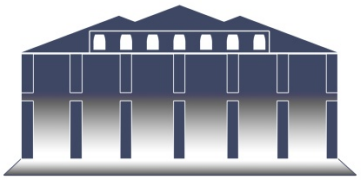
Modifying Criteria for North Carolina's Medical Release Program Could Reduce Costs of Inmate Healthcare

Final Report to the Joint Legislative Program Evaluation Oversight Committee

Report Number 2018-11

September 17, 2018



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September 17, 2018

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Representative Craig Horn, Co-Chair, Joint Legislative Program Evaluation Oversight Committee

North Carolina General Assembly
Legislative Building
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Honorable Co-Chairs:

The 2015–17 Work Plan of the Joint Legislative Program Evaluation Oversight Committee directed the Program Evaluation Division to examine the efficiency and economy of medical and dental services provided for North Carolina state prison inmates. This report is the fourth in a four-part series on the efficiency and economy of inmate healthcare and focuses on the medical release program for inmates.

I am pleased to report that the Department of Public Safety cooperated with us fully and was at all times courteous to our evaluators during the evaluation.

Sincerely,

John W. Turcotte
Director

PROGRAM EVALUATION DIVISION
NORTH CAROLINA GENERAL ASSEMBLY

September 2018 Report No. 2018-11

Modifying Criteria for North Carolina's Medical Release Program Could Reduce Costs of Inmate Healthcare

Summary

The Joint Legislative Program Evaluation Oversight Committee directed the Program Evaluation Division to examine the efficiency and economy of inmate healthcare. This report is the fourth in a four-part series and focuses on North Carolina's medical release program for inmates. Such programs allow for the release of inmates for certain reasons (e.g., age, medical condition) prior to serving their entire sentence in prison. A primary objective of such programs is to limit prison healthcare expenditures for older inmates, which are typically four to five times higher than those of other inmates. In North Carolina, the State pays an estimated $27,748 more each year per inmate providing healthcare for elderly inmates than for non-elderly inmates.

Advocates and opponents disagree on the merits of medical release programs. Advocates contend that qualifying inmates have lower recidivism rates and that their release shows compassion and potentially reduces overall state expenditures. Opponents contend that these inmates still pose a public safety risk and that their release compromises justice and could have a damaging psychological impact on victims.

Established in 2008, North Carolina's medical release program is somewhat more stringent than programs in other states. The State's program requires inmates be at least 65 years old and/or meet certain medical criteria, not be convicted of certain offenses, and be considered a low public safety risk. The State's relatively older age requirement and prohibition of sex offenders makes its criteria more stringent than several other states.

The State releases an average of 13 inmates per year through medical release. As is required to be reported to the General Assembly, the number of medical release requests has varied from 51 in 2012 to 79 in 2017. The number of inmates approved for medical release is similar to other states, suggesting the State's program is functioning well and further indicating there is limited opportunity to achieve greater cost savings.

States experience similar factors that restrict the cost savings they achieve from medical release programs, but modifications to state law could lead to more inmates being approved for medical release. If the General Assembly seeks to broaden the pool of qualifying inmates, it should consider expanding eligibility to inmates convicted of Class B crimes, lowering the minimum age to 60, and expanding eligibility to those inmates diagnosed as having less than 18 months to live.

Purpose and Scope

The 2015–17 Work Plan of the Joint Legislative Program Evaluation Oversight Committee directed the Program Evaluation Division to examine the efficiency and effectiveness of medical and dental services provided for North Carolina state prison inmates. This evaluation only includes healthcare services provided in adult prison facilities and does not include services provided to youth offenders residing in youth detention centers or individuals serving temporary sentences in county jails through the State's Misdemeanant Confinement Program.

This report is the fourth in a four-part series on the efficiency and economy of inmate healthcare. This report focuses on the medical release program for inmates.

Five research questions guided this evaluation:

1. What are medical release programs?
2. What do legislative entities consider when establishing medical release programs?
3. How do North Carolina's eligibility criteria for medical release compare with other states?
4. How do the results of North Carolina's medical release program compare with other states?
5. How can North Carolina's medical release program be modified to achieve greater cost savings?

The Program Evaluation Division collected and analyzed data from several sources, including

- queries and interviews of Department of Public Safety (DPS) staff;
- expenditure and revenue data on health services between State Fiscal Years 2006–07 and 2016–17;
- contract and corresponding usage data for supplies and services for inmate health services;
- outside health services claims data from DPS's claims management vendor;
- site inspections of state prison healthcare facilities and interviews with healthcare staff;
- interviews and queries of stakeholders;
- interviews with staff from other states' corrections departments and national organizations; and
- a review of data and reports from other states and national organizations on efforts to contain costs for inmate healthcare.

Background

Medical release programs—sometimes referred to as compassionate care or geriatric-focused programs—allow for the release of inmates for certain reasons (e.g., age, medical conditions) under specific terms (e.g., parole, furlough). A primary goal of these programs is to reduce healthcare expenditures by departments of corrections through the release of inmates determined to no longer present a risk to society because of their physical conditions. However, savings are often offset to at least some degree by healthcare expenditures incurred for these individuals by other state departments such as a state's Medicaid program.[1]

The increasing proportion of older inmates in prisons, their corresponding higher healthcare costs, and their relatively lower rates of recidivism are primary reasons that legislatures establish medical release programs. The Bureau of Justice estimates that between 1999 and 2007 the number of inmates age 55 or older in state and federal prisons increased by 77%, and the number of inmates age 45 to 54 increased by 68%. Within the federal prison system, it is estimated that older inmates (defined as those age 50 and older) accounted for 19%, or $881 million, of total Bureau of Prison expenditures in Federal Fiscal Year 2012–13.

