

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT:	PAGE <u>1</u> OF <u>5</u>
Medical Release as if on Parole	NUMBER: 66-ILL-01
RULE/CODE REFERENCE: ORC 2967.05; ORC 2929.20; A.R. 5120:1-1-40	SUPERSEDES: 66-ILL-01 dated 11/24/10
RELATED ACA STANDARDS:	EFFECTIVE DATE: April 5, 2016
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish procedural guidelines pursuant to ORC 2967.05, ORC 2929.20 and Administrative Rule 5120:1-1-40, Medical Release, for inmates in imminent danger of death, medically incapacitated, or terminally ill and to establish criteria for consideration of their release as if on parole.

III. APPLICABILITY

This policy shall be applicable to all persons employed by or under contract with the Ohio Department of Rehabilitation and Correction (DRC) and specifically to those who are involved directly or indirectly in the evaluation and processing of inmates who are in imminent danger of death, medically incapacitated or terminally ill.

IV. DEFINITIONS

Activities of Daily Living (ADLs) - A term used in healthcare to refer to daily self-care activities within an individual's place of residence, in outdoor environments, or both including, but not limited to, feeding, bathing, dressing, and grooming. Healthcare professionals routinely refer to the ability or inability to perform ADLs as a measurement of the functional status of a person.

Ambulatory - Capable of independent movement - not bedridden.

Imminent Danger of Death - The inmate has a medically diagnosable condition that will cause death to occur within a short period of time (e.g. generally within six months).

Medically Incapacitated - Any diagnosable medical condition, including mental dementia and severe, permanent medical or cognitive disability, that prevents the inmate from completing activities of daily living without significant assistance, that incapacitates the inmate to the extent that institutional confinement does not offer additional restrictions, that is likely to continue throughout the entire period of parole, and that is unlikely to improve noticeably. Medically Incapacitated does not include conditions related solely to mental illness, unless the mental illness is accompanied by injury, disease or organic defect.

Terminal Illness - A condition that satisfies all of the following criteria:

- The condition is irreversible and incurable and is caused by disease, illness, or injury from which the inmate is unlikely to recover; and
- In accordance with reasonable medical standards and a reasonable degree of medical certainty, the condition is likely to cause death to the inmate within twelve (12) months; and
- Institutional confinement of the inmate does not offer additional protections for public safety or against the inmate's risk to reoffend.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to assess and monitor the physical condition of inmates who are in imminent danger of death, are medically incapacitated, or have a terminal illness and to provide timely consideration for release as if on parole.

VI. PROCEDURES

- A. The eligibility requirements and procedural steps set forth in this policy pertain to a medical release obtained through the Governor's Office as if on parole. Because it is the policy of the Department to encourage such decisions be made by local sentencing courts, all considerations for medical release shall first be presented through Medical Protocol B-35, Medical Judicial Release.
1. Prior to initiating any medical release as if on parole under this policy, the Health Care Administrator shall contact the Division of Legal Services to determine whether a judicial release request has been made under Medical Protocol B-35, Medical Judicial Release.
 2. If the Division of Legal Services advises that a medical release as if on parole may be initiated, the procedures set forth below shall apply.
- B. An inmate is ineligible for medical release as if on parole under this policy if:
1. The inmate is serving a death sentence;
 2. The inmate is serving a sentence of life without parole;
 3. The inmate is serving a sentence under Chapter 2971. of the Revised Code (Sentencing of Sexually Violent Predators) for a felony of the first or second degree;
 4. The inmate is serving a sentence for aggravated murder or murder; or
 5. The inmate is serving a mandatory prison sentence for an offense of violence or any specification described in Chapter 2941 (Indictment) of the Revised Code.

- B. The institution Health Care Administrator shall monitor the condition of inmate patients who may qualify for medical release as if on parole on at least a monthly basis.
1. When an inmate's condition progresses to the point where he/she is in imminent danger of death, is medically incapacitated, or has a terminal illness, the Health Care Administrator shall cause the Chief Medical Officer to issue a certificate outlining the diagnosis, the inmate's ambulatory status, the current prognosis relative to the inmate's medical condition, the minimum placement required to care for the inmate, and the medical release category in which the inmate falls.
 2. The Health Care Administrator shall send the certificate of the Chief Medical Officer to the Division of Legal Services attorney assigned to the Bureau of Medical Services.
- C. Upon receipt of the certificate of the Chief Medical Officer, the staff attorney shall investigate the inmate's statutory eligibility for a judicial release under Ohio Revised Code Section 2929.20, a release as if on parole under Ohio Revised Code Section 2967.05, a Parole Board release for inmates sentenced prior to July 1, 1996 or otherwise subject to the discretionary releasing authority of the Parole Board.
1. If the staff attorney concludes the inmate does not qualify for any of the available processes, he/she shall advise the Health Care Administrator, the Bureau of Medical Services and the Deputy Director of the Division of Parole and Community Services that the inmate does not qualify and no further action shall be taken regarding a medical release.
 2. If the staff attorney concludes the inmate is eligible for a judicial release or a release as if on parole, the inmate's information shall be forwarded to the Deputy Director of the Division of Parole and Community Services for further actions consistent with paragraphs D through M below.
 3. If the staff attorney concludes the inmate is eligible for consideration for a medical release by the Parole Board, the inmate's information shall be forwarded to the Deputy Director of the Division of Parole and Community Services for further actions consistent with paragraph N below.
 4. The Division of Legal Services shall maintain a centralized database of all determinations made under paragraphs C.1 – C.3.
- D. Upon receipt of information from the Division of Legal Services under paragraph C.2 above, the Deputy Director of the Division of Parole and Community Services shall consider:
1. The date of expiration of the inmate's definite sentence;
 2. The specific crime for which the offender is currently incarcerated and any other felony convictions;
 3. Pre-sentence or offender background investigations;
 4. Past and present institutional adjustment;
 5. The inmate's current medical and mental health condition;
 6. Other relevant aggravating or mitigating factors.

