

STATE OF NEW YORK

4221

2019-2020 Regular Sessions

IN SENATE

March 5, 2019

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the executive law, in relation to prohibiting medical parole for persons convicted of an act of terrorism

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 259-r of the executive law, as amended by section
2 38-l of subpart A of part C of chapter 62 of the laws of 2011, subdivi-
3 sions 10 and 11 as added by section 1 of part A of chapter 55 of the
4 laws of 2015, is amended to read as follows:

5 § 259-r. Release on medical parole for terminally ill inmates. 1. (a)
6 The ~~[beard]~~ commissioner shall have the power to release on medical
7 parole any inmate serving an indeterminate or determinate sentence of
8 imprisonment who, pursuant to subdivision two of this section, has been
9 certified to be suffering from a terminal condition, disease or syndrome
10 and to be so debilitated or incapacitated as to create a reasonable
11 probability that he or she is physically or cognitively incapable of
12 presenting any danger to society, provided, however, that no inmate
13 serving a sentence imposed upon a conviction for ~~[murder in the first~~
14 ~~degree or an attempt or conspiracy to commit murder in the first degree~~
15 ~~shall be eligible for such release, and provided further that no inmate~~
16 ~~serving a sentence imposed upon a conviction for any of the following~~
17 ~~offenses shall be eligible for such release unless in the case of an~~
18 ~~indeterminate sentence he or she has served at least one-half of the~~
19 ~~minimum period of the sentence and in the case of a determinate sentence~~
20 ~~he or she has served at least one-half of the term of his or her deter-~~
21 ~~minate sentence: murder in the second degree, manslaughter in the first~~
22 ~~degree, any offense defined in article one hundred thirty of the penal~~
23 ~~law or an attempt to commit any of these offenses. Solely for the~~
24 ~~purpose of determining medical parole eligibility pursuant to this~~

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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~~section, such one half of the minimum period of the indeterminate sentence and one half of the term of the determinate sentence shall not be credited with any time served under the jurisdiction of the department prior to the commencement of such sentence pursuant to the opening paragraph of subdivision one of section 70.30 of the penal law or subdivision two a of section 70.30 of the penal law, except to the extent authorized by subdivision three of section 70.30 of the penal law] an act of terrorism as defined in section 490.05 of the penal law, shall be eligible for such release.~~

(b) Such release shall be granted only after the [~~board~~] commissioner considers whether, in light of the inmate's medical condition, there is a reasonable probability that the inmate, if released, will live and remain at liberty without violating the law, and that such release is not incompatible with the welfare of society and will not so deprecate the seriousness of the crime as to undermine respect for the law, and shall be subject to the limits and conditions specified in subdivision four of this section. Except as set forth in paragraph (a) of this subdivision, such release may be granted at any time during the term of an inmate's sentence, notwithstanding any other provision of law.

~~[(c) The board shall afford notice to the sentencing court, the district attorney and the attorney for the inmate that the inmate is being considered for release pursuant to this section and the parties receiving notice shall have fifteen days to comment on the release of the inmate. Release on medical parole shall not be granted until the expiration of the comment period provided for in this paragraph.]~~

2. (a) The commissioner, on the commissioner's own initiative or at the request of an inmate, or an inmate's spouse, relative or attorney, may, in the exercise of the commissioner's discretion, direct that an investigation be undertaken to determine whether a diagnosis should be made of an inmate who appears to be suffering from a terminal condition, disease or syndrome. Any such medical diagnosis shall be made by a physician licensed to practice medicine in this state pursuant to section sixty-five hundred twenty-four of the education law. Such physician shall either be employed by the department, shall render professional services at the request of the department, or shall be employed by a hospital or medical facility used by the department for the medical treatment of inmates. The diagnosis shall be reported to the commissioner and shall include but shall not be limited to a description of the terminal condition, disease or syndrome suffered by the inmate, a prognosis concerning the likelihood that the inmate will not recover from such terminal condition, disease or syndrome, a description of the inmate's physical or cognitive incapacity which shall include a prediction respecting the likely duration of the incapacity, and a statement by the physician of whether the inmate is so debilitated or incapacitated as to be severely restricted in his or her ability to self-ambulate or to perform significant normal activities of daily living. This report also shall include a recommendation of the type and level of services and treatment the inmate would require if granted medical parole and a recommendation for the types of settings in which the services and treatment should be given.

