

Emerging Issues #3

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Nevada's J-1 Visa Waiver Program: Problems and Solutions for a Critical Source of Primary Care Physicians

Introduction

Reports of abuse of J-1 visa physicians in Nevada by their employers emerged during a 2007 investigation by *The Las Vegas Sun*. These abuses are, at least in part, a reason for declining applications to the program in the State. In response, the Nevada Legislature enacted legislation to require greater oversight of the program. Community health centers rely on the J-1 Visa Waiver Program as a critical source of primary care physicians and therefore have an interest in ensuring effective administration at the state level.

Background: The J-1 Visa Waiver Program

The J-1 Visa Waiver Program for foreign physicians is one of the United States' primary means for combating the decline in available primary care physicians by recruiting foreign medical graduates to work in medically underserved rural and urban areas. By eliminating the two-year home/foreign residency requirement, the J-1 Visa Waiver Program allows foreign physicians to remain in the United States after their completion of medical school as "exchange visitors" in return for their service in a U.S. Department of Health and Human Services (DHHS)-designated medically underserved area (MUA) or health professional shortage area (HPSA) full-time for a minimum of three years.¹

Applications for waiver requests submitted by a physician, or an employer on behalf of a physician (or both), to the State or Federal agency, are processed by the U.S. Department of State (along with the State/Federal agency's waiver request). A recommendation is then made to the U.S. Department of Homeland Security (DHS)'s U.S. Citizenship and Immigration Services (USCIS) for review and approval of the waiver. In 1994, Congress enacted the Conrad 30 Program. The legislation, named for its chief sponsor Senator Kent Conrad (D-ND), allows state health agencies to request up to 30 waivers each year for J-1 visa physicians to work in DHHS-designated HPSAs or MUAs. The program was

¹ U.S. Government Accountability Office. (2006). *Foreign Physicians: Data on Use of J-1 Visa Waivers Needed to Better Address Physician Shortage*. Washington: U.S. Government Accountability Office.

reauthorized in 2009 extending it through September 2012.² No one federal agency is responsible for managing or tracking J-1 visa waivers and States have some discretion in how they design their programs. It is also important to note that federal law does not explicitly require program monitoring by any state or federal agency requesting waivers.³

Like other primary care providers in rural and urban medically underserved areas, community health centers across the country are experiencing significant clinical workforce shortages and challenges in recruiting clinical staff. In 2008, health centers were in need of 1,843 primary care providers. Twenty-eight percent of urban and 38% of rural health centers rely on J-1 visa physicians to fill open positions for primary care providers.⁴

Since they were first authorized to request J-1 visa waivers, the number of states that reported ever having done so has grown steadily. Between FY2003 and FY2005, however, there was substantial variation in the number of waivers states requested. For example, in FY2005, about one-quarter of states and territories requested the maximum 30 waivers, about one-quarter requested 10 or fewer, and two (Puerto Rico and the U.S. Virgin Islands) requested no waivers.⁵ During approximately the same time span, according to the Government Accountability Office (GAO), the number of doctors in the J-1 Visa Program, and therefore in the Waiver Program pool, declined significantly from 11,600 to 6,200 (~ 45% decline).⁶ Reasons for this decline are unknown; however, some speculate that the growing popularity of the less restrictive H1-B visa^{7,8} is a contributing factor. In at least one state (Nevada), purported abuse of J-1 visa waiver physicians by their employers have led to a continuing decline in applications to the program.⁹

The Number of J-1 Visa Physicians Declines in Nevada Amidst Allegations of Abuse

In the years leading up to 2007, Nevada health centers were receiving over 100 applications a month to participate in the Conrad 30 Program. However in 2007, they report receiving almost none.¹⁰ This report corresponds with the overall decline in J-1 visa participants of 67% in Nevada since 2003.

Reports of J-1 physician abuse by their employers were documented extensively by the *Las Vegas Sun* in its three year investigation of the program in Nevada. The investigation began in 2007 and since

² Making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2010, and for other purposes, Pub. L. No.111-83, §568, Stat. 2142 (2009).

³ See footnote 1

⁴ NACHC, The George Washington University School of Public Health and Health Services, The Robert Graham Center. (2008). *ACCESS Transformed: Building a Primary Care Workforce for the 21st Century*. Washington: NACHC.

