

South Carolina state law provides compassionate release to eligible incarcerated individuals through **Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates**.¹

- South Carolina’s Board of Pardons and Paroles (Board) policy references two additional forms of compassionate release but provides little information on them: **Parole for Medical Reasons**,² also covering individuals who are terminally ill, and **Special Parole of Veterans for Psychiatric Treatment**.³
- In limited circumstances, the Director of the Department of Corrections (Department) may also grant a **Medical Furlough/Extension of Confinement** to incarcerated individuals who are terminally ill or who need medical treatment not provided in prison.⁴

MEDICAL PAROLE FOR TERMINALLY ILL, GERIATRIC, OR PERMANENTLY DISABLED INMATES

I. ELIGIBILITY

Medical Condition/Age – To be eligible for Medical Parole, an incarcerated individual must fall into one of the following categories:

- Permanently incapacitated is defined as no longer posing a public safety risk because of a medical condition that is not terminal but that renders the individual permanently and irreversibly incapacitated, as determined by a physician, and requires immediate and long-term residential care.⁵
- Terminally ill means that the individual has, as determined by a licensed physician, an incurable condition caused by illness or disease that will likely produce death within two years and that is so debilitating there is no public safety risk. Note that the condition must have been unknown at the time of sentencing or, since the time of sentencing, has progressed to render the individual terminally ill.⁶
- Geriatric means that the incarcerated individual is age 70 or older with a chronic infirmity, illness, or disease related to aging that a licensed physician has determined is incapacitating to the extent that the person is not a public safety risk.⁷

Exclusions – Only individuals who are eligible for “general” parole can be granted Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates. Based on a legal memo from the South Carolina Attorney General’s office, this requirement

means individuals sentenced to death or to life without the possibility of parole are excluded from consideration for Medical Parole.⁸

II. APPLICATION/REFERRAL

Health Services staff initiate the application process to refer individuals who meet any of the three categories of eligibility (permanently incapacitated, terminally ill, or geriatric) for Medical Parole.⁹

III. DOCUMENTATION AND ASSESSMENT

Initial Documentation: Health Services – Health Services staff complete the application and collect the following information:

- A statement from a licensed Department physician that the incarcerated individual meets the Medical Parole criteria;¹⁰
- A plan for the individual’s medical care and treatment outside of the prison;¹¹
- A notarized letter from the individual’s sponsor agreeing to assume all financial responsibility and care;¹² and
- A statement from the Medical Services Deputy Director concurring with the physician’s opinion and recommending Medical Parole.¹³

The application packet is then submitted to Central Classification through the Office of the Deputy Director of Medical Services.¹⁴

Criminal History Review: Central Classification – The Central Classification office conducts a review of the individual’s criminal history and institutional record and submits it through the Division Director of Classification and Inmate Records to the General Counsel’s Office and the Deputy Director of Operations.¹⁵

Review and Recommendation: Deputy Director of Operations – The Deputy Director of Operations reviews the application packet, and criminal and institutional history, and forwards a recommendation to the Department’s Director.¹⁶

Approval and Petition: Agency/Department Director – The Director reviews the application packet and, when agreeing that the individual is eligible for Medical Parole, approves the request and forwards everything with a Petition for Medical Parole to the South Carolina Board of Pardons and Paroles.¹⁷

IV. DECISION-MAKING PROCESS

Decision-Maker – The South Carolina Board of Pardons and Paroles is responsible for ordering the release of individuals who meet the eligibility guidelines.¹⁸

Decision Process – The Board’s parole orders must include “findings of fact” that support a legal and medical conclusion that an individual is permanently incapacitated, terminally ill, or geriatric (or a combination of those conditions) and does not pose a threat to self or society.¹⁹ Department policy states that Medical Parole applications are processed in the same manner as “normal” parole, including any required victim notifications and hearings.²⁰

Conditions – The Board’s parole order must include conditions for the individual’s supervision, participation in, and removal from Medical Parole.²¹

- An individual released on Medical Parole must reside in an “approved residence.”²² However, state law and Board policy do not provide examples of the types of residences or living environments that will be approved.

V. POST-DECISION

Denials and Appeal Rights – Neither the law nor Board rules reference anything specific about denials or appeal rights of individuals requesting Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates.²³

Supervision – Individuals on Medical Parole are under the supervision of the Department of Probation, Parole and Pardon Services,²⁴ and the Board’s parole order includes the supervision requirements.²⁵ There are annual reviews of the individuals’ status to ensure that they remain eligible for parole.²⁶

Revocation/Termination – If an individual becomes no longer eligible to participate in parole under these rules, a probation agent will issue a warrant or citation charging a violation of parole, and the Board will determine whether it must revoke Medical Parole.²⁷

VI. REPORTING/STATISTICS

The Department is required to submit annual reports to the South Carolina Legislature’s Sentencing Reform Oversight Committee. The reports provide cumulative information, reflecting the number of individuals granted Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates since 2011.

