

Significant Legislative Rule Analysis

Chapter 246-562 WAC
a Rule Concerning the Physician Waiver
Program (J-1 Visa Waiver Program)

April 18, 2016

SECTION 1:

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

Program history

In the 1990s the federal government created an immigration program that allows states to sponsor foreign-trained physicians to work in areas designated as having a shortage of U.S. physicians. The goal of the Conrad 30 Program, also known as the J-1 Visa Waiver Program, is to increase healthcare access for low income and otherwise underserved populations. The Washington State Department of Health (department), Health Systems Quality Assurance Division administers the J-1 Physician Visa Waiver Program in our state. While the federal government remains the ultimate authority in matters of immigration, the state is allowed to create additional sponsorship criteria over and above the basic federal requirements as laid out in 8 U.S.C. Sec. 1182(e), 8 U.S.C. Sec. 1184(l), and 22 C.F.R. Sec. 41.63(e). The goals of Washington's program are to increase the number of physicians working in designated shortage areas and ensure low-income groups have access to those physicians. While the department prefers primary care physicians use the program, we also sponsor other physicians if the community demonstrates need for the service. The state's sponsorship criteria are set in chapter 246-562 WAC.

Program structure

Foreign medical graduates completing a U.S. physician residency program on a J-1 (educational) visa must return to their home country for two years at the completion of their training. If the physician wishes to remain and work in the United States, he or she can receive a waiver of the return-to-home requirement in exchange for a minimum three-year service obligation with an eligible healthcare employer. The department's sponsorship is necessary in order for a physician to receive a waiver. Federal law authorizes each state to sponsorship 30 physicians in a federal fiscal year. Physicians find a position with an eligible employer. Employers must meet the state regulations and federal law in order to qualify as an appropriate employment site. The employer is the party that applies to the department for waiver sponsorship. Employers are typically healthcare facilities, such as hospitals or clinics, but can also be companies contracted to provide medical services staff at a facility in a health professional shortage area.

Reason for proposed changes

The current rules governing the J-1 visa waiver application process need to be updated to match Public Law 110-362 (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 current rules were last updated in 2006 and do not include this federal change.

The rules also need to be reviewed and amended to meet the requirement of RCW 43.70.041 by removing potential barriers and simplifying the application process. The department has received feedback from stakeholders that some of the current requirements are unduly burdensome. While some of the existing rules are an important part of ensuring the program meets its intent, others do not add value in the application process. The proposed rule changes will allow the department to maintain program focus on areas of the state experiencing physician shortages while streamlining the application process.

SECTION 2:

Is a Significant Analysis required for this rule?

Yes, the proposal makes significant amendments to a regulatory program, and some propose amendments may result in a penalty or sanction if violated. As defined in RCW 34.05.328, portions of the proposed rule require a significant analysis. However, the department has determined that no significant analysis is required for those chapter sections identified in Table 1 below.

SECTION 3:

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

Authority for the adoption and revision of rules for physician visa waivers is established in chapter 70.185 RCW. The goal of the statute is to increase access to healthcare for rural and underserved populations. Specifically the statute requires the department to provide recruitment and retention assistance to healthcare entities serving substantial numbers of public pay (such as Medicaid) and charity care patients in rural or underserved areas of the state.

The following proposed rules address the goal of increasing access to healthcare by:

- Adding a requirement that sites must annually update their sliding fee discount schedule to reflect the most recent federal poverty guidelines.
- Modifying the list of eligible shortage designations to exclude whole county Medically Underserved Area designations.
- Maintaining full program eligibility for state psychiatric and correctional facilities that have lost their Health Professional Shortage Area designations.
- Modifying the limits placed on the number of waivers available to an applicant in a single year.
- Adding a mechanism for applicants to receive more waivers if all sponsorships have not been given out during the first eight months of the program year.
- Increasing the requirement for the percentage of low income patients a site must see from 10 to 15 percent.
- Adding a requirement that physicians must submit annual surveys to the department during their obligation period and a survey one year after the obligation ends.
- Simplifying the prioritization process should there be more applications submitted than sponsorships available.
- Expands the grounds on which the department can deny a J-1 visa waiver application.

In addition to better aligning rules with the authorizing statute's intent, the rules were due for five-year review per RCW 43.70.041. The goal of the statute is to reduce the regulatory burden on businesses without compromising public health and safety.

