

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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ON CERTIORARI FROM THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY  
Edgar W. Dickson, Circuit Court Judge

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Appellate Case No. 2016-001983  
Case No. 2010-CP-40-1095

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S.C. SUPREME COURT

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

v.

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

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**BRIEF OF RESPONDENTS**

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## **COUNTERSTATEMENT OF ISSUES ON APPEAL**

1. Whether the Court of Appeals and the Circuit Court correctly held that the General Assembly did not intend for P&A, when conducting inspections of “living conditions” in residential facilities for the developmentally disabled or handicapped, to review medical records of residents of those facilities, unless such information is contained in “plans of care?”
2. Whether P&A’s objections to the decision of the Court of Appeals involve policy issues for the General Assembly?
3. Whether P&A’s construction of § 43-33-350(4) is entitled to deference?
4. Whether P&A’s public policy arguments, which do not address the specific terms of the statute, are matters for the General Assembly?

## STATEMENT OF THE CASE

This action was filed on February 16, 2010, by the entity Protection and Advocacy for People With Disabilities, Inc. (“P&A”). The Defendants were the Department of Disabilities and Special Needs and a number of its officials, herein collectively referred to simply as DDSN. P&A sought an order requiring DDSN to provide P&A access to certain medical records of people with developmental and other disabilities who live in residential care facilities for such persons. The records in issue are primarily the medical records of individual residents of the facilities, particularly the medication administration records (“MARs”). P&A’s enabling legislation provides that when there is a request that P&A investigate a complaint about a facility, P&A is authorized to inspect and copy various records which bear on the subject matter of the individual complaint, “except for the individual medical, treatment or other personal records of other persons in the program or facility.” S.C. Code Ann. § 43-33-370(2)(2015)(emphasis added).

P&A sought to review individual medical records when performing certain inspections that are not in response to individualized complaints about the facilities. P&A cited § 43-33-350(4), which provides only that P&A may conduct certain unannounced inspections of facilities, and that P&A may “review the living conditions of a residential facility, including the plans of care for individuals. . . .” (Emphases added.)

DDSN filed an Answer on March 26, 2010, denying that P&A's enabling legislation provided P&A with authority to have access to any personal records of developmentally disabled persons living in certain group residences, other than "plans of care," the term used in the applicable statute, and the records of any individual on whose behalf a complaint has been filed.

After cross motions for summary judgment were denied, the case was tried by Judge Dickson without a jury on October 3, 2012. On November 29, 2012, Judge Dickson issued an order holding that the governing statute did not authorize P&A to have access to the disabled residents' records (except for "plans of care"), and dismissing this action. App. 8-24. P&A thereafter filed a motion to reconsider on December 17, 2012. App. 474. Judge Dickson denied the motion to reconsider on December 11, 2014, except for one small amendment in a footnote, to which the Defendants consented and for which they provided suggested language for the amendment, which the circuit court adopted. *See* App. 502. That amendment was embodied in an Amended Order, also filed on December 11, 2014. App. 38. Except for the minor change referenced in its n.2, App. 46, the Amended Order is the same as the original Order.

P&A appealed to the Court of Appeals. After hearing oral argument, the Court of Appeals on June 8, 2016, issued a 10-page decision affirming the Circuit Court. App. 617-626. The Court of Appeals concluded that "it is the clear intent of

the General Assembly not to permit P&A to review individual medical records in the course of unannounced inspections of the living conditions of the residential facilities. . . .” App. 624.

P&A filed a Petition for Rehearing on June 23, 2016. App. 627. The petition was denied on August 22, 2016. App. 653. P&A filed its Petition for Certiorari on September 21, 2016. Certiorari was granted on May 30, 2017.

## STATEMENT OF FACTS

### A. Background.

P&A is a corporation that has been given certain powers and duties under state law. S.C. Code Ann. §§ 43-33-310, *et seq.* The existence of such an entity is a prerequisite to the State receiving certain federal funding. *See* 42 U.S.C. § 15043.

As detailed in the Complaint, the basic facts of this case are that P&A has sought to review “resident[s]’ records, including those containing health information. . . .” App. 74. P&A sought to review that self-defined, virtually all-inclusive category of records in the course of conducting “team advocacy inspections” of “living conditions” in facilities in which developmentally disabled or handicapped persons reside. These terms are found in part of P&A’s enabling statute, S.C. Code Ann. § 43-33-350(4), which provides as follows:

Team advocacy inspections are unannounced visits to review the living conditions of a residential facility, including the plans of care for individuals in a residential care facility and a community mental health center day

program. Only the coordinator of the team advocacy project or the coordinator's designee is authorized to perform reviews of plans of care.

(Emphases added). As the statute specifically provides, team advocacy inspections pertain only to "living conditions," and the only records referenced in the statute are "plans of care."

In a "team advocacy" inspection, a P&A employee called a "team advocate" and a volunteer make unannounced visits to residential facilities. App. 124. The role of the volunteer is to

look at the conditions, the closets, the sleeping arrangements, talking with the residents to see what it's like for them, are they getting the care that they want, would they prefer to live there, or would they rather live somewhere else?

App. 125.

For about 20 years, starting in the 1980s, P&A had limited its team advocacy inspections to Community Residential Care Facilities ("CRCFs"), which are licensed by DHEC rather than DDSN. See <http://www.state.sc.us/dmh/crcf/crcf.htm>. P&A conducted those inspections pursuant to contracts with the Department of Mental Health ("DMH"), and acting as the designee of that agency, rather than pursuant to § 43-33-350. App. 138-139.

In 2007, P&A decided that it would begin for the first time to conduct team advocacy inspections in facilities licensed by DDSN, as opposed to those licensed

by DHEC, and so informed DDSN by letter. App. 91-92. P&A's 2007 letter advised DDSN that P&A was planning to start inspecting certain types of DDSN-licensed facilities, but the letter made no reference to review by P&A of any particular records. *Id.*<sup>1</sup>

P&A decided that it would at first concentrate on the DDSN group residences called Community Training Homes (II), generally known as "CTH IIs." These residences were described at trial as "people's homes . . . in neighborhoods where typically people live in, three or four persons that are unrelated get 24-hour supervision, personal care and training." App. 182. A typical CTH II is a three-bedroom home in a neighborhood. App. 182-183.

