

Biden delays Trump immigration rule on cap-subject H-1B visas

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What's the news: The Biden administration has delayed implementation of a problematic Department of Homeland Security (DHS) final rule regarding cap-subject H-1B visa petitioners.

The rule, issued late in the Trump administration and initially set to take effect this month, would have replaced the random-selection process with a system that gives priority to higher wage earners. The AMA vigorously opposed the rule, whose effective date has been pushed back to Dec. 31, 2021.

“The AMA believes the proposed rule will cause irreparable and lasting harm in the ability to provide timely, accessible health care services in rural and medically underserved communities across the United States,” AMA Executive Vice President and CEO James L. Madara, MD, wrote in a Dec. 2 letter to former acting DHS Secretary Chad Wolf that called for the rule to be withdrawn.

The AMA has since alerted the Biden administration about its concerns and expressed appreciation for delaying implementation of the rule.

“The AMA applauds the Biden administration for delaying the implementation of this rule and for reconsidering the negative impacts that this cap selection change would have on H-1B visa applicants,” Dr. Madara wrote in a letter to DHS Secretary Alejandro Mayorkas.

The Biden administration’s announcement delaying implementation of the rule, however, did not speak to the rule’s merits. Instead, it listed the reasons why it was impractical to go forward with the rule in the short time frame that was given to the U.S. Citizenship and Immigration Services to implement it.

The same reason was given for forgoing with the Administrative Procedure Act's (APA) requirement that 30 days' advance notice be given before a substantive regulatory change is undertaken. This requirement can be waived if it is found to be "impracticable, unnecessary or contrary to the public interest."

Why it's important: The rule would have disrupted immigration processes for international medical graduates (IMGs) who often practice in rural and underserved communities and provide care to "many of our country's most at-risk citizens" with higher incidence of diabetes and other chronic conditions that put them at higher risk of experiencing complications from COVID-19, Dr. Madara wrote.

He also noted that the rule was in violation of the Immigration and Nationality Act because it limited who is selected for the H-1B cap "to those employers who pay the most."

"Applicants would be considered solely based on the amount of money that they would be paid, rather than the utility that they would bring to the U.S. workforce," the letter says.

A similar proposal, which was opposed by the AMA and would have hindered IMG physicians' ability to train and practice in the U.S., was issued late in the Trump administration and has also been stopped from taking effect.

That proposed rule would have required J-1 IMG physicians to apply for annual visa extensions through the UCIS via a system that can take five to 19 months to process their application—effectively preventing foreign medical graduates from timely completion of residency training or entrance into the Conrad 30 program.

The Trump administration never issued its final rule on that proposal and any attempt to further advance it was stymied by the new administration's regulatory freeze memorandum issued on President Joe Biden's first day in office.

What's next: The Biden administration stated that, while the USCIS "works through the issues associated with implementation," DHS leadership will also evaluate the rule and related policies.

The AMA has urged the administration "to prioritize supporting and protecting the health and well-being of the U.S. population by revoking this final rule."

"The final rule will create a system that removes physicians that are willing and ready to practice in medically underserved areas and cuts off those that are most in need from receiving physician care," Dr. Madara wrote. "The loss of even one physician within small practices in rural and medically underserved areas could mean many individuals lose access to health care, something that we



cannot afford, especially during a global pandemic.”

Read about the AMA IMG Section’s policies and advocacy efforts.