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Texas provides compassionate release to prisoners with a qualifying medical condition or terminal illness, and to those who are elderly, through (1) Medically Recommended Intensive Supervision (MRIS)\(^1\) and (2) Emergency Medical Reprieve.\(^2\)

**MEDICALLY RECOMMENDED INTENSIVE SUPERVISION**

I. ELIGIBILITY

**Medical Condition/Age** - Prisoners may be considered for Medically Recommended Intensive Supervision (MRIS) if they have a physical disability, mental illness, or intellectual disability, or are terminally ill, in need of long-term care, or elderly.\(^3\)

- **Physical disability** is defined as a severe, chronic disability that is likely to continue indefinitely and results in substantial functional limitations in three or more areas of “major life activity,” such as self-care, self-direction, learning, receptive and expressive language, mobility, capacity for independent living, or economic self-sufficiency.\(^4\)

- **Mental illness** is defined as an illness, disease, or condition that either “substantially impairs” a person’s thoughts, perception of reality, emotional process, judgment, or “grossly impairs” his or her behavior, as manifested by recent “disturbed behavior.”\(^5\)

- **Intellectual disability** is defined as “significantly sub-average intellectual functioning existing concurrently with deficits in adaptive behavior and originating in the developmental period (until the age of 18).”\(^6\)

- **Terminally ill** means the prisoner has a condition that is incurable and “inevitably [will] result in death within six (6) months regardless of life sustaining treatment,” requiring skilled nursing, hospice, or home health care.\(^7\)

- A prisoner who needs *long-term care* is defined as (1) “deficient” in self-care; (2) having, with “reasonable medical probability,” clinical conditions that will not change over time; and (3) requiring nursing care.\(^8\)

- **Elderly** is defined as being 65 years of age or older.\(^9\)

**Exclusions** - Prisoners serving a sentence of death or life without parole are not eligible for MRIS.\(^10\) There are also several eligibility “qualifiers” based on the nature of the conviction.

- Prisoners serving a sentence for an aggravated offense of a violent or sexual nature will be considered for MRIS only if they are terminally ill or in need of long-term care.\(^11\)

- Prisoners with convictions requiring them to register under the Sex Inmate
Registration Program are eligible for MRIS consideration only if they are in a “persistent vegetative state” or have an “organic brain syndrome with significant total mobility impairment.”

- “Persistent vegetative state” is defined as 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.”

- “Organic brain syndrome” is defined as “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 mild-to-severe impairment of memory, orientation, judgment, intellectual functions, and emotional adjustment.”

II. APPLICATION/REFERRAL

A prisoner can be identified as a candidate for MRIS by (1) the facility’s Unit medical/mental health staff making a direct referral; (2) the prisoner making a written request; or (3) an “external” referral from family members, social service agencies, elected officials, or others.

III. DOCUMENTATION AND ASSESSMENT

Initial Screening -

- When Unit staff refer a prisoner for MRIS consideration, they forward his or her medical/mental health summary to the MRIS Program Supervisor, who screens the prisoner’s records to make sure the offense committed does not make him or her ineligible.

- For requests/referrals for MRIS consideration submitted by prisoners or external sources, the prisoner’s records are screened first for eligibility based on his or her offense. If eligible, a request is sent to Unit medical staff for a recommendation based on the prisoner’s current medical condition. Unit staff send a recommendation and the MRIS medical/mental health summary to the MRIS Program Supervisor.

Parole Case Summary and Victim Services Notification - The Correctional Office will (1) prepare a “parole case summary,” if there is not a current one; (2) notify the Victim Services office of the prisoner’s possible release; and (3) complete any needed additional screening (e.g., to see if the prisoner is classified as a sex offender).

MRIS Transmittal - The Correctional Office Program Supervisor sends a completed MRIS transmittal, medical information, and parole file to the Texas Board of Pardons and Paroles (Board) MRIS Panel. Note that the medical information must include the prisoner’s diagnosis, prognosis, life expectancy, mobility level, functional limitations, post-release needs (including transportation), and recommended release plan.
IV. DECISION-MAKING PROCESS

Decision Maker - The Texas Board of Pardons and Paroles has the authority to make all Medically Recommended Intensive Supervision decisions.

Decision Process - The Board has an MRIS Panel, which is composed of the “presiding officer” and two members appointing to the panel by the presiding officer. The Panel’s task is to determine that, based on a prisoner’s condition and medical evaluation, he or she is not a threat to public safety.

- The decision for each prisoner includes (1) a recommendation regarding the threat to public safety; (2) a determination whether to approve or deny MRIS; and (3) any additional special conditions that will be imposed on the prisoner.

Conditions - In addition to any other conditions of release the Board MRIS Panel may set, it will require that the prisoner remain under the care of a physician in a “medically suitable placement.”

Notification - The Correctional Office's MRIS Program Supervisor is responsible for notifying the prisoner, Unit Medical Staff, the Correctional Office Human Service Specialist, and the Texas Department of Criminal Justice (Department) Parole Division of the Board MRIS Panel’s decision. The Department’s Victim Services office is notified of all MRIS cases that have favorable decisions.

