



The COFAR VOICE

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ADVOCACY MEETING – COFAR President Thomas Frain (standing) addresses a meeting of family members and guardians at the Glavin Regional Center on September 13. Frain and others urged the group to fight to keep their loved ones at Glavin and not to be afraid to speak up for their care. Seated at the table to Frain's right are Colleen Lutkevich, COFAR executive director; and Roland Charpentier, president of the Glavin Family Association. Story on page 2.

Facility closure cost study bill is stuck in committee

COFAR is continuing to push for support in the state Legislature for an independent study of the comparative costs of operating state-run developmental centers and privately run group homes for persons with intellectual disabilities.

However, a bill filed by Massachusetts State Rep. Anne Gobi, which would require a cost analysis prior to the planned closures of the Templeton, Monson, and Glavin developmental centers has been mired in the Children, Families, and Persons with Disabilities Committee since January. Moreover, the bill was mistakenly filed without language that would require that the study be conducted by an entity independent of the Patrick administration.

"COFAR and other advocates have been calling for close to a year now for an independent analysis of the cost of

Please see **COST STUDY**, Page 4

DDS provider licensure system raises questions

The Department of Developmental Services licenses and certifies hundreds of nonprofit, state-funded group home providers throughout the state each year.

But a review by COFAR of 30 randomly selected online licensure and certification reports and DDS's revamped licensure and certification manual raises a number of questions about the effectiveness of the provider licensure and certification system.

While two of the licensure survey reports sampled contained detailed findings of deficiencies in care and procedures in the providers' group homes, the majority of the reports appeared to focus on whether the providers were working to achieve broad and often vaguely worded goals such as "maximizing independence" and "supporting people to live healthy and active lives."

One of the most frequently cited problems in the licensure reports was the makeup of the providers' human rights committees, whether they had bylaws, and how frequently they met.

COFAR seeks investigations in 2 group home deaths (Page 2)

In contrast, a 2008 survey report on the state-run Fernald Developmental Center, which was done by the federal Centers for Medicare and Medicaid Services, contained 56 pages of detailed findings about treatment and care, based on direct observation by surveyors as well as on resident records. Observed injuries were noted in the CMMS report, as well as direct observations that certain residents were not receiving adequate treatment.

Developmental centers, which must meet strict federal standards of care, are surveyed by teams of both federal CMMS and state Department of Public Health staff. The provider-run group homes are surveyed by staff of the DDS's Office of Quality Enhancement, supplemented by volunteer surveyors.

While the Fernald Center had some 180 residents in 2008, many of the group home providers whose reports were reviewed by COFAR provided services to that many

Please see **LICENSURE**, Page 3

Guardians urged to be 'squeaky wheels'

Don't be afraid to be a "squeaky wheel" or to fight to keep your loved one in an Intermediate Care Facility.

That was the message to some 40 attendees of an advocacy meeting at the Glavin Regional Center in Shrewsbury on September 13, co-sponsored by COFAR and the Glavin Family Association.

"Don't be pushed into doing anything you don't want to do," Colleen Lutkevich, COFAR's executive director, told the group, which included many family members and guardians of Glavin residents. Glavin is one of four ICF's in Massachusetts that have been targeted by the Patrick administration for closure.

"If you agree to a transfer (of a Glavin resident out of the facility), you're going to have to live with it," added Roland Charpentier, president of the Glavin family group.

Thomas Frain, COFAR's president, told the group to pay close attention to their Individual Service Plans because a transfer cannot take place unless the Department of Developmental Services is able to prove care and conditions would be better elsewhere.

"If you agree to a transfer, you're going to have to live with it." – Roland Charpentier

Also speaking during the event was Al Bacotti, a former director of the Glavin Center, who has become one of the chief critics of the administration's plans to close the facility.

The audience also heard from Jason Palitsch, an aide to State Senator Michael Moore, a sponsor of a proposed independent study prior to the closure of the Glavin, Monson, and Templeton developmental centers. Palitsch urged the attendees to contact their local legislators, who have been getting the message from ICF opponents that the centers are unduly expensive and should be closed.