- The 2020 report says that since the law went into effect in 2011, the Department has referred just 30 individuals for Medical Parole due to being terminally ill, geriatric, or permanently disabled.²⁸ The Board granted Medical

Parole to 15 of the 30 individuals it considered. Of the remaining 15 requests for Medical Parole, the Board rejected nine and did not hear six.

- In response to FAMM’s request for information, the Department reported that in 2019 and 2020, only two individuals submitted requests for Medical Parole. Of those, one was granted and one was denied.²⁹

PAROLE FOR MEDICAL REASONS

South Carolina law provides an additional parole option for incarcerated individuals who are terminally ill, defined in the statute and Board of Pardons and Paroles (Board) policy as having a condition expected to result in death within one year.³⁰ This is in addition to Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates. It is not clear why there are two separate, but similar, parole rules for individuals who are terminally ill.

- The Parole for Medical Reasons statute and Board policy state that “terminally ill” means the individual is not expected to live for more than **one** year. That differs from the definition of “terminally ill” in the Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates statute, which says that the individual is not expected to live for more than **two** years.³¹

The Board may grant Parole for Medical Reasons one year or less before the date of the incarcerated person’s general parole eligibility.³² The Board requires that two licensed physicians state that the incarcerated individual is terminally ill and, “to a reasonable degree of medical certainty,” is not expected to live for more than one year.³³

The Board does not provide any additional information on Parole for Medical Reasons and does not publish statistics on how many individuals have been granted parole under this law.

SPECIAL PAROLE OF VETERANS FOR PSYCHIATRIC TREATMENT

The Board Manual includes Special Parole of Veterans for Psychiatric Treatment,³⁴ authorizing the Board to parole any incarcerated individual (1) who is a veteran; (2) who is otherwise eligible for parole; and (3) whom, due to a “mental condition,” the Board finds should not be released from confinement.³⁵

The Board can grant Special Parole for such individuals and release them to the custody of (1) the Department of Veterans Affairs for psychiatric treatment or (2) a

committee appointed to commit such individuals to a Department of Veterans Affairs medical facility.³⁶

There is no other information on the Board's administration of this program or its decision-making process, and there are no publicly available statistics on how many individuals, if any, have been released under this policy.

MEDICAL FURLOUGH/EXTENSION OF CONFINEMENT

Where there is "reasonable cause" to believe that an incarcerated individual who is terminally ill will "honor [the Director's] trust," the Director of the Department of Corrections (Department) may grant the individual a Medical Furlough, also referred to as "extending the limits of confinement," for an indefinite length of time.³⁷

I. ELIGIBILITY

Medical Condition – An incarcerated individual may be eligible for Medical Furlough if the person has less than one year to live.³⁸

Exclusions – An individual convicted of a violent crime is not allowed to participate in the Medical Furlough program "in the community where the offense was committed" unless all of the following people and entities recommend, in writing, to the Department Director that the incarcerated person be allowed to participate: the victim or victim's relatives, the law enforcement agency that employed the arresting officer, and the solicitor (called the district attorney in most states) in whose circuit the individual was convicted.³⁹

II. APPLICATION/REFERRAL

To begin the Medical Furlough process, the physician who determines that the incarcerated person's condition is terminal must write a statement indicating the illness and life expectancy. That statement, with any supporting diagnostic and treatment information, is submitted to the Medical Furlough Coordinator (Coordinator).⁴⁰

III. DOCUMENTATION AND ASSESSMENT

Initial Discussions: Medical Furlough Coordinator – The Coordinator first discusses the case with the Medical Director and then meets with the individual to confirm the desire to pursue a Medical Furlough. If so, the Coordinator will notify a designated family member.⁴¹

Sponsorship: Family Member – For an individual to be released on a Medical Furlough, a family member who lives in South Carolina must agree to be a sponsor.⁴²

Upon agreeing to sponsor the incarcerated individual, a family member must provide two documents:

- A notarized statement confirming provision of a place for the individual to live and assumption of complete financial responsibility for all living and medical expenses;⁴³ and
- A signed statement from a physician in the community agreeing to provide medical care and stating that the Department will not be held liable for any medical treatment costs.⁴⁴

