



Presents

The Practice of
Optometry under
Indiana law
A Two-Hour
Continuing
Education Course

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ASSOCIATION

Disclaimer

- ▶ This course was prepared by the Indiana Optometric Association, a nonprofit association doing business as Indiana Optometry. Neither the Indiana Optometric Association nor the author provide legal services or advice. By viewing this course, you acknowledge that any use of this course does not create an attorney-client relationship between you and the Indiana Optometric Association or any of its employees, officers, or trustees.
- ▶ No continuing education course can cover all of the laws that affect your practice. For example, The Patient Protection and Affordable Care Act (PPACA) dramatically affects you and your patients; but it is not covered in this course.
- ▶ The purpose of the course is to provide you with useful basic information.
- ▶ Your private health care attorney and medical malpractice insurance carrier are good sources of advice for specific questions.

The Practice of Optometry

- ▶ Optometry is a legislated profession. This means that what you can do in your practice is governed by state and federal statutes and rules.
- ▶ The Indiana General Assembly defines the scope of practice of optometrists and other health professionals in Indiana. The Indiana Optometry Board administers and enforces the statutes enacted by the Indiana General Assembly.
- ▶ You can find the Optometry Practice Act at Indiana Code 25-24-1 <http://iga.in.gov/legislative/laws/2020/ic/titles/025/#25-24> and the Optometry rules at Title 852 of the Indiana Administrative Code. [http://iac.iga.in.gov/iac/iac_title?iact=852&iaca=&submit="+Go+](http://iac.iga.in.gov/iac/iac_title?iact=852&iaca=&submit=)
- ▶ There are many other statutes and rules at the state and federal level that apply to your practice.

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- ▶ On March 9, 1907 the Indiana General Assembly approved an act in order to establish the State Board of Registration and Examination in Optometry to define and regulate the practice of optometry.
 - ▶ Indiana Code 25-24-1-1 establishes the Indiana Optometry Board which consists of (5) members including four (4) optometrists and one (1) consumer member, all of whom are appointed by the Governor to a term of three (3) or four (4) years.

Indiana Optometry Board

Indiana Optometry Board

- ▶ The Optometry Board is appointed by the Governor to regulate the practice of optometry.
- ▶ The Optometry Board issues optometry licenses and optometric legend drug certificates.
- ▶ The Optometry Board promulgates administrative rules setting standards for licensure and practice of optometry.

Indiana Optometry Board

Indiana law provides that the board has the responsibility to safeguard the citizens of Indiana by regulating the practice of optometry by licensed professionals.

The board does not directly advocate for the profession; it advocates for the citizens by enforcing the laws regulating optometrists.

Board responsibilities

- ▶ The board issues licenses and legend drug certificates to qualified applicants.
- ▶ The board establishes continuing education requirements for license and legend drug certificate renewal.
- ▶ The board sets standards for competent practice.
- ▶ The board reviews and imposes disciplinary sanctions for violations of the law committed by optometrists.

Board responsibilities

- ▶ The Board may suspend, revoke, or place a licensee on probation for:
 - ▶ Violating a statute or rule
 - ▶ Committing a criminal offense
 - ▶ Failing to meet renewal requirements
- ▶ The Board can order an unlicensed individual to cease and desist from the practice of optometry.

Unlicensed Practice

- ▶ **Violation**- Under IC 25-24-1-18, a person who practices optometry without possessing a valid license commits a Class B misdemeanor
- ▶ **Cease and Desist Order** - Under IC 25-1-7-14, the Indiana Optometry Board may file a complaint with the attorney general if it believes that a person who is not licensed is engaged in activities for which a license is required

Unlawful Contact Lens Dispensing

- ▶ **Unlawful Contact Lens Dispensing** – A person who dispenses a contact lens, including a contact lens without corrective power, to an individual who does not have a prescription for the contact lens being dispensed commits a Class A infraction
- ▶ [IC 35-45-20](#)

Injections Prohibition History

- ▶ At the end of 2013, the prohibition against optometrists performing injections was lifted. The history of the prohibition is important to understanding how the practice of optometry has changed over the years.
- ▶ In 1991 legislation was passed that established the Indiana Optometric Legend Drug Prescription Advisory Committee (OLDPAC): This state regulatory body was composed of two physicians, two optometrists, a pharmacist and a consumer member. OLDPAC's statutory purpose was to establish and maintain an Optometric formulary and to set educational requirements for OD prescribing. Shortly after its formation, OLDPAC established a rule that banned OD-provided injections of any type.

