

September 20, 2004

Director
Regulations and Forms Services Division (HQRFS)
Department of Homeland Security
Bureau of Citizenship and Immigration Services
111 Massachusetts Avenue, NW, 3rd Floor
Washington, DC 20528

RE: Extension of the Deadline for Certain Health Care Workers Required to Obtain Certificates; BCIS No. 2320-04 (69 Federal Register 43729) July 22, 2004

Dear Director:

On behalf of our nearly 4,700 member hospitals and health care systems and our 31,000 individual members, the American Hospital Association (AHA) welcomes the opportunity to comment on the Department of Homeland Security's (DHS) proposed rule to provide a one-year extension to the deadline by which certain health care workers must obtain foreign health care worker certification.

The AHA applauds the DHS for providing another year for Canadian and Mexican nonimmigrant health care workers to continue to enter the U.S. without certificates, thus preventing a serious disruption in the delivery of health care in America. Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 requires the certificates to ensure that nonimmigrant health care workers' education is equivalent to U.S. standards and that they speak proficient English. This section took effect September 23, 2003 and enforcement began July 26, 2004 for nonimmigrant health care workers that were not included in the one-year extension. The regulation affects nonimmigrant health care workers who are already licensed and regulated by their respective states and are providing care to patients in hospitals, clinics and physician offices.

While we praise the DHS for the one-year extension for a limited number of nonimmigrant health care workers, we remain deeply concerned about the health care worker shortage that our nation is facing. The AHA recommends that the following actions be taken by the DHS to ensure that health care services currently provided in the U.S. by well-qualified nonimmigrant health care workers are not disrupted.



Exemption

One immediate step DHS should take is to exempt from the certification requirement licensed nonimmigrant health care workers who received their education in the U.S. The statute and legislative history of IIRIRA do not explicitly include U.S.-trained workers; however, the regulation extends the certification requirement to this group. By virtue of having graduated from a U.S. program, these workers meet the purposes of certification. As licensed health care workers, they have passed their requisite state examinations, establishing that they have met the standards for safe practice, and they are currently providing vital health care services. The certification requirement for these U.S.-trained nonimmigrant health care workers is redundant, unnecessary and imposes on them a considerable burden and expense.

We also urge the DHS to exempt all nonimmigrant health care workers who held valid licenses prior to September 23, 2003. It is appropriate and fair to impose the certification requirement on future nonimmigrant workers, not to those who currently hold a valid, unencumbered U.S. license and have been providing care to countless Americans.

Without the above action, the AHA strongly recommends the following:

Expand Extension to All Types of Visa Holders

While Canadian and Mexican health care workers will benefit from DHS' one-year extension, all other U.S. licensed nonimmigrant health care workers will not. The AHA has learned about significant delays (longer than six months) in obtaining a foreign health care worker certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) – the only organization authorized at this time to provide certificates for a majority of health care workers, including nurses. As a result, workers who applied for a certificate more than six months ago may not have obtained it in time to meet the July 26, 2004 deadline. The consequences for nonimmigrant health care workers who do not qualify for the extension and who have not yet obtained a certificate, due to CGFNS delays or otherwise, include: 1) ineligibility to enter or re-enter the U.S.; 2) ineligibility to obtain an extension of the worker's immigration status; 3) ineligibility to obtain a change of visa status; 4) ineligibility to change employers. The results of these consequences severely affect nonimmigrant health care workers' ability to work in the U.S.

The DHS should expand the extension to all other nonimmigrant health care worker visa holders so that they may also have sufficient time to obtain a certificate.

Clarification

The DHS should also clarify that nonimmigrant health care workers have up to one year beyond the date which their visa was granted or extended (prior to July 26, 2004) to obtain a certificate. While the regulatory language requiring certification is clear on this point, the proposed rule (BCIS No. 2320-04) has ambiguous language in its supplementary information (on page 43730, under the second question) that might be used to deny entry into the U.S. to nonimmigrant health care workers who have visas expiring after July 26, 2004.

Once again, the AHA thanks the DHS for the one-year extension for Canadian and Mexican nonimmigrant health care workers to obtain certificates and we also appreciate the opportunity to

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submit these comments. If you have any questions about these comments, please feel free to contact me, Carla Luggiero, senior associate director for federal relations, at (202) 626-2333, or Robyn Cooke, director of State Issues Forum, at (202) 626-2672.

Sincerely,

Rick Pollack
Executive Vice President

