

State Authorization and Licensing: Recent Developments and Trends to Watch

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There are several noteworthy national trends that may impact institutions operating in multiple states. First, as states join SARA, many have amended their laws to require non-SARA institutions (e.g., non-degree or unaccredited institutions) to obtain authorization for fully online programs. About half of all states now require institutions offering fully online programs to be licensed, and we expect that number to rise. In other words, the old “physical presence” standard is no longer the basic test for licensure.

Second, in reaction to the failure of several large, for-profit institutions, states continue to increase surety requirements and bolster Student Tuition Recovery Fund protections, raising the cost of market entry in some states.

Finally, recall that the Department of Education’s [rule on state authorization](#) for distance education programs remains “on the books,” even though we still expect it may be modified or suspended prior to its July 1, 2018 effective date. Institutions may need to afford themselves sufficient time to come into compliance or risk a loss of Title IV eligibility. In particular, all schools – regardless of whether they participate in SARA – will be required to disclose prerequisites for professional licensure in each state in which they enroll students. That may require significant research and implementation time for many schools. We will report further on federal developments in a future blog post.

Here’s a roundup of important recent state developments:

California: California will require out-of-state, private for-profit postsecondary institutions enrolling online students in California to register with the Bureau for Private Postsecondary Education (BPPE) beginning in July 2017. Accredited nonprofits are exempt. California still does not participate in SARA, so any out-of-state for-profit institutions enrolling California students will need to register with BPPE if they have not already. Of particular note to coding academies (a frequent enforcement target in California), the amendments also increase fines from \$50,000 to \$100,000 for operating without authorization. See also our [prior post on other developments in California](#).

Florida: The state legislature is considering two companion bills that would authorize the Commission for Independent Education (CIE) to participate in SARA. The bills are expected to pass, paving the way for Florida to submit its application to join SARA and become a participating member in the fall of 2017.

Massachusetts: The Massachusetts state legislature is considering a bill that would grant authority to enter SARA. It remains to be seen how they will reconcile SARA participation with the MA AG’s expanded role in regulating for-profits institutions in that state.

Minnesota: The Minnesota legislature is considering a measure that would make numerous changes to the state’s education statute and add broad new consumer protection provisions. The bill places detailed rules on calculating placement statistics and advertisements on graduate earnings. The measure would also require all institutions to provide more detailed financial information and would remove the upper cap on surety bonds, requiring a surety bond equal to 10% of the preceding year’s gross income from student tuition and fees, even if the total for the surety exceeds \$250,000.

New York State Board of Regents: The New York State Board of Regents now requires any degree-granting, out-of-state institution offering online programs but not participating in SARA to obtain authorization from the Board prior to enrolling New York residents. As we’ve [covered previously](#), institutions had until March 28, 2017 to obtain authorization or an exemption. Institutions that did not obtain an extension prior to March 28 are expected to cease enrolling new students in New York until they obtain authorization.

The [new application process](#) for out-of-state distance education providers was just made available for institutions. The initial application fee is a nonrefundable \$17,000. Approvals must be renewed annually, including receipt of a \$17,000 renewal fee. In addition, the Board is modifying its procedures for in-state on-ground institutions, and staff has indicated that while it works on the changes, it will not accept applications for new on-ground institutions. Staff has not indicated

when it expects procedures to be in place.

If you have questions about any of these developments, and for additional information about our fixed-fee state authorization service for tracking these developments, please contact the author.

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