Travis County Commissioners Have Clear Statutory Authority to Order and Oversee an Independent, Third-Party Performance Audit of Central Health.

County Commissioners Must Require an Audit of Central Health's Outside Providers Because the District Has Abdicated its Access to Their Records and Financial Controls.

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I. Summary: County commissioners have express statutory authority under Texas law to financially oversee hospital districts. The Legislature granted this responsibility to county commissioners to ensure hospital districts are held accountable to the poor and taxpayers, because hospital districts have large budgets (Central Health's is $506 million this year), healthcare delivery is complex, and its board members are unpaid volunteers.

County commissioners are given explicit statutory authority to order performance audits of hospital districts in two places: Texas Health & Safety Code, Sec. 281.049 (county has authority to inspect hospital district-related records); and Sec. 281.053 (county has authority to mandate financial controls and procedures of hospital districts to ensure accountability). Central Health has had little to no oversight or financial controls of its third-party providers, particularly Dell Medical School (DMS), according to Germane Solutions' limited performance audit on behalf of Central Health in 2017. Since the audit recommended strong financial controls over third-party providers, Central Health has failed to implement these necessary changes. Central Health Red Flag Report: Travis County Commissioners Must Order a Comprehensive, Third Party Audit (Health Equity First: Project of the Local Austin NAACP Chapter and LULAC District (March 2022), pp. 7-18. FINAL Red Flag Report (cdn-website.com)

Central Health has given up any contractual rights under the parties' affiliation agreement to inspect DMS's records of its uses of Central Health's $35 million annual payments. In addition, even if Central Health had retained the standard contractual authority to inspect records, the
hospital district would refuse to request these essential records, as they have refused in the past, to provide transparency and accountability of DMS's expenditures.

As for Ascension Seton, Central Health's hospital and primary specialty provider, Central Health is not in a position to conduct an evaluation of the healthcare services provided by Ascension Seton for tens of millions annually of tax dollars. The parties are in a protracted payment dispute that may result soon in litigation. This dispute either will cause Seton to block Central Health from conducting a performance audit, or will inevitably make any Central Health performance audit of Ascension Seton appear biased and untrustworthy.

With Central Health's chronic financial control deficiencies over its third-party providers, the Travis County Commissioners have a heightened need to order and control a third-party performance audit of Central Health's providers. Central Health has relinquished any right to obtain the records necessary to conduct such a performance audit of DMS, and it is compromised from conducting an audit of Ascension Seton because of their protracted payment dispute. In short, if Travis County Commissioners do not order and direct an independent third-party performance audit of Central Health's third-party providers, there will not be one. This would ill serve the Legislature, taxpayers or the poor's healthcare.

The Commissioners Court has a legal duty to order an audit and evaluation of Central Health's major third-party providers in order to evaluate the district’s financial controls and their expenditures. Then, based on this audit evaluation and recommendations, the Commissioners can order and implement strong financial controls and practices.

II. Central Health Has Chronic Deficiencies in its Financial Controls and Required Recordkeeping Requirements for Third-Party Providers. Germance Solutions conducted a limited performance audit on behalf of Central Health in 2017 and released its report in early 2018. The report found Central Health lacked effective financial controls and monitoring over its funding of third-party providers: “Once those [Central Health] funds are disbursed to its [provider] partners, it does not have mechanisms in place to accurately determine how all dollars are being used by each partner, and whether they are being deployed in a manner that is
consistent with its mission. This is an area where Central Health has opportunities for improvement.” Germame Solutions Audit Report (Jan. 2018), p. 34 (emphasis added) https://www.centralhealth.net/wp-content/uploads/2018/02/Central-Health-Performance-Review-FINAL_February-14-2018.pdf. Germame Solutions explained that “Central Health provides many services through partnerships, [but] it does not have full control over how funds allocated to its partner institutions are used. This is the core of the issue with Dell Medical School at the University of Texas at Austin. While Central Health has set restrictions on its ability to dictate how funds are used by its Enterprise and Affiliated partners once they’ve been distributed, there are no limitations on Central Health requesting public transparency of their Enterprise and Affiliated partners regarding the actual use of the funds provided by Central Health.” Id., p. 19. (emphasis added).

Central Health, however, has failed in the last five years to implement its own audit report's recommendations for stronger recordkeeping requirements and financial control over its third-party providers. Red Flag Report, pp. 7-18. The public and Travis County Commissioners Court still do not know important matters such as:

- how DMS spends Central Health's funds,
- why Seton and Central Health's integrated delivery system has been unsuccessful,
- what is the future status of its nonprofit, the Community Care Collaborative, and
- why Central Health has excessive administrative expenses for a payor.

