

# HCSC IMMIGRATION LAW REVIEW



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*A publication of HCSC's Human Resources Department written by attorney Carl Shusterman.  
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Route to: Head of Human Resources, Head of Nursing Service, Employment Manager, Nurse Recruiter

Volume 3, Number 1

January, 1991

## HOW TO DOCUMENT THE NURSE ATTESTATION FORM

The Immigration Nursing Relief Act of 1989 provides that, during the five-year period which began on September 1, 1990, a health care facility that submits to INS either an H-1A petition or a letter in support of an extension-of-stay for an H-1A nurse must attach a copy of an unexpired attestation (Form ETA-9029). The form must be on file and in effect with the U.S. Department of Labor (DOL). H-1A petitions and extensions which are submitted without such attestations will be denied by INS.

Interim final DOL regulations (published on December 6, 1990) describe the documentary requirements for an attestation, the limited nature of DOL's review function, the appeals procedure for challenging DOL's acceptance or rejection of an attestation, the complaint procedure, DOL's investigative and enforcement authority, and the penalties that may be imposed for violations. This paper provides a summary of the DOL rules for facilities (including nursing contractors) that employ registered nurses in H-1A status, and who wish to extend the stay of these nurses, and/or to hire additional RNs in H-1A status.

This paper does not discuss INS regulations and policies in any detail. However, it is essential that health care facilities read the interim final DOL regulations not in isolation, but in the context of relating laws, regulations and policies in particular: (1) the Immigration Act of 1990 (enacted November 29, 1990); (2) the interim INS regulations regarding I-9s

(effective June 25, 1990); (3) the interim INS regulations regarding H temporary workers (effective September 1, 1990); and, (4) the INS memorandum of August 23, 1990, regarding extensions of stay after September 1, 1990 for H-1A nurses.

Every facility that provides health care services that seeks to utilize the services of H-1A nurses must file an attestation with DOL. Employers having multiple sites (e.g., Veterans Administration) must file a separate attestation for each site.

However, the regulation provides that separate buildings or areas which are not physically connected or in immediate proximity are a single health care facility if they are (1) in reasonable geographic proximity, (2) used for the same purpose, and (3) share the same nursing staff and equipment.

The attestation form and any accompanying explanations must be submitted, in triplicate, to: Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N-4456, Washington, D.C., 20210. One copy of form ETA-9029 must be signed by the chief executive officer of the facility. The Employment Training Administration (ETA) of DOL is the agency responsible for processing attestations.

The regulation imposes requirements on health care providers which go beyond what is required by statute. DOL invited written comments about the regulation to be submitted no later than February 4, 1991.

### ATTESTATION ELEMENTS

The law requires that an attestation submitted to DOL by a health care facility contain the following six elements:

- There would be a substantial disruption (through no fault of the facility) in the delivery of health care services without the services of such aliens. A facility that has laid off registered nurses within the previous year cannot meet this requirement.
- The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.
3. The alien will be paid at the prevailing wage rate for registered nurses similarly employed by the facility.
  4. Either (a) 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, to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses; or (b) the facility is subject to an approved state plan for the recruitment and retention of nurses.
  5. There is not a strike or lockout in the course of a labor dispute, 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.
  6. At the time of the filing of an H-1A petition for a registered nurse, notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility, or, when 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.

### DOCUMENTING THE ATTESTATION

The interim final regulation requires that each facility compile extensive documentation in support of the attestation. However, in contrast to the proposed rule, this documentation need not be submitted to DOL. Rather, the documentation must be maintained at the facility and available for public examination on a timely basis. With certain exceptions, the rule requires submission of only a brief explanation of the documentation available at the facility for each attestation element and how it indicates compliance with the regulatory standards.

A facility may claim business exigency as a basis for delaying the compilation of documentation supporting its attestation for up to 90 days following submittal of the completed attestation, provided that such submittal is made prior to April 1, 1991. However, the facility must provide a full explanation of and support for this claim of business exigency if requested or challenged.

The following is a summary of the guidelines which the regulation establishes for facilities in documenting each of the six attestation elements:

#### 1. Element 1 — Substantial Disruption

To demonstrate that there would be a substantial disruption in the delivery of health care services without the services of H-1A nurses, the facility must document that:

- A. It has a current vacancy rate for registered nurses of 7% or more; or
- B. It is unable to utilize 7% or more of its total beds due to a shortage of nurses; or
- C. It has had to eliminate or curtail the delivery of essential health care services that are otherwise not available in the community due to a shortage of nurses; or
- D. It has been unable to effect established plans to provide needed new health care services in the community due to a shortage of nurses.