⁵ See footnote 1

⁶ See footnote 1

⁷ Nevada State Health Division. (2009). *Improving Access to Health Care of Nevada's Underserved Populations: Conrad State 30 Program/J-1 Visa Waiver Program and National Interest Waiver*. Carson City: Nevada Department of Health and Human Services.

⁸ Jordan, M. (2007, February 16). Side Effects: With a Quirk in Visa Law, Small Towns Lose Doctors-- A program to Bring in Foreign Physicians Is Unexpectedly Hurt. *The Wall Street Journal*.

⁹ Allen, M. (2007, December 23). J-1 Doctors exploited; patients suffer, too. *Las Vegas Sun*. December 23, 2007.

¹⁰ See footnote 9

then, the *Sun* reported that some physicians participating in this program were forced to work 80-100 hours a week, sometimes not even in medically underserved areas, often cheated out of their federally mandated salaries and other benefits,¹¹ and a few were coerced to take out personal loans of \$100,000 or more on behalf of their employers.¹² Some physicians were made to sign contracts that called for them to pay up to \$250,000 if they broke their agreements, while others signed contracts that included non-compete clauses preventing them from working in underserved areas after leaving their current employers.¹³ Employers are often able to exploit these foreign physicians because not only do they pay their salaries, they also sponsor their visas and the physicians are reluctant to file complaints out of fear of deportation or other consequences¹⁴. According to the *Sun*, up to six official complaints similar to those aforementioned were made between 2001 and 2008 in Nevada; however they were rarely addressed by officials.

A Swift Response

In 2008, the Nevada State Health Division established the Primary Care Advisory Council to provide guidance to the Administrator and the Health Planning Program Manager who are responsible for the J-1 Visa Waiver Program in Nevada. As major issues with the program emerged, the council was revamped and expanded to address several problems including lack of transparency and oversight of the program, lack of detailed evaluation of applicants and employment contracts, and the lack of annual site visits actually being conducted. It became clear to council members, however, that the force of regulation would be necessary to effectively carry out their charge.

In May 2009, the Nevada legislature unanimously passed Senate Bill 229¹⁵ sponsored by Senator Maggie Carlton, in an attempt to establish stricter oversight of and uniform regulations for this program. The regulations set forth in SB229 intend to address several of the problems reported by the *Las Vegas Sun* during its three year investigation of this program, including the abuse and misuse of these physicians' services¹⁶. The law became effective July 1, 2009.

The new law requires that requests for and the issuing of letters of support be evaluated more closely to avoid potential problems with employers hiring J-1 physicians for fraudulent purposes. Specifically, when the State issues a letter of support, as required, to the U.S. Department of State in order to obtain a waiver, the program must first determine that the waiver is in the public interest and that the contract entered into by the employer and the physician complies with the more stringent regulations set forth in the legislation¹⁷. Additionally, the program must adopt rules to ensure J-1 visa physicians or their employers do not abuse or misuse the benefits of the visa by failing to provide the required minimum hours of health services to a MUA or where a federally designated health care professional shortage exists. J-1 visa physicians who violate these provisions are subject to penalties prescribed by the Nevada

¹¹ Allen, M. (2007, September 30). Indentured Doctors. *Las Vegas Sun*.

¹² Allen, M. (2008, August 4). State knew of abuses, did almost nothing. *Las Vegas Sun*.

¹³ Allen, M. (2009, January 25) J-1 doctors, employers are under scrutiny. *Las Vegas Sun*.

¹⁴ See footnote 13

¹⁵ SB 229 can be viewed in its entirety at http://www.leg.state.nv.us/75th2009/Bills/SB/SB229_EN.pdf

¹⁶ Allen, M. (2009, May 15). Bill would better protect foreign J-1 doctors. *Las Vegas Sun*.

¹⁷ See footnote 16

State Board of Health, however, and perhaps most significantly, the bill provides immunity from any civil or criminal liability for any person who reports or provides information concerning a violation of this act. The legislation also addresses the issue of continued physician service after the expiration of employment contract terms by prohibiting the inclusion of non-compete clauses in J-1 physician contracts.

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