

PROPOSED REGULATION OF THE STATE BOARD OF HEALTH

LCB File No. R138-10

NRS 439A: Section 10 requires the State Board of Health to adopt regulations providing for the administration of the Program and establishing application fees for letters of support.

Section 1. Chapter 439A of NAC is hereby amended by adding thereto the provisions set forth as sections X to X, inclusive, of this regulation.

Section 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, have the meanings ascribed to them in those sections.*

Section 3. *“Administrator” has the meaning ascribed to it in Section 3 of Chapter 439.135 of the NAC.*

Section 4. *“Division” has the meaning ascribed to it in Section 4 of Chapter 439.135 of the NAC.*

Section 5. *“Employer” has the meaning ascribed to it in Section 5 of Chapter 439.135 of the NAC.*

Section 6. *“J-1 Visa Physician” has the meaning ascribed to it in Section 6 of Chapter 439.135 of the NAC.*

Section 7. *“J-1 Visa Waiver” has the meaning ascribed to it in Section 7 of Chapter 439.135 of the NAC.*

Section 8. *“Letter of Support” has the meaning ascribed to it in Section 8 of Chapter 439.135 of the NAC.*

Section 9. *“Program” has the meaning ascribed to it in Section 9 of Chapter 439.135 of the NAC.*

Section 10.

Primary Care Advisory Council

The Administrator may appoint members of any advisory council for recommendations on matters concerning the program including but not limited to the recruitment, applications, placement and monitoring of J-1 Visa Physicians, and other items determined by the Administrator. The Primary Care Advisory Council will meet as needed to review J-1 Visa

Waiver applications and make recommendations to the Health Division Administrator regarding approval of each application and the oversight of sponsor sites.

Section 11.

1. An application for a letter of support that is filed with the Health Division pursuant to Section 11 of Chapter 439.135 of the NAC:

- a. Must be in the format required by the Division;*
- b. Must be complete with a notarized signature of both the employer and the proposed J-1 Visa Physician; and*
- c. Must be accompanied by a fee of \$500.*

2. The Division may refer all applications to the advisory council for its recommendation before determining whether to issue a letter of support.

Section 12.

1. The copy of a contract between the employer and the J-1 Visa Physician which complies with Section 11 of Chapter 439.135 of the NAC must conform to Federal Regulations and shall contain the following:

- a. A statement that the physician agrees to begin work within 90 days after receipt of the J-1 Visa Waiver;*
- b. The employment contract, must be for a term of at least three years;*
- c. The contract states the physician must work a minimum of 40 hours per week at the approved location(s).*
- d. The contract specifies the wage the physician will earn; the wage must be equal or higher than the U.S Department of Labor prevailing wage, as obtained from the Foreign Labor Certification website at www.flcdatacenter.com.*
- e. The contract must contain the signature of both the physician and employer, and the date that the contract was signed.*
- f. The contract must identify the conditions for termination; no-cause termination is not allowed.*
- g. The contract may contain a reasonable liquidated damage amount, preferable not over \$50,000, in the event that the physician terminates before three years.*
- h. The contract must include a statement that the physician agrees to meet the requirements set forth in section 214(k) of the Immigration and Nationality Act, 8 U.S.C. 1184(k).*
- i. The contract must not include a noncompete clause or restrictive covenant that prevents or discourages the J-1 Visa Waiver physician from continuing to practice in the underserved area after the term of the contract expires.*
- j. The contract states the J-1 Visa Physician must accept clients with Medicare, Medicaid and Nevada Check-up, and must offer sliding fee scale for patients*

who are at or below 200% of the Federal Poverty Level and decreases to no cost or minimal cost for persons at or below 100% Federal Poverty level.

Section 13.

State Board of Health

- 1. An annual report of the activities of the J-1 Visa Waiver program, including complaint and violation investigations, will be submitted to the State Board of Health each year for review.*

Section 14.

Sponsor Eligibility

- 1. Employers must ensure that the physician works only in the designated underserved location(s), identified on the Immigration petition, during the forty hour work week unless the application is approved for a flex slot. Affidavits must be submitted to the Nevada State Health Division/Primary Care Office every six months attesting that the physician is working at the site(s) designated on the Immigration petition.*
- 2. Employers must provide signage identifying that the site offers a sliding scale for fees that must be posted in the waiting room at the sponsor site; and signage stating all patients will be treated, regardless of their ability to pay for services.*
- 3. Employers must provide evidence the site accepts, Medicaid, Medicare assignments, and Nevada Check-Up.*
- 4. An employer is ineligible to participate in the J-1 Visa Waiver program if they have previously breached federal, state, or local program regulations.*

Section 15.

