

SENATE BILL NO. 229—SENATOR CARLTON

MARCH 13, 2009

Referred to Committee on Health and Education

SUMMARY—Establishes the Physician Visa Waiver Program in the Health Division of the Department of Health and Human Services. (BDR 40-368)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to health care; establishing the Physician Visa Waiver Program in the Health Division of the Department of Health and Human Services; requiring the Program to provide for the oversight of employers and applicants for J-1 visa waivers in this State, evaluate requests for letters of support and issue such letters; requiring the State Board of Health to adopt regulations providing for the administration of the Program, establishing an application fee for a letter of support and establishing penalties for certain violations by applicants and employers; providing immunity from civil and criminal liability for a person who reports or provides information concerning a violation of the Program to a governmental entity; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 A J-1 visa is a nonimmigrant visa available to certain aliens who are designated
2 “exchange visitors.” Certain classes of J-1 visas, including J-1 visas issued to
3 foreign medical graduates, require that the alien return to his home country or
4 country of last permanent residence for a period of 2 years after his completion of
5 J-1 status. The 2-year foreign residence requirement may be waived by the Federal
6 Government under certain circumstances. One condition for the issuance of such a
7 waiver is that a letter of support stating that the waiver is in the public interest must
8 be issued to the Waiver Review Division of the United States Department of State
9 by the state health department of the state in which the foreign medical graduate
10 will work. (8 U.S.C. §§ 1182(e), 1184(l); 22 C.F.R. § 41.63)

11 **Section 10** of this bill establishes the Physician Visa Waiver Program in the
12 Health Division of the Department of Health and Human Services. The



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Administrator of the Division is charged with administering the Program which must: (1) provide for the oversight of employers and physicians who apply for J-1 visa waivers in this State; (2) evaluate applications for letters of support submitted by J-1 visa physicians; and (3) issue letters of support. **Section 10** requires the State Board of Health to adopt regulations providing for the administration of the Program and establishing application fees for letters of support.

Section 11 of this bill requires a physician who applies for a J-1 visa waiver or his employer to apply to the Program for a letter of support in the manner prescribed by the State Board of Health. The application must include a copy of the contract entered into between the physician and the employer. The Program may issue a letter of support to the physician: (1) if the Program finds that the waiver is in the public interest; (2) if the contract complies with certain requirements; and (3) upon payment of the application fee.

Section 12 of this bill provides that, in addition to any other penalty prescribed by law, a J-1 visa physician who does not provide the required minimum hours of health services required by Federal law, refuses to provide health services to medically underserved persons in this State or violates any provision of state law governing physicians or the provision of health services is subject to penalties prescribed by the State Board of Health by regulation. **Section 12** also provides that, in addition to any other penalty prescribed by law, an employer who employs a J-1 visa physician in a manner other than that specified in the physician's contract, violates any provision of this bill or the regulations adopted pursuant thereto or violates any provision of state law governing physicians or the provision of health services is subject to penalties prescribed by the State Board of Health by regulation. **Section 13** of this bill provides immunity from criminal and civil liability for any person who reports a violation of the provisions of this bill to a governmental entity.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 439A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this act.

Sec. 2. *As used in sections 2 to 13, inclusive, of this act, the words and terms defined in sections 3 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Administrator" means the Administrator of the Division.*

Sec. 4. *"Division" means the Health Division of the Department.*

Sec. 5. *"Employer" means a person who sponsors a J-1 visa physician and enters into a contract with the J-1 visa physician.*

Sec. 6. *"J-1 visa physician" means a foreign medical graduate who:*

1. Has an offer of full-time employment at a health facility in an area designated by the Federal Government as a health care professional shortage area or at a health facility which serves patients from such a designated area, and agrees to begin



1 *employment at that facility within 90 days after receiving a J-1*
2 *visa waiver;*

3 2. *Signs a contract to continue to work at that health facility*
4 *for a total of 40 hours per week for not less than 3 years;*

5 3. *Applies for or has been issued a license to practice*
6 *medicine pursuant to chapter 630 of NRS; and*

7 4. *Applies for a J-1 visa waiver.*

8 **Sec. 7.** *“J-1 visa waiver” means a waiver of the 2-year*
9 *foreign residence requirement authorized pursuant to 8 U.S.C. §*
10 *1182(e) for a physician who holds a J-1 visa.*

