

Accessing MAiD in Canada: Streams, Safeguards and Exceptions Under the New Law (C7)

Dr. Carlye Jensen MD, CCFP (EM)

Chief Uxbridge Site

Kevin Reel MSc, BSc(OT), OT Reg (Ont)

Ethicist MSH

Learning Outcomes

- Understand the **recent revisions** to Canadian law on assisted dying
- Become familiar with the **safeguards** in the law and exceptions to them
- Gain an awareness of the possible **complexities** inherent in broadened access to MAiD
- Be aware of **how and where to find support** for honouring MAiD requests



Mary Wilson

- Mother of three, married for 52 years
- Diagnosed with Alzheimer's in 2013 after issues with faltering memory
- From 2013 to 2017 Alzheimer's lost her ability to drive, tell time, read the morning paper and eventually the ability to remember the names of her youngest children
- 2017 requested MAiD, became first in Canada with sole diagnosis of Dementia

Jean Truchon & Nicole Gladu

- **Jean Truchon;** Born with cerebral palsy Jean had only 1 functional limb, he then lost the use of this final limb.
- **Nicole Gladu;** post polio syndrome, as well as scoliosis, which has distorted her body to the extent that it is hard to breathe.
- Due to intolerable suffering both requested MAiD but were initially denied b/c NDnotRF



Audrey Parker

- Diagnosed with stage 4 breast cancer with mets to brain
- Was fearful of losing capacity and therefore losing her ability to access MAiD
- Instead of seeking MAiD after Christmas, which was her desire, she decided to seek MAiD earlier in Nov 2019
- Posthumously requested for amendments to allow for Waiver of Final Consent.



Background: First law & Challenge

June 2016

- After *Carter v Canada*, former Bill C-14 decriminalized MAiD for:
 - adults
 - with decision-making capacity
 - experiencing a grievous & irremediable condition
 - who are suffering intolerably and
 - **whose natural deaths are reasonably foreseeable (NDRF)**

Dec 2018

- Council of Canadian Academies considered issues re MAiD for:
 - mature minors
 - **advance requests** (this is NOT the same as “advanced directives”)
 - requests where ‘mental disorder is the sole underlying condition’ (SUMC)

Sept 2019

- Superior Court of Québec declares the criterion “**reasonable foreseeability of natural death**” unconstitutional
- The ruling, which applies only in Quebec, was not appealed
- The Court suspends the declaration of invalidity for six months (until March 11, 2020)

Background: Amendments

Feb 2020

- Introduction of first bill in response to Superior Court of Québec *Truchon* decision to allow MAiD in setting of **natural death not reasonably foreseeable (NDnotRF)**
- Parliament subsequently prorogued (COVID)

Jun 2020

- Former Bill C-14 required a Parliamentary Review of the MAiD regime and the state of palliative care to begin 5 years after coming into force (June 2020)

