STATE OF NEW YORK

3202--C

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. McDONALD, O'DONNELL, STECK, PALMESANO, JENSEN, GOTTFRIED, MEEKS, FORREST, JACOBSON, ASHBY -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to allowing patients to receive certain treatment by an occupational therapist without a referral from a physician or nurse practitioner; and to amend the insurance law, in relation to eliminating the need for referrals for certain treatment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 7901 of the education law, as amended by chapter 460 of the laws of 2011, is amended to read as follows:

§ 7901. Definition. **1.** The practice of the profession of occupational therapy is defined as the functional evaluation of the client, the planning and utilization of a program of purposeful activities, the development and utilization of a treatment program, and/or consultation with the client, family, caregiver or organization in order to restore, develop or maintain adaptive skills, and/or performance abilities designed to achieve maximal physical, cognitive and mental functioning of the client associated with his or her activities of daily living and daily life tasks. A treatment program designed to restore function, shall be rendered on the prescription or referral of a physician, nurse practitioner or other health care provider acting within his or her scope of practice pursuant to this title**, except as provided for in subdivision two of this section**. However, nothing contained in this article shall be construed to permit any licensee hereunder to practice

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

LBD01911-06-1

medicine or psychology, including psychotherapy or to otherwise expand such licensee's scope of practice beyond what is authorized by this chapter.

2. Treatment may be rendered by a licensed occupational therapist for ten visits, or thirty days, whichever shall occur first, without a referral from a physician or nurse practitioner provided that:

(a) the licensed occupational therapist has practiced occupational therapy on a full time basis equivalent to not less than three years; and

(b) each occupational therapist licensed pursuant to this article shall provide written notice to each patient receiving treatment absent a referral from a physician or nurse practitioner that occupational therapy may not be covered by the patient's health care plan or insurer without such a referral and that such treatment may be a covered expense if rendered pursuant to a referral. The occupational therapist shall keep on file with the patient's records a form attesting to the patient's notice of such advice. Such form shall be in duplicate, with one copy to be retained by the patient, signed and dated by both the occupational therapist and the patient in such form as prescribed pursuant to regulations promulgated by the commissioner.

§ 2. Paragraph 1 of subsection (a) of section 5102 of the insurance law, as amended by chapter 298 of the laws of 2006, is amended to read as follows:

(1) All necessary expenses incurred for: (i) medical, hospital (including services rendered in compliance with article forty-one of the public health law, whether or not such services are rendered directly by a hospital), surgical, nursing, dental, ambulance, x-ray, prescription drug and prosthetic services; (ii) psychiatric, physical therapy (provided that treatment is rendered pursuant to a referral) and occupational therapy and rehabilitation **(provided that treatment is rendered pursuant to a referral)**; (iii) any non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by the laws of this state; and (iv) any other professional health services; all without limitation as to time, provided that within one year after the date of the accident causing the injury it is ascertainable that further expenses may be incurred as a result of the injury. For the purpose of determining basic economic loss, the expenses incurred under this paragraph shall be in accordance with the limitations of section five thousand one hundred eight of this article.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. 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 to be made and completed on or before such effective date.