To provide incentives to physicians to practice in rural and medically underserved communities and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2013

Ms. KLOBUCHAR (for herself, Ms. HEITKAMP, Mr. MORAN, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide incentives to physicians to practice in rural and medically underserved communities and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Conrad State 30 and Physician Access Act”.

SEC. 2. CONRAD STATE 30 PROGRAM.

Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416; 8 U.S.C. 1182 note) is amended by striking “and before September 30, 2015”.

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To provide incentives to physicians to practice in rural and medically underserved communities and for other purposes.
SEC. 3. RETAINING PHYSICIANS WHO HAVE PRACTICED IN
MEDICALLY UNDERSERVED COMMUNITIES.

Section 201(b)(1) of the Immigration and Nationality
Act (8 U.S.C. 1151(b)(1)) is amended by adding at the
dead the following:

“(F)(i) Alien physicians who have completed
service requirements of a waiver requested under
section 203(b)(2)(B)(ii), including alien physicians
who completed such service before the date of the
enactment of the Conrad State 30 and Physician Ac-
cess Act and any spouses or children of such alien
physicians.

“(ii) Nothing in this subparagraph may be con-
strued—

“(I) to prevent the filing of a petition with
the Secretary of Homeland Security for classi-

fication under section 204(a) or the filing of an
application for adjustment of status under sec-

tion 245 by an alien physician described in this
subparagraph prior to the date by which such
alien physician has completed the service de-
scribed in section 214(l) or worked full-time as
a physician for an aggregate of 5 years at the
location identified in the section 214(l) waiver
or in an area or areas designated by the Sec-
retary of Health and Human Services as having a shortage of health care professionals; or

“(II) to permit the Secretary of Homeland Security to grant such a petition or application until the alien has satisfied all the requirements of the waiver received under section 214(l).”.

SEC. 4. EMPLOYMENT PROTECTIONS FOR PHYSICIANS.

(a) IN GENERAL.—Section 214(l)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(C)) is amended by striking clauses (i) and (ii) and inserting the following:

“(i) the alien demonstrates a bona fide offer of full-time employment, at a health care organization, which employment has been determined by the Secretary of Homeland Security to be in the public interest; and

“(ii) the alien agrees to begin employment with the health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals by the later of the date that is 90 days after receiving such waiver, 90 days after completing graduate medical education or training under a program approved pursuant to
section 212(j)(1), or 90 days after receiving nonimmigrant status or employment authorization, and agrees to continue to work for a total of not less than 3 years in any status authorized for such employment under this subsection unless—

“(I) the Secretary determines that extenuating circumstances exist that justify a lesser period of employment at such facility or organization, in which case the alien shall demonstrate another bona fide offer of employment at a health facility or health care organization, for the remainder of such 3-year period;

“(II) the interested State agency that requested the waiver attests that extenuating circumstances exist that justify a lesser period of employment at such facility or organization in which case the alien shall demonstrate another bona fide offer of employment at a health facility or health care organization so designated by the Secretary of Health and Human Services, for the remainder of such 3-year period; or
“(III) if the alien elects not to pursue a determination of extenuating circumstances pursuant to subclause (I) or (II), the alien terminates the alien’s employment relationship with such facility or organization, in which case the alien shall be employed for the remainder of such 3-year period, and 1 additional year for each termination, at another health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and”.

(b) CONTRACT REQUIREMENTS.—Section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184(l)) is amended by adding at the end the following:

“(4) An alien granted a waiver under paragraph (1)(C) shall enter into an employment agreement with the contracting health facility or health care organization that—

“(A) specifies the maximum number of on-call hours per week (which may be a monthly average) that the alien will be expected to be available and
the compensation the alien will receive for on-call time;

“(B) specifies whether the contracting facility or organization will pay for the alien’s malpractice insurance premiums, including whether the employer will provide malpractice insurance and, if so, the amount of such insurance that will be provided;

“(C) describes all of the work locations that the alien will work and a statement that the contracting facility or organization will not add additional work locations without the approval of the Federal agency or State agency that requested the waiver; and

“(D) does not include a non-compete provision.

“(5) An alien granted a waiver under paragraph (1)(C) whose employment relationship with a health facility or health care organization terminates during the 3-year service period required by such paragraph—

“(A) shall have a period of 120 days beginning on the date of such termination of employment to submit to the Secretary of Homeland Security applications or petitions to commence employment with another contracting health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human
Services as having a shortage of health care professionals; and

“(B) shall be considered to be maintaining lawful status in an authorized stay during the 120-day period referred to in subsection (A).”.

SEC. 5. ALLOTMENT OF CONRAD 30 WAIVERS.

(a) In General.—Section 214(l) of the Immigration and Nationality Act (8 U.S.C. 1184(l)), as amended by section 4(b), is further amended by adding at the end the following:

“(6)(A)(i) All States shall be allotted a total of 35 waivers under paragraph (1)(B) for a fiscal year if 90 percent of the waivers available to the States receiving at least 5 waivers were used in the previous fiscal year.

“(ii) When an allocation has occurred under clause (i), all States shall be allotted an additional 5 waivers under paragraph (1)(B) for each subsequent fiscal year if 90 percent of the waivers available to the States receiving at least 5 waivers were used in the previous fiscal year.

