

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 81

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO THE IDAHO CONRAD J-1 VISA WAIVER PROGRAM; AMENDING SECTION
2 39-6102, IDAHO CODE, TO REVISE PROVISIONS REGARDING PURPOSE; AMENDING
3 SECTION 39-6105, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION
4 39-6106, IDAHO CODE, TO REVISE PROVISIONS REGARDING REQUIREMENTS AND
5 LIMITATIONS OF THE WAIVER PROGRAM AND TO MAKE A TECHNICAL CORRECTION;
6 AMENDING SECTION 39-6107, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING
7 SECTION 39-6108, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION
8 39-6109, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 39-6110,
9 IDAHO CODE, TO REVISE PROVISIONS REGARDING CRITERIA FOR PROPOSED PRAC-
10 TICE LOCATIONS; AMENDING SECTION 39-6111, IDAHO CODE, TO REVISE CRITE-
11 RIA FOR PETITIONING PHYSICIANS; AMENDING CHAPTER 61, TITLE 39, IDAHO
12 CODE, BY THE ADDITION OF A NEW SECTION 39-6111A, IDAHO CODE, TO PROVIDE
13 FOR FLEX WAIVERS; AMENDING SECTION 39-6111A, IDAHO CODE, TO REDESIGNATE
14 THE SECTION; AMENDING SECTION 39-6112, IDAHO CODE, TO REVISE TERMI-
15 NOLOGY; AMENDING SECTION 39-6114, IDAHO CODE, TO REVISE TERMINOLOGY;
16 AMENDING SECTION 39-6114A, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING
17 SECTION 39-6115, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION
18 39-6116, IDAHO CODE, TO REVISE PROVISIONS REGARDING REVIEW AND ACTION
19 BY THE STATE DEPARTMENT OF HEALTH AND WELFARE AND TO MAKE A TECHNICAL
20 CORRECTION; AMENDING SECTION 39-6117, IDAHO CODE, TO REVISE TERMINOL-
21 OGY; AMENDING SECTION 39-6118, IDAHO CODE, TO REVISE TERMINOLOGY; AND
22 DECLARING AN EMERGENCY.
23

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

25 SECTION 1. That Section 39-6102, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 39-6102. PURPOSE. Under this chapter, rural and underserved communi-
28 ties in Idaho would be able to apply for the placement of a foreign trained
29 physician after demonstrating that they are unable to recruit an American
30 physician, and all other recruitment/placement possibilities have proven to
31 be inaccessible.

32 (1) The "Idaho Conrad J-1 Visa Waiver Program" authorizes the Idaho de-
33 partment of health and welfare to recommend up to thirty (30) foreign trained
34 physicians per federal fiscal year to locate in communities that are feder-
35 ally designated as having a health workforce shortage. No more than ten (10)
36 of thirty (30) recommendations may be for physician specialists other than
37 pediatrics, internal medicine, family medicine, obstetrics, gynecology,
38 psychiatry or general surgery. Applications for specialists must demon-
39 strate a need for the type of specialty held by the petitioning physician.
40 Final approval of J-1 visa waiver requests are made by the United States bu-
41 reau of citizenship and immigration services.

1 (2) Provided health care organizations located in federally designated
 2 shortage areas do not utilize the full annual allocation of J-1 visa waivers,
 3 the department will accept no more than ten (10) waiver applications six (6)
 4 months after the beginning of each federal fiscal year for petitioning J-1
 5 visa waiver physicians to work in areas without a federal shortage area des-
 6 ignation. The practice and petitioning physician must serve patients who
 7 reside in federally designated areas of underservice. The maximum number of
 8 flex waiver applications available to specialists is limited to no more than
 9 five (5) per federal fiscal year.

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

16 SECTION 2. That Section 39-6105, Idaho Code, be, and the same is hereby
 17 amended to read as follows:

18 39-6105. DEFINITIONS. As used in this chapter:

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

22 (2) "Area of underservice" means a health professional shortage area in
 23 primary care or mental health, a medically underserved area, or a medically
 24 underserved population, federally designated by the secretary of health and
 25 human services. ~~Physician scarcity areas as determined by the centers for~~
 26 ~~medicaid and medicare services are included for the purpose of placing na-~~
 27 ~~tional 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 equiva-~~
 30 ~~lent primary care physicians necessary to remove the federal designation as~~
 31 ~~an area of underservice.~~

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

39 ~~(6)~~ "Federal fiscal year" means the twelve (12) months which com-
 40 mence the first day of October in each year and close on the thirtieth day of
 41 September of the following year.

