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August 2, 2013



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Legal News

- 1. New Jersey:** Fighting to keep developmental centers open, Englewood man seeks council support

Northern Valley Suburbanite * Thursday, August 1, 2013

An Englewood resident fighting to keep two New Jersey development centers from closing

came to the July 23 city council meeting urging public officials to adopt a resolution supporting his cause.

"We have strongly [begun] to think over time [that the closure] was clearly a political deal and a typical example of government operations at its very worst," said Sam Friedman, whose sister lives in one of the centers. "It did not take into account in any meaningful way the needs of some 700 residents of these two centers."

A state task force issued a binding decision to close Totowa's North Jersey Development Center and the Woodbridge Development Center in Middlesex County in August. The decision leaves the state with five open developmental centers. The state will redirect the funding toward community housing.

Family members of 34 developmental center residents, including Friedman, filed a class action lawsuit against the state in June, alleging closing the two facilities is in violation of the residents' rights.

Friedman is the brother and guardian of his 48-year-old sister Jackie, who has lived at North Jersey Developmental Center since she was a 1-year-old. Jackie has the IQ of approximately a 2-month-old, and while she will never speak or care for herself, she has a life within the developmental center, said Friedman.

"These centers are not just brick and mortar institutions, they are staffed by folks that are professionals," said Friedman. "They are literally family to these folks who live there."

He said family members and guardians of the developmental centers' residents conducted a survey finding that 90 percent of families wanted their loved ones to stay in these centers.

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2. Illinois: Second restraining order granted on behalf of Murrav residents

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WILY/WRXX News (Centralia, IL) • July 29, 2013

The state of Illinois is facing yet another obstacle in its bid to close the Warren G. Murray Center in Centralia, as a 10-day emergency restraining order was entered Monday on behalf of residents who are wards of the state.

In a case filed Monday morning in Clinton County, the employee group Friends of Murray Center Inc., and a number of private individuals filed a request for a temporary restraining order on behalf of Murray residents who are wards of the state. The request seeks to stop those residents from being moved out of Murray, much like a federal restraining order has stopped the movement of residents with private guardians.

Judge Dennis Middendorff approved the temporary request, and appointed Public Defender Stewart Freeman as temporary guardian ad litem for the roughly 20 residents remaining at Murray who are wards of the state.

Monica Sobczak, one of the plaintiffs in the case, said all the residents, including the wards of the state, should stay in their home until the federal court makes a decision on the planned closure.

Sobczak says the plaintiffs do not believe the office of the state guardian has been acting in the best interest of the residents and is instead just doing what the state told them to do and residents were being placed in unsafe conditions, so the plaintiffs decided someone had to protect those residents from the state.

The suit names as defendants not only the Department of Human Services, but its directors, the Office of the State Guardian, administrators of the Murray Center and Community Resource Alliance the private company hired to oversee the closure of Murray.

Rita Winkeler, president of the [Murray Parents Association](#), which is a plaintiff in the federal

lawsuit, voiced her pride in the Murray Center staff and the community in stepping up and fighting for those residents.

Winkeler says since the February 2012 announcement that Murray would be closed, she has been worried about the state wards, as they have no one to defend them.

In addition to the request of an emergency temporary restraining order, the plaintiffs seek a preliminary and permanent injunction against the state and its representatives, and ask to have the office of the state guardian replaced with a guardian ad litem who would represent the best interests of each state ward resident at the Murray Center.

State Representative Charlie Meier (R-Okawville), who has been extremely active in the fight to save Murray, said of Monday's court action, "Today is bad news for Governor Quinn and excellent news for friends of Murray Center. The safety and well-being of the residents of Murray Center will now be preserved."

Meier commented that far too often society has turned its back on mentally challenged members of society and that Monday's suit and the judge's ruling clearly prove that there is care and compassion left in Southern Illinois.

DHS spokeswoman Januari Smith said the state was unaware that such a case had been filed and that the agency had not yet received copies of the complaint. The case will be back in Clinton County Court Aug. 8, with Judge William J. Becker presiding.

Meier closed his comments by saying, "The Friends of Murray Center have finally proven that the wards of the state have friends and family within the small caring village of the Murray Center and within the city of Centralia, Illinois."

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3. Illinois: Union takes stand on privacy

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violations at Murray Center

Sentinel * August 2, 2013

AFSCME to file grievance contesting discipline against employees who refuse to comply with orders.

Centralia, IL: The union representing employees of Warren G. Murray Developmental Center is taking a hardline stance regarding allegations that staff members have been asked to violate residents' private medication information.

