

To be Submitted by
MARTHA MATTHEWS

NEW YORK SUPREME COURT

APPELLATE DIVISION : FIRST DEPARTMENT

In the Matter of

BRIAN (a/k/a/ MARIAH) L.,

N.Y. Co. Family Court
Dkt. #K-1154/96

Petitioner-Respondent,

~~—against—~~

THE ADMINISTRATION FOR CHILDREN'S
SERVICES,

Respondent-Appellant.

**BRIEF OF AMICI CURIAE ON BEHALF OF THE
CHILDREN'S LAW CENTER FOR LOS ANGELES,
THE YOUTH LAW CENTER AND OTHER AMICI**

MARTHA MATTHEWS, ESQ.
Children's Law Center of Los Angeles
201 Centre Plaza Drive
Suite 8
Monterey Park, CA 91754
(323) 980-8751

CORENE KENDRICK, ESQ.
Youth Law Center
200 Pine Street
Suite 300
San Francisco, CA 94104
(415) 543-3379

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-against- :
THE ADMINISTRATION FOR CHILDREN'S :
SERVICES, :
Respondent-Appellant. :
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PRELIMINARY STATEMENT

The Administration for Children's Services ("ACS") appeals from an order of the New York County Family Court entered on February 21, 2007, directing ACS to arrange and pay for respondent Mariah L. to undergo sex reassignment surgery (Rand, J.H.O.). Amici Curiae submit this brief in support of an affirmance of the Family Court's order.

QUESTIONS PRESENTED

- A. Whether it is unlawful for a child welfare agency to deny medically necessary treatment on the basis of an administrator's non-expert opinion, or on the basis of past behavior that is typical of youth in foster care.
- B. Whether Mariah L., and all foster children, have a constitutional right to be provided with all necessary medical care.

- C. Whether the statutes and regulations of New York and numerous other states require the child welfare agency to provide medical care to foster children.

STATEMENTS OF INTEREST OF AMICI CURIAE

1. Children's Law Center of Los Angeles

Children's Law Center of Los Angeles is a nonprofit legal services organization that serves as the voice in the foster care system for dependent children and youth. Our attorneys and other professional staff represent over 80% of the approximately 25,000 abused and neglected children in the Los Angeles County foster care system.

2. Youth Law Center, San Francisco, CA

Youth Law Center, based in San Francisco, is a national public interest legal organization whose mission is to advocate for the rights of at-risk children, especially those in out-of-home confinement through the juvenile justice or child welfare systems. Since 1978, Youth Law Center attorneys have represented children in civil rights and juvenile court cases in two dozen states. Many of the cases have involved the rights of children in foster care to have needed care, services, and treatment, including medical and mental health services. YLC has long worked to protect young people in the foster care and juvenile justice systems against policies and practices that will impede their ability to move on in their lives to productive adulthood.

3. Prof. Libby Adler, Northeastern University, Boston, MA

Ms. Adler is a professor of law at Northeastern University in Boston, Massachusetts. She has taught as well at Harvard Law School and the University of Frankfurt. Her teaching and scholarly publication have been primarily in the areas of constitutional law, administrative law, family law (including foster care) and sexuality, gender and the law.

4. Advocates for Children's Services, Legal Aid of North Carolina, Durham, NC

Advocates for Children's Services (ACS) is a statewide unit of the non-profit Legal Aid of North Carolina. ACS represents low-income children seeking and appealing denial of developmentally appropriate services, including mental health and education services. A shameful number of children are being denied such services. Experience in this area has shown a link between denial of mental health services and increased delinquency. Children at times remain in detention cells solely because there is no available secure residential treatment bed available. The children of North Carolina and ACS have an interest in and knowledge about the issues before this court and wish to be heard, along with others, as a Friend of the Court in this matter.

5. Children's Advocacy Institute, San Diego & Sacramento, CA

The Children's Advocacy Institute is a California statewide academic center and law firm representing the interests of children. Founded in 1989 at the University of San Diego School of Law, CAI educates law students in child advocacy, conducts research, operates a clinic representing foster children in dependency court, and includes legal staff in the state capitol working on behalf of children. The Executive Director of CAI is Robert Fellmeth, author of *Child Rights and Remedies*, who currently serves as the Vice Chair of the Board of Directors of the National Association of Counsel for Children and Chairs the Board of the Public Citizen Foundation in Washington, D.C.

