

106TH CONGRESS  
1ST SESSION

# H. R. 414

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

JANUARY 19, 1999

Mr. RUSH (for himself and Mr. HYDE) 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 1999”.

1 **SEC. 2. REQUIREMENTS FOR ADMISSION OF NON-**  
2 **IMMIGRANT NURSES IN HEALTH PROFES-**  
3 **SIONAL SHORTAGE AREAS DURING 4-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 striking “;  
10 or” at the end and inserting the following: “, or (c) who  
11 is coming temporarily to the United States to perform  
12 services as a registered nurse, who meets the qualifications  
13 described in section 212(m)(1), and with respect to whom  
14 the Secretary of Labor determines and certifies to the At-  
15 torney General that an unexpired attestation is on file and  
16 in effect under section 212(m)(2) for the facility (as de-  
17 fined in section 212(m)(6)) for which the alien will per-  
18 form the services; or”.

19 (b) REQUIREMENTS.—Section 212(m) of the Immi-  
20 gration and Nationality Act (8 U.S.C. 1182(m)) is amend-  
21 ed 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) or has a full and unrestricted license under  
9           State law to practice professional nursing in the  
10          State of intended employment; and

11          “(C) is fully qualified and eligible under the  
12          laws (including such temporary or interim licensing  
13          requirements which authorize the nurse to be em-  
14          ployed) governing the place of intended employment  
15          to engage in the practice of professional nursing as  
16          a registered nurse immediately upon admission to  
17          the United States and is authorized under such laws  
18          to be employed by the facility.

19          “(2)(A) The attestation referred to in section  
20          101(a)(15)(H)(i)(c), with respect to a facility for which  
21          an alien will perform services, is an attestation as to the  
22          following:

23                 “(i) The facility meets all the requirements of  
24                 paragraph (6).

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

4           “(iii) The alien employed by the facility will be  
5           paid the wage rate for registered nurses similarly  
6           employed by the facility.

7           “(iv) The facility has taken and is taking timely  
8           and significant steps designed to recruit and retain  
9           sufficient registered nurses who are United States  
10          citizens or immigrants who are authorized to per-  
11          form nursing services, in order to remove as quickly  
12          as reasonably possible the dependence of the facility  
13          on nonimmigrant registered nurses.

14          “(v) There is not a strike or lockout in the  
15          course of a labor dispute, the facility has not laid off  
16          registered nurses within the previous year other than  
17          terminations for cause, and the employment of such  
18          an alien is not intended or designed to influence an  
19          election for a bargaining representative for reg-  
20          istered nurses of the facility.

21          “(vi) At the time of the filing of the petition for  
22          registered nurses under section 101(a)(15)(H)(i)(c),  
23          notice of the filing has been provided by the facility  
24          to the bargaining representative of the registered  
25          nurses at the facility or, where there is no such bar-

1       gaining representative, notice of the filing has been  
2       provided to registered nurses employed at the facility  
3       through posting in conspicuous locations.

4           “(vii) The facility will not, at any time, employ  
5       a number of aliens issued visas or otherwise pro-  
6       vided nonimmigrant status under section  
7       101(a)(15)(H)(i)(c) that exceeds 33 percent of the  
8       total number of registered nurses employed by the  
9       facility.

10          “(viii) The facility will not, with respect to any  
11       alien issued a visa or otherwise provided non-  
12       immigrant status under section  
13       101(a)(15)(H)(i)(c)—

14           “(I) authorize the alien to perform nursing  
15       services at any worksite other than a worksite  
16       controlled by the facility; or

17           “(II) transfer the place of employment of  
18       the alien from one worksite to another.

19       Nothing in clause (iv) shall be construed as requiring a  
20       facility to have taken significant steps described in such  
21       clause before the date of the enactment of the Health Pro-  
22       fessional Shortage Area Nursing Relief Act of 1999. A  
23       copy of the attestation shall be provided, within 30 days  
24       of the date of filing, to registered nurses employed at the  
25       facility on the date of filing.

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

4           “(i) Operating a training program for reg-  
5 istered nurses at the facility or financing (or provid-  
6 ing participation in) a training program for reg-  
7 istered nurses elsewhere.

