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# Occupational Regulation in Other States

## APPENDIX A

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**T**his appendix summarizes what we learned about occupational regulation through case studies of eight other states. We address the following questions:

- **What is the legislative process for occupational regulation in other states?**
- **What are the unique characteristics of occupational regulation in other states?**
- **What are the recent developments in occupational regulation?**

To find out how occupational regulation is handled in other states we selected a group of states that illustrate a variety of organizational models (see Chapter 2, Figure 2.2). We also selected states that had recently issued reports dealing with occupational regulation, indicating that the issue was under study and debate. After reviewing any available reports, we conducted telephone interviews with legislative staff and departmental officials in each state. We gathered additional information at the annual conference of the Council on Licensure, Enforcement, and Regulation (CLEAR).<sup>1</sup>

Briefly, our research suggests that the issues currently facing Minnesota are very similar to the occupational regulation issues facing other states. Furthermore, while occupational regulation is organized and implemented differently in other states, no state has effectively “solved the problem.” This appendix provides a brief sketch of the legislative process, distinguishing characteristics, and recent developments for each of the eight states that we contacted.

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<sup>1</sup> “Charting a Course for 21st Century Regulation,” Eighteenth Annual Conference, Council on Licensure, Enforcement, and Regulation. Denver, Colorado. September 16-19, 1998. According to the organizations’ website: CLEAR is an international association of state and provincial officials involved with occupational and professional licensing and regulation issues. . . . CLEAR’s mission is to improve the quality and understanding of professional and occupational regulation to enhance public protection. CLEAR’s purpose is to bring together government officials, agencies and others to encourage and provide for the exchange of information and ideas (<http://www.clearhq.org>; November 30, 1998).

## ARIZONA

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**Arizona has a comprehensive sunset provision and a sunrise law covering health professions.**

Arizona is relatively pro-active in the area of occupational regulation. A defining feature of Arizona state government is its level of involvement with sunset legislation. Arizona has comprehensive sunset legislation, meaning *all* state programs are subject to periodic review. Sunset is widely accepted in Arizona and works well according to legislative staff.<sup>2</sup>

Arizona also performs sunrise reviews, but only for health-related occupations. In Arizona, sunrise reviews apply to scope of practice issues as well as the regulation of previously unregulated occupations. Each year applicant groups are required to submit a completed questionnaire to the Joint Legislative Audit Committee (JLAC) by September 1st. The JLAC then refers the issue to a relevant Committee of Reference, which is a joint committee convened specifically for the sunrise review. The Committee of Reference holds hearings and issues recommendations to the Legislature by December 1st. The process can be circumvented by applicant groups who are successful in finding legislators willing to sponsor proposals outside of the process. However, Arizona legislative staff suggested that it is typically not in the applicant group's best interest to circumvent the sunrise process since doing so is likely to become part of the legislative debate. The sunrise process in Arizona is somewhat contentious and politicized, with occupational groups fiercely debating issues during the Committee of Reference hearings.

## FLORIDA

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**Florida has recently reorganized its administration of occupational regulation.**

Prior to the 1970s, occupational regulation in Florida was administered through several autonomous, independent boards appointed by the Governor. In the late 1970s, all occupational regulation was centralized in Florida's Department of Professional Regulation (DPR). However, substantial departmental reorganization in recent years moved oversight of health professions from DPR to the newly created Department of Health. In addition, the Department of Business Regulation was consolidated with the Department of Professional Regulation. Currently, eighteen regulatory boards are organized under the Department of Business and Professional Regulation's Division of Professions. The division is funded by license fees and provides administrative services. Investigations of consumer complaints are handled by the department's Division of Regulation.

In 1991 Florida discontinued its formerly active involvement with sunset reviews in favor of sunrise legislation. Florida's sunrise act is triggered by proposals to regulate previously unregulated occupations, but does not necessarily cover proposals to expand or enhance the scope of practice of occupations already regulated by the state. Florida's sunrise reviews require the collection of information from two primary sources: (1) a questionnaire filled out by the occupational group seeking regulation and (2) the Department of Business

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<sup>2</sup> Ms. Liana Martin, Research Analyst with Arizona House Health Committee, Telephone interview, Phoenix, Arizona, August 14, 1998.

