

Chapter 246-562 WAC

PHYSICIAN VISA WAIVERS

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WAC 246-562-010 Definitions. The following definitions apply in the interpretation and implementation of these rules.

(1) "Applicant" means a health care facility that seeks to employ a physician and is requesting state sponsorship or concurrence of a visa waiver.

(2) "Department" means the department of health.

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

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

(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 care facility" means an entity with an active Washington state business license doing business or proposing to do business in the practice location where the physician would be employed, whose stated purposes include the delivery of medical care.

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

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

(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) "Medically underserved area" (MUA) means a federally designated area based on whether the area exceeds a score for an Index of Medical Underservice, a value based on infant mortality, poverty rates, percentage of elderly and primary care physicians to population ratios.

(11) "Physician" means the foreign physician, named in the visa waiver application, who requires a waiver to remain in the United States to practice medicine.

(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 training, are not considered primary care physicians for the purpose of this chapter.

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

(14) "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).

(15) "Sponsorship" means a request by the department on behalf of a health care facility to federal immigration authorities to grant a visa waiver for the purpose of recruiting and retaining physicians.

(16) "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.

(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.

[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 of health 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, 8 U.S.C. Sec. 1184(l) as amended by Public Law 108-441 and 22 C.F.R. 514.44(e). This option allows the department of health to sponsor a limited number of visa waivers each federal fiscal year if certain conditions are met.

(2) The department may acknowledge 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 shortage areas for health care facilities 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 which have identified a physician currently holding a J-1 visa as an ideal candidate to meet the community's need for primary health care services or specialist services as allowed by WAC 246-562-080.

(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 chapter 246-562 WAC.

(5) The department will limit its activities:

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

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

(c) Because the number of sponsorships the department may provide is limited, and because the number of shortage areas is great, sponsorship will be limited. In any single program year, a health care facility in any one designated health professional shortage area or medically underserved area:

(i) Will not be allotted more than two sponsorships;

(ii) Will not be allotted more than one specialist sponsorship as allowed by WAC 246-562-080(4); and

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

(d) In any given program year twenty of the federally allocated sponsorships will be allotted for primary care physicians and ten of the federally allocated sponsorships will be allotted for specialists through March 31. Any waiver sponsorships that remain unfilled on April 1 of each program year will be available to:

(i) Both primary care and specialist physicians consistent with the provisions of this chapter; and

(ii) Physicians intending to practice in nondesignated shortage areas in health care facilities that meet the criteria in WAC 246-562-075.

[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 health care facilities that can provide evidence of sustained active recruitment for the vacancy in the practice location with 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 health care facilities that provide care to all residents of the federally designated under-served area. When a federal designation is for an under-served population, the health care facility must provide care to the under-served population.

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

[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 the criteria established in 8 U.S.C. 1184(l) as amended by Public Law 108-441 and 22 C.F.R. Sec. 514.44(e) which are incorporated by reference. Copies of these provisions may be requested from the department by writing to the Washington State Department of Health, Office of Community and Rural Health, Visa Waiver Program, PO Box 47834, Olympia, WA 98504-7834.

The criteria set out in chapter 246-562 WAC must also be met.

[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 be existing health care facilities that:

(a) Are 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 institutional and correctional facilities designated as federal shortage areas, the applicant must:

(a) Currently serve:

(i) Medicare clients;

(ii) Medicaid clients;

(iii) Low-income clients, such as subsidized basic health plan enrollees;

(iv) Uninsured clients; and

(v) The population of the federal designation.

(b) Demonstrate that during the twelve months prior to submitting the application, the health care facility was providing a minimum of ten percent of the applicant's total patient visits to medicaid clients, and/or other low-income clients.

(c) Agree to implement a sliding fee discount schedule for the physician named in the J-1 visa waiver application. The schedule must be:

(i) Available in the client's principal language and English; and

(ii) Posted conspicuously; and

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

(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. 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 submitting a visa waiver application to the department. Active recruitment documentation can include one or more of the following:

(a) Listings in national publications;

(b) Web-based advertisements;

(c) Statewide newspaper advertisements;

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

(e) Listing the position with the office of community and rural health, recruitment and retention program.

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; however, they can be used in addition to the methods described in (a) through (e) of this subsection.

(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 shortage area after the term of employment (i.e., no noncompete clauses);

(c) Specify the period of employment:

(i) Three years minimum for primary care sponsorship; or

(ii) Five years minimum for specialist sponsorship.

(6) Any amendments made to the required elements of the employment contract, subsection (5) of this section, during the first three years for primary care physicians or five years for nonprimary care specialist physicians 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 prevailing wage as determined and approved by U.S. Department of Labor. Approval must be documented on a U.S. Department of Labor form ETA 9035 signed by an authorized official.

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

(9) If the applicant is not a publicly funded provider, additional criteria apply. The applicant must provide documentation of notification of intent to submit application for J-1 visa physician waiver to all publicly funded providers who provide medical care in HPSA or MUA designated area. Publicly funded providers include, but are not limited to, public

hospital districts, local health departments, or community and/or migrant health centers.

