



Bureau of Consumer Protection

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

September 29, 2023

RIN: 1210-AC11
Docket No. REG-120727-2

Attention: Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration, Room N-5653
U.S. Department of Labor
200 Constitution Avenue NW, Washington, DC 20210

Staff Comment from the Federal Trade Commission on Proposed Amendments to Regulations Implementing the Mental Health Parity and Addiction Equity Act

The staff of the Bureau of Consumer Protection of the Federal Trade Commission (“FTC”) submit this comment in support of the proposed amendments to regulations implementing the Mental Health Parity and Addiction Equity Act, 1210-AC11.¹ FTC staff share the concerns of the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services regarding the devastating toll of substance use disorders (“SUDs”) on individuals, families, and communities, and are deeply concerned about the ways in which those seeking treatment may be preyed upon by unscrupulous actors. Consumers faced with financial impediments, such as lack of insurance coverage, may be particularly susceptible to scams, which may in turn further impede their access to treatment or even derail treatment entirely.

In addition to over a century of promoting free and fair competition in the U.S. economy, the FTC has worked for decades to protect consumers from unfair and deceptive business

¹ This comment expresses the views of staff of the FTC’s Bureau of Consumer Protection. It does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission has, however, voted to authorize the submission of this comment.

practices, including in the health care sector. The agency has brought hundreds of law enforcement actions challenging deceptive health claims and has obtained significant injunctive and monetary relief. In 2018 Congress passed the Opioid Addiction Recovery Fraud Prevention Act (“OARFPA”), which gave the FTC additional enforcement tools to combat SUD treatment scams, including the authority to obtain civil penalties. In the past two years the FTC has brought four enforcement actions under OARFPA. These cases illustrate the labyrinth of potential deception that people seeking SUD treatment must navigate to access care, in addition to financial and other impediments addressed in the proposed amendments.

The FTC’s first case under OARFPA, *FTC v. R360 LLC*,² filed in May, 2022, targeted allegedly false statements that the defendants would connect patients seeking addiction treatment with “handpicked” and “cream of the crop” treatment centers after evaluating patients’ individualized needs. In reality, incoming calls from consumers were automatically routed to treatment centers without any individualized assessments. Moreover, R360 allegedly provided little to no vetting of any of the treatment centers to which it referred patients. The Order settling the FTC’s complaint included a \$3.8 million civil penalty judgment against R360 and its owner, Steven Doumar, and enjoined them from continuing to make further misrepresentations.

In March 2023, the FTC sued AWAREmed Health & Wellness Resource Center and its owner Dr. Dalal A. Akoury for allegedly making a wide range of false or unsupported claims about the success of their services in treating addiction and other serious conditions.³ In their

² *FTC Press Release, FTC Hits R360 and its Owner With \$3.8 Million Civil Penalty Judgment for Preying on People Seeking Treatment for Addiction* (May 17, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-hits-r360-its-owner-38-million-civil-penalty-judgment-preying-people-seeking-treatment-addiction>.

³ *FTC Press Release, FTC Sues Medical Clinic and its Owner for False or Unsubstantiated Claims its Treatment Could Cure Addiction and Other Diseases* (Mar. 16, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-sues-medical-clinic-its-owner-false-or-unsubstantiated-claims-its-treatment-could-cure-addiction>.

advertisements, the defendants described their clinic as the “Most Effective Medical Clinic Anywhere,” and claimed that it “Boasts a 98% Improvement Rate...Treating Just About...Anything,” including addictions to methadone and other drugs. The settlement barred Dr. Akoury and her AWAREmed clinic from making such unsupported claims and required her to pay a \$100,000 civil penalty.

In addition to targeting false claims involving treatment centers, the FTC has also brought enforcement actions against companies that touted over-the-counter products with deceptive claims of addiction treatment. In June 2023, the FTC charged Michael J. Connors and his companies with deceptively marketing Smoke Away products—tablets and sprays comprised of vitamins and herbs such as alfalfa and licorice root—for the quick elimination of nicotine addiction and withdrawal symptoms.⁴ The final order in that case permanently banned Connors and his companies from marketing or selling any SUD treatment product or service. It also contained a \$7.1 million redress judgment and a \$500,000 civil penalty.

Most recently, in July 2023, the FTC sued Rejuvica, LLC and its owners, Kyle Armstrong and Kyle Dilger, alleging that they deceptively marketed their Sobrenix product for the elimination of alcohol cravings and the management of alcohol consumption, including through fake website reviews and advertisements masquerading as objective news coverage.⁵ The final order against Rejuvica and its owners prohibited them from making any unsubstantiated claims about health care products or services, and required them to pay \$650,000 in redress to consumers.

⁴ *FTC Press Release, FTC Acts to Stop Owner, Marketers of ‘Smoke Away’ from Deceptively Claiming Products Enable Users to Quit Smoking* (June 30, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-acts-stop-owner-marketers-smoke-away-deceptively-claiming-products-enable-users-quit-smoking>.

⁵ *FTC Press Release, FTC Takes Action Against Makers of Sobrenix Supplement That Deceptively Claimed to Reduce Alcohol Cravings, Relied on Fake Endorsements* (July 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-takes-action-against-makers-sobrenix-supplement-deceptively-claimed-reduce-alcohol-cravings>.

FTC staff are concerned that a lack of insurance coverage or high out-of-pocket costs might increase the appeal of nontraditional methods of SUD treatment for some consumers, leaving them more susceptible to the types of scams the FTC has recently addressed. For example, Smoke Away advertised its vitamin-and-herb-based products as “less than the cost of gum, patches, or prescriptions that often don’t work[.]” Rejuvica touted its Sobrenix product as “not an expensive rehab center.” Such advertising demonstrates how scammers target consumers burdened by the cost of SUD treatment.

As the agencies pursue the laudable goal of parity of SUD treatment coverage, FTC staff also want to highlight that insurance coverage does not insulate consumers from scammers. In fact, our own enforcement, reinforced by discussions with our law enforcement partners, has alerted us to fraudulent practices specifically geared towards exploiting insured consumers as well. Accordingly, local, state, and federal enforcement agencies must have resources to combat all illegal practices in the addiction space, including insurance fraud. FTC staff believe that nothing in the proposed amendments would prevent current systems and authorities from monitoring waste, fraud, and abuse, and that the proposed amendments strike the right balance between leaving intact previous enforcement systems while promoting better insurance coverage for SUD treatment.

The FTC is deeply committed to holding accountable bad actors who prey on consumers seeking SUD treatment, and FTC staff support the proposed amendments’ aim to diminish the financial impediments that make consumers vulnerable to SUD treatment scams. FTC staff thank the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services for the opportunity to provide this comment.