

115TH CONGRESS
2D SESSION

S. 3254

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 SENATE OF THE UNITED STATES

JULY 19, 2018

Mr. RUBIO (for himself and Ms. KLOBUCHAR) introduced the following bill;
which was read twice and 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 (c), it shall be unlawful to, in or affecting interstate or
 5 foreign commerce, knowingly and willfully—

6 “(1) solicit or receive any remuneration (includ-
 7 ing any kickback, bribe, or rebate) directly or cov-
 8 ertly, in cash or in kind, in return for referring a pa-
 9 tient or patronage to a recovery home or clinical
 10 treatment facility;

11 “(2) being a recovery home or clinical treat-
 12 ment facility, or an officer or employee of a recovery
 13 home or clinical treatment facility acting in the
 14 course of their employment, pay or offering any re-
 15 muneration (including any kickback, bribe, or re-
 16 bate) directly or covertly, in cash or in kind, to—

17 “(A) a person in exchange for the person
 18 referring an individual to that recovery home or
 19 clinical treatment facility; or

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

23 “(3) being a clinical service provider, or an offi-
 24 cer or employee of a clinical service provider acting
 25 in the course of their employment, pay, solicit, or re-
 26 ceive any remuneration (including any kickback,

1 bribe, or rebate) directly or covertly, in cash or in
2 kind, to a recovery home or clinical treatment facil-
3 ity, or to an officer or employee of a recovery home
4 or clinical treatment facility, in exchange for refer-
5 ring an individual with a substance use disorder to
6 a clinical service provider for clinical services.

7 “(b) PENALTY.—Any person who violates subsection
8 (a) shall be fined not more than \$200,000, imprisoned not
9 more than 10 years, or both.

10 “(c) APPLICABILITY.—Subsection (a) shall not apply
11 to—

12 “(1) a discount or other reduction in price ob-
13 tained by a provider of services or other entity under
14 a health care benefit program if the reduction in
15 price is properly disclosed and appropriately re-
16 flected in the costs claimed or charges made by the
17 provider or entity;

18 “(2) any amount paid by an employer to an em-
19 ployee (who has a bona fide employment relationship
20 with such employer) for employment in the provision
21 of covered items or services and the employee’s re-
22 muneration is not determined by the number of indi-
23 viduals referred to a particular recovery home or
24 clinical treatment facility;

1 “(3) any amount paid by a vendor of goods or
2 services to a person authorized to act as a pur-
3 chasing agent for a group of individuals or entities
4 who are furnishing services reimbursed if—

5 “(A) the person has a written contract,
6 with each such individual or entity, which speci-
7 fies the amount to be paid to the person, which
8 amount may be a fixed amount or a fixed per-
9 centage of the value of the purchases made by
10 each such individual or entity under the con-
11 tract; and

12 “(B) in the case of a recovery home or
13 clinical treatment facility that is a provider of
14 services, the person discloses to the health care
15 benefit program the remuneration received from
16 each such vendor with respect to purchases
17 made by or on behalf of the entity;

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

23 “(5) any payment made by a principal to an
24 agent as compensation for the services of the agent
25 under a personal services and management contract

1 that meets the requirements of section 1001.952(d)
2 of title 42, Code of Federal Regulations, as in effect
3 on the date of enactment of this section;

4 “(6) a waiver or discount (as defined in section
5 1001.952(h)(5) of title 42, Code of Federal Regula-
6 tions, as in effect on the date of enactment of this
7 section) of any coinsurance or copayment by a
8 health care benefit program, as determined by the
9 health care benefit program; or

10 “(7) any remuneration between a health center
11 or entity described under clause (i) or (ii) of section
12 1905(l)(2)(B) of the Social Security Act (42 U.S.C.
13 1396d(l)(2)(B)) and any individual or entity pro-
14 viding goods, items, services, donations, loans, or a
15 combination thereof, to such health center entity
16 pursuant to a contract, lease, grant, or other agree-
17 ment, if such agreement contributes to the ability of
18 the health center entity to maintain or increase the
19 availability, or enhance the quality, of services pro-
20 vided to a medically underserved population served
21 by the health center entity.

22 “(d) INTENT REQUIREMENT.—With respect to a vio-
23 lation of this section, a person need not have actual knowl-
24 edge of this section or specific intent to commit a violation
25 of this section.

1 “(e) DEFINITIONS.—In this section—

2 “(1) the terms ‘applicable beneficiary’ and ‘ap-
3 plicable drug’ have the meanings given those terms
4 in section 1860D–14A(g) of the Social Security Act
5 (42 U.S.C. 1395w–114a(g));

6 “(2) the term ‘clinical treatment facility’ means
7 a medical setting other than a hospital that provides
8 detoxification, risk reduction, outpatient treatment,
9 residential treatment, or rehabilitation for substance
10 use;

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

13 “(4) the term ‘recovery home’ means a shared
14 living environment free from alcohol and illicit drug
15 use and centered on peer support and connections to
16 promote sustained recovery from substance use dis-
17 orders.”.

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

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

○