

## CITY AND STATE REVISE MEDICAID POLICY

### *Settlement of Class Action Lawsuit Ensures Home Care Services For Medicaid Patients with Recurring and Unscheduled Medical Needs*

**New York, NY – January 9, 2003.** Today the Southern District Court of New York approved a settlement with New York City and New York State that resolved the remaining claims in the case of *Rodriguez v DeBuono*. This case challenged the inadequate provision of home health care services for Medicaid recipients with medical needs that were either recurring or unschedulable, and New York’s practice of using task-based assessment to determine home care service hours. As a result of today’s settlement, New York City has changed its forms and training, and has made a commitment to provide services for the span of time over which home care needs arise. New York State has issued policy memos and agreed to provide monitoring to ensure that these needs are being met.

The class action was filed because the State approved local Social Security district plans that assessed hours of time needed for home care services in New York City with what has been called “task-based assessment.” For example, a Medicaid home care recipient with toileting needs would be at risk of not receiving home care services throughout the day. The class action was brought on behalf of individuals with unscheduled toileting, ambulating, or transferring needs and/or recurring needs such as feeding and administration of medication.

In order to avoid further litigation, attorneys for the class of New York City home care applicants and recipients and the City of New York’s Human Resources Administration (“HRA”) have reached an agreement that settled the case without further litigation.

Highlights of the Settlement:

- HRA recognizes its obligation to authorize home care assistance with identified unscheduled and recurring needs through an appropriate home care plan to eligible individuals.
- HRA has agreed that for at least a 30-month period it will use revised forms, guidelines and instructions in future assessments and authorizations of Medicaid home care services in order to better identify clients with unscheduled and/or recurring needs to ensure authorization of adequate home care services and a plan to meet these needs.
- Under the revised forms, guidelines and instructions, assessing nurses and medical review teams will be asked to determine the “span of time” over which the client needs assistance with unscheduled toileting, ambulating and/or transferring needs, such as, “from 8A.M. to 8 P.M.,” or explain why the assistance with unscheduled needs is not required over a span of time.
- Under the revised forms, guidelines and instructions, assessing nurses and medical review teams will be asked to identify a client’s late afternoon or early evening recurring needs, such as feeding, taking evening medication or preparing for bed, and, where appropriate, the medical review teams will authorize a multi-visit plan to cover such recurring needs.

The case was brought on behalf of the class through a collaborative effort the New York Legal Assistance Group (NYLAG), Legal Services for the Elderly in Queens, Cardozo Bet Tzedek Legal Services and Northern Manhattan Improvement Corp. “This was an important victory for

disabled New Yorkers in need of government funded home care,” said Michael Scherz, director of NYLAG’s General Legal Services Unit and co-counsel on the case. “Now the city will no longer use arbitrary formulas to determine home care needs.”

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**ABOUT NYLAG**

NYLAG is a not-for-profit organization dedicated to helping at-risk New Yorkers with their legal needs. Founded in 1990, NYLAG protects the legal rights of New York's neediest populations, including the elderly, immigrants, victims of domestic violence, at-risk children, the disabled and sufferers of chronic and serious illnesses. Largely privately funded, NYLAG has the flexibility to reach New Yorkers who would otherwise be unable to afford or receive legal services. NYLAG provides direct legal services, advocacy through impact litigation, consultation and community legal education. Last year, NYLAG handled 36,363 cases, helping more than 43,000 individuals. For more information on NYLAG, go to [www.nylag.org](http://www.nylag.org).