



REPORT OF REVIEW

J-1 WAIVER PROGRAM MED-SURG GROUP (MSG) OAK HILL, WEST VIRGINIA

OIG Report 95-14(H)
December 23, 1994

INTRODUCTION

This review was conducted as part of an overall evaluation of the J-1 Visa Waiver program and in response to concerns that physicians in the program were not complying with program requirements. Concerns included:

- o J-1 physicians allegedly were not providing the required 40 hours of primary care in Oak Hill, West Virginia, a designated Health Professional Shortage Area (HPSA). Rather, the physicians were practicing primary care and subspecialties in Beckley, West Virginia, a non-HPSA.
- o J-1 physicians allegedly were being used to compete unfairly with local physicians in Beckley.

FINDINGS

Our review disclosed violations of program requirements and intents.

- o Several Med-Surg Group (MSG) physicians were not practicing 40 hours' primary care in a HPSA; and in some cases, the physicians were also practicing subspecialties to a substantial degree.
- o Since J-1 physicians were practicing in Beckley, it is reasonable, in our opinion, to conclude that the physicians were competing with medical practices in Beckley.
- o The physician had ultimate responsibility for fulfilling the requirements of the J-1 Visa Waiver program. However, we found that the employer/sponsor had significant control over the J-1 physicians' work locations, practice, and schedules and was, in our opinion, primarily responsible for the condition noted.
- o There was a general consensus among physicians that there was not a shortage of primary care physicians in Oak Hill.

BACKGROUND

During our review, we noted that concerns about the implementation of the J-1 physician waiver program in the Oak Hill/Beckley area had created a climate of suspicion, distrust, and allegations in the area medical community, including and between J-1 physicians, employers/sponsors, and non-J-1 physicians. Continuation of this climate is not conducive, in our opinion, for effective implementation and acceptance of a program that relies primarily on the good faith efforts of all participants.

Under the J-1 Visa Waiver program, the requirement for foreign physicians to return to their home country for 2 years after they have completed medical training in the United States is waived if they agree to practice in areas of the Appalachian region that have been designated as HPSAs. The J-1 physicians are required to provide 40 hours of primary medical care per week in a HPSA. The majority of the J-1 physicians have a subspecialty and may practice this subspecialty after they meet the 40 hours per week primary care obligation.

When foreign physicians enter the program, they sign a J-1 Visa Waiver Policy Affidavit and Agreement acknowledging they are aware of the rules of the program, including the 40-hour primary care commitment to a HPSA. In addition, the physicians and employers are presently required to report information semiannually to the state of West Virginia about medical practices, including specific work locations and the hours assigned to that location.

Although ARC regulations do not require employer certifications about intended use of J-1 physicians, employers/sponsors submit a statement of intended location and practice in connection with requests for J-1 waivers for physicians to be employed. We consider this statement to be an important aspect of program control and employer accountability and view substantive diversion from statements made to ARC in support of J-1 applications as a serious program violation.

ARC policies note that an employer's failure to comply in good faith with the waiver policy may be considered in the evaluation of other applications involving the same employer. Also, the J-1 Visa Waiver Policy Affidavit and Agreement signed by the physician includes an acknowledgment that willful failure to comply with terms of the agreement would result in ARC notifying INS and recommending that deportation proceedings be instituted against the physician. There are no program provisions for employers/sponsors or J-1 physicians to unilaterally change the conditions under which the J-1 waivers were recommended and approved.

Primary responsibilities for reviewing J-1 waiver requests including supporting documentation, justifications of need, program oversight, and reporting have been delegated to state health agencies; but ARC retains the authority to act on waiver requests and to ensure compliance with program objectives and requirements.

During the period of ARC sponsorship of this program, numerous discussions have been held with state officials about physician eligibility and practice locations. Also, ARC has addressed requests to revise program provisions to allow J-1 physicians to practice in an area that serves

populations living in HPSAs, expand the specialties that are eligible for waiver consideration, and change the minimum of 40 hours per week of primary care to 32 hours per week.

ARC has consistently confirmed its positions that 40 hours per week of primary care in a HPSA remains its policy and that the specialties of family practice, general pediatrics, obstetrics, general internal medicine, psychiatry, or general surgery are eligible for waiver consideration.

The following quoted statements are taken from 1991 ARC correspondence from the Federal Co-Chairman to Congresspersons; and based on our file review, the positions noted remain representative of current ARC policies noted in the J-1 Visa Waiver Policy Affidavit and Agreement (copy attached as Exhibit A) signed by physicians and program guidelines issued by ARC in March 1994 (copy attached as Exhibit B). Prior ARC policy issuances contained similar requirements with respect to providing a minimum of 40 hours per week of primary care in a HPSA. ARC policies do not restrict other practices at other locations after fulfillment of primary care responsibilities.

"By way of background, in 1990 and early 1991, I received a tremendous increase in requests for waivers for physicians holding J-1 Visas. Subsequent to this increase, the United States Information Agency (USIA) raised concerns to me. Consequently, I placed a moratorium on the processing of any new J-1 Visa waiver requests until such time as a revised statement of policy could be issued. Please note, 60 pending J-1 Visa waiver requests were processed during the moratorium under our then existing guidelines, of which 17 were for physicians who went to West Virginia.

"The current J-1 Visa Waiver Request Policy Statement became effective May 1, 1991. It is important to note that in developing the Policy Statement, I sought and received considerable direct input from Appalachian Governors and their designated chief health officers, as well as federal government agencies, hospital administrators, congressional offices, state health care associations, and numerous other interested individuals and organizations.

"The resulting Policy Statement, in my view, is well-reasoned and fundamentally sound, and reflects the widely recognized and continuing commitment of the Appalachian Regional Commission to the health care needs of Appalachians in general and West Virginians in particular. Moreover, the Policy Statement will help to allay USIA concerns regarding our use of waivers under the Visitor Exchange Program. Without the revised Policy Statement, I believe the Program would have been greatly jeopardized or severely limited in the number of physicians who would have been recruited in Appalachia through this mechanism.

"Item 2 addresses the issue of whether the policy should be limited to primary care physicians. This very issue was thoroughly explored by my advisory group. A consensus emerged that primary care physicians were Appalachia's greatest need in order to ensure that people quickly received health care before

their illness became more acute. The Policy Statement, which is tied to placement of primary care physicians in shortage areas defined by the United States Public Health Service, will help people receive this important front line health care. Because of USIA's concern over the number of requests being made, I determined the policy should be limited to primary care physicians and I stand by that determination."

"Realizing there are many needs in Appalachia for health care, ARC voluntarily participates in the J-1 Waiver program with United States Information Agency and Immigration and Naturalization Service. The J-1 program is a part of U. S. Information Agency's Visitor Exchange Program. Over the past few months, requests for waivers for foreign doctors have increased significantly. In acknowledgement of USIA's concerns for the integrity of this international program, ARC has undertaken an effort of self-containment. Overwhelming evidence indicated the need to focus the program on the worst needs of the region.

"While there are many medical needs in the region, it is very clear that the greatest need in Appalachia is for primary care physicians. Therefore, ARC's policies focus on providing for the worst needs in the primary care disciplines in the geographic regions designated by the U. S. Public Health Service as 'health professional shortage areas'."

"Mr. further requests that I amend our guidelines to permit a participating primary care physician to practice 32 hours per week in a Health Professions Shortage Area as defined by the United States Public Health Service rather than 40 hours as is currently required. The 40 hour requirement was determined after numerous discussions with organizations, including the United States Public Health Service, and individuals from government and the private sector. Accordingly, absent any further justification for such a modification, I must decline this request."

"As you know, the clinic itself is not in a health manpower shortage area, a fact which precludes Dr. Dahman from qualifying under our old or new J-1 Visa Waiver Request Policy."

Further, the West Virginia Department of Health and Human Resources issued revised guidelines in June 1994 that emphasized the practice of primary care and restricted waiver considerations to applicants without subspecialties.

