

**PENNSYLVANIA DEPARTMENT OF HEALTH
J-1 VISA WAIVER PROGRAM (CONRAD STATE 30)
STATEMENT OF POLICY**

Background

An International Medical Graduate (IMG) who enters the United States to complete his/her medical education through residency or fellowship programs typically obtains a J-1 or Exchange Visitor visa. The terms of this visa, agreed to in advance, by the IMG, stipulate that the IMG return to his/her home country or country of origin to practice for at least two years before petitioning for re-entry to the United States as a resident alien.

Federal law allows the two-year home residence requirement to be waived under certain conditions, if an Interested Government Agency (IGA) attests to the need for this physician in the U.S. Prior to 1994, only federal agencies had IGA waiver authority. In 1994, as a result of efforts lead by Senator Kent Conrad (D-ND), Congress enlarged eligibility for recommendation of waivers by conferring upon the states the right to issue waiver recommendations for IMGs working within designated medically underserved areas. Participation by states is voluntary; states that choose to participate may request up to 30 such waivers per federal fiscal year. Under the Conrad State 30 Program, the following requirements for participation apply:

1. The IMG must practice a minimum of 40 hours per week in a federally designated primary care health professional shortage area (mental health HPSA in the case of a psychiatrist) or medically underserved area/population.
2. The IMG must agree to serve for a period of no less than three years.
3. There must be a written contract between the employer and the IMG; however, the contract may not contain a non-compete clause that requires the IMG to leave the area if he/she changes jobs during or after the commitment period expires.
4. The IMG must begin practice within ninety days of approval of the waiver by United States Citizenship and Immigration Services (USCIS).
5. The site at which the IMG will practice must agree to care for Medical Assistance and Medicare eligibles and indigent uninsured.
6. The IMG must sign a statement that he/she has no other pending waiver applications.
7. The IMG must submit a no objection letter if funds were received from home country for medical education.
8. The IMG must sign a statement that he/she understands the policies of the J-1 waiver program, agrees to comply with them, and that all of the information provided in the application is correct.
9. The practice site must demonstrate evidence of unsuccessful efforts to recruit an American physician for the vacancy.

States cannot waive the federal requirements for participation in the Conrad State 30 program, also known as and referred to throughout the rest of this Statement of Policy as the J-1 Visa Waiver Program.

DOH Statement of Principles for the J-1 Visa Waiver Program

The Department of Health (DOH) will consider supporting J-1 visa waiver requests to the extent that the applicant can demonstrate, using objective data, that the need for such a placement exists, that the placement is consistent with the Department of Health mission to address disparities in access to health care, supports program objectives of DOH, and that all requirements of the federal program have been met. It is the responsibility of the applicant to document a compelling public health interest for the waiver request. DOH considers the primary responsibility of the J-1 Visa Waiver program to be the underserved communities which the Program serves.

DOH's highest priority for placement pursuant to a J-1 Visa waiver are primary care physicians (family practice, general internal medicine, pediatrics, obstetrics-gynecology, and psychiatry). DOH recognizes, however, the need for non-primary care specialists in many parts of the state and will support requests for non-primary care specialists if sufficient justification, pursuant to Program requirements, is provided.

DOH Program Objectives

1. To assure access to primary care by persons or population groups living in health professional shortage areas (HPSA) or medically underserved areas (MUA) and by designated populations unable by reason of poverty or other circumstances to obtain access to a physician (population-based HPSA or medically underserved population (MUP)).
2. To recruit and retain primary care physicians within designated shortage areas of the Commonwealth who are specifically engaged in providing service to the underserved residents of their area.
3. To support medically underserved communities that have a demonstrated inability to recruit or retain physicians.

DOH Principles for J-1 Visa Waivers

A. Federal J-1 Visa waiver regulations stipulate that the physician who receives a waiver must practice full-time in a federally designated medically underserved areas. There are several types of federally designated medically underserved areas:

1. Geographic HPSA/MUAs are designated based on population to physician ratios for the geographic area indicating insufficient numbers of primary care physicians to meet the needs of the residents of the area.
2. Special population HPSA/MUPs are designated based on the documented lack of access to primary care for special populations, i.e. those residents with incomes below 200% of the poverty level. Since these designations are highly specific, as a matter of policy, DOH requires documentation that a proposed J-1 visa waiver placement in a special population HPSA/MUA will address the access needs of the subject population. Priorities for placements in these areas are:
 - Federally Qualified Health Centers (FQHC) or FQHC look-alikes
 - Free or partial pay clinics
 - Community based clinics that have a current Community Challenge Grant from DOH.

