

112TH CONGRESS  
1ST SESSION

# H. R. 2032

To protect the interests of each resident of intermediate care facilities for the mentally retarded in class action lawsuits by federally funded entities involving such residents and in Department of Justice actions that could result in an agreement to move such a resident from that resident's facility.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2011

Mr. FRANK of Massachusetts (for himself, Mr. GOODLATTE, Ms. WASSERMAN SCHULTZ, Mr. CULBERSON, Mr. PAYNE, Mr. MORAN, Mr. RUSH, Mrs. McMORRIS RODGERS, Mr. MANZULLO, and Mr. FILNER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To protect the interests of each resident of intermediate care facilities for the mentally retarded in class action lawsuits by federally funded entities involving such residents and in Department of Justice actions that could result in an agreement to move such a resident from that resident's facility.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PURPOSES; DEFINITIONS.**

4 (a) PURPOSES.—This Act is enacted to further carry  
5 out the Congressional intent of the Developmental Disabil-

ities Assistance and Bill of Rights Act of 2000 and the Americans with Disabilities Act and the Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999) to permit individuals with disabilities and their legal representatives to choose where to live from a full continuum of options—

(1) by prohibiting class action lawsuits by federally funded entities unless the residents of ICFs/MR are given notice of the proposed action and an opportunity to opt out; and

(2) by permitting such residents and their legal representatives to intervene in such lawsuits.

(b) DEFINITIONS.—In this Act, the terms “ICF/MR” and “ICFs/MR” refer, respectively, to an intermediate care facility for the mentally retarded and intermediate care facilities for the mentally retarded.

**SEC. 2. PROTECTING THE INTERESTS OF EACH RESIDENT OF AN ICF/MR IN CLASS ACTION LAWSUITS INVOLVING SUCH RESIDENT.**

(a) IN GENERAL.—Notwithstanding any other provision of law, no entity that receives funds from the Federal Government may use such funds to file a class action lawsuit involving the residents of an ICF/MR unless the resident (or, if there is a legal representative of the resident, such legal representative), after receiving notice of the

1 proposed class action lawsuit, has the opportunity to elect  
2 not to have the action apply to the resident.

3 (b) NOTICES; RESIDENT RIGHT OF WITHDRAWAL  
4 FROM LAWSUIT.—

5 (1) PLAINTIFF NOTICE OF PROPOSED LAWSUIT  
6 TO FACILITY.—If an entity uses funds from the Fed-  
7 eral Government to file a class action lawsuit involv-  
8 ing the residents of an ICF/MR, the entity shall pro-  
9 vide notice of the proposed lawsuit to the facility at  
10 least 90 days before the date of filing of the lawsuit.

11 (2) FACILITY NOTICE OF PROPOSED LAWSUIT  
12 TO RESIDENTS.—Not later than 30 days after the  
13 date the facility receives such notice, the facility  
14 shall provide notice of the proposed class action law-  
15 suit to each resident of such facility on behalf of  
16 which the lawsuit is proposed to be filed and, if  
17 there is a legal representative of such a resident, to  
18 such representative.

19 (3) RESIDENT RIGHT TO WITHDRAW FROM  
20 LAWSUIT.—A resident (or, if there is a legal rep-  
21 resentative of such a resident, the legal representa-  
22 tive) may elect not to be part of such a proposed  
23 lawsuit by filing a notice of such decision with the  
24 facility within 60 days of the date the facility noti-

1       ifies the resident or legal representative of the pro-  
2       posed class action lawsuit.

3       (c) **LEGAL REPRESENTATIVE DEFINED.**—In this sec-  
4       tion of the Act, the term “legal representative” means,  
5       with respect to a resident of ICF/MR, an individual who  
6       has been appointed under State law to be a legal guardian,  
7       conservator, or other representative for the resident and  
8       who is authorized under law to make decisions on behalf  
9       of the resident with respect to care and treatment of the  
10      resident in the facility.

11      (d) **EFFECTIVE DATE.**—This section shall apply to  
12      lawsuits filed after the date of the enactment of this Act.

13      **SEC. 3. PROTECTING THE INTERESTS OF EACH RESIDENT**  
14                                   **OF AN ICF/MR IN ACTIONS CONDUCTED BY**  
15                                   **THE DEPARTMENT OF JUSTICE THAT AFFECT**  
16                                   **THEIR CHOICE OF RESIDENCY.**

17      (a) **RESIDENT INVOLVEMENT IN DEPARTMENT AC-**  
18      **TIONS INVOLVING RESIDENTS OF ICF'S/MR.**—In any ac-  
19      tion taken by the Department of Justice, including inves-  
20      tigations and other actions under the Americans with Dis-  
21      abilities Act, the Civil Rights for Institutionalized Persons  
22      Act, and any other Act, that involves the residents of an  
23      ICF/MR, the Department shall consult with the residents  
24      (or, if a resident has a legal representative, the resident’s

1 legal representative) among all other interested parties be-  
2 fore taking action.

3 (b) RESIDENT RIGHT OF INTERVENTION IN DEPART-  
4 MENT ACTIONS INVOLVING RESIDENTS OF ICFs/MR.—

5 In any action under subsection (a), a resident (or, if a  
6 resident has a legal representative, the resident’s legal rep-  
7 resentative) shall have the right to intervene in the pro-  
8 ceeding.

9 (c) EFFECTIVE DATE.—This section shall apply to  
10 all actions taken by the Department of Justice after the  
11 date of the enactment of this Act.

12 **SEC. 4. PRESERVATION OF STATES’ RIGHTS.**

13 Nothing in this Act shall be construed to require a  
14 State (as defined for the purposes of title XIX of the So-  
15 cial Security Act) to include ICFs/MR services as an op-  
16 tion under its Medicaid plan under such title.

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