



Overview of Federal National Interest Waiver Requirements

Federal legislation, titled The Nursing Relief for Disadvantaged Areas Act of 1999, established a national interest waiver pathway to permanent residence exclusively for foreign national physicians. Section 203 (b)(2) of the Immigration and Nationality Act provides governance around the Employment-Based Second Preference (EB-2) Immigrant Visa Category. The employment-based category (EB-2), allows for the immigration of persons who are members of professions holding advanced degrees or are of exceptional ability. The United States Attorney General is permitted to waive the job offer requirement placed on EB-2 applicants when it is determined that the services of the immigrant are in the national interest. Such waivers are called National Interest Waivers (NIW). These waivers relieve the petitioner from fulfilling the labor certification requirement as administered by the Department of Labor. In 1999 the Act was amended to add special rules for requests that are filed by or on behalf of physicians who are willing to work in areas designated by the Secretary of Health and Human Services as having a shortage of healthcare professionals (Primary Care Health Professional Shortage Area, Medically Underserved Area, Medically Underserved Population, or Mental Health Professional Shortage Area), or at a Veterans Affairs facility.

NIW applicants must obtain a letter from a federal agency or a state department of public health that determines the immigrant physician's work in such an area or at such a facility is in the public interest. The Primary Care Office at the Colorado Department of Public Health & Environment serves as the supportive agency for such National Interest Waivers.

NIW physicians must practice primary or specialty care, full-time (at least 40 hours per week) for a total of five years. Time spent in H1-B status to fulfill the NIW obligation *does* count toward the five-year commitment. NIW petitions may be filed before the completion of the J-1 Waiver, but the aggregate time must still be five years. Permanent residence visa status is not permitted until the physician's five years of obligatory service in a health professional shortage area has been fulfilled. There is no limit on the number of NIW applicants a state may support in a year.

Overview of Colorado Waiver Review Process

The State of Colorado is committed to assisting all residents of Colorado with improved access to high quality, affordable healthcare. The Colorado Department of Public Health and Environment will consider National Interest Waiver (NIW) requests on behalf of physicians if the following conditions are satisfied. The physician must:

- Work in a clinical practice located in an area of the state designated by the Secretary of Health and Human Services as having a shortage of healthcare professionals
- Practice at least 40 hours per week for five years in primary care (family or general practice, general internal medicine, general pediatrics, general obstetrics/gynecology, general psychiatry), or in a medical specialty, if certain conditions are met (including a competitive salary, and specifying why the specialty is in short supply in the service area having a shortage)
- Practice in the public interest (provide care to the Medicaid, Medicare, and uninsured populations of the service area)
- Sign and adhere to the Colorado Department of Public Health and Environment, Primary Care Office, Statement of Commitment to Comply with Program Requirements, which includes biannual reporting during the obligation and a brief exit survey upon completion of the obligation



Requests for an NIW must be submitted by a physician, with evidence of support by their prospective employer. The Colorado program has a preference for outpatient primary care placements, but will consider applications for specialists and inpatient assignments if the employing healthcare facility can demonstrate a shortage of health care services in the surrounding area. The application must also show the entire practice, in which the physician is working, be able and willing to serve the underserved population of the service area (patients on Medicaid, Medicare, and the uninsured).

Each application is reviewed in the order it was received and each is reviewed based upon its individual merits. Consideration is given to the need in the community, the completeness of the application, the healthcare facility's retention plan, and the degree to which the physician's training matches the community's needs. There is no limit to the number of NIW requests Colorado can support in each federal fiscal year.

Each application is reviewed in the order it was received and each is reviewed based upon its own merits. Considerations include the completeness of the application, demonstrated need in the community, the healthcare facility's retention plan, and the degree to which the physician's training is reflected as matching the community's needs. The submission of a complete waiver package does not ensure that the waiver will be supported. The PCO reserves the right to support or decline any waiver request.

