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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge
Case No. 2016-CP-40-00818

Appellate Case No. 2016-000631

Amedisys SC, LLC..... ..... Plaintiff/Appellant

v.

South Carolina Department of Health and Environmental Control ..... Defendant,

And

National HealthCare Corporation, In-Care Home Health, Inc., Tri-County Home Health & 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 PHCHome Health and PruittHealth Corporation,..... 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, P.A., Hedgemark Brentwood Medical Services, Inc. d/b/a PHC Home Health are the..... Respondents.

Stuart M. Andrews, Jr., Esq.
Daniel J. Westbrook, Esq.
Lacy R. Lee, Esquire
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
Attorneys for National HealthCare Corporation and PruittHealth Corporation

FINAL BRIEF OF RESPONDENTS NATIONAL HEALTHCARE CORPORATION AND PRUITTHEALTH CORPORATION

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court abuse its discretion in denying the Appellant's request for a preliminary injunction to prohibit the Department of Health and Environmental Control from accepting any new Certificate of Need applications or ruling on any pending applications for home health services, thereby restraining the Department from performing its legally mandated function of operating the State's Certificate of Need Program?

STATEMENT OF THE CASE

I. Background

The present action involves South Carolina's Certificate of Need law. South Carolina Code section 44-7-110, *et seq.* (the "CON Act") requires entities to obtain a Certificate of Need ("CON") before undertaking certain projects. The South Carolina Department of Health and Environmental Control ("DHEC") is the sole state agency designated for the administration of the CON program and licensure of home health facilities. *See* S.C. Code Ann. § 44-7-110. The parties, except for DHEC, are all companies that provide or seek to provide home health services in the state. Amedisys currently provides home health services in 25 counties and has applied for a home health CON in 7 additional counties. Complaint at ¶ 5 (R. 17); *See* http://www.scdhec.gov/Health/docs/CON_PendingApp.pdf (pending CON applications). National HealthCare Corporation ("NHC") and PruittHealth Corporation ("Pruitt") both have pending CON applications for multiple counties in the state.

The South Carolina General Assembly enacted the CON Act for the purpose of promoting cost containment, preventing unnecessary duplication of health care facilities and services, guiding the establishment of health facilities and services that will best serve public needs, and ensuring that high quality services are provided in health facilities in South Carolina. *See* S.C. Code Ann. § 44-7-120.

DHEC administers the CON Act through a published State Health Plan. The CON Act lays out a detailed process for periodically reviewing the Plan. An appointed Health Planning Committee (the "Committee") reviews and revises the State Health Plan as it sees fit at least every two years. S.C. Code Ann. § 44-7-180. The Committee met on March 17, 2015, and March 27, 2015, and discussed in each of these meetings revisions to the home health standards.

After these detailed discussions, regional public hearings were held to solicit comments from interested parties. These hearings are a mandatory part of the review process. S.C. Code Ann. § 44-7-180. DHEC held four regional public meetings throughout the State in the month of June 2015. The Committee met again after the regional public hearings on June 29, 2015, July 17, 2015, and July 28, 2015, and again discussed revisions to the home health standards in the Plan. After this months-long process and consideration of commentary from interested parties, the Committee made a recommendation for the Plan. The DHEC Board then reviewed the Committee proposal, before final approval was given. *See* S.C. Code Ann. §44-7-180 (C); S.C Code Ann. Regs. 61-15-106(3). The current (2015) Plan passed through the full statutory process described above, received unanimous approval from the DHEC Board, and took effect on August 13, 2015.

After the new Plan took effect, a number of CON applications for home health services were filed in counties throughout the state by various applicants, including each of the Respondents and Amedisys. Both NHC's and Pruitt's applications have been deemed complete by DHEC and are in a position to be granted or denied.

II. Procedural History

Amedisys filed an action in the circuit court on or about February 8, 2016 seeking a declaratory judgment that the State Health Plan does not comply with statutory requirements. In addition, Amedisys requested a preliminary injunction to prohibit DHEC from accepting any new CONs for home health and from issuing a decision on any pending CON application for

home health services.[1] Pruitt and NHC then intervened, along with other home health providers, in this action.[2]

Following a hearing on February 22, 2016, the court granted all motions to intervene and denied Amedisys's motion for a preliminary injunction, concluding that Amedisys failed to demonstrate irreparable harm, likelihood of success on the merits, or an inadequate remedy of law. Order at 8-13 (R. 8-13). Amedisys appealed the denial of the preliminary injunction on March 21, 2016. On April 1, 2016 Amedisys moved to certify and transfer its appeal to the South Carolina Supreme Court. Respondents filed Returns opposing the motion.

