



Medical Assistance in Dying: What Are My Professional Obligations? *Guidance for Members of the OCSWSSW*

Introduction

In February 2015, the Supreme Court of Canada found that the prohibition against physician-assisted dying in the *Criminal Code* of Canada was unconstitutional.¹ In response to the Supreme Court's decision, Parliament passed legislation on medical assistance in dying (“MAID”) on June 17, 2016. This means that physicians and nurse practitioners in Canada can provide MAID, where this is done in accordance with the federal legislation as well as any applicable provincial laws, rules or standards.²

In September 2019, the Superior Court of Quebec found the eligibility criterion of reasonable foreseeability of natural death in the MAID legislation to be unconstitutional.³ As a result, Parliament introduced Bill C-7 to remove this provision and to make further amendments to the MAID legislation. As of March 17, 2021, these changes were made to the *Criminal Code* to update MAID procedures to reflect these amendments.⁴

This article updates the College’s 2016 MAID resource. It includes information from the 2016 document that is still relevant and explains the legislative changes which occurred in March 2021.

Pursuant to Bill C-7, the MAID process has been changed to:

- Remove the eligibility requirement that a person’s natural death has become reasonably foreseeable, creating two process tracks with respective safeguards depending upon whether or not natural death is reasonably foreseeable.

¹ *Carter v. Canada (Attorney General)*, 2015 SCC 5.

² Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* (“Bill C-14”), section 3 (section 241.2 (7)).

³ *Truchon v Attorney General of Canada*, 2019 QCCS 3792.

⁴ Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)* (“Bill C-7”).

- Remove the 10-day reflection period between the date the person signs the request for MAID and when MAID is provided for those whose natural death is reasonably foreseeable.
- Explicitly exclude mental illness as the sole underlying medical condition for eligibility for MAID, although this change is subject to a period of review with a time limit by March 2023.
- Allow for a person who provides health care services or personal care as their primary occupation and who is paid to provide that care to act as an independent witness.
- Enhance the reporting requirements to Health Canada.⁵

The four Stages below outline the revised MAID process:⁶

Stage 1

Eligibility Criteria for MAID

A person may receive MAID if they meet all the following criteria:

- they are eligible – or, but for any applicable minimum period of residence or waiting period, would be eligible - for health services funded by a government in Canada;
- they are at least 18 years of age and capable of making health care decisions;
- they have a grievous and irremediable medical condition, which now includes both persons whose natural death is reasonably foreseeable (RFND), and persons whose natural death is not reasonably foreseeable (Non-RFND);
- they have made a voluntary request for MAID that was not a result of external pressure; and
- they give informed consent to receive MAID after having been informed of the means that are available to relieve their suffering, including palliative care.⁷

A person has a grievous and irremediable medical condition only if they meet all of the following criteria:

- they have a serious and incurable illness, disease or disability;
- they are in an advanced state of irreversible decline in capability; and
- that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable.⁸

It should be noted that the changes make it clear that mental illness is not

⁵ Bill C-7; Government of Canada, Medical assistance in dying <https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html>.

⁶ College of Nurses of Ontario, Guidance on Nurses' Roles in Medical Assistance in Dying, April 2021 <https://www.cno.org/globalassets/docs/prac/41056-guidance-on-nurses-roles-in-maid.pdf>.

⁷ *Criminal Code*, R.S.C. 1985, c. C-46 ("*Criminal Code*"), section 241.2(1).

⁸ *Criminal Code*, section 241.2(2).

considered to be an illness, disease or disability for the purpose of the definition of a grievous and irremediable condition.⁹ However, individuals with disorders that are neurocognitive or neurodevelopmental may be eligible for MAID.

