

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BUREAU OF HEALTH SERVICES ADMINISTRATION
COMMUNITY SERVICES DIVISION**

**CHAPTER 1200-20-11
RULES AND REGULATIONS GOVERNING THE STATE
CONRAD J-1 VISA WAIVER PROGRAM**

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1200-20-11-.01 INTRODUCTION.

The Department is committed to assuring all Tennesseans have access to quality, affordable health care. The Department will support and facilitate the placement of primary care physicians and physician specialists in accordance with the criteria outlined in these rules. Physicians who are placed must provide medical care to underserved Tennesseans. The Department is positioned to cooperate with and assist any federal agency in its sponsoring and review of requests to waive the foreign residency requirement on behalf of health care physicians holding J-1 visas who will practice in an acceptable location.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-1-103, and Public Acts of 2003; Chapter 117. **Administrative History:** Original rule filed May 30, 1997; effective September 28, 1997. Repeal and new rule filed April 28, 2000; effective July 12, 2000. Repeal and new rule filed December 12, 2003; effective February 25, 2004.

1200-20-11-.02 DEFINITIONS.

As used in these rules, the terms below shall have the following meanings:

- (1) Complete application - submittal, by certified mail, of all forms and information outlined by the Department in the policies and procedures for the State Conrad J-1 Visa Waiver Program to the Nashville, Tennessee office of the State Conrad J-1 Visa Waiver Program.
- (2) Conrad Waiver - see State Conrad J-1 Visa Waiver Program.
- (3) Critical Access Hospital (CAH) - a federally designated hospital that is very small with staffing flexibility under Medicare rules for providing emergency, outpatient, and short-stay inpatient services.
- (4) Department - Tennessee Department of Health.
- (5) Health Professional Shortage Area (HPSA) - a geographical area designated by the Secretary of the U.S. Department of Health and Human Services as having a shortage of health manpower (formerly Health Manpower Shortage Area).
- (6) Health Resource Shortage Area (HRSA) - an area designated annually by the Commissioner of the Department as having inadequate resources in place to ensure access to primary, pediatric, obstetric or TennCare Services. It includes State designated Health Resource Shortage Areas for Primary, Pediatric, Obstetrical Care and TennCare.
- (7) Indigent patients - patients who are at or below two-hundred percent (200%) of the federal poverty level with no comprehensive third-party coverage.

(Rule 1200-20-11-.02, continued)

- (8) Managed Care Organization (MCO) - an entity rendering or arranging necessary medical services to persons who are eligible for Medicaid or TennCare Standard and who are enrolled in the TennCare managed care program. MCO's are paid by the State of Tennessee authorized and consistent with a Section 1115 waiver of the Social Security Act granted by the Health Care Financing Administration (renamed in 2001 as the "Centers for Medicare and Medicaid Services or "CMS"), U.S. Department of Health and Human Services.
- (9) Medicare Dependent Hospital – a federally designated hospital that is a small rural hospital for which Medicare patients comprise a significant percentage of their patients and their revenues.
- (10) Medically Underserved Area (MUA) - a geographical area which is designated by the Secretary of the U.S. Department of Health and Human Services as having a shortage of health care services using several factors, in addition to the availability of health care providers, including infant mortality rate, poverty rate, and percentage of population aged sixty five (65) or over.
- (11) Primary care physician - a physician who has completed a residency in Family Practice, General Pediatrics, Obstetrics, or General Internal Medicine and who is also supported by a sponsoring employer.
- (12) Primary health care - services which emphasize first contact patient care. The provider assumes overall and ongoing responsibility for the patient in both health maintenance and treatment of illness, emphasizing continuity of care over the entire spectrum of health care services.
- (13) Physician specialist - a physician who has completed a residency in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Endocrinology, Diabetes, & Metabolism, Emergency Medicine, Gastroenterology, Geriatric Medicine, Hematology, Hospitalists, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Neurology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental-Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology-Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or General Orthopedic Surgery or General Surgery. If all slots permitted by federal law are not filled by June 30th of each year, at the Commissioner's discretion, a "specialist" may also include a physician who has completed a residency in a medical specialty or subspecialty other than one listed above, if the specialty or subspecialty is among those recognized by the American Board of Medical Specialties at the time the physician applies for placement through the J-1 visa waiver program.
- (14) Rural areas - all counties in Tennessee, excluding Shelby, Davidson, Knox and Hamilton.
- (15) Rural Hospital – a federally designated hospital meeting the requirements for placement of primary care physicians. Rural Hospitals which are located in counties containing federally designated health professional shortage areas (HPSAs) and/or medically underserved areas (MUAs), either of which must also be located within the top thirty (30) state designated health resource shortage areas (HRSAs) for TennCare, primary care, obstetrics or pediatrics.
- (16) Rural Referral Center (RRC) - a federally designated hospital that is authorized under the Tax Equity and Fiscal Responsibility Act of 1982. These are rural hospitals with generally high volume whose costs more closely resemble those of urban hospitals because they treat regionally or nationally referred complex cases.

