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To: Members of the State Board of Health

From:  Stephen Holloway, Branch Chief, Health Equity and Access
Prevention Services Division

Through:  Elizabeth Whitley, Prevention Services Division Director

Date: December 30, 2015

Subject: **Request for Rulemaking Hearing**

Proposed Amendments to 6 CCR 1016-3, International Medical Graduates Seeking State Support of an Immigration Petition: Eligibility Application Process, Fees and Selection Procedures, with a request for the rulemaking hearing to occur in March of 2016.

The goal of the J-1 Visa Waiver and National Interest Waiver programs is to facilitate the placement of non US resident physicians in underserved areas of the state for the purpose of increasing access to primary and specialty medical services. The United States Department of State authorizes the governor or his designee to certify that a waiver of certain visa residency requirements for international medical graduates is in the national interest.

The department proposes to simplify and clarify language contained in 6 CCR 1016-3, which governs the programs for foreign trained physicians practicing in Colorado in order to more clearly reflect federal statutes that create the program. This rule was first promulgated in 2010 and has not been amended since that time. None of the proposed changes are intended to substantially alter how the program has been administered or implemented in the department. The primary purpose of the program is and remains to increase access to care in Colorado communities that experience a shortage of physician providers.

These rules are promulgated in accordance with the statutory authority granted by § 25-1.5-404 C.R.S. for the administration and establishment of application fees for the J-1 Visa Waiver and the National Interest Waiver programs.

**STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY**

for Amendments to
6 CCR 1016-3, International Medical Graduates Seeking State Support of an
Immigration Petition: Eligibility, Application Process, Fees and Selection Procedures

Basis and Purpose.

The department proposes to simplify and clarify language contained in 6 CCR 1016-3, which governs the programs placing foreign trained physicians in Colorado. The proposed changes to the rule include refinement of program definitions, an updated statutory reference, and simplified instructions to applicants regarding the review process.

Key revisions proposed for the current rule include:

- The requirement that the application include evidence that the petitioner has a United States equivalent medical education is removed. The physician residency “match” and admissions process satisfies this requirement prior to the submission of a waiver application to the state. This application requirement is therefore redundant and unnecessary.
- The requirement that a petitioner complete three years of a residency program before applying for a waiver in Colorado is revised to two years. This change is made to allow physicians who are in their final year of residency to apply for a waiver in Colorado. This change benefits the state because it allows physicians to seek qualified employment in Colorado and begin work as soon as they are fully trained. There is no risk of the program supporting waivers for physicians who have incomplete training because the Colorado Medical Board requires complete training for foreign medical graduates prior to granting a license to practice.
- The requirement that a petitioner demonstrate English proficiency is removed. The program has no direct means of evaluating this program requirement. Furthermore, English language proficiency determinations more appropriately reside with the hiring employer.
- The requirement that the petitioner provide a “statement of no objection from the country of origin” is removed. This change is made because the United States Department of State performs this function when reviewing a final waiver application.
- The requirement that an employing practice maintain a sliding fee scale for the uninsured is removed. This change is made because Colorado Medicaid now covers substantially more low income Coloradans and the Health Insurance Exchange provides additional premium support for those ineligible for Medicaid. In addition, it was found that many program users have had difficulty in managing and reporting on the use of sliding fee schedules in large hospital settings. These hospitals continue to maintain free and charitable care policies for the uninsured that do not strictly meet the definition of a sliding fee scale.
- The waiver petition preference hierarchy is removed because Colorado has never filled its allocation of 30 waiver petition slots. As such, there is not likely to be an opportunity to apply this hierarchy in the foreseeable future.

These proposed changes will not modify the purpose of the rule or materially change program implementation. The primary purpose of the program is and remains to increase access to care in Colorado communities that experience a shortage of physician providers.
Specific Statutory Authority.

These rules are promulgated pursuant to § 25-1.5-404.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

Yes, the bill number is _____; rules are ___ authorized ___ required.
 No

Is this rulemaking due to a federal statutory or regulatory change?

Yes
 No

Does this rule incorporate materials by reference?

