

Medical Aid in Dying (MAID) Update – July 14, 2016

The federal government gave Royal Assent to Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* on June 17th (http://cpsm.mb.ca/cjj39alckF30a/wp-content/uploads/MAID_federal_legislation.pdf). This legislation is now in force and provides the legal framework for the provision of medical assistance in dying (M.A.I.D.) across Canada.

The legislation requires that everyone involved must follow both the rules set out in s. 241 of the Criminal Code and all applicable provincial and territorial health-related laws, rules and policies. This includes **Schedule M to By-Law 11**, the Standard of Practice which Council passed last December to fill the legislative void between the time the Criminal Code provisions prohibiting M.A.I.D. were declared invalid and the federal legislation coming into force.

The new legislative provisions supersede any standards of practice by the provincial medical regulatory authorities to the extent those standards are inconsistent with it. **Schedule M to By-Law 11** requires several substantive changes to address the fact that a number of the requirements in it are now redundant and have been replaced by the requirements of the new legislation. In addition, there are components of **Schedule M** that no longer apply given the change in eligibility criteria set out in Bill C-14.

These amendments are set out in the attached version of Schedule M to By-Law 11. Schedule M as amended was approved by the Executive Committee on behalf of Council on July 14, 2016 and is now in force for all members.

We continue to recommend that all physicians who are approached about MAID consult with legal counsel.

Schedule M attached to and forming part of By-Law No. 11 of the College

MEDICAL ASSISTANCE IN DYING

BACKGROUND

Federal legislation now permits medical practitioners and nurse practitioners to provide medical assistance in dying (MAID)¹. Medical practitioners and nurse practitioners are the only people who can provide MAID. Pharmacists, health care providers and others can provide requested assistance.

Nothing in the federal legislation compels an individual to provide MAID.

Amendments to the Criminal Code set out the legislative framework for MAID by creating eligibility requirements, safeguards and specific requirements of the practitioners who provide MAID and those who assist them. Anyone who provides or assists a practitioner who provides MAID and follows the requirements of s. 241 of the Criminal Code and applicable provincial and territorial laws, rules and policies are exempt from criminal responsibility, including those who have a reasonable but mistaken belief about any fact that is an element of the exemption.

The federal legislation requires that MAID be provided with reasonable knowledge and skill in accordance with any applicable provincial laws, rules or standards.

This Schedule establishes the standards of practice and ethical requirements of physicians in Manitoba in relation to the legal requirements for MAID set out in the federal framework. It is subject to existing legislation and regulations governing any aspect of MAID which come into force and effect while this Schedule is in force and effect. Any such legislation and regulations take priority over the requirements of this Schedule where there is any inconsistency.

DEFINITIONS

Medical Assistance in Dying (MAID) is defined in s. 241.1 of the Criminal Code to mean:

- (a) the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or
- (b) 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.

Medical Practitioner - is defined in s. 241.1 of the Criminal Code to be a person who is entitled to practice medicine under the laws of a province.

Physician - a medical practitioner who is a member of the College and is both registered on the Manitoba Medical Register and licensed to practice medicine. This definition excludes a member who is only practicing within a residency training program.

¹ *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* SC 2016, c. 3, http://cpsm.mb.ca/cjj39alckF30a/wp-content/uploads/MAID_federal_legislation.pdf

Patient - the person requesting MAID and whose well-being must be the primary concern of any physician involved with responding to such a request.

Administering Physician – the physician who provides or administers the pharmaceutical agent(s) intended to cause the patient's death. The administering physician is responsible for confirming that all of the requirements of this Schedule have been met before the pharmaceutical agent(s) that intentionally cause the patient's death can be provided or administered. There can only be one administering physician for each patient.

Member – a member of the College who is registered on the Manitoba Medical Register, Educational Register, Physician Assistant Register or Clinical Assistant Register.

