

Title 15: Mississippi State Department of Health

Part 9: Office of Health Policy and Planning

Subpart 95: Appalachian Regional Commission “ARC” J-1 Visa Waiver Guidelines

Chapter 1. MISSISSIPPI STATE DEPARTMENT OF HEALTH APPALACHIAN REGIONAL COMMISSION “ARC” J-1 VISA WAIVER GUIDELINES

Subchapter 1. INTRODUCTION

Rule 1.1.1. The Mississippi State Department of Health (MSDH) is committed to assuring that all Mississippi residents have access to quality, affordable health care. The Mississippi Office of Rural Health and Primary Care reviews applications and makes recommendations to the Appalachian Regional Commission, hereafter referred to as the “ARC”, in regards to the primary care J-1 visa waiver placements within that region of the state. The applications will be reviewed for completeness, and inclusion of all appropriate documentation, as required by the federal agency.

1. The primary purpose of the Mississippi J-1 Visa Waiver Programs is to improve access to primary health care in physician shortage areas in Mississippi and secondarily, to needed specialty care, by sponsoring physicians holding J-1 Visas.
2. The State of Mississippi recognizes that the J-1 Visa Waiver Program affords J-1 Visa holders the privilege of waiving their two-year foreign residency requirement in exchange for providing primary or specialty medical care in designated health professional shortage areas.
3. The provision of assistance to the ARC in the administration of this program is designed to be consistent with the federal requirements of the program resulting in added benefits to the State of Mississippi.
4. The purpose of the following Guidelines is to articulate the conditions under which the State of Mississippi will provide a recommendation to the ARC.
5. Health care facilities/sites interested in employing J-1 Visa Waiver physicians must submit an ARC 30 J-1 Visa Waiver Application to the Mississippi Office of Rural Health and Primary Care to determine if the proposed J-1 physician placement will qualify for the Program.
6. The recommendations provided to the ARC will in no way interfere with placements through the “Conrad State 30 Program”. The Mississippi J-1 Visa

Waiver Program through the "Conrad State 30 Program" is a separate and distinct program from any other program and is an additional program to any now operating within the State of Mississippi.

7. The Mississippi State Department of Health's Guidelines are completely discretionary, voluntary, and may be modified or terminated at any time. The submission of a complete waiver package to the MSDH does not ensure an automatic waiver recommendation. In all instances, MSDH reserves the right to recommend or deny any request for a waiver.
8. HPSA designations must be current on the date the U.S. Department of State reviews the application and on the date the INS approves the J-1 visa waiver. Therefore, any application that is being submitted to the Mississippi State Department of Health at the end of the three-year HPSA designation cycle may be summarily denied if the renewal of the HPSA designation is not obtained.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.1.2. [RESERVED]

Rule 1.1.3. [RESERVED]

Rule 1.1.4. [RESERVED]

Rule 1.1.5. An Employer/Medical Facility eligible to recruit and hire J-1 Visa physicians through the program must be a facility that meets one of the following criteria:

- a. A public health facility, an ambulatory medical facility, a community health center, a community mentalhealth center; or
- b. A hospital or state mental hospital.

SOURCE: Miss. Code Ann. §41-3-17

Subchapter 2. GENERAL GUIDELINES:

Rule 1.2.1. The State of Mississippi is prepared to make recommendations to the ARC on behalf of Mississippi health care facilities for physicians holding J-1 Visas for the purpose of waiving the two-year foreign residency requirement. All conditions of the following ARC and Mississippi J-1 Visa Waiver policies/guidelines must be met. Employers are encouraged to impose additional provisions in order to assure that the delivery of care is consistent with their facility's policies.

