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### CERTIFICATE OF EMERGENCY AMENDMENTS

The Department of Public Health, State of Illinois, certifies that the attached hereto is a true and correct copy of:

Heading for the Part: Visa Waiver Program for International Medical Graduates

Code Citation: 77 Ill. Adm. Code 591

Sections Involved:

591.20	591.120	591.150	591.180
591.30	591.130	591.160	
591.100	591.140	591.165	

which was duly amended by emergency action by this Agency.

Reason for Emergency: These emergency amendments are necessary to implement Public Act 102-0488 and allow the Department to consider forensic pathologists and medical examiners' offices for the J-1 Visa Waiver Program. Pursuant to 77 Ill. Adm. Code 591.110(a), the Department will accept J-1 Visa (medical education) Waiver applications beginning October 1, 2022, with the intent to include forensic pathologists of Illinois medical examiners' offices.

Section 5-45 of the Illinois Administrative Procedure Act [5 ILCS 100/5-45] defines "emergency" as "the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare." The emergency rules are needed for the application cycle, assisting and monitoring waiver recipients, assisting with addressing the shortage of forensic pathologists to alleviate the backlog of inquests and autopsies at Illinois medical examiners' offices, and expanding the waivers to include much needed forensic pathologists so they are not required to return to the home countries (or countries of last legal residency) after education is completed and be disallowed from returning to the U.S. for 24 months.

Statutory Authority: Authorized by and implementing sections 212(e) and 214(l) of the Immigration and Nationality Act (8 USC 1182(e) and 1184(l)), and 22 CFR 62 (Exchange Visitor Program), and Section 5.5(b) of the Illinois Rural/Downstate Health Act [410 ILCS 65].

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Director

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TITLE 77: PUBLIC HEALTH  
 CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
 SUBCHAPTER j: PROCESSING J-1 VISA WAIVERS FOR INTERNATIONAL  
 MEDICAL GRADUATES

PART 591  
 VISA WAIVER PROGRAM FOR INTERNATIONAL MEDICAL GRADUATES

SUBPART A: GENERAL PROVISIONS

## Section

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## Section

- 591.100      Eligibility of Physicians and Medical Facilities  
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 591.180      National Interest Waiver  
 EMERGENCY

AUTHORITY: Authorized by and implementing sections 212(e) and 214(l) of the Immigration and Nationality Act (8 USC 1182(e) and 1184(l)), and 22 CFR 62 (Exchange Visitor Program), and Section 5.5(b) of the Illinois Rural/Downstate Health Act [410 ILCS 65].

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SOURCE: Adopted at 22 Ill. Reg. 14485, effective July 24, 1998; amended at 24 Ill. Reg. 7551, effective May 15, 2000; emergency amendment at 27 Ill. Reg. 2277, effective January 22, 2003, for a maximum of 150 days; emergency expired June 20, 2003; amended at 27 Ill. Reg. 10281, effective June 30, 2003; emergency amendment at 28 Ill. Reg. 6641, effective April 15, 2004, for a maximum of 150 days; emergency expired September 11, 2004; amended at 29 Ill. Reg. 3327, effective February 16, 2005; emergency amendment at 29 Ill. Reg. 7825, effective May 10, 2005, for a maximum of 150 days; emergency expired October 6, 2005; amended at 30 Ill. Reg. 898, effective January 5, 2006; amended at 38 Ill. Reg. 23048, effective November 21, 2014; amended at 39 Ill. Reg. 8294, effective May 27, 2015; emergency amendment at 46 Ill. Reg. \_\_\_\_\_, effective **SEP 19 2022**, for a maximum of 150 days.

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**Section 591.20 Definitions**  
**EMERGENCY**

"Act" means the Immigration and Nationality Act (8 USC 1182(e) and 8 USC 1184(l)).

"Applicant" means a physician or an individual acting on behalf of the physician who applies to the Department for a J-1 Visa Waiver.

"Authorized representative" means a person who has authority to act on behalf of the applicant, including but not limited to applicant's attorney at law. Authorized representatives are: for a corporation, any of its officers or members of its board of directors; for a limited liability company, any of its managers or members; for a partnership, any of its general partners; and for a sole proprietor, the individual who is the sole proprietor.

"Board certified" means that a physician has taken and passed a medical specialty examination.

"Board eligible" means that a physician has completed the requirements for admission to a medical specialty board examination but has not taken and passed the examination.

"Breach of service obligation" means failure for any reason to begin or complete all of a contractual service commitment.