On Tuesday, a family member of a Murray Center resident claimed that the Illinois Department of Human Services directed Murray Center staff to turn over her sister's file to resident transition firm Community Resource Alliance (CRA) despite a legally binding letter in the file preventing CRA from access. The family member alleged the Health Insurance Portability and Accountability Act request was in retaliation for being a plaintiff in a Clinton County Court, which resulted in a judge appointing a new guardian for the facility's wards of the state and putting a halt to their relocation with the guardian's consent.

Rita Winkeler, president of the [Murray Parents Association](#) and a plaintiff in a separate federal lawsuit which led to a temporary restraining order against the state, said the situation was brought to the attorneys in both cases to see what legal recourse could be taken. Winkeler also provided a copy of correspondence from American Federation of State, County and Municipal Employees Council 31 who weighed in on the controversy.

AFSCME Council 31 Director of Public Policy Anne Irving said that she and staff representative Ed LaPorte submitted a letter to Murray Center staff Wednesday about the situation with CRA in which "management is seeking to subvert the normal procedures for

consent."

"We stated that our union believes that providing resident health and treatment information to outside entities violates Murray Center operating policy and procedure, the DHS Employee Handbook provisions on confidentiality, and the Health Insurance Portability and Accountability Act," Irving said in her comments to Winkeler. "We reminded our members that only authorized persons have access to confidential and protected health information and failure to respect customer privacy can bring sanctions against DHS and the employees involved. We also know that [the Murray Parents Association] intends to aggressively prosecute violations of HIPAA."

Employees were reportedly advised by AFSCME to decide the proper course of action when given an order from management while bargaining unit members should refuse to comply with any orders that would lead to violations. Staff members were given specific steps to take to refuse direction and were also given HIPAA Violation complaint forms.

Irving concluded, "Murray Center management may try to impose discipline on our members for refusing to comply with a direct order. The union would file a grievance contesting that discipline."

She added that attempts to contact DHS regarding "this about face on resident confidentiality and guardian consents" had not yet elicited a response.

State News

4. Washington State: Caregivers working with developmentally disabled had failed background checks

Associated Press * July 31, 2013

OLYMPIA, Washington — Nearly two dozen people who failed criminal background checks

were allowed to work with developmentally disabled clients in Washington state, according to a state audit released Wednesday.

In conflict with state policy, some businesses hired the 23 caregivers even though they had past legal problems involving assault, theft, drug charges, abuse and financial exploitation, according to the audit. Officials said it wasn't clear whether the caregivers had unsupervised access to the clients —something that would violate state law — but assumed it happened in some cases within the supported living program.

Auditors said the state does not have the staff to review the results of all background checks.

"We recommend strengthened monitoring processes to prevent caregivers who fail background checks from working with vulnerable populations," said State Auditor Troy Kelley in a statement.

State officials said in response to the findings that 100 percent compliance "is the only acceptable result for this process." Officials said they are working to conduct background check training for service providers, reviewing background check compliance and updating policies.

The supported living program, within the Developmental Disabilities Administration, provides services to about 3,700 developmentally disabled people in the state at a cost of about \$280 million in federal and state money under Medicaid. The state contracts with businesses, which hire caregivers to aid people in maintaining their homes, preparing meals and other basic needs.

Along with the issue of background checks, auditors also raised questions about \$17 million in program payments — about 6 percent of all spending. The audit identified \$500,000 in overpayments and \$5.5 million in payments that weren't properly authorized. Officials said those

problems were linked to a paper-based process that is being replaced by an electronic system.

The audit also identified more than \$11 million in questionable payments in which businesses did not have proper documentation, such as time sheets and schedules, to support the payments they received.

The state said in response that it is working with a consulting firm to evaluate the payment process and examine strategies to improve efficiencies and compliance.

5. National criminal background checks for caregivers to disabled slow in coming

Real Choices in Care Blog * July 30, 2013

Undertaking national criminal background checks in hiring workers to care for people with developmental disabilities would seem to be a basic step in ensuring the safety of the most vulnerable among us.

But states seem to be moving slowly in requiring national checks, and statutes and regulations governing background checks appear to vary widely. It also appears that many states have so far failed to take advantage of federal grant money available to design workable national background check programs.

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Quotable

"We can't solve problems by using the same kind of thinking we used when we created them." - Albert Einstein

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Calendar Reminders:

***Social Media Strengths: Using Facebook and Twitter to Advance Your Cause (VOR, July 2013).**[Visit VOR's website for a copy of the powerpoint presentation and an audio of the event.](#)

*** How Congress Works Webinar: [Recorded - Listen Here.](#) Tuesday, April 23, 2013 - 12:00**

pm central / 1:00 pm eastern

FREE WEBINAR: How Congress Works: The Basics.
Hosted by Peter Kinzler and Larry Innis.

*** AHCA/NCAL to host Intellectual and
Developmental Disabilities (ID/DD) Day –
October 6, 2013. [Details online.](#)**

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