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UNITED STATES DISTRICT COURT

DISTRICT OF CALIFORNIA

WESTERN DIVISION

CALIFORNIA MEDICAL ASSOCIATION; ET AL., Petitioners vs. SANDRA SHEWRY, ETC.; ET AL. Respondents	Case No.: CV 08-3363 CAS (MANx) ORDER REMANDING THE ACTION TO THE LOS ANGELES COUNTY SUPERIOR COURT

I. INTRODUCTION

On May 5, 2008, petitioners filed a petition for writ of mandate and a class action complaint in the Los Angeles County Superior Court, seeking injunctive and declaratory relief against the California Department of Health Care Services ("the Department") and Sandra Shewry, Director of the Department ("the Director").[1] The Department is a California agency charged with the administration of California's Medicaid program, Medi-Cal. Petitioners are professional and trade associations that

[1] Petitioners are the California Medical Association; the California Hospital Association; the California Dental Association; the California Association for Adult Day Services; the American College of Emergency Physicians, State Chapter of California, Inc.; the California Pharmacists Association; and the California Association of Public Hospitals and Health Systems.

represent the interests of California physicians, emergency physicians, dentists, pharmacists, adult day services providers, hospitals, and public hospital systems. Compl. ¶¶ 9-15.

On February 16, 2008, the California Legislature enacted Assembly Bill X3 5 ("AB 5") in special session. Id. ¶ 38. Section 14 of AB 5 adds Cal. Welf. & Inst. Code § 14105.19, which reduces by ten percent payments under the Medi-Cal fee-for-service program for physicians, dentists, pharmacies, adult day health care centers, clinics, health systems, and other providers for services provided on or after July 1, 2008. Cal. Welf. & Inst. § 14105.19(b)(1); Compl. ¶ 39. Section 15 of AB 5 adds Cal. Welf. & Inst. Code § 14166.245, which reduces payments to acute care hospitals not under contract with the Department for inpatient services provided on or after July 1, 2008. Cal. Welf. & Inst. § 14166.245(c).[2] The Court herein refers to these rate and payment reductions as the "ten percent rate reduction."

Petitioners allege that the ten percent rate reduction violates various state and federal laws as set forth *infra*, and therefore, cannot be implemented. They allege claims for (1) a writ of mandate for violation of federal law and California's Medicaid plan ("the state plan"); (2) declaratory relief; and (3) preliminary and permanent injunctive relief.

On May 21, 2008, respondents removed the action to this Court, asserting

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[2] The Department is empowered to contract with individual hospitals for the exclusive right to treat Medi-Cal patients. Cal. Welf. & Inst. § 14081; Cedars-Sinai Med. Ctr. v. Shewry, 137 Cal. App. 4th 964, 969-70 (2006). Contracting hospitals are reimbursed by the Department at the negotiated contract rate, and once the Department has contracted with enough hospitals to meet the needs of Medi-Cal beneficiaries in a geographic area, it awards no further contracts in that area. Cedars-Sinai, 137 Cal. App. 4th at 970. Noncontract hospitals are only reimbursed for treating Medi-Cal patients under certain circumstances, including when providing emergency care or when providing services to a patient whose Medi-Cal eligibility was unknown at the time of admission. Id.

federal question jurisdiction. On May 30, 2008, petitioners filed the instant motion to remand the case to the Los Angeles Superior Court. Respondents filed an opposition thereto on June 2, 2008. On June 16, 2008, petitioners filed a reply. A hearing was held on June 23, 2008. After carefully considering the arguments set forth by the parties, the Court finds and concludes as follows.

II. BACKGROUND

A. Medicaid and Medi-Cal

Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq*. ("the Medicaid Act"), authorizes the federal government to distribute funds to participating states for the purpose of providing medical assistance to low income persons who are aged, blind, disabled, or members of families with dependent children. Because California has elected to participate in the Medicaid program, it must administer its state Medicaid program, Medi-Cal, in compliance with a state plan that has been pre-approved by the Secretary of the U.S. Department of Health and Human Services ("the Secretary") and which complies with the requirements set forth in 42 U.S.C. § 1396a(a)(1)-(70).

Under California law, the Department must administer Medi-Cal in accordance with the state plan; applicable state law, as specified in the Welfare and Institutions Code; and Medi-Cal regulations. Cal. Code Regs. tit. 22, § 50004(b).

