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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To establish a nonimmigrant classification for health and human services workers.

IN THE HOUSE OF REPRESENTATIVES

Mr. LAWLER introduced the following bill; which was referred to the Committee on _____

A BILL

To establish a nonimmigrant classification for health and human services workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Health and Human Services Workforce Visa Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Nonimmigrant classification for health and human services workers.
Sec. 3. Admission of health and human services workers.
Sec. 4. Employer attestation; protection of United States workers.

Sec. 5. Use of fees.
Sec. 6. Annual report to Congress.
Sec. 7. Regulations; commencement of program.
Sec. 8. Period of authorization; preservation of status.

SEC. 2. NONIMMIGRANT CLASSIFICATION FOR HEALTH AND HUMAN SERVICES WORKERS.

Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(1) in subparagraph (U)(iii), by striking ''or'' at the end;

(2) in subparagraph (V)(ii)(II), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(W) subject to section 214(s), an alien—

''(i) who is coming temporarily to the United States to perform services in a qualifying health and human services occupation for a qualifying employer (as such terms are defined in section 214(s)(10)) that has filed a petition with respect to the alien approved under section 214(s)(1), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security that the employer has filed with the Secretary of Labor an attestation under section 212(u)(1); or

''(ii) who is the spouse or child of an alien described in clause (i), if accompanying or following to join the alien.''.

SEC. 3. ADMISSION OF HEALTH AND HUMAN SERVICES WORKERS.

(a) IN GENERAL.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

''(s) HEALTH AND HUMAN SERVICES WORKERS.—

''(1) PETITION.—

''(A) IN GENERAL.—The qualifying employer of a nonimmigrant under section 101(a)(15)(W)(i) shall petition the Secretary of Homeland Security for a visa under such section. The Secretary of Homeland Security shall consult with the Secretary of Labor and the Secretary of Health and Human Services before approving the petition and issuing a visa. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant.

''(B) CONTENTS.—A petition under subparagraph (A) shall be in such form and contain such information as the Secretary of

Homeland Security requires and shall at minimum include—

''(i) the certification of the Secretary of Labor that the employer has filed an attestation under section 212(u)(1) with respect to the occupational classification and area of employment involved;

''(ii) evidence that the employer is a qualifying employer, including evidence of the license, certification, approval, contract, or other governmental authorization under which the employer provides health and human services;

''(iii) evidence that the position is in a qualifying health and human services occupation;

''(iv) in the case of an occupation described in paragraph (4)(A), the evidence required by that paragraph;

''(v) a statement of the health insurance coverage the employer offers to the alien in accordance with paragraph (8)(A); and

''(vi) the fees required under paragraph (9).

''(C) INELIGIBLE EMPLOYERS.—

''(i) IN GENERAL.—The Secretary of Homeland Security may not approve a petition under subparagraph (A) filed by an employer that, during the 5-year period ending on the date on which the petition is filed, has been the subject of a final determination, made after notice and an opportunity for a hearing by a Federal or State court or agency having jurisdiction, that the employer—

''(I) willfully violated section 6 or 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206, 207) or a comparable State law relating to the payment of wages;

''(II) committed fraud or willful misrepresentation of a material fact in connection with a petition, application, or attestation under this Act;

''(III) committed fraud with respect to a program under title XVIII or XIX of the Social Security Act, or is excluded from participation in a Federal health care program under

section 1128 of that Act (42 U.S.C. 1320a–7);

''(IV) engaged in a severe form of trafficking in persons (as defined in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102)) or in fraud in foreign labor contracting (as described in section 1351 of title 18, United States Code);

''(V) willfully or repeatedly violated a Federal or State law relating to the health, safety, or protection of employees in a manner that resulted in serious harm to an employee; or

''(VI) committed, or knowingly permitted an employee or agent of the employer to commit, abuse, neglect, or exploit an individual receiving services from the employer, and by reason of such conduct had a license, certification, or other authorization to provide services suspended or revoked or was assessed a civil money penalty.

''(ii) DEBARRED EMPLOYERS.—The Secretary of Homeland Security may not

approve a petition under subparagraph (A) filed by an employer during any period for which petitions filed by the employer may not be approved under section 212(u)(3)(C)(ii), section 212(n)(2)(C), or subsection (c)(14)(A)(ii).

''(2) PERIOD OF AUTHORIZED ADMISSION.—

''(A) INITIAL PERIOD.—The initial period of authorized admission of an alien as a nonimmigrant under section 101(a)(15)(W)(i) shall be 3 years.

''(B) EXTENSION.—The Secretary of Homeland Security may extend the period of authorized admission of an alien described in subparagraph (A) for 1 additional period of not more than 3 years, upon the petition of a qualifying employer that satisfies the requirements of paragraph (1).

