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NEW YORK STATE MEDICAID HOME CARE LAWS AND CASES©[1]

by Valerie Bogart, revised Dec. 2018, based on original by Ellen Yacknin June 1997), updated by Ellen Yacknin and Valerie Bogart July 2002, and by Valerie Bogart periodically since 2002

Posted at http://www.wnylc.com/health/download/24/ - check there for updates

See http://wnylc.com/health/16/ - Multiple articles on Medicaid home care in NYS

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1. New York State Laws and Regulations

Home Health Care Services (CHHA) http://www.wnylc.com/health/entry/76/

LAW: NY Social Services Law [SSL] §§365-a(2)(d), 367-j; N.Y. Soc. Serv. L. § 367-p.

REGULATIONS: 18 NYCRR §505.23 and Appendix I, 10 NYCRR §763.5;

NYS Dept of Health Scope of Tasks for Home Health Aides http://www.health.state.ny.us/professionals/home_care/curriculum/docs/home_health_aide_scope_of_tasks.pdf

Personal Care Services (Home Attendant Services)

LAW: NY Social Services Law §§365-a(2)(e), 367-k, 367-p, 365-f(2)(e); 367-g (Personal Emergency Response System),
REGULATIONS: 18 NYCRR §505.14*

NYS Personal Care Aide Scope of Tasks – http://www.wnylc.com/health/download/46/ NYS DSS LCM 92-LCM-70

See other guidance at http://www.wnylc.com/health/entry/7/

Private Duty Nursing Services

LAW: NY Social Services Law §§365-a(2)(l),
REGULATIONS: 18 NYCRR §§ 505.8; 505.13
DOH 08-INF–5 (Aug. 18, 2008) - Guide to Accessing Medicaid Private Duty Nursing Services in the Community http://www.health.state.ny.us/health_care/medicaid/publications/docs/inf/08inf-5.pdf . Establishes statewide procedures for obtaining Medicaid private duty nursing services if there is difficulty finding a provider. One option is to apply at the local DSS for a DOH case-specific enhanced payment rate. The enhanced rate is applicable in *all* DSS districts in the State pursuant to the Settlement. Warning- does not seem to exist anymore

Consumer-Directed Personal Assistance Program (CDPAP) ("CONCEPTS" in NYC)

LAW: NY Social Services Law §§367-p, 365-f; Public Health L. § 3622, subd. 10, Education Law § 6908, subd. 1(iii);
REGULATIONS: 18 NYCRR 505.28.
See state directives posted at http://www.wnylc.com/health/entry/40/

Long Term Home Health Care "Waiver" Programs see http://wnylc.com/health/entry/129/

Managed Long Term Care – MLTC (1115 waiver program)

LAW: New York Public Health Law § 4403(f)
Federal law and regulations 42 U.S.C. § 1396b(m)(1)(A)(i); 42 C.F.R. Part 438 (Medicaid managed care), 42 CFR Part 460 (PACE)

As a waiver, program is governed by:

- "Special Terms & Conditions" approved by federal agency CMS, which are updated frequently. Most recent is

- http://www.health.ny.gov/health_care/managed_care/appextension/docs/special_terms_and_conditions.pdf (Jan 2014). To see updates check here http://www.health.ny.gov/health_care/managed_care/appextension/

- Model MLTC Contract between State Dept. of Health and the MLTC plans is important. Posted on MRT 90:
- State sub-regulatory policy -- Both Model contract and policy posted on State MRT 90 page - MRT 90: Mandatory Enrollment Managed Long Term Care - http://www.health.ny.gov/health_care/medicaid/redesign/mrt_90.htm

See http://www.wnylc.com/health/entry/114/

Cases – Court Decisions and Settlements (Federal and State)

Digest by topic
(followed by alphabetical list with cites and descriptions)

Managed Long Term Care

- Bucceri (arbitrary denials and failure to process denials)
- Caballero (arbitrary reductions)
- Taylor v. Zucker
- Turano v. Zucker (transition rights when plan closes)
- Scofero

Due Process Rights to Appeal Denials or Reductions of Services

- **Catanzano** (Certified home health agencies)
- **Home Hearings** for homebound appellants – Varshavsky v. Perales
- **Denial of services**
  - Bucceri (MLTC denials)
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- **Reductions of Services**
  - Catanzano (CHHA reductions, including after temporary hospital stay)
  - Mayer v Wing (notice and standards for reductions)
  - Caballero (MLTC reductions)
  - Granato v. Bane (reduction of personal care after temporary hospital stay)
  - Martin v Wing (reduction of waiver services after temporary hospital stay)
  - Strouchler -(notice and standards for reductions)

Standards for Assessing Need for Home Care Services

- Mayer v. Wing (standard for justifying reductions; task-based assessment may not be used if 24-hour needs)
- Strouchler v. Shah (24-hour care standards)
- Rodriguez v. City of New York ("safety monitoring," verbal cueing assistance must be considered)
- Deluca v. Hammons

Consumer Directed Personal Assistance Program (CDPAP)/Private Duty Nursing

- *Scholtz v. Novello (may have both CDPAP and other services – PCS, private duty nursing)*
- Leon v. Danes, et.al., (CV 07-1674 E.D.N.Y, June 12, 2008) Expands access to Consumer-directed personal assistance services and Private duty nursing services.

Staffing Shortages and Sufficient Payment Rates to Providers, Pressure on Informal Caregivers to provide care

- Bayon
- Cassidy
- Leon (private duty nursing)
- Scofero

Services must be provided outside the home (school, work) not just at home

- Detsel (private duty nursing for children)
- Lupo v. Wing **(**personal care)
- Skubel v. Fuoroli (certified home health aides)

ADA and/or Olmstead Issues Discussed

- Sanon v. Wing
- Rodriguez v De Buono
- Egan v. DeBuono,
- Lupo
- Kuppersmith
- Scofero

Reimbursement for services paid for in 3-month retro period or because of error and delay

- Greenstein v. Perales
- Seitelman v. Silverman
- Massand
- Muhlstein v. HRA

Budgeting of Income –

- Evans v. Wing (calculation of Personal Needs Allowance in 1915(c) waiver program – Long Term Home Health Care Program -

LIST OF CASES - ALPHABETICAL

Bayon v. Novello, CV 00 7200 (EDNY Oct. 2005); *Mayorga v. Novello*, CV-01-6625 (EDNY) (Settlements Oct. 2005)

The settlement prohibits Suffolk County DSS from requiring that non-legally responsible friends and relatives of personal care services (PCS) a/k/a home attendant recipients provide back-up care when PCS aides do not show up or are unavailable. SCDSS must provide case management to ensure that PCS is available 24/7 as indicated on a recipient's care plan. DOH permits a higher PCS rate when necessary to facilitate hospital discharge, avoid inappropriate institutional care, and prevent health and safety risk when PCS providers are unable to fill a care plan. The settlement references a DOH letter issued during the course of the litigation to all Hospital Chief Executives describing the implications of the U.S. Supreme Court *Olmstead* decision for hospital discharge planning which requires community placements and the use of home care in lieu of institutional placements.

