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Joint Committee on Children & Families  
State House  
Boston, MA 02133

To whom it may concern,

The Arc of Massachusetts and the National Alliance for the Mentally Ill are opposed to H2815, *An Act providing for an investigation and study by a special commission relative to the effect of privatization on the delivery of human services*. Since our organizations are named within this bill, we feel compelled to offer the following testimony to the Committee.

Our primary objection stems from language within the bill that suggests the community-based human service system is an unmitigated failure. The bill directly suggests that economic factors impacting staff retention, which are a matter of record, call into question the community care system's ability to "offer the continuity and consistency of support, which is essential to persons with mental retardation." We would strongly argue against the premise that the community-based system, as a model, places people at risk. The success of the purchase of services (POS) community-based model has long been proven, providing care to Massachusetts residents since 1972. There is overwhelming agreement among the vast majority of advocates, families, professionals and the academic community nationwide that individuals reliant upon human service programs are best served in non-segregated, community-based settings.<sup>1</sup> Conversely, we would not argue that the POS is an unqualified success story, but our organizations are committed to quality community care and will continue to work cooperatively with the Legislature, individuals, families, and providers to strengthen the system of community based services.

We have not hesitated to come to the Legislature year after year to state the case that program services have been impacted by 18 years of level funding. There have been no funds appropriated in this period to offset increased operating costs (less than 10% goes to administration, by the state's own calculation) and only minimal appropriations to increase the salaries of our critical direct care staff. Each year the Operational Services Division of the Executive Office for Health and Human Services calculates the increase in provider costs. This is required by the Legislature and the cost inflation factor is provided to Administration and Finance (A&F) for the purpose of setting the Governor's budget. To reiterate, this figure has been ignored for eighteen years.

If anything, this sector is in dire need of a rate setting mechanism which matches funding with quality standards set by the state. This was basically the conclusion of a thorough report of the Massachusetts Taxpayers Foundation in the fall of 2003.<sup>2</sup>

The human service sector represents the largest segment of registered nonprofits in the state. Contract human service providers are predominantly 501(c)(3) organizations and the Commonwealth already tightly monitors their expenditures and operations through a myriad of statutes, regulations, policies, auditing procedures and, of course, contracts.<sup>3</sup> This is now a \$2.4 billion dollar sector and represents almost 10% of the state budget. This sector has grown dramatically since the early 1970's when only \$25 million was available for community-based services. The state has made a huge investment in this system. We should be proud of the work we have done in serving one in ten citizens of the Commonwealth. Thirty years ago, the state made a "make vs. buy" decision that would be catastrophically expensive to reverse. Regardless of the political motivation of the time, the decision has proven to be a wise one as thousands of people's lives have been enhanced by the ability to live, work, learn and play in their own communities. These days, individuals and parents overwhelmingly choose community-based services over institutional settings. Public education and workplace inclusion are now the norm, thanks to such groundbreaking legislation as the Americans with Disabilities Act and court action such as the U.S. Supreme Court's *Olmstead* decision.

Lastly, we contend the vacillating nature of state revenues on which the POS system relies for economic stability is the ultimate determinant of quality services. Much groundwork has already been laid to establish this view. We do not require more research or the creation of yet another deliberative body to define the challenge we face. In March, 1999, The Association of Developmental Disabilities Providers conducted a thorough study that identified problems inherent in DMR providers' inability to recruit and retain staff, and offered a number of recommendations. Copies of this report were given to every member of the Legislature. In January, 2001, the Legislature directed the Executive Office for Administration and Finance to conduct a study on the effects of the Executive Office and Health and Human Services salary reserve throughout its history.<sup>4</sup> In its FY2005 Budget, the Legislature established a Workforce Commission to identify and measure data missing from the A&F study.<sup>5</sup> For the 2005-2006 Session, a bill has been introduced that would address the COLA inequity that exists in state POS contracts.<sup>6</sup>

Do we recognize the need for improvement beyond the simple advocacy of increased funds? Yes. For example, we heed the recommendations of the Massachusetts Inspector General's recent investigation and recommendations regarding the screening of human service workers.<sup>7</sup> A refiled bill currently before the Legislature was cited in the IG's report as a thoughtful public policy initiative.<sup>8</sup> The bill did not receive a hearing during the last legislative Session. While some of us may disagree on the issue of background checks, why not use the Committee Hearing process as a means to vet these differences and accomplish a tangible outcome?

In closing, we respectfully urge the Committee to reject H2815. A number of bills offering thoughtful proposals to improve our community-based system have been filed during the current Session. We commit to providing information and resources to assist the Committee in its important work towards improving services for people with disabilities in the Commonwealth.

