

IN THE SENATE

SENATE BILL NO. 1076

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE IDAHO CONRAD J-1 VISA WAIVER PROGRAM AND THE
2 NATIONAL INTEREST WAIVER PROGRAM; AMENDING THE HEADING
3 FOR CHAPTER 61, TITLE 39, IDAHO CODE, TO INCLUDE THE NATIONAL
4 INTEREST WAIVER PROGRAM; AMENDING SECTION 39-6101, IDAHO CODE,
5 TO REVISE THE SHORT TITLE; AMENDING SECTION 39-6102, IDAHO CODE,
6 TO REVISE THE CHAPTER PURPOSE; AMENDING SECTION 39-6104, IDAHO
7 CODE, TO ADD REGULATIONS INCORPORATED BY REFERENCE; AMENDING
8 SECTION 39-6105, IDAHO CODE, TO REVISE DEFINITIONS, TO DEFINE TERMS
9 AND TO REMOVE A DEFINITION; AMENDING SECTION 39-6106, IDAHO
10 CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR NATIONAL INTEREST
11 WAIVER REQUEST GENERAL REQUIREMENTS, TO PROVIDE FOR CERTAIN
12 LIMITATIONS ON THE NATIONAL INTEREST WAIVER PROGRAM, TO PROVIDE
13 FOR DISCRETIONARY AND VOLUNTARY DEPARTMENT PARTICIPATION IN
14 THE NATIONAL INTEREST WAIVER PROGRAM, TO PROVIDE A STATEMENT
15 ON THE DEVELOPMENT OF PROCEDURES FOR THE ISSUANCE OF NATIONAL
16 INTEREST WAIVER RECOMMENDATIONS AND TO CLARIFY TERMINOLOGY;
17 AMENDING SECTION 39-6107, IDAHO CODE, TO REVISE TERMINOLOGY, TO
18 PROVIDE RESTRICTIONS ON THE NATIONAL INTEREST WAIVER PROGRAM,
19 TO PROVIDE AN EXCEPTION TO RESTRICTIONS, TO PROVIDE AN EXCEPTION
20 TO A CERTAIN TIME REQUIREMENT, TO REVISE PROGRAM PURPOSE AND
21 TO CLARIFY TERMINOLOGY; AMENDING SECTION 39-6108, IDAHO CODE,
22 TO PROVIDE CERTAIN NATIONAL INTEREST WAIVER APPLICANT CRITERIA
23 AND TO REVISE APPLICANT CRITERIA; AMENDING SECTION 39-6109, IDAHO
24 CODE, TO CLARIFY TERMINOLOGY; AMENDING CHAPTER 61, TITLE 39,
25 IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-6109A, IDAHO
26 CODE, TO PROVIDE CONTRACT REQUIREMENTS FOR NATIONAL INTEREST
27 WAIVERS; AMENDING SECTION 39-6110, IDAHO CODE, TO REVISE PROPOSED
28 PRACTICE LOCATION CRITERIA AND TO MAKE TECHNICAL CORRECTIONS;
29 AMENDING SECTION 39-6111, IDAHO CODE, TO REVISE TERMINOLOGY,
30 TO PROVIDE FOR CERTAIN APPLICATION AND ELIGIBILITY CRITERIA FOR
31 A J-1 PETITIONING PHYSICIAN, TO PROVIDE WHEN CERTAIN CRITERIA
32 MUST BE MET, TO REVISE A CERTAIN DOCUMENTATION REQUIREMENT
33 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 61,
34 TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-6111A,
35 IDAHO CODE, TO PROVIDE CRITERIA FOR THE NATIONAL INTEREST
36 WAIVER PETITIONING PHYSICIAN; AMENDING SECTION 39-6112, IDAHO
37 CODE, TO REVISE THE TIMING OF CERTAIN NOTIFICATION, VERIFICATION
38 AND REPORTING REQUIREMENTS, TO PROVIDE CERTAIN REPORTING
39 REQUIREMENTS FOR THE NATIONAL INTEREST WAIVER, TO REVISE
40 TIMING REQUIREMENTS ON EMPLOYMENT CONTRACT AMENDMENTS
41

1 AND TO CLARIFY TERMINOLOGY; AMENDING SECTION 39-6113, IDAHO
 2 CODE, TO PROVIDE FOR AN APPLICATION FEE FOR NATIONAL INTEREST
 3 WAIVER REQUESTS; AMENDING SECTION 39-6114, IDAHO CODE, TO REVISE
 4 TERMINOLOGY, TO REVISE A CERTAIN DOCUMENTATION REQUIREMENT
 5 FOR A J-1 VISA WAIVER REQUEST APPLICATION AND TO MAKE TECHNICAL
 6 CORRECTIONS; AMENDING CHAPTER 61, TITLE 39, IDAHO CODE, BY
 7 THE ADDITION OF A NEW SECTION 39-6114A, IDAHO CODE, TO PROVIDE
 8 REQUIRED APPLICATION FORMS AND DOCUMENTS FOR A NATIONAL
 9 INTEREST WAIVER REQUEST; AMENDING SECTION 39-6116, IDAHO CODE, TO
 10 REVISE TERMINOLOGY, TO REQUIRE THE DEPARTMENT OF HEALTH AND
 11 WELFARE TO ACKNOWLEDGE RECEIPT OF A NATIONAL INTEREST WAIVER
 12 APPLICATION WITHIN A CERTAIN TIME, TO CLARIFY TERMINOLOGY, TO
 13 PERMIT THE DEPARTMENT TO PROVIDE AN ATTESTATION LETTER TO
 14 THE IMMIGRATION AGENCY, TO PROVIDE FOR AN EXPLANATION OF A
 15 DEPARTMENT DECISION TO DECLINE A NATIONAL INTEREST WAIVER
 16 REQUEST, TO PERMIT THE DEPARTMENT TO DENY A NATIONAL INTEREST
 17 WAIVER REQUEST, TO PERMIT THE DEPARTMENT TO WITHDRAW A
 18 NATIONAL INTEREST WAIVER RECOMMENDATION FOR SPECIFIED REASONS,
 19 TO REVISE THE REASONS THE DEPARTMENT MAY WITHDRAW A WAIVER
 20 REQUEST AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING
 21 SECTION 39-6117, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR
 22 DENIAL OF FUTURE PARTICIPATION IN THE NATIONAL INTEREST WAIVER
 23 PROGRAM FOR SPECIFIED REASONS AND TO REVISE THE TIME FRAME IN
 24 WHICH A PROGRAM PARTICIPANT MUST REMAIN IN THE PROGRAM.