Effective April 14, 2010, an application fee is assessed in exchange for a complete application review and waiver determination. Fees are not refundable in the event the Governor's Designee (Primary Care Office) declines to support a waiver petition, the Department of State or the United States Citizenship and Immigration Services declines to grant a waiver, the physician fails to begin a service commitment, or the physician or employer terminates a service commitment prior to the end of a service obligation. Fees shall be payable at the time of application to the "Colorado Department of Public Health and Environment" with a note that the payment is for the "Primary Care Office Waiver Application Review Fee". The fee is \$1,250 for a National Interest Waiver application review where the physician is not a current J-1 visa waiver physician practicing in Colorado or \$250 for a National Interest Waiver application review where the physician is a current J-1 visa waiver physician practicing in Colorado.

The NIW application is only one step in the process of obtaining permanent residency. Permanent residence visas are not available to the physician until the five-year service obligation is complete. A physician may want to seek legal counsel to assist with the preparation and submission of all required immigration forms and documentation. The Primary Care Office cannot provide legal advice to physician applicants or employers.

Use the checklist on the following page to compile the application. Please contact the Primary Care Office at the Colorado Department of Public Health and Environment at 303-692-2466 with questions about this application packet.



Waiver application requirements & checklist

To expedite the application approval process:

- ❑ Provide information for all section and subsection headings outlined below and order them in the completed application as they appear in this checklist
- ❑ Submit one unbound, single sided copy of the complete application, along with a check made out to the “Colorado Department of Public Health and Environment”. Indicate on the check that the payment is for the “Primary Care Office, Waiver Application Review Fee”. The fee is \$1,250 for an NIW application review where the physician is not a current J-1 visa waiver physician practicing in Colorado or \$250 for an NIW application review where the physician is a current J-1 visa waiver physician practicing in Colorado. Send the complete application to:
**Colorado Department of Public Health and Environment
Primary Care Office, A-5
4300 Cherry Creek Drive South
Denver, Colorado 80246**
- ❑ Please do not use staples, tabs, or pages larger or smaller than 8½ x 11”

If the physician has obtained a J-1 visa waiver and is currently practicing in Colorado, contact the Primary Care Office before beginning a National Interest Waiver application. A conversion from a Colorado J-1 visa waiver to a National Interest Waiver requires a letter of support from the Primary Care Office Director; however, the application is significantly simplified.

Elements of a complete application:

- ❑ **Complete National Interest Waiver application face page**
- ❑ **Healthcare employer statement on official letterhead including:**
 1. An **employer statement** about how this physician’s qualifications and future responsibilities will help satisfy the healthcare needs and improve access to care for the underserved population of the service area
 2. A statement **detailing the current healthcare resources** of the area and how they are over utilized, excessively distant, or otherwise inaccessible to the population served by the healthcare facility
 3. A **facility description** including the legal name, primary address, county, and overview of health services offered
 4. A statement of the percentage of **medically underserved patients** (Medicaid, Medicare, and uninsured) the practice is currently serving
 5. A **description of the location** and characteristics of the area served by the healthcare facility
 6. An **impact statement** explaining how a denial will negatively affect healthcare in the community
- ❑ **Evidence of serving the medically underserved, include the following:**
 7. The **Health Professional Shortage Area (HPSA) or Medically Underserved Area or Population (MUA/P)** ID number (please reference: <http://hpsafind.hrsa.gov> for more information)
 8. **Photo or text copy of a sign** posted in patient waiting areas displaying sliding fee and public insurance option
 9. **Copy of sliding fee schedule** (must reflect the current year’s Federal Poverty Guidelines)
 10. Copy of the utilization **policy** for the sliding fee schedule
 11. Copy of **patient non-discrimination** policy
- ❑ **A signed employment contract specifying the following:**
 1. **Full time equivalent** employment (≥40 hours per week)



