

Healthcare & Immigration: What Every HR Professional in the Industry Should Know

CHRIS THOMAS, PARTNER
SARAH BILETI, OF COUNSEL

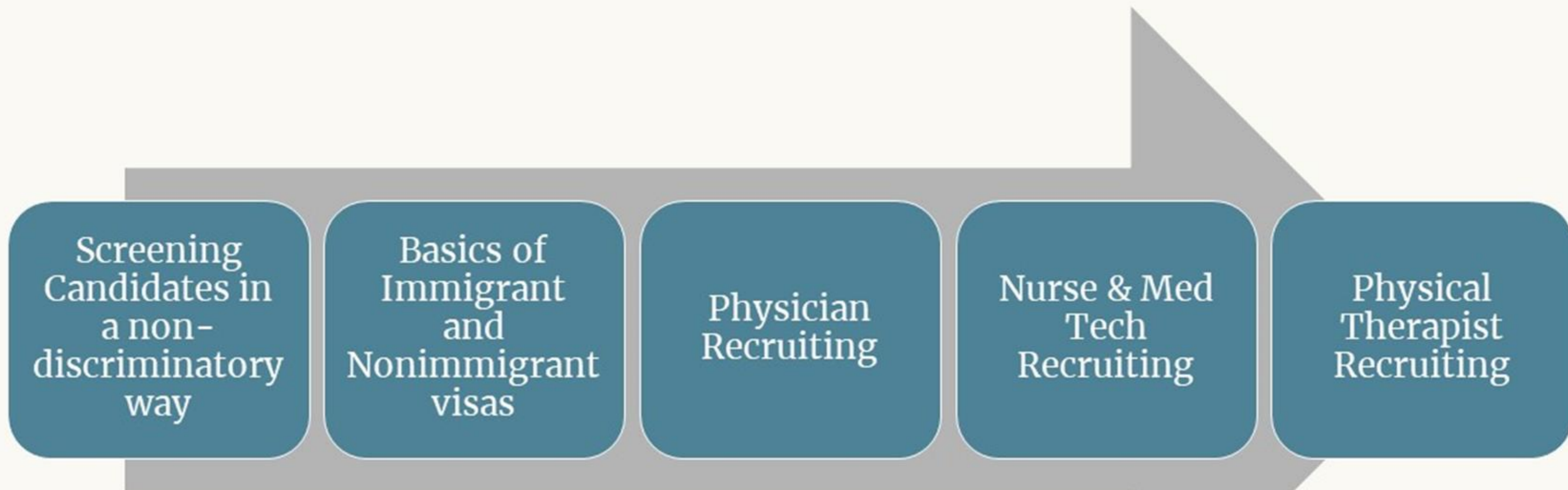
HOSPITAL

First, some housekeeping

This presentation is designed to provide general information on pertinent legal topics. The information is provided for educational purposes only. Statements made or information included do not constitute legal or financial advice, nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author.

This information contained in this presentation is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this presentation might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.

Topics to be Covered



Screening Candidates

Permissible Questions for Recruiters to Ask:

- Are you legally authorized to work in the United States?
- Will you now or in the future require sponsorship for an employment visa status (e.g. H-1B visa status)?
- If yes to second question, can you elaborate?

Recruiters may NOT ask:

- Are you a U.S. citizen?
- Do you have a Green Card?
- May not ask for specific immigration or status related documents or require more or different documents than the minimum required.

Screening Candidates - Sponsorship



Employer is not required to offer immigration-related sponsorship



Considerations

Valid business reason (e.g., cannot find qualified workers)

Cost considerations

- Legal fees
- Government filing fees
- Prevailing wage requirements



Sponsorship does not require term of employment (still at-will)

Be careful not to make promises (e.g., “we will get you a green card”)

The Big Picture

Two types of visas:

*Nonimmigrant
visas*

Alphabet soup
of temporary
visas

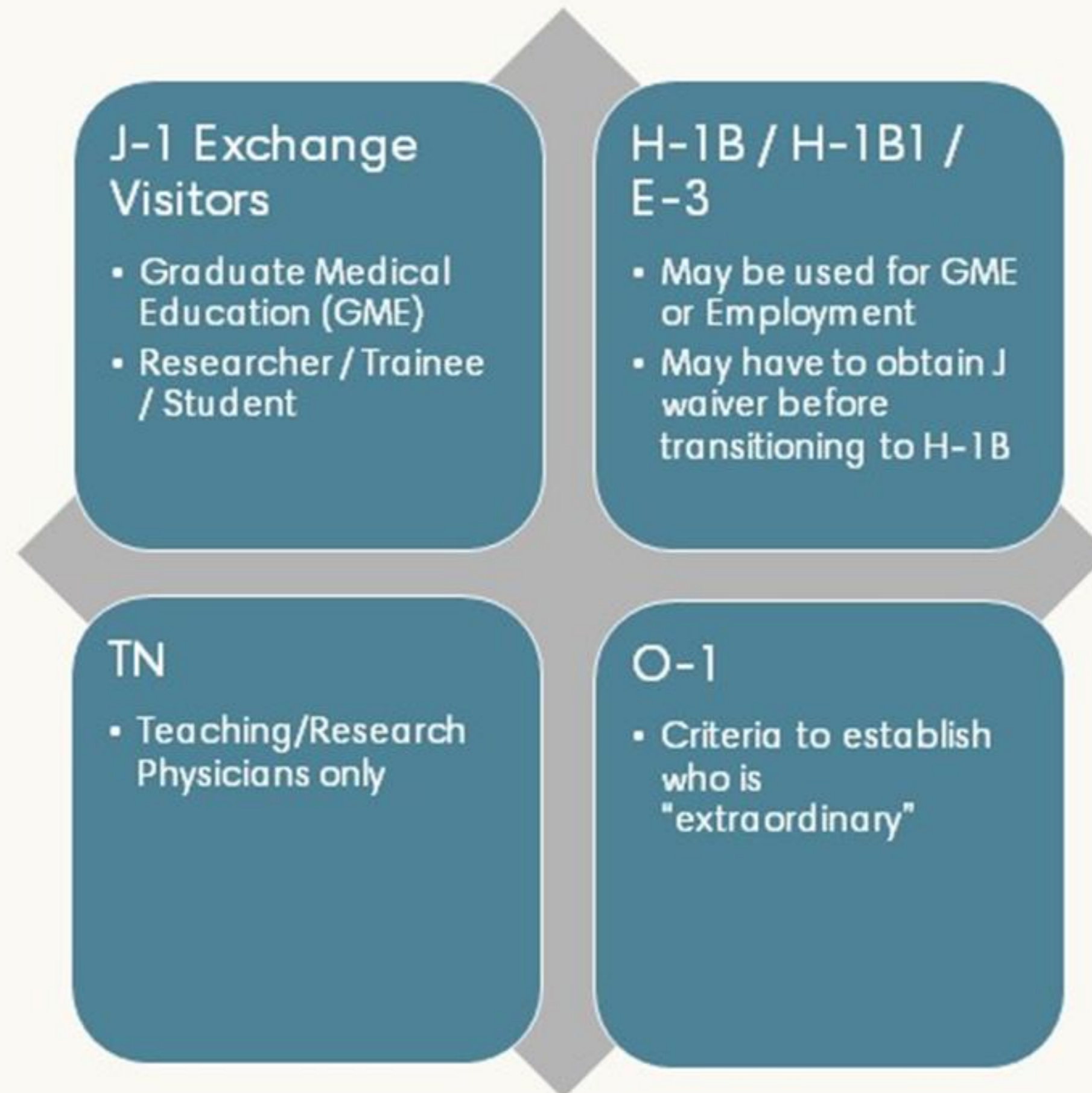
*Immigrant
visas*

Permanent
visas (or green
cards)



Physician Recruiting – Visa Types

There are 4 main visa categories for physicians:



Physician Recruiting – J-1 Waiver



J-1 WAIVER TYPES

Conrad 30 - most common

- State run, varying requirements. 30 total per state annually

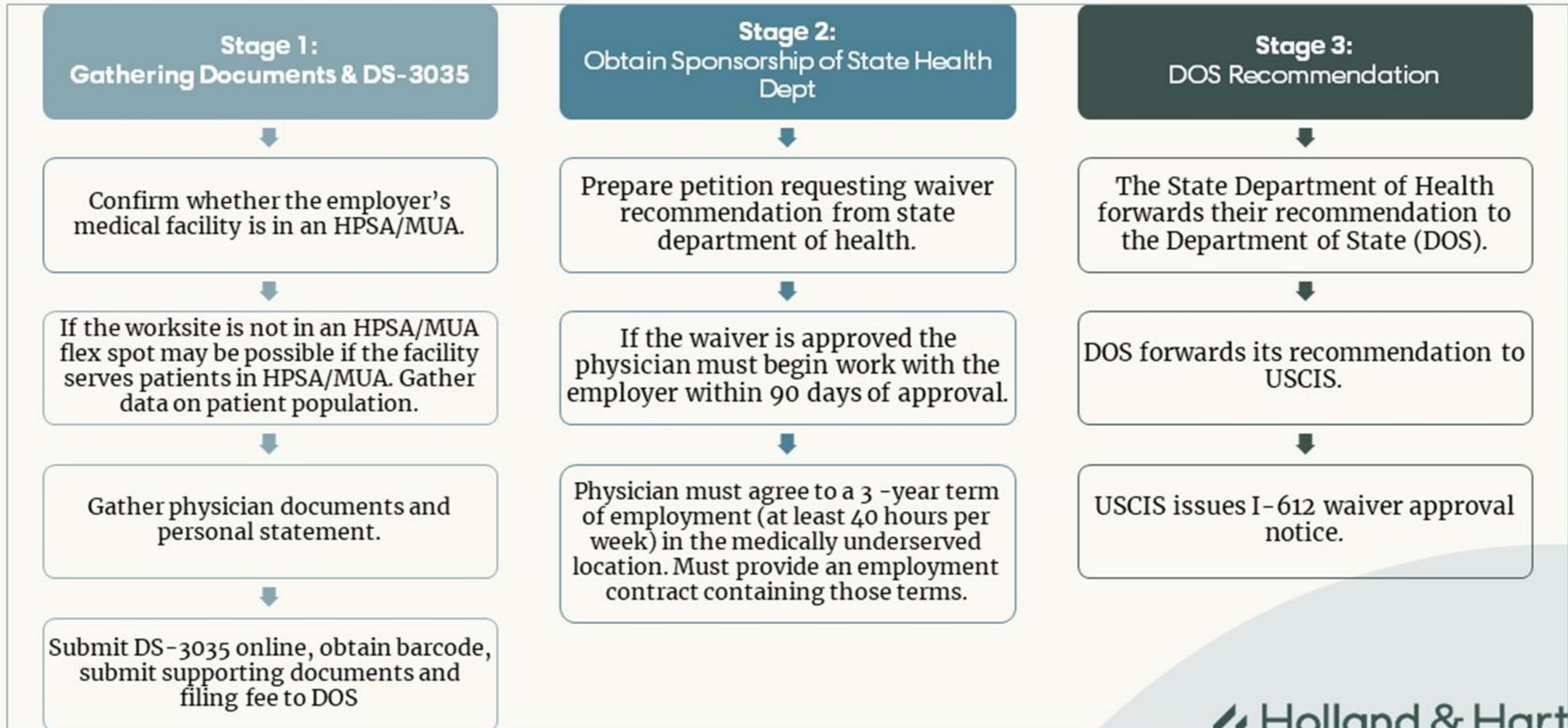
U.S. Department of Health & Human Services (HHS)

