

## MEMORANDUM

**To:** Gainful Employment Negotiated Rulemaking Committee, U.S. Department of Education  
**From:** Laura Metune, Vice Chancellor of External Affairs  
California Community Colleges Chancellor's Office  
**Date:** January 30, 2018  
**Re:** Issue 8 – Certification

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The Department of Education asked negotiators in its Issue Paper 8 whether existing certification requirements are adequate to ensure that Gainful Employment (GE) programs are preparing students to practice in the occupation for which the program is training them, and whether or not any additional certification requirements are necessary. This memo is responsive to that question.

By way of background, in September of 2017, the California Community Colleges Board of Governors adopted goals for our colleges aligned with Chancellor Oakley's Vision for Success.<sup>1</sup> These goals establish a common direction for our system, one that ensures our colleges are doing their part to serve the educational and workforce training needs of the state. Among the goals, the Vision for Success calls for increasing by 20 percent annually the number of community college students who acquire credentials and skills that prepare them for an in-demand job as well as increasing the number of career technical education graduates who are successfully employed in their field of study. To achieve these goals, the California Community College Strong Workforce Program supports 114 community colleges in establishing and expanding career education programs that meet the needs of industry sectors and employer communities. Strong Workforce ensures that community college programs are continuously evaluated and adjusted based on data-driven outcome that ensure colleges are aligned with and responsive to labor market conditions.

Ensuring career education programs have the proper educational components to meet licensure requirements and accreditation standards is vital to the success of our colleges and the students we serve. It is in that vein that this memo seeks to provide common-sense proposals for improving the existing certification requirements. Specifically, the Committee should consider the following:

1. State Licensure Requirements: To ensure that students may be employed in their own state, the Department should require that GE programs certify that each meets the requirements for professional licensure or certification in any state from which the institution enrolls students.
2. Programmatic Accreditation Requirements: To ensure that graduates are able to find employment in the occupation for which they attended school, institutions should be

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<sup>1</sup> "Vision for Success: Strengthening the California Community Colleges to Meet California's Needs." California Community Colleges Chancellor's Office. July 17, 2017: <http://californiacommunitycolleges.cccco.edu/Portals/0/Reports/vision-for-success.pdf>.

required to certify that they are programmatically accredited in any field for which programmatic accreditation is required, in any state from which the institution enrolls students.

As an additional consideration, the Department should evaluate establishing a requirement for institutions to certify that their gainful employment programs undergo a process that ensures alignment with the generally recognized programmatic accreditation and other requirements for gainful employment in the occupation to which the program leads.

**Proposal No. 1: To ensure that students may be employed in their own state, the Department should require that GE programs certify that each meets the requirements for professional licensure or certification in any state from which the institution enrolls students.**

Background: 34 CFR 668.14(d)(3) currently requires that for each eligible GE program that an institution offers, the college must certify that it meets the “applicable educational prerequisites for professional licensure or certification requirements” in the state where the institution is located or in which the institution is required to obtain state authorization.

Currently, because the state authorization distance education rules promulgated in December 2016 have not gone into effect, licensure requirements must be met only in the state in which the institution is located. For instance, an institution in Indiana that enrolls students in online programs who live in Arizona or Maine is not currently required to meet the licensure requirements in those states to meet the gainful employment certification requirements, at least until the state authorization distance education rule goes into effect in July 2018. Moreover, even brick-and-mortar students traveling across state lines for school face these challenges.

Without federal clarity on the requirements of distance and correspondence education providers enrolling students from other states, state authorizing agencies are often left in the dark. As the Department of Education said in the state authorization distance education rule, “some States have expressed concerns over their ability to identify which out of State providers are operating in their States; [and] whether those programs prepare their students for employment, including meeting licensure or certification requirements in those States.”<sup>2</sup>

Moreover, licensure requirements can have significant implications for students and workers themselves. Unlicensed workers also fare worse in the workplace than licensed workers, earning 28 percent less on average.<sup>3</sup> And while in some cases, licensure requirements place undue burdens on workers, those requirements are a reality of today’s workers, with more than one in four U.S. workers across 1,100 occupations requiring a license for their work today.<sup>4</sup>

<sup>2</sup> 81 FR 92232.

<sup>3</sup> “Occupational Licensing: A Framework for Policymakers.” U.S. Department of the Treasury, Council of Economic Advisers, and U.S. Department of Labor. July 2015: [https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf).

<sup>4</sup> Ibid; Erickson, Angela. “Putting Licensing to the Test: How Licenses for Tour Guides Fail Consumers—and Guides.” Institute for Justice. October 2016: <http://ij.org/wp-content/uploads/2016/10/Putting-Licensing-to-the-Test-3.pdf>.

