

Dick Durbin
S.L.C.

PENDING
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AMENDMENT NO. _____ Calendar No. _____

Purpose: To increase the number of nursing faculty and students in the United States, to encourage global health care cooperation, and for other purposes.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

H. R. 3043

Making *Harkin for* **AMENDMENT No. 3449** with
 ar **By** *Durbin* en-
 ci **To: Amdt No. 3404** 08,
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Refer 20 id
Page(s)

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Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. DURBIN to the amendment (No. 3404) proposed by Mr. SCHUMER (for himself and Mrs. HUTCHISON)

Viz:

- 1 On page 2 of the amendment, after line 11, insert
- 2 the following:
- 3 SEC. 522. (a) FEE FOR RECAPTURE OF UNUSED EM-
- 4 PLOYMENT-BASED IMMIGRANT VISAS.—Section 106(d) of
- 5 the American Competitiveness in the Twenty-first Century
- 6 Act of 2000 (Public Law 106-313; 8 U.S.C. 1153 note),

1 as amended by section 521, is further amended by adding
2 at the end the following:

3 “(5) FEE FOR RECAPTURE OF UNUSED EM-
4 PLOYMENT-BASED IMMIGRANT VISAS.—

5 “(A) IN GENERAL.—The Secretary of
6 Homeland Security shall impose a fee upon
7 each petitioning employer who uses a visa re-
8 captured from fiscal years 1996 and 1997
9 under this subsection to provide employment for
10 an alien as a professional nurse, provided
11 that—

12 “(i) such fee shall be in the amount of
13 \$1,500 for each such alien nurse (but not
14 for dependents accompanying or following
15 to join who are not professional nurses);
16 and

17 “(ii) no fee shall be imposed for the
18 use of such visas if the employer dem-
19 onstrates to the Secretary that—

20 “(I) the employer is a health care
21 facility that is located in a county or
22 parish that received individual and
23 public assistance pursuant to Major
24 Disaster Declaration number 1603 or
25 1607; or

1 “(II) the employer is a health
2 care facility that has been designated
3 as a Health Professional Shortage
4 Area facility by the Secretary of
5 Health and Human Services as de-
6 fined in section 332 of the Public
7 Health Service Act (42 U.S.C. 254e).

8 “(B) FEE COLLECTION.—A fee imposed by
9 the Secretary of Homeland Security pursuant
10 to this paragraph shall be collected by the Sec-
11 retary as a condition of approval of an applica-
12 tion for adjustment of status by the beneficiary
13 of a petition or by the Secretary of State as a
14 condition of issuance of a visa to such bene-
15 ficiary.”.

16 (b) CAPITATION GRANTS TO INCREASE THE NUMBER
17 OF NURSING FACULTY AND STUDENTS; DOMESTIC NURS-
18 ING ENHANCEMENT ACCOUNT.—Part D of title VIII of
19 the Public Health Service Act (42 U.S.C. 296p et seq.)
20 is amended by adding at the end the following:

21 “SEC. 832. CAPITATION GRANTS.

22 “(a) IN GENERAL.—For the purpose described in
23 subsection (b), the Secretary, acting through the Health
24 Resources and Services Administration, shall award a
25 grant each fiscal year in an amount determined in accord-

1 ance with subsection (c) to each eligible school of nursing
2 that submits an application in accordance with this sec-
3 tion.

4 “(b) PURPOSE.—A funding agreement for a grant
5 under this section is that the eligible school of nursing
6 involved will expend the grant to increase the number of
7 nursing faculty and students at the school, including by
8 hiring new faculty, retaining current faculty, purchasing
9 educational equipment and audiovisual laboratories, en-
10 hancing clinical laboratories, repairing and expanding in-
11 frastructure, or recruiting students.

12 “(c) GRANT COMPUTATION.—

13 “(1) AMOUNT PER STUDENT.—Subject to para-
14 graph (2), the amount of a grant to an eligible
15 school of nursing under this section for a fiscal year
16 shall be the total of the following:

17 “(A) \$1,800 for each full-time or part-time
18 student who is enrolled at the school in a grad-
19 uate program in nursing that—

20 “(i) leads to a master’s degree, a doc-
21 toral degree, or an equivalent degree; and

22 “(ii) prepares individuals to serve as
23 faculty through additional course work in
24 education and ensuring competency in an
25 advanced practice area.