STANDARD OF REVIEW

The standard of review for a denial of a preliminary injunction is for an abuse of discretion. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005). Amedisys is required to show the trial court abused its discretion in determining that Appellant (1) would suffer irreparable harm if the injunction were not granted; (2) would likely succeed on the merits of the litigation; and (3) has an inadequate remedy at law. *Id.* at 454-55, 626 S.E.2d at 36. Amedisys has failed to make this showing.

ARGUMENT

The sole issue on appeal is whether the circuit court abused its discretion in denying Amedisys's preliminary injunction. *Peek*, at 454, 626 S.E 2d at 36. Amedisys's brief goes beyond the bounds of this Court's review. Amedisys seeks review of the underlying issue of its

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[1] Amedisys withdrew at the hearing its motion for a temporary restraining order. *See* Order Denying Plaintiff's Motion for Preliminary Injunction at 2 n.1 (R. 2).

[2] Amedisys's co-plaintiff in the Complaint, The South Carolina Home Care & Hospital Association, "effectively dismiss[ed] itself" from the action after the motions to intervene were granted. *See* Order Denying Plaintiff's Motion for Preliminary Injunction at 2 (R. 2).

declaratory judgement action that is still pending in the circuit court. The Court should focus on the sole issue before it—the merits of the preliminary injunction— not the merits of the underlying case, before the trial court has had a chance to review the issue.

I. Amedisys's argument misapplies the abuse of discretion standard of review.

Amedisys attempts to create a new standard of review to allow this Court to review the merits of the underlying action. Amedisys argues that because the question of the validity of the State Health Plan is a legal question, this Court may review the circuit court's order without deference to the lower court. This is an incorrect construction of existing law. First, Amedisys argues that factual findings are irrelevant to determine the validity of the new State Health Plan. *MRI at Belfair, LLC v. S.C. Dep't. of Health and Envtl. Control*, 379 S.C. 1, 7 n.4 664 S.E.2d 471, 474 (2008). In *Belfair*, the Court was asked to consider the validity of State Health Plan standards for MRIs. This question came to the Court after a full administrative hearing on the merits. In this case, the Court is not being asked to resolve a question concerning the validity of the State Health Plan. This Court is simply being asked to resolve whether the circuit court properly denied a preliminary injunction. While the validity of the Plan may be, in part, a question of law, this does not change the standard of review for denial of a preliminary injunction. Second, Amedisys mischaracterizes the Court's decision in *Brock v. Town of Mt. Pleasant*, Op. 27621 (S.C. Sup. Ct. filed April 13, 2016). The Court in *Brock* discussed the standard of review for review of a declaratory judgment based on a question of law. The standard of review for a declaratory judgment is "determined by the underlying issues." *Id.* In *Brock*, the Court was asked to review whether an action violated the Freedom of Information Act. This required the Court to examine the statute, which is a question of law. *Id.* This reasoning is not applicable to this case because this case is not an appeal of a declaratory judgment.

Both *Belfair* and *Brock* were cases that had undergone full hearings on the merits and the courts were being asked to review the underlying legal conclusions. If Amedisys had allowed the circuit court to conduct a full hearing on the merits and consider the validity of home health standards in the Plan, the *Brock* and *Belfair* standards of review may have been applicable. Instead, Amedisys appeals the denial of its preliminary injunction and is attempting to have this Court improperly review the validity of the State Health Plan's standards for home health. This question is not properly before this Court. The only issue before this Court is whether the circuit court abused its discretion in denying the preliminary injunction.

II. The circuit court did not abuse its discretion in concluding that Amedisys cannot show a likelihood of success on the merits.

A. The current Plan is valid and provides meaningful standards to home health providers seeking a certificate of need.

The essence of Amedisys's complaint is that the State Health Plan does not contain objective standards by which DHEC can review CON applications and determine whether to grant or deny a CON application. This issue goes to the merits of the underlying action and should only be considered by this Court to the extent necessary to determine whether the circuit court's denial of the preliminary injunction was proper. *See AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009).