8           “(ii) Providing career development programs  
9 and other methods of facilitating health care work-  
10 ers to become registered nurses.

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

14          “(iv) Providing adequate support services to  
15 free registered nurses from administrative and other  
16 nonnursing duties.

17          “(v) Providing reasonable opportunities for  
18 meaningful salary advancement by registered nurses.

19 The steps described in this subparagraph shall not be con-  
20 sidered to be an exclusive list of the significant steps that  
21 may be taken to meet the conditions of subparagraph  
22 (A)(iv). Nothing in this subparagraph shall require a facil-  
23 ity to take more than one step if the facility can dem-  
24 onstrate, and the Attorney General determines, that tak-  
25 ing a second step is not reasonable.

1 “(C) Subject to subparagraph (E), an attestation  
2 under subparagraph (A)—

3 “(i) shall expire on the date that is the later  
4 of—

5 “(I) the end of the one-year period begin-  
6 ning on the date of its filing with the Secretary  
7 of Labor; or

8 “(II) the end of the period of admission  
9 under section 101(a)(15)(H)(i)(c) of the last  
10 alien with respect to whose admission it was ap-  
11 plied (in accordance with clause (ii)); and

12 “(ii) shall apply to petitions filed during the  
13 one-year period beginning on the date of its filing  
14 with the Secretary of Labor if the facility states in  
15 each such petition that it continues to comply with  
16 the conditions in the attestation.

17 “(D) A facility may meet the requirements under this  
18 paragraph with respect to more than one registered nurse  
19 in a single petition.

20 “(E)(i) The Secretary of Labor shall compile and  
21 make available for public examination in a timely manner  
22 in Washington, D.C., a list identifying facilities which  
23 have filed petitions for nonimmigrants under section  
24 101(a)(15)(H)(i)(c) and, for each such facility, a copy of  
25 the facility’s attestation under subparagraph (A) (and ac-

1   companying documentation) and each such petition filed  
2   by the facility.

3       “(ii) The Secretary of Labor shall establish a process,  
4   including reasonable time limits, for the receipt, investiga-  
5   tion, and disposition of complaints respecting a facility’s  
6   failure to meet conditions attested to or a facility’s mis-  
7   representation of a material fact in an attestation. Com-  
8   plaints may be filed by any aggrieved person or organiza-  
9   tion (including bargaining representatives, associations  
10   deemed appropriate by the Secretary, and other aggrieved  
11   parties as determined under regulations of the Secretary).  
12   The Secretary shall conduct an investigation under this  
13   clause if there is reasonable cause to believe that a facility  
14   fails to meet conditions attested to. Subject to the time  
15   limits established under this clause, this subparagraph  
16   shall apply regardless of whether an attestation is expired  
17   or unexpired at the time a complaint is filed.

18       “(iii) Under such process, the Secretary shall provide,  
19   within 180 days after the date such a complaint is filed,  
20   for a determination as to whether or not a basis exists  
21   to make a finding described in clause (iv). If the Secretary  
22   determines that such a basis exists, the Secretary shall  
23   provide for notice of such determination to the interested  
24   parties and an opportunity for a hearing on the complaint  
25   within 60 days of the date of the determination.



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

15       “(v) In addition to the sanctions provided for under  
16 clause (iv), if the Secretary of Labor finds, after notice  
17 and an opportunity for a hearing, that a facility has vio-  
18 lated the condition attested to under subparagraph (A)(iii)  
19 (relating to payment of registered nurses at the prevailing  
20 wage rate), the Secretary shall order the facility to provide  
21 for payment of such amounts of back pay as may be re-  
22 quired to comply with such condition.

23       “(F)(i) The Secretary of Labor shall impose on a fa-  
24 cility filing an attestation under subparagraph (A) a filing  
25 fee, in an amount prescribed by the Secretary based on

1 the costs of carrying out the Secretary's duties under this  
2 subsection, but not exceeding \$250.

3 “(ii) Fees collected under this subparagraph shall be  
4 deposited in a fund established for this purpose in the  
5 Treasury of the United States.