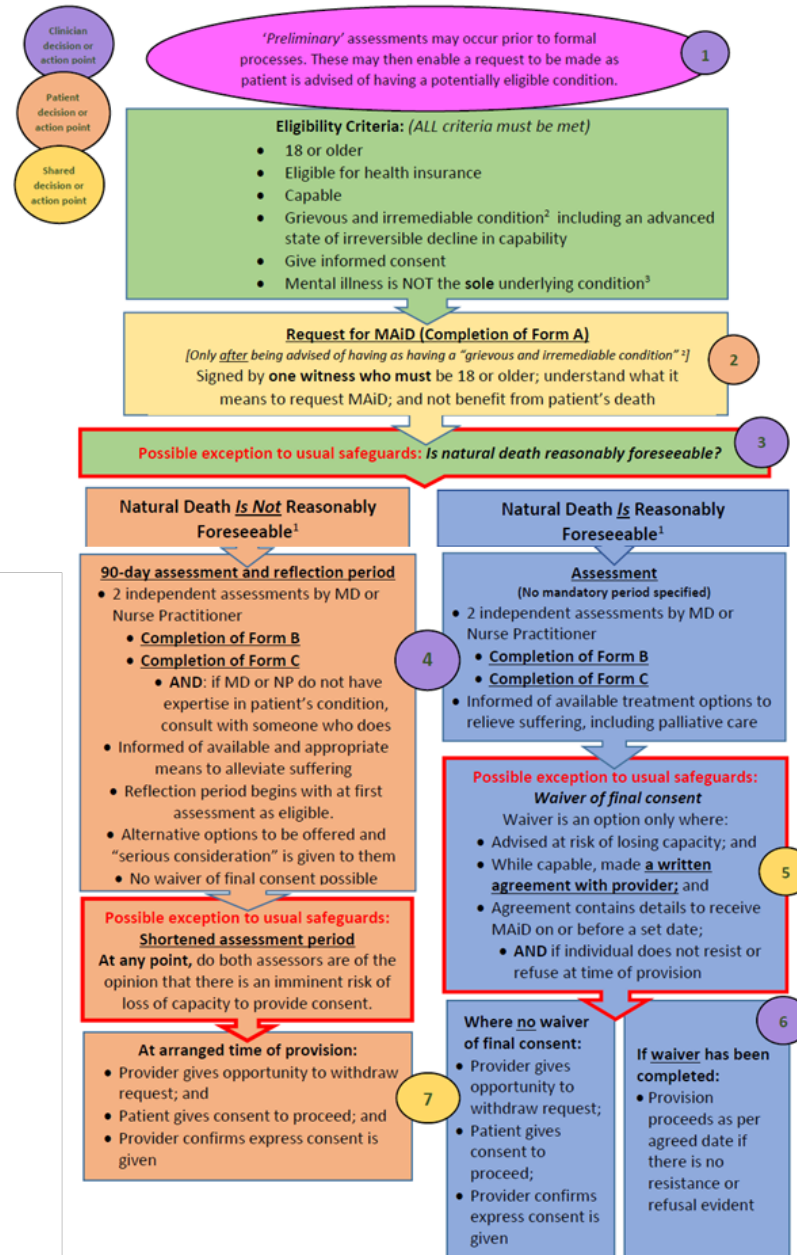
Oct 2020
To
PRESENT

- Oct Bill C-7 reintroduced to Parliament
- Feb passed through Senate
- Mar 17th Bill C-7 received Royal Assent

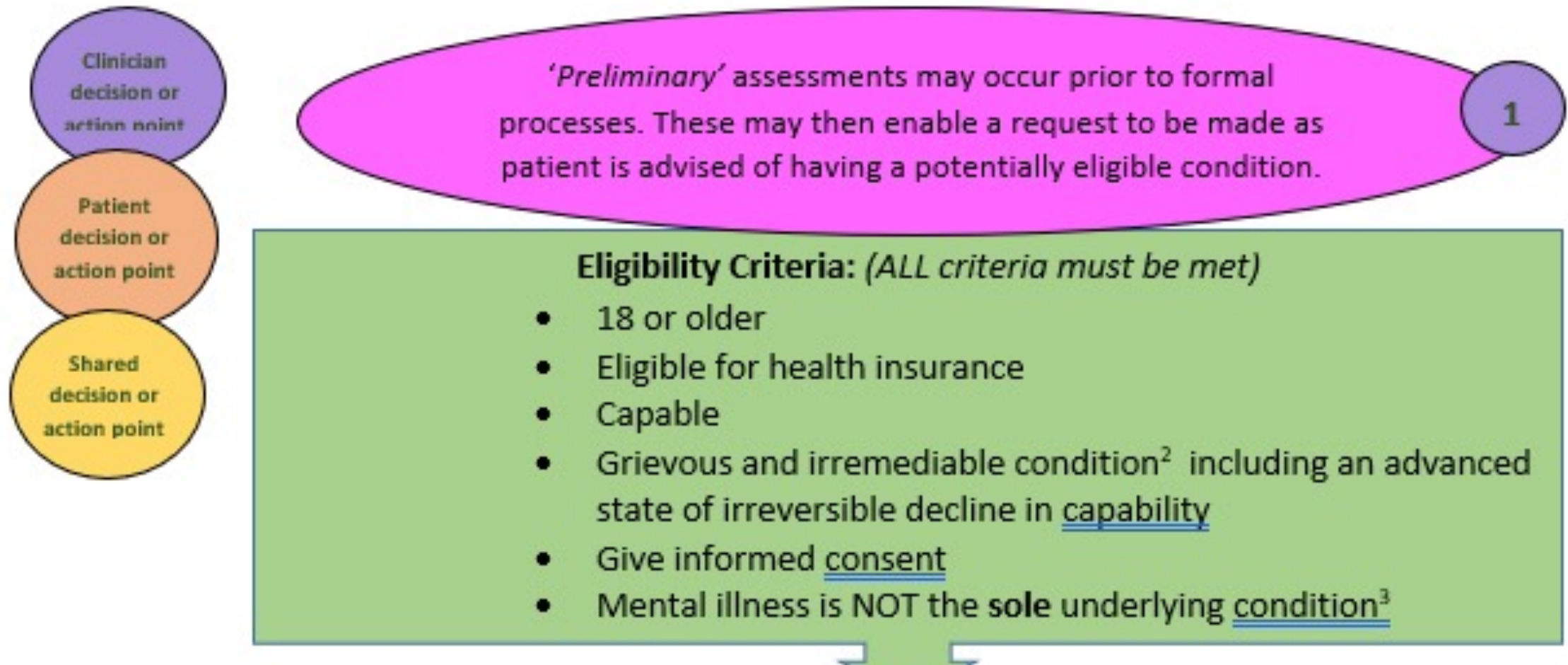
What's new with C7 vs. C14?