1 “(B) \$1,405 for each full-time or part-time
2 student who—

3 “(i) is enrolled at the school in a pro-
4 gram in nursing leading to a bachelor of
5 science degree, a bachelor of nursing de-
6 gree, a graduate degree in nursing if such
7 program does not meet the requirements of
8 subparagraph (A), or an equivalent degree;
9 and

10 “(ii) has not more than 3 years of
11 academic credits remaining in the pro-
12 gram.

13 “(C) \$966 for each full-time or part-time
14 student who is enrolled at the school in a pro-
15 gram in nursing leading to an associate degree
16 in nursing or an equivalent degree.

17 “(2) LIMITATION.—In calculating the amount
18 of a grant to a school under paragraph (1), the Sec-
19 retary may not make a payment with respect to a
20 particular student—

21 “(A) for more than 2 fiscal years in the
22 case of a student described in paragraph (1)(A)
23 who is enrolled in a graduate program in nurs-
24 ing leading to a master’s degree or an equiva-
25 lent degree;

1 “(B) for more than 4 fiscal years in the
2 case of a student described in paragraph (1)(A)
3 who is enrolled in a graduate program in nurs-
4 ing leading to a doctoral degree or an equiva-
5 lent degree;

6 “(C) for more than 3 fiscal years in the
7 case of a student described in paragraph
8 (1)(B); or

9 “(D) for more than 2 fiscal years in the
10 case of a student described in paragraph
11 (1)(C).

12 “(d) ELIGIBILITY.—In this section, the term ‘eligible
13 school of nursing’ means a school of nursing that—

14 “(1) is accredited by a nursing accrediting
15 agency recognized by the Secretary of Education;

16 “(2) has a passage rate on the National Council
17 Licensure Examination for Registered Nurses of not
18 less than 80 percent for each of the 3 academic
19 years preceding submission of the grant application;
20 and

21 “(3) has a graduation rate (based on the num-
22 ber of students in a class who graduate relative to,
23 for a baccalaureate program, the number of students
24 who were enrolled in the class at the beginning of
25 junior year or, for an associate degree program, the

1 number of students who were enrolled in the class
2 at the end of the first year) of not less than 80 per-
3 cent for each of the 3 academic years preceding sub-
4 mission of the grant application.

5 “(e) REQUIREMENTS.—The Secretary may award a
6 grant under this section to an eligible school of nursing
7 only if the school gives assurances satisfactory to the Sec-
8 retary that, for each academic year for which the grant
9 is awarded, the school will comply with the following:

10 “(1) The school will maintain a passage rate on
11 the National Council Licensure Examination for
12 Registered Nurses of not less than 80 percent.

13 “(2) The school will maintain a graduation rate
14 (as described in subsection (d)(3)) of not less than
15 80 percent.

16 “(3)(A) Subject to subparagraphs (B) and (C),
17 the first-year enrollment of full-time nursing stu-
18 dents in the school will exceed such enrollment for
19 the preceding academic year by 5 percent or 5 stu-
20 dents, whichever is greater.

21 “(B) Subparagraph (A) shall not apply to the
22 first academic year for which a school receives a
23 grant under this section.

1 “(C) With respect to any academic year, the
2 Secretary may waive application of subparagraph
3 (A) if—

4 “(i) the physical facilities at the school in-
5 volved limit the school from enrolling additional
6 students; or

7 “(ii) the school has increased enrollment in
8 the school (as described in subparagraph (A))
9 for each of the 2 preceding academic years.

10 “(4) Not later than 1 year after receiving a
11 grant under this section, the school will formulate
12 and implement a plan to accomplish at least 2 of the
13 following:

14 “(A) Establishing or significantly expand-
15 ing an accelerated baccalaureate degree nursing
16 program designed to graduate new nurses in 12
17 to 18 months.

18 “(B) Establishing cooperative
19 intradisciplinary education among schools of
20 nursing with a view toward shared use of tech-
21 nological resources, including information tech-
22 nology.