Researchers have found that inmates older than 55 years of age have an average of three chronic conditions. Elderly inmates require a disproportionate share of prison health care services and experience five times as many visits to health facilities as their non-incarcerated peers. In 2004, the National Institute of Corrections estimated the annual cost of imprisoning an older person to be $70,000 annually. In North Carolina, a 2007 report estimated the State spent four times more on health services for older inmates than younger inmates.[2] As shown in Exhibit 1, the State pays $27,748 more each year to provide healthcare to the average elderly inmate than the average non-elderly inmate. Research also shows the recidivism rates of elderly inmates are lower than those of younger inmates.

[1] The Centers for Medicare and Medicaid Services (CMS) stated that federal financial participation funds are available for inmates in standard hospital rooms and secured units in community hospitals that meet certain conditions and are available for general parolees in standard community nursing facilities. These funds may be available for medical parolees in community nursing facilities under a nonstandard parole process or conditions or for current inmates in secured community nursing facilities with a waived right of residence.
[2] Price, Charlotte A. *Aging Inmate Population Study: 2007 Addendum Report.* Raleigh, North Carolina: North Carolina Department of Public Safety, 2007. This report defined older inmates as those age 50 or older.

Exhibit 1

North Carolina Spends $27,748 More Annually Providing Healthcare for an Elderly Inmate Than for a Non-Elderly Inmate

Inmate Population	State Fiscal Year 2016–17 Health Services Expenditures Per Inmate	
	Monthly	Yearly
Elderly Inmate	$3,028	$36,339
General Inmate	$716	$8,591
Difference	**$2,312**	**$27,748**

Note: Elderly inmates are defined as inmates who are age 50 or older.

Source: Program Evaluation Division based on information from DPS Health Services and Price, Charlotte A. Aging Inmate Population Study: 2007 Addendum Report. Raleigh, North Carolina: North Carolina Department of Public Safety, 2007.

Medical release programs vary by prison system but often contain common criteria that pertain to an inmate's age, medical condition, and risk to the general public. These criteria often are specified in law or in corrections department policies and procedures. Exhibit 2 shows the general components of state policies and corresponding processes for identifying and determining which inmates might be eligible for medical release.

Exhibit 2

Common Factors of Consideration for Medical Release Programs

Medical Release Component	Example Factors for Medical Release Component
Eligibility Requirements	• Minimum age • Minimum time/sentence served • Medical needs
Exclusions	• Conviction offenses • Previous criminal history
Application Process	• Parties eligible to make application • Agency to which application is made
Evaluation Process and Determination	• Public safety or risk assessments • Medical conditions (if applicable) • Party responsible for making evaluations • Existing parole guidelines • Agency responsible for final release decision
Conditions of Release	• Release plan • Predetermined release location • Program participation • Monitoring • Reporting requirements • Level of supervision (if applicable) • Length of supervision (if applicable)
Revocation	• Reason(s) • Responsible agency • Procedures

Source: Program Evaluation Division based on Chiu, Tina. It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release. *New York: Vera Institute of Justice, 2010.*

Among the components presented in the exhibit, the most significant include an inmate's age, required portion of sentence served, and crime of conviction. These factors determine eligibility for many medical release programs and often are considered jointly. For example, an inmate must meet an age criterion as well as certain medical criteria to qualify for medical release consideration in certain states.

Prison medical release programs can be classified as taking one of two approaches, parole or furlough. In general, medical release programs either focus on parole or furlough of inmates, though some states might provide for both approaches.

- **Parole programs** reduce the sentences of qualifying inmates and allow them to be released back into the community. Inmates discharged under these types of programs are considered parolees. Prison systems using medical parole programs often include revocation criteria similar to a traditional parole.
- **Furlough programs** maintain qualifying inmates' sentences while allowing them to serve their sentences in non-prison facilities. Similar to parole programs, these programs contain revocation criteria. Advocates of furlough programs contend the cost savings of these programs are more immediate than those resulting from parole programs and ensure inmates continue serving their sentences, albeit in a non-prison facility.

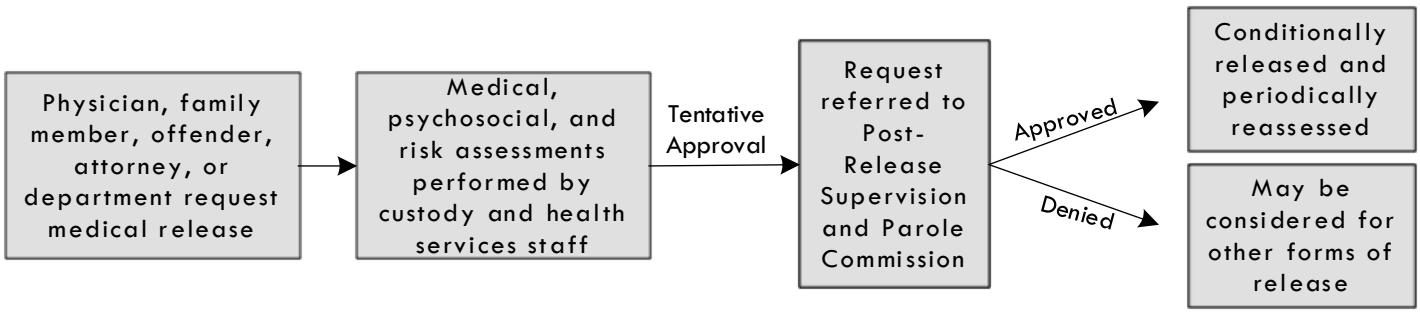
As discussed in more detail in Question 2 of this report, North Carolina's medical release program can be categorized as a parole program. To be eligible, inmates must pose a low public safety risk and meet at least one of three criteria: be geriatric (age 65 or older and suffering from a chronic condition related to aging), terminally ill, or permanently and totally disabled. Inmates convicted of certain violent crimes, including sex offenses, cannot be considered for medical parole in North Carolina.[3,4]

In North Carolina, medical release activities are conducted through a joint effort between the Department of Public Safety's Health Services division (DPS Health Services) staff, DPS custody staff, and the Post-Release Supervision and Parole Commission (the Commission). During this process, medical release requests are submitted by DPS Health Services staff or an acting representative for the offender such as a family member or attorney. Exhibit 3 outlines North Carolina's medical release process.

