IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CAROL BEAL, an individual, Petitioner, v. IOWA DEPARTMENT OF HUMAN SERVICES, an independent executive-branch agency of the State of Iowa, Respondent.	Case No. CVCV055470 **RESISTANCE TO MOTION TO DISMISS**

COMES NOW Petitioner, Carol Beal ("Ms. Beal"), by and through her undersigned attorneys, and respectfully resists the motion to dismiss filed by Respondent, the Iowa Department of Human Services ("DHS"). In support hereof, Ms. Beal states as follows:

INTRODUCTION

DHS's motion acknowledges that this case is "similar in substance, facts, and legal arguments to *Good v. Iowa Dep't of Human Servs.*" (DHS Br. in Supp. of Mot. to Dismiss at 1.) Because the petition in *Good* survived a motion to dismiss identical to the motion at issue here, the Court has already ruled against DHS's arguments. (*See* Ex. 1, 11/27/17 Order, *Good v. Iowa Dep't of Human Servs.*, No. CVCV054956.)

In ruling on DHS's motion to dismiss in *Good*, the Court concluded that the Eighth Circuit's decision in *Smith v. Rasmussen*, 249 F.3d 755 (8th Cir. 2001), was "not dispositive" because "*Smith* did not involve a challenge to [Section 441.78.1(4) of the Iowa Administrative Code ("Iowa Admin. Code r. 441.78.1(4)" or the "Regulation")] under the Equal Protection Clause of the Iowa Constitution or the [Iowa Civil Rights Act ("ICRA")]." (*Id.* at 3.) The Court also rejected "DHS's contention that, as a matter of law, neither DHS nor Iowa Medicaid is a

public accommodation within the meaning of section 216.2(13)(b) of the ICRA," given that "DHS [was] alleged to be a unit of state government that offers the services and benefits of Iowa Medicaid to the public." (*Id.*)

These conclusions are well-grounded and warrant the denial of DHS's motion to dismiss in this case. Ms. Beal's petition for judicial review, like the petition at issue in *Good*, establishes that it was unlawful and unconstitutional for DHS to deny Medicaid coverage to Ms. Beal for medically necessary gender-affirming surgery under Iowa Admin. Code r. 441.78.1(4). *See* Iowa Admin. Code r. 441.78.1(4). The denial was unlawful because it violates ICRA's prohibitions on gender-identity and sex discrimination. *See* Iowa Code §§ 216.7(1)(a), 216.2(13)(b) (2017). And it was unconstitutional because, under either heightened scrutiny or rational-basis review, it violates the Iowa Constitution's equal-protection guarantee. Iowa Const. art. I, §§ 1, 6.

The arguments in DHS's motion to dismiss have no merit. First, *Smith v. Rasmussen*, 249 F.3d 755 (8th Cir. 2001), does not dictate the outcome of this case. *Smith* did not involve a challenge to the Regulation under ICRA or the Iowa Constitution's equal-protection guarantee and was, in fact, decided before ICRA was expressly amended to prohibit gender-identity discrimination. Additionally, in the sixteen years since *Smith* was decided, the medical community has disavowed the flawed and incomplete medical research on which both the challenged Regulation and the *Smith* decision were based.

Second, the plain language of ICRA unambiguously establishes that DHS is a "public accommodation" for purposes of the Act. *See* Iowa Code § 216.2(13)(b) (2017) ("'Public accommodation' includes each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to the public, gratuitously or otherwise.'"). Because DHS is a "public accommodation," its employees

and agents, including Amerigroup Iowa Inc. ("Amerigroup"), the Director of DHS, and the Director's staff, were expressly prohibited from discriminating against Ms. Beal on the basis of sex or gender identity. They violated this prohibition by denying Ms. Beal Medicaid coverage for gender-affirming surgery.

For these reasons, and as described in further detail below, DHS's motion to dismiss should be denied in full, and Ms. Beal should be allowed to proceed with her petition for judicial review.

PROCEDURAL HISTORY

On June 8, 2017, Ms. Beal, through her physician, requested Medicaid preapproval of expenses for gender-affirming surgery from Amerigroup. (Petition, ¶ 19.) After Amerigroup denied her request, she initiated an internal appeal within Amerigroup, which Amerigroup denied. (*Id*., ¶¶ 20–22.)

Ms. Beal appealed Amerigroup's decision to DHS and, at a hearing before an administrative-law judge ("ALJ"), presented unrebutted evidence that the surgical treatment she requested was medically necessary. (*Id*., ¶¶ 23, 44–91). Following the hearing, the ALJ issued a proposed decision affirming Amerigroup's decision. (*Id*., ¶ 24.) On further review, the Director of DHS adopted the ALJ's ruling as the agency's final decision on Ms. Beal's appeal. (*Id*., ¶¶ 25–26.)

On December 15, 2017, Ms. Beal timely filed her petition for judicial review in this Court. The petition seeks to vacate DHS's decision and enjoin the Regulation's enforcement. (*Id*., Relief Sought.)

MS. BEAL'S ALLEGATIONS

Ms. Beal alleges, in relevant part, that she is a forty-two-year-old woman residing in Northeast Iowa who was diagnosed with gender dysphoria in 1989 and currently is eligible for Iowa Medicaid. (Petition, ¶¶ 10–12, 69–76.) Four medical providers—a certified physician assistant, a surgeon, and two clinical psychologists—concluded that surgery is medically necessary to treat her gender dysphoria. (*Id*., ¶¶ 77–91.) Additionally, the existing standards of care for gender dysphoria acknowledge that, for many transgender people, such as Ms. Beal, surgical treatment is necessary to affirm their gender identity and help them transition from living in one gender to another. (*Id*., ¶¶ 44–68.)

