

## **ARIZONA DEPARTMENT OF HEALTH SERVICES NATIONAL INTEREST WAIVER GUIDELINES**

### **INTRODUCTION**

The federal National Interest Waiver (NIW) program allows certain foreign workers with advanced degrees, including foreign physicians (MDs), or exceptional abilities to work in the United States. A national interest waiver granted to a foreign physician by the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security exempts the foreign physician from the labor certification process administered by the U.S. Department of Labor.

Under the federal NIW program, a state health department may support with an attestation letter a request for a national interest waiver for a foreign physician. The foreign physician must agree to provide primary care and specialty services full time in a federally designated primary health professional shortage area (HPSA), medically underserved area (MUA), medically underserved population (MUP), or mental health professional shortage area (MHPSA) for an aggregate of five years.

A state public health department's participation in the NIW program is discretionary. The Arizona Department of Health Services (ADHS) has determined that participation in the NIW program will promote the effective use of health manpower and facilities in this state as required by A.R.S. § 36-104(16). ADHS' participation in the NIW program will increase access to health care for the underserved residents of this state.

### **GUIDELINES**

The USCIS, successor to the Immigration and Naturalization Service of the U.S. Department of Justice, is the federal agency that grants national interest waivers. Under federal statutes and regulations on national interest waivers, a foreign physician must obtain either: the support of a federal agency, such as the U.S. Department of Veterans Affairs, that has knowledge of the physician's qualifications; or a letter from a state's department of public health attesting that the physician's work at the designated site or designated sites is in the public interest.

The federal national interest waiver regulations cover primary care medical specialties: the practice of family or general medicine, pediatrics, general internal medicine, obstetrics and gynecology, and psychiatry. The federal national interest waiver regulations also cover specialists. A national interest waiver is available to foreign physicians in primary or specialty care disciplines in federally designated shortage areas.

ADHS will provide NIW attestation letters **only** to foreign physicians who have obtained a J-1 visa waiver based on ADHS J-1 visa waiver recommendation. ADHS will provide NIW attestation letters to current participants of the J-1 Visa Waiver Program who have practiced on a full-time basis at a qualifying approved service site located within a federally designated HPSA, MUA, MUP, or MHPSA for at least one year immediately preceding the request for an ADHS NIW attestation letter or to previous J-1 Visa Waiver Program participants who have completed J-1 waiver service within one year preceding the NIW request.

Foreign physicians who obtain a national interest waiver from the USCIS based on an ADHS NIW attestation letter must serve the uninsured and under-insured, regardless of ability to pay; must accept Medicaid (AHCCCS) and Medicare assignment; other public health insurance options; and must use a sliding fee schedule (if applicable).

A foreign physician with a national interest waiver based on an ADHS NIW attestation letter must complete an aggregate of at least five years of medical service. The five-year period is counted from the date a foreign physician begins practicing in a federally designated shortage area under a J-1 visa waiver based on an ADHS letter of support, after receiving an H1B visa.

ADHS' review of a request for a NIW attestation letter is at ADHS' **discretion**, and any and all ADHS employees, agents and assigns will be held harmless in the event a decision is made not to grant the request or from any action or lack of action made in connection with this request.

## **ELIGIBILITY**

ADHS will consider for a NIW attestation letter only to foreign physicians who have obtained a J-1 visa waiver from the USCIS based on an ADHS J-1 visa waiver letter of support. To be considered for an ADHS NIW attestation letter, a foreign physician's J-1 visa waiver file must be complete at the time of the request for an ADHS NIW attestation letter. The foreign physician must be in compliance with all ADHS J-1 Visa Waiver Program's requirements, including submission of copies of the physician's J-1 visa waiver issued by the USCIS, valid employment authorization document (EAD) or H1B visa, and Arizona medical license. In addition, the service site must be in compliance with all ADHS J-1 Visa Waiver Program's requirements.

