

TITLE 39
HEALTH AND SAFETY

CHAPTER 61

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

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

[39-6101, added 2004, ch. 128, sec. 1, p. 437; am. 2009, ch. 106, sec. 2, p. 326.]

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

(1) The "Idaho Conrad J-1 Visa Waiver Program" authorizes the Idaho department of health and welfare to recommend up to thirty (30) foreign trained physicians per federal fiscal year to locate in communities that are federally designated as having a health workforce shortage. No more than ten (10) of thirty (30) recommendations may be for physician specialists other than pediatrics, internal medicine, family medicine, obstetrics, gynecology, psychiatry or general surgery. Applications for specialists must demonstrate a need for the type of specialty held by the petitioning physician. Final approval of J-1 visa waiver requests are made by the United States bureau of citizenship and immigration services.

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

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

[39-6102, added 2004, ch. 128, sec. 1, p. 437; am. 2009, ch. 106, sec. 3, p. 326; am. 2017, ch. 72, sec. 1, p. 171.]

39-6103. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

[39-6103, added 2004, ch. 128, sec. 1, p. 437.]

39-6104. INCORPORATION BY REFERENCE. P.L. 103-416, amended by P.L. 107-273, November 2, 2002, 8 U.S.C. 1184(1) and 22 CFR sec. 514.44(e), F.R. volume 60, No. 197, 8 CFR sec. 214.12, 8 CFR sec. 245 and 18 U.S.C. 1001 are incorporated by reference.

[39-6104, added 2004, ch. 128, sec. 1, p. 437; am. 2009, ch. 106, sec. 4, p. 326.]

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

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

(2) "Area of underservice" means a health professional shortage area in primary care or mental health, a medically underserved area, or a medically underserved population, federally designated by the secretary of health and human services.

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

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

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

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

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

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

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

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

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

(12) "National interest waiver" means an exemption from the labor certification process administered by the United States department of labor for foreign physicians whose will to stay in the United States and work in an area

of underservice in Idaho is determined to be in the public interest by the Idaho department of health and welfare.

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

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

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

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

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

(18) "Unmet need" means a vacancy or shortage of primary care or specialist physicians experienced by a community or population, as defined by federally designated health professional shortage areas or medically underserved areas/populations or as demonstrated by additional data and information required by the department.

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

[39-6105, added 2004, ch. 128, sec. 1, p. 438; am. 2009, ch. 106, sec. 5, p. 326; am. 2014, ch. 61, sec. 1, p. 144; am. 2017, ch. 72, sec. 2, p. 172.]

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

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

(2) Limitations of department actions.

- (a) Prior to submission of an application, the department may provide information to the applicant on preparing a complete application.
- (b) The department will not be responsible for adding any information to incomplete application packets.
- (c) For applicants who have benefited from department waiver requests previously, the applicant's history of compliance will be a consideration in future decisions for waiver requests.
- (d) In any single program year, a health care facility will not be allotted more than two (2) J-1 visa waiver request applications per practice location.
- (e) The shortage area designation must be current on the date the United States department of state reviews and recommends the application and on the date the immigration agency approves the J-1 visa waiver and na-

tional interest waiver. Any application that is being submitted to the department at the end of the three (3) year health professional shortage area designation cycle may be summarily denied if the renewal is not obtained.

(i) Participation by the department in the J-1 visa waiver program and in the national interest waiver program is completely discretionary and voluntary. The department may elect not to participate in the program at any time. The submission of a complete waiver application package does not ensure the department will recommend a waiver. The department reserves the right to recommend or decline any request for a waiver.

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

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

[39-6106, added 2004, ch. 128, sec. 1, p. 439; am. 2009, ch. 106, sec. 6, p. 327; am. 2017, ch. 72, sec. 3, p. 173.]

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

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

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

[39-6107, added 2004, ch. 128, sec. 1, p. 440; am. 2009, ch. 106, sec. 7, p. 328; am. 2017, ch. 72, sec. 4, p. 174.]

