

BILL ANALYSIS

C.S.H.B. 2473
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Music therapy promises to be a critical component of the treatment and recovery of those suffering from traumatic brain injuries, comas, or other neurological ailments. Music therapists are certified nationally through the Certification Board for Music Therapy after extensive education, training, and clinical practice, but without state licensure and regulation the potential of untrained practitioners working in clinical settings could pose harm to medically fragile Texans. C.S.H.B. 2473 seeks to address this issue by establishing a regulatory framework for music therapists within the Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 2473 amends the Occupations Code to provide for the licensing and regulation of music therapists. The bill defines "music therapist" and "music therapy" for the purposes of its provisions.

C.S.H.B. 2473 requires a person to hold a license issued under its provisions to practice music therapy. The bill prohibits a person who does not hold a license from using in connection with the person's name, including in advertisements, the title "music therapist" or any other designation that would imply the person is a music therapist. This requirement and prohibition take effect September 1, 2022.

C.S.H.B. 2473 requires each applicant for a license to submit an application and required fees to the Texas Department of Licensing and Regulation (TDLR). The bill requires the application to include sufficient evidence, as defined by Texas Commission of Licensing and Regulation (TCLR) rules, that the applicant has successfully completed a state-approved criminal background check.

C.S.H.B. 2473 provides for license eligibility requirements and the issuance, renewal, and expiration of a license. The bill requires a license holder to notify TDLR of a change of the license holder's residence or business address and provide TDLR with the license holder's new address not later than the 30th day after the date the address change occurs.

C.S.H.B. 2473 sets out the services a music therapist may provide without a referral from a health professional and establishes that providing music therapy services for a specific health condition, other than consultation and evaluation, requires a referral from a physician or other health professional acting within the scope of the person's license. The bill provides for requirements for providing music therapy services to a client for a clinical, developmental, or other health-related need diagnosed or otherwise identified by a health care provider.

C.S.H.B. 2473 authorizes TCLR or the executive director of TDLR, after a hearing, to deny a license to an applicant, suspend or revoke a music therapist's license, or place on probation a music therapist on certain grounds. The bill sets out the grounds for the actions.

C.S.H.B. 2473 establishes an advisory board, provides for the advisory board's composition, eligibility requirements, terms, vacancies, and presiding officer and provides the following:

- a board member may not receive compensation for service on the committee;
- a board member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory board;
- the board must meet at least twice each year and at the call of the presiding officer of TCLR or the executive director;
- the board may meet by telephone conference call, videoconference, or other similar telecommunication method, and a meeting held by one of those methods is subject to applicable state open meetings law; and
- a board member may be removed from the board as provided by applicable statutory provisions establishing the grounds for removal of an advisory board member appointed by the presiding officer of TCLR.

C.S.H.B. 2473 requires TCLR to adopt rules for the administration and enforcement of the bill's provisions. The bill requires TDLR to do the following:

- administer and enforce the bill's provisions;
- evaluate qualifications of license applicants and provide for the examination of applicants;
- issue licenses;
- issue subpoenas, examine witnesses, and administer oaths under state laws in connection with a hearing;
- investigate persons engaging in practices that violate the bill's provisions; and
- establish standards of ethical practice.

The bill authorizes TCLR or the executive director to deny, revoke, or suspend a license or otherwise discipline a license holder.

C.S.H.B. 2473 requires TCLR, in consultation with the advisory board, to set fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing the bill's provisions. The bill provides for, and establishes certain exceptions to, the applicability of its provisions.

C.S.H.B. 2473 makes applicable to the regulation of music therapists the following:

- the statutory prohibition against TCLR adopting a new rule relating to the scope of practice of or a health-related standard of care regarding an applicable regulated profession unless the rule has been proposed by an applicable advisory board; and
- the statutory provision making all information and materials subpoenaed or compiled by TDLR in connection with a complaint and investigation confidential and not subject to disclosure under state public information law and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to any person.

C.S.H.B. 2473 provides for the initial appointments to the advisory board by TCLR and requires TCLR, not later than April 1, 2022, to adopt the rules, procedures, and fees necessary to administer the bill's provisions. A music therapist is not required to hold a license to practice as a licensed music therapist in Texas before September 1, 2022.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2473 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the original provided for the licensing and regulation of music therapists through the Texas Medical Board (TMB), the substitute provides for licensing and regulation through TCLR and TDLR and updates provisions throughout the bill to reflect that regulatory framework. The substitute confers general powers and duties on TCLR and TDLR, including those with respect to certain disciplinary actions, that are substantially similar to those conferred on the TMB by the original.

