

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/KR

P.L.2013, CHAPTER 185, *approved January 13, 2014*
Assembly, No. 3586 (*Second Reprint*)

1 AN ACT concerning ¹**the determination** declarations¹ of death
2 ¹**by** upon the basis of¹ neurological criteria and amending
3 P.L.1991, c.90.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 4 of P.L.1991, c.90 (C.26:6A-4) is amended to read
9 as follows:

10 4. a. A declaration of death upon the basis of neurological
11 criteria pursuant to section 3 of this act shall be made by a licensed
12 physician professionally qualified by specialty or expertise, based
13 upon the ¹exercise of the¹ physician's ¹best¹ medical judgment and
14 in accordance with currently accepted medical standards **and**
15 additional requirements, including appropriate confirmatory tests,
16 as are provided pursuant to this act ¹**that are based upon**
17 nationally recognized sources of practice guidelines, including, but
18 not limited to, those adopted by the American Academy of
19 Neurology¹ ²that are based upon nationally recognized sources of
20 practice guidelines, including, but not limited to, those adopted by
21 the American Academy of Neurology².

22 b. Subject to the provisions of this act, the Department of
23 Health, jointly with the State Board of Medical Examiners, shall
24 adopt, and from time to time revise, regulations setting forth **[(1)]**
25 requirements, by specialty or expertise, for physicians authorized to
26 declare death upon the basis of neurological criteria**];** and (2)
27 currently accepted medical standards, including criteria, tests and
28 procedures, to govern declarations of death upon the basis of
29 neurological criteria**].** The **[initial]** regulations shall **[be issued**
30 within 120 days of the enactment of this act] not require the use of
31 any specific ¹**criteria,**¹ test ¹**[,]**¹ or procedure in the
32 ¹**determination** declaration¹ of death ¹**by** upon the basis of¹
33 neurological criteria.

34 c. If the individual to be declared dead upon the basis of
35 neurological criteria is or may be an organ donor, the physician who
36 makes the declaration that death has occurred shall not be the organ
37 transplant surgeon, the attending physician of the organ recipient,
38 ¹**nor** or¹ otherwise an individual subject to a potentially

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHE committee amendments adopted January 14, 2013.

²Senate SHH committee amendments adopted June 13, 2013.

1 significant conflict of interest relating to procedures for organ
2 procurement.

3 d. If death is to be declared upon the basis of neurological
4 criteria, the time of death shall be upon the conclusion of definitive
5 clinical examinations and any confirmation necessary to determine
6 the irreversible cessation of all functions of the entire brain,
7 including the brain stem.

8 (cf: P.L.1991, c.90, s.4)

9

10 2. This act shall take effect on the first day of the third month
11 next following the date of enactment, but the Department of Health,
12 jointly with the State Board of Medical Examiners, may take such
13 anticipatory administrative action in advance thereof as shall be
14 necessary for the implementation of this act.

15

16

17

18

19 Removes statutory authority of DOH and Board of Medical
20 Examiners over medical standards governing declarations of death
21 upon the basis of neurological criteria.

ASSEMBLY, No. 3586

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED DECEMBER 10, 2012

Sponsored by:
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)

SYNOPSIS

Prohibits DOH from requiring any specific criteria, test, or procedure in the determination of death by neurological criteria.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the determination of death by neurological
2 criteria and amending P.L.1991, c.90.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 4 of P.L.1991, c.90 (C.26:6A-4) is amended to read
8 as follows:

9 4. a. A declaration of death upon the basis of neurological
10 criteria pursuant to section 3 of this act shall be made by a licensed
11 physician professionally qualified by specialty or expertise, based
12 upon the physician's medical judgment and in accordance with
13 currently accepted medical standards **【and additional requirements,**
14 including appropriate confirmatory tests, as are provided pursuant
15 to this act**】** that are based upon nationally recognized sources of
16 practice guidelines, including, but not limited to, those adopted by
17 the American Academy of Neurology.

