STATE OF NEW YORK

4579

2021-2022 Regular Sessions

IN SENATE

February 5, 2021

Introduced by Sen. GRIFFO -- 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 physical therapist assistants

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

Section 1. Section 6738 of the education law, as added by chapter 618 of the laws of 1980, subdivision a as designated by chapter 184 of the laws of 1982, subdivision b as amended by chapter 672 of the laws of 2019, subdivision c as amended by chapter 120 of the laws of 1998, and subdivision d as added by chapter 20 of the laws of 1998, is amended to read as follows:

§ 6738. Definition of physical therapist assistant. a. A "physical therapist assistant" means a person [~~certified~~] **licensed** in accordance with this article who works under the supervision of a licensed physical therapist performing such patient related activities as are assigned by the supervising physical therapist. Duties of physical therapist assistants shall not include evaluation, testing, interpretation, planning or modification of patient programs. Supervision of a physical therapist assistant by a licensed physical therapist shall be on-site supervision, but not necessarily direct personal supervision. The number of **licensed** physical therapist assistants supervised by one licensed physical therapist shall not exceed the ratio of four **licensed** physical therapist assistants to one licensed physical therapist as shall be determined by the commissioner's regulations insuring that there be adequate supervision in the best interest of public health and safety. Nothing in this section shall prohibit a hospital from employing physical therapist assistants, provided they work under the supervision of physical therapists designated by the hospital and not beyond the scope of practice of a physical therapist assistant. The numerical limitation of this section

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

LBD04296-01-1

shall not apply to work performed in a hospital, provided that there be adequate supervision in the best interest of public health and safety.

b. Notwithstanding the provisions of subdivision a of this section, supervision of a **licensed** physical therapist assistant by a licensed physical therapist, (i) in a residential health care facility, as defined in article twenty-eight of the public health law, (ii) in a diagnostic and treatment center licensed under article twenty-eight of the public health law that provides, as its principal mission, services to individuals with developmental disabilities, (iii) in a facility, as defined in section 1.03 of the mental hygiene law, or (iv) under a monitored program of the office for people with developmental disabilities as defined in subdivision (a) of section 13.15 of the mental hygiene law, shall be continuous but not necessarily on site when the supervising physical therapist has determined, through evaluation, the setting of goals and the establishment of a treatment plan, that the program is one of maintenance as defined pursuant to title XVIII of the federal social security act. The provisions of this subdivision shall not apply to the provision of physical therapy services when the condition requires multiple adjustments of sequences and procedures due to rapidly changing physiological status and/or response to treatment, or to children under five years of age.

c. For the purposes of the provision of physical therapist assistant services in a home care services setting, as such services are defined in article thirty-six of the public health law, except that the home care services setting shall not include early intervention services as defined in title two-A of article twenty-five of the public health law, whether such services are provided by a home care services agency or under the supervision of a physical therapist licensed pursuant to this article, continuous supervision of a **licensed** physical therapist assistant, who has had direct clinical experience for a period of not less than two years, by a licensed physical therapist shall not be construed as requiring the physical presence of such licensed physical therapist at the time and place where such services are performed. For purposes of this subdivision "continuous supervision" shall be deemed to include: (i) the licensed physical therapist's setting of goals, establishing a plan of care and determining whether the patient is appropriate to receive the services of a **licensed** physical therapist assistant subject to the licensed physical therapist's evaluation; (ii) an initial joint visit with the patient by the supervising licensed physical therapist and the **licensed** physical therapist assistant; (iii) periodic treatment and evaluation of the patient by the supervising licensed physical therapist, as indicated in the plan of care and as determined in accordance with patient need, but in no instance shall the interval between such treatment exceed every six patient visits or thirty days, whichever occurs first; and (iv) a final evaluation by the supervising licensed physical therapist to determine if the plan of care shall be terminated. For purposes of this subdivision, the number of **licensed** physical therapist assistant's supervised in the home care services setting by a licensed physical therapist shall not exceed the ratio of two physical therapist assistants to one licensed physical therapist.

d. (1) For purposes of the provision of **licensed** physical therapist assistant services in public primary or private primary or secondary schools and for preschool children, as that term is defined in paragraph i of subdivision one of section forty-four hundred ten of this chapter, and receiving services thereunder, continuous supervision of a **licensed** physical therapist assistant, who has direct clinical experience provid-

ing age appropriate physical therapy services for a period of not less than two years, by a licensed physical therapist shall not be construed as requiring the physical presence of such licensed physical therapist at the time and place where such services are performed. For purposes of this subdivision "continuous supervision" shall be deemed to include:

(i) the licensed physical therapist's setting of the goals, establishing a plan of care, determining on an initial and ongoing basis whether the patient is appropriate to receive the services of a **licensed** physical therapist assistant, determining the frequency of joint visits with the patient by both the supervising licensed physical therapist and the **licensed** physical therapist assistant, except that in no instance shall the interval, between joint visits, be more than every ninety calendar days, subject to the licensed physical therapist's evaluation;

(ii) an initial joint visit with the patient by the supervising licensed physical therapist and **licensed** physical therapist assistant;

(iii) periodic treatment and evaluation of the patient by the supervising licensed physical therapist as indicated in the plan of care and as determined in accordance with patient need, except that in no instance shall the interval between such treatment exceed every twelfth visit or thirty days which ever occurs first; and

(iv) notification of the supervising licensed physical therapist by the **licensed** physical therapist assistant whenever there is a change in status, condition or performance of the patient.