''(C) ADDITIONAL EXTENSIONS.—The Secretary of Homeland Security may extend the period of authorized admission of an alien described in subparagraph (A) beyond the periods described in subparagraphs (A) and (B), in increments of not more than 2 years, if—

''(i) the alien is the beneficiary of an application for labor certification under section 212(a)(5)(A), or of a petition under section 204(a)(1)(F), that was filed not later than one year before the end of the period of authorized admission then in effect, and a final decision has not been made on the application or petition, or the petition has been approved and an immigrant visa is not immediately available to the alien;

''(ii) the employer demonstrates, in the attestation under section 212(u)(1) filed in support of the extension, that the employer continues to experience a shortage of workers in the occupational classification involved that meets the requirements of section 212(u)(1)(E); or

''(iii) the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services, determines that the departure of the alien would significantly disrupt the continuity of health and human services provided by the employer to individuals with intellectual or

developmental disabilities, individuals with mental health or substance use disorders, or other individuals who require long-term services and supports.

''(D) SPOUSE AND CHILDREN.—The period of authorized admission of an alien described in section 101(a)(15)(W)(ii) shall be the same as the period of authorized admission of the principal alien, including any extension of that period under this paragraph, and may not exceed the period of authorized admission of the principal alien.

''(3) CHANGE OF EMPLOYER.—

''(A) IN GENERAL.—An alien described in subparagraph (B) who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(W)(i) is authorized to accept new employment in a qualifying health and human services occupation with a qualifying employer upon the filing by the prospective qualifying employer of a new petition under paragraph (1) on behalf of the alien. Employment authorization shall continue for the alien until the new petition is adjudicated. If the new

petition is denied, such authorization shall cease.

''(B) ALIEN DESCRIBED.—An alien described in this subparagraph is a nonimmigrant alien—

''(i) who has been lawfully admitted into the United States;

''(ii) on whose behalf a qualifying employer has filed a nonfrivolous petition for new employment before the date of expiration of the period of stay authorized by the Secretary of Homeland Security; and

''(iii) who, subsequent to such lawful admission, has not been employed without authorization in the United States before the filing of such petition.

''(C) PERIOD FOLLOWING CESSATION OF EMPLOYMENT.—An alien whose employment with a qualifying employer ceases before the end of the period of authorized admission of the alien shall be considered to be maintaining status under section 101(a)(15)(W)(i), for the purpose of seeking new employment described in subparagraph (A), during the 60-day period beginning on the date on which such employment

ceases or until the end of such period of authorized admission, whichever is earlier.

''(4) LICENSURE AND CREDENTIALS.—

''(A) OCCUPATIONS REQUIRING LICENSURE.—In the case of a qualifying health and human services occupation for which a license, certification, registration, or other authorization to practice is required under the law of the State in which the alien will be employed, the Secretary of Homeland Security may not approve a petition under paragraph (1) unless the petition includes evidence that the alien—

''(i) possesses the education, training, credentials, and professional qualifications required for the occupation;

''(ii) has completed each credential verification and certification requirement under section 212(a)(5)(C) and section 212(r) that applies to the occupation; and

''(iii) holds, or is eligible to obtain upon admission, a full license, temporary license, limited permit, or other authorization to practice the occupation issued under the law of such State.

''(B) OTHER OCCUPATIONS.—In the case of any other qualifying health and human services occupation, an alien shall, as a condition of employment as a nonimmigrant under section 101(a)(15)(W)(i), complete each background check, orientation, training, and competency requirement that applies to the position under Federal law and the law of the State in which the alien is employed.

''(5) EFFECT OF PETITION APPROVAL, VISA ISSUANCE, AND ADMISSION.—

''(A) IN GENERAL.—The approval of a petition under paragraph (1), the issuance of a visa, or the admission of an alien as a nonimmigrant under section 101(a)(15)(W)(i) shall not constitute authorization to practice a licensed profession or occupation.

''(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall supersede a requirement under the law of a State relating to the licensing, certification, or practice of a health, behavioral health, or human services profession or occupation.

''(6) EMPLOYMENT AUTHORIZATION FOR SPOUSES.—The Secretary of Homeland Security

shall authorize an alien spouse admitted under section 101(a)(15)(W)(ii) to engage in employment in the United States incident to status.

''(7) NUMERICAL LIMITATIONS.—

''(A) IN GENERAL.—Subject to subparagraphs (D) and (E), the total number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(W)(i) during any fiscal year may not exceed 100,000.

''(B) ADJUSTMENT.—The Secretary of Homeland Security, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, may increase the number under subparagraph (A) for a fiscal year by not more than 20 percent on the basis of documented workforce conditions in qualifying health and human services occupations, including vacancy rates, turnover rates, and unmet demand for services. The Secretary of Homeland Security shall publish notice of any such adjustment in the Federal Register, together with the basis for the adjustment, not later than 60 days before the first day of the fiscal year to which the adjustment applies.

