

ARTICLE 44:63

J-1 VISA WAIVER PROGRAM

Chapter

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CHAPTER 44:63:01

GENERAL PROVISIONS

Section

- 44:63:01:01 Definitions.

44:63:01:01. Definitions. Terms used in this article mean:

(1) "Application," a complete set of materials, as determined by the department per chapter 44:63:02, submitted by an employing facility on behalf of a J-1 physician seeking waiver of the physician's J-1 visa requirement to return to the physician's home country for a minimum of two years upon expiration of the visa;

(2) "Department," the Department of Health;

(3) "Employing facility," a facility located in or serving residents of a shortage area in South Dakota as determined by the department that has made a bona fide employment offer to a J-1

physician, that has submitted a J-1 visa waiver request in the form of an application to the department, and that is incorporated under the laws of the State of South Dakota;

(4) "Full time," an average of 40 hours of medical practice per week, meaning a four week minimum of 128 hours seeing patients on an ambulatory or in-patient basis and 32 hours administrative work ~~for at least 48 weeks per year~~;

(5) "USCIS," U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security;

(6) "J-1 physician," a physician who is in possession of a temporary exchange visitor (J-1) visa to pursue graduate medical education in the United States, or possessed J-1 status and remains subject to the two-year home residence requirement, and is seeking a waiver of ~~their~~ a J-1 visa home country residency requirement through the practice of medicine to shortage area residents;

(7) "Secretary," secretary of the Department of Health;

(8) "Shortage area," a geographic area, population group, or facility in South Dakota that is designated by the federal government as a medically underserved area or health professional shortage area. ~~Such~~ The designation must be in effect at the time an application ~~has been~~ is received by the department;

(9) "Urban ~~area~~ location," any municipality having a population of 50,000 or more persons as well as any area within ten miles of the boundaries of ~~such~~ the municipality.

Source: 28 SDR 47, effective October 4, 2001; 31 SDR 214, effective July 4, 2005; 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

CHAPTER 44:63:02

FORM AND CONTENT OF WAIVER APPLICATIONS

Section

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- 44:63:02:03 Letter from facility.
- 44:63:02:04 Information required from facility.
- 44:63:02:05 Data sheet DS-3035.
- 44:63:02:06 J-1 waiver affidavit.
- 44:63:02:07 Federal forms.
- 44:63:02:08 Eligibility to be licensed to practice.
- 44:63:02:09 J-1 physician curriculum vitae.
- 44:63:02:10 Employment contract.
- 44:63:02:11 Contractual obligation to home country.
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- 44:63:02:1413 Evidence of shortage designation status.
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- 44:63:02:1615 Out of status explanation, when applicable.
- 44:63:02:1716 Form G28, when applicable.
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- 44:63:02:1918 Examinations required by USCIS.
- ~~44:63:02:20 Letters of recommendation.~~

44:63:02:02. Order of documents submitted. Each application shall consist of documents submitted in the following order:

- (1) Data sheet DS-3035;
- (2) Employment contract;
- (3) J-1 waiver affidavit;
- (4) Federal forms (IAP-66//DS2019);
- (5) Letter from facility;
- (6) Evidence of shortage designation status;
- (7) J-1 physician statement;
- (8) J-1 physician curriculum vitae;
- (9) Out of status explanation, when applicable;
- (10) Form G28, when applicable;
- (11) I-94 entry and departure cards;
- (12) Contractual obligation to home country;
- (13) Appendix 1 Information required from facility;
- (14) Appendix 2 Examinations required by USCIS;
- (15) Appendix 3 Eligibility to be licensed to practice; and
- ~~(16) Appendix 4 Letters of recommendation;~~
- ~~(17) Appendix 5 Permanent residence; and~~
- ~~(18)~~16) Appendix ~~6~~4 Medical licensure.

Source: 28 SDR 47, effective October 4, 2001; 31 SDR 214, effective July 4, 2005; 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:02:10. Employment contract. Each application shall include a complete copy of the minimum three-year employment contract between the J-1 physician and the employing facility.

