

# Is it government's responsibility?

## EVALUATING OCCUPATIONAL LICENSING REGULATION

Department: \_\_\_\_\_ Division \_\_\_\_\_

Rater: \_\_\_\_\_ Role: \_\_\_\_\_ Date: \_\_\_\_\_

Sector/activity/program under review: \_\_\_\_\_

This evaluation tool is based on the principles of **right-touch regulation**, which does not prescribe an outcome but leads the thoughtful regulator to explore what characteristics of oversight will properly limit or address any problems with the activity in question.

The principles state that regulation should aim to be:

<b>Proportionate</b>	Regulators should <b>only intervene when necessary</b> . Remedies should be appropriate to the risk posed, and costs identified and minimized
<b>Consistent</b>	Rules and standards must be <b>aligned and implemented fairly</b>
<b>Targeted</b>	Regulation should be <b>focused on the problem, and minimize side effects</b>
<b>Transparent</b>	Regulators should be <b>open, and keep regulations simple and user friendly</b>
<b>Accountable</b>	Regulators must be able to <b>justify decisions, and be subject to public scrutiny</b>
<b>Agile</b>	Regulation must <b>look forward</b> and be able to <b>adapt to anticipate change</b>

These principles provide the foundation for thinking on policy in all sectors of society. The concept of right-touch regulation emerges naturally from these six principles: bringing together commonly agreed-upon principles of good regulation with understanding of a sector and a quantified and qualified assessment of risk of harm. It is intended for those making decisions about the design of a regulatory framework.

### What this exercise WILL do:

- prompt you to consider new ideas to solve problems
- encourage deep dives into alternatives to regulation
- provide justification and reinforcement of management decisions
- expose you to fresh perspectives
- provide a framework for further discussion

### What this exercise WILL NOT do:

- tell you how to solve the problem
- make you feel comfortable
- force you to change

This workbook is intended to accompany an explanatory presentation with the same title. If you have received the workbook without access to the presentation or materials, please contact Sara Chambers at [sara.chambers@alaska.gov](mailto:sara.chambers@alaska.gov).

## Identify the Problems

We need to identify the problem before we can determine whether any policy is the right one. Often in policy development the need for regulatory change, as a solution, is identified before the problem is properly described and understood. This can lead to inefficiencies as resources are spent developing a regulatory solution when the problem may be better dealt with in other ways.



### *Examples from various professions:*

- An improperly built structure could collapse.
- A person could overdose on prescribed medication.
- Wildlife could be wantonly wasted.

**A. Describe the problems with this profession. List each problem on a separate line.**


## Quantify and Qualify the Risks

Once the problem has been identified, we need to understand it fully and quantify and qualify the risks associated with it. Quantifying risks means gauging the likelihood of harm occurring and its severity. Qualifying risks means looking closely at the nature of the harm, and understanding how and why it occurs. Without this two-fold evaluation, which must be based on evidence, it is impossible to judge whether regulatory action is necessary, what type of regulatory response might be needed, or whether it would be better to use other means of managing the issues. Regulation should only be chosen when it clearly provides the best solution. Simply identifying a real or potential risk is not sufficient.