Stage 2

Ensuring Safeguards are Met for Both Tracks¹⁰

- A written request for MAID is signed in front of one independent witness. This has changed from having two independent witnesses. A paid health care professional or personal care worker who provides service to the MAID requestor can now be a witness. This can include a social worker or a social service worker. The witness must be at least 18 years of age and be able to understand the nature of the request for MAID. The witness must not:
 - know or believe that they are a beneficiary under the will of the person making the request, or a recipient, in any other way, of a financial or other material benefit resulting from that person's death; or
 - be an owner or operator of any health care facility at which the person making the request is being treated or any facility in which that person resides.¹¹
- Two independent physicians or nurse practitioners must provide an assessment and confirm eligibility requirements are met.¹²
- The MAID requestor is told they can withdraw their request at any time and in any manner.
- The MAID requestor is given the opportunity to withdraw consent at any time and must also expressly confirm consent immediately before receiving MAID. An exception of a final consent waiver is discussed below.

Additional Safeguards for Non-RFND¹³

- There are at least 90 clear days between the first eligibility assessment and the provision of MAID. This time can be shortened if the MAID requestor is about to lose capacity.
- The MAID requestor must be informed of available services, and offered consultations, on available means to relieve suffering. This can include counselling services, mental health and disability support services, community services and palliative care. It must be agreed that the MAID requestor has seriously considered those means, although they do not have to follow up with information given.
- One health practitioner must have expertise in the condition causing the MAID requestor's suffering or must consult with a practitioner who does have expertise and share the results of that consultation.

⁹ *Criminal Code*, section 241.2(2.1).

¹⁰ *Criminal Code*, section 241.2(3)-(3.1).

¹¹ *Criminal Code*, section 241.2(5)-(5.1).

¹² If a patient is found not to meet the eligibility requirements by their physician or nurse practitioner, the patient could seek a second opinion. College of Nurses of Ontario, Guidance on Nurses' Roles in Medical Assistance in Dying, April 2021 <https://www.cno.org/globalassets/docs/prac/41056-guidance-on-nurses-roles-in-maid.pdf>.

¹³ *Criminal Code*, section 241.2(3.1).

Stage 3

Obtaining Consent

Consent is always required. The MAID requestor must be given an opportunity up until just before the procedure to withdraw their request. Additionally, express consent must be given by the MAID requestor to the health practitioner at the time of the procedure in order to administer MAID, subject to the exceptions below.

For RFND and Non-RFND tracks, a waiver of final consent is available as a backup for failed self-administration. This means that a MAID requestor can develop a plan and consent to a medical practitioner completing the MAID procedure if they lose the capacity to do so during self-administration.¹⁴

For RFND, an advanced consent agreement is permitted, which allows a person who may fear losing capacity before the preferred date for MAID to waive the requirement for final consent if a number of conditions are met.¹⁵ Alternatively, the MAID requestor could regain capacity later on and could consent to MAID at that time. Practitioners must not implement the advanced consent agreement if the person demonstrates refusal or resistance to receive MAID by words, sounds or gestures. There is clarification that involuntary words, sounds or gestures made in response to contact, such as twitching or bodily movement due to needle insertion or bodily contact, does not mean resistance or refusal.¹⁶

Stage 4

Providing MAID (both tracks)

- MAID can be administered by physicians and/or nurse practitioners.
- Care providers, which include social workers and social service workers, can provide support and comfort to family.

Reporting Requirements

Reporting to Health Canada has always been required when a written request is made. Bill C-7 now also requires reporting when any assessments take place, and regardless of the outcome of the MAID request.¹⁷

Bill C-7 has also expanded the data that is collected. New reporting requirements for Health Canada include recording race-based and disability data to identify individual and systemic inequalities and disadvantages in the MAID context.¹⁸

Professional Obligations

Although social workers and social service workers are confronted daily by emotionally charged situations, for many, there is perhaps no greater challenge than considering MAID. Reviewing the College's Standards of Practice is a good place to begin in sorting out the issue. Members are reminded that they are

¹⁴ *Criminal Code*, section 241.2(3.5).

¹⁵ *Criminal Code*, section 241.2(3.2).

¹⁶ *Criminal Code*, section 241.2(3.3).

¹⁷ *Criminal Code*, section 241.31; *Regulations for the Monitoring of Medical Assistance in Dying*, SOR 2018-66.

¹⁸ *Criminal Code*, section 241.31(3)(b).

required to "maintain current knowledge of policies, legislation, programs and issues related to the community, its institutions and services in their areas of practice."¹⁹

The law does not compel an individual to provide or assist in providing MAID²⁰ but social workers and social service workers may become involved in aspects of the MAID process and must be mindful of their professional obligations.

