



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health

- Preproposal Statement of Inquiry was filed as WSR 13-08-019 ; or
- Expedited Rule Making--Proposed notice was filed as WSR ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject)

Chapter 246-562 WAC "Physician Visa Waivers (J1 Visa Waiver Program). Proposing amending selected sections to update and streamline rules to meet current federal regulations, reduce administrative requirements, and increase the number of physicians serving rural and underserved areas of the state.

Hearing location(s): Washington State Department of Health
Town Center 2 - Room 158
111 Israel Road SE
Tumwater WA 98501

Date: 07/06/2016

Time: 9:30 am

Submit written comments to:

Name: Renee Fullerton
Address: Community Health Systems
PO Box 47583
Olympia WA 98504
e-mail: <http://www3.doh.wa.gov/policyreview/>
fax 360-236-2830 by (date) 07/06/2016

Assistance for persons with disabilities: Contact

Mary Roberts at (360) 236-2804 by 06/29/2016

TTY (800) 833-6388 or () 711

Date of intended adoption: 07/13/2016

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Department of Health (department) is proposing amending selected sections of the J-1 Visa Waiver program to: (1) better align with federal requirements to increase access to care for underserved populations; (2) simplify application and reporting requirements where possible; and (3) better allocate the scarce resource of the program's 30 physician sponsorships to areas most in need and with practices that do the most to increase access to care for Medicaid clients, low income individuals, and other underserved populations.

Reasons supporting proposal:

Part of the rule changes are in response to Public Law 110-362 passed in 2008. This federal law increased the number of waivers that the department can grant to facilities located in non-shortage areas from five to 10. The rules were last updated in 2006 and do not include this federal change. The proposed rules also reduce regulatory burdens without compromising public health per chapter 43.70.041 RCW by removing barriers to applicants, simplifying and clarifying the application process, and allowing applying health care facilities and communities greater access to qualified physicians.

Statutory authority for adoption:

RCW 70.185.040

Statute being implemented:

RCW 70.185.020

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:
PL 110-362

DATE 05/13/2016

NAME (type or print)

John Wiesman, DrPH, MPH

SIGNATURE

.DrPH, MPH

TITLE

Secretary of Health

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 13, 2016

TIME: 11:10 AM

WSR 16-11-051

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Washington State Department of Health

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Renee Fullerton	111 Israel Road SE, Tumwater WA	360-236-2814
Implementation.... Renee Fullerton	111 Israel Road SE, Tumwater WA	360-236-2814
Enforcement..... Renee Fullerton	111 Israel Road SE, Tumwater WA	360-236-2814

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No. Explain why no statement was prepared.

A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Renee Fullerton

Address: Community Health Systems

PO Box 47853

Olympia WA 98504-7853

phone 360-236-2814

fax 360-236-2830

e-mail renee.fullerton@doh.wa.gov

No: Please explain:

WAC 246-562-010 Definitions. (~~The following definitions apply in the interpretation and implementation of these rules.~~) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Applicant" means ~~((a health care facility that seeks to employ a physician))~~ an entity with an active Washington state business license that provides health care services and seeks to employ a physician at a Washington state practice location(s) and is requesting state sponsorship or concurrence of a J-1 visa waiver.

(2) "Department" means the Washington state department of health.

(3) "Board eligible" means having satisfied the requirements necessary to sit for board examinations.

(4) "Employment contract" means a legally binding agreement between the applicant and the physician named in the visa waiver application (~~which~~) that contains all terms and conditions of employment(~~)~~ including, but not limited to, the salary, benefits, length of employment and any other consideration owing under the agreement.

(5) "Full time" means a minimum forty hours of medical practice per week, not including call coverage, consisting of at least thirty-two hours seeing patients on an ambulatory or in-patient basis and may include up to eight hours administrative work for at least forty-eight weeks per year.

(6) (~~"Health care facility" means an entity with an active Washington state business license doing business or proposing to do business in the practice location where the physician would be employed, whose stated purposes include the delivery of medical care.~~

~~+7))~~ "Health professional shortage area" (~~(+)~~)or "HPSA(~~(+)~~)" means an area federally designated as having a shortage of primary care physicians or mental health care.

(7) "Integrated health care system" (system) means an organized system in which more than one health care entity participates, and in which the participating entities:

(a) Hold themselves out to the public as participating in a joint arrangement; and

(b) Participate in joint payment activities, such as clinics where a physician group charges a professional fee and a hospital charges a facility fee.

(8) "Hospitalist" means a physician, usually an internist, who specializes in the care of hospitalized patients.

(9) "Low income" means that a family's total household income is less than two hundred percent of the federal poverty level as defined by the *U.S. Federal Poverty Guidelines* published annually.

