§ 655.1110

United States (U.S.) means the continental U.S., Alaska, Hawaii, the Commonwealth of Puerto Rico, and the territories of Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

U.S. Citizenship and Immigration Services (USCIS) means the bureau within the Department of Homeland Security that makes determinations under the INA on whether to approve petitions seeking classification and/or admission of nonimmigrant nurses under the H–1C program.

United States (U.S.) nurse means any nurse who: is a U.S. citizen; is a U.S. national; is lawfully admitted for permanent residence; is admitted as a refugee under 8 U.S.C. 1157; or is granted asylum under 8 U.S.C. 1158.

Worksite means the location where the nurse is involved in the practice of nursing.


§ 655.1110 What requirements are imposed in the filing of an attestation?

(a) Who may file Attestations?

(1) Any hospital which meets the definition of facility in § 655.1102 and 655.1111 may file an Attestation.

(2) ETA shall determine the hospital’s eligibility as a facility through a review of this attestation element on the first Attestation filed by the hospital. ETA’s determination on this point is subject to a hearing before the BALCA upon the request of any interested party. The BALCA proceeding shall be limited to the point.

(3) Upon the hospital’s filing of a second or subsequent Attestation, its eligibility as a facility shall be controlled by the determination made on this point in the ETA review (and BALCA proceeding, if any) of the hospital’s first Attestation.

(b) Where and when should attestations be submitted?

(1) Attestations shall be submitted, by U.S. mail or private carrier, to ETA at the following address: U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, Chicago National Processing Center, 536 South Clark Street, Chicago, IL 60605–1509.

(2) Attestations shall be reviewed and accepted for filing or rejected by ETA within 30 calendar days of the date they are received by ETA. Therefore, it is recommended that attestations be submitted to ETA at least 35 calendar days prior to the planned date for filing an H–1C visa petition with USCIS.

(c) What shall be submitted?

(1) Form ETA 9081 and required supporting documentation, as described in paragraphs (c)(1)(i) through (iv) of this section.

(1) A completed and dated original Form ETA 9081, containing the required attestation elements and the original signature of the chief executive officer of the facility, shall be submitted, along with one copy of the completed, signed, and dated Form ETA 9081. Copies of the form and instructions are available at the address listed in paragraph (b) of this section.

(ii) If the Attestation is the first filed by the hospital, it shall be accompanied by copies of pages from the hospital’s Form HCFA 2552 filed with the Department of Health and Human Services (pursuant to title XVIII of the Social Security Act) for its 1994 cost reporting period, showing the number of its acute care beds and the percentages of Medicaid and Medicare reimbursed acute care inpatient days (i.e., Form HCFA–2552–92, Worksheet S–3, Part I; Worksheet S, Parts I and II).

(iii) If the facility attests that it will take one or more timely and significant steps other than the steps identified on Form ETA 9081, then the facility must submit (in duplicate) an explanation of the proposed step(s) and an explanation of how the proposed step(s) is/are of comparable significance to those set forth on the Form and in § 655.1114. (See § 655.1114(b)(2)(v).)

(iv) If the facility attests that taking more than one timely and significant step is unreasonable, then the facility must submit (in duplicate) an explanation of this attestation. (See § 655.1114(c).)

(2) Filing fee of $250 per Attestation. Payment must be in the form of a check or money order, payable to the “U.S. Department of Labor.” Remittances must be drawn on a bank or other financial institution located in

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§ 655.1111 Element I—What hospitals are eligible to participate in the H–1C program?

(a) The first attestation element requires that the employer be a “facility” for purposes of the H–1C program, as defined in INA Section 212(m)(6), 8 U.S.C. 1182(2)(m)(6).

(b) A qualifying facility under that section is a “subpart (d) hospital,” as defined in Section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395sw(d)(1)(B), which:

1. Was located in a health professional shortage area (HPSA), as determined by the Department of Health and Human Services, on March 31, 1997. A list of HPSAs, as of March 31, 1997, was published in the Federal Register on May 30, 1997 (62 FR 29395);

2. Had at least 190 acute care beds, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., for its fiscal year 1994 cost reporting period (i.e., Form HCFA–2552–92, Worksheet S–3, Part I, column 1, line 8); and

3. Had at least 35% of its acute care inpatient days reimbursed by Medicare, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, for its fiscal year 1994 cost reporting period (i.e., Form HCFA–2552–92, Worksheet S–3, Part I, column 4, line 8 as a percentage of column 6, line 8); and

4. Had at least 28% of its acute care inpatient days reimbursed by Medicaid, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, for its fiscal year 1994 cost reporting period (i.e., Form HCFA–2552–92, Worksheet S–3, Part I, column 5, line 8 as a percentage of column 6, line 8).

(c) The Federal Register notice containing the controlling list of HPSAs (62 FR 29395), can be found in federal depository libraries and on the Government Printing Office Internet website at http://www.access.gpo.gov.

(d) To make a determination about information in the settled cost report, the employer shall examine its own Worksheet S–3, Part I, Hospital and Hospital Health Care Complex Statistical Data, in the Hospital and Hospital Health Care Complex Cost Report,