

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of BetterHelp, Inc.
File No. 2023169

The Federal Trade Commission (the “Commission”) has accepted, subject to final approval, an agreement containing a consent order from BetterHelp, Inc. (“Respondent” or “BetterHelp”).

The proposed consent order (“Proposed Order”) has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement, along with any comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the Proposed Order.

BetterHelp is an online mental-health counseling service that matches consumers with one of BetterHelp’s over 25,000 contracted licensed therapists. Through BetterHelp’s websites and apps, consumers can communicate with therapists via video conferencing, text messaging, live chat, and audio calls. BetterHelp has offered this service under several names, including BetterHelp Counseling, Faithful Counseling, Pride Counseling, ReGain, Terapeuta, iCounseling, and MyTherapist.

To sign up for BetterHelp’s counseling service, a consumer must complete an online intake questionnaire, answering detailed questions about the consumer’s mental health status and history (the “Intake Questionnaire”). Following completion of the Intake Questionnaire, the consumer can create an account by providing the consumer’s name or nickname, email address, phone number, and emergency contact information.

As consumers progressed through the Intake Questionnaire, BetterHelp represented that the consumers’ information “will stay private between you and your counselor.” Similarly, when a consumer completed the Intake Questionnaire and signed up for an account to use Faithful Counseling, Pride Counseling, or Teen Counseling, BetterHelp represented that the consumer’s email address would be “kept strictly private” and “never shared, sold or disclosed to anyone.” BetterHelp made additional privacy guarantees in its privacy policies—first implicitly and then explicitly—of limited use and limited disclosure of consumers’ email addresses, IP addresses, and health information. Despite representing to consumers that BetterHelp would keep consumers’ information private and only use their information for non-advertising purposes, BetterHelp used and disclosed information obtained from consumers through the Intake Questionnaire and sign-up process for advertising.

Additionally, BetterHelp prominently displayed a seal—in close proximity to several other seals provided by third parties—that attested to BetterHelp’s purported compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), a statute that sets forth privacy and information security protections for health information. In addition, BetterHelp represented to consumers that it was in fact

“HIPAA certified,” with its customer service representatives informing consumers that “[y]ou will also be able to see our HIPAA certification at the bottom of” our webpages. However, no government agency or other third party had reviewed BetterHelp’s information practices for compliance with HIPAA, let alone determined that the practices met the requirements of HIPAA.

The Commission’s proposed eight-count complaint alleges that BetterHelp violated Section 5(a) of the Federal Trade Commission Act by: (1) unfairly failing to employ reasonable measures to protect consumers’ health information in connection with the collection, use, and disclosure of that information (Count I); (2) unfairly failing to obtain consumers’ affirmative express consent prior to collecting, using, and disclosing consumers’ health information (Count II); (3) failing to disclose that it shared consumers’ health information with third parties for BetterHelp’s advertising purposes and the recipient third parties’ own business purposes, and failing to disclose that BetterHelp used consumers’ health information to target the consumers and others with advertisements (Counts III and IV); (4) misrepresenting that it would not disclose consumers’ health information to third parties for advertising and the recipient third parties’ own business purposes, that it would not use such information for advertising or advertising-related purposes, and that it would not share such information with anyone except each consumer’s licensed therapist (Counts V-VII); and (5) misrepresenting that a governmental agency or third party had reviewed BetterHelp’s practices and determined that such practices met the requirements of HIPAA (Count VIII).

Summary of Proposed Order with BetterHelp

The Proposed Order contains provisions designed to prevent BetterHelp from engaging in the same or similar acts or practices in the future.

Part I of the Proposed Order prohibits BetterHelp from sharing individually identifiable information relating to the past, present, or future physical or mental health or condition(s) of a consumer with any Third Party (i.e., any party other than BetterHelp, its service providers, therapists or counselors employed by or contracted with BetterHelp, certain employee benefit programs, and entities using consumers’ information for other very limited purposes) for advertising. Part I also prohibits BetterHelp from sharing consumers’ personal information more generally with Third Parties for the purpose of re-targeting (i.e., sharing personal information of consumers who have previously engaged with BetterHelp, such as by visiting one of its websites or using one of its apps, to send advertisements to those consumers).

Part II of the Proposed Order requires that, before it can share a consumers’ personal information with a Third Party for any purpose that is not prohibited under Part I, BetterHelp must obtain that consumer’s affirmative express consent, which includes informing the consumer of the information to be disclosed, the third parties that will receive the information, and how the information will be used.

Part III of the Proposed Order prohibits BetterHelp from misrepresenting: (1) the extent to which it collects, maintains, uses, discloses, deletes, or permits or denies access

to any Covered Information, or the extent to which it protects the privacy, security, availability, confidentiality, or integrity of Covered Information; (2) the purposes for which BetterHelp or any entity to whom it discloses or permits access to Covered Information collects, maintains, uses, discloses, or permits access to such information; (3) the extent to which a consumer can maintain privacy and anonymity when visiting or using BetterHelp's online properties; (4) the extent to which consumers may exercise control over BetterHelp's collection of, maintenance of, use of, deletion of, disclosure of, or permission of access to Covered Information; (5) the extent to which BetterHelp is a member of, adheres to, complies with, is certified by, is endorsed by, or otherwise participates in any privacy, security or any other compliance program sponsored by a government or any self-regulatory or standard-setting organization; and (6) the extent to which BetterHelp is covered by HIPAA, and the extent that its privacy and information practices are in compliance with HIPAA requirements.

Part IV of the Proposed Order requires BetterHelp to identify to the Commission which Third Parties received consumers' personal information from BetterHelp without their consent and what personal information each such Third Party received. Part IV also requires that BetterHelp then ask those Third Parties to delete such personal information.

Part V of the Proposed Order requires that BetterHelp provide notice to consumers who created an account with BetterHelp prior to January 1, 2021 that BetterHelp may have used and disclosed their personal information for advertising.

Part VI of the Proposed Order requires BetterHelp to establish and implement, and thereafter maintain, a comprehensive privacy program that protects the privacy, security, availability, confidentiality, and integrity of consumers' Covered Information.

Part VII of the Proposed Order requires BetterHelp to obtain initial and biennial privacy assessments by an independent, third-party professional ("Assessor") for 20 years, and **Part VIII** requires BetterHelp to cooperate with the Assessor in connection with the assessments required by Part VII.

Part IX of the Proposed Order requires that a BetterHelp executive certify the company's compliance with the Proposed Order.

Part X of the Proposed Order requires BetterHelp to notify the Commission following the discovery of a violation of Parts I, II, or III of the Proposed Order.

Part XI of the Proposed Order requires BetterHelp to pay \$7,800,000 in monetary relief for consumer redress, and **Part XII** describes the procedures and legal rights related to that payment.

Part XIII of the Proposed Order requires BetterHelp to provide information to, and pay for, an independent redress administrator ("Administrator") selected by the Commission, which will be responsible for administration of consumer redress.

Parts XIV through XVII of the Proposed Order are reporting and compliance

provisions, which include recordkeeping requirements and provisions requiring BetterHelp to provide information or documents necessary for the Commission to monitor compliance.

Part XVIII states that the Proposed Order will remain in effect for twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid 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.