III. Texas statutes provide county commissioners broad authority to supervise, inspect and audit hospital districts to ensure financial accountability and compliance with state law. (Relevant statutory provisions are in the Appendix at the end). Texas Health and Safety Code, Section 281.053 authorizes the county commissioners to hire a third-party agent to inspect documents related to the county hospital district. In addition, Section 281.049 empowers the commissioners court to prescribe the purchasing, financial accounting and audit control procedures of the hospital district, and if necessary, for the county itself to exercise these functions for the hospital district. It authorizes the commissioners court to require an agent “to perform any function or service required by the commissioners court under this section,” and to order the hospital district to pay the associated costs. The commissioners courts’ broad authority,
to audit and to ensure essential financial controls are in place for county hospital districts, is
designed to ensure their compliance with state law, recordkeeping requirements, and financial
controls. *Texas Health and Safety Code, Section 281.073*

**A. Commissioner’s courts have broad statutory authority to appoint a representative to inspect documents of hospital districts under Texas Health And Safety Code, Section 281.053.** This provision states:

**DISTRICT INSPECTIONS.** (a) *The district may be inspected by a representative of the commissioners court* or the Department of State Health Services.(b) A district officer shall:

1) admit an inspector into the district facilities; and

2) *on demand give the inspector access to records, reports, books, papers, and accounts related to the district.*

*Texas Health and Safety Code, Sec 281.053* (emphasis added).

**1. This provision authorizes the Commissioner’s Court to hire a “representative” to inspect the hospital district.** *Texas Health and Safety Code, Sec 281.053(a).* “Representative” is a broad legal term that commonly means one who is “standing or acting for another, especially through delegated authority; an agent acting in a representative capacity.” *Academic Law Dictionary Online.* A representative, such as a third-party auditor, serves as an “agent” of the commissioners court; therefore, the representative (as an agent) reports to the commissioners court (as its principal)-- and not to the hospital district. The statute, thus, authorizes the commissioners court to appoint as an auditor agent someone of their choosing that reports to them.

The statute has no limits on the county’s right to inspect the hospital district other than it be “related to the district.” The statute, in short, recognizes the need for commissioners courts to be able to broadly audit hospital districts by hiring representatives that are independent and answer solely to them.

**2. The hospital district is required to provide access to all records “related to the district” to the county’s inspecting representative:** “A district officer shall… on demand give the inspector access to records, reports, books, papers, and accounts related to the district.” *Texas
Health and Safety Code, Sec 281.053 (b)(2). Its representative has access to all documents “related to the district,” including “records, reports, books, papers, and accounts.” Books and accounts clearly contemplate financial and operational records. Records, reports, and papers also include all documents related to the provision and delivery of health care services by the hospital district, since that is its constitutionally prescribed purpose. Tex. Const., Art IX, Sec. 4. In summary, Section 281.053 provides broad authority to the commissioners court to inspect or audit any documents related to the hospital district and to appoint as its representative an auditor of its choosing to do so.

B. Commissioners courts also have additional broad authority: 1) to prescribe the purchasing, accounting and control procedures of hospital districts; 2) to takeover these functions from hospital districts; and 3) to require hospital districts to pay for the county's contracting for these services, under Texas Health & Safety Code, Section 281.049. This provision states:

PURCHASING AND ACCOUNTING METHODS AND PROCEDURES.
(a) The commissioners court may prescribe:
   (1) the method of making purchases and expenditures by and for the district; and
   (2) accounting and control procedures for the district.
(b) The commissioners court by resolution or order may delegate its powers under Subsection (a) to the board.
(c) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.
(d) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section.

Texas Health and Safety Code, Sec 281.049 (emphasis added).

1. This provision provides the commissioners court with express authority to determine “the method of making purchases and expenditures,” both “by” the hospital district and “for” the hospital district (i.e., through third-party providers). Texas Health and Safety Code, Sec 281.049(a)(1). The commissioner’s authority extends to prescribing purchasing and expenditure procedures made “by” the hospital district or on its behalf (“for the district”) by
third-parties, such as DMS, Seton and the Community Care Collaborative. This provision’s purpose is to require hospital districts and their third-party providers to maintain proper records and expenditure controls in order to ensure proper accounting and spending of public funds.

