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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Edgar W. Dickson, Presiding Judge

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

RECEIVED
JUN 23 2016
SC Court of Appeals

Protection and Advocacy for People with Disabilities,
Inc.,

Appellant,

v.

Beverly A. H. Buscemi, Ph.D., in her official capacity as
State Director, South Carolina Department of Disabilities
and Special Needs and The South Carolina Department
of Disabilities and Special Needs, and Kelly Hanson
Floyd, Nancy Banov, W. Robert Harrell, Rick Huntress,
Deborah McPherson and Dr. Otis Speight in their
Official Capacities as Members of the Department of
Disabilities and Special Needs Commission,

Respondents.

Petition for Rehearing

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Petitioner Protection and Advocacy for People with Disabilities, Inc. (“P&A”) requests rehearing of *Protection and Advocacy for People with Disabilities, Inc. v. Beverly A. H. Buscemi, Ph.D., in her official capacity as State Director, South Carolina Department of Disabilities and Special Needs and The South Carolina Department of Disabilities and Special Needs, and Kelly Hanson Floyd, Nancy Banov, W. Robert Harrell, Rick Huntress, Deborah McPherson and Dr. Otis Speight in their Official Capacities as Members of the Department of Disabilities and Special Needs Commission*, Op. No. 5410 (S.C. Ct. App. filed November 5, 2015) (Shearouse Adv. Sh. No. 23 at 73) (“the opinion”). P&A respectfully submits that rehearing and/or issuance of a new opinion reversing the trial court

and holding P&A is entitled to review Medical Administration Records (“MARs”) as part of team advocacy inspections is warranted because the Court overlooked or misapprehended several matters of both fact and law.

Rehearing is proper in this action for several reasons. First, the Panel overlooked the practical effect of its ruling. Second, the Panel misapprehended the intent of the General Assembly to grant P&A broad authority to conduct team advocacy inspections. Accordingly, a review of the statutory scheme demonstrates the General Assembly intended to grant P&A the authority to review MARs as part of team advocacy inspections. Third, the panel overlooked that P&A’s interpretation of the term “plans of care” is entitled to *Chevron* deference. Fourth, the Panel misapprehends the public policy of South Carolina, which further evidences the broad grant of authority to P&A. Rehearing and/or the issuance of a new opinion reversing the trial court, holding P&A can review MARs as part of a Team Advocacy Inspection is warranted as a result.

I. The Panel’s ruling will have a far reaching effect that has the consequence of reaching an absurd result clearly not intended by the General Assembly.

A. The Opinion substantially limits the effectiveness of the Team Advocacy Inspections.

The Panel’s ruling has the effect of drastically lowering the protections individuals with disabilities receive across the entire State. The Opinion is not limited to just Community Training Homes licensed by DDSN. (Opinion at *4.) Rather, the holding will apply to all facilities P&A inspects under Team Advocacy. Thus, the Opinion effectively changes the oversight P&A has exercised for the past twenty years over facilities caring for people with disabilities in South Carolina, many of whom have no one else to advocate on their behalf or who cannot speak for themselves. P&A will no longer be able to effectively ensure residents of facilities across the

State receive proper medical care, as required by statute. No other entity is authorized to conduct these unannounced inspections.¹

Without the ability to inspect MARS, the usefulness or effectiveness of P&A's Team Advocacy inspections is substantially limited. Medical care is inherently part of a person with a disability's living conditions in a facility. A developmentally disabled person, as defined by statute, needs "a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated." S.C. Code Ann. § 43-33-340(2)(e). In order to ensure residents of facilities who have developmental disabilities receive this care, the General Assembly authorized Team Advocacy Inspections. S.C. Code Ann. 43-33-350(4).

