



*Please Note: The information contained in this overview is not intended as legal advice in any individual's case. There are many exceptions and variations in the parole consideration process. If you have questions, please consult with an experienced parole attorney.*

## **OVERVIEW OF CALIFORNIA'S MEDICAL PAROLE PROCESS**

This Guide is intended to explain California's expanded medical parole hearing process. California allows some very ill people to parole to licensed Skilled Nursing Facility (SNF) in the community before their normal parole dates. If an incarcerated person is in a state of permanent medical incapacitation and requires 24-hour care, medical parole allows this person to serve their sentence in a licensed SNF instead of in prison.

The medical parole hearing process was first enacted in 2011 by Senate Bill 1399 but was later expanded following a court order coming out of the *Coleman/Plata* class action lawsuit. As of June 2014, medical parole was expanded in order to apply to more people. The expanded medical parole process is outlined here.

### **I. Eligibility for Expanded Medical Parole**

An incarcerated person who is permanently medically incapacitated is eligible for an expanded medical parole hearing to determine whether he or she can be placed in a SNF. Whether someone is "permanently medically incapacitated" is determined based on how much help is needed to perform basic daily functions such getting in and out of bed, eating, moving to a chair, and using the toilet. Generally, the assistance necessary to be eligible for medical parole will mean that the incarcerated person is at the Correctional Treatment Center level of medical care. People who are sentenced to death or life without the possibility of parole are not eligible for medical parole.

## II. Medical Parole Hearings

**What is a medical parole hearing?** A medical parole hearing is a hearing to determine whether someone who is permanently medically incapacitated can safely be placed in a licensed health care facility in the community. At a medical parole hearing, the Board considers the conditions that would need to be in place in the SNF so that the parole candidate would not reasonably pose a risk to public safety.

**How is a medical parole hearing initiated?** A medical parole hearing is initiated when the head physician at an incarcerated person's institution determines that an individual is permanently medically incapacitated with a medical condition that makes the person unable to perform activities of basic daily living, and results in the need for 24-hour care. Medical staff use an assessment tool called the Resource Utilization Guide IV (RUG IV) to determine how much help the person needs performing day-to-day tasks. The individual is given a RUG score, from 1 to 16, which reflects the level care and resources necessary in a long-term care setting. The higher the score, the more dependent a person is and the less risk to public safety he or she poses. If a person receives even a single point on the RUG scale, they will be referred to Board of Parole Hearings for medical parole consideration.

Before a medical parole hearing, the California Department of Corrections and Rehabilitation (CDCR) must complete the parole plans for the candidate. Parole plans must include at minimum which SNF a person could parole to and the medical care required. The Board determines, based on those parole plans, whether the candidate would pose a reasonable threat to the public if released.

**Who will be at the hearing?** Parties attending a medical parole hearing include a Board of Parole Hearings Commissioner (sometime two) and Deputy Commissioner, a representative from the District Attorney's office, and the representative for the parole candidate.

Victims and next of kin are also allowed to be present at medical parole hearings. Unlike a typical parole hearing, the parole candidate does not have the right to be present at their own medical parole hearing. The Board is required to appoint counsel for a medical parole hearing and will provide one at no cost for those who cannot afford private counsel.

**What to expect at a medical parole hearing?** The process of a medical parole hearing is very similar to a typical parole hearing. The panel will go through the parole candidate's life prior to their commitment offense, any prior criminal history, the life crime and the circumstances surrounding it, and conduct (both good and bad) while incarcerated. The panel will pay particular attention to any misconduct committed after the candidate became permanently medically incapacitated. Unlike a typical parole hearing, a Comprehensive Risk Assessment is not prepared prior to a medical parole hearing.

The Board will look at the RUG score and physical condition of a parole candidate to determine how he or she may be able to threaten public safety. Then the Board will determine how the conditions of the licensed SNF would facilitate this ability to threaten the public safety. If the Board determines that these conditions would not reasonably pose a threat to public safety, then parole will be granted.

The Board must specify what requirements the SNF must have to ensure that the parole candidate will not pose a reasonable risk to public safety. These requirements may include facility security, limitations on visitation and contact with persons under the age of 18, and any other special care provisions that are relevant to the parole candidate's prior misconduct. The Board can also require the person on medical parole to have regular medical evaluations, to comply with the SNF's rules, alcohol and drug restrictions, electronic monitoring, and restrictions on communicating with certain people.

**What happens after a medical parole hearing?** If the Board grants medical parole, the CDCR medical and parole staff are required to look for a licensed SNF in the community that meets the conditions imposed by the Board. Once the facility is found, the parole candidate will be transferred there. When the person is placed on medical parole supervision, the CDCR must make sure that the individual has applied for any federal entitlement programs that the person is eligible for. If no appropriate facility is found within 120 days of the Board's decision, the medical parole grant lapses and the candidate remains in a CDCR institution.

The candidate remains in a licensed SNF unless the medical condition improves so that he or she no longer qualifies for medical parole. If a person no longer qualifies for medical parole, the Board must return that person to CDCR custody. A person on medical parole may also be referred back to CDCR custody by his or her parole agent if they become a threat to themselves, other people, or the public.

If medical parole is denied, the parole candidate will not automatically be scheduled for another medical parole hearing in the future. However, the candidate, their family, attorney, or primary care physician at their institution can make a new referral for medical parole after six months.

**How does medical parole impact a person's eligibility for other forms of parole?** Medical parole does not affect an individual's eligibility for any other form of parole or release provided by law. A person with an indeterminate sentence will become eligible for consideration under regular parole suitability provisions once he or she reaches their minimum eligible parole date. A person with a determinate sentence will remain on medical parole until his or her normal release date.