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DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Visa Waiver Program for International Medical Graduates
- 2) Code Citation: 77 Ill. Adm. Code 591
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
591.10	Repeal
591.20	Amend
591.30	Amend
591.40	Amend
591.100	Amend
591.110	Amend
591.120	Amend
591.130	Amend
591.140	Amend
591.150	New Section
591.160	New Section
591.170	New Section
591.180	New Section
- 4) Statutory Authority: Sections 212(e) and 214(l) of the Immigration and Nationality Act (8 USC 1182(e) and 1184(l)), and 22 CFR 62, Exchange Visitor Program.
- 5) A Complete Description of the Subjects and Issues Involved: Changes to Part 591 are proposed to incorporate new definitions, clarify eligibility requirements, update application criteria, revise selection standards, and amend the term of performance for participating physicians.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the Notice in the *Illinois Register*.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No

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- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after the publication of this issue of the *Illinois Register* to:
- Susan Meister  
Division of Legal Services  
Illinois Department of Public Health  
535 W. Jefferson St., 5<sup>th</sup> floor  
Springfield, Illinois 62761
- 217/782-2043  
e-mail: [dph.rules@illinois.gov](mailto:dph.rules@illinois.gov)
- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda on which this rulemaking was summarized: July 2013; 37 Ill. Reg. 9034.

The full text of the Proposed Amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

SUBCHAPTER j: PROCESSING J-1 VISA WAIVERS FOR INTERNATIONAL  
MEDICAL GRADUATES

PART 591

VISA WAIVER PROGRAM FOR INTERNATIONAL MEDICAL GRADUATES

SUBPART A: GENERAL PROVISIONS

Section

- 591.10      Applicability (Repealed)
- 591.20      Definitions
- 591.30      Incorporated and ~~or~~ Referenced Materials
- 591.40      Administrative Hearings

SUBPART B: PROCEDURES FOR J-1 VISA WAIVER REQUESTS

Section

- 591.100    ~~Participation~~ Eligibility of Physicians and Facilities
- 591.110    Application ~~Applications~~ Submission Time Frames ~~Timeframes~~
- 591.120    Application Materials and Processing
- 591.130    Selection Process
- 591.140    Terms of Performance
- 591.150    Physician Termination
- 591.160    Physician Transfer
- 591.170    Completion of Waiver Requirements
- 591.180    National Interest Waiver

AUTHORITY: Authorized by and implementing Sections 212(e) and 214(l) of the Immigration and Nationality Act (8 USC 1182(e) and 1184(l)), and 22 CFR 62, Exchange Visitor Program.

SOURCE: Adopted at 22 Ill. Reg. 14485, effective July 24, 1998; amended at 24 Ill. Reg. 7551, effective May 15, 2000; emergency amendment at 27 Ill. Reg. 2277, effective January 22, 2003, for a maximum of 150 days; emergency expired June 20, 2003; amended at 27 Ill. Reg. 10281, effective June 30, 2003; emergency amendment at 28 Ill. Reg. 6641, effective April 15, 2004, for a maximum of 150 days; emergency expired September 11, 2004; amended at 29 Ill. Reg. 3327, effective February 16, 2005; emergency amendment at 29 Ill. Reg. 7825, effective May 10, 2005, for a maximum of 150 days; emergency expired October 6, 2005; amended at 30 Ill. Reg. 898, effective January 5, 2006; amended at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

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SUBPART A: GENERAL PROVISIONS

**Section 591.10 Applicability (Repealed)**

~~This Part implements Section 1182(e) of the federal Immigration and Nationality Act, which allows state health departments to request a waiver of the J-1 Visa requirement that international medical graduates must return to their home country upon completion of graduate medical training in the United States. If an international medical graduate is offered a three-year employment contract in a health professional shortage area or medically underserved area, or serving a medically underserved population in Illinois, the Illinois Department of Public Health and certain federal agencies can request that the international medical graduate be allowed to remain in the United States. The Illinois Department of Public Health has been authorized by the U.S. Information Agency to request J-1 Visa Waivers annually for up to 30 eligible physicians.~~

- ~~a) The provisions of this Part are organized into two Subparts. Subpart A includes general provisions, such as definitions and administrative hearing rules, which apply to all Sections of the Part.~~
- ~~b) Subpart B establishes eligibility criteria for an international medical graduate to request that the Department seek a waiver of the J-1 Visa home country requirements. The Subpart sets forth the application time table and components, and the criteria to be used to select those physicians for whom a waiver will be requested.~~

(Source: Repealed at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.20 Definitions**

"Act" means the Immigration and Nationality Act (8 USC 1182(e) and ~~8 USC 1184(l)~~).

~~"Accredited educational institution" means any publicly or privately operated primary, secondary, or post-secondary institution of learning duly recognized and declared as such by the appropriate authority of the state in which such institution is located provided, that, in addition to any state recognition, all post-secondary institutions shall also be accredited by a nationally recognized accrediting agency or association as recognized by the United States Secretary of Education.~~

"Applicant" means a physician or an individual acting on behalf of the physician who applies to the Department for a J-1 Visa Waiver.

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"Board certified" means that a physician has taken and passed a medical specialty examination.

"Board eligible" means that a physician has completed the requirements for admission to a medical specialty board examination but has not taken and passed the examination.

"Calendar day" means all days in a month or prescribed time frame, including weekends and federal or State government declared holidays.