23 “(C) Establishing cooperative interdiscipli-
24 nary training between schools of nursing and
25 schools of allied health, medicine, dentistry, os-

1 teopathy, optometry, podiatry, pharmacy, public
2 health, or veterinary medicine, including train-
3 ing for the use of the interdisciplinary team ap-
4 proach to the delivery of health services.

5 “(D) Integrating core competencies on evi-
6 dence-based practice, quality improvements, and
7 patient-centered care.

8 “(E) Increasing admissions, enrollment,
9 and retention of qualified individuals who are
10 financially disadvantaged.

11 “(F) Increasing enrollment of minority and
12 diverse student populations.

13 “(G) Increasing enrollment of new grad-
14 uate baccalaureate nursing students in graduate
15 programs that educate nurse faculty members.

16 “(H) Developing post-baccalaureate resi-
17 dency programs to prepare nurses for practice
18 in specialty areas where nursing shortages are
19 most severe.

20 “(I) Increasing integration of geriatric con-
21 tent into the core curriculum.

22 “(J) Partnering with economically dis-
23 advantaged communities to provide nursing
24 education.

1 “(K) Expanding the ability of nurse man-
2 aged health centers to provide clinical education
3 training sites to nursing students.

4 “(5) The school will submit an annual report to
5 the Secretary that includes updated information on
6 the school with respect to student enrollment, stu-
7 dent retention, graduation rates, passage rates on
8 the National Council Licensure Examination for
9 Registered Nurses, the number of graduates em-
10 ployed as nursing faculty or nursing care providers
11 within 12 months of graduation, and the number of
12 students who are accepted into graduate programs
13 for further nursing education.

14 “(6) The school will allow the Secretary to
15 make on-site inspections, and will comply with the
16 Secretary’s requests for information, to determine
17 the extent to which the school is complying with the
18 requirements of this section.

19 “(f) REPORTS TO CONGRESS.—The Secretary shall
20 evaluate the results of grants under this section and sub-
21 mit to Congress—

22 “(1) not later than 18 months after the date of
23 the enactment of this section, an interim report on
24 such results; and

1 “(2) not later than September 30, 2010, a final
2 report on such results.

3 “(g) APPLICATION.—An eligible school of nursing
4 seeking a grant under this section shall submit an applica-
5 tion to the Secretary at such time, in such manner, and
6 containing such information and assurances as the Sec-
7 retary may require.

8 “(h) AUTHORIZATION OF APPROPRIATIONS.—In ad-
9 dition to the amounts in the Domestic Nursing Enhance-
10 ment Account, established under section 833, there are
11 authorized to be appropriated such sums as may be nec-
12 essary to carry out this section.

13 **“SEC. 833. DOMESTIC NURSING ENHANCEMENT ACCOUNT.**

14 “(a) ESTABLISHMENT.—There is established in the
15 general fund of the Treasury a separate account which
16 shall be known as the ‘Domestic Nursing Enhancement
17 Account.’ Notwithstanding any other provision of law,
18 there shall be deposited as offsetting receipts into the ac-
19 count all fees collected under section 106(d)(5) of the
20 American Competitiveness in the Twenty-first Century
21 Act of 2000 (Public Law 106–313; 8 U.S.C. 1153 note).
22 Nothing in this subsection shall prohibit the depositing of
23 other moneys into the account established under this sec-
24 tion.

1 “(b) USE OF FUNDS.—Amounts collected under sec-
2 tion 106(d)(5) of the American Competitiveness in the
3 Twenty-first Century Act of 2000, and deposited into the
4 account established under subsection (a) shall be used by
5 the Secretary of Health and Human Services to carry out
6 section 832. Such amounts shall be available for obligation
7 only to the extent, and in the amount, provided in advance
8 in appropriations Acts. Such amounts are authorized to
9 remain available until expended.”.

