

NEW YORK, NY - September 25, 2000 -The U.S. Supreme Court will decide shortly whether to grant certiorari to a 2nd Circuit decision with far-reaching implications for New York State Alzheimer's patients who are on Medicaid and live at home. Moving to nursing homes is the only way this population will be able to stay on Medicaid and get the care they need.

The devastating decision at the root of this, *Rodriguez v. City of New York*, 197 F.3d 611 (2d Cir. 1999), allows New York to refuse to provide "personal care services" to cognitively impaired Medicaid recipients if those same services are not provided to others. This decision, which was grounded in both the ADA's reasonable accommodation clause and Medicaid's amount-duration-scope regulation, holds that the state is not required to provide "safety monitoring"-i.e., verbal and supervisory assistance with activities of daily living rather than hands-on physical assistance with those tasks-to its Medicaid recipients.

"Suppose two elderly Medicaid patients need a home health care aide. One has Alzheimer's and the other has rheumatoid arthritis. Is it reasonable to approve an aide for the arthritis patient and deny one for the Alzheimer's patient?" asks prominent New York City elder law attorney Bernard A. Krooks. "This is an arbitrary limit that flies in the face of longstanding legal and regulatory interpretations of which kinds of services are permissible. If this outrageous ruling stands, the Second Circuit might feel compelled to deny wheelchairs to physically disabled Medicaid recipients simply because not all Medicaid recipients get them."

"This decision will wind up being costly in two important ways: (1) personal cost to patients and their families and (2) monetary cost to the state. Remember, the cost of a home health care aide is about \$100/day (or \$3,000/month), and nursing home care can be as much as \$8,000-12,000/month. What's the point?"