The settlement also ends a "seizure policy" of Suffolk County which denied PCS to anyone determined by SCDSS to have a seizure disorder. (Plaintiff Bayon, a town official who became quadriplegic after an auto accident, was forced to stay in the hospital for 9 months because home care was denied because of seizures, until his elderly mother was forced to agree to be an unpaid back-up aide so that he could go home. Plaintiff Mayorga, who has Multiple Sclerosis, could only receive home care when her elderly, frail mother agreed to be an unpaid back-up aide).

Counsel: Robert Briglio, Nassau/Suffolk Law Services, Islandia NY. (631) 232-2400 (ext 3367)

Bernard v. Novello (E.D.N.Y 00 CV 260).

Stipulation and Order signed around February 2001, in which State agreed that Long Term Home Health Care Program (LTHHCP) or Lombardi recipients are entitled to fair hearing rights when number of hours of home health, personal care, or physical therapy services are discontinued or reduced contrary to treating physician's orders. Implemented in NYS DOH Directive 02 OMM/ADM-4 (5/28/02), posted at http://www.health.state.ny.us/health_care/medicaid/publications/pub2002adm.htm

Best v. DeBuono (N. Y. Co. Supreme Ct., settled January 2001)(see Sanon below)

Bucceri et al. v. Zucker (No. 16 CV 8274 S.D.N.Y.), --Class action lawsuit filed by The Legal Aid Society, challenging the failure of MLTC plans run by Healthfirst (Senior Health Partners and Healthfirst Complete Care) to process requests for increases, and the arbitrary denial of requests for increases in hours where the requested care is medically necessary. See this article[2] Final settlement pending as of 12/2018.

Burland v. Dowling, Index No. 407324\93 (Sup. Court, NY County, Order July 3, 1995,

[2] https://topclassactions.com/lawsuit-settlements/lawsuit-news/347875-new-york-medicaid-ignores-requests-services-class-action-says/.

based on decision dated November 14, 1994)

Preliminary injunction requiring the state and county defendants to provide aid-continued services pending a hearing decision to all recipients of Medicaid-funded personal care services statewide, and CHHA recipients in NYC, whose services are to be reduced or terminated based on fiscal assessment or other grounds after a temporary hospitalization. Implementation: Local Comm'r. Mem. 99-OCC-LCM-2 (4/20/99)

A motion to authorize "applicants" personal care in the amount they need, regardless of the fiscal cost, until an appropriate nursing home placement is available was pending at the time the law expired June 30, 1999. Applicants were claiming the same rights as "recipients" under the comparability provision of federal Medicaid law. The motion was marked off calendar for a year, to be reinstated if the law is re-enacted. Challenge to the inaccuracy of the fiscal cost figures was also marked off calendar.

Caballero et al v. Senior Health Partners and Zucker (Commissioner of State Dept. of Health) et al. (EDNY CV-16-0326) Class action brought by NYLAG against Healthfirst plans (including Senior Health Partners MLTC plan) challenging pattern of arbitrary reductions in hours without legally adequate notice or justification for reducing hours that were previously determined to be medically necessary. Successor case to *Taylor v. Zucker*, dismissed without prejudice in Oct. 2015. Proof of a medical improvement or other change in circumstances is required in such cases. See July 20, 2016 New York Times article about case, *Lives Upended by Disputed Cuts in Home-Health Care for Disabled Patients*, available at https://www.nytimes.com/2016/07/21/nyregion/insurance-groups-in-new-york-improperly-cut-home-care-hours.html. Complaint and other info available here https://www.nylag.org/units/special-litigation/active-cases/caballero-v-senior-health-partners-et-al. (Settlement pending as of December 2018)

Cassidy & Arcuri v. Novello et al., CV 02 3373 (EDNY) (Settlements Oct. 2005)

Certified Home Health Agency (CHHA) providers in Suffolk did not provide substitute aides and relied on families to provide services when aides were not located, sometimes for months on end. Some agencies simply refused to take a case, leaving those eligible for services without care or inappropriately institutionalized. The court-ordered settlement requires CHHAs to engage in region-wide cooperative efforts among themselves and with hospital discharge units to ensure a home health aide case is accepted. The policy provides for a referral to DOH when cooperative efforts are unsuccessful. The policy has been conveyed to all CHHA administrators in New York State.

In SUFFOLK County only, DOH directed the agencies to retain sufficient staff to ensure care is provided as specified in patients= care plans and that fair hearing procedures are adhered to. The agencies have been directed to provide case management, including assisting patients to obtain services from other facilities or agencies when necessary and ensuring the availability 24/7 of professional telephone consultation for patients receiving home care. The agencies must develop written policies and procedures regarding patient rights, including the provision of information for filing complaints to DOH and the availability of the DOH toll-free hotline.

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Catanzano v. Dowling – series of decisions

a. Catanzano v. Dowling, 277 F.3d 99 (2001).

Agreeing with plaintiffs, the Second Circuit vacated in part and reversed in part the district court's final judgment, entered 9/2/99, that had dismissed the entire action with prejudice. The case was dismissed based on mootness because of the "sunset" of the fiscal assessment law. This was OK with plaintiffs as most of the issues had been favorably resolved earlier (see list of earlier decisions below). But the district court had granted summary judgment on one issue that was adverse: the district court's decision precluded notice and fair hearing rights if the treating physician "agreed" with the CHHA about a reduction, denial, or termination of CHHA care. The Second Circuit vacated this part of the decision on a procedural ground - not on the merits, thereby preserving the "treating physician exception" for later litigation.

