Realigning Professional Licensure within the 21st Century

Jennifer S. Lewis, Anne M. Klingen, & Kenneth M. Heard, III
Unprecedented Times 2020-2022

• **COVID**
  - 1.6 million missing from the full-time workforce due to COVID and long-haulers (Picchi, 2022).

• **Retirement** (of baby boomers)

• **The Great Resignation**
United States Labor Shortage

- 10.9 million job vacancies in December of 2021 (Yellin, 2021).
- The U.S. is 2.2 million short of its pre-pandemic workforce size (Pichhi, 2022).
Different Pathways to Licensure

- Initial Licensure
- Alternate Licensure
- Reciprocity
- Occupational Licensure Interstate Compacts
- Transferring License
- License Portability
  - for Military Spouses
  - for Dependent and Spouses of Medical Professionals
- Universal Licensing
Occupational Licensure Compacts

- Advanced Practice Registered Nurse (APRN) Compact
- Audiology and Speech-Language Pathology Interstate Compact (ASLP-IC)
- Counseling Compact
- EMS Compact
- Interstate Medical Licensure Compact (IMLC)
- Nurse Licensure Compact (NLC)
- Occupational Therapy Licensure Compact (OT Compact)
- Physical Therapy Licensure Compact (PT Compact)
- Physician Associates Compact (PA Compact) - covers physician assistants/physician associates
- Psychology Interjurisdictional Compact (PSYPAC)
Despite belonging to a reciprocity agreement that includes members throughout the country, a state may elect to only offer reciprocity for 1 or 2 states.
License portability for military spouses

- 38 states currently offer this special type of reciprocity that only applies to military spouses (Education Commission of the States, 2020) and which ranges from
  - full recognition
  - recognition only if equivalent training
  - election of whether or not to recognize license

- Chart-https://www.dol.gov/agencies/vets/veterans/military-spouses/license-recognition#AL
License Portability for Dependents and Spouses of Medical Professionals

For example, Louisiana grants both dependents and spouses of medical professionals the ability to become licensed without going through each step of obtaining a new license (State Policy Network, 2021).
Benefits of Licensure and Certification

• Implementing high standards for specific professions that are assessed based on education, training, and examination.

• Protecting the public by:
  • Identifying the type of conduct that requires disciplinary action
  • Establishing guidelines that support consistency and fairness in the practice of a profession across a state

• Higher wages are also achieved for those licensed (Tabriz, 2019).
Increased Pattern of Mobility

• In 2019, 7,398,337 people migrated to another state (Census, 2019).

• “Over 20% more Americans moved in 2021 compared to 2020” (North American, 2022, para. 1).

• With remote work increasing, “14 to 23 million Americans relocated in 2021” (North American, 2022, para. 3).
What are the consequences of creating barriers to interstate mobility?

- Interstate migration provides individuals with:
  - economic mobility
  - labor market efficiency
- Barriers “impede interstate mobility” by adversely affecting the economy which creates a labor market incapable of adjusting to shocks thereby increasing downturns and extending economic recovery time.

(Karahn & Li, 2016; National Conference of State Legislatures, 2020, para. 5).

A 2017 study illustrated that in many professions (including lawyers, social workers, electricians, and real estate appraisers) lower rates of between-state migrations occur (Johnson & Kleiner, 2017).

“The ability of workers to move to different labor markets without restriction … [is] fundamental to the efficient functioning of those markets” (Smith, 1776; Friedman, 1962)
Engagement break

Mississippi trivia
Mississippi's official nickname is both "the Magnolia State" and the...?
Mississippi's official nickname is both "the Magnolia State" and the Hospitality State.
All of the following are cities found in the state of Mississippi EXCEPT:

A) Jackson
B) Meridian
C) Lafayette
D) Hattiesburg
E) Tupelo
All of the following are cities found in the state of Mississippi EXCEPT:

C) Lafayette

Lafayette is named after Gilbert du Motier, Marquis de La Fayette, French hero of the American Civil War and the French Revolution.

The University of Mississippi is located in Lafayette County, in an unincorporated area known as University, MS. It is surrounded by the city of Oxford.
Mississippi produces about 60% of America's what?
Mississippi produces about 60% of America's what?

Image Attribution to Catfish Hut on Enid Lake
https://www.facebook.com/catfishhut/
Where did Occupational Licensing come from?

- **Dent v. West Virginia, 129 U.S. 114 (1889)**

US Supreme Court established that a state may establish physician licensing to protect public health and safety.

