



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

WHAT IS MEDICAL ASSISTANCE IN DYING?

In Ontario, Medical Assistance in Dying (MAiD) occurs when a doctor or nurse practitioner administers a substance to a person, at their request, that causes their death.

WHO IS ELIGIBLE FOR MEDICAL ASSISTANCE IN DYING?

A person may receive MAiD if they meet all of 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 includes both persons whose natural death is reasonably foreseeable (RFND), known as TRACK ONE and persons whose natural death is not reasonably foreseeable (Non-RFND), known as TRACK TWO;
- 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.¹

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

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

- 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.²

Mental illnesses are not considered to be an illness, disease or disability for the purpose of the definition of a grievous and irremediable condition at this time.³ However, individuals with disorders that are neurocognitive or neurodevelopmental may be eligible for MAiD.

WHAT ARE THE PROCEDURAL SAFEGUARDS IN PLACE WHEN SOMEONE IS SEEKING MAiD?

There are two procedural tracks in MAiD. Track 1: refers to the procedural safeguards applicable to a request for MAiD made by a person whose natural death is reasonably foreseeable. Track 2: refers to the procedural safeguards applicable to a request for MAiD made by a person whose natural death is not reasonably foreseeable.

Both Track 1 and Track 2 share some procedural safeguards but also differ in some ways. This is outlined below:

Ensuring Safeguards are Met for Both Tracks⁴

- 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.⁵
- Two independent physicians or nurse practitioners must provide an assessment and confirm eligibility requirements are met.⁶
- The MAiD requestor is told they can withdraw their request at any time and in any manner.

² *Criminal Code*, section 241.2(2).

³ *Criminal Code*, section 241.2(2.1).

⁴ *Criminal Code*, section 241.2(3)-(3.1).

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

⁶ 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>.

- 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-RFND⁷

- 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.

WHAT ABOUT 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.⁸

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.⁹ 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.¹⁰

⁷ *Criminal Code*, section 241.2(3.1).

⁸ *Criminal Code*, section 241.2(3.5).

⁹ *Criminal Code*, section 241.2(3.2).

¹⁰ *Criminal Code*, section 241.2(3.3).

WHAT DOES THE PROCESS INVOLVED IN MAiD LOOK LIKE?

PROVIDING MAiD (BOTH TRACKS)

- MAiD can be administered by physicians and/or nurse practitioners.
- Care providers, including social workers and social service workers, can provide support to the client and the client's family.
- Social workers and social service workers can provide insight and feedback to the MAiD team.

Reporting Requirements

Providers being asked to deliver MAiD must report to Health Canada when a written request is made. Providers must also report when any assessments take place, and regardless of the outcome of the MAiD request.¹¹

Reporting requirements for Health Canada include recording race-based and disability data to identify individual and systemic inequalities and disadvantages in the MAiD context.¹²

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. Registrants are reminded that they are required to "be knowledgeable about the policies, legislation, programs and issues related to the communities, institutions and services in their areas of practice."¹³

The law does not compel an individual to provide or assist in providing MAiD¹⁴ 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.

¹¹ *Criminal Code*, section 241.31; *Regulations for the Monitoring of Medical Assistance in Dying*, SOR 2018-66.

¹² *Criminal Code*, section 241.31(3)(b).

¹³ Ontario College of Social Workers and Social Service Workers (OCSWSSW) *Code of Ethics and Standards of Practice, Third Edition, 2023* ("Code of Ethics and Standards of Practice"), Principle II: Competence and Integrity, Interpretation 2.1.6.

¹⁴ *Criminal Code*, section 241.2(9).

In addition, College registrants 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 registrants 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.¹⁵

A common scenario for a College registrant 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 registrant may provide information on the lawful provision of MAiD and refer them to the appropriate physician or nurse practitioner regarding next steps.¹⁶ However, it remains a crime to counsel a person to die by suicide.¹⁷

A College registrant may also receive a request for services for clients who have requested MAiD, and whose natural death is not reasonably foreseeable. In this case, the College registrant may provide counselling, support, or other services within the registrant's scope of practice.

Registrants who are supporting individuals in the Track 2 process will want to refer to the Chief Coroner's MAiD Death Review Committee report linked below when informing best practice guidelines related to navigating complex social needs identified in the Track 2 process.

[MAiD Death Review Committee Report 2024 - 3](#)

Additionally, it is imperative that registrants "keep systematic, dated, and legible records for each client or client system served."¹⁸

It should also be emphasized that registrants must ensure they are "aware of and reflect upon their values, attitudes, assumptions and biases and how these impact

¹⁵ *Criminal Code*, section 241.2(4).

