



## **FACT SHEET: The Fairness to Contact Lens Consumers Act and the FTC's Proposed Update to the Contact Lens Rule**

The landmark Fairness to Contact Lens Consumers Act of 2003 (FCLCA) ensures consumers can shop around when buying contact lenses. The law has increased competition among retailers and provided America's 41 million contact lens wearers with more choice, greater convenience and lower prices.

### **Addressing Conflicts of Interest in the Contact Lens Marketplace ...**

The FCLCA, and the Federal Trade Commission's (FTC) Contact Lens Rule (CLR) which implements the law, was intended to address anti-competitive practices in a contact lens market uniquely saddled with conflicts of interests.

- Unlike most other medical professionals, optometrists may sell the very products they prescribe.
- And contact lens prescriptions are brand specific, meaning patients have no option to choose a less expensive lens than prescribed.
- In fact, optometrists receive about 60% of their revenue from selling glasses and contact lenses, instead of from providing eye care.<sup>1</sup>
- Notably, in the 1990's, 32 state attorneys general found optometrists and lens manufacturers were engaged in anticompetitive collusion to raise prices on consumers.<sup>2</sup>

### **... With a Prescription Release Requirement**

To help ensure consumers aren't negatively impacted by these conflicts, the FCLCA requires optometrists to provide patients with a copy of their prescription following an eye exam.

- Patients then have the option of using that prescription to purchase lenses from their retailer of choice, including often lower cost alternative retailers.
- Optometrists also must verify prescriptions for those retailers if authorized by the patient.
- If an optometrist does not respond to a prescription verification request in eight business hours, the prescription is verified automatically, and the retailer may provide contact lenses to the consumer.

Congress adopted this system after receiving evidence of widespread refusals by optometrists to release prescriptions to patients or to verify prescriptions in the hopes of preventing their patients from buying lenses from other retailers.

### **Optometrists Continue to Flout the Law**

Although the FCLCA has dramatically improved marketplace competition, optometrists have continued to resist implementation of the law.

- A 2017 Consumer Action survey found that almost one-third of consumers are still not being given their prescriptions following eye exams.<sup>3</sup>

- And 60% of consumers remain unaware that eye care providers are required by law to provide them with their prescription.<sup>4</sup>
- Optometrists have also regularly tried to thwart the law by hanging up on verification calls or providing false or insufficient information to alternative retailers. One alternative retailer has found more than 180,000 occurrences each year of optometrists providing false information.<sup>5</sup>

Following the FTC's year-plus-long review of the CLR, including the examination of over 660 comments and numerous studies, surveys and medical evidence, the agency appropriately concluded that *"compliance with the automatic prescription release provision could be substantially improved."*<sup>6</sup>

### **FTC's Signed Acknowledgement Proposal is a Pro-Market Solution That Would Improve Compliance**

To ensure competition in the contact lens marketplace and improve compliance with the law, the FTC has proposed requiring optometrists to obtain a signed acknowledgement after providing a prescription to a patient, which they must keep on file for three years.

- This would allow the FTC to track those who are failing to follow the law and take action on behalf of consumers' rights when warranted.
- It would be minimally-burdensome on optometrists and would bolster compliance without significant new expenditure on enforcement. The FTC estimates the requirement would *"not take more than a few seconds of time, and an inconsequential, or de minimis, amount of record space."*<sup>7</sup>

Based on the FTC's extensive experience with the CLR, it also appropriately concluded that merely posting a sign to inform patients of their rights will not adequately protect consumers because many patients won't see the signs and there would still be a lack of recordkeeping to enforce compliance.

### **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](http://KeepContactLensChoice.org).

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<sup>1</sup> Dwight Akerman, "The Economics of Independent & Corporate Optometric Practice," Ciba Vision, Mar. 17, 2010.

<sup>2</sup> U.S. District Court, Middle District of Florida, Jacksonville Division; In Re: Disposable Contact Lens Antitrust Litigation, MDL Docket No. 1030; Plaintiff States' Consolidated Statement of Facts, Nov. 12, 1999.

<sup>3</sup> Consumer Action survey, Jan. 2017.

<sup>4</sup> Consumer Action survey, Jan. 2017.

<sup>5</sup> 1-800 Contacts Comment Letter to FTC on the Contact Lens Rule, Oct. 26, 2015.

<sup>6</sup> FTC Contact Lens Rule Notice of Proposed Rulemaking, 16 CFR Part 315, RIN 3084-AB36, Dec. 7, 2016.

<sup>7</sup> FTC Contact Lens Rule Notice of Proposed Rulemaking, 16 CFR Part 315, RIN 3084-AB36, Dec. 7, 2016.