

501 CMR 17.00: MEDICAL PAROLE

Section

- 17.01: Purpose and Statutory Authorization
- 17.02: Definitions
- 17.03: Petitions for Medical Parole for Prisoners Committed to the Custody of the Department
- 17.04: Processing of Petitions for Medical Parole for Prisoners Committed to the Custody of the Department
- 17.05: Petitions for Medical Parole for Prisoners Committed to the Custody of a County Correctional Facility
- 17.06: Notification to District Attorneys, Victims/Victims' Families, Prisoner, and Petitioner
- 17.07: Hearings
- 17.08: Referral to the Parole Board
- 17.09: Final Decision
- 17.10: Notices
- 17.11: Parole Board Jurisdiction, Supervision, and Control
- 17.12: Revocation of Medical Parole
- 17.13: Challenges to Medical Parole Decisions
- 17.14: Reporting
- 17.15: Severability

17.01: Purpose and Statutory Authorization

The purpose of 501 CMR 17.00 is to govern the administration and enforcement of petitions for medical parole, as required by M.G.L. c. 127, § 119A.

17.02: Definitions

Activities of Daily Living (ADL). Self-care tasks including, but not limited to, bathing and showering, personal hygiene and grooming, dressing, toilet hygiene, functional mobility, and self-feeding.

Commissioner. The Commissioner of the Department of Correction.

Department. The Department of Correction, established pursuant to M.G.L. c. 27, § 1.

Debilitating Condition. A physical or cognitive condition that appears irreversible and which causes a prisoner significant and serious impairment of strength or ability to perform daily life functions such as eating, breathing, toileting, walking or bathing so as to minimize the prisoner's ability to commit a crime if released on medical parole, and requires the prisoner's placement in a facility or a home with access to specialized palliative or medical care.

Medical Parole. A release on parole pursuant to M.G.L. c. 127, § 119A due to a terminal illness and/or permanent incapacitation, as determined by a licensed physician, that is so debilitating that the prisoner does not pose a public safety risk.

Medical Parole Plan. A comprehensive written medical and psychosocial care plan specific to a prisoner and including, but not limited to:

- (a) the proposed course of treatment;
- (b) the proposed site for treatment and post-treatment care (home plan);
- (c) documentation that medical providers qualified to provide the medical services identified in the medical parole plan are prepared to provide such services; and
- (d) the financial program in place to cover the cost of the plan for the duration of the medical parole, which shall include eligibility for enrollment in commercial insurance, Medicare or Medicaid, or other government benefits, or access to other adequate financial resources for the duration of the medical parole.

17.02: continued

Multidisciplinary Review Team (MRT). A team consisting of the Commissioner's designee, the superintendent of the facility where the prisoner is currently incarcerated, a representative of the Department's health service provider, and the Director of the Department's Classification Division or designee.

Parole Board. The Parole Board established pursuant to M.G.L. c. 27, § 4.

Permanent Incapacitation. A physical or cognitive incapacitation that appears irreversible, as determined by a licensed physician, that is so debilitating that the prisoner does not pose a public safety risk.

Prisoner. A committed offender serving a sentence. Persons who are awaiting trial and persons civilly committed shall not be deemed prisoners for purposes of 501 CMR 17.00.

Secretary. The Secretary of the Executive Office of Public Safety and Security.

Terminal Illness. A condition that appears incurable, as determined by a licensed physician, that will likely cause the death of the prisoner in not more than 18 months, that is so debilitating that the prisoner does not pose a public safety risk.

17.03: Petitions for Medical Parole for Prisoners Committed to the Custody of the Department

(1) Notwithstanding any general or special law to the contrary, a prisoner may be eligible for medical parole due to a terminal illness or permanent incapacitation.