"Calendar day" means all days in a month or prescribed time frame, including weekends and federal or State government declared holidays.

"Center" means the Center for Rural Health of the Illinois Department of Public Health.

"Certified local health department" means a county, multi-county, municipal or district public health agency recognized by the Department pursuant to the Certified Local Health Department Code.

"Change of ownership" means a change in the person who has operational control of a medical facility.

"Community-based organization" means a locally organized and locally recognized group of individuals whose goals include efforts to maintain or increase the availability of primary health care in its community.

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"Community Health Center" or "CHC" means migrant health centers or community health centers or health care for the homeless programs or health care for residents of public housing supported under section 330 of the federal Public Health Service Act and Federally Qualified Health Centers, including Federally Qualified Health Center Look-Alikes, as designated by the Secretary of the U.S. Department of Health and Human Services, that operate at least one federally designated primary health care delivery site in Illinois.

"Country of nationality or country of last legal residence" means the country from which the physician was a national at the time J-1 status was acquired or the last foreign country in which the physician had a legal permanent residence before acquiring J-1 status.

"Curriculum vitae" means a written description of professional accomplishments, work experience, educational background and skills.

"Department" means the Illinois Department of Public Health.

"DHHS" means the U.S. Department of Health and Human Services.

"Emergency medicine physician" means a physician licensed to practice medicine in Illinois under the Medical Practice Act of 1987 with a specialty dedicated to the care and treatment of acutely ill or injured patients who need immediate medical attention. For purposes of this Part, an emergency medicine physician is considered a specialist.

"Federal fiscal year" means the 12-month period beginning October 1 and ending September 30 of the following year. The federal fiscal year may be divided into four calendar quarters: October 1 through December 31; January 1 through March 31; April 1 through June 30; and July 1 through September 30.

"Federally Qualified Health Center" or "FQHC" means a health center funded under section 330 of the Public Health Service Act.

"Federally Qualified Health Center Look-Alike" or "FQHC Look-Alike" means an organization that meets the requirements for receiving a grant under section 330 of the Public Health Service Act, but does not receive federal grants under that authority.

"Forensic pathologist" means a physician licensed to practice medicine in Illinois under the Medical Practice Act of 1987 with a specialty in pathology. These

physicians investigate deaths that occur under unusual circumstances, perform post-mortem examinations, and initiate inquests.

"Full time practice" means maintaining 40 hours of ambulatory access per week as required under the Act and the Code of Federal Regulations.

"H1B visa" means a visa for a foreign national to work in the U.S. for a temporary period, issued by the U.S. Department of Homeland Security. It is available for employment in a specialty occupation, including, but not limited to, biotechnology, chemistry, architecture, engineering, mathematics, education, law, medicine and research.

"Health Professional Shortage Area" or "HPSA" means a designation provided by the U.S. Department of Health and Human Services, Health Resources and Services Administration. The HPSA designation indicates the shortage of primary medical care or dental or mental health providers. The HPSA designation may be geographic (a county or service area), population group (e.g., low-income, Medicaid eligible) or facility (comprehensive health center, FQHC, or other public facility or non-profit facility). HPSA designations can be found at <http://hpsafind.hrsa.gov>.

"Health professional shortage area score" or "HPSA score" means a score calculated by DHHS that is assigned to areas or facilities having a health professional shortage designation to determine priorities for assignment of clinicians.

"Hospital" means a location defined in and licensed under the Hospital Licensing Act.

"Hospital medicine" means a physician whose medical specialty focuses on the care of acutely ill hospitalized patients.

"Hospitalist" means a physician licensed to practice medicine in Illinois under the Medical Practice Act of 1987 whose primary focus is the medical care of hospitalized patients. The hospitalist's activities include patient care, teaching, research, and leadership related to hospital medicine. For purposes of this Part, a hospitalist is considered a primary care physician.

"Intermediate care facilities for the developmentally disabled and long-term care for under age 22 facilities" means a location defined in and licensed under the ID/DD Community Care Act.

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"J-1 visa" means a non-immigrant visa issued by the United States to exchange visitors participating in programs that promote cultural exchange, business training or medical education.

"J-1 visa waiver" or "waiver" means a federal action that waives the requirement for a foreign physician, in the U.S. on a J-1 visa, to return to his/her country of nationality or country of last legal residence for a two-year period following medical residency training.

"J-1 visa waiver flex option" means a waiver granted by the Department recommending that a physician work at a medical facility that is not specifically designated as underserved by DHHS.

