To amend title XVIII of the Social Security Act to increase access to ambulance services under the Medicare program and to reform payments for such services under such program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2017

Ms. STABENOW (for herself, Mr. ROBERTS, Mr. LEAHY, Ms. COLLINS, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to increase access to ambulance services under the Medicare program and to reform payments for such services under such program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) Short Title.—This Act may be cited as the “Medicare Ambulance Access, Fraud Prevention, and Reform Act of 2017”.

(b) Table of Contents.—The table of contents of this Act is as follows:
Sec. 1. Short title.
Sec. 2. Reform to the Medicare ambulance fee schedule.
Sec. 3. Prior authorization for ambulance transports of ESRD beneficiaries.
Sec. 4. Requiring providers of services and ambulance service providers to submit cost data and other information with respect to ambulance services.
Sec. 5. Treatment of ambulance service providers.

1 SEC. 2. REFORM TO THE MEDICARE AMBULANCE FEE SCHEDULE.

(a) IN GENERAL.—Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) is amended by adding the following new paragraphs:

“(17) INCREASE IN CONVERSION FACTOR FOR GROUND AMBULANCE SERVICES.—In the case of ground ambulance services furnished on or after January 1, 2018, for purposes of determining the fee schedule amount for such services under this subsection, the conversion factor otherwise applicable to such services shall be increased by—

“(A) with respect to ground ambulance services for which the transportation originates in a qualified rural area, as identified using the methodology described in paragraph (12)(B)(iii), 25.6 percent;

“(B) with respect to ground ambulance services not described in subparagraph (A) and for which the transportation originates in a rural area described under paragraph (9) or in
a rural census tract described in such para-
graph, 3 percent; and

“(C) with respect to ground ambulance
services not described in subparagraph (A) or
(B), 2 percent.

“(18) INCREASE IN MILEAGE RATE FOR
GROUND AMBULANCE SERVICES.—In the case of
ground ambulance services furnished on or after
January 1, 2018, for purposes of determining the
fee schedule amount for such services under this
subsection, the payment rate for mileage otherwise
applicable to such services shall be increased by—

“(A) with respect to ground ambulance
services for which the transportation originates
in a qualified rural area, as identified using the
methodology described in paragraph
(12)(B)(iii), 3 percent;

“(B) with respect to ground ambulance
services not described in subparagraph (A) and
for which the transportation originates in a
rural area described under paragraph (9) or in
a rural census tract described in such para-
graph, 3 percent; and
“(C) with respect to ground ambulance services not described in subparagraph (A) or (B), 2 percent.”.

(b) STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study on how the conversion factor applicable to ground ambulance services under the ambulance fee schedule under section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)), as adjusted under paragraph (17) of such section (as added by subsection (a)), should be modified, if at all, to take into account the cost of providing services in urban, rural, and super-rural areas. In determining such costs, the Secretary shall use the data collected through the data collection system under paragraph (20) of such section, as added by section 4.

(2) REPORT.—Not later than January 1, 2022, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1), together with recommendations for such legislation and administrative action as the Secretary determines appropriate.
SEC. 3. PRIOR AUTHORIZATION FOR AMBULANCE TRANSPORTS OF ESRD BENEFICIARIES.

(a) In General.—Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)), as amended by section 2, is amended by adding at the end the following new paragraph:

“(19) Prior authorization of coverage for ambulance transports of ESRD beneficiaries.—

“(A) Process.—

“(i) In General.—For applicable ESRD ambulance services furnished on or after January 1, 2019, by a provider of services or an ambulance service provider, the Secretary shall establish and implement a process under which the Secretary shall determine, in advance of furnishing such a service to an individual, whether payment for such service may not be made because such service is not covered or because of the application of section 1862(a)(1).

“(ii) Denial of payment.—Subject to subparagraph (B)(ii)(II), no payment shall be made under this part for the service unless the Secretary determines pursu-
ant to such process that the service meets
the applicable requirements for coverage.

