

# AN ACT

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 and to make an appropriation.

*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:

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

(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:

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

(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;

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

(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;

(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.

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

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

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

(c) An ambulatory surgical facility as defined in section 3702.30 of the Revised Code;

(d) A hospice care program as defined in section 3712.01 of the Revised Code;

(e) A public hospital as defined in section 5122.01 of the Revised Code;

(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;

(g) A residential facility as defined in section 5119.34 or section 5123.19 of the Revised Code;

(h) An intermediate care facility for individuals with intellectual disabilities as described in section 5124.01 of the Revised Code;

(i) A long-term care facility as defined in section 3721.21 of the Revised Code;

(j) A correctional medical center established by the department of rehabilitation and corrections;

(k) Any entity responsible for matching anatomical gift donors to potential recipients.

(3) "Disability" has the same meaning as in the "Americans with Disabilities Act of 1990," 42 U.S.C. 12102.

(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:

(a) Individuals or entities available to support and assist the recipient with an anatomical gift or transplantation;

(b) Auxiliary aids or services;

(c) Reasonable modifications to the policies, practices, or procedures of a covered entity, including modifications to allow for either or both of the following:

(i) Communication with one or more individuals or entities available to support or assist with the recipient's care after surgery or transplantation;

(ii) Consideration of the availability of such individuals or entities when determining whether the recipient is able to comply with medical requirements following transplantation.

(B) A covered entity shall not do any of the following solely on the basis of an individual's disability:

(1) Consider a qualified recipient ineligible for transplantation or to receive an anatomical gift;

(2) Deny medical or other services related to transplantation, including evaluation, surgery, and counseling and treatment following transplantation;

(3) Refuse to refer an individual to a transplant center or specialist;

(4) Refuse to place a qualified recipient on an organ or tissue waiting list;

(5) Place a qualified recipient at a position on an organ or tissue waiting list that is lower than the position at which the recipient would have been placed if not for the recipient's disability.

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

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

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

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

(B) In an action commenced under this section, the court shall schedule a hearing as soon as practicable and shall apply the same standards when rendering judgment as would be applied in an action brought in federal court under the "Americans with Disabilities Act of 1990," 42 U.S.C. 12101 et seq.

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

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

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

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

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

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

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

MCD DEPARTMENT OF MEDICAID

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

POSITIVE EDUCATION PROGRAM CONNECTIONS

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

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

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

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_