

C18-200

Date: October 9, 2018  
To: Ontario Health Care Practitioners  
From: Dirk Huyer, MD  
Re: Medical Assistance in Dying Update

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Monitoring and oversight are key components of the federal and provincial medical assistance in dying (MAiD) legislation. Under the Coroners Act, the Office of the Chief Coroner for Ontario (OCC) has responsibility for the monitoring and oversight of MAiD deaths in Ontario. The OCC reviews all MAiD deaths to evaluate compliance with legal and regulatory obligations and can undertake further investigative steps where indicated. Practitioners are responsible for providing the information required by the OCC to undertake a complete review of each death. Further information about the MAiD process is located on the Ministry of Health and Long-Term Care website (<http://www.health.gov.on.ca/en/pro/programs/maid/>).

I am writing to provide you with an update of the first two years of MAiD in Ontario and to inform you of changes in process that will be made when the new Federal regulations come into effect on November 1, 2018.

The new Federal regulations require additional information to be provided by practitioners and include penalties for failing to provide this information. A copy of the final regulations can be accessed here: <http://www.gazette.gc.ca/rp-pr/p2/2018/2018-08-08/html/sor-dors166-eng.html>

As of August 2018, the OCC has reviewed 2000 cases where MAiD has been administered in Ontario. During the mandatory OCC case review, we explore what was considered by the practitioner and their rationale for being satisfied that all legislative requirements were met. Overall, the provision of information by practitioners to the OCC has been timely and thorough. However, some case reviews have demonstrated compliance concerns with both the Criminal Code and regulatory body policy expectations, some of which have recurred over time.

To date, the OCC MAiD review team has engaged with practitioners on a case-by-case basis to request any information that was missing, appeared inconsistent with the statutory requirements, or was unclear in what was originally provided by the practitioner. Learning opportunities were shared with practitioners in response to identified concerns. Informed by our experience over the initial two years, the volume of cases, and the requirements of the pending Federal regulations, we will be revising our approach to situations where required information was not provided.

As of November 1, 2018, the team will be implementing a more structured approach to respond to concerns that arise about potential compliance issues regarding statutory requirements, regulations, and/or College (regulatory body) policies. Appendix A provides a list of the Criminal Code and federal monitoring regulation requirements, and the approach to oversight the team will follow going forward. Our approach will also reflect whether or not there has been a repeated issue with meeting requirements by the same practitioner.

We believe that making our processes open and transparent will make the process easier for everyone to understand the anticipated expectations and outcome of the OCC review.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Huyer', written in a cursive style.

Dr. Dirk Huyer  
Chief Coroner for Ontario

cc. John McBeth, Senior Manager and Registrar, DIOC Secretariat

## APPENDIX A

### Ranking System:

- Level 1: Informal Conversation \*
- Level 2: Educational Email
- Level 3: Notice Email
- Level 4: Report to Applicable Regulatory Body \*\*
- Level 5: Report to Police (and report to Applicable Regulatory Body) \*\*

\* Does not apply to issues with compliance with statutory requirements. Applies only to issues with compliance with best practices and/or College (regulatory body) policies, guidelines, and standards (e.g., documentation/record-keeping practices, professionalism, etc.)

\*\* Requires team discussion and review with Chief Coroner prior to implementing

\*\*\* These rankings are subject to change based on exceptional circumstance

The rankings noted below apply to the first time an issue with compliance with the applicable requirement is identified for a practitioner. Our approach will reflect whether or not there has been a repeated issue with meeting requirements by the same practitioner. For instance, if there is an issue with compliance on the same issue where a preliminary email has already been sent, that would then typically result in a notice email being sent, and a third occurrence would lead to a report to the practitioner's regulatory college. Where there are unrelated compliance concerns, the first two times would be addressed consistent with the responses set out at Appendix A and a third (unrelated) event would lead to the response being escalated to the next level.

