



OCTOBER 15, 1998

REPORT 99-3(H)

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

SUBJECT: Memorandum Survey Report--Review of Selected Health Providers  
and J-1 Visa Waiver Physicians in New York State

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 requires the physicians to serve at least 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 the 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 the 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.

SCOPE

We performed unannounced visits to 11 facilities and one provider administrative office in New York State on September 15, 16, and 17, 1998, in order to determine if the 15 doctors approved for the J-1 Visa Waiver were practicing in their designated locations and if they were dedicating 40 hours per week to primary care activities. Our results and recommendations are based on visits to the locations and contacts with physicians and employers, including telephone contacts where necessary.

## RESULTS

Our visits disclosed significant differences between the information provided to ARC with respect to the practice locations and activities of J-1 Visa Waiver physicians and actual locations and practices. We noted eight instances where physicians were not practicing full-time at the approved location, two instances where some subspecialty work was being performed during the primary care tour of duty, one instance where a J-1 physician had been reassigned from the approved location to a VA Satellite Clinic in a neighboring town, and one instance where a physician was practicing primarily in a non-HPSA location. In two of the above-noted cases, J-1 physicians were primarily assigned to provide services at a nursing home; and the eligibility of such service is questionable based on HHS HPSA criteria.

In four cases, we did not locate a Verification of Employment form on file at ARC; and in six other cases, the available Verification of Employment form did not accurately identify the current practice location or activity. ARC was generally unaware of the transfers or reassignments of the J-1 physicians.

We attributed the conditions noted primarily to an excess of J-1 Visa Waiver physicians in relation to workload, which resulted in a need to realign and reassign the locations, practices, and schedules of the physicians in order to provide them with increased workload. Although we believe the providers/employers and J-1 Visa Waiver physicians that we contacted were acting in good faith, there is a need to address the conditions noted in order to ensure the program is operating in the most efficient, effective, and allowable manner.

The following sections highlight the conditions noted.

### --Family Health Network (FHN), Cortland New York

FHN currently employs seven J-1 Visa Waiver physicians and is sponsoring another applicant. Our visits to three locations and discussions with the FHN Acting Executive Director and Medical Director, J-1 Visa Waiver physicians, and office staff and a review of the September 1998 work schedule disclosed a need to reevaluate the practice status of the J-1 Visa Waiver program physicians.

We noted as follows:

- o Two physicians that were approved for full-time work at rural clinics were primarily assigned to a nursing home in Cortland. ARC files indicate one of the physicians was approved for clinics in Marathon and Cortland, New York; and the Verification of Employment submitted in early 1998 notes the location of the practice as these clinics. However, our discussions and review of the September 1998 work schedule indicated that the physician was at the Marathon clinic only on Wednesdays from 1:00-8:00 pm, no time was spent or scheduled at the Cortland clinic, and the primary practice involved attending to patients in the short-term/rehabilitation unit of the Highgate Manor nursing home. The physician noted that she sees about 25 patients per week at the nursing home in line with a nursing home policy that each patient in this section must be seen by a physician once per week.

ARC files indicate the other physician was approved to practice primary care in Cuyler, New York. A Verification of Employment form was not on file at ARC. Discussion and

review of the September 1998 work schedule indicated the physician served the Cortland clinic on Thursdays from 1:00-8:00 pm and his remaining time was spent at the Highgate Manor nursing home where his primary responsibility was for the long-term unit. The physician said that he saw 3 to 4 patients per day at the nursing home and also performed other services such as providing overall medical analysis and advice about residents, reviewing test results and advising on medicines, etc. He said he had previously practiced full-time at the Cortland clinic and believed the clinic practice provided him more varied experience.

Both of the physicians said they provided 40 hours of primary care and nursing home residents were almost exclusively low income. Although the actual workload at the nursing homes, as respects the amount of time involved, may be questionable, the primary issue is the eligibility of service at a nursing home. The Department of Health and Human Services (HHS) and the US Public Health Service (USPHS) apparently do not include nursing homes in HPSA determinations and classifications for various reasons including admission restrictions used by some nursing homes and the residence of nursing home patients prior to entering the nursing home. Thus, the eligibility of such service under the J-1 Visa Waiver program becomes an issue.

Although we did not pursue issues related to nursing home residents, our observations, including visits to a wide area of central New York, and discussions indicated that the clientele of the nursing home were primarily of low income and that they either previously resided in or around Cortland or in other low income medically underserved areas in central New York

- o In one case, the physician, an OB/GYN, and employer had entered into a cross-servicing arrangement with the FHN Ithaca, New York clinic, located in a non-HPSA, whereby the J-1 Visa Waiver physician that was approved for a clinic in Groton, New York, also served the Ithaca, New York area. The Verification of Employment form dated January 1998 noted practice locations in Groton and Ithaca and 32 hours of primary care per week but did not break out the time between Groton and Ithaca. It appears the 32 hours noted was intended as the time in Groton since a March 1998 letter to ARC from the physician's lawyer states that the physician is performing 32 hours of primary care weekly at the Groton, New York clinic.

