

Saturday, Sunday, or legal holiday, the filing shall occur no later than the next business day after the expiration date.

CORRECTIONS

(a)

STATE PAROLE BOARD

Parole Board Rules

Proposed Amendment: N.J.A.C. 10A:71-3.53

Authorized By: New Jersey State Parole Board, Samuel J. Plumeri, Jr., Chairman.

Authority: N.J.S.A. 30:4-123.48.d and P.L. 2017, c. 235.

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

Proposal Number: PRN 2018-027.

Submit comments by May 18, 2018, to:

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The agency proposal follows:

Summary

On September 13, 2017, P.L. 2017, c. 235 was enacted. This legislation concerned medical parole and amended, in part, N.J.S.A. 30:4-123.51c. The amendments become effective April 1, 2018. The legislation expands the eligibility of inmates for medical parole. Under current law, an inmate may be released on medical parole if the inmate is suffering from a "terminal condition, disease or syndrome," which is defined as a prognosis that the inmate has six months or less to live. In addition, the inmate must be found to be so debilitated or incapacitated by the terminal condition, disease, or syndrome that the inmate is permanently physically incapable of committing a crime if released on parole.

The legislation expands the eligibility for medical parole to inmates who have a permanent physical incapacity that renders him or her permanently unable to perform activities of basic daily living, results in the need for 24-hour care, and did not exist at the time of sentencing. In addition, the legislation permits medical parole for a permanent physical incapacity only if the State Parole Board (Board) determines that the conditions of the inmate's release would not pose a threat to public safety.

The legislation permits the Board to release an inmate on medical parole if the inmate meets the criteria designated under current law and the provisions of the legislation. The legislation requires the appropriate Board panel to state on the record the reasons for granting or denying medical parole.

Based on the enactment of P.L. 2017, c. 235, and the revisions to N.J.S.A. 30:4-123.51c, the Board proposes the following amendments to N.J.A.C. 10A:71-3.53:

The proposed amendments to N.J.A.C. 10A:71-3.53(a) provide for the inclusion of the phrase "permanent physical incapacity," where appropriate, and would require a finding that the conditions under which the inmate would be released would not pose a threat to public safety.

Proposed new N.J.A.C. 10A:71-3.53(d) provides for the definition of the term "permanent physical incapacity." As specified in the statute, "permanent physical incapacity" means a prognosis by the licensed physicians designated by the Commissioner that an inmate has a medical condition that: renders the inmate permanently unable to perform activities of basic daily living, results in the inmate requiring 24-hour care, and did not exist at the time of sentencing.

The proposed amendments to recodified N.J.A.C. 10A:71-3.53(e)1 and 2 provide for the inclusion of the phrase "permanent physical incapacity."

The proposed amendment to recodified N.J.A.C. 10A:71-3.53(l) requires the Board panel to note on the record the reasons for granting or denying medical parole.

The proposed amendment to recodified N.J.A.C. 10A:71-3.53(m)3 provides for the inclusion of the phrase "permanent physical incapacity."

The proposed amendments to recodified N.J.A.C. 10A:71-3.53(o) provides for the inclusion of the phrase "permanent physical incapacity," where appropriate, and language pertaining to the assessment as to whether the parolee who is no longer so debilitated or incapacitated by a permanently physical incapacity poses a threat to the public safety.

Throughout the section, amendments are proposed to update cross-references based on proposed new subsection (d).

The notice of proposal is excepted from the calendar requirement of N.J.A.C. 1:30-3.3(a) because the Board has provided a 60-day comment period pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments, which are based on enacted legislation, would expand eligibility for medical parole to those inmates determined to be suffering from a medical condition that results in the inmate meeting the definition of permanent physical incapacity. Upon review of an eligible inmate's case, it is possible that the inmate could be released on parole with specified conditions. As a larger group of inmates may become eligible for medical parole, it is possible that the workload of Department of Corrections and Board personnel may increase as eligible inmate cases must be processed for presentation of inmate cases to a Board panel for parole consideration and, if parole is granted, the inmate cases must be processed for parole release.

