

WSR 24-13-113

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed June 20, 2024, 8:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-021.

Title of Rule and Other Identifying Information: J-1 physician visa waiver rules. The department of health (department) is proposing a rewrite and reorganization of chapter 246-562 WAC to clarify and update rules about J-1 physician visa waivers. The proposed changes address applicant criteria, clarify deadlines to receive applications, describe the application review process, create a scoring methodology, and include criteria for letters of attestation.

Hearing Location(s): On August 1, 2024, at 9:00 a.m., at the Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_A3MecocaTj2nFkkv0y3fWA. After registering, you will receive a confirmation email containing information about joining the webinar. Participants can attend in person at the physical location or virtually by registering on Zoom.

Date of Intended Adoption: August 13, 2024.

Submit Written Comments to: Sarah Gambrill, P.O. Box 47853, Olympia, WA 98504-7853, email <https://fortress.wa.gov/doh/policyreview/>, beginning on the date and time of this filing, by August 1, 2024, at midnight.

Assistance for Persons with Disabilities: Contact Sarah Gambrill, phone 564-669-1697, TTY 711, email J1VisaWaiver@doh.wa.gov, by July 30, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing a reorganization of chapter 246-562 WAC to update language for general clean up and clarification. The proposed language and organization updates will better reflect the purpose and intent of the J-1 visa waiver program.

The proposed rule making addresses the need for more available specialist waiver slots earlier in the fiscal year; this allows for prioritization of waiver placement based on physician practices, employers, and communities that are in the most need across Washington state. The proposed rule making will also provide a list of requirements and expectations for requesting letters of attestation and letters of completion.

Reasons Supporting Proposal: Rules in chapter 246-562 WAC, Physician visa waiver, were last revised in 2016. The proposed rule making is necessary to bring this chapter up to date, reorganize the sections for structure and clarity, and clarify the changes in physician practice and the need for physicians across Washington state.

Due to the implementation of the United States Department of Health and Human Services waiver program, the number of primary care waiver applications received by the Washington state J-1 visa waiver program has drastically decreased in the last three years. The proposed rule making will address the need for more available specialist waiver slots earlier in the fiscal year.

Scoring applications based on an adaptable scoring criterion will allow the department to prioritize waiver placements for areas and employers in Washington state in most need of physicians and to prioritize specific physician practices in critical need. In the last year, the department has received approximately 35 requests for letters of

attestation. Including requirements for letters of attestation and letters of completion in chapter 246-562 WAC will ensure that the department writes letters for physicians committed to working in underserved areas of Washington state under the guidelines of each federal agency waiver program and for physicians that have complied with the J-1 visa waiver program guidelines while serving their three-year service obligation.

Statutory Authority for Adoption: RCW 70.185.040.

Statute Being Implemented: Chapter 70.185 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Gambrill, 111 Israel Road S.E., Tumwater 98501, 564-669-1697.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt from analysis according to RCW 34.05.328 (5)(b)(iv) because it clarifies language of a rule without changing its effect and RCW 34.05.328 (5)(b)(ii) because it describes internal governmental operations.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed rule clarifies the language of the rule without changing its effect, and describes internal governmental operations.

Scope of exemption for rule proposal:

Is fully exempt.

June 10, 2024
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-5475.3

AMENDATORY SECTION (Amending WSR 16-17-060, filed 8/12/16, effective 10/1/16)

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, physically located in Washington state, that (~~pro-~~~~vides~~) has provided health care services for a minimum of 12 months and seeks to employ a physician at a Washington state practice loca-

tion(s) and is requesting (~~(state sponsorship or concurrence of a)~~) the department to provide a favorable recommendation to accompany their J-1 visa waiver application.

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

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

(4) "Direct patient care" means providing care to patients for the purpose of prevention, diagnosis, treatment, and monitoring of disease.

(5) "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))~~ (6) "Flex waiver" means a ((minimum forty)) waiver sponsorship for a physician who will practice medicine at a location outside a designated HPSA that serves significant numbers or percentages of patients who reside in designated HPSAs.

(7) "Full-time" means the equivalent of 40 hours of medical practice per week, or 160 hours per month, not including call coverage, consisting of at least ((thirty-two)) 32 hours ((seeing patients)) providing direct patient care on an ambulatory or in-patient basis and may include up to eight hours administrative work for at least ((forty-eight)) 48 weeks per year.

~~((6))~~ (8) "Health professional shortage area" or "HPSA" means an area federally designated as having a shortage of primary care physicians or mental health ~~((care))~~ providers.

