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Proposed Regulation Agency Background Document

Agency name	Board of Social Work, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC140-30
VAC Chapter title(s)	Regulations Governing the Licensure of Music Therapists
Action title	New regulations
Date this document prepared	1/14/22

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

SB633 and HB1562 of the 2020 General Assembly required the Board of Social Work to promulgate regulations governing the practice of music therapy. The Code specifies the requirements for board certification offered by the Certification Board for Music Therapists or any successor organization will be considered as qualification for licensure as a licensed music therapist. The Board adopted additional requirements similar to other licensed professions for a fee structure, renewal or reinstatement, continuing competency, supervision of persons in training, and standards of practice.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CBMT = Certification Board for Music Therapists

MT-BC = Music Therapist-Board Certified

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Chapters 103 and 233 of the 2020 Acts of the Assembly mandate that the Board promulgate regulations for the licensure of music therapists: *The Board shall adopt regulations governing the practice of music therapy, upon consultation with the Advisory Board on Music Therapy established in § 54.1-3709.3. The regulations shall (i) set forth the educational, clinical training, and examination requirements for licensure to practice music therapy; (ii) provide for appropriate application and renewal fees; and (iii) include requirements for licensure renewal and continuing education. In developing such regulations, the Board shall consider requirements for board certification offered by the Certification Board for Music Therapists or any successor organization.* To do so, the Board adopted a new chapter, 18VAC140-30-10 et seq., Regulations Governing the Licensure of Music Therapists.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification, licensure, permit, or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification, licensure, or registration. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*

3. To register, certify, license, or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.

5. To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions, and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

Regulations on licensure of music therapists are promulgated in accordance with:

*Article 2.
Music Therapy.*

§ [54.1-3709.1](#). *Definitions.*

As used in this article, unless the context requires a different meaning:

"Music therapist" means a person who has (i) completed a bachelor's degree or higher in music therapy, or its equivalent; (ii) satisfied the requirements for licensure set forth in regulations adopted by the Board pursuant to § [54.1-3709.2](#); and (iii) been issued a license for the independent practice of music therapy by the Board.

"Music therapy" means the clinical and evidence-based use of music interventions to accomplish individualized goals within a therapeutic relationship through an individualized music therapy treatment plan for the client that identifies the goals, objectives, and potential strategies of the music therapy services appropriate for the client using music therapy interventions, which may include music improvisation, receptive music listening, songwriting, lyric discussion, music and imagery, music performance, learning through music, and movement to music. "Music therapy" does not include the screening, diagnosis, or assessment of any physical, mental, or communication disorder.

§ [54.1-3709.2](#). *Music therapy; licensure.*

A. The Board shall adopt regulations governing the practice of music therapy, upon consultation with the Advisory Board on Music Therapy established in § [54.1-3709.3](#). The regulations shall (i) set forth the educational, clinical training, and examination requirements for licensure to practice music therapy; (ii) provide for appropriate application and renewal fees; and (iii) include requirements for licensure renewal and continuing education. In developing such

regulations, the Board shall consider requirements for board certification offered by the Certification Board for Music Therapists or any successor organization.

B. No person shall engage in the practice of music therapy or hold himself out or otherwise represent himself as a music therapist unless he is licensed by the Board.

C. Nothing in this section shall prohibit (i) the practice of music therapy by a student pursuing a course of study in music therapy if such practice constitutes part of the student's course of study and is adequately supervised or (ii) a licensed health care provider, other professional registered, certified, or licensed in the Commonwealth, or any person whose training and national certification attests to his preparation and ability to practice his certified profession or occupation from engaging in the full scope of his practice, including the use of music incidental to his practice, provided that he does not represent himself as a music therapist.

§ [54.1-3709.3](#). *Advisory Board on Music Therapy; membership; terms.*

A. The Advisory Board on Music Therapy (Advisory Board) is hereby established to assist the Board in formulating regulations related to the practice of music therapy. The Advisory Board shall also assist in such other matters relating to the practice of music therapy as the Board may require.

B. The Advisory Board shall have a total membership of five nonlegislative citizen members to be appointed by the Governor as follows: three members shall be licensed music therapists, one member shall be a licensed health care provider other than a music therapist, and one member shall be a citizen at large.

