

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Casey L. Manning, Circuit Court Judge

C.A. No.: 2016-CP-40-00818
Court of Appeals Docket No. 2016-000631

Amedisys SC, L.L.C.Plaintiff/Appellant,

.....v.

South Carolina Department of Health and Environmental Control, Defendant,

and

National Healthcare Corporation, Pruitthealth 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, PA, and Hedgemark Brentwood Medical Services
Inc. d/b/a PHC Home Health, Intervenor-Defendants;

Of whom, South Carolina Department of Health and Environmental Control, National
Healthcare Corporation, Pruitthealth 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, PA, and Hedgemark Brentwood Medical Services Inc. d/b/a
PHC Home Health are the..... Respondents.

**APPELLANT’S MOTION TO CERTIFY AND TRANSFER CASE
FROM THE COURT OF APPEALS
AND FOR EXPEDITED CONSIDERATION,
WITH MEMORANDUM OF SUPPORTING GROUNDS INCORPORATED**

RECEIVED

APR 01 2016

SC SUPREME COURT

Pursuant to Rule 204(b), SCACR, Amedisys SC, L.L.C. (“**Amedisys**”) moves this Court to certify this case for review prior to determination by the Court of Appeals and for expedited consideration.¹

This case presents an opportunity for the Court to address an issue of critical importance with respect to the provision of home health services to South Carolina’s aging population. Given the importance of the question, its statewide impact, the number of people and entities significantly affected in their receipt and provision of vital healthcare services, the Appellant’s (and others’) present and continuing loss of their statutorily-protected ability to participate meaningfully in ongoing legal proceedings that affect their interests, and the imminent timeframe for agency action, the requested certification serves judicial economy and the public interest. The same reasons support expedited consideration.

THE PARTIES

Each of Amedisys and the Intervenors is an entity that provides home health services in various South Carolina counties and/or that has multiple pending applications for certificates of need (“**CONs**”) to provide home health services in additional counties.

The Department of Health and Environmental Control (“**DHEC**”) is an agency of the State of South Carolina, created and governed by the General Assembly by S.C. Code Ann. §§ 44-1-20 *et seq.*, and in particular as it relates to this action by the “State Certification of Need and Health Facility Licensure Act (S.C. Code Ann. §§ 44-7-110 *et*

¹ Prior to filing this motion, the undersigned counsel consulted with counsel for the Respondents in an effort to obtain consent for the requested relief. The parties were unable to reach an agreement.

seq., the “**CON Act**”) and the “Licensure of Home Health Agencies Act” (S.C. Code Ann. §§ 44-69-10 *et seq.*, the “**HHA Act**”).

SUMMARY OF REGULATORY FRAMEWORK AND AGENCY ACTION

In order “to promote cost containment, prevent unnecessary duplication of healthcare facilities and services, guide the establishment of health facilities and services which will best serve public needs, and ensure that high quality services are provided in health facilities in this State,” the General Assembly requires that certain healthcare providers obtain a CON prior to undertaking certain healthcare activities. CON Act, S.C. Code Ann. § 44-7-120(1). Included in that legislative determination is the requirement that a provider, in order to obtain a license to provide home health services in a county, must first receive a CON from DHEC for the services in that county. S.C. Code Ann. § 44-69-75(A).

Prior to issuing CONs, DHEC must adopt objective standards for need determination and apply those standards in evaluating and acting upon CON applications. Such adoption and application of standards is required by the CON Act and the HHA Act, and the standards are to be revised biennially in a State Health Plan (a “**Plan**”). S.C. Code Ann. § 44-7-180. The Plan is a legally-binding document.² It is supposed to establish objective criteria for DHEC’s implementation of South Carolina’s CON program (“**CON Program**”) and thus to control the issuance of CONs. *Id.* Plans are

² The General Assembly has forbidden DHEC to “issue a Certificate of Need unless an application complies with the South Carolina Health Plan” and certain other requirements. CON Act, S.C. Code Ann. § 44-7-210(B); *see also Trident Med. Ctr. v. S.C. Dep’t of Health & Envtl. Control*, 412 S.C. 341, 350, 772 S.E.2d 177, 182 (Ct. App. 2015), *cert. denied* (Dec. 18, 2015).

adopted by DHEC's governing body, the South Carolina Board of Health and Environmental Control (the "**Board**"). S.C. Code Ann. § 44-7-180.

By direction of the General Assembly, "[t]he Plan at a minimum must include" an inventory of existing services, projections of additional need, and standards for the distribution of health services. CON Act, S.C. Code Ann. § 44-7-180(B) (emphasis added). Leaving nothing to chance, the General Assembly reiterated, "[t]he South Carolina Health Plan must address and include projections and standards for specified health services and equipment which have a potential to substantially impact health care cost and accessibility." *Id.* (emphasis added).

This case arises in the aftermath of the funding hiatus in the CON Program from July 1, 2013 through June 30, 2014. This Court held on April 14, 2014, however, that the failure to fund did not terminate the CON Program and that the Program remained in full force and effect. *Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control*, 403 S.C. 576, 743 S.E.2d 786 (2014). At issue here is what amounts to a second attempted termination of the CON Program for vital home health services state-wide, this time through an administrative implementation that is neither legislatively authorized nor promulgated as a regulation. The implementation in question is the Board's recent (and belated, due to the funding hiatus) adoption of the current biennial Plan for 2014-2015 (the "**Current Plan**") that eviscerates the CON Program of the statutorily-mandated objective standards and criteria to guide applicants, opponents, and DHEC itself in the administration of the CON Program for home healthcare services. These standards were present in all prior Plans.

The disappearance from the Current Plan of objective criteria by which to establish need with respect to home healthcare CON applications is reflected in the free-for-all atmosphere that it has engendered. In the 6 months since the adoption of the Current Plan, applicants have filed approximately 150 applications for home healthcare CONs in all 46 counties,³ as opposed to only about 22 applications in 4 counties in the preceding seven years.⁴ (See **EXHIBIT 1**, Affidavit of Andrea H. Brisbin, Esq.)

Amedisys therefore argues that the home health services portion of the Current Plan contains insufficient objective criteria to determine, in anything other than an arbitrary and capricious manner, the need (and extent or lack thereof) for new home health services in each of South Carolina's counties. The Current Plan thus fails to meet the requirements and purposes of the CON Act and the HHA Act. On that basis, Amedisys alleges that the home health services portion of the Current Plan is invalid and cannot, either legally or practically, be used by DHEC in considering or deciding upon applications for home health CONs.⁵

³ The figures include 8 applications filed by Amedisys to preserve its interests in case DHEC is not enjoined in the present action.

⁴ Once DHEC deems an application complete, it must notify affected persons of that fact through publication in the *South Carolina State Register*. DHEC must then either grant or deny the requested certificate of need within 30 to 120 days of the publication of the last competing application (or up to 150 days if someone requests a public hearing). CON Act, S.C. Code Ann. § 44-7-210(A). DHEC has deemed 81 out of the 150 submitted applications to be complete and has published notices to affected persons in the *South Carolina State Register* issues of January 22, 2016, February 26, 2016, and March 25, 2016. Thus, with respect to those 81 applications, DHEC is now in the period in which it may issue staff decisions and must decide beginning on May 23, 2016. See **EXHIBIT 1**.

⁵ Neither the lawsuit as a whole nor the motion for a preliminary injunction affects the CON Program for any healthcare services or facilities other than home healthcare.

PROCEDURAL STATUS

Amedisys sought a preliminary injunction to restrain DHEC from issuing to home healthcare providers an unprecedented number of CONs without reviewable, objective standards for need determination until there is a final judicial determination of the validity of the Current Plan as it relates to home health services. Without those standards, any such decision would, by definition, be arbitrary and capricious, and would clog the Administrative Law Court (“ALC”), the Court of Appeals, and this Court for many months if not years with scores of individual CON cases all litigating the same issue of the Current Plan’s validity with respect to home health services.

The circuit court heard argument by counsel for Amedisys, DHEC, and all Intervenors on February 22, 2016 on Amedisys’s preliminary injunction request. By Order of February 23, 2016 (the “**Order**,” **EXHIBIT 2**), the circuit court denied that motion. DHEC is now considering the approximately 150 applications under a timetable that requires it to issue decisions beginning May 23, 2016.

Amedisys noticed its appeal of that denial on March 21, 2016; and its initial brief thereon is due April 20, 2016. Amedisys intends to file its initial brief on or before that date or such earlier date as this Court may direct.

GROUNDS SUPPORTING THE MOTION

Amedisys’s appeal from the denial of its requested preliminary injunction meets both criteria of Rule 204(b): “an issue of significant public interest” and “a legal principle of major importance.” The issue of significant public interest is whether the provision of crucially important home health services to predominantly elderly residents of South Carolina will continue to be governed in accordance with the General Assembly’s

express statutory direction, which has the stated legislative purpose of improving healthcare quality and ameliorating duplicative costs and inefficiencies. *See* S.C. Code Ann. § 44-7-120(1). The legal principle of major importance is whether an administrative agency can unilaterally terminate a statutorily-required and Court-affirmed (*see Amisub, supra*) permitting program by removing objective standards from the permitting criteria, thus depriving parties interested in the process of their statutory right to meaningful participation in the required and allowed legal proceedings. More specifically, the issue of public interest and the important legal principle involve four concerns: the Current Plan's compliance with statutory requirements; the undermining of the Rule of Law and the present and ongoing deprivation of statutory due-process rights occasioned by the Current Plan's abandonment of meaningful CON standards; the extent, if any, to which the judicial branch must defer to an executive branch agency on a pure question of law; and the impact of available case-by-case administrative appeal rights on the "adequacy of legal remedy" analysis in the context of a single, shared statutory interpretation question.

I. The Current Plan's Compliance with Statutory Requirements Should Be Considered by this Court Pursuant to Rule 204(b), SCACR.

