HIRING INTERNATIONAL PHYSICIANS WHO NEED A J-1 WAIVER

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J-1 Visas

- Graduate medical education or training
- Two (2) year home country residence requirement
- Sponsoring agency is the Educational Commission for Foreign Medical Graduates (ECFMG)
QUALIFYING FOR A J-1 VISA

- Unexpired ECFMG Certificate
- Passing marks on USMLE Step 1 and Step 2 Clinical Knowledge (CK)
- Contract/job offer letter for their program
- Statement of need from the Ministry of Health
PROCESS

- ECFMG issues a DS-2019 form to the foreign physician
- Physician applies for the visa at the American consulate
- After issuance, he/she enters the US to start program
- Continues J-1 stay for time usually necessary for completion of program, up to seven (7) years
- Physician limited to work in designated program
- No moonlighting
HOME COUNTRY RESIDENCE REQUIREMENT

- Section 212(e) of the INA
- All J-1 exchange visitors entering for medical training must return to their home country or country of last permanent residence for an aggregate of two (2) years, subsequent to their program before being eligible to obtain H-1B visas or green cards (lawful permanent residency)
- Either fulfil requirement or obtain a waiver
- Can postpone by using other visa categories to allow work, such as J-2 (with EAD), O-1, TN, E-1, E-2, or E-3.
J-1 WAIVERS FOR PHYSICIANS

- Starts with online filing of DS-3035 with the State Department’s Waiver Review Division (WRD)
- Mail in application and documentation
Waiver Alternatives

- Hardship: Prove that the physician’s US citizen or permanent resident (green card) spouse and/or child will suffer exceptional hardship:
  - If they remain in the US while the J-1 physician returns home for two (2) years and
  - They will also suffer exceptional hardship if they accompany the J-1 physician home for two (2) years
Fear of Persecution: Prove that the J-1 physician will be persecuted due to race, religion, or political opinion upon return to home country

- Similar to an asylum claim
- Requires substantial and persuasive evidence of persecution.
Interested Government Agency (IGA)- Federal governmental agency or a State 30 Program ("Conrad 30")

- Each agency has their own program and procedures.
- State 30 is the most popular program
- Department of Health and Human Services (HHS)
- Veterans Administration (VA)
- Appalachian Regional Commission (ARC)
- Delta Regional Authority (DRA)
- Other federal governmental agencies
Ohio Department of Health (ODH) - State 30 Program

- The goal of Ohio’s State 30 J-1 Visa Waiver Program is to increase access to primary care in areas that have a shortage of primary care physicians.
- ODH may recommend up to thirty (30) J-1 waivers per federal fiscal year, which runs from October 1 through September 30 of the following calendar year.
- ODH determines annually when J-1 applications can be filed (changes from year to year).
ODH State 30 Program

Who can apply?

- ODH regards applications for primary care physician placements in Health Professional Shortage Areas (HPSAs) as the highest priority.
- ODH accepts applications for placements in certain areas designated as Medically Underserved Areas/Populations (MUA/Ps) but such applications are granted only if there are available slots.
Applications for non-primary care placements from public and children’s hospitals (Cleveland Clinic Children’s Hospital and MetroHealth) are given priority over other non-primary care specialties if accompanied by demonstration of training, recruitment or retention of a primary care physician for an Ohio HPSA or safety net site (i.e. 30% or more of the population served at the site are Medicaid and/or sliding fee scale patients).

Placements outside of the HPSA area and/or facilities may be made using “FLEX” slots.

Up to ten slots per year are available for placements outside of HPSAs and identified MUA/Ps with certification by the applicant that at least 20% of the site’s patients reside in underserved areas.
ODH State 30 Program Priority List

1. Primary care physicians working in primary care HPSAs.
2. Primary care physicians working in identified MUA/Ps.
3. Primary care physicians working outside of HPSAs and/or MUA/Ps who serve underserved population ("FLEX" slots).
4. Non-primary care physicians working in primary care HPSAs.

