IN THE IOWA DISTRICT COURT FOR POLK COUNTY

EERIEANNA GOOD; CAROL BEAL, **Petitioners,** v. IOWA DEPARTMENT OF HUMAN SERVICES, **Respondent.**	**NO: CVCV054956** **(CVCV055470 consolidated)** **RESPONDENT'S BRIEF ON JUDICIAL REVIEW**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases ***Page(s)***

Statutes and Rules

Other Citations

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Do benefits determinations fall under the provisions of the Iowa Civil Rights Act regarding "public accommodations"?

Cases

State v. Pettijohn, 899 N.W.2d 1, 16 (Iowa 2017)
State v. Richardson, 890 N.W.2d 609, 619 (Iowa 2017)
State ex rel. Claypool v. Evans, 757 N.W.2d 166 (Iowa 2008)
U.S. Jaycees v. Iowa Civil Rights Comm'n, 427 N.W.2d 450, 454 (Iowa 1988)
Pippen v. State, 854 N.W.2d 1, 18 (Iowa 2014)

Statutes and Rules

Iowa Code § 216.7(1)
Iowa Code § 216.2(13)(a)
Iowa Code § 216.2(13)(b)
14 C.J.S. Civil Rights § 86
Iowa Code § 216.2
Iowa Code § 216.2(4)
20 U.S.C. § 2000a

Other Citations

Oxford University Press, "English Oxford Living Dictionaries: 'Unit' Definition," *available at* https://en.oxforddictionaries.com/ definition/unit (last visited Feb. 26, 2018).

II. Does the Iowa Civil Rights Act's prohibition on sex discrimination extend protections to transgender individuals?

Cases

In re Estate of Melby, 841 N.W.2d 867, 879 (Iowa 2014)
U.S. Bank Nat. Ass'n v. Lamb, 874 N.W.2d 112, 120 (Iowa 2016)
State v. Iowa Dist. Ct. for Scott Cnty, 889 N.W.2d 467, 474 (Iowa 2017)
Sommers v. Iowa Civil Rights Comm'n, 337 N.W.2d 470, 474 (Iowa 1983)

Statutes and Rules

Iowa Civil Rights Act (ICRA)

III. Was the promulgation of Iowa Admin. Code r. 441-78.1(4), and its subsequent enforcement, reasonable, non-arbitrary, and non-capricious?

Cases

Smith v. Rasmussen, 57 F. Supp. 2d 736 (N.D. Iowa 1999)
Soo Line R.R. Co v. Iowa Dep't of Transp., 521 N.W.2d 685, 688-699 (Iowa 1994)
Jasper v. H. Nizam, Inc., 764 N.W.2d 751, 764 (Iowa 2009)

Statutes and Rules

42 U.S.C. § 1983
Iowa Code § 17A

Other Citations

WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, at 54, available at http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926 (last visited Mar. 12, 2018)

IV. Are classifications of transgender individuals reviewed for a rational basis?

Cases

F.V. v. Barron, No. , 2018 WL 1152405, at *10-*11 (D. Idaho Mar. 5, 2018)
Bd. of Educ. Of the Highland Local School Dist. v. U.S. Dept. of Educ., 208 F. Supp. 3d 850, 874 (S.D. Ohio 2016)
Norsworthy v. Beard, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015)
Doe 1 v. Trump, 275 F. Supp. 3d 167, 208 (D.D.C. 2017)
Johnston v. Univ. of Pittsburgh of Comm. Sys. of Higher Educ., 97 F. Supp. 3d 657, 668-69 (W.D. Pa. 2015)

V. Does Iowa Admin. Code r. 441-78.1(4) draw a reasonable classification in light of its purpose?

Cases

Residential and Agric. Advisory Comm., LLC v. Dyersville City Council, 888 N.W.2d 24, 50 (Iowa 2016)
Guttman v. Khalsa, 669 F.3d 1101, 1123 (2012)
Ass'n of Residential Res. in Minnesota, Inc. v. Gomez, 51 F.3d 137, 141 (8th Cir. 1995)
Shapiro v. Thompson, 394 U.S. 618, 633 (1969)
Maher v. Roe, 432 U.S. 464, 479, 97 S. Ct. 2376, 2385, 53 L. Ed. 2d 484 (1977)
Dandridge v. Williams, 397 U.S. 471, 485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491 (1970). 354 F.Supp. at 459
Williamson v. Lee Optical Co., 348 U.S. 483, 489, 75 S.Ct. 461, 99 L.Ed. 563 (1955)
Geduldig v. Aiello, 417 U.S. 484, 495, 94 S.Ct. 2485, 2491, 41 L.Ed.2d 256 (1974)
Kantrowitz v. Weinberger, 388 F. Supp. 1127, 1130 (D.D.C. 1974)

Smith v. Rasmussen, 249 F.3d 755, 759 (8th Cir. 2001)
Ellis v. Patterson, 859 F.2d 52, 55 (8th Cir. 1988)
Tyler v. Iowa Dept. of Rev., 904 N.W.2d 162, 166 (Iowa 2017)

Statutes and Rules
Iowa Admin. Code r. 441-78.1
Iowa Admin. Code r. 441-73.7
Iowa Code § 249A.4(1)

VI. Is Iowa Admin. Code r. 441-78.1(4) intentionally discriminatory as is necessary to sustain an Equal Protection claim?

Cases
McQuistion v. City of Clinton, 872 N.W.2d 817, 830 (Iowa 2015)
King v. State, 818 N.W.2d 1, 24 (Iowa 2012)
Johnson v. Louis, 654 N.W.2d 886, 890 (Iowa 2002)
Robbins v. Becker, 794 F.3d 988, 995 (8th Cir. 2015)
Villanueva v. City of Scottsbluff, 779 F.3d 507, 511 (8th Cir. 2015)

Statutes and Rules
Iowa Admin. Code r. 441-78.1(4)
Iowa Admin. Code r. 441-78.1

Other Citations
WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, at 5-6, available at http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926 (last visited Mar. 12, 2018)

VII. If Petitioners are successful, should this Court reach a narrow holding and defer to the Department for implementation?