Nonetheless, the current Plan is in compliance with statutorily mandated standards for the review and granting of a CON for a home healthcare provider. Appellant is correct that the current Plan adopts a new set of standards for home health CON applications. Previous plans employed a formulaic approach to determine need. The calculation formula is described in the 2012-2013 State Health Plan at Paragraph 4 of "Certificate of Need Standards," at XII-13, as follows:

> The need methodology creates statewide use rates for four population groups (0-17, 18-64, 65-74, 75+) based on 2011 utilization data; 75% of these rates are applied against the projected 2013 populations for each county to get a total number of estimated patients in need. It then takes the actual number of patients served in 2011 and multiplies them by the population growth factor to project the number of patients to be served by the existing home health agencies in the county for 2013. The projected number of patients served by the existing agencies is subtracted from the total estimated number of patients in need. If there is a difference of 100 or more patients projected to be in need, then another agency could be approved for that county.

This formula projected inaccurate need across the state for home health services, and rarely showed any need in any county for services. Even in the counties with a projected need, the utilization rate had to reach 100 to show a "need" under the Plan. The fact that there are now many more applications pending for home health services than in years past is further evidence of the pent up need for home health services due to years of an overly restrictive formula.

DHEC suspended the CON program from July 1, 2013 to June 30, 2014. During the suspension of the program, providers could not obtain a CON even if they applied. During the program shut down, DHEC issued licenses to multiple home health providers. After obtaining licenses and proper certification through Medicare and Medicaid, these home health agencies began serving numerous patients. When these providers entered the market during suspension of the program it was discovered "that there's a huge need for home health. People are being treated outside of hospitals now, which has essentially, completely been a metamorphosis in home health treatment." *See* Transcript of Record at 34-35 (R. 226-227). As DHEC noted, during the suspension "what we saw is that there were patients out there in need of services. And when we then went back and looked at our past formula . . . we realized it really wasn't matching up" with the actual need in the area. Transcript of Record at 25-26 (R. 217-218). Furthermore, the new home health agencies operating "weren't affecting the ability of already

existing providers to serve. . . ." Transcript of Record at 26 (R. 218). The suspension of the CON program revealed that the previous formula for home health was not working, and, most importantly, patients who had not been able to access home health services finally had their needs met. These agencies are still properly licensed, properly certified, and are now fully complying with current law to seek CONs so they will not be forced to discharge hundreds of home health patients.

The old formulaic approach was not working; therefore, DHEC began a thorough process for devising a new approach to fulfill unmet need for home health services. In all of the regional public hearings, providers and other interested parties expressed concern that need for home health services was not being met. As Ms. Biggers noted, "[t]here was such an intense discussion in the state health planning committee process. There was a full day meeting where [home health] was the only topic . . . . And then [the committee] came back and had another meeting. . . ." The home health industry intensely advocated for a revision to the Plan. As Mr. Mullins noted, "I have never seen a situation where an industry came together and all were advocating for a revision to the home health plan." Transcript of Record at 34 (R. 226). After receiving comments on home health from interested parties, it became clear to DHEC that a revision to the plan was necessary.

Courts should defer to an agency's interpretation of a statute unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Trident Medical Ctr. v. South Carolina Dep't. of Health and Envtl. Control*, 412 S.C. 341, 354, 772 S.E.2d 177, 184 (2015). Agencies entrusted with the interpretation and administration have expertise and skill in the area and the agency's interpretation "will be accorded the most respectful consideration and will not be

overruled absent a compelling reason." *Dorman v. Dep't of Health & Envtl. Control*, 350 S.C. 159, 167, 565 S.E.2d 119, 123 (Ct. App. 2002).

After careful consideration by the Department, the Plan now contains nine standards for DHEC to consider in evaluating home health applications.

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.

2. A separate application is required for each county in which services are to be provided.

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.

4. For the purposes of this Section, a rural county shall mean a county with a population of less than 50,000, according to the most recent projections of the South Carolina Revenue and Fiscal Affairs office as of the time the current Plan was adopted.

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.

6. Specialty home health providers are exempt from the need calculation applicable to full service home health agencies, but are otherwise subject to Certificate of Need.

7. The applicant should have a track record that demonstrates a commitment to quality services. There should be no history of prosecution, consent order, abandonment of patients in other business operations, or loss of license. However, any consent orders or loss of licenses related to licenses that were obtained from the Department between July 1, 2013 and May 22, 2014 without a Certificate of Need shall not be grounds for denial of a Certificate of Need application pursuant to this Section. The applicant must provide a list of all licensed home health agencies it operates and the state(s) where it operates them.

