Office of Commissioner
Rohit Chopra

UNITED STATES OF AMERICA
Federal Trade Commission

July 24, 2018

The Honorable Gregory Walden
Chairman
House Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
House Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Gregg Harper
Chairman
House Energy and Commerce Subcommittee
on Oversight and Investigations
U.S. House of Representatives
Washington, DC 20515

The Honorable Diana DeGette
Ranking Member
House Energy and Commerce Subcommittee
on Oversight and Investigations
U.S. House of Representatives
Washington, DC 20515

Chairman Walden, Ranking Member Pallone, Chairman Harper, and Ranking Member DeGette:

Thank you for holding today's hearing on "Examining Advertising and Marketing Practices within the Substance Use Treatment Industry" and for the opportunity to share my views.[1]

Nearly every eight minutes, an American dies of a drug overdose.[2] Across the country, opioid addiction is tearing apart the lives of individuals, their families, and their communities. There has been significant attention on pharmaceutical firms that withheld information about the misuse of addictive pain medication for years in the pursuit of profit.

Today, a new crop of unscrupulous actors is targeting addiction sufferers not to help them, but to gouge them, their families, and their insurance companies. There are indications that there may be widespread abuse in the drug treatment industry. This is deeply harmful to honest treatment facilities and patients alike. I am concerned that Wall Street investors also see big profit potential and may be exacerbating the challenges our country faces.

In my experience, the government's response to the abusive practices that follow painful events, such as the foreclosure crisis and natural disasters, is too slow. Giving the scale of the opioid crisis, it is especially critical that law enforcement agencies and policymakers crack down on deceptive lead generation practices in the treatment marketplace.

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[1] The views expressed in this statement are my own and do not necessarily reflect those of the Federal Trade Commission or any other Commissioner.
[2] *See* Christopher Ingraham, *CDC releases grim new opioid overdose figures: 'We're talking about more than an exponential increase'*, Washington Post, Dec. 21, 2017, *available at* https://www.washingtonpost.com/news/wonk/wp/2017/12/21/cdc-releases-grim-new-opioid-overdose-figures-were-talking-about-more-than-an-exponential-increase/.

Golden Age for For-Profit Treatment Centers

When the foreclosure crisis devastated neighborhoods across the country, there were many actors who saw big opportunities for profit. When it comes to the devastation wrought by the opioid crisis, it is déjà vu. The opioid epidemic has led to a boom in the for-profit substance use treatment industry. Billions of dollars of capital have been flowing into the sector from Wall Street, primarily from private equity investors. Many nonprofit treatment centers report that investors are seeking to buy them in order to convert them to a for-profit model. A decade ago, 60% of treatment centers were nonprofit; today, 60% are for-profit.[3]

Private equity funds differ from funds that hold publicly traded stocks and bonds. Typically, private equity funds will purchase businesses and make certain strategic or operational changes. The hope is that these changes will lead to increased profitability, enabling the private equity fund to sell these businesses for a large increase in value.

A private equity fund will usually want to enter and exit the investment over a relatively short time horizon, often between five and ten years. When an investor is highly motivated to drive up operating margins in a short time period for an eventual sale, it can lead to predatory practices that put families and honest competitors at risk.

While private equity and other investments into the industry can support capacity expansion and facility upgrades, I am concerned that investors' financial incentives may create the conditions for unfair or deceptive practices to flourish. Bad actors employ these practices to lure in patients and soak their insurers with excessive bills, rather than setting them on the road to recovery.

Driving Up Margins

As a nation, we would hope that for-profit treatment centers would be rewarded for achieving solid outcomes for patients. However, the most lucrative strategies for these treatment centers may be at odds with helping a patient struggling with addiction.

For example, treatment facilities may heavily engage in frequent testing. This frequent testing, especially urinalysis, can be highly profitable. Lab and testing companies are now charging billions of dollars to insurers for urine tests, but these test orders may not be solely driven by medical necessity. Many of these companies have financial ties to doctors and treatment centers.

There have also been reports of bait-and-switch bill shock, where a patient is lured to a facility that is in-network within their insurance plan, but is later treated in that facility by an out-of-network physician, leading to far higher costs for the patient and their insurer. In addition to causing financial devastation, there is a real risk that this practice could lead patients to forgo needed treatment.

Patients seeking substance use treatment may find that private insurance actually makes them more vulnerable. Importantly, for treatment centers looking to drive up billing, patients with private insurance are the most enticing, since private insurers will typically pay rates that are higher than Medicare, Medicaid, and Tricare. Rather than seeking to serve any patient in need, unscrupulous treatment centers might specifically target these privately insured patients through lead generation.