The program is intended to help provide medical service to patients in HPSAs with one objective being to alleviate travel needs of persons, many of whom are elderly and/or have low incomes.

We are not aware of any provisions for unilateral changes of program requirements or unapproved use of J-1 physicians. Our review focused on compliance with policies and J-1 physician and employer agreements.

Oak Hill, West Virginia, is designated a HPSA by the United States Public Health Service. It is located about 10 miles north of Beckley, West Virginia, which is a non-HPSA. As of July 1994, we identified 17 active J-1 physicians that had been approved to provide 40 hours per week of primary medical care at Oak Hill. In two of the cases, service was to be split between Oak Hill and Ansted, West Virginia. Ten of the physicians had subspecialties and most of the physicians admitted patients to Beckley and Oak Hill hospitals.

As of our field work, MSG employed eight J-1 physicians; and in six cases, subspecialties were noted in addition to internal medicine. Two additional J-1 physicians had completed their 2-year waiver period just prior to our review.

MSG operates medical clinics in Beckley, Oak Hill, and a few smaller communities. Of the 8 MSG J-1 physicians, 6 were noted in application packages as intended for Oak Hill and 2 as intended for Ansted and Oak Hill, West Virginia. The 4 physicians with subspecialties other than pediatrics were noted as intended for Oak Hill.

OBJECTIVE

To determine compliance with ARC J-1 program requirements that physicians perform 40 hours weekly of primary care for 2 years in an Appalachian HPSA.

METHODOLOGY

We conducted over 30 interviews, including J-1 physicians and representatives from MSG and other practicing physicians in the Oak Hill and Beckley areas. In addition, we reviewed ARC and the state of West Virginia policies and documents related to the J-1 Visa Waiver program.

We are not identifying J-1 physicians by name due to the tense relationships between affected parties. However, the summary comments included in this report fully reflect the condition reported. We also believe that J-1 physicians' voluntary comments about noncompliance with J-1 program requirements were accurate, especially since such statements were not in the J-1 physicians' best interests. We also concluded that J-1 physicians had the best direct knowledge about their work locations and type of medical services provided to patients. Further, our review emphasized substantive deviation from J-1 agreements.

RESULTS

Based on a review of available information and discussions with J-1 physicians and employer, we concluded that there were violations of ARC regulations and program intents. This occurred because, in four cases, physicians were not providing 40 hours per week of primary care medical service at the approved location and were practicing subspecialties to a substantial degree.

- o At the time of our review (September 1994), MSG had 21 physicians, including 8 J-1 physicians. The J-1 physicians acknowledged they understood their responsibility to provide 40 hours per week in primary care in a HPSA. In four cases, the physicians were generally complying with program requirements. The

other 4 J-1s were practicing subspecialties to a substantial degree and spending from 25 to 50 percent of their time at the Oak Hill HPSA location for which their J-1 waivers were approved. In one instance, a physician was primarily practicing a subspecialty (cardiology) at Beckley, a non-HPSA.

- o The employer/sponsor said that all his physicians work more than 40 hours per week in a HPSA or provide service in Beckley, West Virginia, to patients from a HPSA (underscoring added).
- o There was a general consensus among the J-1 physicians and non-J-1 physicians interviewed that there was not a shortage of primary care service in Oak Hill, West Virginia.
- o Information submitted to support requests for J-1 approvals, including employer/sponsor letters all indicated 40 hours of primary care in a HPSA and made no mention of service, including subspecialty practice, at a non-HPSA location.
- o J-1 physicians with subspecialties noted that they preferred to work in their subspecialties; the majority of patients seen at Oak Hill or Beckley were referred to them for treatment in their subspecialty; most referrals for subspecialty work were generated by other MSG physicians, including J-1s, who practiced primary care; the employer benefitted from subspecialty work because of higher billings; the physicians could benefit from increased salaries based on a bonus/incentive program; and, at times, it was difficult to separate primary care from subspecialty practice.
- o J-1 physicians noted that they had not been pressured to work outside the HPSA or practice subspecialties. However, they also noted that the employer controlled the work assignments, locations, schedules, initial patient contacts in most cases (e.g., patient to see primary care internist first with subsequent referral to subspecialist), and did not discourage practice of subspecialties.
- o There has been an excessive number of J-1 physicians approved for Oak Hill; and this has contributed to instances of noncompliance with program provisions. HPSA designations do not presently include J-1s in determinations of medical provider availability, but we believe the substantial numbers of J-1s approved for Oak Hill creates a special situation that requires inclusion of active J-1s in a redetermination of Oak Hill's designation as a HPSA. Inclusion of the J-1 physicians could result in a ratio of physicians to potential service area patients well below the ratios used by the state of West Virginia and the US Public Health Service to identify HPSAs. For example, available information indicated a physician/patient ratio of about 1 to 3,049 in the Oak Hill HPSA service area without consideration of J-1 physicians. State data that included 19 J-1 active physicians approved to practice primary care in Oak Hill resulted in a ratio of 1 to 313. Normally, a ratio of about 1 to 3,500 is noted as necessary to support a

HPSA designation or 1 to 3,000 in areas with high incidence of disease or high poverty.

- o Restrictive covenants (noncompete clauses) in employer/J-1 physician employment agreements substantially reduces the potential that J-1 physicians will remain at the HPSA location after completion of the 2-year J-1 waiver program.

Records Review

Available records, including J-1 waiver application packages, noted that the four cases where J-1 physicians substantially did not comply with J-1 agreements to provide 40 hours per week of primary care at the HPSA sites were internists with subspecialties in cardiology, infectious diseases, nephrology, and pulmonology, respectively.

The sponsor's supporting letters, noting intentions to employ the physicians to practice 40 hours per week of primary care in a HPSA, were dated 6/5/92, 12/1/92, 12/3/92, and 5/25/93. The J-1 physicians started work for MSG 12/19/92, 7/5/93, 7/19/93, and 7/22/93, respectively.

The letters from MSG supporting ARC sponsorship of J-1 waivers generally noted that MSG was located in a desperately underserved area of Appalachia, which was designated a health manpower shortage area. The letters noted that the clinic's primary service area encompassed the population of Oak Hill and Ansted, that there are fewer than 6 (8 in one letter) primary care physicians in this area, that terms of the physicians J-1 visa waiver policy affidavit and agreement were applicable, and that the physicians would practice a minimum of 40 hours per week in this area, which had been determined to be a HPSA by the US Public Health Service. In two cases, the Oak Hill clinic address was specifically noted; and in the other two cases, Oak Hill and Ansted were noted. A sample of these letters is provided as Exhibit C.

The Application for Alien Employment Certification forms, which were signed by the employer, show the work location for the 4 J-1s as Oak Hill, West Virginia. An example is noted as Exhibit D.

The physicians' completed notarized ARC J-1 Visa Waiver Policy Affidavit and Agreements include a provision to render primary medical care services to patients for a minimum of 40 hours per week within a USPHS designated HPSA (Exhibit A).

ARC and West Virginia Reports

ARC Reporting Requirements

ARC reporting requirements included notification to ARC at the start of employment and at 6-month intervals thereafter until early in 1994, when the 6-month reporting was delegated to state agencies. We did not locate the very basic ARC J-1 Visa Physician Reporting Form, copy attached as Exhibit E, for any of the 8 J-1 physicians. The absence of forms included the initial form noting the start of employment and at least one 6-month reporting form for each physician.

The J-1 physicians said they were not aware of these forms although ARC forwarded the forms to the physicians or their lawyers as part of the J-1 information package. We were unable to determine whether the J-1 physicians had received the reporting forms. Several physicians said that all their mail was opened by MSG. MSG said none of the yellow ARC reporting forms had been completed.

In early July 1994, ARC forwarded a request for information to MSG. The employer responses, example included as Exhibit F, were received on July 22, 1994, and noted, as follows, for the 4 applicable J-1 physicians.

