

**JOIN VOR IN WASHINGTON, D.C.**

2009 VOR Annual Meeting and Washington Initiative

Annual Meeting: Saturday, June 13, 2009

Capitol Hill visits begin: Monday, June 15, 2009

**HOTEL RESERVATIONS:**

Guest can begin calling now to make reservations at 1-866-AFFINIA (233-4642)

Location: The Liaison on Capitol Hill (formerly Holiday Inn on the Hill)

\$179/night (single/double) (reference VOR / Voice of the Retarded Block)

-----  
**VOR Weekly E-Mail Update**

**January 23, 2009**  
-----

=====  
**IN THIS ISSUE:**

**BUDGET WOES LEADING TO CUTS and CLOSURE PROPOSALS:**

**TOOLS FOR ADVOCATES**

1. Legislative and Legal Developments Due to Budget Constraints Impact State ICFs/MR in NJ, KS, VA, CA, WA, and MO

2. Bucking the Trend: News from Delaware and Nebraska

A. Delaware: Stockley to open 54-bed residential facility, to include services for nonresidents

B. Nebraska: County Board Pledges to Support Beatrice Developmental Center / Backs State Bills and Governor's Support for Center

**3. ADVOCACY TOOLS**

A. Cost Comparison Study: 2009 Update (See also, Attached).

B. Olmstead = Choice

C. VOR Issues Position in Support of Virginia Training Centers: Template for other states

D. Delegate in Virginia Stands Up for Choice

**COMING UP:** 2009 Annual Meeting and Washington Initiative:

Complete Conference Details, Registration Form, and Sponsorship Opportunities  
=====

-----  
**1. Legislative and Legal Developments Due to Budget Constraints Impact State ICFs/MR in NJ, KS, VA, CA, WA, and MO**  
-----

**New Jersey:** State Assemblyman Greenwald introduced (A-3625, which calls for the closure of five New Jersey State Developmental Centers. Greenwald cites hoped for savings, along with ideological reasons, as the motives behind his legislation. (Source: Greenwald Press Release, Jan. 8, 2009).

**Kansas:** Gov. Kathleen Sebelius has issued an executive order to set up a commission that will consider closing a number of state facilities, such as the state's hospitals for Kansans with developmental disabilities. "In these unprecedented economic times, we must examine all state operations to determine if savings can be realized by suspending, merging or streamlining programs," Sebelius said in a prepared statement. (Source: LJ World, January 22, 2009).

**Virginia:** The Kaine administration's plan to close the Southeastern Virginia Training center and downsize the Central Virginia Training Center drew bipartisan fire yesterday from members of the House Appropriations Committee. The Department of Mental Health proposes saving \$16 million by closing the Southeastern Virginia Training Center in Chesapeake, closing a center in Marion, and closing part of a center in Staunton. This is precipitous. I don't see how it is physically possible to do this," said Del. Harvey B. Morgan, R-Middlesex. "The disruption could be life-threatening." "Do you have a plan?" asked Del. Robert H. Brink, D-Arlington. Under pressure from the legislators, James S. Reinhard, commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, said the department did not have a detailed plan on where the patients would go if the facilities close. Reinhard and the secretary of Health and Human Resources, Marilyn B. Tavenner, promised to come back to the committee with a more detailed plan in two weeks. Reinhard acknowledged that plans to close some of the facilities by the end of June were prompted by the current budget situation. (Source: Richmond Times-Dispatch, January 17, 2009)

**California:** Due to severe state budget constraints, front line workers at the State Developmental Centers ("psychiatric technicians") will be asked to take two furlough days either during 19 months of the Governor's proposed furlough program, or within 2 years following the end of the called-for furlough. (Source: CAPT release, January 9, 2009).

**Washington:** The state is experiencing a nearly \$6 billion revenue shortfall for the 09/11 biennium. As required, the Governor has proposed a balanced budget to the legislature in which she recommends the closure of the Yakima Valley School which currently houses 100 clients to save an alleged \$1.2 million. (Source: VOR member)

**Missouri:** A preliminary report has just been released that calls for cuts at Hab Centers for people with developmental disabilities, along with other cuts, to address budget shortfalls. (Source: VOR member).

