

VOR Action Alert
SUPPORT H.R. 2032
May 31, 2011

=====

GREAT NEWS!!!

Rep. Barney Frank (D-MA), Rep. Bob Goodlatte (R-VA) and Rep. Debbie Wasserman Schultz (D-FL), with nine original cosponsors, have introduced **H.R. 2032, a bill to allow residents and their legal guardians to be notified in advance of a class action lawsuit involving their ICF/MR home, and given a time limited opportunity to opt out, before the lawsuit is filed.** {This part of the bill is identical to H.R. 1255, which 90 Representatives cosponsored last Congressional session.}

H.R. 2032 will also include a section on the Department of Justice (DOJ)! This new section seeks to protect the right to residential choice for people with profound intellectual disabilities in DOJ actions. Since 2009, the Department has issued investigative reports, filed suit, or presented briefs in cases alleging violations of the Americans with Disabilities Act (ADA), seeking or agreeing to settlements that would reduce significantly the population of or close all ICFs/MR in several states. The new section would require DOJ to consult with the residents and guardians before taking any action and guarantee them the right to intervene in any court proceeding.

ACTION REQUIRED:

Contact your U.S. Representative and ask him/her to *“Please COSPONSOR H.R. 2032, a bill to protect the rights of individuals with profound intellectual disabilities and their families by restoring primary decision making authority in federally funded class action lawsuits and DOJ actions that threaten residential choice. To cosponsor H.R. 2032, contact Pilar Falo, Legislative Counsel for Rep. Barney Frank, at 225-5931.”*

To assist you in your advocacy, attached please find:

1. A position paper that you can share with past cosponsors in your state (attached and below);
2. A copy of H.R. 2032 (attached);
3. A copy of the Dear Colleague letter distributed by Reps. Frank, Goodlatte and Wasserman Schultz (attached);
4. Contact information for Members of Congress: Go to www.congress.org and enter your zip code.

Time is critical. We want to secure as many cosponsors as possible before VOR’s Washington Initiative (beginning June 13).

THANK YOU FOR YOUR HELP! I welcome any questions.

Tamie Hopp

VOR Director of Government Relations & Advocacy

thopp@vor.net

www.vor.net

605-399-1624 direct

Position paper in support of H.R. 2032

Cosponsor H.R. 2032: Federal legislation to protect the rights of people with profound intellectual disabilities

Introduced May 26 by Rep. Barney Frank (D-MA), Bob Goodlatte (R-VA), and Debbie Wasserman Schultz (D-FL), along with the following original cosponsors: Rep. Culberson (R-TX); Rep. Payne (D-NJ); Rep. Moran (D-VA); Rep. Rush (D-IL); Rep. McMorris Rodgers (R-WA); Rep. Manzullo (R-IL); Rep. Filner (D-CA); Rep. Paul (R-TX); and Rep. Weiner (D-NY).

H.R. 2032 will help ensure that individuals with profound intellectual disabilities and their families benefit from their federally-established right to be the “primary decisionmakers” regarding the services and supports received, including where they reside (see e.g., the Developmental Disabilities Assistance and Bill of Right Act, Medicaid, and the landmark Supreme Court decision, *Olmstead*).

As with past versions of this bill (H.R. 3995 and H.R. 1255), H.R. 2032 will allow residents and their legal guardians (usually close relatives) to be notified in advance of a class action lawsuit involving their ICF/MR home, and given a time limited opportunity to opt out, before the lawsuit is filed. These important rights do not exist in current law, resulting in many residents being swept up into the suit, despite strong opposition by affected residents and their families. In the 111th Congress, 90 U.S. Representatives both sides of the aisle cosponsored H.R. 1255.

H.R. 2032 includes new section addressing similar actions by the Department of Justice (DOJ)

The bill also includes a new section to protect the right to residential choice for people with profound intellectual disabilities in Department of Justice (DOJ) actions. Since 2009, the Department has issued investigative reports, filed suit, or presented briefs in cases alleging violations of the Americans with Disabilities Act (ADA), seeking or agreeing to settlements that would reduce significantly the population of or close all ICFs/MR in Virginia, Georgia, Arkansas, Pennsylvania, New Jersey, and Illinois.

Like the federally-funded class action lawsuits which target ICFs/MR, DOJ actions have typically been taken without consulting affected residents or their families and legal representatives. Instead, DOJ attorneys are substituting their judgment with regard to ICF/MR living without any regard to the opinion of the affected residents, their families or guardians. These DOJ lawsuits are inconsistent with the ADA and the Supreme Court decision interpreting it, *Olmstead v. L.C.*, 119 S. Ct. 2176 (1999), which do not mandate ICF/MR closures, but seek a balance between encouraging community integration and preservation of facility-based care for those who require or choose the comprehensive services offered at ICFs/MR. As Justice Ginsburg wrote for the majority, “We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings...Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it.” (Id. at 2187). The new section would require DOJ to consult with the residents and guardians before taking any action and guarantee them the right to intervene in any court proceeding.

Please COSPONSOR H.R. 2032.

Contact Pilar Faló, Legislative Counsel to Rep. Barney Frank (5-5931), to cosponsor this critically important bill.

**THANK YOU FOR CONTACTING
YOUR U.S. REPRESENTATIVE TODAY
TO ASK HIM/HER TO COSPONSOR H.R. 2032!**