- o 30 hours weekly Oak Hill clinic; 10 hours weekly at Plateau Medical Center (PMC), Oak Hill; and 10 to 20 hours weekly in subspecialty at Beckley office above and beyond 40 hours at Oak Hill.
- o 30 hours weekly Oak Hill clinic; 10 hours weekly PMC, Oak Hill; and 10 to 20 hours weekly in subspecialty in Beckley office above and beyond 40 hours in Oak Hill.
- o 30 hours weekly Oak Hill clinic; 10 hours weekly Ansted clinic; and 10 to 20 hours weekly in subspecialty at BMA Dialysis Center above and beyond 40 hours in Oak Hill and Ansted offices.
- o 20 hours weekly at Oak Hill; 10 hours weekly at Ansted; 10 hours weekly at PMC, Oak Hill; and 10 to 20 hours weekly in subspecialty at Beckley office above and beyond 40 hours in Oak Hill and Ansted offices.

These responses were not consistent with information provided by the J-1 physicians. The physicians noted additional time at a non-HPSA location and substantial time devoted to subspecialty practice. Also, information provided to the West Virginia state agency, as noted below, differed substantially with respect to time spent at Oak Hill.

West Virginia Request for Information

In June 1994, the West Virginia Department of Health and Human Resources (state agency) issued new policies and procedures for the J-1 Visa Waiver program and requested completion of a questionnaire identifying use of J-1 physicians. The responses were to be signed by the physician, employer, and medical director.

MSG did not respond to the West Virginia request until October 17, 1994; and the forms did not include information on several items despite the apparent availability of detailed information in MSG systems. For example, the responses noted the number of office and hospital visits for the period January 1 to June 30, 1994, but did not include information on the number of office visits from patients who reside in a HPSA and number of patients for whom Medicare and Medicaid claims were submitted.

The employer supplied West Virginia and OIG with computer printouts that included the location of patients. Thus, it appeared this type information could have been broken down and noted on the West Virginia questionnaire for each J-1 physician. The employer's cover letter submitted with the reporting forms noted that the majority of patients live in HPSAs.

The responses for the 4 physicians we identified as not complying with J-1 provisions are included as Exhibits G, H, I, and J and note as follows:

- o Physician 1--2 1/2 hours on 3 days per week at Oak Hill and 3 hours on 1 day, or 10 1/2 hours per week plus over 50 hours per week treating hospitalized patients. The number of office visits was noted as 566 and hospital visits as 950.
- o Physician 2--A total of 16 1/2 hours per week on 4 days shown at Oak Hill and 50+ hours as required to treat hospitalized patients. The number of office visits was noted as 109 and hospital visits as 1,661.
- o Physician 3--A total of 11 hours per week on 4 days was shown at Oak Hill and 50+ hours as required to treat hospitalized patients. The number of office visits was noted as 179 and hospital visits as 1,107.
- o Physician 4--A total of 12 hours on 4 days was shown at Oak Hill and 40+ hours as required to treat hospitalized patients. The number of office visits was noted as 225 and hospital visits as 732.

Physician	Hours Per Week at HPSA Site	Office Visits	Hospital Visits	Weekly Time Treating Hospitalized Patients
1	10.5	566	950	50+
2	16.5	109	1,661	50+
3	11	179	1,107	50+
4	12	225	732	40+

The noted information is generally consistent with the information provided by the J-1 physicians about their work locations. Also, the information noted about office and hospital visits and time spent treating hospitalized patients is consistent with information provided by J-1 physicians about the substantial amount of subspecialty practice.

Further, in one case, the form notes only cardiology as a physician specialty.

The following table notes the responses dealing with 4 J-1 physicians that we concluded are more closely practicing in line with J-1 waiver agreements.

Physician	Hours Per Week at HPSA Site	Office Visits	Hospital Visits	Weekly Time Treating Hospitalized Patients
1	26.5	755	1,238	35+
2	26.5	1,232	108	15+
3	26.5	744	430	20+
4	38	932	110	15+

Despite the substantial hospital visits in two instances where the J-1 physicians were primarily practicing primary care, the ratios of office to hospital visits is considerably larger for the J-1 physicians who noted substantial practice of subspecialties.

MSG Comment and Records

The summarized comments noted below reflect substantial differences of interpretation about expected and/or necessary program activities between MSG and the ARC/West Virginia program guidance and requirements. These differences of interpretations have contributed to the controversial condition with respect to the J-1 program that we encountered in the Beckley/Oak Hill area.

A fundamental difference is MSG's apparent belief that the provision of service to patients from a HPSA satisfies, or partially satisfies, requirements for 40 hours of weekly primary care service in a HPSA. For example, the employer stated that all of MSG physicians (21) work more than 40 hours per week, and the 8 J-1 physicians work 40 hours per week in a HPSA or provide service in Beckley, West Virginia, to patients from a HPSA.

Other MSG positions were that subspecialty work is interrelated with primary care, that subspecialists are needed as a referral source if internists are to practice in an area, that the Oak Hill area has an aging population with multi-organ/system problems and there is a need for subspecialists to deal with these problems, that it is unrealistic to believe a J-1 physician can sit in a clinic for 40 hours per week when they have subspecialties and there are patients to care for at other locations, and that Federal agencies should not mandate how clinics provide medical care.

Concerns were expressed about some of the quality of care being provided in the area, and the belief was expressed that MSG had improved the quality of care in the area and hoped to provide quality medical care at additional locations in southern West Virginia.

On related program issues, it was noted that the ARC J-1 Physician Reporting Form (yellow) was only required in the past year, none of the forms had been filled out, and there was too much hassle to use the form and obtain J-1 Visa positions. (A copy of the reporting form is noted as

Exhibit E). Concerns were expressed about J-1 commitments to the local communities, the apparent misconception in the community about MSG's motives, and new West Virginia requirements excluding subspecialists. It was noted that new contracts were completed with two J-1 physicians whereby the J-1s will receive 50 percent of the revenues generated for MSG, after payment of overhead, that the physicians can earn more money under this arrangement if they perform well, and that all mail addressed to physicians is opened by MSG unless marked "personal."

An MSG physician work schedule dated 8/10/94 provided information about scheduled clinic work hours for J-1 physicians. As noted in the following table, the schedule reflects a limited amount of scheduled clinic time for some J-1 physicians and generally less scheduled time than reported on other forms. Of particular significance, however, are differences in scheduled time between the 4 J-1 physicians noted as emphasizing subspecialties and the 4 J-1 physicians identified as emphasizing primary care.

Weekly Scheduled Clinic Hours

SUBSPECIALTY PHYSICIANS				
Physician	Oak Hill	Ansted	Beckley	Total
1	5.5		5.5	11
2	9		6	15
3	5.5		6	11.5
4	5.5		5.5	11
PRIMARY CARE PHYSICIANS				
Physician	Oak Hill	Ansted	Beckley	Total
1	12.5	9	3	24.5
2	21.5		3	24.5
3	19		5.5	24.5
4	1.5	13.5		15

MSG also provided summary data in computer-generated printouts pertaining to residence locations of patients. MSG noted the information disclosed that the majority of MSG patients live in HPSAs and that 80 percent of patients treated are either Medicare, Medicaid, or have no insurance. We did not confirm the information but have no reason at this time to question its accuracy.

Based on MSG comments and practices, we concluded that a fundamental issue is not the extent to which MSG provides for treatment of patients from HPSAs but the primary care treatment of patients at a HPSA location. The J-1 waiver program is intended to provide practitioners in a HPSA, not to approve J-1s for physicians to compete with non-J-1s in non-HPSAs. We were not provided any evidence that the non-J-1 physicians in Beckley could not provide primary care service to patients choosing to visit Beckley for treatment. Also, there is no provision for unilateral decisions by employers to utilize J-1 physicians in a manner not provided for in program provisions or agreements. Such actions have contributed substantially to the controversy about the J-1 waiver program in the Beckley/Oak Hill area and the various and widely differing perceptions about program implementation and intentions.

Sponsors/employers have important responsibilities, in our opinion, to address issues of concern, including desired program changes, with appropriate officials, as opposed to initiating unilateral actions, and have primary responsibilities for using J-1 physicians in accord with intentions noted when requesting consideration of J-1 waivers.

