

115TH CONGRESS
1ST SESSION

H. R. 3780

To amend title XVIII of the Social Security Act to provide under the Medicare program for conditions of participation, reporting requirements, and a quality program with respect to air ambulance services.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2017

Mr. HUDSON (for himself, Mr. KENNEDY, Ms. JENKINS of Kansas, and Mr. KIND) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide under the Medicare program for conditions of participation, reporting requirements, and a quality program with respect to air ambulance services.

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 “Air Ambulance Quality
5 and Accountability Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds as follows:

3 (1) Patient access to high quality and essential
4 air ambulance services can mean the difference be-
5 tween life and death and quality of survival for pa-
6 tients.

7 (2) Medicare should assure beneficiaries of high
8 quality air ambulance services and patient safety.

9 (3) Medicare has no requirements related to
10 quality measurement and reporting, adherence to
11 relevant standards as a condition of participating in
12 Medicare, and robust cost reporting.

13 (4) Medicare currently reimburses all suppliers
14 and providers of air ambulance services the same,
15 regardless of clinical capability or investment in
16 aviation safety that exceeds requirements of the
17 Federal Aviation Administration.

18 (5) A subset of patients requiring air transport
19 are so critically ill or injured as to require an ad-
20 vanced level of clinical capability to address unstable
21 and life-threatening medical conditions that may de-
22 velop or deteriorate during transport. The costs of
23 providing care to such patients should be reported to
24 enable the Congress to assess the sufficiency and ap-
25 propriateness of reimbursement for these most vul-
26 nerable patients.

1 (6) There remain many geographic areas of the
2 nation with limited access to air ambulance services
3 due to low volume of patients in geographically iso-
4 lated and very rural areas.

5 (7) Medicare and Medicaid payment should be
6 adequate to protect and promote access to air ambu-
7 lance services that are capable of meeting the clin-
8 ical needs of the most critically ill and injured pa-
9 tients, allow necessary investments in transport safe-
10 ty, and enable transport to the appropriate medical
11 center to receive them.

12 (8) An evaluation of Medicare payment policy is
13 warranted to assess and secure recommendations
14 about payment adequacy for air ambulance providers
15 and suppliers and the realistic costs of providing this
16 life-saving transport services.

17 (9) Mandatory cost reporting is necessary for
18 air ambulance services providers receiving Medicare
19 reimbursement to ensure fair and adequate reim-
20 bursement and allow appropriate access.

21 (10) Such reporting should also capture essen-
22 tial data with regard to access, cost, utilization,
23 quality and variation of such services to enable more
24 specifically narrowly tailoring payments commensu-
25 rate with higher costs actually incurred such as

1 those treating the most critically ill and injured, in-
 2 vesting in higher cost aviation safety and airframes,
 3 and serving patients in the most geographically iso-
 4 lated areas.

5 **SEC. 3. STANDARDS FOR AIR AMBULANCE PROVIDERS AND**
 6 **SUPPLIERS.**

7 (a) MINIMUM STANDARDS.—Section 1834(l) of the
 8 Social Security Act (42 U.S.C. 1395m(l)) is amended by
 9 adding at the end the following new paragraph:

10 “(17) MINIMUM STANDARDS FOR AIR AMBU-
 11 LANCE PROVIDERS AND SUPPLIERS.—

12 “(A) IN GENERAL.—Not later than 2 years
 13 after the date of the enactment of this para-
 14 graph, the Secretary shall, in consultation with
 15 relevant stakeholders, establish minimum stand-
 16 ards which air ambulance suppliers and pro-
 17 viders would be required to satisfy as a condi-
 18 tion of participation under this title.

19 “(B) AIR AMBULANCE MINIMUM STAND-
 20 ARDS.—In establishing the minimum standards
 21 under subparagraph (A), the Secretary shall in-
 22 clude at least minimum standards with respect
 23 to the following:

24 “(i) Scope of practice, training and
 25 clinical capability of medical personnel rel-

1 evant to medical condition of patients
2 transported.

3 “(ii) Medical equipment (such as pa-
4 tient monitoring, respiratory and
5 hemodynamic and other relevant patient
6 support equipment), devices, technology
7 and formularies.

8 “(iii) Vehicle attributes to support
9 needed care, including configuration and
10 conditions of medical environment, elec-
11 trical supply in air ambulance and other
12 related equipment.