6. Children's Law Center of Minnesota, St. Paul, MN

Children's Law Center of Minnesota is a 501(c)(3) nonprofit organization whose mission is to advance the rights and interests of children - particularly children of color and children with disabilities - in the child welfare, judicial, education, and health care systems in Minnesota. Children have rights and legal protections but they need someone to advocate on their behalf. Children's Law Center of Minnesota provides legal representation of children who are in the foster care system, many of whom are wards of the state. Children's Law Center of Minnesota has a deep interest in this case because of its representation of

children in the foster care system and the policy concerns that arise when the responsible county or state does not provide medically necessary care for the children entrusted in their care.

7. Prof. Michael Dale, Ft. Lauderdale, FL

Mr. Dale is a Professor of Law at the Shepard Broad Law Center at Nova Southeastern University in Ft. Lauderdale, FL. He is a national civil rights litigator and represents individual youth in dependency matters, with more than 35 years of experience in children's law. He is the author of more than 70 publications on juvenile law, including the litigation practice manual, *Representing the Child Client*. Professor Dale also teaches in National Institute for Trial Advocacy programs across the country concerning children. He was Executive Director of the Youth Law Center in San Francisco from 1978-1980, and spent eight years prior to that working for the Legal Aid Societies of New York City and Westchester County, including four years as the Director of the Special Litigation Unit at the Legal Aid Society of the City of New York, Juvenile Rights Division.

8. Justice for Children Project, Columbus, OH

The Justice for Children Project is an educational and interdisciplinary research project housed within The Ohio State University Michael E. Moritz College of Law. Begun in January

1998, the Project's mission is to explore ways in which the law and legal reform may be used to redress systemic problems affecting children. The Justice for Children Project has two primary components: original research and writing in areas affecting children and their families, and direct legal representation of children and their interests in the courts. Through its scholarship, the Project builds bridges between theory and practice by providing philosophical support for the work of children's rights advocates. By its representation of individual clients through the Justice for Children Practicum and through its amicus work, the Justice for Children Project strives to advance the cause of children's rights.

9. Juvenile Law Center, Philadelphia, PA

Juvenile Law Center (JLC), founded in 1975, is one of the oldest public interest law firms for children in the United States. JLC pays particular attention to the needs of children who come into contact with the child welfare and juvenile justice systems. JLC works to ensure that youth have access to appropriate and quality physical and behavioral health care services in their communities. As studies demonstrate, youth in the child welfare and juvenile justice systems experience a higher prevalence of both chronic physical health problems and behavioral health disorders as compared to the general population. JLC advocates for changes in laws, policy and

practice such that: (1) youth do not have to enter either of these systems solely in order to access the health care that they need; and (2) that once involved in these systems youth receive all needed screens, assessments, evaluations, and treatment and such services are delivered by qualified health care professionals in the least restrictive setting possible. JLC believes that it is the obligation of the child welfare system to provide youth like Mariah L. all medically necessary treatment and all support services that promote her health, safety, and well-being.

10. Lawyers for Children

Since 1984, Lawyers For Children ("LFC") has operated as a not-for-profit organization providing free legal and social work services for New York City's children. In particular, LFC has been dedicated to representing children in foster care. Over the last 20 years, LFC attorneys and social workers have provided legal and social work advocacy to approximately 30,000 children who are the subject of abuse, neglect, voluntary foster care placement, termination of parental rights, adoption, guardianship, paternity, custody and visitation proceedings. In addition, through our policy and special litigation project, LFC has advocated for legislative reform regarding issues related to foster care, and has participated in class action litigation affecting the rights of children in foster care. See, Marisol v.

Giuliani, 929 F.Supp 662 (S.D.N.Y. 1996); Nicholson v. Scoppetta, 344 F.2d 154 (2d Cir. 2003). As the court appointed law guardians for children placed in foster care in New York City, we have had substantial experience representing children in foster care who are in need of specialized medical care and services. Before Mariah L.'s case was transferred to the Legal Aid Society, LFC represented Mariah in both the Family Court and in the Appellate Division.

11. Legal Services for Children, San Francisco, CA

Founded in 1975, Legal Services for Children (LSC) is a nonprofit law office providing free legal and social work services to children and youth in the San Francisco Bay Area. We represent children in guardianship, dependency, school discipline, immigration, and emancipation proceedings. Through our Model Standards Project, LSC is engaged in national policy advocacy to improve services to lesbian, gay, bisexual and transgender youth who are involved in child welfare and juvenile justice systems.