(2) The superintendent of a correctional facility shall consider a prisoner for medical parole upon receipt of a written petition submitted by:

- (a) the prisoner;
- (b) the prisoner's attorney;
- (c) the prisoner's next of kin;
- (d) a medical provider of the correctional facility;
- (e) a member of the Department's staff; or
- (f) an individual, designated by the prisoner to act on their behalf, but said designated individual shall not be a Department or county prisoner.

(3) A petition for medical parole shall be in writing. The Department shall develop a petition form to be made available to the prisoner, or, where the prisoner is not the petitioner, the petitioner. A failure to submit the petition on the Department's form shall not delay or change the processing of the petition.

(4) A proposed medical parole plan may be submitted along with the petition, but, where not submitted by the petitioner, said proposed plan shall be developed by the superintendent prior to transmitting the petition to the Commissioner under to M.G.L. c. 127, § 119A, and 501 CMR 17.04(4). The Parole Board, or designee, will be available to assist prisoners and their advocates in identifying community resources available to them in the event the prisoner is granted medical parole.

(5) Petitions must be submitted to the superintendent of the facility where the prisoner is currently incarcerated, unless the prisoner is housed at Lemuel Shattuck Hospital, in which case the petition should be submitted to the superintendent of Lemuel Shattuck Hospital for forwarding as appropriate to the superintendent of the facility to which the prisoner is classified. A petition submitted to any other Department employee or facility other than the superintendent of the facility where the prisoner is currently incarcerated shall be forwarded to the appropriate superintendent without delay for review and processing.

(6) Upon request, and to the extent permitted under State or Federal medical privacy laws, victims/victims' family members registered under M.G.L. c. 258B, will be provided with a copy of the petition and the most recent clinical assessment of the prisoner prepared by the Department's medical provider.

17.04: Processing of Petitions for Medical Parole for Prisoners Committed to the Custody of the Department

(1) Petitions for medical parole shall be reviewed by the superintendent of the facility where the prisoner is currently incarcerated, or, in the case of prisoners housed at Lemuel Shattuck Hospital, by the superintendent of the facility to which they are classified. The superintendent shall develop a recommendation for the Commissioner as to whether the prisoner should be released on medical parole.

(2) A Multidisciplinary Review Team will provide information to the superintendent regarding the prisoner to inform the superintendent's development of the recommendation for the Commissioner. The information provided by members of the team shall include, but need not be limited to:

- (a) a written diagnosis by a licensed physician;
- (b) a determination by a licensed physician as to whether the prisoner suffers from a debilitating condition;
- (c) a proposed medical parole plan;
- (d) a risk for violence assessment, which must be based upon the results of a standardized assessment tool that measures clinical prognosis, such as the LS/CMI assessment tool and/or COMPAS; and
- (e) a recent classification report.

(3) The risk for violence assessment required by 501 CMR 17.04(2) shall be conducted by the superintendent or their designee, and shall take into consideration:

- (a) the prisoner's diagnosis and prognosis;
- (b) the prisoner's current housing situation (*e.g.*, placement in general population, institutional infirmary, Lemuel Shattuck Hospital, or outside hospital);
- (c) the necessary clinical management of the prisoner's terminal illness/permanent incapacitation;
- (d) an assessment for mobility, gait and balance, specifically, whether the prisoner is bedridden, wheelchair-bound, uses a walker, or can walk with assistance;
- (e) the medically prescribed and required durable medical equipment or other assistive devices for the prisoner including, but not limited to, wheelchairs (manual or electric), hospital beds, traction equipment, canes, crutches, walkers, kidney machines, ventilators, oxygen, monitors, pressure mattresses, and/or lifts;
- (f) the prisoner's ability to manage Activities of Daily Living;
- (g) a mental health assessment; and
- (h) the prisoner's age, height, weight, ability to eat independently, and if the prisoner is fed intravenously.

