

4. The Regulation's discriminatory exclusion for gender-affirming surgery has no basis in medical science and reflects views on gender dysphoria that have been uniformly condemned by leading medical organizations for decades.

5. This District Court has already enjoined the Regulation and held that it facially discriminates against transgender Iowans based on their gender identity in violation of the Iowa Constitution's equal-protection guarantee and the Iowa Civil Rights Act (the "ICRA"). *Good v. Iowa Dep't of Human Servs.*, No. CVCV054956 (Polk Cnty. Dist. Ct. June 6, 2018) (attached as Exhibit 10-A).

6. On appeal, in *Good v. Iowa Department of Human Services*, 924 N.W.2d 853 (Iowa 2019), the Iowa Supreme Court affirmed this District Court's injunction and held that the categorical ban on Medicaid coverage for gender-affirming surgery imposed by the Regulation violates the ICRA's protections against gender-identity discrimination in public accommodations. The Supreme Court did not reach, and did not disturb, this District Court's ruling based on the Iowa Constitution's equal-protection guarantee.

7. On May 3, 2019, the Iowa General Assembly (the "General Assembly") signed Division XX of House File 766 ("Division") into law. The General Assembly enacted Division XX to negate the Supreme Court's decision in *Good*. As amended by Division XX, ICRA's protections against discrimination in public accommodations no longer "require any state or local government unit or tax-supported district to provide for sex reassignment surgery" or any surgical procedure "related to transsexualism [or] gender identity disorder." See 2019 Iowa House Acts, House File 766, Division XX (codified at Iowa Code § 216.7(3) (2020)).

8. Following the Supreme Court's decision in *Good* and the General Assembly's enactment of Division XX, Mr. Vasquez, who is transgender, requested Medicaid coverage for a

phalloplasty to treat his gender dysphoria. Five health-care providers agreed that the surgical procedure Mr. Vasquez sought to undergo was medically necessary to treat his gender dysphoria. Despite the consensus of Mr. Vasquez's health-care providers, Amerigroup of Iowa Inc. ("Amerigroup"), the managed-care organization ("MCO") to which Mr. Vasquez is assigned under Iowa Medicaid, denied coverage for the surgery under the Regulation.

9. After Amerigroup denied coverage for the surgical procedure requested by Mr. Vasquez, an administrative-law judge ("ALJ") for the Iowa Department of Inspections and Appeals, Administrative Hearings Division ("IDIA"), recommended affirming Amerigroup's decision. Subsequently, the Iowa Department of Human Services' ("DHS") director (the "Director") adopted the ALJ's recommendation and affirmed Amerigroup's denial of coverage for Mr. Vasquez's procedure.

10. IAC 441.78.1(4)'s categorical exclusion of Medicaid coverage for gender-affirming surgical procedures violates the Iowa Constitution's equal-protection guarantee. *See* Iowa Code § 17A.19(10)(a); Iowa Const. Art. I, §§ 1, 6; *Good*, No. CVCV054956, at *20–34. 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. The classification does not serve a compelling or important government interest. Nor is there a plausible policy reason for the classification. *See* Count I.

11. IAC 441.78.1(4)'s categorical exclusion of Medicaid coverage for gender-affirming surgical procedures also violates the ICRA's prohibitions on gender-identity and sex discrimination. *See* Iowa Code §§ 17A.19(10)(a), 17A.19(10)(b); Iowa Code §§ 216.7(1)(a),

216.2(13)(b); *Good*, 924 N.W.2d at 862–63. Although Division XX purported to amend ICRA to allow DHS and Amerigroup, as DHS’s agent, to apply the Regulation without violating ICRA, Division XX itself violates the Iowa Constitution. Division XX exempts state and local government units from ICRA’s nondiscrimination protections for transgender Iowans seeking medically necessary care, despite the Iowa Supreme Court’s ruling in *Good*, and was enacted by logrolling a substantive amendment to ICRA into an annual appropriations bill. Division XX thus violates the Iowa Constitution’s equal-protection guarantee, single-subject rule, and title rule. Because Division XX is unconstitutional, the amendment to ICRA under which “state or local government unit[s] or tax-supported district[s]” are no longer required “to provide for sex reassignment surgery” or any surgical procedure “related to transsexualism [or] gender identity disorder” is null and void. *See* Iowa Code § 216.7(3). As a result, the preamendment version of Section 216.7 of ICRA, which contains no exclusions for gender-affirming surgery, remains in effect. As set forth in *Good*, ICRA’s protections against gender-identity discrimination prohibit the Regulation’s categorical ban on Medicaid reimbursement for gender-affirming surgery. *Good*, 924 N.W.2d at 862–63. So, too, do ICRA’s protections against sex discrimination. *See* Counts II–V.

12. In addition to violating equal protection and the ICRA, the Regulation and DHS’s denial of Medicaid coverage for medically necessary gender-affirming surgery for Mr. Vasquez have had a disproportionate negative impact on private rights and are arbitrary and capricious. *See Good*, No. CVCV054956, at *34–37. Iowa Code §§ 17A.19(10)(k), (n). There is no public interest served by denying Medicaid coverage for medically necessary surgical care, and others who are situated similarly to Mr. Vasquez are able to receive identical care for conditions other than gender dysphoria. *See* Counts VI–VII.

