

115TH CONGRESS
1ST SESSION

S. 2121

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.

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 “Ensuring Access to
5 Air Ambulance Services Act of 2017”.

1 **SEC. 2. AIR AMBULANCE DATA REPORTING PROGRAM AND**
2 **VALUE-BASED PURCHASING PROGRAM.**

3 Section 1834(l) of the Social Security Act (42 U.S.C.
4 1395m(l)) is amended—

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

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

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

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

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

24 “(B) COST DATA.—For purposes of report-
25 ing data for air ambulance services furnished

1 during a year, the data described in this sub-
2 paragraph are cost data on the following:

- 3 “(i) Maintenance of aircrafts.
4 “(ii) Medical supplies and equipment.
5 “(iii) Fuel.
6 “(iv) Employee expenses.
7 “(v) Recurring training relating to
8 aviation, maintenance, communication, and
9 clinical.
10 “(vi) Rent and utilities.
11 “(vii) Communications.
12 “(viii) Travel.
13 “(ix) Hull and aviation liability insur-
14 ance, life insurance, and professional mal-
15 practice insurance.
16 “(x) Marketing.
17 “(xi) Supplies and equipment.
18 “(xii) Overhead support.
19 “(xiii) Aircraft ownership expenses.
20 “(xiv) Depreciation.
21 “(xv) Safety enhancement capital
22 costs.
23 “(xvi) Safety enhancement recurring
24 costs.

1 “(C) CONSULTATION RELATING TO COST
2 REPORTS.—For purposes of this paragraph, the
3 Secretary shall consult with suppliers and pro-
4 viders of air ambulance services to develop a
5 cost reporting instrument and further define
6 the data specified under subparagraph (B)
7 through instructions.

8 “(D) SUBMISSION OF QUALITY DATA.—
9 With respect to 2020 and each subsequent year,
10 each supplier or provider of air ambulance serv-
11 ices shall submit to the Secretary data specified
12 under subparagraph (E) for air ambulance
13 services furnished by such supplier or provider
14 during such year. Such data shall be submitted
15 in a form and manner, and on an annual basis,
16 as specified by the Secretary for purposes of
17 this subparagraph.

18 “(E) QUALITY DATA.—For purposes of re-
19 porting data for air ambulance services fur-
20 nished during a year, the data described in this
21 subparagraph are quality data on the following
22 measures:

23 “(i) Mechanical ventilator use in pa-
24 tients with advanced airways.

1 “(ii) Interpretation of 12-lead electro-
2 cardiogram documented on patient care
3 record for those transported with primary
4 cardiac diagnoses.

5 “(iii) Continuous waveform capnogra-
6 phy for mechanically ventilated patients.

7 “(iv) Advanced airway established
8 without newly developed hypoxia or hypo-
9 tension.

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

13 “(F) CONSEQUENCE FOR NOT REPORTING
14 QUALITY DATA FOR VALUE-BASED PUR-
15 CHASING.—

16 “(i) IN GENERAL.—With respect to
17 ambulance services furnished by a provider
18 or supplier of air ambulance services dur-
19 ing a payment year (beginning with 2024),
20 if such provider or supplier does not sub-
21 mit to the Secretary data specified under
22 subparagraph (E) for the performance pe-
23 riod for such year (as defined in paragraph
24 (20)(F)), the Secretary shall provide for a
25 percent reduction of 10 percent to the per-

1 centage increase determined under para-
2 graph (3)(B), after application of para-
3 graphs (3)(C) and (19) for such payment
4 year.

5 “(ii) APPLICATION.—The reduction
6 under clause (i) shall apply only with re-
7 spect to the year involved and the Sec-
8 retary shall not take into account such in-
9 crease in computing the payment amount
10 under the fee schedule under this sub-
11 section for a subsequent year.

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

16 “(I) 50 percent of such reduc-
17 tions shall be made available for pur-
18 poses of performance payments under
19 paragraph (20) for such payment
20 year; and

21 “(II) 50 percent shall be trans-
22 ferred to the Federal Hospital Insur-
23 ance Trust Fund under section 1817.

24 “(G) DATA DISCLOSURES.—The Secretary
25 shall provide, with respect to data submitted

1 under subparagraph (D) by a supplier or pro-
2 vider of air ambulance services—

3 “(i) with respect to 2020, on a con-
4 fidential basis to such supplier or provider,
5 information with respect to such data and
6 year, including a comparison of the results
7 of such data submitted by such supplier or
8 provider to the national average, with re-
9 spect to such data reported; and

10 “(ii) with respect to a subsequent
11 year, for the public disclosure of such in-
12 formation with respect to such subsequent
13 year, including the comparison described in
14 clause (i) of such data with respect to such
15 subsequent year.

