

**PROPOSED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB FILE NO. R017-201

**The following document is the initial draft regulation proposed
by the agency submitted on 02/04/2020**

Section 1. NAC 439A.720 is hereby amended to read as follows:

439A.720 1. An application for a letter of support must:

- (a) Be complete.
- (b) Include the materials required by subsection 1 of NRS 439A.175.
- (c) Be on the form prescribed by the Division of Public and Behavioral Health.
- (d) Contain the notarized signatures of the employer and the J-1 visa physician.

(e) Except as otherwise provided in subsection 2, be accompanied by an application fee pursuant to NAC 439A.728. ~~[The fee must be paid in equal amounts by the employer and the J-1 visa physician]~~ *At least half of the application fee must be paid by the employer.*

2. The Administrator may waive ~~[the]~~ *any* portion of the application fee ~~[which must]~~ *to* be paid by the J-1 visa physician or require the J-1 visa physician to pay that portion of the application fee pursuant to a payment plan if the J-1 visa physician is experiencing an economic hardship and the J-1 visa physician submits with the application documentation sufficient to demonstrate that the economic hardship exists.

3. The application fee will not be refunded if the Administrator does not issue a letter of support for the applicant. The Administrator may refund:

(a) One-half of the application fee paid by the J-1 visa physician ~~[and one-half of the application fee paid by]~~ *or* the employer if the application is withdrawn before the Administrator has made a determination whether to issue a letter of support; or

(b) All of the application fee paid by the J-1 visa physician ~~[and]~~ *or* the employer if, at the time the application is received by the Division, all the available spots for enrollment of J-1 visa physicians in the Program have been filled for that fiscal year.

4. An employer or a J-1 visa physician may obtain an application for a letter of support from *website maintained by* the Division of Public and Behavioral Health on the Internet ~~[website maintained by the Division at <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/>]~~ *or* by submitting a written request for an application to the Division of Public and Behavioral Health, Primary Care Office ~~[, 4150 Technology Way, Carson City, Nevada 89706.]~~ *at the address posted on the website maintained by the Division.*

Sec. 2. NAC 439A.725 is hereby amended to read as follows:

439A.725 1. An application for a letter of support must be filed with the Administrator by personal delivery, commercial carrier or mail.

2. The Advisory Council may review an application submitted pursuant to this section for completeness and compliance with the provisions of NRS 439A.130 to 439A.185, inclusive, and NAC 439A.700 to 439A.755, inclusive.

3. Applications must be reviewed in the order in which they were received.

4. The Administrator is responsible for the review and the approval or denial of all applications. The Administrator shall provide notice of the approval or denial of an application to the applicant. If an application is incomplete, the Administrator shall provide notice to the applicant within 14 days after receipt of the application and provide a written explanation of the missing information or documentation. An application may be resubmitted with the additional required information or documentation.

5. The Administrator shall accept applications pursuant to this section until all available spots for enrollment of J-1 visa physicians in the Program have been filled. The Administrator shall post the status of the number of available spots for enrollment on the Internet website maintained by the Division of Public and Behavioral Health [at <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/>]

6. The Administrator shall not issue a letter of support to:

(a) An employer who was penalized for a violation of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.

(b) A J-1 visa physician who was determined by the Administrator to have violated a provision of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.

Sec. 3. NAC 439A.728 is hereby amended to read as follows:

439A.728 1. Except as otherwise provided in this section and NAC 439A.720, the application fee[s] ~~is~~ **\$2000** for a letter of support from the Division of Public and Behavioral Health. ~~are as follows:~~

~~—(a) For a primary care provider employed by a health facility in a designated health professional shortage area..... \$500~~

~~—(b) For a primary care provider employed by a health facility in a flex slot..... 800~~

~~—(c) For a primary care provider employed by a third party contractor in a designated health professional shortage area..... 1,100~~

~~—(d) For a primary care provider employed by a third party contractor in a flex slot..... 1,400~~

~~—(e) For a specialist employed by a health facility in a designated health professional shortage area.....800~~

~~—(f) For a specialist employed by a health facility in a flex slot..... 1,100~~

~~—(g) For a specialist employed by a third party contractor in a designated health professional shortage area.....1,100~~

~~—(h) For a specialist employed by a third party contractor in a flex slot..... 1,400~~

~~—2. If the actual cost to the Division of processing an application exceeds the amount listed in subsection 1, the Division shall impose an additional amount equal to that cost, except the total fee may not exceed \$2,000.]~~

3. As used in this section:

(a) “Designated health professional shortage area” means an area designated by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 254e.

