

United States of America FEDERAL TRADE COMMISSION WASHINGTON, DC 20580

Lois C. Greisman Associate Director Division of Marketing Practices Bureau of Consumer Protection

[DATE]

Via Federal Express

[NAME]
[ADDRESS]

Re: Deceptive or Unfair Acts or Practices Relating to the Marketing or Advertising, Including Lead Generation, of Health Insurance and Healthcare-Related Products

Dear [NAME]:

The Federal Trade Commission ("FTC" or "Commission") is an independent federal agency whose mission is to protect the public from deceptive or unfair business practices and from unfair methods of competition through law enforcement, regulation, advocacy, research, and education. As part of that mission, we work to educate marketers and businesses about their rights and responsibilities, and where necessary, initiate investigations and enforcement actions against alleged wrongdoers.

It has come to our attention that companies that provide marketing or advertising, including lead generation, related to <u>Affordable Care Act Marketplace</u> health insurance and healthcare-related products, such as limited benefit plans or medical discount programs, may be violating the FTC Act and rules enforced by the Commission.

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits several types of deceptive claims that have been made by marketers or advertisers, including lead generators, of health insurance and healthcare-related products, which have been the subject of consumer complaints. These include but are not limited to:

• misrepresenting the benefits included in a healthcare-related product, including any insurance benefits;

- misrepresenting that a healthcare-related product is major or comprehensive medical health insurance or the equivalent of such health insurance;
- misrepresenting the costs of healthcare-related products; and
- falsely claiming that consumers who enroll in a healthcare-related product will receive free offers, cash rewards, rebates, or other incentives.

Consumers have also reported receiving unsolicited calls promoting healthcare-related product offers. The Telemarketing Sales Rule, 16 C.F.R. § 310.4(b)(1)(iii), prohibits sellers or marketers from initiating or causing the initiation of outbound telephone calls that deliver pre-recorded messages (i.e., "robocalls") to induce the purchase of products offered for sale, or to charge consumers for products for which consumers have not provided express, informed consent. The Rule, 16 C.F.R. § 310.4(b)(1)(v), also prohibits calling consumers who have placed their phone number on the National Do Not Call Registry, absent consent or other narrow exceptions.

In addition, the Rule on Impersonation of Government and Business, 16 C.F.R. Part 461 *et seq.*, makes it illegal to falsely claim to be a provider of government-sponsored health insurance policies, such as those offered under the Affordable Care Act, or to misrepresent affiliation with, or endorsement or sponsorship by, a government agency, such as the Department of Health and Human Services, or business entities, such as insurance carriers.

Violations of the FTC Act and the rules discussed above may result in legal action seeking a Federal District Court injunction. In addition, companies or individuals that violate either rule may be subject to a civil penalty of up to \$51,744 per violation and may be required to pay refunds to consumers or provide other relief pursuant to Section 19(b) of the FTC Act, 15 U.S.C. § 57b(b).

The FTC has filed and resolved several law enforcement actions to protect consumers from unlawful acts and practices such as those described above. *See, e.g., FTC v. Simple Health Plans, LLC et al., S.D. Fla. No. 18-cv-62593* (\$195 million judgment against lead generation and telemarketing operation that sold medical discount and limited benefit programs deceptively marketed as comprehensive health insurance); *FTC v. Benefytt Technologies, Inc. et al., M.D. Fla. No. 8:22-cv-01794* (consent decrees ordering healthcare companies to pay \$100 million in consumer redress, and banning two executives from the marketing or sale of healthcare-related products, in a case alleging deceptive lead generation and sales practices, including bundling and charging unfair or deceptive fees for unwanted products with deceptively marketed health plans); *FTC v. Partners In Healthcare Association, Inc. et al., S.D. Fla. No. 1:14-CV-23109* (order prohibiting defendants who falsely marketed medical discount cards as health insurance from selling healthcare-related products and from telemarketing, and imposing \$8.7 million judgment); *FTC v. Consumer Health Benefits Association et al.,*

E.D.N.Y. No. 1:2010-cv-03551 (settlements ordering telemarketing operation to pay \$7 million in refunds to consumers who paid for medical discount plans pitched with false claims about their benefits, including that the plans were affiliated with statesanctioned healthcare programs, or were qualified health insurance plans under the Patient Protection and Affordable Care Act).

FTC staff is not singling out your company or suggesting that you have engaged in illegal conduct. We are widely distributing similar letters to other companies engaged in marketing and lead generation efforts related to health insurance and healthcare-related products. You should conduct a comprehensive review of your marketing and advertising practices—including paid or other online ads, as well as representations made on your websites, on social media, in other promotional materials and communications, and through third-party distributors, marketing affiliates, and sales agents—to ensure that you are not engaging in deceptive or unfair conduct. This letter, however, is not intended to be an all-inclusive statement of violations that may exist in connection with marketing or advertising, including lead generation concerning health insurance and healthcare-related products. It is your responsibility to ensure that your company complies with all requirements of federal law, including the FTC Act and other rules enforced by the Commission. We are monitoring for potentially deceptive or unfair acts or practices relating to health insurance and healthcare-related products, and will take follow-up action as warranted.

Copies of the cases discussed in this letter are available on the Commission's website at www.ftc.gov. The Commission's website has other important resources designed to ensure that marketers or advertisers, including lead generators, know their responsibilities under the FTC Act. These resources are available at https://www.ftc.gov/business-guidance/advertising-marketing/advertising-marketing-basics.

Thank you for your attention to this matter. Please direct any inquiries concerning this letter to Christopher E. Brown at (202) 326-2825 and cbrown3@ftc.gov.

Respectfully,

Lois C. Greisman

Associate Director

Division of Marketing Practices