

Chapter 246-562 WAC

PHYSICIAN VISA WAIVERS

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

246-562-110	Waiver requests federal waiver programs. [Statutory Authority: Chapter 70.185 RCW. WSR 03-19-054, § 246-562-110, filed 9/11/03, effective 10/12/03; WSR 00-15-082, § 246-562-110, filed 7/19/00, effective 8/19/00; WSR 98-20-067, § 246-562-110, filed 10/2/98, effective 11/2/98.] Repealed by WSR 16-17-060, filed 8/12/16, effective 10/1/16. Statutory Authority: RCW 70.185.040 and P.L. 110-362.
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WAC 246-562-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Applicant" means an entity with an active Washington state business license that provides health care services and seeks to employ a physician at a Washington state practice location(s) and is requesting state sponsorship or concurrence of a J-1 visa waiver.

(2) "Board eligible" means having satisfied the requirements necessary to sit for board examinations.

(3) "Department" means the Washington state department of health.

(4) "Employment contract" means a legally binding agreement between the applicant and the physician named in the visa waiver application that 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.

(5) "Full time" means a minimum forty hours of medical practice per week, not including call coverage, consisting of at least thirty-two hours seeing patients on an ambulatory or in-patient basis and may include up to eight hours administrative work for at least forty-eight weeks per year.

(6) "Health professional shortage area" or "HPSA" means an area federally designated as having a shortage of primary care physicians or mental health care.

(7) "Hospitalist" means a physician, usually an internist, who specializes in the care of hospitalized patients.

(8) "Integrated health care system (system)" means an organized system in which more than one health care entity participates, and in which the participating entities:

(a) Hold themselves out to the public as participating in a joint arrangement; and

(b) Participate in joint payment activities, such as clinics where a physician group charges a professional fee and a hospital charges a facility fee.

(9) "Low income" means that a family's total household income is less than two hundred percent of the federal poverty level as defined by the *U.S. Federal Poverty Guidelines* published annually.

(10) "Physician" means the foreign physician eligible to be licensed under chapter 18.71 or 18.57 RCW named in the visa waiver application, who requires a waiver to remain in the United States to practice medicine.

(11) "Practice location" means the physical location where the visa waiver physician will work.

(12) "Primary care physician" means a physician board certified or board eligible in family practice, general internal medicine, pediatrics, obstetrics/gynecology, geriatric medicine or psychiatry. Physicians who have completed any subspecialty or fellowship training, excluding OB or geriatric training, are not considered primary care physicians for the purpose of this chapter.

(13) "Publicly funded employers" means organizations such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations.

(14) "Sliding fee discount schedule" means a written delineation documenting the value of charge discounts granted to patients based upon family income up to two hundred percent of the annual federal poverty guidelines.

(15) "Specialist" means a physician board certified or board eligible in a specialty other than family practice, general internal medicine, pediatrics, obstetrics/gynecology, geriatric medicine or psychiatry (the current definition of "primary care" for the waiver program).

(16) "Sponsorship" means a request by the department on behalf of an applicant to federal immigration authorities to grant a visa waiver for the purpose of recruiting and retaining physicians.

(17) "Vacancy" means a full-time physician practice opportunity that is based on a planned retirement, a loss of an existing physician, or an expansion of physician services in the service area.

(18) "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/her home country for a two-year period following medical residency training.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-010, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-010, filed 3/8/06, effective 4/8/06. Statutory Authority: Chapter 70.185 RCW. WSR 03-19-054, § 246-562-010, filed 9/11/03, effective 10/12/03; WSR 00-15-082, § 246-562-010, filed 7/19/00, effective 8/19/00; WSR 98-20-067, § 246-562-010, filed 10/2/98, effective 11/2/98.]

WAC 246-562-020 Authority to sponsor visa waivers. (1) The department may assist communities to recruit and retain physicians, or other health care professionals, as directed in chapter 70.185 RCW, by exercising an option provided in federal law. This option allows the department to sponsor a limited number of visa waivers each federal fiscal year if certain conditions are met.

(2) The department may acknowledge and support as needed sponsorship proposed by federal agencies, including the United States Department of Health and Human Services.

(3) The department may carry out a visa waiver program, or, in the event of resource limitations or other considerations, may discontinue the program. Purposes of the program are:

(a) To increase the availability of physician services in existing federally designated health professional shortage areas (HPSA) for applicants that have long standing vacancies;

(b) To improve access to physician services for communities and specific underserved populations that are having difficulty finding physician services;

(c) To serve Washington communities that have identified a physician currently holding a J-1 visa as an ideal candidate to meet the community's need for health care services.