Department policy states that Medical Services and the relevant Warden will conduct a home study as part of obtaining an approved residence plan.⁴⁵

Application Form: Medical Furlough Coordinator – After receiving the required documentation from the family sponsor, the Coordinator completes the *Medical Furlough Application*, obtains the incarcerated person’s signature, and forwards it to the appropriate Warden.⁴⁶

Recommendation: Warden – The Warden makes a recommendation and returns the completed application to the Coordinator.⁴⁷

Letter of Disposition: Medical Director – The Coordinator sends the completed application form, the physician’s statement, and sponsor documents to the Medical Director who prepares a “letter of disposition.” The Medical Director sends the letter and the complete packet of information to the Department’s State Classification staff.⁴⁸

Investigation: State Classification Staff⁴⁹ – The State Classification office conducts a review looking at the individual’s criminal history and institutional record⁵⁰ and initiates an investigation to determine community reaction to the proposed Medical Furlough, which includes contacting appropriate law enforcement entities and victims/witnesses.⁵¹ Based on that information, the State Classification office makes a recommendation and sends it, with all relevant documentation, “through” the Division Director of Classification and Inmate Records and the Director of Program Services to the Agency Director (sometimes referred to as the Department head) for approval or disapproval.⁵²

IV. DECISION-MAKING PROCESS

The Department of Corrections Director makes all final decisions regarding Medical Furlough requests. After making a decision to approve or disapprove an application, the decision and all the materials are sent back to the State Classification office. State Classification staff are responsible for sending the decision to the Medical Furlough Coordinator.⁵³

V. POST-DECISION

When an individual is approved for Medical Furlough, the Department's State Classification office contacts the Pre-Release Center closest to where the person will live. The Medical Furlough Coordinator facilitates the individual's departure from prison and coordinates with the family sponsor regarding any care, treatment, and medication instructions from the facility's medical staff.⁵⁴

Conditions – The following conditions are listed in one – but not both – of the Department policies that cover Medical Furlough:

- A change of residence is not permitted;⁵⁵
- Individuals must notify the Department regarding any hospital admissions and discharges;⁵⁶ and
- A Community Program Supervisor will make monthly home or hospital visits.⁵⁷

VI. REPORTING/STATISTICS

The Department is not required to report on how many individuals have been released on Medical Furlough due to a terminal illness. However, in response to FAMM's request for information, the Department provided the following information:

- In 2019, 37 individuals were referred to the Medical Furlough Coordinator; of those requests, three were granted.⁵⁸
- The Department did not have information on requests made in 2020.

SOUTH CAROLINA COMPASSIONATE RELEASE **PRIMARY LEGAL SOURCES**

MEDICAL PAROLE FOR TERMINALLY ILL, GERIATRIC, OR PERMANENTLY DISABLED INMATES

Statute

South Carolina Code of Laws, § 24-21-715 (2019), available through the South Carolina Legislature, <https://www.scstatehouse.gov/code/title24.php>.

Agency Policy

South Carolina Board of Pardons and Paroles, Policy and Procedure Manual (Nov. 2019), Part II-Parole Process, § D.4-Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates, <https://www.dppps.sc.gov/content/download/209320/4885043/file/Board+of+Paroles+and+Pardons+11062019.pdf>. Note that this section of the manual is a verbatim copy of the Medical Parole statute and does not provide any additional information.

South Carolina Department of Corrections, Operations Policy Manual, Policy/Procedure OP-21.04: Inmate Classification Plan (Oct. 22, 2020), § 30.2-Medical Parole, <http://www.doc.sc.gov/policy/OP-21-04.htm.pdf>.

PAROLE FOR MEDICAL REASONS

Statute

South Carolina Code of Laws, § 24.21.610 (2019), available through the South Carolina Legislature, <https://www.scstatehouse.gov/code/title24.php>.

Agency Policy

South Carolina Board of Pardons and Paroles, Policy and Procedure Manual (Nov. 2019), Part II-Parole Process, § D.3-Parole for Medical Reasons, <https://www.dppps.sc.gov/content/download/209320/4885043/file/Board+of+Paroles+and+Pardons+11062019.pdf>.

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SOUTH CAROLINA COMPASSIONATE RELEASE **PRIMARY LEGAL SOURCES**

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SPECIAL PAROLE OF VETERANS FOR PSYCHIATRIC REASONS

Agency Policy

South Carolina Board of Pardons and Paroles, Policy and Procedure Manual (Nov. 2019), Part II-Parole Process, § D.5-Special Parole of Veterans for Psychiatric Treatment, <https://www.dppps.sc.gov/content/download/209320/4885043/file/Board+of+Paroles+and+Pardons+11062019.pdf>.