C. After the initial staggering of terms, members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The Board promulgated regulations to establish qualifications for education, examination, and experience that will ensure minimal competency for issuance or renewal of licensure as music therapists to protect the health and safety of clients or patients who receive their services. Amendments are also necessary to ensure there are standards for confidentiality, patient records, dual relationships, and informed consent to protect public health and safety.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

Chapters 103 and 233 of the 2020 General Assembly require the Board to promulgate regulations governing the practice of music therapy. The Board adopted requirements similar to other licensed professions for a fee structure, renewal or reinstatement, continuing competency, supervision of persons in training, and standards of practice.

Subsection A of § 54.1-3709.2 of the Code mandates that “the regulations shall (i) set forth the educational, clinical training, and examination requirements for licensure to practice music therapy; (ii) provide for appropriate application and renewal fees; and (iii) include requirements for licensure renewal and continuing education. In developing such regulations, the Board shall consider requirements for board certification offered by the Certification Board for Music Therapists or any successor organization.”

While not mandated to do so, the Advisory Board concurred that the credential cited in the Code (Music Therapist – Board Certified) is the best measure of minimal competency for the profession because it requires a national board certification examination. The Advisory Board also concurred that graduation from a music therapy program accredited by the American Music Therapy Association should be a requirement for licensure because it includes 1,200 hours of clinical training, including a supervised internship.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1) The primary advantage to the public is the assurance of competency and accountability by having persons who use the title of “music therapist” licensed by the Board of Social Work. Additionally, as a licensed mental health professional, a music therapist may be reimbursed by third-party payors for services provided. Other licensed mental health practitioners who are trained in the therapeutic use of music may use the modality provided they do not call themselves music therapists or claim to be practicing music therapy. There are no disadvantages to the public.

2) There are no advantages or disadvantages to the Commonwealth.

3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.”

The increased accountability and minimal competency requirements for a licensed profession are the foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>There are no costs to the state for implementation or enforcement; all funding for the Board is derived from fees charged to applicants and licensees.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the</p>	<p>There are no costs to other agencies</p>

regulatory change, including a delineation of one-time versus on-going expenditures.	
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The Board does not believe there is any benefit to agencies.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no costs.
Benefits the regulatory change is designed to produce.	There is no benefit.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Persons who hold the MT-BC credential as a music therapist.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	When the Board of Health Professions conducted its study of the need for licensure of music therapists in 2019, the Certification Board for Music Therapists reported 227 professional members located in Virginia. It is estimated that the number of persons seeking licensure will initially be fewer than 300.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	The costs for affected individuals will be the fees for applications and renewal of licensure set in regulation. For those who currently hold licensure as professional counselors or marriage and family therapists, those costs may be offset by the need for only one license – as a music therapist – as third-party payors recognized music therapy for reimbursement as a mental health professional.
Benefits the regulatory change is designed to produce.	The benefit to the public is the assurance of minimal competency for persons who use the title of music therapist or claim to be practicing music therapy. The benefit to music therapists may be the opportunity for direct reimbursement for services.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small

businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no alternatives to the regulatory change as promulgation of regulations was mandated by the 2020 General Assembly. Regulations were developed by the Advisory Board on Music Therapy, composed of three members who are music therapists, one member who is a licensed health care provider other than a music therapist, and one citizen member. Regulations of other mental health care professionals licensed in Virginia and of music therapy regulations in other states were reviewed to determine the alternatives consistent with public health and safety.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There were no alternative regulatory methods considered as the Board has complied with the mandate to license music therapists and to promulgate regulations for that purpose.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

A comment period on the NOIRA was open from 8/16/21 to 9/15/21. There were no comments received or posted on the Townhall.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board of Social Work is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Elaine Yeatts, 9960 Mayland Drive, Henrico, VA 23233, phone: (804) 367-4688; fax: (804) 527-4434; email: Elaine.yeatts@dhp.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
30-10	Sets out definitions for words and terms used in the chapter	Words and terms defined in the Code in 54.1-3500 are also referenced	Definitions, particularly for acronyms used in the chapter, are useful in interpreting and understanding regulatory requirements.
30-20	Establishes the fee schedule for applicants and regulants	54.1-2400 grants the board authority to levy and collect fees sufficient to regulate and discipline a health profession.	The fees are consistent with the other profession licensed by the Board of Social Work that is at the bachelor's level (LBSW)- \$100 for application and initial licensure as a music therapist. The annual renewal fee (\$55) is also identical to the LBSW, as are the miscellaneous fees for duplicate licenses, verification to another jurisdiction, returned checks, etc.

