



UNITED STATES OF AMERICA
Federal Trade Commission
its acquisition of One Medical, a membership-based primary care practice.

¹ Separate from the inquiry into whether the transaction violates the antitrust laws, the Commission issues this statement because acquiring and acquired companies' conduct with respect to the sensitive data they could risk violating consumer protection laws.

One Medical has made representations about how it would collect, analyze, store, share, and use consumers' sensitive health data. Since announcing the proposed acquisition, Amazon and One Medical also have expressly represented to the public that they will not share consumers' "personal health information" for advertising or marketing purposes without their clear permission.² The statements in One Medical's privacy policies, combined with the recent public statements by both companies about privacy, constitute promises to consumers about the collection and use of their data by the post-acquisition entity. Companies that fail to abide by the commitments and representations they have made to consumers violate Section 5 of the FTC Act. The Commission has a long history of bringing successful actions against companies that make statements that, although they may be technically true or qualified by fine print, convey a

¹ See Amazon, One Medical joins Amazon to Make it Easier for People to Get and Stay Healthier (Feb. 22, 2023), <https://www.aboutamazon.com/news/companies/one-medical-joins-amazon-to-make-it-easier-for-people-to-get-and-stay-healthier> The Federal Trade Commission's investigation of Amazon's acquisition of One Medical did not result in a challenge to the acquisition before the parties were eligible to consummate it under Section 5 of the Act's timeline.

² See Life Healthcare, Inc. Privacy Policy (last updated February 17, 2023), <https://www.onemedical.com/privacy/#:~:text=We%20will%20use%20your%20Personal,information%20and%20Services%20to%20you> (last visited Feb. 2, 2023).

³ See Amir Dan Rubin, One Medical, Update from One Medical on Agreement to be Acquired by Amazon (Aug. 2, 2022), <https://www.onemedical.com/blog/newsworthy/update-one-medical-agreement-be-acquired-amazon/> ("Our commitment to protecting your health data is unwavering - Nothing about this changes One Medical's compliance with HIPAA and all other applicable privacy laws and regulations. The clinical providers that you know and trust will continue to be your advocates and partners in your health journey, including in the safeguarding of your private information. Once the transaction closes, One Medical customers' HIPAA Protected Health Information will be handled separately from other Amazon business, as required by law. As required by law, Amazon will never share One Medical patients' personal health information outside of One Medical for advertising or marketing purposes without clear permission from the patient. See also Amazon, Amazon and One Medical Sign Agreement for Amazon to Acquire One Medical (July 2022), <https://www.aboutamazon.com/news/companies/amazon-and-one-medical-sign-an-agreement-for-amazon-to>

false net impression. Amazon and One Medical should make clear not only how they protected health information as defined by HIPAA but also how the integrated entity uses any One Medical patient data for purposes beyond the provision of health care. As relevant here, whether the companies' privacy representations are deceptive will turn on the perspective of a reasonable consumer rather than the perspective of a HIPAA expert.

The Commission has long taken the position that personal health information is sensitive data and has affirmed this position through recent enforcement actions.⁴ Further, companies that fail to have adequate safeguards or controls in place to protect sensitive data to obtain consumers' express affirmative consent for marketing based on sensitive health data may be in violation of the law.⁵

The law requires companies to treat sensitive data with great care. Accordingly, the parties and the market more broadly should be on notice that the Commission will continue to monitor this space and bring enforcement actions whenever the facts warrant.

⁴ See, e.g. Intuit, Inc., Comm'n Opinion & Order Denying Summary Decision, FTC Dkt. No. 9408, slip op. at 7 (Jan. 31, 2023) https://www.ftc.gov/system/files/ftc_gov/pdf/d09408commissionopiniondenyingmsd.pdf; Philips Corp, 111 F.T.C. 139188(1988)

https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume_111/ftc_volume_decision_111__july_1988december_1989pages_10098.pdf Removatron Int'l Corp. v. FTC, 884 F.2d 1489, 1497 (1st Cir. 1989)

⁵ See Compl. ¶¶ 7-8, FTC v. GoodRx Holdings, Inc. No. 23-cv-460 (N.D. Cal. filed Feb. 1, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/goodrx_complaint_for_permanent_injunction_civil_penalties_and_other_relief.pdf

⁶ See Compl. ¶ 23 FTC v. Kochava Inc. No. 22cv-00377(D. Idaho filed Aug. 29, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/d.%20Complaint.pdf

⁷ See, e.g. Fed. Trade Comm., Protecting Consumer Privacy in an Era of Rapid Change (2012) ("Principle: