

**ADOPTED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R138-10

Effective May 5, 2011

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-9, NRS 439A.170 and 439A.175; §§10-12, NRS 439A.170 and 439A.180.

A REGULATION relating to health care; creating the Primary Care Advisory Council; prescribing the membership and duties of the Advisory Council; prescribing provisions for the administration of the Physician Visa Waiver Program; prescribing the application procedure for the Program; establishing the qualifications for an employer and a J-1 visa physician to participate in the Program; prescribing the procedure to file a complaint; providing administrative penalties; and providing other matters properly relating thereto.

Section 1. Chapter 439A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, “Advisory Council” means the Primary Care Advisory Council created by section 3 of this regulation.*

Sec. 3. 1. *The Primary Care Advisory Council is hereby created within the Health Division. The Advisory Council consists of members appointed by the Administrator as follows:*

(a) One member who represents the Great Basin Primary Care Association, or a successor organization;

(b) One member who represents a federally-qualified health center in this State;

(c) One member who represents the Nevada Office of Rural Health within the University of Nevada School of Medicine;

(d) One member who is a physician licensed in good standing pursuant to chapter 630 of NRS and who has successfully completed an employment contract under the Program;

(e) One member who represents the Nevada State Medical Association, or its successor organization;

(f) Members who are health care professionals; and

(g) Representatives from the communities being served by the Program.

2. In addition to the members appointed pursuant to subsection 1, the Administrator may appoint nonvoting members from the Health Division or other governmental agencies who have knowledge of and experience in health care and the Program.

3. Each member of the Advisory Council serves for a term of 2 years. A member may be reappointed.

4. If a vacancy occurs during the term of a member, the Administrator shall appoint a person similarly qualified to replace that member for the remainder of the unexpired term.

5. The Advisory Council shall meet at least once each calendar quarter and at such other times as specified by a call of the Chair.

6. At the first meeting, and annually thereafter, the Advisory Council shall select a Chair from among its members.

7. The Chair of the Advisory Council may appoint a subcommittee to review applications, complaints and policies and procedures of the Program and make recommendations to the Advisory Council.

8. *As used in this section, “federally-qualified health center” has the meaning ascribed to it in 42 U.S.C. § 1396d(l)(2)(B).*

Sec. 4. *The Advisory Council shall review and make recommendations to the Administrator concerning:*

1. *The approval or denial of applications for letters of support filed with the Administrator pursuant to section 9 of this regulation.*

2. *The disposition of complaints submitted to the Program pursuant to section 10 of this regulation.*

3. *The policies and procedures of the Program.*

Sec. 5. 1. *An application for a letter of support must:*

(a) *Be complete.*

(b) *Include the materials required by subsection 1 of NRS 439A.175.*

(c) *Be on the form prescribed by the Health Division.*

(d) *Contain the notarized signatures of the employer and the J-1 visa physician.*

(e) *Except as otherwise provided in subsection 2, be accompanied by an application fee of \$500 which must be paid in equal amounts by the employer and the J-1 visa physician.*

2. *The Administrator may waive the portion of the application fee which must be paid by the J-1 visa physician or require the J-1 visa physician to pay that portion of the application fee pursuant to a payment plan if the J-1 visa physician is experiencing an economic hardship and the J-1 visa physician submits with the application documentation sufficient to demonstrate that the economic hardship exists.*

3. *An employer or a J-1 visa physician may obtain an application for a letter of support from the Health Division on the Internet website maintained by the Health Division at*

<http://health.nv.gov/PrimaryCare.htm> or by submitting a written request for an application to the Health Division, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.

Sec. 6. 1. *In addition to the requirements of subsection 2 of NRS 439A.175, the contract entered into by the employer and the J-1 visa physician must:*

(a) Except as otherwise provided in subsection 2, require the J-1 visa physician to begin work within 90 days after receipt of the J-1 visa waiver.

(b) Except as otherwise provided in subsection 2, be for a term of at least 3 years.

(c) Provide that the J-1 visa physician will work a minimum of 40 hours each week at the location identified on the petition submitted by the J-1 visa physician to the Waiver Review Division of the United States Department of State.

(d) Specify the wage that the J-1 visa physician will earn. The wage must not be less than the prevailing wage determined by the Office of Foreign Labor Certification of the United States Department of Labor, which may be found on the Internet website maintained by the Foreign Labor Certification Data Center at <http://www.flcdatacenter.com>.

