

which to revise and extend their remarks on S. 2344, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

HEALTH PROFESSIONAL SHORTAGE AREA NURSING RELIEF ACT OF 1998

Mr. SMITH of Texas. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2759) 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, as amended.

The Clerk read as follows:

H.R. 2759

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Health Professional Shortage Area Nursing Relief Act of 1998".

SEC. 2. REQUIREMENTS FOR ADMISSION OF NON-IMMIGRANT NURSES IN HEALTH PROFESSIONAL SHORTAGE AREAS DURING 4-YEAR PERIOD.

(a) ESTABLISHMENT OF A NEW NON-IMMIGRANT CLASSIFICATION FOR NON-IMMIGRANT NURSES IN HEALTH PROFESSIONAL SHORTAGE AREAS.—Section 101(a)(15)(H)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)) is amended by striking "; or" at the end and inserting the following: ", 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".

(b) REQUIREMENTS.—Section 212(m) of the Immigration and Nationality Act (8 U.S.C. 1182(m)) is amended to read as follows:

"(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 has not laid off registered nurses within the previous year other than terminations for cause, 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 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 Health Professional Shortage Area Nursing Relief Act of 1998. 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 adequate support services to free registered nurses from administrative and other non-nursing 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). Nothing in this subparagraph shall require a facility to take more than one step if the fa-

cility can demonstrate, and the Attorney General determines, 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 nonimmigrants 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 petitions granted under section 101(a)(15)(H)(i)(c) for each State in each fiscal year shall not exceed the following:

“(A) For States with populations of less than 10,000,000, based upon the 1990 decennial census of population, 25 petitions.

“(B) For States with populations of 10,000,000 or more, based upon the the 1990 decennial census of population, 50 petitions.

“(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.”

(c) REPEALER.—Clause (i) of section 101(a)(15)(H) of the Immigration and Nation-

ality Act (8 U.S.C. 1101(a)(15)(H)(i)) is amended by striking subclause (a).

(d) IMPLEMENTATION.—Not later than 90 days after the date of enactment of this Act, the Secretary of Labor (in consultation, to the extent required, with the Secretary of Health and Human Services) and the Attorney General shall promulgate final or interim final regulations to carry out section 212(m) of the Immigration and Nationality Act (as amended by subsection (b)).

(e) LIMITING APPLICATION OF NONIMMIGRANT CHANGES TO 4-YEAR PERIOD.—The amendments made by this section shall apply to classification petitions filed for nonimmigrant status only during the 4-year period beginning on the date that interim or final regulation are first promulgated under subsection (d).

SEC. 3. CONGRESSIONAL RECORD FOR ALTERNATIVE REMEDY FOR NURSING SHORTAGE.

Not later than the last day of the 4-year period described in section 2(e), the Secretary of Health and Human Services and the Secretary of Labor shall jointly submit to the Congress recommendations (including legislative specifications) with respect to the following:

(1) A program to eliminate the dependence of facilities described in section 212(m)(6) of the Immigration and Nationality Act (as amended by section 2(b)) on nonimmigrant registered nurses by providing for a permanent solution to the shortage of registered nurses who are United States citizens or aliens lawfully admitted for permanent residence.

(2) A method of enforcing the requirements imposed on facilities under sections 101(a)(15)(H)(i)(c) and 212(m) of the Immigration and Nationality Act (as amended by section 2) that would be more effective than the process described in section 212(m)(2)(E) of such Act (as so amended).

SEC. 4. CERTIFICATION FOR CERTAIN ALIEN NURSES.

(a) IN GENERAL.—

(1) Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding after subsection (o) the following new subsection:

“(p) 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 Health Professional Shortage Area Nursing Relief Act of 1998, 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 Health Professional Shortage Area Nursing Relief Act of 1998; 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.”

(2) Section 212(a)(5)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(C)) is amended by striking “Any alien who seeks” and inserting “Subject to subsection (p), any alien who seeks”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(c) ISSUANCE OF CERTIFIED STATEMENTS.—The Commission on Graduates of Foreign Nursing Schools, or any approved equivalent independent credentialing organization, shall issue certified statements pursuant to the amendment under subsection (a) not more than 35 days after the receipt of a complete application for such a statement.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. SMITH) and the gentleman from California (Ms. LOFGREN) each will control 20 minutes.