(b) The commissioner, or the commissioner's designee, shall review the diagnosis and may certify that the inmate is suffering from such terminal condition, disease or syndrome and that the inmate is so debilitated or incapacitated as to create a reasonable probability that he or she is physically or cognitively incapable of presenting [~~any~~] a danger to society. [~~If the commissioner does not so certify then the inmate shall~~

1 ~~not be referred to the board for consideration for release on medical~~
2 ~~parole.~~ If the commissioner does so certify, then the commissioner
3 shall, within seven working days of receipt of such diagnosis, refer the
4 inmate ~~[to the board for consideration]~~ for release on medical parole.
5 However, no ~~[such referral of an inmate to the board]~~ release shall be
6 made unless the inmate has been examined by a physician and diagnosed as
7 having a terminal condition, disease or syndrome as previously described
8 herein at some time subsequent to such inmate's admission to a facility
9 operated by the department of correctional services.

10 (c) ~~[When the commissioner refers an inmate to the board, the]~~ The
11 commissioner shall provide an appropriate medical discharge plan estab-
12 lished by the department. The department is authorized to request
13 assistance from the department of health and from the county in which
14 the inmate resided and committed his or her crime, which shall provide
15 assistance with respect to the development and implementation of a
16 discharge plan, including potential placements of a releasee. The
17 department and the department of health shall jointly develop standards
18 for the medical discharge plan that are appropriately adapted to the
19 criminal justice setting, based on standards established by the depart-
20 ment of health for hospital medical discharge planning. The ~~[board]~~
21 commissioner may postpone its decision pending completion of an adequate
22 discharge plan, or may deny release based on inadequacy of the discharge
23 plan.

24 3. Any certification by the commissioner or the commissioner's desig-
25 nee pursuant to this section shall be deemed a judicial function and
26 shall not be reviewable if done in accordance with law.

27 4. (a) Medical parole granted pursuant to this section shall be for a
28 period of six months.

29 (b) The ~~[board]~~ commissioner shall require as a condition of release
30 on medical parole that the releasee agree to remain under the care of a
31 physician while on medical parole and in a hospital established pursuant
32 to article twenty-eight of the public health law, a hospice established
33 pursuant to article forty of the public health law or any other place-
34 ment that can provide appropriate medical care as specified in the
35 medical discharge plan required by subdivision two of this section. The
36 medical discharge plan shall state that the availability of the place-
37 ment has been confirmed, and by whom. Notwithstanding any other
38 provision of law, when an inmate who qualifies for release under this
39 section is cognitively incapable of signing the requisite documentation
40 to effectuate the medical discharge plan and, after a diligent search no
41 person has been identified who could otherwise be appointed as the
42 inmate's guardian by a court of competent jurisdiction, then, solely for
43 the purpose of implementing the medical discharge plan, the facility
44 health services director at the facility where the inmate is currently
45 incarcerated shall be lawfully empowered to act as the inmate's guardian
46 for the purpose of effectuating the medical discharge.

47 (c) Where appropriate, the ~~[board]~~ commissioner shall require as a
48 condition of release that medical parolees be supervised on intensive
49 caseloads at reduced supervision ratios.

50 (d) The ~~[board]~~ commissioner shall require as a condition of release
51 on medical parole that the releasee undergo periodic medical examina-
52 tions and a medical examination at least one month prior to the expira-
53 tion of the period of medical parole and, for the purposes of making a
54 decision pursuant to paragraph (e) of this subdivision, that the releas-
55 ee provide the board with a report, prepared by the treating physician,
56 of the results of such examination. Such report shall specifically state

1 whether or not the parolee continues to suffer from a terminal condi-
2 tion, disease, or syndrome, and to be so debilitated or incapacitated as
3 to be severely restricted in his or her ability to self-ambulate or to
4 perform significant normal activities of daily living.

5 (e) Prior to the expiration of the period of medical parole the
6 ~~[board]~~ commissioner shall review the medical examination report
7 required by paragraph (d) of this subdivision and may again grant
8 medical parole pursuant to this section; provided, however, that the
9 provisions of ~~[paragraph (e) of subdivision one and]~~ subdivision two of
10 this section shall not apply.

