

Texas provides compassionate release to incarcerated individuals with qualifying medical conditions, terminal illnesses, and advanced age through **Medically Recommended Intensive Supervision**<sup>1</sup> and **Emergency Medical Reprieve**.<sup>2</sup>

## **MEDICALLY RECOMMENDED INTENSIVE SUPERVISION (MRIS)**

### **I. ELIGIBILITY**

**Medical Condition/Age** – To be eligible for Medically Recommended Intensive Supervision (MRIS), an incarcerated individual must have one or more of the following:

- A **terminal illness**, meaning the individual’s condition is incurable; expected to result in death within six months regardless of life-sustaining treatment; and requiring skilled nursing, hospice, or home health care.<sup>3</sup>
- A **physical disability**, defined as a severe, chronic disability that is likely to continue indefinitely and results in substantial functional limitations in three or more major life activities (such as self-care, self-direction, learning, receptive and expressive language, mobility, capacity for independent living, or economic self-sufficiency).<sup>4</sup>
  - Department policy further states that the functional limitations are reflected in the individual’s need for a combination of “special, interdisciplinary, or generic care, treatment, or other services of extended or lifelong duration that are individually planned and coordinated.”<sup>5</sup>
- An **intellectual disability** (also referred to in Department policy as a developmental disability), defined as significantly sub-average intellectual functioning that exists concurrently with deficits in adaptive behavior and originated during the developmental period before age 18.<sup>6</sup>
- **Mental illness**, defined as an illness, disease, or condition that either (1) substantially impairs the individual’s thoughts, perception of reality, emotional process, and/or judgment or (2) grossly impairs the person, as manifested by recent “disturbed behavior.”<sup>7</sup>
- A **need for long-term care**, meaning that the individual (1) is deficient in self-care; (2) has, with reasonable medical probability, clinical conditions that will not change over time; and (3) requires nursing care.<sup>8</sup>

- **Advanced age** (also referred to as “elderly”), defined as being age 65 or older.<sup>9</sup>

**Other Eligibility Criteria** – To be eligible for MRIS, an individual must not be a threat to public safety.<sup>10</sup>

### **Exclusions and Qualifiers**

- Individuals serving a sentence of death or life without parole are not eligible for MRIS.<sup>11</sup>
- Individuals with active Immigration and Customs Enforcement detainers who are not U.S. citizens and who have certain reportable convictions or adjudications are not eligible for MRIS.<sup>12</sup>
- Individuals serving sentences for aggravated offenses of a violent or sexual nature are considered for MRIS only if they are terminally ill or require long-term care.<sup>13</sup>
- Individuals with a pending felony detainer for a sex offense, or a reportable conviction or adjudication for a sex offense, are only considered for MRIS if they are in a persistent vegetative state or have an organic brain syndrome with significant to total mobility impairment.<sup>14</sup>
  - A “persistent vegetative state” means a condition of “profound non-responsiveness in the wakeful state caused by brain damage at any level and characterized by a nonfunctioning cerebral cortex, absence of response to the external environment, akinesia, mutism, and inability to signal.”<sup>15</sup>
  - “Organic brain syndrome” means any of a group of acute or chronic syndromes involving temporary or permanent impairment of brain function caused by trauma, infection, toxin, tumor, or tissue sclerosis and causing a “mild-to-severe impairment of memory, orientation, judgment, intellectual functions, and emotional adjustment.”<sup>16</sup>

## **II. APPLICATION/REFERRAL**

There are two types of referrals for MRIS: (1) internal referrals, which medical staff on a Correctional Institutions Division (CID) Unit submit directly, and (2) external referrals, which are referrals from the incarcerated individual, family members, attorneys, elected officials, social service agencies, or staff from the Texas Correctional Office on Offenders with Medical or Mental Impairments.<sup>17</sup>