18 b. Subject to the provisions of this act, the Department of
19 Health, jointly with the State Board of Medical Examiners, shall
20 adopt, and from time to time revise, regulations setting forth **【(1)】**
21 requirements, by specialty or expertise, for physicians authorized to
22 declare death upon the basis of neurological criteria**【;** and (2)
23 currently accepted medical standards, including criteria, tests and
24 procedures, to govern declarations of death upon the basis of
25 neurological criteria**】**. The **【initial】** regulations shall **【be issued**
26 within 120 days of the enactment of this act】 not require the use of
27 any specific criteria, test, or procedure in the determination of death
28 by neurological criteria.

29 c. If the individual to be declared dead upon the basis of
30 neurological criteria is or may be an organ donor, the physician who
31 makes the declaration that death has occurred shall not be the organ
32 transplant surgeon, the attending physician of the organ recipient,
33 nor otherwise an individual subject to a potentially significant
34 conflict of interest relating to procedures for organ procurement.

35 d. If death is to be declared upon the basis of neurological
36 criteria, the time of death shall be upon the conclusion of definitive
37 clinical examinations and any confirmation necessary to determine
38 the irreversible cessation of all functions of the entire brain,
39 including the brain stem.

40 (cf: P.L.1991, c.90, s.4)

41

42 2. This act shall take effect on the first day of the third month
43 next following the date of enactment, but the Department of Health,
44 jointly with the State Board of Medical Examiners, may take such

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 anticipatory administrative action in advance thereof as shall be
2 necessary for the implementation of this act.

3

4

5

STATEMENT

6

7 This bill amends section 4 of P.L.1991, c.90 (C.26:6A-4) to
8 prohibit regulations adopted by the Department of Health
9 concerning the declaration of death upon the basis of neurological
10 criteria, from requiring the use of any specific criteria, test, or
11 procedure in the determination of death by neurological criteria.

12 Instead, this bill requires that a declaration of death upon the
13 basis of neurological criteria be made, by a licensed physician
14 professionally qualified by specialty or expertise, based upon the
15 physician's medical judgment and in accordance with currently
16 accepted medical standards that are based upon nationally
17 recognized sources of practice guidelines, including, but not limited
18 to, those adopted by the American Academy of Neurology.

19 The bill takes effect on the first day of the third month following
20 the date of enactment, but authorizes the Department of Health
21 (jointly with the State Board of Medical Examiners) to take prior
22 administrative action as necessary for its implementation.

ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3586

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 14, 2013

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 3586.

As amended by the committee, this bill amends section 4 of P.L.1991, c.90 (C.26:6A-4) to remove the statutory authority of the Department of Health (DOH) and the State Board of Medical Examiners (BME) over medical standards governing declarations of death upon the basis of neurological criteria.

The bill requires that a declaration of death upon the basis of neurological criteria be made by a licensed physician professionally qualified by specialty or expertise, based upon the exercise of the physician's best medical judgment and in accordance with currently accepted medical standards.

The bill deletes the statutory provisions that authorize joint DOH/BME regulations setting forth currently accepted medical standards (including criteria, tests, and procedures) to govern declarations of death upon the basis of neurological criteria. Furthermore, the bill explicitly prohibits the joint DOH/BME regulations, concerning the declaration of death upon the basis of neurological criteria, from requiring the use of any specific test or procedure in the declaration of death upon the basis of such criteria.

The bill does retain the current statutory authority of DOH and BME to jointly adopt and periodically revise regulations setting forth requirements, by specialty or expertise, for physicians authorized to declare death upon the basis of neurological criteria.

The bill takes effect on the first day of the third month following the date of enactment, but authorizes DOH, jointly with BME, to take prior administrative action as necessary for its implementation.

COMMITTEE AMENDMENTS

The committee amendments to the bill are designed to clarify the legislative intent behind this measure.

