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DIVISION: Office of Medicaid Management

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TO: Personal Care Services Program Directors; Social Services Attorneys

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

SUBJECT: Task-based Assessment Plans, Rodriguez et al. v DeBuono and Wing (S.D.N.Y.)

EFFECTIVE DATE: Immediately

CONTACT PERSON: Bureau of Long Term Care Personal Care Services
Monitoring Staff

This is to advise you of new litigation that may affect your ability to continue to use task-based assessment plans in your home care services programs. Rodriguez et al. v. DeBuono and Wing (S.D.N.Y.). Districts which utilize task-based assessments in their shared-aide programs may be impacted by this litigation.

The plaintiffs seek, among other relief, a preliminary injunction preventing the defendants from permitting further task-based assessments and directing them to reopen all cases in which task based assessment notices have been issued. Plaintiffs also seek a permanent injunction preventing the Department from permitting the continued use of task-based assessments that do not provide MA recipients with individually determined medically necessary services. Plaintiffs also seek to certify a State wide class of all N.Y.S. MA recipients who have been, or will be, subject to a task based assessment of their need for personal care services.

The Department strongly recommends that all social services districts that currently use task based assessment plans, or wish to implement such plans, seriously consider moving to intervene in this litigation. At present, a hearing on the preliminary injunction motion is scheduled for February 13 and 14, 1997. Please ask your social services attorney to contact the court for further information. You may also contact Assistant Attorney General James M. 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 for further information.