(10) (~~"Medically underserved area" (MUA) means a federally designated area based on whether the area exceeds a score for an Index of Medical Underservice, a value based on infant mortality, poverty rates, percentage of elderly and primary care physicians to population ratios.~~

~~+11))~~ "Physician" means the foreign physician(~~)~~ eligible to be licensed under chapter 18.71 or 18.57 RCW named in the visa waiver application, who requires a waiver to remain in the United States to practice medicine.

(11) "Practice location" means the physical location where the visa waiver physician will work.

(12) "Primary care physician" means a physician board certified or board eligible in family practice, general internal medicine, pediatrics, obstetrics/gynecology, geriatric medicine or psychiatry. Physicians who have completed any subspecialty or fellowship training, excluding OB or geriatric training, are not considered primary care physicians for the purpose of this chapter.

(13) "Publicly funded employers" means organizations such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations.

(14) "Sliding fee discount schedule" means a written delineation documenting the value of charge discounts granted to patients based upon ~~((financial hardship-~~

~~(+14))~~ family income up to two hundred percent of the annual federal poverty guidelines.

(15) "Specialist" means a physician board certified or board eligible in a specialty other than family practice, general internal medicine, pediatrics, obstetrics/gynecology, geriatric medicine or psychiatry (the current definition of "primary care" for the waiver program).

~~((+15))~~ (16) "Sponsorship" means a request by the department on behalf of ~~((a health care facility))~~ an applicant to federal immigration authorities to grant a visa waiver for the purpose of recruiting and retaining physicians.

~~((+16))~~ (17) "Visa waiver" means a federal action that waives the requirement for a foreign physician, in the United States on a J-1 visa, to return to his/her home country for a two-year period following medical residency training.

~~((+17))~~ (18) "Vacancy" means a full-time physician practice opportunity that is based on a planned retirement, a loss of an existing physician, or an expansion of physician services in the service area.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-020 Authority to sponsor visa waivers. (1) The department ~~((of health))~~ may assist communities to recruit and retain physicians, or other health care professionals, as directed in chapter 70.185 RCW, by exercising an option provided in federal law ~~((, 8 U.S.C. Sec. 1184(1) as amended by Public Law 108 441 and 22 C.F.R. 514.44(e)))~~. This option allows the department ~~((of health))~~ to sponsor a limited number of visa waivers each federal fiscal year if certain conditions are met.

(2) The department may acknowledge and support as needed sponsorship proposed by federal agencies, including the United States Department of Health and Human Services.

(3) The department may carry out a visa waiver program, or, in the event of resource limitations or other considerations, may discontinue the program. Purposes of the program are:

(a) To increase the availability of physician services in existing federally designated ~~((shortage areas))~~ health professional shortage areas (HPSA) for ~~((health care facilities))~~ applicants that have long standing vacancies;

(b) To improve access to physician services for communities and specific underserved populations that are having difficulty finding physician services;

(c) To serve Washington communities (~~(which)~~) that have identified a physician currently holding a J-1 visa as an ideal candidate to meet the community's need for (~~(primary)~~) health care services (~~(or specialist services as allowed by WAC 246-562-080)~~).

(4) The department may only sponsor a visa waiver request when:

(a) The application contains all of the required information and documentation;

(b) The application meets the criteria contained in this chapter ((246-562-WAC));

(c) For applicants that have benefited from department sponsorship previously, the applicant's history of compliance will be a consideration in future sponsorship decisions.

~~(5) ((The department will limit its activities:~~

~~(a))~~ Prior to submission of an application, the department may provide information on preparing a complete application(;

~~(b) For applicants that have benefited from department sponsorship previously, the applicant's history of compliance will be a consideration in future sponsorship decisions;~~

~~(c) Because the number of sponsorships the department may provide is limited, and because the number of shortage areas is great, sponsorship will be limited. In any single program year, a health care facility in any one designated health professional shortage area or medically underserved area:~~

~~(i) Will not be allotted more than two sponsorships;~~

~~(ii) Will not be allotted more than one specialist sponsorship as allowed by WAC 246-562-080(4); and~~

~~(iii) Will not be allotted more than one hospitalist sponsorship per hospital;~~

~~(d) In any given program year twenty of the federally allocated sponsorships will be allotted for primary care physicians and ten of the federally allocated sponsorships will be allotted for specialists through March 31. Any waiver sponsorships that remain unfilled on April 1 of each program year will be available to:~~

~~(i) Both primary care and specialist physicians consistent with the provisions of this chapter; and~~

~~(ii) Physicians intending to practice in nondesignated shortage areas in health care facilities that meet the criteria in WAC 246-562-075)).~~

(6) In any single federal fiscal year the department will limit the number of sponsorships granted to each applicant. Applicants, including integrated health care systems, in a single HPSA:

(a) Will not be allotted more than two sponsorships per practice location;

(b) Will not be allotted more than one hospitalist sponsorship per hospital;

(c) Will not be allotted more than three sponsorships total across all practice locations in the HPSA between October 1st and May 31st of the federal fiscal year.