The amendments stipulate that a declaration of death upon the basis of neurological criteria is to be made by a licensed physician professionally qualified by specialty or expertise, based upon the

exercise of the physician's best medical judgment and in accordance with currently accepted medical standards. The amendments remove the requirement that these standards be based upon nationally recognized sources of practice guidelines, including, but not limited to, those adopted by the American Academy of Neurology, as these guidelines may become outdated or obsolete over time.

The amendments also prohibit the joint DOH/BME regulations, concerning the declaration of death upon the basis of neurological criteria, from requiring the use of any specific test or procedure in the declaration of death upon the basis of such criteria. The language in this provision has been modified to be consistent with that used throughout the statute that is amended by the bill.

Finally, the amendments revise the title and synopsis of the bill to use terminology that is consistent with the language of the statute amended by the bill.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3586

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 13, 2013

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Assembly Bill No. 3586 (1R).

As amended, this bill amends section 4 of P.L.1991, c.90 (C.26:6A-4) to remove the statutory authority of the Department of Health (DOH) and the State Board of Medical Examiners (BME) over medical standards governing declarations of death upon the basis of neurological criteria.

The bill requires that a declaration of death upon the basis of neurological criteria be made by a licensed physician professionally qualified by specialty or expertise, based upon the exercise of the physician's best medical judgment and in accordance with currently accepted medical standards. A declaration of death upon the basis of neurological criteria pursuant to section 3 of this act shall be made by a licensed physician professionally qualified by specialty or expertise, based upon the exercise of the physician's best medical judgment and in accordance with currently accepted medical standards that are based upon nationally recognized sources of practice guidelines, including, but not limited to, those adopted by the American Academy of Neurology.

The bill deletes the statutory provisions that authorize joint DOH/BME regulations setting forth currently accepted medical standards (including criteria, tests, and procedures) to govern declarations of death upon the basis of neurological criteria. Furthermore, the bill explicitly prohibits the joint DOH/BME regulations, concerning the declaration of death upon the basis of neurological criteria, from requiring the use of any specific test or procedure in the declaration of death upon the basis of such criteria.

The bill does retain the current statutory authority of DOH and BME to jointly adopt and periodically revise regulations setting forth requirements, by specialty or expertise, for physicians authorized to declare death upon the basis of neurological criteria.

The bill takes effect on the first day of the third month following the date of enactment, but authorizes DOH, jointly with BME, to take prior administrative action as necessary for its implementation.

The committee amended the bill to specify that the currently accepted medical standards to be used to declare death are to be “based upon nationally recognized sources of practice guidelines, including, but not limited to, those adopted by the American Academy of Neurology”.

As amended, this bill is identical to Senate Bill No.2756 SCA (Vitale/Singer), which the committee also reported favorably on this date.

SENATE, No. 2756

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED MAY 13, 2013

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

SYNOPSIS

Removes statutory authority of DOH and Board of Medical Examiners over medical standards governing declarations of death upon the basis of neurological criteria.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning declarations of death upon the basis of
2 neurological criteria and amending P.L.1991, c.90.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 4 of P.L.1991, c.90 (C.26:6A-4) is amended to read
8 as follows:

9 4. a. A declaration of death upon the basis of neurological
10 criteria pursuant to section 3 of this act shall be made by a licensed
11 physician professionally qualified by specialty or expertise, based
12 upon the exercise of the physician's best medical judgment and in
13 accordance with currently accepted medical standards **[and**
14 additional requirements, including appropriate confirmatory tests,
15 as are provided pursuant to this act**]**.

16 b. Subject to the provisions of this act, the Department of
17 Health, jointly with the State Board of Medical Examiners, shall
18 adopt, and from time to time revise, regulations setting forth **[(1)]**
19 requirements, by specialty or expertise, for physicians authorized to
20 declare death upon the basis of neurological criteria**];** and (2)
21 currently accepted medical standards, including criteria, tests and
22 procedures, to govern declarations of death upon the basis of
23 neurological criteria**]**. The **[initial]** regulations shall **[be issued**
24 within 120 days of the enactment of this act] not require the use of
25 any specific test or procedure in the declaration of death upon the
26 basis of neurological criteria.

