



HEALTH CARE ALLIANCE FOR
PATIENT SAFETY

FOR IMMEDIATE RELEASE: Tuesday, June 30, 2020

Contact: Health Care Alliance for Patient Safety Press Team

MediaToday@PatientSafetyToday.com

Vision Health Safety Advocates Call FTC Ruling Dangerous; Congressmen Bobby Rush and Michael C. Burgess, M.D. vow to continue working to protect patients

(Alexandria, Va.) – The Health Care Alliance for Patient Safety (APS) today raised concerns about the final Federal Trade Commission Contact (FTC) Lens Rule [that fails to adequately address](#) the dangerous practice of utilizing computer-generated voice calls to verify contact lens prescriptions and places significant burdens on doctors.

In response, APS, together with Congressman Bobby Rush (D-IL) and Congressman Michael C. Burgess, M.D. (R-Texas), vowed to continue their work to pass the [Contact Lens Prescription Verification Modernization Act](#) to protect patients. The bill, H.R. 3975, which is co-sponsored by Congressmen Rush and Burgess, has support from Members of both parties.

“I am admittedly disappointed that the final rule still allows automated recordings for prescription verification,” Congressman Bobby Rush (D-IL) said. **“Our bill, the Contact Lens Prescription Verification Modernization Act, would correct this outrageous loophole by prohibiting automated verification calls, a practice that has no place in verifying sensitive medical information.”**

“I appreciate the FTC updating its Contact Lens Rule to provide increased flexibility for prescription contact lenses. It is critical for patients to receive the correct prescription when ordering contact lenses. The rule requires prescribers to automatically provide a copy of a patient’s prescription and to verify it when provided to third-party sellers. I am disappointed the rule still allows automated recordings for prescription verification, a practice which has led to patient harm when prescriptions have been misunderstood,” Congressman Michael C. Burgess, M.D. said. **“A bill I introduced with Representative Bobby Rush, the Contact Lens Prescription Verification Modernization Act, would fix this and protect consumers. I will continue working to ensure that patients and their doctors continue to be at the center of prescribing and safe use of regulated medical devices”**

Unless patients have provided them with a copy of the prescription, online contact lens sellers are required to verify a contact lens prescription with the prescribing doctor before completing the sale of these medical devices. Many sellers use computer-generated voices and calls, like robocalls, to attempt verification.

However, robocalls – which will be allowed to continue under this FTC ruling – are undependable and require significant follow-up by doctors and their staff, as the information these robocalls provide is often incomplete, impossible to understand or related to a person who has never been a patient of the eye doctor receiving the call. If an optometrist’s office is unable to verify the validity of a prescription within eight business hours, a contact lens prescription is automatically considered “verified” and sold, even if it was not the prescribed lens.

APS has long maintained that a safer, more responsible and efficient verification method would be email, a technology that is cost effective and could provide clear, written communication to ensure patients receive their correct prescription for contact lenses—Class II and III medical devices. It is inconceivable why the FTC chose to adopt a rule that favors this type of verbal communication over a more modern and accepted method like email.

The proposed Contact Lens Prescription Verification Modernization Act increases patient safety by prohibiting prescription verification made via robocall and establishing a paper trail by instead requiring that online sellers use direct communication – a live phone call, fax, or e-mail – to confirm prescriptions.

“The Federal Trade Commission’s final Contact Lens Rule regarding automated calls is seen as dangerous by eye doctors and patients who know that the continued use of antiquated prescription verification technology means incorrect prescriptions will continue to be sent to patients, which could lead to adverse vision health outcomes,” said Dr. Deanna Alexander, O.D., Chairwoman of the Health Care Alliance for Patient Safety. **“APS has been working with Congress to pass legislation to remedy this ill-advised ruling on robocalls from the Federal Trade Commission.**

The final rule from the FTC also places significant burdens on vision doctors by requiring them to collect, maintain and store signed paperwork from a patient acknowledging receipt of their contact lenses. Throughout the FTC’s consideration of the proposed rule, APS suggested modern, informative and less intrusive means of communicating with patients. Unfortunately, the FTC failed to heed this guidance, instead choosing an outdated, burdensome technology.

Dr. Alexander, speaking on the additional burdens placed on doctors through signed acknowledgement forms, said, **“Requiring doctors to maintain and store signed acknowledgement forms for years means adding more costly, administrative burdens that don’t improve patient care and health outcomes. APS will continue to advocate for more effective means of communications with patients that don’t shift physician offices’ focus away from patient care.”**

Background

APS has been active advocates for patient safety throughout the comment period for the Contact Lens Rule. In 2018, the organization submitted its [formal written comment](#), which included the following:

Out-of-Date Methods for Passive-Verification

In the proposed rule in December 2016, the FTC took the position that updates to the methods used in the verification process were not needed “because the current regulatory framework sufficiently prohibits the use of expired prescriptions.” APS believes the current advancements in technology allow for the FTC to issue guidance on new acceptable forms of verification, (e.g. emails) and disallow outdated forms of verification, like robocalls. Many of the outdated methods currently used do not constitute “direct communication” as intended by Congress.

APS supports the passive-verification process. However, advancements in technology now allow both sellers and prescribers to keep electronic health records. FTC action to modernize its guidance around passive-verification communication while excluding antiquated technology (e.g. robocalls) would provide greater documentation and the possibility of greater oversight in the verification process. Greater oversight, understanding and documentation will ultimately create a safer and more efficient environment for contact lens wearers and the verification of their prescriptions through clearer, concise and accurate communication between the prescriber and the seller.

Signed Acknowledgment

In the FTC’s proposed rule, the Commission proposed to require a signed acknowledgment form of prescription release that would allow the patient to acknowledge receipt of their contact lens prescription. In addition, the prescriber would be required to maintain this acknowledgement form for not less than three (3) years so they may be available for inspection by the FTC.

APS understands that the proposed requirement was in response to a small number of claims that suggest that prescribers were not freely giving patients their contact lens prescription as required under the law. In fact, the FTC itself conceded that “many reports of compliance and noncompliance are anecdotal and robust empirical data is sparse.” It is our belief that the Commission’s purpose for the signed acknowledgment form was to educate consumers of their rights while also subjecting doctors to spot investigations regarding the adherence to

the law. APS believes that less intrusive means can be used to educate consumers of their rights to freely receive their prescriptions while also ensuring doctors follow the law.

Signage can inform patients of their rights under the law while at the same time providing a form of communication (e.g. phone number) to report any bad actors. This form of education is less intrusive and less burdensome while arguable more informative than a signed paper acknowledgment. APS urges the Commission to consider signage or other forms of educating consumers of their rights that are less intrusive and less burdensome than a signed acknowledgment form.

###

About the Health Care Alliance for Patient Safety

The Health Care Alliance for Patient Safety, founded in 2018, advocates for eye health and safety and elevates the doctor-patient relationship – the essential foundation of personal health care decision making. Members of the Alliance for Patient Safety work together to raise awareness and protect public health. Advancing policy and collaboration between leading eye health advocates, vision innovators and trusted voices is essential to elevate patient care.

The Alliance is made up of patient safety advocates, eye doctors, contact lens manufacturers and insurers.

To become a local advocate or to get involved in protecting patient safety, visit www.patientsafetytoday.com.