25 Be It Enacted by the Legislature of the State of Idaho:

26 SECTION 1. That the Heading for Chapter 61, Title 39, Idaho Code, be, and the same is
 27 hereby amended to read as follows:

28 CHAPTER 61

29 IDAHO CONRAD J-1 VISA WAIVER AND NATIONAL INTEREST WAIVER PROGRAMS

30 SECTION 2. That Section 39-6101, Idaho Code, be, and the same is hereby amended to
 31 read as follows:

32 39-6101. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho
 33 Conrad J-1 Visa Waiver Program and National Interest Waiver Program."

34 SECTION 3. That Section 39-6102, Idaho Code, be, and the same is hereby amended to
 35 read as follows:

36 39-6102. PURPOSE. ~~The "Idaho Conrad J-1 Visa Waiver Program" would authorize~~
 37 ~~the state of Idaho department of health and welfare to recommend up to thirty (30) foreign~~
 38 ~~trained physicians per federal fiscal year to locate in communities that are federally designated~~
 39 ~~as having a health workforce shortage. Final approval of J-1 visa waiver requests are made by~~
 40 ~~the U.S. department of state and the bureau of citizenship and immigration services.~~ Under this
 41 chapter, rural and underserved communities in Idaho would be able to apply for the placement

1 of a foreign trained physician after demonstrating that they are unable to recruit an American
2 physician, and all other recruitment/placement possibilities have proven to be inaccessible.

3 (1) The "Idaho Conrad J-1 Visa Waiver Program" authorizes the Idaho department
4 of health and welfare to recommend up to thirty (30) foreign trained physicians per federal
5 fiscal year to locate in communities that are federally designated as having a health workforce
6 shortage. Final approval of J-1 visa waiver requests are made by the United States bureau of
7 citizenship and immigration services.

8 (2) The "National Interest Waiver Program" allows the Idaho department of health and
9 welfare to testify that it is in the public's interest that a waiver be granted to a foreign trained
10 physician who commits to locating in a community that is federally determined as having a
11 health workforce shortage. Final approval of the national interest waiver request is made by the
12 United States bureau of citizenship and immigration services.

13 SECTION 4. That Section 39-6104, Idaho Code, be, and the same is hereby amended to
14 read as follows:

15 39-6104. INCORPORATION BY REFERENCE. P.L. 103-416, amended by P.L.
16 107-273, November 2, 2002, 8 U.S.C. 1184(l) and 22 CFR sec. 514.44(e), F.R. volume 60, No.
17 197, 8 CFR sec. 214.12, 8 CFR sec. 245 and 18 U.S.C. 1001 are incorporated by reference.

18 SECTION 5. That Section 39-6105, Idaho Code, be, and the same is hereby amended to
19 read as follows:

20 39-6105. DEFINITIONS. As used in this chapter:

21 (1) "Applicant" means a health care facility that seeks to employ a physician and is
22 requesting state support of a J-1 visa waiver or national interest waiver.

23 (2) "Area of underservice" means a health professional shortage area in primary care
24 or mental health, a medically underserved area, or a medically underserved population,
25 federally designated by the secretary of health and human services. Physician scarcity areas as
26 determined by the centers for medicaid and medicare services are included for the purpose of
27 placing national interest waiver petitioning physicians.

28 (3) "Department" means the Idaho department of health and welfare.

29 (4) "De-designation threshold" means the number of full-time equivalent primary care
30 physicians necessary to remove the federal designation as an area of underservice.

31 (5) "Employment contract" means a legally binding agreement between the applicant
32 and the physician named in the J-1 visa waiver or national interest waiver application which
33 contains all terms and conditions of employment, including, but not limited to, the salary,
34 benefits, length of employment and any other consideration owing under the agreement. The
35 employment contract must meet all state and federal criteria, including labor and immigration
36 rules.

37 (6) "Federal fiscal year" means the twelve (12) months which commence the first day of
38 October in each year and close on the thirtieth day of September of the following year.

39 (7) "Full time" means a working week of a minimum of forty (40) hours at one (1) or
40 more health care facility facilities.

41 (8) "Health care facility" means an entity with an active Idaho taxpayer identification
42 number doing business or proposing to do business in the practice location where the physician

1 would be employed, whose stated purposes include the delivery of primary medical or mental
2 health care.

3 (9) "Interested government agency" means an agency that has the authority from the
4 United States department of state to submit requests for J-1 visa waivers of foreign physician
5 petitioners on behalf of public interest.

6 (10) "J-1 visa" means an entrance permit into the United States for a foreign trained
7 physician who is a nonimmigrant admitted under section 101(a)(15)(J) of the United States
8 information and education exchange act or who acquired such status or who acquired exchange
9 visitor status under the act.

