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NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 409
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS

FILED

09/29/2022 2:07 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proposed changes to facility qualifications and reporting requirements for the Physician Visa Waiver Program.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/24/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Pete Edlund
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/18/2022

TIME: 1:05 PM

OFFICER: Pete Edlund

ADDRESS: REMOTE MEETING ONLY

421 SW Oak St

Portland, OR 97204

SPECIAL INSTRUCTIONS:

A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting. Please contact pete.edlund@dhsosha.state.or.us.

This hearing is remote only. Please use the link and dial-in numbers below to join:

Join ZoomGov Meeting

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NEED FOR THE RULE(S)

The Oregon Health Authority proposes to reduce the burden to health facilities in the application process to participate in the J-1 Physician Visa Waiver Program, remove culturally unresponsive language from the requirements, and remove

other barriers to participation of foreign physicians in the health care sector in Oregon.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 413.248 (available in Oregon Revised Statutes, <http://www.leg.state.or.us/ors/413.html>; United States Code, 8 U.S.C., Sections 1182(3) and 1184(1) (available at <http://www.gpo.gov/fdsys/browse/collectionUSCode.action?collectionCode=USCODE>; and Code of Federal Regulations, 22 CFR 41.63 (available at <http://www.gpo.gov/fdsys/pkg/CFR-2002-title22-vol1/content-detail.htm>).

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Physician Visa Waiver Program contributes to Oregon having an increasingly diverse physician workforce, by attracting physicians from foreign countries to practice in Oregon. We believe that the proposed rules make it easier for health care facilities to participate in the program. OHA considered priority populations when constructing these rules. OHA worked with the Tribal Affairs Office in determining the proper level of consultation with Tribes. Notice of the rulemaking was distributed to more than 6,900 individuals and health centers that subscribe to the PCO listserv. Invited members of the RAC included representatives of Tribal populations, immigration attorneys who represent individuals from foreign countries, health care providers who are needing culturally responsive providers, and individuals who are themselves members of non-White/non-Hispanic populations.

FISCAL AND ECONOMIC IMPACT:

No fiscal or economic impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1: None.

2a: None.

2b: No additional reporting.

2c: No additional equipment, supplies, labor or increased administration required for compliance.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

None

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

409-035-0000, 409-035-0010, 409-035-0020, 409-035-0030, 409-035-0040, 409-035-0050, 409-035-0060

AMEND: 409-035-0000

RULE SUMMARY: Makes minor language corrections for ease of readability.

CHANGES TO RULE:

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 to~~ waivers ~~of~~ the foreign country residency requirement of foreign medical graduates 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 to~~ waiver ~~of~~ the foreign country residency requirement as authorized under 8 U.S.C. secs. 1182(e) and 1184(l).

Statutory/Other Authority: ORS 413.248

Statutes/Other Implemented: ORS 413.248

AMEND: 409-035-0010

RULE SUMMARY: A. Makes minor language corrections for ease of readability.

B. Adds definition of "Oregon Health Plan" specifying its connection with the federal Medicaid program.

CHANGES TO RULE:

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~~supporting documentation.¶¶

(2) "Authority" means the Oregon Health Authority.¶¶

(3) "Department of State" means the federal agency that reviews J-1 waiver applications.¶¶

(4) "Flex Option" means the placement of a physician in an area that is not a federally-¶¶ designated shortage area, who will serve patients living in designated shortage areas, as determined by the Health Resources and Services Administration.¶¶

(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~~means 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 in Oregon 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: <https://aspe.hhs.gov/poverty>).¶¶

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

(12) "Oregon Health Plan" means the joint Federal/State entitlement program, enacted in 1965 as Title XIX of the Social Security Act, that pays for medical care on behalf of certain groups of low-income persons, as operated in Oregon.¶¶

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

(134) "United States Citizenship and Immigration Services" means the agency that replaced the-¶¶ Immigration and Naturalization Service, effective March 1, 2003.