"Center" means the Center for Rural Health of the Illinois Department of Public Health.

"Certified local health department" means a county, multi-county, municipal or district public health agency recognized by the Department pursuant to the Certified Local Health Department Code (77 Ill. Adm. Code 600).

"Change of ownership" means a change in the person who has operational control of a medical facility.

"Community-based organization" means a locally organized and locally recognized group of individuals whose goals include efforts to maintain or increase the availability of primary health care in their community.

"Community Health Center" or "CHC" means ~~migrant health centers or community health centers~~ ~~community/migrant health centers~~ or health care for the homeless programs or health care for residents of public housing projects supported under Section 329, 330 or 340 of the federal Public Health Service Act (42 USC 254b, 254c, and 256), respectively, and Federally Qualified Health Centers, including Federally Qualified Health Center Look-Alikes, ~~or federally qualified health center look-alikes~~, as designated by the Secretary of the U.S. Department of Health and Human Services, that operate at least one federally designated primary health care delivery site in Illinois ~~Public Health Service.~~

"Country of nationality or country of last legal residence" means the country from which the physician was a national at the time J-1 status was acquired or the last foreign country in which the physician had a legal permanent residence before acquiring J-1 status.

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~~"Center" means the Center for Rural Health of the Illinois Department of Public Health.~~

"Curriculum vitae" means a written description of professional accomplishments, work experience, educational background and skills.

"Department" means the Illinois Department of Public Health.

~~"Downstate" means those Illinois counties other than Cook, Lake, McHenry, DuPage, Will and Kane.~~

"Federal fiscal year" means the 12-month period beginning October 1 and ending September 30 of the following year. The federal fiscal year may be divided into four calendar quarters: October 1 through December 31; January 1 through March 31; April 1 through June 30; and July 1 through September 30.

"Federally Qualified Health Center" or "FQHC" means a health center funded under Section 330 of the Public Health Service Act.

"Federally Qualified Health Center Look-Alike" or "FQHC Look-Alike" means an organization that meets the requirements for receiving a grant under Section 330 of the Public Health Service Act, but does not receive federal grants under that authority.

"Full-time practice" means maintaining 40 hours of ambulatory access per week as required under the Act and the Code of Federal Regulations.

"H1B visa" means a visa for a foreign national to work in the U.S. for a temporary period, issued by the U.S. Department of Homeland Security. It is available for employment in a specialty occupation, including, but not limited to, biotechnology, chemistry, architecture, engineering, mathematics, education, law, medicine, and research.

"Health Professional Shortage Area" or "HPSA" means is a designation provided given by the U.S. Department of Health and Human Services, Health Resources and Services Administration, indicating a Shortage Designation Branch. The HPSA designation shortage of primary medical care or dental or mental health providers. The designation may be geographic (a county or service area), demographic (low-income population) or institutional (comprehensive health center, FQHC, or other public facility or non-profit facility). HPSA designations

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can be found at <http://hpsafind.hrsa.gov>. ~~is based on the ratio of primary care physicians to population and is used to identify areas needing additional primary care physicians. The list of HPSAs is published periodically in the Federal Register, and can be found at~~ <http://belize.hrsa.gov/newhpsa/newhpsa.cfm>.

"Health professional shortage area score" or "HPSA score" means a score calculated by the U.S. Department of Health and Human Services that is assigned to areas or facilities having a health professional shortage designation to determine priorities for assignment of clinicians.

"Hospital" means a location defined in and licensed under the Hospital Licensing Act.

"Hospitalist" means a physician whose primary focus is the medical care of hospitalized patients. The hospitalist's activities include patient care, teaching, research, and leadership related to hospital medicine.

"Intermediate care facilities for the developmentally disabled and long-term care for under age 22 facilities" means a location defined in and licensed under the ID/DD Community Care Act.

"J-1 visa" means a non-immigrant visa issued by the United States to exchange visitors participating in programs that promote cultural exchange, business training or medical education.

"J-1 visa waiver" or "waiver" means a federal action that waives the requirement for a foreign physician, in the U.S. on a J-1 visa, to return to his/her country of nationality or country of last legal residence for a two-year period following medical residency training.

"J-1 visa waiver flex option" means a waiver granted by the Department recommending that a physician work at a medical facility that is not specifically designated as underserved by the U.S. Department of Health and Human Services.

"J-1 visa waiver program" or "program" means the administration of the waiver process by the Department.

"Labor certification" means the process of proving that there are no qualified U.S. workers for the position being offered by an employer.

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"Long-term care facility" means a location defined in and licensed under the Nursing Home Care Act.

"Liquidated damages" means damages in an amount designated by the parties during the formation of a contract for the injured party to collect as compensation upon a specific breach.

"Medical facility" means a facility for the delivery of health services and includes:

A community health center;

A local health department;

An outpatient medical facility;

A community mental health center;

~~a community health center, local health department, outpatient medical facility, or community mental health center;~~

A hospital;

~~A a hospital, State-operated facility providing care to persons with mental illness mental hospital, facility for long-term care or rehabilitation facility;~~

An ID/DD Community Care facility;

A long-term care facility;

A rehabilitation facility (either a distinct bed unit in a general acute care hospital or a specialty hospital);

A Migrant Health Center or an Indian Health Service facility;

An FQHC or FQHC Look-Alike;

A a facility for delivery of health services to inmates in a U.S. penal or correctional institution (under ~~Section~~ ~~section~~ 323 of the Public Health Service Act) or a State correctional institution;



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A a Public Health Service medical facility (used in connection with the delivery of health service under Sections Section 320, 321, 322, 324, 325 or 326 of the Public Health Service Act); or any other federal medical facility;-

A specialized mental health rehabilitation facility.

