

115TH CONGRESS  
1ST SESSION

# S. 1914

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.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2017

Mr. WARNER (for himself and Mr. SCOTT) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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.

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 “Protecting Access to  
5       Diabetes Supplies Act of 2017”.

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

8       (a) SPECIAL RULE IN CASE OF COMPETITION FOR  
9       DIABETIC TESTING STRIPS.—

1 (1) IN GENERAL.—Paragraph (10) of section  
2 1847(b) of the Social Security Act (42 U.S.C.  
3 1395w–3(b)) is amended—

4 (A) in subparagraph (A), by striking the  
5 second sentence and inserting the following new  
6 sentence: “With respect to bids to furnish such  
7 types of products on or after January 1, 2019,  
8 the volume for such types of products shall be  
9 determined by the Secretary through the use of  
10 multiple sources of data (from mail order and  
11 non-mail order Medicare markets), including  
12 market-based data measuring sales of diabetic  
13 testing strip products that are not exclusively  
14 sold by a single retailer from such markets.”;  
15 and

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

18 “(C) DEMONSTRATION OF ABILITY TO  
19 FURNISH TYPES OF DIABETIC TESTING STRIP  
20 PRODUCTS.—With respect to bids to furnish di-  
21 abetic testing strip products on or after Janu-  
22 ary 1, 2019, under the program described in  
23 subparagraph (A), the Secretary shall reject a  
24 bid submitted by an entity if the entity does not  
25 attest to the Secretary and demonstrate,

1 through letters of intent with manufacturers,  
2 wholesalers, or other suppliers, or other evi-  
3 dence as the Secretary may specify, that the en-  
4 tity has the ability to obtain an inventory of the  
5 types and quantities of diabetic testing strip  
6 products that will allow the entity to furnish  
7 such products in a manner consistent with its  
8 bid.

9 “(D) USE OF UNLISTED TYPES IN CAL-  
10 CULATION OF PERCENTAGE.—With respect to  
11 bids to furnish diabetic testing strip products  
12 on or after January 1, 2019, in determining  
13 under subparagraph (A) whether a bid sub-  
14 mitted by an entity under such subparagraph  
15 covers 50 percent (or such higher percentage as  
16 the Secretary may specify) of all types of dia-  
17 betic testing strip products, the Secretary may  
18 not attribute a percentage to types of diabetic  
19 testing strip products that the Secretary does  
20 not identify by brand, model, and market share  
21 volume.

22 “(E) ADHERENCE TO DEMONSTRATION.—

23 “(i) IN GENERAL.—In the case of an  
24 entity that is furnishing diabetic testing  
25 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, a market-wide shortage of the product, or the introduction of a newer model or version of the product in the market involved.”.

(b) CODIFYING AND EXPANDING ANTI-SWITCHING  
 RULE.—Section 1847(b) of the Social Security Act (42

1 U.S.C. 1395w-3(b)), as amended by subsection (a)(1), is  
2 further amended—

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

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

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

9 “(A) IN GENERAL.—With respect to an en-  
10 tity that is furnishing diabetic testing strip  
11 products to individuals under a contract entered  
12 into under the competitive acquisition program  
13 established under this section, the entity shall  
14 furnish to each individual a brand of such prod-  
15 ucts that is compatible with the home blood glu-  
16 cose monitor selected by the individual.

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

23 “(i) persuading, pressuring, or advis-  
24 ing the individual to switch; or

1 “(ii) furnishing information about al-  
2 ternative brands to the individual where  
3 the individual has not requested such in-  
4 formation.

5 “(C) PROVISION OF INFORMATION.—

6 “(i) STANDARDIZED INFORMATION.—  
7 Not later than January 1, 2019, the Sec-  
8 retary shall develop and make available to  
9 entities described in subparagraph (A)  
10 standardized information that describes  
11 the rights of an individual with respect to  
12 such an entity. The information described  
13 in the preceding sentence shall include in-  
14 formation regarding—

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

17 “(II) the right of the individual  
18 to purchase diabetic testing strip  
19 products from another mail order sup-  
20 plier of such products or a retail phar-  
21 macy if the entity is not able to fur-  
22 nish the brand of such product that is  
23 compatible with the home blood glu-  
24 cose monitor selected by the indi-  
25 vidual; and

1 “(III) the right of the individual  
2 to return diabetic testing strip prod-  
3 ucts furnished to the individual by the  
4 entity.

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

14 “(D) ORDER REFILLS.—With respect to  
15 diabetic testing strip products furnished on or  
16 after January 1, 2019, the Secretary shall re-  
17 quire an entity furnishing diabetic testing strip  
18 products to an individual to contact and receive  
19 a request from the individual for such products  
20 not more than 14 days prior to dispensing a re-  
21 fill of such products to the individual.”.

22 (c) IMPLEMENTATION; NON-APPLICATION OF THE  
23 PAPERWORK REDUCTION ACT.—

24 (1) IMPLEMENTATION.—Notwithstanding any  
25 other provision of law, the Secretary of Health and

1 Human Services may implement the provisions of,  
2 and amendments made by, this section by program  
3 instruction or otherwise.

4 (2) NON-APPLICATION OF THE PAPERWORK RE-  
5 Duction ACT.—Chapter 35 of title 44, United  
6 States Code (commonly referred to as the ‘Paper-  
7 work Reduction Act of 1995’) shall not apply to this  
8 section or the amendments made by this section.

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