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COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

ADVICE TO THE PROFESSION

Medical Assistance in Dying (MAID)

The College of Physicians & Surgeons of Alberta (CPSA) provides advice to the profession to support physicians in implementing the CPSA Standards of Practice. This advice does not define a standard of practice, nor should it be interpreted as legal advice.

Advice to the Profession documents are dynamic and may be edited or updated for clarity at any time. Please refer back to these articles regularly to ensure you are aware of the most recent advice. Major changes will be communicated to our members; however, minor edits may only be noted within the documents.

Contents

Introduction

The federal government amended the *Criminal Code of Canada* to enable medical assistance in dying (MAID) in June 2016. Federal reporting regulations came into effect in Nov. 2018, adding to existing provincial requirements.

Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)*, came into force on March 17, 2021. The amendments allow for an individual whose natural death is not "reasonably foreseeable" to pursue MAID, as well as clarify the eligibility criteria by establishing that persons whose sole underlying medical condition is a mental illness are not eligible for medical assistance in dying.

Bill C-7 was introduced in Oct. 2020 to remove the mental illness exemption; however, Bill C-39 has extended the eligibility for persons whose sole underlying condition is a mental illness until Mar. 2024.

At this time, mature minors, advance directives and patients whose sole underlying medical condition is a mental illness remain ineligible for MAID under the *Criminal Code*.

CPSA has worked closely with Alberta Health (AH), Alberta Health Services (AHS) and other healthcare partners to develop direction and guidance for physicians and other practitioners with a role in MAID. Information, along with links to forms and reporting information posted in the secure CPSA portal, under "Additional Resources" or AHS's MAID Care Coordination Team. These documents are regularly updated, so physicians need to go directly to the portal every time they receive a MAID-related request.

Medical Assistance in Dying (MAID)

Please note: the term "physician" is used in this document because physician assistants cannot provide MAID.

AHS MAID CARE COORDINATION SERVICE

The AHS MAID Care Coordination Service is the hub for MAID services in Alberta. The service also provides information on all end-of-life options.

While not a MAID provider, the AHS Care Coordination Service also guides patients and practitioners (both AHS and non-AHS) through the MAID process, and physicians are strongly encouraged to access this support.

For more information, please contact palliative.care@ahs.ca, maid.careteam@ahs.ca or call Health Link at 811.

Patient inquiry/request for MAID

When a patient asks a physician about MAID verbally or in writing, the physician is compelled to provide the patient with contact information for the AHS Care Coordination Service (maid.careteam@ahs.ca) as soon as reasonably possible. This applies in **all** cases, including if the physician conscientiously objects to providing MAID or practises in a facility that does not allow MAID. For more information, please review the "Conscientious Objection" section below.

The physician is expected to have a full discussion with the patient, seeking to understand their circumstances, perspective and reason for contemplating MAID. For patients for whom death is not reasonably foreseeable, the physician must also ensure all options for care and treatment have been considered, including counselling, mental health or disability support services and palliative care. This includes offering consultations with professionals who can provide those services.

At the patient's discretion, the physician may disclose the patient's interest in MAID and the nature of the discussion to family or other supporting individuals.

Once the patient makes an explicit request for MAID in writing (including by text or email, signed or unsigned), the physician must **report the request within seven days,** advising if they will be:

- referring the patient directly to the AHS Care Coordination Service or another practitioner (versus simply providing the patient with contact information for the AHS Care Coordination Service);
- involved in assessing the patient's eligibility; or
- providing the patient with MAID.

To report, complete applicable sections of the Alberta Monitoring of Medical Assistance in Dying Physician/Nurse Practitioner Form and fax it **to MAID Reporting at 403-592-4266**. Any questions about completing the form may be directed to maidreporting@ahs.ca

Conscientious Objection

Physicians have a Charter right to freedom of conscience and religion, as do all Canadians. This includes physicians whose cultural practices do not align with the provision of MAID.

A physician's conscientious objection must not impede the right of patients to receive unbiased information about and access to legally permissible and available health services. Refer to the *Conscientious Objection* standard of practice.