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

¹ The Opinion does state that other, unspecified entities inspect facilities. (Opinion at *3, n.2. (noting that DDSN "contracts with an organization designated by Medicare and Medicaid to perform quality assurance reviews.")) However, no explanation is given as to how this third-party organization is authorized to review medical records while P&A, the entity explicitly authorized by statute to perform a review of these facilities is not authorized to do so. Nor was an explanation given at trial. When DDSN's Director of Policy was questioned at trial as to how these third-party entities were authorized to review medical records, she simply responded that "there is a business agreement within [the] contract [authorizing the third-party to review medical records]." (Tr. p. 93:16-23; R. 195.) Thus, the Opinion effectively endorses authorizing DDSN to be the arbiter of which entities can see the private medical information of developmentally disabled individuals, yet fails to note where this authority derives from. This is an absurd result that could not be intended by the General Assembly.

161.) As the General Assembly has noted, many residents in these facilities have critical, daily medical needs. S.C. Code Ann. § 43-33-340(2)(e). Receiving this care is part of the residents' "living conditions." Reviewing plans of care—including MARs—is the most practical and direct, indeed the only, way to fully review the living conditions of residents. Without this ability, the Team Advocate is unable to ensure the residents have adequate living conditions to suit their individual needs. (Tr. p. 41:2-16; R. 143.) The statute envisions the Team Advocate being allowed to review MARs as part of an inspection of living conditions. Thus, the loss of P&A's authority to review MARs will have far reaching consequences not intended by the General Assembly.

B. The Court's Opinion effectively allows the inspected facilities to determine what constitutes the plan of care P&A is authorized to inspect, which is an absurd result clearly not intended by the General Assembly.

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

The opinion does not take a position on what constitutes the "plan of care" P&A is authorized to inspect pursuant to S.C. Code Ann. § 43-33-350(4). However, the opinion does state in the fact section, seemingly with approval, that DDSN allowed P&A to inspect a document DDSN "considered the same as the plan of care" during team advocacy inspections. (Opinion at *3-4.) Effectively, the Court has endorsed authorizing the entities P&A inspects to dictate what the plan of care is to P&A.² This is an illogical result that surely was not intended by the General

² The Opinion can also be read to endorse the finding that the Residential Treatment Plan/ Support Plan put forth by DDSN is *the* Plan of Care that P&A is authorized to inspect. This document is only required for developmentally disabled individuals receiving care pursuant to a Medicaid waiver. Thus, not all individuals even have this document. A construction of the term plans of care that allows P&A to only inspect a document that not all individuals with

Assembly. Accordingly, this Court should grant rehearing and issue a new opinion holding the term plans of care encompasses MARs.

II. The Panel misapprehends the General Assembly’s intent to grant P&A broad authority when conducting Team Advocacy Inspections.

A. To effectuate the intent of the General Assembly, P&A must be allowed to inspect MARs.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *See Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” *McClanahan v. Richland County Council*, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) (citation omitted).

The Opinion overlooks that in order to effectuate the intent of the General Assembly, P&A’s authority must be construed broadly. In S.C. Code Ann. § 43-33-310, the General Assembly expressly stated its intent behind the entire statutory scheme that not only created P&A, but also authorized P&A to conduct Team Advocacy Inspections:

It is the further purpose of this act to express the desire of the General Assembly that South Carolina Protection and Advocacy System for the Handicapped, Inc., exercise protection and advocacy functions not only for the developmentally disabled citizens of South Carolina but also for all other handicapped citizens of the State.

S.C. Code Ann. § 43-33-310.

In order to comply with this expressly stated intent, P&A’s authority must be construed broadly. *See City of Columbia v. Bd. of Health & Env’tl. Control*, 292 S.C. 199, 202, 355 S.E.2d

disabilities have is an absurd result that could not have been intended by the General Assembly. Any interpretation that reaches the result of only authorizing P&A to inspect the Residential Treatment Plan/ Support Plan, therefore, is in error.

