To amend title 18, United States Code, to establish criminal penalties for unlawful payments for referrals to recovery homes, clinical treatment facilities, and laboratories.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2018

Mr. DEUTCH introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to establish criminal penalties for unlawful payments for referrals to recovery homes, clinical treatment facilities, and laboratories.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Eliminating Kickbacks in Recovery Act of 2018”.
5 SEC. 2. CRIMINAL PENALTIES.
6 (a) IN GENERAL.—Chapter 11 of title 18, United
7 States Code, is amended by inserting after section 219 the following:
§ 220. Illegal remunerations for referrals to recovery homes, clinical treatment facilities, and laboratories

(a) OFFENSE.—Except as provided in subsection (b), whoever, with respect to services covered by a health care benefit program, in or affecting interstate or foreign commerce, knowingly and willfully—

(1) solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in-kind, in return for referring a patient or patronage to a recovery home, clinical treatment facility, or laboratory; or

(2) pays or offers any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in-kind—

(A) to induce a referral of an individual to a recovery home, clinical treatment facility, or laboratory; or

(B) in exchange for an individual using the services of that recovery home, clinical treatment facility, or laboratory,

shall be fined not more than $200,000, imprisoned not more than 10 years, or both, for each occurrence.

(b) APPLICABILITY.—Subsection (a) shall not apply to—
“(1) a discount or other reduction in price obtained by a provider of services or other entity under a health care benefit program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity;

“(2) a payment made by an employer to an employee or independent contract (who has a bona fide employment or contractual relationship with such employer) for employment, if the employee’s payment is not determined by or does not vary by—

“(A) the number of individuals referred to a particular recovery home, clinical treatment facility, or laboratory;

“(B) the number of tests or procedures performed; or

“(C) the amount billed to or received from, in part or in whole, the health care benefit program from the individuals referred to a particular recovery home, clinical treatment facility, or laboratory;

“(3) a discount in the price of an applicable drug of a manufacturer that is furnished to an applicable beneficiary under the Medicare coverage gap
discount program under section 1860D–14A(g) of the Social Security Act (42 U.S.C. 1395w–114a(g));

“(4) a payment made by a principal to an agent as compensation for the services of the agent under a personal services and management contract that meets the requirements of section 1001.952(d) of title 42, Code of Federal Regulations, as in effect on the date of enactment of this section;

“(5) a waiver or discount (as defined in section 1001.952(h)(5) of title 42, Code of Federal Regulations, or any successor regulation) of any coinsurance or copayment by a health care benefit program if—

“(A) the waiver or discount is not routinely provided; and

“(B) the waiver or discount is provided in good faith;

“(6) a remuneration described in section 1128B(b)(3)(I) of the Social Security Act (42 U.S.C. 1320a–7b(b)(3)(I));

“(7) a remuneration made pursuant to an alternative payment model (as defined in section 1833(z)(3)(C) of the Social Security Act) or pursuant to a payment arrangement used by a State, health insurance issuer, or group health plan if the
Secretary of Health and Human Services has determined that such arrangement is necessary for care coordination or value-based care; or

“(8) any other payment, remuneration, discount, or reduction as determined by the Attorney General, in consultation with the Secretary of Health and Human Services, by regulation.

“(c) RULE OF CONSTRUCTION.—Neither actual knowledge of this section nor specific intent to commit a violation of this section shall be an element of an offense under this section.

“(d) REGULATIONS.—The Attorney General, in consultation with the Secretary of Health and Human Services, may promulgate regulations to clarify the exceptions described in subsection (b).

“(e) DEFINITIONS.—In this section—

“(1) the terms ‘applicable beneficiary’ and ‘applicable drug’ have the meanings given those terms in section 1860D–14A(g) of the Social Security Act (42 U.S.C. 1395w–114a(g));

“(2) the term ‘clinical treatment facility’ means a medical setting, other than a hospital, that provides detoxification, risk reduction, outpatient treatment and care, residential treatment, or rehabilita-
tion for substance use, pursuant to licensure or cer-
tification under State law;

“(3) the term ‘health care benefit program’ has
the meaning given the term in section 24(b);

“(4) the term ‘laboratory’ has the meaning
given the term in section 353 of the Public Health
Service Act (42 U.S.C. 263a); and

“(5) the term ‘recovery home’ means a shared
living environment that is, or purports to be, free
from alcohol and illicit drug use and centered on
peer support and connection to services that promote
sustained recovery from substance use disorders.”.

(b) CLERICAL AMENDMENT.—The table of sections
for chapter 11 of title 18, United States Code, is amended
by inserting after the item related to section 219 the fol-
lowing:

“220. Illegal remunerations for referrals to recovery homes, clinical treatment
facilities, and laboratories.”.