OPLR Occupational Regulation Framework

December 2025

Introduction

OPLR's duties include performing three types of reviews:

- **Periodic reviews**, which are deep-dive, 'sunset'-like reviews of every regulated occupation in the state once every ten years, including statute and rule;
- **Sunrise applications**, which propose regulating a currently unregulated occupation;
- **Narrower one-time reviews** as requested by individual legislators as capacity permits.

The framework described here was developed specifically for the deeper periodic reviews, but it also informs OPLR's methodology for sunrise and one-time reviews.

All periodic reviews include three basic questions:

1. Threshold Question: Should the occupation be regulated by the state through individual occupational regulation (yes/no)?

2. Regulatory Model Choice: If so, what is an appropriate regulatory model to balance consumer safety with access and efficient oversight?

3. Elements of the Regulatory Model: What combination of elements (such as entry requirements, scope of practice, supervision) promote consumer safety, access and efficiency?

OPLR answers these questions by gathering data and applying statutory review criteria codified in Utah Code 13-1b-302. These criteria (broadly speaking) require OPLR to consider occupational regulations in light of harm to the health, safety, or financial welfare of the public, the impact to the state from occupational oversight, balanced with a number of criteria related to access–both access to the profession, and access to the services it provides (e.g., number of practitioners, cost to consumers).

These review criteria are informed by an understanding that occupational regulation which is overly restrictive or burdensome can lower supply of practitioners, increase the cost of services, and thereby impede access for consumers, even as that regulation benefits incumbent regulated practitioners. For more on this topic see the writings of Dr. Morris Kleiner (a summary here), or this summary report from the Obama White House in 2015.

The role of the framework is to help OPLR staff apply the same criteria as equally and objectively as possible to each occupation under review. Not all the criteria are equally relevant to the three questions posed by a periodic review. The framework helps the team apply the right criteria to the right question, be it the threshold question, regulatory model choice, or elements within a regulatory model.

Step 1: Threshold Question and Regulatory Model

Applying review criteria

The first step of the framework answers questions #1 and #2 above: should the occupation be regulated by the state, and if so, via which regulatory model? These questions rest on the potential harm to a consumer, which is made up of two elements: 1) the theoretical potential for harm inherent in the occupation, and 2) other factors that may exacerbate or mitigate that harm.

One way to articulate an occupation's theoretical potential for harm is through a hypothetical: what harm would likely be caused to a consumer if a well-meaning but untrained individual were to perform the service?

OPLR begins by considering information related to review criteria directly from section 302 of OPLR's statute. OPLR has also found it useful to add other criteria, as authorized by 13-1b-302(11), which are usually more detailed ways of measuring or assessing harm to consumers.

The criteria OPLR currently uses to assess the potential harm are:

- Mechanism of harm (i.e., how does the harm actually occur? What activities carry the risk of harm?)
- Probability, severity, and permanence of potential harm
- Downstream impact (i.e., potential for future consequences)
- Consumer and setting factors (e.g., vulnerability of the consumer, physical touch, privacy of setting, and information asymmetry)

Higher harm occupations, working with more vulnerable consumers in more vulnerable settings suggest a higher need for occupational regulation, or more restrictive regulatory models.

OPLR additionally assesses other factors that may mitigate or exacerbate the potential for harm. These criteria largely consider existing forms of oversight and include:

- Level of employer oversight (e.g., solo practice vs. large, sophisticated employer)
- Level of private/industry oversight (e.g., national certifying bodies, industry standards)
- Level of other public oversight (e.g., facility licensing, federal regulation)
- Information availability to consumers and choice about individual practitioners

Occupations with other forms of accountability and oversight, whether through public, private/industry, employers, or readily available information have a lower need for occupational regulation at the state level.

Considering regulatory models

From applying the review criteria, OPLR determines whether the occupation requires regulation by the state. If so, OPLR then identifies one or more regulatory models that would address the potential for harm identified above. These range from none (i.e., market forces, which would apply when no state regulation is needed), to a full licensure model.

- **Market forces & existing oversight**: Markets naturally hold participants accountable–less safe, lower quality practitioners lose business to safer, higher quality practitioners. This occurs through education and training, voluntary industry certifications, rating platforms, and other market mechanisms (e.g., employer hiring, contract management). Where the occupation is lower harm (e.g., auto detailing), market mechanisms are most often sufficient to keep consumers safe. In addition, many professions have other oversight from public or private groups, employers, tort liability, and other structures. These forms of oversight may operate at the individual or entity/facility level, but both provide additional safeguards for consumers beyond state occupational regulation.

