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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**SCHEDULE 14D-9**  
(Rule 14d-101)  
**SOLICITATION/RECOMMENDATION STATEMENT**  
**UNDER SECTION 14(d)(4) OF THE SECURITIES EXCHANGE ACT OF 1934**  
(Amendment No. 3)

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**TherapeuticsMD, Inc.**  
(Name of Subject Company)

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**TherapeuticsMD, Inc.**  
(Name of Person(s) Filing Statement)

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**COMMON STOCK, PAR VALUE \$0.001 PER SHARE**  
(Title of Class of Securities)

**88338N206**  
(CUSIP Number of Class of Securities)

**Hugh O'Dowd**  
Chief Executive Officer  
TherapeuticsMD, Inc.  
951 Yamato Road, Suite 220  
Boca Raton, FL 33431  
Telephone: (561) 961-1900

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications on Behalf of the Person(s) Filing Statement)

*With copies to:*

**Marlan Walker**  
General Counsel  
TherapeuticsMD, Inc.  
951 Yamato Road, Suite 220  
Boca Raton, FL 33431  
Telephone: (561) 961-1900

**Joshua M. Samek, Esq.**  
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Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

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This Amendment No. 3 (this “*Amendment*”) to Schedule 14D-9 amends and supplements the Solicitation / Recommendation Statement on Schedule 14D-9 previously filed by TherapeuticsMD, Inc., a Nevada corporation (the “*Company*,” “*TherapeuticsMD*,” “*we*,” “*our*” or “*us*”), with the Securities and Exchange Commission on June 13, 2022 (as amended on June 29, 2022 and July 6, 2022, the “*Schedule 14D-9*”), relating to the cash tender offer by Athene Merger Sub, Inc. (“*Merger Sub*”), a Nevada corporation and wholly-owned subsidiary of Athene Parent, Inc., a Nevada Corporation (“*Parent*”), to purchase all of the issued and outstanding shares of the Company’s common stock, par value \$0.001 per share (the “*Shares*”), at a purchase price of \$10.00 per Share, net to the seller in cash, without interest, and subject to withholding taxes, upon the terms and subject to the conditions set forth in the Agreement and Plan of Merger, dated as of May 27, 2022, by and among the Company, Parent and Merger Sub, the Offer to Purchase, dated as of June 6, 2022 and the related Letter of Transmittal, each of which may be amended or supplemented from time to time.

Except as otherwise set forth in this Amendment, the information set forth in the Schedule 14D-9 remains unchanged and is incorporated herein by reference to the extent relevant to the items in this Amendment. Capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule 14D-9.

***Item 8. Additional Information.***

**Item 8 of the Schedule 14D-9 is hereby amended and supplemented by adding the following paragraphs as a new subsection following the heading entitled “Item 8. Additional Information – Extension of the Offer” on page 46:**

**Expiration of the Offer**

The Offer and withdrawal rights expired as scheduled at one minute after 11:59 p.m., New York City time, on July 12, 2022 and was not extended. The Depository and Paying Agent of Parent has indicated that, as of the Expiration Date, approximately 2,705,915 Shares have been validly tendered and not properly withdrawn pursuant to the Offer, representing approximately 30.6% of the outstanding Shares. As a result, the Minimum Condition was not satisfied and no Shares were accepted for payment or paid for pursuant to the Offer.

The press release of the Company announcing the expiration and results of the Offer is attached as Exhibit (a)(5)(E) to this Schedule 14D-9 and is incorporated herein by reference.

***Item 9. Exhibits.***

**Item 9 of the Schedule 14D-9 is hereby amended by inserting the following Exhibit below (a)(5)(D) as Exhibit (a)(5)(E).**

(a)(5)(E)     [Press Release issued by the Company, dated July 13, 2022.](#)

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**SIGNATURE**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete and correct.

Dated: July 13, 2022

THERAPEUTICSMD, INC.