Economic Impact

The Board does not believe that additional funding is necessary to implement the proposed amendments. It is anticipated that the cost of implementing the proposed amendments will be met by the Board through the established budget process with funding presently allocated by the State.

The Department of Corrections may incur certain administrative costs for determining if inmates have a "permanent physical incapacity." The Department of Corrections currently funds medical costs for inmates, as well as the cost of their incarceration. If inmates eligible for medical parole are granted medical parole, the Department of Corrections may incur a reduction in its annual expenditures as the Department of Corrections would no longer be incarcerating the inmates and no longer be responsible for providing medical care. However, the economic impact cannot be readily identified.

Federal Standards Statement

The proposed amendments are not proposed under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under State statute that incorporates or refers to Federal law, standards, or requirements. An analysis of the amendments pursuant to Executive Order No. 27 (1994), P.L. 1995, c. 65 is, therefore, not required.

Jobs Impact

The proposed amendments pertain to the Board's execution of its statutory functions and responsibilities regarding medical parole. It is not anticipated that any jobs will be lost or created as a result of the proposed amendments.

Agriculture Industry Impact

The proposed amendments pertain to the Board's execution of its statutory functions and responsibilities regarding medical parole. The proposed amendments, therefore, will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments pertain to the Board's execution of its statutory functions

and responsibilities regarding medical parole. A regulatory flexibility analysis is, therefore, not required.

Housing Affordability Impact Analysis

The proposed amendments pertain to the Board's execution of its statutory functions and responsibilities regarding medical parole. The proposed amendments will, therefore, have no impact on the affordability of housing nor will the amendments increase or decrease the average costs of housing.

Smart Growth Development Impact Analysis

The proposed amendments pertain to the Board's execution of its statutory functions and responsibilities regarding medical parole. The proposed amendments will, therefore, not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

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

SUBCHAPTER 3. PAROLE RELEASE HEARINGS

10A:71-3.53 Medical parole

(a) Pursuant to N.J.S.A. 30:4-123.51c, the appropriate Board panel may release on medical parole any inmate, except as provided in (b) below, serving any sentence of imprisonment who has been diagnosed pursuant to [(d)] **(e)** below as suffering from a terminal condition, disease, or syndrome **or a permanent physical incapacity** and is found by the appropriate Board panel to be so debilitated or incapacitated by the terminal condition, disease, or syndrome **or permanent physical incapacity** as to be permanently physically incapable of committing a crime if released on parole **and, in the case of a permanent physical incapacity, the conditions under which the inmate would be released would not pose a threat to public safety.** Notwithstanding any provision of N.J.S.A. 30:4-123.45 et seq., or this chapter to the contrary, the appropriate Board panel may release on medical parole any such inmate at any time during the term of the sentence.

(b) (No change.)

(c) "Terminal condition, disease, or syndrome" means a prognosis by the licensed physicians designated by the Commissioner pursuant to [(d)] **(e)** below that an inmate has six months or less to live.

(d) "Permanent physical incapacity" means a prognosis by the licensed physicians designated by the Commissioner pursuant to (e) below that an inmate has a medical condition that renders the inmate permanently unable to perform activities of basic daily living, results in the inmate requiring 24-hour care, and did not exist at the time of sentencing.

[(d)] **(e)** A medical diagnosis that an inmate is suffering from a terminal condition, disease, or syndrome **or a permanent physical incapacity** shall be made by two licensed physicians designated by the Commissioner. The diagnosis shall include, but not be limited to:

1. A description of the terminal condition, disease, or syndrome **or the permanent physical incapacity**;

2. A prognosis concerning the likelihood of recovery from the terminal condition, disease, or syndrome **or the permanent physical incapacity**;

3.-4. (No change.)

[(e)] **(f)** (No change in text.)

