



**CO L O R A D O**

**Department of  
Regulatory Agencies**

**2014 Sunrise Review:  
Music Therapists**

*Office of Policy, Research and Regulatory Reform  
October 15, 2014*



**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 15, 2014

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunrise reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed its evaluation of the sunrise application for regulation of music therapists and is pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, which provides that DORA shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, whether the public can be adequately protected by other means in a more cost-effective manner and whether the imposition of any disqualifications for regulation based on criminal history serves public safety or consumer protection interests.

Sincerely,

A handwritten signature in cursive script that reads 'Barbara J. Kelley'.

Barbara J. Kelley  
Executive Director



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## Background

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

## Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

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## Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

## Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

## Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

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## Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

## Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:<sup>1</sup>

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;

(III) Whether the public can be adequately protected by other means in a more cost-effective manner; and

(IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

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<sup>1</sup> § 24-34-104.1(4)(b), C.R.S.

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Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

## **Methodology**

DORA has completed its evaluation of the proposal for regulation of music therapists. During the sunrise review process, DORA performed a literature search; contacted and interviewed the applicant; reviewed licensure laws in other states; interviewed music therapy practitioners, mental health practitioners, health-care practitioners and administrators of the Colorado mental health boards; and contacted professional associations, the Colorado Department of Education, and the Colorado Department of Health Care Policy and Financing.

In order to determine the number and types of complaints filed against music therapists in Colorado, DORA contacted representatives of the Office of Occupational Therapy, the State Physical Therapy Board, the Office of Speech-Language Pathology Certification, and the Colorado mental health boards. To find additional reports of harm, DORA also contacted the Colorado Hospital Association, the Colorado Assisted Living Association, and the Colorado Health Care Association and Center for Assisted Living. To better understand the practice of music therapy, DORA staff observed nine music therapy sessions.

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## Profile of the Profession

After World War II, professional and amateur musicians traveled to hospitals throughout the United States to entertain war veterans who were suffering emotional and physical trauma. Recognizing the therapeutic benefit of music, doctors and nurses began to hire musicians to play for other patients, and the field of music therapy began to emerge.<sup>2</sup>

Music therapy is one of the creative arts therapies, which also include art therapy, dance therapy and drama therapy.<sup>3</sup> Music therapy involves listening to, creating, singing or moving to music.<sup>4</sup>

Music therapists use music in clinical or educational settings to treat individuals with cognitive, emotional, physical and social issues.<sup>5</sup> They often work with other health and educational professionals to assess an individual's needs and to develop a treatment plan.

Music therapists work with people who are mentally ill to develop coping and relaxation skills, increase self-esteem, decrease anxiety, enhance interpersonal relationships, improve group cohesiveness, increase motivation and help with catharsis.<sup>6</sup>

Music therapists also work with older people to enhance memory, reduce stress and anxiety, and improve mood.<sup>7</sup> For clients with Alzheimer's, they use music to ease depression, encourage social interaction, and decrease problem behaviors associated with agitation or aggression.<sup>8</sup>

Music therapists often work in hospice and hospital settings to help patients who are dying or coping with serious illnesses. For example, a music therapist may work with a child who has cancer in order to give voice to and validate the child's feelings of anger.<sup>9</sup>

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<sup>2</sup> American Music Therapy Association. *History of Music Therapy*. Retrieved on April 9, 2014, from <http://www.musictherapy.org/about/history/>

<sup>3</sup> See National Coalition of Creative Arts Therapies Association. *About NCCATA*. Retrieved on June 23, 2014, from <http://www.nccata.org/#!aboutnccata/czsv>

<sup>4</sup> American Music Therapy Association. *Definitions and Quotes About Music Therapy*. Retrieved on April 9, 2014, from <http://www.musictherapy.org/about/quotes/>

<sup>5</sup> American Music Therapy Association. *Definitions and Quotes About Music Therapy*. Retrieved on April 9, 2014, from <http://www.musictherapy.org/about/quotes/>

<sup>6</sup> See American Music Therapy Association. *Music Therapy and Mental Health*. 2006.

<sup>7</sup> See American Music Therapy Association. *Music Therapy and Alzheimer's Disease*. 2006.

<sup>8</sup> American Music Therapy Association. *Personal Stories About Music Therapy*. Retrieved on June 18, 2014, from [http://www.musictherapy.org/about/personal\\_stories/](http://www.musictherapy.org/about/personal_stories/)

<sup>9</sup> American Music Therapy Association. *Personal Stories About Music Therapy*. Retrieved on June 18, 2014, from [http://www.musictherapy.org/about/personal\\_stories/](http://www.musictherapy.org/about/personal_stories/)



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Music therapists may also work with people who are autistic in order to teach them to build relationships with peers, to express themselves verbally, to improve communication, and to participate with others in socially acceptable ways.<sup>10</sup>

Other professionals, such as psychologists, counselors and other health-care practitioners, may use music and other art forms therapeutically.<sup>11</sup>

Expressive art therapists are another group of practitioners who use music therapeutically. While creative arts therapists rely on one type of art for therapy, expressive arts therapists work with several different types of arts.

Expressive arts therapists may utilize painting, drawing, sculpture, dance, movement, music, drama, ritual, poetry or prose.<sup>12</sup>

Music thanatologists are another occupational group that uses music therapeutically. They sing and play the harp in hospice and palliative settings to ease suffering during the dying process.<sup>13</sup>

Musicians also play music in educational or clinical settings to entertain students or patients. While music by itself has therapeutic benefits, the American Music Therapy Association (AMTA) does not consider this to be music therapy.<sup>14</sup>

The AMTA establishes the educational and clinical training requirements of music therapists.<sup>15</sup> There are over 70 colleges and universities with music therapy programs approved by the AMTA.<sup>16</sup>

Music therapists must have a strong foundation in music. They must also have a basic knowledge of clinical and therapeutic practice. They must be able to apply the foundations and principles of music therapy, and they must be able to perform an assessment, plan treatment, and implement, document and evaluate treatment.<sup>17</sup>

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<sup>10</sup> American Music Therapy Association. *Personal Stories About Music Therapy*. Retrieved on June 18, 2014, from [http://www.musictherapy.org/about/personal\\_stories/](http://www.musictherapy.org/about/personal_stories/)

<sup>11</sup> See Cathy A. Malchiodi, *Expressive Therapies*, Guilford Publications, p. 2.