-----  
**2. Bucking the Trend: News from Delaware and Nebraska**  
-----

**NOTE:** In addition to alleged cost savings, the national trend is often cited as justification to support downsizings, consolidations and closures of state ICFs/MR. Although there are now 9\* states that do not offer state ICFs/MR services, 41 still do - a resounding majority. Furthermore, the two articles in this section offer different examples of how states are currently showing support for the ICFs/MR. The first article is about Delaware's new state-operated 54-bed ICFs/MR. The second article comes from Nebraska

and details significant legislative and gubernatorial support for the embattled Beatrice State Developmental Center.

\*The 9 states that have no large state-operated ICFs/MR are: AK, DC, HI, ME, NH, NM, RI, VT and WV (Source: University of Minnesota, 2008). "Large" is defined as 16 or more residents. (Note: Oregon and Minnesota are nearly deinstitutionalized; these states each have one state-operated ICF/MR with about 40 residents.

=====  
**A. Delaware: Stockley to open 54-bed residential facility, to include services for nonresidents**  
=====

**BY MOLLY MURRAY  
THE NEWS JOURNAL  
JANUARY 4, 2009**

A \$30 million facility at the Stockley Center near Georgetown will be opening later this month, changing the way the state's residents with developmental disabilities are cared for.

The Mary A. Coverdale Center will provide residential care for Stockley residents who need full-time medical treatment and also will provide temporary and respite care for dozens of other people with developmental disabilities.

"The building has a lot of new things to make life easier for the people who live and work there," said Charlotte Brown, director of residential services at Stockley.

Everything from new lift systems to state-of-the-art beds are designed with better patient care in mind, she said.

"We've got the best beds we could research and buy," she said.

In addition, the Stockley kitchen and laundry will be moved to the new building and will be air-conditioned -- a first in the center's history, Brown said.

Stockley opened in 1921 as an institution that provided residential care for those with cognitive and developmental disabilities. It was a time when both physicians and families felt the disabled were best cared for in institutions. At the peak in the 1970s, about 700 people lived in the wooded setting south of Georgetown.

But these days, most families care for people with disabilities in a home setting so fewer people live full-time at Stockley. Many who remain are severely disabled and require full-time medical care.

"This new 54-bed Intermediate Care Facility is specifically designed for individuals with developmental disabilities.

Some of the beds are for short-term, rehabilitative stays and some will provide medical care for individuals who live at home but whose families need brief periods of respite care," said Marianne Smith, former state director of Developmental Disabilities Services.

These days, 85 people live on the Stockley campus. Of those, 45 live in the current medical care facility. The rest live in cottages on the grounds.

Brown said once the new facility is open -- sometime later this month -- the old medical care building will be torn down. It dates to the 1950s, she said.

Besides offering care to the severely disabled, the new center will provide an outpatient clinic for people who don't live on the grounds, she said.

The site of the old building will be converted into a parking lot, she said.

The new center, dedicated last week, is named for Gov. Ruth Ann Minner's late mother. Coverdale volunteered as a foster grandmother at the center in the 1970s.

=====  
**B. NEBRASKA: County Board Pledges to Support Beatrice Developmental Center / Backs State Bills and Governor's Support for Center**  
=====

**By Chris Dunker**  
**The Daily Sun**  
**Thursday, Jan 15, 2009**

Among the items on the agenda at the first Gage County Board of Supervisors meeting in 2009 was a resolution to support a legislative bill to keep the Beatrice State Developmental Center operational in Beatrice.

The board voted 5-0 in support of the resolution, with members Dave Anderson and Ron Fleecs absent.

BSDC has been under fire after an investigation from late 2006 to late 2007 described multiple cases of abuse and neglect as well as some isolated cases of severe incidents.

Senator Norm Wallman recently introduced a bill (LB68) that would help protect the troubled center by requiring a vote by the Nebraska State Legislature before BSDC could be shut down. See, <http://www.nebraskalegislature.gov/FloorDocs/Current/PDF/Intro/LB68.pdf>

On Tuesday, Sen. Steve Lathrop of Omaha introduced a bill (LB236) that calls on the state to spend nearly \$163 million over the next four years. His proposal would expand community-based programs outside of the Beatrice State Developmental Center. See, <http://www.nebraskalegislature.gov/FloorDocs/Current/PDF/Intro/LB236.pdf>

Before the current legislative session began, Gov. Dave Heineman said he wants to spend \$17 million more on the Beatrice State Developmental Center over the next three years and study whether it should be privatized.

