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The nurse shortage and nurses from abroad

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We have all seen the projections of massive nursing shortages in the coming years. Right now 12% of nursing positions in the United States are vacant. We are lucky in Massachusetts that only about 7% are vacant.

The American Nurse Association predicts that 65% of present nurses will retire during this decade. The U.S. department of Health and Human Services estimates that the current shortage of nurses is about 230,000, rising to 730,000 by 2010 and 1.2 million by 2020.

There are not enough nurses in the pipeline. There are not enough U.S. nursing schools or nursing teachers to put a serious dent in this shortfall. Americans are getting older and the demand for RNs is expected to increase dramatically. Medical errors and compromised care resulting from understaffing are causing some states to legislate minimum staffing ratios.

In facing this challenge, U.S. health care facilities will have no choice but to seek solutions through a variety of efforts, including vigorous recruitment and retention programs, with higher salaries, better working conditions, and continuing education. Unfortunately, even the most generous and creative programs will not solve the nurse-staffing crisis. There simply will not be enough U.S. nurses to meet the growing demand. Things are going to get much worse before they get better.

The hardest hit areas, such as Texas, California and Florida, are increasingly turning to overseas recruitment to help fill some of the vacancies. Foreign nurses have always been a part of the nurse work force, especially since the end of World War Two. But the numbers have been small. Now hospitals are bringing RNs from abroad by the thousands, notably from the Philippines, Europe and India.

There are several reasons to refrain from overseas recruitment. Immigration rules are complex. Dealing with foreign cultures can be intimidating. There are additional costs for immigration applications, legal fees, credentials evaluations, English language testing, and travel. Foreign nurses often need help with U.S. hospital procedures and cultural assimilation. Some hospitals have had bad experiences with disreputable overseas recruiters

On the other hand, the advantages of foreign-born nurses are becoming more apparent. In countries such as India and the Philippines, there has been an explosion in the number of nursing schools. One of the fortunate effects of the global market for healthcare personnel is that more and more nursing colleges are now being built in countries that could not previously afford them. Many thousands of young men and women are entering nursing with the express intention of

emigrating to pursue their careers in modern health care facilities. These RNs can often make ten or twenty times their salaries outside their home countries. These RN's are trained in English and must pass preliminary language, credentialing and proficiency tests, in addition to state licensing requirements such as NCLEX.

Coming from countries where nursing homes are unheard of, these immigrants are particularly compassionate and respectful toward elderly patients. Normally they make a contractual commitment of at least two years to the sponsoring health care facility, reducing the high costs of worker turnover.

Finally, health care facilities can gain considerable financial benefit by hiring overseas nurses, especially facilities that currently use travelling nurse or temporary staffing services. Because agency rates are steep, hospitals often pay \$80,000 or more for nursing services that can be performed by a foreign nurse for under \$40,000. Typically, the costs and fees for recruiting testing, visa processing, travel and transitional assistance total in the range of \$10,000 to \$14,000, which can be quickly recovered by reducing dependence on agency staffing.

Herewith is brief description of the visa process for foreign nurses. The vast majority of overseas RN's enter the US with immigrant visas (also known as permanent residence or green cards). Some RN's are eligible for nonimmigrant (temporary) visas, which are usually faster and easier to obtain.

An H-1B nonimmigrant visa is a temporary visa for professional workers in specialty occupations that normally require a bachelor's degree as a minimum requirement. Most RN positions, such as staff nurse, do not require a bachelor degree, and H-1B visas may not be used for such positions. Higher-level positions such as administrative, supervisory or highly specialized occupations may be H-1B eligible. Examples of H-1B eligible are certified advanced practice nurses (APRNs), nurse practitioners, certified registered nurse anesthetists, and certified nurse-midwives. The H-1B visa is valid for three years and can be renewed for an additional three years.

If the job itself qualifies as a "specialty occupation" and the RN applicant is sufficiently qualified, the health care facility may petition for the H-1B on behalf of the nurse. The Department of Labor requires the filing of a "Labor Condition Application" (LCA) before the petition may be filed. Basically, the rules require the employer to "attest" that the RN will be paid the higher of the actual or prevailing wages, will not adversely affect other workers, and is not involved in a labor dispute. The nurse applying for the position must be properly licensed and must obtain a "visa-screen" certificate demonstrating that her education, licensing and training meets US standards, and that she possesses oral and written English skills appropriate to practice professional nursing in the US.

The visa screen requirement, which went into effect 7/26/04, can take many months to obtain, and the H-1B visa petition can be approved in 1-2 months, if a visa number is available.

Several years ago the USCIS (formerly INS) experienced a surge of fraudulent H-1B petitions filed by health care facilities claiming that the nurses they wanted to hire were all high-level

supervisors or specialists, when in fact they were staff RNs. USCIS is now skeptical of all such H-1B visa petitions, so the professional duties of the position must be heavily and credibly documented. Spouses and dependent children may obtain H-4 visas as the dependents of the primary applicant for an H-1B visa. H-4s may study but not work without obtaining a separate work visa.