- Note that correctional staff are **required** to make MRIS referrals for all individuals who are in a persistent vegetative state, have a life expectancy of less than six months, or have any of the following conditions: organic brain syndrome with significant to total mobility impairment; a condition that meets the criteria for hospice or “permanent infirmity” status; significant mobility impairments, with no expectation of improvement and requiring 24-hour licensed nursing care; a mental illness and/or significant developmental or acquired cognitive impairment but no history or suspected propensity for violent or destructive behavior; cancer with advanced/metastatic disease; end-stage liver disease (with a Model for End-Stage Liver Disease [MELD] score of equal to or greater than 22); or HIV/AIDS with a CD4 count of less than 50.<sup>18</sup>

As part of the referral process, a physician, physician’s assistant, nurse practitioner, or – if applicable – a mental health provider such as a licensed psychiatrist must complete a *MRIS Medical Summary* and provide it to MRIS staff.<sup>19</sup> If a current *MRIS Medical Summary* is unavailable when MRIS staff receive the referral, they will request that the appropriate health care provider complete a new one.<sup>20</sup> As part of the referral, a physician or mental health provider must confirm that the individual’s diagnosis meets the MRIS eligibility guidelines.<sup>21</sup>

### **III. DOCUMENTATION AND ASSESSMENT**

**Initial Evaluation: MRIS Program Supervisor** – The MRIS Program Supervisor (or designee) first evaluates a referral to make sure the individual meets the statutory requirements and that the offense does not make the person ineligible.<sup>22</sup> The Program Supervisor must send a written notice to the individual or the person making the referral if the individual does not meet these initial eligibility criteria and is not eligible for MRIS consideration for a reason other than the medical condition.<sup>23</sup>

**Medical Screening and Summary: Health Care Provider** – If an individual meets the statutory requirements regarding the offense, the Correctional Office on Offenders with Medical or Mental Impairments will ask a Department health care provider to complete the *Medically Recommended Intensive Supervision Screening Form*.<sup>24</sup> The health care provider has three working days to complete the form unless a more urgent or expedited review has been requested.<sup>25</sup> Upon request, the health care provider also completes the *Medically Recommended Intensive Supervision Medical Summary* and confirms a qualifying diagnosis.<sup>26</sup>

**Authorization: MRIS Program Supervisor** – If an incarcerated individual is not eligible based on the medical criteria, the MRIS Program Supervisor will notify the individual (and/or the person who made the MRIS referral) that, based on medical staff opinion, the individual does not meet the clinical criteria.<sup>27</sup> Referrals that **do** meet the initial eligibility criteria are sent to an MRIS Program Specialist for further documentation and preparation for the Board of Pardons and Paroles’ (Board) consideration.<sup>28</sup>

**Preparation of Case: MRIS Program Specialist** – The MRIS Specialist prepares the case for the Board by compiling the medical documentation, obtaining the individual’s parole case file/summary (which includes a criminal history and information on institutional adjustment), and completing additional paperwork.<sup>29</sup> The MRIS Specialist also notifies the appropriate “trial officials” and the Department’s Victim Services Division that the Board will consider the individual for MRIS and possible release.<sup>30</sup>

**Review: MRIS Program Supervisor** – The MRIS Supervisor (or the designee) ensures that all the documentation is complete and reviews the information before approving transmittal to the Board.<sup>31</sup>

#### **IV. DECISION-MAKING PROCESS**

**Decision-Maker** – The Texas Board of Pardons and Paroles is the approving authority for MRIS requests.<sup>32</sup>

**Consideration Vote** – The Board’s MRIS Panel first votes on whether it will consider the incarcerated individual for MRIS. That is based on the individual’s medical condition and a determination as to whether the person constitutes a threat to public safety.<sup>33</sup> If the vote is to deny consideration, the process ends and MRIS staff will close the referral. If the Board’s MRIS Panel approves consideration of the case, it moves forward for a vote on release approval or denial.<sup>34</sup>

**Decision** – Once the Board’s MRIS Panel has voted to consider an individual’s MRIS request, it then reviews all the documentation again before making a decision to approve or deny the request.<sup>35</sup>