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.

2014-2015 SHP at XII-7 through XII-8 (R. 320-321). In addition, the Plan includes an inventory of existing home health agencies in the state and 2013 utilization data (the most recent data available) for home health agencies, showing the total number of persons served and total visits per home health provider. 2014-2015 SHP at XII-8 (R. 321). The Plan requires an applicant to demonstrate it will serve at least 25 patients projected to be in need for rural counties and 50 for non-rural counties. Standard 3 provides a non-inclusive list of ways in which an applicant can support its projection. 2014-2015 SHP at XII-7 (R. 320).

The new home health standards are not based on a complex mathematical formula, but the CON Act does not require mathematical formulaic precision for assessing need; it requires a

reasonable projection of need. S.C. Code Ann. §44-7-180(B)(2). In fact, there are several services or facilities in the State that do not have formulaic projections of need or a cap on maximum number of beds, patients, or applications that can be approved. These include: Ambulatory Service Centers, Inpatient Hospice Facilities, Emergency Hospital Services, and Positron Emission Mammography. Non-formulaic standards for all of the above have existed in the Plan for a number of years and have not been challenged.

CON applications must not only comply with the standards in the Plan, but also with applicable regulatory criteria. *See MRI at Belfair v. S.C. Dept. of Health and Envtl. Control,* 379 S.C. 1, 8, 664 S.E.2d at 471, 475, (2008); *see also* S.C. Code Ann. Reg. 61-15 § 307 ("The Department may refuse to issue a [CON] even if an application is in compliance with the South Carolina Health Plan but is inconsistent with project review criteria or departmental regulations."). It is also important to note that although the standards for home health in the Plan have changed, the project review criteria have not. An applicant will still have to show compliance with the project review criteria for its application to be granted. These criteria are extensive and include: need, acceptability, distribution, medically underserved groups, record of the applicant, and financial feasibility. *See* S.C. Code Ann. Reg. 61-15 § 802 (identifying 33 separate criteria, many with subparts). The presence of workable standards and many objective criteria ensures the home health applications will only be granted after a careful review by DHEC.

The Respondents in the case have all spent considerable time and expense in filing their applications to provide home health services. Despite the prolonged and detailed review process which culminated in issuance of the current Plan in August of 2015, Amedisys waited until February of 2016 to raise its complaints. Notably, no Amedisys representative spoke at any of the four regional public hearings held in June 2015, to express concerns about the proposed Plan

Standards.[3] Instead, Amedisys chose to wait until all applications had been deemed complete and were eligible to be granted, S.C. Code Ann. § 44-7-210(A) (DHEC may begin granting or denying applications 30 days after the applications are deemed complete), thereby self-creating an emergency situation and using the court system as its personal lifeboat.

The South Carolina Supreme Court has already considered the issue in this case. In *MRI at Belfair, LLC v. S.C. Dep't. of Health and Envtl. Control*, 379 S.C. 1, 664 S.E.2d 471 (2008), the Court reversed a DHEC Board decision to affirm an Administrative Law Court ("ALC") decision to grant a CON for an MRI,[4] on grounds that although the applicant complied with Plan standards, the Board did not require it also to demonstrate compliance with separate regulatory criteria. *Id.* at 9, 664 S.E.2d at 475. More importantly for the present case, the Court held that the Plan standards for MRI services did not violate the CON Act. *Id.*

As held in *MRI at Belfair*, a CON applicant for home health services must not only comply with Plan standards, it must also comply with several project review criteria set forth in section 802 of DHEC Regulation 61-15. Moreover, *MRI at Belfair* makes it clear that Plan standards need not be formulaic, completely objective, or reflective of the precise language in the CON Act. In *MRI at Belfair* the Court upheld the following Plan standards for MRIs:

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.

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[3] Regional public hearings were held pursuant to S.C. Code Ann. § 44-7-180(C). These hearings are part of the public record and are available from DHEC.

[4] Under the former procedure, appeals of DHEC staff decisions went directly to the ALC. Appeals of ALC decisions went to the DHEC Board. That process now is reversed. S.C. Code Ann. §§ 44-7-210; 44-7-220.

MRI at Belfair at 6-7, 664 S.E.2d at 474.

