

STATE OF NEW YORK

3202--B

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. McDONALD, O'DONNELL, STECK, PALMESANO, JENSEN, GOTTFRIED, MEEKS, FORREST, JACOBSON, ASHBY -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to allowing patients to receive certain treatment by an occupational therapist without a referral from a physician or nurse practitioner; and to amend the insurance law, in relation to eliminating the need for referrals for certain treatment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 7901 of the education law, as amended by chapter
2 460 of the laws of 2011, is amended to read as follows:
3 § 7901. Definition. 1. The practice of the profession of occupational
4 therapy is defined as the functional evaluation of the client, the plan-
5 ning and utilization of a program of purposeful activities, the develop-
6 ment and utilization of a treatment program, and/or consultation with
7 the client, family, caregiver or organization in order to restore,
8 develop or maintain adaptive skills, and/or performance abilities
9 designed to achieve maximal physical, cognitive and mental functioning
10 of the client associated with his or her activities of daily living and
11 daily life tasks. A treatment program designed to restore function,
12 shall be rendered on the prescription or referral of a physician, nurse
13 practitioner or other health care provider acting within his or her
14 scope of practice pursuant to this title, except as provided for in
15 subdivision two of this section. However, nothing contained in this
16 article shall be construed to permit any licensee hereunder to practice
17 medicine or psychology, including psychotherapy or to otherwise expand

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD01911-04-1

1 such licensee's scope of practice beyond what is authorized by this
2 chapter.

3 2. Treatment may be rendered by a licensed occupational therapist for
4 ten visits, or thirty days, whichever shall occur first, without a
5 referral from a physician or nurse practitioner provided that:

6 (a) the licensed occupational therapist has practiced occupational
7 therapy on a full time basis equivalent to not less than three years;
8 and

9 (b) each occupational therapist licensed pursuant to this article
10 shall provide written notice to each patient receiving treatment absent
11 a referral from a physician, nurse practitioner or other health care
12 provider that occupational therapy may not be covered by the patient's
13 health care plan or insurer without such a referral and that such treat-
14 ment may be a covered expense if rendered pursuant to a referral. The
15 occupational therapist shall keep on file with the patient's records a
16 form attesting to the patient's notice of such advice. Such form shall
17 be in duplicate, with one copy to be retained by the patient, signed and
18 dated by both the occupational therapist and the patient in such form as
19 prescribed pursuant to regulations promulgated by the commissioner.

20 § 2. Paragraph 1 of subsection (a) of section 5102 of the insurance
21 law, as amended by chapter 298 of the laws of 2006, is amended to read
22 as follows:

23 (1) All necessary expenses incurred for: (i) medical, hospital
24 (including services rendered in compliance with article forty-one of the
25 public health law, whether or not such services are rendered directly by
26 a hospital), surgical, nursing, dental, ambulance, x-ray, prescription
27 drug and prosthetic services; (ii) psychiatric, physical therapy
28 (provided that treatment is rendered pursuant to a referral) and occupa-
29 tional therapy and rehabilitation (provided that treatment is rendered
30 pursuant to a referral); (iii) any non-medical remedial care and treat-
31 ment rendered in accordance with a religious method of healing recog-
32 nized by the laws of this state; and (iv) any other professional health
33 services; all without limitation as to time, provided that within one
34 year after the date of the accident causing the injury it is ascertainable
35 that further expenses may be incurred as a result of the injury. For
36 the purpose of determining basic economic loss, the expenses incurred
37 under this paragraph shall be in accordance with the limitations of
38 section five thousand one hundred eight of this article.

39 § 3. This act shall take effect on the one hundred twentieth day after
40 it shall have become a law. Effective immediately, the addition, amend-
41 ment and/or repeal of any rule or regulation necessary for the implemen-
42 tation of this act on its effective date are authorized to be made and
43 completed on or before such effective date.