

114TH CONGRESS
1ST SESSION

S. 1189

To provide incentives to physicians to practice in rural and medically underserved communities and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 5, 2015

Ms. KLOBUCHAR (for herself, Ms. HEITKAMP, Mr. MORAN, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide incentives to physicians to practice in rural and medically underserved communities 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 “Conrad State 30 and
5 Physician Access Act”.

6 **SEC. 2. CONRAD STATE 30 PROGRAM.**

7 Section 220(c) of the Immigration and Nationality
8 Technical Corrections Act of 1994 (Public Law 103–416;
9 8 U.S.C. 1182 note) is amended by striking “and before
10 September 30, 2015”.

1 **SEC. 3. RETAINING PHYSICIANS WHO HAVE PRACTICED IN**
2 **MEDICALLY UNDERSERVED COMMUNITIES.**

3 Section 201(b)(1) of the Immigration and Nationality
4 Act (8 U.S.C. 1151(b)(1)) is amended by adding at the
5 end the following:

6 “(F)(i) Alien physicians who have completed
7 service requirements of a waiver requested under
8 section 203(b)(2)(B)(ii), including alien physicians
9 who completed such service before the date of the
10 enactment of the Conrad State 30 and Physician Ac-
11 cess Act and any spouses or children of such alien
12 physicians.

13 “(ii) Nothing in this subparagraph may be con-
14 strued—

15 “(I) to prevent the filing of a petition with
16 the Secretary of Homeland Security for classi-
17 fication under section 204(a) or the filing of an
18 application for adjustment of status under sec-
19 tion 245 by an alien physician described in this
20 subparagraph prior to the date by which such
21 alien physician has completed the service de-
22 scribed in section 214(l) or worked full-time as
23 a physician for an aggregate of 5 years at the
24 location identified in the section 214(l) waiver
25 or in an area or areas designated by the Sec-

1 retary of Health and Human Services as having
2 a shortage of health care professionals; or

3 “(II) to permit the Secretary of Homeland
4 Security to grant such a petition or application
5 until the alien has satisfied all the requirements
6 of the waiver received under section 214(l).”.

7 **SEC. 4. EMPLOYMENT PROTECTIONS FOR PHYSICIANS.**

8 (a) IN GENERAL.—Section 214(l)(1)(C) of the Immi-
9 gration and Nationality Act (8 U.S.C. 1184(l)(1)(C)) is
10 amended by striking clauses (i) and (ii) and inserting the
11 following:

12 “(i) the alien demonstrates a bona fide
13 offer of full-time employment, at a health care
14 organization, which employment has been deter-
15 mined by the Secretary of Homeland Security
16 to be in the public interest; and

17 “(ii) the alien agrees to begin employment
18 with the health facility or health care organiza-
19 tion in a geographic area or areas which are
20 designated by the Secretary of Health and
21 Human Services as having a shortage of health
22 care professionals by the later of the date that
23 is 90 days after receiving such waiver, 90 days
24 after completing graduate medical education or
25 training under a program approved pursuant to

1 section 212(j)(1), or 90 days after receiving
2 nonimmigrant status or employment authoriza-
3 tion, if the alien or the alien’s employer peti-
4 tions for such nonimmigrant status or employ-
5 ment authorization not later than 90 days after
6 the date the alien completes his or her graduate
7 medical education or training and agrees to
8 continue to work for a total of not less than 3
9 years in any status authorized for such employ-
10 ment under this subsection unless—

11 “(I) the Secretary determines that ex-
12 tenuating circumstances exist that justify a
13 lesser period of employment at such facility
14 or organization, in which case the alien
15 shall demonstrate another bona fide offer
16 of employment at a health facility or
17 health care organization, for the remainder
18 of such 3-year period;

19 “(II) the interested State agency that
20 requested the waiver attests that extenu-
21 ating circumstances exist that justify a
22 lesser period of employment at such facility
23 or organization in which case the alien
24 shall demonstrate another bona fide offer
25 of employment at a health facility or

1 health care organization so designated by
2 the Secretary of Health and Human Serv-
3 ices, for the remainder of such 3-year pe-
4 riod; or

5 “(III) if the alien elects not to pursue
6 a determination of extenuating cir-
7 cumstances pursuant to subclause (I) or
8 (II), the alien terminates the alien’s em-
9 ployment relationship with such facility or
10 organization, in which case the alien shall
11 be employed for the remainder of such 3-
12 year period, and 1 additional year for each
13 termination, at another health facility or
14 health care organization in a geographic
15 area or areas which are designated by the
16 Secretary of Health and Human Services
17 as having a shortage of health care profes-
18 sionals; and”.

