

Florida provides compassionate release to eligible incarcerated individuals who are permanently incapacitated or terminally ill through (1) **Conditional Medical Release**¹ and (2) **Medical Furlough** (also referred to as a “Type A” Furlough).²

CONDITIONAL MEDICAL RELEASE

I. ELIGIBILITY

Medical Condition – An incarcerated individual who is permanently incapacitated or terminally ill may be considered for Conditional Medical Release.³

- “Permanently incapacitated” is defined as having a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, results in permanent and irreversible physical incapacitation to the extent that the person is not a danger to self or others.⁴
- “Terminally ill” means the individual has a condition caused by injury, disease, or illness that, to a reasonable degree of medical certainty, renders the person ill to the extent there can be no recovery, death is imminent, and there is no danger to self or others.⁵

Exclusions – Individuals sentenced to death are not eligible for Conditional Medical Release.⁶

II. APPLICATION/REFERRAL

The Department of Corrections (Department) is responsible for identifying individuals who may be eligible for release.⁷ The Chief Health Officer of each institution makes the initial recommendations to the Department’s Director of Health Services.⁸

III. DOCUMENTATION AND ASSESSMENT

Review and Referral: Director of Health Services – After reviewing the Chief Health Officer’s recommendation and all relevant medical documentation, the Director of Health Services will take one of the following actions:⁹

- Reject the recommendation because the incarcerated individual does not meet the eligibility criteria;
- Defer a referral to the Florida Commission on Offender Review (Commission) because more medical information or additional investigation of the case is needed; or

- Agree that the individual meets the medical criteria and refer the case to the Commission for consideration.

Upon approval of the recommendation, the Director of Health Services forwards it to the Commission for a decision.¹⁰ The referral must include (1) the clinical report documenting that the incarcerated individual is permanently incapacitated or terminally ill, as defined in the Florida Statutes,¹¹ and (2) a “verifiable” release plan that includes necessary medical care.¹²

IV. DECISION-MAKING PROCESS

Decision-Maker – The Florida Commission on Offender Review makes the decision to approve or deny Conditional Medical Release.¹³

Process – When the Commission receives a referral for Conditional Medical Release from the Department, the Commission Clerk docket the case for action.¹⁴

- Notice – The Commission must provide victims with advance notice any time a Conditional Medical Release case is placed on the docket for action.¹⁵

Hearing – During most of 2020 and 2021, all Conditional Medical Release hearings were held by conference call due to COVID-19.¹⁶ The Commission resumed in-person hearings in September 2021 but is making a conference call line available for those who still wish to attend by teleconference.¹⁷

- Preparation – The Commission can take any and all of the following actions to prepare for a hearing: (1) Conduct an investigation on any aspect of the case; (2) ask the Department’s Office of Health Services for additional medical evidence and medical examinations; and/or (3) continue the case to obtain additional information or verification of the individual’s release plan.¹⁸
- Testimony – Victims may provide written or oral statements to the Commission regarding the granting, denying, or revoking of an incarcerated individual’s Conditional Medical Release.¹⁹

Decision – The Commission’s decision to approve or disapprove a Conditional Medical Release is based upon the information the Department submits in support of its recommendation and a review of the individual’s central office file.²⁰ A majority of those present and voting must make the decision.²¹

- Notice of Decision – Victims who appear before the Commission or submit written statements are to be notified “within a reasonable period of time” of Commission action.²² Victims who want to know the Commission’s decision about a specific incarcerated individual but do not want to make or submit a statement can also be notified of the Commission’s decision.²³

- Release Postponement/Rescission – Under certain circumstances, an individual who has been granted Conditional Medical Release may have the release date postponed or rescinded, such as when there is a disciplinary issue before the actual release date.²⁴

Pre-Release Planning – The Conditional Medical Release rules reference the need for release plans that include necessary “medical care and attention.”²⁵ However, they do not provide any detailed guidance or forms for developing those plans.

- Note that the Commission can postpone an individual’s Conditional Medical Release if it finds that the person’s release plan is “unsatisfactory.”²⁶

Conditions – The Commission has the sole authority for deciding appropriate conditions for each individual’s release.²⁷

- Periodic medical evaluations at Commission-specified intervals are required for people granted Conditional Medical Release.²⁸
- In addition, individuals on Conditional Medical Release supervision are subject to a long list of “standard” conditions, such as reporting whether they leave the county or change their residence.²⁹
- They may also be required to abide by “special conditions” established at the Commission’s discretion.³⁰

V. POST-DECISION

Denials and Appeal Rights – There is no information in the statute or administrative code about the right to appeal a Commission denial of Conditional Medical Release.