Cases
Williamson v. Lee Optical Co., 348 U.S. 483, 488, 75 S.Ct. 461, 464, 99 L.Ed. 563 (1955)
Dandridge v. Williams, *supra*, 397 U.S. at 484, 90 S.Ct., at 1161
Missouri, K. & T. R. Co. v. May, 194 U.S. 267, 270, 24 S.Ct. 638, 639, 48 L.Ed. 971 (1904) (Holmes, J.)
Beal v. Doe, 432 U.S. 438, 97 S.Ct. 2366, 53 L.Ed.2d 464
Maher v. Roe, 432 U.S. 464, 479–80, 97 S. Ct. 2376, 2385–86, 53 L. Ed. 2d 484 (1977)
Taylor v. Iowa Dep't of Job Serv., 362 N.W.2d 534, 537 (Iowa 1985)
Loeb v. Employment Appeal Bd., 530 N.W.2d 450, 452 (Iowa 1995)

Statutes and Rules

Iowa Admin. Code r. 441-78.1(4)
Iowa Civil Rights Act (ICRA)
Iowa Admin. Code r. 441-78.1(4), (4)"b"(2), (4)"b"(4), (4)"d"(15)
Iowa Code § 249A.4
42 C.F.R. § 438.210(a)(4)(ii)

Other Citations

WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, at 59-60, available at http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926 (last visited Mar. 12, 2018)

I. Introduction

This case is about whether the State, through its Medicaid program, must pay for gender reassignment surgery. Petitioners are individuals with gender dysphoria who desire transition surgeries to change their bodies to better match society's views of what a woman should look like. These surgeries are excluded by Iowa Medicaid's operating rules. In accordance with its rules, Iowa Medicaid will pay for therapy to address the emotional condition of gender dysphoria and it will pay (and has paid) for hormone treatment. The current Iowa Medicaid rules exclude surgeries for psychological purposes, including costly transition surgeries. Petitioners present a constitutional case of discrimination, claiming that the State's policy discriminates against them and other transgender persons. However, Petitioners have not been denied Medicaid. They are able to receive the benefits of covered services to the same extent as any other Medicaid member. They are not denied Medicaid or any Medicaid benefits because of their transgender status. Instead, they seek a service that is not covered under the program for legitimate, non-discriminatory reasons.

II. Statement of the Case

Ms. Eerieanna Good and Ms. Carol Beal (collectively "Petitioners") are Medicaid beneficiaries diagnosed with gender dysphoria. Having previously received hormone therapies and other services to treat their gender dysphoria, they submitted to Iowa Medicaid a request for surgeries variously referred to as "gender-confirming surgery" or "sex reassignment surgery." The managed care organizations ("MCOs")

which manage the care for the Petitioners denied these requests. The denials were issued solely on the basis that Iowa law prohibits coverage for such procedures under Iowa Medicaid. Iowa Admin. Code r. 441-78.1 (the "Rule"). The MCOs did not engage in a medical necessity analysis because the Rule rendered such analysis unnecessary. Petitioners now challenge the legality of the Rule.

Ms. Good is a 28-year-old transgender woman. (Good AR 37). She is a Medicaid recipient, and has been prescribed hormone therapy medication for her gender dysphoria since 2014. (Good AR 45). At all times relevant to this action, Ms. Good's Medicaid services were managed by an MCO, AmeriHealth Caritas. (Good AR 217). AmeriHealth received a request for prior authorization for an orchiectomy to treat Ms. Good's gender dysphoria. *Id.* On February 2, 2017, AmeriHealth denied that request, citing the Rule. (Good AR 220). On or about March 3, 2017, Ms. Good filed an internal appeal from AmeriHealth's denial. (Good AR 223). Ms. Good filed a supplement two weeks later. (Good AR 234). On March 31, 2017, AmeriHealth upheld its initial denial due to the prohibition outlined in the Rule. (Good AR 266). On June 23, 2017, Ms. Good appealed AmeriHealth's determination to DHS. (Good AR 274). A telephone hearing was conducted by an Administrative Law Judge ("ALJ") on July 11, 2017. (Good AR 170-210).

On July 25, 2017, the ALJ issued her Proposed Decision, determining that DHS could not rule on Ms. Good's claims and that the claims were preserved for judicial review. (Good AR 76). Ms. Good appealed to the Director of DHS. (Good AR

6). The Director's final decision similarly preserved Ms. Good's claims, and affirmed the ALJ and MCO. (Good AR 1). This action followed.

Ms. Beal is a 42-year-old transgender woman. (Beal AR 64). She is a Medicaid recipient, and has been prescribed hormone therapy medication for her gender dysphoria since 1989. (Beal AR 90). She is seeking approval for multiple surgeries as part of her treatment, to wit: vaginoplasty, penectomy, bilateral orchiectomy, clitoroplasty, urethroplasty, labiaplasty, and perineoplasty. (Beal Pet. ¶ 3). At all times relevant to this action, Ms. Beal's Medicaid services were managed by an MCO, Amerigroup. (Beal AR 212, 218, 224, 227). Ms. Beal requested various surgeries generally for the purpose of treatment for her gender dysphoria. *Id.* Her request was denied, which she timely appealed to Amerigroup. (Beal AR 232). On August 14, 2017, Amerigroup affirmed its denial on the basis that the Rule excluded the procedures Ms. Beal requested. (Beal AR 212, 218, 224, 227). On or about September 12, 2017, Ms. Beal appealed Amerigroup's denial to DHS. (Beal AR 313). A telephone hearing was conducted by an ALJ on October 12, 2017. (Beal AR 114-155). After the hearing, the parties submitted briefing on the issues presented. (Beal AR 6, 102, 110).

On October 17, 2017, the ALJ issued his Proposed Decision. (Beal AR 93-101). In that opinion, the ALJ preserved Ms. Beal's constitutional claims. *Id.* The ALJ also found that "it is questionable whether sex reassignment surgery prohibited by an Iowa Administrative Code Medicaid rule properly falls within the parameters of a public accommodation." (Beal AR 99). The ALJ also concluded that Ms. Beal's ICRA

claims were otherwise impermissible under existing case law. (Beal AR 99-100). On October 25, 2017, Ms. Beal appealed the ALJ's proposed decision to the Director of DHS. (Beal AR 39). The Director adopted the ALJ's proposed decision, additionally reasoning that the ICRA did not apply in the circumstance. (Beal AR 1-5). This action followed.

III. Standard of Review

This is an appeal of an administrative law decision under Iowa Code Chapter 17A. The district court functions in an appellate capacity on judicial review under Iowa Code § 17A.19. *See Ludtke v. Iowa Dep't of Transp.*, 646 N.W.2d 62, 64-65 (Iowa 2002); *Glowacki v. Iowa Bd. of Medical Examiners*, 516 N.W.2d 881, 884 (Iowa 1994). Grounds for relief are specified in section 17A.19(10). The burden is on the petitioner to establish grounds for relief. Iowa Code § 17A.19(8)(a). *See* Iowa Code § 17A.19(8)(a); *Iowa Med. Soc. v. Iowa Bd. of Nursing*, 2013 WL 2361007, *11 (Iowa 2013*); Hill v. Fleetguard, Inc.* 705 N.W.2d 665, 671 (Iowa 2005).

Courts "are authorized to grant relief only if the agency's action is affected by error of law, unsupported by substantial evidence in the record, or characterized by abuse of discretion." *George A. Hormel & Co. v. Jordan*, 569 N.W.2d 148, 151 (Iowa 1997). *See also Bridgstone/Firestone, Inc. v. Employment Appeal Bd.*, 570 N.W.2d 85, 90 (Iowa 1997); *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). "[C]onsiderable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer." *City of Mason City v. City Center,* 634

N.W.2d 667, 671 (Iowa 2001). In particular, the Court has given weight to the Department of Human Services on the statute and regulations governing Medicaid. *See Strand v. Rasmussen*, 648 N.W.2d 95, 100 (Iowa 2002). But where interpretation of the law has not been vested in the discretion of an agency, legal issues are subject to de novo review. *Bearinger v. Iowa Dep't of Transp.*, 844 N.W.2d 104, 106 (Iowa 2014).

