



Florida

Overall Grade for Florida

Total Grade

35
/100

Letter Grade

F

Program Grades

	Total Grade	Letter Grade
Conditional Medical Release	48/100	F
Medical Furlough	22/100	F

Conditional Medical Release

Total Grade

48 /100

Letter Grade

F

Eligibility Criteria

21/30

6/10 Clearly set out with understandable and measurable standards.

6/10 Generous or not unduly restrictive.

9/10 No categorical exclusions/everyone is eligible for consideration.

× **Extra credit:** Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. **0**

Procedures

5/10

5/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

0/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.

× **Extra credit:** Expedited time frames exist for terminal cases. **0**

Engaging the Process

2/15

2/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

0/5 Incarcerated people, their loved ones, and advocates can initiate the process.

0/5 Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support

10/10

5/5 Agencies provide comprehensive release planning.

× **Extra credit:** Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **0**

5/5 Release planning begins early in the process.

Agency Policy Design

10/15

3/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

5/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

2/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Data Collection and Public Reporting

0/10

0/5 Agencies are obliged to gather, compile, and report release data to legislature.

0/5 Reporting is made available to the public via annual reports or other means.



Right to Counsel and Appeals

0/5 Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

✘ **Extra credit:** Denials are appealable. **0**

0/5 Individuals have the right to reapply should conditions change.

✘ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. **0**

The Numbers

In response to FAMM's request for information, the Florida Commission on Offender Review reported the following:

2019 The Commission on Offender Review granted 45 people Conditional Medical Release and denied 52.

2020 It granted 35 individuals and denied 33.

High and Low Marks

HIGH MARKS

- FAMM gave passing grades to Florida's Conditional Medical Release for **release planning support**, because, while we could not be certain, it appears the Department of Corrections provides release planning at an early stage. Department Health Services must include a "verifiable" release plan in any referral to the Florida Commission on Offender Review, the agency that rules on Conditional Medical Release cases.
- Conditional Medical Release eked out a passing grade for **agency policy design**. While publicly available policy is quite sparse and lacks standards, it covers the stages, with the exception of initial identification, and it provides some minimal guidance to actors.

LOW MARKS

- **Eligibility criteria:** A person who is terminally ill is only eligible if death is "imminent," and the rules do not define "imminent." Given that no time frames govern the assessment and decision-making steps, FAMM suspects people who are deemed terminally ill may, in some cases, die before the Commission can decide the case. The other eligibility category – for incapacitation – requires a finding, within a reasonable degree of medical certainty, that the incapacitation is such that the person is not a danger to self or others. Requiring medical professionals to make dangerousness findings is inappropriate. Medical professionals are not trained in risk analysis, and requiring them to make such findings likely violates their ethical obligation to their patients.
- Florida's Conditional Medical Release failed **engaging the process** because the only information FAMM could locate about how an application begins explains that the Chief Health Officer makes an initial recommendation to the Director of Health Services. We could not find any information about how the Chief Health Officer identifies and recommends an eligible person. There does not appear to be any way for an incarcerated individual or the individual's advocate to ask for Conditional Medical Release.
- FAMM also found no information about **right to counsel and appeals** or about **data collection and public reporting**. Accordingly, we handed out grades of zero in those categories.



Medical Furlough

Total Grade

22 /100

Letter Grade

F

Eligibility Criteria

21/30

6/10 Clearly set out with understandable and measurable standards.

5/10 Generous or not unduly restrictive.

10/10 No categorical exclusions/everyone is eligible for consideration.

× **Extra credit:** Terminal illness time-left-to-live provisions are reasonable and sufficiently long to permit the completion of the review and decision-making processes. **0**

Procedures

0/10

0/5 Documentation and assessment are straightforward, lacking multiple or redundant reviews and authorizations.

0/5 Time frames for completing review and/or decision-making exist and are designed to keep the process moving along.

× **Extra credit:** Expedited time frames exist for terminal cases. **0**

Engaging the Process

1/15

1/5 Clinical and other staff can identify potentially eligible individuals and initiate the process.

0/5 Incarcerated people, their loved ones, and advocates can initiate the process.

0/5 Corrections staff have an affirmative duty to identify incarcerated people eligible for compassionate release and take the steps necessary to begin the process.

Release Planning Support

0/10

0/5 Agencies provide comprehensive release planning.

× **Extra credit:** Release planning includes helping the incarcerated person apply for benefits prior to release, including housing, Medicaid, Medicare, and/or veterans benefits. **0**

0/5 Release planning begins early in the process.

Agency Policy Design

0/15

0/5 Agency rules exist for all stages of identification, initiation, assessment, and decision-making.

0/5 Agency rules are consistent with and/or complement the statute, are up to date, and internally consistent.

0/5 Rules provide clear guidance to reviewers and decision-makers about steps to take and standards to apply.

Data Collection and Public Reporting

0/10

0/5 Agencies are obliged to gather, compile, and report release data to legislature.

0/5 Reporting is made available to the public via annual reports or other means.

0/10

Right to Counsel and Appeals

0/5 Program allows counsel to represent people before decision-maker (i.e., parole board, commissioner, or court).

✘ **Extra credit:** Denials are appealable. **0**

0/5 Individuals have the right to reapply should conditions change.

✘ **Extra credit:** Revocations are not used to return people to prison because their condition improves or goes into remission or because the individual outlives the prognosis. **0**

The Numbers

Florida does not publish data on how it uses the Medical Furlough program and failed to respond to FAMM's public records request for the information about furloughs in 2019 and 2020.

High and Low Marks

HIGH MARK

- Florida's Medical Furlough barely passed the **eligibility criteria** category. A person who is not expected to live more than six months from the date of the Medical Furlough request or is incapacitated to the extent that it is not reasonably foreseeable that the person could commit another crime is eligible for Medical Furlough. No one is ineligible due to the nature of the conviction or sentence or due to the time left to serve, earning the program a perfect score for no categorical exclusions. And while not generous, the terminal criterion is clear. The definition for incapacitation, on the other hand, is neither readily measurable nor generous, depressing the overall grade in this category.

LOW MARK

- **Overall**, Florida's Medical Furlough **flunked** badly. FAMM could not locate rules or guidance for the Medical Furlough program, outside the statute itself, which includes the barest outlines of steps and roles but has very little information about policies or procedures. No publicly accessible rules or guidance exists, and we could not determine how the Department of Corrections manages any given Medical Furlough, from identification and initiation of the process to the final furlough decision. Consequently, the program received zeros for every grading category other than eligibility criteria.