(7) Applicants located outside designated HPSAs will be allotted no more than three sponsorships across all practice locations in a single county.

(8) Between October 1st and March 31st of the federal fiscal year the department will grant not more than ten specialist waivers. Any waiver sponsorships that remain unfilled on April 1st of each federal

fiscal year will be available to both primary care and specialist physicians consistent with the provisions of this chapter.

(9) Starting January 1st of each federal fiscal year, the department will consider applications for physicians intending to practice in areas without a HPSA designation for applicants that meet the criteria in WAC 246-562-075.

(10) Starting June 1st of each federal fiscal year, the department will consider applications for additional sponsorships from applicants who have already received their maximum three waivers in a single HPSA.

Type of sponsorship	Application timeline and conditions
<u>Primary care in HPSA</u>	<u>Available starting Oct. 1 until state reaches annual federal cap</u>
<u>Specialist in HPSA</u>	<u>Limited to 10 sponsorships from Oct. 1 - March 31, no restriction starting April 1 until state reaches annual federal cap</u>
<u>Nondesignated area (FLEX waiver)</u>	<u>Available starting Jan. 1, limited to 10 total in a federal fiscal year</u>
<u>More than 3 waivers for a single employer</u>	<u>Available starting June 1 until state reaches annual federal cap</u>

AMENDATORY SECTION (Amending WSR 98-20-067, filed 10/2/98, effective 11/2/98)

WAC 246-562-040 Principles that will be applied to the visa waiver program. (1) The visa waiver program is considered a secondary source for recruiting qualified physicians. It is not a substitute for broad recruiting efforts for graduates from U.S. medical schools.

(2) Sponsorship may be offered to ~~((health care facilities))~~ ap-
plicants that can provide evidence of sustained active recruitment for the vacancy in the practice location ~~((with))~~ for a physician who has specific needed skills.

(3) Sponsorship is intended to support introduction of physicians into practice settings that promote continuation of the practice beyond the initial contract period.

(4) Sponsorship will be for an employment situation where there is community support and a collegial professional environment.

(5) The visa waiver program will be used to assist ~~((health care facilities))~~ ap-
plicants that provide care to all residents of the federally designated ~~((under served area))~~ HPSA. When a ~~((federal))~~ HPSA designation is for ~~((an under served))~~ a population((r)) group as ap-
proved by the federal Health Research and Services Administration as defined by 42 C.F.R. Chapter 1, Part 5, Appendices A or C, the ~~((health care facility))~~ applicant must provide care to the ~~((under served))~~ population group.

(6) Sponsorship is available to ~~((health care facilities))~~ ap-
licants that can document the provision of needed services, regardless of public or private ownership.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-050 Review criteria. Applicants and physicians must meet all federal criteria for international medical graduates seeking a visa waiver including the criteria established in 8 U.S.C. ((1184(1) as amended by Public Law 108 441 and 22 C.F.R. Sec. 514.44(e) which are incorporated by reference. Copies of these provisions may be requested from the department by writing to the Washington State Department of Health, Office of Community and Rural Health, Visa Waiver Program, PO Box 47834, Olympia, WA 98504 7834.

~~The criteria set out in chapter 246-562 WAC must also be met))~~
Sec. 1182(e), 8 U.S.C Sec. 1184(1), and 22 C.F.R. Sec. 41.63(e).
Applicants must also meet the criteria in this chapter.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-060 Criteria for applicants. (1) Applicants must ~~((be existing health care facilities that))~~:

(a) ~~((Are))~~ Be licensed to do business in Washington state; and
(b) Have provided medical care in Washington state for a minimum of twelve months prior to submitting the application.

(2) Applicants may be for-profit, nonprofit, or government organizations.

(3) Except for state ~~((institutional and))~~ psychiatric or correctional facilities ~~((designated as federal shortage areas))~~, the applicant must:

(a) Currently serve:
(i) Medicare clients;
(ii) Medicaid clients;
(iii) Low-income clients ~~((, such as subsidized basic health plan enrollees))~~;

(iv) Uninsured clients; and
(v) The population of the federal designation, if applicable.

(b) Demonstrate that during the twelve months prior to submitting the application, the ~~((health care facility was providing a minimum of ten percent of the applicant's total patient visits to medicaid clients, and/or other low income clients.~~

~~(c) Agree to implement a sliding fee discount schedule for the physician named in the J-1 visa waiver application. The schedule must be:~~

~~(i) Available in the client's principal language and English; and
(ii) Posted conspicuously; and
(iii) Distributed in hard copy to individuals making or keeping appointments with that physician.)~~ practice location(s) where the physician will work provided a minimum of fifteen percent of total patient visits to medicaid and other low-income clients. Clients dually eligible for medicare and medicaid may be included in this total.

