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14 *Attorneys for Defendant*

15 **IN THE UNITED STATES DISTRICT COURT**  
16 **FOR THE DISTRICT OF ARIZONA**

17 D.H., by and through his mother, Janice  
18 Hennessy-Waller; and John Doe, by and  
19 through his guardian and next friend, Susan  
20 Doe, on behalf of themselves and all others  
21 similarly situated,

22 Plaintiffs,

23 vs.

24 Jami Snyder, Director of the Arizona Health  
25 Care Cost Containment System, in her  
26 official capacity,

27 Defendant.

Case No. 4:20-cv-00335-SHR

**NOTICE OF SERVICE OF  
SUBPOENAS**

(Assigned to the Honorable Scott H.  
Rash)

28 Notice is hereby given by Defendant Jami Snyder, Director of the Arizona Health  
Care Cost Containment System (“Defendant”), by and through her undersigned counsel,  
that the attached Subpoenas to Produce Documents, Information, or Objects or to Permit  
Inspection of Premises in a Civil Action (**Exhibit A**) will be served on:

- Aron Janssen
- Loren Schechter

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- Andrew Cronyn
- National Center for Lesbian Rights
- National Health Law Program

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of May, 2021.

**BURNSBARTON PLC**

By     /s/ Kathryn Hackett King    

David T. Barton  
Kathryn Hackett King

**JOHNSTON LAW OFFICES, P.L.C.**  
Logan T. Johnston  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2021, I electronically transmitted the foregoing documents to the following CM/ECF registrants.

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*Attorneys for Plaintiffs and the Class*

*s/ Carolyn Galbreath* \_\_\_\_\_

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the  
District of Arizona

D.H. and John Doe

*Plaintiff*

v.

Jami Snyder, Director of AHCCCS

*Defendant*

Civil Action No. 4:20-cv-00335-SHR

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Aron Janssen, M.D.

*(Name of person to whom this subpoena is directed)*

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached Exhibit A.

Place: BurnsBarton PLC 2201 East Camelback, Ste. 360 Phoenix, AZ 85016	Date and Time:  05/21/2021 9:00 am
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**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/03/2021

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Jami Snyder, Director of AHCCCS, who issues or requests this subpoena, are:

Kathryn King, BurnsBarton, 2201 E. Camelback, Ste. 360 Phoenix, AZ 85016 kate@burnsbarton.com 602-753-4500

**Notice to the person who issues or requests this subpoena**

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 4:20-cv-00335-SHR

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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**EXHIBIT A**  
**ITEMS TO BE PRODUCED**

1. All scientific studies, research, and clinical evidence that identify the long-term health benefits of male chest reconstruction surgery for individuals with gender dysphoria under the age of 21.
2. All generally accepted scientific guidelines, research, or publications that describe the criteria that should be applied to determine that male chest reconstruction surgery is medically necessary for transgender males under the age of 21 who suffer from gender dysphoria.
3. All scientific studies, research, and clinical evidence showing:
  - a. whether or not a statistically significant number of natal females with gender dysphoria will seek male chest reconstruction surgery;
  - b. whether or not male chest reconstruction surgery is medically necessary for a statistically significant number of natal females with gender dysphoria;
  - c. whether or not the determination of male chest reconstruction surgery as medically necessary for a natal female with gender dysphoria is a fact-intensive inquiry that must take into account the unique circumstances of each individual;
  - d. whether or not hormone treatment is one way to alleviate the effects of gender dysphoria;
  - e. whether or not gender dysphoria in childhood persists into adulthood (and any statistics demonstrating how often it persists into adulthood);
  - f. whether or not gender dysphoria in adolescents persists into adulthood (and any statistics demonstrating how often it persists into adulthood);  
and
  - g. whether or not the brains of individuals under the age of 21 are still developing.

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4. All scientific studies, research, and clinical evidence that support the allegations and conclusions found in paragraphs 38, 39, and 40 of the Complaint. (See attached Complaint, Exhibit 1).

5. All studies or reports that support the Plaintiffs’ contention that “Transgender people...experience disproportionately high rates of harassment and discrimination in all aspects of their lives” and therefore “would be reluctant to join a lawsuit that might publicize their circumstances.”

# **EXHIBIT 1**

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11 *Counsel for Plaintiffs and the Class*  
12 (Additional Counsel on Signature Page)

12 UNITED STATES DISTRICT COURT  
13 DISTRICT OF ARIZONA

14 D.H., by and through his mother, Janice )  
15 Hennessy-Waller; and John Doe, by his )  
16 guardian and next friend, Susan Doe, on ) No.  
17 behalf of themselves and all others )  
18 similarly situated, ) **COMPLAINT FOR**  
19 Plaintiffs, ) **DECLARATORY AND**  
20 vs. ) **INJUNCTIVE RELIEF**  
21 Jami Snyder, Director of the Arizona )  
22 Health Care Cost Containment System, )  
in her official capacity, )  
Defendant. )

23 Plaintiffs D.H. and John Doe respectfully state and allege as follows

24 **PRELIMINARY STATEMENT**

25 1. D.H. is a seventeen-year-old transgender Arizona resident enrolled in  
26 Arizona’s Medicaid program, known as the Arizona Health Care Cost Containment  
27 System (“AHCCCS”). John Doe is a fifteen-year-old transgender Arizona resident  
28 enrolled in AHCCCS. D.H. and John bring this lawsuit on behalf of themselves and

1 similarly situated individuals to challenge Arizona’s categorical prohibition of coverage  
2 of medically necessary treatments for gender dysphoria, specifically, male chest  
3 reconstruction surgery.

4         2.       Gender dysphoria refers to the distress that can result from the incongruence  
5 between a person’s gender identity and their assigned sex at birth. Gender dysphoria is a  
6 serious medical condition that, if left untreated, can cause anxiety, depression, and even  
7 self-harm or suicidal ideation.

8         3.       Gender-confirming medical treatments—including male chest  
9 reconstruction surgery—are safe, effective, and medically necessary to treat gender  
10 dysphoria in many transgender individuals, including adolescents.

11        4.       A longstanding Arizona regulation, promulgated in 1982 and enforced by  
12 AHCCCS, expressly prohibits Medicaid coverage for “gender reassignment surgeries.”  
13 Ariz. Admin. Code R9-22-205-B.4(a) (“Challenged Exclusion”). Because of the  
14 Challenged Exclusion, D.H., John, and similarly situated individuals have been denied or  
15 prevented from obtaining Medicaid coverage for medically necessary male chest  
16 reconstruction surgery.

17        5.       Both D.H. and John have been diagnosed with gender dysphoria. Although  
18 identified as female at birth, D.H. and John are male and live as male in every aspect of  
19 their lives.

20        6.       D.H. first became aware of his male gender identity around the age of four.  
21 Frustrated and angry at his inability to communicate that he was transgender to his mother,  
22 D.H. developed significant psychological distress at an early age, including severe anxiety  
23 and suicidal ideation. Concerned for his safety and well-being, D.H.’s mother, Janice,  
24 placed him in a psychiatric treatment facility on several occasions.

25        7.       At thirteen, D.H. developed the confidence to tell Janice that he is  
26 transgender. Janice then arranged for D.H. to see a mental health provider with experience  
27 working with transgender youth. With the recommendation and support of his health care  
28 providers, D.H. began to transition to live in accordance with his gender identity. As part

1 of the treatment for his gender dysphoria, D.H. started taking testosterone to masculinize  
2 his body

3 8. Just before turning thirteen, D.H. started wearing a binder to flatten his  
4 chest, which alleviates his gender dysphoria, but significantly impairs his ability to  
5 function. The pain and discomfort caused by wearing the binder interferes with D.H.'s  
6 ability to focus on school and homework. The binder also prevents him from engaging in  
7 prolonged or intense physical activity, especially dance, which had previously been a  
8 source of relief for D.H.

9 9. Last year, D.H.'s pediatrician and his therapist recommended that he obtain  
10 male chest reconstruction surgery to further alleviate his gender dysphoria. However, prior  
11 authorization for this surgery was denied due to the Challenged Exclusion.

12 10. John started becoming aware of his male gender identity when he was about  
13 eleven years old and his body began showing the first signs of puberty. Worried that his  
14 family would reject him for being transgender, John kept everything he was going through  
15 to himself and began to experience depression and suicidal ideation.

16 11. After about six months, John recognized that he needed help and reached  
17 out to his sister, and then eventually told his grandmother, Susan, both of whom were  
18 supportive. John started using a male name and pronouns, which helped to alleviate his  
19 gender dysphoria to some degree.

20 12. In November 2018, John began seeing a specialist at the Gender Support  
21 Program at Phoenix Children's Hospital.

22 13. Like D.H., John also wears a binder, which is very tight and restrictive. Even  
23 with the binder, John feels uncomfortable being outside without layers of clothing. He  
24 wears a hooded sweatshirt nearly every day, including in the summer. John's chest also  
25 hinders his social interactions. For example, John wears his binder and a t-shirt when at  
26 the pool, often having to answer uncomfortable questions about why he insists on wearing  
27 a t-shirt in the water.  
28



1 **THE PARTIES**

2 21. Plaintiff D.H. is a seventeen-year-old boy who has been diagnosed with  
3 gender dysphoria. D.H. resides in Pima County, Arizona and brings this action through his  
4 mother, Janice Hennessy-Waller. Due to his family’s limited income, D.H. is eligible for  
5 Arizona’s Medicaid program. D.H. has been enrolled in Arizona’s Medicaid program at  
6 all relevant times.

7 22. Plaintiff John Doe is a fifteen-year-old boy who has been diagnosed with  
8 gender dysphoria. John resides in Maricopa County, Arizona and brings this action through  
9 his grandmother and legal guardian, Susan Doe. Due to his family’s limited income, John  
10 is eligible for Arizona’s Medicaid program. John has been enrolled in Arizona’s Medicaid  
11 program at all relevant times.

12 23. Defendant Jami Snyder is the Director of AHCCCS, the single-state agency  
13 that administers Arizona’s Medicaid program. As such, she has a duty to ensure that the  
14 AHCCCS program is administered in accordance with federal Medicaid law. Defendant  
15 Snyder is sued in her official capacity.

16 **STATEMENT OF FACTS**

17 ***Gender Identity and Gender Dysphoria***

18 24. Gender identity is an innate, internal sense of one’s sex—*i.e.*, being male or  
19 female—and is a core, hard-wired aspect of a person’s identity. Everyone has a gender  
20 identity. Most people’s gender identity is consistent with the sex they were assigned at  
21 birth (“assigned sex”). Transgender people, however, have a gender identity that differs  
22 from their assigned sex. A transgender man is a man who was assigned female at birth but  
23 has a male gender identity. A transgender woman is a woman who was assigned male at  
24 birth but has a female gender identity.

25 25. Gender identity and transgender status are inextricably linked to one’s sex  
26 and are sex-related characteristics.

27 26. Around the onset of puberty, many transgender youth experience a level of  
28 psychological distress that significantly interferes with their overall wellbeing and ability

1 to function. For some transgender youth, that distress becomes debilitating and can lead  
2 to a severe decline in mental health.

3 27. That distress stems, in part, from the visible physical changes that  
4 accompany puberty. Those physical changes undermine a transgender young person's  
5 ability to live in a manner consistent with their gender identity, exacerbating their  
6 psychological distress. Even basic daily tasks, such as bathing and getting dressed, can  
7 become emotionally paralyzing because those tasks are painful reminders of the  
8 disconnect between a transgender young person's body and their gender identity. In  
9 addition, a transgender boy who has begun to develop breasts is more likely to be mistaken  
10 for female, a probability that serves as a constant source of anxiety. The psychological  
11 distress transgender youth experience is further heightened by the reality that some of  
12 those physical changes may be irreversible, permanently constricting their future  
13 treatment options and negatively affecting their quality of life. Consequently, timely  
14 treatment is critical.

15 28. This significant increase in distress causes many transgender youth who had  
16 previously delayed disclosing that they are transgender to set aside their fears of rejection  
17 and ask for help from family. With the permission of their parents or legal guardians, a  
18 transgender young person can begin accessing the health care services needed to alleviate  
19 their psychological distress. That distress is commonly referred to as gender dysphoria.

20 29. Gender dysphoria is a serious medical condition recognized by the  
21 American Psychiatric Association. Am. Psychiatric Ass'n, *Diagnostic and Statistical*  
22 *Manual of Mental Disorders* (5th ed. 2013) ("DSM-5").<sup>1</sup> Gender dysphoria refers to the

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23  
24 <sup>1</sup> Earlier editions of the DSM included a diagnosis referred to as "Gender Identity  
25 Disorder." The DSM-5 noted that Gender Dysphoria "is more descriptive than the  
26 previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical  
27 problem, not identity *per se*." Being diagnosed with gender dysphoria "implies no  
28 impairment in judgment, stability, reliability, or general social or vocational capabilities."  
Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender &*  
*Gender Variant Individuals* (2012), at <https://goo.gl/iXBM0S>.

