UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

COMMISSIONERS:	Edith Ramirez, Chairwoman Julie Brill Maureen K. Ohlhausen Joshua D. Wright Terrell McSweeny		
In the Matter of))) DOCKETANO	
PaymentsMD, LLC,) DOCKET NO.)	
a limited liability company.		ý	

COMPLAINT

The Federal Trade Commission, having reason to believe that PaymentsMD, LLC ("Respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

- 1. Respondent PaymentsMD, LLC ("PaymentsMD") is a Georgia limited liability company with its principal office or place of business at 5665 New Northside Dr., Suite 320, Atlanta, GA 30328. PaymentsMD is a wholly owned subsidiary of ApolloMD Business Services, LLC.
- 2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

RESPONDENT'S BUSINESS PRACTICES

- 3. Since 2008, PaymentsMD has provided billing services to medical providers. Medical providers that have contracted with PaymentsMD direct their patients to the PaymentsMD website, where consumers are able to enter their invoice number and credit card information to pay their medical bills.
- 4. In December 2011, PaymentsMD launched a free "Patient Portal" product that provided consumers with a place to view their billing history. Unlike the bill-payment service, which enables consumers only to make a one-time payment, the billing history service of the Patient Portal enables consumers to access and view records of the consumers' past

and upcoming payment obligations for any medical providers that use PaymentsMD's billing services. The Patient Portal service enabled consumers to pay their bills and to view their balance, payments made, adjustments taken, and information for other service dates.

- 5. In June 2012, PaymentsMD entered into an agreement with Metis Health LLC ("Metis Health") to develop an entirely new service called Patient Health Report, a fee-based service that would enable consumers to access, review, and manage their consolidated health records through a Patient Portal account. PaymentsMD and Metis Health agreed to split the profits. Both companies participated in developing the disclosures and authorizations for the service, and how and when this information would be presented to consumers during the Patient Portal registration process.
- 6. As described further below, in order to populate the Patient Health Report, respondent tried to obtain the sensitive health information of consumers registering for the Patient Portal from health insurance plans, pharmacies, and a medical testing lab, without appropriate authorization from those consumers. Indeed, many consumers registering for the Patient Portal had no idea that respondent would seek to collect their sensitive health information from third parties for use in the Patient Health Report service.

THE PATIENT PORTAL INTERFACE FAILED TO DISCLOSE THAT RESPONDENT WOULD COLLECT CONSUMERS' SENSITIVE HEALTH INFORMATION FOR THE PATIENT HEALTH REPORT

7. PaymentsMD's home page described the Patient Portal as a medical billing related service. It stated that "At PaymentsMD, we can help you navigate through the maze of medical billing, reimbursement and payment processes. We also make it easy for you to maintain current information about your insurance coverage and to make payments over the Internet, at your convenience." In order to register for the Patient Portal, a consumer could click on a button labeled "Patient Portal Login." (Exhibit A).



8. Consumers could then either enter their login credentials or click on a link that stated "Don't have an account? Create one now." (*See* Exhibit B).





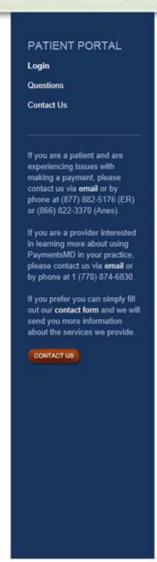


Log into the Patient Portal	
Email	Don't have an account? Create one now
Password	Forget your password? Receive an emailed reminder
LOGIN	

Interested in using the Patient Portal at your Practice or Billing Company? Visit our registration page or view our online demo to learn more about what the PaymentsMD Patient Portal can do for you.

PATIENT PORTAL PROVIDERS DEMO TERMS OF USE PRIVACY POLICY CONTACT US

Consumers that followed the link would then be taken to the Payment Portal registration page, which appeared as follows. (Exhibit C).