An agency action is "unreasonable, arbitrary, or capricious" only if "taken without regard to the law or facts of the case," or if it is "clearly against reason and evidence." *City of Sioux City v. Iowa Dep't of Rev. & Fin.*, 666 N.W.2d 587, 590 (Iowa 2003) (internal citations omitted).

IV. Argument

a. Overview of Iowa Medicaid and the Rule at Issue.

Medicaid, a cooperative federal aid program, helps the states provide medical assistance to the poor. *Lankford v. Sherman*, 451 F.3d 496, 504 (8th Cir. 2006); *see* Iowa Code § 249A.2(3), (6), (7), (10). A state can draw down federal dollars to spend if the state abides by federal requirements. Failure to comply with federal requirements may jeopardize federal funds. 42 U.S.C. §§ 1396a(a)(1)-(65), 1396c; *see* Iowa Code § 249A.4 (introductory paragraph and subsections (6) and (9)(b)); Iowa Code § 249A.2(7). "Although participation in the Medicaid program is entirely optional, once a State elects to participate, it must comply with the requirements of Title XIX." *Harris v. McRae*, 448 U.S. 297, 301, 100 S.Ct. 2671, 65 L.Ed.2d 784 (1980). The Medicaid program "was designed to serve individuals and families lacking adequate funds for basic health ser-

vices, and it was designed to be a payer of last resort." *In re Estate of Melby*, 841 N.W.2d 867, 875 (Iowa 2014). The federal law does not require all states participating in the Medicaid program to provide all services and devices which come within the general purpose of the statute. Rather, Congress has set a basic minimum standard for any state Medicaid program which requires it to provide financial assistance only for certain specified medical treatment. *Id.* at § 1396a(a)(10)(A)(Supp.1997); *Fred C. v. Texas Health & Human Servs. Comm'n*, 988 F. Supp. 1032, 1034 (W.D. Tex. 1997), *aff'd*, 167 F.3d 537 (5th Cir. 1998). As the Supreme Court has held, Medicaid is limited in scope:

> Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs. Instead, the benefit provided through Medicaid is a particular package of health care services . . . That package of services has the general aim of assuring that individuals will receive necessary medical care, but the benefit provided remains the individual services offered—not 'adequate health care.'

Alexander v. Choate, 469 U.S. 287, 303, 105 S. Ct. 712, 721 (1985).

States have broad discretion to implement the Medicaid Act: "This [statutory] language confers broad discretion on the States to adopt standards for determining the extent of medical assistance, requiring only that such standards be 'reasonable' and 'consistent with the objectives' of the Act." *Beal v. Doe*, 432 U.S. 438, 444, 97 S.Ct. 2366, 53 L.Ed.2d 464 (1977). "A State plan for medical assistance must ... include reasonable standards ... for determining eligibility for and the extent of medical assistance under the plan." *Detgen v. Janek*, 752 F.3d 627, 631 (5th Cir. 2014). Iowa's Medicaid

program excludes all surgeries performed for psychological purposes. The rule at issue addresses the benefit in question at Iowa Admin. Code r. 441-78.1(4):

> **78.1(4)** For the purposes of this program, cosmetic, reconstructive, or plastic surgery is surgery which can be expected primarily to improve physical appearance or which is performed primarily for psychological purposes or which restores form but which does not correct or materially improve the bodily functions. When a surgical procedure primarily restores bodily function, whether or not there is also a concomitant improvement in physical appearance, the surgical procedure does not fall within the provisions set forth in this subrule. Surgeries for the purpose of sex reassignment are not considered as restoring bodily function and are excluded from coverage.
>
> a. Coverage under the program is generally not available for cosmetic, reconstructive, or plastic surgery. However, under certain limited circumstances payment for otherwise covered services and supplies may be provided in connection with cosmetic, reconstructive, or plastic surgery as follows:
>
> (1) Correction of a congenital anomaly; or
>
> (2) Restoration of body form following an accidental injury; or
>
> (3) Revision of disfiguring and extensive scars resulting from neoplastic surgery.
>
> (4) Generally, coverage is limited to those cosmetic, reconstructive, or plastic surgery procedures performed no later than 12 months subsequent to the related accidental injury or surgical trauma. However, special consideration for exception will be given to cases involving children who may require a growth period.
>
> b. Cosmetic, reconstructive, or plastic surgery performed in connection with certain conditions is specifically excluded. These conditions are:
>
> (1) Dental congenital anomalies, such as absent tooth buds, malocclusion, and similar conditions.
>
> (2) Procedures related to transsexualism, hermaphroditism, gender identity disorders, or body dysmorphic disorders.

(3) Cosmetic, reconstructive, or plastic surgery procedures performed primarily for psychological reasons or as a result of the aging process.

(4) Breast augmentation mammoplasty, surgical insertion of prosthetic testicles, penile implant procedures, and surgeries for the purpose of sex reassignment.

c. When it is determined that a cosmetic, reconstructive, or plastic surgery procedure does not qualify for coverage under the program, all related services and supplies, including any institutional costs, are also excluded.

d. Following is a partial list of cosmetic, reconstructive, or plastic surgery procedures which are not covered under the program. This list is for example purposes only and is not considered all inclusive.

(1) Any procedure performed for personal reasons, to improve the appearance of an obvious feature or part of the body which would be considered by an average observer to be normal and acceptable for the patient's age or ethnic or racial background.

(2) Cosmetic, reconstructive, or plastic surgical procedures which are justified primarily on the basis of a psychological or psychiatric need.

(3) Augmentation mammoplasties.

(4) Face lifts and other procedures related to the aging process.

(5) Reduction mammoplasties, unless there is medical documentation of intractable pain not amenable to other forms of treatment as the result of increasingly large pendulous breasts.

(6) Panniculectomy and body sculpture procedures.

(7) Repair of sagging eyelids, unless there is demonstrated and medically documented significant impairment of vision.

(8) Rhinoplasties, unlessthere is evidence of accidental injury occurring within the pastsix months which resulted in significant obstruction of breathing.

(9) Chemical peeling for facial wrinkles.

(10)Dermabrasion of the face.

(11)Revision of scars resulting from surgery or a disease process, except disfiguring and extensive scars resulting from neoplastic surgery.

(12)Removal of tattoos.

(13)Hair transplants.

(14)Electrolysis.

(15)Sex reassignment.

(16)Penile implant procedures.

(17)Insertion of prosthetic testicles.

e. Coverage is available for otherwise covered services and supplies required in the treatment of complications resulting from a noncovered incident or treatment, but only when the subsequent complications represent a separate medical condition such as systemic infection, cardiac arrest, acute drug reaction, or similar conditions. Coverage shall not be extended for any subsequent care or procedure related to the complication that is essentially similar to the initial noncovered care. An example of a complication similar to the initial period of care would be repair of facial scarring resulting from dermabrasion for acne.