1 distress that can result from the incongruence between a person’s gender identity and their  
2 assigned sex. If left untreated, gender dysphoria can cause anxiety, depression, and even  
3 self-harm or suicidal ideation. Gender dysphoria is often heightened “when physical  
4 interventions by means of hormones and/or surgery are not available.” *Id.* at 451. Access  
5 to appropriate, individualized medical care can mitigate and often prevent all of those  
6 symptoms.

7 30. Gender dysphoria is highly treatable. As with other medical conditions,  
8 health care providers follow a well-established standard of care when working with  
9 patients with gender dysphoria. The World Professional Association for Transgender  
10 Health (“WPATH”), and its predecessors, has set those standards for over four decades.

11 31. WPATH is an international, multidisciplinary, professional association of  
12 medical providers, mental health providers, researchers, and others, with a mission of  
13 promoting evidence-based care and research for transgender health, including the  
14 treatment of gender dysphoria. WPATH published the seventh and most recent edition of  
15 the Standards of Care in 2011.

16 32. Building on those standards and incorporating the most current research and  
17 clinical experience, the Endocrine Society released the Endocrine Treatment of Gender-  
18 Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice  
19 Guideline in September 2017. Those guidelines reaffirm the WPATH Standards of Care  
20 and offer medical providers practical guidance on providing transition-related care to  
21 patients with gender dysphoria, including young people.

22 33. The WPATH and the Endocrine Society standards have been adopted by  
23 many major associations of healthcare professionals, including the American Medical  
24 Association, American Psychiatric Association, and American Psychological Association,  
25 as well as associations of healthcare professionals focused on youth and adolescents, such  
26 as the American Academy of Pediatrics, American Association of Child and Adolescent  
27 Psychiatrists, and the Pediatric Endocrine Society. Federal courts across the country have  
28

1 also recognized the standards of these medical societies as setting the prevailing standard  
2 of care for the treatment of gender dysphoria.

3 34. A key component of treating gender dysphoria is a “social transition,” in  
4 which the individual lives in accordance with their gender identity in all aspects of life.  
5 Though specific to each person, a social transition typically includes adopting a new first  
6 name, using and asking others to use pronouns reflecting the individual’s true gender,  
7 wearing clothing typically associated with that gender, and using sex-specific facilities  
8 corresponding to that gender.

9 35. Studies and anecdotal evidence demonstrate the tremendous mental health  
10 benefits transgender youth experience following a social transition. One study found that  
11 the mental health profile of transgender children who underwent a social transition was  
12 nearly identical to that of their nontransgender peers. Kristina Olson et al., *Mental Health*  
13 *of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* 1 (2016).  
14 Another study found that transgender young people who were referred to by the correct  
15 name and pronoun throughout their daily lives demonstrated a seventy-seven percent  
16 decrease in severe depressive symptoms. Stephen Russell et al., *Chosen Name Use is*  
17 *Linked to Reduced Depressive Symptoms, Suicidal Ideation and Behavior among*  
18 *Transgender Youth*, 63 *J. of Adolescent Health* 503 (2018). The success of a social  
19 transition hinges on parents, extended family, peers, and others in the community treating  
20 the individual consistently with their gender identity.

21 36. Consistent with the standard of care, many transgender individuals also need  
22 health care services that alter their physical characteristics to bring their outer appearance  
23 into alignment with their gender identity. The purpose of the services is to enable a  
24 transgender person to live consistently with their gender identity in every aspect of their  
25 life. This alleviates a transgender individual’s gender dysphoria by reducing the  
26 incongruence between their assigned sex and gender identity. Those treatments also ensure  
27 that they are seen by others in a way that reflects their true gender, addressing a significant  
28 source of distress.

1           37. For transgender youth who have entered puberty, these health care services  
2 may include hormone-replacement therapy and surgery. Hormone-replacement therapy  
3 ensures that transgender people develop physical sex characteristics typical of their gender  
4 identity—not their assigned sex—such as facial and body hair in boys and breasts in girls.

5           38. The prevailing standards of care for the treatment of gender dysphoria  
6 recognize that transgender males may need male chest reconstruction surgery before  
7 turning eighteen. A prerequisite for male chest reconstruction surgery is a referral letter  
8 from the young person’s treating mental health provider. That letter provides the surgeon  
9 with a psychological assessment of the patient and the clinical rationale(s) for the referral  
10 and confirms that the patient is capable of consenting to the procedure.

11           39. The purpose of the surgery is functional. Following the surgery, a  
12 transgender male is more readily seen as male, improving the effectiveness of their social  
13 transition because they are less likely to be mistaken for female, which can significantly  
14 reduce the anxiety and dysphoria they experience. The surgery also improves their self-  
15 image because they no longer have to see or wear a binder to hide a part of their body that  
16 causes so much physical pain and psychological distress. As a result, transgender males  
17 who have had male chest reconstruction surgery experience fewer barriers to engaging in  
18 physical activity, among other physical and mental health benefits.

19           40. As with other treatments for gender dysphoria, both scientific research and  
20 clinical evidence highlight the importance of male chest reconstruction surgery in the  
21 treatment of gender dysphoria in transgender males.

22           ***The Federal Medicaid Act***

23           41. Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5, creates  
24 the Medicaid program—a cooperative federal-state program that provides health care  
25 services to specified categories of individuals meeting income and other criteria. The  
26 objective of Medicaid is to enable states to “furnish [] medical assistance” to individuals  
27 “whose income and resources are insufficient to meet the cost of necessary medical  
28

1 services” and to provide “rehabilitation and other services to help such families and  
2 individuals attain or retain capability for independence or self-care.” 42 U.S.C. § 1396-1.

3 42. States are not required to participate in the Medicaid program. States that  
4 choose to participate must comply with the federal Medicaid Act and its implementing  
5 regulations.

6 43. In return, the federal government reimburses each participating state for a  
7 substantial portion of the cost of providing medical assistance. *See id.* §§ 1396b(a),  
8 1396d(b), 1396(c).

9 44. The Medicaid Act requires each participating state to establish or designate  
10 a single state agency that is responsible for administering or supervising the administration  
11 of the state’s Medicaid program. *Id.* § 1396a(a)(5); 42 C.F.R. § 431.10.

12 45. In addition, each participating state must maintain a comprehensive plan for  
13 medical assistance approved by the Secretary of the U.S. Department of Health and  
14 Human Services. *Id.* § 1396a. The plan must describe the state’s program and affirm its  
15 commitment to comply with the Medicaid Act and its implementing regulations.

16 46. While a state is entitled to delegate certain of its responsibilities to other  
17 entities, such as local agencies or Medicaid managed care plans, the single state agency is  
18 ultimately responsible for ensuring compliance with all aspects of federal Medicaid law.  
19 *See, e.g.,* 42 C.F.R. §§ 438.100(a)(2), 438.100(d).

20 47. Under the Medicaid Act, a participating state must provide medical  
21 assistance to certain eligibility groups. *Id.* § 1396a(a)(10)(A)(i). One mandatory eligibility  
22 category is children and adolescents under age 18 whose household income is below 133%  
23 of the federal poverty level. *Id.* §§ 1396a(a)(10)(A)(i)(VI)-(VII), 1396a(l).

24 ***The Medicaid Early and Periodic Screening, Diagnostic and Treatment***  
25 ***Requirements***

26 48. The Medicaid Act requires states to cover certain services and gives them  
27 the option to cover other services. *Id.* §§ 1396a(a)(10)(A), 1396d.

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1           49. Each participating state must cover Early and Periodic Screening,  
2 Diagnostic and Treatment (“EPSDT”) for individuals under age 21. *Id.* §§  
3 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(r).

4           50. EPSDT’s fundamental purpose is to “[a]ssure that health problems are  
5 diagnosed and treated early, before they become more complex and their treatment more  
6 costly.” Ctrs. for Medicare & Medicaid Servs., *State Medicaid Manual* § 5010.B.

7           51. As part of providing EPSDT, states must:

- 8                   a. Inform all persons in the state who are under the age of 21 and who  
9                   are eligible for Medicaid of the availability of EPSDT as described  
10                   in 42 U.S.C. § 1396d(r);  
11                   b. Provide or arrange for screening services in all cases where they are  
12                   requested as required by § 1396d(r)(5); and  
13                   c. Arrange for (directly or through referral) corrective treatment for any  
14                   conditions identified by the screening services as required by  
15                   § 1396a(a)(43)(C).

16           52. Pursuant to the EPSDT requirements, states must cover four specific,  
17 separate categories of screening services: medical, vision, dental, and hearing. 42 U.S.C.  
18 § 1396d(r)(1)-(4).

19           53. States also must cover “[s]uch other necessary health care, diagnostic  
20 services, treatment, and other measures described in [§ 1396d(a)] to correct or ameliorate  
21 defects and physical and mental illnesses and conditions discovered by the screening  
22 services, whether or not such services are covered under the State plan.” *Id.* § 1396d(r)(5).  
23 In other words, the EPSDT mandate requires states to cover all necessary Medicaid  
24 services for individuals under age 21.

25           54. EPSDT services must be initiated in a timely manner, as the individual needs  
26 of the child require, and must be consistent with accepted medical standards, no later than  
27 six months from the date of request. 42 C.F.R. § 441.56(e).

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1 55. Surgery to treat gender dysphoria, including male chest reconstruction  
2 surgery, is an EPSDT service under § 1396d(r)(5).

3 ***The Medicaid Comparability Requirement***

4 56. Under the Medicaid Act, “the medical assistance made available to any  
5 individual . . . shall not be less in amount, duration or scope than the medical assistance  
6 made available to any other such individual.” *Id.* § 1396a(a)(10)(B)(i). *See also* 42 C.F.R.  
7 § 440.240(b).

8 57. A state “Medicaid agency may not arbitrarily deny or reduce the amount or  
9 scope of a required service . . . to an otherwise eligible recipient solely because of the  
10 diagnosis, type of illness, or condition.” 42 C.F.R. § 440.230(c).

11 58. States must also ensure that “[e]ach service must be sufficient in amount,  
12 duration, and scope to reasonably achieve its purpose.” 42 C.F.R. § 440.230(b).

13 ***The Arizona Medicaid Program***

14 59. Arizona participates in Medicaid, calling its program the Arizona Health  
15 Care Cost Containment System (“AHCCCS”). Ariz. Rev. Stat. §§ 36-2901 to 2972.

16 60. AHCCCS is also the name of the single-state Medicaid agency that is  
17 responsible for administering and implementing Arizona’s Medicaid program consistent  
18 with the requirements of federal law. *See* 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10.

19 61. AHCCCS contracts with private managed care plans to provide health care  
20 services to Medicaid enrollees. *See* AHCCCS, Available Health Plans,  
21 [https://www.azahcccs.gov/Members/ProgramsAndCoveredServices/availablehealthplans](https://www.azahcccs.gov/Members/ProgramsAndCoveredServices/availablehealthplans.html)  
22 [.html](https://www.azahcccs.gov/Members/ProgramsAndCoveredServices/availablehealthplans.html) (listing the eight Medicaid managed care plans operating in the State).

23 62. The federal government reimburses Arizona for approximately seventy  
24 percent of its expenditures on health care services. U.S. Dep’t of Health & Human Servs.,  
25 Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares  
26 for Medicaid, the Children’s Health Insurance Program, and Aid to Needy Aged, Blind, or  
27 Disabled Persons for October 1, 2020 Through September 30, 2021, 84 Fed. Reg. 66204,  
28 66204 (Dec. 3, 2019).

1            ***Arizona’s Exclusion on Surgical Care for Transgender Medicaid Beneficiaries***

2            63. Since 1982, an Arizona regulation (the “Challenged Exclusion”) has  
3 prohibited AHCCCS coverage for “gender reassignment surgeries.” Ariz. Admin. Code  
4 R9-22-205-B.4(a). The Challenged Exclusion has been applied since that time to deny  
5 coverage to transgender AHCCCS beneficiaries seeking male chest reconstruction  
6 surgery.

7            64. Arizona has singled out transition-related surgical care for an express  
8 exclusion even though AHCCCS covers the same surgical services to treat other health  
9 conditions. *See, e.g.*, Ariz. Admin. Code R9-22-2004(A)(4), AHCCCS Medical Policy  
10 Manual, § 310-C Breast Reconstruction After Mastectomy (2018),  
11 <https://www.azahcccs.gov/shared/Downloads/MedicalPolicyManual/300/310C.pdf>.