12. National Association of Counsel for Children

The National Association of Counsel for Children (NACC) is a non-profit child advocacy and professional membership association dedicated to enhancing the well-being of America's children. Founded in 1977, the NACC is a multidisciplinary organization with approximately 2200 members representing all 50 states, DC,

and several foreign countries. The NACC works to improve the delivery of legal services to children, families, and agencies; advance the rights and interests of children; and develop the practice of law for children and families as a sophisticated legal specialty. NACC programs include training and technical assistance, the national children's law resource center, the attorney specialty certification program, the model children's law office project, policy advocacy, and the amicus curiae program. Through the amicus curiae program, the NACC has filed numerous briefs involving the legal interests of children in state and federal appellate courts and the Supreme Court of the United States.

13. National Center for Youth Law, Oakland, CA

The National Center for Youth Law (NCYL) is a private, non-profit organization devoted to using the law to improve the lives of poor children nation-wide. For more than 35 years, NCYL has worked to protect the rights of low-income children and to ensure that they have the resources, support and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. NCYL has participated in litigation that has improved the quality of foster care in numerous states, expanded access to

children's health and mental health care, and reduced reliance on the juvenile justice system to address the needs of youth in trouble with the law. As part of the organization's child welfare agenda, NCYL works to ensure the protection of the constitutional and statutory rights of children in foster care, including their right to be provided with all necessary medical care.

14. National Health Law Program, Chapel Hill, NC

For over thirty years, the National Health Law Program (NHeLP) has engaged in legal and policy analysis on behalf of low income people, people with disabilities, the elderly and children. NHeLP has provided legal representation, conducted research and policy analysis on issues affecting the health status and health access of these groups. We have frequently engaged in advocacy on behalf of children, including foster children, to help them obtain the necessary health care that they need. The program's work and our clients will be significantly affected by the Court's decision in this case.

15. Pegasus Legal Services for Children, Albuquerque, NM

Pegasus Legal Services for Children, a nonprofit organization founded in 2002 and incorporated in the state of New Mexico, is dedicated to improving the well-being of children and provides legal services to children and their caregivers. Pegasus Legal Services for Children provides legal representation to all

children and youth in the custody of the state of New Mexico who reside in the Seventh Judicial District in New Mexico. Pegasus also provides representation to children and youth in foster care in Bernalillo and Sandoval counties.

16. Public Interest Law Project, Oakland, CA

The Public Interest Law Project is a California nonprofit that provides statewide support, including litigation, policy advocacy, consultation and training for local legal services and other public interest law programs in the areas of public benefits, housing, health, civil rights, redevelopment and community reinvestment. The Project was established in 1996 to continue class action and other major advocacy without LSC funding. Almost all of the Project's Medicaid cases are aimed at ensuring equal and full access to all medically necessary services.

17. Public Justice Center, Baltimore, MD

The Public Justice Center (PJC), a non-profit civil rights and anti-poverty legal services organization founded in 1985, has a longstanding commitment to protecting the rights of children in a variety of contexts, including homeless children's education rights, disability rights, and the rights of families facing state intervention through child welfare proceedings. Of most direct significance to this case, the PJC's Child Welfare Advocacy Fellow, Rhonda Lipkin, has served since August of 2005

as lead counsel for the plaintiff class in the case of *L.J. v. Massinga*, D.Md.Civil Action No. JFM-84-4409. *L.J.* concerns the rights of more than 6,000 foster children in Baltimore City to safety, permanency and well-being, including comprehensive health care, while in the care and custody of the Baltimore City Department of Social Services.

18. Suffolk University Law School, Child Advocacy Clinic, Boston, MA.

The Suffolk Child Advocacy Clinic provides legal representation to needy children, adolescents, and young adults in the Boston area who have not received the services and assistance from the state to which they are entitled under the law.

STATEMENT OF THE CASE

Petitioner Mariah L. has been in foster care since the age of ten. In addition to the typical challenges of a foster child - early experiences of trauma, separation and loss, multiple moves to different placements, etc. - Mariah also suffers from gender identity disorder [GID]. Her body is physically male, but she is psychologically female and has identified as a girl since early childhood.

For over a decade, Mariah has relied on the Administration for Children's Services [ACS] to provide for all her basic needs that a parent would ordinarily meet, such as food, shelter,

clothing, and health care, including specialized health care related to GID.

Now, however, ACS is refusing to provide a specific medical procedure that Mariah needs - sex reassignment surgery. All four medical experts to whom ACS has referred Mariah agree that this surgery is medically necessary. The surgery would allow Mariah to live in a body that matches her identity as a woman, and would alleviate serious mental suffering, protect Mariah from prejudice and physical violence by others, and allow her to have a normal and fulfilling adult life.

