

**As Reported by the Senate Health, Human Services and Medicaid
Committee**

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Sub. H. B. No. 332

Representative Antani

**Cosponsors: Representatives Leland, West, Ingram, Kent, Keller, Lipps,
Zeltwanger, Vitale, Romanchuk, Riedel, Becker, Huffman, LaTourette, Anielski,
Antonio, Arndt, Ashford, Barnes, Bocchieri, Boyd, Brenner, Brown, Butler,
Carfagna, Celebrezze, Craig, Dean, Edwards, Galonski, Gavarone, Ginter,
Greenspan, Hagan, Hambley, Henne, Hill, Holmes, Hoops, Householder, Hughes,
Johnson, Kick, Koehler, Landis, Lanese, Lepore-Hagan, McClain, Miller, O'Brien,
Patterson, Patton, Perales, Rezabek, Rogers, Ryan, Schaffer, Sheehy, Slaby,
Smith, R., Sprague, Stein, Strahorn, Thompson, Wiggam, Young**

Senator Hackett

A BILL

To enact sections 2108.36, 2108.37, and 2108.38 of 1
the Revised Code regarding anatomical gifts, 2
transplantation, and discrimination on the basis 3
of disability and to make an appropriation. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2108.36, 2108.37, and 2108.38 of 5
the Revised Code be enacted to read as follows: 6

Sec. 2108.36. (A) As used in this section and sections 7
2108.37 and 2108.38 of the Revised Code: 8

(1) "Auxiliary aid or service" means an aid or service 9
that is used to provide information to an individual with a 10
cognitive, developmental, intellectual, neurological, or 11

physical disability and is available in a format or manner that 12
allows the individual to easily understand the information. An 13
auxiliary aid or service may include the following: 14

(a) A qualified interpreter or other effective means of 15
making aurally delivered materials available to an individual 16
with a hearing impairment; 17

(b) A qualified reader, taped text, text in an accessible 18
electronic format, or other effective means of making visually 19
delivered materials available to an individual with a visual 20
impairment; 21

(c) A supported decision-making service, including the 22
following: 23

(i) The use of an individual to communicate information to 24
the individual with a disability, ascertain the wishes of the 25
individual, or assist the individual in making decisions; 26

(ii) The disclosure of information to a legal guardian, 27
authorized representative, or another individual designated by 28
the individual with a disability for such purpose, as long as 29
the disclosure is consistent with state and federal law, 30
including the federal "Health Insurance Portability and 31
Accountability Act of 1996," 42 U.S.C. 1320d et seq. and any 32
regulations promulgated by the United States department of 33
health and human services to implement the act. 34

(2) "Covered entity" means any of the following: 35

(a) A licensed health professional as defined in section 36
3721.21 of the Revised Code; 37

(b) A hospital registered under section 3701.07 of the 38
Revised Code or as defined in section 5122.01 of the Revised 39

<u>Code;</u>	40
<u>(c) An ambulatory surgical facility as defined in section 3702.30 of the Revised Code;</u>	41 42
<u>(d) A hospice care program as defined in section 3712.01 of the Revised Code;</u>	43 44
<u>(e) A public hospital as defined in section 5122.01 of the Revised Code;</u>	45 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 48 49 50
<u>(g) A residential facility as defined in section 5119.34 or section 5123.19 of the Revised Code;</u>	51 52
<u>(h) An intermediate care facility for individuals with intellectual disabilities as described in section 5124.01 of the Revised Code;</u>	53 54 55
<u>(i) A long-term care facility as defined in section 3721.21 of the Revised Code;</u>	56 57
<u>(j) A correctional medical center established by the department of rehabilitation and corrections;</u>	58 59
<u>(k) Any entity responsible for matching anatomical gift donors to potential recipients.</u>	60 61
<u>(3) "Disability" has the same meaning as in the "Americans with Disabilities Act of 1990," 42 U.S.C. 12102.</u>	62 63
<u>(4) "Qualified recipient" means a recipient who has a disability and meets the eligibility requirements for receipt of an anatomical gift with or without any of the following:</u>	64 65 66