13 “(iv) Documentation standards, such
14 as patient care records, timeline of care
15 and transport, history of present illness
16 and assessments, and documentation spe-
17 cific to diagnostic and therapeutic proce-
18 dures.

19 “(v) Medical direction and physician
20 medical oversight, such as credentials of
21 such physicians.

22 “(vi) Reporting of always events, such
23 as care coordination and transition, pain
24 management, preventing ventilator ac-

quired pneumonia or invasive line or wound infections.

“(vii) Reporting of never events, such as loss of oxygen, delivery of a baby during transport, patient death or disability due to vehicle failure or crash, transport to unintended destination, dropping a patient or allowing a fall during movement of patient, failure to communicate time of arrival, hypoglycemia, and medication errors.

“(viii) Patient safety and infection control.

“(ix) Physician directed clinical quality management and clinical performance improvement programs including quality assurance, utilization review, outcomes, proficiency measures and patient safety.

“(x) Standards relevant to particular populations, such as those on balloon pumps or ECMO.

“(C) DEEMED STATUS.—Air ambulance providers and suppliers that are accredited by an accreditation organization approved by the Secretary as having standards that meet or exceed the Secretary’s standards for such pro-

1 viders shall be deemed to be in compliance with
2 the minimum requirements required pursuant
3 to this paragraph.”.

4 **SEC. 4. AIR AMBULANCE COST REPORTING PROGRAM.**

5 Section 1834(l) of the Social Security Act (42 U.S.C.
6 1395m(l)), as amended by section 3, is further amended
7 by adding at the end the following new paragraph:

8 “(18) AIR AMBULANCE COST REPORTING PRO-
9 GRAM.—

10 “(A) IN GENERAL.—For the first year be-
11 ginning at least 12 months after the date of the
12 enactment of this paragraph and each subse-
13 quent year, an air ambulance provider or sup-
14 plier of air ambulance services shall submit to
15 the Secretary (in a form and manner and at
16 such time as specified by the Secretary) data
17 described in subparagraph (B) for the reporting
18 period (as specified by the Secretary) for such
19 year.

20 “(B) COST DATA.—For purposes of report-
21 ing data under this for air ambulance services
22 furnished with respect to a year, the data de-
23 scribed in this subparagraph are cost data spec-
24 ified by the Secretary relating to the following:

1 “(i) Geographic location factors, in-
2 cluding mileage and number of providers
3 in the service area.

4 “(ii) Capital and operational costs,
5 such as the type of aircraft, including fixed
6 wing aircraft, rotary wing aircraft—single
7 or twin engine, instrumented flight or vis-
8 ual flight.

9 “(iii) Maintenance of aircraft, includ-
10 ing avionics, communications equipment,
11 fuel, and general repairs.

12 “(iv) Maintenance of equipment, in-
13 cluding specialty clinical equipment.

14 “(v) Medical supplies.

15 “(vi) Employee expenses, including
16 salaries and insurance (life, health, and li-
17 ability).

18 “(vii) Building expenses, including
19 rent and maintenance.

20 “(viii) Any other costs as specified by
21 the Secretary, in consultation with the Sec-
22 retary of Transportation, as needed to be
23 included under this subparagraph for pur-
24 poses of informing the report and evalua-
25 tion under section 6 of the Air Ambulance

1 Quality and Accountability Act or for pur-
2 poses of enabling Congress to make appro-
3 priate determinations about payment under
4 this section to air ambulance providers and
5 suppliers.

6 The Secretary, in consultation with providers
7 and suppliers of air ambulance services, shall
8 periodically update, as determined necessary by
9 the Secretary, the cost data specified pursuant
10 to this subparagraph.

11 “(C) SUSPENSION OF PAYMENT FOR FAIL-
12 URE TO REPORT.—

13 “(i) IN GENERAL.—With respect to
14 air ambulance services furnished by a sup-
15 plier or provider of air ambulance services
16 during the second year beginning at least
17 12 months after the date of the enactment
18 of this paragraph or any subsequent year,
19 in the case that the supplier or provider
20 does not submit data to the Secretary in
21 accordance with subparagraph (A) for the
22 reporting period applicable to such year
23 (which shall be during the previous year),
24 the Secretary shall suspend payments
25 under the fee schedule under this sub-

1 section for air ambulance services fur-
2 nished by such supplier or provider during
3 such year until such supplier or provider
4 submits such data in accordance with such
5 subparagraph.