19 (b) PHYSICIAN EMPLOYMENT IN UNDERSERVED
20 AREAS.—Section 214(l) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1184(l)) is amended by adding at the
22 end the following:

23 “(4) If a physician pursuing graduate medical edu-
24 cation or training pursuant to section 101(a)(15)(J) ap-
25 plies for a waiver under paragraph (1)(B) with an inter-

1 ested State agency and the application is denied because
2 the State has requested the maximum number of waivers
3 permitted for that fiscal year, the physician's non-
4 immigrant status shall be extended for a period of up to
5 6 months if the physician agrees to seek a waiver under
6 this subsection (except for paragraph (1)(D)(ii)) to work
7 for an interested State agency whose State has not yet
8 requested the maximum number of waivers. The physician
9 shall be authorized to work only for such interested State
10 agency from the date on which a new waiver application
11 is filed with the State until the date on which the Sec-
12 retary of Homeland Security denies such waiver or issues
13 work authorization for such employment pursuant to the
14 approval of such waiver.”.

15 (c) CONTRACT REQUIREMENTS.—Section 214(l) of
16 the Immigration and Nationality Act (8 U.S.C. 1184(l)),
17 as amended by subsection (b), is further amended by add-
18 ing at the end the following:

19 “(5) An alien granted a waiver under paragraph
20 (1)(C) shall enter into an employment agreement with the
21 contracting health facility or health care organization
22 that—

23 “(A) specifies the maximum number of on-call
24 hours per week (which may be a monthly average)
25 that the alien will be expected to be available and

1 the compensation the alien will receive for on-call
2 time;

3 “(B) specifies whether the contracting facility
4 or organization will pay for the alien’s malpractice
5 insurance premiums, including whether the employer
6 will provide malpractice insurance and, if so, the
7 amount of such insurance that will be provided;

8 “(C) describes all of the work locations that the
9 alien will work and a statement that the contracting
10 facility or organization will not add additional work
11 locations without the approval of the Federal agency
12 or State agency that requested the waiver; and

13 “(D) does not include a non-compete provision.

14 “(6) An alien granted a waiver under paragraph
15 (1)(C) whose employment relationship with a health facil-
16 ity or health care organization terminates during the 3-
17 year service period required by such paragraph—

18 “(A) shall have a period of 120 days beginning
19 on the date of such termination of employment to
20 submit to the Secretary of Homeland Security appli-
21 cations or petitions to commence employment with
22 another contracting health facility or health care or-
23 ganization in a geographic area or areas which are
24 designated by the Secretary of Health and Human

1 Services as having a shortage of health care profes-
2 sionals; and

3 “(B) shall be considered to be maintaining law-
4 ful status in an authorized stay during the 120-day
5 period referred to in subsection (A).”.

6 **SEC. 5. ALLOTMENT OF CONRAD 30 WAIVERS.**

7 (a) IN GENERAL.—Section 214(l) of the Immigration
8 and Nationality Act (8 U.S.C. 1184(l)), as amended by
9 subsections (b) and (c) of section 4, is further amended
10 by adding at the end the following:

11 “(7)(A)(i) All States shall be allotted a total of 35
12 waivers under paragraph (1)(B) for a fiscal year if 90 per-
13 cent of the waivers available to the States receiving at
14 least 5 waivers were used in the previous fiscal year.

15 “(ii) When an allocation has occurred under clause
16 (i), all States shall be allotted an additional 5 waivers
17 under paragraph (1)(B) for each subsequent fiscal year
18 if 90 percent of the waivers available to the States receiv-
19 ing at least 5 waivers were used in the previous fiscal year.
20 If the States are allotted 45 or more waivers for a fiscal
21 year, the States will only receive an additional increase
22 of 5 waivers the following fiscal year if 95 percent of the
23 waivers available to the States receiving at least 1 waiver
24 were used in the previous fiscal year.