B. Alleged Violations of State and Federal Law

Petitioners allege that the ten percent rate reduction fails to comply with California's state plan, in violation of Cal. Code Regs. tit. 22, § 50004(b) and the Medicaid Act, because, according to petitioners,

> (1) neither the Department nor the Legislature ensured that Medi-Cal payment rates incorporating the ten percent rate reduction are sufficient to establish equal access to services for Medi-Cal beneficiaries;
>
> (2) with respect to non-institutional services, neither the

> Department nor the Legislature (a) developed an evidentiary base or rate study resulting in the determination of proposed rates incorporating the ten percent rate reduction; (b) presented the proposed rates incorporating the ten percent rate reduction at a public hearing to gather public input; (c) determined the final rates based on the evidentiary base including the pertinent public input; or (d) established the payment rates incorporating the ten percent rate reduction through adoption of regulations specifying such rates; and/or (3) with respect to non-institutional services, the rate adjustments made by the ten percent rate reduction otherwise fail to meet the requirements of 42 C.F.R. Part 447.

Compl. ¶ 64.

Petitioners also allege that the ten percent rate reduction violates Attachment 4.19-A of the state plan as to hospital inpatient services and Attachment 4.19-D as to distinct part nursing unit services. Petitioners maintain that in light of these violations of the state plan, the Department may not lawfully implement the ten percent rate reduction unless the Secretary approves amendments to the state plan. Id. ¶ 65.

Additionally, petitioners allege that the ten percent rate reduction violates Cal. Welf. & Inst. Code § 14079, which provides that "[t]he director annually shall review the reimbursement levels for physician and dental services under Medi-Cal, and shall revise periodically the rates of reimbursement to physicians and dentists to ensure the reasonable access of Medi-Cal beneficiaries to physician and dental services." Petitioners maintain that the ten percent rate reduction violates § 14079 because it mandates a rate reduction without the Director's annual review and corresponding

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revision of reimbursement rates to ensure that beneficiaries have reasonable access to

physician and dental services. Id. ¶ 66.

Petitioners further allege that the California Legislature exceeded the scope of its authority under the California Constitution when it enacted the ten percent rate reduction during the special session called by Governor Arnold Schwarzenegger. Id. ¶ 67.

In addition, petitioners allege that the ten percent rate reduction violates 42 C.F.R. § 447.204 because it fails to ensure that Medi-Cal "payments [are] sufficient to enlist enough providers so that services under the [state plan] are available to recipients at least to the extent that those services are available to the general population." Id. ¶ 68.

Finally, petitioners allege that the ten percent rate reduction violates three provisions of the Medicaid Act:

First, petitioners allege that the ten percent rate reduction violates 42 U.S.C. § 1396a(30)(A) ("section (30)(A)"), which requires that the state plan

> provide such methods and procedures relating to the utilization of, and payment for, care and services available under the plan . . . as may be necessary . . . to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.

Petitioners allege that the rates that result from the ten percent rate reduction are inconsistent with efficiency, economy, and quality of care, and are not sufficient to enlist adequate numbers of providers. Petitioners allege that the Department and the Legislature improperly neglected to consider these factors in enacting and implementing the ten percent rate reduction. Furthermore, petitioners allege that the Department and

the Legislature improperly failed to consider the effect of the ten percent rate reduction on Medi-Cal rates in light of provider costs. Compl. ¶ 69(a).

Second, petitioners allege that the ten percent rate reduction violates 42 U.S.C. § 1396a(a)(8) ("section (a)(8)"), which requires that the state plan provide that medical assistance shall be furnished to eligible individuals with "reasonable promptness," because it fails to ensure that Medi-Cal beneficiaries can access care promptly. Id. ¶ 69(b).

Third, petitioners allege that the ten percent rate reduction violates 42 U.S.C. § 1396a(a)(13) ("section (a)(13)"), which requires the state plan to provide for a public process for determining rates of payment for hospital services and certain other institutional providers. This public process must include (i) the publication of proposed rates, the methodologies underlying the establishment of such rates, and justifications for the proposed rates; (ii) a reasonable opportunity for providers, beneficiaries and their representatives, and other concerned California residents to review and comment on the proposed rates, methodologies, and justifications; and (iii) the publication of final rates, the methodologies underlying the establishment of such rates, and the justifications for such final rates. 42 U.S.C. § 1396a(13)(A). Petitioners allege that the ten percent rate reduction was not adopted in accordance with such a public process, in violation of this provision. Compl. ¶ 69(c).

C. Relief Sought

Petitioners seek a writ of mandate and an injunction precluding respondents from implementing the ten percent rate reduction.

Additionally, petitioners seek a declaration that the ten percent rate reduction is invalid because it violates the provisions of Cal. Code Regs. tit. 22, § 50004, the state plan, section (30)(A), section (a)(8), section (a)(13), and 42 C.F.R. § 447.204. Petitioners also seek a declaration that the ten percent rate reduction is a *de facto* amendment to the state plan, such that it cannot be implemented without federal

approval.

