

# Union Calendar No. 376

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2759

[Report No. 105-668]

To amend the Immigration and Nationality Act with respect to the requirements for the admission of nonimmigrant nurses who will practice in health professional shortage areas.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 29, 1997

Mr. RUSH introduced the following bill; which was referred to the Committee on the Judiciary

AUGUST 3, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on October 29, 1997]

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## A BILL

To amend the Immigration and Nationality Act with respect to the requirements for the admission of nonimmigrant nurses who will practice in health professional shortage areas.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Health Professional*  
3 *Shortage Area Nursing Relief Act of 1998”.*

4 **SEC. 2. REQUIREMENTS FOR ADMISSION OF NON-**  
5 **IMMIGRANT NURSES IN HEALTH PROFES-**  
6 **SIONAL SHORTAGE AREAS DURING 4-YEAR**  
7 **PERIOD.**

8 *(a) ESTABLISHMENT OF A NEW NONIMMIGRANT CLAS-*  
9 *SIFICATION FOR NONIMMIGRANT NURSES IN HEALTH PRO-*  
10 *FESSIONAL SHORTAGE AREAS.—Section 101(a)(15)(H)(i)*  
11 *of the Immigration and Nationality Act (8 U.S.C.*  
12 *1101(a)(15)(H)(i)) is amended by striking “; or” at the end*  
13 *and inserting the following: “, or (c) who is coming tempo-*  
14 *rarily to the United States to perform services as a reg-*  
15 *istered nurse, who meets the qualifications described in sec-*  
16 *tion 212(m)(1), and with respect to whom the Secretary of*  
17 *Labor determines and certifies to the Attorney General that*  
18 *an unexpired attestation is on file and in effect under sec-*  
19 *tion 212(m)(2) for the facility (as defined in section*  
20 *212(m)(6)) for which the alien will perform the services;*  
21 *or”.*

22 *(b) REQUIREMENTS.—Section 212(m) of the Immigra-*  
23 *tion and Nationality Act (8 U.S.C. 1182(m)) is amended*  
24 *to read as follows:*

25 *“(m)(1) The qualifications referred to in section*  
26 *101(a)(15)(H)(i)(c), with respect to an alien who is coming*

1 *to the United States to perform nursing services for a facil-*  
2 *ity, are that the alien—*

3           “(A) *has obtained a full and unrestricted license*  
4 *to practice professional nursing in the country where*  
5 *the alien obtained nursing education or has received*  
6 *nursing education in the United States;*

7           “(B) *has passed an appropriate examination*  
8 *(recognized in regulations promulgated in consulta-*  
9 *tion with the Secretary of Health and Human Serv-*  
10 *ices) or has a full and unrestricted license under*  
11 *State law to practice professional nursing in the*  
12 *State of intended employment; and*

13           “(C) *is fully qualified and eligible under the*  
14 *laws (including such temporary or interim licensing*  
15 *requirements which authorize the nurse to be em-*  
16 *ployed) governing the place of intended employment*  
17 *to engage in the practice of professional nursing as a*  
18 *registered nurse immediately upon admission to the*  
19 *United States and is authorized under such laws to*  
20 *be employed by the facility.*

21           “(2)(A) *The attestation referred to in section*  
22 *101(a)(15)(H)(i)(c), with respect to a facility for which an*  
23 *alien will perform services, is an attestation as to the fol-*  
24 *lowing:*

1           “(i) *The facility meets all the requirements of*  
2           *paragraph (6).*

3           “(ii) *The employment of the alien will not ad-*  
4           *versely affect the wages and working conditions of*  
5           *registered nurses similarly employed.*

6           “(iii) *The alien employed by the facility will be*  
7           *paid the wage rate for registered nurses similarly em-*  
8           *ployed by the facility.*

9           “(iv) *The facility has taken and is taking timely*  
10          *and significant steps designed to recruit and retain*  
11          *sufficient registered nurses who are United States*  
12          *citizens or immigrants who are authorized to perform*  
13          *nursing services, in order to remove as quickly as rea-*  
14          *sonably possible the dependence of the facility on non-*  
15          *immigrant registered nurses.*

16          “(v) *There is not a strike or lockout in the course*  
17          *of a labor dispute, the facility has not laid off reg-*  
18          *istered nurses within the previous year other than ter-*  
19          *minations for cause, and the employment of such an*  
20          *alien is not intended or designed to influence an elec-*  
21          *tion for a bargaining representative for registered*  
22          *nurses of the facility.*

23          “(vi) *At the time of the filing of the petition for*  
24          *registered nurses under section 101(a)(15)(H)(i)(c),*  
25          *notice of the filing has been provided by the facility*

1       to the bargaining representative of the registered  
2       nurses at the facility or, where there is no such bar-  
3       gaining representative, notice of the filing has been  
4       provided to registered nurses employed at the facility  
5       through posting in conspicuous locations.

