

## **PLEASE COSPONSOR REP. BOB GOODLATTE'S FORTHCOMING BILL**

### **A bill to protect the interests of residents of Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) in Federally-Financed Class Action Lawsuits**

Rep. Bob Goodlatte (R-VA) is preparing to introduce a bill in the 115<sup>th</sup> Congress. The bill is identical to H.R. 2032, which was introduced in the 112<sup>th</sup> Congress by Rep. Barney Frank (D-MA) and Rep. Goodlatte, with 80 cosponsors from across the political spectrum.

Rep. Goodlatte's bill would require that **before** any federally-financed class action lawsuit against a Medicaid-certified and funded ICF/IID can proceed, residents and guardians must receive notice of the proposed lawsuit and be given a time-limited opportunity to opt-out of the suit, or do nothing and join in. The notice provision is consistent with that included in appropriations legislation passed by this body and enacted into law for fiscal 2016, 2017 and 2018.

#### **Why this bill is needed and supported by families of ICF/IID residents**

Although the overwhelming number of family members and legal guardians typically object strongly to these lawsuits and their closure objectives because they are pleased with the care their loved ones are receiving, **under the law that authorizes these actions, there is no requirement that residents or legal guardians be notified of a lawsuit and they do not have the right to opt out.** Consequently, many residents of ICFs/IID are swept into these lawsuits against their or their family and guardians' wishes.

#### **Class action lawsuits have closed many ICFs/IID and reduced options for those who need fulltime care**

Federally-funded attorney groups have pursued at least 28 class action lawsuits against ICFs/IID, driven primarily by a bias against ICF/IID care. In fact, **since 1996, every federally-funded lawsuit against an ICF/IID has been for the primary purpose of removing residents from their ICF/IID home ("community integration")**; the condition of care at the targeted ICFs/IID was **not** at issue in any of these cases.

Fifteen of these cases have led to the closure of ICFs/IID, affecting thousands of individuals with intellectual disabilities (see, <https://www.vor.net/get-help/more-resources/item/p-a-class-action-litigation>). Bizarrely, despite the fact that ICFs/IID are a residential option created by federal law and funded and monitored by HHS, most of these lawsuits are filed under the Protection & Advocacy (P&A) program, whose lawyers are also funded by HHS. Because one program authorized by HHS is suing another program authorized by HHS, these suits could be labelled HHS v. HHS.

#### **This bill could help prevent tragic outcomes and preserve residential choice**

Families have good reason to be concerned. Closures oftentimes result in tragic outcomes for the former residents (see e.g., <https://www.vor.net/get-help/more-resources/item/abuse-and-neglect-document-2>), listing examples of systemic abuse, neglect and higher death rates in community settings for people with intellectual disabilities who have been moved out of ICFs/IID in many states and the District of Columbia). To view the concerns of several families, see the Judiciary Committee hearing held on March 6<sup>th</sup> of this year: <https://judiciary.house.gov/hearing/examining-class-action-lawsuits-intermediate-care-facilities-individuals-intellectual-disabilities-icf-iid/>

Rep. Goodlatte's bill is consistent with federal law; specifically, the Developmental Disabilities Assistance and Bill of Rights Act (DD Act), which authorizes funds for P&A attorneys, embraces the policy that individuals and their families/guardians are the "primary decisionmakers" regarding the services and supports they receive (see, DD Act, 42 U.S.C.15001(c)(3)(2000)).

#### **Individuals and their families/legal guardians should make fundamental care decisions, not lawyers.**

To cosponsor Rep. Goodlatte's bill, please contact John Coleman, Judiciary Counsel, at 5-1518.