

**R434. Health, Health Systems Improvement, Primary Care and Rural Health.**

**R434-100. Physician Visa Waivers.**

**R434-100-1. Authority and Purpose.**

(1) Sections 1182(e) and 1184 of Title III of the Immigration and Nationality Act and 22 CFR 41.63 provide that the state may request a waiver of the federal two year home residence requirement on behalf of J-1 visa physicians each fiscal year if they work in a medically underserved area of the state and if the waiver is in the public interest. Section 26-1-18 authorizes the Utah Department of Health to implement this program.

(2) This rule establishes the criteria to determine whether it is in the public interest to request a J-1 visa waiver for an applicant. It establishes the procedures for the submission, review, and disposition of applications.

**R434-100-2. Definitions.**

As used in this rule:

(1) "Department" means the Utah Department of Health.

(2) "Health care facility" means a doctor's office, local health department, clinic or licensed health care facility where a J-1 visa waiver physician may work under the supervision of the sponsoring physician.

(3) "Primary care physician" means a physician who specializes in general internal medicine, family medicine, general pediatrics, obstetrics and gynecology, or psychiatry.

(4) "Principal" means any person who owns 10% or more beneficial or equitable interest in the health care facility.

(5) "Subspecialty care physician" means a physician who specializes in a specialty other than general internal medicine, family medicine, general pediatrics, obstetrics and gynecology, or psychiatry.

**R434-100-3. Maximum Number of Visa Waivers.**

(1) The Department may recommend J-1 visa waivers up to the maximum number of eligible J-1 visa waivers that have been granted in a federal fiscal year. If the maximum number of J-1 visa waivers have been granted, the Department shall consider pending applications in the following federal fiscal year in the order each was received.

(2) Each health care facility may make up to two requests per federal fiscal year.

**R434-100-4. Physician Eligibility.**

A physician is eligible to apply for a J-1 visa waiver recommendation if he:

(1) is enrolled in or has completed a minimum three year postgraduate training program in the United States accredited by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association Bureau of Professional Education prior to submitting an application;

(2) has passed the examination requirements for licensure as a physician or surgeon or osteopathic physician or surgeon in Utah, pursuant to rule established by the Division of Occupational and Professional Licensing; and

(3) has the specialty training and previous work experience that corresponds to the health care facility's recruitment descriptions.

**R434-100-5. Requests.**

The health care facility or the physician must submit to the Department a written request for the J-1 visa waiver.

(1) The request must include from the health care facility:

(a) the speciality of physician that the facility has been unable to recruit;

(b) documentation of its recruitment efforts to hire a qualified United States citizen for at least one immediate prior year for the position the J-1 visa waiver physician seeks to fill;

(c) documentation that it implements a sliding fee scale, payment schedule, or similar method that demonstrates that it provides discounts to medically indigent patients; and

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(d) an assurance letter that the health care facility and its principals are not under investigation for, under probation for, or under restriction for:

- (i) Children's Health Insurance Program, Medicaid, or Medicare fraud;
- (ii) violations of Division of Occupational and Professional Licensing statute or rules; or
- (iii) other violations of law that may indicate that it may not be in the public interest that a waiver of

the two-year home residency requirement be granted.

(2) The request must include from the physician:

(a) a completed application that includes all professional experience, education, licenses and certificates, specialty or specialties, research, honors, professional memberships, and three professional references;

(b) a copy of all IAP-66 forms "Certificate of Eligibility for Exchange Visitor (J-1) Status" and INS forms I-94 for the physician and his or her spouse and children; and

(c) the case number issued by the United States Department of State indicating payment of the federal fee required to apply for the visa waiver.

(3) The request must also include:

(a) a copy of the complete contract between the J-1 visa waiver physician and the health care facility;

(b) any required processing fees; and

(c) other information requested by the Department as may be reasonably necessary to determine whether it is in the public interest that a waiver of the two-year home residency requirement be granted.

**R434-100-6. Contract Requirements.**

To obtain a state recommendation that the visa waiver is in the public interest, the contract that the applicant submits must meet the following criteria:

(1) The contract must be for employment at a health care facility:

(a) to work as a primary care physician located within a federally designated primary care Health Professional Shortage Area or to work as a subspecialty care physician serving medically needy population;

(b) that has been operating for at least one year;

(c) whose principals are free from default on any federal or state scholarship or loan repayment program offered by the National Health Service Corps or by the state under Title 26, Chapter 46;

(d) that it or its principals are not under investigation for, under probation for, or under restriction for:

(i) Medicaid or Medicare fraud;

(ii) violations of Division of Occupational and Professional Licensing statute or rules; or

(iii) other violations of law that may indicate that it may not be in the public interest that a waiver of the two-year home residency requirement be granted.

(e) that accepts all Medicaid, Medicare, Children's Health Insurance Program, Primary Care Network and Utah Medical Assistance Program eligible patients; and

(f) that implements a sliding fee scale, payment schedule, or similar method that demonstrates that it provides discounts to medically indigent patients.

(2) The contract must provide:

(a) that the physician agrees to meet the requirements set forth in section 214(k) of the Immigration and Nationality Act, 8 USC 1184(k);

(b) the specific address of the health care facility where the physician will practice medicine;

(c) a description of the geographic area that will be served by the physician;

(d) that the physician agrees to work an annual full-time equivalency of 40 hours in patient care per week;

(e) for an obligation committing both parties to three years of employment; and

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(f) that the physician agrees to begin employment at the health care facility within ninety (90) days of the waiver being granted;

(3) The contract shall not contain a "non competition" clause or other provision that would discourage or inhibit the physician from working anywhere in the state upon termination of his employment with the health care facility.

**R434-100-7. Application Deferral.**

(1) The Department may defer processing of a request if the health care facility or any of its principals is under investigation or awaiting trial for possible:

(a) Medicaid or Medicare fraud;

(b) violations of Division of Occupational and Professional Licensing statute or rules; or

(c) other violations of law that may indicate that it may not be in the public interest that a waiver of the two year home residency requirement be granted.

(2) The Department may defer processing of a request if the health care facility or any of its principals is under probation or has entered a plea in abeyance for any alleged violation of the elements listed in subsection (1).

(3) A physician applicant may seek to obtain a J-1 visa waiver as an employee of another health care facility if the Department has deferred processing of a request under subsections (1) or (2).

(4) If a health care facility for which a request has been deferred desires the Department to remove the deferral, it must notify the Department and provide documentation that the reason for the deferral no longer exists.

**R434-100-8. Program Improvement.**

The Department may require the health care facility and J-1 visa waiver physician to provide information regarding the performance, commitment to the medically underserved area, service obligation fulfillment, and any other information regarding their experience under the J-1 visa waiver as is reasonably necessary for the administration of the program.