12            65. The Challenged Exclusion has no medical or scientific basis. To the  
13 contrary, for many transgender people, including adolescents, surgical care is medically  
14 necessary to treat gender dysphoria.

15            66. Contrary to the prevailing standard of care for the treatment of gender  
16 dysphoria, Defendant continues to enforce the Challenged Exclusion against transgender  
17 Medicaid recipients, even those covered under EPSDT, including D.H. and John.

18            67. On information and belief, many transgender AHCCCS recipients have  
19 been deterred from seeking prior authorization for transition-related surgeries because of  
20 their knowledge, or the knowledge of their medical providers, that the Challenged  
21 Exclusion would make such requests futile.

22            ***D.H.’s Gender Dysphoria and Need for Surgical Treatment***

23            68. D.H. was identified as female at birth but has known that he is male since  
24 age four.

25            69. As a young child, D.H. struggled to express to his mother that he is male.  
26 Nothing he said or did got the result he had hoped for; Janice, D.H.’s mother, continued  
27 to treat him as a girl. As a result, D.H. began exhibiting signs of significant psychological  
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1 distress including depression, prolonged crying episodes, anxiety, and insomnia. The  
2 severity of D.H.'s distress led his mother to seek the advice of mental health professionals.

3 70. When he was about eleven years old, the stress related to his gender  
4 identity—combined with the other stressors D.H. was trying to navigate—was so  
5 overwhelming that D.H. started losing his hair. He was eventually hospitalized for  
6 intensive psychiatric treatment.

7 71. Following his hospitalization, Janice enrolled D.H. in dance class, hoping it  
8 would provide D.H. a healthy way to cope with his distress. The movements were like  
9 therapy to him. Dance also became a social outlet; he made friends and felt a sense of  
10 belonging. It was the only thing in his life that could make him feel better. By the  
11 following year, D.H. was enrolled in three different dance classes: ballet, modern, and  
12 jazz.

13 72. That euphoria ended later that year once puberty began. Because of D.H.'s  
14 increasing chest size, dance no longer provided the same psychological release it once  
15 had. D.H. hated his body and everything that came with it. His thoughts and fears about  
16 experiencing puberty—with its associated physical changes that would take his body even  
17 further out of alignment with his gender identity—became all-consuming and significantly  
18 affected his ability to function. D.H. hid his changing body under baggy clothes and hated  
19 being perceived as a girl at school.

20 73. D.H. began using a variety of methods to flatten his chest, from multiple  
21 sports bras and Ace bandages to duct tape, so that his appearance better aligned with his  
22 gender identity. Those initial attempts were extremely uncomfortable and irritated his  
23 skin. Needing a better and safer solution, D.H. secretly bought his first binder, an article  
24 of clothing that compresses a person's chest, giving the appearance of a flat chest. Putting  
25 on the binder gave D.H. a sense of relief that no amount of therapy or medication had ever  
26 given him. It also eventually helped him gain the confidence to tell his mother what he  
27 struggled to express as a child: "I am a boy."  
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1           74.     Janice was supportive but sought out the advice of health care providers with  
2 experience working with transgender youth before making any decisions regarding next  
3 steps.

4           75.     Soon after disclosing to his mother that he is transgender at age thirteen,  
5 D.H. started seeing Tamar Reed, a therapist who specializes in treating gender dysphoria  
6 in children and adolescents. After carefully assessing D.H.'s mental health, Ms. Reed  
7 recommended that D.H. begin to transition to living as male. D.H. started using a male  
8 name and asked that others refer to him using that name and masculine pronouns. He also  
9 changed his hairstyle and started wearing boys' clothing.

10          76.     D.H.'s social transition provided him with much-needed psychological  
11 relief. He was regularly being referred to by a male name and pronouns and treated as  
12 male by those around him.

13          77.     Nevertheless, D.H.'s distress continued to build.

14          78.     A few months before his fourteenth birthday, the depression and suicidal  
15 ideation became overwhelming. Janice noticed a change in D.H.'s personality and that he  
16 had started distancing himself from his peers and activities that had previously brought  
17 him joy. Then, following a dance competition in January 2017, D.H.'s mental health  
18 decompensated significantly. Out of concern for his safety and wellbeing, D.H. was  
19 admitted to a ten-day intensive psychiatric treatment program.

20          79.     Following that treatment program, his health care providers recommended  
21 that he start hormone-replacement therapy to further his social transition—that treatment  
22 would both halt the effects of estrogen and make his appearance more typically masculine.  
23 D.H.'s pediatrician referred him to a pediatric endocrinologist for this treatment and  
24 related specialty care. D.H. received his first shot of testosterone in November 2017.

25          80.     The testosterone has caused D.H.'s voice to deepen, he has grown facial  
26 hair, and he has developed a more masculine musculature. The testosterone, however,  
27 cannot reverse the physical changes that had already occurred prior to D.H.'s transition,  
28 particularly chest development.

1           81. Because of the prominent appearance of his chest, D.H.'s binder continues  
2 to be one of his most important pieces of clothing. Although binders are not supposed to  
3 be worn for more than seven to eight hours a day, D.H. regularly wears his binder for ten  
4 hours a day, and at least twice per week D.H. wears it for longer than ten hours. On  
5 occasion, D.H. has worn his binder for multiple consecutive days. He even struggles to  
6 take the binder off at home, where feels the most comfortable being himself.

7           82. Keeping the binder on that long is uncomfortable and painful. The effort it  
8 takes to ignore the pain interferes with D.H.'s ability to focus on school, particularly  
9 homework, as D.H.'s discomfort compounds throughout the day. The compression from  
10 the binder also prevents him from breathing too deeply. In fact, D.H.'s current  
11 pediatrician, Dr. Andrew Cronyn, remarked that D.H.'s binder contributed to him  
12 developing asthma in adolescence and needing an inhaler to engage in extended physical  
13 activity.

14           83. While taking testosterone and using the binder have improved D.H.'s mental  
15 health, D.H. continues to experience significant gender dysphoria because of his chest.  
16 The benefits of using a binder were—and continue to be—temporary and imperfect. The  
17 binder dampens the distress D.H. feels during the day, but once he removes the binder at  
18 night, D.H.'s distress intensifies. And, even with the binder, D.H. continues to be mistaken  
19 for female, exacerbating his anxiety around interacting with unfamiliar people.

20           84. D.H.'s distress began compounding again and, in September 2018, D.H. was  
21 placed in an intensive psychiatric treatment program for a third time due to suicidal  
22 ideation. D.H. was fifteen-years old at that time.

23           85. The mental health treatment D.H. received following that hospitalization  
24 helped him develop more effective strategies for coping with the distress caused by gender  
25 dysphoria and the appearance of his chest. Even with those strategies, D.H.'s distress still  
26 has a significant effect on his mental health, daily life, and ability to function. D.H. still  
27 struggles with an ever-present anxiety that the appearance of his chest will cause others to  
28 treat him as female. This prevents him from participating in social activities with his

1 friends and caused him to quit dance over a year ago because he gets winded too easily to  
2 dance with a binder, but the dysphoria is too great for him to dance without one. His  
3 dysphoria also makes him extremely uncomfortable revealing his body even when he is  
4 by himself or in a doctor's office.

5 86. In 2019, D.H.'s pediatrician referred D.H. to a surgeon, Dr. Ethan Larson,  
6 who could perform male chest reconstruction surgery. D.H.'s health care providers  
7 determined that the surgery was medically necessary to alleviate D.H.'s gender dysphoria.  
8 Dr. Larson evaluated D.H. and agreed he would be a good candidate for the surgery.

9 87. Dr. Larson requested prior authorization for the surgery from  
10 UnitedHealthcare, D.H.'s Medicaid managed care plan. UnitedHealthcare denied prior  
11 authorization for the surgery. D.H. appealed the denial of the surgery, and on July 5, 2019,  
12 UnitedHealthcare upheld its denial of coverage pursuant to the Challenged Exclusion.

13 88. Due to her income, Janice cannot afford to pay for John to undergo male  
14 chest reconstruction surgery without AHCCCS covering the procedure.

15 ***John's Gender Dysphoria and Need for Surgical Treatment***

16 89. John was identified as female at birth. His grandmother, Susan, has cared  
17 for him since he was two years old and continues to be his legal guardian.

18 90. As a child, John did not like dresses or typical girl toys, but was never able  
19 to pinpoint a reason.

20 91. Approximately three years ago, just before John turned twelve, he started  
21 experiencing the first signs of puberty. Those signs were coupled with an almost  
22 immediate and significant decline in his mental health. He experienced symptoms of  
23 severe depression, such as a constant and overwhelming sadness, distancing himself from  
24 his friends, and suicidal ideation. Unable to describe his feelings and uncertain about how  
25 Susan would respond even if he could, John kept those emotions bottled up.

26 92. Worried about how Susan and others in his family might react, especially  
27 given their strong religious faith, John waited nearly six months before telling his older  
28 sister that he is transgender. He eventually told Susan as well.

1           93. Over the course of the following year, John’s 7th grade year, Susan and John  
2 had many extensive conversations to help her better understand what he was experiencing  
3 and how she could help him.

4           94. John continued to experience significant gender dysphoria throughout his  
5 7th grade year. Although John continued to wear the boys’ clothes he always had and  
6 started using a male name, his peers, teachers, and family did not consistently refer to him  
7 by that name and male pronouns. Not being consistently treated as male caused John to  
8 be stressed the entire school year.

9           95. Wanting to prevent a repeat of the prior year, in the summer prior to starting  
10 8th grade, John e-mailed each of his teachers to inform them that he is transgender and  
11 ask that they refer to him as John and by male pronouns. This helped set the tone; in 8th  
12 grade, John was more regularly referred to by the correct name and pronouns—both in  
13 school and out.

14           96. Around that same time, at thirteen years old, John’s pediatrician referred  
15 him to the Gender Support Program at Phoenix Children’s Hospital, a clinic specializing  
16 in healthcare services for transgender young people.

17           97. John had his first appointment at Phoenix Children’s Hospital in November  
18 2018, where he began to see Dr. Veenod Chulani, an adolescent-medicine specialist. Dr.  
19 Chulani referred John to a mental health provider, who formally diagnosed John with  
20 gender dysphoria. Soon thereafter John started taking medication to stop his menstrual  
21 cycle, which helped relieve some of the gender dysphoria he was experiencing at the time.  
22 In May 2019, Dr. Chulani and John’s therapist determined that it was medically necessary  
23 for him to start taking testosterone, which he started the following month. John is pleased  
24 with how the testosterone therapy has changed his voice and other aspects of his body.  
25 Transitioning has also boosted his confidence, and now far fewer people mistake him for  
26 female.

27           98. His transition and testosterone treatment, however, have not lessened the  
28 intense dysphoria he experiences regarding the appearance of his chest. Starting in 2018,

1 John began binding his chest using a variety of methods, such as multiple sports bras and  
2 constrictive undergarments. He bought his first binder in December 2019.

3 99. Every morning, the first thing John does is to put on a binder, which he often  
4 wears for longer than the recommended eight-hour maximum. Even with the binder, John  
5 still feels uncomfortable being outside without multiple layers of clothing, including a  
6 hooded sweatshirt that he wears nearly every day. The binder constricts his breathing,  
7 which in combination with his asthma, requires him to take far more breaks than his peers  
8 when engaging in physical activity.

9 100. Although the binder sometimes allows him to forget about his chest—a  
10 sense of relief he treasures—the hardest part of John’s daily routine is removing his binder.  
11 The dysphoria John experiences regarding his chest comes flooding back, a difficult  
12 reminder that his body still does not match who he is. John’s chest-related dysphoria keeps  
13 him awake at night at least once a week; putting on his binder temporarily is the only way  
14 he can calm his distress, a task he often tries to do without opening his eyes or turning on  
15 the lights so that he does not have to see his bare chest.

16 101. Having top surgery would have a significant positive impact on John’s life.  
17 John would finally be able to look at himself in the mirror and be in public without having  
18 to wear so many layers of clothing on top of his binder, which would benefit both his  
19 mental and physical health. John would gain confidence that will help improve his social  
20 functioning and broaden his horizons, challenging himself to try to new things.

21 102. Around February 2020, Dr. Chulani recommended that John undergo male  
22 chest reconstruction surgery to alleviate the dysphoria caused by the shape and appearance  
23 of his chest. At that time, Dr. Chulani also referred John to another mental health provider  
24 to assist John with the increased psychological distress he was experiencing and to  
25 evaluate John for male chest reconstruction surgery as required by the prevailing standards  
26 of care.

