

(7) That no more than 33% of nurses employed by the facility will be H-1C nonimmigrants (See § 655.1117);

(8) That the facility will not authorize H-1C nonimmigrants to work at a worksite not under its control, and will not transfer an H-1C nonimmigrant from one worksite to another (See § 655.1118).

§ 655.1111 Element I—What hospitals are eligible to participate in the H-1C program?

(a) The first attestation element requires that the employer be a “facility” for purposes of the H-1C program, as defined in INA Section 212(m)(6), 8 U.S.C. 1182 (2)(m)(6).

(b) A qualifying facility under that section is a “subpart (d) hospital,” as defined in Section 1886(d)(1)(B) of the Social Security Act, 42 U.S.C. 1395ww(d)(1)(B), which:

(1) Was located in a health professional shortage area (HPSA), as determined by the Department of Health and Human Services, on March 31, 1997. A list of HPSAs, as of March 31, 1997, was published in the FEDERAL REGISTER on May 30, 1997 (62 FR 29395);

(2) Had at least 190 acute care beds, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, (42 U.S.C. 1395 *et seq.*), for its fiscal year 1994 cost reporting period (*i.e.*, Form HCFA-2552-92, Worksheet S-3, Part I, column 1, line 8);

(3) Had at least 35% of its acute care inpatient days reimbursed by Medicare, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, for its fiscal year 1994 cost reporting period (*i.e.*, Form HCFA-2552-92, Worksheet S-3, Part I, column 4, line 8 as a percentage of column 6, line 8); and

(4) Had at least 28% of its acute care inpatient days reimbursed by Medicaid, as determined by its settled cost report, filed under Title XVIII of the Social Security Act, for its fiscal year 1994 cost reporting period (*i.e.*, Form HCFA-2552-92, Worksheet S-3, Part I, column 5, line 8 as a percentage of column 6, line 8).

(c) The FEDERAL REGISTER notice containing the controlling list of HPSAs (62 FR 29395), can be found in

federal depository libraries and on the Government Printing Office Internet website at <http://www.access.gpo.gov>.

(d) To make a determination about information in the settled cost report, the employer shall examine its own Worksheet S-3, Part I, Hospital and Hospital Health Care Complex Statistical Data, in the Hospital and Hospital Health Care Complex Cost Report, Form HCFA 2552, filed for the fiscal year 1994 cost reporting period.

(e) The facility must maintain a copy of the portions of Worksheet S-3, Part I and Worksheet S, Parts I and II of HCFA Form 2552 which substantiate the attestation of eligibility as a “facility.” One set of copies of this document must be kept in the facility’s public access file. The full Form 2552 for fiscal year 1994 must be made available to the Department upon request.

§ 655.1112 Element II—What does “no adverse effect on wages and working conditions” mean?

(a) The second attestation element requires that the facility attest that “the employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed.”

(b) For purposes of this program, “employment” is full-time employment as defined in § 655.1102; part-time employment of H-1C nurses is not authorized.

(c) *Wages.* To meet the requirement of no adverse effect on wages, the facility must attest that it will pay each nurse employed by the facility at least the prevailing wage for the occupation in the geographic area. The facility must pay the higher of the wage required under this paragraph or the wage required under § 655.1113 (*i.e.*, the third attestation element: facility wage).

(1) *Collectively bargained wage rates.* Where wage rates for nurses at a facility are the result of arms-length collective bargaining, those rates shall be considered “prevailing” for that facility for the purposes of this subpart.

(2) *State employment security determination.* In the absence of collectively bargained wage rates, the facility may not independently determine the prevailing wage. The State employment