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

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

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

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

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

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

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

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

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

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

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

(ii) Posted conspicuously; and

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

(8) Applicants must have a signed employment contract with the physician, and guarantee wages for the duration of the contract.

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

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

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

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

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

[39-6108, added 2004, ch. 128, sec. 1, p. 440; am. 2009, ch. 106, sec. 8, p. 329; am. 2017, ch. 72, sec. 5, p. 174.]

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

- (1) Meet state and federal requirements;
- (2) Not prevent the physician from providing medical services in the designated shortage area after the term of employment. A noncompetition clause or any provision that purports to limit the J-1 visa waiver physician's ability to remain in the area upon completion of the contract term is prohibited by regulation;
- (3) State that the physician must serve medicare clients, medicaid clients, low-income clients, uninsured clients, and the population of the federal designation for the area of underservice full time;
- (4) Include a notarized statement by the physician that he agrees to meet the requirements set forth in section 214(l) of the immigration and nationality act;
- (5) Guarantee the physician a base salary of at least ninety-five percent (95%) of step II of the local prevailing wage for the field of practice in the area to be served;
- (6) Specify that benefits offered are not included as part of base salary;
- (7) Include leave (annual, sick, continuing medical education and holiday);
- (8) State that amendments shall adhere to state and federal J-1 visa waiver requirements;
- (9) Acknowledge that the contract may be terminated only with cause and cannot be terminated by mutual agreement until the statutorily required three (3) years of medical service have expired;
- (10) Be assignable only by the employer to a successor with concurrence of the department;
- (11) Include the practice site address, the days and hours of practice, field of medicine, and a statement that on-call and travel times are not included in the minimum hours;
- (12) Include a statement that the employment will start within ninety (90) days after the waiver approval has been issued;
- (13) Not commence until after the petitioning physician's J-1 waiver and appropriate work authorization are approved and the residency program has been successfully completed. The contract shall affirm that no transfer or other modification regarding the duration of contract dates will be approved unless extenuating circumstances are shown to exist, as determined by the department and approved by the United States attorney general in accordance with applicable federal rules and regulations;
- (14) Not be subject to changes which result in termination of contract, change in practice scope, or relocation from a site approved in the application. Any proposed changes must be presented in writing to the department for consideration and approval at least thirty (30) days prior to the proposed change. Moving or placement of a J-1 visa waiver physician to a location that was not approved by the department will result in the physician and applicant being in noncompliance with the program and will be reported as such to the immigration agency. It will also limit the applicant's future participation in the program;
- (15) Be signed by both the J-1 visa waiver petitioning physician and the applicant employer, and the date it is signed must be clear.

[39-6109, added 2004, ch. 128, sec. 1, p. 441; am. 2009, ch. 106, sec. 9, p. 330; am. 2017, ch. 72, sec. 6, p. 175.]

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

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

[39-6109A, added 2009, ch. 106, sec. 10, p. 331.]

39-6110. CRITERIA FOR PROPOSED PRACTICE LOCATION. (1) The proposed practice location must:

- (a) Be located in an area of underservice federally designated by the secretary of health and human services; or
- (b) Serve patients who reside in an area of underservice federally designated by the secretary of health and human services for flex waiver applications only.

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

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

[39-6110, added 2004, ch. 128, sec. 1, p. 442; am. 2009, ch. 106, sec. 11, p. 331; am. 2017, ch. 72, sec. 7, p. 176.]

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

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

(3) Petitioning physicians must:

- (a) Provide direct patient care full time; and
- (b) Be trained in:

- (i) Family medicine;
- (ii) Internal medicine;
- (iii) Pediatrics;
- (iv) Obstetrics and gynecology;
- (v) General surgery;
- (vi) Psychiatry and its subspecialties; or
- (vii) Other specialties licensed or eligible for licensure by the Idaho board of medicine, if there is a demonstrated need by the applicant organization.