(b) “Flex slot” means an area which is not a designated health professional shortage area or a medically underserved area but which contains health facilities that are utilized by persons who reside in neighboring areas which are designated health professional shortage areas or medically underserved areas.

(c) “Medically underserved area” means an area designated by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 254b as containing a medically underserved population.

(d) “Primary care provider” means a physician or osteopathic physician who practices in the area of family practice, general practice, geriatrics, internal medicine, obstetrics and gynecology, pediatrics or psychiatry.

(e) “Specialist” means a physician or osteopathic physician who practices in any area other than an area specified for a primary care provider.

(f) “Third-party contractor” means the employer of a physician or an osteopathic physician who is not a health facility.

Sec. 4. NAC 439A.730 is hereby amended to read as follows:

439A.730 1. In addition to the requirements of subsection 2 of NRS 439A.175, the contract entered into by the employer and the J-1 visa physician must:

(a) Except as otherwise provided in subsection 2, require the J-1 visa physician *to agree* to begin work within 90 days after receipt of the J-1 visa waiver.

(b) Except as otherwise provided in subsection 2, be for a term of at least 3 years.

(c) Provide that the J-1 visa physician will work a minimum of 40 hours each week at the locations identified on the petition submitted by the J-1 visa physician to the Waiver Review Division of the United States Department of State.

(d) Specify the wage that the J-1 visa physician will earn. The wage must not be less than the prevailing wage determined by the Office of Foreign Labor Certification of the United States Department of Labor, which may be found on the Internet website maintained by the Foreign Labor Certification Data Center ~~[at <http://www.fldatacenter.com>].~~

(e) Contain the signatures of the employer and the J-1 visa physician and the date on which the contract was signed by each person.

(f) Identify the conditions for termination of the contract, which must not include a provision authorizing termination without cause.

2. If a J-1 visa physician is transferred to a different employer pursuant to NAC 439A.750, the contract entered into by the employer to which the J-1 visa physician is transferred and the J-1 visa physician must comply with paragraphs (c) to (f), inclusive, of subsection 1 and:

(a) Require the J-1 visa physician *to agree* to begin work within 90 days after receiving notice that the transfer was granted; and

(b) Be for a term ~~[equal to the time remaining on the previous contract]~~ *sufficient for the J-1 visa physician to complete the J-1 visa waiver obligation.*

3. A contract entered into by an employer and a J-1 visa physician may contain a clause for liquidated damages. If a contract entered into by an employer and a J-1 visa physician contains a clause for liquidated damages, the employer may not receive liquidated damages if the contract is terminated by the J-1 visa physician before the end of the contract because the employer has violated a provision of the contract, NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive.

Sec. 5. NAC 439A.735 is hereby amended to read as follows:

439A.735 An employer shall:

1. Offer fees based on a sliding scale to patients whose income is at or below 200 percent of the federally designated level signifying poverty.

2. Ensure that the J-1 visa physician works only in ~~[a location which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division of the United States Department of State]~~ *locations approved by the Administrator.*

3. ~~[Post a sign in the waiting room of each location where the J-1 visa physician works which states that]~~ *Notify patients either with a sign or in writing that:*

(a) Fees based on a sliding scale are available for certain patients who have demonstrated a financial need for assistance to pay for care and services.

(b) Patients will be provided care and services regardless of the ability of the patient to pay.

4. Provide documentation satisfactory to the Division of Public and Behavioral Health that the employer participates in Medicaid, Medicare and Nevada Check Up.

5. File the schedule of fees with the Administrator for review.

6. Submit an affidavit to the Administrator once every 6 months which attests that the J-1 visa physician ~~[-]~~ worked at least 40 hours each week at ~~[a]~~ locations ~~[which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division; and~~

~~—(b) Is not employed at any location which is not identified on the petition.]~~ *approved by the Administrator.*

Sec. 6. NAC 439A.740 is hereby amended to read as follows:

439A.740 A J-1 visa physician must be in the final year of residency or a fellowship program or be requesting a transfer from the J-1 visa waiver program of another state and shall:

1. Comply with the requirements of 8 U.S.C. § 1184(k).

2. If the J-1 visa physician will prescribe or dispense controlled substances:

(a) Obtain any certificate or registration required by chapters 453 and 639 of NRS and any regulations adopted pursuant thereto; and

(b) Register with the Drug Enforcement Administration of the United States Department of Justice.