Bacotti cited several costs in the community system of care, which the Patrick administration has failed to take into account in claiming there would be a savings in closing the ICFs. Those costs include federally funded Food Stamps, which many community-based residents receive to supplement their nutrition, but which are not provided to ICF residents.

In addition, the administration avoided consideration of costs for clinical services, physical therapy, and medical care in its analysis of the cost of community-based care. In some cases, those costs have been shifted from the DDS budget to MassHealth, and in other cases, those services are not provided in the community system.

"If it was really cheaper to take care of people in separate group homes than in (congregate) facilities, every college campus would be doing that," Bacotti said.

Bacotti pointed out that the administration is trying to persuade people to leave Glavin, Templeton, and Monson, knowing that as they leave, the calculated cost per resident at those facilities will rise sharply. At Glavin, the population

has declined from about 63 to 39 in recent months, and will soon be reduced by another 6 residents, Bacotti said. "When the population is cut in half, it looks like you've doubled the cost per person overnight," Bacotti said. "You're soon going to reach a point where the average cost is not going to sell to the Legislature."

Among those in the audience were Mary Babbidge and Nancy Sullivan, whose 56-year-old brother, Paul, is currently in an assisted living facility and who has Down Syndrome and Alzheimer's. Babbidge and Sullivan said their brother's condition has been worsening, and they are concerned the assisted living facility will soon refuse to continue to care for him. "We're all he has," said Babbidge. "It's disheartening that the state doesn't take care of people the people who need its help the most."

Lutkevich advised Babbidge and Sullivan to insist on a developmental center placement for their brother and to get a doctor's recommendation for that. "You have to be willing to go to court," she told the audience.

COFAR files report in group home client death

COFAR joined a state senator in August in asking the Disabled Persons Protection Commission to investigate the death of a resident of a state-operated group home, four days after he had been transferred there from the Templeton Developmental Center.

The man was one of two group home residents who died suddenly in July after having been transferred to the homes from developmental centers, where they had previously lived most of their lives. Both men had been in their 50s.

The former Templeton resident died on July 24 at a group home in Tewksbury of a blood clot of unknown origin in his lung, according to the Chief Medical Examiner's Office. He had suffered a blood clot in his leg about a year before the move, but the problem had been cleared up, his guardian said.

Senator Stephen Brewer of Barre has asked the Department of Developmental Services to halt further transfers to the Tewksbury group home pending the outcome of the Department's own investigation of the case.

The other man died July 6, about two weeks after he swallowed a plastic shopping bag in a group home in Tyngsboro. He had lived at the Fernald Developmental Center until he was transferred to the group home about a year prior to his death. He had had a history of pica, a tendency to swallow foreign objects.

Thomas Frain, COFAR president, maintained that the two deaths raise questions about the quality of care and supervision provided in the DDS group home system. Both of the homes were run by Northeast Residential Services, a division of the DDS.

"We hope both of these deaths are investigated thoroughly," Frain said. "Unfortunately, once residents leave the developmental centers, they enter a system that is much less stringently overseen and supervised," he added.

Licensure system questioned

LICENSURE, *continued from page 1*

or more individuals in their individual networks of group homes.

Few of the DDS provider reports, most of which were only a few pages in length, appeared to mention the results of direct observations about the care provided to individuals in the residences. None of the reports contained findings of observed signs of injuries to residents or of abuse or neglect. Yet, the state's Disabled Persons Protection Commission receives some 1,500 complaints of abuse and neglect each year in the community system, more than one third of which are substantiated, according to agency figures.

In many cases, the DDS licensure surveyors appeared eager to say positive things about the providers, but even those statements usually did not refer directly to observed care issues. For instance, the licensure report for Fidelity House, Inc., stated that a "remarkable" example of "the way people were valued in their homes" was that "confidential records had one page profiles which carefully described each individual in the first person." In a number of cases, the survey reports contained the vague statements that the particular provider being reviewed "takes great pride" in its programs or facilities or, in one case, that the provider's services were "founded upon a values-based mission."

