

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Health Policy

BILL: SB 1310

INTRODUCER: Senator Clemens

SUBJECT: Music Therapists

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harper	Stovall	HP	Pre-meeting
2.			AHS	
3.			FP	

I. Summary:

SB 1310 creates a new profession of Music Therapists in part XVII of ch. 468, F.S. Music therapists will be regulated by the Division of Medical Quality Assurance (MQA) within the Department of Health. The bill establishes licensure requirements for music therapists and specifies duties that music therapists must perform in the practice of music therapy. After January 1, 2016, an individual who is not licensed as a music therapist may not use the title of “music therapist” and may not practice music therapy, with certain exceptions. The bill requires biennial renewal of a music therapist license and authorizes the MQA to conduct investigations into alleged licensure violations and impose sanctions.

The bill creates a Music Therapy Advisory Committee within the MQA to provide the MQA director with assistance in carrying out the duties pursuant to the bill. Members of the advisory committee must be familiar with the practice of music therapy and serve, at the will of the director, without compensation for 4-year terms.

II. Present Situation:

The Sunrise Act and Sunrise Questionnaire

The Sunrise Act (the act), codified in s. 11.62, F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The Legislative intent in the act provides that:

- No profession or occupation be subject to regulation unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the state’s police power be exercised only to the extent necessary for that purpose; and

- No profession or occupation be regulated in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the services to the public.

The Legislature must review all legislation proposing regulation of a previously unregulated profession or occupation and make a determination for regulation based on consideration of the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires the proponents of legislation for the regulation of a profession or occupation to provide specific information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees of reference.¹ This required information is traditionally compiled in a “Sunrise Questionnaire.”

Music Therapists²

Currently, music therapists are not regulated in Florida. The primary proponent seeking regulation of music therapists in Florida is the Florida Music Therapy State Task Force (task force). The task force has completed a Sunrise Questionnaire to provide information concerning the proposed regulation of a currently unregulated profession.

“Music therapy” is defined by the task force to mean “the clinical and evidence-based use of music interventions to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program.” Music therapist serve clinical populations ranging in age from neonates in a hospital’s neonatal intensive care unit (NICU) to older adults in hospice care. Music therapy services are provided in a variety of clinical settings, including:

- Psychiatric hospitals;
- Rehabilitative facilities;
- Medical hospitals;
- Outpatient clinics;

¹ See s. 11.62(4)(a)-(m), F.S.

² Information in this portion of this Bill Analysis is from the Florida Senate Sunrise Questionnaire completed by the Florida Music Therapy State Task Force (on file with the Senate Committee on Health Policy).

- Day care treatment centers;
- Agencies serving persons with developmental disabilities;
- Community mental health centers;
- Drug and alcohol programs;
- Senior centers;
- Nursing homes;
- Hospice programs;
- Correctional facilities;
- Halfway houses;
- Schools; and
- Private practice.

According to the task forces, in some settings, such as certain school districts, the absence of licensure prevents access to music therapy services.

The task force estimates that there are 253 Music Therapists-Board Certified, four Registered Music Therapists, and four Certified Music Therapists in Florida.³

Music therapy degree programs are offered at approximately 73 colleges and universities in the United States. These programs are accredited by the American Music Therapy Association (AMTA). To become a music therapist, a student must earn a bachelor's degree or higher in music therapy from an AMTA-approved college or university. These programs require academic coursework and 1,200 hours of clinical training, including an approved supervised internship. An internship may be approved by the academic institution, the AMTA, or by both. Qualified supervision of clinical training is required and coordinated or verified by the academic institution. Internship supervisors must meet minimum requirements outlined by the AMTA Education and Clinical Training Standards.⁴

Currently in Florida, Florida State University (FSU) and the University of Miami (UM) have the only accredited music therapy programs. FSU and UM both offer Bachelor's, Master's, and Doctoral degrees in Music Therapy. FSU graduates approximately 35 - 40 students annually and UM graduates 10 - 12 students annually. Additionally, Florida Gulf Coast University is developing a music therapy program and is in the accreditation process.

National Certification of Music Therapists

There are two national organizations that recognize the music therapy profession: the AMTA and the Certification Board for Music Therapists (CBMT). The CBMT is the only organization that credentials music therapists nationally. The professional credential for a Music Therapist-Board Certified (MT-BC) is granted by the CBMT to individuals who have successfully completed an

³ The number of music therapists in Florida is based on information provided by the Certification Board for Music Therapists and the National Music Therapy Registry.

