

Hypotheticals for Delegation

I. Hypothetical 1:

Federal Health Care Cost Control Act

Section 1 - Findings.

- a. The prices that health care providers charge for goods and services are artificially inflated.
- b. In order to guarantee prompt, continuous and equitable distribution of health care goods and services, it is necessary to impose limits on the costs of such goods and services.

Section 2 - Price controls.

- a. There is hereby established a Federal Health Care Costs Commission.
 - b. The Commissioner of the Federal Health Care Costs Commission may, by rule or order, establish maximum prices for health care products and services.
- A. How might you argue that this statute is unenforceable? How might you argue that it is valid?

II. Hypothetical 2:

- A. The facts are the same as in Hypothetical 1, except that Section 2b requires that the FHCCC establish maximum prices that are "generally fair and equitable."
- B. How might you argue that this statute is unenforceable? How might you argue that it is valid?

III. Hypothetical 3:

- A. The facts are the same as in Hypothetical 1, except that the statute provides that the American Medical Association, the National Association of Pharmaceutical Companies, and the National Hospital Association are authorized to draft the price schedules, with the approval of the FHCCC.
- B. Is this statute more or less defensible than the statute in Hypothetical 1?

IV. Hypothetical 4:

- A. The facts are the same as in Hypothetical 1.
- B. Assume, however, that the FHCCC has now promulgated regulations that provide that the prices set by the FHCCC for products and services will be based on the actual cost of developing, marketing and providing the product or service, plus a reasonable profit, not to exceed 15% of the actual cost.
- C. Does the agency's adoption of the regulation make the statute more defensible?