

>>> "Tamie Hopp" <Tamie327@hotmail.com> 10/30/2007 3:07 PM >>>

H.R. 3995 INTRODUCED!

Thanks very, very much to all who responded to Monday's Action Alert!

Now it's time to call those offices back to let them know that H.R. 3995 has been introduced and request that they COSPONSOR H.R. 3995 TODAY!

Tuesday, October 30, 2007

URGENT NOTICE
ACTION NEEDED RIGHT NOW!!

THIS ACTION ALERT IS ALSO AVAILABLE ON VOR's WEBSITE AT:
<http://vor.net/HR3995AlertOct.htm>

VOR ACTION ALERT

Revised bill - H.R. 3995 - to assure individual and family decision-making in class action lawsuits, is introduced by Rep. Frank
CO-SPONSORS NEEDED

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1. IMMEDIATE ACTION NEEDED - COSPONSORS

During our effort to secure co-sponsors to the original bill (H.R. 2839), many of you received commitments from your representatives in the House. CALL THESE OFFICES TODAY AND ASK THEM TO COSPONSOR H.R.3995, the new bill, introduced by Rep. Barney Frank.

It is urgent that we QUICKLY get co-sponsors for H.R. 3995. IMMEDIATELY, call and/or write your House representative today and ask them to call Rep. Barney Frank and sign on to H.R. 3995 as a co-sponsor. Template messages follow.

Rep. Barney Frank
Contact: Pilar Faló, Legislative Counsel
Ph. (202) 225-3581
Fax (202) 225-0182

FORWARD THIS MESSAGE TO EVERYONE YOU KNOW.
ACT TODAY.
NUMBERS COUNT!!

2. Revised bill - H.R. 3995 - to assure individual and family decision-making in class action lawsuits, is introduced by Rep. Frank

Good things are worth waiting for!

We are delighted to report that today, Rep. Frank introduced a revised bill -- H.R. 3995 -- which like the original assures individual and family decision-making in class action lawsuits. A PDF copy of the bill is attached. For those of you unable to open a PDF document, the bill's text will be posted at <http://thomas.loc.gov> within about one week (enter H.R. 3995 in the search window).

This bill REPLACES H.R. 2839. It broadens the focus to include all federally-funded class action lawsuits against Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR), including but not limited to Protection & Advocacy class action lawsuits.

Specifically, H.R. 3995 requires that any entity using federal funds to file a class action lawsuit against an ICF/MR provide 90 days notice to the ICF/MR BEFORE the lawsuit is filed. The facility must then, within 30 days, notify EVERY resident and legal guardian that a class action lawsuit will be filed. Each resident or, if there is a legal guardian, the guardian, has 60 days to, OPT OUT (not be a part) of the lawsuit.

Why were these changes necessary?

The short answer: Legal technicality.

After study of the original bill, there was concern that the bill's notice and "opt in" provisions would be perceived as amending Rule 23 of the Federal Rules of Civil Procedure (FRCP) that relates to class action lawsuits. Historically, Congress has deferred to the judicial branch for any proposed amendments to FRCP. Even the perception of an amendment to FRCP rendered the original bill "dead on arrival."

The new bill was drafted with input from both VOR and the National Disability Rights Network (NDRN - the national association for P&As) in an effort to minimize the fierce opposition by NDRN and its supporters and further enhance chances for passage.

There will continue to be strong opposition. At the heart of H.R. 3995 is the right of legal guardians, often the families of the residents of a targeted facility, to decide whether their loved ones should be included in a lawsuit against the facility. As with Rep. Frank's original bill, passage of H.R. 3995 will mean that P&A and other federally-funded litigants are not permitted to include and represent any resident in a lawsuit who has said, or whose legal guardian has said, that they don't want to be included.

This Bill is Needed!!

Class action lawsuits against ICFs/MR are a continuing problem. Despite opposition from the vast majority of guardians in most cases (because they believe the residents are receiving excellent care in the facilities), in 19 states, with 28 lawsuits, state P&As have filed class action lawsuits directed at the care received in the ICFs/MR (see, <http://www.vor.net/classactions.htm>). Many of these cases have led to the downsizing and closure of public and private ICFs/MR and the displacement of thousands of individuals with severe and profound mental retardation, sometimes with tragic consequences.

Visit <http://www.vor.net/DDAct2007.html> for more information and resources.

3. Congressional Contact Information

To identify your Representative, visit <http://www.congress.org>. The Capitol Switchboard can also identify your Representative and connect you to their offices: 1-202-224-3121.

At <http://www.congress.org> (<http://www.congress.org/>), you can also get direct phone and fax numbers.

If you would like the name and contact information for the staff person in charge of this issue in your Representative's office, ask for the Disability/Health LA when you contact your Rep's office, or contact Tamie Hopp at 605-399-1624; Tamie327@hotmail.com.

