

Medical assistance in dying and older adults

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Clinical question

How do changes in legislation pertaining to medical assistance in dying (MAID) affect my patients with frailty or dementia? Are advance requests allowed?

Bottom line

Given their long-term, trusting relationships with patients and their families, family physicians can play a critical role in discussions about MAID. The eligibility for MAID has expanded, albeit with qualifiers to protect vulnerable individuals. This article highlights these changes, which are reviewed in greater depth in an article published in the *Canadian Geriatrics Society Journal of CME* in 2022.¹

Evidence

- In February 2015, with the landmark ruling of *Carter v Canada*, the Supreme Court of Canada decriminalized MAID.²
- Most clinicians are familiar with the criteria for MAID, which became legalized when Bill C-14 received royal assent in 2016.
- The Minister of Justice and Attorney General of Canada subsequently proposed further changes to Canada's MAID law, and Bill C-7 was passed on March 17, 2021. The changes affect who may access MAID and the process for assessment. Eligibility now includes individuals for whom death may not be reasonably foreseeable.³

Approach

Bill C-7 introduced a 2-track approach for persons hoping to receive MAID: 1 for persons with reasonably foreseeable natural deaths (RFNDs) and another for persons with non-reasonably foreseeable natural deaths (NRFNDs).³

Reasonably foreseeable natural death. The legislation for persons with RFNDs is similar to previous legislation but with 2 modifications: removal of the 10-day reflection period and waiver of final consent (**Box 1**).^{2,3} This is relevant to people who may be at risk of losing the capacity to provide consent owing to illness or treatments.

Non-reasonably foreseeable natural death. The second track is for people whose natural deaths are not reasonably foreseeable but who fulfil other criteria for MAID, which may be relevant to those with dementia or clinical frailty. **Box 2** lists procedural safeguards for this track.³

Implementation

Seniors with frailty. According to a report on MAID in Canada published in 2021, MAID legislation does not

Box 1. Process for persons with reasonably foreseeable natural deaths applying for MAID

Procedural safeguards

- A request for MAID must be made in writing; a written request must be signed by 1 independent witness (a family member, friend, or a paid professional personal care worker or health care worker can be an independent witness)
- Two independent doctors or nurse practitioners must provide assessments and confirm that all the eligibility requirements are met
- The person must be informed that they can withdraw their request at any time, in any manner
- The 10-day reflection previously required for those with reasonably foreseeable natural deaths has been removed so there is no longer a waiting period between a MAID request and provision²
- The person must be given an opportunity to withdraw consent and must expressly confirm their consent immediately before receiving MAID (however, this final consent requirement can be waived in certain circumstances)

Circumstances in which a waiver of final consent would be considered

- The person has been assessed and approved to receive MAID
- The person is at risk of losing decision-making capacity before their preferred date to receive MAID and has been informed of that risk
- The person arranges in writing with their MAID provider to waive final consent, detailing their preferred date to receive MAID if they have lost the capacity to provide final consent at that time
- Those persons with non-reasonably foreseeable natural deaths are not eligible for waiver of final consent

MAID—medical assistance in dying.

Adapted from the Government of Canada.³

have a specific eligibility category for geriatric syndromes, but *multiple comorbidities* was given as the main condition for 7.8% of all MAID deaths in Canada in 2020.⁴ *Multiple comorbidities* incorporates diagnoses including frailty (no definition given), osteoporosis, osteoarthritis, and fractures. In annual reports on assisted death from the Netherlands, *multiple geriatric syndromes* is the name of a distinct category of conditions (eg, visual and hearing impairment, osteoporosis, osteoarthritis, balance problems) relevant to MAID; it accounted for approximately 2.7% of all MAID deaths in that country in 2019.⁵

Persons living with dementia. In Canada, dementia or Alzheimer disease was listed as the underlying condition in 4.0% of all MAID deaths in 2020.⁴ As dementia progresses, the capacity required to consent to MAID

Box 2. Process for persons with non–reasonably foreseeable natural deaths applying for MAID

- Two independent doctors or nurse practitioners must provide assessments and confirm that all MAID eligibility requirements are met. If neither of the 2 practitioners who assesses eligibility has expertise in the medical condition that is causing the person's suffering, they must consult with a practitioner who has such expertise
- The person must be informed of available and appropriate means to relieve their suffering, including counseling services, mental health and disability support services, community services, and palliative care, and they must be offered consultations with professionals who provide those services
- The person and the practitioners must have discussed reasonable and available means to relieve the person's suffering and agree that the person has seriously considered those means. However, the person is not obligated to try the options to relieve suffering to be eligible
- The eligibility assessments must take at least 90 days, but this period can be shortened if the person is about to lose the capacity to make health care decisions if both assessments have been completed
- Immediately before MAID is provided, the practitioner must give the person an opportunity to withdraw their request and ensure that they give express consent. Individuals with non–reasonably foreseeable natural deaths are not eligible for waiver of final consent

MAID—medical assistance in dying.

Adapted from the Government of Canada.³

deteriorates. The timing of deterioration is difficult to predict. The “10-minutes-to-midnight” approach employed in the Netherlands suggests that serial assessments of capacity can help guide decision making and that a decision regarding provision of MAID should be sought when a patient is close to losing capacity.⁶

In Canada, capable patients with dementia accessing MAID through the RFND track (either for dementia or another life-limiting condition) would be able to use a waiver of final consent to avoid a situation where unexpected capacity loss precludes them from completing MAID. However, waiver of final consent is not the same as an advance request for MAID. Waiver of final consent applies to those who are close to end of life (under the RFND track); it does not apply to those who are relatively well and wishing to plan ahead for end-stage dementia. It is unlikely that a provider would honour a waiver of final consent for a person with dementia for a date far in the future, as it would contradict that death is indeed reasonably foreseeable. There is no formal time cutoff for RFND, but it is unclear how many people with dementia would be capable of consent when they finally meet the RFND criteria.

Patients with very early dementia or mild cognitive impairment who access MAID through the NRFND track will need to retain capacity throughout the entire process of assessment and provision. Once an individual has passed their 90-day waiting period, they could choose to access MAID right away or use the 10-minutes-to-midnight approach to delay provision up to the point of approaching capacity loss. Given the challenges of capacity assessment, this would not be an easy process for many physicians.

Future directions for MAID legislation. A parliamentary review is considering additional changes to MAID legislation in Canada, including reviewing eligibility for mature minors, allowing advance requests (eg, for those with dementia or major neurocognitive disorder), and reviewing protection of individuals living with disabilities. While no date has been provided, it is anticipated that advance requests for MAID will likely be introduced into legislation in the near future. The Quebec government tabled a bill in May 2022 that would allow this.⁷ The introduction of advance requests would bring about potentially substantial changes to severe illness conversations and advance care planning.

Canadians whose only medical conditions are mental illnesses and who meet all eligibility criteria will be eligible for MAID beginning in March 2023.³ The temporary exclusion from the 2021 C-7 legislation was intended to allow the Government of Canada time to consider expert recommendations and respond to them.

A more detailed discussion of the complexities involved in MAID was published in the *Canadian Geriatrics Society Journal of CME* in 2022.¹

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Competing interests

None declared

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