

New Mexico provides compassionate release to eligible incarcerated individuals who are permanently incapacitated, terminally ill, or geriatric (age 65 and older with an illness related to aging) through **Medical and Geriatric Parole**.¹

MEDICAL AND GERIATRIC PAROLE

I. ELIGIBILITY

Medical Condition/Age – To be eligible for Medical and Geriatric Parole, an incarcerated individual must be permanently incapacitated, terminally ill, or geriatric:

- “Permanently incapacitated” is defined as permanently and irreversibly physically incapacitated because of an existing medical condition;²
- “Terminally ill” means having an incurable condition caused by illness or disease that will, “within reasonable medical judgment,” result in death within six months;³
- “Geriatric” means age 65 or older and suffering from a chronic infirmity, illness, or disease related to aging.⁴

Exclusions – Incarcerated individuals who are serving a sentence for first-degree murder are not eligible for Medical and Geriatric Parole.⁵

- Note that individuals may be considered for Medical and Geriatric Parole even if they have not yet served their minimum sentences.⁶

II. APPLICATION/REFERRAL

Applications – To start the process, any of the following individuals can submit the *Geriatric/Incapacitated/Terminally Ill Parole Consideration Application*⁷ through the incarcerated individual’s Classification Officer: (1) the individual, (2) a family member of the incarcerated person, (3) an attorney, or a (4) Corrections Department (Department) health care provider.⁸

Duty to Inform Individuals About Medical and Geriatric Parole – Note that the Department must proactively provide information on Medical and Geriatric Parole to incarcerated individuals:

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

- The Department must provide individuals arriving at long-term care and geriatric units with copies of the Medical and Geriatric Parole policies and forms during the orientation process and have them sign acknowledgement forms stating they received those documents.¹⁰
- Each correctional institution's law library must maintain a copy of the Medical and Geriatric Parole policies.¹¹

III. DOCUMENTATION AND ASSESSMENT

The Department must forward a Medical and Geriatric Parole application to the New Mexico Adult Parole Board (Parole Board) within 30 days of receiving it.¹²

Review and Recommendation: Classification Officer – The individual's Classification Officer reviews the completed application form, makes a recommendation, attaches any relevant documents, and forwards the application to the Medical Services Unit.¹³

Review and Evaluation: Health Care Vendor Medical Director – The health care vendor's Medical Director reviews the application, evaluates the individual's health status (including a review of all diagnostic tests and consultation reports), attaches any relevant medical records and a signed *Consent to Release Medical Information* form, and provides a "letter of review" to the Department Medical Director.¹⁴

Review and Recommendations: Department Medical Director – The Department Medical Director reviews the documentation, makes summary recommendations regarding the severity of the condition and any future medical needs, and forwards the documents to the Mental Health Unit.¹⁵

Review and Recommendations: Mental Health Unit – The Mental Health Unit reviews the application and considers whether the individual would constitute a danger to self or society if released. The Unit makes recommendations, attaches any relevant reports, and forwards the application to the Institutional/Unit Classification Supervisor.¹⁶

Review and Progress Report: Classification Supervisor – The Institutional/Unit Classification Supervisor reviews the application to make sure it is complete, attaches a progress report and any other relevant documents, and forwards everything to the facility's Warden.¹⁷

Review and Comment: Warden – The Warden reviews the application and all attached documentation and recommendations, adds comments, and forwards the application packet to the originating Classification Officer.¹⁸

Worksheet Completion: Classification Officer – The Classification Officer (or Warden-designated committee) reviews the packet, completes the *Medical Parole*

Application Worksheet,¹⁹ and sends the completed packet to the Department Secretary for comment.²⁰

Comment and Transmittal to Parole Board: Secretary – The Department Secretary adds any relevant comments and sends the packet to the Parole Board for review.²¹

- The Secretary also sends a copy of all the materials to the Probation and Parole Division Field Office for immediate investigation.²²

Investigation: Probation and Parole Division – The Probation and Parole Division investigates the parole plan to determine the individual’s proposed residence, means of support and “accessibility” of support systems, level of required supervision, and any other appropriate factors.²³ It then forwards its investigation report to the Parole Board and provides a copy to the individual’s Classification Officer before the Medical and Geriatric Parole hearing.²⁴

IV. DECISION-MAKING PROCESS

Decision-Maker – The New Mexico Adult Parole Board is responsible for deciding whether to grant or deny Medical and Geriatric Parole.²⁵

Decision Process – Within 30 days of receiving an application and supporting documentation from the Corrections Department, the Parole Board must decide whether to grant Medical and Geriatric Parole.²⁶

- **Factors** – For an individual to be eligible, the Parole Board must find that (1) paroling the individual would be compatible with the welfare of society²⁷ and (2) the individual does not constitute a danger to self or society.²⁸ In making its determination, the Parole Board considers all of the following factors:²⁹
 - The person’s age;
 - The severity of the illness, disease, or “infirmities”;
 - A comprehensive health evaluation;³⁰
 - Institutional behavior;
 - Level of risk for violence;
 - Criminal history; and
 - Alternatives to maintaining the individual in “traditional settings.”