## HCSC IMMIGRATION LAW REVIEW

Vol. 3, No. 1

Page 3

When a facility finds that the indicators in the above four paragraphs cannot be demonstrated, or that such indicators are inappropriate, it must explain how a shortage of nurses has caused a substantial disruption in the delivery of its health care services. This explanation must clearly demonstrate a substantial disruption in the delivery of specific health care services due to a shortage of nurses. Also, it must clearly explain why the indicators in the above four paragraphs cannot be met by, or are inappropriate to, the facility. DOL may require that the facility submit documentation to substantiate such a claim.

No matter which of the above categories a facility utilizes to demonstrate substantial disruption, the following overall data on the facility's nursing positions must be compiled:

- A. The total number of nursing positions at the facility;
- B. The number of nursing vacancies at the facility during a 12-month period ending no later than three months prior to submittal of the attestation;
- C. The number of nurses who left the facility during the same 12-month period;
- D. The number of nurses hired by the facility during the same 12-month period;
- E. The overall staffing pattern for nursing positions at the facility; and
- F. A description of the facility's efforts to recruit U.S. nurses during the same 12-month period.

The above documentation must be broken out by: (1) numbers of U.S. nurses; (2) nurses admitted under H-1 visas; (3) nurses admitted under H-1A visas; (4) nurses admitted under other nonimmigrant visas; and (5) other nurses.

In addition to the above requirements, a facility must attest that it has not laid off nurses during the 12-month period prior to submitting the attestation. A layoff is defined as any involuntary separation of nurses without cause/prejudice. If nurses are separated from one specialized activity and refuse

an offer of retraining and retention at the same facility in another activity at the same wage and status, this does not constitute a layoff.

### 2. Element 2 — No Adverse Effect

A facility is required to attest that the employment of aliens will not adversely affect the wages and working conditions of similarly employed registered nurses.

- A. Wages — A facility must attest that it will pay each nurse at the facility at least the prevailing wage in the geographical area. Prior to submitting an attestation, a facility must request from the state employment service a determination of the prevailing wage for nurses in the geographical area. Where the prevailing wage differs from the facility's wage (See Element 3), the facility is required to pay the higher of the two. A facility must compile documentation summarizing its pay schedule and compensation package for nurses. This documentation must include every category of nursing position for which H-1A nurses are or will be hired or promoted. A facility is prohibited from employing H-1A nurses in categories not included in the documentation.

Where wage rates for nurses at a facility are the result of arms-length collective bargaining, these rates will be considered as prevailing for the facility.

The regulations define "geographic area" to mean "the area within normal commuting distance of the place (address) of the intended worksite... If the place of the intended worksite is within a Metropolitan Statistical Area (MSA), any place within the MSA may be deemed to be within normal commuting distance of the place of intended employment." (Emphasis added. The regulation substituted the words "*may be*" for the word "is" in the proposed regulation to give the state employment security agency added flexibility in determining what is a "geographic area.")

- B. Working Conditions — A facility must attest that it will provide equal treatment to U.S. and H-1A nurses with the same seniority with respect to the number and the scheduling of hours worked (including shifts, straight days, weekends), vacations, wards and clinical rotations, and overall staffing-patient patterns.

3. Element 3 — Facility Wage

A facility must attest that the alien will be paid the wage rate for registered nurses similarly employed by the facility. The facility must compile a description of the factors which it takes into consideration when it makes compensation decisions for nurses.

4. Element 4 — Timely and Significant Steps: or State Plan

A. Alternative One: Timely and Significant Steps

A facility must attest that it has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are U.S. citizens or immigrants who are authorized to perform nursing services, to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses. A facility must take at least two of the following steps, unless it can demonstrate that the taking of a second step is unreasonable. The taking of a second step is considered unreasonable if it would result in the facility's financial inability to continue providing the same quality and quantity of health care or if the provision of nursing services would otherwise be jeopardized by the taking of such a step.

The steps enumerated below are not to be considered an exclusive list. A facility choosing to take alternative steps must submit with its attestation a description of the steps that it proposes, and an

explanation of how the proposed steps are of comparable timeliness and significance to the statutory steps.

