

Minister of Health



Ministre de la Santé

Ottawa, Canada K1A 0K9

OCT 20 2022

Honourable Yonah Martin
Honourable Marc Garneau
Joint Chairs, Special Joint Committee on Medical Assistance in Dying
Parliament of Canada
Ottawa, Ontario

Dear Senator Martin and Mr. Garneau,

I am pleased to respond, on behalf of the Government of Canada, to the first report of the Special Joint Committee on Medical Assistance in Dying (AMAD) entitled, "Medical Assistance in Dying and Mental Disorder as the Sole Underlying Condition: An Interim Report," tabled in the House of Commons on June 22, 2022.

I would like to commend the members of AMAD for their diligent efforts in undertaking a comprehensive review of the provisions of the *Criminal Code* relating to medical assistance in dying (MAID) and their application, beginning with the topic of MAID and mental disorder. I would also like to thank all the witnesses who contributed their time and expertise to providing the Committee with more in-depth information on the topic.

As you are aware, former Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)* received Royal Assent on March 17, 2021. This bill removed the eligibility criterion of a reasonably foreseeable natural death. It also temporarily excluded eligibility for persons whose sole underlying medical condition is a mental illness¹ for a two-year period. Former Bill C-7 required my colleague, the Minister of Justice and Attorney General of Canada, and I, to initiate an independent review "respecting recommended protocols, guidance and safeguards to apply to requests for medical assistance in dying by persons who have a mental illness." The Expert Panel on MAID and Mental Illness (the Panel) was appointed in August 2021 to do this work. Its final report was tabled in Parliament on May 13, 2022.

In its final report, the Panel outlined and addressed the key concerns commonly associated with requests for MAID from persons with a mental disorder. These include challenges in establishing irremediability or incurability, assessing decision-making capacity of the requester, distinguishing patients who are suicidal from those making a rational and sustained request for MAID, and addressing the impact of structural vulnerabilities on the motivation to consider MAID. A key conclusion of the Panel was that these concerns are neither unique to requests for

¹ The term "mental illness" is used in the legislation and associated documents, however the Panel and AMAD used the term "mental disorder" which is better understood and recognized by clinicians. Both terms are used in this document to refer to the same concept.

MAID from persons with a mental disorder, nor applicable to every requester who has a mental disorder. It is for these reasons that the members of the Panel concluded that the legislative framework for MAID in the *Criminal Code* provides Canadians with the right combination of access and protection, and that no new legal safeguards are required to ensure that requests for MAID from individuals with a mental disorder are handled safely and appropriately. At issue for the Panel is how best to ensure that the existing eligibility criteria and safeguards are interpreted and administered as intended and in full conformity with the law.

In the Panel's view, their recommendations should apply to any case where similar concerns may arise, irrespective of the requester's diagnosis – in other words, whether the requester's sole source of suffering is a mental disorder, whether the requester has a mental disorder as a co-morbidity, or whether the requester has another complex condition. The Government's efforts to date in implementing the Panel's recommendations have similarly focused on health system preparedness to address complex MAID cases, including but not limited to those involving a mental disorder diagnosis.

I recognize and acknowledge AMAD's concerns regarding the fast-approaching March 17, 2023 expiry of the temporary exclusion and health system/practitioner readiness. It is important, however, to acknowledge the important collaborative work that has taken place since the Supreme Court of Canada's decision in *Carter* and the passage of Canada's first legislation on MAID in 2016 (former Bill C-14). Shortly after the *Carter* decision and as the federal government and Parliament began their deliberations on a legal framework for MAID, federal/provincial/territorial (FPT) Health Ministers agreed that it was critical that there be a consistent approach to MAID across Canada. Since *Carter*, Health Canada has been collaborating with provinces and territories (PTs) via a FPT working group. Since its inception, the FPT Working Group on MAID has served as a valuable forum for discussion and collaboration on MAID policy. This very productive inter-governmental co-operation has continued following the passage of Bill C-7. The Annual Reports on MAID published each year by Health Canada are one important example of the collaboration among all PT governments with the federal government.

On the practitioner side, the Canadian Association of MAID Assessors and Providers (CAMAP) has been and continues to be an important venue for information sharing among health care professionals, health system administrators, policy makers and researchers involved in MAID. Since its creation in 2017, CAMAP has hosted an annual conference to discuss emerging issues related to the delivery of MAID and developed several guidance documents for health professionals. These fora, and others, will play a key role in supporting the implementation of the Panel's recommendations.

Feedback from MAID practitioners demonstrates that they are exercising a high degree of caution and due diligence, including dedicating very considerable time and effort to the assessment of each and every request for MAID – in particular when a requester's natural death is not reasonably foreseeable. This includes making sure that they consult the right experts, take time to carefully review the patient's medical history, conduct conversations with previous care providers and potentially loved ones (when appropriate and agreed to by the requester), and identifying potential services that could alleviate suffering, before making a decision to proceed.