Summary of J-1 Physician Activities

J-1 physicians essentially confirmed information that was indicated on the recent reports to the West Virginia Department of Health and Human Resources with respect to work locations and types of medical service provided. A summary of input about J-1 physician activity and understandings follows:

- o The J-1 physicians said they understood that the J-1 waiver agreement required them to work 40 hours per week in primary care in a HPSA and that, although they generally preferred practicing their subspecialties, it was their intent to comply with the ARC program provisions. They also noted that, although pressure had not been a factor in determining practice locations and services, work schedules and methods of operation--e.g., subspecialists see most patients based on referrals--were primarily the employer's determinations.
- o There was general consensus among the physicians that there was not a shortage of primary care in Oak Hill. Some of the J-1 physicians stated they did not have full patient loads. One J-1 physician stated he saw an average of 10 patients per day when a full patient load would be between 20 to 25 patients per day, and another J-1 physician stated he saw 1 to 6 patients per day when assigned to an MSG clinic. One physician noted that Oak Hill was saturated with physicians.
- o Many of the J-1 physicians acknowledged that, while they were assigned to an MSG clinic in Oak Hill, the majority of patients they saw were referred to them for treatment in their subspecialty and not for primary care. When not assigned to an MSG clinic, the J-1 physicians typically visited their patients or performed specialized procedures at the hospitals in Beckley or Oak Hill. It was generally acknowledged by the MSG J-1 physicians that the 4 J-1 physicians and other MSG internists practicing primary care made "referrals" to the 4 J-1 physicians

practicing primarily their subspecialties. J-1s said that it often was difficult to separate primary care from subspecialty work. One J-1 physician said that 95 percent of his practice was in his subspecialty as a result of referrals made to him from the J-1 physicians and other physicians at MSG. Two other physicians said they practiced subspecialties 90 percent and 80 percent of the time.

- o MSG offered its J-1 physicians a program in which the physicians earned a guaranteed salary plus a percentage of the revenues they generated above their salary and after overhead expenses were paid. One J-1 physician stated that he expected to generate billings in excess of \$1.5 million for MSG during 1994 as a result of practicing his subspecialty. Because of the bonus program, he estimated he would earn about \$250,000 this year--\$170,000 more than his guaranteed salary of \$80,000. The physician stated that, during 1993, he performed about 250 heart catheterizations, all of which were performed in Beckley, a non-HPSA; generated billings for the employer of about \$1 million; and earned \$150,000.
- o Two of the J-1 physicians, who were receiving \$65,000 to \$85,000 guaranteed salaries for their first year at MSG, were offered new contracts for their second year. Under the new contract, they would not receive a guaranteed salary but would receive 50 percent of the revenues they generate for MSG after MSG takes its share for overhead expenses. This resulted in an immediate reduction of salary for both the physicians because neither of them had a full patient load.
- o Physicians believed that the J-1 waiver program was generally beneficial for them since it offered opportunities for obtaining permanent residence and improved the quality of care in the area.

Additional Requests for Consideration of J-1 Waivers

Three additional requests for consideration of J-1 waivers were made by MSG between January and August 1994. The requests were submitted at different times; and in two cases, submissions were also apparently forwarded to the US Department of Agriculture, which contributed to some confusion and difficulties in tracking all pertinent correspondence. The following paragraphs note pertinent correspondence and issues that resulted in the state agency not recommending sponsorship of the three additional requests as of the end of our review.

On December 8, 1994, MSG requested the Commissioner, Bureau of Public Health, West Virginia Department of Health and Human Resources to consider three additional J-1 physicians. The letter notes that the US Department of Agriculture has agreed to sponsor the physicians for waivers if the State Health Department acknowledges the need for these physicians in the community. (We could not confirm such an agreement.) The letter also notes that MSG is the only organization providing medical services to the town of Ansted and is the largest health care provider in Oak Hill, which has a population of about 8,000.

Comments were also noted about 11 of 20 J-1 physicians in the Oak Hill area. Four of the physicians are employed by MSG and are noted as leaving in December 1994, May 1995, June 1995, and August 1995. Questions about the practices of 3 other J-1s employed by other providers are noted.

Two of the physicians for which waivers are requested are identified as internists and one as a general surgeon. It is our understanding that the physicians have subspecialties of cardiology and nephrology, and the surgeon is a cardiovascular specialist. Based on the use of J-1s with subspecialties, this issue needs careful evaluation in future decisions on J-1 waivers.

A letter dated December 7, 1994, from MSG's law firm to the West Virginia Department of Health and Human Resources notes that the 3 physicians are living and working in West Virginia under employment authorizations granted by the Immigration and Naturalization Service. The letter further states that the MSG made firm commitments to employ the 3 physicians more than 6 months ago, which was prior to the effective date of the state's new policy regarding ARC sponsorship. Further, the letter says that a state official said that a grandfather clause was available to cover the type of situation noted.

A December 7, 1994 letter, copy attached as Exhibit K, from the West Virginia Bureau of Public Health, Health Professional Recruitment to the law firm, states that West Virginia cannot make a favorable recommendation for any additional J-1 physicians for the Oak Hill service area in the near future. The state agency letter also comments on the grandfather clause being a one-time occurrence and that employer commitments to physicians were made with knowledge that West Virginia had a freeze on J-1 waiver applications, pending the finalizing of revised policies. The letter also notes ARC's concern with the concentration of J-1s in Oak Hill and states that, when J-1s are considered, the physician to population ratios are well below those required for a HPSA designation.

Other available information includes sponsor letters requesting consideration of additional J-1s in January 1994; notification to the sponsor's law firm in February 1994 about an ARC freeze on J-1 requests; and an August 12, 1994 resubmission of a J-1 application package to the West Virginia Department of Health and Human Resources with the request that the package be forwarded to ARC for reconsideration. The state agency informed the sponsor's law firm on August 15, 1994 that West Virginia could not sponsor the waiver requests due to the overutilization of J-1 physicians in the Oak Hill service area. ARC did not act on the application due to lack of state sponsorship. ARC concerns about the concentration of J-1s in Oak Hill was noted in a September 6, 1994 letter to the state agency, copy attached as Exhibit L.

We also understand that, between January and August 1994, requests for J-1 waiver consideration for 2 of the physicians were also forwarded to the US Department of Agriculture. We have previously recommended that one Federal entity sponsor J-1 waivers in Appalachia in order to avoid duplicative and unnecessary approvals.

The primary issue is whether a need exists for additional J-1 physicians in the Oak Hill area. The purpose of the ARC program is grounded in ARC policy to increase availability of needed health professionals in rural Appalachian communities. Thus, all parties, including the

prospective employer/sponsor, have a responsibility to ensure a need for primary care physicians in a HPSA prior to submission of requests for waivers.

As noted in this report, numerous J-1 physicians have been approved to practice primary care in Oak Hill; and the general consensus of the practicing J-1 and non-J-1 physicians in the area was that there was no shortage of primary care.

In 4 of the 8 MSG cases reviewed, the physicians were not practicing 40 hours per week at Oak Hill and/or Ansted and were also practicing subspecialties to a substantial degree. If these physicians were practicing 40 hours of primary care at the HPSA sites for which J-1 waivers were recommended, the need for additional such services would be further reduced. We also concluded that sufficient information was available to the employer at the time commitments were made to the 3 physician candidates for J-1 waivers that there was a concentration of J-1s approved for primary care practice at Oak Hill and that patient workload was not sufficient for full-time practice of primary care at Oak Hill by several on-board MSG J-1s. Additionally, the interest in the J-1 program in the Oak Hill/Beckley area was such that, it is reasonable to conclude, the employer was also aware of J-1 physicians approved for other providers.

