Exhibit C

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	Civil Action Number: 10-CP-40-1095
Protection and Advocacy for People with Disabilities, Inc., Plaintiff, v. Beverly A. H. Buscemi, Ph.D., in her official capacity as State Director, South Carolina Department of Disabilities and Special Needs and The South Carolina Department of Disabilities and Special Needs, and Kelly Hanson Floyd, Nancy Banov, W. Robert Harrell, Rick Huntress, Deborah McPherson and Dr. Otis Speight in their Official Capacities as Members of the Department of Disabilities and Special Needs Commission, Defendants.	**AMENDED ORDER**

Plaintiff in this action claims a right to review certain medical records of individuals during the course of statutorily-authorized inspections by Plaintiff of living conditions in facilities that house developmentally disabled persons. Defendants have denied that there is any statutory authority for plaintiff to review individual medical records in the absence of individualized complaints. Instead, Defendants argue, the statute that authorizes plaintiff to investigate living conditions limits the kind of records available for inspection to "plans of care." *S.C. Code Ann.* § 43-33-350(4), a term which they contend has a specific and more limited meaning in this context, preventing the extension of the term to personal medical records.

This case was tried before the Court, sitting without a jury, on October 3, 2012. The Plaintiff presented testimony from Gloria Prevost, Executive Director of Protection and

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Advocacy for People with Disabilities, Inc. ("P & A"). Plaintiff also presented testimony from Susan Perry and Kimberly Tissot, both of whom have conducted team advocacy inspections. Defendants presented testimony from Dr. Kathi Lacy, the Associate Director of Policy at the Department of Disabilities and Special Needs (DDSN), who is familiar with the use of the term "plans of care" in the context of DDSN facilities and services. By consent of the parties, the Court also considered the previously-filed Affidavits of Ms. Prevost and Dr. Lacy.

For the reasons set forth herein, the Court concludes that the Defendants' legal position is supported by the language of the pertinent statutes, especially as read in conjunction with related legal authorities, and by the interpretation of the statutes in practice. As a result, it is appropriate that this action be dismissed. While the Court appreciates the purpose and efforts of the Protection and Advocacy System, the Court and P & A are constrained by powers granted to P & A by S.C. Code Ann. § 44-33-300, et seq. Therefore, the Court finds that allowing P & A access to patients' medical records at Community Training Homes without the patients' or guardians' consents is overstepping the authority granted by the Legislature.

FACTS

A. Background.

The Plaintiff, Protection and Advocacy for People with Disabilities, Inc., is a corporation which has been given certain powers and duties under state law. *S.C. Code Ann.*, §§43-33-310, et seq. The existence of such an entity is a prerequisite to the State receiving certain federal funding. *See* 42 U.S.C. § 15043.

As detailed in the Complaint, the basic facts of this case are that Plaintiff has sought to review personal medical records in the course of conducting "team advocacy inspections" of living conditions in facilities in which developmentally disabled or handicapped persons reside.

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The power to conduct such investigations is conferred on the Plaintiff by *S.C. Code Ann.* § 43-33-350(4), which will be discussed below in detail.

In the course of seeking to inspect living conditions, Plaintiff additionally claims authority to review the medical records of the residents of the institutions, regardless of whether they were clients of Plaintiff, and regardless of whether specific complaints had been made by residents or persons acting on their behalf.[1] In particular, P & A has sought to review MARs (Medication Administration Records, or drug charts). Complaint, Par. 26. Those records contain details about which medications were administered to each patient, together with the times of administration of the medications.

DDSN declined to permit the examination of any records other than "plans of care," the only kind of record mentioned in the statute. Specifically, § 43-33-350(4) provides that in the course of a team advocacy inspection of living conditions, Plaintiff may review "the plans of care for individuals in a residential care facility and a community mental health center day program." (Emphasis added.) No other types of records are mentioned in that section. DDSN accordingly denied Plaintiff's request to review individual medical records without authorization from the DDSN consumers or their representatives. After several rounds of correspondence, attached to the Complaint, the parties' respective positions did not change. As a result, Plaintiff filed the present action. The question presented by this case involves a determination of whether the term "plans of care," as used in § 43-33-350(4), extends to the personal medical records of the individuals living in the facilities that are subject to inspections of living conditions by Plaintiff.

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[1] Indeed, Ms. Prevost, Plaintiff's Executive Director, testified that P & A was seeking to review this personal medical information regardless of the wishes of the consumers of services or the representatives of such individuals.