The underlying question presented – whether the “standards” of a biennial State Health Plan satisfy the statutory requirements for such a plan – is one that this Court has already determined to merit direct consideration by this Court. In *MRI at Belfair, LLC v. S.C. Dept. of Health & Envtl. Control*, 379 S.C.1, 664 S.E.2d 471 (2008), this Court held that the question at the heart of the present case – whether a Plan complies with the CON Act's requirement for objective criteria – is a question of law.

The issue whether the [State Health] Plan standards satisfy the statutory requirements is a legal conclusion based on statutory interpretation principles. Thus, no factual findings are necessary to determine compliance with § 44-7-180(B).

MRI at Belfair at fn. 4, 379 S.C. at 7, 664 S.E.2d at 474 (emphasis added).. There, this Court certified the appeal involving that question for direct review from the Board, thus recognizing “an issue of public interest” and “a legal principle of major importance” as required by Rule 204(b), even though only a single CON application in a single county was at issue. Here, with approximately 150 applications to date for the provision of home health services in 46 counties statewide, the need for direct review is multiplied.

Because determination of this pure question of law resolves not just the likelihood but the actuality of the movant’s likelihood of success on the merits, it will also resolve not just the preliminary injunction but also the underlying litigation itself. Awaiting a full course of litigation would only present the exact same question in the exact same posture for this Court to decide many months from now. The interval would not be redeemed by any additional relevant information – by definition, as noted in *MRI at Belfair*, there is none for this pure question of law – but would instead be burdened by confusion in an important public health program and by a protracted waste of both public and private resources.⁶

II. The Lack of Intelligible Criteria in the Current Plan is Contrary to Rule of Law and Statutory Due Process Rights.

Without uniformly applicable and objective criteria for granting or denying a CON application or determining which applications are “competing,” DHEC’s own decisions would, by definition, be arbitrary and capricious and subject to judicial

⁶ Even matters that are not ordinarily immediately appealable (such as denial of a motion to dismiss) are appropriate for direct consideration by this Court when the “facts are not in dispute” and “the question is one of simple statutory construction.” *Kubic v. MERSCORP Holdings, Inc.*, Op. No. 27169, S.C. Sup. Ct. filed March 30, 2016) (Shearouse Adv. Sh. No 13 at 51, 57).

invalidation. S.C. Code Ann. § 1-23-380(5)(f). DHEC has admitted that the Current Plan is devoid of the objective criteria and standards necessary to avoid that result.⁷ Thus, within the context of home health CONs, this case presents the question of whether there will be a promulgated, standards-based rule of law, or an *ex post facto* and arbitrary rule of agency staff.

In the same way, the Order has the effect of depriving, immediately and irreparably, Amedisys and others of due process rights guaranteed to them by the CON Act and related statutes. Interested parties have a right to notice from DHEC of completed applications that affect their interest. CON Act, S.C. Code Ann. § 44-7-210(A). Importantly, DHEC is prohibited from approving more than one application for similar services in the same area if doing so would “exceed the need” for such facilities and services. CON Act, S.C. Code Ann. § 44-7-130(5); § 44-7-210(B). During the course of DHEC’s review of applications, anyone can demand a public hearing on the

⁷ On September 18, 2015, shortly after the Board adopted the Current Plan, DHEC staff convened an open forum meeting of participants in the home health services industry in South Carolina to seek guidance from those participants on how DHEC might implement the Current Plan. *See, e.g.*, Transcript of September 18, 2015 (“**Tr.**”, ATTACHMENT A to EXHIBIT 1) p. 24:20 - 25:21 (“ . . . [T]his is new to all of us, and I know we have some – some folks here who have some ideas about how to have documentation. I’m hoping, at some point, that they can share them.” Maggie Murdock, DHEC CON staff)). Thus, more than a month after the final adoption of the Current Plan, DHEC acknowledged that there were no standards in place. In response to a question, “[W]hat is the department going to utilize?” when two different applicants submit their “clearly different approaches,” the response from DHEC staff (Ms. Murdock) was “That is a very good question. And, you know, I can’t – we don’t – we can’t – at this point, we haven’t established a set policy outside of the methodology that we have adopted in the state health plan.” (Tr., p. 28:20 - 29:3). Perhaps most directly, one applicant consultant asked: “So in terms of needs, since there’s no methodology in the plan, I assume each one of us can develop the need to justify 25 or 50 patients in the second year of operation. Any new methodology that makes sense to us, hopefully will make sense to you.” The response from DHEC (Shelly Kelly, DHEC Director of Health Regulation): “That’s probably the truth.” (Tr., p. 27: 8-14). The transcript was provided to the circuit court without objection during the preliminary injunction hearing.

application and present arguments for or against the application. Once DHEC staff issues a decision in favor of an application, an interested party has rights both before the Board and with the ALC as outlined in the Order (pp. 9, 12, *citing* S.C. Code Ann. § 44-1-60; CON Act, S.C. Code Ann. § 44-7-210(D) & (E)).

Without intelligible standards that can be applied to the particular facts related to the services and territory involved in an application, however, neither potential applicants nor potential opponents of applications – both of whom have a statutory right to participate in the CON process – can determine what their rights might be or whether an expenditure of resources in applying for or opposing a CON is justifiable. Each step in the process that is allowed to occur, whether at the agency or at the ALC, without discernible, intelligible and objective standards in place on which Amedisys can evaluate, formulate, and assert its claims and defenses, is a step at which Amedisys loses forever the statutory rights of meaningful participation as an interested party that are granted and guaranteed to it by the CON Act and related statutes. Participation is meaningless in an adjudicative process when the substantive rules are not just hidden behind a veil but are in fact being made up as one goes along. Requiring a party to guess as to what is relevant evidence and what is its weight rips at the very fabric of the rule of law.

III. Neither this Court nor Other Courts are Required to Defer to an Agency Interpretation on a Pure Question of Law.

This Court is not required to defer to any agency interpretation on the legal issue raised in this appeal. The circuit court based its denial of the preliminary injunction in significant part on its perception of the deference it owes to an agency's statutory interpretation. (*See* Order, pp. 10-11). However:

Interpreting and applying statutes and regulations administered by an agency is a two-step process. First, a court must determine whether the

language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation.

Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014), citing *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003).

In *MRI at Belfair, supra*, this Court undertook the statutory interpretation called for here on its own, with no discussion of or deference to the agency position. *See also Monex Int'l, Ltd. v. Commodity Futures Trading Com'n*, 83 F.3d 1130, 1133 (9th Cir. 1996): “[J]udicial deference is not necessarily warranted where courts have experience in the area and are fully competent to decide the issue.” (Citation omitted). The question of what should be the applicable standards may be appropriate for agency deference; the question of whether the statute requires meaningful, intelligible standards (based on the *MRI at Belfair* adjudication) is not.

IV. Amedisys is not Required to Surrender its Rights Under the Declaratory Judgment Act and to Pursue Instead Multiple Administrative Appeals as the only Means of Resolving this Important Public Question of Law.

The circuit court’s reliance on the existence of a right to a separate ALC appeal of each CON decision also raises the important issue of whether case-by-case administrative appeal rights constitute an “adequate remedy at law,” such that the existence of those rights prevent Amedisys and others similarly situated from bringing an alternative action under the Uniform Declaratory Judgment Act. S.C. Code Ann. § 15-53-10 *et seq.*

Here, rather than a single challenge, Amedisys would have to bring scores of challenges, just to seek resolution of the identical legal issue in each one, needlessly and wastefully exhausting its own and judicial resources. “[I]f the available legal remedy in a given case reduces itself to a matter of words, rather than to a matter of efficacy, because

. . . successive actions at law would be necessary to protect the plaintiff's rights, equity will hold that the existence of a legal remedy is not an obstacle to the exertion of the equitable power." *Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13, 16 (1939). This case begs for a single, speedy resolution that will answer the question for DHEC and all home health providers in South Carolina.

CONCLUSION

Under the Current Plan, DHEC lacks the tools that the CON Act and the HHA Act require it to utilize in its consideration of any new and pending applications; and other involved parties are without the tools necessary to give their statutory rights substance. DHEC and home health providers have neither a map nor a compass in attempting to discern the merits of CON applications for home health services made under the Current Plan. Trying to unscramble the egg of standardless CONs would require a costly and lengthy invocation of the legal and equitable powers of this Court in numerous actions raising the identical legal issue. Avoiding that kind of tedious and uncertain un-wind of multiple CONs and new services offerings thereunder warrants preliminary relief to maintain the status quo until the merits can be resolved. This is especially true in a case such as this one where the issue presents a straightforward question of law that can be quickly resolved once and for all by this Court, even arising as it does in the context of a preliminary-injunction likelihood-of-success analysis.


In light of the unprecedented number of home healthcare CON applications made pursuant to the Current Plan and the large number of market participants who immediately intervened in this action after its filing, it is clear that any decision rendered by the Court of Appeals would come to this Court for final resolution. It is therefore, in

addition to the reasons cited above, in the interest of judicial economy for this Court to exercise direct review at this time. Given the urgency imposed by DHEC's timetable for action, the propriety of this Court's exercising its Rule 204(b) discretion in favor of direct review with expedited consideration is all-the-more compelling.

April 1, 2016

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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Counsel for Appellant Amedisys SC, LLC

EXHIBIT 1

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Casey L. Manning, Circuit Court Judge

C.A. No.: 2016-CP-40-00818
Court of Appeals Docket No. _____

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.....V.

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of Bluffton, Tidewater Home Health, PA, and Hedgemark Brentwood Medical Services
Inc. d/b/a PHC Home Health, Intervenor-Defendants;

Of whom, South Carolina Department of Health and Environmental Control, National
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Home Health Care & Services, Inc., M&C Group, LLC d/b/a/ Home Helpers of Bluffton,
Tidewater Home Health, PA, and Hedgemark Brentwood Medical Services Inc. d/b/a
PHC Home Health are the..... Respondents.

