

STATE OF MINNESOTA

JUN 22 2011

DISTRICT COURT

COUNTY OF RAMSEY

By BK Deputy

SECOND JUDICIAL DISTRICT

CASE TYPE: Civil

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

Court File No. 62-CV-11-5203

AMICUS CURIAE
MEMORANDUM OF VINLAND
NATIONAL CENTER

INTRODUCTION

Vinland National Center (“Vinland”¹) submits this *amicus curiae* memorandum in support of its request to the Court: (a) to deem chemical dependency services a core function of the executive branch; (b) to require the state to continue to pay its portion of the fund for payment of those services; and (c) to permit counties to continue to refer qualified individuals to chemical dependency treatment programs in the State of Minnesota.

Vinland is a fully accredited substance abuse treatment center licensed by the State of Minnesota. Vinland’s mission is to help persons with disabilities lead productive, chemical abuse free lives. For more than twenty years, Vinland has helped individuals with multiple disabilities² live productive and fulfilling lives through: drug and alcohol treatment for people

¹ Vinland was established in 1976 through a Bicentennial gift from Norway to the United States.

² Approximately 3.2 million Americans live with disabilities as the result of a brain injury. Some of the most common causes of brain injury include strokes, fetal alcohol spectrum disorder, concussions, and falls. People with drug and alcohol addictions and cognitive disabilities are more likely than the average person to struggle with depression, impulse control, and short-term memory problems. One out of every 2 people living with a brain injury will develop a substance abuse issue. U.S. Dept. of Health and Human Servs. (DHHS) Office on Disability Fact Sheet (www.hhs.gov/od/about/fact_sheets/substanceabuse.html); Orman, Jean Langlois, *How is the Prevalence of Long-Term Disability Counted?* Brainline (www.brainline.org); Corrigan, John D. and Gary L. Lamb-Hart, *Substance Abuse Issues after Traumatic Brain Injury*, Brain Injury Association of America, 2004; Brain Injury

with traumatic brain injuries, fetal alcohol syndrome, learning disabilities and other cognitive disabilities; vocational rehabilitation services; and permanent supportive housing for adults with disabilities in recovery from drug and alcohol abuse. Vinland is unique, having the only chemical health program of its kind in Minnesota for people with disabilities.

Vinland's mission is supported through the Consolidated Chemical Dependency Treatment Fund ("CCDTF"), a state program traditionally administered by Minnesota counties. The purpose of the CCDTF is to provide chemical dependency treatment for people eligible for public assistance. The CCDTF is funded by state, county and federal dollars.

This year, providers were told that the state would take over the counties' role in the administration of CCDTF. Providers were asked to enter into a contract with the Department of Human Services by July 1, 2011. Since this transitional rate reform process has not yet been completed, most chemical health providers will not have a contract in place with the state by July 1, 2011. If state government shuts down on the same day, there will be no basis for retroactively reimbursing providers for services provided to patients during the government shutdown period. It is unreasonable to expect that providers can continue to treat low-income individuals without any guarantee that they will be reimbursed for providing those services.

Like many other providers, if Vinland does not receive reimbursement during a government shutdown, clients that are served by Vinland will be left with few alternatives. Many of Vinland's clients would be sent back to jail or to a state hospital, a long-term care facility or would remain chemically dependent wherever they are. Those options are more expensive than Vinland's services without providing the individual level of attention required to

Association of America, www.biausa.org. Unfortunately, the incidence of addiction among this population is 5 times higher than for the general public.

assist these individuals in their recovery. In addition, because of a lack of appropriate long-term supportive housing facilities in the state, many of these individuals would be homeless.

Finally, individuals are often court ordered to attend a residential chemical dependency treatment program. If a treatment provider is forced to stop treating low-income individuals and these individuals return to society, they could become a threat to themselves and others.

Over eighty percent of Vinland's clients have very limited means and access its services through the CCDTF. Funding for the CCDTF will end on June 30, 2011, if the Court does not determine, in the event of a government shutdown, that these services, and the funding of the services, are a core function of the executive branch.