The following proposed rule revisions address the goal of simplifying the regulations:

- Shortening the exclusion period for applicant's seeking a non-designated area (flex) waiver from six months to three months.
- Reducing the number of years a specialist J-1 visa waiver physician must be contracted from five to three years.
- Removing the requirement that the healthcare facilities submit a signed US Department of Labor wage certification during the application process.
- Removing the requirement that healthcare facilities notify publically funded providers of their intent to hire a J-1 visa waiver physician thirty days before submitting an application.
- Removing the requirement for a letter of reference for the physician.
- Changing the reporting requirement for the healthcare facility from semi-annual to annual.
- Simplifying the application process for a specialist physician waiver.

The Washington State J-1 Visa Waiver program is ultimately guided by federal statute. Public Law 110-362 increased the number of waiver sponsorships a state may grant to healthcare facilities not located in designated shortage areas but serving residents of shortage areas from five to 10. These are called flex waivers. As part of the proposed rule changes the department proposes to change the number of flex waiver sponsorships we may grant to match federal statute.

In addition to these proposed section amendments, general housekeeping and technical editing of rules are proposed to clarify and simplify language where possible.

SECTION 4:

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

The proposed rule will achieve the goals and objectives of the state and federal authorizing statutes. The program worked with a broad group of stakeholders and program participants to examine the rules. There are no alternatives to rulemaking that legally enable the department to enforce an application system that conforms to the federal law and ensures the physicians are meeting the needs of Washington's underserved residents.

SECTION 5:

Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

The department determined probable benefits and costs by categorizing all chapter sections of J-1 visa waiver program rules into sections that were (1) newly established, (2) revised, (3) repealed, or (4) not amended. From this, amended sections were identified as being significant or non-significant. While many proposed revisions are by definition considered significant legislative rules under RCW 34.05.328, the following rules in Table 1 are considered non-significant rules and do not require a cost/benefit analysis.

Table 1: Non-significant rule identification

#	WAC Section	Section Title	Section Subject	Reason
1	WAC 246-562-010	Definitions	Defines terms used throughout the chapter.	The proposed rule is exempt from analysis under RCW 34.05.328(5)(c). Definitions do not set or modify a requirement to obtain a visa waiver sponsorship, cannot be violated and do not adopt substantive provisions of the law.
2	WAC 246-562-040	Principles that will be applied to the visa waiver program	Describes guiding principles for the department's program administration.	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(iv). The change clarifies language without changing its effect. Minor changes were made to update and improve the readability of the section.
3	WAC 246-562-050	Review criteria	References the federal statute and state rules that must be met before a waiver can be granted.	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(iii), rules that adopt or incorporate by reference without material change state or federal statutes. Updates references to relevant federal laws and regulations.
4	WAC 246-562-087	Eligibility for facilities hiring physicians as hospitalists	Sets additional criteria for physicians practicing as hospitalists.	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(iv). This section of rule is only updating language pursuant to proposed revisions in WAC 246-562-060 without material change.
5	WAC 246-562-090	Application form	Updates to reflect application availability on the department's website.	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(iv). The change clarifies language without changing its effect. The change

				updates how applicants can find the relevant forms.
6	WAC-246-562-110	Waiver requests federal waiver programs	Department will acknowledge federal agency J-1 applications.	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(ii). The repeal of this section only relates to internal governmental operations that are not subject to violation by a nongovernment party.
7	WAC 246-562-130	Eligibility for future participation in the visa waiver program	Sets terms for continued participation in the J-1 visa waiver program.	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(iv). This section of rule is only updating language pursuant to proposed revisions in WAC 246-562-060 without material change.
8	WAC 246-562-140	Department's responsibility to report to the U.S. Department of State and the United States Citizenship and Immigration Services	Describes the department's ability to report the physician to U.S. DOS and USCIS should the physician leave employment in the federally designated shortage area.	This section of rule is exempt from analysis under RCW 34.05.328(5)(b)(iv). The change clarifies language without changing its effect. The change updates the name of the federal immigration authority.
9	WAC 246-562-150	Appeal process	Clarifies the process for appealing a decision by the department.	This section does not meet the definition of a significant legislative rule. It is a procedural rule under RCW 34.05.328(5)(c)(i)(A).