1. Eligibility criteria; No longer need NDRF
2. Procedural safeguards: some increased, some relaxed; 2 streams
3. Advance requests (*not advanced directives*) for Stream 1 (Audrey's Amendment)
4. Reporting/Monitoring
5. Independent and parliamentary reviews

Accessing Medical Assistance in Dying (MAiD) – Safeguards and Exceptions
(Following the passing of Bill C-7 in March 2021)



Step 1: are they **eligible**?



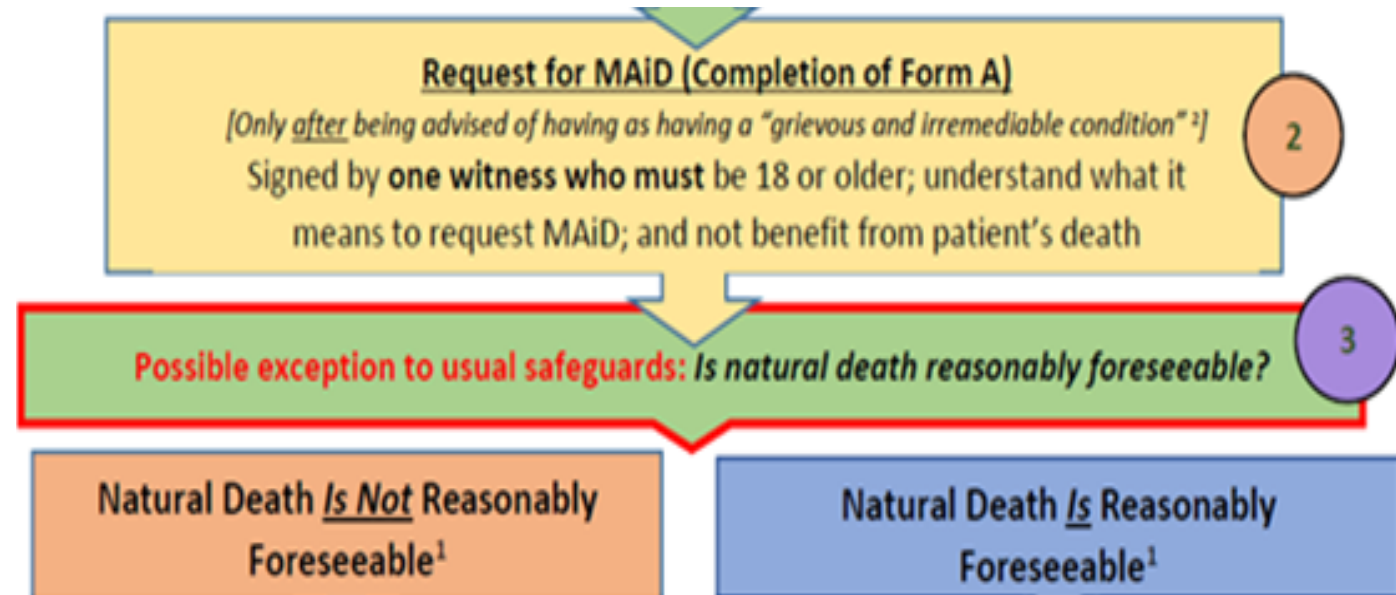
Change in Eligibility

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; **and**
- (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~~