"J-1 visa waiver program" or "Waiver program" means the administration of the waiver process by the Department.

"Labor certification" means the process of proving that there are no qualified U.S. workers for the position being offered by an employer.

"Long-term care facility" means a location defined in and licensed under the Nursing Home Care Act.

"Liquidated damages" means damages in an amount designated by the parties during the formation of a contract for the injured party to collect as compensation upon a specific breach.

"Medical facility" means a facility where a physician fulfills his or her service obligation and includes, but is not limited to, a physician's office, hospital, long-term care facility, medical examiner office, or local health department. A medical examiner office is included as part of a medical facility *for the purposes of complying with and implementing Sections 212(e) and 214(1) of the federal Immigration and Nationality Act (8 U.S.C. 1182(e) and 8 U.S.C. 1184(1)) and 22 CFR 62 regarding the federal Exchange Visitor Program.* [20 ILCS 2310/231-431]

"Medically underserved area" or "MUA" means a location designated by DHHS based on the availability of primary care physicians, demographic characteristics, and health status of the residents of a service area. The designation is used to identify areas in need of additional health care services. MUAs can be found at <https://data.hrsa.gov/tools/shortage-area/mua-find>.

"Medically underserved population" or "MUP" means a population group

designated by DHHS as being in need of additional health care services. MUPs can be found at <https://data.hrsa.gov/tools/shortage-area/mua-find>.

"Metropolitan Statistical Area" or "MSA" means one or more adjacent counties that have at least one urban core area of at least 50,000 in population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties.

"Mental Health HPSA" means the shortage of psychiatrists and core mental health professionals in a defined area.

"National interest waiver" or "NIW" means an exemption from the labor certification process for foreign physicians who stay in the U.S. and work in an underserved area and whose stay is determined to be in the public interest by the Department. The waiver is issued by the U.S. Department of Homeland Security under section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999.

"Non-compete" means an agreement between the physician and the employer under which the physician agrees not to enter into competition with the employer after employment ends.

"Null and void" means that a J-1 visa waiver application submitted to the Department has no legal force and is invalid.

"Physician" means a person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987.

"Primary care" means health care that encompasses prevention services, basic diagnostic and treatment services, and support services such as laboratory, radiology, transportation and pharmacy. Primary care is comprehensive in nature and includes responsibility for coordination of other health and social services as they relate to patients' needs.

"Primary Care HPSA" means the primary care physician shortage in a defined area.

"Primary care physician" means a person licensed to practice medicine in all of its branches in Illinois under the Medical Practice Act of 1987 with a specialty in family practice, internal medicine, pediatrics, obstetrics/gynecology, or hospital medicine.

"Psychiatric physician" or "psychiatrist" means a person licensed to practice

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medicine in all of its branches under the Medical Practice Act of 1987 with a specialty in psychiatry.

"Rural" means any geographic area not located in a U.S. Bureau of the Census Metropolitan Statistical Area; or a county located within an MSA but having a population of 60,000 or less; or a geographic area located within an MSA but having a population of 2,500 or less.

"Service area" is the geographic area composed of the HPSA, MUA or MUP.

"Specialized mental health rehabilitation facility" means a location defined in and licensed under the Specialized Mental Health Rehabilitation Act of 2013.

"Specialist physician" or "Specialist" means a person licensed to practice medicine in all of its branches under the Medical Practice Act of 1987 with a specialty in an area other than primary care or psychiatry.

"Submission of application" or "Submission" means that a J-1 visa waiver application has been submitted to the Department. For purposes of this Part, submission means that the Department has received the application by the established submission deadline (see Section 591.110(a) and (b)). Submission does not mean that the application is postmarked by the established submission deadline but arrives at the Department on a later date.

"Termination for cause" means termination of employment caused by the physician's personal dishonesty, willful misconduct, breach of fiduciary duty, intentional failure to perform stated duties, or the willful violation of any law, rule or regulation, any of which results in material loss to the employer.

"Termination without cause" means termination of the physician's employment for the convenience of the employer.

"Toll" or "Tolling" means to pause, postpone or suspend the running of a defined time period.

"Unauthorized employment" means hiring a physician for employment that is beyond the terms and conditions of the physician's employment contract with the employer.

"Urban" means any geographic area that does not meet the definition of "rural" in this Section.