11 (f) If the updated medical report presented to the ~~[board]~~ commission-
12 er states that a parolee released pursuant to this section is no longer
13 so debilitated or incapacitated as to create a reasonable probability
14 that he or she is physically or cognitively incapable of presenting any
15 danger to society or if the releasee fails to submit the updated medical
16 report then the board may not make a new grant of medical parole pursu-
17 ant to paragraph (e) of this subdivision. Where the ~~[board]~~ commissioner
18 has not granted medical parole pursuant to such paragraph (e) the
19 ~~[board]~~ commissioner shall promptly conduct ~~[through one of its~~
20 ~~members,~~ or cause to be conducted by a hearing officer ~~[designated by~~
21 ~~the board,~~ a hearing to determine whether the releasee is suffering
22 from a terminal condition, disease or syndrome and is so debilitated or
23 incapacitated as to create a reasonable probability that he or she is
24 physically or cognitively incapable of presenting any danger to society
25 and does not present a danger to society. If the ~~[board]~~ commissioner
26 makes such a determination then it may make a new grant of medical
27 parole pursuant to the standards of paragraph (b) of subdivision one of
28 this section. At the hearing, the releasee shall have the right to
29 representation by counsel, including the right, if the releasee is
30 financially unable to retain counsel, to have the appropriate court
31 assign counsel in accordance with the county or city plan for represen-
32 tation placed in operation pursuant to article eighteen-B of the county
33 law.

34 (g) The hearing and determination provided for by paragraph (f) of
35 this subdivision shall be concluded within the six month period of
36 medical parole. If the ~~[board]~~ commissioner does not renew the grant of
37 medical parole, it shall order that the releasee be returned immediately
38 to the custody of the department.

39 (h) In addition to the procedures set forth in paragraph (f) of this
40 subdivision, medical parole may be revoked at any time upon any of the
41 grounds specified in paragraph (a) of subdivision three of section two
42 hundred fifty-nine-i of this article, and in accordance with the proce-
43 dures specified in subdivision three of section two hundred fifty-nine-i
44 of this article.

45 (i) A releasee who is on medical parole and who becomes eligible for
46 parole pursuant to the provisions of subdivision two of section two
47 hundred fifty-nine-i of this article shall be eligible for parole
48 consideration pursuant to such subdivision.

49 5. A denial of release on medical parole or expiration of medical
50 parole in accordance with the provisions of paragraph (f) of subdivision
51 four of this section shall not preclude the inmate from reapplying for
52 medical parole or otherwise affect an inmate's eligibility for any other
53 form of release provided for by law.

54 6. To the extent that any provision of this section requires disclo-
55 sure of medical information for the purpose of processing an application
56 or making a decision, regarding release on medical parole or renewal of

1 medical parole, or for the purpose of appropriately supervising a person
2 released on medical parole, and that such disclosure would otherwise be
3 prohibited by article twenty-seven-F of the public health law, the
4 provisions of this section shall be controlling.

5 7. The commissioner [~~and the chairman of the board~~] shall be author-
6 ized to promulgate rules and regulations for their respective agencies
7 to implement the provisions of this section.

8 8. Any decision made by the [~~board~~] commissioner pursuant to this
9 section may be appealed pursuant to subdivision four of section two
10 hundred fifty-nine-i of this article.

11 9. The [~~chairman~~] commissioner shall report annually to the governor,
12 the temporary president of the senate and the speaker of the assembly,
13 the chairpersons of the assembly and senate codes committees, the chair-
14 person of the senate crime and corrections committee, and the chair-
15 person of the assembly corrections committee the number of inmates who
16 have applied for medical parole; the number who have been granted
17 medical parole; the nature of the illness of the applicants, the coun-
18 ties to which they have been released and the nature of the placement
19 pursuant to the medical discharge plan; the categories of reasons for
20 denial for those who have been denied; the number of releasees who have
21 been granted an additional period or periods of medical parole and the
22 number of such grants; the number of releasees on medical parole who
23 have been returned to imprisonment in the custody of the department and
24 the reasons for return.