6 “(iii) The collected fees in the fund shall be available  
7 to the Secretary of Labor, to the extent and in such  
8 amounts as may be provided in appropriations Acts, to  
9 cover the costs described in clause (i), in addition to any  
10 other funds that are available to the Secretary to cover  
11 such costs.

12 “(3) The period of admission of an alien under sec-  
13 tion 101(a)(15)(H)(i)(c) shall be 3 years.

14 “(4) The total number of nonimmigrant visas issued  
15 pursuant to petitions granted under section  
16 101(a)(15)(H)(i)(c) in each fiscal year shall not exceed  
17 500. The number of petitions granted under section  
18 101(a)(15)(H)(i)(c) for each State in each fiscal year shall  
19 not exceed the following:

20 “(A) For States with populations of less than  
21 10,000,000, based upon the 1990 decennial census  
22 of population, 25 petitions.

23 “(B) For States with populations of 10,000,000  
24 or more, based upon the 1990 decennial census of  
25 population, 50 petitions.

1       “(5) A facility that has filed a petition under section  
2 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform  
3 nursing services for the facility—

4           “(A) shall provide the nonimmigrant a wage  
5 rate and working conditions commensurate with  
6 those of nurses similarly employed by the facility;

7           “(B) shall require the nonimmigrant to work  
8 hours commensurate with those of nurses similarly  
9 employed by the facility; and

10          “(C) shall not interfere with the right of the  
11 nonimmigrant to join or organize a union.

12       “(6) For purposes of this subsection and section  
13 101(a)(15)(H)(i)(c), the term ‘facility’ means a subsection  
14 (d) hospital (as defined in section 1886(d)(1)(B) of the  
15 Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) that  
16 meets the following requirements:

17           “(A) As of March 31, 1997, the hospital was lo-  
18 cated in a health professional shortage area (as de-  
19 fined in section 332 of the Public Health Service Act  
20 (42 U.S.C. 254e)).

21           “(B) Based on its settled cost report filed  
22 under title XVIII of the Social Security Act for its  
23 cost reporting period beginning during fiscal year  
24 1994—

1           “(i) the hospital has not less than 190 li-  
2           censed acute care beds;

3           “(ii) the number of the hospital’s inpatient  
4           days for such period which were made up of pa-  
5           tients who (for such days) were entitled to ben-  
6           efits under part A of such title is not less than  
7           35 percent of the total number of such hos-  
8           pital’s acute care inpatient days for such pe-  
9           riod; and

10          “(iii) the number of the hospital’s inpa-  
11          tient days for such period which were made up  
12          of patients who (for such days) were eligible for  
13          medical assistance under a State plan approved  
14          under title XIX of the Social Security Act, is  
15          not less than 28 percent of the total number of  
16          such hospital’s acute care inpatient days for  
17          such period.”.

18          (c) REPEALER.—Clause (i) of section 101(a)(15)(H)  
19          of the Immigration and Nationality Act (8 U.S.C.  
20          1101(a)(15)(H)(i)) is amended by striking subclause (a).

21          (d) IMPLEMENTATION.—Not later than 90 days after  
22          the date of enactment of this Act, the Secretary of Labor  
23          (in consultation, to the extent required, with the Secretary  
24          of Health and Human Services) and the Attorney General  
25          shall promulgate final or interim final regulations to carry

1 out section 212(m) of the Immigration and Nationality  
2 Act (as amended by subsection (b)).

3 (e) LIMITING APPLICATION OF NONIMMIGRANT  
4 CHANGES TO 4-YEAR PERIOD.—The amendments made  
5 by this section shall apply to classification petitions filed  
6 for nonimmigrant status only during the 4-year period be-  
7 ginning on the date that interim or final regulation are  
8 first promulgated under subsection (d).