1 “(B) Any increase in allotments under subparagraph
2 (A) shall be maintained indefinitely, unless in a fiscal year,
3 the total number of such waivers granted is 5 percent
4 lower than in the last year in which there was an increase
5 in the number of waivers allotted pursuant to this para-
6 graph, in which case—

7 “(i) the number of waivers allotted shall be de-
8 creased by 5 for all States beginning in the next fis-
9 cal year; and

10 “(ii) each additional 5-percent decrease in such
11 waivers granted from the last year in which there
12 was an increase in the allotment, shall result in an
13 additional decrease of 5 waivers allotted for all
14 States, provided that the number of waivers allotted
15 for all States shall not drop below 30.”.

16 (b) ACADEMIC MEDICAL CENTERS.—Section
17 214(l)(1)(D) of the Immigration and Nationality Act (8
18 U.S.C. 1184(l)(1)(D)) is amended—

19 (1) in clause (ii), by striking “and” at the end;

20 (2) in clause (iii), by striking the period at the
21 end and inserting “; and”; and

22 (3) by adding at the end the following:

23 “(iv) in the case of a request by an inter-
24 ested State agency—

1 “(I) the head of such agency deter-
2 mines that the alien is to practice medicine
3 in, or be on the faculty of a residency pro-
4 gram at, an academic medical center (as
5 that term is defined in section
6 411.355(e)(2) of title 42, Code of Federal
7 Regulations, or similar successor regula-
8 tion), without regard to whether such facil-
9 ity is located within an area designated by
10 the Secretary of Health and Human Serv-
11 ices as having a shortage of health care
12 professionals; and

13 “(II) the head of such agency deter-
14 mines that—

15 “(aa) the alien physician’s work
16 is in the public interest; and

17 “(bb) the grant of such waiver
18 would not cause the number of the
19 waivers granted on behalf of aliens for
20 such State for a fiscal year (within
21 the limitation in subparagraph (B)
22 and subject to paragraph (6)) in ac-
23 cordance with the conditions of this
24 clause to exceed 3.”.

1 **SEC. 6. AMENDMENTS TO THE PROCEDURES, DEFINITIONS,**
2 **AND OTHER PROVISIONS RELATED TO PHYSI-**
3 **CIAN IMMIGRATION.**

4 (a) DUAL INTENT FOR PHYSICIANS SEEKING GRAD-
5 UATE MEDICAL TRAINING.—Section 214(b) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1184(b)) is amend-
7 ed by striking “(other than a nonimmigrant described in
8 subparagraph (L) or (V) of section 101(a)(15), and other
9 than a nonimmigrant described in any provision of section
10 101(a)(15)(H)(i) except subclause (b1) of such section)”
11 and inserting “(other than a nonimmigrant described in
12 subparagraph (L) or (V) of section 101(a)(15), a non-
13 immigrant described in any provision of section
14 101(a)(15)(H)(i), except subclause (b1) of such section,
15 and an alien coming to the United States to receive grad-
16 uate medical education or training as described in section
17 212(j) or to take examinations required to receive grad-
18 uate medical education or training as described in section
19 212(j))”.

20 (b) ALLOWABLE VISA STATUS FOR PHYSICIANS FUL-
21 FILLING WAIVER REQUIREMENTS IN MEDICALLY UNDER-
22 SERVED AREAS.—Section 214(l)(2)(A) of the Immigration
23 and Nationality Act (8 U.S.C. 1184(l)(2)(A)) is amended
24 by striking “an alien described in section
25 101(a)(15)(H)(i)(b).” and inserting “any status author-
26 ized for employment under this Act.”.