13. As a result of DHS’s unconstitutional, unlawful, arbitrary, and capricious denial of Medicaid coverage for Mr. Vasquez’s gender dysphoria under IAC 441.78.1(4), Mr. Vasquez is entitled to (a) a declaratory ruling that IAC 441.78.1(4) violates the Iowa Constitution’s equal-protection guarantee, the ICRA, 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 DHS’s decision denying Mr. Vasquez’s request for coverage and requiring DHS to approve the request.

THE PARTIES

I. The Petitioner

14. Mr. Vasquez is a fifty-three-year-old transgender man residing in Iowa.

15. He was diagnosed with gender dysphoria in 2016.

16. At all relevant times, he has participated in Iowa Medicaid.

17. In March 2021, DHS denied Mr. Vasquez’s request for Medicaid coverage for a phalloplasty to treat his gender dysphoria.

II. The Respondent

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

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

20. 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.

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

22. Amerigroup is Mr. Vasquez's designated MCO.

JURISDICTION AND VENUE

23. On August 14, 2020, Mr. Vasquez, through his physician, requested Medicaid preapproval from Amerigroup for an office visit to evaluate Mr. Vasquez for gender-affirming surgery.

24. On August 17, 2020, Mr. Vasquez, through his physician, requested Medicaid preapproval from Amerigroup for gender-affirming surgery.

25. On August 19, 2020, Amerigroup denied Mr. Vasquez's request for preapproval for gender-affirming surgery.

26. On August 28, 2020, Amerigroup denied Mr. Vasquez's request for preapproval for an office visit.

27. On October 14, 2020, Mr. Vasquez timely initiated an internal appeal from the Amerigroup's decisions under Section 249A.4(11) of the Iowa Code and Chapter 14 of the Amerigroup Provider Manual. *See* Iowa Code § 249A.4(11); Amerigroup Provider Manual Ch. 14.

28. On November 3, 2020, Amerigroup denied Mr. Vasquez's appeal regarding his request for preapproval for gender-affirming surgery.

29. On November 6, 2020, Amerigroup denied Mr. Vasquez's appeal regarding his request for preapproval for an office visit.

30. On January 10, 2021, Mr. Vasquez timely appealed Amerigroup's decisions to DHS.

31. On March 2, 2021, an ALJ for IDIA issued a proposed decision affirming Amerigroup's decisions.

32. On March 11, 2021, Mr. Vasquez timely appealed the ALJ's proposed decision to the Director of DHS.

33. On March 25, 2021, the Director adopted the ALJ's proposed decision as DHS's final decision on Mr. Vasquez's appeal.

34. Mr. Vasquez has exhausted all administrative remedies and has been adversely affected by DHS's final agency action.

35. 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).

36. The Court also has jurisdiction to resolve this matter under (a) 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 Iowa's district courts "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.

37. 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. The History of Medicaid Coverage for Gender-Affirming Surgery in Iowa

A. *Pinneke v. Preisser*

38. 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.

39. 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).

40. 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.*

41. 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.

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

43. In 1995, after a public meeting of DHS’s rulemaking body and review by the General Assembly’s administrative-rules committee, DHS adopted IAC 441.78.1(4).

44. 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).

45. 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).

B. *Smith v. Rasmussen*

46. 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.

47. 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 community “regarding the efficacy of sex reassignment surgery” and that such surgery was also excluded from coverage under Medicare. *Id.* at 761.¹

48. 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.

49. After its promulgation, and following the decision in *Smith*, the Regulation was not updated or modified to reflect medical developments in the research or treatment of gender dysphoria.

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>.

50. Nor were any studies commissioned to revisit the validity of the medical research on which the Regulation was based.

C. *Good v. Iowa Department of Human Services*

51. In *Good*, two plaintiffs sought to enjoin the Regulation on the basis that it violated the ICRA’s prohibitions on gender-identity and sex discrimination and the Iowa Constitution’s equal-protection guarantee. *Good*, No. CVCV054956, at *1–10.

52. This District Court enjoined the Regulation and held that it facially discriminates against transgender Iowans based on their gender identity in violation of the Iowa Constitution’s equal-protection guarantee and the ICRA. *Good*, No. CVCV054956, at *11–42.

53. On appeal, the Iowa Supreme Court invalidated the Regulation on the basis that categorically banning Medicaid coverage for gender-affirming surgery violated the ICRA’s protections against gender-identity discrimination in public accommodations.

54. As the Supreme Court explained, “[i]n 2007, the Iowa legislature amended . . . [the ICRA] to add ‘gender identity’ to the list of protected groups.” *Good*, 924 N.W.2d at 862.

55. Under section 216.7(1)(a) of the ICRA, “it is ‘unfair or discriminatory’ for any ‘agent or employee’ of a ‘public accommodation’ to deny services based on ‘gender identity.’” *Id.*

56. The Court acknowledged that “[t]he ICRA’s gender identity classification encompasses transgender individuals—especially those who have gender dysphoria—because discrimination against these individuals is based on the nonconformity between their gender identity and biological sex.” *Id.*

57. The Court further acknowledged that the ICRA’s “prohibition against denying coverage for [the plaintiffs’] gender-affirming surgical procedures extend[ed] to the director and

staff of . . . DHS, as well as its agents, the MCOs,” including Amerigroup, the MCO for one of the plaintiffs. *Id.*

58. The Court went on to hold that the Regulation’s plain language violated the ICRA’s prohibition on gender-identity discrimination. *Id.* at 862.

