
 <b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE		NO. 4304
	<b>Medical Parole and Compassionate Release</b>		DATE 01/23/2023
SUPERSEDES DIR #4304 Dtd. 04/08/14; DIR #4044 Dtd. 12/12/17	DISTRIBUTION A B	PAGES PAGE 1 OF 11	DATE LAST REVISED
REFERENCES (Include but are not limited to) Executive Law §259-r, §259-s and §259-i; Correction Law §806; Penal Law, Article 130; ACA Expected Practice 2-1073; Directives #0500, #4931, #8700	APPROVING AUTHORITY 		

I. **PURPOSE:** This directive implements Executive Law, §259-r and §259-s, “Release on Medical Parole,” as it assigns specific responsibilities and functions to the Department of Corrections and Community Supervision (hereinafter referred to as the Department) and the Board of Parole (hereinafter referred to as the Board). It also provides guidance regarding those who are referred to the Board for Compassionate Release consideration. Its provisions apply to incarcerated individuals (hereinafter referred to as individual) and to releasees.

II. **DEFINITIONS**

A. Medical Parole

1. **Medical Parole for terminally ill incarcerated individuals (hereinafter referred to as “Medical Parole”):** A type of discretionary release granted pursuant to §259-r of the Executive Law to an individual serving either indeterminate or determinate sentences prior to their parole eligibility date, who have been medically certified as suffering from a terminal condition, disease, or syndrome and are so debilitated or incapacitated as to create a reasonable probability that they are physically incapable of presenting any danger to society.

Medical Parole for terminally ill individuals can be granted by either:

- a. The Board; or
- b. The Commissioner of the Department and Chairperson of the Board.

The Board is authorized to consider and grant Medical Parole to any individual eligible for such release consideration under this provision of the Executive Law. The Commissioner is authorized under Executive Law §259-r(10) to grant Medical Parole to a terminally ill individual who, by reason of their crime of conviction and criminal history, would not otherwise be ineligible for Presumptive Release, pursuant to Correction Law §806.

2. **Medical Parole for incarcerated individuals suffering from non-terminal illnesses or conditions (hereinafter referred to as “Medical Parole”):** A type of discretionary release granted only by the Board pursuant to §259-s of the Executive Law to individuals serving either determinate sentences or indeterminate sentences prior to their parole eligibility date when it has been medically certified that they are suffering from a significant and permanent non-terminal condition, disease, or syndrome and are so debilitated or incapacitated as to create a reasonable probability that they are physically incapable of presenting any danger to society.

- B. **Compassionate Release:** A type of release granted only by the Board to individuals who have already served the minimum period of their indeterminate sentence, appeared previously before the Board, and been denied parole, and subsequently, have been medically certified as suffering from either:
1. A terminal condition, disease, or syndrome and so debilitated or incapacitated as to create a reasonable probability that they are physically incapable of presenting any danger to society; or
  2. A significant and permanent non-terminal condition, disease, or syndrome, and so debilitated or incapacitated as to create a reasonable probability that they are physically incapable of presenting any danger to society.

This may be granted regardless of the crime of conviction.

**III. ELIGIBILITY:** An individual serving an indeterminate or determinate sentence may be eligible for Medical Parole if:

- A. The individual has either:
1. A terminal health condition; or
  2. A significant and permanent non-terminal condition, disease, or syndrome.  
and
  3. The individual is so physically or cognitively debilitated or incapacitated that there is a reasonable probability that they no longer present any danger to society; and
  4. The individual is not serving a sentence for Murder in the First Degree, or an Attempt to or Conspiracy to Commit Murder in the First Degree; and
  5. If the individual is serving a sentence for Murder in the Second Degree, Manslaughter in the First Degree, any offense defined in Article 130 of the Penal Law, or an attempt to commit any of these offenses, the individual shall have served at least one-half of the minimum period of the sentence, and in the case of a determinate sentence, they have served at least one-half of their sentence.

