

# STATE OF NEW YORK

5235--A

2017-2018 Regular Sessions

## IN SENATE

March 16, 2017

Introduced by Sens. FUNKE, ADDABBO, AKSHAR, ALCANTARA, GALLIVAN, LITTLE, MARCHIONE, MURPHY, O'MARA, ORTT, RITCHIE, SERINO, SEWARD, VALESKY, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to the use of oral medications by optometrists; and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. Paragraph (e) of subdivision 1 of section 7101-a of the  
2 education law, as added by chapter 517 of the laws of 1995, is amended  
3 to read as follows:  
4 (e) [~~Phase one~~] Topical therapeutic pharmaceutical agents. [~~Phase one~~]  
5 Topical therapeutic pharmaceutical agents shall mean those drugs which  
6 shall be limited to topical application to the surface of the eye for  
7 therapeutic purposes and shall be limited to:  
8 (i) antibiotic/antimicrobials;  
9 (ii) decongestants/anti-allergens;  
10 (iii) non-steroidal anti-inflammatory agents;  
11 (iv) steroidal anti-inflammatory agents;  
12 (v) antiviral agents;  
13 (vi) hyperosmotic/hypertonic agents;  
14 (vii) cycloplegics;  
15 (viii) artificial tears and lubricants; and  
16 (ix) immunosuppressive agents.  
17 § 2. Paragraph (f) of subdivision 1 of section 7101-a of the education  
18 law, as added by chapter 517 of the laws of 1995, is amended to read as  
19 follows:

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

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1 (f) [~~Phase two therapeutic~~] Therapeutic pharmaceutical agents for  
2 treatment of glaucoma and ocular hypertension. [~~Phase two~~] Therapeutic  
3 pharmaceutical agents for treatment of glaucoma and ocular hypertension  
4 shall mean those drugs which shall be limited to topical application to  
5 the surface of the eye and shall be limited to:

- 6 (i) beta blockers;
- 7 (ii) alpha agonists;
- 8 (iii) direct acting cholinergic agents;
- 9 (iv) prostaglandin analogs; and
- 10 (v) carbonic anhydrase inhibitors.

11 § 3. Subdivision 1 of section 7101-a of the education law is amended  
12 by adding a new paragraph (g) to read as follows:

13 (g) Oral therapeutic pharmaceutical agents. Oral therapeutic pharma-  
14 ceutical agents shall mean those orally administered drugs used for  
15 therapeutic purposes solely for the treatment of diseases of the eye and  
16 adnexa and shall be limited to:

17 (i) the following antibiotics, including, where applicable, the gener-  
18 ic equivalent of any of the listed drugs:

- 19 (1) augmentin;
- 20 (2) keflex;
- 21 (3) azithromycin;
- 22 (4) bactrim;
- 23 (5) doxycycline; and
- 24 (6) tetracycline;

25 (ii) the following decongestants/anti-allergenic/antihistamines,  
26 including the generic equivalents of the listed drugs:

- 27 (1) clarinex;
- 28 (2) xyzal; and
- 29 (3) singulair;

30 (iii) the following antiglaucoma agents, including the generic equiv-  
31 alents of such agents, used for the management of acute increases in  
32 intraocular pressure; provided, however, an optometrist may use or  
33 prescribe a maximum of one twenty-four hour prescription and shall imme-  
34 diately refer the patient to a licensed physician specializing in  
35 diseases of the eye:

- 36 (1) diamox; and
- 37 (2) neptazane;

38 (iv) the following antiviral agents, including the generic equivalents  
39 of such agents, used for herpes zoster ophthalmicus; provided an optome-  
40 trist shall use or prescribe in maximum, seven-day prescriptions;  
41 provided, however, if a patient is diagnosed with herpes zoster ophthal-  
42 micus and has not already been examined by a primary care physician or  
43 other appropriate physician for such viral condition, an optometrist  
44 shall refer the patient to a licensed primary care physician, licensed  
45 physician specializing in diseases of the eye, or other appropriate  
46 physician within three days of such diagnosis:

- 47 (1) valacyclovir; and
- 48 (2) acyclovir; and

49 (v) the following non-steroidal anti-inflammatory agents:

- 50 (1) cox-2 inhibitors;
- 51 (2) ibuprofen; and
- 52 (3) naproxen.

53 § 4. The subdivision heading and paragraph (a) of subdivision 4 of  
54 section 7101-a of the education law, as added by chapter 517 of the laws  
55 of 1995, are amended to read as follows:

1 ~~[Phase one]~~ Topical therapeutic pharmaceutical agents. (a) Before  
2 using or prescribing ~~[phase one]~~ topical therapeutic pharmaceutical  
3 agents, each optometrist shall have completed at least three hundred  
4 hours of clinical training in the diagnosis, treatment and management of  
5 patients with ocular disease other than glaucoma and ocular hyperten-  
6 sion, not fewer than twenty-five hours of such training shall have been  
7 completed subsequent to June thirtieth, nineteen hundred ninety-three  
8 and additionally shall either have taken and successfully passed the  
9 treatment and management of ocular diseases portion of the National  
10 Board of Examiners in Optometry test or have taken and successfully  
11 passed an examination acceptable to the board.