(c) Have or agree to implement a sliding fee discount schedule for the practice location(s) in the J-1 visa waiver application. The schedule must be:

(i) Available in the client's principal language and English;

(ii) Posted conspicuously;
(iii) Distributed in hard copy upon patient request; and
(iv) Updated annually to reflect the most recent federal poverty guidelines.

(4) Applicants must provide documentation demonstrating that the employer made a good faith effort to recruit a qualified graduate of a United States medical school for a physician vacancy in the same salary range.

(a) Active recruitment, specific to the location and physician specialty, must be for a period of not less than six months in the twelve months prior ((to submitting a visa waiver application to the department)) to signing an employment contract with the J-1 visa waiver physician. Active recruitment documentation can include one or more of the following:

~~((a)) (i) Listings in national publications;~~
~~((b)) (ii) Web-based advertisements;~~
~~((c) Statewide newspaper advertisements;~~
~~(d)) (iii) Contractual agreement with a recruiter or recruitment firm; or~~
~~((e)) (iv) Listing the position with the ((office of community and rural health,)) department recruitment and retention program.~~

(b) In-house job postings and word-of-mouth recruitment are not considered active recruitment for the purpose of the J-1 physician visa waiver program((; however, they can be used in addition to the methods described in (a) through (e) of this subsection)).

(5) Applicants must have a signed employment contract with the physician. The employment contract must:

(a) Meet state and federal requirements throughout the period of obligation, regardless of physician's visa status;

(b) Not prevent the physician from providing medical services in the designated ~~((shortage area))~~ HPSA after the term of employment ~~((i.e., no noncompete clauses;))~~ including, but not limited to, non-competition clauses; and

(c) Specify the three year period of employment(~~(;~~

~~(i) Three years minimum for primary care sponsorship; or~~

~~(ii) Five years minimum for specialist sponsorship)).~~

(6) Any amendments made to the required elements of the employment contract(~~(7))~~ under subsection (5) of this section(~~(7))~~ during the first three years ~~((for primary care physicians or five years for nonprimary care specialist physicians))~~ of contracted employment must be reported to the department for review and approval. The department will complete review and approval of such amendments within thirty calendar days of receipt.

(7) Applicants must pay the physician ~~((prevailing wage as determined and approved by U.S. Department of Labor. Approval must be documented on a U.S. Department of Labor form ETA 9035 signed by an authorized official))~~ at least the required wage rate as referenced by the federal Department of Labor at 20 C.F.R. Sec. 655.731(a) for the specialty in the area or as set by negotiated union contract.

(8) If the applicant has previously requested sponsorship of a physician, WAC 246-562-020 (4)(c) will apply.

(9) ~~((If the applicant is not a publicly funded provider, additional criteria apply. The applicant must provide documentation of notification of intent to submit application for J-1 visa physician waiver to all publicly funded providers who provide medical care in HPSA or MUA designated area. Publicly funded providers include, but~~

are not limited to, public hospital districts, local health departments, or community and/or migrant health centers.

Notification must:

(a) Be sent at least thirty days prior to submitting the application to the department;

(b) Include a statement giving the publicly funded providers thirty days to provide comment to the department regarding the J-1 physician visa application; and

(c) Provide the department's address.

(10)) Applicants must submit status reports to the department every ((six)) twelve months, with required supporting documentation, during the initial term of employment ((, three years for primary care physicians or five years for specialists)).

(10) Physicians with a J-1 visa waiver must submit annual surveys to the department during their obligation period and a final survey one year after they complete their obligation so that the department can evaluate physician retention.

(11) Applicants must cooperate in providing the department with clarifying information, verifying information already provided, or in any investigation of the applicant's financial status.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-070 Criteria for the proposed practice location to be served by the physician. (1) The proposed practice location(s) must be located in:

(a) A federally designated primary care ((health professional shortage area(s))) HPSA(s); or

(b) A federally designated mental ((health professional shortage area(s))) HPSA(s) for psychiatrists((; or

(c) A federally designated whole county medically underserved area(s); or

(d) A combination of federally designated areas)); or

(c) A state operated psychiatric or correctional facility.

(2) If the federal designation is based on a specific population, the ((health care facility)) applicant must serve the designated population.

(3) ((If the practice location is in both a population designation area and a medically underserved area, the designated population must be served.

(4)) If the practice location is not located in a federally designated ((shortage area or whole county medically underserved area,)) HPSA or a state correctional or psychiatric institution the applicant must meet the criteria in WAC 246-562-075.

