

ICF Guardians Response to DODD's Statement Regarding Revised Proposed Class Action Settlement

ICF Guardians wish to respond to DODD's [statement](#) on the Ball v. Kasich Revised Settlement:

- DODD and Disability Rights Ohio (DRO) both try to deny Guardians' contributions to fighting the Ball v. Kasich lawsuit. They dismiss Guardians' efforts, labeling them as misinformed and based on fear. One need only read DRO's complaint and the vilifying means by which ICFs and sheltered workshops are described in it to understand the jeopardy that this lawsuit created for our family members' supports. When DRO threatened litigation, it demanded that the state of Ohio begin discharge planning of every ICF in Ohio. ICFs were to remain open only for emergency admissions that were to be temporary in nature. DRO sought to remove the ICF choice entirely from Ohioans with intellectual disability.
- ICF Guardians' intervention in the lawsuit changed the course of the litigation as it showed the Court that there were opposing interests at stake - individuals who prefer ICF settings and those that prefer HCBS settings. The State fought the lawsuit, but without Guardians' passionate support of the ICF choice, the State's efforts would not have been as effective. Additionally, the ICF Guardians have fought to preserve all ICF beds, have a continuum of waiver and small and large ICF settings, and preserve large ICFs settings *that continue to be attacked* through downsizing regulations and removal of the ICF client base. (For example, note the State's settlement concession *that changed Ohio statute* so that now even 8-bed ICFs are treated as large and included in counseling to exit residents.) The State seeks to transform the ICF system so that it is a mirror image of the community system. Doing so would mean that families would not have two distinct choices of care. The State's vision precludes the ability of ICFs to staff multiple areas of expertise on site and thus the ICF's ability to serve a wide range of needs. Individuals with severe disabilities would have difficulty finding care if the State is allowed to realize its vision of only small 4 and 6-bed ICFs.
- From day one, ICF Guardians requested to be part of settlement discussions to achieve a global settlement. DODD and DRO refused to include Guardians in settlement negotiations.
- According to DODD's court filings, only 481 people have taken an exit waiver to leave an ICF. The vast majority of these, 395, were taken by Advocacy and Protective Services, Inc. (APSI). Family guardians only account for 86 of the exit waivers taken. To understand these numbers, please note that APSI is funded by the state of Ohio and the head of APSI is a former DRO lawyer.
- As part of their defense of the Ball v. Kasich lawsuit, ICF Guardians filed cross claims – that DODD fails to communicate, offer, and adequately fund the ICF choice. DODD recognized in their revised settlement statement that families have a right to choose between ICF and waiver services. **We ask DODD to implement the Informed Choice Amendment – which County Boards refuse to follow – so that families are informed of all options and exercise the right to choice.**
- ICF Guardians are grateful for changes to the ICF reimbursement system in 2018 that finally allowed for an increase in funding to ICFs that was years overdue. **We ask DODD to continue to honor the new ICF reimbursement system as it is written in statute and not to impose caps on it, as DODD threatened to do just prior to the most recent biennium budget negotiations.**