

Physician Recruitment Through the Arizona J1 Visa Waiver Program

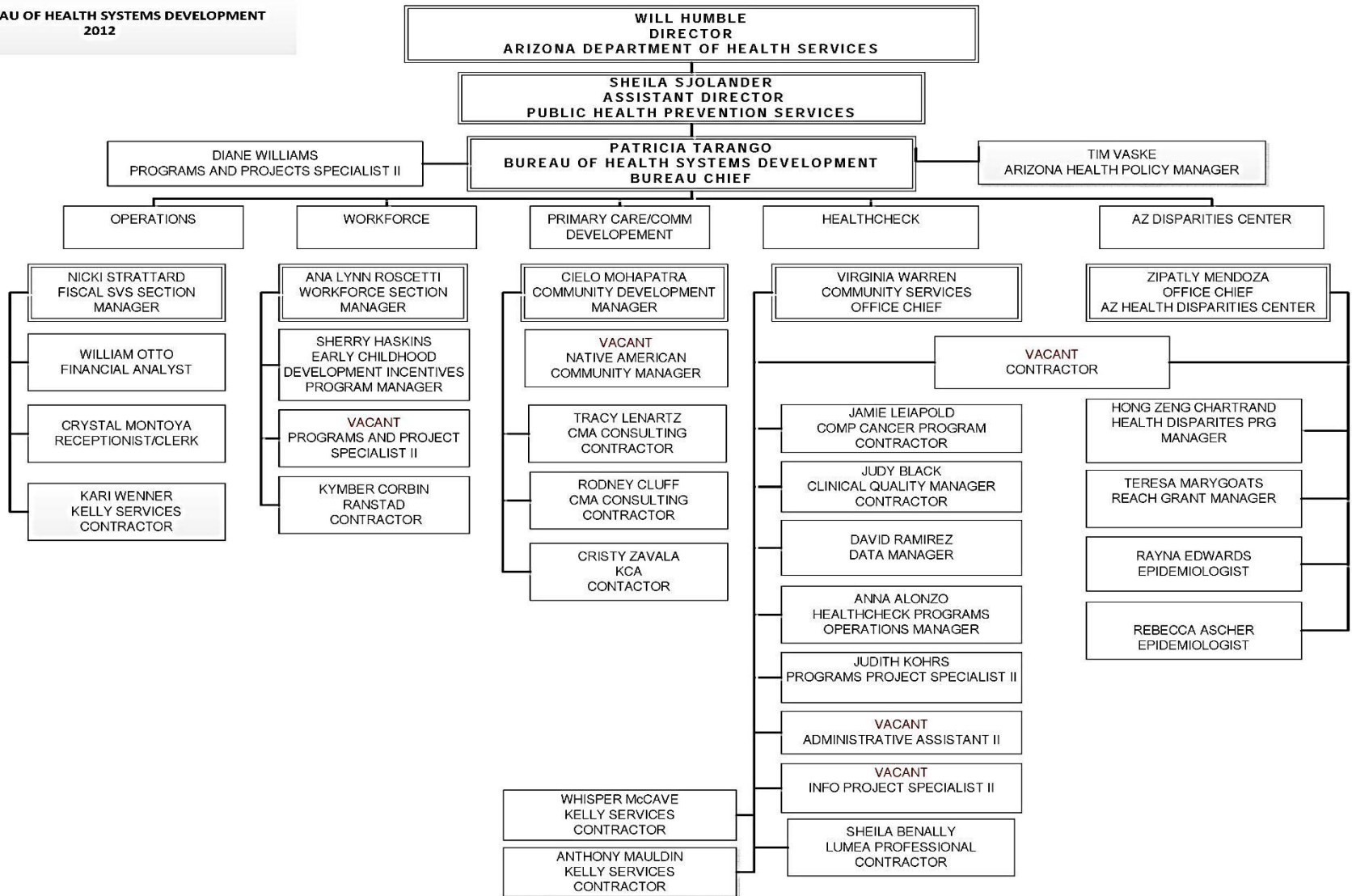
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Learning Objectives

- Understand the advantages and disadvantages in utilizing the AZ J1 Visa Waiver Program for physician recruitment;
- Understand program requirements and expectations; *and*
- Understand program application timelines for better recruitment planning and coordination.