“(B) ELEMENTS OF PROCESS.—The proc-

ess described in subparagraph (A) shall include
the following elements:

“(i) In order to obtain a prior author-

ization, the provider of services or ambu-
lance service provider shall submit—

“(I) a valid physician certifi-
cation statement (PCS) for non-emer-
gency ambulance transport; and

“(II) any other documentation
determined appropriate by the Sec-
retary.

“(ii)(I) The Secretary shall respond to
a prior authorization request within 7 busi-
ness days of receiving the request.

“(II) If the Secretary does not make
a prior authorization determination within
7 business days of the date of the Sec-
retary’s receipt of medical documentation
needed to make such determination, sub-
paragraph (A)(ii) shall not apply.

“(iii) In making the determination
under subparagraph (A) with respect to a
service and individual, the Secretary shall evaluate the medical necessity of the service by determining—

“(I) whether the individual is unable to get up from bed without assistance, unable to ambulate, and unable to sit in a chair or wheelchair;

“(II) whether the individual has a medical condition that, regardless of bed confinement, is such that transport by ambulance is medically necessary; or

“(III) whether the individual meets other criteria as determined appropriate by the Secretary.

“(iv) If the prior authorization request is approved, such request shall be retroactive to the date on which such request was received.

“(v) An approved prior authorization shall be valid for a 60-day period. The Secretary may provide for an extension of such period if the Secretary determines such an extension is appropriate.
“(vi) An approved prior authorization shall be deemed to constitute medical necessity but shall not eliminate the documentation requirements necessary to support a claim for the transport.

“(vii) Other elements determined appropriate by the Secretary.

“(C) RELIANCE UPON CONTRACTORS.—The Secretary may rely upon contractors to implement the requirements of this paragraph. The contractor’s compensation shall be limited to a demonstration that it has reduced the number of non-emergency basic life support services involving individuals with end-stage renal disease for renal dialysis services (as described in section 1881(b)(14)(B)) furnished other than on an emergency basis.

“(D) APPLICABLE ESRD AMBULANCE SERVICES.—In this paragraph, the term ‘applicable ESRD ambulance services’ means ambulance services consisting of non-emergency basic life support services involving transport of an individual with end-stage renal disease for renal dialysis services (as described in section
1881(b)(14)(B)) furnished other than on an emergency basis.

“(E) AMBULANCE SERVICE PROVIDER.—In this paragraph, the term ‘ambulance service provider’ means an entity that furnishes ambulance services (as described in section 1861(s)(7)) and is not a provider of services (as defined section 1861(u)).

“(F) IMPLEMENTATION.—

“(i) IN GENERAL.—Subject to clause (ii), the Secretary may carry out this paragraph through program instruction or otherwise.

“(ii) SUFFICIENT NOTICE TO PREPARE.—Not later than June 30, 2018, the Secretary shall make the aspects of the process under this paragraph available to the public.”.

(b) REFERENCES TO AMBULANCE SERVICE PROVIDERS.—Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) is amended—

(1) in paragraph (1), by striking “a supplier or provider” and inserting “an ambulance service provider (as defined in paragraph (19)(E)) or under ar-
arrangement with an ambulance service provider or by a provider”;

(2) in paragraph (8), in the matter following subparagraph (B), by striking “supplier of ambulance services” and inserting “ambulance service provider (as defined in paragraph (19)(E))”;

(3) in paragraph (9), in the heading, by inserting “PROVIDERS OF SERVICES AND AMBULANCE SERVICE” after “RURAL”;

(4) in paragraph (12), in the heading, by inserting “PROVIDERS OF SERVICES AND AMBULANCE SERVICE” after “RURAL”; and

(5) in each of subparagraphs (B)(ii) and (D)(ii) of paragraph (14), by striking “entity” and inserting “provider of services or ambulance service provider (as defined in paragraph (19)(E))”.

SEC. 4. REQUIRING PROVIDERS OF SERVICES AND AMBULANCE SERVICE PROVIDERS TO SUBMIT COST DATA AND OTHER INFORMATION WITH RESPECT TO AMBULANCE SERVICES.

