



**THE MASSACHUSETTS COALITION
OF FAMILIES AND ADVOCATES, INC.**
3 Hodges Street, Mansfield, MA 02048
Telephone: (508) 339-3379 Fax: (508) 339-5034
www.cofar.org

The Case for the Developmental Centers in Massachusetts

April 2011

Background:

The Department of Developmental Services funds a significant percentage of the \$2.6 billion human services contracting system in Massachusetts.

This contracting system has expanded steadily since the 1970s, when a series of lawsuits were first filed in federal court over poor conditions in state-run institutions for persons with intellectual disabilities.

Under federal oversight, hundreds of millions of dollars were spent to upgrade the state institutions. At the same time, however, the commonwealth restricted new admissions to the state facilities and began to move thousands of their residents into community-based group homes operated by state-funded contractors.

COFAR, which has been in existence since 1983, has generally supported the expansion of the community system. At the same time, COFAR has strongly supported the continued operation of state developmental centers as part of that continuum of care.

When the Weld administration began closing state institutions in the early 1990s, COFAR objected, arguing that the administration was removing a key choice in that continuum for families and guardians. It was clear then, as it remains today, that the rapidly expanding community system did not have the resources to adequately serve those among its clients with the most severe and profound levels of intellectual disability and the most serious medical conditions. It is those people who predominately make up the populations of the developmental centers.

COFAR maintains that the developmental centers serve as a "safety net" for a small but significant percentage of the intellectually disabled population in Massachusetts for whom community-based care has proved ineffective or, in some cases, detrimental.

A succession of governors of Massachusetts has not heeded COFAR's call for maintenance of this safety net. In 2003, the Romney administration proposed a second round of closures of state developmental centers, starting with the Fernald Center in Waltham. The Patrick administration is continuing, as part of its "Community First" initiative, to close developmental centers and expand the contracting system.

In 2008, the Patrick administration targeted the Fernald, Monson, Glavin, and Templeton centers for closure. Since that time, Fernald has been emptied of most of its residents and staff, and efforts have begun to close the three other centers by the end of Fiscal Year 2013. About 20 guardians of remaining Fernald residents have filed administrative appeals, which have kept that facility open well beyond its scheduled closing date of June 30, 2010. Meanwhile, opposition has been mounting among families of the Templeton, Glavin, and Monson centers to the planned closures of those facilities.

The Patrick administration has stated that it plans to keep the Wrentham Developmental Center open indefinitely and has deferred a decision on whether to close the Hogan Regional Center. COFAR and other supporters of the developmental centers contend that keeping only one or even two such facilities open in the state will prove inadequate to meet the demand for the high-level care they provide.

Today, there are hundreds of contractors operating thousands of community-based group homes in Massachusetts. But as we note below, the current administration has failed, just as have the others before it, to fund, manage, and oversee the community-based system adequately.

The impetus behind the continuing institutional closures and expansion of the contracting system is money, politics, and ideology. The contractors are well organized and tied in politically to the Legislature and executive branches. The Patrick administration also has an ideological bias against institutional care, and has joined the contractors in perpetuating myths that the developmental centers are outdated and segregated. DDS Commissioner Elin Howe was recruited from New York State, where she presided over institutional closures, to do the same in Massachusetts.

This anti-institution ideology is pervasive. Federally funded organizations, such as the Center for Public Representation, continue to intervene in litigation intended to close developmental centers around the country. The U.S. Department of Justice Civil Rights Division is involved in legal efforts around the country as well to cite developmental centers for violations and close them, but has not investigated the community system. (Contact the York Legal Group in Pennsylvania for more on this. <http://www.yorklegallgroup.com/practiceareas.html>.)

