



**Regulation Matters:  
a CLEAR conversation**

## **Episode 33: State Regulatory Structures Report** **September 8, 2020**

**Line Dempsey:** Welcome to our podcast, Regulation Matters: a CLEAR conversation. Once again, I'm your host, Line Dempsey. I am currently the chief compliance officer with Riccobene Associates Family Dentistry here in North Carolina. I am on the CLEAR Board of Directors as well as the current chair of the National Certified Investigator Training Committee with CLEAR.

First, I want to welcome back our frequent listeners. For our new listeners, the Council on Licensure, Enforcement and Regulation, or CLEAR, is an association of individuals, agencies and organizations that comprise the international community of professional and occupational regulation. Our podcast is a chance for you to hear about the latest and greatest in our community.

Today's topic is the newly released State Regulatory Structures Report. I am joined by some of the individuals who worked on this project - Iris Hentze and Suzanne Hultin with the National Conference of State Legislatures; our own Stephanie Thompson with CLEAR; and Cory Everett, regulatory consultant. We're glad to have you with us today.

**Iris Hentze:** Thanks, Line. We're glad to be here.

**Line:** And again thank you also to our listeners for joining us. So, NCSL has just recently released this State Regulatory Structures report, and I understand it was part of the larger Occupational Licensing Consortium project. So, to start us off, Iris and Suzanne, can you give a brief introduction to NCSL as well as a brief background on the Occupational Licensing Consortium project that you all have been working on for the last couple of years?

**Suzanne Hultin:** Yes, of course. This is Suzanne. NCSL, or the National Conference of State Legislatures, is a bipartisan organization serving legislators and legislative staff in all 50 states. We provide research, technical assistance and professional development opportunities for our members from across the US. In 2017 we were awarded funding from the US Department of Labor's Employment and Training Administration to study occupational licensing policy and best practices in the states as well as to convene a Consortium of states to really work on this topic.

In recent years there has definitely been increased interest in occupational licensing, not only in its growth as a major labor market institution and but also in what its prevalence means for workers and state economies. Academics and think tanks as well as, of course, our state policymakers have begun to take a lot more of an active role in critically assessing the costs and benefits of licensing policy in their own states as well as the functions and mechanisms of their licensing systems.

**Line:** Great, thanks for that introduction. Can you tell us a little bit more about your work with Consortium states and how questions about regulatory structures began to pop up?

**Suzanne:** So, in working with our Consortium states, we really did a lot of baseline policy research and compiled as much information on state occupational licensing policy and practice as possible in our various publications, databases and other resources such as blogs or magazine articles. We began working with our group of 11 original states in 2017. Each Consortium state team was made up of a diverse stakeholder group in state government, including legislators, governor's office officials, regulators, board representatives and others depending on the state. Each state's team was unique in its composition as well as in its background knowledge of occupational licensing and regulatory policy. At first there was a lot of level setting and education that we did explaining our own research to the teams, connecting them with national experts and having them hear from one another as well as other states outside of our group.

In 2018, we were able to add some additional states from some additional funding from the US Department of Labor, and that brought our total number up to 16 states working in our Consortium. At that point, our state teams had a solid understanding of the landscape of licensing policy in their states and began to really want to compare their own experiences to those of other states. We helped them do this by providing a number of resources, including some of our databases which allowed them to compare minimum-licensing requirement data in their state to other states as well as our legislative database where they could see what types of occupational licensing legislation were being considered in other states. But we also continued to receive a lot of questions from our state teams interested in learning more about how their state's regulatory system compares to those of neighboring states or a state from across the country that they've heard is doing some really innovative things.

State policymakers really always do want to hear what their colleagues from other states are working on, and it's true what they say about states being the laboratories of democracy where new and innovative approaches are being tried out.

**Line:** So, you have about 16 states. Were you also hearing from states outside of the Consortium?

**Iris:** This is Iris, and I'll go ahead and take this question. And, that's definitely right. At NCSL we really work with legislators from all 50 states, so we were receiving questions and requests from other policymakers across the country who were also looking at their own approach to occupational licensing and wanting more information. Again, state legislators really benefit from learning about

how their colleagues in other states are approaching an issue, and we had a lot of that comparative data to offer them, but something we hadn't been able to compile was the regulatory-model specific data. We considered what resources and expertise gathering that data would require, and we realized that we really needed to partner with an organization like CLEAR to be able to provide this kind of information to our legislators and legislative staff.

