

105TH CONGRESS  
1ST SESSION

# H. R. 2759

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

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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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Health Professional  
5 Shortage Area Nursing Relief Act of 1997”.

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

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

19 (b) REQUIREMENTS.—Subsection (m) of section 212  
20 of the Immigration and Nationality Act (8 U.S.C. 1182)  
21 is amended to read as follows:

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

1           “(A) has obtained a full and unrestricted li-  
2           cense to practice professional nursing in the country  
3           where the alien obtained nursing education or has  
4           received nursing education in the United States;

5           “(B) has passed an appropriate examination  
6           (recognized in regulations promulgated in consulta-  
7           tion with the Secretary of Health and Human Serv-  
8           ices), has obtained a certificate from the Commis-  
9           sion on Graduates of Foreign Nursing Schools (in  
10          this subsection referred to as ‘CGFNS’) certifying  
11          that the alien has fulfilled the necessary require-  
12          ments for the CGFNS Qualifying Examination and  
13          has passed both the Nursing and English Language  
14          Proficiency sections of the CGFNS Qualifying Ex-  
15          amination, or has graduated from a nursing school  
16          in the United States and has a full and unrestricted  
17          license under State law to practice professional nurs-  
18          ing in the State of intended employment; and

19          “(C) is fully qualified and eligible under the  
20          laws (including such temporary or interim licensing  
21          requirements which authorize the nurse to be em-  
22          ployed) governing the place of intended employment  
23          to engage in the practice of professional nursing as  
24          a registered nurse immediately upon admission to

1 the United States and is authorized under such laws  
2 to be employed by the facility.

3 The qualification described under subparagraph (B) con-  
4 cerning the CGFNS Qualifying Examination shall only  
5 apply prior to the date of promulgation of regulations  
6 under section 212(a)(5)(C).

7 “(2)(A) The attestation referred to in section  
8 101(a)(15)(H)(i)(c), is an attestation as to the following:

9 “(i) The facility meets all the requirements of  
10 paragraph (4).

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

14 “(iii) The alien employed by the facility will be  
15 paid the wage rate for registered nurses similarly  
16 employed by the facility.

17 “(iv) The facility has taken and is taking timely  
18 and significant steps designed to recruit and retain  
19 sufficient registered nurses who are United States  
20 citizens or immigrants who are authorized to per-  
21 form nursing services, in order to remove as quickly  
22 and as reasonably possible the dependence of the fa-  
23 cility on nonimmigrant registered nurses.

24 “(v) There is not a strike or lockout in the  
25 course of a labor dispute, nor has the facility laid off

1 registered nurses within the previous year other than  
2 terminations for cause, and the employment of such  
3 an alien is not intended or designed to influence an  
4 election for a bargaining representative for reg-  
5 istered nurses of the facility.

6 “(vi) At the time of the filing of the petition for  
7 registered nurses under section 101(a)(15)(H)(i)(c),  
8 notice of the filing has been provided by the facility  
9 to the bargaining representative of the registered  
10 nurses at the facility or, where there is no such bar-  
11 gaining representative, notice of the filing has been  
12 provided to registered nurses employed at the facility  
13 through posting in conspicuous locations.

14 Nothing in clause (iv) shall be construed as requiring a  
15 facility to have taken significant steps described in such  
16 clause before the date of the enactment of this subsection.  
17 A copy of the attestation shall be provided, within 30 days  
18 of the date of filing, to registered nurses employed at the  
19 facility on the date of filing.

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

23 “(i) Operating a training program for reg-  
24 istered nurses at the facility or financing (or provid-

1 ing participation in) a training program for reg-  
2 istered nurses elsewhere.

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

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

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

12 “(v) Providing reasonable opportunities for  
13 meaningful salary advancement by registered nurses.

14 The steps described in this subparagraph shall not be con-  
15 sidered to be an exclusive list of the significant steps that  
16 may be taken to meet the conditions of subparagraph  
17 (A)(iv). Nothing in this subparagraph shall require a facil-  
18 ity to take more than 1 step if the facility can demonstrate  
19 that taking a second step is not reasonable.

