

NOTICE OF CGFNS' PROPOSED POLICY CHANGE

I. INTRODUCTION – SUMMARY OF ISSUE

A. Issue

1. CGFNS International, Inc. (CGFNS) has received complaints related to foreign-educated nurses entering the healthcare field in the United States without being proficient in the spoken English language.
2. According to these complaints, these foreign educated nurses were able to bypass the standard English language proficiency (ELP) examination requirements by enrollment in an additional post graduate degree or diploma program in which the language of instruction was English and the program is located in a country designated by CGFNS as exempt from the ELP requirements for *VisaScreen* certificates and 212(r) certified statements.
 - a. *VisaScreen* certificates and 212(r) certified statements are CGFNS issued documents that are required for any healthcare professionals seeking an employment-based U.S. visa.
 - b. CGFNS has the authority to issue *VisaScreen* certificates and 212(r) certified statements under 8 U.S.C. §§ 1182(a)(5)(C) and 1182(r), respectively.

B. Actions Under Consideration

1. In order to prevent any further foreign educated nurses from entering the United States to work in their profession without being proficient in the spoken English language, CGFNS is considering implementing a new policy that would strengthen CGFNS' ELP requirements for *VisaScreen* certificates and 212(r) certified statements.
2. Specifically, CGFNS is proposing to require that all foreign educated nurses who earn their entry-level nursing education in a country that is not exempt from the ELP requirement for *VisaScreen* certificates and 212(r) certified statements meet the minimum passing requirements of an ELP examination approved by the U.S. Department of Health and Human Services (HHS) for purposes of healthcare professional immigration.
3. Therefore, CGFNS would no longer waive the ELP requirement for *VisaScreen* certificates and 212(r) certified statements for graduates of a post graduate degree or diploma program even when the program is located in a country designated by CGFNS or applicable regulation as exempt from the ELP requirements for graduates of entry-to-practice programs.

C. Why New Policy is Necessary

1. CGFNS believes this proposed policy change will eliminate the ability of foreign-educated nurses who are not proficient in the spoken English language to avoid the ELP requirement by enrolling in a postgraduate or diploma program offered by a program in a country designated by CGFNS as exempt from the ELP requirements for *VisaScreen* certificates. While these universities may have their own ELP requirements for admission, these standards may be different than those required by the U.S. government for immigration purposes for healthcare professionals.
2. CGFNS believes this proposed policy change is necessary to prevent foreign-educated nurses from entering the healthcare field in the United States without being proficient in the spoken English language, which poses a significant risk to patients in the U.S.
3. CGFNS also believes this proposed policy change will reduce the risk of economic exploitation of those foreign nurses who are not proficient in the spoken English language.

II. PROCESS

- A. CGFNS will provide notice of the proposed policy change on its website on November 30, 2020. CGFNS will then conduct a 60-day notice and comment period. During this period, CGFNS will accept comments from the public, government, and other stakeholders.
- B. These comments can be related to, for example:
 1. The basis of the proposed policy change;
 2. The text of the proposed policy change;
 3. The concerns that led to the proposed policy change; and
 4. If the proposed policy change fully addresses those concerns.
- C. Comments should be submitted electronically to ELPpolicy@cgfns.org by January 29, 2021.

If necessary, comments can be also be physically mailed. Please inform us that these materials have been sent by emailing ELPpolicy@cgfns.org and mailing to:

CGFNS International, Inc.

Attn: Mukul Bakhshi re: ELP Policy

3600 Market St., Suite 400

Philadelphia, PA 19104

- D. All comments will be evaluated and considered by CGFNS staff members and its Professional Nurse Credentials and Standards Committee. After the 60-day comment period, the Professional Nurse Credentials and Standards Committee will present its recommendations regarding the proposed policy change to CGFNS' Board of Trustees for final approval.
- E. The earliest implementation date will be April 1, 2021.

III. PROPOSED POLICY CHANGE

- A. CGFNS seeks public comment on the following revised standard:

Foreign-educated nurses (FEN) who have completed an entry-level nursing education (first degree/diploma received allowing one to practice as a nurse) in a country that is not exempt from the English language proficiency (ELP) requirements under Section 343 B (8 U.S.C. § 1182(a)(5)(C)(ii)) will be required to meet the minimum passing requirements of an ELP examination approved by HHS. This applies to all FENs completing an additional post graduate degree or diploma program in a country that is exempt from the ELP requirement under Section 343 B.

- B. Prior to April 1, 2021, any applications or renewal requests for *VisaScreen* certificates and 212(r) certified statements that are submitted and paid for will be assessed according to CGFNS' current policy and not subject to the proposed policy changes.

