



REPORT OF REVIEW

J-1 WAIVER PROGRAM M.D.O. MEDICAL SERVICES, INC. (EMS&AT CORPORATION)

OIG Report 95-2(H)
October 25, 1994

BACKGROUND

The review was undertaken as part of a survey of J-1 waiver program operations in the Appalachian Region and to address issues of concern reported to the Office of Inspector General with respect to compliance with program requirements.

The J-1 waiver program provides a 2-year waiver of foreign physicians' responsibilities to return to their home country after completion of medical training in the United States. The waiver can be granted for various reasons, including the need for health care services in medically underserved areas in the United States. The Appalachian Regional Commission participates as a Federal entity sponsor in the Appalachian Region and, based on supporting information submitted by physicians requesting a waiver, prospective employers, and the applicable state health agency, recommends, where appropriate, approval of waivers to the United States Information Agency and Immigration and Naturalization Service. The applicable ARC policies and procedures are that the J-1 physician will serve 2 years in a Health Professional Shortage Area (HPSA) in the Appalachian Region and will practice 40 hours of primary care per week. There is no prohibition on J-1 physicians working extra hours or practicing subspecialties after fulfilling primary care requirements. Also, transfers to other HPSAs in Appalachia are permitted.

Although 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, ARC retains the authority to act on waiver requests and to ensure compliance with program objectives and requirements.

M.D.O. Medical Services, Inc. (MDO), also known as EMS&AT Corporation, uses J-1 physicians to provide emergency room (ER) care, on a contract basis, at several hospitals in West Virginia and Kentucky. As of our review, eight J-1 physicians were employed by MDO; and ARC recommended approval of J-1 waivers for these physicians based on applications and supporting letters indicating the physicians would be providing primary care, which includes ER care, at locations in HPSAs in West Virginia. A ninth J-1 physician employed by MDO had transferred to another location and employer in June 1994.

OBJECTIVE

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

RESULTS

Based on discussions with J-1 physicians, hospital officials using MDO J-1 physicians to provide ER service, and the president of MDO, we concluded there was not full compliance with ARC program requirements. Noncompliance resulted from the J-1 physicians not always providing 40 hours of primary care at the HPSA location for which the J-1 waiver was approved. The situation resulted primarily because J-1 physicians approved for West Virginia locations were also assigned duties at Kentucky facilities, including hospitals in non-HPSAs. Although much of the service provided in Kentucky was in addition to J-1 requirements in West Virginia (moonlighting), records reflected two instances where J-1 requirements were generally not met for a 2- to 3-month period in 1994 and other intermittent instances where J-1 requirements were not met with respect to weekly service at the assigned HPSA location. Also, several physicians noted that, in addition to recent instances of noncompliance, there had been a more distinct pattern of noncompliance during the first few months of their employment in mid-1993.

In response to an ARC questionnaire in July 1994, MDO had notified ARC that, in one instance, a J-1 physician was being used at another location. The MDO president said that questionnaire responses did not disclose use of other J-1 physicians at Kentucky locations, including non-HPSAs, because he believed they were meeting ARC requirements at assigned locations.

The MDO president also said he interpreted the program to mean 160 hours of primary care per month at assigned locations, rather than 40 hours per week, and that the 160 hours per month generally had been met. He also indicated he did not believe it was necessary to notify ARC or the state agency about physicians' activities and work patterns that were in addition to their J-1 requirements. He acknowledged that, in two recent instances, J-1 physicians had spent substantial time at Kentucky hospitals, including non-HPSA locations, and attributed this in part to varied workloads at West Virginia facilities and personnel problems in one case.

For example, the employer noted that limited workload and billing problems at the Richwood, West Virginia Med-Peds Center, where several J-1 physicians had been assigned, contributed to use of physicians at other locations. Conversely, physicians noted that they believed the Richwood Med-Peds Center workload had been sufficient for them to fulfill their J-1 obligations and assignments to other locations resulted primarily from the availability of increased revenues for the employer at other, especially non-HPSA, locations. We did not attempt to reconcile the different viewpoints.

