

Compassionate Release Report Card • October 2022

South Carolina

Overall Grade for
South Carolina

Total Grade

55
/100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates	64/100	D
Medical Furlough/Extension of the Limits of Confinement	45/100	F

Find all compassionate release resources on FAMM's site →

famm.org



Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates

Total Grade

64 /100

Letter Grade

D

Eligibility Criteria

28/30

- 5/10** Clearly set out with understandable and measurable standards.
- 5/10** Generous or not unduly restrictive.
- 8/10** No categorical exclusions/everyone is eligible for consideration.
 - + Extra credit:** Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. **+10**

Procedures

5/10

- 5/5** Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.
- 0/5** Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.
 - x Extra credit:** Expedited time frames exist for terminal cases. **0**

Engaging the Process

5/15

- 5/5** Clinical and other staff can identify potentially eligible individuals and initiate the process.
- 0/5** Incarcerated people, their loved ones, and advocates can initiate the process.
- 0/5** Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support

4/10

- 2/5** Agencies provide comprehensive release planning.
 - x Extra credit:** Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **0**
- 2/5** Release planning begins early in the process.

Agency Policy Design

15/15

- 5/5** Agency rules exist for all stages of identification, initiation, assessment, and decision-making.
- 5/5** Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.
- 5/5** Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Data Collection and Public Reporting

7/10

- 2/5** Agencies are obliged to gather, compile, and report release data to legislature.
- 5/5** Reporting is made available to the public via annual reports or other means.



Right to Counsel and Appeals

5/5 Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

✘ **Extra credit:** Denials are appealable. **0**

0/5 Individuals have the right to reapply should conditions change.

+ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. **+5**



Overall Penalty

-10 Licensed physicians with the Department of Corrections must certify that an individual meets eligibility criteria. In some cases, that requires the physician to assess whether the individual may pose a risk to public safety. For example, the physician must certify that a person seeking Medical Parole due to a terminal condition is terminally ill, will die within two years, and is so debilitated that the individual does not pose a public safety risk. Medical professionals cannot make public safety determinations consistent with their professional ethics and should not be required to do so as part of their job.

The Numbers

In response to FAMM's request for data, the Department of Corrections reported that in 2019 and 2020, only two individuals were considered for Medical Parole. One was granted, and one was denied.

High and Low Marks

HIGH MARKS

- **Eligibility criteria:** The time-left-to-live measure for terminal illness is 24 months, among the best in the nation and second only to those states that do not require any prognosis of time left to live whatsoever. Most people are eligible for Medical Parole, with the exception of those sentenced to life without parole or death.
- FAMM found the **agency policy design** to be straightforward, consistent with the statute, and including clear guidance to actors.

LOW MARKS

- While the program clearly lays out **procedures** with discrete steps and roles, it has no time frames to govern the process of Medical Parole assessment and decision-making.
- South Carolina does not, as far as we can tell, assist individuals with **release planning**.
- FAMM could not determine whether people denied Medical Parole can **reapply** if their condition changes.

Medical Furlough/ Extension of the Limits of Confinement

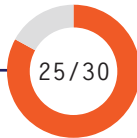
Total Grade

45 /100

Letter Grade

F

Eligibility Criteria



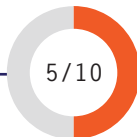
8/10 Clearly set out with understandable and measurable standards.

10/10 Generous or not unduly restrictive.

7/10 No categorical exclusions/everyone is eligible for consideration.

× **Extra credit:** Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. **0**

Procedures

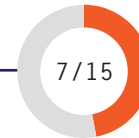


5/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

0/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.

× **Extra credit:** Expedited time frames exist for terminal cases. **0**

Engaging the Process

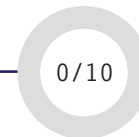


2/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

0/5 Incarcerated people, their loved ones, and advocates can initiate the process.

5/5 Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support

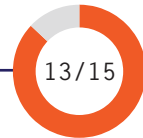


0/5 Agencies provide comprehensive release planning.

× **Extra credit:** Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **0**

0/5 Release planning begins early in the process.

Agency Policy Design

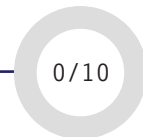


5/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

5/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

3/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Data Collection and Public Reporting



0/5 Agencies are obliged to gather, compile, and report release data to legislature.

0/5 Reporting is made available to the public via annual reports or other means.

5/10

Right to Counsel and Appeals

0/5 Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

✘ **Extra credit:** Denials are appealable. **0**

0/5 Individuals have the right to reapply should conditions change.

+ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. **+5**



Overall Penalty

-10 In 2019, of the 37 people deemed eligible for Medical Furlough, only three received it. We cannot tell from the data provided to us why so many terminally ill people were denied furlough or what happened to them.

The Numbers

The Department of Corrections does not publish Medical Furlough/Extension of the Limits of Confinement numbers. In response to FAMM's request for data, the Department responded that in 2019, treating physicians referred 37 people for Medical Furlough, of whom only three received it. The Department did not provide numbers for 2020.

High and Low Marks

HIGH MARKS

- Medical Furlough/Extension of the Limits of Confinement **eligibility criteria** are clear, easily measurable for the most part, and relatively generous.
- While only the diagnosing physician is able to **initiate the process**, the program assigns the physician the affirmative duty to do so upon a finding that an incarcerated individual is within 12 months of death.
- The Department of Corrections provides a **policy** to implement the one-sentence-long statute. That policy covers all stages, complements the scant statute, and provides clear guidance to actors about steps to take. We found one standard rather unclear and lacking guidance: the requirement that the Director of the Department must conclude the person will "honor [the Director's] trust."

LOW MARKS

- Strong marks for **eligibility criteria** would have been even stronger except for a couple of provisions. One is the decision-maker's release standard, which requires the Director to grant furlough only when believing that, upon release, the individual will "honor [the Director's] trust." The policy does not offer guidance to the Director about making that determination. We also marked down the program for the sole exclusion provision. A person convicted of a violent crime may not participate in the program in the community where the crime occurred unless the victim(s), law enforcement, and the district attorney recommend furlough in writing. That is especially concerning because the program will only grant furlough to a family member who sponsors the individual. Alternative placements outside the community where the family lives, and the crime occurred, may not be feasible.
- The Department provides no **release planning** or support. In fact, it requires a family member who lives in South Carolina to sponsor the furloughed person, find the place where the individual will reside, and secure a physician who will not hold the Department financially responsible for costs of care.
- We cannot tell whether a person denied Medical Furlough can **reapply**, but we suspect not, given the large number of people deemed terminally ill who fail to receive Medical Furlough.