proves to be therapeutically unacceptable. Staff is of the belief that implicit in the MAC program is HEW's determination that a pharmacist who is induced by HEW's incentive system to dispense a multiple-source drug which is priced below the MAC level will have no legal liability if that source of the drug, despite HEW expectations to the contrary, happens to be therapeutically unacceptable. We believe that HEW should thoroughly consider this issue if it has not already done so, and make public its findings and policy determinations.

C. Reimbursement for Dispensing Effort

The problems discussed above, while difficult, are more easily resolved than those pertaining to the second major component of the reimbursement price, the dispensing fee. It is this section of the proposed regulation that disturbs us most. Unless reimbursement is done on the basis of usual and customary charge, some fee must be established. Such a determination is fraught with problems. Of particular concern is whether savings brought about by the acquisition cost components of the MAC plan may be dissipated by pharmacists' negotiating compensating increases in dispensing fees. Since states administer the program, the incentive for astute fair-return fee determination may be absent. States may wish to maximize the inflow of federal monies.

But even apart from this problem, measurement of an appropriate fee must somehow be made. It is our conviction that there is no way that this can be done accurately to avoid distorting incentives unless the system relies on market-determined information. For this reason we recommend accepting as the dispensing fee whatever the market has established in non-insured prescriptions and seeking savings only through the acquisition cost provisions and through the eventual compression of the dispensing fee component as a result of increased competition.

This would mean the following. Reimbursement for dispensing costs would be for the dollar difference between the usual and customary price charged to a non-insured consumer, and the actual acquisition cost. (Sample audits of usual and customary prices impose an administrative burden but it is probably less costly than measuring and remeasuring on the basis of operating costs.) We accept the fact that this "dispensing fee" is larger than that which would exist ideally; it includes both some unnecessarily high costs and probably some monopolistic profit. However, as competition is strengthened in the retail market, usual and customary prices will decline, and the reimbursable "dispensing fee" will decline accordingly. That there will be eventual savings in this component of the reimbursement is based upon pro-competitive actions by the FTC and upon the subsequent effects of such actions.

No extra-market, utility-rate-regulation type of determination of costs will work satisfactorily. The central problem is that we do not know what the costs are for a truly efficient retailer. Suppose actual current costs are studied. There is no assurance—and, indeed, some reason to doubt—that costs are being held to a minimum through competitive pressures. Thus measured costs may not have any normative meaning. Moreover, a retail pharmacy sells many products and establishing the costs of prescription dispensing alone requires the allocation of overhead costs between prescription and non-prescription operations. Various rules of thumb have been used, but because some of these are true joint economic costs there is no absolutely correct, simple way of doing it.

Thus any regulatory scheme, necessarily arbitrary, of defining dispensing costs will introduce rigidities and misdirected incentives. If reimbursement is made for allocated actual costs, whatever their level, inefficient distributors are preserved, which perpetuates a misallocation of resources. This could exist even after competition is enhanced in drug retailing. The extreme and worst case would be reimbursement of each firm on the basis of its costs, whatever they may be. The problem is diminished only somewhat by setting a fee, fixed for all stores. (Separate fees could be set for different size and location classes of stores, but that would preserve inefficient classes of stores.) One system, which is somewhat better but which staff is not recommending, is analogous to the one suggested in the study done by Gosselin for NARD–NACDS. This would involve the collection and arraying of data on stores' costs and the selection of a fee which would cover the average costs of, say, 90 percent of all the stores. This would put pressure on those stores with exceptionally high costs. However, some such stores might be in local situations where the market is so small as not to permit an efficient scale of firm, and the allocation of resources is not improved by penalizing such units.

For these and other reasons the system—any regulatory system—is difficult