

COMPETITIVE PROBLEMS IN THE DRUG INDUSTRY 12393

28. Incorporated into the Medicaid program by 42 U.S.C. § 1396b(i)(1).
29. H. R. Rep. No. 213, 89th Cong., 1st Sess., p. 24 (1965).
30. See, e.g., Catz, et al., "Clinically Inactive Thyroid, U.S.P. a Preliminary Report," 266 N. Eng. J. Med. 136 (1962); Lindenbaum, et al., "Variations in Biological Availability of Digoxin from Four Preparations," 285 N. Eng. J. Med. 1344 (1971).
31. OTA Report, op. cit., pp. 11-12, 14, 25.
32. Cf., International Harvester Co. v. Ruckelshaus, 478 F.2d 615, 648, 649 (D. C. Cir. 1973) (taking EPA to task for revising the assumptions and conclusions of the National Academy of Sciences Report without specifying its reasons for disagreeing with the Report).
33. See 42 U.S.C. §§ 1395a, 1396a(a) (23).
34. (40 FR 3219), January 20, 1975.
35. (39 FR 41480, 81), November 27, 1974.
36. See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971).

The Secretary should also have considered evidence relating to "the principles generally applied by national organizations or established prepayment organizations ... in computing the amount of payment, to be made ... to providers ... on account of services furnished to ... recipients ...," as required by 42 U.S.C. § 1395x(v) (1) (A). In fact, there is no indication that such organizations are restricting payment in the manner proposed in the MAC regulation. Thus, the Secretary's arbitrariness in ignoring evidence is compounded by his failure to consider matters which the statute specifically commends to his attention.

37. Hearings before the Subcommittee on Health of the Senate Committee on Labor and Public Welfare, 93d Cong., 1st Sess., p. 274 (December 19, 1973).
38. Id.
39. (39 FR 40302, 40303), November 15, 1974.
40. See Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962); accord, Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc., 43 U.S.L.W. 4091, 4093 (December 24, 1974).