Mississippi provides compassionate release to eligible prisoners with serious medical conditions through **Conditional Medical Release**\(^1\) and to prisoners who are age 60 or older who meet specific eligibility criteria through a **Geriatric Parole** provision in the general parole rules.\(^2\)

### CONDITIONAL MEDICAL RELEASE

#### I. ELIGIBILITY

**Medical Condition** - To be eligible for Conditional Medical Release, a prisoner must be suffering from a significant and permanent physical medical condition with no possibility of recovery,\(^3\) described as a condition that is “incapacitating, totally disabling, and/or terminal in nature.”\(^4\)

- The Conditional Medical Release statute appears to require that a prisoner be “bedridden” in order to qualify for Conditional Medical Release.\(^5\) However, the Department of Corrections (Department) website does not list this as a requirement.\(^6\)

- The Department provides examples of conditions that meet the medical eligibility criteria: a cancer diagnosis appropriate for hospice care; end-stage lung disease; end-stage heart failure; severe stroke with disabling neurologic manifestations; end-stage liver disease; end-stage AIDS; advanced Alzheimer’s disease; and severe, progressive neurological disease, including paraplegia, quadriplegia.\(^7\)

- The Department also states that “[m]edical conditions or diseases that are chronic, but stable, and are being addressed by ongoing medical intervention or therapy are not considered to be ‘significant permanent physical medical conditions’ and are not eligible for conditional medical release.”\(^8\)

**Exclusions** -

- Prisoners convicted of “sex crimes” are not eligible for Conditional Medical Release.\(^9\)

- “Violent offenders” must serve at least one year of their sentence before being considered for Conditional Medical Release.\(^10\)

**Other Eligibility Criteria** - In addition, for a prisoner to be eligible, the Department must determine that (1) further incarceration serves no rehabilitative purposes and (2) the state will incur unreasonable expenses if the prisoner continues to be incarcerated.\(^11\)
**II. APPLICATION/REFERRAL**

Mississippi law is silent on how the Conditional Medical Release process is started or how a prisoner (or someone on the prisoner’s behalf) can apply. The Department’s Medical Division website says that prisoners should bring their medical “concerns” to their individual treating doctor and that the prisoner’s eligibility is the responsibility of his or her treating physician.

**III. DOCUMENTATION AND ASSESSMENT**

The treating physician communicates the prisoner’s medical information to the Department’s Chief Medical Officer.

**IV. DECISION-MAKING PROCESS**

**Decision Maker** - The decision to grant a Conditional Medical Release is ultimately made by both the Department’s Chief Medical Officer and the Commissioner.

- The Chief Medical Officer must certify that the prisoner (1) meets the medical eligibility criteria; (2) that further incarceration serves no rehabilitative purpose; and (3) the state will incur unreasonable expenses as a result of his or her continued incarceration.

- The Chief Medical Officer and Commissioner decide whether to grant Conditional Medical Release and transfer the prisoner to the Division of Community Corrections for the remainder of his or her sentence.

There is also no information in the statute or Department policy on additional procedures, victim input, or time frames related to the release decisions.

**Conditions** - The Department references “certain conditions” that will apply when a prisoner is granted a Conditional Medical Release, but does not include examples of what those are or cross-reference another policy document.

**Discharge Plan** - The Department states that when “nonviolent” prisoners who are bedridden are placed on Conditional Medical Release, the state is not responsible or liable for any medical costs that are incurred. Note that it does not reference who is responsible for medical costs if the individual is a “violent offender” placed on Conditional Medical Release.

Other than this one statement, the statute and the Department’s website are silent regarding any pre-release planning or assistance in obtaining Medicaid or other financial aid for medical costs.
V. POST-DECISION

Denials and Appeal Rights - State law and Department policy are silent on whether a prisoner can appeal the denial of Conditional Medical Release.

Effect on Parole or Other Release Eligibility - State law and Department policy are silent as to whether consideration for Conditional Medical Release affects parole or other release eligibility.

Supervision - Prisoners granted Conditional Medical Release are supervised by the Division of Community Corrections for the remainder of their sentence.¹⁹

- Note that the Department’s web page says a prisoner granted Conditional Medical Release is “transferred” to Community Corrections, not actually released from custody.²⁰ This can create issues for prisoners with serious medical conditions who need to apply for Medicaid or find appropriate medical placements but can only do so if they are not in custody.

