

NORTH DAKOTA J-1 VISA WAIVER

Program Policy and Guidelines



NORTH
Dakota Be Legendary.

Health & Human Services

North Dakota J-1 Visa Waiver Program Policy and Guidelines

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The North Dakota J-1 Visa Waiver Program

1. Background

Federal law requires that non-U.S. citizen International Medical Graduates (IMGs), defined as individuals who are not United States (US) citizens but are accepted to pursue graduate medical education or residency training in the US, shall obtain a J-1 exchange visitor visa or an H-1B visa. The J-1 visa allows the IMGs to remain in the US until they complete their studies. Upon completion of their studies, the IMGs on J-1 visas (the “J-1 Physicians”) must return to their home country for at least two years before they can return to the US.

Under certain circumstances, the J-1 Physician may request, of the US Citizenship and Immigration Service (USCIS), to waive the “two-year home country physical presence requirement.” The waiver may be requested under any one of the following circumstances:

1. Extreme hardship to his/her spouse or children who are citizens or permanent residents of the US;
2. Persecution if forced to return to his/her home country;
3. A US government agency may request a waiver on the basis that the J-1 Physician’s work is in the national and/or public interest; and/or
4. A state department of health requests a waiver on the condition that the J-1 Physician agrees to practice in an area having a shortage of health care professionals. This provision allows state departments of health to sponsor up to thirty (30) J-1 Physicians per federal fiscal year, 20 serving in health professional shortage area (HPSA), and ten FLEX waivers, or physicians who meet do not currently work in designated area but who serve patients from a designated area. (October 1 to September 30) under the Conrad 30 Waiver Program.

The North Dakota Primary Care Office (NDPCO) is managed by the North Dakota Department of Health and Human Services (NDHHS) and contracts with the Center for Rural Health (CRH) at the University of North Dakota School of Medicine and Health Sciences (UND SMHS) to manage the J-1 visa waiver application process. The NDPCO provides coordination and oversight of the North Dakota J-1 Visa Waiver Program and is the first step in obtaining a J-1 visa waiver for J-1 Physicians to work in North Dakota.

2. Purpose

The mission of the NDPCO is to increase primary care service delivery and workforce availability through the placement of critical healthcare providers to serve in federally designated Health Professional Shortage Areas (HPSAs), Medically Underserved Areas (MUAs), and Medically Underserved Populations (MUPs). Through the Conrad 30 Waiver Program, the NDPCO contributes towards increasing access to these areas and populations by sponsoring J-1 Physicians who agree to serve in HPSAs/MUAs/MUPs; therefore, waiving the two-year home requirement that a J-1 Physician would otherwise need to complete. The Conrad 30 Waiver Program enables the NDPCO to act on behalf of the state of North Dakota to request up to thirty (30) waivers per year for eligible J-1 Physicians.

North Dakota's Designated Shortage Areas

3. Policy

North Dakota's participation in the Conrad 30 Waiver Program is completely discretionary, voluntary, and may be modified or terminated at any time. In all instances, the NDPCO reserves the right to support or deny support for any request for a waiver.

Preference for J-1 visa waivers will be given to physicians in primary care (i.e., Family Practice, Pediatrics, Obstetrics & Gynecology, Internal Medicine, & Psychiatry) and specialists (i.e., Hospitalists, Geriatrics, General Radiology and General Surgery) who are willing to work full time (40 hours per week) for at least three years in a HPSA, MUA, or MUP.

3.1 Non-Designated/Flex Waivers

The Conrad 30 Waiver Program policy objectives are to increase access to physicians for the medically underserved. Flexibility provisions require a qualifying physician to serve the medically underserved population. These waivers are generally referred to as "flex 10" or "flex waivers". North Dakota approves up to 10 flex waivers per fiscal year (October 1 to September 30). In all flex waiver applications, facilities must provide a written statement of how the J-1 Physician will serve patients from HPSAs, MUAs, or MUPs. This statement can be included in the facility letter.

3.2 Special Consideration for Non-Designated Waivers

If extenuating circumstances require a special consideration, please contact the NDPCO J-1 representative, Stacy Kusler, at stacy.kusler@med.und.edu. Special consideration may or may not be given depending on individual cases. Increasing access to quality health

care services for those residing in HPSAs, MUAs, or MUPs will be considered first and foremost.

