

# NURSING RELIEF FOR DISADVANTAGED AREAS ACT OF 1999

MAY 12, 1999.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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

## R E P O R T

[To accompany H.R. 441]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 441) 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, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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## PURPOSE AND SUMMARY

H.R. 441 would create a new “H-1C” temporary visa program for registered nurses that would sunset after four years. The new program would be modeled after the expired “H-1A” program but would limit the number of visas that could be issued to 500 a year and would only allow “in-need” hospitals who meet certain criteria to petition for alien nurses.

## BACKGROUND AND NEED FOR THE LEGISLATION

*I. The H-1A Registered Nurse Temporary Visa Program*

The H-1A program was created by the Immigration Nursing Relief Act of 1989 [INRA]<sup>1</sup> and expired on September 1, 1995. Legislation enacted in the 104th Congress allowed nurses who had entered the United States under the program to stay and work as registered nurses until September 30, 1997.<sup>2</sup> However, amendments to extend the H-1A program for 6 months were defeated both in the Judiciary Committee and on the House floor during consideration of immigration reform legislation in the 104th Congress.<sup>3</sup>

The H-1A program had no numerical cap. In 1993, a representative year, 6,506 aliens were admitted pursuant to the H-1A program. Nurses could stay for an initial period of 3 years, subject to extension up to a total of 5 years (6 years in case of extraordinary circumstances).<sup>4</sup>

INRA was enacted in response to a number of contrasting factors, including the existence of “[a] nationwide nursing shortage severe enough to disrupt the delivery of services to patients in some U.S. health care institutions and potentially place patients in jeopardy” and “[c]oncern among labor organizations . . . that foreign workers [entering under the then-existing temporary visa program] were having, or, given their rate of entry, might come to have, a detrimental effect on the pay and working conditions of the domestic work force . . . .”<sup>5</sup>

Under the H-1A program, an alien had to:

[have] obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States or Canada;

[have] passed an appropriate examination . . . or [have] a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

is fully qualified and eligible under the laws . . . governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon

<sup>1</sup>Pub. L. No. 101-238 (1989). See sections 101(a)(15)(H)(i)(a) and 212(m) of the Immigration and Nationality Act (hereinafter cited as “INA”).

<sup>2</sup>Pub. L. 104-302 (1996).

<sup>3</sup>See *Congressional Quarterly Almanac: 1996* at H-30.

<sup>4</sup>INA sec. 212(m)(4).

<sup>5</sup>Immigration Nursing Relief Advisory Committee, *Report to the Secretary of Labor on the Immigration Nursing Relief Act of 1989* 11 (1995)(“Report”).

admission to the United States and is authorized under such laws to be employed by the facility.<sup>6</sup>

Under the H-1A program, the intending employer had to attest that:

[t]here would be a substantial disruption through no fault of the [employer] in the delivery of health care services . . . without the services of such an alien[.]<sup>7</sup>

[t]he employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed[.]

[t]he alien employed by the [employer] will be paid the wage rate for registered nurses similarly employed by the [employer,]

[e]ither . . . the [employer] has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the [employer] on [H-1A] registered nurses, or . . . the [employer] is subject to an approved State plan for the recruitment and retention of nurses[.]

[t]here is not a strike or lockout in the course of a labor dispute, and the employment of an [H-1A] alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the [employer, and]

. . . notice of the [petitioning for H-1A nurses] has been provided . . . to the bargaining representative of the registered nurses at the [employer], or where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the [employer's] facility . . .<sup>8</sup>

The Labor Department had the responsibility of investigating complaints that an employer did not meet the conditions attested to or misrepresented a material fact in the attestation.<sup>9</sup> If an employer was found to have committed a violation, the employer would be barred from getting new H-1A petitions approved for at least one year, could be fined up to \$1,000 per violation, and could be required to provide back pay if H-1A nurses were underpaid.<sup>10</sup>

## *II. The Immigration Nursing Relief Advisory Committee*

INRA established the Immigration Nursing Relief Advisory Committee to measure the impact of INRA on the nursing shortage and to advise on whether the H-1A program should be extended.

The Committee found that:

H-1A nurses . . . do not constitute a significant national presence.<sup>11</sup> They fill multiple roles in the United States, working in a variety of positions: [1] Positions that are difficult to fill or for

<sup>6</sup> INA section 212(m)(1)(A)-(C).