10 (11) "J-1 visa waiver" means a federal action that waives the requirement for a foreign
11 physician, in the United States on a J-1 visa, to return to his home country for a two (2) year
12 period following medical residency training.

13 (12) "National interest waiver" means an exemption from the labor certification process
14 administered by the United States department of labor for foreign physicians whose will to stay
15 in the United States and work in an area of underservice in Idaho is determined to be in the
16 public interest by the Idaho department of health and welfare.

17 (13) "New start" means a health care facility as defined in subsection (8) of this section,
18 that has been in existence for twelve (12) months or less.

19 (14) "Physician" means the foreign physician, named in the J-1 visa waiver or national
20 interest waiver application, who requires a waiver to remain in the United States to practice
21 medicine.

22 (15) "Primary care" means a medical doctor or doctor of osteopathy licensed in
23 pediatrics, family medicine, internal medicine, obstetrics, gynecology, or psychiatry.

24 (16) "Sliding fee discount schedule" means a written delineation documenting the value
25 of charge discounts granted to patients based upon financial hardship and federal poverty
26 guidelines.

27 (17) "Unmet need" means a vacancy or shortage of primary care health physicians
28 experienced by a community or population, as defined by federally designated health
29 professional shortage areas or medically underserved areas/populations.

30 (18) "Vacancy" means a full-time physician practice opportunity in the delivery of
31 primary care services.

32 ~~(17) "visa waiver" means a federal action that waives the requirement for a foreign~~
33 ~~physician, in the United States on a J-1 visa, to return to his home country for a two (2) year~~
34 ~~period following medical residency training.~~

35 SECTION 6. That Section 39-6106, Idaho Code, be, and the same is hereby amended to
36 read as follows:

37 39-6106. GENERAL REQUIREMENTS AND LIMITATIONS. (1) J-1 v-Visa waiver or
38 national interest waiver request. The department may only submit a ~~visa~~ waiver request when:

- 39 (a) The application contains all of the required information and documentation; and
40 (b) The application meets all state and federal criteria; and
41 (c) Foreign exchange physicians having a J-1 case number assigned by the United States
42 department of state have paid all federal processing fees; and
43 (d) The applicant has paid the state of Idaho application processing fee.
44 (2) Limitations of department actions.

- 1 (a) Prior to submission of an application, the department may provide information to the
 2 applicant on preparing a complete application.
- 3 (b) The department will not be responsible for adding any information to incomplete
 4 application packets.
- 5 (c) For applicants who have benefitted from department waiver requests previously, the
 6 applicant's history of compliance will be a consideration in future decisions for waiver
 7 requests.
- 8 (d) In any single program year, a health care facility in any one (1) area of underservice:
 9 (i) Will not be allotted more than two (2) J-1 visa waiver request applications;
 10 and
 11 (ii) Will not exceed by more than one and nine-tenths (1.9) full-time equivalents,
 12 the number of J-1 physicians needed to eliminate the physician shortage as defined
 13 by the current de-designation threshold in any single program year.
- 14 (e) The shortage area designation must be current on the date the United States
 15 department of state reviews and recommends the application and on the date the
 16 immigration agency approves the J-1 visa waiver and national interest waiver. Any
 17 application that is being submitted to the department at the end of the three (3) year
 18 health professional shortage area designation cycle may be summarily denied if the
 19 renewal is not obtained.
- 20 (i) Participation by the department in the ~~Idaho-conrad~~ J-1 visa waiver program
 21 and in the national interest waiver program is completely discretionary and
 22 voluntary. The department may elect not to participate in the program at any
 23 time. The submission of a complete waiver application package does not ensure
 24 the department will recommend a waiver. The department reserves the right to
 25 recommend or decline any request for a waiver.
- 26 (ii) The department, its employees or agents are held harmless of any perceived
 27 consequence for the denial of a waiver petitioner, or the approved placement of
 28 one that is not favorable.
- 29 (iii) Application procedures for ~~Idaho-conrad~~ J-1 visa waiver physician placements
 30 were developed by the department in compliance with P.L. 103-416 and
 31 subsequent revisions. ~~They~~ The procedures for the issuance of national interest
 32 waveer recommendations were developed by the department in compliance with
 33 8 CFR sec. 214.12 and 8 CFR sec. 245 and subsequent revisions. These
 34 procedures are subject to updates and changes at any time. Interpretation of these
 35 procedures rests solely with the department in consultation with the appropriate
 36 federal agencies.

37 SECTION 7. That Section 39-6107, Idaho Code, be, and the same is hereby amended to
 38 read as follows:

39 39-6107. APPLIED PRINCIPLES. (1) Option of last resort. The J-1 visa waiver
 40 and national interest waiver programs ~~is~~ are considered a final source for recruiting qualified
 41 physicians. ~~It is~~ These programs are not a substitute for broad recruiting efforts for graduates
 42 from United States medical schools, but an option of last resort. Any application that qualifies
 43 for consideration under any other interested government agency or federal program, such as the
 44 one administered by the department of health and human services, must be submitted under
 45 that program in lieu of the ~~Idaho-conrad~~ J-1 visa waiver program. The option of last resort

1 principle does not apply to national interest waiver petitioning physicians for whom a J-1
 2 visa waiver request was issued by the state of Idaho; in which case, physician retention is the
 3 objective if it is determined to be in the public interest.

4 (2) Waiver request applications will only be considered for health care facilities that can
 5 provide evidence of sustained active recruitment over a period of at least six (6) months for the
 6 primary care vacancy in the practice location. The six (6) month vacancy requirement does not
 7 apply to a national interest waiver petitioning physician for whom a J-1 visa waiver request was
 8 issued by the state of Idaho.

