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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Air Ambulance Quality and Accountability Act”.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SEC. 2. FINDINGS.

Congress finds as follows:

(1) Patient access to high quality and essential air ambulance services can mean the difference between life and death and quality of survival for patients.

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

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

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

(5) A subset of patients requiring air transport are so critically ill or injured as to require an advanced level of clinical capability to address unstable and life-threatening medical conditions that may develop or deteriorate during transport. The costs of providing care to such patients should be reported to enable the Congress to assess the sufficiency and appropriateness of reimbursement for these most vulnerable patients.
(6) There remain many geographic areas of the nation with limited access to air ambulance services due to low volume of patients in geographically isolated and very rural areas.

(7) Medicare and Medicaid payment should be adequate to protect and promote access to air ambulance services that are capable of meeting the clinical needs of the most critically ill and injured patients, allow necessary investments in transport safety, and enable transport to the appropriate medical center to receive them.

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

(9) Mandatory cost reporting is necessary for air ambulance services providers receiving Medicare reimbursement to ensure fair and adequate reimbursement and allow appropriate access.

(10) Such reporting should also capture essential data with regard to access, cost, utilization, quality and variation of such services to enable more specifically narrowly tailoring payments commensurate with higher costs actually incurred such as
those treating the most critically ill and injured, in-
vesting in higher cost aviation safety and airframes,
and serving patients in the most geographically iso-
lated areas.

SEC. 3. STANDARDS FOR AIR AMBULANCE PROVIDERS AND
SUPPLIERS.

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

“(17) M INIMUM STANDARDS FOR AIR AMBU-
LANCE PROVIDERS AND SUPPLIERS.—

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

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

“(i) Scope of practice, training and
clinical capability of medical personnel rel-
evant to medical condition of patients transported.

“(ii) Medical equipment (such as patient monitoring, respiratory and hemodynamic and other relevant patient support equipment), devices, technology and formularies.

“(iii) Vehicle attributes to support needed care, including configuration and conditions of medical environment, electrical supply in air ambulance and other related equipment.

“(iv) Documentation standards, such as patient care records, timeline of care and transport, history of present illness and assessments, and documentation specific to diagnostic and therapeutic procedures.

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

“(vi) Reporting of always events, such as care coordination and transition, pain 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-
providers shall be deemed to be in compliance with
the minimum requirements required pursuant
to this paragraph.”

SEC. 4. AIR AMBULANCE COST REPORTING PROGRAM.

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

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

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

“(B) COST DATA.—For purposes of report-
ing data under this for air ambulance services
furnished with respect to a year, the data de-
scribed in this subparagraph are cost data spec-
ified by the Secretary relating to the following:
“(i) Geographic location factors, including mileage and number of providers in the service area.

“(ii) Capital and operational costs, such as the type of aircraft, including fixed wing aircraft, rotary wing aircraft—single or twin engine, instrumented flight or visual flight.

“(iii) Maintenance of aircraft, including avionics, communications equipment, fuel, and general repairs.

“(iv) Maintenance of equipment, including specialty clinical equipment.

“(v) Medical supplies.

“(vi) Employee expenses, including salaries and insurance (life, health, and liability).

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

“(viii) Any other costs as specified by the Secretary, in consultation with the Secretary of Transportation, as needed to be included under this subparagraph for purposes of informing the report and evaluation under section 6 of the Air Ambulance
Quality and Accountability Act or for purposes of enabling Congress to make appropriate determinations about payment under this section to air ambulance providers and suppliers.

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

“(C) Suspension of payment for failure to report.—

“(i) In general.—With respect to air ambulance services furnished by a supplier or provider of air ambulance services during the second year beginning at least 12 months after the date of the enactment of this paragraph or any subsequent year, in the case that the supplier or provider does not submit data to the Secretary in accordance with subparagraph (A) for the reporting period applicable to such year (which shall be during the previous year), the Secretary shall suspend payments under the fee schedule under this sub-
section for air ambulance services fur-
ished by such supplier or provider during
such year until such supplier or provider
submits such data in accordance with such
subparagraph.

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

SEC. 5. AIR AMBULANCE QUALITY REPORTING PROGRAM.