<sup>7</sup> In order to meet the terms of this attestation, the employer generally could not have laid off registered nurses within the previous year. INA sec. 212(m)(2)(A).

<sup>8</sup> INA section 212(m)(2)(A).

<sup>9</sup> INA section 212(m)(2)(E).

<sup>10</sup> *Id.*

<sup>11</sup> There were over 1.85 million registered nurses working in nursing in the United States in 1992. *Report* at Appendix F, page 45.

which they have special qualifications: e.g., intensive care units, labor and delivery units, operating rooms, psychiatric units, and long term care facilities; [2] Regular, bedside staff positions in hospitals and nursing homes; [3] Evening, night, and weekend shifts; and [4] Positions where their language, race, or ethnicity is considered of value in providing services to multi-ethnic patients.<sup>12</sup>

[T]he New York-City-Newark, Chicago, Houston, Los Angeles, and Miami [areas] have accounted for two-thirds of all petitions filed . . . .<sup>13</sup>

[O]ver 80 percent of approved petitions . . . were for nurses from the Philippines.<sup>14</sup>

In the local labor markets studied . . . H-1A nurses were [not] paid differently from U.S. nurses.<sup>15</sup>

[T]here was no evidence of systematic differences in work assignments given to H-1A . . . nurses.<sup>16</sup>

[T]here were no indications of problems with H-1A nurses . . . in delivering care . . . .<sup>17</sup>

Although the national [nursing] shortage of the late 1980s has abated, this change could not be attributed to INRA. Market adjustments—increasing wages, increasing numbers of nursing graduates, and changing demand—were much more powerful and, ultimately, effective in ending the national shortage.<sup>18</sup>

The future labor market for registered nurses is highly uncertain. . . . The most recent projections of employment for RNs by the Bureau of Labor Statistics indicate an increase of 40 percent by 2005, far greater than the growth projected for employment generally. Decreases in the number of nursing graduates may be ahead in this decade with the possibility of RN shortages again in the 21st century.<sup>19</sup>

Three Committee members—representing the AFL-CIO, the American Nurses Association, and the Service Employees International Union—filed dissenting views. They found that “[t]he overwhelming preponderance of evidence indicates that the nursing shortage of the 1980s was a transitory phenomenon. If anything, today there is a slight oversupply of nurses and that oversupply is likely to increase in the future.”<sup>20</sup> They also found that “since 1990, the health care industry has been actively restructuring, a process that has been dominated by hospital downsizing. Today, hospitals are laying off nurses or restructuring their jobs to reduce or eliminate their bedside responsibilities.”<sup>21</sup>

The Committee recommended that:

[The H-1A program should be extended with modifications] to balance both the continuing need for foreign nurses in certain spe-

<sup>12</sup> *Id.* at 21.

<sup>13</sup> *Id.* at 22.

<sup>14</sup> *Id.* at 25.

<sup>15</sup> *Id.* The national average salary for full-time staff nurses working in hospitals was \$35,200 in 1992. *Id.* at Appendix F, page 64.

<sup>16</sup> *Id.* at 26.

<sup>17</sup> *Id.* at 27.

<sup>18</sup> *Id.* at 30.

<sup>19</sup> *Id.* at 31–32 (footnotes omitted).

<sup>20</sup> *Id.* at Appendix A, page 1.

<sup>21</sup> *Id.* at Appendix A, page 2.

cialties and localities for which there are not adequate domestic RNs and the need to continue to lessen employers' dependence on foreign RNs and protect the wages and working conditions of U.S. RNs. In addition . . . the uncertainty about future demand for RNs and the possibility of future shortages as evidenced by the cyclical nature of past RN shortages, argues for a more cautious approach to the elimination or reduction in temporary foreign RN entry into the United States.<sup>22</sup>

The dissenters recommended that the H-1A program be allowed to sunset. However, "[i]f the H-1A Visa program is retained then hospitals should be restricted to using H-1A nurses limited to those specific shortage areas or to meet special requirements, such as language ability."<sup>23</sup>

### *III. H.R. 441*

There does not appear to be a national nursing shortage today; however, a number of hospitals with unique circumstances are still experiencing great difficulty in attracting American nurses.<sup>24</sup> Hospitals serving mostly poor patients have special difficulties. Some hospitals in rural areas might also. For example:

St. Bernard Hospital and Health Care Center . . . is located on the South side of Chicago in the Englewood Community. It is the only remaining hospital in an area with a census in excess of 100,000 and the patient base is almost entirely poverty care or charity care. . . .

