



January 30, 2017

**Submitted Electronically Via**

<https://ftcpublic.commentworks.com/ftc/contactlensrule/>

Office of the Secretary  
Federal Trade Commission  
Office of the Secretary  
Constitution Center  
400 7th Street SW  
Fifth Floor, Suit 5610 (Annex C)  
Washington, DC 20580

**Re: Comments of Opternative, Inc. on the Notice of Proposed Rulemaking, Contact Lens Rule ("CLR"); 16 C.F.R. Part 315 (Project No. R511995)**

Dear Mr. Clark:

Opternative, Inc. submits these comments in response to the Federal Trade Commission's (the "Commission") request for comments on proposed amendments to the Contact Lens Rule, 16 CFR Part 315 ("CLR" or "Rule") and additional questions raised in the corresponding Notice of Proposed Rulemaking ("NPRM"), 81 Fed. Reg. 88526–59 (Dec. 7, 2016).

Opternative, founded in 2012, is an innovator in the field of telemedicine, filling the need for affordable and convenient access to eye tests and ophthalmic prescriptions. Opternative prescribes but does not sell eyeglasses or contact lenses. Using just a computer and a smartphone, Opternative's online eye test can be administered anytime, anywhere to provide patients with ready access to ophthalmologist-verified and -issued prescriptions. Opternative appreciates the opportunity to submit these comments, which are based on our experience interacting with contact lens consumers and our efforts to expand competition and choice in this sector.

**I. Opternative Supports the Proposed Amendment Requiring a Signed Acknowledgement of Prescription Release**

In the NPRM, the Commission's has proposed an amendment to the Rule requiring prescribers to present, and have their patients sign, an "acknowledgment of release," confirming that the patient received a copy of her prescription at the completion of the contact lens fitting.<sup>1</sup> Opternative strongly supports this amendment.

Opternative supports the proposed amendment. Our business model was built on expanding access to ophthalmic services and prescriptions, and the proposed amendment furthers these goals. A signed acknowledgement would increase patient awareness of their right to their prescription. It also will encourage

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<sup>1</sup> NPRM, 81 FR at 88534.



prescribers to release prescriptions, something the Commission identified as problematic more than 10 years after the initial Rule requiring prescription release.<sup>2</sup>

Opternative also supports the Commission's proposed requirement that the signed acknowledgment forms be preserved with patients' existing medical records for a period of no less than three years. A recordkeeping requirement will permit the Commission to audit compliance with the new rule and will provide a basis for enforcement in the case of violations. This threat of enforcement in turn provides a strong incentive to release. Any burden on the prescriber to obtain or maintain these signed acknowledgements is minimal—they can be sent and completed either electronically or via hardcopy in the office at the end of a fitting and added to a patient's existing medical record, which most states already require to be kept for at least three years.<sup>3</sup> As a prescriber, Opternative has no concerns about the burden of maintaining the signed release, and believes any incremental time is far outweighed by the benefit of more prescriptions in the hands of more consumers.

## **II. Opternative Supports a Time Frame for Providers to Respond to Requests from Agents for Prescriptions**

Opternative urges the Commission to adopt a time frame during which prescribers must respond to a request from an authorized agent for a copy of the patient's prescription. Although the Rule currently requires providers to provide a copy of a prescription to authorized parties, it has no associated timeframe for a response. Opternative believes that unless the Commission imposes a reasonable timeframe, there will be no incentive for providers to actually release. It benefits consumers, prescribers, and sellers when sellers have copies of prescriptions—simplifying the ordering process and reducing the burden on prescribers and sellers from the verification system. This is why Opternative always provides its patients ready access to their prescriptions on its website.

As a prescriber, Opternative recommends that the Commission adopt a timeframe of [two] business days, or [16] business hours to respond to such prescription requests. This is a reasonable amount of time to access and transmit a patient's current prescription to an authorized third party. Given the more than [50,000] prescribers in the U.S., anything other than a standardized time frame would not be workable. Opternative understands that extenuating circumstances can make compliance with this timeframe difficult, such as provider-specific extended office closures. However, the burden to provide explanations and support for such non-compliance should fall on the prescriber, and they should comply as quickly as practicable.

## **III. Opternative Supports the Use of Patient Portals as One of Many Means by Which Doctors Can Communicate With Patients**

Opternative supports any effort that increases the ability of contact lens consumers to access their prescriptions, and, in turn, purchase from the seller of their choice. Patient portals can be an effective means to

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<sup>2</sup> *Id.* at 88532 (“[T]he Commission believes that the overall weight of evidence in the rulemaking record—including the surveys, the high number of verifications, the ongoing pattern of consumer complaints and anecdotal reports, and the industry’s long history of failing to provide prescriptions to patients even when obligated by state law—indicates that compliance with the automatic prescription release provision could be substantially improved.”)

<sup>3</sup> *Id.* at 88557.



achieve this goal—when they are correctly implemented. Although adoption of patient portals in the optometric and ophthalmologic fields remains quite low today, we believe that with time it will increase as more eye care professionals move toward electronic medical records.

However, we caution the Commission that for a patient portal to be effective as a means to release prescriptions, the patient must be aware of the portal, have signed up for it, and be notified by some other means (*e.g.*, email or text message) that their prescription has been placed in the portal. This is the approach Opternative takes today. Following an eye test and a review of the results by a licensed ophthalmologist, we send our patients their prescription via secure email and also make a copy available on an online portal, which provides an easy and convenient place for patients to access a copy of their prescription should they misplace the email. This approach ensures that patients receive a copy of the prescription directly and also are aware that it is in the portal should they choose to access it on that platform. We urge the Commission to adopt a similar approach for the release of prescriptions or the obtainment of the patient acknowledgment in order to maximize prescription portability.

We thank the Commission for the opportunity to provide these comments, and appreciate the Commission's consideration of these issues.

Respectfully submitted,

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Peter Horkan, Director, Government Affairs  
Opternative, INC