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SUBCHAPTER j

(Source: Emergency amendment at 46 Ill. Reg. \_\_\_\_\_, effective ~~SEP 19 2022~~, for a maximum of 150 days)

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**Section 591.30 Incorporated and Referenced Materials  
EMERGENCY**

The following materials are incorporated or referenced in this Part:

- a) Illinois statutes:
  - 1) Medical Practice Act of 1987 [225 ILCS 60]
  - 2) Hospital Licensing Act [210 ILCS 85]
  - 3) Nursing Home Care Act [210 ILCS 45]
  - 4) ID/DD Community Care Act [210 ILCS 47]
  - 5) Specialized Mental Health Rehabilitation Act of 2013 [210 ILCS 49]
  - 6) Illinois Rural/Downstate Health Act [410 ILCS 65]
  - 7) The Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois [20 ILCS 2310]
  
- b) Illinois Administrative Rules:
  - 1) Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)
  - 2) Certified Local Health Department Code (77 Ill. Adm. Code 600)
  
- c) Federal statutes:
  - 1) Educational Visitor Status, section 212e of the Immigration and Nationality Act (8 USC 1182e)
  - 2) Admission of Nonimmigrants, section 214(1) of the Immigration and Nationality Act (8 USC 1184(1))
  - 3) Federally Qualified Health Center, section 330 of the Public Health Service Act (42 USC 254b)
  - 4) Designation of Health Professional Shortage Areas, section 332 of the Public Health Service Act (42 USC 254e)

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- 5) Designation of Medically Underserved Areas/Populations, section 330 of the Public Health Service Act (42 USC 254e)
  - 6) Specialty Occupations, Department of Defense Workers, Fashion Models, section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 USC 1101)
  - 7) National Interest Waivers of Job Offer Requirements for Aliens Who are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999 (8 USC 1101, 1153 and 1182 and 42 USC 1395ww and 254e)
- d) Federal regulations:
- 1) Waiver of Two-Year Home-Country Physical Presence Requirement, Foreign Medical Graduates, Exchange Visitor Program (22 CFR 62 (October 6, 2014))
  - 2) Immigrant Visa Petitions (8 CFR 204 (May 17, 2011))
  - 3) Adjustment of Status to that Person Admitted for Permanent Residence (8 CFR 245 (November 18, 2016))
- e) All incorporations by reference of federal regulations refer to materials on the date specified and do not include any amendments or editions subsequent to the date specified.

(Source: Emergency amendment at 46 Ill. Reg. \_\_\_\_\_, effective SEP 19 2022, for a maximum of 150 days)

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## SUBPART B: PROCEDURES FOR J-1 VISA WAIVER REQUESTS

**Section 591.100 Eligibility of Physicians and Medical Facilities  
EMERGENCY**

- a) A physician who applies for a waiver shall meet the following requirements:
- 1) For primary care physicians, have entered into an employment contract with a medical facility located in a Primary Care HPSA. If the physician will work at more than one medical facility, each facility shall be located in a Primary Care HPSA;
  - 2) For psychiatrists, have entered into an employment contract with a medical facility located in a Mental Health HPSA. If the psychiatrist will work at more than one medical facility, each facility shall be located in a Mental Health HPSA;
  - 3) For specialists, have entered into an employment contract with a medical facility located in a Primary Care HPSA. If the specialist will work at more than one medical facility, each facility shall be located in a Primary Care HPSA;
  - 4) For specialists who apply for the J-1 visa waiver flex option, have entered into an employment contract with a medical facility that is not in a Primary Care HPSA. The application shall document that at least 51% of the physician's patients seen at the medical facility will reside in an HPSA. Documentation shall include patient origin data that depicts the total number of patients residing in an HPSA compared to the number of patients from the HPSA who received service at the medical facility. Patient origin information shall be for the most recent 12-month period for which data is available;
  - 5) Be board eligible or board certified in his or her medical specialty; and
  - 6) Have completed a residency in his or her medical specialty.
- b) Medical facilities eligible to participate in the waiver program shall meet the following requirements:
- 1) The facility shall meet the definition of medical facility in Section 591.20;

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- 2) For primary care physicians, the medical facility shall be located in a Primary Care HPSA;
- 3) For psychiatrists, the medical facility shall be located in a Mental Health HPSA;
- 4) For specialists, the medical facility may be located in an HPSA, MUA or MUP. If the medical facility is not located in an HPSA, MUA or MUP, it shall document that at least 51% of the participating physician's patients seen at the medical facility reside in the HPSA, MUA or MUP (see Section 591.100(a)(5));
- 5) The individual, partnership, corporation or other entity that employs the participating physician shall be established as a legal entity in Illinois and must be in good standing with the Illinois Secretary of State;
- 6) The facility shall not be in violation of the program's physician transfer requirements (see Section 591.160(e)).