ACS has taken the position that its *parens patriae* relationship to Mariah stops short of taking financial responsibility for Mariah's surgery. ACS offered an affidavit from a child welfare administrator as the sole evidentiary basis for its claims that the surgery is risky and experimental, and that Mariah is not an appropriate candidate for this surgery. ACS also argued that its legal duty to provide medical care to foster children is limited to the range of services covered by New York's Medicaid program.

Amici respectfully submit that both of these arguments are contrary to applicable statutory and constitutional law, and if accepted by this Court would be detrimental not only to Mariah but to countless other foster children. ACS's untenable position, if adopted by other child welfare agencies, could

adversely impact the health care provided to hundreds of thousands of foster children across the country.

ARGUMENT

- A. IT IS UNLAWFUL FOR A CHILD WELFARE AGENCY TO DENY MEDICALLY NECESSARY TREATMENT ON THE BASIS OF AN ADMINISTRATOR'S NON-EXPERT OPINION, OR ON THE BASIS OF PAST BEHAVIOR THAT IS TYPICAL OF YOUTH IN FOSTER CARE

Both in the original proceedings in the family court and on remand, ACS sought to challenge the unanimous opinion of the medical experts (including experts chosen by ACS itself) by arguing that sex-reassignment surgery is risky and experimental, and by citing instances of instability, resistance to therapy, and uncooperative behavior in an attempt to show that Mariah is not an appropriate candidate for such surgery.

Even though this Court remanded the case specifically to allow ACS to complete the record by offering evidence to support its position, ACS failed to offer any expert testimony to support ACS's position that the surgery is not medically necessary for Mariah, or that the surgery is risky and experimental, or that the opinions of Mariah's medical experts were based on inaccurate or incomplete information. ACS relied solely on the non-expert opinion of a child welfare administrator who claimed no medical

expertise whatsoever, and certainly no specialized expertise concerning GID.

A child welfare agency cannot lawfully disregard the unanimous opinion of all medical experts involved in a child's case as to what medical treatment the child needs, on the basis of a child welfare administrator's own self-serving and non-expert opinion. It is an abuse of authority for an agency charged with the care and protection of foster children to simply ignore the opinions of all the medical experts involved in a child's case. The trial court, and this court, do not owe any deference to the child welfare agency under these circumstances.

Moreover, as to ACS's argument that Mariah's past behavior makes her an inappropriate candidate for surgery, the characteristics and behavior patterns ACS attributes to Mariah are typical of adolescents who have a history of family trauma and separation, and who have grown up in the foster care system (and are also developmentally normal, to some extent, for adolescents in general). Public child welfare agencies should not be permitted to limit medically necessary health care to those rare foster youth whom the agency regards as perfectly mature and cooperative.

B. MARIAH L., AND ALL FOSTER CHILDREN,
HAVE A CONSTITUTIONAL RIGHT TO BE
PROVIDED WITH ALL NECESSARY MEDICAL
CARE.

When a public child welfare agency removes a child from the child's parents due to abuse or neglect, and places the child in foster care, the agency then stands in the place of a parent, and has a duty to ensure that the child receives proper care. See *Palmer v. Cuomo*, 121 A.D.2d 194, 195 (1st Dept.1986) (state has *parens patriae* relationship to children in its care).

Numerous federal and state courts have recognized that children in foster care have a constitutional due process right to safe and adequate care - including medical care. One of the earliest published cases concerning the duties of child welfare agencies to foster children originated in New York. In *Wilder v. City of New York*, 568 F.Supp. 1132, 1137 (E.D.N.Y. 1983), the federal district court pointed out that "absent parents or guardians to protect his rights and to make decisions as to treatment, and unable to make such decisions himself, [the foster child] could have looked only to the City [of New York and its Department of Social Services] to ensure that protection."

Several years later, the United States Supreme Court expanded on this constitutional analysis in *DeShaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189, 200 (1989): "when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for

himself, and at the same time fails to provide for his basic human needs--e.g., food, clothing, shelter, medical care, and reasonable safety--it transgresses the substantive limits on state action set by...the Due Process Clause."

