

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 766 (Senator Augustine)
 Education, Health, and Environmental Affairs

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

This bill requires individuals to be licensed the State Board of Professional Counselors and Therapists by January 1, 2021, in order to practice music therapy in the State and establishes the Music Therapist Advisory Committee within the board. The music therapist licensure program is subject to sunset review under the Maryland Program Evaluation Act and terminates July 1, 2030.

Fiscal Summary

State Effect: Special fund revenues increase by \$60,000 in FY 2021 from initial licensure fees; future year revenues reflect biennial renewal fees and an unknown number of new applicants. Special fund expenditures increase by \$51,200 in FY 2021; future year expenditures reflect annualization and elimination of one-time costs.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	\$60,000	-	\$45,200	-	\$45,200
SF Expenditure	\$51,200	\$58,200	\$59,400	\$61,300	\$63,300
Net Effect	\$8,800	(-)	(\$14,200)	(-)	(\$18,200)

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

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 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) songwriting; (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 individuals 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 screening, diagnosis, or assessment 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 the board 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.

Application Process and Criminal History Records Check

To apply for a license, an applicant must (1) submit an application to the board; (2) pay the application fee set by the board; and (3) submit to a criminal history records check. The board may not issue a license if the criminal history record information (CHRI) has not been received. On receipt of the CHRI of an applicant, when determining whether to grant a license, the board must consider specified factors.

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 a renewal fee; and (3) submits a renewal application as well as evidence of compliance with any continuing education requirements.

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

The bill also specifies procedures for inactive status and reinstatement of a license.

Disciplinary Authority

Subject to specified hearing requirements, 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 is entitled to judicial review. A decision of the board to deny a license, enforce a suspension 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 license of an individual whose license 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. 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.

Current Law/Background: 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. In total, the board regulates 14 different credentials across five areas of specialization. In fiscal 2019, the board regulated approximately 8,700 licensees and certificate holders, a 57% increase from fiscal 2012.

Maryland Program Evaluation Act

The board is 1 of approximately 70 regulatory entities and activities subject to evaluation under the Maryland Program Evaluation Act (MPEA). Entities subject to MPEA may be evaluated by the Department of Legislative Services (DLS) only as directed by specified entities or by legislation. Most such entities are subject to termination, including the board, which is scheduled to terminate July 1, 2021. Accordingly, the evaluation process is better known as sunset review.

In 2017, DLS conducted a full sunset evaluation of the board. The report can be found on the DLS [website](#). In total, DLS offered 32 recommendations related to licensing; complaint resolution; regulation of the alcohol and drug counseling profession; board composition, structure, and transparency; board resources; and other issues. Among other things, DLS recommended that the board should not be authorized to issue additional types of licenses and/or certifications until such time that licensure and certification issues identified in the report had been addressed.

Chapters 756 and 757 of 2018 implemented several of the recommendations of the 2017 sunset evaluation report. The emergency Acts extended the termination date of the board to July 1, 2021; required the board to submit progress reports to DLS every six months for three years beginning October 1, 2018; and made other revisions to statute governing the board. In addition, the Acts required DLS to report to the Senate Education, Health, and Environmental Affairs and House Health and Government Operations committees by December 1, 2019, on the board's progress in implementing the recommendations of the sunset evaluation and recommend whether and for how long the termination date of the board should be extended.

DLS' 2019 review found that the board has made significant progress. However, additional action is required with respect to addressing the remaining backlog of open complaints, reviewing and updating regulations, and implementing the Alcohol and Drug Counselor Subcommittee. Therefore, DLS recommended extending the board's termination date by five years to July 1, 2026, and requiring the board to continue to submit progress reports but to Senate Education, Health, and Environmental Affairs and House Health and Government Operations committees rather than DLS. In addition, DLS recommended that, given the additional actions still required to be completed by the board, the board should be given at least another year to fully implement the recommendations of the report before the General Assembly considers adding more license and/or certification types.

The American Music Therapy Association

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.

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 8,714 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, 148 individuals certified by the board practice in Maryland.