"Medically underserved area" or "MUA" means a location designated is a designation given by the U.S. Department of Health and Human Services, Shortage Designation Branch. The MUA designation is based on the availability of primary care physicians, demographic characteristics, and health status of the residents of a service area. The designation and is used to identify areas in need of additional health care services. The list of MUAs can be found at <http://muafind.hrsa.gov/>. <http://bphe.hrsa.gov/databases/newmua>.

"Medically underserved population" or "MUP" means a population group designated is a designation given by the U.S. Department of Health and Human Services, Shortage Designation Branch. The MUP designation means that a particular population group, such as a group of area residents with incomes at or below twice the federal poverty level, as being is in need of additional health care services. The list of MUPs can be found at <http://muafind.hrsa.gov/>. <http://bphe.hrsa.gov/databases/newmua>.

"Metropolitan Statistical Area" or "MSA" means one or more adjacent counties that have at least one urban core area of at least 50,000 in population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties.

"National interest waiver" or "NIW" means an exemption from the labor certification process for foreign physicians who stay in the U.S. and work in an underserved area and whose stay is determined to be in the public interest by the Department. The waiver is issued by the U.S. Department of Homeland Security under Section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999.

"Non-compete" means an agreement between the physician and the medical facility, where the physician agrees not to enter into competition with the medical facility after employment ends.

"Null and void" means that a J-1 Visa Waiver application submitted to the Department has no legal force and is invalid.

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"Physician" means a person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987 ~~{225 ILCS 60}~~.

"Primary care" means health care that encompasses prevention services, basic diagnostic and treatment services, and support services such as laboratory, radiology, transportation, and pharmacy. Primary care is comprehensive in nature ~~and not organ or problem specific, is oriented toward the longitudinal care of the patient,~~ and includes responsibility for coordination of other health and social services as they relate to patients' needs.

"Primary care physician" means a person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987 ~~{225 ILCS 60}~~ with a specialty in family practice, ~~general~~ internal medicine, ~~general~~ pediatrics, or obstetrics/gynecology, ~~or medicine/pediatrics~~.

"Psychiatric physician" or "psychiatrist" means a person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987 ~~{225 ILCS 60}~~ with a specialty in psychiatry.

"Rural" means any geographic area not located in a U.S. Bureau of the Census Metropolitan Statistical Area; or a county located within a Metropolitan Statistical Area but having a population of 60,000 or less; or a geographic area located within a Metropolitan Statistical Area but having a population of 2,500 or less.

"Service area" is the geographic area composed of the HPSA, MUA, or MUP.

"Specialized mental health rehabilitation facility" means a location defined in and licensed under the Specialized Mental Health Rehabilitation Act of 2013.

"Specialist physician" or "specialist" means a person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987 with a specialty in an area other than primary care or psychiatry.

"Submission of application" or "submission" means that a J-1 Visa Waiver application has been submitted to the Department. For purposes of this Part, submission means that the Department has received the application by the established submission deadline (see Section 591.110(a) and (b)). Submission does not mean that the application is postmarked by the established submission deadline but arrives at the Department on a later date.

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"Unauthorized employment" means hiring a physician for employment that is beyond the terms and conditions of the physician's employment contract with the medical facility.

"Urban" means any geographic area that does not meet the definition of "rural" in this Section located in a U.S. Bureau of the Census Metropolitan Statistical Area, except a county located within a Metropolitan Statistical Area having a population of 60,000 or less.

(Source: Amended at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.30 Incorporated and ~~or~~ Referenced Materials**

The following materials are incorporated or referenced in this Part:

- a) ~~The following Illinois statutes and rules are referenced in this Part:~~
  - 1) ~~Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100).~~
  - 12) ~~Medical Practice Act of 1987 [225 ILCS 60].~~
  - 2) Hospital Licensing Act [210 ILCS 85]
  - 3) Nursing Home Care Act [210 ILCS 45]
  - 4) ID/DD Community Care Act [210 ILCS 47]
  - 5) Specialized Mental Health Rehabilitation Act of 2013 [210 ILCS 49]
- b) Illinois Administrative Rules:
  - 1) Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100).
  - 2) Certified Local Health Department Code (77 Ill. Adm. Code 600).
- c) Federal ~~The following federal statutes are referenced in this Part:~~

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- 1) Educational Visitor Status, Section 212e of the Immigration and Nationality Act (8 USC 1182e).
  - 2) Admission of Non Immigrants, Section 214(1) of the Immigration and Nationality Act (8 USC 1184(1)).
  - 3) Federally Qualified Health Center, Section 330 of the Public Health Service Act (42 USC 254b).
  - 44) Designation of Health Professional Shortage Areas, Section 332 of the Public Health Service Act (42 USC 254e).
  - 52) Designation of Medically Underserved Areas/Populations, Section 330 of the Public Health Service Act (42 USC 254e).
  - 6) Specialty Occupations, Department of Defense Workers, Fashion Models, Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 USC 1101).
  - 7) National Interest Waivers of Job Offer Requirements for Aliens who are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability, Section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999 (8 USC 1101, 1153 and 1182 and 42 USC 1395ww and 254e).
- de) Federal ~~The following federal regulations are incorporated in this Part:~~
- 1) Waiver of Two-Year Home-Country Physical Presence Requirement, Foreign Medical Graduates, Exchange Visitor Program (22 CFR 62 (October 27, 2010)) ~~(April 1, 2004))~~.
  - 2) Immigrant Visa Petitions (8 CFR 204 (November 5, 2007)).
  - 3) Adjustment of Status to that Person Admitted for Permanent Residence (8 CFR 245 (February 28, 2003)).
- ed) All incorporations by reference of federal regulations refer to materials on the date specified and do not include any amendments or editions ~~additions or deletions~~ subsequent to the date specified.