ARGUMENT

I. RESIDENTIAL CHEMICAL HEALTH TREATMENT PROGRAMS PROVIDE A CORE FUNCTION AND SHOULD BE FUNDED TO PROTECT VULNERABLE ADULTS.

The United States Constitution clearly mandates in the Fourteenth Amendment that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The Minnesota Constitution establishes the guiding principle that “Government is instituted for the security, benefit, and protection of the people, in whom all power is inherent.” Minn. Const. art. I, § 1.

The most recent government shutdowns in this state occurred in 2001 and 2005, and resulted from a failure to pass a budget funding state government. As in the present case, the Minnesota Attorney General petitioned this Court to preserve the ongoing operation of those services and activities deemed to be core functions under the United States and Minnesota Constitutions. In both of those instances, the Court directed state and local governments to

determine these “core functions,” which were then reviewed and approved by the Court. The Court required that state and local agencies continue to perform these core functions and that the state continue to pay for them after July 1. See *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minn.*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, C9-01-5725 (Ramsey Co. D. Ct. June 29, 2001); *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minn.*, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, 0-05-5928 (Ramsey Co. D. Ct. June 23, 2005), and subsequent Orders (June 30, 2005 and July 7, 2005).

Providing care to vulnerable adults is essential to the protection of life and property. In our most recent state government shutdowns, the provision of healthcare to patients and the “funding of patient care and services in local government or private facilities or programs, such as hospitals, nursing homes, mental health residential facilities, group homes for mentally ill people, home healthcare and other healthcare services” were considered core functions of government to continue for the duration of the shutdown. *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minn.*, Petition (filed June 13, 2011).

The provision of mental health services to individuals with multiple disabilities and a lack of resources is truly a core function of government. Without access to these services on an ongoing basis, there is an increased risk that individuals needing such treatment will harm themselves or others.³

This state has, in fact, adopted policy in law regarding the care of vulnerable adults:

³ Untreated chemical dependency and/or alcohol abuse often results in driving under the influence violations, spousal abuse, child abuse, other criminal behavior as well as a myriad of other societal problems. *Counselors Manual for Relapse Prevention with Chemically Dependent Criminal Offenders*, The Substance Abuse and Mental Health Administration (SAMHSA), Technical Assistance Publication (TAP) Series 19.

The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment; to assist in providing safe environments for vulnerable adults; and to provide safe institutional or residential services, community-based services, or living environments for vulnerable adults who have been maltreated.

Minn. Stat. § 626.557, subd. 1.

This policy statement reflects the essential nature of the protection of vulnerable adults.

The Vulnerable Adult Act is intended to protect a specific class of individuals. *J.R.B. v.*

Department of Human Servs., 633 N.W. 2d 33, 40 (Minn. App. 2001) *review denied* (Oct 24, 2001).

Based on the rights guaranteed by the Constitution and the underlying public policy, it is clear that funding to such programs that protect vulnerable adults, including CCDTF, should be continued in the event that a budget resolution is not reached by June 30, 2011. The Court has the authority to grant such protection to vulnerable adults absent legislative action. *Petition for Integration of Bar of Minn.*, 12 N.W.2d 515, 518 (Minn. 1943).

II. ABSENT RELIEF, VULNERABLE ADULTS WILL BE AT IMMEDIATE RISK OF HARM AND PUBLIC SAFETY WILL BE COMPROMISED.

Minn. Stat., § 254B.03, subd. 1, obligates local agencies to provide chemical dependency treatment to individuals living within their jurisdiction that meet certain criteria established by the Commissioner of the Department of Human Services. Without action from this Court, local agencies could not uphold their duty to refer qualifying individuals to chemical dependency programs. Vinland requests the Court to enter an order permitting counties to continue referring qualifying individuals to chemical dependency treatment programs.

A government shutdown will have a debilitating effect on providers and cause them to cut back their programs or close them entirely. Unless other viable alternatives became

available, vulnerable adults currently enrolled in these programs would likely be discharged or go untreated.

