



**J-1 VISA WAIVER PROGRAM
(Appalachian Regional Commission - ARC)
STATEMENT OF POLICY**

The Appalachian Regional Commission (ARC) is committed to assisting all residents of the Appalachian Region with access to quality, affordable health care. The ARC conducts a J-1 Visa Waiver program for international medical graduates (IMG) who complete their medical education and agree to practice in underserved areas that lie within the Appalachian Region. In Pennsylvania, 52 of 67 counties lie within the Appalachian Region as designated by ARC. The Pennsylvania Department of Health (DOH) shares ARC’s commitment to quality, affordable health care. DOH will work with ARC to recommend a waiver of the foreign residence requirement on behalf of an IMG who agrees to provide primary medical care in a Health Professional Shortage Area (HPSA) in one of the 52 counties in the state that are within the Appalachian Region.

The ARC J-1 Program is totally discretionary and voluntary and may be modified or terminated at any time without notice. In all instances the ARC program Federal Co-Chair reserves the right at their discretion to recommend or decline to recommend any request for a waiver. Under this program, the following requirements for participation apply:

1. IMG requests will be considered by the ARC Federal Co-Chair only upon written recommendation of the Governor of Pennsylvania. DOH will obtain the Governor’s recommendation letter upon review and DOH approval of an ARC J-1 Visa Waiver application.
2. The IMG must practice a minimum of **40 clinical hours in direct patient care per week** in a federally designated primary care HPSA. Psychiatrists must practice in a mental health HPSA.
3. The IMG must agree to serve for three years.
4. 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.
5. The IMG must not have been “out of status” as defined by the United States Citizenship and Immigration Services (USCIS) for more than 180 days since receiving a visa under 8 U.S.C. 1182(j) of the Immigration and Nationality Act, as amended.
6. The IMG must begin practice within ninety days of approval of the waiver by USCIS.
7. The IMG, prior to employment, must be licensed by the Commonwealth of Pennsylvania and must have completed a residency in one of the following specialties: family practice, general pediatrics, obstetrics, general internal medicine or psychiatry.
8. The sponsor of the IMG must demonstrate that it has made a reasonable good faith effort to recruit a U.S. Physician for the job opportunity in the same salary range without success during the six months immediately preceding the request for waiver.
9. The IMG must submit a no objection letter if funds were received from home country for medical education.
10. The IMG must sign and have notarized the “ARC J-1 Visa Policy Affidavit and Agreement” prior to consideration.
11. The IMG and sponsor must sign the Agreement for Participation in the PA DOH ARC J-1 Visa Waiver Program.
12. The site at which the IMG will practice must agree to serve all patients without regard to ability to pay and must participate in Medical Assistance and Medicare. 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 uninsured or underinsured patients. The site may charge no more than the usual and customary rate prevailing in the HPSA in which the services are provided. Persons with third party insurance may be charged the full fee for services. A notice must be posted in a conspicuous location in the patient waiting area at the practice site notifying patients of the charges for service as required in this paragraph.

The Department of Health cannot waive the federal requirements for participation in the ARC J-1 Visa Waiver program.

PA Department of Health – ARC – J-1 Visa Waiver Program

DOH considers the primary responsibility of the ARC J-1 Visa Waiver Program to be those citizens residing in HPSAs in the 52 counties in the Appalachian Region. DOH will consider supporting ARC 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 DOH aim to address disparities in access to health care, that the placement supports program objectives of DOH, and that all requirements of the ARC program have been met. It is the responsibility of the employer/sponsor to document a compelling public health need for the ARC waiver request.

DOH will only consider primary care physicians (family practice, general internal medicine, pediatrics, obstetrics-gynecology, and psychiatry) in out-patient ambulatory care sites, for the ARC Visa Waiver program.

DOH Program Objectives

1. To assure access to primary care to those residing in HPSAs within the Appalachian Region of Pennsylvania.
2. To provide designated populations unable by reason of poverty or other circumstances to obtain access to a physician.
3. To recruit and retain primary care physicians within designated HPSA's of the Commonwealth who are specifically engaged in providing services to underserved residents of their area.

DOH Principles for ARC J-1 Visa Waivers

- A. ARC J-1 Visa Waiver regulations stipulate that the IMG who receives the waiver must practice full-time, 40 hours per week, in a federally designated primary care HPSA or, in the case of a psychiatrist, a mental health HPSA.
 1. HPSAs 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 HPSAs 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 will address the access needs of the subject population.
 3. 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 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.
 4. 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. **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.**
- 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 40 hours per 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. **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.
 3. **Prevailing Wage** – Salary arrangements that exploit the ARC 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 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 a HPSA 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 area and therefore, results in a loss of physician services to the area.
- D. **DOH is accountable to a variety of agencies for ARC J-1 Visa Waiver authorizations.** Program performance is subject to occasional review by outside entities such as The Appalachian Regional Commission, General Accounting Office, the U.S. Department of State, the U.S. Department of Homeland Security, and the U.S. Citizenship and Immigration Service. 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 DOH in a timely manner. **Physicians who fail to comply with this requirement, or who change practice sites without prior approval from the DOH will be reported to USCIS as being in default of their ARC 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 the 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 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 practice (not the individual physician). **The DOH 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 ARC 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 six-months preceding the request for an ARC J-1 Visa Waiver Program placement. The employer shall document that it has undertaken such a recruitment

through a reasonable number of appropriate sources including but not limited to, advertisements in newspapers and medical journals of national and statewide circulation most likely to bring responses from able, willing, qualified and available U.S. doctors and job opportunity notices placed in appropriate medical schools including all medical schools in the Commonwealth in which the sponsor is located.

- 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 ARC and DOH do not credential nor do they make any representations concerning the qualifications or competency of physicians place under this program. Responsibility for credentialing and for quality assurance rests solely with the sponsor.

Note:

The DOH 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 ARC, federal or state requirements prior to the submission of the Department's waiver recommendation letter to ARC.

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 and 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

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

SUBMIT AN **ORIGINAL AND TWO COPIES** 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 ADDRESSED:

Submit a letter signed by the administrator addressed to the Appalachian Regional Commission Federal Co-Chair 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 ARC 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.
- _____ Affirm that person signing the letter has read and understood the ARC Federal Co-Chair's J-1 Waiver Policy and that the sponsoring organization will comply with this policy.

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 HPSA.

_____ 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 - DOH & ARC AGREEMENT FOR PARTICIPATION IN THE WAIVER PROGRAM

_____ IMG and sponsor signed Agreement for Participation in the PA Department of Health ARC J-1 Visa Waiver Program.
_____ IMG signed and notarized ARC J-1 Visa Waiver Affidavit and Agreement.

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 HPSA designation
_____ ARC J-1 Visa Liquidated Damages Clause (ver batim)
_____ 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) → Governor's Office - Appalachian Regional Commission (ARC)- 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 ARC. 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 ARC until USCIS makes a determination on the waiver is usually three to four months.