"(C) PRIORITY.—In allocating the number available under subparagraph (A) for a fiscal year, the Secretary of Homeland Security shall give priority to petitions filed by qualifying employers that primarily serve—

"(i) individuals with intellectual or developmental disabilities;

"(ii) residents of rural communities (as defined by regulations issued by the Secretary of Health and Human Services in accordance with section 7(a) of the 'Health and Human Services Workforce Visa Act');

"(iii) medically underserved areas or medically underserved populations (as designated under section 330(b)(3)(A) of the Public Health Service Act);

"(iv) individuals with mental health or substance use disorders;

"(v) patients of Federally-qualified health centers;

"(vi) individuals eligible for medical assistance under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); or

''(vii) children and adults who require long-term services and supports.

''(D) COUNTING RULES.—

''(i) PRINCIPAL ALIENS.—The numerical limitation under subparagraph (A) shall apply only to principal aliens and not to the spouses or children of such aliens.

''(ii) ORDER.—Subject to subparagraph (C), aliens who are subject to the numerical limitation under subparagraph (A) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.

''(iii) EXTENSIONS AND CHANGES OF EMPLOYER.—An alien who has been counted toward the numerical limitation under subparagraph (A) shall not again be counted toward that limitation by reason of an extension under paragraph (2) or a change of employer under paragraph (3).

''(iv) REVOCATIONS.—If an alien who was counted toward the numerical limitation under subparagraph (A) is found to have been issued a visa or otherwise pro-

vided nonimmigrant status by fraud or by willfully misrepresenting a material fact and such visa or status is revoked, one number shall be restored to the total number of aliens who may be issued visas or otherwise provided such status under subparagraph (A) in the fiscal year in which the revocation occurs.

''(8) RETURN TRANSPORTATION.—In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(W)(i) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

''(9) INELIGIBILITY FOR CERTAIN PUBLIC BENEFITS.—

''(A) IN GENERAL.—An alien admitted or otherwise provided nonimmigrant status under section 101(a)(15)(W) is admitted for the purpose of employment, is expected to remain financially self-sufficient during the period of such status, and, during such period, is not eligible for—

''(i) medical assistance under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), other than assistance described in section 401(b)(1)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(b)(1)(A));

''(ii) benefits under the supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

''(iii) supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.);

''(iv) assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

''(v) any other Federal means-tested public benefit (within the meaning of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

''(B) RULES OF CONSTRUCTION.—Subparagraph (A) shall not be construed—

''(i) to render an alien ineligible for a benefit under title II or XVIII of the Social Security Act for which the alien becomes eligible by reason of employment and the payment of taxes under chapter 21 of the Internal Revenue Code of 1986;

''(ii) to render an alien ineligible for a benefit or service described in section 401(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(b)); or

''(iii) to affect the eligibility of an alien for any benefit, service, or protection that Federal or State law requires to be provided without regard to immigration status.

''(10) HEALTH INSURANCE COVERAGE.—

''(A) EMPLOYER OFFER.—A qualifying employer that offers a group health plan (as defined in section 733(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(a)(1))) to its employees shall offer coverage under such plan to each alien employed by the employer as a nonimmigrant under section 101(a)(15)(W)(i) on the same

terms and conditions, including the same employee premium contribution, waiting period, and benefits, that apply to similarly situated employees who are United States workers. An employer may not charge such an alien a higher premium contribution, or provide such an alien inferior coverage, on the basis of the immigration status of the alien.

''(B) ENROLLMENT AND MAINTENANCE OF COVERAGE.—As a condition of maintaining nonimmigrant status under section 101(a)(15)(W)(i), an alien—

''(i) shall enroll in the coverage offered under subparagraph (A) when the alien first becomes eligible to do so, and shall pay the employee premium contribution and comply with the reasonable requirements of the plan that apply to similarly situated employees; and

''(ii) if the employer does not offer such coverage, shall obtain and maintain minimum essential coverage (as defined in section 5000A(f) of the Internal Revenue Code of 1986) throughout the period of authorized employment.

''(C) TRANSITION PERIODS.—

''(i) IN GENERAL.—An alien shall not be considered to have failed to maintain status by reason of subparagraph (B) because of an interruption in coverage described in clause (ii) if the alien obtains minimum essential coverage not later than 90 days after the date on which the interruption begins.

