

Vermont provides compassionate release to eligible incarcerated individuals with serious or terminal medical conditions through **Medical Parole**<sup>1</sup> and **Medical Furlough**.<sup>2</sup>

## **MEDICAL PAROLE**

### **I. ELIGIBILITY**

**Medical Condition** – An incarcerated individual may be eligible for Medical Parole if the person has one of the following conditions and, because of the condition, is no longer a danger to society:<sup>3</sup>

- A “serious” medical condition, defined as an incurable, progressive illness or debilitating injury from which the individual will not recover.<sup>4</sup>
  - Note that for an individual to be eligible, the serious medical condition must not have been caused by noncompliance with a medical treatment plan.<sup>5</sup>
  - The Department of Corrections (Department) provides several examples of incarcerated people who would meet this criteria: (1) individuals who are completely disabled, meaning they cannot provide any self-care and are totally confined to a bed or chair, and (2) individuals who are capable of only “limited self-care” and are confined to a bed or chair more than 50% of their waking hours.<sup>6</sup>
- A terminal medical condition, defined as an incurable disease resulting in life expectancy of 18 months or less.<sup>7</sup>

**Other Eligibility Criteria** – To be eligible for medical parole, an individual must authorize release of personal health information.<sup>8</sup>

**Exclusions** – All incarcerated individuals, including those who have not yet served their minimum term, may be released on Medical Parole if they meet the medical criteria.<sup>9</sup>

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

Consideration for Medical Parole may be initiated in any of the following ways:

- An incarcerated individual submits a “medical slip” (also called a “sick slip”) requesting consideration for release under the Medical Parole rules;

- The Department’s health services providers or facility management staff identify specific individuals as potentially eligible for Medical Parole; and
- Review of case files and/or health services reports indicate potential eligibility.<sup>10</sup>

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

**Review: Director of Nursing** – The Director of Nursing reviews each potentially eligible individual’s case and considers the individual’s (1) primary diagnosis, secondary diagnosis, and prognosis; (2) current level of function; (3) any special equipment required or anticipated to be required; (4) “disposition,” meaning the need for hospice or nursing home care; and (5) all treatment needs.<sup>11</sup>

- If the Director of Nursing’s review indicates that the individual meets the eligibility criteria for either a terminal or serious medical condition, it is noted on a “Medical Furlough or Parole Request Form” and sent to the Department’s Director of Classification and the Director of Field Services.<sup>12</sup>
- If the review indicates that the incarcerated individual does **not** meet the eligibility criteria, then the Director of Nursing submits the appropriate paperwork and instructs the facility’s health services staff to provide notification of any changes in the person’s condition that may warrant reconsideration. In addition, the Director of Nursing must review the case every six months to determine whether the individual subsequently meets the eligibility requirements for a terminal or serious medical condition.<sup>13</sup>

**Review and Decision on Suitability of Release: Director of Classification and Director of Field Services** – When the Director of Nursing determines that an incarcerated individual meets the medical criteria, both the Director of Classification and the Director of Field Services review the person for “suitability of release.”<sup>14</sup> That review considers any victims’ concerns and the individual’s criminal history, time served, current age, ability to commit a new crime, and release plans.<sup>15</sup>

If the Directors finds the incarcerated individual is suitable for release, the appropriate Correctional Service Specialist will develop a parole packet and submit it to the Director of Classification at least 30 days before the Medical Parole hearing date.<sup>16</sup>

**Notification of Parole Board: Director of Classification** – The Director of Classification must notify the Vermont Parole Board of the pending Medical Parole review.<sup>17</sup>

- Note that the Medical Parole statute directs the Department to “promptly” notify the Board once it has received information that an individual has a diagnosis of a serious or terminal medical condition.<sup>18</sup>

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

**Decision-Maker** – The Vermont Parole Board has final authority to grant or deny Medical Parole.

**Decision** – When it receives a referral from the Department of an individual who meets the medical criteria and has been determined “suitable” for release, the Parole Board decides at its next scheduled hearing whether to approve or deny the Medical Parole request.<sup>19</sup>

