

alternative certification option to state-licensed foreign health care workers other than nurses supports the inference that Congress intended state-licensed foreign health care workers to comply with the certification process.

In addition to the statutory scheme, there are policy considerations that mitigate in favor of applying the certification requirement to state-licensed foreign health care workers. The state screening process alone would not demonstrate that the other two prongs of the certification requirement, English language competency, and comparable training and unencumbered licensing, had been met. First, the state screening process does not always measure English proficiency. Second, HHS had advised that the state screening process may not always discover encumbrances and restrictions on a license.

The statute and legislative history are silent with respect to whether foreign health care workers, who received their training in the United States, are subject to the certification process. While such aliens would satisfy the comparable training certification requirements, their licensure would not be verified, as required by the statute. Given the lack of evidence of congressional intent that such aliens be exempt from the reach of section 212(a)(5)(C) of the Act, the DHS has concluded that foreign health care workers who received their training in the United States must comply with the certification requirement. The DHS will not modify the proposals contained in the proposed rule to wholly exempt foreign health care workers who received their training in the United States or who hold a license to practice in the United States.

One commenter suggested that the verification requirement for nurses at proposed 8 CFR 212.15(h)(2)(i) be amended to include the parenthetical phrase A(including reliance on evidence provided by the alien)" after the word Averified." Under the suggested language, credentialing organizations would not be permitted to second-guess a state's licensure verification. The DHS will not adopt this proposal. The statutory language at section 212(r) of the Act authorizes CGFNS or any other authorized credentialing organization to verify that the alien has a valid and unrestricted license in a state where the alien intends to be employed, and that such state verifies that the foreign licenses of alien nurses are authentic and unencumbered. The DHS does not have the authority under the statute to determine whether or not a state verifies that the foreign licenses of alien nurses are authentic and unencumbered, nor

does the DHS have the authority to prevent CGFNS or any other authorized credentialing organization from making such a finding before issuing certification.

The proposed rule invited comments regarding the feasibility of having a more streamlined certification process for those who train in the United States or who are already licensed here, and regarding specific proposals on how to adopt such a policy.

The DHS received four comments in response to the request for suggestions relating to a streamlined certification process. Three commenters stated that the DHS should develop a streamlined approach without providing any suggested process while one commenter, CGFNS, provided a detailed description of a proposed process.

The CGFNS proposed that an alien nurse who graduated from an entry-level program accredited by the National League for Nursing Accreditation Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE) would be exempt from the educational comparability review and English language proficiency testing. The CGFNS also proposed that aliens educated in the United States in any other named discipline and who have graduated from a program accredited by the discipline would be evaluated under this same process.

Pursuant to section 343 of IIRIRA, HHS, in consultation with the Secretary of Education, is required to establish a level of competence in oral and written English which is appropriate for the health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write.

The statute vests the Secretary of HHS with the "sole discretion" to determine the standardized tests and appropriate minimum scores required by section 343 of IIRIRA. Because the organizations identified as the accrediting bodies for nursing go through a rigorous review prior to being recognized by the DoED, HHS has agreed that the proposal to accept graduation from an NLNAC or CCNE accredited program in lieu of a review of educational comparability and English proficiency has merit. Accordingly, the proposal will be adopted in the final rule. It will shorten the certification process required for health care workers educated in the United States. It will also allow CGFNS and any approved organization to comply with the statutory requirements and, at the same time, ease the burden

on certain health care workers. This proposal has been implemented in this final rule at 8 CFR 215.15(i).

In addition, HHS has agreed to accept graduation from the following programs in lieu of a review of educational comparability and English proficiency:

(1) For occupational therapists, graduation from a program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association (AOTA);

(2) For physical therapists, graduation from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA); and

(3) For speech language pathologists and audiologists, graduation from a program accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology (CAA) of the American Speech-Language-Hearing Association (ASHA).

However, the proposal that aliens educated in the United States in any other named discipline and who have graduated from a program accredited by the discipline would be evaluated under this same process will not be adopted as general provision, because specific accrediting bodies for other professions were not suggested. The HHS will continue to review further proposals for each profession on a case-by-case basis.

Health Care Occupations That Are Subject to 8 U.S.C. 1182(a)(5)(C)

In the proposed rule, based on congressional history, seven categories of health care workers subject to the health care certification requirements were identified. See H.R. CONF. REP. NO. 104-828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. See the first Interim Rule. The conference report also provided that the DHS could designate additional health care occupations subject to certification by regulation. Since the DHS had limited agency expertise with health care occupations and issues, it consulted extensively with HHS, the agency generally responsible for overseeing health care occupations and other related health care issues in the United States, with respect to the question of whether aliens in additional health care occupations should be required to comply with 8 U.S.C. 1182(a)(5)(C).