''(ii) INTERRUPTIONS DESCRIBED.—An interruption in coverage described in this clause is an interruption that results from—

''(I) a waiting period under the plan of the employer;

''(II) a change of employer under paragraph (3), until the date on which enrollment in the plan of the new employer becomes effective;

''(III) a period of leave approved by the employer;

''(IV) the termination of the plan of the employer; or

"(V) any other circumstance specified by the Secretary of Homeland Security by regulation.

"(11) FEES.—

"(A) WORKFORCE DEVELOPMENT FEE.—In addition to any other fee authorized by law, the Secretary of Homeland Security shall impose a health and human services workforce development fee on a qualifying employer filing a petition under paragraph (1)—

"(i) initially to grant an alien nonimmigrant status under section 101(a)(15)(W)(i);

"(ii) to extend the period of authorized admission of such an alien under subparagraph (B) or (C) of paragraph (2); or

"(iii) to obtain authorization for such an alien to change employers under paragraph (3).

"(B) AMOUNT.—The amount of the fee under subparagraph (A) shall be $750 for each petition, except that the fee shall be half of such amount for a petition filed by an employer with not more than 25 full-time equivalent employees who are employed in the United States

(determined by including any affiliate or subsidiary of the employer).

''(C) DEPOSIT.—Fees collected under subparagraph (A) shall be deposited in the Treasury in accordance with section 286(x).

''(D) FRAUD PREVENTION AND DETECTION FEE.—In addition to the fee under subparagraph (A), the Secretary of Homeland Security shall impose on a qualifying employer filing a petition described in clause (i) or (iii) of subparagraph (A) a fraud prevention and detection fee of $500. Fees collected under this subparagraph shall be deposited in the Treasury in accordance with section 286(v).

''(E) PROHIBITION ON PASSING FEES TO ALIENS.—An employer may not require an alien to pay, or to reimburse the employer for, a fee imposed under this paragraph or any other fee or cost associated with the filing of a petition under paragraph (1).

''(12) DEFINITIONS.—In this subsection:

''(A) DIRECT SUPPORT PROFESSIONAL.—The term 'direct support professional' means an individual who provides direct services to, and supports the daily living, health, safety, and

community participation of, individuals with intellectual or developmental disabilities, including services provided under a waiver under section 1915(c) of the Social Security Act (42 U.S.C. 1396n(c)) or a State plan amendment under subsection (i) or (k) of such section.

''(B) FEDERALLY-QUALIFIED HEALTH CENTER.—The term 'Federally-qualified health center' shall have the meaning given such term in in section 1861(aa)(4) of the Social Security Act (42 U.S.C. 1395x(aa)(4)).

''(C) HEALTH AND HUMAN SERVICES.—The term 'health and human services' means health care services, behavioral health care services (including mental health and substance use disorder treatment), services for individuals with intellectual or developmental disabilities, long-term services and supports, including home and community-based services, and related social and human services.

''(D) QUALIFYING EMPLOYER.—The term 'qualifying employer'—

''(i) means an employer that is licensed, certified, approved, contracted, or otherwise authorized by a Federal or State

governmental agency to provide health and human services and is—

''(I) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

''(II) a State, a political subdivision of a State, an Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)), or an agency or instrumentality of any of the foregoing; or

''(III) any other organization that derives not less than 50 percent of its annual revenue from payments under title XVIII, XIX, or XXI of the Social Security Act or under another Federal or State governmental health or human services program, as determined by the Secretary of Homeland Security in consultation with the Secretary of Health and Human Services;

''(ii) does not mean an employer described in paragraph (1)(C); and

''(iii) includes, if the requirements of clause (i) are met, a provider of services to individuals with intellectual or developmental disabilities, a provider of home and community-based services, a community mental health center, a provider of substance use disorder treatment, a Federally-qualified health center, a hospital, a nursing facility, a home health agency, and any other provider of health and human services, without regard to whether the services are provided in a facility, a community residence, a clinic, a day program, or the home of the individual served.

''(E) QUALIFYING HEALTH AND HUMAN SERVICES OCCUPATION.—

''(i) IN GENERAL.—The term 'qualifying health and human services occupation' means an occupation in which an individual provides health and human services to, or directly supports the provision of health and human services to, individ-

uals served by a qualifying employer, and includes the following occupations:

"(I) Direct support professional.

"(II) Home health aide, personal care aide, and other direct-care worker.

"(III) Nursing assistant and other nursing support personnel.

"(IV) Licensed practical or vocational nurse and registered nurse.

"(V) Physician, physician assistant, nurse practitioner, and other medical practitioner.

"(VI) Social worker, mental health counselor, psychologist, marriage and family therapist, substance use disorder counselor, and other behavioral health clinician.

"(VII) Physical therapist, occupational therapist, speech-language pathologist, and therapy assistant.

"(VIII) Any other health or human services occupation that is a designated shortage occupation under section 212(u)(4) or with respect to

which a qualifying employer demonstrates a shortage under section 212(u)(5).