- The Board’s MRIS Panel must try to make the decisions for terminally ill individuals within 10 business days of receiving an MRIS referral and within 20 business days of all other referrals.<sup>36</sup>
- If the Panel denies MRIS, the process ends with the denial vote and MRIS staff close the referral.<sup>37</sup>
- If the Board’s MRIS Panel, upon a majority vote, approves the individual’s MRIS request,<sup>38</sup> MRIS staff initiate release planning.<sup>39</sup>

**Notice of Decision** – MRIS staff provide written notification of the decision to the individual, the referral source (if other than the individual), the CID Unit medical staff, the Parole Division, and Victim Services.<sup>40</sup>

**Conditions** – The MRIS Panel requires all individuals released on MRIS to remain under the care of a physician in a “medically suitable placement.”<sup>41</sup>

## V. POST-DECISION

**Denials and Appeal Rights** – If the Board denies an MRIS request, the individual may present the case to the Board again if (1) there is a new *MRIS Medical Summary* indicating a significant worsening of the person’s medical condition or (2) it has been six months since the Board’s decision.<sup>42</sup>

### Release Planning

- Release and Continuity of Care Plan – Immediately upon receiving the approval of an MRIS release, the MRIS Human Service Specialist must initiate prerelease planning so that the Unit medical staff can coordinate release and continuity of care plans.<sup>43</sup> Once a medically appropriate placement has been secured, the Specialist will submit the proposed release plan to the appropriate Parole or Community Justice Assistance Division for investigation.<sup>44</sup>
- Social Security – Within one working day of receiving an individual’s MRIS approval, the MRIS Program Specialist will ask the assigned Special Needs Case Manager to complete a Social Security prerelease benefits application and submit it to the Social Security Administration within two working days of the request.<sup>45</sup>

**Supervision** – Individuals on MRIS remain under post-release case management by a Department Human Services Specialist for the duration of their sentences.<sup>46</sup>

- The Specialist will contact the individual and the medical placement every month to obtain status updates and determine the person’s need for ongoing services and treatment.<sup>47</sup>
- The Specialist reports those updates to the Correctional Office on Offenders with Medical or Mental Impairments.<sup>48</sup>
- At least once each calendar quarter, the Correctional Office reports the information on the individual’s medical and placement status to the Board’s MRIS Panel. On the basis of those reports, the MRIS Panel can modify the conditions of release.<sup>49</sup>

## VI. REPORTING/STATISTICS

The Board reported the following information regarding the number of individuals approved for MRIS:

- In 2019, the Board approved 76 individuals for MRIS. Of those, 59 individuals were terminally ill and 17 were in need of long-term care.<sup>50</sup>

- A report from the Texas House of Representatives Research Organization notes that in 2019 the Correctional Office on Offenders with Medical or Mental Impairments screened about 2,900 individuals for MRIS and sent 200 cases to the Board for consideration. As referenced above, the Board approved only 76 of those requests.<sup>51</sup>
- In 2020, the Board approved 61 individuals for MRIS. Of those, 40 individuals were terminally ill and 21 were in need of long-term care.<sup>52</sup>

## **EMERGENCY MEDICAL REPRIEVE**

The Governor has the authority to grant Emergency Medical Reprieves, a form of Executive Clemency, upon the written recommendation of the Texas Board of Pardons and Paroles (Board).<sup>53</sup> Incarcerated individuals who are terminally ill or totally disabled or who have been denied Medically Recommended Intensive Supervision (MRIS) can seek an Emergency Medical Reprieve by filing an *Application for Emergency Medical Reprieve* to the Texas Board of Pardons and Paroles.<sup>54</sup> Beyond the application form and a brief definition of Emergency Medical Reprieve on the Board's website, there is no other publicly available information on the application or decision-making process.

- A report by the Texas House of Representatives Research Organization provides the following information:<sup>55</sup>
  - In FY 2019, the Board received 132 requests for an Emergency Medical Reprieve. After screening, the Board's Clemency Section sent three cases to the full Board; the Board did not recommend any of those three individuals to the Governor.
  - The following year, as of June 2020, 68 requests for Emergency Medical Reprieve had been sent to the Board. After screening, the full Board voted on two cases; the Board recommended one individual to the Governor, and the Governor denied the request.

