

FISCAL YEAR 2016

**POLICY
MANUAL**

**Texas Conrad 30 J-1 Visa
Waiver Program**



TEXAS PRIMARY
CARE OFFICE

Texas Department of State Health Services
Division for Family and Community Health Services



Table of Contents

<u>Acronyms & Definitions</u>		1
<u>Background</u>		2
<u>Federal Codes</u>	§ 1182. Inadmissible aliens	3-4
	§ 1184. Admission of nonimmigrants	4-7
<u>Texas Statutes</u>	Health and Safety Code, Title 2. Health, Subchapter B	8
<u>Texas DSHS Rules</u>	Texas Administrative Code Title 25. Health Services	9-10
<u>Policy Manual</u>	Texas Conrad 30 J-1 Visa Waiver Program	11-14
	• C30-2016.01 – Prioritization of Applications	11
	• C30-2016.02 – Primary Care and Sub Specialty Professions	11
	• C30-2016.03 – Shortage Designation Requirements	11-12
	• C30-2016.04 – Employment Contract	12
	• C30-2016.05 – Texas Medical License	13
	• C30-2016.06 – Letters of Support	13
	• C30-2016.07 – Application Fee	13
	• C30-2016.08 – Mailing Address	13
	• C30-2016.09 – State Hospitals and State Supported Living Centers	13
	• C30-2016.10 – Miscellaneous	13-14
	• C30-2016.11 – Notification	14
	• C30-2016.12 – Responsibilities and Rights	14
	• C30-2016.13 – National Interest Waiver	14
<u>J-1 Applicant Check List</u>	Suggestions from the US Department of State	15-16

Acronyms and Definitions

DOS (Department of State)	Federal cabinet-level department of the United States Government. For the J-1 Visa Waiver Program, DOS reviews and recommends waivers to USCIS.
FMG (Foreign Medical Graduate)	A non-citizen who received medical school training outside of the United States.
FQHC (Federally Qualified Health Center)	A private, non-profit or public entity comprehensive primary care clinic serving the underserved. Clinics are certified and/or funded by the Health Resources and Services Administration. FQHCs are automatically designated as HPSA facilities.
HPSA (Health Professional Shortage Area)	A geographic area, population, or facility with a shortage of physicians, dentists, or mental health professionals that is designated by the Secretary of Health and Human Services.
MUA and MUP (Medically Underserved Area and Medically Underserved Population)	A geographic area or population that lacks medical services as indicated by poverty, low birth weight or infant mortality, age of the population, and lack of primary care providers. MUAs and MUPs are also designated by the Secretary of Health and Human Services.
RHC (Rural Health Clinic)	A hospital or physician operated clinic in a rural area, certified by the Centers for Medicare and Medicaid. RHCs may apply for designation as a HPSA facility.
USCIS (United States Bureau of Citizenship and Immigration Services)	The federal agency that issues visas (or permits) for non-citizens to visit or work in the United States.
U.S.C. and USC (Code of Laws for the United States)	The compilation of all current federal laws. For this program, Title 8 Aliens and Nationality contains the laws that apply to physician immigration and the Conrad 30 program.

Background

Designated state public health departments are authorized under the Conrad 30 Waiver Program to support up to 30 international medical graduates, per year, to serve in designated Health Professional Shortage Areas (HPSA), Medically Underserved Areas (MUAs), or Medically Underserved Populations (MUPs). As per United States, Department of State (DOS) application instructions, only foreign medical doctors who received their exchange visitor J-1 status to pursue graduate medical education or training may apply for a waiver under this basis. In exchange for serving underserved areas or populations for three years, the requirement for a physician to return to his home country for two years is waived.

The Texas Department of State Health Services (DSHS) supports waiver applications for physicians holding J-1 Visas in order to improve access to primary or specialty care in Texas. The Primary Care Office (PCO) reviews applications on behalf of the DSHS to make recommendations to the U.S. Department of State.

In this document, you will find information to aid the completion of a waiver application, including: federal and state statutes which govern the program; DSHS program rules and policy, which includes guidelines regarding responsibilities and rights, and shortage area eligibility requirements; an application check-list; and a glossary of acronyms with their definitions.