Notification must:

(a) Be sent at least thirty days prior to submitting the application to the department;

(b) Include a statement giving the publicly funded providers thirty days to provide comment to the department regarding the J-1 physician visa application; and

(c) Provide the department's address.

(10) Applicants must submit status reports to the department every six months, with required supporting documentation, during the initial term of employment, three years for primary care physicians or five years for specialists.

(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: 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 must be located in:

(a) A federally designated primary care health professional shortage area(s); or

(b) A federally designated mental health professional shortage area(s) for psychiatrists; or

(c) A federally designated whole-county medically underserved area(s); or

(d) A combination of federally designated areas.

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

(3) If the practice location is in both a population designation area and a medically underserved area, the designated population must be served.

(4) If the practice location is not located in a federally designated shortage area or whole-county medically underserved area, the applicant must meet the criteria in WAC 246-562-075.

(5) The health care facility named in the visa waiver application may be an existing practice location or a new practice location. 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 primary care location will be connected to existing secondary and tertiary care if needed.

[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 shortage areas. Public Law 108-441 allows states to sponsor up to five waivers each program year

for physicians who will practice medicine in a health care facility that is not located in a designated health professional shortage area but serves patients who reside in designated shortage areas. Waivers will not be open to physicians practicing in nondesignated shortage areas until April 1 of each program year. For waiver approval, the health care facility must:

(1) Provide care to patients who reside in designated shortage areas.

- (a) Describe the facility's service area.
- (b) Provide a patient visit report that identifies total patient visits in last six months of service by patient origin zip code.

(2) Describe who will benefit from the physician's services.

- (a) Identify the percentage of medicaid and medicare patients who will have access to this physician.
- (b) Describe how the facility will assure access to this physician for low-income or uninsured patients.
- (c) Explain if the physician has language skills that will benefit patients at this facility.

(3) Provide a detailed report of the extensive recruitment efforts made to recruit a U.S. physician for the specific position that the J-1 physician will fill.

- (a) Explain why this physician is necessary at this location.
- (b) Explain why it is difficult to recruit a U.S. physician for this location.
- (c) Provide the number of physicians interviewed for this position.
- (d) Provide the number of physicians offered this position.

[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 must not have a J-1 visa waiver pending for any other employment offer. Physicians must provide a letter attesting that no other applications are pending.

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

(3) Physicians are considered eligible to apply for a waiver when:

- (a) They have successfully completed their residency or fellowship program; or
- (b) They are 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) Physicians must provide direct patient care.

(5) The physician must comply with all provisions of the employment contract.

- (6) The physician must:
 - (a) Accept medicaid assignment; and
 - (b) Post and implement a sliding fee discount schedule; and
 - (c) Serve the low-income population; and
 - (d) Serve the uninsured population; and

- (e) Serve the shortage designation population; or
- (f) Serve the population of a local, state, or federal governmental institution or corrections facility as an employee of the institution.

(7) Physicians must have an active Washington state medical license. The applicant may substitute a copy of the license application and request an exception if the application for a Washington state medical license was submitted to the Washington state medical quality assurance commission four or more weeks prior to submission of the visa waiver application.

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

(9) Physicians must provide the following documentation:

- (a) A current Curriculum Vitae;
- (b) U.S. Department of State Data Sheet, Form DS-3035;
- (c) All DS-2019/IAP-66 Forms (Certificate of Exchange visitor status);

(d) Letter from residency program if applying as a primary care physician or from fellowship program if applying as a specialist that:

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

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

(iii) Documents level of specialty training, if any; and

(iv) Is prepared on residency or fellowship program letterhead and is signed by residency or fellowship program staff or faculty; and

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

- (e) Physician attestation statement;
- (f) No objection statement;
- (g) Personal statement from physician regarding reason for requesting waiver;
- (h) I-94 Entry and Departure cards; and
- (i) G-28 from attorney, when applicable.

[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. Con-

tinuing medical education (CME) will not be considered sub-specialty 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 addressing one of the following need criteria:**

(i) The physician specialty is needed to meet state or federal health care facility regulations, for example to maintain the hospital trauma designation level.

(A) Identify the regulation; and

(B) Address how the facility is currently meeting this regulation.

(ii) The physician specialty is needed to address a major health problem in the facility service area.

(A) Identify the health problem and how this specialty will address it;

(B) Provide incident rates of the pathology and tie diagnosis codes to payer mix (i.e., how many patients are affected and how many are low-income or uninsured?); and

(C) If this specialty is not available in the community, identify the nearest location where this specialty service can be obtained.

(iii) The physician specialty is needed to address population-to-physician ratio because the current ratio does not meet national standards.

(A) Provide the population-to-physician ratio for the specialty, include source for data provided;

(B) Provide the number of physicians (FTE) practicing this specialty in the same health professional shortage area/facility service area;

(C) Provide the distance to the nearest physician practicing the same specialty; and

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

(b) **Describe the referral system that includes:**

(i) On-call sharing;

(ii) Affiliation agreements with other health care entities in the service area, specifically with publicly funded employers, 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.

