Congress of the United States
Washington, DC 20515

April 17, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
Washington, D.C. 20580

Dear Chair Khan:

I write today to express concerns about a deceptive business practice recently brought to my attention. Alternative Funding Vendors ("AFVs") are an emerging business model that advise health plans to exclude coverage for specialty drugs and direct consumers to seek the drug outside of their health plan benefit from non-profit patient assistance programs ("PAPs") which are designed as a safety net for uninsured and underinsured individuals. If left unchecked, this business practice threatens to dismantle the promise of comprehensive drug coverage for many Americans.

By advising health plans to exclude coverage for specialty drugs (often as many as 300 drugs are excluded), AFVs are creating the fraudulent appearance of noncoverage. In many cases, consumers are told: (1) that their drug will not be covered unless they cooperate with the AFV's fraudulent scheme and apply for coverage through the PAP (i.e. "If you do not participate in the program, you will have a 100% reduction in your payable benefit for specialty medication."); and (2) that if coverage is unsuccessful through the PAP, their employer will reinstate their coverage. Consumers are thus forced by the health plan and AFV to participate in deceiving the PAP by claiming that they are without coverage even if coverage from their plan remains available. In many instances, this means consumers are forced to choose between violating the terms and conditions of enrollment in a PAP or paying entirely out of pocket for costly medications. This puts consumers, through no fault of their own, in an untenable position.

In a typical case, consumers receive an abrupt notification that their medication is no longer covered by their employer, with no further explanation. In most cases, these are consumers on long-term therapy for serious, chronic, and often rare conditions. The drug is not excluded for medical reasons – but instead for the sole purpose of shifting financial responsibility to the charitable PAP. This notification is not only distressing for consumers but can result in arbitrary delays as consumers wait for the PAP to determine whether they are eligible for the program.

The AFV revenue model is based on the AFV and the plan splitting the windfall that results from the scheme, while the consumers receive no benefit or cost savings. In addition to deceiving consumers, AFVs also harm indigent consumers who truly do not have insurance coverage. By forcing otherwise insured consumers to deplete PAP resources, AFVs are redirecting finite charitable funds intended for uninsured or underinsured, low-income consumers reliant on these medications for life-sustaining treatment. With the potential windfall so high – and without any effective oversight – AFVs will only continue to grow.

Fundamentally, this is an issue of protecting consumers from a fraudulent business practice. Consumers are being forced to misrepresent themselves to these charities or go without coverage for their medications. As the regulator charged with protecting consumers, FTC needs to review and investigate these deceptive practices. I urge you to take action and look forward to hearing your proposed solution to this increasingly dire problem.

Sincerely,

Earl L. "Buddy" Carter
Member of Congress

Brian Fitzpatrick
Member of Congress

Nancy Mace
Member of Congress

Neal P. Dunn, M.D.
Member of Congress

John Joyce, M.D.
Member of Congress