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EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Amedisys SC, LLC and South Carolina Home Care & Hospice Association, Plaintiffs, v. South Carolina Department of Health and Environmental Control, Defendant and National Healthcare Corporation, In-Care Home Health, Inc., Tri-County Home Health Care & Services, Inc., M&C Group, LLC d/b/a Home Helpers of Bluffton, Tidewater Home Health, P.A., Hedgemark Brentwood Medical Services, Inc. d/b/a PHC Home Health and PruittHealth Corporation, Intervenor-Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No.: 2016-CP-40-00818 **ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

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PROCEDURAL BACKGROUND

Plaintiffs Amedysis SC, LLC ("Amedysis") and South Carolina Home Care & Hospice Association (the "Home Care Association") instituted this action on or about February 8, 2016, pursuant to the Uniform Declaratory Judgments Act. The Plaintiffs in this action seek a declaratory judgment finding that Chapter XII of the South Carolina Health Plan does not comply with the statutory requirements of S.C. Code Ann. §§ 44-7-110 *et. seq.* (the "State Certification of Need and Health Facility Licensure Act (the "CON Act")). In addition, Plaintiffs filed a Notice of Motion and Motion for Temporary Restraining Order and Preliminary Injunction, wherein it sought an injunction prohibiting DHEC from accepting additional CON

applications relating to home health services and an injunction prohibiting DHEC from issuing decisions on any of the pending CON applications relating to home health services.

On February 12, 2016, National Healthcare Corporation ("NHC") filed a Motion to Intervene in the subject action. On February 16, 2016, In-Care Home Health, Inc. ("In-Care"), Tri-County Home Health Care & Services, Inc. ("Tri-County"), M&C Group, LLC d/b/a Home Helpers of Bluffton ("Home Helpers"), Tidewater Home Health, PA ("Tidewater") and Hedgemark Brentwood Medical Services, Inc. d/b/a PHC Home Health ("PHC") filed a joint Motion to Intervene in the action. Likewise, on February 16, 2016 PruittHealth Corporation ("PruittHealth") filed a Motion to Intervene.

Thereafter, on February 16, 2016, the Home Care Association filed a Notice of Dismissal, effectively dismissing itself from the pending action and leaving Amedisys as the sole Plaintiff in the action.

MOTION TO INTERVENE

This matter is before the Court pursuant to Plaintiff's Motion for Preliminary Injunction.[1] Prior to hearing the Motion for Temporary Injunction, the Court considered the pending motions to intervene filed by NHC, In-Care, Tri-County, Home Helpers, Tidewater, PHC and PruittHealth (hereinafter referred to collectively as the "Intervenors"). A hearing on these matters was conducted on February 22, 2016. After careful consideration of Amedysis' Complaint and Motion for Preliminary Injunction, the Intervenors' Motions to Intervene and arguments of counsel, I find that the motions to intervene should be granted.

[1] Amedysis' motion was styled as a Motion for Temporary Restraining Order and Preliminary Injunction. At the outset of the hearing, counsel for Amedysis represented that he believed there was no need to consider the motion as one for a temporary restraining order and believed it appropriate for the Court to consider the motion as seeking a preliminary injunction only.

It is undisputed that the Intervenors have filed multiple certificate of need applications which are currently being reviewed and/or pending a decision from DHEC. The Declaratory Judgment Act provides that "[w]hen declaratory relief is sought **all person shall be made parties who have or claim any interest which would be affected by the declaration**. *See* S.C. Code Ann. § 15-53-80 (emphasis added); *see also*, James F. Flanagan, *South Carolina Civil Procedure* 196 (2d ed. 1996) (listing Declaratory Judgment Act as possible example of a statute granting an unconditional right to intervene under Rule 24(a)(1)). As all of the Intervenors currently have pending CON applications, the outcome of this action undoubtedly affects their rights. Based on the foregoing, I find the Intervenors shall be made parties to the action pursuant to Rule 24(a)(1), SCRCP, which provides a party may intervene as a matter of right when a statute confers an unconditional right to intervene.