Despite this, DHS declined to provide Medicaid coverage for Ms. Beal's gender-affirming surgery based on Iowa Admin. Code r. 441.78.1(4), which categorically prohibits Medicaid reimbursement for surgical procedures related to gender transition and gender dysphoria. (*See id*., ¶¶ 103–114.) Ms. Beal alleges that DHS's decision should be vacated because it (1) violates ICRA's prohibition against gender-identity discrimination (*id*., Count I); (2) violates ICRA's prohibition against sex discrimination (*id*., Count II); (3) violates the Iowa Constitution's equal-protection guarantee (*id*., Count III); (4) creates a disproportionate negative impact on private rights (*id*., Count IV); and (5) is unreasonable, arbitrary, and capricious (*id*., Count V).

LEGAL STANDARDS

In Iowa, the filing or granting of motions to dismiss is disfavored. *Henry v. Shober*, 566 N.W.2d 190, 191 (Iowa 1997) (overruled on other grounds in *Dickens v. Associated Anesthesiologists, P.C.*, 709 N.W.2d 122, 127 (Iowa 2006)). "In determining whether to grant the motion to dismiss, a court views the well-pled facts of the petition in the light most favorable

to the plaintiff, resolving any doubts in the plaintiff's favor." *Turner v. Iowa State Bank & Trust Co.*, 743 N.W.2d 1, 3 (Iowa 2007) (citing *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004)). A court should grant a motion to dismiss for failure to state a claim only if the movant "shows the [petitioner] cannot recover under any state of facts." *Ostrem v. Prideco Secure Loan Fund, LP*, 841 N.W.2d 882, 891 (Iowa 2014). DHS cannot meet this burden.

ARGUMENT

I. Ms. Beal should be allowed to proceed with her equal-protection, disproportionality, and arbitrary-and-capricious claims.

A. *Smith v. Rasmussen* does not bar Ms. Beal's claims.

DHS mistakenly argues that the Eighth Circuit's outdated decision in *Smith v. Rasmussen*, 249 F.3d 755 (8th Cir. 2001), "preempts" Ms. Beal's equal-protection, disproportionality, and arbitrary-and-capricious claims. (DHS Br. in Supp. of Mot. to Dismiss at 3–6.) The *Smith* decision does not justify adhering to Iowa Admin. Code r. 441.78.1(4). In *Smith*, the court never considered or ruled on the claims that Ms. Beal makes here, and the case provides no precedent to this Court on her claims.

Smith, unlike this case, involved a Section 1983 challenge to DHS's denial of Medicaid coverage based on rights conferred by the federal Medicaid Act rather than a challenge based on ICRA, the Iowa Constitution, or the U.S. Constitution. *Id.* at 758. The ICRA and Iowa constitutional claims at issue in this case were not asserted or adjudicated in *Smith*. Indeed, at the time *Smith* was decided in 2001, the 2007 ICRA amendment prohibiting gender-identity discrimination had not even been enacted. *See* Acts 2007 (82 G.A.) ch. 191, S.F. 427, §§ 5, 6 (inserting references to "gender identity").

In addition, in *Smith*, the court concluded that, in 1994, the evidence before DHS reflected disagreement in the medical community "regarding the efficacy of sex reassignment

surgery"[1] and that such surgery was also excluded from coverage under Medicare. *Smith*, 249 F.3d at 761. Whether or not the *Smith* court's conclusions were correct at that time, which Ms. Beal does not concede, in the sixteen years since *Smith* was decided, the medical community has reached a clear consensus that transition-related care—including surgery—is safe and effective and that discriminatory exclusions of transition-related care have no basis in medical science. (*See* Petition, ¶¶ 44–68.) This shift is reflected in the federal Medicare regulations, which no longer prohibit Medicare coverage for gender-affirming surgery. *See, e.g.*, Dep't of Health & Human Servs. Dept'l Appeals Bd. Dec. No. 2576 (May 30, 2014), *available at*: https://www.hhs.gov/sites/default/files/static/dab/decisions/board-decisions/2014/dab2576.pdf.

For these reasons, *Smith* is inapposite and does not bar the equal-protection, disproportionality, or arbitrary-and-capricious claims asserted in Counts III through V of Ms. Beal's petition.

B. Ms. Beal's equal-protection claim is legally sufficient.

DHS further contends that, by finding the Regulation "reasonable" and "consistent with the Medicaid Act," the *Smith* court "found the regulation to be constitutional." (DHS Br. in Supp. of Mot. to Dismiss at 5.) It did not. As mentioned, the Regulation's constitutionality was not at issue in *Smith* under either the U.S. Constitution or the Iowa Constitution. *See Smith*, 249 F.3d at 758. Nor was the Medicaid Act's constitutionality challenged in *Smith*, so the court could not have "found it to be consistent with the federal constitution," as DHS baldly asserts. (DHS Br. in Supp. of Mot. to Dismiss at 5.)