Another year and a half elapsed before P&A advised DDSN by letter of June 11, 2009, that P&A was about to start making team advocacy inspections of the DDSN-licensed CTH II facilities.<sup>2</sup> App. 88-89. Other than an indication that P&A would "review records" during those visits, there was no particular reference to any specific records.

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<sup>1</sup> DDSN has never disputed that CTH IIs are "facilit[ies] providing residence to . . . developmentally disabled or handicapped person[s], and for which P&A "may conduct team advocacy inspections" of "living conditions." §43-33-350(4). The only issue in this case is whether the term "plans of care" includes the medication administration records and other medical records of each resident.

<sup>2</sup> There was apparently no additional correspondence between P&A and DDSN during this period of approximately 18 months.

Beginning in that same month, June 2009, and continuing through August 2009, P&A conducted a few team advocacy inspections in which MARs were reviewed by P&A. App. 115; App. 204-274. At some point during the summer of 2009, DDSN became aware of these reviews of MARs by P&A. *See* App. 93. This led to one or more meetings and written communications between DDSN and P&A in the middle of 2009. App. 88-95, 96.

The result of these discussions was that on August 31, 2009, Dr. Laurent, DDSN's Director, advised P&A that DDSN regarded a "plan of care" as being one specific document:

The Agency's attorney, Ms. Tana Vanderbilt and your attorney, Ms. Anna Marie Darwin, have been in discussions since July 1, 2009, regarding the law pertaining to team advocacy inspections.

S.C. Code Ann. § 43-33-350(4) gives P&A the provision to make unannounced visits to review the living conditions of residential facilities, and specifically states "including plans of care for individuals in a residential care facility." The disagreement between our attorneys is over the interpretation of "plans of care." While we appreciate P&A's efforts to conduct inspections in community training homes, our obligation is to ensure that the rights of our consumers are protected.

\* \* \*

We have informed our contracted providers of our position for CTH II staff to release only the residential treatment/support plan, which we consider the same as the plan of care, to the P&A team advocacy coordinator.

App. 90 (emphasis added). P&A filed the present action several months later.

At the trial of this case, the testimony of P&A's Executive Director reiterated the broad nature of P&A's demands for broad oversight powers and broad access to residents' personal, medical and treatment records, previously set forth in the Paragraph 57 of the Complaint. Ms. Prevost testified as follows:

Q. So is the focus of concern in reviewing these records the performance of the staff in terms of the oversight of medical care and the provision of medication to the residen[ts] of these homes?

A Yes. As I understand it, the responsibility would be that the operator signs onto when they send money to keep someone in these facilities is that they will provide oversight of all the aspects of care.

App. 134-135 (emphases added). Again, however, the statute provides that team advocacy inspections extend only to "living conditions." § 43-33-350(4). The Complaint and the testimony of Ms. Prevost leave no doubt that P&A is claiming authority to conduct oversight "of all the aspects of care" at CTH IIs, rather than merely "living conditions," the term used in the statute, and in the course of such oversight, to be able to review all records pertaining to "all aspects of care," as opposed merely to "plans of care." P&A's claims about the interpretation of the statute must therefore be read in conjunction with P&A's broader claim that all aspects of the operation of a CTH II, and not just living conditions, are subject to oversight by P&A.

**B. Statutory provisions pertaining to P&A.**

The powers and duties of P&A are set forth in § 43-33-350. The specific power involved in the present case is the power to “conduct team advocacy inspections . . . to review living conditions” in facilities that provide residences to developmentally disabled persons. To put this specific grant of authority in context, a review of the general powers and duties of P&A, set forth in § 43-33-350, is appropriate. There are four powers in all. Only two are relevant to this action.<sup>3</sup> The one directly involved in this case is set forth in § 43-33-350(4), already quoted in part and discussed above. That subsection provides for the team advocacy inspections of facilities. The subsection provides in its entirety as follows:

[P&A] may conduct team advocacy inspections of a facility providing residence to a developmentally disabled or handicapped person. Inspections must be completed by the system’s staff and trained volunteers. Team advocacy inspections are unannounced visits to review the living conditions of a residential facility, including the plans of care for individuals in a residential care facility and a community mental health center day program. Only the coordinator of the team advocacy project or the coordinator’s designee is authorized to perform reviews of plans of care. The designee must

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<sup>3</sup> The other two powers, which do not concern the issues in this case, are set forth in §§ 43-33-350(1) (P&A “shall protect and advocate for the rights of all developmentally disabled persons . . . and for the rights of other handicapped persons by pursuing legal, administrative, and other appropriate remedies to insure the protection of the rights of these persons”) and 43-33-350(3) (providing for the prioritization of the services that P&A provides to its clients).

meet criteria developed by the Joint Legislative Committee on Mental Health and Mental Retardation, after consultation with the system and the South Carolina Association of Residential Care Homes. The system shall prepare a report based on the inspection which must be submitted to the Joint Legislative Committee on Mental Health and Mental Retardation, South Carolina Department of Health and Environmental Control, and State Department of Mental Health.

(Emphases added.)

The other power of P&A pertinent to this case is set forth in § 43-33-350(2). It authorizes P&A to “investigate complaints by or on behalf of any developmentally disabled or handicapped person.” The records available in the course of those investigations are set forth in § 43-33-370(2). By contrast, § 43-33-350(4), quoted above, provides authorization for P&A to conduct general random inspections of “living conditions” in facilities in the absence of such specific complaints.

**C. Description of the document considered the “plan of care” by DDSN.**

The specific document that DDSN has always regarded as the “plan of care” is in the record as Exhibit 1 to the Lacy Affidavit, and also as Defendants’ Trial Exhibit 1. App. 275-298.<sup>4</sup> Its title is “Service Coordination Annual Assessment.” That specific document is a form containing, among things, a formal, standardized

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<sup>4</sup> Dr. Lacy of DDSN testified that the two documents were very similar to each other, App. 189, and that Affidavit Exhibit 1 was a previous edition of Trial Exhibit 1.

assessment of the person's needs prepared by the individual's service coordinator. The service coordinator gathers information from the person, family members, friends, service providers and medical care providers and then works with the person and the family to determine what services would best address the identified needs. The resulting document, i.e., the plan of care, "typically includes the medical and other services to be provided, their frequency, and the type of provider to furnish them." App. 43 (quoting Lacy affidavit, ¶¶ 3, 4). Dr. Lacy's testimony was to the same effect. Ap. 192-195.

