



LOFT

LEGISLATIVE OFFICE OF
FISCAL TRANSPARENCY

INTERIM STUDY:

Gatekeepers: How to Ensure Boards and Commissions Meet Their Statutory Obligation to Act in The Public's Best Interest

Senate Committee on General Government

September 26, 2024



The 2022 LOFT Workplan Included an Evaluation of Licensing Boards

The original evaluation was guided by four key objectives:

- Evaluate the public benefits and costs of licensing to Oklahoma citizens.
- Evaluate the volatility of fees charged by non-appropriated agencies.
- Examine agency expenditures to determine total revenues, key expenditure categories, agency expenditure per license, and the amount remitted to the State's General Revenue Fund by each agency.
- Conduct a regional comparative analysis of Oklahoma's licensing and fee structure and identify opportunities for increased accountability and license accessibility.



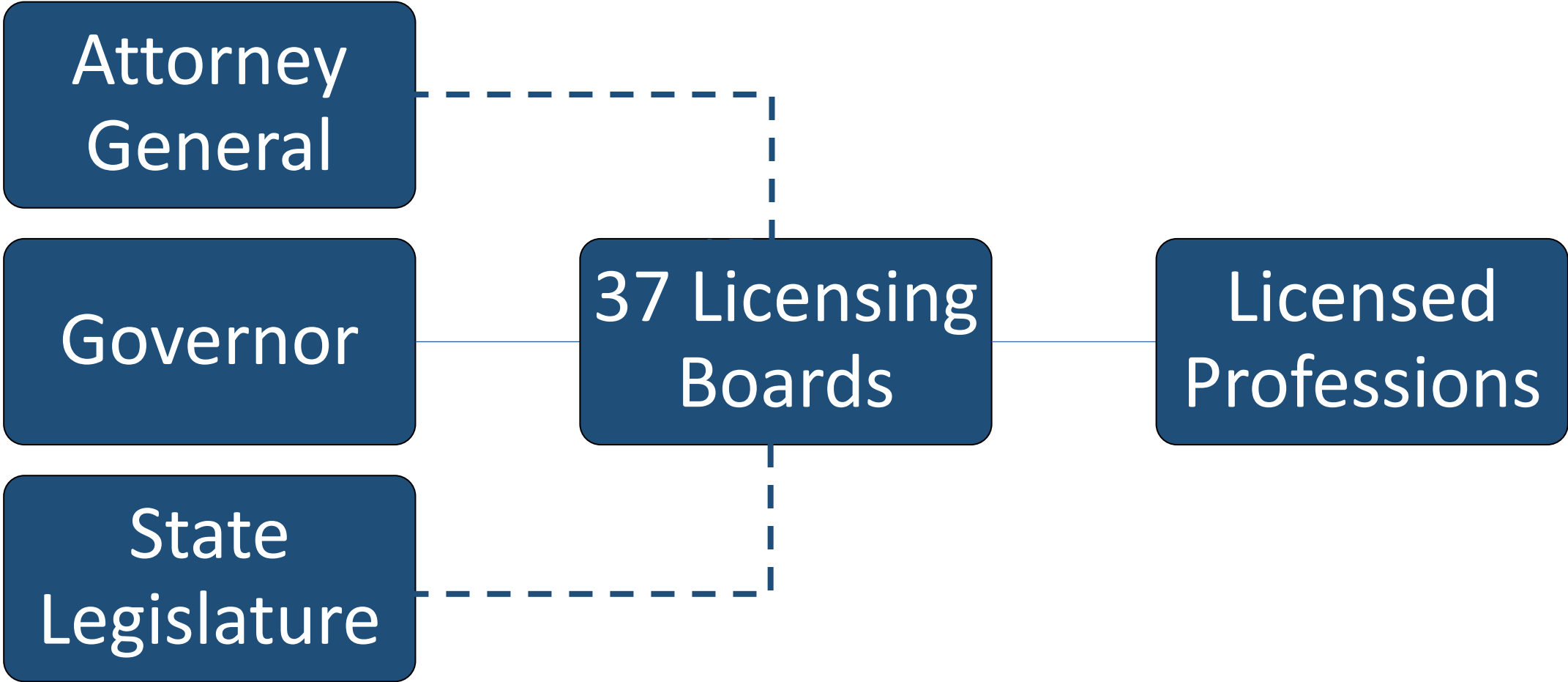
Financial Assessment of Boards:

- Fairly consistent expenditures, stable budgets and fees
- License fees by each agency were at or below the regional average (as of 2022)

Observations of Board Governance:

- Oklahoma's Licensing Board Governance Structure Limits Accountability and Oversight
- Oklahoma Licensing Boards Face Potential Antitrust Liability
- Oklahoma Can Improve its Licensing Boards' Role in Consumer Protection

*Oklahoma's Current
Governance Structure*



Oklahoma's Licensing Board Governance Structure Limits Accountability and Oversight

Key Observations

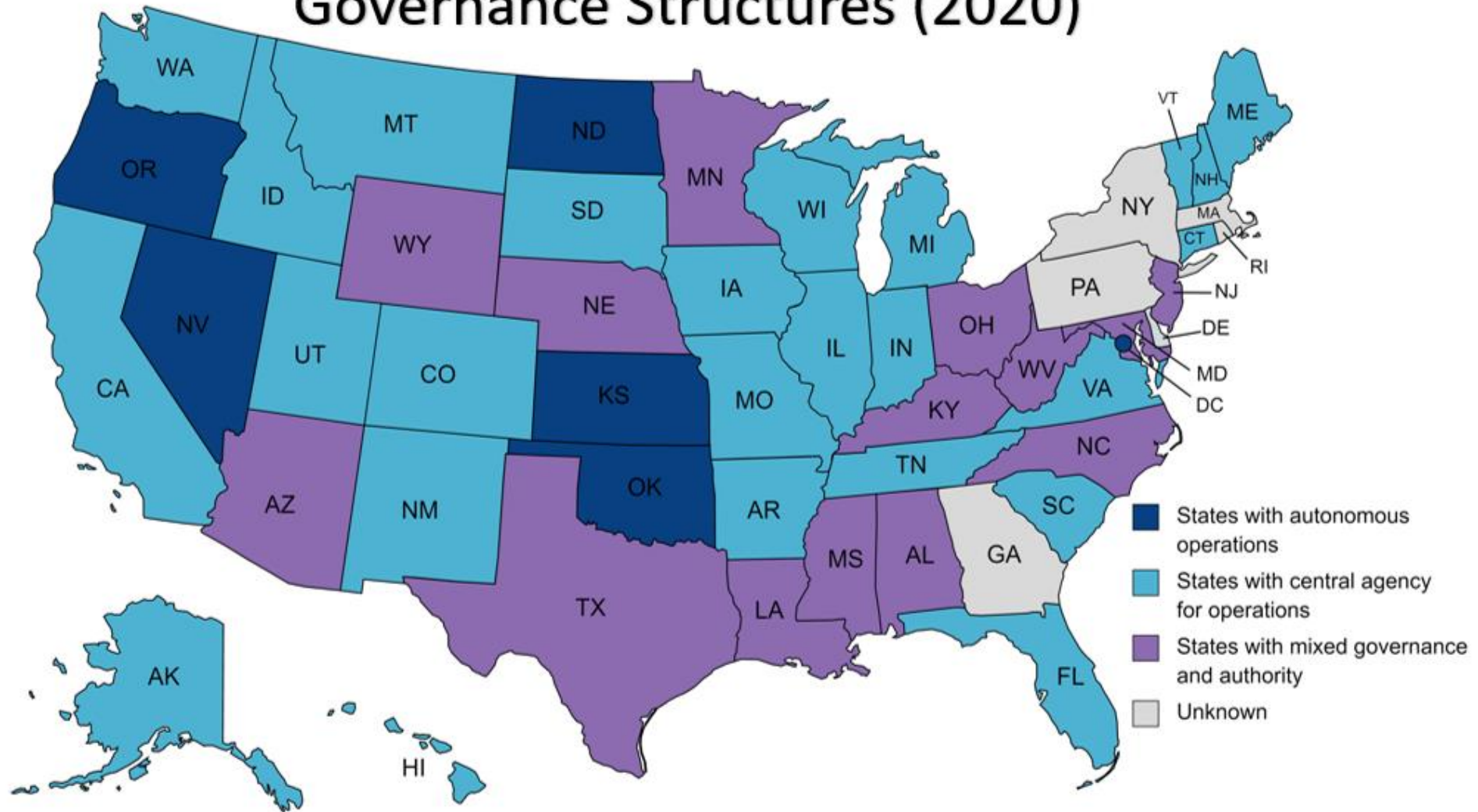
- Decentralized authority
- Limited accountability and oversight
- Over-representation by market participants
- Antitrust Liability

