



The COFAR VOICE

The Official Newsletter of the Massachusetts Coalition of Families and Advocates, Inc. (COFAR)

July 2011

Volume 11/Number 4

Gap seen in DDS funding for community services *Gap raises questions on savings claim*

A state contract for a vendor-run, community-based group home program, which was selected for review by COFAR, did not specify funding for any clinical or therapeutic services for the 14 program residents.

In addition, the Fiscal Year 2009 contract with the May Institute, Inc., specified only minimal nursing services for the residents and no other medical care.

Yet, this contract was one of close to 1,000 such residential services contracts, which were cited last year by the Patrick administration as being less expensive per client than the Monson, Templeton, and Glavin developmental centers.

COFAR seeks expansion of state's special education probe (Page 4).

In an analysis provided to the Legislature last July, the administration claimed that its planned closures of Monson, Templeton, and Glavin would save \$20.3 million a year in state funds. Those centers' budgets, however, do provide for a full range of clinical, medical, and therapeutic services, in addition to direct care services.

"It's abundantly clear now that the administration was comparing apples to oranges in claiming we will save money in closing the developmental centers," said Colleen Lutkevich, COFAR executive director. "This is what we've learned as the culmination of months of Public Records requests from the Department of Developmental Services."

The administration's July 2010 analysis computed a daily, per-person rate for community-based services costs and compared it to a computed daily rate for the developmental centers.

Starting last December, COFAR requested public records from DDS containing a breakdown of the components of the community-based services costs that were used in the administration's savings analysis.

In March, DDS provided a series of spreadsheets that listed total costs for vendor-based residential service



COST ANALYSIS NIXED – COFAR advocates met at the State House on May 18 with key legislative staff to urge support for an independent cost analysis prior to the closures of the Templeton, Monson, and Glavin developmental centers. From left are Sean Harkins, secretary of AFSCME Local 665 at Glavin; Pat Feeley, COFAR member; Thomas Frain, COFAR president; Andy Stacy, president of AFSCME Local 554 at Templeton; Richard Krant, Jr., COFAR member; Anthony Antonelli, Massachusetts Nurses Association; and Jamie Gahan, a physical therapist at Glavin. A week after the meetings, however, a state budget amendment requiring a cost analysis was scuttled by the House and Senate leadership. Story on Page 2.

Fernald families win victory

Guardians of 14 remaining residents of the Fernald Developmental Center have taken heart from a June 9 ruling by a state administrative judge that a transfer from Fernald for one of those residents wouldn't be in his best interest.

Magistrate Kenneth Forton of the Division of Administrative Law Appeals found that the administration's plan to transfer Fernald resident, identified as Daniel O., to the Wrentham Developmental Center would not result in improved services or quality of life for that resident.

Forton's decision effectively blocks the Department of Developmental Services from transferring Daniel unless DDS were either to change Daniel O.'s transfer plan or to appeal Forton's decision to the State Superior Court.

Please see **GAP**, Page 2

Please see **DECISION**, Page 4

Gap found in DDS funding

GAP, continued from page 1

programs, among other documents. The spreadsheets, however, provided no breakdown of those total costs.

As a result, COFAR selected, among other things, one program on the DDS list – a residential services program with a total cost of \$1.2 million, operated by the May Institute, Inc. and listed under the Central Middlesex Area DDS office.

COFAR requested all components of the allowable salaries for that program. In response, DDS provided a contract for the May Institute program, with a breakdown of budgeted salary and other costs for Fiscal Year 2009.

COFAR's review of the May Institute program contract, shows the following:

- As of FY 2009, the program served 14 individuals: 4 in a one-family ranch style home, 4 in a second ranch, 5 in a third ranch, and 1 in an unspecified location. The locations of each of the residences were redacted. All the residents in the program were described as having mild to severe intellectual disabilities. The contract stated that all residents received 24 hours staffing supports, behavior supports, money management, community integration, recreation, medication administration, and transportation services.
- The total per-person cost under the contract was specified as \$286 per day. That program rate was fairly close to the DDS community residential rate of \$295, which was used in the administration's 2010 cost analysis provided to the Legislature. The difference was only \$9 per day.
- The May Institute program contract budgeted the equivalent of 5.6 hours per week of Registered Nursing services for the 14 residents in the 3 group homes and the one additional unidentified location. This works out to a ratio of 1 RN per 99 residents. No other nursing personnel were listed in the May Institute program budget. In contrast, the Fernald Developmental Center, in FY 2006, had 43 RNs for a client population at that time of 181 – or 1 RN per 4.2 residents – according to information provided by the state Comptroller's Office. Fernald also had 19 Licensed Practical Nurses on staff and 23 Nursing Assistant IIs.
- No clinical personnel were budgeted, and no physical, occupational or other therapeutic staff were budgeted for the May Institute Program. At Fernald in FY 2006, there were 67 clinical and professional staff on site, including clinical social workers, habilitation coordinators, occupational therapists, physical therapists, psychological assistants, respiratory therapists, speech language pathologists, and a respiratory technician.
- No medical personnel were budgeted for the May Institute program. At Fernald, \$4.4 million was budgeted for contracted services, including medical services, in FY

09, according to a Fernald budget document provided by DDS.

- The May Institute program contract specified that \$151,595 would be budgeted for "Agency Admin. Support Allocation." This line item appears to refer to the May Institute's administrative office costs. *The COFAR Voice* reported in May that 13 executives of the May Institute were each listed on an IRS tax filing as making over \$143,900 in FY 2009, including the firm's CEO, whose total compensation was over \$1 million that year.

While residents of vendor-run group homes can access medical, clinical, and therapeutic services, the DDS documents indicate that funding for those services does not come from the residential services contracts, which formed the basis for the administration's cost comparison with the developmental centers. Instead, medical, clinical, and therapeutic services in the vendor system are generally funded through the state's Medicaid budget.

In addition, staffing levels for vendor-based services are likely to be considerably lower than developmental center services.

COFAR emailed a query to DDS Commissioner Elin Howe on June 16, asking how clinical, medical, and other services for the May Institute program residents were funded. The COFAR query also sought an explanation of the \$151,595 administrative support allocation. As of the July 6 production deadline for this newsletter, Howe had not responded to that question.

Cost study on ICFs nixed

With no public debate, state legislative leaders scuttled proposed state budget amendments in April and May, which would have required an independent cost analysis prior to the planned closures of the Templeton, Monson, and Glavin Developmental Centers.

COFAR first called for an independent study late last year, after the Patrick administration claimed the closures of the three centers would save the state \$20.3 million a year. (See story on Page 1 on COFAR's review of documents backing up the administration's savings claim.)

"It is crucial that we subject as important a state policy as closing developmental centers to an independent cost analysis," said COFAR President Thomas Frain. "It's very unfortunate that a handful of powerful legislators can simply bypass the democratic process and not allow that to happen."

A group of COFAR advocates visited several legislative offices on May 18, including the office of Senator Stephen Brewer of Barre, chairman of the Senate Ways and Means Committee, to urge support for the cost study. (See photo on Page 1.) At the time, Brewer was considering a state budget amendment, filed by Senator Michael Moore of Worcester, which would have required that the study be conducted by a "non-governmental entity" selected by the state Inspector General's Office.

Continued on next page

Continued from previous page

A week later, Brewer reportedly ordered that Moore's amendment be placed in a group of proposed budget amendments scheduled to be rejected in a single voice vote on the Senate floor.

"(Senate) Ways and Means was not supportive" of the cost study amendment, a staff aide to Moore said later, referring to Brewer. The aide said that before the amendment was placed in the budgetary reject group, Moore had been asked by Brewer to water the measure down by restricting the study to the Glavin Center only. Moore complied with the request and re-drafted the amendment to apply only to Glavin. But the redrafted bill was apparently still unacceptable to Brewer.

A similar fate befell a budget amendment in the House in April.

ADDP/Arc make false claims about Fernald care and costs

As the state budget debate heated up in April and May of this year, opponents of the developmental centers in Massachusetts launched a lobbying campaign that falsely claimed that guardians' transfer appeals were driving up the cost of care at the Fernald Developmental Center.

The campaign was spearheaded by the Massachusetts Association of Developmental Disabilities Providers and the Arc of Massachusetts, many of whose members are vendors seeking additional contracts with the Department of Developmental Disabilities.

