



Review of Medical Assistance in Dying Amendments



Tip of the Month – March 2022

This month marks one year since the new legislative amendments to MAID came into effect in Canada.

Note: To ensure accuracy with the law, we have used excerpts from the Government of Canada MAID reference within this tip and it is written in second person for individuals reading about MAID. The term practitioner refers to either a nurse practitioner or physician practicing MAID.

Key Changes:

Independent Witness for MAID Request¹

A patient now only requires one independent witness on the MAID request form (Clinician Aid A).

An independent witness can be a paid professional personal or health care worker (remember to check in with your individual employer as they may have a policy regarding this that directs your practice).

Eligibility & Safeguards¹

To be considered as having a grievous and irremediable medical condition, you must meet all of the following criteria. You must:

- ❖ have a serious illness, disease or disability (excluding a mental illness until March 17, 2023)
- ❖ be in an advanced state of decline that cannot be reversed
- ❖ 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

If a mental illness is the only medical condition leading you to consider MAID, you are not eligible to seek MAID at this time. Under the new changes made to the law, the exclusion will remain in effect until March 17, 2023. If you have a mental illness along with other medical conditions, you may be eligible to seek MAID.

The changes include removal of the restriction that a patient's natural death must be reasonably foreseeable to be eligible for MAID and now when a patient wants to explore MAID, they will fall into one of two different tracks:

References

1. Government of Canada. (2021). *Medical assistance in dying*. Retrieved from: <https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html>

Track One: Patient's Natural Death is Reasonably Foreseeable¹

Safeguard Changes:

The mandatory 10-day reflection period between the patient's MAID request date and MAID procedure date have been removed.

Waiver of Final Consent Exception:

On March 17, 2021, changes to the legislation on medical assistance in dying allow you to waive the requirement for giving final consent just before MAID is provided, **only if** your natural death is reasonably foreseeable AND while you had decision-making capacity:

- ❖ you were assessed and approved to receive MAID
- ❖ your practitioner advised that you are at risk of losing capacity to provide final consent
- ❖ you made a written arrangement with your practitioner in which you consent in advance to receive MAID on your chosen date if you no longer have capacity to consent on that date

Any arrangement for the waiver of final consent will be considered **invalid** if, at the time that MAID is to be provided, you no longer have capacity **and** you demonstrate refusal or resistance to the administration of MAID by words, sounds or gestures. For further clarity, reflexes, and other types of involuntary movements, such as response to touch or the insertion of a needle, **would not constitute refusal or resistance**.

Waiver of final consent if you choose MAID by self-administration

If you are eligible for MAID and you choose to self-administer prescribed medications for MAID, you may make an arrangement in writing with your practitioner so that they can administer MAID to you in a specific situation.

This specific arrangement allows for practitioner-administered MAID in the event of complications with self-administration that cause your loss of decision-making capacity but not your death. This means that your practitioner must be present at the time that you self-administer the medications.

Track Two: Patient's Natural Death is NOT Reasonably Foreseeable¹

Safeguards Created:

1. One of the two practitioners who provides an assessment must have expertise in the medical condition that is causing your unbearable suffering. If neither of these practitioners have this expertise, another practitioner with expertise in your medical condition that is causing your suffering must be consulted in assessment process.
2. You must be informed of available and appropriate means to relieve your suffering, including counselling services, mental health and disability support services, community services, and palliative care, and you must be offered consultations with professionals who provide those services.
3. You and your practitioners must have discussed reasonable and available means to relieve your suffering, and all agree that you have seriously considered those means.
4. Your eligibility assessment must take a minimum of 90 days unless the assessments have been completed sooner and you are at immediate risk of losing your capacity to consent.
5. Immediately before MAID is provided, the practitioner must give you an opportunity to withdraw your request and ensure that you give express consent to receive MAID.

Monitoring & Reporting Changes¹

The new bill enhances reporting requirements in general, for example all eligibility assessments (accepted and denied) for MAID now must be reported to Health Canada, learn more [here](#).

For additional MAID resources see your professional regulatory body.