(e) Contain the signatures of the employer and the J-1 visa physician and the date on which the contract was signed by each person.

(f) Identify the conditions for termination of the contract, which must not include a provision authorizing termination without cause.

2. *If a J-1 visa physician is transferred to a different employer pursuant to section 11 of this regulation, the contract entered into by the employer to which the J-1 visa physician is transferred and the J-1 visa physician must comply with paragraphs (c) to (f), inclusive, of subsection 1 and:*

(a) Require the J-1 visa physician to begin work within 90 days after receiving notice that the transfer was granted; and

(b) Be for a term equal to the time remaining on the previous contract.

3. A contract entered into by an employer and a J-1 visa physician may contain a clause for liquidated damages. If a contract entered into by an employer and a J-1 visa physician contains a clause for liquidated damages, the employer may not receive liquidated damages if the contract is terminated by the J-1 visa physician before the end of the contract because the employer has violated a provision of the contract, NRS 439A.130 to 439A.185, inclusive, or sections 2 to 12, inclusive, of this regulation.

Sec. 7. An employer shall:

1. Offer fees based on a sliding scale to patients whose income is at or below 200 percent of the federally designated level signifying poverty.

2. Ensure that the J-1 visa physician works only in a location which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division of the United States Department of State.

3. Post a sign in the waiting room of each location where the J-1 visa physician works which states that:

(a) Fees based on a sliding scale are available for certain patients who have demonstrated a financial need for assistance to pay for care and services.

(b) Patients will be provided care and services regardless of the ability of the patient to pay.

4. Provide documentation satisfactory to the Health Division that the employer participates in Medicaid, Medicare and Nevada Check Up.

5. File the schedule of fees with the Administrator for review.

6. Submit an affidavit to the Administrator once every 6 months which attests that the J-1 visa physician:

(a) Worked at least 40 hours each week at a location which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division; and

(b) Is not employed at any location which is not identified on the petition.

Sec. 8. *A J-1 visa physician must be in the final year of residency or a fellowship program or be requesting a transfer from the J-1 visa waiver program of another state and shall:*

1. Comply with the requirements of 8 U.S.C. § 1184(k).

2. If the J-1 visa physician will prescribe or dispense controlled substances:

(a) Obtain any certificate or registration required by chapters 453 and 639 of NRS and any regulations adopted pursuant thereto; and

(b) Register with the Drug Enforcement Administration of the United States Department of Justice.

3. Accept patients who are enrolled in Medicaid, Medicare or Nevada Check Up.

4. Provide care and services based on the sliding scale of fees filed with the Administrator pursuant to subsection 5 of section 7 of this regulation.

5. Only work in a location which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division of the United States Department of State.

6. Submit an affidavit to the Administrator once every 6 months which attests that the J-1 visa physician:

(a) Worked at least 40 hours each week at a location which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division; and

(b) Is not employed at any other location which is not identified on the petition.

Sec. 9. 1. An application for a letter of support must be filed with the Administrator by personal delivery, commercial carrier or mail.

2. The Advisory Council may review an application submitted pursuant to this section for completeness and compliance with the provisions of NRS 439A.130 to 439A.185, inclusive, and sections 2 to 12, inclusive, of this regulation.

3. Applications must be reviewed in the order in which they were received.

4. The Administrator is responsible for the review and the approval or denial of all applications. The Administrator shall provide notice of the approval or denial of an application to the applicant. If an application is incomplete, the Administrator shall provide notice to the applicant within 14 days after receipt of the application and provide a written explanation of the missing information or documentation. An application may be resubmitted with the additional required information or documentation.

5. The Administrator shall accept applications pursuant to this section until all available spots for enrollment of J-1 visa physicians in the Program have been filled. The Administrator shall post the status of the number of available spots for enrollment on the Internet website maintained by the Health Division at <http://health.nv.gov/PrimaryCare.htm>.

6. The Administrator shall not issue a letter of support to:

(a) An employer who was penalized for a violation of NRS 439A.130 to 439A.185, inclusive, or sections 2 to 12, inclusive, of this regulation, or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.

(b) A J-1 visa physician who was determined by the Administrator to have violated a provision of NRS 439A.130 to 439A.185, inclusive, or sections 2 to 12, inclusive, of this

regulation, or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.