Patient Portal Account Creation

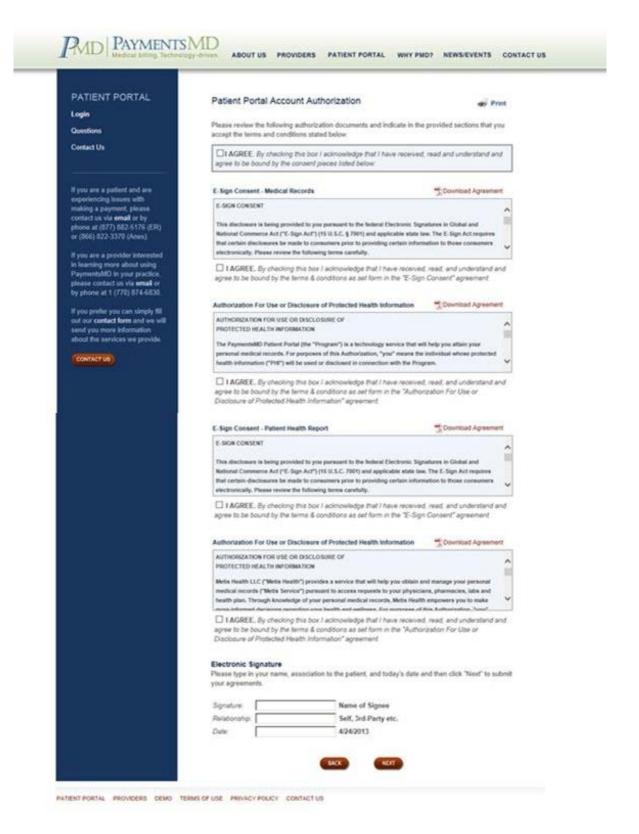
Creating an account will allow you to:	In addition, from within your account you can
View your original balance View any payments made View any adjustments taken View your current balance View information for other service dates Note: It is not necessary to create an account iso.	Update your demographic information (address, phone number, email, etc.) Update your insurance information Set up recurring payments Request your ER medical record n order to make a payment (simply click here to do

Email Address			
	(This will be your username)		
		creating an account, please visory Team will be happy to	
22002		visory ream silii be nappy to	assist you.
First Name	1		
Last Name			
Address			
			_
		_	
City	1		
Country	United States		V
State	Select		V
Postal Code		What is this?	
Phone Number			
Patient's Date of Birth			

PATIENT PORTAL PROVIDERS DEMO TERMS OF USE PRIVACY POLICY CONTACT US

The registration page stated that registering for the Payment Portal service would "allow you to: View your original balance; View any payments made; View any adjustments taken; View your current balance; View information for other service dates." At no point in this process was it stated that respondent would be seeking consumers' sensitive health information from third parties for use in a Patient Health Report service.

9. Consumers who clicked the "Submit" button were taken to a "Patient Portal Account Authorization" page, which required four authorizations. The page presented the authorizations in four boxes that showed only six lines of text at a time. (Exhibit D).



Under each text box was a check box that consumers could select in order to proceed with the registration process. Alternatively, consumers could select a single box at the top of the page, which would populate all four boxes to indicate that each of the four was

- authorized. Although consumers who scrolled through the second and fourth boxes would have seen a statement that "[H]ealth records related to your treatment . . . may be used or disclosed pursuant to this Authorization," the site design simultaneously made it hard to read the authorizations in their entirety, and easy to skip over them by clicking a single check box that preceded all of the authorizations.
- 10. Consumers would reasonably believe that all four authorizations were to be used to provide the Patient Portal billing services for which they were registering. In fact, respondent used two of the four purported authorizations to allow it to collect sensitive health information from third parties for use with the Patient Health Report service.
- 11. Although PaymentsMD's home page and login page included links that allowed consumers to "click here to learn more" about the Patient Health Report service (*see* Exhibit A), these links conveyed that the Patient Health Report was a separate service from the Patient Portal. At no point in registering for the Patient Portal would it have been clear to the consumer that they were purportedly giving respondent permission to obtain their sensitive health information from third parties for use in the Patient Health Report service.