[3] N.C. Gen. Stat. § 15A-1369.

[4] In addition to medical parole, North Carolina has a policy, outlined in N.C. Gen. Stat. § 148-4, allowing DPS Health Services to identify and investigate inmates who are terminally ill or permanently and totally disabled for consideration of extended limits of confinement. As defined by N.C. Gen. Stat. § 148-4, the Secretary of DPS may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agency for a prescribed period of time. Data provided by DPS to the Program Evaluation Division suggest the same criteria for medical release are used for this program.

Exhibit 3: North Carolina's Inmate Medical Release Process



Source: Program Evaluation Division based on DPS Health Services policies and procedures.

The following sections discuss the actions of each of the three entities involved in considering an inmate for medical release.

- **DPS Health Services staff actions.** State law authorizes DPS to determine if requests for medical release meet statutory criteria.[5] Further, statute specifies that DPS must collect and compile relevant information for a medical release application.[6] DPS Health Services policy stipulates that the Director of DPS Health Services should review these requests and recommend those that meet the statutory criteria for further review prior to the collection and compilation of this information. However, during interviews with the Program Evaluation Division, DPS Health Services staff stated they collect and compile information for all requesting inmates even if they know an inmate will not meet the statutory criteria.
- **DPS Custody staff actions.** Upon receipt of information from DPS Health Services staff, DPS custody staff perform a public safety risk assessment. This review considers the inmate's custody record including any infractions committed while in prison.
- **Post-Release Supervision and Parole Commission actions.** Upon receiving all information for the medical release request from DPS, the Commission makes an independent determination within a specified timeframe. If approved, DPS provides offenders with a medical release plan consisting of a proposed course and location of treatment, documentation on the qualifications of medical personnel designated to provide treatment, and a financial program designed to meet the costs of treatment. For example, an inmate's medical release plan would specify the inmate is to reside at home with family or in a nursing facility with plans to pursue Medicaid eligibility.

The federal government and many states have recently revised their medical release programs with a primary goal of achieving state healthcare expenditure savings for high-cost inmates. North Carolina established its medical release program in 2008. This evaluation appears to be the first holistic review of the State's medical release program for

[5] Per N.C. Gen. Stat. § 15A-1369.3(a), requests for medical release can come from a number of sources, including an inmate, an inmate's family, an inmate's attorney, or DPS staff.
[6] N.C. Gen. Stat. § 15A-1369.3.

inmates and seeks to provide the General Assembly with more information should it wish to consider action on this subject.

Questions and Answers

1. What do legislative entities consider when establishing medical release programs?

To summarize the question below, legislative entities that are considering implementing or modifying medical release programs encounter arguments from advocates and opponents of such programs. Advocates contend that qualifying inmates have lower rates of recidivism and that granting such release could limit corrections departments' healthcare expenditures and shows compassion. Opponents contend medical release programs could present a public safety concern, violate a sense of justice, and could have negative psychological effects on victims.

Legislatures have instituted medical release programs to decrease spending on inmate healthcare but must consider the potential advantages and disadvantages of such programs. Advocates of medical release programs often cite three primary factors in their favor: the lower recidivism rates of older inmates, cost savings to prison systems, and a demonstration of compassion for inmates.

- **Recidivism rates.** Advocates of medical release programs contend inmates released through such programs present a low likelihood of recidivism. In 2010, the Vera Center on Sentencing and Corrections concluded that, based on statistics from two reports, releasing some elderly inmates before the end of their sentences poses a relatively low risk to the public in comparison to releasing younger inmates.[7,8] In addition, a Bureau of Prisons study of prisoners released between Federal Fiscal Years 2005–06 and 2009–10 found that only 15% of inmates age 50 or older were re-arrested upon release—primarily for drug offenses—and that the re-arrest rate of inmates generally declines with age.[9] Further, research by the U.S. Sentencing Commission has found that inmates age 65 years and older exhibited a 13.3% recidivism rate.
- **Cost savings to corrections departments.** Many states establish early release programs with the expectation of reducing healthcare costs. Older inmates who might be eligible for medical release cost as much as five times more than other inmates. However, little research has been conducted to empirically demonstrate the level of savings achieved from these programs. Both the Pew Charitable Trusts and Vera Institute of Justice report that state departments of

[7] Chiu, Tina. *It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release*. New York: Vera Institute of Justice, 2010.
[8] The two reports were a 1998 study (Holman, B. [1998]. Nursing homes behind bars: The elderly in prison. *Coalition for Federal Sentencing Reform, 2[1]*) that found offenders age 55 or older had a one-year recidivism rate of 3.2% compared to a 45% rate for offenders age 18 to 29 years old and a 2004 study (United States Sentencing Commission [2004]. Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines) that found offenders age 50 or older had a two-year recidivism rate of 9.5% compared to a 35.5% rate for offenders younger than 21 years of age.
[9] This study found that 41% of older recidivist inmates were re-arrested for drug offenses, 17% for violent offenses, and 16% for immigration offenses.

corrections are likely to achieve savings by operating medical release programs. However, as the latter organization's reporting discusses, states wanting to increase healthcare savings through such programs should conduct analyses on their total costs as well as shifted costs. For example, the savings a state might achieve from granting medical release could be limited by corresponding expenditures incurred by other agencies within the state, such as its Medicaid program.

- **Demonstration of compassion.** Advocates of medical release programs contend government entities can demonstrate compassion to inmates with terminal illnesses, who often have been diagnosed as having only months to live, by allowing them to be at home with family or in another non-corrections environment. The Code of Federal Regulations refers to the Bureau of Prison's medical release program as "Compassionate Release."[10]

Opponents of medical release programs often point out that releasing inmates early presents a public safety concern, violates a sense of justice, and could have damaging psychological effects on victims.