**AFFIDAVIT OF ANDREA H. BRISBIN
IN SUPPORT OF
APPELLANT’S MOTION TO CERTIFY AND TRANSFER CASE
AND FOR EXPEDITED CONSIDERATION,**

I, the undersigned Andrea H. Brisbin, do hereby state as follows:

1. I am an attorney licensed to practice law in South Carolina and a shareholder and employee of Haynsworth Sinkler Boyd, P.A., and a resident of Charleston County, South Carolina.
2. I have at all times since prior to March 2015, represented Amedisys SC, L.L.C. and its affiliates (“**Amedisys**”) in connection with (a) the consideration of the South Carolina State Health Plan for 2014-2015 (the “**Current Plan**”) by the staff of the South Carolina Department of Health and Environmental Control (“**DHEC**”) and the State Health Planning Committee, (b) its adoption by the South Carolina Board of Health and Environmental Control, and (c) the applications for certificates of need (“**CONs**”) under the Current Plan filed by Amedisys and other providers.
3. In my professional and representative capacity, I am familiar with the process for, and the status of, applications for home health CONs under the Current Plan.
4. I have reviewed the list of pending CON applications posted on the DHEC website at http://www.scdhec.gov/Health/docs/CON_PendingApp.pdf, which as of today states that the list was updated as of February 29, 2016. I further have reviewed the most recent Notice of General Public Interest published in the March 25, 2016 *South Carolina State Register* listing CON applications that have been accepted for filing and/or have been deemed complete.
5. My review of these resources reflects that since September 2015, approximately 150 CON applications have been filed by various home health providers. Each of those applications seeks approval to provide home health services to residents of a single county.
6. At least one application has been filed for each of South Carolina’s 46 counties.

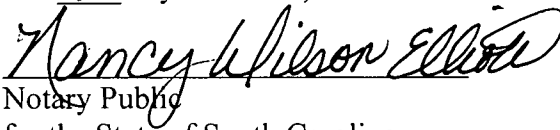
7. Of those approximately 150 CON applications, 8 have been filed by Amedisys.
8. Based on my personal review of various DHEC files and public records, including but not limited to the South Carolina Health Plans adopted since 2009 (the *2010-2011 Health Plan*, *2012-2013 Health Plan*, and *2014-2015 Health Plan*) as well as Administrative Law Court decisions (e.g., *NHC/OP, L.P. v. SCDHEC & Health Related Home Care*, Docket No. 12-ALJ-07-0299-CC; *Tri-County Home Health Care & Servs., Inc. v. SCDHEC & United Home Care, Inc.*, Docket No. 12-ALJ-07-0005-CC), approximately 22 CON applications were filed by various home health providers between January 1, 2009, and August 13, 2015, affecting a total of 4 counties.
9. On September 18, 2015, I participated in an open forum meeting sponsored by DHEC at its offices in Columbia, South Carolina. A transcript of the open forum meeting reflects that approximately 16 individuals drawn from DHEC staff and participants in the home health service marketplace, their consultants and legal advisers attended, although I personally observed that at least 10 more such individuals attended but did not speak publicly.
10. During the open forum meeting, DHEC staff represented that it was holding the meeting at the request of the regulated community to discuss the Current Plan as it related to home health services and applications for CONs thereunder.
11. With the knowledge of DHEC staff and the other attendees at the open forum meeting, I engaged a court reporter from A. Williams Roberts, Jr., & Associates to record and transcribe the discussion at the open forum meeting. A copy of the transcript of that meeting is attached to this Affidavit as **ATTACHMENT A**.

12. DHEC has deemed 81 out of the approximately 150 submitted applications to be complete and with respect to those complete applications has published notices to affected persons in the *South Carolina State Register* issues of January 22, 2016, February 26, 2016, and March 25, 2016.



Andrea H. Brisbin

Sworn to and subscribed before me
this 1st day of ~~March~~ ^{April}, 2016.



Notary Public
for the State of South Carolina
My commission expires: June 23, 2025

**ATTACHMENT A
TO EXHIBIT 1**

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DHEC OPEN FORUM MEETING

DATE: September 18, 2015
TIME: 10:03 AM
LOCATION: DHEC
301 Gervais Street, Room 2407
Columbia, SC 29201
REPORTED BY: SAMANTHA R. QUEDENFELD,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Page 2

1 APPEARANCES:
 2 Shelly Kelly
 3 MaryJo Roue
 4 Ashley Biggers
 5 Maggie Murdock
 6 Venja Szatkowski
 7 Lynn Bailey
 8 James Chin
 9 Andrea Brisbin
 10 Jennifer Hyman
 11 Joel Grice
 12 Keith Guest
 13 Paula Thars
 14 Sam Tolbert
 15 David Levitt
 16 Will Thomas
 17 Kimberly Coleman
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Page 4

1 them unless we put them over there. So --
 2 MS. BAILEY: Right there with the
 3 valet parking.
 4 MS. KELLY: So -- air-conditioned? I
 5 do not know. So -- is it right there? Okay.
 6 You're in charge of A/C.
 7 Okay. The agency did not provide the
 8 court reporter so, you know, we're going to try to make
 9 it as accommodating as possible, but we intended this
 10 meeting to be an informal discussion.
 11 We hold these regulation informational
 12 meetings regularly within our area, health regulations.
 13 We always have -- get feedback from the public when we
 14 do any kind of regulation changes. We don't record, we
 15 don't put them out on video streaming, so it's not
 16 unusual for us to do -- we had one -- we had one
 17 earlier in the week for midwives, and we have one for
 18 birthing centers coming up.
 19 So it's -- while, you know, you certainly
 20 can, you know, I don't have a problem with you being
 21 here, I just want to make sure everybody feels
 22 comfortable. We want everybody to feel comfortable and
 23 be able to speak their mind.
 24 MR. CHIN: I have a question. James
 25 Chin. Who asked for the court reporter?

Page 3

1 MS. KELLY: So I'm Shelly Kelly. I'm
 2 director of health regulations. I know some of you,
 3 I would like to get to know more of you a little bit
 4 better. I'm going to let all of us introduce -- all
 5 the department staff go ahead and introduce
 6 themselves, and I'll start with MaryJo.
 7 MS. ROUE: All right. My name is
 8 MaryJo Roue, and I'm the bureau chief for
 9 certification.
 10 MS. BIGGERS: My name is Ashley
 11 Biggers, and I am chief counsel for health
 12 regulation.
 13 MS. MURDOCK: I'm Maggie Murdock, I'm
 14 the senior consultant for the certificate of need.
 15 MS. SZATKOWSKI: I'm Venja Szatkowski,
 16 I'm an administrative coordinator for certificate of
 17 need.
 18 And Jennifer Hyman has run downstairs to
 19 get a few more people, and she's also an administrative
 20 coordinator.
 21 MS. KELLY: Okay. So when these new
 22 people come in, we may just see if they can stand
 23 against the wall. We may be able to -- if anybody's
 24 uncomfortable, we can try to get some more chairs.
 25 But hopefully -- I don't know where else we can put

Page 5

1 MS. KELLY: It was Andrea.
 2 MS. BRISBIN: Yeah.
 3 MR. CHIN: Okay.
 4 MS. BRISBIN: Okay.
 5 MS. KELLY: So, I mean, if anybody
 6 wants a copy or something -- so I'm going to get
 7 started.
 8 MS. HYMAN: Can I just make one more?
 9 The receptionist asks that when we are done and
 10 everyone leaves to please sign out on the way out so
 11 that they know that everybody was here.
 12 MS. KELLY: So you don't have to be
 13 escorted down like you normally would.
 14 Okay. So we're going to start.
 15 MR. GRICE: This is Joel.
 16 MS. KELLY: I'd ask everybody to
 17 silence your phone, please.
 18 MR. GRICE: Excuse me. This is a
 19 person that is supposed to be coming in.
 20 MS. KELLY: Oh, okay. All right. So
 21 we're going to start with -- we're going to give you
 22 a little bit of information, hopefully receive some
 23 information from you as well. We're going to --
 24 everybody will have a chance to speak.
 25 Maggie, anything you'd like to --



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1 MS. MURDOCK: No, that's okay.

2 MS. KELLY: Anything you'd like to --

3 MS. MURDOCK: That's okay, no. Thank

4 you all for being here, and I just wanted to assure

5 you we -- we are having this forum at the request of

6 the regulated community, many of whom wanted to

7 share some thoughts with us about home health and

8 the home health applications.

9 As you all know, we had a very robust

10 discussion about -- during the (inaudible) process

11 about home health need methodology. We appreciate all

12 the public input and the quality of that debate. I

13 just wanted to assure you all that the purpose of this

14 forum is not to rehash that discussion.

15 We have a state health plan already, so

16 this is really just a chance -- and again, it was at

17 the request of you all to have this forum as a chance

18 for us to hear from you, which we always like to do,

19 either at events like this or even, you know, any time

20 you have input or have suggestions or have anything

21 that you want us to know, we welcome it always.

22 Today is just a chance for us to get

23 together. One of the advantages of this is not only do

24 we get to hear from you, but you all get to hear from

25 each other as well. So we look forward to your

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1 to happen. And we anticipate having quite a few of

2 those.

3 I guess the other concern would be for

4 any of the new CONs that are going to result in a brand

5 new facility. For those, we would like to remind you

6 of CMS' priority for initial surveys. As you know,

7 they are the last priority in the CMS workload. We are

8 responsible to complete all other CMS workload prior to

9 performing initial surveys.

10 Right now, you know, if there were to be

11 an influx of HHA initial applications, I can tell you

12 that although CMS gives us over 90 days, it is unlikely

13 that we, if we were your survey entity, would be able

14 to fulfill those for many new official -- new initial

15 HHAs.

16 My suggestion is that although there is a

17 cost related to accreditation, that you recommend or

18 look into accreditation for initial HHAs as a survey

19 option. Although it is still -- although having an

20 accredit entity -- entity -- accrediting organization

21 perform the initial survey, there is still a processing

22 piece that we do to get your CMS certification number,

23 but it's a paperwork process that can be done

24 administratively.

25 So I just wanted to let everyone know

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1 comments, and that's all I've got.

2 MS. KELLY: Oh, we're going to start

3 off with -- MaryJo Roue is going to give you a

4 little bit of information about the certification

5 process. I know that's of great interest to people,

6 so I'm going to turn the floor over MaryJo.