Step 2: Making a request

- Patient makes a formal request
- Only ONE witness is required (previously 2) and there is option for virtual witnessing
- Paid HCW (not providers) can be witness/proxy
- Next steps depend on:
NDnotRF vs. **NDRF**



Step 3: Determine which stream

Natural Death Is Not Reasonably
Foreseeable

Natural Death Is Reasonably
Foreseeable

Important point:

C-7 did NOT change the meaning of “**natural death has become reasonably foreseeable**”

- NDRF does **NOT** mean
 - 12 months prognosis
 - 24 months prognosis
 - ANY specific prognosis
- NDRF **DOES** mean
 - Sufficient ***temporal proximity***
 - End stage Cancer
 - End stage COPD/CHF
 - ***Predictable trajectory*** toward death
 - ALS diagnosis ✓
 - Clear intent to refuse potentially life-sustaining therapy (e.g., BiPAP) ✓
 - Dementia ✓

NDRF today means what it meant six months ago

Step 3: Determine which stream

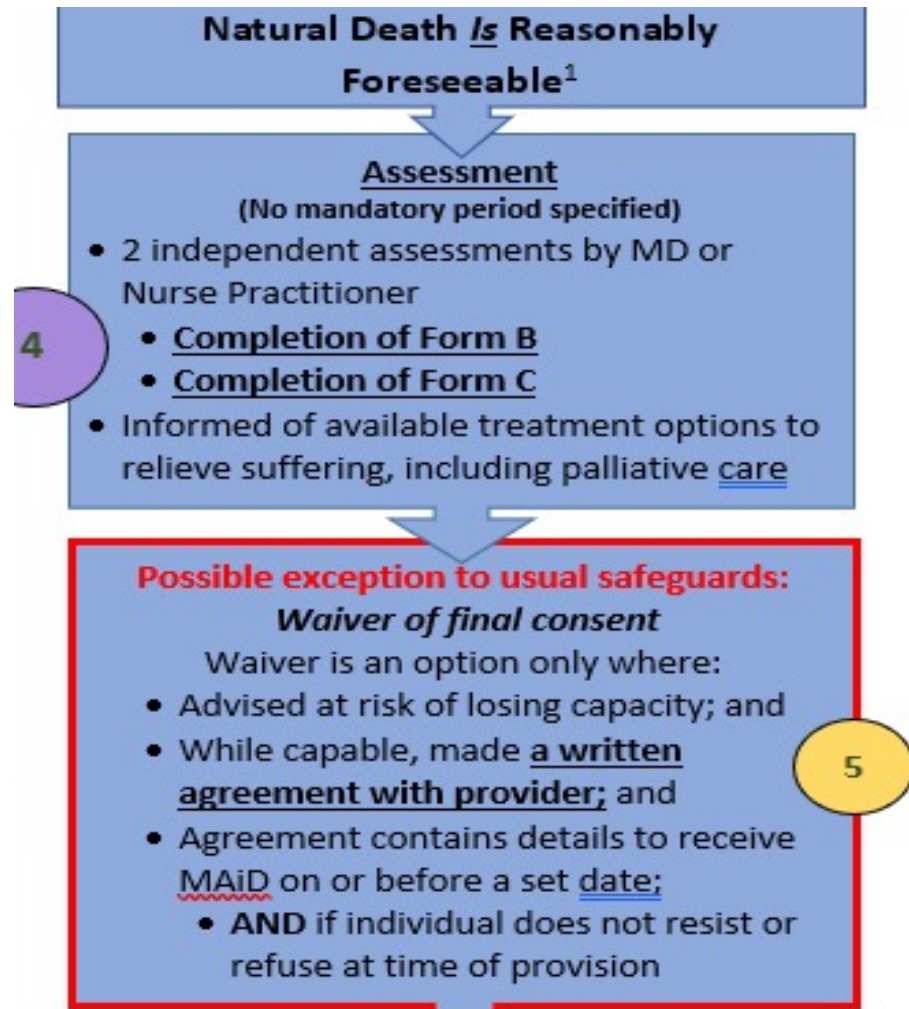
Natural Death Is Not Reasonably
Foreseeable

