

ADVISORY STATEMENT



Medical Assistance in Dying (MAiD): Considerations for Occupational Therapists

Note: Updated to reflect changes to Canada's MAiD legislation effective March 17, 2021

Occupational therapists practise within the scope of the profession, with knowledge of, and adherence to, national and provincial legislation, regulations, standards of practice and policies relevant to the practice of occupational therapy — COTBC Code of Ethics (p. 4)

Purpose

This advisory statement provides an overview on medical assistance in dying (MAiD), including current legal and ethical considerations for occupational therapy practice in British Columbia.

Medical Assistance in Dying

Background

MAiD is defined as “the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or the prescribing or providing by a medical practitioner or nurse practitioner of a substance to a person, at their request, so that they may self-administer the substance and in doing so cause their own death” (Government of Canada, 2016).

MAiD was declared legal in Canada on June 17, 2016, after Bill C-14 enacted amendments to the [Criminal Code of Canada](#). The changes to the *Criminal Code* exempt health care professionals, including occupational therapists, from criminal liability where MAiD is legally performed, as stated in c. C-46: “241 (5.1) For greater certainty, no social worker, psychologist, psychiatrist, therapist, medical practitioner, nurse practitioner or other health care professional commits an offence if they provide information to a person on the lawful provision of medical assistance in dying” (*Criminal Code*, 1985, c. C-46).

Eligibility Criteria

Effective March 17, 2021, the law was revised after Bill C-7 enacted amendments to the *Criminal Code* to modify MAiD eligibility criteria. The law no longer requires a person's natural death to be reasonably foreseeable. While there may still be future changes to the legislation, effective March 17, 2021, persons who wish to receive MAiD must meet all of the following criteria:

1. Be 18 years of age or older and have decision-making capacity with respect to their health.
2. Be eligible for publicly funded health care services by a government in Canada.
3. Make a voluntary request that is not the result of external pressure.
4. Give informed consent to receive MAiD, meaning that the person has consented to receiving MAiD after they have received all information needed to make this decision.

5. Have a serious and incurable illness, disease or disability (Note: persons whose only medical condition is a mental illness, and who otherwise meet all eligibility criteria, will be not be eligible for MAiD until March 17, 2023).
6. Be in an advanced state of irreversible decline in capability.
7. Have enduring and intolerable physical or psychological suffering that cannot be alleviated under conditions the person considers acceptable.

Only a person who is able to directly give consent can be provided MAiD at this time. Consent cannot be provided through an alternative or substitute decision maker, or a personal advance directive.

The Government of Canada published an infographic summarizing the changes enacted as of March 17, 2021, which may be helpful to review. The infographic can be viewed here:

https://www.justice.gc.ca/eng/cj-jp/ad-am/docs/MAID_Infographic_EN.pdf

Eligibility Criteria for Persons Suffering from Mental Illness and Other Considerations

Persons whose only medical condition is a mental illness, and who otherwise meet all eligibility criteria, will not be eligible for MAiD until March 17, 2023 in order to provide the Government of Canada with more time to study how MAiD can be safely provided and ensure applicable safeguards are in place.

The eligibility of mature minors, advance requests, palliative care and the protection of Canadians living with disabilities are still under Parliamentary review of the MAiD legislation.

Documentation Requirements

Specific documentation requirements must be met as part of the MAiD process. In British Columbia, a Patient Request Record form must be completed by the person requesting MAiD, or by their proxy under the person's express direction if the person is unable to physically sign the form. The form is currently available only in English. A professional translator must also sign the form if language translation services are required.

Effective March 17, 2021, one independent witness, who must be at least 18 years old and understand the nature of the request for MAiD, must act as a witness for a person's request for MAiD. This was changed from the previous requirement of two independent witnesses.

A witness is not considered independent if they meet any of the following criteria:

- know or believe that they are a beneficiary under the will of the person making the request, or a recipient, in any other way, of a financial or other material benefit resulting from the person's death;
- are an owner or operator of any health care facility at which the person making the request is being treated or any facility in which the person resides;
- are directly involved in providing health care services to the person making the request or directly provide personal care to the person making the request. New section 241.2(5.1) allows such individuals to act as a witness if the provision of care is their primary occupation and they are paid to provide that care. However, the change does not permit the physician or nurse practitioner providing MAiD or the physician or nurse practitioner providing the second assessment to act as a witness.

