

**As Reported by the House Health Committee**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 332**

**Representative Antani**

**Cosponsors: Representatives Leland, West, Ingram, Kent, Keller, Lipps,  
Zeltwanger, Vitale, Romanchuk, Riedel, Becker, Huffman, LaTourette**

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**A BILL**

To enact sections 2108.36, 2108.37, and 2108.38 of  
the Revised Code regarding anatomical gifts,  
transplantation, and discrimination on the basis  
of disability. 1  
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**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2108.36, 2108.37, and 2108.38 of  
the Revised Code be enacted to read as follows: 5  
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**Sec. 2108.36.** (A) As used in this section and sections  
2108.37 and 2108.38 of the Revised Code: 7  
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(1) "Auxiliary aid or service" means an aid or service  
that is used to provide information to an individual with a  
cognitive, developmental, intellectual, neurological, or  
physical disability and is available in a format or manner that  
allows the individual to easily understand the information. An  
auxiliary aid or service may include the following: 9  
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(a) A qualified interpreter or other effective means of  
making aurally delivered materials available to an individual  
with a hearing impairment; 15  
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(b) A qualified reader, taped text, text in an accessible electronic format, or other effective means of making visually delivered materials available to an individual with a visual impairment; 18  
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(c) A supported decision-making service, including the following: 22  
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(i) The use of an individual to communicate information to the individual with a disability, ascertain the wishes of the individual, or assist the individual in making decisions; 24  
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(ii) The disclosure of information to a legal guardian, authorized representative, or another individual designated by the individual with a disability for such purpose, as long as the disclosure is consistent with state and federal law, including the federal "Health Insurance Portability and Accountability Act of 1996," 42 U.S.C. 1320d et seq. and any regulations promulgated by the United States department of health and human services to implement the act. 27  
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(2) "Covered entity" means any of the following: 35

(a) A licensed health professional as defined in section 3721.21 of the Revised Code; 36  
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(b) A hospital registered under section 3701.07 of the Revised Code or as defined in section 5122.01 of the Revised Code; 38  
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(c) An ambulatory surgical facility as defined in section 3702.30 of the Revised Code; 41  
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(d) A hospice care program as defined in section 3712.01 of the Revised Code; 43  
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(e) A public hospital as defined in section 5122.01 of the 45

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| <u>Revised Code;</u>  | 46                   |
| <u>(f) A home, including a nursing home, residential care facility, or home for the aging as defined in section 3721.01 of the Revised Code or a veterans' home operated under Chapter 5907. of the Revised Code;</u> | 47<br>48<br>49<br>50 |
| <u>(g) A residential facility as defined in section 5119.34 or section 5123.19 of the Revised Code;</u>   | 51<br>52             |
| <u>(h) An intermediate care facility for individuals with intellectual disabilities as described in section 5124.01 of the Revised Code;</u>  | 53<br>54<br>55       |
| <u>(i) A long-term care facility as defined in section 3721.21 of the Revised Code;</u>   | 56<br>57             |
| <u>(j) A correctional medical center established by the department of rehabilitation and corrections;</u>   | 58<br>59             |
| <u>(k) Any entity responsible for matching anatomical gift donors to potential recipients.</u>  | 60<br>61             |
| <u>(3) "Disability" has the same meaning as in the "Americans with Disabilities Act of 1990," 42 U.S.C. 12102.</u>  | 62<br>63             |
| <u>(4) "Qualified recipient" means a recipient who has a disability and meets the essential eligibility requirements for receipt of an anatomical gift with or without any of the following:</u>                      | 64<br>65<br>66<br>67 |
| <u>(a) Individuals or entities available to support and assist the recipient with an anatomical gift or transplantation;</u>  | 68<br>69             |
| <u>(b) Auxiliary aids or services;</u>  | 70                   |
| <u>(c) Reasonable modifications to the policies, practices, or procedures of a covered entity, including modifications to</u>   | 71<br>72             |

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| <u>allow for either or both of the following:</u>                      | 73  |
| <u>(i) Communication with one or more individuals or entities</u>      | 74  |
| <u>available to support or assist with the recipient's care after</u>  | 75  |
| <u>surgery or transplantation;</u>                                     | 76  |
| <u>(ii) Consideration of the availability of such individuals</u>      | 77  |
| <u>or entities when determining whether the recipient is able to</u>   | 78  |
| <u>comply with medical requirements following transplantation.</u>     | 79  |
| <u>(B) A covered entity shall not do any of the following</u>          | 80  |
| <u>solely on the basis of an individual's disability:</u>              | 81  |
| <u>(1) Consider a qualified recipient ineligible for</u>               | 82  |
| <u>transplantation or to receive an anatomical gift;</u>               | 83  |
| <u>(2) Deny medical or other services related to</u>                   | 84  |
| <u>transplantation, including evaluation, surgery, and counseling</u>  | 85  |
| <u>and treatment following transplantation;</u>                        | 86  |
| <u>(3) Refuse to refer an individual to a transplant center</u>        | 87  |
| <u>or specialist;</u>  | 88  |
| <u>(4) Refuse to place a qualified recipient on an organ or</u>        | 89  |
| <u>tissue waiting list;</u>  | 90  |
| <u>(5) Place a qualified recipient at a position on an organ</u>       | 91  |
| <u>or tissue waiting list that is lower than the position at which</u> | 92  |
| <u>the recipient would have been placed if not for the recipient's</u> | 93  |
| <u>disability.</u>   | 94  |
| <u>(C) (1) Subject to division (C) (2) of this section, when</u>       | 95  |
| <u>making treatment recommendations or decisions related to an</u>     | 96  |
| <u>anatomical gift or transplantation, a covered entity may</u>        | 97  |
| <u>consider an individual's disability, if the disability has been</u> | 98  |
| <u>determined by a physician, following an examination of the</u>      | 99  |
| <u>individual, to be medically significant to the provision of an</u>  | 100 |