<sup>12</sup> California Institute of Integral Studies. *Expressive Arts Therapy*. Retrieved on June 23, 2014, from [http://www.ciis.edu/Academics/Graduate\\_Programs/Expressive\\_Arts\\_Therapy.html](http://www.ciis.edu/Academics/Graduate_Programs/Expressive_Arts_Therapy.html)

<sup>13</sup> Music-Thanatology Association International. *What Is Music-Thanatology?* Retrieved on June 23, 2014, from [http://www.mtai.org/index.php/what\\_is](http://www.mtai.org/index.php/what_is)

<sup>14</sup> American Music Therapy Association. *Definition and Quotes About Music Therapy*. Retrieved on April 9, 2014, from <http://www.musictherapy.org/about/quotes/>

<sup>15</sup> American Music Therapy Association. *Frequently Asked Questions*. Retrieved on March 28, 2014, from <http://www.musictherapy.org/faq/>

<sup>16</sup> American Music Therapy Association. *A Career in Music Therapy*. Retrieved on June 20, 2014, from <http://www.musictherapy.org/careers/employment/>

<sup>17</sup> See American Music Therapy Association. *A Career in Music Therapy*. Retrieved on June 20, 2014, from <http://www.musictherapy.org/careers/employment/>

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According to the AMTA, a bachelor's degree in music therapy is made up of the following areas of study:<sup>18</sup>

- Music foundations (45 percent),
- Clinical foundations (15 percent),
- Music therapy (15 percent),
- General education (20 to 25 percent), and
- Electives (5 percent).

Music foundations may include the following courses:<sup>19</sup>

- Music Theory;
- Composition and Arranging;
- Music History and Literature;
- Applied Music Major;
- Ensemble;
- Conducting; and
- Functional Piano, Guitar and Voice.

Clinical foundations may include the following courses:<sup>20</sup>

- Exceptionality and Psychopathology,
- Normal Human Development,
- Principles of Therapy, and
- The Therapeutic Relationship.

Music therapy may include the following courses:<sup>21</sup>

- Foundations and Principles,
- Assessment and Evaluation,
- Methods and Techniques,
- Pre-Internship and Internship Courses,
- Psychology of Music,
- Music Therapy Research,
- Influence of Music on Behavior, and
- Music Therapy with Various Populations.

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<sup>18</sup> American Music Therapy Association. *A Career in Music Therapy*. Retrieved on June 20, 2014, from <http://www.musictherapy.org/careers/employment/>

<sup>19</sup> American Music Therapy Association. *A Career in Music Therapy*. Retrieved on June 20, 2014, from <http://www.musictherapy.org/careers/employment/>

<sup>20</sup> American Music Therapy Association. *A Career in Music Therapy*. Retrieved on June 20, 2014, from <http://www.musictherapy.org/careers/employment/>

<sup>21</sup> American Music Therapy Association. *A Career in Music Therapy*. Retrieved on June 20, 2014, from <http://www.musictherapy.org/careers/employment/>

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A music therapy degree includes 1,200 hours of clinical training, which is gained through fieldwork experience in music therapy courses and an internship.<sup>22</sup>

Music therapists may also obtain a master's or a doctoral degree in music therapy.<sup>23</sup>

A music therapist may be designated as a Music Therapist – Board Certified (MT-BC), through the Certification Board for Music Therapists (CBMT). In order to become an MT-BC, a candidate must complete a bachelor's degree in music therapy and pass a national examination administered by the CBMT.<sup>24</sup>

Other professional credentials that music therapists may hold include the Advanced Certified Music Therapist (ACMT), Certified Music Therapist (CMT) or Registered Music Therapist (RMT). These credentials were previously granted by the National Association for Music Therapy and the American Association for Music Therapy before they merged to form the AMTA in 1998.<sup>25</sup>

Six states regulate music therapists. Two of these states only require music therapists to be licensed if they practice psychotherapy, and in another state, certification is voluntary.

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<sup>22</sup> American Music Therapy Association. *A Career in Music Therapy*. Retrieved on June 20, 2014, from [http://www.musictherapy.org/careers/employment/#Bachelors\\_Degree\\_Requirements](http://www.musictherapy.org/careers/employment/#Bachelors_Degree_Requirements)

<sup>23</sup> American Music Therapy Association. *A Career in Music Therapy*. Retrieved on June 20, 2014, from [http://www.musictherapy.org/careers/employment/#Bachelors\\_Degree\\_Requirements](http://www.musictherapy.org/careers/employment/#Bachelors_Degree_Requirements)

<sup>24</sup> American Music Therapy Association. *Professional Requirements for Music Therapists*. Retrieved on June 23, 2014, from <http://www.musictherapy.org/about/requirements/>

<sup>25</sup> Music Therapy Maven. *All You Need to Know About the Designations Behind a Music Therapist's Name*. Retrieved on June 23, 2014, from <http://www.musictherapymaven.com/acronyms-and-specialized-training-designations-for-the-professional-music-therapist/>

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## Proposal for Regulation

The American Music Therapy Association (AMTA) has submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies state title protection of music therapists as the appropriate level of regulation to protect the public.

The sunrise application states that title protection is necessary to protect the public from the emotional, psychological, physical and financial harm from unqualified and incompetent music therapists.

It also states that title protection will help to protect personal health information from being shared with unqualified practitioners.

The sunrise application requests that only individuals who hold a professional designation, in good standing, through the Certification Board for Music Therapists (CBMT) or the National Music Therapy Registry be able to use the title "music therapist" or "board-certified music therapist."

The requirements to be board certified through CBMT are to:<sup>26</sup>

- Obtain a bachelor's degree in music therapy from a college or university program approved by the AMTA, and
- Pass a national examination created by CBMT.