3.3 Waiver Request Eligibility and Guidelines

To be eligible for a J-1 visa waiver, a physician must:

- Agree to be employed full time in H-1B nonimmigrant status at a healthcare facility located in an area designated by the US Department of Health and Human Services (DHHS) as a HPSA, MUA, or MUP;
- Have a signed employment contract for full time employment (40 hours/week), for a term of three years;
- Agree to begin employment at the approved site within 90 days of receiving the J-1 visa waiver approval from USCIS;
- Provide documentation of completion and passing of the United States Medical Licensing Examination(USMLE) Steps 1, 2, and 3; and Educational Commission for Foreign Medical Graduates (ECFMG) Certifications;
- Have a North Dakota medical license, or documentation that a North Dakota license application is in process; and
- Include a “No Objection” letter from the home country, or a statement that the physician is not contractually obligated to return to the home country

To be eligible, an employer/service site(s) must:

- Be located in an area federally designated as a HPSA, MUA, or MUP. If you are applying for a flex waiver, describe how the J-1 Physician will serve patients from HPSAs, MUAs and/or MUPs.
- Include a bona fide offer of employment in the form of a completed employment contract for a period of at least three years that is signed by the J-1 Physician and by the authorizing representative of the facility
 - Include stipulations that the physician will be employed at least 40 hours per week.
 - Provide added detailed information if more than one service site is to be utilized by the physician to perform his/her required 40 hours per week
- Agree to provide NDPCO with the **Arrival to Practice Report [Appendix F]** within 30 days of the start of employment at the service site(s)
- Comply with federal and state program policies and guidelines. Failure, on the part of the sponsoring employer or the J-1 Physician - who has been granted a waiver, to comply with the rules and regulations of this program will result in a report of noncompliance to the USCIS and may, among other things, make the

site ineligible for future placements for a period of time to be determined by the NDPCO

- Not change, by contractual amendment or otherwise, the essential terms of the employment contract presented to NDPCO, unless authorized by NDPCO

4. North Dakota J-1 Visa Waiver Application Process

Step 1: Prior to applying for the J-1 visa waiver, an applicant must send a completed Data Sheet ([form DS-3035](#)), two self-addressed, stamped, legal-size envelopes and the current filing fee to the U.S. Department of State (USDOS) and receive a case number. The case number must appear on all future documents filed with the waiver application. It is recommended that the applicant do this through a qualified immigration attorney to ensure proper filing. Do not submit this request and fee to the NDPCO.

Step 2: Application is made to the NDPCO requesting a waiver of a J-1 Physician.

It is recommended that waiver requests be submitted from a healthcare facility or an immigration law professional representing the healthcare facility on behalf of a J-1 Physician. J-1 Physicians cannot apply for a waiver themselves.

Two copies of the required information and documentation from the **J-1 Visa Waiver Checklist [Appendix A]** must be submitted, in the order outlined in the checklist, in a single package to NDPCO. All documents must contain the case number previously assigned by the USDOS.

Applications submitted to NDPCO must contain all required documentation and be ready to submit to the USDOS before NDPCO will assign a review number to the application. A NDPCO review number will not be assigned until the application has been reviewed, by NDPCO, and determined complete. If any required documentation is missing, the application will be removed from the queue and returned to the applicant. The original review number will not be assigned to returned applications. Another completed, or revised, application may be resubmitted; however, a new review number and position in the queue for review will be assigned. No amendments to the application will be allowed while the application is under review. The review process may be modified or discontinued at any time. The NDPCO reserves the right to recommend or decline any request for a waiver and may prioritize applications to ensure access to healthcare services for citizens of the state and will make the decision whether to recommend a request for the waiver. Final waiver recommendations to USDOS will be given by the North Dakota State Health Officer. The review process can take two to four weeks.

For flex waivers, one waiver per month per organization will be permitted for review until all flex waivers are used. If a flex waiver application is returned due to incompleteness, it may be resubmitted in that same month for that same J-1 Physician to comply with the “one waiver per month per organization” rule. A second waiver packet for a different J-1 Physician cannot be submitted in the same month a returned application occurs. The same rule as above applies in that a review number will not be assigned until a completed application is submitted and reviewed for completeness by NDPCO.