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

Under Iowa Medicaid rules, there is a broad exclusion for cosmetic, reconstructive, or plastic surgery which can be expected primarily to improve physical appearance or which is performed primarily for psychological purposes or which restores form but which does not correct or materially improve the bodily functions. Iowa Admin. Code r. 441-78.1(4). Sex reassignment is one of several excluded services, along with surgeries primarily for psychological or psychiatric need and to remedy to effects of aging. Surgeries that restore bodily function are covered. The requested ser-

vices in question were denied as falling within the exclusions specified in the Iowa Administrative Code.

b. The Iowa Civil Rights Act Is Inapplicable In This Case.

i. Medicaid Coverage Decisions Are Not "Public Accommodations" Under the ICRA.

The Court should deny Petitioners' claims because Medicaid coverage decisions do not fall within the Iowa Civil Rights Act ("ICRA"). Petitioners' ICRA claims hinge on whether Iowa Medicaid qualifies as a "public accommodation." The ICRA prohibits discrimination on the basis of sex or gender identity in places of "public accommodation." Iowa Code § 216.7(1). However, under the ICRA, "public accommodations" are defined to mean physical places, establishments, and facilities. Neither Medicaid nor DHS (as an entity) is a physical place, and as such benefit determinations are not "public accommodations." Underpinning Petitioners' position is an unsupportable assumption that the ICRA applies to the administration of entitlements generally. Such a construction is not supported by the plain language of the ICRA.

The Court should reject Petitioners' attempts to classify the provision of Medicaid services as a public accommodation for no fewer than five reasons. First, although DHS does have physical locations and may be subject to the ICRA is some contexts, this lawsuit is not related to, or about access to, those physical locations. Second, DHS does not qualify as a "government unit" as defined in ICRA, as the statute's overall context makes clear that a "government unit" also refers to physical

places, establishments, and facilities. Third, DHS does not qualify as a "district," which again is clearly defined in terms of geography and tangibility. Fourth, Petitioners' reading of the ICRA is inconsistent with the plain language of the statute, which defines both "government unit" and "district" in terms of physical facilities. Fifth, federal law supports a reading of the definition of a "public accommodation" as being exclusive of benefit determinations. For these reasons, DHS is entitled to judgment with regard to Petitioners' ICRA claims.

1. The ICRA Does Not Apply to Benefit Determinations Because There is No Physical Location.

Petitioners' ICRA claims fail because DHS is not prohibiting access to a physical location. Under the ICRA, there must be a relationship between the alleged discrimination and a physical locale. Iowa Code § 216.2(13)(a) defines a "public accommodation" as a "place, establishment, or facility . . . that . . . offers services, facilities, or goods . . . ." Petitioners allege that because DHS owns and operates physical facilities and also, separately, administers the Iowa Medicaid program, this alone is sufficient to qualify as a "public accommodation" under the ICRA. Petitioners cite no authority to support this reading of the ICRA. In fact, merely owning or operating physical facilities is insufficient to implicate the ICRA's protections. This Court should reject Petitioners' attempt to create a "public accommodation" in benefit determinations.

2. DHS is Not a "Government Unit" as Used in the ICRA.

The Court should also reject Petitioners' attempt to impart unwarranted weight to the term "government unit." As used in the ICRA, "government unit" is limited to physical locations that provide services, goods, and facilities provided from that location. Iowa Code § 216.2(13)(b). DHS itself is not a "government unit." Petitioners argue that this phrase is inclusive of the entirety of DHS as an agency. However, under state civil rights acts, "the definition of a place of public accommodation is [generally] not so broad as to include the services provided by a state agency; instead, it refers to facilities maintained for the use of the general public." 14 C.J.S. Civil Rights § 86.

Furthermore, other uses of the term "unit" illustrate that the phrase "government unit" applies to specific locations rather than the entirety of a government agency. The term "unit," is not defined in the ICRA. *See* Iowa Code § 216.2. "When the legislature fails to define a statutory term, we examine the context in which the term appears and accord the term its ordinary and common meaning." *State v. Pettijohn*, 899 N.W.2d 1, 16 (Iowa 2017) (internal citation omitted). In addition, "[w]hen the same word or term is used in different statutory sections that are similar in purpose, they will be given a consistent meaning." *State v. Richardson*, 890 N.W.2d 609, 619 (Iowa 2017) (internal citation omitted).

The use of the word "unit" throughout the ICRA makes it clear that the term is made with reference to subparts of facilities or buildings. For example, Iowa Code §

216.2(4), in defining a "covered multifamily dwelling," makes reference to buildings "consisting of four or more dwelling *units*," and "ground floor *units of a building* consisting of four or more dwelling *units*." All three of these references to "units" make clear that the word "unit," whether or not it is preceded by the work "dwelling," refers to physical portions of a larger physical facility. This is consistent with the plain language meaning of a "unit." *See, e.g.*, Oxford University Press, "English Oxford Living Dictionaries: 'Unit' Definition," *available at* https://en.oxforddictionaries.com/definition/unit (last visited Feb. 26, 2018) ("A self-contained section in a building or group of buildings" as in "one- and two-bedroom units."). Indeed, the Iowa Supreme Court has clearly indicated that the term "unit," as used within the ICRA, refers not to state agencies, but to subparts of facilities or buildings. *See State ex rel. Claypool v. Evans*, 757 N.W.2d 166 (Iowa 2008) (using the term "unit" in reference to housing units in comprehensive analysis of the ICRA). If the undefined term "unit" is to be viewed in context and consistently throughout the statute, a "government unit" can only refer to government-subsidized housing or, at most, units of a building owned and operated by a government entity. Examples of "government units" and "districts" provided by the Iowa Civil Rights Commission illustratively include "Police Departments, Schools, Mass Transit, [and] Libraries." Iowa Civil Rights Commission, "Sexual Orientation & Gender Identity," *available at* https://icrc.iowa.gov/sites/default/files/publications/2016/2016.sogi_.pa1_.pdf (last visited Feb. 26, 2018). In no circumstances can

"government unit" be reasonably read to include state agencies generally, or benefits determinations by state agencies specifically.

3. DHS is not a "District" as Used in the ICRA.

The phrase "district" constitutes a collection of facilities covering a defined geographical area, not the entirety of a state government agency. As a result, DHS is not a "district" under the ICRA. Petitioner Good has previously acknowledged that "[t]he terms 'district' denotes, in relevant part, 'a *territorial* division' or 'an area, region, or section with a distinguishing character.'" (Good Br. in Res. to DHS Mot. to Dismiss at 15) (emphasis added). Under this definition, it is clear that the ordinary and common meaning of "district" refers to physically demarcated districts: the use of the word "territorial" makes clear the type of division contemplated, as does the reference to a "section" alongside the physical terms "area" and "region." Read as a coherent whole with the rest of the "public accommodation" definition, a "district," like a library system or school district, is properly defined as the buildings and facilities that constitute the district. While the ICRA undoubtedly was intended to be inclusive of territorially-divided districts such as school districts; the same logic does not apply to a statewide agency like DHS. Petitioners have cited to no authority to suggest that something other than this commonly understood meaning should apply.