- **Certification (voluntary)**: This model provides practitioners with the option of a state certification which validates their qualifications and, in return, allows the use of a title such as ‘state certified X’. Because it is voluntary, certification does not protect the scope of practice (anyone can provide the service), but it does protect the title. As such its purpose is to create a state-validated signal of safety and competence. Certification is often seen as a way to promote marketability and allow reimbursement (CMS and others often require state-validation of qualifications for reimbursement).

- **Registration**: For occupations with some potential for limited harm, registration can provide transparency and accountability with minimal burden. Registration is typically mandatory, requiring practitioners to provide their name and other information to the state. Registries may also include a public listing, a requirement for insurance or bonding, and confer an exclusive right to use a title such as ‘state registered X’. Entry requirements such as education, experience, or exams are typically not required. As such, registration is the least restrictive form of occupational regulation.

- **Exemption**: State law may exempt a certain class of practitioner from occupational regulation under certain conditions. Exemptions are in effect a ‘mini-license’, as exemptions may specify a scope of practice (often a subset of specific acts from the original scope), and specific requirements to obtain exemption (e.g., training). Thus, someone with specified training may provide chiropractic, physical therapy, massage, or acupuncture to an animal without violating the Veterinary Practice Act of Utah. Because exemptions specify a narrow scope, they function much like licenses. However, they do not require any application to the state, continuing education, or advisory board (though they do maintain the agency’s ability to cite for unlicensed practice). In this sense they are less burdensome than licensure or mandatory certification, both for the state and for practitioners.

- **Certification (mandatory)**: OPLR has proposed a new regulatory model sitting between voluntary certification and licensing called 'mandatory certification'. The purpose is to ensure safety and competence for occupations where the harm to the consumer is limited, but entry qualifications are still needed (for a variety of reasons). Mandatory certification specifies required qualifications, protects scope of practice (where, ideally, scope is defined broadly, not prescriptively), protects title, and allows for full discipline and enforcement. However, it is less burdensome administratively in that it has some combination of longer renewal times, limited or no continuing education requirements, and no formal advisory board.

- **Licensure**: Occupational licensing provides the strongest protections, and is thus the most restrictive. Licensure is intended for those occupations with high potential for harm to consumers. It includes all of the elements of occupational regulation: mandatory entry requirements, protected scope of practice, protected title, required continuing education, frequent renewals, full discipline and enforcement authority, and an advisory board for technical and disciplinary issues.

There are two important notes about the choice of regulatory model. First, while this list may appear clean cut, each model entails a great deal of variation in practice. There are harder and softer forms of each: some registration models in some jurisdictions include qualification requirements, and regulations called 'licenses' may be functionally voluntary. Additionally, while the labels of registration, certification, and licensure are generally accepted, states may use different labels (e.g., by using a regulatory model that fits the description of a license, but calling it 'registration' or 'certification').

Second, the choice of regulatory model is not deterministic or mechanistic. Rather, the framework suggests regulatory models that could be reasonable after applying the criteria. Generally, occupations with higher potential for harm require more restrictive regulatory models; lower harm indicates less restrictive models, but there are exceptions. OPLR weighs the available data and information and applies judgment and experience to make a final recommendation.

Step 2: Elements Within the Regulatory Model

The second step answers question #3, 'What combination of elements (such as entry requirements, scope of practice, supervision) promote consumer safety, access and efficiency?' In step 1, it is the potential or theoretical harm that informs the answers. In step 2, OPLR examines what is actually occurring in the market given the existing regulatory and market environment. Thus in step 2, OPLR considers the following categories of information:

- **Actual harm**: This is indicated by multiple sources, but can include DOPL complaint data, national data on adverse events (e.g., disciplinary actions by national certifying bodies, the National Practitioner Data Bank for healthcare, malpractice insurance claims), academic studies, expert interviews, surveys, and others.

- **Other factors** (from step 1): the same factors that may exacerbate or mitigate harm in step 1 influence design choices about entry requirements, scope of practice, and supervision/independence. These are mainly questions about the existence and sophistication of other forms of oversight from consumers, employers, national groups, federal agencies, or other agencies within the State of Utah.
- **Access**: Statute requires OPLR to consider 'potentially less burdensome' regulatory alternatives–this is largely in reference to improving access for potential entrants and consumers. OPLR assesses access by considering the supply of practitioners using workforce data (e.g., federal BLS, Utah Department of Workforce Services, workforce surveys and analysis), barriers to entry (e.g., ROI on education programs), costs of compliance with regulation, and other factors related to access and cost.