1. Physicians who have completed a U.S. residency training program in family practice, general practice, general internal medicine, general pediatrics, and obstetrics/gynecology are considered to be primary care physicians. Psychiatrists are also considered for the program. Waiver recommendations for physicians who will practice specialty medicine may be made with an appropriate showing of need.
2. The medical facility or practice must be located in a county or portion of county currently designated by the United States Department of Health and Human Services as a HPSA for primary medical care or mental health, in the case of the recruitment of psychiatrists.
3. All requests must at a minimum, include the following:
 - a. The ARC Federal Co-Chair Cover Letter.
 - b. The ARC J-1 Visa Waiver Policy Affidavit and Agreement.
 - c. Attestation of the ARC J-1 Visa Liquidated Damages Clause.
 - d. Information describing the public benefit of approval of the placement.
 - e. Attestation that site provides health care services to Medicare and Medicaid- eligible patients, indigent patients, and uninsured patients. And, the percentage of Medicaid, Medicare, indigent, and uninsured patients served by site.
 - f. Proof that practice site is located in a HPSA or the documentation required to prove the practice is serving patients from a nearby HPSA.
 - g. Evidence that other avenues, regionally and nationally, to secure a physician not bound by the 2-year home residence requirement have been undertaken over a period of at least three (3) months. The recruitment must have occurred prior to submission of the ARC 30 J-1 Visa Waiver Application.
 - h. Information about the home government “No Objection” requirement.
 - i. A copy of notarized, dated, executed tentative employment contract indicating three (3) year full-time (40 hours per week) employment with the sponsoring medical facility.
 - j. Information about the applying physician.
 - k. Attestation that the physician will start employment within 90 days of receiving the waiver.
 - l. Attestation to submit the MSDH Annual J-1 Visa Waiver Physician Employment Verification Form.
 - m. The required documentation for specialist applicants.
 - n. An indication of whether the applying physician is a party to any existing

or possible future (one that may occur within the obligation period) petition that would result in the applying physician not having to complete the service obligation.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.2. [RESERVED]

Rule 1.2.3. Waiver requests must be submitted by the employer or the employer's representative. All employment contracts must be between the sponsoring employer and the J-1 Visa physician.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.4. The facility or practice where the J-1 physician will work must have been operational at least six months at the time the waiver request is submitted. Evidence should include the business license and occupancy permit, facility address, fax and telephone numbers, staffing list. Exceptions may be considered.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.5. The facility or practice must accept all patients regardless of ability to pay. The sponsoring entity must agree to provide services to individuals without discriminating against them because (a) they are unable to pay for those services and/or (b) payment for those health services will be made under Medicare and Medicaid. The sponsor may charge no more than the usual and customary rate prevailing in the HPSA in which services are provided.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.6. The facility must have a schedule of discounts or an adopted sliding fee scale. Charges must be discounted for persons at or below 200 percent of poverty level. If the person is unable to pay the charge, such person shall be charged at a reduced rate in accordance with an adopted and utilized policy or not charged at all.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.7. The J-1 Visa physician must accept assignment under Section 1842 (b)(3)(ii) of the Social Security Act as full payment for all services for which payment may be made under Part B of Title XVIII of such act (Medicare).

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.8. The J-1 Visa physician must enter into an appropriate agreement with the

Mississippi state agency which administers the state plan for medical assistance under Title XIX of the Social Security Act (Medicaid) to provide services to individuals entitled to medical assistance under the plan.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.9. The employer must make known to the HPSA community that the J-1 physician will comply with the terms and conditions stated in the Guidelines by posting a notice in a conspicuous place in the waiting area of the practice stating that all patients will be seen regardless of their ability to pay.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.10. [RESERVED]

