ELECTRONICALLY FILED SEP 26, 2018 CLERK OF SUPREME COURT

BEFORE THE IOWA SUPREME COURT

No. 18-1158

EERIEANNA GOOD and CAROL BEAL,

Petitioners-Appellees,

vs.

IOWA DEPARTMENT OF HUMAN SERVICES,

Respondent-Appellant.

APPEAL FROM THE DISTRICT COURT
OF POLK COUNTY
HON. ARTHUR E. GAMBLE

BRIEF OF ONE IOWA, INDIVIDUAL TRANSGENDER IOWANS, AND ALLIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

Sharon Malheiro, AT0004936
Katelynn T. McCollough, AT0013443
Davis Brown Law Firm
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Telephone: (515) 288-2500
SharonMalheiro@davisbrownlaw.com
KatelynnMcCollough@davisbrownlaw.com

ATTORNEYS FOR *AMICI CURIAE*

TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES 3

STATEMENT OF INTERESTS OF AMICI CURIAE AND DISCLOSURE STATEMENT 5

ARGUMENT 10

I. Iowa Administrative Code Rule 441-78.1(4) is Discriminatory on Its Face and Violates the Iowa Civil Rights Act 10

A. Gender-affirming surgical procedures are medically necessary and not conducted primarily for psychological purposes 15

B. Being transgender is not a mental illness, and gender identity is not subject to change by outside influence 18

C. Iowans denied surgical treatments for Gender Dysphoria are left with few options and little hope 23

II. There is No Rational Basis to Deny Coverage for Transgender Medicaid Beneficiaries on the Basis of Asserted Cost-Savings 29

CONCLUSION 31

CERTIFICATE OF COMPLIANCE 33

TABLE OF AUTHORITIES

Cases

Pinneke v. Preisser,
623 F.2d 546, 549-550 (8th Cir. 1980) 15

State Pub. Defender v. Iowa Dist. Ct. for Black Hawk Cnty,
633 N.W.2d 280, 283 (Iowa 2001). 13

U.S. Jaycees v. Iowa Civil Rights Comm'n,
427 N.W.2d 450, 454 (Iowa 1988) 13

Statutes and Rules

Iowa Admin. Code r. 441-78.1(4) 14

Iowa Code § 216.2(13) 11

Iowa Code § 216.2(13)(b) 14

Iowa Code § 216.4 14

Iowa Code § 216.7(1)(a) 11

Other Authorities

Classifying disease to map the way we live and die, World Health Organization, http://www.who.int/health-topics/international-classification-of-diseases (last visited September 17, 2018) 19

Gender Dysphoria, Am. Psychiatric Ass'n, file:///C:/Users/ktm17/Downloads/APA_DSM-5-Gender-Dysphoria.pdf (last visited September 22, 2018) 20

Governmental Unit, Black's Law Dictionary (10th ed. 2014) 14

Herman, Jody L., Costs and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefits Plans (Williams Institute, Sept. 2013); Cal. Dep't of Ins., Economic Impact Assessment: Gender Nondiscrimination in Health Insurance (Apr. 13, 2012),

https://transgenderlawcenter.org/wpcontent/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf .. 30

Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (7th ed. 2012), World Prof'l Ass'n for Transgender Health, https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf (last visited September 18, 2018)................................ 15, 19

WHO: Revision of ICD-11 (gender incongruence/transgender) - questions and answers (Q&A), Youtube, https://www.youtube.com/watch?time_continue=11&v=kyCgz0z05Ik (last visited September 17, 2018) 20

STATEMENT OF INTERESTS OF AMICI CURIAE AND DISCLOSURE STATEMENT

One Iowa is the largest statewide lesbian, gay, bisexual, transgender and queer/questioning ("LGBTQ") organization preserving and advancing equality for LGBTQ individuals in Iowa through grassroots efforts, advocacy and training. *Amici* are also individual transgender Iowans who have been denied coverage of medically necessary, gender-affirming surgeries by their Medicaid providers. *Amici* also include Iowa health care providers who serve the Iowa transgender community, allies of transgender Iowans, and transgender Iowans who have been fortunate enough to receive all necessary medical care recommended by their doctors.

Through its work with transgender Iowans, One Iowa has seen firsthand how powerful, life-changing, and absolutely essential gender-affirming surgery is for many transgender people grappling with Gender Dysphoria. Transgender *Amici* have been and continue to be directly impacted by the denial of medically necessary surgical procedures to treat their Gender Dysphoria. The other *Amici* have cared for patients who have been denied coverage of recommended procedures or supported individuals navigating the gender transition process. Through their collective experiences, *Amici* have a unique interest in these proceedings and the interpretation of Iowa Administrative Code Rule 441-78.1(4). They all share

concerns about the issues raised in the above-captioned matter and understand on a personal level the dangers a blanket denial of health coverage will have on this class of Iowans: low-income transgender Iowans whose doctors have deemed gender-affirming surgery medically necessary for treating their Gender Dysphoria.

The personal stories of the transgender *Amici* in this brief demonstrate the profound harms the denial of medically necessary coverage has on an individual's life and health. In stark contrast will be the stories of transgender Iowans who have had the fortune of receiving approval and coverage of their surgical treatment options. Many of the transgender *Amici* presented in this brief have been denied surgical procedures through Medicaid and continue to face an upward battle to receive the last remaining treatment options available to them. Other *Amici* share how the idea of fighting with their providers, knowing their medical requests will be denied, has exhausted them to the point of waiting to pursue needed treatment. Without this care, many *Amici* feel powerless in pursuing a healthy and successful life, a feeling that leaves them severely depressed and often suicidal. At the same time, their counterparts who have received medically appropriate surgical treatment for their Gender Dysphoria have been able to

move forward with their lives instead of feeling burdened by a fight for health care with no treatment options in sight.

Additionally, the stories provided by ally *Amici*, which includes health care providers and family members providing support and care to transgender Iowans in the process of transitioning, will offer perspectives concerning the extensive hurdles an individual transitioning faces. These *Amici* will share their experiences in assisting transgender Iowans in obtaining coverage for gender-affirming procedures, as well as their personal and professional knowledge concerning the complex classification of Gender Dysphoria as a medical condition, not a psychological disorder. Through their experience of providing support to Iowans weathering the transition process, the ally *Amici* shared in this brief will offer their concerns with how transgender Iowans are currently treated within Iowa's medical sector.

There is no question that the issues presented in this case will have a profound impact on all the *Amici*'s lives. Not all transgender people are alike, and each person's transitioning will be very different from another transgender person. Some will go through a legal and social transition, such as changing their pronouns, clothing, and identity on legal documents. Hormone treatment may be a necessary step for other transgender people to

transition, and still others may require surgical procedures. For those that do require surgical procedures, including *Amici* and Petitioners, there is a widespread medical consensus that gender confirmation surgery is medically necessary care. Under the Respondent's interpretation of Iowa law, these *Amici* will continue to face blanket denials of their healthcare needs.

Amici fit the criteria set forth in Iowa Rule of Appellate Procedure 6.906(5)(a)(3) because they have a unique perspective and information that will assist this Court in assessing the ramifications of any decision rendered in the present case. *Amici* focus on how Gender Dysphoria has impacted their lives, the lives of a patient, or the lives of loved ones. Their personal stories of denial and struggles with obtaining coverage for procedures their doctors have determined are necessary for proper treatment illustrate the sweeping impact a decision finding Medicaid providers may uphold a blanket denial policy toward this class of Iowans will have on the *Amici*'s lives. *Amici*'s perspectives and arguments shared in this brief do not simply reiterate the arguments expected to be made by the Petitioners, but will instead offer this Court additional information when considering how their decisions will affect the lives of a distinct class of Iowans.

Counsel for One Iowa authored this *Amicus* Brief in its entirety. No counsel for Petitioners or Respondent has authored this Brief, in whole or in

part, nor has Petitioners or Respondent or their respective counsel contributed money to fund the preparation or submission of this Brief. No entity has contributed funds to cover the costs of the preparation and submission of this *Amicus* Brief.

ARGUMENT

To ensure the health and well-being of all Iowans, transgender Iowans must be given the same access to medically necessary surgical treatments as their cisgender counterparts. The experiences and stories of *Amici* shared in support of the legal arguments below demonstrate the need for this Court to affirm the District Court's finding that the language within Iowa Administrative Code Rule 441-78.1(4) is discriminatory and in violation of the Iowa Civil Rights Act and the Equal Protection Clause of the Iowa Constitution. A contrary finding places transgender Iowans receiving Medicaid benefits in jeopardy of further health risks and unfairly disadvantages them in becoming successful members of their communities.

I. Iowa Administrative Code Rule 441-78.1(4) is Discriminatory on Its Face and Violates the Iowa Civil Rights Act.

Decisions made by the Iowa Department of Human Services (hereinafter "DHS") related to Iowa Medicaid benefits fall within the scope of the Iowa Civil Rights Act (hereinafter "ICRA"). The ICRA states, in part:

> It shall be an unfair or discriminatory practice for any . . . manager . . . of any public accommodation or any agent or employee thereof: . . . [t]o refuse or deny to any person because of . . . sex, sexual orientation, gender identity . . . the accommodations, advantages, facilities, services, or privileges thereof, or otherwise discriminate against any person because of . . . sex, sexual orientation, gender identity, in the furnishing of such accommodations, advantages, facilities, services, or privileges.

Iowa Code § 216.7(1)(a). Accordingly, transgender Iowans may not be discriminated against because of their gender identity. The question is then, what constitutes a "public accommodation". The ICRA defines this term, in full, as follows:

> 13. a. "Public accommodation" means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility, provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the nonmembers gratuitously shall be deemed a public accommodation if the accommodation receives governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the nonmembers for fee or charge or gratuitously, it shall be deemed a public accommodation during such period.
>
> b. "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. This paragraph shall not be construed by negative implication or otherwise to restrict any part or portion of the preexisting definition of the term "public accommodation".

Iowa Code § 216.2(13). Respondent would have this Court read paragraph "b" of this definition as being dependent on the first definition given in paragraph "a". However, such a reading requires mental gymnastics the legislature could have avoided by simply including the "state and local

government unit" language into the first sentence of paragraph "a". Instead, the legislature made a point to include a second definition for public accommodation in its own, distinct paragraph, indicating it was more likely meant to be read separately from paragraph "a". This reading of subsections 13a and 13b is further supported by the second sentence of paragraph "b", which states paragraph "b" is not meant to restrict any part of paragraph "a", suggesting the paragraphs are meant to have independent meanings.

Additionally, Respondent states the "government units" definition may be inclusive of state agencies in some capacities, but also clearly excludes DHS. (Resp. Br. at 32.)[1] There is nothing included in paragraph "b" that would indicate "government unit" could be referring to a specific subset of state agencies, but still be limited in a way as to not include all state agencies, such as DHS.

Respondent cites *State Pub. Defender v. Iowa Dist. Ct. for Black Hawk Cnty*, wherein the court states "The term "including" usually is

---

[1] Respondent indicates the Iowa Civil Rights Commission has stated police departments, schools, mass transit, and libraries are examples of "government units" and "districts". (Resp. Br. at pg. 36.) Such examples make little sense next to Respondent's conclusion that a "'government unit' can only refer to *government-subsidized housing* or, at most, *units* of a *building* owned and operated by a government entity." *Id.* (emphasis added). Police departments, schools, mass transit, and libraries are certainly not government-subsidized housing, nor is mass transit considered a unit of building. Instead, these are public services managed by state agencies.

interpreted as a term of enlargement or illustration, having the meaning of 'and' or 'in addition to.'" (Resp. Br. at 33); *see also State Pub. Defender v. Iowa Dist. Ct. for Black Hawk Cnty*, 633 N.W.2d 280, 283 (Iowa 2001). However, Respondent misapplies this definition and argues government units are only public accommodations if they are also places, establishments, or facilities. If the term "including" is properly applied here, it would read that, in addition to a public accommodation meaning a place, establishment, or facility, the definition also encompasses "each state and local government unit." Finally, Respondent's reference to *U.S. Jaycees* is irrelevant, as this case addressed whether a membership organization was a public accommodation and focused its analysis on paragraph "a" of the statute. *See U.S. Jaycees v. Iowa Civil Rights Comm'n*, 427 N.W.2d 450, 454 (Iowa 1988). In the current matter, the analysis pertains to how paragraph "b" interacts with paragraph "a", as well as what is meant by "government unit".

This Court should affirm the District Court's interpretation of Iowa Code § 216.2(13), as its reading of paragraph "a" and "b" makes the most statutory sense. Respondent correctly points out that other portions of the ICRA use the term "units" to describe housing units. However, it makes little sense that the legislature would expressly define the term "dwelling unit" and then not use that same terminology in subsection 13(b). *See* Iowa

Code §§ 216.4 and 216.2(13)(b). Instead, the legislature chose a different word, "government", to qualify the term "unit" that is not found elsewhere in the statute, indicating a different meaning was being given to "unit" in this paragraph. Black's Law Dictionary defines "governmental unit" as "[a] subdivision, *agency*, department, county, parish, municipality, or other unit of the government of a country or a state." *Governmental Unit*, Black's Law Dictionary (10th ed. 2014) (emphasis added). Thus, the ICRA's use of the term "government unit" was meant to include state agencies such as DHS.

DHS is thus a "state . . . government unit" within the ICRA's definition of public accommodation, and it cannot be discriminatory in providing services and benefits against individuals based on their gender identity. As stated by the District Court, DHS is the public accommodation in this case and Medicaid is the provided service. As written, Iowa Administrative Code Rule 441-78.1(4) is discriminatory both on its face and in its application. The Rule states outright that "sex reassignment" surgeries are excluded from coverage. Iowa Admin. Code r. 441-78.1(4). Additionally, the Rule expressly denies coverage for procedures pertaining to "transsexualism" and "gender identity disorders". *Id.* This language requires blanket, discriminatory denials of coverage for transgender Iowans in violation of the ICRA.

A. Gender-affirming surgical procedures are medically necessary and not conducted primarily for psychological purposes.

Gender-affirming surgical procedures, or "sex reassignment" procedures as they are described in the Iowa Administrative Code, are a medically necessary treatment for Gender Dysphoria for both Petitioners and many other transgender Iowans. This decision that gender-affirming surgery is medically necessary is the opinion of Petitioner's and *Amici*'s physicians. *Pinneke v. Preisser*, 623 F.2d 546, 549-550 (8th Cir. 1980) ("The decision of whether or not certain treatment or a particular type of surgery is "medically necessary" rests with the individual recipient's physician and not with clerical personnel or government officials."). There is no question in this matter that these surgical procedures are a recognized treatment option for individuals diagnosed with Gender Dysphoria. *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, pg. 8 (7th ed. 2012), World Prof'l Ass'n for Transgender Health, https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf (last visited September 18, 2018).

Respondent relies heavily on the argument that Gender Dysphoria is "undoubtedly psychological in nature", and thus the sex reassignment surgeries are conducted for a primarily psychological benefit and excluded

under Iowa Administrative Code 441-78.1(4). (Resp. Br. at 25.) But that conclusion is not medically accurate. Respondent cites no medical authority to support these contentions. Instead, words and ideas that sound or imply gender confirmation surgery is primarily for psychological purpose are cherry picked and presented as evidence to this Court.[2] (Resp. Br. at 27-28.) To the contrary, gender-affirming surgery acts to bring the body into conformance with one's gender. By changing primary and secondary sex characteristics of the body, gender-affirming surgery is therapeutic to address gender dysphoria for those transgender people for whom gender confirmation surgery is medically necessary.

Ora Uzel is an Iowa woman who came out as transgender and began transitioning to living full time in accord with her female gender identity more than ten years ago. Ora was only on Iowa Medicaid for a few months before getting a new job that allowed her to get nondiscriminatory insurance through the healthcare marketplace. Receiving the gender-affirming surgeries she needed has been life changing. Ora waited more than a decade

---

[2] In fact, one could just as easily argue that the terms used to analyze the effectiveness of gender-affirming surgeries presented by Respondent on page 27 of its Brief would fit many types of medical surgeries, as many individuals are, hopefully, satisfied and feel their general social functioning and life improve after the treatment of a health issue. Such terms are unlikely to be solely connected to transgender people and the treatment of Gender Dysphoria.

to receive her gender confirmation surgeries and struggled with constant suicidal thoughts during that time. “Since I got the surgery, those thoughts are gone just gone! It’s crazy to try and explain what that’s like.”

Alex, who has asked to only be identified by his first name for fear of retaliation, agrees that it is discriminatory and inaccurate to describe gender confirmation surgery as treatment for psychological purposes. “I have anxiety and depression, but as a sociologist, I have a better understanding. . . . You go through all the stigma of this. The public thinks that we are gross or immoral or whatever shame label they want to put on it.”

Joby Holcomb, a licensed mental health counselor in Iowa, sees a large number of LGBTQ individuals of all ages. “The individuals that I work with can be anywhere on the spectrum of transitioning. Some individuals are just understanding who they are and some individuals have been able to afford surgical procedures and are now starting to adjust to what life is like after having all of these physical and mental changes,” Holcomb said. Nearly all of Holcomb’s transgender patients have a diagnosis of Gender Dysphoria. Holcomb says many see him to develop insight on the condition and prepare to transition to living in accord with their gender. Many also have significant past traumas, such as severe bullying and sexual assault, that need to be addressed as well.

"Gender-affirming surgery is one of the things we see help the most, especially with those individuals who have difficulty functioning despite any other intervention we've tried," said Holcomb, who says he works closely with the rest of the medical community. "Yes, there is a psych component, but there is also a strong biological component that comes with Gender Dysphoria as well." For some of his patients, receiving surgery, or simply knowing they will be getting the surgery, can be the start to positive life changes. "Hope brings motivation to do more things, you start to see success in other places." For those who can't get the surgery, Holcomb often sees the opposite. "There are definitely times where it is the difference between life and death." Holcomb stated that DHS's characterization of gender confirmation surgery as treatment for psychological purposes is not medically-based. "When we really break down what dysphoria is . . . their physical self is not congruent with who the individual is." Holcomb explained this incongruence cannot solely be said to be psychological, as DHS is contending, but includes biological components that must be recognized as well.

B. Being transgender is not a mental illness, and gender identity is not subject to change by outside influence.

Gender-affirming surgery works to alter the body's primary and secondary sex characteristics, not to alter the person's gender. Importantly,

being transgender is not a mental illness. Gender identity, unlike the body's primary and secondary sex characteristics, is not subject to change by medical intervention.

The World Professional Association for Transgender Health ("WPATH") has explained this distinction: "In addition to prejudice and discrimination in society at large, stigma can contribute to abuse and neglect in one's relationships with peers and family members, which in turn can lead to psychological distress. However, these symptoms are socially induced and are not inherent to being transsexual, transgender, or gender nonconforming." *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, pg. 4 (7th ed. 2012), World Prof'l Ass'n for Transgender Health, https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf (last visited September 18, 2018).

Just this year, WHO reclassified Gender Dysphoria, which WHO refers to as "gender incongruence", from a psychological disorder to a sexual health condition. *Classifying disease to map the way we live and die*, World Health Organization, http://www.who.int/health-topics/international-classification-of-diseases (last visited September 17, 2018). Dr. Lale Say, Coordinator of the Department of Reproductive Health and Research of the

WHO, stated that "Historically, this concept [gender incongruence] was placed in the mental health chapter in ICD, but in ICD-11 it is moved to a newly created chapter of sexual health. . . . It was taken out from mental health disorders because we had a better understanding that this wasn't actually a mental health condition and leaving it there was causing stigma." *WHO: Revision of ICD-11 (gender incongruence/transgender) - questions and answers (Q&A)*, Youtube, https://www.youtube.com/watch?time_continue=11&v=kyCgz0z05Ik (last visited September 17, 2018).

The WHO's reclassification is comparable to the American Psychiatric Association's ("APA") decision in how it classified Gender Dysphoria when it released the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-5"). The APA stated "gender nonconformity is not in itself a mental disorder." *Gender Dysphoria*, Am. Psychiatric Ass'n, file:///C:/Users/ktm17/Downloads/APA_DSM-5-Gender-Dysphoria.pdf (last visited September 22, 2018). DSM-5 was more careful in its classification and descriptions of Gender Dysphoria in an effort to avoid the stigma that often follows transgender individuals. *Id.* The APA considered removing the condition from being classified as a mental disorder, as the WHO did, but ultimately determined this was not the best

option for patients. "To get insurance coverage for the medical treatments, individuals need a diagnosis. The Sexual and Gender Identity Disorders Work Group was concerned that removing the condition as a psychiatric diagnosis—as some had suggested—would jeopardize access to care." *Id.* Thus, the APA has attempted to protect patients by keeping Gender Dysphoria as a psychiatric condition, but also note that it is not simply a psychological condition. *Amici* have lived the experience of facing stigma and discrimination, described by the WHO and APA, as a result of being transgender.

Jennifer Christiason's son Ben first shared he was transgender to his family when he was in 9th grade. Jennifer, who also works as a nurse at the UnityPoint Health LGBTQ Clinic at Prairie Parkway in Cedar Falls, recalled that Ben suffered from suicidal thoughts before his Gender Dysphoria diagnosis. The family's response to Ben coming out as transgender was supportive and loving, and Jennifer noted that Ben was happier after understanding that the reason he felt the way he did was because he was transgender. Through her work at the LGBTQ Clinic, Jennifer frequently sees individuals who have not received the same support. "The reason for depression and anxiety is often from being shamed by family and society," Jennifer explained. "The minute they [individuals identifying as transgender]

feel acceptance, they change. It takes time to build their trust, and some patients aren't sure at first if the clinic is really a safe space."

Ora Uzel, who described getting gender-affirming surgery as life changing, explained that "For me, [being transgender] is not a psychological issue," said Ora. "The psychological issues are based on how people treat me from this condition." Ora explained that she has experienced non-acceptance and fear because others are angry at her for just being herself. "Denying the surgery is part of that feeling because it is so important. For me, completing transition allows me to be a full part of society."

Respondent attempts to argue there is an irrefutable presumption that gender-affirming surgeries are completed for a purely psychological purpose. However, it is clear that the medical community does not agree, which is further noted by Respondent's lack of authority supporting their conclusion. To the contrary, gender confirmation surgery functions to bring the body into conformance with one's true internal gender. But the regulation on its face does not offer transgender Iowans the opportunity to even be considered for authorization based on medical necessity because it sweepingly denies all "sex reassignment" surgeries.

C. Iowans denied surgical treatments for Gender Dysphoria are left with few options and little hope.

Discrimination in healthcare has caused transgender *Amici* to experience extreme distress, anxiety, and depression. For Skylar Thomas, the road to receiving her medically necessary gender confirmation surgeries has been arduous. Skylar, who is a Medicaid beneficiary, has been attempting to get preauthorization for her necessary surgeries for several years. So far, she has little to show for her efforts. She is frequently redirected when she calls UnitedHealthcare, her managed-care organization ("MCO") with questions. She has arrived at medical appointments only to discover that they weren't covered. Even calling Iowa DHS has proven unhelpful as she receives few straightforward answers concerning her coverage and lots of "we don't know" responses. Most of these conversations have taken place over the phone, and Skylar has faced pushback from her MCO when asking them to give her written responses. Without written responses or denials, tracking what Skylar has been told or making an appeal become increasingly difficult.

Skylar's physician has provided her with a letter stating that gender-affirming surgery is medically necessary to treat her Gender Dysphoria. She has struggled with suicidal thoughts throughout the transition process as a result of the continued denial of her surgeries. "It would mean the world to

me to have the surgery," Skylar said, who stated financing is the only thing stopping her from receiving the treatment she has been seeking for years.

Skylar has not been able to find a therapist in Mason City who is qualified to assist transgender people. She is the Vice President of Mason City Pride, Inc., and has helped mentor younger transgender Iowans through the process. This has allowed her to understand the struggles the Iowa transgender community is facing. "I hear lots of very similar stories of individuals being denied. The process is a lot of red tape and the odds are that you still won't get approved. . . . This isn't just an important topic, it's a matter of life and death." said Skylar.

Mia Ramsdell has been transitioning for two years and has been a Medicaid beneficiary since 2017. She has struggled with homelessness and consistent employment while transitioning. "I feel like I don't fit in, like I stick out like a sore thumb," Mia said, who was recently denied coverage of a surgical consultation. Mia has letters stating gender-affirming surgeries are medically necessary. However, she has not yet attempted to appeal the denial because of the anxiety she experiences around the possibility that coverage for her care will be denied again by Medicaid. Even short of outright denial of preauthorization for surgery, transgender Iowans

experience “a lot of annoyances and inconveniences that can really mess things up for trans people.”

Like Skylar, Eliott Bowers has been denied medically necessary care by Iowa Medicaid. He began identifying as transgender around seven or eight years ago, but his parents were not accepting of his gender identity and told him he could not transition medically while living with them, so he waited until he was 18 to begin the process.

Eliott has been seeking out surgery, but his MCO, UnitedHealthcare, has not allowed him to submit an application for pre-authorization, despite Eliott’s physician finding the gender confirmation surgery to be medically necessary. So, Eliott submitted an appeal. “I waited a month before getting a response and I was told they wouldn’t even look at my appeal because they didn’t consider a denial had ever happened because no pre-authorization was ever submitted.” Eliott then submitted a second appeal. “There was another denial and they wouldn’t even let my doctor’s office submit a pre-authorization. The appeal sat for a week or so, then it just disappeared. I have not received a response and according to the insurance company the appeal doesn’t exist.” Eliott believes his MCO is giving him the runaround because it knows it can outright deny his requests as a transgender person under Iowa law, and thus the MCO does not believe it needs to actually

review his application for pre-authorization before making a decision on coverage.

Eliott has a history of mental health disorders, including suicidal thoughts, anxiety, and depression. "Before this happened with the insurance companies, I considered myself as healthy as I had ever been. But since the denials, I very quickly was borderline suicidal again. I had gotten my hopes up a bit, I was so looking forward to feeling like myself. This was another step in becoming the man that I really am." Eliott said that hearing he wouldn't be getting the surgeries made him feel as if his insurer did not understand how the surgery would affect the outcome of his life.

Alex has been on Medicaid since returning to Iowa in 2017. He began to transition while living and studying abroad, but is now unable to receive the medically necessary surgery he desperately needs. "I'm just waiting to get off Medicaid to get the treatment that I have been waiting for. The whole time you are waiting for this, you've got something that you've been carrying with you that you can't get rid of," Alex said. "It just feels really dehumanizing, like 'Oh, there's this one thing about you . . . we saw you're transgender so we are not going to cover this.'"

Alex, who has two master's degrees and a PhD, is hopeful he will be able to obtain non-discriminatory insurance when he finds better

employment. But he worries about other members of the transgender community. "There are people in the community who are never going to get other insurance," Alex explained, noting that many transgender Iowans struggle with job security and homelessness. "This is something that I have dealt with and dealt with and dealt with. Now it is Medicaid saying, that's never going to happen. It's just exhausting and emotional."

Joby Holcomb is not surprised by many transgender *Amici*'s feeling of hopelessness. Holcomb has found that transgender individuals needing, but not receiving, medically necessary surgeries have difficulty finding stable employment, healthy relationships, or functioning on a daily basis. "We'll see individuals with extremely low self-confidence who really believe at their core that they are not good enough," Holcomb said. In his practice, Holcomb has counseled individuals who have attempted suicide. "I've heard more than once when a person first shows up that this is the last thing they are going to try, and if it doesn't work then their life is essentially over, that they are done trying."

Jennifer is all too aware of the battles patients at the LGBTQ Clinic face when dealing with their insurance companies because she has fought those same battles during her son's transition. The Christiasons are not Medicaid beneficiaries, but have experienced discrimination on the basis of

gender identity in healthcare. Jennifer learned quickly to take thorough notes pertaining to her interactions with their insurer. "We were denied a couple of times initially, but we changed their minds after a few appeals letters. We then received some weird bills afterwards and had to resolve those with more appeals letters." Jennifer described working with the insurance company as a full-time job. "I would write down the day, time and who I talked to for everything. This made writing appeals letters easier. I had to constantly prove that something was said." Like Skylar, Jennifer was nervous whenever the insurer wouldn't give her something in writing because this would make appealing more difficult later. "I think individuals that have to advocate for themselves [while transitioning] . . . it must be very difficult."

Jennifer saw a drastic change in Ben following his surgeries and believe it has helped him succeed. Ben was the first transgender athlete in the state of Iowa, was in marching band, and had a high GPA. Jennifer believes he wouldn't have had opportunities to have success without his transition. Ben has an upcoming hysterectomy surgery, which has been determined to be medically necessary to treat his Gender Dysphoria. Jennifer has yet to hear from their insurer, but, given her son's past experiences facing discrimination in healthcare, is prepared to appeal. In stark contrast to

transgender Medicaid beneficiaries, Jennifer has a chance to argue and win her appeals with their private insurer and ultimately receive coverage for Ben's procedures, an opportunity that is not possible for other *Amici* because of the discriminatory language found within 441-78.1(4).

II. There is No Rational Basis to Deny Coverage for Transgender Medicaid Beneficiaries on the Basis of Asserted Cost-Savings.

Respondent does not dispute that Iowa transgender Medicaid beneficiaries are similarly situated to Iowa cisgender Medicaid beneficiaries. (Resp. Br. at 21.) But while these two groups may be similarly situated, they are not treated equally under Rule 441-78.1(4). Under the regulation, cisgender Iowans have a chance to receive the same or similar procedures sought by transgender Iowans, so long as the basis for their medically necessary care is to not to treat Gender Dysphoria. Transgender Iowans, on the other hand, are automatically denied coverage, despite medical necessity.

Respondent has argued the regulation survives heightened scrutiny because a public interest is served through the cost-savings of denying the expensive surgical procedures. As Petitioners have pointed out, cost savings are an insufficient basis to single out transgender Iowans for discriminatory treatment by excluding medically necessary procedures that only transgender Iowans will require, even as the same procedures are covered for cisgender Iowans. It's also not supported by the research, which indicates

that there are costs associated with denying care, ranging from treatment of suicide attempts, depression, anxiety, and substance abuse. *See Herman, Jody L., Costs and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefits Plans (Williams Institute, Sept. 2013)*; Cal. Dep't of Ins., Economic Impact Assessment: Gender Nondiscrimination in Health Insurance (Apr. 13, 2012), https://transgenderlawcenter.org/wpcontent/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf.

Holcomb has seen this first hand in his practice. He has had many patients go through major depressions, contemplate suicide, and go to any lengths to get the gender confirmation surgery they need. "Individuals who are denied experience a lot of significant health issues, which as a result costs more and more money to correct some of these things." Comparatively, Holcomb said that individuals who received the treatments they needed significantly reduce how often they see him or are able to stop needing his help completely. "Those who are denied feel like they are not being heard and sometimes stop seeking care. Their quality of life deteriorates and eventually Medicaid is having to pay for a lot more things." Holcomb has also had patients state they will go to any lengths to get the surgeries they need. Some individuals state they will go to other countries to

receive the surgery or attempt to do procedures themselves, such as self-castration, decisions that create significant health risks and require further medical care to be covered by Medicaid.

Alex believes that covering gender-affirming surgeries will lower Iowa's suicide rate overall and help address the depression and anxiety found within the transgender community. Alex knows many other individuals who have been struggling with their Gender Dysphoria for decades. Respondent argues the denial of gender confirmation procedures conserves Medicaid resources and allows it to provide medical services to a greater number of medically needy individuals. (Resp. Br. at 46.) Without the opportunity to receive the treatment their doctors have determined is medically necessary to treat their Gender Dysphoria, these individuals will continue to need more extensive care and coverage in some form from Iowa's Medicaid providers.

CONCLUSION

Amici urge the Court to affirm the decision of the District Court in the above-captioned matter. Transgender Iowans on Medicaid are being sweepingly denied medically necessary treatment because Iowa Administrative Code Rule 441-78.1(4) outright denies this class of individuals coverage for gender-affirming surgeries. Gender-affirming

surgery is a matter of life and death for some transgender Iowans. Without these surgical procedures, transgender Iowans who must rely on Medicaid will likely continue to require coverage of other treatments, struggle to function within their communities, and face a life of depression, and for some, suicidal thoughts and self-harm.

Respectfully submitted,

/s/ *Sharon Malheiro*

Sharon Malheiro, AT0004936
Katelynn T. McCollough, AT0013443
Davis, Brown, Koehn, Shors & Roberts, P.C.
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Telephone: (515) 288-2500
Facsimile: (515) 243-0654
E-mail: sharonmalheiro@davisbrownlaw.com
E-mail: katelynnmccollough@davisbrownlaw.com

ATTORNEYS FOR *AMICI CURIAE*

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

The Brief of *Amici Curiae* One Iowa, Individual Transgender Iowans and Allies complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief used a proportionally spaced typeface and contained 5,818 words excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). The brief complied with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because the brief has been prepared in a proportionally space typeface in font size 14 and Times New Roman type.

/s/ *Sharon Malheiro*

Sharon Malheiro, AT0004936
Katelynn T. McCollough, AT0013443
Davis, Brown, Koehn, Shors & Roberts, P.C.
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Telephone: (515) 288-2500
Facsimile: (515) 243-0654
E-mail: sharonmalheiro@davisbrownlaw.com
E-mail: katelynnmccollough@davisbrownlaw.com

ATTORNEYS FOR *AMICI CURIAE*