

DSS-4357EL

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DIVISION: Office of Continuing Care

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TO: Personal Care Services Program Directors; Social Services Attorneys

FROM: Robert W. Barnett, Director, Office of Continuing Care

SUBJECT: Stay of Permanent Injunction Order in Rodriguez et al v. DeBuono and Wing (S.D.N.Y.)

EFFECTIVE DATE: Immediately

CONTACT PERSON: Personal Care Program Monitoring Staff

This is to advise you that, effective immediately, the United States Court of Appeals for the Second Circuit has stayed the April 19, 1999 permanent injunction decision and order in Rodriguez et al v. DeBuono and Wing (S.D.N.Y.).

Districts were advised of this permanent injunction order on April 28, 1999 (GIS 99/MA010). As stated in that GIS message, the Rodriguez decision applies to social services districts that use task-based assessment ("TBA") plans in their Personal Care Services Programs. To comply with the permanent injunction, social services districts that use TBA plans were required to include safety monitoring as a separate task on their TBA forms, assess the need for safety monitoring as a separate task and calculate any minutes allotted for safety monitoring as a part of the total personal care services hours authorized for both recipients and applicants.

The Department is appealing the Rodriguez permanent injunction decision. Until the appeal is decided, the decision is stayed. This means that, until districts are notified otherwise, social services districts that use TBA plans in their Personal Care Services Programs are **NOT** required to include safety monitoring as a separate task on their TBA forms, assess the need for safety monitoring as a separate task or calculate any minutes allotted for safety monitoring as part of the total personal care services hours authorized for Personal Care Services applicants and recipients.

Although social services districts that use TBA plans are no longer required to assess for safety monitoring until further notification from the Department, it is recommended that such districts adopt measures that will enable members of the certified Rodriguez class to be identified should the Department's appeal be unsuccessful and retroactive relief to class members be required. Consequently, it is being suggested that each district that uses a TBA plan maintain a simple log, or some other tracking device, that will identify those Personal Care Services applicants and recipients who are

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assessed or reassessed under a TBA plan after the effective date of this GIS message and who request safety monitoring. This log, or other tracking device, could list the person's name; Medicaid case number; date of application or reauthorization for Personal Care Services, as appropriate; and the district's determination with respect to the case.

Districts having questions regarding this message should contact the Bureau of Medicaid Operation's, Personal Care Services Program Monitoring staff: Shirley Gnacik or Margaret Willard at (518) 478-1091.