(Rule 1200-20-11-.02, continued)

- (17) Sole Community Hospital (SCH) - a federally designated hospital that is the only provider of hospital care in its market area either because it is geographically isolated or because severe weather or travel conditions prevent travel to another hospital offering similar services.
- (18) Sponsoring employer - a health care facility or physician practice located in qualifying communities which provides primary health care to underserved residents. Examples of these facilities are hospitals, primary care clinics, community health clinics, local health departments, or private physician offices which routinely accept TennCare and indigent patients.
- (19) State Conrad J-1 Visa Waiver Program - the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103-416) has provided an additional basis upon which a foreign medical graduate may seek a waiver of the two-year home residence requirement. Section 220(a) of that Act added a provision that authorizes a State Department of Public Health or its equivalent to request the Director of the United States Information Agency to recommend that Immigration and Naturalization Service grant the waiver.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-1-103, 68-1-121, Public Acts of 2003; Chapter 117, and Public Acts of 2004, Chapter 572. **Administrative History:** Original rule filed May 30, 1997; effective September 28, 1997. Repeal and new rule filed April 28, 2000; effective July 12, 2000. Amendment filed January 31, 2003; effective May 30, 2003. Repeal and new rule filed December 12, 2003; effective February 25, 2004. Amendments filed January 12, 2005; effective May 31, 2005. Public necessity rules filed May 19, 2006; effective through October 31, 2006. Amendments filed May 31, 2006; effective September 28, 2006.

1200-20-11-.03 NECESSITY OF LICENSE AND PROFESSIONAL CREDENTIALS.

An applicant for a State Conrad J-1 Visa Waiver must be eligible for and obtain an unencumbered Tennessee license to practice the candidate's profession in the State of Tennessee. In addition, the physician must be board eligible or board certified in the specialty in which the practitioner proposes to practice in the State.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-1-103, and Public Acts of 2003; Chapter 117. **Administrative History:** Original rule filed May 30, 1997; effective September 28, 1997. Repeal and new rule filed April 28, 2000; effective July 12, 2000. Repeal and new rule filed December 12, 2003; effective February 25, 2004.

1200-20-11-.04 ELIGIBILITY.

- (1) The State Conrad J-1 Visa Waiver Program in Tennessee is limited to those primary care physicians who have completed a residency in one of the following medical specialties: Family Practice, General Pediatrics, Obstetrics, or General Internal Medicine. The State Conrad J-1 Visa Waiver Program is limited to those physician specialists who have completed a residency in Family Practice Adolescent Medicine or Geriatric Medicine; or Internal Medicine Adolescent Medicine, Cardiovascular Disease, Critical Care Medicine, Emergency Medicine, Endocrinology, Diabetes, & Metabolism, Gastroenterology, Geriatric Medicine, Hematology, Hospitalists, Infectious Disease, Interventional Cardiology, Oncology, Nephrology, Neurology, Pulmonary Disease, Rheumatology; or Obstetrics & Gynecology, Critical Care Medicine or Gynecologic Oncology; or Pediatric Adolescent Medicine, Developmental Behavioral Pediatrics, Pediatric Cardiology, Pediatric Endocrinology, Pediatric Gastroenterology, Pediatric Hematology- Oncology, Pediatric Infectious Disease, Pediatric Nephrology, Pediatric Pulmonology, or Pediatric Critical Care Medicine; or Addiction Psychiatry, Child & Adolescent Psychiatry, or Geriatric Psychiatry; or General Orthopedic Surgery or General Surgery.
- (2) Health care practitioners who are placed must provide medical care to underserved Tennesseans. Each applicant must be supported by a sponsoring employer. A sponsoring employer will be considered for a J-1 visa waiver placement if the primary purpose of the placement is the provision of health care services to those who live in underserved communities based on the criteria set forth herein.