6               “(vii) The facility will not, at any time, employ  
7       a number of aliens issued visas or otherwise provided  
8       nonimmigrant status under section  
9       101(a)(15)(H)(i)(c) that exceeds 33 percent of the  
10      total number of registered nurses employed by the fa-  
11      cility.

12              “(viii) The facility will not, with respect to any  
13      alien issued a visa or otherwise provided non-  
14      immigrant status under section 101(a)(15)(H)(i)(c)—

15                      “(I) authorize the alien to perform nursing  
16                      services at any worksite other than a worksite  
17                      controlled by the facility; or

18                      “(II) transfer the place of employment of  
19                      the alien from one worksite to another.

20      Nothing in clause (iv) shall be construed as requiring a fa-  
21      cility to have taken significant steps described in such  
22      clause before the date of the enactment of the Health Profes-  
23      sional Shortage Area Nursing Relief Act of 1998. A copy  
24      of the attestation shall be provided, within 30 days of the

1 *date of filing, to registered nurses employed at the facility*  
2 *on the date of filing.*

3       “(B) *For purposes of subparagraph (A)(iv), each of the*  
4 *following shall be considered a significant step reasonably*  
5 *designed to recruit and retain registered nurses:*

6               “(i) *Operating a training program for registered*  
7 *nurses at the facility or financing (or providing par-*  
8 *ticipation in) a training program for registered*  
9 *nurses elsewhere.*

10              “(ii) *Providing career development programs*  
11 *and other methods of facilitating health care workers*  
12 *to become registered nurses.*

13              “(iii) *Paying registered nurses wages at a rate*  
14 *higher than currently being paid to registered nurses*  
15 *similarly employed in the geographic area.*

16              “(iv) *Providing adequate support services to free*  
17 *registered nurses from administrative and other non-*  
18 *nursing duties.*

19              “(v) *Providing reasonable opportunities for*  
20 *meaningful salary advancement by registered nurses.*

21 *The steps described in this subparagraph shall not be con-*  
22 *sidered to be an exclusive list of the significant steps that*  
23 *may be taken to meet the conditions of subparagraph*  
24 *(A)(iv). Nothing in this subparagraph shall require a facil-*  
25 *ity to take more than one step if the facility can dem-*

1 *onstrate, and the Attorney General determines, that taking*  
2 *a second step is not reasonable.*

3       “(C) *Subject to subparagraph (E), an attestation*  
4 *under subparagraph (A)—*

5               “(i) *shall expire on the date that is the later of—*

6                       “(I) *the end of the one-year period begin-*  
7 *ning on the date of its filing with the Secretary*  
8 *of Labor; or*

9                       “(II) *the end of the period of admission*  
10 *under section 101(a)(15)(H)(i)(c) of the last*  
11 *alien with respect to whose admission it was ap-*  
12 *plied (in accordance with clause (ii)); and*

13               “(ii) *shall apply to petitions filed during the*  
14 *one-year period beginning on the date of its filing*  
15 *with the Secretary of Labor if the facility states in*  
16 *each such petition that it continues to comply with*  
17 *the conditions in the attestation.*

18       “(D) *A facility may meet the requirements under this*  
19 *paragraph with respect to more than one registered nurse*  
20 *in a single petition.*

21       “(E)(i) *The Secretary of Labor shall compile and make*  
22 *available for public examination in a timely manner in*  
23 *Washington, D.C., a list identifying facilities which have*  
24 *filed petitions for nonimmigrants under section*  
25 *101(a)(15)(H)(i)(c) and, for each such facility, a copy of*

1 *the facility's attestation under subparagraph (A) (and ac-*  
2 *companying documentation) and each such petition filed*  
3 *by the facility.*

