Title 15 - Mississippi Department of Health

Part IX – Office of Health Policy and Planning

Subpart 95 – MISSISSIPPI J-1 VISA WAIVER GUIDELINES

Date Rule Adopted: August 8, 2007

Effective Date: September 8, 2007

Chapter 01 STATE 30 AND STATE 30 SPECIALTY NOTIFICATION LETTER

MISSISSIPPI DEPARTMENT OF HEALTH

TO: Prospective J-1 Visa Waiver Employers/Sponsors

FROM: Alvin Harrion, Division Director II, Office of Primary Care Liaison

RE: Revised Mississippi J-1 Visa Waiver Policies and Procedures:

"State 30 Program" (Adopted July 12, 2006, Effective Date September 8, 2007)

The Office of Primary Care Liaison (OPCL), within the Office of Health Policy and Planning has been designated as the Division to serve as a State Contact and clearinghouse for the above referenced program. OPCL will administer the program in a fair and consistent manner, as well as provide technical assistance to all interested in developing either the site predetermination or "actual" application for placement of a foreign-trained J-1 Visa Waiver provider. Attached please find the revised Mississippi J-1 Visa Waiver Policies and Procedures for the “State 30 Program”. Separate Guidelines are available for Specialists.

Please note the changes/modifications to the MDH J-1 Waiver Policies. THESE POLICIES AND PROCEDURES ARE EFFECTIVE IMMEDIATELY.

THE FOLLOWING IS IMPORTANT INFORMATION PERTAINING TO THE J-1 WAIVER PROCESS:

- Health care facilities/sites interested in employing J-1 Visa Waiver physicians must submit a written request to the Office of Primary Care Liaison for a "Predetermination", prior to developing their actual J-1 Visa Waiver Application. The request, at a minimum, must include the items contained on the attached page, "Site Predetermination Application". No action in regards to the predetermination will be taken prior to written submission of the application, to include supporting documentation. NO INFORMATION WILL BE PROVIDED OVER THE TELEPHONE IN REGARDS TO THE APPLICATION PRIOR TO FINAL REVIEW BEING COMPLETED.

- Information on currently designated health professional shortage areas (HPSAs) for primary medical care or mental health recommendations will be provided upon request. Medical facilities located in those counties which are a part of the Appalachian Regional Commission are not eligible to recruit primary care J-1 Physicians through the program.

- The review cycle should be completed within 180 days.

- If a favorable final determination is provided, your health care facility may request and receive technical assistance in developing a "full-blown" or "actual" application.

- Additionally, a non-refundable processing fee of $1,500.00 is required to process a State 30 Waiver application. A check or money order from the sponsoring facility should be payable to the Mississippi Department of Health and submitted with the completed application/request. No requests will be processed without payment of the processing fee.

- The US Department of State requires that the J-1 Visa Waiver Data Sheet be submitted to the appropriate address contained in the Department's policies, along with the $230.00 user processing fee and two self-addressed, stamped, legal-size envelopes. A USIA file number will be assigned, and must be placed on each page within the actual application. The Department of State's mailing address and a copy of their required data sheet is included in this packet.

If there are questions, please contact the Office of Primary Care at 601/576-7216.

Chapter 02 MISSISSIPPI J-1 VISA WAIVER GUIDELINES

"STATE 30 PROGRAM and STATE 30 SPECIALTY PROGRAM"

100 The Mississippi Department of Health (MDH) is committed to assuring that all Mississippi residents have access to quality, affordable health care. The Office of the State Health Officer maintains the responsibility within the state of recommending and processing, through its Office of Primary Care Liaison, J-1 Visa waiver requests for the United States Information Agency's "State 30 Program".

100.01 The primary purpose of the Mississippi J-1 Visa Waiver Program through the "State 30 Program" 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.

100.02 The State of Mississippi recognizes that the J-1 Visa Waiver Program through the "State 30 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.

100.03 The operation of the Mississippi J-1 Visa Waiver Program through the "State 30 Program" is designed to be consistent with other health care programs and policies of the State of Mississippi.

100.04 The purpose of the following Guidelines is to articulate the conditions under which the State of Mississippi will request a waiver for physicians holding J-1 Visas through the "State 30 Program".

100.05 The review cycle begins upon MDH receipt of the Site Pre-Determination Application and must be concluded within 180 days.