59. The Court found that record did “not support . . . DHS’s position that [the Regulation] is nondiscriminatory because its exclusion of coverage for gender-affirming surgical procedures encompasses the broader category of ‘cosmetic, reconstructive, or plastic surgery’ that is ‘performed primarily for psychological purposes.’” *Id.* at 862.

60. The Court emphasized that “DHS expressly denied [the plaintiffs] coverage for their surgical procedures because they were ‘related to transsexualism . . . [or] gender identity disorders’ and ‘for the purpose of sex reassignment.’” *Id.*

61. The Court also emphasized that the Regulation “authorize[d] payment for some cosmetic, reconstructive, and plastic surgeries that serve psychological purposes” yet “prohibit[ed] coverage” for the “same” procedures if those procedures were requested by a transgender individual. *Id.*

62. For these reasons, the Court concluded that the Regulation was discriminatory under ICRA.

63. The Court also noted that “the history behind” the Regulation supported its holding. *Id.*

64. According to the Court, before *Pinneke* was decided, DHS “had an unwritten policy of excluding sex reassignment surgeries from Medicaid coverage based on Medicaid’s coverage limitations on ‘cosmetic surgery’ and ‘mental diseases.’” *Id.*

65. Then, after the Eighth Circuit decided *Pinneke*, DHS amended the Regulation “to clarify that [it] excluded Medicaid coverage for ‘sex reassignment procedures’ and ‘gender identity disorders.’” *Id.*

66. Based on this history, the Court concluded that the Regulation “expressly excluded Iowa Medicaid coverage for gender-affirming surgery specifically because this surgery treats gender dysphoria of transgender individuals.” *Id.*

67. The General Assembly’s 2007 amendment of the ICRA, which postdated DHS’s amendment of the Regulation, “made it clear that individuals cannot be discriminated against on the basis of gender identity,” including under the Regulation. *See id.* at 862–63.

D. *Covington v. Reynolds ex rel. Iowa*

68. On May 3, 2019, in response to the Iowa Supreme Court’s decision in *Good*, the General Assembly signed Division XX into law.

69. As amended by Division XX, the ICRA’s protections against discrimination in public accommodations no longer “require any state or local government unit or tax-supported district to provide for sex reassignment surgery” or any surgical procedure “related to transsexualism [or] gender identity disorder.” *See* 2019 Iowa House Acts, House File 766, Division XX (codified at Iowa Code § 216.7(3) (2020)).

70. After Division XX was enacted, Mr. Vasquez and two other plaintiffs challenged the statute’s constitutionality.

71. In *Covington v. Reynolds ex rel. Iowa*, No. 19–1197, 949 N.W.2d 663, 2020 WL 4514691 (Ia. Ct. App. Aug. 5, 2020) (unpublished), the Iowa Court of Appeals held that, since Mr. Vasquez and the other plaintiffs had not yet requested Medicaid preauthorization for gender-affirming surgery at the time their lawsuit was filed, and since no Medicaid providers had evaluated

any requests from the plaintiffs, the controversy over Division XX's constitutionality was not ripe for adjudication. *Id.* at *3.

72. The Court of Appeals also held that, under the circumstances, there was no basis for injunctive relief because the plaintiffs had an adequate remedy at law "through . . . DHS's administrative process," which they could use to request Medicaid coverage. *Id.*

73. As of the filing of this petition, Division XX remains in effect.

74. As of the filing of this petition, the Regulation, despite the injunction previously entered by this District Court in *Good* based on the Regulation's violation of the ICRA and the Iowa Constitution, has not been struck from the administrative rules and is still being enforced by DHS against transgender Iowans who qualify for Medicaid.

II. The Standards of Care for Treating Gender Dysphoria

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

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

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

78. 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.

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

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

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

82. 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").

83. Gender dysphoria 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.

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

85. If left untreated, gender dysphoria 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.

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

87. 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.

88. 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.

89. 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.

90. 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.

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

92. 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.

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

94. 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.

95. 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.

96. 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.

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

98. 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.

99. 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 dysphoria is a serious medical condition, that treatment for gender dysphoria is medically necessary for many transgender people, and that insurers should provide coverage for these treatments.

III. Mr. Vasquez

100. Mr. Vasquez is a fifty-three-year-old transgender man who has known he is male since his early childhood.

101. He has expressed his male identity in various ways since the age of eight.

102. In January 2016, Mr. Vasquez began hormone therapy.

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%20and%20%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>.

103. Shortly after beginning hormone therapy, Mr. Vasquez began the process of socially transitioning from female to male by using the pronouns “he,” “him,” and “his” and using men’s restrooms in public places.

104. In May 2016, Mr. Vasquez legally changed his name, and amended his driver’s license and social-security card, to reflect his male identity.

105. In September 2016, Mr. Vasquez underwent a double mastectomy, using a CareCredit card obtained for that purpose, to better align his body with his gender identity.

106. In October 2017, Mr. Vasquez amended his birth certificate, and changed the gender markers on his identification documents, to reflect his male gender identity.

107. Mr. Vasquez has a long history of self-harm and suicidality stemming from depression caused by his gender dysphoria.

108. He is severely distressed with his genitalia, which does not align with his gender identity and thereby exacerbates his depression.

109. In or around August 2020, Mr. Vasquez began the process of seeking Medicaid coverage for gender-affirming surgery from his MCO, Amerigroup.

110. Mr. Vasquez, a participant in Iowa Medicaid, is eligible for Medicaid reimbursement.

IV. Mr. Vasquez’s Health-Care Providers

111. Mr. Vasquez’s health-care providers have uniformly concluded that surgery is necessary to treat his gender dysphoria.

