



# The COFAR VOICE

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## 'Global payment' initiatives raise concerns

The Patrick administration and the Legislature are making a series of changes to the delivery of human services that are intended to save costs, including taking part in a national move toward fixed or "global" payments to vendors for services to people with disabilities.

In addition, the administration is following in a federal effort to engage private companies to manage care for people who are dually eligible for Medicaid and Medicare services. So-called Integrated Care Organizations (ICOs) under this system would be in charge in many cases of making the global payments to the vendors.

### COFAR sets legislative and budget priorities for Fiscal Year 2014 (Page 3)

A third and related initiative, often referred to as "self-directed" or "participant-directed" services, is an effort, according to the administration, to give disabled persons more decision-making power in selecting their services and even in directly hiring state-funded caregivers.

COFAR is concerned about the new initiatives, arguing that they may also introduce back-door privatization of services and lowered levels of transparency in the human services system, contrary to the claims of the administration and of advocates of the new approaches.

"The state is continuing to slough off its responsibility to provide care to its most vulnerable citizens and calling it innovation," said Colleen Lutkevich, COFAR executive director. "We're concerned that this is yet another series of steps backwards disguised as progress."

A recent report issued by the Providers' Council, a lobbying organization for human service vendors in Massachusetts, maintained that the various initiatives provide a series of financial and management "opportunities" for vendors in conjunction with the ongoing closures of state developmental centers for people with intellectual disabilities.

One initiative in particular, involving self-directed

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EXPERT TESTIMONY – Gary Siperstein, director of the Center for Social Development and Education at the University of Massachusetts Boston explains his finding that DDS regulations have allowed the Department to undercount the number of persons who are intellectually disabled in the state. Siperstein spoke at a public hearing in Worcester on November 15 (Story below).

## DDS IQ regs faulted at hearing

A parade of speakers urged the Department of Developmental Services to consider a person's societal adaptability, not just IQ score, in determining whether he or she is intellectually disabled.

Speaking at a November 15 public hearing on emergency regulations adopted by the Department in the wake of a court order, the attendees maintained that an untold number of people with serious developmental disabilities are falling through the cracks of the system.

"You need to be looking at the whole individual, not just their IQ," Marie Armstrong, the mother of a 19-year-old man with autism, told DDS officials who ran the hearing.

Like many other family members who testified about their developmentally disabled children, Armstrong maintained that her son was denied eligibility for services by DDS because he scored higher than a 70 on an IQ test. In making the determination, she said, DDS disregarded its own previous finding that her son had the adaptive behavior of a 6-year-old child.

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## Parents fault DDS IQ regs

HEARING, *continued from page 1*

DDS adopted emergency IQ regulations governing determinations of intellectual disability in the wake of a ruling by the Massachusetts Court of Appeals in July that previous regulations adopted by the Department in 2006 were invalid. The emergency regulations still appeared to give the Department excessive discretion to rely on IQ scores, according to COFAR, the Disability Law Center and the Arc of Massachusetts, all of which provided testimony on those regulations at the hearing.

Richard Glassman, litigation director with the Disability Law Center, maintained that DDS needs to broaden its eligibility standards to include developmentally disabled persons who may not meet the standard for intellectual disability. "We are raising a generation of young people who are spending their days in their bedrooms playing video games and watching TV," Glassman said. "Their only real tie is to the Nintendo Corporation."

Gary Siperstein of UMass Boston testified that the university in collaboration with the Gallup organization recently surveyed over 350,000 families in all 50 states to determine the prevalence of intellectual disability. In Massachusetts, the polling indicated that one out of three adults with intellectual disabilities was not receiving services from DDS.

The appeals court maintained that the DDS regulations adopted in 2006 failed to refer to a "clinical authority," such as the American Association on Intellectual and Developmental Disability (AAIDD), in defining intellectual disability. Without such a "statutory anchor," the Department's definition of intellectual disability had actually become "a moving target," according to the court.

DDS initially responded to the court order by designating itself as a "clinical authority" in determining the presence of intellectual disability. However, in the wake of comments from the DLC, COFAR, and others, the Department dropped that reference, but has continued to list itself in the emergency regulations as the "state intellectual disability authority."