Revocation/Termination - A Conditional Medical Release can be revoked and a former prisoner returned and placed in “actual custody,” if an order or condition of the release is violated.²¹

- The statute specifically states that former prisoners who are no longer “bedridden” will be returned and placed in custody.²² Note that the Department’s information does not say that a prisoner must be bedridden in order to be granted a Conditional Medical Release.

VI. REPORTING/STATISTICS

The Department says that between 2004 (when the Conditional Medical Release Program started) and 2014, there has been an estimated total “cost avoidance” of at least $11 million through the release of about 120 terminally ill and bedridden prisoners.²³

GERIATRIC PAROLE

I. ELIGIBILITY

Age/Time Served - To be eligible for parole based on advanced age, a prisoner must be age 60 or older and have served at least 10 years of his or her sentence.²⁴

Exclusions - Prisoners are excluded from consideration for Geriatric Parole if they were sentenced:

- As a habitual offender;²⁵
- For a crime of violence;²⁶
• For an offense that specifically prohibits parole release;\textsuperscript{27}

• For trafficking in controlled substances;\textsuperscript{28} or

• For a sex crime.\textsuperscript{29}

In addition, the prisoner’s time served (even if they meet the 10-year requirement) must be at least one-fourth of their sentences to be eligible for release under the Geriatric Parole rule.\textsuperscript{30}

II. APPLICATION/REFERRAL

Consideration for parole for prisoners age 60 and older under the Geriatric Parole provisions is supposed to be automatic, with a hearing date scheduled when the prisoner is within 30 days of the month of his or her parole eligibility date.\textsuperscript{31}

III. ADDITIONAL INFORMATION

All of the general parole rules apply to the documentation/assessment, decision-making, and post-decision processes for prisoners age 60 and older who are seeking Geriatric Parole.\textsuperscript{32}

The parole statute requires the Parole Board to collect information on the numbers of individuals released on parole; however, it is not required to provide the ages of those paroled.

NOTES

\textsuperscript{1} Miss. Code Ann. § 47-7-4. Note that the Mississippi Department of Corrections does not publish its policies and procedures on the Department’s website (http://www.mdoc.ms.gov), and states that they can only be obtained by contacting the Department in writing. See http://www.mdoc.ms.gov/Admin-Finance/Documents/PublicAccessPolicies.pdf. As of June 1, 2018, the Department has not responded to our request for policies and procedures related to Conditional Medical Release. Thus, the information in this report is based solely on the statute.

\textsuperscript{2} Miss. Code Ann. § 47-7-3.

\textsuperscript{3} Miss. Code Ann. § 47-7-4.

\textsuperscript{4} Mississippi Department of Corrections, Medical Division, Medical Concerns FAQs, http://www.mdoc.ms.gov/Inmate-Info/Pages/Medical-Concerns-FAQ.aspx.

\textsuperscript{5} Miss. Code Ann. § 47-7-4.

\textsuperscript{6} Medical Concerns FAQs, supra note 3.

\textsuperscript{7} Mississippi Department of Corrections, Medical Division web page, http://www.mdoc.ms.gov/Divisions/Pages/Medical-Division.aspx.

\textsuperscript{8} Id.

\textsuperscript{9} Miss. Code Ann. § 47-7-4.

\textsuperscript{10} Id.

\textsuperscript{11} Id.

\textsuperscript{12} See Medical Concerns FAQs, supra note 3.

\textsuperscript{13} Id.

\textsuperscript{14} See Medical Division web page, supra note 6.

\textsuperscript{15} Miss. Code Ann. § 47-7-4. There is no information available as to what happens if the Commissioner and the Chief Medical Officer disagree.
16 Id.
17 See Medical Division web page, supra note 6.
18 Miss. Code Ann. § 47-7-4.
19 Id.
20 Medical Division web page, supra note 6.
21 Id.
22 Id.
24 Miss. Code Ann. § 47-7-3 (1) (g) (ii).
26 Id. at (ii) (2), referencing Miss. Code Ann. § 97-3-2.
27 Id. at (ii) (3).
28 Id. at (ii) (4), referencing Miss. Code Ann. § 41-29-139 (f).
29 Id. at (ii) (5).
30 Id. at (ii) (6).
31 Id. at 47-7-3- (3).
32 See general parole rules at Miss. Code Ann. §§ 47-7-3, 47-7-3.1, and 47-7-27. See also the Mississippi Parole Board’s website at http://www.mdoc.ms.gov/About/Pages/Parole-Board.aspx.