112. Nicole Nisly, MD (“Dr. Nisly”), is Mr. Vasquez’s primary-care physician.

113. Dr. Nisly has treated Mr. Vasquez since March 2015.

114. In or around August 2020, Dr. Nisly stated as follows in assessing Mr. Vasquez:

In my professional medical opinion and judgment[,] the sex designation of [Mr. Vasquez] has been permanently changed. All of the treatments [Mr. Vasquez] received under my care were medically necessary, clinically appropriate, and in accord with the standards and guidelines for treatment of Gender Dysphoria, ICD-9 Code 302.85, by the World Professional Association for Transgender Health, American Medical Association, American Psychiatric Association, American Psychological Association, and the American College of Obstetricians and Gynecologists. [Mr. Vasquez] has also under[gone] gender affirming top surgery (mastectomy).

Gender affirming bottom surgery is medically necessary to treat [Mr. Vasquez's] gender dysphoria and I support this decision and referral.

(Ex. 1, Nisly Aff., Ex. A.)

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

116. Scott X. Fieker ("Mr. Fieker") is a Licensed Mental Health Counselor.

117. In or around August 2020, Mr. Fieker conducted an assessment on Mr. Vasquez in

which he stated:

I have no hesitation in recommending [Mr. Vasquez] for the procedure he is requesting. It is my professional opinion as a Licensed Mental Health Counselor in the State of Iowa that he meets and exceeds the criteria as set forth by the World Professional Association for Transgender Healthcare.

(Ex. 2, Fieker Aff., Ex. A.)

118. A true and correct copy of Mr. Fieker's affidavit is attached as Exhibit 2.

119. Amanda Goslin ("Ms. Goslin") is a Licensed Marriage and Family Therapist.

120. In or around August 2020, Ms. Goslin conducted an assessment on Mr. Vasquez in

which she stated:

Aiden has met the WPATH Standards for receiving gender reaffirming bottom surgery. He has persistent, well-documented gender dysphoria and his other mental health concerns are well controlled. Additionally, he has the capacity to make an informed decision and is over the age of 18. I believe that receiving gender reaffirming bottom surgery will help Aiden to make significant progress in treating his gender dysphoria. Therefore, I recommend that Aiden receive gender reaffirming bottom surgery.

(Ex. 3, Goslin Aff., Ex. A.)

121. A true and correct copy of Ms. Goslin’s affidavit is attached as Exhibit 3.

122. Jacob Sandoval (“Mr. Sandoval”) is a Licensed Marriage and Family Therapist.

123. In or around August 2020, Mr. Sandoval conducted an assessment on Mr. Vasquez in which he stated that Mr. Vasquez has “persistent, well documented gender dysphoria,” he has “the capacity to make an informed decision,” any other “significant mental health or medical concerns” are “well controlled,” and he is “over the age of 18.”

124. Mr. Sandoval further stated:

Based upon the interview completed with Aiden, it is clear he has experienced marked gender dysphoria throughout his life. Moreover, these feelings increased after top surgery due to not feeling whole. Aiden is over 18, is making an informed decision, and understands the risks and benefits of bottom surgery. It is my recommendation that Aiden has access to receive bottom surgery and that this treatment would help his mood and dysphoria.

(Ex. 4, Sandoval Aff., Ex. A.)

125. A true and correct copy of Mr. Sandoval’s affidavit is attached as Exhibit 4.

126. Dr. Carol Daniels, PhD (“Dr. Daniels”), is a Licensed Marriage and Family Therapist.

127. In or around September 2020, Dr. Daniels conducted an assessment of Mr. Vasquez in which she stated:

I believe Aiden to be capable of making an informed decision about undertaking surgery and that the next appropriate step for him is to undergo such surgery. In my belief, this will help him make significant progress for further treatment of his gender dysphoria. I see it as a vital quality of life and mental health issue for him, and I recommend Aiden Vasquez for gender reassignment/phalloplasty surgery.

(Ex. 5, Daniels Aff., Ex. A.)

128. A true and correct copy of Dr. Daniels’s affidavit is attached as Exhibit 5.

V. Amerigroup's Denial of Mr. Vasquez's Requests for Preapproval

129. On August 14, 2020, Mr. Vasquez, through his physician, requested Medicaid preapproval from Amerigroup for an office visit to evaluate Mr. Vasquez for gender-affirming surgery.

130. On August 17, 2020, Mr. Vasquez, through his physician, requested Medicaid preapproval from Amerigroup for gender-affirming surgery.

131. On August 19, 2020, Amerigroup denied Mr. Vasquez's request for preapproval for gender-affirming surgery, advising Mr. Vasquez: "We reviewed your records. Gender surgery is not a covered benefit in Iowa. For this reason, we cannot pay for the surgery. We made this decision by looking at: Iowa Administrative Code (IAC) 441-78.1(4)."

132. A true and correct copy of the August 19 letter from Amerigroup to Mr. Vasquez is attached as Exhibit 6.

133. On August 28, 2020, Amerigroup denied Mr. Vasquez's request for preapproval for an office visit, advising Mr. Vasquez:

We cannot approve an office visit by a provider that is outside of your plan. We did not receive any records to review with this request. We do not see you have a medical need to use a provider that is not in the plan. You had asked for surgery by this provider. That request was not approved. We do not see that you need an office visit to be evaluated for a procedure that was not approved. If medically needed, you can get care from a provider in your plan. (Medically necessary services except for true emergencies must come from in-network providers.

