State PCOs and the National Interest Waiver Program
Path to permanent residence:

- There are many foreign national physicians working in the United States on H-1B non-immigrant visas. This category typically includes J-1 study visa physicians who have received a return waiver to work in underserved areas.

- H-1B visas have a typical term of up to 6 years, but can be extended for several additional years.

- Physicians seeking to remain in the US on a permanent basis must take steps to adjust their status and receive a permanent resident visa.
Approximately 140,000 immigrant visas are available each fiscal year for aliens (and their spouses and children) who seek to immigrate based on their job skills.

Applicants with the right combination of skills, education, and/or work experience and are otherwise eligible, may be able to live permanently in the United States.

There are five employment-based immigrant visa preferences. There are two key preferences for foreign national physicians.
First Preference EB-1
- This preference is reserved for persons of extraordinary ability in the sciences, arts, education, business, or athletics; outstanding professors or researchers; and multinational executives and managers.
- Labor Certification is not required.

Second Preference EB-2
- This preference is reserved for persons who are members of the professions holding advanced degrees or for persons with exceptional ability in the arts, sciences, or business.
- Labor Certification or Letter of Attestation is required.
Step One: Labor Certification

- Employer places appropriate job advertisement in national journal. Job must be at prevailing wage.
- Employer reviews resumes and conducts appropriate interviews of qualified applicants.
- Employer submits information to US Labor Department that there are no U.S. physicians ready, able and qualified to perform the job.
- US Labor Department reviews information and provides labor certification.
Step Two: Visa Petition

- Employer submits an immigrant visa petition (Form I-140) within 180 days to the USCIS on behalf of physician.

- In petition employer demonstrates:
  - Employer financial ability to pay the physician’s salary.
  - Employment is full-time with no definite termination date.
  - Evidence of the physician’s education and prior experience.
Step 3: Application for Permanent Residence

- Adjustment of Status Application: US-based physician and his family apply for permanent residence concurrently with visa petition.

- Application must show non-excludability.
Requirement for U.S. employers seeking to employ certain persons whose immigration to the United States is based on job skills or nonimmigrant temporary workers coming to perform services for which qualified authorized workers are unavailable in the United States.

Labor certification is issued by the Secretary of Labor and contains attestations by U.S. employers as to the numbers of U.S. workers available to undertake the employment sought by an applicant, and the effect of the alien’s employment on the wages and working conditions of U.S. workers similarly employed.

Determination of labor availability in the United States is made at the time of a visa application and at the location where the applicant wishes to work.

- **NATIONAL INTEREST WAIVER** — ... the Attorney General may ... waive the requirements ... that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

- **PHYSICIANS WORKING IN SHORTAGE AREAS OR VETERANS FACILITIES. — IN GENERAL** — The Attorney General shall grant a national interest waiver ... on behalf of any alien physician ... if—

  - the alien physician **agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage** of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

  - a Federal agency **or a department of public health in any State has previously determined that the alien physician’s work** in such an area or at such facility **was in the public interest**.
Eligibility Criteria for NIW EB-2 Physicians

- Physicians applying for immigrant status must:
  - **Full Time**: agree to work full-time in a clinical practice. For most physician NIW cases, the required period of service is 5 years.
  - **Clinical Practice**: work in primary care (such as a general practitioner, family practice petitioner, general internist, pediatrician, obstetrician/gynecologist, or psychiatrist) or be a specialty physician.
  - **Shortage Area**: serve either in a Health Professional Shortage Area (HPSA), Mental Health Professional Area (MHPSA – for psychiatrists only), a Medically Underserved Area (MUA), or a Veterans Affairs facility, or for specialists in a Physician Scarcity Area (PSA).
  - **Attestation**: obtain a statement from a federal agency or a state department of health that has knowledge of your qualifications as a physician and that states your work is in the public interest (This statement is known as an attestation).
State Flexibility in Defining Public Interest

- **Rules**: 65 FR 53889

- Participation of States is **voluntary**. No limits on number of attestations. Role is distinct from J-1 Program.

- Statute and rules do not address the **criteria to be used** by a state department in **determining** if a practice is in the **public interest**.

- This permits States **flexibility** in determining when to issue a letter of attestation.

- States **may not countermand regulatory requirements** of full-time employment in a federally-designated shortage area.
Question: Does your state provide attestation letters for National Interest Waiver applicants?