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(Source: Amended at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.40 Administrative Hearings**

Administrative ~~All administrative~~ hearings conducted by the Department concerning the provisions of this Part shall be governed by the Department's ~~Rules of Practice and Procedure in Administrative Hearings.~~

(Source: Amended at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART B: PROCEDURES FOR J-1 VISA WAIVER REQUESTS

**Section 591.100 ~~Participation~~ Eligibility of Physicians and Facilities**

- a) A physician who applies to the program shall meet the following requirements:
- 1) Reside in Illinois or relocate to Illinois if a waiver is granted;
  - 2) For primary care physicians, have entered into an employment contract with a medical facility located in a Primary Care HPSA. If the physician will work at more than one medical facility, each facility shall be located in a Primary Care HPSA;
  - 3) For psychiatrists, have entered into an employment contract with a medical facility located in a Mental Health HPSA. If the psychiatrist will work at more than one medical facility, each facility shall be located in a Mental Health HPSA;
  - 4) For specialists, have entered into an employment contract with a medical facility located in a HPSA. If the specialist will work at more than one medical facility, each facility shall be located in a HPSA;
  - 5) For specialists who apply for the J-1 visa waiver flex option, have entered into an employment contract with a medical facility that is not in a HPSA, MUA or MUP. The application shall document that at least 51% of the physician's patients seen at the medical facility will reside in a HPSA, MUA or MUP. Documentation shall include patient origin data that depicts the total number of patients residing in a HPSA, MUA or MUP compared to the number of patients from the HPSA, MUA or MUP who

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received service at the medical facility. Patient origin information shall be for the most recent 12-month period for which data is available;

- 6) Be board eligible or board certified in his or her medical specialty; and
  - 7) Have completed a residency in his or her medical specialty.
- a) ~~Primary care physicians and psychiatrists eligible to participate in the J-1 Visa Waiver Program for International Medical Graduates in Illinois shall meet the following requirements:~~
- 1) ~~have entered into an employment contract with a facility located in an HPSA~~
  - 2) ~~be board eligible or board certified in family practice, general internal medicine, general pediatrics, obstetrics/gynecology, or psychiatry; and~~
  - 3) ~~have completed a residency in general internal medicine, or general pediatrics, if either of those specialties is indicated in the application of the physician seeking participation in this program.~~
- b) ~~Physicians in specialties other than primary care and psychiatry eligible to participate in the J-1 Visa Waiver Program for International Medical Graduates in Illinois shall meet the following requirements:~~
- 1) ~~have entered into an employment contract with a facility located in an HPSA, MUA/P;~~
  - 2) ~~be board eligible or board certified in their specialty.~~
- be) Medical facilities eligible to participate in the program J-1 Visa Waiver Program ~~in Illinois~~ shall meet the following requirements:
- 1) The facility shall meet the definition of medical facility in Section 591.20;
  - 2) For primary care physicians, the medical facility shall be located in a Primary Care HPSA;
  - 3) For psychiatrists, the medical facility shall be located in a Mental Health HPSA;

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- 4) For specialists, the medical facility may be located in a HPSA, MUA or MUP. If the medical facility is not located in a HPSA, MUA or MUP, it shall document that at least 51% of the participating physician's patients seen at the medical facility reside in the HPSA, MUA or MUP (see Section 591.100(a)(5)).
- 5) Employers shall not be a relative of the participating physician. For purposes of this Part, relative includes, but is not limited to, spouse, parent, sibling or child.
- 6) The individual, partnership, corporation or other entity that employs the participating physician shall be established as a legal entity in Illinois and must be in good standing with the Illinois Secretary of State.
- 7) The facility shall not be in violation of the program's physician transfer requirements (see Section 591.160(e))
- 1) ~~if contracting with a primary care physician or psychiatrist and located in a rural area,~~  
  
~~be located in a geographic HPSA, be designated as an HPSA facility, or, if serving an HPSA population group, document that at least 51% of the participating physician's patients seen at the facility are a part of the HPSA's population group; or~~
- 2) ~~if contracting with physicians in specialties other than primary care and psychiatry,~~  
  
~~be in a geographic HPSA, be an HPSA facility, be located in an MUA, or document that at least 51% of the participating physician's patients come from the HPSA population group or from the MUP group.~~

(Source: Amended at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.110 Application ~~Applications~~ Submission Time Frames ~~Timeframes~~**

- a) ~~Applications for each federal fiscal year~~ will be accepted initially between October 1 and October 31 of each year. Applications will not be accepted after the submission deadline.

