

The Visalaw.com Health Care Newsletter  
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Published by Greg Siskind, partner at Siskind Susser Bland, P.C. - Immigration Lawyers; telephone: 800-343-4890, 901-682-6455; facsimile: 901-273-8770; email: [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com), WWW home page: <http://www.visalaw.com/>.

Siskind Susser Bland serves immigration clients throughout the world from its offices in the US, Canada, Mexico, Argentina and the People's Republic of China. To schedule a consultation with the firm by telephone or in-person, go to <http://www.visalaw.com/intake.html>.

Editor: Greg Siskind

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For our licensing charts by state, go to <http://www.visalaw.com/IMG/charts.html>.

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1. Openers

Dear Readers:

We report on a number of significant developments in health care immigration in this issue of our newsletter. We're seeing a re-run of early 2005 when green cards for nurses ran out. A last minute attempt to pull more unused green card numbers from the unused allotments from prior years was unsuccessful and the 109<sup>th</sup> Congress left this week with no action. So now we are facing several more months of waiting on Congress to address this health care crisis.

Physicians fared a little better. In the closing hours of the Congress, the Conrad 30 J-1 waiver program was continued. But not for very long. The program will now expire in June 2008. Look for a push to make major changes to the physician program.

The General Accounting Office released a major report on J-1 physician waivers that will no doubt be cited regularly by proponents and opponents of physician immigration. We summarize the GAO report's findings this month.

We also report on a new study on foreign nursing prepared by AMN Healthcare, the largest nurse staffing company in the US.

And we report on the rest of the news in health care immigration.

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We remind readers that we do not charge employers and recruiters of health care employees for consultations and that policy extends to individual physicians as well. Please feel free to call our office at 901-682-6455 to arrange for an appointment with me or one of my colleagues.

Kind regards,

Greg Siskind

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2. Ask Visalaw.com for Healthcare Workers

*If you have a question on immigration matters, write [Ask-visalaw@visalaw.com](mailto:Ask-visalaw@visalaw.com). We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.*

Q - What is the latest info about the retrogression for schedule A category?

A - There's really nothing new in the Schedule A category (used mainly by nurses) except that the whole category has retrogressed to the point of being listed as "U" for unavailable. In other words, no cases are being processed at all right now. The only news that would help is if Congress decides to make more green cards available. There is a push going on right now to convince Congress to either pull more unused green card numbers from years past (there are now an estimated 101,000 available) or end the quota on green cards all together for Schedule A occupations. An effort to get this done before Congress recessed this past week was unsuccessful so there will be no action until late this winter at the earliest after the new Congress is sworn in.

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Q - What kind of proof can I provide that I served my J-1 home residency requirement ten years ago in the absence of old passports? I am in the US on an F-1 student visa currently and am getting ready to file for immigration based on marriage to a US citizen.

A - You can present a variety of documents including tax records, affidavits from people knowledgeable about your being in your home country, employment records, bank statements, bills, etc. Really, there are no rules on what is acceptable so anything that would make the case is acceptable.

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Q - I would like to know your comment about the 9th Circuit court decision regarding physician National Interest Waivers. Is it applicable nationwide?

A - I assume you're talking about the Schneider physician case and it is applicable nationwide. USCIS is working on guidelines regarding its implementation, but you are definitely allowed to cite to the case for any filings from this point forward.

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Q - Are medically underserved areas exempted from H1B cap?

A - Only if the person has gotten a J waiver based in going to work in an underserved area. Other H applicants who did not enter the US on the J-1 or who came in J status but who are not seeking a waiver based on an interested government agency, won't necessarily benefit.

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Q - Can a person who passed NCLEX in Singapore work in New Jersey as a Registered Nurse?

A - Passing NCLEX would satisfy one of a number of requirements to immigrate to the US as a nurse. There are English language requirements, credentialing verification, background checks and the employer must also meet various qualifications such as showing adequate funds to cover your salary. And a green card number must be available (see question above on this topic).

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### 3. Health Care News Bytes

According to the Association of American Medical Colleges (AAMC), enrollment of first-year medical students rose 2.2% in 2006. This marks the second straight year that enrollment for first-year students has risen. The AAMC has called for a 30% increase in medical school enrollment by 2015. Twenty-eight medical schools showed an increase in first-year enrollment by 5% this fall.

