



# The COFAR VOICE

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

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## The House of Representatives boosts funding for some DMR line items (Story on page 4)



Beryl Cohen, attorney for the plaintiffs seeking to preserve the Fernald Center, is interviewed following the presentation of U.S. Attorney Michael Sullivan's report at a March 7 hearing in U.S. District Court.

## Sullivan says keep Fernald open

### *Focus now shifts to governor*

BOSTON—United State's Attorney Michael Sullivan's March 7 recommendation to keep the Fernald Developmental Center open shifts the focus on the future of the facility at least temporarily to Governor Deval Patrick.

Patrick has yet to make a specific statement about whether he will reverse the course the Department of Mental Retardation has followed for the past four years, which has been to close the Fernald Center followed by the five other remaining state facilities for persons with mental retardation.

"We've been encouraged thus far by Gov. Patrick's statements on the need for facility care for those with the most severe and profound forms of mental retardation," said COFAR President David J. Hart. "Now that the U.S. Attorney has explicitly recommended that the facility stay open, we are quite hopeful that the governor will take that

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## Morrissey out at DMR *Had pledged to 'work together'*

In a move that may signal sweeping changes in the Department of Mental Retardation, the Patrick administration has replaced Gerald Morrissey as DMR commissioner.

In an April 10 announcement, Secretary of Health and Human Services JudyAnn Bigby said she had appointed Jean Flatley McGuire, a professor of health sciences at Northeastern University, to head the Department on an interim basis. Bigby also appointed McGuire as EOHHS assistant secretary for disability policies and programs.

McGuire, who has worked in the field of public health for 25 years, served for six years as an assistant commissioner of health at the state Department of Public Health. Early in her career, she worked in the field of mental retardation and in special education, according to EOHHS.

Morrissey, who has served as DMR commissioner since 1997, had been overseeing efforts to close the Fernald Developmental Center and possibly other state facilities as well. It was not immediately clear what McGuire's position is on the facility-closure issue.

"We're obviously going to adopt a wait-and-see attitude about this change in leadership," said COFAR President David J. Hart. "We've had our differences with Commissioner

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## Advocacy Network joins COFAR

The Advocacy Network, a leading advocacy organization for persons with mental retardation in central and western Massachusetts, has voted to affiliate with COFAR.

Organized in 1954 as the Friends of Belchertown, the Advocacy Network was headed for many years by Benjamin Ricci, who initiated the landmark Ricci v. Okin lawsuit, which led to major improvements in care in Massachusetts for persons with mental retardation.

"We're thrilled to be teaming up with this critically important organization," said COFAR Executive Director Colleen M. Lutkevich.

## Sullivan: Keep Fernald open

FERNALD, *continued from page 1*

recommendation to heart.” Sullivan’s report to U.S. District Court Judge Joseph L. Tauro is being seen by many as a milestone in the history of the Fernald Center and in the care of persons with mental retardation in Massachusetts. It comes after a four-year campaign by supporters of the facility to keep Fernald open, and it has dealt a sharp blow to the DMR’s plans to privatize additional services in Massachusetts and to provide them primarily in community-based settings.

In a March 7 hearing in Tauro’s packed courtroom, the judge gave the parties until the end of May to respond to Sullivan’s report. He also noted that he was “expecting to hear from the governor” on Sullivan’s recommendation to keep Fernald running.

### Developments in Ricci v. Okin

In February, Tauro appointed Sullivan as court monitor in the landmark Ricci v. Okin lawsuit, and asked him to review the transfers by DMR of 49 residents from Fernald since 2003. He also issued a moratorium on further transfers, pending Sullivan’s review of the process. Governor Mitt Romney announced plans in 2003 to shut down Fernald Center and the five other remaining facilities in Massachusetts.

The Ricci case was begun in the 1970s to address severe deficiencies in the care and services at that time at Fernald and other state facilities. Tauro, who has overseen the case from the start, formally disengaged from the case in 1993, maintaining that improvements in care and conditions at the facilities had made them “second to none anywhere in the world.” His disengagement order required that any residents transferred from the facilities must receive equal or better care elsewhere.