REQUIREMENTS

I. Minimum Requirements of All Members and Physicians

- A. A member must not promote his or her own values or beliefs about MAID when interacting with a patient.
- B. On the grounds of a conscience-based objection², a physician who receives a request about MAID may refuse to:
 1. provide it; or
 2. personally offer specific information about it; or
 3. refer the patient to another physician who will provide it.
- C. A physician who refuses to refer a patient to another physician or to personally offer specific information about MAID on the grounds of a conscience-based objection must:
 1. clearly and promptly inform the patient that the physician chooses not to provide MAID on the grounds of a conscience-based objection; and
 2. provide the patient with timely access to a resource³ that will provide accurate information about MAID; and
 3. continue to provide care unrelated to MAID to the patient until that physician's services are no longer required or wanted by the patient or until another suitable physician has assumed responsibility for the patient; and
 4. make available the patient's chart and relevant information (i.e., diagnosis, pathology, treatment and consults) to the physician(s) providing MAID to the patient when authorized by the patient to do so; and

² See Section 17 of By-Law #11 - conscience-based objection is defined as an objection to participate in a legally available medical treatment or procedure based on a member's personal values or beliefs.

³Acceptable resources may include but are not limited to other members, health care providers, counsellors and publicly available resources which can be accessed without a referral and which provide reliable information about MAID.

5. document the interactions and steps taken by the physician in the patient's medical record, including details of any refusal and any resource(s) to which the patient was provided access.
- D. A member who is not a physician and has a conscientious-based objection to MAID who receives a request for MAID, information about MAID or a referral to a physician who will provide MAID must advise the patient making the request that the member has a conscientious-based objection and must communicate the request to the member's supervising physician in a timely fashion.

II. Specific Requirements for Assessing Patient Eligibility for MAID

Federal legislation requires that to be eligible for MAID, the patient must meet all of the following criteria:

- a) be eligible for publicly funded health services in Canada
- b) be at least 18 years of age and capable of making decisions with respect to their health;
- c) have a grievous and irremediable medical condition (including an illness, disease or disability); and
- d) make a voluntary request for medical assistance in dying that is not the result of external pressure; and
- e) provide informed consent to receive MAID after having been informed of the means that are available to relieve the patient's suffering, including palliative care.

According to the federal legislation, a person has a grievous and irremediable medical condition only if **all** of the following criteria are met:

- 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. (emphasis added)

The College requires that:

- A. Any physician who conducts an assessment for the purpose of determining if a patient is eligible for MAID pursuant to these requirements must:
 1. be satisfied that the patient seeking MAID has a grievous and irremediable medical condition which the physician has verified by:
 - a. a clinical diagnosis of the patient's medical condition; and
 - b. a thorough clinical assessment of the patient which includes consideration of all relevant, current and reliable information about the patient's symptoms and the available medical treatments to cure the condition or alleviate the associated symptoms which make the condition grievous, including, where appropriate, consultation with another qualified physician;

2. be fully informed of the current relevant clinical information about the patient and his/her condition;
 3. be qualified to render a diagnosis and opine on the patient's medical condition or be able to consult with another physician with relevant expertise for the limited purpose of confirming the diagnosis, prognosis or treatment options;
 4. use appropriate medical judgment and utilize a reasonable method of assessment;
 5. when assessing whether a patient's illness, disease or disability or state of decline causes the patient enduring physical or psychological suffering that is intolerable to the patient and cannot be relieved under conditions that the patient considers acceptable, ensure that:
 - a. the unique circumstances and perspective of the patient, including his/her personal experiences and religious or moral beliefs and values have been seriously considered;
 - b. the patient is properly informed of his/her diagnosis and prognosis in relation to the current or impending associated symptoms; and
 - c. treatment options described to the patient include all reasonable medical treatments to cure the condition or alleviate the associated symptoms which make it grievous or, if the patient is terminal, palliative care interventions; and the patient adequately understands the:
 1. current and anticipated course of physical symptoms, ability to function and pain and suffering specific to that patient; and
 2. effect that any progression of physical symptoms, further loss of function or increased pain may have on that specific patient; and
 3. available treatments to manage the patient's symptoms or loss of function or to alleviate his/her pain or suffering.
- B. Each physician must document in the patient's medical record all information that is relevant to his/her role and findings in respect to each of the specific requirements of any assessment related to the patient's eligibility for MAID.

III. Specific Requirements for Assessing Medical Decision Making Capacity

- A. Any physician who conducts an assessment of a patient for the purpose of determining if the patient is capable of making decisions with respect to their health pursuant to the federal requirements must be:
1. fully informed of the current relevant clinical information about the patient and his/her mental and physical condition; and

2. qualified to assess competence in the specific circumstances of the patient whose capacity is being assessed or be able to consult with another physician with relevant expertise for the limited purpose of assessing the patient's medical decision making capacity.
- B. In the event that a physician has a reasonable doubt as to the patient's competence, an additional independent assessment must be conducted by another physician who is enrolled on the Specialist Register as a psychiatrist.
 - C. Each physician must document in the patient's medical record all information that is relevant to his/her role and findings in respect to each of the specific requirements of any assessments of a patient's medical decision making capacity.

