New Mexico provides compassionate release to eligible prisoners who are permanently incapacitated, terminally ill, or age 65 and older with an illness related to aging, through its Medical and Geriatric Parole program.¹

**MEDICAL AND GERIATRIC PAROLE**

**I. ELIGIBILITY**

Medical Condition/Age - To be eligible for Medical and Geriatric Parole, a prisoner must be:

- *Permanently Incapacitated*, defined as permanently and irreversibly physically incapacitated because of an existing medical condition;² or

- *Terminally Ill*, defined as having an incurable condition caused by illness or disease that will, “within reasonable medical judgment,” produce death within six months;³ or

- *Geriatric*, defined as being 65 years of age or older, and suffering from a chronic infirmity, illness, or disease related to aging.⁴

Exclusions - Prisoners who are serving a sentence for first-degree murder are not eligible for Medical and Geriatric Parole.⁵ Note that a prisoner may be considered for Medical or Geriatric Parole even if he or she has not served his or her minimum sentence.⁶

**II. APPLICATION/REFERRAL**

Applications - To start the process, any of the following individuals can submit the Geriatric/Incapacitated/ Terminally Ill Parole Consideration Application⁷ through the prisoner’s Classification Officer: (1) the prisoner; (2) a family member of the prisoner; (3) the prisoner’s attorney; or a (4) New Mexico Corrections Department (Department) health care provider.⁸

Duty to Inform Prisoners About Medical and Geriatric Parole - Note that the Department is required to proactively provide information on Medical and Geriatric Parole to prisoners:

- On an annual basis, Classification Officers are must provide all prisoners over the age of 65 with a copy of the Department policy on Medical and Geriatric Parole and the applicable attachments and forms.⁹

- Prisoners arriving at a long-term care or geriatric unit are provided with a copy of the Medical and Geriatric Parole policy and forms during the orientation process and asked to sign an acknowledgement form stating they received it.¹⁰
• A copy of the policy must be placed and maintained in the law library at each correctional institution.\textsuperscript{11}

**III. DOCUMENTATION AND ASSESSMENT**

There are numerous steps involved in submitting a Medical and Geriatric Parole application to the New Mexico Parole Board (Board).

**Review and Recommendation/Classification Officer** - The prisoner’s Classification Officer reviews the completed application form, makes a recommendation, attaches any relevant documents, and forwards the application to the Medical Services Unit.\textsuperscript{12}

**Medical Records/Vendor’s Medical Director** - The health care vendor’s Medical Director reviews the application, evaluates the health status of the individual (including a review of all diagnostic tests and consultation reports), attaches any relevant medical records, and provides a “letter of review” to the Department Medical Director.\textsuperscript{13}

**Review and Recommendations/Department Medical Director** - The Department’s Medical Director reviews the documentation, makes recommendations about the prisoner’s condition and “future medical needs,” and forwards the documents to the Mental Health Unit.\textsuperscript{14}

**Review and Recommendations/Mental Health Unit** - The Mental Health Unit reviews the application, “particularly with respect to whether the prisoner would constitute a danger to him/herself or society if released” and makes recommendations, attaches any relevant reports, and forwards the application to the Institutional/Unit Classification Supervisor.\textsuperscript{15}

**Progress Report/Classification Supervisor** - The Institutional/Unit Classification supervisor reviews the application to make sure it is complete, attaches a “progress report” and relevant documents, and forwards everything to the facility’s Warden.\textsuperscript{16} The Classification Supervisor is also responsible for ensuring that the prisoner participates in “accelerated reentry planning.”\textsuperscript{17}

**Review and Recommendations/Warden** - The Warden reviews the application, documentation, and recommendations and adds his or her comments. He or she then forwards the original application packet to the originating Classification Officer.\textsuperscript{18}

**Worksheet Completion/Classification Officer** - The Classification Officer (or Warden-designated committee) reviews the packet, completes the *Medical Parole Application Worksheet*,\textsuperscript{19} and sends the complete packet to the Department Secretary for comment.\textsuperscript{20}

**Comment/Secretary** - The Secretary adds any relevant comments, sends the packet to the Board for review, and sends a copy of all the materials to the Probation and Parole Division (PPD) Field Office “for immediate investigation.”\textsuperscript{21}
Investigation/Probation and Parole Division - The PPD investigates all parole plans to determine the prisoner’s proposed residence, means of support and “accessibility” of support systems, the level of supervision required, and treatment factors. It then forwards its investigation report to the Board and provides a copy to the prisoner’s Classification Officer before the Board holds a hearing on the prisoner’s request.

IV. DECISION-MAKING PROCESS

Decision Maker - The New Mexico Parole Board is responsible for deciding to grant or deny Medical or Geriatric Parole.

Decision Process - Within 30 days of receiving an application and supporting documentation from the Corrections Department, the Board must decide whether to grant Medical or Geriatric Parole.

- **Factors** - To be eligible, the Board must find that (1) paroling the prisoner would be compatible with the welfare of society and (2) the prisoner does not constitute a danger to self or society. In making its determination, the Board considers all of the following factors:
  - The prisoner’s age;
  - The severity of the prisoner’s illness, disease, or “infirmities”;
  - A comprehensive health evaluation;
  - Institutional behavior;
  - Level of risk for violence;
  - Criminal history; and
  - Alternatives to maintaining the prisoner in “traditional settings.”

- **Hearing** - Department policy states that the Board will hold hearings for prisoners seeking Medical and Geriatric Parole, but does not provide any details on whether those hearings are any different from the “general” hearings the Board holds.
  - According to the general parole rules, the hearings are held in the correctional facilities and legal counsel is not permitted.