NOTE that a Medicare case was decided favorably on this issue, holding that certified home health agencies must give written notice before they reduce or terminate home health services for any reason, regardless of whether the treating physician "agrees" with the reduction. Lutwin vs. Rovner, 361 F.3d 146 (2d Cir. 2004), *affirming in part and vacating in part*, Healey v. Thompson, 186 F. Supp. 2d 105, 2001 U.S. Dist. LEXIS 23767 (D. Conn., 2001)

b. Catanzano by Catanzano v. Wing, 103 F.3d 223 (2d Cir. 1996), affirming Catanzano by Catanzano v. Dowling, 900 F.Supp. 650 (W.D.N.Y. 1995); on remand, 992 F. Supp. 593 (W.D.N.Y. 1998).

Second Circuit reaffirmed its 1995 decision and district court's decisions holding that under New York's Medicaid home health care laws, Certified Home Health Agencies [CHHAs] are state actors, thereby triggering CHHAs' obligation to provide due process rights to Medicaid recipients. However, the Court remanded the question of whether the Medicaid Act's "freedom of choice" provision and regulation, 42 USC §1396a(a)(23) and 42 CFR §431.51, permit the CHHAs to refuse to comply with state-ordered aid-continuing directives and fair hearing decisions. On remand, the district court held CHHAs' may not refuse to comply with fair hearing decisions and aid continuing. Final Implementation Plan codified at 18 NYCRR §505.23 Appendix 1.

c. Catanzano by Catanzano v. Dowling, 60 F.3d 113 (2d Cir. 1995), affirming 847 F.Supp. 1070 (W.D.N.Y. 1994).

Second Circuit affirmed district court decision that under New York's Medicaid home health care laws, Certified Home Health Agencies [CHHAs] are state actors, thereby entitling Medicaid applicants and recipients to Medicaid due process rights, including notices, hearing rights, and aid-continuing rights.

d. Catanzano v. Richardson, unpublished Order (W.D.N.Y. October 17, 1989), affirmed without opinion, 902 F.2d 1556 (2d Cir. 1990).

District court held that recipients of Medicaid-funded home health care services are entitled to due process rights, including notices, hearings, and aid-continued services pending a fair hearing decision.

Curry v Wing, N.Y.L.J. 716 N.Y.S.2d 6, 2000 N.Y. App. Div. LEXIS 11263, N.Y.L.J. 11/14/2000 (p. 27 col. 3)(App. Div. 1st Dept. 2000)(companion case with Schlossberg)

Terrible decision in transferred Article 78. Finds notice of determination was adequate (appellant had challenged lack of specificity for why split shift was denied). Upholds hearing decision that affirms HRA's denial of increase from sleep-in to split shift. Appellant was *pro se* at the hearing, and his own physician had not specifically recommended split shift. Despite reciting new medical evidence submitted to the Court by appellant's counsel that appellant is tetraplegic and needs repositioning every 2 hours, court says it is constrained by *Kuppersmith* that agency need not follow treating physician's recommendation.

COMMENT: The court's interpretation is arguably incorrect, because *Kuppersmith* does not go that far. While *Kuppersmith* says that the agency need not defer to the treating physicians opinion of the number of hours, the treating physician is still the source for the medical condition and treatment. So the physician's opinion that the patient must be turned and positioned every 2 hours to prevent bedsores SHOULD have deference.

Detsel v. Sullivan, 895 F.2d 58 (2d Cir. 1990)

Medicaid regulation limiting provision of private duty nursing care to the home violates the statute; Medicaid must provide it to child while attending school. See also *Skubel*, below (applied to Medicaid home health services).

Leon v. Danes, et.al., (CV 07-1674 E.D.N.Y, June 12, 2008)[3] Expands access to Consumer-directed personal assistance services and Private duty nursing services.

(1) NURSING) Settlement resulted in directive DOH 08-INF–5 http://www.health.state.ny.us/health_care/medicaid/publications/docs/inf/08inf-5.pdf that establishes procedures for applying for nursing services and requires decisions to be made within 21 days of a fully documented application. It explains how to obtain a list of Medicaid private duty nurses in the local area by calling the Medicaid helpline at 1-800-541-2831 and online at www.homecare.nyhealth.gov. Establishes statewide procedures for obtaining Medicaid private duty nursing services if there is

3 Settlement posted on the Online Resources Center of www.wnylc.net. Registration is required to access postings, but it's free.

difficulty finding a provider. One option is to apply at the local DSS for a DOH case-specific enhanced payment rate. The enhanced rate is applicable in *all* DSS districts in the State pursuant to the Settlement. See DOH 2008- INF–5.

(2) CDPAP – settlement ordered issuance of DOH GIS 08 LTC-005 (9/9/08),[4] amending DOH 06 OMM/LCM-1 (Q & A on CDPAP). Clarifies that the family member or other person directing care does *not* have to be present at all times in which skilled nursing tasks are administered by a CDPAP aide to a non-self-directing recipient of CDPAP.

Long Island Care vs. Coke, 127 S. Ct. 2339; 168 L. Ed. 2d 54; 2007 U.S. LEXIS 7717 (June 2007)

> Reverses, after earlier remand, 2nd Circuit decision and upholds the federal regulation that exempted home care aides from overtime requirements of the Fair Labor Standards Act. The U.S. Supreme Court deferred to an opinion by the Dept. of Labor that home care aides should be exempt from overtime, regardless of whether they were privately hired by a family or worked for a large home care agency. Since the Second Circuit decision in 2004, finding that overtime must be paid to aides, most home care agencies cut weekly hours of individual aides to less than 40 hours per week, rather than paying overtime. In this way, the goal of the lawsuit to increase wages had backfired. It also disrupted continuity of care for clients who need high hours of care, with more aides splitting up the shifts. The Supreme Court remanded the case in June 2007 back to the Second Circuit. In 2010, US DOL proposed regulations to apply the Fair Labor Standards Act to Domestic Service http://www.gpo.gov/fdsys/pkg/FR-2011-12-27/html/2011-32657.htm. A final rule was promulgated and was to be effective Jan. 1, 2015, but is now stayed under an injunction.

Deluca vs. Hammons, 927 F. Supp.132 (S.D.N.Y. 1996)

> Struck down state regulation imposing arbitrary 4-hour per day cap on Medicaid-funded personal care services for new applicants receiving such services for the first time violated federal Medicaid rules with respect to the provision of adequate medical care. Under a 2004 settlement, PERS will be available to HOUSEKEEPING clients as well as personal care/ home attendant clients in NYC. GIS DOH 04 MA-029 clarifies that PERS may not substitute for personal care aide services. Also, no minimum number of hours or level of services is required to be eligible for PERS – Housekeeping (Level I) services may qualify for PERS.

