

Report on Patient Privacy Volume 23, Number 4. April 06, 2023 FTC Proposes \$7.8M Consumer Refunds in BetterHelp Order, Previews More Enforcement

By Jane Anderson

The Federal Trade Commission (FTC), in its second health care privacy action so far in 2023, recently issued a proposed order banning online counseling service BetterHelp Inc., from sharing consumers' health data, including sensitive information about mental health challenges, for advertising purposes.^[1]

The March 2 proposed order—which comes just a month and a day after the FTC moved against prescription drug discount provider GoodRx^[2]—would require BetterHelp to pay \$7.8 million to consumers to settle charges that it revealed consumers' sensitive data with third parties such as Facebook and Snapchat for advertising after promising to keep the data private.

This represents the first FTC action that returns funds to consumers whose health data was compromised. In addition, the FTC's proposed order will ban BetterHelp from sharing consumers' personal information with certain third parties for retargeting of advertisements; it will limit how BetterHelp can share consumer data going forward.

“When a person struggling with mental health issues reaches out for help, they do so in a moment of vulnerability and with an expectation that professional counseling services will protect their privacy,” said Samuel Levine, director of the FTC's Bureau of Consumer Protection. “Instead, BetterHelp betrayed consumers' most personal health information for profit. Let this proposed order be a stout reminder that the FTC will prioritize defending Americans' sensitive data from illegal exploitation.”

The settlement indicates the FTC's continued and stringent focus on using health data for online advertising. Both the FTC and the HHS Office for Civil Rights have warned health care organizations that they should be extremely wary of such uses.

BetterHelp Shared With Facebook, Others

California-based BetterHelp offers online counseling services under several names, including BetterHelp Counseling. It also markets services aimed at specific groups, such as faithful counseling focused on Christians; teen counseling, which caters to teens and requires parental consent; and pride counseling, which is targeted at the LGBTQ community.

Consumers interested in BetterHelp's services must fill out a questionnaire that asks for sensitive mental health information—such as whether they have experienced depression or suicidal thoughts and are on any medications. They also provide their names, email addresses, birth data and other personal information. Consumers then are matched with a counselor and pay between \$60 and \$90 per week for counseling.

At several points in the signup process, BetterHelp promised consumers it would not use or disclose their personal health data except for limited purposes, such as to provide counseling services, according to the FTC. However, the FTC said BetterHelp used and revealed consumers' email addresses, IP addresses and health questionnaire information to Facebook, Snapchat, Criteo and Pinterest for advertising purposes.

For example, the company used consumers' email addresses and the fact that they had previously been in therapy to instruct Facebook to identify similar consumers and target them with advertisements for BetterHelp's counseling service, which the FTC said helped the company bring in tens of thousands of new paying customers and millions of dollars in revenue.

According to the complaint, BetterHelp pushed consumers to hand over their health information by repeatedly showing them privacy misrepresentations and nudging them with unavoidable prompts to sign up for its counseling service. Despite collecting such sensitive information, the FTC said, BetterHelp failed to maintain sufficient policies or procedures to protect the information and did not obtain consumers' affirmative express consent before disclosing their health data.

BetterHelp also failed to place any limits on how third parties could use consumers' health information, the FTC said, which allowed Facebook and other third parties to use that information for their own internal purposes, including research and development or to improve advertising. The FTC noted that BetterHelp misled users and the public in 2020 by falsely denying news reports that it revealed consumers' personal information, including their health information, with third parties.

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