(4) The department may only sponsor a visa waiver request when:

(a) The application contains all of the required information and documentation;

(b) The application meets the criteria contained in this chapter;

(c) For applicants that have benefited from department sponsorship previously, the applicant's history of compliance will be a consideration in future sponsorship decisions.

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

(6) In any single federal fiscal year the department will limit the number of sponsorships granted to each applicant. Applicants, including integrated health care systems, in a single HPSA:

(a) Will not be allotted more than two sponsorships per practice location;

(b) Will not be allotted more than one hospitalist sponsorship per hospital;

(c) Will not be allotted more than three sponsorships total across all practice locations in the HPSA between October 1st and May 31st of the federal fiscal year.

(7) Applicants located outside designated HPSAs will be allotted no more than three sponsorships across all practice locations in a single county.

(8) Between October 1st and March 31st of the federal fiscal year the department will grant not more than ten specialist waivers. Any waiver sponsorships that remain unfilled on April 1st of each federal fiscal year will be available to

both primary care and specialist physicians consistent with the provisions of this chapter.

(9) Starting January 15th of each federal fiscal year, the department will consider applications for physicians intending to practice in areas without a HPSA designation for applicants that meet the criteria in WAC 246-562-075.

(10) Starting June 1st of each federal fiscal year, the department will consider applications for additional sponsorships from applicants who have already received their maximum three waivers in a single HPSA.

Type of sponsorship	Application timeline and conditions
Primary care in HPSA	Available starting Oct. 1 until state reaches annual federal cap
Specialist in HPSA	Limited to 10 sponsorships from Oct. 1 - March 31, no restriction starting April 1 until state reaches annual federal cap
Nondesignated area (FLEX waiver)	Available starting Jan. 15, limited to 10 total in a federal fiscal year
More than 3 waivers for a single applicant in a single HPSA	Available starting June 1 until state reaches annual federal cap

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-020, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-020, filed 3/8/06, effective 4/8/06. Statutory Authority: Chapter 70.185 RCW. WSR 03-19-054, § 246-562-020, filed 9/11/03, effective 10/12/03; WSR 00-15-082, § 246-562-020, filed 7/19/00, effective 8/19/00; WSR 98-20-067, § 246-562-020, filed 10/2/98, effective 11/2/98.]

WAC 246-562-040 Principles that will be applied to the visa waiver program. (1) The visa waiver program is considered a secondary source for recruiting qualified physicians. It is not a substitute for broad recruiting efforts for graduates from U.S. medical schools.

(2) Sponsorship may be offered to applicants that can provide evidence of sustained active recruitment for the vacancy in the practice location for a physician who has specific needed skills.

(3) Sponsorship is intended to support introduction of physicians into practice settings that promote continuation of the practice beyond the initial contract period.

(4) Sponsorship will be for an employment situation where there is community support and a collegial professional environment.

(5) The visa waiver program will be used to assist applicants that provide care to all residents of the federally designated HPSA. When a HPSA designation is for a population group as approved by the federal Health Research and Services Administration as defined by 42 C.F.R. Chapter 1, Part 5, Appendices A or C, the applicant must provide care to the population group.

(6) Sponsorship is available to applicants that can document the provision of needed services, regardless of public or private ownership.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-040, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW. WSR 98-20-067, § 246-562-040, filed 10/2/98, effective 11/2/98.]

WAC 246-562-050 Review criteria. Applicants and physicians must meet all federal criteria for international medical graduates seeking a visa waiver including the criteria established in 8 U.S.C. Sec. 1182(e), 8 U.S.C. Sec. 1184(1), and 22 C.F.R. Sec. 41.63(e).

Applicants must also meet the criteria in this chapter.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-050, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-050, filed 3/8/06, effective 4/8/06. Statutory Authority: Chapter 70.185 RCW. WSR 03-19-054, § 246-562-050, filed 9/11/03, effective 10/12/03; WSR 98-20-067, § 246-562-050, filed 10/2/98, effective 11/2/98.]

