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**Supreme Court Docket No. 24-0346**

IN THE
**IOWA SUPREME COURT**

Kelly Brodie, Dr. John Heffron, Katherine King, Dr. Michael Langenfeld, Katherine Rall, and Jamie Shaw,

*Plaintiffs/Appellants*,

v.

Jerry R. Foxhoven, Richard Shults, Jerry Rea, Mohammad Rehman, Glenwood Resource Center, and Iowa Department of Human Services,

*Defendants/Appellees.*

**On Appeal from the Iowa District Court for Mills County**
Hon. Craig M. Dreismeier, District Judge, Case No. LACV027160

# BRIEF OF *AMICUS CURIAE* VOR, INC.

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

Cases



Statutes and Rules

## TABLE OF AUTHORITIES (cnt'd)

## TABLE OF AUTHORITIES (cnt'd)

Other

## IDENTITY OF *AMICUS CURIAE* AND STATEMENT OF THE CASE

VOR is a nationwide, nonprofit advocacy organization dedicated to fighting for high quality care and human rights for all people with intellectual and developmental disabilities ("IDD").[1] A corollary objective is to advance personal and family participation in the choice of treatment options, with the decisions of the person and his or her family recognized as primary. VOR has previously appeared before courts as *amicus curiae* in cases, like the instant one, that have a direct and significant impact upon the rights, care, and protection of individuals with IDD. *See, e.g., Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 605 (1999) (quoting from VOR's *amicus* brief on behalf of 141 *amici*); *Benjamin v. Dep't of Pub. Welfare of PA*, 701 F.3d 398 (3d Cir. 2012); *Psy-Ed Corp. v. Klein*, 947 N.E.2d 520 (Mass. 2011); *Ball v. Kasich*, No. 2:16-cv-282, 2017 U.S. Dist. LEXIS 116145 at *27 (S.D. Ohio July 24, 2017) (granting VOR's motion for *amicus* participation, explaining that "VOR's brief provide[d] assistance to the Court in addressing important issues in this case").

[1] *See* www.vor.net. VOR sought and received consent from both parties for the filing of this brief, a copy of which is attached as Exhibit A. Iowa R. App. P. 6.906(1). In accordance with Iowa R. App. P. 6.906(4)(d), VOR states that no party or party's counsel authored this brief in whole or in part, no party or party's counsel contributed money to fund the preparation or submission of this brief, and no person or entity other than VOR contributed money to fund the preparation or submission of the brief.

This case presents the issue of whether the Appellants – former employees of Glenwood Resource Center, a residential center for the intellectually disabled operated by the Iowa Department of Health & Human Services ("DHHS") – were wrongfully terminated in violation of public policy. The court below held that they were not, concluding that the terminated employees' objections to what it obliquely characterized as "dangerous practices" were not rooted in a "clearly defined and well-recognized public policy" of the State of Iowa. D0188, M.S.J. Order at 4 (01/04/2023).

As this Court has recognized, "the concept of public policy generally captures the communal conscience and common sense of our state in matters of public health, safety, morals, and general welfare." *Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 110 (Iowa 2011). Of course, defining the "common sense" of a State of more than three million people can sometimes be a challenging task. And articulating a "communal conscience" in the context of providing care for citizens with IDD can be all the more difficult. Accordingly, many cases relating to the intersection of public policy and care for the intellectually disabled raise nuanced questions upon which law-abiding, caring, and responsible people can have differing views.

***This is not one of those cases.***

What the district court casually described using vague euphemisms like "dangerous practices," "unlawful actions," or "concerns regarding GRC

management" was described by the U.S. Department of Justice as "conducting unregulated experiments on human subjects, failing to provide constitutionally adequate medical and behavioral health care at Glenwood, and utilizing unnecessary physical restraints, all of which have subjected residents to serious harms and risks of harm." U.S. Dep't of Justice, *Investigation of Glenwood Resource Center* at p. 2 (Dec. 22, 2020) *available at* https://www.justice.gov/opa/press-release/file/1348041/dl (hereinafter the "DOJ Report") (last visited May 13, 2024).