A review of Def. Ex. 1, App. 275-298, confirms that it contains a certain amount of medical information. DDSN has not claimed that P&A cannot review any medical information at all. Rather, DDSN contends that the statute only permits P&A to review the one document regarded as the "plan of care." To the extent that Def. Ex. 1 contains medical information, the General Assembly has obviously authorized P&A to review such information, as long as it is in that document. However, DDSN submits that the General Assembly did not authorize P&A to review any other documents that may contain medical information, if indeed there are any other such documents in existence that could be described as "plans," as opposed to "records."

DDSN has at all pertinent times regarded this document (or its predecessors that had different names but the same functions), and no other document, to be the “plan of care.” As the circuit court held,

[Exhibit 1 to the Lacy Affidavit] . . . is the document generally referred to as the “plan of care.” This meaning of the term is one that has had long usage. *Id.*, Par. 6. While P&A claims that the term also applies to other documents, P&A has not disputed any of these facts set forth in the Lacy affidavit, nor did P&A provide any evidence to the contrary in any respect.

App. 43 (emphasis added).

### **THE OPINION OF THE COURT OF APPEALS**

The Court of Appeals correctly held as follows:

1. “Section 43-33-370 explicitly limits the inspection of ‘individual medical, treatment or other personal records’ by P&A to those of a resident upon whose behalf a proper complaint requesting investigation has been received. S.C. Code Ann. § 43-33-370(2) (2015).” App. 624.

2. The court rejected P&A’s argument that it had additional authority to review individual medical records as part of its general inspection power: “To accept this proposition would render the limitation of inspection of such records in section 44-33-370(2) meaningless and would lead to an absurd result, as P&A could simply announce during an investigation of a complaint pursuant to section 44-33-370 that it was making an unannounced inspection pursuant to section 44-

33-350(4), thereby entitling it to review the individual medical records of non-complaining residents—which is explicitly prohibited by section 43-33-370.” *Id.*

3. For those reasons, the court concluded that “we hold section 44-33-350(4), read in conjunction with section 43-33-370(2), evinces a clear intent on the part of the General Assembly to exclude the right to review the personal medical records of developmentally disabled and handicapped persons from P&A’s authority to view documents setting forth the plans of care of these persons during its unannounced inspections of facilities housing them.” App. 624-25.

### **ARGUMENT**

The sole issue in this case is one of statutory construction. The Court of Appeals held that “Upon examination of the relevant statutes, we find it is the clear intent of the General Assembly not to permit P&A to review individual medical records in the course of unannounced inspections of the living conditions of the residential facilities and, therefore, affirm the trial court.” App. 618. Specifically, and after a detailed review of all pertinent parts of P&A’s enabling act, the Court of Appeals held that “the General Assembly has not deemed it appropriate to make the medical records of the residents in question available for review to P&A during its Team Advocacy inspections.” App. 625. In dismissing Plaintiff P&A’s claims, this Court noted that the State’s public policy regarding the issues in this case had

been set forth in the statutes, and that “[a]ccordingly, P&A's policy arguments are more properly addressed to the General Assembly.” *Id.*

As will be demonstrated below, most if not all of P&A’s arguments merely seek to argue the policy issues which the Court of Appeals correctly held to be matters for the General Assembly.

1. **The Court of Appeals and the Circuit Court correctly held that the General Assembly did not intend for P&A, when conducting inspections of “living conditions” in residential facilities for the developmentally disabled or handicapped, to review medical information in the records of residents of those facilities, unless such information is contained in “plans of care.”**
  - a. **P&A’s enabling act, read as a whole, precludes P&A’s broad claim of power to inspect any and all medical records of disabled residents.**

P&A’s first argument is that “[t]he General Assembly intended to grant P&A broad authority when conducting Team Advocacy inspections, and that “[t]o effectuate the intent of the General Assembly, P&A must be allowed to inspect MARs.” Br. of Pet. at 9. However, this contention merely assumes that which is to be proven. P&A’s concept of the intent of the General Assembly is a construct of P&A’s own making, and is inconsistent with the limited language actually used by the General Assembly to express its intent.

As both lower courts correctly held, a reading of the entire enabling act makes it clear that the General Assembly stopped well short of granting P&A the kind of “broad authority” P&A now asserts. The General Assembly limited team

inspections to “living conditions,” and limited the kinds of records reviewable in those inspections to “plans of care.” § 43-33-350(4). Both of these limitations effectively prohibit the kind of unlimited record review now sought by P&A. As the Court of Appeals held, “the means with which P&A has been empowered to achieve [protection and advocacy for its constituency] are not unfettered. Rather, the General Assembly placed limitations on P&A’s authority. . . .” App. 624 (emphasis added).

P&A cites only the very general language of § 43-33-310 in support of its contention that the General Assembly must have intended to permit P&A to inspect more records than the statutory language indicates. However, that section merely expresses “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.” *Id.* Under P&A’s reading, this language would effectively permit P&A to do whatever it wants in the course of its self-defined mission, regardless of the language of the statute and the effect of such actions on the rights of handicapped citizens themselves. As will be shown, however, this general policy language is controlled by the specific language of the parts of the enabling legislation which set forth the specific powers of P&A, as provided by well-settled principles of statutory construction. *See, e.g.,*

*Wooten ex rel. Wooten v. S.C. Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999)”[a] specific statutory provision prevails over a more general one”). And, as the Court of Appeals held, “[t]he plain language of a statute is considered the best evidence of the legislature’s intent.” App. 623, quoting *Perry v. Bullock*, 409 S.C. 137, 140, 761 S.E.2d 251, 253 (2014). It is that language, and not P&A’s imagined version of what the General Assembly may have intended, that controls.

