THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Edgar W. Dickson, Presiding Judge

Case No. 2010-CP-40-1095
Appellate Case No. 2015-000109

Protection and Advocacy for People with Disabilities, Inc., ... Appellant,

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, ... Respondents.

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STATEMENT OF ISSUES ON APPEAL

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II. Did the trial court err by interpreting S.C. Code Ann. § 43-33-350 to prevent P&A from conducting proper inspections as required by statute?

III. Did the trial court err by refusing to afford *Chevron* deference to P&A's interpretation of "plans of care"?

IV. Did the trial court err by ignoring South Carolina public policy in preventing P&A from inspecting documents to protect the State's most vulnerable citizens?

STATEMENT OF THE CASE

Appellant Protection and Advocacy for People with Disabilities, Inc. ("P&A") filed suit against Respondents 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 ("DDSN"), 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 by Complaint filed February 16, 2010.

After the close of the pleadings and discovery, both parties filed motions for summary judgment. The circuit court, Judge L. Casey Manning, denied both motions by order filed October 1, 2012.

The Honorable Edgar W. Dickson tried the case, sitting without a jury, on October 3, 2012. P&A called three witnesses and entered two exhibits into evidence. Defendants called one witness and likewise entered two exhibits into the trial record. Both parties also consented to the summary judgment filings coming into the trial record.

On November 29, 2012, Judge Dickson issued an order dismissing P&A's claims with prejudice. Subsequently, P&A filed a motion to reconsider on December 17, 2012.

On December 11, 2014, Judge Dickson denied the motion to reconsider yet slightly amended the order; the amended order also dismissed P&A's claims with prejudice.[1]

[1] P&A does not have an explanation as to why the trial judge waited almost two years to adjudicate the motion to reconsider.

STATEMENT OF THE FACTS

Background

The Developmental Disabilities Assistance and Bill of Rights Act of 2000 ("DD Act"), 42 U.S.C. § 15001 *et seq.*,[2] offers conditional federal money to States to improve community services, such as medical care and job training, for individuals with developmental disabilities. As a condition of that funding, a State must establish a protection and advocacy system "to protect and advocate the rights of individuals with developmental disabilities." *Id.* § 15043(a)(1). Every State accepts funds under the DD Act, and is free to appoint either a state agency or a private nonprofit entity as its protection and advocacy system. *Id.* § 15044(a).

The vast majority of States, including South Carolina, have elected to use a private nonprofit entity as its protection and advocacy system. P&A is a nonprofit corporation designated as South Carolina's protection and advocacy system in S.C. Code Ann. §§ 43-33-310 *et.seq.*[3]

Under the DD Act, a protection and advocacy system must have certain powers. Subject to certain statutory requirements, it must be given access to "all records" of individuals who may have been abused, *see* 42 U.S.C. § 15043(a)(2)(I)(iii)(II), as well as "other records that are relevant to conducting an investigation," *Id.* § 15043(a)(2)(J)(i). The system has authority to "pursue legal, administrative, and other appropriate remedies

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[2] The precursor to this act was originally codified in the 1970s.

[3] Originally the organization was known as Advocacy for the Handicapped Citizens, Inc., which began serving as South Carolina's protection and advocacy entity by an Executive Order of the Governor in 1977. A 1979 act transferred the functions to South Carolina Protection and Advocacy System for the Handicapped, Inc. The name of the organization was changed to Protection and Advocacy for People with Disabilities, Inc. by resolution of the organization's Board of Directors authorized by Senate Bill 599, effective July 1, 1996.

or approaches to ensure the protection of" its charges, *Id.* § 15043(a)(2)(A)(i), and may "pursue administrative, legal, and other remedies on behalf of" those it protects. *Id.* § 10805(a)(1)(C); *see also Id.* § 15044(b).

P&A's Statutory Powers Under South Carolina Law

P&A has four specific powers enumerated in the South Carolina Code of Laws including the general power to "protect and advocate for the rights of all developmentally disabled persons" to the limits of federal and state law. S.C. Code Ann. § 43-33-350(1). The fourth power is the power specifically in issue in this lawsuit:

> (4) **[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.

S.C. Code Ann. § 43-33-350(4) (emphases added). This entire case revolves around what is meant by the emphasized phrase above concerning the unannounced team advocacy inspections to ". . . review the living conditions of a residential care facility, including the plans of care for individuals . . ." *Id.*

These inspections are so important that state law further provides for the Department of Health and Environmental Control to "deny, suspend, or revoke licenses or assess a monetary penalty, or both, against a person or facility for . . . failing to allow a

team advocacy inspection of a community residential care facility by [P&A], as allowed by law." S.C. Code Ann. § 44-7-320(A)(1)(e).

P&A's Team Advocacy Inspections

Generally

As part of P&A's role protecting South Carolinians with disabilities from abuse and neglect, P&A conducts Team Advocacy inspections under § 43-33-350(4). (Tr. p. 18: 17-21; R. 120.) These inspections are of facilities that house disabled persons and have been ongoing since 1986 when the Team Advocacy program was created. (*Id.* at 19:1-17; R. 121.) "The purpose of Team Advocacy inspections is to ensure that those persons are being protected and cared for, to ensure that their rights are being respected in the facilities in which they reside, to check on their quality of life and living conditions within those facilities, and to protect them from abuse and neglect." *SC DHEC v. Bellwood Manor*, 2010 WL 6782577, at *1 (Admin. Law Ct. Nov. 22, 2010).

P&A is authorized to make unannounced inspections. S.C. Code Ann. § 43-33-350(4). Susan Perry, a P&A Team Advocate whose daughter has an intellectual disability and is a client of Respondent DDSN, noted the importance of the unannounced inspections by succinctly and persuasively stating "[w]e don't want people putting out the Sunday china on a Wednesday." (Tr. p. 53:20 – 54:9, 60:14-15; R. 155-156, 162.)