The case before the appeals court concerned a woman who had scored 71 on an IQ test at age 18, 69 at age 40, and 71 at age 42. The woman was represented by Thomas Frain, an attorney who is also COFAR president.

Also providing testimony on the emergency regulations were the national VOR, which submitted testimony stating that the enforcement of the DDS emergency regulations "gives DDS the opportunity ignore real need and make arbitrary eligibility decisions for purely fiscal objectives. Such a conflict of interest was envisioned by the Court of Appeals in July 2012 and is contrary to the spirit of its decision earlier this year," the VOR statement added. COFAR is an affiliate of the VOR.

Meanwhile, state Representative Dan Winslow, a Republican lawmaker, said in November that he had re-introduced a bill in the House that would require that DDS base its definition of intellectual disability on the AAIDD's

definition, which does not establish a "bright-line" cutoff of eligibility at a 70 IQ. Winslow's bill passed the House in the previous legislative session, but died in the Senate.

## DDS licensure system info out of date

More than five months after a state website had reportedly been updated, some 40 percent of state licensure reports for vendors running community-based group homes in Massachusetts remained out of date on the site, according to a survey done by COFAR in early November.

COFAR reviewed licensure data on the Department of Developmental Services website following a year-long examination of DDS policies and procedures on licensing group home vendors.

Of a sample of 30 vendors, licensure reports for 11 were out of date on the website as of the COFAR review, and one report for the Merrimack Education Center, which had previously been posted, had been removed from the site. The Merrimack Education Center was the subject of a critical audit by the Inspector General in 2011.

Also, follow-up licensure reports or updates were posted on the DDS website for only eight of the 30 vendors in the sample. No follow-up reports were posted for any of the 44 vendors listed on the website in the Metro Boston area.

COFAR wrote to DDS Commissioner Elin Howe on November 6, asking why the online licensure information remained out of date more than five months after Howe had stated in a letter that DDS was making efforts to post updated information on the website. Howe's letter had been sent to state Representative Kay Khan, House chair of the Children, Families, and Persons with Disabilities Committee.

As of December 5, Howe had not responded to COFAR's November 6 email.

Howe's May 22 letter to Khan did note that DDS had taken a number of steps to correct some of COFAR's concerns previously raised about the licensure process. She stated that vendor follow-up reports were now posted on the DDS website in addition to an initial licensure report, and that licensure reports will "contain more specific details about specific issues that remain after follow-ups are done."

In addition, Howe stated that "documentation will be added to 'close the loop' on remaining issues, specifically dates when the outstanding issues are resolved."

However, COFAR's review of the website in November indicated that a lot more needs to be done to make the site current.

Among the out-of-date documents on the DDS website were licensure reports posted for Behavioral Associates of Massachusetts (BAM) and the Center for Human Development (CHD) – two vendors that COFAR had selected for review. Those reports remained out of date, and no follow-up reports or updates were posted for either vendor. The BAM licensure report was dated April 2009 and the CHD report was dated November 2010.

## COFAR sets legislative-budget priorities for FY '14

Additional funding for service coordinators and an independent study prior to the closure of the Glavin Regional Center are among COFAR's legislative priorities as the Patrick administration and the Legislature prepare for their new session and the start of the annual state budget process in January.

As has been the case in recent years, the state's fiscal situation is likely to preclude adequate funding for many DDS programs, making it all the more important that the funding that is available is directed to the most cost-effective programs and services. Some of the line items below were cut in December by Governor Patrick in the wake of a projected budget shortfall in the current fiscal year.

- **Independent study language for the Glavin Center (Line item 5930-1000)**

Once again, COFAR will press for passage of a budget amendment to require an independent cost and benefit analysis prior to the closure of the Glavin Center. While such a study has been shot down by the chairs of the House and Senate Ways and Means Committees for the past two years, the proposal gained support for the first time earlier this year from state Representative Patricia Haddad, a member of the House leadership (see Glavin story continuation on page 5.)

