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Legal and Liability Issues with Allowing Students to Volunteer in Direct Patient Care

It is in human nature to want to help others, especially now. Students, particularly those in healthcare fields, may volunteer to provide clinical help in healthcare settings during this pandemic, and overwhelmed hospitals may need it. Universities, academic medical centers, and other healthcare providers should consider the legal implications of such arrangements as they try to balance their obligations to students, students' desire to serve, and the emergent needs of healthcare affiliates and communities.

Consider the directives of the relevant accrediting bodies about student participation in direct patient care.

Medical Students. On March 30, 2020 the Association of American Medical Colleges (AAMC)[1] issued interim guidance strongly recommending that medical students not be involved in any patient care activities for the next two weeks, through April 14, 2020 unless there is a critical healthcare workforce need locally. If medical students want participating voluntarily in direct patient contact activities during a critical health care workforce need, look to the guidance for helpful information. The American Association of Colleges of Osteopathic Medicine issued a similar directive.

Nursing Students. The Commission on Collegiate Nursing Education (CCNE) issued limited guidance on nursing programs regarding Baccalaureate and Graduate programs and Nurse Practitioner programs; however, such guidance relates primarily to clinical-hour requirements.

Allied Health Professionals. For allied health professionals and other healthcare trainees, we encourage you to be aware of your accrediting body's

guidance on this issue. For instance, see ARC-PA Statement regarding physician assistants in training.

If there is a critical healthcare need and your students want to volunteer, there are additional considerations.

Document that Participation is Voluntary. No student should be required to volunteer. Document that your student understands that his or her participation is purely voluntary, done for purposes of providing a public service at a time of emergency, and will not be compensated or considered for course credit.

Maintain Communication with Affiliated Entities. If a student is volunteering at an entity distinct from your medical school, work very closely with them to ensure appropriate placement and that the student is properly trained and supervised.

Be Aware of the Fair Labor Standards Act (FLSA). The FLSA has stringent requirements with respect to the use of volunteers, and the U.S. Department of Labor recently issued guidance.

Ensure Insurance Coverage. Understand available insurance coverage for volunteer students and clearly document who will cover any incidents—the university or the hospital or healthcare provider where the student is volunteering. Your affiliation agreement that sets out insurance obligations may not be applicable in this situation because the volunteer is not providing clinical care as a student. Insurance coverage considerations include medical malpractice claims and tail coverage, liability claims if the student is injured, property claims such as those for damaged medical equipment. Any volunteer must be appropriately supervised at all times by healthcare professionals; therefore, understand how those supervisors will be covered.

Good Samaritan Laws May Not Apply. In an emergency, health care professionals should be concerned about helping people in need rather than worrying about possible liability issues—which is why, in the United States, all states have some form of Good Samaritan laws. Carefully review your state's statute before relying on it for the sole form of liability coverage.

Fourth-Year Medical Students and Provisional Licensure. Some states have asked deans of their medical schools to advance graduation for fourth-year students to a date in April to rapidly expand the capacity of the medical workforce. We may see legislation and accreditor action allowing provisional licensure for students who have not been able to complete clinical rotations but who are otherwise ready to advance into practice.

Changes are Coming. Know that the law and guidance from accrediting bodies around this issue are rapidly changing. Stay up to date.

Contact us

Husch Blackwell continues to monitor the evolving situation and its implications for our clients. Should you have any questions, please do not hesitate to contact your Husch Blackwell attorney.

COVID-19 resource

Husch Blackwell has launched a COVID-19 response team providing insight to institutions as they address challenges related to the Coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and employment, education, and healthcare industries among others.

[1] The guidance was issued jointly with the Liaison Committee on Medical Education (LCME), the accrediting body for medical schools.

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