



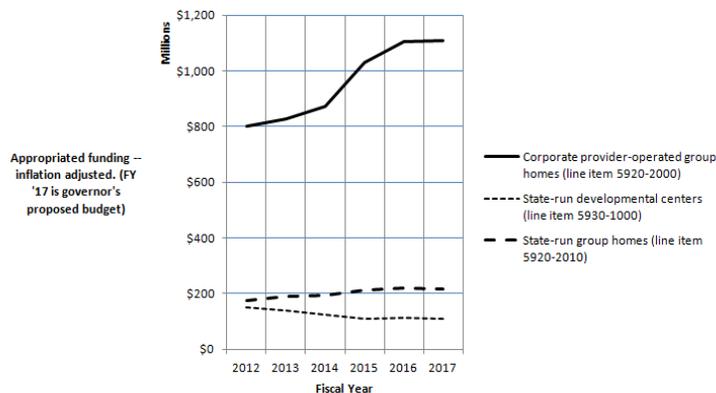
# The COFAR Voice

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

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Key Department of Developmental Services budget items



## Gov. Baker's FY '17 budget widens funding gap

Governor Baker's proposed state budget for Fiscal Year 2017, which he submitted to the state Legislature on January 27, would widen an already growing gap in funding between privatized services and state-run care.

An analysis of Baker's proposed budget for the Department of Developmental Services shows that the budget projects higher funding for corporate providers, but would cut funding for state-operated services when adjusted for inflation.

"The Baker administration is continuing to promote a race to the bottom in the quality and choice of care," said COFAR Board President Thomas J. Frain. "We have to fight to preserve what is left of state services."

COFAR analyzed the history of key DDS line items from Fiscal Year 2012 through 2017 and adjusted the numbers for inflation. A comparison of the DDS corporate provider line item with line items that fund state-run services shows the gap between privatized and state-run services has widened dramatically since Fiscal 2012 (see chart above).

### Corporate provider residential line item (5920-2000):

The governor's Fiscal 2017 budget would increase the corporate provider line item by \$5.9 million, or 0.5 percent, over current-year funding in inflation-adjusted numbers. If the governor's Fiscal 2017 budget is adopted, this line item will have

See BUDGET, Page 3

## Parents fight charges against autistic son

Carrie Reich, the mother of Brett, a 24-year-old man with an intellectual disability, is going public to prevent the possible prosecution of her son for an alleged assault.

Brett Reich has been charged by the Bristol County District Attorney for the alleged assault in March 2015 of two staff workers outside his former group home in Attleboro. Carrie Reich has started an online petition at [change.org](http://change.org), urging the D.A. to drop the case.

The charges were dismissed in October by Attleboro District Court Judge Margaret Guzman, who ruled that Reich "is permanently incompetent due to autism and other developmental incapacities," according to *The Attleboro Sun Chronicle*. But the D.A.'s Office has appealed Guzman's ruling, arguing that state law requires a judge to order an evaluation by a state psychologist to determine competency in a criminal matter before a case can be dismissed.

Brett's family is concerned that the D.A.'s actions could lead to imprisonment

See D.A., page 2

## Firm may cut wages in mental health services

The Baker administration is proposing to put a politically connected private company in charge of virtually all emergency mental health services in the state.

If the proposal is approved by the state auditor, the Massachusetts Behavioral Health Partnership (MBHP), a for-profit company, will assume management of the services, which are currently performed by state personnel.

See MBHP, Page 5

## Most of media skips forum on privatization

Although privatization of state services has become a controversial area of public policy in Massachusetts and other states, only two members of the mainstream media in the state chose to attend a forum on the issue in January that was hosted by the State Auditor's Office and the Boston Bar Association.

The January 7 forum focused on the Pacheco Law, a 23-year-old statute that allows existing employees in state agencies to submit bids in competition with outside contractors seeking to privatize services. The Pacheco Law has garnered much negative publicity in recent years, but COFAR has argued that that law provides a needed scrutiny of cost-saving claims in privatization.

At the forum, David Kassel, *COFAR Voice* editor, presented a case for the Pacheco Law, while Charles Chieppo, a senior fellow at the Pioneer Institute, presented the anti-Pacheco Law case.

Also speaking were members of the State Auditor's Office, who explained how the law works, and Michael LaGrassa of UMass Dartmouth, who discussed the university's experience with the Pacheco Law in privatizing the campus bookstore operations in 2014.

The forum, which was held at the Boston Bar Association office on Beacon Street in Boston, across the street from the State House, was attended by a some 50 policy makers, union officials, and advocates. Media outlets around the state were invited to attend, but only two reporters showed up — one from *The Massachusetts Lawyer's Weekly* and one from *The Boston Business Journal*. No one from either *The Boston Globe* or *The Boston Herald* attended the event, even though both newspapers have editorialized against the Pacheco Law.

