

107TH CONGRESS  
1ST SESSION

# S. 1259

To amend the Immigration and Nationality Act with respect to the admission of nonimmigrant nurses.

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## IN THE SENATE OF THE UNITED STATES

JULY 27, 2001

Mr. BROWNBACK (for himself, Mr. GRAHAM, and Mr. HELMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act with respect to the admission of nonimmigrant nurses.

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 2001”.

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

8       (a) REQUIREMENTS.—Section 212(m) of the Immi-  
9       gration and Nationality Act (8 U.S.C. 1182(m)) is amend-  
10      ed to read as follows:

1       “(m)(1) The qualifications referred to in the section  
2 101(a)(15)(i)(c), with respect to an alien who is coming  
3 to the United States to perform nursing services for a fa-  
4 cility, 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 has passed another appropriate examina-  
13 tion recognized in regulations promulgated in con-  
14 sultation with the Secretary of Health and Human  
15 Services), or has a full and unrestricted license  
16 under State law to practice professional nursing in  
17 the State of 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 take the State licensure examination after entry  
23 into the United States, and the lack of a social secu-  
24 rity number shall not indicate a lack of eligibility to  
25 take the State licensure examination.

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

5           “(i) The employment of the alien will not ad-  
6 versely affect the wages and working conditions of  
7 registered nurses similarly employed at the facility.

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

11           “(iii) There is not a strike or lockout in the  
12 course of a labor dispute, the facility did not lay off  
13 and will not lay off a registered staff nurse who pro-  
14 vides patient care and who is employed by the facil-  
15 ity within the period beginning 90 days before and  
16 ending 90 days after the date of filing of any visa  
17 petition for clarification of such an alien under sec-  
18 tion 101(a)(15)(H)(i)(c), and the employment of  
19 such an alien is not intended or designed to influ-  
20 ence an election for a bargaining representative for  
21 registered nurses of the facility.

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

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

6               “(v) The facility will not, with respect to any  
7       alien issued a visa or otherwise provided non-  
8       immigrant status under section  
9       101(a)(15)(H)(i)(c)—

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

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

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

18       “(C) The Secretary of Labor shall review an attesta-  
19       tion only for completeness and obvious inaccuracies. Un-  
20       less the Secretary finds that the attestation is incomplete  
21       or obviously inaccurate, the Secretary shall certify the at-  
22       testation within 7 calendar days of the date of the filing  
23       of the attestation. If the attestation is not returned to the  
24       facility within 7 calendar days, the attestation shall be  
25       deemed certified.

1       “(D) Subject to subparagraph (F), an attestation  
2 under subparagraph (A)—

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

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

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

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

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

20       “(F)(i) The Secretary shall compile and make avail-  
21 able for public examination in a timely manner in Wash-  
22 ington, D.C., a list identifying facilities which have filed  
23 petitions for classification of nonimmigrants under section  
24 101(a)(15)(H)(i)(c) and, for each such facility, a copy of

1 the facility's attestation under subparagraph (A) and each  
2 such petition filed by the facility.

3       “(ii) The Secretary shall establish a process, includ-  
4 ing reasonable time limits, for the receipt, investigation,  
5 and disposition of complaints respecting a facility's failure  
6 to meet conditions attested to or a facility's misrepresenta-  
7 tion of a material fact in an attestation. Complaints may  
8 be filed by any aggrieved person or organization (including  
9 bargaining representatives, associations deemed appro-  
10 priate by the Secretary, and other aggrieved parties as de-  
11 termined under regulations of the Secretary, but excluding  
12 any governmental agency or entity). The Secretary shall  
13 conduct an investigation under this clause if there is prob-  
14 able cause to believe that a facility willfully failed to meet  
15 conditions attested to. Subject to the time limits estab-  
16 lished under this clause, this subparagraph shall apply re-  
17 gardless of whether or not an attestation is expired or un-  
18 expired at the time a complaint is filed.

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

1 parties and an opportunity for a hearing on the complaint  
2 within 60 days of the date of the determination.

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

17       “(v) In addition to the sanctions provided for under  
18 clause (iv), if the Secretary finds, after notice and an op-  
19 portunity for a hearing, that a facility has violated the  
20 condition attested to under subparagraph (A)(ii) (relating  
21 to payment of registered nurses at the facility wage rate),  
22 the Secretary shall order the facility to provide for pay-  
23 ment of such amounts of back pay as may be required  
24 to comply with such condition.

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

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

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

14       “(3) The period of admission of an alien under sec-  
15 tion 101(a)(15)(H)(i)(c) shall be for an initial period not  
16 to exceed three years, subject to an extension for a period  
17 or periods not to exceed a total period of admission of  
18 six years.

19       “(4) A facility that has filed a petition under section  
20 101(a)(15)(H)(i)(c) to employ a nonimmigrant to perform  
21 nursing services for the facility—

22               “(A) shall provide the nonimmigrant a wage  
23 rate and working conditions commensurate with  
24 those of nurses similarly employed by the facility;  
25 and



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

3           “(5)(A) For purposes of paragraph (2)(A)(iii), the  
4           term ‘lay off’, with respect to a worker—

5           “(i) means to cause the worker’s loss of employ-  
6           ment, other than through a discharge for inadequate  
7           performance, violation of workplace rules, cause, vol-  
8           untary departure, voluntary retirement, or the expi-  
9           ration of a grant or contract; but

10          “(ii) does not include any situation in which the  
11          worker is offered, as an alternative to such loss of  
12          employment, a similar employment opportunity with  
13          the same employer at equivalent or higher com-  
14          pensation and benefits than the position from which  
15          the employee was discharged, regardless of whether  
16          or not the employee accepts the offer.