**IV. PROCEDURE**

- A. **Requests:** At any time during an individual's incarceration, the individual, someone acting on their behalf, or a Department employee, may make a request to the Commissioner or to the Division of Health Services that the individual should be considered for Medical Parole or Compassionate Release.

The Division of Health Services shall keep a record of each request and, for medically appropriate cases, notify the Office of Classification and Movement, which will determine the individual's eligibility based on crime or sentence. If not disqualified by reason of crime or sentence, the Commissioner may, in their discretion, order a medical evaluation and preliminary medical discharge plan.

B. **Medical Evaluation**

1. The evaluation shall be made by a physician licensed to practice medicine in the State of New York. Such physician shall either be employed by the Department, or shall render professional services at the request of the Department, or shall be employed by a hospital or medical facility used by the Department for medical treatment of individuals.

- a. The evaluation shall, at minimum, include:
    - (1) A description of the condition, disease, or syndrome suffered by the individual;
    - (2) A prognosis concerning the likelihood that the individual will not recover from such condition, disease, or syndrome;
    - (3) A description of the individual's physical or cognitive incapacity, which shall include an assessment of their ability to self-ambulate or perform significant normal activities of daily living, and a prediction concerning the likely duration of that incapacity;
    - (4) A list of current medications, dosages, and comments on the individual's ability to self-administer such medications;
    - (5) A statement by the physician of whether the individual is so physically or cognitively debilitated or incapacitated as to be severely restricted in their ability to self-ambulate and to perform significant normal activities of daily living; and
    - (6) A recommendation of the type and level of services and treatment the individual would require if granted Medical Parole or Compassionate Release, and a recommendation for the types and settings in which the services and treatment should be given.
  - b. Said evaluation and recommendation will clearly delineate whether the condition, disease, or syndrome suffered by the individual is terminal or non-terminal.
  - c. Evaluation of individuals with end stage disease of an isolated organ such as heart or liver will include information on appropriateness for transplantation and prognosis, both with and without organ transplantation.
  - d. Information provided for the medical evaluation will be based on the **baseline** status of the individual. Any information provided based on acute changes related to new onset medical illness (e.g., sepsis) must specifically be identified as related to the new diagnosis.
2. In the case of an individual who was previously (i) denied Medical Parole or Compassionate Release by the Board; or (ii) granted Medical Parole or Compassionate Release and returned to the Department's custody because Medical Parole or Compassionate Release was not renewed or was revoked, the evaluation shall also specify the change in circumstances warranting reconsideration of the individual for Medical Parole or Compassionate Release.
- C. **Certification of Eligibility**: The medical evaluation report shall be promptly forwarded to the Deputy Commissioner/Chief Medical Officer or designee. Within seven working days from the Deputy Commissioner/Chief Medical Officer's receipt of the medical evaluation and recommendation, they shall determine and advise the Commissioner as to whether the individual's medical status satisfies the statutory criteria for Medical Parole or Compassionate Release.

