



The COFAR VOICE

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State Representative Thomas Stanley, D-Waltham, testifies at May 11 hearing before the Legislature's Bonding, Capital Expenditures, and State Assets Committee on his bill, which would slow the sale of surplus state land.

Lawmakers restore state land sales process

Following an onslaught of protest from advocates for the mentally retarded and numerous other causes, a House-Senate conference committee has allowed the return of a deliberative process for the sale of surplus state property, where many DMR residents continue to live.

The conference committee on the 2006 state budget approved the June 30 expiration of a fast-track process that the Romney administration had adopted to sell state land for development.

"There is no deliberation in the process on the part of the administration in closing these facilities and selling off the land," said Colleen Lutkevich, COFAR Executive Director. "We think the conference committee has acted to bring back that deliberation."

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Cohen says community beds lag

Makes charge as Tauro admonishes DMR on pace of Fernald closure

The Department of Mental Retardation has been unable to develop new community-based homes for hundreds of residents facing potential evictions from state facilities, an attorney for those residents claims.

Attorney Beryl Cohen made the charge during a June 15 status hearing before U.S. District Court Judge Joseph Tauro, who is presiding over continuing litigation involving the Romney administration's plans to close the Fernald Developmental Center in Waltham.

Cohen noted that in proposing a 13-point plan last July to close Fernald, DMR projected that it would develop 80 community-based beds in the metropolitan Boston and northeast regions for the Fernald residents. However, he said, the DMR to date, has not received any suitable responses to a request for proposals that it issued.

"What about the 80 beds that have been promised to the families? Where are they?" Cohen asked.

The administration announced in February 2003 that it intends to close the six remaining state facilities for the mentally retarded, starting with Fernald. The facilities house some of the state's most severely and profoundly retarded residents, most of whom have highly specialized and intensive residential living requirements.

Cohen contended that DMR has attempted to withhold information from him concerning the applications that have been submitted in response to the RFP for community housing. Many of the responses, he said, provided only sketchy specifications and many did not even identify sites for the residences.

Meanwhile, during the June 15 status hearing, Tauro admonished administration officials not to press Fernald residents to leave the facility before they have undergone their

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Privatization study commission urged

More than a decade after then Governor William Weld intensified the state's efforts to privatize human services, there has been little substantive study of the impact of that ongoing policy.

COFAR has urged a legislative committee to endorse a longstanding proposal for a 15-member commission that would examine the policy, which has had mixed results.

"During the past ten years, the private provider system has established a track record of problems, including financial mismanagement, abuse and neglect of the mentally retarded and mentally ill, politically connected contractual relationships, underpaid direct-care workers, and overpaid executive staff," COFAR President Thomas J. Frain testified on May 17 before the Legislature's Children and Families Committee. Frain stated that these problems have been coupled with severe system-wide budget cuts in recent years and with the administration's plans to close the remaining state facilities for the severely and profoundly mentally retarded. "All of these issues make this commission's work mandatory and overdue," he said.

In the early 1990s, Weld adopted the recommendations of a privatization task force he had created to close and consolidate nine state mental retardation, mental health, and chronic care facilities in Massachusetts. The political upheaval that those closings created led to the passage by the Legislature of the Pacheco Law, which required cost-benefit analyses by the State Auditor before further state services could be contracted out to private vendors. The law slowed the privatization process drastically; but in 2003, Romney administration began pressing ahead with plans to close the six remaining state facilities for the mentally retarded.

Representative Parente has proposed the commission legislation for the past 18 years.

Legislation authorizing the commission, which would include seats for several advocacy groups, including COFAR, has been proposed each year for the past 18 years by Representative Marie Parente, D-Milford, but has never gotten out of committee. In May, the newly created Committee on Children and Families heard testimony on the bill for the first time. Representative Parente, who is retiring from the Legislature at the end of her term, said that passage of the legislation would constitute a "retirement gift" for her.

There has been no systematic study of the administration's privatization policies since the Legislature's House Post Audit and Oversight Committee concluded in a 1997 report that the Department of Mental Retardation's oversight of the

community-based delivery system raised "grave doubts about the (DMR's) commitment to the basic health and safety issues and ensuring that community placements provide equal or better care for DMR clients." The Post Audit report also stated that "despite DMR's substantial efforts to place its clients into the community, all too often DMR clients are isolated not only from the community but from protective services as well..." In addition, many mentally retarded persons "went from intense and tailored special education services provided by school systems to little or no service once they entered the community," according to the report.

Frain noted in his testimony that anecdotal evidence suggested that the problems identified by the Post Audit Committee with privatized, community-based care have persisted to this day. In 2002 and 2003, for instance, there were 235 substantiated claims of abuse, of which 28 were cases in which the abuser agency was a state-operated home, and 207 were in privately-run, community-based residences.

