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112TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 112–153

TO AMEND THE IMMIGRATION AND NATIONALITY ACT TO MODIFY THE REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES IN HEALTH PROFESSIONAL SHORTAGE AREAS

JULY 19, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 1933]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1933) to amend the Immigration and Nationality Act to modify the requirements for admission of nonimmigrant nurses in health professional shortage areas, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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99–006

The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES IN HEALTH PROFESSIONAL SHORTAGE AREAS.

(a) EXTENSION OF PERIOD OF AUTHORIZED ADMISSION.—Section 212(m)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(m)(3)) is amended to read as follows:

"(3) The initial period of authorized admission as a nonimmigrant under section 101(a)(15)(H)(i)(c) shall be 3 years, and may be extended once for an additional 3-year period.".

(b) NUMBER OF VISAS.—Section 212(m)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(m)(4)) is amended by striking "500." and inserting "300.".

(c) PORTABILITY.—Section 214(n) of the Immigration and Nationality Act (8 U.S.C. 1184(n)) is amended by adding at the end the following:

"(3)(A) A nonimmigrant alien described in subparagraph (B) who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c) is authorized to accept new employment performing services as a registered nurse for a facility described in section 212(m)(6) upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (c). Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

"(B) A nonimmigrant alien described in this paragraph is a nonimmigrant alien—

"(i) who has been lawfully admitted into the United States;

"(ii) on whose behalf an employer has filed a nonfrivolous petition for new employment before the date of expiration of the period of stay authorized by the Secretary of Homeland Security, except that, if a nonimmigrant described in section 101(a)(15)(H)(i)(c) is terminated or laid off by the nonimmigrant's employer, or otherwise ceases employment with the employer, such petition for new employment shall be filed during the 45-day period beginning on the date of such termination, lay off, or cessation; and

"(iii) who, subsequent to such lawful admission, has not been employed without authorization in the United States before the filing of such petition.".

(d) APPLICABILITY.—

(1) IN GENERAL.—During the 3-year period beginning on the commencement date described in paragraph (2), the amendments made by section 2 of the Nursing Relief for Disadvantaged Areas Act of 1999 (Public Law 106-95), and the amendments made by this section, shall apply to classification petitions filed for nonimmigrant status. This period shall be in addition to the period described in section 2(e) of the Nursing Relief for Disadvantaged Areas Act of 1999.

(2) COMMENCEMENT DATE.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Homeland Security shall determine whether regulations are necessary to implement the amendments made by this section. If the Secretary determines that no such regulations are necessary, the commencement date described in this paragraph shall be the date of such determination. If the Secretary determines that regulations are necessary to implement any amendment made by this section, the commencement date described in this paragraph shall be the date on which such regulations (in final form) take effect.

Purpose and Summary

H.R. 1933 reauthorizes the H-1C nonimmigrant visa program for nurses and makes a number of modifications to the program.

Background and Need for the Legislation

A number of hospitals with unique circumstances experience a great difficulty in attracting American nurses. Hospitals serving mostly poor patients have special difficulties. Some hospitals in rural areas do also. For example:

> St. Bernard [Hospital and Health Care Center] . . . is located on the south side of Chicago in the Englewood community. Unfortunately, high rates of crime and high poverty rates equal 31,000 visits to our emergency room per year, which makes us the second largest for the Chicago Fire Department's ambulance runs in the city.
>
> St. Bernard is Englewood's only remaining hospital and has a patient base almost entirely of poverty care or charity care. . . .
>
> We are considered by the State of Illinois as one of the safety net hospitals in Chicago, and we are one of only a handful of hospitals recognized by the Illinois Department of Public Aid for special financial recognition for our role in delivering quality care to the indigent in the inner city of Chicago.
>
> We almost closed our doors in 1992, primarily because of our inability to attract registered nurses.[1]

The "Nursing Relief for Disadvantaged Areas Act of 1999" created a new "H-1C" temporary visa program for registered nurses.[2] The program was modeled after the expired "H-1A" temporary nursing visa program but limited the number of visas that could be issued to 500 per year and only allowed in-need hospitals that met certain criteria to petition for alien nurses. To be able to petition for an alien, an employer had to meet four basic conditions. First, the employer must have been located in a health professional shortage area as designated by the Department of Health and Human Services. Second, the employer must have had at least 190 acute-care beds. Third, a certain percentage (35%) of the employer's patients must have been Medicare patients. Fourth, a certain percentage (28%) of patients must have been Medicaid patients.