The Department of Justice's subsequent investigation relating to the events at Glenwood found, among a host of other violations, that:

- Glenwood was "Deliberately Indifferent to the Physical Health Needs of Residents" (DOJ Report at 14);
- Appellee Dr. Rea told Glenwood employees not to "raise concerns about the quality of medical care because it was 'disruptive' to staff" (*id.* at 19);
- "Administrators continued to undercut residents' behavior support plans even after staff reported their actions to the Department of Inspections and Appeals and the facility was cited for them" (*id.* at 37);
- Glenwood "Abandoned Quality Assurance and Ignored Multiple Warnings of Harm" (*id.* at 43);
- Glenwood "Conducted Experiments on Its Residents Without Consent and Without Complying with Applicable Safety, Ethics, and Research Safeguards" (*id.* at 4); and

- "DHS leadership brushed [complaints like those of Appellants'] aside as 'disgruntled' employees, and made no attempt to investigate whether their concerns had merit" (*id.* at 16).

This investigation, in turn, led to a widely publicized settlement agreement between the State of Iowa and the Justice Department. *See e.g.* C. Kauffman, *DOJ Settles With State Over "Deviant" Experiments on Disabled Glenwood Residents*, Iowa Capital Dispatch (Dec. 1, 2022), *available at* https://iowacapitaldispatch.com/2022/12/01/doj-settles-with-state-over-deviant-experiments-on-disabled-glenwood-residents (last visited May 13, 2024).

It should be beyond cavil that the shocking, disturbing, and heartbreaking failures of the state's most vulnerable citizens violates the "communal conscience" of the State of Iowa. It is likewise clear that Appellants' alleged resistance of, and objections to, those failures advanced a "well-recognized and defined public policy of the state." *Teachout v. Forest City Cmty. Sch. Dist.*, 584 N.W.2d 296, 300 (Iowa 1998). As an organization with over 40 years of supporting the developmentally disabled and their families, VOR has an interest in advocating that the public policy of Iowa clearly and unambiguously (1) protects the developmentally disabled from being treated (in the DOJ's words) as "human guinea pigs"[2] without their consent;

[2] Press Release, U.S. Dep't. of Justice, *Justice Department Alleges Conditions at Iowa Institution for Individuals with Disabilities Violate the Constitution* (Dec. 22, 2020) *available at* https://www.justice.gov/opa/pr/justice-department-alleges-conditions-iowa-institution-individuals-disabilities-violate (last visited May 15, 2024).

and (2) entitles the intellectually disabled to protection from harm.

To be clear, VOR offers no view on whether the Appellants should ultimately prevail in their lawsuit. And by filing this *amicus* brief, VOR does not question the good faith of Greenwood's rank and file caregivers or the DHHS's non-policy staff. However, the question of whether Iowa's public policy actively opposes the type of exploitation and abuse alleged in the Petition at Law, and confirmed by the DOJ Report, should be beyond dispute. VOR's status as a representative of individuals with IDD and their families may permit it to add a unique perspective on the issues to be considered by the Court. Accordingly, VOR respectfully requests that the Court accept and consider this *amicus* brief.

## ARGUMENT

Beginning with *Springer v. Weeks & Leo Co.*, 429 N.W.2d 558 (Iowa 1988), this Court recognized the tort of retaliatory discharge where an employee's "discharge serves to frustrate a well-recognized and defined public policy of the state." *Id.* at 560. An employee making such a claim must prove:

> (1) the existence of a clearly defined and well-recognized public policy that protects the employee's activity; (2) this public policy would be undermined by the employee's discharge from employment; (3) the employee engaged in the protected activity, and this conduct was the reason the employer discharged the employee; and (4) the employer had no overriding business justification for the discharge.

*Berry*, 803 N.W.2d at 109-10. VOR's amicus brief is directed only to the first

element of this standard.

The Court looks primarily to "statutes to determine whether an implied or express public policy exists" but has also recognized the Iowa Constitution and administrative rules as sources of policy. *Dorshkind v. Oak Park Place of Dubuque II, LLC*, 835 N.W.2d 293, 303 (Iowa 2013). The Court has also explained that the public policy protecting an employee's activity "need not [be an] express statutory mandate of protection;" it is enough that "the employee's activity . . . advance[s] a well-recognized and defined public policy of the state." *Teachout*, 584 N.W.2d at 300; *see also Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 283 (Iowa 2000) (reaffirming that "we do not limit the public policy exception to specific statutes which mandate protection for employees").

