



The COFAR Voice

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DPPC struggles for funds Special Report

Year after year, the state Disabled Persons Protection Commission deals with a lack of adequate funding and continues to face a glut of constraints over what it can legally investigate.

As a result, the state's only independent agency charged with investigating abuse and neglect of disabled individuals is able to undertake less than 2 percent of those probes, according to data reviewed by COFAR.

The DPPC's data show that between fiscal years 2004 and 2014, the agency investigated an average of 101 cases each year, or 1.5 percent of the average number of abuse complaints it received. In contrast, the DPPC assigned or referred an average of 6,836 cases per year – or more than 98.5

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DDS proposes changes in group home license rules

COFAR has objected to a series of proposed changes in Department of Developmental Services licensing regulations that appear to reduce oversight of corporate providers of services to the developmentally disabled.

The proposed regulatory changes also appear to further reduce family involvement and choice in care and services.

A key change in the regulations would appear to give DDS providers at least partial say in whether their
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FY '16 budget reductions hit state care

State-run care for people with developmental disabilities would be hit hard under Governor Charlie Baker's proposed budget for the coming fiscal year .

In the first budget of Baker's new administration, virtually all Department of Developmental Services budget line items would be funded at lower amounts than the Department had requested, according to DDS Commissioner Elin Howe.

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DDS investigates itself in Perry case

The death in 2013 of Dennis Perry, an intellectually disabled man, at the Templeton Developmental Center, appears to demonstrate the need for independent agencies such as the Disabled Persons Protection Commission to investigate all abuse complaints.

As noted in the Special Report article to the right, the DPPC has been forced to assign or refer the vast majority of the abuse and neglect complaints it receives to other agencies to investigate. Those agencies, however, also provide services and therefore are effectively required to investigate themselves.

Perry, who was 64, died in September 2013 after having been allegedly shoved into the side of a boiler at the developmental center's dairy barn by Anthony Remillard, a resident of the center, who had a history of violent behavior.

The DPPC was prevented by statute from investigating Perry's death because he was over 60. The Executive Office of Elder Affairs was similarly prevented from investigating the matter because it occurred in a long-term care facility. The investigation, as a result, fell by default to the Department of Developmental Services, which funds and operates the Templeton Center.

The DDS investigation report raised a number of questions about its thoroughness. The report and related correspondence, dated in August 2014, concluded that there was no evidence that the staff at the Templeton Center could have prevented Remillard's alleged "spontaneous and unpredictable assault" on Perry.

The DDS report, however, appeared to have failed to address a number of key questions about the Perry case, including whether the overall level of supervision at the Center or of Remillard himself was adequate. The report merely examined the actions of staff caring for Remillard in the moments prior to, and during, the alleged assault.

In January 2014, the Children, Families, and Persons with Disabilities Committee, announced a planned hearing on the Perry case. That hearing, however, has still not been scheduled.

DPPC struggles for funding

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percent of them – to other agencies to investigate, with the Department of Developmental Services chief among them.

"The DPPC may have one of the most important missions of any agency in state government," said COFAR Executive Director Colleen Lutkevich. "Yet, it is barely permitted to operate. It's a shameful situation."

The impact of the agency's lack of adequate funding appears to have changed little since *The COFAR Voice* published an in-depth look at the agency in 2004. At that time, the newsletter noted that between 1999 and 2003, the number of agency personnel investigating abuse and neglect complaints had dropped, due to budget cuts, from seven investigators to three.

A follow-up review by COFAR this year of DPPC reports and budget documents shows that in the decade between fiscal 2004 and 2014, neither the governors involved nor the Legislature demonstrated a consistent commitment to the DPPC or its mission. In a number of years, the agency's budget was cut, resulting in the need for layoffs of investigators and other personnel, despite rising caseloads.

In his first budget, newly installed Governor Charlie Baker has proposed level-funding for the DPPC — an effective cut in the agency's funding when adjusted for inflation.

