

114TH CONGRESS
2D SESSION

H. R. 5045

To impose a moratorium on the implementation of a proposed Medicare local coverage determination on lower limb prostheses.

IN THE HOUSE OF REPRESENTATIVES

APRIL 25, 2016

Mrs. ELLMERS of North Carolina (for herself and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, 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 impose a moratorium on the implementation of a proposed Medicare local coverage determination on lower limb prostheses.

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; FINDINGS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Preserving Access to Modern Prosthetic Limbs Act of
6 2016”.

7 (b) **FINDINGS.**—Congress finds the following:

1 (1) The Medicare program includes coverage for
2 prosthetic limbs under section 1861(s)(9) of the So-
3 cial Security Act (42 U.S.C. 1395w(s)(9)).

4 (2) As a result of significant Federal and pri-
5 vate investment in research and development over
6 the past decades, beneficiaries with lower limb pros-
7 theses are able to maintain optimal function and
8 lead productive and independent lives.

9 (3) Federal spending for prosthetic devices in
10 the Medicare program has decreased by 15 percent
11 between 2010 and 2014.

12 (4) The Secretary of Health and Human Serv-
13 ices, through Medicare contractors known as Dura-
14 ble Medical Equipment Medicare Administrative
15 Contractors, released on July 16, 2015, a document
16 entitled “Local Coverage Determination (LCD):
17 Lower Limb Prostheses (DL33787)”, which applies
18 to all Medicare beneficiaries across the United
19 States.

20 (5) The policies proposed in this document
21 would comprehensively change the requirements
22 under which a Medicare beneficiary would qualify for
23 a lower limb prosthetic device and would seriously
24 restrict access to modern prosthetic care.

1 (6) If finalized, the changes proposed in this
2 document would create coverage requirements that
3 are inconsistent with current clinical practice and
4 would arbitrarily and unreasonably deny Medicare
5 beneficiaries access to prosthetic limb technologies
6 considered the current standard of care.

7 (7) Under these proposed policies, beneficiaries
8 instead would be eligible for prosthetic devices that
9 are functionally outdated, less durable, and less safe.

10 (8) The adverse impact of the Medicare con-
11 tractors' proposed policies extend well beyond the
12 Medicare program and has implications for other
13 Federal health programs, such as health programs
14 of the Veterans Administration, and commercial in-
15 surers.

16 (9) Given the far reaching effect of these poli-
17 cies, and the fact that little or no clinical or sci-
18 entific evidence supported the issuance of these pro-
19 posals, any changes to prosthetic limb coverage
20 should be made only after a transparent process in
21 which evidence is offered to justify coverage modi-
22 fications, meaningful stakeholder feedback is solie-
23 ited, and the Secretary and Medicare contractors re-
24 ceive and respond to this stakeholder feedback in a
25 public manner.

1 (10) A moratorium on the implementation and
2 enforcement of these proposed policies would enable
3 the Secretary and the Medicare contractors to en-
4 gage in such a transparent process.

5 **SEC. 2. MORATORIUM ON IMPLEMENTATION OF PROPOSED**
6 **MEDICARE LOCAL COVERAGE DETERMINA-**
7 **TION ON LOWER LIMB PROSTHESES.**

8 (a) MORATORIUM.—

9 (1) IN GENERAL.—The Secretary of Health and
10 Human Services and any Medicare Administrative
11 Contractor may not implement and enforce the poli-
12 cies in the LCD on lower limb prostheses (as defined
13 in subsection (d)(1)), in whole or in part, during the
14 period beginning on the date of the enactment of
15 this Act, and ending on June 30, 2017.

16 (2) REMOVAL OF POLICY FROM WEBSITES.—
17 The Secretary of Health and Human Services and
18 its medicare administrative contractors shall remove
19 the LCD on lower limb prostheses from the websites
20 of the Centers for Medicare & Medicaid Services and
21 its medicare administrative contractors during the
22 period of the moratorium under paragraph (1).

23 (b) PROVIDING THE SECRETARY WITH AUTHORITY
24 TO OVERSEE THE DEVELOPMENT OF LOCAL COVERAGE

1 DETERMINATIONS.—Section 1862(l)(5) of the Social Se-
2 curity Act (42 U.S.C. 395y(l)(5)) is amended—

3 (1) by redesignating subparagraph (C) as sub-
4 paragraph (D); and

5 (2) by inserting after subparagraph (B) the fol-
6 lowing new subparagraph:

7 “(C) SECRETARY OVERSIGHT AND GUID-
8 ANCE IN DEVELOPING LOCAL COVERAGE DE-
9 TERMINATIONS.—The Secretary shall provide
10 guidance and oversight of any local coverage de-
11 termination developed by a medicare adminis-
12 trative contractor to ensure that the local cov-
13 erage determination is consistent with this
14 title.”.

15 (c) CONSTRUCTION.—Nothing in this section shall be
16 construed to prevent the Secretary from enforcing existing
17 statutes, regulations, and local coverage determinations
18 other than with respect to policies in the LCD on lower
19 limb prostheses.

20 (d) DEFINITIONS.—In this section:

21 (1) LCD ON LOWER LIMB PROSTHESES.—The
22 term “LCD on lower limb prostheses” means the
23 local coverage determination on lower limb pros-
24 theses as proposed by a medicare administrative con-

1 tractor in the document (DL33787) released on July
2 16, 2015, and any successor to such determination.

3 (2) MEDICARE ADMINISTRATIVE CON-
4 TRACTOR.—The term “medicare administrative con-
5 tractor” has the meaning given such term in section
6 1874A(a)(3)(A) of the Social Security Act (42
7 U.S.C. 1395kk–1(a)(3)(A)).

○