''(ii) EXCEPTION.—The term 'qualifying health and human services occupation' does not include an occupation that consists primarily of executive, administrative, or clerical functions.

''(F) UNITED STATES WORKER.—The term 'United States worker' has the meaning given the term in section 212(n)(4)(E).''.

(b) CONFORMING AMENDMENTS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is further amended—

(1) in subsection (b), by striking ''subparagraph (L) or (V) of section 101(a)(15)'' and inserting ''subparagraph (L), (V), or (W) of section 101(a)(15)''; and

(2) in subsection (h), by striking ''(H)(i)(b) or (c), (L), or (V)'' and inserting ''(H)(i)(b) or (c), (L), (V), or (W)''.

SEC. 4. EMPLOYER ATTESTATION; PROTECTION OF UNITED STATES WORKERS.

Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding at the end the following:

''(u) ATTESTATIONS FOR HEALTH AND HUMAN SERVICES WORKERS.—

''(1) IN GENERAL.—No alien may be admitted or provided status as a nonimmigrant under section 101(a)(15)(W)(i) in an occupational classification unless the qualifying employer has filed with the Secretary of Labor an attestation stating the following:

''(A) WAGES.—The employer is offering and will offer during the period of authorized employment to the alien wages that are at least—

''(i) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

''(ii) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater, based on the best information available as of the time of filing the attestation.

''(B) WORKING CONDITIONS AND BENEFITS.—The employer will provide working conditions for the alien that will not adversely affect the working conditions of workers similarly employed, and will provide the alien the same benefits, including the health insurance coverage described in section 214(s)(8), on the same basis as the employer provides them to similarly situated United States workers.

''(C) NO DISPLACEMENT OF UNITED STATES WORKERS.—The employer did not lay off and will not lay off a United States worker employed by the employer in a substantially equivalent job in the area of employment during the period beginning 90 days before and ending 90 days after the date of the filing of the petition under section 214(s)(1) supported by the attestation.

''(D) RECRUITMENT OF UNITED STATES WORKERS.—The employer—

''(i) has taken good faith steps to recruit United States workers for the posi-

tion, using procedures that meet industry-wide standards and including advertising the position for a period of not less than 30 days;

''(ii) offered, in connection with such recruitment, compensation at least equal to the compensation offered to the alien under subparagraph (A);

''(iii) was unable to recruit a sufficient number of United States workers who are able, willing, qualified, and available to fill the position; and

''(iv) continues to have a documented vacancy in the position.

''(E) SHORTAGE.—The occupational classification—

''(i) is a designated shortage occupation under paragraph (4); or

''(ii) is an occupational classification with respect to which the employer demonstrates, on the basis of the evidence described in paragraph (5), a persistent shortage of workers.

''(F) NO STRIKE OR LOCKOUT.—There is not a strike or lockout in the course of a labor

dispute in the occupational classification at the place of employment.

''(G) NOTICE.—At the time of filing the attestation, the employer has provided notice of the filing to the bargaining representative, if applicable, of the employees of the employer in the occupational classification and area for which the alien is sought or, if there is no such bargaining representative, has posted notice of the filing in conspicuous locations at the place of employment.

''(H) NO FEES CHARGED TO ALIENS.—The employer has not required and will not require the alien to pay, or to reimburse the employer for, any fee or cost associated with the petition under section 214(s)(1), including a fee imposed under section 214(s)(9).

''(2) REVIEW AND CERTIFICATION.—

''(A) IN GENERAL.—The Secretary of Labor shall review an attestation filed under paragraph (1) only for completeness and obvious inaccuracies. Unless the Secretary finds that the attestation is incomplete or obviously inaccurate, the Secretary shall certify the attestation to the Secretary of Homeland Security

not later than 7 days after the date of the filing of the attestation.

''(B) VALIDITY.—An attestation shall specify the number of positions to which it applies and shall be valid, with respect to those positions, for petitions filed under section 214(s)(1) during the 12-month period beginning on the date of certification.

''(3) ENFORCEMENT.—

''(A) COMPLAINTS AND INVESTIGATIONS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting the failure of an employer to meet a condition specified in an attestation under paragraph (1) or the misrepresentation of a material fact in such an attestation. Complaints may be filed by any aggrieved person or organization (including a bargaining representative). The Secretary shall conduct an investigation under this paragraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred, and may initiate an investigation on the basis of credible information from a source other than a complainant or as part of a random investiga-

tion of employers that have filed attestations under this subsection.

''(B) HEARING.—Under the process established under subparagraph (A), the Secretary of Labor shall provide, not later than 30 days after the date on which a complaint is filed, for a determination as to whether a reasonable basis exists to make a finding described in subparagraph (C). If the Secretary determines that such a reasonable basis exists, the Secretary shall provide notice of the determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, not later than 60 days after the date of the determination.