Petitioners also seek a declaration that, when setting Medi-Cal rates in the future, the Department must consider whether the rates have a reasonable relationship to the costs of providing services to Medi-Cal beneficiaries and are sufficient to ensure equal access to services for Medi-Cal beneficiaries.

III. DISCUSSION

The question presented is whether petitioners' complaint presents a federal question or whether this action must be remanded for lack of subject matter jurisdiction.

A civil action may be removed from state court if a district court would have original jurisdiction over the action. 28 U.S.C. § 1441(a). It is the removing party's burden to demonstrate the existence of subject matter jurisdiction. Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004). The removal statute is strictly construed and "federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996).

Federal question jurisdiction extends only to "those cases in which a well-pleaded complaint establishes that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law . . ." Christianson v. Colt Indus. Operating Corp., 108 S. Ct. 2166, 2173 (1988) (quoting Franchise Tax Board of Cal. v. Const. Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983)); Ultramar Am., Ltd. v. Dwelle, 900 F.2d 1412, 1414 (9th Cir. 1990) ("Claims brought under state law may 'arise under' federal law if vindication of the state right necessarily turns upon construction of a substantial question of federal law, i.e., if federal law is a necessary element of one of the well-pleaded claims."). A state claim may give rise to federal question jurisdiction only if it necessarily raises a substantial and disputed federal issue that may be considered by a federal court without disturbing "any congressionally approved balance of federal and state judicial

responsibilities." Grable & Sons Metal Prods. v. Darue Eng'g & Mfg., 125 S. Ct. 2363, 2368 (2005).

Additionally, "[w]hen a claim can be supported by alternative and independent theories -- one of which is a state law theory and one of which is a federal law theory -- federal question jurisdiction does not attach because federal law is not a necessary element of the claim." Rains v. Criterion Sys., 80 F.3d 339, 346 (9th Cir. Cal. 1996); Duncan, 76 F.3d at 1486 ("if a single state-law based theory of relief can be offered for each of the three causes of action in the complaint, then the exercise of removal jurisdiction was improper."); see also Broder v. Cablevision Sys. Corp., 418 F.3d 187, 195 (2d Cir. 2005) ("One of the key characteristics of a mere 'theory,' as opposed to a distinct claim, is that a plaintiff may obtain the relief he seeks without prevailing on it.").

Petitioners contend that the complaint alleges three claims -- all of which arise under state law -- for a writ of mandate, declaratory relief, and injunctive relief. While they acknowledge that these claims are predicated on alleged violations of both state and federal law, petitioners maintain that they can prevail on these claims based solely on the alleged violations of state law. Petitioners argue that because the Court therefore need not reach the questions of whether federal law has been violated, there is no federal question jurisdiction.

Because federal law does not create any of petitioners' claims, federal question jurisdiction may lie only if any of these claims necessarily depends on the resolution of a substantial question of federal law.

Each of petitioner's three claims for relief is essentially directed at obtaining the same result -- preventing the implementation of the ten percent rate reduction. In support of each of these claims, petitioners allege that the ten percent rate reduction violates the California Constitution and Cal. Welf. & Inst. Code § 14079. Petitioners further allege that the ten percent rate reduction fails to comply with the state plan, in

violation of Cal. Code Regs. tit. 22, § 50004(b). Additionally, petitioners allege that they are entitled to relief on their claims based on the ten percent rate reduction's noncompliance with section (30)(A), section (a)(8), section (a)(13), and 42 C.F.R. § 447.204.

Respondents focus on the violations of federal law alleged by petitioners in arguing that petitioners' state law claims for relief turn on substantial and disputed questions of federal law, giving rise to a federal question. However, because petitioners have stated alternative state law theories for proceeding on each of their claims for relief, under Rains, the allegations that the ten percent rate reduction violates federal law are not necessary to any of petitioners' claims for relief. See also Pickern v. Stanton's Rest. & Woodsman Room, 2002 U.S. Dist. LEXIS 1587, at *5 (N.D. Cal. 2002) ("For state law claims to support federal question jurisdiction, federal law must provide the only possible theory for relief. If an alternative, independent state law theory for a claim exists, then federal question jurisdiction will not lie.") (citations omitted). Therefore, the allegations that the ten percent rate reduction violates federal law do not suffice to give rise to federal question jurisdiction.

