

MEDICAL ASSISTANCE IN DYING: LEGAL REQUIREMENTS

The *Criminal Code* sets out the legal framework for medical assistance in dying (MAID) (Sections 241.1 to 241.4)¹ and the *Regulations for the Monitoring of Medical Assistance in Dying* under the *Criminal Code* and the *Coroners Act* (Section 10.1) set out the reporting requirements.

The *Criminal Code* and its regulations and the *Coroners Act* will always prevail in the case of any discrepancy or inconsistency between the College's documents and the legislation and regulations.

Eligibility Criteria for MAID

To be eligible for MAID, a patient must:

- a. Be eligible for health services funded by a government in Canada.¹
- b. Be capable and at least 18 years of age.
- c. Have a grievous and irremediable medical condition, meaning:
 - they have a serious and incurable illness, disease, or disability that is not a mental illness;²
 - they are in an advanced state of irreversible decline in capability; and
 - their illness, disease, disability, or state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions they consider acceptable.
- d. Make a request for MAID voluntarily and not as a result of external pressure.
- e. Provide informed consent to receive MAID after having been informed of the means available to relieve their suffering, including palliative care.


Safeguards for MAID

¹ Nothing in the *Criminal Code* compels an individual to provide, or assist in providing, MAID.

² Section 241.2 (2.1) of the *Criminal Code* specifically excludes a mental illness as an illness, disease, or disability that makes an individual eligible for MAID. For clarity, a patient suffering **solely** from a mental illness is not eligible for MAID but a patient with a mental illness may also have a serious and incurable illness, disease, or disability that makes them eligible for MAID provided all of the other eligibility criteria are met. For more information, see the *Advice to the Profession: Medical Assistance in Dying* document.

Summary of Comments

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Expand using federal government eligibility by adding "**(or during the applicable minimum period of residence or waiting period for eligibility)**"

27 The federal legislation sets out safeguards that must be met before MAID is provided.
 28 The applicability of some safeguards depends on whether the patient’s natural death is
 29 reasonably foreseeable.³

30 For the purposes of this document,

- 31 • “MAID provider” refers to the physician or nurse practitioner who: administers
 32 medications that cause a patient’s death, or who prescribes or provides
 33 medications for a patient to self-administer, after first assessing the patient and
 34 determining that the patient meets all of the eligibility criteria and safeguards.
- 35 • “MAID assessor” refers to the physician or nurse practitioner who assesses the
 36 patient and provides a written opinion confirming that the patient meets all of the
 37 eligibility criteria.⁴

| Natural Death Reasonably Foreseeable | Natural Death <i>Not</i> Reasonably Foreseeable |
|---|---|
| Before MAID is provided by administering a substance that causes a patient’s death, or prescribing or providing a substance for a patient to self-administer to cause their own death, the MAID provider must: | |
| 1. Be of the opinion that the patient has met all of the eligibility criteria. | |
| 2. Ensure that the patient’s request for MAID was made in writing and signed and dated by the patient after the patient was informed that they have a grievous and irremediable medical condition.⁵ If the patient is unable to sign and date the request, another person (i.e., a proxy) – who is at least 18 years of age, who understands the nature of the request for MAID and who does not know or believe that they are a beneficiary under the will of the patient, or a recipient, in any other way, of a financial or other material benefit resulting from that patient’s death – may do so in the patient’s presence, on the patient’s behalf and under the patient’s express direction. | |
| 3. Be satisfied that the request for MAID was signed and dated before an independent witness who then also signed and dated the request. | |

³ For more information on the meaning of “reasonably foreseeable natural death”, see the *Advice to the Profession: Medical Assistance in Dying* document.

⁴ For clarity, MAID assessors also have a role to play in ensuring that the following safeguards are met before MAID is provided: 5, 6, and where applicable, 5.1, 8, and 9.