6 “(ii) TREATMENT OF NEW MEDICARE
7 SUPPLIERS AND PROVIDERS OF AIR AMBU-
8 LANCE SERVICES.—In the case of a sup-
9 plier or provider of air ambulance services
10 that first becomes a Medicare enrolled sup-
11 plier or provider of air ambulance services
12 during the reporting period applicable to a
13 year with respect to which clause (i) ap-
14 plies (and had not previously submitted
15 claims under this title such as a person or
16 entity or under a different billing number
17 or tax identifier), such supplier or provider
18 shall not be subject to clause (i) until the
19 subsequent year and with respect to data
20 required to be submitted for the reporting
21 period applicable to such subsequent
22 year.”.

23 **SEC. 5. AIR AMBULANCE QUALITY REPORTING PROGRAM.**

24 Section 1834(l) of the Social Security Act (42 U.S.C.
25 1395m(l)), as amended by sections 3 and 4, is further

1 amended by adding at the end the following new para-
2 graph:

3 “(19) AIR AMBULANCE QUALITY REPORTING
4 PROGRAM.—

5 “(A) PAYMENT BASED ON PERFORM-
6 ANCE.—

7 “(i) IN GENERAL.—The Secretary
8 shall establish an air ambulance quality re-
9 porting and performance program under
10 which—

11 “(I) with respect to air ambu-
12 lance services furnished by a supplier
13 or provider of air ambulance services
14 during the first consequence year, sec-
15 ond consequence year, or third con-
16 sequence year, in the case that the
17 supplier or provider does not submit a
18 report, with respect to the perform-
19 ance period for such year, in accord-
20 ance with subparagraph (C), after de-
21 termining the percentage increase
22 under paragraph (3)(B), and after ap-
23 plication of paragraphs (3)(C) and
24 (18), the Secretary shall reduce such
25 percentage increase for payments

1 under the fee schedule under this sub-
2 section during such year by 2 percent-
3 age points; and

4 “(II) with respect to air ambu-
5 lance services furnished by a supplier
6 or provider of air ambulance services
7 during a consequence year after the
8 third consequence year, the Secretary
9 applies a percentage point adjustment
10 to the percentage increase determined
11 under paragraph (3)(B), after appli-
12 cation of paragraphs (3)(C) and (18),
13 in a manner that provides for dif-
14 ferential payment to a supplier or pro-
15 vider of air ambulance services based
16 upon the quality of care furnished (as
17 determined under subparagraph (B))
18 during a performance period with re-
19 spect to such consequence year (with
20 such percentage point adjustment
21 ranging from an increase of 5 per-
22 centage points for such services fur-
23 nished in a consequence year by such
24 a provider or supplier with the highest
25 demonstrated performance in the per-

1 formance period for such year to a de-
2 crease of 5 percentage points for such
3 services furnished in the consequence
4 year by such a provider or supplier
5 with the lowest demonstrated per-
6 formance for the performance period
7 for such year).

8 “(ii) SPECIAL RULE.—The application
9 of this subparagraph may result in such
10 percentage increase being less than 0.0 for
11 a year, and may result in payment rates
12 under the fee schedule under this sub-
13 section for a year being less than such pay-
14 ment rates for the preceding year.

15 “(iii) NONCUMULATIVE APPLICA-
16 TION.—Any adjustment under this sub-
17 paragraph shall apply only with respect to
18 the year involved and the Secretary shall
19 not take into account such adjustment in
20 computing the payment amount under the
21 fee schedule under this subsection for a
22 subsequent year.

23 “(iv) TREATMENT OF NEW MEDICARE
24 SUPPLIERS AND PROVIDERS OF AIR AMBU-
25 LANCE SERVICES.—In the case of a sup-

1 plier or provider of air ambulance services
2 that first becomes a Medicare enrolled sup-
3 plier or provider of air ambulance services
4 during the performance period for a con-
5 sequence year (and had not previously sub-
6 mitted claims under this title such as a
7 person or entity or under a different billing
8 number or tax identifier), the adjustment
9 under clause (i) shall not apply to such
10 supplier or provider until the subsequent
11 consequence year and performance period
12 for such subsequent consequence year.

