



## SEPARATE INCORPORATION

### Policy Change Adopted on Second Reading

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The Higher Learning Commission (HLC) Board of Trustees (“the Board”) adopted this policy on second reading at its meeting on February 28–March 1, 2019.

#### Background

Prior to this change, HLC’s policy on jurisdiction required its affiliated institutions to be separately incorporated as institutions of higher education. This requirement was a significant challenge primarily for institutions that are a subsidiary of a larger healthcare corporation (i.e., a hospital) and rely on Medicare “pass-through” support payments for the costs of nursing and allied health education activities. Hospitals must meet a host of federal requirements to qualify for these funds. These include demonstrating direct control of the program curriculum, controlling the administration of the program, employing the teaching staff, and controlling both classroom instruction and clinical training. Therefore, compliance with HLC’s jurisdiction requirement placed institutions controlled by these entities at odds with the federal regulations, thereby jeopardizing their funding. The adopted policy change addressed this issue by removing the language that gave rise to the interpretation that affiliated institutions must be separately incorporated. The policy now specifies instead that the primary purpose of the affiliated institution must be higher education. Separately, HLC is developing a framework that will enable such institutions to demonstrate they meet HLC requirements without separately incorporating. Such framework will be published at a later date.

HLC circulated these policy changes to the membership and other interested parties after the Board’s February 2018 meeting. A number of comments were received. In response, HLC revised the policy to restore an explicit grandfathering provision to accommodate several member institutions that are not incorporated in the region, but are registered to do business in the region. The final policy change also clarifies that it is the affiliated institution, and not any related entity, that must have higher education as its primary purpose.

#### Implementation

This policy is effective immediately.

## Adopted Policy

Wording that was deleted or revised is shown as strikethrough (~~old wording~~); new language, whether through addition or revision, is shown in bold (**new wording**). Changes between first and second reading, other than minor editing, are indicated in bold italics (*new wording*). These revisions have been made on HLC's website at [hlcommission.org/policies](http://hlcommission.org/policies).

Policy Title: Jurisdiction  
Number: INST.B.10.010

An institution applying for or holding accredited or candidate status with the Commission shall demonstrate that it meets the Commission's jurisdictional requirements, as established in the *Bylaws of the Higher Learning Commission*, related to 1) incorporation and 2) substantial presence.

### Incorporation

An institution shall demonstrate that it is incorporated ~~as an institution of higher education~~ in one of the 19 states of the north central region or operating under federal authority in conjunction with an executive branch or independent federal agency or branch of the U.S. military. **An institution applying for or holding accredited or candidate status with the Commission shall demonstrate that its primary purpose is higher education.**

*(Note that an institution that was accredited by, or a candidate for accreditation with, the Commission prior to July 1, 2010 ~~must be incorporated as an institution of higher education but may be incorporated outside the region provided that it is registered to do business in at least one of the 19 states of the North Central region. A charter or other form of authorization from the state legislature shall constitute incorporation for public institutions for the purpose of this policy.~~)*

### Substantial Presence

An institution shall demonstrate that its operations are substantially in the 19-state north central region. An institution shall provide evidence that the majority of its educational administration and activity, business operations, and executive and administrative leadership are located or are operating within the North Central region. Institutions that have campuses or additional locations must demonstrate that at least one campus and one additional location (if the institution has additional locations) are located in the region. The Commission shall make the decision regarding whether the institution is substantially in the region based on the preponderance of the evidence regarding the operations of the institution. The Commission shall consider evidence presented by the institution as

well as evidence available from public sources and from evaluations undertaken by the Commission in making a judgment about the institution's presence in the region.

### **Establishing Substantial Presence**

Institutions must establish that they meet the substantial presence requirement according to the implementation provisions established in the Commission's Bylaws. The appropriate provisions derived from Article III, Section 5 are provided below for reference:

*All institutions submitting Preliminary Information Forms or other documentation to establish eligibility for Commission evaluation on or after July 1, 2010, or having evaluation visits for initial candidacy or accreditation in 2010-11 or thereafter shall comply with jurisdictional requirements for incorporation and substantial presence in the region, as identified in Section 2 of this Article.*

*All institutions accredited by the Commission or a candidate for accreditation status on July 1, 2010, shall comply with substantial presence requirements no later than July 1, 2012, or at the time of evaluation for initial accreditation, whichever comes first. Institutions accredited by the Commission on July 1, 2010, shall be evaluated against this requirement at the time of the next comprehensive evaluation except where the Commission has information to indicate that an institution does not meet this requirement and initiates, subsequent to July 1, 2012, an inquiry to review jurisdiction.*

*Institutions that become a candidate for accreditation or accredited after July 1, 2010, must demonstrate compliance with the substantial presence requirement at the time of the next comprehensive evaluation of the institution or prior to initial accreditation of the institution, whichever comes first.*

*All institutions accredited by the Commission or a candidate for accreditation status on July 1, 2010, shall be grandfathered from the requirement for incorporation in the region; such institutions known to be incorporated outside the region shall provide evidence of having registered within the region to do business as a corporation no later than July 1, 2011. Institutions that become accredited or a candidate for accreditation after July 1, 2010, must demonstrate compliance with the incorporation requirement at the time of the next comprehensive evaluation of the institution or prior to initial accreditation of the institution, whichever comes first.*

Non-affiliated institutions seeking status that are unable to demonstrate substantial presence to the satisfaction of the Commission staff shall not proceed with the Eligibility Process. Institutions already holding status with the Commission that are unable to demonstrate substantial presence shall be

subject to Reconsideration as outlined in Commission policy, which may be undertaken in conjunction with a Commission evaluation under this policy.

### **Institutions Accredited by Another Recognized Accreditor Seeking Commission Status**

An institution accredited by another institutional accrediting agency recognized for Title IV federal gatekeeping purposes by the U.S. Department of Education that:

1. moves its home campus or main office or a component to the Commission's region;
2. designates an existing campus or office as the main; or
3. initiates a new home campus or main office in the Commission's region

for the purposes of establishing Commission jurisdiction to accredit the entire institution, including, if applicable, various components in other regions, may seek Commission status. It will seek status by establishing its eligibility for a Commission evaluation under the Eligibility Process. If the Eligibility Panel determines the institution is eligible for Commission review, it must host a comprehensive evaluation team and follow Commission policy and procedure for seeking initial status.

The Commission will not consider for status any institution under sanction, show-cause, or withdrawal by another recognized institutional accrediting agency, or within two years of such status, or less than two years before the agency's next comprehensive evaluation of the institution. As a part of the Eligibility review, the institution must establish how it is resolving any issues identified for monitoring or further review by the other agency. During the time it is seeking status from the Commission, it must remain in good standing with the other agency and meet all financial and accrediting obligations. It must work to keep both agencies properly informed and copy both agencies on all relevant correspondence.

### **Policy History**

*Last Revised: February 2019*

*First Adopted: November 2010 and June 2009*

*Revision History: June 2012, February 2019*

*Notes: Policies combined November 2012 – 1.2, 1.2(a), 1.2(b), 1.2(c), 3.5*

*Related Policies: INST.B.30.050 Commission Right to Reconsider Affiliation*