⁵ The federal legislation does not require that a patient be informed that they have a grievous and irremediable medical condition in the context of an eligibility assessment for MAID (i.e., it does not have to be contemporaneous).

| Natural Death Reasonably Foreseeable | Natural Death <i>Not</i> Reasonably Foreseeable |
|---|--|
| <p>An independent witness is someone who is at least 18 years of age, and who understands the nature of the request for MAID. An individual may not act as an independent witness if they:</p> <ul style="list-style-type: none"> • Know or believe that they are a beneficiary under the patient’s will, or are a recipient in any other way of a financial or other material benefit resulting from the patient’s death. • Were the proxy who signed and dated the patient’s request.⁶ • Own or operate any health care facility at which the patient making the request is being treated or any facility in which the patient resides. • Are directly involved in providing the patient health care services or personal care, unless they provide health care services or personal care as their primary occupation and are paid to provide that care to the patient (e.g., a personal support worker who is a paid employee). <p>However, the MAID provider, MAID assessor, and the practitioner who provided a consultation in light of their expertise in the condition causing the patient’s suffering may <i>not</i> act as an independent witness.</p> | |
| <p>4. Ensure that the patient has been informed that they may, at any time and in any manner, withdraw their request.</p> | |
| <p>5. Ensure that a MAID assessor assessed the patient and provided a written opinion confirming that the patient meets all of the eligibility criteria.</p> | |
| | <p>5.1 If neither the MAID provider nor the MAID assessor has expertise in the condition that is causing the patient’s suffering, the MAID provider must ensure that they or the MAID assessor consult with a physician or nurse practitioner who has that expertise⁷ and must share the results of that consultation with each other.</p> |

⁶ A proxy cannot be an independent witness because the proxy cannot be a witness to their own signature.

⁷ The [federal government](#) has clarified that the practitioner with expertise would not be assessing the patient’s eligibility for MAID, but instead would provide information on the patient’s status and options, including the reasonable and available services and/or treatment options that might relieve the patient’s suffering.

| Natural Death Reasonably Foreseeable | Natural Death <i>Not</i> Reasonably Foreseeable |
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| <p>6. Be satisfied that they and the MAID assessor are independent from each other and from the patient.</p> <p>The MAID provider and MAID assessor are independent if they:</p> <ul style="list-style-type: none"> • Are not a mentor to the other, or responsible for supervising the other’s work; • Do not know or believe that they are a beneficiary under the will of the patient making the request, or a recipient, in any other way, of a financial or other material benefit resulting from that patient’s death, other than standard compensation for their services relating to the request; and • Do not know or believe that they are connected to each other or to the patient making the request in any other way that would affect their objectivity. | |
| | <p>7. Ensure that the patient has been informed of the means available to relieve their suffering, including, where appropriate, counselling services, mental health and disability support services, community services and palliative care and has been offered consultations with relevant professionals who provide those services or that care.</p> |
| | <p>8. Ensure that they and the MAID assessor have discussed with the patient the reasonable and available means to relieve the patient’s suffering and they both agree with the patient that the patient has given serious consideration to those means.</p> |
| | <p>9. Ensure that there are at least 90 clear days⁸ between the day of the first eligibility assessment for MAID and the date MAID is provided or – if the assessments have been completed and they and the MAID assessor are both of the opinion that the loss of the patient’s capacity to provide consent</p> |

⁸ The term “clear days” is defined as the number of days, from one day to another, excluding both the first and the last day.

| Natural Death Reasonably Foreseeable | Natural Death <i>Not</i> Reasonably Foreseeable |
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| | to receive MAID is imminent – any shorter period that they consider appropriate in the circumstances. |
| <p>10. If the patient has difficulty communicating, take all necessary measures to provide a reliable means by which the patient may understand the information that is provided to them and communicate their decision.</p> | |
| <p>11. Give the patient an opportunity to withdraw their request immediately before providing MAID and ensure that the patient gives express consent to receive MAID.⁹</p> | |

38

39 ***Final Consent – Waiver***

40 Patients whose natural death is reasonably foreseeable have the option of entering into
 41 a written arrangement with the MAID provider, waiving the requirement that they give
 42 express consent immediately before receiving MAID, in the event they lose capacity to
 43 consent.