<u>(a) Individuals or entities available to support and</u>	67
<u>assist the recipient with an anatomical gift or transplantation;</u>	68
<u>(b) Auxiliary aids or services;</u>	69
<u>(c) Reasonable modifications to the policies, practices,</u>	70
<u>or procedures of a covered entity, including modifications to</u>	71
<u>allow for either or both of the following:</u>	72
<u>(i) Communication with one or more individuals or entities</u>	73
<u>available to support or assist with the recipient's care after</u>	74
<u>surgery or transplantation;</u>	75
<u>(ii) Consideration of the availability of such individuals</u>	76
<u>or entities when determining whether the recipient is able to</u>	77
<u>comply with medical requirements following transplantation.</u>	78
<u>(B) A covered entity shall not do any of the following</u>	79
<u>solely on the basis of an individual's disability:</u>	80
<u>(1) Consider a qualified recipient ineligible for</u>	81
<u>transplantation or to receive an anatomical gift;</u>	82
<u>(2) Deny medical or other services related to</u>	83
<u>transplantation, including evaluation, surgery, and counseling</u>	84
<u>and treatment following transplantation;</u>	85
<u>(3) Refuse to refer an individual to a transplant center</u>	86
<u>or specialist;</u>	87
<u>(4) Refuse to place a qualified recipient on an organ or</u>	88
<u>tissue waiting list;</u>	89
<u>(5) Place a qualified recipient at a position on an organ</u>	90
<u>or tissue waiting list that is lower than the position at which</u>	91
<u>the recipient would have been placed if not for the recipient's</u>	92
<u>disability.</u>	93

(C) (1) Subject to division (C) (2) of this section, when 94
making treatment recommendations or decisions related to an 95
anatomical gift or transplantation, a covered entity may 96
consider an individual's disability, if the disability has been 97
determined by a physician, following an examination of the 98
individual, to be medically significant to the provision of an 99
anatomical gift or transplantation. 100

(2) A covered entity shall not consider the inability to 101
comply with medical requirements following transplantation to be 102
medically significant if a qualified recipient has individuals 103
or entities available to assist in complying with the 104
requirements. 105

(D) A covered entity shall make reasonable modifications 106
to its policies, practices, or procedures to allow individuals 107
with disabilities access to transplantation-related treatment 108
and services, except when the entity can demonstrate that the 109
modifications would fundamentally alter the nature of the 110
treatment and services. 111

Sec. 2108.37. (A) Whenever it appears that a covered 112
entity has violated or is violating section 2108.36 of the 113
Revised Code, the affected individual may commence a civil 114
action for injunctive and other equitable relief against the 115
covered entity for purposes of enforcing compliance with that 116
section. The action shall be commenced in the court of common 117
pleas of the county in which the violation occurred or is 118
occurring. 119

(B) In an action commenced under this section, the court 120
shall schedule a hearing as soon as practicable and shall apply 121
the same standards when rendering judgment as would be applied 122
in an action brought in federal court under the "Americans with 123