536, 538 (1987) (“The delegation of authority to an administrative agency is construed liberally when the agency is concerned with the protection of the health and welfare of the public.”). It stands to reason that P&A cannot protect and advocate for individuals with developmental disabilities, who require “a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated,” S.C. Code Ann. § 43-33-340(2), if P&A does not know what care those individuals receive on a day-to-day basis. Thus, the General Assembly granted P&A the authority to conduct Team Advocacy Inspections, which includes an inspection of the individual’s plans of care. S.C. Code Ann. 43-33-350(4).

Only a broad interpretation of the term plans of care can effectuate the expressly stated intent of the General Assembly. Accordingly, this Court misapprehended the broad grant of authority the General Assembly intended to give P&A when conducting team advocacy inspections. Consequently, this Court should grant rehearing and issue a new opinion holding that the term plans of care encompasses MARs.

B. The Opinion misapprehends how P&A’s separate authorities work together.

The Panel misapprehends that the General Assembly granted P&A distinct powers that arise in separate situations. P&A has a federally designated role to investigate abuse and neglect and act as an advocate and a monitor under 42 U.S.C. § 15043(a)(1). P&A also has a separate, state-created role, to conduct Team Advocacy Inspections under S.C. Code § 43-33-350(4).³

The General Assembly fulfilled its obligation to grant P&A its federally mandated power, by authorizing P&A to not only advocate for disabled individuals, but also “investigate complaints by or on behalf of any developmentally disabled or handicapped person.” S.C. Code § 43-33-

³ The authority to conduct Team Advocacy Inspections, which is not found in federal law, is broader than any power granted to P&A contained in federal law. *See* 45 C.F.R. § 1386.21(f).

350(2). P&A’s power to inspect records when investigating a complaint only comes into play when P&A receives a “written request to investigate a complaint . . . or upon . . . the receipt of a complaint of abuse or threatened abuse. . . .” S.C. Code § 43-33-370. Section 43-33-370(2) expressly limits P&A’s authority to inspect and copy records in response to a complaint by stating P&A cannot inspect “the individual medical, treatment or other personal records of other persons [who are not the subject of the complaint] in the program or facility.” The Opinion misapprehends that the limitations found in this investigative authority demonstrated that P&A cannot review MARs during Team Advocacy Inspections.

South Carolina adheres to the canon of statutory construction known as the doctrine of “expressio unius est exclusio alterius” or “inclusio est exclusio alterius.” *German Evangelical Lutheran Church of Charleston v. City of Charleston*, 352 S.C. 600, 576 S.E.2d 150 (2003); *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000). This canon of statutory construction holds that “to express or include one thing implies the exclusion of another.” *German Evangelical*, 352 S.C. at 153, 576 S.E.2d at 606 (citing Black’s Law Dictionary 602 (7th ed. 1999)). This canon is applicable here—in the opposite manner in which DDSN believes the doctrine applies.

The General Assembly specifically included the restrictions on P&A’s ability to inspect and copy records in response to a complaint found in Section 43-33-370(2). However, in drafting the remainder of the same chapter of the code, the General Assembly drafted Section 43-33-350(4) without this same language. Moreover, when the General Assembly revised Section 43-33-350(4) in 1993, the General Assembly again chose not to add the same restrictive language to Section 43-33-350(4).⁴ The General Assembly could have very easily included this restrictive language in

⁴ Section 43-33-370(2) has not been revised since first enacted in 1979. S.C. Code Ann. § 43-33-370(2). Thus, the General Assembly was well aware of the restrictive language contained in Section 43-33-370(2) and its effect when the 1993 amendment to Section 43-33-350(4) occurred. *State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 175

Section 43-33-350(4) but did not do so. Stated differently, the General Assembly specifically included restrictions on P&A's authority to review records when responding to a complaint under Section 43-33-370(2), yet they specifically excluded any such restriction on P&A's authority to review records as part of a Team Advocacy Inspection under Section 43-33-350(4). Therefore, under the doctrine of "expressio unius est exclusio alterius" or "inclusio est exclusio alterius," the General Assembly's failure to include this express restriction on P&A's authority in Section 43-33-350(4) is indicative of a legislative intent that P&A's authority to review records under Section 43-33-350(4) is not restricted in the same manner.

