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January 20, 2009

AFL 08-37

**TO:** General Acute Care Hospitals (GACH)

**SUBJECT:** Hospital Brain Death Policy

**AUTHORITY:** Assembly Bill (AB) 2565 (Eng, Chapter 465, Statutes of 2008)

This letter is being sent to notify you of new legislation established by Assembly Bill 2565. The following information represents the mandates set forth by this chaptered legislation, as it affects hospitals and a new required policy.

Effective January 1, 2009, Health and Safety Code (HSC) Section 1254.4 requires all GACHs to develop and adopt a policy for providing a patient's family or next of kin with a reasonably brief period of accommodation, as described in HSC 1254.4(b), from the time that a patient is declared brain dead by reason of irreversible cessation of all functions of the entire brain, including the brain stem (in accordance with HSC § 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.

HSC § 1254.4(b) describes a "reasonably brief period" as an amount of time afforded to gather family or next of kin at the patient's bedside.

HSC § 1254.4(c)(1) requires a hospital to provide the patient's legally recognized health care decisionmaker, if any, or the patient's family or next of kin, if available, a written statement of the policy, upon request, but no later than shortly after the treatment physician has determined that the potential for brain death is imminent.

In addition, HSC § 1254.4(c)(2) requires that 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.

AFL 08-37  
Page 2  
January 20, 2009

HSC § 1254.4(d) affirms that in determining what is reasonable, a hospital shall consider the needs of other patients and prospective patients in need of urgent care.

In closing, HSC § 1254.4(e) states that there shall be no private right of action to sue pursuant to this section.

If you have any questions, please contact your local District Office.

Sincerely,

**Original Signed by Kathleen Billingsley, R.N.**

Kathleen Billingsley, R.N.  
Deputy Director  
Center for Health Care Quality