



November 13, 2025

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Re: Alternative Funding Programs Are Unfair and Deceptive Trade Practices Under Ohio State Law

Dear Attorney General Yost:

Aimed Alliance is a 501(c)(3) not-for-profit health policy organization that seeks to protect and enhance the rights of health care consumers and providers. Aimed Alliance is staffed by a team of attorneys who leverage their experience and understanding of the law to urge state and federal agencies to enforce and uphold consumer rights and legal protections. The Hemophilia Alliance is a not-for-profit organization that is comprised of federally funded hemophilia treatment centers (HTCs) that either have, or are seeking to have, pharmacy programs under Section 340B of the Public Health Service Act. The National Bleeding Disorders Foundation (formerly the National Hemophilia Foundation) is dedicated to finding cures for inheritable blood and bleeding disorders and to addressing and preventing the complications of these disorders through research, education, and advocacy, enabling people and families to thrive. In addition, 15 patient, provider, caregiver, and health policy organizations across multiple disease states have signed on in support of this letter.

As the Ohio Attorney General, your office has demonstrated substantial leadership in bringing novel lawsuits against Pharmacy Benefit Managers (PBMs) for engaging in antitrust practices that increase health care costs for consumers and the health care system more broadly. With this in mind, we are asking your office to again lead accountability efforts against third parties within the health care system that are harming consumers and increasing health care costs.

Specifically, we are writing to bring to your attention a business practice known as “alternative funding programs” (“AFPs”). Based on our analysis, we believe these programs constitute an unfair **and** deceptive trade practice under Ohio law. As such, given your office’s authority over business practices that violate consumer protection laws, we urge your office to take the necessary enforcement and/or regulatory actions to prohibit these practices within Ohio.

I. **Alternative funding programs penalize the most vulnerable consumers**

Specialty drugs are high-cost prescription medications that are often the only effective treatment for complex and chronic conditions like hemophilia, cancer, and arthritis.¹ Specialty drug costs can be a major financial concern for payers and employers (collectively, “health plans”), who have understandably sought to mitigate those costs. Unfortunately, that effort has led many health plans, in concert with pharmaceutical benefits managers (PBMs) and other middlemen, to deploy benefit designs that target their most vulnerable enrollees – those who rely on specialty medications.

AFPs represent the latest twist in a series of schemes intended to reduce payers’ share of drug costs by shifting some or all of those costs to other parties – regardless of the legal and fiduciary responsibilities owed by health plans to their enrollees.² Therefore, we are asking your office to intervene and stop the unfair, deceptive, and misleading practices that have resulted from these unchecked programs.

A. **How AFPs Work**

AFPs focus on *sourcing* targeted drugs from an alternative pathway, which is distinct from other practices such as copay accumulators and maximizers. **The focus of this letter is on AFPs.** Moreover, while each AFP program may vary slightly, there are two general approaches adopted by AFPs to perpetuate their schemes: (1) abuse of prior authorization, and (2) false advertising of benefits.³

Under the first pathway, a health plan contracts with an AFP, which then identifies a list of prescription drugs that will be managed by the AFP. Consumers who attempt to fill a prescription that is on the AFP designated list are first required to complete a prior authorization application. Prior authorization is, of course, a customary requirement for accessing specialty drugs – but when AFPs are involved, the prior authorization process *by design* leads to a denial even though the medication is considered medically necessary. The consumer is told they cannot access their medication in the expected manner using their pharmacy benefit but must instead work with a third party they’ve never previously heard of (the AFP vendor) to access their covered prescription drug. In some cases, when the AFP reaches out to the patient, the AFP self-identifies as a “patient advocacy” organization. At this point, the consumer is also told that if they do not work with the AFP, they will be responsible for 100% of the cost of the medication, and this amount will not count towards their deductible or their overall annual cost-sharing requirement.⁴

¹ HealthInsurance.org, *What is a specialty drug?*, <https://www.healthinsurance.org/glossary/specialty-drug/#:~:text=Specialty%20drugs%20are%20high%2Dcost,or%20her%20prescription%20drug%20benefit>.

² While large group and self-insured health plans are not required to offer all the “essential health benefits” (EHB) enumerated in the Affordable Care Act (ACA), they are required to provide access to drugs that are included in broadly accepted treatment guidelines, and to treat all disease states without discouraging enrollment by any particular group of enrollees. 45 C.F.R. 156.122(a)(3)(iii)(H).

