



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

An International Medical Graduate (IMG) who enters the United States to complete medical education through residency or fellowship programs typically obtains a J-1 or Exchange Visitor visa. The terms of this visa stipulate that the IMG return to their home country to practice for at least two years before petitioning for re-entry to the United States.

Federal law allows state health agencies to recommend the waiver of the two-year home residence requirement, if the agency attests to the public health need for this physician. States may request up to 30 such waivers per Federal Fiscal Year. Under this program, the following requirements for participation apply:

1. The IMG must practice a minimum of **40 clinical hours in direct patient care 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 three years.
3. There must be a written employment contract between the employer and the IMG. The contract **may not** contain a non-compete clause that requires the IMG to leave the area if he/she changes jobs upon termination of the contract.
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 serve patients with Medical Assistance, Medicare and those who are uninsured or underinsured. The site must provide a **discounted/sliding fee scale** based upon **current** Federal Poverty Guidelines to ensure that no financial barriers to care exist for those who meet certain financial eligibility criteria.
6. The IMG must sign a statement that he/she has no other pending waiver applications and that he/she has not already received a J-1 waiver from USCIS.
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.

PA Department of Health - J-1 Visa Waiver Program

The Pennsylvania Department of Health (DOH) considers the primary responsibility of the J-1 Visa Waiver Program to be the underserved communities which the Program serves. DOH will consider supporting J-1 Visa Waiver requests to the extent that the employer/sponsor 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, that the placement supports Program objectives of DOH, and that all requirements of the federal program have been met. It is the responsibility of the employer/sponsor to document a compelling public health need for the waiver request.

DOH's **first priority** for waiver placement is **primary care physicians** (family practice, general internal medicine, pediatrics, obstetrics-gynecology, and psychiatry) in **out-patient ambulatory care sites**. DOH recognizes the need for non-primary care specialists in many parts of the state and will consider requests for support of non-primary care specialists using the priorities for selection of applicants which are described on page 6.

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 with documented inability to recruit 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 area. There are several types of federally designated medically underserved areas:
1. Primary Care Geographic HPSA and MUAs are designated based on population to primary care 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 Primary Care HPSA/MUPs are designated based on the documented lack of access to primary care for special populations, i.e. those residents with incomes at or below 200% of the poverty level. Since these designations are highly specific 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.

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, DOH will consider sites for placements in Low-Income HPSAs or MUPs that demonstrate that at least 30% of persons who used the site in the past 12 months were: medical assistance, sliding fee and/or no fee patients.
 3. A practice site at which a J-1 Waiver physician will work must be located within an area that has a **current** federal designation as defined by the U.S. Health Resources and Services Administration (HRSA) as a HPSA or MUA/P. The only exception to this requirement is a Flex 10 Waiver (p. 5.) **HPSAs categorized by HRSA with a status of "Proposed Withdrawal", "No New Data" or "Withdrawn" will not**

be considered by DOH as a current HPSA. Therefore, DOH will not approve sites located within these HPSA categories.

4. HPSA and MUA/MUP 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. Retention of physicians beyond their three year commitment is an important program objective; therefore, DOH will also consider during the review of the application the probability of the IMG being retained 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** – DOH is cautious regarding waiver placements at new practice sites since the physician must work a 40 hour week and there may not be sufficient patients at the new site to implement and to sustain a full time practice. Ideally, the employer should have additional established sites so that the physician can guarantee a 40 hour week between the new site and an established site(s). If this is not possible, DOH will proceed cautiously in the review of a new waiver site request. Employer shall provide detailed information as to projections of patient numbers to guarantee a 40 hour week.
2. **Non-Primary Care Specialties** – DOH will not consider a physician with subspecialty training for a primary care vacancy (i.e. a cardiologist for internal medicine, or a neonatologist for a pediatrician) with the exception of geriatrics for family practice or internal medicine. A physician with subspecialty training is generally unsatisfied in a primary care setting and therefore may seek a transfer during the three year commitment and most probably will not be retained in the primary care position.
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, can place the underserved community at a disadvantage and are therefore not 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 as stated in the contract is **equal to or more than the prevailing wage for the same specialty of physicians** in the area as determined by 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 is prohibited. These clauses prohibit the physician from establishing a competing practice when the employment arrangement ends, and this is considered a barrier to program purposes since it forces a physician to leave the underserved area and therefore, results in a loss of physician services to the area.

