

AAMC Uniform Clinical Training Affiliation Agreement Project

Frequently Asked Questions

1. **Where did this AAMC Uniform Clinical Training Affiliation Agreement come from?**

The Association of American Medical Colleges (AAMC, or “we”) heard from many of our member institutions about the need to make the approval process for clinical rotations easier, particularly for elective rotations that take place away from a school’s primary teaching affiliates. With help from AAMC member schools and with extensive consultation with members of the National Association of College and University Attorneys as well as the American Health Lawyers Association (including their hospital members) and others, we developed the AAMC Uniform Clinical Training Affiliation Agreement. We incorporated language from templates and models from various universities and hospitals into the agreement.

2. **Why are clinical training placements at low risk?**

In our extensive outreach to medical schools and teaching hospitals, and the attorneys who represent them, there was widespread agreement that such placements represent a very low risk of litigation or liability, probably because the students are under so many levels of supervision in the clinical setting.

3. **Our legal office developed a clinical affiliation agreement template three years ago and most hospitals agree to it with only a few changes. Why should we use the AAMC Uniform Clinical Training Affiliation Agreement now?**

A uniform agreement provides consistency and standardized expectations for both parties and can be implemented with a simple letter between the parties. It will make the process easier for everyone and thus should save time and money.

4. Our medical school has an LCME survey visit scheduled next year. Will the AAMC Uniform Clinical Training Affiliation Agreement satisfy LCME requirements?

We developed the uniform agreement in consultation with the LCME and the agreement carefully tracks the LCME standards relating to affiliation agreements. We are pleased that the LCME has formally endorsed the June 16, 2014 uniform agreement as meeting its standards.

5. Our current training agreement says it will be interpreted under our state law and provides that the other party will indemnify us if anything goes wrong. Why doesn't the AAMC Uniform Clinical Training Affiliation Agreement address those issues?

We consulted with many attorneys representing both hospitals and medical schools as we developed the uniform agreement. Everyone agreed these agreements present a low risk legally. Because choice of law and indemnification provisions are objectionable to a number of schools and hospitals, and because the common law provides a resolution to those issues should they ever arise, we chose to omit them. Similarly, language addressing workers' compensation and binding arbitration were common points of contention without substantially clarifying the relationship between the parties. In order to put an end to the "battle of the forms," the uniform agreement is intentionally silent on these issues.

6. We are a state university with favorable governmental immunity laws that apply when our students do clinical rotations at hospitals within the state. We don't carry the levels of insurance provided for in the AAMC Uniform Clinical Training Affiliation Agreement. How can we use the uniform agreement if it doesn't agree with our state law?

Because many state universities have some form of governmental immunity, the AAMC Uniform Clinical Training Affiliation Agreement is designed to respect those laws when applicable. We also recognize that certain institutions have state law or institutional policies that might conflict with an aspect of the uniform agreement. The implementation letter is designed for each institution to specify if it has different or additional provisions that must be included, with the understanding that too many customized provisions may result in excessive renegotiation of the same terms.

7. Paragraph A.8 in the Uniform Agreement requires the medical school to provide liability insurance for its students with limits of at least \$1M per occurrence and

\$3M in annual aggregate. What if my state law has different requirements than stated in the Uniform Agreement?

We drafted the AAMC Uniform Clinical Training Affiliation Agreement to meet the needs of the vast majority of medical schools and hospitals. However, we also recognize that there are unique state law requirements that fall outside of the norm. For that reason, the Implementation Letter is designed so that those institutions that are subject to unique state law requirements can modify or add terms to the Uniform Agreement to comply with their state laws.

8. **The AAMC Uniform Clinical Training Affiliation Agreement has language that allows the Host Agency to request removal of any student it determines is not performing adequately. Our lawyer told us we have to provide due process before we remove a student from our program. I am confused.**

Most hospitals insist on the right to remove a student from their facilities because they have the ultimate responsibility for the care of their patients. Similarly, medical schools retain the ultimate responsibility for the education of their students and may have to provide some form of due process relating to the student's participation in the program after the student has been removed from the hospital.

