

JUL 27 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DOROTHY CALABRESE, M.D.; et al.,

Plaintiffs - Appellants,

v.

KATHLEEN SEBELIUS, U.S.
Department of Health and Human
Services, Secretary,*

Defendant - Appellee.

No. 10-56346

D.C. No. 8:09-cv-00383-CJC-
RNB

MEMORANDUM**

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted July 12, 2011***

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

* Kathleen Sebelius is substituted for her predecessor, Charles E. Johnson, as Secretary of the Department of Health and Human Services under Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, plaintiffs' request for oral argument is denied.

Dorothy Calabrese, M.D., and her patients Harriet Fahl, Gene Fahl, and Paul Messer, appeal pro se from the district court’s order dismissing their action alleging equal protection violations based on defendant’s denial of Medicare reimbursements for “transfer factor” therapy. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Uhm v. Humana, Inc.*, 620 F.3d 1134, 1139 (9th Cir. 2010), and we affirm.

The district court properly dismissed the action because plaintiffs failed to state an equal protection claim. *See Engquist v. Or. Dep’t of Agric.*, 553 U.S. 591, 601-03 (2008) (addressing “class of one” equal protection claim); *Weinberger v. Salfi*, 422 U.S. 749, 769-70 (1975) (addressing class-based equal protection claim).

Plaintiffs’ remaining contentions are unpersuasive.

AFFIRMED.