((5) The health care facility)) (4) The practice location named in the visa waiver application may be an existing practice location or a new practice location. If a new practice location is planned, the additional criteria in (a) through (c) of this subsection apply. New practice locations must:

(a) Have the legal, financial, and organizational structure necessary to provide a stable practice environment, and must provide a business plan that supports this information;

(b) Support a full-time physician practice;

(c) Have written referral plans that describe how patients using the new ((primary care)) location will be connected to ((existing secondary and tertiary)) other care if needed.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-075 Criteria for waiver sponsorships in nondesignated ((shortage)) areas. ((Public Law 108-441 allows states to sponsor up to five waivers each program year for physicians who will practice medicine in a health care facility that is not located in a designated health professional shortage area but serves patients who reside in designated shortage areas. Waivers will not be open to physicians practicing in nondesignated shortage areas until April 1 of each program year. For waiver approval, the health care facility must:

~~(1) Provide care to patients who reside in designated shortage areas.~~

~~(a) Describe the facility's service area.~~

~~(b) Provide a patient visit report that identifies total patient visits in last six months of service by patient origin zip code.~~

~~(2) Describe who will benefit from the physician's services.~~

~~(a) Identify the percentage of medicaid and medicare patients who will have access to this physician.~~

~~(b) Describe how the facility will assure access to this physician for low income or uninsured patients.~~

~~(c) Explain if the physician has language skills that will benefit patients at this facility.~~

~~(3) Provide a detailed report of the extensive recruitment efforts made to recruit a U.S. physician for the specific position that the J-1 physician will fill.~~

~~(a) Explain why this physician is necessary at this location.~~

~~(b) Explain why it is difficult to recruit a U.S. physician for this location.~~

~~(c) Provide the number of physicians interviewed for this position.~~

~~(d) Provide the number of physicians offered this position.)) Key objectives of the J-1 visa waiver program are to increase access to physicians for low income, medicaid-covered and otherwise medically underserved individuals. Federal law allows states to sponsor a limited number of physicians each federal fiscal year who will practice medicine at a location outside a designated HPSA that serves significant numbers or percentages of patients who reside in designated HPSAs. Sponsorships will not be open to applicants hiring physicians to practice outside HPSA-designated areas until January 1st of each federal fiscal year unless the employer is a state correctional or psychiatric institution.~~

The determination of appropriateness for a sponsorship in a non-designated area will take into consideration the following factors.

(1) Nature of the applicant and practice location(s). Certain health care facilities play an important role in serving Washington's medically underserved populations. Specifically, providers of important services to the state's vulnerable population groups, particularly in specialty and tertiary care services draw patients from a large area, including designated HPSAs. Applicants must describe their prac-

tice location's service area and to what extent they provide service to residents of designated HPSAs.

(2) **Expected patient panel to be served by the sponsored physician.** Successful nondesignated waiver applicants must be able to describe:

(a) The percentage the sponsored physician's panel reasonably expected to be medicaid and medicare patients given current use of the service and practice location by those populations.

(b) How the applicant will ensure access to this physician for low-income or uninsured patients.

(c) If there is a unique practice area or substantial referral network making the physician a statewide resource for certain medical conditions.

(d) If the physician has language skills that will benefit patients at the practice location.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-080 Criteria for the physician. (1) The physician seeking a J-1 visa waiver from Washington state must not have a J-1 visa waiver application pending for any other employment offer. The physician((s)) must provide a letter attesting that no other applications are pending.

(2) The physician((s)) must have the qualifications described in recruitment efforts for a specific vacancy.

(3) The physician((s-are)) is considered eligible to apply for a waiver when:

(a) ((They—have)) The physician has successfully completed ((their)) a residency or fellowship program; or

(b) ((They are)) The physician is in the final year of a residency or fellowship program, and the physician provides a letter from their program that:

(i) Identifies the date the physician will complete the residency or fellowship program; and

(ii) Confirms the physician is in good standing with the program.

(4) The physician((s)) must provide direct patient care.

(5) The physician must comply with all provisions of the employment contract set out in WAC 246-562-060.

(6) The physician must:

(a) Accept medicaid assignment; ((and

~~(b))~~ post and implement a sliding fee discount schedule; ((and

~~(c))~~ serve the low-income population; ((and

~~(d))~~ serve the uninsured population; and

~~((e))~~ serve the ((shortage)) HPSA designation population; or

~~((f))~~ (b) Serve the population of a local, state, or federal governmental ((institution)) psychiatric or corrections facility as an employee of the institution.

(7) The physician((s)) must have an active ((Washington—state medical)) license under chapter 18.71 or 18.57 RCW. The applicant may substitute a copy of the license application and request an exception if the application ((for a Washington state medical license)) was submitted to the Washington state medical quality assurance commission or

Washington state board of osteopathic medicine and surgery four or more weeks prior to submission of the visa waiver application.

(8) Physicians must be an active candidate for board certification on or before the start date of employment.

