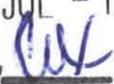


STATE OF MINNESOTA
COUNTY OF RAMSEY

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DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Other Civil

Court File No. 62-cv-11-5203
The Honorable Kathleen R. Gearin

In re Temporary Funding of Core
Functions of the Executive Branch of the
State of Minnesota

Special Master Kathleen Blatz

**PETITION OF MINNESOTA
HOSPITAL ASSOCIATION**

To: Special Master Kathleen Blatz and Chief Judge Kathleen R. Gearin.

INTRODUCTION

As of July 1st, 2011, the life, health, and safety of Minnesotans receiving services in health care institutions, including hospitals, may be at risk as a result of lack of authorized health care professionals and workers in Minnesota health care facilities. Because the Governor and State Legislature have failed to reach a budget agreement, the well-being of these Minnesotans will be put at significant risk because hospitals will not be able to respond to the need to staff hospital operations with the professionals and support staff necessary to ensure safe conditions at Minnesota hospitals. Therefore, Minnesota Hospital Association (“MHA”), on behalf of the sixteen health systems and 145 community-based hospitals it represents, petitions the Special Master to recommend to the Court that continued performance of background studies by the Department of Human Services (“DHS”), required for any health care professional who has direct contact with patients, is a “critical core function” of the executive branch of the state of Minnesota because they are directly related to the “life, health, and safety of Minnesota citizens.”

In re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota,

62-CV-11-5203 (2d Dist. Minn. June 29, 2011) (Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding (“Order”)), at 15.

BACKGROUND AND ARGUMENT

I. MINNESOTA LAW REQUIRES BACKGROUND STUDIES FOR MANY HEALTH CARE WORKERS PRIOR TO “DIRECT CONTACT” WITH PATIENTS.

All hospital employees and contractors who have “direct contact” with hospital patients are required by Minnesota law to undergo a background study conducted by the Minnesota Department of Human Services. Minn. Stat. Ann. § 144.057. “Direct contact” is defined as “providing face-to-face care, training, supervision, counseling, consultation, or medication assistance.” Minn. Stat. Ann. § 245C.02. Unless an employee or contractor undergoes a background study, and is determined by that study to not have any disqualifications, they may not have any “physical access to a [patient] or a [patient’s] personal property without continuous, direct supervision” by someone who has completed the background study. *Id.*, § 144.057, Subd. 1(3). Practically speaking, therefore, if background studies cease during a government shutdown, hospitals would not be able to hire any new licensed health care professionals (such as doctors, nurses, and therapists) or support staff (including those who perform blood tests, administer medications, deliver food, or other provide support services to patients) to provide care services to Minnesota patients.

In her June 29, 2011 Order, Judge Gearin identified several types of government functions that the Minnesota government must continue to perform despite a government shutdown. Order at 9. Judge Gearin defined core functions as those “matters relating to the life, health, and safety of Minnesota citizens ...” *Id.* at 15.

II. BACKGROUND STUDIES PERFORMED BY DEPARTMENT OF HUMAN SERVICES ARE DIRECTLY RELATED TO THE “LIFE, HEALTH, AND SAFETY OF MINNESOTA CITIZENS” AND ARE A CRITICAL CORE FUNCTION OF THE GOVERNMENT.

When the Minnesota Legislature enacted the requirement for background studies as part of the Vulnerable Adults Act Amendments of 1995, it did so because the Legislature concluded that it was “necessary to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to abuse or neglect, maltreatment.” 1995 Minn. Sess. Law Serv. Ch. 229 (S.F. 512) (West), at Art. 1, Subd. 1, now codified at Minn. Stat. Ann. § 626.557. Background studies continue to be an essential tool for ensuring that patients who rely on institutional services receive those services only from properly qualified individuals with a sufficient character to be entrusted with the “life, health, and safety of Minnesota citizens.” If DHS fails to perform background studies as required by Minnesota law during a government shutdown, hospitals and a variety of other health care providers will be unable hire any new workers to meet the needs of health care patients in Minnesota.

CONCLUSION

For the foregoing reasons, MHA respectfully requests that the Special Master recommend to the Court that continued performance of background studies by the Department of Human Services are “critical core functions” of the executive branch of the state of Minnesota because they are directly related to the “life, health, and safety of Minnesota citizens.”

Dated: July 1, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B Peltier", written over a horizontal line.

Ben Peltier, Esq. (#0387545)

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