**Line:** Well, I certainly understand that from my side of things with CLEAR. But, for our listeners, why was partnering with CLEAR on this resource a natural fit for NCSL?

**Iris:** We've had the opportunity to partner with CLEAR throughout our occupational licensing project and have really valued the regulatory expertise CLEAR brings to the table. We immediately knew CLEAR would be the best organization for us to partner with, given their vast and active membership that we knew would be responsive to participating in a survey and telling us about the intricacies of their state's regulatory model. Stephanie's going to talk a lot more about the survey and the research coming up, but we're really happy with how the resource turned out and think that it will be super helpful for legislators and other state policymakers who want to compare their state's regulatory structure to other states or even just want to learn more about how their own state is approaching these issues.

**Line:** Well, that's great. This is quite a treat for me; I know Stephanie's usually on the back side of things, but we actually get to hear from her today. So Stephanie, let me turn to you with CLEAR about some of the data coming out of this project. Can you talk a little about the survey questions and the response rate?

**Stephanie Thompson:** Well, sure; thanks. I think first we'd like to thank NCSL for inviting CLEAR to be part of this project. And importantly, CLEAR thanks all those who responded to the survey. We had 161 responses from 45 states and the District of Columbia.

And in the survey, respondents were asked to indicate which of five regulatory models best represented the model in use by their organization. Respondents were either responding on behalf of a single autonomous board, a single board under a central agency, or a central agency itself. The five models that were presented in the survey are described in the CLEAR publication "Questions a Legislator Should Ask." I'll just give a brief overview of those. Model A is considered fully autonomous or independent, meaning they have their own staff and handle their own finances, they set policies, they set qualifications for licensing and oversee administration of licensing exams, and they handle complaints and discipline. Model B is autonomous but with a central agency responsible for basic housekeeping functions. So the board makes decisions on policy, standards, exams, discipline and staff, but a central agency may, for example, provide office space, collect fees and issue the licenses. Moving to Model C, boards maintain decision-making authority in many areas, but a central agency has increasing responsibility beyond housekeeping to include some control over budget, personnel and investigations. Model D shifts into a central agency with the decision-making authority on all substantive matters with the individual boards being delegated responsibility perhaps for

examinations, recommending standards and recommending disciplinary sanctions with the central agency able to review those decisions. In Model E, the central agency has final decision-making authority and, while boards may exist, they serve only in an advisory capacity. So those are the models that survey participants were selecting from.

**Line:** Gotcha. I know that regulatory structures can vary quite a lot among all the different states. Did most states indicate that they used only one of the models, or did a lot of states seem to have more than one model in place? Where did that fall out?

**Stephanie:** Responses from 20 of the jurisdictions did indicate that only one single model was in use. Of those 20 single-model jurisdictions, Model C was most frequently identified—that is a model where decision-making authority lies with the individual boards and operational authority lies with a central agency.

Of the remaining responses, 15 jurisdictions indicated the use of two different models in their jurisdiction, and the remaining 11 jurisdictions indicated the use of three or more different models.

**Line:** Wow, that data shows quite a range of models in use across jurisdictions and even within jurisdictions. More than half of states have multiple models in place; that's interesting. Were you able to filter the data down further?

**Stephanie:** Right, for those states indicating multiple models, we wanted to take a closer look and see if it was actually very different models in that state, or if it was sort of variations on a theme. We took a look at the models not with distinct lines separating A, B, C, D, and E, but instead considering what elements of the models were actually similar. When you look at Models A, B, and C, the common element is that ultimate decision-making authority on all substantive matters lies with the individual board. With Models D and E, that ultimate decision-making authority is with the central agency. So, decision-making authority was one element we used to further categorize the states, putting states with Models A, B, or C into one group and states with Models D or E in another group.