44 MAID can only be administered without meeting the requirement for final express
 45 consent set out in safeguard (11) if the patient’s natural death is reasonably
 46 foreseeable and:

- 47 a. before the patient lost capacity to consent to MAID:
 - 48 (i) the patient met the eligibility criteria and all safeguards relevant for
 - 49 patients whose natural death is reasonably foreseeable;
 - 50 (ii) the patient and the MAID provider entered into a written arrangement that
 - 51 the provider would administer MAID on a specified day;
 - 52 (iii) the patient was informed by the MAID provider of the risk of losing the
 - 53 capacity to consent to receive MAID prior to the day specified in the
 - 54 written arrangement; and
 - 55 (iv) the written arrangement provides the patient’s consent for the provider to
 - 56 administer MAID on or before the day specified in the arrangement if they
 - 57 lose their capacity to consent prior to that day;
- 58 b. the patient has lost the capacity to consent to receiving MAID;

⁹ See *Final Consent – Waiver* and *Advance Consent – Self-Administration* sections below for exceptions.

- 59 c. the patient does not demonstrate, by words, sounds or gestures, refusal to have
60 the substance administered or resistance to its administration;^{10, 11} and
61 d. the MAID provider administers MAID for the patient in accordance with the terms
62 of the written arrangement.

63

64 **Advance Consent – Self Administration**

65 Patients who choose to self-administer MAID have the option of entering into a written
66 arrangement with a MAID provider, permitting the MAID provider to intervene to
67 administer MAID if self-administration does not result in death within a specified period
68 and the patient loses capacity to consent after attempting self-administration.

69 Advance arrangements relating to self-administration are available regardless of
70 whether the patient’s natural death is reasonably foreseeable.

71 MAID can only be provided to a patient who has unsuccessfully attempted self-
72 administration, and who has lost capacity to consent, without meeting the requirement
73 for final express consent set out in safeguard (11) if:

- 74 a. before the patient lost their capacity to consent to receive MAID, the patient and
75 MAID provider entered into a written arrangement that:
- 76 (i) states the MAID provider will be present when the patient is self-
77 administering MAID;
 - 78 (ii) provides consent for the MAID provider to administer a second substance
79 causing death if self-administration fails, i.e., if the patient does not die
80 within a specified period and loses their capacity to consent; and
 - 81 (iii) specifies the time period after which the MAID provider may administer
82 the second substance, if self-administration fails;
- 83 b. the patient loses capacity after self-administering MAID and does not die within
84 the time period specified in the written arrangement; and
- 85 c. the MAID provider administers MAID for the patient in accordance with the terms
86 of the written arrangement.

87

88

¹⁰ Involuntary words, sounds or gestures made in response to contact do not constitute a demonstration of refusal or resistance.

¹¹ Once the patient demonstrates, by words, sounds or gestures refusal or resistance, MAID can no longer be provided on the basis of the patient’s consent in the written arrangement.

