

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, Colorado 80202	
<hr/> COLORADO CROSS-DIABILITY COALITION, et al., Plaintiffs, v. JOAN HENNEBERRY, et al., Defendants.	<hr/> Case No. 09CV11761 COURTROOM 3
ORDER	

Defendants’ “Motion to Dismiss,” filed February 18, 2010, is DENIED.

Motions to dismiss are disfavored, and may be granted only when, assuming all the allegations of the complaint are true, the plaintiff would still not be entitled to any relief under any cognizable legal theory. *See, e.g., Rosenthal v. Dean Witter Reynolds, Inc.*, 908 P.2d 1095, 1099 (Colo. 1995); *Berenergy Corp. v. Zab, Inc.*, 94 P.3d 1232, 1237 (Colo. App. 2004). Here, it seems to me from my review of the motion and briefs that if all the allegations of the complaint are true, including the allegations that individual Plaintiffs suffered wildly different reductions in services due to wildly different reductions in reimbursement rates, some of which greatly exceeded the reductions authorized by the Executive Orders, then even the non-individualized notice that was given under 42 C.F.R. § 447.205 might have been inadequate.

Defendants shall file an answer in 15 days.

Plaintiffs shall, 30 days after the answer is filed, file a motion for class certification and a notice to set a hearing on class certification, such hearing to be held before the end of the year.

Finally, this case was improvidently set for trial, since it has never been at issue. The November 1, 2010 trial is HEREBY VACATED. When Plaintiffs file the notice to set the class certification hearing addressed above, that notice shall also encompass the setting of a new trial date, to be held no later than May 16, 2011.

DONE THIS 17TH DAY OF JUNE, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Morris B. Hoffman", written over a horizontal line.

Morris B. Hoffman
District Court Judge

cc: All counsel