³ A helpful infographic of these processes is available here: <https://media.cancercare.org/documents/417/original/AFP-2-Pager-as-of-July-2025.pdf>

⁴ See, e.g., Memorandum of Law in Support of Plaintiff AbbVie Inc.’s Motion for Preliminary Injunction, N.D. Ill. 23-cv-02836 (Oct. 11, 2023), at 17.

Thus, with no genuine alternative, consumers have no choice but to “agree” to work with the AFP to access their medication.

The AFP then instructs the consumer to fill out application forms that may include information such as their income, household size, tax returns, insurance status, and other sometimes-sensitive personal information. In some cases:

- AFPs have instructed consumers to supply answers that the consumer cannot attest to, or knows to be false;
- AFPs have required consumers to sign a power of attorney, allowing the AFP to act and speak for the consumer; and/or
- AFPs have even impersonated consumers, completing and submitting application forms without the consumer’s knowledge or assent.⁵

After the AFP has collected all the necessary documentation, it will use this information to apply to patient assistance programs (PAPs). Typically, PAPs are run by pharmaceutical manufacturers and provide prescription drugs directly to the consumer. PAPs are intended for individuals who are uninsured or underinsured—they are not intended for individuals with commercial insurance coverage.⁶ (Indeed, many PAP application forms expressly bar applications from individuals with insurance coverage.) If the consumer is eligible for the PAP, the individual will receive their medication from the PAP for the period allowed by the PAP. If the PAP determines that the consumer is ineligible for PAP assistance, the plan (advised by the AFP) typically reverses course and covers the consumer’s medication.

Under the second pathway, a health plan explicitly removes coverage for all or a subset of all specialty drugs, requiring enrollees who use any of the targeted drugs to work with the AFP to access their necessary medications. Under this pathway, the AFP will collect patient information in the same manner as described above. However, if the AFP is unable to source the medication from the PAP, the medication remains uncovered by the plan, unless the employer *voluntarily* overrides the exclusion as a medical necessity. Consumers have to decide between foregoing treatment or paying out-of-pocket for their medication – a non-feasible option for most, given the cost of the therapies at issue.

Crucially, despite both schemes substantially deviating from traditional prescription drug benefit coverage design, employers, payers, and patients are consistently told the partnership with the AFP will not impact or change the consumer’s medication access. That representation is untrue. Ultimately, AFP schemes are unfairly structured to shift costs away from health plans by exploiting patient assistance programs designed for the uninsured. Without regulation and accountability, AFPs will continue to spread and multiply, misleading employers, deceiving employees, and negatively impacting consumers with chronic conditions. As such, the undersigned organizations are asking your office to investigate these practices and take enforcement action, as

⁵ *Id.*

⁶ Notably, pharmaceutical manufacturers offer a separate program for individuals with commercial insurance.

appropriate, to protect consumers' access to their necessary medications and care.

II. Ohio Attorney General's Jurisdiction Over Unfair or Deceptive Practices

Several statutes under Ohio law prohibit unfair or deceptive trade practices. Specifically, Section 1345.02 of the Consumer Sales Practices Act ("CSPA") prohibits unfair or deceptive practices in connection with a consumer transaction for the sale of goods or services.⁷ In addition to the protections established under the CSPA, Sections 3901.20 and 3901.21 of the Ohio Revised Code also prohibit unfair or deceptive trade practices within the business of insurance.

AFPs are not insurance practices but rather self-identify as "third party solution providers" who purport to assist employer health plans with their specialty drug spend. In fact, AFPs are business practices that carve out new profit opportunities for middlemen by exploiting gaps and weaknesses in the insurance regulatory framework.⁸ A key pillar of insurance is the spreading of risk between the plan and the beneficiary. Under the AFP models, AFPs do not bear any risk. Although the payment structure for AFPs varies, generally, AFPs are paid either a flat rate per beneficiary or receive a percentage, between 20 to 45 percent,⁹ of what the plan would have paid for the employee's prescription had the medication not been alternatively sourced ("cost avoidance fee").¹⁰ If an AFP is not able to source the medication, the AFP is simply not paid; there are no other negative consequences for the AFP. As such, the practices of AFPs are more closely aligned with traditional business practices than insurance practices.

