



# California Association for the Retarded

1220 "S" Street, Suite 100, Sacramento, CA 95811

Phone: (916) 498-1635 Fax: (916) 498-1385

[www.carforchoice.org](http://www.carforchoice.org)

April 3, 2009

The Honorable Barbara Boxer  
1700 Montgomery Street, No. 240  
San Francisco, CA 94111

RE: H.R.1255 – Request for Support

Dear Senator Boxer:

Introduced by Rep. Barney Frank (D-MA), H.R. 1255 would 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 first receive notice of the proposed class action and be given a time-limited opportunity to opt out of it.

This bill is desperately needed and supported by families of ICF/MR residents. It is opposed by the lawyers who bring these suits, as it would limit their discretion with regard to who they are allowed to represent. We, however, submit that the decision regarding attorney representation should be made by individuals and their legal guardians, not the lawyers themselves.

This problem is very real. Federally-funded attorney groups often pursue class action lawsuits against ICFs/MR, driven primarily by a bias against ICF/MR care, as evidenced by the number of closures due to these lawsuits – at least fifteen ICFs/MR in nine states, involving thousands of individuals with mental retardation.

Families have good reason to be concerned. Closures sometime result in tragic outcomes for the former residents, including systemic abuse, neglect and higher death rates in community settings for people with mental retardation who have been moved out of ICFs/MR in many states and the District of Columbia.

Families, many of whom are also legal guardians, often object strongly and expressly object to the lawsuits and their objective of closure because they are pleased with the care their loved ones are receiving. Under current law, however, there is no requirement that legal guardians or residents be notified of a class action lawsuit and they do not have the right to opt out. Consequently, many residents of ICFs/MR are swept into these lawsuits and transferred from ICF/MR settings against their or their guardians' wishes.

These fundamental decisions should be made by legal guardians – not federally paid lawyers. Federal law, including the authorizing language of one federally-funded lawyer group that files class

action lawsuits against ICFs/MR – Protection and Advocacy – also embraces the policy that individuals and their families/guardians are the ‘primary decisionmakers’ regarding the services and supports they receive. This law – the Developmental Disabilities Assistance and Bill of Rights Act – is scheduled to be reauthorized this year. The timing is right to change the rules to assure individual and family rights by passing H.R.3995 (see: DD Act U.S.C. 15001(c)(3)(2000).

**Our request of you is that you cosponsor H.R. 1255 today. Contact Pilar Falo, Legislative Counsel to Rep. Barney Frank at 5-5931 to secure your support.**

Individuals with mental retardation or, where appointed, their legal guardians should make the fundamental decision as to legal representation, not the federally paid lawyers. That is simple common sense.

Thank you in advance for your support.

Sincerely,

Marion Lieberman  
President