⁴ A music therapy internship supervisor must have a clinical practice in music therapy (either private or institutional) and demonstrate the following: all professional level competencies; effectiveness as a music therapy clinician in at least one area of practice; general understanding of the supervisory needs of internship students, and established skills in supervision. See AMTA, *Standards for Education and Clinical Training*, "6.2 Clinical Supervisors," available at <http://www.musictherapy.org/members/edctstan/> (last visited Apr. 2, 2015).

AMTA-approved academic and clinical training program and have passed a written objective national examination.

Currently, the majority of music therapist hold the MT-BC credential. Other credentials that a music therapist may have are: Registered Music Therapist (RMT), Certified Music Therapist (CMT), or Advanced Certified Music Therapist (ACMT). The RMT, CMT, and ACMT credentials were granted prior to 1998 and will expire in 2020.⁵

Regulation of Music Therapists in Other States

Since 1998, Wisconsin has provided a State Registry for Music Therapists through the Wisconsin Department of Regulation and Licensing. This is a title protection act that prohibits the use of the title Wisconsin Music Therapist – Registered (WMTR) unless a music therapist is registered with the state of Wisconsin. Wisconsin does not license state music therapists, and registration is voluntary.⁶

Music therapists were first licensed in the states of North Dakota and Nevada in 2011, followed by Georgia in 2012. North Dakota created a music therapy license through a newly created Board of Integrative Health; Nevada created a music therapy license through the Nevada State Board of Health; and in Georgia, the music therapy license is overseen by the Secretary of State and utilizes an ad hoc volunteer Advisory Council.

In 2014, Utah established a Music Therapy State Certification designation for board certified music therapists that is granted by Utah's Division of Occupational and Professional Licensing; and Rhode Island created a music therapy registry that is administered by the Rhode Island Department of Health.

Health Care Practitioners in Florida

The Department of Health (DOH) is responsible for the licensure of most health care practitioners in the state. In addition to the regulatory authority in specific practice acts for each profession or occupation, ch. 456, F.S., provides the general regulatory provisions for health care professions within the Division of Medical Quality Assurance in the DOH. Section 456.001, F.S., defines "health care practitioner" as any person licensed under chapters 457 (acupuncture); 458 (medicine); 459 (osteopathic medicine); 460 (chiropractic medicine); 461 (podiatric medicine); 462 (naturopathic medicine); 463 (optometry); 464 (nursing); 465 (pharmacy); 466 (dentistry and dental hygiene); 467 (midwifery); 478 (electrology or electrolysis); 480 (massage therapy); 484 (opticianry and hearing aid specialists); 486 (physical therapy); 490 (psychology); 491 (psychotherapy), F.S., or parts III or IV of ch. 483 (clinical laboratory personnel or medical physics), F.S.

Additionally, the miscellaneous professions and occupations regulated in parts I, II, III, V, X, XIII, or XIV (speech-language pathology and audiology; nursing home administration;

⁵ American Music Therapy Association, *Therapeutic Music Services At-A-Glance*, Ver. 14.1 (Feb. 2014), available at http://www.musictherapy.org/assets/1/7/TxMusicServicesAtAGlance_14.pdf (last visited Apr. 6, 2015).

⁶ See Wisconsin Chapter for Music Therapy, *Wisconsin Music Therapy Registry* (2015), available at <http://musictherapywisconsin.org/about-us/wmtr/> (last visited Apr. 2, 2015).

occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics) of ch. 468, F.S., are considered health care practitioners under s. 456.001, F.S.

Florida Administrative Procedures Act

Under ch. 120, F.S., the Florida Administrative Procedures Act (APA), a grant of rulemaking authority is necessary to allow an agency to adopt a rule. A specific law to be implemented is also required for rulemaking.⁷ The APA defines “rulemaking authority” to mean statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term “rule.”⁸ The APA defines “rule” to mean each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.⁹

An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.¹⁰

III. Effect of Proposed Changes:

Section 1 amends s. 20.43, F.S., to include music therapists as a profession established within the Division of Medical Quality Assurance (MQA) in the DOH.

Section 2 creates part XVII of chapter 468, F.S., which is entitled “Music Therapists.”

Section 3 creates s. 468.851, F.S., to provide the purpose of the legislation, which states that “the Legislature finds that the practice of music therapy should be subject to regulation to ensure the highest degree of professional conduct and to guarantee the availability of music therapy services provided by qualified professionals. This part is intended to protect the public from the harmful conduct of unqualified music therapists.”

Section 4 creates s. 468.852, F.S., to provide the following definitions related to music therapists:

- “Advisory committee” means the Music Therapy Advisory Committee.
- “Board-certified music therapist” means an individual who has completed the education and clinical training requirements established by the AMTA and who holds current board certification from the CBMT.
- “Division” means the MQA within the DOH.
- “Director” means the director of the division.

