

DSS-4357EL

WGIUPD

**GENERAL INFORMATION SYSTEM**

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**TO:** Personal Care Services Program Directors and Social Services Attorneys

**FROM:** Ann Clemency Kohler, Director, Office of Medicaid Management

**SUBJECT:** Suspension of Preliminary Injunction Order in Rodriguez v. DeBuono (Task-Based Assessment Plans)

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:** Personal Care Program Monitoring Staff

This is to advise you that, effective immediately, the August 21, 1997 preliminary injunction order in Rodriguez v. DeBuono (S.D.N.Y.) is suspended and will remain suspended until further Department notification.

Districts were advised of this preliminary injunction order on August 27, 1997 (GIS 97 MA/016). As stated in that GIS message, the Rodriguez decision applies to social services districts that use task-based ("TBA") plans in their Personal Care Services Programs. To comply with Judge Shira Scheindlin's preliminary injunction order, social services districts that use TBA plans were required to include safety monitoring as a separate task and calculate any minutes allotted for safety monitoring as part of the total personal care services hours authorized for applicants and recipients.

Judge Scheindlin has now granted the defendants' motion for a stay of her preliminary injunction order while the Department appeals her order to the United States Court of Appeals for the Second Circuit. This means that, until districts are notified otherwise, Judge Scheindlin's preliminary injunction order is suspended. Consequently, 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 and calculate any minutes allotted for safety monitoring as a 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 comply with the Rodriguez preliminary injunction order 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 of Judge Scheindlin's order to the Second Circuit be unsuccessful and retroactive relief to class members be required. Consequently, it is suggested that each district that

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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 assessed or reassessed under a TBA plan after the effective date of this GIS message and who request safety monitoring. For example, this log, or other tracking device, could list the person's name; MA case number; date of application or reauthorization for Personal Care Services, as appropriate; and the district's determination with respect to the case. Districts are not required to maintain such logs or other tracking devices for Personal Care Services applicants or recipients who were assessed or reassessed prior to the effective date of this GIS message.

Should you have any questions regarding this message, please contact the following Department Personal Care Services Program monitoring staff: George Fleury or Margaret Willard. Mr. Fleury may be contacted at (518) 486-7548 or on-line at AW5610. Ms. Willard may be contacted at (518) 473-5569 or on-line at AW8310.