Here, the Appellants allege that they were terminated for, *inter alia*, (1) providing "too much care" to Glenwood residents (*e.g.*, D001, Petition at Law at ¶ ¶ 101 (11/06/2020)); (2) resisting Appellees' efforts to interfere with residents' medical care (*e.g. id.* at ¶ 147); (3) opposing Appellees' dramatic cuts to staff training, which resulted in a "significant negative impact on patient care" (*e.g., id.* at ¶ 121); and (4) objecting to Appellees' use of Glenwood residents as "unknowing research subjects" without their consent (*e.g.*, *id.* at ¶ 76). In VOR's view, such actions further the state's clear public policies of (1) allowing individuals with IDD to preserve their bodily integrity (as evidenced by the state's doctrine of informed

consent) and (2) the right of citizens with IDD to be protected from harm.

## I. IT IS THE PUBLIC POLICY OF THE STATE OF IOWA TO PROTECT IDD CITIZENS FROM BEING EXPERIMENTED UPON WITHOUT CONSENT

The district court below acknowledged that Appellants relied upon Iowa Code section 225C.1(2) in support of a "clearly defined public policy to protect GRC's residents from abuse." D0188, M.S.J. Order at 5 (01/04/2023). However, the court concluded that this statute was a "vague generalization" that did not specifically make Appellees' "alleged actions" unlawful. *Id.* As noted above, the "alleged actions" left unspoken by the district court were, in fact, conducting "research related to both physical and behavior health on Glenwood residents, without their consent" that "exposed residents to serious harm and risks of harm and failed to comply with virtually all basic safeguards routinely employed in human subject experimentation." DOJ Report. at 5-8. Contrary to the district court's conclusion, the public policy of Iowa clearly and unambiguously establishes that developmentally disabled residents have the right to self-determination, bodily integrity, and to be free from such exploitation.

### A. The Requirement of Informed Consent is the Clear Public Policy of the State of Iowa

As an initial matter, this Court has explicitly recognized that the "doctrine of informed consent" is the law of this state:

> [T]he doctrine of informed consent arises out of the ***unquestioned principle*** that absent extenuating circumstances a patient has the right to exercise control over his or her body by making an informed decision concerning whether to submit to a particular medical procedure.

*Andersen v. Khanna*, 913 N.W.2d 526, 536 (Iowa 2018) (emphasis added) (*quoting Pauscher v. Iowa Methodist Med. Ctr.*, 408 N.W.2d 355, 358 (Iowa 1987)); *see also Cruzan v. Dir., Mo. Deplt of Health*, 497 U.S. 261, 269 (1990) (holding that the "informed consent doctrine has become firmly entrenched in American tort law"). That policy is no less applicable to those with intellectual disabilities and/or their guardians. *See e.g. Clites v. State*, 322 N.W.2d 917 (Iowa Ct. App. 1982) (affirming trial court judgment against State arising out of Glenwood Center's improper use of tranquilizers without guardian consent).

Section 225C.1 of the Iowa Code, cited by the Appellants below, is the "findings and purpose" section of the state's law on mental health and disability services. That statute provides, in pertinent part, that it "is the intent of the general assembly that the service system for persons with disabilities emphasize the ability of persons with disabilities to **exercise their own choices** about the amounts and types of services received." Iowa Code § 225C.1 (emphasis added). While Section 225C.1 is necessarily a generalized (but nonetheless explicit) statement of Iowa's policy of self-determination (the cornerstone of informed consent), other sections of Chapter 225C provide more concrete guidance regarding this policy.

For example, Iowa Code section 225C.25 establishes a "bill of rights and

service quality standards of persons with an intellectual disability, developmental disabilities, brain injury or chronic mental illness." Iowa Code § 225C.25. Those standards "apply to any person with an intellectual disability . . . who receives services which are funded in whole or in part by public funds." Iowa Code § 225C.26. Pursuant to that bill of rights, Glenwood residents have "the right to participation in the formulation of the plan" providing for their "treatment, habilitation and program[s]."[3] Iowa Code § 225C.28B.