~~((7))~~ (9) "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))~~ (10) "J-1 visa waiver program" or "program" refers to the department program that coordinates and sponsors J-1 visa waivers.

(11) "Low income" means ~~((that a family's))~~ a total family household income that is less than ~~((two hundred))~~ 200 percent of the federal poverty level as defined by the ~~((U.S. Federal Poverty Guidelines published annually))~~ annual federal poverty guidelines.

~~((10))~~ (12) "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))~~ (13) "Practice location" means the physical location(s) where the visa waiver physician will work.

~~((12))~~ (14) "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))~~ obstetrics or geriatric training, are not considered primary care physicians for the purpose of this chapter.

~~((13))~~ (15) "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))~~ (16) "Sliding fee discount schedule" means a written delineation documenting the value of charge discounts granted to patients based upon patients with family income up to ~~((two hundred))~~ 300 percent of the annual federal poverty guidelines.

~~((15))~~ (17) "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 ~~((+))~~ who do not meet the ~~((current))~~ definition of "primary care ~~((for the waiver program))~~" physician" as defined above.

~~((16))~~ (18) "Sponsorship" means a request by the department on behalf of an applicant to federal immigration authorities to grant a J-1 visa waiver for the purpose of recruiting and retaining physicians.

~~((17))~~ (19) "Telehealth" means a mode of delivering health care services using telecommunications technologies by a practitioner to a patient at a different physical location than the practitioner. Telehealth includes real-time interactive health care services and remote monitoring.

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

~~((18))~~ (21) "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 or fellowship training.

NEW SECTION

WAC 246-562-015 Intent of the visa waiver program. (1) The purpose of the J-1 visa waiver program is:

(a) To increase access to physicians for low income, medicaid-covered and otherwise medically underserved individuals;

(b) To increase the availability of physician services in existing federally designated HPSA for applicants that have long standing vacancies;

(c) To improve access to physician services for communities and specific underserved populations experiencing difficulties obtaining physician services; and

(d) 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.

(2) The visa waiver program is intended as a secondary source for recruiting qualified physicians and is not intended as a substitute for recruiting graduates from U.S. medical schools.

(3) 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, consistent with the rules established in this chapter.

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

(5) The J-1 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. Part 5, Appendices A or C, the applicant must provide care to the population group.

AMENDATORY SECTION (Amending WSR 16-17-060, filed 8/12/16, effective 10/1/16)

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))~~ and as provided in 22 C.F.R. Sec. 41.63 by sponsoring up to the number of allowable visa waivers as authorized by the federal government 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)) Federal law allows states to sponsor a limited number of Flex waivers.~~

~~(3) The department may provide letters of attestation for visa waiver applications sponsored by federal agencies, including the United States Department of Health and Human Services, and the Physician National Interest Waiver program.~~

~~(4) The department may exercise its discretion to sponsor a J-1 visa waiver request only when:~~

~~(a) The ~~((application contains))~~ applicant provides all of the required information and documentation on the department application and provides all supporting documents as required in this chapter; and~~

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

~~(c) ~~For applicants that have benefited from department sponsorship previously,~~).~~

~~(5) In the event an applicant has previously participated in the J-1 visa waiver program, the department may consider 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) with program rules and regulations.~~

~~(6) In any single federal fiscal year, the department ((will)) may 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) location and applicant.~~

~~(7) In the event of resource limitations or other considerations, the department may choose to discontinue the program.~~

((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))

AMENDATORY SECTION (Amending WSR 16-17-060, filed 8/12/16, effective 10/1/16)

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)) 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).~~

~~(2) Except for state psychiatric or correctional facilities, the applicant must:~~

~~(a) Currently serve:~~

~~(i) Medicare clients;~~

~~(ii) Medicaid clients;~~

~~(iii) Low-income clients; and~~

~~(iv) Uninsured clients(, and~~

~~(v) The population of the federal designation, if applicable)).~~

~~(b) Accept all patients regardless of the ability to pay.~~

~~(c) Demonstrate that during the ((twelve)) 12 months prior to submitting the application, the practice location(s) where the physician will work provided a minimum of ((fifteen)) 15 percent of total patient visits to medicaid and other low-income clients. Clients dually ((eligible)) enrolled for medicare and medicaid may be included in this total.~~

~~((e) Have or agree to)) (d) Implement and maintain a sliding fee discount schedule for ((the)) each practice location(s) in which the J-1 visa waiver ((application)) physician will work. The schedule must be:~~

~~(i) Available in ((the client's principal)) any language ((and English)) spoken by more than 10 percent of the population in the practice location's service area;~~

~~(ii) Posted ((conspicuously)) or prominently displayed within public areas of the practice location(s);~~

~~(iii) Distributed in hard copy upon patient request; and~~

~~(iv) Updated annually to reflect the most recent federal poverty guidelines.~~

~~(3) If the applicant does not charge patients, then subsection (2)(d) of this section does not apply.~~

~~(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)) demonstrate that they engaged in active recruitment, specific to the location and physician specialty, ((must be for a period of not less than)) a total or aggregate of at least six months in the ((twelve months)) 12-month period immediately 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~~) that meets state and federal requirements throughout the period of obligation, regardless of physician's visa status (~~(+ (b))~~). The employment contract must:

(a) Identify the physician's name.

