Medical Assistance in Dying: Proposed Legislative Amendments (Bill 84)
Stakeholder Presentation

Ministry of Health and Long-Term Care
December 9, 2016
MAID Overview

• Medical Assistance in Dying (MAID) is defined in recently enacted federal legislation as (a) the administering by a medical practitioner (i.e., a physician) or nurse practitioner of a substance to a person, at their request, that causes their death; or (b) the prescribing or providing by a medical practitioner or nurse practitioner of a substance to a person, at their request, so that they may self-administer the substance and in doing so cause their own death.

• MAID is legal and/or decriminalized in selected jurisdictions across the globe however no single system for MAID has emerged as a best practice. Instead, each system places different emphasis on patient access and safeguards for vulnerable patients.

• MOHLTC and MAG have undertaken broad-based consultations on MAID:
  – 14,514 Ontarians completed a voluntary online survey;
  – 1,201 Ontarians participated in 11 town halls in 9 cities across the province; and
  – MOHLTC/MAG engaged with over 45 stakeholder groups.

• Ontario engaged extensively with other provinces and territories (PT) on MAID, including leading the Provincial-Territorial Expert Advisory Group (EAG). The EAG included nine expert members and had a mandate to provide participating PT governments with non-binding advice on the implementation of MAID. Their final report was released on December 14, 2015.

• Consultations have revealed there is broad-based support for a patient choice-based MAID system in Ontario. However, there are pockets of opposition and/or deep concern among patients, clinicians and institutions.
  – Particular concerns include: religious / moral opposition, ideological opposition, concerns re: access being too easy or too hard, concerns re: implementation readiness, etc.

• Between June 17 and November 20, 2016, 135 MAID deaths have occurred in Ontario, as reported by the Office of the Chief Coroner. If this volume continues, ~300 deaths are projected for the first year of implementation.
  – Based on findings from other jurisdictions, the number of MAID cases is expected to rise annually over time, as the practice becomes integrated within the health care system.
**February 6, 2015:** the SCC in *Carter v. Canada*, unanimously struck down the *Criminal Code* prohibition against assisted dying to the extent that it “prohibits physician-assisted dying for a competent adult person who: (1) clearly consents to the termination of life, and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition. The SCC suspended its decision for 12 months (to February 6, 2016) and explicitly stated that “it is for Parliament and the provincial legislatures to respond, should they so choose, by enacting legislation consistent with the constitutional parameters set out in these reasons.”

**June 2015 – February 2016:** Ontario conducted a series of consultation activities including extensive stakeholder engagement, an online survey, and town-hall style public consultation across Ontario. During this time Ontario also provided lead support for the EAG.

**January 2016:** In response to the federal government’s request for a six-month extension, the SCC granted a four-month extension of the suspension of the Carter declaration to June 6, 2016.

**Feb. 6, 2016 – June 6, 2016:** During the extension period from February 6 – June 6, 2016, the SCC ruled that individuals who meet the *Carter* criteria are granted the right to apply to a superior court of justice in their respective jurisdictions for an individual exemption to receive MAID.

**April 14, 2016:** Federal legislation introduced (Bill C-14).

**June 6, 2016:** Assisted dying became legal in Canada.

**June 17, 2016:** Federal Bill C-14 received Royal Assent.

**Dec 7, 2016:** Ontario introduces the *Medical Assistance in Dying Statute Law Amendment Act, 2016*. 

---

**Context: MAID in Canada**

Feb. 6, 2015: Carter decision by the Supreme Court of Canada

Feb. 6, 2016: Initial Carter deadline

April 14, 2016: Federal legislation introduced

June 17, 2016: Federal legislation passes

June 6, 2016: New Carter deadline (with four-month extension)

Dec 7, 2016: Ontario introduces MAID Statute Law Amendment Act


Jan: Extension granted
June 6-June 17: In absence of federal legislation, implement contingency plan including encouraging continued use of Superior Court applications to support continued patient access to MAID.

### PHASE 1
- Implement non- legislative measures & supports

### PHASE 2
- Implement legislative & regulatory amendments

**Overview of Ontario’s Approach**

- **June 6, 2016**
  - Bill C-14 Passes

- **June 17, 2016**

- **Summer 2016**
  - Ongoing stakeholder engagement and issues management

- **Fall 2016**

- **Early 2017**
**Phase 1 - Implementation**

- The government implemented a number of non-legislative measures and supports (below) as part of the Phase 1 work.

