

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 1458 (Delegate Sample-Hughes, *et al.*)
 Health and Government Operations

State Board of Professional Counselors and Therapists - Maryland Music Therapists Act

This bill establishes the Music Therapist Advisory Committee within the State Board of Professional Counselors and Therapists, and it requires individuals to be licensed by the board by January 1, 2018, in order to practice music therapy in the State.

The bill subjects the new licensure program to periodic review under the Maryland Program Evaluation Act, as with other health occupations boards and certain advisory committees, establishing a termination date of July 1, 2027, with a preliminary evaluation in 2024.

Fiscal Summary

State Effect: Special fund expenditures for the board increase by \$31,600 in FY 2018 to hire one full-time contractual administrative specialist to implement the bill’s requirements. Future year expenditures reflect elimination of the contractual position in FY 2019 concurrent with hiring of a part-time, regular employee to continue licensing music therapists and handle ongoing responsibilities. Special fund revenues for the board increase by \$41,700 in FY 2018 from licensing fees. Out-years reflect biennial renewal fees.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	\$41,700	\$0	\$32,700	\$0	\$32,700
SF Expenditure	\$31,600	\$41,800	\$41,000	\$43,300	\$45,900
Net Effect	\$10,100	(\$41,800)	(\$8,300)	(\$43,300)	(\$13,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Analysis

Definitions

“Board certified music therapist” means an individual who (1) has completed the education and clinical training requirements established by the American Music Therapy Association (AMTA) and (2) holds current board certification from the Certification Board for Music Therapists (CBMT, which is not affiliated with the Maryland State Board of Professional Counselors and Therapists or the Music Therapy Advisory Committee established under the bill).

“Individualized music therapy treatment plan” means a music therapy treatment plan for a client that identifies the goals, objectives, and potential strategies for the client using music therapy interventions, including (1) music improvisation; (2) receptive music listening; (3) song writing; (4) lyric discussion; (5) music and imagery; (6) music performance; (7) learning through music; and (8) movement to music.

“Practice of music therapy” means the clinical and evidence-based use of music therapy to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship. The bill provides several specific examples of the practice of music therapy, but specifies that the term does not include the diagnosis of any physical, mental, or communication disorder.

Requirements of the Board

The bill requires the board to adopt regulations for the licensure and practice of music therapy, as well as a code of ethics for the practice of music therapy. Additionally, the board must set reasonable fees for the issuance and renewal of licenses and the other services it provides to music therapists. The fees charged must be set to approximate the cost of maintaining the licensure program and the other services provided to music therapists.

Music Therapist Advisory Committee

The bill establishes a Music Therapist Advisory Committee within the board. The committee consists of five members who meet specified qualifications and are appointed by the board. The committee must meet at least once a year. Members are entitled to reimbursement for expenses under State travel regulations, as provided in the State budget.

The advisory committee must (1) develop and recommend implementing regulations to the board; (2) develop and recommend to the board a code of ethics for the practice of music therapy; (3) provide to the board recommendations concerning the practice of music therapy and reasonable fees for the issuance and renewal of licenses and the other services that the board provides to music therapists; (4) keep a record of its proceedings; and (5) report to the board as required in regulations adopted by the board.

The advisory committee may also (1) facilitate the development of materials that the board may use to educate the public concerning music therapist licensure, the benefits of music therapy, and the use of music therapy and (2) act as a facilitator of statewide dissemination of information among music therapists, AMTA (or any successor organization), CBMT (or any successor organization), and the board.

Qualifications for Licensure

To qualify for a license, an applicant must be of good moral character and at least 18 years old. The applicant must:

- be a board certified music therapist and provide proof that the applicant has either passed the examination for board certification (offered by CBMT, or any successor organization) or is being transitioned into board certification as well as proof that the applicant is *currently* a board certified music therapist;
- hold a bachelor's degree or higher in music therapy, or its equivalent, from an educational program that is approved by AMTA (or any successor organization) and within an accredited college or university;
- meet specified training requirements, including 1,200 hours of clinical training in specified experiences;
- be in good standing based on a review of the applicant's licensure, certification, or registration history in other jurisdictions; and
- meet any other requirements established by the board.

