

# CHAPTER 17 MEDICAL PAROLE

## I. Introduction

SB 1399 (Leno, Chapter 405, Statutes of 2010) provides for medical parole of permanently medically incapacitated inmates of the California Department of Corrections and Rehabilitation (CDCR). California Correctional Health Care Services (CCHCS), within CDCR, contracts with Skilled Nursing Facilities (SNFs) to provide skilled nursing or custodial care to medical parolees. Accordingly, it is imperative that representatives of the Long-Term Care Ombudsman Program (LTCOP) have an understanding of the medical parole process and issues related to resident rights for individuals released to the SNF setting.

## II. Legal Authority

**STATE** Penal Code section 3550  
California Code of Regulations, title 15, sections 3359.1-3359.6

## III. Medical Parole Approval Process

Prior to releasing an inmate for medical parole, CCHCS establishes contracts with SNFs that are willing, and have appropriate space and services, to accept inmates through the medical parole process.

To be eligible for medical parole, an inmate must have a medical condition that was not present at the time of sentencing, renders him or her permanently unable to perform activities of daily living, and results in the inmate requiring 24-hour care. Additionally, the Board of Parole Hearings must determine that the conditions of release would not reasonably pose a threat to public safety. Individuals sentenced to death or life in prison without the possibility of parole are not eligible for medical parole.

A treating physician who determines that an inmate meets the criteria for medical parole will initiate the referral process for SNF placement. Additionally, an inmate or his or her family members, an attorney or other individual authorized to initiate actions on behalf of the inmate, who believes the inmate meets the criteria, may submit an application for consideration for medical parole.

If the Chief Medical Officer or Chief Medical Executive of the institution where the inmate is located agrees with the recommendation for medical parole, he or she refers the matter to the Board of Parole Hearings. The Board of Parole Hearings independently evaluates whether the inmate meets the eligibility requirements for medical parole and may impose conditions on the parole, such as electronic monitoring.

When the Board of Parole Hearings places an inmate on medical parole, the CDCR ensures that the inmate has applied for any federal entitlement programs,

such as Medi-Cal, for which he or she is eligible. The inmate is released to the SNF with a discharge medical summary; full medical records; a 30-day supply of medications; an advance health care directive, physician orders for life-sustaining treatment (POLST), or other documentation of medical decision making for end of life care; and all property under the control of CDCR.

#### **IV. Supervision of Medical Parolees**

Assigned parole agents, who are required to have face-to-face contact with parolees, supervise individuals on medical parole. The CDCR Division of Adult Parole Operations (DAPO) documents any general and/or special conditions of medical parole.

In the event that a special condition of medical parole imposed by the DAPO no longer applies to a parolee, a parole unit supervisor or higher-level staff may remove or modify the special condition of medical parole. In the event that a special condition of medical parole imposed by the Board of Parole Hearings no longer applies to a parolee, only the Board of Parole Hearings may modify or remove the special condition.

The Board of Parole Hearings may remove an individual from medical parole if the treating physician, another physician selected by the Board of Parole Hearings, or the parole agent makes a recommendation to the Board of Parole Hearings to return the parolee to custody for one of the following reasons:

- The physician determines that the parolee's condition has improved so significantly that he or she no longer qualifies for medical parole;
- The parole agent determines that the parolee is a threat to himself or herself, another person, or public safety; or
- There has been a significant change in the parolee's conditions of release.

#### **V. CCHCS-OSLTCO Memorandum of Understanding**

The Office of the State Long-Term Care Ombudsman (OSLTCO) has a Memorandum of Understanding (MOU) with CCHCS which includes requirements that CCHCS:

- Provide the OSLTCO with a list of SNFs contracting with CCHCS to accept medical parolees
- Notify the OSLTCO of the planned parole of any individual under the medical parole program

The MOU with CCHCS can be found in the Memoranda of Understanding folder on the Coordinator Resources Web page.

CCHCS uses form OSLTCO S800 (available in the Forms folder on the Coordinator Resources Web page) to notify the OSLTCO of any planned parole of an individual under the medical parole program. In turn, the OSLTCO will notify the local Ombudsman Program Coordinator in the Planning and Service Area to which CDCR paroles the individual.

The OSLTCO S800 provides the name of the individual being paroled, the SNF to which he or she will be paroled, contact information for any health care agents and/or other legal representatives, and any specific parole conditions.

The local LTCOP shall keep the OSLTCO S800 and any other records or information related to the parolee locked in confidential files.

## **VI. The Ombudsman Role**

Federal and State laws mandate local LTCOPs to identify, investigate, and resolve complaints made by or on behalf of residents, that affect the residents' health, safety, welfare, or rights. In addition, under California law, local LTCOPs are responsible for receiving and investigating reports of suspected abuse alleged to have occurred in long-term care facilities. Local LTCOPs are also responsible for recruiting and training volunteers to visit facilities and for informing the community about issues affecting long-term care residents and where to access information about conditions in local long-term care facilities.

In resolving concerns made by or on behalf of residents on medical parole, local LTCOPs shall adhere to consent and confidentiality requirements in place for all residents served by the Program. In the event that a resident is able to provide consent to the LTCOP, the Ombudsman representative will follow the resident's direction. The Ombudsman representative should orient the resident to any limitations to the Ombudsman role that may be present due to specific restrictions set forth in the conditions of parole.

## **VII. Protocol for Ombudsman Representatives Assigned to Facilities with Medical Parolees**

### **A. Assignment**

Consistent with all Ombudsman assignments, Ombudsman representatives shall provide services based on their training, experience, and ability. Ombudsman representatives should seek appropriate assistance for their own personal problems or conflicts that are likely to impair their work and sound judgment. Ombudsman staff and volunteers should always consult with their supervisors about complaints they do not currently have the experience to resolve. An Ombudsman representative shall use reasonable diligence and good judgment while endeavoring to investigate and resolve complaints. If an assigned Ombudsman representative is unable to provide services to a resident or within a particular facility, the local Program Coordinator should arrange for another representative of the Program to provide services so that there is continuity of Ombudsman services to that resident or within that facility.

### **B. Facility Coverage Visits**

During regular facility visits, Ombudsman representatives should focus on quality of life activities for residents. Ombudsman representatives may need to advocate to ensure that medically paroled residents participate in activities with other residents as deemed appropriate. If the facility has designated a separate

unit for medically paroled residents, the unit's services should be comparable with those of other units in the SNF.

### **C. Visits with Individual Medical Parolees**

The Ombudsman representative responding to a complaint or concern made by or on behalf of a medical parolee will review the conditions of parole prior to meeting with the resident to ensure adequate knowledge of the resident's situation before advocating. If possible, the Ombudsman representative should determine who is able to provide consent for the resident (resident, legal representative, etc.). When it is not possible to review the conditions prior to meeting with the resident, it is imperative that the Ombudsman representative orient the resident to the fact that the conditions of parole provide a framework for the individual resident's rights.

### **D. Concerns Requiring the Assistance of the Parole Agent**

In the event that an Ombudsman representative determines that a concern related to a resident on medical parole cannot be resolved at the facility level and/or relates more directly to parole issues, the Ombudsman representative may contact the parole agent listed on the OSLTCO S800 after receiving appropriate consent from the resident or his or her legal representative.

If an Ombudsman representative is unable to resolve the concern with the assistance of the assigned parole agent, the local Ombudsman representative or the Program Coordinator shall notify the OSLTCO. The OSLTCO shall endeavor to resolve the concern with CCHCS in accordance with the MOU.