Antitrust Concerns

N.C. State Bd. of Dental Exam'rs v. FTC, 574 U.S. 494 (2015)

- *State Action Immunity does not apply if boards are controlled by market participants unless:*
 - *Anticompetitive behavior is required by state policy; and*
 - *Boards are under active supervision by a state official with authority to overrule the board.*

Professional and Occupational Licensing Governance Structures (2020)

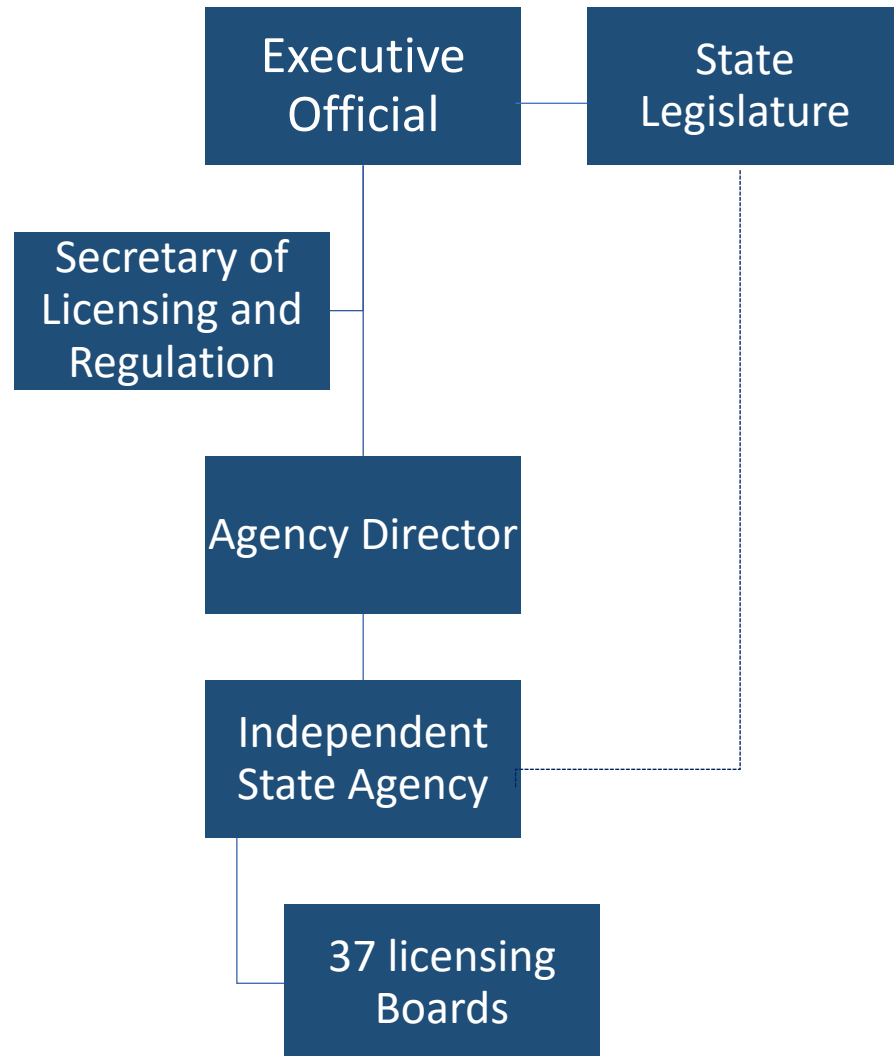


Oklahoma is one of six states (plus DC) that gives each board full independence.