**Line:** So in the end, what do the numbers look like when categorizing the models this way?

**Stephanie:** When grouping the states according to where decision-making authority lies, the numbers do break out a little bit differently. 16 of 46 jurisdictions (or 35%) indicated a mix of models in their jurisdiction; so they were saying that some individual boards had decision-making authority while others in that jurisdiction were governed by a central agency. But 30 jurisdictions (or 65%) indicated that the individual boards within their jurisdiction followed a consistent pattern for where decision making authority lies. More specifically, 26 of the jurisdictions reported that *all* of their boards have an autonomous model of decision making in place, and 4 of the jurisdictions indicated that *all* of their boards have a central agency model of decision making in place.

**Line:** It looks like another element of the models has to deal with who handles the administrative and

operational functions that you mentioned earlier. Did you take a look at the data from that perspective?

**Stephanie:** Yes, in Model A, the autonomous board has responsibility for all operational functions. In Models B, C, D, and E, a central agency has responsibility for increasing amounts of operational functions. Those operational functions that we're talking about range from providing office space, answering routine inquiries, collecting fees, actually issuing the licenses and renewals, and maintaining a listing of licensed individuals, and they may extend to such functions as budgeting, hiring staff, maintaining records, handling complaints and conducting investigations.

So, looking at it that way, 14 of the 46 jurisdictions (30%) reported a mix—meaning that their jurisdiction includes both boards with autonomous operational authority and boards with central agency operational authority. But 70% (or 32 jurisdictions) indicated that the individual boards within their jurisdiction followed a consistent pattern of operational authority. Specifically, 6 of the jurisdictions reported that *all* of their boards have an autonomous model in place and 26 of the jurisdictions indicated that *all* of their boards have a central agency model in place for administrative and operational functions.

**Line:** That's interesting how the breakdowns differ based on those two key elements of the models. What about the combinations of decision-making and operational authority? How do the states fall in that regard?

**Stephanie:** There's an interesting chart in the report that shows those various combinations. The largest number of jurisdictions, 15, indicated autonomous decision-making authority and centralized operations. Then we had nine jurisdictions with a mixed model for decision-making and a mixed model for operations. Seven jurisdictions had a mixed model for decision-making and a centralized model for operations, and five jurisdictions were a mixed model for operations but with autonomous decision-making. Six jurisdictions indicated that they had both autonomous decision-making and autonomous operations, while four jurisdictions reported centralized decision-making and centralized operations.

**Line:** So, obviously I know there are pros and cons that can easily be pointed out for each of these different ways of addressing this. In reviewing the report, I think one of the most interesting things that stood out was how respondents talked about either benefits or challenges of the model they use. What themes seemed to emerge when respondents wrote about the benefits and challenges?

**Stephanie:** Across all respondents and all models that were in place, responses did seem to fall under several themes. Those themes were efficiency, funding and budget, decision-making authority, streamlining and standardization, communication and collaboration, oversight, and political authority. And it's interesting how the type of model really seemed to influence the nature of the comments.

So, for example, under the efficiency theme, respondents implementing models with autonomous

decision-making authority more frequently described benefits related to efficiency, such as quicker, more efficient, and more direct and personal customer service, as well as ease and flexibility to make changes and be responsive to the needs of the industry and the public. Respondents implementing models with centralized operations somewhat more frequently described challenges related to efficiency. So they talked about the lack of expediency, turnover in centralized staff, and lack of a staff dedicated to their specific boards.

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 as a benefit.

When respondents were describing decision-making authority as a benefit, those were predominantly boards, not surprisingly, with autonomous decision-making authority, and they talked about things like having control of their own destiny, having the latitude to carry out their mission, and having profession-specific regulation that allows for subject matter experts with a deeper knowledge of the profession.

Looking at some of the other themes - under the streamlining and standardization theme, respondents with centralized operations models talked about challenges, such as restrictive state policies and that one size does not fit all. They also noted a lack of coordination and consistency between boards.

Finally, respondents commenting on communication and collaboration, either as a benefit or as a challenge, were predominantly those states implementing models with centralized operations. As a benefit, they noted that their model facilitates communication, access to data, and idea-sharing amongst the boards. But they also talked about misunderstandings related to functions, purpose, and limits of authority as some challenges.

It was interesting to hear those comments from the people who are working under the different models, and I think those open responses about benefits and challenges are a really valuable part of the report. So, CLEAR again thanks our respondents for taking the time to share all of those detailed comments.