27 103. On July 2, 2020, John received a referral letter from his mental health  
28 provider for the surgery, as required by the standards of care.



1 applicable to the Class. This action raises questions of law common to all members of the  
2 Class, including: (a) whether the Challenged Exclusion, facially and as applied to  
3 members of the Class, violates the EPSDT and comparability provisions of the federal  
4 Medicaid Act; (b) whether the Challenged Exclusion, facially and as applied to members  
5 of the Class, violates the prohibition on sex discrimination under Section 1557 of the  
6 Patient Protection and Affordable Care Act; and (c) whether the Challenged Exclusion,  
7 facially and as applied to members of the Class, violates the Equal Protection Clause of  
8 the Fourteenth Amendment to the U.S. Constitution. All members of the Class share a  
9 common question of fact: Would their male chest reconstruction surgery be covered by  
10 AHCCCS but for Defendant's continuing enforcement of the Challenged Exclusion?

11       110. The Class satisfies the typicality requirements of Fed. R. Civ. P. 23(a)(3)  
12 because the named Plaintiffs' claims are typical of the claims of the Class. Plaintiffs are  
13 members of the Class, are individuals who have been unable and will be unable to obtain  
14 AHCCCS coverage for medically necessary male chest reconstruction surgery because of  
15 the Challenged Exclusion, and as a result, have faced or will face delayed or denied access  
16 to these medically necessary treatments. Plaintiffs and members of the Class share the  
17 same legal claims under Section 1557, the Medicaid Act, and the Equal Protection Clause  
18 of the Fourteenth Amendment to the U.S. Constitution.

19       111. The Class satisfies the adequacy requirements of Fed. R. Civ. P. 23(a)(4)  
20 because the class representatives will fairly and adequately represent the interests of the  
21 Class. The named Plaintiffs seek the same declaratory and injunctive relief as the other  
22 members of the Class: a declaratory judgment that the Challenged Exclusion violates the  
23 Medicaid Act, Section 1557, and the Equal Protection Clause, and preliminary and  
24 permanent injunctions enjoining Defendant from enforcing the Challenged Exclusion. The  
25 named Plaintiffs seek this relief to benefit themselves and to protect other low-income  
26 transgender Arizona residents who are or will be enrolled in AHCCCS. In asserting their  
27 own rights, the named Plaintiffs will vindicate the rights of all members of the Class fairly  
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1 and adequately. The class representatives have no interests that are antagonistic to the  
2 interests of other members of the Class.

3 112. The Class further satisfies the requirements of Fed. R. Civ. P. 23(a)(4)  
4 because counsel for the Class will fairly and adequately represent the interests of the Class.  
5 The Class is represented by counsel from King & Spalding LLP and Perkins Coie LLP,  
6 two of the largest law firms in the country; the National Center for Lesbian Rights  
7 (“NCLR”), a legal organization dedicated to advancing the civil and human rights of the  
8 LGBTQ community; and the National Health Law Program (“NHLP”), a non-profit law  
9 firm dedicated to protecting and advancing the health rights of low-income and  
10 underserved individuals and families. Collectively, counsel has significant experience  
11 litigating civil rights cases, including transgender rights cases, Medicaid EPSDT cases,  
12 and complex class actions in federal court.

13 113. The Class also satisfies the requirements of Fed. R. Civ. P. 23(b)(2) because  
14 Defendant has acted or refused to act on grounds that apply generally to the Class, so that  
15 final injunctive or corresponding declaratory relief is appropriate respecting the class as a  
16 whole. The Class exhibits sufficient cohesiveness because its members have suffered  
17 group, as opposed to individual, injuries, namely, the Challenged Exclusion’s categorical  
18 denial of male chest reconstruction surgery. Members of the Class are bound together by  
19 the significant common traits that they are all transgender, they have gender dysphoria,  
20 and they need male chest reconstruction surgery to treat their gender dysphoria.

21 114. Further, by definition, members of the Class are low-income individuals  
22 who would otherwise have difficulty affording counsel to individually challenge the  
23 Challenged Exclusion. Therefore, a class action is the ideal—and the only—method by  
24 which the Class may vindicate the denial of their civil rights.

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**COUNT I**

**(Violation of the Medicaid Act’s EPSDT Requirements,  
42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(A)-(C), 1396d(a)(4)(B), and 1396d(r)(5))**

115. Plaintiffs reallege and incorporate by reference paragraphs 1 to 114 of this Complaint.

116. The Challenged Exclusion, Arizona Administrative Code R9-22-205-B.4(a), and Defendant’s refusal, based on the Challenged Exclusion, to provide coverage for surgical treatments and services for gender dysphoria to Plaintiffs and members of the Class, violate the Medicaid Act’s EPSDT requirements, 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(A)-(C), 1396d(a)(4)(B), and 1396d(r)(5), which are enforceable by Plaintiffs under 42 U.S.C. § 1983.

**COUNT II**

**(Violation of the Medicaid Act’s Comparability Requirement,  
42 U.S.C. § 1396a(a)(10)(B))**

117. Plaintiffs reallege and incorporate by reference paragraphs 1 to 114 of this Complaint.

118. The Challenged Exclusion, Arizona Administrative Code R9-22-205-B.4(a), and Defendant’s refusal, based on the Challenged Exclusion, to provide coverage for surgical treatments and services for gender dysphoria to Plaintiffs and members of the Class, while covering the same services for other AHCCCS beneficiaries with different diagnoses, violate the Medicaid Act’s comparability requirement, 42 U.S.C. § 1396a(a)(10)(B), which is enforceable by Plaintiffs under 42 U.S.C. § 1983.

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**COUNT III**

**(Unlawful Discrimination on the Basis of Sex in Violation of Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116)**

119. Plaintiffs reallege and incorporate by reference paragraphs 1 to 114 of this Complaint.

120. Under Section 1557 of the Affordable Care Act, “an individual shall not . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments)” on the basis of sex. 42 U.S.C. § 18116.

121. Section 1557’s prohibitions on sex discrimination are enforceable by Plaintiffs in a judicial action under 20 U.S.C. § 1683, which Section 1557 incorporates by reference. 42 U.S.C. § 18116(a). The Challenged Exclusion, Arizona Administrative Code R9-22-205-B.4(a), on its face and as applied to Plaintiffs and members of the Class, violates Section 1557’s prohibition against discrimination on the basis of sex in a health program or activity receiving federal financial assistance.

122. Plaintiffs and the Class have been and are continuing to be injured by Defendants’ application of the Challenged Exclusion to deny them AHCCCS coverage for surgical treatments for gender dysphoria.

**COUNT IV**

**(Violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution)**

123. Plaintiffs reallege and incorporate by reference paragraphs 1 to 114 of this Complaint.

124. First, the Challenged Exclusion, Arizona Administrative Code R9-22-205-B.4(a), on its face and as applied to Plaintiffs and members of the Class, impermissibly discriminates against Plaintiffs and members of the Class on the basis of sex and violates

1 their right to equal protection of the laws under the Equal Protection Clause of the  
2 Fourteenth Amendment to the United States Constitution.

3 125. Second, the Challenged Exclusion, Arizona Administrative Code R9-22-  
4 205-B.4(a), on its face and as applied to Plaintiffs, impermissibly discriminates against  
5 Plaintiffs and members of the Class for being transgender and violates their right to equal  
6 protection of the laws under the Fourteenth Amendment to the United States Constitution.

7 126. Defendant's promulgation and continued enforcement of the Challenged  
8 Exclusion did not, and does not, serve any rational, legitimate, important, or compelling  
9 state interest. Rather, the Challenged Exclusion serves only to prevent Plaintiffs and  
10 members of the Class from obtaining medically necessary surgical care and services to  
11 treat their gender dysphoria, complete their gender transitions, and live as their authentic  
12 selves.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs respectfully request that this Court:

15 A. Certify a Class consisting of: All transgender individuals under age 21 who  
16 are or will be enrolled in AHCCCS, have or will have a diagnosis of gender dysphoria,  
17 and are seeking or will seek male chest reconstruction surgery following a determination  
18 by their respective health care providers that the procedure is necessary to treat their  
19 gender dysphoria.

20 B. Name D.H. and John as representatives of the Class, and appoint Plaintiffs'  
21 counsel as King & Spalding LLP, Perkins Coie LLP, the NCLR, and NHeLP;

22 C. On behalf of Plaintiffs and all similarly situated individuals, issue  
23 preliminary and permanent injunctions prohibiting Defendant from any further  
24 enforcement or application of the Challenged Exclusion, Arizona Administrative Code  
25 R9-22-205-B.4(a), and directing Defendant and their agents to provide Medicaid coverage  
26 for medically necessary male chest reconstruction surgery;

27 D. On behalf of Plaintiffs and all similarly situated individuals, enter a  
28 declaratory judgment that the denial of coverage for male chest reconstruction surgery:

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1. Violates the Medicaid Act’s EPSDT requirements, 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(A), (C), 1396d(a)(4)(B), and 1396d(r)(5);
  2. Violates the Medicaid Act’s comparability requirement, 42 U.S.C. § 1396a(a)(10)(B);
  3. Violates Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116, by discriminating against Plaintiffs and all similarly situated individuals on the basis of sex; and
  4. Violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution by discriminating against Plaintiffs and all similarly situated individuals on the basis of sex (including sex stereotyping, gender identity, being transgender, and undergoing a gender transition), and for being transgender;
- E. Waive the requirement for the posting of a bond of security for the entry of temporary and preliminary relief;
- F. Award Plaintiffs their reasonable attorneys’ fees, costs, and expenses under 42 U.S.C. § 1988 or other applicable statutes; and
- G. Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: AUGUST 6, 2020

**PERKINS COIE LLP**

/s/ Daniel C. Barr  
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Janet M. Howe (Bar No. 034615)  
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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff**  
(s): **D. H. ; John Doe**

**Defendant**  
(s): **Jami Snyder , Director  
of the Arizona Health  
Care Cost Containment  
System, in her official  
capacity**

County of Residence: Pima  
County Where Claim For Relief  
Arose: Pima

County of Residence: Maricopa

Plaintiff's Atty(s):  
**Daniel C. Barr  
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602-351-8085**

Defendant's Atty(s):

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**310-204-6010**

**Catherine McKee**  
**National Health Law Program**  
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**Los Angeles, California 90010**  
**310-204-6010**

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II. Basis of  
Jurisdiction:

**3. Federal Question (U.S. not a party)**

III. Citizenship of  
Principal Parties  
(Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **440 Other Civil Rights**

VI. Cause of Action: **Arizona Administrative Code R9-22-205-B.4(a) violates the Medicaid Act's EPSDT requirements, 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(A), (C), 1396d(a)(4)(B), and 1396d(r)(5); the Medicaid Act's comparability requirement, 42 U.S.C. § 1396a(a)(10)(B); Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116; and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.**

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **No**

VIII. This case is not related to another case.

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**Signature: Daniel C. Barr**

**Date: 8/6/2020**

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the  
District of Arizona

D.H. and John Doe

Plaintiff

v.

Jami Snyder, Director of AHCCCS

Defendant

Civil Action No. 4:20-cv-00335-SHR

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Loren Schechter, M.D.

(Name of person to whom this subpoena is directed)

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached Exhibit A.

Place: BurnsBarton PLC 2201 East Camelback, Ste. 360 Phoenix, AZ 85016	Date and Time: 05/21/2021 9:00 am
--	--------------------------------------

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/03/2021

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

  
Attorney's Signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Jami Snyder, Director of AHCCCS, who issues or requests this subpoena, are:

Kathryn King, BurnsBarton, 2201 E. Camelback, Ste. 360 Phoenix, AZ 85016 kate@burnsbarton.com 602-753-4500

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 4:20-cv-00335-SHR

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_ *Server's signature*

\_\_\_\_\_ *Printed name and title*

\_\_\_\_\_ *Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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**EXHIBIT A**  
**ITEMS TO BE PRODUCED**

1. All scientific studies, research, and clinical evidence that identify the long-term health benefits of male chest reconstruction surgery for individuals with gender dysphoria under the age of 21.
2. All generally accepted scientific guidelines, research, or publications that describe the criteria that should be applied to determine that male chest reconstruction surgery is medically necessary for transgender males under the age of 21 who suffer from gender dysphoria.
3. All scientific studies, research, and clinical evidence showing:
  - a. whether or not a statistically significant number of natal females with gender dysphoria will seek male chest reconstruction surgery;
  - b. whether or not male chest reconstruction surgery is medically necessary for a statistically significant number of natal females with gender dysphoria;
  - c. whether or not the determination of male chest reconstruction surgery as medically necessary for a natal female with gender dysphoria is a fact-intensive inquiry that must take into account the unique circumstances of each individual;
  - d. whether or not hormone treatment is one way to alleviate the effects of gender dysphoria;
  - e. whether or not gender dysphoria in childhood persists into adulthood (and any statistics demonstrating how often it persists into adulthood);
  - f. whether or not gender dysphoria in adolescents persists into adulthood (and any statistics demonstrating how often it persists into adulthood);  
and
  - g. whether or not the brains of individuals under the age of 21 are still developing.