Roles in MAID

As mentioned previously, a social worker or social service worker may act as a witness when a MAID request occurs.

In addition, College members may be asked to be part of a team or panel to assist in the eligibility assessment. The law requires physicians and nurse practitioners to conduct eligibility assessments, however, some health care facilities have teams or panels, which include other disciplines, to assist in this assessment. Participating in such a team is voluntary and College members may choose to be involved or not.

Social workers and social service workers may be asked to sign on behalf of a person requesting MAID if the person is unable to sign and date the request. This is done in the person's presence and under the person's express direction. The social worker or social service worker who signs on their behalf must:

- be at least 18 years of age;
- understand the nature of the request for medical assistance in dying;
- not know or believe that they are a beneficiary under the person's will; and
- not know or believe that they are a recipient, in any other way, of a financial or other material benefit resulting from the person's death.²¹

A common scenario for a College member with respect to MAID may be one where a client wishes to discuss MAID, including situations where the client has initial questions or interest in further understanding MAID. In this situation, the member may provide information on the lawful provision of MAID and refer them to the appropriate physician or nurse practitioner regarding next steps.²² However, it remains a crime to counsel a person to die by suicide.²³

A College member may also receive a request for services during Stage 2 of the MAID process. A member may provide services to clients who have requested MAID, and whose natural death is not reasonably foreseeable. In this case, the College member may provide counselling, support, or other services within the

¹⁹ *Code of Ethics and Standards of Practice Handbook, Second Edition, 2008* ("Code of Ethics and Standards of Practice Handbook"), Principle II: Competence and Integrity, Interpretation 2.1.3, page 11.

²⁰ *Criminal Code*, section 241.2(9).

²¹ *Criminal Code*, section 241.2(4).

²² *Criminal Code*, section 241(5.1).

²³ *Criminal Code*, section 241(1).

member's scope of practice.

It should be emphasized that members must ensure they are "aware of their values, attitudes and needs and how these impact on their professional relationships with clients."²⁴ Members must also "distinguish their needs and interests from those of their clients to ensure that, within professional relationships, clients' needs and interests remain paramount."²⁵

Regardless of their specific role, members are reminded of the critical requirement of ensuring one's competence. Principle II: Competence and Integrity, Interpretation 2.1.1 states:

College members are responsible for being aware of the extent and parameters of their competence and their professional scope of practice and limit their practice accordingly. When a client's needs fall outside the College member's usual area of practice, the member informs the client of the option to be referred to another professional. If, however, the client wishes to continue the professional relationship with the College member and have the member provide the service, the member may do so provided that:

- (i) he or she ensures that the services he or she provides are competently provided by seeking additional supervision, consultation and/or education and
- (ii) the services are not beyond the member's professional scope of practice.

Recommendations for particular services, referrals to other professionals or a continuation of the professional relationship are guided by the client's interests as well as the College member's judgement and knowledge.²⁶

In some instances, members who are asked about MAID, regardless of the specifics of their role or setting may be concerned about the possibility of legal action against them. It is important to note the following excerpts from the section 241 of the *Criminal Code*:

Exemption for person aiding practitioner

(3) No person is a party to an offence under paragraph (1)(b) if they do anything for the purpose of aiding a medical practitioner or nurse practitioner to provide a person with medical assistance in dying in accordance with section 241.2.

Exemption for person aiding patient

(5) No person commits an offence under paragraph (1)(b) if they do anything, at another person's explicit request, for the purpose of aiding

²⁴ *Code of Ethics and Standards of Practice Handbook*, Principle I: Relationship with Clients, Interpretation 1.5, page 9.

²⁵ *Code of Ethics and Standards of Practice Handbook*, Principle I: Relationship with Clients, Interpretation 1.6, page 9.

²⁶ *Code of Ethics and Standards of Practice Handbook*, Principle II: Competence and Integrity, Interpretation 2.1.1, page 11.

that other person to self-administer a substance that has been prescribed for that other person as part of the provision of medical assistance in dying in accordance with section 241.2.

