

Thurs 8:00am
B

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 3200
OFFERED BY MRS. CAPPS OF CALIFORNIA, MS.
SUTTON OF OHIO, AND MR. WELCH OF VERMONT**

(AINS-EC_001)

In section 1711(b)—

(1) designate the matter beginning with “Section 1928” as a paragraph (1) (and redesignate current paragraphs as subparagraphs accordingly); and

(2) add at the end the following new paragraphs:

1 (2) Subsections (a)(2)(D) and (b)(2)(D) of section
2 tion 1916 of such Act (42 U.S.C. 1396o) are each
3 amended by inserting “preventive services described
4 in section 1905(z),” after “emergency services (as
5 defined by the Secretary),”.

6 (3) Section 1916A(a)(1) of such Act (42 U.S.C.
7 1396o-1 (a)(1)) is amended by inserting “, preventive
8 services described in section 1905(z),” after
9 “subsection (c)”.

In section 1742, add at the end the following:

1 (c) SUPPLEMENTAL INFLATION-RELATED RE-
2 BATE.—Section 1927(c)(2) of the Social Security Act (42
3 U.S.C. 1396r–8(c)(2) is amended—

4 (1) in subparagraph (A), in the matter before
5 clause (i), by inserting “the sum of the product de-
6 scribed in subparagraph (B) (for drugs dispensed
7 after December 31, 2009) and” after “by an amount
8 equal to”;

9 (2) in subparagraph (B)—

10 (A) by redesignating such subparagraph as
11 subparagraph (C); and

12 (B) by adding at the end the following: “In
13 the case of a covered outpatient drug approved
14 by the Food and Drug Administration after Au-
15 gust 1, 2009, clause (ii)(II) of subparagraph
16 (B) shall be applied by substituting ‘the first
17 full calendar quarter after the day on which the
18 drug was first marketed’ for ‘the calendar quar-
19 ter beginning April 1, 2009’ and ‘the month
20 prior to the first month of the first full calendar
21 quarter after the day on which the drug was
22 first marketed’ for ‘July 2009.’”; and

23 (3) by inserting after subparagraph (A) the fol-
24 lowing new subparagraph:

1 “(B) SUPPLEMENTAL REBATE AMOUNT.—

2 The amount described in this subparagraph for
3 a rebate period, with respect to each dosage
4 form and strength of a single source drug or an
5 innovator multiple source drug, is equal to the
6 product of—

7 “(i) the total number of units of such
8 dosage form and strength dispensed after
9 December 31, 2009, for which payment
10 was made under the State plan for the re-
11 bate period; and

12 “(ii) the amount (if any) by which—

13 “(I) the average manufacturer
14 price for the dosage form and
15 strength of the drug for the period,
16 exceeds

17 “(II) the average manufacturer
18 price for such dosage form and
19 strength for the calendar quarter be-
20 ginning April 1, 2009 (without regard
21 to whether or not the drug has been
22 sold or transferred to an entity, in-
23 cluding a division or subsidiary of the
24 manufacturer, after the first day of
25 such quarter), increased by the per-

1 centage by which the consumer price
2 index for all urban consumers (United
3 States city average) for the month be-
4 fore the month in which the rebate pe-
5 riod begins exceeds such index for
6 July 2009.”.

 In the subsection (f)(3)(B)(i) added by section
1181(b)(1)(B) strike “section 1927(b) plus the amount,
if any, specified in paragraph (2)(A)(ii) of such section”
and insert “section 1927(c) plus the amounts, if any,
specified in paragraphs (2)(A)(ii) and (2)(B)(ii) of such
section”.

 Add at the end of subtitle E of title I of division B
the following:

7 **SEC. 1186. NEGOTIATION OF LOWER COVERED PART D**
8 **DRUG PRICES ON BEHALF OF MEDICARE**
9 **BENEFICIARIES.**

10 (a) NEGOTIATION BY SECRETARY.—Section 1860D–
11 11 of the Social Security Act (42 U.S.C. 1395w–111) is
12 amended by striking subsection (i) (relating to noninter-
13 ference) and inserting the following:

14 “(i) NEGOTIATION OF LOWER DRUG PRICES.—

15 “(1) IN GENERAL.—Notwithstanding any other
16 provision of law, the Secretary shall negotiate with

1 pharmaceutical manufacturers the prices (including
2 discounts, rebates, and other price concessions) that
3 may be charged to PDP sponsors and MA organiza-
4 tions for covered part D drugs for part D eligible in-
5 dividuals who are enrolled under a prescription drug
6 plan or under an MA-PD plan.

7 “(2) NO CHANGE IN RULES FOR
8 FORMULARIES.—

9 “(A) IN GENERAL.—Nothing in paragraph
10 (1) shall be construed to authorize the Sec-
11 retary to establish or require a particular for-
12 mulary.

13 “(B) CONSTRUCTION.—Subparagraph (A)
14 shall not be construed as affecting the Sec-
15 retary’s authority to ensure appropriate and
16 adequate access to covered part D drugs under
17 prescription drug plans and under MA-PD
18 plans, including compliance of such plans with
19 formulary requirements under section 1860D-
20 4(b)(3).

21 “(3) CONSTRUCTION.—Nothing in this sub-
22 section shall be construed as preventing the sponsor
23 of a prescription drug plan, or an organization offer-
24 ing an MA-PD plan, from obtaining a discount or

1 reduction of the price for a covered part D drug
2 below the price negotiated under paragraph (1).

3 “(4) SEMI-ANNUAL REPORTS TO CONGRESS.—
4 Not later than June 1, 2011, and every six months
5 thereafter, the Secretary shall submit to the Com-
6 mittees on Ways and Means, Energy and Commerce,
7 and Oversight and Government Reform of the House
8 of Representatives and the Committee on Finance of
9 the Senate a report on negotiations conducted by the
10 Secretary to achieve lower prices for Medicare bene-
11 ficiaries, and the prices and price discounts achieved
12 by the Secretary as a result of such negotiations.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall take effect on the date of the enact-
15 ment of this Act and shall first apply to negotiations and
16 prices for plan years beginning on January 1, 2011.

