Professional and Occupational Regulation:
U.S. State Regulatory Structures
Report Highlights

Project funded by the Occupational Licensing Policy Learning Consortium: the National Conference of State Legislatures (NCSL), the Council of State Governments (CSG), and the National Governors Association Center for Best Practices (NGA Center)

Data collection and analysis conducted by the Council on Licensure, Enforcement and Regulation (CLEAR)

Occupational licensing is one of few areas of government that relies on a high level of coordination and collaboration among state employees and private market experts. As with any partnership, rules of engagement must be defined. For occupational licensing, these rules often emerge around how authority is vested for decision-making and operations.

How states structure this relationship varies but can generally be categorized into five common models. These models range from licensing boards that are autonomous with little influence by state actors, to boards that serve in an advisory-only capacity under a state agency that retains full authority for both decisions and operations.

The five regulatory models described by Schmitt (2018) in *Questions a Legislator Should Ask* [1] are
- fully autonomous/independent (Model A);
- autonomous but with a central agency responsible for housekeeping/administrative functions (Model B);
- autonomous/independent decision-making authority but with a central agency responsible for housekeeping/administration, budget, personnel, investigations, and discipline (Model C);
- central agency with decision-making authority on all substantive matters while boards are delegated responsibility for some functions (Model D); or
- central agency, commission, or council with final decision-making authority and boards serving only in an advisory capacity (Model E).

A focus on occupational licensing promoted by the U.S. Department of Labor, through a series of grants to study occupational licensing reform, has brought renewed interest in occupational licensing regulatory models.

Because licensing policies and practices are set by each state, information about regulatory structures can be obscure. The Council on Licensure, Enforcement and Regulation (CLEAR), in partnership with the National Conference of State Legislatures (NCSL), the Council of State Governments (CSG), and the National Governors Association Center for Best Practices (NGA Center), seeks to provide a comprehensive resource on regulatory structures engaged in the United States.

In a survey conducted by CLEAR, respondents were given the opportunity to indicate which model best represented the model in use by their regulatory organization. Depending on who the respondent was, they answered on behalf of a single, autonomous board; a single board under a central agency; or a central agency (in which case, they completed information for up to 20+ boards). In total, 161 responses were received from 45 states and the District of Columbia (hereafter referred to as jurisdictions in the report).

What is evidenced by the survey is the sheer variety of approaches, with some jurisdictions reporting the utilization of three or more structures within the jurisdiction, distinguishing that one board may not engage the same model as another set of boards. Regardless of the number of different models indicated within a jurisdiction, Model C was indicated most frequently (25), followed by Model A (20), Model B (15), Model D (14), and Model E (9).

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[1] Schmitt, K. (2018). *Questions a legislator should ask, 3rd edition*. Nicholasville, KY: Council on Licensure, Enforcement and Regulation. p. 53-54

As the model with the most occurrence, Model C unsurprisingly divides authority among the two partners, with the board of private market experts responsible for licensing and regulatory decisions and the state agency responsible for operations.

Also evidenced by the survey responses is that each model has its benefits and challenges. Regardless of the model in place, the respondents most frequently focused on specific topics such as efficiency, funding and budget, decision-making authority, streamlining and standardization, communication and collaboration, oversight, and political authority.

The type of model, however, did seem to influence the nature of the comments. When commenting about efficiency, respondents implementing models with autonomous decision-making authority more frequently described benefits, while respondents implementing models with centralized operations somewhat more frequently described challenges. When respondents described benefits related to funding and budget, those with fully autonomous boards noted control of budget and those with centralized operations noted cost-savings. Respondents describing decision-making authority as a benefit were predominantly from boards with autonomous decision-making authority. Respondents noting challenges related to streamlining and standardization were predominantly those implementing models with centralized operations. Finally, respondents commenting on communication and collaboration, either as a benefit or as a challenge, were predominantly those implementing models with centralized operations.

Lastly, the survey responses make clear that structures may be fluid. Some states are considering changing their structure to bring about greater efficiencies and cost-savings, among other reasons. Changes described by respondents fell under two broad (but diametrically opposed) categories— consolidating boards under a centralized authority versus moving from a centralized authority to a more autonomous board.

Summarizing the nature of professional and occupational regulation in the United States is complex, as evidenced by the numerous permutations of the structural models in use within jurisdictions. The goal of the "U.S. State and District of Columbia Regulatory Structures Report" is to provide information to facilitate discussions about the utility of the various models, including the benefits and challenges of each. The report presents a snapshot of the governance structure of regulatory boards in the United States as of Fall 2019. The verbatim responses of the participants provide a rich source of information and should be considered carefully.