- **Public safety concern.** Some opponents of medical release programs argue that inmates are not fully capable of rehabilitation and cite the likelihood of recidivism as a reason for not granting medical release despite the relatively lower recidivism rates for those likely to be released through such programs.
- **Sense of justice.** Opponents of these programs also contend that an inmate not serving his entire sentence represents an example of justice not being served for the crime(s) committed. Although medical release criteria are often very specific, opponents contend inmates need to serve their entire sentences to be held fully accountable for their crimes.
- **Psychological effect on victims.** Many corrections departments notify victims or their families of the potential medical release of an inmate. Opponents of medical release programs contend that even the consideration of early release might have negative psychological effects on the inmate's victim(s) and their families, with the impact intensifying if release is actually granted. Victims could fear retribution and feel concern for their own physical well-being when an inmate who inflicted harm is medically released.

[10] 28 CFR Part 571 (G), Compassionate Release. These procedures are for the implementation of 18 U.S.C. 3582(c)(1)(A) and 4205(g).

2. How do North Carolina's eligibility criteria for medical release compare with other states?

To summarize the question below, North Carolina's medical release program requires inmates to be geriatric or meet certain medical criteria, not be convicted of certain violent crimes including sex offenses, and present a low risk to public safety. North Carolina's program grants parole to approved inmates, which can be revoked. North Carolina's exclusion of sex offenders from consideration and its age criterion make the State's program somewhat more stringent than other states.

As Exhibit 4 shows, a 2010 study found that 15 states and the District of Columbia define processes for the medical release of geriatric inmates.[11] As discussed in the Background, three common qualifications for medical release programs are an inmate's age, minimum sentence served, and crime of conviction. As the exhibit shows, states vary in their eligibility and exclusion criteria.

[11] The Program Evaluation Division identified an additional three states with medical release programs.

Exhibit 4: At Least 18 States and the District of Columbia Have Medical Release Programs

State	Minimum Age	Minimum Sentence Served	Certain Excluded Crimes	Medical Condition Requirement	Low Public Safety Risk Requirement
Alabama	55		✓	✓	✓
Colorado	60		✓	✓	✓
Connecticut	-	✓	✓	✓	✓
District of Columbia	65		✓	✓	✓
Georgia	62		✓	✓	✓
Louisiana	45	✓	✓	✓	✓
Maryland	60	✓	✓	✓	✓
Missouri	-			✓	
North Carolina	**65**		✓	✓	✓
New Mexico	65		✓	✓	✓
Oklahoma	60	✓	✓	✓	✓
Oregon	-	✓	✓	✓	
South Carolina	70		✓	✓	✓
Tennessee	-		✓	✓	✓
Texas	-		✓	✓	✓
Virginia	60 or 65	✓	✓		✓
Washington	-	✓	✓	✓	✓
Wisconsin	60 or 65	✓	✓	✓	✓
Wyoming	-		✓	✓	✓

Notes: This table is not comprehensive; the Program Evaluation Division identified additional surrounding states that have medical release programs that were not included in the original source cited below. The age criterion for some states' medical release programs, such as North Carolina's, is just one of a variety of methods by which inmates can qualify for a program; in other words, an inmate can qualify for such programs by meeting other non-age criteria. For states with both parole and furlough programs, the criteria reflected in this table only pertain to medical parole.

Source: Program Evaluation Division based on Chiu, Tina. (2010). It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release. *New York: Vera Institute of Justice* and research on surrounding states.

North Carolina's medical release program is somewhat more stringent than programs in other states based on its age criterion and exclusion of sex offenders. North Carolina established a medical release program in 2008 that mirrors other states with parole-oriented programs. However, the State's program also differs from other states in a number of ways.

- **Medical condition.** Several states specify medical criteria that must be met for inmates to be released, with some states using very descriptive criteria and others leaving more room for interpretation by physicians or staff.

  Similar to most states with such programs, North Carolina's early release program requires inmates to meet medical criteria,

thereby limiting eligibility.[12] To be considered for medical release, offenders must meet at least one of the following three criteria that severely limit their risk to the public.

  - **Geriatric.** Inmates are geriatric when they are age 65 years or older and suffer from a significantly progressed chronic condition related to aging.
  - **Terminally ill.** An inmate is terminally ill when a condition will likely cause death within six months as determined by a licensed physician.
  - **Permanently and totally disabled.** An inmate is permanently and totally disabled when suffering from an irreversible physical incapacitation.

- **Age.** One state allows inmates as young as 45 to qualify for medical release, but many require inmates be at least 60 years old. Conversely, several states do not impose any age requirements and instead focus eligibility on the health of the inmate. For inmates who are not considered to be terminally ill or permanently and totally disabled, North Carolina requires an inmate to be 65 years of age and suffering from a chronic age-related condition. This age requirement is relatively stringent compared to other states.

- **Minimum sentence served.** Several states require inmates to serve a specific number of years in prison or a specific portion of their total sentence to be considered for medical release. North Carolina does not require a specific length of time or portion of an inmate's sentence be served to qualify for medical release, making it more lenient in this regard than many other states.

- **Crime of conviction.** Several states exclude individuals convicted of certain crimes from medical release consideration, such as inmates sentenced to death or life imprisonment without the possibility of parole. Other states do not prohibit inmates from medical release consideration based on the nature or severity of their crimes.

  North Carolina's medical release program is more focused on crime of conviction than several other states' programs. This focus may limit the State's ability to medically release more inmates since some crimes trigger automatic exclusion from medical release consideration. For example, North Carolina excludes inmates convicted of crimes requiring lifetime registration (i.e., sex offenders). Exhibit 5 shows the crimes that prohibit an inmate from consideration for medical release in North Carolina.[13]

[12] N.C. Gen. Stat. § 15A-1369.
[13] N.C. Gen. Stat. §§ 15A-1369 and 14-208.6A.