1. Step One: Operating a training program for RNs at the facility or financing (or providing participation in) a training program for RNs elsewhere

A facility choosing this step must submit a complete description of the types of training programs available to RNs on its staff, and an explanation of how the requirements of this step are satisfied by the program. Training programs may include both courses leading to a higher degree as well as continuing education programs. These courses must be accepted by the State Board of Nursing or the State Board of Higher Education.

The proposed regulations required a facility to pay 100% of the total costs of the training and allow the RNs to attend the courses on paid duty time. Under the interim final regulations, the facility need pay 100% of the tuition only, whether through direct financing by the facility or by arranging for such financing by a third party. There is no requirement that the nurses attend the courses on paid duty time.

The number of U.S. nurses to whom the training actually is provided must equal at least 50% of the number of RNs who left the facility during the past year. However, U.S. nurses to whom such training was offered, but who rejected the training, may be counted as those who were provided training. The facility must maintain evidence of the offers and rejections.

2. Step Two: Providing career development programs and other methods of facilitating health care workers to become registered nurses

A facility choosing this step must maintain

# HCSC IMMIGRATION LAW REVIEW

Vol. 3, No. 1

Page 5

a description of the content and eligibility requirements of (1) programs leading directly to a degree in nursing or (2) career-ladder/ career-path programs that could ultimately lead to a degree in nursing, and an explanation of how these programs satisfy the requirements of this step. Any degree program must be offered through an accredited community college (A.A.), four-year college (B.S.) or diploma school. The course of study must be accredited by the State Board of Nursing. For the career-ladder or career-path programs, the facility must maintain documentation that the programs are normally part of a course of study or training which prepares a U.S. worker to enroll in formal direct training leading to a degree in nursing, either through an accredited community college, a four-year college, or a diploma school.

The facility, either directly or through a third party, must cover 100% of the total costs of such programs. U.S. workers participating in such programs must be working or have worked in health care occupations or health care facilities.

The number of U.S. workers for whom the training is provided must be equal to 50% or more of the average number of vacancies for nurses during the 12 months prior to the date that the attestation is submitted.

3. Step Three: Paying registered nurses wages at a rate higher than is currently paid to registered nurses similarly employed in the geographic area

A facility choosing this step must document that its entire schedule of wages for nurses is at least 5% higher than the prevailing wage. It must attest that such differentials will be maintained throughout the period of the attestation's effec-

tiveness.

4. Step Four: Providing adequate support services to free registered nurses from administrative and other non-nursing duties

A facility choosing this step may not require nurses to perform non-nursing duties except on an infrequent, non-recurring basis. Non-nursing duties include such activities as housekeeping activities; food preparation and delivery; transporting patients; providing occupational and respiratory therapy; answering telephones; running errands for patients; and clerical tasks. A facility choosing this step must not require RNs to perform nonnursing duties. However, it is understood that on an infrequent, non-recurring basis, RNs at the facility may perform such tasks. Facilities must maintain documentation showing what steps they have taken to ensure that nursing jobs do not include any of these duties and that such activity by RNs occurs without regularity and infrequently. Facilities must also maintain documentation with respect to any other steps being taken to relieve RNs from non-nursing duties, or to enhance the nursing function, such as computerizing certain writing and routine functions performed by nurses.

5. Step Five: Providing reasonable opportunities for meaningful salary advancement by registered nurses

Documentation for this step must include documentation of systems for salary advancement based on factors such as merit, education and specialty, and/or salary advancement based on length-of-service, with other bases for wage differentials remaining constant.

For salary advancement based on these factors, a facility must maintain documentation that it provides opportunities for professional development of its nurses that lead to salary advancement. Examples include: (1) opportunities for continuing education; (2) in-house educational instruction; (3) special committees, task forces or projects considered to be of a professional development nature; (4) participation in professional organizations; and (5) writing for professional publications. These opportunities must be available to all of the facility's nurses.

b. Length of service

For salary advancement based on length of service, a facility must maintain documentation that it has clinical ladders in place which provide 3% (or more) annual salary increases for a period of at least 10 years, over and above the cost of living, and merit, education and specialty increases and differentials.