(4) Whether or not the superintendent recommends in favor of medical parole, the superintendent shall, not more than 21 days after receipt of the petition, transmit his or her recommendation to the Commissioner with the petition and all supporting documentation including, but not limited to:

- (a) a proposed medical parole plan;
- (b) an updated clinical review of the prisoner by a licensed physician, and any relevant supplemental medical diagnosis and/or records;
- (c) the superintendent's risk for violence assessment; and
- (d) the prisoner's classification level.

(5) The Commissioner shall allow or deny the petition for medical parole within 45 days of receiving the superintendent's recommendation.

17.05: Petitions for Medical Parole for Prisoners Committed to the Custody of a County Correctional Facility

(1) Notwithstanding any general or special law to the contrary, a prisoner committed to the custody of a county correctional facility may be eligible for medical parole due to a terminal illness or permanent incapacitation.

(2) The Sheriff with authority over the county correctional facility shall consider a prisoner for medical parole upon receipt of a written petition submitted by:

17.05: continued

- (a) the prisoner;
- (b) the prisoner's attorney;
- (c) the prisoner's next of kin;
- (d) a medical provider of the correctional facility;
- (e) a member of the Sheriff's staff; or
- (f) an individual, designated by the prisoner to act on their behalf, but said designated individual shall not be a Department or county prisoner.

(3) The petition for medical parole shall be in writing. The Sheriff may develop a petition form to be made available to the prisoner and/or the petitioner. A failure to submit the petition on the Sheriff's form shall not delay or change the processing of the petition.

(4) In the event the petition is not accompanied by release forms signed by the prisoner, the Sheriff shall provide the prisoner, or the petitioner if the prisoner is not the petitioner, with said release forms.

(5) A proposed medical parole plan may be submitted along with the petition and may be submitted by the petitioner for review by the Sheriff, or, where not submitted by the petitioner, said plan shall be developed by the Sheriff prior to transmitting the petition to the Commissioner pursuant to M.G.L. c. 127, § 119A.

(6) Petitions must be submitted to the Sheriff responsible for the facility where the prisoner is currently incarcerated, unless the prisoner is housed at Lemuel Shattuck Hospital, in which case the petition should be submitted to the superintendent of Lemuel Shattuck Hospital for forwarding as appropriate to the Sheriff responsible for the facility to which the prisoner is classified. A petition submitted to any other County employee shall be forwarded to the appropriate Sheriff without delay for review and processing.

(7) Upon request, and to the extent permitted under State or Federal medical privacy laws, victims/victims' family members registered under M.G.L. c. 258B, will be provided with a copy of the petition and the most recent clinical assessment of the prisoner prepared by the correctional facility's medical provider.

(8) Whether or not the Sheriff recommends in favor of medical parole, the Sheriff shall, not more than 21 days after receipt of the petition, transmit their recommendation to the Commissioner with the petition and all supporting documentation. The Commissioner shall allow or deny the petition for medical parole within 45 days of receiving the Sheriff's recommendation.

17.06: Notification to District Attorneys, Victims/Victims' Family, Prisoner, and Petitioner

(1) Upon receipt of the medical parole petition, supporting documentation and the recommendation of the superintendent or Sheriff where the prisoner is currently incarcerated, the Commissioner shall notify the following individuals, in writing, that the prisoner is being considered for medical parole:

- (a) the district attorney for the jurisdiction where the offense resulting in the prisoner being committed to the correctional facility occurred;
- (b) the prisoner, together with supporting documentation;
- (c) the person who petitioned for medical parole, if not the prisoner; and
- (d) if applicable, the victim(s) or the victim's family entitled to receive notification under M.G.L. c. 258B. Said notification of the victim(s) or the victim's family should take place through the Department's Office of Victim Services, both telephonically and in writing.

(2) Any individual who receives notice under 501 CMR 17.06(1) shall have an opportunity to provide written statements; provided however, that if the prisoner was convicted and is serving a sentence under M.G.L. c. 265, § 1, the district attorney or victim's family may request a hearing. Further, in all cases, following the receipt of notice from the Commissioner, the District Attorney, may, upon request, receive a copy of the medical parole petition and, to the extent the documents are not protected from disclosure under State and Federal medical privacy laws, the medical parole plan and any other document relied upon by the superintendent or Sheriff when submitting the recommendation to the Commissioner.