Injections Prohibition History

- ▶ In 2006, Governor Mitch Daniels sought to reduce the size of government by eliminating unnecessary boards, commissions, and committees. By that time, OLDPAC's formulary stated that it included: "Sec. 16. (a) Any legend drug for the treatment of the eye or associated structures of the eye."
- ▶ The Indiana General Assembly complied with the Governor's wishes and legislation was passed to eliminate OLDPAC and move all of its regulations and functions under the Indiana Optometry Board. Included among the rules transferred to the IOB was the rule prohibiting OD-provided injections.

Injections prohibition lifted

- ▶ Under Indiana law, a rule adopted by a board expires at the end of seven years unless the board takes proactive action to readopt the rule.
- ▶ The OD injection ban finally came to an end when the rule reached its seven year expiration date on December 31, 2013.
- ▶ While Indiana Optometrists are now permitted to use injections in their practices, before doing so a doctor needs to make sure that he or she has the training and skills to do so. In addition, the wise practitioner will check with his or her malpractice insurance carrier to ensure that the practitioner's coverage includes the use of injections.
- ▶ In 2017, Indiana Medicaid added several injectable procedure codes to the Optometrist Code Set.

Telemedicine

- ▶ During the 2020 session of the Indiana General Assembly, a new law was enacted that made significant changes to statutes regulating Telemedicine Services and Prescriptions. You can read [IC 25-1-9.5 here](#).
- ▶ The telemedicine law includes optometrists in the list of providers authorized to engage in telemedicine and issue prescriptions for medication through telemedicine.

Telemedicine

- ▶ The new law:
 - ▶ Removes the restriction on the prescribing of ophthalmic devices through telemedicine and sets conditions on when a provider may, through telemedicine, prescribe medical devices.
 - ▶ Establishes conditions that must be met before a prescriber may issue a prescription for an ophthalmic device through telemedicine.
 - ▶ Prohibits making changes and substitutions to a prescription for contact lenses or prescription eyeglasses unless under the direction of the prescriber.
 - ▶ States that a prescriber is not liable for any damage or injury to an individual resulting from the packaging, manufacturing, or dispensing of the contact lenses or prescription eyeglasses unless the prescriber is also the seller.

Disciplinary Actions

- ▶ The Consumer Protection Division of the Office of the Attorney General is responsible for the investigation of complaints concerning licensees. IC 25-1-7-3
- ▶ The Board holds hearings concerning alleged violations and imposes sanctions when a violation is found.

Acts that can get an OD into trouble

- ▶ There are many acts that constitute a violation of the law. Some of the more common violations by health care professionals include:
 - ▶ Fraud or material deception in the course of professional services
 - ▶ Advertising in a false or misleading manner
 - ▶ Engaging in fraudulent billing practices under Medicaid, Medicare, HIP, and 3rd party insurance
 - ▶ Professional Incompetence

Acts that can get an OD into trouble

- ▶ What constitutes Professional Incompetence?
 - ▶ Undertaking acts the optometrist is not qualified by training or experience to undertake
 - ▶ Failing to keep abreast of current professional theory or practice
 - ▶ Physical or mental disability
 - ▶ Addiction to, abuse of, or severe dependency on alcohol or other drugs that impair the optometrist's ability to practice competently
 - ▶ Drug diversion

A Cautionary Tale

- ▶ A doctor (although not an optometrist) developed an addiction to alcohol while in school. He was able to hide his addiction for a while. After a few years in practice, he began showing up impaired at work. One day, the doctor, who was also the county coroner, attempted to make a citizen's arrest of a pizza delivery driver that he thought was driving erratically. Both drivers were stopped by the police. The doctor was the one who was arrested, and his impairment was reported to the state licensing board.
- ▶ The doctor's license was suspended on an emergency basis. The doctor admitted that he had a problem but assured the board that he was not an alcoholic and that he would not see patients if he was impaired.
- ▶ After a hearing, the board ordered that his license would remain on suspension until he successfully completed a rehabilitation program. He did not get his license back for several years.
- ▶ Unbelievable as it seems, this really happened. It is an extreme example but, it demonstrates the serious ramifications of practicing while impaired.

