

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-

1           quired pneumonia or invasive line or  
2           wound infections.

3           “(vii) Reporting of never events, such  
4           as loss of oxygen, delivery of a baby during  
5           transport, patient death or disability due  
6           to vehicle failure or crash, transport to un-  
7           intended destination, dropping a patient or  
8           allowing a fall during movement of patient,  
9           failure to communicate time of arrival,  
10          hypoglycemia, and medication errors.

11          “(viii) Patient safety and infection  
12          control.

13          “(ix) Physician directed clinical qual-  
14          ity management and clinical performance  
15          improvement programs including quality  
16          assurance, utilization review, outcomes,  
17          proficiency measures and patient safety.

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

21          “(C) DEEMED STATUS.—Air ambulance  
22          providers and suppliers that are accredited by  
23          an accreditation organization approved by the  
24          Secretary as having standards that meet or ex-  
25          ceed 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.

○