Under Ohio Revised Code 1345.06, the Attorney General has the authority to launch an inquiry when a complaint has been submitted that provides reasonable cause to believe that a person has engaged in, or is engaging in, an act or practice that violates the ("CSPA").¹¹ Reasonable cause is not defined in statute, but should be considered satisfied when a complainant brings forth facts that demonstrate to a person using sound and prudent judgment that a violation may have occurred.¹² As explained below, our analysis indicates that AFPs constitute both an unfair trade practice and a deceptive trade practice, and there is sufficient reasonable cause for the Ohio Attorney General's Office to initiate an investigation into these business practices.

⁷ *Consumer Sales Practices Act*, [https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Business/Consumer-Sales-Practices-Act-\(PDF\).aspx](https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Business/Consumer-Sales-Practices-Act-(PDF).aspx).

⁸ An activity will be considered the "business of insurance" when (1) the activity has the effect of transferring or spreading the policyholder's risk; (2) is integral to the relationship between the insurer and the insured; and (3) is limited to entities within the insurance industry.

⁹ Anastassia Gliadkovskaya, *A new wave of middlemen offers 'alternative funding' for specialty drugs. Patient bear the risk* (Oct. 14, 2025), <https://www.fiercehealthcare.com/payers/new-wave-middlemen-promise-savings-specialty-drugs-patients-bear-risks>.

¹⁰ AISHealth, *Before AbbVie Lawsuit, Payer Matrix's CBO Defended Company's Business Model* (May 18, 2023), <https://aishealth.mmitnetwork.com/blogs/spotlight-on-market-access/before-abbvie-lawsuit-payer-matrix-s-cbo-defended-company-s-business-model>.

¹¹ *Consumer Sales Practices Act*, [https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Business/Consumer-Sales-Practices-Act-\(PDF\).aspx](https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Business/Consumer-Sales-Practices-Act-(PDF).aspx).

¹² Merriam-Webster, *common sense*, <https://www.merriam-webster.com/dictionary/common%20sense>.

III. AFPs Constitute Unfair Trade Practices

AFPs should be considered an unfair trade practice under Ohio Administrative Code 3901-1-07, and under the FTC’s interpretation of “unfair” as defined under the FTC Act.

A. AFPs are unfair trade practices under multiple Ohio statutes

Ohio Administrative Code Section 3901-1-07 defines a practice as unfair or deceptive when there is a knowing misrepresentation to claimants about pertinent facts relating to coverage. AFPs knowingly misrepresent pertinent facts relating to coverage by cloaking themselves in the mantle of “patient advocate;” obfuscating whether specified prescription drugs are or are not covered by the health plan; misleading consumers and employers about the material change in benefits associated with an AFP partnership; inducing consumers to submit documentation without regard to its accuracy; and/or strongarming consumers into signing over powers of attorney – all as preconditions for the consumer to access their medication.

AFPs mislead consumers by providing ambiguous statements as to whether their medication is covered by the health plan and informing them that they must work with the AFP to access their medication. Notably, one AFP FAQ sent to employees clearly states that if a drug is considered medically necessary the health plan will require the individual to work with the AFP to access the medication, which will include applying to the PAP. Importantly, the FAQ also states “If the member does not qualify for a program, the medication will go back through [the PBM’s prior authorization process] and be processed under the plan prescription benefit.”¹³ Similarly, in the lawsuit between a pharmaceutical company and an AFP, the District Court of Illinois recognized that “[the AFP] represents that the members are responsible for 100% of their specialty drug costs, even though they are otherwise commercially insured.”¹⁴

As such, these statements are not simply accidental misstatements but rather a deliberate and coordinated business practice used to mislead consumers. Subjecting consumers to such confusing and misleading practices causes consumers to experience delays in receiving their medication – and gaps in treatment. Notably, one survey of consumers found that, on average, consumers waited over two months to receive their medications after being required to work with an AFP.¹⁵ For many of these patients, had the AFP not intervened, their medications would have been immediately available as a typical pharmacy benefit. Therefore, we urge your office to investigate this conduct as an unfair business practice under Ohio law.

AFPs also knowingly mislead employers and payers regarding how working with the

¹³ PaydHealth FAQ, Attachment A.