Acts that can get an OD into trouble

- ▶ Prescribing, selling, or administering drugs other than as permitted by law
- ▶ Engaging in lewd or immoral conduct in connection with delivery of services to the public
- ▶ Failing to comply with an order of the board
- ▶ Engaging in sexual contact with a patient or using the doctor-patient relationship to solicit sexual contact with a patient under the doctor's care

Acts that can get an OD into trouble

- ▶ There is a specific statutory requirement governing the employment of optometrists.
- ▶ An optometrist may be disciplined for accepting employment to practice optometry from a person other than:
 - ▶ A professional corporation formed by an optometrist
 - ▶ A licensed Indiana optometrist whose legal residence is in Indiana.
- ▶ An optometrist may work as an independent contractor for a non-optometry corporation or business.

Even More Acts that can get an OD into trouble

- ▶ There are other laws that optometrists need to be aware of that can result in discipline or loss of license:
 - ▶ An optometrist's license may be placed on probation or suspended if the optometrist is **delinquent in paying child support**. IC 25-1-1.2
 - ▶ Failure to pay taxes resulting in being placed on the **tax warrant** list by the state department of revenue requires the board to deny the renewal of the OD's license until the taxes are paid. IC 25-1-6-8. The board does not have discretion in this instance; the license renewal must be denied. No hearing before the board is required.
 - ▶ The board may suspend, deny or revoke a license of an OD who is convicted of illegal drug possession. IC 25-1-1.1
 - ▶ The board **must** suspend or revoke the license of an OD who is convicted of dealing drugs. IC 25-1-1.1

Record Keeping Requirements and Patient Requests for Records

- ▶ The requirements for maintaining and releasing patient health records are found in IC 16-39-7.
- ▶ An optometrist must maintain the original health records or microfilms of the records for at least seven (7) years.
- ▶ On written request and reasonable notice, a provider must provide to the patient the health records possessed by the provider concerning the patient.
- ▶ Note that contact lens prescription release requirements are somewhat different and are considered separately in this presentation.

Record Keeping Requirements and Patient Requests for Records

- ▶ You may charge a fee for making and providing copies of records but, you must not charge more than the fees permitted under [760 IAC 1-71-3](#), a rule of the Indiana Department of Insurance.
- ▶ You may waive charges or reduce charges for copies and you must consider doing this if the request comes from a provider to whom you have referred the patient or if the patient is seeking a second opinion. You must consider waiving or reducing the fees if the fees will create an undue financial hardship on the patient.
- ▶ The rule provides that not more than the following may be charged:
 - ▶ One dollar (\$1) per page for the first ten (10) pages.
 - ▶ Fifty cents (\$.50) per page for pages eleven (11) through fifty (50).
 - ▶ Twenty-five cents (\$.25) per page for pages fifty-one (51) and higher.

Record Keeping Requirements and Patient Requests for Records

- ▶ The rule provides that the provider or the medical records company may collect a labor fee not to exceed twenty dollars (\$20). If the provider or medical records company collects a labor fee, the provider or medical records company may not charge for making and providing copies of the first ten (10) pages of a medical record.
- ▶ The provider or medical records company may charge the actual costs of mailing the medical record.
- ▶ The provider or the medical records company may collect an additional ten dollars (\$10) if the request is for copies to be provided within two (2) working days.
- ▶ The provider or medical records company may collect a charge not to exceed twenty dollars (\$20) for certifying a patient's medical record.
- ▶ Federal HIPAA laws require a covered entity to act on a request for access to medical records within thirty (30) days. As a result, an optometrist must either grant access to medical records or provide a justified denial of access within thirty (30) days of receipt of the request for release. [45 CFR § 164.524\(b\)\(2\)](#).