We made this decision by looking at: Iowa Administrative Code: 441, 78.1 and 79.9.

134. A true and correct copy of the August 28 letter from Amerigroup to Mr. Vasquez is attached as Exhibit 7.

135. On October 14, 2020, Mr. Vasquez timely initiated an internal appeal from Amerigroup's decisions under Section 249A.4(11) of the Iowa Code and Chapter 14 of the

Amerigroup Provider Manual. *See* Iowa Code § 249A.4(11); Amerigroup Provider Manual Ch. 14.

136. In support of his appeal, Mr. Vasquez provided assessments from Dr. Nisly, Mr. Fieker, Ms. Goslin, Mr. Sandoval, and Dr. Daniels; his 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 Iowa Constitution’s equal-protection guarantee and the ICRA.

137. A true and correct copy of Mr. Vasquez’s affidavit is attached as Exhibit 8.

138. A true and correct copy of Dr. Ettner’s affidavit is attached as Exhibit 9.

139. A true and correct copy of Mr. Vasquez’s memorandum of law is attached as Exhibit 10.

140. On November 3, 2020, Amerigroup denied Mr. Vasquez’s appeal regarding his request for preapproval for gender-affirming surgery.

141. Amerigroup’s November 3 letter to Mr. Vasquez stated: “The requested surgery is not a covered benefit in Iowa per Iowa Administrative Code 441.78.1(4).”

142. A true and correct copy of Amerigroup’s letter to Mr. Vasquez is attached as Exhibit 11.

143. On November 6, 2020, Amerigroup denied Mr. Vasquez’s appeal regarding his request for preapproval for an office visit.

144. Amerigroup’s November 6 letter to Mr. Vasquez stated:

We cannot approve this request. We looked at all the records sent to us. You have asked for an office visit with a doctor who is outside of your plan. This service needs to be with a doctor within the network under the guidelines (Medically necessary services except for true emergencies must come from in-network providers). The request also shows that the office visit is to consider surgery. This type of surgery is not covered under the program. As such, all related services and

supplies are also not covered. For these reasons, we cannot approve this request. The original denial is upheld.

145. A true and correct copy of Amerigroup's November 6 letter to Mr. Vasquez is attached as Exhibit 12.

VI. DHS's Affirmance of Amerigroup's Decision

146. On January 10, 2021, Mr. Vasquez timely appealed Amerigroup's decisions to DHS.

147. On February 1, 2021, an ALJ for IDIA conducted an administrative hearing at which counsel for Mr. Vasquez and Amerigroup argued their respective positions on Amerigroup's denial of Mr. Vasquez's request for Medicaid coverage.

148. On March 2, 2021, after considering the parties' arguments and the administrative record, an ALJ for IDIA issued a proposed decision affirming Amerigroup's decisions.

149. The ALJ's March 2 decision did not resolve Mr. Vasquez's challenges to Amerigroup's decision on the merits, but rather concluded that those challenges were "preserved for judicial review."

150. A true and correct copy of the ALJ's March 2 decision is attached as Exhibit 13.

151. On March 11, 2021, Mr. Vasquez timely appealed the ALJ's proposed decision to the Director of DHS.

152. On March 25, 2021, the Director adopted the ALJ's proposed decision as DHS's final decision on Mr. Vasquez's appeal.

153. The Director's March 25 decision stated that the ALJ's proposed decision was ADOPTED as the FINAL DECISION" and that DHS was "directed to implement the directions contained in the Proposed Decision."

154. A true and correct copy of the Director’s March 25 decision is attached as Exhibit 14.

CLAIMS FOR RELIEF

**COUNT I
(Iowa APA, Section 17A.19(10)(a),
The Regulation’s Facial and As-Applied Violation of the
Iowa Constitution’s Equal-Protection Guarantee)**

155. Mr. Vasquez incorporates paragraphs 1 through 154 as though fully set forth in this paragraph.

156. 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).

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

158. Section 6 of Article I 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.

159. Section 1 of Article I 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

160. 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.

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

162. The Regulation categorically prohibits Medicaid coverage for medically necessary gender-affirming surgical treatment.

163. 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.

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

165. The Regulation, and DHS's reliance on it to deny Mr. Vasquez gender-affirming surgery, discriminates on the basis of sex.

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

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

168. 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 based on stereotypes 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.

169. The classification created by the Regulation is not narrowly tailored to serve a compelling government interest or substantially related to achieving an important government objective.

170. Alternatively, no plausible policy reason is advanced by, or rationally related to, this classification.

171. For these reasons, the Regulation is unconstitutional, both facially and as applied, and DHS's reliance on the Regulation to deny Mr. Vasquez Medicaid reimbursement violated the Iowa Constitution's equal-protection guarantee. *Good*, No. CVCV054956, at *20–34.

COUNT II
(Iowa APA, Sections 17A.19(10)(a) & (b),
Gender-Identity and Sex Discrimination Under
Section 216.7(1)(a) of the ICRA Based on Division XX's Facial and As-Applied
Violation of the Iowa Constitution's Equal-Protection Guarantee)

172. Mr. Vasquez incorporates paragraphs 1 through 154 as though fully set forth in this paragraph.

173. 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).

174. 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).