- Chronic Pain Syndromes
 - Fibro, OA, DDD
 - Cluster headaches
- Disabilities
 - Cerebral palsy, SCI, blindness
- Chronic Fatigue Syndrome

Natural Death Is Reasonably
Foreseeable

- Terminal Cancer
- ALS
- Organ Failure (renal, cardiac, resp, liver)
- Multiple sclerosis
- Dementia*

Step 3: Determine which track



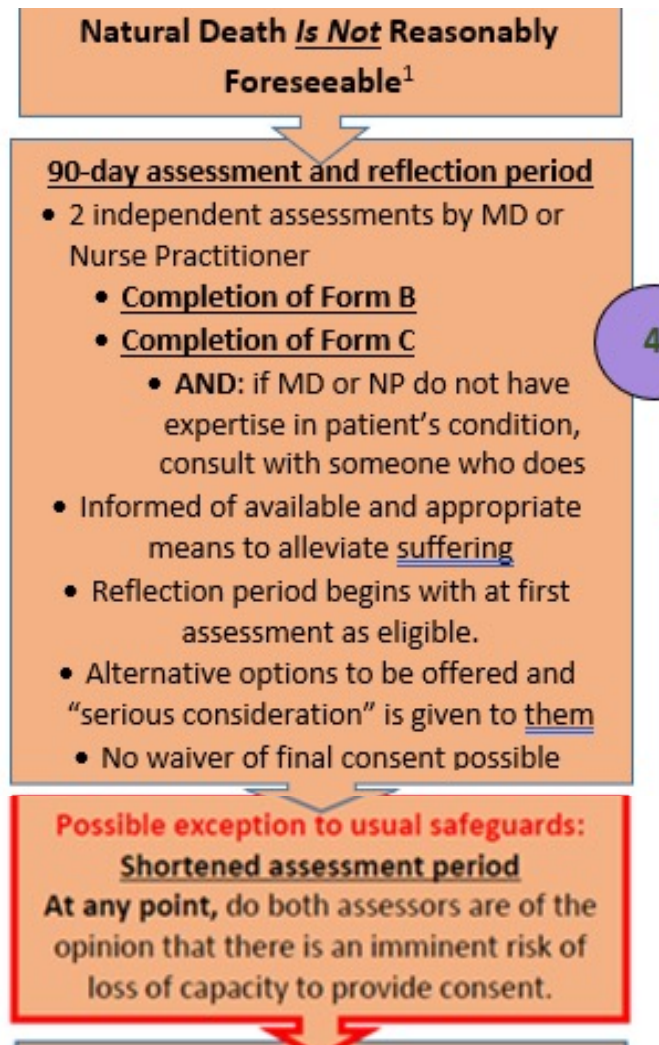
Stream 1: ND is RF

- C7 has **relaxed** some safeguards
- **No 10 day waiting period**
- Additional option of
 - **Waiver of Final Consent** (WFC): provision can be given *if* loss of capacity on or before set date
 - **Advanced Consent**: provision of MD/ND delivered MAiD *if failed self administration*

Waiver of Final Consent

Medical Assistance in Dying WAIVER OF FINAL CONSENT		2021/03/18	Patient Label
HLTH 1645 PAGE 1 OF 2			
<p>If the Requestor loses capacity and MAiD is administered in accordance to the terms of this agreement, Prescriber must fax this and all required forms to the BC Ministry of Health at 778-698-4678 and to the health authority MAiD Care Coordination Service (if required) within 72 hours of confirmation of requestor's death. Retain original in requestor's health records.</p>			
<p>Written arrangement between the Requestor named below and the MAiD Prescriber named below for medical assistance in dying in accordance with section 241.2(3.2) of the <i>Criminal Code of Canada</i> (The waiver of final consent is ONLY applicable for individuals whose natural death is reasonably foreseeable)</p>			
1. REQUESTOR INFORMATION			
Last Name		First Name	Second Name(s)
<input type="text"/>		<input type="text"/>	<input type="text"/>
Personal Health Number (PHN)		Birthdate (YYYY / MM / DD)	Gender <input type="radio"/> Male <input type="radio"/> X (specify)
<input type="checkbox"/> N/A		<input type="text"/>	<input type="radio"/> Female <input type="text"/>
2. MAiD PROVIDER INFORMATION			
Name of MAiD Provider		Phone Number	Agreed Date of MAiD Provision (YYYY/DD/DD)
<input type="text"/>		<input type="text"/>	<input type="text"/>
3. REQUESTOR CONSENT			
Initials	I, the Requestor named above, request that the MAiD Prescriber named above provide me with medical assistance in dying on the Agreed Date of MAiD Provision stated above.		
Initials	I have been informed by the MAiD Prescriber named above that I meet the eligibility criteria set out in section 241.2(1) of the <i>Criminal Code of Canada</i> and that all other safeguards set out in subsection (3) have been met.		
Initials	I have been informed by the MAiD Prescriber named above of the risk of losing capacity to consent to receiving medical assistance in dying prior to the day specified in this arrangement.		
Initials	I consent to receive medical assistance in dying on the date above, even if I no longer have the capacity to consent to receive medical assistance in dying on that date.		