25 ~~[10. Notwithstanding any other provision of law, in the case of an~~
26 ~~inmate whose terminal condition, disease or syndrome meets the criteria~~
27 ~~for medical parole as set forth in paragraph (a) of subdivision one of~~
28 ~~this section, and who is not serving a sentence for one or more offenses~~
29 ~~set forth in paragraph (i) of subdivision one of section eight hundred~~
30 ~~six of the correction law which would render such inmate ineligible for~~
31 ~~presumptive release, the granting of medical parole shall be determined~~
32 ~~by the commissioner provided that a release of such inmate shall be in~~
33 ~~accordance with subdivision eleven of this section. In such case, the~~
34 ~~provisions that would have applied to and the procedures that would have~~
35 ~~been followed by the board of parole pursuant to this section shall~~
36 ~~apply to and be followed by the commissioner.~~

37 ~~11. (a) After the commissioner has made a determination to grant~~
38 ~~medical parole pursuant to subdivision ten of this section, the commis-~~
39 ~~sioner shall notify the chairperson of the board of parole, or their~~
40 ~~designee who shall be a member of the board of parole, and provide him~~
41 ~~or her with all relevant records, files, information and documentation,~~
42 ~~which includes but is not limited to the criminal history, medical diag-~~
43 ~~nosis and treatment pertaining to the terminally ill inmate no more than~~
44 ~~five days from the date of the determination. (b) The chairperson or his~~
45 ~~or her designee shall either accept the commissioner's grant of medical~~
46 ~~parole, in which case the inmate may be released by the commissioner, or~~
47 ~~conduct further review. This decision or review shall be made within~~
48 ~~five days of the receipt of the relevant records, files, information and~~
49 ~~documentation from the commissioner. The chairperson's further review~~
50 ~~may include, but not be limited to, an appearance by the terminally ill~~
51 ~~inmate before the chairperson or his or her designee. (c) After this~~
52 ~~further review, the chairperson shall either accept the commissioner's~~
53 ~~grant of medical parole, in which case the inmate may be released by the~~
54 ~~commissioner, or the chairperson shall schedule an appearance for the~~
55 ~~terminally ill inmate before the board of parole.~~

~~In the event the terminally ill inmate is scheduled to make an appearance before the board of parole pursuant to this subdivision, the matter shall be heard by a panel that does not include the chairperson or any member of the board of parole who was involved in the review of the commissioner's determination.]~~

§ 2. Paragraph (a) of subdivision 1 of section 259-r of the executive law, as amended by section 38-l-1 of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

(a) The ~~[board]~~ commissioner shall have the power to release on medical parole any inmate serving an indeterminate or determinate sentence of imprisonment who, pursuant to subdivision two of this section, has been certified to be suffering from a terminal condition, disease or syndrome and to be so debilitated or incapacitated as to create a reasonable probability that he or she is physically or cognitively incapable of presenting any danger to society, provided, however, that no inmate serving a sentence imposed upon a conviction for ~~[murder in the first degree or an attempt or conspiracy to commit murder in the first degree shall be eligible for such release, and provided further that no inmate serving a sentence imposed upon a conviction for any of the following offenses shall be eligible for such release unless in the case of an indeterminate sentence he or she has served at least one-half of the minimum period of the sentence and in the case of a determinate sentence he or she has served at least one-half of the term of his or her determinate sentence: murder in the second degree, manslaughter in the first degree, any offense defined in article one hundred thirty of the penal law or an attempt to commit any of these offenses. Solely for the purpose of determining medical parole eligibility pursuant to this section, such one-half of the minimum period of the indeterminate sentence and one-half of the term of the determinate sentence shall not be credited with any time served under the jurisdiction of the department prior to the commencement of such sentence pursuant to the opening paragraph of subdivision one of section 70.30 of the penal law or subdivision two-a of section 70.30 of the penal law, except to the extent authorized by subdivision three of section 70.30 of the penal law]~~ an act of terrorism as defined in section 490.05 of the penal law, shall be eligible for such release.