DHS's position is flawed for several other reasons as well. First, even if the *Smith* court had assessed an equal-protection claim under the U.S. Constitution, its determination under the

[1] The preferred terminology, now in common usage, is "gender-confirming" or "gender-affirming" surgery.

federal constitution would not resolve Ms. Beal's Iowa state constitutional claim. Although the Iowa Supreme Court looks to federal courts' interpretation of the U.S. Constitution in construing parallel provisions of the Iowa Constitution, it "jealously reserve[s] the right to develop an independent framework under the Iowa Constitution." *NextEra Energy Resources LLC v. Iowa Utilities Bd.*, 815 N.W.2d 30, 45 (Iowa 2012), *State v. Pals*, 805 N.W.2d 767, 771–72 (Iowa 2011); *Varnum v. Brien*, 763 N.W.2d 862, 896 n.23 (Iowa 2009); *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004) (hereinafter "*RACI*"); *see also State v. Null*, 836 N.W.2d 41, 70 n.7 (Iowa 2013) ("A decision of this court to depart from federal precedent arises from our independent and unfettered authority to interpret the Iowa Constitution.").

This is because, as the Iowa Supreme Court recently reaffirmed, the rights guaranteed to individuals under the Iowa Constitution have critical, independent importance, and the courts play a crucial role in protecting those rights. *See Godfrey v. State*, 898 N.W.2d 844, 864 (Iowa 2017) ("Unlike the federal constitutional framers who did not originally include a bill of rights and ultimately tacked them on as amendments to the United States Constitution, the framers of the Iowa Constitution put the Bill of Rights in the very first article. . . . Our founders did not cringe at the thought of individual rights and liberties—they embraced them."); *see also id.* at 865 ("It is the state judiciary that has the responsibility to protect the state constitutional rights of the citizens."); *id.* at 869 ("The rights and remedies of the Bill of Rights are not subject to legislative dilution as there is no elasticity in the specific guaranty of the Constitution.") (internal quotation marks omitted).

Second, "reasonableness" is not the relevant standard of constitutional review. The appropriate standard of review for Ms. Beal's equal-protection challenge is heightened scrutiny. A growing number of courts have recognized that transgender people should be protected by

heightened scrutiny because they have faced a history of discrimination, their transgender status is unrelated to their ability to contribute to society, their transgender status and gender identity are central to their identity, and they are politically powerless. *See, e.g., Adkins v. City of New York*, 143 F. Supp. 3d 134, 139–40 (S.D.N.Y. 2015) (finding heightened scrutiny under equal-protection clause of U.S. Constitution); *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep't of Educ.*, 208 F. Supp. 3d 850, 874 (S.D. Ohio 2016) (same); *Evancho v. Pine–Richland Sch. Dist.*, No. CV 2:16–01537, 2017 WL 770619, at *13 (W.D. Pa. Feb. 27, 2017) (same).

In addition, heightened scrutiny applies since discrimination against transgender people is a form of sex discrimination. *Varnum*, 763 N.W.2d at 880 (citing *Sherman v. Pella Corp.*, 576 N.W.2d 312, 317 (Iowa 1998)) (heightened scrutiny applies to gender classifications); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017) (applying heightened scrutiny to discrimination because it was based on gender); *Glen v. Brumby*, 663 F.3d 1312, 1320 (8th Cir. 2011) (same).

Of the two forms of heightened scrutiny, "[c]lassifications subject to strict scrutiny are presumptively invalid and must be narrowly tailored to serve a compelling governmental interest." *Varnum*, 763 N.W.2d at 880. Intermediate scrutiny requires a party seeking to uphold a classification to demonstrate that the "challenged classification is substantially related to the achievement of an important governmental objective." *Id.*

DHS cannot meet either of these standards. (*See* Petition, ¶¶ 127–143.) There is no compelling governmental interest or important governmental objective advanced by excluding transgender individuals from Medicaid reimbursement for medically necessary procedures. Surgical treatment for gender dysphoria is medically necessary and effective treatment, so

denying coverage cannot be justified on medical grounds. Nor, under heighted review, can it be justified as a cost-savings measure. *See, e.g., id*. at 902–04 (cost savings could not justify exclusion of same-sex couples from marriage).

Third, the Regulation cannot withstand rational-basis review, which requires (i) a "plausible policy reason for the classification" and (ii) that "the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker" and (iii) that "the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational." *Id.* at 879 (quoting *RACI*, 675 N.W.2d at 7).

For the reasons discussed above, and as Ms. Beal has alleged (*see* Petition, ¶¶ 127–143), there simply is no legitimate government objective or plausible policy reason advanced by, or rationally related to, excluding transgender individuals from Medicaid reimbursement for medically necessary procedures. Moreover, under rational-basis review, the Regulation's surgical ban cannot be justified as a measure to save money. *See, e.g.*, *RACI*, 675 N.W.2d at 12–15 (even under rational-basis review, there must be some reasonable distinction between the group burdened with higher taxes, as compared to the favored group, to justify the higher costs).

For these reasons, Ms. Beal should be allowed to proceed with her equal-protection claim.

B. Ms. Beal's disproportionality claim is legally sufficient.

DHS further argues, without citing any authority, that Ms. Beal "fails to state an independent right upon which there is a disproportionate negative impact." (DHS Br. in Supp. of Mot. to Dismiss at 6.) But Ms. Beal clearly has rights under ICRA and the Iowa Constitution's equal-protection guarantee that have been violated in this case. Even DHS appears to

acknowledge that if the Regulation is deemed to violate ICRA or the Iowa Constitution, then Ms. Beal has asserted a viable disproportionality claim. (*See id*. (conceding that dismissal hinges on whether the Regulation "*is determined to be consistent* with ICRA and with the Iowa Constitution" (emphasis added).)