In 2004, the Fernald plaintiffs in the case, urged Tauro to step back in and reopen the litigation, arguing that the Romney administration’s facility closure plans coupled with budget cuts in community-based line items made it unlikely that equal or better care would be provided to the transferred residents.

In February of this year, the Fernald, Templeton, Monson, Belchertown, Wrentham, and Dever plaintiffs filed a new motion with Tauro, asking him to ensure that Sullivan’s review encompass transfers of residents from all the remaining facilities

Approximately 215 residents remain at the Fernald Center, including 26 residents of the Marquardt skilled nursing facility on the campus. More than 1,000 residents remain at all six facilities, which include the Wrentham Developmental Center, the Templeton Developmental Center in Baldwinville, the Monson Developmental Center in Palmer, the Hogan Regional Center in Danvers, and the Glavin Regional Center in Shrewsbury.

During the March 7 hearing, Tauro took under advisement a request by family members and guardians of nine of the 215

remaining Fernald residents to leave the facility prior to Tauro’s scheduled decision on the facility in May.

### Sullivan endorses Fernald “postage stamp” plan

In an apparent endorsement of the “postage-stamp” proposal that has been put forth by The Fernald League and COFAR, Sullivan maintained in his report that it may be possible to “condense” the Fernald campus by grouping the homes and work sites of the current facility residents together. The commonwealth could then sell the remainder of the land for residential development. DMR could also build new residential homes on the land and keep support services for those residents at Fernald, Sullivan said.

Sullivan and his staff visited all six facilities, 30 community-based residences and numerous day program centers. While Sullivan put his assistant, Rayford Farquhar, in charge of the review, Sullivan nevertheless took an active role in the matter, personally visiting all of the facilities and interviewing residents.

In recommending that Fernald remain open, Sullivan maintained in his report that while the level of care there might be able to be duplicated elsewhere, the loss of familiar surroundings and people “could have devastating effects [on the residents] that unravel years of positive, non-abusive behavior.”

**U.S. Attorney Sullivan took an active role in his assignment as court monitor, personally visiting all the facilities and interviewing residents.**

Sullivan determined that DMR, through its Fernald facility director, did certify that services for the 49 individuals transferred previously would be equal or better than at Fernald. However, he told Tauro that he found two areas of “significant concerns” in community-based care. One involved the delivery of medical services in the community and the second involved the potentially higher risk of abuse and neglect in community-based residences than in the facilities and other state-operated residences. Also, obtaining medical care in the community system takes much longer than the process at Fernald and is more difficult to coordinate, Sullivan’s report stated. In addition, staff turnover in some community residences visited approached 100 percent every year and a half.

While he has reserved judgment on Sullivan’s report until the end of May, Tauro appeared during the March 7 hearing to place great weight on the U.S. Attorney’s recommendations.

“If they (the remaining Fernald residents) want to move, and they’ve pressed all the right buttons, they can move,” Tauro stated during the hearing. “If they don’t want to move and are worried about the consequences, the U.S. Attorney has addressed this. It’s a matter of common sense. If they don’t want to go, they ought to be allowed to stay, and we ought to hold off before making house lots of the [campus acreage].”

## Morrissey out at DMR

MORRISSEY, *continued from page 1*

Morrissey, but he worked very hard for the Department and we wish him the best.”

Morrissey had come under fire in recent months for his Department’s handling of concerns raised by some families and guardians about problems with care and services. In a meeting held April 3 with Board members of both COFAR and the Advocacy Network, Morrissey had pledged to work with his staff and with advocates for families in the DMR system to resolve concerns about his department’s management practices and oversight.

“We need good and open communication,” Morrissey told a roomful of members of both Boards in a rare sit-down meeting, at the Glavin Regional Center in Shrewsbury. “If we have that, we can constructively work together.”

The meeting with the commissioner coincided with the first joint Board meeting between the two advocacy groups. The Advocacy Network, which advocates on behalf of families in the western Massachusetts, voted earlier this year to affiliate with COFAR.

COFAR had first requested a meeting with Morrissey in December to address a rising level of concern about reports of abuse, neglect, medication errors, intimidation, and other problems throughout the DMR system of care.