4. "Public Accommodation" Does Not Mean "Everything the Government Touches."

The definition of "public accommodation" is limited to physical locations and does not include benefit determinations because the definitions of "public accommodation" and "government unit" must be harmonized, not read independently. Petitioners' read of Iowa Code § 216.2(13)(b) as providing a wholly different definition of "public accommodation" when applied to "government unit[s]" and "district[s]." Under Petitioners' reading, "a public accommodation" may denote buildings, establishments, or facilities in the private context, but it applies to everything an amorphous government touches. Such a reading ignores the language that shows that subsection (b) is intended to elaborate on, rather than subsume, the general "public accommodation" definition. Iowa Code § 216.2(13)(b) begins by stating that the term "public accommodation *includes*" government units or tax-supported districts. (emphasis added). This language indicates that the definition provided in Iowa Code § 216.2(13)(b) is meant to be a subset of the general definition provided in Iowa Code § 216.2(13)(a). *State Pub. Defender v. Iowa Dist. Ct. for Black Hawk Cnty*, 633 N.W.2d 280, 283 (Iowa 2001) ("The term 'including' usually is interpreted as a term of enlargement or illustration, having the meaning of 'and' or 'in addition to.'"). The general definition of "public accommodation" limits the applicability of the ICRA to "place[s], establishment[s], or facility[ies] . . . that . . . offers services, facilities, or goods." Petitioners' reading of the ICRA would illogically extend "public accommodation" to include the entirety of

government and all government actions. Inversely, this reading would require that the same would be true for all private entities as well—any private entity covered in *any* respect by the ICRA would be covered in *every* respect by the ICRA. There is no textual support for such a reading. No DHS facility offers the services Petitioners seek, and thus cannot be a "public accommodation" under Iowa Code § 216.2(13)(a) or (b). *See U.S. Jaycees v. Iowa Civil Rights Comm'n*, 427 N.W.2d 450, 454 (Iowa 1988) (noting that an organization was not a place, establishment, or facility).

5. Guiding Federal Case Law Contradicts Petitioners' Reading of the ICRA.

Federal case law supports DHS's reading of the ICRA, and contradicts that of the Petitioners. Iowa courts "have traditionally looked to federal law for guidance in interpreting the Iowa Civil Rights Act." *Pippen v. State*, 854 N.W.2d 1, 18 (Iowa 2014) (internal quotation marks omitted). The federal Civil Rights Act limits its scope to establishments and places. *See* 20 U.S.C. § 2000a ("Each of the following *establishments* which serves the public is a *place* of public accommodation within the meaning of this subchapter . . . .") (emphasis added). A case previously cited by Petitioner Good, *U.S. Jaycees v. Iowa Civil Rights Comm'n*, illustrates how the ICRA was meant to mimic the federal Civil Rights Act's scope. There, the Iowa Supreme Court approvingly cited an article by Professor Bonfield which advocated for language in the ICRA that "substantially mirrors" the current language. Professor Bonfield suggested the change in language to cover "*establishments* catering to the public" more broadly. *U.S. Jaycees*, 427

N.W.2d at 454-55 (emphasis added). This illustrates that the language in the ICRA was drafted for the purpose of broadly including *establishments* that offered services to the public, not entities such as state agencies where the services and the establishments were as attenuated from the benefits determinations challenged here. Professor Bonfield's reasoning is entirely consistent with DHS's reading of the ICRA.

In summary, Petitioners suggest that, because DHS operates facilities, Iowa Medicaid benefit determinations are subject to the ICRA. This is a false equivalent – a logical fallacy. Iowa Medicaid benefit decisions fall outside of the scope of the ICRA's public accommodation provisions. As a result, DHS is entitled to judgment as to both claims one and two of the Petitions.

ii. Even if DHS Was Considered a "Public Accommodation" in This Context, Petitioners' Sex Discrimination Claim is Inapplicable to This Action.

Petitioners' claim for relief under the ICRA for sex discrimination is redundant and contrary to Iowa law. Petitioners allege the denial of Medicaid coverage for their gender confirmation surgery constitutes both gender identity discrimination under the ICRA and sex discrimination. While the ICRA prohibits discrimination on both the basis of "sex" and "gender identity," Petitioners impermissibly equate the two. If gender identity and sex discrimination were identical, then the ICRA's reference to both would be redundant. *In re Estate of Melby*, 841 N.W.2d 867, 879 (Iowa 2014) (courts avoid constructions of statutes which render parts redundant, irrelevant, or absurd); *U.S. Bank Nat. Ass'n v. Lamb*, 874 N.W.2d 112, 120 (Iowa 2016) (courts are tasked

with "harmonizing various sections of [a] statute into a coherent whole."); *State v. Iowa Dist. Ct. for Scott Cnty*, 889 N.W.2d 467, 474 (Iowa 2017) (courts presume statutes do not contain superfluous words). The denial of Medicaid benefits in this context cannot be both gender identity and sex discrimination at the same time. As a result, one of Petitioners' claims is necessarily redundant. In addition, this reading runs directly contrary to established Iowa case law. *See also Sommers v. Iowa Civil Rights Comm'n*, 337 N.W.2d 470, 474 (Iowa 1983) ("[W]e find that by proscribing discrimination on account of sex the legislature did not intend that the term would include transsexuals."). For these reasons, Petitioners cannot succeed under their ICRA sex discrimination claim.

c. *Smith v. Rasmussen* Should Inform This Court's Analysis of The Reasonableness of the Rule.

Eighth Circuit case law analyzing the reasonableness of the Rule at issue here should inform this Court's analysis of the reasonableness of the Rule under Iowa law. Petitioners seek relief from the Court by alleging that the Rule is unreasonable, arbitrary, and capricious. However, this exact question was considered by the Eighth Circuit in *Smith v. Rasmussen* ("*Rasmussen*"), where the Rule was found to be reasonable. 249 F.3d 755 (8th Cir. 2001).

In *Rasmussen*, the plaintiff's primary treating psychiatrist made the determination that sex reassignment surgery, a phalloplasty, was a medically necessary treatment for the plaintiff's gender identity disorder. *Id.* at 756-57. Medicaid denied coverage,

citing the Rule as the legal basis. *See Smith v. Rasmussen*, 57 F. Supp. 2d 736 (N.D. Iowa 1999) (district court opinion). In the context of a Section 1983 claim, the court in *Rasmussen* noted that the evidence that was before DHS at the time the rule was made "revealed that [sex reassignment] surgery can be appropriate and medically necessary for some people and that the procedure was not considered experimental." *Id.* at 760. This is entirely consistent with the WPATH standards of care to which Petitioners cite. *See* WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, at 54, available at http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926 (last visited Mar. 12, 2018). In other words, the medical consensus at the time the Rule was made was not substantially different from that posited by Petitioners today. This demonstrates that, contrary to Petitioners' intimations, the rationale of the Eighth Circuit in *Rasmussen* is equally applicable in today's medical context based on the record.