100.06 The operation of the Mississippi J-1 Visa Waiver Program through the "State 30 Program" will in no way interfere with any other J-1 Visa Waiver Program including, but not limited to, placements through the MDH Office of Primary Care Liaison for the Appalachian Regional Commission. The Mississippi J-1 Visa Waiver Program through the "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.

100.07 Before a completed application is submitted with the $1,500.00 processing fee, the potential employer must submit a Site Predetermination Application to determine if the proposed J-1 physician placement will qualify for the Program.

100.08 The Mississippi 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 MDH does not ensure an automatic waiver

recommendation. In all instances, MDH reserves the right to recommend or deny any request for a waiver.

100.09 Definition of a Health Professional Shortage Area (HPSA)* - Section 332 of the Public Health Service Act provides that the Secretary of Health and Human Services shall designate HPSAs based on criteria established by regulation. HPSAs are defined to include geographical areas - urban and rural, population groups, and facilities with shortages of primary health care and mental health providers.

Geographical Area Designated HPSAs - Three basic determinations are required for this request: (1) the geographical area involved must be rational for the delivery of health services, (2) a specified population-to-practitioner ratio representing shortage must be exceeded within the area, and (3) resources in contiguous areas must be shown to be over utilized, excessively distant, or otherwise accessible.

Population Designated HPSAs - Requests for a J-1 physician to practice in a population-designated HPSA must include evidence that at least 51 percent of the facility's patients are members of the designated population.

Facility Designated HPSAs - This applies to correctional facilities and state mental hospitals. Some public and non-profit private facilities located outside designated HPSAs may be designated if they are shown to be accessible to and serving a designated geographic area or population group HPSA.

*Definitions obtained from the Office of Shortage Designation in Bethesda, Maryland

100.10 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:

1. a public health facility, an ambulatory medical facility, a community health center, a community mental health center; or

2. a hospital or state mental hospital.

101 GENERAL GUIDELINES:

101.01 The State of Mississippi is prepared to request through the Program waivers for physicians holding J-1 Visas for the purpose of waiving the two-year foreign residency requirement. All conditions of the following Mississippi J-1 Visa Waiver 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 internal medicine, general pediatrics, and

obstetrics/gynecology are considered to be primary care physicians and are eligible to participate in the Mississippi's "State 30" J-1 Visa Waiver Program. Psychiatrists may also be considered for the program. Physicians with other specialties are not considered to be primary care physicians for the purpose of the Program.

2. Physicians trained in other specialties may be considered for placement in designated areas of shortage in accordance with the addendum to these Guidelines for Specialists Only. The addendum pertaining to the placement of specialists can be provided upon request from the Office of Primary Care Liaison.

3. It is recognized that emergency rooms are utilized for primary care services by some populations. Requests for emergency room physicians will be considered, however, as a specialty and will require documentation that primary care services are inadequate within the service area.

4. 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.

5. All requests must be fully documented as to the need for the primary care or mental health physician in the community. At a minimum, include the following:

   a. a geographic description or rural character of the service area;

   b. a description of the unmet need 'such as gaps in service, waiting times, environmental factors, ethnic health care issues, etc.) within the community; discussions of barriers to the specific medical service or unique circumstances in regards to environment, community or service; percentage of medically indigent patients served by the site, not including Medicare or Medicaid patients; and how the J-1 Visa physician will satisfy and reduce the unmet need; and

   c. a list of all health care resources in the community, i.e., primary care clinics, hospitals, number of primary care physicians by specialty. A list of primary care/psychiatric physicians, including J-1 and H-1B, and loan-repayment physicians, currently practicing in the HPSA must also be included.

   d. a description of the activities that have occurred to recruit a U. S. physician. Refer to the "Recruitment" section for specifics.

6. Only the number of physicians needed to eliminate the physician shortage will be recommended. The number of J-1 physicians approved for placement within a currently designated HPSA will generally be limited to

the threshold, i.e. the number of additional primary care physicians needed for the area to meet a population-to-physician ratio of 3000:1. Consideration will be given to placement of physicians in areas which do not meet the threshold requirement if there is a documented critical need for a particular primary care specialty. All full-time equivalent U. S. primary care providers and foreign providers, placed through the J-1 Visa Waiver programs, will be counted when determining threshold capacity.

7. 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.

8. 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.

9. 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.

10. The facility must post a schedule of discounts or an adopted sliding fee scale in its waiting room. 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. The notice in the waiting room must contain at least the information set forth in the sample notice provided in this application package.

11. 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).

12. 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.

13. 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.

14. The waiver request must include support letters from the majority of the local practicing physicians, area hospital administrator(s) and community leaders.