During the discussion at the Glavin Center, Morrissey appeared to show a willingness to consider the advocates’ concerns, but stopped short of pledging any specific or wide-ranging reforms. “It’s unacceptable to have bad interactions” with families and guardians, Morrissey said. “Intimidation is unacceptable.” But he also maintained that some families were being contentious as well.

A number of speakers contended that DMR needs to improve communication from its top administrators down to its service coordinators and direct-care workers “at the street level.”

Mary McTernan, president of the national Voice of the Retarded, Inc. and a former COFAR president, said she believes DMR is experiencing “problems in organizational communication. It’s not a problem that’s unique to DMR,” she said to Morrissey, “but the most successful bureaucracies are able to deal with it.”

COFAR Executive Director Colleen M. Lutkevich said she was particularly concerned about phone calls and e-mails she has received from people who charge that the staff of provider-operated group homes often do not respond positively to complaints about care and services. “There is a feeling that families are being intimidated into being quiet,” she said. She added that families are often not aware that they can take their concerns to DMR officials in area and regional offices.

Gail Orzechowski, an Advocacy Network member, said she was erroneously told “by people who work for the Department” that the Individual Support Plan (ISP) was not an

important document regarding the care of residents of group homes. “I was told it’s only one document among many,” she said.

Morrissey responded that he would bring that matter up with his regional staff. “The ISP is the essential, central document that guides the work of the organization,” Morrissey said. “I find it incomprehensible and unacceptable that someone would say that it’s not important.”

Issues were raised as well during the meeting about state-operated facilities. COFAR President David J. Hart said a guardian of a resident at the Hogan Regional Center, who contacted him, had been intimidated by the staff there in a number of instances and that other staff were afraid to say anything about the alleged intimidation to their supervisors. He added that he has been stymied by Hogan administrators during the past year in getting information about staffing and care policies at Hogan. “There has been no real good communication out of Hogan for quite some time,” Hart said. “The issues have festered.”

## COFAR loses records appeal *Legal options weighed*

State Public Records Supervisor Alan Cote has determined that the state is not required to publicly disclose proposals submitted by developers seeking to build and rehabilitate community-based housing for former Fernald Developmental Center residents.

In a decision in early January, Cote upheld the position of the Division of Capital Asset Management that the proposals were exempt from disclosure because releasing them would interfere with an “ongoing deliberative process.”

COFAR, which has sought the records, subsequently asked Cote to reconsider his decision, contending that the state’s Public Records Law clearly states that proposals and bids submitted in a state procurement process become public records once they are opened. The proposals sought by COFAR were received by DCAM and opened in September.

But in a two-paragraph March 16 letter to COFAR, Cote said he would uphold his decision.

“We’re reviewing our options, which include appealing this to Superior Court,” said COFAR President David J. Hart. “We see no basis for refusing to release these publicly opened proposals.”

After reviewing a first round of proposals and other documents, which were disclosed by DCAM in October 2005, *The COFAR Voice* detailed flaws in the procurement process, particularly with respect to the selection of two firms to develop and lease the housing to DMR. In the wake of news coverage of COFAR’s findings, DCAM suspended negotiations with one of the two selected vendors, Toward Independent Living and Learning, Inc. (TILL), and issued a second Request for Proposals. DCAM, however, declined to produce the proposals submitted in response to that second RFP.

## *House budget panel still leaves DMR funding short*

The Massachusetts House of Representatives budget committee has proposed boosting funding for the Department of Mental Retardation by slightly more than the amounts in Governor Deval Patrick's proposed budget for the coming fiscal year.

The total proposed funding by the House Ways and Means Committee for DMR line items of \$1.2 billion would still appear to fall short of the "maintenance budget" that DMR had sought for next year, and could still mean cuts in services throughout the system would become necessary.

In its budget proposal, which was released April 11, the Ways and Means Committee nevertheless undid Patrick's controversial consolidation of two line items of largely community-based funding (see chart at right). One consolidated administrative line item would remain, under the Ways and Means plan. The proposed budget now goes to the full House for consideration, and from there to the Senate.