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The Department of Labor's Bureau of Labor Statistics reports that employment in U.S. hospitals increased in October by 0.14% to a total of 4,459,900 hospital workers. This marks an increase of over 6,300 workers since September.

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The Commission on Graduates of Foreign Nursing Students has released a statement concerning Filipino nurses who took the June 2006 CGFNS exam in Manila. The exam has been tainted as a result of allegations of cheating. The CGFNS board met in October to determine whether nurses who took the exam could qualify for a VisaScreen certificate. CGFNS announced that it would accept applications, but would not make any decision on this issue at this time and would not issue certificates until it had made a decision.

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A new RAND study of immigrants and health care shows that illegal immigrants use less health care resources than their American counterparts. The study's authors looked at immigrants in Los Angeles and have extrapolated nationally from those findings. An abstract of the study can be found at <http://content.healthaffairs.org/cgi/content/abstract/25/6/1700>.

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According to a study conducted by AMN Healthcare, the nation's largest healthcare staffing firm, foreign-trained nurses represent roughly 15 percent of the newly licensed nurses in the U.S. The study, titled *The International Nurse Market: Supply Trends*, focused on the five U.S. states with the largest percentage of foreign-trained nurse, California, Florida, New York, Texas and New Jersey.

Among its findings, the study found that fewer than 10,000 foreign-trained nurses passed the U.S. nurse licensing examination, known as NCLEX, in the first two quarters of 2006. The study also found that over 100,000 foreign-trained nurses are practicing in the U.S. and that this number is expected to continue to grow.

Over 50 percent of the foreign nurses hail from the Philippines. Over 20 percent of the foreign-trained nurses currently practicing are from Canada, and 8.4 percent are from the United Kingdom. The remainder of foreign-trained nurses originate from Nigeria (2.3%), Ireland 1.5%), and India (1.3%).

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#### 4. The ABC's of Healthcare Immigration – J-1 Flowchart Part I: Section 212(e)

This is the first in a series of flowcharts for J-1 visa holders with a two-year home residency requirement. The first flowchart, linked below, shows how to determine whether or not the Section 212(e) Home Residency Requirement applies to a J-1 visa holder in certain cases.

Does the J-1 Section 212(e) Home Residency Requirement Apply:  
<http://www.visalaw.com/03nov3/section212e.pdf>.

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5. Congress Passes Legislation Extending Two Important Health Care Immigration Programs

Congress passed two important pieces of health care immigration legislation in the final hours of its session that ended December 8<sup>th</sup>.

H.R. 4997 extended the Conrad 30 J-1 waiver program for physicians working in physician shortage areas. Under the program, each state may sponsor up to 30 physicians per year to work in areas that are medically underserved. The Conrad program began to sunset on June 1<sup>st</sup> and any physicians entering after that date would no longer be eligible to receive a Conrad waiver. The new law will extend the sunset date to June 1, 2008.

Congress also passed the Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005 (H.R. 1285). The bill extends the H-2C visa for nurses working in underserved areas until 2009. The H-2C allows up to 500 nurses to come to the US each year.

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6. Guest Article: Delta Views by Pete Johnson

The Delta Regional Authority is working hard to improve life for the residents of the 240 counties and parishes we serve in eight states. One of the major ways we're doing this is through health-care initiatives.

We've implemented the Delta Doctors program. The program allows foreign physicians who are trained in this country to work in medically underserved areas for three years. Many of these doctors will choose to stay in our region far longer once they develop a patient base. Let me stress that those in the Delta Doctors program do not take jobs away from U.S.-born physicians. Instead, they provide services in areas where otherwise there would be a shortage of physicians.

The Delta Regional Authority is one of the few government agencies allowed to recommend visa waivers to the State Department. Medical school graduates from other countries normally are required to return to their home countries for at least two years after completing their education. The J-1 visa waiver obtained under the Delta Doctors program allows them to stay in the United States if they spend at least three years in medically underserved areas. These physicians must provide primary care in their specialty fields for at least 40 hours a week. They also must provide care to the indigent, Medicaid recipients and Medicare recipients. The Delta Doctors program accepts waiver requests for medical specialists.