42 (6) "Flex" means the maximum of ten (10) waiver applications, with
 43 no more than five (5) available to specialists, that may be submitted six
 44 (6) months following the beginning of each federal fiscal year for J-1 visa
 45 waiver physicians to work in areas without a federal shortage area designa-
 46 tion.

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

1 (8) "Health care facility" means an entity with an active Idaho tax-
 2 payer identification number doing business or proposing to do business in
 3 the practice location where the physician would be employed, whose stated
 4 purposes include the delivery of primary medical or mental health care.

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

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

13 (11) "J-1 visa waiver" means a federal action that waives the require-
 14 ment for a foreign physician, in the United States on a J-1 visa, to return to
 15 his home country for a two (2) year period following medical residency train-
 16 ing.

17 (12) "National interest waiver" means an exemption from the labor cer-
 18 tification process administered by the United States department of labor for
 19 foreign physicians whose will to stay in the United States and work in an area
 20 of underservice in Idaho is determined to be in the public interest by the
 21 Idaho department of health and welfare.

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

25 (14) "Petitioning pPhysician" means the foreign physician, named in
 26 the J-1 visa waiver or national interest waiver application, who requires a
 27 waiver to remain in the United States to practice medicine.

28 (15) "Primary care" means a medical doctor or doctor of osteopathy li-
 29 censed in pediatrics, family medicine, internal medicine, obstetrics, gyne-
 30 cology, general surgery or psychiatry.

31 (16) "Sliding fee discount schedule" means a written delineation docu-
 32 menting the value of charge discounts granted to patients based upon finan-
 33 cial hardship and federal poverty guidelines.

34 (17) "Specialist" means a medical doctor or doctor of osteopathy in any
 35 specialty or subspecialty other than pediatrics, family medicine, internal
 36 medicine, obstetrics, gynecology, general surgery or psychiatry.

37 (18) "Unmet need" means a vacancy or shortage of primary care health or
 38 specialist physicians experienced by a community or population, as defined
 39 by federally designated health professional shortage areas or medically un-
 40 derserved areas/populations or as demonstrated by additional data and in-
 41 formation required by the department.

42 (189) "Vacancy" means a full-time physician practice opportunity in the
 43 delivery of primary health care services.

44 SECTION 3. That Section 39-6106, Idaho Code, be, and the same is hereby
 45 amended to read as follows:

46 39-6106. GENERAL REQUIREMENTS AND LIMITATIONS. (1) J-1 visa waiver or
 47 national interest waiver request. The department may only submit a waiver
 48 request when:

1 (a) The application contains all of the required information and docu-
2 mentation; and

3 (b) The application meets all state and federal criteria; and

4 (c) Foreign exchange physicians having a J-1 case number assigned by
5 the United States department of state have paid all federal processing
6 fees; and

7 (d) The applicant has paid the state of Idaho application processing
8 fee.

9 (2) Limitations of department actions.

10 (a) Prior to submission of an application, the department may provide
11 information to the applicant on preparing a complete application.

12 (b) The department will not be responsible for adding any information
13 to incomplete application packets.

14 (c) For applicants who have ~~benefitted~~ benefited from department
15 waiver requests previously, the applicant's history of compliance will
16 be a consideration in future decisions for waiver requests.

17 (d) In any single program year, a health care facility ~~in any one (1)~~
18 ~~area of underservice:~~

19 ~~(i) Will not be allotted more than two (2) J-1 visa waiver re-~~
20 ~~quest applications; and~~

21 ~~(ii) Will not exceed by more than one and nine-tenths (1.9) full-~~
22 ~~time equivalents, the number of J-1 physicians needed to eliminate~~
23 ~~the physician shortage as defined by the current de-designation~~
24 ~~threshold in any single program year per practice location.~~

25 (e) The shortage area designation must be current on the date the United
26 States department of state reviews and recommends the application and
27 on the date the immigration agency approves the J-1 visa waiver and na-
28 tional interest waiver. Any application that is being submitted to the
29 department at the end of the three (3) year health professional shortage
30 area designation cycle may be summarily denied if the renewal is not ob-
31 tained.

