To amend title XVIII of the Social Security Act in order to strengthen rules in case of competition for diabetic testing strips, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2017

Ms. DeGette (for herself, Mrs. Brooks of Indiana, and Mr. Reed) 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 in order to strengthen rules in case of competition for diabetic testing strips, 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 “Protecting Access to Diabetes Supplies Act of 2017”.

SEC. 2. STRENGTHENING RULES IN CASE OF COMPETITION FOR DIABETIC TESTING STRIPS.

(a) Special Rule in Case of Competition for Diabetic Testing Strips.—

(1) In general.—Paragraph (10) of section 1847(b) of the Social Security Act (42 U.S.C. 1395w–3(b)) is amended—

(A) in subparagraph (A), by striking the second sentence and inserting the following new sentence: “With respect to bids to furnish such types of products on or after January 1, 2019, the volume for such types of products shall be determined by the Secretary through the use of multiple sources of data, including market based data measuring sales of diabetic testing strip products described in section 1861(n) that are not exclusively sold by, and marketed under the name of, a single retailer that is not the manufacturer of such products, from mail order, non-mail order, Medicare, and non-Medicare markets.”; and

(B) by adding at the end the following new subparagraphs:

“(C) Demonstration of Ability to Furnish Types of Diabetic Testing Strip Products.—With respect to bids to furnish di-
abetic testing strip products on or after January 1, 2019, under the program described in subparagraph (A), the Secretary shall reject a bid submitted by an entity if the entity does not attest to the Secretary and demonstrate, through letters of intent with manufacturers, wholesalers, or other suppliers, or other evidence as the Secretary may specify, that the entity has the ability to obtain an inventory of the types and quantities of diabetic testing strip products that will allow the entity to furnish such products in a manner consistent with its bid.

“(D) USE OF UNLISTED TYPES IN CALCULATION OF PERCENTAGE.—With respect to bids to furnish diabetic testing strip products on or after January 1, 2019, in determining under subparagraph (A) whether a bid submitted by an entity under such subparagraph covers 50 percent (or such higher percentage as the Secretary may specify) of all types of diabetic testing strip products, the Secretary may not attribute a percentage to types of diabetic testing strip products that the Secretary does
not identify by brand, model, and market share volume.

“(E) Adherence to Demonstration.—

“(i) In General.—In the case of an entity that is furnishing diabetic testing strip products on or after January 1, 2019, under a contract entered into under the competition conducted pursuant to paragraph (1), the Secretary shall establish a process to monitor, on an ongoing basis, the extent to which such entity continues to cover the product types included in the entity’s bid.

“(ii) Termination.—If the Secretary determines that an entity described in clause (i) fails to maintain in inventory, or otherwise maintain ready access to through requirements contracts or otherwise, a type of product included in the entity’s bid, the Secretary may terminate such contract unless the Secretary finds that the failure of the entity to maintain inventory of, or ready access to, the product is the result of the discontinuation of the product by the
product manufacturer or a market-wide
shortage of the product.”.

(b) CODIFYING AND EXPANDING ANTI-SWITCHING
RULE.—Section 1847(b) of the Social Security Act (42
U.S.C. 1395w–3(b)), as amended by subsection (a)(1), is
further amended—

(1) by redesignating paragraph (11) as para-
graph (12); and

(2) by inserting after paragraph (10) the fol-
lowing new paragraph:

“(11) ADDITIONAL SPECIAL RULES IN CASE OF
COMPETITION FOR DIABETIC TESTING STRIPS.—

“(A) IN GENERAL.—With respect to an en-
tity that is furnishing diabetic testing strip
products to individuals under a contract entered
into under the competitive acquisition program
established under this section, the entity shall
furnish to each individual a brand of such
strips that is compatible with the home blood
glucose monitor selected by the individual.

“(B) PROHIBITION ON INFLUENCING AND
INCENTIVIZING.—An entity described in sub-
paragraph (A) may not attempt to influence or
incentivize an individual to switch the brand of
glucose monitor or diabetic testing strip product selected by the individual, including by—

“(i) persuading, pressuring, or advising the individual to switch; or

“(ii) furnishing information about alternative brands to the individual where the individual has not requested such information.

“(C) PROVISION OF INFORMATION.—

“(i) STANDARDIZED INFORMATION.—

Not later than January 1, 2019, the Secretary shall develop and make available to entities described in subparagraph (A) standardized information that describes the rights of an individual with respect to such an entity. The information described in the preceding sentence shall include information regarding—

“(I) the requirements established under subparagraphs (A) and (B);

“(II) the right of the individual to purchase diabetic testing strip products from another mail order supplier of such products or a retail pharmacy if the entity is not able to fur-
nish the brand of such product that is compatible with the home blood glucose monitor selected by the individual; and

“(III) the right of the individual to return diabetic testing strip products furnished to the individual by the entity.

“(ii) REQUIREMENT.—With respect to diabetic testing strip products furnished on or after the date on which the Secretary develops the standardized information under clause (i), an entity described in subparagraph (A) may not communicate directly to an individual until the entity has verbally provided the individual with such standardized information.

“(D) ORDER REFILLS.—With respect to diabetic testing strip products furnished on or after January 1, 2019, the Secretary shall require an entity furnishing diabetic testing strip products to an individual to contact and receive a request from the individual for such products not more than 14 days prior to dispensing a refill of such products to the individual.”.
(c) IMPLEMENTATION; NON-APPLICATION OF THE PAPERWORK REDUCTION ACT.—

(1) IMPLEMENTATION.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may implement the provisions of, and amendments made by, this section by program instruction or otherwise.

(2) NON-APPLICATION OF THE PAPERWORK REDUCTION ACT.—Chapter 35 of title 44, United States Code (commonly referred to as the “Paperwork Reduction Act of 1995”), shall not apply to this section or the amendments made by this section.