**Line:** It really sounds like there's a lot of great information in the report, and I do hope our listeners can take an opportunity to read it. Let's now turn to one of my dear friends, Cory. I know you've been part of CLEAR's work with several states on regulatory reform projects. Could you provide some context to how this report fits into the overall regulatory landscape in the US today?

**Cory Everett:** Yeah, Line, thank you for that question and for having me today. I also want to thank NCSL and CLEAR for their work to assemble this resource. I think it is both timely and highly valuable, especially in today's regulatory landscape. As Iris and Suzanne already described, there is this growing interest in occupational licensing especially as states consider the best framework with which to carry out those duties.

The regulatory landscape in the United States is really punctuated by two major initiatives right now. The first, Iris and Suzanne already mentioned—namely that occupational licensing is acknowledged as a major labor market institution. There is a growing body of evidence that considers some of the unintended consequences of state licensing policies. Many academics point to the burgeoning of professional licensing over the last 50 years that has prompted a more collective cost-benefit analysis across and within states.

Also as pointed out earlier, a major part of this analysis considers the function and mechanisms of licensing. One strategy policymakers have considered is a restructuring of occupational licensing boards and agencies to address items related to cost, the speed of licensing, streamlining operations, leveraging economies of scale, standardization across multiple professions, coordination, communication, and responsiveness to name just a few that Stephanie highlighted earlier. So regulatory structure is an important lever as states calibrate their licensing systems.

The second initiative really addresses anti-competitive conduct and the Supreme Court decision in the matter of the Federal Trade Commission vs. North Carolina Dental. This decision, with which many in the regulatory world are familiar, drove right at the heart of regulatory structure by considering the balance of decision-making authority.

Occupational licensing in the United States leverages a unique form of government that requires a high level of coordination between the state (or state employees) and private market experts (i.e. licensees). We talk about licensing being a form of “self-government” in which the licensees themselves play a primary role in regulating their occupation, but really this report demonstrates it is much more nuanced than that.

Stephanie outlined the five different regulatory models, and each of them grapple with how authority for both decisions and operations are vested. But it goes far beyond that. I often like to quote Adam Parfitt, CLEAR’s Executive Director, who once in a speaking engagement referenced the “50 different experiments” in the United States of how to structure occupational licensing. This report is so helpful, as it provides a peek under the hood as these systems evolve and respond to the pressures, demands and expectations of our economy and society.

**Line:** Iris told us about the initiative for the report. Stephanie discussed some of its findings. Could you tell us more about what policymakers could take away from this report?

**Cory:** First and foremost, the diversity of responses to the survey demonstrate that the “ideal” regulatory model is state-specific. There is no silver bullet here, and perhaps the best policy is to consider the regulatory landscape, the societal values and economic environment of a particular state. As Stephanie mentioned, a lot of states don’t use a single model, and we’re seeing a blending of these approaches, using two or three or maybe more models all in a single area.

If we consider the responses in the context of regulatory reform efforts in the US, a few considerations

standout. I think the first is, what are you trying to accomplish? If you're looking at anticompetitive conduct concerns, survey responses would seem to point to greater oversight by the state, meaning that Model D or E may offer some advantages to you. (I do want to caution—this is not legal advice nor the only strategy to address concerns about the appearance or reality of anticompetitive conduct.) The others, looking at the fiscal footprint and the cost of operating occupational licensing—if that's a concern, then a Model C structure that centralizes many of those administrative functions but preserves market expertise in decisions might be the interesting way to go. Improved customer service—if that's a priority, then definitely Model A and Model B. We heard that very strongly from the respondents where more autonomous authority is provided without the influence of a central agency.

Now, of course, who wants just one of those things? Ideally, we want to accomplish all of those things, right? I think the best guidance here is really for the individual stakeholders to dig in. What works in Arizona may not serve as a model for Washington. Even more difficult, what works in New York City may not be a great model for Western New York. The work of the Occupational Licensing Consortium facilitated by NCSL underscores, I think, the importance and value of this interdisciplinary approach.

