

BILL ANALYSIS

C.S.H.B. 667
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Music therapy can be an effective therapy in providing relief to survivors of trauma, but this practice is not currently regulated under state law. Music therapy requires a personalized treatment plan and, like all therapeutics, has a potential for harm if treatment is not properly provided to patients. The potential harm may include, but is not limited to, seizures that could be triggered by specific elements of music, severe states of anxiety that can be triggered by music, and an increase of self-harming behaviors linked to specific diagnoses. C.S.H.B. 667 seeks to ensure that each music therapy patient in Texas receives the same standard of safety and care and to protect patients from potentially harmful consequences of untrained amateurs attempting to provide these therapies by requiring an occupational license for music therapists and creating a regulatory framework for the industry.

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. 667 amends the Occupations Code to provide for the licensing and regulation of music therapists.

License Requirements

C.S.H.B. 667 requires a person to hold a license issued under its provisions to practice music therapy, which is defined by the bill as the clinical and evidence-based use of music interventions by a person for a client who is in a therapeutic relationship with the person to assist the client in accomplishing particular goals and does not include the diagnosis or assessment of or screening for any physical, mental, or communication disorder. The music interventions may include music improvisation, receptive music listening, songwriting, lyric discussion, music and imagery, singing, music performance, learning through music, music combined with other arts, music-assisted relaxation, music-based patient education, electronic music technology, adapted music intervention, and movement to music. 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 "licensed professional music therapist" or any other designation that would imply the person is a music therapist. This prohibition and the requirement to hold such a license take effect September 1, 2024, and a music therapist is not required to hold a license to practice as a licensed music therapist in Texas before September 1, 2024.

C.S.H.B. 667 requires each applicant for a license to submit an application and the 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. 667 provides for license eligibility requirements and the issuance, renewal, and expiration of a license. To be eligible for a license a person must:

- be at least 18 years of age;
- hold a bachelor's or graduate degree in music therapy, or an equivalent field of study, from a program approved by the American Music Therapy Association, or a successor organization, within an accredited public or private institution of higher education and that is approved by TDLR;
- successfully complete any clinical training hours required as part of such a degree program;
- if applicable, be in good standing with any other jurisdiction from which the applicant holds a music therapy license;
- pass the examination for board certification offered by the certifying entity or provide proof of being transitioned into board certification by the certifying entity;
- be certified as a music therapist by the certifying entity;
- be in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; and
- not be subject to any disciplinary action by the certifying entity.

The bill defines "certifying entity" as the nationally accredited Certification Board for Music Therapists or another entity that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute to issue credentials in the professional practice of music therapy and approved by TDLR.

C.S.H.B. 667 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. The bill's provisions do not apply to the following:

- a person certified or otherwise accredited to practice an occupation and who uses music within the scope of that accreditation and the person's training, education, and competence;
- a student who is performing activities under the supervision of a license holder as part of a music therapy or equivalent degree program that meets certain criteria;
- a person employed in the service of the federal government while performing duties related to that employment;
- a person employed by a music therapist and who provides music therapy services under the direct supervision of a music therapist but does not represent that the person is a music therapist;
- a family member or guardian of a recipient of music therapy services who is implementing the recipient's treatment plan under the authority and direction of a licensed music therapist; or
- a music therapist licensed in another jurisdiction or certified by the certifying entity if the activities and services conducted in Texas are within the therapist's customary area of practice, are conducted not more than 20 days in a calendar year, and are not otherwise in violation of the bill's provisions.

The bill requires such an out-of-state therapist to inform the recipient of services or, for a recipient under 18 years of age, the recipient's parent or guardian that the therapist is not licensed in Texas and the therapist's activities and services are time limited.

Practice by License Holder

C.S.H.B. 667 authorizes a music therapist to provide the following services without a referral from a health professional:

- consultation and evaluation;
- preventative care;
- wellness care;
- education; and
- specialized support.

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 professional's license. The bill sets out the following requirements for providing music therapy services to certain clients:

- for a client with a clinical, developmental, or other health-related need diagnosed or otherwise identified by a health care provider, the therapist must review the client's diagnosis, treatment needs, and treatment plan with the appropriate provider and collaborate with applicable licensed professionals;
- for a client with an educational need, the therapist must, if applicable, review the client's diagnosis, treatment needs, and treatment plan with the individuals who are implementing the client's individualized family service plan or individualized education program; and
- for a client with a communication disorder who is also receiving services from an audiologist or speech-language pathologist, collaborate with and disclose the music therapy treatment plan to the applicable provider.

A music therapist may not provide services in a manner that replaces the services provided by the client's audiologist or speech-language pathologist.

Creation of Advisory Board

C.S.H.B. 667 creates the Music Therapist Advisory Board, which may advise TCLR and TDLR on the following:

- technical matters relevant to the administration of the bill's provisions;
- standards of performance and work practices for music therapy;
- eligibility for the issuance or renewal of a music therapy license, including any training or continuing education;
- the content of any examinations required for the license; and
- any other issue affecting music therapy.