9 (3) The J-1 visa waiver program and national interest waiver program will be used to
 10 assist health care facilities that can document the provision of primary health care services to
 11 all residents of the federally ~~designated underserved~~ determined area of underservice. When a
 12 federal designation is for an underserved population, the health care facility must document the
 13 provision of care to, and assure access by, the underserved population.

14 SECTION 8. That Section 39-6108, Idaho Code, be, and the same is hereby amended to
 15 read as follows:

16 39-6108. CRITERIA FOR APPLICANTS. (1) Applicants must be existing health care
 17 facilities that:

- 18 (a) Have an active taxpayer identification number in Idaho; and
- 19 (b) Have provided medical or mental health care in Idaho for a minimum of twelve (12)
 20 months prior to submitting the application, or meet the requirements for a new start as
 21 defined in this chapter.

22 (2) The waiver request to the department must come from a U.S. health care facility on
 23 behalf of the physician and not directly from the physician or his representative.

24 (3) J-1 visa waiver and national interest waiver petitioners with fellowship training must
 25 contract with employers to provide primary care services full time.

26 (4) Applicants must not be former J-1 visa waiver or national interest waiver physicians
 27 who are currently fulfilling their required three (3) or five (5) year obligation.

28 (5) Applicants may not submit waiver requests for a relative.

29 (6) Applicants must accept all patients regardless of their ability to pay.

30 (7) Except for state institutional and correctional facilities designated as federal shortage
 31 areas, the applicant must:

32 (a) Serve medicare clients, medicaid clients, low-income clients, uninsured clients, and
 33 the population of the federal designation.

34 (b) Agree to implement a sliding fee discount schedule. The schedule must be:

35 (i) Available in Spanish (where applicable) and English; and

36 (ii) Posted conspicuously; and

37 (iii) Distributed in hard copy on request to individuals making or keeping
 38 appointments with that physician.

39 (8) Applicants must have a signed employment contract with the physician, and
 40 guarantee wages for the ~~three (3) years~~ duration of the contract.

41 (9) Applicants must cooperate in providing the department with clarifying information,
 42 verifying information already provided, or in any investigation of the applicant's financial status
 43 and payer mix.

44 (10) Applicants must first apply through any organization with federal or interested
 45 governmental agency authority which submits waiver requests for Idaho's underserved rural

1 areas. Documentation which fully explains why this route was not taken for placement is
2 required as part of the application.

3 (11) The physician's name and practice location will be made available to the public as a
4 provider of primary health who accepts medicare, medicaid and utilizes a sliding fee schedule
5 for the low-income population.

6 (12) An assurance letter that the health care facility, its principals, and the J-1 or national
7 interest waiver petitioning physician are not under investigation for, under probation for,
8 or under restriction for medicare or medicaid fraud, or other violations of law or licensure
9 restrictions that may indicate that it may not be in the public interest that a waiver ~~of the two~~
10 ~~(2) year home residency requirement~~ be granted, must be provided.

11 (13) The applicant and its principals must be free of default on any federal or state
12 scholarship or loan repayment program such as the national health service corps or by the state.

13 SECTION 9. That Section 39-6109, Idaho Code, be, and the same is hereby amended to
14 read as follows:

15 39-6109. CONTRACT REQUIREMENTS FOR J-1 VISA WAIVERS. Throughout the
16 period of obligation, regardless of physician's visa status, the employment contract must:

- 17 (1) Meet state and federal requirements;
- 18 (2) Not prevent the physician from providing medical services in the designated shortage
19 area after the term of employment. A noncompetition clause or any provision that purports
20 to limit the J-1 visa waiver physician's ability to remain in the area upon completion of the
21 contract term is prohibited by regulation;
- 22 (3) State that the physician must serve medicare clients, medicaid clients, low-income
23 clients, uninsured clients, and the population of the federal designation for the area of
24 underservice full time;
- 25 (4) Include a notarized statement by the physician that he agrees to meet the
26 requirements set forth in section 214(l) of the immigration and nationality act;
- 27 (5) Guarantee the physician a base salary of at least ninety-five percent (95%) of step II
28 of the local prevailing wage for the field of practice in the area to be served;
- 29 (6) Specify that benefits offered are not included as part of base salary;
- 30 (7) Include leave (annual, sick, continuing medical education and holiday);
- 31 (8) State that amendments shall adhere to state and federal J-1 visa waiver requirements;
- 32 (9) Acknowledge that the contract may be terminated only with cause and cannot be
33 terminated by mutual agreement until the statutorily required three (3) years of medical service
34 have expired;
- 35 (10) Be assignable only by the employer to a successor with concurrence of the
36 department;
- 37 (11) Include the practice site address, the days and hours of practice, field of medicine,
38 and a statement that on-call and travel times are not included in the minimum hours;
- 39 (12) Not commence until after the physician's J-1 waiver and appropriate work
40 authorization are approved and his residency program has been successfully completed. The
41 contract shall affirm that no transfer or other modification regarding the duration of contract
42 dates will be approved unless extenuating circumstances are shown to exist, as determined
43 by the department and approved by the United States attorney general in accordance with
44 applicable federal rules and regulations;

1 (13) Not be subject to changes which result in termination of contract, change in practice
 2 scope, or relocation from a site approved in the application. Any proposed changes must be
 3 presented in writing to the department for consideration and approval at least thirty (30) days
 4 prior to the proposed change. Moving or placement of a physician to a location that was not
 5 approved by the department will result in the physician and applicant being in noncompliance
 6 with the program and will be reported as such to the immigration agency. It will also limit the
 7 applicant's future participation in the program;

8 (14) Be signed by both the J-1 visa waiver petitioning physician and the applicant
 9 employer, and the date it is signed must be clear.

