

Final consent, advance consent and alleviating suffering in frail adults requesting MAiD

We thank Engelhart and colleagues¹ for bringing forward an important topic in their article published in *CMAJ*. The association between frailty and eligibility for medical assistance in dying (MAiD) requires attention, as the authors state, especially in light of changes to the Criminal Code of Canada, brought about by Bill C7² receiving Royal Assent in March 2021.

We wish to highlight 2 important points of clarification.

First, the authors state, “Bill C-7 also permits MAiD through an advanced directive if eligibility was determined when the person was capable.”¹ The Criminal Code³ does not actually allow for an advance directive for MAiD; rather, it allows for a waiver of final consent and advance consent. The former is permitted only for eligible persons whose natural death is reasonably foreseeable, and must be accompanied by a written arrangement with the provider identifying a specific date for provision, among other requirements. This act of waiving final consent is later referred to as “advance consent” in the Code. In addition, the Code allows for advance consent in cases of failed self-administration of MAiD medications. These details are important to highlight for 2 reasons: the meaning of “advance directive” varies from province to province (and is actually not part of the legal framework in Ontario at all), and advance directives typically focus on

a possible future scenario at an undetermined time. In contrast, the meaning of the waiver of final consent and written arrangement does not vary from province to province, and their validity is contingent on satisfying a number of other legal safeguards. Maintaining these distinctions can help to enhance public trust while honouring the changes made in response to what is referred to as “Audrey’s Amendment.”⁴

Second, the authors state, “To be eligible for MAiD, persons and assessors must agree that ‘reasonable and available means of alleviating suffering have been seriously considered.’”¹ This agreement is not one of the eligibility requirements for MAiD. The Code states that a person can be eligible only after “having been informed of the means that are available to relieve their suffering, including palliative care.”³ In other words, to be eligible for MAiD, persons must (among other things) be informed of their options, and the choice remains completely their own. The authors’ statement actually refers to a safeguard that applies only to persons whose death is not reasonably foreseeable. This safeguard requires that there is agreement that the person “has given serious consideration” to “the reasonable and available means to relieve the person’s suffering.” This distinction supports role clarity, helping to ensure a person-centred approach that does not impose restrictions beyond those included in the legislation.

These clarifications help to support the ethical and legal provision of MAiD to eligible persons in Canada, including to persons with frailty.

Jill Oliver PhD

Community ethicist, Ethics Quality Improvement Lab, William Osler Health System, Brampton, Ont.

Angel Petropanagos PhD

Quality improvement ethicist, Ethics Quality Improvement Lab, William Osler Health System, Brampton, Ont.

Paula Chidwick PhD

Director, research and ethics, Ethics Quality Improvement Lab, William Osler Health System, Brampton, Ont.

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