# REGULATORY AMENDMENTS FOR THE MONITORING OF MAID

## Objective

The proposed amendments to the existing 2018 *Regulations for the Monitoring of Medical Assistance in Dying* will align the MAID monitoring regulations with the recent legislative changes to MAID, and enhance data collection and reporting through the federal MAID monitoring regime to provide a more comprehensive picture of how MAID is being implemented in Canada.

More specifically, the proposed regulatory amendments will:

- Capture broader information regarding requests for and the provision of MAID;
- Allow for the collection of data on all assessments following a person's request for MAID (verbal and written);
- Allow for the collection of information on procedural safeguards for persons whose natural death is not reasonably foreseeable;
- Reflect other legislative changes such as, reporting on when a waiver of final consent is used for persons whose natural death is reasonably foreseeable; and
- Allow for the collection of data that can be used to help determine the presence of any systemic inequality or disadvantage based on gender identity, race, Indigenous identity, disability or other characteristics, in MAID.

In addition, the proposed regulatory amendments will continue to:

- Support public accountability and transparency in relation to MAID in order to build public trust;
- Support the protection of vulnerable individuals by monitoring the application of the eligibility criteria and procedural safeguards required by the legislation;
- Identify and monitor trends in requests for, and the provision of, MAID; and
- Make data available to qualified researchers for the purposes of enabling independent analysis and research.

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## SUMMARY OF PROPOSED REGULATORY AMENDMENTS

The following provides a high-level summary of the proposed amendments to the existing 2018 *Regulations*. For a more comprehensive overview, including contextual information related to the regulatory proposal, you may wish to consult the Regulatory Impact Analysis Statement available on the *Canada Gazette* website.

### Important and Noticeable Changes

- The term "patient" has being replaced by the term "person" throughout the proposed Regulations (this is consistent with the *Criminal Code*);
- Requirement for reporting is no longer triggered by a "written request" for MAID, but rather by "a" request (verbal or written) that is followed by an assessment;

- New requirements for other health professionals to file reports:
    - Preliminary assessors (health professionals who have the responsibility to conduct preliminary assessments of requests, such as those in a care team or working at a care coordination service[1]) will be required to report on MAID requests in cases where they deem the applicant ineligible (and where the requests are not passed on to a medical practitioner/nurse practitioner for a further assessment or the provision of MAID),
    - Pharmacy technicians will be required to report, in lieu of a pharmacist, when they are responsible for verifying and signing off on a substance for the purpose of MAID, once it is prepared;
- Reducing the requirement from two independent witnesses signing the person's request for MAID to one witness (introduced by the legislation);
- The reporting of compliance with procedural safeguards has been placed into separate Schedules:
    - Schedule 4 contains safeguards for persons whose natural death is reasonably foreseeable (RFND also known as, Track 1),
    - Schedule 4.1 contains safeguards for persons whose natural death is not reasonably foreseeable (Non-RFND also known as, Track 2).

## New Information to be Reported

MAID assessors and providers will be required to report on the following new information related to:

- Procedural safeguards for persons whose natural death is not reasonably foreseeable;
- The application of the waiver of final consent for persons whose natural death is reasonably foreseeable (embedded in Schedule 4);
- The application of advance consent for practitioner-administered MAID in the event of complications with self-administration (available both in cases where natural death is reasonably foreseeable and where it is not) (embedded in Schedule 6);
- Additional information on disability support services and palliative care services received by persons seeking MAID;
- Race, Indigenous identity and presence of disability of persons requesting MAID (where the person consents to providing this information);
- Gender, in addition to data already collected on sex at birth, to reflect current data collection standards and a more inclusive approach to reporting on gender;
- The means used to ensure that the person seeking MAID understood the information that was provided to them and communicated their decision;
- A person's previous request for MAID, if applicable;

[1] Each jurisdiction will define which health professionals will have the responsibility to conduct preliminary assessments.

- The length of the MAID assessment process;
- Cases where the person was found eligible to receive MAID, but the practitioner was unable to administer MAID due to procedural safeguard(s) not being met.

For an overview of the information to be reported in the context of a MAID assessment or MAID provision, refer to Table 1 below.