15. 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 210 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 IAP-66 and every other document needed to verify status. The name of the foreign trained provider must be provided during the initial “Site Predetermination Application” process in order to remain compliant with this requirement.

16. 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).

17. 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 eligibility for J-1 Visa physician placements.

18. Job transfers must be approved by MDH before the transfer occurs so that it can be determined if the new area is rural and still underserved. Refer to “Transfer” section for related procedures and minimum requirements.

19. National Interest Waiver Requests will be considered only for those J-1 or H1-B Visa Waiver applications that have been reviewed and/or recommendations made in regards to Mississippi's State 30, the Appalachian Regional Commission, and the Department of Agriculture's programs. Refer to "National Interest Waiver Letter Requests" section for specific policies and procedures.

102 EMPLOYMENT CONTRACT:

102.01 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.

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

102.03 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.

102.04 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.

102.05 The Department of State and INS 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.

102.06 MDH must be notified when the J-1 physician does not report for duty or leaves the practice site for whatever reason.

102.07 The employer and/or J-1 physician must notify MDH of breach or termination of contract.

102.08 For the statutorily-required 3 years, there can be no changes to the contract that would result in the J-1 physician leaving the agreed-upon site and treating the patients he/she has agreed to treat in the manner agreed upon, unless the contract of resulting transfer has been approved by the MDH.

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

102.10 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.

102.11 The contract may include a liquidation clause, but is not required by MDH. 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.

Include in all employment contracts the following information:

- guaranteed 3-year base salary
- benefits
- insurance
- 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.
- leave (annual, sick, continuing medical education, holidays)
- commencement date begins within 90 days of receipt of J-1 visa waiver
- statement that amendments shall adhere to State and Federal J-1 visa waiver requirements

103 RECRUITMENT:

103.01 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 the six (6) months prior to preparing/signing a contract.

103.02 Recruitment efforts must include regional and national print advertising stating the position available and the practice site location.

Copies of ads submitted must show the publication date. On-line ads must show the dates the ad was on-line.

Ads run at the time of or after preparation of the contract are not usable.

Advertising bill and payment receipts may be included.

Include copies of recruitment firm contracts, if applicable.

103.03 Documentation required, in response to national recruitment advertisements.

Copies of at least four (4) certified letters to medical schools.

Copies of CVs/resumes submitted in response to recruitment efforts.

Names of non-foreign physicians applying and/or interviewed and detailed justification on reasons not hired.

103.04 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.

103.05 In addition to items 1, 2, 3, and 4, the sponsoring health care facility is required to publish a legal notice in their local newspaper and a state newspaper of general circulation in accordance with the following format. The Proof of Publication of this notice must be submitted with the Site Predetermination Application.

On_____, 200__, (name of J-1 sponsoring facility) requested that the Mississippi Department of Health support a J-1 Visa waiver of the two-year foreign residency requirement of (physician name) 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.

Copies of the letter of support and/or opposition are available from the sponsoring facility, on the Mississippi Department of Health's Web Site (www.MDH.state.ms.us), or by request from the Director, Office of Primary Care Liaison, Mississippi Department of Health, P.O.Box 1700, Jackson, MS 39215-1700. Any interested party should submit their letter to the address above by (date).

104 PROHIBITIONS:

104.01 MDH will not consider recommendations under the following circumstances:

1. Preliminary determinations over the telephone prior to final review of the Site Predetermination being completed.

2. Medical facilities located in those counties which are a part of the Appalachian Regional Commission are not eligible to recruit primary care J-1 Visa physicians through the Program, with the exception of psychiatrists and specialists.

3. Requests from areas/populations that have become fully served due to sufficient placement of physicians, unless a previously recommended J-1

physician has left the area or for replacement of local physicians who have discontinued practice in a designated area. Exceptional circumstances will be reviewed on a case-by-case basis.

4. More than two (2) site predetermination applications per employer each federal fiscal year.

5. Requests for a J-1 physician who's last IAP-66 has expired more than 210 days prior to the time the site predetermination 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.

105 **TRANSFERS:**

105.01 The following guidelines and procedures apply for J-1 Visa physicians transferring from one HPSA to another, from one organization to another, or within the same HPSA. A "Transfer Notification Form" is included in this application packet. A minimum two year commitment by the J-1 Visa physician to practice in the new site is required.

1. The proposed transfer site must meet all of the eligibility and program requirements. Completion of a Site Predetermination Application will be required for those transferring to a HPSA (if not the same HPSA) or to a new sponsoring facility organization.