ADHS will issue an NIW attestation letter **only** for foreign primary care or specialty physicians who meet all of the following requirements:

- Received a J-1 visa waiver based on ADHS J-1 visa waiver letter of support
- Complied with ADHS J-1 Visa Waiver Program's policies
- For current participants, practiced primary or specialty care on a full time basis at a qualifying service site or in a community located within a federally designated HPSA, MUA, MUP, or MHPSA for at least one year immediately preceding the request for an ADHS NIW attestation letter. For previous participants, completed J-1 waiver service within one year preceding the request for NIW attestation letter.
- Will continue to practice a primary care or specialty service on a full time basis at a qualifying approved service site located within a federally designated HPSA, MUA, MUP, or MHPSA
- Will complete an aggregate of at least five years of medical service in an approved service site located in designated HPSA, MUA, MUP, or MHPSA, including the period of practice, after the issuance of an H1B visa, under a J-1 visa waiver based on an ADHS J-1 visa waiver letter of support

## **NON-ELIGIBILITY**

ADHS NIW Program **will not** issue NIW attestation letters for foreign physicians in research positions or who will practice in long-term care, chronic care, inpatient care, or rehabilitation facilities. ADHS NIW Program will not issue attestation letters for foreign physicians who received their J-1 waiver from another State.

The documentation submitted for an ADHS J-1 visa waiver letter of support is site specific. ADHS **will not** issue an NIW attestation letter when circumstances indicate that a foreign physician with a J-1 visa waiver based on ADHS' recommendation transferred to a site other than the original placement **without prior notification to ADHS**.

ADHS will review Arizona Medical Board records and ADHS records for each foreign physician meeting the NIW eligibility requirements listed in the preceding section entitled "Eligibility." At its discretion, ADHS may determine that it is not in the public interest to issue a NIW attestation letter for a foreign physician who has been the subject of a complaint made to the Arizona Medical Board or to ADHS.

At its discretion, ADHS may determine that it is not in the public interest to issue a NIW attestation letter for a foreign physician practicing at a service site that is not in compliance with ADHS J-1 Visa Waiver Program's policies or that has been the subject of a complaint made to ADHS or to other regulatory agencies.

## **COMPLIANCE**

Foreign physicians with a national interest waiver based on an ADHS NIW attestation letter must comply with the Arizona National Interest Waiver Program requirements that include:

- Practice full time primary or specialty care on a sliding-fee-schedule at a qualifying service site located within a federally designated HPSA, MUA, MUP, or MHPSA. The sliding-fee-schedule requirement applies to all primary care or specialists. Primary care physicians working as hospitalists may utilize and offer a sliding fee schedule or a similar discount program. J-1 physicians in the state or federal prisons are exempt from the sliding fee schedule requirement.
- Complete an aggregate of at least five years of medical service. The five-year period is counted from the date a foreign physician begins practicing in a federally designated shortage area under a J-1 visa waiver based on an ADHS letter of support, after receiving an H1B visa.
- Submit a copy of the USCIS national interest waiver approval within seven business days after receiving the document
- Submit the required notarized documents establishing that the foreign physician is practicing and will continue to practice a primary or specialty care on a full time basis at a qualifying service site or in a community located in a HPSA, MUA, MUP, or MHPSA.
- Submit the required quarterly **notarized** encounter report that verifies services rendered at the approved service site and confirms sliding fee schedule use for the foreign physician's patients. The encounter report is due prior to or by the 10<sup>th</sup> business day following the end of each calendar quarter.

- Submit annually a revised sliding fee schedule based on current Federal Poverty Level Guidelines, the procedure for its use. **Exemption:** A foreign physician employed directly by a hospital or a state or federal prison is exempt from this requirement.

## **AUTHORITY**

8 USC 1153(b)(2)(B)(ii); 8 CFR 204.12; A.R.S. § 36-104(16)

## **APPLICABILITY**

These guidelines apply to all foreign physicians requesting an ADHS NIW attestation letter, to foreign physicians who obtain a national interest waiver based on an ADHS NIW attestation letter, and to employers of these foreign physicians.

## **DIVISION PRIMARY POSITION OF RESPONSIBILITY**

Division of Public Health Services/Bureau of Health Systems Development

## **PROCEDURE**

The foreign physician must submit the following to ADHS Division of Public Health Services/Bureau of Health Systems Development:

1. National Interest Waiver Application Form
2. A letter from the physician asking for ADHS to act as an interested government agency and to recommend a national interest waiver for the physician. The letter must state that the physician's work is in the public interest and must describe the physician's education, training, and work experience that substantiates the claim. The letter also must include a description of the physician's work schedule and responsibilities.
3. If the physician will be an employee, a full-time employment contract for the required period of clinical medical practice. The contract must meet the requirements of the J-1 Visa Waiver Program. If the physician will be self-employed, the physician must submit a copy of the lease agreement or purchase agreement for the premises where the physician will practice or other documentation establishing the location where the physician will practice.
4. **A NOTARIZED STATEMENT OF UNDERSTANDING AND AGREEMENT**
5. The SFS based on current Federal Poverty Level Guidelines and the procedure for its use at the site. Each year during the physician's practice under a national interest waiver based on an ADHS NIW attestation letter, the site's SFS must be submitted to ADHS for review and approval.  
**Exemption:** A hospitalist physician employed directly by a hospital or a state or federal prison is exempt from this requirement.
6. **A NOTARIZED CERTIFICATION OF SERVICE SITE**