11 **Sec. 8.** *“Letter of support” means a letter issued by the*
12 *Program to the Waiver Review Division of the United States*
13 *Department of State stating that a request for a J-1 visa waiver is*
14 *in the public interest.*

15 **Sec. 9.** *“Program” means the Physician Visa Waiver*
16 *Program established by section 10 of this act.*

17 **Sec. 10.** 1. *The Physician Visa Waiver Program is hereby*
18 *established in the Division. The Administrator shall administer the*
19 *Program consistent with federal law and the provisions of sections*
20 *2 to 13, inclusive, of this act and the regulations adopted pursuant*
21 *thereto. The Program must:*

22 (a) *Provide for the oversight of employers and J-1 visa*
23 *physicians in this State;*

24 (b) *Evaluate applications for letters of support submitted*
25 *pursuant to section 11 of this act; and*

26 (c) *Issue letters of support.*

27 2. *The State Board of Health shall adopt regulations:*

28 (a) *Providing for the administration of the Program; and*

29 (b) *Establishing an application fee, not to exceed \$500,*
30 *payable to the Program by an employer or J-1 visa physician who*
31 *applies for a letter of support pursuant to section 11 of this act.*

32 3. *Any application fees collected by the Program are not*
33 *refundable and must be deposited in the State Treasury and*
34 *accounted for separately in the State General Fund. Any interest*
35 *and income earned on the money in the account, after deducting*
36 *any applicable charges, must be credited to the account. Any*
37 *money remaining in the account at the end of a fiscal year does*
38 *not revert to the State General Fund. All claims against the*
39 *account must be paid as other claims against the State are paid.*
40 *The money in the account must be used to pay the costs of*
41 *administering the Program and for training and educating J-1*
42 *visa physicians and employers.*

43 4. *The Division is hereby designated as the agency of this*
44 *State to cooperate with the Federal Government in the*
45 *administration of the Program.*



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Sec. 11. 1. An employer or J-1 visa physician who seeks a letter of support from the Division must:

(a) Apply to the Program for a letter of support in the manner prescribed by the State Board of Health;

(b) Include with the application proof satisfactory to the Division that the J-1 visa physician is licensed to practice medicine pursuant to chapter 630 of NRS or has submitted an application for a license to practice medicine pursuant to chapter 630 of NRS; and

(c) Include with the application a copy of the contract entered into by the employer and the J-1 visa physician.

2. The contract entered into by the employer and the J-1 visa physician:

(a) Must comply with:

(1) All applicable provisions of federal law; and

(2) The regulations adopted by the State Board of Health pursuant to sections 2 to 13, inclusive, of this act.

(b) Must not include:

(1) A noncompete clause or restrictive covenant that prevents or discourages the J-1 visa physician from continuing to practice after the term of the contract expires; or

(2) Any provision authorizing termination without cause.

3. The Program may provide a letter of support to a J-1 visa physician:

(a) If the Program determines that the waiver is in the public interest;

(b) If the contract entered into by the employer and the J-1 visa physician complies with the provisions of this section; and

(c) Upon payment of the prescribed application fee.

Sec. 12. 1. In addition to any other penalty prescribed by law:

(a) A J-1 visa physician who:

(1) Does not provide the required minimum hours of health services in an area designated by the Federal Government as a health care professional shortage area;

(2) Refuses to provide health services to medically underserved persons in this State; or

(3) Violates any provision of state law governing physicians or the provision of health services; or

(b) An employer who:

(1) Employs a J-1 visa physician in a manner other than that specified in the contract entered into by the employer and the J-1 visa physician;

(2) Violates any provision of sections 2 to 13, inclusive, of this act or any regulation adopted pursuant thereto; or



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1 (3) Violates any provision of state law governing physicians
2 or the provision of health services,
3 ↪ is subject to the penalty prescribed by the State Board of Health
4 pursuant to subsection 2.

5 2. The State Board of Health shall adopt regulations
6 establishing:

- 7 (a) The procedure for reporting a violation of this section; and
8 (b) The penalty for any violation of this section.

9 Sec. 13. A person who reports or provides any information
10 concerning a violation of sections 2 to 13, inclusive, of this act or
11 any regulation adopted pursuant thereto to a governmental entity
12 is immune from any civil or criminal liability for that action.

13 Sec. 14. This act becomes effective on July 1, 2009.