2. The foreign physician shall make no plans for a transfer or moving of personal possessions until the OPCL has reviewed and/or approved the request.

3. The J-1 physician retains sole responsibility for notifying their current employer of the intent to transfer, and payment of any financial penalty caused by a breach of contract, as determined by the original or current employer or as specified in their employment contract.

4. If the foreign provider is being retained by the original employer, and is being transferred to another HPSA to better serve the residents of Mississippi, the new community's population to patient ratio must exceed the 3000:1 threshold requirement, and need for the foreign provider in the community must be documented.

   a. Responsibility of the J-1 Visa Physician:

Notify the Office of Primary Care Liaison, in writing, of the intent to transfer, detailing the reason for the transfer; and a statement acknowledging agreement to the proposed transfer, if applicable.

Provide the Office of Primary Care Liaison with the new practice site, address, telephone number, employer, hours of work, and proposed date of transfer; and

The new site must meet all requirements of the Program Guidelines.

b. Responsibility of First Employer:

Provide a letter to the Office of Primary Care Liaison releasing the J-1 Visa physician from employment; and/or

Provide an explanation for transfer or termination of contract.

c. Responsibility of Second Employer:

Provide a letter to the Office of Primary Care Liaison of the intent to employ the J-1 Visa physician;

Provide the Office of Primary Care Liaison with a copy of the employment contract; and

Provide in writing, with documentation, that the new site meets the eligibility requirements in the Mississippi J-1 Visa Waiver Guidelines and the federal agency sponsoring the J-1 visa waiver.

5. For the foreign physician transferring from another state to a HPSA in Mississippi, the following must be provided:

a. A Site Predetermination Application must be completed. If an approval is provided, a complete J-1 Visa Waiver application must be submitted, to include a four (4) year employment contract.

b. The foreign provider must obtain a Mississippi medical license prior to commencing practice.

106 FOREIGN PHYSICIANS RELEASED DUE TO TERMINATION, MUTUAL RELEASE, OR DEATH:

106.01 The OPCL 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.

106.02 OPCL will assist, in a limited way, the sponsoring employer and foreign physician in resolving termination disputes. However, OPCL will assume no position in the dispute.

106.03 OPCL will assist, in a limited way, the foreign provider in securing another position in the state.

107 NATIONAL INTEREST WAIVER (NIW) LETTER REQUESTS:

107.01 ~~The following policies apply only to applications the Mississippi State Department of Health has reviewed and/or made recommendations in regards to Mississippi's State 30 and the Appalachian Regional Commission's J-1 Visa Waiver Programs~~. The following policies apply to foreign medical physicians applying for National Interest Waiver Letter Recommendations. The Office of the State Health Officer maintains the responsibility within the state of recommending and processing, through its Office of Primary Care Liaison, NIW requests.

1. The facility or geographical area in which the foreign physician's placement has occurred must be currently designated as a Mississippi health professional shortage area (HPSA) by the MDH Office of Primary Care Liaison.

2. A current letter of support from the health facility or medical provider who has sponsored the original J-1 or H1-B Visa Waiver must be provided which indicates that the foreign physician placement has resulted in an acceptable or satisfactory condition to support the delivery of primary care services.

3. A statement must be provided, dated and signed by the foreign physician, that he/she agrees to meet the original obligations of the employment contract entered as PL 106-95 does not change the foreign physician's obligation of the original contract terms.

4. In the event that the foreign physician requesting a NIW support letter has completed the original contract terms, the terms noted in items 1 and 2 must be met for consideration of a NIW support letter.

5. The NIW support letter will be addressed to the entity who requests the letter, either the individual foreign physician or the designated representative.

6. A NIW support letter will not be provided when circumstances present that a foreign physician has transferred to a work site other than the original placement without notification to the MDH.

7. In addition to items 1 through 5, if applicable, J-1 physicians that completed service obligations in another state or H1-B physicians must provide a letter of support from the interested government agency that sponsored the foreign medical graduate. The support letter should state that the foreign medical graduate's service was in the public interest and that his/her placement resulted in acceptable (or satisfactory) conditions to support the delivery of primary or specialty care.

8. In addition to items 1 through 5 and 7, J-1 physicians from another state or H1-B physicians seeking NIW letters must provide support letters from the new sponsoring facility, as well as the local medical community for the placement.

9. Physicians from another state or H1-B physicians must receive approval for NIW recommendation through the Office of the State Health Officer.