The Chair recognizes the gentleman from Texas (Mr. SMITH).

GENERAL LEAVE

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. SMITH of Texas. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. HYDE), the chairman of the Committee on the Judiciary.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I am very pleased to support H.R. 2759, legislation that is responsive to a crisis facing some large hospitals with high percentages of Medicare and Medicaid patients in health professional shortage areas. The viability of essential health care for large numbers of people is threatened when certain acute care facilities in medically underserved, impoverished communities cannot recruit sufficient numbers of registered nurses to meet their requirements.

H.R. 2759 provides such hospitals relief in compelling circumstances by facilitating the temporary administration of registered nurses in an H-1C nonimmigrant visa category, subject to a nationwide ceiling of 500 visas issued annually and limits of 50 or 25, depending on a State’s population, on the numbers of nurses who can be approved

each year for hospitals in any one State.

This narrowly focused program, which will sunset after a 4-year period, is designed to address urgent needs that cannot be met in any other way. St. Bernard's Hospital, located in the Englewood community in Chicago, brought its precarious situation to my attention. Because I knew the continued functioning of St. Bernard's Hospital would be so essential to the residents of the Englewood community, I decided to endorse an appropriately limited legislative remedy.

The bill that our colleague, the distinguished gentleman from Illinois (Mr. RUSH) introduced, clearly merited bipartisan Congressional support. It provided relief to particularly vulnerable hospitals and incorporated many safeguards designed to protect American jobs.

I commend the gentleman from Texas (Mr. SMITH), chairman of the Subcommittee on Immigration and Claims, and the gentleman from Michigan (Mr. CONYERS), ranking minority member of our full committee, for their important contributions to this carefully-crafted legislation. Of course I commend my colleague, the gentleman from Chicago, Illinois (Mr. RUSH), for his initiative. It is most helpful.

I certainly urge my colleagues to support this measure.

Ms. LOFGREN. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. RUSH).

Mr. RUSH. Mr. Speaker, I thank the gentlewoman for yielding me time.

Mr. Speaker, I rise today to encourage my colleagues to vote in favor of my bill, H.R. 2759, the Health Professional Shortage Area Nursing Relief Act. My reason for encouraging passage of this legislation is simple: to assist the underserved communities of this Nation by providing adequate health care for their residents.

Today there are some areas across this country which experience a scarcity of health professionals, even though numbers indicate that no nursing shortage currently exists nationally. Such an area exists in my district, the First District of Illinois.

The Englewood community, as was mentioned earlier, is a poor urban community with a high incidence of crime, and it is served primarily by St. Bernard's Hospital. This small community hospital's emergency room business averages approximately 31,000 per year. Fifty percent of their patients are Medicare recipients and 35 percent receive Medicaid. Also their charity care continues to grow and to soar.

The Immigration Nursing Act of 1989 created the H-1A visa program in order to allow foreign-educated nurses to work in the United States. The rationale for the H-1A program, as acknowledged by the AFL-CIO, the American Nurses Association and others, was to address spot shortage areas in health care.

St. Bernard's Hospital utilized the H-1A program to maintain an adequate staffing of nurses. The H-1A program was vital to St. Bernard's continued existence. Prior to this program, St. Bernard's hired temporary nurses. As a result, the hospital's nursing expenditures increased by approximately \$2 million in an effort to provide health care to its patients in 1992. This additional cost brought St. Bernard's very, very close to closing its doors.

The H-1A visa program expired on September 30, 1997. Currently, Mr. Speaker, as you know, no program exists that would assist hospitals such as St. Bernard's in their effort to retain qualified nurses. My legislation merely seeks to close the gap created by the expiration of the H-1A program.

H.R. 2759 prescribes that any hospitals which seek to hire foreign nurses under these provisions must meet the following criteria: One, shall be located in a health professional shortage area; two, have at least 190 acute care beds; three, have a Medicare population of 35 percent; and, four, have a Medicaid population of at least 28 percent.