4. Template Phone Message

Note: In some states, Protection and Advocacy goes by a different name. To find out what this agency is called in your state, visit: <http://www.acf.hhs.gov/programs/add/states/pas.html>

Phone Message - Template

"I am your constituent and a member of VOR (Voice of the Retarded). I am writing to ask that Rep. _____ co-sponsor H.R. 3995, introduced by Rep. Barney Frank (D-MA).

"This legislation, if passed, will require that federally-funded lawyers, including but not limited to our state's Protection & Advocacy attorneys, seek my permission, as the legal guardian of my family member with mental retardation, before representing my family member in a class action lawsuit. Right now, these lawyers don't even have to tell me they will be filing a lawsuit and representing my loved one. As a guardian, I think I should be the one to decide, not a federally-paid attorney. H.R. 3995 will address this inequity. Please ask Rep. _____ to co-sponsor H.R. 3995. The contact to call in Rep. Frank's office is Pilar Faló, Legislative Counsel, (202) 225-3581 phone and (202) 225-0182 fax.

5. Template Written Message

Date _____

PLEASE CO-SPONSOR H.R. 3995

Dear Rep _____:

I am your constituent and a member of VOR (Voice of the Retarded). I am writing to ask that you co-sponsor H.R. 3995, introduced by Rep. Barney Frank (D-MA) on October 29, 2007.

[IF APPROPRIATE: You may recall that I contacted you this summer about H.R. 2839, which we since learned that Rep. Frank planned to revise. H.R. 3995 is his revised bill and it maintains as its core value the involvement of legal guardians, often family members, in decisions regarding lawsuits on behalf of individuals with severe and profound mental retardation. I appreciated your support for family rights this summer and ask that you again lend your support to families by co-sponsoring H.R. 3995.]

This legislation, if passed, will require that before federally-financed class action lawsuits against Medicaid-certified and funded Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR) can proceed, residents and their legal representatives must receive notice of the lawsuit and an opportunity to opt out of the proposed lawsuit.

This problem is real. Under the current law, federally-funded lawyers can trump guardian wishes, and they often do. For example, in 19 states, with 28 lawsuits, federally-funded Protection & Advocacy (P&A) lawyers have filed class action lawsuits directed at the care received in ICFs/MR (see, <http://www.vor.net/classactions.htm>). Many of these cases, despite known family/guardian objections, have led to the downsizing and closure of public and private ICFs/MR and the displacement of thousands of individuals with severe and profound mental retardation, sometimes with tragic consequences (see, <http://www.vor.net/DDAct2007.html>, for more information, including family testimonials).

I support H.R. 3995 because if any federally-funded group ever decides to pursue a class action lawsuit on behalf of my family member with profound mental retardation, I want to be notified. I also want the right to decide whether or not to have my family member included in the lawsuit. These decisions are best left to families/guardians, not federally-funded attorneys. That's just good common sense. Please contact Pilar Faló, Legislative Counsel for Rep. Barney Frank's office at (202) 225-3581 and let her know you will co-sponsor H.R. 3995. Thank you for your support.

Sincerely,

Name, Address, Phone, Fax, E-Mail

P.S. The Developmental Disabilities Assistance and Bill of Rights Act, which authorizes many of these class action lawsuits, is scheduled to be reauthorized this year. The timing is right to change the rules to assure family rights by passing H.R. 3995. Thank you in advance for co-sponsoring this legislation.

6. Next Step: Senate Sponsor - your help needed!

VOR is looking for a Senate sponsor. If you think your Senator might like to sponsor this legislation, and you have a strong contact with his/her office, please contact Tamie Hopp at 605-399-1624 or Tamie327@hotmail.com, with your suggestion(s).

7. Keep VOR informed

Contact Tamie Hopp 605-399-1624; Tamie327@hotmail.com or Mary McTernan (978-535-2472) with updates on your progress and let her know if any follow-up by VOR is needed or desired.

8. Section-by-Section Comparison of H.R. 3995 and H.R. 2839

Bill

Litigants

Types of lawsuits

Opt Out v. Opt In

Notice

Guardian rights

Revised Bill:
H.R. 3995

NEW BILL

All federally-funded litigants

Class action lawsuits against ICFs/MR

Opt Out

Facility gives notice before lawsuit

Yes ("A resident (or, if there is a legal representative of such a resident, the legal representative)" receives notice and has right of opt out).

H.R. 2839

OLD BILL

P&A only

Any "legal, administrative, or other remedy"

Opt In

P&A gives notice before action

Yes ("the individual or the legal guardian, conservator, or other legal representative of the individual" receives notice and has right to opt in).

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SEND YOUR LETTER OR MAKE YOUR CALLS TODAY!!
THANK YOU FOR YOUR PARTICIPATION!!
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