Impact of the Proposed H-1B Petition Fee on Tax-Exempt Hospitals

Analysis of DHS Proposed Rule, 91 Fed. Reg. 54817 (Aug. 25, 2026)

Key Takeaway

Tax-exempt hospitals are not categorically exempt from the proposed $103,265 H-1B fee. DHS states that the fee would apply uniformly to all H-1B cap-subject petitioners regardless of size or nonprofit status. The decisive issue is therefore whether a particular H-1B petition is subject to the annual numerical cap, not whether the hospital is organized under section 501(c)(3). [1]

Many nonprofit academic medical centers and teaching hospitals may nevertheless be largely insulated because H-1B petitions filed by qualifying institutions of higher education, related or affiliated nonprofit entities, and nonprofit research organizations are cap-exempt. By contrast, a standalone nonprofit community hospital that does not satisfy a cap-exempt category could owe the proposed fee when it files a new cap-subject H-1B petition. [1]-[3]

What the Proposed Rule Would Do

DHS proposes to impose an additional $103,265 fee, payable when filing, on all H-1B cap-subject petitions. The fee would be in addition to other applicable filing fees or payments. It would also apply to cap-subject beneficiaries who qualify for the 20,000 U.S. advanced-degree exemption. [1]

The proposed rule expressly excludes H-1B petitions that are not subject to the cap, including cap-exempt petitions covered by INA sections 214(g)(5) and 214(g)(7). [1][2]

DHS estimates the fee would be imposed on approximately 85,000 cap-subject petitions annually and would generate roughly $8.78 billion in annual additional costs to petitioners. [1]

Likely Impact by Hospital and Petition Type

Hospital/H-1B situation	Likely treatment under proposal
Nonprofit academic medical center affiliated with a university	Generally no additional fee when the petition qualifies as cap-exempt through the institution-of-higher-education or related/affiliated nonprofit exemption.
Nonprofit teaching hospital with a qualifying university affiliation	Potentially no additional fee if the hospital can establish that the petition is cap-exempt under the governing statute and regulations.
Nonprofit hospital qualifying as a nonprofit research organization	No additional fee on qualifying cap-exempt petitions.
Standalone 501(c)(3) community hospital with no qualifying university or research affiliation	The $103,265 fee would apply to new cap-subject H-1B petitions; nonprofit status alone does not create an exemption.
Hospital sponsoring a qualifying J-1 waiver physician, including through the Conrad State 30 pathway	Generally cap-exempt under the special statutory treatment for qualifying J-1 waiver physicians, so the proposed additional fee generally would not apply. [4]
Hospital filing for an H-1B worker who has previously been counted against the cap and remains exempt from being counted again	Generally outside the new fee when the later petition is not subject to the cap under INA section 214(g)(7).

Hospital/H-1B situation	Likely treatment under proposal
Hospital using the 20,000 U.S. advanced-degree exemption	Fee applies. The proposed rule specifically includes cap-subject petitions eligible for the advanced-degree exemption.

Why Academic and Teaching Hospitals May Fare Better

INA section 214(g)(5) exempts from the annual H-1B numerical limitation workers employed by an institution of higher education, a related or affiliated nonprofit entity, a nonprofit research organization, or a governmental research organization. [2]

Under the implementing regulations, a nonprofit can qualify as related or affiliated with an institution of higher education through several forms of relationship. One pathway is a formal written affiliation agreement that establishes an active working relationship for research or education, where a fundamental activity of the nonprofit directly contributes to the institution of higher education's research or educational mission. [3]

This framework is particularly important to teaching hospitals and academic health systems. A hospital does not necessarily have to be owned by a university to qualify, but it must be able to document a relationship satisfying the statute and regulations. Clinical education, residency and fellowship activity, medical-student training, and research may be relevant, but the legal entity filing the petition must establish the required cap-exempt status. [3][5]

Accordingly, health systems should not assume that every subsidiary or hospital within an academic system automatically shares the same H-1B cap status. Immigration counsel should review the petitioning entity, its nonprofit status, its university affiliation documents, and the activity supporting the claimed exemption.