Arizona J1 Visa Waiver Program (Conrad 30 Program)

- Conrad 30 was created in 1994 to help communities in recruiting primary care providers.
- Has brought over 9,000 physicians to underserved communities in 50 States.
- Intended for foreign physicians with J1 Visas who are subject to return to their home country after graduate medical training.
- Allows J1 physicians to obtain waivers of the home residency requirement in exchange for a three year commitment in medically underserved areas.
- Allows J1 physicians to receive nonimmigrant, H-1B status (temporary worker in specialty occupation) or legal authorization to work in the US for three years.
- Authorizes States to support 30 J1 physicians per year.
- In Arizona, 22 of the 30 slots are dedicated to primary care physicians/psychiatrists , 7 for specialists and 1 as discretionary slot.

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What is a J1 Visa?

- Temporary, Nonimmigrant Status
- Clinical Resident or Fellow
- Duration limited to seven years
- Limited exclusively to Graduate Medical Education (i.e., no moonlighting)
- Spouse is able to work
- Mandatory, across-the-board, two-year home residence obligation



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RELEVANCE OF TWO-YEAR HOME RESIDENCE OBLIGATION:

- Disqualifies J-1 from H-1B visa and/or permanent residence status unless:
 - Obtains Waiver of obligation; or
 - Goes back to HOME country for two years

J-1 WAIVER OPTIONS:

- Interested Governmental Agency (IGA)
- State Department of Health
- Exceptional Hardship
- Persecution

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PROS and CONS of EMPLOYING A J-1 PHYSICIAN

Advantages

- Three year commitment as required by the waiver
- Cost-savings
- Two J1 physicians are allowed per site per year
- Possible two-year extension to a total of 5 year commitment if pursuing National Interest Waiver

Disadvantages

- Lengthy/tedious process (paperwork, coordination, time)
 - J1 physician can't start service until H1B petition has been approved by the USCIS
- Costs for filing fees, attorney fees, misc. fees
- Cultural or Language Barriers
- Ability to adhere to federal requirements

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Physician Eligibility:

- J1 Physicians
- Primary Care (FP, IM, OB/GYN, PEDS) or Specialists
- Have an offer of full-time employment at an eligible service site located in a federally designated Health Professional Shortage Area (HPSA) or in a federally designated Medically Underserved Area (MUA) or in a federally designated Medically Underserved Population (MUP)
- Sign a contract for full time work at an approved service site for at least 40 hours per week for at least three years
- Be eligible for an Arizona medical license



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Service Site/Employer Eligibility:

- Be located in a federally designated HPSA or federally designated MUA, or in a federally designated MUP;
- Have been operational and providing care for at least six months as of the date of the request for an ADHS recommendation;
- Have attempted to recruit a U.S. citizen physician for at least six months prior to the application submission and must be able to document recruitment efforts (recruitment dates must be documented);
- Use a sliding-discount-to-fee scale based on ability to pay for all patients at the facility who are uninsured and at or below 200% of current Federal Poverty Guidelines (FPL). The current FPL is available at <http://aspe.hhs.gov/poverty/index.shtml#latest>.
 - The sliding-discount-to-fee-scale must be based on the current U.S. Department of Health and Human Services Federal Poverty Guidelines as published in the Federal Register and adhere to A.A.C. R9-1-504 sliding fee schedule submission and contents available at: http://www.azsos.gov/PUBLIC_SERVICES/Title_09/9-01.htm.

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STEPS IN SPONSORING A J-1 PHYSICIAN FOR PLACEMENT

1. STEP ONE: A J-1 physician must apply for a case number (DS-3035 online application form) from the U.S. Department of State (DOS) website and must secure a bona fide offer of employment.
2. STEP TWO: The health care facility applies to the State Department of Health to request a waiver on the J-1 Physician's behalf.
 - Application Period – October 1 to November 30 of each year with a possibility of an extension
3. STEP THREE: State Department of Health reviews and processes the J1 Visa Waiver Application (8 to 12 weeks). When requirements are met, State recommends the J-1 waiver to the DOS.
4. STEP FOUR: U.S. DEPARTMENT OF STATE (4-6 WEEKS)
 - U.S. Department of State reviews the J-1 waiver applications
 - U.S. Department of State reviews and considers state recommendation with other policy considerations
 - Generally, U.S. Department of State signs off on state recommendations and forwards the recommendation to the U.S. CITIZENSHIP AND IMMIGRATION SERVICES
5. STEP FIVE: U.S. CITIZENSHIP AND IMMIGRATION SERVICES (2-6 WEEKS)
 - Makes final waiver approval
 - Approves waiver recommendations



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APPLICATION REQUIREMENTS CHECKLIST