Since federal designation criteria for Low-Income HPSAs/MUPs are based on documentation that at least 30% of the service area population is low-income, the Department will consider sites for placements in Low-Income HPSAs or MUPs, other than those listed above, that demonstrate that at least 30% of persons who used the site in the past 12 months are: low income elderly, medical assistance, sliding fee and/or no fee patients.

3. HPSA and MUA/(P) designations, whether geographic or based on special populations, are defined by measures of availability of and access to primary care. Therefore, applicants proposing to place non-primary care specialists must document the need for the proposed specialist using objective, population based data relevant to the proposed specialty (morbidity, mortality, population/physician ratios, etc).

B. As retention of physicians is an important program objective, in reviewing an application, DOH will also review the likelihood that the IMG will remain at the site after the 3-year commitment is fulfilled. DOH experience indicates that retention may be jeopardized under the following circumstances:

1. **New Practice Sites** - These sites may not develop sufficient patient volumes to sustain a full-time practitioner. Physicians then are terminated or reassigned to other sites. However, federal regulations require that the IMG spend a minimum of 40 hours per week working in a designated shortage area. A physician with a J-1 waiver may practice at multiple sites as long as all sites are in federally designated shortage area. DOH will review requests for placement at new practice sites for the reasonableness of expected patient volumes and feasibility of plans to achieve those volumes. DOH also will monitor patient volumes at new practice sites.

2. **Non-Primary Care Specialties** - In reviewing proposed placements, DOH also evaluates the appropriateness of the proposed placement by looking at the type of vacancy and the education/certification of the physician. Physicians with non-primary care sub-specialty training generally are not satisfied in a strictly primary care environment, and, especially in rural areas of the state, there may not be enough people to support their subspecialty training, resulting in physician dissatisfaction and eventual attrition. Therefore, DOH will not consider placement of a non-primary care specialist in a primary care vacancy.
 3. **Third Party Contracts** - Third party contracts, through which an employer “sells” the services of a J-1 physician to a third party are considered to be potential barriers to retention, and can place the underserved community at a disadvantage and are therefore not generally allowed. The only exceptions are placements at government institutions (i.e. state or federal correctional institutions, etc.) and hospital based specialists.
 4. **Prevailing Wage** - Salary arrangements that exploit the J-1 physician are barriers to the ultimate retention of the physician. Therefore, DOH requires documentation that the physician’s salary stated in the contract be **equal to or more than the prevailing wage for the same specialty of physicians** in the area as determined by the PA Department of Labor and Industry **or the US Dept. of Labor**.
- C. Non-compete Clauses are prohibited. The purpose of the waiver program is the recruitment and retention of a physician to serve an underserved geographic area or population. Therefore, inclusion of “non-compete” clauses in employment contracts, prohibiting the physician from establishing a competing practice when the employment arrangement ends, is considered a barrier to program purposes since it forces a physician to leave the underserved area, and results in a loss of physician services to the area.
- D. DOH considers itself to be accountable to a variety of agencies for J-1 visa waiver authorizations. Program performance is subject to occasional review by outside entities such as the General Accounting Office, the U.S. Department of State, the U.S. Department of Homeland Security, the U.S. Citizenship and Immigration Service, and, where applicable, the Appalachian Regional Commission. For that reason, DOH requires semi-annual verification of employment (or more frequently if requested) during the three-year term of the commitment. It is the responsibility of the physician to complete the verification of employment, obtain the signature of the employer on the form, and submit it to the Department in a timely manner. **Physicians who fail to comply with this requirement, or who change practice sites without prior approval from the Department of Health will be reported to USCIS as being in default of their J-1 visa waiver commitment.**
- E. Sites are required to demonstrate that they have processes in place to assure access to the practice for Medical Assistance, Medicare, and the underinsured and uninsured, and that no financial barriers exist for those individuals with incomes at or below 200% of the federal poverty level. Sites must post and comply with written notice of their policies in this regard, and offer a sliding fee schedule, which discounts fees based on federal poverty level.
- F. DOH considers the J-1 Visa waiver program to be a last resort recruitment program to be used after attempts to recruit an American physician to the position have been unsuccessful. Therefore, sites are required to document a good faith effort to recruit a U.S. citizen during a six-month period within the last year preceding the request for a J-1 visa waiver program placement. In certain circumstances, DOH will consider reducing the recruitment requirement. These circumstances include, but are not limited to, the following: sudden loss of a sole practitioner in a rural community; the absence of physicians in a targeted specialty who will accept Medical Assistance patients; small (under 100 beds) or rural hospitals; loss of more than 50% of practitioners in a specific specialty. Sites can verify a circumstance outlined above by providing the DOH with a **brief summary describing in detail** the recruitment process. Sites that opt to advertise their primary care vacancy on the DOH primary care practice opportunities web site for 6 months will be considered as having met the recruitment requirement. The U.S. Department of State (USDOS) is

the final authority in determining the adequacy of the recruitment process; therefore, applicants should be prepared to provide documentation regarding recruitment efforts to either DOH or USDOS if requested.