Exhibit 5

State Law Excludes Certain Classes and Types of Offenses from Eligibility for Medical Release

Felonies Excluded From Medical Release	Example Crimes
Class A	First Degree Murder
Class B1	First Degree Sexual Assault
Class B2	Second Degree Murder
Sex Offender Registration	Sex Offender and Public Protection Registration Program

Source: Program Evaluation Division based on N.C. Gen. Stat. §§ 14-208.6A and 15A-1369.2(b).

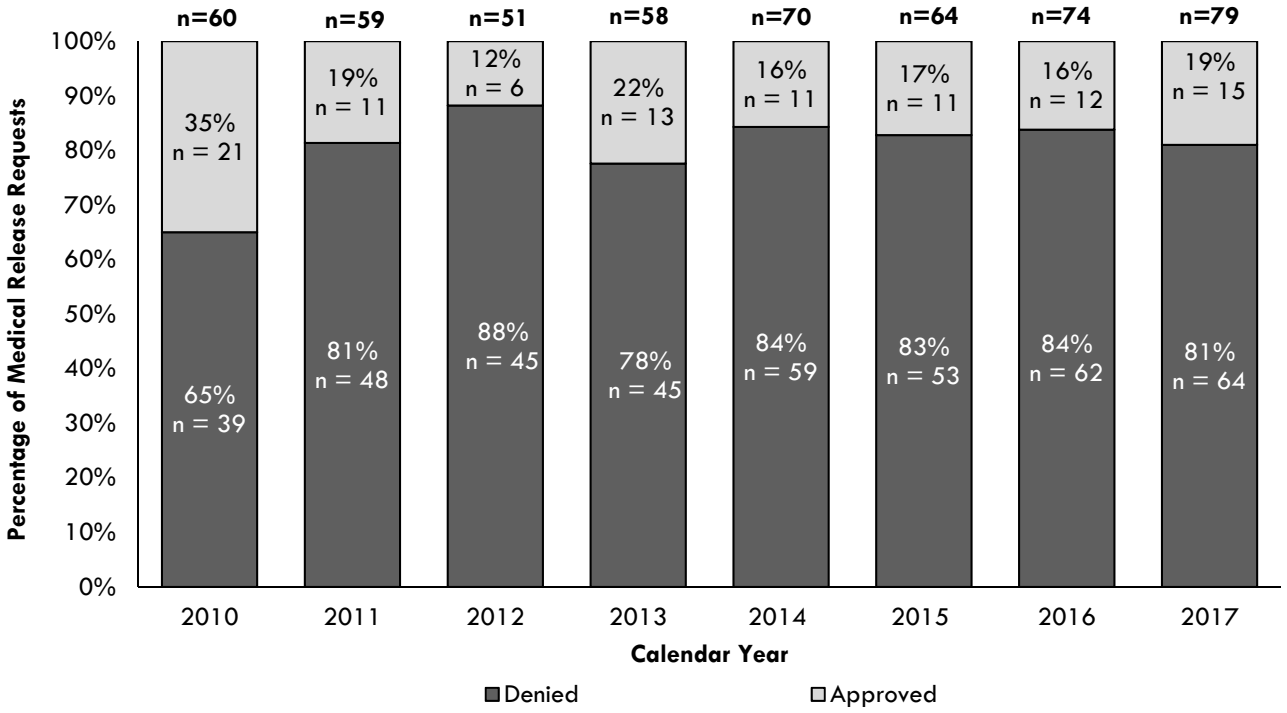
3. How do the data on determinations for medical release in North Carolina compare with other states?

To summarize the question below, North Carolina releases an average of 13 inmates each year through its medical release program. The number of inmates released in North Carolina is comparable to neighboring states; however, certain states receive significantly more requests and one state approves significantly more requests. These differences could be attributable to the eligibility criteria of those states.

North Carolina releases an average of 13 inmates per year through its medical release program. Since 2010, the number of inmates approved each year has ranged from 6 to 21. A total of 100 inmates in North Carolina's prisons have been approved for medical release during this period, which represents 19% of the total number of applications initiated (515). If an inmate's request for medical release is denied, the inmate is not excluded from pursuing other forms of parole. Additionally, a denied application or request for medical release does not prevent an inmate from reapplying for medical release. Exhibit 6 shows total annual medical release requests for North Carolina inmates vary from year to year but are generally consistent, ranging from a low of 51 to a high of 79.[14]

[14] Totals come from annual reports submitted to the General Assembly. Data provided by DPS directly to the Program Evaluation Division for 2017 shows a total of 90 requests; however, to maintain consistency, comparisons across years in the exhibit are based on annual reports.

Exhibit 6: Most North Carolina Medical Release Requests Are Denied



Note: Total number of applications considered are from all sources (inmates, their families, their attorneys, or DPS staff). Number of denied applications does not distinguish between applications that were referred to or considered by the Parole Commission and those that were not, nor does it consider inmates who passed away prior to a decision.

Source: Program Evaluation Division based on review of DPS reports submitted to the General Assembly and data provided by DPS.

State law requires the Department of Public Safety (DPS) and the Post-Release Supervision and Parole Commission (the Commission) to submit reports to the General Assembly on the number of inmates who applied for, were considered for, and who were granted medical release.[15] These reports do not detail the disposition of individual medical release requests. DPS Health Services staff report 55 of the 79 requests (70%) received in 2017 were not referred to the Commission. DPS Health Services staff have no internal mechanism to consistently record why requests are not referred to the Commission and therefore reports submitted to the General Assembly do not contain this information.