17.06: continued

(3) Written statements regarding the petition must be provided to the Department on or before the deadline set by the Commissioner. Individuals who fail to timely submit such statements waive their right to be heard and untimely submitted statements will not be considered by the Commissioner, unless an extension is granted by the Commissioner within the 45-day deadline required under 501 CMR 17.04(5). All individuals shall receive advance notice of the deadline for submission of written statements, and the deadline for filing a request for an extension.

17.07: Hearings

(1) Where a petition is filed by or on behalf of a prisoner serving a sentence under M.G.L. c. 265, § 1, the Commissioner may hold a hearing on a medical parole petition pursuant to 501 CMR 17.07. The hearing shall be closed to the public and to the media.

(2) The Commissioner shall determine who may attend the hearing. Attendees may include, but are not limited to:

- (a) the prisoner;
- (b) the person who petitioned for medical parole, if not the prisoner;
- (c) an attorney for the prisoner or petitioner;
- (d) the district attorney for the jurisdiction where the offense resulting in the prisoner being committed to the correctional facility occurred, and/or one or more persons designated by the district attorney;
- (e) the victim and/or the victim's family, if applicable under M.G.L. c. 258B;
- (f) such other Department staff as designated by the Commissioner; and
- (g) a representative from the Parole Board.

(3) The hearing may be held within the correctional facility where the prisoner is currently incarcerated or in another suitable location determined by the Commissioner. In the Commissioner's discretion, a telephonic or videoconference hearing may be conducted.

(4) Persons who give oral testimony at the hearing shall testify under oath.

(5) The hearing shall be recorded in a manner to allow a written transcript of the hearing to be produced if necessary.

(6) The Commissioner shall preside over every phase of the hearing and may impose procedural requirements such as reasonable time limits on the length of oral testimony. The Commissioner may ask questions, but otherwise, questioning of witnesses by attendees shall not be allowed.

(7) The Commissioner shall not be bound by the laws of evidence observed by the courts of the Commonwealth.

17.08: Referral to the Parole Board

(1) If it appears to the Commissioner that a decision to release the prisoner on medical parole is likely, the Commissioner shall refer the prisoner's entire medical parole petition, and supporting documents, to the Parole Board within 30 days after receiving the superintendent's or Sheriff's recommendation. The Parole Board shall direct the referral to the appropriate Institutional Parole Officer/Transitional Parole Officer where the prisoner is held.

(2) Each medical parole petition referred to the Parole Board by the Commissioner shall include the following:

- (a) the proposed medical parole plan and supporting documents; and
- (b) an updated clinical review of the prisoner by the Department's or Sheriff's medical provider, respectively.

(3) Within 15 days of receipt of the referral from the Commissioner, the Parole Board or designated employees shall, pursuant to M.G.L. c. 127, § 130, conduct the parole risk and needs assessment and set all appropriate terms and conditions of release.

17.08: continued

(4) Simultaneously upon the Parole Board's receipt of the Commissioner's referral of a petition for medical parole, the appropriate Institutional Parole Officer/Transitional Parole Officer shall forward said petition, including the risk/needs assessment to the Field Services Division of the Parole Board. A Field Parole Officer will be assigned to verify the suitability of the proposed place(s) of residence. The assigned Field Parole Officer shall verify all proposed residences including, but not limited to, inpatient treatment facilities, private residences, and hospice care. The assigned Field Parole Officer will make efforts to confirm availability of bed space, evaluate the suitability of the proposed placement environment for supervision purposes, and determine whether the medical parole plan is consistent with the identified medical treatment needs of the prisoner.