7 MS. ROUE: Morning, everyone. I just

8 wanted to talk a little bit about Medicare

9 certification and the implications of new HHA CONs.

10 We understand that some of the CONs that are going

11 to be issued will, of course, be service area

12 expansions. While they are just service area

13 expansions, we are adding counties.

14 This still is workload for certification.

15 There is a process that we go through. Our admin staff

16 have to process your 855s for those additional counties

17 along with your license, and it causes, of course,

18 additional workload for CMS regional office as well

19 because they have a part in processing your service

20 area expansions, and they authorize and make the final

21 approval of those.

22 So even though there might not be -- you

23 might not be starting a new facility, service area

24 expansions, you need to understand, will also involve

25 certification, a process, and paperwork that will have

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1 what the potential increase in HHA CONs could mean for

2 certification. Right now, in the certification staff,

3 we have five nurses and four generalists. As you know,

4 CMS requires nurses to be on HHA surveys, at least one

5 nurse. And so out of those five nurses, three are new

6 and have not attended HHA training yet, as CMS only

7 offers training periodically. So that leaves us with

8 two staff at this point to be performing HHA surveys

9 until we get these staff trained.

10 We operate off a federal budget and not

11 state money, so we can only fund the amount of staff

12 persons that we are funded for. So, you know, our new

13 year starts October 1st. There is no plan at this time

14 to increase the number of FTEs in that area, although

15 we will be evaluating it and hoping we have the funding

16 to maybe look at that as an option. But I just wanted

17 to stress to you the importance of researching your

18 accreditation options if you are having an initial

19 facility.

20 Does anybody have any questions about

21 that?

22 Yes, Lynn.

23 MS. BAILEY: If you have an agency

24 that is certified, you know, out of state, will they

25 have to have -- will they be -- can they be an



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1 expansion or they will be a new and they will have
 2 to come under a South Carolina --
 3 MS. ROUE: They will have to be a new
 4 one.
 5 MS. BAILEY: Okay.
 6 MS. ROUE: There is no reciprocal
 7 agreements to operate over state lines, so any HHA
 8 coming in would have to be licensed and certified
 9 within South Carolina.
 10 MS. BAILEY: Okay.
 11 MS. ROUE: Any other questions?
 12 MR. GUEST: MaryJo, I've got one.
 13 Let's say, for example, during that period of CON,
 14 that you went through and you got, you know, you got
 15 certified and you got Medicare surveys, you know,
 16 all your surveys and everything and they're, you
 17 know, operating like normal, but we have to go
 18 through the process still, what -- how does that
 19 fall in the hierarchy of what kind of class is that?
 20 Because we have all of the surveys and
 21 licensing and all that's already done. We have a
 22 Medicare provider number, all of that. But we don't
 23 have -- we have to get -- it would be the first time
 24 we've ever gotten an actual CON. Do you know what I'm
 25 talking about?

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1 questions for MaryJo?
 2 All right, MaryJo, you're welcome to stay
 3 or you're welcome to leave.
 4 MS. ROUE: I can go if you don't mind.
 5 Now someone can have a seat.
 6 MS. KELLY: Someone can have a seat.
 7 MS. ROUE: Well, this is going to be
 8 cute getting though here, but I'll do my best.
 9 Thank you so much.
 10 MS. KELLY: Okay. If anyone wants to
 11 take -- there's this one seat available, if you
 12 would like to come in. Okay.
 13 I think we're ready to hear from those of
 14 you who have any comments or thoughts to share with the
 15 group. Anybody in particular that would like to start?
 16 MS. BAILEY: I'll start. Lynn Bailey,
 17 I forgot to identify myself. Could you please
 18 outline the CON staff process from the receipt of
 19 the application through the review process to the
 20 decision process so that everyone here understands
 21 how a CON for home health will be processed by the
 22 state.
 23 MS. MURDOCK: Sure. We began with the
 24 actual receipt of the application. We need a hard
 25 copy plus one extra copy; is that right? I really

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1 MS. ROUE: Well, you're probably -- if
 2 you -- if you don't have a CON but you're a
 3 certified home health agency, is that one that has
 4 come in in-between the --
 5 MR. GUEST: Yes.
 6 MS. ROUE: -- time when -- okay.
 7 Okay. I believe at this point, when you get your
 8 CON, I mean the fact that you have it, because you
 9 would be basically still certified. I don't think
 10 there would be any change -- there's not going to be
 11 any change in your certification.
 12 MR. GUEST: Okay. All right. I just
 13 wanted to make sure. Thank you.
 14 MS. ROUE: But if you were to add
 15 counties --
 16 MR. GUEST: We haven't.
 17 MS. ROUE: -- to your CON when you do
 18 get it, then that would be not just what you have,
 19 but in addition of your county -- your service area.
 20 MR. GUEST: I actually thought about
 21 that and decided that it's too complicated. We will
 22 just stick with our two counties and just wait.
 23 MS. ROUE: Okay.
 24 MR. GUEST: It's too complicated.
 25 MS. KELLY: Are there any other

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1 should get Venja to answer these questions because
 2 she's the expert, but kick me if I'm wrong.
 3 MS. SZATKOWSKI: I'll just keep
 4 nodding.
 5 MS. MURDOCK: And as long -- there are
 6 a few requirements for us to be able to accept the
 7 application. There needs to be a payment of a fee,
 8 the application has to be in the -- in the form
 9 required by regulation, there's actually a -- the
 10 application itself is actually in regulation -- and
 11 then we need proof that the proper notice to the
 12 public -- the newspaper notice has run in the -- in
 13 the required time period for the required number of
 14 days. And those are the three things that we need
 15 in order to actually accept the application.
 16 Once we have all those and the
 17 application is accepted, then we will -- there will be
 18 a notice in the subsequent state register stating that
 19 we had -- that the application has been accepted. Our
 20 state register process is -- there's a little bit of
 21 lag time. There's a two-week delay between the time
 22 that we submit information to the, you know, entity in
 23 charge of publishing the state register and the time
 24 the register itself is actually published.
 25 But then after the -- the application is



1 accepted, we will -- the department will review, and if
 2 we -- the department needs any more information from
 3 the applicant in order to deem the application
 4 complete, we will request that information within 30
 5 days of acceptance. And if we do request additional
 6 information, the applicant has 30 days to respond.
 7 Once that process is over, then we
 8 will -- and the application is deemed complete, we will
 9 run that notice in the state register. And, again,
 10 there's the lag time with when we can submit
 11 information and when the information is actually
 12 published in the register. So just be aware of that.
 13 I think it's a two -- it's a two-week lag.
 14 And then once the -- once the state
 15 register notice runs that the application has been
 16 deemed complete, then the department must wait at least
 17 30 days in order to render a decision. And then the
 18 department renders a decision sometime in-between that
 19 30 days and 120 days after the notice of completeness
 20 is in the state register.
 21 The only thing that changes that timeline
 22 is if there is a proper request for a public hearing.
 23 And if there is a request for a public hearing, then
 24 that could extend the timeline for rendering the
 25 decision out to 150 days instead of 120 days.

1 for-sure copy.
 2 But we're going to -- the intent is to
 3 make sure it's accurate. So we'll aim for perfection
 4 on that. But everything published by that -- by that
 5 state register should appear in that part -- or will --
 6 I'll say will appear. So it'll be a little -- probably
 7 the week after -- the very last week of -- of every
 8 month. And the state register runs the fourth Friday
 9 of each month.
 10 MS. BAILEY: Right. And it has the
 11 deadline for your submission into that is?
 12 MS. MURDOCK: The second Friday of
 13 every month.
 14 MS. BAILEY: The second Friday in the
 15 month.
 16 So how long does it take you, typically,
 17 from the time somebody mails you or drops off an
 18 application with all the attachments and the check and
 19 public notice to make a -- to clock that in as being
 20 received and the notification of acceptance going to
 21 the state register to the public?
 22 MS. KELLY: I'm going to, I guess,
 23 interject here that I don't know if we have a set
 24 time. We're -- we are in the process, just for
 25 everybody's information, of adding staff to the

1 So that is generally how it works with
 2 the timeline and, let's see, do you have any questions
 3 about that? And of course, there are other things, you
 4 know, you can -- yes.
 5 MS. BAILEY: You've recently published
 6 on the department's website a 13- to 14-page
 7 spreadsheet that lists -- would that continue to be
 8 updated as applications are received and accepted
 9 and then under review, all of that would continue so
 10 that we all know where all the players are in the
 11 process?
 12 MS. MURDOCK: Yes. Excuse me. Yes.
 13 Right now, we are updating that monthly. That is
 14 not -- we are publishing the update, the chart as a
 15 courtesy to the regulated community. That is not
 16 official notice of acceptance or deemed
 17 completeness. But yes, we update it. But for now,
 18 we only update it once a month. So I mean if --
 19 MS. BAILEY: When?
 20 MS. KELLY: It's going to be -- we're
 21 going to -- the end of the month, so we get the
 22 state register, you know, everything that was
 23 published in that state register should -- the goal
 24 is will show in that update. Now, with the
 25 disclaimer that it's a -- it's a chart, not the

1 program. You know, there's been a lot of staffing
 2 changes in the last year. The program started from
 3 nothing and then had to handle a huge backlog, and
 4 it's -- and I have to say that the staff did a great
 5 job getting everything done when they did. I mean,
 6 if you look at that chart, it shows how many
 7 applications have been handled this year. So I have
 8 to commend them.
 9 But we're committed to speeding up
 10 things, making sure -- I mean, everybody at this table
 11 recognizes that we can do better. So I can't give you
 12 a -- I don't want to base what we're going to do next
 13 week on what may have been done in the past because,
 14 frankly, there was this huge backlog that we had to
 15 address, so --
 16 MS. BAILEY: Right.
 17 MS. KELLY: I mean, we are -- I mean,
 18 every attempt is to -- well, we're going to meet the
 19 difference. I'll just say that right now. I'm firm
 20 on that. So I don't know if we can really give you
 21 a, you know, how soon within the required deadlines,
 22 but I assure you --
 23 MS. BAILEY: Well, we all here want to
 24 do whatever the staff would like it, in the format
 25 that they would like it so that it facilitates the