![Egyptian Priest and acolytes prepare a Pharaoh for the afterlife.](https://commons.wikimedia.org/wiki/File:Hunefer-Papyrus.jpg)  
Ancient Egyptian Papyrus from the Book of the Dead of Hunefer, Public domain, via Wikimedia Commons
A Rise in Occupational Licensure

1950
In 1950, only 5% of professions led to licensure thereby requiring 1 in 20 workers to become licensed to work*

2010
Data shows 25% of professions required licensure

2018
43 million people held a professional certification or license (Bureau of Labor Statistics, 2019).

1 in 3 or 33.3% of all professions require licensure (State Policy Network, 2021).

2021-

Occupational Licensing in the US

- 1950: 5% of workforce
- 2021: 33% of workforce

560% increase in the number of positions subject to a licensing requirement
Occupational Licensing Run Amok
"About the only people who are unlicensed in California are clergymen and university professors, apparently because no one takes them seriously."

Occupational Licensing: The Economists Weigh In

- Widely divergent state requirements
  - Create barriers to mobility
  - Restrict new technology (ex. Telework)
  - Reduce Employment Opportunities
  - Increase costs for consumers
  - Hamper distance education opportunities

Adam Smith, father of Modern Economics
Occupational Licensing: The Economists Weigh In

- Disproportionately affect certain populations
  - Military Spouses
  - Immigrants
  - Criminal Backgrounds
  - Low-income and first-generation
MULTI-STATE OCCUPATIONAL LICENSING LEARNING POLICY CONSORTIUM

Occupational Licensing: State Governments Take Note

Arkansas  Illinois  Nevada
Colorado  Indiana  Wisconsin
Connecticut  Kentucky  Utah
Delaware  Maryland

Image Attribution: https://www.ncsl.org/research/labor-and-employment/request-for-applications.aspx
Universal Licensure

Universal Licensure allows states to recognize education, training and other key skills applicants have but still require residency, testing, and background checks along with fees.

- 2019-passed in Arizona, Montana, and Pennsylvania
- 2020- Missouri and Colorado. (Henze & Herman, 2021, para. 4).
- 2021- Kansas, Mississippi (State Policy Network, 2021).
Don’t Talk About Universal Licensure Recognition

Just another name for Interstate Licensure Compacts and Universal Licensure
Universal Licensure: Healthcare
Interstate Licensure Compacts

• Enhanced Nursing Licensure Compact (eNLC) (37 states)
• Interstate Medical Licensure Compact (30 states)
• Emergency Medical Services Personnel Licensure Interstate Compact (21 states)
• Advanced Practice Nursing Compact (7 states)
• Physical Therapy Compact (29 states)
• Psychology Interjurisdictional Compact (15 states)
• Audiology And Speech-Language
• Pathology Compact (6)
Universal Licensure: Licensed Professions

• Profession-specific Interstate Practice Systems
  • Professional Engineers
  • Architects
  • Certified Public Accountants
  • Professional Surveyors
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<thead>
<tr>
<th>State</th>
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<td>Arizona</td>
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Institute for Justice 2021.
Universal Licensure Advantages

- Allows for expeditious interstate movement of practitioners
- Reduces barriers for out-of-state practitioners aiming to practice within your state
Universal Licensure Applicants

- **Submit Licensing Applications**
- **Pay Fees**
- **Background Checks**
- **Some States Require a State Specific Tests**
- **Might Require Residency**
- **Quick Decisions from Licensing Boards**
Challenges Relative to Providing Disclosures

- Limitations of State-Specific Education Information
- Professionals use many tools to obtain licenses
  - Interstate Compacts, Universal Licensure, and Reciprocity
- Need the flexibility to educate students about these options
Engagement break

• Mississippi Pop Quiz
• Name a Famous Mississippian
Just A Few Notable Mississippians
Regulations, What works, What doesn’t

- Federal Regulations
- NC-SARA Regulations
- State by State Regulations

Assumption that if a program meets its home state’s licensing board requirements, and another state accepts that license through a compact or reciprocity, the program logically meets the requirements of the other state.

BUT OUR STANDARD OF REVIEW IS PREMISED UPON ORIGINAL LICENSURE BY STATE
Federal Regulations and Title IV HEA programs.