Mail completed waiver application packets to NDPCO representative:

Stacy Kusler

Center for Rural Health, Primary Care Office

University of North Dakota School of Medicine and Health Sciences

1301 N Columbia Road, Stop 9037

Grand Forks, ND 58202-9037

Step 3: If waiver application is approved by NDPCO, the application will be sent to the USDOS [**See Sample Letter from NDDHHS to USDOS, Appendix E**]. USDOS reviews the J-1 waiver application and considers the state recommendations. If approved, the application/recommendation is sent to the USCIS to provide the final waiver approval. This process may take two to six weeks.

5. Monitoring and Reporting

Reporting measures are put in place by the NDPCO to ensure both the physician and employer/service site(s) are in compliance with the Conrad 30 program, and that the requirements of the North Dakota J-1 Policy and Guidelines are being met.

The following reports are required for compliance of this program:

- Within 30 days of the start of employment, by the J-1 Physician, the employer/service site(s) is required to submit an **Arrival to Practice Report [Appendix F]**.
- At the end of each contract year, the NDPCO will collect information via an online survey that goes to both the employer/service site(s) and the J-1 Physician to ensure services required under the Conrad 30 Waiver Program and the North Dakota J-1 Policy and Guidelines are continuing.
- **Confidential Exit Survey [Appendix G]** is to be completed by the J-1 Physician after the 3-year employment term has ended.

- **Annual retention survey** completion by both the employer and J-1 Physician. Retention surveys will be sent through **PRISM** (Provider Retention and Information System Management).

6. Change in Employment of J-1 Visa Waiver Recipient

6.1 Change in Status Due to Extenuating Circumstances

If the service site(s), named in the waiver, is due to close before the obligated three-year service, the J-1 Physician and immigration attorney must notify USCIS and receive approval from this agency for the change. Depending on the circumstances, USCIS may consider the closure of the healthcare facility named in the waiver application as an extenuating circumstance, excusing early termination of employment. The J-1 Physician granted a J-1 Visa waiver and H-1B status must comply with the terms and conditions of that non-immigration status. Such compliance includes notifying the USCIS of any material changes in the terms & conditions of the H-1B employment. In determining whether to excuse early termination of employment, USCIS will base its decision on the specific facts of each case. In all cases, the burden to establish eligibility rests with the physician. Contract changes which result in termination of a contract, a change in practice scope, and/or relocation from a site approved in the application request must also be presented in writing to NDPCO at least thirty (30) days prior to the change.

6.2 Transfer

North Dakota does not encourage the transfer of employment once a waiver has been approved. If unforeseen circumstances cause the waiver recipient to transfer to or add a new practice site, notification must be made to the USCIS immediately through an immigration attorney. Notification must be presented in writing to NDPCO at least thirty (30) days prior to the change.

The decision on whether the transfer can take place rests solely with the USCIS. It is up to the J-1 Physician, the new employer, and their representative (attorney) to make a case and submit the proper forms to the USCIS including evidence of extenuating circumstances, proof of designation status for designated areas, and an employment contract for remaining time of obligation.

6.3 Termination

Notify NDPCO, in writing, within ten (10) calendar days in the event of employment termination of the J-1 Physician by the employer and/or service site(s). Include the

specific reason(s) for termination. NDPCO cannot provide legal advice to the employer or J-1 Physician; both parties are encouraged to seek legal counsel to assist with this issue.

6.4 Change in Practice Site Status

The change of status includes adding a new site location to the original practice site or transferring sites while working with the same employer. It is important to note that the physician's H-1B status is address-specific. Therefore, the physician must inform USCIS of any new service site address to remain in compliance.

Adding a work location or transferring work locations under the same employer is acceptable as long as the original conditions of the waiver application are met. Transferring from a designated to a non-designated practice site is not acceptable. Adding a service site in a non-designated area while under a designated waiver is not acceptable. If the physician is serving in a non-designated area and wishes to add a service site in a designated area, please notify NDPCO so designation status can be verified. In all cases, notification to USCIS must be provided by the physician or attorney.