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B. Statutory provisions pertaining to P & A.

The powers and duties of the plaintiff organization are set forth in § 43-33-350. The specific power involved in the present case is the power to "conduct team advocacy inspections . . . to review living conditions" in facilities that provide residences to developmentally disabled persons. To put this specific grant of authority in context, a review of the general powers and duties of P & A, set forth in § 43-33-350, is appropriate. There are four powers in all. Only one, the one set forth in § 43-33-350(4), is involved in this action.

The first power is found in § 43-33-350(1). It provides that P & A "shall protect and advocate for the rights of all developmentally disabled persons . . . and for the rights of other handicapped persons by pursuing legal, administrative, and other appropriate remedies to insure the protection of the rights of these persons." This general grant of power does not specifically address the issues in the present claim.

The second power is found in § 43-33-350(2). It provides that P & A "may investigate complaints by or on behalf of any developmentally disabled or handicapped person." This power is related to specific complaints, and is not the same as the power involved here, which is the power to conduct general random inspections of facilities in the absence of such specific complaints.

The third power is found in § 43-33-350(3). It provides for the prioritization of the services that P & A provides to its clients. Specifically, it provides that P & A "may establish a priority for the delivery of protection and advocacy services according to the type, severity, and number of handicapping conditions of the person making a complaint or on whose behalf a complaint has been made." Obviously, this provision for internal prioritization by P & A itself is not related to the issues in this case.

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The fourth and final power conferred by state law is found in § 43-33-350(4). That subsection provides for the team advocacy inspections of facilities. Those inspections are the subject matter of this case. The subsection provides in its entirety as follows:

> [P & A] may conduct team advocacy inspections of a facility providing residence to a developmentally disabled or handicapped person. Inspections must be completed by the system's staff and trained volunteers. Team advocacy inspections are unannounced visits to review the living conditions of a residential facility, including the plans of care for individuals in a residential care facility and a community mental health center day program. Only the coordinator of the team advocacy project or the coordinator's designee is authorized to perform reviews of plans of care. The designee must meet criteria developed by the Joint Legislative Committee on Mental Health and Mental Retardation, after consultation with the system and the South Carolina Association of Residential Care Homes. The system shall prepare a report based on the inspection which must be submitted to the Joint Legislative Committee on Mental Health and Mental Retardation, South Carolina Department of Health and Environmental Control, and State Department of Mental Health.

(Emphases added.) As can be seen, the "team advocacy inspections" of "living conditions" contemplated by this subsection are general in nature, and not the result of particular complaints by or behalf of any particular person.

CONCLUSIONS OF LAW

1. **As a matter of law and administrative practice, the term "plan of care," in the context of Medicaid Waiver clients, refers to a specific document which sets forth the services to be provided to the client.**

As both sides have pointed out, S.C. Code Ann. § 44-33-350(4) was added in 1990 and subsequently amended in 1993 to include "plans of care" as part of what P & A is allowed to inspect at its unannounced team advocacy inspections. Because the term "plans of care" is not specifically defined by the statutes, it is appropriate for the Court to look to other sources and other uses of that term. The Court is most persuaded by the use of the term in Federal health care law, specifically 42 U.S.C. § 1395n(c)(1) (involving Medicaid waivers) and 42 C.F.R.

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§ 441.(b)(1)(i) and 42 C.F.R. § 441.351(f). As discussed more fully below, the term has been described by the Fourth Circuit in *Doe v. Kidd*, 2011 WL 1058542 (4th Cir. 2011) as involving something significantly less than all of a patient's medical records. The term is also used in South Carolina's Medicaid Waiver forms. Lacy Affidavit, Exhibits 1 and 2.

As set forth in Dr. Lacy's testimony and affidavit, a plan of care in this context is a document that is mandated by Medicaid law, which uses that precise term. It is prepared by the person's Service Coordinator. Affidavit of Kathi Lacy, Par. 3. As set forth in Par. 4 of the Lacy Affidavit, the Service Coordinator "conducts a formal, standardized assessment of the person's needs by gathering information from the person, family members, friends, service providers and medical care providers. The Service Coordinator then works with the person and the family to determine what services would best address the identified needs." The resulting document, i.e., the plan of care, "typically includes the medical and other services to be provided, their frequency, and the type of provider to furnish them." *Id.* The document that performs this function has had different working names from time to time, but those names have always referred to the plan of care. Lacy testimony and Lacy Affidavit, Par. 5. The document in which the recommendations are made is a form, Lacy Affidavit, Exhibit 1, and is the document generally referred to as the "plan of care." This meaning of the term is one that has had long usage. *Id.*, Par. 6. While Plaintiff claims that the term also applies to other documents, Plaintiff has not disputed any of these facts set forth in the Lacy affidavit, nor did Plaintiff provide any evidence to the contrary in any respect.

