

Procedures

**J-1 VISA WAIVER PROGRAM PROCEDURES**

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**CHAPTER I: PROCEDURE FOR J-1 VISA WAIVER PROGRAM**

101 OVERVIEW

- A. The Nevada State Health Division (NSHD) is committed to assuring that all Nevadans have access to quality, affordable health care. The Division will support and facilitate the placement of primary care physicians and specialists in a health care practice site located in a Health Professional Shortage Area (HPSA) or Medically Underserved Area/Population MUA/P).
- B. Federal legislation gives each state authority to review and support requests, from foreign medical graduates with a J-1 visa, to waive their requirement to return to their home country for two years after completing residency. In exchange for the state supporting the waiver of the two year foreign-residence requirement, the physician agrees to provide medical care to medically underserved individuals in Nevada for a minimum period of three years.
- C. The NSHD may support up to 30 slots annually, and has discretion regarding the number of actual selections that it deems appropriate. Ten of the slots (flex slots) can be used for sites that are not located in a HPSA or MUA/P area but predominately serve individuals that live in an underserved

area.

102 STAKEHOLDERS

- A. Primary Care Advisory Council (PCAC). In order to establish and maintain a transparent process, the NSHD facilitated the formation of an advisory council, whose mission is to provide direction for the primary care development function and oversight for the J-1 Visa Waiver program, particularly candidate placements.
  - 1. The PCAC has a clearly defined mission, established through by-laws, adheres to Nevada Open Meeting Law and meets at least quarterly. This Council makes recommendations to NSHD regarding J-1 Visa Waiver applicant recruitment, placement, and monitoring. In addition, the PCAC assists with the development of primary care resources within a broad health planning framework.
  - 2. 7-member Advisory Council appointed by Health Division Administrator.
    - A representative of the primary care association;
    - A representative from a federally qualified health center;
    - A representative from the University of Nevada School of Medicine – Center for Education and Health Services Outreach;
    - One licensed physician, in good standing, who successfully completed an employment contract under the J-1 Visa Waiver Program;
    - One member from Nevada Medicaid; and
    - Other representatives of the health profession or communities being served.
  - 3. Ex-Officio members from NSHD and the Office of the Attorney General.
    - Administrator, NSHD
    - Chief, Health Statistics, Planning and Emergency Response, NSHD
    - Health Planning Program Manager, NSHD
    - Manager, Primary Care Office, NSHD
  - 4. Work Group Resources.
    - Health Statistics, Planning and Emergency Response Staff
    - University of Nevada School of Medicine (UNSOM) Office of Rural Health/AHECs
    - Nevada State Medical Association
    - State Board of Medical Examiners
    - Nevada Rural Hospital Partners
    - Great Basin Primary Care Association

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## 103 SPONSOR ELIGIBILITY FOR THE J-1 VISA WAIVER PROGRAM

- A. To be eligible, the Sponsor/Employer Site must provide primary care or specialty care to individuals in a Health Professional Shortage Area (HPSA), or in a Medically Underserved Area/Population (MUA/P), unless the applicant has been approved as a flex slot. Refer to the HRSA website: <http://hpsafind.hrsa.gov/HPSASearch.aspx> and <http://www.muafind.hrsa.gov> to see if a site qualifies as a HPSA or MUA/P.
- B. According to Federal regulations regarding the J-1 Visa Waiver program, physicians may only work in designated HPSA areas during the three year commitment, unless they have been approved for a flex slot.
- C. The sponsor site must be prepared to offer the physician a binding contract agreement, outlining employer requirements and stipulations, for not less than a three year term.
- D. The primary care provided at the site must include regular health care maintenance for chronic health problems, general on-going wellness care and preventive services, as well as referrals for specialty care. All sites must have a sliding fee scale based on the Federal Poverty Guidelines and a written policy indicating that the site accepts all individuals regardless of their ability to pay. The Site must accept clients with Medicare and participate in Nevada Medicaid and Nevada Check-Up. Eligible sites include, but are not limited to, Federally Qualified Health Centers (FQHC), Rural Health Centers, Tribal Health Centers, primary care clinics in rural hospitals, not-for-profit medical clinics, and for-profit medical clinics. For primary care or specialty care provided in hospitals, the hospital must offer discounted fees for individuals unable to afford medical services.
- E. A site may be denied future participation in the J-1 Visa Waiver Program if the required reports are not submitted in a complete and timely manner, a sponsored physician does not serve in the designated area for the full three years of employment, and the employer applicant has a history of noncompliance with any of the provisions of this procedure.