32 (i) Participation by the department in the J-1 visa waiver pro-
33 gram and in the national interest waiver program is completely
34 discretionary and voluntary. The department may elect not to par-
35 ticipate in the program at any time. The submission of a complete
36 waiver application package does not ensure the department will
37 recommend a waiver. The department reserves the right to recom-
38 mend or decline any request for a waiver.

39 (ii) The department, its employees or agents are held harmless of
40 any perceived consequence for the denial of a waiver petitioner,
41 or the approved placement of one that is not favorable.

42 (iii) Application procedures for J-1 visa waiver physician place-
43 ments were developed by the department in compliance with P.L.
44 103-416 and subsequent revisions. The procedures for the issuance
45 of national interest waiver recommendations were developed by the
46 department in compliance with 8 CFR sec. 214.12 and 8 CFR sec. 245
47 and subsequent revisions. These procedures are subject to updates
48 and changes at any time. Interpretation of these procedures rests
49 solely with the department in consultation with the appropriate
50 federal agencies.

1 SECTION 4. That Section 39-6107, Idaho Code, be, and the same is hereby
2 amended to read as follows:

3 39-6107. APPLIED PRINCIPLES. (1) Option of last resort. The J-1 visa
4 waiver and national interest waiver programs are considered a final source
5 for recruiting qualified physicians. These programs are not a substi-
6 tute for broad recruiting efforts for graduates from United States medical
7 schools, but an option of last resort. Any application that qualifies for
8 consideration under any other interested government agency or federal pro-
9 gram, such as the one administered by the department of health and human
10 services, must be submitted under that program in lieu of the J-1 visa waiver
11 program. The option of last resort principle does not apply to national
12 interest waiver petitioning physicians for whom a J-1 visa waiver request
13 was issued by the state of Idaho; in which case, physician retention is the
14 objective if it is determined to be in the public interest.

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

21 (3) The J-1 visa waiver program and national interest waiver program
22 will be used to assist health care facilities that can document the provision
23 of ~~primary~~ health care services to all residents of the federally determined
24 area of underservice. When a federal designation is for an underserved popu-
25 lation, the health care facility must document the provision of care to, and
26 assure access by, the underserved population.

27 SECTION 5. That Section 39-6108, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 39-6108. CRITERIA FOR APPLICANTS. (1) Applicants must be existing
30 health care facilities that:

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

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

38 (3) J-1 visa waiver and national interest waiver petitioners with fel-
39 lowship training must contract with employers to provide primary care ser-
40 vices full time.

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

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

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

47 (7) Except for state institutional and correctional facilities desig-
48 nated as federal shortage areas, the applicant must:

1 (a) Serve medicare clients, medicaid clients, low-income clients,
 2 uninsured clients, and the population of ~~the~~ a federal shortage design-
 3 nation.

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

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

7 (ii) Posted conspicuously; and

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

10 (8) Applicants must have a signed employment contract with the physi-
 11 cian, and guarantee wages for the duration of the contract.

12 (9) Applicants must cooperate in providing the department with clari-
 13 fying information, verifying information already provided, or in any inves-
 14 tigation of the applicant's financial status and payer mix.

15 (10) Applicants must first apply through any organization with federal
 16 or interested governmental agency authority which submits waiver requests
 17 for Idaho's underserved rural areas. Documentation which fully explains why
 18 this route was not taken for placement is required as part of the applica-
 19 tion.

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

23 (12) An assurance letter that the health care facility, its principals,
 24 and the J-1 or national interest waiver petitioning physician are not un-
 25 der investigation for, under probation for, or under restriction for medi-
 26 care or medicaid fraud, or other violations of law or licensure restrictions
 27 that may indicate that it may not be in the public interest that a waiver be
 28 granted, must be provided.