The J-1 physician and the employing facility shall sign and date the contract. The employment contract shall include the following:

- (1) Name and address of the employing facility;
- (2) Name and address of the J-1 physician;
- (3) The specific shortage area in which the J-1 physician will practice;
- (4) That the J-1 physician will practice full-time;
- (5) That the J-1 physician will practice a minimum of 64 hours per four week period direct patient care within the shortage area identified in the contract;

(6) That the J-1 physician may provide up to 96 additional hours per four week period under any of the following conditions:

(a) Providing care to patients in either the hospital inpatient or outpatient department if the hospital is shown to serve a significant portion of shortage area residents;

(b) Clinical outreach to underserved populations residing in a shortage area, whether directly in person or by electronic means. If by electronic means, the remote site must be located within a shortage area. If provided in person, the setting must be located in a shortage area;

(c) Public health services if approved by the department; or

(d) Direct patient care in a facility or setting that serves the underserved, as evidenced by the posting of a notice of a discounted fee program as an adopted policy of the facility. The discounted fee program ~~must follow~~ shall meet or exceed the following minimum standards: 100% of the federal poverty level (FPL) or less = 100% discount; 101% to 125% of the FPL, inclusive, = 80% discount; 126% to 150% of the FPL, inclusive, = 60% discount; 151% to 175% of the FPL, inclusive, = 40% discount; and 176% to 200% of the FPL, inclusive, = 20% discount;

(7) That the J-1 physician will begin employment at such facility within 90 days of receiving the waiver as well as continue to work at the facility for a total of not less than three years;

(8) That the J-1 physician will accept assignment under the Social Security Act § 1842(b)(3)(ii) as full payment for all services for which payment may be made under part B of Title XVIII of such act (Medicare);

(9) A sentence describing what field of medicine the J-1 physician will practice;

(10) Language requiring that the contract be terminated only for cause and cannot be terminated by mutual agreement until after expiration of the required three-year period of service;

(11) No noncompete clause or provision that purports to limit the J-1 physician's ability to remain in the area upon completion of the contract; ~~and~~

(12) An attachment provided by the department titled "J-1 Employment Contract Policy of the South Dakota Department of Health"; and

(13) A statement by the foreign medical graduate that the graduate agrees to meet the requirements set forth in section 214(l) of the Immigration and Nationality Act in compliance with 22 CFR 41.63(e)(3)(iii).

Source: 28 SDR 47, effective October 4, 2001; 29 SDR 107, effective February 3, 2003; 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

~~44:63:02:12. Permanent residence. Each application shall include a statement from the employing facility that it will not facilitate the process of acquiring permanent residence for the J-1 physician until after the J-1 physician has been employed in accordance with waiver program requirements for at least two years.~~

Source: 28 SDR 47, effective October 4, 2001.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:02:1312. Medical licensure. Each application shall include a statement signed by the J-1 physician stating that all the J-1 physician's medical licenses are in good standing and that he or she is not subject to any criminal investigation or proceedings by any medical licensing authority.

Source: 28 SDR 47, effective October 4, 2001.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:02:1413. Evidence of shortage designation status. Each application shall include evidence that the service area is designated as a health professional shortage area or a medically underserved area or both.

Source: 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:02:1514. J-1 physician statement. A statement from the physician regarding the reasons for not wishing to fulfill the two-year home country residence requirement to which the physician agreed at the time of acceptance of exchange visitor status shall be included in the application.

Source: 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:02:1615. Out of status explanation, when applicable. An explanation shall be included in the application if the physician spent any period of time in some other visa status, out of status, or outside of the United States.

Source: 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:02:1716. Form G28, when applicable. A form G-28 shall be included in the application from an attorney or accredited representative. A letterhead from a law office may be used as a substitute for form G-28 if an attorney represents the applicant.

Source: 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:02:1817. I-94 entry and departure cards. A copy of all I-94 forms for the physician and family members shall be included in the application.