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4 http://www.health.state.ny.us/health_care/medicaid/publications/docs/gis/08oltc005.pdf. The GIS was issued as the result of a settlement in *Leon v. Danes, et.al.,* (CV 07-1674 E.D.N.Y, June 12, 2008)(posted on WNYLC.net Online Resource Center)

http://www.health.state.ny.us/health_care/medicaid/publications/docs/gis/04ma029.pdf

Detsel v. Sullivan, 895 F.2d 58 (2d Cir. 1990)

Federal regulation limiting Medicaid-funded private duty nursing services to recipient's home, and not outside the recipient's residence, was not authorized by the Medicaid Act – must be provided to child at school. see also Skubel and *Lupo v. Wing,* CV 97-0986 (E.D.N.Y.,)(settlement Feb. 4, 1998) below applying same reasoning to personal care and home health care).

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Egan v. DeBuono, 688 N.Y.S.2d 18 (1st Dept. 1999)

In transferred Article 78 case, court affirms agency's termination of 24-hour a day personal care services based on the agency's medical directors review of the treating physicians order for continued 24-hour care, and the nursing assessments. Court rules that Olmstead's mandate to provide "appropriately integrated services" was not violated because a state in not required to made "fundamental alterations in its Medicaid program."

Evans v. Wing, 277 A.D.2d 903, 716 N.Y.S.2d 269 (4th Dept. 2000), reargument denied, 724 N.Y.S.2d 143 (4th Dept. 2001).

Court rules that although a $50 monthly Personal Needs Allowance [PNA] for a married recipient of "Long Term Home Health Care Program" home care services is identical to the PNA for a married skilled nursing facility resident, it was an "irrational" amount because $50 does not cover the cost of maintaining the LTHHCP participant in the community. The court remanded the action to the lower court to determine a rational PNA amount.

In GIS Message 01-MA-021 (June 28, 2001), NYS DOH advised local agencies that the PNA for married Medicaid recipients of LTHHCP services is now the difference between the Medicaid income level for a household of one and the Medicaid income level for a household of two (in 2011 = $350)[5].

Granato v. Dowling, 74 F.3d 406 (2d Cir. 1996)

Court held that temporarily hospitalized recipients of Medicaid-funded personal care services are entitled to aid-continued services pending a fair hearing decision when the state agency refuses to reinstate the services ordered by the recipients' treating physicians upon the recipients' discharge from the hospital. (Martin v. Wing is related issue). Implementation: Local Comm'r. Mem. 99-OCC-LCM-2 (4/20/99) http://www.wnylc.net/pb/docs/99OCCLCM2.pdf

[5] http://www.health.state.ny.us/health_care/medicaid/publications/docs/gis/10ma026.pdf

Greenstein v. Perales, 833 F. Supp. 1054 (S.D.N.Y. 1993)(appeal settled, Second Modified Judgment, 2/24/95)

If Medicaid incorrectly denied a Medicaid application or delayed in processing it, Medicaid must reimburse the recipient for medical expenses paid as a result of the error or delay. 42 U.S.C. § 1396d(a), SSL § 367-a(1), 18 NYCRR 360-7.5(a)(1). 87 ADM-48. In consent judgment, the State agreed to pay reimbursement at the ACTUAL rate, rather than only at the Medicaid rate.

See 10ADM-09 - Reimbursement of Paid Medical Expenses Under 18 NYCRR §360-7.5(a), posted at http://www.health.state.ny.us/health_care/medicaid/publications/pub2010adm.htm.

Kuppersmith v. Perales, 93 N.Y.2d 90, 688 N.Y.S.2d 96 (1999)

NY Court of Appeals upholds as within Medicaid program's discretion a state regulation, 18 NYCRR §505.14(b)(3)(i)(3), prohibiting the treating physician from prescribing a specific number of hours of personal care. The regulatory "gag rule" applies to the physician's order, which is one of several assessments used by the Medicaid program in determining the amount of home care to authorize.

The Court affirms the termination of personal care based on adverse fiscal assessment, and rejects due process and ADA claims (but pre-Olmstead).

Lupo v. Wing, CV 97-0986 (E.D.N.Y.,)

Plaintiff, represented by counsel from NSLS and the Touro Law Center, prevailed in his claim challenging the failure of the Suffolk County Department of Social Services (SCDSS) and the New York State Department of Health (NYSDOH) to permit recipients of Medicaid Personal Care Services (PCS) to go on activities of daily living performed outside the home, such as shopping and banking, with their PCS aides. Plaintiff challenged the defendants' restrictive PCS policies as violating the State Medicaid Statute and Title II of the Americans With Disabilities Act, providing for government programs and services to be offered in the least restrictive manner.

United States District Court Judge Thomas Platt ordered a stipulation of settlement in the case on February 4, 1998, pursuant to which plaintiff is permitted to go with his PCS aide on activities of daily living included on the plaintiff's PCS care plan, which include shopping, banking, haircuts, and other activities. The stipulation provides for the use of Suffolk County paratransit for the performance of activities performed by Mr. Lupo and his aide outside the home.

Lutwin v. Rovner (Medicare case - see under first Catanzano case, above)

Marion v. Balch, 252 A.D.2d 915, 676 N.Y.S.2d 712 (3rd Dept. 1998)

Although Medicaid recipient's doctor ordered continued personal care services, court upheld agency's decision to terminate services based on local professional director's evaluation of doctor's order and nursing assessments. Court ruled that there was no requirement that the "local professional director" must be a medical physician.

Martin v. Wing, 1996 WL 191974 (N.D.N.Y. 1996)

Court held that a temporarily hospitalized recipient of Medicaid-funded Home and Community Based Services under a Medicaid Waiver program was entitled to aid-continued services pending a fair hearing decision on his challenge to defendants' termination of his services upon his discharge from the hospital.