These rights to informed consent and bodily autonomy are further delineated in the Iowa Administrative Code sections relating to Glenwood. This Court has expressly held that "administrative regulations can serve as a source of public policy to give rise to a claim of wrongful discharge from employment." *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 757 (Iowa 2009). In particular, regulations adopted "pursuant to a delegation of authority in a statute that seeks to further a public policy" qualify for public policy status. *Dorshkind*, 835 N.W.2d at 303 (internal quotations and citation omitted). Here, the legislature has delegated to DHHS's disability services

[3] This statutorily protected "right to participation" necessarily entails the right to be consulted before being experimented upon. It strains credulity to conclude that Iowa law calls for informed consent before a citizen undergoes laser hair removal (Iowa Code § 157.5) or obtains assistance from a social worker (Iowa Admin. Code r. 645-282.2) but not before officials of a State Resource Center perform experiments exposing them to "serious harm and risks of harm and failed to comply with virtually all basic safeguards routinely employed in human subject experimentation." DOJ Report at 8.

commission this rulemaking authority. *See* Iowa Code § 225C.5 (creating commission "as the state policy-making body for the provision of services to personal with . . . developmental disabilities"); Iowa Code § 225C.6 (duties of commission include "adopt[ing] necessary rules pursuant to chapter 17A which relate to disability programs and services").

Section 441-30.5 of the Administrative Code, entitled "Rights of Individuals," was promulgated by DHHS in 2009 and explicitly sets forth these rights of self-determination and informed consent:

> 30.5(5) Self-determination. An individual receiving care from a state resource center shall have the right to:
>
> a. Have a dignified existence with self-determination, making choices about aspects of the individual's life that are significant to the individual.
>
> b. **Give informed consent**, including the right to withdraw consent at any given time.
>
> c. Refuse treatment (such as medication or behavioral interventions) offered without the individual's expressed informed consent, and be provided with an explanation of the consequences of those refusals unless treatment is necessary to protect the health or safety of the individual or is ordered by a court.

Iowa Admin. Code r. 441-30.5 (2024) (emphasis added).[4] Central to this right of "self-determination" is the concept of "informed consent," defined by the

[4] In appropriate cases, such consent may be furnished by the individual's guardian. *See e.g.* Iowa Admin Code r. 441-24.1 (2024).

Administrative Code as agreement after a "full explanation of the procedures to be followed, including an identification of those that are experimental" as well as a description of the discomforts, risks, benefits, and alternatives. Iowa Admin. Code r. 441-28.1 (2024). Such consent is alleged to have been entirely lacking here.

This requirement of informed consent is also memorialized in the DHHS's own policies and procedures.[5] For example, DHHS's manual for State Resource Centers, like Glenwood, explicitly states that "[s]pecific informed consent shall be obtained for treatment that includes . . . [p]articipation in experimental research." DHHS, *State Resource Centers Employees Manual* Title 3, Chapter B at p. 21 (Dec. 2, 2022) *available at* https://hhs.iowa.gov/media/3961/download (last visited May 19, 2024). This specific requirement was present in the DHHS manual as of at least 2014. *See* DHHS, *State Resource Centers Employees Manual* Title 3 Chapter B at p. 28 (Apr. 4, 2014) *available at* https://hhs.iowa.gov/sites/default/files/3-B-11.pdf (last visited May 19, 2023).

[5] VOR is mindful of this Court's previous holding that "public policy cannot be derived from internal employment policies." *Jasper*, 764 N.W.2d at 762. As a general rule, this is sensible: the requirements, concerns, predilections, and preferences of private entities do not necessarily reflect the public policy of the State. In this instance, however, the policy manual was drafted by DHHS – the very entity to which the Iowa State Legislature delegated rulemaking responsibility for ensuing the appropriate care of IDD citizens. At a minimum, DHHS's manual makes clear that recognizing a public policy of informed consent will not interfere with DHHS's "freedom to make managerial decisions" in its operations. *Id.*

For the reasons set forth above, the allegations relating to the Glenwood experiments, if true, are in violation of explicit DHHS regulations promulgated pursuant to authority expressly delegated by the Legislature to "emphasize the ability of persons with disabilities to exercise their own choices." Iowa Code § 225C.1. Under this Court's precedents, opposing such violations further the state's public policy, and allowing Appellants to be terminated for doing so "would have a chilling effect on the public policy by discouraging that conduct." *Fitzgerald*, 613 N.W.2d at 284. For these reasons, the district court's opinion to the contrary should be reversed.

