

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p>	
<p>COLORADO CROSS-DISABILITY COALITION, a Colorado Corporation, JULIE REISKIN, PAMELA CARTER, DEBRA MILLER, as parent and guardian for her son, BRIAN MILLER, ANNE MARIE MOKRITSKY-MARTIN, LAURA HERSHEY, ROBIN STEPHENS, PATRICK HAM, as parent and guardian for his son, PATRICK HAM, CRYSTAL HUNTER, HOLLY FISCUS, KRISTINA SAWYCKYJ, MARION HAMBY, DEBBIE LANE, and LINDA S. IVEY, for themselves and all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>JOAN HENNEBERRY, EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, IN HER OFFICIAL CAPACITY, AND COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General JENNIFER L. WEAVER, Assistant Attorney General* JOAN E. SMITH, Assistant Attorney General* 1525 Sherman Street, 7th Floor Denver, CO 80203 Telephone: 303-866-5136/5279 FAX: 303-866-5671 E-Mail: jennifer.weaver@state.co.us joan.smith@state.co.us Registration Numbers: 28882, 34605 *Counsel of Record</p>	<p>Case No.: 2009CV11761</p> <p>Courtroom: 3</p>
<p>ANSWER TO AMENDED COMPLAINT</p>	

The Defendants, by and through counsel, the Office of the Attorney General, submit the following Answer to Plaintiffs' Amended Complaint.

1. Paragraph 1 of the Amended Complaint is a description of the action and does not contain allegations of fact which require an answer.
2. Defendants admit the allegations in Paragraph 2 of the Amended Complaint.
3. Defendants have insufficient information to either admit or deny the allegations in paragraph 3 of the Amended Complaint.
4. Defendants admit the allegations in Paragraph 4 of the Amended Complaint but clarify that the language cited is not verbatim of what appears on the Department's web-site.
5. Defendants deny the allegations in Paragraphs 5, 6, 7, 8, 9, 10, and 11 of the Amended Complaint.
6. Paragraph 12 is the Plaintiffs' characterization of the action and does not contain allegations of fact which require an answer.
7. Defendants admit that this Court has jurisdiction under Article 6, section 9 of the Colorado Constitution, but deny there is jurisdiction under C.R.S. § 24-34-505.6(1).
8. Defendants admit the allegations in Paragraph 14 of the Amended Complaint.
9. Paragraphs 15 and 16 are a description of the action and do not contain allegations of fact which require an answer.
10. Defendants deny the allegations in Paragraph 17 of the Amended Complaint.
11. Defendants have insufficient information to either admit or deny the allegations in Paragraph 18 of the Amended Complaint.
12. Defendants admit the allegations in Paragraphs 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30 and 32 of the Amended Complaint.
13. Defendants deny the allegations in Paragraph 29 of the Amended Complaint because Ms. Hanby is deceased. Defendants also deny the allegations in paragraph 31 of the Amended Complaint in that Department records indicate that Ms. Ivey resides in Windsor, Colorado.
14. Defendants deny the allegations in the first sentence of paragraph 33 of the Amended Complaint, but admit the allegations in the second and third sentences.
15. Paragraph 34 of the Amended Complaint is a description of the proposed class action and does not contain allegations of fact which require an answer.