Record Keeping Requirements and Patient Requests for Records

- ▶ Providers under all Indiana Health Coverage Programs (IHCP) are NOT permitted to charge for copies or transfers of medical records of IHCP members (patients).
- ▶ The IOB has the authority to impose disciplinary action on a practitioner who fails to maintain records as required or who fails to provide copies as required.
- ▶ Can you withhold records of patients who owe you money for your professional services until the patient pays for the services? Indiana law isn't entirely clear on this (with the exception of the IHCP requirements). However, before you withhold records, consider that the Medical Licensing Board has imposed discipline against a physician for refusing to release the copies until the patient paid.
- ▶ If you are a Covered Entity under HIPAA, you cannot deny your patients a copy of the patient's records because the patient has not paid for services you provided. However, you may charge the reasonable costs for copying and mailing the records.

Discontinuation of Practice

- ▶ Upon retirement or upon discontinuing practice in a community, an optometrist must do the following:
 - ▶ notify all of active patients in writing, or by publication once a week for three (3) consecutive weeks, in a newspaper of general circulation in the community, that he or she intends to discontinue his or her practice of optometry in the community, and
 - ▶ encourage his or her patients to seek the services of another licensed practitioner.
- ▶ The optometrist discontinuing practice shall make reasonable arrangements with his or her active patients for the transfer of his records, or copies, thereof, to the succeeding practitioner or an optometric association approved by the board.
- ▶ 852 IAC 1-12-5

Withdrawing from a case

- ▶ The optometrist shall give reasonable written notice to an active patient or those responsible for the patient's care when the optometrist withdraws from a case so that another optometrist may be employed to provide care.
- ▶ 852 IAC 1-12-1

Retirement, discontinuation of practice, transfer of patient

- ▶ An active patient is a person whom the optometrist has examined, cared for, or otherwise consulted with, during the two years prior to transferring a patient, retirement, or discontinuing a practice in a community. 852 IAC 1-12-2
- ▶ Abandoning patients is prohibited and is cause for disciplinary action.

Notification of Practice Location

- ▶ An optometry practice location must have appropriate signage. According to the rules of the IOB, there must be a sign that is clearly visible to the public and which includes the names of all practitioners practicing at that location.
- ▶ An optometrist must notify the IOB within 30 days of the establishment or discontinuation of an office for the practice of optometry.
- ▶ 852 IAC 1-15-2

Display of License

- ▶ The Optometry Practice Act requires all licensed optometrists to display their license in a conspicuous part of the practice location.
- ▶ If the optometrist is practicing optometry outside of the office, the optometrist has an obligation to make available to each patient or person fitted with ophthalmic materials the optometrist's name, office address, and license number.
- ▶ IC 25-24-1-12

Continuing Education Requirements

- ▶ The Indiana Optometry Board periodically adopts amended and new rules. You can read the continuing education rules here:
[http://iac.iga.in.gov/iac/iac_title?iact=852&iaca=&submit="+Go+](http://iac.iga.in.gov/iac/iac_title?iact=852&iaca=&submit=)

Continuing Education Requirements

- ▶ Twenty (20) hours of continuing education is required for renewal of an optometry license. However, as part of the twenty (20) hour requirement a licensed optometrist is required to complete two (2) hours of continuing education in any of the following areas:
 - ▶ (1) Medical charting.
 - ▶ (2) Billing and coding.
 - ▶ (3) Health care compliance.
 - ▶ (4) Compliance with federal or Indiana state laws or regulations.

Continuing Education Requirements

- ▶ An additional twenty (20) hours of continuing education is required for renewal of an optometric legend drug certificate.
- ▶ In 2019, the Indiana General Assembly passed legislation (SEA225) requiring that health care practitioners who hold a Controlled Substances Registration must complete two hours of continuing education addressing the topic of opioid prescribing and opioid abuse.
 - ▶ This provision applies to all optometrists who are registered to prescribe Tramadol.
 - ▶ The two hours earned under this requirement count toward the twenty hour legend drug credit requirement.

Continuing Education Requirements

- ▶ Continuing education credit units or clock hours:
 - ▶ (1) must be obtained within the biennial renewal period; and
 - ▶ (2) may not be carried over from one (1) licensure period to another.
- ▶ A course is eligible for credit only once in a renewal cycle regardless of the number of times it is attended.
- ▶ Any continuing education hours that are counted toward the renewal of a licensee's optometry license may not be counted toward the renewal of the licensee's optometric legend drug certificate.

