GOVERNMENT OF YUKON

MEDICAL ASSISTANCE IN DYING (MAID) INFO SHEET

PURPOSE

The purpose of this document is to provide information about medical assistance in dying in Yukon. This document will provide information to support patients, medical practitioners, nurses, pharmacists and other health care providers who seek information about medical assistance in dying in Yukon, and to enhance the goal of consistent, compassionate, patient-centred approach for medical assistance in dying in Yukon.

Existing laws, procedures, protocols, or standards for health care providers, health care facilities, health care programs, and medications are to be used in conjunction with this info sheet. Medical practitioners are further referred to the Yukon Medical Council, “Medical Assistance in Dying – Standard in Practice” [http://www.yukonmedicalcouncil.ca/](http://www.yukonmedicalcouncil.ca/).

It is noted that medical assistance in dying may take place in a person’s home, in an institution or a hospital. The Yukon Hospital Corporation has their own forms and procedures for MAID that practitioners must follow.

BACKGROUND

Following a Supreme Court of Canada decision, medical assistance in dying became legal in Canada on June 6, 2016 as part of Canadian’s Charter of Rights and Freedoms. On June 17, Bill C-14, the federal legislation on medical assistance in dying received royal assent and became law (see References for a copy of the Act to Amend the Criminal Code and make related Amendments to other Acts relating to MAID). This federal legislation establishes the criteria a patient must meet in order to be eligible for medical assistance in dying, along with the safeguards a medical practitioner, nurse practitioner or pharmacist must comply with in delivering medical assistance in dying.

FOUNDATIONS FOR THE PROVISION OF MEDICAL ASSISTANCE IN DYING

1. All requests for medical assistance in dying must be initiated by the patient and must be made voluntarily, without external pressure or influence.

2. Attention should be paid to the conditions and context of the patient. Vulnerable patients should be protected from discrimination, coercion, exploitation, and undue influence arising from psychosocial or non-medical conditions and circumstances.

3. A patient may change his/her mind regarding a request to access medical assistance in dying at any time, for any reason, and must be provided with explicit opportunities to withdraw his/her request, including immediately prior to the provision of medical assistance in dying.
4. A capable patient’s dignity and autonomy should be respected where they are making decisions about requesting or receiving medical assistance in dying, including consideration of the patient’s culture, preferences, values, spiritual or religious beliefs.

6. Patients who make a request for medical assistance in dying, who meet the mandatory eligibility criteria and have all safeguards addressed should have equitable, timely and reasonable access to medical assistance in dying.

7. Health care providers may follow their conscience when deciding whether or not to participate in medical assistance in dying for reasons of conscience or religion. The choice of health care providers to participate in the medical assistance in dying process must be respected.

8. Health care providers must not impede the rights of a patient who wishes to access medical assistance in dying. Patients shall not be denied appropriate health care because of their request for or participation in medical assistance in dying.

9. Health care providers participating in medical assistance in dying must have the requisite knowledge, care and skill and be acting within their scope of practice, supported by all applicable laws, practice standards, and policies.

10. It is no longer an offence for medical practitioners or nurse practitioners to provide medical assistance in dying or for other health care providers (e.g. nurses, pharmacists, social workers) to assist these individuals in their provision of this service for patients. There is protection from criminal liability as long as medical assistance in dying is done in accordance with the law. The law also extends protection to those who are acting on reasonable but mistaken belief about a fact that is an element of the mandatory criteria or the required safeguards in the Criminal Code.

11. It is lawful for medical practitioners, nurse practitioners and other health care professionals to provide information to a person about the provision of medical assistance in dying (Criminal Code s. 241 (5.1). However, care must be taken not to encourage, counsel, advise, recommend, or in any way try to influence a person to choose medical assistance in dying, because this remains an offence under the Criminal Code, s. 241(1)(a).

1. Mandatory Patient Criteria

1.1 Patients have a right to make informed health care decisions, including the right to consent to or decline specific health care interventions. Only adult patients who have the capacity to provide informed consent and who meet all the eligibility criteria set out in the Amendments to the Criminal Code that relate to MAID, are eligible for medical assistance in dying.

1.2 To be eligible for medical assistance in dying a patient must have a grievous and irremediable medical condition and meet all the eligibility criteria set out in the Criminal Code, as determined by two independent medical practitioners and/or nurse practitioners.

Section 214.2(1) of the Criminal Code outlines the eligibility criteria for medical assistance in dying that a person must meet to receive medical assistance in dying:
Eligibility for medical assistance in dying

241.2 (1) A person may receive medical assistance in dying only if they meet all of the following 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 (see below for definition);
(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 Care and Consent Act section 5 defines the elements of consent for Yukon and regulators may also have standards of practice regarding consent in place for the health professional.

Further information on palliative care in Yukon can be found on Health & Social Services web-site: http://www.hss.gov.yk.ca/palliativecare.php.

Section 241.2(2) of the Criminal Code provides the criteria for a grievous and irremediable medical condition:

Grievous and irremediable medical condition

(2) 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.

The patient has to have the capacity to provide informed consent for medical assistance in dying. This capacity must be in place right up to the time the patient receives medical assistance in dying, otherwise the process cannot proceed. Note that an alternate decision-maker cannot make a request for or consent to medical assistance in dying on behalf of a patient who lacks capacity to consent nor can MAID be part of an
advance directive. Also, a person must be 18 years of age, MAID is not available to mature minors or children.

A request for medical assistance in dying should be signed by a patient only after the patient was informed by the nurse practitioner or medical practitioner that the patient has a grievous and irremediable medical condition, as per the Criminal Code section 241.2(3)(b)(ii). A patient may then fill in a Patient Request for Medical Assistance in Dying form found on Health & Social Services web-site on MAID http://www.hss.gov.yk.ca/maid.php that is witnessed by two independent witnesses over 18 years of age that meet the criteria listed in Criminal Code s. 241.2(5).

2. Safeguards

2.1 Medical practitioners and nurse practitioners must ensure that they are following the safeguards established in the Criminal Code, and many of these have offences associated with them for failure to comply.

2.2 Medical assistance in dying must be provided with reasonable knowledge, care and skill and in accordance with any applicable territorial laws, rules or standards.

2.3 Sections 214.2(3) to (9) of the Criminal Code outlines the safeguards and requirements that must be in place. It outlines the steps that an authorized practitioner must carry out, including, but not limited to:

- ensuring that the eligibility criteria is met,
- ensuring that there is a signed patient request that is witnessed after the patient was informed by an authorized practitioner that they have a grievous and irremediable condition,
- informing the patient that they may at any time withdraw their request,
- ensuring that an independent second practitioner has provided a written opinion confirming that the patient meets all of the eligibility criteria,
- ensuring that there are at least 10 clear days between patient signature and provision of medical assistance in dying unless certain conditions, such as imminent death or loss of capacity are present, as set out in the Criminal Code s. 241.2(3)(g). The 10 clear days is a “cooling off” period during which a patient has the opportunity to reflect on their request and withdraw it, should they choose. In calculating 10 “clear days”, both the day on which the request was signed and the day on which medical assistance in dying is provided are excluded.
- taking all necessary steps to provide a reliable means of communicating with the patient if they have difficulty communicating,
- having the providing practitioner inform the pharmacist that the substance is for medical assistance in dying,
- ensuring patient’s are given the right to withdraw their request immediately before providing medical assistance in dying.

Further details regarding all of the rules and safeguards are outlined in the Criminal Code.

3. Health & Social Services Responsibilities in Medical Assistance in Dying
Health & Social Services will:

a) provide comprehensive multi-disciplinary care through health care providers working within their scope of practice, to patients and families when the patient is exploring end-of-life decisions;
b) provide non-judgmental, comprehensive care without bias;
c) provide timely and reasonable access to information about palliative and all end-of-life care options, including bereavement care;
d) honour health care providers’ decisions regarding their participation in the provision of medical assistance in dying.
e) take reasonable steps to facilitate patient requests for medical assistance in dying made to staff;
f) ensure patients can access medical assistance in dying in a timely and coordinated fashion;
g) ensure consultation services, where available and as needed, such as: clinical ethics (Continuing Care); employee supports such as human resources or employees assistance program; spiritual care; social work; addictions and mental health services, palliative care, referral to hospice services, etc.; and
h) ensure that if concerns about a patient’s health care experience arise, the patient is able to have them addressed.

4. Health Care Providers’ (Other than Physicians or NP’s) Responsibilities in Medical Assistance in Dying

4.1 Prior to participation in any aspect of care related to medical assistance in dying, health care providers should inform themselves of the direction being provided by their respective regulatory bodies and familiarize themselves with the wording of the new Criminal Code along with any employer policies, guidelines, procedures and/or processes in place to guide the practice in MAID in an employment setting, and ensure all other applicable laws, rules and standards are being practiced.

4.2 Health care providers who are not medical practitioners or nurse practitioners should document and notify the appropriate people of a patient’s request for medical assistance in dying. This could mean notifying the patient’s medical practitioner or nurse practitioner of a patient’s request for medical assistance in dying. If the patient does not have a responsible medical practitioner or nurse practitioner or does not wish for their medical practitioner or nurse practitioner to learn of the request, then the health care provider may notify their manager in a timely manner. In circumstances where a health care provider is not in communications with the patient’s medical practitioner or nurse practitioner, then a manager should be notified of the patient’s request. Specific policies may be in place for an institution’s employees around its communication protocols regarding receiving and handling a patient’s MAID request, such as in place for Yukon Government Continuing Care. Note: Health care providers may share information about lawful medical assistance in dying with patients. Health care providers cannot “counsel” or encourage, solicit or incite a person to obtain MAID.

4.3 Health care providers electing not to participate in medical assistance in dying because it does not fall in her or his scope of practice, for moral or religious reasons, or because they are concerned about legal or professional risk are not required to participate. The amendments to the Criminal Code do not in any way create a positive obligation on a health professional to participate in MAID, Criminal Code s. 241.2(9).
If a health care provider has an ethical, moral, or religious objection to participating or assisting in MAID, practice standards or ethics around conscience objection should be observed for regulated professions whose associations have put into place such guidelines. Further, advice of regulatory bodies and/or the employer may be sought for guidance.

There is a duty of care to patients which prevents a health care professional such as a nurse from abandoning a patient and which necessitates a referral to other health care providers. In a Yukon Government institution, the health care provider shall inform his or her manager if he/she is unwilling or unable to support the provision of either the patient’s usual care or care specific to medical assistance in dying. The manager shall then ensure another appropriate health care provider who is willing and able assumes the previous health care provider’s role. If there is a concern regarding having sufficient knowledge, care and skill to support MAID, the insurer, regulator and employer can assist the employee.

4.4 Health care providers shall ensure documentation in the patient’s health record is in accordance with any legislative requirements, policies and practice standards. While health care providers can provide usual end of life care or provide assistance to a medical practitioner or nurse practitioner who is providing medical assistance in dying, (e.g. a registered nurse (RN) setting an IV line), they cannot be delegated the task of delivering medical assistance in dying services.

4.5 For registered nurses, the Canadian Nurses Protective Society (CNPS) advises that while RNs can assist by arranging IV access, or preparing the medication, for instance, they could not administer the substance pursuant to a prescription – this is the role of the providing medical practitioner or nurse practitioner. If a nurse is participating in MAID by setting a IV line for a substance, they may be considered as participating in MAID and must take the necessary inquiries to satisfy himself or herself that the patient has met the legal requirements for MAID that a medical practitioner or nurse practitioner has documented. CNPS encourages registered nurses to contact a CNPS legal advisor to discuss legal risks associated with participating in MAID.

With regards to self-administered MAID, CNPS advises the patient would physically take the medication and the nurse would be prudent not to assist with the actual administration of the medication (see References: Canadian Nurses Protective Society, Medical Assistance in Dying: What Every Nurse Should Know for further legal information).

4.6 The role for nurses outlined above applies to all nurses employed by Health & Social Services, including nurses in home care, continuing care, community nursing or whatever other areas a nurse may be employed at.

**5. Medical Practitioner and Nurse Practitioner Responsibilities regarding Medical Assistance in Dying**

5.1 Medical assistance in dying must be provided with reasonable knowledge, care and skill and in accordance with the *Criminal Code* and any applicable laws, rules, or standards. Only appropriately qualified authorized practitioners may determine eligibility and provide medical assistance in dying.

5.2 Prior to assessing a patient for medical assistance in dying, the medical practitioner or nurse practitioner involved should review and follow advice documents and standards of practice set out by their respective regulatory bodies regarding their participation in aspects of care related to medical assistance in dying and may also consult with their
insurers/protective associations. For nurse practitioners, the Canadian Nurses Protective Society has provided guiding information on medical assistance in dying.

5.3 The eligibility criteria, safeguards, and requirements set out in the Criminal Code and any regulatory standards or guidance shall be followed and documented in the patient record by the medical practitioner or nurse practitioner.

5.4 If a practitioner concludes that a patient does not meet the criteria for medical assistance in dying, the patient is entitled to have another authorized practitioner assess them against the criteria.

5.5 Where a medical practitioner or nurse practitioner is unable to determine if a patient has capacity to consent, a referral to a psychiatrist or psychologist may be required. A patient must have and maintain decision-making capacity in order for medical assistance in dying to proceed.

5.6 Medical practitioners or nurse practitioners who elect not to participate in medical assistance in dying for appropriate reasons, including reasons of conscience are not required to participate but should continue to provide required health care to a patient until services are no longer required or wanted or until another authorized practitioner has resumed responsibility of the patient through timely access to another authorized practitioner or resource with accurate information. Guidance is provided by the profession’s associations for conscience objection and is addressed in the standards of practice for medical practitioners and the Code of Ethics for registered nurses.

5.7 Under no circumstances shall the responsibility for providing medical assistance in dying be delegated or transferred from one medical practitioner or nurse practitioner to another medical practitioner, or nurse practitioner a) who has not personally verified the patient’s eligibility and consent for medical assistance in dying and b) who is not an independent medical practitioner or nurse practitioner as defined in the Criminal Code.

Note: With the patient’s consent, the provision of medical assistance in dying may be observed for learning purposes.

Regarding the scope of responsibilities of multiple authorized practitioners involved in MAID (e.g. a practitioner is away from Yukon when a patient wishes to proceed and another practitioner takes over care), the Canadian Medical Protective Association (CMPA) states the key consideration is that the provider who administers the medication must personally confirm that all of the eligibility criteria have been met and safeguards applied and may not solely rely on the assessment of another practitioner. They further indicate the Patient Record of Request for Medical Assistance in Dying could be relied on as additional confirmation of patient consent prior to re-affirming a patient’s consent immediately before intravenous substances are administered.

5.8 When the providing practitioner prescribes the substance for medical assistance in dying, the Whitehorse General Hospital Pharmacy pharmacist shall be informed when a prescription is being prescribed or obtained for the purpose of delivering medical assistance in dying (Note: until there are amendments to Yukon’s prescribing regulations for nurse practitioners and the hospital’s bylaws, only medical practitioners can prescribe MAID substances at this time).
5.9 A providing practitioner should discuss and have consent for a plan for medical assistance in dying with the patient, including measures that should be taken in the event of complications. Practice standards, advice from the insurer may provide further guidance for situations, such as self-administrated MAID.

5.10 Authorized practitioners should take care to ensure they have documented the requirements laid out in the Criminal Code with regards to medical assistance in dying. Medical assistance in dying should be recorded as required by legislation, standards of practice, or policy. Authorized practitioners are advised to consult with their regulatory bodies for guidance as to the appropriate documents to maintain on patient files. This includes, but is not limited to, capacity assessment, eligibility criteria, completed consent forms, substances administered, documentation of safeguards. CNPS recommends thoroughly documenting patient care provided before, during and after the provision of MAID.

5.11 Forms are available as voluntary aids to patients and authorized practitioners and are being provided to assist in maintaining records of requests for medical assistance in dying. They are based on the legislative guidelines set out in the Criminal Code.

Forms completed to support tracking medical assistance in dying include:

1) Patient Request for Medical Assistance in Dying. This form is to be completed by the patient after an authorized practitioner has determined that the patient has met the eligibility requirements and has a grievous and irremediable medical condition. The form must be witnessed by two independent witnesses who meet the eligibility criteria for being a witness as set out in Criminal Code s. 241.2(5). If a proxy signs on behalf of a patient, the authorized practitioner will need to satisfy themselves that the Criminal Code provisions for a proxy have been met.

2) Practitioner’s Record for Medical Assistance in Dying. This form is to be completed by the providing practitioner and the practitioner who provides a second opinion for MAID. It provides a checklist of steps required by the provisions of the Criminal Code and documentation of some key medical information.

These forms are available on the Health & Social Services web-site on MAID http://www.hss.gov.yk.ca/maid.php. These forms can be completed and kept on the patient file.

5.12 Authorized practitioners must comply with any legal requirements as set by the federal government, territorial government, or regulatory body for medical assistance in dying reporting requirements. At this time, it is anticipated that the Federal Government will have reporting requirements for information about MAID deaths in Yukon that practitioners will be required to respond to.

6. Standardized Prescription Protocols for Medical Assistance in Dying

The Whitehorse General Hospital Pharmacy will fill prescriptions from providing practitioners for medical assistance in dying. Such prescriptions must be made in the patient’s name and picked up by the providing practitioner directly. The Whitehorse General Hospital will provide the providing practitioner with two kits. A Standardized Prescription
Protocol is in place to support providing practitioners and hospital pharmacists. An authorized practitioner may obtain a copy from the Whitehorse General Hospital Pharmacy upon request.

Providing practitioners must inform the pharmacist of the purpose for which the substance is intended before the pharmacist dispenses the substance. This should be done as early as possible (e.g. at the commencement of the reflection period or at least 24 hours notice before intended use of the substance) to provide the pharmacist the sufficient time to obtain the required medications.