Following these early cases, numerous decisions of the federal appellate courts have made it clear that state child welfare agencies have a constitutional duty to provide necessary medical care - among other services - to foster children. For example, in *Jackson v. Schultz*, 429 F.3d 586, 590 (6th Cir. 2005), the court explained that:

It is not a constitutional violation for a state actor to render incompetent medical assistance or fail to rescue those in need. *DeShaney*, 489 U.S. at 196, 109 S.Ct. 998. The two applicable exceptions to this general rule are (1) the custody exception and (2) the state-created danger exception. *Id.* at 199-201, 109 S.Ct. 998. ... The "custody exception" triggers a constitutional duty to provide adequate medical care to ... foster children ... and those under "other similar restraint of personal liberty." See *DeShaney*, 489 U.S. at 200, 109 S.Ct. 998.

See also *Burton v. Richmond*, 276 F.3d 973, 979 (8th Cir. 2002) ("Foster care is designed to provide basic human needs of "food, clothing, shelter, medical care and reasonable safety" to minor children); *Norfleet ex rel. Norfleet v. Arkansas Dep't of Human Servs.*, 989 F.2d 289, 293 (8th Cir.1993) (foster children have a constitutional right to "adequate medical care, protection and supervision"); *K.H. v. Morgan*, 914 F.2d 846, 856 (7th Cir.

1990) (a foster child "whom the state removes from her parents' custody ... is unable to care for herself and is certainly ... dependent upon the state for the fulfillment of her needs for proper development, food, clothing, shelter and proper medical care").

Federal district courts and state appellate courts in numerous jurisdictions have reached the same conclusion. See, e.g., *Hernandez v. Hines*, 159 F.Supp.2d 378, 384 (N.D. Tex. 2001) ("Foster children have a constitutional right to adequate food, shelter, clothing, medical care, and a right to be free from harm while in state managed foster care"); *Del A. v. Roemer*, 777 F.Supp. 1297, 1318 (E.D.La. 1991) ("Because the State has established a custodial relationship with plaintiffs, they have a right to adequate food, shelter, clothing, and medical care"); *L.J. ex rel. Darr v. Massinga*, 699 F. Supp. 508, 538-39 (D.Md. 1988), as modified, *L.J. v. Massinga*, 788 F. Supp. 253 (D.Md 1991) (foster children have a constitutional substantive due process right to protection, which includes medical care); *Aristotle P. v. Johnson*, 721 F.Supp. 1002, 1009 (N.D.Ill.1989) (foster children have a due process right to "adequate food, shelter, clothing and medical care"); *Robbins v. Cumberland County Children & Youth Services*, 802 A.2d 1239, 1249 (Penn. Cmwlth. 2002) (when the agency entered into a "special relationship" by placing child in foster care, "a corresponding

constitutional duty was imposed upon [the agency] to provide for his basic human needs, such as food, shelter, medical care and reasonable safety"); *In re Tameka M.*, 543 A. 2d 782 (Pa. Super. 1990) (child welfare agency must pay for special school needed by child with mental illness even though the agency would receive no state or federal reimbursement; "[o]nce the state intervenes in an individual's life there is the corresponding obligation to provide adequate treatment services to the person affected"); *In re N.E.*, 787 A. 2d 1040 (Pa. Super. 2001) (child welfare agency must pay for dental work for a foster youth that was not covered by the youth's insurance).

The public child welfare agency's constitutional obligation to provide necessary and adequate medical care to foster children cannot be limited by the vagaries of Medicaid reimbursement. ACS's constitutional duty to provide medically necessary care to Mariah is independent and separate from the question whether ACS will be able to obtain Medicaid reimbursement for such care, or will have to use public funds to pay for the care. ACS has a *parens patriae* duty to provide any and all health care that is medically necessary for each individual foster child in its care, and then seek Medicaid reimbursement if available.¹

¹The question whether the New York Medicaid program's exclusion of sex-reassignment surgery is lawful is outside the scope of this *amicus* brief. It is important to note, however, that under the federal Early and Periodic Screening, Diagnosis and Treatment [EPSDT] program, Medicaid-eligible children must be provided with any medically necessary treatment, regardless of whether or not it

If this Court were to accept ACS's reasoning, foster children who suffer from cancer, AIDS, and other serious illnesses, or who need organ transplants or other complex and costly medical procedures, could be deprived of medically necessary and even life-saving treatment if the child welfare agency is unable to secure Medicaid reimbursement or if the agency deems the treatment to be too risky or experimental. Such a result is fundamentally inconsistent with public child welfare agencies' constitutional duties to protect and care for foster children.