(Rule 1200-20-11-.04, continued)

- (3) J-1 primary care physicians are placed only in rural areas of the State. At the discretion of the Department, the Department will support and facilitate the placement of primary care physicians in at least seventy percent (70%) of the slots permitted by federal law each federal fiscal year in health care practice sites which are located in federally designated Health Professional Shortage Areas (HPSAs) and/or Medically Underserved Areas (MUAs), either of which must also be located within the top thirty (30) State designated Health Resource Shortage Areas (HRSAs). Each primary care physician must agree to practice primary health care at that site for a minimum of forty (40) hours per week and for a minimum of three (3) years.
- (4) At the discretion of the Department, the Department will also support and facilitate the placement of one (1) physician specialist per hospital in up to thirty percent (30%) of the slots permitted by federal law between October 1 and June 30 of each federal fiscal year in affiliation with the following hospitals, as designated by the Department, that are located in a HPSA or MUA: one of the top twenty (20) non-psychiatric hospitals with the highest percentage of total adjusted patient days for TennCare patients; or a Rural Referral Center hospital; or a Sole Community hospital; or a Medicare dependent hospital; or a rural hospital meeting the requirements for placement of a primary care physician. The top twenty non-psychiatric hospital list will be updated on an annual basis.

In addition, in accordance with 8 U.S.C.A. § 1184(l)(1)(D)(ii), the Department may also facilitate the placement of physician specialists in up to five (5) of the federally-permitted slots annually in affiliation with hospitals not located in a HPSA or MUA. A hospital requesting participation under 8 U.S.C.A. § 1184(l)(1)(D)(ii) must demonstrate that fifty percent (50%) or more of its patients served reside in a HPSA or MUA.

Each physician specialist must agree to practice his or her specialty in affiliation with the hospital for a minimum of forty (40) hours per week and for a minimum of three (3) years. If the full complement of thirty percent (30%) of the slots for physician specialists has not been committed by April 1, an additional application from a facility which has already received a physician specialist slot between October 1 and March 31 will be accepted and applications for a physician specialist will also be accepted from Critical Access Hospitals located in a HPSA or MUA from April 1 to June 30 of each federal fiscal year. No more than one-third of the specialist slots may be granted in an urban HPSA from October 1 to June 30 of each year.

If the full complement of slots permitted by the federal law has not been committed by June 30, the percentage limitations on the number of slots allocated to specialty physicians and on the placement of specialty physicians, set forth above, shall no longer be applicable. After June 30, all slots permitted by the federal law shall be opened to all eligible sponsoring employers for primary care physicians and specialist physicians as previously described, for the final quarter of the year. Additionally, if all slots permitted by federal law are not filled by June 30th of each year, at the Commissioner's discretion, a physician who has completed a residency in a medical specialty or subspecialty other than one listed in (1) may be considered eligible for placement if the specialty or subspecialty is among those recognized by the American Board of Medical Specialties at the time the physician applies for placement through the J-1 visa waiver program. During the final quarter, priority for the specialist slots is given to specialists but primary care provider applications will be accepted if specialist slots are available and no other specialist provider application has been received and deemed eligible.