As set forth above and in the Lacy Affidavit, the term "plan of care" is used in the Medicaid waiver services context to refer to the specific document that contains the service plan for the individual. In addition to the factual information set forth in that affidavit, these specific

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documents are also specifically mentioned in the parts of the U.S. Code and Code of Federal Regulations that pertain to Medicaid waiver services. (It is undisputed that the Medicaid waiver program provides the funding for the vast majority of people who live in the facilities that P & A seeks to inspect. Complaint, Par. 49.) Specifically, 42 U.S.C. § 1395n(c)(1) provides:

> (1) The Secretary may by waiver provide that a State plan approved under this subchapter may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan.

(Emphasis added). To the same effect is 42 C.F.R. § 441.301(b)(1)(i), which provides as follows:

> (b) If the agency furnishes home and community-based services, as defined in § 440.180 of this subchapter, under a waiver granted under this subpart, the waiver request must—
>
> (1) Provide that the services are furnished—
>
> (i) Under a written plan of care subject to approval by the Medicaid agency;

(Emphasis added.)

Another regulation, 42 C.F.R. § 441.351(f), while addressed only to waiver programs covering persons aged 65 and over, illustrates the kinds of information that are to be found in plans of care:

> **(f) Plan of care.** The request must provide that the home and community-based services described in § 440.181 of this subchapter, are furnished under a written plan of care based on an assessment of the individual's health and welfare needs and developed by qualified individuals for each recipient under the waiver. The qualifications of the individual or individuals who will be responsible for developing the individual plan of care must be described. Each plan of care must contain, at a minimum, the medical and other services to be provided, their frequency, and the

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> type of provider to furnish them. Plans of care must be subject to the approval of the Medicaid agency.

(Emphasis added.)

The term is also used in South Carolina's Medicaid Waiver document, excerpts of which are attached as Exhibit 2 to the Lacy Affidavit. In that document, the plan of care is described in the same manner as in the Lacy Affidavit.

A typical illustration of the use of the term in South Carolina to mean this document is found the recent unreported case, *Doe v. Kidd,* 2011 WL 1058542 (4th Cir. 2011). There the Fourth Circuit described a plan of care as follows:

> DDSN approved a "plan of care" that was developed for Doe pursuant to 42 C.F.R. § 441.301(b) (hereinafter the "2003 plan"). J.A. 616–44. The 2003 plan included a regime of personal care, psychological evaluations, and other services to be provided in-home at the residence of Doe's mother. It also recommended that Doe "receive residential habilitation from a DDSN approved provider" within three months at a "setting located within the Columbia area to be chosen by her family."

2011 WL 1058542 at 2. *See also, e.g., McCrann v. Department of Health and Human Services,* 704 S.E.2d 899, 901 (N.C. App. 2011)(plan of care in the Medicaid wavier program is "a schedule of services to be provided to the program participant"); *Boatman v. Murphy*, 2010 WL 2178821, 1 (S.D.Ind. 2010)(case manager assesses the Medicaid waiver applicant's specific needs and creates a plan of care and cost comparison budget, which are submitted to the Division of Aging for review). These cases, the statutes and regulations, as well as longstanding administrative practice described in the Lacy Affidavit, make it clear that the reference to "plans of care" in § 43-33-350(4) is a reference to a term which has a very specific meaning in this

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context. Such plans of care do not include MARs and other individual medical records that serve functions other than those served by plans of care.[2]

2. The statute creating P & A makes it clear that P & A can review individual medical records only in limited instances, which do not include team advocacy inspections.

A review of the entire state statutory scheme creating P & A makes it clear that the General Assembly actually intended that P & A would not be permitted to review individual medical records in the course of facilities inspections relating only to living conditions. The 1993 amendment to § 44-33-350(4) was expressly "to provide for the review of the plans of care for individuals in a residential care facility and a community mental health center day program," which, as Defendant points out, is a rather limited expansion of P & A's authority and seemingly not meant as carte blanche to peruse medical records as the Plaintiff seeks. The Court therefore finds that, although the term was not defined in the statute by the Legislature, it nonetheless was meant to have a specific meaning and not an expansive, all-inclusive definition that would include any and all of the CTH patients' medical records.