175. IAC 441.78.1(4)'s categorical exclusion of Medicaid coverage for gender-affirming surgical procedures violates the ICRA's prohibitions on gender-identity and sex

discrimination. *See* Iowa Code §§ 17A.19(10)(a), 17A.19(10)(b); Iowa Code §§ 216.7(1)(a), 216.2(13)(b).

176. Although Division XX purported to amend the ICRA to allow DHS and Amerigroup, as DHS's agent, to apply the Regulation without violating the ICRA, Division XX violates the Iowa Constitution's equal-protection guarantee because it facially discriminates against transgender Iowans based on their gender identity.

177. Transgender and nontransgender Iowa Medicaid recipients are similarly situated for equal-protection purposes in that both groups share a financial need for medically necessary treatment.

178. Division XX, which purports to reinstate the Regulation, discriminates against transgender Medicaid recipients, such as Mr. Vasquez, by authorizing the denial of Medicaid coverage for medically necessary gender-affirming surgery simply because the recipients of this coverage are transgender.

179. The classification created by Division XX is not narrowly tailored to serve a compelling government interest or substantially related to achieving an important government objective.

180. Alternatively, no plausible policy reason is advanced by, or rationally related to, this classification.

181. Because Division XX is unconstitutional, the amendment to the ICRA under which "state or local government unit[s] or tax-supported district[s]" are no longer required "to provide for sex reassignment surgery" or any surgical procedure "related to transsexualism [or] gender identity disorder" is null and void. *See* Iowa Code § 216.7(3).

182. As a result, the preamendment version of Section 216.7 of the ICRA remains in effect.

183. As set forth in *Good*, the ICRA's protections against gender-identity discrimination prohibit the Regulation's categorical ban on Medicaid reimbursement for gender-affirming surgery. *Good*, 924 N.W.2d at 862–63.

184. The ICRA's protections against sex discrimination also prohibit the Regulation's categorical ban on Medicaid reimbursement for gender-affirming surgery because discrimination based on transgender status is, by definition, discrimination based on sex.

185. Since the Regulation violates the ICRA, DHS's reliance on the Regulation to deny Mr. Vasquez Medicaid reimbursement was improper.

COUNT III
(Iowa APA, Sections 17A.19(10)(a) & (b),
Gender-Identity and Sex Discrimination Under
Section 216.7(1)(a) of the ICRA Based on Division XX's
Violation of the Iowa Constitution's Equal-Protection Guarantee
Through Discriminatory Animus Against Transgender People)

186. Mr. Vasquez incorporates paragraphs 1 through 154 as though fully set forth in this paragraph.

187. 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).

188. 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).

189. IAC 441.78.1(4)'s categorical exclusion of Medicaid coverage for gender-affirming surgical procedures violates the ICRA's prohibitions on gender-identity and sex discrimination. *See* Iowa Code §§ 17A.19(10)(a), 17A.19(10)(b); Iowa Code §§ 216.7(1)(a), 216.2(13)(b).

190. Although Division XX purported to amend the ICRA to allow DHS and Amerigroup, as DHS's agent, to apply the Regulation without violating the ICRA, Division XX violates the Iowa Constitution's equal-protection guarantee because its enactment was motivated by animus toward transgender people.

191. A law is irrational, and violates equal protection, if its purpose is to target a disadvantaged group.

192. Division XX's sole purpose is to take away publicly funded, medically necessary Medicaid coverage for transgender Iowans.

193. It does so by creating an exception to ICRA directed specifically at transgender people.

194. The evidence establishing Division XX's discriminatory animus includes, but is not limited to, the following:

- a. In urging his colleagues to vote against Division XX, Senator Joseph Bolkcom identified the discriminatory purpose of the legislation, noting that "[t]he language in this bill targets coverage for [transgender Iowans'] essential and necessary medical treatments." Iowa General Assembly, Session, House File 766, Video Recording of 4/27/19 Debate, <https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190426012941549&dt=2019-04026&offset=2721&bill=HF%20766&status=r>, at 2:27:55 (Sen. Bolkcom). Senator Bolkcom also explained to his colleagues that the country's marquee medical associations "support the view that medically necessary care is needed" and "believe these medical procedures should be covered under public insurance programs." *Id.*
- b. Well-aware of Division XX's discriminatory purpose, Senator Mark Costello plainly stated that Division XX was being enacted "to react to the

lawsuit that came up” by changing the administrative code back to the way it was before the lawsuit. *See id.* at 2:31:44. Senator Costello did not agree that gender-affirming surgery “is always medically necessary, which is what Medicaid is about,” and also did not agree that funding gender-affirming surgery through Medicaid was “a proper use of federal or . . . state monies.” *See id.*; *see also* Tony Leys & Barbara Rodriguez, *Iowa Republican lawmakers ban use of Medicaid dollars on transgender surgery*, *The Des Moines Register* (Apr. 27, 2019), <https://www.desmoinesregister.com/story/news/politics/2019/04/26/iowa-legislature-senate-republicans-propose-ban-medicaid-money-transgender-surgery-lawsuit-courts/3578920002/>.

