

## **CORRECTIONS**

### **THE COMMISSIONER**

#### **Compassionate Release**

**Proposed Amendment: N.J.A.C. 10A:16-1.3**

**Proposed New Rules: N.J.A.C. 10A:16-8.6, 8.7, and 8.8**

**Proposed Repeal and New Rule: N.J.A.C. 10A:16-8.5**

Authorized By: Marcus O. Hicks Esq., Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-044.

Submit written comments by July 2, 2021, to:

Kathleen Cullen

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The agency proposal follows:

### **Summary**

The Compassionate Release Act (Act), P.L. 2020, c. 106, requires changes to the Department of Corrections' (Department) rules at N.J.A.C. 10A:16-1.3 and 8.5, as well as the addition of new rules at N.J.A.C. 10A:16-8.6, 8.7, and 8.8 to establish the rules for processing

applications for compassionate release. New rules for assisting eligible inmates in applying for medical assistance as set forth at N.J.S.A. 30:123.51e, are proposed at N.J.A.C. 10A:16-8.8. The Act creates a compassionate release program for certain inmates determined to be suffering from a medical affliction warranting release. The Act requires the Commissioner of the Department (Commissioner) to establish a process for an inmate to obtain a diagnosis from two licensed physicians to determine whether the inmate is eligible for compassionate release. The Act creates requirements related to what constitutes a diagnosis and it defines a grave medical condition to include a terminal condition, disease, or syndrome or permanent physical incapacity. The Commissioner also is required to create a process for applying for medical assistance, so that an inmate who is otherwise eligible for compassionate release is not denied release due to lack of availability of adequate medical services. The Act also repealed the medical parole law.

In accordance with the Act, the Department proposes to add new definitions for “grave medical condition,” “terminal condition, disease, or syndrome,” and “permanent physical incapacity” at N.J.A.C. 10A:16-1.3, as set forth in the Act.

The Department proposes repealing and replacing the rules for medical parole at N.J.A.C. 10A:16-8.5 with the eligibility requirements for compassionate release and adding new rules at N.J.A.C. 10A:16-8.6, 8.7, and 8.8 for the following:

- The medical diagnosis and Certificate of Eligibility for Compassionate Release;
- The petition for compassionate release;
- Applying for medical assistance; and
- Conditions of parole for compassionate release.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendment, new rules, and repeal incorporate the requirements of the Compassionate Release Act, N.J.S.A. 30:4-123.55b and 30:4-92a, into the administrative rules of the Department, which provide a mechanism for inmate medical parole in specified circumstances. The Department anticipates a positive overall social impact on the general public and inmate population resulting from the proposed rule changes.

### **Economic Impact**

The cost of meeting and maintaining the requirements of the proposed amendment, new rules, and repeal are accommodated within the existing budget.

### **Federal Standards Statement**

The proposed amendment, new rules, and repeal are promulgated under the authority of the rulemaking requirements of the Department, as established at N.J.S.A. 30:1B-6 and 10. The proposed amendment, new rules, and repeal are not subject to any Federal laws or standards; therefore, a Federal standards analysis is not required.

### **Jobs Impact**

The proposed amendment, new rules, and repeal will have no impact on jobs.

### **Agriculture Industry Impact**

The proposed amendment, new rules, and repeal will have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendment, new rules, and repeal do not impose reporting, recordkeeping, and other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The

proposed amendment, new rules, and repeal only impose reporting, recordkeeping, and other compliance requirements on the New Jersey Department of Corrections, the New Jersey State Parole Board (Parole Board), and governmental entities responsible for the enforcement of the rules.

### **Housing Affordability Impact Analysis**

The proposed amendment, new rules, and repeal shall have no impact on housing affordability and there is an extreme unlikelihood that the proposed amendment, new rules, and repeal would evoke a change in the average costs associated with housing. The proposed amendment, new rules, and repeal set forth requirements for the processing of Compassionate Release Applications of the inmates in New Jersey State correctional facilities.

### **Smart Growth Impact Development Analysis**

The proposed amendment, new rules, and repeal will have no impact on the achievement of smart growth and there is an extreme unlikelihood the proposed amendment, new rules, and repeal will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendment, new rules, and repeal set forth requirements for the processing of Compassionate Release Applications of the inmates in New Jersey State correctional facilities.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department of Corrections has evaluated this rulemaking and determined that the Department's determination to issue a Certificate of Eligibility for Compassionate Release opens the door for an inmate or the inmate's representative to petition the Superior Court for compassionate release. It also triggers an evaluation of the planning to ensure that the inmate is properly housed and medically supported upon release.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. GENERAL PROVISIONS

### 10A:16-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

**“Grave medical condition” means a prognosis by the licensed physicians designated by the Commissioner of the Department of Corrections that an inmate has more than six months, but not more than 12 months, to live or has a medical condition that did not exist at the time of sentencing and for at least three months has rendered the inmate unable to perform activities of basic daily living, resulting in the inmate requiring 24-hour care.**

...

**“Permanent physical incapacity” means a prognosis by the licensed physicians designated by the Commissioner of the Department of Corrections, pursuant to N.J.S.A. 30:4-123.51e that an inmate has a medical condition that renders the inmate permanently unable to perform activities of basic daily living, resulting in the inmate requiring 24-hour care, and that such condition did not exist at the time of sentencing.**

...