Section 43-33-370(2) states that, upon receipt of a complaint pertaining to the treatment of a particular individual, P & A may "inspect and copy any documents . . . which bear upon the subject matter of the individual complaint, except for the individual medical, treatment or other personal records of other persons in the program or facility." (Emphases added.) Therefore, the Court concludes that the language of § 44-33-350(4), when read in conjunction with the entire

[2] Plaintiff argues that it has inspected another kind of facility, Community Residential Care Facilities (CRCF's) and has not been prevented by another agency, the Department of Mental Health, from reviewing medical records in that context. However, as Ms. Prevost testified, Plaintiff was conducting those inspections as a contractor with the Department of Mental Health. In any event, that other context, which does not involve DDSN, is not before the Court, and cannot govern the present situation, where the matter is being contested.

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Act, and specifically, § 44-33-370(2), was not meant to give P & A access to all or even any of the CTH patients' medical records, absent a complaint filed by a specific patient or waiver by a patient or guardian. Instead, the General Assembly defined the records available to Plaintiff in a team advocacy inspection as only "plans of care," which has a specifically-intended, and rather restrictive (for the Plaintiff's purposes) meaning.

In other words, it is clear that P & A can only view medical records of a specific individual in response to a specific complaint by or on behalf of that individual. This section leaves no doubt that the General Assembly was aware of the need for privacy as to medical records on the part of disabled individuals.

Also, Section 43-33-400, discussed below, provides that in the context of agency cooperation with P & A, the agencies "shall permit [P & A] to inspect and copy any record or documents provided for in 43-33-370(2)." (Emphasis added). As shown above, those records are reviewable only in cases involving individual complaints, and only the records of the specific individual are permitted to be copied.

3. The common meaning of the term "plans of care" does not extend to the kinds of medical records sought by P & A.

Finally, it is clear from the plain meaning of the term that a "plan of care" is something different from a medical record, and specifically from a medication administration record. A "plan" is a document providing for guidance in the future. Thus, as typically defined in dictionaries, a "plan" is "a scheme or method of acting, doing, proceeding, making, etc., developed in advance."[3] (Emphasis added.)

[3] http://dictionary.reference.com/browse/plan

In accordance with this definition of "plan" in general, a plan of care is a guidance document that sets forth what will be provided to the person. On the other hand, most medical records, and especially the medication administration records Plaintiff seeks, are not advance planning documents, but rather are documentation of something that occurred in the past, specifically, documentations of the previous administration of medications.

Presumably, by limiting the records reviewable by P & A in the course of a review of "living conditions," § 43-33-350(4), the General Assembly intended that P & A would be able to review plans of care in order to see whether the conditions in the facilities were responsive to the residents' plans of care. However, since the team advocacy inspections were to pertain only to living conditions, and not to each individual's specific situation, the line was drawn by the General Assembly at plans of care.[4] Plaintiff's claim of a right to review documentations of past events therefore fails to satisfy the most basic definition of what a "plan of care" might be.

The Court would also note that the record in this case contains a number of Team Advocacy Inspection reports relating to inspections that occurred before this action was filed. These reports are typically around six pages long. They detail a number of matters that involve living conditions, such as resident privacy, fire hazard, maintenance, sanitation, housekeeping, food storage, accessibility, resident hygiene, clothing needs and resident safety. These reports demonstrate that even without access to personal medical records, P & A can still conduct thorough inspections of living conditions at the residences.

[4] Of course, the General Assembly could always decide to expand the nature of the documents reviewable by P & A, but that policy decision is one for the legislature, and not this Court, which is faced with the clear language of the statute, as well as the undisputed practice under that language.

4. Other arguments by Plaintiff based on the language of the statute in issue or unrelated statutes provide no support for Plaintiff's contentions.

Plaintiff makes several other unavailing arguments, some of which are based on the statute in question, and others of which are based on unrelated provisions of the Code. As discussed below, all are without merit.

a. Unannounced nature of the inspections.

Plaintiff's first argument concerns DDSN's suggestion, made prior to this litigation, that P & A could obtain medical records with the consent of residents or their guardians. P & A claims that this would conflict with the unannounced nature of the inspections. This is not necessarily true, but in any event, has nothing to do with the definition of the term "plans of care" found in § 43-33-350(4).

