

# STATE OF NEW YORK

6131

2023-2024 Regular Sessions

## IN SENATE

March 30, 2023

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, the  
3 section heading and subdivisions 1, 2, paragraph (b) of subdivision 4,  
4 subdivisions 5, 9, 10 and 11 as amended by section 14 of chapter 322 of  
5 the laws of 2021, is amended to read as follows:

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

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

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~~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 release.

(b) Such release shall be granted only after the [~~board~~] commissioner considers whether, in light of the incarcerated individual's medical condition, there is a reasonable probability that the incarcerated individual, 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 incarcerated individual'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 incarcerated individual that the incarcerated individual 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 incarcerated individual. 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 incarcerated individual, or an incarcerated individual'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 incarcerated individual 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 incarcerated individuals. 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 incarcerated individual, a prognosis concerning the likelihood that the incarcerated individual will not recover from such terminal condition, disease or syndrome, a description of the incarcerated individual'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 incarcerated individual 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 incarcerated individual 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 incarcerated individual is suffering from such terminal condition, disease or syndrome and that the incarcerated individual 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 incarcerated individual shall not be referred to the board for consideration for release on medical parole.]~~ If the commissioner does so certify, then the commissioner shall, within seven working days of receipt of such diagnosis, refer the incarcerated individual ~~[to the board for consideration]~~ for release on medical parole. However, no such ~~[referral of an incarcerated individual to the board]~~ release shall be made unless the incarcerated individual has been examined by a physician and diagnosed as having a terminal condition, disease or syndrome as previously described herein at some time subsequent to such incarcerated individual's admission to a facility operated by the department of correctional services.

(c) ~~[When the commissioner refers an incarcerated individual to the board, the]~~ The commissioner shall provide an appropriate medical discharge plan established by the department. The department is authorized to request assistance from the department of health and from the county in which the incarcerated individual resided and committed his or her crime, which shall provide assistance with respect to the development and implementation of a discharge plan, including potential placements of a releasee. The department and the department of health shall jointly develop standards for the medical discharge plan that are appropriately adapted to the criminal justice setting, based on standards established by the department of health for hospital medical discharge planning. The ~~[board]~~ commissioner may postpone its decision pending completion of an adequate discharge plan, or may deny release based on inadequacy of the discharge plan.

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

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

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

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

4 (d) The ~~[board]~~ commissioner shall require as a condition of release  
5 on medical parole that the releasee undergo periodic medical examina-  
6 tions and a medical examination at least one month prior to the expira-  
7 tion of the period of medical parole and, for the purposes of making a  
8 decision pursuant to paragraph (e) of this subdivision, that the releas-  
9 ee provide the board with a report, prepared by the treating physician,  
10 of the results of such examination. Such report shall specifically state  
11 whether or not the parolee continues to suffer from a terminal condi-  
12 tion, disease, or syndrome, and to be so debilitated or incapacitated as  
13 to be severely restricted in his or her ability to self-ambulate or to  
14 perform significant normal activities of daily living.

15 (e) Prior to the expiration of the period of medical parole the  
16 ~~[board]~~ commissioner shall review the medical examination report  
17 required by paragraph (d) of this subdivision and may again grant  
18 medical parole pursuant to this section; provided, however, that the  
19 provisions of ~~[paragraph (c) of subdivision one and]~~ subdivision two of  
20 this section shall not apply.

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

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

49 (h) In addition to the procedures set forth in paragraph (f) of this  
50 subdivision, medical parole may be revoked at any time upon any of the  
51 grounds specified in paragraph (a) of subdivision three of section two  
52 hundred fifty-nine-i of this article, and in accordance with the proce-  
53 dures specified in subdivision three of section two hundred fifty-nine-i  
54 of this article.

55 (i) A releasee who is on medical parole and who becomes eligible for  
56 parole pursuant to the provisions of subdivision two of section two

1 hundred fifty-nine-i of this article shall be eligible for parole  
2 consideration pursuant to such subdivision.

3 5. A denial of release on medical parole or expiration of medical  
4 parole in accordance with the provisions of paragraph (f) of subdivision  
5 four of this section shall not preclude the incarcerated individual from  
6 reapplying for medical parole or otherwise affect an incarcerated indi-  
7 vidual's eligibility for any other form of release provided for by law.

8 6. To the extent that any provision of this section requires disclo-  
9 sure of medical information for the purpose of processing an application  
10 or making a decision, regarding release on medical parole or renewal of  
11 medical parole, or for the purpose of appropriately supervising a person  
12 released on medical parole, and that such disclosure would otherwise be  
13 prohibited by article twenty-seven-F of the public health law, the  
14 provisions of this section shall be controlling.