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

32 SECTION 6. That Section 39-6109, Idaho Code, be, and the same is hereby
 33 amended to read as follows:

34 39-6109. CONTRACT REQUIREMENTS FOR J-1 VISA WAIVERS. Throughout the
 35 period of obligation, regardless of the petitioning physician's visa sta-
 36 tus, the employment contract must:

37 (1) Meet state and federal requirements;

38 (2) Not prevent the physician from providing medical services in the
 39 designated shortage area after the term of employment. A noncompetition
 40 clause or any provision that purports to limit the J-1 visa waiver physi-
 41 cian's ability to remain in the area upon completion of the contract term is
 42 prohibited by regulation;

43 (3) State that the physician must serve medicare clients, medicaid
 44 clients, low-income clients, uninsured clients, and the population of the
 45 federal designation for the area of underservice full time;

46 (4) Include a notarized statement by the physician that he agrees to
 47 meet the requirements set forth in section 214(1) of the immigration and na-
 48 tionality act;

1 (5) Guarantee the physician a base salary of at least ninety-five per-
2 cent (95%) of step II of the local prevailing wage for the field of practice
3 in the area to be served;

4 (6) Specify that benefits offered are not included as part of base
5 salary;

6 (7) Include leave (annual, sick, continuing medical education and hol-
7 iday);

8 (8) State that amendments shall adhere to state and federal J-1 visa
9 waiver requirements;

10 (9) Acknowledge that the contract may be terminated only with cause
11 and cannot be terminated by mutual agreement until the statutorily required
12 three (3) years of medical service have expired;

13 (10) Be assignable only by the employer to a successor with concurrence
14 of the department;

15 (11) Include the practice site address, the days and hours of practice,
16 field of medicine, and a statement that on-call and travel times are not in-
17 cluded in the minimum hours;

18 (12) Include a statement that the employment will start within ninety
19 (90) days after the waiver approval has been issued;

20 (13) Not commence until after the petitioning physician's J-1 waiver
21 and appropriate work authorization are approved and his the residency pro-
22 gram has been successfully completed. The contract shall affirm that no
23 transfer or other modification regarding the duration of contract dates will
24 be approved unless extenuating circumstances are shown to exist, as deter-
25 mined by the department and approved by the United States attorney general in
26 accordance with applicable federal rules and regulations;

27 (134) Not be subject to changes which result in termination of contract,
28 change in practice scope, or relocation from a site approved in the appli-
29 cation. Any proposed changes must be presented in writing to the department
30 for consideration and approval at least thirty (30) days prior to the pro-
31 posed change. Moving or placement of a J-1 visa waiver physician to a lo-
32 cation that was not approved by the department will result in the physician
33 and applicant being in noncompliance with the program and will be reported
34 as such to the immigration agency. It will also limit the applicant's future
35 participation in the program;

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

38 SECTION 7. That Section 39-6110, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 39-6110. CRITERIA FOR PROPOSED PRACTICE LOCATION. (1) The proposed
41 practice location must ~~be located in:~~

42 (a) A Be located in an area of underservice federally designated
43 primary care health professional shortage area; by the secretary of
44 health and human services; or

45 (b) A Serve patients who reside in an area of underservice federally
46 designated mental health professional shortage area for psychiatrists;
47 by the secretary of health and human services for flex waiver applica-
48 tions only

1 ~~(c) An area having a federal designation as a medically underserved~~
 2 ~~area or a medically underserved population;~~

3 ~~(d) A physician scarcity area for placement consideration of national~~
 4 ~~interest waiver petitioning physicians only; or~~

5 ~~(e) A combination of federally designated areas.~~

6 (2) If a new practice location is planned, additional criteria apply.

7 New practice locations must:

8 (a) Have the legal, financial, and organizational structure necessary
 9 to provide a stable practice environment, and must provide a business
 10 plan that supports this information;

11 (b) Support a full-time physician practice;

12 (c) Have written referral plans that describe how patients using the
 13 new primary practice care location will be connected to existing sec-
 14 ondary and tertiary care if needed.

15 SECTION 8. That Section 39-6111, Idaho Code, be, and the same is hereby
 16 amended to read as follows:

17 39-6111. CRITERIA FOR THE J-1 PETITIONING PHYSICIAN. (1) The
 18 petitioning physician must not have a J-1 visa waiver pending for any other
 19 employment offer, and must provide a notarized statement testifying to this
 20 fact.

21 (2) The physician must have the qualifications described in recruit-
 22 ment efforts for a specific vacancy.

