This communication is provided by the Council of Pediatric Subspecialties
MEMORANDUM

To: Council of Pediatric Subspecialties
Attn: Laura Degnon, CAE, Executive Director

From: Kristen A. Harris, Esq.

Re: Council of Pediatric Subspecialties Action Team’s Recommendation to Shift Fellowship Program Start Date to July 7 – Immigration Considerations for Programs Seeking to Employ Fellow Physicians in H-1B Status

I. Introduction

The Council of Pediatric Subspecialties (the Council) has recommended shifting the start date of Pediatric Subspecialty Programs from the traditional July 1 start date to a July 7 start date. The Council has requested our firm identify a mechanism whereby physicians pursuing Graduate Medical Education (GME) in the United States in H-1B status and the pediatric subspecialty fellowship programs that seek to employ them can comply with U.S. immigration requirements notwithstanding a 7-day gap between the end of a traditional Postgraduate Year (PGY) on June 30th and the start of the new Council programs’ PGY on July 7th of a given year.\(^1\)

Per request of the Council, this memorandum will address the role of the U.S. Department of Labor in the H-1B immigration process, the role of U.S. Citizenship and Immigration Services, the timing of commencement of pay for H-1B fellow physicians, and suggested timing of government filings, as well as atypical situations involving differing immigration status at time of filing and dependent family members of H-1B physician fellows.

II. Executive Summary

Effective January 17, 2017, H-1B physicians and the pediatric subspecialty fellowship programs that seek to employ them should be able to avail themselves of a newly promulgated, discretionary 10-day grace period to cover the “gap” between the end of such physicians’ base

\(^1\) Note: The Council requested analysis with regard to its recommendation for a July 7th start date for fellowship programs administered by Council members. The issues addressed within this memorandum could be applicable to other U.S. GME fellowship programs in other specialties and subspecialties as well.
residency PGY and the newly recommended July 7th start date of the pediatric subspecialty fellowship PGY, as a result of recently published immigration regulations.2 A request for an H-1B start date that is up to 10 days following the prior program’s H-1B end date will be permitted for the first time in this current calendar of 2017, for H-1B petitions filed on or after January 17, 2017. Under the new regulations, pediatric subspecialty fellowship programs are permitted to file an H-1B petition for an incoming H-1B fellow physician for a July 7th start date, and should do so as possible following January 17, 2017, and, in future years, as soon as possible within the 6 months prior to the July 7th start date.

There are some risks to a 7-day gap between PGYs for H-1B visa status on a programmatic basis, as the Department of Homeland Security opted to frame the 10-day grace period as a matter of discretion rather than a mandatory benefit, and as the regulations are at present within a 60-legislative day period during which Congress could revoke the regulation pursuant to the Congressional Review Act, or “CRA.”3 The potential impact of the first risk, as to the discretionary nature of the grace period, can be mitigated through early filing and opting for expedited, premium processing to facilitate resolution well in advance of the upcoming PGY.

The likelihood of the second risk, i.e., CRA revocation, is much lower and realization of such risk is time-limited rather than a perennial one. In the past 20 years since its enactment, only one rule has been revoked pursuant to the CRA, making the likelihood of revocation of the new rule unlikely as a statistical matter.4 Additionally, Congress must now act within 60 legislative days following the 15th legislative day of the current session to revoke the rule.5 Given this deadline, it is reasonable to anticipate that the risk will be realized, if at all, prior to the start of PGY 2018-2019. The only PGY for which the risk would be a factor is the 2017-2018 PGY.

III. Qualifications of Author

I was admitted to the Illinois bar in 1998. Due to the federal nature of immigration law, I am authorized to practice such law in all 50 states. I attained bachelor’s and master’s degrees from Yale University and earned my J.D. degree from the University of Michigan Law School.