Section 44-33-350(4), the subsection that authorizes P&A to conduct team advocacy inspections of “living conditions,” references only one specific kind of document, that is, “plans of care for individuals in a residential care facility.” P&A argues that this term includes any and all medical records of those individuals. See App. 22-23. However, the language of a different section, § 43-33-370(2), provides for substantial limitations on P&A’s ability to examine the “individual medical, treatment, and or other personal records” of individual residents upon receipt of a complaint. A “complaint” is defined in § 43-33-340(5) as an allegation of “injury or deprivation with regard to [a resident’s] health, safety, welfare, rights or level of care.” Section 43-33-370(2) provides that upon receipt of such a complaint, P&A may

Inspect and copy any documents, records, files, books, charts or other writings which are maintained in the regular course of business by the program or facility and which bear upon the subject matter of the individual complaint, except for the individual medical, treatment or

other personal records of other persons in the program or facility.

(Emphases added.)

Because § 43-33-370 is the one instance in the statute in which the General Assembly referred to the kinds of individual medical records which P&A seeks to inspect, the Court of Appeals correctly turned first and foremost to that part of the enabling act in order to determine what was meant by the term “plans of care” in § 43-33-350(4). The court held that far from permitting broad inspections of those records, “Section 43–33–370 explicitly limits the inspection of ‘individual medical, treatment or other personal records’ by P&A to those of a resident upon whose behalf a proper complaint requesting investigation has been received. S.C. Code Ann. § 43–33–370(2) (2015).” App. 624.

The Court of Appeals observed that P&A’s suggested construction of the statutes

would render the limitation of inspection of such [individual medical] records in section 43–33–370(2) meaningless and would lead to an absurd result, as P&A could simply announce during an investigation of a complaint pursuant to section 43–33–370 that it was making an unannounced inspection pursuant to section 43–33–350(4), thereby entitling it to review the individual medical records of non-complaining residents—which is explicitly prohibited by section 43–33–370.

App. 624. In so holding, the Court of Appeals concluded that “the General Assembly apparently provided for such limited review of medical records under these statutes in recognition of the need for privacy as to medical records on the part of disabled individuals.” App. 625, n. 4. In the same vein, the Court of Appeals concluded that “these residents—like other citizens—are entitled to a level of privacy with regard to their medical records. . . .” App. 625. The Court of Appeals also agreed with the trial court that while “section 43–33–400 allows the inspection of medical records by P&A, this section specifically limits it to instances in which review is allowed pursuant to section 43–33–370(2).” App. 625, n. 4.

The decision of the Court of Appeals is supported by the familiar principle that “[i]n ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.” *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). In order to accept P&A’s contention that the General Assembly intended for P&A to have access to medical and personal records other than the plans of care, it would be necessary to “consider the particular clause being construed in isolation,” a practice which is frequently held to be an inappropriate way in which to construe a statute. *See, e.g., Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005).

P&A asserts that P&A would not “enter[ ] facilities with the improper purpose of obtaining access to as many personal documents as possible,” Br. of Pet. at 19, but offers no reason why the course of events predicted by the Court of Appeals would not occur. P&A also makes the conclusory assertion that “[t]he Court can give effect to the plain meaning of each statute without harming the other,” Br. of Pet. at 19, but this statement is also completely unexplained. DDSN submits that the Court of Appeals was correct in holding to the contrary, that is, that permitting P&A to inspect the MARs of all residents would be in direct conflict with the prohibition of access to such records if they were not the records of a resident on whose behalf a complaint had been lodged.

P&A also attempts to argue that by not including § 43-33-370(2)’s privacy limitations in § 43-33-350(4), the General Assembly meant to express the thought that the limitation did not apply to the latter section. Br. of Pet. at 16-18, citing *German Evangelical Lutheran Church of Charleston v. City of Charleston*, 352 S.C. 600, 576 S.E.2d 150 (2003) for the maxim “inclusio unius est exclusio alterius.” While the Court of Appeals did not address this argument (which was only presented to them in a different context, and not as P&A currently states it), the circuit court held that the stated principle actually works against P&A’s position: “The fact that plans of care are referenced, but no other types of records, is a compelling indication that the General Assembly intended for only those

records to be inspected.” App. 50. The General Assembly did not need to include the privacy limitations of § 43-33-370(2) within § 43-33-450(4), because the medical records to which those limitations applied were not included in the latter statute in the first place.

P&A contends that “the General Assembly did not place restrictions on what living conditions P&A may inspect when conducting a Team Advocacy Inspection . . . .” Br. of Pet. at 18. However, the use of the term “living conditions” in § 43-33-450(4) is itself a considerable limitation. The circuit court, whose Order is not addressed by P&A on this point, held as follows”

in common parlance, the term “living conditions” tends to refer to the physical surroundings in which a person lives, such as the sanitation of the residence and whether it is adequately heated and cooled. *See, e.g., South Carolina Dept. of Social Services v. Sims*, 359 S.C. 601, 604, 598 S.E.2d 303, 305 (Ct. App. 2004), where the term was used to describe the physical aspects of a home; *Benjamin v. Housing Authority of Darlington County*, 198 S.C. 79, 15 S.E.2d 737, 739 (1941)(rural housing act would “provide sanitary homes and living conditions for farm families of low income”). Additionally, this connotation of physical surroundings is clearly the meaning intended in other similar provisions of the Code. These include, for instance, § 31-13-180, which deals with moderate to low income housing, and provides that “a serious shortage of sanitary and safe residential housing . . . will contribute to the creation and persistence of substandard living conditions.”

Finally, even if the term “living conditions” extended as far as Plaintiff claims, which is surely not the case, this still would not change the very specific and

limited meaning that the term “plans of care” carries in this context, as discussed above. As a result, any argument of Plaintiff based on the use of the term “living conditions” in the statute is unavailing.

App. 51-52. In addition, as the circuit court noted, the evidence in the record pertaining to actual team inspections shows that there are a numbers of areas more commonly associated with the term “living conditions” and which P&A does in fact inspect, even without the ability to examine MARs:

The Court would also note that the record in this case contains a number of Team Advocacy Inspection reports relating to inspections that occurred before this action was filed. Those reports are typically around six pages long. They detail a number of matters that involve living conditions, such as resident privacy, fire hazard, maintenance, sanitation, housekeeping, food storage, accessibility, resident hygiene, clothing needs and resident safety. These reports demonstrate that even without access to personal medical records, P & A can still conduct thorough inspections of living conditions at the residences.