10 SECTION 10. That Chapter 61, Title 39, Idaho Code, be, and the same is hereby
 11 amended by the addition thereto of a NEW SECTION, to be known and designated as Section
 12 39-6109A, Idaho Code, and to read as follows:

13 39-6109A. CONTRACT REQUIREMENTS FOR NATIONAL INTEREST
 14 WAIVERS. Throughout the period of obligation, regardless of physician's visa status,
 15 the employment contract must:

- 16 (1) Meet state and federal requirements;
- 17 (2) Not prevent the physician from providing medical services in the designated shortage
 18 area after the term of employment. A noncompetition clause or any provision that purports to
 19 limit the national interest waiver physician's ability to remain in the area upon completion of
 20 the contract term is prohibited;
- 21 (3) State that the physician must serve medicare clients, medicaid clients, low-income
 22 clients, uninsured clients and the population of the federal designation for the area of
 23 underservice full time;
- 24 (4) Guarantee the physician a base salary of at least ninety-five percent (95%) of step II
 25 of the local prevailing wage for the field of practice in the area to be served;
- 26 (5) Specify that benefits offered are not included as part of the base salary;
- 27 (6) Include annual, sick, continuing medical education and holiday leave;
- 28 (7) State that amendments shall adhere to state and federal national interest waiver
 29 requirements;
- 30 (8) Acknowledge that the contract may be terminated only with cause and cannot be
 31 terminated by mutual agreement until the statutorily required five (5) years of medical service
 32 have expired;
- 33 (9) Be assignable only by the employer to a successor with concurrence of the
 34 department;
- 35 (10) Include the practice site address, the days and hours of practice and field of
 36 medicine;
- 37 (11) Include a statement that the employment will start within ninety (90) days after the
 38 waiver approval has been issued;
- 39 (12) Not be subject to changes which result in termination of contract, change in practice
 40 scope or relocation from a site approved in the application. Any proposed changes must be
 41 presented in writing to the department for consideration and approval at least thirty (30) days
 42 prior to the proposed change. Moving or placement of a physician to a location that was not
 43 approved by the department will result in the physician and applicant being in noncompliance
 44 with the program. It will also limit the applicant's future participation in the program; and

1 (13) Be signed by both the national interest waiver petitioning physician and the applicant
2 employer, and the date it is signed must be clear.

3 SECTION 11. That Section 39-6110, Idaho Code, be, and the same is hereby amended to
4 read as follows:

5 39-6110. CRITERIA FOR PROPOSED PRACTICE LOCATION. (1) The proposed
6 practice location must be located in:

- 7 (a) A federally designated primary care health professional shortage area; ~~or~~
- 8 (b) A federally designated mental health professional shortage area for psychiatrists; ~~or~~
- 9 (c) An area having a federal designation as a medically underserved area or a medically
10 underserved population; ~~or~~
- 11 (d) A physician scarcity area for placement consideration of national interest waiver
12 petitioning physicians only; or
- 13 (e) A combination of federally designated areas.

14 (2) If a new practice location is planned, additional criteria apply. New practice
15 locations must:

- 16 (a) Have the legal, financial, and organizational structure necessary to provide a stable
17 practice environment, and must provide a business plan that supports this information;
- 18 (b) Support a full-time physician practice;
- 19 (c) Have written referral plans that describe how patients using the new primary care
20 location will be connected to existing secondary and tertiary care if needed.

21 SECTION 12. That Section 39-6111, Idaho Code, be, and the same is hereby amended to
22 read as follows:

23 39-6111. CRITERIA FOR THE J-1 PETITIONING PHYSICIAN. (1) The physician
24 must not have a J-1 visa waiver pending for any other employment offer, and must provide
25 a notarized statement testifying to this fact.

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

28 (3) Physicians must:

- 29 (a) Provide direct patient care full time; and
- 30 (b) Be trained in:
 - 31 (i) Family medicine; ~~or~~
 - 32 (ii) Internal medicine; ~~or~~
 - 33 (iii) Pediatrics; ~~or~~
 - 34 (iv) Obstetrics and gynecology; or
 - 35 (v) Psychiatry and its subspecialties.

36 (4) Physicians must ~~have~~ apply and be eligible for an active Idaho medical license.
37 The physician may be participating in an accredited residency program for this application,
38 but must have successfully completed the third year of their residency training program for
39 their employment contract to be activated. The physician must have an unrestricted license
40 to practice in the state of Idaho and be board certified or eligible in his respective medical
41 specialty at the commencement of employment. A copy of the ~~license~~ acknowledgment of
42 receipt form from the state board of medicine must be included in the waiver request.

1 (5) Physicians must have at least one (1) recommendation from their residency program
2 that:

3 (a) Addresses the physician's interpersonal and professional ability to effectively care for
4 diverse and low-income persons in the United States; and

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

7 (c) Documents the level of specialty training, if any; and

8 (d) Is prepared on residency program letterhead and is signed by residency program staff
9 or faculty; and

10 (e) Includes name, title, relationship to physician, address, and telephone number of
11 signatory.

12 (6) The physician must agree with all provisions of the employment contract as described
13 herein. Other negotiable terms of the contract are between the physician and the hiring agency.

14 (7) The physician must:

15 (a) Agree to work full time for no less than three (3) years in an area of underservice in
16 the state of Idaho; ~~and~~

17 (b) Provide health care to medicare and medicaid beneficiaries; ~~and~~

18 (c) Post and implement a sliding fee discount schedule; ~~and~~

19 (d) Serve the low-income population; ~~and~~

20 (e) Serve the uninsured population; and

21 (f) Serve the shortage designation population; or

22 (g) Serve the population of a local, state, or federal governmental institution or
23 corrections facility as an employee of the institution.