I have practiced immigration law exclusively for over twelve years, with a focus on healthcare immigration. Our firm represents healthcare sector entities, including academic medical centers, as well as physicians and other healthcare providers throughout the United States. I have served as the Advocacy Chair of the International Medical Graduate (IMG) Taskforce, the leading physician immigration attorney organization in the country, from 2010 to

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5 5 U.S.C. § 801(d); see also Carey, et al, The Congressional Review Act: Frequently Asked Questions, n3 above. Note: The likelihood of risk realization will increase if a recent proposed amendment to the CRA, which passed the House of Representatives, is enacted, which amendment would permit the “bundling” of several regulations for revocation. See Midnight Rules Relief Act of 2017, H.R. 21, 115th Cong. (2017).
present; in this role I have led advocacy efforts and provided technical assistance with respect to all federal physician immigration legislation introduced from 2010 onward. I have served in leadership roles – first as Vice-Chair and now Chair – of the Immigration Affinity Group of the American Health Lawyers Association (AHLA), the nation’s largest association of healthcare attorneys, with over 13,000 attorney members. I have also served on the Executive Board of the Chicago Chapter of the American Immigration Lawyers Association (AILA), the country’s largest association of immigration practitioners, with over 14,000 members, from 2014 to present.

In addition to service in related leading organizations, I served as the Immigration Editor for the discussion paper published by the American Medical Association International Medical Graduate Section Governing Council in 2013 relating to international medical graduate physicians in the United States. I have also authored nationally published, peer-reviewed articles regarding physician immigration, including the following two articles, to which I would refer the reader for additional discussion of H-1B petitions for physicians: “Realities of the Physician Shortage: Immigration Considerations in Recruiting and Retaining Foreign National Physicians,” and "Member Briefing: Immigration Issues Impacting the Training, Recruitment, and Employment of Foreign Physicians by Academic Medical Centers."

IV. Role of U.S. Department of Labor with Regard to Authorization of H-1B Employment of and Payment of Physician Fellows by Fellowship Programs

The U.S. Department of Labor (DOL) regulates the wages that H-1B employers must pay H-1B employees, as well as when such payment must commence. This Section IV discusses the related filings required by the DOL, as well as the timing of required payment to H-1B employees.

A. Prevailing Wage Requirements; Labor Condition Applications (”LCAs”)

Prior to filing a new H-1B petition for an incoming fellow, a pediatric subspecialty program seeking to employ the fellow must file a Labor Condition Application (LCA) on-line with the DOL setting forth the job title, occupation, proposed rate of pay, and proposed prevailing wage applicable to the offered position. The employing program must obtain DOL’s certification of the LCA prior to filing an H-1B petition. The DOL publishes prevailing wage information (i.e., information as to the wages paid for a given profession in a given Metropolitan Statistical Area (MSA)) on its website. The DOL publishes this prevailing wage information in the form of report of an Occupational Employment Statistics (OES) survey, for a 12-month

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7 Kristen A. Harris, “Realities of the Physician Shortage: Immigration Considerations in Recruiting and Retaining Foreign National Physicians,” AHLA Connections (Oct. 2016).
period running from July 1 of a given year to June 30th of the next year. The DOL OES wages are the most frequent source of prevailing wages utilized by H-1B petitioners. Alternatively, an employer may choose to utilize a qualifying alternate prevailing wage survey.

After an employer, here a pediatric subspecialty program, files an LCA, the DOL will review and either deny or certify the LCA within seven federal government working days. In this process, the DOL is certifying that the offered wage meets or exceeds the prevailing wage for the given, employer-identified occupation within the given MSA. When an LCA utilizes DOL-published prevailing wage information, it is a rarity for the LCA to be denied, and typically will only be denied for typographical error. An LCA is more vulnerable to denial if the petitioning employer is using an alternate prevailing wage survey.

As a technical and important logistical matter for the purposes of the Council’s inquiry, it should be noted that the LCA cannot be filed more than 6 months from the intended start date, due to the technical parameters of the DOL’s on-line filing portal. In other words, the earliest the LCA could be filed and support a full 3-year H-1B validity period would be after January 7th of the same calendar year as the July 7th date on which the subspecialty program would begin. Alternatively, if the full 3-year period would not be required by the fellowship, then the program could file the LCA slightly earlier than the 6-month period to permit filing the H-1B petition as early as possible within the permitted 6-month period prior to the H-1B start date for any given year beginning in calendar year 2018.

B. Regulations Regarding Payment of Fellows in H-1B Status

DOL regulations include a multitude of requirements regarding payment of H-1B visaholders by their U.S. employers. For purposes of this memorandum, the most important ones relate to commencement of the payment obligations by the pediatric subspecialty fellowship program employing the H-1B visaholder. DOL requires an employer to pay an H-1B visaholder for certain qualifying non-productive time, and this obligation can come due and payable even before an H-1B visaholder is fully credentialed.