Physicians must resolve any conflicts in the best interest of their patients, as stated in Precept 11 of the *Code of Ethics & Professionalism*. Physicians have a professional duty to provide respectful care for patients with health conditions that cannot be cured, enshrined in Precept 3 of the *Code of Ethics & Professionalism*: "Act according to your conscience and respect differences of conscience among your colleagues; however, meet your duty of non-abandonment to the patient by always acknowledging and responding to the patient's medical concerns and requests whatever your moral commitments may be."

Physicians are expected to be sensitive to the needs and concerns of other members of a patient's care team and respectful of each individual's freedom of conscience and religion.

Patient's written request

While a patient may inquire about MAID verbally, a formal signed, dated and witnessed request (Record of Request) must be provided by the *Criminal Code*.

If the patient is unable to sign and date the request, another person, who is at least 18 years of age and who understands the nature of the patient's request for MAID, may do so in the patient's presence on their behalf. By law, a person cannot sign on behalf of the patient if they know (or believe) themselves to be 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 the patient's death.

Once signed and dated, the request must be witnessed by one independent person who understands the nature of the request.

The role of the witness is to confirm the identity of the patient requesting MAID, attest to the patient's apparent understanding of the request being made and affirm the patient is acting voluntarily, free of duress or coercion.

A physician who receives a signed, dated and witnessed request for MAID is responsible for ensuring an AHS Goals of Care Designation (GCD) Order is completed and that the GCD aligns with the patient's request for MAID. The GCD will alert any emergency personnel responding to a patient distress call of the patient's wishes not to be resuscitated or transported to hospital, for a patient receiving MAID in the community.

Patient eligibility

Individuals whose death may or may not be reasonably foreseeable continue to be eligible for MAID. Mature minors, patients whose sole underlying medical condition is mental illness and advance directives remain ineligible for MAID.

ELIGIBILITY CRITERIA

Under federal legislation, to receive MAID a patient must:

1. be eligible or, but for any applicable minimum period of residence or waiting period would be eligible, for health services funded by a federal, provincial or territorial government in Canada;
2. be at least 18 years of age;
3. be capable of making decisions concerning their health (i.e., the ability to understand information that is relevant to the decision. It is the legal status of being able to provide informed consent or refusal of healthcare interventions)[1];
4. have a grievous and irremediable medical condition (see Appendix A) that causes enduring suffering that is intolerable to the patient and cannot be relieved under conditions which the patient considers acceptable;

[1] Refer to AHS's "Role of the Medical Examiner related to Medical Assistance in Dying" (Aug. 2018)

5. have made a voluntary request for MAID that was not made because of external pressure; and
6. have given informed consent to receive MAID, after being informed of their medical diagnosis, the forms of treatment and the means that are available to relieve their suffering, including palliative care, and being offered consultations with professionals that provide such services.

As noted in (3) above, a patient who is incapable of making an informed decision is not eligible for MAID. This includes any patient who requires a substitute decision-maker or who has lost competence since making their wishes known through a Personal Directive.

Regarding (4), a competent adult has the right to declare intolerable suffering. The physician's role is to assess in collaboration with the patient whether the condition is grievous and irremediable (Appendix A).

WHO IS INELIGIBLE FOR MAID

Advance requests (e.g., advance directives) for MAID remain prohibited. This includes patients who don't currently meet eligibility criteria, but who want to make their request now for fear of losing the capacity to decide the future. Mature minors are also ineligible for MAID. For more information on mature minors, please refer to the Informed Consent for Minors Advice to the Profession document.

Individuals seeking MAID solely based on a mental illness are also ineligible: this is pending a decision by the federal government with a decision pending in March 2024.

ELIGIBILITY ASSESSMENT

A patient's eligibility for MAID is determined through at least two assessments:

1. An **initial** assessment, which may be conducted by the physician managing the patient's care or arranged by the AHS Care Coordination Service.

2. A **second, independent assessment**, which may be arranged by the physician managing the patient's care or the AHS Care Coordination Service and must, by law, be performed by a practitioner who:

    a. is neither a mentor to the other practitioner nor responsible for supervising the other practitioner's work;

b. does not know or believe themselves to be 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 the patient's death, other than standard compensation for services relating to the request; and

c. does not know or believe themselves to be connected to the other practitioner or to the patient making the request in any other way that would affect their objectivity.

