guarantee patient freedom of choice[33] and preclude federal interference with the practice of medicine or pharmacy. As long as the possibility of significant quality differences remains, limiting reimbursement to the level of a potentially inferior brand of a drug product will improperly restrict both patient freedom of choice and physician and pharmacist freedom to practice.

The very first section of the Medicare statute is an admonition that the Act should not be construed:

> "to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided. . .or to exercise any supervision or control over the administration or operation of any. . . institution, agency, or person [providing health services]." 42 U.S.C. § 1395.

In combination, this provision and the other non-interference and freedom of choice provisions are intended to insure that:

> "[t]he responsibility for, and the control of, the care of the beneficiaries [of Medicare and Medicaid programs] rests with the hospitals, extended care facilities, the beneficiaries' physicians, etc." H. R. Rep. No. 213, supra, p. 22.

The proposed regulation would allow for reimbursement above the MAC level if the physician certifies that the particular brand prescribed is the only one which his patient can tolerate or which will be effective. But this very limited exception is more apparent than real and cannot disguise the fact that the adoption of a MAC would severely restrict a physician's freedom to treat his patients with the drugs he prefers. As a practical matter, the physician would almost never be able to say with absolute certainty that his patient can tolerate (or will realize a therapeutic effect from) only one particular brand. To substantiate such a certification, the physician would have to