

or discourages the physician from continuing to practice in any HHS-designated primary care HPSA or MUA/P or Mental Health HPSA after the period of obligation under the contract has expired.

(6) Provide that any amendment to the contract complies with all applicable Federal statutes, regulations and HHS policy.

(7) Be consistent with all applicable Federal statutes, regulations and HHS policy.

(e) The facility or practice sponsoring the physician:

(1) Must provide health services to individuals without discriminating against them because either they are unable to pay for those services or payment for those health services will be made under Medicare or Medicaid.

(2) May charge no more than the usual and customary rate prevailing in the geographic area in which the services are provided.

(3) Must provide care on a sliding fee scale for persons at or below 200 percent of poverty income level. Persons with third-party insurance may be charged the full fee for service.

(4) Must post a notice in a conspicuous location in the patient waiting area at the practice site to notify patients of the charges for service as required in this paragraph.

(5) Must provide evidence that the applicant facility made unsuccessful efforts to recruit a physician who is a United States physician for the position to be filled by the Exchange Visitor.

(6) Must provide a statement by the head of the facility to confirm the facility is located in a specific, designated HPSA or MUA/P, and that it provides medical care to Medicaid and Medicare eligible patients and to the uninsured indigent.

(f) The employer and the alien physician must submit information to the Secretary at the times and in the manner that the Secretary may reasonably require.

[67 FR 77696, Dec. 19, 2002]

§ 50.6 Procedures for Submission of application to HHS.

(a) The Exchange Visitor Waiver Review Board will review applications

submitted by private or non-federal institutions, organizations, or agencies or by a component agency of HHS. The Board will not accept applications submitted by Exchange Visitors or, unless under extenuating and exceptional circumstances, other U.S. Government Agencies.

(b) Applications, instruction sheets and information are available from the Executive Secretary, Exchange Visitor Waiver Review Board. An authorized official of the applicant institution (educational institution, hospital, laboratory, corporation, etc.) must sign the completed application. The applicant institution must send the completed application to the address indicated on the instruction sheet.

[67 FR 77697, Dec. 19, 2002]

§ 50.7 Personal hardship, persecution and visa extension considerations.

(a) It is *not* within the Department's jurisdiction to consider applications for waiver based on:

(1) Exceptional hardship to the exchange visitor's American or legally resident alien spouse or child; or

(2) The alien's unwillingness to return to the country of his/her nationality or last residence on the grounds that he/she or family members would be subject to persecution on account of race, religion or political opinion.

(b) Likewise, this Department is not responsible for considering requests to extend visas.

(c) Inquiries concerning the above should be directed to the District Office of the Immigration and Naturalization Service which has jurisdiction over the exchange visitor's place of residence in the United States.

[49 FR 9900, Mar. 16, 1984. Redesignated at 67 FR 77696, Dec. 19, 2002]

§ 50.8 Compliance.

If an alien physician acquires H-1B nonimmigrant status following approval by the INS of a request for waiver, then he or she becomes subject not only to the terms and conditions of the waiver, but also the terms and conditions of the H-1B nonimmigrant status. Failure to comply with those conditions will make that physician subject

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to removal from the United States by the INS.

[67 FR 77697, Dec. 19, 2002]

PART 51—CRITERIA FOR EVALUATING COMPREHENSIVE PLAN TO REDUCE RELIANCE ON ALIEN PHYSICIANS

Sec.

51.1 Purpose.

51.2 Application.

51.3 Who is eligible to apply?

51.4 How will the plans be evaluated?

AUTHORITY: Sec. 212, Immigration and Nationality Act, Pub. L. 82-114, as amended by Pub. L. 97-116, 95 Stat. 1611 (8 U.S.C. 1182(j)(2)(A)).

SOURCE: 48 FR 2539, Jan. 20, 1983, unless otherwise noted.

§ 51.1 Purpose.

The purpose of this regulation is to establish criteria for review and evaluation of the comprehensive plans of Graduate Medical Education Programs to reduce reliance on alien physicians, as required by the Immigration and Nationality Act Amendments of 1981, Pub. L. 97-116, for the waiver of certain requirements for exchange visitors who are coming to the United States to participate in programs of graduate medical education or training.

§ 51.2 Application.

Materials covering procedures for applying for substantial disruption waivers (including the comprehensive plan) may be obtained from the Educational Commission for Foreign Medical Graduates, 3624 Market Street, Philadelphia, Pennsylvania 19104.

EXPLANATORY NOTE: The Department of State entered into an agreement with the Educational Commission for Foreign Medical Graduates in 1971 whereby the latter was designated the authority to administer the issuance of the Form IAP-66 in all cases involving the admission, certification, transfer or extension of stay for foreign physicians in exchange visitor status who are receiving graduate medical education or training. The Commission was further designated the authority (FEDERAL REGISTER, Volume 44, No. 59, March 26, 1979), to process waiver requests under the "substantial disruption" provision of Pub. L. 94-484, as amended, within criteria to be provided by the United States Information Agency on advice from the Department

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of Health and Human Services (formerly Department of Health, Education, and Welfare).

§ 51.3 Who is eligible to apply?

Sponsors which had alien physicians in their exchange visitor programs on January 10, 1978, are eligible to apply. For purposes of this regulation, the term "program" relates to a graduate medical education program having an exchange visitor program for physicians participating in graduate medical education or training. An "exchange visitor program" is a program of a sponsor, designed to promote interchange of persons, knowledge and skills, and the interchange of developments in the field of education, the arts and sciences, and is concerned with one or more categories of participants to promote mutual understanding between the people of the United States and the people of other countries.

§ 51.4 How will the plans be evaluated?

After consultation with the Federal Substantial Disruption Waiver Board (seven Federal representatives charged with the responsibility of reviewing substantial disruption waiver applications), the Secretary of Health and Human Services will make recommendations to the Director, United States Information Agency, for the purpose of granting waivers. The Secretary will consider the following factors in determining whether or not a plan is satisfactory:

(a) The extent of the specific problems that the program or institution anticipates without a waiver, including, for example,

(1) Curtailment of services currently provided,

(2) Downgrading of medical care currently being provided,

(3) Reduction in the number of inpatients and outpatients receiving care,

(4) Inadequate medical coverage for population served, or

(5) Inadequate supervision of junior residents.

(b) The adequacy of the alternative resources and methods (including use of physician assistants (as defined in 42 CFR 57.802), nurse practitioners (as defined in 42 CFR 57.2402), and other non-physician providers) that have been