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July 12, 2013



VOR Weekly News Update

News and views for VOR Advocates

Speaking out for people with
intellectual & developmental
disabilities



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VOR and You

**1. Reminder: VOR Webinar Next Week! [VOR Webinar
Next Week: Social Media Strength: Using Facebook and
Twitter to advance your cause](#)**

Wednesday, July 17, 2013 * 1 Hour

10:00 AM Pacific Time

11:00 AM Mountain Time

12:00 PM Central Time

1:00 PM Eastern Time

VOR is hosting a free Webinar: "Social Media Strength: Using Facebook and Twitter to advance your cause," to help advocates better understand the basics of Facebook and Twitter.

With over one billion Facebook users and 500 million Twitter accounts, the marketing potential for cause-oriented organizations is undeniable.

Presenters will be Adrian Bredeson, of [E-Power Marketing](#) and member of the VOR Marketing & Communications Committee, and Jill Goldstein, President of [JGoldsteinPR](#) (New York, NY) and VOR Second Vice President.

This webinar is free to anyone. VOR membership is not required.

REGISTRATION INFORMATION

Conference Call: 213-416-1560

Attendee Access Code: 666 3135

[Please click here to register and receive your login instructions](#)

Link not working? Copy the following URL into your

browser: <http://www.anymeeting.com/PIID=E957DD85874B30>

Please join us! Thank you!

**2. *Ed's Perspective: Opportunity to Support VOR While
Celebrating a Man and His Photos***

Ed Dubrowsky was a wonderful husband, father, teacher and photographer who passed away on December 22, 2011. He had 3 severely disabled grandchildren all of whom will need life long supports. He left to them over 40,000 slides that are now being converted and made **available for sale at edsperspective.com**. The pictures are from all over the world and from years ago so the beauty is also in the history of these photos. This process will take a

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few years to complete but we are happy to be able to launch now!

The profits from this website will go to various charities that help adults with severe disabilities through advocacy and opportunity, **including VOR**.

As more and more kids age into the adult care system, less and less options await them. The money will be used in efforts to make sure every adult is safe, that they live meaningful lives, and they are viewed as individuals.

Geoffrey Dubrowsky, is Ed's son and father to a young autistic man age 17 who has little language and many behavior issues. He is also co-guardian of his late sister's children, one a woman age 30 who thrives living in a Developmental Center despite having no ability to communicate. The other a man, age 27 with Fragile X, who lives at home with his Dad and has access to day services. Geoffrey Dubrowsky sits on the New Jersey State Council for Developmental Disabilities and has a first hand knowledge of the issue's that this population is facing.

The following charities will be among the first that Geoffrey Dubrowsky will be funding through this effort. He is continuing to reach out to other organizations to help them make the world a better place for the severely developmentally disabled.

www.poac.net

www.vor.net

www.extremesportscamp.org

July 12, 2013 is not only Ed's Birthday, it is also the birth of a new spirit in cooperation as we help our kids move on!

Visit Edsperspective.com today

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Special Feature:

State of the States in Background Checks

By the Numbers

2. Making the Case for Mandatory National Background Checks

-
- The expansion of community-based care for individuals with developmental disabilities is dramatic: Between 1977 and 2010 the number of residential settings serving people with I/DD increased by 1,598%, with most of those new settings being small and privately operated. [“Residential Services for

Persons with Developmental Disabilities: Status and Trends Through 2010,” University of Minnesota (2012)]

- Non-state agencies serve 98.5% of people living in places with 6 or fewer residents. [Id.]
- Recipients of federally funded community care outnumbered recipients of Medicaid funded and licensed facility based care by 676.1%. [Id.]
- The Department of Health and Human Services (HHS) estimates that by 2020, the number of Direct Support Professionals (DSPs; aka direct care workers) needed to meet long term long-term services and supports (LTSS) demand will grow to approximately 1.2 million full time positions (FTEs) providing an estimated 1.4 million individuals with I/DD with needed residential, vocational and other supports. Between 2003 and 2020 HHS anticipates that the number of DSPs needed to provide for the growth of LTSS for individuals with I/DD will increase by about 323,000 jobs, or roughly 37%. [U.S. Department of Health and Human Services Assistant Secretary for Planning and Evaluation Office of Disability, Aging and Long-Term Care Policy (January 2006)]
- The alarming number of deaths and cases of abuse of developmentally disabled individuals in group homes; in particular, the prevalence of preventable deaths at privately run group homes across this nation and the widespread privatization of this delivery system. (See, [Letter from U.S. Senator Chris Murphy to the Health and Human Services’ Inspector General](#) (March 4, 2013); and [Widespread Abuse, Neglect and Death in Small Settings Serving People with Intellectual Disabilities](#), VOR (April, 2013)).

Federal Support Encourages States, But Does Not Mandate States, to implement national background checks

3. Centers for Medicare & Medicaid Services (CMS) National Background Check Program

CMS * June 4, 2013

Since the Omnibus Budget Reconciliation Act (OBRA) passed in 1987, long term care (LTC) patient abuse, neglect and misappropriation of funds have been identified as a widespread problem for millions of Americans receiving LTC services.

