

February 20, 2024

Brian Pasternak
Administrator
Office of Foreign Labor Certification
Employment and Training Administration
Department of Labor
200 Constitution Avenue, N.W., N-5311
Washington, DC 20210

Submitted Electronically

Re: Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A to Include Consideration of Additional Occupations in Science, Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations, Docket No. ETA-2023-0006, 88 FR 88290 (December 21, 2023)

Dear Mr. Pasternak:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners — including more than 270,000 affiliated physicians, 2 million nurses and other caregivers — and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) writes to respond to the request for information (RFI) related to Schedule A occupations that satisfy the permanent labor certification requirement.

Established in 1965, the Schedule A Shortage Occupation List was created to simplify the process of hiring international workers. Occupations on the Schedule A list may be filled by immigrants sponsored for employment-based green cards without their sponsor being required to obtain a permanent labor certification, a process that can take a year or more. While an occupation listed on Schedule A can be processed more quickly and predictably for an immigrant visa, it does not increase the number of employment-based (EB) visas available, and individuals who work in Schedule A occupations are held to the same eligibility standards as any other EB visa applicants; it is simply a tool to be more responsive to skilled-labor needs by avoiding unnecessary labor market testing when a persistent shortage in an occupation has been demonstrated. The Schedule A



list has not been updated since 2004, and currently consists of only two occupations: professional nurses and physical therapists.

The RFI includes questions focused on the potential expansion of Schedule A to include science, technology, engineering and math (STEM) occupations. However, we write to respond to the questions posed in item five at the end of the RFI: “[S]hould the Department expand Schedule A to include other non-STEM occupations? If so, what should the Department consider to establish a reliable, objective, and transparent methodology for identifying non-STEM occupations with a significant shortage of workers that should be added to or removed from Schedule A?”

While the AHA understands the department’s interest in expanding Schedule A to encompass STEM occupations, the current shortages in the health care sector underscore the need to remain focused on including these essential occupations on the list. We strongly urge the department to retain professional nurses and physical therapists on Schedule A, and to consider expanding Schedule A to include medical doctors and pharmacists.

One of the short-term strategies used to ease pressure on the work force shortage in the U.S. is the use of immigrant health care workers, which primarily include nurses and physicians. A recent study found that 18%, or 2.8 million, health care workers were born outside of the U.S.¹ And 16% of registered nurses and 26.5% of physicians are immigrants. Foreign-trained nurses and doctors complement rather than displace American workers. They play critical roles in ensuring the health of the communities our hospitals and health systems serve, are highly qualified and are required to meet our nation’s standards for education, English fluency and state licensure.

Despite the challenges in hiring immigrant health care workers in hospitals and health systems, our members are increasing their efforts to utilize this resource to alleviate staffing shortages, especially in rural and underserved areas. A study published in JAMA in 2021 found that, “Overall, non–U.S.-born HCPs [health care professionals] worked more hours, were more likely to work at night and in skilled nursing and/or home health settings, and were more likely to reside in medically underserved areas than U.S.-born HCPs ... These findings suggest that non–U.S.-born HCPs are making significant contributions to health care in the U.S.”² The study also noted that immigrants contribute to the racial and ethnic diversity of the U.S. health care workforce.

¹ <https://www.migrationpolicy.org/article/immigrant-health-care-workers-united-states#:~:text=Nearly%202.8%20million%20immigrants%20were,in%20a%20health%2Dcare%20occupation.>

² <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2779302>

Nurses Should Remain on Schedule A

The Bureau of Labor Statistics projects a much faster than average growth in the need for health care occupations from 2022 to 2032, citing a projection of 1.8 million openings annually.³ For nursing, which is one of the Schedule A occupations, staffing challenges have persisted in all health care sectors, including for hospitals, and are likely to continue.⁴ A 2023 study of nurse staffing patterns shows an average registered nurse vacancy rate at hospitals of 15.7%.⁵

According to a recent McKinsey report: “By 2025, we estimate the United States may have a gap of between 200,000 to 450,000 nurses available for direct patient care, equating to a 10 to 20 percent gap. To meet this demand, the United States would need to more than double the number of new graduates entering and staying in the nursing workforce every year for the next three years straight.”⁶

Currently there are not enough nurses graduating from U.S. schools to meet this demand. According to the American Association of Colleges of Nursing, American nursing schools turned away almost 80,000 qualified applications from baccalaureate and graduate programs in nursing in 2022 alone due to an insufficient number of qualified faculty, clinical sites, classroom space, clinical preceptors and budget constraints.⁷

These data are sufficient to support the continued presence of registered nurses on Schedule A. Any removal of this occupation from Schedule A would only be warranted if there is a dramatic reduction in available positions. Transient variations in nurse availability should not be used to change this classification unless it is shown to persist over many years, given how long the nursing shortage has persisted.