We concur with state agency decisions not to support sponsorship of the additional J-1 requests; and we do not agree that a current need exists for additional primary care J-1 physicians in the Oak Hill area. Also, we are recommending that ARC and the state agency pursue extensions of J-1 waiver periods for J-1 physicians who have not complied with the J-1 Visa Waiver Agreement and Affidavit. Such extensions will further alleviate needs for additional J-1s. Also, we do not agree that additional J-1 approvals are appropriate when current J-1s are in noncompliance and are recommending deferral of additional J-1 approvals pending an evaluation of medical needs in the Oak Hill, West Virginia area.

We recognize the potential hardships caused the J-1 applicants, but we understand that temporary employment authorizations are not a substitute for J-1 waivers. Available information on the noted cases will be forwarded to the Immigration and Naturalization Service.

With respect to comments noted about J-1 physicians employed by other sponsors, these cases are included in our review of overall J-1 physician utilization in the Oak Hill/Beckley area and will be included in separate reports.

Restrictive Covenant (Noncompete Clause)

MSG agreements with J-1 physicians contain the following clause:

"In the event of the termination of employment with MED-SURG, or upon the expiration of this Agreement, PHYSICIAN agrees not to practice medicine within a 30 air mile radius of any medical facility owned and/or operated by MED-SURG. This restriction shall be for a period of three (3) years subsequent to termination of employment by MED-SURG.

"It is understood that any breach of this contract will be financially damaging to MED-SURG GROUP. It is also understood that failure to fulfill the terms of this agreement for a period of 24-months will be tremendously financially damaging to MED-SURG GROUP. Therefore, it is agreed that if the physician fails to abide by the terms of this agreement or is in breach of any of the terms of this agreement or the physician leaves employment of MED-SURG GROUP, he will reimburse MED-SURG GROUP for all sums paid to him, or on his behalf, as well as all expenses and overhead incurred by MED-SURG as a result of his practice, including but not limited to all salary, fringe benefits, health, life, and malpractice insurance premiums, licenses, moving expenses, and any other sums paid and expenses, whether similar or dissimilar to the foregoing, as well as any attorney fees, court costs, or other expenses incurred in enforcing this provision. It is expressly understood and agreed that the provisions of this paragraph are in addition to, and not in lieu of, the provisions of paragraph 6, and that the provisions of this paragraph shall apply regardless of whether PHYSICIAN relocates to another facility, wherever located."

We also noted one case where the noncompete clause included the following sentence.

"Provided that should this restriction be found to be unreasonable by a court having jurisdiction of such question, as to either geographic scope or length of time, then in that event this provision shall automatically be modified to cover such geographic scope or length of time as such court should find to be reasonable."

We recognize J-1 physicians' comments that noncompete clauses generally preclude the physicians from remaining in the area after completion of their J-1 commitments and base contracts unless they stay with the same employer.

We also recognize employer concerns about recovering investments and losing patient workloads if J-1s stay in the area and work as independent practitioners or for another employer.

Our contacts indicated that J-1s generally intended to leave the area and reasons cited included the noncompete clause, working environment, and low patient workloads. Prior J-1s had also left the area.

Noncompete clauses substantially restrict the potential that J-1 physicians will settle and practice in the HPSA after completion of the J-1 waiver period. Consequently, it appears there will be a need for indefinite use of J-1 physicians to provide medical service in HPSAs.


Of particular significance is that noncompete clauses are open ended and are not affected by the length of employment. Thus, a physician could work many years for an employer, during which period the employer recovered investments and benefitted from the services, but would still be subject to noncompete clauses. The absence of a reasonable ending date or provisions for a reasonable settlement that could permit continuance of service in a HPSA without being subject to large penalties is a major impediment.

Conclusion and Recommendations

We noted four instances where we concluded that J-1 physicians were not fulfilling requirements to provide 40 hours of primary care at a HPSA site and are recommending actions to address this situation. Also, another primary conclusion was the need to address the condition of an excess number of J-1 physicians approved for the Oak Hill area.

Thus, our recommendations include:

- o Negotiating with J-1 physicians about a voluntary extension of service in an Appalachian HPSA to offset service not performed in accordance with J-1 requirements.
- o Deferring action on additional J-1 requests from the Oak Hill area pending completion of current J-1 physician tours of duty and a careful reassessment of the needs for additional J-1s, including the viability for 40 hours per week of primary medical care service at the approved HPSA site.
- o Reevaluating the eligibility of the noted employer as a J-1 waiver program sponsor.
- o Notifying employers and applicable J-1 physicians of the need to comply with program requirements and obtain employer commitments to increase and maximize the use of current J-1 physicians to practice primary care at the approved HPSA location.
- o Requiring sponsors, in the future, to also sign the J-1 Visa Waiver Policy Affidavit agreements and include language in the agreement that specifically addresses the sponsor's responsibilities and potential penalties for noncompliance with the agreement.
- o Recommending to the US Public Health Service and the West Virginia Department of Health a reevaluation of Oak Hill, West Virginia, as a current HPSA, based on consideration of the J-1s approved for Oak Hill.
- o In conjunction with the state agency, clarifying the intent and implementation of the noted restrictive covenant and issuing guidance prohibiting restrictive covenants that preclude continued service at a HPSA after completion of the J-1 waiver period. Such action would also avoid the issue of legal enforceability of noncompetition clauses.


Hubert N. Sparks
Inspector General

Exhibits A-L

J-1 Visa Waiver Policy Affidavit and Agreement

I, _____, being duly sworn, hereby request the Federal Co-Chairman of the Appalachian Regional Commission to review my application for the purpose of recommending waiver of the foreign residency requirement set forth in my J-1 Visa, pursuant to the terms and conditions as follows:

1. I understand and acknowledge that the review of this request is discretionary and that in the event a decision is made not to grant my request, I hold harmless the Appalachian Regional Commission (ARC), the Federal Co-Chairman, any and all ARC employees, agents and assigns from the action or lack of action made in connection with this request.
2. I further understand and acknowledge that the entire basis for the consideration of my request is the ARC Federal Co-Chairman's voluntary policy and desire to improve the availability of primary medical care in regions designated by the United States Public Health Service (USPHS) as Health Professions Shortage Areas (HPSA) in Appalachia.
3. I understand and agree that in consideration for a waiver, which eventually may or may not be granted, I shall render primary medical care services to patients, including the indigent, for a minimum of forty (40) hours per week within a USPHS designated HPSA located in the ARC jurisdiction. Such service shall commence not later than six (6) months after I receive notification of approval by both the United States Immigration and Naturalization Service (INS) and the United States Department of Labor and shall continue for a period of at least two (2) years.
4. I agree to incorporate all terms of this J-1 Visa Waiver Affidavit and Agreement into any and all employment agreements I enter pursuant to paragraph 3 and to include in each such agreement a liquidated damages clause, of not less than \$250,000 payable to the employer. This damage clause shall be activated by my termination of employment, initiated by my employer for cause or by me for any reason, only if my termination occurs before fulfilling the minimum two year service requirement.
5. I further agree that any employment agreement I enter pursuant to paragraph 3 shall not contain any provision which modifies or amends any of the terms of the J-1 Visa Waiver Affidavit and Agreement.
6. I also agree to incorporate all terms of this J-1 Visa Waiver Affidavit and Agreement into any employment agreement I enter pursuant to paragraph 3.

7. I understand and agree that my primary medical care services rendered pursuant to paragraph 3 shall be in a Medicare and Medicaid certified hospital or primary health care clinic which has an open, non-discriminatory admissions policy and that will accept medically indigent patients.

8. I have read and fully understand the "ARC Federal Co-Chairman's J-1 Visa Waiver Policy," a copy of which is attached hereto and is specifically incorporated by reference.

9. I expressly understand that this waiver of my foreign service requirement must ultimately be approved by the INS, and I agree to provide written notification of the specific location and nature of my practice to the ARC Federal Co-Chairman at the time I commence rendering services in the ARC jurisdiction and on a semi-annual basis thereafter.