5. Non-primary care physicians working in eligible facilities or in identified MUA/Ps.

6. Non-primary care physicians working outside of HPSAs and/or MUA/Ps who serve underserved population (“FLEX” slots).
DEFINITION OF PRIMARY CARE

- Family Practice, General Internal Medicine, Obstetrics/Gynecology, General Pediatrics, Combined Internal Medicine/Pediatrics, Adolescent Medicine or Geriatrics providing primary care services
- General, Child/Adolescent or Geriatric Psychiatry placements in mental health HPSAs
- Non-primary care - all other specialties and primary care physicians practicing in inpatient settings, e.g. Hospitalists and Emergency Medicine
**IMPORTANT PARTS OF J-1 APPLICATION**

- J-1 physician must first obtain Department of State (DOS) case number.
- Application must include a filing fee in the amount of $3,571.
- ODH requests patient population data, including percentages of patients (sorted by payor type) for the proposed work site for the 12 month period immediately preceding the J-1 waiver application.
- The J-1 sponsoring facility must have a Sliding Fee Scale (SFS) program in place based on 200% of the current federal poverty guidelines.
- Non-primary care applications must include letters from primary care providers documenting the practice’s current relationships with primary care providers in the service area.

- Non-primary care applications must also include a physician-to-population ratio for the particular specialty for the service area as a justification for the placement of the specialist physician.

- All J-1 waiver physicians must show an approved Ohio Medical License before a J-1 waiver application will be recommended for approval.

- ODH also requests an explanation of the recruitment process that led to the offer of employment to the J-1 physician.
The Employment Contract must:

- Be for no less than 3 years
- Must include language stating that the physician will start working within 90 days of approval of J-1 waiver
- Must list the exact work address(es)
- Must define full-time employment (40 hours per week in clinical care setting)
- Must include a Binding Arbitration Clause.

The agreement may NOT include a non-compete clause, termination without cause clause or an allowance for adding/changing practice sites without prior ODH approval.
THREE STRIKES AND YOU’RE OUT!

- If additional information is deemed necessary to complete the J-1 waiver application, ODH will issue up to three requests for additional evidence or information.
- If the raised issues cannot be resolved with responses to the three requests, the application will not be recommended for approval.
WHAT HAPPENS AFTER ODH?

- ODH forwards an official recommendation letter to the DOS
- DOS then issues their own recommendation, which is made to US Citizenship & Immigration Service (USCIS)
- USCIS issues final J-1 waiver approval (I-612)
- J-1 visa holder can then change status from J-1 to H-1B
- Employer must file H-1B visa petition with a request for change of status and former J-1 physician can start work upon approval of H-1B
FEDERAL IGA WAIVER APPLICATIONS

- U.S. Department of Health and Human Services (HHS)
  - Waiver based on research performed in an area of priority or significant interest to the agency, or
  - Waiver based on health care services performed in a HPSA (primary care of mental HPSA)

- Appalachian Regional Commission (ARC) waiver based on health care services performed in a HPSA
This is for academic researchers only (clinicians will not qualify)

Position must be permanent (tenure/tenure-track) and there is no employment contract requirement

Must show recruitment efforts for the position

NIH funding is very important

HHS Exchange Visitor Waiver Review Board recommends the agency’s decision (board is made up of scientific experts who decide whether the presented research program meets the quality requirement)

Board also decides whether the J-1 researcher is in an essential position and must be retained for the program to continue
Only primary care physicians and psychiatrists will qualify (sub-specialists are not eligible)

Work location must be in a HPSA with a score of 7 or higher

Must demonstrate attempt to recruit a US-born or permanent resident physician
Must obtain acknowledgment letter form State Health Department (ODH)
The facility must treat all patients regardless of their ability to pay
Facility must accept Medicaid, Medicare and S-CHIP assignment
Facility must use a sliding fee scale
Waiver based on health care services performed in a HPSA (primary care of mental HPSA) located within the ARC region

Ohio ARC counties are: Adams, Ashtabula, Athens, Belmont, Brown, Carroll, Clermont, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Trumbull, Tuscarawas, Vinton, and Washington

Virtually identical to the HHS clinical J-1 waiver program