As one who has always fought for the American worker, I can assure you and all those who express concern that this proposal does not have a detrimental effect on American nurses. My legislation sets a cap on new visas that may be issued each year. The legislation also provides processing requirements that require employers to attest that the hiring of foreign nurses would not adversely affect the wages and working conditions of registered nurses. The Secretary of Labor will oversee this process and provide penalties for non-compliance.

Mr. Speaker, health care is indeed a basic human right. The hallmarks of civilized nations are health care, education and democracy. The state of health care is of grave concern in my district. Hospitals have closed, city health clinics are closing, and payments for Medicare and Medicaid have been cut back. This legislation, the legislation that we must pass today, is aimed at helping hospitals like St. Bernard's keep their doors open to the communities that they serve.

Mr. Speaker, I also want to commend the chairman of the Committee on the Judiciary, the gentleman from Illinois (Mr. HYDE), the ranking member, the gentleman from Michigan (Mr. CONYERS), the subcommittee chairman, the gentleman from Texas (Mr. SMITH), and the ranking member, the gentleman from North Carolina (Mr. WATT). Their patience, their indulgence, their concern, their commitment is outstanding, and I certainly appreciate it, and the residents and citizens of the First Congressional District thank you for all your consideration and all your input.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SMITH of Texas asked and was given permission to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, I rise in support of this bill, and I concur with the comments made by the gentleman from Illinois (Chairman HYDE) and the gentlewoman from California (Ms. LOFGREN).

Mr. Speaker. Because of a shortage of nurses in the late 1980's, Congress passed the Immigration Nursing Relief Act of 1989. That Act created for five years the H-1A temporary visa program for registered nurses. When the program sunseted, the House of Representatives decided against extending it.

There does not appear to be a national nursing shortage today—so, there is no need to revise the H-1A program. However, a number of hospitals with unique circumstances are still experiencing great difficulty in attracting American nurses. Hospitals serving mostly poor patients in inner city neighborhoods have special difficulties. So do certain hospitals in rural areas.

H.R. 2759, the "Health Professional Shortage Area Nursing Relief Act of 1998", introduced by our colleague BOBBY RUSH, has been drafted very narrowly to help precisely these kinds of hospitals. It 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 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 of the employer's patients would have to be Medicare patients. Fourth, a certain percentage of patients would have to be Medicaid patients.

The H-1C program created by this bill would adopt those protections for American nurses contained in the expired H-1A program. For instance, for a hospital to be eligible for H-1C nurses, it would have to agree to take timely and significant steps to recruit American nurses. In addition, H-1C nurses would have to be paid the prevailing wage. Additional protections have also been added. For instance, an amendment by JOHN CONYERS was adopted at the Judiciary Committee providing that H-1C nurses can not comprise more than 33% of a hospital's workforce of registered nurses and that a hospital can not contract out H-1C nurses to work at another facility.

Our goal should be that set out by the Immigration Nursing Relief Advisory Committee, created by the Immigration Nursing Relief Act of 1989. We need to "balance both the continuing need for foreign nurses in certain specialties and localities for which there are not adequate domestic registered nurses and the need to continue to lessen employers' dependence on foreign registered nurses and protect the wages and working conditions of U.S. registered nurses."

I believe this bill successfully balances both these needs. Because it is so narrowly drafted, it is not opposed by the American Nurses Association.

The bill contains one modification from the version reported by the Judiciary Committee. The bill now provides a limited exemption from section 212(a)(5)(C) of the Immigration and Nationality Act. 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.

The bill 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 another 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) the alien has passed the National Council Licensure Examination, and (3) the alien is the graduate of a nursing program in which the language of instruction was English and it is determined that the quality of nursing education in that country, and the English language proficiency of those who complete the program, is of sufficient quality.

Nurses who meet all these requirements clearly are of the standard that section 212(a)(5)(C) is trying to ensure. Therefore, it is not necessary that the section apply to such nurses.

I urge my colleagues to support this bill.

Ms. LOFGREN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, when the Subcommittee on Immigration addressed this issue, reservations were expressed by some. But I think the bill that is before us today reflects hard work, certainly by the chairman of our committee, and by the author of the bill, the gentleman from Illinois (Mr. RUSH) to narrow this measure to a point where it could be here today to be considered on the Suspension Calendar.