Continuing Education Requirements

- ▶ **All online CE is considered self-study under the rules of the Indiana Optometry Board.**
- ▶ This includes online seminars advertised as “live”.
- ▶ IOB rules limit self-study credit for the optometry license and the optometric legend drug certificate to 8 hours over the two-year license period.
- ▶ IOB rules require that to be accepted as continuing education for optometry license and optometric legend drug certificate renewal, **self-study methods of presentation must include a written examination or post-evaluation.**

Continuing Education Requirements

- ▶ You can choose how to distribute your self-study credit. For example, you could choose to take eight hours of self-study courses that meet the requirements for legend drug continuing education and apply them all to the renewal of your legend drug certificate. You would then need to obtain the remaining twelve (12) hours of legend drug continuing education and all twenty (20) hours of continuing education for your license renewal by attending live courses.

Continuing Education Requirements

- ▶ The IOB passed a rule that will allow you to claim up to two (2) hours of optometric license continuing education credit each renewal period for completion of a basic life support (BLS) or cardiopulmonary resuscitation (CPR) course approved by the American Heart Association, the American Red Cross, or a provider approved by the board.
- ▶ Finally, the rules allow an optometrist who acts as a speaker, lecturer, or other presenter to be awarded one hour of continuing education credit for each hour of the continuing education course taught. Speakers can earn up to four (4) hours of credit for each renewal period; but the presentation is eligible for credit only once regardless of the number of times it is presented.

Continuing Education Requirements

The IOB conducts audits for continuing education compliance after every renewal.

Failure to comply with the continuing education requirements may result in the suspension of an optometrist's license and substantial fines.

Criminal History Background Checks

- ▶ An individual applying for an initial license to practice optometry shall submit to a national criminal history background check at the cost of the individual. This law applies to all health care professionals seeking licensure in Indiana. IC 25-1-1.1-4
- ▶ The same law provides that the IOB may conduct a random audit and require an optometrist seeking a renewal of a license to submit to a national criminal history background check at the cost of the optometrist.

Malpractice and the Patients Compensation Fund

- ▶ In 1975, Indiana became the first state to pass medical malpractice reform legislation. It has withstood many legal challenges over the years.
- ▶ Optometrists are not required by Indiana law to maintain any malpractice insurance. However, employers and payers usually require it.
- ▶ The Patient's Compensation Fund (PCF) provides for a cap on liability that helps keep insurance rates lower than rates in other states that do not have caps on damages. It allows more practitioners to be able to afford to practice in Indiana, thereby increasing patient access to care.
- ▶ In order to qualify for the protections (capped liability) provided under Indiana law, optometrists must purchase commercial insurance and pay a surcharge to the Patient's Compensation Fund. Your malpractice carrier should be familiar with the process. The surcharge amount varies by practitioner type. Surcharges for optometrists are quite low compared to medical doctors.

Malpractice and the Patients Compensation Fund

- ▶ For practitioners participating in the PCF, effective July 1, 2020 total damages available to a patient for an act of malpractice are capped at \$1.8 million.
- ▶ Optometrists and other covered practitioners are only responsible for the first \$500,000 in damages to any patient for one act of malpractice and not more than \$1.5 million in the annual aggregate.
- ▶ The Indiana Patient's Compensation Fund (PCF) pays any excess over the first \$500,000 in damages, not to exceed \$1.3 million, for a total of \$1.8 million.

Malpractice and the Patients Compensation Fund

- ▶ There are deadlines for filing malpractice claims. Patients must file malpractice claims within two (2) years from the alleged act of malpractice. Minors under the age of six (6) have until their eighth birthday to file. In limited circumstances, courts have allowed patients to file their claim after these time limits have expired if the patient could not have reasonably discovered the malpractice within that time.

The Contact Lens Rule

- ▶ The Contact Lens Rule was amended in 2020 with an effective date of October 16, 2020.
- ▶ The Fairness to Contact Lens Consumers Act, enforced by the Federal Trade Commission, gives consumers certain rights, and imposes duties on contact lens prescribers and sellers. The intent of the Act is to increase consumers' ability to shop around when buying contact lenses.
- ▶ Prescribers 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.
 - ▶ Provide or verify the contact lens prescription to anyone who is designated to act on behalf of the patient, including contact lens sellers.