If the physician obtains a national interest waiver based on an ADHS NIW attestation letter, the physician must notify ADHS and complete a Transfer Request form before transferring to another location. If the physician fails to comply with the terms of the Agreement, ADHS will notify USCIS. Additionally, any and all other measures available to ADHS will be taken in the event of non-compliance.

Upon receipt of a complete NIW packet, ADHS will review the documentation. If ADHS determines that the physician's practice meets all ADHS NIW Program's requirements and is in the public interest, an attestation letter will be forwarded to ADHS Office of the Director for signature. When signed, the letter will be mailed to the physician or to the attorney representing the physician, who will be responsible for mailing the letter to the USCIS.

## NOTARIZED STATEMENT OF UNDERSTANDING AND AGREEMENT OF PHYSICIAN

I, \_\_\_\_\_ having been duly sworn, state that I:

1. Have provided, as a J-1 provider, primary care (family or general practice, pediatrics, internal medicine, obstetrics and gynecology, or psychiatry) or specialty services on a full-time basis (at least 40 hours per week) for at least one year immediately preceding the date of the request for an ADHS NIW attestation letter.
2. As a J-1 provider, I have practiced for at least one year immediately preceding the date of the request for an ADHS NIW attestation letter at a qualifying service site located within a federally designated HPSA, MUA, MUP, or MHPSA, and will continue to do so while practicing under a national interest waiver based on an ADHS NIW attestation letter.
3. Will complete an aggregate of at least five years of medical service in an approved service site located in designated HPSA, MUA, MUP, or MHPSA to satisfy the national interest waiver obligation.
4. Will be an AHCCCS (Arizona Medicaid) and Medicare registered provider, accept other health insurance options, accept all patients regardless of method of payment or ability to pay, provide services to those who have no health insurance coverage, will charge patients at the usual and prevailing rates in the area where I am practicing, and will have a sliding fee schedule (if applicable) based on ability to pay in place for all patients of the facility.
5. Will submit to ADHS for review and approval a current sliding fee schedule and the procedure for its use at the site each year during my obligation under a national interest waiver. The sliding fee schedule will be based on the current [Federal Poverty Guidelines](#) as published in the Federal Register. Notice of the availability of this sliding fee schedule will be posted in a conspicuous location in the patient waiting area of the service site/facility or office where I am practicing.
6. Will submit for each calendar quarter a **notarized** encounter report, on an Encounter Report Form that can be accessed from the program website, prior to or by the 10<sup>th</sup> business day of the month after the end of each calendar quarter. The report will include the total number of encounters and the numbers of encounters using the sliding fee schedule.
7. Will notify ADHS and complete a Transfer Request form before transferring to another location.

If I fail to comply with the terms of this Agreement, I understand that ADHS will notify the U.S. Citizenship and Immigration Services of the Department of Homeland Security. Additionally, I understand that any and all other measures available to ADHS will be taken in the event of my non-compliance.

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Signature of foreign physician

Date

State of Arizona \_\_\_\_\_ )

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,

By \_\_\_\_\_ .

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Notary Public

My Commission Expires: \_\_\_\_\_

## NOTARIZED CERTIFICATION OF SERVICE SITE

I, \_\_\_\_\_ having been duly sworn, state that this service site:

1. Has the financial means available to support the physician \_\_\_\_\_ seeking a national interest waiver.
2. Will employ the physician to provide primary care (family or general practice, pediatrics, internal medicine, obstetrics and gynecology, or psychiatry) or specialty services on a full-time basis (at least 40 hours per week) at a qualifying service site located within a federally designated HPSA, MUA, MUP, or MHPSA.
3. Will accept walk-in patients.
4. Is not an appointment-only practice.
5. Will accept all patients regardless of method of payment or ability to pay; will provide services to those who have no health insurance coverage; will accept AHCCCS, Medicare/Medicaid, and SCHIP assignments; and will charge patients at the usual and prevailing rates in the area where the practice is located.
6. Will have a sliding fee schedule (if applicable) based on the current [Federal Poverty Guidelines](#) that will be used based on patient's ability to pay.
7. Will submit for ADHS review and approval a current sliding fee schedule and the procedure for its use at the site for each year of the physician's obligation under a national interest waiver based on an ADHS NIW attestation letter.