With the different considerations associated with MAID for people whose natural death is not reasonably foreseeable, the above must be satisfied before MAID could be provided to these individuals a minimum of 90 days from the first assessment.

If neither MAID assessor has expertise in the condition causing the patient's suffering, they must consult with a practitioner who does. The practitioner who is consulted is not required to conduct the eligibility assessment. For example, if a patient suffers from a condition that may impair their capacity, the physician should consider referring the patient to a qualified healthcare practitioner for a capacity assessment and possible treatment. If the patient requesting MAID has an underlying mental health condition, a psychiatric or psychological referral is strongly advised to address the effect, if any, of the mental illness on the patient's decision-making capacity.

Each assessor must report their findings upon completing their assessment. Use the Practitioner Assessment form and **fax it to MAID Reporting at 403-592-4266**. Any questions about completing the form should be directed by maidreporting@ahs.ca

All physicians who assess MAID eligibility (prior to receiving a request), and any person who undertakes a preliminary assessment of whether a person meets the eligibility criteria, will be required to provide the information required by federal regulations. It is important to stay up to date on reporting requirements, as they may change at any time.

Referral to a providing practitioner

Physicians are expected to practise medicine commensurate with their knowledge and skills to ensure they safely deliver quality health care.

Once a patient has been declared eligible for MAID, they must be connected with a MAID provider. This connection may be made through the AHS Care Coordination Service or the healthcare provider managing the patient's care (unless the same physician will also provide MAID).

A physician who provides medical assistance in dying must have the knowledge, care and skill to provide MAID in a manner respectful of the patient's context and wishes.

Before providing MAID

SAFEGUARDS

For more information on safeguards for patients whose natural death is foreseeable and for patients whose natural death is not foreseeable, please refer to Section 241.2 of the *Criminal Code*.

Mandatory assessment period

For individuals whose death is not reasonably foreseeable, a minimum 90-day period is required between the day the first assessment for MAID begins and the day on which the procedure occurs. The purpose of this period is to give MAID practitioners time to properly assess the request, consult with relevant areas of expertise and explore means to relieve the suffering with the patient.

This period may be shortened if the person is about to lose the capacity to make health care decisions, as long as both assessments have been completed.[2]

Under *Criminal Code* regulations, practitioners are required to report if they become aware any of the following scenarios has occurred before MAID is provided:

- the patient has withdrawn their request;
- the patient has died of another cause; or
- the patient has become ineligible for MAID due to loss of capacity, OR the practitioner has learned the request was not voluntary.

Use the Practitioner Form (applicable sections) and fax it **to MAID Reporting at 403-592-4266 within 30 days of becoming aware.** If 90 or more days pass before becoming aware, this reporting requirement is waived.

PLANNING WITH THE PATIENT

The physician providing MAID and the patient must develop a plan together, usually with the assistance of the AHS Care Coordination Service. The plan should consider when,

[2] From the Government of Canada's "Canada's medical assistance in dying (MAID) law" (Feb. 21, 2023).

where and how MAID will be administered, who will be present (including healthcare providers and family), and an alternative plan should medical complications arise. The patient must be informed of all aspects of the plan to give informed consent.

CAPACITY & CONSENT

As defined in the standard and this Advice document, "capacity" is defined as the ability to understand information that is relevant to the decision. It is the legal status of being able to provide informed consent or refusal of healthcare interventions[3].

If a patient suffers from a condition that may impair their capacity, the physician should consider referring the patient to a qualified healthcare practitioner for a capacity assessment and possible treatment. If the patient requesting MAID has an underlying mental health condition, a psychiatric or psychological referral is strongly advised to address the effect, if any, of the mental illness on the patient's decision-making capacity.

For a patient to provide "consent," they must be capable [refer to "capacity" above], they must have been given an adequate explanation about the nature of the proposed intervention and its anticipated outcome, as well as the significant risks involved and alternatives available, and the consent must be voluntary.[6] No other individual is permitted to provide consent other than the patient requesting MAID.

Opportunity to withdraw consent

The patient must be made aware that they can withdraw consent to MAID, right up until immediately before the provision of MAID.

LIFE-ENDING MEDICATION

A physician prescribing life-ending medications for a patient eligible for MAID must only prescribe medications recommended for that purpose by the AHS MAID Care Coordination Service, as posted in the secure CPSA portal under "Additional Resources."