A bachelor's degree in music therapy requires 1,200 hours of clinical training, which includes a supervised internship.<sup>27</sup>

In order to maintain certification, a music therapist must complete 100 hours of continuing education every five years.<sup>28</sup>

The National Music Therapy Registry includes music therapists who were credentialed before the creation of the AMTA.<sup>29,30</sup>

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<sup>26</sup> American Music Therapy Association. *Professional Requirements for Music Therapists*. Retrieved on June 23, 2014, from <http://www.musictherapy.org/about/requirements/>

<sup>27</sup> American Music Therapy Association. *Professional Requirements for Music Therapists*. Retrieved on June 23, 2014, from <http://www.musictherapy.org/about/requirements/>

<sup>28</sup> The Certification Board for Music Therapists. *CBMT Definition Fact Sheet*. Retrieved on September 26, 2014, from <http://www.cbmt.org/fact-sheets/cbmt-definition-fact-sheet/>

<sup>29</sup> American Music Therapy Association. *Professional Requirements for Music Therapists*. Retrieved on June 23, 2014, from <http://www.musictherapy.org/about/requirements/>

<sup>30</sup> Music Therapy Maven. *All You Need to Know About the Designations Behind a Music Therapists Name*. Retrieved on June 23, 2014, from <http://www.musictherapymaven.com/acronyms-and-specialized-training-designations-for-the-professional-music-therapist/>

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# Summary of Current Regulation

## The Colorado Regulatory Environment

Music therapy is one of the creative arts therapies, which also include art therapy, dance therapy and drama therapy.<sup>31</sup> According to the National Institute of Mental Health, creative arts therapies and expressive arts therapy are forms of psychotherapy that are “based on the idea that people can heal themselves through art, music, dance, writing or other expressive acts.”<sup>32</sup>

While there are no laws specific to “music therapy,” anyone who practices psychotherapy must at a minimum be registered as a psychotherapist in Colorado.<sup>33</sup>

Under the Mental Health Practice Act, the following six boards regulate mental health providers:

- Addiction counselors,
- Licensed professional counselors,
- Marriage and family counselors,
- Psychologists,
- Registered psychotherapists, and
- Social workers.

The mental health boards have the authority to deny, revoke or suspend a license, certification or registration. They may also issue a letter of admonition, a confidential letter of concern or a fine, and they may place a licensee, certificate holder or registrant on probation.<sup>34</sup>

The grounds for discipline include, among other items:<sup>35</sup>

- A felony conviction;
- Habitually or excessively using or abusing alcohol, a habit-forming drug or a controlled substance;
- Failing to notify the relevant board of a physical or mental illness or condition that affects the person’s ability to treat clients with reasonable skill and safety or that may endanger the client’s health or safety;
- Acting or failing to act in a manner that meets the standards of practice;
- Performing services outside the person’s area of training, experience or competence;

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<sup>31</sup> National Coalition of Creative Arts Therapies Associations. *About NCCATA*. Retrieved on June 23, 2014, from <http://www.nccata.org/#!aboutnccata/czsv>

<sup>32</sup> National Institute of Mental Health. *Psychotherapies*. Retrieved on June 23, 2014, from <http://www.nimh.nih.gov/health/topics/psychotherapies/index.shtml>

<sup>33</sup> § 12-43-226(2), C.R.S.

<sup>34</sup> § 12-43-223(1), C.R.S.

<sup>35</sup> § 12-43-222(1), C.R.S.

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- Exercising undue influence on the client, including the promotion of the sale of services, goods, property or drugs in such a manner as to exploit the client for the financial gain of the practitioner or a third party; and
  - Engaging in sexual contact, sexual intrusion or sexual penetration with a client during the period of time in which a therapeutic relationship exists or for two years following the period in which such a relationship exists.

The Mental Health Practice Act provides a strong regulatory framework that protects the public against unprofessional conduct, incompetent practice and abuse.

The Colorado Department of Health Care Policy and Financing oversees the Medicaid program. In Colorado, there are three Home and Community-Based Services (HCBS) waivers through which music therapy is reimbursed through Medicaid:

- Children’s Extensive Support,
- Supported Living Services, and
- Children with Life-Limiting Illness.

Each of these HCBS waivers require music therapists to be board certified through the Certification Board for Music Therapists (CBMT). For the most fragile and vulnerable persons who receive music therapy through HCBS waivers, the state government ensures that music therapists have demonstrated a certain level of professional competency.

Additionally, in the Consumer Protection Act, it is considered a deceptive trade practice to claim to possess a degree or a title associated with a particular degree unless the person has been awarded the degree from a school that is accredited or otherwise authorized to grant degrees as specified in statute.<sup>36</sup> Therefore, a person could not pose as a graduate of a music therapy program without first having a degree.

There are also numerous health-care practitioners that may use music as an intervention to treat patients:

- Nurses,
- Physical therapists,
- Occupational therapists,
- Speech language pathologists, and
- Mental health providers.

All of these practitioners are governed by their particular practice acts, and they are required to work within the boundaries of their education, skill and training. The professional boards that regulate them may investigate consumer complaints and discipline practitioners for unprofessional conduct.

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<sup>36</sup> § 6-1-707(1)(a), C.R.S.

In addition to health-care professionals, musicians often enter into health-care settings to provide entertainment to patients. There are no laws regulating the professional conduct of these individuals.

## Regulation in Other States

Six states regulate music therapists, and in each of these states the level of regulation is different. Four of these states regulate music therapists as a unique profession, and two states license music therapists as psychotherapists.

New York licenses music therapists as “creative arts therapists,”<sup>37</sup> which New York defines as practitioners who are trained in psychotherapy and specific art disciplines to address mental, emotional, developmental and behavioral disorders.<sup>38</sup> Wisconsin has a voluntary registration program, but it requires music therapists to be licensed in order to practice psychotherapy.

Only Georgia and North Dakota protect the title “music therapist.” New York protects the title “creative arts therapist” and any of its derivatives.

Table 1 provides some basic information about the regulation of music therapists in other states.

**Table 1**  
**Regulation in Other States**

	Georgia	Nevada	New York <sup>39</sup>	North Dakota	Utah	Wisconsin <sup>40</sup>
Year enacted	2012	2011	2007	2011	2014	1998
Type of regulation	License	License	License	License	Certificate	Registration/License
Voluntary or mandatory	Mandatory	Mandatory	Mandatory	Mandatory	Voluntary	Voluntary/Mandatory
Title protected	Yes	No	Yes	Yes	No	No
Practice protected	No	No	Yes	No	No	Yes
Number licensed, certified or registered	91	12	1,575	6	None	38

<sup>37</sup> American Music Therapy Association. *How to Find a Music Therapist*. Retrieved on September 26, 2014, from <http://www.musictherapy.org/about/find/>

<sup>38</sup> New York State Education Department. *Consumer Information*. Retrieved on August 11, 2014, from <http://www.op.nysed.gov/prof/mhp/catbroch.htm>

<sup>39</sup> New York licenses music therapists as creative arts therapists along with other therapists who use art, dance, drama, movement, music or poetry.