2. **Employment term** of no fewer than five years or documentation of five years cumulative time spent in H1-B status and serving in an underserved area (3 year minimum obligation to State of Colorado)
 3. **Description of the primary or specialty care** to be provided by the physician and the proportion of time expected to be in direct patient care (inpatient and/or outpatient)
 4. **Description of service to be provided to underserved patients** (Medicaid, Medicare, and uninsured)
 5. **Evidence that the proposed salary is commensurate** with prevailing wages for similar positions in the region (please reference: www.foreignlaborcert.doleta.gov for more information)
 6. The contract **may not contain a non-compete clause**
- ❑ **Retention plan specifying the following (see page 6 of this application packet):**
1. Monetary and non-monetary compensation, work environment, and organizational culture
 2. Plans to support cultural acclimation into the community for both the physician and the physician's family
- ❑ **Physician information specifying the following:**
1. NIW physician's **Resume or Curriculum Vitae**
 2. Three **professional letters** of recommendation for the NIW physician
 3. Proof of physician's **Colorado Medical License** or licensure eligibility
 4. A **statement declaring that he/she has no other waiver requests** pending with another government agency (see page 7 of this application packet)
 5. **Explanation of "out of status"** for any periods of time in some other visa status or out of the country, if applicable
 6. A **statement of "no objection"** from country of origin, if applicable
 7. A **commitment to comply** with the NIW Program requirements of the Colorado Department of Public Health and Environment statement signed by the physician (see page 8 of this application packet)
- ❑ **Waiver application review fee**



PRIMARY CARE OFFICE

National Interest Waiver Program

Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
303-692-6399

National Interest Waiver Application Face Page

Physician's Name _____

Permanent Address _____

Phone Number _____ **Email** _____

Country of Origin _____

Birth Date _____

Specialty _____

Physician Signature _____ **Date** _____

Employing Facility _____

Address _____

City, Zip & County _____

Phone Number _____ **Email** _____

Contact Name _____

Phone Number _____ **Email** _____

Contact Signature _____ **Date** _____

Practice Location _____

Address _____

City, Zip & County _____

Phone Number _____

HPSA/MUA/MUP ID# _____

Employer Signature _____ **Date** _____

Title _____



**Physician and Employing Facility
Statement of Commitment to Comply with Program Requirements**

It is understood that the purpose of the Colorado National Interest Waiver program is to increase access to healthcare for medically underserved populations. It is understood and agreed that I will provide such services in exchange for the support of the Colorado Department of Public Health and Environment in making a waiver request on my behalf.

I agree to comply with all National Interest Visa Waiver program requirements of the Colorado Department of Public Health and Environment including:

- Fulfilling and agreeing to a five year commitment to serve full-time (at least 40 hours/week) at the healthcare facility named in the waiver application OR continuing to fulfill the required period of clinical medical practice in Colorado for a aggregate total of 5 years
- Agrees to continue work in the area designated by the Secretary of Health & Human Services as having a shortage of healthcare providers
- Notifying the Primary Care Office (PCO) of the NIW physician's new local address, email address and phone number
- Submitting a copy of the USCIS approval notice to the PCO
- Submitting semi-annual reports to the PCO, which includes patient population served
- Cooperating with periodic site visits and other program monitoring and program sustaining activities
- Seeking approval in writing from the PCO prior to any changes in practice location or scope occur
- Completing an exit survey at the end of the completed service obligation

Physician's Name _____

Physician's Signature _____ Date _____

Facility's Authorized Representative _____

Title of Representative _____

Facility's Authorized Representative Signature _____ Date _____

Facility Name _____



**US Department of State
Exchange Visitor Attestation**

I, _____ hereby declare and certify, under
Please print physician name
penalty of the provisions of 18 U.S.C. 1001, that I do not have pending, nor am I submitting during the
pendency of this request, another request to any United States Government department or agency or
any other state department of public health, or equivalent, other than the Colorado Department of
Public Health and Environment, to act on my behalf in any matter relating to my National Interest
Waiver, home country, physical presence requirement.