We know that there is actually not a shortage of nurses in America today. However, there have been spot shortages in hospitals such as the gentleman from Illinois (Mr. RUSH) and the chairman described. I am mindful that these hospitals could make use of the H-1B program to fulfill this need. However, that is not available at this pressing moment. I am mindful as well that the measure has been tailored and limited in such a way that it will meet the need addressed by the gentleman from Illinois (Chairman HYDE) and the author, the gentleman from Illinois (Mr. RUSH), but will not impact the Nation to the point where the American Nurses Association has communicated to the committee that they do not oppose the bill and remain neutral on the bill, which I think speaks volumes about the great effort undertaken by the gentleman from Illinois (Chairman HYDE) and the gentleman from Illinois (Mr. RUSH), as well as the committee.

So I certainly intend to vote for the bill, with some reservations, I guess, because I would have hoped we could have already resolved the broader issue, but we have not. I do understand the pressing health care needs, and, therefore, I will support this measure and urge my colleagues to do so.

Mr. CONYERS. Mr. Speaker, the Nursing Relief Act addresses the pressing need for nurses at low-income, inner-city hospitals and

moves firmly in the direction of developing a new, more permanent solution to this problem that will utilize nurses from the American workforce instead of continuing to rely on foreign labor.

The Nursing Relief Act would allow up to 500 fully qualified foreign nurses to enter the United States each fiscal year to work for three-year periods. This, however, would not be an ongoing program. The act would sunset in four years.

H.R. 2759 also provides that the Attorney General determine whether hospitals are taking reasonable steps to recruit and retain nurses from within the American workforce. In addition, the Department of Labor and the Department of Health and Human Services would be required to conduct a study to establish ways for these hospitals to fulfill their staffing needs from within the American workforce. More specific information about the bill may be found in a summary attached to this statement.

The bill also includes a provision that would create an abbreviated certification process for nurses who meet specific qualifications standards. Without certification, nurses are denied admission to the United States as uncertified foreign health-care workers under section 212(a)(5)(C) of the Immigration and Nationality Act.

I urge the Members to join me in voting for this balanced, common sense bill.

HEALTH PROFESSIONAL SHORTAGE AREA
NURSING RELIEF ACT OF 1998, H.R. 2759.
BILL SUMMARY

1. Purpose. To create a new nonimmigrant visa for qualified foreign nurses who are coming to the United States to work at a hospital in a health professional shortage area.

2. Eligibility requirements.

a. Must be coming temporarily to perform services as a registered nurse.

b. Must have either a U.S. nursing education or a license to practice professional nursing in the foreign country where the nurse obtained his or her nursing education.

c. Must have passed an appropriate examination or have a license to practice in the State of intended employment.

d. Must be qualified to practice nursing in the State of intended employment immediately upon admission to the U.S..

3. Hospitals seeking to employ such nurses must file an attestation which includes the following assurances:

a. 1. As of March 31, 1997, it was located in a health professional shortage area.

2. It has at least 190 acute care beds.

3. The number of inpatient days for its Social Security Act report period beginning during fiscal year 1994 was made up of patients not less than 35% of whom were entitled to SSA benefits under part A of the Act.

4. The number of inpatient days for such period was made up of patients not less than 28% of whom were eligible for medical assistance under a State plan approved by SSA.

b. The employment of the alien will not adversely affect the wages or working conditions of registered nurses similarly employed by the hospital.

c. The alien will be paid the wage rate for registered nurses similarly employed by the hospital.

d. The hospital has taken and is taking timely and significant steps to recruit and retain sufficient nurses from the American workforce.

e. There is not a strike or lockout in the course of a labor dispute, nurses have not been laid off within the previous year, and

the employment of aliens is not intended or designed to influence an election for a bargaining representative for the American nurses at the hospital.

f. The hospital will not use foreign nurses for more than 33% of its nursing staff.

4. The following are considered significant steps reasonably designed to recruit and retain registered nurses:

a. Operating a training program for nurses at the hospital or financing or participating in a training program for nurses elsewhere.

b. Providing career development programs to make it easier for health care workers to become nurses.

c. Paying nurses wages at a rate higher than currently being paid for nurses similarly employed in the geographic area.

d. Providing adequate support services to free nurses from non-nursing duties.

e. Providing reasonable opportunities for salary advancement by nurses.