Rule 1.2.11. The physician must not have been "out of status" (as defined by the Immigration and Naturalization Service of the United States Department of Justice) for more than 180 days since receiving a visa under 8 USC 1182 (j) of the Immigration and Nationality Act, as amended. The physician shall provide the FCC all copies of his or her Certificates of Eligibility for Exchange Visitor (J-1) Status forms and every other document needed to verify status, including a copy of the federal J-1 Visa Waiver Recommendation Application. The name of the foreign trained provider must be provided during the ARC 30 J-1 Visa Waiver Application process in order to remain compliant with this requirement.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.12. A statement in writing is required indicating that the home government has no objection to the waiver if the physician's medical education or training has been funded by the government of the graduate's home country. He or she should obtain this statement from the physician's embassy in Washington or home country. The "No Objection" statements for these physicians should contain the following or similar language: *"Pursuant to Public Law 103-416, the government of (Country) has no objection if (name and address of the foreign medical graduate) does not return to (Country) to satisfy the two-year foreign residence requirement of 212(e) of the Immigration and Nationality Act (INA)."*

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.13. The J-1 physician and his/her employer must, on commencement of practice and annually thereafter through the contract period, verify the physician's practice site address and field of practice. The reporting can be submitted on the "J-1 Visa Physician Verification of Employment Form" contained in this application packet. The first report must be submitted within 30 days. For

population based HPSAs, documentation that the population the foreign physician was placed there to serve was indeed served must be submitted. The final report must indicate whether the J-1 physician intends to remain in the shortage area to practice. Failure to submit accurate reports in a timely manner that complies with the Mississippi J-1 Visa Waiver Guidelines will jeopardize future recommendations for J-1 Visa physician placements. These verification forms will be shared with the ARC.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.14. The J-1 Visa Waiver physician must remain in employment for a total of not less than three (3) years, at the site(s) listed in the ARC J-1 Visa Waiver Application and for which the waiver is approved, unless the physician petitions the United States Citizen and Immigration Services for early termination of the 3-year period because the practice site closes or due to extenuating circumstances.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.15. [RESERVED]

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.2.16. [RESERVED]

Subchapter 3. EMPLOYMENT CONTRACT:

Rule 1.3.1. The J-1 physician is responsible for locating and negotiating a contract for a minimum of three (3) years and preferably four (4) years (unless the service requirement is amended) to provide care a minimum of 40 hours per week, as a primary care physician or psychiatrist in a federally designated HPSA in Mississippi. The 40 hours must be performed during normal office hours, or hours which best suit the needs of the community and may not be performed in less than four (4) days a week. A weekly schedule must be included in all waiver requests. It is recommended that each party have its own legal representation in preparation of the contract.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.2. The J-1 physician must be board eligible in his/her field of practice and eligible for Mississippi licensure.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.3. By regulation (Immigration and Nationality Act, as amended, section 214(k)(1) [8U.S.C. §1184 (k)(1)]), the J-1 physician must commence practice within 90 days of receiving a waiver.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.4. The J-1 Visa physician must agree in writing that he or she will begin employment within 90 days of receiving a waiver; and a statement from the J-1 Visa physician regarding planned commitment to the community should be provided.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.5. The ARC will be notified if a J-1 physician is found not to have reported or not be practicing medicine a minimum of 40 hours per week in the location for which the recommendation was made.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.6. MSDH must be notified when the J-1 physician does not report for duty.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.7. The employer and/or J-1 physician must notify MSDH of breach or termination of contract.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.8. For the statutorily required period there can be no changes to the contract that would result in the J-1 physician leaving the agreed-upon site and no longer treating the patients he/she has agreed to treat in the manner agreed upon, unless the physician has petitioned the United States Citizen and Immigration Services.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.9. The contract should not state commencement or expiration dates. It is a tentative contract based on the application being approved through ARC, U.S. Department of State and INS.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.10. A non-competition clause or any provision that purports to limit the J-1 physician's ability to remain in the area upon completion of the contract term is prohibited by regulation.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.11. The contract must include a liquidation damages clause as required by the ARC. Specific wording to be included in the contract is included in this packet. However, any clauses that would require the J-1 physician to pay a sum to the employer for experience gained on the job or for the J-1 physician remaining in the area after the contract has ended are not allowed.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.3.12. Include in all employment contracts the following information:

1. guaranteed 3-year base salary
2. benefits
3. Insurance
4. field of practice, practice site name and address for 40 hours for at least 4 days per week, not including travel and on-call time; days and hours on site, if multiple sites.
5. leave (annual, sick, continuing medical education, holidays)
6. commencement date begins within 90 days of receipt of J-1 visa waiver
7. statement that amendments shall adhere to ARC and Federal J-1 visa waiver requirements

SOURCE: Miss. Code Ann. §41-3-17

Subchapter 4. RECRUITMENT:

Rule 1.4.1. The medical facility must provide evidence that other avenues, regionally and nationally, to secure a physician not bound by the 2-year home residence requirement have been undertaken over a period of at least three (3) months. The recruitment must have occurred prior to submission of the ARC 30 J-1 Visa Waiver Application.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.4.2. Recruitment efforts must have regional and national reach. Recruitment information must state the position available and the practice site location.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.4.3. Ads run at the time of or after submission of the ARC 30 J-1 Visa Waiver Application are not usable.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.4.4. Documentation of recruitment efforts may include:

1. Copies of the regional and national print advertising ads (copies of ads must show publication date).

2. Online ads (must show the date the ad was online).
3. Copies of certified letters to medical schools.
4. Other forms of recruitment documentation will be reviewed to determine if information for the specific position required in the Mississippi ARC State 30 J-1 Visa Waiver Application is clearly identified and to determine if sufficient date information is available to verify three (3) months of recruitment effort.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.4.5. The sponsoring health care facility is required to publish a legal notice in their local newspaper of general circulation in accordance with the following format. The Proof of Publication of this notice must be submitted with the ARC 30 J-1 Visa Waiver Application.

1. (Name of J-1 sponsoring facility and complete mailing address) is requesting that the Mississippi State Department of Health support a J-1 Visa waiver of the two- year foreign residency requirement of (physician discipline) in exchange for (Primary Care or Specialty Care) health services to (name of underserved area), an underserved area of the state, if approved by the U.S. Department of State.
2. Letters of support or opposition can be sent to Director, Office of Rural Health and Primary Care, Mississippi State Department of Health, P.O. Box 1700, Jackson, MS 39215-1700. Any interested party has 21 calendar days from the date of this publication to submit letters.
3. Copies of letters may be obtained from the Office of Rural Health and Primary Care at the Mississippi State Department of Health.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.4.6. Priority hire must be given to physicians other than J-1 physicians (presumably H-1Bs) who apply for the waiver job and are qualified. The employer must show that hiring a J-1 physician is a last resort.

SOURCE: Miss. Code Ann. §41-3-17

Subchapter 5. PROHIBITIONS:

Rule 1.5.1. MSDH will not consider recommendations when the provisions of Subchapter 2 have not been met and under the following circumstances:

1. Preliminary determinations over the telephone prior to final review of the ARC 30 J-1 Visa Waiver Application being completed.
2. The medical facility is not located in an Appalachian Regional Commission County.

3. Medical facilities located in those counties which are a part of the Appalachian Regional Commission who are not recruiting primary care physicians.
4. More than two (2) ARC 30 J-1 Visa Waiver Applications per employer each federal fiscal year. Exceptional circumstances will be reviewed on a case-by-case basis (depending on the number of remaining waivers and unmet needs in community and state).
5. Requests for a J-1 physician whose last Certificate of Eligibility for Exchange Visitor status has expired more than 210 days prior to the time the ARC 30 J-1 Visa Waiver Application request is submitted.
6. Requests from an employer who is a former J-1 physician currently fulfilling his/her required 3-year obligation.
7. A waiver for a relative or acquaintance of the employer.
8. A J-1 physician showing signs of active tuberculosis without a MSDH approved plan for treatment and an approved provision for payment of testing, treatment, and follow-up.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.5.2. Requests from an employer who is a former J-1 physician currently fulfilling his/her required 3-year obligation.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.5.3. A waiver for a relative or acquaintance of the employer.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.5.4. [RESERVED]

SOURCE: Miss. Code Ann. §41-3-17

Subchapter 6. TRANSFERS:

Rule 1.6.1. The J-1 Visa waiver physician must remain in employment for a total of not less than three (3) years, at the site(s) listed in the Mississippi ARC J-1 Visa Waiver Application and for which the waiver is approved, unless the physician petitions the United States Citizen and Immigration Services for early termination of the 3- year period because the practice site closes or due to extenuating circumstances.