These standards are no more objective than the home health standards in the 2015 Plan. MRI standard 2, for example, does not dictate what the Department must do in the face of shared mobile MRI units, but leaves it to the Department's consideration. MRI Standard 1 in *MRI at Belfair* merely states a hospital "should" have at least one MRI unit. By contrast, Standard 3 of the current home health standards requires an applicant to demonstrate it will serve at least 50 patients in a non-rural county and 25 patients in a rural county (defined as a county with a population less than 50,000). Standard 3 does not prescribe exactly how an applicant must project patient volume. Instead, it provides an objective, intelligible, and non-inclusive list of four ways in which an applicant can meet its burden.[5] As with the standards approved in *MRI at Belfair*, the present home health standards may not "give specific projections of need," but they unmistakably "provide guidance for distribution and utilization" in compliance with CON Act directives. *See MRI at Belfair* at 7, 664 S.E.2d at 474.

B. Amedisys's Due Process rights are not implicated.

Additionally, Amedisys argues that its due process rights are implicated because it cannot participate in the regulatory process without "intelligible standards" in the State Health Plan. Even a cursory glance at the new home health standards, however, reveals they are perfectly intelligible. Moreover, Amedisys itself chose not to fully participate in the regulatory and statutory process of amending the State Health Plan, sending no speakers to any of the four

[5] Amedisys misstates DHEC "admitted" at a public hearing that its standards are not objective. DHEC made no such admission. Instead, DHEC staff stated it was up to each applicant to demonstrate that it could satisfy the objective patient volume requirements of standard 3. As DHEC attorney Ashley Biggers explained, the burden of demonstrating compliance with standard 3 will be on the applicant. Transcript of DHEC Open Forum Meeting at 27:15- 28:6; 31:5-31:22 (R. 158:15-159:6; 162:5-22).

public hearings DHEC held. Finally, the regulatory process is still in place. Due process does not require a perfect process; it requires a minimum of (1) adequate notice, (2) adequate opportunity for a hearing, (3) the right to introduce evidence, and (4) the right to confront and cross-examine witnesses. *In re Vora*, 354 S.C. 590, 596, 582 S.E.2d 413, 416 (2003). These "requirements are not technical; no particular form of procedure is necessary." *Id.*

Amedisys is free to oppose a CON application, demand a public hearing, and argue against a CON throughout the administrative process. It can also bring a contested case in the Administrative Law Court. S.C. Code Ann. § 44-7-210(E). Amedisys will have the opportunities it always has had to participate in the process and can evaluate each CON application to determine whether it wishes to enforce its rights in opposition. The standards in the Plan are clear and defined. The analysis may be new, but requiring a party to prepare its argument based on defined standards is not a loss of due process. It simply requires that Amedisys update its legal analysis appropriately.

C. The Court should defer to DHEC's interpretation of the law.

Courts will defer to an agency's interpretation of a statute unless the interpretation is "arbitrary, capricious, or manifestly contrary to the statute." *Trident Med. Ctr. v. S. Carolina Dep't of Health & Envtl. Control*, 412 S.C. 341, 354, 772 S.E.2d 177, 184 (Ct. App. 2015). The *MRI at Belfair* court recognized this limitation as well when it concluded, "the Board did not exceed its statutory authority in granting the CON in light of the Plan standards." *Belfair,* at 7, 664 S.E.2d at 474. DHEC has decided after a careful review and a lengthy process that the current projection of need is preferable to the old formulaic approach. The Court has no reason to substitute its judgment for that of DHEC.

III. The circuit court did not abuse its discretion in concluding that Amedisys cannot show irreparable harm if home health licenses were granted.

The purpose of an injunction is to preserve the status quo pending litigation to avoid irreparable harm to a party. *Id.* at 455, 626 S.E.2d at 37. Amedisys has no valid argument that it will be harmed by the pending CON applications moving forward.

Amedisys claims the irreparable harm it will suffer is the "loss of its statutorily protected ability to participate meaningfully in DHEC's consideration of Amedisys's own and other applicant's applications." The argument cannot withstand scrutiny. First, as discussed previously, the Plan has clear and workable standards. Amedisys is able to review the standards for home health in the Plan like any other home health provider. Should another provider seek to operate in the same defined area as Amedisys, it still has, as it always has, the right to claim "affected person" status, to request a public hearing, and to oppose such applications. *See* S.C. Regs. 61-15, §103.1; S.C. Code Ann. §44-7-130(1). An injunction serves no purpose here. Amedisys has nine standards to evaluate the merits of its or other's home health applications, Amedisys has the right to apply to serve in any county, and Amedisys has never lost any right to participate in DHEC's process.