All of the DDS provider reports reviewed indicated that the providers were granted licenses to operate, even in the relatively rare cases in which potentially serious problems were cited. In one case, a provider, Behavioral Associates of Massachusetts, was given a one-year conditional license to continue operating even though the license survey had cited numerous problems in managing residents' financial accounts, including altering of residents' confidential records, and noted that the provider's day program was inappropriately operating in the basement of one of the residences.

In another case, the Center for Human Development received a two-year license to operate even though there had been three instances in the previous two-year licensing period in which reportable incidents of abuse or neglect in its residences had not be reported to the Disabled Persons Protection Commission as required.

In October 2010, the Kennedy Donovan Center received a recommendation for a "deferred license" for its residential services after failing to meet the standard on 20 indicators of care and services. A deferred license means the agency can continue operating, but has 60 days to correct the problems. There was no information online to indicate whether those corrections were made.

In the cases reviewed, licenses were granted after the Office of Quality Enhancement had surveyed only a relatively small sample of group homes and residents.

Further, of the 30 online reports surveyed, fully one third were out of date on the DDS website, some by as much as two years. It wasn't clear whether the DDS has simply been slow in posting licensure reports on its website or

whether the licenses may have expired for some of the providers reviewed.

In addition, the DDS licensure and certification procedure was revamped in July 2010, based on input from the providers themselves. In 2009, the Association of Developmental Disabilities Providers stated that it was working with DDS to revamp the licensure system and that it was seeking to reduce the number of group home sites surveyed and the time spent surveying in each location.

Among the changes made by DDS in 2010 were a reduction in the licensure survey time spent in group homes from one to two weeks down to 5 working days, according to the online licensure manual.

Both the old and revamped reports did not always specify the total number of clients served by each provider or even the total number of group homes run by the provider. Some reports listed all relevant indicators while others didn't. Providers are notified 45 days in advance of the start of the licensure survey process, and are informed of the sites to be visited on the first day of the survey.

The licensure report for Behavioral Associates of Massachusetts stated that the provider had received a conditional license for one year and had been certified even though only two out of six required "quality of life areas" had been achieved. Among other problems, the report stated that managers failed to keep records of financial transactions involving residents.

In a number of instances, records of financial transactions were removed or altered in residents' confidential records, the report stated. There was no indication in the report that an audit of the provider's records was recommended.

The Behavioral Associates report also noted that a day program was located in the basement of one of the provider's group homes, and that there was no access to bathrooms on the basement level. The basement site was deemed unsuitable as a day program location and had not been approved by DDS for that purpose.

That report also noted a number of medication errors in the home, including the replacement of prescribed medicine for one resident with a non-approved over-the-counter medication. The report also described the use of intrusive restraints that had not been approved by DDS, and stated that the provider provided only "limited support" to residents to participate in community activities.

The 2008 Behavioral Associates report was one of those reviewed on the DDS website that was more than a year out of date. There was no indication in the report or on the DDS website whether the problems with the program were ever corrected or whether the conditional license expired in 2010 or was replaced by a full license.

The October 2010 licensure report on the Kennedy-Donovan Center found that residents in six different group homes had gone more than a year without a physical exam, with two residents having gone 18 months and two having gone 17 months without an exam. One resident who didn't have a dental exam for more than two years was later

Continued on next page

Continued from previous page

found to need several fillings and extractions, the report stated. Another resident, who had had pneumonia was not provided with a follow-up review by a physician.

There was also a lack of dietary, medical, and treatment protocols in the residences and a lack of “nutritious foods” in one location. Further, there were numerous instances cited in several locations of improper administration of medications. Once again, however, there was no indication on the DDS website whether these problems were corrected.

COFAR has filed a Public Records Law request with DDS, asking for the number of cases in which DDS has cited providers for violations during the licensing process as well as for the total number of providers licensed since Fiscal Year 2009 and the total number of group homes surveyed during that period.