Regulation's Division of Professions. The department provides information concerning the resources that would be needed to implement the new regulation, how the proposed legislation compares to existing regulation, and how regulation might be attained through less restrictive or more cost-effective alternatives. Staff of a relevant legislative committee compiles this information and reports back to the committee with its recommendations. Committee members then sponsor legislation relating to the proposal as they see fit. It should be noted that the implementation of Florida's sunrise law is dependent on the will of committee chairpersons who may choose to hear a bill proposing new occupational regulation before the completion of a formal sunrise review.

Overall, Florida's sunrise provision has been successful in limiting licensure; no groups have been licensed since it was initiated in 1991. Furthermore, according to legislative staff, the sunrise process is less politicized than was the sunset process, largely because the latter dealt with established regulatory bodies and professional associations invested in retaining state regulation.<sup>3</sup>

Another development regarding occupational regulation in Florida is the privatization of the Board of Professional Engineers' staff through the creation of the Florida Engineers Management Corporation (FEMC), operational as of July 1998. The FEMC does not in any way replace the Governor-appointed Board of Professional Engineers but rather supplies the staff services previously performed by Department of Business and Professional Regulation personnel. The FEMC was originally proposed by the Florida Engineer's Society, which had concerns that the previously-existing departmental staffing did not develop the desired level of long-term dedication to and expertise about engineering. Some state officials have concerns about the legality of the FEMC, primarily related to the granting of police-power to a private organization and the degree to which staff privatization might bolster the monopolistic tendencies of board regulation.

## MAINE

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### Maine has a central Office of Licensing and Regulation.

In Maine occupational licensing activities are overseen by the Office of Licensing and Regulation in the Department of Professional and Financial Regulation. The office is responsible for 42 boards, commissions, and registrations. There are also six independent and autonomous health boards.

Hearings for initial or expanded occupational regulation are usually held by the Business and Economic Development Committee, a joint House/Senate committee.<sup>4</sup> Occasionally bills are heard by more than one joint committee, and occasionally professional groups are able to circumvent the Business and Economic Development Committee by having proposals introduced in different committees. If the bill passes the joint committee it returns to the floor of the legislative body that introduced the bill. At any time the Legislature may ask the

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<sup>3</sup> Mr. Gip Arthur, Florida House Committee on Business Regulation and Consumer Affairs, Telephone interview, Tallahassee, Florida, August 14, 1998.

<sup>4</sup> All legislative committees in Maine are joint committees.

Department of Professional and Financial Regulation to study the issue and make recommendations for regulation.

In 1995, Maine passed amended sunrise legislation to help limit the growth of new regulated occupations. The legislation replaced a 1986 sunrise statute that was essentially ignored by legislators and groups seeking regulation. The new statute mandates groups seeking new or substantial expansion of regulation to answer questions pertaining to thirteen criteria stated in law. The law also provides any group opposed to the legislation the opportunity to present arguments to the legislative committee hearing the issue. The committee is instructed to analyze the answers provided by the group seeking regulation, as well as comments from any group opposing the proposed regulation, before making a decision. This new law was designed to help legislators assess the need for occupational regulation in terms of public health, safety, and welfare, and also address issues of costs and benefits, means of voluntary regulation, specialized skill, and minimal competence.

## OREGON

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### Oregon has a recent history of reform and counter-reform.

The series of reforms and counter reforms that Oregon has experienced in recent years illustrates the trends and frustrations associated with occupational regulation in many states. In the 1960s non-health-related boards were administratively consolidated under the Department of Commerce. In 1971 the same was done for health-related boards under the Department of Human Resources' Health Division. By 1975, the health boards were given a more autonomous semi-independent status, and by 1987 the boards of Nursing, Medical Examiners, and Chiropractic Examiners were made fully autonomous. In 1987 the Commerce Department was abolished and the several boards it administered were dispersed to different agencies or became independent. A bill introduced in 1993 would have placed all boards in a semi-independent status, and a budgetary note in 1995 required the Department of Administrative Services to examine the feasibility of consolidating occupational regulation.<sup>5</sup> Neither of these reforms were passed, although six boards were granted semi-independent status during the 1998 legislative session.

