

FAQ: Medical Assistance in Dying (MAID)

General FAQs related to registered nurses (RN) and nurse practitioner (NP)

What are the key changes introduced by Bill C-7?

On March 17, 2021, the senate passed Bill C-7, which changes requirements related to MAID under the *Criminal Code*. The key changes are:

- **Eligibility criteria:** The bill removes the restriction that MAID is available only for patients whose natural death is reasonably foreseeable. It is now available for reasonably foreseeable and not reasonably foreseeable natural death.
- **Safeguards:** The bill provides two sets of safeguards to protect patients and health care providers based on the foreseeability of death:
 - For patients whose natural death is reasonably foreseeable, the safeguards have been eased. For example, individuals no longer need to wait for a 10-day reflection period to pass before receiving the service.
 - There are new safeguards for patients whose natural death is *not* reasonably foreseeable. One is requiring a minimum of 90 days between the beginning of the first assessment and the day MAID is provided.

- **Waiver of Final Consent**

In specific circumstances, the requirement for final consent at the time of the MAID procedure can be waived. When advanced consent has been given, MAID can be administered for patients whose natural death is reasonably foreseeable:

- if they have been assessed and approved,
 - if they lose capacity to consent before their preferred date for MAID,
 - if they have a written arrangement with an NP or physician; and
 - If they neither demonstrate refusal by words, sounds or gestures, nor resist the administration of the substance.
- **Monitoring and reporting requirements**

The bill enhances reporting requirements. The changes in the revised legislation related to data collection include:

1. allowing for the collection of data on all assessments following a person's request for MAID; and
2. modifying the Minister of Health's regulation-making power to:
 - a. expand data collection to race, Indigenous identity and disability; and



b. seek to determine the presence of individual or systematic inequality or disadvantage in the context of delivery of MAID.

To learn more about these key changes, please refer to [Bill C-7, An Act to amend the Criminal Code \(medical assistance in dying\)](#).

What does it mean to have a “Grievous and Irremediable Medical Condition”?

The law states that an individual has a grievous and irremediable medical condition if:

1. They have a serious and incurable illness, disease or disability (excluding mental illness as the sole underlying medical condition until March 17, 2023);
2. They are in an advanced state of irreversible decline in capability; and
3. 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.

Further details on interpreting the legal definition of a grievous and irremediable medical condition can be found here: [Medical Assistance in Dying](#).

Who can be an independent witness for a patient requesting MAID?

An independent witness must be at least 18 years of age and understands the nature of the request for MAID may act as an independent witness, except if they:

- 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 that 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 that person resides; and
- are unpaid caregiver.

RNs, NPs, physicians and other persons who provide health care services or personal care for their primary occupation and who are paid to provide care to the person requesting MAID are permitted to act as an independent witness, except for:

- the NP or physician who will provide MAID to that person; and
- the NP or physician who provided an opinion that a person meets the eligibility criteria for receiving MAID.

The Nurses Association of New Brunswick (NANB) recommends to RNs and NPs who are considering being an independent witness for a patient to consult with the [Canadian Nurses Protective Society](#) before accepting such a role.



Who can obtain consent for MAID?

Consent for MAID must be obtained by the NP or physician who is authorizing the procedure.

FAQs related to RN practice

Are there any restrictions on how an RN can assist a patient in self-administration of medication to end life?

RNs are not authorized to administer a medication to end life. If an RN is assisting the patient to self-administer a medication that has been prescribed for them for the purpose of MAID, they should exercise extreme caution. The decision and action of taking the medication to end life must be the patient's own.

Is an RN accountable for confirming legal requirements have been met before assisting with MAID?

RNs are not responsible for assessing whether a patient meets eligibility criteria or documenting or collecting a patient's consent or written request for MAID. The NP or physician providing care to the patient is responsible for ensuring that the patient's written request meets legal requirements and documenting the patient's initial and final consent prior to administering MAID.

The RN does not need to confirm the specific details of how the assessment was conducted or documented. Where an NP or physician has not indicated that all criteria and safeguards have been met, the RN should follow-up with the NP or physician.

Can an RN pronounce death when death has occurred?

There is no legal barrier that would prevent an RN from pronouncing death in the context of MAID; however, there is a distinction between [“pronouncing death”](#) and [“certifying death”](#). RNs should consult employer policies and procedures in regard to pronouncing death.

FAQs related to NP Practice

What should the NP do when the second NP or Physician has concluded the patient does not meet the eligibility criteria?

This second confirmation is a legal requirement. MAID cannot be provided if the second NP or physician concludes that the patient is not eligible. Patients should be prepared for the possibility that even if you consider them to be eligible, the NP or physician who provides a second opinion may not agree. If the second NP or physician concludes that the client does not meet eligibility criteria, you need to inform the patient that you cannot proceed.



Can assessments of patient eligibility or witnessing of patient requests for MAID be done virtually?

The *Criminal Code* is silent on whether assessments of patient eligibility or witnessing of patient requests can be done virtually.

The NANB acknowledges that virtual tools may be used to conduct patient eligibility assessments and witness requests for MAID in the same circumstances these tools are used for all health care — when NPs can satisfy all their legal and professional obligations. The use of virtual tools for health care is particularly relevant within the context of the pandemic and aligns with [Health Canada's guidance](#).

As with use of virtual tools in general, NPs must consider the appropriateness of using these virtual tools on a case-by-case basis, ensuring they can meet their legal and professional obligations. In this context, conducting assessments of patient eligibility or witnessing patient requests for MAID virtually, may introduce risks that need to be mitigated in order to ensure compliance with the *Criminal Code* (e.g., ensuring voluntariness) and NPs' professional obligations.

