



FEDERAL TRADE COMMISSION

[File No. 232 3040]

Southern Health Solutions, Inc., et al.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Please write “NextMed; File No. 232 3040” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Ave. NW, Mail Stop H-144 (Annex W), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christine DeLorme (202-326-2095), Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 400 7th St. SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR § 2.34, notice is hereby

given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write “NextMed; File No. 232 3040” on your comment and on the envelope, and send it via overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex W), Washington, DC 20580. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other

individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <https://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from Southern Health Solutions, Inc., which does business as NextMed (“NextMed”), Robert S. Epstein, and Frank Pat Leonardo, III (collectively, “Respondents”). The proposed consent order (“proposed order”) has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

This matter involves the NextMed telehealth platform and NextMed’s weight-loss programs that provided consumers with access to medical providers who would provide prescriptions for GLP-1 drugs for weight loss, such as Ozempic and Wegovy. The complaint alleges that Respondents engaged in multiple deceptive and unfair practices in violation of sections 5 and 12 of the FTC Act. It alleges that they misrepresented that the price of NextMed’s weight-loss membership programs included the medication cost for Wegovy, Ozempic, or another GLP-1 drug, as well as the cost of other services that were required to obtain a prescription for such a drug. The complaint further alleges that Respondents made unsubstantiated claims that participants in NextMed’s weight-loss programs lose on average 53 pounds and 23% of their body weight. The complaint also alleges that Respondents misrepresented that testimonials represented the genuine experiences and opinions of ordinary and impartial NextMed clients, and that Respondents took numerous actions with respect to consumer reviews to distort or misrepresent what consumers thought of their services.

According to the complaint, Respondents unfairly charged consumers without obtaining their express informed consent and deceptively failed to disclose or adequately disclose: that consumers who purchased NextMed’s weight-loss programs were obligated

to a one-year membership term; that consumers would be charged every 28 days for their membership; the total costs associated with the membership; the existence of an early termination fee and the cost of that fee; and significant restrictions and limitations in policies pertaining to cancellations and refunds. The complaint also alleges that Respondents' purposeful actions to make it difficult to cancel or obtain a refund, and their failure to maintain sufficient personnel or technological capacity to handle customer service requests, caused delays in processing cancellation and refund requests that caused or were likely to cause substantial injury to consumers. Finally, the complaint alleges that Respondents violated the Electronic Fund Transfer Act and its implementing Regulation E, by debiting bank accounts on a recurring basis without obtaining a written authorization from consumers for preauthorized electronic fund transfers, and without providing a copy of that authorization to purchasers.

The proposed order includes injunctive relief that prohibits these alleged violations and prevents similar and related conduct to prevent the Respondents from further violating the law. The provisions of the order apply to any product or service. Provision I prohibits various misrepresentations including: a) that the cost of a telehealth service includes the cost of medical consultations or appointments, lab work, or a drug, supplement, or other medical treatment; b) that a product or service is free or without cost or obligation; c) about the cost or price of a product or service, the total cost to obtain it, or the amount that a consumer will be charged; d) that a consumer will not be charged for a product or service; e) about the timing or manner of any charge or bill; f) that a consumer purchased or agreed to purchase a product or service, or that a transaction has been authorized by a consumer, or that a customer is obligated to pay any charge for which the customer has not given express informed consent; g) about the existence of a negative option feature or its terms; or h) about any other fact material to consumers concerning the nature or terms of a refund, cancellation, exchange, or repurchase policy

of a product or service, or about the performance, efficacy, nature, or central characteristics of a product or service.

Provision II prohibits any representation about the average or typical results or benefits achieved by users of a product or service, unless it is non-misleading and supported by competent and reliable evidence. Provision III prohibits any misrepresentation: a) that an endorsement or review of a product or service is truthful or by an actual user, or b) about the status of any endorser or person providing a review.

Provision IV prohibits charging a consumer without first obtaining the consumer's unambiguously affirmative consent to be charged. In doing so, respondents must disclose clearly and conspicuously, and in close proximity to any request for billing information, certain information, including the name of the seller, a description of the product or service, the length of any contract, the amount and timing of every charge, and all material limitations or conditions applicable to the purchase, receipt, or use of the product or service. Respondents also must maintain records of verification of consumers' consent for at least three years.

Provision V requires the clear and conspicuous disclosure of all material terms and conditions of any cancellation or refund policy before asking consumers to pay money or provide their billing information. It also requires providing a simple mechanism by which consumers can request a cancellation or refund. The provision prohibits denying a cancellation or refund request based on a minimum contract length or imposing an early termination fee unless those requirements were disclosed clearly and conspicuously prior to purchase. It also prohibits failing to promptly honor any consumer's cancellation or refund request that complies with policies in effect at the time of purchase, or if a product or service was not timely provided.

Provision VI prohibits making any misrepresentation about any endorser or reviewer of a product or service without disclosing, clearly and conspicuously, and in

close proximity to that representation, any unexpected material connection between such endorser or reviewer and any Respondent or other individual or entity affiliated with the product or service. Provision VII prohibits Respondents from manipulating consumer reviews to distort or misrepresent what consumers think of a product or service, including by: selectively soliciting reviews from individuals more likely to give positive reviews; offering payments, refunds, or other incentives conditioned on removing or changing negative or critical reviews or posting positive or favorable reviews; or reporting, disputing, or selectively reporting negative or critical reviews as false, suspicious, or violative of policies without a reasonable basis for doing so.

Provision VIII requires Respondents to obtain consumers' authorization before initiating electronic fund transfers and provide consumers with advance notice of electronic fund transfers. Provision IX requires Respondents to pay the Commission \$150,000 within eight days of the effective date of the order. Provision X sets out additional requirements related to the monetary relief. Provision XI requires the respondents to provide customer information to facilitate consumer redress. Provision XII requires Respondents to send letters to current members of their weight-loss programs notifying them of the Commission's action and telling the consumers how they can cancel their memberships.

Provisions XIII through XVI of the proposed order contain reporting and compliance provisions. Provision XIII mandates that Respondents acknowledge receipt of the order, distribute the order to principals, officers, and certain employees and agents, and obtain signed acknowledgments from them. Provision XIV requires them to submit compliance reports to the Commission one year after the order's issuance and submit notifications when certain events occur. Under Provision XV, Respondents must create certain records for fifteen years and retain them for five years. Provision XVI provides for the Commission's continued compliance monitoring of the respondents' activity

during the order's effective dates. Finally, Provision XVII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

April J. Tabor,

Secretary.

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