

STATE OF NEW YORK

4035--A

2019-2020 Regular Sessions

IN SENATE

February 26, 2019

Introduced by Sens. BAILEY, BIAGGI, FUNKE, HOYLMAN, SERINO, SKOUFIS -- 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:
 - 18 (1) amoxicillin/clavulanate potassium;
 - 19 (2) cephalexin;
 - 20 (3) azithromycin;
 - 21 (4) sulfamethoxazole/trimethoprim;
 - 22 (5) doxycycline; and
 - 23 (6) tetracycline;

24 (ii) the following antiglaucoma agents used for the management of
25 acute increases in intraocular pressure; provided, however, an optome-
26 trist may use or prescribe a maximum of one twenty-four hour
27 prescription and shall immediately refer the patient to a licensed
28 physician specializing in diseases of the eye:

- 29 (1) acetazolamide; and
- 30 (2) methazolamide; and

31 (iii) the following antiviral agents used for herpes zoster ophthalmi-
32 cus; provided an optometrist shall use or prescribe in maximum, one
33 seven-day prescription; provided, however, if a patient is diagnosed
34 with herpes zoster ophthalmicus and has not already been examined by a
35 primary care physician or other appropriate physician for such viral
36 condition, an optometrist shall refer the patient to a licensed primary
37 care physician, licensed physician specializing in diseases of the eye,
38 or other appropriate physician within three days of such diagnosis:

- 39 (1) valacyclovir; and
- 40 (2) acyclovir.

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

44 [~~Phase one~~] Topical therapeutic pharmaceutical agents. (a) Before
45 using or prescribing [~~phase one~~] topical therapeutic pharmaceutical
46 agents, each optometrist shall have completed at least three hundred
47 hours of clinical training in the diagnosis, treatment and management of
48 patients with ocular disease other than glaucoma and ocular hyperten-
49 sion, not fewer than twenty-five hours of such training shall have been
50 completed subsequent to June thirtieth, nineteen hundred ninety-three
51 and additionally shall either have taken and successfully passed the
52 treatment and management of ocular diseases portion of the National
53 Board of Examiners in Optometry test or have taken and successfully
54 passed an examination acceptable to the board.

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

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

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

16 (c) Before using or prescribing oral therapeutic pharmaceutical
17 agents, an optometrist must be certified to prescribe diagnostic pharma-
18 ceutical agents and topical therapeutic and therapeutic pharmaceutical
19 agents for treatment of glaucoma and ocular hypertension, have completed
20 an oral therapeutic pharmaceutical agent certification course and have
21 passed an examination within five years of the department's approval of
22 the initial certification course or the initial examination, whichever
23 is later provided, however, an optometrist who has commenced the oral
24 therapeutic pharmaceutical agent certification course within the five
25 year time period but has not yet passed an examination shall be allowed
26 to take such examination and become certified after the five year time
27 period provided for in this paragraph has ended.

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

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

37 (iii) The examination shall assess the knowledge of materials in the
38 curriculum and reflect the oral therapeutic pharmaceutical agents
39 described in paragraph (g) of subdivision one of this section, and shall
40 be acceptable to the department.

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

43 (v) The requirement for the oral therapeutic pharmaceutical agent
44 certification course and examination shall not apply to those optome-
45 trists who graduated from an accredited college of optometry subsequent
46 to January first, two thousand twenty-one and have taken and successful-
47 ly passed the National Board of Examiners in Optometry examination or an
48 examination acceptable to the department.

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

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

1 § 8. The subdivision heading of subdivision 6 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 Consultation with use of certain topical therapeutic pharmaceutical
5 agents for treatment of glaucoma and ocular hypertension.

