

H.R. 3995 ADVOCACY NEEDED - Click here for ACTION ALERT  
( <http://vor.net/HR3995AlertOct.htm>  
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VOR is the only national organization advocating for a full range of residential and support options for people with mental retardation, including Medicaid-certified Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) and home and community-based care. VOR supports choice.

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VOR Weekly E-Mail Update  
November 9, 2007  
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Coming Up: Next update will be Nov. 16; there will be no update. Nov. 23. Updates re: H.R. 3995 will be published periodically as new information is available.

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1. OPPORTUNITY!! ORGANIZATION "SIGN-ON" LETTER IN SUPPORT OF H.R. 3995 - Deadline is Nov. 30. ( <http://vor.net/HR3995signonletter.htm> )
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VOR will deliver to Congress a letter in support of H.R. 3995 that includes a long list of organizations in support of the bill, from across the country. Sign on letters are a very, very effective way of showing broad, nationwide constituency support for an issue. Please enlist your family associations and any other organization you know that might like to join this letter in support of individual and family/guardian choice (e.g, a church, civic, or professional organization to which you belong),  
See, <http://vor.net/HR3995signonletter.htm> for the letter and permission form. A word document is also attached for your convenience.  
THANK YOU FOR YOUR HELP IN ENLISTING  
ORGANIZATIONAL SUPPORT!!

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2. Victory for choice in Maryland: Mentally disabled can challenge placement denial
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Summary: State and U.S. Constitutional due process rights require that an individual denied admission to a state operated ICF/MR have the opportunity to appeal that decision. Because the state statute does not

provide for any opportunity for appeal, it is unconstitutional, a state court held last week. Mary Reese, stepmother and guardian to Virginia Massa has been seeking admission for Virginia at Holly Center, a state operated center in Salisbury, MD. She sued after failed attempts to have evidence regarding Virginia's eligibility and need for Holly Center care considered at the administrative level. Although this court ruling does not guarantee Virginia's admission, it does ensure that Mary and Virginia and other individuals and their guardians will have their day in court. VOR has been watching this case carefully, having identified its potential for far reaching change in the way Maryland considers admissions to the state's 4 centers. For this reason, VOR helped arrange for attorney representation. Dan Rabinowitz, an attorney for Sidley Austin, has done a remarkable job of representing his clients in this case, and Nirali Patel before him. VOR is very, very grateful for their assistance in this legal matter.

[Additional note: The managing attorney for the Maryland Protection and Advocacy agency, called Maryland Disability Law Center, is quoted, "When you talk to people who have lived in state institutions or are frightened at the possibility they would ever have to live in one, you understand how profound their passion is to live in the community . and not be closeted away by themselves." Make your calls to get H.R. 3995 passed today.]

Mentally disabled can challenge placement denial  
Christina Doran  
The Daily Record  
November 5, 2007

Mentally disabled adults must be given a due-process hearing if they are denied placement at a state residential facility, the Court of Special Appeals held Friday.

The decision declared Maryland's health care law unconstitutional to the extent it does not provide for such a right.

While the statute provides for a contested case hearing if the Secretary of the Department of Health and Mental Hygiene determines admission into a state residential center (SRC) is appropriate, a denial by the secretary was considered final prior to Friday's reported opinion.

"We are extremely pleased with the outcome," said Daniel L. Rabinowitz of Sidley Austin LLP, counsel for appellant Mary L. Reese. "This is a terrific win for our client."

The department could not be reached for comment.

Virginia Massa, now 63, became severely mentally disabled after contracting viral encephalitis at age 16. Massa's father and his partner, Reese, were co-guardians of Massa until Mr. Massa's death in October 2005, at which time Reese was appointed as Massa's sole guardian.

In 2004, Reese and Massa's father sought to admit Massa into Holly Center, an SRC on the Eastern Shore. Massa had previously resided at SRC Great Oaks Center until it closed in 1996, and was currently residing at a community home operated by The Arc of Howard County.

According to Nancy Pineles, managing attorney for the Maryland Disability Law Center, there are only four state-run institutions left in Maryland.

"The current Maryland statute gives a preference toward the least restrictive setting," said Cristine Marchand, executive director of The Arc of Maryland. However, she noted that "[t]here are a small number of guardians in Maryland that feel that a state institution is safer."

Pineles emphasized how important it is for a guardian to consider what the disabled individual preferred.

"When you talk to people who have lived in state institutions or are frightened at the possibility they would ever have to live in one, you understand how profound their passion is to live in the community . and not be closeted away by themselves," she said.

The Department of Health and Mental Hygiene denied the application to admit Massa into Holly Center in 2005, finding community placement appropriate. The department relied on Maryland's Health General Article, which creates the statutory scheme favoring community based placement. Reese sought judicial review of the agency's decision, which was denied by the Montgomery County Circuit Court.

"I think the secretary, by Maryland statute, had a clear responsibility, and authority, to make the best decision," said Marchand.

The intermediate court vacated the dismissal, finding the statute unconstitutional as it failed to provide for review of the department's decision.

"We agree with appellant that she was entitled to a hearing, at which she could attempt to demonstrate that Ms. Massa's needs warrant admission to a SRC, and satisfy the statutory criteria set forth in H.G. § 7-502," wrote Judge Ellen L. Hollander on behalf of the three-judge panel.

The department argued that because the matter was not a "contested case" as defined by the Administrative Procedures Act, Massa did not have a right to a hearing. Nor did due process considerations require that a hearing be held.

The court agreed the matter was not a contested case under the APA; however, it found that because Massa had a protected property interest, procedural due process rights were triggered, and Massa was entitled to a hearing.

The court found that the statute does not give the secretary discretion to determine whether admittance into a SRC is proper; rather, it orders that if an applicant is qualified, the secretary "shall" approve admission.

"The use of the word 'shall' creates a 'legitimate claim of entitlement' as to those individuals who seek admission to a SRC and meet the Department's eligibility standards," the court held.

The court stopped short of adopting Reese's argument that she had an absolute right to choose an SRC under federal law.

The court determined that even though Massa may not qualify for placement, "she does have a legitimate property interest in admission to a SRC, because it is a benefit provided by the State."

Reese is therefore entitled to present evidence on Massa's qualifications in a contested case hearing, the court held.

"We hope that in due course Virginia will have her real day in court to establish that she deserves to be in a state-run facility," said Rabinowitz.

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Tamie Hopp

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