



CHAIRMAN'S
NO. 10-2002

MEMORANDUM
JUNE 28, 2002

**TO: SHERIFFS, COMMISSIONERS OF CORRECTION, JAIL ADMINISTRATORS,
FACILITY MEDICAL DIRECTORS, DIRECTORS OF NURSING**

**RE: USE OF COMMISSARY OTC MEDICATIONS BY FACILITY MEDICAL
DEPARTMENTS**

Information recently received from the Commission's Field Operations and Forensic Medical Unit staff suggests that there may be some misconception regarding the use of over-the-counter (OTC) commissary medication waivers granted to facilities pursuant to 9 NYCRR Part 7010. **The availability of over-the-counter medicines pursuant to such waivers is never to be used as a substitute for sick call access or to in any way curtail or impede an inmate's access to sick call in order to present medical complaints to health care providers. Chief administrative officers are advised that misuse of these waivers in this fashion places them at risk of revocation.**

A number of jails in New York State are authorized, via a waiver issued by the Commission pursuant to §7010.3(b), to sell a selection of patent medicines in the commissary along with other commodities, provided that indigent inmates are provided with the same access to these medicines without cost. This permit is and must remain **wholly unrelated** to the operations of jail medical departments. Inmates may purchase patent medicines; arrangements are made for indigent inmates to obtain the same medicines without charge. Some provision limiting volume and frequency is typically imposed to prevent hoarding and inmate commerce in OTC drugs. The commissary commissions account may properly absorb the cost of providing for these indigent inmates. The complete policy and procedure governing sale and possession of patent medicines shall be pre-approved by the Commission.

When an inmate either seeks sick call access or actually presents himself at the facility clinic with health complaints, however benign, the inmate is to be assessed. If the inmate is destined to receive medication, whether or not by prescription, an order must be given and documented by a prescriber. **The inmate may not, in any event, be instructed to go to the Commissary to obtain OTC medication in connection with this requested or actual health care encounter.** The Commission does not authorize the facility medical department's involvement in commissary medicine distribution as part of OTC medication waivers. The commissary waivers granted to local correctional facilities by the Commission do not authorize selling or giving away these medicines in the commissary pursuant to health care encounters.

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Alan J. Croce, Chairman/Commissioner

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In sum, then, commissary waivers are granted to local correctional facilities [§7010.3.(b)] exclusively to offer some OTC medications for commissary sale, and to afford corresponding authority for such medications to be in the possession of inmates. They in no way authorize correction officers or supervisors to detour inmates to the commissary in lieu of sick call access, or authorize the facility medical department to use the commissary for the purpose of selling or giving away medications ordered or recommended as a result of health care encounters.

Questions may be referred to the Commission's Forensic Medical Unit at (518) 485-2346.

Alan J. Croce
Chairman/Commissioner