benefit non-insured consumers. Several anti-competitive restraints have been suggested. The Federal Trade Commission is currently investigating what, if anything, should or can be done about state and private restrictions on retail price disclosures of prescription drugs. Enhancement of the ability to compete on price would have a highly salutory effect on retail competition. Publicly available information suggests that consumers would save many millions of dollars each year if such restrictions were removed. Other restrictive regulations, such as pharmacist-ownership laws, should also be subject to scrutiny and perhaps attack.

Furthermore, inter-brand competition is inhibited by anti-substitution laws. If such laws were overturned or at least modified where appropriate, both manufacturers and retailers would be subject to much greater competitive pressure on price.

One other element of a viably competitive market, and an implicit assumption in the argument that competition will be strengthened by the removal of restraints such as those mentioned above, is that a sufficient amount of consumer search for low prices takes place. If consumers have no incentive to search for the lowest retail price, competition among retailers will be substantially diminished. This incentive is not present for consumers whose drug expenses are fully covered by insurance. However, as of 1973, only 21.4% of out-of-hospital prescriptions in the U.S. were covered by third-party plans.[3] We assume that the shopping behavior of the remaining (79%) non-insured consumers could impose sufficient discipline on prices for the usual and customary charge to be used as the basis for reimbursement. Nevertheless, the proportion of consumers without 11.9% of all out-of-hospital prescriptions in 1969 to 21.4% in 1973, and some observers expect the share to continue to increase.[4] It may in the future be necessary to develop incentives for consumers to search for low prices. One possible mechanism is a percentage co-payment provision in private and public insurance schemes.

While we submit that it is generally better to institute a concerted drive toward removing anticompetitive restraints rather than installing an alternative regulatory scheme, with all its inherent problems and rigidities, we nevertheless do wish to comment specifically on the several sections of the MAC proposal.

III. THE SPECIFICS OF THE MAC PROPOSAL: ANALYSIS

Staff understands that, at the present time, most reimbursement to out-of-hospital providers is made on the basis of published "average wholesale prices," such as those in the Red Book or Blue Book catalogs which are nationally distributed. According to information supplied by pharmaceutical manufacturers, HEW concludes that the published prices overstate the actual prices paid by pharmacists by an average of 15 to 18 percent.

Furthermore, HEW presently contributes to the reimbursement of a pharmacist for whatever the source (company of manufacture, formulation or labeling) of a particular drug the pharmacist actually dispenses. About three-quarters of the drugs commonly prescribed in the United States are available only from a single source.[5] As to these, no problem exists. The remaining fourth, however, are available from multiple sources, often at widely differing prices. In other words, several manufacturers or processers sell a chemically equivalent drug at prices which may be substantially different.

The proposed regulations would limit payment for all drugs to the *actual cost*, as opposed to such things as average wholesale cost, of the drug to the pharmacist. This limitation is expected by HEW to generate a government savings of up to $40.0 million per year. In the case of "multiple-source" drugs, *i.e.*, chemically equivalent drugs formulated or labeled by more than one company, an additional regulation applies which HEW expects to represent an additional savings of $48.4 million per year. FTC staff have not attempted to verify these numbers.

A. Actual Acquisition Cost

Staff supports that section of the proposed rule which states that dispensers will be reimbursed for *actual* acquisition cost rather than on the basis of a

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[3] American Druggist, April 15, 1974, p. 14.
[4] Id.
[5] H.E.W. Press Release, "Fact Sheet, A Three-Part Cost Saving Program for HEW Drug Expenditures" (Nov. 15, 1974).