

DEPARTMENT OF HEALTH AND HUMAN SERVICES

MAINE CENTER FOR DISEASE CONTROL AND PREVENTION

J-1 VISA WAIVER REVIEW AND RECOMMENDATION PROCESS FOR THE STATE
OF MAINE (CONRAD STATE 30)

The Maine Department of Health and Human Services (DHHS) is committed to increasing access to quality affordable health care services to all residents of the State of Maine. Therefore, the Department of Health and Human Services is prepared to consider recommending a waiver pursuant to the requirements of Public Law 103-416, of October 25, 1994 and Public Law 107-273, of November 2, 2002.

This waiver process applies to international medical graduates (IMGs) admitted to the United States under a J-1 visa who have an offer of full-time employment at an eligible health care facility, and agree to begin employment at the facility within 90 days of receiving such waiver, and who sign a contract to continue to work at the health care facility for a total of 40 hours per week and not less than three years.

Each state is allowed thirty waivers per federal fiscal year. Five of the thirty requests may be specialists who can practice medicine outside of Health and Human Services designated health shortage areas.

The Department of Health and Human Services' policy is completely discretionary, voluntary and may be modified or terminated at any time. The submission of a complete waiver package to the Department does not ensure that the Department will recommend a waiver. In all instances the Department reserves the right to recommend or decline any request for a waiver.

A waiver request to the Department of Health and Human Services must come from a health care facility located in Maine on behalf of a J-1 physician and not directly from a J-1 physician. The area in which the physician will practice must be designated by the Secretary of Health and Human Services as having a shortage of primary care health care professionals and/or a shortage of personal health care services. These designations are referred to as Health Professional Shortage Areas (HPSAs) and/or Medically Underserved Areas/Populations (MUA/Ps). Employment must be in a job consistent with meeting the needs of underserved people in the State of Maine. If the HPSA or MUA/P designation is based on a population group, e.g., migrant farm workers, the homeless, etc., the physician must improve access of this group. Documentation by the employing facility, which demonstrates expanded access for the target population, must be provided in the facility's semi-annual report.

All of the required information and documentation must be submitted in a single package with documents presented in the order set forth. Waiver requests that do not comply with these requirements will not be considered and will be returned. Only

completed waiver request applications will be entered into the State's waiver review process and assigned a priority number.

DESCRIPTION OF THE WAIVER REVIEW PROCESS

Requests for a waiver of the foreign residence requirement must be made by Maine medical facilities directly to the DHHS Office of Rural Health and Primary Health Care (ORHPC). Upon request to the ORHPC, an information packet will be sent detailing the information/documentation that is needed in order for a health care facility to submit an appropriate case file for review.

Each case is reviewed by DHHS-ORHPC staff within 30 calendar days of receipt of the completed application. A recommendation is made and sent to the Commissioner of the Maine Department of Health and Human Services for a final determination. Each case file is assigned a priority number. In the event that greater than thirty complete waiver applications are received simultaneously for the remaining available state waiver slots, additional criterion (to be determined by the Department) may be used to review waiver applications.

After thirty (30) case numbers are assigned, the remaining cases will be assigned a priority number and carried over to the next fiscal year for processing.

The Commissioner of the Department of Health and Human Services makes the final decision as to whether a request for a waiver of the residency requirement is forwarded to federal officials. If the decision is positive, the case file, along with a cover memorandum, is sent to the United States Department of State (DOS)

The DOS reviews the program, policy, and foreign relations aspects of the case and makes its recommendation. If a favorable recommendation is reached, the DOS will forward the waiver application to the United States Citizenship and Immigration Services (USCIS). The USCIS estimates a turnaround time of 4-6 weeks.

The U.S. Citizenship and Immigration Services will inform the requestor and the Maine Department of Health and Human Services of its decision.

Please be aware that in the event there are unforeseen circumstances that prevent the physician who has received a waiver from fulfilling the 3 year contract, e.g., closure of the facility, DHHS-ORHPC must be notified immediately by the facility and the J-1 physician as this may affect his or her non-immigrant H1B status and/or the ability to acquire lawful permanent resident status. The Maine Department of Health and Human Services, in return, will immediately notify the US Citizenship and Immigration Services (USCIS).