B. The Requirement of Informed Consent is the Clear Public Policy of the United States

Federal authorities also make clear that informed consent is absolutely vital before even non-invasive and non-medical experiments are performed upon human subjects. The National Research Act of 1974 created the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. In 1979, that Commission issued what was known as the "Belmont Report." *See* U.S. Dep't of Health & Human Services, *The Belmont Report*, 44 Fed. Reg. 23192 (Apr. 18, 1979). The Belmont Report "was largely a response to reports that people were abused in biomedical experiments during the Second World War." *Ernst v. City of Chi.*, 837 F.3d 788, 800 n.6 (7th Cir. 2016).

The Report sets out three "basic ethical principles," which it defines as "those

generally accepted in our cultural tradition, [and] particularly relevant to the ethics of research involving human subjects." 44 Fed. Reg. at 23193. The very first of these "basic ethical principles" is:

> *Respect for Persons*. – Respect for persons incorporates at least two ethical convictions: first, that individuals should be treated as autonomous agents, and second, that persons with diminished autonomy are entitled to protection. The principle of respect for persons thus divides into two separate moral requirements: the requirement to acknowledge autonomy and the requirement to protect those with diminished autonomy.

*Id.* The experiments that are alleged to have occurred at Glenwood fail both of the "moral requirements" set forth in the first "basic ethical principle" of the Belmont Report.

The Glenwood experiments were also inconsistent with federal regulations that apply to human subject experimentation. In the wake of the Belmont Report, nearly every federal government agency, institute, board, or organization that might carry on such research, adopted a "common rule" providing that "[b]efore involving a human subject in research . . . an investigator shall obtain the legally effective informed consent of the subject or the subject's legally authorized representative." 45 C.F.R. § 46.116 (Department of Health & Human Services); *see also* 21 C.F.R. § 50.20 (Food and Drug Administration); 45 C.F.R. § 690.116(a)(1) (National Science Foundation); 7 C.F.R. § 1c.116(a)(1) (Department of Agriculture); 10 C.F.R. § 745.116 (Department of Energy); 14 C.F.R. § 1230.16(a)(1) (NASA); 15

C.F.R. § 27.116(a)(1) (National Institute of Standards and Technology); 16 C.F.R. § 1028.116 (Consumer Product Safety Commission); 22 C.F.R. § 225.116(a)(1) (Agency for International Development); 24 C.F.R. § 60.116 (Department of Housing & Urban Development); 32 C.F.R. § 219.119(a)(1) (Department of Defense); 34 C.F.R. § 97.116(a)(1) (Department of Education); 38 C.F.R. § 16.116(a)(1) (Department of Veterans Affairs); 40 C.F.R. § 26.116(a)(1) (Environmental Protection Agency); 49 C.F.R. § 11.116(a)(1) (Department of Transportation).

Similarly, the International Covenant on Civil and Political Rights, a "core" human rights instrument of the United Nations, ratified by the United States and more than 170 other countries, provides that "no one shall be subjected without his free consent to medical or scientific experimentation." International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171 at Part III, art. 7. While this is not to suggest that every such treaty or U.N. pronouncement necessarily evidences the public policy of the State of Iowa, the treaty's explicit prohibition of experimentation without consent and its ratification by 174 countries are relevant to show just clearly established and widely accepted the principle prohibiting human experimentation without consent has become.

## II. IT IS THE PUBLIC POLICY OF THE STATE OF IOWA TO PROVIDE APPROPRIATE CARE TO INDIVIDUALS WITH DEVELOPMENTAL OR INTELLECTUAL DISABILITIES AND, AT A MINIMUM, PROTECT THEM FROM HARM

The right of the developmentally disabled to appropriate care – and at a minimum, to be free from being harmed by their caregivers – is also clearly established by Iowa law and Federal law.