Moreover, the alleged violations of state law do not themselves raise any substantial federal questions because determining whether there has been a violation does not require reference to or interpretation of federal law. Hendricks v. Dynegy Power Mktg., Inc., 160 F. Supp. 2d 1155, 1161 (S.D. Cal. 2001) ("a claim raises a substantial question of federal law when its resolution requires reference to or interpretation of federal law."). Federal law has no bearing on petitioners' allegations that the California Legislature enacted the ten percent rate reduction in violation of the California Constitution and Cal. Welf. & Inst. Code § 14079. Likewise, although the state plan must comply with the Medicaid Act and be approved by the Secretary, the question whether implementation of the ten percent rate reduction is invalid because it violates the state plan turns upon an interpretation of Cal. Code Regs. tit. 22, §

50004(b)(1) -- which requires that the Department administer Medi-Cal in accordance with the state plan -- and therefore, is one of state law.[3] See Grable & Sons Metal Prods. v. Darue Eng'g Mfg., 125 S. Ct. 2363, 2367 (2005) ("federal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum.").

Although respondents do not address petitioners' contention that the ten percent rate reduction violates the California Constitution, they argue that AB 5 supercedes Cal. Welf. & Inst. Code § 14079 and Cal. Code Regs. tit. 22, § 50004, such that the ten percent rate reduction is not invalidated by either of these provisions. Respondents rely primarily on Cal. Welf. & Inst. Code § 14105.19's provision that the Director shall reduce Medi-Cal payments as set forth in that section "[n]otwithstanding any other provision of law . . ." Cal. Welf. & Inst. Code § 14105.19(a). In effect, respondents request this Court to decide petitioners' state law theories on their merits. However, it would not be proper for this Court to engage in such an inquiry prior to a determination that it has jurisdiction to do so. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 101-102 (1998) ("For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires."); Fairfax Fin. Holdings Ltd. v. S.A.C. Capital Mgmt., LLC, 2007 U.S. Dist. LEXIS 39214, at *11 (D.N.J. 2007) ("This Court must establish the existence of subject-matter jurisdiction before engaging in any consideration of the

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[3] Respondents rely on Concourse Rehab.& Nursing Ctr. Inc. v. DeBuono, 179 F.3d 38 (2d Cir. 1999), in which the court stated that to plead a federal claim, a plaintiff must allege a "specific conflict between a state plan or practice on the one hand and a federal mandate on the other." Id. at 43-44. However, respondents do not argue that determining whether the ten percent rate reduction violates the state plan necessarily involves the reference to or interpretation of federal law. Instead, respondents merely argue that a federal question exists because petitioners' claims are predicated on a conflict between the ten percent rate reduction and violations of the Medicaid Act. Accordingly, respondents' citation to DeBuono is inapposite.

merits."). Accordingly, this argument fails.

Respondents also argue that removal is proper because the remedy sought by petitioners implicates an overriding federal interest. In this regard, they point to the powers granted to the Secretary under 42 U.S.C. § 1396c, which provides that the Secretary may withhold funds to a state Medicaid agency where its state plan fails to comply with 42 U.S.C. § 1396a or where the agency has failed to comply substantially with any provision thereof. Respondents also note the federal government's substantial financial interest in the Medicaid program.

These arguments are immaterial to the question of whether this Court has subject matter jurisdiction over petitioners' claims. Respondents do not suggest that the complete preemption doctrine applies in this instance. See Valles v. Ivy Hill Corp., 410 F.3d 1071, 1075 (9th Cir. 2005) ("when the preemptive force of a [federal] statute is so strong that it completely preempts an area of state law . . . federal law displaces a plaintiff's state-law claim, no matter how carefully pleaded."). In the absence of a substantial and contested federal issue, generalized considerations regarding the relative federal and state interests implicated by petitioners' claims do not bear on whether these claims give rise to a federal question. Grable, 125 S. Ct. at 2368.

Similarly, respondents' argument that remand is improper due to the pendency of a related action in this Court, Indep. Living Ctr. of S. Calif. v. Shewry, CV 08-3315 CAS (MANx), lacks merit. Because Independent Living Center involves a party's attempt to block the implementation of an aspect of the ten percent rate reduction, respondents contend that remand of this action would create the risk of inconsistent judgments and waste judicial resources. Because such concerns have no effect on the existence of federal question jurisdiction, this argument is unavailing.

In conclusion, the Court finds and concludes that petitioners' claims for relief do not give rise to a federal question, such that this action was improperly removed from

state court.[4] Accordingly, the Court GRANTS petitioners' motion to remand this action to the Los Angeles County Superior Court.

IV. CONCLUSION

In accordance with the foregoing, the Court GRANTS petitioners' motion to remand.

IT IS SO ORDERED.

Dated: June 23, 2008

CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE

[4] In light of the Court's holding herein, it does not reach petitioners' further arguments regarding their inability to pursue their federal law theories in federal court.