The employer and J-1 Physician need to contact NDPCO and receive approval for any changes, in writing, at least thirty (30) days in advance of any consideration of permanent changes in a service site(s) or circumstances of the J-1 Physician under the agreement. If the J-1 Physician under a designated waiver adds a service site, or is relocated to a service site that is in a non-designated HPSA, MUA, or MUP, termination of the J-1 waiver may result in breach of contract and will be reported to USDOS and USCIS.



Appendices

J-1 Visa/Conrad 30 Waiver Program

Appendix A

Waiver Packet Checklist

All listed information and documentation must be submitted to be considered for a waiver slot. Waiver requests that do not comply with these requirements will not be entered into the State's waiver review process and will be returned. There is sometimes a delay in receiving the North Dakota medical license, we will allow the application packet to be submitted without license information; however, there must be documentation verifying that a North Dakota medical license application was submitted.

The following is a list of required information and documents to be submitted for a waiver recommendation under the ND J-1 Visa Waiver Program. Documents should be placed in the waiver application packet in the following order:

1. DS-3035: J-1 Visa Waiver Review Application from USDOS.
2. Employment contract: signed and dated contract of full time employment (40 hours/week), for a term of three years; the physician agrees to begin employment at the approved site within 90 days of receiving the J-1 visa waiver.
3. Physician Attestation.
4. DS-2019: Certificate of Eligibility for Exchange Visitor (J-1) status.
5. Letter from the facility (facility letter) to include a description of the J-1 Physician's responsibilities, hours worked (40 hours are required), and location(s) where physician is expected to work.
 - a.) If the waiver application is for a non-designated flex waiver, a detailed description of how the J-1 Physician will serve the medically underserved population must be included in the facility letter.
 - b.) A description of recruitment efforts of an American physician should be included in the facility letter. Since the Conrad 30 program is not intended to take the place of recruitment efforts, but to offer an additional resource for recruitment, efforts of an American physician should first take place. Copies of advertisements, receipts, etc. are no longer required by NDPCO.
6. Evidence that the facility is located in a Health Professional Shortage Area/Medically Underserved Area (flex waivers, see 5. a.)
7. Personal statement from physician.

8. Physician curriculum vitae.
9. Copy of physician license or evidence the physician will be granted a license in the state.
10. I-94 entry cards: Departure Record card. Given to the traveler to be kept in his/her possession until he/she surrenders it upon departure from the United States.
11. No objection statement from home country (if applicable).
12. Form G-28 or letter from law office

Any questions about the North Dakota J-1 Visa Waiver Program should be directed to the Center for Rural Health, UND School of Medicine and Health Sciences, 1301 N. Columbia Road Stop 9037, Grand Forks, ND 58202-9037. Contact email: stacy.kusler@med.und.edu

Please assemble application packets as follows:

- Include two (2) copies of the application packet; one original and one copy.
- Do not include documents that are not required by DOS or the State of ND.
- Please only use binder clips. Do not use staples, or metal prong fasteners. Do not use two-sided copies or pages larger or smaller than 8.5 x 11.
- The DOS waiver case file number should appear in the upper right corner on every page of the application.
- The packet needs to include a Table of Contents.
- Separate each document with a colored divider page, labeled with the numbers that coincide with the Table of Contents.

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Appendix B

Resources

[FAQ's: Waiver of the Exchange Visitor Two-Year Home-Country Physical Presence Requirement](#)

[Federally Designated Shortage Areas](#)

[Federal Poverty Guidelines](#)

[Health Issues for the State of North Dakota \(Seventh Biennial Report\)](#)

[J-1 Visa Waiver Online](#)

[J-1 Visa Waiver North Dakota State Program](#)

[National Rural Recruitment and Retention Network](#)

[North Dakota Center for Rural Health](#)

[North Dakota Community Healthcare Association of the Dakotas \(CHAD\)](#)

[North Dakota Hospital Association](#)

[North Dakota Medical Association](#)

[Visa Waiver information from the US Department of State](#)

J-1 Visa/Conrad 30 Waiver Program

Appendix C

Frequently Asked Questions

How do I find job openings in ND?