Massand v. Hammons, 662 N.Y.S.2d 754 (1st Dep't 1997)

Eye surgery services received out-of-state during 3-month pre-application period must be reimbursed, relies on decision in Seittelman, see below

Mayer v. Wing, 922 F. Supp. 902 (S.D.N.Y. 1996), modified in part, unpublished Orders (May 20 and 21, 1996); Stipulation & Order of Discontinuance (Nov. 1, 1997)

Court granted preliminary injunction and class certification finding reductions in personal care services were arbitrary and capricious and violated due process where there was no medical improvement or change in circumstances, and the reduction notices did not explain the basis for the reductions. In the final settlement in 1997, the defendants agreed for part of the preliminary injunction to remain in effect until August 2001, which limits the right of local districts statewide to reduce services except for 6 specified reasons:

(1) a change in medical or other circumstances
(2) a mistake that occurred in the previous authorization of services
(3) a recipient's refusal to cooperate with the required reassessment
(4) a technological development such as PERS rendering certain
(5) a finding that the recipient can be more appropriately and cost-
(6) Task-based assessment - But HRA may NOT reduce hours based

The injunction also required defendants to specify the reason for the reduction in its notice to the recipient, ordered defendants to establish a telephone line solely for processing fair hearing requests; and ordered a special aid-continuing for members of the class.

In the final settlement, the State agreed to disseminate a directive requiring districts to make two separate determinations to identify those individuals who are exempt from Task-Based Assessment. (1) the district must determine if someone needs 24-hour care and (2) if family is available to provide some of that care. If the person needs 24-hour care, even if some of that care is provided by family, the person is a "**Mayer 3"** exception and is exempt from TBA. The Mayer provisions are now incorporated in revisions to 18 NYCRR 505.14(b)(5)(v), effective 11/1/01; see GIS Message 01 MA/044. They are also incorporated in state guidance to MLTC plans – DOH MLTC Policy 16.06 - *Guidance on Notices Proposing to Reduce or Discontinue Personal Care Services or Consumer Directed Personal Assistance Services, which* make clear that this rule applies equally to MLTC and managed care plans. (available at https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policies.htm)

Miller v. Bernstein, Sup. Ct. N. Y. Co. Index No. 623/78, Stipulation and Settlement of Discontinuance, filed May 11, 1978 (posted at http://wnylc.com/health/afile/34/50/)

HRA "...shall determine an applicant's eligibility for home attendant services within 30 days from the submission ... of a properly executed physician's request..."(par. 7(a)

Muhlstein v. HRA, *865 N.Y.S.2d 647* (2nd Dept. Oct. 2008). Citing prior hearing decisions allowing reimbursement of cash paid for home care, [6] court holds it would be arbitrary and capricious of agency to ignore these precedents. Finds the signed affidavits of the two home health care aides acknowledging receipt of cash payments should be considered on the issue of reimbursement, in light of the prior acceptance of such evidence.

Olmstead v. L.C., 527 U.S. 581, 144 L.Ed.2d 540, 119 S. Ct. 2176 (1999), affirming in part, 138 F.3d 893 (11th Cir. 1998)

Following Helen L., U.S. Supreme Court holds unnecessary institututionalization of persons with mental impairments is discrimination in violation of the ADA, requiring States to provide community-based services unless it is an "undue burden." Court recites factors but no bright-line cost test to determine if home care & other community-based services are an undue burden to the State, leaving the issue for future litigation. Court finds waiting lists for home care not per se illegal, if they move at a reasonable pace. This case considered the Brown v. Board of Ed for persons with disabilities.

6 E.g. *Matter of MG*, Fair Hearing No. 3834019J (August 4, 2003, D'Andrea, ALJ)(Tonya Wong, Legal Services for New York City, rep. for appellant)(held that the home care aides' signed affidavits acknowledging receipt are sufficient proof of payment in cash)(copy of decision available on www.wnylc.net fair hearing data base).

Regan v. Wing (EDNY 00-CV-6245)

In Stipulation and Order, NYS DOH agrees to provide Medicaid funded personal care services to Medicaid recipients in homeless shelters and emergency shelters, and to remove the bar to such services found in 92-ADM-15 (March 27, 1992). Plaintiffs had argued that the restriction violated the Americans with Disabilities Act. The decision was implemented in NYS DOH GIS Message 02 MA/014 (6/24/02)

Rivera v. DeBuono, (Sup Ct. N. Y. Co. Order, March 25, 1999)

Court rules that the agency's termination of a non-English speaking Medicaid recipient's home care based on fiscal assessment, without meaningful participation of the recipient, who had no interpreter and whose testimony at a home hearing the ALJ did not even attempt to take, is arbitrary & capricious and violates due process.

Rodriguez v. City of New York (challenges Task Based Assessment in personal care)

- *Safety monitoring issue* -- 197 F.3d 611 (2d Cir. Oct. 6,1999), reversing Rodriguez v. DeBuono, 44 F. Supp.2d 601 (S.D.N.Y.1999), on remand from 162 F.3d 56 (2d Cir. 1998), reversing 177 F.R.D. 143 (S.D.N.Y. 1997); petition for rehearing denied, Jan. 26, 2000, cert. denied, Oct. 2000.

  Second Circuit upheld NY's policy of refusing to count "safety monitoring" as a "task" in task-based assessment. Safety monitoring is an aides supervision of a person with a cognitive impairments such as Alzheimers disease to prevent her from wandering, leaving the stove on, etc. Court held that the omission does not violate the Americans with Disabilities Act nor the federal Medicaid "comparability" provision. Citing Olmstead, the Court stated that the ADA bars discrimination only with respect to services that a state already provides, not with respect to the "separate" and "new" service of safety monitoring, which the Court found that New York does not provide. Of course plaintiffs disagree with this characterization of New York's program and of the law.

  A State directive issued January 24, 2003 (GIS 03 MA/003) http://www.wnylc.net/pb/docs/GIS03MA003.pdf> limits the damage of this decision, stating in part:

  > "[D]istricts are reminded that a clear and legitimate distinction exists between safety monitoring as a non-required independent stand-alone function while no Level II personal care services task is being provided, and the appropriate monitoring of the patient while providing assistance with the performance of a Level II personal care services task, such as transferring, toileting, or walking, to assure the task is being safely completed."

  This GIS clarifies that districts MUST assess time need for an aide to assist a cognitively impaired person with recognized "tasks" such as toileting or ambulation even if the assistance is verbal cueing and prompting rather than hands-on care. Also, assisting someone in ambulation to prevent falling, while it does indeed enhance "safety," is not forbidden "safety monitoring" but is rather assistance with ambulation, so must be provided.

- *Task-based assessment* (*TBA*) The remaining claims challenging TBA were settled.

  - Statewide settlement: *Stipulation and Order of Settlement*, dated December 19, 2002 (statewide), and GIS 03 MA/003, January 24, 2003 http://www.health.state.ny.us/health_care/medicaid/publications/docs/gis/03ma003.pdf.