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4. All scientific studies, research, and clinical evidence that support the allegations and conclusions found in paragraphs 38, 39, and 40 of the Complaint. (See attached Complaint, Exhibit 1).

5. All studies or reports that support the Plaintiffs’ contention that “Transgender people...experience disproportionately high rates of harassment and discrimination in all aspects of their lives” and therefore “would be reluctant to join a lawsuit that might publicize their circumstances.”

# **EXHIBIT 1**

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11 *Counsel for Plaintiffs and the Class*  
12 (Additional Counsel on Signature Page)

13 UNITED STATES DISTRICT COURT  
14 DISTRICT OF ARIZONA

15 D.H., by and through his mother, Janice )  
16 Hennessy-Waller; and John Doe, by his )  
17 guardian and next friend, Susan Doe, on ) No.  
18 behalf of themselves and all others )  
19 similarly situated, ) **COMPLAINT FOR**  
20 ) **DECLARATORY AND**  
21 ) **INJUNCTIVE RELIEF**  
22 )  
23 Plaintiffs, )  
24 vs. )  
25 Jami Snyder, Director of the Arizona )  
26 Health Care Cost Containment System, )  
27 in her official capacity, )  
28 Defendant. )

23 Plaintiffs D.H. and John Doe respectfully state and allege as follows

24 **PRELIMINARY STATEMENT**

25 1. D.H. is a seventeen-year-old transgender Arizona resident enrolled in  
26 Arizona’s Medicaid program, known as the Arizona Health Care Cost Containment  
27 System (“AHCCCS”). John Doe is a fifteen-year-old transgender Arizona resident  
28 enrolled in AHCCCS. D.H. and John bring this lawsuit on behalf of themselves and

1 similarly situated individuals to challenge Arizona’s categorical prohibition of coverage  
2 of medically necessary treatments for gender dysphoria, specifically, male chest  
3 reconstruction surgery.

4         2.       Gender dysphoria refers to the distress that can result from the incongruence  
5 between a person’s gender identity and their assigned sex at birth. Gender dysphoria is a  
6 serious medical condition that, if left untreated, can cause anxiety, depression, and even  
7 self-harm or suicidal ideation.

8         3.       Gender-confirming medical treatments—including male chest  
9 reconstruction surgery—are safe, effective, and medically necessary to treat gender  
10 dysphoria in many transgender individuals, including adolescents.

11        4.       A longstanding Arizona regulation, promulgated in 1982 and enforced by  
12 AHCCCS, expressly prohibits Medicaid coverage for “gender reassignment surgeries.”  
13 Ariz. Admin. Code R9-22-205-B.4(a) (“Challenged Exclusion”). Because of the  
14 Challenged Exclusion, D.H., John, and similarly situated individuals have been denied or  
15 prevented from obtaining Medicaid coverage for medically necessary male chest  
16 reconstruction surgery.

17        5.       Both D.H. and John have been diagnosed with gender dysphoria. Although  
18 identified as female at birth, D.H. and John are male and live as male in every aspect of  
19 their lives.

20        6.       D.H. first became aware of his male gender identity around the age of four.  
21 Frustrated and angry at his inability to communicate that he was transgender to his mother,  
22 D.H. developed significant psychological distress at an early age, including severe anxiety  
23 and suicidal ideation. Concerned for his safety and well-being, D.H.’s mother, Janice,  
24 placed him in a psychiatric treatment facility on several occasions.

25        7.       At thirteen, D.H. developed the confidence to tell Janice that he is  
26 transgender. Janice then arranged for D.H. to see a mental health provider with experience  
27 working with transgender youth. With the recommendation and support of his health care  
28 providers, D.H. began to transition to live in accordance with his gender identity. As part

1 of the treatment for his gender dysphoria, D.H. started taking testosterone to masculinize  
2 his body

3 8. Just before turning thirteen, D.H. started wearing a binder to flatten his  
4 chest, which alleviates his gender dysphoria, but significantly impairs his ability to  
5 function. The pain and discomfort caused by wearing the binder interferes with D.H.'s  
6 ability to focus on school and homework. The binder also prevents him from engaging in  
7 prolonged or intense physical activity, especially dance, which had previously been a  
8 source of relief for D.H.

9 9. Last year, D.H.'s pediatrician and his therapist recommended that he obtain  
10 male chest reconstruction surgery to further alleviate his gender dysphoria. However, prior  
11 authorization for this surgery was denied due to the Challenged Exclusion.

12 10. John started becoming aware of his male gender identity when he was about  
13 eleven years old and his body began showing the first signs of puberty. Worried that his  
14 family would reject him for being transgender, John kept everything he was going through  
15 to himself and began to experience depression and suicidal ideation.

16 11. After about six months, John recognized that he needed help and reached  
17 out to his sister, and then eventually told his grandmother, Susan, both of whom were  
18 supportive. John started using a male name and pronouns, which helped to alleviate his  
19 gender dysphoria to some degree.

20 12. In November 2018, John began seeing a specialist at the Gender Support  
21 Program at Phoenix Children's Hospital.

22 13. Like D.H., John also wears a binder, which is very tight and restrictive. Even  
23 with the binder, John feels uncomfortable being outside without layers of clothing. He  
24 wears a hooded sweatshirt nearly every day, including in the summer. John's chest also  
25 hinders his social interactions. For example, John wears his binder and a t-shirt when at  
26 the pool, often having to answer uncomfortable questions about why he insists on wearing  
27 a t-shirt in the water.

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**THE PARTIES**

21. Plaintiff D.H. is a seventeen-year-old boy who has been diagnosed with gender dysphoria. D.H. resides in Pima County, Arizona and brings this action through his mother, Janice Hennessy-Waller. Due to his family’s limited income, D.H. is eligible for Arizona’s Medicaid program. D.H. has been enrolled in Arizona’s Medicaid program at all relevant times.

22. Plaintiff John Doe is a fifteen-year-old boy who has been diagnosed with gender dysphoria. John resides in Maricopa County, Arizona and brings this action through his grandmother and legal guardian, Susan Doe. Due to his family’s limited income, John is eligible for Arizona’s Medicaid program. John has been enrolled in Arizona’s Medicaid program at all relevant times.

23. Defendant Jami Snyder is the Director of AHCCCS, the single-state agency that administers Arizona’s Medicaid program. As such, she has a duty to ensure that the AHCCCS program is administered in accordance with federal Medicaid law. Defendant Snyder is sued in her official capacity.

**STATEMENT OF FACTS**

***Gender Identity and Gender Dysphoria***

24. Gender identity is an innate, internal sense of one’s sex—*i.e.*, being male or female—and is a core, hard-wired aspect of a person’s identity. Everyone has a gender identity. Most people’s gender identity is consistent with the sex they were assigned at birth (“assigned sex”). Transgender people, however, have a gender identity that differs from their assigned sex. A transgender man is a man who was assigned female at birth but has a male gender identity. A transgender woman is a woman who was assigned male at birth but has a female gender identity.

25. Gender identity and transgender status are inextricably linked to one’s sex and are sex-related characteristics.

26. Around the onset of puberty, many transgender youth experience a level of psychological distress that significantly interferes with their overall wellbeing and ability

1 to function. For some transgender youth, that distress becomes debilitating and can lead  
2 to a severe decline in mental health.

3 27. That distress stems, in part, from the visible physical changes that  
4 accompany puberty. Those physical changes undermine a transgender young person's  
5 ability to live in a manner consistent with their gender identity, exacerbating their  
6 psychological distress. Even basic daily tasks, such as bathing and getting dressed, can  
7 become emotionally paralyzing because those tasks are painful reminders of the  
8 disconnect between a transgender young person's body and their gender identity. In  
9 addition, a transgender boy who has begun to develop breasts is more likely to be mistaken  
10 for female, a probability that serves as a constant source of anxiety. The psychological  
11 distress transgender youth experience is further heightened by the reality that some of  
12 those physical changes may be irreversible, permanently constricting their future  
13 treatment options and negatively affecting their quality of life. Consequently, timely  
14 treatment is critical.

15 28. This significant increase in distress causes many transgender youth who had  
16 previously delayed disclosing that they are transgender to set aside their fears of rejection  
17 and ask for help from family. With the permission of their parents or legal guardians, a  
18 transgender young person can begin accessing the health care services needed to alleviate  
19 their psychological distress. That distress is commonly referred to as gender dysphoria.

20 29. Gender dysphoria is a serious medical condition recognized by the  
21 American Psychiatric Association. Am. Psychiatric Ass'n, *Diagnostic and Statistical*  
22 *Manual of Mental Disorders* (5th ed. 2013) ("DSM-5").<sup>1</sup> Gender dysphoria refers to the

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24 <sup>1</sup> Earlier editions of the DSM included a diagnosis referred to as "Gender Identity  
25 Disorder." The DSM-5 noted that Gender Dysphoria "is more descriptive than the  
26 previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical  
27 problem, not identity *per se*." Being diagnosed with gender dysphoria "implies no  
28 impairment in judgment, stability, reliability, or general social or vocational capabilities."  
Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender &*  
*Gender Variant Individuals* (2012), at <https://goo.gl/iXBM0S>.

1 distress that can result from the incongruence between a person’s gender identity and their  
2 assigned sex. If left untreated, gender dysphoria can cause anxiety, depression, and even  
3 self-harm or suicidal ideation. Gender dysphoria is often heightened “when physical  
4 interventions by means of hormones and/or surgery are not available.” *Id.* at 451. Access  
5 to appropriate, individualized medical care can mitigate and often prevent all of those  
6 symptoms.

7 30. Gender dysphoria is highly treatable. As with other medical conditions,  
8 health care providers follow a well-established standard of care when working with  
9 patients with gender dysphoria. The World Professional Association for Transgender  
10 Health (“WPATH”), and its predecessors, has set those standards for over four decades.

11 31. WPATH is an international, multidisciplinary, professional association of  
12 medical providers, mental health providers, researchers, and others, with a mission of  
13 promoting evidence-based care and research for transgender health, including the  
14 treatment of gender dysphoria. WPATH published the seventh and most recent edition of  
15 the Standards of Care in 2011.

16 32. Building on those standards and incorporating the most current research and  
17 clinical experience, the Endocrine Society released the Endocrine Treatment of Gender-  
18 Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice  
19 Guideline in September 2017. Those guidelines reaffirm the WPATH Standards of Care  
20 and offer medical providers practical guidance on providing transition-related care to  
21 patients with gender dysphoria, including young people.

22 33. The WPATH and the Endocrine Society standards have been adopted by  
23 many major associations of healthcare professionals, including the American Medical  
24 Association, American Psychiatric Association, and American Psychological Association,  
25 as well as associations of healthcare professionals focused on youth and adolescents, such  
26 as the American Academy of Pediatrics, American Association of Child and Adolescent  
27 Psychiatrists, and the Pediatric Endocrine Society. Federal courts across the country have  
28

1 also recognized the standards of these medical societies as setting the prevailing standard  
2 of care for the treatment of gender dysphoria.

3 34. A key component of treating gender dysphoria is a “social transition,” in  
4 which the individual lives in accordance with their gender identity in all aspects of life.  
5 Though specific to each person, a social transition typically includes adopting a new first  
6 name, using and asking others to use pronouns reflecting the individual’s true gender,  
7 wearing clothing typically associated with that gender, and using sex-specific facilities  
8 corresponding to that gender.

9 35. Studies and anecdotal evidence demonstrate the tremendous mental health  
10 benefits transgender youth experience following a social transition. One study found that  
11 the mental health profile of transgender children who underwent a social transition was  
12 nearly identical to that of their nontransgender peers. Kristina Olson et al., *Mental Health*  
13 *of Transgender Children Who Are Supported in Their Identities*, 137 *Pediatrics* 1 (2016).  
14 Another study found that transgender young people who were referred to by the correct  
15 name and pronoun throughout their daily lives demonstrated a seventy-seven percent  
16 decrease in severe depressive symptoms. Stephen Russell et al., *Chosen Name Use is*  
17 *Linked to Reduced Depressive Symptoms, Suicidal Ideation and Behavior among*  
18 *Transgender Youth*, 63 *J. of Adolescent Health* 503 (2018). The success of a social  
19 transition hinges on parents, extended family, peers, and others in the community treating  
20 the individual consistently with their gender identity.

