To amend title XVIII of the Social Security Act to require reporting of certain data by providers and suppliers of air ambulance services for purposes of reforming reimbursements for such services under the Medicare program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

November 14, 2017

Mr. Heller (for himself, Mr. Bennet, and Mr. Gardner) 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 require reporting of certain data by providers and suppliers of air ambulance services for purposes of reforming reimbursements for such services under the Medicare 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.

This Act may be cited as the “Ensuring Access to Air Ambulance Services Act of 2017”.
SEC. 2. AIR AMBULANCE DATA REPORTING PROGRAM AND

VALUE-BASED PURCHASING PROGRAM.

Section 1834(l) of the Social Security Act (42 U.S.C. 1395m(l)) is amended—

(1) in paragraph (3)(B), by striking “subpara-
graph (C)” and inserting “subparagraph (C) and
paragraphs (17) and (20)”;

(2) in paragraph (3)(C), by inserting “(other
than 2018)” after “each subsequent year”; and

(3) by adding at the end the following new
paragraphs:

“(17) AIR AMBULANCE DATA REPORTING PRO-
GRAM.—

“(A) SUBMISSION OF COST DATA.—With respect to 2019 and each subsequent year, each
supplier or provider of air ambulance services
shall submit to the Secretary data specified
under subparagraph (B) for air ambulance
services furnished by such provider or supplier
during such year. Such data shall be submitted
in a form and manner, and on an annual basis,
as specified by the Secretary for purposes of
this subparagraph.

“(B) COST DATA.—For purposes of report-
ing data for air ambulance services furnished
during a year, the data described in this sub-
paragraph are cost data on the following:

“(i) Maintenance of aircrafts.
“(ii) Medical supplies and equipment.
“(iii) Fuel.
“(iv) Employee expenses.
“(v) Recurring training relating to
aviation, maintenance, communication, and
clinical.
“(vi) Rent and utilities.
“(vii) Communications.
“(viii) Travel.
“(ix) Hull and aviation liability insur-
ance, life insurance, and professional mal-
practice insurance.
“(x) Marketing.
“(xi) Supplies and equipment.
“(xii) Overhead support.
“(xiii) Aircraft ownership expenses.
“(xiv) Depreciation.
“(xv) Safety enhancement capital
costs.
“(xvi) Safety enhancement recurring
costs.
“(C) Consultation relating to cost reports.—For purposes of this paragraph, the Secretary shall consult with suppliers and providers of air ambulance services to develop a cost reporting instrument and further define the data specified under subparagraph (B) through instructions.

“(D) Submission of quality data.—With respect to 2020 and each subsequent year, each supplier or provider of air ambulance services shall submit to the Secretary data specified under subparagraph (E) for air ambulance services furnished by such supplier or provider during such year. Such data shall be submitted in a form and manner, and on an annual basis, as specified by the Secretary for purposes of this subparagraph.

“(E) Quality data.—For purposes of reporting data for air ambulance services furnished during a year, the data described in this subparagraph are quality data on the following measures:

“(i) Mechanical ventilator use in patients with advanced airways.
“(ii) Interpretation of 12-lead electrocardiogram documented on patient care record for those transported with primary cardiac diagnoses.

“(iii) Continuous waveform capnography for mechanically ventilated patients.

“(iv) Advanced airway established without newly developed hypoxia or hypotension.

“(v) Tracheal intubation verified with capnography and direct visualization, chest radiograph, or symmetric breath sounds.

“(F) CONSEQUENCE FOR NOT REPORTING QUALITY DATA FOR VALUE-BASED PURCHASING.—

“(i) IN GENERAL.—With respect to ambulance services furnished by a provider or supplier of air ambulance services during a payment year (beginning with 2024), if such provider or supplier does not submit to the Secretary data specified under subparagraph (E) for the performance period for such year (as defined in paragraph (20)(F)), the Secretary shall provide for a percent reduction of 10 percent to the per-
percentage increase determined under paragraph (3)(B), after application of paragraphs (3)(C) and (19) for such payment year.

“(ii) APPLICATION.—The reduction under clause (i) shall apply only with respect to the year involved and the Secretary shall not take into account such increase in computing the payment amount under the fee schedule under this subsection for a subsequent year.

“(iii) DISTRIBUTION.—For purposes of paragraph (20)(D)(iii)(III), of the total amount of reductions pursuant to clause (i) for a payment year—

“(I) 50 percent of such reductions shall be made available for purposes of performance payments under paragraph (20) for such payment year; and

“(II) 50 percent shall be transferred to the Federal Hospital Insurance Trust Fund under section 1817.

