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Testimony of Todd Pesavento, MD

Chairman

Ohio Solid Organ Transplantation Consortium

Ohio Senate Health, Human Services, and Medicaid Committee

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Chairman Burke, Vice Chair Beagle, Ranking Member Tavares, and members of the Senate Health, Human Services and Medicaid Committee, thank you for the opportunity to submit written testimony today regarding House Bill 332.

I write on behalf of the Ohio Solid Organ Transplantation Consortium (OSOTC), of which I serve as Chairman. I also am the Deputy Director of Medical Services for the Comprehensive Transplant Center and Medical Director of Kidney and Pancreas Transplantation at the Ohio State University Wexner Medical Center.

The OSOTC is a non-profit organization founded in 1984 through a cooperative agreement signed by Governor Richard Celeste and three founding member institutions. The Consortium now consists of the Ohio State University Wexner Medical Center, the Cleveland Clinic Foundation, Nationwide Children's Hospital, University Hospitals Case Medical Center, UC Health, and Cincinnati Children's Hospital Medical Center.

The primary purpose of the Consortium is to ensure equitable access to quality medical care for those most likely to benefit from extra-renal transplantation, regardless of ability to pay. This includes transplantation of the following: heart, lung, heart-lung, pancreas/islet cell, small bowel, and liver.

To be considered for a transplant, a patient must be evaluated using the OSOTC patient selection criteria by the appropriate multidisciplinary treatment team at one of the member hospitals. Patients recommended by the hospitals are then reviewed by the Consortium's respective organ-specific Patient Selection Committee. Each Patient Selection Committee consists of one representative from each appropriate member hospital, a representative from the Ohio Department of Health (ODH), an ethicist or bioethicist, and a lay representative who may be an attorney. A majority approval is required for the patient to be accepted as a transplant candidate for listing with the United Network for Organ Sharing (UNOS).

Ohio residents in need of organ transplantation deserve assurances that they will not encounter discrimination on the basis of a disability. All of our programs currently transplant individuals with physical and intellectual disabilities when medically necessary and appropriate.

The extra-renal solid organ transplant programs in the State of Ohio already have processes in place to assist with providing equal access to candidates. Ohio transplant programs are under the supervision of ODH, the Centers for Medicare and Medicaid Services (CMS), UNOS and the Organ Procurement and Transplant Network (OPTN), which all require equitable organ allocation and access to transplantation. In addition, transplant centers that participate in Medicare, Ohio Medicaid, and other federally funded programs are required to use patient selection criteria that result in a fair and nondiscriminatory use of organs.

H.B. 332 would clarify that individuals with disabilities cannot be rejected for transplantation solely based on their disability. We commend Representative Niraj Antani for his efforts to ensure the rights of individuals with disabilities in this area.

Our consortium asked Representative Antani for amendments to ease implementation and clarify intent. These changes are included in the substitute version of HB 332 that we understand the Committee will consider today.

The changes are as follows:

1. The bill as introduced would have defined a “qualified recipient” as someone who has a disability and meets the “essential eligibility requirements” for receipt of an anatomical gift, with or without various supports identified. It is unclear what “essential eligibility requirements” for a receipt of an anatomical gift are, as all eligibility requirements are necessary. It is clearer to state “eligibility requirements” instead. The substitute bill makes this clarifying change. Utilization of the various supports identified could help a patient meet the eligibility requirements.
2. Covered entities, which include hospitals that perform transplantation, are required to make reasonable modifications to their policies, practices, or procedures to allow individuals with disabilities access to transplantation-related treatment and services. The substitute ensures a consistent definition of these modifications is used throughout the bill.
3. The bill as introduced also would have required the covered entity to take steps as necessary to ensure that individuals with disabilities are not denied transplantation-related treatment and services due to the absence of auxiliary aids and services. We were concerned that this provision could result in an unfunded mandate to provide auxiliary aids and services to a patient with a disability, whether they are necessary for transplantation or not. The substitute removes this provision. However, as noted, the bill continues to require the covered entity to make reasonable modifications to allow individuals with disabilities access to transplantation-related services.

4. The legislation includes a right for an affected individual to commence a civil action for injunctive and other equitable relief against a covered entity. The substitute bill clarifies that this civil action is for purposes of enforcing compliance with the section 2018.36 being created by this bill.

The bill as introduced would have permitted civil action when a covered entity has violated, is violating, or is about to violate the section. The substitute would clarify that civil action cannot be taken before a violation has occurred. Allowing an individual to file for relief from a violation before one has occurred could invite unnecessary litigation. Court action should be a last resort, not the first. The substitute also states that the statute does not create a right to compensatory or punitive damages against a covered entity. This provision further clarifies that court action is to ensure compliance with the provisions of the bill.

We believe these changes improve the underlying bill by providing important clarifications for purposes of implementing and enforcing its provisions. We encourage you to support the substitute bill.

We look forward to caring for all Ohioans whose health requires a medically appropriate transplant, regardless of disability. We remain committed to serving all individuals without discrimination.