The Program Evaluation Division collected data on the number of inmates who applied and who were approved for medical release in surrounding southeastern states. The following sections discuss medical release programs in nearby states and potential explanations for their rates of release in comparison to North Carolina. As Exhibit 7 shows,

[15] N.C. Gen. Stat. § 143B-707.2(b). Data provided by DPS directly to the Program Evaluation Division shows the number of inmates considered for medical release is much higher than the totals reported to the General Assembly. It appears that in 2016 and 2017, DPS and the Commission reported only the number of inmates considered for medical release by the Commission rather than the total number of inmates who requested medical release. Thus, the General Assembly is not receiving full information on the volume of medical release applications.

although these states may have fewer inmates in their prison systems, their approval rates provide standardized information for comparison.

Exhibit 7: Comparison of Neighboring States' Medical Release Approval Rates

State	2015		2016		2017		3-Year Total	
	Submitted	Approved	Submitted	Approved	Submitted	Approved	Submitted	Approved
Georgia	61	34 (56%)	63	25 (40%)	54	32 (59%)	178	91 (51%)
North Carolina	**64**	**11 (17%)**	**74**	**12 (16%)**	**79**	**15 (19%)**	**217**	**38 (18%)**
South Carolina	54	16 (30%)	54	12 (22%)	41	5 (12%)	149	33 (22%)
Tennessee	412	0 (0%)	434	2 (<1%)	632	1 (<1%)	1,478	3 (<1%)
Virginia	263	6 (2%)	593	20 (3%)	530	34 (6%)	1,386	60 (4%)

Notes: Yearly totals for Georgia are based on its fiscal year, whereas other states report data by calendar year. South Carolina's requests include both medical parole and medical furlough requests.

Source: Program Evaluation Division based on data provided by DPS and other states' parole entities.

- **Georgia.** Georgia allows its Board of Pardons and Paroles to consider for medical reprieve any inmate who is an "entirely incapacitated person suffering a progressively debilitating terminal illness" or for parole any inmate who is age 62 or older, provided the inmate was not convicted of certain crimes.[16] Of particular significance is Georgia's definition of debilitating terminal illness as a condition reasonably expected to result in death within 12 months, which is 6 months longer than the expectancy timeframe used in North Carolina.

  As Exhibit 7 shows, Georgia receives a relatively similar number of medical release requests each year as North Carolina, but Georgia has approved significantly more of these requests. Georgia has the highest approval rate (51%) and granted release to the most inmates (n = 91) overall during the three-year period examined among the comparison states. Georgia's higher number of medical releases granted could be due to its lower age threshold and more generous prognosis criterion.

- **South Carolina.** South Carolina releases geriatric (70+), terminally ill, and/or permanently disabled inmates with a medical prognosis of less than two years under its medical parole program, with no exclusions for certain crimes. In addition, the state releases certain inmates through its medical furlough program—a medical release program for inmates who are terminally ill with a prognosis of one

[16] Georgia Constitution. Article IV, Section II, Paragraph II. The state forbids inmates convicted of the following crimes from being considered for parole: murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, or aggravated sexual battery.

year or less.[17]

As the exhibit shows, South Carolina approves a similar percentage of requests as North Carolina even though it provides the additional method of furlough release not offered in North Carolina. South Carolina's geriatric criterion requiring inmates to be 70 years of age could potentially explain its lower number of requests and approvals.

- **Tennessee.** Tennessee code states that inmates are eligible for a medical furlough if they are in imminent peril of death due to their medical condition or can no longer take care of themselves in a prison environment due to severe physical or psychological deterioration.[18] For the purposes of medical furlough requests, terminally ill is defined as an inmate having a life expectancy of less than 12 months, and seriously ill is defined as having a condition that requires frequent, extensive, specialized care that is not reversible with current medical therapy.

  Tennessee consistently received more requests than most comparison states but approved the fewest number of inmates for medical furlough (n = 3) over the three-year period. Unlike North Carolina, Tennessee does not have any age restrictions on its medical furlough program and its life expectancy requirement is six months longer. According to Tennessee Department of Corrections officials, although state law only excludes inmates sentenced to death from receiving medical furloughs, consideration of opposition from prosecutors and victims' rights groups often results in many requests being denied.

- **Virginia.** Virginia code states that an inmate serving a sentence for a felony offense other than a Class 1 felony (capital murder) who meets one of the following criteria may petition the Virginia Parole Board for conditional release:
  - inmate is at least 65 years old and has served at least five years of the sentence imposed, or
  - inmate is at least 60 years old and has served at least 10 years of the sentence imposed.[19]

  Given these parameters, inmates convicted of other felonies such as sex-based offenses are not automatically prohibited from petitioning for geriatric release in Virginia, thereby allowing more Virginia inmates to be considered for potential medical release.

  Virginia consistently receives more requests for geriatric release each year than North Carolina and several other comparison states, and over the three-year period Virginia released the second-

[17] Individuals convicted of violent crimes are not excluded from medical furlough eligibility, but S.C. Code Section 24-3-210 stipulates that furloughs may only be granted to such inmates, where applicable, when the victim of the crime for which the offender is charged (or the relatives of the victim), the law enforcement agency that employed the arresting officer of the offender, and the solicitor in whose circuit the offender was convicted recommend in writing that the offender be allowed to participate in the program.
[18] Code of Tennessee § 41-21-227(i).
[19] Per the Code of Virginia § 53.1-229, Virginia provides for an additional method of medical release for inmates through a process commonly referred to as Medical Clemency that is managed by the Governor's office.

highest number of inmates (n = 60) among comparison states. Virginia's high number of requests and low approval rate (4% over the three-year period) suggests staff perform a significant amount of work on requests resulting in denial.

4. How can North Carolina's medical release program be modified to achieve greater cost savings?

To summarize the question below, three factors may limit North Carolina's ability to achieve greater cost savings from its medical release program for inmates: eligibility requirements, application procedures, and referral and review processes. Modifications to the State's eligibility requirements could result in more inmates being eligible and approved for medical release, which could result in savings to the State. Some states have explored using dedicated facilities for inmates who qualify for their programs, but potential cost savings are unclear.

