

[COMMITTEE PRINT]

[Showing the text of H.R. 3271, as forwarded by the
Subcommittee on Health on September 13, 2017]

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Protecting Access to
3 Diabetes Supplies Act of 2017”.

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

6 (a) SPECIAL RULE IN CASE OF COMPETITION FOR
7 DIABETIC TESTING STRIPS.—

8 (1) IN GENERAL.—Paragraph (10) of section
9 1847(b) of the Social Security Act (42 U.S.C.
10 1395w–3(b)) is amended—

11 (A) in subparagraph (A), by striking the
12 second sentence and inserting the following new
13 sentence: “With respect to bids to furnish such
14 types of products on or after January 1, 2019,
15 the volume for such types of products shall be
16 determined by the Secretary through the use of
17 multiple sources of data (from mail order and
18 non-mail order Medicare markets), including
19 market-based data measuring sales of diabetic
20 testing strip products that are not exclusively

1 sold by a single retailer from such markets.”;
2 and

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

5 “(C) DEMONSTRATION OF ABILITY TO
6 FURNISH TYPES OF DIABETIC TESTING STRIP
7 PRODUCTS.—With respect to bids to furnish di-
8 abetic testing strip products on or after Janu-
9 ary 1, 2019, under the program described in
10 subparagraph (A), the Secretary shall reject a
11 bid submitted by an entity if the entity does not
12 attest to the Secretary and demonstrate,
13 through letters of intent with manufacturers,
14 wholesalers, or other suppliers, or other evi-
15 dence as the Secretary may specify, that the en-
16 tity has the ability to obtain an inventory of the
17 types and quantities of diabetic testing strip
18 products that will allow the entity to furnish
19 such products in a manner consistent with its
20 bid.

21 “(D) USE OF UNLISTED TYPES IN CAL-
22 CULATION OF PERCENTAGE.—With respect to
23 bids to furnish diabetic testing strip products
24 on or after January 1, 2019, in determining
25 under subparagraph (A) whether a bid sub-

1 mitted by an entity under such subparagraph
2 covers 50 percent (or such higher percentage as
3 the Secretary may specify) of all types of dia-
4 betic testing strip products, the Secretary may
5 not attribute a percentage to types of diabetic
6 testing strip products that the Secretary does
7 not identify by brand, model, and market share
8 volume.

9 “(E) ADHERENCE TO DEMONSTRATION.—

10 “(i) IN GENERAL.—In the case of an
11 entity that is furnishing diabetic testing
12 strip products on or after January 1,
13 2019, under a contract entered into under
14 the competition conducted pursuant to
15 paragraph (1), the Secretary shall estab-
16 lish a process to monitor, on an ongoing
17 basis, the extent to which such entity con-
18 tinues to cover the product types included
19 in the entity’s bid.

20 “(ii) TERMINATION.—If the Secretary
21 determines that an entity described in
22 clause (i) fails to maintain in inventory, or
23 otherwise maintain ready access to
24 (through requirements, contracts, or other-
25 wise) a type of product included in the en-

1 tity’s bid, the Secretary may terminate
2 such contract unless the Secretary finds
3 that the failure of the entity to maintain
4 inventory of, or ready access to, the prod-
5 uct is the result of the discontinuation of
6 the product by the product manufacturer,
7 a market-wide shortage of the product, or
8 the introduction of a newer model or
9 version of the product in the market in-
10 volved.”.

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

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

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

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

21 “(A) IN GENERAL.—With respect to an en-
22 tity that is furnishing diabetic testing strip
23 products to individuals under a contract entered
24 into under the competitive acquisition program
25 established under this section, the entity shall

1 furnish to each individual a brand of such prod-
2 ucts that is compatible with the home blood glu-
3 cose monitor selected by the individual.

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

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

12 “(ii) furnishing information about al-
13 ternative brands to the individual where
14 the individual has not requested such in-
15 formation.

16 “(C) PROVISION OF INFORMATION.—

17 “(i) STANDARDIZED INFORMATION.—
18 Not later than January 1, 2019, the Sec-
19 retary shall develop and make available to
20 entities described in subparagraph (A)
21 standardized information that describes
22 the rights of an individual with respect to
23 such an entity. The information described
24 in the preceding sentence shall include in-
25 formation regarding—

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

3 “(II) the right of the individual
4 to purchase diabetic testing strip
5 products from another mail order sup-
6 plier of such products or a retail phar-
7 macy if the entity is not able to fur-
8 nish the brand of such product that is
9 compatible with the home blood glu-
10 cose monitor selected by the indi-
11 vidual; and

12 “(III) the right of the individual
13 to return diabetic testing strip prod-
14 ucts furnished to the individual by the
15 entity.

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

1 “(D) ORDER REFILLS.—With respect to
2 diabetic testing strip products furnished on or
3 after January 1, 2019, the Secretary shall re-
4 quire an entity furnishing diabetic testing strip
5 products to an individual to contact and receive
6 a request from the individual for such products
7 not more than 14 days prior to dispensing a re-
8 fill of such products to the individual.”.

9 (c) IMPLEMENTATION; NON-APPLICATION OF THE
10 PAPERWORK REDUCTION ACT.—

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

16 (2) NON-APPLICATION OF THE PAPERWORK RE-
17 DUCTION ACT.—Chapter 35 of title 44, United
18 States Code (commonly referred to as the “Paper-
19 work Reduction Act of 1995”), shall not apply to
20 this section or the amendments made by this section.