St. Bernard almost closed its doors in 1992, primarily because of its inability to attract health care professionals, most importantly registered nurses.<sup>25</sup>

H.R. 441 bill has been drafted very narrowly to help precisely these kinds of hospitals. Thus, it is built around the area of consensus between the majority and dissenting members of Immigration Nursing Relief Advisory Committee.

H.R. 441 would create a new temporary registered nurse visa program designated "H-1C" that would provide up to 500 visas a year and that would sunset in four years. To be able to petition for an alien, an employer would have to meet four basic conditions. First, the employer would have to be located in a health professional shortage area as designated by the Department of Health and Human Services. Second, the employer would have to have at least 190 acute care beds. Third, a certain percentage (35%) of the employer's patients would have to be Medicare patients. Fourth, a certain percentage (28%) of patients would have to be Medicaid patients. The bill contains the most important safeguards found in the H-1A program and has added ones of its own.

<sup>22</sup> *Id.* at 35.

<sup>23</sup> *Id.* at Appendix A, page 7.

<sup>24</sup> Neil Sampson, Acting Associate Administrator for Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services, has stated that "[t]he best information currently available indicates that there is not a national shortage of registered nurses. There are a few areas in which specialty and locality shortages persist." Hearing Before the Immigration and Claims Subcomm. of the House Judiciary Comm., 105th Cong., 1st Sess. (Nov. 5, 1997).

<sup>25</sup> *Id.* (statement on behalf of St. Bernard Hospital and Mercy Regional Medical Center).

The American Nursing Association has written that: “[w]ith regard to H.R. 441, ANA has taken a position of neutrality. However, ANA will adamantly oppose any amendments which seek to broaden the application of this visa or would lessen the protections afforded registered nurses under this measure.”<sup>26</sup>

#### HEARINGS

No hearings were held on H.R. 441. However, the Committee’s Subcommittee on Immigration and Claims held one day of hearings on its predecessor bill [H.R. 2759] in the 105th Congress on November 5, 1997. Testimony was received from U.S. Representative Bobby Rush; Neil Sampson, Acting Associate Administrator for Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services; Ron Campbell, Vice President for Patient Care Services, St. Bernard Hospital and Health Care Center, Chicago, Illinois; Cheryl Peterson, Associate Director for Federal Government Relations, American Nurses Association; and Mark Stauder, President and Chief Operating Officer, Mercy Regional Medical Center, Laredo, Texas.

#### COMMITTEE CONSIDERATION

On March 18, 1999, the Subcommittee on Immigration and Claims met in open session and ordered reported the bill H.R. 441 by a voice vote, a quorum being present. On March 24, 1999, the Committee met in open session and ordered reported favorably the bill H.R. 441 by a voice vote, a quorum being present.

#### VOTE OF THE COMMITTEE

The bill was reported favorably by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports 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 Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

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

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<sup>26</sup> Letter from Beverly Malone, President, American Nurses Association, to U.S. Representative Sheila Jackson Lee (March 18, 1999).

## 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. 441, 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, April 2, 1999.*

Hon. HENRY J. HYDE,  
*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. 441, the Nursing Relief for Disadvantaged Areas Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for costs of the Immigration and Naturalization Service), who can be reached at 226-2860, Christi H. Sadoti (for costs of the Department of Labor), who can be reached at 226-2820, Lisa Cash Driskill (for the state and local impact), who can be reached at 225-3220, and John Harris (for the private-sector impact), who can be reached at 226-6910.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure.

*H.R. 441—Nursing Relief for Disadvantaged Areas Act of 1999*

CBO estimates that enacting H.R. 441 would have a negligible net impact on the federal budget. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply. However, we estimate that the amounts involved would be much less than \$500,000 a year. This legislation contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs incurred by state, local, or tribal governments would be a result of voluntary participation in the program established by this bill. H.R. 441 would impose a new private-sector mandate on employers of nonimmigrant nurses who come to the United States under the bill. CBO estimates that the costs of complying with this mandate would fall well below the statutory threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation).