16. Defendants deny the allegations in Paragraphs 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46 of the Amended Complaint.
17. Defendants have insufficient information to either admit or deny the allegations in Paragraph 47 of the Amended Complaint.
18. Defendants deny the allegations in Paragraph 48 of the Amended Complaint.
19. Defendants have insufficient information to either admit or deny the allegations in Paragraph 49 of the Amended Complaint.
20. Defendants deny the allegations in Paragraphs 50, 51, 52, 53, 54, 55 and 56 of the Amended Complaint.
21. Defendants admit the allegations in Paragraph 57 of the Amended Complaint, but add that the ISO has additional responsibilities than what Plaintiffs list in this paragraph.
22. Defendants admit the allegations in paragraph 58 of the Amended Complaint.
23. Defendants deny the allegations in paragraphs 59 and 60 of the Amended Complaint.
24. Defendants have insufficient information to either admit or deny the allegations in Paragraph 61 of the Amended Complaint.
25. Defendants deny the allegations in paragraph 62 of the Amended Complaint.
26. Defendants have insufficient information to either admit or deny the allegations in Paragraph 63 of the Amended Complaint.
27. Defendants admit the allegations in Paragraph 64 of the Amended Complaint.
28. Defendants have insufficient information to either admit or deny the allegations in Paragraphs 65, 66, 67 and 68 of the Amended Complaint.
29. Defendants deny the allegations in Paragraph 69 of the Amended Complaint.
30. Defendants have insufficient information to either admit or deny the allegations in Paragraphs 70, 71, 72, 73, and 74 of the Amended Complaint.
31. Defendants deny the allegations in Paragraphs 75, 76, 77, 78, 79 and 80 of the Amended Complaint.

32. The allegations in paragraph 81 of the Amended Complaint are incomprehensible, and therefore Defendants deny the allegations therein.
33. Defendants deny the allegations in Paragraph 82 of the Amended Complaint.
34. Defendants admit the allegations in Paragraphs 83 of the Amended Complaint.
35. Defendants have insufficient information to either admit or deny the allegations in Paragraph 84 of the Amended Complaint.
36. Defendants deny the allegations in paragraph 85 of the Amended Complaint.
37. Defendants have insufficient information to either admit or deny the allegations in paragraph 86 of the Amended Complaint.
38. Defendants deny the allegations in Paragraphs 87 and 88 of the Amended Complaint.
39. Defendants admit the allegations in Paragraph 89 of the Amended Complaint.
40. Defendants deny the allegations in Paragraph 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102 and 103 of the Amended Complaint.
41. Defendants admit the allegations in Paragraphs 104, 105 and 107 of the Amended Complaint.
42. Defendants deny the allegations in Paragraphs 106, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117 , 118, and 119 of the Amended Complaint.
43. Defendants admit the allegations in Paragraph 120 of the Amended Complaint.
44. Defendants have insufficient information to either admit or deny the allegations in Paragraph 121 of the Amended Complaint.
45. Defendants deny the allegations in Paragraphs 122, 123, and 124 of the Amended Complaint.
46. Defendants admit the allegations in Paragraph 125 and 126 of the Amended Complaint.
47. Defendants are without sufficient information to either admit or deny the allegations in paragraph 127 of the Amended Complaint.
48. Defendants deny the allegations in Paragraphs 128, 129, 130, and 131 of the Amended Complaint.

49. Defendants admit the allegations in Paragraph 132 of the Amended Complaint.
50. Defendants deny the allegations in Paragraphs 133, 134, 135, 137 and 138 of the Amended Complaint.
51. Defendants admit the allegations in Paragraphs 136, 139 and 140 of the Amended Complaint.
52. Defendants are without sufficient information to either admit or deny the allegations in paragraph 141 of the Amended Complaint.
53. Defendants deny the allegations in Paragraphs 142, 143, 144, 145, 147, 148, 149, 151 and 152 of the Amended Complaint.
54. Defendants admit the allegations in Paragraphs 146, 150, 153, and 154 of the Amended Complaint.
55. Defendants are without sufficient information to either admit or deny the allegations in paragraph 155 of the Amended Complaint.
56. Defendants deny the allegations in Paragraphs 156, 157, 158, 159, 161, 162, and 163 of the Amended Complaint.
57. Defendants admit the allegations in Paragraph 160 of the Amended Complaint except that the correct date of the letter to Plaintiff Miller was 12/9/09.
58. Defendants admit the allegations in Paragraph 164, 167 and 168 of the Amended Complaint.
59. Defendants deny the allegations in Paragraphs 165 and 166 of the Amended Complaint.
60. Defendants are without sufficient information to either admit or deny the allegations in paragraph 169 of the Amended Complaint.
61. Defendants deny the allegations in Paragraphs 170, 171, 172, 173, 176, and 177 of the Amended Complaint.
62. Defendants have insufficient information to either admit or deny the allegations in Paragraphs 174, 175, 179 and 180 of the Amended Complaint.
63. Defendants deny the allegations in Paragraphs 181, 182, 183, and 184 of the Amended Complaint.

64. Defendants admit the allegations in Paragraphs 178 and 185 of the Amended Complaint.
65. Defendants deny the allegations in Paragraphs 186, 187, 188, 190, and 191 of the Amended Complaint.
66. Defendants admit the allegations in Paragraphs 189 and 192 of the Amended Complaint.
67. Defendants have insufficient information to either admit or deny the allegations in Paragraphs 193 and 194 of the Amended Complaint.
68. Defendants deny the allegations in Paragraphs 195, 196, 197, 198, 200, 201, 202, 204, and 205 of the Amended Complaint.
69. Defendants admit the allegations in Paragraphs 199, 203, 206, and 207 of the Amended Complaint.
70. Defendants have insufficient information to either admit or deny the allegations in Paragraph 208 of the Amended Complaint.
71. Defendants deny the allegations in Paragraphs 209, 210, 211, 212, 214, 215, and 216 of the Amended Complaint.
72. Defendants admit the allegations in Paragraph 213, 217 and 218 of the Amended Complaint.
73. Defendants deny the allegations in Paragraphs 219, 220 and 223 of the Amended Complaint.
74. Defendants admit the allegations in Paragraphs 221 and 222 of the Amended Complaint.
75. Defendants have insufficient information to either admit or deny the allegations in paragraph 224 of the Amended Complaint.
76. Defendants deny the allegations in Paragraphs 225, 226, 227, 228, 231, 233, 236, and 237 of the Amended Complaint.
77. Defendants have insufficient information to either admit or deny the allegations in Paragraph 232 of the Amended Complaint.
78. Defendants admit the allegations in Paragraphs 229, 230, 234, 235, and 238 of the Amended Complaint.

79. Defendants have insufficient information to either admit or deny the allegations in Paragraphs 239, 240 and 241 of the Amended Complaint.
80. Defendants deny the allegations in Paragraph 242, 243, 244 and 245 of the Amended Complaint.
81. Defendants admit the allegations in Paragraphs 246, 247 and 248 of the Amended Complaint.
82. Defendants deny the allegations in Paragraphs 249, 250, 251, 252, 253, and 256 of the Amended Complaint.
83. Defendants admit the allegations in Paragraphs 254 and 255 of the Amended Complaint.
84. Defendants have insufficient information to either admit or deny the allegations in Paragraph 257 of the Amended Complaint.
85. Defendants deny the allegations in Paragraphs 258, 259, 260, 261, 264, 265, 266, and 267 of the Amended Complaint.
86. Defendants admit the allegations in Paragraphs 262 and 263 of the Amended Complaint, however, the correct date that Public Partnership Limited became the new FMS company is 12/1/2009, per the letter referenced by Plaintiffs.
87. Defendants deny the allegations in Paragraph 268 of the Amended Complaint, in that Ms. Hanby is now deceased.
88. Defendants have insufficient information to either admit or deny the allegations in Paragraphs 269, 270 and 271 of the Amended Complaint.
89. Defendants deny the allegations in Paragraphs 272, 273, 274, 275, 277, 278, 281, and 282 of the Amended Complaint.
90. Defendants admit the allegations in Paragraphs 276, 279, 280 and 283 of the Amended Complaint.
91. Defendants have insufficient information to either admit or deny the allegations in Paragraphs 284, 285, 286, 287, 288, 289, 290, 291 and 295 of the Amended Complaint.
92. Defendants deny the allegations in Paragraphs 292, 293, 296, 297, and 298 of the Amended Complaint.
93. Defendants admit the allegations in Paragraph 294 and 299 of the Amended Complaint.