It is not surprising that the General Assembly did not include the restrictive language in the statute governing P&A's authority to conduct Team Advocacy Inspections, given the fact that the inspections arise in a completely separate context from investigating a complaint. The authority to investigate only arises when P&A receives a signed "written request to investigate a complaint" or "a complaint of abuse or threatened abuse" by a developmentally disabled individual. S.C. Code Ann. § 43-33-370. Conversely, P&A can conduct an "unannounced" Team Advocacy Inspection at any time and no justification is required for conducting the inspection. S.C. Code Ann. § 43-33-350(4). Thus, P&A's authority to conduct Team Advocacy Inspections under Section 43-33-350(4) is much broader than its authority to conduct an investigation under Section 43-33-370.

Further evidencing this broad grant of authority, the General Assembly did not place restrictions on what living conditions P&A may inspect when conducting a Team Advocacy Inspection despite placing explicit restrictions on P&A's ability to investigate. This is due to the different nature of each power. The purpose of conducting an investigation under Section 43-33-

(2003). ("There is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.").

370 is to determine if the specific allegations are true. In order to make that determination, P&A does not need unfettered access to every document contained at a facility where the complaint arises. Rather, P&A needs access to the documents regarding the individual about which the complaint is lodged, which Section 43-33-370 grants. S.C. Code Ann. § 43-33-370. On the other hand, the purpose of a Team Advocacy Inspection under Section 43-33-350(4) is to assess the living conditions for every individual housed in the facility. In order to make that assessment, P&A requires much broader authority to review documents, which Section 43-33-350(4) grants by not including the explicit restrictive language of 43-33-370. S.C. Code Ann. § 43-33-350(4). As the General Assembly did not include that restrictive language, this Court should grant a rehearing and issue a new opinion holding that P&A may review living conditions, such as MARs, as part of a Team Advocacy Inspection.

C. The opinion overlooked the plain language of the statute.

Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). "If the legislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute." *Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (citing *Abell v. Bell*, 229 S.C. 1, 91 S.E.2d 548 (1956)). "When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning." *Id.* (citing *Timmons v. South*

Carolina Tricentennial Comm'n, 254 S.C. 378, 175 S.E.2d 805 (1970)). Furthermore, only if the language of a statute gives rise to doubt or uncertainty as to legislative intent, may the construing court search for that intent beyond the borders of the act itself. *Stephen v. Avins Constr. Co.*, 324 S.C. 334, 339, 478 S.E.2d 74, 76 (1996).

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

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

A Medication Administration Record is a part of a plan of care; that is, it contains a method of supervision for each resident of a Community Training Home, with proper administration of medication on a daily basis being the end to be achieved. Specifically, the MAR shows the reader the daily plan for what medication a CTH resident takes, when the resident should take the medicine, and how the medicine should be administered. (Tr. p. 57:18-23; R. 159.) The fact that

a MAR, depending on when it is reviewed, also contains an ongoing record of compliance with that plan does not transform a plan into simply a record. The two are not mutually exclusive. A document can contain both a plan for future events and a record of past events—which a MAR does. The most logical interpretation is that the purpose of the inspection is to evaluate whether the residents are receiving proper care on an ongoing basis, including the medication as properly prescribed.

As the Opinion overlooks that “plans of care” plainly includes MARs, rehearing and/or issuance of a new opinion reversing the trial court and holding the term plans of care encompasses MARs is warranted.

