



Free markets. Real solutions.

R SHEET ON THE PROTECTIONIST BARRIERS THREATENING OCULAR TELEHEALTH

January 2020

BACKGROUND

Access to affordable vision care is incredibly important for Americans. Tens of millions of our citizens struggle with vision problems, and as the population ages, the problem will likely get worse.

In recent years, telehealth vision services, including the ability to buy contact lenses online, have liberated the marketplace and increased access to vision care. However, there remain strong protectionist currents in the industry that could undermine the growth of ocular telehealth in coming years.

Telehealth increases access to eye care for distinct populations, too. Americans who cannot take time off to visit a traditional nine-to-five doctor's office can use the Internet to buy their contact lenses, as can elderly or rural Americans who have limited mobility or are not located near brick-and-mortar vision centers.

Government-administered health programs like Medicaid and Medicare can also reduce the cost to taxpayers through telehealth. Since telehealth entities often have lower overhead than their brick-and-mortar counterparts, the resulting affordability could reduce public expenditures on eye care. This is especially important as the federal government looks for solutions to the impending Medicare crisis.

CURRENT DEBATE

America's contact lens market has long suffered under a protectionist legal regime that stunts consumers' ability to choose lenses at competitive prices. For decades, industry regulations required patients to both obtain prescriptions and purchase their contact lenses from eye doctors. Consequently, consumers were often pressured to buy certain brands and prevented from enjoying the benefits of competition in the market.

SUMMARY

- Telehealth is an important avenue for greater access to vision care.
- Historically, the contact lens industry has protected eye doctors from competition by requiring patients to buy contact lenses directly from them instead of shopping around.
- The FTC should finalize revisions to the Contact Lens Rule that would protect consumers' ability to obtain competitively priced contact lenses.
- Lawmakers must oppose ongoing legislation that seeks to protect the industry from competition.

But in recent years, the telehealth industry brought major advances in access to affordable eye care and vision exams. The ability to renew a prescription or buy contact lenses online has significantly decreased the time and costs associated with ocular health.

The anti-competitive practices employed by optometrists and contact lens manufacturers have come under fire in recent years, leading to encouraging reforms. But they remain an issue; in particular, optometrist groups have resisted efforts to finalize a federal regulation that would cement competition in the contact lens arena, while both federal and state lawmakers have introduced bills that could substantially harm ocular telehealth markets. Given these trends, it's important that policymakers understand the benefits of telehealth technology and the hurdles it currently faces.

ACTION ITEMS

Finalizing the FTC's New Contact Lens Rule

Over a decade ago, in response to persistent complaints about the antiquated legal framework regulating contact lenses, Congress decided to take action. In 2003, it passed the Fairness to Contact Lens Consumers Act, which requires eye doctors to release contact lens prescriptions to patients, thereby allowing them to purchase lenses from third-party vendors. This act brought contact lens regulations in line with [the Eyeglass Rule](#), which requires eye doctors to release glasses prescriptions to patients.

The Federal Trade Commission, tasked with enforcing the law, finalized its [Contact Lens Rule](#) in 2004, further clarifying that patients cannot be forced to buy prescription lenses from their prescribing doctors. The rule also barred optometrists from charging fees for prescriptions and allowed third-party retailers to issue lenses to a patient if an optometrist did not release their prescription in a timely manner.

The rule [increased](#) in the number of Americans who purchased lenses (from 36 million in 2005 to nearly 41 million in 2015). While the Contact Lens Rule created important changes in contact lens markets, many eye doctors failed to adhere to it or proved recalcitrant.

Because of this, the FTC has considered amendments to the Contact Lens Rule for nearly four years, including a requirement that eye doctors obtain signed acknowledgement forms from patients informing them of their rights to get a prescription copy. The FTC should promptly finalize this commonsense revision to increase compliance with the rule and, in turn, provide far-reaching benefits for consumers.

Resisting Protectionist Laws

While limiting access to ocular telehealth hurts consumers and patients, the beneficiaries of such protectionism are incumbent ophthalmologists and optometrists. As noted, these groups often engage in protectionist behavior in an attempt to insulate themselves from increased competition.

This dynamic has spurred [anti-telehealth bills](#) at the state and federal levels. For example, several states have [pursued](#) and/or [enacted legislation](#) that would ban online contact lens prescription renewals by requiring an in-person examination.

Additionally, a [federal bill](#) seeking to ban the use of pre-recorded calls by third parties to verify patient prescriptions with optometrists was introduced in the U.S. House of Representatives just this year.

While the justification for the legislation is to crack down on so-called “robocalls,” the reality is that recorded calls are a routine mechanism for verifying lens prescriptions, and there is no evidence that their use has created any problems to date. It’s yet another effort by the industry to limit competition from third-party sellers.

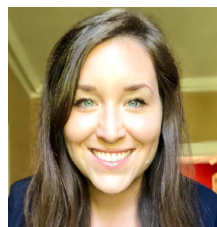
While the Contact Lens Rule did shift away from protectionism toward increased competition in the contact lens marketplace, there are still ocular telehealth battles to be won. Prescriptions for contact lenses should not be held hostage by a protectionist industry at the cost of convenience and accessibility for patients. Lawmakers at all levels of government should make resisting protectionist legislative and regulatory efforts a priority in 2020.

CONTACT US

For more information on this subject, contact the R Street Institute, 1212 New York Ave. N.W., Washington, D.C. 20005, 202-525-5717.



Jarrett Dieterle
Director, Commercial Freedom
jdieterle@rstreet.org



Courtney Joslin
Fellow, Commercial Freedom
cjoslin@rstreet.org