### Example 1:

- First issue with compliance with the requirement that witness is not a beneficiary = Level 3 (Notice Email)
- Second issue with compliance with the same requirement that witness is not a beneficiary = Level 4 (Report to Applicable Regulatory Body)
- Third occurrence of an issue with the requirement that witness is not a beneficiary = Level 4 (with potential for Level 5)

### Example 2:

- First issue with compliance with the requirement that witness is not a beneficiary = Level 3 (Notice Email)
- First issue with compliance with the requirement for 10 clear days = Level 3 (Notice Email)
- Second issue with compliance with either of the above requirements OR first issue with compliance with ANY of the other legislative requirements = Level 4 (Report to Applicable Regulatory Body)
- Third occurrence of an issue with any legislative requirement = Level 4 (with potential for Level 5)

MAiD: Mandatory Legal Requirements – Bill C-14 (Eligibility & Safeguards)

Criteria	Ranking
I. Eligibility Criteria: s.241.2(1)	
Is the individual requesting MAiD (“the requester”) eligible for health services funded by government in Canada	2
Is requester at least 18 years of age	4
Is requester capable of making decisions with respect to their health	5
Does the requester have a grievous and irremediable medical condition: s.241.2(2)	4
a) Does the requester have a serious and incurable illness, disease or disability	4
b) Is the requester in an advanced state of irreversible decline in capability	4
c) Is the requester enduring physical or psychological suffering due to the illness, disease, disability or state of decline that is intolerable to them and that cannot be relieved under conditions that they consider acceptable	4
d) Has the natural death of the requester become reasonably foreseeable, taking into account their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining	4
Is the request voluntary and not made as a result of external pressure	5
Has the requester provided informed consent after having been informed of means available to relieve their suffering, including palliative care	4
II. Safeguards: s.241.2(3)	
As MAiD provider (“the provider”), have you formed the opinion that all of the eligibility criteria have been met	3
As provider, have you ensured that the request for MAiD is in writing	3
As provider, have you ensured that the written request is signed by the requester or their proxy	3
As provider, have you ensured that the written request is dated by the requester or their proxy	2
As provider, have you confirmed that the proxy is independent by:	
a) Confirming the proxy signor is not a beneficiary under the will of the requester	3
b) Confirming the proxy signor is not a recipient of a financial or other material benefit resulting from the death	3
As provider, have you ensured that the written request was made after the requester was informed by a practitioner that they have a grievous and irremediable condition	2
As provider, have you confirmed that the written request was signed and dated by the requester in the presence of two independent witnesses	2

As provider, have you confirmed that the independent witnesses signed the written request in the presence and after the requester	2
As provider, have you confirmed that the independent witnesses dated the request in the presence and after the requester	2
As provider, have you confirmed that the witnesses are independent by:	
a) Confirming the witnesses are not beneficiaries under the will of the requester	3
b) Confirming the witnesses are not a recipient of a financial or other material benefit resulting from the death	3
c) Confirming the witnesses are not providing health care to the requester	3
d) Confirming the witnesses are not providing personal care to the requester	3
e) Confirming the witnesses do not own or operate a health care facility where the requester resides or gets treatment	3
As provider, have you ensured that the requester is aware they can withdraw their request at any time and in any manner	3
As provider, have you ensured that there is a second independent opinion from an assessor confirming the eligibility criteria are met	4
As provider, have you ensured that the second opinion is in writing	3
As provider, have you confirmed the second opinion is independent by:	3
a) Ensuring there is no connection between the provider and the other assessor that could compromise independence (such as a mentor/mentee relationship)	3
b) Ensuring the other assessor is also independent of the requestor (e.g. not a beneficiary or any other relationship that would affect their objectivity)	3
c) Ensuring the provider does not know or believe they are connected to the requester or the other assessor in any way that would affect their objectivity	3
As provider, have you ensured there are at least 10 clear days between day on which the request was signed and day on which MAiD is provided	3
As provider, if the reflection period is less than 10 clear days, have you formed the opinion and indicated that the requester's loss of capacity to provide informed consent is imminent and/or the requester's death is imminent	3
As provider, if the reflection period is less than 10 clear days, have you ensured that the second assessor has formed the opinion and indicated that the requester's loss of capacity to provide informed consent is imminent and/or the requester's death is imminent	3
As provider, did you ensure that the requester was given an opportunity to withdraw their request and gave their express consent to receive MAiD immediately before the procedure	3
As provider, if the requester has difficulty communicating, did you take all necessary measures to provide a reliable means by which the requester could have understood the information that was provided to them and communicated their decision	3
As provider, did you inform the pharmacist that the medication being sought is for the purposes of providing MAiD	2