<sup>40</sup> Wisconsin registers music therapists voluntarily but requires a license if music therapists practice psychotherapy. The number here includes both registered music therapists and those who are licensed to practice psychotherapy.

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# Analysis and Recommendations

## Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

In order to determine whether the regulation of music therapists is necessary, the Department of Regulatory Agencies (DORA) requested that the sunrise applicant provide specific examples of harm to the public.

The examples of harm provided to DORA include:

- Emotional harm,
- Psychological harm,
- Physical harm, and
- Misuse of a title.

Each example of harm is summarized below along with DORA's analysis.

### Emotional Harm

In 2004, a music therapist was working in a hospital in the suburbs of Chicago where music thanatologists<sup>41</sup> and music practitioners also provided services to patients in their rooms and in the waiting areas. The music therapist was called by a registered nurse to provide music therapy to a patient in the oncology unit. The patient was emotionally distraught following a visit from a music thanatologist, who played music that triggered feelings that were overwhelming for the patient. When the patient became distressed, crying and agitated, the thanatologist left the patient in this condition. The nurse was troubled by this and asked a music therapist to help the patient. The music therapist began a session which helped the patient to express and release her feelings in the context of a therapeutic relationship. By the end of the music therapy session, the patient was relaxed and calm.

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<sup>41</sup> Music thanatologists: practitioners who sing and play the harp in hospice and palliative settings to ease suffering during the dying process.



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### Analysis

*Clearly, the patient suffered temporary emotional distress due to the failure of the thanatologist to deal with the emotional response triggered by the music. However, the patient was under the care of nurses and other trained staff in the hospital, and the nurse responded to the emotional distress of the patient by calling in an appropriate person to handle the situation. The nurse could have also called a hospital chaplain or another mental health provider to help this patient. Therefore, any possible harm would likely be addressed without the need for additional regulation.*

### Emotional Harm

A music therapist in Oregon was working with a patient who was suffering from a terminal illness that had also killed her father. The patient was having a difficult week, and the health-care team decided that she needed to refocus on things that brought her happiness, so an intern that was working with the music therapist brought in a book and song. Halfway through the song, the patient broke down into uncontrollable sobbing. The intern did not know it, but the client's father used to sing that song to her at night. The patient had not grieved for the loss of her father, and because the intern was a trained music therapist she was able to help the patient grieve. The music therapy session developed into a cathartic experience for the patient. If the intern had simply been a music volunteer or someone without training, the patient may not have achieved catharsis and may have been left in a state of despair. The patient's psychologist thanked the music therapist for helping this patient to begin grieving the death of her father.

### Analysis

*While this case demonstrates the likelihood of an improved outcome by a board-certified music therapist, it is not clear evidence of harm.*

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## Emotional Harm

A musician was brought into a state-run psychiatric hospital in Denver as a volunteer. During his tenure at the psychiatric hospital, the volunteer acted inappropriately on a number of occasions. First, the musician asked to be called a music therapist although he was not trained as a music therapist. The hospital denied this request. Second, the volunteer attempted to bring his friends into the hospital without processing them through volunteer services, which requires a fingerprint-based criminal history record check. They were not allowed in. Third, he also attempted to hold drum circles but was told to collaborate with the music therapist on staff. He decided not to collaborate and was not allowed to hold any drum circles. Fourth, the volunteer attempted to provide spiritual counsel to patients without understanding the client goals or working with Chaplain Services or collaborating with other appropriate staff. Finally, he attempted to sell compact discs of his music to indigent patients, resulting in emotional distress for some of the patients. His service was officially ended by the volunteer office after his visits became sporadic, and eventually he stopped coming to visit at all.

### Analysis

*A state-run psychiatric hospital is a sophisticated employer that should be able to assess the necessary qualifications of its staff and its volunteers. Attempts by the volunteer that could have resulted in harm to patients were prevented by hospital staff. The patients in this facility are under the care of qualified mental health providers, and this volunteer was supervised by trained staff. If this volunteer presented any real potential for harm to patients, the staff could have prevented him from continuing to volunteer. Even if music therapists were fully licensed, it would not prevent hospitals from enlisting volunteers to provide music to the patients. Therefore, any possible harm would likely be addressed without the need for additional regulation.*

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## Emotional Harm

A psychiatric hospital in Colorado hosted a mental health fair for the community, staff from the facility and other similar facilities. Clients of the hospital also attended the fair. One of the options of the day was drum therapy. The leader of the drum therapy session was a psychologist and a member of the hospital staff but not a board-certified music therapist.

A board-certified music therapist who watched a drum therapy session and attended another reported the following problems. The drum therapy leader taught the group a rhythm and had the members repeat it for the duration of the session. According to the music therapist, this is inconsistent with research which shows that if a stimulus does not change, the behavior becomes rote and, therefore, does not improve aspects of cognition. The drum therapy leader also stopped the group and corrected anyone who was playing incorrectly. According to the music therapist, this is contrary to how music therapists are taught to approach mental health, which is to instill hope, focus on strengths and treat people with respect. Music therapy also focuses on allowing people to express themselves safely. Having people repeat the same rhythm without any aspect of individuality can damage self-esteem and the therapeutic relationship, and it discourages empowerment and independence. The drum therapy leader went back and forth between joining the group and soloing over the others. According to the music therapist, music therapy is client centered, but the music therapist considered the soloing to be attending to the needs of the drum therapy leader rather than the members of the group.

Finally, the drums were made of skin, which the music therapist said cannot be sanitized and should not be used in a medical or hospital setting.

After the drum therapy session, the music therapist approached the drum therapy leader and expressed concern that she was not trained to provide music therapy. The drum therapy leader declined to consult with a music therapist and responded that she had 30 years of experience in psychology and that she used drumming along with dialectical behavior therapy to teach mindfulness.