Source: 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:02:1918. Examinations required by USCIS. Proof of passage of each examination required by USCIS shall be included in the application.

Source: 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

~~44:63:02:20. Letters of recommendation.~~ At least three letters of recommendation shall be included in the application.

Source: 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

CHAPTER 44:63:03

PROCEDURES

Section

- 44:63:03:01 Acceptance of applications.
- 44:63:03:02 Review of applications.
- 44:63:03:03 Incomplete applications.
- 44:63:03:04 Complete applications -- Favorable review.
- 44:63:03:05 Complete applications -- Unfavorable review.
- 44:63:03:06 Annual limit on number of applications.

44:63:03:01. Acceptance of applications. Only applications consisting of ~~one~~ the unbound original ~~and one unbound copy~~ from the employing facility shall be considered for review.

Source: 28 SDR 47, effective October 4, 2001; 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:03:02. Review of applications. ~~Applications shall be reviewed in the order in which they are received.~~ The order in which applications are reviewed shall be based on the date upon which they are received. Upon receipt, each application shall be verified for completeness and evidence that the J-1 physician will provide full-time service to a shortage area. If, on any given date, the number of applications received exceeds the number of available waiver slots, the reviewers may consider the following factors:

- 1) Primary care/specialty care;
- 2) Rural/urban location;
- 3) Impact on service to South Dakota's underserved populations;
- 4) Number of recent waivers approved for the applying health care facility/health system;
- 5) Number of recent waivers approved for the applying geographic location within the state;
or
- 6) Any other factor or special circumstance the department considers relevant to the review process.

If reviewers intend to consider the factors listed above in evaluating an application, the employing facility will be allowed to submit supplemental information.

Source: 28 SDR 47, effective October 4, 2001.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:03:04. Complete applications -- Favorable review. ~~If application materials support seeking waiver of the J-1 physician's two-year home residency requirement,~~ If a complete application is selected for recommendation by the department, the following shall occur:

(1) A letter signed by the secretary shall be added to the application stating that it is in the public interest that a waiver of the two-year home country residency requirement be granted;

(2) The secretary may also add necessary documentation showing the area selected for practice by the J-1 physician is a shortage area;

(3) The letter and application materials shall be delivered to the appropriate federal authorities; and

(4) A copy of the letter shall be delivered to the employing facility.

Source: 28 SDR 47, effective October 4, 2001; 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

44:63:03:05. Complete applications -- Unfavorable review. ~~If application materials do not support seeking waiver of the J-1 physician's two-year home residency requirement, If a complete application is not selected for recommendation by the department, the secretary shall notify the employing facility in writing as to the reasons for the determination. The written notice and application shall be sent to the employing facility.~~

Source: 28 SDR 47, effective October 4, 2001; 37 SDR 235, effective June 27, 2011.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.

CHAPTER 44:63:04

REPORTING REQUIREMENTS

Section

44:63:04:01 Annual reports required.

44:63:04:02 Transfer reports required.

44:63:04:03 Sanctions.

CHAPTER 44:63:05

FEES

Section

44:63:05:01 Amount of fee.

CHAPTER 44:63:06

SPECIAL PROGRAM

Section

44:63:06:01 Creation of special program.

44:63:06:02 Location of J-1 practice.

44:63:06:03 Form and content of special program waiver applications.

44:63:06:02. Location of J-1 practice. Prior to ~~April 1~~ January 2 of each federal fiscal year, the department may not approve more than five applications submitted on behalf of a J-1 physician who proposes to practice under the special program within any urban area, and the department may not approve more than five applications submitted on behalf of a J-1 physician who proposes to practice under the special program within any non-urban area. The department may approve any application on or after that date.

Source: 31 SDR 214, effective July 4, 2005; 35 SDR 183, effective February 2, 2009.

General Authority: SDCL 36-2-22.

Law Implemented: SDCL 36-2-21, 36-2-22.