

Medical Assistance in Dying



Canada's *Criminal Code* allows for an adult to choose a medically assisted death in some situations. The federal government first allowed **medical assistance in dying (MAID)** in 2016.

The law changed again on March 17, 2021.



You should **NOT** rely on this booklet for legal advice.
It provides general information on **Alberta law only**. 2021

Decision-making capacity means a person's ability to make decisions about their health.

Informed consent means having all the information needed to make a decision about a medical procedure.

A person has a **grievous and irremediable medical condition** if they:

- have a serious and incurable illness, disease or disability (mental illness is not currently eligible)
- are in an advanced state of irreversible decline in capability, and
- have lasting and painful physical or psychological suffering that cannot be eased in a way acceptable to the person.

What is a medically assisted death?

A person who meets certain criteria can request medical assistance in dying. A doctor or nurse practitioner administers, prescribes or provides a substance that causes the person's death.

Who can ask for a medically assisted death?

To ask for a medically assisted death, a person must:

- be 18 years or older
- have **decision-making capacity**
- be eligible to receive health care in Canada
- make the request of their own free will, not because someone is pressuring them
- give **informed consent** to receive MAID
- have a **grievous and irremediable medical condition**

If a person meets the above criteria, the law describes safeguard processes to make sure MAID is appropriate in the situation.

What is the process to apply for MAID?

There are two processes:

- one for persons whose natural deaths **are** reasonably foreseeable, and
- another for persons whose deaths **are not** reasonably foreseeable.

These processes include safeguards to make sure MAID is appropriate in the situation.

1. A doctor or nurse practitioner tells the person they have a grievous and irremediable medical condition.
2. The person requests MAID in writing in any form. One **independent witness** must sign the request. The witness can be a paid professional personal or health care worker.
3. The doctor or nurse practitioner must inform the person they can take back their request at any time, in any way.
4. Two **independent doctors or nurse practitioners** each assess the situation and state whether the person meets the criteria for MAID.

Is the person's death reasonably foreseeable?

If YES:

Immediately before receiving MAID, the person must:

- have an opportunity to withdraw consent (change their mind), AND
- expressly confirm their final consent to the doctor or nurse practitioner administering MAID. (A person can waive **final consent** in some situations.)

If NO:

1. Health practitioners who do not have expertise in the medical condition must talk with a practitioner who does. The assessment includes the following steps:
 - The doctor or nurse practitioner must inform the person of the ways to ease their suffering. This could include counselling, mental health and disability support, community services and palliative care. The person must be offered meetings with professionals who provide these services.
 - The person and the practitioners must discuss options to relieve the person's suffering. The practitioners must agree the person has seriously considered these options.
2. Assessments must take at least 90 days. The doctor or nurse practitioner can administer MAID sooner if the person is about to lose capacity to make health care decisions. Both assessments in the previous step must be complete.
3. Before receiving MAID, the person must:
 - have an opportunity to withdraw consent (change their mind), AND
 - expressly confirm their consent.

What if a person cannot sign the request for MAID?

If someone requesting MAID cannot sign and date the request, another person can do so for them if all the following are true about the other person:

- They are at least 18 years old.
- They understand the nature of the request.
- They are not (or believe they are not) a beneficiary under the Will of the person making the request.
- The other person will not benefit (materially or financially) from the requesting person's death.
- They sign the request in the requesting person's presence, on the requesting person's behalf and under their express direction.

Who is an independent witness?

A person is an independent witness if they are at least 18 years old and understand the nature of the request for MAID. A person is **not** an independent witness if:

- They know or believe they are a beneficiary under the Will of the person requesting MAID.
- They will benefit (materially or financially) from the requesting person's death.
- They own or operate a health care facility where the person making the request receives treatment or lives.
- They are the doctor or nurse practitioner providing MAID to the person.
- They are the doctor or nurse practitioner who provided an opinion on whether the person met the criteria for MAID.

What is an independent doctor or nurse practitioner?

The doctors or nurse practitioners who assess the person's request for MAID cannot administer MAID to the person. They are independent if:

- They are not mentors or supervisors to the other practitioner.
- They do not know (or do not believe they are) a beneficiary under the Will of the person requesting MAID.
- They will not benefit (materially or financially) from the requesting person's death. (Benefiting materially or financially does not include pay for their services relating to the request for MAID.)
- They do not know or believe they are connected to the other practitioner or person making the request in any way that affects their objectivity.

When is final consent not needed?

A person does not need to give final consent if all the following are true:

- The person's death is reasonably foreseeable.
- They have been assessed and approved to receive MAID.
- They are at risk of losing decision-making capacity before the date they want to receive MAID. They must be informed of this risk of losing decision-making capacity.
- They arrange in writing with their practitioner to waive final consent. This means the practitioner will administer MAID on their preferred date even if they lose capacity to give final consent at that time.

When is a waiver of final consent not valid?

A waiver of final consent becomes invalid if the person loses decision-making capacity and then refuses or resists the administration of MAID. They can resist or refuse by their words, sounds or gestures.

Reflexes and other kinds of involuntary movements, such as responding to contact, are not refusal or resistance. This means a person flinching when a needle is injected does not make their final waiver invalid.

Who performs a medically assisted death?

A doctor or nurse practitioner can administer MAID using a substance causing death. It must be a different doctor or nurse practitioner than one who assessed the person's request for MAID.

A person can also choose to self-administer the substance. A doctor or nurse practitioner prescribes or provides the substance. The person can agree ahead of time in writing with the practitioner what happens if the substance does not cause death. This allows the practitioner to administer MAID if complications come up with self-administration.

Can a doctor refuse to administer MAID?

Yes, a doctor or nurse practitioner can refuse to administer MAID. Each province has different rules about what a doctor must do if they receive a request for MAID but refuse to administer it. In Alberta a doctor must provide contact information for Alberta Health Services' Medical Assistance in Dying Care Coordination Service.

Can a person request MAID in a Personal Directive?

No. A person must request MAID using the process described in this booklet. The reason is that a Personal Directive is made while a person has decision-making capacity but comes into effect when they lose decision-making capacity. A person who no longer has decision-making capacity cannot confirm they still want MAID (except where they can waive final consent).

Resources

Government of Canada's MAID webpage

<https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html>

Alberta Health Services' Medical Assistance in Dying Care Coordination Service

www.ahs.ca/MAID

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Other publications related to this topic that may interest you include:

- Making a Will
- Making an Enduring Power of Attorney
- Making a Personal Directive
- Mental Capacity
- General Powers of Attorney
- Planning for Incapacity
- Adult Guardianship and Trusteeship Act

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