4       “(ii) *The Secretary of Labor shall establish a process,*  
5 *including reasonable time limits, for the receipt, investiga-*  
6 *tion, and disposition of complaints respecting a facility's*  
7 *failure to meet conditions attested to or a facility's mis-*  
8 *representation of a material fact in an attestation. Com-*  
9 *plaints may be filed by any aggrieved person or organiza-*  
10 *tion (including bargaining representatives, associations*  
11 *deemed appropriate by the Secretary, and other aggrieved*  
12 *parties as determined under regulations of the Secretary).*  
13 *The Secretary shall conduct an investigation under this*  
14 *clause if there is reasonable cause to believe that a facility*  
15 *fails to meet conditions attested to. Subject to the time lim-*  
16 *its established under this clause, this subparagraph shall*  
17 *apply regardless of whether an attestation is expired or un-*  
18 *expired at the time a complaint is filed.*

19       “(iii) *Under such process, the Secretary shall provide,*  
20 *within 180 days after the date such a complaint is filed,*  
21 *for a determination as to whether or not a basis exists to*  
22 *make a finding described in clause (iv). If the Secretary*  
23 *determines that such a basis exists, the Secretary shall pro-*  
24 *vide for notice of such determination to the interested par-*

1 *ties and an opportunity for a hearing on the complaint*  
2 *within 60 days of the date of the determination.*

3       “(iv) *If the Secretary of Labor finds, after notice and*  
4 *opportunity for a hearing, that a facility (for which an at-*  
5 *testation is made) has failed to meet a condition attested*  
6 *to or that there was a misrepresentation of material fact*  
7 *in the attestation, the Secretary shall notify the Attorney*  
8 *General of such finding and may, in addition, impose such*  
9 *other administrative remedies (including civil monetary*  
10 *penalties in an amount not to exceed \$1,000 per nurse per*  
11 *violation, with the total penalty not to exceed \$10,000 per*  
12 *violation) as the Secretary determines to be appropriate.*  
13 *Upon receipt of such notice, the Attorney General shall not*  
14 *approve petitions filed with respect to a facility during a*  
15 *period of at least one year for nurses to be employed by*  
16 *the facility.*

17       “(v) *In addition to the sanctions provided for under*  
18 *clause (iv), if the Secretary of Labor finds, after notice and*  
19 *an opportunity for a hearing, that a facility has violated*  
20 *the condition attested to under subparagraph (A)(iii) (re-*  
21 *lating to payment of registered nurses at the prevailing*  
22 *wage rate), the Secretary shall order the facility to provide*  
23 *for payment of such amounts of back pay as may be re-*  
24 *quired to comply with such condition.*

1       “(F)(i) *The Secretary of Labor shall impose on a facil-*  
2 *ity filing an attestation under subparagraph (A) a filing*  
3 *fee, in an amount prescribed by the Secretary based on the*  
4 *costs of carrying out the Secretary’s duties under this sub-*  
5 *section, but not exceeding \$250.*

6       “(ii) *Fees collected under this subparagraph shall be*  
7 *deposited in a fund established for this purpose in the*  
8 *Treasury of the United States.*

9       “(iii) *The collected fees in the fund shall be available*  
10 *to the Secretary of Labor, to the extent and in such amounts*  
11 *as may be provided in appropriations Acts, to cover the*  
12 *costs described in clause (i), in addition to any other funds*  
13 *that are available to the Secretary to cover such costs.*

14       “(3) *The period of admission of an alien under section*  
15 *101(a)(15)(H)(i)(c) shall be 3 years.*

16       “(4) *The total number of nonimmigrant visas issued*  
17 *pursuant to petitions granted under section*  
18 *101(a)(15)(H)(i)(c) in each fiscal year shall not exceed 500.*  
19 *The number of petitions granted under section*  
20 *101(a)(15)(H)(i)(c) for each State in each fiscal year shall*  
21 *not exceed the following:*

22               “(A) *For States with populations of less than*  
23 *10,000,000, based upon the 1990 decennial census of*  
24 *population, 25 petitions.*

1           “(B) For States with populations of 10,000,000  
2           or more, based upon the 1990 decennial census of  
3           population, 50 petitions.

4           “(5) A facility that has filed a petition under section  
5 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform  
6 nursing services for the facility—

7           “(A) shall provide the nonimmigrant a wage  
8           rate and working conditions commensurate with those  
9           of nurses similarly employed by the facility;

10           “(B) shall require the nonimmigrant to work  
11           hours commensurate with those of nurses similarly  
12           employed by the facility; and

13           “(C) shall not interfere with the right of the non-  
14           immigrant to join or organize a union.

