

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. This law outlines the requirements for who is allowed to provide medical assistance in dying and the specific conditions for someone to be eligible.

The Criminal Code applies in all provinces and territories although some details related to implementing the law may vary.

As the changes are new, forms and procedures are still being developed. The purpose of this fact sheet is to help identify the legal requirements and practical issues of putting these into effect.

Nidus mostly uses wording from the legislation rather than re-drafting or interpreting it. We also provide references, in brackets, to relevant sections of the [Criminal Code of Canada](#).

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

Medical assistance in dying (MAiD) is health care a **patient must request**. It is not a treatment option that a health care provider offers. You must request and receive MAiD when you are mentally capable. If you are eligible, it involves taking a prescribed medication that will cause your death. The Criminal Code sets out the rules.

The recent publicity around MAiD has brought attention to planning for end-of-life but not clarity. Many people are unaware or confused about their rights to consent for health care.

Patients make various health care decisions all the time, which are unrelated to MAiD. For example, you have the right to **give or refuse consent to health care that is offered to you**. This and other rights for health care decisions are set out in the laws of your province or territory.

Another example is what happens if you are not mentally capable of making health care decisions. Your province or territory has laws that outline how you can be pro-active by making a planning document to authorize someone to give consent on your behalf. There are also laws that decide for you, if you do not plan. Nidus calls this the re-active or default scheme.

See the example in italics on page 3 of this fact sheet. Nidus also provides an overview for different provinces/territories at www.nidus.ca > Get Help > [Cross-Canada Info](#).

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.

According to the federal law, you must also have a grievous and irremediable medical condition, which is defined as:

- A serious and incurable illness, disease or disability; and
- Being in an advanced state of irreversible decline in capability; and
- Causing enduring physical or psychological suffering that is intolerable to you and that cannot be relieved under conditions that you consider acceptable; and
- Your natural death is reasonably foreseeable, although there is no specific time frame.

You must be considered capable of informed consent to health care and capable to give consent to receive medical assistance in dying.

You are required to be informed of alternatives including palliative care. Your request must be voluntary, without pressure from others.

Mary is diagnosed with amyotrophic lateral sclerosis (ALS). It is a progressive disease that affects the muscles including those for swallowing and breathing. Mary has had the disease for six years and is now having trouble breathing. Her physician said that she will need to be on a ventilator soon. Although some people with ALS also have problems with mental function, Mary does not. She is considering a request for MAiD.

Who can provide MAiD?

The federal legislation allows a medical practitioner (physician) or a nurse practitioner (NP) to provide MAiD [227(1)].

It is against the Criminal Code for anyone other than a physician or NP to be involved in assessing a patient or prescribing medication for MAiD.

The regulatory body for each province or territory has or will provide guidelines for its physicians. Nurse practitioners are advised to contact their governing bodies for direction.

The federal law says that pharmacists must only provide medication for MAiD if it is prescribed by a physician or NP for an eligible patient [241(4)].

The federal law includes wording to protect a social worker, psychologist, psychiatrist, therapist, physician, nurse practitioner or other health care professional from criminal prosecution if they provide information on MAiD when requested [241(5.1)].

What are the procedures to request MAiD?

You need at least two independent physicians/NPs, one of whom is willing to prescribe the medication(s) to cause your death. The two physicians or the two NPs or one of each will need to assess you and agree you are eligible for MAiD.

If one of the physicians or NPs assessing you is unsure of your mental capability to give informed consent to MAiD, they may refer you to a psychiatrist or other professional for an opinion.

Here is a list of steps that a patient might go through when requesting MAiD [based on 241.2]:

1. Talk with your family physician or a NP. They may be willing to be one of your assessors. If not, they can refer you to someone else.
2. The physician or NP will assess whether you are eligible. You must **make a request for MAiD in writing** after being informed that you have a grievous and irremediable medical condition. You will need to sign and date this request in front of two qualified witnesses. The federal government did not produce any prescribed forms for MAiD so you may expect a regulatory body or provincial/territorial government will develop standard forms for use in their jurisdictions. You may be required to use a specific form for making your request and will likely be asked to return the completed form to be put in your medical chart. Take a photocopy first for your records.
3. You will need to meet with at least one other physician or NP who must also assess you as eligible.
4. One of the physicians or NPs must be willing to prescribe the medication(s) for MAiD. This physician or NP will discuss your options for the location and timing of taking the medication(s) as well as the method you prefer.
5. The law says that there must be **10 clear days** from the time you sign the request and when you receive MAiD. During this period, you can still withdraw your request—at any time and in any manner.

The first physician/NP may decide on a shorter waiting period if both physicians/NPs agree that one of two conditions is imminent:

- a. Your death; or
- b. Your loss of mental capacity to provide informed consent.

5. Just before receiving the prescribed medication(s) for MAiD, you must be given the opportunity to withdraw your request. If you decide to proceed, you must be mentally capable to give specific consent to receive MAiD. You may be required to do it in writing.
6. The physician or NP can give the medication(s) to you. This is called assisted suicide. You have the option of taking the prescribed medication(s) yourself, which is called voluntary euthanasia. Someone else—at your direct request—can help you take the medication(s) [241(5)].

What if I cannot physically sign the required consent form to request MAiD?

Someone else can sign the form requesting MAiD if you cannot physically sign it. However, making your own mark (a line or dot) is consistent with self-determination and voluntariness, which underlies the intent of MAiD.

Sometimes people can sign, but they are worried about the look of their signature. Your signature is the mark that you make in front of two witnesses. 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 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 two witnesses. They will sign their own signature.

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

- Be at least 18 years of age;
- 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 my request?