The following sections were reviewed but no changes made:

- WAC 246-562-100 Criteria applied to federally designated facilities.
- WAC 246-562-160 Implementation.

The proposed rules that are considered legislatively significant are analyzed below.

A. WAC 246-562-020 Authority to sponsor visa waivers. (Amended)

Rule Overview: The current rule describes the authority to offer the J-1 Visa Waiver Program, the purposes of the program and the conditions, limits, and timelines of waiver sponsorship. The proposed rule:

- Adds a statement that department can support waiver requests proposed by federal agencies.
- Clarifies the limits on the number of waivers an applicant can receive in a given program year.
- Allows applicants to receive additional waivers should sponsorships still be available in the last four months of the program year.
- Adds language stating an applicant in a non-designated shortage area can receive the same number of waivers as an applicant in a designated shortage area.
- Shortens the period when the department does not accept flex waiver applications from six to three months.

Rule Cost/Benefit Analysis: There are no costs to comply with this rule. The benefit of this rule is that it allows health care facilities greater flexibility in hiring and placing J-1 visa waiver physicians in their practice locations. The rule balances the state's competing interests by making sure there is an equitable distribution of waivers across employers and communities while not being so restrictive that waivers are left unused. Moving up the date when facilities in non-shortage areas can apply for waivers allows those facilities to better meet their staffing needs while preserving a priority period for communities in Washington's designated shortage areas.

B. WAC 246-562-060 Criteria for applicants. (Revised)

Rule Overview: The current rule sets the qualifying criteria for employer applicants including populations that they must serve, minimum requirement percentage of low income patients served, sliding fee discount schedules, recruitment time periods, physician contract periods, notification, and reporting requirements. The proposed rule:

- Removes the requirement that state psychiatric and correctional facilities be designated as federal shortage areas.
- Increases required percentage of Medicaid or other low-income patients from 10 to 15 percent of the practice location's payer mix.
- Clarifies that patients dually eligible for Medicare and Medicaid may be counted towards the required percentage.
- Clarifies that the applicant's sliding fee scale must be used in the entire practice location and updated annually.
- Clarifies that the contract with the J-1 visa waiver physician cannot be signed during the six month period when the applicant must be recruiting for a U.S. physician.
- Changes the required period of contracted employment from five to three years for specialist physicians.
- Removes the requirement for employers to submit a U.S. Department of Labor signed ETA 9035 form as part of the state J-1 visa waiver application.
- Removes the requirement for non-publically funded employers to send out letters about their intent to apply to the J-1 visa waiver program to all the publicly funded providers in the designated shortage area.
- Reduces employer reporting requirements from twice to once per year.
- Adds an annual survey requirement for the J-1 visa waiver physician.

Rule Cost/Benefit Analysis: There are minimal costs and some savings to comply with this rule.

The proposed rule ensures the program still meets the legislative intent of increasing physician access for underserved rural and urban populations. The state correctional and psychiatric facilities experience extreme difficulty hiring physicians however due to federal regulation changes some facilities have lost their shortage area designations. The change to allow these facilities to remain eligible to hire a J-1 visa waiver physician regardless of their shortage designation status increases healthcare access to their vulnerable residents.

Increasing the required percentage of Medicaid or other low income patients required to be eligible for the program will not be a significant change because the numbers of these patients seen in applicant facilities has increased following the expansion of Medicaid in Washington. After the expansion of Medicaid under the Affordable Care Act, a full 25 percent of Washington's residents are enrolled in one of the Health Care Authority's programs. In 1998, the department set the 10 percent Medicaid/or other low income patient threshold as part of initial rulemaking for the J-1 visa waiver. Increasing the percentage reflects the increased use of the Medicaid program and ensures that waivers are benefiting practices with a strong commitment to see low income and Medicaid patients. The clarification that individuals dually eligible for Medicare and Medicaid can be counted towards the 15 percent thresholds helps support practices that serve low income seniors. The requirement to annually update the sliding fee scale adds a minimal administrative burden and helps ensure low income patients are means-tested against the most recent federal information.

The department wants to ensure that sites are not using the J-1 visa waiver program as a primary recruitment tool. The change to clarify that the contract with the J-1 visa waiver physician cannot be signed during the six months of U.S. candidate recruitment ensures that a true good faith effort is made. This issue has arisen with several applicants over the past several years continuing to post advertisements to meet the recruitment requirement after already signing a contract with a J-1 visa waiver physician. Changing the contract length requirement to be three years for all physician types removes a burden sites experienced when attempting to recruit specialists, reduces reporting requirements, and simplifies enforcement.