In an inspection, a trained P&A employee known as a Team Advocate and also a trained P&A volunteer announce their identity and enter the facility. (*Id.* at 19:18-25, 42:1-8, 56:15-20; R. 121, 144, 158.) The Team Advocate and the volunteer then do a "walk through" and determine whether there are residents willing to be interviewed. (*Id.* at 56:19-25; R. 158.) The inspectors perform a physical inspection such as a review of

sleeping arrangements. (*Id.* at 20:18-23; R. 122.) Talking to residents helps to develop a list of who lives at the facility and provides other helpful information, but there is no requirement that residents must talk to the inspectors. (*Id.* at 57:1-3, 67:9-22; R. 159, 169.) P&A does not know the identities of the residents at the commencement of the inspection and may never know since getting a roster is not required. (*Id.* at 41:2-7; R. 143.)

The Team Advocate locates the Medication Administration Records ("MARs") and reviews the records; the volunteer does not review any records. (*Id.* at 20:24-25, 57:8-13; R. 122, 159.) MARs show the medicine prescribed to residents of these facilities, including the dosage and frequency requirements, and include many spaces for the facility staff to initial to confirm the medications are being properly and timely administered to the residents. (*Id.* at 57:14 – 58:7; R. 159-160.) There is no other document which shows the daily plan for administration of medication other than the MAR. (*Id.* at 59:25 – 60:2; R. 161-162.) Notably, the facility staff members administering the medications are not nurses. (*Id.* at 58:1-3; R. 160.)

At the end of the inspection the Team Advocate prepares a report of findings which is submitted to multiple state agencies, including Respondent DDSN. (Tr. p. 21:1-10; p. 62:3-8; Plaintiff's Ex. 2; R. 123, 164, 201.) The report does not contain any personal identifiers. (Tr. p. 21:24 – 22:2; Pl. Ex. 2; R. 123-124, 201.).

There are a variety of residential rehabilitation options in South Carolina which serve as an alternative to institutional care, including supported living services, supervised living, Community Residential Care Facilities and Community Training Homes. (Tr. p. 81:7-19; R. 183.) In the almost 30 years since the creation of the

program, P&A has inspected over 1,000 Community Residential Care Facilities ("CRCF"). (Prevost Aff.; R. 343.) As part of these inspections, to include CRCF facilities licensed by Respondent DDSN, P&A reviewed MARs. (Tr. p. 71:2-21; R. 173.)

Reviewing MARs in these unscheduled examinations is a critical part of P&A's "review [of] the living conditions of a residential facility, including the plans of care for individuals" because, for example, "it's unusual that [P&A inspectors] don't find medication errors . . . "[w]e do find a considerable amount of medication errors." (*Id.* at 59:16-24; R. 161.) More disturbingly, Ms. Perry as Team Advocate has found falsified MARs in her CRCF inspections. (*Id.* at 60:18-21; R. 162.)

Specific to this case

Beginning in 2009, P&A expanded its Team Advocacy inspections to include Community Training Homes ("CTH") licensed by DDSN. (*Id.* at 24:8-12; R. 126.) CTHs are small, residential settings where three to four unrelated people with disabilities live together and receive twenty-four hour supervision, personal care, and training. (*Id.* at 77:15-19; R. 179.) These individuals are vulnerable; many residents who meet this level of care need significant assistance in many of the activities of daily living such as toileting, bathing, ambulating, feeding themselves, medication management, and assistance. (Prevost Aff. ¶ 12; R. 345.) About 2,500 South Carolinians rely on one of 775 CTHs for their daily existence. (Tr. p. 78:3-5; Def. Resp. to Pl. Int. No. 9; R. 180, 365.) Many residents of these facilities do not have parents or guardians and those individuals are alone and isolated. (Tr. p. 36:22-24; R. 138.)

The impetus for these CTH inspections was abuse and neglect reports made to the State Law Enforcement Division showing serious problems in CTHs. (*Id.* at 22:4 – 23:11; R. 124-125.) Initially, CTHs licensed by DDSN allowed the inspections to include a review of the residents' MARs. (*Id.* at 68:12-15; 73:5-15; Plaintiff's Ex. 2; R. 170, 175, 201.) However, at some point thereafter DDSN did not allow the Team Advocacy inspection to include a review of MARs. (Tr. p. 25:9 – 26:9, 73:5-15; R. 127-128, 175.) Inspectors found expired foods, maintenance problems, accessibility problems, and expired medications at DDSN CTHs. (*Id.* at 66:3-8; Pl. Ex. 2; R. 168, 201.)

P&A brought suit seeking to require DDSN to allow P&A to inspect MARs at CTHs as part of P&A's statutory grant of unannounced inspections to ". . . review the living conditions of a residential care facility, including the plans of care for individuals . . ." P&A correctly believes that it has the right to review on-site medication administration records—and other documents concerning residents which are kept at the CTH—of individuals residing within such facilities, while Respondents propose to unilaterally restrict P&A's powers with a tortured reading of the statute which is neither generally in line with P&A's explicit charge under law nor specifically justifiable by Respondents' arbitrary position.

STANDARD OF REVIEW

"Questions of statutory construction are a matter of law." *Boiter v. S. Carolina Dep't of Transp.*, 393 S.C. 123, 132, 712 S.E.2d 401, 405 (2011) (citing *Charleston County Parks & Recreation Comm'n v. Somers,* 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995)). The appellate standard of review for questions of law is *de novo*. *See Catawba*

Indian Tribe of S.C. v. State, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) ("We are free to decide a question of law with no particular deference to the circuit court."); *Fresmire v Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2008) ("This court reviews all questions of law *de novo*."). The appellate court will not disturb the trial court's findings of fact unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

ARGUMENT

I. The trial court erred by not giving effect to the review of "plans of care" during Team Advocacy inspections as provided for in P&A's enabling statute.

