National Center for Youth Law

youth law center

September 11, 2019

Honorable Tani Cantil-Sakauye, Chief Justice
Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

RE: Frances Rivera, et al. v. Jennifer Kent, as Director, etc., et al.,
Supreme Court No. S257304
First Appellate District, Division 4, No. A147534
Alameda County Super. Ct. No. RG14740911

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Court:

The Youth Law Center and the National Center for Youth Law urge the Court to grant the Petition for Review filed in the above captioned case, *Rivera v. Kent*. The Court of Appeal's ruling improperly interprets California's statutory scheme for Medi-Cal, and failed to find that the framework attributed a duty to the single state agency responsible for the program's administration. This places at risk the ability of children to enforce the myriad of statutory rights that make up the State's public safety net.

This letter is submitted pursuant to California Rule of Court 8.500, subdivision (g). Counsel for the Plaintiffs are aware of our interest, and support the filing of this letter.

I. Amici Curiae Youth Law Center and National Center for Youth Law's Interest in Review

The Youth Law Center ("YLC") and National Center for Youth Law ("NCYL") (collectively "Amici") are interested in this case because it affects the ability of California's children to enforce countless statutory rights to critical services offered through joint federal-state programs. YLC is a non-profit that profit that advocates through youth-focused and research informed litigation, policy reform, media advocacy, collaborative system change

initiatives, training, and public education to transform foster care and juvenile justice systems so every young person can thrive. Similarly, NCYL is a non-profit that works to improve the lives of disadvantaged children and youth by weaving together research, public awareness, policy development, technical assistance and litigation to ensure governmental systems provide the support these children and youth need to thrive. YLC and NCYL, since 1978 and 1970 respectively, have represented the interests of countless children and young adults in California and dozens of other states across the country. Amici staff have long been involved in public discussions, legislation, and court challenges regarding the treatment, services, and benefits available to youth via joint federal-state programs.

II. Support for Review

The Petition for Review—specifically issue number three—presents a question of exceptional importance to the public, including the children and youth that Amici serve: the third issue presented is, "Does the Department have a mandatory duty to ensure adherence to Medi-Cal's timeliness, notice and other requirements even where it has delegated responsibilities to the counties?" (Petition, p. 9.) This issue is also known as the Single State Agency ("SSA") issue.

Review by this Court of the SSA issue is critical because of its impact on the many state agencies charged with administering critical services to California's children. These agencies—including the Department of Health Care Service ("DHCS"), the Department of Social Services, Child Support Services, and the Department of Education—are responsible for the provision of basic and necessary services to California's more than 9 million children. Just a few of the joint federal-state programs implicated are: Medi-Cal, which covers 5.3 million low-income children in California[1]; Aid to Families with Dependent Children, which supports over 60,000 children and young adults in the state's foster care system[2]; and the state's Supplemental Nutrition Assistance Program (CalFresh), which in 2015 provided food stamps to 24 percent of children, free school meals to 51 percent of school-aged children, and supplemental food and resources to 44 percent of infants and 34 percent of young children.[3]

[1] California Department of Health Care Services – Medi-Cal Children's Health Dashboard (June 2019) *available at*: https://www.dhcs.ca.gov/services/Documents/June-2019-Pediatric-Dashboard-6.21.19.pdf

[2] Webster, D., Lee, S., Dawson, W., Magruder, J., Exel, M., Cuccaro-Alamin, S., Putnam-Hornstein, E., Wiegmann, W., Saika, G., Chambers, J., Min, S., Hammond, I., Sandoval, A., Yee, H., Flamson, T., Hunt, J., Ensele, P., Lee, H., Casillas, E., & Gonzalez, A. (2019). *CCWIP reports*. Retrieved 9/4/2019, from University of California at Berkeley California Child Welfare Indicators Project website *available at*: http://cssr.berkeley.edu/ucb_childwelfare

[3]Caroline Danielson and Sarah Bohn, *Children's Participation in Nutrition Programs*, Public Policy Institute of California (December 2016) *available at*: https://www.ppic.org/publication/improving-california-childrens-participation-in-nutrition-programs/

Under both state and federal laws and regulations, DHCS and other similar entities serve as the "single state agency" for the respective programs they administer. In an effort to increase efficiency, and as a practical means of achieving agency objectives across a large state, the legislature has also delegated the day-to-day management and operations of various programs to the state's 58 counties. Relevant to the plaintiffs in *Rivera*, the instant case, was the delegation of DHCS's duty to make timely Medi-Cal eligibility determinations and to provide notices to beneficiaries.

