



# The COFAR VOICE

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## Legislative Breakfast held at Wrentham Developmental Center on October 18, 2002

### ***Appreciation Shown for Families, Advocates, DMR Leadership & Staff and Legislators***



*Richard O'Meara, Southeast Regional Director, Nick D'Alusio, Wrentham Developmental Center Administrator, Colleen Lutkevich, President of the Wrentham Parents Association and Vice-President of COFAR and DMR Commissioner Gerry Morrissey, Jr. (left to right)*



*Representative Christine E. Canavan, Democrat from Brockton speaks out in favor of "Choice."*

The Legislative Breakfast, co-sponsored by the Wrentham Developmental Center (WDC) and the Wrentham Parents Association, was very well attended. Commissioner Gerald Morrissey provided an update of the current DMR budget situation and the Commissioner and Legislators alike applauded the

excellent care provided at WDC by the caring staff. The partnership and involvement with families was highlighted and the WDC community was described as a caring family responsive to the needs of residents providing them with a quality of life that would be difficult to match elsewhere.

## What happened to Senate Budget Amendment 210?

*Senate Budget Amendment 210 was successful however budget language reverts via Conference Committee. Has the democratic process broken down? The House did not include "closure" language in the Fiscal Year 2003 budget but the Senate version did. Senate Amendment 210 removed the word "closure" from DMR Facility Line Item 5930-1000 and substituted the accurate Olmstead Supreme Court criteria.<sup>1</sup> Despite the fact that the amendment was passed by the Senate, the Legislature, through the Budget Conference Committee retained the original Senate budget language. How can this happen? Many families of individuals with severe and profound mental retardation and other disabling conditions participated in the democratic process to get their voices heard and remove and correct the objectionable language. The Senate Amendment was apparently ignored and families feel betrayed and are asking why?*

The 2003 Budget language under the DMR Facility Line item reads as follows:

"In order to enhance care within available resources to clients served by the department, the department shall take steps to consolidate or close intermediate care facilities for the mentally retarded." In addition, DMR "shall endeavor within available resources to discharge clients residing in the ICF's/MR to residential services in the community when the following criteria are met: (1) the client is deemed clinically suited for a more integrated setting, (2) community residential service capacity and resources available are sufficient to provide each client with an equal or improved level of services and, (3) the cost to the commonwealth of serving the client in the community is less than or equal to the cost of serving the client in ICF's/MR." DMR has been directed by the legislature, through the budget language, to "submit a report no later than February 15, 2003." There is no evidence that the consolidation or closure of ICF's/MR will "enhance care within available resources to clients served by the department." An "apples-to-apples" and fair cost analysis between community and facility programs has not been conducted to date. There has been no attempt by DMR to offer ICF/MR level care to eligible individuals by updating their 15 year-old Admissions Policy despite the "Choice

assurance" the Commonwealth made to the Federal Centers for Medicare and Medicaid (formerly the Health Care Financing Administration).

The Supreme Court in *Olmstead* set forth a three part test to determine if community placement is appropriate :

- "(a) The State's treatment professionals have determined that community placement is appropriate,
- (b) the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and
- (c) the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." 119 S. Ct. at 2181.

Part (b) of the three part test was eliminated from the final 2003 budget language under the facility line item. Why?

**Follow-up with Conference Committee Members is Underway:** Now that the summer is over, follow-up is underway with members of the Budget Conference Committee in an attempt to understand the rationale for what happened. Results of the follow-up will be included in the Next **COFAR Voice**.

## The Massachusetts Phase One Olmstead Plan Emphasizes Facility Diversion and Outplacement

The Executive Office of Health and Human Services (EOHHS), the Executive Office of Administration and Finance (EOAF) and the Executive Office of Elder Affairs (EOEA) released **Enhancing Community Based Services: Phase One of the Massachusetts' Plan** on July 31, 2002.

Governor Swift established the Olmstead Advisory Group "to provide insight and recommendations to those agencies involved in planning enhancements to the system" and "directed members of her cabinet to develop a written plan for enhancing community-based services within the state." Unfortunately, the plan focused less on "enhancing" community programs than it did on "institutional" diversion and outplacement. The report does not state how ICF/MR facility diversion, outplacement and closure "enhances" community based services.