D. DOH is 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 and the employer to complete the verification of employment, sign 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. **Practice Sites receiving waiver support must provide access to care for all.** Sites are required to demonstrate that they have processes in place to assure access to the practice for Medical Assistance, Medicare, 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 discounted/sliding fee schedule, which discounts fees based on current Federal poverty level. Discounted/sliding fee schedules must be revised when new federal poverty guidelines are issued.
- F. **Sites receiving waiver support will be required to submit a semi-annual patient report and a verification of employment for the waiver physician.** This patient report will document patient visits at the site during each six-month period of waiver support. Patient visits will be reported based upon the service provided at the site related to the practice specialty of the waiver physician being supported. Patient visits will be reported based upon patient insurance/payment categories (i.e. Medicare, Medicaid, Discounted/sliding fee, No Pay, Commercial Insurance, etc.) for the entire specialty practice (not for the individual physician). For example, if a waiver Cardiologist is providing care at Hospital XYZ, Hospital XYZ will report all patient visits for cardiology at the approved site that the waiver Cardiologist is working. **The Department expects that once supported with a waiver physician, access to care at approved practice sites will be available to all, regardless of their ability to pay, at the approved practice site.**
- G. **DOH considers the J-1 Visa Waiver Program to be a last resort recruitment program to be used after attempts to recruit a U. S. citizen to the position have been unsuccessful.** Therefore, sites are required to document a good faith effort to recruit a U.S. citizen 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 and Critical Access 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, to include listing of dates, efforts and outcomes. 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.
- H. Waiver applications will be **accepted from employers/sponsors during the physician's last year of training.** DOH will not finalize a waiver recommendation until one of the following two documents is submitted: **PA Medical License** (current renewal license; not a medical trainee license) **or** official **notice from the PA Board of Medicine** verifying the only outstanding documentation required to issue a license is the completion of the final year of the physician's training. Applications may be submitted prior to obtaining these documents during the physician's final year of training. Should DOH offer support of this waiver application, it will be conditional upon the final submission of one of the above documents.
- 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.

FLEX 10 Waivers (Exceptions to Site Location in HPSA/MUA/MUP)

Section 214(l)(1)(D) of the Immigration and National Act (8 U.S.C. 1184 (l)(1)(D)) authorizes interested State Agencies to recommend approval for a **maximum of 10 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 exception, **identify the request as such in the first paragraph of the Letter of Need**, and include justification for the request. In addition, the sponsor **must provide a patient of origin study** to document that at least **20% of the patient encounters** for a period of one year at the facility (specific to the requested specialty) **are from patients who reside in a primary care HPSA/MUA/MUP**. **The patient of origin study must report on patients for a full year. Contact the DOH Program Office for instructions on completing a patient of origin study.**

The DOH will consider **only one Flex 10 Waiver per FFY per an organization's Federal Employer Identification Number (EIN)**. Sponsors must **submit a copy of their EIN number with the waiver application**.

Schedule for Review and Recommendation of Applications

- **Initial Application Period: September 30 – December 15:**
 - Applications may be submitted
 - Applications will be reviewed according to the priorities for selecting applicants (below) and for compliance with state and federal requirements.
(Incomplete applications and applications not following the required format will be returned and will not be reviewed.)
 - Successful applicants will be notified of Department support for waiver recommendation on or before January 10 (this includes specialty physician and Flex 10 applicants.) Support will be conditional upon the submission of license to practice in Pennsylvania and any other requested documentation. However, once notified of support, a slot will be reserved for the applicant.