Step 3: Determine which track



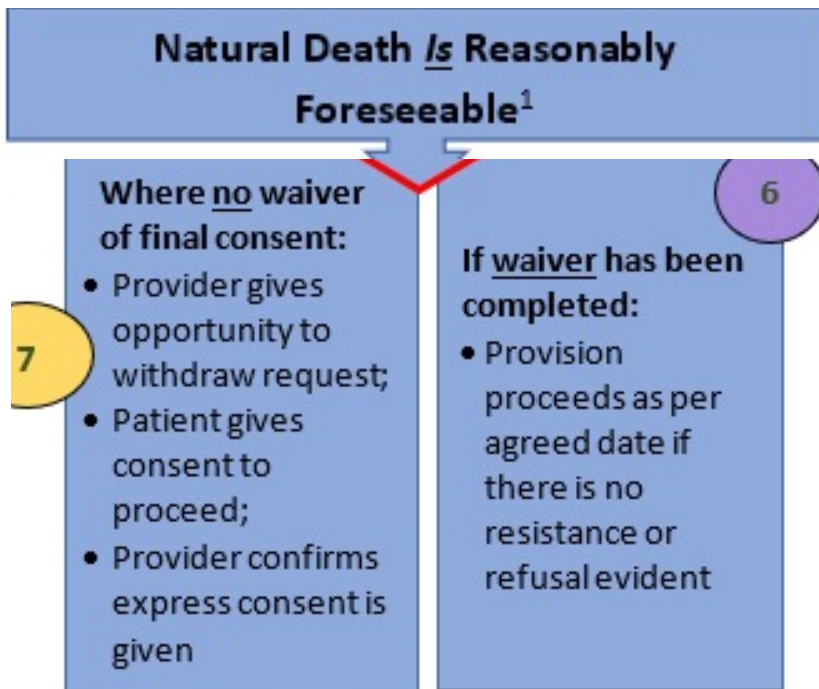
Stream 2: ND not RF

- C7 has **added** safeguards
- **90 day** reflection period
- Must have **expertise** with regards to the mgmt of the underlying condition
- Patient '**must**' **consider** the alternative options to relieve their suffering
- No option for waiver of final consent
- Can flip into **track 1** if ND becomes RF

