

113TH CONGRESS
1ST SESSION

S. 616

To provide incentives to physicians to practice in rural and medically underserved communities and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2013

Ms. KLOBUCHAR (for herself, Ms. HEITKAMP, Mr. MORAN, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide incentives to physicians to practice in rural and medically underserved communities and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Conrad State 30 and
5 Physician Access Act”.

6 **SEC. 2. CONRAD STATE 30 PROGRAM.**

7 Section 220(c) of the Immigration and Nationality
8 Technical Corrections Act of 1994 (Public Law 103–416;
9 8 U.S.C. 1182 note) is amended by striking “and before
10 September 30, 2015”.

1 **SEC. 3. RETAINING PHYSICIANS WHO HAVE PRACTICED IN**
2 **MEDICALLY UNDERSERVED COMMUNITIES.**

3 Section 201(b)(1) of the Immigration and Nationality
4 Act (8 U.S.C. 1151(b)(1)) is amended by adding at the
5 end the following:

6 “(F)(i) Alien physicians who have completed
7 service requirements of a waiver requested under
8 section 203(b)(2)(B)(ii), including alien physicians
9 who completed such service before the date of the
10 enactment of the Conrad State 30 and Physician Ac-
11 cess Act and any spouses or children of such alien
12 physicians.

13 “(ii) Nothing in this subparagraph may be con-
14 strued—

15 “(I) to prevent the filing of a petition with
16 the Secretary of Homeland Security for classi-
17 fication under section 204(a) or the filing of an
18 application for adjustment of status under sec-
19 tion 245 by an alien physician described in this
20 subparagraph prior to the date by which such
21 alien physician has completed the service de-
22 scribed in section 214(l) or worked full-time as
23 a physician for an aggregate of 5 years at the
24 location identified in the section 214(l) waiver
25 or in an area or areas designated by the Sec-

retary of Health and Human Services as having
a shortage of health care professionals; or

“(II) to permit the Secretary of Homeland
Security to grant such a petition or application
until the alien has satisfied all the requirements
of the waiver received under section 214(l).”.

SEC. 4. EMPLOYMENT PROTECTIONS FOR PHYSICIANS.

(a) IN GENERAL.—Section 214(l)(1)(C) of the Immi-
gration and Nationality Act (8 U.S.C. 1184(l)(1)(C)) is
amended by striking clauses (i) and (ii) and inserting the
following:

“(i) the alien demonstrates a bona fide
offer of full-time employment, at a health care
organization, which employment has been deter-
mined by the Secretary of Homeland Security
to be in the public interest; and

“(ii) the alien agrees to begin employment
with the health facility or health care organiza-
tion in a geographic area or areas which are
designated by the Secretary of Health and
Human Services as having a shortage of health
care professionals by the later of the date that
is 90 days after receiving such waiver, 90 days
after completing graduate medical education or
training under a program approved pursuant to

1 section 212(j)(1), or 90 days after receiving
2 nonimmigrant status or employment authoriza-
3 tion, and agrees to continue to work for a total
4 of not less than 3 years in any status author-
5 ized for such employment under this subsection
6 unless—

7 “(I) the Secretary determines that ex-
8 tenuating circumstances exist that justify a
9 lesser period of employment at such facility
10 or organization, in which case the alien
11 shall demonstrate another bona fide offer
12 of employment at a health facility or
13 health care organization, for the remainder
14 of such 3-year period;

15 “(II) the interested State agency that
16 requested the waiver attests that extenu-
17 ating circumstances exist that justify a
18 lesser period of employment at such facility
19 or organization in which case the alien
20 shall demonstrate another bona fide offer
21 of employment at a health facility or
22 health care organization so designated by
23 the Secretary of Health and Human Serv-
24 ices, for the remainder of such 3-year pe-
25 riod; or

1 “(III) if the alien elects not to pursue
2 a determination of extenuating cir-
3 cumstances pursuant to subclause (I) or
4 (II), the alien terminates the alien’s em-
5 ployment relationship with such facility or
6 organization, in which case the alien shall
7 be employed for the remainder of such 3-
8 year period, and 1 additional year for each
9 termination, at another health facility or
10 health care organization in a geographic
11 area or areas which are designated by the
12 Secretary of Health and Human Services
13 as having a shortage of health care profes-
14 sionals; and”.

15 (b) CONTRACT REQUIREMENTS.—Section 214(l) of
16 the Immigration and Nationality Act (8 U.S.C. 1184(l))
17 is amended by adding at the end the following:

18 “(4) An alien granted a waiver under paragraph
19 (1)(C) shall enter into an employment agreement with the
20 contracting health facility or health care organization
21 that—

22 “(A) specifies the maximum number of on-call
23 hours per week (which may be a monthly average)
24 that the alien will be expected to be available and

1 the compensation the alien will receive for on-call
2 time;

3 “(B) specifies whether the contracting facility
4 or organization will pay for the alien’s malpractice
5 insurance premiums, including whether the employer
6 will provide malpractice insurance and, if so, the
7 amount of such insurance that will be provided;

8 “(C) describes all of the work locations that the
9 alien will work and a statement that the contracting
10 facility or organization will not add additional work
11 locations without the approval of the Federal agency
12 or State agency that requested the waiver; and

13 “(D) does not include a non-compete provision.

14 “(5) An alien granted a waiver under paragraph
15 (1)(C) whose employment relationship with a health facil-
16 ity or health care organization terminates during the 3-
17 year service period required by such paragraph—

18 “(A) shall have a period of 120 days beginning
19 on the date of such termination of employment to
20 submit to the Secretary of Homeland Security appli-
21 cations or petitions to commence employment with
22 another contracting health facility or health care or-
23 ganization in a geographic area or areas which are
24 designated by the Secretary of Health and Human

1 Services as having a shortage of health care profes-
 2 sionals; and

3 “(B) shall be considered to be maintaining law-
 4 ful status in an authorized stay during the 120-day
 5 period referred to in subsection (A).”.

6 **SEC. 5. ALLOTMENT OF CONRAD 30 WAIVERS.**

7 (a) IN GENERAL.—Section 214(l) of the Immigration
 8 and Nationality Act (8 U.S.C. 1184(l)), as amended by
 9 section 4(b), is further amended by adding at the end the
 10 following:

11 “(6)(A)(i) All States shall be allotted a total of 35
 12 waivers under paragraph (1)(B) for a fiscal year if 90 per-
 13 cent of the waivers available to the States receiving at
 14 least 5 waivers were used in the previous fiscal year.

15 “(ii) When an allocation has occurred under clause
 16 (i), all States shall be allotted an additional 5 waivers
 17 under paragraph (1)(B) for each subsequent fiscal year
 18 if 90 percent of the waivers available to the States receiv-
 19 ing at least 5 waivers were used in the previous fiscal year.
 20 If the States are allotted 45 or more waivers for a fiscal
 21 year, the States will only receive an additional increase
 22 of 5 waivers the following fiscal year if 95 percent of the
 23 waivers available to the States receiving at least 1 waiver
 24 were used in the previous fiscal year.

1 “(B) Any increase in allotments under subparagraph
 2 (A) shall be maintained indefinitely, unless in a fiscal year,
 3 the total number of such waivers granted is 5 percent
 4 lower than in the last year in which there was an increase
 5 in the number of waivers allotted pursuant to this para-
 6 graph, in which case—

7 “(i) the number of waivers allotted shall be de-
 8 creased by 5 for all States beginning in the next fis-
 9 cal year; and

10 “(ii) each additional 5 percent decrease in such
 11 waivers granted from the last year in which there
 12 was an increase in the allotment, shall result in an
 13 additional decrease of 5 waivers allotted for all
 14 States, provided that the number of waivers allotted
 15 for all States shall not drop below 30.”.