The hospital only has to take one of these steps if it can establish that taking a second step is not reasonable.

5. Failure to meet the conditions of an attestation or misrepresentation of a material fact in an attestation.

a. If the Secretary of Labor determines that it is warranted, a hearing will be scheduled.

b. Fines of up to \$1,000 per nurse per violation may be imposed, but the total penalty cannot exceed \$10,000 per violation. Also, the Attorney General will not approve nurse petitions filed by the hospital for at least one year.

c. When wage rate violations occur, a hospital may be ordered to provide back pay.

6. An attestation filing fee of up to \$250 may be imposed. These fees may be made available by an appropriations bill to cover the costs of this program.

7. The admission period for these nurses shall be 3 years.

8. Limited number of visas.

a. The total number of visas issued under this Act shall not exceed 500 in any fiscal year.

b. States with populations of less than 10,000,000, are limited to 25 petitions.

c. States with populations of 10,000,000 or more, are limited to 50 petitions.

9. Additional requirements for the hospitals.

a. Must provide foreign nurses with a wage rate and working conditions commensurate with those of nurses similarly employed by the hospital.

b. Must require the foreign nurses to work hours commensurate with those of nurses similarly employed by the hospital.

c. Must not interfere with the right of the foreign nurses to join or organize a union.

10. Implementing regulations must be promulgated not later than 90 days after the date of enactment of this Act.

11. Act sunsets in 4 years.

12. Alternative remedy for nursing shortage.

Secretary of Health and Human Services and Secretary of Labor shall jointly recommend to Congress (1) a program to eliminate the dependence of hospitals on foreign nurses by providing for a permanent solution to the shortage of nurses from the American workforce, and (2) a more effective method of enforcing the requirements imposed on hospitals participating in these programs.

13. Certification for certain alien nurses.

a. The existing INA exclusion ground for uncertified health care workers will not apply to foreign nurses who are certified under this new provision.

b. The Commission on Graduates of Foreign Nursing Schools ("CGFNS") has certified that a nurse admitted to the United States under this program has met the following requirements:

1. Nurse has a valid and unrestricted license in the State of intended employment and such State verified that he or she has a foreign license which is authentic and unencumbered.

2. Nurse has passed the National Council Licensure Examination (NCLEX).

3. Nurse is a graduate of a nursing program in which (i) the language of instruction was English; and (ii) the program was located in a country designated unanimously by CGFNS and any other authorized credentialing organizations based on a determination 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.

4. CGFNS will make the initial designations during the 30-day period following passage of the Act.

c. These provisions will take effect on the date of the enactment of the Act without regard to whether or not final regulations have been promulgated to carry them out.

Mr. DAVIS of Illinois. Mr. Speaker, I am pleased to express support for H.R. 2759, the Health Professional Shortage Area Nursing Relief Act, introduced by my colleague the Honorable BOBBY RUSH. H.R. 2759 provides opportunities for institutions in medical manpower shortage areas to hire foreign trained nurses who have been granted special waivers to enter the country and work.

Initially, I had some concerns about this bill due to reservations expressed by some nursing groups, especially the Chicago Chapter of the Black Nurses Association. However, after reading the bill and having discussions with Congressman RUSH, I am convinced that there is little room for negative impact on opportunities for U.S. trained nurses who are available and ready to work in these special situations. This bill is well crafted, it has built in protections and should go a long way towards meeting concrete needs. Therefore, I commend the gentleman from Illinois, Mr. RUSH, for entertaining a specific problem and finding a solution which will benefit one of our great community hospitals, St. Bernards in Chicago and other institutions experiencing similar problems throughout the Nation. I am pleased to support this well crafted legislation and congratulate Congressman RUSH on his creativity and ingenuity.

Ms. LOFGREN. Mr. Speaker, I yield back the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SMITH) that the House suspend the rules and pass the bill, H.R. 2759, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CORRECTION OFFICERS HEALTH AND SAFETY ACT OF 1998

Mr. HYDE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2070) to amend title 18, United States Code, to provide for the mandatory testing for serious transmissible diseases of incarcerated persons whose bodily fluids come into contact with

corrections personnel and notice to those personnel of the results of the tests, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2070

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Correction Officers Health and Safety Act of 1998".

