

105TH CONGRESS
2^D SESSION

S. 2210

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.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 1998

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nursing Relief for Dis-
5 advantaged Areas Act of 1998”.

1 **SEC. 2. REQUIREMENTS FOR ADMISSION OF NON-IMMI-**
 2 **GRANT NURSES IN HEALTH PROFESSIONAL**
 3 **SHORTAGE AREAS DURING 4-YEAR PERIOD.**

4 (a) ESTABLISHMENT OF A NEW NONIMMIGRANT
 5 CLASSIFICATION FOR NONIMMIGRANT NURSES IN
 6 HEALTH PROFESSIONAL SHORTAGE AREAS.—Section
 7 101(a)(15)(H)(i) of the Immigration and Nationality Act
 8 (8 U.S.C. 1101(a)(15)(H)(i)) is amended by striking “;
 9 or” at the end and inserting the following: “, or (c) who
 10 is coming temporarily to the United States to perform
 11 services as a registered nurse, who meets the qualifications
 12 described in section 212(m)(1), and with respect to whom
 13 the Secretary of Labor determines and certifies to the At-
 14 torney General that an unexpired attestation is on file and
 15 in effect under section 212(m)(2) for the facility (as de-
 16 fined in section 212(m)(6)) for which the alien will per-
 17 form the services; or”.

18 (b) REQUIREMENTS.—Section 212(m) of the Immi-
 19 gration and Nationality Act (8 U.S.C. 1182(m)) is amend-
 20 ed to read as follows:

21 “(m)(1) The qualifications referred to in section
 22 101(a)(15)(H)(i)(c), with respect to alien who is coming
 23 to the United States to perform nursing services for a fa-
 24 cility, are that the alien—

25 “(A) has obtained a full and unrestricted li-
 26 cense to practice professional nursing in the country

1 where the alien obtained nursing education or has
2 received nursing education in the United States;

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

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

17 “(2)(A) The attestation referred to in section
18 101(a)(15)(H)(i)(c), with respect to a facility for which
19 an alien will perform services, is an attestation as to the
20 following:

21 “(i) The facility meets all the requirements of
22 paragraph (6).

23 “(ii) The employment of the alien will not ad-
24 versely affect the wages and working conditions of
25 registered nurses similarly employed.

1 “(iii) The alien employed by the facility will be
2 paid the wage rate for registered nurses similarly
3 employed by the facility.

4 “(iv) The facility has taken and is taking timely
5 and significant steps designed to recruit and retain
6 sufficient registered nurses who are United States
7 citizens or immigrants who are authorized to per-
8 form nursing services, in order to remove as quickly
9 as reasonably possible the dependence of the facility
10 on nonimmigrant registered nurses.

11 “(v) There is not a strike or lockout in the
12 course of a labor dispute, the facility has not laid off
13 registered nurses within the previous year other than
14 termination for cause, and the employment of such
15 an alien is not intended or designed to influence an
16 election for a bargaining representative for reg-
17 istered nurses of the facility.

18 “(vi) At the time of the filing of the petition for
19 registered nurses under section 101(a)(15)(H)(i)(c),
20 notice of the filing has been provided by the facility
21 to the bargaining representative of the registered
22 nurses at the facility or, where there is no such bar-
23 gaining representative, notice of the filing has been
24 provided to the registered nurses employed at the fa-
25 cility through posting in conspicuous locations.

1 “(vii) The facility will not, at any time, employ
2 a number of aliens issued visas or otherwise pro-
3 vided nonimmigrant status under section
4 101(a)(15)(H)(i)(c) that exceeds 33 percent of the
5 total number of registered nurses employed by the
6 facility.

7 “(viii) The facility will not, with respect to any
8 alien issued a visa or otherwise provided non-immi-
9 grant status under section 101(a)(15)(H)(i)(c)—

10 “(I) authorize the alien to perform nursing
11 services at any worksite other than a worksite
12 controlled by the facility; or

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

15 Nothing in clause (iv) shall be construed as requiring a
16 facility to have taken significant steps described in such
17 clause before the date of the enactment of the Health Pro-
18 fessional Shortage Area Nursing Relief Act of 1998. A
19 copy of the attestation shall be provided, within 30 days
20 of the date of filing, to registered nurses employed at the
21 facility on the date of the filing.

22 “(B) For purposes of subparagraph (A)(iv), each of
23 the following shall be considered a significant step reason-
24 ably designed to recruit and retain registered nurses:

1 “(i) Operating a training program for reg-
2 istered nurses at the facility or financing (or provid-
3 ing participation in) a training program for reg-
4 istered nurses elsewhere.

5 “(ii) Providing career development programs
6 and other methods of facilitating health care work-
7 ers to become registered nurses.

8 “(iii) Paying registered nurses wages at a rate
9 higher than currently being paid to registered nurses
10 similarly employed in the geographic area.

11 “(iv) Providing adequate support services to
12 free registered nurses from administrative and other
13 non-nursing duties.

14 “(v) Providing reasonable opportunities for
15 meaningful salary advancement by registered nurses.

16 The steps described in this subparagraph shall not be con-
17 sidered to be an exclusive list of the significant steps that
18 may be taken to meet the conditions of subparagraph
19 (A)(iv). Nothing in this subparagraph shall require a facil-
20 ity to take more than one step if the facility can dem-
21 onstrate, and the Attorney General determines, that tak-
22 ing a second step is not reasonable.

