



The COFAR VOICE

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National background check bill stalled

Long-awaited legislation that would require a national background check for workers who provide direct care services to persons with mental retardation has remained stalled in the House Ways and Means Committee.

State Representative Martin J. Walsh, D-Boston, the bill's chief sponsor, said the measure appears to have gotten lumped together with several other bills intended to reform the state's Criminal Offender Record Information (CORI) law, which governs criminal background checks in Massachusetts. All of the bills have been held up in the committee, and chances for passage of the background check measure are slim this year, he said.

Walsh told *The COFAR Voice* that he believes his national background check bill "represents a unique situation and shouldn't be part of CORI reform. These people (direct-care workers whom the bill targets) are coming to Massachusetts and taking care of some of the most vulnerable residents in the commonwealth," he added.

The bill (House Bill 5052) would authorize Massachusetts to use the FBI's Integrated Automated Fingerprint Identification System to check persons applying for direct-care jobs for criminal convictions in other states.

Currently, applicants for direct-care jobs are given CORI-authorized background checks, which list all criminal convictions in Massachusetts. But because the CORI checks are limited to Massachusetts data, persons with convictions in other states can get direct-care-related jobs in Massachusetts without the Department of Mental Retardation or other authorities knowing about it.

"This bill is necessary for the oversight of care provided throughout the DMR system," said COFAR Executive Director Colleen M. Lutkevich. "It's a basic safety issue."

The Massachusetts Inspector General reported that from 1992 through 2002, the Disabled Persons Protection Commission received 284 cases in which the alleged victims lived in Massachusetts and the alleged abusers lived in neighboring states even though they were employed at the time in Massachusetts-based group homes and facilities.

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Linda and David Burke with their daughter, Lisa, in front of Lisa's state-run group home in Medford. Lisa is recovering from serious injuries suffered in May when she was run over by a staff-driven van at approximately the spot in which she is shown in the picture.

Accident at group home leaves families questioning DMR care

Burkes say DMR appears to be trying to coerce them into silence

The serious injuries David and Linda Burke's daughter, Lisa, suffered in May when she was run over by a van at a state-operated group home in Medford were upsetting enough.

But the situation has been made even more painful to the Burkes because of the Department of Mental Retardation's apparent indifference both to the accident and to inadequate staffing and other care-related issues at the home.

In fact, the Burkes say, a regional DMR director threatened to close down the home after the Burkes and other parents voiced concerns about the accident and other issues. And DMR Commissioner Gerald Morrissey himself has threatened in the past to close the home as well.

"It's not the first time they've (DMR) tried to intimidate the families (of the group home residents)," David Burke said in an interview. "But the fact is that unless someone speaks out, this kind of disaster may well happen again."

Lisa, who is 39 and has moderate mental retardation and

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Background check bill stalled

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Under the proposed legislation, job applicants would be given the opportunity to contest the accuracy of an out-of-state record.

The bill was approved by the Children and Families Committee and sent to the House Ways and Means Committee on June 14, where it has remained ever since.

A spokesperson for Rep. James Vallee, D-Franklin, one of the bill's other sponsors, said Vallee has personally spoken with Rep. Robert DeLeo, D-Revere, chairman of the House Ways and Means Committee, and has sent the chairman two letters urging the bill's approval. Vallee is a member of the Ways and Means Committee.

Walsh said there was a slim chance that the bill could come up for debate this fall. If not, he said, he will re-introduce the bill in December.

You can call your own representative or Rep. DeLeo's office at 617-722-2990, or email him at Robert.DeLeo@state.ma.us to urge the release of House Bill 5052 for a vote in the House and Senate.

Turning 22, salary vetoes overridden

The Massachusetts House and Senate voted unanimously in late July to override Governor Mitt Romney's cuts of additional funding for both the Turning-22 program and for direct-care worker salaries.

The funding for the two programs was among \$570 million in the current-year budget, which the governor had vetoed and which the Legislature overrode.

