Welcome to Today's PaperClip Communications Webinar

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Distance Learning Regulations: UPDATE 2014

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2:00 – 3:30 PM ET

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Panelist

Matthew Johnson
• Associate
• Cooley LLP
• mjohnson@cooley.com

The opinions expressed during today’s event are not necessarily those of PaperClip Communications.

Panelist

Jeannie Yockey-Fine
• Senior Manager, State Regulatory Services
• Cooley LLP
• jyockeyfine@cooley.com

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Making Sense of State Authorization Now

Common Myths
The Federal Regulations
The State Regulators
Reciprocity

What has your institution done (or not done) on state authorization?

http://nemrc.state.va.us/docs/state-appl2013/..
Common Myths Debunked

- **MYTH:**
  - “The federal rule was vacated, so I don’t have to worry about state authorization.”

- **FACT:**
  - The revocation of the federal rule had no impact on state law. And there are alternative means for Feds to trip up institutions that are not complying with state laws.

- **MYTH:**
  - “I don’t have to worry about state authorization until 2014 because the Dept. of Education issued an extension.”

- **FACT:**
  - The Dept. of Education extension only applies to federal enforcement of the state laws dealing with “home state” authorization, not distance learning.

- **MYTH:**
  - “I do not need to be authorized in a state if the only students I have in that state are on military bases.”

- **FACT:**
  - Only a very small handful of states exempt institutions that only enroll students on military bases. Most will require institutions to be authorized if they meet the state’s physical presence test.

- **MYTH:**
  - “I do not need to be authorized in a state if I only have one or two students enrolled there.”

- **FACT:**
  - Only a couple of states have a *de minimis* test that exempts an institution with a small number of students. Usually, it does not matter if you have 1 or 100 students in the state (as a legal matter).

- **MYTH:**
  - “I don’t need to worry about state authorization, because reciprocity is right around the corner.”

- **FACT:**
  - Even if reciprocity stays on schedule, large scale adoption by states is years away. And some states (including some of the most difficult) may never participate.
Common Myths Debunked

• **MYTH:**
  – “No one ever gets in trouble for failure to obtain authorization in a state.”

• **FACT:**
  – Penalties are becoming more common. Most often, these consist of cease-and-desist letters, forced teach-outs, enrollment freezes, and fines. Some states even provide for criminal penalties, although these are rarely applied.

FEDERAL REGULATION UPDATE

Era of Increased Regulatory Scrutiny

• **Dept. of Education** – especially OIG, historically suspicious of distance learning, partly due to fraud concerns and issues at for-profit schools
• **Program Integrity Rules (2010)**—new/revised rules on state authorization, incentive compensation, misrepresentation, written arrangements, third party servicers...
• **Accreditors** – Under pressure from feds, getting tougher
• **States** – Stricter oversight by AG’s, especially of licensing requirements for online programs

The Department of Education’s State Authorization Rules

• State authorization is a condition to Title IV eligibility
• Traditionally, Department of Education only required state authorization by the state in which an institution was physically located
• In 2010, 14 new “program integrity” rules, including several provisions relating to state approvals
• The new rules apply to all types of educational institutions – public, for-profit and private non-profit
• Two parts—the “distance education rule” and the “on-ground rule” relating to “home state” requirements

The (Vacated) “Distance Education Rule”

• 34 CFR 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.” (emphasis added)

Rule was Successfully Challenged (But is Coming Back with a Vengeance)

• Rule was thrown out on procedural grounds in APSCU v. Duncan (2012)
• ED has announced its intent to re-issue the distance education rule (in modified form)
Rule was Successfully Challenged (But is Coming Back with a Vengeance)

- The rulemaking process began in February 2014.
  - ED released an initial proposal in March 2014.
  - Due to ED’s “Master Calendar” restrictions, a new Distance Education Rule would need to be promulgated before 11/1/2014 to be effective in 2015.
    - ED would need to release a formal proposal by July 2014.
    - Likely overlap with Congress’s HEA reauthorization process.

ED’s Initial Proposal

- ED released its initial proposed draft ahead of the March negotiation session.
- Would no longer defer to states.

ED’s Initial Proposal

- Would fundamentally change the regulation of distance education.
  - We estimate that 46 states and D.C. would need to amend their laws to comply.
  - The cost and burden (on states and institutions) would be extreme.
  - Would hinder small institutions, including community colleges, from participating in nationwide distance education.
    - Cost analysis would not support obtaining authorization in states with few students or potential students.