Federal Codes:

**TITLE 8,
CHAPTER 12,
SUBCHAPTER II,
Part II § 1182.
Inadmissible
aliens**

(e) Educational visitor status; foreign residence requirement; waiver

No person admitted under section [1101\(a\)\(15\)\(J\)](#) of this title or acquiring such status after admission

(i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence,

(ii) who at the time of admission or acquisition of status under section [1101\(a\)\(15\)\(J\)](#) of this title was a national or resident of a country which the Director of the United States Information Agency, pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or

(iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section [1101\(a\)\(15\)\(H\)](#) or section [1101\(a\)\(15\)\(L\)](#) of this title until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence

abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section [1184\(l\)](#) of this title: And provided further, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

Links: [TITLE 8](#) > [CHAPTER 12](#) > [SUBCHAPTER II](#) > [Part II § 1182. Inadmissible aliens](#)

**TITLE 8,
CHAPTER 12,
SUBCHAPTER II,
Part II § 1184.
Admission of
nonimmigrants**

(l) Restrictions on waiver

(1) In the case of a request by an interested State agency, or by an interested Federal agency, for a waiver of the 2-year foreign residence requirement under section [1182\(e\)](#) of this title on behalf of an alien described in clause (iii) of such section, the Attorney General shall not grant such waiver unless—

(A) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver;

(B) in the case of a request by an interested State agency, the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed 30;

(C) in the case of a request by an interested Federal agency or by an interested State agency—

(i) the alien demonstrates a bona fide offer of full-time employment at a health facility or health care organization, which employment has been determined by the Attorney General to be in the public interest; and

(ii) the alien agrees to begin employment with the health facility or health care organization within 90 days of receiving such waiver, and agrees to continue to work for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances exist, such as closure of the facility or hardship to the alien, which would justify a lesser period of employment at such health facility or health care organization, in which case the alien must demonstrate another bona fide offer of employment at a health facility or health care organization for the remainder of such 3-year period); and

(D) in the case of a request by an interested Federal agency (other than a request by an interested Federal agency to employ the alien full-time in medical research or training) or by an interested State agency, the alien agrees to practice primary care or specialty medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals, except that—

(i) in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary;

(ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is located within such a designated geographic area), and the grant of such waiver would not cause the number of the waivers

granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph conditions of this clause to exceed 10; and (B)) in accordance with the (iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien.

(2)

(A) Notwithstanding section [1258\(a\)\(2\)](#) of this title, the Attorney General may change the status of an alien who qualifies under this subsection and section [1182\(e\)](#) of this title to that of an alien described in section [1101\(a\)\(15\)\(H\)\(i\)\(b\)](#) of this title. The numerical limitations contained in subsection (g)(1)(A) of this section shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.

(B) No person who has obtained a change of status under subparagraph (A) and who has failed to fulfill the terms of the contract with the health facility or health care organization named in the waiver application shall be eligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status, until it is established that such person has resided and been physically present in the country of his nationality or his last

residence for an aggregate of at least 2 years following departure from the United States.

(3) Notwithstanding any other provision of this subsection, the 2-year foreign residence requirement under section [1182\(e\)](#) of this title shall apply with respect to an alien described in clause (iii) of such section, who has not otherwise been accorded status under section [1101\(a\)\(27\)\(H\)](#) of this title, if—

(A) at any time the alien ceases to comply with any agreement entered into under subparagraph (C) or (D) of paragraph (1); or

(B) the alien's employment ceases to benefit the public interest at any time during the 3-year period described in paragraph (1)(C).

Links: [TITLE 8](#) > [CHAPTER 12](#) > [SUBCHAPTER II](#) > [Part II § 1184. Admission of nonimmigrants](#)

Texas Statutes:

**Health and Safety
Code, Title 2.,
Subchapter B.,
Sec 12.0127
Immigration Visa
Waivers for
Physicians**

Sec. 12.0127. IMMIGRATION VISA WAIVERS FOR PHYSICIANS.

(a) The department, in accordance with [§ U.S.C. Section 1182\(e\)](#), as amended, under exceptions provided by [§ U.S.C. Section 1184\(l\)](#), as amended, may request waiver of the foreign country residence requirement for a qualified alien physician who agrees to practice medicine in a medically underserved area or health professional shortage area, as designated by the United States Department of Health and Human Services, that has a current shortage of physicians.

(b) The department may charge a fee to cover the costs incurred by the department in administering the visa waiver program established under this section.

Added by Acts 2003, 78th Leg., ch. 143, Sec. 1, eff. Sept. 1, 2003.

Link: [Health and Safety Code > Title 2> Subchapter B > Sec 12.0127](#)

Texas DSHS Rules:

**Texas
Administrative
Code ,Title 25,
Part 1, Ch. 13,
Subchapter A,
§13.1 - §13.3
Recruitment of
Physicians to
Underserved
Areas**

§13.1. Priorities for Waiver Recommendations.

(a) It is the intent of the Legislature that applications submitted under this program be prioritized by the Department of State Health Services (department) to the areas of greatest need and that the department consider relative specialty need as well, adhering to federal and state legislation ([Health and Safety Code, §12.0127](#)), therefore the Texas Conrad 30 Program will identify priorities for waiver recommendations for the coming year, and publish them on the Texas Conrad 30 website at <http://www.dshs.state.tx.us/chpr/j1info.shtm>, prior to May 1 of each year.

