Information about USDE Regulations on Distance Education for Title IV Funds

USDE regulations on distance education
The US Department of Education (USDE or the Department) has promulgated new regulations, which went into effect on July 1, 2011, that require institutions offering distance education to have state authorization, if required by the state, to provide distance education in the state where the education is occurring (as opposed to the state from which it is being delivered). Without such authorization, students in those states will not be eligible for Title IV funds.

If these regulations are about distance education and Title IV eligibility, what’s the problem?
While the preamble to the federal regulation is very clear that it is not meant to include authorization for clinical education, practica, etc as related to Title IV eligibility, individual state regulations MAY also require authorization for clinical education experiences.

In response to the regulations, several organizations have collected information about the relevant regulations in each state. The WICHE Cooperative for Educational Technologies (WCET) along with other organizations has created a directory of state regulations, which is available on their website, http://wcet.wiche.edu/advance/state-approval, along with a lot of additional information about this issue.

A search of the WCET directory reveals that at there are at least eight states (CO, LA, MI, NH, NC, OH, OR, WA) that appear to overtly include clinical education, practica, etc among the educational offerings for which state authorization is required, irrespective of requirements related to distance education. Additionally, there are states, e.g., Alabama, that require state authorization if any course is offered in their state regardless of delivery mode; in Alabama’s case, the definition of a course is that credit is awarded. How many states fit this category, or have some other applicable definition, is unknown at this time.

This means that if a program sends students for a clinical education experience to a state that requires authorization, USDE will expect the institution to be in compliance with that state’s requirements, or the students’ eligibility for Title IV funding will be in jeopardy.

Additionally, we have anecdotal evidence of one institution that has been told by one of the eight states noted above that they can no longer send students to that state for clinical education because they do not have the required authorization. We are also aware of one state (not among the eight noted above) that has decided not to grant any new authorizations unless and until the costs and penalties of non-compliance are more clearly defined by USDE, which has yet to occur.

What has been done about this?
In response to these new regulations, the higher education and accreditation communities have sent letters to USDE asking that the regulations be rescinded or at least that implementation be delayed. While USDE did not rescind the regulations, on April 22 they sent a letter to all institutions indicating that while the regulations would become effective on July 1, 2011, the Department will not enforce them until July 1, 2014 as long as institutions provide evidence of a good faith effort to acquire needed authorizations. On April 26, 2011 a community letter, signed by 70 higher education and accreditation
organizations (including CAPTE/APTA), was sent to the House and Senate committees that oversee education policy and regulation asking that implementation of the regulations be stopped by legislative action.

In July, 2011 the USDE was enjoined from enforcing the requirement on the basis of the process used to create the regulation (not on the legitimacy of the requirement) and since then USDE has sued to reinstate the requirement, though no decision in that matter has been rendered to date.

Additionally, there has been at least one meeting of state higher education executives to consider ways to develop reciprocal arrangements. As far as we know, no specific solution was agreed upon.

More recently, the House of Representatives has passed a bill that would rescind the regulations, the White House has made a statement in support of the regulations and the Senate has not acted (nor is it likely to in the near future).

**So, if the USDE regulation is not being enforced, what's the problem?**
Most states have had requirements for authorization all along, but either they have not enforced them or institutions have been unaware that they should have been getting approvals, or both. The problem is that the “cat is out of the bag” and now no one can claim ignorance of the various state laws. States that have had authorization requirements all along, but have not enforced them, are now doing that. States that haven’t had such requirements are establishing them.

**Students in our program do not receive Title IV funding. Do I still have to worry about this?**
Yes, because of the need to function within the requirements of state law regardless of the USDE regulation related to Title IV eligibility.

**What should I do?**
The USDE regulations require the institution, not the program, to have state authorization, which should cover all the institutional offerings, including clinical education. It is our understanding that most institutions are already investigating state regulations and seeking needed authorizations. But this is not an inexpensive proposition and some institutions are deciding not to seek the authorization from some states.

If you send students out of state for clinical education, you should be in contact with your institutional administration to determine if state authorization already exists for the states to which you send students, and if not, whether such authorization is being sought. This is especially important if you send students to the eight states noted above, but may be equally important for other states as well.

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