Independent study bill stalled

COST STUDY, *continued from page 1*

closing developmental centers,” said Colleen Lutkevich, COFAR executive director. “It’s frustrating that there’s so little impetus for this in the Legislature.”

During the state budget debate last spring, Massachusetts legislative leaders scuttled amendments filed by Gobi in the House and Senator Michael Moore in the Senate, which would have required that the costs of closing the Monson, Templeton, and Glavin Centers be undertaken by a “non-governmental entity” selected by the state Inspector General’s Office.

Gobi also filed a separate bill, calling for a similar cost study, but the Children and Families Committee has so far failed to act on it. In addition, the bill (H. 1859), does not specify that the study would be done by a non-governmental entity – a safeguard to ensure that the study is independent. An aide to Gobi said that the non-governmental-entity language was mistakenly left out of the bill and that Gobi has requested that the bill be amended to include the language.

The COFAR Voice called the office of Rep. Kay Khan, the co-chair of the Children and Families Committee, on September 25 to determine the status of Gobi’s bill. A legislative aide declined to say whether Khan supports the measure, but said she would contact Gobi’s office to discuss inserting the proposed amended language.

In July 2010, the Patrick administration submitted a cost analysis, which projected a \$20 million annual cost savings in closing Templeton, Monson, and Glavin, based, in part, on a comparison of their budgets with the cost of community-based group home contracts. COFAR has contended that the administration’s analysis is flawed because it compares very different populations of residents and appears to have failed to take into account several community-based costs.

In May, COFAR obtained one such state contract for a group home program operated by the May Institute. The \$1.2 million contract specified funding only for direct care and supervisory services and minimal nursing services. It did not, however, specify any funding for clinical, medical, or therapeutic services, which tend to be paid in the community-based system under Medicaid and Medicare budgets.

COFAR filed Public Records Law requests with the Department of Developmental Services and the Executive Office of Health and Human Services in July, seeking documents showing sources of funding for clinical, medical, therapeutic, and nursing services in the May Institute group home program. COFAR also requested the budgets of the Monson, Glavin, and Templeton Centers.

As of early October, those requested documents had still not been provided by the administration. COFAR filed appeals in August with the state Public Records Division to compel the release of the requested documents from DDS.

In addition to arguing that the administration has failed to take community-based costs into account in its savings analysis, COFAR has made the following points in urging support for an independent study of the costs of closing the developmental centers:

- The administration’s cost analysis does not appear to take into account the fact that the developmental center residents are more intellectually disabled, older, and more medically involved than are community-based residents on average. The cost-savings conclusion is based on an apples-to-oranges comparison.
- The administration failed to project the cost of the parallel, group-home infrastructure that must be built in the community as the developmental centers are closed.
- The administration’s analysis does not recognize that the budgets of the developmental centers provide for a number of clinical and recreational services that benefit community-based clients.
- The administration failed to take into account the cost of closing the developmental centers and the economic losses to the communities in which those centers are located. For instance, the pending closure of the Jacksonville Developmental Center will result in the loss of \$47 million in economic activity in Morgan County, IL, according to a recent study by the University of Illinois.

Please contribute

COFAR continues to need your financial contributions in order to continue our mission of advocacy for DDS clients and families.

We are the only state-wide, nonprofit advocacy organization fighting for a full continuum of choice for clients of the DDS system, and the only organization systematically evaluating that system on your behalf.

A donation box appears on the back of this newsletter.

Thank you!

Reducing Medicaid fraud could prevent funding cuts

As a “super committee” in Congress debates this fall whether and how to cut entitlement programs such as Medicaid in order to eliminate the federal budget deficit, many experts believe much of the cutting could be avoided if federal and state governments cracked down on fraudulent Medicaid claims.

Medicaid and Medicare cuts could be part of at least \$1.2 trillion in revenue cuts that the super committee is required to recommend by November, in addition to \$1 trillion in discretionary spending cuts.

Medicaid, which is one of the state’s largest sources of budgetary spending, funds a wide range of human services, from health care for both low income families to care and services for persons with intellectual disabilities in both the state developmental centers and community-based system.

