STATE OF NEW YORK

4035

2019-2020 Regular Sessions

IN SENATE

February 26, 2019

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

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:

Section 1. Paragraph (e) of subdivision 1 of section 7101-a of the education law, as added by chapter 517 of the laws of 1995, is amended to read as follows:

(e) [~~Phase one~~] **Topical** therapeutic pharmaceutical agents. [~~Phase one~~] **Topical therapeutic** pharmaceutical agents shall mean those drugs which shall be limited to topical application to the surface of the eye for therapeutic purposes and shall be limited to:

(i) antibiotic/antimicrobials;

(ii) decongestants/anti-allergenics;

(iii) non-steroidal anti-inflammatory agents;

(iv) steroidal anti-inflammatory agents;

(v) antiviral agents;

(vi) hyperosmotic/hypertonic agents;

(vii) cycloplegics;

(viii) artificial tears and lubricants**; and**

(ix) immunosuppressive agents.

§ 2. Paragraph (f) of subdivision 1 of section 7101-a of the education law, as added by chapter 517 of the laws of 1995, is amended to read as follows:

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

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

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(i) beta blockers;
(ii) alpha agonists;
(iii) direct acting cholinergic agents;
(iv) prostaglandin analogs; and
(v) carbonic anhydrase inhibitors.

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

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

(i) the following antibiotics, including, where applicable, the generic equivalent of any of the listed drugs:

(1) augmentin;
(2) keflex;
(3) azithromycin;
(4) bactrim;
(5) doxycycline; and
(6) tetracycline;

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

(1) clarinex;
(2) xyzal; and
(3) singulair;

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

(1) diamox; and
(2) neptazane;

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

(1) valacyclovir; and
(2) acyclovir; and

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

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

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

[~~Phase one~~] Topical therapeutic pharmaceutical agents. (a) Before using or prescribing [~~phase one~~] topical therapeutic pharmaceutical agents, each optometrist shall have completed at least three hundred hours of clinical training in the diagnosis, treatment and management of patients with ocular disease other than glaucoma and ocular hypertension, not fewer than twenty-five hours of such training shall have been

completed subsequent to June thirtieth, nineteen hundred ninety-three and additionally shall either have taken and successfully passed the treatment and management of ocular diseases portion of the National Board of Examiners in Optometry test or have taken and successfully passed an examination acceptable to the board.

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

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

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

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

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

(ii) Such course shall qualify towards meeting the continuing education per triennial registration requirement pursuant to subdivision seven of this section.

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

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

(v) The requirement for the oral therapeutic pharmaceutical agent certification course and examination shall not apply to those optometrists who graduated from an accredited college of optometry subsequent to January first, two thousand seven and have taken and successfully

passed the National Board of Examiners in Optometry test or an examination acceptable to the department.

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

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

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

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

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

7. Continuing education. Each optometrist certified to use [~~phase one or phase two~~] topical therapeutic pharmaceutical agents and therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension, shall complete a minimum of thirty-six hours of continuing education in the area of ocular disease and pharmacology per triennial registration period. [~~The education shall be in the area of ocular disease and pharmacology and may include both didactic and clinical components.~~] Each optometrist certified to use oral therapeutic pharmaceutical agents shall, in addition to the minimum thirty-six hours of continuing education provided for in this subdivision, complete an additional minimum of thirty-nine hours of continuing education related to systemic disease and therapeutic treatment per triennial registration period. Such educational programs may include both didactic and clinical components and shall be approved in advance by the department and evidence of the completion of this requirement shall be submitted with each application for license renewal as required by section sixty-five hundred two of this chapter.

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

Notice to patient with the use or prescription of topical therapeutic pharmaceutical agents and therapeutic pharmaceutical agents for treatment of glaucoma and ocular hypertension.

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

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

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

(a) Diagnostic pharmaceuticals.

(b) Those optometrists having been certified for [~~phase one~~] topical therapeutic pharmaceutical agents shall be authorized [~~(i) to use and recommend all nonprescription medications appropriate for ocular disease whether intended for topical or oral use; and (ii)~~] to use and prescribe all [~~phase one~~] topical therapeutic pharmaceutical agents specified in

paragraph (e) of subdivision one of this section, which are FDA approved and commercially available for topical use.

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

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

(d) Those optometrists having been certified for oral therapeutic pharmaceutical agents shall be authorized to use and prescribe oral therapeutic pharmaceutical agents specified in paragraph (g) of subdivision one of this section, which are FDA approved and commercially available and shall comply with all safety information and side-effect and warning advisories contained in the most current physicians' desk reference.

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

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

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

§ 13. Oral therapeutic pharmaceutical agent implementation review. 1. For purposes of this section, the term "commissioner" shall mean the commissioner of the state education department; and the term "department" shall mean the state education department.

2. Each optometrist certified to use oral therapeutic pharmaceutical agents pursuant to paragraph (c) of subdivision four of section 7101-a of the education law shall provide the department with information, on a form prescribed by the commissioner, related to the prescription or use of oral therapeutic pharmaceutical agents provided for in section 7101-a of the education law. Such information shall include the optometrist's license number and the national provider identifier as established by the centers for medicare and medicaid services, whether no oral prescriptions have been issued and in the event that oral prescriptions have been issued, then the following information shall be required: the prescribed or used oral therapeutic pharmaceutical agent, the dosage of such agent, the date of the prescription, the diagnosis of the patient for which the agent was prescribed or used, and whether a referral was made in accordance with paragraph (g) of subdivision one of section 7101-a of the education law. Such information shall not include any

patient identifying information and must otherwise be in compliance with all state and federal requirements related to protected health information. Each form shall be submitted by mail or electronic means to the department on a quarterly basis. If a database of all oral therapeutic pharmaceutical agents prescribed or used by optometrists is, or becomes, available to the committee provided for in this act, then optometrists shall be advised by the commissioner that quarterly reporting forms will no longer be required. The requirements of this section shall remain in effect for five years following approval by the department of the initial oral therapeutic pharmaceutical agent certification course and examination pursuant to paragraph (c) of subdivision four of section 7101-a of the education law, after which time these requirements shall expire and no longer have effect.

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

4. The commissioner shall submit each form received pursuant to this section to the committee, except as otherwise provided in this subdivision. The committee shall review the forms and shall randomly cross-check such submissions with a publicly available or other database containing electronic prescriber information. Should a database of all oral therapeutic pharmaceutical agents prescribed or used by optometrists pursuant to section 7101-a of the education law become available, and the commissioner determines and advises optometrists that quarterly reports are no longer necessary, then the committee shall review the database and ascertain the prescribing information for all optometrists consistent with section 7101-a of the education law. The committee shall advise the commissioner as to compliance with the provisions of section 7101-a of the education law for the purpose of evaluating compliance with the provisions of section 7101-a of the education law including the applicable referrals and dosing limitations and to identify any necessary enhancements to the curriculum provided for in paragraph (c) of subdivision 4 of section 7101-a of the education law and other educational materials and to assist in ensuring patient safety. Upon finding evidence of non-compliance by any optometrist, the committee shall refer such information to the commissioner and to the office of professions within the department for investigation and, if applicable, disciplinary action. Nothing in this subdivision is intended to modify or otherwise limit the department's authority or discretion to review, investigate and refer matters related to the professional conduct of a licensed provider.

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

(a) section thirteen of this act shall expire and be deemed repealed five years following the approval by the department of education of the initial certification course or the initial examination, whichever is

later, pursuant to paragraph (c) of subdivision 4 of section 7101-a of the education law as added by section six of this act;

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

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