

## Medical Assistance in Dying — Fact Sheet

The Criminal Code of Canada (a federal law) was amended/changed on June 17, 2016 to provide exemptions to criminal charges for assisting someone to die. Additional amendments came into effect March 17, 2021 (by way of Bill C-7).

The Criminal Code applies in all provinces and territories of Canada. It sets out the legal requirements for medical assistance in dying (MAiD) in Canada.

This fact sheet is based on the legislation for MAiD, with references to relevant sections of the [Criminal Code of Canada](#) given in [brackets]. You may encounter some different terms used by practitioners and health services in your province or territory.

### How is medical assistance in dying different from other health care decisions?

Medical assistance in dying is health care a **patient must request**. It is not a treatment option that a health care provider offers.

A health care provider is protected by the law to give out information about MAiD as long as it is legally accurate.

You must request MAiD in writing. If you are eligible, it involves taking prescribed medication (substances) that will cause your death.

People make health care decisions all the time that are unrelated to MAiD. For example, giving or refusing consent to Covid-19 vaccination.

Provinces and territories have legislation or policies about the rights of patients including informed consent to health care.

Many provinces and territories also have legislation for how you can make a legal document to authorize someone of your choosing to give or refuse consent on your behalf, if you are incapable of informed consent to health care. In BC, a Representation Agreement is the legal document you can make to give someone (a spouse, a family member, or a friend) legal authority to make health care and personal care decisions on your behalf. Ontario has legislation for making a document called a Power of Attorney for Personal Care. These documents cover many more situations than MAiD.

### Who is eligible for MAiD? [241.2]

You must be at least 18 years old and eligible for health services funded by a government in Canada in order to request MAiD.

To be eligible for MAiD you must also have a grievous and irremediable medical condition, defined by this criteria:

- Have a serious and incurable illness, disease or disability;\* and
- Be in an advanced state of irreversible decline in capability; and
- Experience enduring physical or psychological suffering, as a result, that is intolerable to you and that cannot be relieved under conditions that you consider acceptable.

*\* If you have only a mental illness, you are currently excluded from being eligible for MAiD, even if you meet other criteria. This exclusion is to be removed on March 17, 2027.*

You must be informed of various ways to relieve your suffering and about palliative care. Your request for MAiD must be voluntary, without pressure from anyone. You must be informed that you can withdraw your request at any time.

You must be mentally capable of informed consent to request MAiD. This means you must understand what MAiD involves and its effect. You must also understand information you are given, including about alternatives to MAiD.

*One of the major changes as of March 17, 2021 is that the criteria for being eligible for MAiD now applies to two situations (not only the first one):*

1. *Where "natural death is reasonably foreseeable," or*
2. *Where "natural death is NOT reasonably foreseeable."*

*The law outlines some different requirements (called safeguards) for each situation.*

### EXAMPLE NATURAL DEATH REASONABLY FORESEEABLE

*Mary is diagnosed with amyotrophic lateral sclerosis (ALS). It is a progressive disease that affects the muscles including those for swallowing and breathing. Mary made a Representation Agreement (BC). She has had ALS for six years and is now having trouble breathing. Mary's physician said that Mary is nearing end-of-life and will have to be on a ventilator soon due to the progression of her ALS. Although some people with ALS also have problems with mental function, Mary does not. She is considering a request for MAiD.*

### EXAMPLE NATURAL DEATH NOT FORESEEABLE

- Leonard has nerve damage from an injury to his spine when he was 22. He has tried various treatments, even outside Canada, but nothing relieves his constant pain. He made a Representation Agreement (BC). Although his natural death is not considered reasonably foreseeable; he sees no end to the pain, which affects his ability to sleep as well as to do everyday tasks. He is mentally capable of informed consent and may request MAiD.

### Who can provide MAiD?

Only a medical practitioner (physician/MD) or a nurse practitioner (NP) can provide MAiD [227(1)]. This means no one else can prescribe the substances used for MAiD. The MD or NP must inform the pharmacist filling the prescription of its purpose [241.2(8)].

The MD and NP are also responsible to their regulatory or governing body of the province or territory where they practice. They may be subject to additional guidelines and standards.

### What are the procedures to request MAiD?

Following are the main procedures for MAiD. There are more requirements if natural death is NOT foreseeable (see content in dotted boxes).

Key steps [based on 241.2]:

1. You need at least two practitioners (MD or NP) to find you eligible for MAiD. (They may be referred to as assessors.) The practitioners must be independent of each other and not knowingly gain from your death.

