

**Department of State Health Services  
Agenda Item for State Health Services Council  
March 2005**

**Agenda Item Title: Proposed amendments to rules regarding physician recruitment in Health Professional Shortage Areas**  
**Agenda Number:** \_\_\_\_\_

**Recommended Council Action:**

\_\_\_\_ For Discussion Only

For Discussion and Action by the Council

\_\_\_\_ Other (Please Describe) \_\_\_\_\_

**Summary:** These are proposed amended rules concerning the recommendation for a J-1 visa waiver for physicians to serve in shortage areas in Texas. These rules address waivers that may be recommended by the department under the program known as the Conrad/State 30. This program allows state health departments to recommend the waiver of the two0year home residency requirement for foreign medical graduates on a J-1 visa.

**List of Stakeholder Input to Date (including advisory committees)**

On March 23, 2004 the Primary Care Office sent via e-mail attachment a notice to stakeholders asking for comments and participation in the rule amendment process. None of the comments received were of a controversial nature.

**Proposed Motion:**

(Note: Does not apply to rules items)

**Presented By:** Monty Waters                      **Approved By:** \_\_\_\_\_

**Name:** \_\_\_\_ Monty Waters \_\_\_\_\_

**Title:** \_\_\_\_ Assistant General Counsel \_\_\_\_\_

**Program** Primary Care Office **Division:** Family and Community Health Services

**Date Submitted**

\_\_\_\_\_

Legend: (Proposed Amendments)

Single Underline = Proposed new language

**[Bold Print and Brackets]** = Current language proposed for deletion

Regular Print = Current language

(No Change.) = No changes are being considered for the designated subdivision

### §13.1 - §13.2

#### §13.1. Definition of Terms.

The following words and terms when used in these sections, shall have the following meaning.

(1) Employer - A director of a health care facility where the physician will practice.

**[(2) Fully Served - An area with a population to provider ratio of 3000:1 or more physicians per capita.]**

(2) [(3)] HPSA - Health Professional Shortage Area.

(3) [(4)] J-1 Visa Waiver - Removal of the requirement that a J-1 visa holder must return to their country of origin for two years at the end of his/her graduate medical training. The waiver allows the J-1 visa holder to remain in the United States if they agree to practice in an underserved area.

(4) [(5)] MUA - Medically Underserved Area.

**[(6) NHSC - National Health Service Corps.]**

(5) [(7)] Operational - Providing health care services to patients.

**[(8) Primary Care Specialist - A physician who has a degree and specialization in internal medicine, general practice, family practice, pediatrics, or obstetrics/gynecology.]**

(6) [(9)] Provider - A physician requesting a J-1 visa waiver.

#### §13.2. J-1 Visa Waiver Rules.

**[The following apply to faculty and non-faculty waivers.]**

(a) [(1)] The **[Texas]** Department of State Health Services (department) will consider a recommendation for a J-1 visa waiver in the area or areas designated by the Secretary of Health and Human Services as a HPSA or a MUA and meet shortage area requirements as identified by the program annually. **[are not fully served by J-1, NHSC or other primary care physicians. The HPSA or MUA must have a population to physician ratio of 3000:1 or fewer physicians per capita.]**

**§13.2, §13.5, §13.8**

**[(2) Primary care specialists will be considered eligible to apply to areas designated as Primary Care HPSAs or MUAs.**

**(3) Psychiatrists will be considered eligible to apply to areas designated as Mental Health HPSAs or MUAs.**

**(4) The department will consider J-1 visa waivers for physicians who are non-primary care specialists when additional documentation is submitted supporting the need for the services of the specialist and the shortage of that specialty in the HPSA or MUA.]**

**(b) [(5) [The first 30 complete applications] Applications** that meet federal and state requirements will be considered for recommendation on a first-come-first-served basis. The submission of a complete waiver application to the department does not ensure that the department will recommend a waiver to the United States Department of State and the Bureau of Citizenship and Immigration Services.

**(c) [(6)]** The employer or the employer's representative must submit the J-1 waiver request application to the department.

§13.5. Contract.

(a) – (b) (No Change.)

(c) The contract must contain the following information:

(1) list of benefits, insurance to be provided to the provider;

(2) field of practice of the provider;

(3) practice site name, address and telephone number of the health care facility where the provider will work;

(4) scheduled work hours; **[hours of work]**

(5) amount of leave; and

(6) statements that amendments shall adhere to state and federal J-1 visa waiver requirements.

**[(d) If applying under Education Code, §51.949, the applicant must demonstrate compliance with its provisions.]**

§13.8. Other Federal or State Requirements.

**§13.8**

All waiver request applications must meet federal laws 8 USC §1182 and §1184. **[All waiver request applications for faculty physicians must meet applicable state laws (Texas Education Code, §51.949).]**

Title 25. HEALTH SERVICES  
Part 1. DEPARTMENT OF STATE HEALTH SERVICES  
Chapter 13. Health Planning and Resource Development  
Chapter A. Waiver of Visa Requirement For Physicians  
Amendments §13.1, §13.2, §13.5, §13.8

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §13.1, §13.2, §13.5, and §13.8, concerning waiver of visa requirements for physicians serving in health professional shortage areas, who apply to the J-1 visa waiver program.

BACKGROUND AND PURPOSE

The amendments are proposed to give the department more flexibility in determining appropriate practice locations for J-1 visa waiver physicians.

SECTION-BY-SECTION SUMMARY

Amendments to §13.1 remove the defined terms “fully served”, “NHSC” and “primary care specialist” because these terms are removed from §13.2. Amendments to §13.2 remove the 3000:1 or fewer physicians per capita provision and remove language concerning primary care specialists, psychiatrists and non-primary care specialists and the other terms deleted from the definitions in §13.1. Language is added that recommendations will be made in areas that meet shortage area requirements as identified by the program annually. Amendments to §13.5 clarify employment contract requirements concerning scheduled work hours and remove language concerning Education Code §51.949, as this section is no longer applicable to the J-1 visa waiver program. Amendments to §13.8 also remove language concerning Education Code §51.949.

FISCAL NOTE

Connie Berry, Program Manager for the Primary Care Office, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to state or local governments as a result of administering the sections as proposed because the fee is not changed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Berry has also determined that there is no anticipated cost to small businesses or micro-businesses because the proposed amendments will affect only those professional associations that employ physicians, and will increase the pool of physicians from which they can recruit. There are no anticipated economic costs to persons who are required to

comply with the amendments as proposed. There is no anticipated negative impact on local employment.

## PUBLIC BENEFIT

Connie Berry has also determined that for each year of the first five years the sections are in effect the public health benefit anticipated as a result of these rules will be greater access by physicians to the waiver process allowed by federal law, clear criteria for physicians who wish to serve this state in health professional shortage areas under these provisions, and a greater chance that physicians can be recruited to serve these areas as envisioned by state and federal law.

## REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

## TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

## PUBLIC COMMENT

Comments on the proposal may be submitted to Connie Berry, Program Manager, Texas Department of State Health Services, Texas Primary Care Office, 1100 West 49<sup>th</sup> Street, Austin Texas 78756, (512) 458-7518 [connie.berry@tdh.state.tx.us](mailto:connie.berry@tdh.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

## STATUTORY AUTHORITY

These amendments are proposed under Government Code §531.0055, Health and Safety Code §12.0127 which authorizes the department to request waiver of certain residence requirements for alien physicians who agree to practice in medically underserved areas and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules reasonably necessary for the department to administer its regulatory and administrative functions.

The proposed amendments affect Health and Safety Code, Chapters 12 and 1001, and Government Code Chapter 531.