In correspondence that took place prior to the filing of this action, DDSN had suggested that P & A could review the residents' medical records, in addition to their plans of care, if consent from the residents or their guardians could be obtained. P & A now argues that to do so would make P & A's intent to conduct inspections known to the facilities, when the statute provides for unannounced visits. The Court finds this argument unpersuasive. A medical record waiver can be executed by a patient or his or her guardian at any time, perhaps most effectively upon intake to the facility, and kept on site with the patient's file. P & A would still be free to conduct unannounced inspections and at that time inspect any medical records for which disclosure has been waived. The Court feels that, absent any waiver, P & A is not entitled to access to patients' medical records at a Community Training Home.

In any event, this argument is merely addressed to an alternative approach that had been suggested by DDSN. Even if this approach were to have the effect of advising the facility in advance that an inspection of living conditions might be forthcoming, that result still cannot

expand the meaning of the term "plans of care" beyond the clear meaning that the term has in this context, as DDSN has already argued. This entire argument is therefore simply beside the point.

b. Use of the term "including."

Plaintiff claims that when the statute provided for P & A to make "unannounced visits to review the living conditions of a residential facility, including the plans of care for individuals in a residential care facility," the term "including" suggests that other records might be reviewed as well.

The first problem with this argument is that it contradicts the well-settled rule that "to express or include one thing implies the exclusion of another," also known as "inclusio unius est exclusio alterius." *Nelson v. Ozmint*, 390 S.C. 432, 436-437, 702 S.E.2d 369, 371 (2010).[5] The fact that plans of care are referenced, but no other types of records, is a compelling indication that the General Assembly intended for only those records to be inspected. Secondly, and as Plaintiff itself points out, this language was inserted by Act No. 133 of 1993. Prior to that act, the statute provided for team advocacy inspections of living conditions, but did not reference plans of care. Act No. 133 added the language about plans of care. The title of the 1993 Act was

> AN ACT TO AMEND SECTION 43-33-350, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS AND DUTIES OF THE PROTECTION AND ADVOCACY SYSTEM FOR THE HANDICAPPED, INC., SO AS TO PROVIDE FOR THE REVIEW OF THE PLANS OF CARE FOR INDIVIDUALS IN A RESIDENTIAL CARE FACILITY AND A COMMUNITY MENTAL HEALTH CENTER DAY PROGRAM BY THE TEAM ADVOCACY

[5] Plaintiff references cases in which the presumption is reversed, but those involve situations where the word "including" modifies the term to be defined. In order for that rule to apply in the present case, the statute would have to say "records, including plans of care," but it does not say that. Instead, it says "living conditions . . . , including plans of care. . . ."

PROJECT'S COORDINATOR OR HIS DESIGNEE AND REQUIRE THE DESIGNEE TO MEET CERTAIN CRITERIA.

(Emphasis added.) The language added is shown below with underlining:

> [P & A] may conduct team advocacy inspections of a facility providing residence to a developmentally disabled or handicapped person. Inspections must be completed by the system's staff and trained volunteers. Team advocacy inspections are unannounced visits to review the living conditions of a residential facility, including the plans of care for individuals in a residential care facility and a community mental health center day program. Only the coordinator of the team advocacy project or the coordinator's designee is authorized to perform reviews of plans of care. The designee must meet criteria developed by the Joint Legislative Committee on Mental Health and Mental Retardation, after consultation with the system and the South Carolina Association of Residential Care Homes. The system shall prepare a report based on the inspection which must be submitted to the Joint Legislative Committee on Mental Health and Mental Retardation, South Carolina Department of Health and Environmental Control, and State Department of Mental Health.

In other words, the only additional information made reviewable by the 1993 amendment was the information in plans of care. To argue otherwise, as Plaintiff tries to do, is to argue exactly the opposite of what the General Assembly intended with this limited addition to the statute.

c. The term "living conditions."

Plaintiff claims that the provision of health and medication services is part of what is meant by "the living conditions of a residential facility." § 43-33-350(4). This is a broader definition of the term "living conditions" than the context indicates. In addition, even if Plaintiff's broad definition of "living conditions" were to be accepted, it still would not change the reference in the statute to the "plan of care," which is a very specific document in this context.