For more information:

Administration's Community First Plan, available at:
http://www.mass.gov/?pageID=eohhs2terminal&L=5&L0=Home&L1=Consumer&L2=Disability+Services&L3=In-home+and+Community+Living+Supports&L4=Community+First&sid=Eeohhs2&b=terminalcontent&f=eohhs_communityfirst&csid=Eeohhs2

Michael K California Appeals Court case in which a vendor argued that a blind, paralyzed, and profoundly intellectually disabled man would not have "freedom to leave" a state facility because of locked doors. See:
<http://www.leagle.com/xmlResult.aspx?xmlDoc=in%20caco%2020100622085.xml&docbase=cs1war3-2007-curr>

Fernald League blog post on this and other cases at
<http://www.bluemassgroup.com/diary/20518/guardians-rights-upheldin-other-states>

Fernald League blog post on protection and advocacy organizations at
<http://www.bluemassgroup.com/diary/20010/legal-representation-from-big-brother>

The Case for the Developmental Centers

1. The planned closures of the developmental centers will not result in a savings to taxpayers

The administration's claimed cost savings in closing developmental centers appears to be based on an apples-to-oranges comparison of the average community-based resident and the average facility-based resident. Developmental center residents are older, more medically involved and more intellectually disabled on average than community-based residents.

The administration has projected capital expenditures in keeping the developmental centers open but has not publicly projected the costs of building the new infrastructure in the community that will be needed when the centers are closed.

The administration's cost analysis does not appear to account for community-based costs that do not fall under the Department of Developmental Services budget. Examples include doctors' costs and day habilitation costs, which are paid by MassHealth.

Developmental centers provide economies of scale in terms of purchases of food, medications, and other supplies. These economies of scale are not as available in the community system. In addition, centralized services in the developmental centers

provide for savings in transportation costs, which are lost in the dispersed community-based system.

For more information:

Walsh, et al., "Cost Comparisons of Community and Institutional Residential Settings: Historical Review of Selected Research, Mental Retardation, Volume 41, Number 2: 103-122, April 2003; See <http://www.vor.net/images/Costcomparison.doc> and 2009 update: http://www.vor.net/images/stories/pdf/CCS_Update.doc

COFAR blog post: <http://www.bluemassgroup.com/diary/21597/we-need-an-independent-cost-comparison-in-closing-developmental-centers>

COFAR blog post on projections by the State of Connecticut that closing its remaining developmental center will not save money:
<http://www.bluemassgroup.com/diary/21728/ct-no-savings-in-closing-developmental-center>

2. The community-based system is under-funded and provides less intensive care than the developmental centers. However, phasing down and closing the developmental centers has not increased funding of the community system:

Despite the administration's "Community First" commitment, the community system in Massachusetts remains badly under-funded. At the same time, anticipated savings in phasing down and closing the Fernald Developmental Center and other state facilities have not been redirected, as promised, into the community-based system. Key programs intended to replace institutional services, such as day habilitation and adult foster care, are being cut. Service coordinators, who manage care for persons in the community system, are being laid off and those who remain are facing unprecedented caseloads.

Thousands of people in Massachusetts are waiting for residential placements and services in the community system. DDS won't say how many are waiting and denies there is even a waiting list.

Direct-care workers in the community system are underpaid and many lack benefits and are under-trained. These workers have gone without pay increases for the past three years because the administration and Legislature have failed to fund a salary reserve line item for that purpose.

Former developmental center residents are not finding equal or better care in the community system. The community-based system operates under a waiver to Title XIX of the Social Security Act, which sets standards for Intermediate Level Care in the developmental centers. Under ICF care regulations, medical, clinical, physical therapy, and other services are provided on the developmental center site. Doctors and nurses are available on site, 24 hours a day. Under the community-based waiver system, nurses, clinicians, physical therapists and other personnel float among the group homes in a geographic region.

Under ICF regulations, only doctors or licensed nurses may dispense medications to facility residents. Under the waiver, non-licensed, direct-care staff can dispense most medications after taking a 16-hour course.

These lower standards, combined with lower pay and benefits in the community-based system, make it impossible to provide care in the community system that is equal to or better than the developmental centers.

