AUTONOMY, CAPACITY, AND THE RIGHT TO EXIT

An Advocacy Brief on Capacity-Based Medical Aid in Dying

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Document Suite

This document is one of five in the *Autonomy, Capacity, and the Right to Exit* policy suite (Bogner, 2026). The Master Policy Packet contains the complete philosophical argument, all data, and full procedural architecture. Audience-specific briefs are available for Legislative, Clinical/Medical Ethics, Academic, and Advocacy audiences.

Who This Brief Is For

This brief is written for disability rights organizations, civil liberties advocacy groups, patient rights advocates, and policy organizations that work at the intersection of autonomy and social provision. It takes the disability rights critique of expanded MAiD as a serious argument deserving serious engagement—not dismissal—and offers a structural response grounded in the same values that animate that critique.

Starting Point: What the Critics Are Right About

The disability rights organizations opposing expanded MAiD eligibility—DAWN Canada, ADAPT, the UN Special Rapporteur on the Rights of Persons with Disabilities—have identified a real and documentable problem. It deserves to be stated plainly before the response begins.

Health Canada's 2024 Annual Report documents 732 Track 2 provisions (non-foreseeable death cases), representing a 17% year-over-year increase. Of these, 61.5% of recipients reported disability as a condition—nearly double the 31.6% rate in terminal Track 1 cases. The Ontario Chief Coroner's reviews have documented individual cases in which inadequate housing, income insufficiency, and absence of community care appear as primary conditions motivating MAiD requests.

These are not fringe cases. They are a pattern. And the disability rights organizations are correct to name what that pattern suggests: in some instances, the Canadian state is processing deaths that are attributable not to irremediable medical conditions but to irremediable policy failures.

Expanding MAiD eligibility to non-terminal cases does not extend autonomy if the conditions under which people make that choice are coercive by virtue of deprivation. A person who chooses death because they cannot access adequate housing, disability support, or social connection is not exercising free choice in any meaningful sense. They are being failed by the state and given a bureaucratically clean mechanism to exit that failure.
This is a legitimate concern. It demands a structural response, not a procedural footnote.

Where the Protectionist Response Fails

The policy position that follows from the disability rights concern is typically: *restrict eligibility, close the exit, compel continued existence until adequate supports are in place.*

This position has three fatal problems.

It does not resolve the underlying conditions

The Protectionist Model—restrictions on MAiD eligibility as the mechanism for compelling social investment—has governed most jurisdictions for decades. Canada's existing Track 2 framework, limited as it is, has been operative since 2021. The United States has restricted MAiD to terminal cases since the first state laws in the 1990s. The United Kingdom has no MAiD provision at all.

In those same decades: disability support funding has been chronically underfunded across all these jurisdictions. Social housing stocks have declined. Community mental health infrastructure has been cut. Institutional waiting lists have grown. The Protectionist position did not produce the dignified conditions its defenders claim it would compel. There is no historical evidence that locking the exit creates political pressure for better lives. The evidence is that it creates administrative invisibility for people whose suffering is politically inconvenient to see.

It substitutes one coercion for another

When the state denies a person with intact decisional capacity the right to act on their informed preference—on the grounds that the state disapproves of the conditions producing

that preference—it is not protecting that person. It is overriding their expressed will with institutional judgment. This is precisely the form of paternalism that disability rights advocacy has historically opposed: the substitution of external authority for personal agency in the lives of people the state deems vulnerable.

The person who cannot access adequate housing and finds their life intolerable is not made better off by being prohibited from acting on that assessment. They are worse off, in a way that is now legally compelled. They remain in the conditions that produced the crisis, with the additional indignity of the state having decided it knows better than they do whether those conditions are sufficient to justify exit.

It makes the state's failure invisible

This is the most consequential problem. Under current restrictive frameworks, when a person in inadequate conditions is denied MAiD access and continues living in those conditions, that outcome is recorded as nothing. There is no document. No report. No attributed failure. The person's continued existence, however inadequate, is counted as a policy success.

When that same person eventually dies—in a hospital, in inadequate housing, by unassisted means—the causal chain between policy failure and death is severed by the absence of documentation. The state is never held accountable, because the mechanism for accountability does not exist.

The Forcing Function: A Structural Answer

The response this framework offers to the disability rights concern is not a procedural footnote. It is a structural mechanism designed to make state failure politically legible.

> Under this framework, where an applicant identifies inadequate housing, income, disability support, or social connection as a primary or contributing condition of their MAiD preference, the administering authority is **required** to transmit a formal written report to the relevant government ministry documenting these conditions as a driver of the provision. This reporting obligation is mandatory, not discretionary, and must be fulfilled within 30 days of provision.

The policy rationale is straightforward.

State failure becomes documented public record

Aggregated across a population, mandatory socioeconomic reporting produces a dataset that did not previously exist: the number of people, by year, by region, by condition, who received

MAiD in circumstances attributable in part to policy failure. That dataset is a political instrument. It is citable, attributable, and specific.

The disability rights organizations have been arguing, correctly, that inadequate supports are driving some MAiD uptake. This framework makes that argument documentable. It transforms an advocacy claim into a government data series.

Political cost creates structural incentive

A government that must publish, annually, the number of its citizens who died with inadequate housing as a documented driver faces a political cost that the current system does not impose. The current system produces no such document. Inadequate deaths are absorbed into aggregate mortality statistics and disappear.