## Repealed or Discontinued Reporting Requirements

- Information related to a referral[2] or transfer of care of a person[3] (e.g. when a practitioner receives a request for MAID and refers the person to another practitioner or care coordination service, or as a result of the request, transfers the care of the person to another practitioner). As such, “Refer” has been repealed from the Definitions section and Schedule 2 of the existing Regulations has also been repealed;
- Information related to the ten-day reflection period for persons whose natural death is reasonably foreseeable (repealed by the Act);
- Date on which the person (or other person) signed the request for MAID;
- Date on which the practitioner signed the written opinion.

## Reporting Timelines

- Some reporting timelines have been lengthened to reflect the often longer and more complex assessment processes for persons whose natural death is not reasonably foreseeable (see Table 2 for all timelines for scenarios with a reportable outcome).

[2] Information related to a referral has been removed given different approaches among the provinces/territories posing challenges to collecting consistent and reliable data.
[3] Only information related to the transfer of a person (from one place to another) specifically for the purposes of administering the substance to them will continue to be required. This information will now be reported by the MAID provider through Schedule 6 – Administering a Substance.

## TABLE 1 – INFORMATION TO BE CAPTURED THROUGH THE FEDERAL MAID MONITORING SYSTEM[4]

**Red Text: denotes new requirements / information to be captured**

| OUTCOME | Basic Information (Schedule 1) | Eligibility Criteria and Related Information (Schedule 3) | Procedural Requirements Track 1 Safeguards (RFND) (Schedule 4) | Procedural Requirements Track 2 Safeguards (Non-RFND) (Schedule 4.1) | Prescribing / Providing a Substance (Schedule 5) | Administering a Substance (Schedule 6) |
|---|---|---|---|---|---|---|
| | **Scenarios resulting in a MAID death** | | | | | |
| **MAID by practitioner administration** | Person requesting MAID<br>• DOB; sex at birth; gender, race; Indigenous identity, disability (self-identification); postal code; health card number.<br><br>Practitioner (assessor)<br>• Type & specialty; contact information, & phone number; previous contact with requester.<br><br>Preliminary Assessor<br>• Type; contact information & phone number.<br><br>Request<br>• Date MAID request (verbal/written) was received; outcome of any previous MAID request. | Eligibility<br>• Confirmation of eligibility criteria and information on assessment process (e.g. description of illness/ disease/disability; suffering; advanced state of decline; voluntary request).<br><br>Other Information<br>• Date on which first assessment began & length of assessment period;<br>• Palliative Care (whether required and received, access to care, type, duration & location);<br>• Disability Support Services (whether required and received, access to care, type & duration);<br>• Professionals consulted & type;<br>• Whether person was RFND or non-RFND;<br><br>Cases where person was found eligible but MAID not provided:<br>• Information on subsequent determination of ineligibility (criteria not met);<br>• Information on safeguard(s) not being met. | • Confirmation that eligibility criteria met;<br>• Official written request signed / before one witness / after person informed of grievous / irremediable condition;<br>• Written 2nd opinion by another independent practitioner obtained;<br>• Person informed they are able to withdraw request at any time, in any way;<br>• If person had difficulty communicating – information on the means used to communicate with person;<br>• Practitioner informed Pharmacist that substance prescribed is for MAID procedure;<br>• Person gave final consent before MAID provided OR person had a waiver of final consent (WFC) in place;<br><br>For cases where the person had a WFC in place – confirmation that:<br>• All WFC requirements were met (WFC was in place; person informed of risk of losing capacity; person consented to receiving MAID before specified date if there was a loss of capacity; person had lost capacity to consent; person did not demonstrate refusal of MAID; MAID provided as per terms of WFC). | All Track 1 (RFND) Safeguards (*except those specific to the WFC*) in addition to the following:<br><br>• Expertise in condition causing the person's suffering [MAID assessor(s) or third practitioner; nature of expertise];<br>• Minimum 90-day assessment period OR rationale for shortening;<br>• Services/treatments to relieve suffering: means that were discussed with person; consultations that were offered;<br>• Agreement by MAID assessors and the person that the means were seriously considered. | • Date practitioner prescribed / provided the substance;<br>• Place where the person was residing;<br>• Whether practitioner was present;<br>• If practitioner is aware self-administration took place – confirmation of death, date and location of death;<br>• If practitioner is aware self-administration did **not** take place – date and cause of death other than MAID. | • Date and place where practitioner administered substance;<br>• Whether the person was transferred for provision of MAID and the reason(s) for the transfer;<br>• Whether provision occurred after failed self-administration.<br><br>For cases of advance consent for practitioner-administered MAID (second substance) in the event of complications with self-administration – confirmation that:<br>• The person had an agreement in place (prior to losing capacity);<br>• The practitioner was present during self-administration;<br>• The person had lost capacity to consent after failed self-administration;<br>• Second substance was provided after failed self-administration and in accordance with the terms of the agreement. |
| **MAID by self-administration** | Same as above | Same as above | Same as above<br>(except requirements specific to the WFC) | Same as above | Same as above | |

