



January 31, 2008


Memorandum for:     The Federal Co-Chair  
                                  ARC Executive Director

Subject:                 OIG Report 08-04  
                                  Review of Selected Health Providers  
                                  And J-1 Visa Waiver Physicians  
                                  In New York

Attached is the report dealing with the review of compliance with the ARC J-1 Visa Waiver program requirements by providers and J-1 physicians.

The report contains four recommendations which are considered closed based on ARC's actions based on the draft report. The report is now closed.

The attached report includes two appendices' that include the names of the physicians and sponsors. As this information may be considered privacy act information, please do not release this report without clearance from the General Counsel.

  
Clifford H. Jennings  
Inspector General

Attachment

cc: General Counsel

**MEMORANDUM REPORT ON REVIEW OF  
APPALACHIAN REGIONAL COMMISSION  
J-1 VISA WAIVER PROGRAM**

**REVIEW OF SELECTED HEALTH PROVIDERS  
AND J-1 VISA WAIVER PHYSICIANS IN NEW YORK**

**Period of Random Site Visits: October 29, 2007 through November 1, 2007**

**CAUTION:** *Certain information contained herein is subject to disclosure restrictions under the Freedom of Information Act, 5 U.S.C. 522 (b) (4). Distribution of this report should be limited to Appalachian Regional Commission and other pertinent parties.*

**Report Number: 08-04**

**Date: January 28, 2008**

**MEMORANDUM REPORT ON REVIEW OF  
APPALACHIAN REGIONAL COMMISSION  
J-1 VISA WAIVER PROGRAM**

**REVIEW OF SELECTED HEALTH PROVIDERS  
AND J-1 VISA WAIVER PHYSICIANS IN NEW YORK**

**Period of Random Site Visits: October 29, 2007 through November 1, 2007**

**Prepared By:**

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TO: Appalachian Regional Commission (ARC)  
Office of Inspector General (OIG)

FROM: Tichenor & Associates, LLP  
Louisville, Kentucky

REPORT FOR: The Federal Co-Chairman  
ARC Executive Director  
OIG Report Number: 08-04

SUBJECT: Memorandum Review Report on Appalachian Regional  
Commission (ARC) J-1 Visa Waiver Program – Review of  
Selected Health Providers and J-1 Visa Waiver Physicians in New  
York.

PURPOSE: The purpose of our review was to determine the compliance with ARC J-1 Visa Waiver program requirements and that J-1 physicians perform primary care services in an Appalachian Health Profession Shortage Area (HPSA) for 40 hours per week.

BACKGROUND: This review was undertaken as part of a review 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 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 HPSA in the Appalachian Region. The ARC program requires the physician to serve at least 3 years (unless the 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 preliminary 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.

SCOPE: We performed a review of the program as described in the Purpose above. Our review was based on the terms of the ARC Federal Co-Chair's J-1 Visa Waiver Policy and on the application of certain agreed-upon procedures previously discussed with the ARC OIG. Specifically, we determined if the physicians were providing medical care in accordance with the approved practices. Our results and recommendations are based upon those procedures. These review procedures were performed in accordance with applicable Government Auditing Standards.

RESULTS: During the period October 29, 2007 through November 1, 2007, unannounced visits to eleven physicians located in New York were performed. The purpose of the visits was to verify the practices and locations of the physicians with J-1 Visa Waivers. The results of the visits were as follows:

1. Lack of Notice Posted in Patient Waiting Area of Availability of Service to Medicare, Medicaid, and Medically Indigent Patients

The ARC Federal Co-Chair's J-1 Visa Waiver Policy states that the facility or practice sponsoring the physician must agree to provide health services to individuals without discriminating against them because (a) they are unable to pay for those services or (b) payment for those health services will be made under Medicare or Medicaid; and, a notice must be posted in a conspicuous location in the patient waiting area at the practice site notifying patients of the charges for services as required in this policy.

Of the eleven locations we visited where the J-1 physician is currently providing services, none of the locations had notices posted of the availability of treatment to Medicare, Medicaid, and medically indigent patients in a conspicuous location in the patient waiting area. (See Appendix B – Summary of Findings)

Recommendation:

We recommend that ARC, in conjunction with New York state officials, ensure that the above employers properly post notices of the availability of treatment to Medicare, Medicaid and medically indigent patients in a conspicuous location in the patient waiting area in compliance with the ARC Federal Co-Chair's J-1 Visa Waiver Policy.

ARC's Response:

In response to our recommendation ARC contacted state officials in New York. As a result, the State has issued a letter to all J-1 Visa Waiver sponsors in New York to ensure that they properly post notices that the facility or practice sponsoring the physician must agree to provide health services to individuals without discriminating against them because (a) they are unable to pay for those services or (b) payment for those services will be made under Medicare and Medicaid. (See Appendix C – ARC's Response)

Auditor's Comment:

*ARC, in conjunction with New York state officials, has taken steps to ensure that all J-1 Visa Waiver sponsors in New York properly post notices of the availability of treatment to Medicare, Medicaid, and medically indigent patients in a conspicuous location in the patient waiting area in compliance with the ARC Federal Co-Chair's J-1 Visa Waiver Policy. As a result, this recommendation is considered closed.*

2. Employment Agreement has Restrictions to Practice in the Local Area after Completion of the J-1 Visa Waiver Period

The ARC Federal Co-Chair's J-1 Visa Waiver Policy states that the physicians are allowed to practice in the local area after completion of the J-1 waiver period in a designated HPSA in the Appalachian Region.