3. Accept patients who are enrolled in Medicaid, Medicare or Nevada Check Up.

4. Provide care and services based on the sliding scale of fees filed with the Administrator pursuant to subsection 5 of NAC 439A.735.

5. Only work in ~~[a]~~ locations ~~[which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division of the United States Department of State.]~~ *approved by the Administrator.*

6. Submit an affidavit to the Administrator once every 6 months which attests that the J-1 visa physician ~~[-(a)]~~ Worked at least 40 hours each week at ~~[a]~~ locations ~~[which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division; and~~

~~—(b) Is not employed at any other location which is not identified on the petition.]~~ *approved by the Administrator.*

Sec. 7. NAC 439A.745 is hereby amended to read as follows:

439A.745 1. A complaint about an employer or a J-1 visa physician may be submitted to the Program on the Internet website maintained by the Division of Public and Behavioral Health ~~[at <http://dph.nv.gov/Programs/Conrad30/Conrad30-Home/>]~~ or by submitting a written complaint to the Division of Public and Behavioral Health, Primary Care Office ~~[-4150]~~

~~Technology Way, Carson City, Nevada 89706.] at the address posted on the website maintained by the Division.~~

2. The Administrator shall investigate ~~[or require the Advisory Council to investigate]~~ each complaint submitted pursuant to this section. The investigation must commence within 45 days after receipt of the complaint, except that if the complaint alleges that the safety of a patient was threatened, the investigation must commence as soon as practicable. The Administrator is responsible for the investigation of complaints submitted pursuant to this section.

3. If the Administrator determines that a violation of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, has occurred, the Administrator ~~is~~

~~—(a)—~~ Shall, if the violation affected the health and safety of a patient, submit a report to the Board of Medical Examiners *or to the Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health.*; or

(b) May, if the violation did not affect the health or safety of a patient, submit a report to the Board of Medical Examiners or to the Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health.

Sec. 8. NAC 439A.750 is hereby amended to read as follows:

439A.750 1. If an employer violates the provisions of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, the Administrator *may prohibit the employer from future participation in the program and assist in the transfer of the J-1 visa physician to a different employer. The Administrator without limitation, may submit a letter to the J-1 visa physician which documents the reasons for the transfer and provides documentation for designating a new location in which the J-1 visa physician may work. In addition, the Administrator may:*

(a) For a first offense, impose an administrative fine of \$1,000.

(b) For a second offense, impose an administrative fine of \$10,000.

~~[(c) For a third offense, withdraw the support of the Division of Public and Behavioral Health for the employer and assist in the transfer of the J-1 visa physician to a different employer pursuant to subsection 2.~~

~~—2.— If an employer is penalized for a third offense pursuant to paragraph (c) of subsection 1, the Administrator shall, in cooperation with a different employer, the J-1 visa physician and the Waiver Review Division of the United States Department of State, assist in the transfer of the J-1 visa physician to a different employer, including, without limitation, submitting a letter to the J-1 visa physician which documents the reasons for the transfer and providing documentation for designating a new location in which the J-1 visa physician may work.]~~

2. The Administrator may allow an employer prohibited from program participation pursuant to subsection 1 of NAC 439A.750 to recommence participation in the program after a period of two years if the employer provides sufficient justification including:

(a) a detailed description of key management and/or policy changes that have occurred that will sufficiently protect the interests of future J-1 visa waiver physicians; and

(b) an attestation that key management have reviewed and will comply with state and federal J-1 visa waiver program requirements.

3. If a J-1 visa physician *or employer* does not comply with the provisions of NRS 439A.130 to 439A.185, inclusive, and NAC 439A.700 to 439A.755, inclusive, the Administrator may report the failure to comply to the United States Citizenship and Immigration Services ~~[and~~

~~the United States Department of State~~ and recommend *transfer of the J-1 visa physician or* that the J-1 visa waiver of the J-1 visa physician be revoked.

Sec. 9. NAC 439.220 is amended as follows:

1. The Secretary of the State Board of Health shall provide public notice of the application and the date of the public hearing by publishing the notice ~~[in one or more newspapers of general circulation within the area affected by the requested variance.]~~ *on the website for the Division of Public and Behavioral Health.* 2. The notice must be published at least once, not less than 10 days before the hearing and must specify the time, date and place of the hearing, the nature of the application and the regulation involved. 3. The Board will hold a public hearing on the application 40 or more days after the date on which the Secretary receives the application. The hearing will be held: (a) At its next regularly scheduled meeting; (b) At its next meeting in Carson City, Las Vegas or Reno, as requested by the applicant in the application; or (c) As soon as the schedule of the Board permits.