



July 29, 2019

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Room CC-5610 (Annex B)
Washington, DC 20580

Contact Lens Rule Review, 16 CFR part 315, Project No. R511995

Dear FTC Commissioners and Staff,

Below please find a statement from the National Hispanic Medical Association and the League of United Latin American Citizens (LULAC) in response to the Federal Trade Commission's (FTC) request for comments on its Notice of Proposed Rulemaking on the Contact Lens Rule (16 CFR Part 315, Project No. R511995). We want to thank the FTC staff for all the time and attention they have put in over the past years to craft a final Contact Lens Rule that will help millions of Americans, especially Hispanics and other underserved populations, understand their rights as contact lens consumers, to have access to their own contact lens prescriptions and be afforded more choice, more competition and more access in the marketplace.

The League of United Latin American Citizens (LULAC) is the nation's largest and oldest volunteer-based civil rights organization that empowers Hispanic Americans and builds strong Latino communities.

Headquartered in Washington, DC, with 1,000 councils around the United States and Puerto Rico, LULAC's programs, services and advocacy address the most important issues for Latinos, meeting critical needs of today and the future. For more information, visit www.LULAC.org.

Established in 1994 in Washington, DC, **the National Hispanic Medical Association** is a non-profit association representing the interests of 50,000 licensed Hispanic physicians in the United States. The mission of NHMA is to empower Hispanic physicians to lead efforts to improve the health of Hispanic and other underserved populations in collaboration with Hispanic state medical societies, residents, and medical students, and other public and private sector partners.

THE CHALLENGE FACING THE HISPANIC COMMUNITY WHEN IT COMES TO VISION CARE

Access to vision care is one of the biggest health care challenges facing the Hispanic community because while we are one of the fastest growing demographics in the marketplace, we are also a community who has traditionally put off getting preventative care due to high costs, language barriers and lack of access to doctors. According to an April 2017 study on Hispanic Health by the Kaiser Family Foundation, among non-elderly adults, 30% of Hispanics did not visit a doctor in the last 12 months, a quarter of Hispanics have no usual source of care and 22% of Hispanics delayed care due to cost.

The situation is even worse when it comes to vision care. A 2016 study in the medical journal *JAMA Ophthalmology* found that only 59% of the Hispanics/Latinos in their study received an eye examination in the past 2 years and 12% had difficulty obtaining needed eye care in the past year.

The best way to improve vision and eye care use among Hispanics/Latinos is to decrease the cost of care, increase awareness of the need for preventive eye health care, educate Hispanics about their rights as health care consumers and improve access to the marketplace.

Many Hispanics live in communities that do not have optometrists or ophthalmologists conveniently located in their neighborhood, or they work hours or jobs that make it very difficult to get to an optometrist to pick up contact lenses or glasses. They rely on buying their contact lenses at big box stores and pharmacies located in their community who are open late at night or on weekends or online but they need their prescriptions to be able to do that and they are not receiving them. In fact, many Hispanics are unaware they have a right to their prescription.

The national consumer group Consumer Action submitted a consumer survey conducted in 2017 to the FTC as part of their comments on the FTC's proposed Contact Lens Rule. Sixty-five percent (65%) of Hispanics who were surveyed were unaware of their rights as contact lens consumers as compared to 63% of Blacks and 58% of Whites. Forty-four percent (44%) of Hispanics surveyed in the Consumer Action were not given copies of their prescription after their exam and had to ask their eye doctor to give them a copy of their prescription.

These numbers make clear the challenges facing our community. We must do more to ensure that the Hispanic community is educated about our rights as consumers and to act swiftly against those who are breaking the law and denying us the ability to shop around for contacts and glasses. We believe that the FTC's proposed Contact Lens Rule is an important step in the right direction to doing just that.

LULAC & NHMA STRONGLY SUPPORT THE FTC'S PROPOSED CONTACT RULE

As we have stated throughout this process and in our comments around the original NPRM and the Workshop, the Federal Trade Commission's proposed amendments to the Contact Lens Rule are an important victory for Hispanic working families who rely on the convenience, choice and savings that comes from being able to take your prescription for contact lenses and shop where you want, when you want. Every day, more and more Hispanics enter the market for contact lenses. We are the fastest growing demographic but our families simply

do not know their rights as consumers, especially our right to a copy of prescription and this is critical because you can't buy contact lenses without a prescription.

The system here in the US for buying contact lenses is stacked against consumers because the people who issue you your prescription are also allowed to sell you contact lenses at the very same time. Consumers who don't know their rights are getting "trapped in the exam chair" so to speak, unaware that they can buy lenses elsewhere for lower prices.

This flawed system also creates inequities for working families, who are forced to take time off from work or to travel hours across town to get to the eye doctor for fittings, new lenses and replacement lenses because they think that the eye doctor's office is the only place they can buy contact lenses.

Over the past decade since the Contact Lens Rule and Fairness to Contact Lens Consumers Act has gone into place, a vibrant and healthy marketplace has grown for the sale of contact lenses. Consumers can buy contact lenses online, at the drugstore or when they are doing their weekly shopping at Costco, comparing prices and getting the best deal for their families. We are not opposed to Hispanic consumers buying their contact lenses from their eye doctors but they should have a choice and a copy of their own prescription.

