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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

EERIEANNA GOOD, an individual, Petitioner, v. IOWA DEPARTMENT OF HUMAN SERVICES, an independent executive-branch agency of the State of Iowa, Respondent.	Case No. **PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION UNDER IOWA CODE § 17A.19**

COMES NOW Petitioner EerieAnna Good ("Ms. Good"), by her undersigned counsel, and respectfully submits the following petition for judicial review of agency action:

STATEMENT OF THE CASE

1. This action arises from Section 441.78.1(4) of the Iowa Administrative Code's ("IAC 441.78.1(4)" or the "Regulation") ban on coverage for surgical treatment of "transsexualism," "gender identity disorder," and "sex reassignment," as well as the Iowa Department of Human Services' ("DHS") decision affirming AmeriHealth Caritas Iowa's ("AmeriHealth") denial of Ms. Good's request for preapproval of expenses related to surgical treatment for gender dysphoria under the Regulation.

2. Iowa Medicaid provides coverage for medically necessary care for a broad range of medical conditions. The Regulation, however, bars Medicaid coverage for gender-affirming surgery to treat gender dysphoria, a medical condition only experienced by transgender individuals, even though Medicaid coverage is provided for the same surgical procedures for other medical conditions. This discriminatory exclusion from Medicaid coverage has no basis in

medical science and has been uniformly condemned by leading medical organizations. The ban violates the Iowa Civil Rights Act ("ICRA") and the Iowa Constitution.

3. Ms. Good, who is transgender, requested Medicaid coverage for an orchiectomy to treat her gender dysphoria. Four health-care providers agreed that the surgical procedure Ms. Good sought to undergo was medically necessary to treat her gender dysphoria. Despite the consensus of Ms. Good's providers, AmeriHealth, the managed-care organization ("MCO") to which Ms. Good is assigned under the State of Iowa's Medicaid program ("Iowa Medicaid"), denied coverage for the surgery under IAC 441.78.1(4).

4. IAC 441.78.1(4) categorically prohibits Medicaid reimbursement for surgical procedures related to gender transition and gender dysphoria. The Regulation "specifically exclude[s]" coverage for "[p]rocedures related to transsexualism . . . [or] gender identity disorders." *See* Iowa Admin. Code r. 441.78.1(4)(b)(2). It also states that "[s]urgeries for the purpose of sex reassignment are not considered as restoring bodily function and are excluded from coverage." *See* Iowa Admin. Code r. 441.78.1(4).

5. An administrative-law judge ("ALJ") for the Iowa Department of Inspections and Appeals, Division of Administrative Hearings ("IDIA"), recommended affirming AmeriHealth's decision. Subsequently, DHS's director (the "Director") adopted the ALJ's recommendation and affirmed AmeriHealth's denial of coverage for Ms. Good's orchiectomy.

6. DHS's denial of coverage for the treatment requested by Ms. Good is unlawful. *See* Iowa Code § 17A.19(10)(b). IAC 441.78.1(4)'s categorical exclusion of Medicaid coverage for gender-affirming surgical procedures violates the ICRA's express prohibitions against gender-identity and sex discrimination. *See* Iowa Code §§ 216.7(1)(a), 216.2(13)(b). Under the ICRA, it is discriminatory and unlawful for any agent of a "public accommodation," including a

state government unit such as DHS, to deny services or privileges based on sex or gender identity. The Regulation discriminates based on gender identity by burdening transgender persons, the only individuals who seek surgical procedures related to "transsexualism" or "gender identity disorders" as set forth in IAC 441.78.1(4)(b)(2). The Regulation discriminates based on sex by perpetuating discrimination arising from a person's transgender status, failure to conform to stereotypical gender norms, and transition from one gender to another.

7. IAC 441.78.1(4)'s categorical exclusion of Medicaid coverage for gender-affirming surgical procedures also violates the Iowa Constitution's equal-protection guarantee. *See* Iowa Code § 17A.19(10)(a); Iowa Const. art. I, §§ 1, 6. Under the Regulation, Iowa Medicaid covers certain medically necessary treatment for nontransgender Medicaid participants that it does not cover for transgender Medicaid participants as part of their gender-affirming care. Both groups need financial assistance for medical treatment; yet, only one group receives the assistance. There is no plausible policy reason for this classification. Nor does the classification serve a compelling or important government interest.

8. Moreover, the Regulation and DHS's denial of Medicaid coverage for medically necessary gender-affirming surgery for Ms. Good have had a disproportionate negative impact on private rights and are arbitrary and capricious. *See* Iowa Code §§ 17A.19(10)(k), (n).

9. As a result of DHS's unlawful, unconstitutional, arbitrary, and capricious denial of Medicaid coverage for Ms. Good's gender dysphoria under IAC 441.78.1(4), Ms. Good is entitled to (a) a declaratory ruling that IAC 441.78.1(4) violates the ICRA, the Iowa Constitution's equal-protection guarantee, and the Iowa Administrative Procedure Act ("APA"); (b) an order invalidating the Regulation and enjoining any further application of it to deny Medicaid coverage for gender-affirming surgical care; and (c) an order reversing and vacating

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DHS's decision denying Ms. Good's request for coverage and requiring DHS to approve the request.

THE PARTIES

I. The Petitioner

10. Ms. Good is a twenty-seven-year-old woman residing in Davenport, Iowa.

11. She was diagnosed with gender dysphoria in 2013.

12. At all relevant times, she has participated in Iowa Medicaid.

13. In August 2017, DHS denied Ms. Good's request for Medicaid coverage for an orchiectomy to treat her gender dysphoria.

III. The Respondent

14. DHS is the Iowa executive agency charged with administering Iowa Medicaid.

15. Medicaid is a cooperative federal–state program through which the federal government provides financial assistance to states so that they may furnish medical care to needy individuals.

16. Individuals eligible for Iowa Medicaid include but are not limited to adults between the ages of nineteen and sixty-four whose income is at or below 133 percent of the Federal Poverty Level, a measure of income issued every year by the United States Department of Health and Human Services.

17. AmeriHealth, an MCO, is one of DHS's designees with respect to administering Iowa Medicaid.

18. AmeriHealth is Ms. Good's designated MCO.

JURISDICTION AND VENUE

19. On January 27, 2017, Ms. Good, through her physician, requested Medicaid preapproval of expenses for an orchiectomy from AmeriHealth.

20. On February 2, 2017, AmeriHealth denied Ms. Good's request.

21. On March 3, 2017, Ms. Good timely initiated an internal appeal from AmeriHealth's February 2 decision under Section 249A.4(11) of the Iowa Code and Section VI of the AmeriHealth Caritas Iowa Provider Manual. *See* Iowa Code § 249A.4(11); AmeriHealth Caritas Iowa Provider Manual § VI, *available at*: http://amerihealthcaritasia.com/pdf/provider-manual.pdf.

22. On March 31, 2017, AmeriHealth denied Ms. Good's appeal.

23. On June 23, 2017, Ms. Good timely appealed AmeriHealth's decision to DHS.

24. On July 25, 2017, an ALJ for IDIA issued a proposed decision affirming AmeriHealth's decision.

25. On August 2, 2017, Ms. Good timely appealed the ALJ's proposed decision to the Director of DHS.

26. On August 25, 2017, the Director adopted the ALJ's proposed decision as DHS's final decision on Ms. Good's appeal.

27. Ms. Good has exhausted all administrative remedies and has been adversely affected by DHS's final agency action.

28. The Court has jurisdiction to resolve this matter under Section 17A.19(1) of the Iowa APA, which permits judicial review of final agency actions. *See* Iowa Code § 17A.19(1).

29. The Court also has jurisdiction to resolve this matter (a) under Rule 1.1101 of the Iowa Rules of Civil Procedure, *et seq*., which permit declaratory judgments; (b) Rule 1.1501 of

the Iowa Rules of Civil Procedure, *et seq*., which permit injunctive relief; (c) the common law of the State of Iowa, which permits declaratory and injunctive relief; and (d) Section 602.6101 of the Iowa Code, which grants the Iowa district court "exclusive, general, and original jurisdiction" over all civil "actions, proceedings, and remedies . . . ." *See* Iowa R. Civ. Pro. 1.1101, *et seq*.; Iowa R. of Civ. Pro. 1.1501, *et seq*.; Iowa Code § 602.6101.

30. Venue is proper in Polk County under (a) Section 17A.19(2) of the Iowa APA, which allows proceedings for judicial review to be instituted in Polk County, and (b) Section 616.3(2) of the Iowa Code because part of the action arose in Polk County, which is where DHS's primary office is located. *See* Iowa Code §§ 17A.19(2), 616.3(2).

ALLEGATIONS COMMON TO ALL COUNTS

I. Coverage for Transition-Related Surgery in Iowa and the Regulation

31. In 1980, in *Pinneke v. Preisser*, 623 F.2d 546 (8th Cir. 1980), the United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") held that the State of Iowa's blanket policy of denying Medicaid benefits for gender-affirming surgery constituted an arbitrary denial of benefits. *See id*. at 549.

32. The *Pinneke* court found that Iowa's policy violated a federal Medicaid regulation prohibiting a state from denying benefits to an otherwise eligible individual "solely because of the diagnosis, type of illness, or condition." *See id*. (internal quotation marks and citation omitted).

33. The *Pinneke* court also found that, without any formal rulemaking proceedings or hearings, DHS's irrebuttable presumption that sex-reassignment surgery could never be medically necessary was inconsistent with the Medicaid statute's objectives. *See id*.

34. In 1993, in the wake of *Pinneke*, DHS contracted with the Iowa Foundation for Medical Care, now known as Telligen Inc. (the "Foundation"), to analyze whether to provide Medicaid coverage for treating conditions like gender dysphoria, which, at the time, was known as gender-identity disorder.

35. Following its receipt of the Foundation's report, DHS recommended a rulemaking process by publishing a notice of intended action and soliciting public commentary.

36. In 1995, after a public meeting of DHS's rulemaking body and review by the state legislature's administrative-rules committee, DHS adopted IAC 441.78.1(4).

37. The Regulation stated, in relevant part, that "[s]urgeries for the purpose of sex reassignment are not considered as restoring bodily function and are excluded from coverage." Iowa Admin. Code r. 441.78.1(4).

38. It also stated that "[c]osmetic, reconstructive, or plastic surgery performed in connection with certain conditions is specifically excluded. These conditions are: . . . [p]rocedures related to transsexualism . . . [or] gender identity disorders." Iowa Admin. Code r. 441.78.1(4)(b)(2).

39. In *Smith v. Rasmussen*, 249 F.3d 755 (8th Cir. 2001), the Eighth Circuit considered a challenge to the Regulation based on Section 1983 and rights conferred by the federal Medicaid Act.

40. The *Smith* court upheld the Regulation, noting that, in 1994, at the time the Regulation was adopted, the evidence before DHS reflected disagreement in the medical

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community "regarding the efficacy of sex reassignment surgery" and that such surgery was also excluded from coverage under Medicare. *Id*. at 761.[1]

41. The *Smith* court's decision was based on research that was flawed at the time the Regulation was enacted and has since been superseded by new research providing additional evidence of the defects in the Foundation's report.

42. Since its promulgation, the Regulation has not been updated or modified to reflect medical developments in the research or treatment of gender dysphoria.

43. Nor have any studies been commissioned to revisit the validity of the medical research on which the Regulation was based.

II. <u>The Standards of Care for Treating Gender Dysphoria</u>

44. "Gender identity" is a well-established medical concept referring to a person's internal sense of gender.

45. All human beings develop this basic understanding of belonging to a gender.

46. Gender identity is an innate and immutable aspect of personality.

47. Typically, people who are designated male at birth based on their external anatomy identify as boys or men, and people designated female at birth identify as girls or women.

48. For transgender people, gender identity differs from the sex assigned at birth.

[1] On May 30, 2014, the United States Department of Health and Human Services' Departmental Appeals Board ruled that Medicare's categorical exclusion of coverage for transition-related care is inconsistent with contemporary science and medical standards of care. *See* Department of Health and Human Services, Departmental Appeals Board, Appellate Division, NCD 140.3, Transsexual Surgery, Docket No. A-13-87 (May 30, 2014), *available at*: https://www.hhs.gov/sites/default/files/static/dab/decisions/board-decisions/2014/dab2576.pdf.

49. Transgender women are women who were assigned "male" at birth but have a female gender identity.

50. Transgender men are men who were assigned "female" at birth but have a male gender identity.

51. The medical diagnosis for the feeling of incongruence between one's gender identity and one's birth-assigned sex is "gender dysphoria" (previously known as "gender-identity disorder" or "transsexualism").

52. Gender dypshoria is a serious medical condition codified in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition ("DSM-V"), and the International Statistical Classification of Diseases and Related Health Problems, Tenth Edition.

53. The criteria for diagnosing gender dypshoria are set forth in Section 302.85 of DSM-V.

54. If left untreated, gender dypshoria can lead to serious medical problems, including clinically significant psychological distress and dysfunction, debilitating depression, and, for some people without access to appropriate medical care and treatment, suicidality and death.

55. The World Professional Association for Transgender Health ("WPATH") is a nonprofit interdisciplinary professional and educational organization devoted to transgender health.

56. The standards of care for treating gender dysphoria ("Standards of Care") are set forth in WPATH's Standards of Care for the Health of Transsexual, Transgender, and Nonconforming People, available at: http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351.

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57. The Standards of Care are widely accepted, evidence-based, best-practice medical protocols that articulate professional consensus to guide health-care professionals in medically managing gender dysphoria by providing the parameters within which they may provide care to individuals with this condition.

58. The WPATH Standards of Care are recognized as authoritative by the American Medical Association, the American Psychiatric Association, and the American Psychological Association, among others.

59. The WPATH Standards of Care are so well established that federal courts have declared that a prison's failure to provide health care in accordance with those standards may constitute cruel and unusual punishment under the Eighth Amendment.

60. For many transgender people, necessary treatment for gender dypshoria may require medical interventions to affirm their gender identity and help them transition from living in one gender to another.

61. This transition-related care may include hormone therapy, surgery (sometimes called "gender-confirmation surgery" or "sex-reassignment surgery"), and other medical services to align transgender people's bodies with their gender identities.

62. The treatment for each transgender person is individualized to fulfill that person's particular needs.

63. The WPATH Standards of Care for treating gender dysphoria address all these forms of medical treatment, including surgery to alter primary and secondary sex characteristics.

64. By the mid-1990s, there was consensus within the medical community that surgery was the only effective treatment for many individuals with severe gender dysphoria.

65. More than three decades of research confirms that surgery to modify primary and secondary sex characteristics and align gender identity with anatomy is therapeutic, and therefore effective treatment for gender dysphoria.

66. For appropriately assessed severe gender-dysphoric patients, surgery is the only effective treatment.

67. Health experts have rejected the myth that these treatments are "cosmetic" or "experimental" and have recognized that the treatments can provide safe and effective care for a serious health condition.

68. Leading medical groups, including the American Medical Association,[2] the American Psychological Association,[3] the American Academy of Family Physicians,[4] the American Congress of Obstetricians and Gynecologists,[5] the National Association of Social Workers,[6] and WPATH,[7] all agree that gender dypshoria is a serious medical condition, that treatment for gender dypshoria is medically necessary for many transgender people, and that insurers should provide coverage for these treatments.

III. Ms. Good

69. Ms. Good is a twenty-seven-year-old transgender woman who has known herself to be female since age seven.

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[2] *See* Resolution 122 (A–108), *available at*: http://www.ama-assn.org/resources/doc/PolicyFinder /policyfiles/HnE/H-185.950.htm.

[3] *See* Position Statement on Access to Care for Transgender and Gender Variant Individuals (2012), *available at*: www.psychiatry.org/File%20Library/Advocacy%20and20%Newsroom/Position%20Statements/ps2012_TransgenderCare.pdf.

[4] *See* Resolution No. 1004 (2012), *available at*: http://www.aafp.org/dam/AAFP/documents/about_us/special_constituencies/2012RCAR_Advocacy.pdf.

[5] *See* Committee Opinion No. 512: Health Care for Transgender Individuals, *available at*: http:// www.ncfr.org/news/acog-releases-new-committee-opinion-transgender-persons.

[6] *See* Transgender and Gender Identity Issues Policy Statement, *available at*: http://www.socialworkers.org/da/da2008/finalvoting/documents/Transgender%202nd%20round%20-%20Clean.pdf.

[7] *See* Clarification on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the USA (2008), *available at*: http://www.wpath.org/documents/Med%20Nec%20on%202008%20Letterhead.pdf

70. She has presented as female full-time and used female pronouns since 2010 and has lived full-time as a woman in every aspect of her life for several years as treatment for her gender dypshoria.

71. In 2014, Ms. Good began hormone therapy.

72. In 2016, Ms. Good legally changed her name, birth certificate, driver's license, and social-security card to reflect her female identity.

73. Ms. Good's gender dysphoria exacerbates her existing depression and anxiety.

74. She is distressed and very uncomfortable with her genitalia, which does not align with her gender identity.

75. To better present as female, she tucks and wears a girdle for up to twelve hours or more each day.

76. These measures help Ms. Good present outwardly as female in conformity with her gender identity but are very painful and uncomfortable.

77. In or around January 2017, Ms. Good began the process of seeking Medicaid coverage for gender-affirming surgery from her MCO, AmeriHealth.

78. Ms. Good, a participant in Iowa Medicaid, is eligible for Medicaid reimbursement.

IV. Ms. Good's Health-Care Providers

79. Ms. Good's health-care providers have uniformly concluded that surgery is necessary to treat her gender dysphoria.

80. Katherine Imborek, MD ("Dr. Imborek"), is Ms. Good's primary-care physician.

81. In February 2017, Dr. Imborek assessed Ms. Good's condition.

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82. She confirmed that Ms. Good has been diagnosed with gender dysphoria, has been on hormone treatment since February 2014 without complications, and has been living fully in her affirmed gender since that time as well. (Ex. 1, Imborek Aff., ¶ 4.)

83. She also concluded that gender-affirming surgery is medically necessary to treat Ms. Good's gender dysphoria. (*Id.*)

84. A true and correct copy of Dr. Imborek's affidavit is attached as Exhibit 1.

85. Jacob Priest, PhD ("Dr. Priest"), is the Director of the University of Iowa's LGBTQ Clinic.

86. In February 2017, Dr. Priest performed a psychosocial assessment on Ms. Good in which he stated:

> [Ms. Good] . . . meets the eligibility and readiness criteria for surgery as set forth [in] the [WPATH standards of care]. Specifically, she is aware of the potential risks of surgery and she is capable of making an[] informed decision. Additionally, even though she has been taking estrogen, she still experiences distress because her body is not congruent with her gender. Given this, she meets diagnostic criteria for gender dysphoria. This dysphoria is not better accounted for by another diagnosis.
>
> It is my opinion that gender affirming surgery is a necessary treatment for [Ms. Good's] gender dysphoria. It is likely that much of the distress that she is currently experiencing stems from the lack of congruence between her body and her gender. It is likely that surgery would help alleviate much of her distress and improve her quality of life. Therefore, I support [Ms. Good's] desire for gender affirming surgery. She understands the potential risks and benefits of surgery and appears to be making an informed decision.

(Ex. 2, Priest Aff., ¶ 4.)

87. A true and correct copy of Dr. Priest's affidavit is attached as Exhibit 2.

88. Armeda Wojciak, PhD ("Dr. Wojciak"), is the Program Coordinator for the Couple and Family Therapy Program of the University of Iowa's LGBTQ Clinic.

89. In March 2017, Dr. Wojciak performed a psychosocial assessment on Ms. Good.

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90. Dr. Wojciak concurred with Dr. Priest's assessment that Ms. Good meets the diagnostic criteria for gender dysphoria, that she meets WPATH's eligibility and readiness criteria for gender-affirming surgery, and that gender-affirming surgery is medically necessary treatment for Ms. Good's gender dysphoria. (Ex. 3, Wojciak Aff., ¶ 3.)

91. A true and correct copy of Dr. Wojciak's affidavit is attached as Exhibit 3.

92. Bradley Erickson, MD ("Dr. Erickson"), is Ms. Good's surgeon.

93. In March 2017, Dr. Erickson opined:

> [Drs. Imborek, Priest, and Wojciak] believe (and I concur) that Ms. Good's gender dysphoria would be significantly improved by undergoing an orchiectomy. Further, AmeriHealth . . . covers orchiectomy procedures for other medical conditions, such as testicular cancer, pain and torsion [and an orchiectomy procedure] is an equally necessary and proper treatment for transgender women with gender dysphoria, including Ms. Good.
>
> The treatment of Ms. Good is consistent with the [WPATH] guidelines . . . .

(Ex. 4, Erickson Aff., ¶ 3.)

94. A true and correct copy of Dr. Erickson's affidavit is attached as Exhibit 4.

V. <u>AmeriHealth's Denial of Ms. Good's Application for Preapproval</u>

95. On January 27, 2017, Dr. Erickson requested Medicaid preapproval from AmeriHealth to perform an orchiectomy on Ms. Good.

96. On February 2, 2017, AmeriHealth denied the request, advising Dr. Erickson that "the request for orchiectomy for gender dysphoria" could not be approved because of IAC 441.78.1(4), which excludes from coverage "[s]urgeries for the purpose of sex reassignment coverage."

97. A true and correct copy of AmeriHealth's February 2 decision is attached as Exhibit 5.

98. On March 3, 2017, Ms. Good timely initiated an internal appeal from AmeriHealth's February 2 decision under Section 249A.4(10) of the Iowa Code and Section VI of the AmeriHealth Caritas Iowa Provider Manual.

99. In support of her appeal, Ms. Good provided assessments from Drs. Imborek, Priest, Wojciak, and Erickson; her own affidavit; the affidavit of Randi Ettner, PhD ("Dr. Ettner"), the Secretary of WPATH and a member of the organization's Executive Board of Directors; and a memorandum of law explaining that the Regulation violates the ICRA and the Iowa Constitution's equal-protection guarantee.

100. A true and correct copy of Ms. Good's affidavit is attached as Exhibit 6.

101. A true and correct copy of Dr. Ettner's affidavit is attached as Exhibit 7.

102. A true and correct copy of Ms. Good's memorandum of law is attached as Exhibit 8.

103. On March 31, 2017, AmeriHealth denied Ms. Good's appeal.

104. AmeriHealth's March 31 decision reiterated that, based on the information provided to AmeriHealth, the orchiectomy requested by Ms. Good was excluded from coverage by IAC 441.78.1(4).

105. A true and correct copy of AmeriHealth's March 31 decision is attached as Exhibit 9.

VI. DHS's Affirmance of AmeriHealth's Denial

106. On June 23, 2017, Ms. Good timely appealed AmeriHealth's decision to DHS.

107. On July 11, 2017, an ALJ for IDIA conducted an administrative hearing at which counsel for Ms. Good and AmeriHealth argued their respective positions on AmeriHealth's denial of Ms. Good's request for Medicaid coverage.

108. On July 25, 2017, after considering the parties' posthearing briefs and the administrative record, the ALJ issued a proposed decision affirming AmeriHealth's decision.

109. The ALJ's July 25 decision did not resolve Ms. Good's challenges to AmeriHealth's decision on the merits, but rather concluded that resolving those challenges was the judiciary's role and did not fall within the scope of the pending administrative proceeding, noting that the issues raised by Ms. Good were "preserved for judicial review."

110. A true and correct copy of the ALJ's July 25 decision is attached as Exhibit 10.

111. On August 2, 2017, Ms. Good timely appealed the ALJ's proposed decision to the Director of DHS.

112. On August 25, 2017, the Director adopted the ALJ's proposed decision as DHS's final decision on Ms. Good's appeal.

113. The Director concluded that the agency "lack[ed] jurisdiction" to decide Ms. Good's arguments that the Regulation "violates the equal protection clause [of the Iowa Constitution] and the [Iowa] Civil Rights Act," noting that these issues were "preserved for judicial review."

114. A true and correct copy of the Director's August 25 decision is attached as Exhibit 11.

CLAIMS FOR RELIEF

COUNT I
Iowa APA, Section 17A.19(10)(b), Gender-Identity Discrimination Under Section 216.7(1)(a) of the ICRA

115. Ms. Good incorporates paragraphs 1 through 114 as though fully set forth in this paragraph.

116. Under Section 17A.19(10)(b) of the Iowa APA, a court may reverse an agency action if substantial rights of the person seeking judicial relief have been prejudiced because the agency action is beyond the authority delegated to the agency by any provision of law or in violation of any provision of law. *See* Iowa Code § 17A.19(10)(b).

117. IAC 441.78.1(4)'s categorical exclusion of Medicaid coverage for gender-affirming surgical procedures violates the ICRA's express prohibition on gender-identity discrimination.

118. Under the ICRA, it is discriminatory and unlawful for any agent of a "public accommodation," including a state government unit such as DHS, to deny services or privileges based gender identity. *See* Iowa Code §§ 216.7(1)(a), 216.2(13)(b).

119. The Regulation's ban on coverage for surgical procedures to treat "transsexualism" or "gender identity disorders" as set forth in IAC 441.78.1(4)(b)(2) discriminates based on gender identity by burdening transgender persons, the only individuals who seek surgical procedures for those conditions.

120. As a result, the Regulation is unlawful, and DHS's reliance on the Regulation to deny Ms. Good Medicaid reimbursement was improper.

COUNT II
Iowa APA, Section 17A.19(10)(b),
Sex Discrimination Under Section 216.7(1)(a) of the ICRA

121. Ms. Good incorporates paragraphs 1 through 114 as though fully set forth in this paragraph.

122. Under Section 17A.19(10)(b) of the Iowa APA, a court may reverse an agency action if substantial rights of the person seeking judicial relief have been prejudiced because the

agency action is beyond the authority delegated to the agency by any provision of law or in violation of any provision of law. *See* Iowa Code § 17A.19(10)(b).

123. IAC 441.78.1(4)'s categorical exclusion of Medicaid coverage for gender-affirming surgical procedures violates the ICRA's express prohibition on sex discrimination.

124. Under the ICRA, it is discriminatory and unlawful for any agent of a "public accommodation," including a state government unit such as DHS, to deny services or privileges based on sex. *See* Iowa Code §§ 216.7(1)(a), 216.2(13)(b).

125. Discrimination on the basis of transgender status, gender nonconformity, and gender transition is discrimination on the basis of sex.

126. The Regulation discriminates based on sex because it is directed at transgender people, it enforces gender stereotypes, and it is directed toward preventing surgical treatments for gender transition.

127. As a result, the Regulation is unlawful, and DHS's reliance on the Regulation to deny Ms. Good Medicaid reimbursement was improper.

COUNT III
Iowa APA, Section 17A.19(10)(a),
Violation of the Iowa Constitution's Equal-Protection Guarantee

128. Ms. Good incorporates paragraphs 1 through 114 as though fully set forth in this paragraph.

129. Under Section 17A.19(10)(a) of the Iowa APA, a court may reverse an agency action if substantial rights of the person seeking judicial relief have been prejudiced because the agency action is unconstitutional on its face or as applied or is based on a provision of law that is unconstitutional on its face or as applied. *See* Iowa Code § 17A.19(10)(a).

130. The Iowa Constitution includes two equal-protection clauses.

131. Article I, Section 6, states that "[a]ll laws of a general nature shall have a uniform operation; the general assembly shall not grant any citizen or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." *See* Iowa Const. art. I, § 6.

132. Article I, Section 1, states that "[a]ll men and women are, by nature, free and equal, and have certain inalienable rights—among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness." *See* Iowa Const. art. I, § 1

133. Under the Iowa Constitution's equal-protection guarantee, people who are similarly situated with respect to the purpose of a law must be treated alike.

134. With respect to the need to obtain financial assistance for medical care, transgender people in need of surgical treatment for gender dysphoria, such as Ms. Good, are situated similarly to nontransgender people who need medically necessary treatment for other conditions.

135. The Regulation categorically prohibits Medicaid coverage for medically necessary gender-affirming surgical treatment for Ms. Good.

136. As a result, under the Regulation, Iowa Medicaid covers certain medically necessary treatment for nontransgender Medicaid participants that it does not cover for transgender Medicaid participants as part of their medically necessary gender-affirming care.

137. Discrimination on the basis of transgender status, gender transition, or gender nonconformity is discrimination on the basis of sex.

138. The Regulation, and DHS's reliance on it to deny Ms. Good gender-affirming surgery, discriminates on the basis of sex.

139. Sex discrimination involves a quasi-suspect classification and demands a heightened level of scrutiny under the Iowa Constitution.

140. Discrimination based on transgender status is suspect and demands a heightened level of scrutiny under the Iowa Constitution.

141. DHS's actions purposefully single out a minority group—transgender people—that historically has suffered discriminatory treatment and been relegated to a position of political powerlessness solely on the basis of stereotypes and myths about their transgender status, a characteristic that bears no relation to their ability to contribute to society and is immutable in that it is central to their core identity.

142. No plausible policy reason is advanced by, or rationally related to, this classification.

143. Nor is the classification substantially related to achieving an important government objective or narrowly tailored to serve a compelling government interest.

144. For these reasons, the Regulation is unconstitutional, both facially and as applied, and DHS's reliance on the Regulation to deny Ms. Good Medicaid reimbursement violated the Iowa Constitution's equal-protection guarantee.

COUNT IV
Iowa APA, Section 17A.19(10)(k),
Disproportionate Negative Impact on Private Rights

145. Ms. Good incorporates paragraphs 1 through 114 as though fully set forth in this paragraph.

146. Under Section 17A.19(10)(k) of the Iowa APA, a court may reverse an agency action if substantial rights of the person seeking judicial relief have been prejudiced because the agency action is not required by law and its negative impact on the private rights affected is so

grossly disproportionate to the benefits accruing to the public interest that it must necessarily be deemed to lack any foundation in rational agency policy. *See* Iowa Code § 17A.19(10)(k).

147. An unlawful, unconstitutional administrative regulation such as IAC 441.78.1(4) is not only "not required," it is forbidden.

148. Ms. Good has a right to be treated in accordance with the provisions of the ICRA and the Iowa Constitution.

149. The Regulation causes a disproportionate negative impact on the private rights of transgender individuals such as Ms. Good by categorically prohibiting them from receiving Medicaid coverage for medically necessary surgical treatment of gender dysphoria.

150. There is no public interest served by denying Medicaid coverage for medically necessary and effective treatment.

151. For these reasons, DHS's reliance on the Regulation to deny Ms. Good Medicaid reimbursement was improper.

COUNT V
Iowa APA, Section 17A.19(10)(n),
Unreasonable, Arbitrary, and Capricious Decision

152. Ms. Good incorporates paragraphs 1 through 114 as though fully set forth in this paragraph.

153. Under Section 17A.19(10)(l) of the Iowa APA, a court may reverse an agency action if substantial rights of the person seeking judicial relief have been prejudiced because the agency action is unreasonable, arbitrary, capricious, or an abuse of discretion. *See* Iowa Code § 17A.19(10)(n).

154. DHS's denial of Ms. Good's request for Medicaid coverage for her orchiectomy was unreasonable, arbitrary, and capricious because DHS relied on a Regulation that violates

Section 216.7(1)(1) of the ICRA and the Iowa Constitution's equal-protection guarantee and denied Medicaid coverage for medically necessary treatment for one medical condition that it provides for others. *See* Iowa Code §§ 216.7(1)(a), 216.2(13)(b); Iowa Const. art. I, §§ 1, 6.

155. For these reasons, DHS's reliance on the Regulation to deny Ms. Good Medicaid reimbursement was improper.

PRAYER FOR RELIEF
Declaratory and Injunctive Relief

156. Ms. Good incorporates paragraphs 1 through 114 as though fully set forth in this paragraph.

157. This matter is appropriate for declaratory relief under Section 17A.19(10) of the Iowa APA and Rule 1.1101, *et seq*., of the Iowa Rules of Civil Procedure. *See* Iowa Code § 17A.19(10); Iowa R. of Civ. Pro. 1.1101, *et seq*.

158. Granting the declaratory relief sought by Ms. Good will terminate the dispute over the legality of IAC 441.78.1(4)'s surgical ban that gave rise to this petition.

159. This matter is also appropriate for temporary and permanent injunctive relief under Section 17A.19(10) of the Iowa APA, Rule 1.1106 of the Iowa Rules of Civil Procedure, and Rule 1.1501, *et seq*., of the Iowa Rules of Civil Procedure. *See* Iowa Code § 17A.19(10); Iowa R. Civ. Pro. 1.1106; Iowa R. of Civ. Pro. 1.1501, *et seq*.

160. Ms. Good has suffered irreparable harm as a result of IAC 441.78.1(4), which categorically prohibits Medicaid coverage for surgical treatment of gender dysphoria.

161. Absent injunctive relief, Ms. Good will continue to suffer irreparable harm.

162. There is no adequate remedy at law for IAC 441.78.1(4)'s categorical surgical ban.

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RELIEF SOUGHT

FOR THESE REASONS, Petitioner EerieAnna Good requests the following relief:

a. A declaratory ruling that IAC 441.78.1(4):

   i. violates the ICRA's prohibitions on sex and gender-identity discrimination; and

   ii. violates the Iowa Constitution's equal-protection guarantee facially and as applied;

b. An order invalidating IAC 441.78.1(4) and enjoining any further application of the Regulation to deny Medicaid coverage for gender-affirming surgical procedures;

c. An order reversing and vacating DHS's affirmance of AmeriHealth's denial of Ms. Good's request for Medicaid coverage for her orchiectomy and requiring DHS to approve coverage for that procedure;

d. An award of attorneys' fees and costs; and

e. Any other relief the Court deems just and proper.

Dated: September 21, 2017

Respectfully submitted,

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