6. Other Possible Steps

The above five steps are not meant to be an exclusive list. Facilities are encouraged to be innovative in devising other steps as long as they can demonstrate the comparable timeliness and significance of these alternative steps. A facility may attest that it has taken and is taking other such steps and explain in its attestation what these steps are, their nature and scope, how they are effected and how they meet the statutory test of timeliness and significance comparable to the above steps. In addition, the facility must maintain documentation which provides a complete description of the nature and operation of its programs sufficient to substantiate its attestation and full compliance with the law and regulations.

The regulations enumerate the following alternative steps: (1) Providing monetary incentives such as bonuses and merit pay; (2) Providing special perks such as dependent care, free parking, housing assistance, etc.; (3) Work schedule options (provided that all H-1A nurses are employed only in full-time work); and (4) Providing U.S. workers not in health care occupations with training opportunities to become registered nurses.

Alternative to criteria for each specific step

Instead of complying with the specific criteria for each of the five steps in the second and succeeding years, a facility may include in its prior year's attestation, in addition to the actions taken under Steps 1-5, that it shall reduce the amount of H-1/H-1A nurses that it employs one year from the date of attestation by at least 10%. This must be achieved without reducing the quality or quantity of the services provided.

If this goal is achieved (as demonstrated by documentation maintained by the facility, and indicated in its subsequent year's attestation) in the following year's attestation, Form ETA-9029 need be accompanied solely by an explanation demonstrating that the goal has been achieved and an attestation that the facility shall again, in one year, reduce the number of H-1/H-1A nurses that it employs by an additional 10%.

B. Alternative Two: Subject to Approved Annual State Plan

There is no need to document that a facility is taking the above timely and significant steps to recruit and retain U.S. nurses if the facility attests that it is subject to a State plan for the recruitment and retention of nurses which has been approved by DOL. The regulation provides guidelines regarding the content, and the approval, of state plans.

5. Element 5: No Strike or Lockout

A facility must attest that there is no strike or

## HCSC IMMIGRATION LAW REVIEW

Vol. 3, No. 1

Page 7

lockout in the course of a labor dispute, and that the employment of an alien is not intended or designed to influence an election for a bargaining representative for registered nurses at the facility. Labor disputes for purposes of this attestation element relate only to those involving nurses providing nursing services; other health service occupations are not included. This attestation element applies to strikes and lockouts and elections of bargaining representatives at both the facility employing the nurse and, in the case of nursing contractors, at the worksite facility.

Should a strike or lockout of nurses at the facility occur during the one-year period of validity of the attestation, the facility must submit written notice of the strike or lockout to DOL within three days. DOL will examine the documentation, and may consult with the union at the facility or with other appropriate entities. If DOL determines that the strike or lockout is covered under INS's "Effect of strike" regulations for H visaholders, DOL will certify to INS that a strike or other labor dispute involving a work stoppage of nurses is in progress at the facility.

### 6. Element 6: Notice of Filing

A facility must attest that at the time of filing an attestation with DOL or an H-IA petition with INS, notice of filing has been provided by the facility to the bargaining representative of the RNs at the facility or, where there is no bargaining representative, notice of filing has been provided to the RNs at the facility through posting in conspicuous locations. The notice must state that the attestation/petition is available for review by interested parties at the facility and at DOL in Washington, D.C. The notice must explain how the attestation and petition can be inspected or obtained. The notice must contain the following statement: "Complaints alleging misrepresentation of material facts in the attestation or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour

Division of the United States Department of Labor." The Wage and Hour Division of the Employment Standards Administration (ESA) of DOL is responsible for enforcement of the attestation requirements.

Where there is a bargaining representative, notice of the filing must be provided no later than the date that the attestation is mailed to DOL or, in the case of an H-IA petition, the date that the petition is transmitted to INS.

Where there is no bargaining representative, notice of filing must be posted when the attestation is submitted to DOL and whenever an H-IA petition is filed with INS. All such notices must remain posted during the entire validity period of the attestation. Appropriate locations for posting such notices include locations in the immediate proximity of mandatory FLSA wage and hour notices and OSHA notices.

The regulation provides that whenever a facility files an H-IA petition or a letter in support of an extension of stay for an H-IA nurse with INS, a copy of the petition or letter must be filed with DOL at the same time. A facility must forward a copy of an INS approval notice of an H-IA petition to DOL within five days after it is received.

