

DEPARTMENT OF HUMAN SERVICES, PUBLIC HEALTH

DIVISION 005

PHYSICIAN VISA WAIVER PROGRAM

333-005-0000

Purpose of the Physician Visa Waiver Program

The purpose of the Physician Visa Waiver program is to make recommendations to the United States Department of State for waivers of the foreign country residency requirement on behalf of physicians holding visas who seek employment in federally designated area having a shortage of physicians. These rules are promulgated pursuant to 2003 Or Laws ch. 608 in order to enable Oregon to make requests for waiver of the foreign country residency requirement as authorized under 8 U.S.C. secs. 1182(e) and 1184(l).

Stat. Authority: 2003 Or Laws ch. 608

Stats Implemented: 2003 Or Laws ch. 608

333-005-0010

Definitions

For the purposes of this Division 333-005, the following definitions apply:

- (1) "Application" means the Physician Visa Waiver Program application form and accompanying documentation;
- (2) "Bureau of Citizenship and Immigration Services" means the agency that replaced the Immigration and Naturalization Service, effective March 1, 2003;
- (3) "Department" means the Oregon Department of Human Services;
- (4) "Department of State" means the federal agency that reviews J-1 applications;
- (5) "Health Care Facility" means the clinic or hospital that employs the J-1 physician;
- (6) "Health Services and Resources Administration" (HRSA) means the branch of the Department of Health and Human Services that designates federal shortage areas;
- (7) "Health Care Shortage Area" means a geographic area or site approved by HRSA. Categories include Health Professional Shortage area (HPSA), Medically Underserved Area (MUA), and Medically Underserved Population (MUP);
- (8) "J-1 Application" refers to the application form and supporting material submitted jointly by the health care facility and the J-1 physician to the Department;
- (9) "J-1 Physician" means the doctor who is requesting a waiver of the two-year foreign country residency requirement in order to practice in a federally designated shortage area;
- (10) "Low Income" means a patient whose income does not exceed 200% of the current Federal Poverty Guidelines;

(11) "Mental Health Facility" means an agency that provides mental health services in an outpatient, residential, or hospital setting;

(12) "Primary Care Physician" means a physician licensed in Oregon to practice family medicine, general internal medicine, obstetrics and gynecology, pediatrics, or psychiatry.

Stat. Authority: 2003 Or Laws ch. 608

Stats. Implemented: 2003 Or Laws ch. 608

333-005-0020

Health Care Facility Participation Requirements

(1) In order to qualify for the program the health care facility must:

(a) Identify the nature of the business entity seeking to employ the physician (domestic or foreign professional corporation, domestic or foreign private corporation, LLC, partnership, etc.), and provide a certificate of existence or proof of authorization to do business in Oregon;

(b) Have provided care for a minimum of six months in Oregon, or supply evidence of stability such as HRSA funding, prior to submitting an application;

(c) Currently serve Medicare, Medicaid, low-income, and uninsured patients, as well as the population of the local HRSA designation. A minimum of 20% of the total current patient visits must be Medicaid and/or other low-income patients, excluding Medicare;

(d) Post a sliding fee schedule in the primary language(s) of the population being served;

(e) Document attempts to actively recruit an American doctor for at least six months prior to submission of the application;

(f) Execute an employment contract with the physician that includes the following provisions:

(A) Duration of at least three years;

(B) Wages and working conditions comparable to those for a graduate from an American medical school;

(C) A signed U.S. Department of Labor Prevailing Wage Form (ETA-9035);

(D) May not include a non-compete clause or restrictive covenant that prevents or discourages the physician from continuing to practice in any designated area after the term of the contract expires;

(E) Specifies the geographic shortage area within Oregon in which the physician will practice;

(F) The physician will treat all patients regardless of their ability to pay;

(G) The physician will provide patient care on a full-time basis, i.e., a minimum of 40 hours per week;

(2) If a health care facility is located in a Medically Underserved Area (MUA) or Medically Underserved Population (MUP) that is not a Health Professional Shortage Area (HPSA), then the facility should provide documentation substantiating the area's need for a physician.

(3) The health care facility shall submit to the Department a fee of \$2,000 and two original copies of the application packet for each waiver requested.

