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DIVISION: Office of Continuing Care

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TO: Personal Care Services Program Directors and Social Services Attorneys

FROM: Robert Barnett, Director, Office of Continuing Care

SUBJECT: Fiscal Assessments (Personal Care Services): Best v. Whalen

EFFECTIVE DATE: Immediately

CONTACT PERSON: Personal Care Services Monitoring Staff

This is to advise you of new litigation challenging the manner in which fiscal assessments of personal care services applicants and recipients are conducted under Social Services Law 367-k.

Plaintiffs represent a proposed class of all New York State residents who, since January 1, 1996, have received or applied for, or who will receive or apply for, Medicaid funded personal care services and whose services have been denied or discontinued based on fiscal assessments. Plaintiffs challenge, in particular, districts' implementation of statutory exception criterion that permits personal care services applicants or recipients to receive services when such services are appropriate for their functional needs and institutionalization is contraindicated. [SSL 367-k (1) (d) (iv)]. Among other relief, plaintiffs seek a preliminary injunction that would enjoin districts from denying or discontinuing personal care services based upon fiscal assessment notices and procedures.

Should you wish to consider intervening in this litigation or seek additional information, please contact Assistant Attorney General James Hershler of the New York State Department of Law at (212) 416-8590 or Senior Attorney Jane McCloskey of the New York State Department of Health at (518) 473-4631.