

IMMIGRATION SOLUTIONS:

Interested Government Agencies' ("IGA") Physician J-1 Waivers

INTRODUCTION TO THE J-1 VISA WAIVER FOR IGAs REQUIREMENTS

Fredrikson's Healthcare Immigration Solutions Team has created this guide as a general overview for what to expect, should you consider applying for a J-1 Visa Waiver from the following Interested Government Agencies (IGAs):

- Conrad 30 State Waivers
- U.S. Department of Health and Human Services (HHS)
 - Research Waiver
 - Clinical Care Waiver
- Delta Regional Authority (DRA)
- Southeast Crescent Regional Commission (SCRC)
- Appalachian Regional Commission (ARC)

This guide is provided with the caveat that agencies change their guidelines regularly so it will be important to consult the agency's current guidelines.

Please contact the Fredrikson's Healthcare Immigration Solutions Team for any assistance or if you have any questions.

J-1 CONRAD 30 STATE WAIVER PROGRAMS

General Requirements Applicable to All State Programs

- Physician must agree in writing to start within 90 days of J-1 waiver issuance.
- Physician must agree to provide full-time direct medical care for at least 3 years (and a signed employment agreement must be provided as evidence).
- Physicians must agree to provide medical care in a designated Health Professional Shortage Area (HPSA), although up to

10 waivers can be granted for FLEX waiver placements for physicians not working at a HPSA worksite but otherwise providing care to the indigent and medically underserved.

- Most states require that employment agreements list the worksite and address with specificity and not include any restrictive covenants (e.g., noncompetition agreements).
- Some states impose waiver reporting obligations.

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS)

Rules and Regulations updated 2022

RESEARCH WAIVER REQUIREMENTS (SUPPLEMENT A)

Recruitment Requirements

- Evidence of at least two means of recruitment, dated no older than 18 months from the dates the waiver application is submitted, that indicates the applying institution made genuine efforts to recruit for the exchange visitor's position and was unable to find a suitable candidate.
- Provide a written description of the recruitment campaign and outcomes with documentation of the practice site's position-specific advertisements.
 - Clearly demonstrate a suitable replacement for the exchange visitor cannot be found through recruitment or any other means, and the position cannot be filled by any individual who is not subject to the foreign residence requirement.
 - Provide copies of recruitment advertisements placed in nationally circulated journals, or online career/job boards associated with a nationally circulated journal, or on USAJOBS, with specific information provided as to the results (including why the candidates were not qualified).
 - Salary level should be advertised showing a range at a fair market rate.
 - Include additional information such as placement on organizations website, Internet recruitment and letters to colleagues in the field.
 - Phone conversations, personal visits, and such other documentation should also be included .

Link to the government website program and requirements.

<https://www.hhs.gov/about/agencies/oga/about-oga/what-we-do/visitor-exchange-program/supplementary-a-research.html>

CLINICAL CARE WAIVER REQUIREMENTS (SUPPLEMENT B)

Required Contract Terms

- Both the physician and Employer must sign and date the contract, AND it must be notarized.
- Must contain the facility name and address of ALL locations where the physician will be working or might work occasionally, and they must all be in a designated professional shortage area (HPSA) with a score of 7 or higher. The HPSA identifier number must be provided for all locations.
- Must contain language obligating physician to begin work within the first three months of receiving the waiver approval
- The contract must state that the physician is a full-time employee working a minimum of 40 hours per week providing primary care, family practice, general internal medicine, general pediatrics, obstetrics/gynecology, or general psychiatric services.
- The term of the contract must be for a minimum of three (3) years with a salary greater than or equal to the Level 2 wage from the United States Dept. Of Labor's prevailing wage guidelines for physicians of the same type in the same area.
- A non-compete clause must NOT be included in the contract; there can be no restrictions to practicing in the area once the three (3) year requirements are met.
- Must include a clause that the contract can only be terminated for cause until completion of the three-year commitment.
- Contract must include language regarding care to patients utilizing Medicare, Medicaid, and indigent patients.

Recruitment Requirements

- Evidence of employer's regional and national recruitment efforts, including names of non-foreign physicians applying and/or interviewed and reasons why they were not hired

Link to the government website with program and requirements.

<https://www.hhs.gov/about/agencies/oga/about-oga/what-we-do/visitor-exchange-program/supplementary-b-clinical-care.html>

Waiver Reporting Obligations

Not specified



DELTA REGIONAL AUTHORITY (DRA)

Rules and Regulations updated 2022

Required Contract Terms

- The facility name and address of ALL locations where the physician will be working or might work occasionally. These possible work locations can be listed separately as an addendum if numerous.
- Both the physician and Employer must sign and date the contract.
- The contract must state that the physician is a full-time employee working a minimum of 40 hours per week or 160 hours in direct patient care at a worksite located within the DRA (regions of AL, AR, IL, KY, LA, MS, MO, TN).
- The term of the contract must be for a minimum of three (3) years with a salary at least Level 2 of the United States Dept. Of Labor's prevailing wage guidelines for physicians of the same type in the same area.
- A non-compete clause must NOT be included in the contract; there can be no restrictions to practicing in the area once the three (3) year requirements are met.
- Contact must include language regarding care to patients utilizing Medicare, Medicaid, and indigent patients.
- The DRA will be notified of ALL post-approval contract amendments and assignments after the date of the original contract signing.