- E. Based upon the initial review of the inmate's information, the Deputy Director of the Division of Parole and Community Services shall determine whether a further detailed investigation is warranted. In the event a decision is made not to complete a more detailed investigation due to factors which indicate the inmate would not be a good candidate for medical release, the Deputy Director of the Division of Parole and Community Services shall notify the Health Care Administrator, the Bureau of Medical Services and the Division of Legal Services. The Division of Legal Services shall indicate the decision in the database described in paragraph C.4.
- F. In the event a decision is made by the Deputy Director of the Division of Parole and Community Services to conduct a detailed investigation into whether the inmate should be medically released, the investigation report shall be completed, and if the Deputy Director recommends the medical release, the recommendation and investigation shall be forwarded to the Director and shall include, at a minimum, the following information:
1. Information on the inmate's placement in the community;
 2. An Institutional Summary Report;
 3. Input from consultations with the sentencing court, county prosecutor and the Office of Victim Services;
 4. The terms and conditions which would be imposed on the inmate;
 5. Information regarding transportation arrangements for the inmate.
- G. Upon conclusion of the detailed investigation, the Deputy Director of the Division of Parole and Community Services shall make a recommendation and notify the Health Care Administrator, the Bureau of Medical Services and the Division of Legal Services. The Division of Legal Services shall indicate the completion of the investigation and the recommendation of the Division of Parole and Community Services in the database described in paragraph C.4.
- H. If the inmate is also eligible for a judicial release, the information in paragraph F may also be forwarded to the sentencing Court of Common Pleas with the exception of the terms and conditions of a medical release as if on parole.
- I. The Director shall consider the complete investigation report, including the recommendation of the Deputy Director of Parole and Community Services, the Chief Medical Officer's certificate, and all other associated information from the detailed investigation.
1. In the event the Director recommends a medical release as if on parole, the entire packet shall be forwarded to the Governor with a statement indicating a recommendation for medical release.
 2. The decision of the Director as to whether to recommend a medical release or stop the medical release process shall be communicated to the Health Care Administrator, the Bureau of Medical Services, the Deputy Director of the Division of Parole and Community Services and the Division of Legal Services. The Division of Legal Services shall indicate the decision of the Director in the database described in paragraph C.4.
- J. If the Governor authorizes release as if on parole and after the authorization is filed with the Secretary of State and delivered to the Managing Officer of the institution where the inmate is

confined, the inmate may be released as if on parole. Terms and conditions of such release shall be made a part of the inmate's file.

1. The Managing Officer shall forward a copy of the Governor's warrant to the APA Superintendent of Field Services, who shall generate a parole certificate in consultation with the designated Parole Board staff member; and
2. The APA Superintendent of Field Services shall notify the DRC State Medical Director of the inmate's impending release; and
3. The APA Superintendent shall notify the Office of Victim Services so appropriate victim notification may be completed.

- K. If, subsequent to the inmate's release in accordance with section J of this policy, the inmate's health improves so that the inmate is no longer terminally ill, medically incapacitated, or in imminent danger of death, the inmate shall be returned, by order of the Governor, to the institution from which he was released.
- L. If the inmate violates any rules or conditions applicable to the inmate, the inmate may be returned to an institution under the control of DRC. The Governor may direct the APA to investigate or cause to be investigated the inmate and make a recommendation as to whether the continued release of the inmate would further the interests of justice and be consistent with the welfare and security of society.
- M. An inmate released under this policy shall be subject to supervision by the APA in accordance with any recommendation of the APA that is approved by the Governor.
- N. If an inmate is eligible for consideration for release by the Parole Board, the Deputy Director of the Division of Parole and Community Services shall forward the certificate of the Chief Medical Officer to the Chair of the Parole Board.
1. The Chair of the Parole Board shall review the material submitted by the Chief Medical Officer. The Parole Board Chair may elect to reject the medical release after staffing and making a recommendation to the Deputy Director of the Division of Parole and Community Services or may cause the matter to be considered by the Parole Board. If submitted to the Parole Board, its options include, but are not limited to:
 - a. Making no change in its original decision;
 - b. Modifying its decision and ordering the inmate's release on parole (provided subsequent notice requirements are met).
 2. If the Parole Board elects to release the inmate, a release shall be effective as soon as placement can be arranged and approved. The Parole Board shall notify the Office of Victim Services prior to the release.
 3. The final decision of the Parole Board shall be communicated to the Division of Legal Services by the Deputy Director of Parole and Community Services to be recorded in the database described in paragraph C.4.