Yes
 No

Does this rule create or modify fines or fees?

Yes
 No

REGULATORY ANALYSIS

for Amendments to

6 CCR 1016-3 International Medical Graduates Seeking State Support of an Immigration Petition: Eligibility, Application Process, Fees and Selection Procedures

- 1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The simplification and clarification of 6 CCR 1016-3 is expected to benefit employers, physicians and their representatives who apply to this program. These benefits will also indirectly accrue to the communities they serve by making the visa waiver programs easier to use.

Employers and physicians may be effected by the fee structure, though no changes from the current fee structure are proposed. The fee structure benefits these groups because it supports the work of the Primary Care Office to promote and administer programs that improve access to health care. Specifically, these programs lead to increased placement of physicians in underserved areas of the state and promote more care to publicly insured, uninsured and underinsured people.

While employers generally bear the cost of the visa waiver fee, they benefit from a recruitment incentive that has value far in excess of the cost of the fee. For example, it is not uncommon to pay a signing bonus to US trained physicians of \$30,000 or more for a period of service to a rural hospital or medical practice.

In addition to the recruitment incentive, employers benefit from the technical assistance provided by program staff to facilitate the complete process of application for a visa waiver. This process includes relationships with physician residency programs, immigration attorneys, the US Department of State, and the US Citizenship and Immigration Service.

- 2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.**

The proposed rule changes are expected to only have a nominal impact on employers and physicians seeking to use the visa waiver program. The burden of completing an application to the state is expected to be similar, or slightly less, as a result of the proposed changes to the rule. These proposed changes are not expected to increase or decrease the total number of waiver applications to the state. The access to care impact of the program is expected to continue on a scale similar to the experience of the program over the previous five years.

The placement characteristics of the program in the last five years are as follows:

County	Number (56)	Percent
Adams	7	12.5
Alamosa	2	3.6
Arapahoe	3	5.4
Denver	8	14.3
Morgan	4	7.1
Otero	1	1.8
Prowers	1	1.8
Pueblo	30	53.6

Specialty	Number (56)	Percent
Primary Care	40	71.4
Specialty	16	28.6

The Primary Care Office evaluates the effectiveness of the immigration waiver programs on a three year iterative cycle. Data from participating physicians is collected semiannually in reports that document the number of Medicaid, Medicare and uninsured patient visits. Both physicians and employers are required to complete end of service program evaluations that provide information about the overall success of the program at increasing access to care.

The health plan characteristics of those served by program participants are as follows:

Encounters Per Year	Number (56)	Percent
Medicaid	42,180	19.8
Medicare	88,364	41.4
Child Health Plan	1,415	0.7
Sliding Fee Scale	9,923	4.7
Other Health Plans	71,478	33.5

3. **The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The cost of administering the program in the department is not expected to change. Annual state revenues are not predicted to change, as no change to the fee structure is proposed and the number of applicants will likely remain constant.

4. **A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.**

The benefit to changing the rule is a clearer regulation that more precisely conforms to federal statutes about the conduct of the visa programs in the state. The proposed language is simpler and easier to understand for employers and physicians interested in waiver programs. The cost of the application fee remains nominal when compared to the total cost of recruitment, legal council, and federal application fees for those who wish to participate in the program.

If no action is taken on this rule, overall program efficiency improvements may not be realized.

5. **A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

There are no less costly or intrusive methods of achieving the purpose of this rule revision.

6. **Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.**

State statute requires the State Board of Health to maintain rules for this program and establish fees. There is no alternative to rulemaking.

7. **To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.**

Because the proposed changes are largely qualitative, no data was used in the analysis of the proposed changes to the rule.

**STAKEHOLDER COMMENTS
for Amendments to**

**6 CCR 1016-3 International Medical Graduates Seeking State Support of an Immigration
Petition: Eligibility, Application Process, Fees and Selection Procedures**

The following individuals and/or entities were included in the development of these proposed rules:

Connie Berry, former director of the Texas Primary Care Office and national subject matter expert regarding international medical graduate programs.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

Stakeholders were notified via the Colorado Health Service Corps loan repayment program's social media outlets, Facebook and Twitter, and in the program's quarterly newsletter. The audiences for these outlets are comprised of health facility employers in Colorado, as well as current loan recipients and students of health professional schools.