9 **SEC. 3. RECOMMENDATIONS FOR ALTERNATIVE REMEDY**  
10 **FOR NURSING SHORTAGE.**

11 Not later than the last day of the 4-year period de-  
12 scribed in section 2(e), the Secretary of Health and  
13 Human Services and the Secretary of Labor shall jointly  
14 submit to the Congress recommendations (including legis-  
15 lative specifications) with respect to the following:

16 (1) A program to eliminate the dependence of  
17 facilities described in section 212(m)(6) of the Immi-  
18 gration and Nationality Act (as amended by section  
19 2(b)) on nonimmigrant registered nurses by provid-  
20 ing for a permanent solution to the shortage of reg-  
21 istered nurses who are United States citizens or  
22 aliens lawfully admitted for permanent residence.

23 (2) A method of enforcing the requirements im-  
24 posed on facilities under sections  
25 101(a)(15)(H)(i)(c) and 212(m) of the Immigration

1 and Nationality Act (as amended by section 2) that  
2 would be more effective than the process described  
3 in section 212(m)(2)(E) of such Act (as so amend-  
4 ed).

5 **SEC. 4. CERTIFICATION FOR CERTAIN ALIEN NURSES.**

6 (a) IN GENERAL.—

7 (1) Section 212 of the Immigration and Nation-  
8 ality Act (8 U.S.C. 1182), as amended by the Amer-  
9 ican Competitiveness and Workforce Improvement  
10 Act of 1998, is further amended by adding at the  
11 end the following:

12 “(r) Subsection (a)(5)(C) shall not apply to an alien  
13 who seeks to enter the United States for the purpose of  
14 performing labor as a nurse who presents to the consular  
15 officer (or in the case of an adjustment of status, the At-  
16 torney General) a certified statement from the Commis-  
17 sion on Graduates of Foreign Nursing Schools (or an  
18 equivalent independent credentialing organization ap-  
19 proved for the certification of nurses under subsection  
20 (a)(5)(C) by the Attorney General in consultation with the  
21 Secretary of Health and Human Services) that—

22 “(1) the alien has a valid and unrestricted li-  
23 cense as a nurse in a State where the alien intends  
24 to be employed and such State verifies that the for-

1        eign licenses of alien nurses are authentic and  
2        unencumbered;

3            “(2) the alien has passed the National Council  
4        Licensure Examination (NCLEX);

5            “(3) the alien is a graduate of a nursing  
6        program—

7            “(A) in which the language of instruction  
8        was English;

9            “(B) located in a country—

10            “(i) designated by such commission  
11            not later than 30 days after the date of the  
12            enactment of the Health Professional  
13            Shortage Area Nursing Relief Act of 1999,  
14            based on such commission’s assessment  
15            that the quality of nursing education in  
16            that country, and the English language  
17            proficiency of those who complete such  
18            programs in that country, justify the coun-  
19            try’s designation; or

20            “(ii) designated on the basis of such  
21            an assessment by unanimous agreement of  
22            such commission and any equivalent  
23            credentialing organizations which have  
24            been approved under subsection (a)(5)(C)

1           for the certification of nurses under this  
2           subsection; and

3           “(C)(i) which was in operation on or before  
4           the date of the enactment of the Health Profes-  
5           sional Shortage Area Nursing Relief Act of  
6           1999; or

7           “(ii) has been approved by unanimous  
8           agreement of such commission and any equiva-  
9           lent credentialing organizations which have  
10          been approved under subsection (a)(5)(C) for  
11          the certification of nurses under this sub-  
12          section.”.

13          (2) Section 212(a)(5)(C) of the Immigration  
14          and Nationality Act (8 U.S.C. 1182(a)(5)(C)) is  
15          amended by striking “Any alien who seeks” and in-  
16          serting “Subject to subsection (r), any alien who  
17          seeks”.

18          (b) EFFECTIVE DATE.—The amendments made by  
19          subsection (a) shall take effect on the date of the enact-  
20          ment of this Act, without regard to whether or not final  
21          regulations to carry out such amendment have been pro-  
22          mulgated by such date.

23          (c) ISSUANCE OF CERTIFIED STATEMENTS.—The  
24          Commission on Graduates of Foreign Nursing Schools, or  
25          any approved equivalent independent credentialing organi-



1 zation, shall issue certified statements pursuant to the  
2 amendment under subsection (a) not more than 35 days  
3 after the receipt of a complete application for such a state-  
4 ment.