MEDICAL FURLOUGH/EXTENSION OF CONFINEMENT

Statute

South Carolina Code of Laws, § 24-3-210 (B) (2019), available through the South Carolina Legislature, <https://www.scstatehouse.gov/code/title24.php>.

Agency Policy

South Carolina Department of Corrections, Health Services Operations Manual, Policy/Procedure HS-18.01: Specialized Health Services Programs (Sept. 1, 2008), § 4-Medical Furloughs for Terminally Ill Inmates, <http://www.doc.sc.gov/policy/HS-18-01.htm.pdf>.

South Carolina Department of Corrections, Operations Policy Manual, Policy/Procedure OP-21.04: Inmate Classification Plan (Oct. 22, 2020), § 30.1-Medical Furlough, <http://www.doc.sc.gov/policy/OP-21-04.htm.pdf>.

NOTES

* *Id.* means to see prior note.

¹ S.C. Code Ann. § 24-21-715; South Carolina Board of Pardons and Paroles, Policy and Procedure Manual (Nov. 2019), Part II-Parole Process, § D (4), Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates [note that the Parole Manual section is a verbatim copy of the statute and does not provide any additional information or details]; South Carolina Department of Corrections, Operations Policy Manual, Policy/Procedure (SCDC Policy) OP-21.04: Inmate Classification Plan (Oct. 22, 2020), § 30.2-Medical Parole.

² S.C. Code Ann. § 24.21.610; South Carolina Board of Pardons and Paroles, Policy and Procedure Manual (Nov. 2019), Part II-Parole Process, § D (3), Parole for Medical Reasons. Note that the Board of Pardons and Paroles also refers to incarcerated individuals with terminal illnesses on its Pardon Application webpage, stating individuals with terminal illnesses “may be considered [for a pardon] any time after they are afflicted with a terminal illness with a life expectancy of one year or less. The Board will decide, based upon the submissions and finding, if the evidence demonstrates a condition that meets these criteria. Two separate doctor’s statements documenting life expectancy must be attached to the application. All restitution must be paid in full.” There are no other references to this pardon authority in state law and no information on whether it has been used. See South Carolina Department of Probation, Parole and Pardon Services, Pardon Application, <https://www.dppps.sc.gov/Parole-Pardon-Hearings/Pardon-Application>; South Carolina Board of Pardons and Paroles, Policy and Procedure Manual (Nov. 2019), Part IV-Pardons, Reprieves, and Commutations, § A (1) (e).

³ South Carolina Board of Pardons and Paroles, Policy and Procedure Manual (Nov. 2019), Part II-Parole Process, § D (5), Special Parole of Veterans for Psychiatric Treatment.

⁴ S.C. Code Ann. § 24-3-210 (B); South Carolina Department of Corrections, Health Services Operations Manual, Policy/Procedure HS-18.01: Specialized Health Services Programs (Sept. 1, 2008), § 4, Medical Furloughs for Terminally Ill Inmates; South Carolina Department of Corrections, Operations Policy Manual, Policy/Procedure OP-21.04: Inmate Classification Plan (Oct. 22, 2020), § 30.1, Medical Furlough.

⁵ S.C. Code Ann. § 24-21-715 (A) (3); note that although the word “disabled” is in the title of the law, the text of the statute uses the word “incapacitated.” See also SCDC Policy OP-21.04, § 30.2.

⁶ S.C. Code Ann. § 24-21-715 (A) (1); SCDC Policy OP-21.04, § 30.2.

⁷ S.C. Code Ann. § 24-21-715 (A) (2); SCDC Policy OP-21.04, § 30.2.

⁸ Letter from Brendan McDonald, Assistant Attorney General, to Kela E. Thomas, Director, Department of Probation, Parole and Pardon Services (Aug. 24, 2015), available at <http://2hsvz0l74ah31vgcm16peuy12tz.wpengine.netdna-cdn.com/wp-content/uploads/2015/08/00733624.pdf>.

⁹ SCDC Policy OP-21.04, § 30.2.1. The application is SCDC Form 27-17, *Application for Medical Furlough/Medical Parole*. The Department does not make the form available to the public on its website. *Id.* at § 30.2.2.

¹⁰ *Id.* at § 30.2.2.

¹¹ *Id.* at § 30.2.1.

¹² Id. at § 30.2.2. Note there is no additional information in this policy on sponsor requirements.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at § 30.2.3.

¹⁶ Id.

¹⁷ Id. Note that the Director forwards the Petition with a cover letter from the Department's General Counsel.

