

1 of the Senate and the Committee on Transportation and
2 Infrastructure of the House of Representatives a status
3 report on implementation of the final rule for the Com-
4 mercial Driver’s License Drug and Alcohol Clearinghouse
5 (81 FR 87686), including—

6 (1) an updated schedule, including benchmarks,
7 for implementing the final rule as soon as prac-
8 ticable, but not later than the compliance date; and

9 (2) a description of each action the Federal
10 Motor Carrier Safety Administration is taking to im-
11 plement the final rule before the compliance date.

12 (b) DEFINITION OF COMPLIANCE DATE.—In this sec-
13 tion, the term “compliance date” means the earlier of—

14 (1) January 6, 2020; or

15 (2) the date that the national clearinghouse re-
16 quired under section 31306a of title 49, United
17 States Code, is operational.

18 **Subtitle J—Eliminating Kickbacks** 19 **in Recovery**

20 **SEC. 8121. SHORT TITLE.**

21 This subtitle may be cited as the “Eliminating Kick-
22 backs in Recovery Act of 2018”.

1 **SEC. 8122. CRIMINAL PENALTIES.**

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

5 **“§ 220. Illegal remunerations for referrals to recovery**
6 **homes, clinical treatment facilities, and**
7 **laboratories**

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

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

18 “(2) pays or offers any remuneration (including
19 any kickback, bribe, or rebate) directly or indirectly,
20 overtly or covertly, in cash or in kind—

21 “(A) to induce a referral of an individual
22 to a recovery home, clinical treatment facility,
23 or laboratory; or

24 “(B) in exchange for an individual using
25 the services of that recovery home, clinical
26 treatment facility, or laboratory,

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

3 “(b) APPLICABILITY.—Subsection (a) shall not apply
4 to—

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

11 “(2) a payment made by an employer to an em-
12 ployee or independent contractor (who has a bona
13 fide employment or contractual relationship with
14 such employer) for employment, if the employee’s
15 payment is not determined by or does not vary by—

16 “(A) the number of individuals referred to
17 a particular recovery home, clinical treatment
18 facility, or laboratory;

19 “(B) the number of tests or procedures
20 performed; or

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

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

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

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

17 “(A) the waiver or discount is not routinely
18 provided; and

19 “(B) the waiver or discount is provided in
20 good faith;

21 “(6) a remuneration described in section
22 1128B(b)(3)(I) of the Social Security Act (42
23 U.S.C. 1320a–7b(b)(3)(I));

24 “(7) a remuneration made pursuant to an alter-
25 native payment model (as defined in section

1 1833(z)(3)(C) of the Social Security Act) or pursu-
2 ant to a payment arrangement used by a State,
3 health insurance issuer, or group health plan if the
4 Secretary of Health and Human Services has deter-
5 mined that such arrangement is necessary for care
6 coordination or value-based care; or

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

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

15 “(d) RULE OF CONSTRUCTION.—Nothing in sub-
16 section (a) should be interpreted to supersede or preempt
17 other applicable Federal or State law including, but not
18 limited to, section 1128B of the Social Security Act (42
19 U.S.C. 1320a–7b).

20 “(e) DEFINITIONS.—In this section—

21 “(1) the terms ‘applicable beneficiary’ and ‘ap-
22 plicable drug’ have the meanings given those terms
23 in section 1860D–14A(g) of the Social Security Act
24 (42 U.S.C. 1395w–114a(g));