### Analysis

*Clearly, the drum therapy leader did not provide a drum therapy session the same way that the music therapist would have. However, music is an intervention that may be employed by psychologists and other health-care providers, and there is no evidence of actual harm to members of the community in this case.*

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## Emotional Harm

A music therapist was working as a musician with a small ensemble in a kindergarten classroom and not as a music therapist when she noted a five-year-old boy who was behaving and reacting in the classroom in an atypical way. He seemed to be out of touch, screamed and had poor peer interactions with poor eye contact, and he did not follow directions well. Over a period of four weeks, it became clear that the child was sensitive to sound. He exhibited sudden episodes of high anxiety and self-talk, including covering his ears. This behavior was exacerbated by certain types of music and sounds. The music therapist made several attempts to remove the child from the group when he was having the most severe reactions, but the school did not have many alternatives for the child. After several months, the child was evaluated by the school, and it was determined that the child had special needs and probable childhood psychosis. In this case, music was contraindicated. The music therapist was not acting in her role as a music therapist, but as a musician. Her training, however, allowed her to advocate for the child given his negative reactions to music and certain sounds.

### Analysis

*According to the music therapist, music was not an appropriate form of treatment for this child. Music can be provided in almost any setting, and in this case, the music therapist was hired as a musician, not as a music therapist. Therefore, music was not being used to treat this individual. While this case demonstrates the likelihood of an improved outcome by a board-certified music therapist, it is not clear evidence of harm.*

## Psychological Harm

A hospital in Colorado hired two people to provide music therapy to patients in an adolescent psychiatric unit, an adult psychiatric unit and a pediatric unit. One person was a board-certified music therapist, and the other was a musician without any clinical training. The music therapist was holding a music therapy session when the musician entered into the room. The musician did not recognize the signs of acute hyper-sexuality in one of the patients, and she lacked therapeutic boundaries and clinical training. The musician engaged in a personal conversation in the presence of patients that triggered a patient to masturbate during the session. This patient and at least one other patient in the group were traumatized by the event. The music therapist immediately ended the session, asked everyone else to leave and called appropriate hospital staff to attend to the patients.

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### Analysis

*This scenario is common in psychiatric units, and the music therapist reported to DORA that she has encountered it on other occasions in music therapy sessions. The hospital trains its staff and volunteers to respond to situations like this and other situations that could escalate into violence or be harmful to patients. The hospital could always hire musicians with or without clinical training to provide music to patients and call them music practitioners, music specialists or musicians. Therefore, neither title protection nor further regulation would address the alleged harm.*

### Physical Harm

During a music therapy session with a small group in Tucson, Arizona, a music therapist noted that a young boy – who had multiple developmental delays, was unable to walk or talk, and was on medication for epilepsy – was having *petit mal* seizure activity in response to higher frequency sounds and certain repetitive sounds. The music therapist addressed the high frequency sounds, bass rhythms and discernible tempos that were causing the seizures, and the following music therapy session was successful. Music therapy helped the child to stay alert and interact with her mother and her sibling. The music therapist provided the mother with information about music-induced seizures and how an advisory for the child’s Individualized Education Program might be considered to prevent further seizures.

### Analysis

*This is one area where specialized training and education in music therapy clearly prepared this practitioner to help the client. While this case demonstrates the likelihood of an improved outcome by a board-certified music therapist, it is not evidence of harm.*

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## Physical Harm

After several weeks of medical treatment, a 12-year-old oncology patient in Indiana had a stroke and was placed in a medically induced coma to protect her neurological functioning. After noting the physiological signs of agitation between doses of sedative medication, the attending physician requested music therapy. The board-certified music therapist assessed the patient and observed no behavioral responses to the music therapy intervention. The patient's mother asked for the session to continue because her child had received and loved music therapy before she had a stroke. As the session continued, the music therapist noted a drastic increase in the patient's heart rate, a decrease in her oxygen saturation levels, and an increase in her rate of respiration despite controlled, mechanical ventilation. The music therapist discontinued music therapy because of the potential strain on the child's heart, increased pressure on her brain, and strain on her compromised lungs.

### Analysis

*The board-certified music therapist acted appropriately by stopping the intervention and preventing the infliction of any harm. Even if the music therapist were not properly trained, the patient was under the care of an attending doctor and intensive care nurses, who were responsible for the patient, monitoring the patient's vitals and would act appropriately to prevent harm to the patient. Therefore, any possible harm would likely be addressed without the need for additional regulation.*

## Physical Harm

A music therapist from Oregon was working in a children's hospital when a doctor from the pediatric intensive care unit (PICU) called her in to consult on a case. A teenager ran his snowmobile into a tree and suffered a traumatic brain injury. He was in a stage of coma in which he was extremely agitated. The parents hired someone who claimed to be a music therapist, but who was not. The person programmed music to be played by the patient's bedside to help him relax. The patient became more agitated. His heart rate increased, and his oxygen saturation rates decreased. The PICU staff responded by increasing the sedatives, and the attending doctor called in a board-certified music therapist to consult on the case. When the music therapist entered the room, the music that was playing by the patient's bedside was a Mozart concerto. The music therapist noted that the child was writhing in his bed. The family told the music therapist that the patient did not like classical music and actually preferred gangster rap. When the music therapist set up a listening program that included the patient's preferred music, the patient sighed and visibly relaxed. His heart rate lowered to normal in less than three minutes, and his oxygen saturation rate went from 82 percent to 96 percent and remained stable. He was then able to relax without further medication, allowing his body and brain to heal.

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### Analysis

*In this case, the patient was not harmed. The PICU staff was monitoring the vitals of the patient, and they responded to the situation appropriately. The hospital staff was sophisticated enough to recognize a potentially dangerous situation and assess the necessary qualifications of staff to consult on the case. Therefore, any possible harm would be addressed without the need for additional regulation.*

### Physical Harm

A music therapist from Colorado who provides music therapy to children and adults with intellectual and developmental disabilities was working with a 23-year-old man with Angelman syndrome. During the session, the man became extremely agitated and began throwing instruments across the kitchen and striking out at his parents and the music therapist. The music therapist assessed the situation and observed that he was frustrated because he had difficulty grasping an instrument. He was in immediate danger of harming himself and others, so the music therapist changed the tempo and volume of the music to reduce the auditory stimulation. She did this gradually but over a short period of time to settle him down and to avoid further distress.

