

New Hampshire provides compassionate release to eligible incarcerated individuals with serious medical conditions and terminal illnesses through **Medical Parole**.<sup>1</sup>

## **MEDICAL PAROLE**

### **I. ELIGIBILITY**

**Medical Condition** – To be considered for Medical Parole, an incarcerated individual must have a (1) terminal illness or (2) a debilitating, incapacitating, or incurable medical condition or syndrome.<sup>2</sup> In addition, the cost of medical care, treatment, and resources must be “excessive.”<sup>3</sup>

**Exclusions** – An individual who has been sentenced to death or who is serving a life sentence is not eligible for Medical Parole.<sup>4</sup>

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

The Department of Corrections (Department) Commissioner and Administrative Director of Forensic and Medical Services (Director of Medical Services) must recommend individuals for Medical Parole.<sup>5</sup> The Department does not provide any information on who is responsible for identifying potentially eligible individuals or whether incarcerated people can start the process on their own.

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

A licensed physician must certify that an individual has a (1) terminal illness or (2) a debilitating, incapacitating, or incurable medical condition or syndrome.<sup>6</sup> The Director of Medical Services may then petition the New Hampshire Adult Parole Board (Parole Board) for a hearing to decide whether the person meets the Medical Parole criteria.<sup>7</sup>

- There is no additional information on the Department’s process for documenting and assessing an individual’s medical condition.

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

**Decision-Maker** – The New Hampshire Adult Parole Board makes the final decision to grant Medical Parole.<sup>8</sup>

**Hearing** – After receiving a Medical Parole request/petition from the Department, the Parole Board will convene a hearing.<sup>9</sup>

- A hearing panel, consisting of three Parole Board members, holds each parole hearing, including those for Medical Parole.<sup>10</sup>
- The Department’s Director of Medical Services, or a designee, is required to submit “parole plans” to the Board for individuals who meet the medical eligibility criteria<sup>11</sup> and attend Medical Parole hearings to answer the hearing panel’s questions.<sup>12</sup>
- The Parole Board will only grant Medical Parole if a majority of the hearing panel finds that, in addition to meeting the medical criteria, there is a “reasonable probability” that the individual (1) will not be a danger to the public; (2) will not violate the law while on Medical Parole; and (3) will be a “good citizen.”<sup>13</sup>

**Conditions** – The Parole Board can require individuals on Medical Parole to (1) obtain periodic medical examinations and (2) comply with any other parole conditions it sets.<sup>14</sup>

## **V. POST-DECISION**

**Effect of Medical Parole Request on other Parole or Release Eligibility** – The Medical Parole statute and rules do not address the effect of Medical Parole on eligibility for parole or other forms of early release.

**Denials and Appeal Rights** – There is nothing in New Hampshire law, or Department or Parole Board rules, that references any appeal rights.

**Revocation/Termination** – The Board generally requests periodic medical examinations and reports for those released on Medical Parole.<sup>15</sup> The Director of Medical Services reviews any post-parole medical information and reports the findings to the Board.<sup>16</sup> If, after reviewing those findings, the Board determines an individual no longer has a debilitating or terminal condition, it will revoke Medical Parole and order the individual’s return to state custody.<sup>17</sup>

**Other Medical Expenses After Release** – Note that the state is responsible for all Medicaid costs incurred (“net of federal reimbursement”) for individuals granted Medical Parole until the earliest date parole could have been granted if they had not been granted Medical Parole.<sup>18</sup>

## **VI. REPORTING/STATISTICS**

The Board is not required by law to report on the number of Medical Parole requests that it grants or denies, and it has not published any relevant statistics.

- In response to FAMM’s request for information on the number of requests the

Board granted in 2019 and 2020, the Board responded that it does not generate or maintain reports for individuals requesting Medical Parole.<sup>19</sup>

## **NEW HAMPSHIRE COMPASSIONATE RELEASE**

### **PRIMARY LEGAL SOURCES**

#### **MEDICAL PAROLE**

##### **Statute**

New Hampshire Revised Statutes, § 651-A:10-a (2020), available through the General Court of New Hampshire, <http://www.gencourt.state.nh.us/rsa/html/LXII/651-A/651-A-10-a.htm>.

##### **Regulations**

New Hampshire Code of Administrative Rules, Parole (Par) 303 (2020), available through the General Court of New Hampshire, [http://gencourt.state.nh.us/rules/state\\_agencies/par.html](http://gencourt.state.nh.us/rules/state_agencies/par.html).

## **NOTES**

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\* *Id.* means see prior note.

<sup>1</sup> N.H. Rev. Stat. Ann. § 651-A:10-a; N.H. Code Admin. R. Par. 303.

<sup>2</sup> N.H. Rev. Stat. Ann. § 651-A:10-a (I) (a); N.H. Code Admin. R. Par. 303.02.

<sup>3</sup> N.H. Rev. Stat. Ann. § 651-A:10-a (I) (b).

<sup>4</sup> *Id.* at (VI).

<sup>5</sup> *Id.* at (I) and (II).

<sup>6</sup> *Id.* at (I) (a). Note that the New Hampshire Adult Parole Board can request that at least one additional licensed physician review and certify the incarcerated person's condition. *Id.*

<sup>7</sup> *Id.* at (II).

<sup>8</sup> *Id.* at (I).

<sup>9</sup> N.H. Rev. Stat. Ann. §§ 651-A:10-a (I) and II; N.H. Code Admin. R. Par. 303.02.

<sup>10</sup> N.H. Rev. Stat. Ann. § 651-A:3.

<sup>11</sup> N.H. Rev. Stat. Ann. § 651-A:10-a (II). There is no publicly available information on what needs to be included in the parole plan.

<sup>12</sup> N.H. Code Admin. R. Par. 303.03.

<sup>13</sup> N.H. Rev. Stat. Ann. §§ 651-A:10-a (I) (c) and (III); N.H. Code Admin. R. Par. 303.04.

<sup>14</sup> N.H. Rev. Stat. Ann. § 651-A:10-a (IV).

<sup>15</sup> N.H. Code Admin. R. Par. 303.05.

<sup>16</sup> N.H. Rev. Stat. Ann § 651-A:10-a (IV).

<sup>17</sup> N.H. Rev. Stat. Ann. § 651-A:10-a (IV); N.H. Code Admin. R. Par. 303.05.

<sup>18</sup> N.H. Rev. Stat. Ann. § 651-A:10-a (VII).

<sup>19</sup> Letter from Jennifer Sargent, chair of the New Hampshire Adult Parole Board, to FAMM (March 30, 2021) (on file with FAMM, Office of the General Counsel).