- **A continuing increase in the state-operated group home line item (5920-2010) and continued separation of that line item from the community-based residential line item (5920-2000).**

Last spring, the state-operated group home line item was increased by \$13 million from the previous fiscal year, apparently to accommodate people who have been moved out of developmental centers marked by the administration for closure. While COFAR opposes the closures of the developmental centers, the organization supports adequate funding of the state-operated group homes, which are taking on much of the burden of housing former developmental center residents.

In recent years, the administration has attempted to merge the state-operated group home line item with the community-based residential line item, which supports vendor-operated group homes. COFAR is concerned that the merging of these line items is a step toward privatizing the state-run residences and therefore opposes the line-item merger.

- **Increase funding for the Disabled Persons Protection Commission (Line item 1107-2501)**

Funding to the DPPC, one of the state's most critically important public agencies, has remained static at \$2.3 million per year since FY 2009. For the current fiscal year, the governor had recommended a cut of \$39,000 in the DPPC budget account, but the Legislature ended up approving a very small increase in funding for the agency over the previous fiscal year.

The DPPC was created in 1987 as an independent state agency charged with investigating complaints of abuse and neglect of persons in the state with intellectual disabilities. But because the agency has been chronically underfunded, it has had to farm out most of its investigations to the Department of Developmental Services and other agencies. COFAR has long contended that DDS should not be investigating complaints, which are essentially lodged against their own employees or against human services vendors working directly for the state agencies.

COFAR supports a major shift in funding from DDS to the DPPC to allow it to conduct all abuse investigations independently. Short of that, COFAR supports a substantial increase in funding over the \$2.3 million, which the DPPC received in the current fiscal year.

- **Additional funding for service coordinators in DDS administrative line item (5911-1003)**

An additional \$2.5 million appropriated to this line item would restore 50 service coordinator jobs to the Department of Developmental Services. The state has continued to under-fund the service coordinators, whose job is to make sure intellectually disabled clients are receiving the services in the DDS community-based system that that state pays for and that are specified in their plans of care.

There has been a loss of 82 DDS service coordinator positions since 2007, and Massachusetts is now in the lowest 5-to-10 percent of states in the country in providing monitoring and oversight of DDS programs, according to the SEIU state employees union. Service coordinator caseloads are as large as 60 right now, making it almost impossible for the existing staff to carry out their various missions effectively, the SEIU maintains.

- **National criminal background check legislation**

COFAR strongly supports legislation that would give the state the authority to conduct national background checks on people who are hired by DDS and its residential and day program vendors to work directly with intellectually disabled people.

DDS currently authorizes Criminal Offender Record Information (CORI) checks on new hires, but those records do not disclose any convictions a job applicant may have received in another state.

The legislation has been repeatedly filed by state Representative Martin Walsh of Boston, but has died in the House Ways and Means Committee in each of the last two years.

### Please contribute

COFAR is continuing to play a critical role in monitoring the Department of Developmental Services system and advocating for the best available services for persons throughout the state with intellectual disabilities.

We are the only state-wide nonprofit advocacy group for DDS clients that is not beholden to the Department for our funding, so we continue to need your help to stay in operation. Please contribute what you can. **Thank You!**

## Global payment initiatives raise questions

GLOBAL, *continued from page 1*

services, has the potential to provide a “substantial growth opportunity” to vendors to develop a workforce of “lower-skilled/lower education workers than (has) historically (been) used,” the report, prepared by Public Consulting Group, stated.

The following are some of the key initiatives the administration has recently undertaken in its delivery of human services:

- **“Global Payment” law**

In August, the governor signed into law Chapter 224 of the Acts of 2012, which establishes a new state Health Policy Commission, which will consider setting “global payment” or “capitated” rates for a wide range of health care and human service providers in Massachusetts.

The new law would also establish Accountable Care Organizations (ACOs) to manage care throughout the health care industry in the state.

Currently, most human services providers in Massachusetts have been funded under a so-called fee-for-service system, under which they are reimbursed by the state for most, but not all of their costs. The vendors must submit detailed information about those costs to the state, which puts that information online on a state website at [www.mass.gov/ufr](http://www.mass.gov/ufr).