In two cases, the physician is restricted for a period of one and two years, respectively, from soliciting current or former patients following completion of the J-1 Visa Waiver period. (See Appendix B – Summary of Findings)

Recommendation:

We recommend that ARC, in conjunction with New York state officials, take steps to ensure that such restrictive language is removed from the above employment agreements to be in compliance with the ARC Federal Co-Chair's J-1 Visa Waiver Policy.

ARC's Response:

ARC reviewed the employment agreements in question and stated that they contain non-solicitation, rather than non-compete, clauses and **do** comply with ARC policy. (See Appendix C – ARC's Response)

Auditor's Comment:

*ARC stated that the employment agreements in question are in compliance with the ARC Federal Co-Chair's J-1 Visa Waiver Policy. As a result, this recommendation is considered closed.*

3. Physician not Providing Approximately 40 Hours of Primary Care Per Week

The ARC Federal Co-Chair's J-1 Visa Waiver Policy states that the physician must agree to provide primary medical care for at least forty hours per week in a designated HPSA in the Appalachian Region.

At one of the locations we visited, the physician claimed to work at the psychiatric hospital for 7 1/2 hours per day (split shift), five days a week, with additional coverage

hours at another location, when needed. The physician also works at two additional locations which are not part of the employee agreement.

The amount of time spent at the additional locations would seem to take away from his required duties specified in the Employee Agreement. (See Appendix B – Summary of Findings)

Recommendation:

We recommend that ARC, in conjunction with New York state officials, review the current status of the physician and determine if the physician is in compliance with the ARC Federal Co-Chair’s J-1 Visa Waiver Policy.

ARC’s Response:

In conjunction with New York state officials, ARC has reviewed the physician’s current work schedule and determined that the physician is in compliance with ARC policy. (See Appendix C – ARC’s Response)

Auditor’s Comment:

*ARC has determined that the physician is in compliance with the ARC Federal Co-Chair’s J-1 Visa Waiver Policy. As a result, this recommendation is considered closed.*

4. No U.S. Department of State Notification Letter in ARC Files

The U.S. Department of State (DOS) must approve a request from the ARC for a physician to be granted a waiver from the two-year foreign residency requirement. For each request made, ARC receives a Notification Letter from DOS indicating whether the request was granted or denied.

ARC did not have a U.S. Department of State Notification Letter on file for one of the physicians we visited. (See Appendix B – Summary of Findings)

We recommend that ARC ensure that U.S. Department of State Notification Letters are properly maintained on file for all J-1 Visa Waiver physicians.

ARC’s Response:

ARC stated that receipt of the U.S. Department of State Notification Letter is not essential to the operation of the program and is not a program requirement. ARC further stated that they rely on the ARC Verification form to obtain approval dates and practice information. (See Appendix C – ARC’s Response)

Auditor's Comment:

*ARC stated that the U.S. Department of State Notification Letter is not a program requirement and that they rely on the ARC Verification form to obtain approval dates and practice information. Since the auditor verified that a J-1 Placement Verification Form was on file for the physician in question, this recommendation is considered closed.*

CONCLUSION: All of the eleven physicians we contacted were satisfied with the program and practices and they generally expressed interest in staying in the area upon completion of their waiver period. (See Appendix A – J-1 Physician Visits in New York)

*Tichenor & Associates, LLP*  
Tichenor & Associates, LLP  
Louisville, Kentucky  
November 1, 2007



w/o

appendices'

A: B

**APPENDIX C**  
**ARC'S RESPONSE**



## MEMORANDUM

**DATE:** January 15, 2008

**TO:** Jack Somerville, CPA, Tichenor & Associates, LLP  
Cliff Jennings, IG, Office of the Inspector General

**THROUGH:** Charles S. Howard, General Counsel *h*

**FROM:** Deann Reed Fairfax, J-1 Program Specialist, Office of General Counsel *DR*

**CC:** Steve Swanson, Associate Health Planner, New York State Department of Health

**SUBJECT:** Review of Selected Employers and J-1 Visa Waiver Physicians in New York

In response to the recommendations in the *Review of Selected Health Providers and J-1 Visa Waiver Physicians in New York*, we contacted state officials in New York. As a result, the State will contact all J-1 Visa Waiver sponsors in New York to ensure that they properly post notices that the facility or practice sponsoring the physician must agree to provide health services to individuals without discriminating against them because (a) they are unable to pay for those services or (b) payment for those health services will be made under Medicare and Medicaid.

We have reviewed the employment agreements in question and understand that they contain non-solicitation clauses and do comply with ARC policy.

In conjunction with New York state officials we have reviewed the current work schedule for Dr. Ahsan Mahmood and have determined that he is in compliance with ARC policy.

While some ARC J-1 files do contain the U.S. Department of State Notification letter, receipt of that letter is not essential to the operation of the program and is not a program requirement. We rely on the ARC Verification form to obtain approval dates and practice information.

We appreciate your review and, except as noted in the preceding paragraph, accept your recommendations. If you have any questions, please do not hesitate to contact me at 202-884-7786 or [dfairfax@arc.gov](mailto:dfairfax@arc.gov).