You will need two witnesses for your signature or the signature of the person you direct to sign on your behalf. The witnesses must be present when the written request for MAiD is signed and they must watch each other sign.

The law sets out qualifications for being witnesses [241.2(5)]. They must:

- Be at least 18 years of age;
- Understand the nature of the request for medical assistance in dying;
- 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;
- Not be an owner or operator of any health care facility at which you are being treated or any facility in which you reside;
- Not be directly involved in providing health care services to you; and
- Not be directly providing personal care to you.

From a practical point of view, there is an advantage to having two witnesses who know you personally and are aware of your situation and your consistent wish for MAiD, because, apart from your family physician/NP, other health care providers involved may be strangers to you and won't have this knowledge or confidence.

How long does it take to receive MAiD?

Ask your family physician or assessor(s) how long the procedure for MAiD might take. It may depend on the information they require in order to assess your eligibility and the availability of trained assessors/prescribers.

Can I have MAiD at home?

You will need to discuss the location and timing for receiving MAiD with the physician who will prescribe the medication(s).

Is the cost of the medications for MAiD covered by the government?

The federal government does not fund health care services. In BC, the medications are covered by the medical services plan. Check with your provincial or territorial government.

What if I am refused MAiD?

If you are refused MAiD, ask why. It may be that you were determined mentally incapable of informed consent for MAiD. Determination of capability or incapability can change depending on various factors. You may decide to make another request at a later time.

It may be that one or both physicians/NPs who assessed you did not find you eligible according to the requirements of the legislation. You could contact a lawyer for legal advice. You may wish to learn about the court challenge by the BC Civil Liberties Association. This challenge is based on

the belief that eligibility requirements are too narrow. More at www.nidus.ca > click Information > End-of-Life > [Medical Assistance in Dying](#).

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 your death [[HCC&CFA Act—4\(a\)](#)].

In BC, you can make a Representation Agreement to give someone else the authority to give or refuse consent on your behalf—if, for example, you are mentally incapable due to a serious accident or illness.

Check the laws for your province or territory.

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 peacefully at end-of-life. You can give consent to medication for pain and comfort measures. You can refuse consent to tests and to treatment, including antibiotics if you have pneumonia or an infection.

Even if you plan to request MAiD, you will want to have a Representation Agreement in place (BC) in case you become mentally incapable before MAiD is administered. If you are incapable, your representative can give or refuse consent on your behalf and must follow your wishes and values. Representation Agreement forms are free on the Nidus website, see Resources on next page.

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. He refuses antibiotics to treat the infections from the pneumonia. He gives consent to medication to help stabilize his breathing and for pain control. He also refuses further cancer treatments. He made a Representation Agreement (BC planning document) and his representative is available to assist him with decisions and act on his behalf to carry out his wishes if he becomes unconscious or otherwise mentally incapable. This might include refusing resuscitation when Tom stops breathing.

Health Care Consent in BC

The Health Care Consent and Care Facility Admission Act of BC sets out the legal requirements for **informed consent**.

A health care provider (including a physician) must get consent before giving you health care.

The law says that they must give you information about:

- What condition they want to treat (your diagnosis);
- What health care they want to give you (the proposed treatment);
- How it may help you (the benefits);
- How it may harm you (the risks); and
- Other health care you could choose instead (possible alternatives).

The health care provider must also **allow you to ask questions** and get answers. You can refuse health care, even if it means your death.

Your decision must be respected.

The law says you are **capable of consent** unless and until you demonstrate that you are incapable.

If the health care provider has concerns, they will try to find out if you understand these two things:

1. What kind of health care is being offered—for example, its purpose, and the risks; and
2. The fact that the health care is meant for you and your situation.

ALERT—be informed and keep up-to-date

Since the law governing MAiD is new, there may be changes to the forms, the procedures, the legislation, and the accompanying regulation. Information and education will also evolve as we learn more; you can email us your feedback.

The College of Physicians and Surgeons of BC sets out [Professional Standards and Guidelines for Physicians](#). These can change if the law or policies change. If the link to standards does not work, search at the website www.cpsbc.ca

The BC government has developed a provincial [Patient Request form](#) that is available on its website. While this form is not required by law, it may be required by policy. The BC government website has information on MAiD—do an Internet search as the link to the web page is too long to list here.

The **BC government may make amendments** to the Health Care Consent and Care Facility Admission Act to include specific references to MAiD. For example, the federal law says you must be at least 18 years old to request MAiD, but the BC legislation for health care consent is for adults (19 is the age of adulthood in BC).

[Bill C-14](#) amended the Criminal Code and states that the Canadian Minister of Justice and Minister of Health must set up **independent reviews** within 180 days from June 17, 2016 about the following issues related to MAiD [see 9.1]:

- Requests made by mature patients who are younger than 18 years of age;
- Requests made by patients when they are mentally capable—to be acted on when the patient is mentally incapable; and
- Requests made by patients only on the basis of their mental illness.

Don't forget to register your plans

Nidus operates the online **Personal Planning Registry**—for secure storage of important information and documents in ONE central place. You can register health care and financial plans and grant access to others who may need to know in times of crisis. You can also upload video/audio files to state your beliefs and/or upload a recorded message for loved ones.

Sign up for a free demo and read more details including 'how-to-instructions' at www.nidus.ca > click [Registry](#) tab (top blue menu bar).

Resources

Nidus provides **free legal Representation Agreement forms** and information for self-help. Go to www.nidus.ca

Forms—click the [video](#) link above the 3 photos on the homepage to find the right legal form

Information—click Information tab, then click > [End-of-Life Planning](#)
> Health Care Consent (BC) > [More HC Resources](#)

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