## **TEXAS COMPASSIONATE RELEASE** **PRIMARY LEGAL SOURCES**

### **MEDICALLY RECOMMENDED INTENSIVE SUPERVISION (MRIS)**

#### **Statute**

Texas Government Code § 508.146 (2019), available through the Texas Legislature’s Constitution and Statutes webpage, <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.508.htm#508.146>.

#### **Agency Policy**

Texas Department of Criminal Justice, Parole Division, Policy and Operating Procedure 2.2.5 (Sept. 3, 2018), [https://www.tdcj.texas.gov/documents/pd/02.02.05\\_parole\\_policy.pdf](https://www.tdcj.texas.gov/documents/pd/02.02.05_parole_policy.pdf).

Texas Board of Pardons and Paroles, Board Policy 145.204 (Oct. 18, 2018), [https://www.tdcj.texas.gov/bpp/policies\\_directives/POL%20145.204%20\\_MRIS.pdf](https://www.tdcj.texas.gov/bpp/policies_directives/POL%20145.204%20_MRIS.pdf).

Texas Department of Criminal Justice, Texas Correctional Office on Offenders With Medical or Mental Impairments, Program Guidelines and Processes, PGP-01.04 (June 1, 2020), [https://www.tdcj.texas.gov/documents/rid/TCOOMMI\\_PGP\\_0104\\_MRIS.pdf](https://www.tdcj.texas.gov/documents/rid/TCOOMMI_PGP_0104_MRIS.pdf).

- Attachment A, Eligibility Criteria for Medically Recommended Intensive Supervision (MRIS)
- Attachment B, Medically Recommended Intensive Supervision Program Acceptance/Refusal
- Attachment C-2, Board Transmittal Checklist

*Note that as of September 1, 2021, the Guideline’s attachments (A, B, and C-2) are not available on the Department’s website. They can be obtained by submitting a public information request at [https://www.tdcj.texas.gov/divisions/ogc/information\\_act.php](https://www.tdcj.texas.gov/divisions/ogc/information_act.php).*

Texas Department of Criminal Justice, Correctional Managed Health Care Policy A-08.6, Medically Recommended Intensive Supervision (MRIS) Screening (July 2020), [https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc\\_policy\\_manual/A-08.06.pdf](https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_policy_manual/A-08.06.pdf).

- Attachment A, Medically Recommended Intensive Supervision Screening Form, [https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc\\_policy\\_manual/A-08.06\\_Attachment\\_A.pdf](https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_policy_manual/A-08.06_Attachment_A.pdf).
- Attachment B, Medically Recommended Intensive Supervision Medical Summary, [https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc\\_policy\\_manual/A-08.06\\_Attachment\\_B.pdf](https://www.tdcj.texas.gov/divisions/cmhc/docs/cmhc_policy_manual/A-08.06_Attachment_B.pdf).

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## **TEXAS COMPASSIONATE RELEASE** **PRIMARY LEGAL SOURCES**

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### **EMERGENCY MEDICAL REPRIEVE**

#### **Regulations**

37 Tex. Admin. Code § 143.34 (2020), available through the Texas Secretary of State, [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=37&pt=5&ch=143&rl=34](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=37&pt=5&ch=143&rl=34).

#### **Agency Publications**

Texas Board of Pardons and Paroles, Emergency Medical Reprieve Information Page (Jan. 2, 2019), [https://www.tdcj.texas.gov/bpp/exec\\_clem/Reprieve.html](https://www.tdcj.texas.gov/bpp/exec_clem/Reprieve.html).

Texas Board of Pardons and Paroles, *Application for Emergency Medical Reprieve* (Form EMR-10) (Jan. 11, 2010), <https://www.tdcj.texas.gov/bpp/forms/forms.html>.

## **NOTES**

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\* *Id.* means see prior note.