- **Approval** – If the Parole Board approves the request for Medical Parole, the facility’s Correctional Service Specialist notifies the Department’s Director of Classification. The Director completes the appropriate paperwork and notifies the Facility Superintendent, District Manager, and Director of Nursing.<sup>20</sup> The Facility Superintendent and District Manager are responsible for ensuring the assigned Probation and Parole Officer, appropriate Correctional Service Specialist, and the facility’s Health Services staff begin the individual’s care coordination and release planning.<sup>21</sup>
- **Denial** – If the Parole Board denies the request for Medical Parole, the Director of Classification provides written notification of the denial to the individual, submits the necessary paperwork, and notifies the appropriate facility Superintendent and Director of Nursing.<sup>22</sup> The facility’s health services staff is supposed to notify the Director of Nursing of any changes in the individual’s condition that may justify reconsideration; in addition, the Director of Nursing reviews all denied cases every six months.<sup>23</sup>

Note that the Board Manual says it may grant Medical Parole without considering the usual parole factors, such as the seriousness of the crime.<sup>24</sup> However, the Department, in making its “suitability for release” decision, still considers those factors.<sup>25</sup>

#### **Conditions**

- The Board must be satisfied that the incarcerated individual will be able to receive proper medical care outside of a correctional institution.<sup>26</sup> Individuals approved for Medical Parole can be released to a hospital, hospice, licensed inpatient facility, or other “suitable housing accommodation” specified by the Parole Board.<sup>27</sup>

- In addition, individuals released on Medical Parole are required to comply with any general parole conditions the Board sets.<sup>28</sup>

## **V. POST-DECISION**

**Supervision** – Individuals released on Medical Parole are under the same field supervision as any other parolee unless the Board waives the supervision requirements.<sup>29</sup>

## **VI. REPORTING/STATISTICS**

The Board is not required to report on Medical Parole requests and does not publish any statistics on the number of requests it considers, grants, and/or denies.

- In response to FAMM’s request for information, the Board reported that no individuals were released on Medical Parole in 2019 and 2020.<sup>30</sup>

## **MEDICAL FURLOUGH**

In addition to Medical Parole, the Department of Corrections (Department) may furlough incarcerated individuals for a variety of reasons, including the need to obtain medical services that cannot be provided in the correctional institution.<sup>31</sup> This is also referred to in Vermont law as “extending the limits of the place of confinement.”<sup>32</sup>

- Note that due to new legislation in 2020, as of January 1, 2021, all furloughs are designated as “temporary.”<sup>33</sup> However, in the Department’s 2022 Budget Presentation, published after the legislation was signed into law, Medical Furlough is listed as a “Reentry/Furlough” status – with no mention of a time limit – for individuals who have been diagnosed with terminal or debilitating conditions who may be released to a medical facility or other Department-approved housing.<sup>34</sup>

## **I. ELIGIBILITY**

**Medical Condition** – Individuals may be eligible to obtain medical services through a Medical Furlough if they have a terminal or serious medical condition rendering them unlikely to be physically capable of presenting a danger to society.<sup>35</sup> The definitions of “terminal” and “serious” are identical to those for Medical Parole:

- A “terminal” medical condition is defined as an incurable disease resulting in life expectancy of 18 months or less.<sup>36</sup>

- A “serious” medical condition is defined as an incurable, progressive illness or debilitating injury from which the individual will not recover.<sup>37</sup>
  - Examples of incarcerated individuals who meet the “serious” medical condition criteria are (1) those who are completely disabled, meaning they cannot provide any self-care and are totally confined to a bed or chair; and (2) individuals who are capable of only “limited self-care” and are confined to a bed or chair more than 50% of “waking hours.”<sup>38</sup>

**Exclusions** – All incarcerated individuals, including those who have not yet served their minimum term, may be considered for a Medical Furlough if they meet the medical eligibility criteria.<sup>39</sup>

## II. APPLICATION/REFERRAL

The different ways a Medical Furlough request may be initiated are identical to those of Medical Parole:

- An incarcerated individual submits a “medical slip” (also called a “sick slip”) requesting consideration for release under the Medical Furlough rules;
- The Department’s health services providers or facility management staff identify specific individuals as potentially eligible for Medical Furlough; and
- Review of case files and/or health services reports indicate potential eligibility.<sup>40</sup>

