

The staff of the Federal Trade Commission urged that the pharmacist incentive to locate lower priced drugs should be maximized, and advocated that they be able to keep 100 percent of the difference. I understand in the proposed regulations it is only 25 percent of the difference in the savings that they might make. What do you think about that?

Dr. APPLE. I have not seen the Federal Trade Commission filing, Senator, but just based on what you say here, we would be opposed to it. We think it would be just another way for the Federal Trade Commission to favor large volume purchasers over small because the large volume purchasers have economic leverage. They would force favored prices for themselves, often in violation of the Robinson-Patman Act which the Federal Trade Commission is supposed to enforce but does not. As you know, they do not think much of the Robinson Patman Act over at the Federal Trade Commission. So we think that that would be just another way, this Federal Trade Commission recommendation, of making it sound like FTC is trying to do something for the little pharmacist, but that is not so. The net result of giving 100 percent of the differential between the MAC and what you could buy it for in the marketplace would favor the large chains and large volume purchasers because they have the leverage to get these favored prices from the manufacturers.

Senator HATHAWAY. While we are on that point, a comment was brought to my attention by some smaller pharmacists, that the proposed regulations indicate that warehousing costs would be considered in the pharmacist's fee; and the small pharmacists thought they were being discriminated against.

Would you like to comment on that?

Did you make that criticism to the Secretary? I did not have the opportunity to ask him that the other day because we were interrupted by votes and he had left when I got back.

Dr. APPLE. Senator, if you do not mind, I am going to ask Mr. Roberts to respond to that. This is a legal matter in a way; it is a marketing matter in another way. Mr. Roberts has gone into this issue very carefully.

Mr. ROBERTS. Senator, the comments that were filed by APHA with HEW on the MAC proposals do take the position that the warehousing allowance, as it is presently proposed, essentially again constitute a favored situation for large volume purchasers. Those comments note that all pharmacies and pharmacists have costs which are associated with getting a product from their supplier into their pharmacy inventory. What we have suggested is—in fact we have taken the position—that the failure to compensate for those costs as a part of the fee rather than as an add-on to the drug product cost constitutes a discrimination against one class of pharmacy in favor of another class of pharmacy. We have taken the position that it ought to be eliminated, or at least applied with an even hand.

Senator HATHAWAY. I see.

Did you also make the point that a lot of pharmacists, especially in rural areas, provide delivery services which, I do not think the Secretary has at least not ostensibly taken into consideration in proposed regulations on the fee for pharmacists?