

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

MOTION TO DISMISS

The Defendants move to dismiss this action in accordance with Federal Rule of Civil Procedure 12 (b)(6), stating:

1. Plaintiffs are a putative class of Medicaid members who receive services on one of Iowa Medicaid’s waivers.
2. In the past, Plaintiffs have received exceptions to policy to allow them to receive greater services than they would otherwise receive. Specifically, an exception to policy allows services greater than the rate caps set in administrative code.
3. Iowa moved its Medicaid program to a managed care model. Iowa Medicaid services are currently provided through contractual

relationships with three managed care organizations (MCOs). The Defendants are in a contract management role with respect to the MCOs.

4. Defendants ask the court to dismiss the Amended Complaint because no relief can be granted.
 - a. Because Plaintiffs are not entitled to an exception to policy, there is no process due.
 - b. Plaintiffs receive actual notice of the expiration of the term of the exception at the time the exception was granted.
 - c. Plaintiffs continue to receive services, albeit at the level available to all waiver recipients without an exception, so there is no violation of the reasonable promptness requirement.
 - d. Defendants built Olmstead and community integration goals and expectations into the contracts with the MCOs. Waivers are federally required to be cost neutral and managed to the average aggregate cap. Olmstead contains a balancing test which expressly includes the State's obligation to serve others.
 - e. There is no direct personal responsibility to serve as the basis for 42 U.S.C. § 1983 liability for the Defendants. Supervisory responsibility does not state a claim under § 1983.
 - f. Defendants assert their sovereign immunity. The Amended Complaint seeks more than simply complying with the law. Granting the relief sought would be a draw on the public treasury.

g. Additionally, Defendants assert special sovereign interests in the management of the Medicaid program and the managing the tax payors funds for the benefit of the many programs the State of Iowa offers.

WHEREFORE, the Defendants respectfully moved that this claim be **DISMISSED**, costs taxed to Plaintiffs, that the filing fee be assessed to Plaintiffs, and for any further relief appropriate under the circumstances.

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I certify that the attached was filed via CM/ECF on August 18, 2017. /s/
Gretchen Kraemer

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