V. POST-DECISION

Denials and Appeal Rights - If the Board denies a prisoner’s release on MRIS, his or her case can be reconsidered at the request of the Unit Medical Staff at any time they find that the prisoner’s condition has deteriorated.

Release Plan -

- Social Security - For prisoners whose release under MRIS is approved, the Correctional Office will prepare a “Social Security Prerelease Application memorandum” to the appropriate Texas Department of Health and Human Services office “for immediate completion and submission (48 hours) of aged or disability claim[s] for cases in which applications have not been previously filed.”

- Continuity of Care and Release - The Correctional Office coordinates an appropriate release and continuity of care plan that addresses the prisoner’s post-release needs, coordinates release transportation with the Department’s Health Services Transfer Liaison and Field Services Manager, prepares release notifications, and obtains a current MRIS medical summary.

Supervision - A prisoner can only be released if the Correctional Office, in cooperation with the Department’s Pardons and Parole Division, has prepared an MRIS supervision plan that (1) requires the former prisoner to submit to electronic monitoring; (2) places the
former prisoner on “super-intensive” supervision; or (3) otherwise ensures “appropriate supervision.”

- At least once each calendar quarter, the Correctional Officer is directed to report to the Board MRIS Panel regarding the prisoner’s medical and placement status. On the basis of those reports, the MRIS Panel can modify the conditions of release.

VI. REPORTING/STATISTICS

The Board reported that in Fiscal Year 2016, 86 prisoners were released on Medically Recommended Intensive Supervision. Of those, 55 prisoners were terminally ill and 31 were in need of long-term care.

- According to the Board, no prisoners who are mentally ill or “intellectually disabled” (previously referred to as “mentally retarded”) have been released under MRIS.

EMERGENCY MEDICAL REPRIEVE

The Governor may grant reprieves, including Emergency Medical Reprieves, upon the written recommendation of the Texas Board of Pardons and Paroles (Board). Prisoners 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 with the Board. Beyond the application form and a brief definition of Emergency Medical Reprieve on the Board’s website, there is very little information on the reprieve process.

NOTES

1 Tex. Gov’t Code Ann. § 508.146 (2017); Texas Department of Criminal Justice, Texas Correctional Office on Offenders with Medical or Mental Impairments, Program Guidelines and Processes for Medically Recommended Intensive Supervision (MRIS) (Department Guidelines) PGP 01.04 (2014); Texas Department of Criminal Justice Parole Division, Policy and Operating Procedures (Parole Policy), PD/POP 2.2.5 (2006).
2 37 Tex. Admin. Code § 143.34.
3 Tex. Gov’t Code Ann. § 508.146 (a) (1) (A).
4 Department Guidelines, PGP 01.04, Attachment 1: MRIS Eligibility Criteria.
5 Id.
6 Id. Note that many of the MRIS rules and guidelines still use the term “mentally retarded,” which is considered outdated, rather than the term “intellectually disabled.”
7 Department Guidelines, PGP 01.04, Attachment 1: MRIS Eligibility Criteria.
8 Id.
9 Id.
10 Tex. Gov’t Code Ann. § 508.146 (a).
11 Id. These are also called “3g” offenses, a reference to the Code section that lists them.
12 Tex. Gov’t Code Ann. § 508.146 (a) (1) (B).
13 Department Guidelines, PGP 01.04, Attachment 1: MRIS Eligibility Criteria.
14 Id.
15 Department Guidelines, PGP 01.04, § I.A. Medical summaries must be completed by a physician, physician’s assistant, or nurse practitioner; mental health summaries must be completed by a licensed psychiatrist, or physician’s assistant/nurse practitioner trained as a “correctional managed care mental health provider.” Id.
16 Id. at § I.B.
17 Id. at Discussion and § I.C.
18 Department Guidelines, PGP 01.04, § I.A.
19 Id. at §§ I.B and I.C.
20 Department Guidelines, PGP 01.04, §§ II.1-3 and III.1-3; Parole Policy 2.2.5, §§ I.A.2 and II.
21 Department Guidelines, PGP 01.04, § III.4.
22 Id. at § III.4.B.
23 Tex. Gov’t Code Ann. § 508.146 (e).
24 Id. at (a) (2).
25 Department Guidelines, PGP 01.04, § III.4.C.
26 Tex. Gov’t Code Ann. § 508.146 (c).
27 Department Guidelines, PGP 01.04, § III.4.D.
28 Id. at § III.4.F.
29 Id. at § III.5.A.1.
30 Id. at § III.5.B.1.
31 Department Guidelines, PGP 01.04, § III.5.B.2. See also Parole Policy 2.2.5, § II.D
32 Tex. Gov’t Code Ann. §§ 508.146 (a) (3) and (b).
33 Tex. Gov’t Code Ann. § 508.146 (c); Department Guidelines, PGP 01.04, § VI.1.G.
35 Id.
36 37 Tex. Admin. Code § 143.31 (a).
38 Note that the Board’s most recent annual report states the number of non-capital clemency cases it heard and approved but does not specify which of those are reprieves. Texas Board of Pardons and Paroles, Annual Statistical Report 2016, http://www.tdcj.state.tx.us/bpp/publications/FY%202016%20AnnualStatistical%20Report.pdf.