Sec. 10. 1. *A complaint about an employer or a J-1 visa physician may be submitted to the Program on the Internet website maintained by the Health Division at http://health.nv.gov/PrimaryCare_J-1.htm or by submitting a written complaint to the Health Division, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.*

2. The Administrator shall investigate or require the Advisory Council to investigate each complaint submitted pursuant to this section. The investigation must commence within 45 days after receipt of the complaint, except that if the complaint alleges that the safety of a patient was threatened the investigation must commence as soon as practicable. The Administrator is responsible for the investigation of complaints submitted pursuant to this section.

3. If the Administrator determines that a violation of NRS 439A.130 to 439A.185, inclusive, or sections 2 to 12, inclusive, of this regulation has occurred, the Administrator:

(a) Shall, if the violation affected the health and safety of a patient, submit a report to the Board of Medical Examiners; or

(b) May, if the violation did not affect the health or safety of a patient, submit a report to the Board of Medical Examiners or to the Bureau of Health Care Quality and Compliance of the Health Division.

Sec. 11. 1. *If an employer violates the provisions of NRS 439A.130 to 439A.185, inclusive, or sections 2 to 12, inclusive, of this regulation, the Administrator shall:*

(a) For a first offense, impose an administrative fine of \$1,000.

(b) For a second offense, impose an administrative fine of \$10,000.

(c) For a third offense, withdraw the support of the Health Division for the employer and assist in the transfer of the J-1 visa physician to a different employer pursuant to subsection 2.

2. If an employer is penalized for a third offense pursuant to paragraph (c) of subsection 1, the Administrator shall, in cooperation with a different employer, the J-1 visa physician and the Waiver Review Division of the United States Department of State, assist in the transfer of the J-1 visa physician to a different employer, including, without limitation, submitting a letter to the J-1 visa physician which documents the reasons for the transfer and providing documentation for designating a new location in which the J-1 visa physician may work.

3. If a J-1 visa physician does not comply with the provisions of NRS 439A.130 to 439A.185, inclusive, and sections 2 to 12, inclusive, of this regulation, the Administrator may report the failure to comply to the United States Citizenship and Immigration Services and the United States Department of State and recommend that the J-1 visa waiver of the J-1 visa physician be revoked.

Sec. 12. *A J-1 visa physician or an employer may request a hearing on any action taken by the Administrator pursuant to subsection 3 of section 10 or section 11 of this regulation. The hearing must be conducted in accordance with the procedures set forth in NAC 439.300 to 439.395, inclusive.*

HEALTH DIVISION

Bureau of Health Statistics, Planning, and Emergency Response, Office of Epidemiology LCB File #R138-10

Informational Statement per NRS 233B.066

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

In order to receive public comment, a workshop was held on December 1, 2010, and a public hearing was held under the Nevada State Board of Health (BOH) on April 8, 2011. Notices for the workshop and the public hearing, with intent to act upon a regulation, were posted at public libraries and on the Nevada State Health Division (NSHD) website, fifteen and thirty days in advance, respectively, as required by regulation.

The proposed regulation was presented by staff from the Primary Care Office (PCO) at both the workshop and at the public hearing. At the workshop, one comment was provided by a member of the public, requesting some flexibility with regard to the application fee, to accommodate providers who have just completed training and may not be able to afford the fee before obtaining employment.

At the public hearing, the staff presentation included draft language to provide flexibility regarding the fee payment for physicians who demonstrate financial hardship. Staff also cited a request from the Director of the Board of Nursing to include an Advanced Practice Nurse on the Primary Care Advisory Council (PCAC) and the need to update the language referencing the seat on the PCAC identified as the "Center for Education and Health Services Outreach" because that Center is to be terminated effective July 1, 2011.

Interested parties can receive documentation of the changes and public comments through the PCO, NSHD.

2. The number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulation.

Attendance at the December 1, 2010, workshop included three members of the public, four members of the PCAC, and three staff from the PCO, NSHD. Testimony came from one staff member and one member of the public. No written comments were provided.

Attendance at the April 8, 2011 meeting of the BOH included: 10 members from the public, 6 members of the BOH, the Deputy Attorney General for the NSHD, and 12 staff from the NSHD. Testimony came from one staff member. No written comments were provided.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

An online survey was distributed to all members of the Nevada State Medical Association. Out of 11 responses, two noted an adverse impact and five noted a beneficial impact. One respondent expressed concern about the impact of poor training; other respondents expressed support for bringing more providers to health professional shortage areas.