12 § 5. Paragraph (b) of subdivision 4 of section 7101-a of the education  
13 law, as added by chapter 517 of the laws of 1995, is amended to read as  
14 follows:

15 (b) Before using or prescribing ~~[phase two]~~ therapeutic pharmaceutical  
16 agents for treatment of glaucoma and ocular hypertension, an optometrist  
17 must be certified for diagnostic and ~~[phase one]~~ topical therapeutic  
18 agents and have completed an additional one hundred hours of clinical  
19 training in the diagnosis, treatment and management of patients with  
20 glaucoma and ocular hypertension, not fewer than twenty-five hours of  
21 such training shall have been completed subsequent to July first, nine-  
22 teen hundred ninety-four, and shall have taken and successfully passed  
23 an oral or written examination acceptable by the board.

24 § 6. Paragraphs (c) and (d) of subdivision 4 of section 7101-a of the  
25 education law are relettered paragraphs (d) and (e) and a new paragraph  
26 (c) is added to read as follows:

27 (c) Before using or prescribing oral therapeutic pharmaceutical  
28 agents, an optometrist must be certified to prescribe diagnostic pharma-  
29 ceutical agents and topical therapeutic and therapeutic pharmaceutical  
30 agents for treatment of glaucoma and ocular hypertension, have completed  
31 an oral therapeutic pharmaceutical agent certification course and have  
32 passed an examination within five years of the department's approval of  
33 the initial certification course or the initial examination, whichever  
34 is later.

35 (i) The curriculum for the course shall include, but not be limited  
36 to, instruction in pharmacology and drug interaction in treating ocular  
37 disease and be taught through clinical case scenarios and emphasize  
38 clinical decision making and shall be no less than forty hours, of which  
39 no less than twenty-four hours shall be live instruction.

40 (ii) Such course shall qualify towards meeting the continuing educa-  
41 tion per triennial registration requirement pursuant to subdivision  
42 seven of this section.

43 (iii) The examination shall test the knowledge of materials in the  
44 curriculum and reflect the provisions of paragraph (g) of subdivision  
45 one of this section, and shall be acceptable to the department. If an  
46 optometrist fails to pass the examination, such optometrist may retake  
47 the examination; provided, however, that if an optometrist fails to pass  
48 the examination after three attempts, such optometrist must again  
49 complete the certification course in order to retake the examination. An  
50 optometrist shall be required to complete the certification course after  
51 each subsequent failure to pass the examination three times. If an opto-  
52 metrist requires more time to pass the examination and to become certi-  
53 fied than the five-year period provided for in this paragraph, such  
54 optometrist may be authorized to retake the examination and to become  
55 certified beyond such period upon application by the optometrist and a  
56 showing of good cause as may be acceptable to the commissioner.

1 (iv) The initial, and any subsequent, curriculum and examination shall  
2 be subject to review and approval by the department.

3 (v) The requirement for the oral therapeutic pharmaceutical agent  
4 certification course and examination shall not apply to those optome-  
5 trists who graduated from an accredited college of optometry subsequent  
6 to January first, two thousand seven and have taken and successfully  
7 passed the National Board of Examiners in Optometry test or an examina-  
8 tion acceptable to the department.

9 § 7. Subdivision 5 of section 7101-a of the education law, as added by  
10 chapter 517 of the laws of 1995, is amended to read as follows:

11 5. Suspension of certification. The department shall suspend the  
12 certification for the use and prescribing of [~~phase one~~] topical thera-  
13 peutic agents of any optometrist who fails to receive certification for  
14 [~~phase two~~] therapeutic pharmaceutical agents for treatment of glaucoma  
15 and ocular hypertension within three years of having been certified for  
16 [~~phase one~~] topical therapeutic pharmaceutical agents.

17 § 8. The subdivision heading of subdivision 6 of section 7101-a of the  
18 education law, as added by chapter 517 of the laws of 1995, is amended  
19 to read as follows:

20 Consultation with use of certain topical therapeutic pharmaceutical  
21 agents for treatment of glaucoma and ocular hypertension.