"Clearly, the revenues are there this year to make up for years of cutbacks in critical programs for people with disabilities," said COFAR President David J. Hart. "The Legislature has done the right thing and the compassionate thing in overriding these vetoes."

The Turning-22 program provides transitional funding for persons with mental retardation when they reach the age of 22 and are no longer eligible for school-based special education programs. The program had been level-funded for several years, despite a rising caseload, and Romney had proposed level-funding it again this year.

During the July 26 override session in the House, Representative Tom Sannicandro, D-Ashland, who sponsored the increased Turning-22 funding, noted that the House was "helping people with intellectual disabilities have a full and meaningful life."

In June, a House-Senate conference committee agreed to boost the Turning-22 funding by just over \$2 million. The committee adopted the Senate's proposed \$8.5 million in total funding for program. Advocates for persons with mental retardation had urged a \$4 million increase in the program.

DMR Commissioner Gerald Morrissey had stated that it would be difficult to continue to provide transitional services to the rising Turning 22 population without increased funding.

The conference committee had also approved a total \$28 million reserve to boost salaries for direct-care workers. The governor had proposed a cut of \$14 million from the reserve.

Personal care attendant directory bill

In another unanimous override vote, the House and Senate acted to preserve a bill that allows for union organization of personal care attendants in Massachusetts.

Personal care attendants care for people with disabilities and for the elderly in their homes.

The legislation also creates a consumer directory of qualified personal care attendants and a six-member council, led by consumers, to oversee the management of the directory.

Rep. Lida Harkins, D-Needham, who co-sponsored the bill with Sen. Steven Tolman, D-Brighton, told the State House News Service that the council will establish a back-up system to ensure that people who need assistants can find them when their primary assistant is not available.

The News Service reported that the elderly and people with disabilities often have to post advertisements in public locations for personal care assistants, leaving them vulnerable to unqualified caregivers.

Jeff Hall, a spokesman for the Massachusetts Quality Home Care Campaign, told the News Service that the new law provides caregivers with the option to join a union and to have a voice in talks with the state over better compensation. Hall said the state's 13,000 personal care assistants receive an average of \$10.84 per hour, which has caused a 40 to 60 percent turnover annually.

Harkins said in the past five years, personal care assistants received, on average, a wage increase of 73 cents per hour. She said they are not eligible for state employment benefits such as health insurance.

State reissues RFP for Fernald housing

Following publication of a COFAR report (at www.cofar-mass.org/Fernald_procurement_report.pdf) and articles in *The COFAR Voice* about flaws in the state's process of procuring community-based housing for former Fernald Developmental Center residents, the state has, at least partly, started that process over.

The Division of Capital Asset Management issued a new Request for Proposals on July 19 for the development of group homes in the metro Boston and northeast regions of the state.

The Department of Mental Retardation, which will staff the homes, will lease the facilities from the selected developers for 20-year periods.

DCAM has stated that it has dropped plans to award a lease contract to Toward Independent Living and Learning, Inc. (TILL), one of two vendors it had selected, according to Massachusetts Inspector General Gregory W. Sullivan, whose office reviewed the process at COFAR's request.

COFAR's report, which was provided to Sullivan and to U.S. District Court Judge Joseph Tauro and United States Attorney Michael Sullivan, found that TILL had submitted proposals that were deficient in several key respects. For instance, several proposals submitted by TILL appeared to be identical to each other despite the fact that they were submitted for the rehabilitation of homes in different towns that were of different ages, sizes, and types of construction.

Sullivan said that as of July 22, DCAM had awarded two lease contracts to a second developer, CIL Realty of Massachusetts, Inc. (CIL Realty). The new July 19 RFP will presumably seek proposals for residences in addition to the homes developed by CIL Realty.

COFAR Executive Director Colleen M. Lutkevich said that while she was encouraged by the issuance of the new RFP, she was also disappointed that DCAM had not corrected flaws in the original RFP, which had been issued in January 2005.

