

services that the Minnesota and United States Constitutions require during a government shutdown.

II. BACKGROUND FACTS.¹

Petitioners are three Minnesota non-profit corporations whose combined membership consists of nearly 250 providers that serve thousands of Minnesotans who struggle with mental, physical, and developmental disabilities. The Association of Residential Resources in Minnesota (“ARRM”) is an association of 150 organizations that provide twenty-four-hour care services to Minnesotans with brain injuries, autism, mental illness, and developmental and physical disabilities. Funding for the services that ARRM’s members provide comes from DHS through Medical Assistance, and includes Federal Medicaid funds and state funds. Funding for room and board comes from DHS under the Group Residential Housing Program. ARRM members are licensed by DHS, and their caregivers are required to receive DHS background studies.

The Minnesota Habilitation Coalition, Inc. (“MHC”) is a Minnesota non-profit corporation comprised of thirty-four non-profit organizations. MHC members are licensed by DHS, and their caregivers are required to receive DHS background studies. MHC members provide support services to disabled individuals to help them develop and maintain life skills, participate in community life, and engage in proactive and satisfying activities of their own choosing. Funding for the services that MHC members provide comes primarily from DHS through Medical Assistance, and includes Federal Medicaid funds and state funds.

Minnesota Development Achievement Center Association (“MnDACA”) is an association of 65 non-profit, DHS-licensed organizations, whose caregivers are required to receive DHS background studies. MnDACA members provide support services to people with

¹ Bruce Nelson will verify the background facts during his testimony. Mr. Nelson serves as the Chief Executive Officer of Association of Residential Resources in Minnesota.

disabilities through supported employment, community integration, and community survival skills. Funding for the services that MnDACA members provide comes primarily from DHS through Medical Assistance, and includes Federal Medicaid funds and state funds.

Before employees and volunteers of Petitioners' members can have direct contact with the disabled individuals in their programs, DHS must perform a background study on each caregiver, and determine that the caregiver is not disqualified from direct contact with disabled individuals. With annual caregiver-turnover rates of 48%,² the need for new caregivers, and background studies, is almost constant. Without background studies, Petitioners' members will not have sufficient caregivers to operate DHS-licensed programs. Background studies are needed to support, administer, and operate DHS-licensed programs.

On June 29, 2011, the Ramsey County District Court, the Honorable Kathleen R. Gearin, Chief Judge, issued an Order requiring the funding of critical core functions during a government shutdown. Critical core functions include the DHS-administered Medicaid and Group Residential Housing programs through which Petitioners' members provide services to disabled Minnesotans.³ Judge Gearin also required funding for "operational support"⁴ for these programs. The Order generally requires "Support/Administrative services to support" the critical core functions receiving funding during a government shutdown.⁵ The Order does not specifically require funding for DHS background studies.

² Based on a 2009 ARRM survey of its members.

³ *In Re Temporary Funding of Core Functions of the Executive Branch of the State of Minnesota*, Case No. 62 CV 11-5203, Findings of Fact, Conclusions of Law, and Order Granting Motion for Temporary Funding, Order ¶ 11, and Exhibit A at (numbered) p. 3 (Ramsey County Dist. Ct. June 29, 2011). Generally called the "Order."

⁴ *Id.*

⁵ Order at Exhibit A §§ III(A)(2.0) and III(B)(2.3).

III. **ARGUMENT:**

Because Programs Funded by the Order Will Cease Operation Without DHS Background Studies, the Studies are Services Necessary to Support, Administer, and Operate the Programs, and the Studies Must Be Funded in a Government Shutdown.

Minnesota law requires DHS to conduct background studies on all prospective caregivers of Petitioners' members – “The commissioner shall conduct a background study on . . . current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program”⁶ “Applicants for licensure, license holders, and other entities as provided in this chapter must submit completed background study forms to the commissioner before individuals . . . begin positions allowing direct contact in any licensed program.”⁷ Direct contact “means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to persons served by the program.”⁸ The only exception is if the prospective caregiver “is under continuous direct supervision”⁹ Continuous direct supervision means “within sight or hearing of the program’s supervising individual to the extent that the program’s supervising individual is capable at all times of intervening to protect the health and safety of the persons served by the program.”¹⁰

Judge Gearin ordered continued funding of the DHS-licensed Medicaid and Group Residential Housing programs in which Petitioners’ members participate. The Order finds the programs to be either core government functions, which must be funded under case law and the Minnesota Constitution, or Medicaid programs, which must be funded under the United States

⁶ Minn. Stat. § 245C.03, subd. 1(a)(3).

⁷ Minn. Stat. § 245C.04, subd. 1(h).

⁸ Minn. Stat. § 245C.02, subd. 11.

⁹ Minn. Stat. § 245C.13, subd. 2(b)(3).

¹⁰ Minn. Stat. § 245C.02, subd. 8.

Constitution's Supremacy Clause.¹¹ With the funding of DHS-licensed programs, Judge Gearin ordered funding for operational support, and support/administrative services, for the programs.

DHS-required background studies are operational, support, and administrative services necessary for Petitioners' members to staff the DHS-licensed programs covered by Judge Gearin's Order. Without the DHS's background studies, Petitioners' members cannot hire caregivers, and provide the services required by the Order. DHS background studies, therefore, fall within the operational, support, and administrative services that require continued funding.

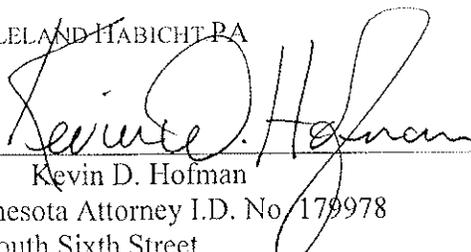
IV. CONCLUSION.

Only DHS can conduct background studies. They are required by statute and, therefore, are a necessary operational, support, and administrative service for the Medicaid and Group Residential Housing programs, which have been deemed core government functions.

WHEREFORE, Petitioners request that the Special Master recommend to the Court that funding for DHS background studies, under Minnesota Statutes, Chapter 245C, be funded and continue during the government shutdown.

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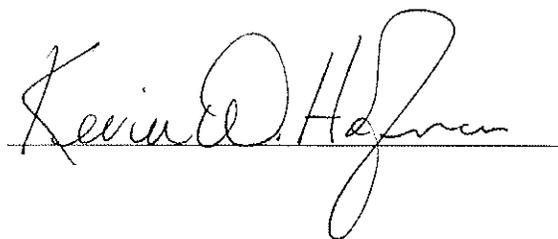
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Association, and Minnesota Habilitation Coalition, Inc.*

¹¹ Order, Conclusion of Law §§ 3-5.

ACKNOWLEDGMENT

Petitioners, through their attorneys, acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties under Minn. Stat. § 549.211, subd. 3.

A handwritten signature in cursive script, reading "Kevin D. Hoffman", is written over a horizontal line. The signature is positioned to the right of the text above.