13 “(B) DETERMINING PERFORMANCE.—

14 “(i) IN GENERAL.—Under the air am-
15 bulance quality reporting and performance
16 program, the performance of a provider or
17 supplier of air ambulance services with re-
18 spect to a performance period with respect
19 to a consequence year after the third con-
20 sequence year shall be determined as speci-
21 fied by the Secretary based on data re-
22 quired under subparagraph (C) to be sub-
23 mitted (in a form and manner and at such
24 time as specified by the Secretary) by the

1 provider or supplier for such performance
2 period for the consequence year.

3 “(ii) TREATMENT OF NON-REPORT-
4 ERS.—Under the air ambulance quality re-
5 porting and performance program, for pur-
6 poses of subparagraph (A), any provider or
7 supplier of air ambulance services who
8 does not submit data required under sub-
9 paragraph (C) to submitted for a perform-
10 ance period with respect to a consequence
11 year after the third consequence year, shall
12 be treated as if such provider or supplier
13 had the lowest demonstrated performance
14 for the performance period for such year.

15 “(C) REPORTING.—

16 “(i) IN GENERAL.—For purposes of
17 this paragraph for years beginning with
18 the first consequence year, an air ambu-
19 lance provider or supplier shall submit to
20 the Secretary a report, with respect to the
21 performance period for such year, on—

22 “(I) the measures described in
23 subparagraph (D)(i);

1 “(II) in the case of a con-
2 sequence year before the fourth con-
3 sequence year—

4 “(aa) at least 2 of the meas-
5 ures described in subparagraph
6 (D)(ii)(I); and

7 “(bb) at least 2 of the meas-
8 ures established under subpara-
9 graph (D)(iii)(I); and

10 “(III) in the case of a con-
11 sequence year beginning with the
12 fourth consequence year—

13 “(aa) at least 4 of the meas-
14 ures described in subparagraph
15 (D)(ii)(II); and

16 “(bb) at least 4 of the meas-
17 ures established under subpara-
18 graph (D)(iii)(II).

19 “(ii) AVAILABILITY OF DATA.—The
20 Secretary shall establish procedures for
21 making data submitted under clause (i)
22 available to the public. Such procedures
23 shall ensure that—

1 “(I) data submitted under clause
2 (i) for the first consequence year shall
3 not be made public; and

4 “(II) an air ambulance provider
5 or supplier has the opportunity to re-
6 view the data that is to be made pub-
7 lic with respect to the air ambulance
8 provider or supplier prior to such data
9 being made public.

10 “(D) MEASURES.—In establishing the
11 quality program under subparagraph (A), the
12 following shall apply:

13 “(i) OVER-TRIAGE.—The Secretary
14 shall provide for the application of a meas-
15 ure with respect to over-triage in mode of
16 transportation.

17 “(ii) PATIENT SAFETY MEASURES.—
18 The Secretary shall, in consultation with
19 providers and suppliers of air ambulance
20 services, establish—

21 “(I) with respect to a perform-
22 ance period with respect to a con-
23 sequence year before the fourth con-
24 sequence year, at least 3 patient safe-

1 ty measures for providers and sup-
2 pliers of air ambulance services; and

3 “(II) with respect to a perform-
4 ance period with respect to a con-
5 sequence year beginning with the
6 fourth consequence year, at least 6
7 patient safety measures for providers
8 and suppliers of air ambulance serv-
9 ices.

10 “(iii) CLINICAL QUALITY MEAS-
11 URES.—The Secretary shall, in consulta-
12 tion with providers and suppliers of air
13 ambulance services, establish—

14 “(I) with respect to a perform-
15 ance period with respect to a con-
16 sequence year before the fourth con-
17 sequence year, at least 3 clinical qual-
18 ity measures for providers and sup-
19 pliers of air ambulance services; and

20 “(II) with respect to a perform-
21 ance period with respect to a con-
22 sequence year beginning with the
23 fourth consequence year, at least 6
24 clinical quality measures for providers

1 and suppliers of air ambulance serv-
2 ices.