Among the results of the DPPC's historic lack of funding is that the agency was able only to increase its investigative staff from three in fiscal 2004 to six as of 2014; and some of those investigators have other duties and are not available to work on investigations full time, according to Emil DeRiggi, deputy executive director of the agency. The investigative staff actually appears to be smaller than it was in 1999, which seven investigators were employed.

The DPPC is the only state agency in Massachusetts whose mission is devoted exclusively to preventing and investigating abuse and neglect of disabled persons. Other agencies that undertake those investigations also employ or fund caregivers who provide a wide range of services to the same individuals. This appears to cause potential conflicts for those agencies by requiring them to investigate their own services.

According to DeRiggi, the DPPC maintains an oversight responsibility over investigations it assigns to other agencies. However, the DPPC's lack of funding appears to limit its oversight capacity.

The DPPC's total funding rose from \$2 million to \$2.8 million in inflation-adjusted (fiscal 2015) dollars between fiscal 2004 and 2015 – a 37 percent increase over that period. But budget cuts between fiscal 2009 and 2012 necessitated overall staffing reductions, according to agency annual reports and other records. The DPPC budget was cut each year from fiscal 2009 through 2012, dropping from \$2.6 million to \$2.3 million in inflation-adjusted dollars.

It was only in the current and past two fiscal years that some of that lost ground was made up in the form of increased funding, bringing the budget to \$2.8 million in fiscal 2015. But given that the state is facing a budget shortfall for fiscal 2016, the DPPC is once again finding itself on the fiscal chopping block. "The DDS corporate provider line item alone is over \$1 billion," said COFAR President Thomas Frain. "Yet, the budget of the agency that oversees abuse and neglect in all DDS programs is just \$2.8 million. It's a joke."

COFAR seeks DPH report on hospital death

COFAR is seeking the public release of an investigative report on the case of a developmentally disabled man who died while en route to Lowell General Hospital in February 2012 after having been turned away from the hospital twice without any significant treatment.

The report was done by the Department of Public Health, which has declined to release it. The DPH contends the department is prohibited by state law from disclosing medical information about an individual to anyone other than his or her guardian or an "authorized representative." COFAR is unaware of who the man's guardian or authorized representative might be.

In an appeal filed on February 11 with the Secretary of the State's public records supervisor, COFAR noted that it had asked DPH for a copy of the report with all personal, identifying information redacted. The Department did not respond to that request.

COFAR believes the case suggests the possibility of inadequate training by the hospital of health care personnel in the treatment of developmentally disabled persons. As such, it is in the public interest to know what the report's findings and conclusions are.

The man, a former resident of the Fernald Developmental Center, had been living in a group home in Chelmsford and was attending a day program on February 6, 2012, when the staff at the day program made the first call to 911 to take him to the hospital. He had reportedly been having difficulty breathing and was sweating profusely. The hospital released the man shortly after his arrival, however, and sent him back to his group home, according to sources.

The following morning, the man was slumped over in his wheelchair and sweating heavily, a source said. A group home staff member called 911 shortly afterward. The man, however, was sent home from the hospital for a second time. Shortly after arriving back at the group home, the man began to vomit and then lost consciousness. He died while being taken to the hospital for the third time. The DPPC referred the case to the Department of Public Health for investigation.

In its Public Records appeal, COFAR noted that there appear to be inconsistent policies among state agencies in releasing investigative reports.

DDS seeks changes in provider licensure rules

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licenses to operate residential and other programs are renewed. Proposed new language in the regulation (115 CMR 8.00) codifies a process that allows providers to assess their own compliance with state licensing and certification standards as part of the licensure renewal process.

COFAR submitted comments to DDS in December, opposing the regulatory changes to DDS. COFAR stated in a letter to DDS that allowing providers to assess their own services sanctioned a conflict of interest.

DDS normally grants licenses to corporate providers every two years to operate residential and other programs, following a survey or inspection of their facilities.