Furthermore, I find that the Intervenors have a right to intervene in the subject action pursuant to Rule 24(a)(2), in that they have satisfied the elements of intervention under Rule 24(a)(2), which requires a party to: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. *See In re S.C. Dep't of Health and Envtl. Control v. Columbia Organic Chem. Co.*, 310 S.C. 495, 498, 427 S.E.2d 661, 663 (1993); *Berkeley Elec. Coop., Inc. v. Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 715 (1990).

As to the first factor, I find that the Intervenors' motions were timely filed. As to the second factor, the Intervenors have a strong financial and business interest in the subject of this action. They have invested significant resources in the numerous applications prepared and filed to

obtain CONs in an effort to meet the need of the patients residing in the Counties for which the applications were filed. The Court also finds that the third element was satisfied as the Intervenors' pending CON applications, which DHEC has either marked complete or are currently under review, will be put on hold for an indeterminate period if the relief sought is granted. Finally, this Court finds that the Intervenors' interest will not be protected by DHEC, as they have separate and distinct interests in protecting their own investments in its CON applications and to further their own legitimate business interests.

For the foregoing reasons, the Intervenors' motions to Intervene are hereby GRANTED.

MOTION FOR PRELIMINARY INJUNCTION

A hearing was held on Amedysis' motion for preliminary injunction pursuant to Rule 65, SCRCP, seeking to enjoin Defendant DHEC during the pendency of this action from accepting, reviewing or issuing staff decisions regarding applications for certificates of need ("CONs") to provide home health services pursuant to the 2014-15 State Health Plan ("SHP"), which was adopted by the DHEC Board on August 13, 2015. The Court has carefully reviewed the Plaintiff's Complaint, the Motion and Memorandum in Support of Motion for Preliminary Injunction, DHEC's Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction, what additional evidence that was submitted plus arguments of counsel. For the reasons that follow, I find that Amedyis' Motion for Temporary Injunction should be denied.

I. FACTS

This action arises out of the South Carolina Department of Health and Environmental Control's ("DHEC" or "Department") operation of its Certificate of Need Program pursuant to S.C. Code Ann. §§ 44-7-110 *et. seq.* (the "State Certification of Need and Health Facility Licensure Act (the "CON Act")). The purpose of the CON Act is to promote cost containment, to

prevent the unnecessary duplication of health care facilities and services, to guide the establishment of health facilities and services which will best serve public needs, and to ensure that high quality services are provided in health facilities in South Carolina. *See* S.C. Code Ann. § 44-7-120. The CON Act requires certain health care providers, prior to undertaking certain health care activities, first obtain a certificate of need. In addition, the Licensure of Home Health Agencies Act, S.C. Code Ann. § 44-69-10, *et. seq.*("Home Health Act"), requires the issuance of a CON prior to licensure for home health agencies.. The CON Act further requires the Department to establish procedures and criteria for the submission of an application and appropriate review prior to the issuance of a certificate of need. *Id.*

The CON Act requires the issuance of a State Health Plan ("SHP") to be utilized by the Department in its administration of the CON Program. Pursuant to Section 44-7-180(B), the Plan must include at a minimum the following:

> (1) An inventory of existing health care facilities, beds, specified health services, and equipment;
>
> (2) Projections of need for additional health care facilities, beds, health services, and equipment;
>
> (3) Standards for distribution of health care facilities, beds, specified health services, and equipment including scope of services to be provided, utilization, and occupancy rates, travel time, regionalization, other factors relating to proper placement of services and proper planning of health care facilities; and
>
> (4) A general statement as to the project review criteria considered most important in evaluating Certificate of Need applications for each type of facility, service, and equipment, including a finding as to whether the benefits of improved accessibility to each such type of facility, service and equipment may outweigh the adverse affects caused by the duplication of any existing facility, service or equipment.

The CON Act sets forth a detailed process for the periodic review and issuance of the SHP. The State Health Planning Committee (the "SHP Committee"), whose members are primarily appointed by the Governor, reviews and revises the SHP as it sees fit at least every two years.

S.C. Code Ann. § 44-7-180. The review process includes mandatory regional public meetings throughout the State. The SHP Committee must accept and consider written comments from interested parties. After undergoing a significantly deliberative process, the SHP Committee makes a recommendation for the new SHP. The proposed SHP is then submitted to the DHEC Board for additional review, including additional meetings and deliberation, and approval. The current SHP passed through the full statutory process described above, received unanimous approval from the DHEC Board, and became effective August 13, 2015.