¹⁴ See e.g. *AbbVie Inc. v. Payer Matrix, LLC, No. 1:2023cv02836-Document 343 (N.D. Ill. 2025)*, <https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2023cv02836/433197/343/>; *Payer Matrix Overview*, [https://docs.bartonccc.edu/humres/HRBenefits%20and%20Discounts/Benefits/Health%20Plan%20Open%20Enrollment%20Links/BCCC%20Payer%20Matrix%20Overview%20%20FAQs%20-Combined%20\(002\).pdf](https://docs.bartonccc.edu/humres/HRBenefits%20and%20Discounts/Benefits/Health%20Plan%20Open%20Enrollment%20Links/BCCC%20Payer%20Matrix%20Overview%20%20FAQs%20-Combined%20(002).pdf).

¹⁵ William B. Wong, et al., *A descriptive survey of patient experiences and access to specialty medicines with alternative funding programs* (Oct. 29, 2024), <https://www.jmcp.org/doi/full/10.18553/jmcp.2024.30.11.1308>.

AFP will impact their employees and beneficiaries' quality of care. AFPs often state if the employer works with the AFP "nothing will change" for the beneficiary and that there will be "no disruptions" in care. This is false, for all the reasons set forth in I.A above.¹⁶ The AFP's deception aimed at the plan sponsor leads in turn to consumers being misled at open enrollment, and causes beneficiaries to enroll in health plans that lack the coverage they need to manage their complex and chronic conditions.

For many consumers with longstanding complex or chronic conditions, the sudden introduction of an AFP – and the resulting disruption in their coverage – comes as an alarming and unwelcome surprise. Typically, consumers with complex and chronic conditions are well-versed in health insurance and carefully check at open enrollment to ensure their prescription drugs are included on the health plan's formulary. Thus, it is particularly frustrating for consumers to learn, after their careful review of the formulary and premium payments, that their medication is not available as a typical pharmacy benefit without additional hurdles and delays. This same frustration extends to health care providers and clinic administrators who have treated patients for years and help ensure consumers enroll in health plans that cover their medications.

This frustration deepens when consumers, clinic administrators, or health care providers ask the health plan to provide the complete plan terms to better understand how an individual no longer has coverage for their medication. Health plans often refuse to provide these materials, or provide the documentation only after a substantial delay of weeks or even months, i.e., well into the plan year.¹⁷ Without these plan materials, consumers lack the information necessary to file an appeal and challenge the plan's coverage denial for their medication, or the plan's requirement to work with the AFP to access their medication. The failure of health plans and AFPs to provide consumers with prompt access to their terms and conditions, and the failure to provide a denial letter that affords consumers the opportunity to challenge the plan's requirements, should be considered an unfair trade practice under Ohio's Administrative Code 3901-1-07.

B. AFPs are Unfair Trade Practices Under the FTC Standard for "Unfair"

In addition to the types of unfair trade practices defined under Ohio law and regulation, Ohio's consumer protection statute also allows the Attorney General to consider the FTC's definition and interpretation of "unfair" under the FTC Act.

The FTC deems a practice unfair when it (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers; and (3) is not outweighed by

¹⁶ *Id.*

¹⁷ Stakeholders who have signed onto this letter are willing to discuss their experience with delays and denials in receiving the plan terms with the OH AG's office. Anastassia Gliadkovskaya, *A new wave of middlemen offers 'alternative funding' for speciality drugs. Patient bear the risk* (Oct. 14, 2025), <https://www.fiercehealthcare.com/payers/new-wave-middlemen-promise-savings-specialty-drugs-patients-bear-risks> (discussing how a patient's explanation of benefits kept getting revised to increase cost-sharing requirements during the plan year).

countervailing benefits to consumers or competition.¹⁸ AFPs satisfy all three of these requirements and should constitute an unfair trade practice.

1. AFPs Cause Substantial Injury to Consumers

A substantial injury occurs when a consumer experiences genuine harm.¹⁹ The FTC applies an objective test to determine if a genuine harm has occurred.²⁰ Emotional distress is usually insufficient; however, a financial injury will satisfy the genuine harm requirement.²¹

Alternative funding schemes cause consumers to experience several types of financial loss. First, when a consumer is forced to enroll in an AFP, they are told the plan will not cover the cost of their medication if they do not enroll in the AFP. As such, consumers who choose not to enroll in the AFP are responsible for the full cost of their medication. For some consumers with chronic conditions, this may be thousands of dollars a month that would have to be paid out of pocket for their medication.²² This hefty cost-sharing – not remotely feasible for most people -- is the first recognizable financial harm.

