



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 09 2019

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 728, the "Title VIII Nursing Workforce Reauthorization Act of 2019." As we explain below, the bill raises a constitutional concern.

Section 4 of H.R. 728 would authorize appropriations for fiscal years 2020–2024 for the workforce-diversity program established by 42 U.S.C. § 296m. Under that program, the Secretary of Health and Human Services "may award grants . . . and enter into contracts . . . to increase nursing education opportunities for individuals who are from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among registered nurses)" by, for example, providing "student scholarships or stipends," "pre-entry preparation," and "advanced education preparation." 42 U.S.C. § 296m(a). Because the workforce-diversity program allocates benefits on the basis of race or ethnicity, section 4 would be subject to strict scrutiny. *See Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 235 (1995). For section 4 to survive that scrutiny, the Government would need to show that the provision is narrowly tailored to serve a compelling governmental interest. *Id.* Whether the Government could make that showing would depend, in part, on the legislative record that the Congress developed. We are not in a position to evaluate the legislative record and therefore express no opinion on the ultimate constitutionality of section 4.

Thank you for the opportunity to present our views. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Prim Escalona".

Prim F. Escalona

Principal Deputy Assistant Attorney General

cc: The Honorable Greg Walden
Ranking Member