Recruitment Requirements

- Recruitment efforts must take place before the employer offers employment to or engages in an employment contract with a physician holding a J-1 visa and no longer than 12 months prior to the submission of the J-1 Visa Waiver application.
- Provide a written description of the recruitment campaign and outcomes with documentation of the practice site's position-specific advertisements.
 - Must include proof of a good-faith effort to recruit an American physician for the opportunity in the same salary range, without success, for a period of 45 days.

- Documentation of recruitment on 3 levels: national, in-state, and state medical recruitment.
- All documentation of advertising and recruitment must be specifically targeted to the employment opportunity (e.g., practice type, specific location, and specific employer).
- Acceptable documentation shall include copies of advertisements for the position published in newspapers, journals, copies of letters to state medical schools, targeted mailings, and/or copies of on-line advertisements that specifically target the practice opportunity. All documentation must include evidence of advertising duration.
- Examples of out-of-state publications which are acceptable include newspapers with national circulation (such as *USA Today* or *The Wall Street Journal*) or medical journals (such as *JAMA* or the *New England Journal of Medicine*).
- Examples of in-state publications which are acceptable include newspapers with major instate circulation (such as *The Commercial Appeal*, *The Arkansas Democrat Gazette*, or *The Clarion Ledger*), publications which are circulated in the practice area such as local newspapers/magazines, or in-state medical journals or publications.
 - Additional documentation may also be included regarding written statements of other recruitment activity including phone conversations, personal visits, and such.

Link to the government website with program and other requirements.

<https://dra.gov/initiatives/promoting-a-healthy-delta/delta-doctors-how-to-apply/how-to-apply/>

Waiver Reporting Obligations

- Physician Employment Verification Form must be completed and mailed to the DRA within the physician's first week of practice.

APPALACHIAN REGIONAL COMMISSION (ARC)

Rules and Regulations updated 2021

Required Contract Terms

- The facility name and address of ALL locations where the physician will be working or might work occasionally. These possible work locations can be listed separately as an addendum if numerous.
- Both the physician and Employer must sign and date the contract.
- The contract must state that the physician is a full-time employee working a minimum of 40 hours per week or 160 hours in direct patient care at a worksite located within the ARC (regions of AL, GA, KY, MD, MS, NY, NC, OH, PA, SC, TN, VA, WV).
- The term of the contract must be for a minimum of three (3) years with a salary at or above the United States Dept. Of Labor's prevailing wage guidelines for physicians of the same type in the same area.

- Non-compete or non-solicitation clauses (or other restrictive covenant) must NOT be included in the contract; there can be no restrictions to practicing in the area once the three (3) year requirements are met.
- Contact must include sliding fee schedule

Recruitment Requirements

- Evidence of good faith recruitment efforts (including notices sent to all relevant residency programs in state) within 6 months J-1 waiver application.
- Additional documentation may also be included regarding written statements of other recruitment activity including phone conversations, personal visits, and such.

Link to the government website with program and other requirements.

<https://www.arc.gov/j-1-visa-waivers/>

SOUTHEAST CRESCENT REGIONAL COMMISSION (SCRC)

Rules and Regulations updated 2022

Application Fee (Non-Refundable)

- \$3,000 filing fee
- SCRC does expedite review within 45 days for an additional fee of \$3,000 (not required)

Required Contract Terms

- The facility name and address of ALL locations where the physician will be working or might work occasionally. These possible work locations can be listed separately as an addendum if numerous.
- Both the physician and Employer must sign and date the contract.
- The contract must state that the physician is a full-time employee working a minimum of 40 hours per week or 160 hours per month of direct patient care at a worksite located within the SCRC (all of FL and regions of AL, GA, MS, NC, SC, VA).
- The term of the contract must be for a minimum of three (3) years with a salary at least Level 2 of the United States Dept. Of Labor's prevailing wage guidelines for physicians of the same type in the same area.
- Contract must not contain a non-compete clause or any other restrictive covenant enforceable against the foreign medical graduate after the tenure of the contract period.
- Contract must include language regarding care to patients utilizing Medicare, Medicaid, and indigent patients.
- The SCRC will be notified of ALL post-approval contract amendments and assignments after the date of the original contract signing.

Recruitment requirements

- Provide a written description of the recruitment campaign and outcomes with documentation of the practice site's position-specific advertisements:
 - Must include proof of a good-faith effort to recruit an American physician for the opportunity in the same salary range, without success, for a period of 45 days.

- Documentation of recruitment on 3 levels: national, in-state, and state medical recruitment.
- Description should include recruitment duration dates, forms and kinds of recruitment done, and responses received from those recruitment efforts.
- All documentation of advertising and recruitment must be specifically targeted to the employment opportunity (e.g., practice type, specific location, and specific employer).
- Acceptable documentation shall include copies of advertisements for the position published in newspapers, journals, copies of letters to state medical schools, targeted mailings, and/or copies of on-line advertisements that specifically target the practice opportunity. All documentation must include evidence of advertising duration.
 - Examples of out-of-state publications which are acceptable include newspapers with national circulation (such as *USA Today* or *The Wall Street Journal*) or medical journals (such as *JAMA* or *The New England Journal of Medicine*).
 - Examples of in-state publications which are acceptable include newspapers with major in-state circulation (such as *Charleston Post & Courier*, *The Miami Herald*, or *Atlanta Journal-Constitution*), publications which are circulated in the practice area such as local newspapers/magazines, or in-state medical journals or publications.
 - Additional documentation may also be included regarding written statements of other recruitment activity including phone conversations, personal visits, and such.

Link to the government website with program and other requirements.

<https://scrc.gov/>

Waiver Reporting Obligations

- Physician Employment Verification Form must be completed and mailed to the SCRC within the physician's first week of practice.

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