IV. REASONS FOR PROPOSED CHANGE

CGFNS has received complaints of foreign-educated nurses entering the healthcare field in the United States without being proficient in the spoken English language. CGFNS recognizes that the inability of foreign educated nurses to speak English proficiently poses a risk to the healthcare receiving public and to the foreign nurses themselves.

- A. Danger to Healthcare Receiving Public
 - 1. Foreign-educated nurses' inability to speak proficient English poses a significant danger to the healthcare receiving public. On any given day, a nurse must communicate with patients and their families about the care being given; tell patients about their medications and how to take them; provide explicit discharge instructions; listen to and understand the changing conditions of their patients; and describe and discuss the condition of their patients with their healthcare coworkers.
 - 2. In emergency scenarios, nurses are expected to understand rapidly given instructions and to react immediately. There is no time for a nurse to pause

and try to glean the intended directives, and a miscommunication can prove life-threatening. Should a nurse struggle with spoken English language skills, the nurse's ability to function safely and to provide total care significantly diminishes.

3. In addition, some foreign nurses work in settings such as nursing homes, home care, and other areas that involve particularly vulnerable segments of the population. Patients in these settings are often compromised with comorbidities such as loss of hearing or dementia, where strong English proficiency is important.

B. Increased Risk of Economic Exploitation of Foreign Nurses

1. Foreign nurses who do not have proficient English-speaking skills have reduced job opportunities in the United States and are at an increased risk of economic exploitation. Most nursing jobs, especially in hospitals, require nurses to have a proficient level of English-speaking skills. When the foreign nurses in the complaints received by CGFNS attempted to gain employment in hospitals or other care settings that matched their experience levels, many were rejected due to their inability to speak English.
2. These foreign nurses are limited to jobs in nursing homes and other healthcare settings that do not require strong English-speaking skills. For example, if the foreign nurse is from South Korea and predominately speaks Korean, the only jobs available to her or him may be in Korean nursing homes or healthcare settings that almost exclusively support Korean-language communities. These healthcare settings are more likely to exploit these foreign nurses, often by providing fewer financial or professional growth opportunities, because they know the foreign nurses have limited job options. Therefore, these foreign nurses may find themselves working in the United States but unable to take advantage of the promised opportunities for financial and professional success due to their lack of English-speaking skills.

C. Changing Nature of Underlying Education System

1. Even prior to the coronavirus pandemic, there was a growing number of online post-graduate nursing programs. Online education programs lack the critical clinical component that forces a student nurse to speak and understand English in a healthcare setting. Nurses receiving an online nursing education do not benefit from the language immersion experience of living on or attending class at an academic campus, often surrounded by students who exclusively speak English. Instead, online education programs almost exclusively assess the written and reading skills of the foreign nurses. Depending on the structure of the online education

program, many students can graduate from the program without ever having their spoken English abilities assessed.

2. CGFNS had previously set its standards regarding the ELP requirements in 2005. At that time, online nursing programs were rare. Therefore, CGFNS had the reasonable expectation that a foreign nursing student enrolled in any level of nursing program would be living in and taking the classes in the country where the program was based. However, as the nature of education has changed in the past decade and a half, more of these programs have moved entirely online. Therefore, CGFNS can no longer rely upon their prior expectations that these nursing programs have sufficient elements to test and improve a foreign nursing student's spoken English skills. Instead, CGFNS must adapt its standards to ensure a foreign nursing student's English-speaking skills are adequate to safely work in a U.S. healthcare setting.

V. JUSTIFICATION

- A. CGFNS has a responsibility to foreign nurses, to the American healthcare receiving public, and to the U.S. government on whose behalf we provide credential evaluation services for healthcare professionals for immigration purposes. In order to ensure that the foreign nurses entering the U.S. on occupational visas can provide comprehensive, safe care to the American healthcare receiving public, CGFNS should not certify the ability of foreign nurses to enter the American healthcare field until they have proven the proficiency of their English-speaking skills. As discussed above, CGFNS previously operated under the expectation that foreign nursing students enrolled in a post-entry-to-practice nursing program would be living in and taking the classes in the country where the program was based. Since some of these programs have become exclusively online, CGFNS has determined it must alter its standards to ensure students graduating from online nursing programs have the English-speaking skills necessary to safely operate in a healthcare setting in the United States.
- B. CGFNS also has a responsibility to the foreign nurses who come to the United States searching for the typical spectrum of job opportunities available to professional nurses. By altering its standards to ensure all foreign nurses meet the minimum English language proficiency requirements, these foreign nurses will be able to gain employment at healthcare settings that meet their experience and their ambition. The careers and lives these nurses build in the United States will be more financially and professionally fulfilling when they are no longer limited by their English-speaking abilities.