



September 13, 2017

SUBMITTED ELECTRONICALLY

Re: Please Cosponsor H.R. 3635, the *Local Coverage and Determination Clarification Act*

Dear Congressman:

The undersigned members of the Independence Through Enhancement of Medicare and Medicaid (ITEM) Coalition respectfully request that you cosponsor H.R. 3635, the *Local Coverage Determination Clarification Act of 2017*, introduced by Representatives Lynn Jenkins (R-KS-2) and Ron Kind (D-WI-3). H.R. 3635 is companion legislation to S. 794, which was introduced in the Senate with bipartisan support in March. This important legislation would help ensure basic procedural fairness in Local Coverage Determinations (LCDs), and thereby provide an important Medicare beneficiary protection that is often lacking in local coverage decisions.

The ITEM Coalition is a national consumer and clinician-led coalition advocating for access to and coverage of assistive devices, technologies, and related services for persons with injuries, illnesses, disabilities, and chronic conditions of all ages. Our members represent individuals with a wide range of disabling conditions, as well as the providers who serve them, including such conditions as multiple sclerosis, spinal cord injuries, brain injuries, stroke, paralysis, limb loss, cerebral palsy, hearing and speech impairments, visual impairments, vision loss, spina bifida, myositis, and other life-altering conditions.

Given the ITEM Coalition's membership and mission, legislation that seeks to improve access to care and Medicare beneficiary protections is a high priority. H.R. 3635 directly addresses long-standing problems of access to care and adds beneficiary coverage protections by improving the transparency and accountability of the opaque LCD process.

As you may know, Medicare coverage policy decisions are made nationally and locally. National coverage determinations (NCDs) are developed by the Centers for Medicare and Medicaid Services (CMS) to describe the circumstances under which Medicare will cover an item or service on a nationwide basis. LCDs are developed by Medicare Administrative Contractors (MACs) to establish coverage or non-coverage of a particular item or service on a contractor-wide basis. MACs may make coverage decisions where CMS has not made an NCD or where the rules are vague regarding a specific procedure or device. LCD policy may not, however, conflict with an NCD. Moreover, contractors are allowed to adopt other MACs' draft LCDs. This authority to issue the same or similar local coverage decisions effectively

transforms an LCD into a national one without having to follow the more rigorous NCD requirements.

As a result of contractor reforms that have taken place over the past several years, local MACs are now responsible for much larger jurisdictions, and there are fewer opportunities for stakeholders to interact with the contractor medical directors who make local medical policies. As the current program stands, coverage decisions by one MAC could impact beneficiaries in multiple states, with little room for input or involvement from the many stakeholders affected by those decisions. Ultimately, although CMS' Program Integrity Manual instructs MACs on how to develop LCDs, the current process lacks transparency and sufficient stakeholder involvement to ensure decisions are in the best interests of patients.

In light of these challenges, it is imperative that improvements are made to the LCD process to enhance openness and transparency and improve accountability. H.R. 3635 addresses those challenges.

H.R. 3635 would require Medicare contractors to establish a timely and open process for developing LCDs that includes open public meetings, meetings with stakeholders, an open comment period for the development of draft policies, and posting of responses to comments received, as well as a description of all evidence relied upon and considered when drafting a coverage determination. Furthermore, H.R. 3635 would require MACs seeking to adopt another MAC's LCD proposal to independently evaluate and consider the evidence needed to make a coverage determination. Finally, H.R. 3635 would afford providers and suppliers with a meaningful reconsideration process, and a designated Medicare Reviews and Appeals Ombudsman to provide administrative and technical assistance in filing requests and appeals.

Medicare beneficiaries, providers, and suppliers deserve the right to participate in the coverage determination process. The current lack of transparency and stakeholder involvement means that millions of Medicare beneficiaries ultimately are left without a voice in the determination of what innovative health care services are offered in their region. H.R. 3635 would improve the LCD process and ensure that decisions about Medicare beneficiaries' coverage determinations are made with greater transparency and accountability. For that reason, **we ask for your support of H.R. 3635, and urge you to cosponsor and pass this important legislation.**

We are happy to meet to discuss this issue further and are available for any questions that you might have. To contact the ITEM Coalition, please contact any of the Steering Committee Members listed below or contact the ITEM Coalition coordinators, Peter Thomas, at Peter.Thomas@PowersLaw.com or Leif Brierley at Leif.Brierley@PowersLaw.com, or call 202-466-6550.

Sincerely,

ITEM Coalition Steering Committee

American Foundation for the Blind

Amputee Coalition

(continued on next page)

Christopher and Dana Reeve Foundation
National Multiple Sclerosis Society
Paralyzed Veterans of America
United Spinal Association

ITEM Coalition Signatories

Academy of Spinal Cord Injury Professionals
ACCSES
American Academy of Physical Medicine & Rehabilitation
American Association on Health and Disability
American Congress of Rehabilitation Medicine
American Medical Rehabilitation Providers Association
American Occupational Therapy Association
American Physical Therapy Association
American Speech-Language-Hearing Association
American Therapeutic Recreation Association
Assistive Technology Industry Association
Association for Education and Rehabilitation of the Blind and Visually Impaired (AER)
Association of Assistive Technology Act Programs
Brain Injury Association of America
Caregiver Action Network
Center for Medicare Advocacy
Clinician Task Force
Lakeshore Foundation
National Association for the Advancement of Orthotics and Prosthetics
National Association for the Support of Long Term Care
National Disability Rights Network
Rehabilitation Engineering and Assistive Technology Society of North America
Spina Bifida Association
The Arc of the United States
The Myositis Association
The Simon Foundation for Continence
Unite 2 Fight Paralysis
United Cerebral Palsy