15           “(6) For purposes of this subsection and section  
16 101(a)(15)(H)(i)(c), the term ‘facility’ means a subsection  
17 (d) hospital (as defined in section 1886(d)(1)(B) of the So-  
18 cial Security Act (42 U.S.C. 1395ww(d)(1)(B))) that meets  
19 the following requirements:

20           “(A) As of March 31, 1997, the hospital was lo-  
21           cated in a health professional shortage area (as de-  
22           fined in section 332 of the Public Health Service Act  
23           (42 U.S.C. 254e)).

1           “(B) *Based on its settled cost report filed under*  
2 *title XVIII of the Social Security Act for its cost re-*  
3 *porting period beginning during fiscal year 1994—*

4                   “(i) *the hospital has not less than 190 li-*  
5 *censed acute care beds;*

6                   “(ii) *the number of the hospital’s inpatient*  
7 *days for such period which were made up of pa-*  
8 *tients who (for such days) were entitled to bene-*  
9 *fits under part A of such title is not less than*  
10 *35 percent of the total number of such hospital’s*  
11 *acute care inpatient days for such period; and*

12                   “(iii) *the number of the hospital’s inpatient*  
13 *days for such period which were made up of pa-*  
14 *tients who (for such days) were eligible for medi-*  
15 *cal assistance under a State plan approved*  
16 *under title XIX of the Social Security Act, is not*  
17 *less than 28 percent of the total number of such*  
18 *hospital’s acute care inpatient days for such pe-*  
19 *riod.”.*

20           (c) *REPEALER.—Clause (i) of section 101(a)(15)(H) of*  
21 *the Immigration and Nationality Act (8 U.S.C.*  
22 *1101(a)(15)(H)(i)) is amended by striking subclause (a).*

23           (d) *IMPLEMENTATION.—Not later than 90 days after*  
24 *the date of enactment of this Act, the Secretary of Labor*  
25 *(in consultation, to the extent required, with the Secretary*

1 of Health and Human Services) and the Attorney General  
2 shall promulgate final or interim final regulations to carry  
3 out section 212(m) of the Immigration and Nationality Act  
4 (as amended by subsection (b)).

5 (e) *LIMITING APPLICATION OF NONIMMIGRANT*  
6 *CHANGES TO 4-YEAR PERIOD.*—The amendments made by  
7 this section shall apply to classification petitions filed for  
8 nonimmigrant status only during the 4-year period begin-  
9 ning on the date that interim or final regulation are first  
10 promulgated under subsection (d).

11 **SEC. 3. RECOMMENDATIONS FOR ALTERNATIVE REMEDY**  
12 **FOR NURSING SHORTAGE.**

13 Not later than the last day of the 4-year period de-  
14 scribed in section 2(e), the Secretary of Health and Human  
15 Services and the Secretary of Labor shall jointly submit to  
16 the Congress recommendations (including legislative speci-  
17 fications) with respect to the following:

18 (1) A program to eliminate the dependence of fa-  
19 cilities described in section 212(m)(6) of the Immigra-  
20 tion and Nationality Act (as amended by section  
21 2(b)) on nonimmigrant registered nurses by providing  
22 for a permanent solution to the shortage of registered  
23 nurses who are United States citizens or aliens law-  
24 fully admitted for permanent residence.

1           (2) *A method of enforcing the requirements im-*  
2           *posed on facilities under sections 101(a)(15)(H)(i)(c)*  
3           *and 212(m) of the Immigration and Nationality Act*  
4           *(as amended by section 2) that would be more effec-*  
5           *tive than the process described in section*  
6           *212(m)(2)(E) of such Act (as so amended).*

7   **SEC. 4. EXEMPTION FOR CERTAIN NURSES AND PHYSICAL**  
8                   **THERAPISTS FROM CERTIFICATION REQUIRE-**  
9                   **MENTS FOR FOREIGN HEALTH-CARE WORK-**  
10                  **ERS.**

11           *Section 212(a)(5)(C) of the Immigration and Nation-*  
12           *ality Act (8 U.S.C. 1182(a)(5)(C)) is amended in the mat-*  
13           *ter preceding clause (i) by striking “physician,” and insert-*  
14           *ing “physician or an alien who has a full and unrestricted*  
15           *license as a nurse or physical therapist in the State of in-*  
16           *tended employment,”.*



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