Dear Senators Thune, Nelson, Alexander and Murray:

On behalf of the National Association of Optometrists and Opticians (NAOO), a national organization representing the retail optical industry and its thousands of employed and affiliated optometrists and opticians, I write today to express NAOO’s strong opposition to S. 2777, the Contact Lens Consumer Health Protection Act of 2016.

This ill-conceived legislation would roll back the clock to a time before consumers enjoyed the convenience, choice and benefits of price competition provided by a robust, competitive contact lens marketplace.

NAOO is consumer-service oriented, dedicated to the proposition that the consumer’s visual care needs are met most completely and economically by the free market, in the tradition of the American business system. NAOO members collectively represent nearly 9000 co-located eye care offices and optical dispensaries serving millions of patients and eyewear customers each year. Our members offer consumers the convenience of optical dispensaries (staffed with opticians) that are co-located with eye care services from independent eye care providers (typically optometrists) who prescribe corrective eyewear and perform eye health examinations. These forms of practice offer an alternative to the traditional practice modalities where either there is no on-site eye care available to an optician’s customers, or where the eye care patient is tied or at least strongly induced through a variety of practices to become a customer of the dispensary owned and operated by an optometrist who is also the prescriber. Most NAOO members also offer e-commerce optical retailing to customers, including both contact lenses and eyeglasses.

S. 2777 is not, as suggested by its supporters, about any legitimate patient health concerns. It is simply an effort to gut the main provisions of the highly successful, bipartisan 2003 Fairness to Contact Lens Consumers Act (the FCLCA). Passage of the FCLCA provided to the nation’s 40 million contact lens wearers the choice and freedom eyeglasses users had enjoyed for years. The ability to take your prescription from the doctor’s office and comparison shop created by the FCLCA led to the creation of a large, competitive marketplace, as is almost always the case in consumer product

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markets. As a result, contact lens prices decreased and the number of vendors and method of delivery became more innovative. Discount and online sales became options nearly overnight.

In gutting FCLCA, particularly the ability to presume that a prescription is valid when a prescriber has not responded to a request for verification, consumers would be returned to the world before the FCLCA. Many prescribers would simply not respond to requests for verification of contact lens prescriptions and would impose barriers to patient requests for a copy of their prescription. Our members see these practices in action not just in the contact lens market, but also in that for eyeglasses when trying to confirm or clarify a prescription. We are aware of instances where prescribers incorrectly inform patients that HIPAA or other laws require written authorization from the patient or face-to-face requests by the patient to the prescriber.

Our members are also on the other side of the verification process – we receive requests for verification of contact lens prescriptions. The process is not intrusive, the information received from sellers is clear and complete and we are given appropriate opportunity to respond accordingly. In our collective experience, claims that the process does not work are simply an effort by a minority of prescribers that do not want to comply with a well thought out process or that hope the government will come to their competitive rescue. Our members have and continue to welcome competition in the marketplace and the challenges of offering good value and high quality to keep consumers coming back to us for products and service.

Other provisions of S. 2777 are simply alternative approaches to allow a prescriber to dodge the requirement to verify the prescription by delaying well developed processes in FCLCA and FTC rules to ensure the consumer’s ability to purchase lenses from the seller of choice. Existing law allows the prescriber to indicate if the prescription is either invalid or inaccurate but also requires that the prescriber indicate why and offer the correct prescription. The existing system works. S. 2777, by allowing the prescriber to raise vague questions or concerns and thereby stop the clock on verification, or require only certain methods of communication between seller and prescriber, are not-so-veiled attempts to kill the verification process and frustrate the consumer’s desire to purchase refills for their lenses.

FCLCA and the resulting FTC rules work for consumers. The rules have been tweaked since their inception and the FTC is reviewing them as we speak. The work of the Commission and its enforcement of the rules should be allowed to continue. S. 2777 is simply the latest in a long line of seemingly never-ending attempts to undermine the FCLCA. It is an anti-competitive approach that was soundly rejected by Congress in the past and should be rejected again. It is an attempt by legislative fiat to take money from the pockets of consumers and move it onto the balance sheets of those optometrists for whom retail sales of glasses and lenses – rather than providing eye health services – is the primary income driver. It would deprive consumers of choice and convenience, and raise contact lens prices.

NAOO urges you to stand up for consumers and oppose S. 2777 in the strongest possible terms. For further information or follow up, please contact Joe Neville at joebneville@gmail.com.

Sincerely,

Jeff Smith, O.D., MBA
President, NAOO and AOA Member

Joseph B. Neville
Executive Director, NAOO

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