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- b) If all recommendations for waivers ~~Visa-Waivers~~ are not made ~~identified~~ from the applications received between October 1 and October 31, applications will be accepted again between January 1 and January 31; and ~~and~~ between April 1 and April 30, if necessary; ~~and between July 1 and July 31, if necessary.~~ Applications will not be accepted after the submission deadlines.

(Source: Amended at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.120 Application Materials and Processing**

- a) Application materials are available from the Department's web site at:  
[http://www.idph.state.il.us/about/rural\\_health/J1\\_application.pdf](http://www.idph.state.il.us/about/rural_health/J1_application.pdf)

~~Application materials are available from, and should be returned to, the following address:~~

Completed applications shall be sent to:

J-1 Visa Waiver Program  
Illinois Department of Public Health  
Center for Rural Health  
535 West Jefferson Street  
Springfield, Illinois 62761-0001

or electronically to: [dph.crh@illinois.gov](mailto:dph.crh@illinois.gov)

- b) The application materials ~~to be prepared by or on behalf of the international medical graduate seeking the waiver of the two-year home-country residency requirement~~ shall include the following ~~items~~:
- 1) A statement from the administrator or director of the ~~medical health-care facility or agency that will be employing the international medical graduate~~ describing prior recruitment difficulties experienced by the ~~medical~~ facility, the expected practice arrangement for the ~~physician~~ international medical graduate, and the impact on the facility and the patients it serves if the waiver is not approved; ~~home-country residency requirement is not waived~~;
  - 2) A copy of medical facility's Certificate of Good Standing from the Illinois Secretary of State's Office (see Section 591.100(b)(6));



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- 3) Documentation of the medical facility's payment policy demonstrating that the J-1 physician will accept Medicare/Medicaid patients and will not deny services to anyone because of the inability to pay.
- 42) A copy of a minimum three-year employment contract between the physician ~~international medical graduate~~ and the medical ~~a health care~~ facility. If the physician will be employed at multiple facilities, the contract shall contain this information for each facility. The contract shall include:
- A) The ~~the~~ name and address of the medical facility;
  - B) The ~~the~~ specific geographic area or areas in which the physician ~~international medical graduate~~ will practice; and
  - C) A ~~a~~ statement that the physician ~~applicant~~ will practice full-time (40 hours).
    - i) For primary care physicians, the statement shall include that the physician will work full time in the Primary Care HPSA;
    - ii) For psychiatrists, the statement shall include that the physician will work fulltime in the Mental Health HPSA;
    - iii) For specialists, the statement shall include that the physician will work full time in the HPSA, ~~HPSAs, or MUA/P identified in the contract~~ MUA or MUP; or, if the facility is not located in a HPSA ~~or MUA/P~~, MUA or MUP, documentation that at least 51% of the participating physician's patients will come from a HPSA ~~or MUA/P~~, MUA or MUP.
  - D) A statement that any amendments to the contract will adhere to State and federal J-1 visa waiver requirements;
  - E) A statement that termination of the physician may be only for cause;

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- F) A statement that the physician will begin working within 90 calendar days after receiving the waiver and employment authorization from the United States Customs and Immigration Services; and
  - G) A list of benefits and insurance to be provided to the physician.
- 5) The employment contract shall not include:
- A) A non-compete clause; or
  - B) A liquidated damages clause.
- 2) ~~copy of a minimum three-year employment contract between the international medical graduate and a health care facility. The contract shall include the name and address of the facility, the specific geographic area or areas in which the international medical graduate will practice, and a statement that the physician will practice full-time (40 hours) in the HPSA, HPSAs, or MUA/P identified in the contract; or, if the facility is not located in a HPSA, or MUA/P, documentation that at least 51% of the participating physician's patients come from a HPSA, or MUA/P;~~
- 63) A statement from the employing medical health care facility or agency that the salary or other form of financial support offered to the physician international medical graduate is at a level equivalent to that offered to all other physicians with equivalent skills and experience recruited by the medical health care facility;
- 74) A letter of support from the chief medical officer or other high-level hospital executive a hospital verifying that admitting privileges will be granted to the physician chief of staff verifying that hospital admitting privileges will be granted to the physician international medical graduate, and, if not, how admissions of the physician's international medical graduate's patients will be arranged. If the physician will work at multiple hospitals, each hospital shall submit this letter in the application;
- 85) A letter of support for the visa requirements waiver from at least one local organization or agency, such as the chamber of commerce, local health department, or other community-based organization, demonstrating support for the physician;

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- 96) A copy of the applicant's Illinois medical license or application for an Illinois medical license;
- 107) A copy of the applicant's completed U.S. Department of State, J-1 Visa Waiver Recommendation Application (DS-3035); ~~completed United States Information Agency Data Sheet;~~
- 118) A copy of ~~the applicant's international medical graduate's~~ curriculum vitae;
- 129) A copy of the IAP-66/DS-2019 Form (Certificate for Exchange Visitor J-1 Status) for each year ~~the applicant international medical graduate~~ was in J-1 status;
- 13) Copies of the applicant's U.S. Customs and Border Protection I-94 Entry and Departure Cards.
- 14) Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative (if applicant is represented by an attorney).
- 15) A personal statement from the applicant regarding his or her reasons for not wishing to fulfill the two-year country of nationality legal residence requirement;
- 16) For specialists, documentation that their specialty has a greater shortage in the underserved area or for the underserved population group they propose to serve. Documentation may include, but not be limited to, the following:
  - A) A listing of specialists who provide service in the underserved area or for the underserved population; or
  - B) If there are no specialists who provide service in the underserved area or for the underserved population, the applicant shall provide a summary listing the number of patients in the underserved area who migrated out of the underserved area to seek service. This summary shall be for the most recent 12-month period and shall include the travel time and distance these patients incurred to obtain service.