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1 work of going -- and if you've got guidelines that
 2 you would like us to follow in how we present an
 3 application to you so that, you know, you only have
 4 to look at the first six pages and get everything
 5 checked off and that speeds your process, you
 6 know --
 7 MS. MURDOCK: That initial review,
 8 getting from receipt of the application itself to
 9 acceptance is a pretty cursory review. As long as
 10 we see the proof of publication, the check, and, you
 11 know, can look at the application to make sure it's
 12 in generally the right -- you know, we're using the
 13 form that answers the questions that the department
 14 asks, that process is pretty quick.
 15 And I don't think -- we're very aware,
 16 well aware of when the state register information is
 17 due. And so if we have applications that have come in
 18 and we haven't stamped them as accepted, we usually
 19 make every effort -- and I think every time, if we have
 20 everything we need to deem it accepted, we will get --
 21 get that information to the state register at the very
 22 next deadline.
 23 You know, I have not -- and again, you
 24 know, I can't -- as soon as I say this, you know how
 25 that works -- but I don't know of a time that we've

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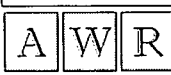
1 interest, you know, we would like to hear it, if
 2 that would be something people would be interested
 3 in. We would have it in a more of a classroom
 4 setting, not all crammed in, and we would have
 5 people let us know in advance who's coming so we can
 6 do that. So if that's an interest, we certainly --
 7 we've been talking about doing that, realizing
 8 there'll probably be a lot of applicants that may
 9 have never entered into the CON program before.
 10 MS. BRISBIN: I just -- actually,
 11 following up on that, so it's fair to say at this
 12 time, although you're doing the courtesy of the
 13 updates, if an application is filed between the
 14 deadline for submitting to the state register and
 15 the end of the month, then it's not necessarily
 16 going to be reflected on the end of the month
 17 summary, although you'll make every effort to do
 18 that?
 19 MS. KELLY: Oh, you mean as far as --
 20 MS. BRISBIN: If an application is
 21 filed.
 22 MS. SZATKOWSKI: Well, we have a
 23 column that says accepted for filing, and that's the
 24 state registered application.
 25 MS. KELLY: What you're saying --

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1 gotten an application in and haven't turned it around
 2 and let the state register know that we have accepted
 3 the application unless it was missing something that --
 4 that was required for acceptance.
 5 Now, that process is a lot simpler than
 6 the, you know, the deemed complete element of it and,
 7 you know, that's a little bit more of an in-depth
 8 review, and it's to the benefit of the applicant that
 9 we get as much information as we can and just
 10 generally, you know -- we have a state health plan, we
 11 have regulations with project review criteria and, you
 12 know, as long as each applicant keeps an eye on what
 13 the required state plan and applicable law and
 14 regulations tell us we need to look at, that's -- we're
 15 looking at what the law and the health plan requires us
 16 to look at. I know that's frustratingly general,
 17 but --
 18 MS. BAILEY: Well, no, it gives me a
 19 pretty good idea. I just think there are going to
 20 be some people that are going to be DIY who have
 21 never done one of these before that, you know -- and
 22 are going to be --
 23 MS. KELLY: Well, we have talked about
 24 possibly doing an application informational session,
 25 and that's something it sounds like if that's a

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1 MS. SZATKOWSKI: We can put it on
 2 there and just not have it filled in on the date of
 3 the state register.
 4 MS. KELLY: I see what you're saying.
 5 MS. BRISBIN: Yeah.
 6 MS. KELLY: So you want to know if we
 7 receive the application, it just hasn't -- well,
 8 we'll talk to Ashley and see if -- we don't want to
 9 publish information that's inaccurate. So we'll
 10 talk -- I see what you're saying though, whether
 11 we --
 12 MS. BRISBIN: Yeah, because there's
 13 going to be that time period, and so if it's -- and
 14 the concept is: Will people -- can't necessarily
 15 rely on the end of the month summary as the
 16 complete --
 17 MS. BAILEY: If it's going to reflect
 18 what's in the state register, if somebody files
 19 after the second Friday of the month --
 20 MS. BRISBIN: Right.
 21 MS. BAILEY: -- it will be six weeks
 22 before it is published in the following month state
 23 register. And if you're looking at what's going on,
 24 the number of applicants in a particular county,
 25 there could be four or five applications that are



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1 sitting out there that you don't know about that you
 2 don't have any way of --
 3 MS. KELLY: Okay.
 4 MS. BAILEY: -- responding.
 5 MS. KELLY: I see that's --
 6 MS. BRISBIN: Yeah. So that's --
 7 MS. BAILEY: So I think if you have a
 8 column that just says received.
 9 MS. KELLY: Well, no, I understand.
 10 If it were accepted and not published yet --
 11 MS. BRISBIN: Yeah.
 12 MS. KELLY: Well, we'll definitely --
 13 MS. BRISBIN: Yeah, that's --
 14 MS. KELLY: -- and maybe we can
 15 publish it every two weeks or so. But we'll look
 16 into whether we can do that.
 17 MS. BRISBIN: And that's more to
 18 minimize the inquiry, you know --
 19 MS. KELLY: Yeah. Sure.
 20 MS. BRISBIN: -- so there's not this
 21 constant --
 22 MS. BAILEY: So we're not always
 23 calling in --
 24 MS. KELLY: No, I --
 25 MS. BAILEY: -- and leaving --

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1 because it's not applicable anymore because we're doing
 2 it based on more arbitrary letters of need, you know,
 3 people not receiving service.
 4 So I guess if there could be a way to do
 5 an updated application, specifically to home health
 6 that's not facility-based -- there's already, when you
 7 do it for home health, a lot of nonapplicable transfer
 8 agreements that they always made us apply for, but
 9 really never, you know, made any sense for us. Would
 10 there be a way to do that?
 11 MS. MURDOCK: Well, the application
 12 itself and the application process, all of that is
 13 prescribed by regulation. So changing the format
 14 itself, the actual application, is more complicated
 15 than just --
 16 MS. THARS: Or just letting us know
 17 for home health what really would tie back to the
 18 methodology numbers that are no longer there, if
 19 that makes sense.
 20 MS. KELLY: Well, that's part of why
 21 we wanted to have this meeting, because that was the
 22 questions we were receiving about ideas like how --
 23 you still have to show need, so you --
 24 MS. THARS: But how, arbitrarily, it's
 25 different. Yeah, we don't have a number to use

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1 MS. KELLY: No, and this is good
 2 information.
 3 MS. BAILEY: -- voicemails.
 4 MS. KELLY: That's why we're having
 5 this meeting. Because we -- you know, this is --
 6 instead of -- this is your chance to tell us how to
 7 do our job better, so we do appreciate it. So we'll
 8 make note of that.
 9 And who's next? Anybody? Okay, I know
 10 other people have questions or have -- yes.
 11 MS. THARS: Paula Thars, here on
 12 healthcare. I just have a question specifically
 13 about the application, and for anyone that's scared,
 14 I've done five of them, they're not hard, they're
 15 tedious.
 16 But now that the criteria has changed for
 17 methodology, we have no more numbers to work off of.
 18 So the application -- there's going to be a lot of
 19 things that are not applicable. So I guess we really
 20 do need something to do with the application where we
 21 can go through -- because a lot of the stuff ties into
 22 the methodology answering the questions, and if we're
 23 not using that criteria anymore, there's a lot of
 24 things that you're thinking, okay, I mean, do I really
 25 need to do all the census data and all the other stuff

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1 where, okay, there's a hundred people not receiving
 2 home health services anymore.
 3 MS. KELLY: And that's -- that's part
 4 of the challenge, that's part of why we're welcoming
 5 this comment on this, to discuss ideas. And let me
 6 just say a disclaimer, I guess. We're not -- we
 7 haven't started reviewing any of the new, I don't
 8 think, health plan -- I mean, the new home health
 9 applications yet, so we don't have -- you know,
 10 we're -- we're not -- we don't know how it's been
 11 proposed yet. Now, we may -- we have a few.
 12 MS. MURDOCK: Yeah, we started review,
 13 but, you know, we're expecting a lot more. And so
 14 we have -- we're not at the point now where we see
 15 trends in how applicants are documenting the need.
 16 And so -- and it's a very good question.
 17 That's kind of the question of the day, is how do you
 18 do that. And so this is -- this is new to all of us,
 19 and I know we have some -- some folks here who have
 20 some ideas about how to have documentation. I'm
 21 hoping, at some point, that they can share them.
 22 MS. THARS: I can go there, too.
 23 MS. MURDOCK: But I didn't mean to cut
 24 you off.
 25 MS. THARS: No, but when we're talking

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1 about regulation stuff, I think the other thing is
 2 when we talk about sending it out, it's being opened
 3 up and everyone's worried about everyone running out
 4 and 500 agencies in one county, I just want to make
 5 sure that everybody in the department understands
 6 that home health is not necessarily Medicare
 7 certification. You know, home health encompasses
 8 what we do, pediatric, and in a lot of other single
 9 services, even.
 10 Here's the problem with single services:
 11 It doesn't fit in the criteria of home health, yet I
 12 need a license to be able to contract with the
 13 different HMOs and Medicaid who want single service
 14 like wound care or, you know, something else.
 15 So that need, I think, needs to be looked
 16 holistically when we're looking at certified agencies
 17 that want to concentrate on the Medicare population and
 18 agencies that want to pick up, you know, the private
 19 insurances, Medicaid HMOs, the Medicaid. And we get
 20 calls all the time for, you know, why we went into it,
 21 for a lot of those payer groups. Workers' comp, for
 22 example -- we got a call from MUSC Friday. They could
 23 not find a home -- a certified home health agency that
 24 would take a private pay because there were no codes in
 25 their system for someone to pay privately.