A. The plain language of the statute authorizing inspections by P&A allows P&A to inspect MARs as a plan of care.

P&A is authorized to conduct Team Advocacy Inspections under S.C. Code Ann. § 43-33-350(4). The statute defines Team Advocacy inspections as "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." *Id.* (emphasis added). The language of S.C. Code Ann. § 43-33-350(4) authorizes P&A to inspect MARs as part of the plans of care for residents of CTHs licensed by DDSN.

1. "Plans of care" is unambiguous.

The issue before the Court is one of straightforward statutory construction as to what is meant by the phrases "plans of care."

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *See Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). "All rules of statutory construction are subservient to the

one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *McClanahan v. Richland County Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) (citation omitted). "The legislature's intent should be ascertained primarily from the plain language of the statute." *Bass v. Isochem*, 365 S.C. 454, 470, 617 S.E.2d 369, 377 (Ct. App. 2005).

Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "If the legislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute." *Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (citing *Abell v. Bell,* 229 S.C. 1, 91 S.E.2d 548 (1956)). "When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning." *Id.* (citing *Timmons v. South Carolina Tricentennial Comm'n,* 254 S.C. 378, 175 S.E.2d 805 (1970)). Furthermore, only if the language of a statute gives rise to doubt or uncertainty as to legislative intent, may the construing court search for that intent beyond the borders of the act itself. *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 339, 478 S.E.2d 74, 76 (1996).

"Plans of care" is plain and unambiguous and the Court need not and cannot embark on a search for the plain meaning outside the statute. While the statute does not specifically define the phrase "plans of care", the plain meaning of the phrase "plans of care" is precisely what it says: the Team Advocacy inspector has access to all "plans," *plural*, that relate to "care," of whatever kind, for the stated residents. When a term is undefined the court must interpret the term in accordance with its usual and customary meaning. *E.g. Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 23, 579 S.E.2d 334, 337 (Ct. App. 2003). According to Merriam-Webster:

- Plan—noun—"a method for achieving an end; an orderly arrangement of parts of an overall design or objective; a detailed program." Making a word plural is to "consist of more than one or more than one kind or class."
- Of—preposition—"the component material, parts, or elements or the contents; relating to; used as a function word to indicate a characteristic or distinctive quality or possession."
- Care—noun—"maintenance; charge, supervision."

A Medication Administration Record is a plan of care; that is, it contains a method of supervision for each resident of a Community Training Home, with proper administration of medication on a daily basis being the end to be achieved. Specifically, the MAR shows the reader the daily plan for what medication a CTH resident takes, when the resident should take the medicine, and how the medicine should be administered. (Tr. p. 57:18-23; R. 159.) The fact that a MAR, depending on when it is reviewed, also contains an ongoing record of compliance with that plan does not transform a plan into simply a record. The two are not mutually exclusive. A document

can contain both a plan for future events and a record of past events—which a MAR does. The most logical interpretation is that the purpose of the inspection is to evaluate whether the residents are receiving proper care on an ongoing basis, including the medication as properly prescribed.

It is uncontested that DDSN knows P&A has requested to review these records in discharge of its statutory duties, and state law requires DDSN to cooperate with P&A. S.C Code § 43-33-400 ("All departments, officers, agencies and institutions of the State **shall** cooperate with [P&A] in carrying out its duties.") (emphasis added) Not only is DDSN ignoring this unequivocal mandate, it is actively opposing P&A's efforts to comply with its enabling statute.

DDSN has created an internal document it refers to as the "Residential Treatment/Support Plan."[4] DDSN arbitrarily claims this document is not just a plan of care but **the** "plans of care" addressed in S.C Code § 43-33-350(4). *See* Pl. Ex. 1 ("[w]e have informed our contracted providers of our position for CTH II staff to release only the residential treatment/support plan, **which we consider the same as the plan of care**, to the P&A team advocacy coordinator") (emphasis added).

Notably, DDSN has never provided any authority supporting its assertion that the Residential Treatment/Support Plan is the "plans of care" identified in P&A's enabling statute, and has never provided any justification as to why what DDSN "considers" is relevant, much less dispositive.[5]

---

[4] The document is titled "Support Plan", (Def. Ex. 1, p. 21; R. 292.); it is unclear why it is referred to as the "Residential Treatment/Support Plan."

[5] DDSN also argued in the letter that the Health Insurance Portability and Accountability Act (HIPAA) prohibited the disclosure, (Pl. Ex. 1; R. 200), but wisely abandoned that position at trial since HIPAA does not prevent P&A from receiving the information.

The Affidavit of DDSN Associate State Director Kathi Lacy dated July 7, 2011[6] is telling, admitting

> [w]hile the document in which the needs are listed and the recommendations are made has been known at times by different names, such as "Single Plan," "service of plan," or "support plan" those designations are simply different terms for the federally-required "plan of care.

(Lacy Aff.; R. 385.) First, this is not simply a federally-required form as described herein. Second, DDSN admits its internal form has been known by at least three separate names, none of which is "plan of care." No explanation was even attempted at how three separate documents could all be the **one** plan of care DDSN now argues is meant by the P&A enabling statute. The absurdity of this can be seen by Dr. Lacy's trial testimony on direct examination by her counsel:

> Q. . . . [Y]our affidavit previously submitted in 2011, had a document attached to that which was called a single plan. Do you recall that?
>
> A. I do.
>
> Q. And what's the relationship of Exhibit 1 right here [the Residential Treatment/Support Plan] to that single plan?
>
> A. It replaced the single plan.
>
> Q. Okay. When did that happen? I see down at the bottom that was revised February 1st, '12?
>
> A. I think there was a previous addition but very similar to this.

(Tr. p. 84:3-14; R. 186.)