23 (3) Petitioning pPhysicians must:

24 (a) Provide direct patient care full time; and

25 (b) Be trained in:

26 (i) Family medicine;

27 (ii) Internal medicine;

28 (iii) Pediatrics;

29 (iv) Obstetrics and gynecology;

30 (v) General surgery; ~~or~~

31 (vi) Psychiatry and its subspecialties; or

32 (vii) Other specialties licensed or eligible for licensure by the
 33 Idaho board of medicine, if there is a demonstrated need by the ap-
 34 plicant organization.

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

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

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

1 (b) Describes an ability to work well with supervisory and subordinate
2 medical staff, and adapt to the culture of United States health care fa-
3 cilities;

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

5 (d) Is prepared on residency program letterhead and is signed by resi-
6 dency program staff or faculty; and

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

9 (6) The petitioning physician must agree with all provisions of the em-
10 ployment contract as described in section 39-6109, Idaho Code. Other nego-
11 tiable terms of the contract are between the petitioning physician and the
12 hiring agency.

13 (7) The petitioning physician must:

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

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

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

18 (d) Serve the low-income population;

19 (e) Serve the uninsured population; and

20 (f) Serve the shortage designation population; or

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

23 SECTION 9. That Chapter 61, Title 39, Idaho Code, be, and the same is
24 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
25 ignated as Section 39-6111A, Idaho Code, and to read as follows:

26 39-6111A. FLEX WAIVERS FOR J-1 PETITIONING PHYSICIANS. The department
27 will accept no more than ten (10) waiver applications six (6) months after
28 the beginning of each federal fiscal year for petitioning J-1 visa waiver
29 physicians to work in areas without a federal shortage area designation. The
30 practice and petitioning physician must serve patients who reside in feder-
31 ally designated areas of underservice. The maximum number of flex applica-
32 tions may not exceed the total number of waiver slots available.

33 (1) The practice location must be located outside of a federally desig-
34 nated shortage area to apply for a flex waiver.

35 (2) The applicant organization and petitioning physician must meet all
36 eligibility, application and reporting requirements with the exception of
37 the practice location.

38 (3) The applicant organization must submit documentation demonstrat-
39 ing how the practice location and petitioning physician will serve patients
40 who reside in federally designated areas of underservice.

41 (4) The maximum number of flex waiver applications available for spe-
42 cialists is limited to no more than five (5) per federal fiscal year.

43 (5) Flex waiver applications must demonstrate a need for the primary
44 care or specialty petitioning physician.

45 SECTION 10. That Section 39-6111A, Idaho Code, be, and the same is
46 hereby redesignated as Section 39-6111B, Idaho Code, and amended to read as
47 follows:

1 39-6111AB. CRITERIA FOR THE NATIONAL INTEREST WAIVER PETITIONING
2 PHYSICIAN. The national interest waiver petitioning physician must:

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

4 (b) Be trained in:

5 (i) Family medicine;

6 (ii) Internal medicine;

7 (iii) Pediatrics;

8 (iv) Obstetrics and gynecology;

9 (v) General surgery; or

10 (vi) Psychiatry and its subspecialties.

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

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

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

24 (b) Describes an ability to work well with supervisory and subordinate
25 medical staff, and adapt to the culture of United States health care fa-
26 cilities;

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

28 (d) Is prepared on residency program letterhead or the employer's busi-
29 ness letterhead and is signed by residency program staff or faculty; and

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

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

35 (5) (a) Agree to work full time for no less than five (5) years in an
36 area of underservice in the state of Idaho unless the physician quali-
37 fies for the three (3) year service provision under the applicable na-
38 tional interest waiver rules and regulations or the physician is trans-
39 ferring from another area of underservice;

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

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

42 (d) Serve the low-income population;

43 (e) Serve the uninsured population; and

44 (f) Serve the shortage designation population; or

45 (g) Serve the population of a local, state or federal governmental in-
46 stitution or corrections facility as an employee of the institution.

47 SECTION 11. That Section 39-6112, Idaho Code, be, and the same is hereby
48 amended to read as follows:

1 39-6112. JOINT REPORTING REQUIREMENT UPON COMMENCEMENT OF PRAC-
2 TICE. (1) Notification of waiver status and commencement of employment must
3 be submitted to the department upon receipt of written notification of ap-
4 proval from the immigration agency. This notification must include the date
5 the medical service obligation commences, and a copy of the notification of
6 approval from the immigration agency.

7 (2) The waiver physician and the applicant must, on commencement of
8 practice and annually thereafter or more frequently as determined by the
9 department, and upon expiration of the physician's service obligation to the
10 underserved area, verify the physician's practice site address and field of
11 practice. Further, ~~for population-designated health professional short-~~
12 ~~age areas,~~ documentation that the population the physician was to serve was
13 indeed served must be submitted. This will include the facility's payer
14 mix, the number of patients seen by the physician, and the payer mix of those
15 patients. When submitting the final report, the physician must indicate
16 whether he intends to remain in the shortage area to practice.

17 (3) Sites receiving waiver approval must agree to report to the de-
18 partment on the status of the physician's activities at the beginning of the
19 physician's employment and every year thereafter during the three (3) to
20 five (5) year medical service obligation period. Failure to provide these
21 reports within thirty (30) days of the annual anniversary date of approval
22 of the J-1 visa or national interest waiver in an accurate manner or failure
23 to demonstrate good faith in utilizing a physician's services in accordance
24 with these policies will jeopardize future eligibility for placements and
25 will be cause for reporting and referral to the United States department of
26 state and immigration agency. This referral could ultimately lead to depor-
27 tation proceedings against the physician.

28 (4) Any amendments made to the required elements of the employment con-
29 tract during the physician's medical service obligation must be reported to
30 the department for review. The department will complete review and provide
31 notice of approval or declination of such amendments within thirty (30) cal-
32 endar days of receipt.

33 SECTION 12. That Section 39-6114, Idaho Code, be, and the same is hereby
34 amended to read as follows:

35 39-6114. REQUIRED APPLICATION FORMS AND ACCOMPANYING DOCUMENTS FOR A
36 J-1 VISA WAIVER REQUEST. (1) Applications for the J-1 visa waiver program
37 must include, but not be limited to, the following:

38 (a) Evidence the applicant has no other mechanism through another
39 process or interested government agency to apply for a J-1 visa waiver
40 for the petitioning physician;

41 (b) Evidence of recruiting efforts over a minimum of six (6) months
42 prior to when the physician applied for the vacancy; this must include
43 regional and national electronic or print advertising stating the po-
44 sition available and the practice site location ~~and at least six (6)~~
45 ~~certified letters to medical schools to advertise the vacancy.~~ Copies
46 of advertisements submitted must show the publication date. Advertise-
47 ments run at the time of or after preparation of the employment contract
48 are unusable. Online advertisements must show dates the advertise-
49 ments were online. Contracts with recruitment firms are allowable as

1 evidence in lieu of electronic or print advertisements ~~or letters~~ if
2 the activities described in this section are provided under contract.
3 Recruitment firm contracts must be included if applicable;

4 (c) Evidence that the petitioning physician selected for the position
5 visited the practice site;

6 (d) A mailing list of physicians who applied for the position and the
7 reason they were not selected;

8 (e) Evidence that the applicant has been providing medical or mental
9 health care in Idaho for at least twelve (12) months or meets the re-
10 quirements for a new start as defined in this chapter. This includes,
11 but may not be limited to, the Idaho taxpayer identification number, fa-
12 cility address, fax and telephone numbers, and staffing list;

13 (f) A copy of an employment contract between the petitioning physician
14 and the applicant for no less than three (3) years;

15 (g) Evidence that the employment site is in a designated area of under-
16 service;

17 (h) The request must be submitted by the applicant or applicant's rep-
18 resentative. The letter must be written on the applicant's letterhead
19 stationery, which includes address, telephone and fax numbers, if any.
20 Letters, contracts and forms must contain original signatures;

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

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

26 (k) Legible copies of all IAP-66/DS 2019 forms (certificate of eligi-
27 bility for exchange visitor status), covering every period the physi-
28 cian was in J-1 status, submitted in chronological order;

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

31 (m) The petitioning physician's curriculum vitae;