1. DS-3035 Review Application Form, Data Sheet (current edition) (2 copies).
2. A letter from the head of the organization that wishes to hire the J-1 physician (Original and 1 copy).
3. Signed valid contract of full time employment from the time BCIS grants a waiver of the two-year home-country residency requirement (2 copies).
4. Evidence that the facility is in a federally designated Health Professional Shortage Area (HPSA) or in a Medically Underserved Area (MUA) or that serves a Medically Underserved Population (MUP) (2 copies).
5. Legible copies of the physician's IAP-66/DS-2019 forms, covering every period the physician was in J-1 status. IAP-66/DS-2019 forms must be submitted in chronological order (2 copies of each item).
6. Curriculum Vitae (2 copies).
7. Form G-28 or letter from law office (2 copies).
8. Description of the J-1 physician's proposed responsibilities and schedule (hours per day and days per week). Provide a statement of how the J-1 physician's employment will satisfy important unmet needs, including the health care needs of the specific community and preventive programs the physician will initiate or continue that address health problems prevalent in the specific community, etc. If the provider will work in multiple sites, please describe the proposed responsibilities and schedule at each site (1 copy).

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APPLICATION REQUIREMENTS CHECKLIST – Continuation

9. Documentation demonstrating that the employer made a good faith effort to recruit a United States citizen primary care physician for the job opportunity in the same salary range at least six months prior to the application submission and that the effort was not successful. The documentation may include dated advertisements or announcements in news papers or professional journals, residency programs, etc. The employer must describe the recruitment efforts, including the number of United States citizen physicians, who responded to the advertisements or announcements, the number of United States citizen physicians interviewed, and outcome of any interviews. The description of recruitment efforts must clearly demonstrate that the employer could not find a United States citizen primary care physician through traditional recruitment methods. (1 copy of each item)
10. Physician Application (1 original).
11. Service Site Application – one for each service site (1 original).
12. Sliding Discount-to Fee Schedule and policy/procedure (1 copy).
13. Three letters of community support on appropriate letterhead (1 original for each letter).
14. Copy of the physician's license or license application (1 copy).

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CONTRACT GUIDELINES

- Must specify the service site(s) where the J-1 physician will provide services. (A separate service site application must be completed and submitted for each service site where the physician will perform his/her required 40 hours per week.)
- Must specify that the contract is for at least 3 years full time for 40 hours per week
- Must specify the type of professional or medical service that the physician will be required to perform
- Must specify that the physician agrees to begin employment at the approved service site(s) within 90 days of receiving a J-1 visa waiver
- Must not include a Non-Compete Clause.
- May only be terminated for cause and may not be terminated by mutual agreement or without cause
- Must include “verbatim” that “The J-1 physician and the employer may not change, by contractual amendment or otherwise, the essential terms of the employment contract as required by the ADHS J-1 Visa Waiver Program.”
- Must be signed by both parties

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IF WAIVER IS GRANTED:

6. STEP SIX: Employer files for the physician's H-1 B petition with the USCIS (allow 3 to 4 months)
 - Cost ranges from \$2,325 to \$5,550 **PLUS** legal fees estimated between \$1,000 to \$3,000

H-1B: WHAT IS IT?

- Temporary, nonimmigrant classification
 - 3 years initially, plus 3-year extension
 - Employer specific
 - If a J-1 waiver, must fulfill 3-year employment in H-1B status to gain eligibility for permanent residence
 - J-1 Physicians are exempt from H-1B cap
6. STEP SEVEN: USCIS approves the H1B petition.
 - Submit a copy of the H-1B approval notice to the State Department of Health.
 7. STEP EIGHT: H-1B approved physician can start employment with the sponsoring employer.
 - Mandatory 3-year period in **H-1B STATUS**
 - Mandatory service verification forms to the State Department of Health
 - Mandatory communication to the State Department of Health of any transfer or change in employment status/change in contract related to responsibilities/duties, term of employment, service site assignment, restrictive covenants, etc.
 - USCIS considers transfer requests only in extenuating circumstances, such as closure of the physician's assigned facility

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How much and Who pays for What in filing H1B visa petition ?

Fee Type	Fee	Who Pays for it ? Why ?
Base filing fee (I-129)	\$325	Employer. It is employer's business expense
AICWA Training Fee (American Competitiveness and Workforce Improvement Act of 1998)	\$750 or \$1,500 (One time fee)	Employer. It is employer's business expense. Law requires that this fee is never passed to you or third party
Fraud prevention & detection fee	\$500	Employer. It is employer's business expense. Just like above, it is mandated by law.
Fee based on Public Law 111 – 230	\$2000	Employer. It is employer's business expense.
Premium processing fee (Optional)	\$1,225	Optional fee. Either employer or J1 Physician. If you bear it, the employer has to demonstrate to DOL that it was expedited due to your personal reasons.
Visa fee (Fee involved in getting H1B visa at US consulate)	varies by country	J1 Physician's expense. All the costs involved in obtaining visa, including cost involved in translation of your credentials, etc. It will NOT be an employer's expense. The employer will only send you the documents required for visa stamping.