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- 17) For specialists, documentation comparing wait times for an appointment with a physician of the same specialty in the underserved area or for the underserved population group they propose to serve. Documentation may include, but not be limited to, the following:
- A) A listing of specialists who provide service in the underserved area or for the underserved population, including the average wait time for an appointment; or
- B) If there are no specialists who provide service in the underserved area or for the underserved population, the applicant shall provide a summary listing the number of patients who migrated out of the underserved area to seek service. The summary shall be for the most recent 12-month period and shall include the average wait time for an appointment.
- 1840) A completed and notarized Certification Statement A regarding signed by the international medical graduate agreeing to the contractual requirements set forth in Section 214(k)(1)(B) ~~(4)(1)(B)~~ and (C) of the Immigration and Nationality Act;
- 1944) A completed and notarized Certification Statement B describing the applicant's international medical graduate's obligation to his/her home country of nationality or country of last legal residence. If the applicant has a contractual obligation to return to his/her country of nationality or country of last legal residence, the applicant shall obtain a letter from that country stating no objection to the applicant remaining in the United States;
- 2042) A completed and notarized Certification Statement C attesting that the applicant's in which international medical graduate states that his or her medical license has never been suspended or revoked and that he or she is not subject to any criminal investigation or proceedings by any medical licensing authority;
- 2143) A completed and notarized Certification Statement D regarding the accuracy of the application materials; and
- 2244) A completed and notarized Certification Statement E regarding medical specialty status.

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- c) An original and duplicate copy of the application shall be submitted to the Department. If a duplicate copy is not submitted, the application will be considered to be incomplete (see subsection (e)(1)(B)).
- d) If the physician proposes to work at a medical facility that currently has another J-1 waiver physician working at the medical facility and that physician is not compliant with the reporting requirements in Section 591.140(a), the application will be considered to be incomplete (see subsection (e)(1)(B)).
- e) When an application is received, the following will occur:
  - 1) The Department will determine whether the application is complete. A review will determine whether all applicable requirements have been addressed and whether all required materials and documentation have been submitted (see subsections (a) and (b)).
    - A) If complete, the application will be considered for selection of a waiver (see Section 591.130).
    - B) If the application is incomplete, the Department will notify the applicant or the applicant's representative in writing. The applicant will have 30 calendar days (from the date of the Department's notification) to address the issues identified by the Department and submit requested information or materials. If the applicant does not respond to the Department's notification within the prescribed time frame or if supplemental materials or information fail to address the issues identified by the Department, the application will be null and void.
  - 2) The Department will notify the applicant (or the applicant's representative) in writing if the Department recommends a waiver. If the Department recommends a waiver, the application package will be forwarded to the U.S. Department of State, Waiver Review Division.
- e) ~~Upon receipt of the application materials, Center for Rural Health staff will verify completeness and accuracy of the application. One written request to the applicant, or the facility or legal agency acting on behalf of the international medical graduate, will ask for any materials not included in the application. If the~~

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~~requested materials are not received within one month after the date of the written request, the application will be returned to the applicant.~~

(Source: Amended at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.130 Selection Process**

- a) The Department will not begin the selection process until all issues with incomplete applications have been resolved (see Section 591.120(e)(1)(B)).
- b) The U.S. Department of State allows state health departments to submit 30 waiver requests per federal fiscal year. When the Department has processed and approved 30 waiver requests in a federal fiscal year, subsequent applications will not be considered.
- ca) In the first and second calendar quarters of the federal fiscal year, a maximum of two ~~Visa Waiver~~ applications ~~may~~ will be approved for physicians working at the same per medical facility requesting J-1 Visa Waivers for international medical graduates. In subsequent calendar quarters, applications from physicians proposing to work at medical facilities that have already employed ~~had~~ two physicians with waivers will be considered ~~waivers approved may apply for additional waivers~~; however, selection priority will be given to applications from physicians proposing to work at medical facilities that have not previously employed physicians with ~~had~~ waivers approved.
- db) The following selection criteria will apply to primary care physicians and psychiatrists:
  - 1) Applicants will be ranked based on the HPSA score of their respective medical facility. If an applicant proposes to work at more than one medical facility, the HPSA score of the medical facility where the applicant will predominately work will be used to rank the applicant.
  - 2) If two or more medical facilities have the same HPSA score, preference will be given to the medical facility having the greatest unmet need for primary care physicians and psychiatrists. Unmet need is the number of primary care physician or psychiatrist full-time equivalents needed to cause the HPSA to no longer meet the threshold ratio for HPSA designation.

