

OPTERNATIVE

October 26, 2015

Chairwoman Edith Ramirez
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Eye-glass Rule Review, Project No. R511996

Dear Chairwoman Ramirez:

We are writing in regards to the Federal Trade Commission's ("Commission") ten-year review of the Eyeglass Rule, 16 CFR Part 456 ("Rule"). The Commission's Advanced Notice of Proposed Rulemaking ("Notice") requests comment on whether there is a continuing need for the Rule and whether some specific modifications should be made to the Rule. As a leading telehealth provider in ophthalmic care, Opternative, Inc. welcomes this opportunity to provide comments to the Commission.

The intent of the Rule is to protect a patient's freedom to choose an ophthalmic eyewear seller by separating the patient's right to obtain a prescription from any obligation to purchase eyewear directly or indirectly from the prescriber. Based on interactions with our patients, Opternative believes that the intent of the Rule is being fulfilled and there is most certainly a continuing need for the Rule, as well as modifications allowing for greater consumer control over obtaining copies of their prescriptions.

One of the modifications proposed in the Notice asks whether the Rule should be expanded to require that prescribers provide a duplicate copy of a prescription to a patient who does not currently have access to their original prescription. Opternative *supports* such a modification as an appropriate expansion of the Rule. This modification is consistent with the original intent and furthers the purpose of the Rule to ensure patients the ability to obtain a prescription from the prescriber without further obligation.

Accordingly, we also *support* the Notice's proposed modification that the Rule be extended to require that a prescriber provide a copy to or verify a prescription with third parties authorized by a patient. The patient should have the right to designate the recipient of the prescription.

In addition to the proposed modification set forth in the Notice, Opternative would also support the inclusion of a time requirement for a prescriber to issue a copy of the prescription. The Commission has already taken a similar approach with the verification time requirement seen in the Contact Lens Rule (16 CFR § 315.5); while we do not necessarily advocate for an 8-business-hour requirement, we do believe a time requirement will lead to better and more consistent outcomes for patients.

In addition to the Rule, these proposed modifications are consistent with a patient's right to access medical records as prescribed in the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA) (45 C.F.R. § 164.524(a)(1), which specifically states that "an individual has a right of access to inspect and *obtain a copy* of protected health information about the individual"

(emphasis added). The patient's prescription is the exact type of health information that was contemplated by HIPAA.

While we, as prescribers, recognize that this modification appears to create a new obligation for the prescriber, we strongly support a patient's right to obtain or authorize the disclosure of a copy of the prescription in furtherance of the patient's right to purchase ophthalmic eyewear from any appropriate retailer without undue consumer constraint. We are willing to take on this burden as prescribers because it will lead to greater consumer choice.

Finally, with regards to the modifications proposed in the Notice that the definition of "prescription" in the Rule be modified to include pupillary distance, Opternative believes that the definition of "prescription" in the Rule should *not* be modified to include pupillary distance. A measurement of pupillary distance is not necessary or appropriate for every patient and every prescription. Ophthalmologists should retain the discretion to determine whether a pupillary distance measurement is necessary for proper ophthalmic correction in the context of the exercise of their professional judgement. Requiring ophthalmologists to measure pupillary distance when it is not medically necessary creates an improper burden for practitioners while inconveniencing patients. There is no compelling reason to support such a requirement on every prescription.

We thank the Commission for the opportunity to provide comment on this Rule, and are available to provide further information if useful.

Sincerely,

Aaron Dallek, CEO
Opternative, Inc.