Oregon also enacted sunset legislation in 1977, but it was repealed in 1993 due to funding shortages. Additionally, the Oregon legislature used to have a sunrise committee, but it was discontinued due to lack of interest. Since Oregon does not have active sunrise or sunset provisions it is not surprising that occupational regulation has proliferated in Oregon.<sup>6</sup>

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<sup>5</sup> Oregon Department of Administrative Services, Budget, and Management Division, *Regulated Professional Occupations*, (Salem, January 1997).

<sup>6</sup> According to *The Directory of Professional and Occupational Regulation in the United States* (CLEAR, 1994), Oregon regulates 165 occupations, compared to a national state average of 124. Only four states regulate more occupations than Oregon (Massachusetts, California, Nevada, and Arkansas). As noted in Chapter 2, *The Directory of Professional and Occupational Regulation in the United States* indicates that Minnesota regulates 142 occupations and ranks 13th highest among all states (see Figure 2.1, page 41).

## TEXAS

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### Texas has a Health Professions Council.

In Texas occupational regulation is organized under three entities: (1) the Department of Licensing and Regulation has jurisdiction over several non-health-related occupations, (2) the Department of Health oversees the regulation of some health professions, and (3) the Health Professions Council coordinates the efforts of the independent health boards. The Health Professions Council is a unique and frequently cited aspect of occupational regulation in Texas. The Council, whose membership includes the executive directors of the health boards, was created as a result of a sunset review in the early 1990s. In an effort to encourage cost savings, the sunset review commission recommended that the health boards share administrative services such as photocopying and processing consumer complaints. The Health Professions Council also reviews policy issues, although it is not a policy-making body.

In Texas the Sunset Advisory Commission reviews each agency every twelve years. The commission also provides the legislature with basic information regarding proposed legislation upon request. Texas does not have a formal sunrise provision, although sunrise for health professions was proposed during the 1998 session. The legislation would have given the Health Professions Council responsibility for conducting sunrise reviews, but the proposal did not pass partly because of concerns relating to whether the executive directors of enforcing agencies should create policy and then enforce laws.

## VIRGINIA

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### Virginia has two departments that oversee occupational regulation.

Virginia has two departments that oversee occupational regulation, the Department of Health Professions and the Department of Professional and Occupational Regulation. The departments provide administrative support for the health and non-health boards, respectively. Additionally, the Department of Professional and Occupational Regulation directly regulates some occupations. The departments are also responsible for conducting studies and soliciting public comment about occupations seeking regulation. Health boards wishing to introduce new legislation must submit the proposals to the Department of Professional and Occupational Regulation before they are presented to the Assembly. New occupations seeking legislation may submit bills to the Assembly or approach the department for assistance.

In addition to the Department of Health Professions, the regulation of health professions is also overseen by the Board of Health Professions. The Board of Health Professions, made up of representatives from all twelve health boards and five public members, approves all health board budgets. The Board of Health Professions also coordinates policy from each of the regulatory boards, reviews all board-sponsored legislative proposals, and advises the governor and assembly.

## WASHINGTON

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**Washington has enacted a sunrise law and a uniform disciplinary act for health professions. It also has centralized the administration of the health boards.**

The most interesting aspects of occupational regulation in Washington relate to the health care professions. Washington passed three major reforms in the regulation of health care professions during the 1980s. First, in 1983, Washington passed a sunrise act that applies to scope of practice proposals as well as proposals for regulating previously unregulated professions. Similar to Minnesota's sunrise statute, Washington's sunrise act stipulates that when regulation is deemed necessary, the legislature should enact the least restrictive form of regulation; however, Washington's act explicitly provides the three options of registration, certification, and licensing.<sup>7</sup> The act has been successful in limiting the number of new occupations regulated in Washington; since it was passed only one health profession has become licensed. Two problems were noted with Washington's statute. One was that the act mandates sunrise reviews by both the Health Board and the Department of Health. This two review system has been somewhat problematic since the two agencies receive different information and sometimes offer different recommendations. The other problem is that the statute mandates the reviews to be narrowly tailored to the specific proposals at hand. This is problematic because the proposals can undergo substantial change in the time between the beginning of the reviews and the time at which the reviews are presented to the legislature.