16 (b) ACADEMIC MEDICAL CENTERS.—Section
 17 214(l)(1)(D) of the Immigration and Nationality Act (8
 18 U.S.C. 1184(l)(1)(D)) is amended—

19 (1) in clause (ii), by striking “and” at the end;

20 (2) in clause (iii), by striking the period at the
 21 end and inserting “; and”; and

22 (3) by adding at the end the following:

23 “(iv) in the case of a request by an inter-
 24 ested State agency—

1 “(I) the head of such agency deter-
2 mines that the alien is to practice medicine
3 in, or be on the faculty of a residency pro-
4 gram at, an academic medical center (as
5 that term is defined in section
6 411.355(e)(2) of title 42, Code of Federal
7 Regulations, or similar successor regula-
8 tion), without regard to whether such facil-
9 ity is located within an area designated by
10 the Secretary of Health and Human Serv-
11 ices as having a shortage of health care
12 professionals; and

13 “(II) the head of such agency deter-
14 mines that—

15 “(aa) the alien physician’s work
16 is in the public interest; and

17 “(bb) the grant of such waiver
18 would not cause the number of the
19 waivers granted on behalf of aliens for
20 such State for a fiscal year (within
21 the limitation in subparagraph (B)
22 and subject to paragraph (6)) in ac-
23 cordance with the conditions of this
24 clause to exceed 3.”.

1 **SEC. 6. AMENDMENTS TO THE PROCEDURES, DEFINITIONS,**
2 **AND OTHER PROVISIONS RELATED TO PHYSI-**
3 **CIAN IMMIGRATION.**

4 (a) DUAL INTENT FOR PHYSICIANS SEEKING GRAD-
5 UATE MEDICAL TRAINING.—Section 214(b) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1184(b)) is amend-
7 ed by striking “(other than a nonimmigrant described in
8 subparagraph (L) or (V) of section 101(a)(15), and other
9 than a nonimmigrant described in any provision of section
10 101(a)(15)(H)(i) except subclause (b1) of such section)”
11 and inserting “(other than a nonimmigrant described in
12 subparagraph (L) or (V) of section 101(a)(15), a non-
13 immigrant described in any provision of section
14 101(a)(15)(H)(i), except subclause (b1) of such section,
15 and an alien coming to the United States to receive grad-
16 uate medical education or training as described in section
17 212(j) or to take examinations required to receive grad-
18 uate medical education or training as described in section
19 212(j))”.

20 (b) ALLOWABLE VISA STATUS FOR PHYSICIANS FUL-
21 FILLING WAIVER REQUIREMENTS IN MEDICALLY UNDER-
22 SERVED AREAS.—Section 214(l)(2)(A) of the Immigration
23 and Nationality Act (8 U.S.C. 1184(l)(2)(A)) is amended
24 by striking “an alien described in section
25 101(a)(15)(H)(i)(b).” and inserting “any status author-
26 ized for employment under this Act.”.

1 (c) PHYSICIAN NATIONAL INTEREST WAIVER CLARI-
2 FICATIONS.—

3 (1) PRACTICE AND GEOGRAPHIC AREA.—Sec-
4 tion 203(b)(2)(B)(ii)(I) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1153(b)(2)(B)(ii)(I)) is
6 amended by striking items (aa) and (bb) and insert-
7 ing the following:

8 “(aa) the alien physician agrees to
9 work on a full-time basis practicing pri-
10 mary care, specialty medicine, or a com-
11 bination thereof, in an area or areas des-
12 ignated by the Secretary of Health and
13 Human Services as having a shortage of
14 health care professionals, or at a health
15 care facility under the jurisdiction of the
16 Secretary of Veterans Affairs; or

17 “(bb) the alien physician is pursuing
18 such waiver based upon service at a facility
19 or facilities that serve patients who reside
20 in a geographic area or areas designated
21 by the Secretary of Health and Human
22 Services as having a shortage of health
23 care professionals (without regard to
24 whether such facility or facilities are lo-
25 cated within such an area) and a Federal

1 agency, or a local, county, regional, or
 2 State department of public health deter-
 3 mines the alien physician’s work was or
 4 will be in the public interest.”.