App. 48.

The circuit court’s holdings on these points relied on several additional rationales which the Court of Appeals did not reach, but which are consistent with the decision of the Court of Appeals. Specifically, the circuit court held that Sections 43-33-370(2) and 43-33-400 make it clear that the General Assembly could not reasonably have intended for P&A, in the course of team advocacy inspections of living conditions, to review the individual medical records of the

approximately 2,500 residents of CTH IIs licensed by DDSN (*see* App. 183), when the General Assembly prohibited P&A from reviewing the records of even one more person in a facility that has been the subject of an actual complaint of potential injuries or other deprivations. App. 46-47. (Section 43-33-400 provides that “any program or facility shall permit [P&A] to inspect and copy any record or documents provided for in 43-33-370(2).”) These conclusions were reiterated in the Order Denying Reconsideration. App. 27-33. Indeed, if the General Assembly had wanted to make the residents’ “individual medical, treatment or other personal records” even slightly more available to P&A, the logical place to start would have been to permit P&A to review those records pertaining to the other two or three persons residing in the same facility that had been the subject of an actual complaint. That would have permitted P&A to see whether the records of those other residents of the same facility were experiencing injuries or deprivations similar to those allegedly experienced by the resident on whose behalf the complaint was filed. Instead, the General Assembly placed even the medical and personal records of those co-residents off limits.<sup>5</sup>

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<sup>5</sup> P&A argues, Br. of Pet. at 17-18, that the two powers are different, as indeed they are, but offers nothing to offset the circuit court’s logical conclusion that if any broadening of the power to inspect individual records had been intended, the starting point for such broadening would have been the records of other residents of the same facility as to which a complaint had been filed.

b. **In this context, the meaning of the term “plan of care” in § 43-33-350(4) refers to a specific document with specific contents.**<sup>6</sup>

1. **The ordinary meaning of the language “plans of care.”**

The Court of Appeals held the term “plans of care,” as found in § 43-33-350(4), to be “an undefined term in the statute.” Based on its conclusions as discussed above, the Court of Appeals did not actually define the specific documents to which the term “plans of care” refers, but the court did not need to reach a conclusion on that point in light of its review of § 43-33-350(4) in conjunction with § 43-33-370(2).<sup>7</sup>

Should, however, this Court decide to inquire into the definition of that term, DDSN would refer this Court to the circuit court’s holding that the plain meaning

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<sup>6</sup> P&A claims that the use of the plural term “plans of care,” in the plural, means that the phrase must be generic and that other documents could also be regarded as “plans” of care. Br. of Pet. at 11. The circuit court rejected this claim, holding that “[t]he short answer to this is that each facility has more than one resident, each of whom will have a plan of care, so it is completely appropriate to refer to those specific plans, one per resident, in the plural.” App. 52. This conclusion of the circuit court (which P&A has not specifically challenged on appeal) is bolstered by language of the entire phrase in which the term appears: “. . . the plans of care for individuals [plural] in a residential care facility and a community mental health center day program.”

<sup>7</sup> The Court of Appeals declined to consider other grounds of affirmance on the well-known ground that when an appellate court’s determination of one issue is dispositive, it need not address remaining issues on appeal. App. 625 n.625. There is no reason to believe that the Court of Appeals found any alternative grounds to be “specious,” as P&A argues. Br. of Pet. at 13 n.7.

of the term “plan of care” connotes something different from a medical record, and specifically from a medication administration record. App. 47-48. As the court held, “[a] ‘plan’ is a document providing for guidance in the future. Thus, as typically defined in dictionaries, a “plan” is “a scheme or method of acting, doing, proceeding, making, etc., developed in advance.” *Id.* (Emphasis added, footnote omitted).

The court further held that “a plan of care is a guidance document that sets forth what will be provided to the person. On the other hand, most medical records, and especially the medication administration records Plaintiff seeks, are not advance planning documents, but rather are documentations of something that occurred in the past, specifically, documentations of the previous administration of medications.” *Id.* To put it even more simply, at least with reference to MARs, those documents are actually labeled “Medication Administration Records.”<sup>8</sup>

The Order further concluded that by limiting the records reviewable by P&A in the course of a review of “living conditions,” § 43-33-350(4), the General Assembly intended that P&A would be able to review plans of care in order to see whether the conditions in the facilities were responsive to the residents’ plans of

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<sup>8</sup> P&A argues that a “plan of care,” as that term has been used by DDSN, might also be considered “a record and not a plan,” because part of its contents can document past events. Br. of Pet. at 14-15. However, this contention is irrelevant, because the specific document referenced in Defendants’ Exhibit 1 is the document regarded as a “plan of care,” regardless of whether it has some characteristics of a record as well.

care. App. 48. However, the Order continues, “since the team advocacy inspections were to pertain only to living conditions, and not to each individual’s specific situation, the line was drawn by the General Assembly at plans of care.” *Id.*<sup>9</sup> Plaintiff’s claim of a right to review documentations of past events therefore fails to satisfy the most basic definition of what a “plan of care” might be. In the Order Denying Reconsideration, the court reiterated that “[t]he medication administration records (MARs) sought by Plaintiff in this case, as their descriptive title would suggest, are records that serve to document past occurrences, i.e., the administration of medications, and therefore fall outside the normal definition of what is meant by a ‘plan.’” App. 26.

P&A attempts to point out the various factual differences between team advocacy inspections and investigations of a specific complaint. Br. of Petitioner at 15-18. P&A has not, however, made any attempt to explain why the those differences should permit review of all residents’ medical and personal records, when other parts of the same statute prohibit P&A from reviewing the medical and personal records of even one more person.

## **2. Usage of the term “plan of care” by DDSN.**

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<sup>9</sup> Of course, the General Assembly could always decide to expand the nature of the documents reviewable by P&A, but that policy decision is one for the legislature, and not this Court, which is faced with the clear language of the statute, as well as the undisputed practice under that language.