⁷ Section 120.536(1), F.S.

⁸ Section 120.52(17), F.S.

⁹ Section 120.52(16), F.S.

¹⁰ Section 120.536(1), F.S.

- “Music therapist” means a person licensed to practice music therapy pursuant to Part XVII of ch. 468, F.S.
- “Music therapy” means the clinical and evidence-based use of music interventions by a board-certified music therapist to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship. The term “music therapy” does not include the diagnosis or assessment of any physical, mental, or communication disorder.

Section 5 creates s. 468.853, F.S., to create a Music Therapy Advisory Committee within the division. The advisory committee shall consist of five members who have been appointed by the director of the MQA. Members of the advisory committee must be persons familiar with the practice of music therapy and must provide the director with expertise and assistance in carrying out the duties pursuant to Part XVII of ch. 468, F.S. Members of the advisory committee serve without compensation for 4-year terms and may serve consecutive terms at the will of the director.

The bill provides that advisory committee members must meet at least annually or otherwise as called by the director. The director must consult with the advisory committee before setting or changing required fees for music therapists. The advisory committee must provide analysis of disciplinary actions taken, appeals and denials, or revocation of licenses at least annually. The advisory committee may facilitate the development of materials that the director may utilize to educate the public concerning:

- Music therapist licensure;
- The benefits of music therapy; and
- Use of music by individuals and within facilities or institutional settings.

The advisory committee may also facilitate statewide dissemination of information between music therapists, the AMTA or any successor organization, and the director.

Section 6 creates s. 468.854, F.S., to establish licensure and practice requirements for music therapists. Beginning January 1, 2016, an individual must be licensed as a music therapist to practice musical therapy in this state or to use the title “music therapist,” with certain exceptions for a person who does not hold himself or herself out as a music therapist. These exceptions include:

- A person who is licensed, certified, or regulated to practice a profession or occupation in Florida who uses music, incidental to the practice of his or her profession or occupation;
- A person practicing his or her profession pursuant to a national certification;
- A student practicing music therapy as a part of an accredited music therapy program; or
- A person practicing music therapy under the supervision of a licensed music therapist.

A music therapist must:

- Collaborate with a client’s primary care provider before providing music therapy services to a client for an identified clinical or developmental need;
- Collaborate with the client’s treatment team, as applicable;
- Assess a client to determine if music therapy is indicated;
- Develop an individualized treatment plan based upon the results of the assessment.;
- Implement a treatment plan that is consistent with other services being provided to the client;

- Document the client’s response to music therapy and the treatment plan, noting needed modifications or whether discontinuation is appropriate;
- Minimize barriers to the delivery of music therapy services;
- Collaborate with and educate the client and the family or other appropriate persons regarding the client’s needs which are being addressed in music therapy and how music therapy treatment addresses those needs; and
- Use research, reasoning, and problem-solving skills to determine appropriate actions in the context of each specific clinical setting.

The bill provides that a music therapist may accept referrals for music therapy services from medical, developmental, mental health, or education professionals, family members, clients, or other caregivers. After January 1, 2016, an individual who is not licensed as a music therapist may not use the title of “music therapist” or a similar title and may not practice music therapy.

Section 7 creates s. 468.855, F.S., to specify requirements for the issuance of licenses to music therapists. The division shall issue a music therapist license to an applicant upon completion and submission of an application form, applicable fees, and evidence satisfactory to the division that the applicant:

- Is at least 18 years of age;
- Holds a bachelor’s degree or higher in music therapy, or its equivalent, from a program approved by the AMTA or any successor organization within an accredited college or university;
- Successfully completed a minimum of 1,200 hours of clinical training, with at least 180 hours in pre-internship experiences and at least 900 hours in internship experiences, provided that the internship is approved by an academic institution or the AMTA or any successor organization;
- Is in good standing based on a review of the applicant’s music therapy licensure history in other jurisdictions, including a review of any alleged misconduct or neglect in the practice of music therapy on the part of the applicant; and
- Provides proof of passing the examination for board certification offered by the CBMT or any successor organization, or provides proof of being transitioned into board certification and provides proof that the applicant is currently a board-certified music therapist.

The division shall also issue a music therapy license to an applicant who completes and submits an application, applicable fees, and evidence satisfactory to the division that the applicant is licensed and in good standing as a music therapist in another jurisdiction where the qualifications are equal to or greater than those required in Florida.

The division must waive the examination requirement until January 1, 2020, for an applicant who is currently designated as a RMT, CMT, or ACMT and is in good standing with the National Music Therapy Registry.