"The mainstream media have shown for years that they have many misconceptions about privatization and the Pacheco Law in particular," said COFAR Board president Thomas J. Frain, who attended the forum. "Here was a convenient opportunity for members of the media to learn what this law is really about and how it really functions, and they skipped the class."

## Parents go public against charges

D.A., continued from Page 1

for Brett, or his possible placement in Bridgewater State Hospital, a facility for persons with mental illness who have been convicted of or charged with committing violent crimes. "It's inhumane," Brett's father, Daniel Reich, said. "He's never going to get out if he goes to Bridgewater State. They are trying to destroy him and us. We want him home safe with us."

As of mid-February, Brett Reich was living in his parents' home. After the alleged assault, he was evicted from the Attleboro group home, according to his father. The group home is run by Lifeworks, Inc., a DDS provider.

COFAR Executive Director Colleen Lutkevich said she shares the Reichs' concern about the D.A.'s apparent intention to prosecute Brett criminally. "Neither Bridgewater State Hospital nor jail would be appropriate places for Brett," Lutkevich said. "Brett is intellectually disabled, not mentally ill. He needs residential care from the Department of Developmental Services."

Bridgewater State has been a focus of continuing controversy over the use of restraints and isolation. In 2014, *The Boston Globe* published a series of articles about isolation and forced restraints at the facility, including restraints that resulted in the death of a patient there in 2009. The federally funded Disability Law Center has called for major reforms at Bridgewater State, including removing it from the control of the Department of Corrections.

Brett, who is 6 foot, 3 inches tall and weighs about 240 pounds, allegedly assaulted the two staff workers, one of whom was his personal caretaker, as he was being taken for a trip outside the residence. As he was being placed in a van, he suddenly turned on the staff worker. According to the *Sun Chronicle*, Brett began choking the woman and grabbed a fistful of hair from her head before she fled to the group home where she locked the door.

While still outside the home, Reich allegedly attacked another female staff member moments later when she arrived at the home to assist the first worker. The newspaper said he punched her head and body and bit her right hand. Both women, who were treated for cuts and bruises at Sturdy Memorial Hospital in Attleboro, told police they feared for their lives.

Daniel Reich does not believe the staff in the residence were properly equipped or trained to deal with Brett's behavioral issues. Daniel said that when Brett was first placed by DDS in the Attleboro group home, he and his wife, Carrie, had requested that Brett have male direct-care staff "who were bigger and stronger." That request was not heeded, however.

Before being placed in the Attleboro group home, Brett had lived in a residential facility in New Hampshire in which his aides were men. That program, however, came to an end when Brett turned 22 and was required to move from the special education system to the DDS system of care in Massachusetts.

Daniel Reich said that Brett's behavioral issues are controllable if he receives his prescribed medications. Lutkevich maintained that an appropriate residential setting for Brett would be either a secure DDS state-operated group home or the Templeton Developmental Center, a DDS-run Intermediate Care Facility. Other possibilities include the Wrentham Developmental Center and the Hogan Regional Center.

## ***Workshop closures not leading to jobs***

Sheltered workshops for the developmentally disabled are fast being closed in Massachusetts, but the promise of mainstream jobs to replace the workshops does not appear to be materializing.

According to DDS records, the number of participants in sheltered workshops dropped by 1,166 between August 2014 and August 2015 — a 61 percent reduction from the 1,913 people who had been in those programs. In that same period, the number of sheltered workshop providers dropped from 39 to 14.

Also in that same period, the number of developmentally disabled persons in corporate-run, community-based day programs increased by 1,116, or 27 percent.

In contrast to the increase in day program use, the number of developmentally disabled people in “integrated employment” settings increased from August 2014 to 2015 by only 337, or about 6 percent. DDS said it had no records on the number of integrated workplaces that exist in Massachusetts.

Sheltered workshops have become a target of a political ideology that holds that any type of congregate care setting is institutional and “segregates” developmentally disabled people from their peers in the wider community or in the mainstream workforce. But COAR and many families of workshop participants argue there are relatively few integrated or mainstream workforce jobs available for them. The DDS data appears to confirm that most sheltered workshop participants are likely to be transferred to community-based day programs that do not offer the same activities or skills as the workshops did.

The governor’s Fiscal 2017 budget would increase the DDS day program line item by \$5.6 million or 3 percent. Since Fiscal 2012, this line item will have been increased by 45 percent if the governor’s Fiscal 2017 budget is approved.

A 2013 state policy document called for the closure of all remaining sheltered workshops in Massachusetts. The policy document was jointly drafted by DDS and two lobbying organizations for corporate providers — the Arc of Massachusetts and the Association of Developmental Disabilities Providers. Corporate providers operate the day programs that are receiving the additional funding as the workshops are being closed.