(9) Physicians must provide the following documentation:

(a) A current Curriculum Vitae;

(b) U.S. Department of State Data Sheet, Form DS-3035;

(c) All ~~((DS-2019/IAP-66))~~ U.S. Department of State DS-2019 Forms (Certificate of Exchange visitor status);

~~(d) ((Letter from residency program if applying as a primary care physician or from fellowship program if applying as a specialist that:~~

~~(i) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low income people in the United States; and~~

~~(ii) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities; and~~

~~(iii) Documents level of specialty training, if any; and~~

~~(iv) Is prepared on residency or fellowship program letterhead and is signed by residency or fellowship program staff or faculty; and~~

~~(v) Includes name, title, relationship to physician, address and telephone number of signatory.~~

~~(e))~~ A physician attestation statement described in subsection (1) of this section;

~~((f))~~ (e) A no objection statement;

~~((g))~~ (f) A personal statement from the physician regarding the reason for requesting a waiver;

~~((h))~~ (g) U.S. Citizenship and Immigration Services (USCIS) I-94 Entry and Departure cards; and

~~((i))~~ (h) USCIS Form G-28 Notice of Entry of Appearance from an attorney, when applicable.

The statements required in (e) and (f) of this subsection may be on a form provided by the department or other format that provides substantially the same information as the department form.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-085 Eligibility for primary care and specialist waivers. (1) Primary care waivers.

(a) Primary care waivers are available to the following physician specialties:

(i) Family medicine;

(ii) General internal medicine;

(iii) Pediatrics;

(iv) Geriatric medicine;

(v) Obstetrics and gynecology; or

(vi) Psychiatry and its subspecialties.

(b) Physicians who have completed any additional subspecialty training are not eligible for a primary care waiver, with the exception of geriatric medicine and psychiatry. Continuing medical education (CME) will not be considered subspecialty training for the purposes of this rule.

(2) **Specialist waivers.** Specialist waivers are available to non-primary care physician specialties. Applicants submitting an application for a specialist physician must:

(a) ~~((Demonstrate a need for the nonprimary care specialty by addressing one of the following need criteria:~~

~~(i) The physician specialty is needed to meet state or federal health care facility regulations, for example to maintain the hospital trauma designation level.~~

~~(A) Identify the regulation; and~~

~~(B) Address how the facility is currently meeting this regulation.~~

~~(ii) The physician specialty is needed to address a major health problem in the facility service area.~~

~~(A) Identify the health problem and how this specialty will address it;~~

~~(B) Provide incident rates of the pathology and tie diagnosis codes to payer mix (i.e., how many patients are affected and how many are low income or uninsured?); and~~

~~(C) If this specialty is not available in the community, identify the nearest location where this specialty service can be obtained.~~

~~(iii) The physician specialty is needed to address population to physician ratio because the current ratio does not meet national standards.~~

~~(A) Provide the population to physician ratio for the specialty, include source for data provided;~~

~~(B) Provide the number of physicians (FTE) practicing this specialty in the same health professional shortage area/facility service area;~~

~~(C) Provide the distance to the nearest physician practicing the same specialty; and~~

~~(D) Describe how the demand for the specialty has been handled in the past.~~

~~(b) Describe the referral system that includes:~~

~~(i) On-call sharing;~~

~~(ii) Affiliation agreements with other health care entities in the service area, specifically with publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations.~~

~~(c) Provide at least one letter of support for this type of physician specialty from a primary care provider practicing with publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations outside of the applicant's organization.~~

~~(d) Provide written notice to the department and all publicly funded providers in the health care facility's HPSA or MUA designated area **within thirty days** of the physician's start date of employment. The notice must include:~~

~~(i) The physician's name, employment start date and practice location;~~

~~(ii) Services to be provided; and~~

~~(iii) Identification of accepted patients, such as medicaid, medicare, or basic health plan.)) Demonstrate a need for the nonprimary care specialty by using data to show how the physician specialty is needed to address a major health problem in the practice location~~

service area, address a population to provider ratio imbalance, or meet government requirements such as trauma designation regulations.

(b) Describe how this specialty will link to primary care.

(c) Describe how the demand for the specialty has been handled in the past.

(d) Describe the practice location's referral system that includes:

(i) On-call sharing;

(ii) How patients from other health care entities in the service area, specifically publicly funded employers, will be able to access the sponsored physician's services.

(e) Provide written notice to the department and all publicly funded employers in the applicant's HPSA within thirty days of the sponsored physician's start-date of employment. The notice must include:

(i) The sponsored physician's name, employment start date, and practice location;

(ii) Services to be provided; and

(iii) Identification of accepted patients, such as medicaid, medicare, and the availability of a sliding fee schedule of discounts.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-087 Eligibility for facilities hiring physicians as hospitalists. (1) ~~((A health care facility))~~ An applicant is limited to one hospitalist sponsorship per hospital per ~~((program))~~ federal fiscal year. Multiple employers at the same location are not allowed.