- Primary care physicians only (internal, family, psychiatry, pediatrics, obstetrics and gynecology).
- Physician must have completed residency program no more than 12 months prior
- Must be in HPSA with area score of 7 or above
- No cap for waiver approvals

Other Options

- Appalachian Regional Commission (ARC), Delta Regional Authority (DRA), Southeast Crescent Regional Commission (SCRC), Veterans Administration
- Individual Applications based on hardship/persecution/no objection

Physician Recruiting – Conrad 30



Physician Recruiting – Permanent Residence Options

Labor Certification (PERM)

- Requires a recruitment effort to test the U.S. labor market and demonstration of no qualified or willing U.S. workers for the role.

Physician National Interest Waivers (PNIW)

- Requires 5 years of service in a shortage area
- Outstanding Researcher
- Extraordinary Ability



Physical Therapists

- ❑ F-1 & OPT
- ❑ H-1B/H-1B1/E-3
- ❑ TN
- ❑ Schedule A

- ❑ Health Care Worker Certification Required
 - ❑ VisaScreen from CGFNS International
 - ❑ Foreign Credentialing Commission on Physical therapy (FCCPT) – evaluates foreign credentials and issues Health Worker Certificates



Nurse Recruiting/Certification

Finding Nurses

- Domestic recruiting
- International recruiting
 - Hot area from compliance perspective
 - Possible options to avoid legal disaster

Healthcare Certificate

- Comparable to US education
- Commission on Graduates of Foreign Nursing Schools (CGFNS)
- English ability (Educational Testing Service, including TOEFL, TOEIC, and IELTS), **unless** exempt because they studied in Australia, Barbados, Canada, Ireland, New Zealand, South Africa, UK, Trinidad and Tobago, or the US.



Nurses Nonimmigrant (Temporary) Options

Nonimmigrant (Temporary) options

F-1

Part-time while studying on campus

OPT (but not STEM designated)

H-1B/H-1B1/E-3

Advanced practice nurse positions, e.g., CNM, CNS, CNP, along with addiction, cardiovascular, critical care, emergency room, genetics, neonatology, oncology, pediatrics, perioperative, rehabilitation, etc.

Cap exempt?

H-2B

One time, intermittent, peak-load, seasonal need

Cap problems

H-3

Requires detailed training program, with classroom instruction, at non-university

TN

Mexican/Canadian

Nurse Immigrant (Permanent) Options

Immigrant Options

EB-1, 2, or 3

- EB-3, Schedule A (faster than normal, but still six to 12 months)

Adjustment of Status

- Process for nurses already in US with underlying work nonimmigrant visa status

Consular Processing

- Process for nurses outside of US with no viable nonimmigrant visa option.

Case study of large hospital network in desperate need of nurses

Medical Technicians/Technologists

Nonimmigrant Visa Options

- Strong candidates for all previously discussed visa categories (unlike registered nurses)

Immigrant Visa Options

- Do not appear on the current Schedule A—longer green card process that requires PERM

Certifications

- Comparable to US degree
 - Fields that do not clearly qualify
 - Fields that do qualify
- CGFNS

Thank You – Any Questions?



SARAH BILETI

303.295.8522



CHRIS THOMAS

303.290.1611