WAC 246-562-060 Criteria for applicants. (1) Applicants must:

- (a) Be licensed to do business in Washington state; and
- (b) Have provided medical care in Washington state for a minimum of twelve months prior to submitting the application.
- (2) Applicants may be for-profit, nonprofit, or government organizations.
- (3) Except for state psychiatric or correctional facilities, the applicant must:
 - (a) Currently serve:
 - (i) Medicare clients;
 - (ii) Medicaid clients;
 - (iii) Low-income clients;
 - (iv) Uninsured clients; and
 - (v) The population of the federal designation, if applicable.
 - (b) Demonstrate that during the twelve months prior to submitting the application, the practice location(s) where the physician will work provided a minimum of fifteen percent of total patient visits to medicaid and other low-income clients. Clients dually eligible for medicare and medicaid may be included in this total.

(c) Have or agree to implement a sliding fee discount schedule for the practice location(s) in the J-1 visa waiver application. The schedule must be:

- (i) Available in the client's principal language and English;
- (ii) Posted conspicuously;
- (iii) Distributed in hard copy upon patient request; and
- (iv) Updated annually to reflect the most recent federal poverty guidelines.

(4) Applicants must provide documentation demonstrating that the employer made a good faith effort to recruit a qualified graduate of a United States medical school for a physician vacancy in the same salary range.

(a) Active recruitment, specific to the location and physician specialty, must be for a period of not less than six months in the twelve months prior to signing an employment contract with the J-1 visa waiver physician. Active recruitment documentation can include one or more of the following:

- (i) Listings in national publications;
- (ii) Web-based advertisements;

(iii) Contractual agreement with a recruiter or recruitment firm; or

(iv) Listing the position with the department recruitment and retention program.

(b) In-house job postings and word-of-mouth recruitment are not considered active recruitment for the purpose of the J-1 physician visa waiver program.

(5) Applicants must have a signed employment contract with the physician. The employment contract must:

(a) Meet state and federal requirements throughout the period of obligation, regardless of physician's visa status;

(b) Not prevent the physician from providing medical services in the designated HPSA after the term of employment including, but not limited to, noncompetition clauses; and

(c) Specify the three year period of employment.

(6) Any amendments made to the required elements of the employment contract under subsection (5) of this section during the first three years of contracted employment must be reported to the department for review and approval. The department will complete review and approval of such amendments within thirty calendar days of receipt.

(7) Applicants must pay the physician at least the required wage rate as referenced by the federal Department of Labor at 20 C.F.R. Sec. 655.731(a) for the specialty in the area or as set by negotiated union contract.

(8) If the applicant has previously requested sponsorship of a physician, WAC 246-562-020 (4)(c) will apply.

(9) Applicants must submit status reports to the department every twelve months, with required supporting documentation, during the initial term of employment.

(10) Physicians with a J-1 visa waiver must submit annual surveys to the department during their obligation period and a final survey one year after they complete their obligation so that the department can evaluate physician retention.

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

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-060, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-060, filed 3/8/06, effective 4/8/06. Statutory Authority: Chapter 70.185 RCW. WSR 03-19-054, § 246-562-060, filed 9/11/03, effective 10/12/03; WSR 00-15-082, § 246-562-060, filed 7/19/00, effective 8/19/00; WSR 98-20-067, § 246-562-060, filed 10/2/98, effective 11/2/98.]

WAC 246-562-070 Criteria for the proposed practice location to be served by the physician. (1) The proposed practice location(s) must be located in:

(a) A federally designated primary care HPSA(s); or

(b) A federally designated mental HPSA(s) for psychiatrists; or

(c) A state operated psychiatric or correctional facility.

(2) If the federal designation is based on a specific population, the applicant must serve the designated population.

(3) If the practice location is not located in a federally designated HPSA or a state correctional or psychiatric institution the applicant must meet the criteria in WAC 246-562-075.

(4) The practice location named in the visa waiver application may be an existing practice location or a new practice location. If a new practice location is planned, the additional criteria in (a) through (c) of this subsection 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 location will be connected to other care if needed.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-070, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-070, filed 3/8/06, effective 4/8/06. Statutory Authority: Chapter 70.185 RCW. WSR 98-20-067, § 246-562-070, filed 10/2/98, effective 11/2/98.]

WAC 246-562-075 Criteria for waiver sponsorships in nondesignated areas. Key objectives of the J-1 visa waiver program are to increase access to physicians for low income, medicaid-covered and otherwise medically underserved individuals. Federal law allows states to sponsor a limited number of physicians each federal fiscal year who will practice medicine at a location outside a designated HPSA that serves significant numbers or percentages of patients who reside in designated HPSAs. Sponsorships will not be open to applicants hiring physicians to practice outside HPSA-designated areas until January 15th of each federal fiscal year unless the employer is a state correctional or psychiatric institution.

