**Legal framework for medical decision-making**

**Accessible transcript**

Audio

(GENTLE MUSIC PLAYS)

**Visual**

**A heading slowly fades onto screen on a grey background. The text reads ‘Advance care planning legal framework.**

Audio

This video is designed to help you understand the legal framework of advance care planning including Enduring Powers of Attorney for personal care and welfare and advance directives.

**Visual**

**A woman fades into view. She has dark hair tied back in a ponytail and is wearing a blue t-shirt with a black blazer overtop. There is a plain dark grey background behind**

**her.**

Audio

Advance care planning is a process of shared discussion for future health care. It involves an individual, whānau & their health care team. Advance care planning is an opportunity for a person to develop and express their preferences for future care based on their values, beliefs, concerns, hopes & goals. The focus is on giving people the opportunity to say what care and treatment they do and don’t want now and in the future, as well as what they would like to see happen when they are dying and after they die.

**Visual**

**The heading ‘advance care planning’ fades on and off the screen. It is replaced by an illustration of a family embracing. The woman then returns to the screen. Headings highlighting the key points appear alongside her on the background.**

Audio

The person is encouraged to capture this in anadvance care plan.

This plan is aimed at supporting people and their families to get onto the same page about what is most important to the person and to ensure their health care team use that information to support shared decision-making in the future.

**Visual**

**An illustration of a hand holding a book titled ‘advance care plan’ fades into view on the screen. This illustration fades away and is replaced by an illustration of a family talking with a clinician.**

Audio

It can help a person and their whānau clarify differing views, improve understanding of treatment options, feel more in control and positively enhance a person’s hope in the face of progressive illness. Advance care planning has also been shown to reduce stress, anxiety and depression for whānau after a person has died. For health care staff, the process of advance care planning helps develop and deepen relationships between a health care team, the person and their whānau. Evidence shows that advance care planning supports a substantial reduction in unwanted and unwarranted treatments for people. This leads to fewer and shorter hospital admissions and improved quality of life for the person in care. Ideally this process of planning starts before the person becomes unwell and continues throughout their lifetime.

**Visual**

**The woman returns to the screen. Headings highlighting the key points appear alongside her as she speaks then fade away.**

Audio

An advance care plan has a section for a person to say who they want to be involved in decision-making. People named in the advance care plan will be included in conversations about what care and treatment to provide wherever possible by the health care team. These people will not be able to consent or refuse treatment for the person unless they are the person’s activated Enduring Power of Attorney for personal care and welfare. Enduring Powers of Attorney for Personal care and welfare cover the person’s health, accommodation and associated care decisions.

**Visual**

**The heading ‘the enduring power of attorney’ appears on the screen and then fades away.** **The woman then returns to the screen. Headings highlighting the key points appear alongside her as she speaks then fade away.**

Audio

There can be only one person designated for this role and the responsibility is activated only if a medical professional or the Family Court decides the person is not competent as defined by the Protection of Personal Property and Rights Act of 1988.

**Visual**

**An illustration of a judge appears to the right of the woman then an illustration of a clinician appears to the left. The woman fades out of view and is replaced by a heading which reads ‘Protection of Personal Property and Rights Act 2988’.**

Audio

The overriding consideration of the attorney is to promote and protect the persons welfare and best interests.They can make decisions on the personal care and welfare matters only as specified in *the EPA and* the Act. But there are limits on the attorney’s powers – the attorney cannot refuse consent on behalf of the person to have medical treatment that might save their life. If a person has a strong preference not to receive a specific life sustaining treatment, they should capture that in an advance directive so that the person’s attorney will not need to be asked to consent.

**Visual**

**The woman returns to the screen. Headings highlighting the key points appear alongside her as she speaks then fade away.**

Audio

An advance care plan has legal standing and clinicians are required to take it into consideration when determining treatment options. Rights and corresponding obligations for clinicians are set out in the Code of Health and Disability Consumers’ Rights. These include the right to dignity and independence; the right to services of an appropriate standard and the right to make an informed choice and give informed consent.

**Visual**

**A heading which reads ‘the legal standing of an advance care plan’ appears on the screen and then fades away.** **The woman then returns to the screen. Headings highlighting the key points appear alongside her as she speaks then fade away.**

Audio

An advance care plan can and often does include an advance directive. An advance directive is consent or refusal of specific treatment that may be offered in the future when the person no longer has capacity. It doesn’t come into play until the specific treatment is offered and the person is unable to consent themselves.

**Visual**

**A heading which reads ‘advance directives’ appears on the screen and then fades away.** **The woman returns to the screen. Headings highlighting the key points appear alongside her as she speaks then fade away.**

Audio

Advance directives are generally valid when they are created by a person who has mental capacity to make the directive, the directive is made freely and without undue influence, the person intends it to apply to the current circumstances and, at the time of making it, the person understood the benefits, risks and consequences of consenting to or refusing the specific treatment.

**Visual**

**They key points readout by the narrator appear in white text appear in a list down the screen. The text is white on a dark blue background.**

Audio

Valid advance directives are legally binding. This applies even if a refusal of treatment contained in an advance directive is not what is in the person’s best interests from the clinician’s perspective.