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Title VI, Subtitle B, Part III, Subtitle C, Section 6201 of the Affordable Care Act of 2010 (P.L. 111-148) ([overview](#)) established the framework for a nationwide program to conduct background checks on a statewide basis on all prospective direct patient access employees of LTC facilities and providers. LTC facilities and providers include skilled nursing and nursing facilities, home health agencies, hospice and personal care providers, LTC hospitals, residential care providers arranging for or providing LTC services, and intermediate care facilities for individuals with intellectual disabilities.

The program's purpose is to identify efficient, effective, and economical procedures for conducting background checks. The program will be administered by the Centers for Medicare & Medicaid Services (CMS), in consultation with the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).

CMS has awarded more than \$50 million to 24 States to design comprehensive national background check programs for direct patient access employees [federal matching funds are available to participating states for 3 years]. The Ninth solicitation for grant proposals from States and U.S. territories for inclusion in this National Background Check Program deadline has been extended and applications will be accepted on a flow basis and acted on every 30 days. Federal matching funds are available to all States and U.S. territories that apply to CMS and meet all the National Background Check Program requirements as defined in Section 6201 of the Affordable Care Act. CMS will provide technical support to the States participating in the program. The program will be evaluated by the HHS Office of Inspector General (OIG).

More information about the program solicitation and awards, including a list of all States that have received awards and a copy of Section 6201, can be found by on the [CMS website](#).

Questions regarding the National Background Check Program may be directed to background_checks@cms.hhs.gov.

Existing Research

4. Spotlight On ... Medicaid Personal Care Services

HHS Office of Inspector General * November 2012

Eligible beneficiaries (seniors and people with disabilities) can receive personal attendant care services (PCS) under Medicaid State plan options or waivers. The services must be provided at home or another approved location and follow a specific plan-of-care. Personal care services are typically performed by care attendants, a career that is expected to grow substantially over the next few years along with the costs to Medicaid for PCS. Already in the past 6 years, Medicaid costs for PCS increased by 35 percent, totaling approximately \$12.7 billion in 2011.

Over the past 6 years, the Office of Inspector General (OIG) has issued 23 reports on the topic of PCS and conducted numerous investigations involving PCS fraud. Its latest product, an OIG Portfolio entitled [Personal Care Services: Trends, Vulnerabilities, and recommendations for Improvement](#), synthesizes this body of work and offers new and comprehensive recommendations to address vulnerabilities.

OIG makes several recommendations to CMS to address PCS attendant qualifications and increased Medicaid fraud, including calling on CMS to more effectively leverage its authorities to oversee the Medicaid PCS program by a) making qualification standards for PCS care attendants more consistent, b) requiring care attendants to be enrolled or registered with the State, c) requiring dates, times, and attendants' identities to be listed on PCS claims to Medicaid, and d) expanding Federal requirements and guidance to reduce variation of requirements for claims documentation, beneficiary assessments, plans of care, and supervision of attendants across States.

The [full report \(p. 4\)](#) finds "Insufficient Qualification Safeguards." "To be eligible for Federal financial participation, PCS must be provided by a qualified individual. Although there are no Federal requirements that specify qualifications for PCS attendants, States are required to Specify qualifications or requirements for PCS attendants to ensure quality of care. A 2006 evaluation of State requirements for PCS attendants revealed 301 different sets of requirements nationwide. The most common requirements were background checks, training,

supervision; minimum age; health status (e.g., that the attendant test negative for tuberculosis); and education.” However, a related OIG report noted the wide variation among

States and within the same State may make it difficult to ensure compliance with requirements, and that in 18% of paid claims for Medicaid PCS were inappropriate due to the failure to document certain requirements, including background check results (see, Inappropriate Claims for Medicaid Personal Care Services, OEI-07-08-00430, December 2010).

5. “Safe at Home? Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers”

**AARP and National Conference of State Legislators (NCSL) *
September 2010**

Note: This research does not include federal grants awarded to 24 States since the completion of AARP and NCSL’s work. To see [a list of the 24 States that have received this grant click here \(page 3\)](#).

Summary of Full Study

As an increasing number of services to older adults and individuals with disabilities are being provided in the home and community rather than in institutions, there has become a greater awareness of the need to monitor the individuals providing those services.

One tool to assure high-quality workers is the use of a pre-employment criminal background check. This project gathered and analyzed information on state requirements for criminal background checks for home care workers whose services are eligible for reimbursement through the state’s Medicaid program.

In general, these are workers paid through the state’s Medicaid state plan personal assistance option and workers paid through a state’s Medicaid home and community based services waiver programs. These workers may be employed by an agency or employed as individuals. In some cases, state statutes and regulations apply to privately funded workers in addition to those funded by Medicaid or other public programs, and the [charts](#) and text indicate the scope of state policy.

While the focus is on paid workers, the project also determined whether state rules applying to employees are

used when individuals volunteer in a home care role.