Some institutions of higher education have been found to suggest, intimate, or misrepresent to students that their education will lead to employment, when in actuality the fact that they do not meet students' home state licensure requirements forecloses the possibility that those students will find employment in the field for which they sought education. For instance, in 2015, the Iowa Attorney General settled a lawsuit with an institution that offered an online teacher preparation program that students believed would lead to their being certified as a public school teacher. According to the Attorney General's office, graduation from that program is not sufficient to obtain initial teacher licensure in any state, in large part because its programs do not offer student teaching experience.<sup>5</sup>

It cannot be said that a program leads to gainful employment in a recognized occupation if it does not even meet the minimum bar for graduates to become licensed. Therefore, the Department should clarify in the regulations that institutions must certify they meet licensure requirements for all of their students, in all states in which they operate. Given that some students may enroll from a state in which the licensure requirements are not met, with the intent to move to another state in which the licensure requirements would be met (including, perhaps, the state in which the institution is located), language proposed by legal aid representatives in their comments on the state authorization distance education rule<sup>6</sup> would permit an exception for those students if accompanied by a written statement from the student.

Proposed Language:

*34 CFR 668.414 - Certification requirements for GE programs.*

*(d) GE program eligibility certifications.* An institution certifies for each eligible program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that -

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(3) For the State in which the institution is located or in which the institution is otherwise required to obtain State approval under 34 CFR 600.9, **or the State in which a student enrolled in the program resides,** each eligible program it offers satisfies the applicable educational prerequisites for professional licensure or certification requirements in that State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter, **unless prior to enrollment the student affirmatively states in writing, in the student's own words, that the student knows that the program does not meet the state licensure requirements, and explains the reason the student seeks to enroll in the program;** and

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<sup>5</sup> "Former Iowa Ashford Online Education Students Now Receiving Payments from 2014 \$7.25 Million Settlement." Iowa Department of Justice. 15 July 2015: <https://www.iowaattorneygeneral.gov/newsroom/former-iowa-ashford-online-education-students-now-receiving-payments-from-2014-725-million-settlem/>.

<sup>6</sup> "Comments from the Legal Aid Community to the Department of Education re: Proposed Regulations on Program Integrity and Improvement: State Authorization of Distance Education Programs." 24 August 2016: <https://www.regulations.gov/document?D=ED-2016-OPE-0050-0090>.

**Proposal No. 2: To ensure that graduates are able to find employment in the occupation for which they attended school, institutions should be required to certify that they are programmatically accredited in any field for which programmatic accreditation is required, in any state from which the institution enrolls students.**

Background: As with state licensure requirements, some states, employers, and/or occupations require that educational programs that lead to certain certifications hold programmatic or specialized accreditation in that field. Yet too often, students do not realize that their programs lack that programmatic accreditation and learn only when they are unable to find employment in the field that their credential is effectively worthless.

In particular, some states require that those who sit for a licensure exam either have graduated from a program with specialized/programmatic accreditation or meet a separate set of requirements. For instance, Kansas requires those who wish to become licensed clinical social workers to either demonstrate their graduation from a Council on Social Work Education (CSWE)-accredited program, or to apply to have their program of study evaluated against a lengthy list of academic requirements.<sup>7</sup>

In other circumstances, states require programmatic accreditation to sit for the licensure exam, but—as with the state licensure requirements noted above—institutions are currently only required to meet state standards for programmatic accreditation in the state in which the institution is located. That leaves students who live in other states out of luck. The Colorado Attorney General’s office investigated and obtained relief for former students for an institution that offered a doctorate of education program in counseling psychology without American Psychological Association (APA) accreditation, a requirement to become licensed in the state.<sup>8</sup> And a lawsuit by the New York Attorney General’s office found that a higher education corporation headquartered out of state did not adequately disclose that some of its programs lacked programmatic accreditation required by New York for licensure.<sup>9</sup>

The Department should update its rule to reflect the programmatic accreditation requirements of the state in which the student resides, rather than simply the state in which the institution is located. As with state licensure, students who live across state lines from their institution may otherwise find themselves in debt and having wasted their time in a program that will not permit them to gain employment in their home states. For a program to be called one that leads to gainful employment in a recognized occupation, as is required by the Higher Education Act for proprietary and certificate programs, it must meet this minimum bar.

The Department should include an exemption similar to that proposed under the state licensure requirements, as some students may enroll from a state in which programmatic accreditation is required with the intent to move to another state where that accreditation is not required. For

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<sup>7</sup> §102-2-6, Program Approval. <https://ksbsrb.ks.gov/docs/default-source/regulations/social-workers/102-2-6.pdf?sfvrsn=4>.

