

108TH CONGRESS  
1ST SESSION

# H. R. 87

To modify the requirements applicable to the admission into the United States of H–1C nonimmigrant registered nurses, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2003

Ms. JACKSON-LEE of Texas introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To modify the requirements applicable to the admission into the United States of H–1C nonimmigrant registered nurses, and for other purposes.

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 “Rural and Urban  
5       Health Care Act of 2003”.

6       **SEC. 2. REQUIREMENTS FOR ADMISSION OF H-1C NON-**  
7       **IMMIGRANT NURSES.**

8       (a) IN GENERAL.—Section 212(m) of the Immigra-  
9       tion and Nationality Act (8 U.S.C. 1182(m)) is amended  
10      to read as follows:

1       “(m)(1) The qualifications referred to in section  
2 101(a)(15)(H)(i)(c), with respect to an alien who is com-  
3 ing to the United States to perform nursing services for  
4 a facility, are that the alien—

5           “(A) has obtained a full and unrestricted li-  
6 cense to practice professional nursing in the country  
7 where the alien obtained nursing education or has  
8 received nursing education in the United States or  
9 Canada;

10          “(B) has passed the examination given by the  
11 Commission on Graduates of Foreign Nursing  
12 Schools or another appropriate examination (recog-  
13 nized in regulations promulgated in consultation  
14 with the Secretary of Health and Human Services)  
15 or has a full and unrestricted license under State  
16 law to practice professional nursing in the State of  
17 intended employment; and

18          “(C) is fully qualified and eligible under the  
19 laws (including such temporary or interim licensing  
20 requirements which authorize the nurse to be em-  
21 ployed) governing the place of intended employment  
22 to engage in the practice of professional nursing as  
23 a registered nurse immediately upon admission to  
24 the United States and is authorized under such laws  
25 to be employed by the facility, except that, in the

1 case of an alien who is otherwise eligible to take the  
2 State licensure examination after entering into the  
3 United States, but who has not passed such exam-  
4 ination before entering—

5 “(i) the alien may take such examination  
6 not more than twice after entering, but the  
7 alien’s status as a nonimmigrant under section  
8 101(a)(15)(H)(i)(c) shall terminate, and the  
9 alien shall be required to depart the United  
10 States, if the alien does not pass such examina-  
11 tion either the first or second time; and

12 “(ii) the failure of the alien to have ob-  
13 tained a social security account number shall  
14 not be deemed a ground of ineligibility to take  
15 such examination.

16 “(2)(A) The attestation referred to in section  
17 101(a)(15)(H)(i)(c), with respect to a facility for which  
18 an alien will perform services, is an attestation as to the  
19 following:

20 “(i) The employment of the alien will not ad-  
21 versely affect the wages and working conditions of  
22 registered nurses similarly employed by the facility.

23 “(ii) The alien will be paid the wage rate for  
24 registered nurses similarly employed by the facility.

1           “(iii) There is not a strike or lockout in the  
2           course of a labor dispute, the facility did not lay off  
3           and will not lay off a registered staff nurse employed  
4           by the facility within the period beginning 90 days  
5           before and ending 90 days after the date of filing of  
6           any visa petition, and the employment of such an  
7           alien is not intended or designed to influence an  
8           election for a bargaining representative for reg-  
9           istered nurses of the facility.

10           “(iv) At the time of the filing of the petition for  
11           registered nurses under section 101(a)(15)(H)(i)(c),  
12           notice of the filing has been provided by the facility  
13           to the bargaining representative of the registered  
14           nurses at the facility or, where there is no such bar-  
15           gaining representative, notice of the filing has been  
16           provided to the registered nurses employed at the fa-  
17           cility through posting in conspicuous locations.

18           “(v) The facility will not, with respect to any  
19           alien issued a visa or otherwise provided non-  
20           immigrant status under section  
21           101(a)(15)(H)(i)(c)—

22           “(I) authorize the alien to perform nursing  
23           services at any worksite other than a worksite  
24           controlled by the facility; or

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

3                   “(vi) The facility will not, with respect to any  
4                   alien issued a visa or otherwise provided non-  
5                   immigrant status under section 101(a)(15)(H)(i)(c),  
6                   require the alien to pay a penalty (as determined  
7                   under State law) for ceasing employment prior to a  
8                   date agreed to by the alien and the facility.

9                   “(B) A copy of the attestation shall be provided, with-  
10                  in 30 days of the date of filing, to registered nurses em-  
11                  ployed at the facility on the date of filing.

12                  “(C) The Secretary shall review the attestation only  
13                  for completeness and obvious inaccuracies. Unless the Sec-  
14                  retary finds that the attestation is incomplete or obviously  
15                  inaccurate, the Secretary shall provide the certification de-  
16                  scribed in section 101(a)(15)(H)(i)(c) within 7 days of the  
17                  date of the filing of the attestation.

18                  “(D) Subject to subparagraph (F), an attestation  
19                  under subparagraph (A)—

20                         “(i) shall expire on the date that is the later  
21                         of—

22                                 “(I) the end of the 3-year period beginning  
23                                 on the date of its filing with the Secretary; or

24                                 “(II) the end of the period of admission  
25                                 under section 101(a)(15)(H)(i)(c) of the last

1 alien with respect to whose admission it was ap-  
2 plied (in accordance with clause (ii)); and

3 “(ii) shall apply to petitions filed during the 3-  
4 year period beginning on the date of its filing with  
5 the Secretary if the facility states in each such peti-  
6 tion that it continues to comply with the conditions  
7 in the attestation.

8 “(E) A facility may meet the requirements of this  
9 paragraph with respect to more than one registered nurse  
10 in a single attestation.