COFAR's report, which was also provided to DCAM, stated that the original RFP was flawed because it didn't include requirements for selecting the most qualified developers and contractors. For instance, it didn't require that the proposers list references for homes or buildings they had actually constructed, nor did it require that they submit audited financial statements with their proposals. In addition, an amendment to the RFP eliminated a requirement that the proposers demonstrate that they actually owned the properties they were proposing to rehabilitate or build upon.

The original RFP also didn't require that the proposers identify sites for the homes they were proposing to develop. The report further criticized the lease approach as overly expensive. The report noted the leases will cost the state as much as \$2.18 million per home over the 20-year period, based on the proposals submitted thus far.

In an August 20 letter to Inspector General Sullivan, Lutkevich and COFAR President David J. Hart stated that the new RFP was virtually identical to the original one.

"We are concerned that without the implementation of our recommended changes, there is little to prevent the selection by DCAM of another contractor whose proposals are as flawed as those submitted by TILL," the letter from Lutkevich and Hart stated. The letter suggested that the IG ask DCAM to amend the RFP to address relevant concerns and extend the September 13 date for responding to the RFP.

COFAR's report concluded that new housing needed for Fernald residents should be built on the Fernald grounds where it would be subject to the state's public construction bidding law (M.G.L. c. 149, s. 44A-M). The law requires that complete designs and specifications be developed prior to

selection of a contractor, and that the contract award go to the lowest "responsible and eligible" bidder.

Families question DMR care

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several medical issues, was run over on May 21 by a van driven by a staff worker at the group home at 71-A Foster Court in Medford, which is operated by Northeast Residential Services. NRS is a state entity within DMR.

Lisa had been sitting in her wheelchair in front of the home at the time of the incident, and was dragged under the van for 40 to 50 feet, still strapped into the chair. She suffered a broken right hip, broken bones in her left ankle, two broken ribs, several small bones broken in her back, a deep gash on her left calf and several cuts on her head requiring stitches. She was taken to Massachusetts General Hospital, where she was operated on the next morning. Her hip was repaired with a metal plate. She remained at Mass General until May 30 and then went to Spaulding Rehabilitation Hospital and was released July 1. She is still recovering from her injuries.

The van driver has been charged with operating to endanger and her license has been revoked indefinitely. She is no longer working at the group home, the Burkes said.

David Burke said there was no supervisor on duty at the group home at the time of the accident, and there was no driver training or certification process for direct-care staff to operate the vans.

The police report described the driver as having had a "cognitive lockup" in which she "froze behind the steering wheel of the (van) with her foot fully depressed on the acceleration." The report also noted that the driver's seat was found in an extreme forward position, about 8 inches from the dash pad. An operator would have had difficulty moving his or her foot from the accelerator to the brake pedal with the seat in this position, according to the report.

Parents feel intimidated

Since early June, the Burkes have been trying without success to arrange a meeting with DMR Commissioner Morrissey to discuss the accident and what they contend are continuing problems with a lack of staffing and supervision in the home. Those issues directly contributed to the accident, they contend.

But not only has Morrissey failed to respond to their requests for a meeting, DMR appears to be trying to force the families into silence, David Burke maintained. As evidence, he produced a June 2 letter to the families of the group home residents from Amanda Chalmers, DMR Northeast regional director.

The letter, which was written after the May 21 accident, accused the families of saying critical things about the group home "that have contributed to staff feeling afraid for their

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jobs, intimidated in their roles in the program, and, as a result, not reporting to work.” The letter warned that “if this situation is not corrected immediately,” DMR would close down the house and move Lisa and the other residents to other locations. Lisa and the three other female residents have lived together in the home for the past 17 years.

The only specific charge made in Chalmers’ letter was that one family member or members had stated that “senior staff within the program and the service coordinator has (sic) never done a good job.” That type of comment, the letter stated, “reduces staff morale and puts us back to zero yet again.”

“This (Chalmers’ letter) is intimidation of the families, pure and simple,” said David Hart, president of COFAR, which was contacted by the Burkes to help them bring public attention to the case and the conditions in the home. “The clear message of that letter is ‘shut up and don’t complain about anything, or your daughters will lose their home.’ It’s unacceptable.”