Clarification

(5.1) For greater certainty, no social worker, psychologist, psychiatrist, therapist, medical practitioner, nurse practitioner or other health care professional commits an offence if they provide information to a person on the lawful provision of medical assistance in dying.²⁷

Despite this clarification, members who have questions or concerns about their role should seek legal advice before proceeding.

Many members will be employed by organizations engaged in the provision of MAID while others may work in organizations that choose not to provide MAID or have limitations on how they provide it. Accordingly, "members employed by organizations maintain an awareness and consideration of the purpose, mandate and function of those organizations and how these impact on and limit professional relationships with clients."²⁸

In instances where a member is not prepared to support clients or potential clients in relation to MAID, they should tell their employer immediately. If they are in private practice, they should tell the MAID requestor directly, and assist the client or potential client in finding an alternative provider.

The Standards of Practice state that: "College members assist potential clients to obtain other services if members are unable or unwilling, for appropriate reasons, to provide the requested professional help."²⁹ Appropriate reasons for refusing to provide service include that "complying with the potential client's request would violate the member's values, beliefs and traditions to the extent that the member would not be able to provide appropriate professional service."³⁰ In any situation, members must "provide clients with accurate and complete information regarding the extent, nature, and limitations of any services available to them."³¹ In addition, "members respect and facilitate self-determination in a number of ways including acting as resources for clients and encouraging them to decide which problems they want to address as well as how to address them."³²

Members who may be involved with MAID are encouraged to "engage in the

²⁷ *Criminal Code*, section 241(3),(5),(5.1).

²⁸ *Code of Ethics and Standards of Practice Handbook*, Principle I: Relationship with Clients, Interpretation 1.7, page 10.

²⁹ *Code of Ethics and Standards of Practice Handbook*, Principle III: Responsibility to Clients, Interpretation 3.5, page 16.

³⁰ *Code of Ethics and Standards of Practice Handbook*, Principle III: Responsibility to Clients, footnote 4. ii), page 17.

³¹ *Code of Ethics and Standards of Practice Handbook*, Principle III: Responsibility to Clients, Interpretation 3.1, page 16.

³² *Code of Ethics and Standards of Practice Handbook*, Principle I: Relationship with Clients, Interpretation 1.3, page 9.

process of self-review and evaluation of their practice and seek consultation when appropriate"³³ to ensure they are appropriately addressing their own needs.

The Ministry of Health has established a toll-free referral support line to help Ontario clinicians to arrange for assessment referrals and consultations for clients requesting MAID.³⁴ Members may contact or assist clients to contact this support line or may provide this phone number to clients to get more information about the MAID process.

Conclusion

The law permitting MAID continues to be controversial and may arouse intense feelings and anxieties. Members are urged to ensure their competence, which includes:

- Gaining knowledge about the legislation as well as their roles and responsibilities.
- Identifying their own values and attitudes to ensure they do not adversely affect clients.
- Seeking consultation when needed.

As with all social work and social service work practice, the best interest of the client is members' primary professional obligation.

For more information

Please contact the Professional Practice Department at practice@ocswssw.org.

Code of Ethics and Standards of Practice, Second Edition, 2008

<http://www.ocswssw.org/professional-practice/code-of-ethics/>

Ontario.ca webpage: <https://www.health.gov.on.ca/en/pro/programs/maid/>

Read [Bill C-7, An Act to amend the Criminal Code \(medical assistance in dying\)](https://parl.ca/DocumentViewer/en/43-2/bill/C-7/royal-assent).
<https://parl.ca/DocumentViewer/en/43-2/bill/C-7/royal-assent>

The Ontario Ministry of Health and Long-Term Care (MOHLTC) has established an email address for general questions about MAID (endoflifedecisions@ontario.ca).

³³ *Code of Ethics and Standards of Practice Handbook*, Principle II: Competence and Integrity, Interpretation 2.1.5, page 12.

³⁴ Ontario Ministry of Health and Long Term-Care, Medical Assistance in Dying
<https://www.health.gov.on.ca/en/pro/programs/maid/>