11 “(F)(i) The Secretary of Labor shall compile and  
12 make available for public examination in a timely manner  
13 in Washington, D.C., a list identifying facilities that have  
14 filed petitions for nonimmigrants under section  
15 101(a)(15)(H)(i)(c) and, for each such facility, a copy of  
16 the facility’s attestation under subparagraph (A) (and ac-  
17 companying documentation) and each such petition filed  
18 by the facility.

19 “(ii) The Secretary shall establish a process, includ-  
20 ing reasonable time limits, for the receipt, investigation,  
21 and disposition of complaints respecting a facility’s failure  
22 to meet conditions attested to or a facility’s misrepresenta-  
23 tion of a material fact in an attestation. Complaints may  
24 be filed by any aggrieved person or organization (including  
25 bargaining representatives, associations deemed appro-

1 piate by the Secretary, and other aggrieved parties as de-  
2 termined under regulations of the Secretary). The Sec-  
3 retary shall conduct an investigation under this clause if  
4 there is reasonable cause to believe that a facility willfully  
5 failed to meet conditions attested to. Subject to the time  
6 limits established under this clause, this subparagraph  
7 shall apply regardless of whether an attestation is expired  
8 or unexpired at the time a complaint is filed.

9 “(iii) Under such process, the Secretary shall provide,  
10 within 180 days after the date such a complaint is filed,  
11 for a determination as to whether or not a basis exists  
12 to make a finding described in clause (iv). If the Secretary  
13 determines that such a basis exists, the Secretary shall  
14 provide for notice of such determination to the interested  
15 parties and an opportunity for a hearing on the complaint  
16 within 60 days of the date of the determination.

17 “(iv) If the Secretary of Labor finds, after notice and  
18 opportunity for a hearing, that a facility (for which an  
19 attestation is made) has willfully failed to meet a condition  
20 attested to or that there was a willful misrepresentation  
21 of material fact in the attestation, the Secretary shall no-  
22 tify the Attorney General of such finding and may, in ad-  
23 dition, impose such other administrative remedies (includ-  
24 ing civil monetary penalties in an amount not to exceed  
25 \$1,000 per nurse per violation, with the total penalty not

1 to exceed \$10,000 per violation) as the Secretary deter-  
2 mines to be appropriate. Upon receipt of such notice, the  
3 Attorney General shall not approve petitions filed with re-  
4 spect to a facility during a period of at least one year for  
5 nurses to be employed by the facility.

6 “(v) In addition to the sanctions provided for under  
7 clause (iv), if the Secretary finds, after notice and an op-  
8 portunity for a hearing, that a facility has violated the  
9 condition attested to under subparagraph (A)(ii) (relating  
10 to payment of registered nurses at the prevailing wage  
11 rate), the Secretary shall order the facility to provide for  
12 payment of such amounts of back pay as may be required  
13 to comply with such condition.

14 “(G)(i) The Secretary shall impose on a facility filing  
15 an attestation under subparagraph (A) a filing fee, in an  
16 amount prescribed by the Secretary based on the costs of  
17 carrying out the Secretary’s duties under this subsection,  
18 but not exceeding \$250.

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

22 “(iii) The collected fees in the fund shall be available  
23 to the Secretary, to the extent and in such amounts as  
24 may be provided in appropriations Acts, to cover the costs



1 described in clause (i), in addition to any other funds that  
2 are available to the Secretary to cover such costs.

3 “(3) The period of admission of an alien under sec-  
4 tion 101(a)(15)(H)(i)(c) shall be for an initial period not  
5 to exceed 3 years, and may be extended if the extension  
6 does not cause the total period of authorized admission  
7 as such a nonimmigrant to exceed 6 years.

8 “(4) The total number of nonimmigrant visas issued  
9 pursuant to petitions granted under section  
10 101(a)(15)(H)(i)(c) in each fiscal year shall not exceed  
11 195,000.

12 “(5) A facility that has filed a petition under section  
13 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform  
14 nursing services for the facility—

15 “(A) shall provide the nonimmigrant a wage  
16 rate and working conditions commensurate with  
17 those of nurses similarly employed by the facility;  
18 and

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

21 “(6) For purposes of this subsection and section  
22 101(a)(15)(H)(i)(c):

23 “(A) The term ‘facility’ includes a hospital,  
24 nursing home, skilled nursing facility, registry, clin-

1       ic, assisted-living center, and an employer who em-  
2       ploys any registered nurse in a home setting.

3           “(B)(i) The term ‘lay off’ with respect to a  
4       worker (for purposes of paragraph (2)(A)(iii))—

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

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

19          “(ii) Nothing in this subparagraph is intended  
20       to limit an employee’s or an employer’s rights under  
21       a collective bargaining agreement or other employ-  
22       ment contract.

23          “(C) The term ‘Secretary’ means the Secretary  
24       of Labor.”.

1 (b) REGULATIONS; EFFECTIVE DATE.—Not later  
2 than 90 days after the date of the enactment of this Act,  
3 regulations to carry out subsection (a) shall be promul-  
4 gated by the Secretary of Labor, in consultation with the  
5 Secretary of Health and Human Services and the Attorney  
6 General. Notwithstanding the preceding sentence, the  
7 amendment made by subsection (a) shall take effect 90  
8 days after the date of the enactment of this Act, regardless  
9 of whether such regulations are in effect on such date.

10 **SEC. 3. INCREASE IN NUMBER OF WAIVERS OF TWO-YEAR**  
11 **FOREIGN RESIDENCE REQUIREMENT UPON**  
12 **REQUESTS BY STATE AGENCIES.**

13 Section 214(l)(1)(B) of the Immigration and Nation-  
14 ality Act (8 U.S.C. 1184(l)(1)(B)) is amended by striking  
15 “30;” and inserting “40;”.

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