The current SHP's home health section sets forth the following selected relevant standards applicable to CON applications for home health services:

1. An applicant must propose home health services to cover the geographic area of an entire county and agree to serve residents throughout the entire county....

3. A new home health agency may be approved if an applicant can demonstrate it will serve 50 or more patients projected to be in need in non-rural counties, or 25 or more patients projected to be in need in rural counties, through evidence that may include, but would not be limited to, the following:
    a. Letters of support that identify need for additional home health services from physicians and other referral sources.
    b. Evidence of underutilitization of home health services.
    c. Evidence of limited scope home health agency service including skilled nursing, physical therapy, occupational therapy, speech therapy, home health aides, and medical social workers.
    d. Evidence of the denial or delay in the provision of home health services, including but not limited to long waiting lists or delays which exceed industry standards...

5. All home health agency services (Skilled Nursing, Physical Therapy, Occupational Therapy, Speech Therapy, Home Health Aide, and Medical Social Worker) should be available within a county. If there is no hospital in a county and the existing licensed home health agencies between them do not provide all of the services identified above, this may be cited as potential justification for the approval of an additional agency that intends to offer these services.

8. The applicant must document that it can serve at least 25 patients annually in each rural county for which it is licensed and 50 patients annually in each non-rural county for which it is licensed within two years of initiation of services. The applicant must assure the Department that, should it fail to reach this threshold number two years

after initiation of services in a county, it will voluntarily relinquish its license for that county.

9. Nothing in this Section is intended to restrict the ability of the Department to approve more than one new Home Health Agency in a County at any given time.

2014-15 SHP, pp. XII-7 through XII-8. In addition, the SHP includes an inventory of existing home health agencies in the State and 2013 utilization data for home health agencies, the most recent data available to the Department at the time of the SHP's adoption, showing the total number of persons served and total visits per home health agency. 2014-15 SHP, p. XIII-51. The SHP also lists the project review criteria deemed most relevant for consideration of home health CON applications. 2014-15 SHP, p. XII-8.

The Intervenors are all home health agencies operating in South Carolina. In addition, shortly after the issuance of the current SHP, the Intervenors filed multiple CON applications. Each of these applications has been deemed complete by the Department or are currently under review. The application process required the Intervenors to incur considerable time and expense. Despite the prolonged and detailed review process which culminated in the approval of the current SHP over six months ago, Amedysis filed a complaint challenging the SHP seeking a declaratory judgment finding that Chapter XII of the SHP does not comply with the statutory requirements of the CON Act. In addition, Plaintiffs seek an injunction prohibiting DHEC from accepting additional CON applications relating to home health services and an injunction prohibiting DHEC from issuing decisions on any of the pending CON applications relating to home health services. Although Amedysis is currently operating in only 20 of the counties in which CON applications have been filed, it seeks an injunction prohibiting the Department from taking any action on CON applications in all 46 counties.

II. LEGAL STANDARD

"An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." *Scratch Golf Co. v. Dunes Wes Residential Gold Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). The party seeking an injunction has the burden of demonstrating the facts and circumstances warranting an injunction. *Calcutt v. Calcutt*, 282 S.C. 565, 320 S.E.2d 55 (Ct. App. 1984). For a preliminary injunction to be granted, "the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 907.

III. DISCUSSION

A. Irreparable Harm

The purpose of an injunction is to preserve the status quo to avoid possible irreparable injury to a party pending litigation. *Peak v. Spartanburg*, 367 S.C. 450, 455, 626 S.E.2d 34, 37 (2005). Amedysis has not demonstrated that it will be irreparably harmed in the absence of an injunction. Generally, one may not enjoin a state agency from the performance of duties imposed by valid statute. *Frady v. Student Loan Servicing Center*, 313 S.C. 561, 564, 442 S.E.2d 580, 582 (1994). An injunction seeking to enjoin a government agency from performing tasks it has expressly been given authority to perform will only be granted upon a clear showing of injury. *See Tallevast v. Kaminski*, 146 S.C. 225, 143 S.E. 796, 800 (1928). Amedysis has not presented any evidence demonstrating how it will be harmed in the absence of an injunction. It relies solely on conclusory statements. Amedysis is presumably concerned with the possible adverse financial impacts it may suffer if other businesses are granted licenses to operate in the counties where it currently operates. However, Amedysis has not submitted affidavits or any other evidence indicating that the granting of additional licenses would negatively impact its business.

