

MEDICAL ASSISTANCE IN DYING

Medical assistance in dying (MAiD) occurs when a qualified doctor or nurse practitioner provides or administers medication (lethal substances) that intentionally brings about a person's death, at that person's request. This procedure is only available to legally eligible patients "experiencing intolerable suffering due to a grievous and irremediable (incurable) medical condition" (Government of BC, 2017).

Patients interested in accessing MAiD should consult their physician or nurse practitioner who will be able to discuss the patient's available options, or assist them in finding a doctor or nurse practitioner who can help (Government of BC, 2017). Each health authority in BC also has a designated person whose role is to connect patients requesting information on MAiD with a doctor or nurse practitioner who is able to provide guidance.

This helpsheet is intended to provide general information on Medical Assistance in Dying. Individuals considering Medical Assistance in Dying will need to consult with their physician or nurse practitioner.

The MAiD Process

The Criminal Code of Canada was amended on June 17, 2016 to provide exemptions to criminal charges for assisting someone to die. This law outlines who is allowed to provide medical assistance in dying, and the specific conditions for eligibility (Nidus, 2018).

The MAiD process requires the agreement of two independent medical assessors (MAs), one of whom will also be the administrator of the lethal substances. Only a physician or nurse practitioner may be a MA. Physicians have the right to decide whether or not to perform MAiD. The Criminal Code does not compel any individual to provide MAiD.

According to the College of Physicians and Surgeons of British Columbia's practice standard for MAiD (2019b), physicians may make a personal choice not to assess patients for or perform MAiD based on their values and beliefs. The practice standard for MAiD expects physicians to provide patients with enough information and assistance to allow them to make an informed decision. The College also requires physicians who object to MAiD to provide an effective transfer of care for their patients. This may be through advising the patient of other physicians who may be available to see them, or suggesting an alternate physician or service.

MAiD and care plans

MAiD cannot be contained in a care plan because the law requires the person requesting MAiD to be mentally competent of consent at the time that MAiD is provided (College of Physicians and Surgeons of British Columbia, 2019a). Therefore, individuals who may experience a decline in competency through the progression of an illness and who may wish to exercise their right to die at a defined point in time cannot include MAiD in their care plan. Furthermore, a Representative in an individual's Representation Agreement cannot request MAiD on behalf of the individual, nor can a Representative make a decision about when MAiD is administered. You also cannot request MAiD in an Advance Directive. All actions pertaining to MAiD must be completed by the person requesting MAiD themselves. Federal law includes the following safeguards to ensure vulnerable individuals are protected (Government of BC, 2017):

- A person's request for MAiD must be made in writing, and signed and dated in front of two "independent witnesses", who must also sign and date the request. See the Patient Request Record: <https://www2.gov.bc.ca/assets/gov/health/forms/1632fil.pdf>
- A person's request must be signed and dated after they have been informed by a doctor or nurse practitioner that they have a medical condition that fits the "grievous and irremediable" criteria.
- Two independent doctors or nurse practitioners must assess the person to confirm their eligibility.
- A person must be given the opportunity to withdraw their request throughout the process, including immediately before being provided with MAiD.
- A person must be given a period of reflection of at least 10 days from the date they signed their request, unless both practitioners agree that a shorter period is appropriate in the circumstances.

The province of BC has implemented the following additional safeguards (Government of BC, 2017):

- If an eligibility assessment is conducted via the Telehealth videoconferencing system, a regulated health professional must witness this. A Telehealth assessment would be arranged by the doctor or nurse practitioner.
- If one or both doctors or nurse practitioners are concerned about a patient's capability to provide informed consent, they will request a capability assessment from a third doctor or specialist.
- The prescribing doctor or nurse practitioner must be present with the patient during the self-administration or administration of medical assistance in dying, and remain with the patient until death is confirmed. This may not be delegated to another person or professional.

Details such as criteria for an individual to be an "independent witness" and where to send Patient Request forms can be found on the Government of British Columbia page on Medical Assistance in Dying. See the Additional Resources section of this helpsheet for links.

Eligibility for MAiD

According to the Criminal Code of Canada (2016), in order to be eligible for MAiD an individual must meet all of the follow criteria:

- (a) they are eligible – or, but for any applicable minimum period of residence or waiting period, would be eligible – for health services funded by a government in Canada;
- (b) they are at least 18 years of age and capable of making decisions with respect to their health;
- (c) they have a grievous and irremediable medical condition;
- (d) they have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure; and
- (e) they give informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering, including palliative care.

