

Economic Recovery - Mr

1-22-2009

Amend # 1G

Withdrawn

(no obj)

**AMENDMENT TO COMMITTEE PRINT
OFFERED BY MR. STUPAK OF MICHIGAN**

Add at the end of title V the following:

1 **SEC. _____. EXTENSION OF PRESCRIPTION DRUG DIS-**
2 **COUNTS TO ENROLLEES OF MEDICAID MAN-**
3 **AGED CARE ORGANIZATIONS.**

4 (a) IN GENERAL.—Section 1903(m)(2)(A) of the So-
5 cial Security Act (42 U.S.C. 1396b(m)(2)(A)) is amend-
6 ed—

7 (1) in clause (xi), by striking “and” at the end;

8 (2) in clause (xii), by striking the period at the
9 end and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(xiii) such contract provides that (I)
12 payment for covered outpatient drugs dis-
13 pensed to individuals eligible for medical
14 assistance who are enrolled with the entity
15 shall be subject to the same rebate re-
16 quired by the agreement entered into
17 under section 1927 as the State is subject
18 to, and (II) capitation rates paid to the en-
19 tity shall be based on actual cost experi-
20 ence related to rebates and subject to the

1 Federal regulations requiring actuarially
2 sound rates.”.

3 (b) CONFORMING AMENDMENTS.—Section 1927 of
4 such Act (42 U.S.C. 1396r-8) is amended—

5 (1) in subsection (d)—

6 (A) in paragraph (1), by adding at the end
7 the following:

8 “(C)(i) Notwithstanding subparagraphs
9 (A) and (B), a medicaid managed care organi-
10 zation with a contract under section 1903(m)
11 may exclude or otherwise restrict coverage of a
12 covered outpatient drug on the basis of policies
13 or practices of the organization, such as those
14 affecting utilization management, formulary ad-
15 herence, and cost sharing or dispute resolution,
16 in lieu of any State policies or practices relating
17 to the exclusion or restriction of coverage of
18 such drugs, except that any such exclusions and
19 restrictions of coverage are subject to any con-
20 tractual requirements and oversight by the
21 State. As contained in the medicaid managed
22 care organization’s contract with the State, the
23 State shall maintain approval authority over the
24 formulary used by the Medicaid managed care
25 organization.

1 “(ii) Nothing in this section or paragraph
2 (2)(A)(xiii) of section 1903(m) shall be con-
3 strued as requiring a medicaid managed care
4 organization with a contract under such section
5 to maintain the same such polices and practices
6 as those established by the State for purposes
7 of individuals who receive medical assistance for
8 covered outpatient drugs on a fee-for service
9 basis.”; and

10 (B) in paragraph (4), by adding at the end
11 the following:

12 “(F) Notwithstanding the preceding sub-
13 paragraphs of this paragraph, any formulary
14 established by a medicaid managed care organi-
15 zation with a contract under section 1903(m)
16 may be based on the positive inclusion of drugs
17 selected by a formulary committee consisting of
18 physicians, pharmacists, and other individuals
19 with appropriate clinical experience as long as
20 drugs excluded from the formulary are available
21 through prior authorization, as described in
22 paragraph (5).”; and

23 (2) in subsection (j), by striking paragraph (1)
24 and inserting the following:

1 “(1) Covered outpatients drugs are not subject
2 to the requirements of this section if such drugs
3 are—

4 “(A) dispensed by health maintenance or-
5 ganizations, including medicaid managed care
6 organizations that contract under section
7 1903(m); and

8 “(B) subject to discounts under section
9 340B of the Public Health Service Act.”.

10 (c) REPORTING.—On a quarterly basis, each State
11 (as defined for purposes of title XIX of the Social Security
12 Act) shall report to the Secretary of Health and Human
13 Services the total amount of rebates in dollars and volume
14 received from medicaid managed care organizations that
15 contract under section 1903(m) of the Social Security Act
16 as a result of this section for both brand-name and generic
17 drugs. This report shall be made publicly available.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section take effect on the date of the enactment of
20 this Act and apply to rebate agreements entered into or
21 renewed under section 1927 of the Social Security Act (42
22 U.S.C. 1396r-8) on or after such date.