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

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

- (a) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income persons in the United States;
- (b) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities;
- (c) Documents the level of specialty training, if any;
- (d) Is prepared on residency program letterhead and is signed by residency program staff or faculty; and
- (e) Includes name, title, relationship to physician, address, and telephone number of signatory.

(6) The petitioning physician must agree with all provisions of the employment contract as described in section 39-6109, Idaho Code. Other nego-

tiable terms of the contract are between the petitioning physician and the hiring agency.

(7) The petitioning physician must:

- (a) Agree to work full time for no less than three (3) years in an area of underservice in the state of Idaho;
- (b) Provide health care to medicare and medicaid beneficiaries;
- (c) Post and implement a sliding fee discount schedule;
- (d) Serve the low-income population;
- (e) Serve the uninsured population; and
- (f) Serve the shortage designation population; or
- (g) Serve the population of a local, state, or federal governmental institution or corrections facility as an employee of the institution.

[39-6111, added 2004, ch. 128, sec. 1, p. 442; am. 2009, ch. 106, sec. 12, p. 332; am. 2014, ch. 61, sec. 2, p. 145; am. 2017, ch. 72, sec. 8, p. 177.]

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

(1) The practice location must be located outside of a federally designated shortage area to apply for a flex waiver.

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

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

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

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

[39-6111A, added 2017, ch. 72, sec. 9, p. 178.]

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

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

(b) Be trained in:

- (i) Family medicine;
- (ii) Internal medicine;
- (iii) Pediatrics;
- (iv) Obstetrics and gynecology;
- (v) General surgery; or
- (vi) Psychiatry and its subspecialties.

(2) Apply and be eligible for an active Idaho medical license. The physician may be participating in an accredited residency program for this application, but must have successfully completed the third year of his residency training program for his employment contract to be activated. The physician must have an unrestricted license to practice in the state of Idaho and be board certified or eligible in his respective medical specialty at the

commencement of employment. A copy of the acknowledgment of receipt form from the state board of medicine must be included in the waiver request.

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

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

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

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

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

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

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

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

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

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

(d) Serve the low-income population;

(e) Serve the uninsured population; and

(f) Serve the shortage designation population; or

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

[(39-6111B) 39-6111A, added 2009, ch. 106, sec. 13, p. 333; am. 2014, ch. 61, sec. 3, p. 146; am. and redesig. 2017, ch. 72, sec. 10, p. 178.]

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

(2) The waiver physician and the applicant must, on commencement of practice and annually thereafter or more frequently as determined by the department, and upon expiration of the physician's service obligation to the underserved area, verify the physician's practice site address and field of practice. Further, documentation that the population the physician was to serve was indeed served must be submitted. This will include the facility's payer mix, the number of patients seen by the physician, and the payer mix of those patients. When submitting the final report, the physician must indicate whether he intends to remain in the shortage area to practice.

(3) Sites receiving waiver approval must agree to report to the department on the status of the physician's activities at the beginning of the physician's employment and every year thereafter during the three (3) to five (5) year medical service obligation period. Failure to provide these reports within thirty (30) days of the annual anniversary date of approval

of the J-1 visa or national interest waiver in an accurate manner or failure to demonstrate good faith in utilizing a physician's services in accordance with these policies will jeopardize future eligibility for placements and will be cause for reporting and referral to the United States department of state and immigration agency. This referral could ultimately lead to deportation proceedings against the physician.

(4) Any amendments made to the required elements of the employment contract during the physician's medical service obligation must be reported to the department for review. The department will complete review and provide notice of approval or declination of such amendments within thirty (30) calendar days of receipt.

[39-6112, added 2004, ch. 128, sec. 1, p. 443; am. 2009, ch. 106, sec. 14, p. 334; am. 2017, ch. 72, sec. 11, p. 179.]