**Visual**

**An illustration appears of a piece of paper with the heading ‘advance directive’ appears on screen. There is an illustrated hand holding a pen, which hovers over the paper.**

Audio

Just like when a person is competent and refuses a treatment, we cannot force the treatment onto that person. An advance directive does not need to be signed or dated and in fact can even be verbal. However, having an advance directive in writing, signed and dated by the person and the supporting clinician is good practice. The national advance care plan template contains a section for advance directives. Providing the directive as part of an advance care plan will give the clinician more information and context to understand the advance directive and assess its validity.

**Visual**

**The woman returns to the screen. Headings highlighting the key points appear alongside her as she speaks then fade away.**

Audio

Depending on the situation there are a series of steps to offering treatment and seeking consent. First, a treating clinician determines what treatment to offer based on the person’s current condition, other health issues and risk. They take into consideration the person’s goals, priorities and preferences. Ideally the person has captured this information into their advance care plan. Just because a person has requested specific treatments or stated a treatment preference does not obligate the treating clinician to offer these. If the person is able to, they will be asked to consent to the treatment offered before the clinician proceeds.

**Visual**

**A heading which reads ‘medical decision-making’ appears on the screen and then fades away.** **An illustration showing five steps appears briefly and then disappears. The woman returns to the screen. Headings highlighting the key points appear alongside her as she speaks then fade away.**

Audio

If the person is unable to consent, then the treating clinician should determine whether the person has already consented in the form of an advance directive.

**Visual**

**An illustration of a clinician talking to a patient appears inside a circle. A heading appears alongside highlighting the key points of step one.**

Audio

If there is a validadvance directive that applies to the specific treatment offered, the consent or refusal contained in the advance directive is legally binding. If there is no advance directive or the treating clinician has reasonable grounds to doubt the validity of the advance directive, the clinician must look for anyone else who has the power to consent on the behalf of the patient.

**Visual**

**An illustration of a piece of paper with ‘advance directive’ at the top appears. There is a hand holding a pen, hovering over top of the piece of paper. A heading appears alongside highlighting the key points of step two.**

Audio

This would be an activated enduring power of attorney or court appointed welfare guardian. It’s important to know that no one else has the legal right to consent or refuse treatment and that an enduring power of attorney cannot refuse life-sustaining treatment.

**Visual**

**An illustration of a woman wearing a red top appears inside a circle. A heading appears alongside highlighting the key points of step three.**

Audio

If there is no one with the power to consent on the patient’s behalf, the treating clinician is obliged to take into consideration any advance care plans and talk to whānau and other clinicians about what the patient would have wanted.

**Visual**

**An illustration of a woman wearing a blue coat with a stethoscope around her neck, and her arms crossed appears inside a circle. A heading appears alongside highlighting the key points of step four.**

If the treating clinician is unable to ascertain what the person would have wanted then they will need to make the decision for the patient based on the patient’s best interests.

**Visual**

**The same illustration appears, and a heading appears alongside highlighting the key points of step five.**

Audio

This legal framework focuses on individual decision-making and autonomy. It does not support collective decision-making.

**Visual**

**The screen zooms out to show all five illustrations in a step formation, with step one at the top of the screen, stepping down the screen to step five. There are arrows between each step to indicate the direction of movement.**

Audio

So in summary it is ideal if the advance care plan is documented in the national advance care plan template. This increases the chances that what matters most to a person and their whānau is used to direct their care now and in the future.

**Visual**

**White text on a dark blue background appears which reads ‘Ideal if what the person wants is documented in the advance care plan template’. The woman then returns to the screen.**

Audio

In this advance care plan template a person can communicate what matters to them and what worries them, why they are doing an advance care plan, how they like to make decisions and who they want to make decisions on their behalf, what they want when they are dying, what they would like to happen if they cannot communicate for themselves, any advance directives, including refusal of life-sustaining treatments, their wishes after death.

**Visual**

**An illustration of a piece of paper with ‘advance directive’ at the top appears. There is a hand holding a pen, hovering over top of the piece of paper. The illustration fades slightly and then headings highlighting the key points appear over top of the image.**

Audio

It’s best if an advance care plan is completed with the support of a clinician who also signs the document. The advance care plan can then be shared with whānau, the enduring power of attorney and the health care team. A copy should also be available in the medical record so it’s easily accessible and it can be reviewed when there has been a change of circumstances.

**Visual**

**The illustration reappears. It fades away and is replaced by the woman in the middle of the screen.**

Audio

An advance care plan does not need to meet any of these criteria to be useful, but it will be easier to use if it does. The process of creating this plan is of benefit for individuals, their whānau and their health care team. It can help everyone navigate the legal framework of care when a person is unable to communicate for themselves.

**Visual**

**An illustration of a family talking to a clinician appears. It fades away and is replaced by the woman in the middle of the screen. The screen fades to white and three logos appear. The first logo reads ‘our voice tō tātou reo, advance care planning’ the second logo reads ‘Health Quality & Safety Commission New Zealand Kupu Taurangi Hauora o Aotearoa’. The blue and green company logo comprises of three thin square blocks with white circles of differing sizes within them. The third logo, in grey text reads ‘New Zealand Government’.**