The second major reform was in 1986 when Washington passed a Uniform Disciplinary Act (UDA) for health professions. As its name suggests, the UDA requires boards to take similar disciplinary actions for similar violations. The UDA also broadened the range of disciplinary actions available to the boards. Prior to the passage of the UDA board disciplinary action was largely limited to the harsh measure of license revocation. Finally, the UDA also requires the boards to report to the Legislature periodically on disciplinary actions. Currently, the Washington State Department of Licensing is drafting a proposal for a similar UDA which would cover all non-health professions. The proposed legislation would add to the existing practice acts which govern each profession by creating a uniform system of sanctions and remedies covering all regulated professions.<sup>8</sup>

A third reform came in 1989 with the creation of the Department of Health. At that time the administrative, staffing, and budgetary decisions of the health-related boards were moved from the Department of Licensing to the Department of Health. The boards retain full rule-making authority.

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<sup>7</sup> *Revised Code of Washington* §18.120.010. Minnesota's sunrise act, *Minn. Stat.* §214.001, explicitly provides only two levels of occupational regulation: licensing and registration (the latter defined in Minnesota statute as title protection).

<sup>8</sup> The proposed Uniform Disciplinary Act for Non-Health Professions will not be presented until legislative session year 2000. Another mechanism for attaining regulatory uniformity in Washington is found in the "uniform administrative provisions" (RCW §18.122), which provides groups seeking occupational regulation a template for legislative proposals. Among the reported advantages of the template is that the consistency in format makes it easier to analyze proposal content.

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**Wisconsin has a Department of Regulation and Licensing responsible for both health and non-health occupations.**

## WISCONSIN

In Wisconsin occupational regulation is overseen by the Department of Regulation and Licensing, which was created in 1976. The Secretary of the department is appointed by the Governor. This department handles both health and non-health occupations. Many of the professions have regulatory boards which maintain responsibility for policy development and disciplinary actions, but other occupations are directly regulated by the department. In recent years the state has shifted towards using less restrictive forms of regulation. Thus, most newly-regulated occupations are overseen by the department rather than a board. The department handles the complaint and investigation process, although the Attorney General's Office may assist in a very limited number of cases.

Legislative proposals relating to occupational regulation are heard in various committees of the Assembly and Senate. Wisconsin does not have a sunrise provision, but the Department of Regulation and Licensing does apply sunrise-like criteria when it studies regulation requests. Frequently the Legislature will direct new groups seeking regulation to the department so the department can apply the sunrise criteria and issue a recommendation commensurate with the administration's political agenda. In addition to studying new regulation requests, the department is responsible for assisting regulatory boards in the preparation and presentation of any proposed regulatory changes. In these situations, the department will apply the sunrise criteria and issue a recommendation about the proposed legislation. Occasionally the department may oppose the boards' position on legislation or rules. Should the Legislature decide to regulate an occupation or business entity contrary to the department's recommendation, the legislature will ask the department to work with the group to ensure that the regulation can be implemented effectively.

## SUMMARY

In conclusion, we found that all of the states that we contacted were struggling with the questions similar to those that gave rise to this report, including: What is the best way to inform legislative decision making concerning occupational regulation? What is the most efficient way to organize occupational regulation? How can regulatory entities best address consumer complaints? Several people we talked to in other states echoed concerns raised in Minnesota about the degree to which occupational regulation actually protects the public and the relative political strength of professional organizations.

In general, states that have formal sunrise provisions, complete with questionnaires for applicant groups and summary reports generated by either executive branch departments or legislative staff, give the impression of a better-informed legislative process. However, even states with such complete sunrise provisions experience frustrations with professional groups that are able to circumvent the process. Generally, states with sunset provisions give the impression that they do a better job of providing continued legislative oversight.

Centralization of regulatory activities leaves a more ambiguous impression; while many states have centralized, many have also backed away from centralization. While centralization may create some efficiencies, it also creates additional layers of bureaucracy. Several states appear to have at least temporarily settled this issue through the creation of a sort of middle ground that retains at least some independent regulatory boards but segregates health and non-health professions under different umbrella departments. One benefit of at least some degree of centralization is that it provides a focal point for the legislative oversight that is more easily lost in a system made of several small independent boards.

In sum, despite the flexibility that our federal system allows, no state we studied appears to have solved the subtle yet chronic problems that accompany occupational regulation. While our research into occupational regulation in other states left us with some impressionistic conclusions about the costs and benefits of certain organizational features, we found no convincing evidence that any particular organizational arrangement or process provides an assured solution to any given problem associated with occupational regulation.