RESPONDENT SOUGHT CONSUMERS' SENSITIVE HEALTH INFORMATION WITHOUT THEIR KNOWLEDGE OR CONSENT

- 12. Respondent requested sensitive health information from a large number of health plans, pharmacies, and a medical lab about everyone who registered for the Patient Portal. These requests used consumers' name, birth date, address, and sex. The information requested was as follows:
 - a. <u>Pharmacies</u>: Medication dispensed, dispense date, instructions, prescription number, prescribing physician, quantity dispensed, refill ability, co-pay amount, amount payable as co-insurance or deductible, and amount paid by health plan.
 - b. <u>Health plans</u>: Medical information (procedures, diagnoses, dates of service, medical providers, co-pay amount, amount payable for co-insurance or deductible, and the amount paid by health plan); prescription information (medications dispensed, dispense dates, prescription number, prescribing physician, quantity dispensed, refill ability, co-pay amount, amount payable as coinsurance or deductible, and the amount paid by health plan); and lab information (test performed, date, laboratory, physician, co-pay, amount payable as co-insurance or deductible, and amount paid by health plan).
 - c. <u>Laboratory</u>: Lab test performed, date, laboratory, test results, normal range for test values, ordering physician, co-pay, amount payable as co-insurance or deductible, and the amount paid by health plan.
- 13. Metis Health sent requests to health plans that were identified using PaymentsMD's billing records. For the pharmacies, Metis Health sent requests to all major commercial pharmacies with locations near the consumers' home address, notwithstanding that

- neither PaymentsMD nor Metis Health had any reason to believe that the consumer had used any of those pharmacies.
- 14. Metis Health sent approximately 5,500 requests for consumers' health information to 31 different companies. One company fulfilled the requests. The others, concerned about the validity of the requests which in some cases related to minors or consumers who were not in fact a customer of the company receiving the request refused to fulfill the requests.

RESPONDENT'S SUBSEQUENT COMMUNICATIONS TO CONSUMERS GENERATED NUMEROUS COMPLAINTS

15. Initially, respondent did not inform consumers that Metis Health was attempting to collect their sensitive health information. When PaymentsMD began informing consumers, via an email sent a day after users registered for Patient Portal, numerous consumers filed complaints with PaymentsMD regarding the collection of their sensitive health information. The common themes of the complaints were that consumers did not want their information collected, and that they had only registered for the Patient Portal to track their bills. PaymentsMD ultimately did not sell any Patient Health Reports.

DECEPTIVE OMISSION

(Count 1)

- 16. As described in Paragraphs 3-15, respondent represented, directly or indirectly, expressly or by implication, that consumers registering for its free Patient Portal billing service could access and review their medical payment history.
- 17. Respondent failed to disclose adequately that, if consumers registered for its free Patient Portal billing service, respondent would also engage in a comprehensive collection from third parties of consumers' sensitive health information for the Patient Health Report service.
- 18. This fact would be material to consumers in deciding whether to register for the Patient Portal. Respondent's failure to disclose adequately this fact, in light of the representations made, is a deceptive act or practice.

DECEPTIVE REPRESENTATION

(Count 2)

- 19. As described in Paragraphs 3-15, respondent represented, directly or indirectly, expressly or by implication, that the authorizations were to be used exclusively to provide the free Patient Portal billing history service for which consumers were registering.
- 20. In fact, the authorizations were not used exclusively to provide the free Patient Portal billing history service for which consumers were registering. Instead, all of the

authorizations were also used by respondent to attempt to collect sensitive health information for use with the Patient Health report service, and two were only used for this purpose. Therefore, this representation is false or misleading.

VIOLATIONS OF SECTION 5

21. The acts and practices of responde or practices in or affecting comme Commission Act, 15 U.S.C. § 45(a)	erce in violation of Section 5(a)	
THEREFORE, the Federal Trade Con his complaint against respondent.	nmission this day of	, 2014, has issued
By the Commission.		
	Donald S. Clark Secretary	