## B. Create a *hazard profile* for each problem

Intrinsic Hazards		Extrinsic Hazards	
<p><b>Complexity</b></p> <p>Potential for harm caused by essential features of practice; for example: prescribing, surgical and psychological interventions</p> <p>The complexity and inherent hazards of the activity</p>		<p><b>Scale</b></p> <ul style="list-style-type: none"> <li>• Size of service user group</li> <li>• Size of practitioner or licensee group</li> </ul>	<p>This criterion helps to ascertain the dimensions of harm. If the number of practitioners or service users is small, then this may suggest an alternative method of assurance would be appropriate. Conversely, support workers might pose a small risk volume in terms of complexity but are high in numbers.</p>
<p><b>Context</b></p> <p>Environments with varying levels of oversight (hospitals, private practice, homes) may indicate greater or lesser opportunity for hazards—or the ability to proactively or reactively manage hazards.</p> <p>The environments in which the intervention takes place</p>		<p><b>Perception</b></p> <p>Need for:</p> <ul style="list-style-type: none"> <li>• Public confidence in the occupation</li> <li>• Assurance for employers or other stakeholders</li> </ul>	<p>This criterion enables consideration of probable effects on public confidence in the occupation or needs of employers or other agencies using the services of the occupational group.</p> <p>Take care not to allow false perceptions influence your answers.</p>
<p><b>Agency</b></p> <p>Contact with service users who may have less ability to exercise control over their care and circumstances may indicate a greater opportunity for hazards.</p> <p>Service user vulnerability or autonomy</p>		<p><b>Impact of regulation</b></p> <ul style="list-style-type: none"> <li>• Market</li> <li>• Workforce</li> <li>• Quality</li> <li>• Cost</li> <li>• Innovation</li> </ul>	<p>This criterion considers the impact of assurance mechanisms on the cost and supply of the occupation.</p> <p>Market impact might include market size, prices, trading conditions, labor supply, employer needs, cost to licensee.</p>
		<p><b>Unintended Consequences</b></p>	<p>Any identifiable unintended consequences of the proposed forms of assurance are considered so that any implications can be addressed.</p>
<b>Problem</b>	<b>Intrinsic Hazards</b>	<b>Extrinsic Hazards</b>	

	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>
	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>
	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>
	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>
	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>

**C. What is the possibility for the hazard(s) to lead to creation of a harm?**

<b>1-2</b>	<b>No harm to person or property</b> is associated with this profession.
<b>3-4</b>	<b>Minimal possibility of harm:</b> Unlikely to occur because conditions for hazards are unusual or infrequent.
<b>5-6</b>	<b>Moderate possibility of harm:</b> Possible to occur because conditions for hazards may be present.
<b>7-8</b>	<b>Significant possibility of harm:</b> Likely to occur because hazards are frequently present.
<b>9-10</b>	<b>Significant possibility of harm:</b> Certain to occur because hazards are always present.

<b>Hazard</b>	<b>Possibility Rating</b>	<b>Explanation of the possibility of harm:</b> What is the likelihood for something to go wrong? What conditions must be triggered?
1.		
2.		
3.		
4.		

5.		
6.		
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8.		
9.		
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## D. What is the significance of the harm?

<b>1-2</b>	<b>No harm to person or property</b> is associated with this profession.		
<b>3-4</b>	<b>Minimal harm to property:</b> Items of low dollar value or low quantity could be damaged or destroyed.		
<b>5-6</b>	<b>Moderate harm to property</b> Multiple structural systems or components or a single system/component of moderate value or investment could be damaged or destroyed.	<b>OR</b>	<b>Minimal harm to life, health, or safety</b> <ul style="list-style-type: none"> <li>Physical/emotional/mental harm to a person could be limited and minor, no treatment required</li> <li>Small number of people possibly affected</li> </ul>
<b>7-8</b>	<b>Significant harm to property</b> Total loss of significant structure or investment	<b>OR</b>	<b>Moderate harm to life, health, or safety</b> to a person <ul style="list-style-type: none"> <li>Temporary, treatable physical/emotional/mental injury could occur</li> <li>Larger number of people possibly affected</li> </ul>
<b>9-10</b>	<b>Significant harm to life, health, or safety:</b> Permanent physical/emotional/mental injury or death could occur. Wide audience of potential victims.		

Hazard	Significance Rating	Explanation of the significance of the harm
1.		
2.		
3.		
4.		
5.		
6.		
7.		

8.		
9.		
10.		