In cases such as the one most typical here, where the fellow physician is already in the United States in H-1B status and participating in either a residency program or another fellowship program during the immediately prior PGY, then the employer is required to commence paying the fellow the offered wage upon the earlier of a) the date the H-1B fellow “enters into employment” by making him/herself available for work, such as reporting for orientation, studying for a licensing exam, or otherwise subjecting him or herself to the control of the employer; or b) 60 days from the date on which the H-1B worker becomes eligible to work for the pediatric fellowship program. The 60-day period to commence pay would begin on July 7th for the likely physician fellow who is already in the U.S. in H-1B status and simply transferring from his/her current GME program to the pediatric subspecialty program. If there are no program requirements prior to the July 7th start date and the physician fellow does not present

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9 This information may be found at http://www.flcdatacenter.com/OesWizardStart.aspx.
10 The DOL’s on-line portal to file LCAs, known as “iCert,” may be found at https://icert.doleta.gov/.
11 20 C.F.R. § 655.731(c)(6). See also U.S. Dep’t of Labor, Wage and Hour Division, Fact Sheet #62I: Must an H-1B employer pay for nonproductive time? (Nov. 2016).
him/herself to work prior to the July 7th start date, then there is no requirement to pay the physician prior to July 7th. Rather, the payment obligations would commence on July 7th, at the start of the GME program.

In cases where an H-1B visaholder is outside of the United States at the time of approval of the H-1B petition, the subspecialty fellowship program must commence payment of the H-1B employee on the earlier of a) the date the H-1B fellow “enters into employment” as described above or b) within 30 days of admission of the H-1B fellow to the United States. In other words, the 60-day period is shortened to 30 days for situations in which the H-1B fellow is entering the U.S. from abroad to participate in the program.

V. Role of Department of Homeland Security/U.S. Citizenship and Immigration Services with Regard to Authorization of H-1B Employment of Physician Fellows by Fellowship Programs

U.S. Citizenship and Immigration Services (USCIS) is the agency of the Department of Homeland Security that regulates legal immigration to and within the United States. Each pediatric subspecialty program seeking to employ a physician fellow in H-1B status must first file an H-1B petition with USCIS, as a matter of law, before employing such fellow. Due to restrictive language in the current Form I-9 and recently revised M-274 Handbook regarding ongoing employment without a valid, unexpired Form I-94, it is strongly recommended that the pediatric subspecialty program also obtain USCIS approval of such petition before the start of the program year on July 7.

A. New 10-Day Grace Period Afforded by Highly Skilled Worker Regulations, Effective as of January 17, 2017

As noted in the Executive Summary above, the Department of Homeland Security (DHS) has promulgated new immigration regulations which lessen the potentially adverse immigration impact of the new 7-day gap anticipated by the Council’s Action Team’s recommendation. Such regulations went into effect January 17, 2017. Provided that the regulations do not undergo Congressional revocation pursuant to the CRA, the regulations will be in place and active for purposes of the upcoming PGY to commence in July 2017. Under the new regulations, an H-1B visaholder may be afforded a 10-day grace period following his/her H-1B stay and prior to the commencement of a new H-1B or other stay. The new regulations provide as follows:

An alien admissible in . . . H-1B . . . classification . . . may be admitted to the United States . . . for the validity period of the petition . . . plus an additional period of up to . . . 10 days after the validity period ends.

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12 20 C.F.R. § 655.731(c)(6)(ii).
14 Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82398 (Nov. 18, 2016).
15 8 C.F.R. § 214.1(l).
The new regulations further provide:

An alien in any authorized period described in (1) of this section may apply for and be granted an extension of stay under paragraph (c)(4) of this section . . . if otherwise eligible.\(^{16}\)

Importantly, the final regulations removed the language in the initially published, proposed regulations that might have been deemed to limit use of the 10-day grace period only “to prepare for departure from the United States or to seek an extension or change of status based on a subsequent offer of employment.”\(^{17}\) This language included within the proposed regulations could have been construed to require the new offer of employment – in our case the pediatric subspecialty program’s offer of employment as a fellow – to be extended within the 10-day grace period. Helpfully, the supplementary information to the final regulation makes explicit DHS’s intention to clarify that the 10-day grace period could be invoked where, as here, an H-1B visaholder requires sufficient time following a cessation of employment to change status, vacation, or pursue other opportunities.\(^ {18}\) In the instant situation contemplated by this memorandum, an H-1B visaholder physician employed by one GME program concluding on June 30\(^{th}\) of a given year ought to be able to avail him/herself of seven days of the 10-day grace period to relocate to the new pediatric subspecialty program, to begin on July 7\(^{th}\) of the coming PGY, under the new regulations.

