

**As Passed by the Senate**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**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, Boccieri, 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**

**Senators Hackett, Balderson, Burke, Coley, Dolan, Eklund, Gardner, Hoagland, Huffman, Kunze, LaRose, Lehner, Manning, Obhof, O'Brien, Oelslager, Peterson, Schiavoni, Sykes, Tavares, Terhar, Thomas, Uecker, Yuko**

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**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

<u>Revised Code or as defined in section 5122.01 of the Revised</u>	39
<u>Code;</u>	40
<u>(c) An ambulatory surgical facility as defined in section</u>	41
<u>3702.30 of the Revised Code;</u>	42
<u>(d) A hospice care program as defined in section 3712.01</u>	43
<u>of the Revised Code;</u>	44
<u>(e) A public hospital as defined in section 5122.01 of the</u>	45
<u>Revised Code;</u>	46
<u>(f) A home, including a nursing home, residential care</u>	47
<u>facility, or home for the aging as defined in section 3721.01 of</u>	48
<u>the Revised Code or a veterans' home operated under Chapter</u>	49
<u>5907. of the Revised Code;</u>	50
<u>(g) A residential facility as defined in section 5119.34</u>	51
<u>or section 5123.19 of the Revised Code;</u>	52
<u>(h) An intermediate care facility for individuals with</u>	53
<u>intellectual disabilities as described in section 5124.01 of the</u>	54
<u>Revised Code;</u>	55
<u>(i) A long-term care facility as defined in section</u>	56
<u>3721.21 of the Revised Code;</u>	57
<u>(j) A correctional medical center established by the</u>	58
<u>department of rehabilitation and corrections;</u>	59
<u>(k) Any entity responsible for matching anatomical gift</u>	60
<u>donors to potential recipients.</u>	61
<u>(3) "Disability" has the same meaning as in the "Americans</u>	62
<u>with Disabilities Act of 1990," 42 U.S.C. 12102.</u>	63
<u>(4) "Qualified recipient" means a recipient who has a</u>	64
<u>disability and meets the eligibility requirements for receipt of</u>	65

<u>an anatomical gift with or without any of the following:</u>	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

disability. 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  
Disabilities Act of 1990," 42 U.S.C. 12101 et seq. 124

(C) This section does not create a right to compensatory 125  
or punitive damages against a covered entity. 126

**Sec. 2108.38.** (A) As used in this section: 127

(1) "Covered person" means a policyholder, subscriber, 128  
enrollee, member, or individual covered by a health benefit 129  
plan. 130

(2) "Health benefit plan" means a policy, contract, 131  
certificate, or agreement offered by a health plan issuer to 132  
provide, deliver, arrange for, pay for, or reimburse any of the 133  
costs of health care services, including benefit plans marketed 134  
in the individual or group market by all associations, whether 135  
bona fide or not. "Health benefit plan" also means a limited 136  
benefit plan, except as follows. "Health benefit plan" does not 137  
mean any of the following types of coverage: a policy, contract, 138  
certificate, or agreement that covers only a specified accident, 139  
accident only, credit, dental, disability income, long-term 140  
care, hospital indemnity, supplemental coverage, as described in 141  
section 3923.37 of the Revised Code, specified disease, or 142  
vision care; coverage issued as a supplement to liability 143  
insurance; insurance arising out of workers' compensation or 144  
similar law; automobile medical payment insurance; or insurance 145  
under which benefits are payable with or without regard to fault 146  
and which is statutorily required to be contained in any 147  
liability insurance policy or equivalent self-insurance; a 148  
medicare supplement policy of insurance, as defined by the 149  
superintendent of insurance by rule, coverage under a plan 150  
through medicare, medicaid, or the federal employees benefit 151

program; any coverage issued under Chapter 55 of Title 10 of the 152  
United States Code and any coverage issued as a supplement to 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
<b>Section 3.</b> 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