The determination of appropriateness for a sponsorship in a nondesignated area will take into consideration the following factors.

(1) **Nature of the applicant and practice location(s).** Certain health care facilities play an important role in serving Washington's medically underserved populations. Specifically, providers of important services to the state's vulnerable population groups, particularly in specialty and tertiary care services draw patients from a large area, including designated HPSAs. Applicants must describe their practice location's service area and to what extent they provide service to residents of designated HPSAs.

(2) **Expected patient panel to be served by the sponsored physician.** Successful nondesignated waiver applicants must be able to describe:

(a) The percentage the sponsored physician's panel reasonably expected to be medicaid and medicare patients given current use of the service and practice location by those populations.

(b) How the applicant will ensure access to this physician for low-income or uninsured patients.

(c) If there is a unique practice area or substantial referral network making the physician a statewide resource for certain medical conditions.

(d) If the physician has language skills that will benefit patients at the practice location.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-075, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-075, filed 3/8/06, effective 4/8/06.]

WAC 246-562-080 Criteria for the physician. (1) The physician seeking a J-1 visa waiver from Washington state must not have a J-1 visa waiver application pending for any other employment offer. The physician must provide a letter attesting that no other applications are pending.

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

(3) The physician is considered eligible to apply for a waiver when:

(a) The physician has successfully completed a residency or fellowship program; or

(b) The physician is in the final year of a residency or fellowship program, and the physician provides a letter from their program that:

(i) Identifies the date the physician will complete the residency or fellowship program; and

(ii) Confirms the physician is in good standing with the program.

(4) The physician must provide direct patient care.

(5) The physician must comply with all provisions of the employment contract set out in WAC 246-562-060.

(6) The physician must:

(a) Accept medicaid assignment; post and implement a sliding fee discount schedule; serve the low-income population; serve the uninsured population; and serve the HPSA designation population; or

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

(7) The physician must have an active license under chapter 18.71 or 18.57 RCW. The applicant may substitute a copy of the license application and request an exception if the application was submitted to the Washington state medical quality assurance commission or Washington state board of osteopathic medicine and surgery four or more weeks prior to submission of the visa waiver application.

(8) Physician must be an active candidate for board certification on or before the start date of employment.

(9) Physician must provide the following documentation:

(a) A current Curriculum Vitae;

(b) U.S. Department of State Data Sheet, Form DS-3035;

(c) All U.S. Department of State DS-2019 Forms (Certificate of Exchange visitor status);

(d) A physician attestation statement described in subsection (1) of this section;

(e) A no objection statement;

(f) A personal statement from the physician regarding the reason for requesting a waiver;

(g) U.S. Citizenship and Immigration Services (USCIS) I-94 Entry and Departure cards; and

(h) USCIS Form G-28 Notice of Entry of Appearance from an attorney, when applicable.

The statements required in (e) and (f) of this subsection may be on a form provided by the department or other format that provides substantially the same information as the department form.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-080, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-080, filed 3/8/06, effective 4/8/06. Statutory Authority: Chapter 70.185 RCW.]

WSR 03-19-054, § 246-562-080, filed 9/11/03, effective 10/12/03; WSR 02-19-084, § 246-562-080, filed 9/16/02, effective 10/17/02; WSR 00-15-082, § 246-562-080, filed 7/19/00, effective 8/19/00; WSR 98-20-067, § 246-562-080, filed 10/2/98, effective 11/2/98.]

WAC 246-562-085 Eligibility for primary care and specialist waivers. (1) Primary care waivers.

(a) Primary care waivers are available to the following physician specialties:

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

(b) Physicians who have completed any additional subspecialty training are not eligible for a primary care waiver, with the exception of geriatric medicine and psychiatry. Continuing medical education (CME) will not be considered subspecialty training for the purposes of this rule.

(2) **Specialist waivers.** Specialist waivers are available to nonprimary care physician specialties. Applicants submitting an application for a specialist physician must:

(a) Demonstrate a need for the nonprimary care specialty by using data to show how the physician specialty is needed to address a major health problem in the practice location service area, address a population to provider ratio imbalance, or meet government requirements such as trauma designation regulations.

(b) Describe how this specialty will link to primary care.

(c) Describe how the demand for the specialty has been handled in the past.

(d) Describe the practice location's referral system that includes:

- (i) On-call sharing;
- (ii) How patients from other health care entities in the service area, specifically publicly funded employers, will be able to access the sponsored physician's services.