As with step 1, there is no definitive pattern of information that leads to a particular design choice within a particular regulatory model. In general, occupations with sufficient workforce, limited additional oversight, and clear indications of significant actual consumer harms are likely candidates for tighter regulation within a model. Conversely, occupations with workforce shortages, significant existing oversight, and fewer indications of significant actual harm to consumers would be a natural candidate for loosening regulation within a model. Less restrictive in this case could mean lowering entry requirements, expanding scope of practice, and/or reducing supervision/increasing independence.

Final thoughts

Each occupation is different and functions differently in the market. Drawing the "right" conclusions from the available information is both art and science, as is developing an initial recommendation. The framework helps OPLR collect and consider relevant information consistently, and often provides more clarity when there is a problem in the existing regulatory structure that should be addressed. However there is no shortcut to conducting research, applying experience and critical thinking, and engaging with stakeholders.

In all cases, OPLR tries to vet recommendations with a broad range of stakeholders to test and refine them. Despite all of the data and information gathered, and work applying the framework, it is often these conversations with practitioners, regulators, employers, and others that transforms an initial idea into a workable recommendation.

Full list of framework criteria

Factors in assessing potential for harm:

- Mechanism of harm: This is the primary means by which a practitioner could potentially harm a client, patient or consumer, or the actions typical of the profession that carry risk (i.e., misdiagnosis, infection from non-sterile tools, financial loss)
- Severity, permanence and likelihood of harm: How likely, permanent and severe harm may be if a well-meaning but untrained individual were to perform the service
- Consequence of error: Based on the U.S. DOL O*NET database estimate of harm from 0 to 100. These data are imperfect and do not allow for fine comparisons between occupations, but can provide directionally helpful information on magnitude of harm.
- Downstream impact: The future implications (in terms of health, safety, financial welfare) of negligent or sub-standard care (e.g., failing to properly screen for hearing loss in children leading to poor language development, poor rehab treatment leading to medical intervention)
- Patient vulnerability: The physical or mental fragility of the consumer (e.g., geriatric, infant, chronically ill, intellectually disabled). Is the consumer in a position to advocate for themselves and make informed decisions?
- Frequency of physical touch: DOPL complaints show that boundary issues such as sexual touching are a common driver of complaints against regulated individuals–professions that must physically touch consumers, particularly intimate touch, creates opportunity for such harm.
- Privacy of setting: The degree to which services are rendered one-on-one, in a closed room/area that is away from other individuals.
- Information Asymmetry: This covers information a practitioner has about the service that their client/patient does not have. Consider if the client/patient can adequately judge the quality/safety of the services being rendered.

Factors that may mitigate and/or exacerbate the potential for harm:

- Clinical/operational independence: The degree to which a regulated practitioner can exercise clinical judgement and independently determine the services received by an individual or required in a given situation. In non-healthcare settings, this would be ‘operational’ or ‘tactical’ independence.
- Business/administrative independence: The degree to which a practitioner can legally and practically set up an independent business offering services without being a part of a larger organization, firm, or agency which would otherwise exercise oversight of the practitioner’s actions.

- Patient choice: Whether consumers have choice or agency in selecting a specific practitioner providing services. For example, a patient in an ambulance cannot select the EMT nor the emergency room staff providing them care.
- Information availability: The ease of accessing information that can inform a consumer on the background, experience, training, and quality of a given practitioner.
- Employer oversight: Employed individuals have natural oversight through their employer, especially larger, more sophisticated employers. Professions that work exclusively for larger employers have existing oversight that may change the role of individual level occupational regulation.
- Public oversight: The presence of other governmental bodies (local, state, federal), besides DOPL (or the Utah agency responsible for licensing), that set mandatory qualification, scope, or conduct rules. Do they take action or force the employers to take actions in cases of violation? For example, facility-level licensing within healthcare provides a type of oversight for many health care providers.
- Private oversight: The presence and impact of any private bodies (i.e. certifying and accrediting bodies) that may set commonly accepted qualification/scope/conduct rules for the profession. Do these bodies have their own complaint processes through which they may revoke someone's credentials, and to what degree does this have practical impact?