### Analysis

*In this case, the patient was not harmed. Angelman syndrome is a genetic disorder that causes severe intellectual and developmental disabilities. This client is most likely receiving services through the Supported Living Services, Home and Community-Based Services Medicaid-waiver program, which requires music therapy to be provided by a board-certified music therapist. Also, the music therapist is an approved service provider through the Colorado Department of Health Care Policy and Financing, Division of Developmental Disabilities, which regulates the provision of therapeutic services provided to persons with developmental disabilities. Therefore, any possible harm would be addressed without the need for additional regulation.*

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## Misuse of a Title

A registered nurse who is also a fitness instructor and a musician contacted a music therapist for some advice on how to improve the services she is providing to nursing homes in a small community in Colorado. The registered nurse promotes herself to the nursing homes as a music therapist. She provides 30-minute sessions, and she leads the residents in familiar songs and gives them instruments to play. Then she leads them in 30 minutes of gentle exercise therapy. She only provides these sessions once a week and otherwise works as a school nurse. According to the registered nurse, her clients appreciate the services she is providing.

### Analysis

*In this case, no consumer harm is reported or alluded to. The only possible harm is the misuse of a title, which is only harmful to the profession and is not evidence of consumer harm.*

These cases do not demonstrate evidence that the unqualified practice of music therapy harms the public. In the cases presented in which clients were medically fragile, they were protected by other means.

DORA also contacted the Certification Board for Music Therapists (CBMT) to find additional cases of harm. CBMT provided several cases that resulted in disciplinary action. These cases occurred in other states and took place over a period of approximately 16 years.

Some of the cases provided by CBMT illustrate the following types of harm:

- Sexual assault,
- Sexual misconduct, and
- Financial exploitation.



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Each example of harm is summarized below along with DORA's analysis.

### Sexual Assault

CBMT revoked the certification of a music therapist following three cases of sexual assault, which all took place over the summer of 2008 in Arizona. The music therapist was reported to have locked the bedroom door where he was treating a 10-year-old non-verbal female with autism. When the mother unlocked the door, the child's underwear and pants were around her ankles. The child was unable to unbutton her pants by herself. The twin brother also alleged that the therapist touched his private parts and made him touch his. Another 10-year-old boy reported that he performed oral sex on the music therapist. The father of a 21-year-old non-verbal male with cerebral palsy walked in on a session, and found the therapist taking his hand out of his son's pull-up diaper. The music therapist was placed on lifetime probation and required to serve at least one year in county jail, and he will have to register as a sex offender.

#### Analysis

*This case provides clear evidence of harm to people with developmental disabilities, who are especially vulnerable to abuse and exploitation. The individual was placed on a sex offender registry and his board certification was revoked, which would likely diminish his ability to find work as a music therapist, but it may not eliminate it.*

### Sexual Assault

A board-certified music therapist pleaded guilty to sexually molesting a child in Maryland in 1999, and he was given a suspended sentence and placed on probation. CBMT was not notified of this incident, so it did not revoke his certification. He then moved to Florida where he was working with terminally ill children in hospice and palliative care. He was subsequently arrested in 2008 for failing to register as a sex offender, which is a felony, and he was incarcerated. Following the music therapist's conviction, CBMT revoked his certification.

#### Analysis

*This case provides evidence of harm to the public. Unfortunately, the requirement to register as a sex offender did not result in the revocation of the music therapist's board certification for nine years or reduce the sex offender's ability to work as a music therapist with terminally ill children during that time. Nine years later, he was convicted of a felony, incarcerated and CBMT revoked his certification, which would very likely diminish his ability to find work as a music therapist, but it may not eliminate it.*

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## Sexual Assault

CBMT denied certification to an individual based on a history of sexual assault while in a position of trust in 1998. While working as a high-school band director at a high school in Virginia, the director was found guilty of sexually abusing more than one student by inappropriate touching, proposing sexual acts, exposing himself to students and asking a student to expose himself.

### Analysis

*This case provides evidence of harm to the public. However, the perpetrator was convicted and sentenced as a sex offender, and CBMT subsequently denied his application for board certification, which should reduce his ability to find work as a music therapist, but it may not completely eliminate it.*

## Sexual Misconduct

In 2010, CBMT suspended the certification of a music therapist in Ohio who entered into a sexual relationship with a young male adult, who was an in-patient in psychiatric care. CBMT required the music therapist to take ethics classes and appeal for reinstatement, and the certification was then reinstated.

### Analysis

*This case provides evidence of harm to the public. While the music therapist was disciplined, consumers would have no way of knowing that any disciplinary action was taken. If the music therapist's board certification was revoked, consumers would be able to determine that the music therapist was no longer board certified. However, in this case, the music therapist's board certification was reinstated. CBMT is a private organization, so the misconduct would not be public. With state regulation, disciplinary actions are available to the public.*

## Sexual Misconduct

In 1999, CBMT suspended the certification of a music therapist in Texas who entered into a sexual relationship with a young female adult, who was an in-patient in psychiatric care. CBMT required the music therapist to take ethics classes and appeal for reinstatement, and the certification was then reinstated.

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### Analysis

*This case provides evidence of harm to the public. While the music therapist was disciplined, consumers would have no way of knowing that any disciplinary action was taken. If the music therapist's board certification was revoked, consumers would be able to determine that the music therapist was no longer board certified. However, in this case, the music therapist's board certification was reinstated. CBMT is a private organization, so the misconduct would not be public. With state regulation, disciplinary actions are available to the public.*

### Financial Exploitation

An individual used alias names and falsely advertised that he was a board-certified music therapist. While representing himself as a music therapist, the individual extorted money from nursing home residents and nursing homes in California. After he performed as a music therapist at a nursing home, he would collect signatures from residents and staff. Then after a lengthy period of time he would forge the signatures onto contracts. Once this was done, he would send demand letters for breach of contract. Due to the lapse of time, many agreed to pay him or they would hire him. If they didn't, he would sue them. He had 35 active lawsuits in a few years of time, and he acquired thousands of dollars through forged and fraudulent contracts. He was reported to CBMT in 2006 and 2009, and it ordered him to cease and desist representing himself as a board-certified music therapist.