(b) The following criteria will be applied in prioritizing applications for waiver recommendations:

- (1) The needs of medically underserved areas will always be of importance in establishing the department's priorities; and
- (2) The department will operate the program to conform to federal law as it may be amended.

§13.2. Application Fee.

The department shall collect a fee of \$2500 to \$5000 from each applicant who is granted a waiver of the two-year home residency requirement from the Bureau of Citizenship and Immigration Services. The Texas Conrad 30 Program has the option to assess the fee each year based on the cost of operating the program. The amount of the application fee will be identified on the Texas Conrad 30 Program website at <http://www.dshs.state.tx.us/chpr/j1info.shtm> by May 1 of each year. The fee shall be submitted to the department at the time of application. Part of the fees may be returned under the following circumstances:

- (1) if the department recommends the waiver to the US Department of State, none of the application fee will be returned to the applicant;

(2) if the applicant withdraws the application before a recommendation is submitted by the department, 50% of the application fee will be returned to the applicant;
or

(3) if at the time the application is received by the department, all 30 slots have been used for the fiscal year, 100% of the application fee will be returned to the applicant.

§13.3. Other Federal or State Requirements.

All waiver request applications must meet federal laws Title 8 United States Code §1184, and relevant provisions in Health and Safety Code, Chapter 12.

Links: [TX Administrative Code](#) > [Title 25](#) > [Part 1](#) > [Ch. 13](#) > [Subchapter A](#)

**Texas Conrad 30
J-1 Visa Waiver
Program Policy
Manual for Fiscal
Year 2016**

1) **Purpose:** The purpose of this Policy Manual is to describe and clarify policy as it relates to a favorable recommendation for J-1 physicians through this program. State law and Department of State Health Services rules allow for the program to set priorities for the program on an annual basis. The information in this manual will be made available on the [program's web site](#) by May 1st of each year.

2) **Policy:**

C30-2016.01 – Prioritization of Applications

Applications will be accepted beginning September 1, 2015. If more than 30 applications are received on the first day, applications will be prioritized according to the HPSA score, specifically: the higher the score, the greater the priority. If the health care facility has both a geographic HPSA and facility HPSA, the higher score will be used.

If there are less than 30 applications received on the first day, any subsequent applications received will be considered on a first come-first served basis.

C30-2016.02 – Primary Care and Sub-Specialty Professions Primary care and sub-specialist physicians qualify for the program. Primary care specialties include: Family Medicine, Internal Medicine, Pediatrics, Psychiatry and Obstetrics/Gynecology. Sub-Specialists include Hospitalist, Geriatrics, and all other physicians who have received additional Fellowship training.

C30-2016.03 – Shortage Designation Requirements

Primary Care and Sub Specialty:

Eligible areas are limited to: Geographic Primary Care Health Professional Shortage Areas (HPSAs), and Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) with "automatic" facility HPSA designation. The geographic area must be designated as HPSA on September 1, 2015.

Areas that are not eligible include: population based HPSAs, MUAs, MUPs, or facility HPSAs. RHCs that do not have an automatic facility HPSA designation are also not eligible, unless located in a geographic HPSA.

Psychiatry:

Eligible areas are limited to: Geographic Mental Health, Health Professional Shortage Areas (HPSAs), and Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) with "automatic" facility HPSA designation. The geographic area must be designated as HPSA on September 1, 2015.

Areas that are not eligible include: population based HPSAs, MUAs, MUPs, or facility HPSAs. RHCs that do not have an automatic facility HPSA designation are also not eligible, unless located in a geographic HPSA.

C30-2016.04 – Employment Contract

Must Include:

- Statement that any amendments to the contract will adhere to State and Federal J-1 visa waiver requirements;
- statement that termination can only be for cause, not mutual agreement;
- statement that indicates the physician will begin working within 90 days of receiving the waiver and employment authorization from the USCIS;
- field of practice of the provider;
- list of benefits, insurance to be provided to physician;
- estimated schedule of hours per week at *each address*;
- amount of leave; *and*
- practice site(s) name, address and telephone number for *every* practice site at which the physician will practice medicine.

Cannot include:

- non-compete clause;
- liquidated damages clause; *and*
- remedies clause; (non solicitation clauses will be reviewed at on a case by case basis).

C30-2016.05 – Texas Medical License Include in the application evidence of Texas licensure or proof that the Texas license application process has been initiated.

C30-2016.06 – Letters of Support Include in the application a minimum of four but no more than six letters of support for the waiver that indicate the need for the physician in the area. Letters may be from community leaders such as the Mayor, the County Commissioners' Court, school board members, hospital administrators, local health department, etc. For sub-specialty applicants, include support letters from local physicians.