(c) **Provide at least one letter of support for this type of physician specialty** from a primary care provider practicing with publicly funded employers, 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 outside of the applicant's organization.

(d) Provide written notice to the department and all publicly funded providers in the health care facility's HPSA or MUA designated area **within thirty days** of the physician's start-date of employment. The notice must include:

(i) The physician's name, employment start date and practice location;

(ii) Services to be provided; and

(iii) Identification of accepted patients, such as medic-aid, medicare, or basic health plan.

[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.]

(3/8/06)

WAC 246-562-087 Eligibility for facilities hiring physicians as hospitalists. (1) A health care facility is limited to one hospitalist sponsorship per hospital per program year. Multiple employers at the same location are not allowed.

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

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

[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. (1) Physician visa waiver program application forms are available online at www.doh.wa.gov/hsqa/ocrh or may be requested from: Washington State Department of Health, Office of Community and Rural Health, Visa Waiver Program, PO Box 47834, Olympia, WA 98504-7834.

(2) Applications must be completed, address all state and federal requirements, and must include all required documents as specified in the application form.

[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 246-562-110 Waiver requests federal waiver programs. In the event an applicant for a federal agency J-1 waiver submits a copy of an application to the department, the department will acknowledge receipt of the copy of the application.

[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.]

WAC 246-562-120 Department review and action. (1) The department will review applications for completeness in date order received.

(2) Applications must be mailed, sent by commercial carrier, or delivered in person. Applications may not be sent by telefax, or electronically.

(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) Should multiple primary care physician applications arrive at the department on the same day, the department will rank those applications according to the following criteria:

(a) Facilities located in federally designated shortage areas will rank ahead of those facilities located in nondesignated areas.

(b) Federally designated shortage facilities will rank first.

(c) Publicly funded employers, 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, will rank second.

(d) Critical access hospitals and rural health clinics will rank third.

(e) All other private practice, for profit facilities will rank last.

(f) If multiple applications within a designated category arrive on the same day or if a ranked order cannot be determined by using the criteria in (a) through (f) of this subsection, then applications will be ranked by:

(i) Percentage of services provided to low-income, uninsured and sliding fee based patients;

(ii) Distance from applicant's practice location to nearest publicly funded provider;

(iii) Language skill of provider matching those significantly represented in the community;

(iv) Type of services provided, outpatient versus inpatient; and

(v) Facility location, rural versus urban based on RUCA codes to most current census data.

(5) Should multiple specialist applications arrive at the department on the same day, the department will rank these applications according to the following criteria:

(a) Facilities located in federally designated shortage areas will rank ahead of those facilities located in nondesignated areas.

(b) Hospitals or other health care facilities at risk of being out of state compliance standards will rank first. For example: The physician specialty is needed to maintain trauma designation or meet certificate of need requirements.

(c) Federally designated shortage facilities will rank second.

(d) Publicly funded employers, 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 will rank third.

(e) All other private practice, for profit facilities will rank last.

(f) If multiple applications within a designated category arrive on the same day, or if a ranked order cannot be determined by using the criteria in (a) through (e) of this subsection, then applications will be ranked by:

(i) Percentage of services provided to low-income, uninsured and sliding fee based patients;

(ii) Distance from applicant's practice location to nearest publicly funded provider;

(iii) Language skill of provider matching those significantly represented in the community;

(iv) Type of services provided, outpatient versus inpatient; and

(v) Facility location, rural versus urban based on RUCA codes to most current census data.

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

(7) The department will return incomplete applications to the applicant, and provide a written explanation of missing items.

(8) Incomplete applications may be resubmitted with additional required information. Resubmitted applications will be considered new applications and will be reviewed in date order received on resubmission.

(9) 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 J-1 applications.

(10) The department will return sponsorship applications to applicants who have had two approved sponsorships in the current year for the shortage area.

(11) If the Washington state medical license 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.

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

(13) The department may:

(a) Request additional clarifying information;

(b) Verify information presented;

(c) Investigate financial status of the applicant;

(d) Further investigate any comments generated by publicly funded provider notification of application for waiver;

(e) 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.

(14) 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.

(15) 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, which shall include the following:

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

(b) Fraud;

(c) Misrepresentation;

(d) False statements;

(e) Misleading statements; or

(f) Evasion or suppression of material facts in the visa waiver application or in any of its required documentation and supporting materials.

(16) 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: 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) Health care facilities may be denied future participation in the state visa waiver program if:

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

(b) A sponsored physician does not serve the designated shortage area and/or shortage population for the full three years of employment for primary care physicians or the full five years of employment for specialists.

(c) A sponsored physician does not remain employed by the applicant for the full three years of employment for primary care physicians or the full five years of employment for specialists.

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

(2) A health care facility 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: 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 Bureau of Citizenship and Immigration Services.

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

[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 receipt of the department's decision.

(4) The request shall be mailed, by a method showing proof of receipt, to the Adjudicative Clerk Office, PO Box 47879, 2413 Pacific Avenue, 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: 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.]