### Analysis

*This case provides evidence of harm to the public. However, forgery and fraud are crimes that may be addressed by a criminal court. This individual was falsely representing himself as board certified. It is unlikely that title protection or government regulation could have prevented these crimes.*

### Financial Exploitation

A music therapist in Wisconsin became a primary caregiver for an elderly woman, who was a former client. The elderly woman subsequently left her estate to the music therapist upon her death. The daughter of the elderly woman contested the will, but the case was dismissed by two civil court judges and the Wisconsin Department of Regulation and Licensing. The music therapist maintained that there was no merit to the allegations of financial exploitation, but she voluntarily surrendered her certification in 2001 after the daughter filed a complaint with CBMT.

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## Analysis

*It is unknown whether the music therapist in this case financially exploited her client since two civil courts dismissed the case. In this case, the music therapist was regulated in Wisconsin, and the state regulatory agency also dismissed the case. By surrendering her certification, the music therapist diminished her ability to find work as a music therapist, but she did not eliminate it entirely.*

Most of these cases provide clear evidence of harm to the public by board-certified music therapists. The harm includes sexual abuse of children with developmental disabilities, sex with patients in psychiatric wards, and financial exploitation of elderly clients. While they represent only a few isolated cases, all of these events are reprehensible and some are heinous.

In nearly all of these cases, the board-certified music therapist was disciplined by the professional association. For those whose certification was revoked or surrendered, the chances of finding work as a music therapist has been significantly reduced.

However, the problem with private certification is that it cannot entirely prevent individuals from practicing music therapy without certification. Similarly, protecting the title "music therapist" would not prevent anyone from practicing music therapy as long as they did not represent themselves as a "music therapist." Only a regulatory program that requires a license in order to practice would prevent these individuals from practicing music therapy.

Unfortunately, government regulation does not prevent misconduct from taking place, but it could prevent individuals convicted of heinous crimes from practicing as music therapists in the future. While some of these music therapists received criminal sentences, they would still present a threat to the public if they continued to practice as music therapists.

That said, the harm identified in these cases is extremely rare, and none of these cases took place in Colorado. CBMT reported only five cases of harm throughout the entire country over a 16-year period, and there are currently about 6,000 board-certified music therapists throughout the United States.

The question is whether these few cases are sufficient to warrant government regulation of an entire occupational group.

In an attempt to identify harm in other states, DORA staff contacted the six states where music therapists are regulated. Wisconsin was the only state that reported having a record of any complaints filed against music therapists. In 16 years, Wisconsin reported only six complaints. No states, including Wisconsin, reported taking disciplinary action against a music therapist or denying any licenses, certificates or registrations.

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DORA staff also contacted the following boards and offices in DORA to determine whether they have received any complaints against music therapists:

- The six boards that regulate mental health providers in Colorado,
- The Office of Occupational Therapy,
- The State Physical Therapy Board, and
- The Office of Speech-Language Pathology Certification.

Staff reported no records of complaints against music therapists.

DORA staff also contacted the Colorado Assisted Living Association and the Colorado Health Care Association and Center for Assisted Living. The facilities that these associations represent reported that some of them do hire or contract with board-certified music therapists, other clinicians and musicians to provide music to their patients. While the provision of music is different depending on the qualifications of the practitioner, these facilities state that the patients benefit therapeutically from music, and none of them reported any harm from the unqualified practice of music therapy.

DORA staff contacted the Colorado Hospital Association. One hospital reported that it hires musicians to provide entertainment, but it only hires board-certified music therapists to provide music therapeutically to improve functional outcomes with patients who have significant and severe neurologic injuries. In these cases, a physician writes an order for music therapy, and the hospital staff ensures the music therapist has a minimum of a Master's degree and board certification. However, no hospitals provided any evidence of harm from the unqualified practice of music therapy.

Community Centered Boards (CCB) also hire music therapists to provide treatment to persons who are developmentally disabled. Reimbursement for music therapy through a CCB is exclusively paid for by Medicaid through two HCBS waivers: Supported Living Services and Children's Extensive Support. Both of these HCBS waivers require music therapy to be provided by a board-certified music therapist.

DORA staff contacted Alliance, the association for agencies that serve persons with developmental disabilities, to determine if they have any evidence of harm by the unqualified practice of music therapy, but as of the writing of this report Alliance has not responded to any queries.

DORA staff also contacted the Division for Developmental Disabilities in the Colorado Department of Health Care Policy and Financing. The HCBS waivers that serve these populations require music therapists to be board certified, and staff did not provide any evidence of harm from the practice of music therapy.

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DORA staff received numerous testimonials from other parties citing the need to regulate music therapists, but none of these parties could provide any evidence of harm. Most of these testimonials supported the regulation of music therapists because they consider client outcomes to be better with board-certified music therapists. However, this is difficult to quantify. Although DORA staff sought evidence to support this, it was not provided.

Overall, DORA staff utilized a variety of sources in an attempt to identify instances where unregulated music therapists were harming consumers. A comprehensive review of the information did not reveal harm resulting from the unqualified practice of music therapy.

DORA staff did uncover evidence of reprehensible and heinous crimes being committed by music therapists against their clients. While regulation would not prevent these crimes from taking place, it could prevent the individuals from practicing music therapy in the future. The cases reported are disturbing. However, they are also extremely rare.

## **Need for Regulation**

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

Since there is no clear evidence of harm by the unqualified practice of music therapy, an assurance of initial and continuing professional or occupational competence is unwarranted.

## **Alternatives to Regulation**

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

The applicant is seeking title protection, which is the least restrictive form of regulation. Since there is very little evidence of harm from the practice of music therapy, it is uncertain what public protection would be provided through title protection. There is even less evidence to support a more intrusive and costly regulatory scheme.

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At this time, consumers have a choice in the marketplace. They may hire a music therapist who is board certified by CBMT or one who is not.

The Consumer Protection Act (CPA) makes it unlawful for anyone to claim to have a degree or use a title associated with a particular degree unless the person has been awarded the degree from a school that is accredited, or otherwise authorized to grant degrees as specified in statute.<sup>42</sup> Therefore, it is already unlawful for a person to pose as a graduate of a music therapy program without actually holding a degree.