20 “(C) Subject to subparagraph (E), an attestation  
21 under subparagraph (A) shall—

22 “(i) expire at the end of the 1-year period be-  
23 ginning on the date of its filing with the Secretary  
24 of Labor; and

1           “(ii) apply to petitions filed during such 1-year  
2           period if the facility states in each such petition that  
3           it continues to comply with the conditions in the at-  
4           testation.

5           “(D) A facility may meet the requirements under this  
6           paragraph with respect to more than 1 registered nurse  
7           in a single petition.

8           “(E)(i) The Secretary of Labor shall compile and  
9           make available for public examination in a timely manner  
10          in Washington, D.C., a list identifying facilities which  
11          have filed petitions for nonimmigrants under section  
12          101(a)(15)(H)(i)(C) and, for each such facility, a copy of  
13          the facility’s attestation under subparagraph (A) (and ac-  
14          companying documentation) and each such petition filed  
15          by the facility.

16          “(ii) The Secretary of Labor shall establish a process,  
17          including reasonable time limits, for the receipt, investiga-  
18          tion, and disposition of complaints respecting a facility’s  
19          failure to meet conditions attested to or a facility’s mis-  
20          representation of a material fact in an attestation. Com-  
21          plaints may be filed by any aggrieved person or organiza-  
22          tion (including bargaining representatives, associations  
23          deemed appropriate by the Secretary, and other aggrieved  
24          parties as determined under regulations of the Secretary).  
25          The Secretary shall conduct an investigation under this

1 clause if there is reasonable cause to believe that a facility  
2 fails to meet conditions attested to.

3       “(iii) Under such process, the Secretary shall provide,  
4 within 180 days after the date such a complaint is filed,  
5 for a determination as to whether or not a basis exists  
6 to make a finding described in clause (iv). If the Secretary  
7 determines that such a basis exists, the Secretary shall  
8 provide for notice of such determination to the interested  
9 parties and an opportunity for a hearing on the complaint  
10 within 60 days of the date of the determination.

11       “(iv) If the Secretary of Labor finds, after notice and  
12 opportunity for a hearing, that a facility (for which an  
13 attestation is made) has failed to meet a condition attested  
14 to or that there was a misrepresentation of material fact  
15 in the attestation, the Secretary shall notify the Attorney  
16 General of such finding and may, in addition, impose such  
17 other administrative remedies (including civil monetary  
18 penalties in an amount not to exceed \$1,000 per nurse  
19 per violation, with the total penalty not to exceed \$10,000  
20 per violation) as the Secretary determines to be appro-  
21 priate. Upon receipt of such notice, the Attorney General  
22 shall not approve petitions filed with respect to a facility  
23 during a period of at least 1 year for nurses to be em-  
24 ployed by the facility.

1       “(v) In addition to the sanctions provided for under  
2 clause (iv), if the Secretary of Labor finds, after notice  
3 and an opportunity for a hearing, that a facility has vio-  
4 lated the condition attested to under subparagraph (A)(iii)  
5 (relating to payment of registered nurses at the prevailing  
6 wage rate), the Secretary shall order the facility to provide  
7 for payment of such amounts of back pay as may be re-  
8 quired to comply with such condition.

9       “(3) The period of admission of an alien under sec-  
10 tion 101(a)(15)(H)(i)(c) shall be for an initial period of  
11 not to exceed 3 years, subject to an extension for a period  
12 or periods, not to exceed a total period of admission of  
13 5 years.

14       “(4) For purposes of this subsection and section  
15 101(a)(15)(H)(i)(c), the term ‘facility’ means an employer  
16 who—

17               “(A) is located in a health professional shortage  
18 area (as such term is defined in section 332 of the  
19 Public Health Service Act (42 U.S.C. 254e) as of  
20 March 31, 1997;

21               “(B) is a subsection (d) hospital as described in  
22 section 1886(d) of the Social Security Act (42  
23 U.S.C. 1395ww(d)) with at least 190 licensed acute  
24 care beds as reported by the Health Care Financing  
25 Administration in its PPS XI data report;

1           “(C) has at least 35 percent of its hospital  
2 acute care inpatient days reimbursed under the med-  
3 icare program under title XVIII of the Social Secu-  
4 rity Act (42 U.S.C. 1395 et. seq.) as reported by the  
5 Health Care Financing Administration in its PPS  
6 XI data report; and

7           “(D) has at least 28 percent of its hospital  
8 acute care inpatient days reimbursed under the med-  
9 icaid program under title XIX of the Social Security  
10 Act (42 U.S.C. 1396 et. seq.) as reported by the  
11 Health Care Financing Administration in its PPS  
12 XI data report.”.