9. **Our attorney general has told us we need to have certain “boilerplate” language in all of our agreements. We just attach a preprinted page with these provisions to any clinical training agreement we get. Can we do the same thing with the AAMC Uniform Clinical Training Affiliation Agreement?**

That could undermine the Agreement's utility. As an alternative, you might consider asking your attorney general's office to review the AAMC Uniform Clinical Training Affiliation Agreement with you. If together you identify some provisions you have to change, the Implementation Letter is designed to allow you to make changes without changing the other aspects of the agreement. If you know you will need to add the same language every time you use the agreement, you might consider developing your own version of the Implementation Letter that contains those provisions.

10. **I handle all the clinical training placements for a hospital system. We usually use the affiliation agreements sent to us by the medical schools. Can I tell medical schools that we will only accept the AAMC Uniform Clinical Training Affiliation Agreement from now on?**

Some medical schools may require additional provisions that will need to be included in the Implementation Letter and you will need to consider those. Also, there might be variation in medical school adoption of this uniform approach. We hope you will encourage them to begin using the AAMC Uniform Clinical Training Affiliation Agreement to save you and them time and money.

11. Our medical school does not take responsibility for conducting criminal background checks nor do we keep records of immunizations. Can we still use the AAMC Uniform Clinical Training Affiliation Agreement?

Although most schools now do require criminal background checks and maintain records of immunizations, this may be an example of where you would need to add specific language in the Implementation Letter to make clear that for your program these are student responsibilities and not school responsibilities.

12. The AAMC Uniform Clinical Training Affiliation Agreement says in paragraph F that HIPAA's Privacy Rule allows medical students access to patient medical information. Are you sure we do not need a Business Associate Agreement as part of our affiliation?

Our analysis follows that of the U.S. Department of Health and Human Services which answers a similar Frequently Asked Question by stating: "The definition of 'health care operations' in the Privacy Rule provides for 'conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers.'" Because medical students engaged in clinical training pursuant to the AAMC Uniform Clinical Training Affiliation Agreement are part of the HOST AGENCY's workforce for HIPAA compliance purposes and come within the "minimum necessary requirements" for access to patient medical information, they may participate in training under the direct supervision of a covered entity without requiring a Business Associate Agreement.

Also, we chose not to include a provision in the AAMC Uniform Clinical Training Affiliation Agreement addressing the potential liability issues associated with a violation of HIPAA. In the event there is a HIPAA violation that involves a participating student, we believe the statute and its associated regulations, along with common law concepts of indemnity provide adequate guidance to help the parties resolve the costs and damages associated with such a potential violation.

13. We will be sharing student information with the clinical training site, including criminal background checks, immunization status, etc. We have concerns about the confidentiality of this information.

The AAMC Uniform Clinical Training Affiliation Agreement contains a strong FERPA provision in paragraph B.6. We think this language accurately reflects the law and provides appropriate protection for the information contained in student records.

14. We have literally hundreds of these clinical training affiliations in place. Some expire next year, some in three years and some are in place indefinitely. It is too much work to track them all down and replace them. Can we leave these in place and just use the AAMC Uniform Clinical Training Affiliation Agreement as new affiliation agreements are needed.

Absolutely! We understand that it may take several years to cycle through all the existing agreements.

15. A large number of our medical student complete elective rotations at VA facilities. How well does the AAMC Uniform Clinical Training Agreement track the agreements now used in VA facilities?

The VA form agreement is used for both medical students and residents, so it differs in that respect. Generally, the terms of the two agreements are very similar, although they are organized differently. One notable difference is that the VA provides tort liability coverage for trainees under the Federal Tort Claims Act, where the AAMC Uniform Agreement requires the medical school to provide liability coverage for its students.

