

Medical Assistance in Dying

Criminal Code (RSC, C-46)

March 17, 2021 update:

These changes to the Criminal Code now allow MAID for eligible persons who wish to pursue a medically assisted death, whether their natural death is reasonably foreseeable or not. The new law will reduce unnecessary suffering in Canada. It also supports greater autonomy and freedom of choice for eligible persons, and provides safeguards to protect those who may be vulnerable:

- Removes the requirement for a person's natural death to be reasonably foreseeable in order to be eligible for MAID
- Introduces a two-track approach to procedural safeguards based on whether or not a person's natural death is reasonably foreseeable. Existing safeguards are maintained and, in some cases, eased for eligible persons whose natural death IS reasonably foreseeable.
- New and strengthened safeguards are introduced for eligible persons whose natural death is NOT reasonably foreseeable.
- Temporarily excludes eligibility for individuals suffering solely from mental illness for 24 months, and requires the Ministers of Justice and Health to initiate an expert review tasked with making recommendations within the next year on protocols, guidance and safeguards for MAID for persons suffering from mental illness.
- Allows eligible persons whose natural death is reasonably foreseeable, and who have a set date to receive MAID, to waive final consent if they are at risk of losing capacity in the interim.
- Allows for expanded data collection and analysis through the federal monitoring regime to provide a more complete and inclusive picture of MAID in Canada.

Definitions

- **Medical assistance in dying**
 - Performed by a **medical practitioner or nurse practitioner**, at the request of the person, to cause their death
 - **Administering** a substance to a person; *OR*
 - **Prescribing or providing** a substance to a person, so that they may **self-administer** it
- **Medical practitioner**
- **Nurse practitioner**
- **Pharmacist**

Eligibility

- Must meet ALL of the following criteria:

- 1) Funding:** eligible for government-funded health services
- 2) Capable adult:** age ≥ 18 & capable of making healthcare decisions
- 3) Grievous & irremediable** medical condition
- 4) Voluntary request:** for MAID (not due to external pressure)
- 5) Informed consent:** after informed of alternatives, palliative care

Receive dx, available tx, available options to relieve suffering (including palliative care). Must give consent at time of request, and immediately before MAID provided UNLESS SPECIAL CIRCUMSTANCES APPLY.

**Can waive requirement for final consent IF:

- 1) Natural death reasonably foreseeable AND
- 2) While pt had decision-making capacity, written arrangement made in which pt provided consent in ADVANCE to receive MAID on chosen date (if NO LONGER has capacity to consent on that day)

Grievous & Irremediable Medical Condition

- A person has a “grievous & irremediable medical condition” if ALL:
 1. Serious illness, disease or disability
 2. In an advanced state of decline that cannot be reversed
 3. Experience unbearable physical or mental suffering from your illness, disease, disability or state of decline that cannot be relieved under conditions that you consider acceptable.
 4. ~~Natural death is reasonably foreseeable. This takes into account all of your medical circumstances and does not require a specific prognosis as to how long you have left to live.~~

You do not need to have a fatal or terminal condition to be eligible for medical assistance in dying. ***Canadians whose only medical condition is a mental illness, and who otherwise meet all eligibility criteria, will not be eligible for MAID until March 17, 2023

Safeguards I

- Before provision of MAID, the MD/NP must ensure/believe:
 - 1) Be of opinion the person **meets eligibility criteria**
 - 2) Ensure **2nd opinion from MD/NP** confirming eligibility criteria
 - 3) The person's request was
 - a) Made **in writing, signed, dated** by the person (or proxy)
 - b) Signed & dated **AFTER the person was informed** their medical condition is grievous & irremediable
 - c) Also signed & dated by 1 **independent witnesses**

Safeguards II

- Before provision of MAID, the MD/NP must ensure/believe:
 - 4) The person is informed they **may withdraw request any time**
 - 5) Ensure **at least 10 CLEAR days** between the day request was signed, and the day when MAID is provided (may be shorter if death considered imminent) ****or WAIVED final consent****
 - 6) Immediately before providing MAID**, give the person opportunity to **withdraw request**, and ensure the person gives **express consent** for MAID
 - 7) Take all measures to provide **reliable communication**, ensure understanding

Proxy If Unable to Sign

Gov't website NO LONGER has info on proxy!

- If the person requesting MAID is unable to sign & date the request, another person (proxy) may do so IF:
 - In the person's **presence**, on their **behalf** & under their **express direction**
 - **18 years old**
 - **Understand the nature** of request for MAID
 - **Would NOT benefit** from the person's death (including will)

Independent Witness

- **ANY adult** (age >18) who **understands the nature** of MAID request may be an independent witness to the request, **EXCEPT IF:**
 - **Would benefit** from the person's death
 - Owner/operator of any **healthcare facility** where the person resides or is being treated at
 - Directly involved in **providing healthcare services** to the person
 - Directly providing **personal care** to the person

Independent MD/NP

- The MD/NP providing **2nd opinion** is independent IF:
 - **NOT a mentor/supervisor** to the primary MD/NP
 - **Would NOT benefit** from the person's death (aside from standard compensation)
- NOT **Objectively affected** by connection to primary MD/NP or the person making request

Reasonable Knowledge, Care & Skill

- MAID must be provided with **reasonable knowledge, care & skill**
 - In accordance with applicable provincial laws, rules or standards

Informing Pharmacist

- The MD/NP providing or prescribing a substance for MAID must:
 - **Inform the pharmacist** that the substance is intended for MAID
 - **BEFORE** the pharmacist dispenses the substance

Clarification

- **Nothing compels** an individual to provide or assist in providing MAID

Failure to Comply with Safeguards

- A MD/NP who, in providing MAID, **knowing fails to comply** with safeguards is **guilty of an offence**, and is liable
 - On conviction on indictment, to imprisonment for up to 5 years
 - On summary conviction, to imprisonment for up to 18 months