In other documented instances, patients ensnared in AFPs have, after long delays, accessed their medication – only to, months later, receive bills for tens of thousands of dollars and letters saying the medication was not covered by their health plan. One patient summed up her experience: “In one week, I went from being out of debt to over a quarter of a million in debt.”²³

In a second instance of financial harm, even when consumers work with the AFP to access their medications, they are still losing the benefit of their premium payments. Insurance premiums represent a big expense for most individuals and families. In 2024, premiums for employer-sponsored health insurance coverage averaged \$8,951 for single coverage and \$25,572 for family coverage – with employees commonly contributing from 14 – 33% of the premium cost, depending on the type of coverage and the type of employer.²⁴ Typically, consumers expect these high premiums to afford them some type of prescription drug coverage. It is a breach of the contract between the consumer and the health plan for a consumer to pay these substantial sums and then to learn their medication will not be covered by the plan, but can only be accessed via a non-insurance source.²⁵ If the consumer had known at enrollment that their prescription drugs would

¹⁸ FTC, Federal Trade Commission Act: Section 5: Unfair or Deceptive Acts or Practices, at p. 8, <https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf>

¹⁹ *Id.*

²⁰ FTC, The FTC’s Use of Unfairness Authority: Its Rise, Fall, and Resurrection, <https://www.ftc.gov/news-events/news/speeches/ftcs-use-unfairness-authority-its-rise-fall-resurrection>.

²¹ *Id.*

²² See e.g. Mark Cuban Cost Plus Drug Company, *Medications*, <https://costplusdrugs.com/medications/> (listing the retail price of certain medications over \$30,000).

²³ John Tozzi, “Patient Hit With \$250,000 Bill Over Plan to Access Cheap Drugs.” Bloomberg Law News (April 22, 2025), <https://www.bloomberg.com/news/features/2025-04-22/high-prescription-drug-costs-push-employers-to-alternative-funders>.

²⁴ KFF, *2024 Employer Health Benefits Survey*, <https://files.kff.org/attachment/Employer-Health-Benefits-Survey-2024-Annual-Survey.pdf>.

²⁵ Moreover, because PAPs provide medicine but not the ancillary supplies required to self-administer that medicine, consumers must obtain and pay out-of-pocket for those necessary supplies.

not be covered without alternative sourcing, they would have likely identified a different plan to enroll in that would have provided them coverage in exchange for their premiums.

Lastly, a federal district court judge recently recognized that a patient who was required to work with an AFP may have recognizable compensatory damages “to compensate him for physical injuries stemming from gaps in treatment caused by delays in filling prescriptions. The patient might seek compensatory damages for time he expended calling health care providers, insurance companies, and PBMs in an effort to get his hands on an appropriate and covered medication.”²⁶ In addition to the financial harm experienced by consumers, they may also experience physical, financial, and moral harms when they have to navigate AFPs. Consumers seeking a prescription fill are told that they must apply for enrollment in a PAP, or else pay 100% of the cost of their drugs – but the PAP application expressly bars applications from patients covered by an AFP. The consumer has no access to their medication until either their PAP application wins approval, *or* the patient receives the PAP’s denial letter and then has their prescription re-processed through plan’s pharmacy benefit.

Ultimately, when a plan engages an AFP, there is no way for consumers to avoid financial harm. Participation and non-participation in the AFP both shift substantial and often unsustainable costs to consumers – costs that they reasonably expected to be covered by their health plan.

2. AFPs Cannot be Reasonably Avoided by Consumers

The FTC has found that a practice is not unfair if a consumer can reasonably avoid the injury.²⁷ However, a practice may be considered unfair if the consumer is coerced into purchasing unwanted products or services.

As explained above, alternative funding schemes are structured to coerce consumers to enroll in their programs. These schemes present consumers with two bad options, either of which leads to financial injury. On the one hand, if consumers enroll in these programs, they may receive their medications from a PAP but can be required to falsify paperwork or sign over a power of attorney to the AFP to access their medications. Meanwhile, on the other hand, if consumers refuse to enroll in this program, they are responsible for 100% the cost of the medication—costs which are out of reach for most, and sums which (if within reach) will not count towards the consumers’ annual cost-sharing limits.²⁸ As a result, most consumers are forced to choose the lesser of two evils: enrollment in the AFP. Furthermore, it is important to recognize that when the consumer is attempting to access their medication, it is likely at the beginning of the plan year, which means

²⁶ *AbbVie Inc. v. Payer Matrix, LLC, No. 1 :2023cv02836 – Document 387 (N.D. Ill 2025)*, <https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2023cv02836/433197/387/>.