At the patient's request, the medications may either be administered by the physician to cause the patient's death or provided to the patient for self-administration to cause their own death.

When a patient wishes to self-administer, the physician is expected to bring the medications to the patient and is strongly encouraged, with the patient's consent, to

[3] From the "Final Report of the Expert Panel on MAID and Mental Illness" (May 2022)

remain present during ingestion to address any needs of the patient, including service provision in the event of medical complications or the failure of the medications.

COLLABORATION WITH PHARMACIST

In obtaining the life-ending medications, the physician must collaborate with a pharmacist and inform them of the purpose to provide MAID.

The physician and the dispensing pharmacist should:

1. plan well in advance, considering the availability and delivery of the recommended medications and medications for the alternate plan;
2. discuss issues related to medication counselling for the patient; and
3. plan for release of the medications to the physician.

Both the physician and pharmacist are required to complete the Medication Inventory Tracking Sheet (available in the CPSA Portal under "Additional Resources") and sign off on any unused and returned or wasted medication.

Provision of MAID

Before providing MAID, a physician may choose to consult with the Canadian Medical Protective Association (CMPA). Confidential counselling is available to physicians through the Physician and Family Support Program, administered by the Alberta Medical Association.

PATIENT'S OPPORTUNITY TO WITHDRAW REQUEST AND FINAL CONSENT

Immediately before being provided with MAID, the patient must be given the opportunity to withdraw their request and must expressly reaffirm their consent to proceed. The Medical Examiner will require a record of this consent.

FINAL CONSENT WAIVER

Final consent to receive MAID may be waived by the patient only when natural death is reasonably foreseeable, and all the following criteria are satisfied:

Immediately before being provided with MAID, the patient must be given the opportunity to withdraw the request and to reaffirm their consent to proceed.

- Before the person loses the capacity to consent to MAID:
    - they satisfied the criteria for MAID and all the relevant safeguards;
    - they entered into an arrangement in writing with the physician or nurse practitioner (NP) for a substance to be administered to cause their death on a specified day;
    - they were informed by the physician or NP of the risk of losing the capacity to consent before the specified day; and
    - they consented to the administration of a substance to cause their death on or before the specified day if they lost capacity to consent before that day in the written arrangement.
- The person neither demonstrates refusal by words, sounds or gestures nor resists the administration of the substance. Bill C-7 clarifies this provision by stating:
    - involuntary words, sounds or gestures made in response to contact do not constitute refusal or resistance; and
    - once the patient demonstrates refusal or resistance, MAID cannot be provided to them based on the written arrangement.
- The substance is administered in accordance with the terms of the arrangement.

There have been situations in which self-administration did not result in death, but the patient then lost the capacity to consent to have a physician or NP administer a substance to cause their death. The physician or NP may administer a substance when a patient has self-administered and lost the capacity to consent, but has not died, if the following conditions are met:

- Before the person lost the capacity to consent to MAID, the person agreed in writing with the physician or NP providing MAID that:
    - requires the physician or NP to be present at the time of the self-administration; and
    - allows the physician or NP to administer a second substance to cause the patient's death if the patient loses capacity to consent and does not die within a specified period after self-administration;
- The patient self-administered the first substance, but did not die within the specified period and has lost capacity to consent to MAID; and
- The second substance is administered to the patient in accordance with the terms of the arrangement.

Reporting

The AHS Care Coordination Service manages data collection and reports to the Minister of Alberta Health and Health Canada, as required. Refer to the MAID Reporting Summary and other resources on the AHS website (click on the Forms tab).

All reports must be faxed within the specified timeframes to MAID Reporting (RightFax 403-592-4266) and, upon the provision of MAID, to the Office of the Chief Medical Examiner (detailed below). If MAID medications were provided to the patient for self-administration, the practitioner must report this to the AHS Care Coordination Service from 90 – 120 days after provision, or earlier if they become aware of the patient's death.

Timely reporting not only helps avoid unnecessary delays for patients but also provides a safeguard for practitioners by ensuring compliance with federal reporting regulations, enacted under the *Criminal Code*.