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

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

21 9. The [~~chairman~~] commissioner shall report annually to the governor,  
22 the temporary president of the senate and the speaker of the assembly,  
23 the chairpersons of the assembly and senate codes committees, the chair-  
24 person of the senate crime and corrections committee, and the chair-  
25 person of the assembly corrections committee the number of incarcerated  
26 individuals who have applied for medical parole; the number who have  
27 been granted medical parole; the nature of the illness of the appli-  
28 cants, the counties to which they have been released and the nature of  
29 the placement pursuant to the medical discharge plan; the categories of  
30 reasons for denial for those who have been denied; the number of  
31 releases who have been granted an additional period or periods of  
32 medical parole and the number of such grants; the number of releases on  
33 medical parole who have been returned to imprisonment in the custody of  
34 the department and the reasons for return.

35 ~~[10. Notwithstanding any other provision of law, in the case of an~~  
36 ~~incarcerated individual whose terminal condition, disease or syndrome~~  
37 ~~meets the criteria for medical parole as set forth in paragraph (a) of~~  
38 ~~subdivision one of this section, and who is not serving a sentence for~~  
39 ~~one or more offenses set forth in paragraph (i) of subdivision one of~~  
40 ~~section eight hundred six of the correction law which would render such~~  
41 ~~incarcerated individual ineligible for presumptive release, the granting~~  
42 ~~of medical parole shall be determined by the commissioner provided that~~  
43 ~~a release of such incarcerated individual shall be in accordance with~~  
44 ~~subdivision eleven of this section. In such case, the provisions that~~  
45 ~~would have applied to and the procedures that would have been followed~~  
46 ~~by the board of parole pursuant to this section shall apply to and be~~  
47 ~~followed by the commissioner.~~

48 ~~11. (a) After the commissioner has made a determination to grant~~  
49 ~~medical parole pursuant to subdivision ten of this section, the commis-~~  
50 ~~sioner shall notify the chairperson of the board of parole, or their~~  
51 ~~designee who shall be a member of the board of parole, and provide him~~  
52 ~~or her with all relevant records, files, information and documentation,~~  
53 ~~which includes but is not limited to the criminal history, medical diag-~~  
54 ~~nosis and treatment pertaining to the terminally ill incarcerated indi-~~  
55 ~~vidual no more than five days from the date of the determination. (b)~~  
56 ~~The chairperson or his or her designee shall either accept the commis-~~

~~sioner's grant of medical parole, in which case the incarcerated individual may be released by the commissioner, or conduct further review. This decision or review shall be made within five days of the receipt of the relevant records, files, information and documentation from the commissioner. The chairperson's further review may include, but not be limited to, an appearance by the terminally ill incarcerated individual before the chairperson or his or her designee. (c) After this further review, the chairperson shall either accept the commissioner's grant of medical parole, in which case the incarcerated individual may be released by the commissioner, or the chairperson shall schedule an appearance for the terminally ill incarcerated individual before the board of parole.~~

~~In the event the terminally ill incarcerated individual 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 14-a of the chapter 322 of the laws of 2021, is amended to read as follows,

(a) The ~~[board]~~ commissioner shall have the power to release on medical parole any incarcerated individual 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 incarcerated individual 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 incarcerated individual 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 490.04 of the penal law, shall be eligible for such release.

§ 3. Section 259-s of the executive law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

§ 259-s. Release on medical parole for incarcerated individuals suffering significant debilitating illnesses. 1. (a) The ~~[board]~~ commissioner shall have the power to release on medical parole any incarcerated individual serving an indeterminate or determinate sentence of imprisonment who, pursuant to subdivision two of this section, has been



1 certified to be suffering from a significant and permanent non-terminal  
2 condition, disease or syndrome that has rendered the incarcerated indi-  
3 vidual so physically or cognitively debilitated or incapacitated as to  
4 create a reasonable probability that he or she does not present any  
5 danger to society, provided, however, that no incarcerated individual  
6 serving a sentence imposed upon a conviction for ~~[murder in the first~~  
7 ~~degree or an attempt or conspiracy to commit murder in the first degree~~  
8 ~~shall be eligible for such release, and provided further that no incar-~~  
9 ~~cerated individual serving a sentence imposed upon a conviction for any~~  
10 ~~of the following offenses shall be eligible for such release unless in~~  
11 ~~the case of an indeterminate sentence he or she has served at least~~  
12 ~~one half of the minimum period of the sentence and in the case of a~~  
13 ~~determinate sentence he or she has served at least one half of the term~~  
14 ~~of his or her determinate sentence; murder in the second degree,~~  
15 ~~manslaughter in the first degree, any offense defined in article one~~  
16 ~~hundred thirty of the penal law or an attempt to commit any of these~~  
17 ~~offenses. Solely for the purpose of determining medical parole eligibil-~~  
18 ~~ity pursuant to this section, such one half of the minimum period of the~~  
19 ~~indeterminate sentence and one half of the term of the determinate~~  
20 ~~sentence shall not be credited with any time served under the jurisdic-~~  
21 ~~tion of the department prior to the commencement of such sentence pursu-~~  
22 ~~ant to the opening paragraph of subdivision one of section 70.30 of the~~  
23 ~~penal law or subdivision two-a of section 70.30 of the penal law, except~~  
24 ~~to the extent authorized by subdivision three of section 70.30 of the~~  
25 ~~penal law]~~ an act of terrorism as defined in section 490.05 of the penal  
26 law, shall be eligible for such release.