\*\*\*\*\***Attach a copy of the sliding fee schedule and the office procedure for its use.** \*\*\*\*\*

8. Will submit a **notarized** quarterly encounter report, on an Encounter Report Form that can be accessed from the program website, prior to or by the 10<sup>th</sup> business day of the month after the end of each calendar quarter. The report will include the total number of encounters and the numbers of encounters using the sliding fee schedule.
9. Will notify ADHS and complete a Transfer Request form before transferring the physician to another location

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(Signature of Service Site's Executive Director/Administrator or Authorized Signer)

(Date)

State of Arizona \_\_\_\_\_ )

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ ,

By \_\_\_\_\_ .

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Notary Public

My Commission Expires: \_\_\_\_\_

## **DEFINITIONS**

1. "ADHS" means the Arizona Department of Health Services.
2. "Correctional facility" means any place used for the confinement or control of a person:
  - (a) Charged with or convicted of an offense; or
  - (b) Held for extradition; or
  - (c) Pursuant to an order of court for law enforcement purposes. A.R.S. § 13-2501
3. "Detention facility" means:
  - (a) A juvenile facility under:
    - i. A county board of supervisors, or
    - ii. A county jail district authorized by A.R.S. Title 48, Chapter 25;
  - (b) A juvenile secure care facility under the Department of Juvenile Corrections; or
  - (c) A facility for individuals who are not U.S. citizens and who are in the custody of the U.S. Immigration and Customs Enforcement of the Department of Homeland Security.
4. "Encounter report" means a completed and notarized report, on a form provided by ADHS, including the number of patients seen using an ADHS-approved sliding fee schedule.
5. "Federal Poverty Guidelines" means the most recent annual update of the U.S. Department of Health and Human Services' (DHHS) Poverty Guidelines published in the Federal Register.
6. "Foreign physician" means an individual who:
  - (a) Is not a U.S. citizen or lawful permanent resident, and
  - (b) Is a medical school graduate.
7. "FQHC" means a federally qualified health center designated by the DHHS under 42 USC 1395x (aa)(4)(A).
8. "FQHC look-alike" means a federally qualified health center look-alike designated by the DHHS under 42 USC 1395x(aa)(4)(B).
9. "Full time" means at least 40 hours per week.
10. "HPSA" means health professional shortage area, a service area designated by the DHHS as having insufficient primary care providers.
11. "Inpatient services" means hospital services provided to an individual who is expected to receive the services for 24 consecutive hours or more.
12. "J-1 visa waiver" means a waiver of the two-year foreign residence requirement applicable to foreign medical graduates with a J-1 visa.
13. "MUA" means a medically underserved area designated by the DHHS.
14. "MUP" means a medically underserved population designated by the DHHS.
15. "National interest waiver" means a foreign worker's exemption from the labor certification requirement administered by the U.S. Department of Labor.
16. "Primary care physician" means a physician who:
  - (a) Practices a primary care specialty;
  - (b) Is frequently a patient's first point of contact with the health care system, except for emergencies; and
  - (c) Provides prevention, health promotion and education, identification of individuals at special risk, early detection of disease, treatment of illness and injury, and referral to specialists when appropriate.
17. "Primary care specialty" means:
  - (a) Family practice,
  - (b) General practice,
  - (c) Internal medicine,
  - (d) Obstetrics and gynecology,
  - (e) Pediatrics, or

(f) Psychiatry.

18. "Qualifying service site" means a FQHC, FQHC Look-Alike, RHC, Arizona Primary Care Clinic, or correctional or detention facility that is federally designated as having a health manpower shortage or that is located in a HPSA, MUA, MUP, or MHPSA.

19. "RHC" means rural health clinic designated by the DHHS under 42 USC 1395x(aa)(2).

20. "Rural" means either:

(a) A county with a population of less than four hundred thousand persons according to the most recent United States decennial census.

(b) A census county division with less than fifty thousand persons in a county with a population of four hundred thousand or more persons according to the most recent United States decennial census. A.R.S. § 36-2171.

21. "Sliding-fee schedule" means a document stating the percentage of the cost of medical services, based on the current Federal Poverty Guidelines, charged to an uninsured individual with a gross family income less than or equal to 200 percent of the applicable federal poverty guideline.