

## Assembly Bill No. 2565

### CHAPTER 465

An act to add Section 1254.4 to the Health and Safety Code, relating to health facilities.

[Approved by Governor September 27, 2008. Filed with  
Secretary of State September 27, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2565, Eng. Hospitals: brain death.

Existing law, the Uniform Determination of Death Act, defines a person as being "dead" to include when an individual has sustained irreversible cessation of all functions of the entire brain, including the brain stem. Existing law requires a determination of death to be made in accordance with accepted medical standards.

Existing law, administered by the State Department of Public Health, provides for the licensure and regulation of health facilities, including general acute care hospitals. A violation of the provisions regulating health facilities is a crime.

This bill would require a general acute care hospital to adopt a policy for providing a family or next of kin with a reasonably brief period of accommodation, as defined, from the time that a patient is declared dead by reason of irreversible cessation of all functions of the entire brain, including the brain stem, in accordance with a provision of existing law, through discontinuation of cardiopulmonary support for the patient. The bill would also require the hospital to provide the patient's legally recognized health care decisionmaker, if any, or the patient's family or the next of kin, if available, with a written statement of the policy developed pursuant to these provisions, as soon as possible when the potential for brain death is imminent. The bill would require the hospital, if the patient's legally recognized health care decisionmaker, or next of kin voices any special religious or cultural practices or concerns of the patient or the patient's family surrounding the issue of death by reason of irreversible cessation of all functions of the entire brain of the patient, to make reasonable efforts, as described, to accommodate those special religious or cultural practices and concerns. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1254.4 is added to the Health and Safety Code, to read:

1254.4. (a) A general acute care hospital shall adopt a policy for providing family or next of kin with a reasonably brief period of accommodation, as described in subdivision (b), from the time that a patient is declared dead by reason of irreversible cessation of all functions of the entire brain, including the brain stem, in accordance with Section 7180, through discontinuation of cardiopulmonary support for the patient. During this reasonably brief period of accommodation, a hospital is required to continue only previously ordered cardiopulmonary support. No other medical intervention is required.

(b) For purposes of this section, a “reasonably brief period” means an amount of time afforded to gather family or next of kin at the patient’s bedside.

(c) (1) A hospital subject to this section shall provide the patient’s legally recognized health care decisionmaker, if any, or the patient’s family or next of kin, if available, with a written statement of the policy described in subdivision (a), upon request, but no later than shortly after the treating physician has determined that the potential for brain death is imminent.

(2) If the patient’s legally recognized health care decisionmaker, family, or next of kin voices any special religious or cultural practices and concerns of the patient or the patient’s family surrounding the issue of death by reason of irreversible cessation of all functions of the entire brain of the patient, the hospital shall make reasonable efforts to accommodate those religious and cultural practices and concerns.

(d) For purposes of this section, in determining what is reasonable, a hospital shall consider the needs of other patients and prospective patients in urgent need of care.

(e) There shall be no private right of action to sue pursuant to this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.