21 36. Consistent with the standard of care, many transgender individuals also need  
22 health care services that alter their physical characteristics to bring their outer appearance  
23 into alignment with their gender identity. The purpose of the services is to enable a  
24 transgender person to live consistently with their gender identity in every aspect of their  
25 life. This alleviates a transgender individual’s gender dysphoria by reducing the  
26 incongruence between their assigned sex and gender identity. Those treatments also ensure  
27 that they are seen by others in a way that reflects their true gender, addressing a significant  
28 source of distress.

1           37. For transgender youth who have entered puberty, these health care services  
2 may include hormone-replacement therapy and surgery. Hormone-replacement therapy  
3 ensures that transgender people develop physical sex characteristics typical of their gender  
4 identity—not their assigned sex—such as facial and body hair in boys and breasts in girls.

5           38. The prevailing standards of care for the treatment of gender dysphoria  
6 recognize that transgender males may need male chest reconstruction surgery before  
7 turning eighteen. A prerequisite for male chest reconstruction surgery is a referral letter  
8 from the young person’s treating mental health provider. That letter provides the surgeon  
9 with a psychological assessment of the patient and the clinical rationale(s) for the referral  
10 and confirms that the patient is capable of consenting to the procedure.

11           39. The purpose of the surgery is functional. Following the surgery, a  
12 transgender male is more readily seen as male, improving the effectiveness of their social  
13 transition because they are less likely to be mistaken for female, which can significantly  
14 reduce the anxiety and dysphoria they experience. The surgery also improves their self-  
15 image because they no longer have to see or wear a binder to hide a part of their body that  
16 causes so much physical pain and psychological distress. As a result, transgender males  
17 who have had male chest reconstruction surgery experience fewer barriers to engaging in  
18 physical activity, among other physical and mental health benefits.

19           40. As with other treatments for gender dysphoria, both scientific research and  
20 clinical evidence highlight the importance of male chest reconstruction surgery in the  
21 treatment of gender dysphoria in transgender males.

22           ***The Federal Medicaid Act***

23           41. Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5, creates  
24 the Medicaid program—a cooperative federal-state program that provides health care  
25 services to specified categories of individuals meeting income and other criteria. The  
26 objective of Medicaid is to enable states to “furnish [] medical assistance” to individuals  
27 “whose income and resources are insufficient to meet the cost of necessary medical  
28

1 services” and to provide “rehabilitation and other services to help such families and  
2 individuals attain or retain capability for independence or self-care.” 42 U.S.C. § 1396-1.

3 42. States are not required to participate in the Medicaid program. States that  
4 choose to participate must comply with the federal Medicaid Act and its implementing  
5 regulations.

6 43. In return, the federal government reimburses each participating state for a  
7 substantial portion of the cost of providing medical assistance. *See id.* §§ 1396b(a),  
8 1396d(b), 1396(c).

9 44. The Medicaid Act requires each participating state to establish or designate  
10 a single state agency that is responsible for administering or supervising the administration  
11 of the state’s Medicaid program. *Id.* § 1396a(a)(5); 42 C.F.R. § 431.10.

12 45. In addition, each participating state must maintain a comprehensive plan for  
13 medical assistance approved by the Secretary of the U.S. Department of Health and  
14 Human Services. *Id.* § 1396a. The plan must describe the state’s program and affirm its  
15 commitment to comply with the Medicaid Act and its implementing regulations.

16 46. While a state is entitled to delegate certain of its responsibilities to other  
17 entities, such as local agencies or Medicaid managed care plans, the single state agency is  
18 ultimately responsible for ensuring compliance with all aspects of federal Medicaid law.  
19 *See, e.g.*, 42 C.F.R. §§ 438.100(a)(2), 438.100(d).

20 47. Under the Medicaid Act, a participating state must provide medical  
21 assistance to certain eligibility groups. *Id.* § 1396a(a)(10)(A)(i). One mandatory eligibility  
22 category is children and adolescents under age 18 whose household income is below 133%  
23 of the federal poverty level. *Id.* §§ 1396a(a)(10)(A)(i)(VI)-(VII), 1396a(l).

24 ***The Medicaid Early and Periodic Screening, Diagnostic and Treatment***  
25 ***Requirements***

26 48. The Medicaid Act requires states to cover certain services and gives them  
27 the option to cover other services. *Id.* §§ 1396a(a)(10)(A), 1396d.

28

1           49. Each participating state must cover Early and Periodic Screening,  
2 Diagnostic and Treatment (“EPSDT”) for individuals under age 21. *Id.* §§  
3 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(r).

4           50. EPSDT’s fundamental purpose is to “[a]ssure that health problems are  
5 diagnosed and treated early, before they become more complex and their treatment more  
6 costly.” Ctrs. for Medicare & Medicaid Servs., *State Medicaid Manual* § 5010.B.

7           51. As part of providing EPSDT, states must:

- 8                   a. Inform all persons in the state who are under the age of 21 and who  
9                   are eligible for Medicaid of the availability of EPSDT as described  
10                   in 42 U.S.C. § 1396d(r);  
11                   b. Provide or arrange for screening services in all cases where they are  
12                   requested as required by § 1396d(r)(5); and  
13                   c. Arrange for (directly or through referral) corrective treatment for any  
14                   conditions identified by the screening services as required by  
15                   § 1396a(a)(43)(C).

16           52. Pursuant to the EPSDT requirements, states must cover four specific,  
17 separate categories of screening services: medical, vision, dental, and hearing. 42 U.S.C.  
18 § 1396d(r)(1)-(4).

19           53. States also must cover “[s]uch other necessary health care, diagnostic  
20 services, treatment, and other measures described in [§ 1396d(a)] to correct or ameliorate  
21 defects and physical and mental illnesses and conditions discovered by the screening  
22 services, whether or not such services are covered under the State plan.” *Id.* § 1396d(r)(5).  
23 In other words, the EPSDT mandate requires states to cover all necessary Medicaid  
24 services for individuals under age 21.

25           54. EPSDT services must be initiated in a timely manner, as the individual needs  
26 of the child require, and must be consistent with accepted medical standards, no later than  
27 six months from the date of request. 42 C.F.R. § 441.56(e).

28

1 55. Surgery to treat gender dysphoria, including male chest reconstruction  
2 surgery, is an EPSDT service under § 1396d(r)(5).

3 ***The Medicaid Comparability Requirement***

4 56. Under the Medicaid Act, “the medical assistance made available to any  
5 individual . . . shall not be less in amount, duration or scope than the medical assistance  
6 made available to any other such individual.” *Id.* § 1396a(a)(10)(B)(i). *See also* 42 C.F.R.  
7 § 440.240(b).

8 57. A state “Medicaid agency may not arbitrarily deny or reduce the amount or  
9 scope of a required service . . . to an otherwise eligible recipient solely because of the  
10 diagnosis, type of illness, or condition.” 42 C.F.R. § 440.230(c).

11 58. States must also ensure that “[e]ach service must be sufficient in amount,  
12 duration, and scope to reasonably achieve its purpose.” 42 C.F.R. § 440.230(b).

13 ***The Arizona Medicaid Program***

14 59. Arizona participates in Medicaid, calling its program the Arizona Health  
15 Care Cost Containment System (“AHCCCS”). Ariz. Rev. Stat. §§ 36-2901 to 2972.

16 60. AHCCCS is also the name of the single-state Medicaid agency that is  
17 responsible for administering and implementing Arizona’s Medicaid program consistent  
18 with the requirements of federal law. *See* 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10.

19 61. AHCCCS contracts with private managed care plans to provide health care  
20 services to Medicaid enrollees. *See* AHCCCS, Available Health Plans,  
21 [https://www.azahcccs.gov/Members/ProgramsAndCoveredServices/availablehealthplans](https://www.azahcccs.gov/Members/ProgramsAndCoveredServices/availablehealthplans.html)  
22 [.html](https://www.azahcccs.gov/Members/ProgramsAndCoveredServices/availablehealthplans.html) (listing the eight Medicaid managed care plans operating in the State).

23 62. The federal government reimburses Arizona for approximately seventy  
24 percent of its expenditures on health care services. U.S. Dep’t of Health & Human Servs.,  
25 Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares  
26 for Medicaid, the Children’s Health Insurance Program, and Aid to Needy Aged, Blind, or  
27 Disabled Persons for October 1, 2020 Through September 30, 2021, 84 Fed. Reg. 66204,  
28 66204 (Dec. 3, 2019).

1            ***Arizona’s Exclusion on Surgical Care for Transgender Medicaid Beneficiaries***

2            63. Since 1982, an Arizona regulation (the “Challenged Exclusion”) has  
3 prohibited AHCCCS coverage for “gender reassignment surgeries.” Ariz. Admin. Code  
4 R9-22-205-B.4(a). The Challenged Exclusion has been applied since that time to deny  
5 coverage to transgender AHCCCS beneficiaries seeking male chest reconstruction  
6 surgery.

7            64. Arizona has singled out transition-related surgical care for an express  
8 exclusion even though AHCCCS covers the same surgical services to treat other health  
9 conditions. *See, e.g.*, Ariz. Admin. Code R9-22-2004(A)(4), AHCCCS Medical Policy  
10 Manual, § 310-C Breast Reconstruction After Mastectomy (2018),  
11 <https://www.azahcccs.gov/shared/Downloads/MedicalPolicyManual/300/310C.pdf>.

12            65. The Challenged Exclusion has no medical or scientific basis. To the  
13 contrary, for many transgender people, including adolescents, surgical care is medically  
14 necessary to treat gender dysphoria.

15            66. Contrary to the prevailing standard of care for the treatment of gender  
16 dysphoria, Defendant continues to enforce the Challenged Exclusion against transgender  
17 Medicaid recipients, even those covered under EPSDT, including D.H. and John.

18            67. On information and belief, many transgender AHCCCS recipients have  
19 been deterred from seeking prior authorization for transition-related surgeries because of  
20 their knowledge, or the knowledge of their medical providers, that the Challenged  
21 Exclusion would make such requests futile.

22            ***D.H.’s Gender Dysphoria and Need for Surgical Treatment***

23            68. D.H. was identified as female at birth but has known that he is male since  
24 age four.

25            69. As a young child, D.H. struggled to express to his mother that he is male.  
26 Nothing he said or did got the result he had hoped for; Janice, D.H.’s mother, continued  
27 to treat him as a girl. As a result, D.H. began exhibiting signs of significant psychological  
28

1 distress including depression, prolonged crying episodes, anxiety, and insomnia. The  
2 severity of D.H.'s distress led his mother to seek the advice of mental health professionals.

3 70. When he was about eleven years old, the stress related to his gender  
4 identity—combined with the other stressors D.H. was trying to navigate—was so  
5 overwhelming that D.H. started losing his hair. He was eventually hospitalized for  
6 intensive psychiatric treatment.

7 71. Following his hospitalization, Janice enrolled D.H. in dance class, hoping it  
8 would provide D.H. a healthy way to cope with his distress. The movements were like  
9 therapy to him. Dance also became a social outlet; he made friends and felt a sense of  
10 belonging. It was the only thing in his life that could make him feel better. By the  
11 following year, D.H. was enrolled in three different dance classes: ballet, modern, and  
12 jazz.

13 72. That euphoria ended later that year once puberty began. Because of D.H.'s  
14 increasing chest size, dance no longer provided the same psychological release it once  
15 had. D.H. hated his body and everything that came with it. His thoughts and fears about  
16 experiencing puberty—with its associated physical changes that would take his body even  
17 further out of alignment with his gender identity—became all-consuming and significantly  
18 affected his ability to function. D.H. hid his changing body under baggy clothes and hated  
19 being perceived as a girl at school.

20 73. D.H. began using a variety of methods to flatten his chest, from multiple  
21 sports bras and Ace bandages to duct tape, so that his appearance better aligned with his  
22 gender identity. Those initial attempts were extremely uncomfortable and irritated his  
23 skin. Needing a better and safer solution, D.H. secretly bought his first binder, an article  
24 of clothing that compresses a person's chest, giving the appearance of a flat chest. Putting  
25 on the binder gave D.H. a sense of relief that no amount of therapy or medication had ever  
26 given him. It also eventually helped him gain the confidence to tell his mother what he  
27 struggled to express as a child: "I am a boy."  
28

1           74. Janice was supportive but sought out the advice of health care providers with  
2 experience working with transgender youth before making any decisions regarding next  
3 steps.