For more information:

Association of Developmental Disabilities Providers statement and letter to Health and Human Services Secretary JudyAnn Bigby on cuts to day habilitation and other community-based programs:

<http://archive.constantcontact.com/fs084/1101398806423/archive/1104400804858.html>

American Health Care Association statement on Intermediate Care Facilities:

<http://www.vor.net/legislative-voice/37-additional-dd-act-reauthorization-resources/101-icfmr-program-background-and-history?q=icf+american+health+care>

Online description of Intermediate Care Facility regulations:

http://docs.google.com/viewer?a=v&q=cache:x9Mv1solzNkJ:www.cms.hhs.gov/CertificationandCompliance/Downloads/ICFMR_Background.pdf+42+CFR+Part+483,+Subpart+I,+Sections+483.400-+483.480&hl=en&gl=us&pid=bl&srcid=ADGEESjmBDJTxwdo5s0i7hfWCPCN81AelMhpMnzH7NHLEnv2ToUHeHC1XN11K26GA-QFERunP6eUuGlaI_8ztPuBAZa8Q-tCXCzXXMjF9qBZEYZkQkiuw5T8DA2aCVNrWmEdyWbgi9E4&sig=AHIEtbTh7-DVXqLz5jz_EFQEfziDaBCIeg

Fernald League blog post on how First Circuit Appeals Court killed ICF-level care:

<http://www.bluemassgroup.com/diary/19050/how-the-first-circuit-court-killed-highlevel-dds-care>

Fernald League blog post on Cathy McDonough's care in a group home:
<http://www.bluemassgroup.com/diary/15621/cathy-mcdonoughs-care-in-a-dmr-group-home>

Fernald League blog post on case of Anna Tross:
<http://www.bluemassgroup.com/diary/15168/>

Fernald League post on administration's lack of a waiting list for community-based care:
<http://www.bluemassgroup.com/diary/16908/the-question-the-administration-doesnt-want-to-answer>

3. There is an additional layer of bureaucracy in the community system: highly paid executives

As the number of human services contractors in the DDS system has grown, so has a new layer of managerial bureaucracy. These are managers of the contracting firms, an increasing number of whom are paid more than \$100,000 a year.

Currently, a state regulation [(808 CMR 1.05 (24))] caps an individual contract executive's salary that can be charged to the state at \$143,900. In cases in which an executive has a higher salary, the company has to obtain that money largely through private donations. The problem with this system is that over the past 30 years, as state services have been steadily privatized, the number of contract executives earning at least \$143,900 a year has grown steadily. There are more than 1,000 firms that contract with the Executive Office of Health and Human Services.

This growing number of highly-paid executives is a significant cost to taxpayers and is one of a number of factors that negate projected savings in privatizing state services.

For more information:

COFAR blog post on contractor salaries:
<http://www.bluemassgroup.com/diary/22203/gov-patrick-should-look-at-contractors-salaries-too>

4. The community system suffers from a lack of monitoring and oversight

It is difficult and expensive to adequately monitor the thousands of group homes in the DDS community-based system, and adequate monitoring is not being done. DDS does not have sufficient licensing and certification personnel to regularly check all of the homes to ensure adequate care and conditions. In many cases, DDS appears to rely on service coordinators to report on conditions in group homes. This is ineffective because service coordinators are not trained as licensing inspectors. Moreover, inspecting group homes conflicts with the service coordinators' assigned role of managing the care of the residents in the homes.

For more information:

Fernald League blog post on lack of regular inspections of group homes and human service provider organization's proposal for reducing existing oversight of group homes: <http://www.bluemassgroup.com/diary/15468/surprise-dmr-vendors-want-even-less-group-home-monitoring-an-update>

Fernald League blog post on use of service coordinators to monitor group homes: <http://www.bluemassgroup.com/diary/15156/what-weve-been-told-about-monitoring-dmr-group-homes>

5. There is a high potential for fraud and waste in the community-based contracting system.

The poor oversight of the entire human services contractor system has left it vulnerable to fraud and waste. The state no longer has internal contract auditors, but instead relies on CPA firms hired by the contractors themselves that provide opinions on the accuracy of their financial statements. The CPA firms do not generally investigate or provide opinions on the contractors' business practices. And the fact that the CPAs are paid by the companies whose financial statements they are reviewing on behalf of the state makes them less than independent sources of information to the state.