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1 And so, essentially, between the plan and
 2 that question, it will be up to the applicant to
 3 demonstrate what they think that unmet need and
 4 project, what they think the utilization will be and,
 5 as Sam said, you know, kind of justify using their own
 6 methodology, which we would then review.
 7 MS. BAILEY: So I could list 25 people
 8 and give you their phone numbers?
 9 MS. BIGGERS: Well, I'm not going to
 10 tell you which methodology to use, but --
 11 MS. BAILEY: Okay.
 12 MS. BIGGERS: -- we will review
 13 whatever methodology the applicant provides.
 14 MR. TOLBERT: I'd go with that one if
 15 I were you, Lynn.
 16 MS. BAILEY: Yeah.
 17 MS. BRISBIN: So the question --
 18 MS. BAILEY: All right. Endorsed by
 19 Sam Tolbert.
 20 MS. BRISBIN: -- so the question for
 21 Maggie will be -- or the department will be: When
 22 Lynn and Sam submit their clearly different
 23 approaches, what is the department going to utilize?
 24 MS. MURDOCK: That is a very good
 25 question. And, you know, I can't -- we don't -- we

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1 And so, I mean, you know, the need, I
 2 think, can be shown and I'd just like everyone to
 3 remember because sometimes we get really caught up in
 4 that Medicare dollar, the Medicare certification, but
 5 home health is really holistic. It's care being
 6 provided in the home, and there's lots of different
 7 payers and lots of different people that require that.
 8 MR. TOLBERT: So in terms of needs,
 9 since there's no methodology in the plan, I assume
 10 each one of us can develop the need to justify 25 or
 11 50 patients in the second year of operation. Any
 12 new methodology that makes sense to us, hopefully
 13 it'll make sense to you.
 14 MS. KELLY: That's probably the truth.
 15 MS. BIGGERS: Yeah, that's right. And
 16 I will just -- you know, just kind of reference in
 17 following up to your question, the regulation in
 18 Chapter 2, it spells out the -- what the application
 19 questions are, and the B-11 question is the one that
 20 primarily addresses need. And so even though, you
 21 know, usually when people are filling out
 22 applications, that's where they might reference the
 23 state health plan standards in the answer to their
 24 B-11, well, you know, still look at everything that
 25 B-11 is asking for.

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1 can't -- at this point, we haven't established a set
 2 policy outside of the methodology that we have
 3 adopted in the state health plan. It's going to --
 4 you know, we're going to have to look hard at all of
 5 those standards. You know, it'll be -- the burden
 6 will be on the applicant to show us -- to
 7 demonstrate to the department that there is need
 8 and, you know, all of the -- all of the things in
 9 B-11. Not all of those questions are about numbers.
 10 You know, just -- and there are many ways
 11 that you can -- you can support the contention that
 12 there's a need for whatever service it is that you want
 13 to provide in that community, in that community.
 14 If there is something that, you know, is
 15 just, hypothetically, if there is a single service
 16 service, you know, that would be -- you know, we would
 17 need to know why -- you know, is there a need, show us
 18 there is a need, and then looking at all the other --
 19 you know, the purpose of CON, we have four main
 20 purposes, cost containment, one of which is to prevent
 21 unnecessary duplication of services. So tell us why
 22 you're not duplicating other services.
 23 Instead of just looking at a number,
 24 which we don't have anymore, there's got to be -- we
 25 need other information. And the burden has -- is on



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1 the applicant to show us why that that's a necessary
 2 service and not a necessary duplication and all the
 3 other things that, you know, that we need to see.
 4 MS. BRISBIN: Has the department
 5 quantified what would be evidence of
 6 under-utilization or is that going to be --
 7 MS. MURDOCK: We have not quantified
 8 that. Again, we have -- you know, we -- we -- as a
 9 result of the robust debate about home health
 10 methodology, these sort of quantifications, we -- we
 11 don't have those. We have what's in the plan. And
 12 so that's what -- that's how we will be looking at
 13 all of these. And it will be difficult, frankly,
 14 but -- but it's going to be -- you know, we have not
 15 come up with a numerical quantification of how to
 16 show any -- outside of what's already in the --
 17 MS. BRISBIN: And then the other
 18 question I have, just from some of my clients:
 19 Where you get multiple letters of support from
 20 physicians who say I will -- I will refer 30
 21 patients to you -- I will refer 30 patients to you
 22 who I believe aren't being met, and that's going to
 23 be the demonstration of need for that rural county,
 24 but another applicant files another application for
 25 that same county but then the -- gets a letter from

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1 thinking home health, but this is not unlike many
 2 other services that don't have a quantified need.
 3 So I think, you know, we're getting hung up on there
 4 used to be a quantified need, now there's not.
 5 Well, many services don't have a quantified need.
 6 Ashley's exactly right, the burden is on
 7 the applicant to demonstrate how they comply with the
 8 standards in the plan, there are nine of them, they're
 9 pretty clear, and even give some examples on how to
 10 demonstrate the need. It also says it's not limited to
 11 those examples. So I don't see it that different from
 12 some of the other services that don't have a calculated
 13 need.
 14 MS. BIGGERS: For example, inventory
 15 surgery facilities.
 16 MR. LEVITT: Right.
 17 MS. BRISBIN: Now, will home health
 18 still be required to submit jars(phonetic)?
 19 MS. BIGGERS: Yeah.
 20 MS. BRISBIN: Okay.
 21 MS. BAILEY: When are the --
 22 MR. TOLBERT: May I ask a question
 23 about jars?
 24 Well, Lynn's got her hand up. She can
 25 ask the question for me.

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1 that same physician for 30 patients, how is the
 2 department going to make that determination as to
 3 whether there really exists a need for those
 4 patients?
 5 MS. BIGGERS: I think it's not going
 6 to depend just on, you know, from your example, this
 7 one letter of support from a physician in two
 8 different applications. It's going to depend on the
 9 totality of all of the evidence that's submitted by
 10 each of the applicants. And sometimes that might be
 11 a one-on-one review of just this application,
 12 sometimes it might be comparison review to see, you
 13 know, if there are multiple applicants in the same
 14 area, you know, reviewing them across the way.
 15 So I don't think that -- and certainly,
 16 you know, we're going to apply the state health plan
 17 and the regulation, which have not put, you know,
 18 quantifying numbers, so we are not going to provide
 19 quantifying numbers on our own that are not in the plan
 20 or in the regulation. So it'll depend upon what come
 21 in -- what comes in in the applications and the review
 22 of the totality of what is presented.
 23 And David, did you have a comment?
 24 MR. LEVITT: Yeah, I was going to
 25 say -- I know most people in the room are sort of

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1 MS. BAILEY: Do we have a date for the
 2 receipt and publication of the 2014 joint annual
 3 report from home health agencies? The plan was
 4 based on 2013.
 5 MR. LEVITT: I know they haven't been
 6 requested yet.
 7 MS. KELLY: I don't know.
 8 MS. MURDOCK: I don't know the answer
 9 to that, but I'll find out.
 10 MR. TOLBERT: DHEC hasn't
 11 authorized -- finish it, David.
 12 MR. LEVITT: Yeah, they haven't --
 13 they haven't sent those out to the agencies yet, so
 14 it'll be quite some time. If everyone responds
 15 quickly, which no one does, then it'll be sometime
 16 after that, but --
 17 MS. BAILEY: So the most current
 18 publicly available utilization data for home health
 19 is what was in the recently approved state health
 20 plan?
 21 MR. TOLBERT: That's it.
 22 MS. THARS: And just to follow up on
 23 that, jars, because you have to show need per
 24 county, so I had put a couple of requests to see --
 25 and this is a good time to ask: It used to be --

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1 Misty used to be on CON and used to be the jars
 2 person, so when you would put a request on can I get
 3 Charleston County jars, you know, that pulled out
 4 for all the home health agencies, you know, because
 5 it's just in the state plan, it's just all grouped
 6 together by agency, which might include, you know,
 7 several counties, who would be the person we could
 8 direct those specific questions to now that the
 9 department's all new?
 10 MS. BAILEY: Byron.
 11 MS. THARS: Who?
 12 MS. BAILEY: Byron over at the office
 13 of fiscal and --
 14 MS. THARS: Oh, okay, over there.
 15 MS. BAILEY: Yup. Yup.
 16 MS. THARS: CON used to handle that.
 17 MS. BAILEY: Yeah. Tell them you want
 18 the Lynn Bailey report.
 19 MS. THARS: Okay.
 20 MR. TOLBERT: May I ask a question
 21 about the application, particularly in Part C? That
 22 relates to the facility description and the space
 23 program, a whole lot of information that really it's
 24 intended for a facility that's going to be housing
 25 patients, but these are offices.