²⁷ FTC, Federal Trade Commission Act: Section 5: Unfair or Deceptive Acts or Practices, at p. 8, <https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf>.

²⁸ CareFactor, PaydHealth Program, <https://www.wchcs.org/Downloads/Paydhealth%20general%20letter%20for%20EMPLOYEES.pdf>; PaydHealth, Select Drugs and Product Program Questions & Answers, https://mennonitevillage.org/wp-content/uploads/2021/03/Select-Drugs-and-Products-Program_HR-FAQ-2020-03.pdf.

open enrollment has closed and there is no opportunity to enroll in a different plan that would provide better coverage. As such, there is no reasonable way for consumers who are prescribed a specialty medication that is managed by a third-party program to avoid an injury.

3. AFPs Are Not Outweighed by Countervailing Benefits to Consumers or Competition

Lastly, for a practice to be unfair, its overall net effect on consumers must be negative, and any harm incurred by the consumer cannot be outweighed by an alternative benefit to consumers or competition.²⁹ AFP schemes do not have an underlying benefit to consumers or to competition that would outweigh the net harm experienced by consumers forced to enroll in these programs.

While plans, PBMs, and the partnering companies operating these schemes would likely argue that consumers receive a net benefit because they receive their medications for a low-cost through the AFP, this argument ignores the fact that in the larger picture of the plan year, AFPs deprive consumers of the benefit of their premiums and expose them to unexpected financial costs (e.g., for ancillary equipment needed to self-administer their medication – not supplied by PAPs) and opportunity costs (e.g., time spent trying to navigate the AFP processes and access their medications). AFPs strongarm patients into signing up for programs (PAPs) they don't qualify for – programs, moreover, that the patient could enroll in independently, if the patient *were* eligible. Moreover, the pro-AFP argument fails to recognize the delays in access to medication created by these programs, and the negative health outcomes that can result from interruption to therapy; the harm that can occur if the plan refuses to cover the medication if the consumer is denied from the PAP; and the harm that occurs when the consumer is denied from the PAP and the AFP attempts to non-medically switch the consumer to another medication in a bid to enroll the consumer in a different (easier to fool) manufacturer's PAP.³⁰ As a result, the short-term benefit of the health plan paying less for prescription drug benefits does not outweigh the additional financial pressures and health impacts that consumers experience as a result of these programs.

In summary, we strongly believe that AFPs satisfy the definition of an unfair practice under the FTC's interpretation of "unfair." Therefore, the undersigned organizations encourage the Ohio Attorney General to take appropriate investigation and enforcement actions against these programs.

IV. AFPs are Deceptive Trade Practices

In addition to finding AFPs to be unfair trade practices, the Ohio Attorney General can also find AFPs constitute deceptive trade practices. Both Ohio and federal law recognize that trade practices may be deceptive or unfair and are not required to be *both* deceptive and unfair. Ohio

²⁹ FTC, *The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection* (May 30, 2003), <https://www.ftc.gov/news-events/news/speeches/ftcs-use-unfairness-authority-its-rise-fall-resurrection>.

³⁰ *AbbVie Inc. v. Payer Matrix, LLC, No. 1 :2023cv02836-Document 387 (N.D. Ill. 2025)*, at p. 18, <https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2023cv02836/433197/387/>.

Revised Code Section 4165.02 provides additional guidance on the type of conduct that may be considered a deceptive trade practice.³¹

A. Deceptive Practices under the Ohio Revised Code

Ohio Revised Code Section 4165.02 recognizes an individual may be engaging in deceptive practices when the alleged conduct:

- (2) causes likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of good or services;
- (3) causes likelihood of confusion or misunderstanding as to affiliation, connection, or association with or certification by, another;
- (7) represents that good or services have sponsorship, approval, characteristics, or benefits that the person does not have; and
- (12) makes false statements of fact concerning the reasons for, existence of, or amounts of price reductions.

AFPs engage in multiple levels of deception to both consumers and other stakeholders within the health care system. While not all deception is targeted at consumers, consumers nonetheless experience harm due to both direct and indirect deception.