23 “(C) Subject to subparagraph (E), an attestation
24 under subparagraph (A)—

1 “(i) shall expire on the date that is the later
2 of—

3 “(I) the end of the one-year period begin-
4 ning of the date of its filing with the Secretary
5 of Labor; or

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

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

15 “(D) A facility may meet the requirements under this
16 paragraph with respect to more than one registered nurse
17 in a single petition.

18 “(E)(i) The Secretary of Labor shall compile and
19 make available for public examination in a timely manner
20 in Washington, D.C., a list identifying facilities which
21 have filed petitions for nonimmigrants under section
22 101(a)(15)(H)(i)(c) and, for each such facility, a copy of
23 the facility’s attestation under subparagraph (A) (and ac-
24 companying documentation) and each such petition filed
25 by the facility.

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

16 “(iii) Under such process, the Secretary shall provide,
17 within 180 days after the date such a complaint is filed,
18 for a determination as to whether or not a basis exists
19 to make a finding described in clause (iv). If the Secretary
20 determines that such a basis exists, the Secretary shall
21 provide for notice of such determination to the interested
22 parties and an opportunity for a hearing on the complaint
23 within 60 days of the date of the determination.

24 “(iv) If the Secretary of Labor finds, after notice and
25 opportunity for a hearing, that a facility (for which an

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

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

21 “(F)(i) The Secretary of Labor shall impose on a fa-
22 cility filing an attestation under subparagraph (A) a filing
23 fee, in an amount prescribed by the Secretary based on
24 the costs of carrying out the Secretary’s duties under this
25 subsection, but not exceeding \$250.

1 “(ii) Fees collected under this subparagraph shall be
2 deposited in a fund established for this purpose in the
3 Treasury of the United States.

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

10 “(3) The period of admission of an alien under sec-
11 tion 101(a)(15)(H)(i)(c) shall be 3 years.

12 “(4) The total number of nonimmigrant visas issued
13 pursuant to petitions granted under section
14 101(a)(15)(H)(i)(c) in each fiscal year shall not exceed
15 500. The number of petitions granted under section
16 101(a)(15)(H)(i)(c) for each State in each fiscal year shall
17 not exceed the following:

18 “(A) For States with populations of less than
19 10,000,000 based upon the 1990 decennial census of
20 population, 25 petitions.

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

1 “(5) A facility that has filed a petition under section
2 101(a)(15)(H)(I)(c) to employ a nonimmigrant to perform
3 nursing services for the facility—

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

7 “(B) shall require the nonimmigrant to work
8 hours commensurate with those of nurses similarly
9 employed by the facility; and

10 “(C) shall not interfere with the right of the
11 nonimmigrant to join or organize a union.

12 “(6) For purposes of this subsection and section
13 101(a)(15)(H)(i)(c), the term ‘facility’ means a subsection
14 (d) hospital (as defined in section 1886(d)(1)(B) of the
15 Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) that
16 meets the following requirements:

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

21 “(B) Based on its settled cost report filed
22 under title XVIII of the Social Security Act for its
23 costs reporting period beginning during fiscal year
24 1994—

1 “(i) the hospital has not less than 190 li-
2 censed acute care beds;

3 “(ii) the number of the hospital’s inpatient
4 days for such period which were made up of pa-
5 tients who (for such days) were entitled to ben-
6 efits under part A of such title is not less than
7 35 percent of the total number of such hos-
8 pital’s acute care inpatient days for such pe-
9 riod; and

10 “(iii) the number of the hospital’s inpa-
11 tient days for such period which were made up
12 of patients who (for such days) were eligible for
13 medical assistance under a State plan approved
14 under title XIX of the Social Security Act, is
15 not less than 28 percent of the total number of
16 such hospital’s acute care inpatient days for
17 such period.”.

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

21 (d) IMPLEMENTATION.—Not later than 90 days after
22 the date of enactment of this Act, the Secretary of Labor
23 (in consultation, to the extent required, with the Secretary
24 of Health and Human Services) and the Attorney General
25 shall promulgate final or interim final regulations to carry

1 out section 212(m) of the Immigration and Nationality
2 Act (as amended by subsection (b)).

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

9 **SEC. 3. RECOMMENDATIONS FOR ALTERNATIVE REMEDY**
10 **FOR NURSING SHORTAGE.**

11 Not later than the last day of the 4-year period de-
12 scribed in section 2(e), the Secretary of Health and
13 Human Services and the Secretary of Labor shall jointly
14 submit to the congress recommendations (including legis-
15 lative specifications) with respect to the following:

16 (1) A program to eliminate the dependence of
17 facilities described in section 212(m)(6) of the Immi-
18 gration and Nationality Act (as amended by section
19 2(b)) on nonimmigrant registered nurses by provid-
20 ing for a permanent solution to the shortage of reg-
21 istered nurses who are United States citizens or
22 aliens lawfully admitted for permanent residence.

23 (2) A method of enforcing the requirements im-
24 posed on facilities under sections
25 101(a)(15)(H)(i)(c) and 212(m) of the Immigration

1 and Nationality Act (as amended by section 2) that
2 would be more effective than the process described
3 in section 212(m)(2)(E) of such Act (as so amend-
4 ed).

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