Human services contractors are periodically reviewed by the State Auditor, but the auditor has the capacity to examine only a small proportion of those contractors each year.

In recent years, the state appears to have tightened some of its rules regarding related-party practices and other contracting arrangements involving human services providers that led to procurement scandals in the early 1990s. But many questionable practices appear to remain. For instance, a 2009 report by the State Auditor identified numerous questionable compensation and contracting practices by Road to Responsibility, Inc., a DDS contractor. Many more such reports can be found on the State Auditor's website.

In addition, COFAR and the Fernald League have investigated expensive lease programs initiated by DDS to develop group homes for former developmental center residents. These leasing arrangements appear to be virtually risk free to the developers of the residences, but may be significantly more expensive to taxpayers than conventional state financing of these facilities.

For more information:

Fernald League blog posts on complexity of leasing arrangement for group homes:
<http://www.bluemassgroup.com/diary/16330/the-high-cost-and-complexity-of-the-states-lease-arrangement-for-group-homes-an-update>

Also, <http://www.bluemassgroup.com/diary/14087/>

Fernald League blog post on cost of renovating the Wrentham Developmental Center to accommodate former Fernald Center residents:
<http://www.bluemassgroup.com/diary/20854/final-price-tag-on-wrentham-renovations-reaches-32-m>

State Auditor report on Road to Responsibility, Inc.
<http://www.mass.gov/sao/Audit%20Reports/2009/200843173c.pdf>

State Auditor's report on TILL's business practices.
<http://www.mass.gov/sao/Audit%20Reports/2002/200043963.pdf>

Article on a Danvers Vinfen home that was condemned.
<http://www.wickedlocal.com/danvers/news/lifestyle/health/x985826934/Danvers-Board-of-Health-condemns-DMR-house>

6. Abuse and neglect in the community-based system: The difference between community and developmental center systems.

Poor oversight has also contributed to a situation in which abuse and neglect go relatively unpunished in the community-based system. Statistics from the Disabled Persons Protection Commission, in fact, show that between 2007 and 2009, abuse and neglect complaints were investigated at a 50 percent higher rate per person in the developmental centers than the community. In other words, abuse and neglect are less likely to be

reported and investigated in the widely dispersed and less-well-monitored community system.

Compounding the problem is the chronic under-funding of the DPPC, which is forced to refer most of the complaints it receives about abuse and neglect to DDS for investigation. This results in a conflict of interest for DDS, because DDS contracts with the same vendors against whom abuse and neglect complaints have been made. DDS is naturally reluctant to discipline or terminate contractors on whom it relies to provide services.

For more information:

Wrentham Association response to Court Monitor's report discussing DPPC abuse statistics and listing DPPC cases

Kassel spreadsheet on DPPC abuse, neglect statistics in developmental centers versus the community system

Fernald League blog post on DPPC abuse and neglect statistics.
<http://www.bluemassgroup.com/diary/20929/playing-with-statistics>

New York Times article on abuse and neglect in New York State's community-based system: http://www.nytimes.com/2011/03/13/nyregion/13homes.html?_r=3&emc=eta1

Cincinnati Enquirer article on abuse and neglect in Ohio's community-based system:
http://www.enquirer.com/mrdd/abuse_neglect.html

COFAR blog post on guardian's decision to personally press charges in assault case:
<http://www.bluemassgroup.com/diary/22268/justice-is-elusive-in-assaults-of-the-intellectually-disabled>

Letter from DPPC Executive Director Nancy Alterio on lack of funding for DPPC staff, 2007.

COFAR Voice article on DPPC being down to three investigators:
http://www.cofar.org/NewsletterPDF/VOICE_January2004.pdf

Article on abuse and neglect allegations at a Waltham group home:
<http://www.city.waltham.ma.us/ferald/FernaldAuxFiles/Fernald%20Testimony%20PH%20120309%20Part%203.pdf>