COFAR tracked the ADDP/Arc campaign and sent an email message to the ADDP, asking for a retraction of the false claims. COFAR also sent a letter to the editor of *The Boston Herald*, which published a story in May with a highly overstated claim about Fernald's current cost.

"The misrepresentations by the ADDP and the Arc were extremely serious," said Colleen Lutkevich, COFAR executive director. "Not only were these false cost claims damaging to the reputations of the guardians of the remaining Fernald residents, but they were used to lobby key legislators against an independent cost analysis prior to closing three other developmental centers in the state."

On April 25, ADDP President Gary Blumenthal and Arc President Leo Sarkissian signed a letter to House legislators, claiming that the cost of continuing to operate Fernald was "\$1.3 million per month for 16 individuals due to administrative appeals." However, in a May 25 letter to COFAR, DDS Commissioner Elin Howe indicated that the \$1.3 million amount was an average monthly figure for the entire 2011 fiscal year. During the year, there were as many as 70 residents at Fernald, not just 16.

Also on April 25, Blumenthal was quoted by the State House News Service as claiming that the cost of care at Fernald had "nearly quadrupled" to \$917,000 per person. The News Service stated that the figure came from DDS documents. However, Marianne Meacham, DDS general counsel, told COFAR that to her knowledge DDS had never

cited a cost as high as \$917,000 and had no knowledge of any documents citing that amount.

On May 24, *The Boston Herald* ran a story headlined "16M to care for 14 people," which implied that DDS was spending \$16 million per year on the remaining 14 residents at Fernald. This figure, which would equate to a per-person cost of \$1.1 million, was also erroneously based on a projected operating cost for the full 2011 fiscal year.

Blumenthal was quoted in the *Herald* story as terming the claimed cost "excessive" and "the cost of delay" in closing Fernald.

In her May 25 letter, Howe stated that the projected cost of operating Fernald in the coming fiscal year was \$8.9 million for the remaining 14 residents. In addition, Howe wrote that spikes typically occur in per-person costs of developmental centers when the residential population is reduced "in the final stage of closure."

Chelmsford attack shows need for ICF care model

An attempted rape in May of a woman in Chelmsford by a resident of a community-based group home illustrates the need to preserve the federally prescribed Intermediate Care Facility model in Massachusetts, COFAR contends.

The Lowell Sun reported on June 3 that Tholda Chhom, a resident of a state-run group home, attacked a pregnant woman inside her home next door and ripped off her shirt before being pulled off the woman by her husband. After an altercation with the husband, Chhom ran back to his residence before being apprehended by police. Chhom was later placed in "a more secure facility," according to *The Sun*, but Chelmsford residents were concerned he might be returned to the same group home.

In a June 14 letter to *The Sun*, COFAR noted that had the state's Intermediate Care Facility model been available to Chhom, the alleged attack might have been prevented. However, the Patrick administration is seeking to drastically reduce ICF-level care by closing four of the state's six remaining developmental centers, which are the only locations in which ICF care is currently available.

ICF care must meet federal standards that specify intensive levels of onsite clinical, medical, and nursing care and full-time supervision for DDS clients. Only a small fraction of the total number of people in Massachusetts with intellectual disabilities need ICF-level care, but Chhom would appear to be one of them, according to COFAR's letter. The group home system, in which Chhom was living, operates under less stringent staffing requirements.

According to *The Sun*, the staff reportedly didn't know Chhom had left his residence on the day of the alleged attack.

Fernald guardian wins ruling

DECISION, continued from page 1

Stephen Sheehy, an attorney representing the guardians of the remaining Fernald residents, termed Forton's ruling "fact specific," in remarks to *The Waltham News Tribune*. It is unclear what effect the ruling may have on other appeals, seven of which have been denied. Six were still pending as of early July.

In the cases in which administrative magistrates have ruled in favor of transfers, the guardians have filed further appeals to the state Superior Court, and have won stays of the transfers in a number of those cases.

DDS had planned to transfer Daniel O. to one of two renovated buildings at the Wrentham Center to which 64 former Fernald residents had already been transferred. Under the plan, Daniel, who currently has his own room at Fernald, would be placed in a room at Wrentham with a roommate. However, Daniel, who is described as extremely passive, has had problems in the past with "aggressive peers." His Individual Support Plan states that he needs his own room for that reason.