Notably, the Eighth Circuit in *Rasmussen* determined that, as a matter of law, "the State's prohibition on funding of sex reassignment surgery is both reasonable and consistent with the Medicaid Act." *Rasmussen*, 249 F.3d at 761. The court reviewed the State's rulemaking processes and the evidence it considered, noting the State commissioned a review and recommendation for coverage of treatment for gender identity disorder from the Iowa Foundation for Medical Care, considered the fiscal impact of coverage, conducted a study of gender reassignment surgery coverage in Medicaid

across the states, considered the existing coverage of alternative treatment options, and engaged in a public rulemaking process. *Id.* at 760-61.

Although the holding in *Rasmussen* was reached in the context of a Section 1983 claim, its conclusions are equally compelling in the context of a Section 17A judicial review. Both inquiries center on the reasonableness and arbitrary or capricious nature of the Rule. Indeed, based on the information that was before DHS at the time it created the rule, the Eighth Circuit found that it *could not* conclude as a substantive matter "that the Department's regulation is unreasonable, arbitrary, or inconsistent with the Act, which is designed to provide 'necessary medical services to the greatest number of needy people, in a reasonable manner.'" *Id.* at 761 (internal citation omitted).

Petitioners have argued that it is DHS's enforcement of the Rule, not the Rule itself, that is unreasonable, arbitrary, or capricious. (Pets. Br. in Supp. at 48). This fails under Iowa Code Ch. 17A. An agency action cannot be unreasonable, arbitrary, or capricious when the agency acts out of legal obligation. *See Soo Line R.R. Co v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 688-699 (Iowa 1994) (noting an agency action is arbitrary or capricious when taken "without regard to the law."). "Administrative regulations have the force and effect of a statute." *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 764 (Iowa 2009) (internal citation omitted). Under Petitioners' theory, DHS's enforcement of the Rule is unreasonable, arbitrary, and capricious, notwithstanding the fact that DHS is *obligated* to enforce the Rule as it has the "force and effect of a statute." *Id.* It would be illogical for DHS to be acting arbitrarily, capriciously, or even unreasonably

when performing a function it is mandated to perform. The Legislature could not have intended that the Iowa Administrative Procedure Act would operate in such a fashion.

d. Classifications Based on Gender Identity Have Not Been Determined to be Suspect or Quasi-Suspect Under Iowa Law.

The Court should apply rational basis review to the Rule. As implicitly acknowledged in Petitioners' brief, neither the Court of Appeals nor the Iowa Supreme Court have designated transgender individuals as a protected or semi-protected class so as to entitle them to heightened scrutiny under the Iowa Constitution. Federal courts that have addressed the issue have arrived to different conclusions. *See F.V. v. Barron*, No. , 2018 WL 1152405, at *10-*11 (D. Idaho Mar. 5, 2018) (concluding discrimination based on gender identity is sex discrimination, affording heightened scrutiny to such classifications); *accord. Bd. of Educ. Of the Highland Local School Dist. v. U.S. Dept. of Educ.*, 208 F. Supp. 3d 850, 874 (S.D. Ohio 2016); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015); *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 208 (D.D.C. 2017). *But see Johnston v. Univ. of Pittsburgh of Comm. Sys. of Higher Educ.*, 97 F. Supp. 3d 657, 668-69 (W.D. Pa. 2015) (applying rational basis review and compiling cases). In the absence of Iowa case law, the Court should apply rational basis scrutiny to the regulation at issue.

e. The Rule Survives Rational Basis Review Because It Conserves Valuable and Limited Resources and Reflects The Evolving Nature of Treatment.

In determining whether a rule meets the rational basis test, the courts examine "whether the classifications drawn in a statute are reasonable in light of its purpose." *Residential and Agric. Advisory Comm., LLC v. Dyersville City Council*, 888 N.W.2d 24, 50 (Iowa 2016) (internal citation omitted). In making this determination, the courts engage in a three-part inquiry: (1) whether there was a valid, "realistically conceivable" purpose that served a legitimate government interest; (2) whether the identified reason has any basis in fact; and (3) whether the relationship between the classification and the purpose for the classification "is so weak that the classification must be viewed as arbitrary." *Id.* (internal citations and quotation marks omitted). Notably, the Iowa Supreme Court has stated it "will not declare something unconstitutional under the rational-basis test unless it 'clearly, palpably, and without doubt infringe[s] upon the constitution.'" *Id.* (internal citation omitted).

There are numerous realistically conceivable purposes for the Rule that serves legitimate government interests. First, the Rule serves the purpose of conserving limited state resources. *See Guttman v. Khalsa*, 669 F.3d 1101, 1123 (2012) ("Costs are especially relevant when the state's actions are subject only to rational basis review, given that conserving scarce resources may be a rational basis for state action."). Preserving the fiscal integrity of welfare programs such as Medicaid is a legitimate state interest. *Ass'n of Residential Res. in Minnesota, Inc. v. Gomez*, 51 F.3d 137, 141 (8th Cir. 1995)

(citing *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969)). "Our cases uniformly have accorded the States a wider latitude in choosing among competing demands for limited public funds." *Maher v. Roe*, 432 U.S. 464, 479, 97 S. Ct. 2376, 2385, 53 L. Ed. 2d 484 (1977).

The state's restriction of benefits to exclude psychologically-motivated surgeries is a rational approach to rationing public funds. Petitioners are being treated for their gender dysphoria in the form of hormone therapy and other services. However, coverage is denied for their requested surgeries due to the excessive cost of the procedure. Such a restriction is rational in the context of limited resources:

> In the area of economics and social welfare the Supreme Court has established that 'a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect.' *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491 (1970). 354 F.Supp. at 459. Moreover, there is related authority to the effect that equal protection is not denied when a legislature in dealing with a social problem chooses to take 'one step at a time,' *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489, 75 S.Ct. 461, 99 L.Ed. 563 (1955), 'so long as the line drawn' between steps is 'rationally supportable.' *Geduldig v. Aiello*, 417 U.S. 484, 495, 94 S.Ct. 2485, 2491, 41 L.Ed.2d 256 (1974)

Kantrowitz v. Weinberger, 388 F. Supp. 1127, 1130 (D.D.C. 1974), *aff'd*, 530 F.2d 1034 (D.C. Cir. 1976) (finding no equal protection violation in the funding of inpatient mental health treatment for those 21 and younger, and those over 65, but not for persons aged 22-64).