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

“(20) SUBMISSION OF COST DATA AND OTHER INFORMATION.—
“(A) Development of data collection system.—

“(i) In general.—The Secretary shall develop a data collection system for the submission by providers of services and ambulance service providers (as defined in paragraph (19)(E)) of data on cost, revenue, and utilization with respect to ambulance services, and other information determined appropriate by the Secretary. Such system shall enable providers of services and ambulance service providers to submit to the Secretary information—

“(I) needed to evaluate the appropriateness of payment rates under this subsection;

“(II) on the utilization of capital equipment and ambulance capacity; and

“(III) on different types of ambulance services furnished in different geographic locations, including rural areas and low population density areas described in paragraph (12).
“(ii) Collection of cost data information.—For purposes of collecting the cost data information described in subparagraph (B)(iv), the Secretary shall use the sampling methodology described in subparagraph (B)(ii).

“(B) Specification of data collection system.—

“(i) In general.—Not later than 90 days after the date of enactment of this paragraph, the Secretary shall specify the data collection system developed under subparagraph (A), which shall consist of the basic data collection described in clause (iii) and the cost data information described in clause (iv), and the time period for which the reporting of such data is required under this paragraph.

“(ii) Selection of providers of services and ambulance service providers required to submit cost data information.—

“(I) In general.—Subject to subparagraph (D)(ii), the Secretary shall determine a statistically appro-
appropriate sample of providers of services and ambulance service providers based upon the organizational designation of the provider of services or ambulance service provider as described in clause (iii)(I) to submit cost data information under clause (iv) for each period for which the reporting of such data is required, as specified under clause (i).

“(II) Implementation.—In determining an appropriate sample of providers of services and ambulance service providers under subclause (I), the Secretary shall promulgate an interim final rule and shall accept and consider public comments on the interim final rule for 30 days after the date of publication of such interim final rule.

“(III) Notification of Providers of Services and Ambulance Service Providers Selected.—Not later than 180 days after the date on which the Secretary has completed the basic data collec-
tion under clause (iii), the Secretary shall provide notice to those providers of services and ambulance service providers selected under this clause to submit cost data information under clause (iv).

“(iii) BASIC DATA COLLECTION.—The Secretary shall require providers of services and ambulance service providers to submit information under the data collection system under this paragraph, such as the following with respect to the provider of services or ambulance service provider, not later than the date that is 120 days after the date on which the Secretary specifies such data collection system under clause (i), and not less often than once every 5 years thereafter:

“(I) The organizational designation of the provider of services or ambulance service provider as a government ambulance authority, independent ambulance company, public safety or fire department-based orga-
nization, hospital-based organization, or other type of organization.

“(II) The percentage of volunteer emergency medical technician labor the provider of services or ambulance service provider relies on.

“(III) The volume of ambulance services furnished per year.

“(IV) The percentage of emergency and non-emergency services furnished under this title per year.

“(V) The average duration of transports.

“(VI) Whether the provider of services or ambulance service provider has a sole source contract and the percentage of the activity provided under that contract.

“(VII) Whether the provider of services or ambulance service provider is required to pay fees to the local jurisdiction to subsidize emergency and other services as a requirement of doing business.
“(VIII) The percentage of transports that are urban, rural, or in a low-population density area described in paragraph (12), as determined by the Secretary.

“(IX) Other data elements that the Secretary, in consultation with stakeholders, determines appropriate.

“(iv) COST DATA INFORMATION.—The Secretary shall require those providers of services and ambulance service providers selected under clause (ii) to submit under the data collection system under this paragraph for each period for which the reporting of such data is required, as specified under clause (i), data on cost, revenue, and utilization, such as—

“(I) data on total revenue, including revenues under this title, subscription programs, Medicaid, other health care plans and self-pay, public funding, fundraising and donations, uncompensated care, and write-offs; and
“(II) data on total cost including labor costs (paid and volunteer), operating costs, administrative costs, vehicle and fleet costs, communications costs, equipment and supplies (including drugs), maintenance, building and facility costs, administrative costs, local jurisdiction costs, the cost of readiness, and central office administration costs.