16 “(H) REPORTS.—

17 “(i) BY SECRETARY.—Not later than
18 July 1, 2021, subject to clause (iii), the
19 Secretary shall submit to Congress a re-
20 port on the data described in subpara-
21 graphs (B) and (E) submitted to the Sec-
22 retary.

23 “(ii) BY COMPTROLLER GENERAL.—
24 Not later than July 1, 2021, subject to
25 clause (iii), the Comptroller General of the

1 United States shall submit to Congress a
2 report on the data described in subpara-
3 graph (B) and subparagraph (E) sub-
4 mitted under this paragraph. Such report
5 shall include an analysis of cost variation
6 to providers and supplier of air ambulance
7 services by geography and provider or sup-
8 plier status and a recommendation on the
9 adequate amount of reimbursement under
10 this title to providers and suppliers of air
11 ambulance services for furnishing such
12 services that would reflect operational costs
13 of such providers and suppliers and pre-
14 serve access to critical air medical services
15 and such other recommendations as the
16 Comptroller General deems appropriate.

17 “(iii) LIMITATION.—The reports sub-
18 mitted under subclauses (i) and (ii) shall
19 not include any information that the Sec-
20 retary or Comptroller General, respectively,
21 determines is proprietary.

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

24 “(A) INCREASE.—

1 “(i) IN GENERAL.—Subject to sub-
2 paragraph (B), in the case of air ambu-
3 lance services—

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

10 “(II) furnished during 2019 and
11 2020, the Secretary shall provide for
12 a percent increase of 20 percent in
13 the base rate of the fee schedule es-
14 tablished under this subsection for
15 such air ambulance services.

16 “(ii) APPLICATION.—The increase
17 under clause (i) shall apply only with re-
18 spect to the year involved and the Sec-
19 retary shall not take into account such in-
20 crease in computing the payment amount
21 under the fee schedule under this sub-
22 section for a subsequent year.

23 “(B) NO INCREASE FOR PROVIDERS AND
24 SUPPLIERS THAT DO NOT REPORT DATA.—The
25 Secretary shall not provide for the percent in-

1 crease under subparagraph (A) in the base rate
2 of the fee schedule established under this sub-
3 section—

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

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

18 “(19) REBASING AIR AMBULANCE BASE
19 RATE.—The Secretary shall, through rulemaking,
20 provide for an update to the base rate of the fee
21 schedule established under this subsection for air
22 ambulance services, which shall be applied beginning
23 with air ambulance services furnished during 2021,
24 so that such rate reflects the actual costs of pro-
25 viding air ambulance services, consistent with cost

1 data submitted under paragraph (17)(A). In car-
2 rying out the previous sentence, the Secretary shall
3 ensure that the aggregate data, methodology, and
4 rationale applied for determining the updated base
5 rate shall be made publicly available through rule-
6 making. The preceding sentence shall not be applied
7 in a budget neutral manner.

8 “(20) VALUE-BASED PURCHASING PROGRAM.—

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

14 “(i) for a performance period (as de-
15 fined in subparagraph (F)) with respect to
16 a payment year (beginning with 2024), de-
17 termine the performance of each provider
18 or supplier of air ambulance services, with
19 respect to each quality measure described
20 in paragraph (17)(E);

21 “(ii) for each such performance pe-
22 riod, establish performance benchmarks in
23 accordance with subparagraph (B);

24 “(iii) for each such performance pe-
25 riod and each quality measure described in

1 paragraph (17)(E), establish a perform-
2 ance score for each provider or supplier of
3 air ambulance services, that is determined
4 by measuring the performance of such pro-
5 vider or supplier described in clause (i),
6 with respect to each quality measure de-
7 scribed in such clause, against the per-
8 formance benchmark established under
9 subparagraph (B) for such quality meas-
10 ure;

11 “(iv) for each such performance pe-
12 riod and provider or supplier of air ambu-
13 lance services, determine a composite per-
14 formance quality score, in accordance with
15 subparagraph (C);

16 “(v) for each such performance pe-
17 riod, rank each provider or supplier of air
18 ambulance services, based on the composite
19 performance quality score of such provider
20 or supplier for such period (as determined
21 under subparagraph (C)), in order from
22 highest to lowest; and

23 “(vi) for each such payment year
24 specify a performance payment percentage
25 point adjustment, in accordance with sub-

1 paragraph (D)(ii), for each provider or
2 supplier of air ambulance services to be ap-
3 plied under subparagraph (D)(i).

