

115TH CONGRESS
2D SESSION

H. R. 6878

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
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, clinical treatment facilities, and**
3 **laboratories**

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

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

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

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

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

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

25 “(b) APPLICABILITY.—Subsection (a) shall not apply
26 to—

1 “(1) a discount or other reduction in price ob-
2 tained by a provider of services or other entity under
3 a health care benefit program if the reduction in
4 price is properly disclosed and appropriately re-
5 flected in the costs claimed or charges made by the
6 provider or entity;

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

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

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

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

22 “(3) a discount in the price of an applicable
23 drug of a manufacturer that is furnished to an ap-
24 plicable beneficiary under the Medicare coverage gap

1 discount program under section 1860D–14A(g) of
2 the Social Security Act (42 U.S.C. 1395w–114a(g));

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

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

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

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

18 “(6) a remuneration described in section
19 1128B(b)(3)(I) of the Social Security Act (42
20 U.S.C. 1320a–7b(b)(3)(I));

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

1 Secretary of Health and Human Services has deter-
2 mined that such arrangement is necessary for care
3 coordination or value-based care; or

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

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

12 “(d) REGULATIONS.—The Attorney General, in con-
13 sultation with the Secretary of Health and Human Serv-
14 ices, may promulgate regulations to clarify the exceptions
15 described in subsection (b).

16 “(e) DEFINITIONS.—In this section—

17 “(1) the terms ‘applicable beneficiary’ and ‘ap-
18 plicable drug’ have the meanings given those terms
19 in section 1860D–14A(g) of the Social Security Act
20 (42 U.S.C. 1395w–114a(g));

21 “(2) the term ‘clinical treatment facility’ means
22 a medical setting, other than a hospital, that pro-
23 vides detoxification, risk reduction, outpatient treat-
24 ment and care, residential treatment, or rehabilita-

1 tion for substance use, pursuant to licensure or cer-
2 tification under State law;

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

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

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

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

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

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