(2) ~~((A facility))~~ An applicant may only use inpatient data on the patient visit report required in WAC 246-562-060 to demonstrate that ~~((ten))~~ fifteen percent of applicant's total patient visits were to medicaid ~~((and/or))~~ and other low-income patients.

(3) ~~((A facility))~~ An applicant must identify primary care physicians in the community who will accept unattached medicaid, medicare or uninsured patients for follow-up care.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-090 Application form. ~~((1))~~ Physician visa waiver program application forms are available online at www.doh.wa.gov/hsqa/ocrh or may be requested from: Washington State Department of Health, Office of Community and Rural Health, Visa Waiver Program, PO Box 47834, Olympia, WA 98504-7834.

~~((2))~~ Applications must be completed, address all state and federal requirements, and must include all required documents as specified in the department application form. Applications are available on the department's web site.

WAC 246-562-120 Department review and action. (1) The department will review applications for completeness in the date order received.

(2) Applications must be mailed, sent by commercial carrier, or delivered in person ~~((. Applications may not be sent by telefax, or electronically))~~ as long as the U.S. Department of State requires a paper application.

(3) The department 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) ~~((Should multiple primary care physician applications arrive at the department on the same day, the department will rank those applications according to the following criteria:~~

~~(a) Facilities located in federally designated shortage areas will rank ahead of those facilities located in nondesignated areas.~~

~~(b) Federally designated shortage facilities will rank first.~~

~~(c) Publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations, will rank second.~~

~~(d) Critical access hospitals and rural health clinics will rank third.~~

~~(e) All other private practice, for profit facilities will rank last.~~

~~(f) If multiple applications within a designated category arrive on the same day or if a ranked order cannot be determined by using the criteria in (a) through (f) of this subsection, then applications will be ranked by:~~

~~(i) Percentage of services provided to low income, uninsured and sliding fee based patients;~~

~~(ii) Distance from applicant's practice location to nearest publicly funded provider;~~

~~(iii) Language skill of provider matching those significantly represented in the community;~~

~~(iv) Type of services provided, outpatient versus inpatient; and~~

~~(v) Facility location, rural versus urban based on RUCA codes to most current census data.~~

~~(5) Should multiple specialist applications arrive at the department on the same day, the department will rank these applications according to the following criteria:~~

~~(a) Facilities located in federally designated shortage areas will rank ahead of those facilities located in nondesignated areas.~~

~~(b) Hospitals or other health care facilities at risk of being out of state compliance standards will rank first. For example: The physician specialty is needed to maintain trauma designation or meet certificate of need requirements.~~

~~(c) Federally designated shortage facilities will rank second.~~

~~(d) Publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations will rank third.~~

~~(e) All other private practice, for profit facilities will rank last.~~

~~(f) If multiple applications within a designated category arrive on the same day, or if a ranked order cannot be determined by using the criteria in (a) through (e) of this subsection, then applications will be ranked by:~~

~~(i) Percentage of services provided to low income, uninsured and sliding fee based patients;~~

~~(ii) Distance from applicant's practice location to nearest publicly funded provider;~~

~~(iii) Language skill of provider matching those significantly represented in the community;~~

~~(iv) Type of services provided, outpatient versus inpatient; and~~

~~(v) Facility location, rural versus urban based on RUCA codes to most current census data.~~

~~(6)) If the department receives more complete applications than the number of available waiver slots, priority will be given in the following order:~~

~~(a) Applications submitted by state psychiatric or correctional facilities;~~

~~(b) Applications for physicians working in outpatient primary care practice locations that:~~

~~(i) Are located in a HPSA;~~

~~(ii) Serve the highest percentage of medicaid and other low-income patients; and~~

~~(iii) Are not eligible for another visa waiver program.~~

~~(c) Applications for physicians working in outpatient specialty care practice locations that:~~

~~(i) Are located in a HPSA; and~~

~~(ii) Serve the highest percentage of medicaid and other low-income patients.~~

~~(5) The department will review applications within ten working days of receipt of the application to determine if the application is complete.~~

~~((7) The department will return incomplete applications to the applicant, and provide a written explanation of missing items.~~

~~(8) Incomplete applications may be resubmitted with additional required information. Resubmitted applications will be considered new applications and will be reviewed in date order received on resubmission.~~

~~(9)) (6) The department will notify the applicant if the application is incomplete and will provide an explanation of what items are missing.~~

~~(7) Applicants with incomplete applications can submit additional documentation; however, the application will not be considered for approval until missing items are received and the application will not retain the date order.~~

~~(8) The department will return applications that are received after the maximum number of sponsorships have been approved. This does not apply to copies of other federal ((J-1)) visa wavier applications.~~

~~((10) The department will return sponsorship applications to applicants who have had two approved sponsorships in the current year for the shortage area.~~

~~(11)) (9) If an applicant who has already received three sponsorships submits additional applications before June 1st, the department will return the applications. Starting on June 1st these addi-~~

tional applications will be accepted for consideration if the department still has waiver sponsorships available.

