



comparisons without being locked into a single manufacturer by their prescriptions.

My observations do not arise from any medical expertise. I understand that there are important subsets of consumers for whom the selection of a particular brand or manufacturer on the prescription does represent the prescriber's medical judgment about the ocular health of the patient. One example is patients with astigmatism, who require special lenses outfitted with tiny weights to keep the lens in place, and only one manufacturer presently makes such lenses. The updated Act could account for such situations by allowing otherwise anticompetitive use of brands on prescriptions where the prescribers' selection is based on their medical judgment about the patient's ocular health (perhaps with a phrase such as "material or manufacturer where appropriate," following the Act's other prescription elements such as "diameter where appropriate," § 7610(3)(G)). The Rule presently relies on prescribers' medical judgment in allowing exceptions to the baseline standard that prescriptions last at least one year. See C.F.R. § 315.6(a)(3) (prescriptions expire in less than one year "if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient").

Another path that may prove fruitful is for Congress to task the Food and Drug Administration with conducting a study about the therapeutic interchangeability of different kinds of lenses for common ocular ailments, such as nearsightedness. The FDA could also study whether a minimum prescription period of two years instead of one year would benefit consumers without threatening ocular health. Such an effort would follow in the footsteps of the modern generic substitution revolution in pharmaceuticals, facilitated by the Drug Price Competition and Patent Term Restoration Act and Biologics Price Competition and Innovation Act, which has proved a great boon to consumers nationwide. My hope is that policymakers do not see this Final Notice of Rulemaking as the final step in the long journey to improve the contact lens market for American consumers. We have more work to do.