Furthermore, economic loss only constitutes irreparable harm if the economic loss threatens the very existence of Plaintiff's business. *Peek v. Spartanburg Regional Healthcare System*, 367 S.C. 450, 455 n. 2, 626 S.E.2d 34, 37 n. 2 (2005). All parties acknowledge that the revisions to the home health section of the SHP were made in order to allow for providers to address what was determined to be unmet need for home health services in the state. Amedysis has not presented any evidence showing that additional providers in the counties in which it operates or in which it has filed a certificate of need application would prevent its continued operations. Moreover, it cannot show how it could in any way be harmed by the issuance of certificates of need in counties in which it is not currently operating or seeking a certificate of need.

Furthermore, if a decision is made to grant a CON, affected persons may request a final review conference before the Board pursuant to S.C. Code Ann. § 44-1-60, and may thereafter request a contested case hearing with the Administrative Law Court ("ALC"). S.C. Code Ann. § 44-7-210(D) and (E). In the event a contested case hearing is filed with the ALC, the decision approving the CON is automatically stayed. S.C. Code Ann. § 1-23-600(H)(2). Amedysis has the opportunity to file a request for contested case hearing at the ALC to challenge a decision by the Department approving a new home health agency in a county where Amedysis is an affected person with standing. Such a filing would trigger the ALC's automatic stay provision. Because the status quo would remain pending resolution of a contested case hearing, Amedysis would suffer no irreparable harm prior to its opportunity for a full merits hearing on the application before the ALC.

Therefore, Plaintiff has not demonstrated that the granting of an injunction is necessary to prevent irreparable harm.[2]

[2] The Court also notes that the facts and circumstances which form the basis of the Complaint and Motion for Temporary Injunction were known to Amedysis upon the enactment of the SHP in August of 2015. Nevertheless,

B. Likelihood of Success on the Merits

Plaintiff has also failed to demonstrate that it is likely to succeed on the merits. When a court is asked to grant a preliminary injunction, it can consider the merits of the case to the extent necessary to determine whether an injunction is appropriate. *See AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (2009). The gravamen of Amedysis' complaint and the basis for its motion for a preliminary injunction is that the SHP as enacted by DHEC failed to comply with the statutory requirements of § 44-7-180(B) because it does not contain a projection of need for home health services.

Prior to the adoption of the current plan, the need for home health services was projected using a formulaic approach. After following the statutorily mandated revision procedure and receiving public comments regarding the degree of unmet need, the current SHP was adopted, which required an applicant to demonstrate it will serve 50 or more patients in non-rural counties and 25 or more patients in rural counties projected to be in need of services. The SHP contains additional objective criteria reflecting projection of need for home health services. The home health standards were recommended by the SHP Committee and, after thorough review, adopted by the DHEC Board, which is charged with administering the CON program under the CON Act. There is no requirement set forth in S.C. Code Ann. § 44-7-180(B) that a projection of need in the SHP must exist in a formulaic approach, as is suggested by Amedysis.

Courts will defer to an agency's interpretation of a statute unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Trident Medical Center v. South Carolina Dep't. of Health & Envtl. Control*, 412 S.C. 341, 354, 772 S.E.2d 177, 184 (2015); *see also Dorman v. S.C. Dep't. of Health & Envtl. Control*, 350 S.C. 159, 167, 565 S.E.2d 119, 123 (Ct.

Amedysis failed to take any action until initiating this lawsuit six months later. It now seeks "emergency interim relief" and an injunction from this Court based on allegations of irreparable harm which may not have existed if it had pursued its claims earlier.

App. 2002) ("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 reason."). Courts "give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations. *Id.* After careful review, DHEC determined that the method of projecting need in the current State Health Plan is preferable to the formulaic approach that was previously used. Courts may not substitute their judgment for that of the agency.

