

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

LCB File No. R138-10

October 18, 2010

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

AUTHORITY: §§1-9, NRS 439A.170 and 439A.175; §§10-12, NRS 439A.170 and 439A.180.

A REGULATION relating to health care; creating the Primary Care Advisory Council; prescribing the membership and duties of the Advisory Council; prescribing provisions for the administration of the Physician Visa Waiver Program; prescribing the application procedure for the Program; establishing the qualifications for an employer and a J-1 visa physician to participate in the Program; prescribing the procedure to file a complaint; providing administrative penalties; and providing other matters properly relating thereto.

Section 1. Chapter 439A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, “Advisory Council” means the Primary Care Advisory Council created by section 3 of this regulation.*

Sec. 3. 1. *The Primary Care Advisory Council is hereby created within the Health Division. The Advisory Council consists of members appointed by the Administrator as follows:*

(a) One member who represents the Great Basin Primary Care Association, or a successor organization;

(b) One member who represents a federally-qualified health center in this State;

(c) One member who represents the University of Nevada School of Medicine, Center for Education and Health Services Outreach;

(d) One member who is a physician licensed in good standing pursuant to chapter 630 of NRS and who has successfully completed an employment contract under the Program;

(e) One member who represents the Nevada State Medical Association, or its successor organization;

(f) Members who are health care professionals; and

(g) Representatives from the communities being served by the Program.

2. In addition to the members appointed pursuant to subsection 1, the Administrator may appoint nonvoting members from the Health Division or other governmental agencies who have knowledge and experience in health care and the Program.

3. Each member of the Advisory Council serves for a term of 2 years. A member may be reappointed.

4. If a vacancy occurs during the term of a member, the Administrator shall appoint a person similarly qualified to replace that member for the remainder of the unexpired term.

5. The Advisory Council shall meet at least once each calendar quarter and at such other times at the call of the Chair.

6. At the first meeting, and annually thereafter, the Advisory Council shall select a Chair from among its members.

7. The Chair of the Advisory Council may appoint a subcommittee to review applications, complaints and policies and procedures of the Program and make recommendations to the Advisory Council.

8. *As used in this section, “federally-qualified health center” has the meaning ascribed to it in 42 U.S.C. § 1396d(l)(2)(B).*

Sec. 4. *The Advisory Council shall review and make recommendations to the Administrator concerning:*

1. *The approval or denial of applications for letters of support filed with the Administrator pursuant to section 9 of this regulation.*

2. *The disposition of complaints submitted to the Program pursuant to section 10 of this regulation.*

3. *The policies and procedures of the Program.*

Sec. 5. 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 Health Division.*

(d) *Contain the notarized signatures of the employer and the J-1 visa physician.*

(e) *Be accompanied by a fee of \$500. The fee must be paid in equal amounts by the employer and the J-1 visa physician.*

2. *An employer or a J-1 visa physician may obtain an application for a letter of support from the Health Division on the Internet website maintained by the Health Division at <http://health.nv.gov/PrimaryCare.htm> or by submitting a written request for an application to the Health Division, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.*

Sec. 6. 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.flcdatacenter.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 section 11 of this regulation, 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.

3. Except as otherwise provided in this subsection, 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 sections 2 to 12, inclusive, of this regulation.

Sec. 7. 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.

3. Post a sign in the waiting room of each location where the J-1 visa physician works 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 Health Division 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:

(a) 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.

Sec. 8. *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 section 7 of this regulation.

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.

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 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.

Sec. 9. *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 sections 2 to 12, inclusive, of this regulation.*

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 Health Division at <http://health.nv.gov/PrimaryCare.htm>.*

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 sections 2 to 12, inclusive, of this regulation, 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 sections 2 to 12, inclusive, of this regulation, or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.*

Sec. 10. 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 Health Division at http://health.nv.gov/PrimaryCare_J-1.htm or by submitting a written complaint to the Health Division, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.*

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, and if a 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 sections 2 to 12, inclusive, of this regulation 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

(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 Health Division.

Sec. 11. 1. *If an employer violates the provisions of NRS 439A.130 to 439A.185, inclusive, or sections 2 to 12, inclusive, of this regulation, the Administrator shall:*

(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 Health Division 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.

3. If a J-1 visa physician does not comply with the provisions of NRS 439A.130 to 439A.185, inclusive, and sections 2 to 12, inclusive, of this regulation, 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.

Sec. 12. *A J-1 visa physician or an employer may request a hearing on any action taken by the Administrator pursuant to subsection 3 of section 10 or section 11 of this regulation. The hearing must be conducted in accordance with the procedure set forth in NAC 439.300 to 439.395, inclusive.*