89 **Providing MAID**

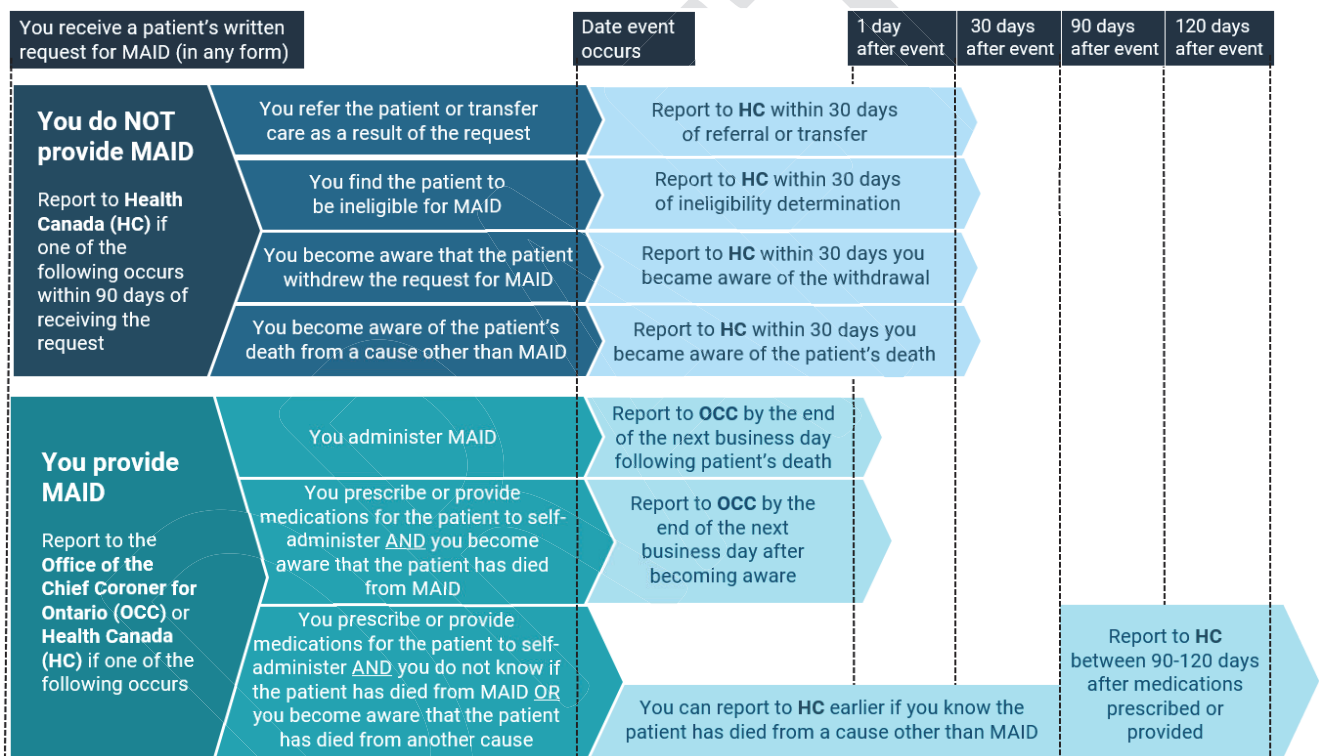
90 MAID must be provided with reasonable knowledge, care, and skill and in accordance
 91 with any applicable provincial laws, rules, or standards.

92 Before any pharmacist dispenses a substance for MAID, the MAID provider must inform
 93 the pharmacist that the substance is intended for MAID.

94

95 **Reporting MAID**

96 Physicians are required to report in the following circumstances:



97

98 **Reporting to Health Canada**

99 The written request for MAID that triggers reporting requirements to Health Canada can
 100 be made in any ¹ any form, including email or text message. It does not have to be the
 101 formal signed and witnessed request required under the *Criminal Code*.

102 Health Canada has [stated](#) that physicians are never required to actively seek out
 103 information regarding whether the patient has withdrawn their request for MAID or has
 104 died.



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"in any" written twice

105 Physicians are required to use the [Canadian MAID Data Collection Portal](#) to make their
106 report to Health Canada.

107 *Reporting to the Office of the Chief Coroner for Ontario (OCC)*

108 The OCC requires that physicians complete the relevant Clinician Aid ([B](#) for physicians
109 who provide MAID or [C](#) for physicians who conduct an eligibility assessment) and where
110 applicable, provide Clinician Aid C to the MAID provider so that they can fulfil their
111 reporting obligations to the OCC following the provision of MAID.

112 After confirming or becoming aware that the patient has died, MAID providers are
113 required to notify the OCC by completing and electronically submitting the prescribed
114 form (add link) by the end of the next business day. In some circumstances, the OCC
115 may request a copy of the patient's medical record and MAID providers are required to
116 provide it.¹²

¹² MAID providers are required to provide the OCC with information about the facts and circumstances related to the MAID death that the OCC considers necessary to form an opinion as to whether the death ought to be investigated.

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Clinician Aid B and C are no longer mandatory for reporting to the OCC. The secondary assessment is still required to be given to the MAiD provider (whether Clinician Aid C or written assessment note - which should accompany the Aid C per the policy document - or both).

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Should be "OCC and Health Canada"

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The MAiD provider must call the OCC immediately to report the death if any of the following circumstances were involved: history of recent injury, history of remote injury that led to conditions that prompted the request for MAiD or the provider lists an injury as the immediate cause of death or as a contributing condition to the death.

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"will" instead of "may"