Thus, DDSN's own witness admits the fluid nature of its own internal documents, the evolution of which DDSN now argues to the court is a static, monolithic, singular

[6] The trial court stated P&A "has not disputed any of these facts set forth in the Lacy affidavit, nor did [P&A] provide any evidence to the contrary in any respect." (Am. Order 6; R. 40.) This quotation should be limited to DDSN's internal procedures and forms and should not be read to show that P&A agrees with DDSN's position.

"plan of care"—utterly ignoring that DDSN does not now and has never had a document titled Plan of Care.

This Residential Treatment/Support Plan also looks suspiciously like what DDSN says a MAR is exclusively—a record, not a plan. (*Id.* at 13:13-20; R. 115.) For example, it includes categories for the date the service was included in the plan and a category titled "Amount, Frequency, and Duration of Service/Intervention." (Def. Ex. 1; R. 272, 294.) It also includes a box to be checked as to whether or not the need "has been met" and a space to explain why a service is being discontinued if the need has not been met. *Id.* Each and every one of these is by definition a record of what occurred in the past beginning with the day after it is executed and continuing thereafter.

Incredibly, considering this form relates to the most vulnerable people in our society and their daily needs, it is completed but once per year. (Tr. p. 82:20-23, 86:25-87:2; R. 184, 188-89.) DDSN thus unsurprisingly admits the Residential Treatment/Support Plan does not reflect what happens on a day-to-day basis at its CTHs. (*Id.* at 96:1-3;R. 198.) "Plans of care" are an extension of "living conditions" as referenced in the enabling statute, but apparently DDSN believes living conditions remain permanently frozen in time for periods of at least one year. The trial court not only accepted this faulty logic, but expanded it by stating the following regarding DDSN's Residential Treatment/Support Plan:

> [p]resumably, 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' plan of care.

(Am. Order p. 11; R. 45.) Even a cursory review of the Residential Treatment/Support Plan shows it provides no information concerning "conditions in the facilities." Thus, not only are the living conditions frozen in time, the review of them is to come from a document that does not even address the matter.

Since "plans of care" plainly includes MARs, the trial court was incorrect to prevent P&A from inspecting MARs during Team Advocacy visits of CTHs.

2. Even if "plans of care" is ambiguous, the trial court improperly relied on federal law instead of state law in its interpretation.

As an initial matter, only if the language of a statute gives rise to doubt or uncertainty as to legislative intent, may the construing court search for that intent beyond the borders of the act itself. *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 339, 478 S.E.2d 74, 76 (1996). As described above, there is no need to search outside the statute. However, even if there is ambiguity, the trial court still erred.

The trial court relied on the usage of the phrase "plan of care" within 42 U.S.C § 1395n(c)(1), 42 C.F.R. § 441.301(b)(1)(i), and 42 C.F.R. § 441.351(f), the federal Medicaid regulations governing the Medicaid Waiver program of the DDSN. (Am. Order p. 5-9; R. 39-43.)

First, these are provisions of federal law, not South Carolina law. South Carolina law provides a specific power to P&A by way of Team Advocacy inspections, a power which is not bottomed in federal law. Importantly, the federal protection and advocacy scheme anticipates that individual States might provide for even broader powers, stating "[a] Protection and Advocacy System may exercise its authority under State law where the authority exceeds the authority required by the [DD Act], as amended. However,

State law must not diminish the required authority of the Protection and Advocacy System." 45 C.F.R. § 1386.21(f). This plainly provides that federal law is the floor, and a state is free to provide more powers and, if so, then P&A may utilize the expanded powers. The state also "shall provide to [P&A] . . . information about the adequacy of health care and other services, supports, and assistance that individuals with developmental disabilities who are served through home and community-based waivers . . . . receive . . ." 42 U.S.C. § 15043(a)(3)(B).

Additionally, other South Carolina statutes and regulations reveal the "plans of care" refers to all plans that detail whatever care, including medical care, that individual is receiving. The South Carolina Code contains numerous references to "plans of care," including the following:

- S.C. Code Ann. § 44-81-40(J) ("Each resident must be assured that no resident will be required to perform services for the facility that are not for therapeutic purposes as identified in the plan of care for the resident.");
- S.C. Code Ann. § 44-7-350 ("The agency placing a client in a community residential care facility shall develop an individual plan of care in cooperation with the provider.");
- S.C. Code Ann. § 43-35-10 (referring to a "written plan of care" in defining exploitation and physical abuse of adults).

These statutes refer generally to a written plan of care, encompassing all manners of care the individual is receiving—including medical care.

Moreover, the South Carolina regulations that refer to "plans of care" specifically refer to medical care. The regulation that provides the standard for a facility housing

people with mental disabilities to receive a license specifically refers "to the health aspects of the individual plans of care." S.C. Code Ann. Regs. 61-13 E(3). The regulation for Medicaid Nursing Facility Services mandates that such "services shall be provided according to a written plan of care under the direction of a licensed attending physician." S.C. Code Ann. Regs. 126-314. Both regulations obviously envision a plan of care encompassing medical care as well as other care an individual requires.

Second, these Federal provisions operate within a much narrower context than P&A's general Team Advocacy inspection power. Admittedly, these statutes govern the Medicaid Waiver that provides funding for most residents of the facilities that P&A seeks to inspect in this case. However, that is but a fraction of the facilities that P&A inspects under its Team Advocacy program. (Tr. p. 33:10-13, 71:2-15; R. 135, 173.) It is undisputed that P&A's Team Advocacy program inspects other facilities as well—including private facilities and facilities run by the Department of Mental Health. (*Id.*) There is no evidence that residents of those facilities are being cared for under DDSN's Medicaid Waiver regulations. Indeed, many of the facilities inspected by the Team Advocacy program are CRCFs, which are not directly governed by any federal regulation at all, but only by state level regulatory requirements. *See* SCDHEC Reg. 61-84. The trial court, therefore, erred by relying on federal law to limit the meaning of "plans of care" in a state law.