“(G) DATA DISCLOSURES.—The Secretary shall provide, with respect to data submitted
under subparagraph (D) by a supplier or provider of air ambulance services—

“(i) with respect to 2020, on a confidential basis to such supplier or provider, information with respect to such data and year, including a comparison of the results of such data submitted by such supplier or provider to the national average, with respect to such data reported; and

“(ii) with respect to a subsequent year, for the public disclosure of such information with respect to such subsequent year, including the comparison described in clause (i) of such data with respect to such subsequent year.

“(H) REPORTS.—

“(i) By Secretary.—Not later than July 1, 2021, subject to clause (iii), the Secretary shall submit to Congress a report on the data described in subparagraphs (B) and (E) submitted to the Secretary.

“(ii) By Comptroller General.—Not later than July 1, 2021, subject to clause (iii), the Comptroller General of the
United States shall submit to Congress a report on the data described in subparagraph (B) and subparagraph (E) submitted under this paragraph. Such report shall include an analysis of cost variation to providers and supplier of air ambulance services by geography and provider or supplier status and a recommendation on the adequate amount of reimbursement under this title to providers and suppliers of air ambulance services for furnishing such services that would reflect operational costs of such providers and suppliers and preserve access to critical air medical services and such other recommendations as the Comptroller General deems appropriate.

“(iii) LIMITATION.—The reports submitted under subclauses (i) and (ii) shall not include any information that the Secretary or Comptroller General, respectively, determines is proprietary.

“(18) TEMPORARY INCREASE IN PAYMENT FOR AIR AMBULANCE SERVICES.—

“(A) INCREASE.—
“(i) In general.—Subject to subparagraph (B), in the case of air ambulance services—

“(I) furnished during 2018, the Secretary shall provide for a percent increase of 12 percent in the base rate of the fee schedule established under this subsection for such air ambulance services; and

“(II) furnished during 2019 and 2020, the Secretary shall provide for a percent increase of 20 percent in the base rate of the fee schedule established under this subsection for such air ambulance services.

“(ii) Application.—The increase under clause (i) shall apply only with respect to the year involved and the Secretary shall not take into account such increase in computing the payment amount under the fee schedule under this subsection for a subsequent year.

“(B) No increase for providers and suppliers that do not report data.—The Secretary shall not provide for the percent in-
crease under subparagraph (A) in the base rate
of the fee schedule established under this sub-
section—

“(i) with respect to air ambulances
services furnished by a supplier or provider
of air ambulances services during 2019,
unless the provider or supplier submits to
the Secretary cost data in accordance with
paragraph (17)(A) for such year; and

“(ii) with respect to air ambulances
services furnished by a supplier or provider
of air ambulances services during 2020,
unless the provider or supplier submits to
the Secretary cost data in accordance with
paragraph (17)(A) and quality data in ac-
cordance with paragraph (17)(D) for such
year.

“(19) REBASING AIR AMBULANCE BASE
RATE.—The Secretary shall, through rulemaking,
provide for an update to the base rate of the fee
schedule established under this subsection for air
ambulance services, which shall be applied beginning
with air ambulance services furnished during 2021,
so that such rate reflects the actual costs of pro-
viding air ambulance services, consistent with cost
data submitted under paragraph (17)(A). In carrying out the previous sentence, the Secretary shall ensure that the aggregate data, methodology, and rationale applied for determining the updated base rate shall be made publicly available through rule-making. The preceding sentence shall not be applied in a budget neutral manner.

“(20) VALUE-BASED PURCHASING PROGRAM.—

“(A) IN GENERAL.—The Secretary shall establish an air ambulance services value-based purchasing program (in this paragraph referred to as the ‘Program’). Under the Program, the Secretary shall—

“(i) for a performance period (as defined in subparagraph (F)) with respect to a payment year (beginning with 2024), determine the performance of each provider or supplier of air ambulance services, with respect to each quality measure described in paragraph (17)(E);

“(ii) for each such performance period, establish performance benchmarks in accordance with subparagraph (B);

“(iii) for each such performance period and each quality measure described in
paragraph (17)(E), establish a performance score for each provider or supplier of air ambulance services, that is determined by measuring the performance of such provider or supplier described in clause (i), with respect to each quality measure described in such clause, against the performance benchmark established under subparagraph (B) for such quality measure;

“(iv) for each such performance period and provider or supplier of air ambulance services, determine a composite performance quality score, in accordance with subparagraph (C);

“(v) for each such performance period, rank each provider or supplier of air ambulance services, based on the composite performance quality score of such provider or supplier for such period (as determined under subparagraph (C)), in order from highest to lowest; and

“(vi) for each such payment year specify a performance payment percentage point adjustment, in accordance with sub-
paragraph (D)(ii), for each provider or supplier of air ambulance services to be applied under subparagraph (D)(i).