<table>
<thead>
<tr>
<th>Item</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulatory college guidance/policies</td>
<td>The College of Physicians and Surgeons of Ontario, College of Nurses of Ontario and Ontario College of Pharmacists have each issued guidance or policy statements on professional obligations and protocols for MAID, in line with the federal MAID legislation.</td>
</tr>
<tr>
<td>Launch Clinician Referral Service</td>
<td>A Clinician Referral Service (CRS) was launched on June 6, 2016, to help Ontario clinicians (physicians and nurse practitioners) arrange referrals for patients requesting MAID.</td>
</tr>
</tbody>
</table>
| Launch drug funding system | Effective June 6, 2016, Ontario implemented a system to cover the full costs of MAID drugs for all eligible patients:  
  - MAID drugs administered in the hospital setting are covered by hospital global budgets.  
  - For administration of MAID in the community, MAID drugs are dispensed through retail pharmacies at no charge to the patient. Pharmacies submit an online claim to the ministry for the full cost of the MAID drugs and a dispensing fee through the health Network System (HNS), the claims adjudication system that supports the Ontario Drug Benefit (OBD) Program. |
| Stakeholder webinars | Effective June 6, 2016, MOHLTC has launched bi-weekly stakeholder webinars with sector associations, patient groups and professional associations in addition to system leaders such as the regulatory colleges, partner ministries and the LHINs. The purpose of these webinars is for information sharing and discussion of implementation challenges. |
| Landing Page – Ontario.ca | Currently operational, the landing page provides high-level MAID specific communication for the general public, patients and stakeholders. Links to related information, including palliative care, the Carter decision, and federal legislation are provided through this forum. |
| MOHLTC Landing Page | Currently operational, the MOHLTC landing page aims to provide the general public, patients and providers with MAID-specific information, guidance and resources. |
| Voluntary clinician aids | Currently available on the Ontario Forms Repository, these voluntary aids aim to assist patients in making a written request for MAID that complies with the legal requirements, as well as aid clinicians in documenting the MAID process and eligibility criteria. |
| Patient pathway | Public-facing tool to guide patients through the MAID process. Currently available on MOHLTC Landing Page. |
| Frequently Asked Questions (FAQs) | Clinician and public facing FAQs to be posted on the MOHLTC provider website. |
| Centre for Effective Practice (CEP) clinician tool | Provides additional guidance to clinicians on MAID provision and process. Currently available on the CEP website at https://thewellhealth.ca/maid/ |
The government recently introduced legislation (Bill 84) entitled the "Medical Assistance in Dying Statute Law Amendment Act, 2016. If passed, the Bill would amend six existing statutes in order to provide greater clarity and legal protections that would increase appropriate access to MAID in Ontario.

The proposed legislation would amend the following Acts:

- The Coroners Act
- The Excellent Care for All Act (ECFAA)
- The Freedom of Information and Protection of Privacy Act (FIPPA)
- The Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)
- The Vital Statistics Act (VSA)
- The Workplace Safety and Insurance Act (WSIA)

Bill 84 aligns with the federal MAID legislation (Bill C-14), and if passed, would address areas relevant to MAID that fall under provincial jurisdiction.

Note, an amendment to the regulation under the Nursing Act is required to authorize nurse practitioners to prescribe the required controlled drugs for MAID. This process will be led by the College of Nurses of Ontario.
### 1) Coroners Act

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
<th>Require that the Coroner be notified of all MAID deaths, but allow the Coroner to determine whether to investigate the death. The amendments would also require a review of the Coroner’s role by the Minister of MCSCS within two years of the amendments coming into force.</th>
</tr>
</thead>
</table>
| Provisions in the Bill | **Medical assistance in dying**  
10.1 (1) Where a person dies as a result of medical assistance in dying, the physician or nurse practitioner who provided the medical assistance in dying shall give notice of the death to a coroner and, if the coroner is of the opinion that the death ought to be investigated, the coroner shall investigate the circumstances of the death and if, as a result of the investigation, the coroner is of the opinion that an inquest ought to be held, the coroner shall hold an inquest upon the body.  

**Requirements re giving of notice**  
(2) The physician or nurse practitioner who provided the medical assistance in dying shall 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, and any other person who has knowledge of the death shall provide such information on the request of the coroner.  