The NDPCO contracts with the North Dakota Center for Rural Health to supplement recruitment and retention efforts of rural healthcare facilities. The Center for Rural Health utilizes [the National Rural Recruitment and Retention Network \(3RNET\)](#) for recruitment. [Job Service ND](#) is also a helpful resource for employment opportunities. While the Center for Rural Health offers recruitment assistance to providers, it is ultimately up to the J-1 Physician to find and secure employment.

How do I request a J-1 Visa Waive

The waiver request must come from a healthcare facility or immigration attorney on behalf of the J-1 Physician, and not directly from the J-1 Physician. There is no fee to the NDPCO to apply for a J-1 Visa waiver in ND, although it is recommended that an immigration attorney be used, and fees may be associated with services rendered by an attorney. However, you must first apply to the USDOS for a case file number which you will need for the J-1 Visa waiver application. Do not submit this request and fee to the NDPCO. For further instruction, refer to section 5 titled "**North Dakota J-1 Visa Waiver Application Process**" on page 5 of the Policy and Guidelines.

How long will it take the NDPCO to process my waiver request?

Each application will be reviewed by the NDPCO to determine whether the application is complete and meets the requirements of the federal and state guidelines. The amount of time necessary to process an application varies based on level of accuracy in the initial application. If all materials are provided, the initial review process should take approximately two to four (2-4) weeks. The sponsoring legal representative will be notified when the NDPCO has made a decision to recommend or not recommend a waiver. Non-designated flex waiver applications may take longer. If a waiver application is approved by the NDPCO, the waiver packet will then be sent to the USDOS for further review. The USCIS will grant the final decision and notify the NDPCO, as well as the representative listed on the waiver application.

How do I check the status of my waiver request?

Once an application has been submitted to the NDPCO for consideration, the J-1 Physician needs to refer all questions regarding his/her application to the employer or

immigration attorney handling their application request. All J-1 Physicians who call or e-mail regarding their status will be directed to contact their legal representative.

Who actually grants a J-1 Visa Waiver Application?

The NDPCO reviews J-1 Visa waiver applications initially for consideration. If the NDPCO recommends a J-1 Visa waiver, the application is sent to the USDOS **[Appendix E]** for their recommendation. The USDOS submits the application to the USCIS for final determination of approval/disapproval.

J-1 Visa/Conrad 30 Waiver Program

Appendix D

Glossary/Acronyms

DOS - Department of State, Bureau of Consular Affairs Waiver Review Division: The federal agency that reviews the recommendations submitted by interested state agencies on behalf of J-1 Physician applicants. In turn, they submit their own recommendations to the US Citizenship and Immigration Service (USCIS) for final determination of approval/disapproval.

Federally Designated Shortage Areas: Includes HPSAs, MUAs, and MUPs

Full-Time Clinical Practice: Defined as working a minimum of 40 hours per week, for at least 45 weeks each service year. The 40 hours per week may be compressed into no less than four days per week, with no more than 12 hours of work performed in a 24-hour period. Participants do not receive credit for hours worked over the required 40 hours per week and excess hours cannot be applied to any other work week. Research and teaching are not considered to be clinical practice. On-call status will not count towards the 40-hour work week, except to the extent the provider is directly serving patients during that period. Up to seven (7) weeks, or 35 workdays, of leave is allowed from the service site each year.

HPSA - Health Professional Shortage Area: An area defined by the US Department of Health & Human Services as having a shortage of healthcare providers.

MUA - Medically Underserved Area: A defined geographic area with a low provider-to-population ratio, or other high needs factors.

MUP - Medically Underserved Population: A population group with barriers to healthcare access due to culture, language or economics.

Primary Care Provider: A physician practicing general/family medicine, general internal medicine, general pediatrics, and/or general obstetrics/gynecology.

NDPCO – North Dakota Primary Care Office: The NDPCO is defined as the North Dakota Department of Health and Human Services (NDHHS). NDHHS subcontracts with the North Dakota Center for Rural Health to assist and monitor the J-1 Visa Waiver Program.

Service Site: The physical location(s) where the J-1 Physician will provide medical services. This location can be different from the sponsoring site location if, for example, a satellite office is used.

Specialist: A medical practice focus other than a primary care provider.

USCIS – United States Citizenship and Immigration Service: The governmental body that is responsible for the final recommendation to approve or deny the J-1 Visa waiver. This is a bureau in the Department of Homeland Security.

