Employment and Training Administration, Labor § 655.1111

the U.S. and be payable in U.S. currency.

(3) Copies of H–1C petitions and USCIS approval notices. After ETA has approved the attestation used by the facility to support any H–1C petition, the facility must send copies of each H–1C petition and USCIS approval notice on such petition to Employment and Training Administration, Administrator, Office of Foreign Labor Certification, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210.

(d) Attestation elements. The attestation elements referenced in paragraph (c)(1) of this section are mandated by section 212(m)(2)(A) of the INA (8 U.S.C. 1182(m)(2)(A)). Section 212(m)(2)(A) requires a prospective employer of H–1C nurses to attest to the following:

(1) That it qualifies as a facility (See § 655.1111);
(2) That employment of H–1C nurses will not adversely affect the wages or working conditions of similarly employed nurses (See § 655.1112);
(3) That the facility will pay the H–1C nurse the facility wage rate (See § 655.1113);
(4) That the facility has taken, and is taking, timely and significant steps to recruit and retain U.S. nurses (See § 655.1114);
(5) That there is not a strike or lockout at the facility, that the employment of H–1C nurses is not intended or designed to influence an election for a bargaining representative for RNs at the facility, and that the facility did not lay off and will not lay off a registered nurse employed by the facility 90 days before and after the date of filing a visa petition (See § 655.1115);
(6) That the facility will notify its workers and give a copy of the Attestation to every nurse employed at the facility (See § 655.1116);
(7) That no more than 33 percent of nurses employed by the facility will be H–1C nonimmigrants (See § 655.1117); and
(8) That the facility will not authorize H–1C nonimmigrants to work at a worksite not under its control, and will not transfer an H–1C nonimmigrant from one worksite to another (See § 655.1118).

§ 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(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. 1395ww(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 Cost Report,
(e) The facility must maintain a copy of the portions of Worksheet S–3, Part I and Worksheet S, Parts I and II of HCFA Form 2552 which substantiate the attestation of eligibility as a “facility.” One set of copies of this document must be kept in the facility’s public access file. The full Form 2552 for fiscal year 1994 must be made available to the Department upon request.

§ 655.1112 Element II—What does “no adverse effect on wages and working conditions” mean?

(a) The second attestation element requires that the facility attest that “the employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.”

(b) For purposes of this program, “employment” is full-time employment as defined in § 655.1102; part-time employment of H–1C nurses is not authorized.

(c) Wages. To meet the requirement of no adverse effect on wages, the facility must attest that it will pay each nurse employed by the facility at least the prevailing wage for the occupation in the geographic area. The facility must pay the higher of the wage required under this paragraph or the wage required under § 655.1113 (i.e., the third attestation element: facility wage).

1. Collectively bargained wage rates. Where wage rates for nurses at a facility are the result of arms-length collective bargaining, those rates shall be considered “prevailing” for that facility for the purposes of this subpart.

2. Determination of prevailing wage for H–1C purposes. In the absence of collectively bargained wage rates, the National Processing Center (NPC) having jurisdiction as determined by OFLC shall determine the prevailing wage for similarly employed nurses in the geographic area in accordance with administrative guidelines issued by ETA for prevailing wage determination requests submitted on or after the effective date of these regulations.

(i) Prior to the effective date of these regulations, the SWA having jurisdiction over the area of intended employment shall continue to receive and process prevailing wage determination requests in accordance with the regulatory provisions and Department guidance in effect prior to January 1, 2009. On or after the effective date of these regulations, the NPC shall receive and process prevailing wage determination requests in accordance with these regulations and with Department guidance. A facility seeking to determine the prevailing wage must request a prevailing wage determination from the NPC having jurisdiction for providing the prevailing wage over the proposed area of intended employment not more than 90 days prior to the date the attestation is submitted to the Department. The NPC must enter its wage determination on the form it uses and return the form with its endorsement to the employer. Once a facility obtains a prevailing wage determination from the NPC and files an attestation supported by that prevailing wage determination, the facility shall be deemed to have accepted the prevailing wage determination as accurate and appropriate (as to both the occupational classification and the wage rate) and thereafter shall not contest the legitimacy of that prevailing wage determination in an investigation or enforcement action pursuant to subpart M of this part.

(ii) A facility may challenge the prevailing wage determination with the NPC having provided such determination according to administrative guidelines issued by ETA, but must obtain a final ruling prior to filing an attestation.

3. Total compensation package. The prevailing wage under this paragraph relates to wages only. Employers are cautioned that each item in the total compensation package for U.S. nurses, H–1C, and other nurses employed by the facility must be the same within a given facility, including such items as housing assistance and fringe benefits.

4. Documentation of pay and total compensation. The facility must maintain in its public access file a copy of the prevailing wage, which shall be either the collective bargaining agreement or the determination that was obtained from the NPC. The facility