As stated above, if a person is unable to physically sign and date the Patient Request Record form, a proxy can act on their behalf under the person's express direction. The proxy must meet the following criteria:

- cannot be the independent witness;
- must be at least 18 years of age and understand the nature of the request for MAiD;
- must not know or believe that they are a beneficiary in the person's will, or a recipient of financial or other material benefit resulting from the person's death; and
- must sign the form in the presence of the person requesting MAiD and the independent witness.

All written and verbal requests for MAiD and a summary of discussion must be documented in the person's medical record.

Eligibility Assessments

Once a person requests MAiD, the eligibility process requires the opinion of two independent medical assessors, one of whom must also be the prescriber and/or administrator of the lethal substances. Only a physician or nurse practitioner may be a medical assessor.

Both medical assessors must be satisfied that the person requesting MAiD is mentally capable of making a free and informed decision at the time of the request and throughout the process. If either medical assessor is unsure that the person has capacity to consent to MAiD, they will request a capability assessment from a third assessor or specialist.

In British Columbia, one of the eligibility assessments can be completed by telehealth, as arranged by the physician or nurse practitioner. A regulated health professional must witness an eligibility assessment conducted via a telehealth videoconferencing system and provide their registration number.

A. Occupational Therapy Roles in MAiD

Providing End-of-Life Care

Occupational therapists work across the continuum of the lifespan. This includes providing occupational therapy services for clients who are receiving end-of-life care. Occupational therapists provide client-centred, culturally safe services that can enable individuals to access their environment, relieve discomfort, maintain important relationships, make choices, create meaningful memories, preserve a sense of purpose, and participate in activities to empower a sense of self-efficacy and control during the dying process. In this context, occupational therapists may, in some circumstances, aid a medical practitioner or nurse practitioner with MAiD providing that they follow the rules of legislation, provincial requirements, and practice standards. This includes following standards for consent, professional boundaries, managing client information, and supervising support personnel.

Providing Information About End-of-Life Options

In order to enable clients to make informed decisions, occupational therapists must be able to provide accurate, objective information in a respectful and thoughtful manner on the legal provision of MAiD. Occupational therapists should be able to interpret and understand when a client is making an inquiry

about MAiD and must clearly document any request for or discussion about MAiD in the client's medical record.

Occupational therapists are permitted to provide the Patient Request Record form and information about MAiD as an end-of-life option but must not encourage or discourage any option for care over another, such as hospice and palliative care. Additionally, occupational therapists must know the limitations of occupational therapy scope of practice in addressing client questions or requests for MAiD. For example, if an occupational therapist is approached by a client asking about MAiD, the occupational therapist may consider saying, "Can you tell me more about what information you are looking for, so I can clarify or direct you to someone who can answer your questions?"

Should a referral to another health care provider be warranted, occupational therapists will obtain consent from the client for the referral and proceed with agreed-upon occupational therapy service plans as appropriate.

Acting as an Independent Witness or Proxy

Occupational therapists registered with the College of Occupational Therapists of British Columbia are permitted to act as a witness for a telehealth eligibility assessment for MAiD. They may also act as a proxy to sign and date the Patient Request Record form if the client is physically unable to do so.

Occupational therapists acting as a witness on the MAiD Patient Request Record form must meet the specified requirements. Occupational therapists should always confirm current provincial requirements and seek clarification from their applicable Health Authority MAiD Care Coordination Centre before acting as an independent witness or proxy, to ensure adherence to legislative requirements and employer policies.

Contributing to Eligibility Assessments

Under the current legislation, occupational therapists are not permitted to determine client eligibility for MAiD. However, as stated by the College of Occupational Therapists of Ontario (2017), they "are often relied upon for their knowledge, skill, and experience in assessing the functional abilities of clients as it pertains to capacity for decision-making and may be asked to assist in this regard" (p. 5).

Occupational therapists offer cognitive screening, assessment, and intervention as standard clinical practice when there are concerns about client function or occupational performance. By evaluating the client's cognitive strengths and limitations in the context of performing everyday life activities, occupational therapists can identify strategies and adapt the environment to enable client participation.

Given the complexity of the process in assessing capacity to consent in relation to MAiD requests, occupational therapists are advised to participate in any employer mandated and recommended educational opportunities, as well as complete self-directed learning to maintain or enhance competence in this clinical practice area.