Chapter 224 follows an initial effort by the administration and Legislature in 2008, known as Chapter 257, to pre-set rates for vendors.

Under a global payment or capitated system, the state sets fixed rates in advance to vendors for all services provided to specific groups of recipients. This approach has generally been supported by vendor organizations such as the Association of Developmental Disabilities Providers (ADDP) and the Providers’ Council, although those organizations maintain that the rates that have been set so far under Chapter 257 have tended to be too low to enable vendors to provide adequate services.

COFAR is concerned that the capitated system could lead to lowered requirements to vendors for submission of cost information to the state. And they could provide an incentive to vendors to provide less services since the vendors are paid the same fixed rates no matter what services they provide.

Both of these concerns in fact were raised in the Public Consulting Group report done for the Providers’ Council. The report stated, for instance, that documentation required for a capitated rate “is often less than with other payment models.”

The ADPP has projected on its website that full adoption of Chapter 257 rates for residential DDS care will require “an infusion” of \$150 to \$160 million in the coming fiscal year “to address a twenty five year absence of rate adjustments.”

- **Dual eligibles project**

The Executive Office of Health and Human Services is developing a program to jointly manage Medicare and Medicaid services for adults ages 21-64 who are eligible for both programs.

Under the initiative, private ICOs would be hired to arrange care for the program recipients. Early this year, COFAR joined with the SEIU, a state employee union, in urging the state not to include intellectually disabled clients of the Department of Developmental Services in the program. The EOHHS later announced that DDS residents of developmental centers and those receiving services under a community-based Medicaid waiver program would not receive their services from an ICO.

It was unclear, however, whether this exemption would cover all people served by DDS who are eligible for Medicaid and Medicare.

A post in October on the website of *Governing Magazine* stated that at least 26 states have pledged to develop pilot programs “to better coordinate care between Medicaid and Medicare,” and that Massachusetts was the first to gain approval from the Centers for Medicare and Medicaid Services for its “duals demonstration program.” That program, the *Governing* post stated, will be “partially modeled after two existing programs in the state that are aimed at moving away from a fee-for-service model.”

- **“Self-directed services”**

Proposed legislation to encourage self-directed services for the intellectually disabled in Massachusetts was approved by the House last spring, but died after the Senate declined to take it up.

COFAR has raised a number of concerns about the proposed legislation, dubbed the “Real Lives” bill, including its designation of unspecified private companies known as service brokers to manage the initiative.

The bill was supported by the ADPP and the Arc of Massachusetts.

## ***Glavin land deal questioned***

COFAR has joined with families and guardians of residents at the Glavin Regional Center in questioning an agreement by the state to lease 69 acres of land at Glavin to the Town of Shrewsbury for a nominal fee.

Governor Deval Patrick signed a bill into law in August to lease the land for \$1 a year for the next 25 years to the town. The land subject to the lease consists of 15 acres currently used as soccer fields and 54 acres of farmland.

In an October 16 email sent to the state Inspector General’s Office, Tom Frain, COFAR president, and Colleen Lutkevich, executive director, stated that the \$1 lease “effectively gives away for the next quarter century what appears to be a majority of the state land at Glavin to a non-state entity prior to, and outside of, a formal and deliberative reuse process for the property.”

Special legislation authorizing the lease requires the IG to review and comment on the arrangement.

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Based on news reports, the Glavin land that has effectively given to the town in this case could be worth as much as \$12.9 million.

In 2008, the administration announced it was closing the Glavin, Fernald, Monson, and Templeton developmental centers, contending there would be a fiscal savings in doing so. In making the closure announcement, the administration stated that disposition of the land at those centers would be subject to a "collaborative" reuse-committee planning process.

Legislation was subsequently enacted into law to set up land reuse committees for the Fernald Center (Chapter 149 of the Acts of 2004, S. 402) and for the Monson and Templeton Centers (Chapter 59 of the Acts of 2009). However, a bill filed in January 2009 to establish a similar land reuse committee for the Glavin Center died in the Legislature's Bonding Committee.