Section 1834(l) of the Social Security Act (42 U.S.C.
1395m(l)), as amended by sections 3 and 4, is further
amended by adding at the end the following new para-
graph:

“(19) AIR AMBULANCE QUALITY REPORTING
   PROGRAM.—

“(A) PAYMENT BASED ON PERFORMANCE.—

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

“(I) with respect to air ambulance services furnished by a supplier or provider of air ambulance services during the first consequence year, second consequence year, or third consequence year, in the case that the supplier or provider does not submit a report, with respect to the performance period for such year, in accordance with subparagraph (C), after determining the percentage increase under paragraph (3)(B), and after application of paragraphs (3)(C) and (18), the Secretary shall reduce such percentage increase for payments
under the fee schedule under this sub-
section during such year by 2 percent-
age points; and

“(II) with respect to air ambu-
lance services furnished by a supplier
or provider of air ambulance services
during a consequence year after the
third consequence year, the Secretary
applies a percentage point adjustment
to the percentage increase determined
under paragraph (3)(B), after appli-
cation of paragraphs (3)(C) and (18),
in a manner that provides for dif-
ferential payment to a supplier or pro-
vider of air ambulance services based
upon the quality of care furnished (as
determined under subparagraph (B))
during a performance period with re-
spect to such consequence year (with
such percentage point adjustment
ranging from an increase of 5 per-
centage points for such services fur-
nished in a consequence year by such
a provider or supplier with the highest
demonstrated performance in the per-
formance period for such year to a decrease of 5 percentage points for such services furnished in the consequence year by such a provider or supplier with the lowest demonstrated performance for the performance period for such year).

“(ii) SPECIAL RULE.—The application of this subparagraph may result in such percentage increase being less than 0.0 for a year, and may result in payment rates under the fee schedule under this subsection for a year being less than such payment rates for the preceding year.

“(iii) NONCUMULATIVE APPLICATION.—Any adjustment under this subparagraph shall apply only with respect to the year involved and the Secretary shall not take into account such adjustment in computing the payment amount under the fee schedule under this subsection for a subsequent year.

“(iv) TREATMENT OF NEW MEDICARE SUPPLIERS AND PROVIDERS OF AIR AMBULANCE SERVICES.—In the case of a sup-
plier or provider of air ambulance services
that first becomes a Medicare enrolled sup-
plier or provider of air ambulance services
during the performance period for a con-
sequence year (and had not previously sub-
mitted claims under this title such as a
person or entity or under a different billing
number or tax identifier), the adjustment
under clause (i) shall not apply to such
supplier or provider until the subsequent
consequence year and performance period
for such subsequent consequence year.

“(B) Determining performance.—

“(i) In general.—Under the air am-
bulance quality reporting and performance
program, the performance of a provider or
supplier of air ambulance services with re-
spect to a performance period with respect
to a consequence year after the third con-
sequence year shall be determined as speci-
fied by the Secretary based on data re-
quired under subparagraph (C) to be sub-
mitted (in a form and manner and at such
time as specified by the Secretary) by the
provider or supplier for such performance period for the consequence year.

“(ii) Treatment of Non-Reporters.—Under the air ambulance quality reporting and performance program, for purposes of subparagraph (A), any provider or supplier of air ambulance services who does not submit data required under subparagraph (C) to submitted for a performance period with respect to a consequence year after the third consequence year, shall be treated as if such provider or supplier had the lowest demonstrated performance for the performance period for such year.

“(C) Reporting.—

“(i) In General.—For purposes of this paragraph for years beginning with the first consequence year, an air ambulance provider or supplier shall submit to the Secretary a report, with respect to the performance period for such year, on—

“(I) the measures described in subparagraph (D)(i);
“(II) in the case of a consequence year before the fourth consequence year—

“(aa) at least 2 of the measures described in subparagraph (D)(ii)(I); and

“(bb) at least 2 of the measures established under subparagraph (D)(iii)(I); and

“(III) in the case of a consequence year beginning with the fourth consequence year—

“(aa) at least 4 of the measures described in subparagraph (D)(ii)(II); and

“(bb) at least 4 of the measures established under subparagraph (D)(iii)(II).