The Right to Exit, combined with mandatory socioeconomic documentation, functions as a consumer protection standard for existence: the state must either provide conditions worth living in or produce a public record of why it did not. This is the incentive structure for social investment that the Protectionist position cannot create, because it requires the deaths to be visible.

The alternative to coercion is accountability, not access

The disability rights organizations want the state to improve conditions before unlocking the exit. The framework presented here wants both simultaneously: unlock the exit, and document every choice made in the shadow of state failure. These are not in conflict. They are complementary. The exit cannot remain locked as the condition for investment in life, because that bet has already been lost. The door has been locked. The investment has not arrived.

Robust Safeguards for Vulnerable Populations

Acknowledging that some MAiD uptake is driven by socioeconomic deprivation does not mean accepting it uncritically. The procedural architecture of this framework includes specific protections for exactly the populations the disability rights community is concerned about.

Mandatory alternatives presentation

Evaluators are required to present, in documented specificity, every available alternative: housing assistance programs, income support, disability services, community connection, peer support, palliative care, psychiatric intervention. Not a pamphlet. A documented conversation with referrals offered and declinations recorded. An applicant who does not know

that housing assistance exists cannot give an informed refusal of housing assistance. The evaluation must close that gap.

Independent coercion screening

Every assessment includes a confidential interview with a social worker or patient advocate who has no institutional stake in the outcome. This person's role is to look for external pressure—from family, from financial circumstances, from the care system—and to provide the applicant with space to express concerns they may not feel safe expressing in the presence of their treating team.

Absolute revocation

The right to revoke is unconditional and available until the final moment. No provision date may be locked in. No bureaucratic or social momentum may constrain it. This protects against the "inertia coercion" that can occur when a process has begun and withdrawal feels socially costly.

Socioeconomic documentation is mandatory, not optional

The reporting obligation is not a clinician's discretionary note. It is a statutory requirement. A provision that occurs without this report, where the conditions warranted it, constitutes a failure of the administering authority. This is enforceable.

The Values We Share

This framework and the disability rights critique it engages are animated by the same underlying values. Both hold that:

- The state has an obligation to provide conditions in which disabled people, socioeconomically marginal people, and isolated people can live with dignity.
- Choices made under conditions of deprivation are not fully free choices, and the state bears responsibility for those conditions.
- Disabled people are not less capable of autonomous decision-making than non-disabled people, and should not be subjected to heightened paternalistic oversight on that basis.
- The substitution of institutional judgment for personal agency in the lives of people deemed vulnerable is a form of harm, not protection.

The disagreement is not about values. It is about which mechanism best advances those values given the evidence about what restrictive frameworks have actually produced.

The point of genuine disagreement

The disability rights position holds that the risk of the state normalizing death as a response to deprivation is severe enough to justify categorical restriction, even at the cost of overriding the expressed preferences of people with genuine capacity. This framework holds that categorical restriction, given the historical evidence, does not produce the investment it is supposed to compel, and that overriding expressed autonomous preferences on a population-wide basis is itself a serious harm that must be weighed.

This is a genuine disagreement about empirical predictions and about how to weigh competing harms. It deserves honest engagement, not mutual dismissal.

A Proposed Basis for Dialogue

The following points represent the minimal shared ground from which a productive policy conversation between this framework and disability rights organizations might begin:

1. **Agree on the documentation obligation.** Even organizations opposed to expanded eligibility should be able to support mandatory socioeconomic reporting as an improvement on the status quo. If deaths are occurring due to inadequate support under any eligibility framework, those deaths should be documented. This is not controversial in principle.
2. **Agree on the alternatives mandate.** Mandatory documented presentation of all available alternatives, with referrals offered and declinations recorded, advances the goals of disability rights advocacy regardless of eligibility framework. It ensures that no one proceeds to MAiD without genuine knowledge of what was available.
3. **Engage on the empirical question.** Has the restrictive framework produced the social investment it was intended to compel? If not, on what basis should the restriction be maintained? This question deserves honest engagement with the historical record, not assumption.
4. **Disagree on eligibility while cooperating on process.** Even where eligibility remains contested, process improvements—independent coercion screening, absolute revocation, documentation requirements—can be pursued cooperatively.

> **A Direct Statement to Disability Rights Organizations**
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> You have been right that the state is failing people and that some MAiD uptake reflects that failure. This framework does not dispute that. It disputes only the conclusion that the remedy is restriction rather than accountability.
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> If your position is that disabled people with intact decisional capacity should not have the same right to self-determination that non-disabled people have—because their choices might be influ-

> enced by conditions the state has failed to provide—then you are arguing for a form of protective paternalism that disability rights advocacy has historically and correctly opposed in every other domain.
> The door must stand unlocked. What must change is the system of accountability that operates on the other side of it. This framework builds that accountability system. We are, on that goal, allies.

Key Sources: Health Canada, *Sixth Annual Report on MAiD in Canada* (2024 data; released November 2025); DAWN Canada, *MAiD and the Inadequacy of Social Supports* (2023); Ontario Office of the Chief Coroner, *MAiD Case Reviews* (2022–2025); UN Special Rapporteur on the Rights of Persons with Disabilities (2019); *Carter v. Canada (AG)*, 2015 SCC 5.