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

52 [~~(c) The board shall afford notice to the sentencing court, the~~  
53 ~~district attorney, the attorney for the incarcerated individual and,~~  
54 ~~where necessary pursuant to subdivision two of section two hundred~~  
55 ~~fifty-nine-i of this article, the crime victim, that the incarcerated~~  
56 ~~individual 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 incarcerated individual. 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 incarcerated individual, or an incarcerated individual'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 incarcerated individual 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 incarcerated individuals. The diagnosis shall be reported to the commissioner and shall include but shall not be limited to a description of the condition, disease or syndrome suffered by the incarcerated individual, a prognosis concerning the likelihood that the incarcerated individual will not recover from such condition, disease or syndrome, a description of the incarcerated individual'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 incarcerated individual 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 incarcerated individual 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 incarcerated individual is suffering from such condition, disease or syndrome and that the incarcerated individual is 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. If the commissioner does not so certify then the incarcerated individual shall not be referred to the board for consideration for release on medical parole. If the commissioner does so certify, then the commissioner shall, within seven working days of receipt of such diagnosis, ~~[refer the incarcerated individual to the board for consideration for]~~ the incarcerated individual on medical parole. However, no such referral of an incarcerated individual to the ~~[board of parole]~~ commissioner shall be made unless the incarcerated individual has been examined by a physician and diagnosed as having a condition, disease or syndrome as previously described herein at some time subsequent to such incarcerated individual's admission to a facility operated by the department.

(c) ~~[When the commissioner refers an incarcerated individual to the board, the]~~ The commissioner shall provide an appropriate medical discharge plan established by the department. The department is authorized to request assistance from the department of health and from the county in which the incarcerated individual resided and committed his or her crime, which shall provide assistance with respect to the development and implementation of a discharge plan, including potential placements of a releasee. The department and the department of health shall



1 jointly develop standards for the medical discharge plan that are appro-  
2 priately adapted to the criminal justice setting, based on standards  
3 established by the department of health for hospital medical discharge  
4 planning. ~~[The board may postpone its decision pending completion of an~~  
5 ~~adequate discharge plan, or may deny release based on inadequacy of the~~  
6 ~~discharge plan.]~~

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

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

12 (b) The ~~[board]~~ commissioner shall require as a condition of release  
13 on medical parole that the releasee agree to remain under the care of a  
14 physician while on medical parole and in a hospital established pursuant  
15 to article twenty-eight of the public health law, a hospice established  
16 pursuant to article forty of the public health law or any other place-  
17 ment, including a residence with family or others, that can provide  
18 appropriate medical care as specified in the medical discharge plan  
19 required by subdivision two of this section. The medical discharge plan  
20 shall state that the availability of the placement has been confirmed,  
21 and by whom. Notwithstanding any other provision of law, when an incar-  
22 cerated individual who qualifies for release under this section is  
23 cognitively incapable of signing the requisite documentation to effectuate  
24 the medical discharge plan and, after a diligent search no person  
25 has been identified who could otherwise be appointed as the incarcerated  
26 individual's guardian by a court of competent jurisdiction, then, solely  
27 for the purpose of implementing the medical discharge plan, the facility  
28 health services director at the facility where the incarcerated individ-  
29 ual is currently incarcerated shall be lawfully empowered to act as the  
30 incarcerated individual's guardian for the purpose of effectuating the  
31 medical discharge.