Information provided by MDO, which was generally confirmed by comparison with information obtained at three hospitals using MDO J-1 physicians to help staff ER rooms, noted as follows:

| July 1994 | PHYSICIAN HOURS BY LOCATION | | | | | |
|-----------|-----------------------------|------------------------------|-----|---------------------|-----------|-----|
| PHYSICIAN | WEST VIRGINIA FACILITIES | | | KENTUCKY FACILITIES | | |
| | HPSAs | | | HPSA | Non-HPSAs | |
| | A | B | C | A | B | C |
| 1 | 168 | | | | 110 | |
| 2 | 176 | | | | 56 | |
| 3 | 168 | | | | 72 | |
| 4 | Out of Country | | | | | |
| 5 | | | | | 143 | |
| 6 | | | 160 | | | |
| 7 | | 253 | | | 97 | |
| 8 | | | | | 27 | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| June 1994 | PHYSICIAN HOURS BY LOCATION | | | | | |
| PHYSICIAN | WEST VIRGINIA FACILITIES | | | KENTUCKY FACILITIES | | |
| | HPSAs | | | HPSA | Non-HPSAs | |
| | A | B | C | A | B | C |
| 1 | 84 | Out of Country Part of Month | | | 72 | |
| 2 | 167 | | | | 24 | |
| 3 | 120 | | | | 102 | |
| 4 | | | 48 | | 191 | |
| 5 | | | | 61 | | 174 |
| 6 | | | 175 | | | |
| 7 | | 180 | | | 186 | |
| 8 | No Activity Noted | | | | | |
| 9 | | | 46 | | 72 | 84 |
| | | | | | | |

| May 1994 | PHYSICIAN HOURS BY LOCATION | | | | | |
|------------|-----------------------------|-----|-----|---------------------|-----------|---|
| PHYSICIAN | WEST VIRGINIA FACILITIES | | | KENTUCKY FACILITIES | | |
| | HPSAs | | | HPSA | Non-HPSAs | |
| | A | B | C | A | B | C |
| 1 | 134 | | | | 48 | |
| 2 | 228 | | | | 24 | |
| 3 | Out of Country | | | | 72 | |
| 4 | Leave of Absence | | | | 65 | |
| 5 | | | | 205 | | |
| 6 | | | 183 | | | |
| 7 | | 228 | | | | |
| 8 | 142 | | | | 72 | |
| 9 | | | | | 173 | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| April 1994 | PHYSICIAN HOURS BY LOCATION | | | | | |
| PHYSICIAN | WEST VIRGINIA FACILITIES | | | KENTUCKY FACILITIES | | |
| | HPSAs | | | HPSA | Non-HPSAs | |
| | A | B | C | A | B | C |
| 1 | 156 | | | | 72 | |
| 2 | 216 | | | | 72 | |
| 3 | Out of Country | | | | | |
| 4 | Leave of Absence | | | | 93 | |
| 5 | | 168 | | | 1/ | |
| 6 | | | 160 | | | |
| 7 | | 129 | | | 237 | |
| 8 | 142 | | | | 72 | |
| 9 | | | | | 125 | |
| | | | | | | |

NOTE: 1/ Hospital records reflect 32 hours of work in a Kentucky non-HPSA facility during April 1994.

The above information discloses:

- o In two instances, physicians (5 and 9) spent several consecutive months at Kentucky locations. In one instance (physician 5), the record reflects limited service in the West Virginia Appalachian HPSA location for the 3-month period of May-July 1994. During this period, 583 hours are noted for service in Kentucky and zero hours in West Virginia. Of the 583 hours in Kentucky, 317 hours were at two hospitals in non-HPSAs. Although 266 hours were served at a Kentucky hospital in a HPSA, the use of a West Virginia approved J-1 physician at this location had not been coordinated with, or approved by, state officials.

