

# *The Iowa Supreme Court struck down the state's Medicaid ban on transgender surgeries. Here's why.*

Courtney Crowder and Luke Nozicka, Des Moines Register Published 9:11 a.m. CT March 8, 2019 | Updated 6:19 p.m. CT March 8, 2019

Aiden Vasquez needed more than an hour to collect himself before he could talk about Friday's [Iowa Supreme Court decision](#) ruling that transgender people like himself could use Medicaid funds to pay for transition-related care, including surgeries.

Tears blurred his vision as he read the verdict over and over. Sobs caught his voice in his throat as the Davenport resident barely squeaked out to his wife what the court decided.

As a transgender man, the ruling's stuffy language was so much more than legalese — these words were his ticket to being able to live *fully* as the man he knows he is.

“They are now finally acknowledging us as human beings,” he said. “They are finally acknowledging that this is not a plastic surgery or about what I look like. This is a matter of life and death.”

The court's [unanimous decision](#) struck down the administrative code governing Medicaid in Iowa that classifies transition-related surgeries as "[cosmetic, reconstructive or plastic surgery](#)" and explicitly bans "[surgeries for the purpose of sex reassignment](#)."

Transgender surgeries can range from \$20,000 to \$100,000, putting it out of reach of individuals who qualify for the assistance.

In affirming [a district judge's decision](#), Justice Susan Christensen wrote that the “express ban on Medicaid coverage for gender-affirming surgical procedures” contradicted the gender-identity protections in the [Iowa Civil Rights Act](#).

Or, as Rita Bettis Austen, the ACLU of Iowa's legal director, put it: “Any discriminatory ban on care — whether that's from a medical provider, which is less likely, or it's from an insurance provider, which is more likely — is illegal in Iowa.”

*Advocates believe the decision is the first by a state's highest court to hold that transgender people have the right to use public money for transition-related surgeries. As issues of LGBT rights swirl nationally, the decision could help open the door for challenges to bans in other states, about half of which have language like Iowa's in their administrative codes.*

Gender identity — or the deeply held sense of who one is, which may differ from the sex organs with which one was born — and sexual orientation were added to the [Iowa Civil Rights Act](#) as protected classes in 2007.

Under that statute, transgender Iowans have legal protections against discrimination in education, employment, housing and public accommodations. Medicaid, a state and federally funded program, is considered a public accommodation.

But the court stopped short of ruling that this was a violation of the equal protection clause in the Iowa Constitution. Polk County Chief District Judge Arthur Gamble [held in his June ruling](#) that it did.

Christensen said that question wasn't necessary to decide to resolve this case.

That leaves the door open to legislators to change laws that would put Friday's decision in the balance, said Sharon Malheiro, a Des Moines-based lawyer and LGBT advocate.

"It still leaves the question of transgender rights up in the air," said Malheiro. "And the Iowa Civil Rights Act can be amended to remove gender identity, leaving those lives in fear that the rights they enjoy today may not be here tomorrow."

## ***Two-year battle over medical necessity***

The verdict ended an almost two-year legal battle that hinged on whether transition-related surgery was "medically necessary" or a procedure provided solely for psychological purposes.

After years of dealing with denials and headaches regarding their health coverage, Carol Ann Beal, 43, of northwest Iowa, and EerieAnna Good, 29, of southwest Iowa, sued the Department of Human Services in 2017. They alleged that the state's blanket ban denying their use of public funds for doctor-prescribed surgery singled them out solely because of their gender identity.

*When prescribed by a doctor, all forms of transition care, including surgeries, are recommended by most professional medical organizations, including the American Medical Association, the American Psychological Association and the American Psychiatric Association.*

But not every transgender person is interested in surgery, Dr. Joe Freund, one of the most sought-after transition-care doctors in the state, previously told the Register.

Transitioning is a spectrum, and some patients find alignment simply by dressing in gender-specific clothing. Other patients may find hormone-replacement therapy enough while some may need surgery to make themselves whole, he said.

[In the district court ruling](#), Gamble wrote that DHS did not "rebut the medical evidence that gender affirming surgery is medically necessary treatment" and that Good and Beal's denials were issued "without regard to the law and facts,"

"The agency acted in the face of evidence upon which there is no room for difference of opinion among reasonable minds," he wrote.

*The state appealed, arguing the ban is not discriminatory because the department denies all surgeries performed primarily for psychological reasons — which is how it has characterized transition-related surgeries.*

"We are covering these surgeries in the same instances when the primary purpose is to address a non-psychological purpose," Assistant Attorney General Matthew Gillespie said [during oral arguments](#) before the Supreme Court. "And we don't cover surgeries in the same instance, regardless of gender identity, when the surgery is performed primarily for a psychological purpose."

The Supreme Court didn't agree. Christensen wrote that Beal and Good were "expressly denied" coverage because the procedures were "related to transsexualism."

The court also noted that the department covers other procedures that serve psychological purposes, including the revision of scarring.

"As the ruling showed, this case presented a difficult question involving individual rights and the state's interests," said Lynn Hicks, spokesman for the Attorney General's Office. "This issue was a first for Iowa's courts, and we thank the court for its guidance and for resolving this issue."

For next steps, Hicks directed the Register to the Department of Human Services, which through spokesman Matt Highland declined to comment.

## *Comes too late for some*

Beal has known she was a woman despite being born with male genitalia since before she started kindergarten.

She began presenting as a girl at 10 and started taking hormones in her teens after being diagnosed with gender dysphoria, the medical term for feeling that one's inner masculinity or femininity is incongruent with his or her biological sex.

Both her family and her spouse supported her decision to go through with this litigation, Beal said when the lawsuit was filed in 2017.

"You go through so many years transitioning, and now I hit a brick wall with Iowa's discriminatory ban on Medicaid coverage for transition-related care," Beal said in 2017. "It has caused me stress and depression and affects every aspect of my life."

Overwhelming gender dysphoria also causes severe anxiety for Good, who has been living as a female for almost a decade. To align her body with her gender identity, she "wears a tight girdle and 'tucks' her male genitalia for up to 12 hours each day," according to court documents.

After the ruling, Good said in a statement that this decision will "save lives."

"Transgender people are at such risk for suicide," she said. "And I've lost transgender friends to suicide. I hope this decision helps change that."

Like Good and Beal, many of the patients at the award-winning University of Iowa LGBTQ Clinic are on Medicaid, co-founder Dr. Nicole Nisly previously told the Register. Some of them meet the medical criteria for surgical intervention and are in desperate need of that kind of care.

"When they are denied this care, it is heartbreaking for us and heartbreaking for them," Nisly said.

"Imagine it from their perspective: They have been on hormones and transitioned in every other way for a year, and then they find out they can't take that extra step to fully become themselves.

"Some (of my patients) do become suicidal."

*For The Family Leader, a conservative, Christian advocacy group in Iowa, human sex and sexuality is immutable and determined by God.*

"We grieve to see measures that encourage — and now compel taxpayers to fund — others seeking fulfillment outside of God's design," Drew Zahn, the group's communications director, said in a written statement.

Tabulating the cost of transition is difficult because of the variation of care needed or desired, but the Philadelphia Center for Transgender Surgery prices the full suite of procedures for both transgender women and transgender men at about \$100,000.

However, single surgeries cost much less. For example, a vaginoplasty, the creation of a vagina, or a phalloplasty, the creation of a penis, costs about \$20,000.

Despite what could be considered high costs, transgender people make up a relatively small portion of the national population. One estimate found about 0.3 percent of the total population, or about 964,000 people nationally and 9,300 in Iowa, identify as transgender, according to the Williams Institute, a think tank at UCLA's law school.

A smaller subset of that population would seek surgeries.

Vasquez, who was profiled in the [Register's Trans in Iowa series](#), couldn't wait for approval for his top surgery — as a mastectomy for transgender men is commonly known — to wind its way through the Iowa Medicaid system. Instead, he took out a costly loan to have the procedure done.

Since being publicly viewed as a man has become easier, his depression has eased, suicidal thoughts subsided, and he has lost more than 100 pounds.

“It’s too late for me,” he said. “But it gives me hope for all the guys coming after me.”

He pauses, collecting his emotions one more time, “And I am just so happy for them.”