If uncertainty remains about the person's eligibility, the law requires MAID clinicians not to proceed with MAID.

We have heard from practitioners that the expansion of MAID eligibility to individuals not facing a reasonably foreseeable natural death (but who are suffering intolerably) has led to increased case complexity, necessitating more robust and lengthy assessments. In recognition of the new challenges associated with the revised legislation, Health Canada is supporting the development of training and guidance for practitioners, as well as research on topics of relevance to Canada's MAID regime. These initiatives, funded through Budget 2021¹ align with several key recommendations of the Panel, as outlined below.

We are working with PTs and other partners to support the implementation of the Panel's recommendations, and will continue to do so over the coming months/years. I will take this opportunity to outline the Government's progress in this area to date and other ongoing work to support the safety and efficacy of Canada's MAID regime.

GUIDANCE AND SUPPORT FOR PRACTITIONERS

Development of Practice Standards

The Panel concluded that the existing MAID eligibility criteria and safeguards provide an adequate structure for MAID where a mental disorder is the sole underlying medical condition, so long as they are interpreted and applied appropriately. In this vein, its first, perhaps central, recommendation was for FPT governments to facilitate collaboration among regulatory bodies on the development of MAID practice standards. The bulk of the remaining recommendations provide guidance on the interpretation of the MAID eligibility criteria, application of the legislated safeguards, and the assessment process.

From the Government's perspective, the development of MAID practice standards (to supplement the policy and guidance documents already developed by PT regulators and national bodies) will be invaluable in providing clarity for practitioners involved in assessing challenging MAID requests from patients where the concerns addressed by the Panel arise, including but not limited to requests from persons with a mental disorder. They will also be an important tool for health professional regulators, providing a basis for assessing the appropriateness of clinical decision-making in this context. While the development of practice standards falls outside of direct federal responsibility, we are leading work with key partners to complete this work in advance of March 2023.

Health Canada is actively engaging PTs and the Federation of Medical Regulatory Authorities of Canada on the development of consistent practice standards. The department is creating a small ad hoc group of experienced clinicians to undertake the task of turning the Panel's recommendations and supporting evidence into a set of practice standards for MAID assessors and providers. Once the practice guidelines have

¹ Budget 2021 allocated funding of \$13.2 million over five years, beginning in 2021-22, with \$2.6 million per year ongoing to Health Canada to ensure that Canada's medical assistance in dying framework is implemented consistently and with all appropriate safeguards.

been developed, they will be subject to a further review by a select number of clinical experts and other stakeholders, prior to publication and adoption and/or reference by medical and nurse practitioner regulatory bodies across Canada.

Training

A portion of Budget 2021 funding (\$3.3 million) is being provided to CAMAP to develop and implement a national, fully accredited MAID curriculum that will provide high quality MAID training to health care practitioners across Canada. Through this multiyear project (2021-22 to 2024-25), training modules are being developed to advise on and support clinicians in assessing persons who request MAID, including those with a mental disorder, complex chronic conditions, or who are impacted by structural vulnerability, providing culturally-safe care, and the practical application of the MAID legislative framework. These modules will begin to be launched in early 2023 with a priority placed on the modules addressing requesters with a mental disorder and cases posing other complex eligibility questions.

TRANSPARENCY AND ACCOUNTABILITY

Monitoring and Reporting on MAID in Canada

Under the original legislation on MAID passed in 2016, the federal Minister of Health was required to develop regulations for the collection of data and annual public reporting on MAID in Canada. These annual reports, produced using data collected under the 2018 *Regulations for the Monitoring of Medical Assistance in Dying*, are the primary source of information about the state and evolution of MAID in Canada.

Health Canada is currently amending the 2018 monitoring regulations to align with the changes to the *Criminal Code* through former Bill C-7. It is anticipated the final regulations will come into force on January 1, 2023, resulting in expanded data collection for the 2023 year (findings published in 2024).

The amended regulations include enhanced reporting requirements related to the assessment of persons whose death is not reasonably foreseeable. The amendments will also require the collection of data related to gender identity, race, Indigenous identity and disability for the purposes of determining the presence of any inequality— including systemic inequality—in MAID (if the requester consents to this information being collected). Other changes to the regulations include: expanding reporting beyond physicians, nurse practitioners and pharmacists to include other health care professionals and pharmacy technicians; allowing for the collection of data on all assessments following a person's request (verbal and written) for MAID; and the collection of additional data on disability support services and palliative care, such as the type and duration of services and care received and the place where palliative care was received.

Following from the Panel's recommendations, we will be capturing data on the length of time that a person has experienced the illness, disease or disability which motivates their request for MAID, and the type of residence of the requester. As recommended by the Panel, additional information will also be captured for persons whose natural death is not

reasonably foreseeable. This includes information on reasons for refusing means to relieve suffering that may have been offered, whether income supports and housing were discussed as a means to relieve suffering, and whether multiple treatments or interventions were attempted.