<u>Disabilities Act of 1990," 42 U.S.C. 12101 et seq.</u>	124
<u>(C) This section does not create a right to compensatory</u>	125
<u>or punitive damages against a covered entity.</u>	126
<u>Sec. 2108.38.</u> (A) <u>As used in this section:</u>	127
<u>(1) "Covered person" means a policyholder, subscriber,</u>	128
<u>enrollee, member, or individual covered by a health benefit</u>	129
<u>plan.</u>	130
<u>(2) "Health benefit plan" means a policy, contract,</u>	131
<u>certificate, or agreement offered by a health plan issuer to</u>	132
<u>provide, deliver, arrange for, pay for, or reimburse any of the</u>	133
<u>costs of health care services, including benefit plans marketed</u>	134
<u>in the individual or group market by all associations, whether</u>	135
<u>bona fide or not. "Health benefit plan" also means a limited</u>	136
<u>benefit plan, except as follows. "Health benefit plan" does not</u>	137
<u>mean any of the following types of coverage: a policy, contract,</u>	138
<u>certificate, or agreement that covers only a specified accident,</u>	139
<u>accident only, credit, dental, disability income, long-term</u>	140
<u>care, hospital indemnity, supplemental coverage, as described in</u>	141
<u>section 3923.37 of the Revised Code, specified disease, or</u>	142
<u>vision care; coverage issued as a supplement to liability</u>	143
<u>insurance; insurance arising out of workers' compensation or</u>	144
<u>similar law; automobile medical payment insurance; or insurance</u>	145
<u>under which benefits are payable with or without regard to fault</u>	146
<u>and which is statutorily required to be contained in any</u>	147
<u>liability insurance policy or equivalent self-insurance; a</u>	148
<u>medicare supplement policy of insurance, as defined by the</u>	149
<u>superintendent of insurance by rule, coverage under a plan</u>	150
<u>through medicare, medicaid, or the federal employees benefit</u>	151
<u>program; any coverage issued under Chapter 55 of Title 10 of the</u>	152
<u>United States Code and any coverage issued as a supplement to</u>	153

that coverage. 154

(3) "Health plan issuer" means an entity subject to the 155
insurance laws and rules of this state, or subject to the 156
jurisdiction of the superintendent of insurance, that contracts, 157
or offers to contract to provide, deliver, arrange for, pay for, 158
or reimburse any of the costs of health care services under a 159
health benefit plan, including a sickness and accident insurance 160
company, a health insuring corporation, a fraternal benefit 161
society, a self-funded multiple employer welfare arrangement, or 162
a nonfederal, government health plan. "Health plan issuer" 163
includes a third-party administrator licensed under Chapter 164
3959. of the Revised Code to the extent that the benefits that 165
such an entity is contracted to administer under a health 166
benefit plan are subject to the insurance laws and rules of this 167
state or subject to the jurisdiction of the superintendent. 168

(B) A health plan issuer that provides coverage for 169
anatomical gifts, transplantation, or related treatment and 170
services shall not deny such coverage to a covered person solely 171
on the basis of the person's disability. 172

Section 2. All items in this section are hereby 173
appropriated as designated out of any moneys in the state 174
treasury to the credit of the designated fund. For all 175
appropriations made in this act, those in the first column are 176
for fiscal year 2018 and those in the second column are for 177
fiscal year 2019. The appropriations made in this act are in 178
addition to any other appropriations made for the FY 2018-FY 179
2019 biennium. 180

MCD DEPARTMENT OF MEDICAID 181

General Revenue Fund 182

GRF	651426	Positive Education			183
		Program Connections	\$ 0	\$ 2,500,000	184
TOTAL GRF		General Revenue Fund	\$ 0	\$ 2,500,000	185
TOTAL ALL BUDGET FUND GROUPS			\$ 0	\$ 2,500,000	186

POSITIVE EDUCATION PROGRAM CONNECTIONS 187

The foregoing appropriation item 651426, Positive 188
Education Program Connections, shall be used for the Positive 189
Education Program Connections in Cuyahoga County. This 190
appropriation shall not limit any efforts by state government to 191
implement a statewide program for similarly situated youth. 192

Section 3. Within the limits set forth in this act, the 193
Director of Budget and Management shall establish accounts 194
indicating the source and amount of funds for each appropriation 195
made in this act, and shall determine the form and manner in 196
which appropriation accounts shall be maintained. Expenditures 197
from appropriations contained in this act shall be accounted for 198
as though made in Am. Sub. H.B. 49 of the 132nd General 199
Assembly. 200

The appropriations made in this act are subject to all 201
provisions of Am. Sub. H.B. 49 of the 132nd General Assembly 202
that are generally applicable to such appropriations. 203