


STATE OF MINNESOTA  
SECOND JUDICIAL DISTRICT

FILED  
Court Administrator

JUL - 8 2011  
By  Deputy

DISTRICT COURT  
DISTRICT CASE TYPE: Civil  
COURT FILE NO.: 62-CV-11-5203  
(Chief Judge Kathleen R. Gearin)

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Special Master Kathleen Blatz

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

***PETITION OF CARE PROVIDERS OF  
MINNESOTA, INC. AND AGING SERVICES OF  
MINNESOTA***

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REQUEST

This Petition requests Special Master Kathleen Blatz order essential services to include 13 additional employees of the Minnesota Department of Human Services, and 2 employees of the Minnesota Department of Health for the necessary and critical provision of background studies required for employees of Aging Services and Care Providers of Minnesota, and for registration of nursing assistants so that they may care for Minnesota's frail elderly.

REQUESTING PARTIES

Aging Services of Minnesota and Care Providers of Minnesota, Inc. filed as amicus curiae in the proceeding before Judge Kathleen Gearin on June 20, 2011. These entities are trade associations comprised of 385 nursing home providers and 750 senior housing and assisted living establishments. According to Minnesota Department of Human Services data from 2009, approximately 29,852 seniors were served by the nursing facilities every day, of which 17,269 relied on Medicaid payments for their care. In 2008 the Department of Human Services reported that over 26,000 residents in assisted living facilities relied on Elderly Waiver benefits to pay for their care. Each organization represents a widely diverse group of providers, from traditional nursing homes to highly specialized, subacute centers and every type of disability services and

senior housing provider. See Aging Services of Minnesota website at [www.agingservicesmn.org](http://www.agingservicesmn.org) and Care Providers of Minnesota website at [www.careproviders.org](http://www.careproviders.org). Aging Services and Care Providers launched a joint venture known as the Long Term Care Imperative in 1999 (Imperative). The Imperative advances innovative ideas for delivering and funding quality senior services throughout Minnesota. The Imperative's members provide necessary care and services to Minnesota's most vulnerable citizens.

Members of Aging Services and Care Providers employ 89,700 people in care and service of the elderly.

#### REASON FOR THE REQUEST

The services provided by the 89,700 employees of Aging Services and Care Provider members have already been deemed "essential services" by Judge Gearin through her Order approving ongoing Medicaid payments to providers of Medicaid services. However, due to the shutdown, these providers are unable to continue to provide the services unless they are able to screen, hire, and retain employees who are licensed and deemed safe to provide the services.

Chapter 245C of Minnesota Statutes requires that people employed to care for our seniors be screened for safety reasons under the "Background Studies Act" implemented by the Department of Human Services. (DHS) The background studies or "checks" ensure that the people hired by Care Provider and Aging Services members have no criminal history of offenses that would pose a risk to the seniors. A provider must request a background check through DHS before hiring any staff person. If the background check cannot be conducted due to the shutdown, the provider will be unable to hire staff. When there is a shortage of caregivers, care suffers – our seniors suffer. Serving our seniors is not an easy job, and there is significant turnover of staff. Statistics show that in 2008, the turnover of nursing assistants was 41.70%. In

2010, in the beginning of the year, there were 32,525 licensed or registered employees in long term care facilities. By the end of the same year, there were on 24,258 – over 8,000 fewer positions for which staff had to be hired. That would require 8,267 screenings – or 158 per week - just to fill vacant positions to provide the care needed. (See attached statistical information from the Long Term Care Imperative dated 7-1-2-11.) Minnesota must protect the frail elderly in need of that care by allowing DHS to continue to conduct background checks on employees of the providers.

Minnesota Statutes section 144A.61 requires that a nursing assistant be registered. Once a nursing assistant is trained and tested pursuant to the law, the name of that nursing assistant appears on a registry maintained by two staff persons at the Minnesota Department of Health. In order for a provider to hire a nursing assistant, the provider must first check the registry to verify that the nursing assistant is employable and in good standing – the nursing assistant is trained and can safely deliver the care. The nursing assistant cannot be employed if his or her name is not on the registry. The registry must be maintained by the Minnesota Department of Health ongoing to prevent a staffing shortage of the most important caregivers in long term care. Nursing assistants render every personal care to our beloved elderly, and without them, we place our seniors at great risk.

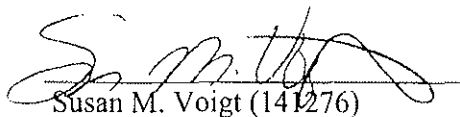
A second reason for the request for background check staff and nursing assistant registry staff is to decrease unemployment and improve Minnesota's economic situation. That is why we are here, before a Special Master – the economic situation. The 89,700 jobs in long term care delivery have a direct financial impact on our state economy. Long term care contributed over 4 million in economic activity last year. We must keep people employed in long term care facilities during these difficult economic times.