Also, a listing of FHN physicians and locations noted the physician as located only at the Ithaca Medical Office.

Our discussions and review of the September 1998 work schedule indicated the physician was at the Groton clinic on Mondays and on Friday mornings. The physician noted that the workload at Groton was still low and that her work in Ithaca included attending to hospitalized patients from the Groton area. The key issue is the amount of practice at a non-HPSA location.

- o In two instances, physicians were involved with some subspecialty work; and there is a need for ARC to obtain better information about the physicians' primary care and subspecialty practice. Also, performance of practices not considered to be primary care could have an impact on conditions of licenses issued by New York State.

In one case, the physician practiced his subspecialty in Gastroenterology at the Cortland Memorial Hospital several mornings each week. A schedule of work was not available for this physician, and there was some inconsistency between the information provided by the office staff and physician. However, since the physician performs various gastroenterology related procedures on Monday and Friday mornings, and possibly at other times, and has no scheduled work on Thursday, there is a need to obtain updated information on practices and locations in order to better evaluate this case. The physician noted that his primary care duties, which include time at the clinic and hospital rounds in the morning and afternoon/evening, including Thursday, result in meeting the J-1 primary care requirements.

In the second case, the physician with a subspecialty in Cardiovascular Disease is at the hospital 3 mornings per week and primarily performs stress tests, EKGs, and some consultations. Since procedures such as catheterizations are not performed or available, we do not believe a serious problem exists; but updated information should be obtained.

Although we did not conclude that the subspecialty work seriously impeded performance of primary care responsibilities, the scheduling of the subspecialty work during hours of clinic operation raises questions about how primary care requirements are met. Also, there is an apparent need for New York officials to clarify and review subspecialty practices in relation to conditions noted in medical licenses approved by New York State as respects participation in the J-1 Visa Waiver program. We did not attempt to determine if the procedures performed at the Cortland Memorial Hospital in line with subspecialty certifications would also qualify as primary care.

- o In two other instances, a Verification of Employment form was not available at ARC; and in one instance, the physician had been assigned half-time to another rural clinic not included in prior correspondence with ARC. Although Verification of Employment forms should be obtained, it appeared these physicians were in general compliance with program provisions pertaining to service in a HPSA.

We attributed the conditions noted primarily to excess physicians in relation to workload and recommend that ARC work with the state and FHN in order to address the issues raised in a manner that will be consistent with J-1 Visa Waiver program intents and requirements. A first step should be to obtain updated information, including revised Verification of Employment forms, on all FHN J-1 physicians, including practice sites, hours at each site, and types of practices and procedures, and a plan from FHN dealing with use of J-1 Visa Waiver physicians, to the maximum degree possible, in line with program requirements. In the interim, we recommend that additional J-1 Visa Waiver physicians not be approved for FHN.

#### --Harpursville Health and Wellness Center

Two physicians were approved for the Harpursville, New York clinic. Our visit confirmed that one physician was practicing primary care full-time at the clinic, but the other physician had been reassigned to practice full-time at the Department of Veterans Affairs (VA) Outpatient Clinic in Sidney, New York. The available physician said the workload at Harpursville did not fully occupy two J-1 Visa Waiver physicians and an arrangement was made for one of the J-1 Visa Waiver physicians to be reassigned to the VA clinic when an opening occurred. He said he believed the reassignment had been approved by New York State program officials.

ARC correspondence and the Verification of Employment form for the reassigned physician was dated March 1997 and noted Harpursville as the practice location.

Our contact with the transferred physician disclosed that he started at the Harpursville clinic in March 1997, did some part-time work at the VA clinic, and was assigned full-time to the VA clinic around April 1998. He has resided in Sidney since he arrived in the area. He noted that the assignment had been approved by the State of New York and provided a copy of an October 16, 1996 letter from the State of New York Department of Health approving service at the VA Medical Center Satellite Clinic in Sidney (copy attached).

It appears the state approval for the physician to expand his service area to include the VA Satellite Clinic in Sidney was not an approval for transfer from Harpursville to Sidney. Rather, the notification was intended to permit the physician to conduct additional practice in addition to the primary care requirement at the Harpursville clinic. The physician employment agreement with the hospital, which operates the Harpursville Health and Wellness Center and an acute care hospital in Sidney, New York, was signed March 1, 1996, and specifies service at the Harpursville clinic. The J-1 Visa Waiver Affidavit and Agreement was signed November 13, 1996; and employment started in March 1997.