SEC. 2. TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.

(a) *IN GENERAL.*—Chapter 301 of title 18, United States Code, is amended by adding at the end the following:

"§4014. Testing for human immunodeficiency virus

"(a) *The Attorney General shall cause each individual convicted of a Federal offense who is sentenced to incarceration for a period of 6 months or more to be tested for the presence of the human immunodeficiency virus not earlier than 3 nor later than 4 months after the commencement of that incarceration.*

"(b) *If the Attorney General has a well founded reason to believe that a person sentenced to a term of imprisonment for a Federal offense, or ordered detained before trial under section 3142(e), may have intentionally or unintentionally transmitted the human immunodeficiency virus to any officer or employee of the United States, or to any person lawfully present in a correctional facility who is not incarcerated there, the Attorney General shall, upon the request of the affected officer, employee, or other person, cause the person who may have transmitted the virus to be promptly tested for the presence of such virus and communicate the test results as soon as practicable to the person requesting that the test be performed and to the person tested, if person tested so requests.*

"(c) *If the results of the test indicate the presence of the virus, the Attorney General shall provide appropriate access for counselling, health care, and support services to the affected officer, employee, or other person, and the person tested.*

"(d) *The results of a test under this section are inadmissible against the person tested in any Federal or State civil or criminal case or proceeding.*

"(e) *Not later than one year after the date of enactment of this section, the Attorney General shall make rules to implement this section. Such rules shall require that the results of any test are communicated only to a person requesting the test, to the person tested, and, if the results of the test indicate the presence of the virus, to the chief administrative officer of the correctional facility in which the person tested is imprisoned or detained. Such rules shall also provide for procedures designed to protect the privacy of a person requesting that the test be performed and the privacy of the person tested.*"

(b) *CLERICAL AMENDMENT.*—The table of sections at the beginning of chapter 301 of title 18, United States Code, is amended by adding at the end the following new item:

"4014. Testing for human immunodeficiency virus."

(c) *GUIDELINES FOR STATES.*—Not later than one year after the date of the enactment of this Act, the Attorney General, in consultation with the Secretary of Health and Human Services, shall provide to the several States proposed guidelines for the prevention, detection, and treatment of incarcerated persons and correctional employees who have, or may be exposed to, infectious diseases in correctional institutions.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois (Mr. HYDE) and the gentlewoman

from California (Ms. LOFGREN) each will control 20 minutes.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, H.R. 2070, introduced by the gentleman from New York (Mr. SOLOMON), is designed to give an added measure of protection to those Federal employees who work with or near prison inmates. This bill requires the testing of all inmates in the Federal prison system for the HIV virus upon their arrival in the system. It also requires the testing of any inmate in the Federal prison system when there is reason to believe that an inmate or a person ordered detained pending trial may have intentionally or unintentionally transmitted the HIV virus to any government employee or to any person lawfully present in a Federal correctional facility.

The bill allows Federal employees, should they be involved in the type of incident with an inmate or detained person in which the HIV virus could have been transmitted, to request that the inmate or detained person be tested for the virus. The bill then requires the government to test the person and report the test results to the employee requesting the test, the person tested and the warden of the facility in which the person is incarcerated or detained.

The need for this legislation is simple: Drugs have now been developed which can prevent the transmission of the HIV virus after exposure to someone who carries the virus. The drugs are effective in preventing transmission approximately 80 percent of the time. However, the drugs must be administered within 2 to 24 hours after exposure, and have extremely unpleasant side effects.

□ 1630

If a Bureau of Prisons or Marshalls Service employee were to come in contact with the blood of an inmate, knowing the HIV status of the inmate will enable the employee and his or her doctor to make a more informed decision as to whether to undergo this course of treatment. Unfortunately, some inmates refuse to be tested when Bureau of Prison officials request. This bill will require that they be tested.

Finally, the bill requires the Attorney General to develop model guidelines for States to follow to prevent, detect, and treat all types of infectious diseases that are commonly found in prison populations.