Each inmate discharged through a medical release program reduces costs for the State's department of corrections. However, these cost savings typically do not provide an accurate representation of the actual amount states can expect to save because medically-released inmates often qualify for other state benefits.

Eligibility requirements limit the number of medical release requests submitted and approved and the ability of states to achieve corresponding cost savings. Research has shown that one factor contributing to the aging prison population is the length of sentences being served for violent crime convictions. Many states, including North Carolina, categorically exclude inmates convicted of serious and violent crimes from consideration for medical release. Thus, older inmates who are serving long sentences because of their serious or violent crimes are not eligible for medical release. In addition, states that restrict medical release to inmates with certain physical conditions are likely to discharge only a small number of inmates. In 2009, the state of Washington expanded its definition to include inmates presently experiencing qualifying conditions as well as those expected to be incapacitated at the time of their release, potentially allowing that state's corrections department to avoid paying higher medical costs as the health of those inmates worsens.

The federal prison system has recently revised its medical release criteria in hopes of expanding the population of eligible inmates. Federal law provides for medical release of inmates for "extraordinary and compelling reasons" or if the inmate is 70 years old and meets other criteria.[20] Congress has authorized the U.S. Sentencing Commission to develop guidelines to support implementation of this law.[21]

A 2013 report by the Office of the Inspector General of the U.S. Department of Justice found that the federal compassionate release program administered by the U.S. Bureau of Prisons (BOP) was only being

[20] 18 U.S.C. 3582(c)(1)(A).
[21] 28 U.S.C. 992(a)(2).

applied to inmates expected to live 12 months or fewer. As a result of this report, the U.S. Attorney General expanded the eligibility criteria for inmates age 65 or older for both medical and nonmedical reasons. However, these efforts did not lead to a significant increase in the number of older inmates released.

In 2016, the U.S. Sentencing Commission revised its guidelines for BOP's use of medical release, broadening what is considered "extraordinary and compelling reasons" for compassionate release by providing four categorical criteria: inmate's medical condition, age, family circumstances, and other reasons.

North Carolina's statutory restrictions for medical release limit opportunities for DPS's cost containment.[22] As discussed earlier, North Carolina releases an average of 13 inmates each year through its medical release program, suggesting the program is achieving a modicum of savings. However, there is some room for modifying the program's parameters to potentially increase savings. The Program Evaluation identified three areas that might be inhibiting current usage of medical release in North Carolina:

- **Statutory restrictions for the inmate's crime**. As discussed earlier, North Carolina inmates convicted of certain violent offenses are ineligible for medical release regardless of medical condition. This restriction reduces DPS's ability to recommend, and the Commission's ability to approve, medical release requests for certain severely incapacitated and medically fragile inmates.

  North Carolina's medical release system prioritizes keeping inmates convicted of specific crimes incarcerated above consideration of the threat these inmates may pose to the public. In 2017, 90 requests were submitted to the medical release program; 34 requests (40%) were considered for extended limits of confinement and 51 (60%) were considered for medical parole.[23] Of all requests, 11 (12%) were approved for medical release under parole provisions. The Program Evaluation Division could not identify instances where any applications were approved for extended limits of confinement.

  Data analyzed by the Program Evaluation Division on medical release request determinations shows that the statutory restriction disqualifying inmates convicted of Class B felonies (e.g., first degree sexual assault, second degree murder) resulted in the denial of 58 requests (92% of all denied requests) in 2017. Releasing such inmates, even under conditional supervision or other

[22] In August 2017, DPS Health Services revised its medical release policy. However, this revision only generated technical corrections that did not change the context or process of medical release for geriatric, terminally ill, or permanently and totally disabled inmates.
[23] Reports submitted to the General Assembly show a total of 79 medical release requests were submitted in 2017, but data provided directly to the Program Evaluation Division by DPS Health Services show 90 requests were submitted. The Program Evaluation Division used the number of requests submitted in reports for historical analyses to ensure consistency, but used DPS-provided data for an in-depth analysis of the reasons medical release requests were denied. Of the 90 requests examined, five were missing specification of the program sought (medical release or extended limits of confinement).

release requirements, could decrease custody costs and possibly increase federal Medicaid reimbursement.

- **Statutory restrictions for the inmate's health.** DPS staff report that the statutory limitation on "terminally ill," defined as likely to result in the inmate's death within six months, limits the likelihood DPS will submit potentially qualifying inmates for medical release consideration. DPS Health Services staff report this prognosis is difficult to predict.

  According to data collected by the Program Evaluation Division, 18 requests in 2017 were not approved because these inmates died before their cases were heard by the Commission.[24] As discussed earlier, South Carolina considers inmates for release who are expected to die within 12 months, and the U.S. Sentencing Commission recently removed any prognosis criterion, which formerly was set to an 18-month timeframe. The Program Evaluation Division could not estimate the number of inmates who would be eligible for medical release if the expected lifespan of a qualifying inmate was increased beyond the current statutory six-month timeframe. DPS Health Services does not record the prognosis of inmates, and both agency staff and the Association for Home and Hospice Care of North Carolina stated during interviews that estimating when an inmate is expected to die is often difficult. However, the death of inmates before their cases are heard before the Commission suggests DPS's costs could be decreased if the terminally ill timeframe was extended to 12 or 18 months.

- **Statutory restrictions for the inmate's age.** Many states, including North Carolina, restrict medical release programs to inmates 65 years of age or older with a health condition, unless they meet other eligibility criteria. Several other states consider inmates for medical release who are 55 or 60 years of age or older. If North Carolina lowered its statutory restriction to allow medical release for inmates 60 years of age or older, the Program Evaluation Division estimates four additional inmates would not have been disqualified in 2017.