- (5) A physician specialist who requests placement as a primary care physician under the State Conrad J-1 Visa Waiver Program will be required to adhere to all rules and regulations herein specific to primary care physicians.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-1-103, 68-1-121, Public Acts of 2003; Chapter 117, and Public Acts of 2004, Chapter 572. **Administrative History:** Original rule filed May 30, 1997; effective September 28, 1997. Repeal and new rule filed April 28, 2000; effective July 12, 2000. Amendment filed January 31, 2003; effective May

(Rule 1200-20-11-.04, continued)

30, 2003. Repeal and new rule filed December 12, 2003; effective February 25, 2004. Amendments filed January 12, 2005; effective May 31, 2005. Public necessity rules filed May 19, 2006; effective through October 31, 2006. Amendments filed May 31, 2006; effective September 28, 2006.

1200-20-11-.05 APPLICATION REVIEW, APPROVAL, DENIAL.

- (1) The Department will only consider a complete application that has arrived by certified mail submitted by the sponsoring employer on behalf of the physician. Submittal by any other means, including, but not limited to, hand delivered or incomplete applications, will be rejected and the application will be returned COD/certified to the sponsoring employer. The HRSAs will be designated annually. Applications for primary care practitioners will only be accepted for the HRSAs in effect at the time the complete application is received. For the federal fiscal year 2003 only, physician specialist applications will be accepted until September 30, 2003.
- (2) If an employer proposes to utilize the J-1 primary care physician at more than one (1) site located within a HPSA and/or MUA, either of which must also be located within a HRSA, or if an employer proposes to utilize the physician specialist in affiliation with more than one (1) hospital within a HPSA or MUA or the qualifying location, the name and location of each facility and a schedule of the days and hours that the physician will be available at each site must be included in the application.
- (3) Completed applications will be considered in the order in which they were received. All completed applications received beyond the maximum number of placements permitted by federal law per year will be held in a pending file to be reconsidered before any other applications at the beginning of the new federal fiscal year. In order to receive such reconsideration, however, an applicant must submit a request, in writing, setting forth his/her desire to be reconsidered, and such request must be received by the Department prior to the commencement of the Department's reconsideration process. Upon the Department's receipt of a written request for reconsideration, each applicant will be contacted by the Department to confirm its receipt of the request and confirm the applicant's continued desire for reconsideration.
- (4) The Department will review each waiver application to ensure that the proposed placement will not adversely affect or compromise delivery of health care in the HPSA or MUA in a HRSA service area. The Department is wholly responsible for the interpretation of this policy.
- (5) Once it is determined the application is complete and the applicant meets all of the appropriate requirements, a number will be assigned to the application which indicates that the Department has accepted the application as one of its allowable placements. A certified letter will be sent to the sponsoring employer notifying the sponsoring employer that the application has been forwarded to the appropriate federal agency for processing.
- (6) If the applicant does not meet State requirements, the Department will notify the sponsoring employer by certified mail. Notification of a failure to meet federal requirements will be made by the federal agency directly to the Department which, in turn, will notify the sponsoring employer.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-1-103, 68-1-121, and Public Acts of 2003; Chapter 117. **Administrative History:** Original rule filed May 30, 1997; effective September 28, 1997. Repeal and new rule filed April 28, 2000; effective July 12, 2000. Amendment filed January 31, 2003; effective May 30, 2003. Repeal and new rule filed December 12, 2003; effective February 25, 2004. Public necessity rule filed May 19, 2006; effective through October 31, 2006. Amendment filed May 31, 2006; effective September 28, 2006.

1200-20-11-.06 PROGRAM REQUIREMENTS.

- (1) The primary care physician or physician specialist seeking a J-1 visa waiver and the Chief Executive Officer of the sponsoring employer must each submit semi-annual reports to the Department which

(Rule 1200-20-11-.06, continued)

assure that the sponsoring employer and the physician are complying with the rules and regulations of the program. The first reports must be submitted within thirty (30) days after employment begins and every six (6) months thereafter, until the three-year commitment is complete. Reporting forms will be supplied to the physician and the sponsoring employer by the Department.