(e) Provide written notice to the department and all publicly funded employers in the applicant's HPSA within thirty days of the sponsored physician's start-date of employment. The notice must include:

- (i) The sponsored physician's name, employment start date, and practice location;
- (ii) Services to be provided; and
- (iii) Identification of accepted patients, such as medicare, medicaid, and the availability of a sliding fee schedule of discounts.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-085, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-085, filed 3/8/06, effective 4/8/06.]

WAC 246-562-087 Eligibility for facilities hiring physicians as hospitalists. (1) An applicant is limited to one hospitalist sponsorship per hospital per federal fiscal year. Multiple employers at the same location are not allowed.

(2) An applicant may only use inpatient data on the patient visit report required in WAC 246-562-060 to demonstrate that fifteen percent of applicant's total patient visits were to medicaid and other low-income patients.

(8/12/16)

(3) An applicant must identify primary care physicians in the community who will accept unattached medicaid, medicaid or uninsured patients for follow-up care.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-087, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-087, filed 3/8/06, effective 4/8/06.]

WAC 246-562-090 Application form. Applications must be completed, address all state and federal requirements, and must include all required documents as specified in the department application form. Applications are available on the department's web site.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-090, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-090, filed 3/8/06, effective 4/8/06. Statutory Authority: Chapter 70.185 RCW. WSR 98-20-067, § 246-562-090, filed 10/2/98, effective 11/2/98.]

WAC 246-562-100 Criteria applied to federally designated facilities. Local, state, or federal institutions that are federally designated with a facility designation may request state sponsorship. Physician services may be limited to the population of the institution. All other state and federal requirements must be met.

[Statutory Authority: Chapter 70.185 RCW. WSR 98-20-067, § 246-562-100, filed 10/2/98, effective 11/2/98.]

WAC 246-562-120 Department review and action.

(1) The department will review applications for completeness in the date order received.

(2) Applications must be mailed, sent by commercial carrier, or delivered in person as long as the U.S. Department of State requires a paper application.

(3) The department may limit the time period during which applications may be submitted including cutting off applications after the state has sponsored all applications allowed in a given federal fiscal year.

(4) If the department receives more complete applications than the number of available waiver slots, priority will be given in the following order:

- (a) Applications submitted by state psychiatric or correctional facilities;
- (b) Applications for physicians working in outpatient primary care practice locations that:
 - (i) Are located in a HPSA;
 - (ii) Serve the highest percentage of medicaid and other low-income patients; and
 - (iii) Are not eligible for another visa waiver program.
- (c) Applications for physicians working in outpatient specialty care practice locations that:
 - (i) Are located in a HPSA; and
 - (ii) Serve the highest percentage of medicaid and other low-income patients.

(5) The department will review applications within ten working days of receipt of the application to determine if the application is complete.

(6) The department will notify the applicant if the application is incomplete and will provide an explanation of what items are missing.

(7) Applicants with incomplete applications can submit additional documentation; however, the application will not be considered for approval until missing items are received and the application will not retain the date order.

(8) The department will return applications that are received after the maximum number of sponsorships have been approved. This does not apply to copies of other federal visa waiver applications.

(9) If an applicant who has already received three sponsorships submits additional applications before June 1st, the department will return the applications. Starting on June 1st these additional applications will be accepted for consideration if the department still has waiver sponsorships available.

(10) If the Washington state license under chapter 18.71 or 18.57 RCW is pending at the time the application is submitted to the department, the department may:

- (a) Sponsor or concur;
- (b) Hold the application in order received; or
- (c) Return the application as incomplete.

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

(12) The department may:

- (a) Request additional clarifying information;
- (b) Verify information presented;
- (c) Investigate financial status of the applicant;

(d) Return the application as incomplete if the applicant does not supply requested clarifying information within thirty days of request. Incomplete applications must be resubmitted. Resubmitted applications will be considered new applications and will be reviewed in date order received.

(13) The department will notify the applicant in writing of action taken. If the decision is to decline sponsorship, the department will provide an explanation of how the application failed to meet the stated criterion or criteria.

(14) The department may deny a visa waiver request or, prior to U.S. Department of State approval, may withdraw a visa waiver recommendation for cause, when the department finds the applicant has engaged in conduct contrary to the intent of the J-1 visa waiver program identified in WAC 246-562-020 including, but not limited to, the following:

- (a) Application is not consistent with state or federal criteria;
- (b) Dishonesty;
- (c) Evasion or suppression of material facts in the visa waiver application or in any of its required documentation and supporting materials;
- (d) Fraud;
- (e) History of noncompliance for applicants who benefited from previous department sponsorship;
- (f) Misrepresentation; or
- (g) Violation of Washington state laws and rules related to charity care.