Generally speaking, these delegations are in keeping with California law. Unless restricted by a specific provision of the California Constitution, the Legislature may delegate to the counties any of the functions that belong to the state itself, as the counties are subdivisions of the state. (Cal. Const. Art. 11, § 1(a); Gov. C. § 23002.) Even some duties specifically ascribed to the single state agency under federal law may be appropriately delegated when not in conflict with the applicable federal laws. However, delegating some of an agency's duties relating to the administration of a joint federal-state program does not relieve the agency of its obligations to ensure statewide compliance with federal laws and regulations or to carry out critical duties owed to the statewide populations it serves.

The Court of Appeal in *Rivera* held that neither the state regulation prescribing the timeliness for processing Medi-Cal applications, nor the federal regulation regarding the same, creates a clear, ministerial duty attributable to DHCS. (22 C.C.R. § 50177; 42 C.F.R. 435.912.) The court found the state regulation imposes a duty only on the counties, and that the federal regulation is too vague to be incorporated into the state law framework as a requirement for DHCS (Slip Opn. at 9-12.) Taken together, these holdings require counties to perform the delegated duties in compliance with state laws and regulations, and absolve DHCS of its obligation as the single state agency to administer the Medi-Cal program in compliance with the state's own implementation of federal laws and regulations.

No review of the statutory framework for a joint federal-state program can logically conclude that it imposes a duty on counties to comply with state laws implementing the plan, but does not impose a duty on the single state agency to ensure compliance with the same plan. Such a conclusion would turn the entire system on its head. It is well-settled that joint federal-state programs must be administered in compliance with applicable federal laws and regulations.[4] The Medi-Cal structure is no exception. California law clearly imposes a duty on DHCS to comply

[4] *See, e.g.*, *Smith v. Miller*, 665 F.2d 172, 174-75 (7th Cir. 1981) ("While a state's participation in the Medicaid program is purely voluntary and its acceptance of substantial federal funds uncoerced, once electing to participate, it must fully comply with federal statutes and regulations in its administration of the program."); *Missouri Child Care Ass'n v. Cross*, 294 F.3d 1034, 1036 (8th Cir. 2002) (addressing the Child Welfare Act and stating, "Although Congress may not require a state to participate in a program created pursuant to the Spending Clause, once a state agrees to take the funds offered through such programs the state is bound to comply with federally imposed conditions.")(internal quotation marks and citation omitted).

with all federal laws and regulations in its administration of the program by virtue of its designation as the single state agency responsible for Medi-Cal. To the extent that California's plan delegates certain responsibilities to the counties, DHCS—as the singles state agency responsible for Medi-Cal—nonetheless remains responsible for ensuring compliance with the plan across the state.

If left undisturbed, this published opinion could have broad consequences for the many children and young adults relying on cooperative federal-state programs for essential supports and services. Children and youth entitled to such resources will be largely at the whim of county decision making authorities. Children as a group, and low-income children in particular, have extremely limited access to legal assistance and representation. They rely on responsible state agencies to ensure statewide uniformity and compliance with state and federal laws. When problems emerge, it is essential that children who manage to gain access to attorneys, as well as the relatively small number of attorneys with expertise representing children, have the ability to pursue actions in mandamus against the state agencies. If the state can limit its own federal obligations and ministerial duties by simply shifting some initial administrative responsibilities to the counties, it will place the state's neediest children at an even greater disadvantage. Allowing the state to shield its own agencies from a writ of mandate when they fail to uphold their responsibilities to a federal-state program dangerously incentivizes state agencies to delegate many critical functions to counties free of consequences.

The Legislature did not intend such a result in the Medi-Cal context. Thus, it designated DHCS as the single state agency responsible for administering Medi-Cal. (42 U.S.C. § 1396a(a)(5); Welf. & Inst. Code § 14100.1.) In so doing, the Legislature recognized that while DHCS may delegate certain functions to the counties, the department would not be able to avoid responsibility for ensuring that those functions are carried out properly. To interpret the Legislature's intent otherwise would call into question the state's certification of its Title XIX plan to the federal government.

Nevertheless, the Court of Appeal in *Rivera* read the statutes delegating certain initial administrative functions to the counties to absolve DHCS of responsibility for the timeliness of Medi-Cal eligibility determinations and notices of delay. This odd result is partly due to the nature of the statutory framework requiring interpretation, which the Court of Appeal itself recognized as "highly complex." Given the level of importance, clarity is required in interpreting the system. It should be plain, wherever the federal government can claim the law imposes on a state agency a clear and present duty to act in accordance with federal law in administering a program, mandate may compel performance of the same action on behalf of a beneficially interested party.

Due to the broad impact on the public welfare, including the welfare of the children and youth the Amici serve, the California Supreme Court should grant review of the opinion published by the Court of Appeal in *Rivera*.

Thank you for your consideration.

Sincerely,

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