Fees collected by the division for music therapist license applications must be deposited into the Medical Quality Assurance Trust Fund.

Section 8 creates s. 468.856, F.S., to provide requirements for biennial licensure renewal. A license must be renewed upon payment of a renewal fee if the applicant is not in violation of any of the terms of part XVII of ch. 468, F.S., at the time of application for renewal. To renew a license, the licensee must provide:

- Proof of maintenance of status as a board-certified music therapist; and
- Proof of completion of a minimum of 40 hours of continuing education in a program approved by the CBMT or any successor organization and any other continuing education requirements established by the division.

Failure to renew a license results in forfeiture of the license. Licenses that have been forfeited may be restored within 1 year of the expiration date upon payment of renewal and restoration fees. Failure to restore a forfeited license within 1 year of expiration will result in the automatic termination of the license. The division may require an individual with a terminated license to reapply for licensure as a new applicant.

The division may place an active license on inactive status upon written request of the licensee, subject to an inactive status fee established by the division. The licensee may continue on inactive status for a period up to 2 years. An inactive license may be reactivated at any time by making a written request to the division and by fulfilling requirements established by the division.

A music therapist licensee must inform the division of any changes to his or her address.

Section 9 creates s. 468.857, F.S., to establish disciplinary grounds and actions. The bill lists the following acts as violations of part XVII of ch. 468, F.S.:

- Falsification of information submitted for licensure or failure to maintain status as a board-certified music therapist.
- Failure to pay fees when due.
- Failure to provide requested information in a timely manner.
- Conviction of a felony.
- Conviction of any crime that reflects an inability to practice music therapy with due regard for the health and safety of clients and patients, or with due regard for the truth in filing claims with Medicare, Medicaid, or any third-party payor.
- Inability or failure to practice music therapy with reasonable skill and consistent with the welfare of clients and patients.
- Any related disciplinary action by another jurisdiction.

The division may conduct investigations into alleged violations and impose one or more of the following sanctions:

- Suspension.
- Revocation.
- Denial.
- Refusal to renew a license.
- Probation with conditions.
- Reprimand.
- A fine of at least \$100, but no more than \$1,000, for each violation.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill does not provide express rule authority to the DOH or Division of Medical Quality Assurance. Article II, section 3 of the Florida Constitution, establishes a doctrine of separation of powers, providing that no branch may exercise powers pertaining to the other branches. Interpreting this doctrine in the context of the Legislature delegating authority to the executive branch, the Florida Supreme Court has stated that, “where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine.” *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978). However, “[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.” *Conner v. Joe Hatton, Inc.* 216 So.2d 209 (Fla. 1968).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Music therapists will be required to pay fees associated with licensure; however, SB 1310 does not specify fee amounts or maximum amounts for the fees authorized in the bill.

B. Private Sector Impact:

Music therapists are required to pay an initial licensure fee as well as biennial renewal fees. Other potential fees relate to inactive status, renewal and restoration, or reapplication. The fee amounts will be determined by the director of the MQA in consultation with the Music Therapy Advisory Committee.

C. Government Sector Impact:

The DOH reports that it will experience an indeterminate increase in revenues based on music therapist license application fees. The DOH will also incur a recurring increase in workload and costs associated with the regulation of music therapists and educating the public concerning music therapy and licensure.

VI. Technical Deficiencies:

The bill does not provide express rule authority for the DOH, which may make the bill insufficient to meet the Florida Administrative Procedures Act standards in ch. 120, F.S. Under Florida law, a state administrative agency has no authority to adopt rules apart from the authority delegated to it by the Legislature in statute. Without statutory authority to develop rules, the DOH cannot perform required administrative tasks such as creating an application form or establishing fees. The bill also does not set parameters for authorized fees.

The Music Therapy Advisory Committee is to consist of persons familiar with the practice of music therapy. However, the bill does not describe what constitutes familiarity with the practice of music therapy with respect to two members of the committee. Also, one of the members of the committee is to be a health care provider who is not a music therapist. However, the term “health care provider” is not defined. Chapter 456, F.S., which is applicable to all professions regulated by the DOH and MQA, defines the term “health care practitioner.” That term might provide more clarity.

VII. Related Issues:

The bill does not amend ch. 456, F.S., regarding health care practitioners, to include music therapists as “health care practitioners.”

Lines 223 – 227 require a music therapist to collaborate with and educate various persons regarding the needs of the client which are being addressed in music therapy. This language is seemingly broad and does not reference compliance with the federal HIPAA privacy regulations.

VIII. Statutes Affected:

This bill substantially amends section 20.43 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 468.851, 468.852, 468.853, 468.854, 468.855, 468.856, and 468.857.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