Amedisys has made no showing of irreparable harm on any front. "Whether 'a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules.'" *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36 (Ct. App. 2005). In this case, the logical harm would be financial in the form of lost business. However, Amedisys does not claim financial harm and instead examines case law where other forms of irreparable harm are found.

Amedisys first cites *Bethel M. E. Church v. City of Greenville*, 211 S.C. 442, 451, 45 S.E.2d 841, 845 (1947), apparently for the position that Amedisys will suffer unquantifiable damages. *Bethel* does not stand for the proposition that irreparable injury can be shown when damages are difficult to calculate. *Bethel* involved a continuing nuisance concerning the blocking of a public street. The court concluded that the nominal damages the Plaintiff would receive from a remedy at law were not adequate and equity could intervene to prevent the closure of the road. This case is not analogous to the present. The Plaintiff in *Bethel*, a church, could not show financial injury. If Amedisys were actually harmed they should be able to clearly show financial injury in the form of lost or declining business.

Next, Amedisys cites two South Carolina cases for the proposition that an injunction is proper if there will be waste. First, these cases both only apply to real property. *See Kinsler v. Clarke*, 11 S.C. Eq. 617, 617 (S.C. App. Eq. 1837); *Cty. Council of Charleston v. Felkel*, 244 S.C. 480, 484, 137 S.E.2d 577, 578 (1964). *Kinsler* discusses the removal of timber from a piece of land in litigation and concludes that the timber could not be removed because it was the source of the value of the land. *Kinsler*, 11 S.C. Eq. 617, 617. Second, *County Council of Charleston* discusses preventing the sale of land while litigation is pending. 244 S.C. at 484, 137 S.E.2d at 578. Both of these cases illustrate that an injunction is proper to preserve the status quo of land while litigation is pending. Here, were there waste, it would appear in the form of financial injury. If the asset is the right to serve in a particular county—as Amedisys claims—the waste would be the lost revenue from that county.

Lastly, Amedisys goes on to cite *Standard Lighting Distributors, Inc., v. Sweatman*, 2006 WL 4911571 (S.C. Com. Pl, October 9, 2006). Amedisys claims this decision supports an injunction when a restriction on competition is involved. This is incorrect, *Standard Lighting*

reasoned that an injunction was proper to enforce a covenant not to compete when the Plaintiff showed it would "suffer disruptions to its business, loss of good will, and loss of customer relationships which cannot be quantified by a monetary amount or rectified by a monetary judgment." *Id.* The court's finding of irreparable harm does not mention any restriction of the market. In fact, applying the actual reasoning of the court, Amedisys again fails to show irreparable harm as it cannot show any disruption, loss of good will, or customers.

After a review of the above case law, it becomes evident that Amedisys has suffered no harm. It cannot prove any harm financially and it cannot make a showing of harm under any other case law it cites.

IV. The circuit court did not abuse its discretion in concluding that Amedisys has an adequate remedy at law.

A party seeking an injunction must show that it has no adequate remedy at law. *Milliken & Co. v. Morin*, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009). Injunctive relief is not appropriate when a party has not exhausted administrative remedies. *Garris v. Governing Bd. of S. Carolina Reinsurance Facility*, 319 S.C. 388, 390, 461 S.E.2d 819, 821 (1995). Amedisys not only has an adequate remedy at law, it has several remedies at law to protect its interest.

Amedisys has the right to proceed before the circuit court for a declaratory judgment that the State Health Plan is invalid. Amedisys has not allowed the court to fully consider the issues it raises in its Complaint. Instead, Amedisys has purposefully deprived the circuit court of that power by couching the issue in equity by means of a preliminary injunction. "In order to justify a court of equity in refusing to take jurisdiction, the remedy at law must be adequate, and must attain the full end and justice of the case." *Chisolm v. Pryor*, 207 S.C. 54, 60, 35 S.E.2d 21,

24 (1945). Surely a full hearing on the merits would satisfy an adequate legal remedy; Amedisys just refuses to take this route.