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

35 (d) The ~~[board]~~ commissioner shall require as a condition of release  
36 on medical parole that the releasee undergo periodic medical examina-  
37 tions and a medical examination at least one month prior to the expira-  
38 tion of the period of medical parole and, for the purposes of making a  
39 decision pursuant to paragraph (e) of this subdivision, that the releas-  
40 ee provide the ~~[board]~~ commissioner with a report, prepared by the  
41 treating physician, of the results of such examination. Such report  
42 shall specifically state whether or not the parolee continues to suffer  
43 from a significant and permanent non-terminal and debilitating condi-  
44 tion, disease, or syndrome, and to be so debilitated or incapacitated as  
45 to be severely restricted in his or her ability to self-ambulate or to  
46 perform significant normal activities of daily living.

47 (e) Prior to the expiration of the period of medical parole the  
48 ~~[board]~~ commissioner shall review the medical examination report  
49 required by paragraph (d) of this subdivision and may again grant  
50 medical parole pursuant to this section; provided, however, that the  
51 provisions of paragraph (c) of subdivision one and subdivision two of  
52 this section shall not apply.

53 (f) If the updated medical report presented to the ~~[board]~~ commission-  
54 er states that a parolee released pursuant to this section is no longer  
55 so debilitated or incapacitated as to create a reasonable probability  
56 that he or she is physically or cognitively incapable of presenting

1 ~~[any]~~ a danger to society or if the releasee fails to submit the updated  
2 medical report then the ~~[board]~~ commissioner may not make a new grant of  
3 medical parole pursuant to paragraph (e) of this subdivision. Where the  
4 ~~[board]~~ commissioner has not granted medical parole pursuant to such  
5 paragraph (e) the ~~[board]~~ commissioner shall promptly conduct ~~[through~~  
6 ~~one of its members,~~] or cause to be conducted by a hearing officer  
7 ~~[designated by the board,~~] a hearing to determine whether the releasee  
8 is suffering from a significant and permanent non-terminal and incapaciti-  
9 ating condition, disease or syndrome and is so debilitated or incapaci-  
10 tated as to create a reasonable probability that he or she is physically  
11 or cognitively incapable of presenting any danger to society and does  
12 not present a danger to society. If the ~~[board]~~ commissioner makes such  
13 a determination then ~~[it]~~ he or she may make a new grant of medical  
14 parole pursuant to the standards of paragraph (b) of subdivision one of  
15 this section. At the hearing, the releasee shall have the right to  
16 representation by counsel, including the right, if the releasee is  
17 financially unable to retain counsel, to have the appropriate court  
18 assign counsel in accordance with the county or city plan for represen-  
19 tation placed in operation pursuant to article eighteen-B of the county  
20 law.

21 (g) The hearing and determination provided for by paragraph (f) of  
22 this subdivision shall be concluded within the six month period of  
23 medical parole. If the ~~[board]~~ commissioner does not renew the grant of  
24 medical parole, ~~[it]~~ he or she shall order that the releasee be returned  
25 immediately to the custody of the department of correctional services.

26 (h) In addition to the procedures set forth in paragraph (f) of this  
27 subdivision, medical parole may be revoked at any time upon any of the  
28 grounds specified in paragraph (a) of subdivision three of section two  
29 hundred fifty-nine-i of this article, and in accordance with the proce-  
30 dures specified in subdivision three of section two hundred fifty-nine-i  
31 of this article.

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

36 5. A denial of release on medical parole or expiration of medical  
37 parole in accordance with the provisions of paragraph (f) of subdivision  
38 four of this section shall not preclude the incarcerated individual from  
39 reapplying for medical parole or otherwise affect an incarcerated indi-  
40 vidual's eligibility for any other form of release provided for by law.

41 6. To the extent that any provision of this section requires disclo-  
42 sure of medical information for the purpose of processing an application  
43 or making a decision, regarding release on medical parole or renewal of  
44 medical parole, or for the purpose of appropriately supervising a person  
45 released on medical parole, and that such disclosure would otherwise be  
46 prohibited by article twenty-seven-F of the public health law, the  
47 provisions of this section shall be controlling.

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

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

54 9. The ~~[chair of the board]~~ commissioner shall report annually to the  
55 governor, the temporary president of the senate and the speaker of the  
56 assembly, the chairpersons of the assembly and senate codes committees,

1 the chairperson of the senate crime and corrections committee, and the  
2 chairperson of the assembly corrections committee the number of incar-  
3 cerated individuals who have applied for medical parole under this  
4 section; the number who have been granted medical parole; the nature of  
5 the illness of the applicants, the counties to which they have been  
6 released and the nature of the placement pursuant to the medical  
7 discharge plan; the categories of reasons for denial for those who have  
8 been denied; the number of releasees who have been granted an additional  
9 period or periods of medical parole and the number of such grants; the  
10 number of releasees on medical parole who have been returned to impri-  
11 sonment in the custody of the department and the reasons for return.

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