Under the DDS regulation, a proposed new section refers to both a "self-assessment" done by the provider of its own services and a "targeted review" by the Department as part of the licensure renewal process. The proposed language in the section states that "ratings from the targeted review and self-assessment [done by both the Department and the provider] **will be combined to determine...the licensure levels for the provider.**" (Emphasis added.)

In a December 12 letter to DDS, COFAR Executive Director Colleen Lutkevich and Board President Thomas Frain stated that the proposed language "seems to defeat the purpose of the licensure process, which should be to provide an outside assessment of the provider's ability to provide adequate supports and services, and to make licensure decisions that are independent of influence from the entity being licensed."

COFAR's letter also raised objections to a number of other proposed changes in the regulation, including the addition of a 30-day notice provision to providers of planned licensure visits. At the same time, DDS was proposing in the regulation to remove an existing provision that notification of licensure visits be given to guardians, family members, individuals, and service coordinators.

COFAR further objected to proposed changes to a second DDS regulation concerning services and supports (115 CMR 7.00). Among the proposed changes to that regulation was the removal of the words "rights and dignity" in discussing client outcomes. In addition, in defining Family Supports, DDS proposed eliminating language in the regulation that those supports should "enable the family to stay together."

"We cannot think of any legitimate justification for removing that phrase," the letter from Lutkevich and Frain stated. In discussing Staffing Standards, the proposed rewrite removed a reference to providers having sufficient staff with enough training to ensure "quality of life outcomes delineated in the provider's mission statement..." DDS held public hearings on the proposed changes in early February.

DDS eligibility law cost info sought

Even as the Department of Developmental Services faces a budget crunch in the coming fiscal year (see story on Page 1), the Department is confronting yet-to-be disclosed additional costs as the result of a new eligibility expansion law.

In a query to DDS on March 2, COFAR asked whether the Department had developed a cost estimate for the new law and what that estimate might be.

The new law specifies that in addition to people with intellectual disabilities, people with autism and conditions known as Prader-Willi Syndrome and Smith-Magenis Syndrome will be eligible for DDS services. Until now, state law has restricted eligibility for DDS services to people with "intellectual disabilities," as measured by a score of approximately 70 or below on an IQ test.

As of March 9, a notice on the DDS website stated that the Department was attempting to "gather information and learn more about service needs," as a result of the new law. The notice added that the Department was developing regulations to implement the law, and planned to post a notice of public hearings on those regulations. New eligibility applications will be available soon, the website stated.

COFAR has raised a concern that in specifying three additional conditions that make individuals eligible for DDS services, the new law necessarily leaves out other conditions that can and often do result in many of the same types of functional limitations, including Williams Syndrome, Spina-Bifida, and Cerebral Palsy.

COFAR seeks records on Real Lives law payments

COFAR is seeking records from the Department of Developmental Services concerning payments made in the past two years to a private firm hired to provide services under the newly enacted Real Lives Law.

DDS has paid more than \$24 million to Public Partnerships, LLC, a financial management firm, during the current and previous fiscal years, according to online information available about state funding. The online sites, however, do not specify the services that the firm has provided for those payments.

According to the DDS website, Public Partnerships has begun contracting with DDS to provide "individualized fiscal intermediary" or financial management services to participants in the Real Lives program. The firm is a subsidiary of the Boston-based Public Consulting Group.

The Real Lives law, which was signed into law last July, introduces what is called "person-centered planning" in providing care and services to persons with developmental disabilities. It is touted as providing individuals with more choice and "self determination" in the services they receive from DDS.

The final version of the legislation dropped a number of provisions in earlier drafts that appeared to unduly benefit corporate providers of DDS services. Nevertheless, COFAR continues to have concerns that the new law will transfer decision-making authority from guardians and family members of disabled individuals to private financial management companies. As of early March, it did not appear that DDS had yet developed policies or regulations regarding the law, and more specifically concerning the nature of the financial management services under the law.