**“Terminal condition, disease, or syndrome” means a prognosis by the licensed physicians designated by the Commissioner of the Department of Corrections, pursuant to N.J.S.A. 30:4-123.51e, that an inmate has six months or less to live.**

## SUBCHAPTER 8. EXECUTIVE CLEMENCY AND MEDICAL PAROLE

### [10A:16-8.5 Medical parole]

Medical parole shall be handled in accordance with N.J.A.C. 10A:71-3.53, Medical parole.]

### **10A:16-8.5 Eligibility requirements for compassionate release**

**(a) A medical diagnosis to determine an inmate's eligibility for compassionate release may be initiated by the administrator, superintendent, a staff member of a correctional facility, or by the inmate, a member of the inmate's family, or the inmate's attorney by submitting the Compassionate Release Request Form to the Health Services Unit. The form will be available from members of the custody staff or health services in all correctional facilities. The medical diagnosis required for compassionate release shall be made by two health services licensed physicians designated by the Commissioner of the Department of Corrections and shall include, but not be limited to:**

- 1. A description of the terminal condition, disease, or syndrome or permanent physical incapacity;**
- 2. A prognosis concerning the likelihood of recovery from the terminal condition, disease, or syndrome or permanent physical incapacity;**
- 3. A description of the inmate's physical incapacity, if appropriate; and**
- 4. A description of the type of ongoing treatment that would be required if the inmate is granted compassionate release.**

### **10A:16-8.6 Medical diagnosis and Certificate of Eligibility for Compassionate Release**

**(a) The two designated physicians will complete the required examinations and forward their attestations, and all related medical records, to the health services unit medical director for review. Following review of the medical records, the medical director shall make a medical determination of eligibility or ineligibility and issue a memo to the Commissioner of the Department of Corrections detailing the same.**

**(b) All compassionate release procedures shall be handled on an expedited basis.**

**(c) The health services unit shall compile a compassionate release package (that is, medical records, attestations, Compassionate Release Request Form) for further review and processing.**

**(d) Once the Compassionate Release Request Form and packet details at (a) above have been finalized, the form and other relevant documentation shall be forwarded to the Division of Operations for review and notification to the inmate regarding eligibility. A copy of the notification will be provided to the State Parole Board for all eligible inmates. The Division of Operations will draft a Certificate of Eligibility for Compassionate Release for review and signature by the Commissioner for those deemed medically eligible. The signed certificate, along with the compassionate release packet, will be sent to a compassionate release designee in the facility in which the inmate is assigned for issuance to the inmate.**

**(e) The facility designee will ensure the inmate receives the packet and signs a receipt indicating the same. Instructions on how to file with the courts and the related addresses will be included in the packet provided to the inmate. If the inmate has retained counsel, the packet will be sent through certified mailed to the inmate's attorney or public defender.**

#### **10A:16-8.7 Petition for compassionate release**

**(a) In the event that a medical diagnosis determines that an inmate is suffering from a grave medical condition, the Department of Corrections shall notify the inmate's attorney or, if the inmate does not have an attorney, the Public Defender, to initiate the process of petitioning for compassionate release. The petition shall not be filed until a second, subsequent medical diagnosis by a licensed physician designated by the Commissioner of the Department of Corrections determines that the inmate is suffering from a terminal condition, disease, or syndrome or a permanent physical incapacity and the Department of Corrections issues to the inmate a Certificate of Eligibility for Compassionate Release.**

**(b) In the event that a medical diagnosis determines that an inmate is suffering from a terminal condition, disease, or syndrome or permanent physical incapacity, the Department of Corrections shall issue to the inmate a Certificate of Eligibility for Compassionate Release and provide a copy of the certificate to the inmate's attorney or, if the inmate does not have an attorney, the Public Defender. An inmate who receives a Certificate of Eligibility for Compassionate Release may petition the Superior Court for compassionate release.**

**(c) In the event of a medical diagnosis that an inmate is suffering from a grave medical condition or upon issuance of a Certificate of Eligibility for Compassionate Release, an inmate may request representation from the Office of the Public Defender for the purpose of filing a petition for compassionate release.**

**(d) Once the Department of Corrections provides a copy of a Certificate of Eligibility for Compassionate Release to the inmate's attorney or the Public Defender, the attorney or Public Defender shall petition the Superior Court, in accordance with N.J.S.A. 30:4-123e.**

**The petition must be accompanied by a copy of the Certificate of Eligibility for Compassionate Release.**

**10A:16-8.8 Applying for medical assistance**

**(a) Prior to any determination of ineligibility by the court, the Commissioner of the Department of Corrections shall ensure that any inmate who petitions for compassionate release is provided an opportunity to apply, and is provided necessary assistance to complete the application, for medical assistance benefits under the Medicaid program established, pursuant to N.J.S.A. 30:4D-1 et seq. The application for medical assistance benefits shall be undertaken prior to any determination of ineligibility by the court as a result of the inability to verify the availability of appropriate medical services.**

**(b) The Commissioner of the Department of Corrections, or designee, may advise the New Jersey State Parole Board of special medical conditions or services required if compassionate release is granted.**