IV. **Specific Requirements for Obtaining Informed Consent**

The federal legislation requires that before a physician provides MAID, the physician must:

- (a) ensure that the request for MAID was:
 - i. made in writing and signed and dated by:
 - a. the patient; or
 - b. where the patient is unable to sign and date the request, by another person (proxy) at the express direction of and in the presence of the patient. The person who serves as the proxy must:
 1. be at least 18 years of age;
 2. understand the nature of the request for MAID;
 3. not know or believe that they are a beneficiary under the will of the patient or a recipient in any other way of a financial or other material benefit resulting from the patient's death; and
 - ii. signed and dated after the patient was informed by a physician or nurse practitioner that the patient has a grievous and irremediable medical condition.
- (b) be satisfied that the request was signed and dated by the patient or by the patient's proxy before two independent witnesses who then also signed and dated the request;
- (c) ensure that the person has been informed that they may, at any time and in any manner, withdraw their request;
- (d) ensure that another physician or nurse practitioner has provided a written opinion confirming that the person meets all of the eligibility criteria and be satisfied that they and the other physician or nurse practitioner providing the opinion are independent in that each of them :
 - i. is not a mentor to the other practitioner or responsible for supervising their work;
 - ii. does not know or believe that they are a beneficiary under the will of the patient, or a recipient, in any other way, of a financial or other material benefit resulting from that patient's death, other than standard compensation for their services relating to the request; or
 - iii. does not know or believe that they are connected to the other practitioner or to the patient in any other way that would affect their objectivity;

- (e) ensure that there are **at least 10 clear days** between the day on which the request was signed by or on behalf of the patient and the day on which MAID is provided or — if they and the other physician or nurse practitioner are both of the opinion that the patient’s death, or the loss of their capacity to provide informed consent, is imminent — any shorter period that the first physician or nurse practitioner considers appropriate in the circumstances;
- (f) immediately before providing MAID, give the patient an opportunity to withdraw their request and ensure that the patient gives express consent to receive MAID; and
- (g) if the patient has difficulty communicating, take all necessary measures to provide a reliable means by which the patient may understand the information that is provided to them and communicate their decision.

The federal legislation also provides that any person who is at least 18 years of age and who understands the nature of the request for MAID may act as an independent witness, except if that person:

- (a) knows or believe that they are a beneficiary under the will of the patient, or a recipient in any other way of a financial or other material benefit resulting from the patient’s death;
- (b) are an owner or operator of any health care facility at which the patient is being treated or any facility in which patient resides;
- (c) are directly involved in providing health care services to the patient; or
- (d) directly provide personal care to the patient.

The College requires that:

- A. Physicians who obtain informed consent for MAID must have sufficient knowledge of the patient’s condition and circumstances to ensure that:
 - 1. the patient is properly informed of his/her diagnosis and prognosis in relation to the current or impending associated symptoms; and
 - 2. the treatment options described to the patient include all reasonable medical treatments to cure the condition or alleviate the associated symptoms which make it grievous and/or palliative care interventions where the patient is terminal; and
 - 3. the patient is offered appropriate counseling resources; and
 - 4. the patient fully understands that:
 - a. death is the intended result of the pharmaceutical agent(s); and
 - b. the potential risks and complications associated with taking the pharmaceutical agent(s).
- B. Each physician who obtains informed consent from the patient for MAID must:
 - 1. have either conducted his/her own assessment or be fully informed of the assessments conducted by other physicians of the patient’s medical condition and the patient’s medical decision making capacity; and

2. meet the legal requirements for informed consent, including informing the patient of:
 - a. material information which a reasonable person in the patient's position would want to have about MAID;
 - b. the material risks associated with the provision/administration of the pharmaceutical agent(s) that will intentionally cause the patient's death; and
 3. meet with the patient alone at least once to confirm that his/her decision to terminate his/her life by MAID is voluntary and that the patient has:
 - a. made the request him/herself thoughtfully; and
 - b. a clear and settled intention to end his/her own life by MAID after due consideration;
 - c. considered the extent to which the patient has involved or is willing to involve others such as family members, friends, other health care providers or spiritual advisors in making the decision or informing them of his/her decision; and
 - d. made the decision freely and without coercion or undue influence from family members, health care providers or others.
- C. Each physician must document in the patient's medical record all information that is relevant to his/her role and findings in respect to each of the specific requirements for obtaining informed consent.