10. I understand and acknowledge that if I willfully fail to comply with the terms of the J-1 Visa Waiver Affidavit and Agreement, the Office of the ARC Federal Co-Chairman will notify the INS and recommend deportation proceedings be instituted against me. Additionally, any and all other measures available to the Office of the ARC Federal Co-Chairman will be taken in the event of my non-compliance.

I declare under the penalties of perjury that the foregoing is true and correct.

5/20/92
Date

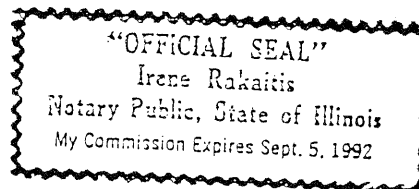
Signature

Sworn and subscribed to

before me this 20TH day

of MAY 1992

Irene Rakaitis
Notary Public





APPALACHIAN REGIONAL COMMISSION

OFFICE OF THE
FEDERAL CO-CHAIRMAN
1666 Connecticut Avenue, N.W.
Washington, D.C. 20235
202/884-7660

TO: J-1 Visa Waiver Inquiries

FROM: Office of the General Counsel, Appalachian Regional Commission

Enclosed you will find the Appalachian Regional Commission's Federal Co-Chairman's J-1 Visa Waiver Policy. A list of the thirteen (13) states and the counties within each state which constitute the legislatively mandated ARC geographic borders is included.

Requests for waiver must originate with the State and no request will be reviewed without States' sponsorship. All inquiries should be made to each State's designated contact person. A list of the State contact's name, address, and phone number is enclosed.

Thank you.

Revised 3/9/94

ARC Federal Co-Chairman's J-1 Visa Waiver Policy

The Appalachian Regional Commission (ARC) is committed to assisting all residents of Appalachia to have access to quality, affordable health care. Accordingly, the Federal Co-Chairman (FCC) of the ARC is prepared to consider recommending a waiver of the foreign residence requirement on behalf of physicians holding J-1 Visas under certain conditions.

The FCC's policy is totally discretionary and voluntary and may be modified or terminated at any time without notice. In all instances the FCC reserves the right at the FCC's discretion to recommend or decline to recommend any request for a waiver.

These ARC guidelines are the minimum requirements which must be complied with but each state may impose additional requirements as it deems necessary to support its physician recruitment program.

1. Physician requests must be sponsored by a State within the Appalachian Region and will be considered by the FCC only upon written recommendation of the Governor of the sponsoring State.
2. The physician must agree to provide primary medical care a minimum of forty (40) hours a week in a manner best suited to provide such care to the target population in a Health Professions Shortage Area, as designated by the United States Public Health Service, within the legislatively defined Appalachian Regional Commission service area, in a Medicare and Medicaid certified hospital or primary health care clinic which also accepts medically indigent patients. Travel or on-call time may not be included in the 40 hours required by this paragraph. The states may make an exception in appropriate cases for obstetricians and general surgeons.
3. The hospital or clinic at which the physician will be employed must demonstrate that it has made a reasonable good faith effort to recruit a U.S. doctor for the job opportunity in the same salary range without success during the six months immediately preceding the request for waiver. The hospital or clinic shall demonstrate, with such supporting documentation as the Federal Co-Chairman may require, that it has undertaken such recruitment through a reasonable number of appropriate sources including but not limited to advertisements in newspapers and medical journals of national and statewide circulation most likely to bring responses from able, willing, qualified and available U.S. doctors and job opportunity notices placed in appropriate medical schools including all medical schools in the state in which the hospital or clinic is located.
4. The physician, prior to employment, must be licensed by the State where he or she will practice and must have completed a residency in one of the following specialties: family practice, general pediatrics, obstetrics, general internal medicine, psychiatry or general surgery.
5. The physician must not have been "out of status" (as defined by the Immigration and Naturalization Service of the United States Department of Justice) for more than six (6) months since receiving a visa under 8 USC 1182 (j) of the Immigration and Nationality Act, as amended. The physician shall provide the FCC all copies of his or her Certificates of Eligibility for Exchange Visitor (J-1) Status, forms IAP-66 and every other document needed to verify status.

6. The physician must sign and have notarized the FCC's "J-1 Visa Policy Affidavit and Agreement" prior to consideration by the FCC of the request and must comply with the terms and conditions set forth in that document.

7. All requests approved initially by the FCC and approved subsequently by the Immigration and Naturalization Service of the United States Department of Justice will be subject to review by ARC's Inspector General for compliance with this policy statement and other applicable laws. An employer's failure to comply in good faith with this waiver policy may be considered in the evaluation of other applications involving the same employer.

Revised: 2/14/94



Med-Surg Group

502 Main Street (Main Office)
Oak Hill, WV 25901
(304) 465-1030 465-1455
Fax (304) 465-5558

1804 Harper Rd. (Suite 8) 101 Florence Street
Beckley, WV 25801 Ansted, WV 25812
(304) 253-8538 (304) 658-5223 658-5224

201 Jones A
Oak Hill, WV
(304) 465-5

R. K. Parsi, M.D.

President

Touraj Farid, M.D.

Secretary

Bahman K. Parsi

Financial Director

December 1, 1992

Jacqueline L. Phillips
Federal Co-Chairperson
Appalachian Regional Commission
Washington, DC 20235

RE: , M.D.

I write this letter in support of our request for your sponsorship of a waiver of the two year home residence requirement in behalf of Dr.

1. We hope to have Dr. begin employment with us in March of 1993.
2. Med-Surg Group, Inc. is located in a desperately under served area of Appalachian which has been designated a health care power shortage area. Our group accepts all medicaid and medicare eligible patients. The clinic's primary service area encompasses the population of Oak Hill and Ansted with additional patients referred to us from outlying areas. We are desperately in need of well trained primary care physicians in this area. The geography of this section of West Virginia creates an area that is isolated from Metropolitan area mountainous terrain and generally poor road conditions. The residents of this area have traditionally preferred to receive their medical treatment within the local area. There are strong family ties and the importance of family support in injuries cannot be over emphasized. In addition, treatment in the local area reduces the costs and inconveniences of visiting the injured and the sick. All of these factors increase the need for service for a primary care physician (Internist) in this area. There are fewer than six primary care physicians in this area at present. As you can see, we are desperately understaffed to service people in our community. Over the last several years, we have directed considerable resources towards recruiting primary care physicians to more fully staff our group at a tremendous cost to our organization and with minimal success through the Appalachian Regional Commission;
3. Dr. is now completing a fellowship at Henry Ford Hospital in Detroit, MI. His practice in West Virginia will be located at 502 Main Street, Oak Hill, WV 25901;

December 1, 1992

Page 2

4. Dr. will practice a minimum of 40 hours per week in this area which has been determined to be a health professional shortage area by the U.S. Public Health Service.
5. All of the terms and conditions of the physicians J-1 visa policy affidavit and agreement have been incorporated into the employment agreement;
6. The employment agreement does not modify or amend any of the terms or conditions of the physicians J-1 visa policy affidavit and agreement.

For the above reasons, we would respectfully request that the Commission intervene in Dr. behalf with the United States Information Agency requesting that they recommend waiver of the two year home residence requirement in Dr. case.

Should anything further be required, please let me know.

Very truly yours,

R K Parsi

Rouzbeh K. Parsi, M.D.
President
Med-Surg Group, Inc.

U.S. DEPARTMENT OF LABOR
Employment and Training Administration

OMB Approval No. 4430-001

APPLICATION
FOR
ALIEN EMPLOYMENT CERTIFICATION

IMPORTANT: READ CAREFULLY BEFORE COMPLETING THIS FORM

PRINT legibly in ink or use a typewriter. If you need more space to answer questions to this form, use a separate sheet. Identify each answer with the number of the corresponding question. SIGN AND DATE each sheet in original signature.