**Total your ratings regarding *harm*:**

Hazard	Harm Possibility Rating	Harm Significance Rating	<b>TOTAL</b>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

**Write down any observations regarding your rating totals:**



### Get as Close to the Problem as Possible

Once we have identified the problem and fully understood the risks, we must look for a solution that is as close to the problem as possible. Regulation is distant and removed from the point of care and problems are best solved near to where they occur. Targeted regulation needs to understand both the range of hazards and the factors that increase or decrease the risk of them resulting in harm. This means understanding the context in which the problem arises and the different tools that may be available to tackle the issues. We may need to work with organizations and individuals that are closer to the problem to bring about change. Some problems may be best tackled by regulatory measures applying to a whole profession, while others may require more targeted regulation or a non-regulatory approach.

### Focus on the Outcome

Adopting a “right-touch” approach means staying focused on the outcome that we are looking to achieve, rather than being concerned about process, or prioritizing interests other than public safety. The outcome should be both tangible and measurable, and it must be directed towards the reduction of harm. Staying focused on the outcome helps identify the most appropriate solution. Having a clearly defined and measurable outcome also makes it easier to measure effectiveness.

### Use Regulation Only When Necessary

Once the problem has been considered, we may begin to examine whether a regulatory change is the right proposal, evaluating this against the options of doing nothing and the risks and benefits of intervening. Making changes to regulation, especially statutory regulation, can be a slow process, so regulation should only be used as a solution when other actions are unable to deliver the desired results. A right-touch regulatory solution must keep to the six principles of good regulation and should build on existing approaches where possible. This will often involve looking for solutions other than regulation and may require regulators to work with other organizations and people to bring about change.

**E. How can the hazards be managed without state regulation?** Total harm ratings under 14 *may best be managed through non-governmental strategies*. If they can't, explain why.

<b>0</b>	<b>Market competition</b>	Yelp, Angie's List, Facebook, word of mouth
<b>0</b>	<b>Quality service self-disclosure</b>	Written specific warranty or money-back guarantee
<b>0</b>	<b>Voluntary third-party certification</b>	Better Business Bureau, national accreditation
<b>1</b>	<b>Partnership with stakeholders</b>	Employer/facility oversight, such as training, qualifications, codes of conduct, supervision, and evaluation
<b>1</b>	<b>Voluntary bonding/insurance</b>	Proof of insurance or bond is available
<b>2</b>	<b>Local/municipal ordinance</b>	Regulated or managed at the local level
Assign numbers	<b>Other ideas:</b>	

Hazard	Non-State Management Rating	Explanation of your suggested management <i>solution</i> in section E
1.		
2.		
3.		
4.		
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6.		
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For regulation to work, it must be clear to those who are regulated, clear to the public, clear to employers, and clear to the regulator. If each cannot explain to the other what the purpose of a regulation is and why it will work, it is not simple. This is as true in health and social care, with such a wide variety of agencies and individuals involved, as it is in other sectors. Avoiding complexity will lead to a greater impact. A regulatory response should be as simple as it can be while achieving the desired outcome.

### Check for Unintended Consequences

Assessing the probable impact of a particular solution is an essential step to help us avoid unintended consequences. In a system as interconnected and complex as health and social care, for example, it is inevitable that proposing a change in policy and practice will have consequences for other parts of the system. If regulations are not workable, people will work around them and in doing so create new risks. Regulating to remove one risk without a proper analysis of the consequences may create new risks or merely move the risk to a different place.

**F. How can the risk of hazards be managed through government regulation?** List the potential unintended consequences or new risks created by government intervention.

**Do these consequences outweigh the benefits of regulation? Why is state intervention the only solution?** Validate your answer; you may find that you change your mind.

<b>2</b>	<b>Legal recourse/consumer protection acts</b>	Legal grounds for court action, may enjoin the state
<b>3</b>	<b>Mandatory bonding/insurance</b>	Law requires proof of insurance or bonding
<b>5</b>	<b>State Inspection</b>	Periodic safety or compliance reviews by state agency
<b>6</b>	<b>State Registration</b>	Must be on an approved state list; minimal entry criteria required
<b>8</b>	<b>State Certification</b>	Must meet state criteria, no discipline is applicable
<b>10</b>	<b>State Licensure</b>	Must meet state criteria, may be disciplined for violations
Hazard	State Management Rating	Explanation of your suggested management <i>solution</i> in section F
1.		
2.		

