

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of NextMed, File No. 232-3040

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 by 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 8 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.