limits are to be established "do not generally vary significantly in quality from one supplier to another."

Under present circumstances, it seems clear that implementation of the MAC proposal could jeopardize the quality of drug therapy available to Federal health care beneficiaries, contrary to express congressional intent.

Other provisions in the medicare-medicaid statutes guarantee patient's freedom of choice and preclude Federal interference with the practice of medicine or pharmacy. But, as long as the possibility of significant quality differences remains, limiting reimbursement to the level of a potentially inferior brand of a drug product would improperly restrict this freedom of practice. Further, the very limited physician certification expection in MAC cannot disguise the fact that the proposal would severely restrict a physician's freedom to treat his patients with the products he prefers. Such an exemption for the pharmacist is nonexistent in the proposal.

A fundamental principle of administrative law is that agency action which is irrational or unsupported by relevant facts is arbitrary and capritious. Since the medicare-medicaid statutes preclude implementation of a program such as the MAC proposal unless findings of quality assurance and therapeutic equivalence can properly be made, HEW must consider the evidence on those issues does not support the required findings.

Until HEW comes forward with evidence which will support such findings, adoption of a MAC program will lack the required rational connection between the facts found and the choice made. The evidence does not provide a factual predicate which will support the assumptions underlying the MAC program. Thus, implementation would be arbitrary and capricious.

Mr. Chairman, this concludes our brief statement. If there are questions, we would be glad to attempt to answer them.

The CHAIRMAN. Thank you, Mr. Stetler. We appreciate your taking the time to come and present your statement.

You will submit that material for the record?

Mr. STETLER. Yes.

Mr. GORDON. Mr. Stetler, do you have a copy of the submission that you would like to make, that is, a copy of the statement that you presented to the Department of HEW on the proposed regulations? It is a fairly long paper.

Mr. STETLER. Yes.

Mr. GORDON. Will you please turn to page 4. In the third paragraph down you say:

> In considering the attitude of the public in this regard, it is interesting to note that a recently conducted national survey regarding prescription drugs contains the following question: "If the Government paid for drugs, should it pay for any brands of a particular drug a doctor might want to prescribe? Or, to keep costs down, should the Government only pay for those brands of a drug whose price is under a certain limit?"
>
> Despite the fact that the public has been exposed to exaggerated estimates of price disparities among drug products and potential savings, 68 percent of those questioned responded that the Government should pay for the specific brand prescribed. Only 27 percent said that the Government should pay only for those brands under a certain price limit while five percent expressed no opinion.