We've already assisted with the placement of more than 50 physicians in our region. This program allows us to meet the health-care needs of more Delta families than ever before as we bring doctors to underserved areas who otherwise wouldn't be there. We'll only recommend visa waivers within the 240 counties and parishes we serve. An employer must first make a good-faith effort for at least six months to recruit an American-born physician before requesting a waiver. We require evidence of these recruitment efforts. The foreign physician, in turn, must agree to provide

primary medical care for not less than 40 hours per week in areas designated by the U.S. Department of Health and Human Services as shortage areas. All requests for visa waivers are subject to the periodic review by our staff for compliance. An employer's failure to comply in good faith with the policies of the Delta Doctors program is considered in the evaluation of other applications involving that employer. As you can see, we're going to great lengths to ensure we're placing the right doctors in the right places.

Those desiring more information on the Delta Doctors program may go to our website at [www.dra.gov](http://www.dra.gov) or contact R.L. Condra in our Washington office at (202) 434-4870.

Meanwhile, we continue to make progress with our Healthy Delta program in the area of diabetes awareness and prevention. I was in Washington recently to formally unveil our Healthy Delta program for the media and congressional staffers. I can tell you that everyone with whom I visited was impressed by what we're trying to do at the Delta Regional Authority. The concept behind the Healthy Delta initiative is to use health as an economic engine. While we're known primarily as an economic development agency, our board determined that we will never be able to fully develop the economy of our region without a healthy workforce.

In its first stage, Healthy Delta will address the devastating effects of the diabetes epidemic in the 240 counties and parishes we serve. We have instituted an outreach and education program to encourage Delta residents who may have diabetes to see a health-care professional and manage the long-term effects of the disease. If someone cannot consistently go to work five days in a row because of illness, it affects worker productivity and ultimately the economic prosperity of our region. We know healthy economies are built with healthy workforces. The goal of this program is to get our workforce healthy.

We have television, print and web components of this education and outreach effort that are designed to drive people to our Healthy Delta call center. Callers can speak to a diabetes specialist, obtain a free diabetes risk test, be screened for Medicaid eligibility, receive help finding a doctor and get plugged into other diabetes education and management resources in their areas. We also are planning a minority outreach effort to bring the message about taking control of diabetes to hard-to-reach segments of the population.

We're especially excited about our partnership with the American Diabetes Association. Larry Smith, the national chairman of the association, joined me in Washington for our news conference at the National Press Club. Larry recognizes that more entities such as the Delta Regional Authority are needed to join the fight against diabetes, as it becomes a crisis nationwide. The total annual economic cost of diabetes is more than \$130 billion nationwide, according to the American Diabetes Association. The direct costs are more than \$90 billion, up from \$44 billion in 1997. More than a tenth of all health-care dollars spent in this country are spent on diabetes and its complications. That's because diabetes alone represents 11 percent of U.S. health-care expenditures, while people with diabetes have medical expenditures that are 2.4 times higher than they would be if they did not have the disease. Cardiovascular disease is the most costly complication of diabetes. More than 175,000 cases of permanent disability are caused by diabetes each year at a cost of \$7.5 billion.

Those needing help with their diabetes can call our toll-free number at 1-866-602-3300 or visit the Healthy Delta website at [www.HealthyDelta.com](http://www.HealthyDelta.com). Those who call us will be contacted again at 30-, 60-, 90- and 120-day intervals to track progress and see if the caller visited a health-care provider or diabetes education center. Based on data collected by the call center, the DRA will build a database to demonstrate measurable outcomes in diabetes management in the region.

The Delta, of course, is one of the most culturally and historically rich areas of our country. This is a unique region that has a long tradition of cultural relevance in America. Unfortunately, it is also an area that has faced numerous economic and social challenges. Congress has charged the Delta Regional Authority with being a positive economic driver in the region. Since the hurricanes of last year, the world has seen the resiliency of people in this part of the country. One of the crises we now face is the health of our citizens. As the statistics I outlined above clearly show, diabetes is a problem across the country. But our region has experienced especially high rates of diabetes compared with other states. Of the 10 states with the worst diabetes rates, five of them are in our region -- Mississippi, Illinois, Alabama, Louisiana and Arkansas. We're truly ground zero for the diabetes epidemic. It is holding our workforce back from being productive.

The point I wanted to make in Washington is that diabetes is not just a public health issue. It's an economic issue. People who aren't healthy cannot go to work to produce the goods and services that drive the economy. They cannot support their families. Employees don't show up to work five days in a row on a consistent basis when they're dealing with severe cases of diabetes. Those with diabetes who do manage to show up at their jobs cannot operate heavy machinery, and they're less productive. That's why an economic development agency is focusing now on human development. We're building the Healthy Delta program at the Delta Regional Authority on the premise that healthy economies are the result of healthy workforces, not the other way around.