Finally, the Petitioner's request is supported by both the Minnesota Departments of Health and Human Services. Mr. Jerry Kerber of DHS testified before the Special Master on July 1, 2011 regarding the need for criminal background checks to continue. Ms. Darcy Miner, Division Director of the Division of Compliance Monitoring at the Health Department requested that the Governor retain the two staff in the nursing assistant registry office in order to continue to operate the registry. The long term care providers, including nursing homes, assisted living and residential care facilities; hospitals and developmental achievement centers have all echoed the same refrain: We must have safe and qualified staff to perform the essential function of delivering care and services to Minnesota's most frail and needy. Our seniors must be provided the best care possible, even in times of budget crisis. The background checks and the registry maintenance will allow Aging Services and Care Provider members the necessary resources to provide the very best care.

Please consider the background check staffing and nursing assistant registry staffing an essential service, and allow for the 13 positions at the Department of Human Services, and the two positions at the Minnesota Department of Health.

Dated: July 1, 2011.

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## Nursing Facility and Assisted Living Staff Retention and Turnover

**Table 1: Nursing Facility Staff Retention in Minnesota**

Nursing Facility Positions*	Employed Beginning of Report Year	Of Those Employed at Beginning, How Many Were Employed at End of Report Year	Retention
Certified Nursing Assistants	17,304	12,097	69.91%
Activities Staff	1,971	1,642	83.31%
Licensed Practical Nurses	5,499	4,263	77.52%
Trained Medication Aides	1,615	1,358	84.09%
Nursing Administration	1,428	1,224	85.71%
Other Direct Care Staff	572	449	78.50%
Registered Nurses	3,377	2,591	76.72%
Social Workers	728	612	84.07%
Mental Health Workers	31	22	70.97%
<b>Total</b>	<b>32,525</b>	<b>24,258</b>	<b>74.58%</b>

\* 380 nursing facilities

Source: 9-30-2010 Minnesota Department of Human Services Nursing Facility Cost Report

**Table 2: Estimated Number of Selected Vacant FTE Positions in Minnesota's Nursing Facilities**

	Vacant FTE Positions as a Percent of Budgeted Positions	Estimated Number of Selected Vacant FTE Positions
2010		
R.N.	3.60%	111
L.P.N.	5.30%	214
C.N.A.	6.68%	823
Dietary Aide	3.11%	85

Source: 2011 Long-Term Care Imperative Legislative Survey, 193 respondents

**Table 3: Retention, Turnover, and Vacancy Rates of Nursing Facility Employees, 2008**

Minnesota	Retention Rate	Turnover Rate	Vacancy Rate
All Nursing Facility Employees	55.80%	32.70%	4.50%
Administrative and Management Staff	69.60%	19.30%	1.00%
Nursing Staff	52.30%	36.80%	5.20%
Therapy Staff	69.20%	11.90%	2.20%
Food Services Staff	55.50%	34.60%	3.80%
Housekeeping and Maintenance Staff	70.80%	18.70%	2.60%
Social Services and Activities Staff	68.70%	20.50%	3.30%
<b>Nursing Staff</b>			
Director of Nursing	72.50%	14.60%	0.00%
RN with Administrative Duties	57.20%	32.50%	8.20%
Staff Registered Nurse	51.70%	34.70%	6.10%
Licensed Practical Nurse	56.00%	35.00%	5.80%
Certified Nurse Assistant	47.90%	41.70%	5.50%

Source: American Health Care Association, Report of Findings 2008 Nursing Facility Staff Vacancy, Retention and Turnover Survey, Page 59

## Nursing Facility and Assisted Living Staff Retention and Turnover

**Table 4: Retention, Turnover, and Vacancy Rates of Assisted Living Employees, 2009**

United States	Retention Rate	Turnover Rate	Vacancy Rate
Administrative/Management	66.40%	20.60%	0.70%
Nursing	47.20%	40.90%	1.60%
Food Services	48.90%	45.80%	1.30%
Housekeeping/Maintenance	61.90%	27.60%	0.70%
Social Activities	58.40%	31.90%	1.90%

Source: National Center for Assisted Living (NCAL) in collaboration with the American Association of Homes and Services for the Aging (AAHSA), the American Seniors Housing Association (ASHA), and the Assisted Living Federation of America (ALFA), 2009 Findings Assisted Living Staff Vacancy, Retention and Turnover Survey