Effect on Parole and Other Release Eligibility – Individuals being considered for Conditional Medical Release may still be considered for any other parole/release for which they are eligible.³¹

Termination/Revocation

- Term – A formerly incarcerated individual’s Conditional Medical Release is for the remainder of the sentence, without any reduction of the sentence for good behavior.³²
- Reasons for Revocation – If a medical condition improves to the extent that an individual no longer meets the Conditional Medical Release criteria, the Commission may order a return to custody and a revocation hearing.³³ If release is revoked due to medical improvement, the individual must serve the balance of the sentence with credit for the time served on Conditional Medical

Release.³⁴ The Commission may also revoke Conditional Medical Release if the individual violates any of the release conditions.³⁵

- Revocation Hearings – The Commission will hold a revocation hearing before making a final revocation decision.³⁶ If the individual’s Conditional Medical Release is revoked, the Commission will determine whether the person is eligible for any other form of release.³⁷

VI. REPORTING/STATISTICS

In response to FAMM’s request for information on the number of individuals granted Conditional Medical Release, the Florida Commission on Offender Review reported the following information:³⁸

- In 2019, it granted 45 individuals Conditional Medical Release and denied 52 individuals.
- In 2020, it granted 35 individuals Conditional Medical Release and denied 33 individuals.

MEDICAL FURLOUGH

The Florida Department of Corrections (Department) grants incarcerated individuals furloughs for a variety of reasons, including Medical Furloughs for those with terminal illnesses (referred to in Department rules as “Type A” furloughs).³⁹ Although most furloughs are typically only for a few days, that limitation does not appear to always apply to Medical Furloughs, particularly to those granted on the basis of a terminal illness.

I. ELIGIBILITY

Medical Condition – An individual may be considered for a Medical (Type A) Furlough if the person “in all medical probability” (1) is not expected to live more than six months from the date of the furlough request or (2) is permanently incapacitated to such an extent that it is not reasonably foreseeable that the individual could perpetrate a crime.⁴⁰

Exclusions – The Department does not list any individuals as excluded from Medical Furlough eligibility.

II. APPLICATION/REFERRAL

To be considered for Medical Furlough, an incarcerated individual must be recommended by the Department’s Chief Health Officer, Regional Health Services Director, and the Classification Team.⁴¹

III. DOCUMENTATION AND ASSESSMENT

The Assistant Secretary for Health Services considers the recommendation, relevant medical information, and eligibility criteria.⁴² If the Assistant Secretary endorses the Medical Furlough recommendation, it is forwarded to the “approving authority.”⁴³

IV. DECISION-MAKING PROCESS

Decision-Maker – The approving authority – defined in Department rules as the Secretary of the Department of Corrections or a designee (i.e., the Warden of a “major institution” or a “select exempt service status employee” with oversight responsibility of a community correctional center)⁴⁴ – conducts a final review of any security issues and makes the final determination whether to grant Medical Furlough.⁴⁵

V. POST-DECISION

When the approving authority grants an individual Medical Furlough, the Classification Specialist develops a plan for community supervision and makes arrangements for monitoring the individual’s “progress.”⁴⁶

- Monitoring includes any changes in the individual’s medical condition or any violations of the general furlough rules. Any changes or violations are reported to the approving authority of the facility in which the individual was previously housed.⁴⁷
- The approving authority is authorized to terminate a Medical Furlough at any time for noncompliance with conditions or changes in the individual’s medical condition.⁴⁸

VI. REPORTING/STATISTICS

The Department did not respond to FAMM’s request for information on how many individuals were approved for Medical Furlough in 2019 and 2020.

FLORIDA COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

CONDITIONAL MEDICAL RELEASE

Statute

Florida Statutes § 947.149 (2021), available through the Florida Legislature,
http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0947/Sections/0947.149.html.

Regulations

Florida Administrative Code § 23-24.020(2021), available through the Florida Secretary of State,
<https://www.flrules.org/gateway/ruleNo.asp?id=23-24.020>.

Florida Administrative Code § 23-24.025 (2021), available through the Florida Secretary of State,
<https://www.flrules.org/gateway/ruleno.asp?id=23-24.025>.

Florida Administrative Code § 23-24.030, available through the Florida Secretary of State,
<https://www.flrules.org/gateway/ruleNo.asp?id=23-24.030>.

Florida Administrative Code § 23.24.040 (2021), available through the Florida Secretary of State,
<https://www.flrules.org/gateway/ruleNo.asp?id=23-24.040>.

Florida Administrative Code § 23.24.050 (2021), available through the Florida Secretary of State,
<https://www.flrules.org/gateway/ruleNo.asp?id=23-24.050>.

Florida Administrative Code § 33-401.201 (1) (2021), available through the Florida Secretary of State,
<https://www.flrules.org/gateway/RuleNo.asp?ID=33-401.201>.