- D. Referral to the Office of Victim Assistance: The Department's Health Services Medical Parole Coordinator will notify the Office of Victim Assistance of all cases that are being sent to the Deputy Commissioner/Chief Medical Officer and the Commissioner for review and approval.
1. The Department's Office of Victim Assistance will respond to the Health Services Medical Parole Coordinator as to whether there is a registered victim associated with the case in question. This information will be sent with the medical information to the Deputy Commissioner/Chief Medical Officer.
  2. If the case is approved by the Commissioner to proceed to the Board and there is a registered victim, the Health Services Medical Parole Coordinator will, within one business day, inform the Office of Victim Assistance that the case has been certified by the Commissioner and is being referred to the Board. The Office of Victim Assistance will then follow the procedures in accordance with Directive #0500, "Office of Victim Assistance."
- E. Referral to the Board: Except for cases that are covered in Section V, upon an individual being certified by the Commissioner as eligible for Medical Parole or Compassionate Release, the individual shall be immediately referred to the Board for Medical Parole or Compassionate Release consideration. The referral shall be accompanied by the Deputy Commissioner/Chief Medical Officer's signed and approved Medical Parole Request Summary, a Comprehensive Medical Summary (CMS), NYS Patient Review Instrument (PRI), NYS Department of Health form, NYS Screen, and any information on registered victims from the Office of Victim Assistance.
- F. Letters to the Sentencing Court, Office of the District Attorney, Defense Attorney, and Registered Victims
1. **Terminal Illness:** In instances where the individual certified for Medical Parole suffers from a terminal condition, disease, or syndrome, the Commissioner shall send a 15-day letter to the sentencing court, Office of the District Attorney, and the defense attorney in accordance with §259-r(1)(c) of the Executive Law, advising them of the certification and referral to the Board for release consideration, and notifying them of their right to submit any recommendation or statement they wish to have considered by the Board before a Medical Parole determination is made. When crime victims have registered with the Office of Victim Assistance for the purpose of being heard in connection with an individual's possible release, the Office of Victim Assistance will simultaneously attempt to contact the registrant(s) by phone and will also send a 15-day letter to registrant(s).  
Neither the Board nor the Commissioner will render a decision until 21 days from the date the letters were sent or when all parties have responded, whichever comes first. The 21-day time frame shall be calendar days, not business days, and shall not include the date that it was sent.

2. **Non-Terminal Illness or Condition:** In instances where the individual certified for Medical Parole is suffering from a non-terminal condition, disease, or syndrome, the Commissioner shall send a 30-day letter to the sentencing court, the Office of the District Attorney, and the defense attorney in accordance with §259-s(1)(c) of the Executive Law, advising them of the certification and referral to the Board for release consideration, and notifying them of their right to submit any recommendation or statement they wish to be considered by the Board before a Medical Parole determination is made. When crime victims have registered with the Office of Victim Assistance for the purpose of being heard in connection with an individual's possible release, the Office of Victim Assistance will simultaneously attempt to contact the registrant(s) by phone and will also send a 30-day letter.  
The Board will not render a decision until 35 days from the date of the above-described letter or when all of the parties respond, whichever comes first. The 35-day time frame shall be calendar days, not business days, and shall not include the date that the letter was sent.
3. **Compassionate Release**
  - a. In instances of a Compassionate Release interview, the Commissioner shall send to the sentencing court, the Office of the District Attorney, and defense attorney, written notification as follows:
    - (1) a 15-day letter when the individual suffers from a terminal condition, disease, or syndrome; or
    - (2) a 30-day letter when the individual suffers from a permanent non-terminal condition, disease, or syndrome.The Commissioner will also notify the Office of Victim Assistance. When crime victims have registered with the Office of Victim Assistance for the purpose of being heard in connection with an individual's possible release, the Office of Victim Assistance will simultaneously attempt to contact registrant(s) by phone and will also send written notification with the timeframes noted above.
  - b. The Board will not render a decision until the close of the time periods as follows:
    - (1) 21 days from the date the letters were sent for individuals suffering from a terminal illness or when all parties have responded, whichever comes first.
    - (2) 35 days from the date the letters were sent out for individuals suffering from a non-terminal illness; or when all parties have responded, whichever comes first.
  - c. The timeframe shall be calendar days, not business days, and shall not include the date that the letter was sent.
4. When the Commissioner sends the letters identified in subsections IV-F-1 through IV-F-3, copies shall be forwarded by e-mail to the Superintendent, Deputy Superintendent for Programs (DSP), Inmate Records Coordinator (IRC), and Guidance shared mailboxes at the facility to which the individual is assigned.