The 10-passenger Dodge van, which struck and ran over Lisa Burke in front of her group home.

David Burke said Morrissey himself threatened to close down the house when the Burkes and other parents met with him in 2004, for the one and only time, to discuss staffing and other issues there. It was at that meeting, Burke said, that Morrissey, before he had even listened to the parents’ concerns, said DMR’s only option might be to close the group home. One of the parents immediately commented that Morrissey’s statement sounded very much like a threat, and the other parents agreed that it sounded that way to them as well, Burke said.

Neither Morrissey nor Chalmers would comment for this article. Marianne Meacham, DMR general counsel, termed the accident a “terrible tragedy,” and maintained that the Department wants the home to stay open. She said she wasn’t personally aware of any staffing issues involving the home.

Meacham contended that Chalmers’ June 2 letter threatening to close the home stemmed from DMR’s concern

over “a history of conflict between the families and the staff” in the home. “There have been many, many instances in which families have been disrespectful of the staff or have had contentious interactions with them,” she said. She said, however, that Chalmers told her that the Burkes have never had any contentious interactions with the staff. She said she understood that these interactions involved families other than the Burkes, but she said she couldn’t comment on which ones or how many.

Meacham insisted that, “we’re not about to try to discourage anyone from complaining to the DPPC (Disabled Persons Protection Commission) or the Department.”

Regarding Morrissey’s refusal to meet with the Burkes after the accident, Meacham maintained that it would not be appropriate for him to do so because he has a responsibility to review the investigation of the accident. And regarding the 2004 meeting in which Morrissey threatened to close the home, Meacham said the meeting largely involved a dispute with the families over the Department’s decision to replace the then residential manager of the program. She said the Department had found numerous irregularities involving the financial management of the home.

According to Meacham, the families were upset with the decision to replace the house manager and took the matter to their legislators and then sought the meeting with Morrissey. A “communication protocol” was later put in place, she said, to keep the home intact. It provided a way for the families to communicate with NRS and DMR supervisors, Meacham said.

David Burke contended that the reason for the 2004 meeting with Morrissey was unresolved staffing issues and not the removal of the house manager. He maintained that DMR sought to shift the blame for the staffing issues to the house manager and used the alleged financial irregularities as an excuse to remove her. “At the time, she (the residential manager) was doing everything she could to get the group home to perform,” he said.

The Burkes also produced their notes on issues they had planned to bring up during the 2004 meeting with Morrissey. The notes concerned staffing issues and a concern that the “house was going downhill.” There was no mention in the notes of the removal of, or DMR’s financial issues with, the house manager.

Staffing issues have been ongoing

Burke said NRS is the fourth entity to operate the group home since the facility was established 17 years ago. All four residents have been there from the start. He said there have been issues going back to the start involving a lack of staffing, supervision and training at the home, and that conditions initially improved when NRS took over from a series of private vendors in 2001. But staffing and supervision issues eventually surfaced under NRS.

Burke said that following the 2004 meeting between the families and Morrissey, Chalmers sent the families a letter, detailing a series of commitments that DMR had agreed to

make with regard to staffing the group home. Nevertheless, staffing problems continued after that, he said.

On May 15, just six days before the accident involving Lisa, the group home families were informed that the manager of the group home would be on vacation for the next two to three weeks; that another shift supervisor was on hardship leave for another week or two; and a third shift supervisor was scheduled for a two-week vacation. Burke said the parents expressed concerns that this would leave the home without supervision for many shifts. He said the parents were told that NRS had no plans to bring in supervisors from other group homes and that the NRS area supervisor would provide "close supervision of the home to prevent problems." The area supervisor is in charge of 11 NRS group homes.

According to Burke, at the time of the accident, six days later, there were no supervisors on duty in the home.

Burke said that despite an ongoing need for replacement personnel at DMR group homes when people are on vacation or have personal emergencies or illnesses, there is apparently no pool of replacement supervisors or direct-care workers who can be assigned to shifts on short notice.