Ms. Beal's disproportionality claim is straightforward. Under Section 17A.19(10)(k) of the Iowa Administrative Procedure Act, a court may reverse an agency action if "substantial rights of the person seeking judicial relief have been prejudiced." *See* Iowa Code § 17A.19(10) (2017). This occurs when, among other things, an agency action "is [n]ot required by law and its negative impact on the private rights affected is so grossly disproportionate to the benefits accruing to the public interest from that action that it must necessarily be deemed to lack any foundation in rational agency policy." *See* Iowa Code § 17A.19(10)(k) (2017).

As Ms. Beal has alleged, an unlawful, unconstitutional administrative regulation such as Iowa Admin. Code r. 441.78.1(4) is not only "not required," it is forbidden. (Petition, ¶ 146.) The Regulation causes a disproportionate negative impact on the private rights of transgender individuals such as Ms. Beal by categorically prohibiting them from receiving Medicaid coverage for medically necessary surgical treatment of gender dysphoria. (*Id*., ¶ 148.) And there is no public interest served by denying Medicaid coverage for medically necessary and effective treatment. (*Id*., ¶ 150.) Based on these allegations, the disproportionality claim should stand.

C. Ms. Beal's arbitrary-and-capricious claim is legally sufficient.

DHS also contends that Ms. Beal's arbitrary-and-capricious claim should be dismissed because, when the Regulation was enacted, it allegedly was "reasonable" based on the medical evidence existing at the time. (DHS Br. in Supp. of Mot. to Dismiss at 6.) Ms. Beal's arbitrary-and-capricious claim, however, challenges DHS's 2017 decision to enforce the Regulation's

categorical surgical ban against her in light of current law and current evidence regarding medical necessity and the applicable standards of care—not DHS's 1994 decision to adopt the Regulation. For purposes of Ms. Beal's claim, the relevant agency action is the ongoing exclusion of benefits for Ms. Beal and others similarly situated, not the Regulation's enactment.

This approach is consistent with well-established Iowa case law. An agency action is considered arbitrary or capricious "when it is taken without regard to the law or facts of the case" pending before the agency. *See Soo Line R.R. Co. v. Iowa Dept. of Transp.*, 521 N.W.2d 685, 688–89 (Iowa 1994); *Hough v. Iowa Dept. of Personnel*, 666 N.W.2d 168, 170 (Iowa 2003). An agency "of course cannot act unconstitutionally, in violation of a statutory mandate, or without substantial support in the record." *Stephenson v. Furnas Elec. Co.*, 522 N.W.2d 828, 831 (Iowa 1994). Although an "agency is entitled to reconcile competing evidence," it is not entitled to "ignore competing evidence." *JBS Swift & Co. v. Hedberg*, 873 N.W.2d 276, 280–81 (Iowa Ct. App. 2015); *see also Meyer v. IBP, Inc.*, 710 N.W.2d 213, 225 (Iowa 2006) ("[T]he commissioner commits error by failing to weigh and consider all of the evidence."); *Armstrong v. State of Iowa Bldgs. & Grounds*, 382 N.W.2d 161, 165 (Iowa 1986) (stating that it is reversible error for the commissioner to fail to "weigh and consider all the evidence"). Here, DHS blindly applied the Regulation without regard for ICRA, the Iowa Constitution's equal-protection guarantee, or the unrefuted evidence that the surgical procedure requested by Ms. Beal is medically necessary and consistent with modern standards of care.

Van Hollen v. Federal Election Commission, 811 F.3d 486 (D.C. Cir. 2016), on which DHS relies, is distinguishable. *Van Hollen* simply states that a reviewing court evaluates "the agency's rationale at the time of decision." *Id*. at 495. It does not state that the relevant "decision" date is the date a rule is adopted. If that were the case, then a party could never

challenge an agency's application of a rule to the circumstances of a particular case after the rule's adoption.

Ravenwood v. Daines, No. 06–cv-6355–CJS, 2009 WL 2163105 (W.D.N.Y. July 17, 2009), is likewise distinguishable. *Ravenwood* does not stand for the proposition that a plaintiff cannot challenge the application of a previously adopted administrative rule; it simply notes that the passage of time, in itself, does not render a rule unreasonable. *See id.* at *13. Here, Ms. Beal does not rely on the mere passage of time to challenge the Regulation, but rather on concrete developments in the law and medical science that have occurred since the time the Regulation was enacted. *See also Cruz v. Zucker*, 116 F. Supp. 3d 334, 343 (S.D.N.Y. 2015) (allegations regarding a regulatory bar prohibiting reimbursement for gender-affirming surgeries and other treatments similar to the regulatory bar at issue in *Ravenwood* were sufficient to make out a violation of the federal Medicaid Act).

When laws change and regulations fail to be amended to conform with them, the regulations become unlawful and unenforceable; when they are nevertheless enforced against a person, the enforcing agency has violated the law as to that individual. *See Exceptional Persons, Inc. v. Iowa Dep't of Human Servs.*, 878 N.W.2d 247, 252 (Iowa 2016) ("When a statute directly conflicts with a rule, the statute controls.") (internal citation omitted). In *Exceptional Persons*, the very same agency whose action Ms. Beal challenges here argued as much, successfully, to the Iowa Supreme Court, when defending its decision not to apply a 2009 rule that failed to conform with a subsequently enacted law, arguing that it must apply the law over prior, nonconforming rules. *Id.* Indeed, the well-known governing practice of administrative agencies in Iowa is to regularly review all administrative rules to ensure consistency with changing law

for this very reason, reviewing each rule no less than every five years. This is typically referred to by each agency as its "five-year regular review" process.[2]

II. Ms. Beal should be allowed to proceed with her ICRA claims.

DHS argues that Ms. Beal's ICRA claims should be dismissed because DHS is not a "public accommodation" within the meaning of ICRA. (DHS Br. in Supp. of Mot. to Dismiss at 7–9.) DHS misconstrues the Act on several levels.

A. DHS ignores the plain meaning of ICRA.

"The intent of the legislature is the polestar of statutory construction and is primarily to be ascertained based on the language employed in the statute." *Univ. of Iowa v. Dunbar*, 590 N.W.2d 510, 511 (Iowa 1999). "Precise, unambiguous language will be given its plain and rational meaning in light of the subject matter." *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996).

The plain language of ICRA expressly states that it is "unfair or discriminatory" for any "employee or agent" of a "public accommodation" to deny services based on "sex [or] gender identity." *See* Iowa Code § 216.7(1)(a) (2017) ("It shall be an unfair or discriminatory practice for any . . . employee or agent [of any public accommodation] . . . [t]o refuse or deny to any person because of . . . sex [or] gender identity . . . the accommodations, advantages, facilities, services or privileges thereof, or otherwise to discriminate against any person because of . . sex

[2] The specific legislative history of Iowa Admin. Code r. 441.78.1 shows that it was reviewed by DHS in 2010, 2012, 2013, 2015, 2015, and 2016. Iowa Admin. Bulletin ARC 2371C (Jan. 1, 2016), *available at*: https://www.legis.iowa.gov/docs/aco/arc/2361C.pdf; Iowa Admin. Bulletin ARC 2164C (Sept. 30, 2015), *available at*: https://www.legis.iowa.gov/docs/aco/arc/2164C.pdf; Iowa Admin. Bulletin ARC 1297C (Feb. 5, 2014), *available at* :https://www.legis.iowa.gov/docs /Aco/arc/1297C.pdf; Iowa Admin. Bulletin ARC 1052 (Oct. 2, 2013), *available at*: https://www.l egis.iowa.gov/docs/aco/arc/1052C.pdf; Iowa Admin. Bulletin ARC 0305C (Sept. 5, 2012), *available at* https://www.legis.iowa.gov/docs/aco/arc/0305C.pdf; Iowa Admin. Bulletin ARC 8714B (May 5, 2010), *available at*: https://www.legis.iowa.gov/docs/aco/arc/8714B.pdf.

[or] gender identity . . . in the furnishing of such accommodations, advantages, facilities, services or privileges.").

"Public accommodation[s]" expressly include "each state . . . government unit . . . that offers services . . . [or] benefits to the public . . . .," such as DHS. *See* Iowa Code § 216.2(13)(b) (2017).

As an "agent" of DHS, Amerigroup was expressly prohibited by the terms of ICRA from discriminating against Ms. Beal on the basis of sex or gender identity. And as "employee[s] or agent[s]" of DHS, the Director and his staff were expressly prohibited from endorsing Amerigroup's discriminatory decision. Yet that is what Amerigroup, the Director, and the Director's staff did when they denied expense reimbursement for Ms. Beal's gender-affirming surgery.

DHS's proposed interpretation of the Act is based on the false premises that (1) a "public accommodation" must be a physical facility open to the public, and (2) the "public accommodation" at issue in this case is the Medicaid program itself, which, DHS argues, is not a physical facility open to the public. (*See* DHS Br. in Supp. of Mot. to Dismiss at 7–9.) As set forth below, this highly restrictive reading of the Act ignores its plain language, which expressly covers "employee[s] or "agent[s]," such as Amerigroup, the Director, or the Director's staff, of "state . . . government unit[s]," such as DHS, "that offer[] services . . . [or] benefits," such as Medicaid, "to the public," such as Ms. Beal and other Medicaid participants. *See* Iowa Code §§ 216.7(1)(a), 216.2(13)(b) (2017).

1. The term "unit" does not denote a physical facility.

DHS attempts to restrict the definition of "state . . . government unit" to physical facilities. (DHS Br. in Supp. of Mot. to Dismiss at 7.) This argument has no merit.

An undefined statutory term, such as "state . . . government unit," must be afforded its "plain and rational meaning." *Carolan*, 553 N.W.2d at 887. To do so, Iowa courts frequently look to an undefined term's dictionary definition. *See, e.g.*, *State v. Pettijohn*, 899 N.W.2d 1, 16 (Iowa 2017); *U.S. Jaycees v. Iowa Civil Rights Comm'n*, 427 N.W.2d 450, 454 (Iowa 1988).