- Additionally, copies shall be forwarded via e-mail to the Health Services Medical Parole Coordinator, the Executive Assistant to the Board, the Chairperson's Special Assistant, and the Office of Victim Assistance. When the Commissioner or Office of Victim Assistance receives responses, copies shall immediately be forwarded by e-mail to the Superintendent and DSP with copies to the Executive Assistant to the Board.
5. When the Commissioner sends the letters identified in subsection IV-F-4, the assigned Offender Rehabilitation Coordinator (ORC) shall prepare a Parole Board Report within 10 calendar days of the date of the letters referenced in subsection IV-F-4, and prepare to provide the Board with all relevant records, files, information, and documentation about the case, including, but not limited to the criminal history, the Parole Board Packet, the Re-Entry COMPAS, a copy of the most recent Case Plan, copies of the letters to the sentencing court, Office of the District Attorney, and the defense attorney, including any responses; the Deputy Commissioner/Chief Medical Officer's signed and approved Medical Parole Request Summary, a Comprehensive Medical Summary (CMS), NYS Patient Review Instrument (PRI), the NYS Department of Health form, NYS Screen, and any confidential information, including statements received from victims.
  6. In any case where an individual has been previously denied Medical Parole or Compassionate Release but has applied again for either consideration within six months of denial of release to Community Supervision, new letters will not be sent to the Office of the District Attorney, sentencing court, defense attorney, or the registered victims.
- G. Medical Discharge Plan: Upon notification of a decision by either the Board or the Commissioner granting an individual Medical Parole or Compassionate Release, Central Office Health Services (in coordination with Regional Medical Unit (RMU) staff for RMU patients and the Discharge Planning Unit (DPU) for General Population individuals), the ORC at the facility to which the individual is assigned, and the Community Supervision staff to whom the case will be assigned will begin to prepare a final medical discharge plan. Facility, Central Office Health Services, and Community Supervision staff are authorized to request assistance from the Department of Health and from the county in which the individual is approved to reside, in accordance with Directive #8700, "Community Preparation - Case Assignment and Release Investigation Processes." This plan shall be forwarded as soon as possible to Community Supervision, including Re-Entry staff, for review and final approval from a supervision perspective.
- The Deputy Commissioner/Chief Medical Officer may issue specific directions on a case-by-case basis. Typically, however, it is anticipated that Central Office Health Services staff, in collaboration with the Facility Health Services staff and Community Supervision staff, shall identify and select specific providers.
1. The medical discharge plan shall take into account the individual's preferences for placement to the extent possible, and shall include:
    - a. Confirmation of placement, including the name of the individual who obtained confirmation.
    - b. A level of care determination.

- c. A description of special equipment or transportation needs and identification of the provider(s) of the equipment or transportation.
  - d. A description of the individual's participation in the discharge plan and selection of care if competent to do so; if not competent, a description of surrogate decision maker's involvement, if any.
  - e. For home-care plans, an assessment will be conducted by Community Supervision staff, who will visit the individual's proposed home and review the adequacy of the physical environment relative to the individual's medical condition, health care needs, and evaluate the individual's personal-support system.
  - f. A description of the ancillary support(s) needed by the individual and/or caregiver and arrangements for same.
  - g. A report on the status of applications for Public Assistance/Medicaid/SSI(A)/Private Insurance.
  - h. A report on the status of applications for institutional placement, if any.
2. When it appears by the report of the examining physician that an individual's medical condition may meet the criteria for Medical Parole or Compassionate Release and the individual may be in need of Public Assistance/Medicaid/SSI(A)/Private Insurance, Central Office Health Services staff shall notify the Director of the Office of Transitional Services, who will ensure the completion of appropriate applications for services.
  3. When an individual who qualifies for release under Medical Parole or Compassionate Release is cognitively incapable of signing the requisite documentation to effectuate the final medical discharge plan and Certificate of Release documents, and after a diligent search no person has been identified who could otherwise be appointed as the individual's guardian by a court of competent jurisdiction, then, solely for the purpose of implementing the medical discharge plan, the Facility Health Services Director or designee at the facility where the individual is currently assigned shall be lawfully empowered to act as the individual's guardian for the purpose of effectuating their medical discharge.
- H. Pre-Release Responsibilities: Upon notification by the Board or the Commissioner that the individual has been granted Medical Parole or Compassionate Release, Facility Health Services staff, in collaboration with Central Office Health Services staff and the ORC under the supervision of the DSP and Supervising Offender Rehabilitation Coordinator (SORC) at the individual's assigned facility, shall coordinate release and transportation arrangements. The Facility Health Services staff shall copy all appropriate medical records in its possession and send them to the physician or facility accepting care of the individual.

