

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

LCB File No. R017-20

March 6, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 439.190 and 439.200; §§2, 3 and 5-7, NRS 439.200, 439A.170 and 439A.175; §4, NRS 439.150, 439.200, 439A.170 and 439A.175; §§8 and 9, NRS 439.200, 439A.170 and 439A.180.

A REGULATION relating to the State Board of Health; revising requirements concerning publication of certain notice relating to the request for a variance from certain regulations; revising the application fee for a letter of support for the Physician Visa Waiver Program; revising requirements concerning the notification of patients of a J-1 visa physician of certain information; revising provisions governing the reporting of violations concerning the Program and disciplinary action for such violations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Health to adopt regulations for certain purposes and hold hearings. (NRS 439.190, 439.200) Existing regulations authorize a person who is unduly burdened by a regulation of the Board and thereby suffers a hardship and the abridgment of a substantial property right to request a variance. (NAC 439.200) Existing regulations require the Secretary of the Board to provide public notice of the application and the date of the public hearing on the application by publishing the notice in newspapers of general circulation within the area affected by the requested variance. (NAC 439.220) **Section 1** of this regulation removes the requirement that such notice be published in newspapers and instead requires the Secretary to publish such notice on the Internet website maintained by the Division of Public and Behavioral Health of the Department of Health and Human Services.

Existing law establishes the Physician Visa Waiver Program, whereby the Administrator of the Division oversees: (1) physicians who have graduated from a foreign medical school, hold a J-1 visa and a waiver of certain federal requirements and work at health facilities that serve patients residing in underserved areas; and (2) employers of such physicians. (NRS 439A.150, 439A.170) The Program is required to issue letters of support to the Waiver Review Division of the United States Department of State stating that a request for a J-1 visa waiver by such a physician is in the public interest. (NRS 439A.160, 439A.170) **Section 4** of this regulation removes a requirement that an applicant for a letter of support pay a fee that is based on the practice area and practice location of the physician and instead requires the applicant to pay a fee

of \$2,000. **Section 2** of this regulation revises provisions concerning payment of the application fee for a letter of support. **Sections 2, 5 and 8** of this regulation revise certain contact information for the Division.

Existing regulations require the employer of a J-1 visa physician to post a sign in the waiting room of each location where the J-1 visa physician works stating that: (1) fees based on a sliding scale are available to certain patients who demonstrate financial need; and (2) patients will be provided care and services regardless of ability to pay. (NAC 439A.735) **Section 6** of this regulation alternatively authorizes the employer to instead provide written notice of that information to patients.

Existing regulations require a J-1 visa physician to work at a location which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division. (NAC 439A.735, 439A.740) **Sections 6 and 7** of this regulation remove that requirement and instead require a J-1 visa physician to work at a location approved by the Administrator.

Existing regulations require the Administrator to report a violation of provisions of law or regulations governing the Program that affects the health and safety of a patient to the Board of Medical Examiners. (NAC 439A.745) **Section 8** of this regulation alternatively authorizes the Administrator to report such a violation to the Bureau of Health Care Quality and Compliance of the Division, which regulates medical facilities and facilities for the dependent. (Chapter 449 of NRS, chapter 449 of NAC)

If an employer violates provisions of law or regulations governing the Program, existing regulations require the Administrator to: (1) impose a fine for a first or second offense; and (2) withdraw the support of the Division for the employer's participation in the Program for a third offense. (NAC 439A.750) Existing regulations prohibit the Administrator from issuing a letter of support to an employer who was penalized for a violation of requirements concerning the Program or federal immigration law within the immediately preceding 2 years. (NAC 439A.725) **Section 9** of this regulation authorizes rather than requires the imposition of certain penalties. **Section 9** also authorizes an employer for whom support has been withdrawn to apply for reinstatement not sooner than 2 years after the withdrawal. **Section 3** of this regulation removes the prohibition on the issuance of a letter of support to an employer who has been penalized but for whom the Administrator has not withdrawn support.

If a J-1 visa physician violates provisions of law or regulations governing the Program, existing regulations authorize the Administrator to report the violation to the United States Citizenship and Immigration Services and the United States Department of State and recommend that the J-1 visa waiver of the J-1 visa physician be revoked. (NAC 439A.750) **Section 9** removes authorization for the Administrator to report the violation to the Department of State.

Section 1. NAC 439.220 is hereby amended to read as follows:

439.220 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 Internet website maintained by the Division of Public and Behavioral Health of the Department of Health and Human Services.~~

2. The notice must be published *for* at least ~~{once, not less than}~~ *10 days, at least one of which must be the date* 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.

Sec. 2. 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}~~ *the* application fee pursuant to NAC 439A.728. ~~{The}~~ *At least one-half of the* fee must be paid ~~{in equal amounts}~~ by the employer. ~~{and the J-1 visa physician.}~~

2. The Administrator may waive ~~{the}~~ *any* portion of the application fee which must 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 ~~½~~:

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

~~—(b) All *all or any portion* of the application fee paid by the J-1 visa physician and the employer if ~~½, at~~:~~

(a) The application is withdrawn before the Administrator has made a determination whether to issue a letter of support; or

(b) 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 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 *Primary Care Office of the* Division ~~{of Public and Behavioral Health, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.}~~ *at the address posted on the Internet website maintained by the Division.*~~

Sec. 3. 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://dphh.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.~~ *for which the Administrator has withdrawn the support of the Division of Public and Behavioral Health pursuant to NAC 439A.750.*

(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. 4. NAC 439A.728 is hereby amended to read as follows:

439A.728 ~~{H.}~~ Except as otherwise provided in ~~{this section and}~~ NAC 439A.720, the application ~~{fees}~~ *fee* 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.] is \$2,000.~~

Sec. 5. 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 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 location 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 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 obligation associated with the J-1 visa waiver.*

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. 6. 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.~~ *approved by the Administrator.*

3. Post a sign in the waiting room of each location where the J-1 visa physician works *or provide written notice to each patient* which states 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 ~~is~~

~~—(a) Worked~~ *worked* at least 40 hours each week at a location ~~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. 7. 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 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.}~~ *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~~ *worked* at least 40 hours each week at a location ~~{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. 8. 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 *Primary Care Office of the* Division ~~of Public and Behavioral Health, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.~~ *at the address posted on the Internet 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:

(a) Shall, if the violation affected the health and safety of a patient, submit a report to the Board of Medical Examiners ~~;~~ *or 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. 9. 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 ~~shall;~~ *may:*

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

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

(c) ~~{For a third offense, withdraw}~~ **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}~~ :

(a) ***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. ***The Administrator may notify the United States Citizenship and Immigration Services of the withdrawal of support and recommend to the United States Citizenship and Immigration Services that the J-1 visa physician be transferred to a different employer in this State.***

(b) ***The employer may apply to the Administrator to request reinstatement of support not sooner than 2 years after the date on which support is withdrawn. The application must include, without limitation:***

(1) ***A detailed description of changes concerning management or policy which the employer has made to protect the interests of any J-1 visa physicians to be employed by the employer; and***

(2) ***An attestation that each person who has responsibility for any part of the operation or management of the employer has reviewed and agreed to comply with all federal and state requirements relating to the Program.***

3. If a J-1 visa physician 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 that the J-1 visa waiver of the J-1 visa physician be revoked.