In addition to clarifying the safety monitoring issue, the GIS 03 MA/003 (cited above) issued under the state settlement clarifies that "The assessment process should evaluate and document when and to what degree the patient requires assistance with personal care services tasks and whether needed assistance with tasks can be scheduled or may occur at unpredictable times during the day or night." In addition, the GIS provides that ". . .a care plan must be developed that meets the patient=s scheduled and unscheduled day and nighttime personal care needs." This GIS as incorporated in State policy guidance to MLTC plans. See MLTC Policy 16.07: *Guidance on Task–based Assessment Tools for Personal Care Services and Consumer Directed Personal Assistance Services,* available at https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policies.htm.

- New York City only -- *Stipulation of Settlement and Order of Dismissal*, dated January 9, 2003

The City explicitly recognizes its obligation to authorize personal care assistance with identified *unscheduled and recurring needs* through an appropriate plan of care. Revises nurse's assessment form and internal assessment procedures to identify the span of time during which client needs unscheduled and/or recurring assistance with toileting, ambulation and transferring.

- Nassau County - Settlement dated around March 29, 2004. County agreed to revise certain assessment forms and instructions "to identify clients with unscheduled needs (such as toileting, transferring, and/or ambulating) and/or recurring needs (such as feeding, assistance with medication, etc.) to ensure a plan of care that will meet these needs." (Departmental Memo to all assessing and reviewing nurses and medical directors from Rita Nolan, Dir, Medical Services, dated May 24, 2004). The Task-Oriented Plan of Care now says that the recommended hours and days "must allow for unscheduled and/or recurring needs."

- If assistance with toileting, ambulation, transferring, feeding, meal prep or assistance with meds is needed, the reviewing nurse must explain in a memorandum to the Medical Director how the total task time is sufficient to meet those needs when they occur.

    - A *Mayer* plan of care (24-hour care cases, including those where informal supports provide some care), must meet client's needs when supports are unavailable. Plan should specify the time availability of the informal support.

Sanon v. Wing, Jackson v. Wing, and Rubin v. Wing, 2000 N.Y. Misc. LEXIS 139, Index No. 403296/98 and 402855/98 (Sup. Ct. N. Y. Co., Moskowitz, J.) (N.Y.L.J. Mar. 3,

2000 p. 27 col. 2)

Holds that Olmstead requires analysis of whether or not the provision of high-cost home care is an "undue burden" under the ADA, in which case the fiscal assessment limitations would violate the ADA. Requires State to analyze cost factors using Olmstead guidelines. Finds Egan not binding in light of Olmstead. Other than ADA, rejects other challenges to fiscal assessment notices and procedures.

Schlossberg v Wing, 715 N.Y.S.2d 44, 2000 N.Y. App. Div. LEXIS 11299, N.Y.L.J. 11/14/2000 (p. 27 col. 3)(App. Div. 1st Dept. 2000)

In a transferred case, First Department Appellate Division affirms a fair hearing decision that denied continuous split-shift 24-hour care. The court holds that the hearing decision was supported by substantial evidence because the agency was entitled to deference in interpreting its own regulations and the legislation under which it functions. The decision reiterates *Kuppersmith* that the agency is not required to follow treating physician's recommendation for amount of hours. Finds notice of determination was adequate (appellant had challenged lack of specificity for why split shift was denied). Refers to *Curry* case, decided same day.

Scholtz v. Novello et al., CV-02-4245 (E.D.N.Y.) and *Bacon v. Novello* et al., CV-02-4244 (E.D.N.Y. 2004)(Settlements posted at http://www.wnylc.net/onlineresources/welcome.asp?index=welcome. DOH agreed to release GIS 02 MA 024, which permits the provision of Consumer Directed Personal Assistance Program (CDPAP) services in conjunction with Medicaid certified home health care, personal care, or nursing services in a combined care plan. DOH also agreed to release a directive to ensure better case management and supervision by private duty nursing agencies, notice to recipients of procedures to file complaints when care is inadequate, development of written emergency care plans, ensurance that nursing agencies accept and retain only those patients that can be cared for safely and appropriately and to contract with sufficient staff to meet its responsibilities. These instructions are in DOH Medicaid Update June 2004 Vol.19, No.6, "Licensed Home Care Services Agencies and Independent Providers of Private Duty Nursing Services." http://www.health.state.ny.us/nysdoh/mancare/omm/2004/jun2004.htm#pdn

NASSAU & SUFFOLK COUNTIES - Unique relief granted to these counties, allowing an enhanced rate when necessary because of the severity and complexity of a patients medical condition, when the recipient will be left alone in the community in a potentially life threatening situation if authorized services are not provided, when the recipient has a severe mental or physical diagnosis making the patient hard to serve, when the recipient resides in a problematic environment making the case difficult to serve, when the agency, despite diligent

efforts, has been unable to consistently provide authorized services, and when the recipient is awaiting discharge from a hospital and no other home care services are available at the time of discharge and a higher rate would enable the patient to be discharged.
(Counsel: Robert Briglio, Nassau-Suffolk Law Services, Islandia, NY)

Scofero v Zucker - *(W.D.N.Y. 6:16-CV-6125),* *Empire Justice Center* and National Health Law Program filed this Empire Justice Center has filed a class action lawsuit against the New York State Department of Health (DOH) individuals with serious conditions who require significant amounts of homecare services. When they contact MLTC plans seeking to enroll, as mandated in order to access personal care services, they are routinely turned away. The MLTC plans tell them that they won't be able to offer the level of care they require, even though they are under contract with DOH to do so. As a result, many individuals throughout New York State are left in nursing homes or are at risk of institutionalization. According to the lawsuit, the failure of the state to provide these services to needy individuals violates both the federal Medicaid Act and the Americans with Disabilities Act. Download complaint at https://empirejustice.org/resources_post/scofero-v-zucker-616-cv-6125/. Preliminary injunction denied.