Merriam–Webster's online dictionary defines "unit," in most relevant part, as "a single thing, person, or group that is a constituent of a whole" or "a piece or complex of apparatus serving to perform one particular function." *Dictionary by Merriam–Webster, available at*: http://www.merriam-webster.com/dictionary/unit (last visited Jan. 12, 2017). This definition encompasses individual government agencies or entities such as DHS. An agency is "a single thing . . . that is a constituent of a whole" state government. *See id*. It is also "a piece" of the "apparatus" of state government that "serv[es] to perform [the] particular function" of administering the programs and services that fall within its purview. *See id.*

Of the eleven possible definitions of "unit" offered by Merriam–Webster's online dictionary, only one—"an area in a medical facility and especially a hospital that is specially staffed and equipped to provide a particular type of care," such as "an intensive care unit"—implies a physical facility of any kind. *See id*. Interpreting "state . . . government unit[s]" under Section 216.2(13)(b) of ICRA to include only physical facilities would require reading a limitation into the statutory language that is not supported by the plain meaning of the words chosen by the legislature. This is impermissible. *See Cubit v. Mahaska County*, 677 N.W.2d 777, 782 (Iowa 2004) (courts "have no power to read a limitation into [a] statute that is not supported by the words chosen by the general assembly"); *Miller v. Marshall County*, 641 N.W.2d 742, 748 (Iowa 2002) ("[W]hen the language of a statute is plain, we do not read words or restrictions into a statute that are not readily apparent from the express terms.").

2. The doctrine of *noscitur a sociis* supports Ms. Beal's interpretation of "unit."

The doctrine of *noscitur a sociis* further supports interpreting "unit" as something broader than a physical facility. Under that doctrine, which Iowa court's often invoke in ascertaining a term's plain meaning, "the meanings of particular words may be indicated or controlled by associated words." *Porter v. Harden*, 891 N.W.2d 420, 425 (Iowa 2017); *see also Des Moines Flying Serv., Inc. v. Aerial Servs., Inc.*, 880 N.W.2d 212, 221 (Iowa 2016) ("[*N*]*oscitur a sociis* . . . "summarizes [a] rule of both language and law . . . .") (internal quotation marks omitted).

Here, Section 216.2(13)(b) of ICRA states that "public accommodation" includes "each state and local government *unit* or tax-supported *district*." Iowa Code § 216.2(13)(b) (2017) (emphasis added). The term "district" denotes, in relevant part, "a territorial division" or "an area, region, or section with a distinguishing character." *Dictionary by Merriam–Webster*, *available at*: http:/www.merriam-webster.com/dictionary/district (last visited Jan. 12, 2018). A "district" is not a physical facility; it is a more generalized "division" or "section," such as a division or section of government administered by the state or one of its localities. By association with the word "district," the word "unit" should be interpreted as something broader than a physical facility.

3. Even under a restrictive definition of "unit," DHS qualifies as a "public accommodation."

In any event, even if "state . . . government unit[s]" were limited to physical facilities, DHS would still qualify as a "public accommodation."

DHS has multiple offices across the State of Iowa. *See, e.g.*, Iowa Dep't of Human Servs., DHS Offices Map, *available at*: http://dhs.iowa.gov/dhs_office_locator. At least one of those offices was involved in denying Ms. Beal Medicaid benefits. (*See* Petition, Ex. 11

(11/17/17 Final Decision from Director of DHS to C. Beal).) Ms. Beal was therefore subject to a discriminatory practice by an agent or employee of DHS operating out of a DHS facility when DHS denied her Medicaid coverage on the basis of her sex and gender identity. These circumstances satisfy DHS's restrictive definition of "public accommodation" under Section 216.2(13)(b) of ICRA. *See* Iowa Code § 216.2(13)(b) (2017).

They also satisfy the definition of "public accommodation" set forth in Section 216.2(13)(a) of the Act. Under that provision, "public accommodation[s]" expressly include "facilit[ies] . . . that offer services to . . . nonmembers [of any organization or association] gratuitously . . . if the accommodation receives governmental support or subsidy." *See* Iowa Code § 216.2(13)(a) (2017).

DHS operates "facilities" throughout the State of Iowa that "offer services" to members of the public "gratuitously," such as Medicaid. And those facilities "receive[] governmental support or subsidy" in that they are funded by the State of Iowa. Therefore, even under Section 216.2(13)(a)'s definition of "public accommodation," the Director of DHS and his staff, as "employee[s] or agent[s]" of DHS, were prohibited from discriminating on the basis of sex or gender identity in administering the Iowa Medicaid program from an office of the Iowa state government. *Cf.* Ltr. from Richard C. Turner, Attorney General, to Dennis L. Freeman, State Representative, and Rolland A. Gallagher, Director, Iowa, Beer & Liquor Control Dep't, 1972 WL 262259 (Feb. 2, 1972) (noting that even a private club may become a public accommodation if it receives government support or subsidy).

It is, moreover, immaterial that Ms. Beal was not denied physical access to DHS's office facility. Section 216.2(13)(a) covers the denial of services administered by a public facility, as multiple courts have acknowledged. *See Torres v. N. Fayette Comty. Sch. Dist.*, 600 F. Supp. 2d

1026, 1031 (N.D. Iowa 2008) ("[A] person subject to discrimination in accommodation is denied the use of a public facility *or the services or privileges of a public facility* . . ."") (emphasis added); *Kirt v. Fashion Bug #3253, Inc.*, 479 F. Supp. 2d 938, 963 (N.D. Iowa 2007) ("[A] properly adapted prima facie case . . . requires [the plaintiff] to prove . . . [that the plaintiff] sought to enjoy the accommodations, advantages, facilities, *services, or privileges* of a 'public accommodation . . . .'") (emphasis added). DHS's conduct falls within the scope of Section 216.2(13)(a).

4. Medicaid is a "service . . . [or] benefit" offered "to the public."

DHS also argues that it does not qualify as a "public accommodation" because Medicaid is not available to "the general public" or "the public writ large." (*See* DHS Br. in Supp. of Mot. to Dismiss at 9.) This argument is meritless.