In another holding which the Court of Appeals did not find necessary to reach, the circuit court concluded that the term “plan of care” in § 43-33-350(4) had been used by DDSN to refer to a specific document with specific contents. The court rejected P&A’s conclusion that the term was intended to be used in a generic sense.

P&A contended, as it does on appeal, that the General Assembly intended to permit P&A to review any document which might arguably be a “plan” relating to “care.” The circuit court instead concluded that in the present context, a “plan of care” was one specific document, that is, Exhibit 1. App. 25-26, 28; 42-45.

It is well settled that in construing a statute, the court should look to its context, as occurred here. *See, e.g., Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 11, 760 S.E.2d 785, 790 (2014) (“[i]f a statute’s terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense, unless it fairly appears from the context that the Legislature intended to use such terms in a technical or peculiar sense”); *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 S.C. 354, 360, 60 S.E.2d 682, 684 (1950) (same); *Poole v. Saxon Mills*, 192 S.C. 339, 6 S.E.2d 761, 765 (1940) (“[t]he first and most elementary rule of construction is, that it is to be assumed that the words and

phrases are used in their technical meaning if they have acquired one and in their popular meaning if they have not”).<sup>10</sup>

In addition, as shown above, accepting P&A’s contention about the meaning of § 43-33-350(4) would lead to an absurd result, because such a reading would allow P&A full access to personal and medical records to which § 43-33-370(2) tightly restricts access in a situation (individual complaints) which logically would be the most likely situation for that section’s privacy-based restrictions to be slightly loosened. *Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) (“In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.”). Further, to give § 43-33-350(4) the scope proffered by P&A would render 43-33-370(2) useless because the same records -- for all residents -- would already be available to P&A under 43-33-

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<sup>10</sup> For the first time on appeal, P&A asserted in the Court of Appeals and before this Court that none of the information pertaining to context should have been considered. App. 523; Br. of Pet. at 10-11. However, to the extent that context was shown by documents and testimony, P&A did not object to it at the trial. Indeed, some of that evidence, such as the 2009 letter and e-mail, App. 88-89, 87, 93-94, 95 and 96, was placed before the court by P&A itself in the attachments to the Complaint and to the Prevost Affidavit. App. 355-361. Even if the point had been argued to the circuit court (which it never was, even at the Rule 59(e) stage), this belated objection is without merit. In addition, even if an ambiguity in the statute needed to be shown before information pertaining to context could be considered, which DDSN denies, the apparent conflict between the language of § 43-33-370(2) and § 43-33-350(4), discussed under Point 1 above, as well as the facial vagueness of the term “plans of care” sufficiently indicate a possible ambiguity.

350(4). *See State v. Graves*, 269 S.C. 356, 363 (1977) (“a statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous”).

The specific context of the term “plans of care” in § 43-33-350(4) is to refer to a specific type of document in the possession of a residential facility such as a CTH II, and pertaining to an individual resident. As already discussed, P&A claims, citing broad dictionary definitions, that the term should be read as applying generically to anything in the possession of the facility that might in some sense be regarded as a “plan” that in some sense might be said to involve “care.” Br. of Pet. at 11-12. Indeed, this is practically all that P&A argues in connection with the words of the one part of the statute on which they focus, i.e., § 33-43-3504. As shown previously, however, this suggested interpretation by P&A is founded in that entity’s unsupported claim that it has authority to engage in “oversight of medical care and the provision of medication to the residen[ts] of these homes,” a concept that includes “oversight of all the aspects of care.” App. 134-135. However, as the evidence indicates, DDSN has always regarded the term “plan of care” in this context as referring to a specific document.

DDSN presented abundant and unconverted evidence and testimony that the agency has consistently used the term “plan of care” to refer to one specific document, that is, Def. Ex. 1 and its predecessors. For instance, in her affidavit, Dr.

Lacy stated that “[f]or as long as I have been employed by DDSN [i.e., since 1997], the term “plans of care,” has had a very specific meaning in the context of service delivery to DDSN clients. App. 387, ¶ 3.

Continuing, Dr. Lacy averred in her affidavit as follows:

5. While the document in which the needs are listed and the recommendations are made has been known at times by different names, such as “Single Plan,” “service plan,” or “support plan,” those designations are simply different terms for the federally-required “plan of care.”

6. Plans of care have never been regarded by DDSN as including the kinds of records that would be found in a physician’s files for an individual, such as diagnostic and treatment notes. Nor have plans of care even been regarded as including medical records, such as medication administration records, that are maintained by the facilities in which DDSN clients reside.

App. 388. Finally, Dr. Lacy identified Exhibit 1 to her affidavit as being a sample form for a plan of care. *Id.*, ¶ 7. Her trial testimony was to the same effect. App. 187,<sup>11</sup> 188, 194:19-22.<sup>12</sup> DDSN advised P&A several times in 2009 that the agency regarded documents such as Def. Ex. 1 to be the only document regarded as the plan of care. *See* App. 96. (“DDSN’s position on the plan of care is that it refers

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<sup>11</sup> The correct title of the document is “Service Coordination and Annual Assessment,” not “useful assessment,” as p. 82 of the transcript reads. *See* App. 187:16-18.

<sup>12</sup> The transcript incorrectly reads “plan and care,” but other references make clear that this is a transcribing error, and that the reference is to “plan of care.”

only to the residential treatment/support plan”); App. 90. (DDSN considered “the residential treatment/support plan” as “the same as the plan of care”).

Finally, as the circuit court observed, “[t]he term [plan of care] is also used in South Carolina’s Medicaid Waiver document, excerpts of which are attached as Exhibit 2 to the Lacy Affidavit. In that document, the plan of care is described in the same manner as in the Lacy Affidavit.” App. 45. Dr. Lacy’s testimony regarding the same Medicaid Waiver document, Def. Ex. 2, was to the same effect. App. 196-197. Dr. Lacy also confirmed that Def. Ex. 1 was the document referenced in the cited portion of Def. Ex. 2. App. 197:5-8.