The final regulations unfortunately maintain the permissive word “may” from the initial proposed regulations, to emphasize that this 10-day period shall be a matter of agency discretion rather than of right or operation of law. DHS explicitly declined to adopt the stronger, mandatory word “shall” suggested by some commenters.\(^{19}\) However, the ample and favorable discussions of the expansive appropriate use of the 10-day period throughout the final regulations, as well as the revisions between the proposed and final rule to remove the limiting language, point toward a reasonable basis to anticipate a favorable outcome for petitions seeking to permit H-1B physicians in GME to remain within the U.S. transfer to pediatric subspecialty fellowships notwithstanding the 7-day gap following the conclusion of their base residency programs.

B. USCIS – Filing with USCIS; Adjudication of H-1B Petition

The vast majority of H-1B visaholder applicants for a pediatric subspecialty fellowship will already be present in the United States in H-1B status and will be within a period of H-1B status that will expire with the close of their current GME program on June 30\(^{th}\) of a PGY. For such physicians to remain in the United States and to be able to join a pediatric subspecialty fellowship program on July 7\(^{th}\), the fellowship program will need to file an H-1B petition with USCIS on behalf of such physician to extend his/her current H-1B stay, just as such programs

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\(^ {16}\) 8 C.F.R. § 214.1(3).
\(^ {17}\) 81 Fed. Reg. at 82435, quoting from proposed regulations (emphasis added).
\(^ {18}\) 81 Fed. Reg. at 82437.
\(^ {19}\) 81 Fed. Reg. at 82437 (8 C.F.R. § 214.1(l)).
are required to currently file for a July 1 start date.\textsuperscript{20} As is the current practice, each such petition, given its start date of a date before the start date of the federal government’s fiscal year of October 1, must substantiate its qualification for exemption from the annual quota, or “H-1B cap,” on new H-1B petitions due to the employer’s status as an institution of higher education or a non-profit organization affiliated with or related to an institution of higher education.\textsuperscript{21}

The newly promulgated regulations outlined above now codify the existing USCIS interpretation of the “portability” provisions of the American Competitiveness in the 21st Century Act that permit commencement of certain H-1B employment prior to approval.\textsuperscript{22} The new regulations clarify that the incoming H-1B visaholder is eligible to commence employment for the new H-1B employer upon the date of the timely filing of the H-1B petition or upon the requested start date, whichever is later, provided that certain criteria are met.\textsuperscript{23} The new H-1B employer has authorization to employ an H-1B visaholder so along as she/he i) has been lawfully admitted into the United States or has otherwise been afforded H-1B non-immigrant status, ii) is the beneficiary of a non-frivolous H-1B petition for new employment before the H-1B nonimmigrant’s stay expires, and iii) has not worked without authorization in the United States since his/her most recent admission to the U.S.\textsuperscript{24} As is currently the case, the new H-1B employer must file the petition with USCIS prior to or on the H-1B candidate’s last day of H-1B stay as reflected by the candidate’s Form I-94 expiration date.

\textbf{Cautionary Note:} The current Form I-9 does not provide language that clearly permits a pediatric subspecialty program to accept the expired I-94 of the incoming fellow from his/her residency program as a qualifying List A document. Form I-9 currently permits acceptance only of Forms I-94 that meet certain criteria:

Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.\textsuperscript{25}

In addition, the most current M-274 Handbook, revised and reissued effective as of January 22, 2017 directs employers to accept a Form I-94 only “as long as the period of endorsement has not yet expired.”\textsuperscript{26} Thus, although a permissive reading of the new regulations would seem to indicate the mere filing of an H-1B petition for an incoming fellow prior to approval could suffice as employment authorization, there is concern that

