

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-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:

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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- (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

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.