While the governor's proposal represents an increase of \$43 million over current-year spending on DMR line items, it nevertheless fell \$17.5 million short of the "maintenance" budget sought by DMR Commissioner Gerald Morrissey. The Ways and Means proposal appears to provide only about \$2.5 million more in total funding than the governor's plan would.

COFAR strongly opposed the consolidation of the community-based line items in the governor's budget plan. In a letter sent March 25 to members, COFAR President David J. Hart and Executive Director Colleen M. Lutkevich asked members to call their legislators to reject the line item consolidations and to urge more funding for existing line items. The line item consolidations, in particular, can mask efforts to privatize services, they argued. "We have fought for many years to keep the commonwealth in the business of delivering direct care to people with mental retardation," the letter stated. The letter added that employees of private providers are paid less and have a higher turnover than employees of state-operated facilities.

Among the under-funded line items in the governor's budget plan was the facilities line item. Hart and Lutkevich's letter stated that if \$3 million was not returned to that line item, layoffs of employees at the facilities would become likely. The Ways and Means plan appeared to provide about \$2.3 million more than did the governor's proposal for the facilities.

The Turning 22 program, which provides transitional services to persons when they lose their special education services at the age of 22, would be cut by \$3 million, under the governor's plan. The Ways and Means plan would cut the program by \$2 million.

Hart and Lutkevich had also urged additional funding to the Disabled Persons Protection Commission. The DPPC has faced declining budget appropriations for the last several

years, requiring it to repeatedly cut its investigative and legal staff. Hundreds of cases are now backlogged and the resolutions of these cases are months overdue.

The COFAR letter urged that the Ways and Means Committee provide at least an additional \$1.1 million in funding to the DPPC above the governor's proposed appropriation. However, the Ways and Means proposal would provide only about \$29,000 more than the governor's budget plan.

### **DMR line item proposals**

Line item	FY 2007 budget	Governor's proposed FY 2008 budget	House Ways and Means proposed FY 2008 budget
Administration and Operations (5911-1003)		\$73,677,966 <b>Consolidated</b>	\$73,226,467 <b>This line item remains consolidated</b>
Administration (5911-1000)	\$13,324,093		
Regional administration (5920-1000)	\$55,914,599		
Community Support Programs (5920-2007)		\$185,686,848 <b>Consolidated</b>	<b>Original line items below restored:</b>
Transportation (5911-2000)	\$14,052,195		\$13,972,324
Day Programs (5920-2025)	\$117,434,430		\$121,481,711
Family support (5920-3000)	\$53,094,228		\$55,371,374
Community Residential Programs (5920-2045)		\$767,435,196 <b>Consolidated</b>	<b>Original line items below restored:</b>
Community Residential (5920-2000)	\$524,724,492		\$549,157,636
Residential Rate Initiative (5920-2006)	\$2,000,000		\$2,000,000
Community State-ops (5920-2010)	\$121,998,709		\$130,964,744
Boulet Waiting List Settlement (5920-2020)	\$86,361,602		\$87,812,812
Autism (5920-3010)	\$3,000,000	\$3,002,672	\$3,002,672
Turning 22 (5920-5000)	\$8,500,000	\$5,500,000	\$6,500,000
Facilities (5930-1000)	\$172,013,458	\$180,430,895	\$182,759,388
<b>Totals</b>	<b>\$1,180,535,806</b>	<b>\$1,223,833,577</b>	<b>\$1,226,349,128</b>

## Analysis shows Fernald cost claims may be inflated

Nearly half of the 82 buildings on the campus of the Fernald Developmental Center in Waltham don't appear to provide any exclusive benefit to the 215 remaining residents of the facility, according to a review by COFAR of records provided by the Department of Mental Retardation.

The records indicate that Fernald residents share the use of at least 12 buildings on the campus with community-based clients and derive no apparent benefit from eight other buildings. In addition, nearly 30 buildings on the campus are unoccupied. Yet virtually all of the buildings on the campus are connected to the campus heating and possibility electricity infrastructure, according to DMR.

In addition, records provided by the state Comptroller's Office show that Linda Montminy, the Director of the Hogan Regional Developmental Center in Danvers, is listed on the payroll of the Fernald Center.