\textsuperscript{20} Additional discussion of H-1B sponsorship in the context of academic medical centers is set forth in Karen M. Pollins & Kristen A. Harris, "Member Briefing: Immigration Issues Impacting the Training, Recruitment, and Employment of Foreign Physicians by Academic Medical Centers," American Health Lawyers Association (Jan. 2015), which I would be pleased to furnish upon request.
\textsuperscript{21} 8 U.S.C. § 1184(g)(5).
\textsuperscript{23} 8 C.F.R. § 214.2(h)(2)(i)(H).
\textsuperscript{24} 8 C.F.R. § 214.2(h)(2)(i)(H)(1).
\textsuperscript{25} Form I-9, page 3, List A, Item 5.b., available at \url{https://www.uscis.gov/i-9} (emphasis added).
the adequate documentation would not be available to support such an approach for full compliance with Form I-9. Therefore, to insure immigration compliance, it is strongly recommended that approval of the new, incoming fellow’s new fellowship H-1B petition be obtained prior to the new program start date of July 7th.

USCIS is not required to adjudicate an H-1B petition within any given timeframe. In the current and prior fiscal year, USCIS processing of H-1B extension petitions have often involved several months nearing one year where employers have not opted for the expedited path of premium processing. Accordingly, given the concerns outlined above, it is recommended that pediatric subspecialty fellowship program pursue the premium processing option.

Pursuit of the premium processing option requires paying USCIS an additional premium processing fee of $1,225.00 per filing and filing a Form I-907 either with the underlying H-1B petition or, alternatively, after the H-1B petition has been filed and after a receipt notice issued. Upon receipt of the Form I-907 and the filing fee, USCIS is required to either issue a “response” within 15 days or refund the filing fee. In the vast majority of cases, USCIS issues a timely response. The response can be in the form of a Request for Evidence (“RFE”), to request additional evidence, or a final decision in the form of a denial or approval. If an RFE is issued, then the 15-day clock for government response re-sets upon USCIS receipt of the employer’s response to the RFE. Accordingly, for planning purposes it is recommended to allot two months from filing to final decision with premium processing, to account for the possibility of an RFE. Even with premium processing, given the July 7th date, the latest date recommended to file an H-1B petition, or to “upgrade” an H-1B petition to premium processing, would be the first week of May.

VI. Suggested Procedures, Timelines for H-1B Fellow Physicians to Commence Subspecialty GME on July 7th

A. Generally

As best practices, pediatric subspecialty programs should file the H-1B petition with the premium processing option as early as possible for each such candidate, subject to certain early filing limitations reviewed here. First, no H-1B petition may be filed prior to 6 months before the anticipated start date. Second, there are other limitations specific to Council members’ situations that will operate so as to prevent a subspecialty program from filing the H-1B on January 17th of this year or January 7th of subsequent years.

i. Early filing limitations -- licensure timing

As noted above, in order to be approved, an H-1B petition must include either proof of full licensure (i.e., a license to practice medicine in the state in which the GME program is situated), proof of exemption from such, or proof that the H-1B candidate is eligible for such licensure which licensure has not yet been granted due to a qualifying technical requirement. Licensure requirements and processes differ from state to state, and may operate so as to delay

28 8 C.F.R. § 214.2(h)(4)(v); 8 C.F.R. § 214.2(h)(4)(v)(C).
filing beyond the optimal January/February time frame. In order to best lessen delay due to licensure, the Council should encourage its fellowship candidates to make as much independent, personal progress as is possible toward state medical licensure well in advance of the announcement of official match results or other extension of fellowship offers.

ii. Early filing limitations -- LCA timing

Pediatric subspecialty fellowships are often of 3-year duration. Where this is the case, it is recommended that such a program file for a full, 3-year H-1B petition to avoid the costs and fees of filing a 2nd H-1B petition. So long as the incoming fellow physician will have a balance of at least 3 years of his or her initial 6-year H-1B stay remaining as of the start of the fellowship program, then the program can petition for a full 3-year validity period with one, initial H-1B petition prior to commencement of the program, without the need for add-on extension petitions for the same physician.

However, a full 3-year petition must be supported by an LCA with a full, 3-year validity period. To obtain this full, 3-year validity period, the sponsoring program cannot file the LCA before 6 months before the program start date. The LCA period for adjudication is seven federal working days, which often equates to approximately two calendar weeks. Accordingly, to permit a full 3-year H-1B petition, it may not be possible to file such a petition until a 3-year LCA is certified in the last week in January or the first weeks of February. This timing would still handily afford a decision will in advance of July 7 start date, provided that premium processing is requested for the H-1B petition.