H.R. 441 would establish a new nonimmigrant category for nurses who would work in areas of the United States with shortages of health professionals. The bill would authorize the issuance of 500 nonimmigrant visas annually over the next four years for individuals in this category, and recipients could stay in the United States for three years. The fee charged for these visas would be \$110, so enacting the bill could increase the amount of fees collected by the Immigration and Naturalization Service (INS) by about \$55,000 annually if all 500 visas were granted. The INS would spend the fees (without appropriation action), mostly in the

year in which they were collected, so enacting H.R. 441 would result in a negligible net impact on INS spending.

The bill would require the Department of Labor (DOL) to charge fees of up to \$250 to facilities that file applications to hire immigrant nurses. This provision would result in the collection of fees totaling between \$15,000 and \$50,000 annually, assuming all visas are granted and petitioning facilities apply to hire more than one worker. The spending of fees collected by DOL would be subject to appropriation action.

In addition, the bill would increase civil monetary penalties for violations of certain laws relating to the hiring of nonimmigrant nurses. This action could result in the collection of additional receipts, but we estimate that any such amounts would be less than \$500,000 per year.

By creating a new nonimmigrant visa program for qualified nurses, the bill would allow certain health facilities, some of them operated by state and local public agencies, to increase the number of nurses they employ. In order to participate, these facilities would have to satisfy criteria established in the bill and pay the fee to DOL as described above. However, their participation in the program would be voluntary.

H.R. 441 would impose a new private-sector mandate on employers of nonimmigrant nurses who come to the United States under the program established by the bill. Although employers who use nonimmigrant nurses would do so voluntarily, such employers would have to comply with requirements of the applicable federal immigration programs. They would be required to provide certain information, wages, working conditions, and rights to unionization commensurate with those of similarly employed nurses who are citizens or immigrants. These enforceable duties meet the definition of a private-sector mandate in UMRA because immigration processes are governmentally mandated and are not considered voluntary federal programs. CBO estimates that the direct cost of new mandates in H.R. 441 would be very small because the number of nonimmigrant nurses allowed to enter the United States under this legislation would be limited to 500 or fewer each year.

The CBO staff contacts are Mark Grabowicz (for INS costs), who can be reached at 226-2860, Christi H. Sadoti (for DOL costs), who can be reached at 226-2820, Lisa Cash Driskill (for the state and local impact), who can be reached at 225-3220, and John Harris (for the private-sector impact), who can be reached at 226-6910. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 4 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

The Act may be cited as the “Nursing Relief for Disadvantaged Areas Act of 1999.”



*Section 2. Requirements for admission of nonimmigrant nurses in health professional shortage areas during 4-year period*

Section 2(a) of the bill amends section 101(a)(15)(H)(i) of the Immigration and Nationality Act by adding a subclause (c) creating a nonimmigrant visa program for aliens to perform services as registered nurses. To qualify for an “H-1C” visa, an alien would have to meet the three qualifications set forth in section 2(b) of the bill and the facility for which the alien would perform nursing services must have an unexpired attestation on file and in effect with the U.S. Secretary of Labor, as described in section 2(b) of the bill.

Section 2(b) of the bill amends section 212(m)(1) of the INA in order that it set forth the three qualifications an alien must possess. First, the alien must have obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States. Second, the alien must have passed an appropriate examination or has a full and unrestricted license under State law to practice nursing in the State of intended employment. Third, the alien must be fully qualified and eligible under the laws governing the place of intended employment to engage in the practice of nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

Section 2(b) amends section 212(m)(2)(A) of the INA in order that it describe the attestation that a facility must make. The facility must attest that (1) it meets the requirements of section 212(m)(6) of the INA, (2) the employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed, (3) the alien will be paid the wage rate for registered nurses similarly employed by the facility, (4) the facility has taken (after the date of enactment of this bill) and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are U.S. citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses, (5) there is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered nurse employed by the facility within the period beginning 90 days before and ending 90 days after the date of filing of any H-1C visa petition, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility, (6) at the time of the filing of the petition for H-1C nurses, notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility, or, where there is no bargaining representative, notice of the filing has been provided to registered nurses employed at the facility through posting in conspicuous locations, (7) the facility will not, at any time, employ a number of aliens issued H-1C visas or otherwise provided H-1C nonimmigrant status that exceeds 33% of the total number of registered nurses employed by the facility, and (8) the facility will not, with respect to any alien issued an H-1C visa or otherwise provided H-1C status, authorize the alien to perform nursing services at any worksite other than a worksite controlled by the facility or

transfer the place of employment of the alien from one worksite to another. A copy of the attestation shall be provided to registered nurses employed at the facility.