WAIVER REQUEST GUIDELINES

1. The request must be accompanied by a letter from the head of the medical facility at which the physician will be employed that:
 - a) requests that the Maine Department of Health and Human Services recommend a waiver for the J-1 physician.
 - b) describes the J-1 physician's qualifications, proposed responsibilities and that the physician's employment will assist in meeting the current unmet health care needs of the medically underserved rural community.
 - c) states unequivocally that the medical facility is contracting with the J-1 physician for a minimum of 40 hours per week for at least three years employment.
 - d) states that the medical facility is located in an area designated by the Secretary of Health and Human Services as a Medically Underserved Area (MUA), or a Primary Medical Care Health Professional Shortage Area (HPSA), or a Mental Health Professional Shortage Area and the J-1 physician accepts Medicaid (Mainecare) and Medicare eligible patients and medically indigent uninsured patients. The facility shall also list the HPSA or MUA identifier number of the designation and shall include the FIPS county code and census tract or block numbering area number (assigned by the Bureau of the Census) or the 9 digit zip code of the area with the facility is located.

NOTE: Five (5) flexible waivers are open to J-1 physicians employed by facilities that are not located in a federally designated MUA/P or HPSA area as part of the Conrad 30 expansion. (See the special considerations in attachment B.)

- e) summarizes the effect on the area/population of a waiver denial by the DHHS.
 - f) states the facility will comply with the physician monitoring and retention activities (see #9).
2. The request must include a description of the medical facility which details the nature and extent of its medical services. Including a copy of the facility's sliding fee scale. (A charity policy is not a substitute for a sliding fee scale, unless fees are waived for all medically indigent uninsured patients with incomes at or below 100% of the federal poverty guidelines.)
3. The J-1 physician must demonstrate a bona fide offer of full-time employment at a medical facility (i.e., a copy of the complete contract). The contract must specify the following:
 - a) the J-1 physician agrees to remain employed at the medical facility not less than three (3) years;

- b) the J-1 physician agrees to practice medicine a minimum of 40 hours per week serving patients from the geographic area(s) or populations which are designated by the US Bureau of Primary Health Care as having a shortage of primary care health care professionals and/or medically underserved area/population; and,
- c) the J-1 physician agrees to begin employment at such facility within 90 days of receiving a waiver.

In addition to the contract, the J-1 physician and the authorized representative of the facility must sign the attached addendum which fully details the employment contract requirements listed above (see attachment A).

4. Evidence must be submitted that the J-1 physician will meet all medical licensure requirements for the State of Maine (prior to employment). That documentation must be included with the request.
5. A signed statement by the J-1 physician that no outstanding obligation to the home country exists or in the instance where the J-1 physician has a contractual obligation to the home country government, the request must include a copy of the "no objection" letter from the home government (see attachment C).
6. The request must include copies of the DS 2019 (previously the IAP-66) "Certificate of Eligibility for Exchange Visitor (J-1) Status", and all I-94 forms for the J-1 physician and any family members, and proof of passage of examinations required by USCIS (i.e., USMLE, ECFMG).
7. Recruitment and retention efforts must be described clearly by the facility and demonstrate that recruitment through traditional methods has been unsuccessful. Please provide:
 - a) information as to how long the position has been vacant;
 - b) copies of advertisements, agreements with placement services, attendance at recruitment fairs, etc.;
 - c) a description of the facility's plans for retaining the international medical graduate physician (see attachment D).
8. The request must contain a curriculum vitae of the J-1 physician and at least three letters of professional recommendation.
9. The facility must commit that semi-annual reports will be submitted to the Office of Rural Health and Primary Care to enable the Office staff to monitor the J-1 physician's compliance with the three year service obligation. (The Office of

Rural Health and Primary Care will send this form to the health care facility one month before it is due.) This commitment to comply with a monitoring program may be included in the facility's letter of request or can be a separate statement, signed by the facility administrator.