22 § 9. Subdivision 7 of section 7101-a of the education law, as added by  
23 chapter 517 of the laws of 1995, is amended to read as follows:

24 7. Continuing education. Each optometrist certified to use [~~phase one~~  
25 ~~or phase two~~] topical therapeutic pharmaceutical agents and therapeutic  
26 pharmaceutical agents for treatment of glaucoma and ocular hypertension,  
27 shall complete a minimum of thirty-six hours of continuing education in  
28 the area of ocular disease and pharmacology per triennial registration  
29 period. [~~The education shall be in the area of ocular disease and phar-~~  
30 ~~maceology and may include both didactic and clinical components.~~] Each  
31 optometrist certified to use oral therapeutic pharmaceutical agents  
32 shall, in addition to the minimum thirty-six hours of continuing educa-  
33 tion provided for in this subdivision, complete an additional minimum of  
34 thirty-nine hours of continuing education related to systemic disease  
35 and therapeutic treatment per triennial registration period. Such educa-  
36 tional programs may include both didactic and clinical components and  
37 shall be approved in advance by the department and evidence of the  
38 completion of this requirement shall be submitted with each application  
39 for license renewal as required by section sixty-five hundred two of  
40 this chapter.

41 § 10. The subdivision heading and subparagraph (i) of paragraph (a) of  
42 subdivision 8 of section 7101-a of the education law, as added by chap-  
43 ter 517 of the laws of 1995, are amended to read as follows:

44 Notice to patient with the use or prescription of topical therapeutic  
45 pharmaceutical agents and therapeutic pharmaceutical agents for treat-  
46 ment of glaucoma and ocular hypertension.

47 (i) An optometrist prescribing topical steroids or antiviral medica-  
48 tion shall inform each patient that in the event the condition does not  
49 improve within five days, a physician of the patient's choice will be  
50 notified.

51 § 11. Subdivision 10 of section 7101-a of the education law, as added  
52 by chapter 517 of the laws of 1995, is amended to read as follows:

53 10. Pharmaceutical agents. Optometrists who have been approved and  
54 certified by the department shall be permitted to use the following  
55 drugs:

56 (a) Diagnostic pharmaceuticals.

1 (b) Those optometrists having been certified for [~~phase one~~] topical  
2 therapeutic pharmaceutical agents shall be authorized [~~(i) to use and~~  
3 ~~recommend all nonprescription medications appropriate for ocular disease~~  
4 ~~whether intended for topical or oral use, and (ii)] to use and prescribe~~  
5 all [~~phase one~~] topical therapeutic pharmaceutical agents specified in  
6 paragraph (e) of subdivision one of this section, which are FDA approved  
7 and commercially available for topical use.

8 In the event an optometrist treats a patient with topical antiviral or  
9 steroidal drugs and the patient's condition either fails to improve or  
10 worsens within five days, the optometrist shall notify a physician  
11 designated by the patient or, if none, by the treating optometrist.

12 (c) Those optometrists having been certified for [~~phase two~~] therapeu-  
13 tic pharmaceutical agents for treatment of glaucoma and ocular hyperten-  
14 sion shall be authorized to use and prescribe [~~phase two~~] therapeutic  
15 pharmaceutical agents for treatment of glaucoma and ocular hypertension  
16 specified in paragraph (f) of subdivision one of this section, which are  
17 FDA approved and commercially available.

18 (d) Those optometrists having been certified for oral therapeutic  
19 pharmaceutical agents shall be authorized to use and prescribe oral  
20 therapeutic pharmaceutical agents specified in paragraph (g) of subdivi-  
21 sion one of this section, which are FDA approved and commercially avail-  
22 able and shall comply with all safety information and side-effect and  
23 warning advisories contained in the most current physicians' desk refer-  
24 ence.

25 (e) Those optometrists having been certified for topical therapeutic  
26 pharmaceutical agents, therapeutic pharmaceutical agents for treatment  
27 of glaucoma and ocular hypertension or oral therapeutic pharmaceutical  
28 agents shall be authorized to use and recommend all nonprescription  
29 medications, whether intended for topical or oral use, appropriate for  
30 the treatment of the eye and adnexa.

31 § 12. Subdivision 8 of section 7104 of the education law, as amended  
32 by chapter 517 of the laws of 1995, is amended to read as follows:

33 (8) Fees: pay a fee of two hundred twenty dollars to the department  
34 for admission to a department conducted examination and for an initial  
35 license, a fee of one hundred fifteen dollars for each reexamination, a  
36 fee of one hundred thirty-five dollars for an initial license for  
37 persons not requiring admission to a department conducted examination,  
38 [~~and~~] a fee of two hundred ten dollars for each triennial registration  
39 period, [~~and~~] for additional authorization for the purpose of utilizing  
40 diagnostic pharmaceutical agents, a fee of sixty dollars, and for  
41 certification to use or prescribe oral therapeutic pharmaceutical  
42 agents, a fee of two hundred fifty dollars.

43 § 13. Oral therapeutic pharmaceutical agent implementation review. 1.  
44 For purposes of this section, the term "commissioner" shall mean the  
45 commissioner of the state education department; and the term "depart-  
46 ment" shall mean the state education department.