The applicants are no longer required to submit a signed U.S. Department of Labor ETA 9035 form (Labor Condition Application) to the department as part of the J-1 visa waiver application process. Due to federal immigration timing issues applicants sometimes had to file a second ETA 9035 as part of their H-1B work visa application creating a duplication of effort. The prevailing wage information can be determined without going through the formal Department of Labor process.

Non-publically funded applicants are no longer required to send out letters notifying the publically funded employers in the Health Professional Shortage Area of the planned J-1 visa waiver application. These letters created a substantial amount of work for the applicant without generating meaningful information for the department. Removal of this requirement will speed up the application process, as applicants had to wait 30 days after sending the notices before being able to file with the department.

The rule adds an annual reporting requirement for the J-1 visa waiver physicians themselves; however, this is balanced out with a corresponding reduction in other reporting required of the employer. The estimated annual time for a physician to complete an electronic or paper survey is 20 minutes. The burden on the employer to report on work of the physician is reduced from twice a year to once a year. The benefit of adding the physician survey requirement is that the

department can better track retention of the clinicians over time and identify possible program compliance issues such as clinicians being moved to non-approved worksites by the employers. There have been several instances in the past three years of the J-1 visa waiver physician changing employment sites, leaving employment or leaving the state without the department being notified and/or approving.

C. WAC 246-562-070 Criteria for the proposed practice location to be served by the physician. (Amended)

Rule Overview: The current rule describes the requirements for proposed practice locations including types of qualifying shortage designations. The proposed rule:

- Adds state psychiatric and correctional facilities to the list of approved practice locations regardless of the facilities' federal shortage designation status.
- Eliminates the Medically Underserved Area (MUA) designation as a qualifying shortage designation type.

Rule Cost/Benefit Analysis: There are minimal costs to comply with this rule and improved alignment with the federal intent of the program.

The state correctional and psychiatric facilities experience extreme difficulty hiring physicians however due to federal regulation changes some facilities have lost their shortage area designations. The specific facilities currently affected are Western State Hospital and the Correctional Center for Women, which have only been able to access J-1 visa waiver physicians by use of Pierce County's MUA designation. The change to allow these facilities to remain eligible to hire a J-1 visa waiver physician regardless of their shortage designation status increases healthcare access to their vulnerable residents. This is especially important given the ongoing staffing difficulties at Western State Hospital.

MUA is a federal designation that is calculated using the infant mortality rate, poverty rate, percentage of elderly and primary care physician to population ratio. These designations do not expire and are not updated. Because of these limitations they do not represent a meaningful measure of current physician shortages for the purposes of the J-1 visa waiver program. The federal HPSA designations are redone every three years. The only county where applicants primarily qualify via an MUA designation is Pierce County. The designation for that county was completed in 1982 and has not been updated. Applicants not located in a HPSA, such as Pierce County, will be able to apply for flex waiver sponsorships. The benefit of the rule is that sponsorships are prioritized for Washington communities with current physician shortages while maintaining program access for physicians serving residents that travel from HPSAs to receive services via the flex option. As part the proposed rules, the number of flex waivers available each year will increase from five to 10. Pierce County employers using the MUA designation to qualify have received from 3-5 waivers in the last five program years. The department has never previously had a year when the supply of flex waivers was exhausted. The cost is that facilities located in Pierce County will need to apply for non-designated shortage area waivers and meet the requirement to demonstrate the site is serving the residents of HPSAs in order to hire physicians with a J-1 waiver. The anticipated staff time to meet this requirement will depend on the organization's ability to access their billing addressing information but overall burden should be less than under the current regulations. The benefit of this change is improved alignment and compliance with the federal intent of the program that physicians serve residents of areas currently experiencing physician shortages. In addition, applicants and patients may benefit from

equitable distribution of J-1 waiver slots statewide based on current HPSA data rather than outdated models.