1. The J-1 Visa Waiver physician must notify the MSDH in writing as soon as possible of their intent to petition the United States Citizen and Immigration Services for early termination of the 3-year period because the practice site

closes or due to extenuating circumstances.

2. To work at another facility the J-1 Visa Waiver physician must amend or file a new H-1B petition with the United States Citizen and Immigration Services.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.6.2. The J-1 physician retains sole responsibility for notifying their current employer of the intent to petition the United States Citizen and Immigration Services for early termination of the 3-year period, and payment of any financial penalty caused by a breach of contract.

SOURCE: Miss. Code Ann. §41-3-17

Subchapter 7. FOREIGN PHYSICIANS RELEASED DUE TO TERMINATION, MUTUAL RELEASE, OR DEATH:

Rule 1.7.1. The Mississippi Office and Primary care must be informed in writing by the sponsoring employer of the following circumstances:

1. the sponsoring employer determines that there is reasonable cause to terminate the employment contract of a foreign provider;
2. the employer and foreign provider mutually agree to the release from employment;
3. there are no funds to reimburse the foreign provider for their services; or
4. there is a loss due to the death of the foreign provider.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.7.2. The Mississippi Office of Rural Health and Primary Care will assist, in a limited way, the sponsoring employer and foreign physician in resolving termination disputes. However, the Mississippi Office of Rural Health and Primary Care will assume no position in the dispute.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.7.3. The Mississippi Office of Rural Health and Primary Care will assist, in a limited way, the foreign provider in securing another position in the state.

SOURCE: Miss. Code Ann. §41-3-17

Rule 1.7.4. J-1 Visa Waiver physicians who are released from the sponsoring medical facility prior to the completion of the federally required three (3) year full-time

service obligation must amend or file a new H-1B petition with the United States Citizen and Immigration Services to complete the service obligation at another facility.

The J-1 Visa Waiver physician must notify the MSDH that he/she is petitioning.

SOURCE: Miss. Code Ann. §41-3-17

Subchapter 8. NATIONAL INTEREST WAIVER (NIW) LETTER REQUESTS:

Rule 1.8.1. Please refer to the Mississippi State Department of Health National Interest Waiver Guidelines for the requirements for consideration of a support letter for a NIW application.

Rule 1.8.2. [RESERVED]

Rule 1.8.3. [RESERVED]

Rule 1.8.4. [RESERVED]

Rule 1.8.5. [RESERVED]

Rule 1.8.6. [RESERVED]

Rule 1.8.7. [RESERVED]

Rule 1.8.8. [RESERVED]

Rule 1.8.9. [RESERVED]

Rule 1.8.10. [RESERVED]

Rule 1.8.11. [RESERVED]

Rule 1.8.12. [RESERVED]

Rule 1.8.13. [RESERVED]

Rule 1.8.14. [RESERVED]

Rule 1.8.15. [RESERVED]

Rule 1.8.16. [RESERVED]

Rule 1.8.17. [RESERVED]

SOURCE: Miss. Code Ann. §41-3-17

**Chapter 2. CERTIFICATION OF COMPLIANCE WITH THE MISSISSIPPI J-1
VISA WAIVER PROGRAM**

Rule 2.1.1. [RESERVED]

Rule 2.1.2. [RESERVED]

Rule 2.1.3. [RESERVED]