DHS reads a limitation into Section 216.2(13)(b) that is not supported by the language of the statute. *See Cubit v. Mahaska County*, 677 N.W.2d 777, 782 (Iowa 2004) (courts "have no power to read a limitation into [a] statute that is not supported by the words chosen by the general assembly"); *Miller v. Marshall County*, 641 N.W.2d 742, 748 (Iowa 2002) ("[W]hen the language of a statute is plain, we do not read words or restrictions into a statute that are not readily apparent from the express terms.").

As the Iowa Supreme Court has held with respect to ICRA, "the public, as opposed to the general public, can mean any group or segment, however characterized, of the aggregate of the citizens of a political entity." *Good. v. Iowa Civil Rights Comm'n*, 368 N.W.2d 151, 156 (Iowa 1985); *see also Cubit*, 677 N.W.2d at 783 (courts may refer to prior decisions of Iowa Supreme Court to ascertain the meaning of an undefined statutory term). Section 216.2(13)(b) of ICRA explicitly refers to "state . . . government unit[s]" that "offer[] services, facilities, benefits, grants

or goods to the public." It does not refer to "the general public" or "the public writ large." *See* Iowa Code § 216.2(13)(b) (2017). The statute thus applies to services or benefits such as Medicaid, which is available to a subset of Iowa residents who meet the program's financial-eligibility requirements. (*See* Petition, ¶ 16.)

DHS's interpretation of Section 216.2(13)(b) also disregards the 1984 amendments to ICRA, which struck all references to the term "general public" from what is now Section 216.2(13)(a) of the Act. When ICRA was originally enacted, it defined "public accommodation" as a "place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods *to the general public*." *See* Iowa Code § 105.A2 (1971) (emphasis added). In 1984, all references to "the general public" were changed to "nonmembers." *U.S. Jaycees v. Iowa Civil Rights Comm'n*, 427 N.W.2d 450, 455 (Iowa 1988). Therefore, to qualify as a "public accommodation" under Section 216.2(13)(a) of ICRA, an entity no longer needs to provide goods or services without restriction.

Section 216.2(13)(b)'s reference to "the public" must be read in light of this modification to Section 216.2(13)(a). Based on that modification, it would be inconsistent with Section 216.2(13)(a) to interpret Section 216.2(13)(b) as referring to the general public. *See, e.g., Schuler v. Rodberg*, 516 N.W.2d 902, 903–04 (Iowa 1994) ("When statutes relate to the same subject matter or to closely allied subjects they are said to be *in pari materia* and must be construed . . . in light of their common purpose and intent so as to produce a harmonious system or body of legislation."); *State v. Vargason*, 607 N.W.2d 691, 697 (Iowa 2000) ("[S]tatutes must be read *in pari materia*.").

B. DHS's interpretation of ICRA violates other well-established principles of statutory interpretation.

DHS's interpretation of "public accommodation" is problematic for several other reasons as well, none of which are addressed in DHS's brief.

1. DHS's interpretation of "public accommodation" renders key statutory language superfluous.

DHS's focus exclusively on Section 216.2(13)(a) to interpret "public accommodation" renders Section 216.2(13)(b) of ICRA superfluous. As the Iowa Supreme Court has repeatedly emphasized, courts must "not construe a statute to make any part of it superfluous." *Petition of Chapman*, 890 N.W.2d 853, 857 (Iowa 2017); *Civil Serv. Comm'n v. Iowa Civil Rights Comm'n*, 522 N.W.2d 82, 86 (Iowa 1994). On the contrary, they must "'presume the legislature included all parts of the statute for a purpose . . . [to] avoid reading the statute in a way that would make any portion of it redundant or irrelevant.'" *Chapman*, 890 N.W.2d at 86 (quoting *Rojas v. Pine Ridge Farms, LLC*, 779 N.W.2d 223, 231 (Iowa 2010)); *see Ramirez-Trujillo v. Quality Egg, LLC*, 878 N.W.2d 759, 770 (Iowa 2016) (same).

DHS's interpretation of "public accommodation" focuses exclusively on Section 216.2(13)(a) of ICRA, which states that "'public accommodation'" means each and every place, establishment, or facility of whatever kind, nature, or class that . . . offers services" to the public. Iowa Code § 216.2(13)(a) (2017). Emphasizing this component of the public-accommodation definition to the exclusion of the component including "state . . . government unit[s]" renders the latter superfluous. *Compare* Iowa Code § 216.2(13)(a) (2017), *with* Iowa Code § 216.2(13)(b) (2017). This is improper. *See also Chapman*, 890 N.W.2d at 857 ("When the legislature chooses to act as its own lexicographer by defining statutory terms, we are ordinarily bound by its definitions.") (internal quotation marks omitted).

2. DHS's interpretation of "public accommodation" produces absurd results.

DHS's interpretation of "public accommodation" also produces absurd results. Under Iowa law, courts "will not construe the language of a statute to produce an absurd or impractical result." *State v. Adams*, 810 N.W.2d 365, 369 (Iowa 2012); *see In re Detention of Bosworth*, 711 N.W.2d 280, 283 (Iowa 2006) (same). Instead, courts "presume the legislature intends a reasonable result when it enacts a statute." *Adams*, 810 N.W.2d at 369 (internal quotation marks omitted); *see Bosworth*, 711 N.W.2d at 283 (same).