30-30	Sets out the prerequisites for licensure as a music therapist	54.1-2400 and 54.1-3709.2 specify authority of the Board to establish requirements for licensure.	The prerequisites are consistent with those found in regulations for other mental health practitioners. They include submission of the application, applicable fees, verification of other mental health or health licenses, and a current report from the National Practitioner Data Bank
30-40	Establishes the specific requirements for licensure in the profession as a music therapist	54.1-2400 and 54.1-3709.2 specify authority of the Board to establish requirements for licensure.	Subsection A of section 54.1-3709.2 requires the Board to consider “ <i>requirements for board certification offered by the Certification Board for Music Therapists or any successor organization.</i> ” The Advisory Board did not recommend any other evidence of minimal competency. Since the MT-BC credential includes completion of education in music therapy, completion of supervised experience, and passage of the examination, the Advisory concluded that it was appropriate to use that as the benchmark for licensure.
30-50	Sets out the requirements for annual renewal of licensure	54.1-2400 (1) (4) (6) establish the authority of the board to promulgate regulations for requirements for renewal of licenses.	Subsection A sets the annual renewal date of June 30 and the requirements for submission of a fee and attestation of completion of CE. Subsection B sets out the option for requesting an inactive license, Subsection C specifies that a licensee must notify the board of an address changes within 60 days. Subsection D specifies that practice with an expired license is prohibited and may constitute grounds for discipline.
30-60	Sets out the continued competency requirements for renewal of licensure	54.1-103 authorizes boards within the Department of Health Professions to promulgate regulations specifying additional training or conditions for	Subsection A states the requirement of 20 hours for an annual renewal with at least 3 of those hours every five years in courses that emphasize ethics, standards of practice or laws governing the profession.

		<p>individuals seeking certification or licensure, or for the renewal of certificates or licenses.</p> <p>54.1-2400 (1) (4) (6) establish the authority of the board to promulgate regulations for requirements for renewal of licenses.</p>	<p>The 20-hour requirement is consistent with the hours of CE required to maintain one's MT-BC credential, which the vast majority of music therapists do. The CBMT recognizes a wide variety of coursework, activities, supervisory responsibilities, presentations, and professional development. Subsection B states that any hours approved for recertification as an MT-BC are approved for renewal of licensure. Subsection C authorizes an extension of CE for up to one year for good cause shown. Subsection D authorizes an exemption for all or part of the required hours for causes beyond the control of the licensees. Subsection E provides that a music therapist who holds another health regulatory license does not have to exceed 20 hours of CE to renew the art therapy license, except 10 of those hours must be related to music therapy. Subsection F allows a music therapist to count up to 2 hours of volunteer services toward the 20-hour requirement. Subsection G exempts a newly-licensed music therapist from the requirement for the first renewal.</p>
30-70	Sets out the requirements for documentation of continuing competency requirements	54.1-2400 and 54.1-3516 specify authority of the Board to establish requirements for licensure	The requirements for documentation are the same for music therapists as for other licensed professions, except there are no category 2 hours for music therapy. Chapter 20, Section 106
30-80	Establishes the requirements for late renewal, reactivation of an inactive license or reinstatement of a lapsed license	54.1-2400 and 54.1-3516 specify authority of the Board to establish requirements for licensure	The requirements for late renewal, reinstatement or reactivation are the similar to those in a proposed action for social workers that would eliminate the requirements for evidence of active practice or practice under supervision - Chapter 20, Section 110.

			The maximum amount of continuing education required for reinstatement (80 hours) is the equivalent of 4 years' worth of CE.
30-90	Establishes the standards of practice for licensed music therapists	54.1-2400 and 54.1-3516 specify authority of the Board to establish requirements for licensure.	The standards of practice for the protection of the public are the same for music therapists as for other licensed professions under the Board of Social Work. Chapter 20, Section 150
30-100	Sets out the grounds for revocation, suspension, probation, reprimand, censure, or denial of licensure	54.1-2400(9) authorizes the Board "To take appropriate disciplinary action for violations of applicable law and regulations, and to accept, in their discretion, the surrender of a license, certificate, registration, permit, or multistate licensure privilege in lieu of disciplinary action."	The grounds for disciplinary action or denial of licensure are the same for music therapists as for other licensed professions, except the language is music therapy rather than social work and there is no language about failure to provide supervision because there are no residents or supervisees in music therapy. Chapter 20, Section 160
30-110	Sets out the requirements for reinstatement following disciplinary action	54.1-2400 specifies the authority of the Board.	The requirements are the same for other licensed professions under the same board. Chapter 20, Section 170