(5) Upon completion of the risk and needs assessment and receipt of the assigned Field Parole Officer's findings, the Institutional Parole Officer/Transitional Parole Officer shall forward the medical parole petition to the Parole Board with all collateral information utilized during the assessment process and the Field Parole Officer's findings, to set the terms and conditions of medical parole that would be effective upon the final release determination by the Commissioner.

(6) The Parole Board shall forward verification and approval of a proposed place of residence, and the established terms and conditions of release, and contingent Parole Board vote, to the Commissioner for a final determination on the petition for medical parole.

17.09: Final Decision

(1) The Commissioner shall issue a written decision not later than 45 days after receipt of the superintendent's or Sheriff's recommendation and supporting documentation. If the Commissioner determines that a prisoner is terminally ill or permanently incapacitated such that if released, the prisoner will live and remain at liberty without violating the law and the release will not be incompatible with public safety or the welfare of society, the prisoner shall be released on medical parole. The decision shall be accompanied by:

- (a) a written statement of reasons for the Commissioner's decision;
- (b) all the conditions that must be met prior to the prisoner's release; and
- (c) notification of the ability to file a petition for judicial review under M.G.L. c. 249, § 4.

(2) A copy of the Commissioner's written decision shall be provided to the individuals entitled to notice as set forth in 501 CMR 17.06, and the Parole Board.

(3) The Commissioner may set conditions which must be met prior to the prisoner's release on medical parole where doing so is necessary to ensure the prisoner is released to a facility or home that provides appropriate care in an appropriate facility, consistent with the requirements of the medical parole plan. Said conditions shall include, but are not limited to, enrollment in MassHealth, signing all necessary release forms, registration with the Sex Offender Registry Board, where required, and, acceptance by the Interstate Commissioner of Adult Offender Supervision under the Interstate Compact for the Supervision of Adult Offenders, where required, or where such acceptance is not received, the availability of an alternative placement. The Department shall work proactively and collaboratively with other states, departments, agencies, facilities, and individuals, including the prisoner and petitioner, to ensure the conditions are satisfied so the prisoner is released as expeditiously as possible.

(4) The conditions established by the Commissioner pursuant to 501 CMR 17.10(3) are distinct from the terms and conditions of supervision imposed by the Parole Board pursuant to 501 CMR 17.11(1), which take effect upon the prisoner's release from custody.

17.10: Notices

(1) Not less than 24 hours before a prisoner's release on medical parole, the Commissioner shall notify the following, in writing, of the prisoner's release date, and the terms and conditions of the scheduled release:

- (a) the district attorney for the jurisdiction where the offense resulting in the prisoner being committed to the correctional facility occurred;

17.10: continued

- (b) the department of the state police;
- (c) the police department in the city or town in which the prisoner shall reside; and
- (d) if applicable under M.G.L. c. 258B, the victims or the victims' family, through the Department's Office of Victim Services.

17.11: Parole Board Jurisdiction, Supervision, and Control

- (1) A prisoner granted release under M.G.L. c. 127, § 119A, and 501 CMR 17.09 shall be under the jurisdiction, supervision and control of the Parole Board, as if the prisoner has been paroled pursuant to M.G.L. c. 127, § 130.
- (2) Upon a favorable determination on the petition by the Commissioner, the Institutional Parole Officer/Transitional Parole Officer at the institution where the prisoner is held will generate a Medical Parole permit, which shall include the Parole Board's final terms and conditions of medical parole and apply through the date upon which the prisoner's sentence would have expired. The Parole Board may revise, alter, or amend the terms and conditions of a medical parole at any time.
- (3) The Institutional Parole Officer/Transitional Parole Officer will notify the Field Parole Officer of the scheduled date of release of the prisoner on medical parole by the Commissioner. A Victim Services Coordinator at the Parole Board will contact victims and victims' families to provide notification of terms and conditions of release set by the Parole Board.
- (4) A prisoner granted medical parole will be supervised in accordance with Parole Board policy. In the event that the conditions set by the Parole Board are inconsistent with existing Field Policies or Standard Operating Procedures concerning special conditions, the conditions for medical parole set by the Parole Board shall supersede those policies or procedures.
- (5) A prisoner granted medical parole will not see the Parole Board for a traditional parole release hearing. A prisoner granted medical parole will only go before the Parole Board in the event of a revocation hearing.