3.		
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**G. Rate the level of restriction on market participants or restriction of access to services created by the management of each hazard.**

<b>1-2</b>	<b>Not restrictive:</b> No solution is necessary.
<b>3-4</b>	<b>Minimally restrictive:</b> A voluntary market solution like self-certification or bonding was selected. Most people can easily meet these criteria, and the service is widely available.

5-6	<b>Moderately restrictive:</b> A low-impact regulatory solution like registration, bonding, or insurance was selected. Most people seeking to enter the profession can meet these criteria, and the service is available in most markets.
7-8	<b>Very restrictive:</b> National certification/examination or another universal industry standard was selected. Many people seeking to enter the profession can meet these criteria, and the service is usually available in medium-to-large markets.
9-10	<b>Extremely restrictive:</b> Full licensure with criteria like restricted education, supervision, and examination was selected. Some people seeking to enter the profession can meet these criteria, and the service is usually only available in large markets.

Hazard	Restrictiveness Rating	Explanation of the restrictions created by your suggested <i>management</i> solutions in sections E and F.
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**Review and Respond to Change**

We should build flexibility into regulatory strategy to enable regulation to respond to change. All sectors evolve over time, as a result of a range of different influences. Regulators must not be left managing the crises of the past, while ignoring or being unable to react to new evidence that calls for change. This is what we mean by agility. A program of regular reviews, evaluation, and sunset audits can all help here.

**H. Rate the level of flexibility of the management strategy as determined above.**

<b>1</b>	<b>Extremely flexible:</b> No solution is necessary.
<b>3</b>	<b>Moderately flexible:</b> Solution is managed by the participant or employer.
<b>7</b>	<b>Minimally flexible:</b> Management of the problem requires state regulation change.
<b>10</b>	<b>Not flexible:</b> Management of the problem requires state statute change.

Hazard	Flexibility Rating	Provide method and frequency of evaluation to determine whether the solution is relevant and effective and—if not—how changes can be made
1.		
2.		
3.		
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**I. Total all your *management* ratings:**

Below your ratings, write down your observations. Are you surprised that a particular hazard has a higher number—and therefore a more regulatory management response—than others? Reconsider any changes. If you are doing this exercise in a small group, discuss your ratings and answers with colleagues.

Hazard	Non-State Management Rating	State Management Rating	Restrictiveness Rating	Flexibility Rating	TOTAL
1.					



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2.					
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6.					
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7.					
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**J. Determining next steps**

What must happen to adjust the climate of regulation of the profession you are reviewing? Review the documentation you have created in the previous exercises.

Hazard	Changes needed to implement new management strategies	Current inhibitors to improvement in management of relevant hazards
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**Deadlines and due-outs to accomplish next steps:**

Next Step	Person Responsible	Target Date of Draft	Target Date Final


This workbook was developed by the Alaska Department of Commerce, Community, and Economic Development; Division of Corporations, Business and Professional Licensing ([www.commerce.alaska.gov/web/cbpl](http://www.commerce.alaska.gov/web/cbpl)) in 2019.

Primary credit for the narrative and concepts used in this tool are to the Professional Standards Authority ([www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)). The concept of right-touch regulation emerges from the application of the principles of good regulation identified by the [Better Regulation Executive](#) in 2000, to which the [Professional Standards Authority](#) added agility as a sixth principle. All rights are reserved by the PSA.

Questions about this workbook can be directed to Sara Chambers, Director, Alaska Division of Corporations, Business and Professional Licensing, at [sara.chambers@alaska.gov](mailto:sara.chambers@alaska.gov).