4 “(B) PERFORMANCE BENCHMARKS.—
5 Under the Program, for each performance pe-
6 riod with respect to a payment year (beginning
7 with payment year 2024), the Secretary shall
8 establish a nationwide performance benchmark
9 for each quality measure described in para-
10 graph (17)(E). Such a benchmark, with respect
11 to such a quality measure, shall be the average
12 of the performance scores for all such providers
13 and suppliers for such measure.

14 “(C) COMPOSITE PERFORMANCE QUALITY
15 SCORES.—Under the Program, for each per-
16 formance period with respect to a payment year
17 (beginning with payment year 2024), the Sec-
18 retary shall determine a composite performance
19 quality score for each provider or supplier of air
20 ambulance services, based on the cumulative
21 performance scores determined under subpara-
22 graph (A)(iii) for such provider or supplier and
23 performance period. For purposes of ranking
24 under subparagraph (A)(v), a provider or sup-
25 plier of air ambulance services who does not

1 submit required data to determine performance
2 under this paragraph for a performance period
3 for a year shall be treated as receiving a com-
4 posite performance quality score of zero under
5 this subparagraph for such period and shall be
6 ranked accordingly under subparagraph (A)(v).

7 “(D) PERFORMANCE PAYMENT.—

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

19 “(ii) PERFORMANCE PAYMENT PER-
20 CENTAGE POINT ADJUSTMENT.—The Sec-
21 retary shall, in accordance with clause (iii),
22 specify a performance payment percentage
23 point adjustment for a provider or supplier
24 of air ambulance services for a payment

1 year (beginning with 2024) which may in-
2 clude a zero percentage.

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

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

14 “(II) the application of all such
15 adjustments in such fiscal year results
16 in an appropriate distribution of per-
17 formance payment incentives applied
18 under this paragraph such that—

19 “(aa) providers and sup-
20 pliers of air ambulance services
21 with the highest rankings under
22 subparagraph (A)(v) receive the
23 highest payment increases under
24 clause (i); and

1 “(bb) providers and sup-
2 pliers of air ambulance services
3 with the lowest rankings under
4 subparagraph (A)(v) receive the
5 lowest payment increases under
6 clause (i), which may include
7 zero; and

8 “(III) the total amount of in-
9 creases in payment under this sub-
10 section for all providers and suppliers
11 of air ambulance services, pursuant to
12 this subparagraph, in such payment
13 year shall be equal to the sum of the
14 total amount, as estimated by the Sec-
15 retary, of the reductions to payments
16 under this subsection for such pay-
17 ment year pursuant to subparagraph
18 (E) and the total amount, as esti-
19 mated by the Secretary, of the reduc-
20 tions made under paragraph
21 (17)(F)(i) and made available under
22 paragraph (17)(F)(iii)(I) for purposes
23 of performance payments under this
24 paragraph for such payment year.

1 “(E) FUNDING FOR PERFORMANCE INCEN-
2 TIVE ADJUSTMENTS.—

3 “(i) IN GENERAL.—With respect to
4 air ambulance services furnished by a sup-
5 plier or provider of air ambulance services
6 during 2024 or a subsequent year, the Sec-
7 retary, after determining the percentage
8 increase under paragraph (3)(B), and after
9 application of paragraphs (3)(C), (17), and
10 (19), shall reduce such percentage increase
11 for payments under the fee schedule under
12 this subsection otherwise applicable to such
13 provider or supplier for services furnished
14 by such provider or supplier during such
15 year by the applicable percent (as defined
16 in clause (ii)). The Secretary shall make
17 such reductions for all providers and sup-
18 pliers of air ambulance services in the year
19 involved, regardless of whether or not the
20 provider or supplier has been determined
21 by the Secretary to have earned a perform-
22 ance payment percentage point adjustment
23 under subparagraph (D) for such year.

24 “(ii) APPLICABLE PERCENT.—For
25 purposes of clause (i), the term ‘applicable

1 percent’ means, with respect to 2024 and
2 succeeding years, 2 percent.

3 “(F) PERFORMANCE PERIOD.—For pur-
4 poses of this paragraph, the term ‘performance
5 period’ means, with respect to a payment year,
6 the previous year (or, if specified by the Sec-
7 retary, portion or portions of such previous
8 year).”.

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