

Hawaii provides compassionate release to eligible incarcerated individuals with debilitating or terminal medical conditions through its **Medical Release** program.¹

MEDICAL RELEASE

I. ELIGIBILITY

Medical Condition – An incarcerated individual will be considered for Medical Release in four situations:

- When the individual has a terminal illness or disease.²
 - The Hawaii Paroling Authority defines a terminal condition as one where competent medical authorities indicate death is “imminent” but does not define imminent.³
 - The Hawaii Department of Public Safety Corrections Division⁴ (Corrections Division) provides two definitions for terminal illness: (1) a progressive and incurable medical condition that is expected to result in death⁵ and (2) a terminal illness with “a predictably poor prognosis.”⁶
- When the individual has a seriously debilitating condition for which treatment is not available in prison.⁷
 - The Corrections Division policy uses two slightly different definitions of a qualifying debilitating condition: (1) a persistent and/or progressive illness that “impedes” the person’s mental and/or physical capacities and compromises the quality of life;⁸ and (2) a debilitating and irreversible mental or physical condition that impairs the individual’s functional abilities to the extent that more appropriate care could be provided in a community setting.⁹
- When the individual is too ill or cognitively impaired to participate in rehabilitation and/or to be aware of punishment.¹⁰
- When the individual has a disease or condition that requires a complexity of treatment or a level of care that the Hawaii Department of Public Safety is unable to provide on a long-term basis.¹¹

Exclusions – No incarcerated individuals are automatically excluded from Medical Release consideration.

II. APPLICATION/REFERRAL

An incarcerated individual can initiate a Medical Release request, or Department of Public Safety (Department) physicians can recommend a Medical Release.¹² Requests submitted by individuals go through the same documentation and assessment process as those that physicians initiate.¹³

III. DOCUMENTATION AND ASSESSMENT

Memorandum: Primary Care Doctor – An incarcerated person’s primary care physician must draft a memorandum to the Health Care Division Medical Director requesting a Medical Release recommendation.¹⁴ The memo must include the following information:

- The individual’s name, state identification number (SID), and date of birth;¹⁵
- The individual’s diagnosis, with a description of the medical condition;¹⁶
- A “functional description” of the individual, meaning an assessment of the person’s ability to eat, perform personal care, ambulate, comprehend and recall information, and communicate an understanding of that information;¹⁷ and
- A designation of the Medical Release criteria the individual meets.¹⁸

Additional Information: Clinical Section Administrator (CSA) – The next step in the process varies slightly depending on whether the incarcerated person is subject to parole.

- **Subject to Parole** – For an individual subject to parole, the CSA requests an abbreviated Prescriptive Plan Update (PPU)¹⁹ from the appropriate correctional facility.²⁰ The PPU must include, at a minimum, the person’s risk assessment, prison behavior, participation in required programs, detention charges, sentences, conviction history, and custody status.²¹
- **Not Subject to Parole** – When an individual is serving a determinate sentence of less than one year and **not** subject to parole, the CSA requests a “report” (not a PPU) from the correctional facility that summarizes the person’s risk assessment, prison behavior, participation in required programs, detention charges, sentences, conviction history, and custody status.²²

The CSA attaches the PPU or report to the medical recommendation and sends the documents to the Medical Director.²³

Approval of Recommendation: Medical Director – The Medical Director approves or disapproves the Department physician’s recommendation²⁴ and forwards all recommendation requests to the Department’s Corrections Health Care Administrator.²⁵

- The Health Care Division can submit an updated Medical Release recommendation if a denied individual’s condition changes.²⁶

Packet Submission: Health Care Administrator – The Health Care Administrator submits all the relevant information with a cover memo recommending Medical Release to the Department Director, through the Deputy Director for Corrections.²⁷

Comments and Signature: Department Director and Deputy Director for Corrections – Both the Director and Deputy Director must sign the memo to acknowledge the recommendation.²⁸ The Director then forwards the recommendation, with comments, to the Hawaii Paroling Authority.²⁹

IV. DECISION-MAKING PROCESS

Decision-Maker – The Hawaii Paroling Authority decides whether to grant Medical Release based on the recommendation and information the Department submits.³⁰ There is no additional information on the Paroling Authority’s decision-making guidelines or process.

V. POST-DECISION

There is no information in Hawaii statutes or administrative rules or in Department or Paroling Authority policy on supervision, revocation, or other post-decision issues related to Medical Release.

VI. REPORTING/STATISTICS

The Paroling Authority is not required to report on how many Medical Releases it has granted or denied, and that information is not included in its annual reports.

- The Hawaii Paroling Authority did not respond to FAMM’s request for information on the number of individuals granted Medical Release in 2019 and 2020.

HAWAII COMPASSIONATE RELEASE **PRIMARY LEGAL SOURCES**

MEDICAL RELEASE

Regulations

Hawaii Administrative Rules, §§ 23-700-26 (c) and 23-700-29 (b) (dated January 1991 but listed as current as of December 1, 2021), available through the Hawaii Department of Public Safety, <https://dps.hawaii.gov/wp-content/uploads/2012/09/HPA-Administrative-Rules-Chapter-23-700.pdf>.

Agency Policy

Hawaii Department of Public Safety, Corrections Administration Policy and Procedures, Policy 10.1G.11-Medical Releases (2014), <http://dps.hawaii.gov/wp-content/uploads/2015/10/COR.10.1G.11.pdf>.

NOTES

* *Id.* means see prior note.

¹ Hawaii Administrative Rules (HAR), §§ 23-700-26 (c) and 23-700-29 (b); Hawaii Department of Public Safety, Corrections Division Policy and Procedures (COR Policy), Policy 10.1G.11-Medical Releases.

² HAR §§ 23-700-26 (c) and 23-700-29 (b); COR Policy 10.1G.11, § 3.

³ HAR §§ 23-700-26 (c) and 23-700-29 (b).

⁴ Note that the Department of Public Safety's Corrections Division used to be called the Corrections Administration, and many policies and publications still use the old name.

⁵ COR Policy 10.1G.11, § 2.2 (a).

⁶ *Id.* at § 3.

⁷ HAR §§ 23-700-26 (c) and 23-700-29 (b).

⁸ COR Policy 10.1G.11, § 2.2 (b).

⁹ *Id.* at § 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² Id.

¹³ Id. Note that the COR Policy also says an incarcerated individual may “submit a recommendation from a private licensed medical doctor” if it is obtained pursuant to Haw. Rev. Stat. § 353.13.5 (which permits individuals to retain their private doctor or psychologist for care at a correctional facility at their own expense). Id. at § 4.2. However, a Department physician must then evaluate that recommendation. Id. at § 4.3.

¹⁴ Id. at § 4.4.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at §§ 2.2 (e) and 4.4.

¹⁸ Id. at § 4.4.

¹⁹ Prescriptive Plan Updates (PPUs) are part of the Department’s case management process, where individuals are assessed so they may be connected to programs and activities that fit their needs and custody classification. Case management includes a “transitional phase” focusing on issues related to reintegration into the community, with planning and resources related to medical, social, and emotional well-being. See COR Policy 14.03-Prescriptive Program Plans (2020), <https://dps.hawaii.gov/wp-content/uploads/2012/10/COR.14.03.pdf>.

²⁰ COR Policy 10.1G.11, § 4.5.

²¹ Id.

²² Id. at § 4.6.

²³ Id. at § 4.5.

²⁴ Id. at § 4.7.

²⁵ Id.

²⁶ Id. at § 4.10.

²⁷ Id. at § 4.8.

²⁸ Id.

²⁹ Id. at § 4.9.

³⁰ Id.