B. H-1B Fellow Physicians in the United States with Spouses and Children in Dependent H-4 Status

Where incoming fellow physicians in H-1B status have a spouse or children in H-4 dependent status, such family members’ H-4 status will end with the conclusion of the physician’s residency program, if not before. The form to file an extension of the family members’ status, Form I-539, is not a form for which premium processing is formally available. However, the family members’ form, when accompanying an H-1B petition with premium processing, is typically adjudicated within the same accelerated timeframe as the primary H-1B petition. In other words, the family members’ petition is usually adjudicated as if the premium processing did apply, so long as it accompanies the principal’s H-1B petition filed with premium processing. Accordingly, it is recommended to enclose the family members’ Form I-539 seeking extended H-4 status together with the H-1B petition for the incoming fellow.

C. Special Cases; Attendant Timing Concerns

In the unlikely but possible event that the H-1B visaholder applicant has not previously been afforded H-1B status and/or is not in the United States in H-1B status during the time of filing the H-1B petition, then it is all the more important to commence the H-1B process as soon

as practicable to permit H-1B filing and approval within the 6-month period immediately prior to the anticipated start date.

i. Candidate in the United States in Status Other than H-1B During PGY Immediately Preceding Subspecialty Fellowship

If the fellow is within the United States, but is or will be in some status other than H-1B status within the final 6 months of the PGY immediately preceding the subspecialty fellowship, then it is now clear under the new regulations that the “portability” provisions do not apply and that the H-1B petition will in all such cases need to be approved before he or she can start the fellowship.\(^{30}\) Additionally, depending on the status type and length of stay, it may be necessary to not only obtain USCIS approval of the H-1B petition, but it also may be necessary for the candidate to depart from the U.S. with the approved H-1B petition and apply for an H-1B visa stamp at a U.S consulate abroad before he or she could re-enter the U.S. to commence the fellowship. Pediatric subspecialty fellowship programs with a physician fellow candidate who is not in H-1B status are encouraged to seek analysis from immigration counsel upon identification of the physician as a match, both to ensure that the candidate is ultimately eligible for the H-1B and to determine whether the candidate will be required to depart and obtain a new H-1B visa stamp abroad before commencing the fellowship program.

ii. Candidate Outside of the United States During PGY Immediately Preceding Subspecialty Fellowship

If a fellowship candidate is outside the United States and without a valid unexpired H-1B visa stamp, it is all the more imperative to file the H-1B petition as early as possible within the 6-month window prior to July 7th. In this situation, the H-1B petition must be not only approved by USCIS but also the fellow must apply for an H-1B visa with the U.S. Department of State at a U.S. consulate abroad. Visa stamping requires an incoming H-1B physician to file and submit a DS-160, schedule a visa interview, and attend a successful interview to obtain the new visa stamp. All of this must be accomplished before he/she may enter the U.S. to commence the program.

It is recommended but not required that the physician have his/her spouse and any dependent children under the age of 21 apply for H-4 visas at the same time that the physician applies for his/her H-1B. However, the spouse and any dependent children may apply after the principal physician at the consulate on a “follow to join” basis.

VII. Conclusion

In sum, thanks to the newly promulgated federal regulations discussed above, it will be possible for pediatric subspecialty fellowship programs to shift their fellowship program start date from July 1st to July 7th while still complying with immigration requirements under the H-1B program. As such, incoming physician fellows in H-1B status should be able to delay their

\(^{30}\) See 81 Fed. Reg. at 82486 (8 C.F.R. § 214.2(h)(2)(i)(H)(1)) (The new regulations make clear that an incoming employee must be in H-1B status and in no other status for an employer to be able to use the portability provisions for continued work authorization prior to approval outlined at Section V.B. above.)
fellowship start date to July 7th, subject to the caveats and risks set forth above. To mitigate the minor risk associated with the discretionary nature of the 10-day grace period, such programs should file H-1B petitions as early as possible within the six months prior to the July 7th start date, subject to the timing requirements outlined above. The risk of regulatory revocation is not statistically probable and in any event would likely be realized if at all prior to the 2018-2019 PGY, given the timing requirements for CRA.

Thank you for the opportunity to respond to the Council’s request for information in this matter. Should the Council or its members have any questions whatsoever regarding this memorandum or wish to discuss these matters further, I would be pleased to be of further assistance.