Section 2(b) amends section 212(m)(2)(B) of the INA so that it provides a non-exclusive list of “significant steps” to recruit and retain registered nurses: (1) operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere, (2) providing career development programs and other methods of facilitating health care workers to become registered nurses, (3) paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area, and (4) providing reasonable opportunities for meaningful salary advancement by registered nurses. A facility does not need to take more than one step if it can demonstrate that taking a second step is not reasonable.

Section 2(b) amends section 212(m)(2)(C) of the INA to provide that attestations shall expire on the later of (1) the end of the one-year period beginning on the date of its filing, or (2) the end of the period of admission of the last alien with respect to whose admission it was applied, and shall apply to petitions filed during the one-year period beginning on the date of its filing if the facility states in each such petition that it continues to comply with the conditions of the attestation.

Section 2(b) amends section 212(m)(2)(D) of the INA to provide that a facility may meet the requirements of paragraph 212(m)(2) with respect to more than one registered nurse in a single petition.

Section 2(b) of the bill amends section 212(m)(2)(E) of the INA to provide that the Secretary of Labor shall compile and make available for public examination a list identifying facilities that have filed petitions for H-1C nonimmigrants (along with copies of attestations, accompanying documentation and petitions filed).

Section 212(m)(2)(E) is also amended to provide that the Secretary of Labor shall establish a process, including reasonable time limits, for the receipt, investigation, and disposition of complaints respecting a facility’s failure to meet attested to conditions or misrepresentation of a material fact in an attestation. Complaints may be filed by aggrieved persons or organizations (including bargaining representatives). The Secretary shall conduct an investigation if there is reasonable cause to believe that a violation has occurred. The Secretary shall provide for a determination within 180 days of the filing of a complaint as to whether or not a basis exists to make a finding that a violation has occurred, and provide notice and opportunity for a hearing to interested parties if the Secretary finds that a basis does exist. If the Secretary finds that a violation (failure to meet attested to conditions or misrepresentation of a material fact in an attestation) has occurred, the Secretary shall notify the Attorney General of such finding, and may, in addition, impose other appropriate administrative remedies (including civil monetary penalties not to exceed \$1,000 per nurse per violation with a total penalty not to exceed \$10,000 per violation). The Secretary shall order the payment of back pay as may be necessary to put a facility in compliance with the prevailing wage requirement. Upon receipt of notice that a violation has occurred, the Attorney

General shall not approve H-1C petitions filed with respect to a facility during a period of at least one year.

Section 2(b) of the bill creates a new section 212(m)(2)(F) of the INA providing for a filing fee for attestations (based on the costs to the Secretary of Labor of operating the H-1C program but not to exceed \$250).

Section 2(b) of the bill amends section 212(m)(3) of the INA to provide that the period of admission of an H-1C nonimmigrant shall be three years.

Section 2(b) of the bill amends section 212(m)(4) of the INA to provide that the total number of nonimmigrant visas issued pursuant to H-1C petitions in a fiscal year shall not exceed 500. The number of visas issued for employment in each state in a fiscal year shall not exceed 25 for states with populations of less than 9,000,000 and 50 for states with larger populations. If the total number of visas available for a fiscal year quarter exceeds the number of qualified nonimmigrants who may be issued visas during those quarters, the visas made available shall be issued without regard to the per state limitations during the last fiscal year quarter.

Section 2(b) of the bill amends section 212(m)(5) of the INA to provide that a facility participating in the H-1C program shall provide H-1C nonimmigrants with a wage rate and working conditions commensurate with those of nurses similarly employed by the facility, shall require H-1C nonimmigrants to work hours commensurate with those of nurses similarly employed by the facility, and shall not interfere with the right of H-1C nonimmigrants to join or organize a union.