D. WAC 246-562-075 Criteria for waiver sponsorships in nondesignated shortage areas. (Amended)

Rule Overview: The current rule sets the qualifying criteria for applicants seeking a sponsorship for a practice location outside a designated shortage area (flex waiver). The criteria include documentation of patient residence and special recruitment efforts. The proposed rule:

- Removes the five flex waiver-sponsorship limitation to allow flexibility in responding to federal program changes. Current federal regulation allows up to 10 flex waivers each year.
- Clarifies that state psychiatric and correctional facilities without a HPSA can apply October 1.
- Removes the requirement for a patient visit report that identifies total patient visits in the last six months of service by patient origin zip code.
- Removes the requirement for a detailed recruitment report.
- Clarifies the criteria that will be used to determine flex waiver approval.

Rule Cost/Benefit Analysis: There are no costs to comply with this rule and some savings in administrative time. The benefit of the rule is that it allows the department to grant more sponsorships for flex waivers should we receive more than five approvable applications. The rule describes the criteria that will be used to determine flex waiver eligibility while removing document requirements that did not help in the decision making process. Another benefit of the rule change is reducing the applicant's burden to produce extensive documentation showing patient visits by zip code. The removal of the requirement for an additional recruitment report reduces the amount of time it will take to complete an application. State psychiatric and correctional facilities without HPSA designations maintain their ability to apply at the start of the program year rather than waiting until January 1.

E. WAC 246-562-080 Criteria for the physician. (Amended)

Rule Overview: The current rule sets the qualifying criteria for physicians including status of other immigration actions, completed education, provision of direct patient care, required patient types, licensure and required documents. The proposed rule:

- Removes the requirement for a letter of reference from the residency or fellowship program.
- Is edited for language clarity throughout.

Rule Cost/Benefit Analysis: There are no costs to comply with this rule. The removal of the letter of reference streamlines the application process for the physician. The letters do not provide actionable information for the department.

F. WAC 246-562-085 Eligibility for primary care and specialist waivers. (Amended)

Rule Overview: The current rule sets the qualifying criteria for primary care and specialist physician waivers including allowable residency/fellowship programs and additional application requirements for specialists. The proposed rule:

- Clarifies and streamlines the report showing need for specialty services.

- Removes requirements for a letter of support from a primary care physician practicing at a publically funded provider.
- Changes required notification letter to remove reference to the state’s basic health plan and add information about availability of a sliding fee scale.

Rule Cost/Benefit Analysis: There are no costs to comply with this rule. Streamlining the specialist application process and removing the letter of support requirement reduces the administrative burden on the applicant and ensures the department still gets the information necessary to make a sponsorship decision. The benefit of changing the specialist notification letters to include reference to sliding fee scale is that entities with an obligation to provide services know they can refer their low-income and Medicaid patients to the specialist receiving the visa waiver.

G. WAC 246-562-120 Department review and action. (Amended)

Rule Overview: The current rule describes the department’s process in reviewing applications, determination of priority and making sponsorship recommendations to the U.S. Department of State. The proposed rule:

- Sets requirement that an application must be submitted to the department in hard copy so long as U.S. Department of State requires a paper application process
- Simplifies application prioritization criteria to emphasize that waivers will be first given to applicants that are state psychiatric or correctional facilities, then to applicants seeking to employ primary care physicians in designated shortage areas at practice sites serving the highest percentages of Medicaid and other low income patients.
- Clarifies the department process for seeking additional documentation when applications are incomplete.
- Expands the grounds on which the department can deny a J-1 visa waiver application.

Rule Cost/Benefit Analysis: There are no costs to comply with this rule. The benefit of this rule is that it allows the department the option of moving to an electronic application in the future should the federal government change its process. The simplification of the prioritization process gives applicants a clear view of what will be weighed should a decision need to be made between two or more applications. The clarification of the application process aligns the rules with the program’s workflow. The addition of dishonesty, history of noncompliance for applicants who benefited from previous department sponsorship and violations of Washington state laws and rules related to charity care to the review criteria ensures the department will be able to deny an application when an applicant has engaged in conduct contrary to the intent of the J-1 visa waiver program.

Cost Benefit Analysis Conclusion

The proposed rules balance the intent of chapter 70.185 RCW, to increase access to care for rural and underserved populations, with the goal of RCW 43.70.041 to reduce the regulatory burden on businesses. The changes also align the WAC with current federal law. Based on this analysis, the total probably benefits of the rules exceed the total probable costs, eliminates unnecessary administrative burden and streamlines the application process.

