

Nebraska provides compassionate release to eligible incarcerated individuals who are permanently incapacitated or terminally ill through its **Medical Parole** program.<sup>1</sup>

## **MEDICAL PAROLE**

### **I. ELIGIBILITY**

**Medical Condition** – To be eligible for Medical Parole, an incarcerated individual must be permanently incapacitated or terminally ill because of an existing medical condition.<sup>2</sup>

**Exclusions** – An individual serving a death sentence or life imprisonment is not eligible for Medical Parole.<sup>3</sup>

### **II. APPLICATION/REFERRAL**

The Nebraska Department of Correctional Services (Department) is directed to identify incarcerated individuals who may be eligible for Medical Parole based upon their medical records.<sup>4</sup>

### **III. DOCUMENTATION AND ASSESSMENT**

There is nothing in state law or Department policy that provides any information on the documentation or assessment process prior to an individual's case going to the Board of Parole for consideration.

### **IV. DECISION-MAKING PROCESS**

**Decision-Maker** – The Nebraska Board of Parole is responsible for making Medical Parole decisions.<sup>5</sup>

**Decision Process** – The Board first reviews the individual's medical, institutional, and criminal records. It can also order additional medical examinations or investigations if necessary.<sup>6</sup>

#### **Conditions and Prerelease Planning**

- **Environment** – As a condition of Medical Parole, an individual must agree to placement for medical treatment and to live for “a definite or indefinite period of time” in a hospital, hospice, or other housing accommodation “suitable to the medical condition,” which can include a family home.<sup>7</sup>

- Medicaid – In 2019, the Governor signed a law requiring that the Nebraska Department of Health and Human Services’ Division of Medicaid and Long-Term Care consult with the Department of Correctional Services to develop a “protocol” intended to assist individuals eligible for Medical Parole in applying for and receiving Medicaid benefits to cover health care costs and treatment.<sup>8</sup> There is currently no information on either of the Department websites regarding implementation of this law.
- Other Conditions – It is within the Board’s discretion to establish any conditions of release in addition to medical treatment and/or living arrangements.<sup>9</sup>

## **V. POST-DECISION**

**Effect of Medical Parole Request on Other Parole Eligibility** – An individual’s general parole is not affected by eligibility for Medical Parole.<sup>10</sup>

**Denials and Appeal Rights** – There are no provisions in the Medical Parole statute or the Board’s rules indicating a right to review of Medical Parole decisions.

**Revocation/Termination** – In general, Medical Parole is for the remainder of an individual’s sentence, reduced by any adjustment for good conduct.<sup>11</sup> However, Medical Parole may be revoked for violation of any conditions the Board establishes.<sup>12</sup> In addition, if the individual’s medical condition improves to the extent the eligibility criteria is no longer met, the Board may order the person returned to Department custody for a hearing to determine whether Medical Parole should be revoked.<sup>13</sup>

- If, after a hearing, Medical Parole is revoked due to the individual’s medical condition improving, the person must serve the balance of the sentence with credit for time served on Medical Parole.<sup>14</sup>
- If Medical Parole is revoked, the individual may be considered for general parole or any other appropriate release program.<sup>15</sup>

## **VI. REPORTING/STATISTICS**

The Board is not required by law to report on its decisions, and it does not publish data regarding the number of individuals granted Medical Parole.

- The Board did not respond to FAMM’s request for data on the number of individuals granted Medical Parole in 2019 and 2020.

## **NEBRASKA COMPASSIONATE RELEASE**

### **PRIMARY LEGAL SOURCES**

#### **MEDICAL PAROLE**

##### **Statutes**

Nebraska Revised Statutes, § 83-1,110.02 (2020), available through the Nebraska Legislature, <https://nebraskalegislature.gov/laws/statutes.php?statute=83-1,110.02>.

Nebraska Revised Statutes, § 83-1,110.03 (2020), available through the Nebraska Legislature, <https://nebraskalegislature.gov/laws/statutes.php?statute=83-1,110.03>.

##### **Agency Policy/Publications**

Nebraska Board of Parole Rules, §§ 4-601 and 4-602 (2019), <https://parole.nebraska.gov/sites/parole.nebraska.gov/files/doc/9-6-2019%20Adopted%20Board%20of%20Parole%20Rules%20-%20website.pdf>. Note that the text of the Board's Medical Parole rules is a verbatim copy of the Medical Parole statutes.

## **NOTES**

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\* *Id.* means see prior note.

<sup>1</sup> Neb. Rev. Stat. §§ 83-1,110.02 and 83-1,110.03; Nebraska Board of Parole (Board) Rules, §§ 4-601 and 4-602.

<sup>2</sup> Neb. Rev. Stat. § 83-1,110.02 (1); Board Rules § 4-601 (A).

<sup>3</sup> *Id.* Note that the Board Rules at § 4-601(A) exclude incarcerated individuals who are serving sentences of life imprisonment but do not reference individuals under sentence of death, which is in the statutory language. Given that every other word of § 4-601 is identical to the Medical Parole statute, this appears to be an inadvertent error.

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 83-1,110.02 (2); Board Rules § 4-601 (B).

<sup>6</sup> *Id.*

<sup>7</sup> Neb. Rev. Stat. § 83-1,110.02 (3); Board Rules § 4-601 (C).

<sup>8</sup> Neb. Rev. Stat. § 68-993.

<sup>9</sup> Neb. Rev. Stat. § 83-1,110.02 (2); Board Rules § 4-601 (B).

<sup>10</sup> Neb. Rev. Stat. § 83-1,110.02 (1); Board Rules § 4-601 (A).

<sup>11</sup> Neb. Rev. Stat. § 83-1,110.02 (4); Board Rules § 4-601 (D). See also the Nebraska Treatment and Corrections Act regarding adjustments for good conduct at Neb. Rev. Stat. §§ 83-1107 and 83-1108.

<sup>12</sup> Neb. Rev. Stat. § 83-1,110.03 (4); Board Rules § 4-602 (D).

<sup>13</sup> Neb. Rev. Stat. § 83-1,110.03 (1); Board Rules § 4-602 (A).

<sup>14</sup> Neb. Rev. Stat. § 83-1,110.03 (2); Board Rules § 4-602 (B). Note that if Medical Parole is revoked due to an improvement in the parolee's condition, credits accrued for good conduct prior to Medical Parole are not forfeited. *Id.*

<sup>15</sup> *Id.*