

Tennessee provides compassionate release to eligible prisoners with serious medical conditions or terminal illnesses through its **Medical Furlough** program¹ and through the Executive Clemency process.²

MEDICAL FURLOUGH

I. ELIGIBILITY

Medical Condition - Prisoners must have one of the following conditions to be eligible for a Medical Furlough:

- *Serious Medical Condition*, meaning that due to severe physical or psychological deterioration the prisoner can no longer take care of him or herself in a prison environment.³
 - The level of deterioration must render the prisoner incapable of performing basic activities of daily living or thinking cognitively such that he or she poses no threat to the public.⁴
 - “Such furloughs are generally considered for prisoners requiring skilled nursing care, hospitalization, or acute psychiatric care for an extended period of time without expectation of improvement in their medical condition.”⁵
- *Terminal Illness*, meaning that due to a medical condition, the prisoner is in “imminent peril” of death.⁶

Exclusions -

- Prisoners who are under a death sentence are not eligible for Medical Furlough.⁷
- Only prisoners who can be released “without substantial risk” that they will commit a crime while on furlough are eligible for a Medical Furlough.⁸

II. APPLICATION/REFERRAL

To start the process, a Medical Furlough request must be submitted to the facility’s doctor by (1) the prisoner; (2) the prisoner’s legal guardian or conservator; (3) A family member acting on behalf of the prisoner; or (4) Tennessee Department of Correction (Department) staff.⁹ The doctor then completes the Department’s *Process for Medical Furlough Request* form.¹⁰

- If the prisoner does *not* meet the medical criteria, the doctor notes this on the *Medical Furlough Request* form and forwards it to the Department Medical Director, and the request is closed. No further action is required or will be taken.¹¹

- If the doctor believes the prisoner meets the medical criteria, he or she lets the Institutional Health Administrator and Clinical Case Manager know, and a fairly detailed documentation process begins.¹²

III. DOCUMENTATION AND ASSESSMENT

Identification of Resources/Case Manager - The Institutional Clinical Case Manager identifies the following resources for the prisoner:

- Community resources available to facilitate necessary health care;¹³
- Housing resources, including the family home, skilled nursing care, nursing home, or hospice;¹⁴ and
- Other support systems.¹⁵

In addition, the Case Manager initiates the application process for Social Security benefits, Medicaid, Medicare, veterans' benefits, and any other resources for which the prisoner might be eligible.¹⁶

Documentation/Health Administrator - The Health Administrator works with the prisoner to complete or obtain the following documents:

- The *Authorization for Release of Health Services Information*;¹⁷
- Appropriate sections of the *Medical Furlough Request* form;¹⁸
- A supporting statement from a person or organization accepting responsibility for the prisoner upon release (e.g., family members or hospice);¹⁹ and
- A notarized report from the facility physician that includes a description and history of the prisoner's illness or condition, prognosis and life expectancy, an opinion on how continued incarceration will affect the condition, release plans (including the name and address of the physician who will be providing care during the furlough), and a recommendation for Medical Furlough.²⁰

The Health Administrator then submits the documents to the Warden.²¹

Review and Recommendation/Warden - The Warden reviews the prisoner's institutional record, the completed *Medical Furlough Request*, and any accompanying documents. He or she can attach additional remarks and then recommends approval or denial. Within two business days, the Warden then forwards the recommendation and all documents to the Department's Medical Director for evaluation.²²

Resource Verification/Clinical Case Program Manager - At the same time that the Warden is reviewing everything, the Department Statewide Clinical Case Program Manager (1) verifies that the available community health care resources, housing, and support systems are available; (2) provides the status of the applications for benefits (such as Social Security, Medicare, Medicaid, and veteran's benefits); and (3) documents progress of the furlough "re-entry" plan.²³

Review and Recommendation/Department Medical Director - The Medical Director carries out the following tasks:

- Conducts and documents a physical assessment of the prisoner;
- Reviews the *Request for Medical Furlough* and accompanying documentation;
- Recommends approval or denial of the request; and
- Forwards all the documents to the Department's Director of Victim Services.²⁴

Victim Notification/Director of Victim Services - The Director of Victim Services is responsible for determining if there is any opposition to a Medical Furlough by the prisoner's victims. Victims are notified in writing that the prisoner is being considered for a furlough and, if they want to respond, they must do so within three days of receiving the notice. Victim Services then has four business days to document the responses and forward the information back to the Department Medical Director.²⁵

Final Check/Department Medical Director - The Medical Director confirms that all the documents are completed and forwards them to the Assistant Commissioner of Community Supervision.²⁶

Verification and Recommendation/Assistant Commissioner of Community Supervision - The Assistant Commissioner is responsible for verifying the Medical Furlough by:

- Reviewing the proposed residence arrangements, family support, medical and financial arrangements, and social services resources;²⁷
- Determining if there is community opposition by the district attorney, chief law enforcement officers (both in the county where the prisoner plans to live and the county in which the offense was committed), or the sentencing judge;²⁸ and
- Documenting any community opposition to the Medical Furlough and providing the reasons for the opposition.²⁹

The Assistant Commissioner then recommends approval or denial of the Medical Furlough and returns it to the Department's Medical Director with a written summary of the field investigation (including information on any opposition) and verification of the various community, housing, and medical resources.³⁰

Compilation of Documents/Department Medical Director - The Medical Director forwards all documents to the Commissioner of Correction for final review and a decision.³¹

IV. DECISION-MAKING PROCESS

Decision Maker - The Commissioner of the Department of Correction makes the decisions to grant or deny Medical Furlough.³²

- *Denials* - If the Commissioner denies the Medical Furlough request, he or she

prepares a written notification of the denial and sends it to the appropriate Warden.³³ The request cannot be resubmitted unless there is a significant change of circumstances that was not included in the original request.³⁴

- *Approvals* - If the Commissioner approves the Medical Furlough request, it is communicated to the appropriate Warden, who instructs the Institutional Counselor to verbally advise the prisoner (or guardian/conservator if the prisoner is unable to sign) of the conditions for the furlough.³⁵
 - The Department’s Medical Furlough Coordinator coordinates the effective furlough date with the Warden.³⁶
 - Copies of the completed *Medical Furlough Request* form are given to the prisoner (or guardian/conservator, if applicable) and the Assistant Commissioner of Community Supervision.³⁷

Notice -

- When the Department grants any type of furlough, including a Medical Furlough, it must notify the chief law enforcement officer of the county in which the prisoner resides of the furlough.³⁸
- The Department must also notify the Tennessee Senate’s State and Local Government Committee and the Tennessee House of Representatives State Government Committee of the release of any person under the Medical Furlough provision. The notice must include the name of the person released, the rationale for releasing the person, and the period for which the furlough will be effective.³⁹

Conditions and Pre-Release Planning - The Commissioner is allowed to set any “reasonable” conditions for the Medical Furlough.⁴⁰

V. POST-DECISION

Denials and Appeal Rights - As stated above, a Medical Furlough request cannot be resubmitted unless there is a significant change in the prisoner’s condition.⁴¹

Supervision - Prisoners released under the Medical Furlough law are under the supervision of the Department’s Division of Community Supervision.⁴² Community Supervision staff are assigned to establish a reporting schedule and supervise the furloughed prisoner. In general, a probation/parole officer will visit the prisoner on a monthly basis, “periodically” contact his or her physician, and submit a written status report each month.⁴³

Length of Medical Furlough - Furloughs under Tennessee law are generally for just three days. However, Medical Furloughs can be granted for an “indeterminate duration.”⁴⁴

- Note that Department policy says that they will review “currently furloughed” prisoners on a semi-annual basis for consideration of a *Medical Furlough Continuation*. The assigned probation/parole officer conducts a comprehensive review to ensure the furloughed prisoner is in compliance with all Medical Furlough conditions.⁴⁵