- Hearing – Department policy states that the Parole Board will hold hearings for individuals seeking Medical and Geriatric Parole but does not provide any details on whether those hearings are any different from the general parole hearings the Board holds.³¹
- Decision – The Parole Board must inform an individual 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.³²

Conditions and Prerelease Planning

- The Parole Board determines the terms and conditions of Medical and Geriatric Parole, including medical supervision and intervals of periodic medical evaluations.³³
- The Probation and Parole Division investigates all parole plans prior to the individual’s Parole Board hearing and looks at the individual’s proposed residences, means of support and the accessibility of support systems, and the level of supervision required.³⁴
- The Parole Board is required to develop a comprehensive discharge plan for each individual released under the Medical and Geriatric Parole program.³⁵ The *Medical Parole Application Worksheet* asks questions regarding the best environment, the person’s mobility needs, and whether there are resources to support the plan.³⁶
- Department policy states that the Classification Supervisor must ensure that the individual participates in accelerated reentry planning.³⁷

V. POST-DECISION

Denials and Appeal Rights – Within 10 working days, the Parole Board must notify individuals if they are denied Medical and Geriatric Parole and provide the reasons for the decision.³⁸ Individuals who have been denied can reapply if they have additional information and/or if their medical conditions have worsened.³⁹

Supervision – The Parole Board determines the appropriate level of supervision.⁴⁰ Once approved for parole, the Department will not release an individual until the Classification Officer makes phone contact with the appropriate Probation and Parole Officer to provide updated medical information, the date and time of departure, the person’s mode of transportation, and any other relevant information.⁴¹

Revocation/Termination – The Medical and Geriatric Parole term is for the remainder of the individual’s sentence.⁴²

- An individual with a determinate sentence serves the remainder of the basic sentence and parole period on Medical and Geriatric Parole.⁴³
- An individual with an indeterminate sentence serves the remaining sentence on Medical and Geriatric Parole.⁴⁴
- Individuals are not eligible for “good time” deductions while on Medical and Geriatric Parole.⁴⁵
- The Parole Board can consider “early parole discharge” based on the supervising Probation and Parole Officer’s recommendation.⁴⁶

If the Board revokes Medical and Geriatric Parole, it will not reconsider the individual until two years after the date of revocation.⁴⁷

Effect of Medical and Geriatric Parole on Other Parole Eligibility – Medical and Geriatric Parole consideration is in addition to any other parole for which the person may be eligible.⁴⁸

VI. REPORTING/STATISTICS

The Parole Board is required to report the following information annually to the New Mexico Corrections Department and the New Mexico state legislature: (1) the number of applications for Medical and Geriatric Parole it receives; (2) the nature of applicants’ illnesses, diseases, and conditions; (3) the reasons for denial of applications for Medical and Geriatric Parole; and (4) the number of persons on Medical and Geriatric Parole who have been returned to Department custody and the reasons for their returns.⁴⁹

In response to FAMM’s request for information, the Parole Board reported the following statistics:

- In FY 2019, there were 10 individuals who applied for Medical and Geriatric Parole; the Parole Board granted one application, denied seven applications, and discharged two because the individuals died.⁵⁰
- In FY 2020, there were 11 individuals who applied for Medical and Geriatric Parole; the Parole Board granted one application, denied nine applications, and discharged one because the individual died.⁵¹

NEW MEXICO COMPASSIONATE RELEASE

PRIMARY LEGAL SOURCES

MEDICAL AND GERIATRIC PAROLE

Statute

New Mexico Statutes, § 31-21-25.1 (2021), available through the New Mexico Compilation Commission, https://nmonesource.com/nmos/nmsa/en/nav_date.do, by searching for Chapter 31, Article 21, Section 25.1.

Agency Policy

New Mexico Corrections Department Policy CD-050400, Parole of Geriatric, Permanently Incapacitated, or Terminally Ill Inmates (Aug. 31, 2018), <https://cd.nm.gov/wp-content/uploads/2021/05/CD-050400-Parole-of-Geriatric-Permanently-Incapacitated-or-Terminally-Ill-Inmates.pdf>.

New Mexico Corrections Department Policy CD-050401, Application Procedures for Probation/Parole of Geriatric, Permanently Incapacitated, or Terminally Ill Inmates (Aug. 31, 2018), <https://cd.nm.gov/wp-content/uploads/2021/05/CD-050400-Parole-of-Geriatric-Permanently-Incapacitated-or-Terminally-Ill-Inmates.pdf>.

