

106TH CONGRESS
1ST SESSION

S. 455

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 1999

Mr. DURBIN (for himself and Mrs. HUTCHISON) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

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 “Nursing Relief for Dis-
5 advantaged Areas 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 did not lay off
16 and will not lay off a registered nurse employed by
17 the facility within the period beginning 90 days be-
18 fore and ending 90 days after the date of filing of
19 any visa petition, and the employment of such an
20 alien is not intended or designed to influence an
21 election for a bargaining representative for reg-
22 istered nurses of the facility.

23 “(vi) At the time of the filing of the petition for
24 registered nurses under section 101(a)(15)(H)(i)(c),
25 notice of the filing has been provided by the facility

1 to the bargaining representative of the registered
2 nurses at the facility or, where there is no such bar-
3 gaining representative, notice of the filing has been
4 provided to the registered nurses employed at the
5 facility through posting in conspicuous locations.

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

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

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

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

21 Nothing in clause (iv) shall be construed as requir-
22 ing a facility to have taken significant steps de-
23 scribed in such clause before the date of the enact-
24 ment of the Nursing Relief for Disadvantaged Areas
25 Act of 1999. A copy of the attestation shall be pro-

1 vided, within 30 days of the date of filing, to reg-
2 istered nurses employed at the facility on the date
3 of filing.

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

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

11 “(ii) Providing career development programs
12 and other methods of facilitating health care work-
13 ers to become registered nurses.

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

17 “(iv) 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 that taking 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 such visas issued for employment in
18 each State in each fiscal year shall not exceed the follow-
19 ing:

20 “(A) For States with populations of less than
21 9,000,000, based upon the 1990 decennial census of
22 population, 25 visas.

23 “(B) For States with populations of 9,000,000
24 or more, based upon the 1990 decennial census of
25 population, 50 visas.

1 “(C) If the total number of visas available
2 under this paragraph for a fiscal year quarter ex-
3 ceeds the number of qualified nonimmigrants who
4 may be issued such visas during those quarters, the
5 visas made available under this paragraph shall be
6 issued without regard to the numerical limitation
7 under subparagraph (A) or (B) of this paragraph
8 during the last fiscal year quarter.

9 “(5) A facility that has filed a petition under section
10 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform
11 nursing services for the facility—

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

15 “(B) shall require the nonimmigrant to work
16 hours commensurate with those of nurses similarly
17 employed by the facility; and

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

20 “(6) For purposes of this subsection and section
21 101(a)(15)(H)(i)(c), the term ‘facility’ means a subsection
22 (d) hospital (as defined in section 1886(d)(1)(B) of the
23 Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) that
24 meets the following requirements:

1 “(A) As of March 31, 1997, the hospital was lo-
2 cated in a health professional shortage area (as de-
3 fined in section 332 of the Public Health Service Act
4 (42 U.S.C. 254e)).

5 “(B) Based on its settled cost report filed
6 under title XVIII of the Social Security Act for its
7 cost reporting period beginning during fiscal year
8 1994—

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

11 “(ii) the number of the hospital’s inpatient
12 days for such period which were made up of pa-
13 tients who (for such days) were entitled to ben-
14 efits under part A of such title is not less than
15 35 percent of the total number of such hos-
16 pital’s acute care inpatient days for such pe-
17 riod; and

18 “(iii) the number of the hospital’s inpa-
19 tient days for such period which were made up
20 of patients who (for such days) were eligible for
21 medical assistance under a State plan approved
22 under title XIX of the Social Security Act, is
23 not less than 28 percent of the total number of
24 such hospital’s acute care inpatient days for
25 such period.

1 “(7) For purposes of paragraph (2)(A)(v), the
2 term ‘lay off’, with respect to a worker—

3 “(A) means to cause the worker’s loss of
4 employment, other than through a discharge for
5 inadequate performance, violation of workplace
6 rules, cause, voluntary departure, voluntary re-
7 tirement, or the expiration of a grant or con-
8 tract; but

9 “(B) does not include any situation in
10 which the worker is offered, as an alternative to
11 such loss of employment, a similar employment
12 opportunity with the same employer at equiva-
13 lent or higher compensation and benefits than
14 the position from which the employee was dis-
15 charged, regardless of whether or not the em-
16 ployee accepts the offer.

17 Nothing in this paragraph is intended to limit an
18 employee’s or an employer’s rights under a collective
19 bargaining agreement or other employment con-
20 tract.”.

21 (c) REPEALER.—Clause (i) of section 101(a)(15)(H)
22 of the Immigration and Nationality Act (8 U.S.C.
23 1101(a)(15)(H)(i)) is amended by striking subclause (a).

24 (d) IMPLEMENTATION.—Not later than 90 days after
25 the date of enactment of this Act, the Secretary of Labor

1 (in consultation, to the extent required, with the Secretary
 2 of Health and Human Services) and the Attorney General
 3 shall promulgate final or interim final regulations to carry
 4 out section 212(m) of the Immigration and Nationality
 5 Act (as amended by subsection (b)).

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

12 **SEC. 3. RECOMMENDATIONS FOR ALTERNATIVE REMEDY**
 13 **FOR NURSING SHORTAGE.**

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

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

1 (2) A method of enforcing the requirements im-
 2 posed on facilities under sections
 3 101(a)(15)(H)(i)(c) and 212(m) of the Immigration
 4 and Nationality Act (as amended by section 2) that
 5 would be more effective than the process described
 6 in section 212(m)(2)(E) of such Act (as so amend-
 7 ed).

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

9 (a) IN GENERAL.—

10 (1) Section 212 of the Immigration and Nation-
 11 ality Act (8 U.S.C. 1182) is amended by adding at
 12 the end the following new subsection:

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

23 “(1) the alien has a valid and unrestricted li-
 24 cense as a nurse in a State where the alien intends
 25 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 Nursing Relief for Dis-
13 advantaged Areas Act of 1999, based on
14 such commission’s assessment that the
15 quality of nursing education in that coun-
16 try, and the English language proficiency
17 of those who complete such programs in
18 that country, justify the country’s designa-
19 tion; 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 Nursing Relief
5 for Disadvantaged Areas Act of 1999; or

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

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

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

22 (c) ISSUANCE OF CERTIFIED STATEMENTS.—The
23 Commission on Graduates of Foreign Nursing Schools, or
24 any approved equivalent independent credentialing organi-
25 zation, shall issue certified statements pursuant to the

- 1 amendment under subsection (a) not more than 35 days
- 2 after the receipt of a complete application for such a state-
- 3 ment.