- Successor Case filed as ***Scofero v. VNA Homecare Options****, LLC (W.D.N.Y. 6:17-cv-06391) (June 2017).* Case sought to enforce compliance by MLTC plan with fair hearing decision that had reversed the MLTC plan's refusal to enroll the named plaintiff enrollment in the MLTC plan. He was confined to a nursing home as a result. The plan did finally enroll him, and authorized 24-hour care. However, the plan claimed it could not find a home care agency to staff the case. Preliminary injunction denied July 2017, saying the plaintiff was not suffering irreparable harm by being in the nursing home, and that the plan's attempt to comply with the hearing decision was enough. (2017 U.S. Dist. LEXIS 114155). Case withdr*awn 2018.*

Seitelman v. Silverman, 601 N.Y.S.2d 391 (N.Y.Co. 1993), *aff'd*, 630 N.Y.S. 2d 296 (App. Div. 1st Dept. 1995), *modified*, 91 N.Y.2d 618, 674 N.Y.S.2d 253 (1998)

In class action certified for New York City, orders that bills of non-Medicaid providers must be reimbursed for services in the 3-month period pre-application period (and through the acceptance of the application), but only at the Medicaid rate. Case is successor to *Krieger v. Perales*, 503 N.Y.S.2d 418 (2d Dept. 1986), aff'd, 518 N.Y.S.2d 957 (1987), implemented in 88 ADM-31, which orders reimbursement statewide during the pre-application period, but did not deal with the types of providers.

Follow up case: Services received out-of-state during 3-month pre-application period must be reimbursed. *Massand v. Hammons*, 662 N.Y.S.2d 754 (1st Dep't 1997)(eye surgery; relies on its decision in Seittelman)

2010 ADM on Reimbursement -- http://www.health.state.ny.us/health_care/medicaid/publications/pub2010adm.htm.

Skubel v. Fuoroli, 113 F.3d 330 (2d Cir. 1997)

Federal regulation limiting Medicaid-funded home health care services to recipient's home, and not outside the recipient's residence, was not authorized by the Medicaid Act. Decision follows Detsel v. Sullivan, 895 F.2d 58 (2d Cir. 1990)(same ruling applied to private duty nursing care - Medicaid must provide it to child while attending school). See also *Lupo v. Wing,* CV 97-0986 (E.D.N.Y.,)(settlement Feb. 4, 1998)(personal care services)

Strouchler v. Shah, 2012 U.S. Dist. LEXIS 125339, S.D.N.Y. Docket No. No. 12 CV 3216 - SAS) Sept. 4, 2012 (preliminary injunction granted) (Class Certification granted 2012 U.S. Dist. LEXIS 14471, Oct. 5, 2012); Stipulation of Settlement of Class Action and Order, May 2014 (on file with NYLAG)

In challenge to arbitrary reductions in 2x12 continuous personal care services, and 2011 amendment to state regulation defining criteria for that level of service (18 NYCRR 505.14), grants preliminary injunction based on irreparable harm and likelihood to succeed on the merits of their claims that the City and State violated procedural due process requirements and the Medicaid Act. The decision does not reach the claims under the ADA.

- **The Court found that the State failed in its duty to ensure that the City complies with the federal Medicaid act.** Even though the State repeatedly reversed the City in individual fair hearings, it failed to take extra steps to clarify its regulations and policies so that the City would stop repeating the same mistakes. As a result, over 300 people who did NOT request hearings to challenge cuts in their split-shift services may have been harmed.
- **The City failed to use "reasonable standards" for determining eligibility** and the extent of services, and to provide the same services to everyone who is eligible for them, as required by federal Medicaid law. In particular, the Court found these standards unreasonable:
  - "**Total" vs. "Some" Assistance.** State regulations limit split-shift services to those who need "total" assistance with a task. The Court found that the City wrongly treated many people as needing only "some" assistance -- even though they could not perform a task without help.
  - **Limiting Split-Shift to Those who need Help at Times that cannot be predicted.** In 2011, the State amended its personal

care regulations so that to qualify for split-shift care, one must have needs that cannot be "predicted." "However, the State's witness testified that a patient who needed diaper changes and turning and positioning throughout the night would not be ineligible for split-shift services simply because the need was regular and could be predicted." The Court faulted the State for not clarifying the language of this regulation, leaving the City and hearing judges to apply inconsistent standards.

- **Turning and Positioning** -- "Plaintiffs have established a substantial likelihood that they will prevail on their claim regarding the availability of home care for patients who have a medical need for turning and positioning during the night." The State's regulation, again, was unclear because it omits this task from needs that qualify one for split-shift care -- such as toileting and transferring. Again, the court faulted the State for failing to establish reasonable, clear standards.
- **Arbitrary Reductions for alleged "change in circumstance" or "mistake" -- without any real reason - and with inadequate Notice** -- The federal judge hearing this case is the same federal judge who issued the decision in *Mayer v. Wing,* 922 F. Supp. 902 (S.D.N.Y. 1996). Mayer challenged a similar round of across-the-board cuts in Medicaid personal care services in NYC. The decision in *Mayer* barred arbitrary reductions in home care services, unless there was a written notice of a specific change in circumstances such as an improvement in condition, or where there was a mistake. That ruling was incorporated in state regulations. 18 NYCRR 505.14(b)(5)(c). The Court now found that "the City has, in dozens of cases, improperly cited either a change in condition or a mistake in previous assessment (and frequently both) to justify reducing or terminating split-shift care. These decisions are unreasonable." ..."It appears, however, that the City has expanded what was meant to be a narrow exception ...[correcting a mistake made in an earlier authorization] ...into a mechanism for simply reducing services arbitrarily..." (p. 17)

Pursuant to the preliminary injunction, the State promulgated amended regulations defining "**Continuous personal care services – commonly known as "Split-Shift" or 2x12 care** -- means the provision of uninterrupted care, by more than one person, for more than 16 hours per day for a patient who, because of the patient's medical condition and disabilities, requires total assistance with toileting, walking, transferring or feeding at times that cannot be predicted.
(This is the directive issued on October 3, 2012 -- GIS 12 MA/026 and amended regulations 18 NYCRR 505.14(a)(3), which also set a new

definition for live-in at 505.14(a)(5)

Taylor v. Zucker, (S.D.N.Y. No. 14-CV-05317), filed June 2014. NYLAG filed this federal class action law suit challenging New York State DOH's failure to protect the rights of Medicaid recipients who receive home care services through managed care contractors – MLTC and mainstream managed care. Suit challenges failure of plans to provide adequate and timely written notice before reducing or discontinuing services, failure to provide aid continuing, and lack of justification for reductions in violation of *Mayer v. Wing*. Class certification was denied in July 2015. Action withdrawn without prejudice in Oct. 2015. New action commenced. See *Caballero* case.

Turano et al. v. Zucker (E.D.N.Y. CIV 1-0326) –NYLAG filed this action challenging the lack of due process rights for members of Managed Long Term Care plans when their plans close. The case was precipitated by closure of Guildnet MLTC plan in Long Island and Westchester. The plans' 4,000 affected members were notified to find a new plan, but not told that the new plan was required to continue the same services that Guildnet had authorized in the same amount. In fact, State policy did not require the new plans to continue the plan of care or same providers. Additionally, those who could not find and enroll in a new plan in time were left with no services.

