TO: Personal Care Services Program Directors; Social Services Attorneys

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

SUBJECT: Task-based Assessment Plans; Rodriguez v. DeBuono U.S. Second Circuit Decision

EFFECTIVE DATE: Immediately
CONTACT PERSON: Personal Care Program Monitoring Staff

This is to advise you that on October 6, 1999, a three judge panel of the U.S. Second Circuit Court of Appeals issued a decision in the Rodriguez v. DeBuono lawsuit which reversed the lower court's April 19, 1999 permanent injunction in its entirety. Districts have been kept apprised of this lawsuit in prior General Information System (GIS) messages 97MA/004 and 97MA/026.

In 1997 plaintiffs argued in Rodriguez v. DeBuono that independent safety monitoring should be included as a separate task on any Task-based Assessment (TBA) forms used by social services districts to determine amount and frequency of personal care services required to meet recipients' needs. Plaintiffs argued that a failure to provide independent safety monitoring to mentally impaired recipients violated the comparability provisions of the Medicaid Act, Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). In August 1997, the District Court preliminarily enjoined the Department to direct social services districts using TBA assessment instruments to include independent safety monitoring as a separate task and calculate any minutes allotted for independent safety monitoring as part of the total personal care services hours authorized for applicants and recipients. On April 19, 1999, the District Court permanently enjoined the Department to include safety monitoring as a separate TBA task. The Department succeeded in obtaining a stay of the court's permanent injunction to allow districts to continue to use existing TBAs without having to include safety monitoring as a separate task, pending our appeal to the Second Circuit Court.

The U.S. Second Circuit Court of Appeals has now determined that the plaintiffs' Medicaid comparability claim was unfounded because New York State's Personal Care Services Program (PCSP) does not include independent safety monitoring as a discrete personal care services task for any PCSP recipient. Therefore, the mentally impaired are not being treated differently from other PCSP recipients when the State does not assess any

segment of the population for this task. The Second Circuit applied similar reasoning in rebuffing plaintiffs' ADA claims. It ruled that the "ADA requires only that a particular service provided to some may not be denied to disabled people." In the Court's view, the State did not fund independent safety monitoring for physically disabled personal care recipients; therefore, mentally impaired recipients had no cognizable ADA claim to challenge its denial to them. Nor, in the Courts opinion, could plaintiffs use the ADA to compel the State to add a new benefit(independent safety monitoring) to the PCSP.

Since the U.S. Second Circuit had previously granted a stay of the April 19, 1999 permanent injunction, there is no impact on existing TBA assessments and authorizations. The Department has been notified by the Attorney General's Office that the plaintiffs have moved to reargue the Second Circuit Court of Appeals decision. The Department will notify districts of any future developments in this lawsuit through issuance of a GIS.

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.