C. NEW YORK AND NUMEROUS OTHER STATES
HAVE STATUTES AND REGULATIONS
REQUIRING THE CHILD WELFARE AGENCY
TO PROVIDE MEDICAL CARE TO FOSTER
CHILDREN

In addition to violating its constitutional duties to foster children, ACS's position in this case ignores the fact that New York, like numerous other states, has codified in its statutes and regulations the duty to provide medical care to foster children. S.S.L. §398(6)(c) requires ACS to provide all "necessary medical or surgical care" to children and minors. The regulations implementing this statute state that "[e]ach authorized agency is responsible for providing comprehensive medical and health services for every foster child in its care," 18 N.Y.C.R.R. 441.22(a), and that when a medical examination

is included in the state's Medicaid plan. See 42 U.S.C. §§ 1396a(a)(10)A, 1396a(a)(43), 1396d(a)(4)(B), 1396d(r)(45).

"indicates a condition requiring follow-up care as determined by the child's physician, the agency responsible for the child's care must provide or arrange for such follow up care as recommended by the child's physician." 18 N.Y.C.R.R. 441.22(g).

Previous family court decisions have applied these statutes in situations very similar to this case, where a foster child needs specialized and costly medical care and the child welfare agency seeks to avoid financial responsibility for such care. *See, e.g., Matter of Arlene L.*, 187 Misc.2d 356 (Fam. Ct. N.Y. Co. 2001) (ACS must provide foster child in its care with "necessary medical treatment and care, including the provision of a glass (*i.e.*, prosthetic) eye" because ACS had a "nondelegable statutory duty to provide all necessary medical care and treatment for children placed in [foster] care" and "the Commissioner must pay for the same 'from public funds, if necessary.'"); *Matter of Daniel M.*, 166 Misc.2d 135, 140 (Fam. Ct. N.Y. Co. 1995) (court had authority to order ACS to provide foster child with and pay for daily skilled nursing care).

Numerous other states have similar statutes and regulations, which give state child welfare agencies an unconditional duty to provide medical care to foster children, regardless of whether the agency can obtain Medicaid reimbursement for such care. *See, e.g., Cal. Welf & Inst. C. 16001.9(a)(4)* (all children in foster care have the right "to receive medical, dental, vision and

mental health care"); Texas Fam. C. §264.101 (c), (e) ("... The payment of foster care, including medical care, for a child as authorized under this subchapter shall be made without regard to the child's eligibility for federally funded care. ... The department may accept and spend funds available from any source to pay for foster care, including medical care, for a child in the department's care"); Ohio Admin. Code § 5101:2-5-35(A)(7) (children in foster care have "right to receive adequate and appropriate medical care"); 102 CMR 5.11(3) (Mass.) (Department of Social Services "shall assure the availability of a range of medical and dental services to foster children, in order to promote the children's complete physical, mental and social well-being"); Il. Admin. Code tit. 89, sec. 359.9 (a) (child welfare agency responsible for providing medical treatment to children in the social services system "for whom the Department is legally responsible who are Medicaid ineligible and who have no financial services"); Code of Maryland Regs. §07.02.11.08(J), (M) (child welfare agency must secure treatment for foster children's health care needs; such care shall be provided under Medicaid but the agency must pay for any necessary care not covered by Medicaid).

Thus, the New York legislature and the legislatures of numerous other states have explicitly required their child welfare agencies to provide all medically necessary health care to foster children, and have not made this requirement contingent

on the agency's prospects of obtaining Medicaid reimbursement. These statutes not only mirror the agencies' constitutional duties to children in foster care, but also reflect important considerations of public policy. Failing to provide medically necessary health care to foster children would not only cause immediate harm, but would also lead to significant long-term public costs, due to the adverse impact of untreated health problems on a foster child's ability to transition to a productive and independent adult life.

CONCLUSION

FOR ALL THE REASONS STATED ABOVE, AMICI URGE THIS COURT TO AFFIRM THE FAMILY COURT'S ORDER REQUIRING ACS TO PROVIDE MARIAH WITH ALL MEDICALLY NECESSARY HEALTH CARE, INCLUDING BUT NOT LIMITED TO SEX-REASSIGNMENT SURGERY, REGARDLESS OF WHETHER ACS WILL BE ABLE TO OBTAIN MEDICAID REIMBURSEMENT FOR SUCH HEALTH CARE.

Respectfully submitted,



Martha Matthews
Children's Law Center

Corene Kendrick
Youth Law Center

May 10, 2007

CERTIFICATE OF COMPLIANCE
PURSUANT TO 22 NYCRR §600.10(d)(1)(i)

The foregoing brief was prepared on a computer (on a word processor) using WordPerfect 11. A proportionally spaced typeface was used, as follows:

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