DHS's interpretation of Section 216.2(13)(b) of ICRA attempts to exclude "state . . . government unit[s]," such as DHS, from ICRA's prohibition against gender-identity and sex discrimination by distinguishing between the programs provided by those government units and the government units themselves. (*See* DHS Br. in Supp. of Mot. to Dismiss at 7–8.) If this were the proper interpretation of the Act, then any state agency could avoid ICRA's prohibition against discrimination by "public accommodation[s]" by arguing that their services and benefits are not "government unit[s]." This is an absurd and impractical interpretation of Section 216.2(13)(b) that artificially circumscribes the coverage of ICRA.

DHS's interpretation of Section 216.2(13)(b) also attempts to exclude "state . . . government unit[s]," such as DHS, from the purview of the Act by claiming that an entity must offer services or benefits to the general public without limitation to qualify as a "public accommodation." (*See* DHS Br. in Supp. of Mot. to Dismiss at 8.) If this were true, then nearly every Iowa government agency would fall outside the Act's scope since nearly all government services are subject to qualifying criteria. For example, under DHS's interpretation of the statute, ICRA would not prevent the Iowa Department of Motor Vehicles ("DMV") from denying a driver's license to a qualified Iowa resident on the basis of race, sex, gender identity, or any other

protected classification. The DMV does not issue driver's licenses to individuals under the age of sixteen; therefore, it does not offer services or benefits to the general public. This is yet another absurd and impractical interpretation of Section 216.2(13)(b).

3. DHS fails to broadly construe ICRA.

Additionally, DHS's interpretation of "public accommodation" runs afoul of the principle that ICRA must be broadly construed. The Iowa legislature has declared that ICRA "shall be broadly construed to effectuate its purpose." Iowa Code § 216.18(1) (2017). And the Iowa Supreme Court has reaffirmed this principle, noting that "[a]n Iowa court faced with competing legal interpretations of the [ICRA] must keep in mind the legislative direction of broadly interpreting the Act when choosing among plausible legal alternatives." *Pippen v. State*, 854 N.W.2d 1, 28 (Iowa 2014); *see also Probasco v. Iowa Civil Rights Comm'n*, 420 N.W.2d 432, 435 (Iowa 1988) ("Remedial legislation should be construed liberally consistent with its statutory purpose.").

Here, Ms. Beal maintains that the only plausible interpretation of "public accommodation" includes DHS, a "state . . . government unit." *See supra* Arg., § II(A). Yet, even assuming DHS's restrictive interpretation of Section 216.2(13)(b) of the Act were a "plausible legal alternative[]" (which it is not), Ms. Beal's interpretation must be adopted to ensure that the Act is "broadly construed." *See* Iowa Code § 216.18(1) (2017); *Pippen*, 854 N.W.2d at 28.

C. Federal law is irrelevant to interpreting ICRA's public-accommodation provisions.

Finally, DHS impermissibly relies on federal law to interpret ICRA's public-accommodation provisions. (*See* DHS Br. in Supp. of Mot. to Dismiss at 9.)

Although "it is generally true that Iowa courts have traditionally looked to federal law for guidance in interpreting the [ICRA]," they are "not bound by federal law . . . ." *Pippen v. State*, 854 N.W.2d 1, 18 (Iowa 2014) (internal quotation marks omitted). Federal law is inapplicable here because ICRA's public-accommodation provisions differ substantially from those of the Civil Rights Act of 1964.

ICRA defines a "public accommodation" as "each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods" to the public and "each state and local government or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to the public, gratuitously or otherwise." Iowa Code § 216.2(13) (2017).

The federal Civil Rights Act of 1964, by contrast, defines a "public accommodation" as:

> (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests . . .;
>
> (2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises . . . or any gasoline station;
>
> (3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and
>
> (4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by the subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

42 U.S.C. § 2000a(b). This definition of "public accommodation" is significantly narrower, and much more focused on discrimination regarding the goods, services, and facilities provided at certain specific physical locations, than the definition in ICRA. It bears very little relation to ICRA's definition and is of no value in interpreting that statute.

Indeed, when ICRA was enacted in 1965, it replaced a previous Iowa civil-rights statute with language similar to the federal Civil Rights Act of 1964. Under ICRA's predecessor, all persons within the State of Iowa were "entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, restaurants, chop-houses, eating houses, lunch counters, and all other places where refreshments are served, public conveyances, barbershops, bathhouses, theaters, and all other places of amusement." Iowa Code § 735.1 (1962).

The old language was similar to the federal statute in that it listed facilities constituting public accommodations instead of defining "public accommodation" in general terms. It was abandoned by the Iowa legislature because of a concern that it would be interpreted to exclude all establishments not explicitly listed in the statute, such as banks, gas stations, and doctor's offices. *See U.S. Jaycees v. Iowa Civil Rights Comm'n*, 427 N.W.2d 450, 454–55 (Iowa 1988).

Because the public-accommodation language of ICRA differs substantially from that of the federal Civil Rights Act of 1964 and, in fact, replaced similar language over a concern that it was too narrow, the Civil Rights Act of 1964 is irrelevant to interpreting ICRA's public-accommodation provisions.

CONCLUSION

For the reasons stated above, and consistent with the denial of DHS's motion to dismiss in the *Good* litigation, the Court should enter an order denying DHS's motion to dismiss in its entirety and allowing Ms. Beal to proceed with her petition for judicial review of DHS's decision denying Medicaid reimbursement for her gender-affirming surgery.

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Respectfully submitted,

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