- **Second Application Period: January 1 – June 15:**
 - Applications may be submitted for slots, if any, not filled in initial application period
 - Applicants not selected for recommendation in the Initial Application Period may request ***in writing*** that the application be reconsidered in the Second Application Period
 - Applications will be reviewed according to the priorities for selecting applicants (below) and for compliance with state and federal requirements.
(Incomplete applications and applications not following the required format will be returned and will not be reviewed.)
 - Successful applicants will be notified of Department support for waiver recommendation on or before July 10 (this includes specialty physician and Flex 10 applicants.) Support will be conditional upon the submission of license to practice in Pennsylvania and any other requested documentation. However, once notified of support, a slot will be reserved for the applicant.

- **Final Application Period: July 1 – September 15:**
 - Applications may be submitted for remaining slots, if any
 - Applicants not selected for recommendation in the Second Application Period may request ***in writing*** that the application be reconsidered in the Final Application Period
 - Applications will be reviewed according to the priorities for selecting applicants (below) and for compliance with state and federal requirements.
(Incomplete applications and applications not following the required format will be returned and will not be reviewed.)
 - Successful applicants will be notified of Department support for waiver recommendation on or before September 30 (this includes specialty physician and Flex 10 applicants.) Support will be conditional upon the submission of license to practice in Pennsylvania and any other requested documentation. However, once notified of support, a slot will be reserved for the applicant.
 - Applicants not selected for recommendation in the Final Application Period may request ***in writing*** that the application be reconsidered in the Initial Application Period for the next year.

Priorities for Selection of Applicants:

All 30 slots available for the federal fiscal year will be eligible for consideration when reviewing applications for support, beginning with the first application period. At the point that all slots are filled, the Department will cease reviewing applications. The Department will advise via our website (www.health.state.pa.us/pco) that no more applications for the J-1 Visa Waiver Program will be entertained.

The Department will give priority, in each application period, to the following applications:

- **Priority 1:** Applications for primary care physicians who will provide services at out-patient, ambulatory care sites located in HPSAs or MUA/Ps.
- **Priority 2:** Applications for physicians (including specialists) who will be employed at the following practice sites where need for the physician is sufficiently documented:
 - Critical Access Hospitals
 - Small Rural Hospitals
 - Federally Qualified Health Centers (and Look Alikes)
 - Certified Rural Health Clinics
 - Primary care outpatient facilities not located in a HPSA or MUA/P [Flex 10]
- **Priority 3:** Applications for specialty physicians located in an MUA/P or HPSA or for a Flex 10 slot will be accepted in each application period. These applications will be considered for support **in each application period** based upon the availability of slots after the priority 1 and 2 applications have been considered and based upon the need as documented in the application. For specialty physicians, the Department will consider the county population-to-provider ratio for the specialty as a major factor to determine need, especially when the county ratio is lower than the state ratio.

Note:

The Department reserves the right to withdraw support for any application it has indicated waiver support should a situation emerge that will result in non-compliance with federal or state requirements prior to the submission of the Department's waiver recommendation letter to the United States Department of State.

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The Pennsylvania Department of Health reserves the right to modify this policy as needed. For additional assistance contact:

Department of Health
Bureau of Health Planning – Division of Health Professions Development
Room 1033, Health & Welfare Building
625 Forster Street
Harrisburg, PA 17120-0701
717-772-5298
Fax: 717-705-6525

Questions may be addressed by calling the above number or e-mailing WaiverPrograms@pa.gov



**J-1 VISA WAIVER PROGRAM
APPLICATION INSTRUCTIONS AND CHECKLIST**

SUBMIT AN ORIGINAL AND ONE COPY OF THE REQUIRED DOCUMENTATION ALONG WITH THIS CHECKLIST TO:

**Department of Health
Bureau of Health Planning – Division of Health Professions Development
Room 1033, Health & Welfare Building
625 Forster Street
Harrisburg, PA 17120-0701
717-772-5298
Fax: 717-705-6525**