Questions about reporting can be emailed to maidreporting@ahs.ca

REPORTING TO THE MEDICAL EXAMINER

Within 24 hours of the patient's death as a result of MAID, the providing practitioner must submit to the Office of the Chief Medical Examiner (ME), and copy the AHS Care Coordination Service, the completed:

- Record of Request
- Providing Practitioner Record

- Consent to Treatment
- Record of Medication Administration

The physician will not sign the death certificate: only the Medical Examiner can identify the cause and manner of death on the death certificate. The ME will not routinely require the patient's body to be shipped to Edmonton or Calgary but may make this request if questions arise from the documentation.

More details on the Medical Examiner's role and a fax cover sheet identifying all the documents required by the ME are posted in the CPSA Portal under "Additional Resources."

Recordkeeping

Physicians who are custodians are responsible for maintaining in their patient record an accurate and complete reflection of the care provided relevant to their role in MAID, including (as applicable):

1. the patient's diagnosis and prognosis;
2. the patient's written request for medical assistance in dying (Record of Request);
3. a record of the information provided to the patient to ensure informed consent, including other treatment options discussed;
4. the patient's consent to treatment;
5. a copy of all eligibility assessment reports (initial assessment, second independent assessment and any specialist assessment);
6. the plan for providing MAID considering:
    a. the patient's wishes regarding when, where and how MAID will be provided, the presence of the physician and any additional support;
        i. a physician is not required to be present if the patient chooses the self-administered protocol[4];
    b. risks and probable consequences of taking the prescribed life-ending medication; and

[4] Refer to AHS's "Role of the Medical Examiner related to Medical Assistance in Dying" (Aug. 2018)

c. an alternate plan to address potential complications;

7. a statement by the providing physician confirming the patient was offered the choice to withdraw the request for MAID at any time, including immediately before the provision of MAID, and that the patient consented to receive MAID immediately before the provision of MAID;

8. summary of the process undertaken in providing MAID;

9. Record of Medication Administration; and

10. signed Medication Inventory Tracking Sheet.

Refer to the *Patient Record Content* and *Patient Record Retention* standards of practice. More information is also available in the CPSA Portal under Additional Resources.

If the AHS Care Coordination Service is supporting the MAID process, they will ensure the providing practitioner has the necessary documentation to proceed with MAID at the time of provision, including the patient's Record of Request.

Resources

CPSA team members are available to speak with if you have questions or concerns. Please contact suport@cpsa.ab.ca.

RELATED STANDARDS OF PRACTICE

- *Code of Ethics & Professionalism*
- *Conscientious Objection*
- *Informed Consent*
- *Medical Assistance in Dying*

COMPANION RESOURCES

- Advice to the Profession:
  - Informed Consent for Adults
  - Legislated Reporting & Release of Medical Information
- Advice to Albertans: MAID

- MAID Combined Assessor/Provider Electronic Form
- MAID Provider Electronic Form
- Alberta Health Services:
  - Medical Assistance in Dying resources
  - Advance Care Planning
- Guide to Capacity Assessment under the *Personal Directives Act* (Government of Alberta)
- Canada's new medical assistance in dying (MAID) law (Department of Justice)
- Canadian Medical Association Medical Assistance in Dying policy base
- Canadian Medical Protective Association resources Palliative Care Matters

Review Date	Revision/Change
Mar. 2023	Aligning with updated standard of practice
Mar. 2021	Inclusion of Bill C-7; format change
Sep. 2019	Updated *Code of Ethics & Professionalism* references
Nov. 2018	Clarifying expectations in provision of MAID
July 2016	Updated to address changes to regulations for MAID reporting
June 2016	Renamed MAID; legislation added; included eligibility requirements
Feb. 2016	Added information regarding pharmacists

Appendix A: Criteria for grievous and irremediable

Under federal legislation, to be considered as having a grievous and irremediable medical condition, the patient must meet **all** of the following criteria:

a) have a serious and incurable illness, disease or disability;

b) be in an advanced state of irreversible decline in capability; and

c) have enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions they consider acceptable.

The patient does not have to have a fatal or terminal condition to be eligible for medical assistance in dying.

For support in determining if a patient has a grievous and irremediable medical condition, contact the Alberta Health Services Care Coordination Service at MAID.CareTeam@ahs.ca or Health Link 811.