The substitute shares with the original substantially similar provisions excepting certain persons from the applicability of the bill's provisions but the substitute adds additional exceptions for a music therapist employee directly supervised by another music therapist, for a family member or guardian of a recipient, and, under certain conditions, for a music therapist licensed in another jurisdiction or certified by the certifying entity.

The substitute revises the original's definition of "music therapy" as follows:

- it adds additional sources of referrals for music therapy services;
- it specifies that an applicable treatment plan is an individualized music therapy plan and that such a plan should be consistent with, in addition to other services provided, preventative or wellness services;
- it does not include the original's specification that the term includes collaborating as necessary with a referring health professional on a treatment plan to provide music therapy addressing the individual's clinical or developmental needs; and
- it establishes that the practice of music therapy does not include screening for any physical, mental, or communication disorder.

The substitute and the original share substantially similar license eligibility requirements but differ as follows:

- the substitute includes a license eligibility provision requiring an application for a license to include evidence of a state-approved criminal background check;
- with respect to the education requirement, the substitute requires TDLR approval of the applicable degree program but the original does not require any other type of approval for that program;
- with respect to the clinical training hours requirement, the substitute requires the completion of any hours as part of a degree program but the original sets out the minimum number of hours required and provides for the allocation of those hours in pre-internship experiences and in internship experiences; and
- whereas the original provided as a general condition of eligibility that a person hold a specified board certification as a music therapist, the substitute provides the specific constituent elements of certification required by the applicable certification entity.

The substitute does not include the following, which were included in the original:

- an authorization to waive license requirements for an applicant who is licensed in another state that has substantially equivalent license requirements;
- a requirement for the TMB to adopt by rule a system to stagger license expirations during the year; and

- an authorization for the TMB to adopt rules and set reasonable fees relating to placing license holders on inactive status.

The substitute includes provisions, which were not included in the original, making the following applicable to music therapists:

- the statutory prohibition against TCLR adopting a new rule relating to the scope of practice of or a health-related standard of care for an applicable health-related profession unless the rule has been proposed by the advisory board established for that profession;
- the statutory provision making a complaint and investigation concerning an applicable health-related professional and all information and materials subpoenaed or compiled by TDLR in connection with the complaint and investigation:
 - confidential;
 - not subject to disclosure under state public information law; and
 - not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to any person.

The substitute includes the following provisions, which were not included in the original, with respect to music therapy services for clients with a clinical, developmental, or other health-related need diagnosed or otherwise identified by a health care provider:

- a provision requiring a music therapist to review and collaborate with specified providers and other individuals and health professionals regarding the client; and
- a provision prohibiting a music therapist from providing music therapy services in a manner that replaces services provided by an audiologist or speech-language pathologist.

Both the original and substitute provide for advisory bodies. The substitute's advisory body is an advisory board appointed by the presiding officer of TCLR but the original provided for an informal advisory committee appointed by the TMB, established membership restrictions, and exempted it from state law governing advisory committees. The advisory bodies share a substantially similar composition but the substitute adds another public member and another licensed music therapist member and, in contrast with the original's advisory committee:

- requires both public members to be either former recipients of music therapy services or the parent or guardian of a current or former recipient of music therapy services, which was not required in the original;
- requires that the advisory board member who is a physician or other health professional have the authority to refer patients or clients to music therapy services, which is not required in the original;
- prohibits an advisory board member from serving more than two consecutive terms, which was not prohibited in the original;
- entitles an advisory board member to reimbursement for applicable expenses but prohibits the compensation of a member, whereas the original only prohibited the compensation of its advisory committee members;
- expands the original's authorization to hold meetings by telephone conference call to include other telecommunication methods and subjects such meetings to state open meetings law; and
- provides that the advisory board must, as a general duty, provide advice and recommendations to TDLR on technical matters relevant to the administration of the bill's provisions, whereas the original established specific advisory committee duties and actions, including those regarding disciplinary matters.

The substitute includes a provision that was not included in the original establishing that a music therapist is not required to hold a license to practice as a licensed music therapist in Texas before September 1, 2022.