(b) Identify the name and address of the proposed practice location(s).

(c) Identify the nature of services to be provided by the physician.

(d) Describe duties to be provided by the physician.

(e) Specify the wages, working conditions, and benefits.

(f) Include a statement of the federal HPSA to be served.

(g) Specify a minimum three-year period of full-time employment.

(h) State that the physician agrees to begin employment within 90 days of visa waiver approval.

(i) 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).~~

(j) State that the physician:

(i) Will provide care to medicaid, medicare, and other low-income patients;

(ii) Must see all patients regardless of ability to pay based on sliding fee scale; and

(iii) Meets all requirements set forth in 8 C.F.R. Sec. 214.1 of the Immigration Nationality Act.

~~((7))~~ (6) 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))~~ (7) If the applicant has previously requested sponsorship of a physician, WAC 246-562-020 ((4)(e)) (5) 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))~~ (8) Applicants must cooperate in providing the department with clarifying information, verifying information already provided, or in any investigation of the applicant's financial status.

(9) Applications for a specialist physician must include a letter from the applicant. The letter must:

(a) Be on the organization's letterhead;

(b) Identify the physician by name;

(c) Demonstrate a need for the nonprimary care specialty by using available 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;

(d) Describe how this specialty will link patients to primary care physicians;

(e) Describe how the demand for the specialty has been handled in the past;

(f) Be signed and dated by the head of the organization; and

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

(i) On-call sharing; and

(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.

(10) Applicants applying for a specialist physician must provide written notice to the department and all publicly funded employers in the applicant's HPSA within 30 days of the sponsored physician's start-date of employment. The notice must include:

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

(b) Specialty and services to be provided; and

(c) Identification of accepted patients, such as medicaid, medicare, and the availability of a sliding fee schedule.

AMENDATORY SECTION (Amending WSR 16-17-060, filed 8/12/16, effective 10/1/16)

WAC 246-562-070 Criteria for ~~((the proposed)) practice locations ((to be served by the physician))~~. (1) ((The)) All proposed practice location(s) must be an existing practice location in Washington state for at least 12 months prior to application submittal.

(2) All proposed practice location(s) provided in the application will be counted toward the maximum number of sponsorships allotted as described in WAC 246-562-095 (6) (a).

(3) Any proposed practice location(s) must be located in:

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

(b) A federally designated mental health HPSA(s) in Washington state 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)) applications.~~

~~((3)) (4) 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.~~

(5) If the practice location is not located in a federally designated HPSA or a state correctional or psychiatric institution, then 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)) apply for a Flex waiver.~~

(6) Successful Flex waiver applicants must be able to document:

- (a) Their practice location's service area and to what extent they provide services to residents of surrounding designated HPSAs;
- (b) The percentage of the sponsored physician's patient panel reasonably expected to be medicaid and medicare patients given current use of the service and practice location by those populations;
- (c) How the applicant will ensure access to this physician for low-income or uninsured patients;
- (d) If there is a unique practice area or substantial referral network making the physician a statewide resource for certain medical conditions; and
- (e) If the physician has language skills that will benefit patients at the practice location.

AMENDATORY SECTION (Amending WSR 16-17-060, filed 8/12/16, effective 10/1/16)

WAC 246-562-080 Criteria for ((the)) physician. (1) The physician seeking a recommendation for 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))~~ and must provide a letter attesting that no other applications are pending.

(2) The physician must have the qualifications described in recruitment efforts for ~~((a))~~ the 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 training program that:

(i) Is on the program's letterhead;

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

~~(ii))~~ (iii) Confirms the physician is in good standing with the program;

(iv) Is signed and dated by the head of the program; and

(v) Includes contact information for signee.