Other stakeholders include the members of the Waiver Application Review Committee:

- Angela Rose, Colorado Community Health Network
- Ashley Mills, Colorado Rural Health Center
- Gail Finley, Colorado Hospital Association
- Henrique Fernandez, MD, Parkview Medical Center (former J-1 Visa physician)
- Tanah Wagenseller, Colorado Community Health Network

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

No major factual and policy issues were encountered through the process of stakeholder feedback. The proposed changes are for the purpose of improving the clarity and concision of the rule.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

There are no health equity or environmental justice impacts of the proposed rule change. The effect of the program is, however, intended to improve health equity for those who have poor access to care by placing physicians in underserved areas of the state.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Prevention Services Division

~~RULES PERTAINING TO~~ INTERNATIONAL MEDICAL GRADUATES SEEKING STATE SUPPORT OF AN IMMIGRATION PETITION: ELIGIBILITY, APPLICATION PROCESS, FEES AND SELECTION PROCEDURES

6 CCR 1016-3

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1.1 Authority

This regulation is adopted pursuant to the authority in section 25-~~20~~ 1.5-~~64~~04, Colorado Revised Statutes and is intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 et seq. (the "APA"), C.R.S., the Conrad 30 J-1 Visa Waiver Program established in 8 U.S.C. section 1184 ~~(c)~~ ~~(+2)~~ ~~(+D)~~ (ii) and the National Interest Waiver ~~Program~~ established in 8 U.S.C. section 1153 (b) (2) (B) (ii).

1.2 Definitions

(1) "International Medical Graduate" means a physician who is not a United States citizen and has received a medical degree from a school outside of the United States or Canada.

(2) "J-1 visa physician" means an International Medical Graduate who is not a United States citizen and who holds a J-1 visa for training in a United States medical residency or fellowship program.

(3) "Underserved Area" means a geographic area or clinical facility with one or more of the following designations of the United States Secretary of Health and Human Services.

(A) "Health Professional Shortage Area" as provided in 42 U.S.C. sec. 294e.

(B) "Medically Underserved Area" as provided in 42 U.S.C. sec. 295p.

(C) "Medically Underserved Population" as provided in 42 U.S.C. sec. 254b.

(4) "Conrad 30 J-1 Visa Waiver Program" means the program established in 8 U.S.C. section- 1184 ~~(c)~~ ~~(+2)~~ ~~(+D)~~ (ii), allowing ~~foreign-trained~~ J-1 visa physicians who meet certain criteria to remain in the United States after training and practice in communities designated as Medically Underserved Areas, Medically Underserved Populations, or Health Professional Shortage Areas.

(5) "National Interest Waiver ~~Program~~" means the program established in 8 U.S.C. sec.1153 (b) (2) (B) (ii) allowing foreign-trained physicians who meet certain criteria to

~~practice in communities designated as Medically Underserved Areas, Medically Underserved Populations, or Health Professional Shortage Areas, receive legal permanent residence in the United States.~~

(6) “Governor’s Designee” means the Director of the Primary Care Office, who has received an official assignment from the governor to act on behalf of the state regarding immigration waiver petitions of ~~International Medical Graduate J-1 Visa~~ physicians.

~~(7)~~ “Primary Care Office” means the office created in C.R.S. 25-~~201.5-603404~~.

~~(8)~~ “Practice Site” means the physical location at which the ~~International Medical Graduate physician who is recommended for a waiver~~ will provide clinical services and may or may not be the administrative address of the Employer.

~~(7)(9)~~ “Employer” means the legal entity seeking to engage the ~~International Medical Graduate J-1 visa~~ physician in an agreement to provide medical services in exchange for a salary and other remunerations.

~~(8)(10)~~ “Waiver Application Review Committee” means the committee of health access experts, appointed by the Director of the Primary Care Office, who represent broad interests in addressing Colorado’s health work force needs and who support and participate in the ~~decision-making-review~~ process regarding the waiver petitions of International Medical Graduates.