By: /s/ Marlan D. Walker

Marlan D. Walker

Title: General Counsel and Secretary

**FOR IMMEDIATE RELEASE****TherapeuticsMD Announces Expiration of Tender Offer**

*Company anticipates termination of Merger Agreement with EW Healthcare Partners*

**BOCA RATON, Fla. – July 13, 2022** – TherapeuticsMD, Inc. (NASDAQ: TXMD), (“TXMD” or the “Company”) an innovative, leading women’s healthcare company, announced today that Athene Merger, Inc., an affiliate of EW Healthcare Partners (“EW”), did not acquire the required majority of shares of TXMD through the previously announced tender offer by the extended offer deadline of one minute after 11:59 PM Eastern Time on July 12, 2022. As a result, the tender offer has expired according to its terms. The Company anticipates that the Merger Agreement between TXMD and EW will be terminated pursuant to its terms following 11:59 PM Eastern Time on July 13, 2022.

TherapeuticsMD intends to maintain normal operations at this time.

**TherapeuticsMD Advisors**

Greenhill & Co., LLC is serving as financial advisor and DLA Piper LLP (US) and Jones Day are serving as legal counsel to TherapeuticsMD.

**About TherapeuticsMD, Inc.**

TherapeuticsMD, Inc. is an innovative, leading healthcare company, focused on developing and commercializing novel products exclusively for women. TherapeuticsMD’s products are designed to address the unique changes and challenges women experience through the various stages of their lives with a therapeutic focus in family planning, reproductive health, and menopause management. TherapeuticsMD is committed to advancing the health of women and championing awareness of their healthcare issues. To learn more about TherapeuticsMD, please visit <https://www.therapeuticsmd.com/> or follow us on Twitter: @TherapeuticsMD and on Facebook: TherapeuticsMD.

**Cautionary Notes Regarding Forward Looking Statements**

Certain statements in this communication, including, without limitation, statements regarding the proposed transaction, plans and objectives, and management’s beliefs, expectations or opinions, may contain forward-looking information within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements relate to future, not past, events and often address expected future actions and expected future business and financial performance. Forward-looking statements may be identified by the use of words such as “believe,” “will,” “should,” “estimate,” “anticipate,” “potential,” “expect,” “intend,” “plan,” “may,” “subject to,” “continues,” “if” and similar words and phrases. These forward-looking statements are not guarantees of future events and involve risks, uncertainties and assumptions that are difficult to predict.

Actual results, developments and business decisions may differ materially from those expressed or implied in any forward-looking statements as a result of numerous factors, risks and uncertainties over which the Company has no control. These factors, risks and uncertainties include, but are not limited to, the following: whether the Company will be able to repay the indebtedness under the Company’s Financing Agreement, which is scheduled to mature on July 13, 2022, and, if not, whether the Company will be able to continue as a going concern; risks that the failure of the proposed transaction disrupts current plans and operations and potential difficulties in employee retention as a result of the failure of the proposed transaction; risks related to diverting management’s attention from ongoing business operations; the outcome of any legal proceedings that may be instituted related to the proposed transaction or the transaction agreement between the parties to the proposed transaction; the

amount of the costs, fees, expenses and other charges related to the proposed transaction; general economic conditions, particularly those in the life science and medical device industries; stock trading prices, including the impact of the failure of the proposed transaction on the Company's stock price, particularly in relation to the Company's current and future capital needs and its ability to raise additional funds to finance its future operations; and other factors discussed from time to time in the reports of the Company filed with the Securities and Exchange Commission (the "SEC"), including the risks and uncertainties contained in the sections titled "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements" in the Company's most recent Annual Report on Form 10-K, as filed with the SEC on March 23, 2022, and related sections in the Company's subsequent Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, all of which are available free of charge at <http://www.sec.gov> or under the "Investors & Media" section on the Company's website at [www.therapeuticsmd.com](http://www.therapeuticsmd.com).

Forward-looking statements reflect the views and assumptions of management as of the date of this communication with respect to future events. The Company does not undertake, and hereby disclaims, any obligation, unless required to do so by applicable laws, to update any forward-looking statements as a result of new information, future events or other factors. The inclusion of any statement in this communication does not constitute an admission by the Company or any other person that the events or circumstances described in such statement are material.

#### **Contact**

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