## III. DOCUMENTATION AND ASSESSMENT

**Review: Director of Nursing** – The Director of Nursing reviews each potentially eligible incarcerated person’s case to decide whether there is a terminal or serious medical condition.<sup>41</sup> The review must consider the individual’s (1) primary diagnosis, secondary diagnosis, and prognosis; (2) current level of function; (3) any special equipment required or anticipated to require; (4) “disposition,” meaning the need for hospice or nursing home care; and (5) treatment needs.<sup>42</sup>

- If the Director of Nursing’s review indicates that the individual meets the eligibility criteria for either a terminal or serious medical condition, a completed “Medical Furlough or Parole Request Form” is sent to the Department’s Director of Classification and the Director of Field Services.<sup>43</sup>

- If the review indicates that the person does **not** meet the eligibility criteria, then the Director of Nursing submits the appropriate paperwork and instructs the facility’s Health Services staff to provide notification of any future changes in the individual’s condition that may warrant reconsideration. In addition, the Director of Nursing must review the case every six months to determine whether the individual subsequently meets the eligibility requirements for a terminal or serious medical condition.<sup>44</sup>

**Review and Decision on Suitability of Release: Director of Classification and Director of Field Services** – As with Medical Parole, when the Director of Nursing determines that an individual meets the medical criteria, both the Director of Classification and the Director of Field Services review the person for “suitability of release.”<sup>45</sup> The review considers the same factors as those for Medical Parole, including the individual’s criminal history, amount of time served, victim concerns, current age, ability to commit a new crime, and release plans.<sup>46</sup>

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

**Decision-Maker** – Although the statute says that the Commissioner of Corrections makes Medical Furlough decisions,<sup>47</sup> current Department policy states that it is the Director of Classification and Director of Field Services who make the Medical Furlough decisions.<sup>48</sup>

##### **Decision**

- Approval – If the Medical Furlough request is approved, the Director of Classification completes the necessary paperwork and sends the decision to the appropriate Facility Superintendent, the District Manager, and Director of Nursing.<sup>49</sup>
  - When requests are approved, the Facility Superintendent and District Manager must ensure the assigned Probation and Parole Officer, Corrections Service Specialist, and facility Health Services staff begin care coordination and release planning for the individuals.<sup>50</sup>
- Denial – If the Medical Furlough request is denied, the Director of Classification will send written notice to the incarcerated person regarding the denial and will also notify the applicable Facility Superintendent and Director of Nursing.<sup>51</sup>
  - The Director of Nursing will instruct Health Services to provide notification if there are subsequent changes in the individual’s condition that could warrant reconsideration.<sup>52</sup> In addition, every

six months the Director of Nursing must review the case of someone denied Medical Furlough.<sup>53</sup>

### Conditions

- Note that as with Medical Parole, individuals may only be released to a hospital, hospice, other licensed inpatient facility, or “other housing accommodation deemed suitable by the Commissioner.”<sup>54</sup>
- To be furloughed, an individual must agree to comply with whatever conditions the Department decides are appropriate.<sup>55</sup>

## V. POST-DECISION

**Supervision** – The Department may use electronic monitoring equipment to enable “efficient” supervision of individuals granted any type of furlough, including Medical Furlough.<sup>56</sup>

**Revocation** – When a Department employee responsible for supervising a person on Medical Furlough believes that a verbal or written condition has been violated, the employee may “immediately lodge” the individual at a correctional facility or deputize any law enforcement agency to have the person arrested, and document the reasons for taking such action.<sup>57</sup>

## VI. REPORTING/STATISTICS

In response to FAMM’s request for information, the Department said that it did not grant any Medical Furloughs in 2019 and 2020.<sup>58</sup>

## **VERMONT COMPASSIONATE RELEASE PRIMARY LEGAL SOURCES**

### **MEDICAL PAROLE**

#### **Statute**

Vt. Stat. Ann. tit. 28, § 502a (d) (2021), available through the Vermont General Assembly “Statutes Online” webpage at <https://legislature.vermont.gov/statutes/section/28/007/00502a>.

#### **Agency Policy**

Vermont Parole Board Manual (Board Manual) (2021), Chapter 14-Medical Parole, <https://humanservices.vermont.gov/sites/ahsnew/files/documents/ParoleBoard/The%20Vermont%20Parole%20Board%20Manual%20%28Revised%2001-01-2021%29.pdf>.