Also, while the Schedule A regulation refers to “professional nurses” to distinguish the occupation from licensed practical nurses and nursing aides and assistants, the accepted title for this occupation is “registered nurse,” which reflects the regulatory structure of the profession. This is also the occupational title used by the department in both the Occupational Outlook Handbook and O*Net Online (SOC 29-1141.00). Should the Schedule A regulation be amended, we would recommend the term “professional nurses” be replaced with the term “registered nurses.”

³ <https://www.bls.gov/ooh/healthcare/home.htm>

⁴ <https://bhw.hrsa.gov/data-research/projecting-health-workforce-supply-demand>

⁵ https://www.nsinursingsolutions.com/Documents/Library/NSI_National_Health_Care_Retention_Report.pdf

⁶ <https://www.mckinsey.com/industries/healthcare/our-insights/assessing-the-lingering-impact-of-covid-19-on-the-nursing-workforce>

⁷ <https://www.aacnnursing.org/news-data/all-news/new-data-show-enrollment-declines-in-schools-of-nursing-raising-concerns-about-the-nations-nursing-workforce#:~:text=In%202022%2C%20a%20total%20of,201%20from%20PhD%20nursing%20programs.>

Physical Therapists Should Also Remain on Schedule A

Current workforce trends support the continued inclusion of physical therapists on Schedule A. For instance, a survey conducted by the American Physical Therapy Association (APTA) and APTA Private Practice revealed a 10% vacancy rate, fueled in part by clinic growth.⁸

Overall, the 2023 report paints a picture of continued staffing challenges among private practice clinics. Among the findings:

- The total vacancy rate reported by practices averaged 10%. Vacancy rates were highest for physical therapy assistants (PTAs), at 12%, followed by 11% for physical therapists (PTs) and 8% for support personnel. Like the 2022 survey, nearly 80% of respondents reported at least a 5% vacancy rate across all positions.
- At the clinic level, one in every three clinics reported having an opening for a PT, compared with one in every 11 clinics for PTAs and one in every 5.5 clinics for support personnel.
- In terms of job openings, 39.3% of clinics reported the same number of staff openings compared with the 2022 survey. A nearly equal number of clinics surveyed — 39.9% — reported more openings than the year prior, with 46.2% of those reporting an increase in openings of 50% or more.

These findings show a demand for physical therapists and support for having these health care professionals on Schedule A.

Medical Doctors Should Be Added to Schedule A for Some Specialties

According to data published by the Association of American Medical Colleges, the U.S. could see an estimated shortage of between 37,800 and 124,000 physicians by 2034, including shortfalls in both primary and specialty care.⁹ The persistence of these shortages is likely to continue for the foreseeable future as both the U.S. population ages and the physicians themselves reach retirement.

Given the long-term projected shortages of physicians, we urge the department to include them in Schedule A. In doing so, the department could consider prioritizing those physician specialties that are in shortage, which currently include behavioral health, family medicine and general internal medicine. The list of specialty shortages would likely need to be updated over time to reflect changes in need and the composition of the physician workforce.

⁸ <https://www.apta.org/news/2023/10/18/vacancy-report-2023>

⁹ <https://www.aamc.org/news/press-releases/aamc-report-reinforces-mounting-physician-shortage>

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Pharmacists Should Be Considered for Addition to Schedule A

The health care workforce shortage extends to pharmacists, as applications for pharmacy schools and residency programs have decreased. According to a survey of health system pharmacy leaders by McKinsey, 41% indicated a shortage of acute clinical pharmacists and 34% said they have shortages of ambulatory clinical pharmacists and acute pharmacists.¹⁰ Due to this troubling trend for a critical health care position, we recommend that pharmacists be considered for addition to Schedule A.

We appreciate the opportunity to provide input on potential modifications to the occupations listed on Schedule A. Please contact me if you have questions or feel free to have a member of your team contact Megan Cundari, AHA's senior director of federal relations, at mcundari@aha.org.

Sincerely,

/s/

Stacey Hughes
Executive Vice President
Government Relations and Public Policy

¹⁰ <https://www.beckershospitalreview.com/pharmacy/a-shortage-of-hospital-pharmacists-is-on-the-horizon-leaders-say.html>