Amedisys also has remedies available through the administrative process. When a CON is granted, the process in place allows an affected person to request a final review conference and thereafter a contested case hearing in the Administrative Law Court. *See* S.C. Code Ann. § 44-1-60; § 44-7-210. Upon the filing of a contested case, the CON approval is stayed pending resolution. Amedisys has challenged 150 home health applications in all 46 counties. Despite only operating in 25 counties, Amedisys seeks an injunction to prevent any application in the state's 46 counties from being approved. This request is overly broad, and one for which Amedisys does not have standing. However, Amedisys will have the opportunity to contest any CON that is granted for which it has standing. Amedisys should follow the proscribed procedure which allows it to request a contested hearing and also allows Amedisys to seek an appeal. Contrary to Amedisys's assertion, this approach does not require a case-by-case appeal. The Administrative Law Court can certainly consolidate cases for which an identical legal issue needs to be decided. Furthermore, the Court of Appeals would only have to consider the question of whether the State Health Plan is valid one time and that determination would be binding on all other cases in the Administrative Law Court.

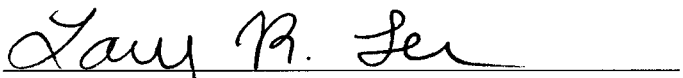
The administrative procedures in place have a mechanism to preserve the status quo until litigation is resolved. Amedisys cannot simply choose to opt out of this process because it is more convenient to file one appeal. This procedure ensures that the status quo remains and affords Amedisys a full hearing on the merits. Amedisys cannot claim it has no adequate remedy at law.

CONCLUSION

The circuit court correctly denied Appellant's request for preliminary injunction as Amedisys cannot show it would suffer irreparable harm if the injunction is not granted; cannot show the likelihood it would succeed on the merits of the litigation; and has an adequate remedy at law. For the foregoing reasons, this Court should:

1. Find that the circuit did not abuse its discretion in denying Amedisys's motion for a preliminary injunction, and
2. Remand to the circuit court for entry of appropriate orders.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Stuart M. Andrews, Jr.
SC Bar No. 000400
Daniel J. Westbrook
SC Bar No. 012939
Lacy R. Lee
SC Bar No. 100671
1320 Main Street, 17th Floor
Columbia, SC 29201
(803) 799-2000

Attorneys for National HealthCare Corporation and PruittHealth Corporation

Columbia, South Carolina

July _____, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge
Case No. 2016-CP-40-00818

Appellate Case No. 2016-000631

Amedisys SC, LLC..... ..... Plaintiff/Appellant

v.

South Carolina Department of Health and Environmental Control ..... Defendant,

And

National HealthCare Corporation, In-Care Home Health, Inc., Tri-County Home Health & 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 PHCHome Health and PruittHealth Corporation,..... 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, P.A., Hedgemark Brentwood Medical Services, Inc. d/b/a PHC Home Health are the..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondents National HealthCare Corporation and PruittHealth Corporation complies with Rule 211(b), SCACR.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Lacy R. Lee
Stuart M. Andrews, Jr.
SC Bar No. 000400
Daniel J. Westbrook
SC Bar No. 012939
Lacy R. Lee
SC Bar No. 100671
1320 Main Street, 17th Floor
Columbia, SC 29201
(803) 799-2000

July 25, 2016

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PROOF OF SERVICE

Pursuant to Rule 211(a), SCACR, I hereby certify that one copy of the printed and bound Final Brief of Appellant and Certificate of Counsel in the above-referenced matter was served on the Appellant and Respondents by hand-delivery and/or United States Mail to their attorneys at the following addresses:

Counsel Served:

By Hand Delivery
Ashley C. Biggers, Esq.
South Carolina Department of Health
& Environmental Control
2600 Bull Street
Columbia, SC 29201

Counsel for South Carolina Department of Health and Environmental Control

By Hand Delivery
E. Wade Mullins, III, Esq.
Bruner, Powell, Robbins, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Columbia, SC 29204

Counsel for 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

By Hand Delivery
Steve A. Matthews
Haynsworth Sinkler Boyd, P.A.
1201 Main Street
Columbia, SC 29201-3226

By Mail
Andrea H. Brisbin, Esq.
Haynsworth Sinkler Boyd, P.A.
134 Meeting Street, 3rd Floor
Charleston, SC 29401

By Mail
Sarah P. Spruill, Esq.
Haynsworth Sinkler Boyd, P.A.
ONE North Main, 2nd Floor
Greenville, SC 29601-2772

Attorneys for Amedisys SC, LLC.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Lacy R. Lee

Stuart M. Andrews, Jr.
SC Bar No. 000400
Daniel J. Westbrook
SC Bar No. 012939
Lacy R. Lee
SC Bar No. 100671
1320 Main Street, 17th Floor
Columbia, SC 29201
(803) 799-2000

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