24 SECTION 13. That Chapter 61, Title 39, Idaho Code, be, and the same is hereby
25 amended by the addition thereto of a NEW SECTION, to be known and designated as Section
26 39-6111A, Idaho Code, and to read as follows:

27 39-6111A. CRITERIA FOR THE NATIONAL INTEREST WAIVER PETITIONING
28 PHYSICIAN. The national interest waiver petitioning physician must:

29 (1) (a) Provide direct patient care full time; and

30 (b) Be trained in:

31 (i) Family medicine;

32 (ii) Internal medicine;

33 (iii) Pediatrics;

34 (iv) Obstetrics and gynecology; or

35 (v) Psychiatry and its subspecialties.

36 (2) Apply and be eligible for an active Idaho medical license. The physician may be
37 participating in an accredited residency program for this application, but must have successfully
38 completed the third year of his residency training program for his employment contract to be
39 activated. The physician must have an unrestricted license to practice in the state of Idaho
40 and be board certified or eligible in his respective medical specialty at the commencement of
41 employment. A copy of the acknowledgment of receipt form from the state board of medicine
42 must be included in the waiver request.

43 (3) Have at least one (1) recommendation from their residency program and one (1) from
44 a previous employer, if applicable, that:

1 (a) Addresses the physician's interpersonal and professional ability to effectively care for
2 diverse and low-income persons in the United States;

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

5 (c) Documents the level of specialty training, if any;

6 (d) Is prepared on residency program letterhead or the employer's business letterhead and
7 is signed by residency program staff or faculty; and

8 (e) Includes name, title, relationship to physician, address and phone number of
9 signatory.

10 (4) Agree with all provisions of the employment contract as described in section
11 39-6109A, Idaho Code. Other negotiable terms of the contract are between the physician and
12 the hiring agency.

13 (5) (a) Agree to work full time for no less than five (5) years in an area of underservice
14 in the state of Idaho unless the physician qualifies for the three (3) year service provision
15 under the applicable national interest waiver rules and regulations or the physician is
16 transferring from another area of underservice;

17 (b) Provide health care to medicare and medicaid beneficiaries;

18 (c) Post and implement a sliding fee discount schedule;

19 (d) Serve the low-income population

20 (e) Serve the uninsured population; and

21 (f) Serve the shortage designation population; or

22 (g) Serve the population of a local, state or federal governmental institution or
23 corrections facility as an employee of the institution.

24 SECTION 14. That Section 39-6112, Idaho Code, be, and the same is hereby amended to
25 read as follows:

26 39-6112. JOINT REPORTING REQUIREMENT UPON COMMENCEMENT OF
27 PRACTICE. (1) Notification of waiver status and commencement of employment must
28 be submitted to the department upon receipt of written notification of approval from the
29 immigration agency. This notification must include the date the ~~three (3) year~~ medical service
30 obligation commences, and a copy of the notification of approval from the immigration agency.

31 (2) The physician and the applicant must, on commencement of practice and annually
32 thereafter or more frequently as determined by the department, and upon expiration of the ~~first~~
33 ~~three (3) years of the contract~~ physician's service obligation to the underserved area, verify
34 the physician's practice site address and field of practice. Further, for population-designated
35 health professional shortage areas, documentation that the population the physician was to serve
36 was indeed served must be submitted. This will include the facility's payer mix, the number
37 of patients seen by the physician, and the payer mix of those patients. When submitting the
38 final report, the physician must indicate whether he intends to remain in the shortage area to
39 practice.

40 (3) Sites receiving waiver approval must agree to report to the department on the status
41 of the physician's activities at the beginning of the physician's employment and every year
42 thereafter during the three (3) ~~to five (5) year~~ waiver medical service obligation period. Failure
43 to provide these reports within thirty (30) days of the annual anniversary date of approval
44 of the J-1 visa or national interest waiver in an accurate manner or failure to demonstrate
45 good faith in utilizing a physician's services in accordance with these policies will jeopardize

1 future eligibility for placements and will be cause for reporting and referral to the United States
 2 department of state and immigration agency. This referral could ultimately lead to deportation
 3 proceedings against the ~~J-1~~ physician.

4 (4) Any amendments made to the required elements of the employment contract during
 5 the ~~first three (3) years for primary care physician's of contracted employment~~ medical service
 6 obligation must be reported to the department for review. The department will complete review
 7 and provide notice of approval or declination of such amendments within thirty (30) calendar
 8 days of receipt.

9 SECTION 15. That Section 39-6113, Idaho Code, be, and the same is hereby amended to
 10 read as follows:

11 39-6113. APPLICATION FEE. At the time the application is submitted to the
 12 department, an administrative fee must be paid to the department by the applicant. The fee
 13 amount will be determined by the director of the department, will not be less than one thousand
 14 dollars (\$1,000) for a J-1 visa waiver request, and three hundred fifty dollars (\$350) for a
 15 national interest waiver request, and may be revised at the beginning of the state fiscal year by
 16 the director based on costs to administer the program. The fee is nonrefundable.