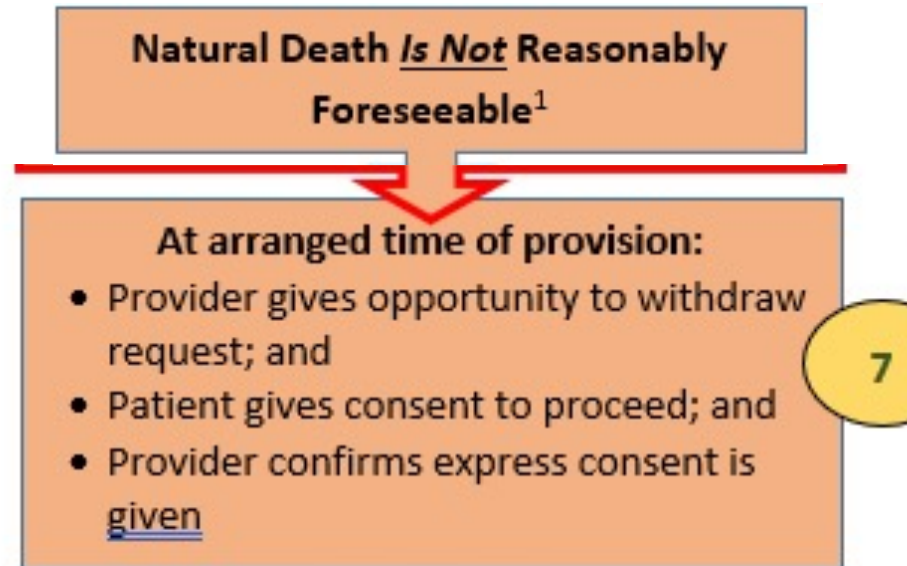
Step 4: Provision of MAiD

Stream 1: ND is RF

- Patient *is* capable
 - Provision as per normal
 - Option to withdraw
- Patient is no longer capable
(If WFC has been obtained)
 - Provision provided on agreed upon date provided no indications of refusal (gestures/words etc.)
 - 3rd parties cannot intervene/block



Step 4: Provision of MAiD



Stream 2: ND not RF

- Provider proceeds after providing option to withdraw and getting explicit consent to proceed
- No waiver of final consent (can have *advanced consent* if failed self-administration)
- If loss of capacity (e.g. intercurrent stroke, head injury) then is no longer eligible.
- If someone is at risk of losing capacity then the 90d period can be shortened.

Cases

Gayle Garlock

- 70yo M with LBD (2 yrs ago)
- Married with children who support his decision
- Retired university librarian and avid reader
- Can no longer read a book, follow a TV program, manage his own affairs.
- Requesting MAiD because of intolerable suffering and loss of independence





Janet Hopkins

- 69yo with chronic pain related to RA; Lichen Sclerosis; OA; fibromyalgia
- Happily married with supportive family requesting MAiD on basis of her daily suffering
- *“What is considered an acceptable amount of suffering? How much is enough to satisfy those who can’t or don’t want to understand? There is a limit to one’s endurance. It’s not that we want to die, it is that the pain has taken away the will to live. I am not the same person I was all my life. I am losing myself.”*

Changes re: **WHO** to Reporting

C-14

- All cases in which **written request** for MAiD is submitted
- **Physician/NP** who received written request

C-7

- All cases in which an **assessment** takes place (MD/NP)
- **Pharmacist and pharmacy technician** who dispenses a substance in connection with provision of MAiD
- (cannot delegate)

Changes re: **WHAT** is being Reported

- the **elements considered** in the course of the assessments — preliminary or otherwise — of whether a person meets the eligibility criteria
- information respecting the **race or Indigenous identity** of a person who requests or receives MAiD,
*if the person consents to providing this information
- Information respecting **any disability** of a person who requests or receives MAiD,
*as defined in section 2 of the Accessible Canada Act
* if the person consents to providing that information

Changes re: **WHAT is being done** with the reported information

- Use, analysis and interpretation of information gathered, including for the purposes of determining the presence of **any inequality – including systemic inequality – or disadvantage based on race, Indigenous identity, disability, or other characteristics**, in requests or provision of MAiD

What's Next?

- **Independent Expert Review:**

- recommended protocols, guidance and safeguards to apply to requests made for MAiD by persons who have a **mental illness**

- **Parliamentary Review**

- C-14; review of **provisions & state of palliative care**
- C-7: review of the Criminal Code MAiD provisions and their application including but not limited to
 - **Mature minors**
 - **Advance requests**
 - **Mental illness**
 - **State of palliative care in Canada (leftover still from c-14)**
 - **Protection of Canadians with disabilities**

NEW Non-Legislative Measures

- Minister of Health to work with provinces and territories, health system partners and health practice regulatory bodies to develop, implement, monitor and report on MAID practice guidelines, training and retrospective review processes and results.
- Minister of Employment, Workforce Development and Disability Inclusion to work with provincial and territorial partners to enhance disability supports.

Questions?

ethics@msh.on.ca

maid@msh.on.ca

References

- <https://www.health.gov.on.ca/en/pro/programs/maid/>
- <https://www.canada.ca/en/health-canada/services/medical-assistance-dying/guidance-reporting-summary.html>
- <https://camapcanada.ca/wp-content/uploads/2019/05/Assessing-MAiD-in-Dementia-FINAL-Formatted.pdf>
- <https://www2.gov.bc.ca/assets/gov/health/forms/1645fil.pdf>