



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Elizabeth Molnar

Sub. H.B. 332

132nd General Assembly
(As Passed by the General Assembly)

- Reps.** Antani, 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, T. Johnson, Kick, Koehler, Landis, Lanese, Lepore-Hagan, McClain, Miller, O'Brien, Patterson, Patton, Perales, Rezabek, Rogers, Ryan, Schaffer, Sheehy, Slaby, R. Smith, Sprague, Stein, Strahorn, Thompson, Wiggam, Young
- Sens.** 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

Effective date: September 28, 2018; appropriation effective June 29, 2018

ACT SUMMARY

- Prohibits physicians, hospitals, and other covered entities from discriminating against potential transplant recipients solely on the basis of disability.
- Generally requires each covered entity to make reasonable modifications to allow individuals with disabilities access to transplantation-related treatment and services.
- Authorizes an individual who has been adversely affected by a violation of the act's provisions to seek an injunction to stop the violation, but prohibits a court from awarding compensatory or punitive damages.
- Prohibits a health plan issuer from denying coverage for anatomical gifts, transplantation, or related treatment and services solely on the basis of disability.
- Appropriates \$2.5 million to the Department of Medicaid in FY 2019 for the Positive Education Program Connections in Cuyahoga County.

* This version updates the effective date.

CONTENT AND OPERATION

Prior Ohio law governing anatomical gifts focused solely on their donation, addressing matters like who may make an anatomical gift, the means by which a gift may be made, and how the gift may be revoked or amended.¹ Following the passage of Sub. H.B. 332, Ohio law now also addresses the receipt of anatomical gifts, by prohibiting discrimination against a potential recipient of an organ or tissue transplant solely on the basis of the recipient's disability.²

Discriminatory actions

The act prohibits a "covered entity" from doing any of the following based solely on an individual's disability:

- (1) Considering a qualified recipient ineligible to receive a transplant or anatomical gift;
- (2) Denying medical or other services related to transplantation, including evaluation, surgery, and counseling and treatment following a transplant;
- (3) Refusing to refer an individual to a transplant center or specialist;
- (4) Refusing to place a qualified recipient on an organ or tissue waiting list;
- (5) Placing a qualified recipient lower on an organ or tissue waiting list than the recipient would have been placed if not for the disability.³

Entities affected

In addition to licensed health professionals (e.g., physicians, nurses, physician assistants, social workers, and nursing home administrators),⁴ the following types of entities are subject to the act: (1) hospitals, (2) ambulatory surgical facilities, (3) hospice care programs, (4) nursing homes, (5) residential care facilities, (6) intermediate care facilities for individuals with intellectual disabilities, (7) residential facilities, (8) long-

¹ In 2009, Sub. H.B. 529 of the 127th General Assembly enacted the Revised Uniform Anatomical Gift Act. See <https://www.lsc.ohio.gov/documents/gaDocuments/analyses127/08-hb529-127.pdf>. See also R.C. Chapter 2108.

² R.C. 2108.36(B) and 2108.38(B).

³ R.C. 2108.36(B).

⁴ R.C. 3721.21, not in the act.



term care facilities, (9) correctional medical centers, and (10) entities responsible for matching anatomical gift donors to potential recipients.⁵

Medical significance

A covered entity may consider a disability when making a treatment recommendation or decision involving an anatomical gift or transplantation if a physician determines the individual's disability to be medically significant. Such a determination may be made only after an examination of the individual. Under the act, the inability to comply with medical requirements following transplantation is not medically significant if others are available to assist the disabled individual in complying with those requirements.⁶

Access to transplantation-related treatment

Each covered entity must make reasonable modifications to its policies, practices, or procedures to allow individuals with disabilities access to transplantation-related treatment and services. But an entity is not required to do so if it can demonstrate that modifications would fundamentally alter the nature of the treatment or services.⁷

Injunctive relief

Whenever it appears that a covered entity has engaged in or is engaging in a discriminatory action (see "**Discriminatory actions**" above), the affected individual may bring a civil case asking for a court order to stop it. The case must be brought in the court of common pleas for the county in which the discriminatory action occurred or is occurring. The court must schedule a hearing on the matter as soon as practicable and must apply the same standards when rendering judgment as would be applied in a case brought in federal court under the Americans with Disabilities Act. The right to bring a civil case does not, however, create a right to compensatory or punitive damages against a covered entity.⁸

Insurance coverage

The act prohibits a health plan issuer that provides coverage for anatomical gifts, transplantation, or related treatment and services under a health benefit plan from

⁵ R.C. 2108.36(A)(2).

⁶ R.C. 2108.36(C).

⁷ R.C. 2108.36(D).

⁸ R.C. 2108.37.



denying that coverage to a person covered by the plan solely on the basis of the person's disability.⁹

Definitions

Disability

A "disability" means any of the following: (1) a physical or mental impairment that substantially limits one or more major life activities, (2) a record of such an impairment, or (3) being regarded as having such an impairment.¹⁰ This definition is the same as that used in the Americans with Disabilities Act.¹¹

Qualified recipient

A "qualified recipient" is a recipient who has a disability and meets the eligibility requirements for receipt of an anatomical gift with or without reasonable modifications, auxiliary aids or services, or individuals or entities available to assist the recipient with an anatomical gift or transplantation.¹²

Auxiliary aid or service

An "auxiliary aid or service" is 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. It may include a qualified interpreter, qualified reader, taped text, text in an accessible electronic format, or supported decision-making service.¹³

⁹ R.C. 2108.38(B).

¹⁰ R.C. 2108.36(A)(3).

¹¹ 42 United States Code 12102.

¹² R.C. 2108.36(A)(4).

¹³ R.C. 2108.36(A)(1).



HISTORY

ACTION	DATE
Introduced	08-30-17
Reported, H. Health	11-29-17
Passed House (96-0)	01-24-18
Reported, S. Health, Human Services & Medicaid	05-23-18
Passed Senate (32-0)	05-23-18
House concurred in Senate amendments (88-0)	06-07-18

18-HB332-UPDATED-132.docx/ts

