

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman  
Julie Brill  
Maureen K. Ohlhausen  
Joshua D. Wright  
Terrell McSweeney

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In the Matter of )  
 )  
PaymentsMD, LLC, ) DOCKET NO. C-4505  
 )  
a limited liability company. )  
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DECISION AND ORDER

The Federal Trade Commission (“Commission” or “FTC”), having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45 *et seq.*;

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in the Consent Agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; and waives and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the FTC Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following Order:

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.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

## **ORDER**

### **DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. “Covered information” shall mean information from or about an individual consumer, including but not limited to (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license or other state-issued identification number; (g) a financial institution account number; (h) an insurance account number or other insurance information; (i) credit or debit card information; (j) credit report information; (k) a persistent identifier, such as a customer number held in a “cookie,” a static Internet Protocol (“IP”) address, a mobile device ID, or processor serial number; and (l) health information, as defined below.
2. “Health information” shall mean information about an individual consumer’s health or medical care, including but not limited to (a) an insurance account number or other insurance information; (b) prescription information; (c) medical records; (d) information concerning the consumer’s diagnoses or treatments; and (e) medical or health related purchases.
3. Unless otherwise specified, “respondent” shall mean PaymentsMD, LLC and its successors and assigns.
4. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. “Clear(ly) and prominent(ly)” shall mean:
  - a. In textual communications (e.g., printed publications or words displayed on the screen of a computer or mobile device), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts highly with the background on which they appear;
  - b. In communications disseminated orally or through audible means (e.g., radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
  - c. In communications disseminated through video means (e.g., television or streaming video), the required disclosures are in writing in a form consistent with

subparagraph (a) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication;

- d. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (a) of this definition, in addition to any audio or video presentation of them; and
- e. In all instances, the required disclosures: (1) are presented in an understandable language and syntax, and (2) include nothing contrary to, inconsistent with, or in mitigation of any statement contained within the disclosure or within any document linked to or referenced therein.

## **I.**

**IT IS ORDERED** that respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by respondent, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the extent to which respondent uses, maintains, and protects the privacy, confidentiality, security, or integrity of covered information collected from or about consumers, including but not limited to:

- A. Services for which consumers are being enrolled as part of any sign-up process;
- B. The extent to which respondent will share covered information with, or seek covered information from, third parties; and
- C. The purpose(s) for which covered information collected from third parties will be used.

## **II.**

**IT IS FURTHER ORDERED** that respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by respondent, in or affecting commerce, in connection with the online advertising, marketing, promotion, offering for sale, sale, or dissemination of any service, shall:

- A. Separate and apart from any final “end user license agreement,” “privacy policy,” “terms of use” page, or similar document, clearly and prominently disclose to consumers respondent’s practices regarding the collection, use, storage, disclosure or sharing of health information prior to seeking authorization to collect health information from a third party; and
- B. Obtain affirmative express consent from consumers prior to collecting health information from a third party.

### III.

**IT IS FURTHER ORDERED** that respondent and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, website, or other device or affiliate owned or controlled by respondent, in or affecting commerce, shall not use, collect or permit any third party to use or collect any covered information pursuant to any authorization obtained prior to the date of service of this order from consumers registering for the Patient Portal, except for the sole purpose of offering any health-related bill-payment or bill history services. Within sixty (60) days after the date of service of the order, respondent shall permanently delete or destroy all covered information in respondent's possession or control that was collected pursuant to such authorization by or on behalf of respondent from any third party for any purpose except for the offering of any health-related bill-payment or bill history services and shall provide a written statement to the Commission, sworn under penalty of perjury, confirming that all such information has been deleted or destroyed. Provided that, if respondent is prohibited from deleting or destroying such information by law, regulation, or court order, respondent shall provide a written statement to the Commission, sworn under penalty of perjury, identifying any information that has not been deleted or destroyed and the specific law, regulation, or court order that prohibits respondent from deleting or destroying such information. Unless otherwise directed by a representative of the Commission, all statements required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line *In the Matter of PaymentsMD, LLC*, FTC File No. 1323088. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at DEbrief@ftc.gov.

### IV.

**IT IS FURTHER ORDERED** that respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying, for a period of five (5) years from the date of preparation or dissemination, whichever is later, a print or electronic copy of all documents relating to compliance with this order, including but not limited to:

- A. statements disseminated to consumers that describe the extent to which respondent maintains and protects the privacy, security and confidentiality of any covered information, including, but not limited to, any statement related to a change in any website or service controlled by respondent that relates to the privacy, security, and confidentiality of covered information, with all materials relied upon in making or disseminating such statements;
- B. all consumer complaints directed at respondent, or forwarded to respondent by a third party, that relate to the conduct prohibited by this order, and any responses to such complaints; and

- C. all forms, websites, and other methods used to obtain affirmative express consent to collect health information from third parties; and any documents, whether prepared by or on behalf of respondent, that contradict, qualify, or call into question compliance with this order.

## V.

**IT IS FURTHER ORDERED** that respondent shall deliver a copy of this order to all current and future subsidiaries, current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current subsidiaries and personnel within thirty (30) days after service of this order, and to such future subsidiaries and personnel within thirty (30) days after the person or subsidiary assumes such position or responsibilities. For any business entity resulting from any change in structure set forth in Part VI, delivery shall be at least ten (10) days prior to the change in structure. Respondent must secure a signed and dated statement acknowledging receipt of this order, within thirty (30) days of delivery, from all persons or subsidiaries receiving a copy of the order pursuant to this Part.

## VI.

**IT IS FURTHER ORDERED** that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation(s) about which respondent learns fewer than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580, with the subject line *In the Matter of PaymentsMD, LLC*, FTC File No. 1323088. Provided, however, that in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of any such notice is contemporaneously sent to the Commission at [Debrief@ftc.gov](mailto:Debrief@ftc.gov).

## VII.

**IT IS FURTHER ORDERED** that respondent within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, it shall submit an additional true and accurate written report.

## VIII.

This order will terminate on January 27, 2035, or twenty (20) years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in fewer than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order as to such respondent will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: January 27, 2015