AFPs deceive employers by stating that nothing in the consumer's experience will change, when in fact the introduction of an alternative funding arrangement will subject consumers to denials, delays, and dubious interactions with sketchy third parties before they can access their necessary treatments. AFPs also provide conflicting messaging to consumers about whether they have coverage. For example, as discussed above, consumers are often told a drug is "medically necessary", but that the consumer must work with the AFP to access their medication.³² For consumers, this is confusing, as a medical necessity designation should mean that the health plan will cover the cost of the medication -- whereas, with an AFP in place, the plan will deny coverage for the drug unless the PAP is unavailable. Moreover, consumers often do not receive a denial from the plan but instead are consistently redirected to the AFP in a frustrating and deliberate loop of email and phone tag when they try to fill their prescriptions. This deception results in consumers being confused as to how to challenge the requirement to work with the AFP and if, and when, they can exercise their right to appeal.

Moreover, AFPs also mislead payers as to their affiliation with pharmaceutical manufacturer PAPs. AFPs have been known to misrepresent that they are working with pharmaceutical manufacturers to connect patients with their prescribed medications via the manufacturers' PAPs. However, pharmaceutical companies are not affiliated with AFPs, and manufacturers actively oppose AFP schemes, which steer commercially insured individuals into

³¹ OH Rev Code § 4165.02 (2024).

³² PaydHealth FAQ.

charitable free drug programs intended for uninsured and underinsured individuals.³³ Notably, this very issue arose in a recent lawsuit between a pharmaceutical company and an AFP. The manufacturer's claim of false association survived the defendant's motion for summary judgment, with the court finding sufficient facts to survive the motion for summary judgment standard.³⁴ While this misrepresentation is not directed towards consumers, it does result in employers partnering with AFPs where they may otherwise have rejected the AFPs' business proposition, had AFPs been transparent about their relationship with pharmaceutical companies and PAP requirements. Therefore, in addition to the unfairness of AFPs, these practices should also constitute deceptive trade practices under Ohio Revised Code Section 4165.02.

B. "Deceptive" Practices as Defined by the FTC

In addition to finding AFPs to be unfair trade practices under the Ohio code, the Ohio Attorney General can also find that AFPs constitute deceptive trade practices as defined by the FTC. While the FTC statute does not define deceptive trade practices, it has clarified the considerations the agency deems relevant when determining if a practice is deceptive.³⁵ A practice will be considered deceptive when (1) there is a material representation, omission, or practice that is likely to mislead the consumer; (2) when a consumer is acting reasonably; and (3) the consumer injury is likely because the consumer would have chosen differently but for the deception. AFPs satisfy all three elements and should be considered a deceptive trade practice under FTC standards.

1. AFPs make a material misrepresentation about health insurance coverage

A statement is material when it has "important information, generally significant enough to determine an issue."³⁶ A material misrepresentation occurs when the consumer would have chosen differently, but for the misrepresentation.³⁷ A misrepresentation about the benefits a plan provides "[goes] to 'the heart of a consumer's decision to purchase' a product or service and is presumptively material."³⁸

Consumers with chronic conditions cautiously review their health insurance renewals to ensure their medically necessary prescription drugs are covered. Thus, when a consumer enrolls or re-enrolls in a health plan with their employer, they do so under the reasonable belief that they have prescription drug coverage for their medications. When an AFP is involved, however, the employee typically learns of the AFP's involvement – and the new barriers to access that now exist -- only *after* the employee is enrolled in the plan and in need of a particular prescription drug. As

³³ *AbbVie Inc. v. Payer Matrix, LLC, No. 1 :2023cv02836-Document 387 (N.D. Ill. 2025)*, at p. 18, <https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2023cv02836/433197/387/>.

³⁴ *AbbVie Inc. v. Payer Matrix, LLC, No. 1 :2023cv02836 – Document 387 (N.D. Ill 2025)*, <https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2023cv02836/433197/387/>.

³⁵ FTC Policy Statement on Deception, https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

³⁶ Cornell Law School, *material*, <https://www.law.cornell.edu/wex/material>

³⁷ FTC, *FTC Policy Statement on Deception* (Oct. 14, 1983), at p. 2 https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

³⁸ FTC, *FTC v. Simple Health Plans, LLC. Order*, at p. 18, https://www.ftc.gov/system/files/ftc_gov/pdf/SimpleHealthSJOpinion_0.pdf.

such, at open enrollment, consumers are materially misled as to the contents of their health insurance coverage: had consumers known of the AFP during open enrollment, they may have selected a different health plan that provided straightforward coverage of their medication.