RESPONDING TO THE QUESTIONS IN THE 5-28 SNPRM ON THE CONTACT LENS RULE

PRESCRIPTION RELEASE ACKNOWLEDGMENT IS ESSENTIAL TO ENSURE THAT HISPANIC CONSUMERS KNOW THEIR RIGHT TO THEIR CONTACT LENS PRESCRIPTION

When the proposed new Contact Lens Rule was first introduced, LULAC and NHMA applauded the addition of a requirement for optometrists to obtain a signed acknowledgement after providing a prescription to a consumer, and to keep that acknowledgement on file for three years. A signed acknowledgment gives the FTC a means to track those who are failing to follow the prescription release requirement under FCLCA and to take action on behalf of consumers' rights when a case warrants.

We understand that the optometrists and their allies have since raised questions about the burdens that they claim could result from adding a signed acknowledgment form to the exam and contact lens fitting process. We do not share their concerns. Our community continually has been victimized and denied their prescriptions by prescribers and doctors at a higher rate than most other Americans. We strongly believe that more must be done to ensure patients are informed of their rights and given copies of their prescription, as many copies as they need and ask for.

This focus on "burdens" that providers might face is upsetting when one remembers just how many patients are being robbed of their right to lower prices and more convenient shopping and being denied a copy of something that they worked hard to pay for, namely their own prescription.

That being said, we are not opposed to the different ways that the FTC has proposed in the SNPRM for prescribers to obtain a signed acknowledgement from a patient, just as long as these records are maintained for three years and the FTC has a way of tracking and enforcing compliance. We do have some questions about the idea of portals which we explore below. We continue to strongly oppose the idea of replacing the requirement for signed acknowledgment with the idea of prescribers simply posting signs with patients' rights, especially when there is no mandate to have that sign be in Spanish or other alternative languages and prescribers are given an inordinate amount of leeway when it comes to where signs are placed. It is also hard to track signage placement and enforce the law.

USING TECHNOLOGY TO ENSURE HISPANIC CONTACT LENS CONSUMERS KNOW THEIR RIGHTS AND CAN ACCESS THEIR PRESCRIPTION IS A GOOD IDEA AS LONG AS IT IS DESIGNED FAIRLY AND IS EASY TO USE

A July 2016 Pew Poll found more than 94% of Hispanics/ Latinos do have access to the Internet via a smartphone or tablet. With these new technologies and ready access to their prescriptions, Hispanic and Latinos can shop for glasses and contacts at the place and time of their choosing.

It makes sense to use technology to ensure Hispanic customers and patients can have access to their contact lens prescription wherever and whenever they might need it and we applaud the FTC for encouraging and exploring the idea of transmitting prescriptions from prescribers to patients via technology. Even just allowing prescribers to email and text copies of consumers' prescriptions would be very helpful for millions of Hispanic patients and would allow them to shop for contact lenses on their own time and schedule.

The question of prescribers and sellers creating portals for customers in order to share prescription information is a little more of a complex question and may in fact create a greater burden initially on doctors and their patients. There is no doubt that more and more families and medical practices are storing critical health and wellness information in secure clouds and portals.

The critical aspects that must be considered are portal design and prescription portability. Portals and instructions on how to use portals would need to include English and Spanish instructions and staff and patients would need to be able to explain how to use these portals in both English and Spanish. The other key consideration when it comes to portal design is how easy it would be for a patient to transfer their prescription from the doctor who writes the prescription to an alternative retailer. Patients should also have the ability to remove their prescription easily from a prescriber's portal when they move, change doctors or want to shop around. The potential for miscommunication and even possible willful misuse seems high and the FTC would need to clearly specify what is required.

In conclusion, the most important point we can stress to the FTC is the critical and time sensitive need to finalize and start enforcing the Contact Lens Rule as soon as possible. Every day we delay is another day that Hispanic consumers are denied their rights under the law as contact lens consumers. The opportunity to help improve eye health and vision care in the Hispanic community and to ensure the community knows their rights and has access to their prescriptions is literally before our eyes thanks to your good work. The time is now for

the FTC to seize this opportunity and help every American get access to the services and vision care they need. We urge you to swiftly issue the final Contact Lens Rule.

Sincerely,

Dr Elena Rios, President of the National Hispanic Medical Association

Sindy Benavides, Chief Executive Officer of the League of United Latin American Citizens (LULAC)

LINKS TO ARTICLES/STUDIES CITED

CONSUMER ACTION

https://www.consumer-action.org/news/articles/support_ftc_contact_lens_rule_updates

KAISER FAMILY FOUNDATION

Health and Health Care for Hispanics in the United States

<https://www.kff.org/infographic/health-and-health-care-for-hispanics-in-the-united-states/>

JAMA OPHTHAMOLOGY STUDY

Factors Associated With Ocular Health Care Utilization Among Hispanics/Latinos: Results From an Ancillary Study to the Hispanic Community Health Study/Study of Latinos (HCHS/SOL).

[McClure LA](#)¹, [Zheng DD](#)², [Lam BL](#)³, [Tannenbaum SL](#)¹, [Joslin CE](#)¹, [Davis S](#)⁴, [López-Cevallos D](#)⁵, [Youngblood ME Jr](#)⁴, [Zhang ZM](#)⁶, [Chambers CP](#)⁷, [Lee DJ](#)⁸.

<https://www.ncbi.nlm.nih.gov/pubmed/26821791>

US NEWS

<https://www.usnews.com/news/best-states/articles/2017-05-04/latinos-millennials-among-groups-least-likely-to-have-health-insurance>

Modern Healthcare <http://www.modernhealthcare.com/article/20150824/NEWS/150829945>