

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.

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## 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

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## 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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