A summary of the responses may be obtained from the PCO, NSHD.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change. The statement should also explain the reasons for making any changes to the regulation as proposed.

The State Board of Health adopted the regulation with the following changes:

- Section 5 paragraph 1. (f) The Administrator may waive the portion of the application fee which must be paid by the J-1 visa physician or require the J-1 visa physician to pay the fee pursuant to a payment plan if the J-1 visa physician is experiencing an economic hardship and the J-1 visa physician submits with the application documentation sufficient to demonstrate that the economic hardship exists.
 - Section 3 paragraph 1. (c) One member who represents the University of Nevada School of Medicine, Office of Rural Health.
5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:
 - (a) Both adverse and beneficial effects; and

The economic effect of the proposed regulation is the required fee of \$500 to be paid in equal amounts by the employer and the J-1 visa physician, for the processing of an application for a letter of support by the State Health Division.

The required fee directly affects those small businesses and physicians that choose to apply for a letter of support to participate in the program. The fee supports administration of the program to ensure compliance with all rules and regulations, as well as training and technical assistance for both employers and physicians.

The benefit of program participation to the small business employer is that they gain the services of a healthcare professional to sustain their business model in a health professional shortage area.

The benefit of participation for the physician is that the requirement to return to their country of origin following completion of their education and training is waived in exchange for their service in an underserved area.

The benefit to the public is the provision of professional health services within a designated shortage area, increasing health care access for low income or isolated populations.

There are no identified adverse effects to the public.

- (b) Both immediate and long term effects.

The immediate effect is to impose a fee on the employers and physicians participating in the program.

The long term effect is to improve program quality through technical assistance and regulatory compliance. By improving program quality, we anticipate increased recruitment and retention of primary care providers which will increase access for the public, improving public health generally.

6. The estimated cost to the agency for enforcement of the proposed regulation.

The estimated cost to the agency for enforcement of the proposed regulation is \$500 per applicant to complete the application review, provide documentation on program policies and procedures, and to conduct periodic site visits.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, name the regulating federal agency.

There are no state or federal laws or regulations that overlap with the proposed regulation.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

This regulation includes provisions which are more stringent than federal regulations, under Section 212(e) of the Immigration and Naturalization Act, as included in the summary below:

- Provisions for the administration of the Physician Visa Waiver Program, including the following:
 - Requirements for applications for a letter of support;
 - Establishment of a \$500 fee for letters of support, to be shared by the employer and employee;
 - Contractual requirements for work start date, length of service, hours of service, wages, signatures, conditions for termination, and possible liquidated damages.
- Qualifications for employers include the following:
 - Sliding fee scale for patients at or below 200% of the federal poverty level;
 - Ensure physician works in designated area identified on the federal petition;

- Post signage in waiting room regarding availability of sliding fee scale and availability of services regardless of ability to pay;
 - Document participation in Medicaid, Medicare and Nevada Check Up; and
 - Provide routine documentation on compliance with program requirements.
 - Qualifications for J-1 visa physicians include the following:
 - Comply with federal requirements;
 - Obtain certificate or registration required by state or federal authorities;
 - Accept Medicaid, Medicare or Nevada Check Up patients;
 - Provide care and services based on sliding fee scale;
 - Only work in location(s) identified on federal petition; and
 - Provide routine documentation on compliance with program requirements.
 - Administrator (Health Division) is required to do the following:
 - Provide written notice to the applicant within 14 days if an application is incomplete;
 - Accept applications until all slots are filled;
 - Post the status of available slots on the Health Division website;
 - Not issue a letter of support to an employer or physician penalized or convicted of a violation of this regulation or the related statute, or relating to immigration within the last two years;
 - Investigate complaints that may be submitted to the program via the Internet or in writing;
 - Report violations effecting health and safety of patients to the Board of Medical Examiners;
 - Impose administrative fines or withdraw support on a progressive scale for violations of this regulation or the authorizing statute;
 - Assist with the transfer of J-1 visa physician to a different employer in the case of employer violations; and
 - Report failure of compliance to the federal Citizenship and Immigration Services in the case of an employee violation.
 - Program participants may request a hearing on certain actions taken by the Administrator.
9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

Eight participants started service in 2010. If that level of participation is stable, the agency would collect \$4,000 to support application review, program documentation, and travel for site visits.

