

Fiscal 2018 Labor HHS and Commerce, Justice Appropriations Bills **Support Language to Uphold the Right of Choice**

VOR is a national organization that advocates for high quality care and human rights for people with intellectual and developmental disabilities (I/DD).

We urge you to support language in the FY'18 Labor, HHS and Commerce, Justice Appropriations bills which affirms the right of choice so that individuals, their families and guardians can access appropriate services and supports according to individual need, including the choice of a Medicaid-licensed residential facility such as an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID).

The **ADA** requires public entities to provide services in *"the most integrated setting appropriate to the needs of qualified individuals with disabilities,"* and recognizes the right of an individual to choose *"not to accept"* an accommodation. The **U.S. Supreme Court *Olmstead*** decision interpreting the ADA upheld both rights and spoke strongly in support of the **right of choice**:

"Nothing in the ADA ...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."

- *Olmstead v L.C.* 527 U.S. 581, 601-02 (1999) (**emphasis added**)

HHS' Developmental Disabilities Act (DD Act) programs and the Department of Justice (DOJ) **have undermined the right of choice** by aggressively pursuing activities designed to close (ICFs/IID) and similar Medicaid-licensed facilities. They have spent tens of millions of dollars on litigation aimed at removing services and supports provided by these facilities for individuals with severe and profound needs. Protection and Advocacy (P&A) agencies of HHS have brought more than 31 class action suits, while DOJ has brought 50 actions just since 2009. *This litigation has been conducted in direct opposition to the choices of the overwhelming number of individuals with I/DD who need and prefer ICF/IID homes.*

P & A class actions ignore **the right of choice** defined in their authorizing statute, the DD Act:

"Individuals with developmental disabilities and their families are the primary decisionmakers regarding the services and supports such individuals and their families receive, including regarding choosing where the individuals live from available options, and play decisionmaking roles in policies and programs that affect the lives of such individuals and their families."

- DD Act, 42 U.S.C. 15001(c)(3)(2000)

"The goals expressed in this Act to promote the greatest possible integration and independence for some individuals with developmental disabilities may not be read as a Federal policy supporting the closure of residential institutions."

- H. Rep. 103-442 (March 21, 1994)

The **illegality and absurdity of DOJ and P & A actions** is best described by U.S. District Court Judge J. Leon Holmes in his order to dismiss the DOJ's case against the State of Arkansas:

"Most lawsuits are brought by persons who believe their rights have been violated. Not this one. The Civil Rights Division of the Department of Justice brings this action on behalf of the United States of America against the State of Arkansas and four state officials in their official capacities alleging that practices at Conway [ICF/IID] violate the rights of its residents guaranteed by the 14th Amendment, the Americans with Disabilities Act, and the Individuals with Disabilities Education Act. All or nearly all of those residents have parents or guardians who have the power to assert the legal rights of their children or wards. Those parents and guardians, so far as the record shows, oppose the claims of the United States. Thus, the United States is in the odd position of asserting that certain persons' rights have been and are being violated while those persons - through their parents and guardians - disagree."

- *US v Arkansas, dismissal order, June 8, 2011 (emphasis added)*