4           75. Soon after disclosing to his mother that he is transgender at age thirteen,  
5 D.H. started seeing Tamar Reed, a therapist who specializes in treating gender dysphoria  
6 in children and adolescents. After carefully assessing D.H.'s mental health, Ms. Reed  
7 recommended that D.H. begin to transition to living as male. D.H. started using a male  
8 name and asked that others refer to him using that name and masculine pronouns. He also  
9 changed his hairstyle and started wearing boys' clothing.

10           76. D.H.'s social transition provided him with much-needed psychological  
11 relief. He was regularly being referred to by a male name and pronouns and treated as  
12 male by those around him.

13           77. Nevertheless, D.H.'s distress continued to build.

14           78. A few months before his fourteenth birthday, the depression and suicidal  
15 ideation became overwhelming. Janice noticed a change in D.H.'s personality and that he  
16 had started distancing himself from his peers and activities that had previously brought  
17 him joy. Then, following a dance competition in January 2017, D.H.'s mental health  
18 decompensated significantly. Out of concern for his safety and wellbeing, D.H. was  
19 admitted to a ten-day intensive psychiatric treatment program.

20           79. Following that treatment program, his health care providers recommended  
21 that he start hormone-replacement therapy to further his social transition—that treatment  
22 would both halt the effects of estrogen and make his appearance more typically masculine.  
23 D.H.'s pediatrician referred him to a pediatric endocrinologist for this treatment and  
24 related specialty care. D.H. received his first shot of testosterone in November 2017.

25           80. The testosterone has caused D.H.'s voice to deepen, he has grown facial  
26 hair, and he has developed a more masculine musculature. The testosterone, however,  
27 cannot reverse the physical changes that had already occurred prior to D.H.'s transition,  
28 particularly chest development.

1           81. Because of the prominent appearance of his chest, D.H.'s binder continues  
2 to be one of his most important pieces of clothing. Although binders are not supposed to  
3 be worn for more than seven to eight hours a day, D.H. regularly wears his binder for ten  
4 hours a day, and at least twice per week D.H. wears it for longer than ten hours. On  
5 occasion, D.H. has worn his binder for multiple consecutive days. He even struggles to  
6 take the binder off at home, where feels the most comfortable being himself.

7           82. Keeping the binder on that long is uncomfortable and painful. The effort it  
8 takes to ignore the pain interferes with D.H.'s ability to focus on school, particularly  
9 homework, as D.H.'s discomfort compounds throughout the day. The compression from  
10 the binder also prevents him from breathing too deeply. In fact, D.H.'s current  
11 pediatrician, Dr. Andrew Cronyn, remarked that D.H.'s binder contributed to him  
12 developing asthma in adolescence and needing an inhaler to engage in extended physical  
13 activity.

14           83. While taking testosterone and using the binder have improved D.H.'s mental  
15 health, D.H. continues to experience significant gender dysphoria because of his chest.  
16 The benefits of using a binder were—and continue to be—temporary and imperfect. The  
17 binder dampens the distress D.H. feels during the day, but once he removes the binder at  
18 night, D.H.'s distress intensifies. And, even with the binder, D.H. continues to be mistaken  
19 for female, exacerbating his anxiety around interacting with unfamiliar people.

20           84. D.H.'s distress began compounding again and, in September 2018, D.H. was  
21 placed in an intensive psychiatric treatment program for a third time due to suicidal  
22 ideation. D.H. was fifteen-years old at that time.

23           85. The mental health treatment D.H. received following that hospitalization  
24 helped him develop more effective strategies for coping with the distress caused by gender  
25 dysphoria and the appearance of his chest. Even with those strategies, D.H.'s distress still  
26 has a significant effect on his mental health, daily life, and ability to function. D.H. still  
27 struggles with an ever-present anxiety that the appearance of his chest will cause others to  
28 treat him as female. This prevents him from participating in social activities with his

1 friends and caused him to quit dance over a year ago because he gets winded too easily to  
2 dance with a binder, but the dysphoria is too great for him to dance without one. His  
3 dysphoria also makes him extremely uncomfortable revealing his body even when he is  
4 by himself or in a doctor's office.

5 86. In 2019, D.H.'s pediatrician referred D.H. to a surgeon, Dr. Ethan Larson,  
6 who could perform male chest reconstruction surgery. D.H.'s health care providers  
7 determined that the surgery was medically necessary to alleviate D.H.'s gender dysphoria.  
8 Dr. Larson evaluated D.H. and agreed he would be a good candidate for the surgery.

9 87. Dr. Larson requested prior authorization for the surgery from  
10 UnitedHealthcare, D.H.'s Medicaid managed care plan. UnitedHealthcare denied prior  
11 authorization for the surgery. D.H. appealed the denial of the surgery, and on July 5, 2019,  
12 UnitedHealthcare upheld its denial of coverage pursuant to the Challenged Exclusion.

13 88. Due to her income, Janice cannot afford to pay for John to undergo male  
14 chest reconstruction surgery without AHCCCS covering the procedure.

15 ***John's Gender Dysphoria and Need for Surgical Treatment***

16 89. John was identified as female at birth. His grandmother, Susan, has cared  
17 for him since he was two years old and continues to be his legal guardian.

18 90. As a child, John did not like dresses or typical girl toys, but was never able  
19 to pinpoint a reason.

20 91. Approximately three years ago, just before John turned twelve, he started  
21 experiencing the first signs of puberty. Those signs were coupled with an almost  
22 immediate and significant decline in his mental health. He experienced symptoms of  
23 severe depression, such as a constant and overwhelming sadness, distancing himself from  
24 his friends, and suicidal ideation. Unable to describe his feelings and uncertain about how  
25 Susan would respond even if he could, John kept those emotions bottled up.

26 92. Worried about how Susan and others in his family might react, especially  
27 given their strong religious faith, John waited nearly six months before telling his older  
28 sister that he is transgender. He eventually told Susan as well.

1           93. Over the course of the following year, John’s 7th grade year, Susan and John  
2 had many extensive conversations to help her better understand what he was experiencing  
3 and how she could help him.

4           94. John continued to experience significant gender dysphoria throughout his  
5 7th grade year. Although John continued to wear the boys’ clothes he always had and  
6 started using a male name, his peers, teachers, and family did not consistently refer to him  
7 by that name and male pronouns. Not being consistently treated as male caused John to  
8 be stressed the entire school year.

9           95. Wanting to prevent a repeat of the prior year, in the summer prior to starting  
10 8th grade, John e-mailed each of his teachers to inform them that he is transgender and  
11 ask that they refer to him as John and by male pronouns. This helped set the tone; in 8th  
12 grade, John was more regularly referred to by the correct name and pronouns—both in  
13 school and out.

14           96. Around that same time, at thirteen years old, John’s pediatrician referred  
15 him to the Gender Support Program at Phoenix Children’s Hospital, a clinic specializing  
16 in healthcare services for transgender young people.

17           97. John had his first appointment at Phoenix Children’s Hospital in November  
18 2018, where he began to see Dr. Veenod Chulani, an adolescent-medicine specialist. Dr.  
19 Chulani referred John to a mental health provider, who formally diagnosed John with  
20 gender dysphoria. Soon thereafter John started taking medication to stop his menstrual  
21 cycle, which helped relieve some of the gender dysphoria he was experiencing at the time.  
22 In May 2019, Dr. Chulani and John’s therapist determined that it was medically necessary  
23 for him to start taking testosterone, which he started the following month. John is pleased  
24 with how the testosterone therapy has changed his voice and other aspects of his body.  
25 Transitioning has also boosted his confidence, and now far fewer people mistake him for  
26 female.

27           98. His transition and testosterone treatment, however, have not lessened the  
28 intense dysphoria he experiences regarding the appearance of his chest. Starting in 2018,

1 John began binding his chest using a variety of methods, such as multiple sports bras and  
2 constrictive undergarments. He bought his first binder in December 2019.

3 99. Every morning, the first thing John does is to put on a binder, which he often  
4 wears for longer than the recommended eight-hour maximum. Even with the binder, John  
5 still feels uncomfortable being outside without multiple layers of clothing, including a  
6 hooded sweatshirt that he wears nearly every day. The binder constricts his breathing,  
7 which in combination with his asthma, requires him to take far more breaks than his peers  
8 when engaging in physical activity.

9 100. Although the binder sometimes allows him to forget about his chest—a  
10 sense of relief he treasures—the hardest part of John’s daily routine is removing his binder.  
11 The dysphoria John experiences regarding his chest comes flooding back, a difficult  
12 reminder that his body still does not match who he is. John’s chest-related dysphoria keeps  
13 him awake at night at least once a week; putting on his binder temporarily is the only way  
14 he can calm his distress, a task he often tries to do without opening his eyes or turning on  
15 the lights so that he does not have to see his bare chest.

16 101. Having top surgery would have a significant positive impact on John’s life.  
17 John would finally be able to look at himself in the mirror and be in public without having  
18 to wear so many layers of clothing on top of his binder, which would benefit both his  
19 mental and physical health. John would gain confidence that will help improve his social  
20 functioning and broaden his horizons, challenging himself to try to new things.

21 102. Around February 2020, Dr. Chulani recommended that John undergo male  
22 chest reconstruction surgery to alleviate the dysphoria caused by the shape and appearance  
23 of his chest. At that time, Dr. Chulani also referred John to another mental health provider  
24 to assist John with the increased psychological distress he was experiencing and to  
25 evaluate John for male chest reconstruction surgery as required by the prevailing standards  
26 of care.

27 103. On July 2, 2020, John received a referral letter from his mental health  
28 provider for the surgery, as required by the standards of care.



1 applicable to the Class. This action raises questions of law common to all members of the  
2 Class, including: (a) whether the Challenged Exclusion, facially and as applied to  
3 members of the Class, violates the EPSDT and comparability provisions of the federal  
4 Medicaid Act; (b) whether the Challenged Exclusion, facially and as applied to members  
5 of the Class, violates the prohibition on sex discrimination under Section 1557 of the  
6 Patient Protection and Affordable Care Act; and (c) whether the Challenged Exclusion,  
7 facially and as applied to members of the Class, violates the Equal Protection Clause of  
8 the Fourteenth Amendment to the U.S. Constitution. All members of the Class share a  
9 common question of fact: Would their male chest reconstruction surgery be covered by  
10 AHCCCS but for Defendant's continuing enforcement of the Challenged Exclusion?

11       110. The Class satisfies the typicality requirements of Fed. R. Civ. P. 23(a)(3)  
12 because the named Plaintiffs' claims are typical of the claims of the Class. Plaintiffs are  
13 members of the Class, are individuals who have been unable and will be unable to obtain  
14 AHCCCS coverage for medically necessary male chest reconstruction surgery because of  
15 the Challenged Exclusion, and as a result, have faced or will face delayed or denied access  
16 to these medically necessary treatments. Plaintiffs and members of the Class share the  
17 same legal claims under Section 1557, the Medicaid Act, and the Equal Protection Clause  
18 of the Fourteenth Amendment to the U.S. Constitution.

19       111. The Class satisfies the adequacy requirements of Fed. R. Civ. P. 23(a)(4)  
20 because the class representatives will fairly and adequately represent the interests of the  
21 Class. The named Plaintiffs seek the same declaratory and injunctive relief as the other  
22 members of the Class: a declaratory judgment that the Challenged Exclusion violates the  
23 Medicaid Act, Section 1557, and the Equal Protection Clause, and preliminary and  
24 permanent injunctions enjoining Defendant from enforcing the Challenged Exclusion. The  
25 named Plaintiffs seek this relief to benefit themselves and to protect other low-income  
26 transgender Arizona residents who are or will be enrolled in AHCCCS. In asserting their  
27 own rights, the named Plaintiffs will vindicate the rights of all members of the Class fairly  
28

1 and adequately. The class representatives have no interests that are antagonistic to the  
2 interests of other members of the Class.

3 112. The Class further satisfies the requirements of Fed. R. Civ. P. 23(a)(4)  
4 because counsel for the Class will fairly and adequately represent the interests of the Class.  
5 The Class is represented by counsel from King & Spalding LLP and Perkins Coie LLP,  
6 two of the largest law firms in the country; the National Center for Lesbian Rights  
7 (“NCLR”), a legal organization dedicated to advancing the civil and human rights of the  
8 LGBTQ community; and the National Health Law Program (“NHLP”), a non-profit law  
9 firm dedicated to protecting and advancing the health rights of low-income and  
10 underserved individuals and families. Collectively, counsel has significant experience  
11 litigating civil rights cases, including transgender rights cases, Medicaid EPSDT cases,  
12 and complex class actions in federal court.