Vermont Agency of Human Services/Department of Corrections Interim Memo, Medical Furlough and Medical Parole (July 1, 2018), <https://doc.vermont.gov/sites/correct/files/documents/policy/correctional/373.02-interim-memo-medical-furlough-and-medical-parole.pdf>.

Vermont Agency of Human Services/Department of Corrections Directive 373.02, Medical, Treatment and Short Term Inpatient Furloughs (March 27, 2006), <https://doc.vermont.gov/sites/correct/files/documents/policy/correctional/373.02-Medical-Treatment-and-Short-Term-Inpatient-Furloughs.pdf>.

### **MEDICAL FURLOUGH**

#### **Statute**

Vt. Stat. Ann. tit. 28, § 808 (2021), available through the Vermont General Assembly “Statutes Online” webpage, <https://legislature.vermont.gov/statutes/section/28/011/00808>.

#### **Agency Policy**

Vermont Agency of Human Services/Department of Corrections Interim Memo: Medical Furlough and Medical Parole (DOC Interim Memo) (2018), <https://doc.vermont.gov/sites/correct/files/documents/policy/correctional/373.02-interim-memo-medical-furlough-and-medical-parole.pdf>.

## NOTES

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\* *Id.* means see prior note.

<sup>1</sup> Vt. Stat. Ann. tit. 28, § 502a (d); Vermont Parole Board Manual (Board Manual), Chapter 14-Medical Parole; Vermont Agency of Human Services/Department of Corrections (Department) Interim Memo: Medical Furlough and Medical Parole, supplementing Department Directive 373.02, Medical, Treatment and Short Term Inpatient Furloughs.

<sup>2</sup> Vt. Stat. Ann. tit. 28, § 808; Department Interim Memo; Department Directive 373.02.

<sup>3</sup> Vt. Stat. Ann. tit. 28, § 502a (d); Board Manual, Chapter 14, Procedures, § I (A) (1); Department Interim Memo, Purpose.

<sup>4</sup> Department Interim Memo, Purpose, Subpar. 2 (a). Note that the statute says that a serious medical condition does not mean “a condition caused by noncompliance with a medical treatment plan.” See Vt. Stat. Ann. tit. 28, § 502a (d).

<sup>5</sup> Board Manual, Chapter 14, Policy.

<sup>6</sup> Department Interim Memo, Purpose, Subpar. 2.

<sup>7</sup> *Id.* at Subpar. 1 (a).

<sup>8</sup> Vt. Stat. Ann. tit. 28, § 502a (d); Board Manual, Chapter 14, Policy.

<sup>9</sup> Vt. Stat. Ann. tit. 28, § 502a (d).

<sup>10</sup> Department Interim Memo, Policy-Medical Parole, Subpars. 1 (a) through (f).

<sup>11</sup> *Id.* at Subpar. 3.

<sup>12</sup> *Id.* at Subpar. 4 (a).

<sup>13</sup> *Id.* at Subpar. 4 (b).

<sup>14</sup> *Id.* at Subpar. 5.

<sup>15</sup> *Id.* Although terminally ill individuals are not required to have limitations on activities of daily living to meet the medical eligibility criteria, the Department may consider any limitations when evaluating the person’s ability or inability to commit a new crime. In addition, the Department may consider an individual’s cognitive deficits (such as Alzheimer’s disease or a traumatic brain injury) when considering the person’s ability to reoffend. *Id.* at Purpose, Subpar. 1 (a).

<sup>16</sup> Department Interim Memo, Policy-Medical Parole, Subpars. 6 (a) (i) and (6) (a) (ii).

<sup>17</sup> *Id.* at Subpar. 6 (a) (iii).

<sup>18</sup> Vt. Stat. Ann. tit. 28, § 502a (d).

<sup>19</sup> Department Interim Memo, Policy-Medical Parole, Subpar. 6 (a) (iv).

<sup>20</sup> *Id.* at Subpar. 6 (a) (iv) (1).