His proposal calls for committing an additional \$17 million in general funds to the Beatrice State Developmental Center over a three-year period. The fiscal year 2009 BSDC budget is currently more than \$54 million.

BSDC employs 665 full-time and part-time staff members and 93 on-call temporary workers.

-----  
**3. ADVOCACY TOOLS**  
-----

=====  
**A. Cost Comparison Study: 2009 UPDATE**  
=====

For additional resources relating to the Cost Comparison Study, see, <http://vor.net/resources.htm>.

For a complete copy of the Cost Comparison Study, contact Tamie at Tamie327@hotmail.com; 605-399-1624.

**UPDATE**  
**January, 2009**

***Cost Comparisons of Community and Institutional Residential Settings:  
Historical Review of Selected Research***

**Kevin K. Walsh, Theodore A. Kastner, and Regina Gentlesk Green**  
***Mental Retardation, Volume 41, Number 2: 103-122, April 2003***

In the 2003 article noted above a review of selected literature was undertaken to determine the validity of institutional vs. community cost comparisons. A number of methodological problems were identified in the literature reviewed that compromised much of the earlier research on the topic. Additionally, a number of considerations were outlined - source of funds, cost shifting, cost variation, staffing, and case mix - that need to be taken into account when such comparisons are undertaken.

The question has arisen whether the conclusion of this 2003 review, that large savings are not possible within the field of developmental disabilities by shifting from institutional to community settings, remains current.

For the reasons explained below, we find that the 2003 article continues to be valid in 2009 and beyond. That is, cost savings at the macro level are relatively minor when institutional settings are closed and, if there are any at all, they are likely due to staffing costs when comparing state and private caregivers. As such, the study will continue to be useful in policy discussions in states.

Several factors point to why the study's conclusions remain valid in 2009:

**Review Article.** As a review article, the 2003 publication does not generate new data; that is, it reviews previous research. Because of this, the article is more resistant to becoming outdated. Those reading the article, however, would do well to keep in mind that the studies reviewed in the article employ cost figures that existed at the time the original research articles were published. Therefore, while the findings and conclusions drawn in Walsh, et al. (2003) will continue to be timely, the actual cost figures may need to be adjusted to current levels.

**Stability of the Components.** Because the service and support landscape remains, in large part, similar in 2009 to 2003 and before, the conclusions of Walsh, et al. are likely to hold. For the most part comparisons reviewed generally compared congregate ICF/MR settings and community-based residential settings (typically group homes) funded under the Medicaid HCBS waiver. Although many states have been moving toward personal budgets and fee-for-service models, group homes continue to be a primary community residential service setting. In this way also the conclusions of the 2003 article continue to be applicable.

**Stability of the Issues.** As noted, the 2003 article presented descriptions of various considerations that affect cost comparisons across states. Because the structural components of the issue have remain unchanged (e.g., institutional settings, group homes) and the funding models have remained largely intact (i.e., Medicaid ICF/MR and HCBS waivers), the various factors affecting them, for the most part, remain as presented in Walsh, et al.

That is, these remains a great deal of cost variation from institutional to community settings as described in the article; cost shifting as described in Walsh, et al. is, to some extent, likely to be structurally fixed in most states owing to the nature of state governments. That is, when certain costs disappear with transfer from ICF/MR, it is highly likely that these costs will reappear in other state budgets (such as Medicaid). In nearly all instances, this is nearly unavoidable.

Based on the forgoing, it appears that the conclusions drawn in the 2003 article continue to be valid.

**KKW, January 23, 2009**

=====  
**B. Olmstead Requires Choice of Residential Setting**  
=====

The Supreme Court, in its Olmstead ruling, recognized the need for a range of services which respond to the varied and unique needs of the entire disability community:

(1) Unjustified institutionalization is discrimination based on disability. 119 S. Ct. 2176, 2185 (1999).

(2) The Supreme Court held that community placement is only required and appropriate (i.e., institutionalization is unjustified), when -

"(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.