1.3 Program

International Medical Graduates are permitted to come to the United States for medical residency training on a ~~J-1, non-immigrant~~ Exchange Visitor Visa. Upon completion of training, ~~exchange J-1 visa~~ physicians are required to return to their country of origin for two years before applying for a new United States immigration Visa. The two-year home return requirement may be waived for a physician willing to practice medicine full-time in an ~~U~~underserved ~~A~~area of the United States for a period of three years, ~~if requesting a Conrad 30 J-1 Visa Waiver, or five years if requesting a National Interest Waiver~~. A petition for a waiver of the home return requirement is granted by the federal government where a qualified application is submitted to a state health department and the Governor’s Designee determines that the ~~placement of the International Medical Graduate physician waiver~~ is in the national interest.

1.4 Waiver Petition

~~(1)~~ ~~At the time of application, A~~an eligible ~~International Medical Graduate J-1 visa~~ physician shall:

~~(2)~~

~~(3)(1)~~ ~~demonstrate a medical education equivalent to a United States trained physician;~~

(A) ~~S~~uccessfully complete at least ~~three two~~ years of a United States based medical residency program;

- 88 | ~~(B)~~—demonstrate English language proficiency;
- 89 |
- 90 | ~~(C)~~ file a statement of no objection from the country of origin, where applicable;
- 91 |
- 92 | ~~(D)~~~~(B)~~ have or Apply for or obtain a Colorado Medical License;
- 93 |
- 94 | ~~(E)~~~~(C)~~ aAgree to comply with program requirements for the full term of service;
- 95 |
- 96 | ~~(F)~~—
- 97 | ~~(G)~~~~(D)~~ Upon receipt of a Colorado Conrad 30 recommendation, the physician will:
- 98 |
- 99 | i. ~~f~~RReport practice characteristics to the Primary Care Office on a biannual
- 100 | basis; and
- 101 |
- 102 | ii. ~~e~~Complete an exit survey at the conclusion of his or her service obligation.
- 103 |
- 104 | ~~(4)~~~~(2)~~ At the time of application, Aan eligible Practice Site shall:
- 105 |
- 106 | (A) ~~b~~Be located in an Underserved Area or provide substantial evidence of a
- 107 | physician shortage in the service area for the ~~International Medical~~
- 108 | ~~Graduate~~J-1 visa physician's medical specialty;
- 109 |
- 110 | (B) ~~a~~Acept patients covered by Colorado Medicaid;
- 111 |
- 112 | (C) ~~a~~Acept patients insured by Child Health Plan+, if the practice accepts
- 113 | children;
- 114 |
- 115 | ~~(D)~~ ~~a~~Acept patients insured by Medicare, if the practice accepts ~~elderly~~ patients
- 116 | who are 65 and over;
- 117 | ~~(E)~~—
- 118 | ~~(F)~~~~(D)~~ ~~assess clinic charges on a posted sliding fee schedule for low income~~
- 119 | ~~patients~~; ~~e~~Employ the ~~International Medical Graduate-J-1 visa~~ physician full
- 120 | time, in direct patient care, at a salary commensurate with that of a United
- 121 | States trained physician in the same specialty with similar experience and
- 122 | training, in the region;
- 123 |
- 124 | ~~(E)~~ aAssign a patient panel to the ~~International Medical Graduate~~J-1 visa
- 125 | physician that is not substantially different than that of other physicians in the
- 126 | practice with the same clinical specialty;
- 127 |
- 128 | ~~(F)~~ Upon receipt of a Colorado Conrad 30 recommendation, the Practice Site
- 129 | will:
- 130 |
- 131 |
- 132 | i. ~~f~~RReport practice characteristics to the Primary Care Office on a biannual
- 133 | basis; and
- 134 |
- 135 | ii. ~~e~~Complete an exit survey at the conclusion of their service obligation.
- 136 |

137 | ~~(5)~~(3) A complete application shall originate from a prospective Employer and shall
138 | contain all elements described in the application guidance available from the
139 | Primary Care Office, which include:

- 140 |
- 141 | (A) an application face page,
 - 142 |
 - 143 | (B) an employer statement,
 - 144 |
 - 145 | (C) a community statement of need,
 - 146 |
 - 147 | (D) a recruitment effort summary,
 - 148 |
 - 149 | (E) a signed contract that conforms to waiver and program requirements,
 - 150 |
 - 151 | (F) a physician retention plan,
 - 152 |
 - 153 | (G) all required immigration documentation, and
 - 154 |
 - 155 | (H) documentation supporting the International Medical Graduate's waiver
156 | eligibility.

157 |

158 | ~~(6)~~(4) An application fee shall be assessed in exchange for a complete application
159 | review and waiver support determination. Fees are not refundable in the event
160 | the Governor's Designee declines to support a waiver petition, the Department of
161 | State or the United States Citizenship and Immigration Services declines to grant
162 | a waiver, the physician fails to begin a service commitment, or the physician or
163 | employer terminates a service commitment prior to the end of a service
164 | obligation. Fees shall be payable at the time of application to the "Colorado
165 | Department of Public Health and Environment" on the following schedule:

166 |

167(A) | \$1,000 for a Conrad 30 J-1 Visa Waiver application review.

168 |

169(B) | \$250 for a National Interest Waiver application review letter where the
170 | physician is ~~a currently J-1 Visa Waiver physician practicing, or intends to practice~~
171 | in Colorado.

172 |

173(C) | \$1,250 for a National Interest Waiver application review letter where the
174 | physician is not ~~a currently J-1 Visa Waiver physician practicing in Colorado.~~

175 |

176(D) | The Governor's Designee may waive application fees for Executive
177 | agencies of state government.

178 |

179 | 1.5 Application Review Process

180 |

181 | (1) Conrad 30 J-1 Visa Waiver Application

- 182 |
- 183 | (A) Applications will be accepted at any time and will be reviewed in the
184 | order that they are received.

185 |

186 ~~(B) Complete applications, where both the International Medical Graduate and~~
187 ~~Practice Site are eligible under program rules, will be referred to the~~
188 ~~Waiver Application Review Committee for a vote. In federal fiscal years~~
189 ~~where more than 30 applications are received, priority will be given to~~
190 ~~applicants who:~~

191
192 ~~(1) are specialists in Family Medicine, General Internal Medicine,~~
193 ~~General Pediatrics, General Obstetrics and Gynecology, or~~
194 ~~General Psychiatry;~~

195
196 ~~(2) will be placed in an outpatient clinical setting; and~~

197
198 ~~(3) are assigned to a Practice Site located in a current Health~~
199 ~~Professional Shortage Area.~~

200
201 ~~(C) The Governor's Designee will support waiver petitions that are~~
202 ~~recommended by a majority vote of the Waiver Application Review~~
203 ~~Committee. All decisions regarding state support of a waiver petition are~~
204 ~~final.~~

205
206 ~~(D)(B)~~ Once 30 waiver requests have been supported by the Governor's
207 Designee in a single federal fiscal year, the application process will be
208 closed until the following federal fiscal year.

209
210 (2)

211 ~~(2) National Interest Waiver Application~~

212 ~~(3)~~

213 ~~Applications Requests~~ will be accepted at any time and will be reviewed in the
214 order that they are received. The Governor's Designee will respond to the
215 National Interest Waiver request in writing.

216
217 ~~(A) Complete applications, where both the International Medical Graduate and~~
218 ~~Practice Site are eligible under program rules, will be evaluated by the~~
219 ~~Governor's Designee if an applicant is a current J-1 Visa Waiver physician~~
220 ~~practicing in Colorado, or be referred to the Waiver Application Review~~
221 ~~Committee for a vote if the applicant is not a current J-1 Visa Waiver~~
222 ~~physician practicing in Colorado.~~

223
224 ~~(B) The Governor's Designee will make the final determination of state~~
225 ~~support. All decisions regarding state support of a waiver petition are~~
226 ~~final.~~