



Oregon

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FAQ Regarding the Board's rules for Early Medical Release – OAR 255-040-0028 Advancing Release Dates for Adults in Custody (AIC) with Severe Medical Conditions or Permanent Incapacity

1. What is the purpose of the Early Medical Release (EMR) rule (OAR 255-040-0028)?

This rule outlines the process for the Board to consider advancing the parole and PPS release date for adults in custody (AICs) who suffer from a severe medical condition, including terminal illness, or who are elderly and permanently incapacitated.

2. Who can request an Early Medical Release for an AIC?

An AIC, their legal guardian, a person with legal authority to act on behalf of the AIC, or a family member (spouse, parent, child, sibling) who is not incarcerated may submit a request using the Early Medical Release Request form (EMR-R).

3. How does the process of advancing a release date begin?

The process is initiated by submitting an EMR-R form, which can be filled out by the AIC themselves, or by other authorized persons when the AIC is unable to do so. (A list of authorized persons is set out in OAR 255-040-0028.) The form can be submitted to the Board by email or mail. In some cases, the Board may initiate the process on its own.

4. Where can I find the text of the Early Medical Release Rule (255-040-0028) and the Early Medical Release Request form?

The Early Medical Release rule and forms can be found on the Board's website as well as at all of the institution law libraries.

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5. What information is required in the EMR-R request?

A requestor should complete the EMR-R form in its entirety. The EMR-R form must include:

- A statement detailing the AIC's severe medical condition, including terminal illness or permanent incapacitation.
- Any available information about the AIC's proposed housing and medical care plan if released.
- A release of information allowing the Oregon Department of Corrections (DOC) to share medical details with the Board.
- Any other available relevant information the requestor wants the Board to consider.

6. As an AIC, do I have to sign a Release of Information for DOC medical records?

Yes. Under the Board's rules, an Early Medical Release request must include an authorized release of information for DOC medical records.

7. If a request is made on an AIC's behalf, does the AIC have to authorize a Release of Information to release DOC medical records?

Yes. Under the Board's rules, an Early Medical Release request must include an authorized release of information for DOC medical records.

8. Can an AIC receive help to fill out an Early Medical Release request?

Yes. AICs are not prohibited from receiving assistance with completing the EMR-R form from an attorney, a legal assistant, medical professional, or other professional, or a family member.

9. What is the role of the Department of Corrections (DOC)?

The Board may request that DOC provide information about the AIC on the Board's Medical Information Form (Exhibit EMR-MIF in the Board's rules.) The DOC also would prepare the release plan for an AIC in the event the Board preliminarily approves an early release.

10. How does the Board evaluate eligibility for Early Medical Release?

The Board will review an AIC's sentence to determine if an AIC is eligible under ORS 144.122 or ORS 144.126. If the AIC is eligible, the Board may proceed with the review. If not, the request will be denied.

11. Are there any restrictions on AICs who may be considered for Early Medical Release?

An AIC's conviction or sentence may make them ineligible for early release. Per OAR 255-040-0028(10), the Board has no authority to grant early release to AICs sentenced under Ballot Measure 11 (ORS 137.700, 137.707). Additionally, the Board has no authority to grant an early release for AICs who committed their crimes after June 12, 1997, and when the sentencing order states that the AIC is not entitled to any form of early release. An AIC may wish to consult with an attorney to determine whether a conviction or sentence may make them ineligible for early release.

12. Can the Board prioritize certain requests?

Yes, the Board has the discretion to prioritize the order in which requests for early medical release are considered.

13. What kinds of information does the Board consider when deciding whether to grant an Early Medical Release request?

Information on what type of information the Board considers can be found in OAR 255-040-0028(7). The Board may consider, but is not limited to considering, the following information:

- the age of the AIC;
- a medical provider's determination of whether the AIC is elderly and unable to move from place to place without the assistance of another person;
- whether the AIC has a severe medical condition including a terminal illness;
- a medical provider's diagnosis of the nature and severity of AIC's medical condition and the effect on the AIC's Activities of Daily Living (ADL);
- the AIC's institutional disciplinary conduct;
- the AIC's criminal history and history of prior performance on supervision;
- any available information regarding the AIC's proposed housing plan and plan for medical care;
- information relevant to there being a reasonable probability that the AIC will remain in the community without violating the law or conditions of supervision;
- any available information regarding risk of harm to any victim of the AIC's previous criminal conduct;
- if available, an assessment of the AIC's current risk of re-offending and risk of harm to the community;

- the degree of premeditation or deviancy involved in the commission of the crime and whether the AIC’s rehabilitative efforts and severe medical condition mitigates those underlying factors;
- whether the AIC is able to participate in educational, employment, and rehabilitative programs, or other institution activities considering the AIC’s medical condition; and
- any other relevant information.

14. Can the Board order a psychological evaluation?

Yes, the Board may order a psychological evaluation and perform a risk assessment before making a release determination. If an AIC refuses to participate in these evaluations, it may lead to a denial of their release request.

15. Can the Board hold a hearing to consider a request for Early Medical Release?

Yes. The Board at its discretion, may make a decision on an Early Medical Release request administratively or require a hearing be held.

16. Do victims have a role in the Early Medical Release process and if so, what?

Yes, the Board will notify any victim registered with the Board upon receipt of a completed Early Medical Release packet. Victims will have the opportunity to provide information for the Board to consider after being notified and prior to the Board making a final decision.

To register with the Board for notification, please visit the Board’s website.

17. Does the District Attorney from the committing jurisdiction have a role in the Early Medical Release process?

Yes, the Board will notify the District Attorney of the committing jurisdiction upon receipt of a completed Early Medical Release packet. The District Attorney will have the opportunity to provide information for the Board to consider after being notified and prior to the Board making a final decision.

18. How long does it take for the Board to make a decision?

The Board must make an initial decision from the date the Board received a completed Early Medical Release packet within:

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- 45 days if the decision is made administratively.
- 120 days if a hearing is required.

If the Board is unable to make a decision within this time, it will issue a written notice explaining the delay.

19. What happens after the Board makes an initial decision to approve Early Medical Release?

Once the Board makes an initial decision on a request for Early Medical Release, it will notify the DOC, the AIC or their representative, the district attorney, and any registered victim of the decision. If the initial release is preliminarily approved, the Board will ask DOC to prepare a release plan, including suitability of medical care and suitable housing.

20. What happens if the AIC is denied early release?

If the request is denied, the Board may consider a subsequent request which should include an assessment as to whether there has been a significant change in the AIC's medical condition or prognosis since the prior request.

21. Is there an option for administrative review of a final decision?

Yes, an AIC may request administrative review of a final decision by the Board as provided in the Board's Early Medical Release rule (OAR 255-040-0028).