2. Consumers act reasonably when enrolling in employer-sponsored health insurance that purports to provide coverage for their necessary medications

Reasonableness is determined from the perspective of a reasonable consumer under the circumstances.³⁹ If a representation conveys two or more meanings, only one needs to be misleading for deception to be found.⁴⁰ AFPs are deceptive when they mislead consumers as to whether they have coverage for their specialty medications. For example, in one AFP FAQ⁴¹ the following two questions are included:

Is my medication still covered?

The plan will still pay for your medication with no increase in co-pay or cost share to you. However, the method of obtaining these medications have [sic] changed. Instead of funneling through your Pharmacy Benefits Manager, this will now funnel through [the AFP]. If [the AFP] is unable to obtain secure alternative funding, then coverage will revert to your traditional coverage.

What do I do if the manufacturer calls to confirm that there is no coverage for Specialty Drugs?

While the manufacturer may contact you, your Reimbursement Care Coordinators will help you prepare for these potential calls. The coverage effective December 1st, 2022, under the [plan's] prescription drug benefit, is that all specialty drugs are 100% patient responsibility, with no portion of the cost being covered by the group. Additionally, these costs do not accumulate towards satisfying either the in-network or out-of-network deductibles, coinsurance or out-of-pocket maximums.

To the average reasonable consumer, a clear statement in writing that “[t]he plan will still pay for your medication with no increase in co-pay or cost share to you” would be understood as the plan continuing to provide coverage for the specialty medication. It is also misleading when read in conjunction with the subsequent language instructing the consumer how to respond if a manufacturer calls. Either the individual still has coverage for their medication, and their cost-sharing does not change (paragraph 1) – OR they are 100% responsible for the cost of specialty drugs, with payment for those medications not counting toward their cost-sharing (paragraph 2). Both statements cannot be true. Although this is only one example, these are common statements made by AFPs that mislead a reasonable consumer as to whether they have health insurance coverage for their medications.

³⁹ FTC, *Unfair, Deceptive, and Abusive Practices – Federal Trade Commission Act/Dodd-Frank Act Section 1031 and 1036*, <https://www.ftc.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/7/vii-1-1.pdf>.

⁴⁰ *Id.*

⁴¹ PayerMatrix FAQ, .

3. AFP's material misrepresentation harms consumers

AFPs' misrepresentation to employers that consumers will not experience changes in their access to their specialty medications results in consumers experiencing recognizable harm by denying them the opportunity to pursue better coverage. Importantly, a federal court has already recognized that a misrepresentation that causes consumers to purchase a health plan that does not meet their health care needs is a genuine harm under the FTC Act. *See Federal Trade Commission v. Simple Health Plans LLC* (holding that a misrepresentation that led to the purchase of a limited coverage plan harmed consumers by denying them the opportunity to enroll in an ACA-compliant plan).⁴² Therefore, when AFPs fail to disclose that consumers' medications may not be covered, and may only be covered if they work with an AFP to apply to a PAP, consumers are materially misled and experience a recognizable harm.

V. Conclusion

In conclusion, under the above analysis we believe AFPs constitute unfair and deceptive trade practices under Ohio statutes and under the FTC's standards for unfair and deceptive trade practices. We would greatly appreciate an opportunity to meet with your office and discuss these practices that impair patient access to necessary treatments. Thank you for your time and consideration.

Sincerely,

Ashira Vantrees, Esq.
Director of Legal Strategy & Advocacy
Aimed Alliance

National Bleeding Disorders Foundation

The Hemophilia Alliance

ADDITIONAL SUPPORTERS

Accessia Health
AiArthritis
Alliance for Patient Access
American Kidney Fund
Arthritis Foundation
Autoimmune Association
CancerCare
Coalition of State Rheumatology
Organizations
Hemophilia Federation of America

HIV+Hepatitis Policy Institute
Little Hercules Foundation
Midwest Gastrointestinal Associates
Ohio Bleeding Disorders Council
The Mended Hearts, Inc.
The Coalition for Hemophilia B

⁴² FTC, *FTC v. Simple Health Plans, LLC. Order*, at p. 18,
https://www.ftc.gov/system/files/ftc_gov/pdf/SimpleHealthSJOpinion_0.pdf.