The NANB appreciates the increased value virtual tools offer to support access to care and mitigate the risks associated with providing care during a pandemic. Our focus is on ensuring that NPs comply with the requirements of the *Criminal Code* and that the procedural safeguards that have been put in place to protect patients are satisfied in all instances, whether done in-person or virtually. Please refer to the NANB's [Telenursing Practice Toolkit](#) to better assist you in providing virtual care.

When is the written arrangement waiving final express consent no longer valid?

The federal legislation sets out that the written arrangement that waives final express consent made by a patient whose natural death is reasonably foreseeable is invalidated (permanently) if “a person demonstrates, by words, sounds or gestures, refusal to have the substance administered or resistance to its administration.”

Consequently, an NP or physician may only administer MAID in accordance with a written arrangement waiving final consent if they are satisfied that the patient has not demonstrated refusal or resistance to administration. *Involuntary* words, sounds or gestures made in response to contact are not considered a demonstration of refusal or resistance. The federal government has stated that the legislation does not provide any further direction and NPs will have to use their professional judgment to determine whether a patient's reaction indicated refusal or resistance to administration or it was an involuntary reaction in response to contact.

To help NPs comply with the *Criminal Code* and NANB's standards and guidelines, NPs are required to:

- collaborate with their broader healthcare teams;
- document any words, sounds or gestures made by the patient when the NP attempts to administer MAID in accordance with a written arrangement; and
- document their rationale for determining whether or not the patient's reaction indicated refusal or resistance to administration or was an involuntary reaction in response to contact.

What does it mean to have "expertise" in the condition that is causing the individual's suffering? What role does the "expert" play?

A new safeguard in place for individuals whose natural death is not reasonably foreseeable is the requirement that one of the two practitioners who confirm the individual's eligibility for MAID have expertise in the condition that is causing their suffering, or that they consult with an NP or physician who has such expertise.

The federal government has clarified that the practitioner's expertise must be in the condition that is causing the individual the *greatest* suffering. A practitioner does not need to have a specialty designation or certification in order to be considered an expert in the individual's condition. Expertise regarding the condition could be obtained through education and training or experience (e.g., treating patients with a similar condition).

If neither practitioner has expertise in the condition that is causing the patient the greatest suffering, a consultation with a third practitioner is required. The federal government has clarified that the expert would not be assessing the individual's eligibility for MAID. Instead, they would conduct a thorough assessment of the individual's status and treatment options, especially as it relates to options to reduce suffering, and provide advice regarding the reasonable and available services and/or treatment options that might relieve the individual's suffering. This may include advising on the nature or stage of the individual's condition or on the status of the individual's state of decline based on their knowledge of the trajectory associated with the condition. The information provided by the expert enables the practitioners who are assessing the individual's eligibility for MAID to complete a fully informed assessment of the individual.

The federal government has also advised that the assessment information will need to be provided by the expert in writing, so both practitioners who are assessing the individual's eligibility for MAID will have access to the entire information. To help NPs comply with the *Criminal Code*, NPs must thoroughly review and retain the written assessment provided by the practitioner with expertise as part of the patient's medical record.



Can an NP refuse to provide MAID after agreeing to be named in the waiver of final consent?

Yes, an NP can refuse to provide MAID after agreeing to be named in the waiver of final consent arrangement. There is nothing in the federal legislation that compels an NP or physician to provide MAID.

What are NPs accountabilities for federal reporting on MAID?

NPs have federal reporting requirements to Health Canada. Health Canada's authority to collect information related to MAID for the purpose of monitoring falls under the federal [Regulations for the Monitoring of MAID](#). Bill C-7 authorizes the expansion of federal data collection and reporting, however, the new reporting obligations only come into effect once the existing *Regulations for the Monitoring of MAID*, which outline federal MAID reporting requirements, are amended and come into force.

The process to amend the federal regulations on MAID monitoring will involve extensive consultations and is expected to take up to two years before reporting requirements are finalized and the regulations are in force by spring 2023. The federal government has advised that until the new regulations are in force, there are no new federal reporting requirements under the current reporting regime.

The federal government has advised when completing federal reporting forms for MAID there are currently some questions that are no longer applicable or that are inconsistent with Bill C-7 changes. Until the required changes are made to the federal Portal and forms, NPs are advised to follow instructions from the [Guidance for reporting on medical assistance in dying - Summary](#).

This content is adapted with permission from the College of Nurses of Ontario - the original work is available on www.cno.org.

Resources

[Medical Assistance in Dying](#) (CNA)

[National Nursing Framework on Medical Assistance in Dying in Canada](#) (CNA)

[Palliative and End-of-Life Care](#) (CNA)

[Bill C-7, An Act to amend the Criminal Code \(MAID\)](#) (GC)

[Canada's new MAID law](#) (GC)

[Medical Assistance in Dying](#) (GC)

[At a Glance: Practitioners' Reporting Responsibilities for Medical Assistance in Dying Infographic](#) (GC)

[Guidance for Reporting on Medical Assistance in Dying - Summary](#) (GC)



[Framework on Palliative Care in Canada](#) (GC)

[Medial Assistance in Dying: What Every Nurse Should Know](#) (CNPS)

[Canadian Association of MAiD Assessors and Providers](#) (CAMAP)

[Practice Guideline for Registered Nurses and Nurse Practitioners: Medical Assistance in Dying](#)
(NANB)

If you have further questions related to assisting with or providing MAID, please contact NANB to speak with a Nurse Consultant by email at nanb@nanb.nb.ca or by phone at 1-800-442-4417/1-506-458-8731.