Section by section summary of S.948. *“Conrad State 30 and Physician Access Reauthorization Act,” To provide incentives to physicians to practice in rural and medically underserved communities, and for other purposes.

Section 1, short title: “Conrad State 30 and Physician Access Reauthorization Act.”


Section 3, “Retaining physicians who have practiced in medically underserved communities.” Immigrant visa numbers for physicians who complete five years of full-time service pursuant to INA section 203(b)(2)(B)(ii), will be provided under INA section 201(b)(1), which is not subject to any annual numerical limit. Physicians who complete five years of qualifying service will be immediately eligible to immigrate, notwithstanding backlogs in the employment-based immigrant visa preference categories. Section 3 also confirms that National Interest Waiver Physicians may apply for adjustment of status prior to the completion of the five-year service requirement, and may meet the five-year service requirement by aggregating service at different qualifying locations.

Section 4, “Employment protections for physicians.” Section 4 makes a number of minor changes in the Conrad State 30 J-1 waiver program, to address recurring problems for state departments of public health, healthcare employers, and the USCIS, in the administration of the program. In general, these changes are designed to make the program more effective in bringing physicians to underserved communities and retaining the physicians within those areas, by making those employment situations more stable:

Section 4(a). Replaces the old requirement that a physician granted a waiver begin employment within 90 days of the waiver approval, with a requirement that the physician begin employment within the later of: 120 days after approval of the waiver, completion of residency/fellowship training, or receipt of USCIS authorization to begin employment.

Section 4(b). Replaces the requirement that the three years of waiver service be completed only in H-1B status, with a provision allowing the three-year service requirement to be completed in any non-immigrant status or with USCIS-issued employment authorization.

Section 4(c). Requires that there be a “substantial” contract breach for a physician to be found to be in violation of J-1 contract waiver requirements.

Section 4(d). Where a physician is denied a Conrad State 30 waiver because the State Department of Public Health where the physician applied has exhausted its waiver quota for the current fiscal year, the physician’s J-1 status is automatically extended for six months and the physician will be authorized to work for an employer in a shortage area in a state that has not used up its allocation of Conrad waivers.

Section 4(e). “Contract requirements.” Imposes certain requirements and restrictions on the three-year employment contract that is the basis for an application for a Conrad State waiver, including:

*Prepared by Charles Wintersteen, chw@charleswintersteen.com
- Contract must specify the number of required on-call hours per week and state the rate of compensation for those on-call hours
- Contract must state whether the employer will provide medical malpractice insurance and must specify the amount of insurance coverage
- Contract must state all locations where the physician will be employed and state that additional work locations will not be added without the approval of the agency that requested the waiver
- Contract must not include a non-compete provision

Section 4(e) also provides that a Conrad State Waiver physician who is terminated from employment during the required three-year employment period is considered to be maintaining lawful non-immigrant status for 120 days, if the physician transfers employers based on extenuating circumstances, and for 45 days if the physician transfers to new employment based on agreeing to extend the three-year service requirement (by one year).

Section 4(f). “Recapturing waiver slots lost to other states.” If a waiver physician’s employment ends before the completion of the required three years of service, and the physician will be permitted to complete his/her three-year service requirement in another state, the state department of public health that originally requested the waiver will receive an additional waiver for use in the fiscal year in which the physician’s employment was terminated.

Section 4(g). “Exception to 3-year work requirement.” This section specifies three situations in which a physician granted a Conrad State waiver would be permitted to complete the three-year service requirement by working for an employer (in an underserved area) other than the employer identified in the original waiver application.

- DHS (USCIS) determines that extenuating circumstances (including violations of the employment agreement by the employer) justify a lesser period of employment, and the physician agrees to complete the three-year term at another facility in a designated underserved area;
- The state department of health that originally requested the waiver determines that extenuating circumstances justify a lesser period of employment and the physician agrees to complete the required term of employment in a designated underserved area; or
- The waiver physician terminates employment without seeking a determination of extenuating circumstances, agrees to work for a different employer located in an underserved area, and agrees to extend his/her three-year service commitment by an additional year.

Section 5. “Allotment of Conrad 30 Waivers.” Section 5 provides a mechanism for the per-state waiver maximum to increase beyond 30, for all states, in situations of high and increasing demand for waiver slots (nation-wide).

Section 5(a) provides for an increase of five waivers per state, if 90% of waivers (excluding “low-use” states that used fewer that five waivers) were used in the prior year. If the per-state
waiver limit reaches 45, additional increases will require that 95% of available waivers are used. A five percent decrease in waiver use will cause the per-state waiver maximum to drop by 5. Regardless of decreases in use, the per-state waivers will never drop below 30.

Section 5(b) allows each state department of public health to use three waivers per year for physicians who agree to work for three years in an academic medical center in the state, regardless of whether the medical center is located in an underserved area.

**Section 6.** “Amendments to the procedures, definitions, and other provisions related to physician immigration.” Section 6 makes changes to several sections of the INA that govern J-1 physicians in residency/fellowship programs, physician national interest waiver immigrant petition procedures, and physicians in H-1B status.

Section 6(a) states that immigrant intent is not a bar to a physician applying for a J-1 visa to pursue graduate medical training, or applying for a visa to take exams required to qualify for that training.

Section 6(b), “Physician National Interest Waiver Clarifications,” clarifies rules regarding the five-year service requirement for national interest waiver petitions, including rules on the location and type of practice, public health agency support letters, and the duration of required contracts. All of these clarifications are designed to make the physician national interest waiver immigrant petition option more effective in incentivizing physician to practice in designated underserved areas and to utilize the national interest waiver option. Section 6(b) codifies many of the procedures and criteria adopted by the USCIS in January 2007 in the “Schneider memorandum.”

Section 6(c) clarifies that a foreign medical degree that is acceptable for entry into graduate medical training in the U.S. is deemed to be equivalent to a U.S. Medical Doctor degree for purposes of a physician qualifying to be the beneficiary of an immigrant petition filed under the employment-based second preference category.

Section 6(d) provides “cap-gap” employment authorization for physicians who completed residencies with an H-1B cap-exempt employer and the beneficiaries of cap-subject petitions (to allow the physician to continue employment between June 30 and October 1).

Section 6(e) clarifies that J-2 spouses and children are not subject to the INA 212(e) two-year home country residence requirement.