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### **Federal Court Orders Disclosure of Medicaid Managed Care Treatment Guidelines**

**Washington, DC, Feb. 11, 2009** – On Friday, February 6, a U.S. District Court ordered the D.C. Medicaid agency – a Medicaid-participating managed care plan – and McKesson Health Solutions to release McKesson’s Interqual Clinical Support Criteria. The Interqual Criteria are evidence-based treatment guidelines developed and copyrighted by McKesson, which, in turn, has licensed their use to the managed care plan and other managed care organizations across the country. The Criteria are used to approve or deny requests for services, including home health care, private duty nursing and personal care services.

These types of criteria are becoming a focal point in Medicaid managed care programs as health plans are increasingly using them to make coverage decisions. People – especially those with ongoing health problems – need to understand these standards so that they will be able to enroll in the managed care plan that is best suited for them and so that, if a service is denied, they will be able to decide knowledgeably about whether to challenge the denial. This is especially true for people on Medicaid because they are often required to receive all but emergency services from their health plans and they cannot afford to go outside of their health plan to obtain care.

The dispute arose in *Salazar v. District of Columbia*, an ongoing Medicaid case in the District. The law firm of Terris, Pravlik & Millian represents the Medicaid beneficiaries and has been monitoring implementation of the settlement agreement in the case. The firm asked the District for copies of the Interqual Criteria after they and other public interest advocates received inquiries from Medicaid beneficiaries about their entitlement to home-based services. According to Kathy Millian, an attorney with the firm, “We needed the Criteria because we could not reliably advise our clients about their rights or their health care choices.” The Medicaid agency, the managed care plan and McKesson all objected, arguing that the Criteria were trade secrets protected by the D.C. Uniform Trade Secrets Act and the federal copyright statutory scheme. Judge Gladys Kessler disagreed and compelled disclosure. Citing the complexity of the “multi-layered” health care system for parents and children and a number of specific Medicaid laws that require public disclosure of information about the amount and scope of benefits, Judge Kessler found no authority for the proposition “that the federal copyright laws and local trade secret laws trump the federal Medicaid statute and regulations.” According to Jane Perkins, Legal Director of the National Health Law Program, which co-counsels the case, “The decision is a common sense endorsement of government accountability and transparency. Moreover, the notion that these Criteria could be kept secret from the public was at odds with health policy makers’ emphasis on the need to ground government-funded health in evidence-based medicine.”

The memorandum can be found at [www.healthlaw.org](http://www.healthlaw.org) on the Government Accountability page or at 596 F. Supp. 2d 67 (D.D.C. 2009)

*Founded in 1969, the National Health Law Program works with and on behalf of limited-income people, people with disabilities, and children to improve their access to quality health care, and to enforce their legal rights to health. NHeLP works with courts, government agencies, and Congress to ensure quality health care for the most vulnerable members of our society.*

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