47 2. Each optometrist certified to use oral therapeutic pharmaceutical  
48 agents pursuant to paragraph (c) of subdivision four of section 7101-a  
49 of the education law shall provide the department with information, on a  
50 form prescribed by the commissioner, related to the prescription or use  
51 of oral therapeutic pharmaceutical agents provided for in section 7101-a  
52 of the education law. Such information shall include the optometrist's  
53 license number and the national provider identifier as established by  
54 the centers for medicare and medicaid services, whether no oral  
55 prescriptions have been issued and in the event that oral prescriptions  
56 have been issued, then the following information shall be required: the

1 prescribed or used oral therapeutic pharmaceutical agent, the dosage of  
2 such agent, the date of the prescription, the diagnosis of the patient  
3 for which the agent was prescribed or used, and whether a referral was  
4 made in accordance with paragraph (g) of subdivision one of section  
5 7101-a of the education law. Such information shall not include any  
6 patient identifying information and must otherwise be in compliance with  
7 all state and federal requirements related to protected health informa-  
8 tion. Each form shall be submitted by mail or electronic means to the  
9 department on a quarterly basis. If a database of all oral therapeutic  
10 pharmaceutical agents prescribed or used by optometrists is, or becomes,  
11 available to the committee provided for in this act, then optometrists  
12 shall be advised by the commissioner that quarterly reporting forms will  
13 no longer be required. The requirements of this section shall remain in  
14 effect for five years following approval by the department of the  
15 initial oral therapeutic pharmaceutical agent certification course and  
16 examination pursuant to paragraph (c) of subdivision four of section  
17 7101-a of the education law, after which time these requirements shall  
18 expire and no longer have effect.

19 3. The commissioner shall appoint a committee to advise and assist the  
20 commissioner in evaluating compliance with the provisions of section  
21 7101-a of the education law and to identify any necessary enhancements  
22 to the curriculum provided for in such section and other educational  
23 materials and to assist in ensuring patient safety. The committee shall  
24 consist of one pharmacist, one optometrist upon the recommendation of a  
25 statewide professional organization consisting of optometrists, one  
26 ophthalmologist upon the recommendation of a statewide professional  
27 organization consisting of ophthalmologists, and one expert in the field  
28 of public health who shall be designated as chair by the commissioner in  
29 consultation with the commissioner of the department of health and who  
30 shall be neither an ophthalmologist nor an optometrist.

31 4. The commissioner shall submit each form received pursuant to this  
32 section to the committee, except as otherwise provided in this subdivi-  
33 sion. The committee shall review the forms and shall randomly cross-  
34 check such submissions with a publicly available or other database  
35 containing electronic prescriber information. Should a database of all  
36 oral therapeutic pharmaceutical agents prescribed or used by optome-  
37 trists pursuant to section 7101-a of the education law become available,  
38 and the commissioner determines and advises optometrists that quarterly  
39 reports are no longer necessary, then the committee shall review the  
40 database and ascertain the prescribing information for all optometrists  
41 consistent with section 7101-a of the education law. The committee  
42 shall advise the commissioner as to compliance with the provisions of  
43 section 7101-a of the education law for the purpose of evaluating  
44 compliance with the provisions of section 7101-a of the education law  
45 including the applicable referrals and dosing limitations and to identi-  
46 fy any necessary enhancements to the curriculum provided for in para-  
47 graph (c) of subdivision 4 of section 7101-a of the education law and  
48 other educational materials and to assist in ensuring patient safety.  
49 Upon finding evidence of non-compliance by any optometrist, the commit-  
50 tee shall refer such information to the commissioner and to the office  
51 of professions within the department for investigation and, if applica-  
52 ble, disciplinary action. Nothing in this subdivision is intended to  
53 modify or otherwise limit the department's authority or discretion to  
54 review, investigate and refer matters related to the professional  
55 conduct of a licensed provider.

1 § 14. This act shall take effect eighteen months after it shall have  
2 become a law; provided that:

3 (a) section thirteen of this act shall expire and be deemed repealed  
4 five years following the approval by the department of education of the  
5 initial certification course or the initial examination, whichever is  
6 later, pursuant to paragraph (c) of subdivision 4 of section 7101-a of  
7 the education law as added by section six of this act;

8 (b) the commissioner of education shall notify the legislative bill  
9 drafting commission upon approval of the initial certification course  
10 and examination required in section six of this act in order that the  
11 commission may maintain an accurate and timely effective data base of  
12 the official text of the laws of the state of New York in furtherance of  
13 effectuating the provisions of section 44 of the legislative law and  
14 section 70-b of the public officers law; and

15 (c) any rule or regulation necessary for the timely implementation of  
16 this act on its effective date shall be promulgated on or before such  
17 effective date.