- (2) All primary care physicians and physician specialists who have been granted a J-1 visa waiver are required to grant Department representatives, who shall maintain full confidentiality, reasonable access to all records maintained by the physician's practice which are pertinent to ascertaining compliance with these rules and regulations, including, but not limited to, patient files and payment records. From time to time, audits for compliance with these rules and regulations may be performed by staff of the Department.
- (3) At all times, the primary care physician or physician specialist who has been granted a J-1 visa waiver must operate the practice consistent with established standards recognized or adopted by the appropriate medical specialty.
- (4) A primary care physician and physician specialist who has been granted a J-1 visa waiver is not permitted to transfer from one site to another unless such physician receives prior written approval from the Department. An unapproved transfer may result in, among other things, cancellation of the visa waiver.
- (5) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must complete an exit interview within ninety (90) days of the completion of his/her three-year obligation, or at such point that the employment contract is terminated by the sponsoring site, the physician, or the Department. The Department will conduct the exit interview, which will concentrate on the physician's experiences in Tennessee and his/her future plans for practicing at the current location or another location.
- (6) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must agree to enroll with a sufficient number of MCOs which serve at least fifty-one percent (51%) of the TennCare enrolled population in the physician's primary county of practice. In the event that one (1) or more MCO's have closed enrollment to new providers which would not allow the physician to meet this criteria, the physician must demonstrate to the Department that a good faith effort was made and that the physician has enrolled in all other MCO's accepting new providers.
- (7) All primary care physicians and physician specialists who have been granted a J-1 visa waiver must agree, without exception, to provide services to indigent patients as long as the provider's total number of indigent patient visits does not exceed fifteen percent (15%) of the provider's total practice visits.
- (8) All primary care physicians and physician specialists who have been granted a J-1 visa waiver 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). All primary care physicians and physician specialists must also accept TennCare payment as payment in full for TennCare patients.
- (9) The sponsoring employer must make known to the community that primary care physicians and physician specialists who have been granted a J-1 visa waiver will comply with the terms and conditions stated in these rules and regulations by posting a notice stating the terms and conditions in a conspicuous place in the public waiting area of the facility.

(Rule 1200-20-11-.06, continued)

Authority: T.C.A. §§4-5-202, 4-5-204, 68-1-103, and Public Acts of 2003; Chapter 117. **Administrative History:** Original rule filed May 30, 1997; effective September 28, 1997. Repeal and new rule filed April 28, 2000; effective July 12, 2000. Repeal and new rule filed December 12, 2003; effective February 25, 2004.

1200-20-11-.07 NONCOMPLIANCE.

Failure on the part of the sponsoring employer or the primary care physician or physician specialist who has been granted a J-1 visa waiver to comply with the rules and regulations of this program will result in a report of noncompliance to the Immigration and Naturalization Service and may, among other things, make the site ineligible for future placements for a period of time to be determined by the Department.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-1-103, and Public Acts of 2003; Chapter 117. **Administrative History:** Original rule filed May 30, 1997; effective September 28, 1997. Repeal and new rule filed April 28, 2000; effective July 12, 2000. Repeal and new rule filed December 12, 2003; effective February 25, 2004.

1200-20-11-.08 WAIVER OF RESPONSIBILITY.

- (1) The Department is not responsible for exceptions to or interpretations of these rules and regulations which have occurred without the written approval of the Immigration and Naturalization Service or its designee.
- (2) The Department is not responsible for any practice arrangements or contractual obligations entered into by primary care physicians or physician specialists prior to approval of a J-1 visa waiver request. However, all such arrangements and all related contracts must be provided to the Department to ensure compliance with the requirements of these rules.
- (3) The Department assumes no responsibility for future actions taken by the Immigration and Naturalization Service or any potential investigation that may be conducted by the Office of Inspector General. It is the responsibility of all primary care physicians, physician specialists who have been granted a J-1 visa waiver and the employers to meet any reporting requirements of the Immigration and Naturalization Service or the Department.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-1-103, and Public Acts of 2003; Chapter 117. **Administrative History:** Original rule filed May 30, 1997; effective September 28, 1997. Repeal and new rule filed April 28, 2000; effective July 12, 2000. Repeal and new rule filed December 12, 2003; effective February 25, 2004.