(Source: Emergency amendment at 46 Ill. Reg. \_\_\_\_\_, effective SEP 19 2022, for a maximum of 150 days)

**Section 591.120 Application Materials and Processing  
EMERGENCY**

- a) Application materials are available from the Department's web site at:  
<https://dph.illinois.gov/content/dam/soi/en/web/idph/forms/topics-services/life-stages-populations/rural-underserved-populations/j1-waiver-program/j-1-waiver-application922021.pdf>.

Applications shall be sent to:

J-1 Visa Waiver Program  
Illinois Department of Public Health  
Center for Rural Health  
535 West Jefferson Street, Ground Floor  
Springfield, Illinois 62761-0001

or electronically to: [dph.j1waiver@illinois.gov](mailto:dph.j1waiver@illinois.gov).

- b) The application materials shall include the following:
- 1) A statement from the employer describing prior recruitment difficulties, the expected practice arrangement for the physician, and the impact on the medical facility and the patients it serves if the waiver is not approved;
  - 2) A copy of the medical facility's Certificate of Good Standing from the Illinois Secretary of State's Office (see Section 591.100(b)(6));
  - 3) An attestation from each medical facility where the physician will work that it accepts all patients regardless of the ability to pay, accepts Medicaid and Medicare on assignment, and uses a sliding-fee scale based on federal poverty guidelines to discount services to low-income uninsured persons. The attestation must also state that these discounts are offered to all patients of all providers at the medical facility and not only to the patients of the J-1 waiver applicant. This is not required for forensic pathologists who apply for a J-1 waiver and propose to work at a medical examiner's office;
  - 4) A copy of a minimum three-year employment contract between the physician and the medical facility. If the physician will be employed at multiple facilities, the contract shall contain this information for each facility.

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- A) The contract shall include:
- i) The name and address of the medical facility;
  - ii) The specific geographic area or areas in which the physician will practice;
  - iii) A statement that the physician will practice full-time.
    - For primary care physicians, the statement shall include that the physician will work full time in the Primary Care HPSA;
    - For psychiatrists, the statement shall include that the physician will work full time in the Mental Health HPSA;
    - For specialists, the statement shall include that the physician will work full time in the HPSA, MUA or MUP; or, if the facility is not located in an HPSA, MUA or MUP, documentation that at least 51% of the participating physician's patients will come from an HPSA, MUA or MUP;
  - iv) A statement that any amendments to the contract will adhere to State and federal J-1 visa waiver requirements;
  - v) A statement that termination of the physician may be only for cause;
  - vi) A statement that the physician will begin working at the medical facility within 90 days after receiving the waiver, completing graduate medical education, or receiving employment authorization (whichever is later) from the U.S. Department of Homeland Security, Citizenship and Immigration Services;
  - vii) A list of benefits and insurance to be provided to the physician;
  - viii) A statement that the employer will not add additional work locations without approval of the Department; and

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- ix) A statement that the contract will be in effect for, at a minimum, three years.
- B) The employment contract shall not include:
  - i) A non-compete clause; or
  - ii) A liquidated damages clause; or
  - iii) A termination without cause provision.
- 5) A statement from the employer that the salary offered to the physician is equivalent to that offered to all other physicians with equivalent skills and experience recruited by employer;
- 6) A letter from the chief medical officer or other high-level hospital executive verifying that hospital admitting privileges will be granted to the physician and, if not, how admissions of the physician's patients will be arranged. If the physician will work at multiple hospitals, each hospital shall submit this letter in the application;
- 7) A letter from at least one local organization or agency, such as the chamber of commerce, local health department, or other community-based organization, demonstrating support for the physician;
- 8) A copy of the applicant's Illinois medical license or application for an Illinois medical license;
- 9) A copy of the applicant's completed U.S. Department of State, J-1 Visa Waiver Recommendation Application (DS-3035);
- 10) A copy of the applicant's curriculum vitae;
- 11) A copy of the IAP-66/DS-2019 Form (Certificate for Exchange Visitor J-1 Status) for each year the applicant was in J-1 status;
- 12) Copies of the applicant's U.S. Customs and Border Protection I-94 Entry and Departure Cards;
- 13) Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative (if applicant is represented by an attorney);