3 “(iv) UPDATES.—The Secretary, in
4 consultation with providers and suppliers
5 of air ambulance services, shall periodically
6 update, as determined necessary by the
7 Secretary, the measures to be applied pur-
8 suant to this subparagraph.

9 “(E) DEFINITIONS.—For purposes of this
10 paragraph:

11 “(i) The term ‘consequence year’
12 means a year beginning with the 5th year
13 starting at least 12 months after the date
14 of the enactment of this paragraph. The
15 terms ‘first consequence year’, second con-
16 sequence year, and third consequence year
17 mean such 5th year starting at least 12
18 months after such date of enactment, the
19 6th year starting at least 12 months after
20 such date of enactment, and the 7th year
21 starting at least 12 months after such date
22 of enactment, respectively.

23 “(ii) The term ‘performance period’
24 means, with respect to a consequence year,
25 such period as specified by the Secretary.”.

1 **SEC. 6. MEDPAC STUDY ON ACCESS, QUALITY, COSTS, AND**
2 **REIMBURSEMENT.**

3 (a) EVALUATION.—Not later than three years after
4 December 31 of the first year to which paragraph (18)
5 of section 1834(l) of the Social Security Act, as added by
6 section 4, applies, the Medicare Payment Advisory Com-
7 mission shall submit to Congress a report containing an
8 evaluation of the costs of air providers and suppliers. Such
9 evaluation shall—

10 (1) be derived from the cost and other data
11 submitted under such paragraph (18) of such sec-
12 tion 1834(l); and

13 (2) differentiate as appropriate to recognize
14 variation or higher costs related to—

15 (A) aviation instrument flight control;

16 (B) provision of care to critically ill or in-
17 jured patients;

18 (C) the provision of services in geographi-
19 cally isolated areas; and

20 (D) the provision of care to uninsured indi-
21 viduals.

22 (b) RECOMMENDATIONS.—As part of the report sub-
23 mitted under subsection (a), the Medicare Payment Advi-
24 sory Commission shall provide recommendations on
25 whether changes should be made with regard to reim-
26 bursement of air ambulance providers and suppliers under

1 title XVIII of the Social Security Act based upon the data
2 submitted under paragraph (18) of section 1834(l) of the
3 Social Security Act, as added by section 4, taking into con-
4 sideration variables affecting payment adequacy under
5 such title for and its impact on Medicare beneficiaries, in-
6 cluding—

7 (1) whether payment under such title is suffi-
8 cient to ensure access to air ambulance services or
9 should be altered, including whether payment should
10 be higher for air ambulance providers and sup-
11 pliers—

12 (A) with higher levels of clinical capability
13 to serve the most critically ill and injured pa-
14 tients; and

15 (B) that utilize advanced and expense avi-
16 onics such as Instrument Flight Rules;

17 (2) whether uncompensated care borne by air
18 ambulance providers and suppliers impedes access;

19 (3) the degree to which there is variation in the
20 utilization of air ambulance services on a per capita
21 and per transport basis, including whether the
22 undersupply or oversupply of helicopters or fixed
23 wing aircraft in a geographic region affects access
24 and the volume and adequacy of payments under
25 such title with regard to such utilization;

1 (4) the degree to which membership programs
2 are utilized by air ambulance providers and suppliers
3 to sustain their operations, and if revenue from
4 membership programs is used to reduce their costs
5 or provide capital funding, and whether such pro-
6 grams are beneficial to Medicare beneficiaries;

7 (5) the degree of subsidization that occurs from
8 private insurers or hospitals sponsoring air ambu-
9 lance providers or suppliers to cover inadequate pay-
10 ments under title XVIII or XIX of the Social Secu-
11 rity Act and enable reasonable profitability;

12 (6) the ratio of charges to Medicare reimburse-
13 ment and the impact on beneficiary cost sharing of
14 cost, utilization, and variation in air ambulance serv-
15 ices;

16 (7) appropriate financial or other incentives for
17 the utilization of ground critical care transport
18 where medically appropriate;

19 (8) the degree to which a quality reporting and
20 performance program based upon patient safety
21 measures and clinical quality measures should be
22 used in determining a value based payment model
23 for suppliers and providers of air ambulance service;
24 and

1 (9) any other information deemed relevant and
2 appropriate by the Medicare Payment Advisory
3 Commission for the purposes of providing such rec-
4 ommendations.

○