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- 3) An application will not be considered if the inclusion of the applicant will increase the number of primary care physicians or psychiatrists beyond the number needed to eliminate the HPSA designation for the geographic area, facility or population group.
  - 1) ~~Selection preference will be given to the Visa Waiver application for the international medical graduate whose position represents the largest proportion of primary care or psychiatrist vacancies at the facility offering employment to the physician.~~
  - 2) ~~Selection preference will be given to applications received from HPSAs having the greatest unmet need for primary care physicians. Unmet need is the number of primary care physician full time equivalents needed to cause the HPSA to no longer meet the threshold ratio for HPSA designation.~~
- ee) The following selection criteria will apply to specialists ~~physicians in specialties other than primary care and psychiatry~~:
- 1) Applicants will be ranked based on the HPSA score of their respective medical facility. If an applicant will work at more than one medical facility, the HPSA score of the medical facility where the applicant will predominately work will be used.
  - 2) If two or more medical facilities have the same HPSA score, preference will be given to the medical facility having the greatest unmet need for specialty medical care. Unmet need is the number of specialist full-time equivalents needed to cause the HPSA to no longer meet the threshold ratio for HPSA designation.
  - 3) Specialists who applied through the J-1 visa waiver flex option shall be ranked based on the greater number of patients that will be seen at the medical facility.
  - 1) ~~Selection preference will be given to applicants who can demonstrate the greatest shortage of their specialty in the underserved area or for the underserved population group they propose to serve.~~
  - 2) ~~Selection preference will be given to applicants who can demonstrate the longer waiting time for an appointment with a physician of the same~~

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~~specialty in the underserved area or for the underserved population group they propose to serve.~~

- ~~f~~d) The following selection allocations will be used in processing waiver applications:
- 1) In the first calendar quarter ~~and second calendar quarters~~ of the federal fiscal year, ~~four~~ 6 waivers will be reserved for psychiatrists who will serve in rural medical facilities; ~~six~~ waivers will be reserved for primary care physicians who will serve in rural medical facilities; ~~seven~~ waivers will be reserved for primary care physicians who will serve in urban medical facilities; and ~~13~~ 12 of the remaining 24 ~~waivers will be reserved for primary care physicians~~; 12 ~~waivers will be available to specialists. Of the 13~~ waivers allocated to specialists, the Department may approve up to 10 ~~waivers under the J-1 visa waiver flex option. Specialists who receive a waiver through the option shall work at a medical facility that is not in a HPSA, MUA or MUP. Physicians shall document that at least 51% of their patients will come from a HPSA, MUA or MUP. Documentation shall include information and data referenced in Section 591.100(a)(5).~~ physicians in other specialties. The Department will reserve 50% of the waivers allocated to primary care physicians for physicians who will serve in rural areas. The Department may grant up to 5 waivers to physicians in other than primary care specialties who will practice at medical facilities that can document that at least 51% of the participating physician's patients come from a HPSA or MUA/P.
  - 2) In the second and ~~third and fourth~~ quarters of the federal fiscal year, remaining waivers may be used for primary care, psychiatry ~~psychiatrist~~ and specialists ~~other specialty waiver applicants, in~~ both rural and urban areas.

(Source: Amended at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.140 Terms of Performance**

- a) Each six months subsequent to the date of receiving the ~~J-1~~ waiver ~~from~~ by the U.S. Department of Homeland Security, Customs and Immigration Service ~~Justice~~, the physician international medical graduate shall send to the Department of Public Health a written verification of the full-time practice of the ~~international medical graduate~~ at the medical facility in the HPSA, MUA, MUP or other



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~~approved location health professional shortage area originally identified in the waiver application.~~

- b) The Department will consider the physician to be in breach of the waiver obligation when any of the following occur:
- 1) The physician fails to practice on a full-time basis at the medical facility in the HPSA, MUA, MUP or other approved location;
  - 2) The physician fails to maintain a valid Illinois medical license; or
  - 3) The medical facility terminates the physician's employment for cause.
- c) The Department will notify the U.S. Department of Homeland Security, Immigration and Customs Enforcement of the physician's breach of the waiver obligation. ~~If at any time the international medical graduate fails to practice on a full-time basis in the approved shortage area, the Department will notify the Immigration and Naturalization Service of the physician's breach of obligation.~~
- d) During the physician's employment, the medical facility shall notify the Department in writing of the following:
- 1) A change in its address, telephone number or fax number;
  - 2) A change of ownership of the facility;
  - 3) A change in financial circumstances that renders the facility unable to financially support the physician;
  - 4) Loss of licensure or accreditation;
  - 5) Termination of its exchange visitor program;
  - 6) Physician's withdrawal from the program; or
  - 7) Physician's employment termination.

(Source: Amended at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.150 Physician Termination**

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- a) A medical facility may terminate employment when the physician:
  - 1) Fails to pursue activities for which he or she was admitted to the U.S.;
  - 2) Is unable to continue in the program;
  - 3) Fails to maintain a valid Illinois medical license; or
  - 4) Engages in unauthorized employment.
- b) The medical facility shall notify the Department within 10 calendar days after termination of the physician.
- c) Once notification is received from the medical facility, the Department will notify the U.S. Department of Homeland Security, Customs and Immigration Service of the physician's breach of obligation.