10. The request must contain a Data Sheet – DS3035 (which may be downloaded: <http://travel.state.gov/pdf/ds3035.pdf> or completed online: <https://j1visawaiverrecommendation.state.gov/>)
11. The request must contain a statement, signed and dated by the international medical graduate (IMG) exchange visitor that declares he/she has not filed any competing application for waiver with another U.S. department(s)
12. If the facility employs an attorney or representative to appear the “Notice of Entry Appearance as Attorney or Representative” form G-28 must be attached to the request.

The J-1 visa waiver is only one step in a multi-part process. A waiver is necessary but not sufficient to obtain an IMG's services. A waiver simply eliminates the requirement that the IMG return to his/her home country for two years before he/she can return to the United States.

It is important to note that the waiver of the two-year residence requirement is not a visa. IMGs going through the state 30 waiver programs are eligible for, and must make an application to the USCIS for H1B visa status. Permanent residence visa status will not be permitted until the IMG's three years of obligatory service in a health professional shortage area and/or medically underserved area/population has been fulfilled.

Seeking legal counsel to assist you in the preparation and submission of the required USCIS forms and documentation is recommended. All necessary forms are available online at: http://travel.state.gov/visa/temp/info/info_1296.html

Submit the waiver request with one original and one copy of the entire package in the order presented above (on page 3) to:

Charles Dwyer, Director
Office of Rural Health and Primary Care
J-1 Visa Waiver Review
Department of Health and Human Services
#11 State House Station
Augusta, ME 04333-0011

WAIVER PACKAGE CHECKLIST

1. LETTER FROM FACILITY
2. DETAILED DESCRIPTION OF MEDICAL FACILITY AND SLIDING FEE SCALE
3. COPY OF ENDORSED CONTRACT AND ADDENDUM VERIFYING FULL-TIME EMPLOYMENT WITH MEDICAL FACILITY FOR AT LEAST THREE YEARS
4. PROOF OF MAINE LICENSURE ELIGIBILITY
5. SIGNED STATEMENT BY J-1 PHYSICIAN OR IF NECESSARY, A NO OBJECTION LETTER FROM HOME GOVERNMENT
6. COPIES OF PHYSICIAN'S DS-2019s, COPIES OF I-94'S OF PHYSICIAN AND FAMILY MEMBERS, PROOF OF PASSAGE OF EXAMINATIONS REQUIRED BY USCIS (i.e., ECFMG, USMLE)
7. RECRUITMENT AND RETENTION EFFORTS
8. PHYSICIAN CURRICULUM VITAE AND LETTERS OF RECOMMENDATION
9. STATEMENT OF COMPLIANCE WITH SEMI-ANNUAL REPORTING PROCEDURES FROM MEDICAL FACILITY
10. PHYSICIAN DATA SHEET (DS-3035)
11. SIGNED AND DATED STATEMENT BY THE J-1 PHYSICIAN THAT DECLARES HE/SHE HAS NOT FILED ANY COMPETING APPLICATION FOR WAIVER WITH ANY OTHER STATE OR FEDERAL AGENCY
12. IF NECESSARY, NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE (G-28)

ATTACHMENT A
ADDENDUM TO J-1 PHYSICIAN EMPLOYMENT AGREEMENT

Notwithstanding any appropriate provision to the contrary in the Employment Agreement between _____(Physician) and _____(Facility), made _____(Date), the following terms and conditions shall apply:

1. Physician agrees to remain employed by and provide services at _____(Facility) within the federally designated area of _____(Location) for not less than three (3) years; and,
2. Physician agrees to practice medicine a minimum of forty (40) hours per week at _____(Site) in the geographic area designated by the federal Department of Health and Human Services as having a medically underserved population or health professional shortage area which is the location of the applicant facility; and,
3. Physician's Employment Agreement with _____(Facility) shall not become effective unless or until Physician has received both a waiver of his/her J-1 return to home country requirement from the U.S. Department of State, and approval by the Bureau of Citizenship and Immigration Services for an H-1B visa; and,
4. Physician agrees to begin employment at _____(Facility) within 90 days of receiving a waiver of the J-1 obligation.

The parties specifically agree and intend for this Addendum to more fully detail the Employment Agreement between _____(Physician) and _____(Facility) made _____(Date).