''(C) PENALTIES.—If the Secretary of Labor finds, after notice and an opportunity for a hearing, a failure to meet a condition of paragraph (1), a substantial failure to meet a condition of subparagraph (C), (D), (F), (G), or (H) of paragraph (1), a willful failure to meet a condition of paragraph (1), or a misrepresentation of a material fact in an attestation—

''(i) the Secretary of Labor shall notify the Secretary of Homeland Security of the finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation or, in the case of a willful failure or a misrepresentation that resulted in the laying off of a United States worker or in harm to an individual receiving services from the employer, $35,000 per violation) as the Secretary of Labor determines to be appropriate; and

''(ii) the Secretary of Homeland Security may not approve petitions filed with respect to the employer under section 204 or under subsection (c) or (s) of section 214, and the Secretary of Labor may not certify attestations filed by the employer under paragraph (1), for aliens to be employed by the employer during a period of—

''(I) not less than 1 year, in the case of a failure that is not willful;

''(II) not less than 2 years, in the case of a willful failure or a misrepresentation; or

''(III) not less than 3 years, which may be permanent, in the case of a willful failure or a misrepresentation that resulted in the laying off of a United States worker or in abuse, neglect, or exploitation of an individual receiving services from the employer.

''(D) BACK WAGES.—If the Secretary of Labor finds a failure to meet the condition of paragraph (1)(A), the Secretary shall order the employer to provide for payment of such amounts of back pay as may be required to comply with that condition, whether or not a penalty is imposed under subparagraph (C).

''(E) PROTECTION OF COMPLAINANTS.—It is a violation of this paragraph for an employer that has filed an attestation under paragraph (1) to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this subparagraph, includes a

former employee and an applicant for employment) because the employee has disclosed information to the employer or to any other person that the employee reasonably believes evidences a violation of this subsection, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with this subsection. The Secretary of Homeland Security shall provide, by regulation, that an alien who files a complaint or cooperates in an investigation described in this subparagraph and who is otherwise eligible to remain in the United States as a nonimmigrant under section 101(a)(15)(W)(i) may seek new employment in accordance with section 214(s)(3) and shall be considered to be maintaining status during a reasonable period established by the Secretary for that purpose. A violation of this subparagraph shall be treated as a willful failure to meet a condition of paragraph (1) for purposes of subparagraph (C).

''(F) RULE OF CONSTRUCTION.—Nothing in this subsection or section 214(s) limits any right or remedy of an alien or a United States

worker under any other Federal, State, or local law.

''(4) DESIGNATED SHORTAGE OCCUPATIONS.—

''(A) IN GENERAL.—The Secretary of Labor, in consultation with the Secretary of Health and Human Services, shall establish, and not less frequently than once every 2 years shall review and update by notice published in the Federal Register, a list of health and human services occupations with respect to which the Secretary of Labor determines, on the basis of the data described in subparagraph (C), that there is a national shortage of United States workers who are able, willing, qualified, and available.

''(B) INITIAL LIST.—The initial list under subparagraph (A) shall include each of the following occupations, unless the Secretary of Labor determines, on the basis of the data described in subparagraph (C), that a national shortage does not exist with respect to the occupation:

''(i) Direct support professionals.

''(ii) Home health aides and personal care aides.

''(iii) Nursing assistants.

''(iv) Licensed practical nurses and licensed vocational nurses.

''(v) Registered nurses.

''(vi) Physicians in primary care and in any specialty for which the Health Resources and Services Administration projects a national shortage.

''(vii) Mental health counselors, psychologists, psychiatrists, marriage and family therapists, social workers, and substance use disorder counselors.

''(viii) Physical therapists, occupational therapists, speech-language pathologists, and therapy assistants.

''(C) DATA.—The data described in this subparagraph are—

''(i) the employment projections of the Bureau of Labor Statistics;

''(ii) the health workforce projections of the Health Resources and Services Administration;

''(iii) national and State surveys of vacancy and turnover rates among providers of health and human services; and

"(iv) such other reliable data on the supply of, and demand for, workers in health and human services occupations as the Secretary of Labor considers appropriate.

"(D) RELATIONSHIP TO OTHER AUTHORITY.—Nothing in this paragraph affects the authority of the Secretary of Labor to determine, for purposes of subsection (a)(5)(A), that there are not sufficient United States workers who are able, willing, qualified, and available in an occupation.