§ 3. Section 259-s of the executive law, as amended by section 38-m of subpart A of part C of chapter 62 of the laws of 2011, is amended to read as follows:

§ 259-s. Release on medical parole for inmates suffering significant debilitating illnesses. 1. (a) The ~~[board]~~ commissioner shall have the power to release on medical parole any inmate serving an indeterminate or determinate sentence of imprisonment who, pursuant to subdivision two of this section, has been certified to be suffering from a significant and permanent non-terminal condition, disease or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society, provided, however, that no inmate serving a sentence imposed upon a conviction for ~~[murder in the first degree or an attempt or conspiracy to commit murder in the first degree shall be eligible for such release, and provided further that no inmate serving a sentence imposed upon a conviction for any of the following offenses shall be eligible for such release unless in the case of an indeterminate sentence he or she has served at least one-half of the minimum period of the sentence and in the case of a determinate sentence he or she has served at least one-half of the term of his or her determinate~~

~~sentence: murder in the second degree, manslaughter in the first degree, any offense defined in article one hundred thirty of the penal law or an attempt to commit any of these offenses. Solely for the purpose of determining medical parole eligibility pursuant to this section, such one half of the minimum period of the indeterminate sentence and one half of the term of the determinate sentence shall not be credited with any time served under the jurisdiction of the department prior to the commencement of such sentence pursuant to the opening paragraph of subdivision one of section 70.30 of the penal law or subdivision two a of section 70.30 of the penal law, except to the extent authorized by subdivision three of section 70.30 of the penal law]~~ an act of terrorism as defined in section 490.05 of the penal law, shall be eligible for such release.

(b) Such release shall be granted only after the [~~board~~] commissioner considers whether, in light of the inmate's medical condition, there is a reasonable probability that the inmate, if released, will live and remain at liberty without violating the law, and that such release is not incompatible with the welfare of society and will not so deprecate the seriousness of the crime as to undermine respect for the law, and shall be subject to the limits and conditions specified in subdivision four of this section. In making this determination, the [~~board~~] commissioner shall consider: (i) the nature and seriousness of the inmate's crime; (ii) the inmate's prior criminal record; (iii) the inmate's disciplinary, behavioral and rehabilitative record during the term of his or her incarceration; (iv) [~~the amount of time the inmate must serve before becoming eligible for release pursuant to section two hundred fifty-nine i of this article, (v)~~] the current age of the inmate and his or her age at the time of the crime; [~~(vi) the recommendations of the sentencing court, the district attorney and the victim or the victim's representative, (vii)~~] (v) the nature of the inmate's medical condition, disease or syndrome and the extent of medical treatment or care that the inmate will require as a result of that condition, disease or syndrome; and [~~(viii)~~] (vi) any other relevant factor. Except as set forth in paragraph (a) of this subdivision, such release may be granted at any time during the term of an inmate's sentence, notwithstanding any other provision of law.

~~[(c) The board shall afford notice to the sentencing court, the district attorney, the attorney for the inmate and, where necessary pursuant to subdivision two of section two hundred fifty-nine-i of this article, the crime victim, that the inmate is being considered for release pursuant to this section and the parties receiving notice shall have thirty days to comment on the release of the inmate. Release on medical parole shall not be granted until the expiration of the comment period provided for in this paragraph.]~~

2. (a) The commissioner, on the commissioner's own initiative or at the request of an inmate, or an inmate's spouse, relative or attorney, may, in the exercise of the commissioner's discretion, direct that an investigation be undertaken to determine whether a diagnosis should be made of an inmate who appears to be suffering from a significant and permanent non-terminal and incapacitating condition, disease or syndrome. Any such medical diagnosis shall be made by a physician licensed to practice medicine in this state pursuant to section sixty-five hundred twenty-four of the education law. Such physician shall either be employed by the department, shall render professional services at the request of the department, or shall be employed by a hospital or medical facility used by the department for the medical treatment of

1 inmates. The diagnosis shall be reported to the commissioner and shall
2 include but shall not be limited to a description of the condition,
3 disease or syndrome suffered by the inmate, a prognosis concerning the
4 likelihood that the inmate will not recover from such condition, disease
5 or syndrome, a description of the inmate's physical or cognitive inca-
6 pacity which shall include a prediction respecting the likely duration
7 of the incapacity, and a statement by the physician of whether the
8 inmate is so debilitated or incapacitated as to be severely restricted
9 in his or her ability to self-ambulate or to perform significant normal
10 activities of daily living. This report also shall include a recommenda-
11 tion of the type and level of services and treatment the inmate would
12 require if granted medical parole and a recommendation for the types of
13 settings in which the services and treatment should be given.

