

115TH CONGRESS
2D SESSION

H. R. 6902

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2018

Mr. KNIGHT (for himself and Ms. ESHOO) 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 and clinical treatment facilities.

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
5 in Recovery Act of 2018”.

6 **SEC. 2. CRIMINAL PENALTIES.**

7 (a) IN GENERAL.—Chapter 11 of title 18, United
8 States Code, is amended by inserting after section 219 the
9 following:

1 **“§ 220. Illegal remunerations for referrals to recovery**
2 **homes and clinical treatment facilities**

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

7 “(1) solicits or receives any remuneration (in-
8 cluding any kickback, bribe, or rebate) directly or in-
9 directly, overtly or covertly, in cash or in-kind, in re-
10 turn for referring a patient or patronage to a recov-
11 ery home or clinical treatment facility; or

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

15 “(A) to induce a referral of an individual
16 to a recovery home or clinical treatment facility;
17 or

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

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

23 “(b) APPLICABILITY.—Subsection (a) shall not apply
24 to—

25 “(1) a discount or other reduction in price ob-
26 tained by a provider of services or other entity under

1 a health care benefit program if the reduction in
2 price is properly disclosed and appropriately re-
3 flected in the costs claimed or charges made by the
4 provider or entity;

5 “(2) a payment made by an employer to an em-
6 ployee or independent contract (who has a bona fide
7 employment or contractual relationship with such
8 employer) for employment, if the employee’s pay-
9 ment is not determined by or does not vary by—

10 “(A) the number of individuals referred to
11 a particular recovery home or clinical treatment
12 facility;

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

15 “(C) the amount billed to or received from,
16 in part or in whole, the health care benefit pro-
17 gram from the individuals referred to a par-
18 ticular recovery home or clinical treatment facil-
19 ity;

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

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

7 “(5) a waiver or discount (as defined in section
8 1001.952(h)(5) of title 42, Code of Federal Regula-
9 tions, or any successor regulation) of any coinsur-
10 ance or copayment by a health care benefit program
11 if—

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

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

16 “(6) a remuneration described in section
17 1128B(b)(3)(I) of the Social Security Act (42
18 U.S.C. 1320a-7b(b)(3)(I));

19 “(7) a remuneration made pursuant to an alter-
20 native payment model (as defined in section
21 1833(z)(3)(C) of the Social Security Act) or pursu-
22 ant to a payment arrangement used by a State,
23 health insurance issuer, or group health plan if the
24 Secretary of Health and Human Services has deter-

1 mined that such arrangement is necessary for care
2 coordination or value-based care; or

3 “(8) any other payment, remuneration, dis-
4 count, or reduction as determined by the Attorney
5 General, in consultation with the Secretary of
6 Health and Human Services, by regulation.

7 “(c) REGULATIONS.—The Attorney General, in con-
8 sultation with the Secretary of Health and Human Serv-
9 ices, may promulgate regulations to clarify the exceptions
10 described in subsection (b).

11 “(d) DEFINITIONS.—In this section—

12 “(1) the terms ‘applicable beneficiary’ and ‘ap-
13 plicable drug’ have the meanings given those terms
14 in section 1860D–14A(g) of the Social Security Act
15 (42 U.S.C. 1395w–114a(g));

16 “(2) the term ‘clinical treatment facility’ means
17 a medical setting, other than a hospital or a facility
18 that is owned and operated by, controlled by, or con-
19 trolled in common by a hospital, that provides de-
20 toxification, risk reduction, outpatient treatment and
21 care, residential treatment, or rehabilitation for sub-
22 stance use, pursuant to licensure or certification
23 under State law;

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

1 “(4) the term ‘recovery home’ means a shared
2 living environment, except for a facility that is
3 owned and operated by, controlled by, or controlled
4 in common by a hospital, or purports to be, free
5 from alcohol and illicit drug use and centered on
6 peer support and connection to services that promote
7 sustained recovery from substance use disorders.”.

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

“220. Illegal remunerations for referrals to recovery homes and clinical treat-
ment facilities.”.

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