

# 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:

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;  
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:

20 (f) [~~Phase two therapeutic~~] Therapeutic pharmaceutical agents for  
21 treatment of glaucoma and ocular hypertension. [~~Phase two~~] Therapeutic  
22 pharmaceutical agents for treatment of glaucoma and ocular hypertension  
23 shall mean those drugs which shall be limited to topical application to  
24 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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- 1 (i) beta blockers;  
2 (ii) alpha agonists;  
3 (iii) direct acting cholinergic agents;  
4 (iv) prostaglandin analogs; and  
5 (v) carbonic anhydrase inhibitors.

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

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

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

- 14 (1) augmentin;  
15 (2) keflex;  
16 (3) azithromycin;  
17 (4) bactrim;  
18 (5) doxycycline; and  
19 (6) tetracycline;

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

- 22 (1) clarinex;  
23 (2) xyzal; and  
24 (3) singulair;

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

- 31 (1) diamox; and  
32 (2) neptazane;

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

- 42 (1) valacyclovir; and  
43 (2) acyclovir; and

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

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

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

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

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

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

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

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

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

29 (i) The curriculum for the course shall include, but not be limited  
30 to, instruction in pharmacology and drug interaction in treating ocular  
31 disease and be taught through clinical case scenarios and emphasize  
32 clinical decision making and shall be no less than forty hours, of which  
33 no less than 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 test the knowledge of materials in the  
38 curriculum and reflect the provisions of paragraph (g) of subdivision  
39 one of this section, and shall be acceptable to the department. If an  
40 optometrist fails to pass the examination, such optometrist may retake  
41 the examination; provided, however, that if an optometrist fails to pass  
42 the examination after three attempts, such optometrist must again  
43 complete the certification course in order to retake the examination. An  
44 optometrist shall be required to complete the certification course after  
45 each subsequent failure to pass the examination three times. If an opto-  
46 metrist requires more time to pass the examination and to become certi-  
47 fied than the five-year period provided for in this paragraph, such  
48 optometrist may be authorized to retake the examination and to become  
49 certified beyond such period upon application by the optometrist and a  
50 showing of good cause as may be acceptable to the commissioner.

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

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

1 passed the National Board of Examiners in Optometry test or an examina-  
2 tion acceptable to the department.

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

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

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

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

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

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

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

38 Notice to patient with the use or prescription of topical therapeutic  
39 pharmaceutical agents and therapeutic pharmaceutical agents for treat-  
40 ment of glaucoma and ocular hypertension.

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

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

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

50 (a) Diagnostic pharmaceuticals.

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

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

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

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

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

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

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

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

38 § 13. Oral therapeutic pharmaceutical agent implementation review. 1.  
39 For purposes of this section, the term "commissioner" shall mean the  
40 commissioner of the state education department; and the term "depart-  
41 ment" shall mean the state education department.

42 2. Each optometrist certified to use oral therapeutic pharmaceutical  
43 agents pursuant to paragraph (c) of subdivision four of section 7101-a  
44 of the education law shall provide the department with information, on a  
45 form prescribed by the commissioner, related to the prescription or use  
46 of oral therapeutic pharmaceutical agents provided for in section 7101-a  
47 of the education law. Such information shall include the optometrist's  
48 license number and the national provider identifier as established by  
49 the centers for medicare and medicaid services, whether no oral  
50 prescriptions have been issued and in the event that oral prescriptions  
51 have been issued, then the following information shall be required: the  
52 prescribed or used oral therapeutic pharmaceutical agent, the dosage of  
53 such agent, the date of the prescription, the diagnosis of the patient  
54 for which the agent was prescribed or used, and whether a referral was  
55 made in accordance with paragraph (g) of subdivision one of section  
56 7101-a of the education law. Such information shall not include any

1 patient identifying information and must otherwise be in compliance with  
2 all state and federal requirements related to protected health informa-  
3 tion. Each form shall be submitted by mail or electronic means to the  
4 department on a quarterly basis. If a database of all oral therapeutic  
5 pharmaceutical agents prescribed or used by optometrists is, or becomes,  
6 available to the committee provided for in this act, then optometrists  
7 shall be advised by the commissioner that quarterly reporting forms will  
8 no longer be required. The requirements of this section shall remain in  
9 effect for five years following approval by the department of the  
10 initial oral therapeutic pharmaceutical agent certification course and  
11 examination pursuant to paragraph (c) of subdivision four of section  
12 7101-a of the education law, after which time these requirements shall  
13 expire and no longer have effect.

14 3. The commissioner shall appoint a committee to advise and assist the  
15 commissioner in evaluating compliance with the provisions of section  
16 7101-a of the education law and to identify any necessary enhancements  
17 to the curriculum provided for in such section and other educational  
18 materials and to assist in ensuring patient safety. The committee shall  
19 consist of one pharmacist, one optometrist upon the recommendation of a  
20 statewide professional organization consisting of optometrists, one  
21 ophthalmologist upon the recommendation of a statewide professional  
22 organization consisting of ophthalmologists, and one expert in the field  
23 of public health who shall be designated as chair by the commissioner in  
24 consultation with the commissioner of the department of health and who  
25 shall be neither an ophthalmologist nor an optometrist.

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

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

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

1 later, pursuant to paragraph (c) of subdivision 4 of section 7101-a of  
2 the education law as added by section six of this act;  
3 (b) the commissioner of education shall notify the legislative bill  
4 drafting commission upon approval of the initial certification course  
5 and examination required in section six of this act in order that the  
6 commission may maintain an accurate and timely effective data base of  
7 the official text of the laws of the state of New York in furtherance of  
8 effectuating the provisions of section 44 of the legislative law and  
9 section 70-b of the public officers law; and  
10 (c) any rule or regulation necessary for the timely implementation of  
11 this act on its effective date shall be promulgated on or before such  
12 effective date.