At the same time, Frain noted, the Massachusetts Disabled Persons Protection Commission, the agency charged with the investigation of cases of abuse and neglect of mentally retarded and other disabled people, has been hamstrung by budget cuts in its efforts to carry out its mandate. As COFAR reported in its January 2004 newsletter, the DPPC was struggling with three investigators to respond to thousands of reports of abuse and neglect. As a result, the chronically under-funded agency has had to transfer most of its investigations to the DMR. DMR, however, is dependent on the services provided by the same private providers it investigates—a situation, which COFAR considers to be a conflict of interest.

Financial investigations

The privatization commission bill would also authorize the privatization commission to investigate the financial side of the private provider industry, including such things as executive compensation versus direct-care salaries, related-party transactions, provider fraud, and the relative cost of state versus community-based services. In its November 2004 newsletter, COFAR reported that a review of 10 state filings showed that top executives of private provider firms were earning average wages and benefits of \$117,000 a year. The CEO of one firm was paid a total compensation of over \$369,000 in 2003. Yet, direct-care employees of these organizations, who work on the front lines in group homes for the mentally retarded, were being paid in the range of \$10 an hour, which translates to a yearly wage of about \$21,000. The language in the bill specifically notes that private providers have been "forced to hire unskilled, undereducated and inexperienced workers who often lack the basic skills necessary to assist others in developing their own like skills and may jeopardize the safety of those in their care." Furthermore, the "inferior and inequitable" compensation of direct care workers has reduced program quality and stability, the legislation states.

Surplus land process hit

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Two years ago, an “outside section” to the state budget removed the Legislature from the state land disposal process, and local governments were no longer given the opportunity to purchase the land.

Earlier this year, Representatives Thomas Stanley, D-Waltham, and Jay Kaufman, D-Lexington, persuaded 112 House and Senate members to sign a letter calling for an end to the fast-track authorization. Stanley also proposed one of a number of bills to return some decision-making power in the disposal of state land to the Legislature.

The fast-track provision was scheduled to sunset on June 30. While the Senate ultimately adopted a budget provision similar to Stanley’s proposal, the conference committee allowed the return of the previous, deliberative process for land disposition.

The situation has been of particular concern for persons living in the remaining state facilities for the mentally retarded because the administration has targeted all of those facilities for closure, starting with the Fernald Developmental Center in Waltham. COFAR and other advocates contend the administration has yet to publicly issue a viable plan for placing residents of the facilities in alternative locations that provide equal or better care.

The administration has also not responded to a longstanding proposal by COFAR and the Fernald League to consolidate services for the mentally retarded in a portion of the Fernald campus in order to allow development of the remaining land there.

On May 11, Lutkevich testified before the Committee on Bonding, Capital Expenditures and State Assets, urging support for Stanley’s bill. Lutkevich noted that successful plans had been developed for the sharing and disposal of lands at the Wrentham Developmental Center and Glavin Regional Center in Shrewsbury. Similarly, she said, the Fernald property “could easily accommodate” its current residents while still allowing a portion of the land to be declared surplus and sold. “There is no reason to move these retarded people away from their long time homes,” Lutkevich said.

Darryl Every, an advocate for residents of the former Dever State School in Taunton, testified that DMR has declared that land to be surplus, resulting in the possibility that more than 100 residents of 13 state-operated group homes remaining on the property could be evicted. “We want protections before this transfer happens,” Every said.

Representative Marie Parente, D-Milford, testified that state assets have been assessed at notoriously low levels. Dever, she said, was “a classic case of an industrial park ending up paying almost nothing” for the land. “We can’t have development without proper planning,” she added.

Stanley acknowledged to the committee that prior to the adoption of the fast-track surplus land process, “there was

ample opportunity for delay” by local interests, the Legislature and others in the sale of state land. Stanley said his bill would give communities the right of first refusal at a purchase price of 85 percent and given them authority to transfer land to local community development corporations or land trusts. Other provisions of the bill stated that:

- Municipalities would be notified at the same time as state agencies that land was being considered for surplus designation.
- Public hearings would be required in host communities for all parcels larger than two acres that are declared surplus.
- The Legislature would be given 75 days to review and approve or disapprove the disposition plan for any property over 25 acres.

Facility protection bill stalls

The state Legislature is moving slowly on proposed legislation to change longstanding budget language calling for the consolidation or closure of remaining facilities for the mentally retarded in Massachusetts.

The bill, which was filed by Representative Thomas Stanley, D-Waltham, has remained in the Rules Committee since May.

In April, the House of Representatives rejected an amendment proposed by Stanley to the 2006 Fiscal Year budget, which would have required the DMR to maintain capacity at all six remaining facilities for those residents who wish to remain there. The amendment would also have eliminated language in the budget legislation implying that the 1999 U.S. Supreme Court decision in *Olmstead v. L.C.* mandates the closure of state facilities for the mentally retarded.