Burke said he has also found that DMR routinely requires direct-care staff to work additional shifts on short notice, which, as one staff worker told the Burkes, can be for as long as 24 hours straight. This affects not only their morale, but their ability to perform their jobs, he said. Further, the lack of supervisors reduces the incentive of some of the direct-care workers to perform their duties conscientiously and well, he said.

Burke maintained Morrissey "does not appear to be interested in finding out about or fixing the problems (at the home.) Based on his lack of response to the accident, one can only wonder whether his intention is to deny that a problem exists," he said. Burke said he was told by other parents that a week after the accident, on Memorial Day weekend, there were still no supervisors at the house. "That may be why he (Morrissey) won't meet with us," he added. "He may not want to be on the record of acknowledging there's an issue here."

The accident and its aftermath

According to the Medford Police report, Lisa had been sitting in a wheelchair in front of the home at the time of the incident. She and the two other residents had been brought outside during a fire alarm there. The police report stated that a staff worker at the group home got into the rearmost of two Dodge Ram vans, each of which were designed to accommodate up to 10 passengers. The vans had been parked, one behind the other, in front of the residence.

The staff member intended to back the rear van out of the way of an approaching fire truck, but put the one-ton van into drive for unknown reasons and accelerated, hitting the rear of the van parked in front of it, the report stated. The staff member then veered to the left, and the van, "still under hard acceleration," struck Lisa and one other resident of the home.

The second resident was pushed in her wheelchair out of the way by the van, but Lisa was dragged, still strapped into her wheelchair, under the van as it continued to accelerate through the parking lot.

According to the police report, the van climbed a sod knoll, drove through a wooden split rail fence and into a steel stanchion supporting a clothesline. It came to a stop only after the drive shaft was sheared off by the force of the crash. No mechanical defect with the vehicle was found, according to a State Police crash investigation report.

Burke said the accident involving Lisa was witnessed by a neighbor, who said he physically lifted and removed the driver from the van so he could put the vehicle in park and turn off the engine. When the fire department arrived, the neighbor alerted them that Lisa was trapped under the van in her wheelchair.

Burke said the firemen raised the van with jacks, cut the safety straps, which held Lisa in her wheelchair, and removed her from under the van. EMT personnel then took over. Lisa's mother, Linda, who had been visiting the group home that afternoon, had been away on a short errand when the accident occurred. She accompanied Lisa to the hospital in the ambulance.

For most of the month of July, Lisa was required to spend her time in bed, lying on her back, with cushioning wedges strapped between her legs to prevent any turning of her legs while her broken hip was healing.

As part of her recovery, she had to be encouraged to gradually overcome her fear of being put into a wheelchair and into a wheelchair van. She also had to be encouraged by her parents and other caregivers to rebuild her trust in people. Burke described it as a slow and difficult process, which is still continuing.

Burke said the family is considering a lawsuit against DMR "as a way of getting DMR's attention to these issues," but the state's limited liability might prevent any legal action from accomplishing that. He also said he called the Governor's Commission on Mental Retardation, but that the organization was of little help. The Disabled Persons Protection Commission opened an investigation of the incident, but referred the case back to DMR, due to the DPPC's own limited resources.

Linda Burke, summing up the case, maintained: "Gov. Romney recently said people should not have to be fearful when they drive through the (Central Artery/harbor) tunnels. So, why should any parent of a mentally retarded person have to be fearful they will get a call as we did? No one (at DMR) seems to be looking at these issues."

Your contributions are needed

Please consider making a contribution to COFAR to enable us to continue our advocacy on behalf of persons with mental retardation. Our mailing address is on the back of this newsletter. Or contribute online at www.cofar-mass.org/page3.html. Thank you.

COFAR is a family support, education and advocacy organization funded by member families. **Become a COFAR member and receive *The COFAR Voice*.** For membership information and information on how to donate and to be on our mailing list, visit our website at www.cofar-mass.org, or write to:

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The COFAR VOICE
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FOR ALL PERSONS WITH MENTAL RETARDATION

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