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

8 7. Continuing education. (a) Each optometrist certified to use [~~phase~~
9 ~~one or phase two~~] topical therapeutic pharmaceutical agents and thera-
10 peutic pharmaceutical agents for treatment of glaucoma and ocular hyper-
11 tension, shall complete a minimum of thirty-six hours of continuing
12 education in the area of ocular disease and pharmacology per triennial
13 registration period. [~~The education shall be in the area of ocular~~
14 ~~disease and pharmacology and may include both didactic and clinical~~
15 ~~components.~~] Each optometrist certified to use oral therapeutic pharma-
16 ceutical agents shall, in addition to the minimum thirty-six hours of
17 continuing education provided for in this subdivision, complete an addi-
18 tional minimum of eighteen hours of continuing education related to
19 systemic disease and therapeutic treatment per triennial registration
20 period. Such educational programs may include both didactic and clinical
21 components and shall be approved in advance by the department [~~and~~
22 ~~evidence of the completion of this requirement shall be submitted with~~
23 ~~each application for license renewal as required by section sixty-five~~
24 ~~hundred two of this chapter~~]. Beginning on January first, two thousand
25 twenty-two, all sponsors of continuing education courses seeking
26 advanced approval from the department shall file an application and pay
27 a fee determined by the department in accordance with the regulations of
28 the commissioner. An optometrist subject to the provisions of this
29 subdivision whose first registration date following the effective date
30 of this section occurs less than three years from such effective date,
31 but on or after January first, two thousand twenty-two, shall complete
32 continuing education hours on a prorated basis at the rate of one hour
33 per month for the period beginning January first, two thousand twenty-
34 two up to the first registration date thereafter. An optometrist who has
35 not satisfied the mandatory continuing education requirement pursuant to
36 this subdivision shall not be issued a triennial registration certif-
37 icate by the department and shall not practice unless and until a condi-
38 tional registration is issued as provided for in paragraph (b) of this
39 subdivision. Continuing education hours taken during one triennium may
40 not be transferred to the subsequent triennium.

41 (b) The department, in its discretion, may issue a conditional regis-
42 tration to an optometrist who fails to meet the continuing education
43 requirements established in paragraph (a) of this subdivision, but who
44 agrees to make up any deficiencies and complete any additional education
45 which the department may require. The fee for such a conditional regis-
46 tration shall be the same as, and in addition to, the fee for the trien-
47 niel registration. The duration of such conditional registration shall
48 be determined by the department, but shall not exceed one year. Any
49 optometrist who is notified of the denial of registration for failure to
50 submit evidence, satisfactory to the department, of required continuing
51 education and who practices without such registration may be subject to
52 disciplinary proceedings pursuant to section sixty-five hundred ten of
53 this title.

54 (c) In accordance with the intent of this section, adjustment to the
55 mandatory continuing education requirement may be granted by the depart-
56 ment for reasons of health that are certified by an appropriate health

1 care professional, for extended active duty with the armed forces of the
2 United States, or for other good cause acceptable to the department
3 which may prevent compliance.

4 (d) An optometrist not engaged in practice, as determined by the
5 department, shall be exempt from the mandatory continuing education
6 requirement upon the filing of a statement with the department declaring
7 such status. Any licensee who returns to the practice of optometry
8 during the triennial registration period shall notify the department
9 prior to reentering the profession and shall meet such continuing educa-
10 tion requirements as shall be prescribed by regulations of the commis-
11 sioner.

12 (e) Optometrists subject to the provisions of this subdivision shall
13 maintain adequate documentation of completion of acceptable continuing
14 education credits and shall provide such documentation at the request of
15 the department. Failure to provide such documentation upon the request
16 of the department shall be an act of misconduct subject to disciplinary
17 proceedings pursuant to section sixty-five hundred ten of this title.

18 (f) The mandatory continuing education fee shall be determined by the
19 department. Such fee shall be payable on or before the first day of
20 each triennial registration period, and shall be paid in addition to the
21 triennial registration fee required by subdivision eight of section
22 seventy-one hundred four of this article.

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

26 Notice to patient with the use or prescription of topical therapeutic
27 pharmaceutical agents and therapeutic pharmaceutical agents for treat-
28 ment of glaucoma and ocular hypertension.

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

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

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

38 (a) Diagnostic pharmaceuticals.

39 (b) Those optometrists having been certified for [~~phase one~~] topical
40 therapeutic pharmaceutical agents shall be authorized [~~(i) to use and~~
41 ~~recommend all nonprescription medications appropriate for ocular disease~~
42 ~~whether intended for topical or oral use, and (ii)] to use and prescribe~~
43 all [~~phase one~~] topical therapeutic pharmaceutical agents specified in
44 paragraph (e) of subdivision one of this section, which are FDA approved
45 and commercially available for topical use.

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

50 (c) Those optometrists having been certified for [~~phase two~~] therapeu-
51 tic pharmaceutical agents for treatment of glaucoma and ocular hyperten-
52 sion shall be authorized to use and prescribe [~~phase two~~] therapeutic
53 pharmaceutical agents for treatment of glaucoma and ocular hyperten-
54 sion specified in paragraph (f) of subdivision one of this section, which are
55 FDA approved and commercially available.

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

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

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

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

26 § 13. This act shall take effect two years after it shall have become
27 a law; provided that section nine of this act shall take effect January
28 1, 2022. Effective immediately, the addition, amendment and/or repeal
29 of any rule or regulation necessary for the implementation of this act
30 on its effective date are authorized and directed to be made and
31 completed on or before such effective date.