Stat. Authority: 2003 Or Laws ch. 608

Stats. Implemented: 2003 Or Laws ch. 608

OAR 333-005-0030

Physician Participation Requirements

(1) In order to qualify for consideration by this program the physician must:

(a) Obtain a Department of State case number prior to submitting an application to the Department;

(b) Submit a completed application that:

(A) Documents having, or having applied for, an active Oregon medical license;

(B) Documents board certification or board eligibility;

(C) Includes either a "No Objection" letter from the home country, or a statement that the physician is not contractually obligated to return to the home country.

(D) Includes a signed and dated statement certifying that the physician does not have any other pending J-1 waiver requests;

(E) Provides at least one recommendation from the physician's primary care residency program or fellowship/subspecialty training;

(F) Includes evidence of graduation from the residency program or subspecialty training program. Under some circumstances, a letter from the program director projecting graduation by the end of the academic year may be acceptable;

(G) Documents an agreement to begin employment with the health care facility within 90 days from the latest of the granting of the waiver, receiving an Oregon medical license, or graduation from the residency or fellowship program.

(H) Includes a copy of the medical degree or diploma;

(I) Includes legible copies of all IAP-66 Forms;

(J) Documents satisfactory completion of all examinations that the Bureau of Citizenship and Immigration requires;

(K) Includes a curriculum vita that documents the physician's date of birth, city and country of birth.

Stat. Authority: 2003 OR Laws ch. 608

Stats. Implemented: 2003 OR Laws ch. 608

OAR 333-005-0040

Application Review Process

(1) The Department will review completed health care facility applications that meet all requirements of 333-005-0020. Potential physician participants must meet all 333-005-0030 requirements.

(2) The following factors will be considered in determining whether to recommend a request for waiver of the foreign country residency requirement:

(a) The type of medicine to be practiced. Eighty percent of the slots allotted for each federal fiscal year must be primary care physicians as defined in OAR 333-005-0010. Applications from community health centers and mental health facilities will receive priority.

(b) Geographic distribution of physicians. To the extent possible, the Department will attempt equitable distribution of waiver requests for eligible areas of the state. The number of physicians already working under waivers or recommended for waivers in a particular geographic area will be taken into consideration.

(c) Facility patient profile. The health care facility's percentage of patient visits which are covered by the state Medicaid program or are low income, uninsured.

(3) Incomplete applications will be returned, including application fees. The Department will process completed resubmitted applications (including fees) as of the new date of receipt.

(4) The Department will review each completed application and notify the applicant of the results within 15 business days.

(5) The Department will forward recommended requests for waiver to the Department of State. Their review normally takes four to six weeks. The Department of State will forward waiver requests recommended for approval to the Bureau of Citizenship and Immigration Services for final approval.

(6) The Department reserves the right to re-allocate positions based on a review of current access needs in the state. The Department additionally reserves the right to recommend or decline to recommend a waiver request.

Stat. Authority: 2003 Or Laws ch. 608

Stats. Implemented: 2003 Or Laws ch. 608

OAR 333-005-0050

Monitoring and Follow-up Requirements

(1) In order to maintain participation in the Physician Visa Waiver Program the health care facility must:

(a) Notify the Department in writing as soon as the physician starts work;

(b) Submit semi-annual reports signed by the physician and the Chief Executive Officer of the health care facility verifying the physician's employment. The first report is due six months after employment begins, and every six months thereafter, until the term of the contract is complete. Failure to submit timely, accurate reports

will result in a report of non-compliance to the Bureau of Citizenship and Immigration Services.

(c) Allow Department auditors access to health care facility and physician records.

Stat. Authority: 2003 Or Laws ch. 608

Stats. Implemented: 2003 Or Laws ch. 608

OAR 333-005-0060

Transfer of J-1 Waiver Physician Obligation

(1) A physician who is granted a visa waiver and who encounters a practice failure due to extenuating circumstances may, with Department approval, continue the service obligation at another approved health care facility. A written transfer request must be submitted to the Department documenting the need for the transfer.

(2) The request must include the reason for transfer, proposed new employer, health care facility director's name, practice name, address, telephone number and proposed date of transfer.

(3) The original employer must provide a letter releasing the physician from the employment contract and providing an explanation for the termination.

(4) The new employer must:

(a) Provide a letter of intent to employ the physician;

(b) Provide a copy of the new employment contract;

(c) Meet health care facility participation requirements as set forth in these rules;

(d) Work with the physician to jointly submit semi-annual Verification of Employment forms as required by the Department.

Stat. Authority: 2003 Or Laws ch. 608

Stats. Implemented: 2003 Or Laws ch. 608