Section 2(b) of the bill creates a new section 212(m)(6) of the INA providing that for a facility to be able to participate in the H-1C program, it must be a hospital defined in section 1886(d)(1)(B) of the Social Security Act, be located in a health professional shortage area (as of March 31, 1997, and as defined in section 332 of the Public Health Service Act), have not less than 190 acute care beds, and have not less than 35% of its total number of acute care inpatient days made up of patients who were entitled to benefits under Part A of title XVIII of the Social Security Act and have not less than 28% made up of patients who were eligible for assistance under a State plan approved under title XIX of the Social Security Act).

Section 2(b) of the bill creates a new section 212(m)(7) of the INA defining the term "lay off" for purposes of the H-1C program.

Section 2(c) of the bill strikes the designation (at section 101(a)(15)(H)(i)(a) of the INA) of the expired "H-1A" nonimmigrant nursing program.

Section 2(d) of the bill provides that not later than 90 days after the bill's enactment, the Secretary of Labor (in consultation with the Secretary of Health and Human Services) and the Attorney General shall promulgate final or interim final regulations to carry out the H-1C program.

Section 2(e) of the bill provides that facilities may file H-1C petitions only during the four year period beginning on the date that interim or final regulations are first promulgated.

*Section 3. Recommendations for alternative remedy for nursing shortage*

Section 3 of the bill provides that by no later than the conclusion of the H-1C program, the Secretary of Health and Human Services and the Secretary of Labor are required to submit recommendations to Congress on a program to eliminate the dependence of certain hospitals on H-1C foreign nurses by providing for a permanent resolution to the current shortage of American nurses at some rural and urban locations. They also must recommend a program for more effectively enforcing the qualification and attestation requirements for nurses under the program. While this provision accords a 4-year period for the submission of the recommendations, it is anticipated that an effort will be made to submit them as soon as possible. This is particularly true of the recommendation for a program to enforce the qualification and attestation requirements for the nurses. Enforcement is an immediate need.

This provision grants the Secretaries the discretion to determine what measures should be considered as recommendations. Possible measures might include the development of programs to recruit more college-educated persons into the nursing profession, programs to retain people who have already entered the profession, programs to provide financial assistance to young people who are willing to work in economically deprived rural and urban areas but do not have the financial means to pay for a nursing education, and studies to determine what factors would encourage experienced nurses to work in the rural and urban communities that are experiencing shortages. In addition, consideration might be given to expanding the federal programs that already address some of these problems and to the possibility of creating new federal programs. Finally, consideration might be given to ways of implementing the recommendations.

*Section 4. Certification for certain alien nurses*

Section 4 of the bill provides a limited exemption from section 212(a)(5)(C) of the INA. That section provides for a certification process for aliens seeking to enter the United States to work as non-physician health care workers. The section is designed to ensure that the credentials of alien health care workers are authentic and that they have sufficient training and English language ability to adequately perform their jobs.

Section 4 provides that section 212(a)(5)(C) shall not apply to an alien seeking to work as a nurse where the Commission on Graduates of Foreign Nursing Schools (or an approved equivalent independent credentialing organization) certifies that the alien (1) has a valid and unrestricted license in the state of intended employment and such state verifies the alien's license as authentic and unencumbered, (2) has passed the National Council Licensure Examination, (3) is the graduate of a nursing program in which the language of instruction was English, and either the Commission has designated the country where the nursing program is located within 30 days of the enactment of the bill based on an assessment that the quality of nursing education in that country and the English language proficiency of those who complete nursing programs in that country are of sufficient quality or the Commission

and any approved credentialing organizations unanimously agree to the country's designation based on such an assessment, and (4) is a graduate of a nursing program which was in operation on or before the date of enactment of the bill or has been approved by unanimous agreement of the Commission and any approved credentialing organizations.

The effective date of the amendments made by section 4 is the date of enactment of the bill, regardless of whether or not final regulations to carry out such amendments have been promulgated. The Commission or any approved equivalent independent credentialing organization must issue statements certifying the qualifications of the nurses not more than 35 days after the receipt of completed applications for such statements.