As a result of the litigation and other advocacy, the State issued MLTC Policy 17.02: *MLTC Plan Transition Process – MLTC Market Alteration,* available at *https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policies.htm*. The policy gives members of closing plans transition rights. First, if the member does not enroll in a new plan, they are assigned to one, to prevent disruption of services. Second, the new plan must continue the same service plan for 120 days. Advocates point out gaps in the policy. See this article for more about these issues. . http://www.wnylc.com/health/entry/217/#advocacy%20concerns.

Varshavsky v. Bane, 608 N.Y.S.2d 194 (App. Div. 1st Dept. 1994)(affirming March 5, 1992 State Supreme Court order granting preliminary injunction and class certification). People who cannot travel to the hearing because of a disability can ask for a "**home hearing,"** where the Administrative Law Judge comes to their home. They do not get a home hearing at first, though. FIRST, there is a PHONE HEARING or a REPRESENTATIVE hearing, in which a family member or advocate appears at the hearing for them. If they win this first hearing, that is the end of the process. If they lose the first hearing, the State must schedule a second hearing at HOME. If they had aid continuing, this aid must continue pending the home hearing. If they did not have aid continuing, they may get special interim aid while awaiting the home hearing. While case does not apply only to Medicaid home care hearings, the issue is frequently about home care for people who need a home hearing.[7]

[7] 1992 decision available at http://www.wnylc.com/kb_wnylc/admin/index.php?module=file&page=file_entry&action=file&id=964www.wnylc.com/kb_wnylc/afile/41/964/.

INTERIM AID - Extra benefit of home hearing -- in addition to getting a second bite at the apple by having a home hearing, client can get special "interim aid" after the 1st phone or representative hearing while waiting for the 2nd home hearing. Interim aid is the amount of hours client wanted but did not get -- so it is more than standard "aid continuing." Confusingly, it is called “Aid Continuing” anyway. This is not in the court decisions, but was agreed to by the parties subsequently because the State could not comply with the time limits to schedule the home hearing.

Example: Local DSS or MLTC plan denied request for increase from 8 hours to 24 sleep-in, which client appealed. Interim aid is 24 hours sleep-in. If issue is denial of an initial application, there is no "interim aid" thru *Varshavsky*. Client must have been found eligible for Medicaid and for services to receive interim aid. If interim aid not given, or if case was mistakenly adversely decided without being assigned for a home hearing, contact Nina Keilin, class counsel for *Varshavsky* (212) 302-7760.
The interim aid ENDS when a decision is issued after the home hearing. So hours may go back down if you lose.

See more at http://www.wnylc.com/kb_wnylc/entry/47/, with links to copies of state directives and forms implementing Varshavsky. Directives posted here http://www.wnylc.com/kb_wnylc/entry/8/.

PUBLICATIONS regarding Personal Care in NYS

Valerie Bogart, *Exhaustion of MLTC Plan Appeals Before Requesting a Fair Hearing, Starting May 1, 2018,* NYSBA Elder and Special Needs Law Journal, Vol, 28 No. 2 (Spring 2018)(available at http://www.wnylc.com/health/download/675, reprinted with permission from: Elder and Special Needs Law Journal, Spring 2018, Vol, 28 No. 2, published by the New York State Bar Association, One Elk Street, Albany, NY 12207.

Mis-Managed Care: Fair Hearing Decisions on Medicaid Home Care Reductions by Managed Long Term Care Plans, Medicaid Matters NY and National Assoc'n of Elder Law Attorneys – NY Chapter (co-sponsors) (July 2016) (available at http://medicaidmattersny.org/cms/wp-content/uploads/2016/08/Managed-Long-Term-Care-Fair-Hearing-Monitoring-Project-2016-07-14-Final.pdf. See links to press release of report and New York Times story about report at http://medicaidmattersny.org/managed-care/

Medicaid Managed Long Term Care in New York, Parts 1 & II -- By David Silva, Assistant Director, Selfhelp Community Services Evelyn Frank Legal Resources Program, and David Kronenberg, Goldfarb, Abrandt Salzman & Kutzin: Elder Law Attorney, Winter 2010 – Summer 2010, Vol. 20, No. 1 and 2, published by the New York State Bar Association, One Elk Street, Albany, NY 12207. (posted with permission at http://wnylc.com/health/entry/114/

Medicaid Personal Care in New York City: Service Use and Spending Patterns, (Medicaid Institute at United Hospital Fund, December 2010) http://www.uhfnyc.org/publications/880720 -- takes two distinct looks at one group of personal care recipients, elderly dual Medicare-Medicaid beneficiaries in New York City

Medicaid Long-Term Care in New York: Variation by Region and County, (Medicaid Institute at United Hospital Fund, December 2010) http://www.uhfnyc.org/publications/880719 -- analyzes rates of service use and levels of spending per recipient across New York State, documenting variation by region and by county, and examines four interrelated factors—demographics, reimbursement policies, availability of service, and local administration—to explain regional variation.

Alene Hokenstad, *An Overview of Medicaid Long-Term Care Programs in New York,* (Medicaid Institute at United Hospital Fund, May 2009) A comprehensive report on Medicaid long-term care programs in New York, which serve 247,000 Medicaid beneficiaries each month and account for roughly one quarter of all Medicaid spending. Care for these beneficiaries can be intensive and costly. The report also identifies policy options for addressing the key challenges facing the state as it looks at options to better serve New York's frail seniors and adults with physical disabilities through its 12 long-term care programs. http://www.uhfnyc.org/publications/880507

Valerie Bogart, *Tips for Solving a Common Problem for Medicaid Home Care*

Applicants Who Need Services Pending Approval of the Application," NYSBA Elder Law Attorney, Vol. 13 No. 3, p. 31 (Summer 2003)

Status Report: Litigation Concerning Home and Community Services for People with Disabilities, http://www.hsri.org/index.asp?id=news, by Human Services Research Institute (updated bi-monthly, last in June 2006)

Alfred J. Chiplin, Jr., Vicki Gottlich, Valerie Bogart, & Judith A. Stein, *Legal Issues in Securing Home Health Services Under Medicare and Medicaid*, 31 Clearinghouse Review 199 (Sept-Oct. 1997)