



Medical Assistance in Dying Policy: 10 Things The Patient Should Know

1. Why did the federal government introduce new law on medical assistance in dying?

The federal government's law on medical assistance in dying is its response to the Supreme Court of Canada's (SCC's) decision in the case of *Carter v. Canada*. In that case, the SCC considered the constitutional validity of existing criminal laws that prohibited medical assistance in dying (referred to as 'physician assisted death' by the SCC). The SCC ruled that these laws violated the *Charter* rights of competent adults, who are suffering intolerably from grievous and irremediable medical conditions, and seek a physician's assistance in dying.

The SCC suspended its decision to allow the federal and/or provincial governments time to design a framework to govern the provision of medical assistance in dying. In response, on June 17, 2016, the federal government passed legislation to allow eligible adults to request medical assistance in dying. The legislation includes rules on who is eligible for medical assistance in dying and outlines safeguards that must be followed to ensure public protection.

2. What is the meaning of 'medical assistance in dying' and what does the term encompass?

As set out in the federal legislation, medical assistance in dying refers to an individual seeking and obtaining the assistance of a physician or nurse practitioner to end his/her life. This assistance encompasses two potential scenarios:

- i. The physician or nurse practitioner provides the patient with the means to end his/her own life (e.g., a prescription for a fatal dose of medication); or
- ii. The physician or nurse practitioner is directly involved in administering an agent to end the patient's life. This is often referred to as voluntary euthanasia.

3. What criteria must be met in order for an individual to access medical assistance in dying?

As set out in the federal legislation, for an individual to access medical assistance in dying, he/she must:

- i. Be eligible for publicly-funded health services in Canada;
- ii. Be at least 18 years of age and capable of making decisions with respect to their health;
- iii. Have a grievous and irremediable medical condition (including an illness, disease or disability);
- iv. Make a voluntary request for medical assistance in dying

- that is not the result of external pressure; and
- v. Provide 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.

4. What is a grievous and irremediable medical condition?

An individual must have a grievous and irremediable medical condition to access medical assistance in dying. As set out in the federal legislation, an individual has a grievous and irremediable medical condition if:

- 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 the individual has to live.

5. Does an individual have to be terminally ill to meet the eligibility criteria for medical assistance in dying?

The federal government has stated that an individual need not have a terminal condition to be eligible for medical assistance in dying. Rather, there must be a real possibility of death, evidenced by the individual's irreversible decline, within a period of time that is foreseeable in the not too distant future. The federal government advises that the nature of the illness causing the individual intolerable and enduring suffering, and any other medical conditions or health-related factors such as age and/or frailty, are to be considered in assessing the individual's trajectory towards death.

6. Is medical assistance in dying now legally available in Canada?

Yes, medical assistance in dying is now legally available in Canada. This means that medical assistance in dying is a legal option for adults who meet the eligibility criteria set out in the federal law.



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7. In order to access medical assistance in dying, the patient must be capable of making decisions with respect to their health. Does this mean the patient has to be capable when they request medical assistance in dying, when they receive medical assistance in dying, or both?

The federal legislation specifies that medical assistance in dying is available only to individuals who are capable of making decisions with respect to their health. In accordance with the legislation, the patient must provide the physician or nurse practitioner with their expressed consent immediately prior to receiving medical assistance in dying. This means that the patient must maintain decision-making capacity from the time the request for medical assistance in dying is made, right up to the time at which medical assistance in dying is provided.

8. Can requests for medical assistance in dying be made through an advance directive, or the patient's substitute decision-maker?

All requests for medical assistance in dying must be made directly by the patient, and not be through an advance directive, or the patient's substitute decision-maker. The federal legislation specifies that medical assistance in dying is available only to individuals who are capable of making decisions with respect to their health. The individual's decision-making capacity must be maintained right up until the time medical assistance in dying is provided.

A substitute decision-maker would only make decisions for a patient in circumstances where the patient no longer has capacity. Similarly, advance directives only take effect if the patient loses capacity. With respect to medical assistance in dying, therefore, substitute decision-makers do not have a role to play, and advance directives are not applicable.

9. Could an individual with a mental illness potentially meet the criteria for medical assistance in dying?

Individuals with mental illness are not prevented from accessing medical assistance in dying, as long as they meet the criteria for medical assistance in dying, as set out in the federal legislation. This includes the requirement that the individual who is seeking medical assistance in dying has decision-making capacity. The federal government has stated that where an individual is suffering only from a mental illness, the criteria for medical assistance in dying would not be satisfied. The federal government has committed to conducting further studies to examine the legal, medical and ethical questions that arise where individuals, who suffer from mental illness only, are seeking a medically assisted death.

10. What if I am interested in learning more about or pursuing medical assistance in dying and my physician has a moral or religious objection. How do I get the help I need in this circumstance?

In the physician-patient relationship, physicians must prioritize patient interests. In keeping with this principle, the College's *Medical Assistance in Dying* policy requires that where a physician declines to provide medical assistance in dying for reasons of conscience or religion, the patient must not be abandoned and an effective referral must be provided to the patient in a timely manner. An effective referral means a referral made in good faith, to a non-objecting, available, and accessible physician, nurse practitioner or agency.

One way for physicians to satisfy the College's effective referral requirement is to contact Ontario's Care Coordination Service (CCS). The CCS would then connect the patient with a willing provider of MAID-related services. For more information on and examples of what constitutes an 'effective referral', please see document titled *Fact Sheet: Effective Referral*, available on the College's website.

Patients may also contact the CCS directly to receive information about end-of-life options in Ontario, including information on hospice care, other palliative care options in their communities, and medical assistance in dying. Patients can also call the CCS to request to be connected to a physician or nurse practitioner who provides medical assistance in dying services, such as eligibility assessments. The CCS can be reached toll free by calling 1-866-286-4023.