MEDICAL FURLOUGH

Regulations

Florida Administrative Code § 33-601.603 (7) (b) (2021),
<https://www.flrules.org/gateway/RuleNo.asp?title=CLASSIFICATION%20AND%20CENTRAL%20RECORDS&ID=33-601.603>.

NOTES

* *Id. means see prior note.*

¹ Fla. Stat. § 947.149.

² Fla. Admin. Code § 33-601.603 (7) (b).

³ Fla. Stat. §§ 947.149 (1) (a) and (b); Fla. Admin. Code § 23-24.020 (1); Fla. Admin. Code § 33-401.201 (1).

⁴ Fla. Stat. § 947.149 (1) (a).

⁵ *Id.* at (1) (b).

⁶ Fla. Stat. § 947.149 (2); Fla. Admin. Code §§ 23-24.020 (1) and 33-401.201 (4).

⁷ Fla. Stat. §§ 947.149 (2) and (3); Fla. Admin. Code § 33-401.201 (1).

⁸ Fla. Admin. Code § 33-401.201 (2).

⁹ *Id.* at (2) (a) through (2) (c).

¹⁰ Fla. Admin. Code § 23-24.020 (1).

¹¹ *Id.* at (1) (a).

¹² *Id.* at (1) (b).

¹³ Fla. Stat. § 947.149 (3); Fla. Admin. Code § 23-24.020 (2).

¹⁴ Fla. Admin. Code § 23-24.020 (2).

¹⁵ Fla. Admin. Code §§ 23-24.020 (4) and 23-24.025 (1). Note that “victim” includes the victim, relative of a minor who is a victim, relative of a homicide victim, victim representative, or victim advocate. Fla. Admin. Code § 23-24.025 (1).

¹⁶ Florida Commission on Offender Review, Conditional Medical Release Cases Update, <https://www.fcor.state.fl.us/docs/release/CMRCases.pdf>.

¹⁷ Florida Commission on Offender Review, Parole and Conditional Medical Release Hearings, <https://www.fcor.state.fl.us/>.

¹⁸ Fla. Stat. § 947.149 (3); Fla. Admin. Code §§ 23-24.020 (3) and 33-401.201 (3).

¹⁹ Fla. Admin. Code §§ 23-24.025 (2) through (4).

²⁰ Fla. Admin. Code § 23-24.020 (3).

²¹ *Id.* at (2). Note that the Commission has only three members. See Florida Commission on Offender Review, Organization, <https://www.fcor.state.fl.us/>.

²² Fla. Admin. Code § 23-24.025 (6).

²³ Id. at (5).

²⁴ Fla. Admin. Code §§ 23-24.040 (1) through (7), (9) through (10).

²⁵ Fla. Admin. Code § 23-24.020 (1) (b).

²⁶ Fla. Admin. Code § 23-24.040 (1). The Commission’s investigator can obtain testimony from an incarcerated individual and any witnesses as to whether alternate release plans exist that the Commission can consider. Id. at (8).

²⁷ Fla. Stat. § 947.149 (3).

²⁸ Id. at (4).

²⁹ See Fla. Admin. Code §§ 23-24.030 (1) (a) through (1) (m) for the list of standard conditions.

³⁰ Id. at (2).

³¹ Fla. Stat. § 947.149 (2).

³² Id. at (4).

³³ Fla. Stat. § 947.149 (5) (a). See also Fla. Admin. Code § 23-24.030 (1) (m).

³⁴ Fla. Stat. § 947.149 (5) (a). Individuals do not forfeit “gain-time” accrued prior to a Conditional Medical Release. Id.

³⁵ Fla. Stat. § 947.149 (5) (b). See Fla. Stat. § 947.141 for revocation hearing guidelines when individuals violate their release conditions; unlike revocations for medical improvement, for these violations, “gain-time” may be forfeited.

³⁶ Fla. Admin. Code §§ 23-24.050 (1) through (6). See also Fla. Stat. § 947.141.

³⁷ Fla. Admin. Code § 23-24.050 (6) (o).

³⁸ Email from the Public Records Unit, Office of the General Counsel, Florida Commission on Offender Review, to Famm (June 24, 2021) (on file with Famm, Office of the General Counsel).

³⁹ Fla. Admin. Code § 33-601.603 (7) (b).

⁴⁰ Id. at (7) (b) (1).

⁴¹ Id. at (7) (b) (2).

⁴² Id.

⁴³ Id.

⁴⁴ Id. at (2) (c).

⁴⁵ Id. at (7) (b) (2).

⁴⁶ Id. at (7) (b) (2), (c), and (d).

⁴⁷ Id. at (7) (d) and (e).

⁴⁸ Id. at (7) (f).