Notification shall be provided to the individual immediately. Once the board is closed out, a Parole Release Decision Notice may be printed and provided.

**V. MEDICAL PAROLE GRANTED BY THE COMMISSIONER**

- A. Eligibility: In accordance with subdivisions 10 and 11 of Executive Law §259-r, the decision to grant certain terminally ill individuals Medical Parole can be made by the Commissioner instead of the Board. To be eligible, in addition to the criteria described in Sections II and III of this directive, the individual cannot be serving a sentence for any offense listed on Attachment A of this directive.
- B. Conditional Determinations: When the Commissioner makes a conditional determination that an individual should be released on Medical Parole, they shall:
1. Send a 15-day letter to the sentencing court, Office of the District Attorney and the defense attorney advising them of this conditional determination and notifying them of their right to submit any recommendation or statement they may wish to have considered before a final Medical Parole release determination is made by the Commissioner.
  2. When the Commissioner sends the letters identified in subsection V-B-1, copies shall be forwarded by e-mail to the Superintendent, DSP, Guidance, and IRC shared mailboxes at the individual's assigned facility, as well as the Health Services Medical Parole Coordinator and the Office of Victim Assistance. Guidance staff shall provide a parole board packet and Commissioner's Worksheet to the Commissioner within 10 calendar days of the date of the letters referenced in subsection V-B-1.
  3. The Commissioner shall inform the Chairperson of the Board of their determination within 10 business days and provide to the Chairperson all relevant records, files, information, and documentation about the case, including, but not limited to the criminal history; the parole board packet and Commissioner's Worksheet; copies of letters to the sentencing court, Office of the District Attorney, and the defense attorney; the medical diagnosis; and the medical treatment pertaining to the individual.
  4. Guidance staff will enter a Pre-Board Community Preparation in the Case Management System (CMS).
  5. The Chairperson shall either accept or not accept the Commissioner's conditional grant of Medical Parole, or decide to conduct a further review, within five business days of their receipt from the Commissioner of all relevant records regarding the individual. A further review by the Chairperson may include, but is not limited to, an appearance by the terminally ill individual before the Chairperson or designee. Acceptance of the Commissioner's determination shall be noted on the Commissioner's certification by the signature of the Chairperson as noted in Form #4304A, "Certification of Medical Parole by the Commissioner and Chairperson."
  6. If the Chairperson does not accept the Commissioner's conditional grant of Medical Parole following the review, then the Chairperson shall have the individual scheduled for an appearance before a panel of the Board for Medical Parole release consideration in accordance with §259-r of the Executive Law.



7. If the Chairperson accepts the Commissioner's conditional grant of Medical Parole, they will jointly render a final determination by taking into consideration any recommendations or statements that may have been submitted by the sentencing court, the Office of the District Attorney, defense attorney, or registered victim, if any, or their representative.
8. Upon the Commissioner and Chairperson's final approval for Medical Parole:
  - a. Chairperson will complete the Commissioner's Worksheet to impose Special Conditions of Release.
  - b. Such conditions of release shall be provided to the Department's Guidance staff to enter into the Guidelines Entry System (GES) as a Special Conditions for Non-Parole Board Release, utilizing Interview Code 21 – Medical – No Board.
  - c. Central Office Health Services staff shall make certain that a final medical discharge plan has been completed and entered into CMS.
  - d. Community Supervision and Re-entry Operations staff, in concert with Guidance staff at the assigned facility, shall make certain that the community prep in CMS is updated and a supervision plan is in place, so the individual can be released as soon as possible.