You need one practitioner to get started. Talk with your primary practitioner (MD or NP). They may be willing to confirm your eligibility. If your primary practitioner cannot help, they can refer you to someone else.

2. You must make a request for MAiD in writing AFTER an MD or NP confirms you are eligible (you have a grievous and irremediable medical condition – see criteria on page 1). You will need to sign and date your request in front of a qualified witness.

You may be required to use a specific form for the request. You return the completed form to be put in your medical chart. For your own records, you can securely store a copy of the request and related documents in the Nidus Registry (see page 4).

3. You will need confirmation of eligibility from at least one other MD or NP. They must put their opinion of your eligibility in writing.

- If natural death is **NOT foreseeable**, the MDs or NPs who are willing to confirm your eligibility are not familiar with your condition, they must ensure that one of them consults with an MD or NP who has this expertise. The findings from the consultation must be shared with all practitioners who confirm your eligibility for MAiD.

- In addition to providing information to you about alternatives before you submit a written request for MAiD, the practitioners who are willing to confirm your eligibility must make sure you are informed of all available means to relieve your suffering including, as appropriate, counselling services, mental health and disability supports, community services and palliative care. They must ensure you are offered consultation with professionals who provide these services and care. The practitioners must agree that you gave serious consideration to alternatives to MAiD.

4. One of the MDs or NPs who confirmed your eligibility must be willing to prescribe the substances used for MAiD (to cause your death). Discuss with them the location and date you plan on taking the substances.

- If natural death is **NOT foreseeable**, there must be **90 clear days** from the date you complete the first assessment that finds you eligible, to the date you receive MAiD.

- The first practitioner may decide on a shorter waiting period if all assessments are completed and all practitioners agree that your loss of mental capacity to provide informed consent before receiving MAiD could be soon (is imminent).

5. Immediately before providing the substances for MAiD, the practitioner must give you an opportunity to withdraw your request. You must be mentally capable to give consent to proceed. See (2) under next heading, page 3.

If you decide to try a treatment that is offered, this counts as withdrawing your request. You may make a new request for MAiD later.

6. The practitioner who prescribes the substances is probably also willing to give (administer) the substances to you OR you have the option of taking the substances yourself (self-administer).

Someone else (like a spouse or family member) can provide physical help to you with taking the substances but you must be mentally capable and directly request their help [241(5)].

If you decide to self-administer, see (2) under next heading, page 3.

### What if I become mentally incapable?

You must be mentally capable of informed consent for MAiD (explained on page 1, under *Who is eligible*) at both of the following steps:

(1) When you request MAiD.

*The law does not provide for anyone to request MAiD on your behalf.*

There are **NO exceptions** to this requirement. AND

(2) When the substances to cause your death are administered.

There is **ONE exception** to this requirement.

**If your natural death is foreseeable**, like for Mary, and the practitioner informed you that you might become mentally incapable before substances to cause your death are administered, you can give consent in advance.

Your advance consent must be in writing and must specify a date when the substances are to be administered (to cause your death).

You can consent to be provided with the substances before the specified date in the event you become mentally incapable before the specified date.

This arrangement is between you and the practitioner. Likely the practitioner will provide a form with necessary wording for you to use.

If you consented in advance and you become mentally incapable, the practitioner can administer the substances for MAiD to you, according to the terms of the written arrangement. This option is **ONLY** available if your natural death is foreseeable. (Check that your advance consent also applies if you choose to **self-administer** but become mentally incapable and are still alive after taking the first substance.)

You can withdraw (refuse) your consent by words, sounds, or gestures at any point even if you gave consent in advance. However, the law says that **involuntary** words, sounds, or gestures made as a result of contact are not a demonstration of your withdrawal (refusal) of consent for MAiD.

- If **natural death is NOT foreseeable**, like for Leonard, you must be mentally capable on the date when the substances are to be administered. If you chose to **self-administer**, you can arrange in advance for the practitioner to be present and to proceed with administration of substances to cause your death in the event you self-administer the first substance and do not die but become mentally incapable.

### What if I cannot physically sign?

Someone else can sign the form requesting MAiD if you cannot physically sign it. (Although it is not mentioned, this accommodation likely also applies to signing advance consent arrangements as appropriate and as directed by you.)

Sometimes people can sign, but they are worried about the look of their signature. Looks are not as important as demonstrating self-determination and voluntariness.

Your signature is the mark you make in front of the witness—it might be a dot or line or squiggle. You can hold the pen in your hand or mouth or even your toes. You may need to wrap tape around the pen to 'build it up' for an easier grip.