The report focuses on 8 highlights of Phase I Olmstead Planning. Five of the eight "highlights" focus on outplacement and closure. The report would more appropriately be called an "Institutional Diversion, Outplacement and Closure Plan.

The report is a disappointment from COFAR's perspective but that is not surprising given the membership of the various

<sup>1</sup> *Olmstead v. L.C.* 119 S. Ct. 2176 (1999).

committees involved. Neither the Olmstead Advisory Group nor the four subcommittees it established included representatives of families with loved ones living at any of the six Massachusetts ICF's/MR. Another major problem with the report is that the general conclusions and recommendations do not distinguish between the various types of "institutions." Nursing homes, psychiatric facilities and ICF's/MR are all referred to as "institutions." The document is also full of contradictions. While "institutional" closure is a de facto assumption, the report continually emphasizes the importance of the "preferences of people with disabilities," "options that maximize consumer choice," "informed consumer choice," "consumer empowerment." The fact is that 98% of the current residents at the facilities are under guardianship. It is likely that most individuals who are ICF/MR-eligible would be under guardianship. Why are their preferences and choices not honored if they choose ICF/MR placement?

The definition of an "institution" developed by the Olmstead Advisory Group is totally unacceptable. Their definition is as follows: "An institution is a publicly or privately funded congregate setting where the individuals who are served do not have autonomy over their daily routines and activities and are not living in the least restrictive setting!" COFAR will be recommending a different definition in its formal recommendations.

It is important that the ICF/MR be addressed separately from other "institutional" settings as there are unique considerations. Individuals are not forced to live in ICF/MR settings as the report implies. Their guardians have been fighting to keep their loved ones at the facilities for decades under tremendous pressure to move into the community. ICF/MR settings are the least restrictive, most appropriate, responsive and cost-effective settings for individuals with pervasive needs. Most individuals with mental retardation belong in the community but the choice of an ICF/MR setting should be honored. Families should be given objective and current information about what the facilities have to offer.

DMR Commissioner Morrissey will be making decisions on the Future of the Facilities in the next few months and Families are very concerned.

The hope is that 2003 will bring rational thought to the issue of the future of the DMR facilities and that access and choice, cost and the development of models of care will be objectively addressed through reason and respect.

COFAR's concerns regarding the future of the facilities focus on four issues that must be addressed before any defensible plan for the future role of the facilities can be recommended:

- The need to complete a Comparative Cost Analysis of facility and community-based services;
- Validation of Assumptions in three critical areas;
- Intent of Legal Mandates on Choice and the need for a survey of the "ICF/MR Choice" population; and
- Development of "Models of Care" and creative use of existing resources.

We trust that Commissioner Morrissey will do the right thing and addresses these issues objectively and develop a rational and reasonable plan for the future of the facilities.

### John Turner joins COFAR Staff and Tours DMR Community Programs and Facilities.

John Turner joined COFAR as Development Director on October 1, 2002. John will be responsible for establishing COFAR's first Development Office and will be spearheading various fundraising and membership initiatives. John has experience with annual fundraising campaigns, grant writing, special event planning and membership drives as well as corporate and community giving programs. He holds a bachelor's degree in Business from Rutgers University. He is a member of the Association of Fundraising Professionals and has completed the first year towards becoming a Certified Fundraising Executive. COFAR is very pleased to have John on board as we strive to expand our efforts to focus on community-based services.



*Peggy and Joe Hughes, Sabine Hedberg, John Turner and Phyllis Onusseit tour the Fernald Center in Waltham. Mr. and Mrs Hughes and Ms. Onusseit have family members who make their home at Fernald. Ms. Hedberg is Executive Director of COFAR.*

## Amendments to DMR Eligibility Regulations

COFAR completed an analysis of the proposed amendments to the DMR Eligibility Regulations 115 CMR 6.01-6.10 and submitted written testimony to the Department of Mental Retardation on September 30, 2002. Recommendations focus on a centralized eligibility determination process and structure and more specificity in definitions thus providing the public with greater accountability. Substituting the word “may” for the word “shall” in section 6.06 reduces eligibility for DMR non-residential services to children from a “certainty” to a “possibility.” This is a substantive change and could have serious unintended consequences. Anyone wishing to receive a copy of COFAR’s testimony is encouraged to call the COFAR Office (978.897.7179).

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