## 104 PHYSICIAN ELIGIBILITY FOR THE J-1 VISA WAIVER PROGRAM

- A. The physician applicant should be in the final year of their residency or fellowship program, must have a bona fide employment offer in a HPSA or MUA/P site in Nevada and be prepared to work for a minimum of three years at that particular site. The physician must agree to the requirements of Section 214(l) of the Immigration and Nationality Act. The physician applicant must meet the requirements for licensure under the provisions of the Nevada State Board of Medical Examiners, the Nevada State Board of Pharmacy and have an unrestricted Federal Drug Enforcement Administration (DEA) certificate.
- B. According to Federal regulations regarding the J-1 Visa Waiver program, physicians may only work in one or more geographic areas so designate by the Secretary of Health and Human Services during the three year commitment, unless they have been approved for a flex slot.
- C. A physician is ineligible to participate in the J-1 Visa Waiver program if they have previously breached a health professions service obligation to a federal government, state government, or local government entity.

## 105 PRE-QUALIFYING A SPONSOR SITE

- A. The NSHD will accept applications from new provider sites, preferably before recruiting a physician, and determine whether the practice site is eligible to sponsor a J-1 Visa Waiver Physician. The application from the employer must include an annual summary of the primary care services that were provided in the past year with a breakdown of payor source; a business plan with financial reports from the past year and financial planning for the next year; a copy of the business license; and a copy of the employer/employee contract that will be used. An on-site review may be done by the NSHD or designee to assess working conditions.

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## 106 APPLICATION PROCESS FOR PHYSICIAN AND SPONSOR

- A. Please refer to Attachment A for specific directions regarding the submission of an application to the NSHD and the application fee requirement of \$500.
- B. Denial of Application. The NSHD will notify the sponsor applicant/physician in writing of initial issues or concerns with the newly submitted application. The employer and/or physician will have the opportunity to provide additional information to the application. The employer/physician will be notified of the Council review date and encouraged to attend the meeting. The Council may recommend denial of the placement for the following reasons, but may recommend denial for other reasons: 1) There is not satisfactory evidence of primary or specialty care need; 2) the site has more physician providers than seems warranted by the number of clients served; 3) the site has not complied with the program's procedures in the past; and 4) the Council has concerns regarding the financial stability of the sponsor site.
  - 1. The State Health Division Administrator has final approval for sponsoring physicians in the program.
  - 2. If the employer/physician disagrees with the NSHD or Council decision and they wish to appeal the decision, they must submit a written request for an Administrative Hearing to the NSHD, within 10 business days of the decision.

## 107 MONITORING AND TRACKING ACTIVITIES

- A. By the Primary Care Advisory Council. The Primary Care Office (PCO) will provide the J-1 Visa Waiver Annual Report to the Council during the PCAC meeting in August of each year. The report will summarize the PCO activities related to the J-1 Visa Waiver program during the grant year (April 1 – March 30). The report will summarize complaint investigations, site visit reports, exit surveys, physician satisfaction survey results, recruitment/retention efforts and a written progress report on performance indicators. The annual report will identify the PCO's progress in meeting program goals and the corrective actions it will take for the deficiencies identified. The PCO will request the Council's recommendations and feedback regarding the activities of the PCO.
- B. By the PCO. All sponsor sites will be provided with a website accessible [orientation](#) to ensure that employers and physicians have the necessary information to comply with the program's requirements. Review of the web-based orientation presentation of the program is required for each new physician within thirty days of their start of employment. In addition, a review of the orientation is required for each new employer/sponsor site.
- C. Provisions of this procedure give the Health Division the authority to monitor employers and physicians to determine whether the requirements of the waiver program are met. Internal PCO monitoring may include analyzing Medicaid billing data, tracking the submission of the six-month reports from physicians and sponsors, and monitoring the NSHD application process for timeliness and consistency. External monitoring activities may include unannounced or announced site visits.
- D. The PCO has an internal mechanism for tracking applications through the process, and tracking the status of J-1 Visa Waiver physicians once they begin work. Key indicators of efficiency, as well of indicators of compliance with Federal requirements have been developed as Performance Indicators. This information will be summarized and provided to the Council and the HD Administrator on an annual basis for review and feedback.
- E. The PCO will mail exit surveys to all J-1 Visa Waiver physicians, sixty days before the end of their three year commitment to elicit their comments and concerns regarding the program.
- F. The PCO has developed several methods to monitor physician and employer satisfaction with the J-1 Visa Waiver process. Please refer to section 108: COMPLAINTS.

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- G. Mandatory Reports. Reports from J-1 Visa Waiver physicians and physicians participating in the National Interest Waiver (NIW) must be submitted to the NSHD every six months. The physician must indicate the site where his/her services are provided and the weekly hours of physician service on the affidavit. The affidavit can be found on the [NSHD Conrad 30/J-1 Visa Waiver website](#).
1. Reports from the sponsor site are also required every six months (Attachment G-2). The employer must indicate the site where the physician provided service and the number of hours that the physician provided weekly at the site.
  2. The original affidavits must be mailed, emailed or faxed to the PCO and postmarked no later than May 1<sup>st</sup> and November 1<sup>st</sup>. An email reminder notice will be sent to the physician and sponsor one month prior to the deadline. The PCO recommends that the employer and physician send their six-month reports by certified mail so they have a receipt for their records.
  3. If a provider site and/or physician are delinquent with their six-month reports, they will be sent one reminder notice. If non-compliance continues or reoccurs, it will be considered a breach of program requirements. The non-compliance could have a bearing on future physician placements, may trigger an unannounced site visit and may be reported to the Department of State (DOS) or other governmental agencies.
- H. Unannounced Site Visit. Reasons for an unannounced site visit may include, but are not limited to: delinquent six-month reports; a complaint investigation; when a normal PCO surveillance shows an anomaly in the data submitted by the site; a request from a local, state or federal agency; an application from a new employer site; or a request from the NSHD Administrator for a site visit.
1. Information that the employer or physician may be required to furnish during a site visit may include, but is not limited to: patient and hospital visitation schedules; office hours; physician timesheets; financial and other records documenting that health services are being provided for patients unable to pay; financial and other records documenting that the requirements for participation in the Medicare and Medicaid programs are being fulfilled; practice site's financial background regarding resources to pay the physician's salary; and other documents related to the conduct of the practice.