94. Defendants admit the allegations in Paragraph 300 of the Amended Complaint, except that the correct citation is § 25.5-4-106, C.R.S.
95. The regulations speak for themselves and therefore no admission or denial is required for Paragraph 301 of the Amended Complaint. However, the correct citation is 42 C.F.R. § 440.70.
96. Defendants admit the allegations in Paragraph 302 of the Amended Complaint, but clarify that personal care and homemaker services may also be included.
97. The statutes, regulations and caselaw speak for themselves and therefore no admission or denial is required for Paragraph 303 of the Amended Complaint.
98. The regulations speak for themselves and therefore no admission or denial is required for Paragraph 304 of the Amended Complaint. However, the correct citation is 42 C.F.R. § 431.211, not 42 C.F.R. § 431.11.
99. The regulation speaks for itself and therefore no admission or denial is required for Paragraph 305 of the Amended Complaint.
100. Defendants deny the allegations in Paragraphs 306 and 307 of the Amended Complaint.
101. The regulation speaks for itself and therefore no admission or denial is required. All other allegations in Paragraph 308 of the Amended Complaint are denied.
102. Defendants deny the allegations in Paragraphs 309, 310, 311, 312, 313, and 314 of the Amended Complaint.
103. Defendants admit the allegations in Paragraphs 315 and 317 of the Amended Complaint.
104. Defendants deny the allegations in Paragraph 316 of the Amended Complaint.
105. Defendants have insufficient information to either admit or deny the allegations in Paragraph 318 of the Amended Complaint.
106. Defendants admit the allegations in Paragraphs 319 and 320 of the Amended Complaint, except that the correct regulation and citation is 10 Colo. Code Regs. 2505-10 § 8.551.1.
107. Defendants incorporate by reference all answers to the allegations of the Amended Complaint, and therefore Paragraphs 323, 326, 329 and 333 require no further answer.
108. Defendants deny the allegations in Paragraphs 321, 322, 324, 325, 327, 328, 330, 331, 334, and 335 of the Amended Complaint.

109. State statutes and regulations speak for themselves and therefore no admission or denial is required for paragraph 332 of the Amended Complaint.

110. Any allegation not specifically admitted is hereby denied.

AFFIRMATIVE AND OTHER DEFENSES

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Defendants did not deprive Plaintiffs of any rights, privileges or immunities under color of state law.
3. Defendants' actions were not in excess of statutory jurisdiction, authority, purposes or limitations, were not an abuse or clearly unwarranted exercise of discretion, and were not unsupported by substantial evidence when the record is taken as a whole.
4. Plaintiffs may lack standing to prosecute or bring any claims under 42 U.S.C. § 1983 or claims alleging violations of constitutionally protected rights, privileges or immunities.
5. Plaintiff Colorado Cross-Disability Coalition is not a real party in interest.
6. Plaintiff Colorado Cross-Disability lacks standing.
7. Defendants may be entitled to qualified immunity from Plaintiffs' claims.
8. Plaintiffs' action is moot.
9. Plaintiffs have no damages, or any damages are de minimus.
10. Defendants reserve the right to add additional defenses that are or may become applicable to this case.
11. Plaintiffs are not entitled to costs against the state of Colorado. C.R.C.P. 54(d). Absent specific legislative direction, costs cannot be assessed against the state. *McFarland v. Gunther*, 829 P.2d 510, 511 (Colo. App. 1992).

Respectfully submitted this 19th day of July, 2010.

JOHN W. SUTHERS
Attorney General

/s/JENNIFER L. WEAVER

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Financing and the Colorado Department of Health
Care Policy and Financing

*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within ANSWER TO AMENDED COMPLAINT upon all parties herein via LexisNexis File and Serve on this 19th day of July, 2010, on the following:

Kevin W. Williams
Carrie Ann Lucas
Colorado Cross-Disability Coalition
655 Broadway, Suite 775
Denver, CO 80203

/s/Connie Risser