[4] This Table provides an abbreviated overview of information to be reported. Those with reporting obligations should always refer to the actual *Regulations* for the reporting requirements.

| OTHER REPORTABLE OUTCOMES | Basic Information (Schedule 1) | Eligibility Criteria and Related Information (Schedule 3) | Procedural Requirements Track 1 Safeguards (RFND) (Schedule 4) | Procedural Requirements Track 2 Safeguards (Non-RFND) (Schedule 4.1) | Prescribing / Providing a Substance (Schedule 5) | Administering a Substance (Schedule 6) |
|---|---|---|---|---|---|---|
| | **Scenarios not resulting in a MAID death** | | | | | |
| **Determination of ineligibility**<br><br>**(this is the only scenario where a person with the responsibility to carry out preliminary assessments may report)** | Same as above | Same as above | | | | |
| **Withdrawal of request** | Same as above | Same as above if person had been found eligible prior to withdrawal of request, plus:<br>• Reason(s) for withdrawing the request;<br>• Means that were chosen by the person to relieve their suffering (where applicable) | | | | |
| **Death from another cause** | Same as above | Same as above if person had been found eligible prior to dying from another cause, plus:<br>• Whether the practitioner completed a death certificate (if so, date & cause of death, information on immediate or underlying cause);<br>• Reason(s) why MAID was not provided (e.g. operational; no date scheduled, etc.). | | | | |
| **Person eligible but MAID not provided because practitioner unable to satisfy procedural safeguard(s)** | Same as above | Same as above plus:<br>• An indication of which procedural safeguard(s) could not be met. | | | | |
| **Pharmacist who dispensed a substance in connection with the provision of MAID OR, Pharmacy technician who dispensed a substance to aid a practitioner in providing MAID.** | | | **Dispensing a Substance (Schedule 7)**<br><br>• DOB; health card number & issuing P/T; postal code;<br>• Pharmacist / Pharmacy Technician contact information;<br>• Date & place the substance was dispensed;<br>• Information in respect of the practitioner who prescribed or obtained the substance. | | | |

## TABLE 2 – REPORTING TIMELINES[5]

| Reportable Outcome | Timelines under existing 2018 *Regulations* | Timelines under the proposed amended *Regulations* |
|---|---|---|
| **Determination of ineligibility** | Within 30 days after the day on which the practitioner makes that determination | Timeline remains the same<br>(note that the determination may be made by a preliminary assessor) |
| **Withdrawal of request** | Within 30 days of becoming aware of the person's withdrawal of a written request for MAID | Timeline remains the same<br>(note that the request may be written or verbal) |
| **Death from another cause** | Within 30 days after the day on which the practitioner becomes aware that the person died from a cause other than MAID | Timeline remains the same |
| **MAID not provided because practitioner unable to satisfy procedural safeguard(s)** | N/A | Within 30 days after the day on which the practitioner determines that they are unable to satisfy procedural safeguard(s) |
| | The requirement to report ceases if none of the outcomes described above have occurred within 90 days of receiving a written request, with the exception of "provision of MAID" (whether by administering a substance or by prescribing/providing a substance for self-administration), for which the requirement to report does not cease. | The requirement to report ceases if none of the outcomes described above have occurred within 90 days of receiving a written/verbal request (in the case of a person whose natural death is reasonably foreseeable) or within two years (in the case of a person whose natural death is not reasonably foreseeable), with the exception of "provision of MAID" (whether by administering a substance or by prescribing/providing a substance for self-administration), for which the requirement to report does not cease. |
| **MAID by practitioner-administration** | Within 30 days after the day on which the person dies | Timeline remains the same |
| **MAID by self-administration** | No earlier than 90 days, and no later than 120 days, after prescribing or providing the substance | No earlier than 90 days, and no later than one year, after prescribing or providing the substance |
| **Pharmacist or Pharmacy Technician dispensed a substance** | Within 30 days after the day on which the substance is dispensed | Timeline remains the same |

[5] Some provinces and territories have shorter timelines for filing a report – the provincial or territorial health ministry should be contacted to determine jurisdiction-specific timelines.