* Note that although these are two separate Corrections Department policies, they share the same URL because both are included in the same online document.

NOTES

* *Id.* means see prior note.

¹ N.M. Stat. § 31-21-25.1; New Mexico Corrections Department Policy (Department Policy) CD-050400, Parole of Geriatric, Permanently Incapacitated, or Terminally Ill Inmates; Department Policy CD-050401 Application Procedures for Probation/Parole of Geriatric, Permanently Incapacitated, or Terminally Ill Inmates.

² N.M. Stat. § 31-21-25.1 (F) (2); Department Policy CD-050400, Definitions, § (B). Note that the policy says the permanently incapacitating condition must be “medically-certified.”

³ N.M. Stat. § 31-21-25.1 (F) (3); Department Policy CD-050400, Definitions, § (C).

⁴ N.M. Stat. § 31-21-25.1 (F) (1); Department Policy CD-050400, Definitions, § (A).

⁵ N.M. Stat. § 31-21-25.1 (A) (6); Department Policy CD-050400, Applicability.

⁶ N.M. Stat. § 31-21-25.1 (B).

⁷ Department Policy CD-050401, Attachment A.

⁸ N.M. Stat. § 31-21-25.1 (A) (1).

⁹ Department Policy CD-050400, Policy.

¹⁰ Department Policy CD-050400, Policy; Department Policy CD-050401, Attachment C.

¹¹ Department Policy CD-050400, Policy.

¹² N.M. Stat. § 31-21-17.1.

¹³ Department Policy CD-050401, Procedures, § (A) (2).

¹⁴ Id. at § (A) (3), referencing *Consent to Release Medical Information* form (CD-171401-A), available at <https://cd.nm.gov/wp-content/uploads/2019/06/CD-171400.pdf>.

¹⁵ Id. at § (A) (4).

¹⁶ Id. at § (A) (5).

¹⁷ Id. at § (A) (6).

¹⁸ Id. at § (A) (8).

¹⁹ Id. at Attachment B.

²⁰ Id. at § (A) (9).

²¹ Id.

²² Id.

²³ Id. at § (B) (1), referencing Department Policy CD-052600, Probation and Parole Division Placement Investigations, <https://cd.nm.gov/wp-content/uploads/2021/02/CD-052600.pdf>.

²⁴ Id. at § (B) (2).

²⁵ N.M. Stat. § 31-21-25.1 (A) (6).

²⁶ Id. at (A) (4).

²⁷ Id. at (A) (6).

²⁸ Id. at (F) (1) through (F) (3).

²⁹ Id. at (E) (1) through (E) (7).

³⁰ Note that the Parole Board can ask for specific medical evidence or additional “reasonable” medical examinations. Id. at (C).

³¹ Id. at (B) (2). Note the general parole rules are in N.M. Stat. § 31-21-10 but specifically state they do not apply to individuals applying for Medical and Geriatric Parole. N.M. Stat. § 31-21-10 (G).

³² N.M. Code R. § 22.510.2.8 (A) (4).

³³ N.M. Stat. § 31-21-25.1 (A) (5).

³⁴ Department Policy CD-050401, Procedures, § (B) (1) (a).

³⁵ N.M. Stat. § 31-21-25.1 (A) (2).

³⁶ Department Policy CD-050401, Attachment B.

³⁷ Id. at Procedures, § (A) (7), referencing Department Policy CD-083000, Reentry Planning, <https://cd.nm.gov/wp-content/uploads/2021/02/CD-083000.pdf>.

³⁸ Id. at § (C) (2) (a). The Parole Board must send a copy of the denial decision to the Department Secretary and the appropriate facility Warden. Id.

³⁹ Id. at § (C) (2) (b).

⁴⁰ N.M. Stat. § 31-21-25.1 (A) (2).

⁴¹ Department Policy CD-050401, Procedures, § (C) (1) (a).

⁴² N.M. Stat. § 31-21-25.1 (D).

⁴³ Department Policy CD-050401, Procedures, § (C) (1) (b).

⁴⁴ Id. at § (C) (1) (c).

⁴⁵ N.M. Stat. § 31-21-25.1 (D); Department Policy CD-050401, Procedures, § (C) (1) (d).

⁴⁶ Department Policy CD-050401, Procedures, §§ (C) (1) (f), referencing Department Policy CD-051600, and (C) (3).

⁴⁷ Id. at § (C) (1) (e). There is no mention of an exception to this if the individual's medical condition changes or worsens. Id.

⁴⁸ N.M. Stat. § 31-21-25.1 (B).

⁴⁹ Id. at (A) (3).

⁵⁰ Letter from Audrie Carmack, New Mexico Adult Parole Board, to FAMM (Sept. 3, 2021), (on file with FAMM, Office of the General Counsel).

⁵¹ Id.