Revocation/Termination - A prisoner can be ordered to be return to the institution if he or she breaks any conditions of the furlough.⁴⁶ In addition, if a furloughed prisoner’s medical condition improves to the point that death is no longer imminent, or it becomes possible to receive adequate medical care in the prison environment, he or she can be returned “by order of the commissioner” to the institution.⁴⁷

- DOC policy says that a Medical Furlough can be revoked at the Commissioner’s discretion at any time because furloughs “are a privilege and are to be considered as such.”⁴⁸

When a prisoner has been returned to an institution pursuant to an *Order of Revocation of Medical Furlough and Return to Prison*, the Commissioner’s designee holds a due process hearing.⁴⁹ After the hearing, the designee has three working days to submit a report and recommendation to the Commissioner, and the Commissioner then has three working days to decide whether there are substantial reasons to believe that the Medical Furlough should be revoked or modified. The decision must be in writing and is provided to the prisoner “in a timely manner.” The Commissioner’s decision is final.⁵⁰

Eligibility for parole - If the prisoner becomes eligible for parole while on Medical Furlough, the prisoner and the probation/parole officer are notified with details on the parole hearing. If parole is granted, the “parole certificate will be issued through the [releasing] institution and the prisoner will transfer from furlough status to parole supervision.”⁵¹

VI. REPORTING/STATISTICS

The Tennessee Department of Correction annual statistical reports do not specify the number of Medical Furloughs granted each year.⁵² They provide general statistics and demographic information on the number of individuals being supervised by Community Corrections but they do not delineate which of those individuals, if any, are on Medical Furlough.

EXECUTIVE CLEMENCY DUE TO ILLNESS OR DISABILITY

The Tennessee Constitution gives the Governor the power to grant Executive Clemency, including commutations shortening a prisoner’s sentence.⁵³ Prisoners who have a life-threatening illness or “severe chronic disability” can submit an Application for Commutation.⁵⁴ Note that applications can also be submitted by someone else on a prisoner’s behalf.

The applications must be submitted to the Tennessee Board of Parole (Board),⁵⁵ which has an Executive Clemency Unit. The Board is responsible for considering each application and making a non-binding recommendation to the Governor, who makes the final decision.⁵⁶

NOTES

¹ Tenn. Code Ann. §§ 41-21-227 (i) (1) - (5); Tennessee Department of Correction Administrative Policies and Procedures (DOC Policy) 511.01.1.

² Tenn. Const. art. III, § 6.

³ Tenn. Code Ann. § 41-21-227 (i) (2) (A) (II); DOC Policy 511.01.1, § VI.A.2.

⁴ DOC Policy 511.01.1, § VI.A.2.

⁵ Id.

⁶ Tenn. Code Ann. § 41-21-227 (i) (2) (A) (I); DOC Policy 511.01.1, § VI.A.1. Note that neither the statute nor Department policy defines “imminent.”

⁷ DOC Policy 511.01.1, § VI.A.3.

⁸ Tenn. Code Ann. § 41-21-227 (i) (2) (B).

⁹ DOC Policy 511.01.1, § VI.C.1.

¹⁰ Id. at § VI.C.2.a, referencing DOC Form CR-2285.

¹¹ Id. at § VI.C.2.a (1).

¹² Id. at § VI.C.2.a (2).

¹³ Id. at § VI.C.2.b (1).

¹⁴ Id. at § VI.C.2.b (2).

¹⁵ Id. at § VI.C.2.b (3).

¹⁶ Id.

¹⁷ Id. at § VI.C.2.c (1), referencing DOC Form CR-1885.

¹⁸ Id. at § VI.C.2.c (2), referencing DOC Form CR-2285.

¹⁹ Id. at § VI.C.2.c (3).

²⁰ Id. at (4).

²¹ Id. at § VI.C.2.c.

²² Id. at § VI.C.3.

²³ Id. at §§ VI.C.4.a - d.