An alternative DDS transfer plan would place Daniel in a single room at Wrentham, but only in contact with other residents who are blind and who function at a lower cognitive level than he does. Forton concluded that neither living option for Daniel would result in an improved quality of life for him and therefore would not be in his best interest. Forton also noted that while Wrentham offers some improvements in nursing care over Fernald, Wrentham is much farther away from Daniel's brothers, who currently visit him weekly at Fernald.

The administrative appeals in the Fernald case have delayed the planned closing of the center by a year, and DDS has indicated that it is projecting the facility will stay open at least another year as the litigation continues. Opponents of the ICF care model at the developmental centers have blamed the Fernald guardians' appeals for the delay in closing Fernald and have charged that the delay has resulted in excessive costs. COFAR strongly disputes the charge (see story on Page 3).

Sheehy maintained that the purpose of the appeals has not been to keep Fernald open, but to ensure that the guardians' wards receive the best possible care. Under state law, guardians of individual residents of DDS facilities can appeal decisions to transfer those residents to other locations if the guardians disagree that the transfers will result in improved services or quality of life for their wards.

Sheehy said he would like to reach a settlement with the administration under which new, more cost-effective housing could be developed for his clients in a single location on the Fernald campus, while the current level of care is continued for them. Such a settlement would mirror a longstanding "postage-stamp" proposal by Fernald advocates, under which current residents of the facility would be allowed to remain in a reduced area, while the remainder of the campus was developed for other uses.

Sheehy said, though, that DDS has been uninterested in negotiating such a settlement. "I think there's a possibility for a workable solution here that would cost a lot less than the (\$8.9 million) amount DDS is projecting to spend on Fernald next year," Sheehy said.

COFAR seeks expansion of special education probe

In the wake of a state report on alleged abusive financial practices in the operation of a special education program in Merrimack County, COFAR is calling for an investigation of the entire contracting system serving people with intellectual disabilities in Massachusetts.

State Inspector General Gregory Sullivan alleged in June that John Barranco, the executive director of both the Merrimack Special Education Collaborative, a public agency, and the Merrimack Education Center, a nonprofit, used his position to fleece taxpayers of more than \$10 million. Among the allegations were that Barranco misused a credit card for tens of thousands of dollars in personal purchases, and arranged for "extravagant" executive bonuses and salaries for himself and top staff, including a former girlfriend of his.

After the announcement of Sullivan's findings, State Auditor Suzanne Bump told *The Boston Globe* she was investigating whether the Merrimack case was part of a larger pattern of abuse in the special education system in the state.

In letters to Bump and Sullivan, COFAR President Thomas Frain and Executive Director Colleen Lutkevich maintained that the special education cases the two officials are examining appear to be typical of abuses found in the human services contracting system as a whole. COFAR has found numerous examples in the state's human services contracting system that indicate a vulnerability to waste, fraud, and abuse.

The Merrimack Special Education Collaborative is intended to save costs among 10 school districts in providing educational programs and services for children with intellectual disabilities. Sullivan stated that Barranco and others had "used the blurred boundaries between the government entity (the Collaborative) and the private nonprofit (the Education Center) for personal enrichment."

Poor oversight may be a cause. COFAR examined both federal and state financial filings for both the Special Education Collaborative and Education Center and found that in a number of cases, the records didn't match up with each other. For instance, the federal IRS Form 990 for the Merrimack Education Center listed Barranco's total compensation as \$464,411 in FY 2009 and \$525,198 in FY 2010.

However, the state Operational Services Division listed Barranco's total compensation as \$427,909 in FY 2009 and didn't list any compensation for him in FY 2010 on its Uniform Financial Reports on the Merrimack Special Education Collaborative.

Most of state's delegation mum on Frank's opt-out bill

Most members of Massachusetts' congressional delegation are declining to state their position on a bill, which would give guardians of developmental center residents around the country a limited right to opt out of class action suits filed to close those centers.

In addition, the legislation (HR 2032) would require the U.S. Department of Justice to notify the guardians of class action suits ostensibly filed on their behalf, and to consult with them in any investigations undertaken of centers in which their wards are living. The bill has been proposed for the past two years by Massachusetts U.S. Representative Barney Frank.

