



ISSUE BRIEF

The Impact of State Authorization on PA Training Programs

BACKGROUND

Congress enacted the Higher Education Act (HEA) in 1965 as a component of President Johnson's Great Society initiatives. The act increased federal funding for universities, provided for scholarships, and started federally guaranteed low-interest loans for students. This legislation has been amended and reauthorized many times, resulting in changes to financial aid, the development of Pell grants, and capping the percent of income required for repayment of student loans. HEA was amended as the Higher Education Opportunity Act (HEOA) of 2008, which included the following language:

The State Authorization Regulation Chapter 34, § 600.9(c)
“If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering distance or correspondence education in that State. An institution must be able to document to the Secretary, the State's approval upon request.”

As a result of advances in technology, many institutions were offering distance education to students residing in other states. The legislation empowered the states to oversee education being provided inside their state by institutions residing outside their state. The federal distance education requirements were eventually set aside by the Department of Education, as financial aid funding for students could be jeopardized by schools who could not prove that they met requirements in every state in which they had students.

In spite of the distance education requirements being set aside, numerous state regulations remained, including requirements for “authorization” or “licensing,” and began to be enforced. In the case of medical and health professions education, this meant that the states were free to decide which educational activities in their states would require authorization or licensing. For some states, it was an opportunity to limit the number of students from out of state who were using increasingly scarce clinical sites for clerkships and rotations.

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Each state could define what they meant by “operating in their state while not being physically located in the state.” They used terms like “operating,” “presence,” or “physical presence,” to define an out-of-state school’s activity and particular “trigger” activities in their state that might result in a requirement for authorization or licensing. These triggers and the resulting authorization requirements vary greatly from state to state. Requirements range from a form and \$100 fee (WY) to thousands of dollars and typically 18 months of licensing requirements (NC).

IMPACT ON PA PROGRAMS

The impact on PA programs around the country has varied considerably, based on institutional awareness of the variety of requirements and varying levels of enforcement by states. PA programs do have a requirement for compliance in the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA) Accreditation Standards as noted below:

ARC-PA Standard A1.03

The sponsoring institution is responsible for:

f) ensuring that all PA personnel and student policies are consistent with federal and state statutes, rules and regulations. (ARC-PA 2016)

This would generally be understood to mean that student policies related to clinical placements, student recruitment, and online coursework would need to meet applicable state and federal regulations.

Factors that may be considered triggers for “physical presence,” “presence,” or “operating” in a state, thereby requiring authorization to conduct educational activities in a state, vary greatly. The most common potential trigger for PA programs would likely be sending students outside an institution’s home state for clinical rotations. Less common potential triggers are:

- Faculty members or paid employees who reside in, or work from, a state outside of the institution’s home state
- Certain recruiting activities
- Proctored activities, like examinations, for students outside the institution’s home state

WHAT CAN PA PROGRAMS AND INSTITUTIONS DO?

If a PA program is deploying students to another state for clinical rotations, the director should have a conversation with their institution's administration and legal counsel as it is the responsibility of the institution to seek compliance with state authorization requirements. One solution may be participation in a multi-state compliance mechanism called the National Council for State Authorization Reciprocity Agreements (NC-SARA).

A State Authorization Reciprocity Agreement (SARA) is an agreement among its member states, districts, and U.S. territories that establishes comparable national standards for interstate offering of postsecondary distance-education courses and programs. It is intended to make it easier for students to take online courses offered by postsecondary institutions in a state other than the one where they reside. SARA is overseen by a national council [NC-SARA] and administered by four regional higher education compacts, MHEC, NEBHE, SREB and WICHE. The four SARA agreements of those compacts are collectively treated as a plural, the Agreements.¹

Although NC-SARA primarily relates to distance or online education, it contains language that specifically excludes clinical rotations from the list of triggers for physical presence in member states. If an institution's home state is a member of NC-SARA, then it could decide to join. As of March 2017, this would ease restrictions on clinical rotations in the 47 member states. The only non-participating states are California, Florida, and Massachusetts. For an updated list of NC-SARA status by state, please visit: <http://nc-sara.org/content/sara-state-status>.

