Bill C-41: Proposed changes to medical assistance in dying laws

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The federal government recently introduced Bill C-41, the *Medical Assistance in Dying Safeguards Act*. Through Bill C-41, the government proposes to permanently prohibit MAiD for those whose sole underlying medical condition is a mental illness, allow practitioners, in certain circumstances, to provide MAiD to those who have made advance requests for MAiD and update reporting requirements for practitioners.

Background

MAiD has been legal since 2016, and access was expanded in March 2021 through Bill C-7. Bill C-7 established different procedural requirements for persons whose natural death is reasonably foreseeable and for those whose natural death is not reasonably foreseeable. (BLG published a bulletin on this topic in 2021 available here.)

Through Bill C-7, the Criminal Code was amended to include a time-limited prohibition on the availability of MAiD for an individual whose sole underlying condition was a mental illness.

Prohibiting MAiD for mental illness

In tabling Bill C-41, the federal government has accepted the 2026 recommendation of the Special Joint Committee on Medical Assistance in Dying and has proposed to permanently prohibit MAiD for individuals whose sole underlying medical condition is a mental illness.

Advance requests for MAiD

If enacted, Bill C-41 would permit MAiD to be provided on the basis of an advance request in certain circumstances. An advance request allows an adult who suffers from a disease that may affect their capacity in the future to set out, while they still have capacity to consent, the circumstances in which they would want to receive MAiD.

Bill C-41 proposes eligibility requirements for the person making an advance request for MAiD, safeguards for the practitioner providing MAiD on the basis of an advance requests and criteria for the preparation and contents of the advance request.

Importantly, Bill C-41 does not propose to enable uniform access to advance requests for MAiD across Canada. Rather, if enacted, Bill C-41 would require that MAiD on the basis of an advance request may only be provided in a province that has laws that identify a repository, or storage system, for advance requests and that govern the creation, submission, and withdrawal of an advance request, among other things. It would be open to provinces and territories to decide whether to establish the required regime to permit MAiD by advance request.

Criteria for the advance request

Bill C-41 provides that a practitioner may only provide MAiD on the basis of an advance request if the advance request met certain criteria and was stored in an eligible provincial or territorial repository. The bill proposes the advance requests could only be stored in the repository if the criteria were met. The proposed criteria include that:

- Before the request was signed, the person must have been diagnosed with a serious and incurable illness or disease that was reasonably expected to lead to an irreversible loss of their capacity to consent to MAiD.
- The advance request must outline the “observable clinical manifestations” related to the person’s illness that they anticipate would cause enduring and intolerable suffering and for which they would want to receive MAiD. In the advance request, the person must give informed consent to receive MAiD if they lose capacity to consent as a result of the illness or disease and exhibit the clinical manifestations described in the request.
- The advance request must be prepared with the assistance of a medical or nurse practitioner. Before the advance request is signed, the person would need to have been informed of the nature of their diagnosis, the expected trajectory of their illness, their prognosis, the means available to relieve their anticipated suffering and the possibility that the means available may be different in the future. If the practitioner did not have expertise in the illness or disease, the person would be required to consult with a practitioner who did. The person must have been informed how to withdraw, amend, or replace the request.

Criteria for providing MAiD by advance request

Bill C-41 includes the following eligibility criteria that would need to be met before a practitioner could provide MAiD by advance requests. The person must:

- Be eligible for health services funded by a government in Canada;
- Have irreversibly lost, as a result of the serious and incurable illness or disease with which they were diagnosed and in respect of which they made the request, the capacity to consent to receiving medical assistance in dying;
- Be exhibiting on a recurring basis the clinical manifestations that they described in the request;
- Be in an advanced state of irreversible decline in capability; and
- Be experiencing enduring and intolerable physical or psychological suffering that cannot be relieved through reasonable means.

The existing requirement that two independent practitioners confirm that an individual meets the eligibility criteria would apply for MAiD by advance request.

Bill C-41 proposes that a practitioner would not be permitted to provide MAiD on the basis of an advance request if the individual demonstrates refusal or resistance through words, sounds or gestures. Where there is doubt or uncertainty as to whether there was refusal or resistance, MAiD would not be permitted to be administered within 30 days, after which the medical practitioner would be permitted to attempt to administer MAiD again, provided the criteria are still met.

Updated reporting requirements

Bill C-41 proposes to remove reporting requirements for practitioners performing preliminary eligibility assessments for MAiD. The government also intends to allow other professionals to assist practitioners with reporting. Finally, there are proposed amendments to expand data collection on advance requests for MAiD.

Future developments

At present, Bill C-41 has only been introduced in Parliament. Bill C-41 will need to pass through the House of Commons and Senate if it is to become law. BLG will continue to monitor the progress of Bill C-41 and related provincial and territorial developments. If you have questions about Bill C-41 or how the proposed changes may affect your organization, please reach out to any of the key contacts listed below.

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