As illustrated by the record, "sex reassignment surgery" is a misnomer: instead of being one procedure, oftentimes transitioning requires multiple procedures, not

necessarily performed at one time. (Beal AR 39) (referencing the seven procedures for which Petitioner Beal was denied coverage). Medicaid also declines coverage for other cosmetic surgeries that do not restore function, such as surgeries primarily for psychological purposes or surgeries to reduce the impact of aging. To the extent these surgeries are covered by Medicaid and result in additional complications (as surgeries often can), Medicaid would also be responsible for making payment related to those additional complications. Iowa Admin. Code rr. 441-78.1, 441-73.7. As a result, the Rule not only conserves state resources by not providing coverage for costly surgical procedures, it also conserves resources by preempting the need for subsequent medical coverage related to complications from such procedures. These resources may then be used to fulfill Medicaid's purpose of "provid[ing] the largest number of necessary medical services to the greatest number of needy people." *Smith v. Rasmussen*, 249 F.3d 755, 759 (8th Cir. 2001) (*citing Ellis v. Patterson*, 859 F.2d 52, 55 (8th Cir. 1988)); *see also* Iowa Code § 249A.4(1) (delegating to the director of the Department the responsibility of "[d]etermin[ing] the greatest amount, duration, and scope of assistance which may be provided, and the broadest range of eligible individuals to whom assistance may effectively be provided, under this chapter within the limitations of available funds.").

Second, as acknowledged by the Eighth Circuit in *Rasmussen* (discussed above), the Rule was also intended to reflect the "evolving nature of the diagnosis and treatment of gender identity disorder and the disagreement regarding the efficacy of sex

reassignment surgery." *Rasmussen,* 249 F.3d at 761. Although Petitioners purport that the medical consensus has changed considerably since the Eighth Circuit's holding in *Rasmussen*, the court's opinion in *Rasmussen* shows the medical consensus at the time the Rule was made was not substantially different from that posited by Petitioners today. In *Rasmussen*, the court noted that sex reassignment "surgery can be appropriate and medically necessary for some people and that the procedure was not considered experimental." *Id.* at 760. This is entirely consistent with the standards of care to which Petitioners cite. As a result, the rule, both at the time of its promulgation and now, still serves the legitimate purpose of withholding coverage of procedures which, while not experimental, are not a panacea for everyone with gender dysphoria.

These legitimate and realistically conceivable purposes enjoy the requisite "basis in fact" to survive rational basis review. To show that a realistically conceivable purpose has a "basis in fact," it is unnecessary for there to be "actual proof." *Tyler v. Iowa Dept. of Rev.*, 904 N.W.2d 162, 166 (Iowa 2017). Instead, courts will "examine [the justifications] to determine whether [they are] credible as opposed to specious." *Id.* As to the Department's first purpose, the credibility of the justification is self-evident. The overall scheme of the Rule outlines reasonable limitations to what "physician services" will be provided under Medicaid. These reasonable limitations, which go well beyond treatment for gender dysphoria, all serve the same underlying purpose: providing the largest number of necessary medical services to the greatest number of

needy people. With regard to the Department's second purpose, the legitimacy of that purpose has been acknowledged and affirmed by the Eighth Circuit.

Finally, the relationship between the Rule and the legitimate purposes identified here are not arbitrary. In addition to being consistent with the Eighth Circuit's findings in *Rasmussen*, the Rule's prohibition on sex reassignment surgery coverage clearly has a direct and substantial financial impact on the Medicaid program. While the record does not have direct reference to the cost of the requested procedures, this Court may safely assume that such extensive surgical interventions are not negligible expenses.

f. The Rule Does Not Intentionally Discriminate Between Similarly Situated Medicaid Recipients.

The Court should deny Petitioners' equal protection claims because Medicaid rules are not discriminatory. Although transgender and non-transgender Medicaid recipients may be similarly situated, the Rule does not discriminate on the basis of transgender status, and Petitioners have failed to show any intentional discriminatory treatment to date. Underpinning any equal protection claim must be a showing of intentional discrimination. *McQuistion v. City of Clinton*, 872 N.W.2d 817, 830 (Iowa 2015) ("Equal protection claims require an allegation of disparate treatment, not merely disparate impact.") (internal citations, quotation marks, and brackets omitted); *accord King v. State*, 818 N.W.2d 1, 24 (Iowa 2012); *Johnson v. Louis*, 654 N.W.2d 886, 890 (Iowa 2002) ("Mere differentiation is not enough to constitute denial of equal protection—

there must be invidious discrimination."); *see also Robbins v. Becker*, 794 F.3d 988, 995 (8th Cir. 2015) ("Unequal treatment of those who are entitled to be treated alike is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination.") (internal citations, quotation marks, and brackets omitted).

"Proving discriminatory purpose is no simple task. It requires a showing that the law or practice in question was implemented at least in part because of, not merely in spite of, its adverse effects upon an identifiable group." *Villanueva v. City of Scottsbluff*, 779 F.3d 507, 511 (8th Cir. 2015) (internal quotation marks and citations omitted). Here, the record contains no evidence pertaining to a discriminatory intent of DHS in drafting or enforcing the Rule. This failure is dispositive against Petitioners' equal protection claims.

Regardless, neither the Rule nor its enforcement can be determined to be discriminatory. The Rule identifies particular categories of procedures (e.g. "surgery . . . which is primarily performed for psychological purposes") and diagnoses (e.g. malocclusions, gender identity disorder, body dysmorphic disorder) as not covered under Iowa's Medicaid program. The Rule is facially neutral: the rule provides for certain exclusions of *medical* procedures in a *medical* context. The Rule, at its essence, categorically excludes surgeries for psychological purposes from coverage, and specifically identifies sex reassignment surgery (or surgeries for treatment of gender identity disorder or "transsexualism") as procedures that fall under that scope. The Rule does *not*, howev-

er, limit other non-surgical services transgender Medicaid recipients can receive, such as hormone therapies.

Petitioners allege that the Rule is discriminatory because non-transgender Medicaid recipients can receive approval for the same procedures for purposes other than treatment of gender dysphoria. However, the Rule treats everyone the same by excluding coverage for surgery for the purposes of treating psychological conditions for everyone alike. Iowa Admin. Code r. 441-78.1(4). Both transgender and non-transgender Medicaid recipients are entitled to the surgeries they seek if there is a non-psychological medical necessity. Indeed, this was the exact circumstance of *Smith v. Rasmussen*, where the plaintiff, a transgender man, received a hysterectomy for purposes unrelated to his gender dysphoria. *Smith v. Rasmussen*, 57 F. Supp. 2d 736, 744 (N.D. Iowa 1999) (noting Smith had two hysterectomies in response to abdominal pain). If the Rule read as Petitioners imply, where transgender Medicaid recipients were denied those procedures on the basis that they are transgender, the Rule would be discriminatory. However, it does not – instead, it excludes from coverage all surgeries sought for psychological need, including but not limited to sex reassignment surgery.

Furthermore, Petitioners have failed to show the Rule is anything other than a reasonable and uniform limitation on covered services as the *Rasmussen* court concluded. Just as sex reassignment surgery is excluded from coverage for treatment of the mental disorder of gender dysphoria, so too are all other surgeries for psychological purposes. Iowa Admin. Code r. 441-78.1(4). Sex reassignment surgery undoubtedly

falls under this broad exclusion. Even Petitioners' pleadings and cited authorities acknowledge gender dysphoria is classified as a "mental disorder." (Good Pet. ¶52, Beal Pet. ¶52); WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, at 5-6, available at http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926 (last visited Mar. 12, 2018). The exclusion of "sex reassignment surgery" is not categorical – it is a subset of the larger exclusion of surgeries for psychological purposes. As a result, the Rule is not and cannot be discriminatory, and Petitioners' equal protection claims must fail.

g. Even If Petitioners are Successful, This Court's Ruling Should Defer Implementation to the Department.

