

BRIEF



**CANADIAN
NURSES
ASSOCIATION***

**SUGGESTED AMENDMENTS TO THE TEXT OF BILL C-14:
AN ACT TO AMEND THE CRIMINAL CODE AND TO
MAKE RELATED AMENDMENTS TO OTHER ACTS
(MEDICAL ASSISTANCE IN DYING)**

**Brief for the Senate Legal and Constitutional Affairs
Committee**

May 2016

CNA is the national professional voice of registered nurses in Canada. A federation of 11 provincial and territorial nursing associations and colleges representing nearly 139,000 registered nurses, CNA advances the practice and profession of nursing to improve health outcomes and strengthen Canada's publicly funded, not-for-profit health system.

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Canadian Nurses Association
50 Driveway
Ottawa, Ont. K2P 1E2
CANADA.

Tel.: 613-237-2133 or 1-800-361-8404
Fax: 613-237-3520
Website: www.cna-aiic.ca

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RECOMMENDATIONS

This brief on recommended changes to the wording of draft Bill C-14, entitled An Act to Amend the Criminal Code and to Make Related Amendments to Other Acts (Medical Assistance in Dying), is respectfully submitted by the Canadian Nurses Association (CNA), the national professional voice for 139,000 registered nurses in Canada.

In response to the 2015 Supreme Court of Canada decision in *Carter v. Canada*, CNA has actively engaged in the consultations leading up to the release of C-14. In appearances before and submissions to the legislative committees studying assisted death in Canada, CNA provided recommendations related to:

- ▶ Safeguards to support individual decision-making by patients and to ensure that assisted death is dealt with carefully, competently and ethically.
- ▶ Universal access to end-of-life care, including both palliative care and assisted death.
 - Our fundamental position is that, while 3 per cent of Canadians may someday request medical assistance in dying (MAID), most may have the need for palliative care. Nurses have long supported patients and families during end-of-life care planning, and CNA believes it is important to ensure access to palliative care for all Canadians, which would likely have a bearing on future demands for MAID.
 - We also highlighted the unique access issues faced by 20 per cent of the Canadian population — over 7 million people — who live in rural and remote communities where primary care is generally provided by nurses with an expanded scope of practice and whose presence makes it possible for Canadians to die with dignity without having to leave their home communities.
- ▶ Support for patient choice that honours individual values and health-care wishes by promoting autonomy, choice and control.
- ▶ Protection of nurses and other health-care providers under the Criminal Code.
- ▶ A harmonized approach to MAID across Canada with respect to access, practice, monitoring and reporting, which would prevent a patchwork system where patients might be forced to “shop” for care and health-care providers would practise under varied regulations across jurisdictions.



On April 14, 2016, the federal government introduced Bill C-14. CNA welcomed the federal government's work to table this challenging legislation to guide end-of-life care for Canadians. We hope for an expeditious passing of C-14 by June 6, 2016.

In reviewing the bill, CNA was pleased with the moderate approach taken on the complex issue of MAID. In its current form, C-14 promotes compassionate care that will empower patients with grievous and irremediable medical conditions to choose among a broader range of end-of-life options. C-14 provides protection to registered nurses and nurse practitioners (NPs) from criminal prosecution when participating in MAID and shows a clear understanding and recognition of the nursing profession's role in MAID, both when nurses provide primary care, as in the case of NPs, and when they are part of an interdisciplinary health-care team. Furthermore, the federal government listened to our concerns for a national oversight body to monitor and report on MAID.

The federal government has indicated the intention to work with the provinces and territories on the pan-Canadian care pathway for end-of-life care, which has the potential to reconcile issues related to access and conscience for patients and health-care providers. This aligns with CNA's support for integrated health services that offer equitable, universal access to those who request palliative care and/or MAID.

CNA strongly favours a harmonized implementation of MAID across the provinces and territories. In support, CNA is presently focusing on convening nursing stakeholders, including provincial and territorial regulatory bodies, to develop a national nursing framework that will guide nurses on ethical issues and professional development related to MAID. We expect to have this work completed by October, 2016.

While CNA supports an expeditious passing of C-14, we offer the following recommendations for amendments to the proposed legislation:

Regarding Sections 241.2 (1), (2) and (3)

- 1 New legislation for MAID may best serve patients and health-care providers if the requirements can be clearly understood, transparently and clearly demonstrated in practice, and are practical to implement in the best interests of the patient. In accordance with these principles, CNA suggests the following:

241.2 (1) (c) refers to "grievous and irremediable medical condition" as a condition for MAID. A "grievous and irremediable medical condition" is defined in section 241.2 (2) as including "a serious and incurable illness, disease or disability."



This language could be interpreted to suggest that a person with a grievous and irremediable medical condition must exhaust treatment options that might cure their condition before seeking MAID, even if those treatment options are not acceptable to the person.

CNA suggests that section 241.2 (1) (c) be revised and simplified to read as follows: “they have 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 and where ‘irremediable’ does not require the person to undertake treatments that are not acceptable to the person”;

By making the above revision, all of section 241.2. (2) could be deleted.

Furthermore, section 241.2 (2) (d) refers to a “natural death [that] has become reasonably foreseeable.” Not only is this terminology subjective in its interpretation, it could potentially restrict access to MAID for individuals with intolerable suffering, as those with a “grievous and irremediable condition” may not also have a “reasonably foreseeable” death.

CNA recommends that the eligibility criteria could be limited to those outlined in 241.2 (1) with the revisions suggested above.

- 2 Section 241.2 (3) (b) (ii) also refers to a “natural death [that] has become reasonably foreseeable.”

CNA recommends that 241.2 (3) (b) (ii) be revised to read: “signed and dated after the person was informed by a medical practitioner or nurse practitioner that all the criteria set out in subsection (1) have been met.”

Regarding Section 241.2 (6) (a) and (c)

- 1 Section 241.2 (6) refers to the independence of medical and nurse practitioners. As currently written, criteria 6 (a) “are not in a business relationship” and (c) “do not know or believe that they are connected to the other practitioner” are potentially confusing. They may therefore create longer waiting periods for MAID while practitioners attempt to establish clear “independence” and also satisfy the requirements under 241.2. (3) (e) and (f) relating to written opinions from independent practitioners. In rural and remote settings, delays in securing opinions in writing from independent practitioners may occur where communities have a limited number of health-care providers who clearly meet the criteria outlined in 6 (a) and (c). In many cases, meeting the criteria as written will require practitioners to travel from outside the community.

CNA recommends amending sections 6 (a) and (c), as written, and replacing them with terms that can be clearly understood, transparently and clearly demonstrated in practice, and are practical to implement in the best interests of the patient.



In addition, CNA supports the proposed amendments to C-14 suggested by the Canadian Association of Advanced Practice Nurses and the Canadian Nurses Protective Society.