### **3. Usage of the term “plan of care” by federal authorities.**

Because funding for virtually all CTH II residents is provided by the Medicaid Waiver program, as P&A has admitted, App. 71, ¶ 49, the circuit court also held that the relevant context for interpreting § 43-33-350(4) also includes the use of the term “plan of care” in connection with the Medicaid program, App. 26, 32, 43-44. The court cited a number of references to the term in that context. These included (1) a federal statute, 42 U.S.C. § 1395n(c)(1) (referring to “home or community-based services . . . approved by the [federal DHHS Secretary] which are provided pursuant to a written plan of care”; (2) a federal regulation on the same subject, 42 C.F.R. § 441.301(b)(1)(i) (requiring “a written plan of care subject to approval by the Medicaid agency” when an individual receives Medicaid

home or community-based services); (3) another federal regulation to the same effect, 42 C.F.R. § 441.351(f) (referring to “a written plan of care based on an assessment of the individual’s health and welfare needs and developed by qualified individuals for each recipient under the waiver”). These references in a federal statute and in federal regulations were quoted at length at App. 43-45.

The circuit court also cited two federal cases and a state case to the same effect: *Doe v. Kidd*, 2011 WL 1058542 (4th Cir. 2011), which characterized the “plan of care” as a specific document that was developed pursuant to 42 C.F.R. § 441.301(b), the same regulation cited above; *Boatman v. Murphy*, 2010 WL 2178821, 1 (S.D. Ind. 2010) (case manager assesses the Medicaid waiver applicant’s specific needs and creates a plan of care and cost comparison budget, which are submitted to the Division of Aging for review); *McCarran v. Dep’t of Health and Human Servs.*, 704 S.E.2d 899, 901 (N.C. App. 2011) (plan of care in the Medicaid waiver program is “a schedule of services to be provided to the program participant”). App. 45.

All of these references leave no doubt that in the context of Medicaid services provided to residents of CTH II facilities, virtually all of whose residents are funded under the Medicaid Waiver, App. 71, ¶ 49, there is only one specific document, Def. Ex. 1 and its predecessors, that is recognized as the plan of care.

Again, P&A claims that any document could be regarded as the statutorily-referenced plan of care if it was a “plan” in some broad sense that had something to do with “care,” again in the broadest sense. However, the record and the cited legal authorities make it clear that any document other than Def. Ex. 1 and its predecessors would not be recognized in this context as the plan of care.

For all of the reasons set forth above, the Court of Appeals and the trial court were clearly correct in rejecting P&A’s contention that P&A could review any medical or personal records other than those included within the meaning of the term “plans of care” in § 43-33-350(4).

**2. P&A’s objections to the decision of the Court of Appeals involve policy issues for the General Assembly.**

P&A next argues that the opinion reaches an “absurd result,” which “substantially limits the effectiveness” of team advocacy inspections. Br. of Pet. at 21-23. This is a policy issue rather than a question of statutory construction. As the Court of Appeals held, “P&A’s policy arguments are more properly addressed to the General Assembly.” To the extent that the Court of Appeals’ correct reading of the statutes may impact P&A’s conception of what would constitute appropriate records for it to inspect, then P&A’s remedy is to seek to have the statute amended.<sup>13</sup>

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<sup>13</sup> In a footnote, Br. of Pet. at 21 n.9, P&A argues that the Court of Appeals erred in recognizing that DDSN authorizes quality assurance inspections which are

In their brief to this Court, P&A's counsel have allowed themselves to overstate the effect of the decision of the Court of Appeals on existing P&A practice. They contend that the decision of the Court of Appeals "effectively changes the oversight P&A has exercised for the past thirty years over facilities caring for people with disabilities in South Carolina. . . ." Br. of Pet. at 21. This simply is not so. P&A has been around since the 1970s, but it is undisputed that it never sought to conduct team inspections of facilities licensed by DDSN until 2009, and when it did, DDSN promptly disagreed with P&A's novel attempt to expand its powers, and declined to permit P&A to review MARs. App. 90-96. Accordingly, P&A has not exercised this kind of oversight regarding DDSN for "the past thirty years." Instead, it has not exercised it at all.

P&A next argues that the result of the Court's opinion is that it "authorize[es] the entities P&A inspects to dictate what the plan of care is to P&A." Br. of Pet. at 23. However, the Court of Appeals simply holds that P&A cannot inspect MARs, and did not opine on the point of which P&A complains. Moreover, this case does not involve DDSN "dictating what the plan of care is.

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performed on behalf of DDSN under contract with a third party organization. However, any such third party in question, by performing quality assurance reviews for DDSN, merely stands in the shoes of DDSN itself. *See* App. 201. DDSN, as the licensing authority, undoubtedly can inspect the premises it licenses. Such inspections are irrelevant to this case, which involves the issue of whether records may be reviewed by P&A, not by DDSN or those acting in that agency's stead.

Instead, it involves statutory language that refers to documents with a recognized meaning in this context.

**3. P&A's construction of § 43-33-350(4) is not entitled to deference.**

In Issue III of the Brief of Petitioner, P&A argues that the lower courts should have accorded deference to P&A's views on the construction of the statute. This issue was comprehensively discussed in the Order Denying Reconsideration, App. 29-32. The Court of Appeals did not consider it necessary to address this argument in light of the conclusions it reached concerning the proper construction of the statute.

The primary case on which P&A relies is the leading federal administrative law case, *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). *Chevron* has been only sparingly cited in South Carolina, where this Court has cited it only in support of the idea that “[i]f the statute or regulation ‘is silent or ambiguous with respect to the specific issue,’ the court then must give deference to the agency’s interpretation of the statute or regulation, assuming the interpretation is worthy of deference. *Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Envtl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014).<sup>14</sup>

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<sup>14</sup> In federal cases, *Chevron* requires a high level of deference to regulations and other formally-adopted agency actions, but P&A has cited *Chevron* only in the sense that the case is cited in South Carolina, that is, as quoted above in *Kiawah*.

It is well settled in South Carolina that, as the circuit court held, “deference is given to construction of a statute by the agency charged with its administration, at least as long as the agency’s construction is not contrary to the clear language of the statute. *See, e.g., State v. Sweat*, 379 S.C. 367, 374, 665 S.E.2d 645, 649 (Ct. App. 2008).” App. 29. The circuit court then set forth several reasons why P&A’s policies or interpretations do not fall within this rule, regardless of whether those interpretations are correct or not. App. 29-31.