Montminy's \$91,961 salary in the current fiscal year is the fourth highest salary on the Fernald payroll. It wasn't clear why Montminy would be on the payroll at Fernald. Fernald is the first facility that has been targeted by the Department of Mental Retardation for closure, and the DMR has frequently cited a high cost per patient there as a reason to close it.

"It makes us wonder whether anyone else listed on the Fernald payroll doesn't belong there," said Colleen M. Lutkevich, COFAR Executive Director.

Lutkevich maintained that analyses showing that Fernald's payroll may be inflated and that the residents don't benefit from all spending under the Fernald budget support a proposal to keep Fernald open at its current location, while searching for ways to make the campus operate more efficiently.

"We think our analyses help debunk the myth that Fernald is prohibitively expensive to operate on a per-resident basis," Lutkevich said.

In Fiscal Year 2006, the Fernald Center's total budget was \$39.4 million, according to DMR records. The total number of residents is currently about 215—a number, which includes roughly 25 patients at the campus skilled nursing facility. The nursing facility serves both facility residents and community-based clients.

In addition to Montminy's appearance on the Fernald payroll, the Comptroller's numbers appear to show that the total salary cost is significantly higher per resident at Fernald than at Hogan. The Comptroller's records show 700 full-time staff at Fernald and list total salaries of \$29.2 million there. The records show approximately 360 full time staff at Hogan, and list total salaries of \$16.3 million there. Given that there are approximately 160 residents at Hogan and a total of 215 residents at Fernald, the salary cost per resident at Fernald appears to be roughly 33 percent higher than at Hogan. It is \$135,744 at Fernald versus \$102,000 at Hogan.

Also, the ratio of full-time staff to residents appears to be 45 percent higher at Fernald than at Hogan, or 3.26 to 1 at Fernald versus 2.25 to 1 at Hogan. DMR did not respond to written questions about the Fernald and Hogan salary numbers.

## Agencies' abuse statistics differ

The Department of Mental Retardation and the independent Disabled Persons Protection Commission appear to possess contradictory sets of statistics on the levels of abuse and neglect in the DMR system, according to an analysis by COFAR.

DMR's statistics show the rate of "substantiated" abuse investigations dropped steadily between 2001 and 2004. The 16 percent drop suggests, according to the Department's latest Annual Quality Assurance Report, dated March 2006, "that individuals served by DMR may be experiencing fewer and fewer incidents of abuse and/or neglect over time."

However, statistics provided for a slightly longer period of time by the DPPC appear to lead to the opposite conclusion—the rate of incidents of abuse and neglect has been steadily rising. DPPC's figures show that between FY00 and 06, the number of substantiated cases investigated by DPPC rose by nearly 54 percent.

Using the DPPC's statistics, United States Attorney Michael Sullivan concluded in a March 7 report to U.S. District Court Judge Joseph L. Tauro (see story on page 1) that there has been a "steady increase in allegations of sexual abuse and physical abuse" in community-based, vendor-operated residences since 2002. Sullivan also found that physical abuse was much higher in provider-operated residences than in state facilities. A full report on COFAR's analysis of the DMR and DPPC statistics can be found on COFAR's blog site at [www.cofar-mass.org/cblog/](http://www.cofar-mass.org/cblog/) (January 26, 2007 blog entry).

## COFAR holds seminar on special education services

SOMERVILLE—COFAR held the first of a series of seminars for families with children receiving special education services on March 21 at the Somerville Senior Center.

The seminars, which are being conducted by COFAR Vice President Thomas J. Frain and Executive Director Colleen M. Lutkevich, have been made possible by a grant from the Sean McDonough Charitable Foundation. The focus of the seminars is on how families can best make the transition from special education to services provided by the Department of Mental Retardation as their children approach the age of 18.

Kathleen Houghton, a COFAR Board member, organized the March 21 event and arranged for it to be held at the Senior Center.

COFAR is a family support, education and advocacy organization funded by member families. **Become a COFAR member and receive *The COFAR Voice*.** For membership information and information on how to donate and to be on our mailing list, visit our website at [www.cofar-mass.org](http://www.cofar-mass.org), or write to:

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

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