(4) The physician must provide full-time 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 and unrestricted medical license under chapter 18.71 or 18.57 RCW without any pending enforcement action cases. 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) The physician must be an active candidate for board certification on or before the start date of employment.
- (9) The 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 or statement that the physician is not contractually obligated to return to their home country;
 - (f) A personal statement from the physician regarding the reason for requesting a waiver;
 - (g) All 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.
- (10) The statements required in subsection (9)(e) and (f) of this ((subsection)) section may be on a form provided by the department or other format that provides ((substantially)) the same information as the department form.
- (11) Physicians who have completed additional subspecialty training are not eligible for a primary care waiver, except for geriatric medicine, obstetrics, and psychiatry. Continuing medical education (CME) will not be considered subspecialty training for the purposes of this rule.

NEW SECTION

- WAC 246-562-095 Application submittal.** (1) Notwithstanding any other provisions 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 on October 1st of each year.
- (2) The department will accept complete applications during an application review period of October 1st through October 15th of each year.
- (3) The department may open an additional application review period from November 15th through September 1st if waiver slots are available.
- (4) The application review period will be announced on the department's website at least 10 business days prior to the start date of the application review period.
- (5) Flex waiver applications will only be received beginning January 1st of each year if waiver slots are available.
- (6) From October 1st through October 15th of each year, applicants will not be allotted more than:
- (a) Two sponsorships per practice location(s); and
 - (b) Three waiver sponsorships, including integrated health care systems.
- (7) The primary application package must be submitted electronically to the department. Instructions on how to submit electronic applications will be available on the department's website.
- (8) A secondary application package must be mailed or sent by commercial carrier, as long as the U.S. Department of State requires a

paper application. The mailing address will be available on the department's website.

(9) Applications must be completed, meet all state and federal requirements, and must include all required documents as specified in the department application form. Application forms will be available on the department's website.

NEW SECTION

WAC 246-562-115 Application review process. (1) During the application review period of October 1st through October 15th, the following review process will apply.

(a) Applications that are ineligible or incomplete will be returned to the applicant and will not be considered for scoring. The applicant is solely responsible for ensuring that their application is complete to avoid the possibility of denial.

(b) Complete and eligible applications will undergo a full review and will be scored using the weighted scoring method posted on the department's website.

(2) Applications received during the potential review period of November 15th through September 1st will be reviewed on a first-come, first-served basis and will not undergo scoring.

(3) The department may request additional clarifying information or verify information presented in the application and may consider information outside of the submitted application during the review and scoring process.

(4) The department will use the following criteria to score and prioritize applications:

(a) Geographic location;

(b) Facility type;

(c) Specialty type;

(d) Percentage of medicaid and other low-income patients served;

and

(e) HPSA designation score.

(5) The department will publish a publicly available scoring rubric each year identifying how the criteria outlined in subsection (4) of this section will be weighted.

(6) In the event the department identifies a further need for specific physician services consistent with the intent of this chapter, the department may identify additional criteria or factors by which to score applications.

(7) In the event the department identifies any additional criteria, this criteria will be made publicly available at least 90 days prior to the applicable application review period.

(8) Sponsorships will be provided to applicants according to score.

(9) If applications receive the same score for the last available waiver slot, the applications will be reevaluated based on the scoring criteria described in subsection (4) of this section. If they still receive the same score, priority will be given in the following order:

(a) Highest percentage of medicaid and other low-income patients served;

(b) Highest HPSA designation score; and

(c) Physicians that trained or completed their residency or fellowship training in Washington state.

(10) If, after the reevaluation in subsection (9) of this section, there are applications that have equal scores for the last available waiver, the secretary of health, or the secretary's designee, will select the final applicant(s).

AMENDATORY SECTION (Amending WSR 16-17-060, filed 8/12/16, effective 10/1/16)

WAC 246-562-120 Department ((review and action)) decision. (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.)~~ Applicants will be notified of the department's decision within 30 business days of the review period's closing date. If the decision is to decline sponsorship, the department will provide an explanation of how the application scored or failed to meet the stated ~~((criterion or))~~ criteria.

~~((14))~~ (2) 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))~~ 246-562-015 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))~~; or

(h) Status of medical license.

(3) Applicants may be denied future participation in the state visa waiver program for noncompliance with any of the provisions of this chapter or federal labor law requirements.

(4) Any decision by an applicant or physician to contest a department decision, including a decision to deny or withdraw a visa waiver sponsorship, shall be governed by the Administrative Procedure Act (chapter 34.05 RCW), chapter 246-10 WAC, and this chapter. The burden shall be on the applicant or physician to establish that the department's decision or action was in error in all cases involving this chapter.

NEW SECTION

WAC 246-562-125 Reporting requirements. (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 following amendments made to the employment contract or changes to the employment conditions during the first three years of contracted employment must be reported to the department, which include:

- (a) Practice location(s);
- (b) Number of hours served by the physician;
- (c) Duties served by the physician; or
- (d) Any changes that would result in a decrease of the physician's wages.