Should this Court find that the Rule is impermissible, this Court should remand to the Department for determination regarding the medical necessity of the denied procedures. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534, 537 (Iowa 1985) ("After holding the administrative decision was based on error, the district court should ordinarily remand the case to the agency for redetermination in accordance with the proper rule of law."); *Loeb v. Employment Appeal Bd.*, 530 N.W.2d 450, 452 (Iowa 1995). As the record reflects, the Department deferred its determination of medical necessity as moot given the existence of the Rule. (Good AR 185; 266); (Beal AR 148:2-7, 212, 218, 224, 227). It would be inappropriate at this juncture for the Petitioners to be

provided their surgeries without undergoing the appropriate review typically applied to requests for prior approval of procedures.

Similarly, the Court should substantially limit the scope of any invalidation of the Rule. Petitioners pray this Court invalidate Iowa Admin. Code r. 441-78.1(4) as counter to the ICRA and the Iowa Constitution – however, the Petitions, their standing, and the issue presented to this Court do *not* pertain to Iowa Admin. Code r. 441-78.1(4) as a whole, but rather only to the limitations of coverage related to sex reassignment surgery and procedures related to "transsexualism" and "gender identity disorder." Iowa Admin. Code r. 441-78.1(4), (4)"b"(2), (4)"b"(4), (4)"d"(15). The remainder of the Rule, which relates to reasonable restrictions on coverage for cosmetic, reconstructive, or plastic surgery, is unchallenged by the Petitions and is a valid exercise of the Department's administrative authority. Therefore, should this Court rule in Petitioners' favor, only the provisions of the Rule relating to sex reassignment surgery, gender identity disorder, and "transsexualism" should be invalidated; not the Rule wholesale.

Finally, federal law permits managed care organizations the right to develop appropriate utilization controls on services. 42 C.F.R. § 438.210(a)(4)(ii). As the record reflects, it is appropriate for the health and safety of the patient to develop criteria the patient must meet prior to receiving approval for sex reassignment surgery. *See, e.g.* WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, at 59-60, available at http://www.wpath.org/site_page.

cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926 (last visited Mar. 12, 2018). In addition to remanding to the Department for a determination of medical necessity, the Department requests that this Court permit the Department (with and through its MCOs) an appropriate amount of time to develop appropriate and reasonable criteria by which to evaluate requests for sex reassignment procedures. Not only will this ensure that the Department's practices are in keeping with current medical standards, but this will also increase the likelihood that these procedures are being appropriately prescribed.

h. If Petitioners Are Successful under These Facts, a Narrow Decision is Appropriate.

In the event the Court rules in favor of Petitioners, a narrow decision best suits these facts. Petitioner seeks a broad, substantive change in the law recognizing not only the right to be treated equally as a transgender person, but for the government to be required to fund surgical transition expenses. Such a broad ruling could also impact other governmental programs, such as the Department of Corrections, the Civil Commitment Unit for Sexual Offenders (CCUSO), and other facilities that are required to provide medically appropriate treatment for serious medical needs. If the Medicaid program cannot decline to provide surgical transitions even though it provides therapy and hormones to address the underlying psychological condition, it is likely plaintiffs would use such a ruling to argue the DOC and other institutions must fund transition surgeries for confined persons. Such decisions are aptly left to the leg-

islature, the entity that will be required to raise or allocate funding to address any changes in the law.

Like the public discourse about abortion, the policy decisions around transgender persons are subject to disagreement. The Iowa Medicaid program does not disparage or intend to discriminate against transgender persons, who are fully able to receive the benefits of covered Medicaid services. The Iowa Medicaid program, however, does not fund surgical transition. In determining that Medicaid need not cover nontherapeutic abortions as a matter of constitutional equal protection law, Justice Powell opined:

> The decision whether to expend state funds for nontherapeutic abortion is fraught with judgments of policy and value over which opinions are sharply divided. Our conclusion that the Connecticut regulation is constitutional is not based on a weighing of its wisdom or social desirability, for this Court does not strike down state laws "because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson v. Lee Optical Co.*, 348 U.S. 483, 488, 75 S.Ct. 461, 464, 99 L.Ed. 563 (1955), *quoted in Dandridge v. Williams*, *supra*, 397 U.S. at 484, 90 S.Ct., at 1161. Indeed, when an issue involves policy choices as sensitive as those implicated by public funding of nontherapeutic abortions, the appropriate forum for their resolution in a democracy is the legislature. We should not forget that "legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, K. & T. R. Co. v. May*, 194 U.S. 267, 270, 24 S.Ct. 638, 639, 48 L.Ed. 971 (1904) (Holmes, J.).
>
> In conclusion, we emphasize that our decision today does not proscribe government funding of nontherapeutic abortions. It is open to Congress to require provision of Medicaid benefits for such abortions as a condition of state participation in the Medicaid program. Also, under Title XIX as construed in *Beal v. Doe*, 432 U.S. 438, 97 S.Ct. 2366, 53 L.Ed.2d 464, Connecticut is free through normal democratic processes to decide that such benefits should be provided. We hold only that the

> Constitution does not require a judicially imposed resolution of these difficult issues.

Maher v. Roe, 432 U.S. 464, 479–80, 97 S. Ct. 2376, 2385–86, 53 L. Ed. 2d 484 (1977). Similarly, the decision to exclude coverage for psychologically-motivated surgeries is a matter for the legislature to address. As a result, the Court's decision should be confined to the narrower issues raised by Petitioners.

V. Conclusion

Petitioners' challenge to the Rule should be denied. Although the ICRA has broad application, there is no basis for it to be applied to benefits determinations and entitlement administration, as is the case here. Similarly, Petitioners' dual ICRA claims are redundant and not contemplated by the ICRA. Regardless, the Eighth Circuit's well-reasoned opinion in *Rasmussen* should be afforded substantial deference in the Court's own analysis of the reasonableness of the challenged Rule. In addition, this Court should apply rational basis review to the Rule, for which there are numerous realistically conceivable and nondiscriminatory purposes for the rule. Nonetheless, Petitioners have failed to show that the Rule is intentionally discriminatory, as is required to sustain their Equal Protection claim. If, however, this Court finds in favor of Petitioners, the Court's ruling should be narrow in scope, and allow DHS and its MCOs the opportunity to develop appropriate implementation guidelines.

For these reasons, the Department pray this Court enter an order DENYING Petitioners' Petitions for Judicial Review.

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Original electronically filed via EDMS.
Electronically served on parties of record.

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on this 16th day of March, 2018:

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Other
- ☒ ECF System Participant (Electronic Service)

Signature: */s/Matthew Gillespie*