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1 information, you know, as part of the -- in order to --
 2 you know, so that we could make the application
 3 complete, so --
 4 MR. TOLBERT: Understood.
 5 MS. MURDOCK: -- I mean, I would -- I
 6 think it's safe to say that, you know, the applicant
 7 deciding not to answer a question like that, based
 8 on that type of logic, you know, if we disagree, we
 9 can let the applicant know we disagree.
 10 MR. TOLBERT: With all of us here, it
 11 would be nice to think about that.
 12 MS. KELLY: Well, that's a good point.
 13 I think we'll take notes.
 14 MR. TOLBERT: And I understand --
 15 MS. KELLY: And some of these
 16 questions, we'll take notes. And if we can give
 17 clear answers within a couple of weeks after this
 18 meeting.
 19 MR. TOLBERT: Am I the only one that
 20 thinks it would be a lot easier not to have to deal
 21 with the --
 22 MS. BAILEY: No.
 23 MR. LEVITT: And I think -- along with
 24 that same point, some of the questions asked, if
 25 you're going to -- if you don't own the building,

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1 And a few home health application -- or
 2 several at the time -- it was a pain in the rear to try
 3 and identify a physical office, get a sketch of that
 4 office, some of us may not want to rent an office,
 5 putting well in advance and getting it CON approved, so
 6 I just don't think those really apply to home health
 7 and patients treated in the home. The office is just a
 8 administrative space.
 9 And it would be a whole lot easier on us
 10 just to say those parts really just don't apply to home
 11 health, because it's not a facility that treats
 12 patients in the building.
 13 MS. MURDOCK: Well, I can't say, you
 14 know, home health does or does not need to answer X,
 15 Y, Z question. But one -- many times, applicants
 16 will decide which parts of the application are not
 17 applicable to their application, and then they will,
 18 you know, answer were they not applicable or
 19 indicate, you know, that this is not applicable to
 20 our application.
 21 One way that -- and I'll just speak for
 22 myself, when I'm reviewing an application, I think if
 23 an applicant answers that that way and I disagreed and
 24 thought that we really did need that, that would be
 25 a -- an opportunity for the department to request that

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1 identify the owners of the building, the percentages
 2 of that ownership, and all that, and that's very
 3 difficult coming from a rental space to get that
 4 information.
 5 MR. TOLBERT: Well, you're supposed to
 6 get the financial liability --
 7 MR. LEVITT: Exactly.
 8 MR. TOLBERT: -- and get the owner of
 9 the building --
 10 MR. LEVITT: That's right.
 11 MR. GRICE: I'm Joel Grice, managing
 12 director of health from Grice & Whiteside, LLC.
 13 Several years ago -- and this was the only
 14 problem -- when I submitted the applications for
 15 home health, it was absurd. We were required, in
 16 additional information, to give the floor plans of
 17 the office including the restroom, because the
 18 original one didn't have a restroom, we had to do
 19 that.
 20 And the problem is a home health agency
 21 is not a healthcare facility. It does not follow the
 22 definition of a healthcare facility. And that's why I
 23 agree with both Sam and David. We need to be
 24 reasonable on this and not require ridiculous
 25 information.

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1 MS. KELLY: Okay. Well, we'll try to
 2 get some clarification.
 3 MR. CHIN: And for the record, the
 4 same question is asked for licenses. And they
 5 clarified that we didn't have to provide the owner
 6 information when we submitted the application a
 7 couple years ago.
 8 MS. KELLY: Okay. So we'll try to get
 9 out -- some of these issues just -- we'll identify,
 10 and if we can get back to you with a clear answer
 11 and help the application process go more smoothly,
 12 that's the intent of this thing. So we'll
 13 definitely look into that.
 14 MS. BAILEY: I think y'all have,
 15 within your authority -- I'm sure Ashley will
 16 disagree with me -- to just issue guidelines and
 17 preferences to facilitate the administrative process
 18 and, you know, which are -- which are the critical
 19 questions. None of these are long-term care
 20 facilities. So any question that lands in relation
 21 to long-term care is going to get nonapplicable.
 22 And, you know, what licensing needs to
 23 look at, because licensing needs to know where your
 24 physical office is, where your financial and medical
 25 records are. And, you know, those kind of pieces of

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1 MR. TOLBERT: -- without it, we have
 2 to go to the nth degree to ensure it's 100 percent
 3 complete in case somebody challenges us. But with
 4 your guidelines, we are more comfortable doing -- a
 5 little easier on everybody.
 6 MS. BAILEY: And Ashley will know
 7 because she's been through enough appeals, so --
 8 MR. LEVITT: I think guidelines would
 9 be helpful but, I mean, you're going to have 40, 50
 10 applications within a week that wouldn't have had
 11 the benefit of those guidelines. So I think it
 12 might be helpful in the future, but we already have
 13 a bunch doing whatever they need to do.
 14 MS. BAILEY: Yeah, but then they'd
 15 have 150 that don't, you know, kill a lot of trees
 16 for -- with useless information.
 17 MS. BRISBIN: Quick question: Getting
 18 back to the patient projections for the 25 and 50
 19 patient need threshold, it -- the department still
 20 is going to have to review whether it's financially
 21 feasible; is that right? Just because -- meaning
 22 just because an applicant projects that there is
 23 some need for 25 patients in a rural county or 50
 24 patients in a nonrural county, that doesn't
 25 necessarily trigger for you that this is a

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1 information, I think, are critical to provide to the
 2 department. Anything that licensing is going to need,
 3 CON ought to need.
 4 But, you know, do you have electrical
 5 service, are you appropriately zoned, you know, do you
 6 have utility for water and sewer and natural gas, you
 7 know, that's important if you're an ambulatory surgery
 8 center, you got a physical plant that you operate in.
 9 But, you know, pretty much most of everything in
 10 attachment -- or Part C, except for the indigent care
 11 plan --
 12 MR. TOLBERT: Correct.
 13 MS. BAILEY: -- is, in terms of a
 14 service, bullshit.
 15 So I think if you all tell everybody
 16 that, you know, the license -- the regulations require
 17 that these questions be asked, but it's okay for home
 18 health, from the staff's perspective on this, and
 19 everybody knows this up front to answer N/A, we'll all
 20 be happy. I know Sam will.
 21 MR. TOLBERT: Well, we -- it would be
 22 very helpful to have some direction so we all know
 23 what to do because --
 24 MS. BAILEY: Common administrative
 25 guidelines.

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1 financially feasible project; is that accurate?
 2 MS. KELLY: Yeah, that's absolutely
 3 correct, yeah.
 4 MS. BRISBIN: Yeah.
 5 MR. THOMAS: I have a question about
 6 the 25, 50 and -- if you don't make your thresholds
 7 within two years as an applicant and you're supposed
 8 to, I guess, surrender your license, correct?
 9 Is that going to also apply to
 10 non-applicants that -- you know, existing providers in
 11 counties that don't make their numbers? As you say,
 12 annual projection right now, I know which one --
 13 MS. BIGGERS: Yeah. I have to go
 14 back -- and I think we would -- whatever standards
 15 were in the plan at the time an application -- under
 16 which the application was approved, those are the
 17 standards we would apply. So if the last plan had a
 18 similar standard, it would apply to all those that
 19 were approved under that.
 20 MS. KELLY: Okay. Anybody else? Any
 21 questions from the --
 22 MS. BAILEY: Do you want to do a quick
 23 survey to see how many of us are going to file how
 24 many applications so that you know whether you're
 25 going to get 150 or 250?



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1 MS. KELLY: Sure.

2 MR. TOLBERT: Or does that concern --

3 MS. BAILEY: Or is anything over 35

4 going to overload the system and just, you know --

5 MS. KELLY: I mean, I -- if people

6 want to -- I don't know, there's so many people

7 here, it would be hard to be able to quantify that.

8 I'm sure we'll know that soon enough.

9 (Simultaneous Cross-talk.)

10 MS. BAILEY: -- survey.

11 MR. TOLBERT: Well, some of us are

12 predicting in excess of 200. Is that a good number?

13 MS. COLEMAN: And so many not here to

14 have a number -- put a number out there.

15 MS. BAILEY: I'm thinking 200 is a

16 good number.

17 MS. MURDOCK: We're expecting many.

18 MR. TOLBERT: Over the next three

19 weeks?

20 MS. KELLY: All right. Well, we got

21 the entire health regulation staff, training --

22 MS. BAILEY: My problem is I got two

23 AFCs coming in getting mixed in with all this. I've

24 got some other projects that are going to come in in

25 addition to the myriad of home health applications

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1 answer --

2 MS. BRISBIN: Well, and -- just from

3 the CO -- I mean, that's your -- that's your call.

4 But there's going to be a marked advantage for those

5 who have -- who expanded during the hiatus and are

6 Medicare certified. And when they go back to get

7 themselves a CON, they will say, well, we're already

8 Medicare certified, so day one of our license, we're

9 going to be able to serve these patients in a more

10 quicker time frame whereas there are going to be

11 other applicants who are seeking to go into that

12 county who may have to go through the Medicare

13 certification process which may take longer in the

14 initial Medicare certification. So has -- has that

15 been discussed about how you're going to measure

16 that?

17 MS. MURDOCK: We have not discussed

18 whether -- I mean, from a CON standpoint, we will

19 review the applications as they come in. And the

20 current certification status or lack thereof doesn't

21 in and of itself affect our CON review timelines.

22 MS. BRISBIN: Yeah. Oh, and I don't

23 mean the timelines, but I mean the evaluation of how

24 quickly an applicant can meet the need. That's --

25 that's actually --

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1 and, you know --

2 MS. KELLY: I -- we're working on -- I

3 really feel confident that we -- we're going to get

4 this done, and we're going to meet the timelines.

5 We're going to -- we have -- like I said, we're

6 adding staff to the office, we have other people

7 within the agency that have -- if we get a lot more

8 applications than we expect, I mean, we might have

9 to add more staff. And we'll consider that as we go

10 on. But the agency is committed to doing what we

11 need to do.

12 MS. BRISBIN: Okay. I actually have

13 one more question: The concept of, you know, you

14 have to project your timeline for coming on board

15 and being able to care for Medicare certified if

16 you're going to care for Medicare certified, for

17 the -- for the folks who went and expanded during

18 the hiatus and have their licenses on appeal so

19 their licenses are continuing, and they are

20 supposedly continuing their Medicare certification,

21 that's going to be measured up against folks who are

22 starting out from the beginning, and is the

23 department going to weight those timelines the same?

24 MS. MURDOCK: Are you asking from a

25 CON standpoint or from the -- because I can't

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1 MS. KELLY: And at this point, we

2 can't -- I can't address how we're going to look at

3 those applications. Every application is going to

4 stand on its own merits. And this meeting was -- is

5 really intended and -- to raise issues like that.

6 So it may -- it lets us take the information back

7 and it allows us to think about how we're -- you

8 know, how these applications are going to be

9 received, how many, how we're going to handle them.

10 So it's good to know what you're thinking. It'll

11 make us better process the applications.

12 MS. BAILEY: Can I venture out of the

13 home health and ask: Does -- the state health plan

14 now is a month old.

15 MS. KELLY: Uh-huh.

16 MS. BAILEY: Do we have a process in

17 place to begin the next state health plan?

18 MS. KELLY: We have -- well, we're --

19 we are going to breathe a minute. But, I mean, it

20 is part of the functions within the agency. Are we

21 starting it today? No, we're not starting it today.