The Board must inform prisoners of its decision within five working days from the date of the hearing, unless it requires more time to set parole conditions and consider an appropriate parole plan.
**Conditions and Pre-Release Planning** - The Board determines the terms and conditions of Medical or Geriatric Parole, including medical supervision and intervals of periodic medical evaluations.\(^{36}\)

- **Environment** - Department policy states that the PPD investigates parole plans and proposed residences.\(^{37}\) However, there is no information on what constitutes an “appropriate” residence or whether there is assistance for prisoners who need to make those arrangements.

- **Discharge Plan** - The Board is required to develop a comprehensive discharge plan for prisoners released under the medical and geriatric parole program.\(^{38}\) The *Medical Parole Application Worksheet* asks questions regarding the best environment and mobility needs, and whether there are resources “to support the plan.” \(^{39}\)

**V. POST-DECISION**

**Denials and Appeal Rights** - The Board must notify prisoners if they are denied Medical or Geriatric Parole within 10 working days, and provide the reasons for the decision.\(^{40}\) Prisoners who have been denied can reapply if they have additional information and/or if a medical condition has worsened.\(^{41}\)

**Supervision** - The Board determines the appropriate level of supervision.\(^{42}\) Once a prisoner is approved for parole, he or she cannot be released until the Classification Officer makes phone contact with the appropriate Probation and Parole Officer, providing updated medical information, the date and time of departure, the prisoner’s mode of transportation, and any other relevant information.\(^{43}\)

**Revocation/Termination** - The parole term of someone on Medical or Geriatric Parole is for the remainder of the parolee’s sentence.

- Parolees are not eligible for “good time” deductions while on Medical or Geriatric Parole.\(^{44}\)

- Former prisoners with “determinate” sentences serve the remainder of their basic sentence and parole period on parole.\(^{45}\) Former prisoners with “indeterminate” sentences serve their remaining sentence on parole.\(^{46}\)

- The Board can consider “early parole discharge” based on the recommendation of the supervising probation and parole officer.\(^{47}\)

If the Board revokes a parolee’s Medical and Geriatric Parole, he or she may not be reconsidered for two years from the date of revocation.\(^{48}\)

**Effect of Medical and Geriatric Parole Request on Other Parole Eligibility** - Medical and Geriatric Parole consideration is in addition to any other parole for which the prisoner might be eligible.\(^{49}\)
VI. REPORTING/STATISTICS

The Board is required to report the following information annually to the New Mexico Corrections Department and the New Mexico state legislature:

- The number of applications for Medical and Geriatric Parole it receives;
- The nature of the illnesses, diseases, and conditions of the applicants;
- The reasons for denial of applications for Medical or Geriatric Parole; and
- The number of persons on Medical and Geriatric Parole who have been returned to the custody of the Department and the reasons for their return.

It is unclear whether the Parole Board has reported those numbers, as no statistics are available for Medical and Geriatric Parole on either the Board or Department websites.

NOTES

1 N.M. Stat. § 31-21-25.1 (2016); New Mexico Corrections Department Policy (NMCD Policy) 050400, Parole of Geriatric, Permanently Incapacitated, or Terminally Ill Inmates (2017) and NMCD Policy 050401 Application Procedures for Probation/Parole of Geriatric, Permanently Incapacitated, or Terminally Ill Inmates (2017).
3 N.M. Stat. § 31-21-25.1-F (3); NMCD Policy 050400.
4 N.M. Stat. § 31-21-25.1-F (1); NMCD Policy 050400.
5 N.M. Stat. § 31-21-25.1-A (6).
6 Id. at B.
7 NMCD Policy 050401, Attachment A.
8 Id. at § A.1.
9 NMCD Policy 050400.
10 Id.
11 Id.
12 NMCD Policy 050401, § A.2.
13 Id. at § A.3. Note that a Consent to Release Medical Information (NMCD Policy 171401, § A) must be included.
14 Id. at § A.4.
15 Id. at § A.5.
16 Id. at § A.6.
17 Id. See also NMCD Policy 083000, Reentry Planning.
18 NMCD Policy 050401, § A.8.
19 Id. at Attachment B.
20 Id. at § A.9.
21 Id.
23 Id. at § B.2.
25 Id. at A (6).
26 Id. at F (1) · (F) (3).
27 Id. at E (1).
28 Id. at E (2).
29 Id. Note that the Board can ask for specific medical evidence or additional “reasonable” medical examinations. See N.M. Stat. § 31-21-25.1-C.
30 Id. at E (4).
31 Id. at E (5).
32 Id. at E (6).
33 Id. at E (7).
34 N.M. Code R. § 22.510.2.8-A. See general parole hearing rules at N.M. Code R. §§ 22.510.2.8, 22.510.3.8, and 22.510.9.8. See also N.M. Stat. §§ 31-21-25 (B)-(E).
36 N.M. Stat. §§ 31-21-25.1-A (5) and A (6).
37 NMCD Policy 050401 § B.1.a.
38 N.M. Stat. § 31-21-25.1-A (2).
39 NMCD Policy 050401, Attachment B.
40 Id. at C.2.a. A copy of the decision is also sent to the Cabinet Secretary of Corrections and to the appropriate facility warden. Id.
41 Id. at C.2.b.
42 N.M. Stat. § 31-21-25.1-A (2).
43 NMCD Policy 050401 § C.1.a.
45 NMCD Policy 050401, § C.1.b.
46 Id. at C.1.c.
47 Id. at C.1.f and C.3. See also NMCD Policy 051600.
48 NMCD Policy 050401, § C.1.e. There is no mention of an exception to this if the prisoner’s medical condition changes or worsens. Id.
49 N.M. Stat. § 31-21-25.1-B.
50 Id. at A (3).