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Attorney Fees – Who is responsible?

The Department of Labor (DOL) takes the position that it is the employer's responsibility to pay for the preparation and filing of an H-1B visa petition - it considers this to be a business expense of the employer; indeed the DOL's regulations state: "Where the employer depresses the employee's wages below the required wage by imposing on the employee any of the employer's business expenses, [including attorney's fees for preparation and filing of the H-1B visa petition], the Department will consider the amount to be an unauthorized deduction from wages, even if the matter is not shown in the employer's payroll records as a deduction."

The "required wage" is the higher of...

- (1) the wage paid to all other similarly qualified workers who are performing substantially the same work as the H-1B worker, and
- (2) the prevailing wage as established by a legally acceptable wage survey. The rate of pay in any given case is set forth in the certified Labor Condition Application ("LCA"), which the employer must obtain from DOL and file with the H-1B petition.

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Responsibilities of an Employer and/or J1 Physician

- Fair and equitable treatment of each other, staff and affiliates without regard to visa status, race, gender, education, ethnicity, and religion.
- Carry out the provisions of the employment contract as agreed upon. Any re-negotiations must meet state and federal requirements OR clarify any contract provisions that the physician don't understand.
- Meet performance expectations and provide/solicit assistance for reaching those goals.
- Ensure professionalism.
- Lawful/correct billing practices submitted on behalf of the physician or the clinic.
- Maintain compliance with contracted service and benefits.
- Inform/be informed and gain approval about any outside employment.
- Be consulted for any decisions that may impact my role as an employer or as a physician.
- Discuss financial implications of the employee or their behavior

Additional J-1 Physician Responsibilities

- Professional behavior and appropriate conduct on the part of the sponsored employee.
- Discuss my situation with legal or government professionals if necessary.
- Recognize the value of my sponsor's offer of employment.
- Recognize that my conduct is the reflection of the practice and to act in a manner that provides a positive reflection.
- Right to be treated equal to my peers.
- Right to leave the practice without repercussions after my obligation is complete.

Courtesy of Texas Primary Care Office



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General Rules for Physician Recruiters/Employers

Courtesy of Robert D. Aronson, ESQ, Aronson and Associates
Presentation at the 3RNet Annual Conference, September 2012



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RULE #1: Avoid discrimination.

- ❖ Ask the same question to ALL applicants to avoid discrimination charges.
- ❖ Know what questions that can be asked during recruitment process.
 - ❖ Are you legally authorized to work in the United States?
 - ❖ Do you now or in the future require sponsorship for employment visa status?

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RULE #2: Know the players.

- ❖ States
- ❖ Federal Government
- ❖ Employers
- ❖ Physicians

ROLE OF STATES:

- J-1 Waiver Recommendations
- Physician Need Statement for NIW
- Monitoring

ROLE OF FEDERAL GOVERNMENT:

- Final J-1 Waiver Approval
- Adjudicating H-1B Petition
- Adjudicating Permanent Residence (Green Card)

ROLE OF EMPLOYER:

- J-1 Waiver Application
- Filing H-1B Petition
- Sponsoring Permanent Residence

ROLE OF PHYSICIAN:

- Assure site is in designated MUA/HPSA
- Knowledge of program expectations including reporting requirements
- Adhere to state and federal policy

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RULE #3: Know the immigration fundamentals.

- Temporary Nonimmigrant
 - Employer specific work authorization, limited time, limited scope



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RULE #4: Know your pools of physicians.

- U.S. Citizens and Permanent Residents
- IMGs with alternative options
- J-1 Physicians
- H-1B Physicians:
 - H-1B Trainees
 - H-1B Practicing Physician
 - Former J-1 Physicians

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- RULE #5: Know what a J1 Visa/J1 Visa Physician means and when to employ one?
- RULE #6: Apply for a J-1 Visa Waiver on behalf of the J1 physician if eligible and compliant with state and federal requirements.
 - Be aware of the application period (October 1 of each year).
 - Be aware of the processing times:
 - State - 8 to 12 weeks (shorter if application is complete and compliant upon receipt)
 - DOS - 4 to 6 weeks
 - USCIS – 2 to 6 weeks
 - Total processing times : 3.5 to 6 months
- RULE #7: File an H-1 petition, gain approval and enjoy three years of the REQUIRED service obligation.
 - H1B- 3 to 4 months

Thank you!

Questions???



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