



**Framework for Developing Consistent Descriptions of Regulatory Models:  
United States**

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This document provides a broad overview of the model(s) of regulation for professions and occupations. It is brief by design and aims to introduce the reader to the model(s) in place. The author is involved in professional and occupational regulation in the country discussed and their contribution is gratefully acknowledged. This project was initiated by the International Relations Committee of the Council on Licensure, Enforcement and Regulation (CLEAR), from where additional resources can be located at <http://www.clearhq.org/links.htm>

**General Question:**

**1. Is the regulatory model consistent for each profession and occupation, or are there substantial differences?**

- The regulatory model is broadly consistent for each profession, though differences in the organization of regulatory boards exist.

**Philosophy/Purpose**

**2. Describe the primary purpose of the model (e.g., public protection).**

- Broadly speaking, state governments are only interested in regulating professions where there is a potential to harm the public's health, safety and/or welfare if the profession is practiced by unqualified professionals.

**Government Structure**

**3. Describe how regulatory entities are organized (e.g. nationally, by state, province, municipality etc).**

- Regulatory entities are organized by State as directed by the 10<sup>th</sup> Amendment of the U.S. Constitution. In each state, the legislature provides the Executive branch with legislation that creates regulatory entities and typically provides some funding.

**4. Explain how regulatory entities interact and share power with other branches of government.**

- State and Federal governments operate on a three part, balance of power model, which divides powers across the three branches of government: Legislative; Executive; and Judicial. Each branch is separate and distinct from the others, and each serves as a check on the potential excesses of the others. It is the Executive branch of government that administers the regulation process.

**Authority Basis**

**5. On what legal basis is the authority of regulatory entities derived?**

- **Federal Government:** The United States [Constitution](#) grants to the states those powers not enumerated in the Federal Constitution and has always been interpreted as allowing states to regulate professions. The 10<sup>th</sup> Amendment declares that: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The role of the Federal Government is limited to interstate commerce by Article 1, Section 8 which states: “The Congress shall have Power...to regulate Commerce...among the several States...”

### **Regulation Creation Framework**

#### **6. Describe how the legislative process works when creating the authority for regulatory entities.**

- State legislatures create the framework for regulation through a system commonly referred to as the legislative process.

#### **7. Explain how public involvement and comment is incorporated into the process.**

#### **8. Describe how professionals and consumers influence regulations.**

#### **9. Explain how political involvement influences regulations.**

- *Response to questions 7-9:* Legislators propose legislation that has been called for by constituents who feel the proposed legislation is needed. It is only at this point that a legislator will make a decision as to whether or not he/she will author a bill. The process begins when a legislator decides to propose legislation and sets about authoring a bill. The legislator sends the proposal to the legislative counsel, where it is drafted into a bill. Upon the return of the bill to the legislator, the bill is introduced to the legislature and is then considered by a committee with appropriate expertise in the subject matter. During this committee stage, there is an opportunity for testimony by parties that would be affected or who are in some way interested. Lobbying by professionals and those impacted by the profession will often occur when the bills relate to the regulation of a profession, and political influence is sometimes brought to bear. The committee then votes on the proposed bill, either approving it as is, amending it, or defeating it. Prior to the vote, an analysis of the bill is often prepared, detailing the current law, the intent of the new bill as well as other general information. A list of organizations supporting and opposing the bill is also frequently created.

Bills approved or amended are read again in the legislature, before a date is assigned for a third reading. At the time of the third reading, the author argues for the passage of the bill, before a roll-call vote is held. If a bill is approved in the house\* in which it was introduced, it then proceeds to the remaining house\* where the same procedure takes place. If the bill is amended in the second house\*, it returns to the original house where the amendments must be approved. If they cannot be, a joint committee from both House\* and Senate\* is formed to address the differences. If agreement is reached, the bill returns to both houses\*<sup>1</sup> for approval.

Upon approval by the Legislature, the bill moves to the Executive Branch where the Governor considers whether to sign the bill into law, allow it to become law without signature, or to veto it. A Governor’s veto can be overcome by a two-

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\* Except in Nebraska which has a single legislative branch.

thirds vote in both legislative houses. Generally, bills take effect in January of the following year.

### **Regulatory Entities**

- 10. Illustrate how regulatory entities (e.g., board, agency, college) are typically constituted and the degree to which they include practitioners, the public, and other stakeholders.**
- 11. Detail how participants in the regulatory process are typically appointed to regulatory entities.**
- 12. Give examples of administrative and disciplinary functions typically undertaken by regulatory entities.**
- 13. Describe the typical funding structure of regulatory entities.**
- 14. Indicate how much autonomy regulatory entities enjoy.**
  - *Response to questions 10-14:* The constitution of regulatory boards varies, but typically includes members representing:
    - Individual practitioners from the profession or occupation being regulated;
    - Public members to represent the consumer; and
    - Other members for example, members of a complimentary profession

Examples of board membership vary from the [Alabama State Board of Optometry](#), where there appear to be a high number of practitioners, to the [Michigan Board of Architects](#) whose nine voting members consist of 5 architects, 1 engineer, 1 surveyor and 2 public members. Meanwhile, [California's Contractor Licensing Board](#) has 15 members include, 9 public members, 5 contractor members, and 1 labor representative. The process by which members are appointed to serve on regulatory boards varies across the country, with election to the board by licensed members or appointment by the governor and/or legislature being the most common.