“(ii) Availability of Data.—The Secretary shall establish procedures for making data submitted under clause (i) available to the public. Such procedures shall ensure that—
“(I) data submitted under clause (i) for the first consequence year shall not be made public; and

“(II) an air ambulance provider or supplier has the opportunity to review the data that is to be made public with respect to the air ambulance provider or supplier prior to such data being made public.

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

“(i) OVER-TRIAGE.—The Secretary shall provide for the application of a measure with respect to over-triage in mode of transportation.

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

“(I) with respect to a performance period with respect to a consequence year before the fourth consequence year, at least 3 patient safe-
ty measures for providers and suppliers of air ambulance services; and

“(II) with respect to a performance period with respect to a consequence year beginning with the fourth consequence year, at least 6 patient safety measures for providers and suppliers of air ambulance services.

“(iii) CLINICAL QUALITY MEASURES.—The Secretary shall, in consultation with providers and suppliers of air ambulance services, establish—

“(I) with respect to a performance period with respect to a consequence year before the fourth consequence year, at least 3 clinical quality measures for providers and suppliers of air ambulance services; and

“(II) with respect to a performance period with respect to a consequence year beginning with the fourth consequence year, at least 6 clinical quality measures for providers
and suppliers of air ambulance services.

“(iv) Updates.—The Secretary, in consultation with providers and suppliers of air ambulance services, shall periodically update, as determined necessary by the Secretary, the measures to be applied pursuant to this subparagraph.

“(E) Definitions.—For purposes of this paragraph:

“(i) The term ‘consequence year’ means a year beginning with the 5th year starting at least 12 months after the date of the enactment of this paragraph. The terms ‘first consequence year’, second consequence year, and third consequence year mean such 5th year starting at least 12 months after such date of enactment, the 6th year starting at least 12 months after such date of enactment, and the 7th year starting at least 12 months after such date of enactment, respectively.

“(ii) The term ‘performance period’ means, with respect to a consequence year, such period as specified by the Secretary.”
SEC. 6. MEDPAC STUDY ON ACCESS, QUALITY, COSTS, AND REIMBURSEMENT.

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

(1) be derived from the cost and other data submitted under such paragraph (18) of such section 1834(l); and

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

(A) aviation instrument flight control;

(B) provision of care to critically ill or injured patients;

(C) the provision of services in geographically isolated areas; and

(D) the provision of care to uninsured individuals.

(b) RECOMMENDATIONS.—As part of the report submitted under subsection (a), the Medicare Payment Advisory Commission shall provide recommendations on whether changes should be made with regard to reimbursement of air ambulance providers and suppliers under
title XVIII of the Social Security Act based upon the data submitted under paragraph (18) of section 1834(l) of the Social Security Act, as added by section 4, taking into consideration variables affecting payment adequacy under such title for and its impact on Medicare beneficiaries, including—

(1) whether payment under such title is sufficient to ensure access to air ambulance services or should be altered, including whether payment should be higher for air ambulance providers and suppliers—

(A) with higher levels of clinical capability to serve the most critically ill and injured patients; and

(B) that utilize advanced and expense avionics such as Instrument Flight Rules;

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

(3) the degree to which there is variation in the utilization of air ambulance services on a per capita and per transport basis, including whether the undersupply or oversupply of helicopters or fixed wing aircraft in a geographic region affects access and the volume and adequacy of payments under such title with regard to such utilization;
(4) the degree to which membership programs are utilized by air ambulance providers and suppliers to sustain their operations, and if revenue from membership programs is used to reduce their costs or provide capital funding, and whether such programs are beneficial to Medicare beneficiaries;

(5) the degree of subsidization that occurs from private insurers or hospitals sponsoring air ambulance providers or suppliers to cover inadequate payments under title XVIII or XIX of the Social Security Act and enable reasonable profitability;

(6) the ratio of charges to Medicare reimbursement and the impact on beneficiary cost sharing of cost, utilization, and variation in air ambulance services;

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

(8) the degree to which a quality reporting and performance program based upon patient safety measures and clinical quality measures should be used in determining a value based payment model for suppliers and providers of air ambulance service; and
(9) any other information deemed relevant and appropriate by the Medicare Payment Advisory Commission for the purposes of providing such recommendations.