²⁴ Id. at §§ VI.C.5.a - c.

²⁵ Id. at § VI.C.6.

²⁶ Id. at § VI.C.7.

²⁷ Id. at §§ VI.C.8.a (1) - (4).

²⁸ Id. at § VI.C.8.a (5). Note that parole staff will be authorized to provide information on the prisoner’s condition and prognosis to the District Attorney or chief law enforcement officer. Id.

²⁹ DOC Policy 511.01.1, § VI.C.8.a (6).

³⁰ Id. at § VI.C.10.

³¹ DOC Policy 511.01.1, § VI.C.11; see also TN Code § 41-21-227 (i) (1).

³² Tenn. Code Ann. § 41-21-227 (i) (1); DOC Policy 511.01.1, § VI.D.1.

³³ DOC Policy 511.01.1, § C.3.a. Copies of the denial are also sent to the prisoner, Assistant Commissioner of Community Supervision, Deputy Commissioner of Operations, Institution Health/Mental Health Administrator, Operational Support Services, the Department’s Medical Furlough Coordinator, the Director of Victim Services, the Institutional Records Office (if applicable), the Tennessee Bureau of Investigation if the prisoner is a sex offender, and the Commissioner’s designee at privately managed correctional facilities. Id. at § VI.C.3.b.

³⁴ DOC Policy 511.01.1, § VI.D.2.

³⁵ Id. at § VI.D.4.a. Note that the Medical Furlough Conditions of Release are provided in Form CR-2285, Process for Medical Furlough Request, in Section V.

³⁶ DOC Policy 511.01.1, § VI.D.4.b. The DOC policy also lists all the Department and community entities that must receive notice of the effective furlough date. Id. at § VI.D.4.c.

³⁷ DOC Policy 511.01.1, § VI.D.5.d. A copy is put in the Operational Support Services File. Id.

³⁸ Tenn. Code Ann. §§ 41-21-227 (e).

³⁹ Id. at (i) (4).

⁴⁰ Id. at § 41-21-227 (i) (2) (B).

⁴¹ DOC Policy 511.01.1, § VI.D.2.

⁴² Id. at §§ IV.A and VI.F.

⁴³ Id. at §§ VI.F.1.a - j. Note that DOC policy says that the prisoner is required to pay supervision fees “in accordance with Tenn. Code Ann. §40-28-201.” Id. at § VI.F.1.h.

⁴⁴ Tenn. Code Ann. § 41-21-227 (i) (1).

⁴⁵ DOC Policy 511.01.1, § VI.G.2.

⁴⁶ Tenn. Code Ann. § 41-21-227 (i) (3); DOC Policy 511.01.1, § IV.F.6.

⁴⁷ Tenn. Code Ann. § 41-21-227 (i) (3); DOC Policy 511.01.1, § VI.F.6.

⁴⁸ DOC Policy 511.01.1, § V.

⁴⁹ *Id.* at § VI.G.

⁵⁰ *Id.* at § VI.G.1.h.

⁵¹ *Id.* at § VI.F.2.

⁵² See Tennessee Department of Correction annual reports and statistical abstracts at <https://www.tn.gov/correction/topic/tdoc-annual-reports>.

⁵³ Tenn. Const. art. III, § 6. See also Tenn. Code Ann. §§ 40-27-101 and 40-27-109 and the Tennessee Board of Parole's Executive Clemency Unit webpage, which includes the current Governor's Guidelines for Pardons, Commutations, Reprieves and Exoneration at <https://www.tn.gov/bop/agency-services/executive-clemency-unit.html>.

⁵⁴ The Application for Commutation forms are available online at https://www.tn.gov/content/dam/tn/boardofparole/documents/BOP_Commutation_Application-BP_0044.pdf.

⁵⁵ Tenn. Code Ann. §§ 40-28-104 (a) (10) and 40-28-126.

⁵⁶ *Id.* See also the Board's Executive Clemency Unit website, *supra* note 53.