108 COMPLAINTS

- A. The Health Division will investigate complaints received from employers, physicians and site staff in a timely manner. The "[Comments and Complaint form](#)" is available on the Primary Care Office website; complaints will also be accepted by telephone. Comments and complaints are reviewed by the Manager, Primary Care Office and the Health Planning Program Manager, who have the responsibility for determining the appropriate action for each complaint.
- B. All complaints will be investigated within forty-five days by the NSHD and reported to the HD Administrator. If a complaint reports or alleges that the safety of patients is compromised, the complaint investigation will take place as soon as possible. The Council may be consulted, based on the results of the investigation and the Administrator's recommendations for further action.
- C. If the HD Administrator determines that consumer safety is affected by alleged or substantiated activities that do not conform to the J-1 Visa Waiver Procedures, an immediate report will be made to the Nevada State Board of Medical Examiners.
- D. If the HD Administrator determines that the employer/sponsor is not compliant with the J-1 Visa Waiver Procedures, he/she may render the Employment Agreement null and void. The NSHD will assist the J-1 Visa Waiver physician to relocate to another employer.
- E. Remedies that the NSHD may impose for substantiated non-compliance of an employer or physician include, but are not limited to: civil action; complaint to the State Board of Medical Examiners; complaint to the Bureau of Health Care Quality and Compliance; and/or report to the Attorney General's Office, Department of State, Homeland Security, and Health Care Financing and Policy.

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- F. Each December, all employers and J-1 Visa Waiver physicians will be notified that a satisfaction survey is available on the website in addition to the survey sent to their work site or email address (Attachment E). The surveys may be done anonymously and mailed to the NSHD. By the end of the first quarter of each year, the PCO will compile the results of the survey and make the aggregate results available on the Primary Care Office website and to the Council.
- G. After the physician has completed his/her three year commitment to the employer, an exit interview will be conducted by the PCO. This information will be used to assess whether physicians are continuing to work in a designed area, and to assist the NSHD in making changes to the J-1 Visa Waiver program.

109 INFORMATION DISCLOSED TO PUBLIC

- A. Section 1106 of the Social Security Act (the Act) prohibits disclosure of any file, record, report, or other writing, or any information obtained at any time by or from the Secretary or an office or employee of Department of Health and Human Services (DHHS) in the course of discharging his duties under the Act, except as prescribed by regulations. The applicable regulations are found in 42 CFR 401, Subpart B (Confidentiality and Disclosure). The regulations identify what records are available, how they may be obtained, and, where applicable, when a fee is paid to offset the cost of administrative activity involved in furnishing the information.
- B. Federal Freedom of Information Act (FOIA): Coexisting with the confidentiality provision of Section 1106 of the Act are the provisions of the 1967 “Freedom of Information” amendment to the Administrative Procedures Act. This amendment establishes the right of the public to access numerous types of Federal records and information. Exempted from mandatory disclosure under this amendment, however, are records and information that other Federal confidentially statutes prohibit from being disclosed. See 42CFR 401.118 regarding the deletion of identifying details.

110 NATIONAL INTEREST WAIVER

- A. The PCO will consider supporting J-1 Visa Waiver physicians, who have been compliant with the J-1 Visa Waiver procedures, for a National Interest Waiver. At the request of the physician, the PCO will provide a letter of support outlining the contributions that the physician has made in medically underserved areas. If the physician is approved for a NIW, the PCO will require semi-annual affidavits from the physician as evidence that the physician is providing service in a HPSA or MUA/P

Richard Whitley, MS, Administrator, Health Division

\_\_\_\_\_ Date

Attachments:

- Attachment A: Waiver Application
- Attachment B-1: Affidavit and Agreement – Physicians
- Attachment B-2: Affidavit and Agreement – Employers
- Attachment C: Verification of Status Form
- Attachment D: Site Visit Monitoring Form
- Attachment E: Annual Satisfaction Survey Tool
- Attachment F: Sample Contract
- Attachment G-1: Six-month Compliance Report – Physician
- Attachment G-2: Six-month Compliance Report – Employer
- Attachment H: Exit Interview