To knowingly furnish any false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a felony punishable by \$10,000 (fine or) years in the penitentiary, or both (18 U.S.C. 1001)

PART A. OFFER OF EMPLOYMENT

1. Name of Alien (Family name in capital letters, First, Middle, Maiden)									
2. Present Address of Alien (Number, Street, City and Town, State ZIP code or Province, Country)								3. Type of Visa (If in U.S.)	
720 S. WOLCOTT ST. #1514, CHICAGO, IL, USA60612								J-1	
The following information is submitted in an offer of employment.									
4. Name of Employer (Full name of Organization)								5. Telephone	
MED SURG GROUP, INC.								304-465-1030	
6. Address (Number, Street, City and Town, State ZIP code)									
302 Main Street Oak Hill, WV 25901									
7. Address Where Alien Will Work (If different from item 6)									
same as #6									
8. Nature of Employer's Business Activity		9. Name of Job Title		10. Total Hours Per Week		11. Work Schedule		12. Rate of Pay	
Health Care		Internist		a. Basic 40		b. Overtime N.A.		a. Basic 7:00 a.m. to 6:00 p.m. \$ 80000.00 per year S N.A. per hour	
13. Describe fully the job to be performed (Duties)									
Diagnose and treat diseases and injuries of human internal organ systems; examine patient for symptoms of organic or congenital disorders and determines nature and extent of injury or disorder, using diagnostic aids, such as x-ray machine, blood test, electro cardiograph, and stethoscope. Prescribe medication and recommend dietary and activity programs as indicated by diagnosis. Refer patient to appropriate medical specialists when indicated.									
14. State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in item 13 above.					15. Other Special Requirements				
EDUCATION (Enter number of years)	Grade School	High School	College	College Degree Required (specify)	Must make commitment to remain in position for a minimum of two years. Training must incl extensive exp w/ state-of-the-art medical equipment & techs. Must have or be immediately eligible for West Virginia Medical License.				
	yes	yes	yes	MD or equivalent Major Field of Study Medicine					
TRAINING	No. Yrs. 3	No. Mos.	Type of Training	Residency Internal Medicine					
EXPERIENCE	Job Offered		Related Occupation		(specify)				
	Yrs.	Mos.	Yrs.	Mos.					
16. Occupational Title of Person Who Will Be Alien's Immediate Supervisor					17. Number of Employees Alien Will Supervise				
President					vary				
ENDORSEMENTS (Make no entry in section - for Government use only)									
Date Forms Received									
U.O.					S.O.				
R.O.					N.O.				
Iss. Code					Occ. Code				
Occ. Title									

PHYSICIAN:

NAME: _____

EMPLOYMENT START
DATE: _____

ADDRESS:

Home _____

Office _____

Type of Medical Practice _____

Location of Medical Practice _____

Street _____

City _____

State _____

County _____

Zip Code _____

I HEREBY CERTIFY THAT I, THE UNDERSIGNED, DO PROVIDE PRIMARY
HEALTH CARE SERVICES AT THE ABOVE STATED ADDRESS A MINIMUM OF
40 HOURS PER WEEK.

Physician's Signature_____
Date

EMPLOYER:

I DO HEREBY CERTIFY DOCTOR _____ IS

EMPLOYED BY _____

AND PROVIDES 40 HOURS OF PRIMARY HEALTH CARE PER WEEK.

Employer's Signature_____
Date_____
Title

NOTARY:

RETURN TO:

Office of the General Counsel
ATTN: Deann Greathouse
1666 Connecticut Avenue, N.W.
Washington, D.C. 20235
(202) 834-7680

INFORMATION REQUEST FOR EMPLOYERS OF
J-1 WAIVER PROGRAM PHYSICIANS

Name of Physician:

, M.D.

ARC
Questionnaire

Name and Address of Employer:

Med-Surg Group, Inc.
502 Main Street
Oak Hill, WV 25901

Date of J-1 Waiver Approval:

09/15/92

=====

REQUESTED INFORMATION

Is physician currently employed by your facility? ☒ Yes ☐ No

What is the type of medical practice? Small group practice in a rural environment.

How many hours of primary care (not including on-call or travel time) are/were provided weekly?

40 hours weekly

At what location(s) is/was the primary care provided? (Please note addresses and average weekly direct hours at locations)

Med-Surg Group, Inc.
502 Main Street
Oak Hill, WV 25901Plateau Medical Center
430 Main Street
Oak Hill, WV 25901

30 hours weekly

10 hours weekly

Comments (including information on other locations or practice of subspecialties since date of waiver approval)

In addition, Dr. [redacted] gives 10 to 20 hours in his subspecialty in our Beckley Office above and beyond his 40 hours in the Oak Hill Office.

I certify that the above information is correct to the best of my knowledge.

Bahman K. Passi

Employer's Signature

Chief Executive Officer

Title

Return to:

Appalachian Regional Commission
1666 Connecticut Ave, NW
Washington, DC 20235

Fax No.: (202) 884-7682

WEST VIRGINIA J-1 VISA WAIVER PROGRAM

Physician Reporting Form

J-1 Physician Name: _____ Specialty: CardiologyReport for the six-month reporting period from January 1, 1994 to June 30, 1994.

Item 6 of the West Virginia J-1 Visa Waiver Policy states: "The J-1 Visa physician, Chief Executive Officer, and Chief of Staff or Medical Director must agree to provide the West Virginia Bureau of Public Health a semi annual report that will be furnished by the Bureau."

In accordance with that requirement:

1. I maintain a full-time clinical practice at:

Practice Name: Med-Surg Group, Inc.
 Street Address: 502 Main Street
 City/State/Zip: Oak Hill, WV 25901
 Telephone: (304) 465-1030

2. During this reporting period, I maintained office hours (use "x" for days not usually practicing). DO NOT include "on call" status time.

	Sun.	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.
From:	<u>X</u>	<u>10:30</u>	<u>10:30</u>	<u>10:30</u>	<u>1:30</u>	<u>X</u>	<u>X</u>
To:	<u>X</u>	<u>1:00</u>	<u>1:00</u>	<u>1:00</u>	<u>4:30</u>	<u>X</u>	<u>X</u>

^{2 1/2} ^{2 1/2} ^{2 1/2} ³ ^{10 1/2}

3. During this reporting period, approximately
- 50 Plus
- hours/week were required to treat hospitalized patients of the practice.

4. During this reporting period, I was absent from the practice for
- 20
- days due to illness, vacation, or for continuing professional education.

5. For this reporting period:

- a. Number of office visits (do not include telephone consultations or hospital visits). 566
- b. Number of visits from 5a who reside in a Health Professional Shortage Area (HPSA). _____
- c. Number of hospital visits. 950
- d. Number of patient visits for whom a Medicare Claim was submitted. _____
- e. Number of patient visits for whom a Medicaid Claim Medicaid claim was submitted. _____
- f. Number of patients wherein services were rendered at a rate less than the usual and customary fee. _____

WEST VIRGINIA J-1 VISA WAIVER PROGRAM

Physician Reporting Form

J-1 Physician Name: _____

Specialty: Infectious Disease
Internal MedicineReport for the six-month reporting period from January 1, 1994 to June 30, 1994.

Item 6 of the West Virginia J-1 Visa Waiver Policy states: "The J-1 Visa physician, Chief Executive Officer, and Chief of Staff or Medical Director must agree to provide the West Virginia Bureau of Public Health a semi annual report that will be furnished by the Bureau."

In accordance with that requirement:

1. I maintain a full-time clinical practice at:

Practice Name: Med-Surg Group, Inc.
 Street Address: 502 Main Street
 City/State/Zip: Oak Hill, WV 25901
 Telephone: (304) 465-1030

2. During this reporting period, I maintained office hours (use "x" for days not usually practicing). DO NOT include "on call" status time.

	Sun.	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.
From:	<u>X</u>	<u>10:30</u>	<u>10:30</u>	<u>10:30</u>	<u>10:30</u>	<u>1:30</u>	<u>X</u>
To:	<u>X</u>	<u>1:00</u>	<u>4:30</u>	<u>1:00</u>	<u>1:00</u>	<u>4:30</u>	<u>X</u>

16 1/2

3. During this reporting period, approximately
- 50 Plus
- hours/week were required to treat hospitalized patients of the practice.