<sup>8</sup> “Argosy to Pay \$3.3 Million for Misleading Psychology Students.” American Psychological Association. February 2014, Vol. 45, No. 2: <http://www.apa.org/monitor/2014/02/argosy.aspx>.

<sup>9</sup> “A.G. Schneiderman Announces Groundbreaking \$10.25 Million Dollar Settlement with For-Profit Education Company that Inflated Job Placement Rates to Attract Students.” New York Attorney General Eric T. Schneiderman. 19 August 2013: <https://ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>.

example, California allows students from selected institutions that are not accredited by the American Bar Association to sit for the California Bar Examination. Specifically, the proposed language would permit an exception from programmatic accreditation requirements if the students enrolling from a state that requires programmatic accreditation provide a written statement.

Proposed Language:

§ 668.414 *Certification requirements for GE programs.*

(d) *GE program eligibility certifications.* An institution certifies for each eligible program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that -

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(2) Each eligible GE program it offers is programmatically accredited, if such accreditation is required by a Federal governmental entity or by a governmental entity in the State in which the institution is located **or the State in which a student enrolled in the program resides**, or in which the institution is otherwise required to obtain State approval under 34 CFR 600.9, **unless prior to enrollment the student affirmatively states in writing, in the student's own words, that the student knows that the program does not meet the state programmatic accreditation requirements, and explains the reason the student seeks to enroll in the program;**

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Additional Consideration: In some occupations, programmatic accreditation is strongly preferred by employers but not explicitly required by state or federal law. Employers may require third-party certification for which programmatic accreditation is required. For instance, one Florida school's pending accreditation with a specialized accrediting agency lapsed last year, leaving students in the program ineligible to sit for the exam—passage of which is commonly required to find employment in the field.<sup>10</sup> In effect, students find themselves unable to find jobs without either a programmatically accredited credential or years of work experience—and they cannot gain that work experience without the credential. In particular, many healthcare occupations require programmatic accreditation for credentials to be recognized and graduates to become employed in the field.<sup>11</sup>

In California, for example, no license or certification is required to be a medical assistant, but in practice certain training is necessary to secure employment as a medical assistant in this state. According to the Medical Board of California “Medical assistants are not licensed, certified, or registered by the State of California. However, the medical assistant's employer and/or supervising physician's or podiatrist's malpractice insurance carrier may require that the medical assistant be certified by a national or private association.”<sup>12</sup> According to the American

<sup>10</sup> Smith, Ashley. “Moonlighting While Accreditation Fell Through.” *Inside Higher Ed*. 28 April 2017: <https://www.insidehighered.com/news/2017/04/28/tallahassee-professor-fired-after-program-loses-potential-accreditation>.

<sup>11</sup> See, for instance, “Diagnostic Medical Sonographers and Cardiovascular Technologists and Technicians, Including Vascular Technologists.” U.S. Bureau of Labor Statistics. 24 October 2017: <https://www.bls.gov/ooh/healthcare/print/diagnostic-medical-sonographers.htm>.

<sup>12</sup> The Medical Board of California. “Frequently Asked Questions – Medical Assistants.”

Association of Medical Assistants, “[M]ore employers of allied health personnel [are] preferring or even insisting that their medical assistants have the CMA (AAMA) credential.”<sup>13</sup>

To ensure that institutions are offering only programs of particular use to students, the Department should evaluate establishing a requirement for institutions to certify that their gainful employment programs undergo a process that ensures alignment with the generally recognized programmatic accreditation and other requirements for gainful employment in the recognized occupation to which the program leads. Before certifying that they meet the process requirement, institutions could rely on the type of market analysis that many of colleges already conduct prior to launching a new program to ensure that these programs will meet the requirements of typical job openings in the area. Alternatively, a smaller local college could point to evidence that local businesses unaffiliated with the institution regularly hire graduates of their programs for that field.

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<sup>13</sup> Balasa, Donald. American Association of Medical Assistants. Why more employers are hiring CMAs (AAMA). <http://www.aama-ntl.org/docs/default-source/employers/more-emps-hire-cma.pdf?sfvrsn=4>. Only graduates of medical assisting programs accredited by two of the five major accrediting agencies are eligible to take the CMA (AAMA) Certification Examination. For more information, see American Association of Medical Assistants. “What is a CMA (AAMA)?” <http://www.aama-ntl.org/medical-assisting/what-is-a-cma#.U4PrQiimV4U>.