**Non-application of clause 10 (1) (f)**  
(3) Clause 10 (1) (f) does not apply in respect of a deceased person who died as a result of medical assistance in dying. |

(Table continued on slide 8)
**Phase 2 - Proposed legislative amendments (Cont’d)**

<table>
<thead>
<tr>
<th>Provisions in the Bill</th>
<th>Review</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(4)</strong> The Minister shall, within two years after the Medical Assistance in Dying Statute Law Amendment Act, 2016 receives Royal Assent, establish a process to review the provisions of this section.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(5)</strong> In this section,</td>
</tr>
</tbody>
</table>

“**medical assistance in dying**” means medical assistance in dying within the meaning of section 241.1 of the Criminal Code (Canada); (“aide médicale à mourir”)

“**nurse practitioner**” means a registered nurse who holds an extended certificate of registration under the Nursing Act, 1991; (“infirmière praticienne ou infirmier praticien”)

“**physician**” means a member of the College of Physicians and Surgeons of Ontario. (“médecin”)

<table>
<thead>
<tr>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensures that oversight of MAID cases continues with the appropriate medical expertise provided by the Coroner.</td>
</tr>
</tbody>
</table>

Clarifies the Coroner’s role in MAID cases.
2a) *Excellent Care for All Act, 2010 (ECFAA)*

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
<th>Provide that the fact a person received MAID cannot be invoked as a reason to deny a right or refuse a benefit that would otherwise be provided under a contract or statute.</th>
</tr>
</thead>
</table>
| **Provisions in the Bill** | 2. (1) Section 1 of the Excellent Care for All Act, 2010 is amended by adding the following definitions:  

“medical assistance in dying” means medical assistance in dying within the meaning of section 241.1 of the Criminal Code (Canada); (“aide médicale à mourir”)

“nurse practitioner” means a registered nurse who holds an extended certificate of registration under the Nursing Act, 1991; (“infirmière praticienne ou infirmier praticien”)

“physician” means a member of the College of Physicians and Surgeons of Ontario; (“médecin”)

**MAID has no effect on rights and benefits**  
13.9 (1) Subject to subsection (2), the fact that a person received medical assistance in dying may not be invoked as a reason to deny a right or refuse a benefit or any other sum which would otherwise be provided under a contract or statute.

**Contrary intention**  
(2) Subsection (1) applies unless an express contrary intention appears in the statute. |
| **Rationale** | Clarifies that MAID may not be used as a reason to deny a payout on insurance or other benefits. |
Phase 2 - Proposed legislative amendments *(Cont’d)*

### 2b) Excellent Care for All Act, 2010 (ECFAA)

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
<th>Provide statutory immunity for physicians and nurse practitioners and those who assist them in the lawful provision of MAID (except in cases of alleged negligence).</th>
</tr>
</thead>
</table>
| Provisions in the Bill | **Immunity, MAID**  
13.8 (1) No action or other proceeding for damages shall be instituted against a physician or nurse practitioner or any other person assisting him or her for any act done or omitted in good faith in the performance or intended performance of medical assistance in dying.  

**Exception**  
(2) Subsection (1) does not apply to an action or proceeding that is based upon the alleged negligence of a physician, nurse practitioner or other person. |
| Rationale | Protects clinicians by deterring parties from bringing civil claims against clinicians and those assisting them in the lawful provision of MAID. |
3) Freedom of Information and Protection of Privacy Act (FIPPA) & Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
<th>Exclude identifying information about clinicians and facilities that provide MAID from the application of FIPPA and MFIPPA.</th>
</tr>
</thead>
</table>
| Provisions in the Bill | **FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**  
3. Section 65 of the Freedom of Information and Protection of Privacy Act is amended by adding the following subsections:  

**Non-application of Act**  
(11) This Act does not apply to identifying information relating to medical assistance in dying.  

**Interpretation**  
(12) In subsection (11),  
“identifying information” means information that identifies a person or facility or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify a person or facility; (“renseignements identificatoires”)  

“medical assistance in dying” means medical assistance in dying within the meaning of section 241.1 of the Criminal Code (Canada). (“aide médicale à mourir”) |
### Phase 2 - Proposed legislative amendments (Cont’d)

| Provisions in the Bill | **MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**  
4. Section 52 of the Municipal Freedom of Information and Protection of Privacy Act is amended by adding the following subsections:  

**Non-application of Act**  
(5) This Act does not apply to identifying information relating to medical assistance in dying.  