5 (2) FIVE-YEAR SERVICE REQUIREMENT.—Sec-
 6 tion 203(b)(2)(B)(ii)(II) of the Immigration and Na-
 7 tionality Act (8 U.S.C. 1153(B)(ii)(II)) is amend-
 8 ed—

9 (A) by inserting “(aa)” after “(II)”; and

10 (B) by adding at the end the following:

11 “(bb) The 5-year service requirement of
 12 item (aa) shall be counted from the date the
 13 alien physician begins work in the shortage area
 14 in any legal status and not the date an immi-
 15 grant visa petition is filed or approved. Such
 16 service shall be aggregated without regard to
 17 when such service began and without regard to
 18 whether such service began during or in con-
 19 junction with a course of graduate medical edu-
 20 cation.

21 “(cc) An alien physician shall not be re-
 22 quired to submit an employment contract with
 23 a term exceeding the balance of the 5-year com-
 24 mitment yet to be served, nor an employment
 25 contract dated within a minimum time period

1 prior to filing of a visa petition pursuant to this
 2 subsection.

3 “(dd) An alien physician shall not be re-
 4 quired to file additional immigrant visa peti-
 5 tions upon a change of work location from the
 6 location approved in the original national inter-
 7 est immigrant petition.”.

8 (d) TECHNICAL CLARIFICATION REGARDING AD-
 9 VANCED DEGREE FOR PHYSICIANS.—Section
 10 203(b)(2)(A) of the Immigration and Nationality Act (8
 11 U.S.C. 1153(b)(2)(A)) is amended by adding at the end
 12 “An alien physician holding a foreign medical degree that
 13 has been deemed sufficient for acceptance by an accredited
 14 United States medical residency or fellowship program is
 15 a member of the professions holding an advanced degree
 16 or its equivalent.”.

17 (e) SHORT-TERM WORK AUTHORIZATION FOR PHY-
 18 SICIANS COMPLETING THEIR RESIDENCIES.—A physician
 19 completing graduate medical education or training as de-
 20 scribed in section 212(j) of the Immigration and Nation-
 21 ality Act (8 U.S.C. 1182(j)) as a nonimmigrant described
 22 section 101(a)(15)(H)(i) of such Act (8 U.S.C.
 23 1101(a)(15)(H)(i)) shall have such nonimmigrant status
 24 automatically extended until October 1 of the fiscal year
 25 for which a petition for a continuation of such non-

1 immigrant status has been submitted in a timely manner
2 and where the employment start date for the beneficiary
3 of such petition is October 1 of that fiscal year. Such phy-
4 sician shall be authorized to be employed incident to status
5 during the period between the filing of such petition and
6 October 1 of such fiscal year. However, the physician's
7 status and employment authorization shall terminate 30
8 days from the date such petition is rejected, denied or re-
9 voked. A physician's status and employment authorization
10 will automatically extend to October 1 of the next fiscal
11 year if all visas as described in such section
12 101(a)(15)(H)(i) authorized to be issued for the fiscal
13 year have been issued.

14 (f) APPLICABILITY OF SECTION 212(e) TO SPOUSES
15 AND CHILDREN OF J-1 EXCHANGE VISITORS.—A spouse
16 or child of an exchange visitor described in section
17 101(a)(15)(J) of the Immigration and Nationality Act (8
18 U.S.C. 1101(a)(15)(J)) shall not be subject to the require-
19 ments of section 212(e) of the Immigration and Nation-
20 ality Act (8 U.S.C. 1182(e)).

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