Public Partnerships is apparently not new to contracting with DDS. The firm received \$14 million in funding from DDS in Fiscal Year 2014, according to an online state site that tracks spending on human services contractors. It was not clear what services Public Partnerships provided to DDS in fiscal 2014. The state's Open Checkbook website listed a total of \$9.7 million in payments to Public Partnerships so far in the current fiscal year. The website, however, also did not specify the services provided for that funding.

Public Partnership billed itself on its website as "a full-service financial management services firm dedicated solely to providing fiscal/employer agent, third party administrator, and related support services to public agencies." Audited financial statements for the company and a Colorado affiliate, filed with the state of Massachusetts, stated that Public Partnerships and its Colorado affiliate received more than \$1 billion in total revenues in fiscal 2014.

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DDS earmarks background check funds

The Department of Developmental Services has set aside funding to develop a national background check system for current and new employees who care for persons with developmental disabilities.

It is not clear, however, how much funding has been set aside for that purpose.

In a conference call on March 4 on the state budget (see story on Page 1), DDS Commissioner Elin Howe said only that the Department had received funding for the national background check program and was "looking at the adequacy" of that funding. Howe did not provide any additional details about the funding.

In an email to Howe on March 2, COFAR asked what steps the Department has taken so far to develop the national background check program and whether it had applied for federal funds that have been available for that purpose.

The law will ultimately require that both current and prospective caregivers submit their fingerprints to a federal database maintained by the FBI. Up to now, persons hired to care for clients in the DDS system have had to submit only to an in-state criminal background check, which identifies criminal arrests and convictions in Massachusetts. The in-state background checks do not identify any convictions a job applicant might have from another state.

COFAR has noted that the new law contains provisions that delay the national background check requirements for existing DDS employees for four years and for newly hired employees until January 2016.

Prior to the enactment of the national background check legislation last August, it was stuck in legislative committees and continually re-filed for about a decade. DDS, moreover never applied for grant funds available since 2010 under the federal Affordable Care Act to design a national background check program.

DDS state-run programs facing reductions in FY '16

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Howe made the comments during a conference call with advocates for the developmentally disabled on March 4, the day Baker's budget was publicly released.

Howe said the governor's budget required a total of \$27 million in reductions from DDS funding requests, but that DDS had been able to reduce the hit by \$8 million by using some federal revenues as an offset to the total reductions.

As has been the case in the past several years, state-operated services appeared to be taking the brunt of the reductions. Howe noted that Baker was proposing a \$2.6 million reduction from the DDS request in the state-operated group homes line item. Under Baker's budget, the line item would actually be increased by \$5.1 million, from current-year spending (from \$209.6 million to \$214.7 million). But that amount was below what DDS considered necessary to maintain current services.

In January, COFAR sent a letter to Kristen Lepore, Baker's secretary of administration and finance, asking that the new administration consider making the funding of state-operated care for the developmentally disabled a priority. Baker's first budget, however, did not appear to address that situation.

In addition to the shortfall in funding for state-operated care, Howe said the state-run developmental centers line item would be funded under the governor's budget at \$2 million less than what DDS was requesting. That account would be cut from the level of spending in the current fiscal year as well, under Baker's budget.

Also, DDS service coordinators would be funded at a level that was \$1.8 million below what DDS had requested. The DDS administrative line item, which funds the service coordinators, would be increased under Baker's budget, but not by enough to maintain current services.

Baker seeks higher provider funding

Even as it was grappling with a projected budget deficit that was as high as \$760 million, the Baker administration and the Legislature added more than \$40 million in funding in the current fiscal year for the Department of Developmental Services' privatized group home system.

The additional funding had originally been sought by the outgoing Patrick administration and was inserted in the same mid-year legislation that cut funding for numerous other state budget accounts. The current-year budget deficit has been pegged by the Baker administration at \$768 million.

COFAR has criticized the supplemental budget increase for the provider line item, which had previously been increased by more than \$140 million from the previous fiscal year. The legislation containing the \$42.5 million supplemental funding measure was signed into law by Governor Baker on February 14.

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