[State Policies on Criminal Background Checks for Medicaid-Supported In-Home Direct Care Workers](#)

Criminal background checks are widely used by states to assess the fitness of people to be hired as in-home direct care workers. State laws vary greatly in their breadth, scope and specificity and in the degree of flexibility afforded employers and applicants when they use the checks to make hiring decisions. Several states have broad requirements that include any workers who provide direct care to the disabled or elderly in their home. Others reference specific workers by type, using terminology such as personal care attendants, home care aides, or companion service providers.

[Criminal Background Checks State Chart](#)

This chart provides a state-by-state list of statutes governing criminal background checks for home health workers. The chart gives the statute number (with links to the statutory text); lists whether the check is mandatory and what exemptions apply; who pays for the check; and summarizes disqualifying offenses.

[State Summaries](#)

This document expands upon the information given in the State Chart, providing a narrative with additional relevant details not covered in the chart.

[Offense Categories](#)

States vary widely in how they define certain criminal actions. This chart explains how these crimes, grouped together in the State Chart, are defined and their relevancy to the background check process.

Related News

6. Poll Finds Disability Caregivers On The Rise

[Disability Scoop](#) * June 24, 2013

An increasing number of Americans say they are responsible for caring for a child or adult with a disability, a new survey finds.

In a poll of over 3,000 individuals nationwide, the Pew Research Center [found](#) that 39 percent of adults — or nearly 4 in 10 — are caring for an adult or child with significant health issues. Just three years ago that number was 30 percent. the research center said.

“More Americans are finding themselves on the front lines of health care as caregivers to a loved one, and often with little warning,” said Susannah Fox, associate director of the Pew Research Center’s Internet & American Life Project and lead author of the report.

The trend is likely to continue as the population ages in the coming decades, experts say.

With regard to children, individuals polled were asked if they had provided unpaid care to anyone under age 18 because of a medical or behavioral condition or disability.

7. Massachusetts: Will we finally get a national background check for DDS hires?

[COFAR Blog](#) * June 24, 2013 * David Kassel

A little more than two years ago, [I wrote about a man](#) who had served a year in prison in California for having sex with a minor before violating probation and fleeing to Massachusetts where he took a job driving people with intellectual disabilities to day programs.

I noted that this individual’s out-of-state conviction was not picked up in an in-state background check done on him in Massachusetts. That was because a longstanding bill that would require that national background checks be done of people hired to work in the Department of Developmental Disabilities system had not yet been passed by the Massachusetts Legislature.

It’s now two years later, and the DDS national background check is still pending in the state Legislature.

This year the measure ([H. 1674](#)) is pending once again in the Judiciary Committee, which held a hearing on July 9. This much-needed bill has been filed each year going back as long as a decade by Representative Martin Walsh of Boston. It has never been clear to us why the bill has never made it through the legislative process or who has opposed it.

National background check legislation for new DDS hires has long been supported by a wide range of advocacy organizations for the developmentally disabled. We know of no advocacy groups that have voiced any opposition to it.

The Patrick administration and the Legislature appear to support national background checks in general. In 2010. the

state upgraded its criminal records database to make it compatible with databases in other states and the FBI. And last year, Governor Patrick signed a bill into law (Chapter 459 of the Acts of 1012), which requires that all persons hired to work in public, private and parochial schools in the state as well as employees of contractors to the school systems and child care organizations undergo national background checks. Massachusetts apparently became the last state in the nation to impose those requirements.

However, the DDS in Massachusetts still hasn't been authorized to require that the people whom the Department or its providers hire also submit to national background checks. H. 1674 would provide that authorization.

State regulations currently authorize DDS to require only that Criminal Offender Record Information (CORI) checks be done on individuals hired to work in both state and privately operated facilities in the DDS system. However, CORI records list only criminal arrests and convictions in Massachusetts and do not identify any convictions a job applicant might have from another state. A national background check system would fill in those potential gaps in the records of persons seeking to work with intellectually disabled persons in Massachusetts.

H. 1674 appears to have numerous checks built into it to protect the rights and privacy of persons applying for DDS positions. The measure would give persons seeking DDS employment the right to inspect and contest the accuracy of out-of-state records and would require the Criminal History Systems Board to help resolve any such contested records within 30 days.

In addition, H. 1674 would require that only information from other states regarding convictions and open cases be made available to DDS or providers considering individuals applying for employment. Juvenile records would not be made available. The national background checks system would be jointly overseen by the Criminal History Systems Board, the Disabled Persons Protection Commission, and the State Police.

Clearly, this legislation is long overdue. The question is whether this will finally be the year for it.

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Calendar Reminders:

***REGISTRATION NOW OPEN: **Reminder: VOR Webinar Next Week!** VOR Webinar Next Week: Social Media Strength:**

Using Facebook and Twitter to advance your

cause. Wednesday, July 17, 2013 - 12:00 pm central / 1:00 pm eastern. Cost: Free. [Click to Register.](#)

*** [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.

*** Sunday, June 9, 2013**

VOR Annual Conference * Washington, D.C. [Registration available.](#) [Details online.](#)

*** Begins Monday, June 10, 2013**

VOR Washington Initiative (Begins Monday, June 10, 2013) *

Washington, D.C. [Details online.](#)

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

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