Although the physician and the employer may have been confused about the VA and ARC programs and related requirements, there is a need to determine the eligibility of the practice at the VA clinic in Sidney, especially since VA clinics are essentially closed facilities.

--Our Lady of Lourdes Memorial Hospital and Clinic

In one instance, the physician was practicing at the assigned location but the workload remained low; and in order to supplement the low clinic workload, the physician actively pursued related activities such as visiting patients of the clinic at local nursing homes, acting as medical provider at local events, etc.

Although we concluded that the physician was complying with J-1 Visa Waiver program requirements as best as possible in view of the workload circumstances, we recommend that ARC carefully review any applications for additional J-1 Visa Waivers from physicians for employment with the provider.

--Chenango Memorial Hospital, Sherburne Clinic


ARC files did not indicate receipt of a Verification of Employment form for a physician that started his employment in July 1998. Although the physician was on-site and performing in accordance with requirements, the required notification should be obtained.

--General

Notices required by ARC J-1 Visa Waiver program requirements in connection with charges for services were generally not posted at the locations visited. Although we provided a copy of the applicable notice to the persons contacted, we recommend that ARC reiterate this requirement to participating physicians and employers.

RECOMMENDATIONS

ARC, in conjunction with New York State program officials, the sponsoring health care providers, and applicable physicians, should initiate action to ensure compliance with program requirements, with emphasis on issues raised with respect to nursing home service, practice at a non-HPSA location, subspecialty practices, transfer to a VA Satellite Clinic, and numbers of J-1 physicians.

  
Hubert N. Sparks  
Inspector General

Attachment



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.  
Commissioner

October 16, 1996

Dr.  
c/o The Hospital  
Pearl Street  
Sidney, New York 13838

Dear Dr.

This is in response to the October 11, 1996 letter from Russell Test requesting to expand the service area for your three year limited medical license to include the Stratton VA Medical Center satellite clinic located in Sidney. Since this site is a Regents designated facility for service to special populations, we approve an expansion of your service area to include the VA Medical Center satellite clinic located in Sidney.

If we can be of any further assistance to you, please do not hesitate to contact Tom Kaczmarek of my staff at 518-473-7019.

Sincerely,

Sean Moore  
Assistant Director  
Bureau of Health Resources  
Development

cc: Michelle McGrath

RECEIVED OCT 16 1996




December 17, 1998

Ms. Hilary T. Fraser  
True, Walsh & Miller, LLP  
Attorneys at Law  
202 East State Street  
Ithaca, NY 14850

Dear Ms. Fraser:

As requested, enclosed is a copy of our survey report dealing with the J-1 Visa Waiver Program in central New York.

Sincerely,

  
Hubert N. Sparks  
Inspector General

Enclosure





October 15, 1998


Mr. Tom Kaczmarek  
Associate Health Planner  
Bureau of Health Resources Development  
New York State Department of Health  
Corning Tower Building, Room 1602  
Albany, NY 12237

Dear Mr. Kaczmarek:

Enclosed is a copy of our report dealing with compliance visits in connection with the J-1 Visa Waiver program in central New York and a summary provided to ARC that identifies contacts made. As noted, our primary recommendation pertains to action necessary to ensure maximum possible compliance with program requirements regarding physicians whose locations and/or activities are not in accord with waiver approval requirements and agreements.

If you have any questions, please give me a call.

Sincerely,

  
Hubert N. Sparks  
Inspector General

Enclosure



October 15, 1998

MEMORANDUM FOR Federal Co-Chairman  
Executive Director  
General Counsel

SUBJECT: New York State J-1 Visa Waiver Program Compliance Visits

The enclosed final report involving 15 J-1 Visa Waiver program physicians identifies some problems with respect to the placement, activities, and/or unapproved transfer of physicians. These actions, which we attributed primarily to excess physicians in relation to workload, resulted in 8 physicians performing activities or working part or full-time at locations different from the sponsor request or Verification of Employment form submitted to ARC. This included one case where a physician had been transferred full-time from the approved clinic to a VA Satellite Clinic in a neighboring town, one case where the physician was practicing primarily in a non-HPSA, and two instances where physicians were primarily providing medical service at a local nursing home.


Also, in two instances, physicians spent several mornings each week at a local hospital performing procedures in line with their subspecialties in cardiovascular disease and gastroenterology. Although these activities did not appear to seriously conflict with primary care responsibilities and some of the procedures, e.g., EKGs and stress tests, might be considered primary care, ARC had not been informed about these practices, the scheduled hours conflicted with established clinic hours, and any subspecialty practice could conflict with the conditions of New York State medical licenses.

Although we concluded, based on contacts with J-1 physicians and employers that good faith efforts were made to comply with program requirements, an excess of physicians resulted in unapproved actions that were not in compliance with program requirements. Therefore, we are recommending that ARC, in conjunction with New York State program officials, employers, and applicable physicians, address the issues raised in order to ensure maximum possible compliance with program requirements. Pending resolution of the noted issues, we are recommending suspension of further approvals of requests for waivers involving the Family Health Network.