(3) Any amendments to the employment contract or changes in employment conditions outlined in subsection (2) of this section must be submitted to the department for review within 30 calendar days after the effective date of the amendment.

(4) Applicants must submit status reports to the department every 12 months, with required supporting documentation, during the initial three-year term of employment.

(5) Physicians with a J-1 visa waiver must submit status reports to the department every 12 months, with required supporting documentation, during the initial three-year term of employment and one-year post-obligation period.

NEW SECTION

WAC 246-562-135 Requirements for letters of attestation. (1) The department may provide letters of attestation for visa waiver applications sponsored by federal agencies, including the Physician National Interest Waiver Program and the United States Department of Health and Human Services Waiver Program.

(2) Requests for a letter of attestation must be sent electronically to the department for consideration.

(3) The physician named in the request must have an active and unrestricted medical license under chapter 18.71 or 18.57 RCW without any pending enforcement action cases to receive a letter of attestation from the department.

(4) The practice location(s) provided in the request must be located in a primary care HPSA, or a mental health HPSA for psychiatrists.

(5) Requests for a letter of attestation must include a letter from the employer. The letter from the employer must:

- (a) Be on employer letterhead;
- (b) Identify the waiver program;
- (c) Describe how the physician's practice is in the public interest;

(d) State that the employer treats all patients regardless of their ability to pay, accepts medicare, medicaid, and S-CHIP assignment, uses a sliding fee discount, and may charge no more than the usual customary rate prevailing in the geographic area in which the services are provided; and

(e) Be signed and dated by the head of the organization.

(6) To receive a letter of attestation for a Physician National Interest Waiver application, the request must include an employment contract. The employment contract must:

(a) Include a total of five years of employment obligation;

(b) Identify the practice location(s) and HPSA identification number; and

(c) Not include a noncompete clause that prohibits the physician from providing services within the community at the end of their three-year period of obligation.

(7) If the physician received a J-1 visa waiver in Washington state, all currently due annual reports must be completed by the physician and employer prior to requesting a letter of attestation.

(8) The department may credit prior employment years served by the physician toward the five-year service obligation under the following conditions.

(a) The previous employment must not be served during fellowship or residency training.

(b) The previous employment must not be served while under J-1 visa status.

(c) The previous employment must be served in a health care facility in an area with a HPSA designation.

(9) To receive a letter of attestation for a U.S. Department of Health and Human Services waiver application, the request must be for a primary care physician and include an employment contract. The employment contract must:

(a) Include a minimum of three years employment obligation;

(b) Identify the practice location and HPSA identification number;

(c) State that the physician agrees to start employment within 90 days of receiving the waiver;

(d) Obligate the physician to work 40 hours per week providing primary care services;

(e) Include a clause that the contract can only be terminated for cause until the completion of the three-year commitment; and

(f) Not contain a noncompete clause or restrictive covenant.

(10) The physician must complete their training no more than 12 months prior to the start date of employment under a U.S. Department of Health and Human Services waiver.

NEW SECTION

WAC 246-562-145 Requirements for letters of completion. (1) The department may provide a letter of completion to confirm a physician's fulfillment of the three-year service obligation under the Washington state J-1 physician visa waiver program.

(2) Requests for a letter of completion must be sent electronically to the department for consideration.

(3) The department will consider providing a completion letter based on the following criteria:

(a) The status of an active medical license without any pending enforcement actions;

(b) If the physician and employer complied with the program rules and regulations;

(c) The completion of all annual reports under the three-year service obligation by both the employer and the physician. The submitted annual reports must verify that:

(i) The physician was not absent from the practice for more than four weeks per year;

(ii) The physician worked at least 32 hours per week providing patient care services; and

(iii) The employer had a current sliding fee discount schedule in place to reflect the most recent federal poverty guidelines.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-562-040	Principles that will be applied to the visa waiver program.
WAC 246-562-050	Review criteria.
WAC 246-562-075	Criteria for waiver sponsorships in nondesignated areas.
WAC 246-562-085	Eligibility for primary care and specialist waivers.
WAC 246-562-090	Application form.
WAC 246-562-100	Criteria applied to federally designated facilities.
WAC 246-562-130	Eligibility for future participation in the visa waiver program.
WAC 246-562-140	Department's responsibility to report to the U.S. Department of State and the United States Citizenship and Immigration Services.
WAC 246-562-150	Appeal process.
WAC 246-562-160	Implementation.