§ 259-s. Release on medical parole for incarcerated individuals suffering significant debilitating illnesses. 1. (a) The board 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 significant and permanent non-terminal condition, disease or syndrome that has rendered the incarcerated individual 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 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.

(b) Such release shall be granted only after the board 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. In making this determination, the board shall consider: (i) the nature and seriousness of the incarcerated individual's crime; (ii) the incarcerated individual's prior criminal record; (iii) the incarcerated individual's disciplinary, behavioral and rehabilitative record during the term of his or her incarceration; (iv) the amount of time the incarcerated individual must serve before becoming eligible for release pursuant to section two hundred fifty-nine-i of this article; (v) the current age of the incarcerated individual 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) the nature of the incarcerated individual's medical condition, disease or syndrome and the extent of medical treatment or care that the incarcerated individual will require as a result of that condition, disease or syndrome; and (viii) 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 incarcerated individual'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 incarcerated individual and, where necessary pursuant to subdivision two of section two hundred fifty-nine-i of this article, the crime victim, that the incarcerated 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 release on medical parole. However, no such referral of an incarcerated individual to the board of parole 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 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 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 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, including a residence with family or others, 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.

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

(d) The board shall require as a condition of release on medical parole that the releasee undergo periodic medical examinations and a medical examination at least one month prior to the expiration of the period of medical parole and, for the purposes of making a decision pursuant to paragraph (e) of this subdivision, that the releasee provide the board with a report, prepared by the treating physician, of the results of such examination. Such report shall specifically state whether or not the parolee continues to suffer from a significant and permanent non-terminal and debilitating condition, disease, or syndrome, and to be 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.

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

(f) If the updated medical report presented to the board states that a parolee released pursuant to this section is no longer 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 or if the releasee fails to submit the updated medical report then the board may not make a new grant of medical parole pursuant to paragraph (e) of this subdivision. Where the board has not granted medical parole pursuant to such paragraph (e) the board shall promptly conduct through one of its members, or cause to be conducted by a hearing officer designated by the board, a hearing to determine whether the releasee is suffering from a significant and permanent non-terminal and incapacitating condition, disease or syndrome and 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

and does not present a danger to society. If the board makes such a determination then it may make a new grant of medical parole pursuant to the standards of paragraph (b) of subdivision one of this section. At the hearing, the releasee shall have the right to representation by counsel, including the right, if the releasee is financially unable to retain counsel, to have the appropriate court assign counsel in accordance with the county or city plan for representation placed in operation pursuant to article eighteen-B of the county law.

(g) The hearing and determination provided for by paragraph (f) of this subdivision shall be concluded within the six month period of medical parole. If the board does not renew the grant of medical parole, it shall order that the releasee be returned immediately to the custody of the department of correctional services.

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

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

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

6. To the extent that any provision of this section requires disclosure of medical information for the purpose of processing an application or making a decision, regarding release on medical parole or renewal of medical parole, or for the purpose of appropriately supervising a person released on medical parole, and that such disclosure would otherwise be prohibited by article twenty-seven-F of

the public health law, the provisions of this section shall be controlling.

7. The commissioner and the chair of the board shall be authorized to promulgate rules and regulations for their respective agencies to implement the provisions of this section.

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

9. The chair of the board shall report annually to the governor, the temporary president of the senate and the speaker of the assembly, the chairpersons of the assembly and senate codes committees, the chairperson of the senate crime and corrections committee, and the chairperson of the assembly corrections committee the number of incarcerated individuals who have applied for medical parole under this section; the number who have been granted medical parole; the nature of the illness of the applicants, the counties to which they have been released and the nature of the placement pursuant to the medical discharge plan; the categories of reasons for denial for those who have been denied; the number of releasees who have been granted an additional period or periods of medical parole and the number of such grants; the number of releasees on medical parole who have been returned to imprisonment in the custody of the department and the reasons for return.