- <sup>21</sup> Id. In addition, if an individual is going to be paroled out of state, the facility Correctional Service Specialist must coordinate with the Deputy Compact Administrator. Id. at Subpar. 6.
- <sup>22</sup> Id. at Subpar. 6 (a) (iv) (2).
- <sup>23</sup> Id.
- <sup>24</sup> Board Manual, Chapter 14, § I (A) (4), referencing Chapter 10.
- <sup>25</sup> Department Interim Memo, Policy-Medical Parole, Subpar. 5.
- <sup>26</sup> Board Manual, Chapter 14, § I (A) (2).
- <sup>27</sup> Vt. Stat. Ann. tit. 28, § 502a (d).
- <sup>28</sup> Board Manual, Chapter 14, § I (A) (3).
- <sup>29</sup> Id. at (A) (5).
- <sup>30</sup> Email from Mary Jane Ainsworth, Vermont Parole Board, to FAMM (July 28, 2021) (on file with FAMM, Office of the General Counsel).
- <sup>31</sup> Vt. Stat. Ann. tit. 28, § 808 (a) (3).
- <sup>32</sup> Id. at §§ 808 (a) and (c). Note that the statute emphasizes that, unlike Medical Parole, individuals released on Medical Furlough are still considered to be in custody, and it is “in no way” to be interpreted as probation or parole. Id. at (c).
- <sup>33</sup> See Vt. Stat. Ann. tit. 28, § 808 (a).
- <sup>34</sup> See Vermont Department of Corrections, *FY 2022 Budget Presentation* (Dec. 2020), <https://linfo.vermont.gov/assets/Uploads/1d2d3ff4ed/FY22-DOC-Budget-Presentation-Final.pdf>.
- <sup>35</sup> Vt. Stat. Ann. tit. 28, § 808 (e). Note that a qualifying “serious” medical condition for purposes of Medical Furlough does not include conditions caused by noncompliance with a medical treatment plan. Id.
- <sup>36</sup> Department Interim Memo, Purpose, Subpar. 1 (a).
- <sup>37</sup> Id. at Subpar. 2.
- <sup>38</sup> Id.
- <sup>39</sup> Vt. Stat. Ann. tit. 28, § 808 (e).
- <sup>40</sup> Department Interim Memo, Policy-Medical Furlough, Subpar. 1 (a) through (f) and Subpar. 2.
- <sup>41</sup> Id. at Subpar. 3.
- <sup>42</sup> Id.
- <sup>43</sup> Id. at Subpar. 4 (a).
- <sup>44</sup> Id. at Subpar. 4 (b).

<sup>45</sup> Id. at Subpar. 5.

<sup>46</sup> Id. Although terminally ill individuals are not required to have limitations on activities of daily living to meet the medical eligibility criteria, the Department may consider any limitations when evaluating the person's ability or inability to commit a new crime. In addition, the Department may consider an individual's cognitive deficits (such as Alzheimer's disease or a traumatic brain injury) when considering the person's ability to reoffend. Id. at Purpose, Subpar. 1 (a).

<sup>47</sup> Vt. Stat. Ann. tit. 28, § 808 (e).

<sup>48</sup> Department Interim Memo, Policy-Medical Furlough, Subpar. 6.

<sup>49</sup> Id. at Subpar. 6 (a) (i).

<sup>50</sup> Id. at Subpar. 6 (a) (ii).

<sup>51</sup> Id. at Subpars. 6 (b) (i) and (b) (ii).

<sup>52</sup> Id. at Subpar. 6 (b) (ii) (1).

<sup>53</sup> Id. at Subpar. 6 (b) (ii) (2).

<sup>54</sup> Vt. Stat. Ann. tit. 28, § 808 (e).

<sup>55</sup> Id. at § 808 (a).

<sup>56</sup> Id. at § 808 (b). See also Vermont Agency of Human Services/Department of Corrections, Directive 348-Supervision of Sentenced Offenders in the Community (Jan. 1, 2021), [https://doc.vermont.gov/sites/correct/files/documents/348%20Supervision\\_of\\_Sentenced\\_Offenders\\_in\\_the\\_Community\\_Directive.pdf](https://doc.vermont.gov/sites/correct/files/documents/348%20Supervision_of_Sentenced_Offenders_in_the_Community_Directive.pdf).

<sup>57</sup> Id. at § 808 (d).

<sup>58</sup> Email from Laura Carter, Vermont Department of Corrections, to FAMM (August 17, 2021) (on file with FAMM, Office of the General Counsel).