10 (c) GLOBAL HEALTH CARE COOPERATION.—

11 (1) IN GENERAL.—Title III of the Immigration
12 and Nationality Act (8 U.S.C. 1401 et seq.) is
13 amended by inserting after section 317 the fol-
14 lowing:

15 **“SEC. 317A. TEMPORARY ABSENCE OF ALIENS PROVIDING**
16 **HEALTH CARE IN DEVELOPING COUNTRIES.**

17 “(a) IN GENERAL.—Notwithstanding any other pro-
18 vision of this Act, the Secretary of Homeland Security
19 shall allow an eligible alien and the spouse or child of such
20 alien to reside in a candidate country during the period
21 that the eligible alien is working as a physician or other
22 health care worker in a candidate country. During such
23 period the eligible alien and such spouse or child shall be
24 considered—

1 “(1) to be physically present and residing in the
2 United States for purposes of naturalization under
3 section 316(a); and

4 “(2) to meet the continuous residency require-
5 ments under section 316(b).

6 “(b) DEFINITIONS.—In this section:

7 “(1) CANDIDATE COUNTRY.—The term ‘can-
8 didate country’ means a country that the Secretary
9 of State determines to be—

10 “(A) eligible for assistance from the Inter-
11 national Development Association, in which the
12 per capita income of the country is equal to or
13 less than the historical ceiling of the Inter-
14 national Development Association for the appli-
15 cable fiscal year, as defined by the International
16 Bank for Reconstruction and Development;

17 “(B) classified as a lower middle income
18 country in the then most recent edition of the
19 World Development Report for Reconstruction
20 and Development published by the International
21 Bank for Reconstruction and Development and
22 having an income greater than the historical
23 ceiling for International Development Associa-
24 tion eligibility for the applicable fiscal year; or

1 “(C) qualified to be a candidate country
2 due to special circumstances, including natural
3 disasters or public health emergencies.

4 “(2) ELIGIBLE ALIEN.—The term ‘eligible
5 alien’ means an alien who—

6 “(A) has been lawfully admitted to the
7 United States for permanent residence; and

8 “(B) is a physician or other healthcare
9 worker.

10 “(c) CONSULTATION.—The Secretary of Homeland
11 Security shall consult with the Secretary of State in car-
12 rying out this section.

13 “(d) PUBLICATION.—The Secretary of State shall
14 publish—

15 “(1) not later than 180 days after the date of
16 the enactment of this section, a list of candidate
17 countries;

18 “(2) an updated version of the list required by
19 paragraph (1) not less often than once each year;
20 and

21 “(3) an amendment to the list required by
22 paragraph (1) at the time any country qualifies as
23 a candidate country due to special circumstances
24 under subsection (b)(1)(C).”.

25 (2) RULEMAKING.—

1 (A) REQUIREMENT.—Not later than 180
2 days after the date of the enactment of this
3 Act, the Secretary of Homeland Security shall
4 promulgate regulations to carry out the amend-
5 ments made by this subsection.

6 (B) CONTENT.—The regulations promul-
7 gated pursuant to paragraph (1) shall—

8 (i) permit an eligible alien (as defined
9 in section 317A of the Immigration and
10 Nationality Act, as added by paragraph
11 (1)) and the spouse or child of the eligible
12 alien to reside in a foreign country to work
13 as a physician or other healthcare worker
14 as described in subsection (a) of such sec-
15 tion 317A for not less than a 12-month pe-
16 riod and not more than a 24-month period,
17 and shall permit the Secretary to extend
18 such period for an additional period not to
19 exceed 12 months, if the Secretary deter-
20 mines that such country has a continuing
21 need for such a physician or other
22 healthcare worker;

23 (ii) provide for the issuance of docu-
24 ments by the Secretary to such eligible
25 alien, and such spouse or child, if appro-

1 priate, to demonstrate that such eligible
2 alien, and such spouse or child, if appro-
3 priate, is authorized to reside in such
4 country under such section 317A; and

5 (iii) provide for an expedited process
6 through which the Secretary shall review
7 applications for such an eligible alien to re-
8 side in a foreign country pursuant to sub-
9 section (a) of such section 317A if the Sec-
10 retary of State determines a country is a
11 candidate country pursuant to subsection
12 (b)(1)(C) of such section 317A.

13 (3) TECHNICAL AND CONFORMING AMEND-
14 MENTS.—

15 (A) DEFINITION.—Section
16 101(a)(13)(C)(ii) of the Immigration and Na-
17 tionality Act (8 U.S.C. 1101(a)(13)(C)(ii)) is
18 amended by adding at the end the following:
19 “except in the case of an eligible alien, or the
20 spouse or child of such alien, who is authorized
21 to be absent from the United States under sec-
22 tion 317A,”.