anatomical gift or transplantation. 101

(2) A covered entity shall not consider the inability to 102  
comply with medical requirements following transplantation to be 103  
medically significant if a qualified recipient has individuals 104  
or entities available to assist in complying with the 105  
requirements. 106

(D) A covered entity shall make reasonable modifications 107  
to its policies, practices, or procedures to allow individuals 108  
with disabilities access to transplantation-related treatment 109  
and services, except when the entity can demonstrate that the 110  
modifications would fundamentally alter the nature of the 111  
treatment and services. 112

(E) A covered entity shall take steps as necessary to 113  
ensure that individuals with disabilities are not denied 114  
transplantation-related treatment and services, including 115  
counseling, due to the absence of auxiliary aids and services, 116  
except when the entity can demonstrate that the steps would 117  
fundamentally alter the nature of the treatment and services 118  
offered or result in an undue burden. 119

**Sec. 2108.37.** Whenever it appears that a covered entity 120  
has violated, is violating, or is about to violate section 121  
2108.36 of the Revised Code, the affected individual may 122  
commence a civil action for injunctive and other equitable 123  
relief against the covered entity. The action shall be commenced 124  
in the court of common pleas of the county in which the 125  
violation occurred, is occurring, or is about to occur. 126

In an action commenced under this section, the court shall 127  
schedule a hearing as soon as practicable and shall apply the 128  
same standards when rendering judgment as would be applied in an 129

action brought in federal court under the "Americans with 130  
Disabilities Act of 1990," 42 U.S.C. 12101 et seq. 131

**Sec. 2108.38.** (A) As used in this section: 132

(1) "Covered person" means a policyholder, subscriber, 133  
enrollee, member, or individual covered by a health benefit 134  
plan. 135

(2) "Health benefit plan" means a policy, contract, 136  
certificate, or agreement offered by a health plan issuer to 137  
provide, deliver, arrange for, pay for, or reimburse any of the 138  
costs of health care services, including benefit plans marketed 139  
in the individual or group market by all associations, whether 140  
bona fide or not. "Health benefit plan" also means a limited 141  
benefit plan, except as follows. "Health benefit plan" does not 142  
mean any of the following types of coverage: a policy, contract, 143  
certificate, or agreement that covers only a specified accident, 144  
accident only, credit, dental, disability income, long-term 145  
care, hospital indemnity, supplemental coverage, as described in 146  
section 3923.37 of the Revised Code, specified disease, or 147  
vision care; coverage issued as a supplement to liability 148  
insurance; insurance arising out of workers' compensation or 149  
similar law; automobile medical payment insurance; or insurance 150  
under which benefits are payable with or without regard to fault 151  
and which is statutorily required to be contained in any 152  
liability insurance policy or equivalent self-insurance; a 153  
medicare supplement policy of insurance, as defined by the 154  
superintendent of insurance by rule, coverage under a plan 155  
through medicare, medicaid, or the federal employees benefit 156  
program; any coverage issued under Chapter 55 of Title 10 of the 157  
United States Code and any coverage issued as a supplement to 158  
that coverage. 159

(3) "Health plan issuer" means an entity subject to the 160  
insurance laws and rules of this state, or subject to the 161  
jurisdiction of the superintendent of insurance, that contracts, 162  
or offers to contract to provide, deliver, arrange for, pay for, 163  
or reimburse any of the costs of health care services under a 164  
health benefit plan, including a sickness and accident insurance 165  
company, a health insuring corporation, a fraternal benefit 166  
society, a self-funded multiple employer welfare arrangement, or 167  
a nonfederal, government health plan. "Health plan issuer" 168  
includes a third-party administrator licensed under Chapter 169  
3959. of the Revised Code to the extent that the benefits that 170  
such an entity is contracted to administer under a health 171  
benefit plan are subject to the insurance laws and rules of this 172  
state or subject to the jurisdiction of the superintendent. 173

(B) A health plan issuer that provides coverage for 174  
anatomical gifts, transplantation, or related treatment and 175  
services shall not deny such coverage to a covered person solely 176  
on the basis of the person's disability. 177