Failure to comply with this agreement may result in legal action.

(Physician)

(Authorized Facility Representative)

ATTACHMENT B

SPECIAL CONSIDERATIONS FOR THE FIVE FLEXIBLE WAIVERS

The Conrad program's policy objectives are to enlarge access to physicians by the indigent and medically underserved, flexibility provisions require a qualifying physician to serve substantial numbers or percentages of the indigent and medically underserved. Determinants in adjudicating waiver requests under these flexibility provisions:

- *Nature of the medical facility.* Certain medical facilities play an important role in serving the needs of a state's indigent and medically underserved populations. For example, those systems and hospitals serving as important safety net providers to the indigent and medically underserved, even though such facilities may not be located in designated medically underserved areas. Specifically, providers of important outreach services to a state's vulnerable population groups, particularly in specialty and tertiary care services, which are practice areas not supported at a local level.
- *Physician's expected practice plan.* Unquestionably, there are quantifiable measures to judge the actual contributions of a physician to at-risk population groups within a state. In fact, probably no profession is subject to a higher burden of regulation and reporting than medicine. Therefore, it should be quite possible to evaluate an alien physician's expected contributions to a state's vulnerable population groups by considering such factors as: percentage or actual numbers of the physician's public aid patients, expected annual write-offs of patients who have fallen through the safety net, discounted fee arrangements extended to the indigent, medical services provided to minorities, unique practice area/substantial referral network making the physician a statewide referral source for certain medical conditions, the prevalence among the poor and disadvantaged of a disease handled by the alien physician, etc.

This information enables Office of Rural Health and Primary Care to substantively consider the true contributions of a physician's practice to vulnerable population groups and to channel physician resources into practice situations of greatest benefit to the indigent and the medically underserved.

ATTACHMENT C

LETTER OF NO OBJECTION FROM THE HOME GOVERNMENT IN THOSE CASES WHERE ONE IS REQUIRED

On occasion, the US Department of State (DOS) will require that waiver requests from state health departments include a copy of a "no objection" letter from the J-1 physician's home government. This is a letter from the physician's home government that states the home government has no objection to the physician remaining in the United States to practice medicine.

If required, the physician needs to contact his/her home government embassy in the United States and request that they write a letter of "no objection" on their behalf to:

U.S. Department of State
Visa Services
Waiver Review Division
2401 E Street, NW
Washington, DC 20522-0106

If required, the physician should request a copy of the "no objection" letter and must include a copy of the "no objection" letter with the other waiver request documentation required.

USIA does not require that a "no objection" letter be of or on a particular form; however the "no objection" letter must reference Public Law 103-416, i.e.,

Pursuant to Public Law 103-416, the government of (Name and Country)
has no objections if (Name of physician, address, date of birth), does not return
to (Name of Country) to satisfy the two-year foreign residency requirement of
Section 212(e) of the Immigration and Nationality Act.

ATTACHMENT D

SUGGESTED RETENTION PLAN

The following plan provides suggested guidelines regarding the development of a retention strategy for your facility.

Keep in mind that today's physician looks for quality. Consider two factors as you begin to develop your retention strategy - professional environment and lifestyle.

Professional Environment

- Availability of medical colleagues
- Staff and professional support
- Adequate call coverage
- Quality facilities, equipment, and personnel
- Access to referral physicians
- Access to continuing medical education

Lifestyle Issues

- Availability for spouse employment
- Recreational opportunities
- Quality school
- Cultural activities
- Adequate housing
- Adequate shopping facilities

Develop a recruitment/retention committee or assign this task to one individual.

Check periodically to see that the physician's on-call responsibilities are realistic.

Provide opportunity for continuing medical education.

Monitor the physician's patient load - is it overburdening?

Check to see that referral patterns are established and appropriate.

Relate to your physician on a personal level; is the physician happy and content? Set up monthly breakfast meetings to discuss a variety of issues.

Be aware of the physician and family's integration into the community - are they included in social events; does the physician and family have a sense of belonging.

Guard against concerns that may arise due to any unmet expectations.