B. Other Considerations for Occupational Therapists Affected by Assisted Dying

Ensuring Individual Competence

Occupational therapists are obligated to “practise within the scope of the profession, with knowledge of, and adherence to, national and provincial legislation, regulations, standards of practice and policies relevant to the practice of occupational therapy” (COTBC, 2006, p. 4) as they apply to MAiD. Occupational therapists should ensure that they are competent to perform a given intervention prior to initiating the intervention, and set clear expectations for the client, family, and other care providers, as appropriate. Additionally, occupational therapists should be familiar with policies and procedures related to MAiD relevant to their employer, health authority, facility, and care home, and seek clarification when unclear.

Conscientious Objection and Acting Ethically

Occupational therapists are expected to adhere to the College’s Code of Ethics. This includes treating clients with dignity, demonstrating respect for their autonomy, and remaining non-judgemental in interactions with clients, clients’ families, and other care providers.

Occupational therapists may elect not to participate or aid in the provision of MAiD on the grounds of conscience or religion. Occupational therapists who have a conscientious objection to aiding in the provision of assisted death must do so in a transparent, non-discriminatory manner that meets their ethical standards and practice obligations.

In determining if it would be appropriate to continue care, “the occupational therapist must be confident their own personal beliefs and values will not present a conflict of interest that may prevent them from acting in the client’s best interests” (COTO, 2017, p. 7).

Occupational therapists who experience conscientious objection are advised to do the following:

- notify their immediate manager and seek employer support,
- not withhold information or impede their clients’ access to MAiD,
- direct clients to available MAiD resources and obtain consent to refer the client to an alternative service provider who will address the client’s MAiD request, and
- continue to provide other occupational therapy service components not directly related to the request for MAiD until care has been successfully transferred to another occupational therapist or care provider.

The Government of Canada has an obligation to ensure that all Canadians have reasonable access to MAiD. However, at this time, not every health facility must provide MAiD. If an occupational therapist works for an employer that declines to provide MAiD on conscientious or religious grounds, the occupational therapist should be familiar with relevant organizational resources that enable clients to access information regarding their MAiD options.

Coping and Bereavement

Coping and bereavement are sensitive and important aspects of end-of-life care. Occupational therapists encountering any death, including assisted death, in their clinical practice need to manage their professional responsibilities by recognizing their own personal and professional limits or

challenges. If needed, occupational therapists are encouraged to seek support for themselves, as well as guide their colleagues, clients, and clients' families accordingly.

Monitoring the Legislative and Regulatory Landscape

Considering that end-of-life care is an evolving area in Canada, occupational therapists who encounter MAiD in their practice are advised to refer to current legislation. If there are discrepancies between this advisory statement and the legislation, the legislation will supersede information provided in this advisory statement.

COVID-19 Public Health Emergency - Temporary Regulatory Changes

The [College of Physicians and Surgeons of BC](#) and the [BC College of Nursing Professionals](#) have made temporary regulatory changes regarding the MAiD assessment process that are in effect during the COVID-19 public health emergency. Of relevance to occupational therapy practice are:

- The Patient Request Record form can be completed virtually by videoconference. The person requesting MAiD and the independent witness can complete their signed pages separately and submit to create a complete document.
- Both of the two required eligibility assessments can be completed virtually by a physician or nurse practitioner with another regulated health professional in physical attendance with the person requesting MAiD to act as a witness to the assessment, unless one is not reasonably available.

SUMMARY

While this advisory statement provides an overview on medical assistance in dying (MAiD), there is much more knowledge required when navigating a request for MAiD (e.g., there are two pathways of eligibility: where a person's natural death is reasonably foreseeable, or their natural death is not reasonably foreseeable). Occupational therapists who work in end-of-life care should always confirm current provincial requirements and seek clarification from their applicable Health Authority MAiD Care Coordination Centre.

MAiD Resources

British Columbia Bereavement Helpline

<https://www.bcbh.ca>

British Columbia Ministry of Health

Medical Assistance in Dying

<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>

Canadian Association of MAiD Assessors and Providers

<https://camapcanada.ca>

Dying with Dignity Canada

<https://www.dyingwithdignity.ca>

Government of Canada
Medical Assistance in Dying
<https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html>

Government of Canada
Options and Decision-Making at End of Life
<https://www.canada.ca/en/health-canada/services/options-decision-making-end-life.html>

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Advisory statements are published by the College of Occupational Therapists of British Columbia to increase registrants' awareness of important issues relevant to the practice of occupational therapy.