- G. In order to assure that the IMG is able to fulfill his/her commitment to start working within 90 days of receipt of the waiver, DOH will only review applications of IMGs who are able to begin work within six months from the date of the application. Also, the IMG must not have been out of status (as defined by USCIS) for more than six (6) months since receiving the J-1 visa.
- H. DOH is engaged in a planning process called State Health Improvement Planning (SHIP) that emphasizes the prevention of disease and disability, the coordination of resources, interagency collaboration, and improved government responsiveness to community health planning priorities. This planning process encourages health professionals within communities to work together with Local Health Improvement Partnerships to address health care priorities. Accordingly, if DOH recommends approval of a waiver request to the U.S. Department of State, the sponsor and IMG will be notified by the DOH regarding collaborative efforts required between the IMG and a Local Health Improvement Partnership to address health priorities in the county where the IMG will practice.
- I. Sponsors (sites) are strongly cautioned that DOH does not credential nor does it make any representations concerning the qualifications or competency of physicians placed under this program. Responsibility for credentialing and for quality assurance rests solely with the sponsor.

Exceptions to Site Location in HPSA/MUA

Section 214(l)(1)(D) of the Immigration and National Act (8 U.S.X. 1184 (l)(1)(D) was amended to authorize interested State Agencies to recommend approval for a maximum of 5 out of the 30 requests at facilities that are not physically located in federally designated shortage areas, but which serve residents from one or more designated areas.

If the sponsor wishes to apply for a waiver under this exemption, please identify the request as such in the first paragraph in the Letter of Need, and include justification for the request (priority sites include: small rural hospitals, solo practices, loss of sole specialist, no other providers to low-income individuals, etc.). In addition, please provide documentation that at least 20% of the patient encounters at the facility (specific to the requested specialty) are from a primary care HPSA or MUA/P (i.e. a patient origin study by requested specialty and zip code). In the case that access is provided to a low-income HPSA/MUP, at least 30% of patients in low-income status must be coming from the designated contiguous HPSA/MUP. Report on the above information for a full year period by using 7-1-05 to 6-30-06 or 7-1-06 to 6-30-07.

Because the Federal legislation allows only 5 exemptions per federal fiscal year (FFY), the Department feels it is necessary to take steps to assure that applications for placement are fairly and equally available to all hospitals in the Commonwealth. Therefore, the DOH will only approve one (1) exemption request per facility per FFY. Individual facilities will be determined by the federal Employer Identification Number (EIN), a copy of which must be enclosed with the application.

The Department of Health reserves the right to monitor this policy and to modify it in the future.

J-1 Visa Waiver Program Application Instructions and Checklist

SUBMIT AN ORIGINAL AND ONE COPY OF THE REQUIRED INFORMATION TO THE FOLLOWING ADDRESS:

**Department of Health
Bureau of Health Planning
Room 1033, Health & Welfare Building
7th & Forster Streets
Harrisburg, PA 17120
717-772-5298
Fax: 717-705-6525**

Required Information

1. Site Application:

- _____ Complete the Site Application in its entirety for each proposed practice site. (Disregard if you were informed that the DOH has a current, approved site application for your practice site on file).
- _____ Submit the site's sliding fee scale charges which includes discounts for individuals/families up to 200% of the federal poverty levels. If waiver support is provided, the sliding fee scale amounts must be adjusted each year based on poverty guidelines which are issued January or February.