Application procedures may limit the number of medical release requests that are submitted. Some application procedures, such as limiting the number of parole requests an inmate can submit annually, might discourage older inmates from seeking medical release.

In North Carolina, state law specifies that inmates denied for medical release may not reapply unless there is a change warranting additional review.[25] However, data collected by the Program Evaluation Division showed inmates submitting multiple applications for medical release and

[24] These individuals did not commit crimes that would have disqualified them from consideration.

[25] N.C. Gen. Stat. § 15A-1369.3(e) stipulates that when inmates are denied medical release, it does not affect their eligibility for any other form of parole, provided they meet those requirements.

extended limits of confinement.[26] Therefore, the State's restrictions on reapplying do not appear to be restricting the number of requests submitted for medical release, and likely do not affect the amount of savings DPS might achieve.

Referral and review processes may limit the number of medical release requests that are approved. Regular analysis of the processes that constitute medical release programs could identify issues limiting the number of inmates approved for medical release. One such limitation is an insufficient number of referral sources. At least one state, Texas, requires physicians within prison facilities to initiate the medical release referral process and recommend inmate applications to the state's Board of Pardons and Paroles; as a result, inmates are identified and their applications are submitted sooner. As an alternative approach that is perceived to be timelier, other states have created furlough programs that circumvent the lengthy parole process but still produce the same outcome of an inmate exiting prison.

Many state prison systems have undertaken efforts to streamline medical release review and determination processes by specifying determination timeframes. North Carolina law stipulates that upon the receipt of a request for medical release, the process should take a maximum of 60 or 65 days; specifically, DPS is directed to forward required information to the Post-Release Supervision and Parole Commission (the Commission) within 45 days, and then the Commission is expected to make a determination within either 15 or 20 days depending on the criteria that is met. Even with these statutory timeframes in place, DPS Health Services staff report delays in the process and report instances of inmates passing away prior to receiving their medical release decision. Shortening referral and review process timeframes might lead to an increase in the number of requests received and may result in decreased costs for DPS as inmates could be approved for release sooner.

As an alternative to fully releasing inmates into the community, some states place medically released inmates into long-term community care facilities. A study conducted by Kentucky's Legislative Research Commission in 2016 determined that cost savings may be achieved by placing chronically ill and elderly inmates into dedicated nursing facilities. However, cost savings are dependent on available Medicaid reimbursement and already-fixed prison facility costs. Additionally, the state of Kentucky concluded that few inmates would be eligible for such a placement program and that it would be difficult to find dedicated nursing facilities willing to house approved offenders.[27]

[26] As defined by N.C. Gen. Stat. § 148-4, the Secretary of DPS may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agency for a prescribed period of time

[27] The Kentucky Research Report No. 426, "Medical Care for Kentucky Inmates In Community Medical Facilities: Feasibility And Savings Are Uncertain," also identified other limitations to cost savings such as lack of future guidance from the Centers for Medicare and Medicaid Services on the use of secured hospital units and eligibility for federal financial participation funds to offset costs, as well as the limitation of rights and custody-associated issues with housing inmates at dedicated nursing facilities (i.e., an inmate must be able to exercise the same rights as other facility residents, including free movement, which could violate the state's responsibility for confining the inmate and would endanger public safety).

In 2017, Louisiana passed legislation to establish a medical furlough program for inmates not otherwise eligible for parole who, when approved, would be placed in a secure medical facility appropriate for their condition.[28] Between Fiscal Years 2014 and 2017, Louisiana granted 41 of 46 requests for medical parole (89%) to offenders who were permanently disabled or terminally ill and eligible for parole. At this time, it is unclear whether placing medically released inmates into long-term community care facilities could decrease custody costs in North Carolina.

Agency Response

A draft of this report was submitted to the Department of Public Safety to review. Its response is provided following the report.

Program Evaluation Division Contact and Acknowledgments

For more information on this report, please contact the lead evaluator, Brent Lucas, at brent.lucas@ncleg.net.

Staff members who made key contributions to this report include Sara Nienow and Adora Thayer. John W. Turcotte is the director of the Program Evaluation Division.

[28] La. Senate Bill 139 amends La. R.S. 15:5674.20 retroactively and does not permit medical furlough to be granted to those individuals convicted of and/or awaiting death sentences.

North Carolina Department of Public Safety
Prevent. Protect. Prepare.

Roy Cooper, Governor

Erik A. Hooks, Secretary

August 3, 2018

Mr. John Turcotte
Director, Program Evaluation Division
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Raleigh, NC 27603-5925

Re: ***Modifying Criteria for North Carolina's Medical Release Program Could Reduce Costs of Inmate Healthcare*** **(PED Report 2018-11)**

Dear Mr. Turcotte:

Thank you for providing the North Carolina Department of Public Safety (DPS) with the opportunity to respond to the Program Evaluation Division's Report 2018-11: *Modifying Criteria for North Carolina's Medical Release Program Could Reduce Costs of Inmate Healthcare*. This evaluation is especially timely as the Department is finalizing work on a palliative and long-term care unit at Central Prison Healthcare Complex, but has not received appropriations to equip or staff the unit.

The Department broadly agrees with the conclusions reached in this study and specifically agrees that releasing more inmates through Medical Release will reduce related correctional healthcare costs. The Department would note, as PED did as well, that cost savings to the state as a whole are more difficult to determine, because many release-eligible inmates will continue to require state-funded care regardless of whether they are incarcerated. Nevertheless, should the General Assembly endorse an expansion of the Medical Release Program by relaxing certain qualifying requirements, the Department is prepared to evaluate and refer to the Post-Release Supervision and Parole Commission any and all applications deemed appropriate under the relevant statutory authority.

Please extend the Department's thanks to PED staff for their work in evaluating this issue.

Sincerely,

Erik A. Hooks

Erik A. Hooks
Secretary
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