

One commenter suggested that recognized experts should be on an organization's board while another commenter suggested that members of the health care profession should be included. One commenter suggested that the standards were so complicated that they might discourage entities from applying for approval while one commenter stated that the requirements were not specific. Three commenters stated that the credential review process developed by the approved organizations must follow established guidelines. One commenter stated that organizations should be required to solicit information from applicants seeking a certification. Finally, one commenter suggested that each organization should require that health care workers complete the same course work for each occupation.

Two commenters made suggestions relative to the composition of the organization's board, including a suggestion from one commenter that the proposed language at 8 CFR 212.15(k)(1)(vi) be amended to clarify that a not-for-profit corporation that has a self-perpetuating board of directors may still demonstrate that it is independent and free of material conflicts of interest regarding whether an alien receives a visa. Many not-for-profit organizations have self-perpetuating boards of directors but may nevertheless be considered independent and free of material conflicts of interest under the statute. This provision was not intended to exclude not-for-profit corporations from receiving authorization to issue health care worker certifications, and the DHS recognizes that a not-for-profit organization with a self-perpetuating board of directors may yet establish that it has met the statutory requirement. Accordingly, the DHS will adopt this suggestion and has added language at 8 CFR 212.15(k)(1)(vi) to provide that not-for-profit corporations which have difficulty meeting the requirement relating to self-perpetuating boards of directors may nevertheless establish that the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa.

One commenter suggested that any credentialing organization that seeks authorization to issue health care worker certificates should be required to request evidence of an alien's degree and transcript from the issuing educational and licensing authorities, rather than accept those documents from the applicants. The DHS, in consultation with HHS, has determined that this suggestion will provide additional protection against fraudulent

submissions from applicants, and will ensure the authenticity of documentation relating to an applicant's education and licensure. Accordingly, the DHS will adopt this comment and has added language at 8 CFR 212.15(k)(3)(vi).

In general, the standards as written in the proposed rule have been one of the more contentious issues in the entire health care worker certification process; however, they were developed with HHS based in part on those standards held by other currently authorized entities. The standards are voluminous and, in some situations, can be satisfied in a number of different ways. As such, the DHS has determined that these standards are best viewed as guidelines and not strict criteria. Further, since the approval of an organization by the DHS is a matter of discretion, the final rule reflects that an organization seeking approval is required to meet the majority, but not all, of the listed standards. The burden to establish eligibility, however, rests with the organization seeking approval. An organization seeking approval to issue a health care certificate should make every attempt to submit evidence addressing each of the criteria listed. It should be noted that any organization, including a state agency, for example, could be found eligible for authorization to issue certification so long as it meets the majority of the listed standards.

It is the opinion of the DHS that the standards contained in this rule are specific enough to ensure that approved organizations will develop credentialing processes that are reasonably consistent given the differences in the types of health care occupations that will be reviewed. The DHS is aware that approved organizations will be required to develop different credentialing processes because of the differences in the educational and training requirements for the affected occupations. As a result, the DHS will not dictate specific credentialing processes to the approved organizations.

Aside from modifications relating to not-for-profit corporations and the requirement that a credentialing organization obtain educational and licensing documents directly from the issuing authorities, the DHS will not modify the proposed regulation with respect to the composition of its governing board or the portion of the organization responsible for overseeing certification. The standards as currently written provide sufficient flexibility to ensure that organizations will operate in a fair and objective fashion.

The DHS will not amend the standards describing an organization's

responsibility to track the performance of foreign workers holding credentials. These provisions are valuable tools for determining the effectiveness of the credentialing process and are essential to the success of the credentialing program.

Monitoring Organizations Authorized To Issue Certificates or Certified Statements

In the proposed rule, the DHS provided that it intended to develop a regulatory process to monitor credentialing organizations, including CGFNS, to ensure that a credentialing organization continues to follow the standards described in the proposed rule. The DHS proposed to review and reauthorize the credentialing organizations every 5 years. The rule also proposed that the DHS notify the credentialing organization in writing of the results of the review and reauthorization. If the DHS developed adverse information with respect to the performance of the organization, the DHS could institute termination proceedings. The DHS solicited comments from the public regarding the frequency of review, e.g., review as part of the 5-year reauthorization, or an annual or bi-annual review, the nature of the review, and whether reviews, if conducted separately from reauthorization, should be targeted versus random, would be of great assistance in the development of a review process.

The DHS also proposed to assess whether an authorized credentialing organization had issued certificates or certified statements in a timely manner so as to minimize any delays that may affect an alien's ability to proceed with his or her application for an immigration benefit, and to assess whether the fee charged for a certificate or certified statement unduly impairs an alien's ability to seek an immigration benefit. The DHS sought comments on what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates or certified statements, and regarding what methodology the DHS should use in assessing whether a fee constitutes an obstacle to obtaining an immigration benefit.

In response to this proposal the DHS received eight comments. One commenter stated that the 5-year review period was appropriate while two commenters suggested that the DHS conduct bi-annual reviews of approved organizations. Two commenters suggested that the DHS conduct random surveys during the 5-year period.