

State Regulation for the Unregulated: Application Requirements for Alternative Providers

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In a [previous post](#) on CooleyED, we explained that alternative providers often require a license from state education agencies to enroll residents of a given state. That's true regardless of whether the program is online and regardless of whether students get a formal credential, such as a diploma. With state authorization for degree-granting institutions mostly covered by NC-SARA, state regulators are increasingly focusing their enforcement efforts on those left out of SARA: nondegree, alternative providers.

While state requirements can vary substantially, there are a few common licensure requirements that can have a significant impact on a business model. We've put together a list of the key issues alternative providers should consider before enrolling students in a state. While not all of these requirements will be applicable in every state, understanding these common issues will enable providers to avoid launching in states where they cannot meet the requirements or potentially suspending operations in a particular state.

1. **Demonstrated Financial Stability or a Surety Bond.** Most states ask for evidence that an entity is financially stable to ensure that it can cover the cost of operations for a period of time (often at least a year) and will not close down abruptly and leave students unable to complete their programs. States commonly request audited financial statements, balance sheets, bank statements, descriptions of ownership and sources and amounts of capital. Many states will also expect providers to post a surety bond or contribute to a student protection fund (or both). Modest bonding requirements can rapidly add up when a provider seeks to enroll students in dozens of states.
2. **Appropriate Policies and Procedures.** An initial application for state licensure requires the provider be operational, with academic and financial aid policies, forms, catalogs and handbooks in place that meet state requirements. These often include syllabi, course and program descriptions, and student and staff personnel policies that are compliant with specific state requirements. That means an institution needs to be familiar with the requirements of each state in which it intends to operate and may require different policies in place for students residing in different states.
3. **Equitable Tuition Policies.** Many states prohibit charging some students more than other students for the same educational program. This issue arises when different types of students are charged higher tuition, or with respect to increasingly popular income share and similar "job-guarantee" arrangements where students agree to pay back a percentage of income over a period of time to cover tuition. Self-paced programs, where some students may take longer to complete, may also face additional scrutiny from regulators if they result in variable total tuition. Even creative, student-friendly tuition models need to be carefully described, their terms must be clearly disclosed, may require extra discussion and negotiation with the state.
4. **Qualified Instructors.** Many states require individuals who instruct students or evaluate student work to have a documented minimum educational or experience level. Even programs that use a mentor-based rather than instructor-led model may need to verify mentor qualifications, depending on the role of the mentor. In most states, evidence that the instructors are qualified is required when application is made for state authorization. As an initial matter, that means understanding the state's standard for instructor qualifications and implementing a compliant employment policy.
5. **Qualified Students.** An increasing number of states expect providers to admit only students who are capable of successfully completing the program. As concerns increase over underqualified students wasting their money on programs that are beyond their capabilities, more states are requiring providers to demonstrate that they have an appropriate way of determining an applicant's fitness for the program. This may include verifying the prospective student has a high school diploma or conducting an evaluation of an applicant's prior experience and education. These requirements vary widely from state to state and across programs, and providers need to keep careful records of how they verify compliance on a student-by-student basis.
6. **Qualified Recruiting Agents.** Many states require that school personnel engaged in recruiting students meet certain qualifications, often in the form of holding individual recruiter licenses issued by the state. What constitutes recruiting, and whether a recruiter license is required, varies widely from state to state. Recruiter compensation also comes into play. Some states prohibit or limit incentive-based pay for recruiters, mirroring the federal ban on incentive compensation and applying it to providers that are not Title IV participants.

If you have questions about these and other common state licensure issues for alternative providers, please contact us at nanderson@cooley.com or pthompson@cooley.com.

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