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A Guide to Seeking Medical Parole for Eligible Applicants

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A Guide to Seeking Medical Parole for Eligible Applicants

Current through May 2023

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I. Introduction and Overview

Medical Parole is a type of discretionary release for incarcerated individuals who are either terminally ill or suffer from a non-terminal significant debilitating illness. Pursuant to New York Executive Law § 259-r and § 259-s, the New York State Board of Parole and, in some instances, the Commissioner of the Department of Corrections and Community Supervision (“DOCCS”) has discretion to release individuals who DOCCS has determined are Medical Parole eligible. For those released on Medical Parole prior to the expiration of their minimum sentence, there is a post-release review process every six months.

This guide will cover the following:

- Eligibility requirements;
- Application process;
- Requesting medical records; and
- Requesting an expert opinion from the Medical Justice Alliance.

II. Eligibility Requirements

Medical Parole Eligibility Limitations:

Individuals convicted of certain offenses may be completely barred from Medical Parole eligibility or must serve at least one-half of the minimum period of their sentence to be eligible.

- An individual is barred from Medical Parole if they have been convicted of murder in the first degree or an attempt or conspiracy to commit murder in the first degree.
- An individual must serve at least **one-half of the minimum** period of their sentence for both indeterminate and determinate sentences if they have been convicted of murder in the second degree, manslaughter in the first degree, any sex offense in Article 130 of the New York Penal Law, or an attempt to commit any of these offenses.¹ For example, if an applicant was convicted of one of the above offenses and sentenced to twenty years to life, they must serve ten years before they are eligible for Medical Parole consideration.

Medical Parole Eligibility Standards:

In addition to the above limitations based on offense or sentence, an applicant must meet one of the following standards to be eligible for Medical Parole.

- Certified to be suffering from a **terminal condition**, disease, or syndrome **and** to be so debilitated or incapacitated that he or she is physically or cognitively incapable of presenting any danger to society.²

¹ N.Y. Exec. Law §§ 259-r(1)(a); 259-s(1)(a); Directive 4304, § II((5).

² N.Y. Exec. Law § 259-r(1)(a).

- Certified to be suffering from a **significant and permanent non-terminal condition, disease or syndrome** that renders the person so physically or cognitively debilitated as to create a reasonable probability that they do not present a danger to society.³

III. Application Process

There are two primary steps in the Medical Parole process.

First, an applicant must be certified as Medical Parole eligible. To be certified as Medical Parole eligible, the DOCCS Commissioner (the “Commissioner”) must determine that the applicant meets the standard for terminal illness or significant debilitating condition and is not otherwise excluded due to their offense or sentence.

Second, if the applicant is certified as Medical Parole eligible, they must be granted Medical Parole by the Parole Board.

Certification as Medical Parole Eligible:

Application/Referral: First, the applicant, another individual acting on behalf of the applicant, or a DOCCS employee must make a request to the Commissioner or to the DOCCS Division of Health Services (“Division of Health Services”) for the applicant to be considered for Medical Parole.⁴

There are no formal requirements for Medical Parole requests. However, it is helpful to include details about the applicant’s diagnosis and condition.

Before submitting a Medical Parole request, an advocate should obtain a signed HIPAA release form and request the applicant’s medical records from the facility. The procedure for requesting medical records is discussed in Part IV of this guide.

A Medical Parole request letter may include the following:

- A description of the applicant’s medical diagnosis and condition;
- Details about how medical diagnosis and condition affect the applicant’s ability to perform activities of daily living. For example, if the applicant has difficulty walking on their own, that is helpful information to include in the Medical Parole request;⁵
- An affidavit from the Medical Justice Alliance (discussed in Part V of this guide);
- A signed HIPAA release form, to allow the facility to communicate with you about Medical Parole.

Eligibility Based on Offense and Sentence: Once a request has been made, the Division of Health Services will notify the DOCCS Office of Classification and Movement, who will determine the

³ N.Y. Exec. Law § 259-s(1)(a).

⁴ N.Y. Exec. Law §§ 259-r(2)(a); 259-s (2)(a); Directive 4304, § IV(A).

⁵ Per DOCCS Chief Medical Officer Dr. Carol Moores, facts about the applicant’s ability or inability to do certain activities are relevant to the Medical Parole certification determination. To the extent possible, advocates should try to visit the applicant and include in the Medical Parole application their relevant observations.

applicant's eligibility based on their offense and sentence.⁶ If they are not disqualified due to their offense or sentence, DOCCS will conduct a medical evaluation.⁷

Medical Evaluation: A medical evaluation of the applicant is conducted by a DOCCS physician, or a physician associated with DOCCS.⁸ The medical evaluation includes the following:

- A description of the applicant's condition, disease, or syndrome
- A prognosis of the applicant's condition, disease or syndrome
- A description of the applicant's physical or cognitive incapacity, including, their ability to self-ambulate or perform normal daily activities, and a prediction of the duration of that incapacitation
- A list of the applicant's current medications, dosages, and comments on their ability to self-administer their medications
- A statement by the physician of whether the applicant is so physically or cognitively debilitated or incapacitated as to be severely restricted in their ability to self-ambulate and to perform normal daily activities
- Recommendations on the type and level of services and treatments the applicant will require if granted Medical Parole; and
- Recommendations for the types of settings that can provide the needed services and treatment⁹

Review by the Deputy Commissioner/Chief Medical Officer: After receiving the medical evaluation, the DOCCS Deputy Commissioner/Chief Medical Officer has seven working days to advise the Commissioner as to whether the applicant's medical condition fits the criteria for Medical Parole.¹⁰

Certification and Referral: The Commissioner, or the Commissioner's designee, reviews the applicant's diagnosis and decides whether to certify that the applicant is (1) suffering from a terminal or significant debilitating condition, disease, or syndrome, and (2) so incapacitated as to create a "reasonable probability" that the person is incapable of presenting any danger to the society.¹¹

- If the Commissioner **does not certify** the applicant, the case is not referred to the Parole Board for consideration.¹² Applicants not certified for Medical Parole may submit subsequent requests for Medical Parole certification.
- If the Commissioner **does certify** an applicant as eligible for Medical Parole, the case is referred to the Parole Board for release consideration.¹³ The referral includes the following records:

⁶ Directive 4303, § IV(A).

⁷ *Id.*

⁸ N.Y. Exec. Law §§ 259-r(2)(a); 259-s (2)(a); Directive 4304, § IV(B)(1).

⁹ Directive 4304, § IV(B)(1).

¹⁰ Directive 4304, § IV(C).

¹¹ N.Y. Exec. Law §§ 259-r(2)(b); 259-s(2)(b).

¹² N.Y. Exec. Law §§ 259-r(2)(b); 259-s(2)(b).

¹³ Directive 4304, § IV(E).

- Medical Parole Request Summary signed and approved by the Deputy Commissioner or Chief Medical Officer;
- Comprehensive Medical Summary;
- NYS Patient Review Instrument;
- NYS Department of Health form;
- NYS Screen; and
- Any information on registered victims from the Office of Victims Services.¹⁴

Post Medical Parole Certification Process:

Once an applicant is certified as Medical Parole eligible, they may be granted Medical Parole by the Commissioner (in very limited cases)¹⁵ or the Parole Board.

The Parole Board is generally the decision-maker on Medical Parole requests. The Parole Board applies different release standards for applicants who are terminally ill and applicants with a significant debilitating illness. For **all applicants**, the Parole Board grants Medical Parole only after it considers, in light of the applicant’s medical condition that, (1) there is a reasonable probability that if released, the applicant will not violate the law; (2) the release is compatible with the welfare of society; and (3) the applicant’s release will not “deprecate” the seriousness of the crime in a way that undermines the respect for law.¹⁶

For applicants with a **significant debilitating illness** the Parole Board considers additional factors. These factors are:

- The nature and seriousness of the applicant’s crime
- Prior criminal record
- Disciplinary, behavioral, and rehabilitative record;
- The applicant’s current age and age at the time of crime
- The recommendations of the sentencing court, the district attorney, and the victim or victim’s representative
- The nature of the medical condition and required medical treatment or care
- Any other relevant factor¹⁷

Note: Before an applicant can be granted Medical Parole, certain parties must be notified that the Parole Board is considering the applicant’s release. Once the parties have been notified, they have a certain period to submit a recommendation or a statement regarding the applicant’s release for the Parole Board to consider. The Parole Board will not grant release until after the comment

¹⁴ *Id.*

¹⁵ There are limited cases where the Commissioner grants an applicant Medical Parole. First, the Commissioner may grant Medical Parole only to applicants who are suffering a terminal condition, disease, or syndrome. *See* N.Y. Exec. Law § 259-r(10). Second, the applicant must not be serving a sentence for, or has not previously been convicted of the following crimes: class A-1 Felony, violent felony, manslaughter in the second degree, vehicular manslaughter in the first or second degree, criminally negligent homicide, or other sex offenses. *Id.*

¹⁶ N.Y. Exec. Law §§ 259-r(1)(b); 259-s(1)(b).

¹⁷ N.Y. Exec. Law § 259-s(1)(b).

period expires. The rules regarding the comment period vary slightly depending on whether the applicant has been certified as having a terminal illness or a significant debilitating condition.