In a concession to Stanley, the House did agree to remove specific references in the 2006 budget to the closure of the Fernald Developmental Center in Waltham. Stanley also said that House Speaker Salvatore DiMasi had given his commitment that a hearing would be held within a month on a bill that would provide similar protections to the facilities. Stanley subsequently filed a bill, which states that the DMR commissioner must develop a plan both to maintain capacity at the remaining facilities and to consolidate buildings and services there so that unneeded land could be declared surplus [See story on page 1.]

Last year, COFAR joined the national Voice of the Retarded in filing a brief in federal court contending that the *Olmstead* decision does not preclude the use of state facilities by persons with mental retardation. It is also COFAR’s position that federal Medicaid law [42 U.S.C. Section 1396n(c)(2)(C)] requires that states offer a choice of state facility-based services as an option for families.

Conference budget plan shortchanges DMR in some areas

A House-Senate conference committee has approved a state budget for the fiscal year that begins July 1 that contains a mix of good and bad news for services and supports provided by the Department of Mental Retardation.

The committee approved \$1.12 billion in total DMR funding for Fiscal Year 2006. This is \$1.7 million more than Governor Mitt Romney proposed, and some \$56 million above projected current fiscal year spending. But the conference committee budget would provide less funding than the governor proposed in some key areas.

The budget now goes to Governor Romney, who can approve it or veto specific line items.

In the **Regional Administration** line item (5920-1000), the conference committee agreed to provide roughly \$363,000 less in 2006 than the Governor had proposed. This line item funds service coordinators, who coordinate, review, and evaluate DMR clients' Individual Support Plans. Governor Romney had proposed an increase of roughly \$1.5 million in 2006 in the account in order to offset a \$1 million cut in the current fiscal year. The current-year cut had jeopardized the jobs of some 20 service coordinators.

In February, the Service Employees International Union, Local 509, reported to U.S. District Court Judge Joseph Tauro that service coordinator caseloads have grown to over 50, resulting in delays in completion of ISPs.

In a conference call in May with COFAR Executive Director Colleen Lutkevich, DMR Commissioner Gerald Morrissey said no service coordinator positions would be cut in the coming fiscal year, and in fact positions would be added. He did not specify the number of additional services coordinators that would be hired. The SEIU supported a budget amendment for \$1.36 million in funding to hire 20 new service coordinators, but the Senate rejected the amendment.

Also, the conference committee agreed to spend roughly \$86,000 less than the Governor proposed in the **State facilities** account (5930-1000). The Governor had proposed a \$3.7 million **increase** in this line item. The significant cuts sustained by the facilities in recent years have been a factor in efforts by the plaintiffs in the landmark Ricci v. Okin litigation to seek Judge Tauro's renewed oversight of DMR [see story on page 1].

The conference committee also agreed on the following:

- **Community state-ops** line item (5920-2010). The Governor proposed a \$3.8 million **increase** in this line item. The conference committee **reduced the increase** by \$422,000.
- **Transportation programs** line item (5911-2000). The Governor proposed a \$99,900 **increase** in this

line item. The conference committee added roughly \$10,000 to that increase.

- **Day programs** line item (5920-2025). The Governor proposed a \$3.8 million **increase** in this line item. The conference committee added \$202,000 to that amount.
- **Family supports** line item (5920-3000). The Governor proposed a \$1.9 million **increase** in this line item. The conference committee **added** \$500,000 to the Governor's amount.
- **Autism program** (5920-3010). The conference committee approved \$1.2 million to initiate this program for services to children with autism. To come up with the funding, however, the committee reduced about \$900,000 from the governor's proposals in the regional administration, residential state-ops, and facilities accounts

One area in which there was slight disagreement between the House and Senate was over the **Community residential** line item (5920-2000). The Governor proposed a \$23.7 million **increase** in this account over projected current year spending in his 2006 budget. The House **reduced** this increase slightly and the Senate **added** \$100,000 to the governor's amount. The conference committee approved an amount \$682,500 **above** the governor's proposal.

The community residential account is a \$500 million account--by far the biggest DMR line item, so the percentage increase is about 5 percent, which is slightly larger than increases in many other accounts. The biggest percentage increase was the **Boulet** waiting list account (5920-2020), which will increase by 22 percent next year.

The conference committee also approved \$500,000 more in funding for the **Family Support** line item (5920-3000) than the Governor had proposed. However, the program has had no increases in 8 years and "is fundamental for keeping people living at home with their families," according to the Massachusetts Human Services Coalition. Advocates have been working for \$3.5 million in additional funds.

