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:

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:

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

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(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:

(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:

(1) amoxicillin/clavulanate potassium;

(2) cephalexin;

(3) azithromycin;

(4) sulfamethoxazole/trimethoprim;

(5) doxycycline; and

(6) tetracycline;

(ii) the following antiglaucoma 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) acetazolamide; and

(2) methazolamide; and

(iii) the following antiviral agents used for herpes zoster ophthalmicus; provided an optometrist shall use or prescribe in maximum, one seven-day prescription; 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.

§ 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 provided, however, an optometrist who has commenced the oral therapeutic pharmaceutical agent certification course within the five year time period but has not yet passed an examination shall be allowed to take such examination and become certified after the five year time period provided for in this paragraph has ended.

(i) The curriculum for the oral therapeutic pharmaceutical agent certification 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 assess the knowledge of materials in the curriculum and reflect the oral therapeutic pharmaceutical agents described in paragraph (g) of subdivision one of this section, and shall be acceptable to the department.

(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 twenty-one and have taken and successfully passed the National Board of Examiners in Optometry examination 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. **(a)** 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 eighteen 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~~]**. Beginning on January first, two thousand twenty-two, all sponsors of continuing education courses seeking advanced approval from the department shall file an application and pay a fee determined by the department in accordance with the regulations of the commissioner. An optometrist subject to the provisions of this subdivision whose first registration date following the effective date of this section occurs less than three years from such effective date, but on or after January first, two thousand twenty-two, shall complete continuing education hours on a prorated basis at the rate of one hour per month for the period beginning January first, two thousand twenty-two up to the first registration date thereafter. An optometrist who has not satisfied the mandatory continuing education requirement pursuant to this subdivision shall not be issued a triennial registration certificate by the department and shall not practice unless and until a conditional registration is issued as provided for in paragraph (b) of this subdivision. Continuing education hours taken during one triennium may not be transferred to the subsequent triennium**.

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

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

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

(d) An optometrist not engaged in practice, as determined by the department, shall be exempt from the mandatory continuing education requirement upon the filing of a statement with the department declaring such status. Any licensee who returns to the practice of optometry during the triennial registration period shall notify the department prior to reentering the profession and shall meet such continuing education requirements as shall be prescribed by regulations of the commissioner.

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

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

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