

FACT SHEET: AOA Makes False Claims About Costs and Benefits of FTC's Proposed Procompetitive Update to Contact Lens Rule

The American Optometric Association (AOA), the lobbying group representing optometrists, has been making false claims about the economic costs and benefits of the Federal Trade Commission's (FTC) proposed procompetitive update to the Contact Lens Rule. These claims have no merit. What the FTC is proposing is a low-cost way to improve lagging optometrist compliance with an important rule. It's a smart solution that both optometrists and consumers can and should support.

FTC's Proposal – Require Optometrists to Obtain Signed Acknowledgement of Prescription Release

Federal law requires optometrists to automatically release contact lens prescriptions to patients following a contact lens fitting so that patients can buy lenses from the seller of their choice. Despite this clear legal requirement, at least 30% of patients are never provided with a copy of their prescription. To improve compliance with the law, the FTC has proposed requiring that optometrists: (1) ask patients to sign a simple two-sentence form to acknowledge receipt of their prescription, and (2) keep that signed acknowledgement on hand for three years. This requirement would provide the FTC with access to the evidence it needs to enforce the rule against violators. Moreover, this minimal recordkeeping amendment would create a more credible risk of FTC enforcement and fines against violators – which is likely to **bolster compliance without significant new expenditure on enforcement**.

The AOA's False Claim

The AOA falsely claims that the FTC's proposal would impose a costly burden on optometrists and that any compliance problem could be solved by merely requiring that optometrists post a sign notifying patients of their rights. This claim misrepresents both the cost of the FTC's proposed solution and the ability of a sign to fix the problem.

The Truth – The Benefits Will Outweigh Any Minimal Costs

In its proposed rulemaking – which followed a thorough year-plus-long examination of over 660 comments and numerous studies, surveys and medical evidence, the FTC concluded that the costs of the needed amendment will be minimal and outweighed by benefits to business and consumers alike. The FTC stated:

*"[T]he Commission believes that any recordkeeping burden would be **relatively minimal and outweighed by the benefit** of having more patients in possession of their prescriptions..."*

*"The addition of a signed acknowledgment requirement accomplishes the desired objectives **with little increased burden on prescribers**."*

*"Maintaining the form for a period of not less than three years **does not impose a substantial new burden** on individual prescribers and their office staff. The majority of states already require that optometrists maintain records of eye examinations for at least three years, and maintaining a one page acknowledgment form per patient per year*

should not take more than a few seconds of time, and an inconsequential, or de minimis, amount of record space.

"Some prescribers might present the acknowledgment form electronically, and such format would allow the signed acknowledgment to be preserved without any additional burden. For other prescribers, the new recordkeeping requirement would likely require that office staff either preserve the signed acknowledgment form in paper format or electronically scan the signed acknowledgment form and save it as an electronic document. In the latter scenario, the Commission estimates this scanning and saving **would take approximately one minute...**

"While not insubstantial, this amount [of additional labor cost] constitutes just **under one-fourth of one percent of the estimated overall retail market** for contact lens sales in the United States. Furthermore, the burden is likely to be less, because many prescribers' offices will not require a full minute to store the acknowledgment form. And, as noted above, increasing the number of patients in possession of their prescriptions should correspondingly increase the number of consumers who provide their prescriptions to third-party sellers when purchasing contact lenses. **This, in turn, could potentially reduce the number of verification requests made to prescribers, and the time prescribers spend responding.**"

The Truth – Posting a Sign Will Not Fix the Problem

Based on the FTC's extensive experience with the Contact Lens Rule, it also concluded that merely posting a sign to inform patients of their rights will not solve the problem because many patients won't see the signs and there would still be a lack of recordkeeping. The FTC stated:

"The Commission recognizes the need for increased enforcement of the automatic prescription release provision...however ...**the absence of documentation makes it difficult to determine whether a prescriber did or did not provide a patient with a prescription as required, in any particular case...**

"It is unclear how many patients actually read posted notices at doctor's offices, particularly in locations where there are already numerous ads or other postings...[and posted signs] **would do little to assist the Commission in verifying or enforcing compliance with the automatic prescription release provision...**"

The Truth – The AOA's "Independent Economic Analysis" is Neither "Independent" Nor "Economic Analysis"

The AOA points to so-called "independent economic analysis" to argue that, if finalized, the new rule could "cost a solo-practitioner eye doctor practice as much as \$18,000 in the first year and a high-volume, multi-doctor practice could face added costs of nearly \$75,000." But this study is neither "independent" nor "economic analysis."

- The AOA study is based on a small survey sample **of its own members** — the same members it asked to submit letters to the FTC to oppose the proposed amendment. This is **not a representative sample – the results are necessarily biased and unreliable.**
- The AOA asks its own members to predict how patients will react to the acknowledgement – **rather than ask contact lens wearers themselves.** The difference is dramatic.

- The AOA study predicts that an optometrist office would spend 3.12 minutes to explain the purpose of the acknowledgement to every patient. The analysis assumes that every patient would have questions about the form and it would take on average 3.41 minutes to answer those questions and 13.31 extra minutes of staff training four times per year to prepare to address patient questions.
 - But a recent survey of a representative sample of contact lens wearers predicts that it will take on average 12 seconds for a patient to read the acknowledgement form and that 94% of patients would not have questions.
 - The AOA's inflated time estimates lead to inflated estimates of the overall costs of the proposed FTC amendment.
- Moreover, the cost estimates are not specific to the proposed amendment; they are based on optometrists' predictions about "the total administrative time" associated with adhering to "rules, regulations and policies" — **not any minimal new costs from the proposed amendment.**
 - The AOA misrepresents the study as an economic analysis of the amendment – but it is a one-sided, biased survey of costs alone. Genuine economic analysis of regulation considers **both costs and benefits** — the AOA study does not even consider the benefits that the FTC describes in terms of a more competitive marketplace and fewer time-consuming prescription verification calls.
 - **Genuine economic analysis** shows that the amendment is likely to reduce verification calls sufficiently to **offset entirely** any minimal administrative costs associated with the proposed amendment – and may reduce the time that both sellers and prescribers spend to comply with the Contact Lens Rule today. Given that consumers will benefit directly from greater choice and convenience, the proposed amendment is a clear step towards greater efficiency and competition in the contact lens marketplace.

About the Coalition for Contact Lens Consumer Choice

The Coalition for Contact Lens Consumer Choice serves as a voice for 41 million American contact lens consumers by advocating for continued consumer choice in the contact lens market. The Coalition opposes legislative and regulatory proposals at the federal and state levels that would limit the ability of consumers to purchase contact lenses from the retailer of their choice, whether online, in stores or over-the-phone.

More information about the coalition can be found at KeepContactLensChoice.org.