According to the national VOR, lawsuits filed by federally funded attorneys have resulted in the closures of residential facilities and the evictions of thousands of residents, often with tragic consequences.

COFAR, which strongly supports the bill, polled the Massachusetts congressional delegation on June 22, and found that only two of the state's 10 House members were on record as supporting the measure, in addition to Rep. Frank. Staff aides to both Reps. Richard Neal and Michael Capuano said they intended to sign on as co-sponsors of the bill.

Neither Senator John Kerry nor Scott Brown have publicly expressed support for the bill. An aide to Kerry did respond to COFAR's inquiry, and said that because no companion Senate bill had yet been filed, the language of such a bill "would first have to be reviewed before we can comment."

COFAR followed up by asking if Kerry would support Frank's bill "in concept," and noted that the proposed legislation has been filed for at least the past two years. Kerry's office did not respond to COFAR's follow-up question.

Brown's office did not respond to COFAR's inquiry either.

As of the press deadline of this newsletter on July 6, staff of the remaining members of Massachusetts' House delegation either had not responded to COFAR's inquiry or said the matter was under review. No one expressed opposition to the measure.

Meanwhile, in Arkansas, a federal judge ruled in June that the DOJ had failed to consult with families of the Conway Developmental Center, an ICF, prior to filing suit to close the facility. In dismissing the DOJ allegations, Chief U.S. District Court Judge J. Leon Holmes cited testimony of family members of residents of the center who were "overwhelmingly satisfied" with the care delivered there, and consider the facility to be fully integrated with the surrounding community.

In his 85-page decision, Holmes stated that: "the United States [Department of Justice] 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."

Holmes also noted that the DOJ lawsuit led to the "oddity" that "...the United States simultaneously funds Conway Developmental Center, certifies it as eligible for those federal funds, and contends that the conditions there are so deplorable as to be unconstitutional."

Conference committee restores some DDS accounts

On the eve of the state's new fiscal year, which started July 1, a legislative conference committee restored funding to some hard-hit Department of Developmental Services line items.

The House-Senate conference committee restored \$3 million cut from the DDS administrative line item in Governor Deval Patrick's Fiscal Year 2012 budget proposal, which will save service coordinator jobs that would have otherwise been lost.

The committee also reduced a cut of \$13.9 million in the governor's budget plan in adult family supports, restoring \$8.4 million of it. The final budget plan, however, still leaves this account \$5.5 million lower than the spending in the just-ended 2011 fiscal year.

In addition, the DDS Day and Work program line item will have a projected \$1.7 million shortfall, even though the conference committee added \$1 million to the governor's proposal for the line item, according to Larry Tummino, a DDS deputy commissioner.

"There are challenges that remain..., but we are in a much better position than where we may have landed," Tummino stated in an email to advocates.

The conference committee did restore more than \$596,000, which had been cut from the governor's proposal for state-operated group homes. The governor had actually proposed a \$17 million increase in the state-ops line item as part of his plan to shift funding from the developmental centers as the Fernald, Glavin, Monson, and Templeton centers are phased down and closed.

The conference committee accepted the House and Senate budget plans for a \$7.8 million cut in the developmental centers line item, which was more than \$400,000 deeper than what the governor had proposed.

The Association of Developmental Disabilities Providers stated that it is also likely that additional funding will be needed for the state's Day Habilitation and Adult Foster Care programs, which are funded by Medicaid, and which are key community-based programs intended to replace programs provided in the developmental centers.

Please contribute

COFAR continues to need your financial contributions in order to continue our mission of advocacy for DDS clients and families. A donation box appears on the back of this newsletter.

Thank you!

COFAR
3 Hodges St.
Mansfield, MA 02048



COFAR is a family supported, education and advocacy organization funded by member families.

Phone: 508-339-3379

Fax: 508-339-5034

Thomas J. Frain, President, Thomas.frain@cofar.org
Colleen Lutkevich, Executive Director, colleen.lutkevich@cofar.org
David Kassel, Newsletter Editor, dkassel@earthlink.net

Please donate to keep COFAR alive and viable. Become a member, if you haven't already, and receive *The COFAR Voice*.

_____ Membership \$25

\$_____ Other Donation

First Name Initial Last name

Address City State Zip

Telephone () E-Mail Check #

Thank you!