- c. In the Iowa House of Representatives, the only comments supporting Division XX came from the bill manager, Representative Joel Fry, who described Division XX’s function, in discriminatory terms, as “amending [ICRA] to clarify that we are not requiring any government unit in the State to provide for gender reassignment surgeries.” Iowa General Assembly Session, House File 766, Video Recording of 4/27/19 Debate, <https://www.legis.iowa.gov/dashboard?video&chamber=H&clip=h20190427092516225&dt=2019-04-27&offset=6564&bill=HF%20766&status=r>, at 11:24:30 (Rep. Fry).
- d. The rest of the comments in the House debate came from opponents. For example, Representative Beth Wessel-Kroeschell criticized Division XX, saying: “This amendment takes away the civil rights of Iowa’s transgender population.” *Id.* at 11:36:50 (Rep. Wessel-Kroeschell). She added: “This proposal deserved to be thoroughly examined, and it was not. This amendment was mean-spirited and cruel.” *Id.* at 11:37:10.
- e. Similarly, Representative Kirsten Running-Marquardt stated: “I question the integrity of a body that passes language that denies Iowans critical healthcare because they’re transgender. That’s what this bill does. . . We are codifying discrimination against people and their healthcare needs because they’re transgender. . . . It is the doctor’s decision what is critical healthcare. It is not the people in this chamber. It is not your decision.” *Id.* at 12:30:20 (Rep. Running-Marquardt).
- f. Governor Kim Reynolds, for her part, is on record as saying: “This [legislation] takes it back to the way it’s always been. This has been the State’s position for decades.” *See* Caroline Cummings, *Governor Reynolds stands by signing bill with Medicaid coverage ban on transgender surgery* (May 7, 2019), <https://cbs2iowa.com/news/local/gov-kim-reynolds-stands-by-decision-to-sign-budget-bill-with-transgender-surgery-ban>.

195. Because Division XX is unconstitutional, the amendment to the ICRA under which “state or local government unit[s] or tax-supported district[s]” are no longer required “to provide for sex reassignment surgery” or any surgical procedure “related to transsexualism [or] gender identity disorder” is null and void. *See* Iowa Code § 216.7(3).

196. As a result, the preamendment version of Section 216.7 of the ICRA remains in effect.

197. As set forth in *Good*, the ICRA’s protections against gender-identity discrimination prohibit the Regulation’s categorical ban on Medicaid reimbursement for gender-affirming surgery.

198. The ICRA’s protections against sex discrimination also prohibit the Regulation’s categorical ban on Medicaid reimbursement for gender-affirming surgery because discrimination based on transgender status is, by definition, discrimination based on sex.

199. Since the Regulation violates the ICRA, DHS’s reliance on the Regulation to deny Mr. Vasquez Medicaid reimbursement was improper.

COUNT IV
(Iowa APA, Sections 17A.19(10)(a) & (b),
Gender-Identity and Sex Discrimination Under
Section 216.7(1)(a) of the ICRA Based on Division XX’s
Violation of the Iowa Constitution’s Single-Subject Rule)

200. Mr. Vasquez incorporates paragraphs 1 through 154 as though fully set forth in this paragraph.

201. 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).

202. 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).

203. IAC 441.78.1(4)'s categorical exclusion of Medicaid coverage for gender-affirming surgical procedures violates the ICRA's prohibitions on gender-identity and sex discrimination. *See* Iowa Code §§ 17A.19(10)(a), 17A.19(10)(b); Iowa Code §§ 216.7(1)(a), 216.2(13)(b).

204. Although Division XX purported to amend the ICRA to allow DHS and Amerigroup, as DHS's agent, to apply the Regulation without violating the ICRA, Division XX violates the Iowa Constitution's single-subject rule.

205. Section 29 of Article III of the Iowa Constitution states that "[e]very act shall embrace but one subject, and matters properly connected therewith." Iowa Const. Art. III, § 29.

206. Division XX was part of the General Assembly's annual Health and Human Services Appropriations Bill ("HHS Appropriations Bill") in 2019.

207. Division XX was not merely a funding restriction on a DHS appropriation.

208. On the contrary, Division XX was a new, substantive third subsection to the section of the ICRA otherwise ensuring protections against nondiscrimination in public accommodations.

209. The subject matter of the act of which Division XX was part—i.e., the annual HHS Appropriations Bill—had nothing to do with the subject matter of Division XX—i.e., the ICRA's protections against discrimination in public accommodations, thereby violating the Iowa Constitution's single-subject rule.

210. Because Division XX is unconstitutional, the amendment to the ICRA under which “state or local government unit[s] or tax-supported district[s]” are no longer required “to provide for sex reassignment surgery” or any surgical procedure “related to transsexualism [or] gender identity disorder” is null and void. *See* Iowa Code § 216.7(3).

211. As a result, the preamendment version of Section 216.7 of the ICRA remains in effect.

212. As set forth in *Good*, the ICRA’s protections against gender-identity discrimination prohibit the Regulation’s categorical ban on Medicaid reimbursement for gender-affirming surgery. *Good*, 924 N.W.2d at 862–63.

213. The ICRA’s protections against sex discrimination also prohibit the Regulation’s categorical ban on Medicaid reimbursement for gender-affirming surgery because discrimination based on transgender status is, by definition, discrimination based on sex.

214. Since the Regulation violates the ICRA, DHS’s reliance on the Regulation to deny Mr. Vasquez Medicaid reimbursement was improper.

215. 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).

216. 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.

217. 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).

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

219. 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.

220. Since the Regulation violates the ICRA, DHS's reliance on the Regulation to deny Mr. Vasquez Medicaid reimbursement was improper.

COUNT V
(Iowa APA, Sections 17A.19(10)(a) & (b),
Gender-Identity and Sex Discrimination Under
Section 216.7(1)(a) of the ICRA Based on Division XX's
Violation of the Iowa Constitution's Title Rule)

221. Mr. Vasquez incorporates paragraphs 1 through 154 as though fully set forth in this paragraph.

222. 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).