If the States are allotted 45 or more waivers for a fiscal year, the States will only receive an additional increase of 5 waivers the following fiscal year if 95 percent of the waivers available to the States receiving at least 1 waiver were used in the previous fiscal year.
“(B) Any increase in allotments under subparagraph (A) shall be maintained indefinitely, unless in a fiscal year, the total number of such waivers granted is 5 percent lower than in the last year in which there was an increase in the number of waivers allotted pursuant to this paragraph, in which case—

“(i) the number of waivers allotted shall be decreased by 5 for all States beginning in the next fiscal year; and

“(ii) each additional 5 percent decrease in such waivers granted from the last year in which there was an increase in the allotment, shall result in an additional decrease of 5 waivers allotted for all States, provided that the number of waivers allotted for all States shall not drop below 30.”.

(b) ACADEMIC MEDICAL CENTERS.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)) is amended—

(1) in clause (ii), by striking “and” at the end;

(2) in clause (iii), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(iv) in the case of a request by an interested State agency—
“(I) the head of such agency determines that the alien is to practice medicine in, or be on the faculty of a residency program at, an academic medical center (as that term is defined in section 411.355(e)(2) of title 42, Code of Federal Regulations, or similar successor regulation), without regard to whether such facility is located within an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

“(II) the head of such agency determines that—

“(aa) the alien physician’s work is in the public interest; and

“(bb) the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B) and subject to paragraph (6)) in accordance with the conditions of this clause to exceed 3.”.
SEC. 6. AMENDMENTS TO THE PROCEDURES, DEFINITIONS, AND OTHER PROVISIONS RELATED TO PHYSICIAN IMMIGRATION.

(a) Dual Intent for Physicians Seeking Graduate Medical Training.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by striking ``(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section)'' and inserting ``(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), a nonimmigrant described in any provision of section 101(a)(15)(H)(i), except subclause (b1) of such section, and an alien coming to the United States to receive graduate medical education or training as described in section 212(j) or to take examinations required to receive graduate medical education or training as described in section 212(j))''.


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(c) Physician National Interest Waiver Clarifications.—

(1) Practice and Geographic Area.—Section 203(b)(2)(B)(ii)(I) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(B)(ii)(I)) is amended by striking items (aa) and (bb) and inserting the following:

“(aa) the alien physician agrees to work on a full-time basis practicing primary care, specialty medicine, or a combination thereof, in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals, or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; or

“(bb) the alien physician is pursuing such waiver based upon service at a facility or facilities that serve patients who reside in a geographic area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals (without regard to whether such facility or facilities are located within such an area) and a Federal
agency, or a local, county, regional, or State department of public health determines the alien physician’s work was or will be in the public interest.”.

(2) Five-year Service Requirement.—Section 203(b)(2)(B)(ii)(II) of the Immigration and Nationality Act (8 U.S.C. 1153(B)(ii)(II)) is amended—

(A) by inserting “(aa)” after “(II)”; and

(B) by adding at the end the following:

“(bb) The 5-year service requirement of item (aa) shall be counted from the date the alien physician begins work in the shortage area in any legal status and not the date an immigrant visa petition is filed or approved. Such service shall be aggregated without regard to when such service began and without regard to whether such service began during or in conjunction with a course of graduate medical education.

“(cc) An alien physician shall not be required to submit an employment contract with a term exceeding the balance of the 5-year commitment yet to be served, nor an employment contract dated within a minimum time period
prior to filing of a visa petition pursuant to this subsection.

“(dd) An alien physician shall not be required to file additional immigrant visa petitions upon a change of work location from the location approved in the original national interest immigrant petition.”.

(d) Technical Clarification Regarding Advanced Degree for Physicians.—Section 203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A)) is amended by adding at the end “An alien physician holding a foreign medical degree that has been deemed sufficient for acceptance by an accredited United States medical residency or fellowship program is a member of the professions holding an advanced degree or its equivalent.”.

(e) Short-Term Work Authorization for Physicians Completing Their Residencies.—A physician completing graduate medical education or training as described in section 212(j) of the Immigration and Nationality Act (8 U.S.C. 1182(j)) as a nonimmigrant described section 101(a)(15)(H)(i) of such Act (8 U.S.C. 1101(a)(15)(H)(i)) shall have such nonimmigrant status automatically extended until October 1 of the fiscal year for which a petition for a continuation of such non-
immigrant status has been submitted in a timely manner and where the employment start date for the beneficiary of such petition is October 1 of that fiscal year. Such physician shall be authorized to be employed incident to status during the period between the filing of such petition and October 1 of such fiscal year. However, the physician’s status and employment authorization shall terminate 30 days from the date such petition is rejected, denied or revoked. A physician’s status and employment authorization will automatically extend to October 1 of the next fiscal year if all visas as described in such section 101(a)(15)(H)(i) authorized to be issued for the fiscal year have been issued.

(f) Applicability of Section 212(e) to Spouses and Children of J–1 Exchange Visitors.—A spouse or child of an exchange visitor described in section 101(a)(15)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J)) shall not be subject to the requirements of section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)).