C.S.H.B. 667 establishes the board's composition, as appointed by the presiding officer of TCLR and approved by TCLR, as follows:

- four licensed music therapists;
- one physician or other health professional who is authorized to refer patients or clients to receive music therapy services; and
- two members who represent the public and who are either former recipients of music therapy services or the parent or guardian of a current or former recipient of music therapy services.

The bill adds a temporary provision, set to expire January 31, 2027, making a person who is certified as a music therapist by the certifying entity eligible for appointment as one of the board's licensed music therapist members regardless of whether the person holds such a license.

C.S.H.B. 667 requires appointments to be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin and makes Government Code provisions relating to state agency advisory committees inapplicable to the duration of the advisory board. The bill sets out provisions regarding requirements for making the initial appointments, the terms of board members and the process for filling vacancies, and the designation of a presiding officer.

Administration and Enforcement

C.S.H.B. 667 requires TCLR to adopt rules for the administration and enforcement of the bill's provisions. The bill requires TCLR to establish standards of ethical practice and adopt and publish a code of ethics. The bill requires TDLR to do the following:

- administer and enforce the bill's provisions;
- evaluate the 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 under the bill's provisions; and
- investigate persons engaging in practices that violate the bill's provisions.

The bill authorizes TCLR or the executive director of TDLR, after a hearing, to deny a license to an applicant, revoke or suspend a music therapist's license, or place on probation a music therapist on the grounds specified by the bill and authorizes TCLR to otherwise discipline a license holder in accordance with statutory provisions establishing its authority to take such actions. The bill sets out the following actions by a license holder or applicant that constitute such disciplinary grounds:

- violating the bill's music therapist provisions, a TCLR rule, or an order of TCLR or the executive director of TDLR;
- obtaining a license by means of fraud, misrepresentation, or concealment of a material fact;
- selling, bartering, or offering to sell or barter a license;
- engaging in unprofessional conduct that:
 - endangers or is likely to endanger the health, welfare, or safety of the public as defined by TCLR rule; or
 - violates the code of ethics adopted and published by TCLR;
- treating or attempting to treat a client's specific health condition by means other than music therapy;
- failing to refer a client to a health care provider for treatment if a music therapist recognizes symptoms for which treatment by music therapy is inadvisable or which warrant treatment that is outside the scope of music therapy;
- the inability to practice music therapy with reasonable skill and safety because of excessive use of alcohol, drugs, narcotics, chemicals, or another substance;
- a felony conviction that directly relates to the duties and responsibilities of a music therapist or that indicates that the person poses a continued threat to public safety;
- practicing music therapy in a grossly negligent manner;
- adjudication as an incapacitated person by a court;
- conviction of an offense indicating that the music therapist's continued practice of music therapy is detrimental to the best interests of the public or profession, including an offense that constitutes a violation of any applicable ethical rule of the profession; or
- previous suspension or revocation of a music therapy license by another jurisdiction.

The bill's provisions establishing disciplinary grounds and disciplinary action take effect September 1, 2024.

C.S.H.B. 667 requires TCLR to set fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing the bill's provisions. The bill requires TCLR, not later than April 1, 2024, to adopt the rules, procedures, and fees necessary to administer the bill's provisions.

Applicability of Other Law

C.S.H.B. 667 makes the following applicable to the regulation of 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 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.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 667 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

With respect to the required qualifications of a person serving on the advisory board as a licensed music therapist, the introduced and the substitute differ in the following ways:

- the substitute omits a provision included in the introduced requiring the person to have at least three years experience as a licensed music therapist; and
- while the introduced added a temporary provision making a person who has practiced music therapy for that period eligible for appointment, regardless of whether the person has held a music therapy license continuously during that period, the substitute adds a temporary provision making a person who is certified as a music therapist by the certifying entity eligible for appointment, regardless of whether the person is licensed as a music therapist.

While the introduced required the advisory board to provide advice and recommendations to TDLR on technical matters relevant to the administration of the bill's provisions, the substitute instead authorizes the board to advise TCLR and TDLR on such matters and expands the topics on which the board may advise TCLR and TDLR.

The substitute includes a provision absent from the introduced that makes Government Code provisions relating to state agency advisory committees inapplicable to the duration of the advisory board.

The substitute omits provisions included in the introduced that did the following:

- prohibited an advisory board member from serving more than two consecutive terms;
- authorized the board's presiding officer to vote on any matter before the board;
- required the board to meet at least twice each year and at the call of TCLR's presiding officer or TDLR's executive director;
- provided for the grounds for removal of a board member;
- prohibited a board member from receiving compensation for service on the board, but entitled a board member to reimbursement for actual and necessary expenses incurred in performing functions as a board member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act; and
- specified that TCLR consult with the advisory board in setting fees to cover the costs of administering and enforcing the bill's provisions.