

The commenter also disagreed with the Bureau's assertion that inmate health care conformed to community standards. The commenter criticized the actual provisioning of health care to inmates, citing as an example alleged misdiagnosis of a "rash of illness over night among the prisoners" at a Bureau institution.

Agency Response to Public Comment

Administrative Procedure. Procedures for providing for the health needs of inmates in federal facilities are in the Bureau's Health Services Manual. Because these procedures conform to the community standard of medical care (requiring us to meet inmates' medically mandatory and medically necessary needs), the procedures do not require separate rulemaking.

In instances where correctional management needs require adjustments to the procedures, we do go through rulemaking. For example, special provisions dealing with correctional management needs and chronic infectious disease are in 28 CFR part 549, subpart A.

The provisions for OTC medications are another example where we go through rulemaking because of our correctional management needs. We believe these regulations are necessary to allocate medical resources efficiently and cost-effectively.

The regulation should promote efficiency because Bureau health services staff will not need to see an inmate merely to dispense OTC medications. Health services staff can then devote more time to necessary medical care needs of inmates which they can only address through prescribed medications.

Also, limiting free distribution of OTC medications reduces government expenses. While requiring the inmate to purchase OTC medications may increase costs to the inmate, doing so will prepare inmates for post-incarceration life where individuals have the opportunity and responsibility to address their health care needs through sensible and prudent use of OTC medications.

Providing Health Care. By statute, we must provide for the safekeeping, care, and subsistence of the inmates in our custody. Title 18 of the United States Code, section 4042(a)(2) states that, with regard to inmates, we must "provide for their proper government, discipline, treatment, care, rehabilitation, and reformation."

We disagree with the comments that this rule will compromise our obligation to provide "treatment" and "care" to inmates or that inmates' health is being

used as the target of a money-making enterprise. This rule will, in fact, improve the quality of health care available to inmates: While continuing to meet inmates' medical needs by providing OTC medications in the commissary, we will free valuable medical staff time to more effectively meet inmates' medical needs.

In fact, only OTC medications that are approved by the Pharmacy and Therapeutics Committee (the Bureau's national formulary board) are available for sale in institution commissaries. Under this regulation, our commissaries will continue to sell OTCs such as aspirin, acetaminophen, ibuprofen, chlorpheniramine, antacids, hemorrhoidal ointment, hydrocortisone cream, and a fiber supplement (e.g. Metamucil®), and all other such medications that are available at the institution commissary.

It is consistent with community standards to expect inmates to responsibly, sensibly and prudently use OTC medications. While inmates can get various OTC medications through the institution commissary, some may choose to get these same medications for free through sick call.

The impact for the Bureau's medical resources is not limited merely to the cost of the free OTC medications dispensed at sick call, but also includes health services staff time, which could be more efficiently used during greater medical urgency. An inmate who needs to be evaluated by health care staff ought not to be deterred by the revised procedures. Instead of detracting from our quality of health care, this rule will allow us to use our health care resources where and when the inmates need them the most, thereby improving the quality of health care for inmates.

To clarify that we will still dispense OTC medications to those who do not have ready access to commissary purchases, we state in the rule that it applies to all inmates except those in inpatient status at Federal Medical Centers. Those in inpatient status who, necessarily, do not have commissary access, will receive OTC medications as needed. All other inmates, who have commissary access and are physically able to purchase OTC medications at the commissary will be required to do so by this rule.

Examples cited by some of the commenters of alleged excessive delay in scheduling sick call appointments may well be explained by the need for health services staff to spend time with inmates who attend sick call primarily to receive free OTC medications.

Commissary Sales. National policy established by the FDA and the

Department of Health and Human Services specifies what medical items, including OTC medications, our commissaries may sell, and a national Pharmacy and Therapeutics Committee (a Bureau formulary committee composed of a group of accredited pharmacists) annually reviews and modifies the list of permissible OTC medications. The committee reviews medications to ensure that, before we sell or give them to inmates as "OTC medications", they are dispensed "over the counter" in the public community. In this way, we ensure that we conform to the community standard of medical care. The committee must give us permission before we may sell "OTC medications" to inmates in our commissaries.

We operate the commissary under generally accepted accounting principles. We use profits from commissary sales to provide benefits to inmates in general. We do not use profits to fund tort claim or law suit settlements.

Because of limitations imposed by the correctional setting, the institution commissary cannot offer the variety of items possibly available at local retailers. The commissary does not compete with local retailers, and we are not obligated to provide the lowest price on any particular item.

In any case, as noted above, profits from commissary sales are used for the general benefit of inmates. Even so, we conducted surveys comparing the prices of identical or similar items sold in retail convenience stores and supermarkets in the community surrounding the correctional institutions to assist in pricing policies.

One survey of 50 commissary items was conducted at the following locations: LSCI Allenwood, FPC Alderson, USP Leavenworth, FCI Dublin, FMC Fort Worth, and FCI Miami. We compared the prices of commissary items to identical or similar items in a local retail convenience store and a local supermarket at each location. In 70 percent of the comparisons, we found that the items surveyed were less expensive in the commissaries than in the local convenience stores and supermarkets.

While we limit access to the institution commissary, the proposed regulations allow for exceptions where health services staff determine that the inmate has an immediate medical need which must be addressed before the inmate's regularly scheduled commissary visit (see § 549.30(a)). The proposed regulations also allow for exceptions where the inmate does not have access to the commissary because