TN visas are available to Canadian nurses who are licensed registered nurses in a province or state and have an interim permit to practice in a US state. These TN visas are valid for up to one year at a time, with unlimited eligibility for one-year extensions, as long as the nurse promises to return to Canada. The TN process can be very fast and simple. No labor condition attestation or visa petition is required. As of July 26, 2005, however, Canadian RN's are required to submit a visa-screen certificate before obtaining a visa or entering the US. Spouses and dependent children may obtain TD visas as the dependents of the primary applicant for a TN visa. TDs may study but not work without obtaining a separate work visa.

The H-1C nonimmigrant visa is a temporary RN visa created in 1999 specifically for hospitals in medically underserved areas. Unfortunately only 500 such visas may be issued each year for the entire country, and the employer must meet the law's rigorous attestation and recruitment requirements. Before a nurse may apply for an H-1C visa the hospital must receive permission from the Department of Labor. The hospital must be located in a federally-designated Health Professional Shortage Area as of March 30, 1997, have at least 190 acute care beds, have a qualifying percentage of Medicare and Medicaid patients, and must demonstrate its commitment to recruit and retain U.S. workers in order to remove its dependency on foreign RNs. This attestation process must be repeated every 12 months. Despite large investments of time and money, only ten hospitals in the US have been approved for H-1C visas. The regulations authorizing the issuance of H-1C visas expire in 2005. After that, H-1C visas will only be issued if Congress renews or extends the law.

Immigrant Visas (permanent residence) are the most common way to bring foreign-born registered nurses to the United States. An employer may file an immigrant visa petition for a nurse requesting that the nurse enter the United States as a permanent resident - a so-called "green card".

The Department of Labor (DOL) has recognized that there is a shortage of registered nurses in the United States and has pre-certified this position (20 CFR Sec. 656.22). An employer wanting to sponsor an RN for permanent residence is exempt from the normal monitored recruitment and alien labor certification requirements. This can save months or years of processing depending on which state the employer is in.

Nurses seeking to qualify for an immigrant visa must show they possess (1) a valid nursing license in the country of nationality; (2) a diploma from a nursing school; (3) a full and unrestricted nursing license in the U.S. state of intended employment *or* evidence of passing the National Council Licensure Examination for Registered Nurses (NCLEX-RN) *or* a Certificate by

the Commission on Graduates of Foreign Nursing Schools (CGFNS); and (4) that the nurse has obtained a VisaScreen Certificate issued by the International Commission for Healthcare Professionals (ICHP).

When the employer has reached a conditional agreement with an RN, the employer, or its attorney, begins the immigration process by filing an immigrant visa petition with the USCIS accompanied by a prevailing wage determination, position posting, Labor Department "PERM" application, and various documents regarding the petitioner and the nurse. Typically, the USCIS will approve the petitions in 4-5 months, and the case will be forwarded to the National Visa Center, after which the appropriate biographical and alien conditional documents will be sent to the US Embassy where the RN lives.

If the nurse is present in the U.S. in valid immigration status, she may also take advantage of recent changes in the immigration laws permitting concurrent filing. In essence, if the registered nurse qualifies for an immigrant visa, he or she may *simultaneously* file applications for permanent residence and interim work authorization. Thus, a nurse may become authorized to work in a few months. Nurses outside the United States must spend at least several more months to process their green card at a US consulate there.

Nurses outside the U.S. must file their immigrant visa applications at a U.S. Embassy. In addition to the visa application, police clearance, medical examination, birth certificate, and other documents, the nurse must present a "Visa Screen" certificate. This certificate is issued by the Commission on Graduates of Foreign Nursing Schools. CGFNS will issue the certificate after reviewing the nurse's education, license and training credentials, and after the nurse has passed stringent tests of her written and oral English skills. Even nurses who are educated in English in the Philippines and India have only a 50% pass rate on the test of spoken English. Even if a foreign-born RN is educated, licensed and trained in the U.S., she must still obtain a Visa Screen certificate.

When the RN has passed the FBI/CIA security clearance, she will be called in for an interview, and issued an immigrant visa, which will allow her (and her immediate relatives) to immigrate to the U.S. Upon arrival, she will normally be required to take and pass the NCCEX before receiving her RN license. When these RNs enter the U.S., it is advisable to offer them assistance in getting started with housing, transportation, and other basic survival skills.

As of January 1, 2005, there was a "retrogression" in the visa backlog for most immigrant workers. The number of green card visas available for these countries is now limited. However, subsequent legislation was enacted, making more immigrant visas available specifically for registered nurses.

The bottom line is that hospitals are desperate for qualified RNs, and many foreign nurses would cherish the opportunity to work in the United States. By better understanding the visa categories available to nurses, hospitals and international RNs can both benefit.

The law firm of Curran & Berger has specialized in immigration law since 1985, with lawyers and immigration specialists concentrating in health care and business visas.

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