What we know from the emerging body of evidence regarding occupational licensing is that it is not a small or inconsequential matter. It has touchpoints to workforce policy, academic policies, healthcare, access to care, the justice system and the economy. Policymakers may consider questions such as: How should decisions be made about conduct that endangers consumers? How do we engage market expertise in those decisions? Should the model vary by industry? For example, sometimes we see healthcare professions utilize a different model than some of the more technical professions. What does operational authority look like in the state? This may speak to the fiscal processes or how the state manages performance among its different departments and divisions. Who is most likely to succeed in this system? Who bears the cost? Who is excluded by current licensing policies? These questions are not easily answered, and often policy decisions related to such questions fall on a spectrum. Deciding where your state should fall on that spectrum, I believe, is best determined by local stakeholders.

**Line:** I agree whole-heartedly. I know COVID-19 has posed an unprecedented challenge for our society and economy, let alone state budgets. North Carolina moved into phase 2.5 [of re-opening] just recently. How should readers of this report interpret its findings given the unprecedented time in which we find ourselves now?

**Cory:** Yeah, Line, I think that's a really great question and obviously a very timely one. Licensing boards have played an important part in state responses to COVID. It is also not the first crisis many occupational licensing boards have faced. Many of the policies that boards have implemented in response to COVID were incubated during responses to natural disasters.

So, crisis management is not unfamiliar to many licensing boards, and several already have disaster recovery plans in place. They understand how to flex to unprecedented circumstances to preserve

consumer protections while responding to the most important crisis priorities. During COVID, many of those priorities related to access to care, ensuring there is an adequate workforce to respond to the crisis, providing guidance on matters related to consumer safety in light of public health protocols, or helping to streamline and reduce costs to businesses as they're trying to re-open or just keep the doors open. Occupational licensing does have several touchpoints back to these initiatives.

What does regulatory structure have to do with COVID response? Regulatory structure speaks to the coordination of market expertise and public policy. Good crisis management demands quick decisions and alignment for effective response. These are the types of considerations that may be identified ahead of time in a continuity of operations plan, but they are also germane to the state's regulatory structure. So COVID may present an opportunity to evaluate the state's regulatory structure and calibrate communication channels, information sharing and decision making to support the overall needs of the state and its residents.

**Line:** Thank you, definitely some important considerations for licensing boards and policy makers. Well, before we close today, I want to make sure listeners know where they can find the report. Iris, where is it?

**Iris:** Yeah, so the report is on our website, which is [www.ncsl.org](http://www.ncsl.org). Under the Research tab on our homepage, on the Labor and Employment topic page, you'll see a link for the Occupational Licensing Project. There, you'll see a link to the Regulatory Structures Project, including the full report, a summary, and additional resources. There's also a link to the report from the project landing page: [www.ncsl.org/stateslicense](http://www.ncsl.org/stateslicense). And it's available from a link on CLEAR's Regulatory News blog and the Communities by CLEAR discussion forum.

**Line:** Perfect, thank you. I think this has been a great discussion. Thank you, Iris, Suzanne, Stephanie, and Cory, for your time and being a part of CLEAR's podcast. It's always wonderful to have the opportunity to talk about these issues and learn about what's happening in the field of occupational and professional licensing. Thank you all for speaking with us today.

**Cory:** It's been a pleasure. Thank you for having us.

**Line:** Absolutely! And thank you for listening. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. Thank you to our frequent listeners. You guys are why we keep coming back. And if you're new to the CLEAR podcast, please take a moment to subscribe. It's available on Podbean, iTunes, Apple Podcasts, Google Podcasts, Stitcher, Spotify, or TuneIn. If you enjoyed this podcast episode, please leave a rating or comment in the app. Those reviews help us improve our ranking and make it easier for new listeners to find us. Feel free to visit our website at [www.clearhq.org](http://www.clearhq.org) for additional resources, as well as a calendar of upcoming training programs and events.

Finally, thanks to CLEAR staff, specifically Stephanie Thompson, one of our commenters today but also

Content Coordinator and editor for our program. Once again, I'm Line Dempsey, and I hope to be speaking with you again soon.

*The audio version of this podcast episode is available at [https://podcast.clearhq.org/e/regulatory\\_structures/](https://podcast.clearhq.org/e/regulatory_structures/).*