Thank you very much for your consideration of this testimony.

Sincerely,



John Thomas  
The Arc of Massachusetts



Tobias Fisher  
NAMI Massachusetts

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<sup>1</sup> Policy Brief, Institute on Community Integration (UCEDD) • College of Education and Human Development, University of Minnesota, Volume 12 • Number 2 • June 2001

<sup>2</sup> Reforming the Commonwealth's \$2 Billion Purchase of Human Services: Meeting the Promise for Clients and Taxpayers, Massachusetts Taxpayers Foundation, September, 2003

<sup>3</sup> Provider agencies operating within the POS are registered with the Internal Revenue Service, and the offices of the Secretary of State and the Attorney General. Each has an independent role in producing regulations and standards for providers that require compliance and each monitors and evaluates our members. In addition to this, human service providers are subject to audits from the Executive Office of Health and Human Services, Executive Office for Administration and Finance, the State Auditor, and the Departments of Labor (State and Federal). Further, providers are monitored, subject to audits, and in some cases licensed by any of our state funding sources, (DMR, DSS, DYS, DMH, DPH, OCCS etc.), and local municipal licensors, all with their own unique processes and definitions. Since these contracts are funded by state appropriations, providers are also subject to review by House and Senate Post Oversight Committees. As funding sources are allowed to create their own contract documents, requirements and definitions, providers must adhere to extensive regulations of the state's Operational Services Division that govern the procurement of provider services and foster more definitions of acceptable expenditures. The ability to retain any surplus revenue is limited and executive salary levels are regulated by both the state and the I.R.S. There is clear and enforceable language regarding related party transactions for board members and executives. Providers are required to file annual audits conducted by *independent certified public accountants* as well as complementary reports that provide greater detail into expenditures to the state. These reports are reviewed according to regulation, by the volunteer boards of each provider organization, and are signed to document this review. All providers must meet "pre-qualification standards" with State agencies before contracts can be offered. And finally, all contracts are forwarded to the State Comptroller to insure expenditure levels over the course of the service period are consistent with the maximum obligations of each contract. In those instances where providers receive funds from federal sources, again, they are subject to all applicable licensing standards, audits and other federal regulations and oversight. In addition, those organizations that receive funding from foundations or their local United Way are typically required to submit additional distinct financial documentation. The Uniform Financial Report completed by all providers, in addition to independent certified audits, is regarded as one of the most thorough in the country.

<sup>4</sup> Outside Section 445, Study of the Impact of Salary Reserve, FY1997 - FY2000, Commonwealth of Mass., Executive Office for Administration and Finance, Operational Services Division.

<sup>5</sup> Outside Section 358 – FY2005 Massachusetts Budget

<sup>6</sup> H2885 **AN ACT RELATIVE TO RATES FOR HUMAN AND SOCIAL SERVICE PROGRAMS**, This bill shifts the responsibility for setting rates to be paid by government agencies for human and social service programs, other than special education programs, to the Division of Health Care Finance and Policy (DHCFP) within the Executive Office of Health and Human Services (EOHHS). Currently, prices paid by state agencies for human and services, other than special education programs, are determined through a bid process dictated by the Division of Purchased Services (DPS) and the Operational Services Division (OSD) within the Executive Office for Administration and Finance (A&F).

Under A&F's bid process, providers are required to bid to a state agency's pre-set contract prices that are based solely on budgetary considerations and that bear no relation to the cost or value of the services purchased. Under the current bid system, there is no assurance of rate adequacy and there is no right for providers to appeal inadequate rates. There is no effective check or balance against unfair government payments. As a result, amounts paid to human and social service providers have not kept pace with inflation for more than 15 years, and providers can no longer afford to pay their direct care workers enough to retain them (leading to extraordinarily high rates of employee turnover) and have been deferring maintenance and basic improvements for years.

This bill addresses these issues by requiring DHCFP to treat human and social service providers like other health care providers that have class rates set by DHCFP. It sets a standard of rate adequacy and confers on social service providers the same appeal rights as are accorded to other providers whose rates are set by DHCFP. It also adjusts multi-year contracts for the annual inflation (as costs currently determined by DPS), and provides a right to obtain a contract amendment if the procuring government agency adds additional units of service or new program requirements to a contract.

<sup>7</sup> A Review of the Department of Mental Health's Employee Screening Practices, Office of the Massachusetts Inspector General, 2005.

<sup>8</sup> An Act TO REQUIRE NATIONAL BACKGROUND CHECKS, REFILE OF PREVIOUS MATTER: BILL #: 1304 OF YEAR: 2002, CHIEF SPONSOR: Representative Martin Walsh of Boston