4. During this reporting period, I was absent from the practice for
- 9 1/2
- days due to illness, vacation, or for continuing professional education.

5. For this reporting period:

- a. Number of office visits (do not include telephone consultations or hospital visits). 109
- b. Number of visits from 5a who reside in a Health Professional Shortage Area (HPSA). _____
- c. Number of hospital visits. 1661
- d. Number of patient visits for whom a Medicare Claim was submitted. _____
- e. Number of patient visits for whom a Medicaid Claim Medicaid claim was submitted. _____
- f. Number of patients wherein services were rendered at a rate less than the usual and customary fee. _____

J-1 Physician Name: Dr. J. L. ...

Specialty: Internal Medicine

Report for the six-month reporting period from January 1, 1994 to June 30, 1994

In accordance with that requirement:

- Practice Name: Med-Surg Group, Inc.
Street Address: 502 Main Street
City/State/Zip: Oak Hill, WV 25901
Telephone: (304) 465-1030

- | | Sun. | Mon. | Tue. | Wed. | Thurs. | Fri. | Sat. |
|-------|------|-------|------|------|--------|-------|------|
| From: | X | 10:30 | X | 1:30 | 1:30 | 10:30 | X |
| To: | X | 1:00 | X | 4:30 | 4:30 | 1:00 | X |

5. For this reporting period:

- | | | |
|----|--|-------------------|
| a. | Number of office visits (do not include telephone consultations or hospital visits). | <u>179</u> |
| b. | Number of visits from 5a who reside in a Health Professional Shortage Area (HPSA). | <u> </u> |
| c. | Number of hospital visits. | <u>1107</u> |
| d. | Number of patient visits for whom a Medicare Claim was submitted. | <u> </u> |
| e. | Number of patient visits for whom a Medicaid Claim Medicaid claim was submitted. | <u> </u> |
| f. | Number of patients wherein services were rendered at a rate less than the usual and customary fee. | <u> </u> |

WEST VIRGINIA J-1 VISA WAIVER PROGRAM

Physician Reporting Form

J-1 Physician Name: _____

Specialty: Critical Care
Pulmonary Disease
Internal MedicineReport for the six-month reporting period from January 1, 1994 to June 30, 1994.

Item 6 of the West Virginia J-1 Visa Waiver Policy states: "The J-1 Visa physician, Chief Executive Officer, and Chief of Staff or Medical Director must agree to provide the West Virginia Bureau of Public Health a semi annual report that will be furnished by the Bureau."

In accordance with that requirement:

1. I maintain a full-time clinical practice at:

Practice Name: Med-Surg Group, Inc.
 Street Address: 502 Main Street
 City/State/Zip: Oak Hill, WV 25901
 Telephone: (304) 465-1030

2. During this reporting period, I maintained office hours (use "x" for days not usually practicing). DO NOT include "on call" status time.

	Sun.	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.
From:	<u>X</u>	<u>1:30</u>	<u>1:30</u>	<u>X</u>	<u>1:30</u>	<u>10:30</u>	<u>X</u>
To:	<u>X</u>	<u>4:30</u>	<u>4:30</u>	<u>X</u>	<u>4:30</u>	<u>1:30</u>	<u>X</u>

3. During this reporting period, approximately
- 40 Plus
- hours/week were required to treat hospitalized patients of the practice.

4. During this reporting period, I was absent from the practice for
- 15
- days due to illness, vacation or for continuing professional education.

5. For this reporting period:

- a. Number of office visits (do not include telephone consultations or hospital visits). 225
- b. Number of visits from 5a who reside in a Health Professional Shortage Area (HPSA). _____
- c. Number of hospital visits. 732
- d. Number of patient visits for whom a Medicare Claim was submitted. _____
- e. Number of patient visits for whom a Medicaid Claim Medicaid claim was submitted. _____
- f. Number of patients wherein services were rendered at a rate less than the usual and customary fee. _____



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU OF PUBLIC HEALTH

Gaston Caperton
Governor

December 7, 1994

Ann A. Ruben
Steel, Rudnick & Ruben
Suite 936 Public Ledger Building
Sixth & Chestnut Street
Philadelphia, PA 19106-3471

Re: Dr.
Dr.
Dr.

Dear Ms. Ruben:

This is in response to your letter of December 1 requesting grandfather approval by the State of West Virginia and the Appalachian Regional Commission for sponsorship of the J-1 Visa Waivers of Drs. , , and ...

Mr. ... was correct in his statement that some waiver applications were grandfathered. This was a one-time occurrence for those applications submitted and received in this office before the announcement that the Appalachian Regional Commission had imposed a freeze on all applications until a revised policy was established. West Virginia has never had a formal written policy that addressed the above grandfather provisions.

We appreciate the circumstances of these three physicians now that they have relocated and established a practice in Oak Hill. Although firm commitments were made by Med-Surg prior to the implementation of the West Virginia J-1 Visa Waiver Policy, these commitments were not without knowledge that West Virginia had a freeze on J-1 Waiver applications pending the finalizing of the policy.

The Federal Co-Chairman of Appalachian Regional Commission has asked us to pay particularly close attention to any unusual concentrations of J-1 physicians in a single locality such as Oak Hill. Our records show that currently there are 19 doctors practicing in Oak Hill for whom J-1 Visa Waivers were obtained through the ARC J-1 Visa Waiver Program within the past few years. This is of major concern for this program in view of the

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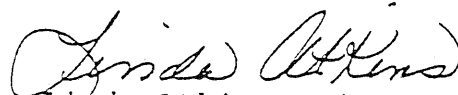
Ann A. Ruben
Page 2
December 7, 1994

fact that the U.S. Public Health Service does not take J-1 doctors into account for the purpose of designating sites as Health Professional Shortage Areas. Consequently, large number of J-1 doctors in an area could bring actual physician to population ratios well below those required for HPSA designation. This is, in fact, what has happened in Oak Hill with a physician to population ratio of 1:313. This result is inconsistent with the purpose of the ARC program that is grounded in policy to increase availability of needed primary care professionals in rural Appalachia.

Federal and State policies governing the placement of J-1 physicians that are now in effect prohibits further placement in the Oak Hill area. Based on this already large concentration, we are unable to make a favorable recommendation for any additional J-1 physicians for the Oak Hill service area in the near future.

As always, Ann, thanks for your continued efforts in trying to improve the availability of primary care physicians for rural West Virginia.

Sincerely,



Linda Atkins, Director
Health Professions Recruitment

LA/

cc:

Enclosure

**APPALACHIAN REGIONAL COMMISSION**

1686 Connecticut Avenue, N.W.
Washington, D.C. 20235

September 6, 1994

Linda Atkins
Director of Health Professions Recruitment
Primary Care and Recruitment
1411 Virginia Street, East
Charleston, West Virginia 25301

Dear Ms. Atkins:

In response to your letter of August 15, 1994 regarding the placement of J-1 physicians in Oak Hill, West Virginia. Our records show that currently there are 13 doctors practicing in Oak Hill for whom J-1 Visa Waivers were obtained through the ARC Federal Co-Chairman's program within the past two years.

The Federal Co-Chairman has asked us, in administering this program, to pay particularly close attention to any unusual concentrations of J-1 physicians in a single locality such as appears to be evidenced in this instance. This is an area of major concern for this program in view of the fact that the U.S. Public Health Service does not take J-1 doctors into account for purposes of designating sites as Health Professional Shortage Areas. Consequently, large numbers of J-1 doctors in an area could bring actual physician to population ratios well below those required for HPSA designation. This result is inconsistent with the purpose of the ARC program which is grounded in Commission policy to increase availability of needed health professionals in rural Appalachian communities.

Therefore, we support the position of the State of West Virginia in declining the request for waiver of ~~Dr.~~ based on the overutilization of J-1 physicians in the Oak Hill area. If you wish to discuss this matter further, please do not hesitate to contact me or Deann Greathouse at 202-884-7785.

Sincerely,

CHARLES S. HOWARD
General Counsel