

118TH CONGRESS  
1ST SESSION

# H. R. 5396

To amend title XVIII of the Social Security Act to prohibit Medicare local coverage determinations from restricting access to care, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2023

Mr. BUCSHON 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

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## A BILL

To amend title XVIII of the Social Security Act to prohibit Medicare local coverage determinations from restricting access to care, 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 “Coverage Determina-  
5 tion Clarity Act of 2023”.

1 **SEC. 2. IMPROVING ACCESS TO ITEMS AND SERVICES**  
2 **UNDER MEDICARE LOCAL COVERAGE DETER-**  
3 **MINATIONS.**

4 (a) IN GENERAL.—Section 1862(l)(5) of the Social  
5 Security Act (42 U.S.C. 1395y(l)(5)) is amended—

6 (1) in subparagraph (A), by striking “The Sec-  
7 retary” and inserting “Subject to subparagraph (E),  
8 the Secretary”; and

9 (2) by adding at the end the following new sub-  
10 paragraph:

11 “(E) PROHIBITION ON LIMITING ACCESS  
12 ITEMS AND SERVICES.—

13 “(i) REVIEW OF LOCAL COVERAGE  
14 DETERMINATIONS.—Beginning in 2024,  
15 and annually thereafter, the Secretary  
16 shall review each local coverage determina-  
17 tion in effect as of the date of such review  
18 to determine whether such local coverage  
19 determination denies, limits, or conditions  
20 the coverage or provision of items or serv-  
21 ices beyond that provided by a national  
22 coverage determination that has deter-  
23 mined that such items or services be cov-  
24 ered nationally under this title.

25 “(ii) CONFLICT BETWEEN A NA-  
26 TIONAL COVERAGE DETERMINATION AND A

1 LOCAL COVERAGE DETERMINATION.—A  
2 local coverage determination denies, limits,  
3 or conditions the coverage or provision of  
4 items or services for purposes of clause (i)  
5 to the extent that such local coverage de-  
6 termination limits access to such items or  
7 services by imposing restrictions that do  
8 not directly interpret provisions of a na-  
9 tional coverage determination that has de-  
10 termined that such items or services be  
11 covered nationally under this title.

12 “(iii) REVISION OF LOCAL COVERAGE  
13 DETERMINATIONS.—

14 “(I) IN GENERAL.—If the review  
15 conducted by the Secretary under  
16 clause (i) determines that a local cov-  
17 erage determination denies, limits, or  
18 conditions the coverage or provision of  
19 items or services that are approved,  
20 cleared, authorized, or licensed under  
21 section 505, 510(k), 513, or 515 of  
22 the Federal Food, Drug, and Cos-  
23 metic Act or section 351 of the Public  
24 Health Service Act, the Secretary  
25 shall direct the appropriate Medicare

1 administrative contractor to expedi-  
2 tiously revise such local coverage de-  
3 termination to eliminate the limita-  
4 tion.

5 “(II) TIMING.—A Medicare ad-  
6 ministrative contractor shall publish a  
7 revised local determination no later  
8 than the date that is 180 days after  
9 the date on which the Secretary di-  
10 rects such contractor to revise a local  
11 coverage determination under sub-  
12 clause (I).

13 “(iv) NEW LOCAL COVERAGE DETER-  
14 MINATIONS.—The Secretary shall require  
15 each Medicare administrative contractor  
16 that develops a local coverage determina-  
17 tion to ensure that any such local coverage  
18 determination does not deny, limit, or con-  
19 dition the coverage or provision of items or  
20 services pursuant to clause (ii) beyond that  
21 provided by a national coverage determina-  
22 tion that has determined that such items  
23 or services be covered nationally under this  
24 title.

1           “(v) ERROR VERIFICATION AND COR-  
2           RECTIVE ACTIONS.—In verifying any po-  
3           tential errors and taking corrective actions,  
4           Medicare administrative contractors, com-  
5           prehensive error rate testing recovery audi-  
6           tors, and unified program integrity con-  
7           tractors and independent review agencies—

8                   “(I) shall not deviate from local  
9                   coverage determination provisions ap-  
10                  plicable in the region in which such  
11                  verification or corrective action occurs;  
12                  and

13                  “(II) shall provide transparent  
14                  review by publishing the names of the  
15                  reviewers and their qualifications in a  
16                  place and format available to pro-  
17                  viders.

18           “(vi) REPORTS TO CONGRESS.—Be-  
19           ginning in 2025 and each year thereafter,  
20           the Secretary shall submit a report to the  
21           appropriate committees of Congress on the  
22           findings of the review conducted under  
23           clause (i) and any local coverage deter-  
24           minations revised pursuant to clause (iii)  
25           during the preceding year.”.

1       (b) **EFFECTIVE DATE.**—The amendments made by  
2 subsection (a) shall apply with respect to proposed and  
3 final local coverage determinations posted on Medicare ad-  
4 ministrative contractor websites on and after January 1,  
5 2023.

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