Physician Signature

Date



Physician Retention Plan

In an effort to promote a more stable healthcare system for underserved areas in Colorado and to increase physician satisfaction, the Primary Care Office requires you to include in your application the steps you have taken or anticipate taking to improve the likelihood of retaining the NIW physician in your community after their service commitment is complete.

The following information contains suggestions to help in the development of a strategy for your healthcare facility. These ideas are based on research and satisfaction surveys of National Interest Waiver physicians. Not all communities are able to address every area; however, discussing these issues and planning ahead may result in a better experience for both the physician and the employer.

Workplace/Relationship Considerations

- Foster a personal relationship with the physician.
- Establish regular meetings to discuss workplace integration issues (concerns, which negatively impact the potential for long term retention, can arise from unmet expectations of either party).
- Develop a recruitment/retention committee or assign this task to a committed individual.
- NIW physicians report that employers who foster a culture of quality are the most desirable as employers. This translates in to higher rates of retention.

Environment/Support Considerations

- Availability of medical colleagues for consultation and mentoring
- Number of staff and professional support
- Adequate call coverage
- Quality facilities, equipment, and personnel
- Access to referral physicians
- Access to continuing medical education
- Physician's on-call responsibilities and patient load
- Established and appropriate referral patterns
- Physicians report that professional environment and personal lifestyle are as important in the decision to accept and remain in a position, as is compensation.

Lifestyle Considerations

- Spouse's employment opportunities
- Recreational and entertainment opportunities
- Quality of schools
- Cultural activities
- Adequate housing
- Adequate shopping facilities (for example: access to familiar food, clothing, activities, etc.). One NIW physician was attracted to a community whose grocery store agreed to carry a few food items from the physician's home country.
- Physician and his/her family's opportunities to integrate into the community (for example: participation in social events to develop a sense of belonging)



Monitoring and reporting requirements

The Primary Care Office at the Colorado Department of Public Health and Environment will conduct periodic monitoring of all National Interest Waiver physicians, either through on-site visits, telephone calls, or requests for various reports. The physician and employer must submit to the Primary Care Office semi-annual reports describing the patient population served. Reports are due to the Primary Care Office in January and July of each year for the full three-year service commitment. The semi-annual report will be emailed to the physician approximately three weeks before the submission due date. In this report, the healthcare facility is required to report on the patient payor mix and number of underserved patients (Medicaid, Medicare, and uninsured). Contract changes which result in termination of contract, practice location, or practice scope must be submitted in writing to the Primary Care Office 30 days prior to the requested change.

Upon approval of the waiver request from the USCIS, the employer of the NIW physician is encouraged to work with the local public health agency, community health clinic, and any rural health clinic in the area to assure care for the underserved population in the area. The Primary Care Office will notify these entities when a new NIW physician is placed.

Effect of failure to abide by the terms and conditions of the waiver

National Interest Waiver physicians who do not complete the three year commitment to the healthcare facility named in the waiver application (unless the USCIS has determined that there are extenuating circumstances or hardships to the physician), who do not work in U.S. Department of Health and Human Services designated shortage areas or areas otherwise deemed to have a specialty shortage and a history of providing care to the underserved, who change employment without permission from CDPHE and the USCIS, or who do not comply with the terms and conditions of the Statement of Commitment to Comply with Program Requirements will be deemed to not have maintained their nonimmigrant status and will be reported to the USCIS. Furthermore, a letter to USCIS certifying completion of the physician's three year service obligation will be withheld. Facilities that are out of compliance with the terms and conditions of the Statement of Commitment to Comply with Program Requirements may be made ineligible for future J-1 visa waiver or National Interest Waiver physicians, placement of state-supported healthcare providers through the Colorado Health Service Corps, and/or National Health Service Corps site designation.