2. Letter of Need:

All Requests

Submit a letter signed by the administrator of the sponsoring organization including all of the following:

- _____ A request that the DOH recommend to the USDOS a waiver of the two-year foreign residency requirement;
- _____ The name of the sponsoring organization;
- _____ The name and specialty of the IMG;
- _____ The current staffing level and any vacancies;
- _____ A description of the service area demographics including: the average income, age make-up of residents, and other pertinent information to illustrate the community the physician will serve;
- _____ A description of the health care needs of the community and how the physician will meet the unmet health care needs of the community; the preventive programs the physician will initiate to address the prevalent health problems of the community; and mention any extenuating circumstances applicable such as retirement of the only physician in the community in the near future;
- _____ A summary paragraph describing your recruitment efforts for this particular position in chronological order by date of effort including the number of physicians that responded to advertisements, whether or not they were US citizens, and why any US citizens were not selected for the position;
- _____ The plan to retain the IMG after the 3 year service obligation;
- _____ If requesting a non-primary care physician, also see the Non-Primary Care Specialist Waiver Request section.

Non-Primary Care Specialist Waiver Requests

Include the following additional documentation to support the need for the non-primary care **specialty** in the county and include this information in the Letter of Need:

- _____ Document names of all physicians with the same sub-specialty in the county in which the practice site is located and whether or not they are available full time (or the service area of the facility for hospital based specialists, including those located at other hospitals in the service area). Also mention if physician accepts Medicaid and what their waiting time is for a new appointment. There are several ways to do this, one of which is to obtain a list of zip codes for the county where practice is proposed. Zip code websites: www.zip-codes.com or www.getzips.com/county.htm. Then search the American Medical Association (AMA) website for other

physicians with this specialty www.ama-assn.org/aps/amahg.htm. When working on the AMA website, make sure the particular specialty is checked before entering all zip codes for the county.

____ Describe any and all extenuating circumstances and why the current number of physicians is not sufficient to meet the needs of the county. Examples include: specialists listed on the AMA website are not actually available to the county; current specialists do not accept Medicare, Medicaid and the medically indigent nor do they accept payment via a sliding fee scale for patients who cannot pay the full price; current practices are closed to new patients; the waiting time for a new appointment is excessive (document the waiting time); driving distance to the specialist is excessive (document the driving time and distance) from the proposed practice site address; public transportation is not available; and mention any extenuating circumstances such as retirement of the only physician in the area or why the physician is needed, i.e., for a cardiologist, a higher percentage of residents over 65 and higher cardiovascular disease death rate for the county compared to the state.

____ Describe the support that will be provided by the local hospital

3. IMG Information

____ Curriculum Vitae (CV) which includes current home address, telephone number and email address.

____ PA Medical License (current renewal license). Application cannot be finalized by the DOH until a current MD renewal license is received.

____ Copy of J-1 Visa Waiver Review Application (USDOS - DS 3035)

____ All DS 2019 Forms (Formerly IAP 66 Forms).

____ I-94 card.

____ The USDOS Waiver file number on all forms submitted.

____ Current home address, home telephone number, work telephone number, and email address.

4. Agreement for Participation in the Waiver Program

____ Signed by sponsor and IMG

5. Employment Contract

____ Submit an employment contract signed and dated by both the sponsor and the IMG that includes the following:

____ The name and specialty of IMG, practice site address, and county. If there are multiple practice sites, list each site with the address and days and hours at each site.

____ State that the IMG will work for 40 hours per week at the approved practice site. List the name and identifying number of the Health Professional Shortage Area (HPSA) or Medically Underserved Area/Population (MUA/P).

____ Include a statement in the Term Section that the IMG agrees to begin employment within ninety (90) days from the date the USCIS grants a waiver and approval to work and he will practice on a full time basis for at least three years from the date the IMG begins work.

____ The contract may not contain a non-compete clause.

____ Termination without cause is prohibited.

____ The salary for a J-1 physician must be listed in the contract and it must be equal to the prevailing wage determination. Submit a copy of the prevailing wage determination, which can be obtained by calling the PA Department of Labor and Industry at (717) 787-5436. Websites for this information: www.dli.state.pa.us - type in keyword "alien labor"; or go to US Department of Labor – www.flcdatacenter.com.

6. OTHER

____ If the IMG has received funding from his home country, attach a letter from the home country stating that they have no objection to the IMG's waiver request.

Application Flow and Processing Times

Pennsylvania Department of Health (DOH) → United States Department of State (USDOS) → United States Citizenship and Immigration Services (USCIS).

Processing time for review of the application by the DOH is contingent upon the submission of a complete application. If the waiver request will be supported, DOH will notify the sponsor and physician when the file, including the application, is sent to USDOS. USDOS is the agency that recommends that the USCIS grant the physician a waiver. USCIS has the ultimate authority regarding waivers. Processing time from when DOH submits the application to USDOS until USCIS makes a determination on the waiver is usually three to four months.