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Jul 22, 2020

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State Authorization and Crossing State Borders, Part 2: Additional Approvals and Professional Licensure

written by Cheryl Dowd & Russ Poulin

In this second of two posts, we discuss state oversight of institutions' education activities by agencies other than the higher education agency that may be required. As we addressed in our [last post](#), institutions must obtain each state's institutional approval either from the state higher education agencies in each of the states where the students are located, or state institutional approval by participating in reciprocity through the State Authorization Reciprocity Agreements (SARA).

A state approving an out-of-state institution to operate within its boundaries is just a first step. The institution must research if additional responsibilities require oversight by other governmental agencies in the state where the student is located while participating in an institution's activities. These state agencies may include but are not limited to the following: state professional licensing boards, state

Departments of Labor and secretaries of state. Some institutions incorrectly assume that reciprocity through SARA participation extends to other state agency approvals and requirements beyond state institutional approval.

Additional Approvals That an Institution May Need

State Departments of Labor and secretary of state requirements for institutions providing interstate distance education may be less common among the 50 states and territories; however, the institution should exercise due diligence to determine if the states where the students are located have additional requirements. For example, the Colorado Department of Labor and Employment requires the institution to ensure that the student has workers' compensation insurance if the student is participating in experiential learning (internships/clinical) in Colorado. Additionally, some states may deem institutions that offer education in the state as "doing business" and therefore require the institution to register with the secretary of state's office and obtain a registered agent in the state to accept service of process, meaning accept court papers "served" on behalf of the out-of-state institution in the event of a lawsuit.

State Licensing Board Approvals and Notifications

In the last decade, there has been an increase in distance education offerings in fields leading to professional licensure. These opportunities are often offered to students located in a different state than where the institution is located. There is some confusion among institutions about the responsibility to meet state licensing requirements in a different state for the out-of-state distance education student.

Two questions arise. First, do institutions have additional responsibilities to obtain program approval or to meet another state's requirements if their program is approved by the state licensing board where the institution is located? Second,

does an institution have a responsibility to inform students whether the program is approved or meets state requirements in any state other than where the institution is located?

State licensing boards provide oversight for state regulatory approval, if required, of an institution's programs that lead to a license or certificate. When the program's activities are offered to students outside of the state where the institution is located, the institution must determine if program approval is required in that state where the student is located. The state licensing boards serve an important role in protecting the public by ensuring that education standards are met in order to produce competent professionals. Professions and states vary, but states may require that the student complete a program approved by that state's licensing board to obtain a license in that state.

State regulatory approval overseen by state licensing boards must be distinguished from approval by national programmatic accreditors. While state licensing boards are state agencies that primarily function to protect the public, programmatic accreditors are national organizations that focus on the program's educational quality and the academic policies of the institution. Approval by the national programmatic accreditor may be a requirement for approval by the state licensing board.

More than 2,000 institutions in all states except California and the Pacific territories have obtained institutional approval through reciprocity by participation in SARA to offer distance education to students in other states that are members of SARA. Whether through SARA or direct approval by a state, students may incorrectly assume that institutional approval is the same as program approval. Additionally, students may incorrectly assume that the program is approved where the student is located if the institution has accepted the out-of-state student into the program. For these reasons, SARA and federal

regulations require professional licensure notifications to be transparent with students whether a program meets state educational requirements for licensure or certification where the student is located. Additionally, [new federal regulations](#) require that institutions now provide public notifications for all face-to-face programs and distance education programs leading to professional licensure and certification in all 50 states and territories.

Notifications seem like a reasonable requirement for institutions to protect students from making uninformed decisions when the student wishes to pursue educational goals for a professional career. However, what has rarely been discussed by the decision-makers imposing the notification requirements is how institutions can efficiently connect with state licensing boards for the many professions in all of the states and territories to help institutions research and understand state requirements and approval processes.

State educational requirements are often nuanced and frequently require more than a review of a checklist of requirements to determine if the curriculum meets the state educational requirements or if program approval is required. While the Federal Register announcement of the [new federal regulations](#) included a preamble that indicated that the Department of Education does not require the institutions to complete this research, transparency for students is universally desired. One may wish to note that the [newly revised SARA Policy Section 5.2](#) requires that the institution provide professional licensure notifications as required by federal regulations for distance education programs subject to SARA policy, plus the institution must make all reasonable efforts to determine state requirements. After making all reasonable efforts, the institution may indicate that no determination has been made and provide a direct notification to the student to that effect and provide the state licensing board's contact information for the state where the student is located.

Additionally, state licensing boards did not participate in the conversation to impose these notifications, but those same licensing boards are now deeply affected by the demands on their time to help institutions understand their requirements. Licensing boards are the recipients of numerous institution inquiries. While they are obliged to communicate the needed information, they often do not have the staff to meet the demand.

And, yes, we understand that one of the co-authors was on the rulemaking subcommittee that proposed the notification regulation and was guilty of not fully consulting the licensing boards. We both are still proponents for the regulations and urge institutions to do all they can to inform students now. We know a better solution will take time, but students need help in making informed decisions now.

A plan is needed to coordinate professional licensure research and approvals to guarantee that students make informed decisions about programs leading to licensure and certification. Institutions often inquire about a compendium of state educational requirements for every profession in each of the 50 states and territories to expedite the research process. No resource of this magnitude exists. Access to information is a significant issue for which support from each leg of higher education's regulatory triad can take a role.

Suggested actions include:

- The Department of Education can use its resources to inform national and state leaders about the need to provide the ability to transport pre-licensure educational credentials across state lines in this 21st century mobile society balanced with the need for public protection for licensed professions.

- States can assist their state higher education agencies in developing relationships within their state to collaborate with the state licensing boards to communicate the educational requirements for licensure and certification.
- Accreditors, especially programmatic accreditors with their subject matter expertise, can bridge higher education and licensing boards to facilitate information access.

Developing a plan to coordinate professional licensure research and approvals will assist the institutions in meeting their responsibilities to support students in making informed decisions about these programs.

Institutions must weave state and federal regulatory compliance into the development of educational opportunities to serve students wherever they are located. Innovation is important, but with opportunities also come responsibilities. Additionally, the institution must think nationally whether the curriculum for a program leading to licensure or certification meets state educational requirements in other states. No longer is this just a distance education issue — the institution must notify face-to-face students as well. The WCET/State Authorization Network (SAN) addresses strategy building for the institutions wishing to comply with state and federal regulations for distance education and professional licensure notifications. You may wish to review the [SAN website](#). Please look to WCET and SAN to continue to provide policy and practice updates.

Cheryl Dowd, director, State Authorization Network (SAN)

Russ Poulin, executive director, WICHE Cooperative for Educational Technologies (WCET)