<sup>1</sup> Tex. Gov't Code Ann. § 508.146; Texas Board of Pardons and Paroles, Board Policy 145.204, Medically Recommended Intensive Supervision; Texas Department of Criminal Justice, Parole Division, Policy and Operating Procedure (Parole Policy) 2.2.5, Medically Recommended Intensive Supervision; Texas Department of Criminal Justice, Texas Correctional Office on Offenders with Medical or Mental Impairments, Program Guidelines and Processes (Department Guideline) PGP-01.04, Medically Recommended Intensive Supervision; Texas Department of Criminal Justice, Correctional Managed Health Care Policy (Department Health Policy) A-08.6, Medically Recommended Intensive Supervision (MRIS) Screening.

<sup>2</sup> 37 Tex. Admin. Code § 143.34; Texas Board of Pardons and Paroles, *Application for Emergency Medical Reprieve* (Form EMR-10).

<sup>3</sup> Tex. Gov't Code Ann. § 508.146 (a) (1) (A); Department Guideline PGP-01.04, Attachment A, Eligibility Criteria for Medically Recommended Intensive Supervision (MRIS); Department Health Policy A-08.6, Definitions.

<sup>4</sup> *Id.*

<sup>5</sup> Department Health Policy A-08.6, Definitions.

<sup>6</sup> Tex. Gov't Code Ann. § 508.146 (a) (1) (A); Department Guideline PGP-01.04, Attachment A; Department Health Policy A-08.6, Definitions, referencing the Texas Health and Safety Code, § 591.003. Note that some of the Department's MRIS rules still use the outdated term "mentally retarded" rather than intellectually or developmentally disabled.

<sup>7</sup> Tex. Gov't Code Ann. § 508.146 (a) (1) (A); Department Guideline PGP-01.04, Attachment A; Department Health Policy A-08.6, Definitions, referencing the Texas Health and Safety Code, § 571.003.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Tex. Gov't Code Ann. § 508.146 (a) (2); Texas Board of Pardons and Paroles, Board Policy 145.204, Procedure, § I (A).

<sup>11</sup> Tex. Gov't Code Ann. § 508.146 (a); Department Guideline PGP-01.04, Attachment A.

<sup>12</sup> Department Guideline PGP-01.04, Attachment A. See also Tex. Gov't Code Ann. § 508.146 (f).

<sup>13</sup> Tex. Gov't Code Ann. § 508.146 (a). See Tex. Code of Crim. Proc., Art. 42A.054, for the list of relevant aggravated offenses, <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.42A.htm#42A.054>.

<sup>14</sup> Tex. Gov't Code Ann. § 508.146 (a) (1) (B); Department Guideline PGP-01.04, Attachment A. See Tex. Code of Crim. Proc., Ch. 62, for additional information on sex offenses, <https://statutes.capitol.texas.gov/Docs/CR/htm/CR.62.htm#62>.

<sup>15</sup> Department Health Policy A-08.6, Definitions.

<sup>16</sup> Id.

<sup>17</sup> Department Guideline PGP-01.04, § I (A).

<sup>18</sup> Department Health Policy A-08.6, Definitions.

<sup>19</sup> Department Guideline PGP-01.04, § I (B) and Attachment B, Medically Recommended Intensive Supervision Medical Summary form.

<sup>20</sup> Id. at § I (B).

<sup>21</sup> Id. at § I (C).

<sup>22</sup> Id. at § II (A). See also Parole Policy 2.2.5, § I (A).

<sup>23</sup> Id. at § II (B).

<sup>24</sup> Department Health Policy A-08.6, Procedures, § I and Attachment A. "Health care provider" is defined as a physician, physician assistant, or nurse practitioner. Id. at § I (B).

<sup>25</sup> Id. at § I (A).

<sup>26</sup> Id. at § II (A) and Attachment B.