Moreover, the federal regulations to which the trial court refers do not contain a specific definition of "plan of care," nor do those regulations limit said plan to a specific document; rather, they simply state that services must be provided according to "a written plan of care." 42 USC § 1395n(c)(1), 42 C.F.R. § 441.301(b)(1)(i). Similarly, 42 C.F.R.

§ 441.351(f), which deals only with waiver programs for people aged sixty-five and over, does not define "plans of care" as narrowly as the Court's opinion relies upon it to do. 42 C.F.R. § 441.351 actually states that services are provided under a "written plan of care based on an assessment of the individual's **health** and welfare needs. . . . **Each** plan of care must contain **at a minimum, the medical and other services to be provided, ...**" *Id.* (emphasis added). The federal regulations merely set a minimum; they do not fully define everything that must be included in a plan of care, and they do not limit individuals to only a single defined plan of care.

The trial court also relied on several cases interpreting DDSN's federal waiver document and on testimony from Dr. Lacy as to the history of DDSN's waiver policies in making its decision. (Am. Order p.6, 8; R. 40, 42.) Those cases and that testimony is inapposite, because the relevant question is not the meaning of the language within DDSN's federal waiver, but the meaning of P&A's enabling statute under state law. To the extent that it is relevant, however, DDSN admits in their Answer to Plaintiff's Complaint, that "plans of various kind" are used for residents of CTHs. (Defs.' Answer; R. 98.) However, DDSN contends they are only required to disclose the Residential Treatment/Support Plan to P&A during a Team Advocacy inspection; that document does not contain information about the medical care given to residents. (Def. Ex. 1; R. 272.) Again, this interpretation would limit P&A's review to one plan and to the one plan which does not contain information about the care provided to CTH residents. Such an interpretation is contrary to the language of the statute and would destroy the intent of the General Assembly.

In responding to interrogatories, DDSN admitted the "Residential Habilitation standard (RH5.0) requires that each person receive continuous and coordinated health care. People must be evaluated by a licensed physician, physician's assistant or nurse practitioner (and dentist) and the plan of care must be followed." (Def. Resp. to Interrog. No. 13; R. 366.) This demonstrates that the phrase "plans of care" is a not term of art which refers only to DDSN's Residential Treatment/Support Plan. Rather, DDSN's actual use of the term is to refer to any "plan" which relates to general "care." The "plan of care" under 42 USC § 1395n(c)(1), 42 C.F.R. §441.301(b)(1)(i), and 42 C.F.R. § 441.351(f) (2011) is simply a reference to any physician's "plan" for an individual's "care," which follows the plain meaning as explained in Part I.A.1, *supra*. The fact that DDSN has chosen to designate a particular document as *the* "plan of care" for Medicaid Waiver participants is purely a choice on the part of DDSN, not a matter of binding law or regulation. The trial court, therefore, erred in its interpretation of "plans of care" through improper reliance on federal law.

B. P&A's enabling statute should be construed broadly.

The General Assembly intended P&A's authority to be broadly construed in order to fulfill "the desire of the General Assembly that South Carolina Protection and Advocacy System for the Handicapped, Inc., exercise protection and advocacy functions not only for the developmentally disabled citizens of South Carolina but also for all other handicapped citizens of the State." S.C. Code Ann. § 43-33-310.

1. P&A's authority to conduct Team Advocacy inspections should be liberally construed and include inspection of MARs.

As "an organization authorized by statute to serve and protect the health, welfare, and rights of developmentally disabled and handicapped persons in South Carolina,

P&A's authority to conduct Team Advocacy inspections should be liberally construed." *Bellwood Manor*, 2010 WL 6782577, at *8 (citing *City of Columbia v. Bd. of Health & Envtl. Control*, 292 S.C. 199, 202, 355 S.E.2d 536, 538 (1987) ("The delegation of authority to an administrative agency is construed liberally when the agency is concerned with the protection of the health and welfare of the public.")). In *Bellwood Manor* P&A sought to conduct Team Advocacy inspections of a community residential care facility licensed by DHEC; as part of the inspection P&A sought to inspect the resident's medical records. *Id.* at *2. The Administrative Law Court specifically found that "Team Advocacy members perform a physical inspection of the facility and its records and interview residents, **in order to ensure** . . . **that residents have access to their** finances and **medications**." *Id.* (emphasis added). The Administrative Law Court held that P&A had the authority to inspect any community residential care facility licensed by DHEC, implying that this inspection encompassed an inspection of the resident's medical records—including MARs. *Id.* at *8.

Similarly, P&A now seeks to conduct inspections of CTHs licensed by DDSN. As part of that inspection P&A seeks to review plans of care—including MARs. P&A's authority to conduct these inspections must be liberally construed.

2. When "plans of care" was added to the enabling statute the General Assembly was aware the purpose of P&A is to ensure the developmentally disabled receive proper medical care.

The General Assembly created P&A in response to federal legislation to implement a statewide protection and advocacy system for the disabled. PL 94–103. In response, the legislature created P&A. S.C. Code Ann. § 43-33-310. The purpose of the DD Act is "to improve community services, such as medical care . . . , for individuals

with developmental disabilities." *Virginia Office for Prot. & Advocacy v. Stewart*, 131 S. Ct. 1632, 1636 (2011) (citing 42 U.S.C. §§ 15023(a), 15024).

When ascertaining the meaning of a statute there is "a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects." *State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003). The General Assembly amended P&A's enabling statute in 1993 to add "plans of care." The legislature was thus aware of the purpose of the DD Act to improve medical care for individuals with developmental disabilities when adding this language to the statute. Accordingly, this language was added to ensure that people with developmental disabilities received the proper medical care—to include receiving the proper medication. The legislature thus intended for MARs to be included in documents items inspected as "plans of care" during Team Advocacy inspections.

3. The term "including," as used in the enabling statute, enlarges the scope of what P&A may inspect during Team Advocacy inspections.