We shared our approach with the Veterans' Administration and it was well-received. However, because of the VA's unique status as a Federal entity, it appears prudent to continue using the VA template agreement.

16. A colleague of mine showed me the AAMC Uniform Clinical Training Affiliation Agreement and I would like to use it, but we don't have a medical school. Can I adapt this for other health professional programs like nursing or physical therapy?

Yes! While the AAMC Uniform Clinical Training Affiliation Agreement was drafted for medical student clinical training -- which means it was designed to meet medical school accreditation standards -- we are supportive of its adaptation for other health professional programs.

17. Our medical school hosts visiting students for clinical rotations, but we do not own the clinical facilities where students complete those rotations. Rather, we have standing agreements with several primary clinical affiliates where our clinical education takes place. We would like to use the AAMC Uniform Clinical Training Affiliation Agreement when we host students, but because we don't own the clinical facilities, we are hesitant about those provisions in the AAMC Uniform Agreement regarding clinical supervision, clinical facilities, etc. Is there a way to use the AAMC Uniform Agreement without making it a three-party agreement with our regular clinical affiliates?

We think there are two ways to approach this issue.

First, if a visiting student is registered for a rotation through your medical school as the Host Agency, we believe the student becomes “your” student for the purposes of that rotation. In the AAMC Uniform Clinical Training Affiliation Agreement, the underlying obligation of the Host Agency is to provide “access to appropriate resources for medical student education.” Your existing affiliation agreements with your primary clinical affiliates should already provide access to those clinical resources for your students, including a visiting student registered with your school. Provided that your existing agreements with your primary clinical affiliates contain terms that meet the generic obligations in the AAMC Uniform Clinical Training Affiliation Agreement regarding clinical education, you can simply use the Implementation Letter with the visiting student’s home institution.

A second approach would be to modify the Implementation Letter to reflect that the clinical facilities associated with the medical student education are owned and operated by a third party, and have the clinical facility sign the Implementation Letter. This, in effect, makes it a three party agreement. In that case, you might consider something like the following language:

“With respect to the medical student education covered by the AAMC Uniform Clinical Training Affiliation Agreement implemented through this letter, the clinical facilities are owned and operated by [Insert Clinical Facility]. By signing this Implementation Letter, the clinical facility agrees to those terms of the AAMC Uniform Clinical Training Affiliation Agreement that pertain to obligations of the host agency.”

18. Can you explain the 2015 revision to the Uniform Agreement?

The Uniform Agreement is designed to track to the LCME Functions and Structures of a Medical School (“LCME Standards”). For the 2016-2017 Academic Year, the LCME dropped a sentence from previous Standards referring to ensuring access to appropriate

resources for medical student education. The 2015 revision to the Uniform Agreement drops this sentence as well. We consider this change to be a non-substantive, technical revision that does not change the Uniform Agreement in any material way.

19. Can you explain the 2015 revision to the Implementation Letter?

The 2014 Implementation Letter included space to list individual students by name and by dates and types of training. To avoid duplication of effort and possible discrepancies with records maintained by school registrars, we revised the 2015 Implementation to refer generally to all registered students rather than require individual students to be listed by name.

20. Can we modify the 2015 Implementation Letter, for example, by having it list individual students by name?

Yes. The Implementation Letter is designed to be customized to your particular situation.

21. My school was an early adopter when AAMC first launched its Uniform Agreement in 2013. There have now been two revisions to the agreement (June 2014 and June 2015). Can we continue to use the agreements we put in place in 2013?

Yes. The changes to the Uniform Agreement and its implementation letter are clarifying in nature and do not change the substance of the documents. The changes were made in order to incorporate feedback from LCME and member schools regarding the implementation of the Uniform Agreement. As you enter into new clinical training agreements with other institutions, we recommend you use the latest versions available on the AAMC website, but we do not believe you need to change those agreements already in place.