



MARCH 16, 1998

OIG REPORT 98-35(H)

MEMORANDUM FOR The Federal Co-Chairman
 ARC Executive Director
 ARC General Counsel

SUBJECT: Memorandum Survey Report--Review of Selected Health Care
 Providers in Tennessee

BACKGROUND

This review was undertaken as part of a survey of J-1 Visa Waiver program operations in the Appalachian Region.

The J-1 Visa Waiver program provides a waiver of the requirement for a foreign physician to return to his/her home country after completion of medical training in the United States. The Appalachian Regional Commission (ARC) participates as a Federal Entity sponsor to assist Appalachian Region communities in providing health care services to medically underserved areas. The applicable ARC policies and procedures require J-1 physicians to practice 40 hours of primary care per week in a designated Health Profession Shortage Area (HPSA) in the Appalachian Region. The ARC program initially required the physicians to serve at least 2 years; however, in August 1995, the minimum was changed to 3 years (unless a state has a longer period). There is no prohibition on J-1 physicians working extra hours or practicing subspecialties after fulfilling primary care requirements.

Although primary responsibilities for reviewing J-1 Visa 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.

OBJECTIVE

The objective of our review was to determine compliance with ARC J-1 Visa Waiver program requirements that J-1 physicians perform primary care services in an Appalachian HPSA for 40 hours per week.

RESULTS

We made unannounced visits to seven medical facilities in Tennessee on Monday and Tuesday, February 23 and 24, 1998, to review the status of nine J-1 physicians. Although we were not able to contact the J-1 physicians directly in most cases, we concluded, based primarily on discussions with office staff and physician listings at the facilities, that the J-1 physicians were providing service in accordance with the provisions of the J-1 Visa Waiver program. In six cases, the J-1 physicians had not initially forwarded the required verification of employment form to ARC; in one case, the physician had not yet started work; and in one case, the employment agreement between the J-1 physician and employer contained a restrictive covenant regarding future employment.

Followup to determine the status of the J-1 physician that had not started work indicated the employment agreement was signed in January 1997 and the ARC J-1 Visa Waiver Agreement had been signed in October 1996. Contact with the sponsoring employer indicated that the J-1 physician's starting date had been delayed primarily by pregnancy and that the physician would be starting her 3-year J-1 period around March 16, 1998.

Discussions with one J-1 physician indicated that he had recently received a followup from ARC with respect to the employment verification form and that he had returned a completed form to ARC. Based on our visits, we anticipate the other physicians have submitted, or will be submitting, the required employment verification forms.

In one instance, the employment agreement, dated September 9, 1997, between the provider and J-1 physician contained the following language:

"SECTION 5. COVENANTS REGARDING PHYSICIAN'S PRACTICE AFTER TERMINATION, EXPIRATION AND RESIGNATION

"Acknowledging that Employer will have expended and invested significant sums of money in building and supporting a practice around Physician, in the event of (a) expiration of this Agreement or (b) early termination of this Agreement by either party and whether or not for cause, Physician agrees that he will not, for a period of twelve months next following termination or expiration, practice medicine in any capacity where children are a part of the patient base in Hamilton County, Tennessee.


"In the event of breach of this provision, Employer shall be entitled to injunctive process to halt same and, in addition, as damages would be difficult and expensive and time consuming to prove, the parties agree that Physician will pay to Employer the sum of \$30,000.00 as liquidated damages, together with attorney fees and costs, if Physician breaches or attempts to breach this provision."

Although the liquidated damages are relatively small, the restriction on employment after expiration of the agreement should be eliminated.

In three instances, J-1 physicians were located, or will be located, in close proximity to, or at, major hospitals in Chattanooga, Tennessee. Although we did not verify the eligibility of the specific site location census tract, it was apparent that the J-1 physicians were providing service to low income populations, including a substantial percentage of children. Also, justifications submitted by sponsors noted a serious scarcity of primary care providers in the area. Therefore, we did not question the eligibility of service being provided.

RECOMMENDATIONS

We recommend that ARC ensure that the employment verification forms are submitted, as required, and followup to resolve the issue related to a restrictive covenant in one employment agreement.


Hubert N. Sparks
Inspector General



Memo

To: Hubert Sparks
From: Charles Howard *[Signature]*
Date: 05/22/98
Re: OIG Report 98-35(H)

I am responding to your recommendations in OIG Report 98-35(H) to obtain verification forms for the seven physicians surveyed and resolve the issue related to the restrictive covenant in one employment agreement.

We now have verification forms for all seven physicians listed in your memo.

After careful consideration of the restrictive covenant contained in the contract for Dr. Mohammed Ghazali, I do not believe it violates our policy. The J-1 policy on restrictive covenant is intended to prevent a former employer of a J-1 physician from preventing a J-1 from practicing in the immediate area after the term of the doctor's J-1 commitment expires. Such restrictive covenants typically require a very large penalty to continue practice in the area and make it all but impossible for a J-1 to remain. This has seemed at odds with the purpose of the ARC J-1 program; hence our policy of not allowing such covenants.

The covenant in question however, appears to be designed not to prevent the J-1 from continuing practice in the area, but to recover the costs of recruitment and sponsoring by the employer if the doctor does choose to stay in the area. In this light, the amount is not burdensome and appears to be fair both to the doctor and the ex-employer.

If you have any questions, please do not hesitate to contact me.



March 16, 1998

MEMORANDUM FOR Mr. Charles Howard
 Deann Greathouse

SUBJECT: Tennessee J-1 Field Visit Summary


The J-1 physicians referred to in the summary report are:

- Needing verification of ARC followup to obtain employment verification form

Dr. Abu-Mohammad Haque
Dr. Mohammed Ghazali
Dr Kamran Farrukh
Dr. Hardeep Singh
Dr. Jayati Singh
Dr. Pawel Kowiczak
Dr. Naushabu Rizvi--Employment to start around March 16, 1998

- Employment agreement with restrictive covenant

Dr. Mohammed Ghazali


Hubert N. Sparks
Inspector General