(2) This subdivision shall not apply to the provision of physical therapy services when a child's condition requires multiple adjustments of sequences and procedures due to rapidly changing physiologic status and/or response to treatment.

§ 2. Section 6739 of the education law, as added by chapter 618 of the laws of 1980, is amended to read as follows:

§ 6739. Duties of **licensed** physical therapist assistants and the use of title "physical therapist assistant". Only a person [~~certified~~] **licensed** or otherwise authorized under this article shall participate in the practice of physical therapy as a **licensed** physical therapist assistant and only a person [~~certified~~] **licensed** under this section shall use the title "physical therapist assistant".

§ 3. Section 6740 of the education law, as added by chapter 618 of the laws of 1980, subdivision c-1 as added by chapter 404 of the laws of 2002, subdivision f as amended by chapter 43 of the laws of 1987, and subdivision g as amended by chapter 62 of the laws of 1989, is amended to read as follows:

§ 6740. Requirements for [~~certification~~] **license** as a physical therapist assistant. a. Application: file an application with the department;

b. Education: have received an education including completion of a two-year college program in a physical therapist assistant program or equivalent in accordance with the commissioner's regulations;

c. Experience: have experience satisfactory to the state board for physical therapy in accordance with the commissioner's regulations;

c-1. Examination: pass an examination satisfactory to the board and in accordance with the commissioner's regulations;

d. Age: be at least eighteen years of age;

e. Character: be of good moral character as determined by the department;

f. Registration: all [~~certified~~] **licensed** physical therapist assistants shall register triennially with the [~~education~~] department in accordance with the regulations of the commissioner;

g. Fees: pay a fee for an initial [~~certificate~~] **license** of forty-five dollars, and for the biennial registration period ending December thirty-first, nineteen hundred eighty-two a fee of twenty dollars and a fee of fifty dollars for each triennial registration period.

§ 4. Section 6742-a of the education law, as added by chapter 207 of the laws of 2008, is amended to read as follows:

§ 6742-a. Mandatory continuing education. 1. (a) Each licensed physical therapist and [~~certified~~] **licensed** physical therapist assistant required under this article to register triennially with the department to practice in the state shall comply with the provisions of the mandatory continuing education requirements prescribed in subdivision two of this section except as set forth in paragraphs (b) and (c) of this subdivision. Licensed physical therapist and [~~certified~~] **licensed** physical therapist assistants who do not satisfy the mandatory continuing education requirements shall not practice until they have met such requirements, and they have been issued a registration certificate, except that a licensed physical therapist or [~~certified~~] **licensed** physical therapist assistant may practice without having met such requirements if he or she is issued a conditional registration certificate pursuant to subdivision three of this section.

(b) Each licensed physical therapist and [~~certified~~] **licensed** physical therapist assistant shall be exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed. 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 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.

(c) A licensed physical therapist and [~~certified~~] **licensed** physical therapist assistant 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 physical therapy during the triennial registration period shall notify the department prior to reentering the profession and shall meet such mandatory education requirements as shall be prescribed by regulations of the commissioner.

2. During each triennial registration period an applicant for registration as a licensed physical therapist or [~~certified~~] **licensed** physical therapist assistant shall complete a minimum of thirty-six hours of acceptable formal continuing education, as specified in subdivision four of this section. Any licensed physical therapist or [~~certified~~] **licensed** physical therapist assistant 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 ten, shall complete continuing education hours on a prorated basis at the rate of one-half hour per month for the period beginning January first, two thousand ten up to the first registration date thereafter. A licensee who has not satisfied the mandatory continuing education requirements shall not be issued a triennial registration certificate by the department and shall not practice unless and until a conditional registration certificate is issued as provided for in subdivision three of this section. Continuing education hours taken during one triennium may not be transferred to a subsequent triennium.

3. The department, in its discretion, may issue a conditional registration to a licensee who fails to meet the continuing education requirements established in subdivision two of this section 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 licensee 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.

4. As used in subdivision two of this section, "acceptable formal education" shall mean formal courses of learning which contribute to professional practice in physical therapy and which meet the standards prescribed by regulations of the commissioner. Such formal courses of learning shall include, but not be limited to, collegiate level credit and non-credit courses, professional development programs and technical sessions offered by national, state and local professional associations and other organizations acceptable to the department, and any other organized educational and technical programs acceptable to the department. The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement. Courses must be taken from a sponsor approved by the department, pursuant to the regulations of the commissioner.

5. Licensed physical therapist or [~~certified~~] **licensed** physical therapist assistant shall maintain adequate documentation of completion of acceptable formal continuing education 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.

6. The mandatory continuing education fee shall be forty-five dollars, 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 section sixty-seven hundred thirty-four of this article.

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that amendments to subdivisions c and d of section 6738 of the education law made by section one of this act shall not affect the repeal of such subdivisions and shall be deemed repealed therewith. 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 by the commissioner of education and the board of regents on or before such effective date.