A providing practitioner writing a prescription must affirm with the pharmacist his/her willingness to dispense. The Whitehorse General Hospital has further requirements of both the providing practitioner and the pharmacist with regards to prescribed substances for medical assistance in dying. This includes returning unused substances back to the pharmacy within 24 hours. At this time, a nurse practitioner cannot prescribe substances for MAID until legal amendments are made to prescribing regulations and bylaws.

7. Fees for Medical Assistance in Dying

For those patients eligible for Yukon Health Care Insurance, drug costs will be covered by Insured Health.

Medical Practitioners have been issued fee codes that will apply for medical assistance in dying through a memorandum issued by Insured Health Services. Nurse practitioners are reimbursed via contract or wages, not fee for service codes.

8. Protocol for Completion of the Registration of Death Form in Medical Assistance in Dying

When a patient receives medical assistance in dying in Yukon, the Registration of Death form is completed by the responsible medical practitioner or nurse practitioner, in accordance with the Vital Statistics Act s. 19. The current version of the World Health Organization Classification of Disease does not include medical assistance in dying as an option for cause of death. As a result, the medical practitioner or nurse practitioner will complete the death registration form as follows:

- Report the underlying disease/illness causing the grievous and irremediable medical condition in Section 25 - Part I as the cause of death in accordance with the World Health Organization Classification of Disease, and

- Medical assistance in dying (or MAID) must be reported (hand written) on the form in Section 29 as the manner of death.

Example:

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<th>25. Cause of Death</th>
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<tr>
<td>Part I: Immediate cause of death a) <strong>Advanced ALS</strong></td>
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The Yukon Certificate of Death procedure will remain unchanged, and will not state the cause of death.

When notification of death to the Coroner is required:

While there is no general requirement for the Coroner to be notified of a medically assisted death, if the underlying grievous and irremediable condition which leads someone to make a decision for medical assistance in dying is related to an accident, violence, workplace exposure or injuries, or misfortune, the Coroner must be reported. This is a reportable death under the Coroners Act, as normally is the case.

The focus is on the circumstances of the condition that started the chain of events.

For example:

*Man dying of mesothelioma due to asbestos exposure which occurred 30 years prior at work. The cause of death is MAID due to the grievous and irremediable condition – but this death is required to be reported to the Coroner because the grievous and irremediable condition was potentially a work related exposure.*

*If we apply the “but for” test – “but for” the fact that this man had a work related exposure which later developed into terminal mesothelioma, he would not have decided to elect for MAID.*

**DEFINITIONS**

**Adult** means a person aged 18 years or older and capable of making decisions in respect of their health.

**Authorized Practitioner** means either a medical practitioner or a nurse practitioner as defined in this policy qualified to provide medical assistance in dying services or a second opinion.

**Consent** is defined in the *Care Consent Act*, s. 5.

**Medical Assistance in Dying** means,

(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** means a person who is entitled to practise medicine in the Yukon pursuant to the *Medical Profession Act*. 
**Nurse Practitioner** means a person who is entitled to practise as a nurse practitioner in the Yukon pursuant to the *Registered Nurses Profession Act*. 

**Providing Practitioner** means the authorized practitioner who provides the medical assistance in dying services by prescribing and administering MAID substances.

**Patient** means an adult who receives or has requested health care or services from health care providers and practitioners in Yukon.

**Second Practitioner** means the medical practitioner or nurse practitioner who provides a second written medical opinion to the providing practitioner that the patient meets all of the criteria set out in the *Criminal Code*, as part of the safeguards of the *Criminal Code*.

### REFERENCES

- Insured Health & Hearing Services Memorandum to all Yukon Physicians and Billing Staff, Fee Codes for Medical Assistance in Dying, June 27, 2016
- Registrar Vital Statistics Insured Health & Hearing Services Memorandum to all Yukon Physicians, Yukon Hospital Corporation, Yukon Registered Nurses Association, Yukon Medical Council, Protocol for Completion of Death Registration in Medical Assistance in Dying, September 1, 2016.
- Whitehorse General Hospital Standardized Prescription Protocols for Medical Assistance in Dying (practitioners should contact the Whitehorse General Hospital for a copy)
• Yukon Palliative Care Framework
• Yukon Government Continuing Care Medical Assistance in Dying Policy
• Standards of Care/Code of Ethics for the various health professions such as medical practitioners, registered nurses or LPNs (e.g. conscientious objection, collaboration in patient care, client-centred practice, assessing mental capacity of a patient, informed consent.)

VERSION HISTORY

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