(3) A majority of Justices in *Olmstead* recognized an ongoing role for publicly and privately-operated institutions: "We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings...Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it." 119 S. Ct. at 2187.

(4) A plurality of Justices noted:

"[N]o placement outside the institution may ever be appropriate . . . 'Some individuals, whether mentally retarded or mentally ill, are not prepared at particular times-perhaps in the short run, perhaps in the long run-for the risks and exposure of the less protective environment of community settings' for these persons, 'institutional settings are needed and must remain available'" (quoting *Amicus Curiae Brief for the American Psychiatric Association, et al.*) 119 S. Ct. at 2189.

"As already observed [by the majority], the ADA is not reasonably read to impel States to phase out institutions, placing patients in need of close care at risk... 'Each disabled person is entitled to treatment in the most integrated setting possible for that person - recognizing on a case-by-case basis, that setting may be an institution'[quoting *VOR's Amici Curiae brief.*" *Id.*

(5) Justice Kennedy noted in his concurring opinion, "It would be unreasonable, it would be a tragic event, then, were the Americans with Disabilities Act of 1990 (ADA) to be interpreted so that states had some incentive, for fear of litigation to drive those in need of medical care and treatment out of appropriate care and into settings with too little assistance and supervision." 119 S. Ct. at 2191.

For more information about *Olmstead* and *VOR*, visit [http://vor.net/olmstead\\_resources.htm](http://vor.net/olmstead_resources.htm)

=====  
**C. VOR Issues Position in Support of Virginia Training Centers: Template for other states**  
=====

**NOTE:** VOR can adapt this position paper for your state. Contact Tamie at [Tamie327@hotmail.com](mailto:Tamie327@hotmail.com).

## **Virginia's Training Centers Provide**

### **Life Sustaining, Quality Care to Residents**

Given the diversity of persons in the developmental disabilities community, VOR strongly supports a continuum of quality care options to meet the wide range of needs, ranging from family home, own home, other community-based options, to Medicaid-licensed facility-based care (ICFs/MR, a/k/a Training Centers).

We emphatically reject the position taken by the Virginia Alliance for Community, which has turned its back on Training Center residents and their families by calling for the closure of all Training Centers. The Alliance position is driven by ideology and ignores the diverse individualized needs of all Virginians with developmental disabilities.

Virginia lawmakers are urged to reject proposals based on ideology and focus on the FACTS which clearly support maintaining a full continuum of quality care options in Virginia, including Training Centers and expanded community based options.

Training Centers provide licensed, life-sustaining supports for residents:

? Virginia's Training Centers are all licensed as ICFs/MR. Medicaid certified and licensed ICFs/MR provide least restrictive, cost effective, safe and comfortable homes for the Virginia's most needy, most fragile, most disabled citizens.

? Training Center residents are the most disabled, most medically fragile of all Virginia citizens with disabilities. Families and legal guardians have very valid concerns with regard to whether the community is prepared to safely provide for these citizens' around-the-clock health care and support requirements. Media investigative series, peer reviewed research, and state audits from around the country have found systemic problems - including abuse, neglect and death - with the placement of profoundly developmentally disabled, medically fragile individuals in unprepared community homes (see e.g., The Washington Post's extensive media coverage of this very problem).

Training Centers are a Good Investment:

? Closing Training Centers will not save money. The community is not always cheaper (see, Walsh, et al., Mental Retardation, Vol. 41, Number 2, April 2003: Transferring individuals from large settings to smaller settings will not necessarily save money, and may cost more, if all necessary services are provided and adequately funded).

? Virginia Training Centers benefit from "economies of scale" by employing degreed professionals who provide highly specialized, cost effective health care, therapeutic services, and other supports under one roof to residents and nonresidents.

? Community-based individuals with developmental disabilities also receive services via the Training Centers' Regional Community Support Clinics. In many communities professional health care services, including medical, dental, and therapies, would not be available at all if not for the Training Center's "outpatient" clinics.

? There is no spending bias In Virginia. Nearly 60% of all Medicaid long term care spending for disability services is for community based services.

The Law Requires Choice:

? The United States Supreme Court recognized the need for Training Centers when it stated, "We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings...Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it." (Olmstead v. L.C., 119 S. Ct. at 2187).