#### 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 italics, existing law in which no change is proposed is shown in roman):

### IMMIGRATION AND NATIONALITY ACT

\* \* \* \* \*

#### TITLE I—GENERAL

##### DEFINITIONS

##### SECTION 101. (a) As used in this Act—

(1) \* \* \*

\* \* \* \* \*

(15) The term “immigrant” means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) \* \* \*

\* \* \* \* \*

(H) an alien (i) **[(a) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for each facility (which facility shall include the petitioner and each worksite, other than a private household worksite, if the worksite is not the alien's employer or controlled by the employer) for which the alien will perform the services, or]** (b) subject to section 212(j)(2), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) or as a fashion model, who meets the requirements for

the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1) [; or ], or (c) *who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services;* or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

\* \* \* \* \*

## TITLE II—IMMIGRATION

\* \* \* \* \*

### 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) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) \* \* \*

\* \* \* \* \*

(5) LABOR CERTIFICATION AND QUALIFICATIONS FOR CERTAIN IMMIGRANTS.—

(A) \* \* \*

\* \* \* \* \*

(C) UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.—

【Any alien who seeks】 *Subject to subsection (r), any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—*

(i) \* \* \*

\* \* \* \* \*

【(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(a), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

【(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States or Canada;

【(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

【(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

【(2)(A) The attestation referred to in section 101(a)(15)(H)(i)(a) is an attestation as to the following:

【(i) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien or aliens.

【(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.

【(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

【(iv) Either (I) the facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the

facility on nonimmigrant registered nurses, or (II) the facility is subject to an approved State plan for the recruitment and retention of nurses (described in paragraph (3)).

[(v) There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

[(vi) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses employed at the facility through posting in conspicuous locations.

A facility is considered not to meet clause (i) (relating to an attestation of a substantial disruption in delivery of health care services) if the facility, within the previous year, laid off registered nurses. Notwithstanding the previous sentence, a facility that lays off a registered nurse other than a staff nurse still meets clause (i) if, in its attestation under this subparagraph, the facility has attested that it will not replace the nurse with a nonimmigrant described in section 101(a)(15)(H)(i)(a) (either through promotion or otherwise) for a period of 1 year after the date of the lay off. Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before the date of the enactment of this subsection. In the case of an alien for whom an employer has filed an attestation under this subparagraph and who is performing services at a worksite other than the employer's or other than a worksite controlled by the employer, the Secretary may waive such requirements for the attestation for the worksite as may be appropriate in order to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause.

[(B) For purposes of subparagraph (A)(iv)(I), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

[(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

[(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

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

[(iv) Providing adequate support services to free registered nurses from administrative and other nonnursing duties.

[(v) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv)(I). Nothing herein



shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable.

[(C) Subject to subparagraph (E), an attestation under subparagraph (A) shall—

[(i) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor, and

[(ii) apply to petitions filed during such 1-year period if the facility states in each such petition that it continues to comply with the conditions in the attestation.

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

[(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for non-immigrants under section 101(a)(15)(H)(i)(a) and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

[(ii) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to.

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

[(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of at least 1 year for nurses to be employed by the facility.

[(v) In addition to the sanctions provided under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.

[(3) The Secretary of Labor shall provide for a process under which a State may submit to the Secretary a plan for the recruitment and retention of United States citizens and immigrants who are authorized to perform nursing services as registered nurses in facilities in the State. Such a plan may include counseling and educating health workers and other individuals concerning the employment opportunities available to registered nurses. The Secretary shall provide, on an annual basis in consultation with the Secretary of Health and Human Services, for the approval or disapproval of such a plan, for purposes of paragraph (2)(A)(iv)(II). Such a plan may not be considered to be approved with respect to the facility unless the plan provides for the taking of significant steps described in paragraph (2)(A)(iv)(I) with respect to registered nurses in the facility.]

[(4) The period of admission of an alien under section 101(a)(15)(H)(i)(a) shall be for an initial period of not to exceed 3 years, subject to an extension for a period or periods, not to exceed a total period of admission of 5 years (or a total period of admission of 6 years in the case of extraordinary circumstances, as determined by the Attorney General).]

[(5) For purposes of this subsection and section 101(a)(15)(H)(i)(a), the term “facility” includes an employer who employs registered nurses in a home setting.]