- <sup>27</sup> Id. at § II (C).
- <sup>28</sup> Id. at §§ II (D) and IV (A).
- <sup>29</sup> Id. at §§ IV (A) through IV (C), and IV (E).
- <sup>30</sup> Id. at § IV (D).
- <sup>31</sup> Id. at § IV (F).
- <sup>32</sup> Id. at § III (A). Note that the case of an individual with a “concurrent state jail felony” to serve upon completion or release of the prison sentence, if approved at this stage, is submitted to the sentencing judge for secondary review and a decision. Id. at §§ III (A) through III (C).
- <sup>33</sup> Texas Board of Pardons and Paroles, Board Policy 145.204, Procedure, § I (A).
- <sup>34</sup> Department Guideline PGP-01.04, § VI (A). Note that individuals denied MRIS consideration who have a mandatory release date or sentence completion date in the upcoming six months are referred to the Continuity of Care Program Supervisor for review and processing. Id. at § VI (E).
- <sup>35</sup> Texas Board of Pardons and Paroles, Board Policy 145.204, Procedure, § I (C).
- <sup>36</sup> Id. at Procedure, § V.
- <sup>37</sup> Department Guideline PGP-01.04, § VI (B).
- <sup>38</sup> Texas Board of Pardons and Paroles, Board Policy 145.204, Procedure, § III (A).
- <sup>39</sup> Department Guideline PGP-01.04, § VI (C).
- <sup>40</sup> Id. at § VI (D). Note that the Department’s Parole Division operating procedures state that Victim Services staff must be notified within one day of an individual’s approval for MRIS. See Parole Policy 2.2.5, § I (B).
- <sup>41</sup> Tex. Gov’t Code Ann. § 508.146 (c); Texas Board of Pardons and Paroles, Board Policy 145.204, Procedure, § I (C) (1).
- <sup>42</sup> Department Guideline PGP-01.04, § VI (F).
- <sup>43</sup> Id. at § VI (E). Note that the Department Guideline has two sections labeled “VI.” This reference is to the second one, entitled “Pre-Release Processing.”
- <sup>44</sup> Id. at § VI (F).
- <sup>45</sup> Id. at § VI (D).
- <sup>46</sup> Id. at § VII (C).
- <sup>47</sup> Id. at § VII (D) (3).
- <sup>48</sup> Id. at § VII (D) (4).

<sup>49</sup> Tex. Gov't Code Ann. § 508.146 (c); Texas Board of Pardons and Paroles, Board Policy 145.204, Procedure, § III (C).

<sup>50</sup> Texas Board of Pardons and Paroles, *Annual Statistical Report FY 2020*, 11, [https://www.tdcj.texas.gov/bpp/publications/FY\\_2020\\_Annual\\_Statistical\\_Report.pdf](https://www.tdcj.texas.gov/bpp/publications/FY_2020_Annual_Statistical_Report.pdf).

<sup>51</sup> Texas House of Representatives, House Research Organization, "Existing Medical Parole Program in Texas Provides for Limited Release of Certain Seriously Ill, Elderly Inmates," *Interim News Briefs* (July 9, 2020), <https://txhronews.wordpress.com/2020/07/09/existing-medical-parole-program-provides-for-limited-release-of-certain-seriously-ill-elderly-inmates/>.

<sup>52</sup> Texas Board of Pardons and Paroles, *Annual Statistical Report FY 2020*, 11, [https://www.tdcj.texas.gov/bpp/publications/FY\\_2020\\_Annual\\_Statistical\\_Report.pdf](https://www.tdcj.texas.gov/bpp/publications/FY_2020_Annual_Statistical_Report.pdf).

<sup>53</sup> 37 Tex. Admin. Code § 143.31 (a).

<sup>54</sup> 37 Tex. Admin. Code § 143.34. See also Texas Board of Pardons and Paroles, Reprieve Information Page, [http://www.tdcj.state.tx.us/bpp/exec\\_clem/Reprieve.html](http://www.tdcj.state.tx.us/bpp/exec_clem/Reprieve.html). The *Emergency Medical Reprieve* application is available at [www.tdcj.texas.gov/bpp/forms/forms.html](http://www.tdcj.texas.gov/bpp/forms/forms.html).

<sup>55</sup> Texas House of Representatives, House Research Organization, "Existing Medical Parole Program in Texas Provides for Limited Release of Certain Seriously Ill, Elderly Inmates," *Interim News Briefs* (July 9, 2020), <https://txhronews.wordpress.com/2020/07/09/existing-medical-parole-program-provides-for-limited-release-of-certain-seriously-ill-elderly-inmates/>.