State Revenues: The bill authorizes the board to set reasonable fees for licensure sufficient to produce funds to approximate the cost of maintaining the licensure program and other services provided to music therapists. Based on the number of individuals certified by CBMT who practice in Maryland, DLS estimates that approximately 150 individuals will seek licensure in fiscal 2021.

Assuming, consistent with existing licensure and renewal fees, that the board charges a \$200 application fee, \$200 initial license fee, and a \$301 renewal fee (which includes a \$26 Maryland Health Care Commission (MHCC) fee), board special fund revenues increase by \$60,000 in fiscal 2021 and \$41,250 in fiscal 2023 and 2025 (and biennially thereafter); MHCC special fund revenues increase by \$3,900 in fiscal 2023 and 2025 (and biennially thereafter).

The fees contemplated above do not cover the full cost of licensure under the bill. However, DLS notes that the additional licensing coordinator is likely available to assist the board with other duties and that the board has a fund balance that well exceeds the recommended 20% to 30% of annual expenditures. In fiscal 2019, the board had a closing fund balance of approximately \$2.3 million, which represents 173% of the fiscal 2021 allowance for the board included in Governor’s proposed fiscal 2021 budget. It is assumed that the board’s 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.

State Expenditures: The board advises, and DLS concurs, that existing staff cannot absorb the addition of a new licensing group under the bill. Since 2012, two new specializations have been added to the board’s workload (professional art therapists in 2012 and behavior analysts in 2014), and the board’s licensee base has increased by 57%. DLS’s 2019 review of the board revealed that additional action is required by the board to fully implement the recommendations of the 2017 sunset evaluation with respect to existing board duties.

To ensure ongoing board operations and handle additional licensing duties required under the bill, which must be implemented under an aggressive licensing schedule (in order to practice music therapy in the State, individuals must be licensed by January 1, 2021, within three months of the bill’s effective date), the board requires one additional full-time licensing coordinator who must be hired expeditiously to staff initial meetings of the advisory committee, assist in promulgating regulations, process initial applications, and license music therapists. In addition, the board advises that its existing office space cannot accommodate any additional staff; as a result, additional office space is required.

Accordingly, board special fund expenditures increase by \$51,266 in fiscal 2021, which accounts for the bill’s October 1, 2021 effective date. This estimate includes the cost of hiring one full-time licensing coordinator. It includes a salary, fringe benefits, one-time start-up costs, expense reimbursements for advisory committee members, additional office space rent, and other ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$41,860
Rent	2,500
Advisory Committee Member Reimbursement	1,500
Other Operating Expenses	<u>5,366</u>
Total FY 2021 State Expenditures	\$51,226

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

The bill requires the advisory committee to meet at least once per year. However, this analysis assumes that the committee meets at least six times during fiscal 2021 to develop and recommend a code of ethics and to provide other necessary advice to the board. Estimated future year expenditures related to committee member reimbursement assume that the board meets twice annually, given the duties of the advisory committee.

As noted above, the bill sets an aggressive licensing timetable with an effective date of October 1, 2020, and a requirement that all practicing music therapists be licensed by January 1, 2021 (only three months later). It is not likely, even with the staffing complement discussed above, that the board is able to license music therapists by that date. The board advises that it did not begin licensing professional art therapists until about one year after the licensing program took effect in October 2012.

This analysis, however, assumes the program is implemented within the required timeframe. To do so, the board must not only expeditiously hire an additional licensing coordinator but also quickly select and appoint members to the advisory committee, establish regulations, and ensure processes are in place to confirm required credentials. To the extent that existing board staff are diverted from existing duties to implement the new licensing program within the bill's timeframe, the bill results in potentially significant operational impacts for the board.

Small Business Effect: As of January 1, 2021, to be able to continue to practice music therapy in Maryland, an individual must be licensed by the board and is subject to various fees and to regulatory oversight and disciplinary action by the board. The bill *does not* waive licensure requirements for credentialed music therapists who are already practicing in the State.

Additional Information

Prior Introductions: HB 1458 of 2017, a similar bill, received a hearing in the House Health and Government Operations Committee but was withdrawn.

Designated Cross File: HB 1102 (Delegate Sample-Hughes, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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