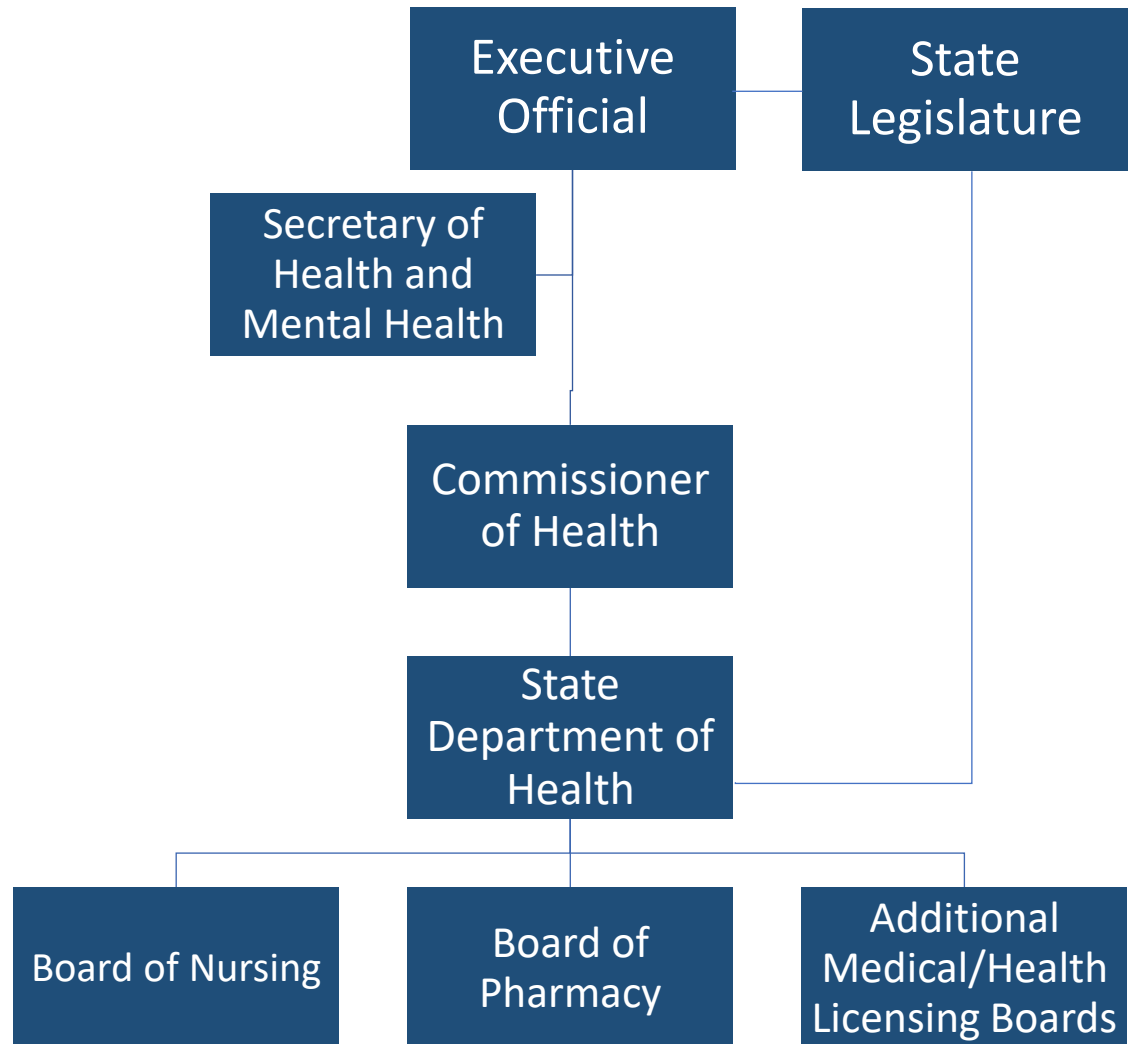
Note: NY uses a decentralized system, while PA, GA, MA, RI, and DE use partially or fully centralized systems

Two Models of Central Governance

Single Umbrella Agency



Industry-specific Umbrella





Utah shares
investigators
across Boards



California shares
investigators across
Boards and provides help
to consumers looking for
a remedy

Oklahoma Can Improve its Licensing Boards' Role in Consumer Protection

Under Current Law:

Oklahoma licensing boards can:

- Keep out those who lack the skill, knowledge, or experience to perform the profession at a high level
- Discipline bad actors, flag them for future consumers, or remove them from the profession entirely

Oklahoma licensing boards cannot:

- Ensure that practitioners perform with care every time, and that no mistakes are made
- Help consumers receive compensation when they are harmed through carelessness, mistakes, or malfeasance

The Legislature may consider the following policy changes:

- Placing licensing boards under the direction of a single agency or combining industry-specific boards under a single director for that industry.
- Alternatively, if not under a centralized structure, assigning an elected or appointed-and-confirmed state official with the duty to review and power to overrule board actions.
- Creating a consumer protection division under the centralized licensing agency to provide direct assistance and services to individual consumers.
- Changing the composition of licensing boards to a majority of non-market participants.
- Requiring licensing boards to provide the same budgetary documentation required of appropriated agencies.
- Requiring licensing boards (or the umbrella agency if one is created) to track and report Key Performance Indicators regarding resolution of consumer complaints.



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Questions