Private certification is available to music therapists through CBMT. Only those individuals who hold this credential may represent themselves as board-certified music therapists, or place the initials MT-BC after their names. CBMT actively pursues individuals who falsely represent themselves as board-certified music therapists, and consumers can easily verify whether an individual is a board-certified music therapist.

Additionally CBMT has the authority to deny, revoke, suspend and require additional education of board-certified music therapists who are in violation of the certification standards. This includes gross or repeated negligence or malpractice in professional practice including a sexual relationship with a client, and sexual, physical, social or financial exploitation.<sup>43</sup>

Typically, private certification represents a high level of professional competency, beyond what is necessary for public protection. Unlike private certification, the purpose of state regulation is to ensure practitioners have the minimum standards necessary to protect the health, safety and welfare of the public.

Private certification provides a market advantage to those who have it. Anyone who does not have private certification must compete with those who do, and when it is important to consumers, professionals without it are at a competitive disadvantage.

A degree in music therapy and private board certification are credentials that offer consumers some assurance of professional competency.

While there is little evidence of harm from the unqualified practice of music therapy, there are some alternatives in place to provide consumers with some assurance of professional competency. However, none of these alternatives can entirely prevent someone from practicing music therapy or holding himself or herself out as a music therapist.

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<sup>42</sup> § 6-1-707(1)(a), C.R.S.

<sup>43</sup> The Certification Board for Music Therapists. *CBMT Code of Professional Practice*. Revised October 4, 2011.

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## Collateral Consequences

The fourth sunrise criterion asks:

Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

The applicant did not propose any disqualifications based on criminal history.

Nevertheless, DORA staff uncovered some cases of music therapists committing reprehensible and heinous crimes against clients who are vulnerable to abuse and exploitation, and a regulatory program with the authority to disqualify individuals based on criminal history could serve to protect these consumers. However, considering the cases of harm are extremely rare, it is uncertain whether they demonstrate a need to regulate an entire occupational group.

## Conclusion

The sunrise applicant identifies title protection of music therapists as the appropriate level of regulation to protect the public. The applicant states that title protection is necessary to protect the public from the emotional, psychological, physical and financial harm from unqualified and incompetent music therapists.

The sunrise application requests that only individuals who hold a professional designation, in good standing, through CBMT or the National Music Therapy Registry be able to use the title “music therapist” or “board-certified music therapist.”

While the sunrise application states that the applicant is only seeking title protection, DORA must consider the consumer harm first and then determine the appropriate level of regulation.

Board-certified music therapists clearly demonstrate a certain level of professional competency and provide services that benefit clients in various settings. However, a comprehensive review of evidence from multiple sources demonstrated little evidence of harm to the public by the unqualified practice of music therapy.

According to the applicant, title protection would benefit the public by:

- Increasing access to music therapy, and
- Clarifying for the public and state government the qualifications necessary to work as a music therapist.



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Title protection is unlikely to increase access to music therapy. Only 132 board-certified music therapists work in Colorado. While title protection would have less of an impact on the availability of services than a higher level of regulation would, it would restrict the market, and it is not clear that it would encourage qualified individuals to enter the market in Colorado.

Further, while the average consumer may not be able to determine the necessary qualifications for the provision of some types of music therapy, it seems relatively simple for the average consumer to find a music therapist who is board certified through CBMT.

If consumers search for a music therapist on their own, they would most likely search for one online. Since Google is the most widely used search engine, DORA staff performed four simple searches in Google for:

- Music therapists in Colorado,
- Music therapists in Denver,
- Music therapists in Greeley, and
- Music therapists in Grand Junction.

Overwhelmingly, these searches resulted in music therapists who are board certified through CBMT. Almost none of the online results were for music therapists without board certification. Any consumer who shops around would find that nearly all music therapists advertising their services online are board certified.

Individual consumers may also find music therapists from referrals. If they were referred by a health-care provider, an educator, a friend or a family member, then the music therapist referred most likely provides some benefit to consumers. A consumer may always request a resume outlining a music therapist's education, work history and references, and a consumer could perform a criminal history record check.

While some music therapists work in private practice, many others work in hospitals, nursing homes and assisted living facilities. These employers are sophisticated consumers with the ability to determine the appropriate qualifications necessary to hire staff.

According to the applicant, a large number of non-credentialed individuals are misrepresenting themselves as music therapists. Some of these people are musicians without any clinical training, and others are health-care providers, such as nurses and psychologists.

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Music is a therapeutic intervention used by many different occupations and professions, and DORA staff found that some individuals who are not board certified are providing therapeutic music services in settings such as assisted living facilities, hospitals and nursing homes. However, many facilities find music to be beneficial and therapeutic whether provided by a musician, someone with clinical training, or a board-certified music therapist, and they reported no evidence of harm to patients.

The AMTA does not consider music that is provided by musicians or other health-care providers in health-care settings to be music therapy. While this may not be an appropriate use of the title, it is unlikely to harm consumers.

Additionally, the only consumer harm discovered through extensive research concerned criminal activity. Title protection could not have prevented this activity, and it would not prevent an individual from practicing music therapy.

For all of these reasons, there is little evidence to support protecting the title “music therapist” or “board-certified music therapist.”

The applicant is also seeking state regulation so that board-certified music therapists may provide music therapy in public schools. However, the Colorado Department of Education (CDE) has its own licensing program distinct from professional licensure. Even if music therapists gained title protection or a professional licensing program, they would still be required to be licensed through CDE to work in the schools. In order to do this, the Colorado State Board of Education would have to include music therapists in the educational licensing category of Special Service Providers.

The Colorado Department of Health Care Policy and Financing currently requires music therapists to be board certified in order to provide services under three Home and Community-Based Services waivers. These waivers allow Medicaid reimbursement for therapeutic services to children and adults with developmental disabilities and to children with life-limiting illnesses. Therefore, title protection, in these cases, is unnecessary.

While music therapists have been successful in obtaining some level of regulation in a few states, most states do not recognize music therapy as a unique profession necessitating a separate regulatory program.

In conclusion, there is not sufficient evidence for Colorado to create a unique regulatory program for music therapists, or to protect the title, “music therapist” or “board-certified music therapist.”

**Recommendation – There is no demonstrated public interest or need to warrant the creation of a new regulatory program or to protect the title, “music therapist” or “board-certified music therapist.”**