MAiD: Mandatory Legal Requirements – Federal Monitoring Regulations

Information Required	Ranking
As MAiD provider (“the provider”), have you provided the following information:	
<i>The following information in respect of the individual requesting MAiD (“the requester”):</i>	
Date of birth	2
Sex	2
Health insurance number and the province or territory that issued it or, in the case where the requester does not have a health insurance number, the province or territory of their usual place of residence on the day on which the practitioner received the request	2
The postal code associated with the requester’s health insurance number or, in the case where they do not have a health insurance number, the postal code of their usual place of residence on the day on which the practitioner received the request	2
<i>The following information in respect of the practitioner (MAiD provider):</i>	
Name	2
An indication of whether you are a medical practitioner or nurse practitioner	2
If you are a family physician, an indication to that effect	2
If you are a medical practitioner other than a family physician, your area of specialty	2
The province or territory in which you practise and, if you practise in more than one province or territory, the province or territory in which you received the request	2
The licence or registration number assigned to you in the province or territory in which you received the request	2
The mailing address and email address that you use for work	2
To the best of your knowledge or belief, an indication of whether, before you received the request, the requester consulted you concerning their health for a reason other than seeking medical assistance in dying	2
<i>The following information in respect of the request:</i>	
The date on which you received the request	2
The date on which the request was signed by the requester or by the proxy signor	2
An indication of whether you received the request from the requester directly, another practitioner, a care coordination service, or another third party	2
<i>The following information in respect of the eligibility criteria:</i>	
An indication of whether you consulted with other health care professionals or social workers in order to determine whether the requester met the eligibility criteria and, if so, the professions of those persons	2

The reasons why you were of the opinion that the requester made a voluntary request for medical assistance in dying that was not made as a result of external pressure	2
A description of the requester's serious and incurable illness, disease, and/or disability	2
The requester's description of their physical and/or psychological suffering	2
An indication of whether the requester received palliative care, if known, and	2
a) If the requester received palliative care, how long the requester received it, if known; or	2
b) If the requester did not receive palliative care, an indication of whether, to the best of your knowledge or belief, palliative care was accessible to the requester.	2
An indication of whether the requester required disability support services, if known, and if so,	2
a) If the requester received disability support services, how long the requester received those services, if known; or	2
b) If the requester did not receive disability support services, an indication of whether, to the best of your knowledge or belief, disability support services were accessible to the requester.	2
<i>The following information in respect of prescribing or providing a substance:</i>	
The date on which you prescribed or provided the substance to the requester	2
The place where the requester was staying when you prescribed or provided the substance to them	2
<i>The following information in respect of self-administered MAiD:</i>	
An indication of whether the requester self-administered the substance, if known	2
In the case where you know that the requester self-administered the substance:	
a) An indication of whether you were present when the requester self-administered the substance;	2
b) The date on which the requester self-administered the substance, if known, and;	2
c) The place where the requester self-administered the substance, if known.	2
<i>The following information in respect of clinician-administered MAiD:</i>	
The date on which you administered the substance to the requester	2
The place where you administered the substance to the requester	2

MAiD: Mandatory Legal Requirements – Section 10.1 of the Coroners Act

Legislative Requirement	Ranking
<i>Where a person dies as a result of MAiD, the physician or nurse practitioner who provided MAiD shall:</i>	
Give notice of the death to a coroner	4
Provide the coroner with any information about the facts and circumstances relating to the death that the coroner considers necessary to form an opinion about whether the death ought to be investigated	2