

CHAPTER 409
OREGON HEALTH AUTHORITY
OFFICE FOR OREGON HEALTH POLICY AND RESEARCH

DIVISION 035
PHYSICIAN VISA WAIVER PROGRAM

409-035-0000

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 areas having a shortage of physicians. These rules set forth the requirements for 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: ORS 409.745

Stats Implemented: ORS 409.745

409-035-0010

Definitions

For the purposes of this Division, the following definitions apply:

- (1) "Application" means the Physician Visa Waiver Program application form and accompanying documentation;
- (2) "Authority" means the Oregon Health Authority;
- (3) "Department of State" means the federal agency that reviews J-1 applications;
- (4) "Flex Option" means the placement of a physician in an area that is not federally designated, who will serve patients living in designated shortage areas;
- (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 Authority;

- (9) "J-1 Physician" means allopathic or osteopathic physician who is requesting a waiver of the two-year foreign country residency requirement in order to practice in a facility that is either located in a federally designated shortage area or serves patients living in designated shortage areas;
- (10) "Low Income" means a patient whose income does not exceed 200% of the current Federal Poverty Guidelines (see: <http://aspe.hhs.gov/poverty>);
- (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 general psychiatry.
- (13) "United States Citizenship and Immigration Services" means the agency that replaced the Immigration and Naturalization Service, effective March 1, 2003.

Stat. Authority: 409.745

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409-035-0020

Health Care Facility Participation Requirements

- (1) Federally Qualified Health Centers with a HPSA score at or above the requirements of 22CFR41.63 shall apply for a J-1 Waiver through the United State Department of Health and Human Services (see: <http://www.globalhealth.gov/exchangevisitorprogram/index.html>); Federally Qualified Health Centers with a HPSA score below the requirements of 22CFR41.63 shall apply through the Authority.
- (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), or if the request is for a flex option, then the facility must obtain prior approval from the Authority and provide documentation substantiating the area's need for a physician.
- (3) In order to qualify for the Oregon Physician Visa Waiver Program the health care facility must:
 - (a) Identify the nature of the business entity seeking to employ the physician, including but not limited to domestic or foreign professional corporation, domestic or foreign private corporation, LLC, or partnership, 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 HPSA funding, prior to submitting an application;

- (c) Currently serve Medicare, Medicaid, and low income uninsured patients-that are members of the population of the local HRSA designation. A minimum of 20% of the total current patient visits must be Medicaid, Medicare, or other low-income patients. At least half of the 20% requirement, i.e. 10%, must be Medicaid and low income uninsured patients, excluding Medicare.
- (d) Post a sliding fee schedule in the primary languages 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 or, if requesting a flex option, the shortage area or areas where prospective patients live;
 - (F) The physician shall treat all patients regardless of their ability to pay;
 - (G) The physician shall provide patient care on a full-time basis; a minimum of 40 hours per week;
- (4) The health care facility shall submit to the Authority a fee of \$2,000 and two original copies of the application packet for each waiver requested.

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409-035-0030
Physician Participation Requirements

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

- (1) Obtain a Department of State case number prior to submitting an application to the Authority;
- (2) Submit a completed application that:
 - (a) Documents having, or having applied for, an active Oregon medical license. If the residency or fellowship is not completed, the license application may be listed as “pending”;
 - (b) Documents board certification or, if the residency or fellowship is not yet completed, board eligibility upon completion of the program;
 - (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 a letter of recommendation from the department head of the physician’s residency or fellowship program;
 - (f) Includes evidence of graduation or of the projected date of graduation from the residency or fellowship program.
 - (g) Documents an agreement to begin employment with the health care facility within 90 days from the date the waiver is granted;
 - (h) Includes a copy of the medical degree or diploma, translated into English;
 - (i) Includes legible copies of all DS 2019 Forms;
 - (j) Documents satisfactory completion of all examinations required by the United States Citizenship and Immigration Services;
 - (k) Includes a curriculum vita that documents the physician's date of birth, city and country of birth.

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Stats. Implemented: ORS 409.745

409-035-0040

Application Review Process

- (1) The Authority shall review completed health care facility applications that meet all requirements of 409-035-0020. Potential physician participants must meet all requirements set forth in 409-035-0030.

- (2) The following factors shall 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 are reserved for primary care physicians as defined in OAR 409-035-0010. Applications from community health centers with HPSA scores below 7 and from mental health facilities shall receive priority.
 - (b) Geographic distribution of physicians. To the extent possible, the Authority shall 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 shall 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, Medicare, or are low income, uninsured.
- (3) The Authority shall return incomplete applications, including application fees. The Authority shall process completed resubmitted applications, including fees, as of the new date of receipt.
- (4) The Authority shall review each completed application and notify the applicant of the results within 15 business days.
- (5) The Authority shall forward recommended waiver requests to the Department of State. The Department of State shall forward waiver requests recommended for approval to the United States Citizenship and Immigration Services, which shall determine whether to issue or deny the waiver.
- (6) The Authority may re-allocate positions based on a review of current access needs in the state. The Authority may also recommend or decline to recommend a waiver request.

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Stats. Implemented: ORS 409.745

409-035-0050

Monitoring and Follow-up Requirements

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

- (1) Notify the Authority in writing as soon as the physician starts work;
- (2) Promptly 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 shall result in a report of non-compliance to the United States Citizenship and Immigration Services.

- (3) Notify the Authority immediately of any change or prospective change in the physician's employment status.
- (4) Allow Authority auditors access to health care facility and physician records.

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Stats. Implemented: ORS 409.745

409-035-0060

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 Authority approval, finish the three-year service obligation at another approved health care facility. A written transfer request must be submitted to the Authority documenting the need for the transfer.
- (2) The request must include the reason for transfer, proposed new employer, the 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. The Authority may waive this requirement if the original employer is in non-compliance with federal requirements, federal or state law, or with these rules.
- (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 Authority.

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