If you cannot physically make a mark, you can ask someone to sign the request on your behalf. You must be present. You must be mentally capable of informed consent and you must specifically direct them to sign for you in front of the witness. They will sign their own signature.

There are qualifications for the person signing on your behalf [241.2(4)]. They must:

- Be at least 18 years of age; and
- Understand the nature of the request for medical assistance in dying; and
- Not know or believe they are a beneficiary in your Will or a recipient, in any other way, of a financial or other material benefit resulting from your death.

### Who can be a witness for the request?

When requesting MAiD, you need one independent witness. The witness must be present when the request for MAiD is signed by you or someone else at your direction.

A witness must [241.2(5)]:

- Be at least 18 years of age; and
- Understand the nature of the request for medical assistance in dying; and
- Not know or believe they are a beneficiary in your Will or a recipient, in any other way, of a financial or other material benefit resulting from your death; and
- Not be an owner or operator of any health care facility at which you are being treated or any facility in which you live; and
- Not be a practitioner who confirmed your eligibility and/or is providing MAiD to you.

### Is the cost of the substances used for MAiD covered by the government?

In BC, the substances for MAiD are covered by the BC medical services plan.



## Where do I get forms for MAiD in BC?

You can find information about how to access MAiD in BC on the [BC government website](#) including [forms](#) developed for BC patients to use.

## What if I am refused MAiD?

If you are refused MAiD, ask why. Is it because you are not considered eligible? Is it because you are not considered capable of informed consent to MAiD? Sometimes circumstances change; you can apply again. You may also want to consult a lawyer about any legal action you can take.

## Do I have to be eligible for MAiD in order to refuse health care?

No, you do not have to be determined eligible for MAiD to refuse health care.

In BC, the Health Care Consent and Care Facility Admission Act governs the rights of adults to give or refuse consent to health care that is offered. This law says that if you are mentally capable, you can refuse health care on any grounds, including moral or religious grounds, even if refusal will result in your death [[HCC&CFA Act sec. 4\(a\)](#)].

In BC, you can make a Representation Agreement to give someone else the authority to act your behalf, if, for example, you are not mentally incapable to give or refuse consent to health care that is offered to you.

## Do I have to request MAiD at end-of-life?

No, you do not have to request MAiD if you have been diagnosed with a terminal illness or believe you are dying. Many people die with dignity – peacefully and pain-free – without MAiD.

You can give consent to medication for pain relief and give consent to comfort measures. You can refuse consent to tests and to treatment that you believe may cause or prolong suffering.

Even if you plan to request MAiD, you will want to have a Representation Agreement (BC planning document) in place as it covers many more situations than MAiD including the unexpected and urgent.

A Representation Agreement also addresses personal care matters (such as where you live, or die), not just health care matters.

A Representation Agreement is not just about dying and end-of-life. People may need a representative to help them temporarily or ongoing due to a stroke, car accident, mental illness, bad fall, Parkinson or dementia.

*Tom has prostate cancer. He has other health problems that affect his immune system. He had pneumonia three times in the last two years. He is diagnosed with pneumonia again. This time Tom refuses antibiotics. He gives consent to medication to help stabilize his breathing and for pain control. He also refuses further cancer treatments. Tom has a Representation Agreement (BC) and his representative is involved to support and be aware of decisions Tom makes. If Tom becomes unconscious or otherwise mentally incapable or wants help, Tom's representative can assist or make decisions on Tom's behalf, according to Tom's wishes and values. For example, Tom's representative might refuse consent for treatments that are offered such as resuscitation, participation in an experimental drug trial, antibiotics, or a feeding tube. For example, the representative might give consent for sedation when Tom is close to death.*

## Nidus Registry — to store your records

The online Nidus Registry offers a secure place to store a copy of your MAiD request and related paperwork – select 'Other Documents' from Registration Options, after you sign up and create your Registry Account. You can also select 'Representation Agreement' to register and upload a Representation Agreement you made. You can share registrations with others who may need to know. See the FAQ section at the Nidus Registry website, or email [registry@nidus.ca](mailto:registry@nidus.ca) Click to go to [Nidus Registry](#)

## Resources from the Nidus Resource Centre

The Nidus Resource Centre has lots of free information, stories and videos. You will find information about Health Care Consent legislation in BC, Enduring Powers of Attorney and Representation Agreements.

You will also find free forms for making a Representation Agreement.

Go to [nidus.ca](https://nidus.ca)

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