Statutory/Other Authority: ORS 413.248

Statutes/Other Implemented: ORS 413.248

AMEND: 409-035-0020

RULE SUMMARY: A. Makes minor language corrections for ease of readability.

B. Replaces "Medicaid" with "Oregon Health Plan."

C. Removes requirement that at least 40 percent of patient visits from a facility be from Medicaid, Medicare and other low-income patients.

D. Removes 6-month requirement for an employer to have attempted to recruit a US citizen prior to applying for a J-1 waiver request.

E. Removes requirements that a facility includes USDOL Prevailing Wage Form in application packet.

F. Requires a letter from a facility outlining the need and intention to hire a physician in the application packet.

CHANGES TO RULE:

409-035-0020

Health Care Facility Participation Requirements ¶¶

(1) Federally Qualified Health Centers with a:¶¶

(a) HPSA score at or above the requirements of 22 CFR 41.63 shall apply for a J-1 Waiver either through the Authority or through the United States Department of Health and Human Services (see:

<http://www.globalhealth.gov/global-programs-and-initiatives/exchange-visitor-program>);¶¶

(b) HPSA score below the requirements of 22 CFR 41.63 shall apply for a J-1 Waiver 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 upon~~ providing documentation substantiating the area's need for a physician.¶¶

(3) ~~In order to~~ 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~~ is registered 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~~, and low-income uninsured patients ~~that are members of the population of the local HRSA designation~~, and Oregon Health Plan members that are members of the local community;¶¶

(~~Ad~~) ~~At least 40 percent of patient visits at the facility must be from Medicaid, Medicare or other low-income patients.~~¶¶

(~~B~~) ~~Medicaid~~ Ensure that Oregon Health Plan member visits must represent a share of the overall facility's patient visits that are equal to or greater than the statewide percentage of the population eligible for ~~Medicaid~~ the Oregon Health Plan at the beginning of each program year as determined by the Authority (up to a maximum of 25%). If the facility does not meet this requirement, it must provide a plan to achieve that level of service for review and approval by the Authority. Plans that do not outline a strategy to achieve the required level of service within the ~~provider~~ physician's first year will not typically be approved, but the Authority will consider additional information provided by the facility when making a final decision. If the total ~~number of~~ patient visits covered by ~~Medicaid~~ the Oregon Health Plan or Medicare or from low-income, uninsured patients exceeds 50 percent of all patient visits, the Authority may waive the requirement for a plan.;¶¶

(~~de~~) Post a sliding fee schedule in the primary languages of the population being served;¶¶

(~~ef~~) Document attempts to actively recruit ~~an American doctor for at least six months~~ United States citizen or permanent resident prior to submission of the application;¶¶

(~~fg~~) 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~~ United States medical school;¶¶

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

(~~D~~) ~~May~~ Does 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;¶¶

(~~ED~~) 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;¶¶

(~~FE~~) ~~Ensures~~ the physician shall treat all patients regardless of their ability to pay; and¶¶

(~~GF~~) ~~Ensures~~ the physician shall provide patient care on a full-time basis a minimum of 40 hours per week.¶¶

(h) Submit a letter outlining the need and intention to hire the physician, signed by the CEO or equivalent, or their designee.[¶]

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

Statutory/Other Authority: ORS 413.248

Statutes/Other Implemented: ORS 413.248

AMEND: 409-035-0030

RULE SUMMARY: Removes requirements for various forms and letters from the application packet not critical to the approval of the request.

CHANGES TO RULE:

409-035-0030

Physician Participation Requirements ¶¶

~~In order to~~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 vitae that documents the physician's date of birth, city and country of birth.

Statutory/Other Authority: ORS 413.248

Statutes/Other Implemented: ORS 413.248

AMEND: 409-035-0040

RULE SUMMARY: A. Makes minor language corrections for ease of readability.