The Contact Lens Rule

- ▶ How the Rule Changes Affect Prescribers*:
- ▶ After a contact lens fitting, you'll have to confirm in one of four ways that patients have gotten their prescriptions:
 - ▶ ask the patient to acknowledge receipt by signing a separate confirmation statement
 - ▶ ask the patient to sign a prescriber-retained copy of the prescription that has a statement confirming the patient has got it
 - ▶ ask the patient to sign a prescriber-retained copy of the sales receipt for the examination that has a statement confirming the patient got the prescription, or
 - ▶ with the patient's permission, give the patient a digital copy of the prescription, and keep a record that it was sent, received, or made accessible, downloadable, and printable.
 - ▶ [*https://www.ftc.gov/news-events/blogs/business-blog/2020/06/ftc-updates-contact-lens-rule-what-it-means-prescribers](https://www.ftc.gov/news-events/blogs/business-blog/2020/06/ftc-updates-contact-lens-rule-what-it-means-prescribers)

The Contact Lens Rule

- ▶ How the Rule Changes Affect Prescribers continued*:
- ▶ You must keep the record of consent when you provide a paper copy of the prescription.
- ▶ New definition of “provide the patient a copy” – You’re now allowed, with the patient’s verifiable consent, to give the patient a digital copy of his or her prescription instead of a paper copy. When asking for consent, you must obtain consent to the specific form of electronic delivery that you will use. You must also keep a record of the patient’s consent for three years.
- ▶ Additional copy of prescription – When patients, or their designated agents, ask for an extra copy of their prescription, you must give it to them within 40 business hours.
- ▶ *<https://www.ftc.gov/news-events/blogs/business-blog/2020/06/ftc-updates-contact-lens-rule-what-it-means-prescribers>

The Contact Lens Rule

- ▶ In any response to a verification request, prescribers must correct any inaccuracy in the prescription, inform the seller if it is expired and specify the reason if it is invalid.
- ▶ Prescribers cannot require patients to
 - ▶ Buy contact lenses
 - ▶ Pay additional fees or
 - ▶ Sign a waiver or release in exchange for a copy of the contact lens prescription

The Contact Lens Rule

- ▶ Prescribers may require a patient to pay for the eye examination, fitting, and evaluation before giving the patient a copy of the contact lens prescription, but only if the prescriber also requires immediate payment from patients whose eye exams reveal no need for glasses, contact lenses, or other corrective eye care products.
- ▶ Proof of valid insurance coverage counts as payment for purposes of this requirement.
- ▶ Prescribers cannot disclaim liability or responsibility for the accuracy of the eye examination.

The Contact Lens Rule

- ▶ According to the Federal Trade Commission Bureau of Consumer Protection:
 - ▶ You must give the patient a copy of their contact lens prescription when the lens fitting is complete. Some patients may require follow-up visits after the initial exam and before their contact lens fitting is complete. All follow-up examinations must be medically necessary, and eye care providers should use sound professional judgment – based upon appropriate and objective standards of care – to make that judgment.

The Contact Lens Rule

- ▶ You are not required to provide the contact lens prescription to the patient before the fitting is complete.
- ▶ **Caveat:** If you are prepared to sell the patient contact lenses, you cannot refuse to give the patient a copy of their prescription on the grounds that their fitting isn't complete. In other words, if you are willing to sell the patient lenses, their fitting is complete, and you must give them a copy of the prescription.
- ▶ You may charge a patient for trial lenses but ONLY if the trial lenses are necessary to complete the fitting process. This is sometimes the case with some "specialty" or custom-made lenses. You may not otherwise require a patient to buy contact lenses as a condition of giving them a copy of their prescription.

The Contact Lens Rule

- ▶ Prescription Expiration
 - ▶ The Rule allows prescribers to set prescription expiration dates – one year or more from the date the prescription is issued to a patient. If applicable state law requires a specific expiration period that is longer than one year, however, the prescriber must follow that law.
 - ▶ The rules of the Indiana Optometry Board state that the optometrist has the duty to determine the expiration of the contact lens prescription and that the prescription expiration shall not exceed one (1) year from the date of issuance. (852 IAC 1-5.1-1)

The Contact Lens Rule

- ▶ Prescription Expiration Continued
 - ▶ A prescriber may set an expiration date of earlier than one year only if that date is based on the prescriber's medical judgment about the patient's eye health. In these cases, the prescriber must document the medical reason for the shorter expiration date with enough detail to allow for review by a qualified medical professional and maintain the records for at least three years.
 - ▶ Note that the records must be maintained for at least seven (7) years under Indiana law (IC 16-39-1). Follow the Indiana law as it is more restrictive.