Why Standalone Nonprofit Hospitals Are More Exposed

Being tax-exempt under section 501(c)(3) is not sufficient by itself. DHS expressly states that the proposed fee applies to cap-subject petitioners irrespective of nonprofit status. A nonprofit community hospital without a qualifying higher-education affiliation or research-organization status therefore remains exposed when it sponsors a new H-1B worker who is subject to the annual cap. [1]

The exposure could extend beyond physicians to other specialty occupations that hospitals recruit through H-1B status, including certain information technology, data, laboratory, pharmacy, research, finance, and other professional positions, depending on the facts of the position and the beneficiary. For a cap-subject filing, the additional $103,265 would be a direct employer cost on top of existing immigration expenses.

Physician Recruitment: Important Cap-Exempt Pathways

Many international medical graduates practice in underserved areas after obtaining a waiver of the J-1 two-year foreign-residence requirement. Congress amended the Conrad State 30 framework to make qualifying J-1 waiver physicians H-1B cap-exempt. USCIS guidance confirms this treatment. [4]

Hospitals also frequently recruit H-1B professionals who have already been counted against the numerical cap. INA section 214(g)(7) provides that certain previously counted H-1B workers are not counted again during the applicable period. Because the proposed rule excludes petitions not subject to

the cap under sections 214(g)(5) and (7), many extensions and subsequent-employer filings may avoid the new fee, depending on the beneficiary's immigration history and the specific filing. [1][2]

By contrast, the 20,000 U.S. advanced-degree exemption does not protect a hospital from this new fee. DHS expressly proposes to impose the $103,265 fee on cap-subject petitions eligible for that advanced-degree exemption. [1]

Magnitude of the Potential Financial Impact

For large academic medical centers whose H-1B programs are predominantly cap-exempt, the direct impact may be low to moderate, although the system should confirm the cap-exempt status of each petitioning entity.

For standalone nonprofit hospitals that depend on new cap-subject H-1B hires, the impact could be substantial. A single affected filing would add $103,265 to the hospital's cost of recruiting that worker. Multiple cap-subject hires could quickly create seven-figure annual exposure.

DHS itself concludes that the proposal would have a significant economic impact on many small entities. Its regulatory flexibility analysis estimates that 11,051 small entities, or 76 percent of the small entities that filed cap-subject petitions in FY 2025, would experience a significant economic impact; DHS calculates that 76 percent would face a cost increase greater than 1 percent of annual revenue. [1]

Policy Implications for Hospitals

- Hospital organizations have a strong basis to request a categorical exemption for tax-exempt hospitals and health systems, rather than requiring nonprofit hospitals to establish cap exemption petition by petition.
- At minimum, DHS could be asked to clarify the treatment of teaching hospitals, academic affiliation arrangements, nonprofit research organizations, Conrad/J-1 waiver physicians, previously counted H-1B workers, extensions, and change-of-employer petitions.
- Hospital commenters can emphasize that the proposed fee could make recruitment of needed physicians and other professionals economically impractical for rural, safety-net, and community hospitals that do not have the organizational structure needed to qualify as an academic cap-exempt entity.
- Health systems should inventory current H-1B filings now and classify them by petitioning entity and cap status to identify which positions could become subject to the proposed fee if the rule is finalized.

Comment Deadline

The proposal was published August 25, 2026, and written comments are due September 24, 2026. DHS Docket No. USCIS-2026-0298. [1]

References

1. Department of Homeland Security, U.S. Citizenship and Immigration Services, “Fee for Certain H-1B Petitions,” 91 Fed. Reg. 54817 (Aug. 25, 2026), DHS Docket No. USCIS-2026-0298. Federal Register source

2. Immigration and Nationality Act § 214(g)(5) and (7), 8 U.S.C. § 1184(g)(5), (7). U.S. Code source

3. 8 C.F.R. § 214.2(h)(8)(ii)(F), including standards for a nonprofit entity related to or affiliated with an institution of higher education. eCFR source

4. U.S. Citizenship and Immigration Services, Memorandum, “Extension of the Conrad State 30 Program” (Jan. 29, 2007), discussing statutory cap exemption for qualifying J-1 waiver physicians. USCIS Conrad guidance

5. Department of Homeland Security, “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers,” 81 Fed. Reg. 82398, 82443-45 (Nov. 18, 2016), final rule explaining the related-or-affiliated nonprofit standard. GovInfo final rule PDF