



AMERICAN OPTOMETRIC ASSOCIATION

ADVISORY

From: Mike Stokes, AOA General Counsel
To: AOA Affiliate Presidents and Executive Directors
Date: Oct. 20, 2020
Regarding: Requests for patient prescriptions for sellers

Prescription requests from retailers: Important information from AOA legal counsel

While the AOA continues to address issues raised by the recent changes to the Contact Lens Rule, it is critical that doctors understand and comply with all current requirements under the rule and the law. According to guidance received by the AOA from the Federal Trade Commission (FTC) in 2006 under the Fairness to Contact Lens Consumers Act (FCLCA), contact lens prescribers must respond to all requests for copies of patient prescriptions from retailers claiming to act as the patient's agent. Additionally, as of Oct. 16, doctors are required to respond to these requests within 40 business hours.

How to respond to prescription requests from a contact lens seller

Remember, prescription demands are different than the standard prescription verification requests that are sent following a patient's order of contact lenses. According to the FTC, individuals prescribing contact lenses must:

- Give a copy of the contact lens prescription to the patient at the end of the contact lens fitting—even if the patient doesn't ask for it.
- Document that they have provided a copy of the contact lens prescription to the patient.
- In any response to a verification request, prescribers must correct any inaccuracy in the prescription, inform the seller when it's expired, and otherwise specify the reason it's invalid. Prescribers must respond to these requests within eight business hours. If a prescriber does not respond within eight business hours, the prescription is considered to be passively verified.
- Provide the contact lens prescription to anyone who is designated to act on behalf of the patient, including contact lens sellers, within 40 business hours of the request.

For additional information regarding the new documentation requirement, and other necessary advocacy and compliance steps, review the AOA's [Contact Lens Rule Updates: Compliance and Advocacy Checklist](#).

Additional background regarding prescription requests

With regard to requests for complete prescriptions, the FTC stated in a letter to the AOA in 2006 that:

- **Prescribers have an obligation under the FCLCA to respond to requests for prescriptions from retailers acting as the patient's agent.**
- The FCLCA does not require that patients provide written authorization to prescribers. Prescribers do **not** have the right under the FCLCA to require that the patient provide written authorization to the prescribers before the prescriber sends a copy of the prescription in response to a prescription request.

Because the FTC has previously taken the position that prescription requests should be treated as similar to verification requests, the **AOA recommends the doctors only take the step of contacting patients to verify that the patient has designated a particular retailer as his or her agent if the doctor would take the same step for a similar verification request**; for example due to the prescription being expired or for some other irregularity.

The proliferation of prescription requests has raised questions regarding how HIPAA intersects with the FCLCA with regard to such requests. The 2004 Contact Lens Rule derived from the FCLCA directly addressed this issue and states, "Providing, confirming or correcting a prescription for contact lenses to a seller designated by the patient constitutes 'treatment' under the Privacy Rule." Second, the 2002 HIPAA Privacy Rule also directly addressed this issue and explains "that disclosure of protected health information by an eye doctor to a distributor of contact lenses for the purpose of confirming a contact lens prescription is treatment and is permissible under Sec. 164.506."

If the prescription that is requested is expired or otherwise invalid, the AOA recommends communicating that fact promptly to the requesting seller. Previously the FTC recommended responding to prescription demands in the same way a prescriber would answer a verification request, which includes the option to inform a seller that a requested contact lens prescription "is inaccurate, expired or otherwise invalid." If a requested prescription is nearing expiration, a doctor may note that in his or her communication back to the seller. Please note that there is no "passive verification" for a prescription demand, so in all cases the AOA strongly encourages doctors of optometry to communicate with the seller regarding patient-related inquiries.

Doctors should also be aware that failure to comply with Contact Lens Rule regulations can result in legal action including civil monetary penalties of up to \$42,530 per violation.