V. Additional Requirements of the Federal Legislation

The federal legislation also:

- (a) requires physicians who receive a written request for MAID to provide information pursuant to regulations made by the Minister of Health;
- (b) requires that physicians who, in providing MAID, prescribe or obtain a substance for that purpose must, before any pharmacist dispenses the substance, inform the pharmacist that the substance is intended for that purpose;
- (c) requires physicians to comply with guidelines established for the completion of certificates of death for patients to whom MAID is provided;
- (d) creates criminal offences for knowingly failing to comply with the eligibility and safeguard requirements set out in Criminal Code and destroying documents with the intent to interfere with a patient's access to MAID, the assessment of a request for MAID or a person seeking an exemption related to MAID.

The College expects physicians to comply with the federal and provincial regulations and guidelines described above as they come into force and effect.

VI. Specific Requirements of the Administering Physician

- A. The administering physician must:
1. have appropriate knowledge and technical competency to provide/administer the pharmaceutical agent(s) in the appropriate form and/or dosage that will terminate the patient's life in the manner in which the patient was informed that it would terminate his/her life at the time the patient provided his/her consent; and

2. be qualified to provide appropriate instructions to the patient as to how to administer the pharmaceutical agent(s) that will terminate the patient's life in the manner in which the patient was informed that it would terminate his/her life at the time the patient provided his/her consent in circumstances where the patient elects to administer the pharmaceutical agent(s) to him/herself; and
3. be readily available to care for the patient at the time the pharmaceutical agent(s) that intentionally brings about the patient's death is administered by the administering physician or taken by the patient until the patient is dead; and
4. provide reasonable notice to the Office of the Chief Medical Examiner that the patient is planning to die by means of MAID where the location is not a health care institution; and
5. certify, in writing, on the prescribed form (Appendix A) that he/she is satisfied on reasonable grounds that all of the following requirements have been met:
 - a. The patient is at least 18 years of age;
 - b. The patient's medical decision making capacity to consent to receiving medication that will intentionally cause the patient's death has been established in accordance with the requirements of the Criminal Code and this Schedule;
 - c. All of the requirements of the Criminal Code and this Schedule in relation to assessing eligibility for MAID and obtaining and documenting informed consent have been met; and
6. ensure that the requirements of physicians set out in all relevant federal and provincial legislation, including the Criminal Code, *The Fatality Inquiries Act*, C.C.S.M. c. F52 and *The Vital Statistics Act*, C.C.S.M. c. V60 in respect to reporting and/or registering the cause and manner of the patient's death, including completing all required forms specified by the legislation or regulations, are met in a timely fashion.

Appendix A – Certification by the Administering Physician

I, _____, am the administering physician.
(print physician’s name)

_____ is the patient.
(print patient’s name)

I hereby certify that:

1. I am familiar with all of the requirements for providing MAID to a patient set out in the Criminal Code and Schedule M of By-Law 11 of The College of Physicians & Surgeons of Manitoba (“the Schedule”).

2. I am satisfied that:

- a. The patient is at least 18 years of age;
- b. The patient’s medical decision making capacity to consent to receiving pharmaceutical agent(s) that will intentionally cause the patient's death has been established in accordance with the requirements of the Criminal Code and this Schedule;
- c. All of the requirements of the Criminal Code and this Schedule in relation to assessing eligibility for MAID and obtaining and documenting informed consent have been met. The following physicians were involved:

- i. _____
[Print first and last names of the physician(s)]
conducted the assessment(s) for patient eligibility
- ii. _____
[Print first and last names of the physician(s)]
conducted the assessment(s) of the patient’s medical decision making capacity
- iii. _____
[Print first and last names of the physician(s)]
obtained informed consent

Signed by me at _____, in the Province of Manitoba, this ____ day of _____, 20__.

WITNESS

Administering Physician

Print Name of Witness

Print Name of Administering Physician