For the duration of the attestation's validity, and for as long as the facility uses any H-1 or H-IA nurse under the attestation, the facility must maintain a separate file containing the attestation and required documentation, and must make this file available to any interested parties within 72 hours upon written or oral request. If a party requests a copy of the file, the facility must provide it. Any charge for the copy must not exceed the cost of reproduction.

DOL will compile and make available for public examination in Washington, D.C.:

1. A list of facilities which have filed attesta-

- tions;
2. A list of such facilities' visa petitions for H-1A nurses;
  3. A copy of each facility's attestation and any supporting documents which DOL has received;
  4. The annual state plan (if any) that relates to the facility's attestation; and
  5. A copy of each facility's H-1A visa petitions to INS.

### SPECIAL PROVISIONS FOR NURSING CONTRACTORS

The regulations provide that a nursing contractor that submits an attestation, in addition to fulfilling the six attestation elements, must state that it will refer H-1A nurses only to facilities that have valid attestations on file with DOL. The nursing contractor must obtain a copy of the attestation for each facility to which it refers nurses, and maintain a copy of these attestations (but not the accompanying documentation) at its principal office for the validity period of the contractor's attestation or the period of time that the H-1A nurse is providing nursing services to the worksite facility, whichever is longer. The attestation (with documentation) of the nursing contractor must also be available for inspection at each contracting worksite facility.

The Immigration Act of 1990, which was signed into law on November 29, 1990, contains an amendment to the Immigration Nursing Relief Act of 1989. This amendment provides that, when nursing contractors are involved, both the contractor and the worksite facility (other than private households) must file attestations. However, the amendment grants DOL discretion in determining the requirements of the worksite facility attestation in such instances.

The regulation defines "nursing contractor" as "an entity that employs registered nurses and supplies these nurses, on a temporary basis and for a fee, to health care facilities or private homes."

A nursing contractor may serve as an authorized agent in completing an attestation for its worksite facilities. Each worksite facility, however, retains liability for its attestation.

The regulation contains special provisions for worksite facilities that are not employers of H-1A nurses (and are not controlled by employers of H-1A nurses), but which obtain the services of H-1A nurses from nursing contractors. Such a worksite facility may request from DOL a waiver of specific elements of the attestation: (1) to avoid duplicative attestations; (2) in cases of temporary, emergency circumstances; (3) with respect to information not within the knowledge of the attestor; or (4) for other good cause. The worksite facility must be able to demonstrate the existence of the circumstances or good cause which are asserted as the basis(es) for the waiver, but need not submit such evidence with its request for waiver, except evidence with respect to a "bona fide medical emergency."

If a worksite facility uses H-1A nurses only through a nursing contractor, the third element of the attestation (facility wage) is inapplicable and need not be included in the attestation of the worksite facility.

Conditions for waivers of other attestation elements for worksite facilities that do not employ H-1A nurses, but obtain the services of H-1A nurses through nursing contractors, are listed below:

1. Minimal use of H-1A contract nurses by a worksite

If the worksite facility attests that it will use no more than 15 workdays of H-1A contract nurse services in any three-month period of the attestation's validity to meet emergency needs on a temporary basis, DOL may also waive the first (substantial disruption), second (adverse effect) and fourth (timely and significant steps or state plan) elements of the worksite facility's attestation.

2. Short-time use of H-1A contract nurses

If the worksite facility attests that it will use no more than 60 workdays of H-1A contract nurse services in any three-month period of the attestations's validity to meet temporary needs, DOL may also waive the nursing shortage component of the first element (but not the no-layoff component), and the fourth element (timely and significant steps or state plan).

3. Long-term use of H-1A contract nurse services

If the worksite facility attests that it will use more than 60 workdays of H-1A contract nurse services in any three-month period of the attestation's validity, and documents the existence of a "bona fide medical emergency," DOL may also waive the fourth element (timely and significant steps or state plan).

The regulation defines "bona-fide medical emergency" as "a situation in which the services of one or more H-1A contract nurses are necessary at a worksite facility (which itself does not employ an H-1A nurse) to prevent death or serious impairment of health, and, because of the danger to life or health, nursing services for such situation are not elsewhere available in the geographic area."

Private households

Private households are required to file attestations with the DOL to employ H-1A nurses. The regulation does not provide for waivers of attestation elements for private households. However, the Immigration Act of 1990 specifically excludes private households from the need to file attestations when their use of H-1A nurses is solely through a nursing contractor.