14 (b) The commissioner, or the commissioner's designee, shall review the
15 diagnosis and may certify that the inmate is suffering from such condi-
16 tion, disease or syndrome and that the inmate is so debilitated or inca-
17 pacitated as to create a reasonable probability that he or she is phys-
18 ically or cognitively incapable of presenting any danger to society. If
19 the commissioner does not so certify then the inmate shall not be
20 referred to the board for consideration for release on medical parole.
21 If the commissioner does so certify, then the commissioner shall, within
22 seven working days of receipt of such diagnosis, ~~[refer the inmate to~~
23 ~~the board for consideration for]~~ release the inmate on medical parole.
24 However, no such referral of an inmate to the ~~[board of parole]~~ commis-
25 sioner shall be made unless the inmate has been examined by a physician
26 and diagnosed as having a condition, disease or syndrome as previously
27 described herein at some time subsequent to such inmate's admission to a
28 facility operated by the department.

29 (c) ~~[When the commissioner refers an inmate to the board, the]~~ The
30 commissioner shall provide an appropriate medical discharge plan estab-
31 lished by the department. The department is authorized to request
32 assistance from the department of health and from the county in which
33 the inmate resided and committed his or her crime, which shall provide
34 assistance with respect to the development and implementation of a
35 discharge plan, including potential placements of a releasee. The
36 department and the department of health shall jointly develop standards
37 for the medical discharge plan that are appropriately adapted to the
38 criminal justice setting, based on standards established by the depart-
39 ment of health for hospital medical discharge planning. ~~[The board may~~
40 ~~postpone its decision pending completion of an adequate discharge plan,~~
41 ~~or may deny release based on inadequacy of the discharge plan.]~~

42 3. Any certification by the commissioner or the commissioner's designee
43 pursuant to this section shall be deemed a judicial function and
44 shall not be reviewable if done in accordance with law.

45 4. (a) Medical parole granted pursuant to this section shall be for a
46 period of six months.

47 (b) The ~~[board]~~ commissioner shall require as a condition of release
48 on medical parole that the releasee agree to remain under the care of a
49 physician while on medical parole and in a hospital established pursuant
50 to article twenty-eight of the public health law, a hospice established
51 pursuant to article forty of the public health law or any other place-
52 ment, including a residence with family or others, that can provide
53 appropriate medical care as specified in the medical discharge plan
54 required by subdivision two of this section. The medical discharge plan
55 shall state that the availability of the placement has been confirmed,
56 and by whom. Notwithstanding any other provision of law, when an inmate

1 who qualifies for release under this section is cognitively incapable of
2 signing the requisite documentation to effectuate the medical discharge
3 plan and, after a diligent search no person has been identified who
4 could otherwise be appointed as the inmate's guardian by a court of
5 competent jurisdiction, then, solely for the purpose of implementing the
6 medical discharge plan, the facility health services director at the
7 facility where the inmate is currently incarcerated shall be lawfully
8 empowered to act as the inmate's guardian for the purpose of effectuat-
9 ing the medical discharge.

10 (c) Where appropriate, the [beard] commissioner shall require as a
11 condition of release that medical parolees be supervised on intensive
12 caseloads at reduced supervision ratios.

13 (d) The [beard] commissioner shall require as a condition of release
14 on medical parole that the releasee undergo periodic medical examina-
15 tions and a medical examination at least one month prior to the expira-
16 tion of the period of medical parole and, for the purposes of making a
17 decision pursuant to paragraph (e) of this subdivision, that the releas-
18 ee provide the [beard] commissioner with a report, prepared by the
19 treating physician, of the results of such examination. Such report
20 shall specifically state whether or not the parolee continues to suffer
21 from a significant and permanent non-terminal and debilitating condi-
22 tion, disease, or syndrome, and to be so debilitated or incapacitated as
23 to be severely restricted in his or her ability to self-ambulate or to
24 perform significant normal activities of daily living.

25 (e) Prior to the expiration of the period of medical parole the
26 [beard] commissioner shall review the medical examination report
27 required by paragraph (d) of this subdivision and may again grant
28 medical parole pursuant to this section; provided, however, that the
29 provisions of paragraph (c) of subdivision one and subdivision two of
30 this section shall not apply.