First of all, in common parlance, the term "living conditions" tends to refer to the physical surroundings in which a person lives, such as the sanitation of the residence and

whether it is adequately heated and cooled. *See, e.g., South Carolina Dept. of Social Services v. Sims*, 359 S.C. 601, 604, 598 S.E.2d 303, 305 (Ct. App. 2004), where the term was used to describe the physical aspects of a home; *Benjamin v. Housing Authority of Darlington County*, 198 S.C. 79, 15 S.E.2d 737, 739 (1941)(rural housing act would "provide sanitary homes and living conditions for farm families of low income"). Additionally, this connotation of physical surroundings is clearly the meaning intended in other similar provisions of the Code. These include, for instance, § 31-13-180, which deals with moderate to low income housing, and provides that "a serious shortage of sanitary and safe residential housing . . . will contribute to the creation and persistence of substandard living conditions."

Finally, even if the term "living conditions" extended as far as Plaintiff claims, which is surely not the case, this still would not change the very specific and limited meaning that the term "plans of care" carries in this context, as discussed above. As a result, any argument of Plaintiff based on the use of the term "living conditions" in the statute is unavailing.

d. The reference to "plans" of care.

Plaintiff also claims that the General Assembly must have intended more than one kind of document, because it used the plural term "plans of care." The short answer to this is that each facility has more than one resident, each of whom will have a plan of care, so it is completely appropriate to refer to those specific plans, one per resident, in the plural. This reference is clearly insufficient to overcome the specificity of the reference in other contexts, as discussed above. Moreover, it does not overcome the fact that the documents referenced in the statute are "plans," that is future-oriented, and not medical records, which document events in the past.

e. Use of similar phrases in other statutes.

Plaintiff also makes passing reference to the use of the term "plans of care" elsewhere in the Code, but suggests no reason why those references should overcome the specificity of the reference in § 43-33-350(4). Again, a "plan" is a document providing guidance for the future, while a medication administration record is a documentation of something that occurred in the past. In other words, the medication administration records are simply not the kinds of records that would be included in the most fundamental definition of a "plan." As the term "plan of care" is used in the references cited by Plaintiff, it is clear that it normally has this connotation of a document that contains plans for the future, not documentation of past events.[6]

5. Plaintiff's claims based on vague language in statutes pertaining to cooperation are insufficient to overcome the specific limitations on the kinds of documents that can be disclosed to Plaintiff.

Plaintiff's Second Cause of Action alleges that certain other language in state and federal statutes is a source for the authority it claims. First, Plaintiff cites § 43-33-400. That section, however, only provides as follows:

> All departments, officers, agencies and institutions of the State shall cooperate with the System in carrying out its duties. . . . Notwithstanding any other provision of law, any program or facility shall permit the System to inspect and copy any record or documents provided for in 43-33-370(2).

(Emphases added.) The first emphasized part of the statute, and the one on which Plaintiff relies, simply provides for cooperation with Plaintiff in its carrying out of the duties it already has. This provision is not the source of any duty not previously mentioned in the statute. In addition, the

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[6] The statutes and regulations cited by Plaintiff are all of the same nature as, for example, § 44-7-350 (DHEC licensure of Nursing Homes: an "agency placing a client in a community residential care facility shall develop an individual plan of care in cooperation with the provider") While the context is different from that in this case, the concept of an advance plan is the same.

sole reference to making records available is a reference back to § 43-33-370(2), which as seen above, provides only for disclosure in situations where individualized complaints are made.

In addition, Plaintiff cites 42 U.S.C. § 15043(a)(3)(b), which states that the State should provide to P & A, "to the extent that information is available, . . . "information about the adequacy of health care and other services . . . that individuals with developmental disabilities who are served through home and community based waivers (under Medicaid) receive..." This section does not suggest that the State is required to provide P & A with confidential medical information of DDSN clients. That information is authorized to be released only in the individualized circumstances set forth earlier in the statute, specifically in 42 U.S.C. § 15043(a)(2)(F) and –(J), both of which provide for the release of the records of individuals only when complaints are made relating to specific individuals. It is unreasonable to think that Congress would have provided elaborate limitations of the disclosure of such information in those two specific sections, only to then authorize virtually unlimited access in a later section that deals only with general reviews of adequacy of health care and other services.

CONCLUSION

For the foregoing reasons, the Court concludes that Plaintiff's claimed right to review medical records is without support in the pertinent statutes, and that as a result, this action should be, and is, dismissed with prejudice.

AND IT IS SO ORDERED.

Edgar W. Dickson
Presiding Judge

Orangeburg, South Carolina

December 5, 2014