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- 14) A personal statement from the applicant regarding his or her reasons for not wishing to fulfill the two-year country of nationality legal residence requirement;
- 15) For specialists who apply through the J-1 visa waiver flex option, documentation that a shortage exists in their specialty, for patients they propose to serve who reside in an HPSA, that is greater than the norm. This shortage is determined by creating a ratio of physicians to the population using a listing of physicians in that specialty who provide service in the HPSA and the population of the HPSA using the most recent data available. If the ratio of physician to population is greater than 1:10,000, a greater shortage of that specialty exist in the HPSA than is the norm. Documentation may include, but not be limited to, the following:
  - A) A listing of specialists who provide service in the HPSA; or
  - B) If there are no specialists who provide service in the HPSA, the applicant shall provide a summary listing the number of patients in the HPSA who migrated out of the HPSA to seek service. This summary shall be for the most recent 12-month period and shall include the travel time and distance these patients incurred to obtain service;
- 16) For specialists who apply through the J-1 visa waiver flex option, documentation comparing wait times for an appointment with a physician of the same specialty for patients who reside in the HPSA they propose to serve. Documentation may include, but not be limited to, the following:
  - A) A listing of specialists who provide service in the HPSA, including the average wait time for an appointment; or
  - B) If there are no specialists who provide service in the HPSA, the applicant shall provide a summary listing the number of patients who migrated out of the HPSA to seek service. The summary shall be for the most recent 12-month period and shall include the average wait time for an appointment;
- 17) A completed and notarized Certification Statement A regarding the contractual requirements set forth in section 214(k)(1)(B) and (C) of the Immigration and Nationality Act;

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- 18) A completed and notarized Certification Statement B describing the applicant's obligation to his/her country of nationality or country of last legal residence. If the applicant has a contractual obligation to return to his/her country of nationality or country of last legal residence, the applicant shall obtain a letter from that country stating no objection to the applicant remaining in the United States;
  - 19) A completed and notarized Certification Statement C attesting that the applicant's medical license has never been suspended or revoked and that he or she is not subject to any criminal investigation or proceedings by any medical licensing authority;
  - 20) A completed and notarized Certification Statement D regarding the accuracy of the application materials; and
  - 21) A completed and notarized Certification Statement E regarding medical specialty status.
- c) If the physician proposes to work at a medical facility that currently has another J-1 waiver physician working at the medical facility and that physician is not compliant with the reporting requirements in Section 591.140(a), the application will be considered to be incomplete (see subsection (e)(1)(B)).
- d) When an application is received, the following will occur:
- 1) The Department will determine whether the application is complete. A review will determine whether all applicable requirements have been addressed and whether all required materials and documentation have been submitted (see subsections (a) and (b)).
    - A) If complete, the application will be considered for selection of a waiver (see Section 591.130).
    - B) If the application is incomplete, the Department will notify the applicant or the applicant's representative in writing. The applicant will have 30 calendar days (from the date of the Department's notification) to address the issues identified by the Department and submit requested information or materials. If the applicant does not respond to the Department's notification within the prescribed time frame or if supplemental materials or information fail to address the issues identified by the Department, the application will be null and void.

- 2) The Department will notify the applicant (or the applicant's representative) in writing if the Department recommends a waiver. If the Department recommends a waiver, the application package will be forwarded to the U.S. Department of State, Waiver Review Division.

(Source: Emergency amendment at 46 Ill. Reg. \_\_\_\_\_, effective **SEP 19 2022**, for a maximum of 150 days)

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**Section 591.130 Selection Process  
EMERGENCY**

- a) The Department will not begin the selection process until all issues with incomplete applications have been resolved (see Section 591.120(e)(1)(B)).
- b) The U.S. Department of State allows state health departments to submit 30 J-1 waiver requests per federal fiscal year. When the Department has processed and approved 30 waiver requests in a federal fiscal year, subsequent applications will not be considered.
- c) In the first quarter of the federal fiscal year, a maximum of two applications may be approved for waiver recommendations for physicians who propose to work at the same medical facility. In subsequent calendar quarters, applications from physicians proposing to work at medical facilities that have already received two waiver recommendations will be considered; however, selection priority will be given to applications from physicians proposing to work at medical facilities that have not previously employed physicians with waivers or who do not currently have a physician with a waiver employed.
- d) The following selection criteria will apply to primary care physicians and psychiatrists:
  - 1) Applicants will be ranked based on the primary care or mental health HPSA score (as applicable) of their respective medical facility. If an applicant proposes to work at more than one medical facility, the primary care or mental health HPSA score of the medical facility where the applicant will predominately work will be used to rank the applicant.
  - 2) If two or more medical facilities have the same primary care or mental health HPSA score, preference will be given to the medical facility having the greatest unmet need for primary care physicians and psychiatrists. Unmet need is the number of primary care physician or psychiatrist full-time equivalents needed to cause the HPSA to no longer meet the threshold ratio for HPSA designation.
  - 3) An application will not be considered if the inclusion of the applicant will increase the number of primary care physicians or psychiatrists beyond the number needed to eliminate the HPSA designation for the geographic area, facility or population group.
- e) The following selection criteria will apply to specialists:

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- 1) Applicants will be ranked based on the primary care HPSA score of their respective medical facility. If an applicant will work at more than one medical facility, the primary care HPSA score of the medical facility where the applicant will predominately work will be used.
  - 2) If two or more medical facilities have the same primary care HPSA score, preference will be given to the medical facility having the greatest unmet need for specialty medical care. Unmet need is the number of specialist full-time equivalents needed to cause the HPSA to no longer meet the threshold ratio for HPSA designation.
  - 3) Specialists who applied through the J-1 visa waiver flex option shall be ranked based on the greater number of patients that will be seen at the medical facility.
- f) The following selection allocations will be used in processing waiver applications:
- 1) In the first quarter of the federal fiscal year, waiver recommendations will be initially reserved based on the following: four for psychiatrists; six for primary care physicians who will serve at medical facilities located in rural areas; seven for primary care physicians who will serve at medical facilities located in urban areas; and 13 for specialists.
  - 2) Of the 13 waiver recommendations initially reserved for specialists, the Department may approve up to 10 waivers under the J-1 visa waiver flex option.
  - 3) If an insufficient number of applications are submitted to apportion waiver recommendations based on the allocation in subsection (f)(1), the Department shall take those waiver applications and reallocate them to other categories.
  - 4) In the second, third, and fourth quarters of the federal fiscal year, remaining waivers may be used for primary care, psychiatry and specialists to work at medical facilities in both rural and urban areas.

(Source: Emergency amendment at 46 Ill. Reg. \_\_\_\_\_, effective SEP 19 2022, for a maximum of 150 days)

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**Section 591.140 Terms of Performance  
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- a) Each six months subsequent to the beginning date of employment, the physician shall send to the Department verification of full-time practice. This verification will be required until the physician fulfills the three-year service obligation. Physicians will access this website to provide the requested information:  
<https://idph.illinois.gov/nspmis/tblApplicationInformation/Show-J1WInformation.aspx?TblApplicationInformation=cwZxre8OVuHpwfJtqQZIKw%3d%3d>
- b) The Department will consider the physician to be in breach of the service obligation when any of the following occur:
  - 1) The physician fails to practice on a full-time basis at the approved medical facility;
  - 2) The physician fails to maintain a valid Illinois medical license; or
  - 3) The employer terminates the physician for cause.
- c) The Department will notify the U.S. Department of Homeland Security, Citizenship and Immigration Services, of the physician's breach of the waiver obligation.
- d) During the physician's employment, the medical facility shall notify the Department in writing of the following:
  - 1) A change in the medical facility's address;
  - 2) A change of ownership of the medical facility;
  - 3) A change in financial circumstances that renders the medical facility unable to financially support the physician;
  - 4) The medical facility's loss of licensure or accreditation;
  - 5) Termination of its exchange visitor program;
  - 6) Physician's withdrawal from the program; or
  - 7) Physician's employment termination.

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(Source: Emergency amendment at 46 Ill. Reg. \_\_\_\_\_, effective SEP 19 2022, for a maximum of 150 days)

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**Section 591.150 Physician Termination  
EMERGENCY**

- a) An employer may terminate the physician's employment when the termination is for cause (as defined in the employment contact and this Part).
- b) The employer shall notify the Department within 10 calendar days after termination of the physician.
- c) Once notification of the physician's termination is received from the employer, the Department will notify the U.S. Department of Homeland Security, Citizenship and Immigration Service of the physician's breach of the service obligation.