The Criminal Code (2016) states that a person has a grievous and irremediable medical condition only if they meet all of the following criteria:

- (a) they have a serious and incurable illness, disease or disability;
- (b) they are in an advanced state of irreversible decline in capability;
- (c) that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and

- (d) their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

Informed Consent

Anyone seeking MAiD must give informed consent, meaning that they have received and understood all of the information needed to make this decision prior to giving their written consent. Under Government of Canada (2017) guidelines, this information includes:

- their medical diagnosis
- available treatment options
- available options to relieve suffering, including palliative care

Informed consent must be given both at the time of the request and immediately before MAiD is provided. Consent may be withdrawn at any time and in any manner.

Physical signatures and requesting MAiD

If an individual cannot physically sign the required consent form to request MAiD, someone else can sign the MAiD request form if the person requesting MAiD cannot physically sign it themselves. However, making your own mark (a line or dot) is also consistent with self-determination and voluntariness, which underlies the intent of MAiD. Sometimes people can sign, but are worried about the look of their signature. However, a signature for this purpose is merely 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. 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

This section on "Physical signatures and requesting MAiD" was adapted with permission from Nidus.

MAiD Refusal

If you are refused MAiD, ask why. It may be that you were determined mentally incapable of informed consent. 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/nurse practitioners who completed your assessment 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.

Refusing healthcare

Individuals do not need to be eligible for MAiD in order to refuse healthcare. In BC, according to the Health Care Consent and Care Facility Admission Act, adults have the right to consent or refuse 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.

This means you can accept treatment for certain symptoms or illnesses, such as medication for pain control, while refusing treatment for other symptoms such as an infection or an illness such as cancer.

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.

This section on “MAiD Refusal” was adapted with permission from Nidus.

Representation Agreements and MAiD

A Representation Agreement is separate from the document used to request MAiD. A Representation Agreement section 9 (RA9) is a legal document that will permit a representative to make health and personal care decisions on your behalf, including the decision to refuse health care that is necessary to keep you alive, such as life support. Note that this is a feature of RA9. Representation Agreement section 7 (RA7) does not permit a representative to have the final say in refusing life supporting health care. Having a RA9 does not prevent you from requesting MAiD and, because a representative can refuse treatments, it can provide you with more options in case you are not eligible for MAiD or you become mentally incapacitated before it can be administered.

This section on “Representation Agreements” was adapted with permission from Nidus.

Additional Resources

Provincial Health Authorities

Medical Assistance in Dying | Website | <https://www2.gov.bc.ca/gov/content/health/accessing-health-care/home-community-care/care-options-and-cost/end-of-life-care/medical-assistance-in-dying>

Fraser Health | 604-587-7878 | www.fraserhealth.ca

- mccc@fraserhealth.ca
- bit.ly/2Q3TGtC

Interior Health | 1-844-469-7073 | www.interiorhealth.ca

- maid@interiorhealth.ca
- www.interiorhealth.ca/YourCare/MAiD

Island Health | 1-877-370-8699 | www.islandhealth.ca

- maid@viha.ca
- bit.ly/2PVp1yy

Northern Health | 250-645-6417 | www.northernhealth.ca

- maid@northernhealth.ca
- bit.ly/2PSNF2P

Vancouver Coastal Health | 1-844-550-5556 | www.vch.ca

- assisteddying@vch.ca
- bit.ly/2PWHgDv

Provincial Health Services Authority | 1-888-875-3256 | www.phsa.ca

- 1-844-851-MAID (6243)
- maidcco@phsa.ca
- bit.ly/2PY7FAW

Parkinson Society British Columbia

Healthcare Decision Making | Helpsheet | bit.ly/pdadvancecareplan

Power of Attorney | Helpsheet | bit.ly/pdpowerofattorney

Representation Agreements | Helpsheet | bit.ly/pdrepresentationagreement

Wills and Estate Planning | Helpsheet | bit.ly/willsandestatesplanning

Wills & Estate Webinar | Video | youtu.be/yPLvh7BfvZo

Sources

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Nidus (2018). *Medical assistance in dying – fact sheet*. Retrieved from http://www.nidus.ca/PDFs/Nidus_Info_MAIID.pdf

Criminal Code, Revised Statutes of Canada (2016, c.3 C-14). Retrieved from Justice Laws website: http://laws-lois.justice.gc.ca/PDF/2016_3.pdf