

J-1 Visa Waiver Program (Conrad 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 or she changes jobs upon termination of the contract.
4. The IMG must begin practice within 90 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 or she has no other pending waiver applications and that he or 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

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 DOH 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 based on the priorities for selection of applicants.

All 30 slots available for the federal fiscal year will be eligible for consideration when reviewing applications for support. At the point that all slots are filled, the Department will cease reviewing applications. The Department will advise via our [website](#) that no more applications for the J-1 Visa Waiver Program will be entertained.

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. Because 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.

Because 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 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 **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 three-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. Restrictive Covenant or 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 restrictive covenant or 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 employer 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 the 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.

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 notarized document attesting**, 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 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

The program will begin accepting application October 1st – December 31st or until the department has received 30 eligible and complete applications. At the point that all slots are filled, the Department will cease reviewing applications. The Department will advise via our [website](#) that no more applications for the J-1 Visa Waiver Program will be entertained.

Prioritization of applications:

Priority 1: Applications for primary care physicians who will provide services at **out-patient**, ambulatory caresites 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 considered based upon the availability of slots and 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 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.

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

**Department of Health
Pennsylvania Primary Care Office
Health & Welfare Building
625 Forster Street
Harrisburg, PA 17120-0701
717-772-5298**

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