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[3] *See* Jeanne Whalen and Laura Cooper, *Private-Equity Pours Cash Into Opioid-Treatment Sector*, Wall Street Journal, Sept. 2, 2017, *available at* https://www.wsj.com/articles/opioid-crisis-opens-opportunities-for-private-equity-firms-1504353601.

Lead Generators and Body Brokers

In 2016, the Federal Trade Commission (FTC) published a Staff Perspective on lead generation. Lead generation is the process of identifying and cultivating consumers who may be likely to purchase a particular product or service. The FTC Staff Perspective highlighted the possible pitfalls with potentially deceptive lead generation practices.[4]

In the treatment industry, lead generators may seek to collect sensitive information about a potential patient, including information about their drug use and insurance coverage. Lead generators can then sell – or even auction off – this information for hundreds of dollars.

Lead generators usually operate online, purchasing ads on Google and other search engines to attract potential leads. These leads are so lucrative that companies have reportedly been willing to pay hundreds of dollars per click.[5] In testimony last year, a nonprofit treatment center described how a lead generator hijacked its Google Local listing.[6] By masquerading as a legitimate treatment center and rerouting phone calls to its call center, the lead generator was able to intercept inbound inquiries from patients looking for help.

Similarly, the quest to rapidly drive up profits may also lead to a practice known as body brokering. Here, treatment centers might provide financial incentives to intermediaries who find patients in "sober homes" or other locations where the patients are seeking to recover, but may not be receiving medical treatment that is covered by health insurance. These body brokers can then earn kickbacks by steering these patients to treatment centers that will soak their insurers.

These practices raise serious questions about the adequacy of oversight in this market.

FTC Efforts

The Federal Trade Commission enforces laws that prevent unfair or deceptive business practices. The agency has brought two enforcement actions against marketers of bogus withdrawal and addiction treatment products.[7] Earlier this year, the agency partnered with the Food and Drug Administration to send warning letters to marketers selling products that claimed to help with opioid addiction. The FTC's jurisdiction includes for-profit treatment centers and lead generators, and unfair or deceptive practices by these entities may violate Section 5 of the FTC Act.[8]

Federal, state, and local law enforcement agencies are all working to confront the many challenges created by the opioid crisis. But, it is clear that we all must do more.

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[4] FTC Workshop, *Follow the Lead: An FTC Workshop on Lead Generation* (Sept. 2016), *available at* https://www.ftc.gov/system/files/documents/reports/staff-perspective-follow-lead/staff_perspective_follow_the_lead_workshop.pdf.

[5] Cat Ferguson, *Google is cracking down on sketchy rehab ads*, The Verge, Sept. 14, 2017, *available at* https://www.theverge.com/2017/9/14/16309752/google-rehabs-near-me-search-adwords-crackdown.

[6] US House Committee on Energy and Commerce, Hearing on Examining Concerns of Patient Brokering and Addiction Treatment Fraud, Dec. 12, 2017, (Testimony of Douglas Tieman, President & CEO of Caron Treatment Centers), *available at* https://docs.house.gov/meetings/IF/IF02/20171212/106716/HHRG-115-IF02-Wstate-TiemanD-20171212.pdf.

[7] *See* Compl., *FTC v. Catlin Enterprises, Inc.*, No. 1:17-cv-403 (W.D. Tex. filed May 3, 2017), *available at* https://www.ftc.gov/system/files/documents/cases/withdrawal_ease_-_complaint_w_exhibit.pdf; Amended Compl., *FTC v. Sunrise Nutraceuticals, LLC.*, Civil Action No. 9:15-cv-81567-DMM (S.D. Fla. filed Jan. 8, 2016), *available at* https://www.ftc.gov/system/files/documents/cases/160108sunrisecmpt.pdf.

[8] *See* 15 U.S.C. § 45(a)(1).

As Congress continues its work to investigate advertising and marketing practices in this industry, it must carefully look at how the billions of dollars of new investment in the sector may be spawning scams that harvest profits from patients and their families.

Congress should closely examine incentive compensation practices for employees and operators of treatment centers, as well as financial conflicts of interest with other firms. Importantly, we must work to crack down on illegal lead generation practices, both online and offline, for-profit and nonprofit.

Too many firms are looking to profit off the pain of families dealing with addiction. In the absence of vigorous enforcement and sensible safeguards, the opioid crisis will inflict even more financial, physical, and emotional damage throughout our country.

Respectfully submitted,

Rohit Chopra

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