1 (c) PHYSICIAN NATIONAL INTEREST WAIVER CLARI-
2 FICATIONS.—

3 (1) PRACTICE AND GEOGRAPHIC AREA.—Sec-
4 tion 203(b)(2)(B)(ii)(I) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1153(b)(2)(B)(ii)(I)) is
6 amended by striking items (aa) and (bb) and insert-
7 ing the following:

8 “(aa) the alien physician agrees to
9 work on a full-time basis practicing pri-
10 mary care, specialty medicine, or a com-
11 bination thereof, in an area or areas des-
12 ignated by the Secretary of Health and
13 Human Services as having a shortage of
14 health care professionals, or at a health
15 care facility under the jurisdiction of the
16 Secretary of Veterans Affairs; or

17 “(bb) the alien physician is pursuing
18 such waiver based upon service at a facility
19 or facilities that serve patients who reside
20 in a geographic area or areas designated
21 by the Secretary of Health and Human
22 Services as having a shortage of health
23 care professionals (without regard to
24 whether such facility or facilities are lo-
25 cated within such an area) and a Federal

1 agency, or a local, county, regional, or
2 State department of public health deter-
3 mines the alien physician's work was or
4 will be in the public interest.”.

5 (2) FIVE-YEAR SERVICE REQUIREMENT.—Sec-
6 tion 203(b)(2)(B)(ii)(II) of the Immigration and Na-
7 tionality Act (8 U.S.C. 1153(B)(ii)(II)) is amend-
8 ed—

9 (A) by inserting “(aa)” after “(II)”; and

10 (B) by adding at the end the following:

11 “(bb) The 5-year service require-
12 ment of item (aa) shall be counted
13 from the date the alien physician be-
14 gins work in the shortage area in any
15 legal status and not the date an immi-
16 grant visa petition is filed or ap-
17 proved. Such service shall be aggre-
18 gated without regard to when such
19 service began and without regard to
20 whether such service began during or
21 in conjunction with a course of grad-
22 uate medical education.

23 “(cc) An alien physician shall not
24 be required to submit an employment
25 contract with a term exceeding the

1 balance of the 5-year commitment yet
2 to be served, nor an employment con-
3 tract dated within a minimum time
4 period prior to filing of a visa petition
5 pursuant to this subsection.

6 “(dd) An alien physician shall
7 not be required to file additional im-
8 migrant visa petitions upon a change
9 of work location from the location ap-
10 proved in the original national interest
11 immigrant petition.”.

12 (d) TECHNICAL CLARIFICATION REGARDING AD-
13 VANCED DEGREE FOR PHYSICIANS.—Section
14 203(b)(2)(A) of the Immigration and Nationality Act (8
15 U.S.C. 1153(b)(2)(A)) is amended by adding at the end
16 “An alien physician holding a foreign medical degree that
17 has been deemed sufficient for acceptance by an accredited
18 United States medical residency or fellowship program is
19 a member of the professions holding an advanced degree
20 or its equivalent.”.

21 (e) SHORT-TERM WORK AUTHORIZATION FOR PHY-
22 SICIANS COMPLETING THEIR RESIDENCIES.—A physician
23 completing graduate medical education or training as de-
24 scribed in section 212(j) of the Immigration and Nation-
25 ality Act (8 U.S.C. 1182(j)) as a nonimmigrant described

1 in section 101(a)(15)(H)(i) of such Act (8 U.S.C.
2 1101(a)(15)(H)(i)) shall have such nonimmigrant status
3 automatically extended until October 1 of the fiscal year
4 for which a petition for a continuation of such non-
5 immigrant status has been submitted in a timely manner
6 and where the employment start date for the beneficiary
7 of such petition is October 1 of that fiscal year. Such phy-
8 sician shall be authorized to be employed incident to status
9 during the period between the filing of such petition and
10 October 1 of such fiscal year. However, the physician's
11 status and employment authorization shall terminate 30
12 days from the date such petition is rejected, denied or re-
13 voked. A physician's status and employment authorization
14 will automatically extend to October 1 of the next fiscal
15 year if all visas as described in such section
16 101(a)(15)(H)(i) authorized to be issued for the fiscal
17 year have been issued.

18 (f) APPLICABILITY OF SECTION 212(e) TO SPOUSES
19 AND CHILDREN OF J-1 EXCHANGE VISITORS.—A spouse
20 or child of an exchange visitor described in section
21 101(a)(15)(J) of the Immigration and Nationality Act (8
22 U.S.C. 1101(a)(15)(J)) shall not be subject to the require-
23 ments of section 212(e) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1182(e)).

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