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

Mrs. ELLMERS introduced the following bill; which was referred to the Committee on ___________________________

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS.

(a) Short Title.—This Act may be cited as the “Preserving Access to Modern Prosthetic Limbs Act of 2016”.

(b) Findings.—Congress finds the following:
(1) The Medicare program includes coverage for prosthetic limbs under section 1861(s)(9) of the Social Security Act (42 U.S.C. 1395w(s)(9)).

(2) As a result of significant Federal and private investment in research and development over the past decades, beneficiaries with lower limb prostheses are able to maintain optimal function and lead productive and independent lives.

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

(4) The Secretary of Health and Human Services, through Medicare contractors known as Durable Medical Equipment Medicare Administrative Contractors, released on July 16, 2015, a document entitled “Local Coverage Determination (LCD): Lower Limb Prostheses (DL33787)”, which applies to all Medicare beneficiaries across the United States.

(5) The policies proposed in this document would comprehensively change the requirements under which a Medicare beneficiary would qualify for a lower limb prosthetic device and would seriously restrict access to modern prosthetic care.
(6) If finalized, the changes proposed in this document would create coverage requirements that are inconsistent with current clinical practice and would arbitrarily and unreasonably deny Medicare beneficiaries access to prosthetic limb technologies considered the current standard of care.

(7) Under these proposed policies, beneficiaries instead would be eligible for prosthetic devices that are functionally outdated, less durable, and less safe.

(8) The adverse impact of the Medicare contractors’ proposed policies extend well beyond the Medicare program and has implications for other Federal health programs, such as health programs of the Veterans Administration, and commercial insurers.

(9) Given the far reaching effect of these policies, and the fact that little or no clinical or scientific evidence supported the issuance of these proposals, any changes to prosthetic limb coverage should be made only after a transparent process in which evidence is offered to justify coverage modifications, meaningful stakeholder feedback is solicited, and the Secretary and Medicare contractors receive and respond to this stakeholder feedback in a public manner.
(10) A moratorium on the implementation and enforcement of these proposed policies would enable the Secretary and the Medicare contractors to engage in such a transparent process.

SEC. 2. MORATORIUM ON IMPLEMENTATION OF PROPOSED MEDICARE LOCAL COVERAGE DETERMINATION ON LOWER LIMP PROSTHESES.

(a) Moratorium.—

(1) In general.—The Secretary of Health and Human Services and any Medicare Administrative Contractor may not implement and enforce the policies in the LCD on lower limb prostheses (as defined in subsection (d)(1)), in whole or in part, during the period beginning on the date of the enactment of this Act, and ending on June 30, 2017.

(2) Removal of policy from websites.—

The Secretary of Health and Human Services and its medicare administrative contractors shall remove the LCD on lower limb prostheses from the websites of the Centers for Medicare & Medicaid Services and its medicare administrative contractors during the period of the moratorium under paragraph (1).

(b) Providing the Secretary With Authority to Oversee the Development of Local Coverage
DETERMINATIONS.—Section 1862(l)(5) of the Social Security Act (42 U.S.C. 395y(l)(5)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph:

“(C) SECRETARY OVERSIGHT AND GUIDANCE IN DEVELOPING LOCAL COVERAGE DETERMINATIONS.—The Secretary shall provide guidance and oversight of any local coverage determination developed by a medicare administrative contractor to ensure that the local coverage determination is consistent with this title.”.

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

(d) DEFINITIONS.—In this section:

(1) LCD ON LOWER LIMB PROSTHESSES.—The term “LCD on lower limb prostheses” means the local coverage determination on lower limb prostheses as proposed by a medicare administrative con-
tractor in the document (DL33787) released on July 16, 2015, and any successor to such determination.

(2) **Medicare Administrative Contractor.**—The term “medicare administrative contractor” has the meaning given such term in section 1874A(a)(3)(A) of the Social Security Act (42 U.S.C. 1395kk–1(a)(3)(A)).