The board must waive specified requirements until January 1, 2020, for an applicant who is (1) designated as a registered music therapist, certified music therapist, or advanced certified music therapist and (2) in good standing with the National Music Therapy Registry (NMTR).

Application Process

To apply for a license, an applicant must (1) submit an application to the board on the form that the board requires; (2) pay to the board the application fee set by the board; and (3) submit to a criminal history records check (CHRC) in accordance with standards for

professional counselors and therapists under the Health Occupations Article. The board must issue a license to any applicant who meets the requirements of the bill.

Criminal History Records Check

The board may not issue a license if the criminal history record information has not been received. On receipt of the criminal history record information of an applicant for licensure, when determining whether to grant a license, the board must consider:

- the age at which the crime was committed;
- the circumstances surrounding the crime;
- the length of time that has passed since the crime;
- subsequent work history;
- employment and character references; and
- other evidence that demonstrates whether the applicant poses a threat to the public health or safety.

Renewal, Inactive Status, and Reinstatement of Licenses

A license may not be renewed for a term longer than two years. Before a license expires, the licensee may renew the license for an additional term if the licensee (1) otherwise is entitled to be licensed; (2) pays to the board a renewal fee; and (3) submits a renewal application on the form that the board requires as well as evidence of compliance with any continuing education requirements.

The board must establish continuing education requirements as a condition of the renewal of licenses which must include proof of completion of at least 40 hours of continuing education in an approved program.

The board must place a licensee on inactive status if the licensee submits an application for inactive status (on the form that the board requires) and the inactive status fee. The board must license an individual on inactive status who applies for a license if the individual meets the renewal requirements and meets any continuing education requirements.

The board must reinstate the license of an individual who has not been put on inactive status and who has failed to renew the license if the individual (1) meets the renewal requirements; (2) pays to the board a reinstatement fee; and (3) applies for reinstatement within five years after the license expires. However, the board may not reinstate a license that has been expired for five years or more. An individual may become licensed by meeting the requirements for obtaining a new license.

Disciplinary Authority

Subject to specified hearing requirements, on the affirmative vote of a majority of its membership, the board may deny any applicant a license, reprimand a licensee, place a licensee on probation, or suspend or revoke a license, if the applicant or licensee engages in specified conduct.

If the board finds grounds to suspend or revoke a license, the board may impose a monetary penalty of up to \$10,000 instead of suspending or in addition to suspending or revoking the license. The board must pay any penalties into the general fund. The board may also issue a cease and desist order for a violation of the bill's provisions.

With limited exceptions, a person aggrieved by a final decision of the board in a contested case, as defined under the State Government Article, is entitled to judicial review. A decision of the board to deny a license, enforce a suspension of a license for more than one year, or revoke a license may not be stayed pending judicial review. On the affirmative vote of a majority of its full appointed membership, the board may reinstate the certificate of an individual whose certificate has been revoked, reduce a suspension, or withdraw a reprimand. Unless the board accepts the surrender of a license, the license may not lapse by operation of law while the licensee is under investigation or while charges are pending against the licensee.

Music Therapist Rehabilitation Subcommittee

The bill establishes a Music Therapist Rehabilitation Subcommittee that evaluates and provides assistance to any music therapist in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition. The subcommittee may function solely for the committee, or jointly with a rehabilitation committee representing another board or boards. Generally, the proceedings, records, and files of the subcommittee are not discoverable and are not admissible in evidence in any civil action arising out of the matters that are being or have been reviewed and evaluated by the subcommittee.

An individual who acts in good faith and within the scope of jurisdiction of the subcommittee is not civilly liable for any action as a member of the subcommittee or for giving information to, participating in, or contributing to the function of the subcommittee.

Prohibited Acts and Penalties

With specified exceptions, unless a person is licensed by the board, a person may not practice music therapy in the State, represent to the public that the person is a licensed music therapist, or use any title or other representation that the person is a licensed music

therapist. A person who violates any of the bill's provisions is guilty of a misdemeanor and on conviction is subject to a fine of up to \$10,000 and/or imprisonment for up to one year. A person who violates the prohibition against practicing without a license is subject to a civil fine of up to \$50,000 to be assessed by the board in accordance with regulations adopted by the board.

Miscellaneous Provisions

The bill does not prohibit or restrict the practice, services, or activities of individuals otherwise licensed or authorized to practice in the State. A licensee must notify the board in writing of a change in name or address within 60 days after the change occurs. The penalty for failure to comply is \$100, which must be paid into the general fund.