13 113. The Class also satisfies the requirements of Fed. R. Civ. P. 23(b)(2) because  
14 Defendant has acted or refused to act on grounds that apply generally to the Class, so that  
15 final injunctive or corresponding declaratory relief is appropriate respecting the class as a  
16 whole. The Class exhibits sufficient cohesiveness because its members have suffered  
17 group, as opposed to individual, injuries, namely, the Challenged Exclusion’s categorical  
18 denial of male chest reconstruction surgery. Members of the Class are bound together by  
19 the significant common traits that they are all transgender, they have gender dysphoria,  
20 and they need male chest reconstruction surgery to treat their gender dysphoria.

21 114. Further, by definition, members of the Class are low-income individuals  
22 who would otherwise have difficulty affording counsel to individually challenge the  
23 Challenged Exclusion. Therefore, a class action is the ideal—and the only—method by  
24 which the Class may vindicate the denial of their civil rights.

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**COUNT I**

**(Violation of the Medicaid Act’s EPSDT Requirements,  
42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(A)-(C), 1396d(a)(4)(B), and 1396d(r)(5))**

115. Plaintiffs reallege and incorporate by reference paragraphs 1 to 114 of this Complaint.

116. The Challenged Exclusion, Arizona Administrative Code R9-22-205-B.4(a), and Defendant’s refusal, based on the Challenged Exclusion, to provide coverage for surgical treatments and services for gender dysphoria to Plaintiffs and members of the Class, violate the Medicaid Act’s EPSDT requirements, 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(A)-(C), 1396d(a)(4)(B), and 1396d(r)(5), which are enforceable by Plaintiffs under 42 U.S.C. § 1983.

**COUNT II**

**(Violation of the Medicaid Act’s Comparability Requirement,  
42 U.S.C. § 1396a(a)(10)(B))**

117. Plaintiffs reallege and incorporate by reference paragraphs 1 to 114 of this Complaint.

118. The Challenged Exclusion, Arizona Administrative Code R9-22-205-B.4(a), and Defendant’s refusal, based on the Challenged Exclusion, to provide coverage for surgical treatments and services for gender dysphoria to Plaintiffs and members of the Class, while covering the same services for other AHCCCS beneficiaries with different diagnoses, violate the Medicaid Act’s comparability requirement, 42 U.S.C. § 1396a(a)(10)(B), which is enforceable by Plaintiffs under 42 U.S.C. § 1983.

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**COUNT III**

**(Unlawful Discrimination on the Basis of Sex in Violation of Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116)**

119. Plaintiffs reallege and incorporate by reference paragraphs 1 to 114 of this Complaint.

120. Under Section 1557 of the Affordable Care Act, “an individual shall not . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments)” on the basis of sex. 42 U.S.C. § 18116.

121. Section 1557’s prohibitions on sex discrimination are enforceable by Plaintiffs in a judicial action under 20 U.S.C. § 1683, which Section 1557 incorporates by reference. 42 U.S.C. § 18116(a). The Challenged Exclusion, Arizona Administrative Code R9-22-205-B.4(a), on its face and as applied to Plaintiffs and members of the Class, violates Section 1557’s prohibition against discrimination on the basis of sex in a health program or activity receiving federal financial assistance.

122. Plaintiffs and the Class have been and are continuing to be injured by Defendants’ application of the Challenged Exclusion to deny them AHCCCS coverage for surgical treatments for gender dysphoria.

**COUNT IV**

**(Violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution)**

123. Plaintiffs reallege and incorporate by reference paragraphs 1 to 114 of this Complaint.

124. First, the Challenged Exclusion, Arizona Administrative Code R9-22-205-B.4(a), on its face and as applied to Plaintiffs and members of the Class, impermissibly discriminates against Plaintiffs and members of the Class on the basis of sex and violates

1 their right to equal protection of the laws under the Equal Protection Clause of the  
2 Fourteenth Amendment to the United States Constitution.

3 125. Second, the Challenged Exclusion, Arizona Administrative Code R9-22-  
4 205-B.4(a), on its face and as applied to Plaintiffs, impermissibly discriminates against  
5 Plaintiffs and members of the Class for being transgender and violates their right to equal  
6 protection of the laws under the Fourteenth Amendment to the United States Constitution.

7 126. Defendant's promulgation and continued enforcement of the Challenged  
8 Exclusion did not, and does not, serve any rational, legitimate, important, or compelling  
9 state interest. Rather, the Challenged Exclusion serves only to prevent Plaintiffs and  
10 members of the Class from obtaining medically necessary surgical care and services to  
11 treat their gender dysphoria, complete their gender transitions, and live as their authentic  
12 selves.

13 **PRAAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs respectfully request that this Court:

15 A. Certify a Class consisting of: All transgender individuals under age 21 who  
16 are or will be enrolled in AHCCCS, have or will have a diagnosis of gender dysphoria,  
17 and are seeking or will seek male chest reconstruction surgery following a determination  
18 by their respective health care providers that the procedure is necessary to treat their  
19 gender dysphoria.

20 B. Name D.H. and John as representatives of the Class, and appoint Plaintiffs'  
21 counsel as King & Spalding LLP, Perkins Coie LLP, the NCLR, and NHeLP;

22 C. On behalf of Plaintiffs and all similarly situated individuals, issue  
23 preliminary and permanent injunctions prohibiting Defendant from any further  
24 enforcement or application of the Challenged Exclusion, Arizona Administrative Code  
25 R9-22-205-B.4(a), and directing Defendant and their agents to provide Medicaid coverage  
26 for medically necessary male chest reconstruction surgery;

27 D. On behalf of Plaintiffs and all similarly situated individuals, enter a  
28 declaratory judgment that the denial of coverage for male chest reconstruction surgery:

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1. Violates the Medicaid Act’s EPSDT requirements, 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(A), (C), 1396d(a)(4)(B), and 1396d(r)(5);
  2. Violates the Medicaid Act’s comparability requirement, 42 U.S.C. § 1396a(a)(10)(B);
  3. Violates Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116, by discriminating against Plaintiffs and all similarly situated individuals on the basis of sex; and
  4. Violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution by discriminating against Plaintiffs and all similarly situated individuals on the basis of sex (including sex stereotyping, gender identity, being transgender, and undergoing a gender transition), and for being transgender;
- E. Waive the requirement for the posting of a bond of security for the entry of temporary and preliminary relief;
- F. Award Plaintiffs their reasonable attorneys’ fees, costs, and expenses under 42 U.S.C. § 1988 or other applicable statutes; and
- G. Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: AUGUST 6, 2020

**PERKINS COIE LLP**

/s/ Daniel C. Barr  
Daniel C. Barr (Bar No. 010149)  
Janet M. Howe (Bar No. 034615)  
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mckee@healthlaw.org

*Attorneys for Plaintiffs and the Class*

\* *Pro hac vice* forthcoming

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff**  
(s): **D. H. ; John Doe**

**Defendant**  
(s): **Jami Snyder , Director  
of the Arizona Health  
Care Cost Containment  
System, in her official  
capacity**

County of Residence: Pima  
County Where Claim For Relief  
Arose: Pima

County of Residence: Maricopa

Plaintiff's Atty(s):  
**Daniel C. Barr  
Perkins Coie LLP  
2901 N. Central Avenue, Suite 2000  
Phoenix, Arizona 85012  
602-351-8085**

Defendant's Atty(s):

**Janet M. Howe  
Perkins Coie LLP  
2901 N. Central Avenue, Suite 2000  
Phoenix, Arizona 85012  
602-351-8187**

**Brent P. Ray**

**King & Spalding LLP**  
**353 N. Clark Street, 12th Floor**  
**Chicago, Illinois 60654**  
**312-995-6333**

**Andrew J. Chinsky**  
**King & Spalding LLP**  
**353 N. Clark Street, 12th Floor**  
**Chicago, Illinois 60654**  
**312-995-6333**

**Asaf Orr**  
**National Center For Lesbian Rights**  
**870 Market Street, Suite 370**  
**San Francisco, California 94102**  
**415-392-6257**

**Abigail K. Coursolle**  
**National Health Law Program**  
**3701 Wilshire Boulevard, Suite 750**  
**Los Angeles, California 90010**  
**310-204-6010**

**Catherine McKee**  
**National Health Law Program**  
**3701 Wilshire Boulevard, Suite 750**  
**Los Angeles, California 90010**  
**310-204-6010**

---

II. Basis of  
Jurisdiction:

**3. Federal Question (U.S. not a party)**

III. Citizenship of  
Principal Parties  
(Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **440 Other Civil Rights**

VI. Cause of Action: **Arizona Administrative Code R9-22-205-B.4(a) violates the Medicaid Act's EPSDT requirements, 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(A), (C), 1396d(a)(4)(B), and 1396d(r)(5); the Medicaid Act's comparability requirement, 42 U.S.C. § 1396a(a)(10)(B); Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116; and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.**

VII. Requested in  
Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **No**

VIII. This case is not related to another case.

---

**Signature: Daniel C. Barr**

**Date: 8/6/2020**

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the  
District of Arizona

D.H. and John Doe

Plaintiff

v.

Jami Snyder, Director of AHCCCS

Defendant

Civil Action No. 4:20-cv-00335-SHR

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Andrew Cronyn, M.D.

(Name of person to whom this subpoena is directed)

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached Exhibit A.

Place: BurnsBarton PLC 2201 East Camelback, Ste. 360 Phoenix, AZ 85016	Date and Time:  05/21/2021 9:00 am
--	--

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/03/2021

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Jami Snyder, Director of AHCCCS, who issues or requests this subpoena, are:

Kathryn Hackett King, BurnsBarton PLC, 2201 E. Camelback, Ste. 360 Phoenix, AZ 85016 kate@burnsbarton  
602-753-4500

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 4:20-cv-00335-SHR

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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**EXHIBIT A**  
**ITEMS TO BE PRODUCED**

1. All documents or other evidence that support the assertion of Dr. Cronyn that El Rio Health Center is treating more than 40 transgender boys who receive their health insurance through AHCCS and need male chest reconstruction surgery. In providing this information, please use identifiers that will allow for further discovery related to each individual while still protecting patient privacy.

2. The transcript of the talk “Creating a Primary Care Medical Home for Transgender Youth.”

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the  
District of Arizona

D.H. and John Doe

Plaintiff

v.

Jami Snyder, Director of AHCCCS

Defendant

Civil Action No. 4:20-cv-00335-SHR

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: National Center for Lesbian Rights

(Name of person to whom this subpoena is directed)

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached Exhibit A.

Place: BurnsBarton PLC 2201 East Camelback, Ste. 360 Phoenix, AZ 85016	Date and Time:  05/21/2021 9:00 am
--	--

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/03/2021

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

  
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Jami Snyder, Director of AHCCCS, who issues or requests this subpoena, are: Kathryn King, BurnsBarton, 2201 E. Camelback, Ste. 360 Phoenix, AZ 85016 kate@burnsbarton.com 602-753-4500

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 4:20-cv-00335-SHR

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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**EXHIBIT A**  
**ITEMS TO BE PRODUCED**

1. Please produce all non-privileged statements, letters, or documents whereby Plaintiff D.H., Plaintiff John Doe, any one of Plaintiffs’ guardians, the National Health Law Program, and/or the National Center for Lesbian Rights discuss the goals, purpose, or objectives of the lawsuit with the case caption: *D.H., by and through his mother, Janice Hennessy-Waller; and John Doe, by his guardian and next friend, Susan Doe, on behalf of themselves and all others similarly situated v. Jami Snyder, Director of the Arizona Health Care Cost Containment System, in her official capacity*, Case No. 4:20-cv-335-SHR.

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the  
District of Arizona

D.H. and John Doe	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No. 4:20-cv-00335-SHR
Jami Snyder, Director of AHCCCS	)	
<i>Defendant</i>	)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: National Health Law Program

*(Name of person to whom this subpoena is directed)*

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached Exhibit A.

Place: BurnsBarton PLC 2201 East Camelback, Ste. 360 Phoenix, AZ 85016	Date and Time:  05/21/2021 9:00 am
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**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/03/2021

CLERK OF COURT

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

OR

  
\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Jami Snyder,  
Director of AHCCCS, who issues or requests this subpoena, are:

Kathryn King, BurnsBarton, 2201 E. Camelback, Ste. 360 Phoenix, AZ 85016 kate@burnsbarton.com 602-753-4500

**Notice to the person who issues or requests this subpoena**

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 4:20-cv-00335-SHR

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

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