31 (f) If the updated medical report presented to the [beard] commission-
32 er states that a parolee released pursuant to this section is no longer
33 so debilitated or incapacitated as to create a reasonable probability
34 that he or she is physically or cognitively incapable of presenting
35 [any] a danger to society or if the releasee fails to submit the updated
36 medical report then the [beard] commissioner may not make a new grant of
37 medical parole pursuant to paragraph (e) of this subdivision. Where the
38 [beard] commissioner has not granted medical parole pursuant to such
39 paragraph (e) the [beard] commissioner shall promptly conduct [~~through~~
40 ~~one of its members,~~] or cause to be conducted by a hearing officer
41 [~~designated by the board,~~] a hearing to determine whether the releasee
42 is suffering from a significant and permanent non-terminal and incapacit-
43 ating condition, disease or syndrome and is so debilitated or incapaci-
44 tated as to create a reasonable probability that he or she is physically
45 or cognitively incapable of presenting any danger to society and does
46 not present a danger to society. If the [beard] commissioner makes such
47 a determination then [~~it~~] he or she may make a new grant of medical
48 parole pursuant to the standards of paragraph (b) of subdivision one of
49 this section. At the hearing, the releasee shall have the right to
50 representation by counsel, including the right, if the releasee is
51 financially unable to retain counsel, to have the appropriate court
52 assign counsel in accordance with the county or city plan for represen-
53 tation placed in operation pursuant to article eighteen-B of the county
54 law.

55 (g) The hearing and determination provided for by paragraph (f) of
56 this subdivision shall be concluded within the six month period of

1 medical parole. If the [~~board~~] commissioner does not renew the grant of
2 medical parole, [~~it~~] he or she shall order that the releasee be returned
3 immediately to the custody of the department of correctional services.

4 (h) In addition to the procedures set forth in paragraph (f) of this
5 subdivision, medical parole may be revoked at any time upon any of the
6 grounds specified in paragraph (a) of subdivision three of section two
7 hundred fifty-nine-i of this article, and in accordance with the proce-
8 dures specified in subdivision three of section two hundred fifty-nine-i
9 of this article.

10 (i) A releasee who is on medical parole and who becomes eligible for
11 parole pursuant to the provisions of subdivision two of section two
12 hundred fifty-nine-i of this article shall be eligible for parole
13 consideration pursuant to such subdivision.

14 5. A denial of release on medical parole or expiration of medical
15 parole in accordance with the provisions of paragraph (f) of subdivision
16 four of this section shall not preclude the inmate from reapplying for
17 medical parole or otherwise affect an inmate's eligibility for any other
18 form of release provided for by law.

19 6. To the extent that any provision of this section requires disclo-
20 sure of medical information for the purpose of processing an application
21 or making a decision, regarding release on medical parole or renewal of
22 medical parole, or for the purpose of appropriately supervising a person
23 released on medical parole, and that such disclosure would otherwise be
24 prohibited by article twenty-seven-F of the public health law, the
25 provisions of this section shall be controlling.

26 7. The commissioner [~~and the chair of the board~~] shall be authorized
27 to promulgate rules and regulations for [~~their~~] his or her respective
28 [~~agencies~~] agency to implement the provisions of this section.

29 8. Any decision made by the [~~board~~] commissioner pursuant to this
30 section may be appealed pursuant to subdivision four of section two
31 hundred fifty-nine-i of this article.

32 9. The [~~chair of the board~~] commissioner shall report annually to the
33 governor, the temporary president of the senate and the speaker of the
34 assembly, the chairpersons of the assembly and senate codes committees,
35 the chairperson of the senate crime and corrections committee, and the
36 chairperson of the assembly corrections committee the number of inmates
37 who have applied for medical parole under this section; the number who
38 have been granted medical parole; the nature of the illness of the
39 applicants, the counties to which they have been released and the nature
40 of the placement pursuant to the medical discharge plan; the categories
41 of reasons for denial for those who have been denied; the number of
42 releasees who have been granted an additional period or periods of
43 medical parole and the number of such grants; the number of releasees on
44 medical parole who have been returned to imprisonment in the custody of
45 the department and the reasons for return.

46 § 4. This act shall take effect immediately, provided, however, that
47 the amendments to paragraph (a) of subdivision 1 of section 259-r of the
48 executive law made by section one of this act shall be subject to the
49 expiration and reversion of such paragraph pursuant to subdivision d of
50 section 74 of chapter 3 of the laws of 1995, as amended, when upon such
51 date the provisions of section two of this act shall take effect.