C30-2016.07 – Application Fee The application fee is \$3,000.00. Please include the fee in the application packet. Refund procedure is described in the Rules, on page 10 of this document.

C30-2016.08 – Mailing Address Applications should be sent to:

Department of State Health Services
Cash Receipts Branch, MC 2003, J-1
1100 West 49th Street
Austin, TX 78756

Use an established overnight delivery service such as UPS, USPS, FedEx, etc. Hand delivered applications are not accepted.

C30-2016.09 – Flex Option for State Hospitals and State Supported Living Centers State Hospitals and State Supported Living Centers qualify for a waiver recommendation. If the facility is not in a HPSA or MUA, the Flex option is available for these facilities only.

C30-2016.10 – Miscellaneous

- a duplicate copy of the application must be included;
- employers cannot be a relative of the physician, or currently serving a J-1 obligation;
- the physician's salary can be no less than the prevailing wage;
- the health care facility must be operational at the time the application is submitted;

- the individual, partnership, corporation or other entity that employs program participants must be established as a legal Texas entity;
- it is an expectation of the program that waiver recipients and their employers be available by telephone for periodic follow-up calls, and also be available for occasional site visits;
- employers are limited to 3 program participants per year; *and*
- applicants who qualify for a HHS waiver must utilize that program for a waiver recommendation, it is the responsibility of the applicant to determine eligibility for a HHS waiver

C30-2016.11 – Notification The employer and the J-1 physician must notify the department in writing within 10 days if the contract is breached or terminated.

C30-2016.12 – Responsibilities and Rights Each J-1 waiver physician applicant and Sponsor must read and understand the [Responsibilities and Rights](#). Reading and understanding this **Policy Manual** is also required. After you have read both documents, send a written attestation that you have read and understood them to TexasPCO@dshs.state.tx.us.

C30-2016.13 – National Interest Waiver We provide National Interest Waiver support letters for primary care and sub-specialty physicians who practice or will practice in a designated shortage area, on a request basis.

J-1 Applicant Check-list

The following is a list of documents to be submitted for a waiver recommendation under the **Texas Conrad 30 Program**. Also provided here are suggestions from the **US Department of State** on how to put an application together that may speed up application review time. It will also speed up our review of applications so we recommend applications be assembled as follows:

Suggestions from US Department of State (DOS)

- a) Do not include documents that are not required by DOS or the State of Texas.
- b) Limit use of staples, binders, tabs, two sided copies or pages larger or smaller than 8.5 x 11.
- c) The DOS waiver case file number should appear on every page of the application.
- d) Documents should be placed in the following order, separated by a colored divider page, appropriately labeled with the name of the document behind it:

Application Document Description and Document Order

1) **Data Sheet:** [DS-3035](#) (90K, PDF, [viewing information](#))

2) **Employment Contract:**

1. The physician and the head of the health care facility must sign the contract.
2. The date that the contract is signed should be included in the contract.
3. A minimum of 40 hours weekly to provide patient care only.
4. A statement that the health care facility is located in a shortage area.
5. Statement that physician agrees to begin employment within 90 days of waiver and employment authorization.

3) **Physician Attestation:**

I, _____, hereby declare and certify, under penalty of the provisions of 18USC.1001, that:

I have sought or obtained the cooperation of the Texas Department of State Health Services which is submitting a State Health Agency request on behalf of me under the Conrad 30 program to obtain a waiver of the two-year home residency requirement.

I do not now have pending nor will I submit during the pendency of this request, another request to any U.S. Government department or agency or any equivalent, to act on my behalf in any matter relating to a waiver of my two-year home residence requirement.

- 4) **IAP-66/DS-2019 Forms** - Must be submitted in chronological order with the "Beginning a new program" first
- 5) **Letter From Facility** - that indicates a desire to hire physician
- 6) **Evidence of Shortage Designation Status**
- 7) **Personal Statement** - from physician regarding his/her reasons for not wishing to fulfill the two-year home country residence requirement to which the FMG agreed at the time of acceptance of exchange visitor status
- 8) **Curriculum Vitae**
- 9) **Explanation For Out of Status** - *if* FMG spent any period of time in some other visa status, out of status, or outside of the US
- 10) **Form G-28 or letterhead from law office** - *if* applicant is represented by attorney.
- 11) **I-94 Entry and Departure Cards** - Photo copies, front and back
- 12) **A "No Objection" Statement** - from the visitor's government *if* foreign government funding is involved

Texas Conrad 30 Required Items

- 1) Evidence of Texas licensure or proof that the Texas license application process has been initiated. ([C30-2016.05](#))
- 2) Letters of Support ([C30-2016.06](#))
- 3) Application fee ([C30-2016.07](#))
- 4) Duplicate copy of application ([C30-2016.10](#))