- Yes
- No
Survey Question 2

How many letters of attestation does your state provide of NIW applicants in a typical year?

- 5 or fewer
- 6 to 10
- 11 to 20
- More than 20
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Robert was initially admitted to the Bar as an attorney in 1977, and has spent the vast majority of his professional career practicing exclusively in immigration law. He is a Cum Laude graduate of the Indiana University School of Law (1976) and thereafter continued his post-graduate legal studies as a Fulbright Fellow at the law schools of Harvard University (Cambridge, MA) and Moscow State University (Russia).

Robert received the 2012 Distinguished Service Award from the Indiana University School of Law, which was given in recognition of his having developed a professional career in a manner that does credit to the University and the legal profession.
Eligibility: Texas accepts applications from all physicians in eligible practice. This includes all H-1B physicians in full clinical practice.

Recognized Service: Texas will attest to all service in the state’s HPSAs and MUAs, including past, current and intended service.

Public Interest Definition: Texas recognizes practice in designated shortage areas as the basis for public interest designation. Practices which include Medicaid and uninsured patients enhance the public interest nature of the practice. This approach is designed increase the number of physicians practicing in underserved locations.

Monitoring: Texas defers monitoring of NIW service obligation to USCIS.
Eligibility

- Primary Care physicians who have obtained a J-1 visa waiver from the USCIS based on an ADHS J-1 visa waiver letter of support.
- Have practiced as Arizona J-1 primary care physician in an ambulatory rural or FQHC setting for at least 1 year immediately preceding the request for an ADHS NIW attestation letter.
- Provide ambulatory primary care services on a full time basis at a qualifying service site.

Qualifying Sites

- The service site must be located within a RURAL federally designated HPSA, MUA, MUP community.
- Federally Qualified Health Center (FQHC) or FQHC lookalike.
- Rural Health Clinic.
- Arizona Primary Care Program Clinic.
- Federal or State correctional facility.
Additional Requirements

- Foreign physicians who obtain a national interest waiver from the USCIS based on an ADHS NIW attestation letter must serve the uninsured and under-insured, regardless of ability to pay; must accept Medicaid (AHCCCS) and Medicare assignment; and must use a sliding fee schedule.

- ADHS requires notarized documents establishing that the foreign physician is practicing and will continue to practice a primary care specialty outpatient and full time basis at a qualifying service site or in a community located in a rural HPSA, MUA, MUP, or MHPSA.

- ADHS must receive each calendar quarter a notarized encounter report for the foreign physician. This report will confirm the service site and will also confirm sliding fee schedule use for the foreign physician's patients. ADHS must annually receive the current sliding fee schedule and the procedure for its use.
Arizona: Targeted program focus for NIW physicians.

Texas: Maximizing NIW physician practice in underserved areas.
Targeted Definition of Public Interest - Some States require more than the federally established requirements for a letter of attestation, targeting specific:

- Location of proposed practice.
- Practice specialty.
- Type of employer.
- Acceptance of Medicaid/Medicare.
- Sliding fee arrangements.
- Waiting period (for J-1 physicians).
Monitoring – some states monitor post placement practice requiring reports of:

- Location of practice.
- Employer and employment conditions.
- Medicaid/Medicare acceptance.
- Sliding fee acceptance.
Promoting a State’s NIW Process

- **Employer Awareness**: Education/awareness of health center and other safety net employers.

- **Notice on Recruitment Listings**: NIW language on 3Rnet and similar listings.

- **Posting on Health Department Website**: NIW Process listing on State websites.

- **Notice to Key Groups**: Notification of immigration law attorneys and immigration groups.

- **Residency Outreach**: Outreach to residency programs employing H-1B physicians.
**NIW Reference Sources - 1**

- **USCIS NIW Overview:**
  - [http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=e39718a1f8b73210VgnVCM100000082ca60aRCRD&vgnextchannel=a695a6c515083210VgnVCM100000082ca60aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=e39718a1f8b73210VgnVCM100000082ca60aRCRD&vgnextchannel=a695a6c515083210VgnVCM100000082ca60aRCRD)

- **Public Law 106-95**

- **NIW Federal Register Notice**
NIW Reference Sources - 2

- **USCIS Overview of EB-2**
  - [http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=816a83453d4a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=816a83453d4a3210VgnVCM100000b92ca60aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=816a83453d4a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=816a83453d4a3210VgnVCM100000b92ca60aRCRD)

- **US Department of Labor Certification Information**