The Glavin land reuse bill, which had been filed by then state Representative Karyn Polito, had stated that the proposed reuse committee "will be mindful of the rights of current Glavin residents, and their need for adequate and appropriate housing, clinical services, and appropriate staffing..." COFAR has been unable to determine why Polito's bill died and was never refiled.

In February 2010, the administration proposed to sell what appeared to be the same parcels of land at Glavin that it later agreed to lease to the town for \$1 a year. Area legislators opposed the planned sale of the land.

In May, Governor Patrick praised the land reuse process that had taken place at the Fernald Center, and maintained that the state couldn't afford to give away land there to the City of Waltham. "Everybody's on it (the Fernald reuse process), all the interests, all the factions, and that's how it should be," Patrick told *The Waltham News-Tribune*. "I know the city has expressed interest in buying it (a portion of the Fernald land). I don't think the state's in a position to give it away. But I think selling to the city, some or all of it, is certainly an option."

In another development related to Glavin, the center's remaining families met with state legislators in September to urge that the center remain open, after an initial meeting, scheduled in mid August with state Representative Patricia Haddad of Taunton, had fallen through. Haddad, a member of the House leadership, spearheaded an effort in July in the House to save Taunton State Hospital from being closed.

The Glavin families' meeting took place on September 11 at the State House, and was organized by state Representative Matthew Beaton of Shrewsbury. At the meeting, which was attended by Haddad and a number of other legislators and staff members, Haddad supported an independent study that would cover "the entire DMH (Department of Mental Health) and DDS system." (See story on COFAR's legislative priorities on page 3.)

"Someone has to be the first to say we're not afraid to have an outside study done to tell us what's wrong and what's right," Haddad said. She maintained that internal

studies done by the administration that showed a savings in closing Glavin and other developmental centers in Massachusetts "are asking people to trust the results."

DDS Deputy Commissioner Larry Tummino said during the meeting that he did not dispute that the services at Glavin are excellent. He contended that "we can structure that clinical expertise in the community." Tummino also maintained that guardians of some 31 residents remaining at the time at Glavin had agreed to move those residents to other locations.

That latter claim from Tummino brought a sharp rebuke from Roland Charpentier, the president of the Glavin family association. Charpentier said the guardians who agreed to leave Glavin did so "because they were scared to death that Glavin is going to close."

Haddad also was critical of the administration's contention that the services provided by facilities such as Glavin and Taunton State can be replicated in the community system. "There are more horror stories than good stories in the private sector," Haddad said. "You're asking people to trust a system that has a lot of flaws," she said to Tummino and a second DDS official who attended the September meeting. "This is not something you can just say 'it's going to be okay,'" Haddad added.

Speaking specifically about the plan to close Glavin, Haddad maintained that it is harmful to remove intellectually disabled people from their longtime homes. "People cling to the people and things that they know," she said.

## ***Direct-care salary reserve remains frozen***

Despite passage of state budget legislation last year to establish a \$20 million reserve fund for wage increases for low-paid direct-care workers employed by state-funded human services vendors, the money has apparently still not been distributed to those workers.

In November, Governor Patrick froze the funding in the salary reserve because of lower-than-expected state tax collections, which have led to renewed fears on Beacon Hill of a looming budget crisis, according to *The Boston Globe*.

The governor's action resulted in a demonstration at the State House on November 26 by direct-care workers, the newspaper reported. The demonstration came at the same time that legislative leaders approved 3 percent wage hikes for State House employees.

COFAR supports higher wages for direct-care workers and has questioned moves by many vendors to increase the pay of their executives instead. A survey last spring by COFAR of more than 30 vendors showed that the average compensation to the top executives increased by more than 16 percent from Fiscal Year 2008 to 2011, while average salaries to direct-care workers dropped by 1.9 percent during that time.

The budget language establishing the reserve fund did not appear to include any audit protections to ensure that the funding would actually go toward direct-care wages and not into other areas in individual vendor agencies such as salaries of CEOs.

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**Thank you!**