(Source: Added at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.160 Physician Transfer**

- a) A physician may transfer from one approved medical facility to another approved medical facility, provided that prior approval is received from the Department. To initiate the transfer request, the following materials shall be submitted to the Department:
  - 1) The physician's most recent I-797A, Notice of Action form from the U.S. Department of Homeland Security, Citizenship and Immigration Services, demonstrating the physician's current visa status;
  - 2) The receiving medical facility's written notification demonstrating that it is willing and able to accept the physician;
  - 3) A statement from the administrator of the receiving medical facility describing prior recruitment difficulties, the expected practice arrangement for the physician, and the impact on the facility and its patients if the transfer is not approved;
  - 4) A copy of the employment contract between the physician and the receiving medical facility (if the physician will be employed at multiple

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medical facilities, the contract must contain this information for each facility). The contract shall include the following:

- A) The name and address of the medical facility;
  - B) The specific geographic area or areas in which the physician will practice;
  - C) A statement that:
    - i) For primary care physicians, the physician will practice full time in a Primary Care HPSA;
    - ii) For psychiatrists, the physician will practice full time in a Mental Health HPSA;
    - iii) For specialists, the physician will practice full time in the HPSA, MUA or MUP; or, if the facility is not located in a HPSA, MUA or MUP, documentation that at least 51% of the participating physician's patients come from a HPSA, MUA or MUP (see Section 591.100(a)(5));
  - D) A statement that any amendments to the contract will adhere to State and federal J-1 visa waiver requirements;
  - E) A statement that termination of the physician can be only for cause; and
  - F) A list of benefits and insurance to be provided to the physician.
- 5) The employment contract cannot include:
- A) A non-compete clause; or
  - B) A liquidated damages clause.
- 6) A statement from the receiving medical facility that the salary or other form of financial support offered to the physician is equivalent to that offered to all other physicians with equivalent skills and experience recruited by the medical facility; and

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- 7) A letter from the chief medical officer or other high-level executive of a hospital verifying that admitting privileges will be granted and, if not, how admissions of the physician's patients will be arranged.
- b) The employment contract with the receiving facility shall be of duration so that the three-year employment requirement is fulfilled.
- c) The Department will deny the transfer request if it determines that any of the requirements in subsections (a) and (b) are not fulfilled.
- d) The Department will notify the physician and the receiving medical facility in writing if the transfer request is approved or denied.
- e) If a physician transfers without prior approval of the Department, the violation will be reported to the U.S. Departments of State and Homeland Security and the Illinois Department of Financial and Professional Regulation. Any violation of this requirement may also adversely affect the receiving medical facility's eligibility for participation in the program (see Section 591.100(b)(7)).

(Source: Added at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.170 Completion of Waiver Requirements**

- a) Within 30 calendar days after the three-year service obligation is complete, the physician shall submit a notice to the Department. The notice shall include:
  - 1) The physician's name;
  - 2) The physician's Department of State number;
  - 3) The physician's I-94 entry and departure number;
  - 4) A current G-28 form (if applicable);
  - 5) The name and address of the medical facility where the physician worked;
  - 6) The physician's beginning and end dates of employment at the medical facility; and

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- 7) A statement from the administrator of the medical facility verifying fulfillment of the employment contract.
- b) After reviewing these materials, the Department will send a letter to the physician (or physician's representative) indicating that the service obligation has been fulfilled and that the waiver file is closed.
- c) The Department will notify the U.S. Department of Homeland Security, Customs and Immigration Service if the physician does not provide the completion notice within the prescribed time frame.

(Source: Added at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 591.180 National Interest Waiver**

A foreign national physician who wishes to initiate the process for permanent residence in the U. S. shall have an approved labor certification and a job offer and his/her employer shall file an Immigrant Petition for Alien Worker form with the U.S. Department of Homeland Security, Customs and Immigration Service. In certain circumstances, the labor certification may be waived through the approval of a National Interest Waiver (NIW).

- a) To be eligible for a NIW, the physician shall:
  - 1) Agree to work full time in a medical facility for five years. The five-year commitment may occur prior to filing the NIW petition, is ongoing at the time the petition is filed, or will commence after the petition is filed (provided that the Department confirms that the work was, is, or will be in the public interest). Medical care provided in a HPSA, MUA or MUP that was part of the physician's medical education may be credited toward the five years, provided that the physician was in a lawful status other than J-1 during that time;
  - 2) Agree to work in primary care, psychiatry or other medical specialty;
  - 3) Agree to serve in a medical facility that is located in a HPSA, MUA, or MUP; and
  - 4) Obtain a letter from the Department stating that the physician's work is in the public interest.

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- b) A request for a letter from the Department regarding the NIW shall contain the following:
- 1) The physician's full name;
  - 2) The name of the physician's practice;
  - 3) The address of the physician's practice;
  - 4) The physician's specialty;
  - 5) A copy of the physician's H1B waiver or waivers for the date or dates of service;
  - 6) A copy of the physician's Illinois medical license;
  - 7) An affirmation letter from the employer stating that:
    - A) The physician has provided services as a primary care, psychiatric or specialty physician, full time (40 hours per week) at a clinical practice located in a HPSA, MUA or MUP, including the specific address where services were provided;
    - B) The practice is in the public interest in Illinois, including information that the physician served underinsured or uninsured patients as evidenced by acceptance of Medicaid, Medicare, and use of a sliding/discount fee scale for those without insurance in the designated underserved area.
  - 8) Contact information for the physician and his/her legal counsel if the physician is represented.
- c) The Department will review all information submitted to determine if responses meet the criteria of this Section. The Department will contact the physician or the physician's representative if additional or clarifying information is needed.
- d) The physician or his/her legal representative will be notified in writing of the approval or denial of the NIW request. If the request is approved, the Department will provide an attestation letter notifying the federal authority that the physician

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will work in an underserved area and that the medical services provided will be in the public interest.

(Source: Added at 38 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)