Employers had to make certain attestations pertaining to "payment of a wage which will not adversely affect wages and working conditions of similarly employed registered nurses; payment of wages to aliens at rates paid to other registered nurses similarly employed by the facility; taking timely and significant steps designed to recruit and retain U.S. nurses in order to reduce dependence on nonimmigrant nurses; absence of a strike/lockout or lay off of nurses; notice to workers of its intent to petition for H-1C nurses; percentages of H-1C nurses to be employed at the facility; and placement of H-1C nurses within the facility."[3]

The Department of Labor has determined that the following hospitals are eligible for the program: Beaumont Regional Medical Center, Beaumont, TX; Beverly Hospital, Montebello, CA; Doctors Medical Center, Modesto, CA; Elizabeth General Medical Center, Elizabeth, NJ; Fairview Park Hospital, Dublin, GA; Lutheran Medical Center, St. Louis, MO; McAllen Medical Center, McAllen, TX; Mercy Medical Center, Baltimore, MD; Mercy Regional Medical Center, Laredo, TX; Peninsula Hospital Center, Far Rockaway, NY;

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[1] *The Health Professional Shortage Area Nursing Relief Act of 1997: Hearing Before the Immigration and Claims Subcomm. of the House Judiciary Comm.,* 105th Cong., 1st Sess. at 15 (Nov. 5, 1997)(statement of Ron Campbell, Vice President, Patient Care Services, St. Bernard Hospital and Health Care Center).

[2] *See* Pub. L. No. 106–95.

[3] 65 Fed. Reg. 51138 (2000). For a full description of the terms of the H-1C program, see H. Rep. No. 106–135, at 8–13 (1999).

Southeastern Regional Medical Center, Lumberton, NC; Southwest General Hospital, San Antonio, TX; St. Bernard Hospital, Chicago, IL; and Valley Baptist Medical Center, Harlingen, TX.[4]

The Nursing Relief for Disadvantaged Areas Act of 1999 was enacted as a 4-year program (beginning on the effective date of implementing regulations) on November 12, 1999. The program expired in 2005 and was reauthorized in 2006 for an additional 3 years.[5] The program expired in December 2009 (but some H-1C nurses remain who received approval for 3-year stays before this date).

The Department of Labor reports that 499 nurses received visas under the program in fiscal year 2007 as did 110 in fiscal year 2008.[6]

St. Bernard Hospital has indicated that:

> Because of the sunset, in combination with the extended approval period for green cards, nurses are now forced to leave our institution and the rate of loss continues to increase. This loss cannot be sustained. As the only hospital serving one of the most difficult sections of Chicago, and perhaps the entire country, we need the extension of the visa program to survive.[7]

H.R. 1933 reauthorizes the program for an additional 3 years. The number of visas that may be issued in each fiscal year cannot exceed 300. An alien may be admitted for 3 years and this stay may be extended once for an additional 3 years (the extension is new with H.R. 1933). The bill also allows H-1C nurses to be able to switch employment between any of the H-1C-eligible hospitals.

Hearings

The Committee on the Judiciary held no hearings on H.R. 1933.

Committee Consideration

On June 23, 2011, the Committee met in open session and ordered the bill H.R. 1933 reported favorably, as amended, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 1933. The Committee approved by voice vote an amendment by Ms. Lofgren to allow H-1C nurses to be able to switch employment between any of the 14 H-1C-eligible hospitals.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

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[4] *See* 65 Fed. Reg. 51143 (2000); 75 Fed. Reg. 10396 (2010).
[5] *See* Pub. L. No. 109–423.
[6] Information provided by the U.S. Department of Labor.
[7] Letter from Sister Elizabeth Van Straten, President-Chief Executive Officer, St. Bernard Hospital and Health Care Center, to Lamar Smith (Dec. 15, 2010), on file with the Committee on the Judiciary.

resentatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1933, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 6, 2011.