SECTION 6:

Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives state previously.

The department reviewed and proposed revised rules in conjunction with stakeholders from December 2014 through April 2015. Ideas were proposed, thoroughly discussed, then accepted or rejected through multiple iterations of draft rules. Some of the more significant proposed rule revisions discussed but ultimately rejected because the cost implications exceeded the benefit includes the following:

- a. A proposal to allow physicians with specialty training to receive a primary care waiver. After consideration the department chose to not move forward with the suggestion. The department wishes to prioritize the placement and retention of primary care physicians into outpatient settings. Physicians who train in a subspecialty and then accept a primary care position in order to be able to remain in the United States have had poor retention during and after completion of their service obligation.
- b. A proposal to require the sliding fee scale be in place 12 months before an applicant could apply. This proposal was discussed and ultimately rejected as stakeholders felt this would create a new burden that would hinder their ability to use the program to fill immediate needs. It also would create a disincentive for a site that had not previously created a sliding fee scale to use the program.
- c. A proposal to require advertising the existence of sliding fee discounts on an applicant's website if one exists. Stakeholders and the program discussed the feasibility of adding the information to health care facility's sites and decided not to add this requirement. While many applicants' websites already contain such a notice, others do not. In many large healthcare systems, the administrative functions, such as web site maintenance, are completely separated from the clinics seeking to hire a J-1 visa waiver physician. The notices would have limited potential benefit for patients and a potential large burden on applicants. The proposed rules do not prohibit the sites from advertising the sliding fee scale on a website should the facility wish.
- d. A proposal to increase the required recruitment period for specialist physicians to be 12 months. After an extended discussion with stakeholders about this suggestion the program decided not to move forward with this proposed change. While the proposal was intended to increase the program's emphasis on primary care physicians, stakeholders felt that doubling the required recruitment period for specialists could lead to lost lives and poorer outcomes if a specialist position could have been filled by a J-1 visa waiver physician during the expanded recruitment period.
- e. A proposal to require applicants seeking a flex waiver to submit a report cross referencing patient residence with health professional shortage areas. The current rule requires applicants seeking a flex waiver to submit a report of all patient visits in the previous six months by patient zip code. However this data by itself does not easily indicate that patients are traveling from designated shortage areas to seek care. The program must cross reference it by hand with the HPSA database. Requiring the submitted document already be cross referencing by HPSA would create a clearer picture of the volume of patients traveling from HPSAs. However stakeholders said it would

dramatically increase their application time to have to do such cross referencing by hand for all patients, especially if the physician is going to work at a high volume practice. The proposal was dropped because it would increase the regulatory burden without providing a strong enough public health benefit.

- f. A proposal to drop all extra application requirements for those seeking a specialist waiver. The department considered this proposal, which would allow applicants to seek specialist waivers solely at their own discretion without a determination of need by the department. It is the department's position that placing primary care physicians is the primary goal of the J-1 Visa Waiver Program and so the additional requirements, while more burdensome, help the state to make a determination that the specialist waiver is justifiable in the area and sufficient to take up a slot that could have potentially gone to a primary care doctor.
 - g. A proposal to add palliative care to the list of physician types eligible for a primary care waiver. This change was proposed by the department because of several recent cases of palliative care physicians seeking outpatient primary care positions. A stakeholder made the point that palliative care has never traditionally been part of primary care and is most commonly offered in the hospital setting. Upon reconsideration the department withdrew the suggestion as the general reduction in specialist application requirements will have the effect of making it easier for palliative care physicians to receive a waiver without classifying them as primary care.
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SECTION 7:

Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The proposed rule does not require those to whom it applies to take an action that violates requirements of federal or state law. The proposal is intended to make the rules more consistent with current federal and state law.

SECTION 8:

Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The proposed rule does not impose more stringent performance requirements on private entities than on public entities.

SECTION 9:

Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is

justified by an explicit state statute or by substantial evidence that the difference is necessary.

The proposed rule does not differ from any federal regulation or statute applicable to the same activity or subject matter.

SECTION 10:

Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

Yes, the rule is coordinated to the maximum extent practicable with other applicable laws including the guiding federal statutes (8 U.S.C. Sec. 1182(e), 8 U.S.C. Sec. 1184(l), and 22 C.F.R. Sec. 41.63(e)).