“(C) Penalty for failure to report cost data information.—

“(i) In general.—Beginning on January 1, 2021, subject to clause (ii), a 5-percent reduction to payments under this part shall be made for a 1-year prospective period specified by the Secretary to a provider of services or ambulance service provider who—

“(I) is identified under subparagraph (B)(ii) or (D)(ii) as being required to submit information under subparagraph (B)(iv) or (D)(ii), respectively; and
“(II) does not submit such information in a timely manner for the period specified under subparagraph (B)(i) or (D)(ii), respectively.

“(ii) EXCEPTION.—The Secretary may suspend the payment reduction under clause (i) with respect to a period in the event of a natural disaster, bankruptcy, or other similar situation that the Secretary determines interfered with ability of the provider of services or ambulance service provider to submit such information in a timely manner for the specified period.

“(D) ONGOING COST DATA COLLECTION.—

“(i) REVISION OF DATA COLLECTION SYSTEM.—The Secretary may, as appropriate, periodically revise the data collection system under this paragraph.

“(ii) SUBSEQUENT COST DATA COLLECTION.—

“(I) IN GENERAL.—In order to continue to evaluate the appropriateness of payment rates under this subsection, the Secretary shall, for years after 2020 (but not more frequently
than once every 3 years), require providers of services and ambulance service providers to submit information described in subparagraph (B)(iv) for a period the Secretary determines appropriate. The penalty described in subparagraph (C) shall apply to each such subsequent data collection period in accordance with such subparagraph.

“(II) SAMPLE.—For each period described in subclause (I), the Secretary shall determine a statistically appropriate sample of providers of services and ambulance services providers to submit information under the data collection system for the period. In determining which providers of services and ambulance service providers would be required to submit information for such period, the Secretary may not require a provider of services or ambulance service provider who has already submitted information for a previous period to submit
information for a subsequent period
unless all of the providers of services
and ambulance service providers that
the Secretary determines are of the
same type as such provider of services
or ambulance service provider have ei-
ther submitted information or been
penalized under subparagraph (C) for
failing to do so in a timely manner.

“(E) Consultation.—The Secretary shall
consult with stakeholders in carrying out the
development of the data collection system and
the collection of information under this para-
graph, including the activities described in sub-
paragraphs (A) and (D). Such consultation
shall include the use of requests for information
and other mechanisms determined appropriate
by the Secretary.

“(F) Administration.—Chapter 35 of
title 44, United States Code, shall not apply to
the collection of information required under this
paragraph.

“(G) Limitations on Review.—There
shall be no administrative or judicial review
under section 1869, section 1878, or otherwise
of the data collection system under this paragraph, the determination of providers of services and ambulance service providers required to submit information under the data collection system, or the application of the penalty for failure to report information under subparagraph (C).

“(H) FUNDING FOR IMPLEMENTATION.—

For purposes of carrying out subparagraph (A), the Secretary shall provide for the transfer, from the Federal Supplementary Medical Insurance Trust Fund under section 1841, of $1,000,000 to the Centers for Medicare & Medicaid Services Program Management Account for fiscal year 2016. Amounts transferred under this subparagraph shall remain available until expended.”.

SEC. 5. TREATMENT OF AMBULANCE SERVICE PROVIDERS.

(a) In General.—Section 1834 of the Social Security Act (42 U.S.C. 1395m(l)), as amended by section 4, is amended by adding at the end the following new paragraph:

“(21) TREATMENT OF AMBULANCE SERVICE PROVIDERS AS PROVIDERS OF SERVICES FOR CERTAIN PURPOSES.—
“(A) Provider reimbursement review board.—For purposes of section 1878, an ambulance service provider (as defined in paragraph (19)(E)) shall be treated as a provider of services.

“(B) Establishment of conditions of participation.—An ambulance service provider—

“(i) for purposes of section 1865(a)(1), shall be treated as a provider entity; and

“(ii) shall be required to meet such requirements for participation under this title as the Secretary shall establish by regulation.

“(C) Use of billing codes.—An ambulance service provider may, for purposes of this title, use billing codes established for providers of services, if such use is consistent with applicable Federal, State, or local scope of practice requirements.”.

(b) Effective date.—The amendment made this section shall take effect on January 1, 2018, and shall
1 apply to an ambulance service provider on or after such date.