17 SECTION 16. That Section 39-6114, Idaho Code, be, and the same is hereby amended to
 18 read as follows:

19 39-6114. REQUIRED APPLICATION FORMS AND ACCOMPANYING
 20 DOCUMENTS FOR A J-1 VISA WAIVER REQUEST. (1) Applications for the ~~Idaho contract~~
 21 J-1 visa waiver program must include, but not be limited to, the following:

- 22 (a) Evidence the applicant has no other mechanism through another process or interested
 23 government agency to apply for a J-1 visa waiver for the physician;
- 24 (b) Evidence of recruiting efforts over a minimum of six (6) months prior to when
 25 the physician applied for the vacancy; this must include regional and national print
 26 advertising stating the position available and the practice site location and at least six (6)
 27 certified letters to medical schools to advertise the vacancy. Copies of advertisements
 28 submitted must show the publication date. Advertisements run at the time of or after
 29 preparation of the employment contract are unusable. Online advertisements must show
 30 dates the advertisements were online. Contracts with recruitment firms are allowable as
 31 evidence in lieu of print advertisements or letters if the activities described in this section
 32 are provided under contract. Recruitment firm contracts must be included if applicable;
- 33 (c) Evidence that the physician selected for the position visited the practice site;
- 34 (d) A mailing list of physicians who applied for the position and the reason they were
 35 not selected;
- 36 (e) Evidence that the applicant has been providing medical or mental health care in Idaho
 37 for at least twelve (12) months or meets the requirements for a new start as defined in
 38 this chapter. This includes, but may not be limited to, the Idaho taxpayer identification
 39 number, facility address, fax and telephone numbers, and staffing list;
- 40 (f) A copy of an employment contract between the physician and the applicant for no
 41 less than three (3) years;
- 42 (g) Evidence that the employment site is in a designated area of underservice;

1 (h) The request must be submitted by the applicant or applicant's representative. The
 2 letter must be written on the applicant's letterhead stationery, which includes address,
 3 telephone and fax numbers, if any. Letters, contracts and forms must contain original
 4 signatures;

5 (i) A copy of the sliding fee scale which the health care facility must agree to implement
 6 and post;

7 (j) A copy of the physician's license to practice medicine in the state of Idaho, or proof
 8 of the physician's eligibility to apply for an Idaho license;

9 (k) Legible copies of all IAP-66/DS 2019 forms (certificate of eligibility for exchange
 10 visitor status), covering every period the physician was in J-1 status, submitted in
 11 chronological order;

12 (l) Legible copies (front and back) of all I-94 entry and departure cards for the physician
 13 and family members;

14 (m) The physician's curriculum vitae;

15 (n) A statement of "no objection from the government" of the physician's country of
 16 nationality, if applicable. The government of the country to which the physician is
 17 otherwise contractually obliged to return must furnish a letter to the director of the United
 18 States department of state with a statement in writing that there is no objection to such
 19 waiver in cases where the physician's medical education or training is funded by the
 20 government of the physician's home country. Whether or not there is foreign government
 21 funding can be determined from examining the physician's IAP-66 form. This letter must
 22 be in English and follow the procedures and format outlined in federal register volume
 23 60, number 197, published October 12, 1995 (or subsequent revisions);

24 (o) Payment of the department's administrative application processing fee;

25 (p) Federal form G-28 or letterhead from the law office, if the physician is being
 26 represented by an attorney, with telephone and fax numbers, and a contact name and
 27 address;

28 (q) A copy of the United States department of state issued instruction sheet with case
 29 number.

30 (2) The state may require any other documentation or information for the support and
 31 approval process in the waiver application on the part of the physician or the applicant.

32 (3) These requirements are subject to change without notice.

33 (4) ~~Idaho code~~ J-1 visa waiver program application forms and instructions are available
 34 and may be requested from the department.

35 (5) The physician's case number must appear on each page. The case number is
 36 assigned by the United States department of state.

37 (6) All required information and documentation must be submitted in a single package
 38 with all documents presented per instructions that will be provided by the department upon
 39 request. One (1) single-sided, unbound original and one (1) single-sided, unbound copy must
 40 be included. Waiver requests that do not comply with these requirements and the instructions
 41 provided by the department will not be considered.

42 SECTION 17. That Chapter 61, Title 39, Idaho Code, be, and the same is hereby
 43 amended by the addition thereto of a NEW SECTION, to be known and designated as Section
 44 39-6114A, Idaho Code, and to read as follows:

1 39-6114A. REQUIRED APPLICATION FORMS AND DOCUMENTS FOR A
2 NATIONAL INTEREST WAIVER REQUEST. (1) Applications for the national interest waiver
3 program must include, but not be limited to, the following:

- 4 (a) Evidence of recruiting efforts over a minimum of six (6) months prior to when the
5 physician applied for the vacancy. This evidence must include regional and national print
6 advertising stating the position available and the practice site location and at least six (6)
7 certified letters to medical schools to advertise the vacancy. Copies of advertisements
8 submitted must show the publication date. Advertisements run at the time of or after
9 preparation of the employment contract are unusable. Online advertisements must show
10 dates the advertisements were online. Contracts with recruitment firms are allowable
11 as evidence in lieu of print advertisements or letters if the activities described in this
12 paragraph are provided under contract. Recruitment firm contracts must be included, if
13 applicable. The provision of evidence for recruitment efforts over a six (6) month period
14 is not necessary for national interest waiver petitioning physicians who receive a J-1 visa
15 waiver at the request of the state of Idaho;
- 16 (b) Evidence that the physician selected for the position visited the practice site;
- 17 (c) A mailing list of physicians who applied for the position and the reason they were not
18 selected;
- 19 (d) Evidence that the applicant has been providing medical or mental health care in
20 Idaho for at least twelve (12) months or meets the requirements for a new start as defined
21 in section 39-6105, Idaho Code. This includes, but may not be limited to, the Idaho
22 taxpayer identification number, facility address, fax and telephone numbers and staffing
23 list;
- 24 (e) A copy of an employment contract between the physician and the applicant;
- 25 (f) Evidence that the employment site is in a federally determined area of underservice;
- 26 (g) The request must be submitted by the applicant or applicant's representative. The
27 letter must be written on the applicant's letterhead stationery, which includes address,
28 telephone and fax numbers, if any. Letters, contracts and forms must contain original
29 signatures;
- 30 (h) A copy of the sliding fee scale which the health care facility must agree to implement
31 and post;
- 32 (i) A copy of the physician's license to practice medicine in the state of Idaho, or
33 eligibility to apply for an Idaho license;
- 34 (j) Legible copies of any DS 2019 forms (formerly IAP-66), and other United States
35 immigration documentation attesting to the physician's current legal status and history of
36 stay in the United States;
- 37 (k) The physician's curriculum vitae; and
- 38 (l) Payment of the department's administrative application processing fee.
- 39 (2) The state of Idaho may require any other documentation or information for the
40 support and approval process in the waiver application on the part of the physician or the
41 applicant.
- 42 (3) These requirements are subject to change without notice.

