Immigration Bill Could Significantly Affect Healthcare Industry

By Kristen Harris and Gregory Siskind*

The Senate's 800-page comprehensive immigration bill, the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), was introduced this week. The bill contains a number of provisions that would significantly affect the healthcare industry.

The bill provides a legalization process for the approximately 11 million out-of-status immigrants that live in the United States. While the bill bars such individuals from access to public benefits during their transitional status, the ability to work legally means that many will have access to private insurance for the first time and reliance on emergency rooms may lessen as a result. In addition, as the legalization process moves into the next phase, these individuals will eventually have the same access to public health benefits as other U.S. citizens.

The bill will require all employers across the country to use E-Verify (an electronic immigration status verification system) to verify their employees within five years. Large employers with more than 5,000 employees will be required to use E-Verify within two years; employers with more than 500 employees within three years; and all other employers prior to the completion of the five-year period. A new biometric card will be created for individuals who are not U.S. citizens or green card holders.

The bill includes a new W visa that could make it easier for healthcare employers to employ workers that do not qualify for high-skilled visa categories. The visa could be useful for nurse positions as well as lesser-skilled occupations. However, many observers believe the visa program's available numbers are too low to meet current needs. The H-1C nurse
visa is revived in the bill, albeit with a decrease to a mere 300 visas for the entire United States.

Significant changes are in the works for employers of physicians as well as employers of other high-skilled workers. The bill provides a shorter path to the green card for physicians who serve in U.S. Department of Health & Human Services-designated shortage areas or populations for five years, expands the immigration options for J waiver physicians, and includes several technical provisions to smooth the immigration process for physicians, their employers, and graduate medical education programs. The existing Conrad 30 J waiver program, which permits state health departments to recommend 30 J waivers per year, is expanded to include an additional three slots per state for service at academic medical centers, as well as including a mechanism for nationwide expansion. The bill also includes new physician employment contract requirements for the Conrad 30 program and increases employment portability of J waiver physicians.

In addition to those changes, the overall H-1B annual quota or "cap" is increased from 65,000 to 110,000 with the authority to increase to up to 180,000 new H-1B visas per year, depending on demand and unemployment. The H-1B program will become more complicated as the bill includes a new advertising requirement and new restrictions for H-1B dependent employers and staffing companies. Healthcare companies are excluded from the definition of H-1B dependent employers which will be welcome news for some. However, nurse and physical therapist staffing companies focusing on overseas recruiting still could be negatively impacted by the new language.

The brightest news for the healthcare sector immigrants comes on the green card side of the equation. Aside from the changes noted above in the doctor section of the bill, the per-country limits that currently hamper Indian professionals are eliminated. Overall green card numbers are hiked dramatically, which should eliminate current multi-year backlogs for professional workers.

The bill is expected to undergo markup in the Senate Judiciary Committee in early May, with several amendments in Committee and anticipated debate on the Senate floor in June or July. The House schedule and strategy is still unclear. The bill's advocates are hopeful the legislation may reach President Barack Obama before the August recess or soon thereafter.

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