

Waivers: The Conrad State 30 Program

Foreign physicians in J-1 status for purposes of graduate medical education (GME) are subject to a two-year home residency requirement. Physicians subject to the two year rule who wish to remain in the U.S. following completion of their medical education have limited options to do so. These physicians are barred from receiving most nonimmigrant visas or permanent residency unless they either fulfill the two year obligation in their home country or receive a 'J-1 waiver'.

You, as recruiters, will generally be dealing with international medical graduates (IMGs) seeking J-1 waivers based on the favorable recommendation of an interested U.S. government agency, or "IGA" based on the physician's service in a medically underserved area. This presentation focuses on the state administered "Conrad 30 Waiver Program". As indicated in the name, states may recommend up to 30 waivers in any fiscal year.

IMGs may seek waivers based on service in medically underserved communities. To obtain a waiver, physicians must provide clinical services in a specific geographic location or to a specific population for at least three years, and are not eligible for permanent residency until they have completed the full three years. Programs designed to alleviate shortages of medical professionals in underserved communities include State Departments of Public Health as well as the Delta Regional Authority (DRA), the Appalachian Regional Commission (ARC), the Department of Veterans Affairs (VA), the Department of Health & Human Services (HHS), and the congressionally mandated waivers through a State Department of Public Health.

All of the States represented in MAPRA - Delaware, Kentucky, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia and Washington, D.C. participate in the Conrad 30 program.

Federal statutory requirements for Conrad 30 Programs

The statutory requirements for the Conrad 30 program include:

- Physician must agree to begin employment within 90 days of receiving the waiver
- Physician must commit to not less than three years service
- Physician must serve patients residing in federally designated medically underserved areas
 - Physician must agree to full time employment
 - If the request is to practice specialty medicine, a shortage of that specialty in the requesting community must be documented.

As long as the state programs include the requirements referenced above, they are free to determine the requirements of their individual programs. Requirements are generally detailed on the State websites. *See Appendix A.*

Fundamental Determination: Is the worksite in a HPSA, MUA/P?

Federal shortage designations include Health Professional Shortage Areas (HPSA) or a Medically Underserved Areas (MUA) or Populations (MUP). The following site indicates whether an address is located in a HPSA or MUA/P:

<http://datawarehouse.hrsa.gov/GeoAdvisor/ShortageDesignationAdvisor.aspx>. Determining whether the area of intended employment is designated as an HPSA or MUA/MUP is the first step. After the initial research on this site, it is wise to follow up after with the state administrator for the Conrad 30 Program to confirm site eligibility as the state may only, for example, approve HPSAs/MUAs with specific ratings.

Options for sites not physically located in a HPSA/MUA - FLEX Spots

Conrad 30 programs may recommend waivers for physicians who are serving patients from underserved areas, even though the practice site itself is not geographically located within a federally designated area. These sites are referred to as “FLEX” spots and a state *may* recommend waivers for up to 10 physicians in any one fiscal year, though certain states limit the number to less than 10.

State policies regarding the use of FLEX slots are constantly evolving based on the needs identified in the state. It is important not to assume that policies remain the same from year-to-year. Some states require proof that a certain percentage of the patient population to be served by the physician reside in a HPSA/MUA in order to grant a waiver for a FLEX spot. Even if the state does not require it, providing this documentation can certainly strengthen a case. This can be very important where the number of applications exceed the number of waiver slots available and your application is being judged against other applications.

Recruitment Efforts

All states in the Mid-Atlantic region require evidence that the employer tried and failed to recruit U.S. physicians. However, the extent of the recruitment and the types of evidence required to document the efforts varies somewhat from state to state. Most states in this region require 6 months of recruitment, though Pennsylvania wants 12 months and New Jersey states “good faith effort” over the last 12 months.

Primary Care versus Specialists

The focus of the Conrad 30 program initially was to bring primary care physicians into the underserved communities. Primary care medicine is generally defined as internal medicine, family medicine, pediatrics, obstetrics/gynecology, though it varies from state to state. Primary care is generally still favored, but Conrad 30 programs generally do permit specialists.¹

¹ Federal agency waivers generally are limited to primary care.

Specialists

Each state has different rules regarding how many specialists it will recommend per fiscal year, at what point during the fiscal year it will recommend a specialist, and the type and amount of additional documentation required to support an application for a specialist. Some states, for example, will only accept applications for a specialist waiver several months into the fiscal year, giving primary care physicians the first opportunity to apply for the limited number of spots available.

Basic Requirements for State 30 Applications

- Copy of the Department of State DS-3035 Application including the Third Party Bar Code
- Letter from the sponsoring health facility employer
- Valid 3 Year contract that meets the state requirements
- Every State 30 waiver application requires a contractual agreement between the employer and the J-1 physician. The statute dictates that the contract must be for full time employment for at least three years; that the physician must agree to begin employment within 90 days of receiving the waiver; and must agree to serve patients residing in federally designated medically underserved areas. Many State 30 programs also require certain terms and prohibit others. The most common required are that “physician will work at least 40 hours per week excluding on call and travel time” and “no less than 32 hours must be spent in direct patient care”. The State may require a liquidated damages clause and prohibit “non-compete” clauses and termination other than for cause.
- Proof that the facility is located in a HPSA/MUA or meets the requirements for a FLEX slot
- Proof of recruitment efforts
- Physician’s Curriculum Vitae and credentials
- Physician’s immigration documentation
- Site application including evidence on patient flow, sliding fee scale, community support letters

Serving Low Income Patients

While the Federal law only requires that physicians serve patients residing in medically underserved areas, some states also require the physicians agree to serve the medically indigent population. Many states require that employers post a sliding fee scale and/or charitable care policy, accept Medicaid, or they may give preference to safety net providers. States that emphasize service to the medically indigent include Delaware, Kentucky, Maryland, and Virginia.

Prevailing Wage Determination

Some states want to ensure that the J-1 physician is not being brought into the community to undercut the wages of U.S. physicians. Within the Mid-Atlantic region, currently only Pennsylvania has this requirement. As it can take 60 days to get a prevailing wage determination, it is important to plan accordingly.

J-1 Waiver Review

The waiver application is filed with the State Department of Public Health in which the J-1 physician will be employed. Processing times vary from state to state, with some taking a few weeks and others taking several months. The state's review is just the first step in a three step process.

If the state issues a favorable recommendation, the application is forwarded to the Waiver Review Division of the United States Department of State (DOS). The DOS generally defers to the state's recommendation, and forwards its concurrence to the Vermont Service Center (VSC), United States Citizenship and Immigration Services (USCIS). The DOS takes about 30 – 60 days to submit its recommendation to VSC.

VSC may take up to an additional 60 days to issue the final waiver approval, on Form I-797 indicating approval of the I-612, waiver of the two year home residency requirement. Therefore the total review time for a waiver can run anywhere from about three months to eight or nine months.

H-1B Process

A waiver only “waives” the two-year home residence requirement. It does not, in and of itself, grant employment authorization or permission to remain in the United States. Once the waiver is approved, the employer must file the H-1B petition. Moreover, the three year service obligation may only be fulfilled by the physician in H-1B status.

To be eligible to change status to H in the U.S., the J-1 physician must be maintaining a valid status in the U.S. The three agency review process can make this difficult, and some J-1 physicians may have to leave the U.S. and reenter the U.S. once the waiver and H-1B petition has been approved.

CONCLUSION

IMGs can be an important source to meet your need for physicians. Certainly employers must accept that there are additional requirements that must be met to hire IMGs who require a waiver. With careful planning, however, this population may be a fruitful source to meet your recruitment goals.