- For applicants who are **terminally ill** the notified parties have 15 days to comment on the applicant’s proposed release.¹⁸ The Parole Board must notify:
 - The sentencing court;
 - The district attorney;
 - The applicant’s defense attorney; and
 - When applicable, the crime victim(s).¹⁹

- For applicants with a **significant debilitating illness**, the notified parties have 30 days to comment on the applicant’s proposed release.²⁰ The Parole Board must notify:
 - The sentencing court;
 - The district attorney’s office;
 - The applicant’s defense attorney; and
 - When applicable, the crime victim(s).²¹

Medical Discharge Plan: Once an applicant has been granted Medical Parole, DOCCS staff will prepare a discharge plan.²² The discharge plan is forwarded to Community Supervision staff for review and final approval.²³ Typically, Facility Health Services staff and Community Supervision staff identify and select specific care providers for the applicant upon release.²⁴ The discharge plan will consider an individual’s preferences for placement “to the extent possible” and includes the following information:²⁵

- A level of care determination;
- Any special equipment or transportation needs and who will provide them;
- The individual’s participation in the discharge plan and selection of care;
- For home-care plans, an assessment by Community Supervision staff regarding the adequacy of the physical environment for the individual’s condition and health care needs and an evaluation of the person’s personal support system;
- “Ancillary supports” the individual and the caregiver need and arrangement for meeting those needs;
- The status of applications for Medicaid, public assistance, private insurance, and Supplemental Security Income (SSI); and
- A report on the status for applications, if any, for institutional placement.²⁶

¹⁸ Directive 4304, § IV (F)(1).

¹⁹ Directive 4304, § IV (F)(1).

²⁰ Directive 4304, § IV (F)(2).

²¹ Directive 4304, § IV(F)(2).

²² Directive 4304, § IV(G).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

IV. Requesting Medical Records

When supporting a medical parole applicant, it is important that the individual signs a HIPAA Authorization form so that you may request their medical records. Medical records will likely come from the facility in which the applicant is currently incarcerated. To request the medical records, submit a written request to the medical records unit of the facility and include the signed HIPAA. The request should specify the date range of the records requested. Contact the facility to ask how to submit the medical records request.

Depending on the length and severity of the applicant's condition, there may be hundreds of pages of medical records. Note that you will likely have to be pay per page of record, so it is important to understand which records would be most valuable in preparing the Medical Parole application. Further, you may also need to request records from outside hospitals depending on the applicant's medical history.

V. Medical Justice Alliance (MJA) Expert Opinion

Medical Justice Alliance (MJA) is an organization that connects advocates to volunteer medical professionals who support and advocate for access to quality health care for incarcerated individuals. An MJA expert can contribute to the Medical Parole application process in a variety of ways, depending on the needs of the applicant. Primarily, an MJA expert can prepare an expert opinion which can strengthen the initial request for Medical Parole certification.

To request an MJA expert opinion, visit the MJA website (<https://www.medicaljusticealliance.org/>) and complete the contact form. An MJA coordinator will contact you and assign a volunteer medical professional to work on the applicant's case. The expert can review the applicant's medical records and prepare an expert opinion in support of the application for Medical Parole.

Note that a signed HIPAA release form is required to share the applicant's medical records with MJA volunteers.

VI. Post-Release on Medical Parole

An applicant released on medical parole will be assigned a parole officer in the county of release. Where the minimum sentence has not yet been completed, a grant of Medical Parole is for six months. Prior to the expiration of the six-month period, the parole officer will submit a letter to the treating physician requesting a medical report. A medical report will be prepared by the treating physician and sent to the parole officer to forward to the Executive Assistant to the Board and Health Services Medical Parole Coordinator. The Board of Parole will review the medical report

and decide whether to again grant Medical Parole. If the Board decides against another grant of Medical Parole, a hearing will be scheduled.²⁷

Where the minimum sentence has been served prior to the grant of Medical Parole, there is no six-month review process.²⁸ However, the person will still be on parole, subject to the recommended conditions of parole that include periodic check-ins with the assigned parole officer.

VII. Challenging Denials of Medical Parole Certification and Medical Parole

If an applicant is denied Medical Parole certification (the first step of the Medical Parole process), they may apply again. A renewed application for Medical Parole certification should include any new details about the medical condition, including worsening symptoms or prognosis.

Attorneys may consider filing an Article 78 petition in Supreme Court challenging DOCCS' denial of Medical Parole certification. Though such litigation has thus far been limited, this area is ripe for advocacy. *See e.g., Wilfredo Lopez v. John Morley, et al.*, Albany County Supreme Court Index No. 905420-20, accessible via [NYSCEF](#).

If Medical Parole is denied following a Medical Parole interview before the Board of Parole, the denial may be appealed in the same manner as a general parole denial.

VIII. Appendix

- a. [HIPAA Release Form](#)
- b. [DOCCS Directive 4304](#)
- c. Medical Parole Statutes
 - i. [New York Executive Law § 259-r](#)
 - ii. [New York Executive Law § 259-s](#)
- d. [Parole Information Project](#)

²⁷ Directive 4304, § VI.

²⁸ *Id.*