27 c. If the individual to be declared dead upon the basis of
28 neurological criteria is or may be an organ donor, the physician who
29 makes the declaration that death has occurred shall not be the organ
30 transplant surgeon, the attending physician of the organ recipient,
31 **[nor]** or otherwise an individual subject to a potentially significant
32 conflict of interest relating to procedures for organ procurement.

33 d. If death is to be declared upon the basis of neurological
34 criteria, the time of death shall be upon the conclusion of definitive
35 clinical examinations and any confirmation necessary to determine
36 the irreversible cessation of all functions of the entire brain,
37 including the brain stem.

38 (cf: P.L.1991, c.90, s.4)

39

40 2. This act shall take effect on the first day of the third month
41 next following the date of enactment, but the Department of Health,
42 jointly with the State Board of Medical Examiners, may take such
43 anticipatory administrative action in advance thereof as shall be
44 necessary for the implementation of this act.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

This bill amends section 4 of P.L.1991, c.90 (C.26:6A-4) to remove the statutory authority of the Department of Health (DOH) and the State Board of Medical Examiners (BME) over medical standards governing declarations of death upon the basis of neurological criteria.

The bill requires that a declaration of death upon the basis of neurological criteria be made by a licensed physician professionally qualified by specialty or expertise, based upon the exercise of the physician's best medical judgment and in accordance with currently accepted medical standards.

The bill deletes the statutory provisions that authorize joint DOH/BME regulations setting forth currently accepted medical standards (including criteria, tests, and procedures) to govern declarations of death upon the basis of neurological criteria. Furthermore, the bill explicitly prohibits the joint DOH/BME regulations, concerning the declaration of death upon the basis of neurological criteria, from requiring the use of any specific test or procedure in the declaration of death upon the basis of such criteria.

The bill does retain the current statutory authority of DOH and BME to jointly adopt and periodically revise regulations setting forth requirements, by specialty or expertise, for physicians authorized to declare death upon the basis of neurological criteria.

The bill takes effect on the first day of the third month following the date of enactment, but authorizes DOH, jointly with BME, to take prior administrative action as necessary for its implementation.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2756

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 13, 2013

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2756.

As amended, this bill amends section 4 of P.L.1991, c.90 (C.26:6A-4) to remove the statutory authority of the Department of Health (DOH) and the State Board of Medical Examiners (BME) over medical standards governing declarations of death upon the basis of neurological criteria.

The bill requires that a declaration of death upon the basis of neurological criteria be made by a licensed physician professionally qualified by specialty or expertise, based upon the exercise of the physician's best medical judgment and in accordance with currently accepted medical standards that are based upon nationally recognized sources of practice guidelines, including, but not limited to, those adopted by the American Academy of Neurology.

The bill deletes the statutory provisions that authorize joint DOH/BME regulations setting forth currently accepted medical standards (including criteria, tests, and procedures) to govern declarations of death upon the basis of neurological criteria. Furthermore, the bill explicitly prohibits the joint DOH/BME regulations, concerning the declaration of death upon the basis of neurological criteria, from requiring the use of any specific test or procedure in the declaration of death upon the basis of such criteria.

The bill does retain the current statutory authority of DOH and BME to jointly adopt and periodically revise regulations setting forth requirements, by specialty or expertise, for physicians authorized to declare death upon the basis of neurological criteria.

The bill takes effect on the first day of the third month following the date of enactment, but authorizes DOH, jointly with BME, to take prior administrative action as necessary for its implementation.

The committee amended the bill to specify that the currently accepted medical standards to be used to declare death are to be "based upon nationally recognized sources of practice guidelines, including,

but not limited to, those adopted by the American Academy of Neurology.”

As amended, this bill is identical to Assembly Bill No. 3586 (1R) SCA (Conaway/Jimenez), which the committee also reported favorably on this date.