[(f)] **(g)** The appropriate Board panel shall conduct its review of a request for medical parole as expeditiously as possible. However, at least five working days prior to commencing its review of a request for a medical parole, the appropriate Board panel shall notify the appropriate sentencing court; county prosecutor or, if the matter was prosecuted by the Attorney General, the Attorney General; and any victim or member of the family of a victim entitled to notice relating to a parole or the consideration of a parole under N.J.S.A. 30:4-123.45 et seq. The notice shall be in writing and shall contain all such information and documentation relating to the medical diagnosis prepared pursuant to [(d)] **(e)** above as the Board shall deem appropriate and necessary.

[(g)] **(h)** Upon receipt of the notice provided by [(f)] **(g)** above, the sentencing court; county prosecutor or Attorney General, as the case may be; the victim or member of the family of the victim, as the case

may be, shall have 10 working days to review the notice and submit comments to the appropriate Board panel. If a recipient of the notice does not submit comments within the [10 day] **10-day** period following receipt of the notice, the Board panel may presume that the recipient does not wish to submit comments and may proceed with its consideration of the request for medical parole. Any comments provided by a recipient shall be delivered to the appropriate Board panel in the same manner or by the same method as notice was given by the Board panel to the recipient.

[(h)] **(i)** The information contained in any notice given by the Board panel pursuant to [(f)] **(g)** above and the contents of any comments submitted by a recipient in response thereto shall be confidential and shall not be disclosed to any person who is not authorized by the regulations of the Board or the Department to receive or review that information or those comments.

[(i)] **(j)** Notice given pursuant to [(f)] **(g)** above shall be in lieu of any other notice of parole consideration required under N.J.S.A. 30:4-123.45 et seq., and this chapter.

[(j)] **(k)** (No change in text.)

[(k)] **(l)** Upon a decision being rendered [by], the Board panel[, the] **shall note on the record the reasons for granting or denying medical parole.** The Board panel shall provide written notice of its decision to the sentencing court; the county prosecutor or Attorney General, as the case may be; and any victim or member of the family of the victim given notice pursuant to [(f)] **(g)** above.

[(l)] **(m)** Whenever an inmate is granted medical parole pursuant to this section, the Board panel shall require, as a condition precedent to release, that the release plan of the inmate include:

1. (No change.)

2. Verification by the Division of Parole of the availability of appropriate medical services sufficient to meet the treatment requirements identified pursuant to [(d)4] **(e)4** above; and

3. Verification by the Division of Parole of appropriate housing which may include, but need not be limited to, a hospital, hospice, nursing home facility or other housing accommodation suitable to the inmate's medical condition, disease, or syndrome **or permanent physical incapacity.**

[(m)] **(n)** (No change in text.)

[(n)] **(o)** If, after review of a medical diagnosis required under [(m)] **(n)** above, the Board panel determines that a parolee released on medical parole is no longer so debilitated or incapacitated by a terminal condition, disease, or syndrome **or permanent physical incapacity** as to be physically incapable of committing a crime **or, in the case of a permanent physical incapacity, the parolee poses a threat to public safety,** the parolee shall be returned to confinement in an appropriate facility designated by the Commissioner.

1.-2. (No change.)

Recodify existing (o)-(p) as **(p)-(q)** (No change in text.)

[(q)] **(r)** The denial of a request for medical parole or the return of a parolee to confinement pursuant to [(n)] **(o)** or [(p)] **(q)** above shall not preclude the inmate from being eligible for parole consideration pursuant to N.J.S.A. 30:4-123.51(a).

LABOR AND WORKFORCE DEVELOPMENT

(a)

INCOME SECURITY

Contributions, Records and Reports

Proposed Readoption with Amendment: N.J.A.C. 12:16

Authorized By: Robert Asaro-Angelo, Acting Commissioner,
Department of Labor and Workforce Development.

Authority: N.J.S.A. 43:21-1 et seq.