*(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(c), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—*

*(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States;*

*(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and*

*(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.*

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

*(i) The facility meets all the requirements of paragraph (6).*

*(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.*

*(iii) The alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.*

(iv) *The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses.*

(v) *There is not a strike or lockout in the course of a labor dispute, the facility did not lay off and will not lay off a registered nurse employed by the facility within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.*

(vi) *At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(c), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the facility through posting in conspicuous locations.*

(vii) *The facility will not, at any time, employ a number of aliens issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c) that exceeds 33 percent of the total number of registered nurses employed by the facility.*

(viii) *The facility will not, with respect to any alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c)—*

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

(II) *transfer the place of employment of the alien from one worksite to another.*

*Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999. A copy of the attestation shall be provided, within 30 days of the date of filing, to registered nurses employed at the facility on the date of filing.*

(B) *For purposes of subparagraph (A)(iv), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:*

(i) *Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.*

(ii) *Providing career development programs and other methods of facilitating health care workers to become registered nurses.*

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

(iv) *Providing reasonable opportunities for meaningful salary advancement by registered nurses.*

*The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet*

the conditions of subparagraph (A)(iv). Nothing in this subparagraph shall require a facility to take more than one step if the facility can demonstrate that taking a second step is not reasonable.

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

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

(I) the end of the one-year period beginning on the date of its filing with the Secretary of Labor; or

(II) the end of the period of admission under section 101(a)(15)(H)(i)(c) of the last alien with respect to whose admission it was applied (in accordance with clause (ii)); and

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

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

(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for non-immigrants under section 101(a)(15)(H)(i)(c) and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

(ii) The Secretary of Labor shall establish a process, including reasonable time limits, for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining representatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to. Subject to the time limits established under this clause, this subparagraph shall apply regardless of whether an attestation is expired or unexpired at the time a complaint is filed.

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

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$1,000 per nurse per violation, with the total penalty not to exceed \$10,000 per violation) as the Secretary determines to be appropriate. Upon receipt of such notice,

*the Attorney General shall not approve petitions filed with respect to a facility during a period of at least one year for nurses to be employed by the facility.*

*(v) In addition to the sanctions provided for under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such amounts of back pay as may be required to comply with such condition.*

*(F)(i) The Secretary of Labor shall impose on a facility filing an attestation under subparagraph (A) a filing fee, in an amount prescribed by the Secretary based on the costs of carrying out the Secretary's duties under this subsection, but not exceeding \$250.*

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

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

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

*(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. The number of such visas issued for employment in each State in each fiscal year shall not exceed the following:*

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

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

*(C) If the total number of visas available under this paragraph for a fiscal year quarter exceeds the number of qualified nonimmigrants who may be issued such visas during those quarters, the visas made available under this paragraph shall be issued without regard to the numerical limitation under subparagraph (A) or (B) of this paragraph during the last fiscal year quarter.*

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

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

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

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

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

(A) As of March 31, 1997, the hospital was located in a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e)).

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

(i) the hospital has not less than 190 licensed acute care beds;

(ii) the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were entitled to benefits under part A of such title is not less than 35 percent of the total number of such hospital's acute care inpatient days for such period; and

(iii) the number of the hospital's inpatient days for such period which were made up of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX of the Social Security Act, is not less than 28 percent of the total number of such hospital's acute care inpatient days for such period.

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

(A) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract; but

(B) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

Nothing in this paragraph is intended to limit an employee's or an employer's rights under a collective bargaining agreement or other employment contract.

\* \* \* \* \*

(r) Subsection (a)(5)(C) shall not apply to an alien who seeks to enter the United States for the purpose of performing labor as a nurse who presents to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from the Commission on Graduates of Foreign Nursing Schools (or an equivalent independent credentialing organization approved for the certification of nurses under subsection (a)(5)(C) by the Attorney General in consultation with the Secretary of Health and Human Services) that—

(1) the alien has a valid and unrestricted license as a nurse in a State where the alien intends to be employed and such State verifies that the foreign licenses of alien nurses are authentic and unencumbered;

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

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

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

(B) located in a country—

*(i) designated by such commission not later than 30 days after the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999, based on such commission's assessment that the quality of nursing education in that country, and the English language proficiency of those who complete such programs in that country, justify the country's designation; or*

*(ii) designated on the basis of such an assessment by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) for the certification of nurses under this subsection; and*

*(C)(i) which was in operation on or before the date of the enactment of the Nursing Relief for Disadvantaged Areas Act of 1999; or*

*(ii) has been approved by unanimous agreement of such commission and any equivalent credentialing organizations which have been approved under subsection (a)(5)(C) for the certification of nurses under this subsection.*

\* \* \* \* \*