- Definition of state authorization reciprocity agreement (34 CFR 600.2)
- State Authorization (34 CFR 600.9(c))
- Professional Licensure Notifications (34 CFR 668.3(a)(5)(v) & 668.43(c))
- Contact information for filing complaints (34 CFR 668.43(b))
- Misrepresentation (34 CFR 668.71) (34 CFR 668.72)
- Student Identification Verification (34 CFR 602.17(h))
34 CFR 668.43 - Institutional Information Professional Licensure Notifications - 668.43(a)(5)(v) & 668.43(c)
Direct Individual Notifications/Disclosures

(1) If the institution has made a determination under paragraph (a)(5)(v) of this section that the program's curriculum does not meet the State educational requirements for licensure or certification in the State in which a prospective student is located, or if the institution has not made a determination regarding whether the program's curriculum meets the State educational requirements for licensure or certification, the institution must provide notice to that effect to the student prior to the student's enrollment in the program.

(2) If the institution makes a determination under paragraph (a)(5)(v)(B) of this section that a program's curriculum does not meet the State educational requirements for licensure or certification in a State in which a student who is currently enrolled in such program is located, the institution must provide notice to that effect to the student within 14 calendar days of making such determination.

“Prospective Student Located” is not always reliable

14 days, THAT’S FAST!
Programs leading to Professional Licensure:

SARA has no effect on state professional licensing requirements. Any institution approved to participate in SARA that offers courses or programs designed to lead to professional licensure or certification or advertised as leading to licensure must satisfy all federal requirements for disclosures regarding such professional licensure programs under 34 §C.F.R. 668.43.

For SARA purposes, these requirements will also apply to non-Title IV institutions.
For SARA purposes, institutions that are unable, after all reasonable efforts, to determine whether a program will meet state professional licensure requirements shall provide the student or applicant with current contact information for any applicable licensing boards, and advise the student or applicant to determine whether the program meets requirements for licensure in the state where the student is located.
SARA GUIDANCE only confuses things

- Institutions must keep all students, applicants, and potential students informed as to whether such offerings actually meet state licensing requirements.

- For the purposes of SARA once a student has provided the institution with the state they wish to practice in, then unless the student notifies the institution of a change in the state, the institution would provide initial written notification.
Follow-up communications should be made if the institution becomes aware of changes that would affect the student’s ability to pursue and/or obtain licensure.

HOWEVER, that is strictly for the written notification requirement; it does not cover the consumer protection requirements for marketing, website, etc. The institution should be updating and verifying information as circumstances change, and at least yearly as a best practice.
Johnny Isakson and David P. Roe, M.D., Section 1018

21st Century Guidelines

Both require notification to all students that the state in which they “intend” to work has other non-program post-graduation requirements such as professional exams, application fees, work/training minimums, etc.
Johnny Isakson and David P. Roe, M.D.

Section 1018 – Consumer Information Requirements

- Not just educational requirements based upon program of study

- Must also **fully disclose** conditions or additional requirements, including training, experience, or examination

- I&R also centers around place of **intended** practice
On the Horizon: 21st Century Guidelines will replace CRAC Guidelines

- Information about professional licensure requirements, where appropriate, and advice on licensing in the state(s) of intended employment.

- How do we know state of intended employment?

- There is no institutional req for FUTURE PLANS
what does all that mean: DOESN’T WORK

- Coordination in a fragmented environment
- Institutional Resources are limited
- Location is a moving target; our students are mobile

IT DOES NOT WORK LIKE THAT

LEME EXPLAIN
what does all that mean:

Expansive Research really means Expensive to Research
what does all that mean:
It’s all about Perspective

- Cost for initial research 1 PLC Program - $22,000
- Cost for annual research update/program - $11,000

$525 a year per institution
Prospective GI Bill student for F2F nursing program located in Kansas, originally from Mississippi, applies to a school in Florida. When asked by the recruiter where they wish to practice, prospect says (1) Bora Bora, or (2) go home to Mississippi.

What should institution do/disclose to prospect? What about at the time of enrollment?
Even worse, there are Research Roadblocks

- Most licensure boards handle on a case by case basis

- Written confirmation process impracticable: Anecdotal evidence suggests 90% go unresponsive

- Model Practice Acts aren’t so modeled in practice

- Money
By the Way:
What Happened to Practice Acts

Many states used them as starting point, but then went and nullified the standardization

- Built in some state protection
- Require their own specific licensure for Program Directors, preceptors, instructors....
- Programs “Approved by this Board”
Institutional Financial Burdens

- **FTE’s**
  - Math for most institutions to perform exhaustive determination for all of its programs = Cost prohibitive.