223. 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).

224. IAC 441.78.1(4)'s categorical exclusion of Medicaid coverage for gender-affirming surgical procedures violates the ICRA's prohibitions on gender-identity and sex

discrimination. *See* Iowa Code §§ 17A.19(10)(a), 17A.19(10)(b); Iowa Code §§ 216.7(1)(a), 216.2(13)(b).

225. Although Division XX purported to amend the ICRA to allow DHS and Amerigroup, as DHS's agent, to apply the Regulation without violating the ICRA, Division XX violates the Iowa Constitution's title rule.

226. Section 29 of Article III of the Iowa Constitution states that an act's subject "shall be expressed in the title." Iowa Const. Art. III, § 29.

227. The title of the annual HHS Appropriations Bill was: "An Act relating to appropriations for health and human services and veterans and including other related provisions and appropriations, providing penalties, and including effective date and retroactive and other applicability date provisions." 2019 Iowa Acts, House File 766, *available at* <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba-hf766>, p. 1.

228. This title does not refer to the ICRA at all, much less provide any notice that Division XX would create an exception to the ICRA's prohibition on gender-identity discrimination in public accommodations.

229. There was no reasonable basis for legislators or citizens to expect that a substantive amendment to ICRA's nondiscrimination protections for transgender Iowans in public accommodations, in place since 2007, would be amended through annual appropriations legislation.

230. Because Division XX is unconstitutional, the amendment to the ICRA under which "state or local government unit[s] or tax-supported district[s]" are no longer required "to provide for sex reassignment surgery" or any surgical procedure "related to transsexualism [or] gender identity disorder" is null and void. *See* Iowa Code § 216.7(3).

231. As a result, the preamendment version of Section 216.7 of the ICRA remains in effect.

232. As set forth in *Good*, the ICRA's protections against gender-identity discrimination prohibit the Regulation's categorical ban on Medicaid reimbursement for gender-affirming surgery.

233. The ICRA's protections against sex discrimination also prohibit the Regulation's categorical ban on Medicaid reimbursement for gender-affirming surgery because discrimination based on transgender status is, by definition, discrimination based on sex.

234. Since the Regulation violates the ICRA, DHS's reliance on the Regulation to deny Mr. Vasquez Medicaid reimbursement was improper.

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

235. Mr. Vasquez incorporates paragraphs 1 through 154 as though fully set forth in this paragraph.

236. 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).

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

238. Mr. Vasquez has a right to be treated in accordance with the provisions of the Iowa Constitution and the ICRA.

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

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

241. For these reasons, DHS's reliance on the Regulation to deny Mr. Vasquez Medicaid reimbursement was improper. *Good*, No. CVCV054956, at *34–35.

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

242. Mr. Vasquez incorporates paragraphs 1 through 154 as though fully set forth in this paragraph.

243. 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).

244. DHS's denial of Mr. Vasquez's request for Medicaid coverage for his gender-affirming surgery was unreasonable, arbitrary, and capricious because DHS relied on a Regulation that violates the Iowa Constitution's equal-protection guarantee, and Section 216.7(1)(1) of the ICRA, 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.

245. For these reasons, DHS's reliance on the Regulation to deny Mr. Vasquez Medicaid reimbursement was improper. *Good*, No. CVCV054956, at *35–37.

**PRAYER FOR RELIEF
(Declaratory and Injunctive Relief)**

246. Mr. Vasquez incorporates paragraphs 1 through 154 as though fully set forth in this paragraph.

247. 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.*

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

249. This matter is also appropriate for 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.*

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

251. Absent injunctive relief, Mr. Vasquez will continue to suffer irreparable harm.

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

RELIEF SOUGHT

FOR THESE REASONS, Mr. Vasquez requests the following relief:

- a. A declaratory ruling that:
 - i. IAC 441.78.1(4) is null and void because it violates the Iowa Constitution's equal-protection guarantee facially and as applied;
 - ii. Division XX is null and void because it violates the Iowa Constitution's equal-protection guarantee facially and as applied,

- and, as a result, IAC 441.78.1(4) violates ICRA's prohibitions on gender-identity and sex discrimination;
- iii. Division XX is null and void because it was enacted based on discriminatory animus toward transgender people and therefore violates the Iowa Constitution's equal-protection guarantee, and, as a result, IAC 441.78.1(4) violates ICRA's prohibitions on gender-identity and sex discrimination;
 - iv. Division XX is null and void because it violates the Iowa Constitution's single-subject rule, and, as a result, IAC 441.78.1(4) violates ICRA's prohibitions on gender-identity and sex discrimination;
 - v. Division XX is null and void because it violates the Iowa Constitution's title rule, and, as a result, IAC 441.78.1(4) violates ICRA's prohibitions on gender-identity and sex discrimination;
 - vi. DHS's denial of Mr. Vasquez's request for Medicaid coverage created a disproportionate negative impact on private rights; and
 - vii. DHS's denial of Mr. Vasquez's request for Medicaid coverage was unreasonable, arbitrary, and capricious;
- 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 Amerigroup's denial of Mr. Vasquez's request for Medicaid coverage for a phalloplasty and an office visit and requiring DHS to approve coverage;
- d. An award of attorneys' fees and costs; and
- e. Any other relief the Court deems just.

Dated: April 22, 2021

Respectfully submitted,

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