

STATE OF NEW YORK

1193

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. PAULIN, COOK, CYMBROWITZ, ABINANTI, GUNTHER, WEPRIN, HEVESI, RYAN, TITUS, STIRPE, BUCHWALD, DiPIETRO, BRABENEC, BLAKE, FAHY, ORTIZ, COLTON, NORRIS, BARRETT, PHEFFER AMATO, DINOWITZ, LALOR, ZEBROWSKI, STECK, HUNTER, BRONSON, SOLAGES, PEOPLES-STOKES, DE LA ROSA, B. MILLER, RAIA, GARBARINO, MORINELLO, FITZPATRICK, DICKENS, MAGNARELLI, PICHARDO, SANTABARBARA, GIGLIO, D. ROSENTHAL, KIM, RODRIGUEZ, ABBATE, JONES, ARROYO, VANEL, McDONOUGH, AUBRY, L. ROSENTHAL, ENGLEBRIGHT, LAVINE, D'URSO, JAFFEE, JOYNER, SEAWRIGHT, M. L. MILLER -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, CAHILL, CROUCH, CUSICK, EPSTEIN, FRIEND, GALEF, GOODELL, GOTTFRIED, HAWLEY, LENTOL, LIFTON, LUPARDO, PALMESANO, RIVERA, STEC, TAGUE, THIELE, WALSH, WOERNER, WRIGHT -- read once and referred 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:

- 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-allergenic;
10 (iii) non-steroidal anti-inflammatory agents;
11 (iv) steroidal anti-inflammatory agents;
12 (v) antiviral agents;
13 (vi) hyperosmotic/hypertonic agents;

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

LBD01275-01-9

- 1 (vii) cycloplegics;
2 (viii) artificial tears and lubricants; and
3 (ix) immunosuppressive agents.

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

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

- 12 (i) beta blockers;
13 (ii) alpha agonists;
14 (iii) direct acting cholinergic agents;
15 (iv) prostaglandin analogs; and
16 (v) carbonic anhydrase inhibitors.

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

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

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

- 25 (1) augmentin;
26 (2) keflex;
27 (3) azithromycin;
28 (4) bactrim;
29 (5) doxycycline; and
30 (6) tetracycline;

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

- 33 (1) clarinex;
34 (2) xyzal; and
35 (3) singulair;

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

- 42 (1) diamox; and
43 (2) neptazane;

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

- 53 (1) valacyclovir; and
54 (2) acyclovir; and

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

- 56 (1) cox-2 inhibitors;

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

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

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

17 § 5. Paragraph (b) of subdivision 4 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:

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

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

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

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

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

48 (iii) The examination shall test the knowledge of materials in the
49 curriculum and reflect the provisions of paragraph (g) of subdivision
50 one of this section, and shall be acceptable to the department. If an
51 optometrist fails to pass the examination, such optometrist may retake
52 the examination; provided, however, that if an optometrist fails to pass
53 the examination after three attempts, such optometrist must again
54 complete the certification course in order to retake the examination. An
55 optometrist shall be required to complete the certification course after
56 each subsequent failure to pass the examination three times. If an opto-

1 metrist requires more time to pass the examination and to become certi-
2 fied than the five-year period provided for in this paragraph, such
3 optometrist may be authorized to retake the examination and to become
4 certified beyond such period upon application by the optometrist and a
5 showing of good cause as may be acceptable to the commissioner.

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

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

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

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

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

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

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

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

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

49 Notice to patient with the use or prescription of topical therapeutic
50 pharmaceutical agents and therapeutic pharmaceutical agents for treat-
51 ment of glaucoma and ocular hypertension.

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

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

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

6 (a) Diagnostic pharmaceuticals.

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

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

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

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

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

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

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

49 § 13. Oral therapeutic pharmaceutical agent implementation review. 1.
50 For purposes of this section, the term "commissioner" shall mean the
51 commissioner of the state education department; and the term "depart-
52 ment" shall mean the state education department.

53 2. Each optometrist certified to use oral therapeutic pharmaceutical
54 agents pursuant to paragraph (c) of subdivision four of section 7101-a
55 of the education law shall provide the department with information, on a
56 form prescribed by the commissioner, related to the prescription or use

1 of oral therapeutic pharmaceutical agents provided for in section 7101-a
2 of the education law. Such information shall include the optometrist's
3 license number and the national provider identifier as established by
4 the centers for medicare and medicaid services, whether no oral
5 prescriptions have been issued and in the event that oral prescriptions
6 have been issued, then the following information shall be required: the
7 prescribed or used oral therapeutic pharmaceutical agent, the dosage of
8 such agent, the date of the prescription, the diagnosis of the patient
9 for which the agent was prescribed or used, and whether a referral was
10 made in accordance with paragraph (g) of subdivision one of section
11 7101-a of the education law. Such information shall not include any
12 patient identifying information and must otherwise be in compliance with
13 all state and federal requirements related to protected health informa-
14 tion. Each form shall be submitted by mail or electronic means to the
15 department on a quarterly basis. If a database of all oral therapeutic
16 pharmaceutical agents prescribed or used by optometrists is, or becomes,
17 available to the committee provided for in this act, then optometrists
18 shall be advised by the commissioner that quarterly reporting forms will
19 no longer be required. The requirements of this section shall remain in
20 effect for five years following approval by the department of the
21 initial oral therapeutic pharmaceutical agent certification course and
22 examination pursuant to paragraph (c) of subdivision four of section
23 7101-a of the education law, after which time these requirements shall
24 expire and no longer have effect.

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

37 4. The commissioner shall submit each form received pursuant to this
38 section to the committee, except as otherwise provided in this subdivi-
39 sion. The committee shall review the forms and shall randomly cross-
40 check such submissions with a publicly available or other database
41 containing electronic prescriber information. Should a database of all
42 oral therapeutic pharmaceutical agents prescribed or used by optome-
43 trists pursuant to section 7101-a of the education law become available,
44 and the commissioner determines and advises optometrists that quarterly
45 reports are no longer necessary, then the committee shall review the
46 database and ascertain the prescribing information for all optometrists
47 consistent with section 7101-a of the education law. The committee
48 shall advise the commissioner as to compliance with the provisions of
49 section 7101-a of the education law for the purpose of evaluating
50 compliance with the provisions of section 7101-a of the education law
51 including the applicable referrals and dosing limitations and to identi-
52 fy any necessary enhancements to the curriculum provided for in para-
53 graph (c) of subdivision 4 of section 7101-a of the education law and
54 other educational materials and to assist in ensuring patient safety.
55 Upon finding evidence of non-compliance by any optometrist, the commit-
56 tee shall refer such information to the commissioner and to the office

1 of professions within the department for investigation and, if applica-
2 ble, disciplinary action. Nothing in this subdivision is intended to
3 modify or otherwise limit the department's authority or discretion to
4 review, investigate and refer matters related to the professional
5 conduct of a licensed provider.

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

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

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

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