- **State Specific Curriculum would defy logic**
  - Not going to happen, just imagine a Mississippi institution teaching about Texas History...cowboy hats and rattlesnakes

- **Cost to create**
Here’s some Interesting State Level Licensure Language- So Much Variability

- **MLS in Tennessee**: Prerequisite course work includes Sixteen (16) semester hours or twenty-four (24) quarter hours of chemistry, a high number for admission purposes.
- **Alabama nursing** requires that clinical coordinators/preceptors have an unencumbered Alabama nursing license.
- **CPA licensure** in nearly every US State requires 150 hours of postsecondary education. Do undergraduate accounting programs require students earn 150 hours?
- **Allopaths in Nevada**, check out NRS 630.253(2)(b). The requirement needs to be satisfied within the first 2 years of initial licensure.
Here's some interesting state level licensure language—so much variability.

- **Florida statute requires masters-level mental health counselors** to have "a course in human sexuality and a course in substance abuse" as a part of their degree program.

- **South Carolina statute requires mental health counselors** to have "coursework content providing an understanding of career development theories" as part of their graduate studies.

- **Arkansas statute requires mental health counselors** to have at least one graduate credit in "Technology Assisted Counseling."
MORE Federal Rulemaking Aimed at Reciprocity This Time

Our concerns:

Reciprocity could maintain a uniform application and uniform fee, but the institution would be subject to any consumer protection laws (including state refund policies, reporting, surety bonds etc.) as designated by the state.
MORE Federal Rulemaking Aimed at Reciprocity This Time

- A Major Change to Professional Licensure Requirements
  - the institution must **ENSURE** that each program **Satisfies** state educational requirements for programs leading to a professional license or certification where the student is located.
  - The proposed language would remove the “no determination made” option.
Questions raised by NEGREG

What will it mean to ensure? What kind of documentation will be enough? Will it require an affirmative statement from the state licensing board? Will a list of their published requirements and our documented assessment that we meet them be enough if we can prove we tried to get an affirmative decision?

Has the department given any consideration to the cost of this change? I realize their previous estimates in the last regulation change were far below the actual work time required, I would hope there has been some discussion about this additional workload.

Who is responsible for the repayment of Title IV funds for a mid-term move? The institution (even though the disbursement date has passed) or the student? Either way, the institution, and student have incurred the cost of the education, but now repayment is expected.

What does the department expect to happen for students who were initially enrolled under 'meeting a state’s educational requirements' but then the state changes? I know the currents regs say that we have a finite amount of time to inform the student, but these proposed regs don’t seem to cover that scenario.

Is there a standard definition "initial enrollment"?
From Leaders in our Industry

There is the completely separate issue that is still hanging out there about prospective students for direct notifications for purposes of 34 CFR 668.43(c) which causes the institution to address location "prior to enrollment". We don't know how the Department will try to harmonize this regulation with new proposed language.

I would also love to see professional boards be more active in informing the Department about the various ways states approve, review, or offer multiple paths to certification. We suggested to the Department, in our comment the first week of rulemaking in January, that they communicate with state licensing boards to learn of the various processes for professions and states.

For the language that was last put up in front of the negotiators, no provision for a waiver was included. We need to be vocal that such an option is needed to best serve student needs. For teacher education, and many other professions, we feel the lack of a waiver will add to the shortage of professionals in those fields.
Identify options for meeting the existing disclosure requirements in a changing professional licensure landscape

- Specialized Accreditors as Defining Gateway: Medicine (LCME), Dentistry (CODA), Occupational Therapy (ACOTE), Physical Therapy (CAPTE)
- National Boards
- Multistate licensure/Reciprocity
  - example, National Licensure Consortium (NLC) The NLC increases access to care while maintaining public protection at the state level. Under the NLC, nurses can practice in other NLC states, without having to obtain additional licenses.
Next Steps for Professional Licensure Disclosures

- Reach out to NC-SARA and SAN
- Work with your State Professional Licensing Boards to support alternative pathways to licensure
- Work with your Legislative Action team & reach out to your legislators
- Submit A Comment to US DOE Negotiated Rulemaking
Thank you!

- Kenneth M. Heard, III
  - Director of Department of State Authorization
  - University of Mississippi Medical Center

- Anne M. Klingan
  - State Authorization & Compliance Director
  - University of Mississippi

- Jennifer S. Lewis
  - Associate Director of Compliance and Ethics
  - University of Southern Mississippi
Presentation Summary

- Discussed the different pathways to licensure
- Reviewed the challenges relative to providing professional licensing information to students
- Recognized the move toward universal licensure
- Identified options for meeting the existing disclosure requirements in a changing professional licensure landscape
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