III. The Opinion overlooked that P&A’s interpretation of “plans of care” is entitled to *Chevron* deference.

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

Moreover, prior case law grants P&A the status of an agency when interpreting P&A's statutory authority. *See SC DHEC v. Bellwood Manor*, 2010 WL 6782577, at *8 (Admin. Law Ct. Nov. 22, 2010) (holding that P&A's delegation of authority should be construed liberally like delegations of similar authorities to an administrative agency). Therefore, even if "plans of care" is found to be ambiguous, P&A is entitled to deference in its interpretation of its own enabling legislation. *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837 (1984); *Sweat*, 379 S.C. at 374, 665 S.E.2d at 649 (citing *Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) ("The construction of a statute by the agency charged with its administration will be accorded the *most respectful consideration* and *will not* be overruled absent *compelling* reasons.")) (emphasis added); *see also City of Columbia v. Board of Health and Environmental Control*, 292 S.C. 199, 202, 355 S.E.2d 536, 538 (1987) ("The delegation of authority to an administrative agency is construed liberally when the agency is concerned with the protection of the health and welfare of the public.")

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

court will only reject an agency's interpretation where there are compelling reasons and "the plain language of the statute is contrary to the agency's interpretation"). Therefore, unless there are compelling reasons and a specific finding that P&A's interpretation is *contrary* to the plain language of the statute, the Court must give deference to P&A's reading of "plans of care."

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

IV. The opinion overlooked South Carolina public policy in preventing P&A from inspecting documents to protect the State's most vulnerable citizens.

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

P&A was then formally established, and the legislature noted the “purpose of th[e] act [creating P&A and authorizing Team Advocacy inspections is] to express the desire of the General Assembly that South Carolina Protection and Advocacy System for the Handicapped, Inc., exercise protection and advocacy functions not only for the developmentally disabled citizens of South Carolina but also for all other handicapped citizens of the State.” S.C. Code Ann. § 43-33-310.

Thus, the General Assembly expressly stated the State’s public policy for the protection of people with disabilities, and then implemented the policy through a comprehensive statutory scheme authorizing P&A to affirmatively “protect” and “advocate.” S.C. Code Ann. §§ 43-33-310 through -400.⁵

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

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

⁵ As previously noted, it is impossible for P&A to effectuate this intent without inspecting the day-to-day care a developmentally disabled person receives. *See supra*, Parts I.A. and II.A.

By providing independent, third-party oversight of the facilities that serve and house these citizens, Team Advocacy inspections help ensure that South Carolina residents with disabilities are receiving appropriate care and living in safe environments. This confirms the State's public policy to ensure that people with disabilities are protected and that they have an advocate in P&A. By removing this power to inspect MARs from P&A's inspectors, the trial court endangered the safety and quality of life of South Carolina's most vulnerable residents.

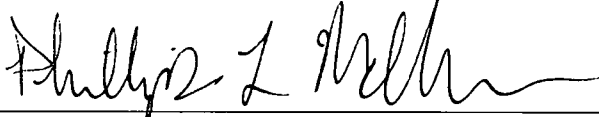
Conclusion

For the foregoing reasons, rehearing and/or issuance of a new opinion reversing the trial court and holding the term plans of care encompasses MARs is warranted.

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Respectfully Submitted,

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June 23, 2016.

THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

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

Pleadings: PETITION FOR REHEARING

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SC Court of Appeals

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1220 Senate Street
Columbia, SC 29201

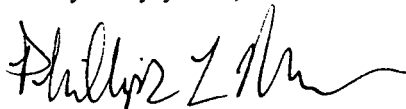
RE: Protection and Advocacy for People with Disabilities, Inc. v. Beverly A. H.
Buscemi, Ph.D., et al.
Case No. 2010-CP-40-1095
Appellate Case No. 2015-000109

Dear Ms. Kitchings:

Enclosed are the original and six copies of the *Petition for Rehearing* in the above-referenced matter. We would appreciate it if you would file the original document and return a clocked in copy to us via our firm's courier.

By copy of this letter to all counsel, we are hereby serving them with copies of the above referenced pleading.

Very truly yours,



Phillips L. McWilliams

PLM:kdm

Enclosures

cc: Kenneth P. Woodington, Esquire
William H. Davidson, Esquire