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Contact: Jennifer L. Nye, Staff Attorney
(520) 327-9547, extension 332

**Arizona Center for Disability Law Files Class Action Lawsuit Against
Arizona Medicaid Program**

Adults with Disabilities Denied Medically Necessary Incontinence Briefs

Tucson, October 1, 2009.....Low-income adults with disabilities who struggle to find the money to pay for medically necessary incontinence briefs may find one of life's burdens lifted through a class action lawsuit filed yesterday by the Arizona Center for Disability Law (Center).

The Center's lawsuit against the Arizona Health Care Cost Containment System (AHCCCS), Arizona's Medicaid program, aims to overturn a state Medicaid regulation and policy that bars coverage of incontinence briefs to prevent skin breakdown and infection for adults age twenty-one and over. These adults can only receive coverage of briefs if they have existing skin breakdown and infection, but not to prevent such occurrences. AHCCCS covers preventative incontinence briefs for children between ages three and twenty-one.

The nine plaintiffs in this case are AHCCCS members age twenty-one and over who are incontinent as the result of their disabilities. Each plaintiff's doctor has prescribed incontinence briefs to prevent skin breakdown and infection and to allow the person to participate in community, social, educational, and therapeutic activities, such as day treatment programs, which require attendees who are incontinent to wear briefs. Nonetheless, AHCCCS denied coverage of the briefs for all the plaintiffs, and even overturned favorable administrative decisions in two cases where the Plaintiffs appealed.

"This policy is cruel and violates the federal Medicaid mandate to provide coverage of medical supplies and to have reasonable coverage standards," said Jennifer L. Nye, staff attorney at the Center, who brought the lawsuit. "It is unreasonable. It denies people medical supplies that their doctors say are medically necessary."

In addition to the Medicaid violations, the Center's lawsuit says that Arizona's policy of covering preventative incontinence briefs for people living in institutions, like nursing homes, but not for those living in the community, illegally discriminates against people with disabilities and violates the integration mandate of the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. It is the Center's contention that people should not have to go to a nursing home to receive Medicaid covered services.

“Arizona’s policy has a negative impact on the disability community,” said Nye. “Without briefs, people who are incontinent would be confined to their homes and risk developing dangerous and debilitating infections. The failure of AHCCCS to cover these preventative medical supplies means that people with disabilities and their guardians must choose between buying briefs or paying for other necessary living expenses, like food, housing, clothing, and medical services not covered by AHCCCS, like dental care. At costs between \$100 to \$300 per month, incontinence briefs can account for up to half of the monthly income of a person with a disability.”

Some of the named plaintiffs in *Alvarez v. Rodgers* include:

Peter Alvarez (Guardian: Ramona Mendoza) (Tucson): Peter is twenty-seven years old and diagnosed with multiple disabilities, including spastic quadriplegia, cerebral palsy, severe cognitive impairment, and bowel and bladder incontinence. He is unable to tell his caregivers that he needs to or has moved his bowel or bladder and his day treatment program requires him to wear briefs. His AHCCCS health plan denied his doctor’s prescription for preventative briefs. Peter filed an appeal and the Administrative Law Judge ruled in his favor. However, the AHCCCS Director overturned the Judge’s decision on April 2, 2009 and upheld the denial.

Osmar Vasquez (Guardian: Agustin Vasquez) (Tucson): Osmar is twenty-three years old and diagnosed with multiple disabilities, including cerebral palsy, epilepsy, and bowel and bladder incontinence. He is fed via a feeding tube. He attends a day treatment program that requires him to wear briefs. His doctor prescribed preventative incontinence briefs, which was denied by his AHCCCS health plan in March and May 2009.

Elena Rivera (Guardian: Viola Rivera) (Tucson): Elena is twenty-two years old and diagnosed with spastic quadriplegia, cerebral palsy, a seizure disorder, and severe developmental delays. Elena is non-verbal, non-ambulatory and incontinent of both bowel and bladder. When Elena turned twenty-one, AHCCCS terminated coverage of her incontinence briefs despite her doctor’s prescription. Elena filed an appeal, which was denied on April 15, 2009.

Jacob Simms (Guardian and Power of Attorney: Joseph Simms and Pamela Simms) (Phoenix): Jacob is twenty-four years old and diagnosed with severe mental retardation, a seizure disorder, and bowel and bladder incontinence. He is non-verbal and cannot tell his caregivers when he needs to or has moved his bowels or bladder. His AHCCCS health plan denied his doctor’s prescription for preventative incontinence briefs. Jacob filed an appeal and the Administrative Law Judge ruled in his favor. However, the AHCCCS Director overturned the Judge’s decision on September 3, 2009 and upheld the denial.

Emily Rowley (Guardian: Shelley Serrine) (Mesa): Emily is twenty-one years old and diagnosed with severe mental retardation, spastic cerebral palsy, quadriplegia, and bowel and bladder incontinence. She is non-verbal and is unable to tell her caregivers that she needs to or has moved her bowels or bladder. In March 2008, her AHCCCS health plan terminated coverage of incontinence briefs, despite her doctor’s prescription that the briefs were medically necessary. She filed an appeal, but the AHCCCS Director upheld the denial in May 2009.

Adrian Villanueva (Guardian: Michelle Villanueva) (San Tan Valley): Adrian is thirty-three years old and diagnosed with a traumatic brain injury and bowel and bladder incontinence. He is fed via a feeding tube. He cannot speak and has limited cognitive ability, such that he is unable to tell his caregivers that he needs to or has moved his bowel or bladder. He attends a day treatment program that requires him to wear briefs. Adrian's doctor prescribed briefs as medically necessary in January 2009, but his AHCCCS health plan denied coverage.

Alvarez v. Rodgers is a continuation of the Center's work to ensure that people with disabilities have the health care services they need, ranging from individual Medicaid service denial cases to statewide class action lawsuits demanding changes to Arizona's Medicaid program. The Center's other health care litigation includes: *Ball v. Rodgers*, a federal class action that resulted in a ruling that AHCCCS must provide all attendant care services within two hours and mandating back-up services; *Sharpe v. Rodgers*, a case that resulted in an Arizona Court of Appeals ruling that AHCCCS's restrictive denture coverage policy violated the state statute; *Ekloff v. Rodgers*, a federal class action that resulted in coverage of preventative incontinence briefs for children under age 21; and *Price v. Rodgers*, a federal class action that resulted in a change to the AHCCCS notice and appeal procedures.

Jennifer Nye is lead attorney in *Alvarez v. Rodgers*, as well as the litigation listed above.

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The Arizona Center for Disability Law is a not-for-profit public interest law firm, dedicated to protecting the rights of individuals with a wide range of physical, mental, psychiatric, sensory and cognitive disabilities. The Arizona Center for Disability Law is authorized under various federal statutes to ensure the protection and advocacy of all individuals with disabilities in the state.