32 (n) A statement of "no objection from the government" of the
33 petitioning physician's country of nationality, if applicable. The
34 government of the country to which the petitioning physician is oth-
35 erwise contractually obliged to return must furnish a letter to the
36 director of the United States department of state with a statement in
37 writing that there is no objection to such waiver in cases where the
38 petitioning physician's medical education or training is funded by the
39 government of the petitioning physician's home country. Whether or not
40 there is foreign government funding can be determined from examining
41 the physician's IAP-66 form. This letter must be in English and follow
42 the procedures and format outlined in federal register volume 60, num-
43 ber 197, published October 12, 1995 (or subsequent revisions);

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

46 (p) Federal form G-28 or letterhead from the law office, if the physi-
47 cian is being represented by an attorney, with telephone and fax num-
48 bers, and a contact name and address;

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

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

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

5 (4) J-1 visa waiver program application forms and instructions are
6 available and may be requested from the department.

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

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

15 SECTION 13. That Section 39-6114A, Idaho Code, be, and the same is
16 hereby amended to read as follows:

17 39-6114A. REQUIRED APPLICATION FORMS AND DOCUMENTS FOR A NATIONAL
18 INTEREST WAIVER REQUEST. (1) Applications for the national interest waiver
19 program must include, but not be limited to, the following:

20 (a) Evidence of recruiting efforts over a minimum of six (6) months
21 prior to when the petitioning physician applied for the vacancy. This
22 evidence must include regional and national electronic or print adver-
23 tising stating the position available and the practice site location
24 ~~and at least six (6) certified letters to medical schools to advertise~~
25 ~~the vacancy~~. Copies of advertisements submitted must show the publi-
26 cation date. Advertisements run at the time of or after preparation of
27 the employment contract are unusable. Online advertisements must show
28 dates the advertisements were online. Contracts with recruitment firms
29 are allowable as evidence in lieu of electronic or print advertisements
30 ~~or letters~~ if the activities described in this paragraph are provided
31 under contract. Recruitment firm contracts must be included, if appli-
32 cable. The provision of evidence for recruitment efforts over a six (6)
33 month period is not necessary for national interest waiver petitioning
34 physicians who receive a J-1 visa waiver at the request of the state of
35 Idaho;

36 (b) Evidence that the physician selected for the position visited the
37 practice site;

38 (c) A mailing list of physicians who applied for the position and the
39 reason they were not selected;

40 (d) Evidence that the applicant has been providing medical or mental
41 health care in Idaho for at least twelve (12) months or meets the re-
42 quirements for a new start as defined in section 39-6105, Idaho Code.
43 This includes, but may not be limited to, the Idaho taxpayer identifi-
44 cation number, facility address, fax and telephone numbers and staffing
45 list;

46 (e) A copy of an employment contract between the physician and the ap-
47 plicant;

48 (f) Evidence that the employment site is in a federally determined area
49 of underservice;

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

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

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

9 (j) Legible copies of any DS 2019 forms (formerly IAP-66), and other
10 United States immigration documentation attesting to the physician's
11 current legal status and history of stay in the United States;

12 (k) The physician's curriculum vitae; and

13 (l) Payment of the department's administrative application processing
14 fee.

15 (2) The state of Idaho may require any other documentation or informa-
16 tion for the support and approval process in the waiver application on the
17 part of the physician or the applicant.

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

19 SECTION 14. That Section 39-6115, Idaho Code, be, and the same is hereby
20 amended to read as follows:

21 39-6115. CRITERIA APPLIED TO FEDERALLY DESIGNATED FACILITIES. Local,
22 state, or federal institutions which offer ~~primary~~ health care services and
23 are federally designated as a shortage facility accompanied by a health pro-
24 fessional shortage area score may submit an application. Physician services
25 may be limited to the population of the institution. All other state and fed-
26 eral requirements must be met.

27 SECTION 15. That Section 39-6116, Idaho Code, be, and the same is hereby
28 amended to read as follows:

29 39-6116. DEPARTMENT REVIEW AND ACTION. (1) The department will review
30 applications for completeness in date order received.

31 (2) Applications submitted for petitioning physicians with language
32 skills appropriate to the community they wish to serve will be given prior-
33 ity.

34 (3) Selection preference will be given to applications received from
35 ~~HPSAs~~ health professional shortage areas having the greatest unmet need for
36 ~~primary care~~ physicians.

37 (4) Applications must be mailed, sent by commercial carrier, or deliv-
38 ered in person. Applications may not be sent electronically. The department
39 is not responsible for applications or related materials lost in the mail.

