

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MELINDA FISHER, SHANNON G. by and
through her guardian, BRANDON R. by
and through his guardian, MARTY M. by
and through his guardian, MISTY M. by
and through her guardian, and NEAL
SIEGEL,

on behalf of themselves and all
others similarly situated,

PLAINTIFFS,

vs.

KIM REYNOLDS, in her official capacity of
Governor of Iowa; JERRY FOXHOVEN
In his official capacity as Director of the
Iowa Department of Human Services,

DEFENDANTS.

No. 17-cv-0208

RESISTANCE
TO MOTION FOR CLASS
CERTIFICATION

Defendants Resist the Motion for Class Certification, stating:

1. The proposed class definition is vague and difficult to ascertain with specificity because Plaintiffs fail to identify the policies or procedures at issue.
2. Because of the vagueness in the definition of the putative class, Plaintiffs' claims of numerosity are unsupported.
3. The service needs of any individual waiver member will be dependent on that person's medical and clinical presentation at the time. Individual inquiry into each person's circumstances is necessary to understand service needs and whether any service reduction was appropriate, and this inquiry renders class certification impracticable. Common questions

of law and fact are not central to, nor is class action a superior method of adjudicating, the claims.

4. Because individual questions predominate over common questions, the requirements of commonality, typicality, and adequacy of representation are not satisfied.
5. Further, individual Medicaid members retain the right of self-determination over their confidential protected health information, particularly given the fact that adjudication of Plaintiff's claims require fact-intensive inquiries into each specific Medicaid recipient's health care needs and situation. Plaintiffs have not addressed how they should have access to this information, nor do the Plaintiffs have the right to take positions on such personal information in this lawsuit.
6. Defendants have not refused to act on grounds that would impact the class. DHS takes its responsibilities to administer the Medicaid program seriously. The contract has provisions against de facto rationing and requires that service decisions be based on current clinical need. There are contract monitoring and quality provisions and substantial oversight. There is a financial incentive to meet contract monitoring provisions. In addition to formal compliance monitoring, DHS continues to mediate and address concerns, provide education, and serve as a liaison between the managed care plans and various stakeholders. DHS also tracks and problem-solves urgent member needs.

7. Appointment of three law firms as class counsel is duplicative and unnecessary.
8. Because injunctive relief claims are made against Defendants in their official capacities, class certification is unnecessary.

WHEREFORE, Defendants object to the motion for certification of this matter as a class action. Defendants seek an order rejecting the putative class and for any other relief appropriate under the circumstances.

THOMAS J. MILLER
Attorney General of Iowa

/s/ **Gretchen Witte Kraemer** AT0004358
gkraeme@dhs.state.ia.us
Special Assistant Attorney General
Hoover State Office Bldg, 2nd Floor
Des Moines, IA 50319
Tel.: (515) 281-8330
Fax: (515) 281-7219

I certify that the attached was filed via CM/ECF on August 2, 2017.
/s/ Gretchen Kraemer

Copies via EDMS to:

Roxanne B. Conlin
roxlaw@aol.com
319 Seventh Street, Suite 600
Des Moines, Iowa 50309

Jane Hudson
jhudson@driowa.org
Cynthia Miller
cmiller@driowa.org
400 East Court Avenue, Suite 300
Des Moines, Iowa 50312

Elizabeth Edwards
Edwards@healthlaw.org

Abigail Coursolle
Coursolle@healthlaw.org
200 N. Greensboro St, Suite D-13
Carrboro, North Carolina 27510