Current Law: The State Board of Professional Counselors and Therapists licenses and certifies professional counselors, alcohol and drug counselors, marriage and family therapists, art therapists, and behavior analysts; receives and resolves complaints regarding professional counselors and therapists; and sets standards for the practice of professional counseling through regulations and legislation. The board consists of 13 members: 4 licensed clinical professional counselors, 3 licensed clinical marriage and family therapists, 3 licensed clinical alcohol and drug counselors, 1 licensed professional art therapist, and 2 consumers. In total, the board now regulates 14 different credentials across five areas of specialization. In fiscal 2016, the board regulated more than 7,500 individuals, a 66% increase from fiscal 2007.

Maryland Program Evaluation Act

Approximately 70 regulatory entities and activities, including the board, are subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as "sunset review" as most entities evaluated are also subject to termination, including the board, which is scheduled to terminate July 1, 2019. In 2016, the Department of Legislative Services (DLS) conducted a preliminary sunset evaluation of the board, [*Preliminary Evaluation of the State Board of Professional Counselors and Therapists*](#). DLS recommended a full evaluation of the board, which will be conducted in 2017.

Background: Music therapy is the clinical and evidence-based use of music interventions to accomplish individualized goals within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program. In music therapy, music is used within a therapeutic relationship to address the physical, emotional, cognitive, and social needs of individuals. After assessing the strengths and needs of a client, a qualified music therapist provides treatment including creating, singing, moving to, and/or listening to music.

The American Music Therapy Association and the National Music Therapy Registry

AMTA is the professional association for music therapists. AMTA advises that it is committed to the advancement of education, training, professional standards, credentials, and research in support of the music therapy profession. AMTA maintains a directory search on its website to find AMTA-approved schools that offer a music therapy degree program.

According to AMTA, NMTR serves qualified music therapy professionals with the following designations: RMT (Registered Music Therapist), Certified Music Therapist, and Advanced Certified Music Therapist. Although these designations are no longer awarded, individuals who have received and continue to maintain them have met accepted educational and clinical training standards and are qualified to practice music therapy. NMTR sunsets January 1, 2020. Two Maryland residents are listed on NMTR, both of whom hold the RMT designation and would qualify for licensure under the bill.

The Certification Board for Music Therapists

CBMT, an independent organization, certifies music therapists to practice music therapy and administers a national music therapy examination that is officially recognized by the National Commission for Certifying Agencies. There are 7,106 music therapists who maintain the Music Therapist – Board Certified (MT-BC) credential. To become an MT-BC, a person must successfully complete an AMTA-approved educational and clinical training program and pass the board certification exam. Recertification is required every five years through the completion of 100 recertification credits. According to CBMT, 117 individuals certified by the board practice in Maryland.

State Expenditures: The board advises, and DLS concurs, that it has no capacity to absorb the impacts of the bill. The board's licensee base has increased by 66% since 2007. Over the past five years, two new specializations have been added to the board's workload (professional art therapists in 2012 and behavior analysts in 2014). The DLS sunset evaluation conducted in 2016 found that the board has had to give significant attention to implementing the regulation of the new credentials. Further, instead of gaining incremental staff in response to the addition of new specializations, the board has lost staff.

Thus, to ensure ongoing board operations and handle additional licensing duties required by the bill, which must be implemented under an aggressive licensing schedule (within three months of the bill's effective date), the board needs one full-time contractual staff member for one full year (three-quarters of fiscal 2018 and the first quarter of fiscal 2019) who must be hired expeditiously to staff initial meetings of the advisory committee, assist in promulgating regulations, and initially process applications and license music therapists.

Concurrent with elimination of the contractual position, the board needs permanent staff to handle renewals, oversee any additional licensing and renewal requirements that occur, and support the advisory committee. This permanent position would also be available to support the board with other ongoing duties. DLS notes that, under normal operations and with a longer timeframe for implementation, the board could likely handle the bill’s initial licensing duties with one part-time contractual administrative specialist for nine months to develop and implement the licensing program and could rely on periodic contractual assistance in renewal years. However, given the current staffing deficit and the issues the board is experiencing with its current responsibilities, the board requires additional permanent staff.