(Source: Emergency amendment at 46 Ill. Reg. \_\_\_\_\_, effective SEP 19 2022, for a maximum of 150 days)

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**Section 591.160 Change of Employer  
EMERGENCY**

- a) A physician may change employers, provided that prior approval is received from the Department. A physician can request a change of employer for the following:
  - 1) Infringement by the employer of the employment contract;
  - 2) Infringement by the employer of labor or employment laws; or
  - 3) The physician terminates employment for cause.
- b) The employment contract with the receiving facility shall be of duration so that the three-year employment requirement is fulfilled.
- c) The Department will deny the transfer request if it determines that any of the requirements in subsections (a) and (b) are not fulfilled.
- d) The Department will notify the physician and the receiving medical facility in writing if the transfer request is approved or denied.
- e) If a physician transfers without prior approval of the Department, the violation will be reported to the U.S. Departments of State and Homeland Security and the Illinois Department of Financial and Professional Regulation. Any violation of this requirement may also adversely affect the receiving medical facility's eligibility for participation in the program (see Section 591.100(b)(7)).

(Source: Emergency amendment at 46 Ill. Reg. \_\_\_\_\_, effective SEP 19 2022, for a maximum of 150 days)

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**Section 591.165 Physician Monitoring  
EMERGENCY**

- a) The physician's waiver will be monitored throughout the period of the service obligation. Components in the monitoring process include, but are not limited to, the physician's verification reports, correspondence, e-mails, and telephone calls.
- b) The physician and physician's employer shall fully and promptly cooperate with the Department's efforts to monitor and verify compliance with the waiver, including providing supporting documentation.
- c) The physician and physician's employer shall maintain records necessary to document compliance with the waiver and immediately notify the Department of any breaches of the waiver or of problems or concerns.
- d) The Department will relay any questions and concerns regarding the waiver to the physician (or physician's authorized representative) in writing. The physician or physician's authorized representative will be requested to respond in writing addressing the concerns.

(Source: Emergency rule added at 46 Ill. Reg. \_\_\_\_\_, effective SEP 19 2022, for a maximum of 150 days)

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**Section 591.180 National Interest Waiver  
EMERGENCY**

A foreign national physician who wishes to initiate the process for permanent residence in the U.S. shall have an approved labor certification and a job offer and his or her employer shall file an Immigrant Petition for Alien Worker form with the U.S. Department of Homeland Security, Citizenship and Immigration Service. In certain circumstances, the labor certification may be waived through the approval of a National Interest Waiver (NIW).

- a) To be eligible for an NIW, the physician shall:
  - 1) Agree to work full time in a medical facility for five years. The five-year commitment may occur prior to filing the NIW petition, be ongoing at the time the petition is filed, or commence after the petition is filed (provided that the Department confirms that the work was, is or will be in the public interest). Medical care provided in an HPSA, MUA or MUP that was part of the physician's medical education may be credited toward the five years, provided that the physician was in a lawful status other than J-1 during that time;
  - 2) Agree to work in primary care, psychiatry or other medical specialty;
  - 3) Agree to serve in a medical facility that is located in an HPSA, MUA, or MUP; and
  - 4) Obtain an attestation letter from the Department stating that the physician's work is in the public interest, available at:  
<https://dph.illinois.gov/content/dam/soi/en/web/idph/files/forms/niw-letter-request-form-042816.pdf>.
- b) A request for an attestation letter from the Department regarding the NIW shall contain the following:
  - 1) The physician's full name;
  - 2) The name of the physician's practice;
  - 3) The address of the physician's practice;
  - 4) The physician's specialty;

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- 5) A copy of the physician's H1B waiver or waivers for the date or dates of service;
  - 6) A copy of the physician's Illinois medical license;
  - 7) An affirmation letter from the employer stating that:
    - A) The physician has provided services as a primary care, psychiatric or specialty physician, full time (40 hours per week) at a clinical practice located in an HPSA, MUA or MUP, including the specific address where services were provided;
    - B) The practice is in the public interest in Illinois, including information that the physician served underinsured or uninsured patients as evidenced by acceptance of Medicaid and Medicare, and use of a sliding/discount fee scale for those without insurance in the designated underserved area. This is not required for forensic pathologists who apply for a J-1 waiver and propose to work at a medical examiner's office;
  - 8) Contact information for the physician and his or her legal counsel, if the physician is represented.
- c) The Department will review all information submitted to determine if responses meet the criteria of this Section. The Department will contact the physician or the physician's authorized representative if additional or clarifying information is needed.
- d) The physician or his or her authorized representative will be notified in writing of the approval or denial of the NIW request. If the request is approved, the Department will provide an attestation letter notifying the federal authority that the physician will work in an underserved area and that the medical services provided will be in the public interest.

(Source: Emergency amendment at 46 Ill. Reg. \_\_\_\_\_, effective SEP 19 2022, for a maximum of 150 days)

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