13       (c) IMPLEMENTATION.— Not later than 90 days after  
14 the date of enactment of this Act, the Secretary of Labor  
15 (in consultation, to the extent required, with the Secretary  
16 of Health and Human Services) and the Immigration and  
17 the Naturalization Service shall publish final or interim  
18 final regulations to carry out section 212(m)(1) of the Im-  
19 migration and Nationality Act (as added by subsection  
20 (b)), except that in the event any such regulations are not  
21 published within 90 days after the date of enactment of  
22 this Act, the regulations published to carry out and imple-  
23 ment the Immigration Nursing Relief Act of 1989, in ef-  
24 fect on September 30, 1995 (specifically including part  
25 504 of title 29, Code of Federal Regulations and parts

1 621 and 655 of title 20, Code of Federal Regulations)  
2 shall continue to apply.

3 (d) LIMITING APPLICATION OF NONIMMIGRANT  
4 CHANGES TO 5-YEAR PERIOD.—The amendments made  
5 by this section shall apply to classification petitions filed  
6 for nonimmigrant status only during the 5-year period be-  
7 ginning on the date of enactment of this Act.

8 (e) ANNUAL LIMITATION ON PETITIONS GRANTED.—  
9 The total number of nonimmigrant visas issued pursuant  
10 to petitions granted under section 101(a)(15)(H)(i)(c) of  
11 the Immigration and Nationality Act in each fiscal year  
12 shall not exceed 500, not including extensions of non-  
13 immigrant status under that section. The number of peti-  
14 tions granted under such section 101(a)(15)(H)(i)(c) for  
15 each State in each fiscal year shall not exceed the follow-  
16 ing:

17 (1) For States with populations of less than  
18 10,000,000 based upon the 1992 Census, 25 peti-  
19 tions, not including extensions of nonimmigrant sta-  
20 tus under that section.

21 (2) For States with populations of 10,000,000  
22 or more based upon the 1992 census, 50 petitions,  
23 not including extensions of nonimmigrant status  
24 under that section.

1           (f) FULL PRIOR DISCLOSURE TO NON-  
2 IMMIGRANT NURSES.—Prior to contracting with a  
3 nonimmigrant under section 101(a)(15)(H)(i)(c) of  
4 the Immigration and Nationality Act, an employer  
5 sponsoring such a nonimmigrant must provide the  
6 potential nonimmigrant nurse with detailed informa-  
7 tion on the neighborhood, hospital, and working con-  
8 ditions under which the nonimmigrant will be work-  
9 ing.

10          (g) WORKING CONDITIONS.—An employer sponsor-  
11 ing a nonimmigrant under section 101(a)(15)(H)(i)(c) of  
12 the Immigration and Nationality Act shall—

13           (1) provide a wage rate and working conditions  
14 commensurate with those of nurses similarly em-  
15 ployed by the hospital; and

16           (2) require the nonimmigrant to work hours  
17 commensurate with those of nurses similarly em-  
18 ployed by the hospital; and

19           (3) not interfere with the right of the non-  
20 immigrant to join or organize a union.

21          (h) TECHNICAL AMENDMENT.—Section 212(a)(5)(C)  
22 of the Immigration and Nationality Act (8 U.S.C.  
23 1182(a)(5)(C)) is amended in the matter preceding clause  
24 (i) by striking “physician,” and inserting “physician, and,  
25 until such time as final regulations are published concern-

1 ing this section, other than nonimmigrant health care  
2 workers pursuant to section 101(a)(15)(H)(i)(C),”.

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