**Interpretation**  
(6) In subsection (5),  

“identifying information” means information that identifies a person or facility or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify a person or facility; (“renseignements identificatoires”)  

“medical assistance in dying” means medical assistance in dying within the meaning of section 241.1 of the Criminal Code (Canada). (“aide médicale à mourir”)  

| Rationale | Protects the identities of clinicians and institutions that provide MAID from being disclosed pursuant to an FOI request. This addresses some safety concerns arising from the fact that MAID remains a controversial issue.  

Statistical (non-identifying) information could be disclosed outside of the Act. The MFIPPA amendment is to cover municipally-run long-term care homes, which are subject to MFIPPA and not FIPPA.  

Notwithstanding the privacy protection being proposed with the amendments to FIPPA/MFIPPA, the ministry strongly encourages health care facilities to develop MAID policies and procedures and share them with the public so that patients can make informed choices about their care options. |
### 4) Vital Statistics Act (VSA)

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
<th>Amend the <em>Vital Statistics</em> Act to set requirements respecting the coroner’s documentation of MAID deaths consistent with the <em>Coroners Act</em> amendments.</th>
</tr>
</thead>
</table>
| Provisions in the Bill | **5. Section 21 of the Vital Statistics Act is amended by adding the following subsection:**

*Exception*

(7) Subsections (5) and (6) do not apply if the person has died after receiving medical assistance in dying within the meaning of section 241.1 of the Criminal Code (Canada), and a coroner has been given notice of or information about the death under section 10.1 of the Coroners Act and determined that the death ought not to be investigated. |
| Rationale | Clarifies that the Coroner does not need to sign the medical certificate of death for MAID deaths unless the Coroner investigates the death. |
## Phase 2 - Proposed legislative amendments (Cont’d)

### 6) Workplace Safety and Insurance Act, 1997 (WSIA)

<table>
<thead>
<tr>
<th>Proposed Amendment</th>
<th>Clarify that for the purposes of the Act, a worker who receives MAID is deemed to have died from the underlying injury or disease.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions in the Bill</td>
<td><strong>6. (1) Subsection 2 (1) of the Workplace Safety and Insurance Act, 1997 is amended by adding the following definition:</strong></td>
</tr>
<tr>
<td></td>
<td>“medical assistance in dying” means medical assistance in dying within the meaning of section 241.1 of the Criminal Code (Canada); (“aide médicale à mourir””)</td>
</tr>
<tr>
<td></td>
<td><strong>(2) Part I of the Act is amended by adding the following section:</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Medical assistance in dying</strong></td>
</tr>
<tr>
<td></td>
<td>2.2 For the purposes of this Act, a worker who receives medical assistance in dying is deemed to have died as a result of the injury or disease for which the worker was determined to be eligible to receive medical assistance in dying in accordance with paragraph 241.2 (3) (a) of the Criminal Code (Canada).</td>
</tr>
<tr>
<td>Rationale</td>
<td>Ensures that a claim made under the WSIA where the worker received MAID would be determined based on the illness or disease for which the worker was determined to be eligible to receive MAID and not another cause of death.</td>
</tr>
</tbody>
</table>
In consultation with key stakeholders, Ontario has been exploring ways to support access to MAID for eligible patients, while respecting the conscientious objection rights of clinicians.

In addition to the existing Clinician Referral Service, the province will also work to establish a care coordination service to assist patients and caregivers in accessing additional information and services for medical assistance in dying and other end-of-life options.

The ministry will share further information regarding the CCS in early 2017.
Introduction of legislation – December 7, 2016

A link to the proposed Bill should be made available within 48 hours of introduction through the website of the Ontario Legislature: http://www.ontla.on.ca/web/

It is proposed that the legislation, if approved, would come into effect upon Royal Assent. (Note: we cannot predict the outcome of the legislative process therefore a specific date cannot be provided at this time.)

Generally, following introduction, a Bill receives Second Reading and is referred to a Standing Committee for further study, including potential public hearings and by clause-by-clause review.

Interested stakeholders who may wish to appear before the Standing Committee should visit the website of the Ontario Legislature and register with the Clerk: http://www.ontla.on.ca/web/

Any comments, questions, concerns?

- Additional questions or comments may be directed to: endolifedecisions@ontario.ca