"(5) EMPLOYER-SPECIFIC SHORTAGE.—For purposes of paragraph (1)(E)(ii), an employer may demonstrate a persistent shortage of workers in an occupational classification on the basis of objective evidence, which may include—

"(A) the vacancy rate for the occupational classification at the employer;

"(B) the length of time for which positions in the occupational classification have remained unfilled;

"(C) the rate of turnover in the occupational classification at the employer;

''(D) documented recruitment efforts and the results of those efforts;

''(E) expenditures on overtime or on temporary staffing agencies that are attributable to the shortage;

''(F) the closure, reduction, or suspension of a program or service, the maintenance of a waiting list, or the inability to accept referrals or to admit individuals for services, because of insufficient staff; or

''(G) a designation by a Federal or State agency of a shortage of workers in the occupational classification in the area of employment.

''(6) PUBLIC EXAMINATION.—

''(A) EMPLOYER PUBLIC NOTICE.—The employer shall make available for public examination, not later than 1 working day after the date on which the attestation under paragraph (1) is filed, at the principal place of business of the employer or at the worksite, a copy of the attestation and such accompanying documents as are necessary.

''(B) INTERNET WEBSITE.—The Secretary of Labor shall maintain, and make publicly available on the internet website of the Depart-

ment of Labor, a current list, including the employer and by occupational classification, of the attestations filed under paragraph (1).

''(7) DEFINITIONS.—In this subsection:

''(A) AREA OF EMPLOYMENT; LAYS OFF; UNITED STATES WORKER.—The terms 'area of employment', 'lays off' (and forms of that term), and 'United States worker' shall have the meaning given those terms in subsection (n)(4).

''(B) HEALTH AND HUMAN SERVICES; QUALIFYING EMPLOYER; AND QUALIFYING HEALTH AND HUMAN SERVICES OCCUPATION.—The terms 'health and human services', 'qualifying employer', and 'qualifying health and human services occupation' shall have the meaning given those terms in section 214(s)(10).''.

SEC. 5. USE OF FEES.

(a) USE OF FEES FOR ADMINISTRATION.—

(1) IN GENERAL.—Such amounts as are necessary shall remain available until expended, without further appropriation—

(A) to the Secretary of Homeland Security to carry out section 214(s) of the Immigration

and Nationality Act (8 U.S.C. 1184(s)), including the adjudication of petitions and the conduct of background and security checks;

(B) to the Secretary of Labor to carry out section 212(u) of the Immigration and Nationality Act (8 U.S.C. 1184(u)), including the review and certification of attestations, the establishment and maintenance of the list of designated shortage occupations under section 212(u)(4) of such Act (8 U.S.C. 1182(u)(4)), and the investigation and enforcement of the conditions of attestations; and

(C) to the Secretary of State, to carry out the consular processing of applications for visas under section 101(a)(15)(W) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(W)), including the conduct of interviews.

(2) ALLOCATION.—The Secretary of Homeland Security, in consultation with the Secretary of Labor and the Secretary of State, shall determine annually the allocation of amounts among subparagraphs (A) through (C) of paragraph (1) on the basis of the costs incurred by each Secretary in the preceding

fiscal year, and shall publish the allocation in the Federal Register.

(b) USE OF REMAINING FEES FOR DOMESTIC WORKFORCE DEVELOPMENT.—Amounts deposited into the account and remaining after the application of subsection (a) shall remain available to the Secretary of Health and Human Services until expended for grants to States, qualifying employers (as defined in section 214(s)(10) of the Immigration and Nationality Act (8 U.S.C. 1184(s)(10))), institutions of higher education, and joint labor-management organizations to recruit, train, credential, and retain United States workers in qualifying health and human services occupations (as defined in section 214(s)(10) of the Immigration and Nationality Act (8 U.S.C. 1184(s)(10)).

(c) ESTABLISHMENT OF ACCOUNT.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

''(x) HEALTH AND HUMAN SERVICES WORKFORCE DEVELOPMENT ACCOUNT.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Health and Human Services Workforce Development Account'. Notwithstanding any other section of this title, there shall

be deposited all remaining fees collected under section 214(s)(9)(A) that are not expended for Administration.

''(2) USE OF FEES FOR DOMESTIC WORKFORCE DEVELOPMENT.—The amounts deposited into the account shall remain available to the Secretary of Health and Human Services until expended for grants to States, qualifying employers (as defined in section 214(s)(10)), institutions of higher education, and joint labor-management organizations to recruit, train, credential, and retain United States workers in qualifying health and human services occupations (as defined in section 214(s)(10)).''.