(10) If the Washington state ((medical)) license under chapter 18.71 or 18.57 RCW is pending at the time the application is submitted to the department, the department may:

- (a) Sponsor or concur;
- (b) Hold the application in order received; or
- (c) Return the application as incomplete.

~~((12))~~ (11) The department will review complete applications against the criteria specified in this chapter.

~~((13))~~ (12) The department may:

- (a) Request additional clarifying information;
- (b) Verify information presented;
- (c) Investigate financial status of the applicant;

~~(d) ((Further investigate any comments generated by publicly funded provider notification of application for waiver;~~

~~(e))~~ Return the application as incomplete if the applicant does not supply requested clarifying information within thirty days of request. Incomplete applications must be resubmitted. Resubmitted applications will be considered new applications and will be reviewed in date order received.

~~((14))~~ (13) The department will notify the applicant in writing of action taken. If the decision is to decline sponsorship, the department will provide an explanation of how the application failed to meet the stated criterion or criteria.

~~((15))~~ (14) The department may deny a visa waiver request or, prior to U.S. Department of State approval, may withdraw a visa waiver recommendation for cause, ((which shall include the following:

~~(a) The application is not consistent with state and/or federal criteria;~~

~~(b) Fraud;~~

~~(c) Misrepresentation;~~

~~(d) False statements;~~

~~(e) Misleading statements; or~~

~~(f) Evasion or suppression of material facts in the visa waiver application or in any of its required documentation and supporting materials.~~

~~(16))~~ when the department finds the applicant has engaged in conduct contrary to the intent of the J-1 visa waiver program identified in WAC 246-562-020 including, but not limited to, the following:

(a) Application is not consistent with state or federal criteria;

(b) Dishonesty;

(c) Evasion or suppression of material facts in the visa waiver application or in any of its required documentation and supporting materials;

(d) Fraud;

(e) History of noncompliance for applicants who benefited from previous department sponsorship;

(f) Misrepresentation; or

(g) Violation of Washington state laws and rules related to charity care.

(15) Applications denied may be resubmitted with concerns addressed. Resubmitted applications will be considered new applications and will be reviewed in date order received.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-130 Eligibility for future participation in the visa waiver program. (1) (~~Health care facilities~~) Applicants may be denied future participation in the state visa waiver program if:

(a) The required (~~six month~~) reports are not submitted in a complete and timely manner.

(b) A sponsored physician does not serve the designated (~~short-age area and/or shortage~~) HPSA or HPSA population at an approved practice location for the full three years of employment (~~for primary care physicians or the full five years of employment for specialists~~).

(c) A sponsored physician does not remain employed by the applicant for the full three years of employment (~~for primary care physicians or the full five years of employment for specialists~~).

(d) The applicant has a history of noncompliance with any of the provisions of this chapter or federal labor law requirements.

(2) A (~~health care facility~~) potential applicant may request a determination of eligibility prior to submitting an application. The department will review the situation upon receipt of a written request.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

WAC 246-562-140 Department's responsibility to report to the U.S. Department of State and the United States (~~Bureau of~~) Citizenship and Immigration Services. (1) The department may report to the U.S. Department of State and the United States (~~Bureau of~~) Citizenship and Immigration Services if the applicant or physician is determined to be out of compliance with any of the provisions of this chapter.

(2) The department may report to the U.S. Department of State and the United States (~~Bureau of~~) Citizenship and Immigration Services if the physician is determined to have left employment in the federally designated area.

AMENDATORY SECTION (Amending WSR 00-15-082, filed 7/19/00, effective 8/19/00)

WAC 246-562-150 Appeal process. (1) The applicant or physician may appeal the following department decisions:

(a) To deny or withdraw a visa waiver sponsorship;

(b) To deny a request for approval of an employment contract amendment;

(c) Determination that the applicant or physician is out of compliance with this chapter; or

(d) Determination that the applicant is not eligible for future participation in the visa waiver program.

(2) The appeal process is governed by the Administrative Procedure Act (chapter 34.05 RCW), chapter 246-10 WAC, and this chapter.

(3) To initiate an appeal, the applicant must file a written request for an adjudicative proceeding within twenty-eight days of ~~((re-
eeipt))~~ the department's mailing of the department's decision on the application.

(4) The request shall be mailed, by a method showing proof of receipt, to the Adjudicative ~~((Clerk))~~ Clerk's Office, P.O. Box 47879, ((2413 Pacific Avenue,)) Olympia, WA 98504-7879.

(5) The request must contain:

(a) A specific statement of the issue or issues and law involved;

(b) The grounds for contesting the department's decision; and

(c) A copy of the department's decision.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-562-110 Waiver requests federal waiver programs.