17.12: Revocation of Medical Parole

- (1) If a Field Parole Officer receives information that the prisoner failed to comply with a condition of the prisoner's medical parole, and the Field Parole Officer finds the violation does not constitute a technical violation as provided for in the Parole Board's Graduated Sanctions Policy, the Field Parole Officer shall obtain a warrant for immediate return to custody and pursue revocation proceedings. If a Field Parole Officer receives credible information that the terminal illness or permanent incapacitation has improved to the extent that the prisoner would no longer be eligible for medical parole under M.G.L. c. 127, § 119A, the Field Parole Officer shall obtain a warrant for immediate return to custody and pursue revocation proceedings.
- (2) If, following the revocation proceeding, the Parole Board determines that the prisoner violated a condition of medical parole, or the terminal illness or permanent incapacitation has improved to the extent that the prisoner would no longer be eligible for medical parole, the prisoner shall resume serving the balance of the sentence with credit given only for the duration of the medical parole that was served in compliance with all terms and conditions of medical parole.
- (3) Revocation of a prisoner's medical parole shall not preclude eligibility for medical parole in the future or for another form of release permitted by law.

17.13: Challenges to Medical Parole Decisions

- (1) Following the Commissioner's decision, a prisoner, Sheriff or superintendent aggrieved by the decision denying or granting a medical parole petition may petition for judicial review of the decision under M.G.L. c. 249, § 4. Following the Commissioner's decision, and upon request by the aggrieved party, the prisoner, or the petitioner, the Department will provide a copy of the administrative record, redacted where required under State and Federal medical privacy laws, or where necessary to protect the victim or the victim's family, within 15 business days of receipt of the request, following the Commissioner's decision.

17.13: continued

(2) A decision by the court under M.G.L. c. 249, § 4, affirming or reversing the Commissioner's grant or denial of medical parole shall not affect a prisoner's eligibility for any other form of release permitted by law, nor shall it preclude a prisoner's eligibility for medical parole in the future.

(3) Following the Commissioner's denial of medical parole, a prisoner may file a new petition, or request that the Commissioner reconsider his or her previous decision on the petition. In no event shall a new petition or request for reconsideration be acted upon later than the 66 days permitted under the medical parole statute.

17.14: Reporting

(1) The Commissioner and the Secretary shall file an annual report not later than March 1st with the clerks of the Senate and the House of Representatives, the Senate and House Committees on Ways and Means and the Joint Committee on the Judiciary detailing, for the prior fiscal year:

- (a) the number of prisoners in the custody of the Department or sheriffs who applied for medical parole and the race and ethnicity of each applicant;
- (b) the number of prisoners who have been granted medical parole and the race and ethnicity of each parolee;
- (c) the nature of the illness of the applicants for medical parole;
- (d) the counties to which the prisoners have been released;
- (e) the number of prisoners who have been denied medical parole, the reason for the denial and the race and ethnicity of each prisoner;
- (f) the number of prisoners who have petitioned for medical parole more than once;
- (g) the number of prisoners released who have been returned to the custody of the Department or the sheriff and the reason for each prisoner's return; and
- (h) the number of petitions for relief filed under M.G.L. c. 249, § 4.

(2) No information provided in this report shall include personally identifiable information of the prisoners.

17.15: Severability

If any article, section, subsection, clause, or phrase of 501 CMR 17.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Executive Office of Public Safety and Security, the Department of Correction, the Sheriff's Department or the Parole Board, or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause, or phrase of 501 CMR 17.00

REGULATORY AUTHORITY

501 CMR 17.00: M.G.L. c. 127, § 119A.