(15) Applications denied may be resubmitted with concerns addressed. Resubmitted applications will be considered new applications and will be reviewed in date order received.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-120, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-120, filed 3/8/06, effective 4/8/06. Statutory Authority: Chapter 70.185 RCW. WSR 03-19-054, § 246-562-120, filed 9/11/03, effective 10/12/03; WSR 00-

15-082, § 246-562-120, filed 7/19/00, effective 8/19/00; WSR 98-20-067, § 246-562-120, filed 10/2/98, effective 11/2/98.]

WAC 246-562-130 Eligibility for future participation in the visa waiver program. (1) Applicants may be denied future participation in the state visa waiver program if:

(a) The required reports are not submitted in a complete and timely manner.

(b) A sponsored physician does not serve the designated HPSA or HPSA population at an approved practice location for the full three years of employment.

(c) A sponsored physician does not remain employed by the applicant for the full three years of employment.

(d) The applicant has a history of noncompliance with any of the provisions of this chapter or federal labor law requirements.

(2) A potential applicant may request a determination of eligibility prior to submitting an application. The department will review the situation upon receipt of a written request.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-130, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW and Public Law 108-441. WSR 06-07-035, § 246-562-130, filed 3/8/06, effective 4/8/06. Statutory Authority: Chapter 70.185 RCW. WSR 03-19-054, § 246-562-130, filed 9/11/03, effective 10/12/03; WSR 98-20-067, § 246-562-130, filed 10/2/98, effective 11/2/98.]

WAC 246-562-140 Department's responsibility to report to the U.S. Department of State and the United States Citizenship and Immigration Services. (1) The department may report to the U.S. Department of State and the United States Citizenship and Immigration Services if the applicant or physician is determined to be out of compliance with any of the provisions of this chapter.

(2) The department may report to the U.S. Department of State and the United States Citizenship and Immigration Services if the physician is determined to have left employment in the federally designated area.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-140, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW. WSR 03-19-054, § 246-562-140, filed 9/11/03, effective 10/12/03; WSR 00-15-082, § 246-562-140, filed 7/19/00, effective 8/19/00; WSR 98-20-067, § 246-562-140, filed 10/2/98, effective 11/2/98.]

WAC 246-562-150 Appeal process. (1) The applicant or physician may appeal the following department decisions:

(a) To deny or withdraw a visa waiver sponsorship;

(b) To deny a request for approval of an employment contract amendment;

(c) Determination that the applicant or physician is out of compliance with this chapter; or

(d) Determination that the applicant is not eligible for future participation in the visa waiver program.

(2) The appeal process is governed by the Administrative Procedure Act (chapter 34.05 RCW), chapter 246-10 WAC, and this chapter.

(3) To initiate an appeal, the applicant must file a written request for an adjudicative proceeding within twenty-eight days of the department's mailing of the department's decision on the application.

(4) The request shall be mailed, by a method showing proof of receipt, to the Adjudicative Clerk's Office, P.O. Box 47879, Olympia, WA 98504-7879.

(5) The request must contain:

- (a) A specific statement of the issue or issues and law involved;
- (b) The grounds for contesting the department's decision; and
- (c) A copy of the department's decision.

[Statutory Authority: RCW 70.185.040 and P.L. 110-362. WSR 16-17-060, § 246-562-150, filed 8/12/16, effective 10/1/16. Statutory Authority: Chapter 70.185 RCW. WSR 00-15-082, § 246-562-150, filed 7/19/00, effective 8/19/00; WSR 98-20-067, § 246-562-150, filed 10/2/98, effective 11/2/98.]

WAC 246-562-160 Implementation. Notwithstanding any other provision of this chapter, this rule governs the allocation of departmental J-1 visa waiver sponsorships of specialists and primary care physicians during the federal fiscal year which begins October 1 of each year.

[Statutory Authority: Chapter 70.185 RCW. WSR 03-19-054, § 246-562-160, filed 9/11/03, effective 10/12/03; WSR 02-19-084, § 246-562-160, filed 9/16/02, effective 10/17/02; WSR 00-15-082, § 246-562-160, filed 7/19/00, effective 8/19/00.]