ED’s Initial Proposal

- Would mandate that all states regulate distance education.
  - Eliminates option to have a “physical presence test.”
  - Prohibits exemption based on accreditation or years in operation.
- Accepts participation in a reciprocity agreement.
  - Makes participation essential (but a lot of variables at play).

ED’s Initial Proposal

- The next (and final) negotiating session scheduled for April 23-25.
- ED expected to revise the proposal.
  - If consensus cannot be reached (it won’t), ED will proceed with issuing a notice of proposed rulemaking.
    - Opportunity for comments.
Some Related Provisions

- **The Student Disclosure Rule**
  - Section 668.43(b) – All institutions must disclose to all students, or prospective students, the complaint agency in all states where students reside
  - May be posted on your website
  - NB – must also make state approval documents available “on request” to students (auditable by ED)

Related Provisions

- **Enhanced Federal Misrepresentation Rule**
  - Exceptionally broad and vague rules ban any form of “misrepresentation”
  - Rule mostly upheld by Courts
  - Specifically references state authorization or accreditation of a program. 34 CFR 668.72.
  - Some accreditors/states have added similar requirements; State AG’s now very active applying related state laws
  - Sanctions include possible loss of Title IV!
  - New Normal: disclosure of any state and programmatic authorizations must be 100% accurate!

Questions?

STATE LAW

What is happening at the State level?

- With or without a federal rule, underlying state authorization requirements apply.
- Federal actions and related publicity have energized many states.
- As noted, state AG’s have taken up enforcement.
- State law continues to evolve rapidly.

States Where Purely Online Degree Institutions Must Be Authorized

- Alabama
- Arkansas
- Indiana
- Iowa
- Maryland
- Minnesota
- Montana
- Wisconsin
- Wyoming
States Where Purely Online Non-Degree Institutions Must Be Authorized

- Alabama
- Montana
- Nebraska
- New Hampshire
- Texas
- Wisconsin
- Wyoming

Which States Require Authorization?

- Most states (approximately ¾) still require some level of “physical presence” to trigger licensure
- Other states do not require authorization, but exclusively online programs must obtain an exemption:
  - Alaska
  - Illinois
  - North Dakota
  - Utah

Determining Physical Presence – The Most Common “Triggers”

- Local Address/Site
- Local Advertising
- Faculty
- Externships
- Recruiting Activities (usually on ground)
What happens when schools fail to obtain necessary state authorization?

- Cease and desist orders
- Possible institutional sanctions, fines, etc.
- Very unpleasant situations, including lawsuits, if a student graduates and then can’t get licensed (common in fields requiring professional licensure—Nursing, Education, Medicine, Psychology)
- Domino effect with accreditors and Department
- Damage to reputation

State Authorization Reciprocity Agreement (SARA)

- A model State Authorization Reciprocity Agreement (SARA) is in the works
- “Home” state maintains jurisdiction
  - States agree to common state standards, including definition of “physical presence”
  - Managed by regional compact organizations and a national board
- Some years away from “full” implementation
- Unlikely all states will adopt reciprocity

State Authorization Reciprocity Agreement (SARA)

Who?
- MHEC
- NEBHE
- WICHE
- SREB

When/if reciprocity happens, an institution may, without additional authority:

- Advertise
- Offer distance courses / programs.
- Have faculty/employees in a state.
- Conduct proctored exams in a state.
- Serve military on bases/posts.
- Offer (non-licensure) field experiences.
State Authorization Reciprocity Agreement (SARA)

But Institution Can NOT:

- Conduct field experiences in licensure programs (e.g. nursing, teaching) without all necessary approvals.
- Establish a physical location.
- Establish administrative offices.

Current State of SARA Participation

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Questions and Contact Information

Jeannie Yockey-Fine
jyockeyfine@cooley.com
202-776-2972

Matt Johnson
mjohnson@cooley.com
202-776-2445

Q/A

How Do I Call-in with a Question?

If you would like to ask a question of our panelist(s) please press *1 and you will be put in a call queue until it is your turn to ask your question.

OR

You can write in a question or comment anytime during the event by clicking on the “Chat” Bubble in the left hand corner of your screen.

For Questions that Arise After the Conference

If you have a question that you were unable to ask of our presenter(s), please feel free to email us at:
info@paper-clip.com
...and we will be happy to forward it to our panelists!

Feedback

We want your feedback on today’s event!

If you would like to provide suggestions for improvement and/or ideas for future event topics, please email Tamie Klumpyan at:
tamie@paper-clip.com
and she will send you the link to our brief online survey.

Thank you for your participation,
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