If a program is placing students in the remaining three states that do not belong to NC-SARA, they should work with their institution's legal counsel to determine what the requirements may be for placing students in those states. Remember that responsibility for obtaining authorization is an institutional responsibility and should not be undertaken by a program independently.

¹ NC-SARA State Authorization Reciprocity Agreements Policies and Standards <http://www.nc-sara.org/files/docs/FINAL%20SARA%20General%20Policies%20released.pdf>

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CONCLUSIONS

The issue of state authorization is complex and has resulted in a number of revisions and delays since 2008, but it is an issue that must be addressed by any institution sending students to other states for clinical rotations. The following recommendations may serve as guidance:

- Each program that places students in clerkships or clinical rotations outside of their home state must be aware of state authorization requirements and consult with their institution's legal counsel to ensure compliance with all state regulations.
- If an institution's home state is a member of NC-SARA, then it may choose to participate. The Unified SARA Agreement, approved on December 1, 2015, details activities that do not trigger physical presence in paragraph 3.4.3.²
- If an institution's home state is not a member of NC-SARA, it should seek guidance from its institution's legal counsel to determine what steps need to be taken to remain in compliance.
- Until there is a federal solution to this issue that is acceptable to all states, each institution will have to navigate the variety of requirements imposed by each of the non-SARA states.
- An algorithm created by the Association of American Medical Colleges that may help in decision-making can be found here: <https://www.aamc.org/download/435970/data/stateauthorizationandmedicaleducation.pdf> (ignoring the reference to VSAS, as it currently only applies to medical students).

PAEA is working with its partner health professions organizations to seek regulatory and legislative remedies. However, states may still impose their own requirements.

² Unified State Authorization Reciprocity Agreement, December 1, 2015 http://nc-sara.org/files/docs/UNIFIED_SARA_AGREEMENT_2015-FINAL_Approved_120115.pdf

RESOURCES

1. Western Interstate Commission for Higher Education (WICHE) – WICHE Cooperative for Educational Technologies, Focus Area on State Authorization <http://wcet.wiche.edu/focus-areas/policy-and-regulation/state-authorization>
2. National Council for State Authorization Reciprocity Agreements (NC-SARA) <http://nc-sara.org/>
3. NC-SARA – State Actions Regarding SARA <http://nc-sara.org/content/sara-state-status>
4. American Association of Medical Colleges discussion of state authorization in the context of medical education <https://www.aamc.org/download/435970/data/stateauthorizationandmedicaleducation.pdf>
5. Directory of State Authorization Agencies and Lead Contacts, April 2014. <http://www.sheeo.org/sites/default/files/Directory%20of%20State%20Authorization%20Agencies%20and%20Lead%20Contacts%20-%202004-2014.pdf>
6. Accreditation Review Commission on Education for the Physician Assistant (ARC-PA). *Accreditation Standards for Physician Assistant Education*, 4th ed. Johns Creek, GA: ARC-PA; 2016. http://www.arc-pa.org/acc_standards/
7. NC-SARA State Authorization Reciprocity Agreements Policies and Standards, Section 2.5.g. <http://www.ncsara.org/files/docs/FINAL%20SARA%20General%20Policies%20released.pdf>
8. Report of The National Association of College and University Attorneys 55th Annual Conference. Washington, DC; June 28 to July 1, 2015. http://www.cmcgc.com/media/handouts/350627/2B_Going%20the%20Distance%20on%20State%20Authorization%20Institutional%20Risks%20and%20Responsibilities.pdf
9. Unified State Authorization Reciprocity Agreement, December 1, 2015. http://nc-sara.org/files/docs/UNIFIED_SARA_AGREEMENT_2015-FINAL_Approved_120115.pdf
10. State Higher Education Executive Officers Association State Authorization Surveys http://sheeo.org/sheeo_surveys/
11. Responses to 2014 survey updates for each state. Especially useful resource for researching non-NC-SARA states.