Section 43-33-350(4) authorizes P&A to conduct inspections of "the living conditions of a residential facility, including the plans of care[.]" S.C. Code Ann. § 43-33-350(4) (emphasis added). Generally in statutory construction "to express or include one thing implies the exclusion of another." *Berkeley Cnty. Sch. Dist. v. S. Carolina Dep't of Revenue*, 383 S.C. 334, 348, 679 S.E.2d 913, 920 (2009). However, in "definitive provisions of statutes and other writings, 'include' is frequently, if not generally, used as a word of extension or enlargement rather than as one of limitation or enumeration." *Am. Sur. Co. of New York v. Marotta*, 287 U.S. 513, 517 (1933); *see also*

In re Grewe, 4 F.3d 299, 305 n.5 (4th Cir. 1993) (the "general rule of statutory construction" is that using the word "'including' enlarges the scope of [a statute] rather than limits it.").

The term "including" in section 43-33-350(4) enlarges the scope of the term "living conditions." The General Assembly has not provided an exhaustive list in the statute of what can and cannot be inspected during team advocacy inspections other than generally living conditions and specifically "plans of care." Nor did the General Assembly intend to limit the inspections of living conditions to written plans that never contain records of care already received; such an inspection would hardly constitute an inspection at all. The General Assembly, therefore, did not intend for "plans of care" to be construed narrowly. Rather, the General Assembly intended the statute to be read broadly and allow a Team Advocacy inspection to inspect all living conditions including plans for whatever care an individual receives—including MARs.

4. The privacy protections built into P&A's enabling statute evidence intent for P&A's access to records to be construed broadly.

The statutes creating P&A encompass multiple safeguards protecting the privacy of individuals whose plans of care P&A reviews; "[o]nly the coordinator of the team advocacy project or the coordinator's designee is authorized to perform reviews of plans of care." S.C. Code Ann. § 43-33-350(4). A report based on the inspection must be submitted to select State agencies. *Id.* Additionally, section 43-33-380 prohibits the "disclos[ure of] the name or identity of any person, complainant, witness or subject of a complaint or any information or writing relating thereto unless the person or his parent or

legal guardian authorizes in writing the release of such information[.]" S.C. Code Ann. § 43-33-380.

Both of these sections provide strong protections for the privacy rights of all residents. P&A takes the privacy of residents of facilities P&A inspects very seriously and ensures these statutes are followed. (Tr. p. 20:24 – 22:3; R. 122-124.)

These protections demonstrate that the General Assembly intended P&A to have the authority to review sensitive and private information. Otherwise, these protections would not be necessary. Since "courts must presume the legislature did not intend to do a futile act[,]" this Court must acknowledge this intention. *State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645, 651 (Ct. App. 2008) (citing *Proctor v. Dep't of Health and Envtl. Control,* 368 S.C. 279, 311, 628 S.E.2d 496, 513 (Ct.App.2006)). Furthermore, this Court must take this intent into account when interpreting "plans of care." *Ranucci v. Crain*, 409 S.C. 493, 500, 763 S.E.2d 189, 192 (2014) (A "statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect.") (quoting *S.C. State Ports Auth. v. Jasper Cnty.,* 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (internal quotation marks omitted)). Accordingly, the protections mandated in the statutes evidence the General Assembly's intention that the Team Advocate be allowed to view sensitive and private information such as MARs as part of the inspection of "plans of care."

C. P&A's additional authority to conduct investigations after receiving a complaint does not limit P&A's authority to conduct Team Advocacy inspections.

The General Assembly designated multiple and mutually exclusive functions to P&A. P&A has a federally designated role to investigate abuse and neglect and act as an

advocate and a monitor under 42 U.S.C. § 15043(a)(1). P&A also has a separate, state-created role, to conduct Team Advocacy inspections under S.C. Code § 43-33-350(4).

In addition to Team Advocacy inspections, P&A has a separate power allowing it to "investigate complaints by or on behalf of any developmentally disabled or handicapped person." S.C. Code § 43-33-350(2). P&A's power to inspect records when investigating a complaint only comes into play when P&A receives a "written request to investigate a complaint . . . or upon . . . the receipt of a complaint of abuse or threatened abuse. . . ." S.C. Code § 43-33-370. The trial court found this investigative authority demonstrated that P&A could not review MARs during team Advocacy inspections.

P&A's authority under the Team Advocacy provision, however, is distinct and is triggered in separate contexts. Indeed, P&A has the authority to conduct these "unannounced" inspections at any time as opposed to only in response to a complaint. S.C. Code § 43-33-350(4). Additionally, the purpose of a Team Advocacy inspection—to determine how the facility operates on a day-to-day basis—is different than the purpose of responding to a complaint—to determine if the allegations are true. Moreover, Team Advocacy inspections are administered by separate personnel—only the Team Advocate can review plans of care while there is no such restriction on reviewing medical records in section 43-33-370. The generally available Team Advocacy inspections are legally distinct from investigations of a specific complaint of abuse and/or neglect. Limitations on P&A's authority to inspect records in one context do not apply in other legally distinct contexts. The trial court, therefore, erred by conflating these separate provisions in the enabling statute.

II. The trial court erred by interpreting S.C. Code Ann. § 43-33-350 to prevent P&A from conducting proper inspections as required by statute.

Without the ability to inspect MARs during unannounced inspections P&A cannot fulfill the statutory requirements mandated by the General Assembly. As State law requires P&A to conduct these inspections, the trial court's order prohibits P&A from fulfilling it obligations under law.

A. In order to inspect living conditions P&A must be able to inspect records that document those conditions.

Medical care is a necessary part of a resident's living conditions. A developmentally disabled person as defined by statute needs "a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated." S.C. Code Ann. § 43-33-340(2)(e). In order to ensure residents of CTHs are receiving this care the General Assembly authorized Team Advocacy inspections. S.C. Code Ann. 43-33-350(4).

