

Principles for Effective Licensing Policy & Common Reform Blind Spots

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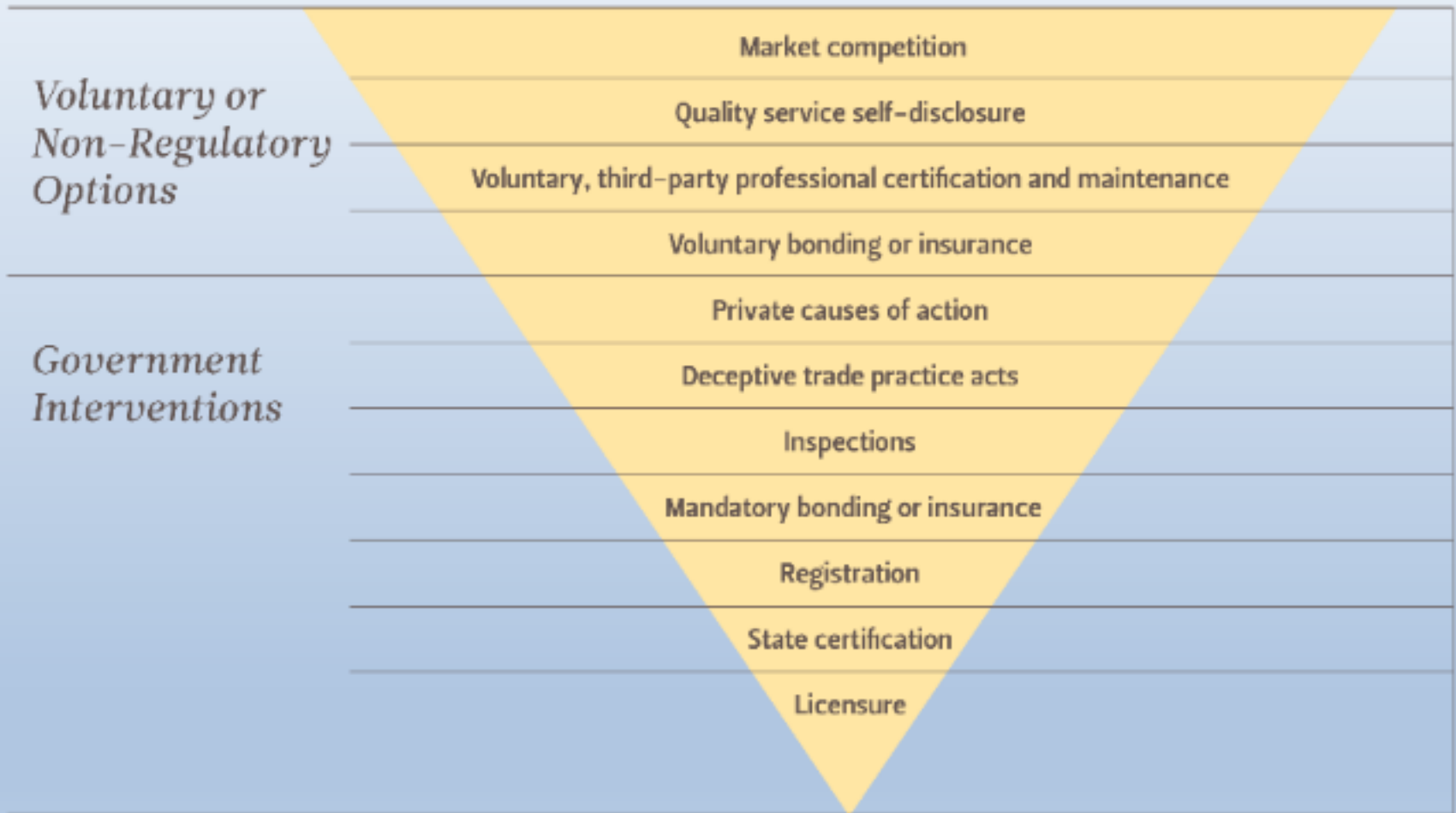
Principle #1: Identify the problem first

- Is there systematic empirical evidence—not theory or anecdote—of harm to public health and safety from occupational practice?
- Is the harm widespread?
- Is it severe?
- Are there voluntary mechanisms established to mitigate public harm?

Principle #2: Use least restrictive regulation

- The concept of “least restrictive regulation” is as old as sunrise and sunset laws dating to the 1970s and ’80s.
- Endorsed by CLEAR and Council of Economic Advisers; mirrors “right-touch” health care regulation in UK.
- IJ’s “inverted pyramid” (next slide) displays the concept graphically and considers voluntary alternatives.
- The basic idea is to right-size regulation: If there is proof of a problem unaddressed by voluntary mechanisms, select the best suited, least restrictive regulatory option.
- Don’t assume licensing is the best choice—there are alternatives for mitigating public risk.

The Inverted Pyramid: A Hierarchy of Alternatives to Licensing



Principle #3: Don't stop at the decision to license—how licensure works matters

- Keep requirements narrowly tailored to health and safety.
- Avoid accretion of anticompetitive rules.
 - Ø Carefully draw scope of practice.
 - Ø Favor neutral, not industry, oversight.
- Avoid needless burdens for people with a criminal record.
- Welcome out-of-staters.

Principle #4: Evidence-based licensing policy works for all occupations and professions

- Even occupations and professions with clear links to public health and safety (e.g., dentistry, medicine) are at risk for over-regulation and anticompetitive practices.
- An evidence-based approach can mitigate anticompetitive regulations and improve consumer outcomes across the board.

Blind Spot #1: Mobility vs. Ease of Entry

- Without careful thought, mobility solutions can increase barriers to entry as license requirements are raised to achieve agreement across states; they can also further entrench needless requirements.
- Most mobility solutions also leave people out—those in states without licensing.
- The first questions should be: Is there substantial proof that licensing is addressing a real problem? If so, are we licensing in the least restrictive way possible?
- Removing needless licensing barriers can improve worker mobility and expand economic opportunity.

Blind Spot #2: Overlooking Oversight

- Licensing boards are dominated by market participants with means and opportunity to stifle competition.
 - Ø See [“Foxes at the Henhouse: Occupational Licensing Boards Up Close”](#) by legal scholar Rebecca Haw Allensworth.
- Through “license creep” boards can expand scope of practice to shut out innovative or lower-cost providers.
 - Ø See, e.g., [N.C. Dental](#) and [teeth-whitening regulations](#), Mississippi [mapping software](#).
- Boards can enforce licensing to squelch disfavored speech.
 - Ø See, e.g., Oregon [engineer](#), North Carolina [diet blogger](#), [advice column](#) in Kentucky.
- Establishing neutral oversight (possibly with boards as advisory), conducting periodic review of regulations, and providing access to courts can mitigate risk.

Blind Spot #3: Poorly Drawn Scope of Practice

- If not carefully drawn, overly broad scopes of practice can shut out qualified, lower-cost providers and new services.
 - Ø APRNs vs. doctors, dentists vs. hygienists, telemedicine.
- Vague statutes can put entrepreneurs at risk of unwittingly breaking the law.
 - Ø Illinois proposal to license landscape architects appears to cover the work of landscape contractors (IL SB1899).
- They can also empower boards to exclude niche, competing, or disfavored services.
 - Ø Teeth whiteners, makeup artists, eyebrow threaders, hair braiders.