

Subtitle J—Eliminating Kickbacks In Recovery

SEC. 8121. SHORT TITLE.

This subtitle may be cited as the “Eliminating Kickbacks in Recovery Act of 2018”.

SEC. 8122. CRIMINAL PENALTIES.

(a) IN GENERAL.—Chapter 11 of title 18, United 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 contractor (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) 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).

“(d) PREEMPTION.—

“(1) FEDERAL LAW.—This section shall not apply to conduct that is prohibited under section 1128B of the Social Security Act (42 U.S.C. 1320a–7b).

“(2) STATE LAW.—Nothing in this section shall be construed to occupy the field in which any provisions of this section operate to the exclusion of State laws on the same subject matter.

“(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 rehabilitation for substance use, pursuant to licensure or certification 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 following:

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