? The federal Developmental Disabilities Assistance and Bill of Rights Act requires that the Virginia Office of Protection and Advocacy (a member of the Alliance) recognize individuals and their families as "primary decisionmakers" with regard to support and residential placement decisions.

**Closing Training Centers will displace residents to unprepared community settings; prevent community-based individuals from receiving vitally necessary health care and other services from Training Center professionals; and likely lead to higher costs.**

**The Virginia Alliance for Community's proposal to close all Training Centers is reckless and must be REJECTED.**

=====  
**D. Delegate in Virginia Stands Up for Choice**  
=====

**NOTE:** Ask your friendly legislators to release a media statement in support of a particular center(s), or a general statement in support of a full array of residential options.

**Delay SEVTC move  
Op-Ed By Del. Phil Hamilton  
The Daily Press**

January 15, 2009

Recently, Gov. Tim Kaine offered amendments to the state budget to address the economic downturn that is negatively impacting the projected revenues needed to fund the core service functions of state government. One of the governor's proposals called for the closure of the Southeastern Virginia Training Center (SEVTC), which provides residential and health-care services for the severely mentally retarded, effective June 30, 2009.

This proposal would require that the current 172 residents be transferred to other facilities over the next five and a half months. Over the past three years, only 25 residents have been transitioned from this state-run residential facility to more community-based facilities.

Unfortunately, the infrastructure for such a transition is not available at this time in Hampton Roads.

While I understand the difficult decisions that the governor had to make as a result of the economic downturn, I am not convinced that this is the appropriate strategy to implement within such a short time frame.

As a result, during the 2009 session, I am going to work to delay such proposed actions at SEVTC at least until June 30, 2010, and then only on the condition that adequate and appropriate facilities, services and work force are in place within Planning District 5 (Hampton Roads) to meet The needs of these vulnerable citizens.

To be successful, I will aggressively work to fund the operations at SEVTC until such time as these conditions can be met and to provide the funds to develop a community- based infrastructure that is equal to or exceeds the services currently available at SEVTC.

To meet this goal, we must work cooperatively and collaboratively with the governor and his administration to provide the needed funds so that the local community service boards, the SEVTC professional staff, the families and the advocacy community can develop and implement a "win-win" strategy to protect the dignity and meet the needs of these vulnerable citizens.

*Phillip Hamilton*

Member, Virginia House of Delegates, R-Newport News

-----

**Tamie Hopp**

**REFERRAL/MEMBERSHIP/CONTRIBUTION FORM  
THREE EASY WAYS TO SUPPORT VOR**

**REFER, CONTRIBUTE OR JOIN  
THANK YOU FOR YOUR SUPPORT!**

**TO JOIN OR CONTRIBUTE:** \$25 per individual, \$150 per family organization, or \$200 per provider/professional organization. Extra donations are welcome!

You may pay by credit card or check.

**TO REFER SOMEONE TO VOR:** Use the form below, including the additional sections for referrals.

Mail the completed form (if joining or contributing) with payment to:

VOR (Voice of the Retarded)  
836 S. Arlington Heights Rd., #351  
Elk Grove Village, IL 60007  
847-253-0675 fax (for referrals or credit card payments)  
Tamie327@hotmail.com (for referrals or credit card payments)

FOR REFERRALS: \_\_\_ The contact information provided is for someone I think would consider membership with VOR.

FOR REFERRALS: \_\_\_ You may use my name in any correspondence with this individual. My name is \_\_\_\_\_.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address (if paying by credit card, use billing address). All forms must include complete address including zip code)

\_\_\_\_\_  
City St Zip

\_\_\_\_\_  
Phone Fax

\_\_\_\_\_  
E-Mail

\_\_\_\_\_  
Family/Professional Organization Affiliation (if applicable)

VOR accepts Master Card and Visa. If paying by credit card, please provide the following information:

Amount to charge to card:

\_\_\_\$1,000 \_\_\_\$500 \_\_\_\$250 \_\_\_\$150 \_\_\_\$50 \_\_\_\$25 \$\_\_\_ Other amount

\_\_\_ Mastercard

\_\_\_ Visa

Card Number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Cardholder's Signature: \_\_\_\_\_