¹⁸ S.C. Code Ann. § 24-21-715 (B).

¹⁹ Id. at (C).

²⁰ SCDC Policy OP-21.04, § 30.2.4. The general parole hearing rules are in the Board of Pardons and Paroles Policy and Procedure Manual (Board Manual) (2015), Part II, § A.

²¹ S.C. Code Ann. § 24-21-715 (C).

²² Id. at (D).

²³ The rules for denials of "normal" parole are available in the Board Manual, Part II, § E. There do not appear to be any exceptions for individuals petitioning for Medical Parole for Terminally Ill, Geriatric, or Permanently Disabled Inmates.

²⁴ S.C. Code Ann. § 24-21-715 (D).

²⁵ Id. at (C).

²⁶ Id. at (E).

²⁷ S.C. Code Ann. § 24-21-715 (E); Board Manual, Part III, § A.

²⁸ South Carolina Department of Probation, Parole and Pardon Services, Report to the Sentencing Reform Oversight Committee (2020), 19, <https://www.dppps.sc.gov/content/download/231189/5384968/file/2020+SR0C+Report+FINAL.pdf>.

²⁹ Email from Anita Dantzler, Public Information Director, South Carolina Department of Probation, Parole and Pardon Services, to FMM (April 22, 2021) (on file with FMM, Office of the General Counsel).

³⁰ S.C. Code Ann. § 24.21.610 (2019); Board Manual, Part II, § D (3).

³¹ Id.

³² Id.

³³ Board Manual, Part II, § D (3). Note that one of these medical opinions must come from a Department of Corrections physician; the other may come from any other licensed physician.

³⁴ Id. at § D (5).

³⁵ Id.

³⁶ Id.

³⁷ S.C. Code Ann. § 24-3-210 (B); South Carolina Department of Corrections, Health Services Operations Manual, Policy/Procedure (SCDC Policy) HS-18.01: Specialized Health Services Programs (Sept. 1, 2008), § 4, Medical Furloughs for Terminally Ill Inmates; South Carolina Department of Corrections, Operations Policy Manual, Policy/Procedure (SCDC Policy) OP-21.04: Inmate Classification Plan (Oct. 22, 2020), § 30.1, Medical Furlough.

³⁸ SCDC Policy HS-18.01, § 4.1; SCDC Policy OP-21.04, § 30.1.

³⁹ S.C. Code Ann. § 24-3-210 (D).

⁴⁰ SCDC Policy HS-18.01, § 4.2; SCDC Policy OP-21.04, § 30.1.

⁴¹ SCDC Policy HS-18.01, §§ 4.3 and 4.4.

⁴² SCDC Policy OP-21.04, § 30.1.

⁴³ SCDC Policy HS-18.01, § 4.5.1.

⁴⁴ Id. at § 4.5.2.

⁴⁵ SCDC Policy OP-21.04, § 30.1.

⁴⁶ SCDC Policy HS-18.01, § 4.6. The Medical Furlough Application is SCDC Form 27-17. The Department has not made the form publicly available on its website.

⁴⁷ Id. at § 4.7.

⁴⁸ Id. at §§ 4.8 and 4.9.

⁴⁹ Note that SCDC policy uses both “State Classification” and “Central Classification” to refer to this office.

⁵⁰ SCDC Policy OP-21.04, § 30.1.2.

⁵¹ SCDC Policy HS-18.01, § 4.10.1; SCDC Policy OP-21.04, § 30.1.2.1.

⁵² SCDC Policy HS-18.01, § 4.10.2. Note that SCDC Policy OP-21.04, § 30.1.2.3 details a process that varies slightly from the Medical Furlough policy at this point, stating that the application packet must go to the General Counsel’s office and the Deputy Director of Operations before being forwarded to the Agency Director. The Agency Director will consider the recommendations of law enforcement, victims, and prison staff.

⁵³ SCDC Policy HS-18.01, § 4.11.

⁵⁴ Id. at §§ 4.12 and 4.13.

⁵⁵ SCDC Policy OP-21.04, § 30.1.3.

⁵⁶ Id. at § 30.1.6. Note this policy also says that incarcerated individuals must be in their approved residence between the hours of 11 p.m. and 6 a.m. It is not clear if this requirement applies only to individuals released on temporary furloughs or also for those released on Medical Furlough due to a terminal illness. Id. at § 30.1.5.

⁵⁷ Id. at § 30.1.7.

⁵⁸ Email from the South Carolina Department of Corrections FOIA Office, to FMM (April 29, 2021) (on file with FMM, Office of the General Counsel).