## **Budget widens funding gap**

BUDGET, continued from Page 1

been increased by \$309 million, or 38.6 percent, since Fiscal 2012.

In contrast, the governor’s proposed budget would cut the **Commonwealth-operated developmental center line item (5930-1000)** by \$3.18 million or 2.8 percent from the current-year appropriation. If the governor’s proposal for Fiscal 2017 is adopted, this line item will have been cut by \$41.6 million, or 27.5 percent, since Fiscal 2012.

That \$41.6 million cut reflects the closures since 2008 of three of six remaining developmental centers.

**Commonwealth-operated residential line item (5920-2010):** The governor’s Fiscal 2017 budget would cut this line item by \$212,800, or 0.1 percent, from current-year funding. (In nominal dollars, the governor has proposed a \$3.7 million increase in this line item, but it is a cut when adjusted for inflation.)

There has been a net increase of 40 commonwealth-run group homes over the total number in in Massachusetts in 2008; but the state has closed commonwealth-run residences even as it has built new ones. It appears the new commonwealth-run residences and the additional funding for those residences have been intended to accommodate the more than 250 people who have been transferred since 2008 from the closed developmental centers and the closed commonwealth-run homes. Those are apparently the only people who have been admitted to the new commonwealth-operated homes.

As COFAR has pointed out, the administration does not offer commonwealth-run residential facilities as options for developmentally disabled people waiting for residential care. Privatized, corporate-run care has become the only “choice” available those people despite the fact that the federal Medicaid Law requires that developmentally disabled individuals and their guardians be informed of the available “feasible alternatives” for care.

**DDS administration line item (5911-1003):** In addition to administrative functions, this line item funds DDS service coordinators, who are responsible for ensuring that clients throughout the system are receiving services to which they are entitled. The service coordinators have seen their caseloads rise dramatically in recent years, but funding under this line item has failed to keep up with the caseload increases.

The governor’s Fiscal 2017 budget would cut the DDS administrative line item by \$977,000, or 1.4 percent. (In nominal dollars, the governor proposed a slight increase in this line item, but it too would be a cut when adjusted for inflation.)

Since Fiscal 2012, the administrative-service coordinator line item will have been increased by 8.1 percent if the governor’s Fiscal 2017 budget is approved. That is a far smaller percentage increase than the comparable increase in privatized services.

## Death report leaves questions unanswered

A partially redacted investigative report on the death of a developmentally disabled man who had been sent home without treatment by Lowell General Hospital appears to have left numerous questions about the case unanswered.

COFAR received the report from the Department of Public Health in October after filing two appeals to the state Public Records Division. The report exonerated the hospital in the death in 2012 of the 51-year-old man, who had been sent home twice in two days without treatment. But the report did not appear to examine whether the hospital staff was trained to deal with developmentally disabled people.

Meanwhile, as of mid-February, the Legislature's Public Health Committee had taken no action on H. 1932, a bill that would require such training of healthcare professionals.

## Group home license rule status sought

COFAR has requested information from the Department of Developmental Services on the status of proposed changes to regulations governing licensing and staffing of group homes.

The changes to the regulations (115 CMR 7.00 and 8.00) were proposed by DDS in December 2014.

COFAR has opposed one of the proposed changes, which would appear to give DDS providers at least partial authority in determining whether their licenses to operate residential and other programs should be renewed. COFAR has also opposed changes that appear to reduce staffing requirements in group homes and that remove the words "rights and dignity" from the regulatory language.

## COFAR cites factual errors in McDonald guardianship case

COFAR has raised a number of questions about a 2006 probate court ruling that has led to a continuing ban on home visits for an intellectually disabled man.

Andy McDonald has been denied permission for the past 20 years to visit his parents in his family home in Sherborn. The prohibition was ordered in 2006 by then Probate Court Judge Edward Rockett, who had concluded that Andy, 48, was sexually dangerous and posed a continuing threat in his hometown.

However, an examination of the case by COFAR has found that Rockett's ruling contained several factual errors and unsupported allegations regarding both Andy McDonald and his now 80-year-old father, Stan, who has sought unsuccessfully for years to gain guardianship of his son.

In particular, Rockett's ruling stated that Andy had been arrested in 1990 for a sexual assault in his neighborhood in Sherborn. Police and court records, however, say only that Andy had been arrested that year for threatening an unidentified person during a telephone call, and later for disturbing the peace in downtown Sherborn. He has never been charged with sexual assault.

Rockett's ruling also stated that Stan McDonald was unfit to be Andy's guardian. But that conclusion appeared to be largely based on unsubstantiated allegations, including an allegation that Stan had brought "prohibited materials" to Andy in his group home. Those materials were not disclosed in the ruling, but they turned out to be innocuous things such as a piece of beach glass, a sparkler for a birthday cake, and a photo of Andy's niece and nephew.