Regulatory boards are typically staffed by an Executive Director who carries out the work as directed by the board. The Executive Director usually employs a staff whose functions may include: investigating complaints against licensees; administering a continuing education program; and issuing and renewing licenses. Licensing boards are usually funded by a combination of fees charged to licensees when applying for initial licensure or when renewing their license, and funding appropriated by the state legislature.

States organize their regulatory functions through either a collective umbrella organization (referred to as a central agency), by a series of independent and autonomous boards, or a combination of the two. Central agencies frequently combine administrative functions, while autonomous boards employ staff directly to work only for themselves. Examples of central agencies are the [Iowa Bureau of Professional Licensure](#), part of that state's Department of Health, which includes 18 regulatory boards overseeing the regulation of more than 30 professions. Similarly, the [Utah Division of Occupational and Professional Licensing](#) issues licenses in around 60 licensure categories and yearly reviews 20,000 applications on average and processes approximately 70,000 renewal applications. By contrast, the [State of Oregon's regulatory boards](#) operate independently, each performing the administrative functions mentioned previously.

Federations of Regulatory Boards exist to foster exchanges of information about regulatory best practice. Typically these are financed through membership dues from member boards, though a number also provide a national examination which is required for initial state licensure as a demonstration of basic competence. Examples include the [Federation of State Boards of Physical Therapy](#) or the [National Council of Architectural Registration Boards](#).

**15. Describe the relationship between regulatory entities and the professional membership organization, where different.**

- Broadly speaking, professional associations tend to represent the interests of the professionals themselves, as well as issues affecting the practice of the profession. In contrast, regulatory entities exist to protect the public interest and members of the public as mandated by legislation.

**Practice Requirements**

**Broadly speaking, prior to beginning practice in a regulated profession or occupation, do requirements exist that must be met in the following areas:**

**16. education and training;**

**17. background checks;**

**18. experience;**

**19. examination(s) a candidate must pass;**

- *Response to questions 16-19:* Educational requirements vary by profession and occupation but the requirement of a demonstration of basic competence is universal for initial regulation. Frequently, this takes the form of successfully completing an examination, a prescribed educational course, or applying for admission to a register of members of a profession or occupation.

In some instances, previous practice in a profession or occupation can allow an applicant for initial regulation to bypass some of the requirements outlined above. Others may require practice in a given field prior to approving the application of a potential applicant. For example, the [Montana Board of Realty Regulation](#) requires two years experience as a licensed Real Estate Salesperson and the completion of a certain number of real estate or commercial transactions in the three years prior to applying for licensure, in order to be licensed as a Real Estate Broker.

Background checks also frequently form part of the application process, particularly for licensees working with vulnerable clients, but also out of security concerns. Examples of requirements and this part of the application process include the [Wisconsin Caregiver Program](#). Background checks might include self-disclosure forms as well as checks on credentials, and criminal history checks, as well as checks of disciplinary databases where available.

**20. continuing competence requirements for renewing practitioners;**

- Having achieved regulation for the first time, members of regulated professions and occupations are often required to maintain currency in the profession. This is a condition many regulatory boards require to renew the license, certification or registration of an individual and can take the form of hours spent undertaking certain procedures, or can be demonstrated through taking accredited education programs. As part of the continuing regulation of an individual,

renewal fees are normally assessed and further background checks may be undertaken. The [Iowa Professional Licensure Bureau's renewal process for Physical Therapists and Occupational Therapists](#) contains many of the requirements outlined above.

- 21. fees practitioners must pay for entry to the profession;**
  - Fees vary widely by profession, occupation and state.
- 22. fees practitioners pay as part of continuing practice requirements;**
  - Fees vary widely by profession, occupation and state.
- 23. language(s) in which practitioners are expected to be proficient;**
  - English
- 24. conduct that could cause withdrawal of a practitioner's right to practice?**
  - A variety of actions may be defined as professional misconduct, which in the most serious cases can cause withdrawal of a practitioner's right to practice. An extensive definition can be found on the website of the [New York State Department of Health](#). Practitioners deemed to be either incompetent or incapable (physically or mentally) may also see their right to practice withdrawn.

#### **Inter-Jurisdictional Recognition of Regulation**

**25. Describe the reciprocity/endorsement/mutual recognition that exists with other government entities**

**26. Identify international recognition and trade agreements that are affected.**

- *Response to questions 25 and 26:* Broadly speaking, regulation takes place in a vacuum in individual states and territories, meaning that the granting of licensure, certification or registration may entitle the regulant to work or practice only in that given territory. Frequently, becoming a resident of another state will require another application to that state's regulatory board and the successful completion of that state's examination. There have been moves towards the recognition of another state's license, most notably in [nursing](#) where seventeen states have to date agreed to recognize a license issued in another signatory state as valid for their own. To understand this arrangement, one must remember the U.S. Constitutional provisions setting out the limited role of the Federal Government (which operates nationally) as opposed to the substantial local control enjoyed by the states. Given this separation, states have developed their own standards, practices and examinations in terms of their requirements for regulation.

Interstate Reciprocity/Endorsement/Mutual Recognition

Stems from Constitutional requirement:

“Article IV, Section 2: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”

**27. Are regulatory entities typically ISO 17024 accredited?**

- Not available

#### **Commonly Used Terms**

**28. List definitions of technical terms someone outside the regulatory agency may require to better understand the program.**