



## Perspective

### Unethical International Nurse-Staffing Agencies — The Need for Legislative Action

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After passage by the U.S. House of Representatives, the Senate is currently considering the Fairness for High-Skilled Immigrants Act (H.R.1044 and S.386), which would, among other

things, remove the 7% cap on employment-based visas for immigrants from any single country and raise family caps from 7% to 15%. The international nurse-staffing industry and the American Hospital Association are conditioning their support for the bill on the inclusion of “a carve-out from visa caps for a reasonable number of immigrant nurses each year.” Without such a set-aside, they argue, the elimination of the cap on employment-based visas would result in most visas going to Indian and Chinese technology-sector workers and would thus increase wait times for other visa seekers, such as Filipino nurses. In 2018, about 5% of nurses who passed the registered nurse licen-

sure test on their first try (7505 of 151,617) were international nurses, and about 63% of those were Filipino.<sup>1</sup>

Negotiators have settled on 4400 visas carved out per year for nurses and additional visas for their family members. If enacted, this policy would represent a huge win for the international nurse-staffing industry. It would also probably exacerbate a chronic problem of unfair labor practices in this sector of the staffing industry. Before visa carve-outs for international nurses are created, we believe that rules should be established to prevent recruitment and staffing agencies from engaging in practices that exploit these workers.

A recent court decision sheds light on some of these abusive practices. On September 24, 2019, a federal judge ruled that a New York nurse-staffing agency violated the Trafficking Victims Protection Act with respect to more than 200 nurses recruited from the Philippines.<sup>2</sup> The court found that a \$25,000 “liquidated damages” provision that the agency included in nurses’ contracts was unlawful and that by suing nurses to enforce this provision when they resigned, the agency was using “threats of serious harm” to coerce nurses into continuing to work for it, despite allowing nurses to work in unsafe conditions with low nurse-to-patient staffing ratios and paying them lower-than-required wages. We believe that this class-action lawsuit is the first resulting in a finding of liability for a nurse-recruiting company under the Trafficking Victims Protection Act. In 2013, a

jury found a Colorado man guilty of criminal charges on the basis of actions he took in connection with the recruitment of Filipino nurses.<sup>3</sup>

The contract terms that were at issue in the New York case are frequently used by international nurse-staffing agencies. At the core of these agencies' model is the use of high contract-breach fees, which serve to hold immigrant nurses captive for 3 or more years. In guidance to governments, the International Labor Organization recommends prohibiting such fees because they create debt bondage and effectively prevent workers from leaving a job.<sup>4</sup>

In our review of dozens of nurses' cases, we found that high breach fees go hand in hand with other problems. For example, it is not uncommon for an agency to have no job available when the nurse arrives, and weeks or months may pass before the nurse receives an assignment — and a paycheck. During that period, and during periods between assignments, the nurse is prohibited from seeking other employment. Many contracts also stipulate that the weeks and months during which the nurse has no assignment (and isn't paid) don't count toward the completion of the contract period, which means that nurses could theoretically be held captive indefinitely. Similarly, if nurses (and their families) are told to move to a new assignment in a new region of the country, they have no recourse. To thwart attempts to report these abuses, many agencies' contracts prohibit nurses from bringing lawsuits against them in federal court.

In contrast, lawsuits seeking damages against immigrant nurses who resign are rampant. Two

companies alone, MedPro and Health Carousel, are responsible for at least 120 lawsuits in the past 5 years in Florida and Ohio, respectively, according to county court records. Most of these nurses lack sufficient knowledge of the U.S. legal system and access to lawyers to represent them and therefore end up in default when they are sued — which results in their bank accounts being seized and their wages garnished. In the rare cases in which nurses find lawyers to represent them, the companies often back down and offer a reduced financial penalty in exchange for silence, thereby avoiding bad press and a potential court decision expressly invalidating their practices. As a result, there are very few cases involving nurse-staffing agencies that have been won by nurses or litigated on the merits.

Hospital administrators in the process of redesigning care to meet the demands of outcomes-based payment structures know that nurses' work environment is a key predictor of patient outcomes.<sup>5</sup> For the international nurses held captive by contracts, the stress of adapting to a new country is exacerbated by the realization that they are being treated differently from their nonimmigrant colleagues and have no power to improve their situation. The effects of various provisions of international nurse-staffing agencies' contracts on patients have not been assessed, but as the TIME'S UP Healthcare movement has emphasized, inequality in the workplace negatively affects quality of care. In the case of recently arrived international nurses, being coerced into working in a particular facility hardly facilitates healthy relationships with coworkers.

One reason this problem has gone unnoticed is that almost all nurses recruited to the United States receive employment-based green cards. The absence of adequate regulatory oversight reflects a presumption that, once in the country, green-card holders are free to change jobs at will and that this freedom will protect them from the most abusive practices. But this presumption doesn't match the reality for many newly recruited nurses.

The current legislative debate presents a window of opportunity to address the unfair treatment of many workers. If Congress is going to reserve 4400 visas for immigrant nurses, we believe that recruitment and staffing agencies should be required to compete in a free and fair labor market with other potential employers. If a staffing agency wants to retain international nurses, it should have to do what other employers do: provide competitive wages and working conditions. Current practices are not only unethical, but they also potentially undercut labor-market dynamics for domestic nurses as well.

We suggest that Congress consider five key measures for any legislation authorizing additional visas for international nurses. First, in keeping with International Labor Organization standards, no recruitment or contract-breach fees should be permitted, and all U.S. government visa fees should be covered by employers. Second, contracts should not exceed 12 months. Third, nurses should have a job offer at a specific organization and in a specific location before coming to the United States and should be provided with a copy of their signed contract. If the job they had been offered no

longer exists when they arrive in the United States, nurses should be under no obligation to sign a new contract. Fourth, the job (or payment) should begin within 1 week after a nurse's arrival in the United States, and nurses should be paid continuously during the contract period, including training and orientation and any "benching" period between assignments. Finally, contracts should not prohibit nurses from bringing legal claims in any court that would have jurisdiction.

The wages and conditions in contracts used by many of the

largest international staffing agencies are discriminatory. Nonimmigrant nurses would not agree to such conditions. In the 21st century, it is unconscionable that a staffing agency would use the threat of a financial penalty, or debt bondage, to force nurse retention.

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