In the other instance (physician 9), the physician was assigned to non-HPSA Kentucky locations for 454 hours during the 3-month period of April-June 1994 and to approved West Virginia locations for 46 hours. This physician transferred to another employer effective June 30, 1994, after a period of conflict between him and MDO.

- o Other J-1 physicians spent a substantial amount of time at a hospital in non-HPSA Kentucky. In some instances, this time resulted in the required time not being served at the approved West Virginia facility. For example, note the time charges for physicians 3 and 4 in June 1994, physician 1 in May 1994, and physicians 7 and 8 in April 1994.
- o As noted in the table, there are also other intermittent instances where records do not indicate primary care service in West Virginia was sufficient to meet program requirements. These instances primarily related to periods when the physicians were on leave, including periods out of the country. Although such absences are normally reasonable, it should be noted the absences were apparently applied to primary care requirements in West Virginia as opposed to ER duty (moonlighting) in Kentucky. For example, see physician 1 in June 1994, physicians 3 and 4 in May 1994, and physician 4 in April 1994.

In addition to the questionnaire response previously noted, available correspondence from MDO about physician use and location included April 1994 letters to the state agency about a transfer of a J-1 physician from one facility to another because of a conflict between the physician and the hospital staff and an undated letter (probably June 1994) identifying changed locations within West Virginia HPSAs for two J-1 physicians effective August 1, 1994, and one resignation. We did not locate correspondence to ARC or the state agency relative to use of J-1 physicians in Kentucky except for the one response to an ARC inquiry in July 1994.

Our discussions with Kentucky hospital officials indicated that, with one exception, they were satisfied with the work of physicians provided by MDO. Also, they noted difficulties in obtaining ER physicians and believed the MDO physicians were important in ensuring ER service could be provided uninterrupted. In one instance where MDO physicians were used in a non-HPSA for 1 month, a hospital official noted bad weather created an emergency that required use of these physicians to remain operational.

We also noted the potential for increased compliance with ARC and J-1 waiver requirements based on a July 1994 J-1 physician initiative and apparent agreement between several physicians and MDO management that, henceforth, the physicians would be assigned primarily to a facility in a West Virginia HPSA.

Although J-1 physicians have responsibilities for ensuring compliance with program requirements, we attributed the instances of noncompliance noted in this report primarily to the employer's assignment of physicians to locations other than the approved West Virginia HPSA location, including non-HPSA locations in Kentucky.

GENERAL

Various other issues surfaced during this review including 1) the use and effect of noncompete clauses in employer/physician contracts, which essentially prevent the J-1 physician from remaining in the HPSA after completion of the J-1 waiver period unless the physician continues employment with the current employer; 2) the approval of J-1 waivers for physicians who are to be employed by contractors who do not independently operate a medical facility or conduct a medical practice; 3) the need for provisions that ensure notification of state and Federal entities about internal transfers of J-1 physicians or terminations of employment; and 4) the limited actions possible in cases where employers direct J-1 physicians to perform duties and/or work at locations that are not in accordance with the J-1 waiver approval or program requirements.

These issues will be included in a separate report dealing with program activities.

RECOMMENDATIONS FOR ARC

1. MDO and the applicable J-1 physicians should be notified of their responsibilities to fully comply with program requirements, including the provision of 40 hours of primary care per week at the location for which the J-1 waiver was approved.
2. MDO should be notified that terminations of J-1 physicians and changes of work assignments, including transfers or temporary use of J-1 physicians at other locations, should be communicated to, and approved by, appropriate state officials.
3. MDO should be advised that priority should be placed on scheduling of work at assigned HPSA locations and that lengthy absences should be offset against assignment at unapproved, including non-HPSA, locations.
4. Reports to the applicable West Virginia state agency should include identification of physicians and hours worked outside of assigned and approved West Virginia HPSA locations.



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