### A. The Public Policy of Iowa is to Provide Individuals with IDD Appropriate Care

Chapter 222 of the Iowa Code addresses the "public and private services available in this state to meet the needs of persons with an intellectual disability." Iowa Code § 222.1. As part of those services, the state established Glenwood to provide "treatment, training, instruction, care, habilitation, and support of persons with an intellectual disability." *Id.* The standards of care applicable to Glenwood are set forth in Chapter 225C of the Code (relied upon by Appellants below) as well as the regulations promulgated by DHHS thereunder. In Chapter 225C, the Legislature expressed its intent to make available "a comprehensive array of high-quality, evidence-based consumer and family-centered mental health and disability services and other support in the least restrictive . . . setting appropriate for a consumer." Iowa Code § 225C.6B. In furtherance of that intent, the Iowa Legislature adopted a "Bill of Rights" for Glenwood residents and others, which provides that they have a right to "treatment, habilitation, and program services that

are individualized, provided to produce results" and provided in the "least restrictive environment." Iowa Code § 225C.28A; *cf. Hanson v. Clarke Cty., Iowa*, 867 F.2d 1115, 1120 (8th Cir. 1989) (Iowa law creates "substantive right to appropriate care and treatment" for the developmentally disabled).

The requirements for achieving the Legislature's goals are set forth in the administrative rules adopted by the DHHS pursuant to rulemaking authority delegated to it by the General Assembly. For example, DHHS Rule 30.5(2) provides that "[a]n individual receiving care from a state resource center shall have right to . . . [r]eceive appropriate treatment, services, and habilitation for the individual's disabilities, including appropriate and sufficient medical and dental care," to be "free from unnecessary drugs and restraints" and to be "free from physical, psychological, sexual, or verbal abuse, neglect and exploitation." Iowa Admin. Code r. 44-30.5(2), (3) (2024). Just as Iowa's administrative rules relating to the care of dementia patients in *Dorshkind*, the DHHS rules set forth above "specifically articulated a concern for the health, safety, and welfare" of Glenwood residents. *Dorshkind*, 835 N.W.2d at 294.

In the proceedings below, Appellants claim that they were discharged for objecting to or resisting the Appellees clear violations of these standards. *See e.g.,* D001, Petition at Law at ¶ 78 (11/06/2020) (Appellee-Defendants interfered "with patient treatment and Plaintiff's medical judgments, for the purpose of facilitating

[Appellee-Defendant Rea's] research"); *id* at ¶ 85 (Appellee-Defendants Rea and Rehman "overruled and/or directly interfered with the medical judgment of the patients' primary healthcare providers") *id.* at ¶ 121 (Appellants opposed Appellees' dramatic cuts to staff training, which resulted in a "significant negative impact on patient care") *id.* at ¶ 76 (Appellants objected to Appellees' use of Glenwood residents as "unknowing research subjects" without their consent). These allegations involve conduct that "jeopardized the health, safety, and welfare" of Glenwood residents in contravention of a clearly established policy providing for their care. *Cf. Dorshkind*, 835 N.W.2d at 305. To the extent that Appellants can demonstrate that they were terminated for opposing such conduct, their discharge on that basis is strongly opposed by public policy. *See e.g.*, *id.* at 305 (public policy of protecting dementia patients undermined by termination of employee for reporting violation of administrative regulations); *Teachout*, 584 N.W.2d at 301 (holding that it would be contrary to public policy of preventing child abuse to permit termination for reporting suspected child abuse).

### B. Federal Law and Other Authorities Support the Public Policy of Providing Appropriate Care to Individuals with IDD

While VOR understands that this Court has not ruled on the question of whether federal law can provide the necessary public policy to support a claim of wrongful discharge, the context here argues for more conformity with federal law then the average case. The "majority of the Glenwood budget is funded through the

Medicaid program." Iowa Legislative Services Agency, *Budget Unit Brief FY 2017: Glenwood Resource Center* at p. 1 *available at* https://www.legis.iowa.gov/docs/publications /FT/696675.pdf (last visited May 19, 2024). "Medicaid is a cooperative federal-state program through which the Federal Government provides financial assistance to States so that they may furnish medical care to needy individuals." *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 502 (1990). While state participation in the Medicaid program is voluntary, states that choose to participate "must comply with certain requirements imposed by the Medicaid Act and regulations promulgated by the Secretary of Health and Human Services." *Id.*

One such provision with which Iowa must comply is the federal Developmental Disabilities Assistance and Bill of Rights Act. 42 U.S.C. § 15001, *et seq*. *See e.g.* Iowa Code § 225C.3(2) (designating DHHS as "the state developmental disabilities agency for the purpose of directing the benefits of the federal Developmental Disabilities Assistance and Bill of Rights Act"). This federal act expressly provides that "the goals of the Nation properly include a goal of providing individuals with developmental disabilities" support to "make informed choices and decisions about their lives" and to "live free of abuse, neglect, financial and sexual exploitation, and violations of their legal and human rights." 42 U.S.C. § 15001. To that end, the Act establishes that the "Federal Government and the States both have an obligation to ensure that public funds are provided" only to

programs that "meet minimum standards" relating to, among other things:

> (i) provision of care that is free of abuse, neglect, sexual and financial exploitation, and violations of legal and human rights and that subjects individuals with developmental disabilities to no greater risk of harm than others in the general population;
>
> (ii) provision to such individuals of appropriate and sufficient medical and dental services;

42 U.S.C. § 15009(a)(3)(B).

These provisions clearly establish a strong public policy in favor of providing appropriate care and protection to the developmentally disabled. The failure to comply with even these most basic requirements – as is alleged to have occurred at Glenwood – is a violation both of these policies and the constitutional rights of Glenwood residents. *See e.g.*, *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982) (government has "an unquestioned duty to provide reasonable safety for all residents and personnel within [an] institution"); *Dadd v. Anoka Cnty.*, 827 F.3d 749, 756 (8th Cir. 2016) (constitutional right to adequate medical care).

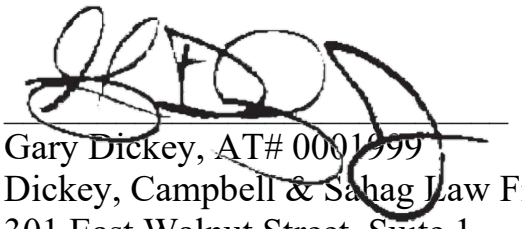
Nor would Iowa somehow be unique in finding that public policy strongly supports providing appropriate care to the developmentally disabled. To the contrary, this policy has been expressly recognized in states throughout the country. *See*, *e.g.*, *State v. New Eng. Health Care Emps. Union*, 855 A.2d 964, 971 (Conn. 2004) (affirming lower court finding that the "legislative and regulatory scheme respecting mental retardation reflects a clear, well-defined and dominant state public

policy in favor of the care and protection of persons with mental retardation"); *Epperson v. Res. Healthcare of Am., Inc.*, 566 Fed. Appx. 433, 437 (6th Cir. 2014) (applying Tennessee law; recognizing that violation of developmentally disabled individual's "Service Plan" was sufficient to support objecting nurse's claim for wrongful discharge); *Am. Fed'n of State, Cty. & Mun. Emps. v. State*, 529 N.E.2d 534, 541 (Ill. 1988) ("We acknowledge the important public policy of this State's commitment to compassionate care for the mentally disabled"); *Miller v. Szelenyi*, 546 A.2d 1013, 1021 (Me. 1988) (noting that "the proper care and treatment of the mentally retarded patients" at a state center is a "basic state policy"); *Bellarmine Hills Assoc. v. Residential Sys. Co.*, 269 N.W.2d 673, 675 (Mich. Ct. App. 1978) ("Unquestionably, promoting the development and maintenance of quality programs and facilities for the care and treatment of the mentally handicapped is a settled public policy of our state"); *Deep E. Tex. Reg'l Mental Health Mental Retardation Servs. v. Kinnear*, 877 S.W.2d 550, 559 (Tex. App. 1994) ("Hence, we conclude – and it is obvious – that the State has a valid governmental interest in the welfare of the mentally handicapped and the mentally retarded citizens of Texas").

VOR respectfully submits that the foregoing clearly supports a finding that Iowa's public policy strongly and insistently supports the provision of appropriate care to the developmentally disabled and their protection from harm.

## CONCLUSION

For the foregoing reasons, VOR respectfully submits that the decision of the Iowa District Court should be reversed, and that this Court should issue an opinion clearly memorializing (1) that it is a clearly defined and well-recognized public policy of the State of Iowa that individuals may not be experimented upon without their consent and (2) citizens in State Resource Centers such as Glenwood have the right to appropriate care and treatment.



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## CERTIFICATION OF COMPLIANCE WITH TYPEFACE REQUIREMENTS & TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 font. This brief also complies with Iowa Rule of Appellate Procedure 6.906(4) because it does not exceed more than one-half of the length limitation for a required brief specified in Rule 6.903(1)(i) in that it contains 4,789 words excepting the parts exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

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