

## **BC MAiD Forms and New Federal Legislation: Quick Guide to the “Transitional Provision”**

### **PURPOSE OF THIS GUIDE**

This guide applies only to situations where a patient made a valid request for medical assistance in dying (MAiD) prior to the coming into force of new federal MAiD legislation<sup>1</sup> on March 17, 2021, but where the assessment and/or provision of MAiD will take place after this date. The legislation includes a “Transitional Provision” which applies when patients and practitioners are in such a situation. This quick guide clarifies the practical applications of the Transitional Provision for practitioners within BC.

***IMPORTANT NOTE:*** *The Transitional Provision only applies to persons whose natural death is reasonably foreseeable.*

### **TRANSITIONAL PROVISION**

The transitional provision states that if a MAiD prescriber receives a written request for MAiD that was signed and dated by a patient prior to the day the new legislation came into force (March 17, 2021), they must provide MAiD in accordance with the *Criminal Code* as it existed before the new legislation, with two exceptions:

- The safeguard requiring 10 clear days between the day a person signs a MAiD request and the day MAiD is provided is not required under this provision;
- The person may waive the requirement for final consent (i.e. immediately before provision of MAiD) if they and their provider have entered into a written Waiver of Final Consent agreement.

Apart from the two exceptions noted above, all eligibility criteria and safeguards that were in place prior to the new legislation coming into force must be followed.

### **PRACTICAL CONSIDERATIONS**

- For the Transitional Provision to apply, the *Patient Request Record* needs to have been completed prior to the new legislation coming into force. It does not need to have been submitted.
- A valid request (i.e. a request made by a person who met the eligibility criteria as they existed at the time of the request, and whose request was signed and dated by that person [or a proxy] before two independent witnesses, who then also signed and dated the request) made prior to the coming into force of the new legislation will not lose validity.
- In situations where the Transitional Provision applies, assessor and prescriber forms (1633 and 1634 forms) completed or in progress before the new legislation came into force may still be used. Assessors and prescribers are *not* required to redo their paperwork using the new updated forms.

---

<sup>1</sup> *An Act to amend the Criminal Code (medical assistance in dying)*, S.C. 2021 c.2

- If the assessor or prescriber has not yet begun their assessment of the patient, they may do so using the new updated versions of the 1633 and 1634 forms available on the provincial website.
- However, assessors and prescribers should be aware of how the requirements of the Transitional Provision differ from what is on each version of the forms.
- The table below summarizes how to complete each version of the form for a MAiD assessment or provision carried out under the Transitional Provision:

Old 1633 Form	Updated 1633 Form
Complete all fields (no modifications required)	In <a href="#">Section 6, Conclusion Regarding Eligibility and Practitioner Signature</a> → the option regarding a patient whose natural death is not reasonably foreseeable is invalid
Old 1634 Form	Updated 1634 Form
<p>If the patient waives the requirement to give final consent (using the new 1645 form) and MAiD is provided after they lose capacity:</p> <ol style="list-style-type: none"> <li>1. In the <a href="#">Patient Confirmation of Request and Consent Immediately Prior to Medical Assistance in Dying</a> section → the patient’s signature is not required.</li> <li>2. Practitioners should note in the <a href="#">Consent Via Verbal or Other Means</a> sub-section that a Waiver of Final Consent was used, and submit the completed 1645 form along with all other required documentation.</li> <li>3. In the <a href="#">Supplementary Information</a> section, the Prescriber must note that the following safeguards were met when MAiD was provided in accordance with a Waiver of Final Consent: <ul style="list-style-type: none"> <li>○ The patient lost capacity to consent to receiving MAiD and the Waiver of Final Consent is included with the forms.</li> <li>○ I ensured the patient did not, by words, sounds or gestures, demonstrate refusal or resistance to having the substance administered.</li> <li>○ I ensured the substance was administered to the patient in accordance with the terms of the Waiver of Final Consent.</li> </ul> </li> </ol>	<p>In <a href="#">Section 5, Eligibility Criteria and Related Information</a> → the Prescriber must be satisfied that that the request was signed and dated by the patient, or by another person permitted to do so on their behalf, before <b>two</b> independent witnesses who then signed and dated the request. The Prescriber should cross out “one” and write “two” in this section to indicate that this safeguard was met under the Provisional Transition.</p> <p>In <a href="#">Section 6, Conclusion Regarding Eligibility and Practitioner Signature</a> → the option regarding a patient whose natural death is not reasonably foreseeable is invalid</p> <p>All of <a href="#">Section 8, Planning For Medical Assistance In Dying (If patient’s natural death is NOT reasonably foreseeable)</a> is invalid</p>
In the <a href="#">Planning for Medical Assistance in Dying</a> section → the requirement to ensure 10 clear days between the MAiD request and MAiD provision is not required	