Thus, board special fund expenditures increase by \$31,595 in fiscal 2018, which accounts for the bill’s October 1, 2017 effective date. This estimate reflects the cost of hiring one full-time, contractual administrative specialist to establish the program and begin licensing music therapists. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. In fiscal 2019, special fund expenditures increase by \$41,753, which reflects elimination of the contractual position after the first quarter and the cost of hiring one part-time regular employee to handle renewals, oversee ongoing licensing and renewal requirements, and support the advisory committee (among other duties that may be assigned).

	<u>FY 2018</u>	<u>FY 2019</u>
Contractual Position	1.0	-1.0
Regular Position		0.5
Salary and Fringe Benefits	\$24,986	\$36,472
Advisory Committee Member Reimbursement	1,500	250
Other Operating Expenses	<u>5,109</u>	<u>5,031</u>
Total State Expenditures	\$31,595	\$41,753

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses, including reimbursement for advisory committee members. This estimate does not include any health insurance costs that could be incurred for the one contractual employee in fiscal 2018 and 2019 under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Although the advisory committee is only required to meet once a year, this analysis estimates that the advisory committee must meet at least six times during fiscal 2018 to develop and recommend regulations and a code of ethics and to provide other necessary advice to the board. Future years reflect the bill’s requirement that the committee meet once a year.

As noted above, the bill sets an aggressive licensing timetable with an effective date of October 1, 2017, and a requirement that all practicing music therapist be licensed by January 1, 2018 (only three months later). It is not likely, even with the staffing complement noted above, that the board is able to license music therapists by that date, nevertheless, this analysis assumes the program is implemented within the required timeframe. To be able to do so, the board must not only expeditiously hire contractual staff but also quickly select and appoint members to the advisory committee, establish regulations, and ensure processes are in place to confirm required credentials.

State Revenues: Under the bill, the board is authorized to set reasonable fees for licensure sufficient to produce funds to approximate the cost of maintaining the licensure program and the other services provided to music therapists. DLS estimates that 119 individuals (117 with an MT-BC and 2 from the NMTR) seek licensure in fiscal 2018.

The board indicates that it intends to charge a \$200 application fee, a \$150 license fee, and a \$275 renewal fee. Thus, special fund revenues increase by \$41,650 in fiscal 2018 and by \$32,725 in fiscal 2020 and 2022 (and biennially thereafter).

However, to cover the full costs of licensure through fiscal 2022, the board would have to set initial licensing fees at \$505 and biennial renewal fees at \$605. DLS notes that the part-time permanent position is likely available to assist the board with other duties and that the board has a fund balance that well exceeds the recommended 25% of annual expenditures. The current and projected fund balance reported in the 2016 preliminary sunset evaluation indicates that the fund balance is sufficient to cover the deficit between proposed fee revenues and expenditures. Thus, the board should be able to subsidize the cost of licensing musical therapists with its special fund balance.

Small Business Effect: As of January 1, 2018, to be able to continue to practice music therapy in Maryland, an individual must be licensed by the board. To become licensed, an individual must also be certified by CBMT. Under the bill, music therapists must also likely pay at least \$350 for initial licensure and \$150 for biennial renewal and be subjected to regulatory oversight and disciplinary action by the State Board of Professional Counselors and Therapists.

Also, each music therapist applying for licensure is subject to a CHRC at a cost of \$50 for a State and national CHRC including a \$20 fingerprinting fee, a \$12 Federal Bureau of Investigation fee, and an \$18 fee to the Criminal Justice Information System (CJIS) Central Repository in the Department of Public Safety and Correctional Services. CJIS collects, manages, and disseminates Maryland Criminal History Record Information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes.

Although the bill does not specify whether a licensee must maintain MT-BC, the requirement for a licensee to “otherwise be entitled to be licensed” at renewal appears to establish a requirement for ongoing certification as well. Maintenance of MT-BC status requires licensees to, every five years, complete at least 100 hours of recertification credits, take and pass the certification examination, and pay at least \$100 for the exam fee. These requirements for national certification are independent of the biennial requirement for 40 hours of continuing education to maintain licensure.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): American Music Therapy Association; Certification Board for Music Therapists; Department of Health and Mental Hygiene; National Music Therapy Registry; Department of Legislative Services

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