Physician Eligibility

- 1. The physician should be in the final year of residency or a fellowship program or transfer from another state's J-1 Visa Waiver program; must have a bona fide employment offer in an underserved area Nevada, or be assigned a flex slot; and work for a minimum of three years at a designated site.*
- 2. The physician must agree to requirements of Section 214(l) of the Immigration and Nationality Act.*
- 3. The physician must meet the requirements for licensure under the provisions of the Nevada State Board of Medical Examiners, the Nevada State Board of Pharmacy, and have an unrestricted Federal Drug Enforcement Administration Certificate.*
- 4. The physician must only work in the designated site(s) identified on the Immigration petition during their three year commitment. An affidavit must be submitted to the*

NSHD/PCO every six months attesting that the physician is working at the site(s) designated on the Immigration petition.

- 5. A physician is ineligible to participate in the J-1 Visa Waiver program if they have previously breached a health professions service obligation to a federal government, state government, or local government entity.*

Section 16.

Division review and action

- 1. The Division will review applications for completeness in the order received.*
- 2. Applications must be mailed, sent by commercial carrier, or delivered in person.*
- 3. The Division may limit the time period during which applications may be submitted including cutting off applications after the state has sponsored all applications allowed in a given federal fiscal year.*
- 4. The Division will notify applicants of an incomplete application, and provide a written explanation of the missing items. Incomplete applications may be resubmitted with additional required information.*

Section 17.

Fees and Application Process for Physician and Sponsor

- 1. J-1 Visa Waiver program application forms are available on-line at <http://health.nv.gov/HSPER.htm> or may be requested from: Nevada State Health Division, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.*
- 2. Applications must be completed, meet all state and federal requirements, and must include all required documents as specified in the application form.*
- 3. A fee of \$500 is required, payable to the J-1 Visa Waiver Program, by the employer, physician or both, to apply for the letter of support.*

Section 18.

Education, Monitoring and Tracking Activities

- 1. The Division will provide an orientation for all new sponsors and physicians to the program.*
- 2. The Division will conduct internal monitoring of sponsor sites and physicians which may include analyzing Medicaid billing data, and tracking submission of six-month reports.*
- 3. The Division will conduct external monitoring which may include unannounced site visits.*
- 4. The Division will monitor participant's satisfaction through the use of surveys.*

Section 19.

Complaints

- 1. Complaints may be submitted via the Primary Care Office site, accessed through <http://health.nv.gov/HSPER.htm> or submitted to Nevada State Health Division, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.*
- 2. All complaints will be investigated within forty-five days by the NSHD; written results of the investigation will be provided to the HD Administrator. If a complaint alleges that the safety of patients is compromised, the complaint investigation will take place as soon as possible.*
- 3. If the HD Administrator determines that consumer safety is affected by alleged or substantiated activities that do not conform to the J-1 Visa Waiver procedures, a report will be made to the Nevada State Board of Medical Examiners.*
- 4. The Nevada State Health Division may report substantiated non-compliance of an employer or physician to: the State Board of Medical Examiners; to the Bureau of Health Care Quality and Compliance; and/or report to the Attorney General's Office, Department of State, Homeland Security, and Health Care Financing and Policy.*

Section 20.

Penalty for any violation of this section

- 1. The Employer site will be fined \$1000 for each occurrence of failure to post the proper signage regarding the provision of a sliding fee scale discount to those individuals unable to pay full price.*
- 2. The Employer site will be fined \$1000 for each J-1 Visa Waiver physician who is found not providing Medicaid services for each six month period of the commitment.*
- 3. The Employer site and physician will have one opportunity to correct a situation where the physician is not working the required hours at the designated location; a repeat occurrence will result in the Health Division's removal of support for the placement. The Health Division will assist the physician in a transfer to a more suitable employer, and a letter will be provided to the physicians from the Health Division that documents the compelling reasons for the transfer.*
- 4. Failure by the J-1 Visa Physician to comply with the requirements of the Program may be reported to the United States Citizenship and Immigration Services (USCIS) and the United States Department of State, that the J-1 Visa Physician is out of compliance with the terms of the Program, and recommend to the USCIS the two year home residence requirement be reinstated.*
- 5. A J-1 Visa Physician or Employer who is aggrieved by an action of the Nevada State Health Division relating to the imposition of penalties or withdrawal of support may appeal pursuant to the procedures set forth in NAC 439.300 to 439.395, inclusive.*

Section 21.

National Interest Waiver

- 1. The NSHD/PCO will consider supporting J-1 Visa Waiver physicians, who have complied with the J-1 Visa Waiver regulations, for a National Interest Waiver (NIW).*
- 2. Upon request by the physician, the PCO will provide a letter of support, addressed to the physician.*
- 3. The physician will work in a HPSA or MUA/P for an additional two year commitment or until five years total have been served in an underserved area.*
- 4. If the physician is approved by Homeland Security for a NIW, the physician and employer must submit six-month affidavits to the PCO, as evidence that the physician is working in the designation underserved area.*
- 5. Unannounced site visits by the PCO may occur to confirm that the physician is working in an underserved area for the required 40 hours per week.*
- 6. The J-1 Visa Physician must have a signed contract with the employer for a term of two years. The contract must conform to the requirements set forth in section 12, with the exception of item b, regarding the term of the contract.*