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Notice of Intended Regulatory Action (NOIRA) 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	3/12/21

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an 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 will adopt 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 or technical definitions used in this form.

CBMT = Certification Board for Music Therapists

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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 will adopt 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

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Board will promulgate 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 that are being considered, the substantive changes to existing sections that are being considered, or both.

Chapters 103 and 233 of the 2020 General Assembly require the Board to promulgate regulations governing the practice of music therapy. The Board will adopt 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 1200 hours of clinical training, including a supervised internship.

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 viable alternatives because the Code of Virginia requires the Board to adopt regulations. The Board can only enforce licensing and renewal qualifications, fees, and standards of practice that are set forth in regulation. There is no alternative to regulation.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

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, and (iii) the potential impacts of the regulation.

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, Suite 300, Richmond, VA 23233; phone (804) 367-4688; fax (804) 527-4434; 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.