Oversight

Health Canada is engaging in preliminary discussions on additional oversight and quality assurance processes, through its FPT Working Group on MAID to gauge interest in a common approach and possible federal support in this area. Primary responsibility for the oversight of MAID falls under PT jurisdiction and the majority of jurisdictions have developed their own mechanisms for MAID oversight that suit their local needs including current legislative and regulatory requirements. Negotiating and developing a common model or new models for oversight is a longer-term project that will require significant FPT collaboration.

Research

While discussions and negotiations with PTs on the topic of oversight will take time, the Government is supporting research that will inform FPT policy discussions in this area. One of the planned research projects using funding provided through Budget 2021 will explore approaches to the oversight of MAID across Canada and existing models of MAID program delivery. This will include a jurisdictional scan to document and examine the different models of MAID program organization, delivery and oversight in each PT. The goal of this work is to identify promising practices and considerations for MAID delivery and oversight to inform future MAID planning, including additional approaches to protect persons who may be vulnerable, or at risk, related to socio-economic and health inequalities. It is anticipated that this research will begin in the fall of 2022 and be completed by March 2024.

Budget 2021 funding is also being used to advance other MAID research. Projects will provide valuable qualitative information that will supplement the federal monitoring system, including understanding more about the circumstances underlying a MAID request and the experiences of and views on MAID by different population groups. Another project planned in the short term (besides the oversight project mentioned above) would focus on the views and experiences of persons living with disabilities that will inform and complement the information collected through the federal MAID monitoring system. This research is expected to generate evidence that responds to the concerns of organizations representing persons with disabilities and inform future policy development.

INDIGENOUS ENGAGEMENT

Health Canada recognizes the importance of meaningful engagement and ongoing dialogue with Indigenous peoples to support culturally safe implementation of MAID. We are committed to working with Indigenous partners to identify and support distinctions-based priorities with respect to an engagement process at the federal level. To date, Health Canada has reached out to National Indigenous Organizations to discuss

their preferred role in a national engagement with First Nations, Inuit and Métis on the topic of MAID.

The department will complement any engagement on MAID with existing feedback received from Indigenous organizations from: the process of revising the MAID monitoring regulations (currently underway); previous research into distinctions-based views on end-of-life care; testimony at Parliamentary Committees in relation to MAID; as well as Indigenous Services Canada's engagement processes on the holistic continuum of care and Indigenous Health Legislation. Further, consultation and engagement with Indigenous partners will be informed by any applicable obligations under the United Nations Declaration on the Rights of Indigenous Peoples Act.

We know that access to mental health services is a priority issue for many Canadians and was a topic of concern for some of the witnesses appearing before AMAD. The Government is committed to working with partners to improve access to high-quality mental health services for Canadians. In 2017, FPT governments endorsed the Common Statement of Principles on Shared Health Priorities (CSOP) and committed to working together to improve health systems across the country, with a focus on mental health and addictions and home and community care. Under the CSOP, the Government is investing \$5 billion over ten years through bilateral agreements with PTs to improve access to mental health and addictions services in priority areas. The Minister of Mental Health and Addictions and Associate Minister of Health is also working with PTs and a broad range of stakeholders to strengthen mental health services and supports, as well as on the development of national standards for mental health and substance use services in priority areas.

In sum, since the legalization of MAID in 2016, PTs and practitioners have made significant efforts to support access and quality of care while implementing the MAID framework set out in the *Criminal Code*. The Government is providing leadership, in collaboration with PTs and other partners, to implement the Panel's recommendations on practice standards to guide MAID practitioners who consider and manage complex MAID cases. Our immediate priority is to support the development of common practice standards for MAID for adoption by health professional regulatory bodies and to support the practitioners who ultimately ensure that Canada's MAID system is accessible, safe and delivered with care, compassion and respect for the law. By March 2023, we expect there will be practice standards and training modules in place which will serve to provide clarity for practitioners involved in assessing challenging MAID requests from patients where the concerns outlined by the Panel arise, including but not limited to requests from persons with a mental disorder. Continued engagement with PTs and other partners will further support clinician preparedness to assess challenging MAID requests where mental disorder and/or other conditions are present.

In closing, I would like to again thank AMAD for its efforts in reviewing Canada's legislation on MAID, and for summarizing the evidence it has heard to date with respect to MAID and mental disorder. As recommended by the Committee's Interim Report, the Government has taken action to ensure the timely implementation of the Panel's recommendations, and will continue to advance this work over the coming months and beyond.

As shown in our response, our Government is committed to ensuring Canada's MAID framework respects autonomy while rigorously protecting individuals who apply for MAID or who are exposed to Canada's MAID system. Given that work on the initiatives outlined in this response continues to advance, Health Canada would welcome the opportunity to provide a formal presentation to the committee when appropriate.

Sincerely,

A handwritten signature in blue ink, appearing to read "JY Duclos".

The Honourable Jean-Yves Duclos, P.C., M.P.

Minister of Health