B. Removes language that 80 percent of slots each year are reserved for primary care physicians.

C. Clarifies that OHA is to issue any refunds to the health care facility applying for the waiver.

CHANGES TO RULE:

409-035-0040

Application Review Process ¶¶

(1) The Authority ~~may~~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 ~~may~~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.~~¶¶

(b) The area of the state where the physician will practice. ~~A physician who applies for a waiver who will practice in a service area targeted by the Authority as a particularly high-need area shall receive priority.~~¶¶

(c) Distribution of physicians among employers. The Authority may limit the number of slots to six per employer (as defined by EIN) in a program year.¶¶

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

(e) Facility type. Applications from community health centers¶¶

(b) Applications from community health centers with HPSA scores below 7 and from mental health facilities shall receive priority.¶¶

(fc) 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.¶¶

(3d) An application from a non-primary care physician whose specialty cannot be documented as being in high need in the geographical area of practice, or who is proposed to work outside a HDistribution of physicians among employers. The Authority may limit the number of slots to six per employer (as defined by EIN) in a program year.¶¶

(e) Facility patient profile. The health Ccare Shortage Area will be held for consideration after November 30 and considfacility's percentage of patient visits which are covered atby that time. Such applications may be considered on a first-come, first served basis, without respect to OAR 409-035-0040 (2)e Oregon Health Plan, Medicare, or are low income, uninsured.¶¶

(43) The Authority shall return incomplete applications, including application fees to the health care facility applying for the waiver. The Authority shall process completed resubmitted applications, including fees, as of the new date of receipt.¶¶

(54) The Authority shall review each completed application and notify the applicanthealth care facility of the results within 15 business days of receiving the application.¶¶

(65) The Authority shall forward the recommended waiver requests to the United States Department of State. The United States 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 waivergrant or deny the waiver.¶¶

(6) The Authority may reallocate positions based on a review of current access needs in the state. The Authority may also recommend or decline to recommend a waiver request.

Statutory/Other Authority: ORS 413.248

Statutes/Other Implemented: ORS 413.248

AMEND: 409-035-0050

RULE SUMMARY: A. Makes minor language corrections for ease of readability.

B. Stipulates that an employer's failure to meet program reporting requirements may jeopardize future participation.

CHANGES TO RULE:

409-035-0050

Monitoring and Follow-up Requirements ¶¶

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 or their designatee. These reports shall include:¶¶

(a) Verification that the physician is employed full-time;¶¶

(b) A current breakdown of patient visits from ~~Medicaid~~Oregon Health Plan members, Medicare, and low-income uninsured patients served by the physician; and¶¶

(c) The current number of ~~Medicaid patient~~Oregon Health Plan member visits as a percentage of the total patient visits at the facility.¶¶

(3) The first report is due six months after employment begins, and every ~~six months~~year thereafter, until the term of the contract is complete. Failure to submit timely, accurate reports ~~shall~~may result in a report of non-compliance to the United States Citizenship and Immigration Services; and may adversely affect the facility's eligibility for future participation in the program.¶¶

(4) Notify the Authority immediately of any change or prospective change in the physician's employment status.¶¶

(5) Allow Authority auditors access to health care facility and physician records.

Statutory/Other Authority: ORS 413.248

Statutes/Other Implemented: ORS 413.248

AMEND: 409-035-0060

RULE SUMMARY: A. Clarifies language around notification to OHA of transfers and intentions of physicians to transfer sites.

B. Stipulates that an employer's failure to timely inform OHA around physician transfers may jeopardize future participation.

C. Changes employment verification requirement from semi-annual to annual.

CHANGES TO RULE:

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 notification of the intended transfer ~~request~~ must be submitted to the Authority documenting the need for the transfer.¶¶

~~(2) The request before the transfer takes place. Failure to submit written notification prior to a transfer may adversely affect the facility's eligibility for future participation in the program.¶¶~~

(2) The notification 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.

Statutory/Other Authority: ORS 413.248

Statutes/Other Implemented: ORS 413.248