“(B) PERFORMANCE BENCHMARKS.—
Under the Program, for each performance period with respect to a payment year (beginning with payment year 2024), the Secretary shall establish a nationwide performance benchmark for each quality measure described in paragraph (17)(E). Such a benchmark, with respect to such a quality measure, shall be the average of the performance scores for all such providers and suppliers for such measure.

“(C) COMPOSITE PERFORMANCE QUALITY SCORES.—Under the Program, for each performance period with respect to a payment year (beginning with payment year 2024), the Secretary shall determine a composite performance quality score for each provider or supplier of air ambulance services, based on the cumulative performance scores determined under subparagraph (A)(iii) for such provider or supplier and performance period. For purposes of ranking under subparagraph (A)(v), a provider or supplier of air ambulance services who does not
submit required data to determine performance
under this paragraph for a performance period
for a year shall be treated as receiving a com-
posite performance quality score of zero under
this subparagraph for such period and shall be
ranked accordingly under subparagraph (A)(v).

“(D) PERFORMANCE PAYMENT.—

“(i) IN GENERAL.—With respect to
ambulance services furnished by a provider
or supplier of air ambulance services dur-
ing a payment year (beginning with 2024),
the Secretary shall apply a performance
payment percentage point adjustment to
the percentage increase determined under
paragraph (3)(B), after application of
paragraphs (3)(C), (17)(F), and (19) and
subparagraph (E) for a payment year (be-
beginning with 2024).

“(ii) PERFORMANCE PAYMENT PER-
cENTAGE POINT ADJUSTMENT.—The Sec-
retary shall, in accordance with clause (iii),
specify a performance payment percentage
point adjustment for a provider or supplier
of air ambulance services for a payment
year (beginning with 2024) which may include a zero percentage.

“(iii) REQUIREMENTS.—In specifying the performance payment percentage point adjustment for a provider or supplier of air ambulance services for a payment year under clause (i), the Secretary shall ensure that—

“(I) such adjustment is based on the ranking of the provider or supplier under subparagraph (A)(v) for the performance period for such payment year;

“(II) the application of all such adjustments in such fiscal year results in an appropriate distribution of performance payment incentives applied under this paragraph such that—

“(aa) providers and suppliers of air ambulance services with the highest rankings under subparagraph (A)(v) receive the highest payment increases under clause (i); and
“(bb) providers and suppliers of air ambulance services with the lowest rankings under subparagraph (A)(v) receive the lowest payment increases under clause (i), which may include zero; and

“(III) the total amount of increases in payment under this subsection for all providers and suppliers of air ambulance services, pursuant to this subparagraph, in such payment year shall be equal to the sum of the total amount, as estimated by the Secretary, of the reductions to payments under this subsection for such payment year pursuant to subparagraph (E) and the total amount, as estimated by the Secretary, of the reductions made under paragraph (17)(F)(i) and made available under paragraph (17)(F)(iii)(I) for purposes of performance payments under this paragraph for such payment year.
“(E) Funding for performance incentive adjustments.—

“(i) In general.—With respect to air ambulance services furnished by a supplier or provider of air ambulance services during 2024 or a subsequent year, the Secretary, after determining the percentage increase under paragraph (3)(B), and after application of paragraphs (3)(C), (17), and (19), shall reduce such percentage increase for payments under the fee schedule under this subsection otherwise applicable to such provider or supplier for services furnished by such provider or supplier during such year by the applicable percent (as defined in clause (ii)). The Secretary shall make such reductions for all providers and suppliers of air ambulance services in the year involved, regardless of whether or not the provider or supplier has been determined by the Secretary to have earned a performance payment percentage point adjustment under subparagraph (D) for such year.

“(ii) Applicable percent.—For purposes of clause (i), the term ‘applicable
percent’ means, with respect to 2024 and succeeding years, 2 percent.

“(F) PERFORMANCE PERIOD.—For purposes of this paragraph, the term ‘performance period’ means, with respect to a payment year, the previous year (or, if specified by the Secretary, portion or portions of such previous year).”.

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