

MEDICAL RELEASE REQUIREMENTS

What is the new law? On September 25, 2008, the Governor Signed into law Act 84 of 2008 (formerly House Bill 7). Act 84 rewrites 61 P.S. §§ 81-82 and is effective 11/24/08.

What does the new law do? Act 84 replaces an outdated medical treatment statute, 61 P.S. § 81, that was almost 100 years old. It allows judges to place prisoners in hospitals, long-term nursing care facilities and hospice care locations. However, the requirements for such placements are quite stringent.

Does this apply to state and county prisoners? Yes.

How does this impact state prisoners? In summary, Act 84 primarily addresses terminally ill state prisoners.

1. **Who may petition?** The Department of Corrections (DOC), the prisoner, or some someone on the prisoner's behalf.
2. **What are they allowed to ask for?** The petition can seek to "temporarily defer service of the sentence of confinement" and to "temporarily remove" the prisoner from DOC custody for placement in a "hospital, long-term nursing care facility, or hospice care location" (as defined in subsection (f)).
3. **Who is entitled to object to the placement?** The prosecutor and victim are entitled to notice and an opportunity to be heard on a medical release petition.
4. **What is required to send a prisoner to a hospital or nursing care facility?** The petition must include the name of facility proposed for placement and facts showing that the facility has agreed to accept the prisoner. In addition, *all* of the following must apply—
 - a. the medical needs of prisoner are "more appropriately addressed" there;
 - b. the facility has agreed to accept prisoner;
 - c. the prisoner is "seriously ill" and not expected to live more than 1 year;
 - d. there are no writs or detainers;
 - e. there is no undue escape risk (looking at conduct record, whether convicted of a crime of violence, length of imprisonment, and any other "relevant factor);
 - f. the facility has agreed to notify DOC of material changes (health status, nature of care, or other information requested by DOC); and
 - g. there has been notice and opportunity to be heard by prosecuting agency, state or local prison, and victim.
5. **What is required for hospice care?** Basically the same standards as 4. above, *plus--*
 - a. the prisoner must be "terminally ill, not ambulatory, and likely to die in the near future,"
 - b. the hospice care provider must provide appropriate "medical services and palliative care," and
 - c. the released prisoner is subject to electronic monitoring by DOC.

6. **What are the release order requirements?** Any order must include a provision that DOC or prosecutor may petition for recommitment of the prisoner if changed or previously unknown circumstances (including change in medical status, risk of escape, danger to community, or change in case provided). Copies of the release order are to be provided to the prosecutor, victim, defendant, DPW and the medical facility (which must provide notice of order to persons who will come in contact with the prisoner during the placement).
7. **What kind of facilities qualify?**
 - a. **hospitals** (*licensed* for acute-care, specialty care, or rehabilitation) (subsection (f));
 - b. **“long-term nursing care facility”** (a *licensed* facility that provides either skilled or intermediate nursing care or both levels of care to two or more patients, who are unrelated to the licensee, for a period exceeding 24 hours; does not include facilities exclusively for the mentally retarded). Subsection (f) and 35 P.S. § 448.802a.
 - c. **“hospice care location”**—a home, independent living environment that provides a program of palliative and supportive services through a *licensed* hospice care provider. See Subsection (f) and 35 P.S. § 448.802a (defining hospice).
8. **Are there other alternatives for medical treatment?** Yes. Although DOC provides medical treatment for all prisoners, under existing law eligible prisoners can seek a pardon, parole, or a community corrections placement. There are limits on all of these options and additional information should be obtained about prisoner eligibility.
9. **What happens if circumstances change or the placement doesn’t work out?** The judge can terminate the release order and order the prisoner recommitted. [Note: Although 61 P.S. § 81 does not explicitly provide for order modifications, presumably a judge can modify a prior order provided the modification process and order complies with the statute.]
10. **What happens if a prisoner leaves the facility?** The prisoner is subject to arrest and conviction under 61 P.S. § 82 and will be returned to prison.

Does this apply to prisoners in other facilities (including county jails)? Yes. The standards are basically the same as for state prisoners except that

1. electronic monitoring applies to all placements; and
2. the prison administrator must consent to the placement.
3. [Note: for county inmates, medical treatment may be available through work release or parole; for unsentenced inmates, medical issues may be addressed through bail orders or detainer hearings. The availability of these options depends on the individual circumstances of the inmate and pending legal matters.]