A mass discharge of chemically-dependent vulnerable adults will have an adverse impact upon the public health and safety of all people in Minnesota and on the ability of Vinland and other chemical health programs to provide services to clients in need. When individuals who are addicted to controlled substances do not get the help they need, some will relapse and engage in high risk behaviors such as drunk driving that pose a risk to anyone traveling on the state's roads and highways. Others may wind up in long-term care facilities, jails, or other more-expensive alternatives. There is simply no safety net for those who are in the middle of treatment or those who are in crisis. Without this care, vulnerable adults will suffer immediate harm as the result of the shutdown and for some individuals, this harm may be irreparable.

III. CONTINUING TO FUND CHEMICAL DEPENDENCY SERVICES THROUGH THE SHUT DOWN WILL SAVE THE STATE MONEY IN THE LONG RUN.

Chemical dependency treatment is effective even for people with complex needs. According to the Substance Abuse and Mental Health Services Administration, every \$1 spent on treatment saves society \$7 from reduced health care costs, reduced crime, and increased productivity.⁴ Almost 25 percent of adult stays in community hospitals involved mental health or substance abuse disorders.

A large number of Vinland's clients have spent time in hospital emergency rooms, psychiatric facilities and jails before arriving at our facility. Vinland's success at rehabilitation

⁴ SAMHSA Agency Overview (www.samhsa.gov/about/summary); DHHS *Cost Offset of Treatment Services* Fact Sheet (July 2009) (*citing* Ettner, S.D., D. Huang, et al. (2006) *Benefit-cost in the California Treatment Outcome Project: Does Substance Abuse Treatment 'Pay for Itself'?* Health Services Research 41(1):192-213); National Institute of Drug Abuse, *Principles of Addiction Treatment*, 1999 (www.kap.samhsa.gov/products/manuals/taps/196.htm).

and treatment produces a large cost savings for society. Over the years, Vinland has helped hundreds of individuals overcome their addiction and regain their independence. Over 90 percent of Vinland's clients report that they are completely abstinent or have reduced their use of drugs and alcohol after completing its program. Over the eight years that Vinland has tracked its results, its clients have also demonstrated a 93 percent reduction in the number of incarcerations they have had after completing our program. By assigning a conservative cost estimate of \$200 per day⁵ based on a seven day average incarceration rate, Vinland estimates that it has saved the criminal justice system over \$1.2 million during the last eight years. Clearly, Vinland's program and many other chemical health programs have helped save people's lives and have helped reduce the state budget expenditure for corrections.

In the event of a shutdown, Vinland's programs may survive a short-term budget gap, but its clients may be forced to return to jail or out on the street. In the event of a long period without government funding, Vinland's programming will be put at risk and this unique provider of services to clients with multiple disabilities may be unable to recover. As a result, Minnesota could then lose a significant facility providing a core function to vulnerable adults needs these essential services.

CONCLUSION

Chemical dependency treatment programs play a critical role for the vulnerable adults they serve and for ensuring the health and safety of the general public. By continuing this core function, providers will be able to continue to meet the state mandate to protect vulnerable adults, avoid the adverse impacts of vulnerable adults functioning without treatment, and avoid the inevitable cost increase to society if this core function is shut down. This Court has the

⁵ Hennepin County Attorney's Study (2005).

authority to maintain the health and vitality of the treatment providers in this critical area by ordering payment to the CCDTF and ordering the counties to continue referring qualified individuals to treatment if the state government shuts down.

Dated: 4/22/11

Karin O. Holt

Karin O. Holt, #0346846
General Counsel
Vinland National Center
3675 Ihduhapi Road
Loretto, MN 55357
Telephone: (763) 479-4552

AND

Julie L. Perrus

Julie L. Perrus, #0347036
Larkin Hoffman Daly & Lindgren Ltd.
1500 Wells Fargo Plaza
7900 Xerxes Avenue South
Minneapolis, MN 55431-1194
Telephone: (952) 896-3308

Attorneys for *Amicus Curiae*
Vinland National Center

The undersigned hereby acknowledge that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Karin O. Holt

Karin O. Holt

Julie L. Perrus

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