In *MRI at Belfair v. South Carolina Department of Health & Environmental Control*, 379 S.C. 1, 664 S.E.2d 471 (2008), the Supreme Court of South Carolina addressed a similar challenge to the State Health Plan. In *MRI at Belfair*, the Plaintiff argued that the State Health Plan standards for MRI services did not comply with § 44-7-180(B). *Id.* at 5, 664 S.E.2d at 473. The SHP contained the following standards for MRI services:

> 1) Each hospital should have at least one MRI unit available for diagnosis of emergency patients, inpatients and outpatients.
>
> 2) In order to promote cost-effectiveness the use of shared mobile MRI units should be considered.
>
> 3) The applicant agrees in writing to provide the Department utilization data on the operation of the MRI service.

The plaintiff argued that the SHP did not comply with § 44-7-180(B) because the standards for MRI services did not contain projections of need or standards of distribution. *Id.* The Supreme Court disagreed finding that "[a]lthough the [State Health] Plan does not give specific projections of need or standards of distribution in terms that track the exact statutory language, the [State Health] Plan does not violate § 44-7-180." *Id.* The court found that the reference to "each hospital" in the first standard satisfied the CON Act's directive for a projection of need.

Id. The court found that the second standard was sufficient to provide guidance for the distribution and utilization of existing MRI resources. *Id.*

As in *MRI at Belfair*, Amedysis challenges the current SHP on the basis that it fails to provide specific standards for projecting need. The SHP provides that a CON will only be granted if the applicant shows that it will serve at least 25 or 50 patients (depending on the county where the applicant seeks to operate). The SHP also provides objective criteria upon which DHEC can evaluate the sufficiency of the need projected by the applicant. The need standards for home health services are far more specific than the standards upheld by the Supreme Court in *MRI at Belfair*. Accordingly, Amedysis has not shown that it is likely to succeed on the merits of the case.

C. Adequate Remedy at Law

An injunction is inappropriate when the party seeking an injunction has an adequate remedy at law. *Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 545, 627 S.E.2d 687, 689 (2006). Injunctive relief is not available to one who has not exhausted all administrative remedies. *Garris v. Governing Board of South Carolina Reinsurance Facility*, 319 S.C. 388, 390, 461 S.E.2d 819, 821 (1995). Here, Amedysis has an adequate remedy at law, which is to request a contested case hearing at the ALC challenging any decision granting a CON application for a home health agency in a county in which Amedysis is an affected person with standing. *See Strategic Resources Co.*, 367 S.C. at 545, 627 S.E.2d at 689. (stating the right to appeal provides an adequate remedy at law). The doctrine of exhaustion of administrative remedies promotes an orderly review process and allows courts with a greater understanding of particular issues to resolve those disputes. *See Garris*, 319 S.C. at 390, 461 S.E.2d at 821.

Previous challenges to the State Health Plan have been brought pursuant to the appeals process set forth in the CON Act. *See MRI at Belfair*, 379 S.C. 1, 664 S.E.2d 471 (2008). The facts and circumstances in this case do not warrant a deviation from the established appeals procedure. The right to request a contested case review of DHEC's decisions to the Administrative Law Court provides Amadysis with an adequate remedy at law. Therefore, the granting of an injunction is improper.

In summary, the Court denies the Motion for Preliminary Injunction because Amedysis has failed to meet its burden of proof. In reaching this decision, the Court expresses no final opinion or determination regarding the merits of Plaintiff's claims. The Court simply finds that Amedysis has not established the threshold requirements for obtaining a preliminary injunction.

IT IS, THEREFORE, ORDERED that the motion for temporary injunction be denied.

L. Casey Manning
Judge, Fifth Judicial Circuit

February 23, 2016

Columbia, South Carolina

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February 23, 2016

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Re: Amedisys SC, LLC vs. South Carolina Department of Health and Environmental Control, et al
Civil Action No.: 2016-CP-40-00818
BrunerPowell File No. 7-1921.107

Dear Judge Manning:

Pursuant to your direction at the hearing on yesterday, I hereby submit for your consideration a **Proposed Order Denying Plaintiff's Motion for Preliminary Injunction**. This Proposed Order is being submitted jointly on behalf of all of the Intervenors, including those represented by Stuart Andrews.

Thank you for your kind attention to this matter. Please do not hesitate to have your office call me with any questions or concerns.

With my kindest regards, I am

Very truly yours,

E. Wade Mullins III

EWM/rdd
Enclosures
cc: All Counsel of Record (via Email)