



Treating Illegal Immigrants

The ANA aims to protect nurses against potential criminal penalties.

The ANA contacted the Senate Judiciary Committee in March to express opposition to portions of the House-passed immigration bill. These provisions would make it illegal to provide health care services to undocumented aliens.

The House bill—the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (HR 4437)—could have serious, unforeseen consequences for nurses who treat illegal immigrants and for the health care facilities in which these nurses work. Section 202 of HR 4437 would criminalize any activity that “assists” or “harbors” an illegal alien. The ANA explained that providing needed health care to an illegal immigrant meets these definitions, even if

the House authors did not intend to include RNs in their bill. If enacted, the House bill would subject these nurses to severe criminal penalties.

The ANA pointed out that the Emergency Medical Treatment and Active Labor Act (EMTALA) requires all hospitals participating in Medicare to screen and stabilize any patient seeking emergency care, regardless of citizenship or immigration status. In addition, Section 1011 of the Medicare Modernization Act (PL 108-173) reimburses facilities for uncompensated care provided to illegal immigrants. To obtain this reimbursement, providers must determine the residency status of the patients that they treat. To meet these legal requirements, ED nurses do knowingly provide care to undocumented immigrants.

These concerns were addressed in the Senate Judiciary bill by an

amendment offered by Richard Durbin (D-MI) that exempted medical and humanitarian services from criminal penalties. A bill offered by Senate Majority Leader Bill Frist (R-TN), however, maintained troubling language. The Frist bill, Securing America’s Borders Act (S 2454), removes penalties for “assisting” immigrants but maintains them for those who “harbor” immigrants. The ANA remains concerned about the Frist bill because sheltering an immigrant in an ED while providing care could meet the legal definition of “harboring.”

At the time of this writing, the Senate had yet to consider compromise immigration legislation. The ANA will continue to monitor developments and to insist that Congress should not criminalize health care services provided to illegal immigrants.

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The ANA Champions Respiratory Protections for Nurses

The ANA is once again opposing efforts to stop the fit testing of respirators used to protect health care workers from airborne biohazards. For the last two years, Representative Roger Wicker (R-MI) has been successful in attaching a rider to appropriations legislation that prohibits the Occupational Safety and Health Administration (OSHA) from enforcing the annual fit-test requirement for these respirators.

The current OSHA general industry respirator standard requires all workers exposed to airborne hazards to wear appropriate respirators that are fit tested at least once a year to ensure proper performance. The manufacturers of the respirators most commonly used in health care settings (N-95 masks) recommend annual fit testing because small changes in weight, dental work, or facial hair can compromise a respirator’s seal. The Institute of Medicine has reviewed the OSHA regulations and supports the annual fit testing requirement.

Representative Wicker argues that the fit testing requirement is too burdensome for health care facilities and that recent reduction in tuberculosis cases (tuberculosis being the

first reason that the standard was extended to health care workers) have made the requirement obsolete.

The ANA is concerned about the impact that this amendment will have on tuberculosis transmission and also because the tuberculosis standard is the only current means to require health care facilities to obtain and test respirators needed to protect health care workers from other airborne biohazards that do not have their own enforceable standards (such as severe acute respiratory syndrome (SARS), pandemic flu, and bioterrorism agents). The Canadian SARS experience proved that fit testing must occur before an infectious disease outbreak. Dozens of Canadian nurses were infected with SARS while wearing respirators that did not work. One nurse wearing an ill-fitting respirator died from the disease.

The ANA continues to monitor the health appropriations bills. If Wicker attempts to add his rider again this year, the ANA will need your help to oppose it. Information and advocacy materials are available at www.anapoliticalpower.org.