43 SECTION 18. That Section 39-6116, Idaho Code, be, and the same is hereby amended to
44 read as follows:

1 39-6116. DEPARTMENT REVIEW AND ACTION. (1) The department will review
2 applications for completeness in date order received.

3 (2) Applications submitted for physicians with language skills appropriate to the
4 community they wish to serve will be given priority.

5 (3) Selection preference will be given to applications received from HPSAs having the
6 greatest unmet need for primary care physicians.

7 (4) Applications must be mailed, sent by commercial carrier, or delivered in person.
8 Applications may not be sent electronically. The department is not responsible for applications
9 or related materials lost in the mail.

10 (5) The department may limit the time period during which applications may be
11 submitted including refusing to process applications after the department has submitted requests
12 for all applications allowed in a given federal fiscal year.

13 (6) In the event an applicant for a J-1 visa waiver or a national interest waiver submits
14 an application to the department, the department will acknowledge receipt of the copy of the
15 application within five (5) business days of receipt.

16 (7) The department will review applications within fifteen (15) working days of receipt
17 of the application to determine if the application is complete, and provide a written explanation
18 of missing items.

19 (8) An additional fee will not be charged for incomplete applications if the missing items
20 are provided within thirty (30) calendar days of the date on the letter of explanation from the
21 department. If new information is not received within this time frame, the application will be
22 returned to the applicant. The application fee will not be returned.

23 (9) The department will return applications and application fees to applicants having had
24 two (2) approved J-1 visa waiver requests in the current federal fiscal year for the shortage
25 area, applications received that exceed the de-designation threshold limit, and applications
26 received after thirty (30) placements have been recommended.

27 (10) The department will review complete applications against the criteria specified in this
28 chapter.

29 (11) The department may:

30 (a) Request additional clarifying information;

31 (b) Verify information presented;

32 (c) Investigate the financial status of the applicant;

33 (d) Request verification of the health care facility's payer mix for the previous twelve
34 (12) to eighteen (18) months; and

35 (e) Return the application as incomplete if the applicant does not supply the requested
36 clarifying information in its entirety within thirty (30) days of request. The application
37 fee is nonrefundable. Incomplete applications must be resubmitted with the application
38 fee. Resubmitted applications will be considered new applications and will be reviewed
39 in date order received.

40 (12) The department may request the director of the United States department of state to
41 recommend that the immigration agency grant the J-1 visa waiver.

42 (13) The department may provide a letter of attestation to the immigration agency that the
43 physician's work in Idaho is in the public interest for a national interest waiver.

44 (14) The department will notify the applicant in writing of action taken by the
45 department. If the decision is to decline the J-1 visa waiver or national interest waiver request,

1 the department will provide an explanation of how the application failed to meet the stated
2 criterion or criteria. The application fee is nonrefundable.

3 (145) The department may deny a J-1 visa waiver or national interest waiver request or,
4 prior to United States department of state or immigration agency approval, may withdraw a
5 J-1 visa waiver or national interest waiver recommendation for cause, which shall include the
6 following:

- 7 (a) The application is not consistent with state or federal criteria;
- 8 (b) Fraud;
- 9 (c) Misrepresentation;
- 10 (d) False statements;
- 11 (e) Misleading statements;
- 12 (f) Evasion or suppression of material facts in the J-1 visa waiver or national interest
13 waiver application or in any of its required documentation and supporting materials;
- 14 (g) Incomplete or insufficient information;
- 15 (h) Allowable number of recommendations for the area or year has been met.

16 (156) Applications denied may be resubmitted with concerns addressed, with the
17 application fee. Resubmitted applications will be considered new applications and will be
18 reviewed in date order received.

19 (167) The department retains the authority to audit, monitor and conduct unannounced
20 site visits.

21 SECTION 19. That Section 39-6117, Idaho Code, be, and the same is hereby amended to
22 read as follows:

23 39-6117. ELIGIBILITY FOR FUTURE PARTICIPATION. Health care facilities may be
24 denied future participation in the ~~Idaho Conrad~~ J-1 visa waiver program or national interest
25 waiver program if:

- 26 (1) The required annual reports are not submitted in a complete and timely manner;
- 27 (2) A physician does not serve the designated shortage area or shortage population
28 approved at the time of placement for the full three (3) to five (5) years of employment. This
29 does not apply only if the approved site is in a designated health professional shortage area that
30 loses its designation after the physician begins employment;
- 31 (3) A physician does not remain employed by the applicant for the full three (3) to five
32 (5) years of employment;
- 33 (4) The applicant or physician is not in compliance with the terms defined in this chapter
34 or any federal requirements.