*Pete Johnson of Clarksdale, Miss., is the federal co-chairman of the Delta Regional Authority. He was appointed by President Bush and confirmed by the Senate in 2001.*

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## 7. GAO Report on HPSA Designation System

According to a report by the Government Accounting Office (GAO), the Department of Health and Human Services (HHS) needs to update its list of Health Professional Shortage Areas and revise its system for designating the areas. In its response to the report, HHS said it generally agreed with the GAO's findings and recommendations.

The GAO identified over 5,500 HPSAs currently designated throughout the United States. The GAO estimates that slightly more than half of the HPSAs were designated for geographic areas, such as counties or portions of counties, or population groups, such as migrant farmworkers. The remaining HPSAs were designated for facilities, such as rural health clinics. In fiscal year 2005, more than 30 federal programs relied on HPSA designations, and in some cases HPSA scores, to allocate resources or provide benefits.

By law, HHS is required to annually review HPSA designations in order to determine if the HPSA designations are still applicable. HHS is also required to publish current designations in the *Federal Register* as well as publish a list of those HPSAs that have been withdrawn.

Since 2002, HHS has not annually published a list of HPSAs in the *Federal Register*. As a result, some HPSAs that no longer meet the designation criteria have retained their HPSA designation and have received benefits from federal programs that rely on that designation. HHS has previously recognized the need for improvements in the designation system and has been working since 1998 on a proposal to revise the system.

The GAO concluded that HHS must resume publishing a list of designated HPSAs in the *Federal Register* and complete a proposal to revise the HPSA designation system. In its comments to a draft of the report, HHS agreed with all the GAO's recommendations.

The full report can be found online at <http://www.gao.gov/new.items/d0784.pdf>.

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#### 8. GAO Report on Usage of J-1 Physician Waivers

According to a November 2006 General Accounting Office (GAO) report, usage of J-1 visa waivers is has continued to be a major source in providing physicians for underserved areas of the United States. Between fiscal years 2003 and 2005, over 1,000 waivers were requested through the Conrad State 30 programs, the Appalachian Regional Commission (ARC), the Delta Regional Authority (DRA) and the Department of Health and Human Services (HHS). Of these waivers, 90 percent were requested by states, who have become the primary source of J-1 visa waiver requests.

The GAO compared this recent study to one it conducted in 1995. Like the 1995 study, the number of J-1 waiver physicians practicing in underserved areas at the end of 2005 exceeded the number of physicians practicing in these areas through HHS's National Health Service Corps (HHSC) programs. However, unlike in the 1995 study, where the majority of waivers were requested by federal agencies, the 2006 study found that states are now the main source of waiver requests. In fiscal year 2005 alone, states requested 956 waivers, while federal agencies requested only 56 waivers. In 1995, states requested only 89 waivers, while federal agencies requested 1285.

Both state and federal J-1 physician waiver programs requested waivers for physicians to work in a variety of practice specialties, settings and locations. The study showed that in fiscal year 2005, a little less than half of the waiver requests were for physicians to practice exclusively primary care. About half of the waiver requests were for physicians to be employed in rural areas.

The full report can be found online at <http://www.gao.gov/new.items/d0752.pdf>.

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#### 9. Chart Of Pharmacist Licensing Requirements By State

Linked at <http://www.visalaw.com/IMG/charts.html>.

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10. State 30 Physician Waiver Chart

Linked at <http://www.visalaw.com/IMG/state30.html>.

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11. Physician National Interest Waiver Chart

Linked at <http://www.visalaw.com/IMG/NIW.html>.

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12. PHYSICIAN JOB CENTER

Siskind Susser Bland, through its numerous health clients and its working relationships with physician recruiting firms, is able to assist international medical graduates seeking employment opportunities in the US with our employer clients interested in going through the visa application process. We do not charge physicians or our employer and recruiter clients for these services. If you are interested in our help, please e-mail us at [eschachter@visalaw.com](mailto:eschachter@visalaw.com). If you are an employer or recruiter interested in listing a position in our newsletter, please also e-mail us at [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com) or call Greg Siskind at 901-682-6455.

For a listing of physicians seeking positions requiring visa sponsorship, go to [www.visalaw.com/quickbase.html](http://www.visalaw.com/quickbase.html). For more information on any of these candidates, please email us at [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com) with the physician's candidate number in the subject line of your email.