The circuit court held that there must be something in the enabling act to show that “the applicable legislative body (Congress or a state legislature) has delegated to the agency, either explicitly or implicitly, the authority to make policy. *See, e.g., Linemaster Switch Corp. v. U.S. E.P.A.*, 938 F.2d 1299, 1303 (D.C. Cir. 1991) (“[b]efore we may defer to an agency’s construction of a statute, we must find either explicit or implicit evidence of congressional intent to delegate interpretive authority”). App. 29. The court then held that there was

[N]o indication in P&A’s enabling legislation, S.C. Code Ann. §§ 43-33-310, *et seq.*, that the General Assembly intended to delegate such authority to P&A. Instead of serving as a policymaking or regulatory agency, P&A was created to serve investigative and advocacy functions to the extent authorized by statute. Those functions actually exclude the role of serving as a policymaker, because neither an investigator nor an advocate is empowered to legislate the proper subjects of their own activities.

App. 30. The court then cited several cases in which deference was not given to the views of agencies or entities whose roles under the applicable statutes were something other than administering it. Those cases included *Kelley v. E.P.A.*, 15 F.3d 1100, 1106 (D.C. Cir. 1994), in which it was held that a “civil prosecutor typically lacks authority to issue substantive regulations to interpret a statute establishing liability.” P&A’s role, as the circuit court held, is to perform investigative and advocacy functions to the extent authorized by statute. Those functions actually exclude the role of serving as a policymaker, because P&A as an investigator or advocate is not empowered to legislate the proper subjects of its own activities. App. 30.

On appeal, P&A asserts that the General Assembly “delegated authority to P&A and charged it with administering its own statutes. Br. of Pet. at 23. However, no specific statutory authority is cited in support of this. Instead, P&A merely makes a general citation to the entire enabling act. *Id.* (citing only “*See S.C. Code Ann. §§ 43-33-310 et seq.*”). The absence of a citation to any specific provision of the statute containing the necessary delegation is indicative of the absence of such delegation.

P&A next cites *DHEC v. Bellwood Manor, Inc.*, 2010 WL 6782577 (S.C. Administrative Law Court 2010). Br. of Pet. at 24, but that case did not involve the issue of giving deference to an agency construction of a statute. In addition, that

case did not address the issue of records in any way. P&A cites no other case involving an investigative agency whose role in administering the statute in question was something other than governing under it. *See, e.g., Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (counties interpreted tax statutes as permitting flat rate of interest on redeemed properties); *State v. Sweat*, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008) *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010) (construction of statute regulating maximum gross weight of vehicles; agency construction appears to have been that of the Department of Public Safety).

P&A also claims that “established usage” is a relevant and persuasive guide to a statute’s interpretation. Br. of Pet. at 25. However, the facts of this case actually illustrate why that rule does not apply. As already noted, P&A never even was permitted by DDSN to review documents other than Def. Ex. 1. Moreover, there was no evidence that DDSN was ever aware that P&A was obtaining MARs from CRCFs. Such unknown practices by P&A could hardly be regarded as “established usage.” At most, P&A’s practices amounted to an investigative body’s unauthorized and unilateral attempt to expand its own authority. Deference to an administrative construction normally requires that the construction be of long standing. *See, e.g., Media Gen. Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530–31 (2010) (“An agency’s long-standing interpretation of a statute is usually entitled to be given deference). In the present

case, P&A's construction never amounted to established or long-standing usage, because DDSN rejected that construction at the very outset.

Finally, since P&A's relationship to the statutes is not one that qualifies its interpretation for deference, it is not necessary to consider P&A's brief reiteration of the reasons why its "agency interpretation" should be adopted. Br. of Pet. at 25-26. In any event, and as addressed above, those reasons lack merit and were therefore properly rejected by the circuit court.

**4. P&A's public policy arguments, which do not address the specific terms of the statutes at issue, are matters for the General Assembly.**

P&A's final argument is that its views on the issues in this case would, as a matter of public policy, be of most benefit to the clientele it serves. Br. of Pet. at 26-27. This argument makes virtually no reference to any conclusion reached by the Court of Appeals or by the trial court. The circuit court rejected P&A's argument, holding that "[w]hile no one would disagree with the worthiness of the broad goal[s] [expressed by P&A] . . ., P&A does not recognize that those residents, like all other residents of the state, are entitled to have their medical records remain private, absent a clear expression of intent to the contrary by the General Assembly." App. 35. The Court of Appeals agreed, citing *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 244, 768 S.E.2d 385, 387 (2015) (holding the primary source of the declaration of public policy in this state is the General Assembly, and our courts assume this prerogative only in the absence of legislative declaration) and *Nationwide Mut. Ins. Co. v. Rhoden*, 398 S.C. 393, 401 n. 4, 728 S.E.2d 477, 481 n. 4 (2012) ("If legislative intent is clear as reflected in the statutory language, any public policy as promulgated by this Court must give way because '[t]he primary source of the declaration of the public policy of the state is the General Assembly[, and] the courts assume this prerogative only in the absence

of legislative declaration.’ ” (alteration in original) (*quoting Citizens’ Bank v. Heyward*, 135 S.C. 190, 204, 133 S.E. 709, 713 (1925))). App. 625.

Stated differently, “A public policy argument serves to resolve the ambiguities of a statute, but it does not alone stand superior to the express terms of the statute.” *Zumbrun Law Firm v. California Legislature*, 165 Cal. App. 4th 1603, 1620, 82 Cal. Rptr. 3d 525, 539 (2008). The error of Plaintiff’s public policy argument is that it seeks to do just that, i.e., to have a claimed “policy” override the terms of the statute. As the Court of Appeals held, “P&A’s policy arguments are more properly addressed to the General Assembly.” App. 625.

### CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

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July 31, 2017

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**CERTIFICATE OF SERVICE**

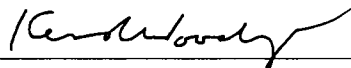
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The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondents, does hereby certify that service of the **Brief of Respondents** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 31st day of July 2017:

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JUL 31 2017

S.C. SUPREME COURT