In good news involving non-DMR accounts, the conference committee approved placing \$20 million into a reserve account to upgrade **direct-care worker salaries** (Line item 1599-6901). The House had proposed \$10 million in this account, and the Governor had proposed zero funding. But like the conference committee approved less than the governor in additional funding next year for the **Disabled Persons Protection Commission** (Line item 1107-2501).

The conference committee did approve \$500,000 more than the governor's proposed funding for the DMR/Department of Education "**voluntary placement prevention earmark**" (in DOE's budget) to "partially address the waiting list for this successful program that provides services to keep students living at home in their communities."

Cohen says community beds lag

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required clinical evaluation processes for care and services.

"If there is no ISP (Individual Support Plan) in place, then there will be no discussions on transfers (out of Fernald)," Tauro said, as DMR Commissioner Gerald Morrissey and his legal staff sat before him in the courtroom. "If that's not going to happen, then we are going to have a little trouble."

In an agreement reached in December, DMR was precluded from discussing alternative placements with Fernald clients during the process to develop a client's ISP. However, Cohen alleged that since that time, DMR has begun holding informal "teas" and other conferences with residents in order to persuade them to transfer out the facility. Many of those conferences have been held before the completion of the residents' ISPs, he said.

Since July 2004, Tauro has been considering a number of aspects of the landmark Ricci v. Okin lawsuit, which was initiated in the 1970s to improve conditions in the state facilities. He officially disengaged from the case more than a decade ago after issuing an order requiring that all Ricci class members must receive equal or better care if they are ever transferred from facilities to other locations. In July 2004, Cohen filed a motion to reopen the case, contending that DMR had been engaged in systemic violations of Tauro's 1993 disengagement order. The DMR, Cohen alleged, was simultaneously cutting staffing and services at Fernald and attempting to shut the facility down without certifying that equal or better care was available elsewhere.

In January, Tauro denied Cohen's motion to reopen, but he said he was prepared to step back in if Cohen were to demonstrate that persons transferred from Fernald were not getting equal or better care. The judge also ordered DMR to provide Cohen with records relating to the ISPs for all Fernald residents in order to allow Cohen to compare the ISPs of residents before and after they were transferred from the facility.

Since January, DMR has transferred 48 of the remaining 252 Fernald residents. Thirty-eight have gone to other state facilities, which could be next in line for closure after Fernald, and 10 have presumably been transferred to community-based residences, Cohen said.

Cohen said that he had not yet been able to review the ISPs of the transferred residents because DMR had not agreed to conditions under which he could view the records. He said he intended to ask Tauro for a two-month moratorium on further transfers until he had a chance to undertake the reviews. During the June 15 conference, Tauro accepted an agreement reached that day by the plaintiffs and defendants that allows Cohen to inspect the ISP records.

Cohen also cited a case during the status conference in which a woman he introduced as Dina, whose 53-year-old son, Luigi, is a resident of Fernald, had been informed two weeks after her husband died that her son was scheduled to be transferred to a different facility. She was subsequently taken to the facility and shown a small room that her son would be sharing with four other men. The woman, whose last name was not given, stepped forward in the courtroom, and told Tauro that she objected to the transfer because the room was "like a cell."



Plaintiff Attorney Beryl Cohen is interviewed by Channel 5 News following June 15 status hearing before U.S. District Court Judge Joseph Tauro.

Cohen also accused DMR of delaying the ISP appeals process of Fernald residents. Fernald League President Diane Booher later said that she has been waiting since last August for a Fair Hearing on her appeal of the ISPs developed for her two brothers at Fernald. DMR regulations require that the department hold such a hearing within 60 days of an informal conference. In formal hearings were held regarding Booher's brothers in August.

"They're way out of compliance," Booher said. She added that, "The families are terrified, and want a good ISP that shows equal or better care. They don't want any more lousy ISPs." She said her brothers need music therapy and need to use the pool at Fernald, and DMR has refused to provide them with those services.

Membership renewal notice

Not all of our COFAR members have renewed their membership for the current calendar year. If you haven't already done so, please take a few moments to renew your membership with a \$25 tax-deductible check payable to COFAR at 3 Hodges Street, Mansfield, MA 02048.

Your continued support enables us to continue our efforts to advocate on behalf of your wards and family members in the DMR system for comprehensive and high-quality care. Membership also entitles you to continue receiving monthly issues of *The COFAR Voice*.

COFAR is a family support, education and advocacy organization funded by member families. **Become a COFAR member and receive your monthly issues of *The COFAR Voice*. For membership information, visit our website at www.cofar-mass.org, or write to:**

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The COFAR VOICE
JOIN COFAR IN OUR ADVOCACY EFFORTS TO PROVIDE
COMPREHENSIVE CARE
FOR ALL PERSONS WITH MENTAL RETARDATION