During these inspections the team advocate walks through the facility, reviews the food residents eat, the sleeping conditions of residents, interviews residents, and reviews various external and internal documents relating to the facility and the individual care of each resident, including the treatment plan for each resident—which includes MARs. (Tr. p. 19: 7-13, 56:18 – 57:11, 71:18 – 72:23; R. 121, 158-159, 173-174.) The team advocate often discovers that a facility is not following the prescribed plan of care or that records have been altered in order to make it appear as though the plan of care was followed. (*Id.* at p. 59:16-24, 60:18-21; R. 161-162.) As the General Assembly has noted, many residents in these facilities have critical, daily medical needs. S.C. Code

Ann. § 43-33-340(2)(e). Receiving this care is part of the residents' "living conditions." Reviewing plans of care—including MARs—is the most practical and direct, indeed the only, way to fully review the living conditions of residents. Without this ability, the Team Advocate is unable to ensure the residents have adequate living conditions to suit their individual needs. The statute envisions the Team Advocate being allowed to review MARs as part of an inspection of living conditions.

B. P&A cannot conduct effective unannounced inspections as required by statute without the ability to view MARs.

Section 43-33-350 requires Team Advocacy inspections to be "unannounced," without any requirement for permission from facilities or the residents of those facilities. S.C. Code Ann. §43-33-350(4). This grant of authority would not need to exist if the General Assembly intended P&A to only be able to access records after a grant of permission. Again, as "courts must presume the legislature did not intend to do a futile act[,]" this Court should acknowledge the requirement that the inspections be unannounced. *Sweat*, 379 S.C. at 377, 665 S.E.2d at 651.

The trial court held that P&A could review medical records only if a resident or his guardian consented. However, under the trial court's interpretation, if a resident or his guardian refused permission, P&A could not review records concerning that resident during its Team Advocacy inspection. Team Advocacy inspections would, therefore, be authorized by S.C. Code § 43-33-350 but P&A would be effectively blocked from performing those inspections in any instance where an individual or his legal guardian refused permission. This interpretation fails to give effect to the entire statute as required. *Ranucci*, 409 S.C. at 500, 763 S.E.2d at 192 (A "statute must be read as a

whole and sections which are a part of the same general statutory law must be construed together and each one given effect.")

Additionally, Team Advocacy inspectors testified that requiring advance permission would make unannounced inspections less effective and could even render the inspections impossible. (Tr. p. 41:2-16; R. 143.) That interpretation is entitled to *Chevron* deference. *See infra*, Part III.

Finally, if DDSN is correct that its internal document, updated only once a year, is the only "plans of care" P&A can review, having the inspection be unannounced is substantially reduced in efficacy since the document is the same for at least an entire year.

Accordingly, this Court should reverse the trial court and hold that P&A can review plans of care, including MARs, without the advance permission of a CTH resident or the resident's guardian.

C. The trial court's holding will have consequences beyond the inspection of CTHs licensed by DDSN by forcing Team Advocacy inspectors to apply the language of DDSN's Medicaid Waiver in inspections of facilities licensed by other entities.

When interpreting a statute "courts will reject [a] meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." *Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). Rather, "the court will construe the statute so as to escape the absurdity and carry the intention into effect." *Id.*

Taken to its logical conclusion, the trial court's interpretation of "plans of care" reaches an absurd result not intended by the General Assembly. P&A inspects numerous

facilities operated and licensed by various organizations, not just CTHs licensed by DDSN. (Tr. p. 33:10-13, 71:2-15; R. 135, 173.) The trial court's order, however, forces Team Advocate inspectors to follow the court's construction of the phrase "plan of care" within 42 U.S.C § 1395n(c)(1) and 42 C.F.R. § 441.301(b)(1)(i) **for all inspections**—that is, even when not inspecting facilities licensed by DDSN that contain no Medicaid Waiver residents.[7] This is an illogical result that surely was not intended by the General Assembly. For this very reason, P&A's enabling statute refers to "plans of care" rather than the singular "plan of care" and purposefully does not include a definition of any one plan of care.

The Team Advocacy provision does not limit P&A to a review of a single DDSN document, no more than Team Advocacy inspections are limited to only facilities governed by DDSN's Medicaid Waiver agreement. As previously discussed, P&A's statutory authorization is simply broader than that. It is uncontested that P&A has reviewed and continues to review MARs at CRCFs, and at least one South Carolina court has already affirmatively acted to enforce P&A's rights to conduction such inspections. *See Bellwood Manor*, 2010 WL 6782577.

The trial court's ruling risks forcing P&A's inspectors to apply the terms of 42 USC §1395n(c)(1), 42 C.F.R. §441.301(b)(1)(i), and 42 C.F.R. §441.351(f) to situations and facilities in which it makes no logical sense to do so and in which same has already been rejected (i.e. CRCFs). Accordingly, this Court should reverse the trial court and hold that P&A can inspect MARs during Team Advocacy inspections.

[7] There is no telling what singular document will be put forth as the rigid "plan of care" by other entities.

III. The trial court erred by refusing to afford *Chevron* deference to P&A's interpretation of "plans of care."

While P&A is not a state agency, the state legislature delegated authority to P&A and charged it with administering its own statutes. *See* S.C. Code Ann. §§ 43-33-310 *et seq.* P&A is specifically defined as part of the "State" within the meaning of the South Carolina Tort Claims Act, and is the only entity given such explicit protection—not even DDSN can lay such a claim. S.C. Code § 15-78-30(e) ("State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including[8] the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges"). Persons acting in good faith to provide information to P&A or participate in resulting judicial proceedings are given statutory immunity—both civil and criminal. S.C. Code § 43-33-390. The Governor of the State of South Carolina makes appointments to P&A's Board of Directors. S.C. Code § 43-33-330. P&A receives government funding. (Prevost Aff. p. 2; R. 344.)