Hon. LAMAR SMITH, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1933, a bill to amend the Immigration and Nationality Act to modify the requirements for admission of nonimmigrant nurses in health professional shortage areas.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1933—A bill to amend the Immigration and Nationality Act to modify the requirements for admission of nonimmigrant nurses in health professional shortage areas.

CBO estimates that implementing H.R. 1933 would result in no significant cost to the Federal Government. Enacting the bill could affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be insignificant for each year. H.R. 1933 would not affect revenues.

H.R. 1933 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, or tribal governments.

Current law permits foreign nurses to work temporarily in the United States in areas where there are shortages of qualified applicants. No more than 500 of those individuals may be admitted in each year, and they may remain in the United States for 3 years. H.R. 1933 would limit annual admissions to 300 and would authorize those persons to extend their stay for an additional 3 years.

The Department of State and the Department of Homeland Security (DHS) collect fees to admit those individuals. The DHS fees are classified as offsetting receipts (a credit against direct spending) and the department is authorized to spend such fees without further appropriation. The State Department fees are retained and spent by the Department. CBO estimates that enacting H.R. 1933 would have no significant effect on the collection and spending of such fees.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1933 reauthorizes the H-1C nonimmigrant visa program for nurses and makes a number of modifications to the program.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1933 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Sec. 1. Requirements for Admission of Nonimmigrant Nurses in Health Professional Shortage Areas.

Subsection (a) amends section 212(m)(3) of the Immigration and Nationality Act to allow H-1C nonimmigrant nurses to request an extension of their period of authorized admission for an additional 3 years after the initial 3 year admission.

Subsection (b) amends section 212(m)(4) of the INA to provide that the total number of nonimmigrant visas issued pursuant to H-1C petitions shall not exceed 300 in each fiscal year.

Subsection (c) amends section 214(n) of the INA to provide that an H-1C alien (who has been lawfully admitted to the U.S., who has not since admission been employed without authorization, and on whose behalf an employer has filed a nonfrivolous petition for new employment before the date of expiration of the authorized period of stay except that if the alien is terminated or laid off by their employer, or otherwise cease employment, such petition for new employment shall be filed during the ensuing 45 day period) is authorized to accept new employment performing services as a registered nurse at any facility which qualifies for the H-1C program upon the filing by the prospective employer of a new petition on behalf of the alien. Employment authorization shall continue for such alien until the new petition is adjudicated. Once a petition is denied, such authorization shall cease.

Subsection (d) provides that the H-1C program is reauthorized for the 3 year period beginning on the date (no later than 60 days after enactment) that the Secretary of Homeland Security determines that no regulations are necessary to implement the bill; however, if the Secretary determines (within this 60 day period) that regulations are necessary, the program is reauthorized for 3 years

beginning on the date on which such regulations (in final form) take effect.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

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TITLE II—IMMIGRATION

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CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) * * *

* * * * * * *

(m)(1) * * *

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[(3) The period of admission of an alien under section 101(a)(15)(H)(i)(c) shall be 3 years.**]**

(3) The initial period of authorized admission as a nonimmigrant under section 101(a)(15)(H)(i)(c) shall be 3 years, and may be extended once for an additional 3-year period.

(4) The total number of nonimmigrant visas issued pursuant to petitions granted under section 101(a)(15)(H)(i)(c) in each fiscal year shall not exceed **[**500.**]** *300.* The number of such visas issued for employment in each State in each fiscal year shall not exceed the following:

(A) * * *

* * * * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

* * * * * * *

(n)(1) * * *

* * * * * * *

(3)(A) A nonimmigrant alien described in subparagraph (B) who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c) is authorized to accept new employment performing services as a registered nurse for a facility described in section 212(m)(6) upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided

under subsection (c). Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

(B) A nonimmigrant alien described in this paragraph is a nonimmigrant alien—

(i) who has been lawfully admitted into the United States;

(ii) on whose behalf an employer has filed a nonfrivolous petition for new employment before the date of expiration of the period of stay authorized by the Secretary of Homeland Security, except that, if a nonimmigrant described in section 101(a)(15)(H)(i)(c) is terminated or laid off by the nonimmigrant's employer, or otherwise ceases employment with the employer, such petition for new employment shall be filed during the 45-day period beginning on the date of such termination, lay off, or cessation; and

(iii) who, subsequent to such lawful admission, has not been employed without authorization in the United States before the filing of such petition.

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