J-1 Visa/Conrad 30 Waiver Program

Appendix E

**Sample Letter from North Dakota Department of Health and Human Services to
US Department of State**

___, 2017

Certified Mail Number:

U.S. Department of State
Waiver Review Division, CA/VO/DO/W
600 – 19th Street NW
SA-17, 11th Floor
Washington, DC 20522-1707

RE: J-1 VISA HOME RESIDENCY WAIVER

NAME:

CASE FILE NUMBER:

DOB:

COUNTRY:

STATE REQUEST: North Dakota Department of Health and Human
Services

STATE IDENTIFICATION NUMBER: ND-__ of 10-17; ND-__ of 30-17

FACILITY:

ADDRESS:

COUNTY:

HPSA/MUA:

PRACTICE LOCATION(S):

EMPLOYMENT CONTRACT:

PUBLIC INTEREST:

Dear Visa Waiver Official:

Pursuant to Public Law 108 441, as amended, I request that you recommend a waiver of the two-year foreign residence requirement for Dr. _____.
_____, has submitted the enclosed documents to my office on behalf of _____ in support of a J-1 foreign residence waiver for Dr. _____.

After reviewing the enclosed documents, I agree that the services of a _____ physician that will be provided by Dr. _____ are urgently needed in the areas served by _____ in _____. Dr. _____'s services are in the public interest and will help address the significant demand for these services in North Dakota.

Thank you for your prompt attention to this important matter.

Sincerely,
Nizar Wehbi, MD, MPH, MBA
North Dakota State Health Officer

NKW/SK: mo
Cc:

**J-1 Visa/Conrad 30 Waiver Program
Appendix F**

Arrival to Practice Report

Note: We prefer this report to be completed online at:

https://und.qualtrics.com/jfe/form/SV_4YFeXnSibZbiGwZ

I, _____, a physician participating in the North Dakota J-1 Visa Waiver Program certify that I have arrived for work at (site name)_____

on ___/___/___ after having received notification from the US Citizenship and Immigration Service (USCIS) . My three-year service period begins ___/___/___ and ends ___/___/___.

Updated Contact Information

Home Address: _____

Home Phone: _____ Cell Phone: _____

Email Address: _____

ND Medical License Number: _____

Signature of Site Contact Person _____

Site Contact Person (Please Print Name): _____

Date _____

Location of Service Site: _____

Address City/State/Zip

Telephone Number

I hereby certify that I, the undersigned, will provide full-time primary health care or specialty services at the above-stated address a minimum of 40 hours per week for 3 years. I agree to notify the North Dakota Primary Care Office (NDPCO) of any changes in my intent to practice at the site identified in the application and/or contract with the North Dakota Department of Health and Human Services. Deviation from this agreement may result in notification by the NDPCO to the US Department of State and the US Citizenship and Immigration Service. I have a current ND medical license and have been thoroughly credentialed.

Physician's Signature

Date

Return completed form to: Stacy Kusler, Workforce Specialist, Stacy.kusler@und.edu

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Appendix G

Confidential Exit Survey

Note: we prefer to have this report completed online:

https://und.qualtrics.com/jfe/form/SV_djtwHvZb1rv6jad

Physician's Name: _____

Discipline: _____

Home Address: _____

City/State/Zip: _____

Home Phone: _____

Email: _____

Employer/Practice Site Name: _____

Address/City/State/Zip: _____

Start Date of J-1 Obligation: _____ Completion Date: _____

1. Did you apply for a National Interest Waiver (NIW)? ___Yes ___No
2. Retention Information: Will you remain at the site: ___Yes ___No
 - a. If the answer is no, what is the reason for leaving? Check all that apply:
 - Salary/Benefits
 - Workload
 - Relationship with management
 - Relationship with other professional staff
 - Inadequate support staff
 - Administrative responsibilities
 - Physical surroundings (facility)
 - Family needs
 - Geographic location
 - Other (describe)

Do you feel that you had an impact on the practice? ___Yes ___No

Describe: _____

Date of survey: _____

Return completed form to: Stacy Kusler, Workforce Specialist, Stacy.kusler@und.edu