The federal government also provides Medicaid funding to reimburse the states such as Massachusetts for 50 percent of its own Medicaid expenditures and for the costs of care in the Department of Developmental Disabilities system.

But fraud is widespread in the Medicaid system, and much of that fraud is driven by privately run contractors, who submit fraudulent Medicaid claims for reimbursement.

State Auditor Suzanne Bump told *The Boston Globe* in August that she plans to intensify her office’s focus on Medicaid fraud and has appointed a former federal prosecutor to head those investigations. One Medicaid fraud expert told *The Globe* that most Medicaid fraud is perpetuated by “providers who take advantage of loopholes in regulations to process claims that would be detected by more rigorous analysis.”

“Every claim...for payment...should suffer some risk of review.” – M. Sparrow

COFAR President Thomas Frain and David Kassel, COFAR Voice newsletter editor, met on September 29 with members of State Auditor Bump’s staff to urge an expanded investigation of the DDS contractor system in Massachusetts.

COFAR has reported in the past on high salaries received by many executives in the DDS contracting system in Massachusetts and on the lack of oversight of the system (see story on Page 1 on the state’s provider licensure system). COFAR has also reported on the states’s potentially risky and expensive lease-back process for developing new group homes for former developmental center residents.

In his book, “License to Steal, Why Fraud plagues America’s Health Care System,” Malcolm Sparrow, a Harvard Kennedy School professor, argued that deep cuts in Medicaid could be avoided if the government and insurers paid more attention to combatting fraud.

“Every claim submitted for payment,” Sparrow wrote, should suffer some risk of review for fraud, regardless of its

dollar amount...”

In July, however, the Government Accountability Office reported that the federal government’s systems for analyzing Medicaid and Medicare data for possible fraud were inadequate and underused.

An August 2 article in *The New York Times* reported on one New York City-based provider for the intellectually disabled – The Young Adult Institute – which paid its two top executives close to \$1 million each in Medicaid funding. Among other things, the public funding went to buy luxury cars for the two executives and paid for the purchase of a public co-op apartment in Greenwich Village for one of the executives’ daughters.

The Times reported that there was such little oversight of the provider’s records that the provider was able to bill Medicaid for reimbursement for the salaries of fundraisers for the company, who were falsely listed in records provided to the government as group home administrative workers.

Frain noted that given the high salaries drawn by so many executives in the provider contracting system, it is ironic that the Association of Developmental Disabilities Providers in Massachusetts is pushing for legislative approval of tens of millions of dollars in state funding to boost the salaries of underpaid direct-care workers in their agencies. “If these executives are so concerned about what their workers are making,” Frain said, “why not give up some portion of their own salaries that reach \$200,000 and more a year?”

Trial date set in assault case

A jury trial has been set for January 9 for a former caretaker at a West Springfield group home, who allegedly assaulted an intellectually disabled resident of the home during a weekend outing on Cape Cod in June 2010.

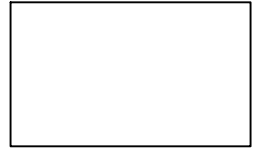
“I hope this case will send a message to all those who turn a blind eye to such assaults,” said Sheila Paquette, president of the Advocacy Network, a COFAR member organization. Paquette personally filed charges in the case against John Saunders for allegedly hitting Paquette’s brother, John Burns, in the face, causing two black eyes and other injuries. The alleged incident occurred while Saunders was toileting Burns.

Saunders had worked at the Center for Human Development, where Burns was a resident. Saunders was subsequently fired by the group home.

Paquette filed assault charges against Saunders in July 2010 after she became frustrated with the slow pace of state and law enforcement authorities in investigating the alleged assault. The Disabled Persons Protection Commission concluded that there was reasonable cause to believe Saunders had used excessive force and had physically assaulted Burns.

The DPPC report also recommended that Saunders no longer be permitted to work with DDS clients, and cited the CHD group home in which he had worked for failing to identify Burns’ injuries before sending him to his day program the morning after the alleged assault.

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