40 (5) The department may limit the time period during which applications
41 may be submitted including refusing to process applications after the de-
42 partment has submitted requests for all applications allowed in a given fed-
43 eral fiscal year.

44 (6) In the event an applicant for a J-1 visa waiver or a national in-
45 terest waiver submits an application to the department, the department will
46 acknowledge receipt of the copy of the application within five (5) business
47 days of receipt.

1 (7) The department will review applications within ~~fifteen~~ thirty (15
2 30) working days of receipt of the application to determine if the applica-
3 tion is complete, and provide a written explanation of missing items.

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

9 (9) The department will return applications and application fees to ap-
10 plicants having had two (2) approved J-1 visa waiver requests in the current
11 federal fiscal year for the shortage area, ~~applications received that ex-~~
12 ~~ceed the de-designation threshold limit, and or~~ applications received after
13 thirty (30) placements have been recommended.

14 (10) The department will review complete applications against the cri-
15 teria specified in this chapter.

16 (11) The department may:

17 (a) Request additional clarifying information;

18 (b) Verify information presented;

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

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

22 (e) Return the application as incomplete if the applicant does not sup-
23 ply the requested clarifying information in its entirety within thirty
24 (30) days of request. The application fee is nonrefundable. Incomplete
25 applications must be resubmitted with the application fee. Resubmitted
26 applications will be considered new applications and will be reviewed
27 in date order received.

28 (12) The department may request the director of the United States de-
29 partment of state to recommend that the immigration agency grant the J-1 visa
30 waiver.

31 (13) The department may provide a letter of attestation to the immigra-
32 tion agency that the physician's work in Idaho is in the public interest for a
33 national interest waiver.

34 (14) The department will notify the applicant in writing of action taken
35 by the department. If the decision is to decline the J-1 visa waiver or na-
36 tional interest waiver request, the department will provide an explanation
37 of how the application failed to meet the stated criterion or criteria. The
38 application fee is nonrefundable.

39 (15) The department may deny a J-1 visa waiver or national interest
40 waiver request or, prior to United States department of state or immigration
41 agency approval, may withdraw a J-1 visa waiver or national interest waiver
42 recommendation for cause, which shall include the following:

43 (a) The application is not consistent with state or federal criteria;

44 (b) Fraud;

45 (c) Misrepresentation;

46 (d) False statements;

47 (e) Misleading statements;

48 (f) Evasion or suppression of material facts in the J-1 visa waiver or
49 national interest waiver application or in any of its required documen-
50 tation and supporting materials;

- 1 (g) Incomplete or insufficient information;
2 (h) Allowable number of recommendations for the ~~area~~ facility or year
3 has been met.
4 (16) Applications denied may be resubmitted with concerns addressed,
5 with the application fee. Resubmitted applications will be considered new
6 applications and will be reviewed in date order received.
7 (17) The department retains the authority to audit, monitor and conduct
8 unannounced site visits.

9 SECTION 16. That Section 39-6117, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 39-6117. ELIGIBILITY FOR FUTURE PARTICIPATION. Health care facili-
12 ties may be denied future participation in the J-1 visa waiver program or
13 national interest waiver program if:

- 14 (1) The required annual reports are not submitted in a complete and
15 timely manner;
16 (2) A waiver physician does not serve the designated shortage area or
17 shortage population approved at the time of placement for the full three (3)
18 to five (5) years of employment. This does not apply only if the approved
19 site is in a designated health professional shortage area that loses its des-
20 ignation after the waiver physician begins employment;
21 (3) A waiver physician does not remain employed by the applicant for the
22 full three (3) to five (5) years of employment;
23 (4) The applicant or waiver physician is not in compliance with the
24 terms defined in this chapter or any federal requirements.

25 SECTION 17. That Section 39-6118, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 39-6118. DEPARTMENT RESPONSIBILITY TO REPORT. The department shall
28 report to the United States department of state and the immigration agency if
29 the applicant or waiver physician is determined to be out of compliance with
30 any of the provisions of this chapter or if the waiver physician is deter-
31 mined to have left employment in the federally designated area.

32 SECTION 18. An emergency existing therefor, which emergency is hereby
33 declared to exist, this act shall be in full force and effect on and after its
34 passage and approval.