¹⁶ *Criminal Code*, section 241(5.1).

¹⁷ *Criminal Code*, section 241(1).

¹⁸ OCSWSSW, *Code of Ethics and Standards of Practice*, Principle IV: The Social Work and Social Service Work Record, Interpretation 4.1.5.

their professional relationships with clients.”¹⁹ Registrants must also "distinguish their own needs and interests from those of their clients to ensure that, within professional relationships, clients’ needs and interests remain paramount."²⁰

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

2.1.1 College registrants shall be responsible for being aware of the extent and parameters of their competence and their professional scope of practice and limit their practice accordingly.

2.1.3 When a client’s needs fall outside the College registrant’s usual area of practice, the College registrant shall inform the client of the option to be referred to another professional. However, if the client wishes to continue the professional relationship with the College registrant and have the College registrant provide the service, the College registrant may do so provided that:

(i) the College registrant ensures they are competent to provide services by seeking additional supervision, consultation and/or education and

(ii) the services are not beyond the College registrant’s professional scope of practice as a social worker or social service worker.

Recommendations for particular services, referrals to other professionals or a continuation of the professional relationship shall be guided by the client’s interests as well as the College registrant’s judgment and knowledge.²¹

In some instances, registrants 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

¹⁹ OCSWSSW, *Code of Ethics and Standards of Practice*, Principle I: Relationship with Clients, Interpretation 1.7.

²⁰ OCSWSSW, *Code of Ethics and Standards of Practice*, Principle I: Relationship with Clients, Interpretation 1.8.

²¹ OCSWSSW, *Code of Ethics and Standards of Practice*, Principle II: Competence and Integrity, Interpretation 2.1.1, and 2.1.3.

anything, at another person's explicit request, for the purpose of aiding 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.²²

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

Many registrants 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, "College registrants employed by organizations shall consider the purpose, mandate and function of those organizations and how these impact upon and limit professional relationships with clients."²³

In instances where a registrant 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 registrants shall assist potential clients to obtain other services if College registrants are unable to provide the requested professional help."²⁴ Appropriate reasons for refusing to provide service include that "the provision of services to the client has created a situation where the College registrant's values, ethics and/or boundaries have been violated to the extent that the College registrant is unable to provide appropriate professional services."²⁵ In any situation, registrants must "obtain informed consent from clients, where needed, before providing social work or social service work services, including but not limited to, by:

- providing accurate and complete information about the services available;
- explaining the advantages and disadvantages of receiving/not receiving services;

²² *Criminal Code*, section 241(3), (5), (5.1).

²³ OCSWSSW, *Code of Ethics and Standards of Practice*, Principle I: Relationship with Clients, Interpretation 1.9.

²⁴ OCSWSSW, *Code of Ethics and Standards of Practice*, Principle III: Responsibility to Clients, Interpretation 3.7.

²⁵ OCSWSSW, *Code of Ethics and Standards of Practice*, Principle III: Responsibility to Clients, Interpretation 3.10, v.

- describing the expectations and limitations of service;
- explaining clients' rights with respect to capacity, privacy and confidentiality;
- clarifying registrants' mandatory reporting obligations and other limits to confidentiality (for more information see Principle V: Confidentiality, interpretation 5.1.3); and
- providing information in a way that is appropriate for the client's cognitive ability."²⁶

In addition, "College registrants shall respect and facilitate self-determination in a number of ways, including acting as resources for clients and encouraging them to decide which problems to address and how to address them."²⁷

Registrants who may be involved with MAiD are encouraged to "engage in the ongoing process of self-reflection and evaluation of their practice and shall seek supervision and consultation when appropriate"²⁸ to ensure they are adequately 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.²⁹ Registrants 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. Registrants 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 registrants' primary professional obligation.

²⁶ OCSWSSW, *Code of Ethics and Standards of Practice*, Principle III: Responsibility to Clients, Interpretation 3.1.

²⁷ OCSWSSW, *Code of Ethics and Standards of Practice*, Principle I: Relationship with Clients, Interpretation 1.4.

²⁸ OCSWSSW, *Code of Ethics and Standards of Practice*, Principle II: Competence and Integrity, Interpretation 2.1.8.

²⁹ Ontario Ministry of Health and Long Term-Care, Medical Assistance in Dying <https://www.ontario.ca/page/medical-assistance-dying-and-end-life-decisions>

FOR MORE INFORMATION

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

Please review the following resources:

Code of Ethics and Standards of Practice, Third Edition, 2023

<https://www.ocswssw.org/sop/>

Ontario.ca webpage: <https://www.ontario.ca/page/medical-assistance-dying-and-end-life-decisions>

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>

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