17          “(B) Nothing in this paragraph is intended to limit  
18          an employee’s or an employer’s rights under a collective  
19          bargaining agreement or other employment contract.

20          “(6) For purposes of this subsection and section  
21          101(a)(15)(H)(i)(c), the term ‘facility’ includes a hospital,  
22          nursing home, skilled nursing facility, registry, clinic, as-  
23          sisted-living center, and an employer who employs any reg-  
24          istered nurse in a home setting.

1       “(7) Except as otherwise provided, in this subsection,  
2 the term ‘Secretary’ means the Secretary of Labor.”.

3       (b) IMPLEMENTATION.—Not later than 90 days after  
4 the date of the enactment of this Act, the Secretary of  
5 Labor (in consultation, to the extent required, with the  
6 Secretary of Health and Human Services) and the Attor-  
7 ney General shall promulgate final or interim final regula-  
8 tions to carry out section 212(m) of the Immigration and  
9 Nationality Act (as amended by subsection (a)) The  
10 amendments made by this section shall take effect not  
11 later than 90 days after the date of the enactment of this  
12 Act, without regard to whether or not regulations to carry  
13 out such amendments have been promulgated by such  
14 date.

15 **SEC. 3. REPEAL.**

16       Section 3 of the Nursing Relief for Disadvantaged  
17 Areas Act of 1999 (Public Law 106–95; 8 U.S.C. 1182  
18 note; relating to recommendations for alternative remedy  
19 for nursing shortage) is repealed.

20 **SEC. 4. QUALIFICATION FOR CERTAIN ALIEN NURSES.**

21       (a) ELIMINATION OF CERTAIN GROUNDS OF  
22 INADMISSABILITY.—Section 212 of the Immigration and  
23 Nationality Act (8 U.S.C. 1182) is amended by striking  
24 subsections (a)(5)(C) and (r).

1 (b) PROCEDURE FOR GRANTING IMMIGRANT STA-  
 2 TUS.—Section 204(a)(1)(F) of the Immigration and Na-  
 3 tionality Act (8 U.S.C. 1154(a)(1)(F)) is amended by add-  
 4 ing at the end the following new sentence: “Any such peti-  
 5 tion filed on behalf of an alien who will be employed as  
 6 a professional nurse shall include evidence that the alien—

7 “(i) has passed—

8 “(I) the examination given by the  
 9 Commission on Graduates of Foreign  
 10 Nursing Schools (CGFNS); or

11 “(II) another appropriate exam-  
 12 ination recognized in regulations pro-  
 13 mulgated in consultation with the Sec-  
 14 retary of Health and Human Services;  
 15 or

16 “(ii) holds a full and unrestricted li-  
 17 cense to practice professional nursing in  
 18 the State of intended employment.”.

19 **SEC. 5. WAIVERS OF TWO-YEAR FOREIGN RESIDENCE RE-**  
 20 **QUIREMENT.**

21 (a) IN GENERAL.—Section 214(l) of the Immigration  
 22 and Nationality Act (8 U.S.C. 1184(l)) is amended—

23 (1) in paragraph (1)(B), by striking “20” and  
 24 inserting “40, plus the number of waivers specified  
 25 in paragraph (4)”; and

1           (2) by adding at the end the following new  
2       paragraph:

3       “(4) The number of waivers specified in this para-  
4 graph is the total number of unused waivers allotted to  
5 all States for a fiscal year divided by the number of States  
6 having no unused waivers remaining in the allotment to  
7 those States for that fiscal year.”.

8       (b) **ELIMINATION OF TERMINATION DATE.**—Section  
9 220(c) of the Immigration and Nationality Technical Cor-  
10 rections Act of 1994 (Public Law 103–416, as amended;  
11 8 U.S.C.1182 note) is amended by striking “and before  
12 June 1, 2002”.

13 **SEC. 6. OTHER MEASURES TO MEET RURAL AND URBAN**  
14 **HEALTH CARE NEEDS.**

15       (a) **GRANT AUTHORITY.**—The Secretary of Health  
16 and Human Services shall award grants to States, local  
17 governments, and institutions of higher education (as de-  
18 fined in section 101(a) of the Higher Education Act of  
19 1965) to fund training, recruitment, and other activities  
20 to increase the supply of domestic registered nurses and  
21 other needed health care providers.

22       (b) **APPLICATION.**—

23           (1) **IN GENERAL.**—Each eligible entity desiring  
24 a grant under this section shall submit an applica-  
25 tion to the Secretary of Health and Human Services

1 at such time, in such manner, and accompanied by  
2 such information as the Secretary may reasonably  
3 require.

4 (2) CONTENTS.—Each application submitted  
5 pursuant to paragraph (1) shall—

6 (A) describe the activities for which assist-  
7 ance under this section is sought; and

8 (B) provide such additional assurances as  
9 the Secretary of Health and Human Services  
10 determines to be essential to ensure compliance  
11 with the requirements of this section.

12 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
13 are authorized to be appropriated to the Department of  
14 Health and Human Services such sums as may be nec-  
15 essary to carry out this section.

○