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

[39-6113, added 2004, ch. 128, sec. 1, p. 444; am. 2009, ch. 106, sec. 15, p. 334.]

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

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

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

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

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

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

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

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

(m) The petitioning physician's curriculum vitae;

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

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

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

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

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

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

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

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

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

[39-6114, added 2004, ch. 128, sec. 1, p. 444; am. 2009, ch. 106, sec. 16, p. 335; am. 2017, ch. 72, sec. 12, p. 180.]

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

(a) Evidence of recruiting efforts over a minimum of six (6) months prior to when the petitioning physician applied for the vacancy. This evidence must include regional and national electronic or print advertising stating the position available and the practice site location. Copies of advertisements submitted must show the publication date. Advertisements run at the time of or after preparation of the employment contract are unusable. Online advertisements must show dates the advertisements were online. Contracts with recruitment firms are allowable as evidence in lieu of electronic or print advertisements if the activities described in this paragraph are provided under contract. Recruitment firm contracts must be included, if applicable. The provision of evidence for recruitment efforts over a six (6) month period is not necessary for national interest waiver petitioning physicians who receive a J-1 visa waiver at the request of the state of Idaho;

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

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

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

(e) A copy of an employment contract between the physician and the applicant;

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

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

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

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

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

(k) The physician's curriculum vitae; and

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

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

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

[39-6114A, added 2009, ch. 106, sec. 17, p. 336; am. 2017, ch. 72, sec. 13, p. 181.]

39-6115. CRITERIA APPLIED TO FEDERALLY DESIGNATED FACILITIES. Local, state, or federal institutions which offer health care services and are federally designated as a shortage facility accompanied by a health professional shortage area score may submit an application. Physician services may be limited to the population of the institution. All other state and federal requirements must be met.

[39-6115, added 2004, ch. 128, sec. 1, p. 445; am. 2017, ch. 72, sec. 14, p. 182.]

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

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

(3) Selection preference will be given to applications received from health professional shortage areas having the greatest unmet need for physicians.

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

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

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

(7) The department will review applications within thirty (30) working days of receipt of the application to determine if the application is complete, and provide a written explanation of missing items.

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

(9) The department will return applications and application fees to applicants having had two (2) approved J-1 visa waiver requests in the current federal fiscal year for the shortage area or applications received after thirty (30) placements have been recommended.

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

(11) The department may:

(a) Request additional clarifying information;

(b) Verify information presented;

(c) Investigate the financial status of the applicant;

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

(e) Return the application as incomplete if the applicant does not supply the requested clarifying information in its entirety within thirty (30) days of request. The application fee is nonrefundable. Incomplete applications must be resubmitted with the application fee. Resubmitted

applications will be considered new applications and will be reviewed in date order received.

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

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

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

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

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

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

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

[39-6116, added 2004, ch. 128, sec. 1, p. 445; am. 2009, ch. 106, sec. 18, p. 337; am. 2017, ch. 72, sec. 15, p. 182.]

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

(1) The required annual reports are not submitted in a complete and timely manner;

(2) A waiver physician does not serve the designated shortage area or shortage population approved at the time of placement for the full three (3) to five (5) years of employment. This does not apply only if the approved site is in a designated health professional shortage area that loses its designation after the waiver physician begins employment;

(3) A waiver physician does not remain employed by the applicant for the full three (3) to five (5) years of employment;

(4) The applicant or waiver physician is not in compliance with the terms defined in this chapter or any federal requirements.

[39-6117, added 2004, ch. 128, sec. 1, p. 447; am. 2009, ch. 106, sec. 19, p. 338; am. 2017, ch. 72, sec. 16, p. 184.]

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

[39-6118, added 2004, ch. 128, sec. 1, p. 447; am. 2017, ch. 72, sec. 17, p. 184.]

CHAPTER 62
PCB WASTE DISPOSAL [REPEALED]