## VI. POST-RELEASE ON MEDICAL PAROLE

- A. A grant of Medical Parole shall be for a period of six months for both terminal and non-terminal cases that are prior to the minimum period of the individual's sentence. The six-month period shall commence upon the individual's release from the Department's custody. This does not apply to Compassionate Release cases.
- B. The Board shall require as a condition of release on Medical Parole that the releasee sign a medical release, undergo periodic medical examinations and a medical examination at least one month prior to the expiration of the period of Medical Parole.
- C. The assigned field parole office will establish a liaison with the treating physician or medical facility, provide a copy of [Form #4304B](#), "Letter to the Releasee's Physician," as well as a copy of [Form #4304C](#), "Physicians Report to the NYS Board of Parole," to be utilized for reports to the Board, advise as to due dates, and advise that the report should be sent to the assigned parole officer who will forward it to the Executive Assistant to the Board and Health Services Medical Parole Coordinator.
- D. Central Office Re-entry Services will monitor and track due dates of medical reports and take steps to ensure compliance with timeframes for submission of reports.
- E. Upon receipt of the medical report, the field parole office will fill out [Form #4304D](#), "Medical Parole Status Form," and forward it to the Board along with all relevant attachments, with a copy to the Health Services Medical Parole Coordinator, and retain a copy for the case file.
- F. The Board will review the updated medical report upon receipt and make a decision on whether to again grant Medical Parole.

- G. If the Board's decision is to not grant Medical Parole again, a hearing shall be scheduled in accordance with subdivision 4 of Executive Law §259-r and §259-s; provided, however, that a Medical parole releasee who has become eligible for discretionary release pursuant to Executive Law §259-i may be considered for continued release under that section.

NOTE: Subsections VI-A through VI-G do not apply to Compassionate Release.

## VII. MEDICAL PAROLE AND COMPASSIONATE RELEASE VIOLATORS

### A. For All Parole Violators

In the event that a parole warrant is executed against an individual who has been granted Medical Parole or Compassionate Release, the individual should be lodged at a State facility, where possible, and the recognizance court asked to direct remand to such a facility pending resolution of the parole revocation proceedings.

### B. Indeterminate Sentences and Mixed Sentences

1. Medical Parole for those granted release prior to reaching the minimum period of their sentence:
  - a. If an individual was released after a grant of Medical Parole prior to the minimum period of their sentence, but has had the grant of parole revoked, an application can again be made for Medical Parole. If an application is made again, and it is still prior to the individual's minimum period of their sentence, they will be treated as a new Medical Parole case as in Sections IV or V.
  - b. If an individual was granted Medical Parole prior to the minimum period of their sentence but has since reached that minimum period of their sentence and subsequently had their parole revoked, that application will be treated as a Compassionate Release case.
2. If an individual was granted Compassionate Release, has subsequently had their parole revoked, and again seeks release prior to the end of a time assessment, that application will again be treated as a Compassionate Release case.

### C. Determinate Sentences

An individual who was granted Medical Parole but has had their parole revoked under the Determinate Sentence before the Conditional Release Date shall be treated as a new Medical Parole case. If the individual is beyond the Conditional Release Date, the application will be treated as a Compassionate Release case.

**New York State Department of Corrections and Community Supervision**  
(Commissioner of DOCCS) Medical Parole Decision Eligibility Criteria

Please reference Section V of this directive entitled, "Medical Parole Granted by the Commissioner." In order to be considered, an individual cannot presently be serving a sentence for any of the following offenses, or an attempt or conspiracy to commit any of the following offenses:

1. An A-1 felony;
2. A violent felony offense;
3. Manslaughter in the second degree;
4. Vehicular manslaughter in the first or second degree;
5. Criminally negligent homicide;
6. Incest;
7. An offense defined in Article 130 of the Penal Law (sex offense);
8. An offense defined in Article 263 of the Penal Law (use of a child in a sex performance);
9. A hate crime as defined in Article 485 of the Penal Law;
10. An act of terrorism as defined in Article 490 of the Penal Law;
11. Aggravated harassment of an employee by an incarcerated individual; or
12. Any out-of-state criminal conviction which has the essential elements of any of the offenses listed in 1-11.