The Contact Lens Rule

- ▶ How the 2020 Rule Changes Affect Sellers of Contact Lenses:
- ▶ If a seller uses automated telephone messages to prescribers to verify a prescription the seller must:
 - ▶ record the entire call and preserve the complete recording
 - ▶ start the call by identifying it as a prescription verification request, in accordance with the Rule
 - ▶ deliver the verification message in a slow and deliberate manner and at a volume the prescriber can hear, and
 - ▶ make the message repeatable, at the prescriber's request.

The Contact Lens Rule

- ▶ Prescription alterations – Sellers must have a clear and easy way for customers to give the seller a copy of their prescription (for example, by e-mail, text message, or file upload), before the seller can ask for the prescriber’s information to verify the order.
- ▶ The Rule already prohibits prescription alteration. But the amended Rule defines alteration to include sellers, in a verification request, changing the brand or manufacturer from that prescribed to the customer. The only exception is if the seller submitted a verification request for a brand that the customer told the seller is listed on their prescription. To qualify for this exception, the seller must ask the customer to give the seller the manufacturer or brand listed on their prescription. The customer must then respond by affirmatively naming their brand. For private label lenses, however, the seller can substitute identical contact lenses made by the same manufacturer and sold under a different name.
- ▶ Learn more about prescriber and seller responsibilities by reading [The Contact Lens Rule: A Guide for Prescribers and Sellers and FAQs: Complying with the Contact Lens Rule.](#)

The Eyeglass Rule

- ▶ The Federal Trade Commission enforces the Eyeglass Rule. The Eyeglass Rule is not the same as the Contact Lens Rule.
- ▶ You must give your patients a copy of their eyeglass prescription at the end of the eye examination, at no extra cost, whether or not the patient asks for it.
- ▶ You may not refuse to provide an eye examination if the patient does not agree to buy eyeglasses from your practice. The rule prohibits optometrists and ophthalmologists from conditioning the availability of an eye exam on a requirement that patients agree to buy their ophthalmic goods from the optometrist or ophthalmologist.

The Eyeglass Rule

- ▶ Indiana optometrists are not required to put expiration dates on eyeglass prescriptions.
- ▶ However, if an optometrist puts an expiration date on an eyeglass prescription, it is not valid after that date.
- ▶ If the prescription contains an expiration date and that date has passed, the OD does not have to release an expired prescription.

The Eyeglass Rule

- ▶ You may not charge a fee for releasing the prescription in addition to the agreed upon fee for the examination.
- ▶ The pupillary distance measurement is not required to be included on the prescription.
- ▶ You are not prohibited from charging a fee for providing the PD measurement.
- ▶ You are not prohibited from charging for adjustments if the glasses are purchased elsewhere.

The Eyeglass Rule

You may charge for verifying eyeglasses dispensed by an outside source to make sure the glasses were made correctly.

Whether or not you should charge for providing PD measurements, adjustments, and verification of ophthalmic goods depends on your business model and your strategy to compete in the market.

The Eyeglass Rule

You may not disclaim or waive liability or responsibility of the optometrist for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

However, the FTC rules state that in prohibiting the use of waivers and disclaimers of liability, it is not the Commission's intent to impose liability on an optometrist for the ophthalmic goods and services dispensed by another seller pursuant to the optometrist's prescription.

Interpreters for Limited English Proficiency Patients

- ▶ The Civil Rights Act provides that if you, as a provider, receive federal assistance (e.g., Medicare or Medicaid), you must take reasonable steps to provide meaningful access to Limited English Proficient (LEP) patients.
- ▶ The Office of Civil Rights suggests that you, as the provider, make the patient aware that he or she has the option of having you provide an interpreter without charge or of using his or her own interpreter.

Interpreters for Limited English Proficiency Patients

- ▶ You cannot charge the patient or the patient's insurance company for the interpreter. You must incur the cost.
- ▶ You cannot require the LEP patient to use family members or friends as interpreters.
- ▶ Even if the patient is agreeable to using a family member or a friend as an interpreter, you should consider whether the family member or friend is competent to provide the services, or if there are confidentiality issues to consider.