10. If the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formulation, operation or expansion of a small business. What methods did the agency use in determining the impact of the regulation on a small business?

The agency worked with small businesses and program participants to include flexibility for the payment of fees.

SMALL BUSINESS IMPACT STATEMENT

The Primary Care Office is promulgating regulations for the Physician Visa Waiver Program as required by NRS 439A.170. A small business is defined in Nevada Revised Statutes (NRS) 233B as a "business conducted for profit which employs fewer than 150 full-time or part-time employees." This small business impact statement complies with the requirements of NRS 233B.0609.

1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Input was solicited beginning November 2, 2010, in coordination with Nevada State Medical Association providing a Survey Monkey link to all of their members. Out of eleven respondents with the number of employees ranging from two to one hundred, two noted an adverse impact and five noted beneficial impact. Comments provided were as follows:

- If not well trained practitioners, poor medication and medical practice proves too costly to patients, providers and the system.
- J-1 physicians have been very important in sustaining our clinic.
- Building the physician workforce in Nevada is a goal of the Association.
- Less competition from other physicians.
- Maintain standards of care.
- We are a free clinic for uninsured patients at 200% of below of the FPL. Other than myself, the medical director, all of our professional staff are volunteers. Bringing J-1 physicians to Clark County might help with our staffing issues if they are willing to volunteer a 3-4 hour shift a month. In turn, this cuts down on the number of uninsured patients in the local hospital ERs.
- Though we are fully staffed presently the departure of one leaves us in need situation.
- An increase in the physicians workforce will be beneficial particularly in rural and underserved parts of the State resulting in relief for the overworked physician and health care workforce.

Interested persons may obtain a summary of written responses to the November 2, 2010 survey by contacting Laura Hale, PCO, 4150 Technology Way, Room 104, Carson City, NV 89706, via e-mail at ljhale@health.nv.gov or by calling (775) 684-4041.

2. The estimated economic effect of the proposed regulation on the small business which it is to regulate including, without limitation both adverse and beneficial effects and both direct and indirect effects.

The estimated economic effect of the proposed regulation is the required fee of \$500 to be paid in equal amounts by the employer and the J-1 visa physician, for the processing of an application for a letter of support by the State Health Division.

The required fee directly affects those small businesses that choose to apply for a letter of support to participate in the J-1 physician visa waiver program. The fee supports administration of the program to ensure compliance with all rules and regulations.

The direct benefits are the provision of professional health services within a designated shortage area and health care access for low income or isolated populations. By improving program oversight through this regulation, we hope to recruit more J-1 providers to Nevada's health shortage areas.

Indirectly, the J-1 physicians, their employers, their co-workers, and their patients are all part of an interconnected and interdependent economic system within the communities they serve.

There is no estimated indirect adverse economic effect of the proposed regulations on the small businesses.

3. A description of the methods that the PCO considered to reduce the impact of the proposed regulation on small businesses and statement regarding whether the agency actually used those methods.

The fee is a minimal amount to be equally shared by the employer and the physician. Based on feedback from the workshop, language was added to the draft regulation that the physician's portion may be waived by the Administrator of the Health Division, or a payment plan may be established, if the J-1 visa physician can document an economic hardship.

4. The estimated cost to the agency for enforcement of the proposed regulation.

The estimated cost to the agency for enforcement of the proposed regulation is \$500 per applicant to complete the application review, provide documentation on program policies and procedures, and to conduct periodic site visits.

5. Total amount the PCO expects to collect from any fees and the manner in which the money will be used.

At the time the bill draft request was submitted, staff estimated 15 applications in SFY2010 and 20 for SFY2011. There were only eight participants starting service in SFY2010, and there has only been one applicant in SFY2011, as of April 5, 2011. Because the regulation has not yet been approved, no fees have been collected.

Any fees collected in future years will be used to support application review, program documentation, and travel for site visits.

6. An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.

The proposed regulations do not overlap or duplicate any federal, state or local regulations.

This Small Business Impact Statement was developed pursuant to Assembly Bill (AB) No. 486 which amended NRS 233B.0608 2 (c).