**AFTER AN ATTESTATION IS FILED**

The proposed regulation provided that, after an attestation was filed, the Labor Department had 30 days to accept or reject the attestation. The law, however, only requires that attestations be "on file" with DOL. The interim final regulation eliminates much of DOL's review function. In most cases, DOL's function is limited to simply checking whether a facility has attested to compliance with the regulatory standards. If it has, there will be no further DOL review and the attestation will merely be "accepted for filing."

DOL will review only those elements of attestations where: (1) facilities choose to utilize the "other" categories under elements one (substantial disruption) and four (timely and significant steps); (2) the bases advanced by facilities for claiming the unreasonableness of taking a second step under the fourth element, and the bases advanced by facilities for demonstrating a bona-fide medical emergency (for the purpose of securing a waiver of the fourth element) where a facility uses H-1A nurses only through a nursing contractor. Only in these limited circumstances will DOL review, and accept or reject, an attestation.

In instances where DOL accepts or rejects an attestation, the facility or "any interested party" may appeal the decision to the Board of Alien Labor Certification Appeals (BALCA). Appeals are limited to DOL's determinations on the element(s) reviewed. Until the attestation is accepted, a facility may not submit an H-1A petition or even a supporting letter for an H-1 or H-1A nurse who is presently employed by the facility and is seeking an extension of stay from INS.

The regulation provides that an approved attestation may be suspended or invalidated if (1) BALCA reverses DOL's decision to accept an attestation; (2) an investigation by DOL determines that there is a misrepresentation or a failure to meet a condition in the attestation; or (3) DOL discovers that it made an error in accepting the

## HCSC IMMIGRATION LAW REVIEW

Vol. 3, No. 1

Page 10

attestation and that the explanation and documentation provided and maintained by the facility does not or did not meet the regulatory criteria. If an attestation is suspended or invalidated, DOL will notify INS. INS will not approve an H-1A petition or an extension of stay for an H-1A nurse where the employer's attestation has been suspended or invalidated.

Complaints that an attestation contains a misrepresentation or that a facility is not fulfilling a condition of its attestation may be filed with DOL by any "aggrieved party or organization." The complaint may be oral or in writing. Where requested by the complainant, DOL will, to the extent possible, maintain confidentiality regarding identity. The regulations provide DOL with broad powers to investigate any such complaint, and to determine whether a facility has violated the law. Following DOL's written determination, the facility may request a hearing before an Administrative Law Judge (ALJ). However, if the Chief ALJ does not receive a written request for a hearing within 10 days of DOL's determination, the determination shall become final and not appealable. The regulation outlines the nature of the proceedings before an ALJ, and provides that the decision of an ALJ may be reviewed by the Secretary of Labor.

Penalties may include civil monetary penalties of up to \$1,000 per affected person, back pay, and the performance of attested obligations such as providing training. Upon a determination that a facility has violated an attestation requirement, DOL will suspend the facility's attestation and notify INS. INS is required to deny any H-1A petitions or extensions of status filed by the facility for a minimum of 12 months.

In determining the amount of civil monetary penalty to be assessed for any violation, DOL will consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

1. Previous history of violations by the facility;

2. The number of workers affected by the violation(s);
3. The gravity of the violation(s);
4. Efforts made by the violator to comply with the attestation;
5. The violator's explanation of the violation(s);
6. The violator's commitment to future compliance, taking into account the public health, interest or safety; and
7. The extent to which the violator achieved financial gain due to the violation, or the potential financial loss or potential injury or adverse affect upon the workers.

The facility's failure to pay a civil money penalty, back wages or other monetary relief, or to perform any other assessed remedy, will result in the rejection by DOL of any future attestation submitted by the facility, until such payment or performance is accomplished.

## CONCLUSION

The Immigration Nursing Relief Act of 1989 and the DOL regulations that implement the law impose a great burden on health care facilities that wish to continue to employ H-1A nurses. Where formerly it was common practice for health care providers to allow each nonimmigrant nurse to prepare her own H-1 petition or extension of stay, after September 1, 1990, a coordinated approach is required. Providers who do not take prompt action to prepare and submit proper attestations with DOL and to comply with the notice requirements when filing H-1A petitions could lose the ability to employ H-1A nurses in the future. □