Auxiliary Aids and Interpreters for Hearing Impaired Patients

- ▶ Patients who are hearing impaired fall under the Americans with Disabilities Act.
- ▶ Under the Americans with Disabilities Act (ADA), optometrists' offices are considered places of public accommodation and must comply with the ADA.
- ▶ You may not deny services to a hearing impaired person or treat them differently than other patients.
- ▶ You must provide auxiliary aids and services unless you can demonstrate that to do so would result in an undue burden, i.e., significant difficulty or expense.

Auxiliary Aids and Interpreters for Hearing Impaired Patients

- ▶ The undue burden argument under the ADA is not likely to be helpful as the question of whether the accommodation is a significant difficulty or expense is not determined on the basis of whether you will lose money on this patient. Instead, the courts have said that the burden is compared to the overall yearly budget for an optometric office.
- ▶ Auxiliary Aids include qualified interpreters and note takers as well as other effective methods of communicating to patients with hearing impairments.
- ▶ You **cannot** charge the patient or the patient's insurance company for the cost of the auxiliary aids or interpreter.

Auxiliary Aids and Interpreters for Hearing Impaired Patients

- ▶ If no satisfactory alternative is available, you must provide a sign language interpreter.
- ▶ Although there may be alternatives to a sign language interpreter that you consider reasonable, your patient may disagree. You must then consider whether it is worth taking the risk of a lawsuit being filed against you by refusing to obtain a sign language interpreter.

Auxiliary Aids and Interpreters for Hearing Impaired Patients

- ▶ You cannot turn away a new patient merely because the patient requested a sign language interpreter.
- ▶ You cannot transfer the patient to another medical provider merely because the patient is hearing impaired or requests a sign language interpreter.
- ▶ Check with your malpractice insurance carrier for guidance and to see if the carrier includes ADA requirements in your policy.

Federal patient nondiscrimination requirements

- ▶ As of October 17, 2016, all healthcare providers, including optometrists, who accept federal funds are required to post certain information in their offices. The following information must be posted:
 - ▶ The provider complies with applicable federal civil rights laws and does not discriminate on the basis of race, color, national origin, sex, age, or disability
 - ▶ The provider makes available free aids and services to people with disabilities to communicate effectively with the provider, including qualified interpreters, written information in other formats and free language services to people whose primary language is not English; and information on how to obtain these aids and services
 - ▶ If the provider employs 15 or more individuals, the name and contact information of the provider's civil rights coordinator who handles grievances
 - ▶ How to file and Office for Civil Rights (OCR) complaint.

Missed Appointments by Medicaid Patients

- ▶ Federal and State regulations prohibit providers from charging any Indiana Health Coverage Programs (IHCP) members for missed appointments.
- ▶ The Department of Health and Human Services bases this policy on the reasoning that a missed appointment is not a distinct reimbursable service, but a part of the provider's overall costs of doing business. Furthermore, the Medicaid rate covers the cost of doing business and providers may not impose separate charges on members.

Anti-Trust Issues

- ▶ The purpose of the anti-trust laws is to protect competition. They are a complex set of laws including the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act.
- ▶ Under the law, each individual optometrist or optometry practice is a competitor of any other optometrist or optometry practice.
- ▶ Any conduct that reduces or eliminates competition, such as monopolies or price-fixing, is generally prohibited under antitrust laws. Optometrists must be aware of the federal antitrust provisions because they may affect their private practices.
- ▶ For example, optometrists may not share information about employment compensation, reimbursement or discounts. Optometrists also may not conspire or collaborate about contracting with payers.
- ▶ The laws may be enforced both civilly and criminally.

The Stark Law – OD Self- Referral

- ▶ The Stark Law, also known as the physician self referral law, prohibits optometrists from referring Medicare and Medicaid patients for “designated health services” to an entity with which the referring optometrist or an immediate family member of the referring optometrist has a financial relationship. The Stark Law contains approximately 35 exceptions. As a result, the guidance for and compliance with the law is extremely fact sensitive.
- ▶ If you have a specific question about how the Stark law affects your practice, you should discuss it with your private health care attorney.