Questions may be addressed by calling the above number or e-mailing WaiverPrograms@pa.gov

APPLICATION MUST BE SUBMITTED IN THE FOLLOWING ORDER WITH EACH SECTION LABELED ACCORDING TO THE SECTION TITLES BELOW. EACH SECTION MUST CONTAIN THE REQUIRED DOCUMENTS AND INFORMATION. FAILURE TO SUBMIT ACCORDING TO THIS FORMAT WILL RESULT IN THE APPLICATION BEING RETURNED TO THE APPLICANT:

SECTION 1 - LETTER OF NEED:

- Submit a letter signed by the administrator of the sponsoring organization which includes the following:
- _____ Name of the sponsoring organization (employer); type of organization (i.e. solo practice, hospital based clinic, federally qualified health center, etc.) and the profit status such as non-profit; private for-profit, etc.
- _____ Sponsor’s contact information: address, telephone number, email address; and fax number.
- _____ Request that the DOH recommend to the USDOS a waiver of the two-year foreign residency requirement for the IMG (include name of physician and specialty).
- _____ Current staffing level and any vacancies.
- _____ Description (with applicable data) of the service area demographics including: the average income, age make-up of residents, and other pertinent data to illustrate the community the physician will serve.
- _____ 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 (for example: the retirement of the only physician in the community in the near future.)
- _____ Summary paragraph describing your recruitment efforts for this particular position, by effort, 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 a US citizen was not selected for the position.
- _____ Describe the organization’s plan to retain the physician after the three year waiver commitment.
- _____ If requesting the services of a specialist, also see the Specialist Waiver Request requirements for this letter below.
- _____ For a Flex 10 Waiver request, attach a copy of the Federal Employer Identification Number (EIN).

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. Also mention if physician accepts Medicaid and those without insurance or the ability to pay and the waiting time to obtain an appointment.

_____ 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 practicing in the county that are not actually available to patients; current specialists do not accept Medicare, Medicaid and those who are uninsured nor do they accept payment via a sliding fee scale for patients who cannot pay the full charges; 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.

SECTION 2 – PRACTICE SITE APPLICATION:

_____ Complete the Practice Site Application in its entirety for each proposed practice site.

_____ Complete the Low Income Table if site is located in a low income designated area.

_____ Submit the site's sliding fee scale policies and charges which are based on the current poverty guidelines which are part of the site application. The submission must list the discount charges available to individuals and families up to and including those at 200% poverty level. If waiver support is provided, the sliding fee scale amounts must be adjusted each year based on the most recent federal poverty guidelines.

SECTION 3 - AGREEMENT FOR PARTICIPATION IN THE WAIVER PROGRAM

_____ Signed by sponsor and IMG.

SECTION 4 – IMG INFORMATION

_____ Curriculum Vitae (CV) which includes current home address, home/work telephone numbers and email address.

_____ **PA Medical License** (current renewal license; DO NOT SUBMIT MEDICAL TRAINEE LICENSE) or official **notice from the PA Board of Medicine** verifying the only outstanding documentation required to issue a license is the completion of the final year of the physician's training. DOH will not finalize a waiver recommendation until one of these two documents is submitted.

_____ 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.

_____ 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.

SECTION 5 – EMPLOYMENT CONTRACT

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

_____ Name and specialty of IMG, **each practice** site address, county, name and identifying number of **each** MUA/P or HPSA designation

_____ Statement that the IMG will work for 40 hours a week at the approved practice site(s).

_____ 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 that the IMG will practice on a full time basis (minimum of 40 hours per week) for at least three years from the date the IMG begins work.

- _____ Contract may not contain a non-compete clause. Include a statement that there are no non-compete clauses in any of the employer’s policies, handbooks, etc., that would prohibit the IMG from working in ***any location*** upon the termination of the contract.
- _____ Termination without cause is prohibited.
- _____ 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 US Department of Labor prevailing wage determination.**

SECTION 6 – OTHER

- _____ Include any other pertinent information to this application in this section.

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 waiver request 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.