(d) FRAUD PREVENTION AND DETECTION ACCOUNT.—Section 286(v) of the Immigration and Nationality Act (8 U.S.C. 1356(v)) is amended—

(1) in paragraph (1), by striking ''paragraph (12) or (13) of section 214(c)'' and inserting ''paragraph (12) or (13) of section 214(c) or section 214(s)(9)(D)'';

(2) in paragraph (2)(A), by striking ''(H)(i), (H)(ii), or (L)'' each place it appears and inserting ''(H)(i), (H)(ii), (L), or (W)'';

(3) in paragraph (2)(B), by striking ''subparagraph (H) or (L) of section 101(a)(15)'' and insert-

ing ''subparagraph (H), (L), or (W) of section 101(a)(15)''; and

(4) in paragraph (2)(C), by inserting ''and section 212(u)'' after ''section 212(n)''.

SEC. 6. ANNUAL REPORT TO CONGRESS.

(a) IN GENERAL.—Not later than 1 year after the date on which the Secretary of Homeland Security begins accepting petitions under section 214(s)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(s)(1)), and annually thereafter, the Secretary of Homeland Security, the Secretary of Labor, and the Secretary of Health and Human Services shall jointly submit to the appropriate committees of Congress a report on the operation of this Act and the amendments made by this Act.

(b) CONTENTS.—Each report under subsection (a) shall include, with respect to the preceding fiscal year, the following:

(1) The number of petitions filed, approved, denied, and withdrawn under section 214(s)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(s)(1)), and the number of aliens issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(W)(i) of that Act, disaggregated by occupation, State of employment, category under

section 214(s)(5)(B) of that Act (8 U.S.C. 1184(s)(5)(B)).

(2) The number of qualifying employers that filed petitions, disaggregated by the type of entity described in section 214(s)(10)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1184(s)(10)(C)(ii)), and the identity of each employer for which a petition was approved.

(3) The wages paid to aliens employed under section 101(a)(15)(W)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(W)(i)), by occupation, as compared with the actual wages paid to United States workers similarly employed by the same employers and with the prevailing wages for the occupations involved.

(4) The vacancy rates and turnover rates for qualifying health and human services occupations at petitioning employers, as reported by such employers under subsection (c), and the change in those rates since the employer first filed a petition.

(5) The number and disposition of complaints and investigations under section 212(u)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(u)(3)), and the penalties imposed and periods of ineligibility ordered under that section.

(6) The amounts deposited into and expended from the Health and Human Services Workforce Development Account under section 286(x) of the Immigration and Nationality Act (8 U.S.C. 1356).

(7) An assessment of whether the numerical limitation under section 214(s)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(s)(5)) is appropriate in light of workforce conditions.

(8) Recommendations regarding the reauthorization, modification, or termination of the program established under this Act and the amendments made by this Act.

(c) EMPLOYER REPORTING.—The Secretary of Labor, in consultation with the Secretary of Homeland Security and the Secretary of Health and Human Services, may require each qualifying employer that has filed an attestation under section 212(u)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(u)(1)) to submit annually, in a form that minimizes the burden on the employer, such information as is necessary to prepare the report under this section.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on the Judiciary, the Committee on Health, Education, Labor, and Pensions, and the Committee on Finance of the Senate; and

(2) the Committee on the Judiciary, the Committee on Education and Workforce, and the Committee on Energy and Commerce of the House of Representatives.

SEC. 7. REGULATIONS; COMMENCEMENT OF PROGRAM.

(a) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, the Secretary of Labor, and the Secretary of Health and Human Services shall each issue such regulations as are necessary to carry out this Act and the amendments made by this Act. Such regulations may be issued as interim final regulations.

(b) COMMENCEMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall begin accepting petitions under section 214(s)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(s)(1)) and the Secretary of Labor shall begin accepting attestations under section 212(u)(1) of that Act (8 U.S.C. 1182(u)(1)).

SEC. 8. PERIOD OF AUTHORIZATION; PRESERVATION OF STATUS.

(a) PERIOD OF AUTHORIZATION.—The Secretary of Homeland Security may not approve a petition under section 214(s)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(s)(1)) for the initial grant of nonimmigrant status under section 101(a)(15)(W)(i) of that Act (8 U.S.C. 1101(a)(15)(W)(i)), if the petition is filed after September 30, 2032.

(b) PRESERVATION OF STATUS.—Subsection (a) shall not—

(1) affect the validity of a petition approved under section 214(s)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(s)(1)) before the date described in subsection (a), or the status of an alien admitted or otherwise provided nonimmigrant status under section 101(a)(15)(W) of that Act (8 U.S.C. 1101(a)(15)(W)) before that date;

(2) prevent the Secretary of Homeland Security from extending the period of authorized admission of such an alien under section 214(s)(2) of that Act (8 U.S.C. 1184(s)(2)), or from approving a change of employer for such an alien under section 214(s)(3) of that Act (8 U.S.C. 1184(s)(3)), after that date; or

(3) affect the eligibility of such an alien for any other immigration benefit for which the alien is otherwise eligible.