A draft of report sections dealing with Family Health Network (FHN) J-1 physicians was provided to FHN officials on September 29, 1998; and a followup contact was made on October 7, 1998. No response for inclusion in the final report was received from FHN.

Since we do not identify physicians in our report, this memorandum also summarizes and identifies the contacts made and conditions noted.

PROVIDER	PHYSICIAN	CONDITION
Family Health Network	J. Ahmad	No problem noted, but Verification of Employment form is needed.
	M. Fejka	Part-time in clinic, part-time in adjoining hospital performing cardiovascular disease related procedures. Generally stress tests, EKGs, and consultations. Not noted on Verification of Employment form.
	Y. Khan	OB/GYN whose primary work is at a non-HPSA location. Verification of Employment form is unclear.
	S. Kmiecik	Primarily assigned to a Cortland nursing home. Need Verification of Employment form.
	L. Laredo	Reassigned to half-time duty at another rural clinic. No problem noted, but Verification of Employment form is needed.
	M. Sharma	Primarily assigned to a Cortland nursing home. Not noted on Verification of Employment form.
	B. Syam	Conducts gastroenterology procedures at hospital in the morning several days per week. Not noted on Verification of Employment form.
Chenango County Outpatient Clinic	M. Sfeir	No problem noted.
Harpurville Health and Wellness	C. Sukumar	Reassigned to VA clinic in Sidney. No notification to ARC, and Verification of Employment form incorrect.
	M. Muhammed	No problem noted.
Lourdes Hospital and Clinics	J. Almendral	No problem noted.
	A. de Leon	No problem noted.
	M. Raymundo	Practicing primary care, but limited workload requires expansion of duties.
	A. Shamin	No problem noted.
Sherburne Clinic	S. Daoud	No problem noted, but Verification of Employment form is needed.

  
 Hubert N. Sparks  
 Inspector General

Attachment



October 7, 1988


Mr. Michael G. Guley, President  
Our Lady of Lourdes  
Memorial Hospital, Inc.  
169 Riverside Drive  
Binghamton, NY 13905

Dear Mr. Guley:

In our September 29, 1988 correspondence, we mistakenly requested updated information in connection with Dr. de Leon's duties. Subsequent to this correspondence, we noted that the Verification Form previously submitted does indicate service at Richford and Greene; and we have annotated this form to reflect time is evenly split between the Richford and Greene offices.

We apologize for any inconvenience caused.

Sincerely,

  
Hubert N. Sparks  
Inspector General



October 8, 1998

Mr. Russell Test  
Chief Executive Officer  
The Hospital  
Pearl Street  
Sidney, NY 13838

Dear Mr. Test:

This letter confirms our discussion of the reassignment of Dr. Sukumar from the Harpursville Health and Wellness Center to the Veterans Affairs satellite clinic in Sidney, New York, and the impact of this action on compliance with the J-1 Visa Waiver program and Appalachian Regional Commission (ARC) procedures.

As noted, there is no record of the reassignment being approved by New York State or ARC officials. Documentation available at ARC includes an employment agreement, dated March 1, 1996; a December 20, 1996 request to New York State from The Hospital requesting support for the waiver applications for Doctors Sukumar and Muhammad; and other letters of support for the waiver applications. All correspondence notes that the physicians would serve a primary care clinic in Harpursville, New York, and there is no indication of potential service at any other location. Dr. Sukumar's signed J-1 Visa Waiver Policy Affidavit and Agreement noting intention to fully comply with program requirements was dated November 13, 1996.

We were also provided a copy of an October 16, 1996 letter to Dr. Sukumar from the New York State Bureau of Health Resources Development pertaining to New York approval of an expanded service area for Dr. Sukumar to include the VA Medical Center satellite in Sidney. However, this approval does not provide for a waiver of ARC program requirements and agreements that were entered into subsequent to October 1996 with respect to providing 40 hours of primary care at an approved location—e.g., the Harpursville clinic.

ARC procedures require completion of service at approved locations unless transfers are approved and such approvals are conditioned on compliance with program requirements at the new location. A primary program requirement is that ARC-sponsored J-1 Visa Waiver program physicians' services be accessible to all patients. Since VA medical facilities are not routinely available to everyone, service at such facilities is not considered to be eligible service.

In view of potential misunderstandings about the meaning of the October 16, 1996 letter to Dr. Sukumar and potential confusion about ARC and New York State J-1 Visa Waiver program requirements, including transfer actions, we are recommending in our report to ARC that action be initiated between the affected parties to resolve this issue and provide for maximum compliance with program requirements.

  
Hubert N. Sparks  
Inspector General