22 MS. BAILEY: Okay.

23 MS. KELLY: But it will be --

24 MS. BAILEY: Well, data is -- data is

25 critical.

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1 MS. KELLY: Uh-huh.
 2 MS. BAILEY: And for -- you know, for
 3 those of us that represent clients that are not
 4 hospitals, hospital -- and through the association
 5 has a -- has a very sophisticated data sharing
 6 information that the rest of the facilities and
 7 services out there don't. So we are heavily
 8 dependent on what is publicly available. And
 9 historically, the joint annual reports have been
 10 critical to that. And there used to be a lot of
 11 data available through what is now OFRA that is no
 12 longer readily available. You have to call up and
 13 ask for it. A lot of times, it used to be free, now
 14 there's always a charge.
 15 So, you know, just sort of advocating
 16 that you can't do good planning without good data, and
 17 good data is -- you know, data is terribly important.
 18 And please do not overlook that.
 19 MR. TOLBERT: Shelly, let me ask a
 20 question: Some of us that do just CON consulting
 21 might want to stay and have -- continue that little
 22 dialogue, but I'm not sure everybody else is -- who
 23 may not be interested in that, just to talk general
 24 about the state health plan and some of the things
 25 like Lynn has mentioned, if you're willing to stay a

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1 MS. BIGGERS: -- to know. I mean,
 2 either is a possibility. We'll have to wait and
 3 see.
 4 MS. MURDOCK: And always -- you know,
 5 we're -- we -- if you have any questions or
 6 comments, don't hesitate to contact us and, you
 7 know, we -- we like, you know, we don't want to make
 8 it hard for you, and we would always like to help as
 9 much as we can.
 10 So don't -- if there's something that
 11 you -- that you want to know or want to say after
 12 today, then we've got the coninfo email, I promise we
 13 look at those all the time, and believe it or not, we
 14 respond to those as well. And it is a very good
 15 vehicle for letting -- because everyone on the CON
 16 staff has access to the coninfo email. So if there's a
 17 question -- you know, depending on the nature of the
 18 question, all of us will have a chance to look at it,
 19 and it's a really good way to get information to us or
 20 to -- or to ask questions.
 21 So, you know, that's a resource, and then
 22 certainly call and we'll do the best we can to answer
 23 your questions. You know, don't let our upcoming
 24 avalanche of CON applications scare you away from
 25 asking us for help or information, because we're here

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1 few minutes after we adjourn.
 2 MS. KELLY: Yeah, that would be fine.
 3 I'm fine if anybody -- and anybody is welcome to
 4 stay.
 5 Do you -- does anybody else have
 6 questions? Or does anybody have their application with
 7 them they want to drop off?
 8 MS. THARS: I just want to say,
 9 Charleston County, ten people put in tomorrow, and
 10 we're all projecting 50 patients. How do you make
 11 the decision when to stop saying, okay, they're all
 12 projecting the same 50 need and when to stop? Do we
 13 all go head-to-head or do you -- are you just -- I
 14 mean, is that arbitrary right now, we don't know
 15 what's going to happen?
 16 MS. KELLY: No, I mean, well, that's
 17 what we're -- we need to see the applications and --
 18 maybe defer to Ashley here.
 19 MS. THARS: Is it a possibility they
 20 can all -- you know, we can all go head-to-head and
 21 do a public hearing and the best application wins or
 22 like Beaufort and the rest of them?
 23 MS. BIGGERS: Well, it -- I think
 24 we'll have to wait until we see the applications --
 25 MS. THARS: Okay.

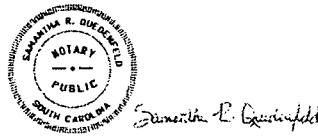
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1 to -- you know, we're here for service. That's what we
 2 do. So that's why we're here.
 3 MS. BRISBIN: As to Sam's suggestion
 4 that the consultants kind of stay and talk a little
 5 bit more, it was my understanding that that was the
 6 primary -- well, not the primary, but one of the
 7 reasons why we were going to have an open forum, is
 8 to actually have that discussion in an open forum,
 9 so --
 10 MR. TOLBERT: And I wasn't talking
 11 about home health.
 12 MS. BRISBIN: Yeah. Okay.
 13 MR. TOLBERT: I got some -- we have
 14 some questions about some other services.
 15 MS. BRISBIN: Sure.
 16 MR. TOLBERT: You're welcome to stay
 17 if you want.
 18 MS. KELLY: Yeah, anybody's welcome.
 19 I mean, that's -- so if anybody --
 20 MR. TOLBERT: So I'm not going to talk
 21 about home health once -- once this adjourns.
 22 But I do have a point. I think the state
 23 health plan in the standards allows the department to
 24 approve as many new licenses for counties as they are
 25 comfortable those applicants can do what they say they

1 were going to do in the application.
 2 MS. THARS: Unless we're all showing
 3 the same need. You know, we're all saying I can get
 4 50 patients out of this hospital, then who gets them
 5 for -- you know, are we all going to --
 6 MR. TOLBERT: Well, we have to make
 7 our best case.
 8 MS. THARS: Well, that's a -- yeah.
 9 MR. TOLBERT: Yeah. But that's --
 10 that's how it works. As David points out, there are
 11 many other services, and we'll just see what
 12 happens.
 13 And to the extent that we're counting --
 14 all counting the same patients, that they may judge it
 15 to be a problem. If it looks like they're looking at
 16 different populations, absolutely not a problem.
 17 MS. BRISBIN: And that remains to be
 18 seen.
 19 MR. TOLBERT: Yeah, and that remains
 20 to be seen.
 21 MS. KELLY: All right. Anybody else?
 22 Well, we thank you all for coming.
 23 MS. BAILEY: Thank you.
 24 MS. KELLY: And I'm sorry for the
 25 accommodations. Thank you to those that -- who were

1 outside for --
 2 MS. BAILEY: Thank you for meeting
 3 with us. Let's give them a round of applause.
 4 MS. KELLY: And if anybody wants to
 5 stick around and ask questions and talk to us,
 6 that's fine, too. We're going to be around.
 7 (The meeting was concluded at 11:02
 8 AM.)
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1 CERTIFICATE OF REPORTER
 2
 3 I, Samantha R. Quedenfeld, Notary
 4 Public for the State of South Carolina at Large, do
 5 hereby certify that the foregoing transcript is a
 6 true, accurate, and complete record.
 7 I further certify that I am neither
 8 related to nor counsel for any party to the cause
 9 pending or interested in the events thereof.
 10 Witness my hand, I have hereunto
 11 affixed my official seal this 27th of September,
 12 2015 at Charleston, Charleston County, South
 13 Carolina.
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Samantha R. Quedenfeld
 My Commission expires
 January 13, 2025

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EXHIBIT 2

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**

RICHLAND COUNTY
 FILED
 2016 FEB 23 PM 12:13
 JANNETTE W. MOHR
 C.C.P. & G.S.

PROCEDURAL BACKGROUND

Plaintiffs Amedisys SC, LLC (“Amedisys”) 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 Amedisys’ 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 Amedisys’ motion was styled as a Motion for Temporary Restraining Order and Preliminary Injunction. At the outset of the hearing, counsel for Amedisys 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), SCRCF, 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 Intervenor's 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 Intervenor's 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 Intervenor's motions to Intervene are hereby GRANTED.

MOTION FOR PRELIMINARY INJUNCTION

A hearing was held on Amedysis' motion for preliminary injunction pursuant to Rule 65, SCRPC, 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 Amedysis' 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 underutilization 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 Intervenor are all home health agencies operating in South Carolina. In addition, shortly after the issuance of the current SHP, the Intervenor 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 Intervenor 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. *Fraday 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 & Env'tl. Control*, 412 S.C. 341, 354, 772 S.E.2d 177, 184 (2015); *see also Dorman v. S.C. Dep't. of Health & Env'tl. 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.

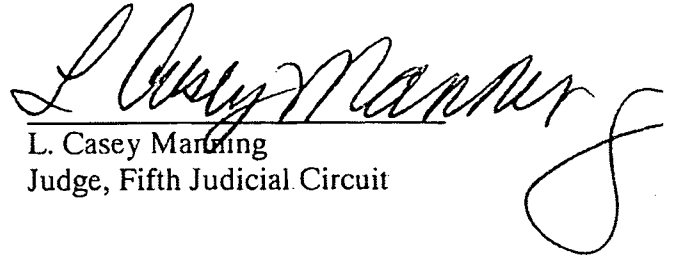
C. Adequate Remedy at Law

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 Amedysis 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

VIA EMAIL

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AND HAND DELIVERY

The Honorable L. Casey Manning
Richland County Courthouse
1701 Main Street
Columbia, South Carolina 29201

**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**

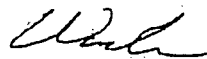
Dear Judge Manning:

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)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APR 01 2016

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Casey L. Manning, Circuit Court Judge

SC SUPREME COURT

C.A. No.: 2016-CP-40-00818
Court of Appeals Docket No. 2016-000631

Amedisys SC, L.L.C.Plaintiff/Appellant,

.....v.

South Carolina Department of Health and Environmental Control,Defendant,

and

National Healthcare Corporation, Pruitthealth 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, PA, and Hedgemark Brentwood Medical Services
Inc. d/b/a PHC Home Health, Intervenor-Defendants;

Of whom, South Carolina Department of Health and Environmental Control, National
Healthcare Corporation, Pruitthealth 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, PA, and Hedgemark Brentwood Medical Services Inc. d/b/a
PHC Home Health are the..... Respondents.

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify
that I have this 1st day of April 2016, served the Appellant's Motion To Certify And
Transfer Case From The Court Of Appeals And For Expedited Consideration, With

Memorandum Of Supporting Grounds Incorporated via first class mail on counsel of record at the addresses shown below:

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Vito M. Wicevic, Esq.
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Carolina Department of Health and
Environmental Control*

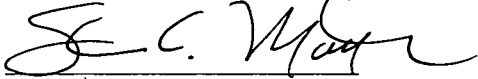
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