Moreover, prior case law grants P&A the status of an agency when interpreting P&A's statutory authority. *See Bellwood Manor*, 2010 WL 6782577, at *8 (holding that P&A's delegation of authority should be construed liberally like delegations of similar authorities to an administrative agency). Therefore, even if "plans of care" is found to be ambiguous, P&A is entitled to deference in its interpretation of its own enabling legislation. *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837 (1984); *Sweat*, 379 S.C. at 374, 665 S.E.2d at 649 (*citing Buist v. Huggins,* 367 S.C. 268, 276,

[8] Again, use of the word "including" here represents an extension of what constitutes the State of South Carolina. *See supra* Part I.B.3.

625 S.E.2d 636, 640 (2006) ("The construction of a statute by the agency charged with its administration will be accorded the *most respectful consideration* and *will not* be overruled absent *compelling* reasons.") (emphasis added); *see also City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 202, 355 S.E.2d 536, 538 (1987) ("The delegation of authority to an administrative agency is construed liberally when the agency is concerned with the protection of the health and welfare of the public.")

The application of *Chevron* deference involves a two-step process. First, "[i]f the intent of [the General Assembly] is clear, . . . the court, as well as the agency, must give effect to the unambiguously expressed intent of [the General Assembly]." *Chevron*, 467 U.S. at 843-44; *see also Sweat*, 379 S.C. at 374, 665 S.E.2d at 649 (analyzing the plain language of the statute before considering the agency's interpretation). Here, the first step of the *Chevron* formula is dispositive as to the meaning of "plans of care." *See supra* Part I. However, should the Court find that the General Assembly "has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute . . . Rather, . . . the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 844; *see also Sweat*, 379 S.C. at 374, 665 S.E.2d at 649 (citations omitted) (stating that the court will only reject an agency's interpretation where there are compelling reasons and "the plain language of the statute is contrary to the agency's interpretation"). Therefore, unless there are compelling reasons and a specific finding that P&A's interpretation is *contrary* to the plain language of the statute, the Court must give deference to P&A's reading of "plans of care."

P&A's interpretation is not contrary to the plain meaning of the statute. Rather, it is in line with the plain meaning. *See supra* Part I. Moreover, established usage in regard to the meaning and effect of a statute is a relevant and persuasive guide to its authoritative interpretation. 2B Sutherland Statutory Construction § 49:6 (7th ed.); (citing *C. I. R. v. First Sec. Bank of Utah, N. A.*, 405 U.S. 394 (1972)). In this instance, P&A has inspected MARs at private CRCFs and at facilities controlled and operated by several separate state agencies, including the Department of Mental Health and **even facilities operated by DDSN** for over 20 years. (Tr. p. 33:10-13, 71:2 – 72:23; Provost Aff.; R. 135, 173-174, 343.) Accordingly, because P&A's interpretation of "plans of care" is entitled to deference and such interpretation is not contrary to the plain language of the statute, this Court should reverse the trial court and hold that "plans of care" encompasses MARs.

IV. The trial court erred by ignoring South Carolina public policy in preventing P&A from inspecting documents to protect the State's most vulnerable citizens.

South Carolina, decades ago, explicitly stated by statute that the public policy in this State is to foster the protection of the disabled. Specifically, "[i]t is the policy of this State to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life of the State and to engage in remunerative employment." S.C. Code Ann. § 43-33-10. The legislative history of this statute shows this unambiguous expression was made prior to the initial passage of the DD Act and prior to the establishment of P&A.

P&A was then formally established, and the legislature noted the "purpose of th[e] act [creating P&A and authorizing Team Advocacy inspections is] to express the

desire of the General Assembly that South Carolina Protection and Advocacy System for the Handicapped, Inc., exercise protection and advocacy functions not only for the developmentally disabled citizens of South Carolina but also for all other handicapped citizens of the State." S.C. Code Ann. § 43-33-310.

Thus, the General Assembly expressly stated the State's public policy for the protection of the disabled, and then implemented the policy through a comprehensive statutory scheme authorizing P&A to affirmatively "protect" and "advocate." S.C. Code Ann. §§ 43-33-310 through -400.

The appellate courts of South Carolina defer to the legislature on matters of public policy. *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 247, 768 S.E.2d 385, 389 (2015) ("Given our deference to the General Assembly in matters of public policy . . ."); *see also Cato v. Grendel Cotton Mills*, 129 S.E. 203, 204 (1925) ("Courts must refuse to sustain that which is against the public policy of the state, when such public policy is manifested by the legislative or fundamental law of the state.") (quotation omitted).

P&A is the "organization authorized by statute to serve and protect the health, welfare, and rights of developmentally disabled and handicapped persons in South Carolina[.]" *Bellwood Manor*, 2010 WL 6782577, at *8. P&A is thus vested with a formidable mechanism to defend the State's public policy—the Team Advocacy inspection. These unannounced inspections to review the various realities of daily life in residential rehabilitation facilities are an essential part of South Carolina's legislative plan to implement the public policy to protect individuals with disabilities.

By providing independent, third-party oversight of the facilities that serve and house these citizens, Team Advocacy inspections help ensure that South Carolina

residents with disabilities are receiving appropriate care and living in safe environments. This confirms the State's public policy to ensure that people with disabilities are protected and that they have an advocate in P&A. By removing this power to inspect MARs from P&A's inspectors, the trial court endangered the safety and quality of life of South Carolina's most vulnerable residents.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court and hold that "plans of care" encompasses MARs and other on-site documents regarding CTH residents.

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September 22, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Edgar W. Dickson, Presiding Judge

Case No. 2010-CP-40-1095
Appellate Case No. 2015-000109

Protection and Advocacy for People with Disabilities, Inc., ... Appellant,

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, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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September 22, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
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Edgar W. Dickson, Presiding Judge

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PROOF OF SERVICE

I, the undersigned Paralegal of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, Protection and Advocacy for People with Disabilities, Inc. do hereby certify that I have served all counsel/parties in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

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