23 (B) DOCUMENTARY REQUIREMENTS.—Sec-
24 tion 211(b) of such Act (8 U.S.C. 1181(b)) is
25 amended by inserting “, including an eligible

1 alien authorized to reside in a foreign country
2 under section 317A and the spouse or child of
3 such eligible alien, if appropriate,” after
4 “101(a)(27)(A),”.

5 (C) INELIGIBLE ALIENS.—Section
6 212(a)(7)(A)(i)(I) of such Act (8 U.S.C.
7 1182(a)(7)(A)(i)(I)) is amended by inserting
8 “other than an eligible alien authorized to re-
9 side in a foreign country under section 317A
10 and the spouse or child of such eligible alien, if
11 appropriate,” after “Act,”.

12 (D) CLERICAL AMENDMENT.—The table of
13 contents of such Act is amended by inserting
14 after the item relating to section 317 the fol-
15 lowing:

“Sec. 317A. Temporary absence of aliens providing health care in developing countries.”.

16 (4) AUTHORIZATION OF APPROPRIATIONS.—
17 There are authorized to be appropriated to U.S.
18 Citizenship and Immigration Services such sums as
19 may be necessary to carry out this subsection and
20 the amendments made by this subsection.

21 (d) ATTESTATION BY HEALTH CARE WORKERS.—

22 (1) ATTESTATION REQUIREMENT.—Section
23 212(a)(5) of the Immigration and Nationality Act (8

1 U.S.C. 1182(a)(5)) is amended by adding at the end
2 the following:

3 “(E) HEALTH CARE WORKERS WITH
4 OTHER OBLIGATIONS.—

5 “(i) IN GENERAL.—An alien who
6 seeks to enter the United States for the
7 purpose of performing labor as a physician
8 or other health care worker is inadmissible
9 unless the alien submits to the Secretary of
10 Homeland Security or the Secretary of
11 State, as appropriate, an attestation that
12 the alien is not seeking to enter the United
13 States for such purpose during any period
14 in which the alien has an outstanding obli-
15 gation to the government of the alien’s
16 country of origin or the alien’s country of
17 residence.

18 “(ii) OBLIGATION DEFINED.—In this
19 subparagraph, the term ‘obligation’ means
20 an obligation incurred as part of a valid,
21 voluntary individual agreement in which
22 the alien received financial assistance to
23 defray the costs of education or training to
24 qualify as a physician or other health care
25 worker in consideration for a commitment

1 to work as a physician or other health care
2 worker in the alien's country of origin or
3 the alien's country of residence.

4 “(iii) WAIVER.—The Secretary of
5 Homeland Security may waive a finding of
6 inadmissibility under clause (i) if the Sec-
7 retary determines that—

8 “(I) the obligation was incurred
9 by coercion or other improper means;

10 “(II) the alien and the govern-
11 ment of the country to which the alien
12 has an outstanding obligation have
13 reached a valid, voluntary agreement,
14 pursuant to which the alien's obliga-
15 tion has been deemed satisfied, or the
16 alien has shown to the satisfaction of
17 the Secretary that the alien has been
18 unable to reach such an agreement
19 because of coercion or other improper
20 means; or

21 “(III) the obligation should not
22 be enforced due to other extraordinary
23 circumstances, including undue hard-
24 ship that would be suffered by the
25 alien in the absence of a waiver.”.

1 (2) EFFECTIVE DATE; APPLICATION.—

2 (A) EFFECTIVE DATE.—The amendment
3 made by paragraph (1) shall take effect on the
4 date that is 180 days after the date of the en-
5 actment of this Act.

6 (B) APPLICATION BY THE SECRETARY.—

7 Not later than the effective date described in
8 subparagraph (A), the Secretary of Homeland
9 Security shall begin to carry out subparagraph
10 (E) of section 212(a)(5) of the Immigration
11 and Nationality Act, as added by paragraph
12 (1), including the requirement for the attesta-
13 tion and the granting of a waiver described in
14 clause (iii) of such subparagraph (E), regard-
15 less of whether regulations to implement such
16 subparagraph have been promulgated.