Also, COFAR contends that circumstances have changed since Rockett's ruling. Andy's disruptive behavior has improved, largely because Stan successfully advocated for him to be taken off Stelazine, an anti-psychotic drug that was inappropriate for him.

An appeals court ruling in 2009 upheld Rockett's decision. But that appeals ruling only partially addressed the factual error regarding the 1990 arrest, and didn't acknowledge the unsupported allegations or the changed circumstances.

In a February 15 letter sent to the Middlesex County Probate Court, COFAR Executive Director Colleen Lutkevich and COFAR Voice editor David Kassel called for reconsideration of the case. "This case seems to show how mistakes in the legal process can go uncorrected for years and thereby erode due process, potentially for anyone," the letter stated.

The letter noted that the case was not unique and that COFAR was aware of a number of other cases in which developmentally disabled persons have been subjected to inappropriate restrictions, restraints, and even isolation as a result of probate court rulings.

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Thank You!

## Guardianship bill remains stalled

Despite support from advocacy organizations and a state disability rights council, a bill that would boost the guardianship rights of family members of persons with developmental disabilities has been stalled in a legislative committee for more than a year.

As of mid-February, the bill still had not been approved by the Judiciary Committee, which has held the measure since the current legislative session began in January 2015.

The proposed legislation (H. 1459) states that probate court judges should presume a spouse or parent to be the proper person to be the guardian of an incapacitated person.

Momentum for the bill seemed to be building last year when the measure received support for the first time from the Massachusetts Developmental Disabilities Council (MDDC), a state-run organization that identifies priorities for care for people with those disabilities. The MDDC listed the bill as one of its legislative priorities for 2015-2016.

The proposed legislation has been repeatedly filed by state Representative David Linsky since 1999 at the request of Stan McDonald, a constituent of his. McDonald has been involved in a long-time effort to gain guardianship of his son, Andy. (See story on Page 4.)

In January, both Linsky and Senator Richard Ross, McDonald's state senator, sent a letter to the co-chairs of the Judiciary Committee, Senator William Brownsberger and Representative John Fernandes, urging their committee to approve the bill and send it to the full House for a vote. Aides to both Ross and Linsky said they did not know of any reason that the bill has not moved in the committee.

COFAR has placed calls to the Judiciary Committee, but committee staff have provided no information about the status of the bill.

## Concerns raised over MBHP plan

MBHP, continued from Page 1

COFAR has joined a state employee union and a state legislator in voicing concerns that MBHP may cut the wages paid to direct-care workers if the privatization proposal is approved.

The state auditor has the authority to approve or deny the privatization plan under the Pacheco Law, a statute that requires agencies seeking to privatize services to demonstrate that the proposed services would cost less and be equal or better in quality than if done by existing state employees. (See story on Page 2 on Pacheco Law privatization forum.)

MBHP currently has an ongoing Primary Care Clinician (PCC) contract with the state for separate clinician services that is scheduled to run through June 30, 2017. According to SEIU Local 509, a state employee union, the administration's plan is to manage the emergency mental health services under the PCC contract. The union maintains that under the administration's interpretation of the Pacheco Law, wage levels specified in MBHP's proposal to privatize the mental health services could be reduced as of June 2017, when the PCC contract expires.

The state auditor had up to 60 days to consider the MBHP privatization proposal. In a letter to the auditor, COFAR President Thomas Frain and Executive Director Colleen Lutkevich urged the auditor not to approve the proposal without a guarantee from the administration that the wage levels specified in the proposal would not subsequently be lowered.

In a letter sent in November to state Attorney General Maura Healey, state Senator March Pacheco, the principal sponsor of the law that has been named for him, warned that the administration's interpretation of the law would "undermine" the intent of the law. "It was never my or the other supporters' intent that wages and health benefits could sink lower than the 'minimum wage' established by the Taxpayer Protection Act (the Pacheco Law) once the initial contract expired," Pacheco wrote.

MBHP has close relationships with the Baker administration and with previous administrations. In April 2015, Scott Taberner, previously the chief financial officer at MBHP, was named Chief of Behavioral Health and Supportive Care, a position created by the Baker administration within the Executive Office of Health and Human Services. Taberner's position falls under MassHealth, a division of EOHHS, which holds the PCC contract with MBHP.

## Status sought of IG review of privatized group home system

COFAR has sent a request to the Inspector General for the federal Department of Health and Human Services for information about the status of the agency's review of abuse and neglect in privatized group homes in Massachusetts, Connecticut and New York.

COFAR reported last May that the HHS Inspector General had begun in August 2013 to examine data on admissions of persons from group homes and "nursing facilities" to hospital emergency rooms in Massachusetts, Connecticut and New York. As of mid-February, the IG did not appear to have released any findings of the investigation.

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