2. The commissioners court also has clear authority to prescribe the “accounting and control procedures for the district.” *Texas Health and Safety Code, Sec 281.049 (a)(2).* Commissioners may dictate the district’s financial accounting and control procedures for third-party expenditures of the district’s public funds. This would include prescribing internal audit controls, defined generally as “the mechanisms, rules, and procedures implemented by a company to ensure the integrity of financial and accounting information, promote accountability, and prevent fraud.” *Investopedia Online.* Thus, the commissioners have explicit authority to prescribe the financial controls and accounting procedures of the hospital district to ensure accountability, integrity, and transparency.

Furthermore, the commissioners court may broadly require a county “employee or agent “ to “perform any function or service required by the commissioners court under this section.” *Texas Health and Safety Code, Sec 281.049 (c).* Commissioners may hire an “agent” to inspect, examine, report on, and recommend changes to any of the district’s purchasing, accounting, and control procedures—a broad delegation to the commissioners court to ensure the accountability and effectiveness of the hospital district's expenditures of taxpayer funds. In addition, the commissioners court has the authority to require its agent to “perform any of these services or functions,” rather than the hospital district's personnel. The commissioners court has broad financial oversight authority to make sure the hospital district is properly serving the Legislature's purpose, the poor's healthcare, and taxpayers.

3. The statute also provides that the hospital district shall pay for the Commissioner’s services related to evaluating, recommending, and implementing the district’s purchasing, accounting and control procedures: “The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section.” *Texas Health and Safety Code, Sec 281.049(d).* A performance audit of Central Health’s deficient financial controls, as well as full access to
its third-party provider records, is an integral part of and a necessary predicate for the Travis County Commissioners to consider and mandate financial control reforms of Central Health's multi-million dollar contracts with third-party providers.

C. These statutory provisions necessarily should be interpreted to authorize the Commissioners to hire a third-party auditor to: 1) have access to the records of Central Health and its third-party providers; and 2) to require Central Health to pay for the evaluation and recommendations by the auditor of its recordkeeping requirements and financial controls of third-party providers. Otherwise, the Legislature's purpose in providing commissioners with meaningful financial oversight, and the ability to mandate accountability controls and procedures, of hospital districts would be frustrated-- which Texas courts seek to avoid. See Tex Gov Code, Sec. 311.023 (“in construing a statute… a court may consider among other matters the…” object sought to be attained…[and] consequences of a particular construction)...

These statutory oversight provisions should not be interpreted to preclude commissioners from having authority to inspect and audit third-party providers' records related to their uses of Central Health's taxpayer funds, rewarding Central Health for unwisely or illegally contracted away its right to access these records (discussed below). This interpretation would have the unfortunate result, contrary to legislative intent, of allowing Central Health and other hospital districts to undermine through their contracts financial oversight and accountability of both the hospital district and the Travis County Commissioners.

In short, under the above misguided statutory interpretation, any hospital district, such as Central Health, simply could relinquish contractually its right to audit and implement financial controls over its third-party providers and, thereby, eviscerate the commissioners court's financial oversight responsibilities. This would leave no one with authority to inspect and evaluate the use of Central Health's public funds by third-party providers-- a result the Legislature clearly did not intend and is contrary to all normal governmental practices.
This improper interpretation also would appear to violate both statutory recordkeeping requirements and state constitutional mandates (discussed below) that all local governmental entities in Texas maintain sufficient controls over their public funds to ensure state law is complied with. Otherwise, the uncontrolled and unmonitored fund transfers would constitute an illegal gift. *Tex. Const. Article III, Sec 52.*

1. The Commissioners Court’s statutory authority to inspect records and ensure accountability of hospital districts serves to ensure their compliance with state recordkeeping requirements— which Central Health appears to be violating. Texas Health and Safety Code, Section 281.073 provides that “the preservation, microfilming, destruction, or other disposition of the records of a [hospital] district is subject to Subtitle C, Title 6, Local Government Code [Chapter 203].” Chapter 203’s recordkeeping requirements mandate that all local governmental entities shall “facilitate the creation and maintenance of local government records containing *adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the local government and designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and persons affected by the activities of the local government.*” Texas Local Gov. Code, Section 203.021 (emphasis added). This recordkeeping law requires hospital districts to maintain “adequate and proper documentation” of their overall activities, including their “functions, policies, decisions, procedures, and essential transactions.” They must maintain these records “to protect the legal and financial rights [of] persons affected by the activities of the local government,” i.e., the Legislature, taxpayers and the poor. This Central Health has failed repeatedly to do.

2. Central Health's Affiliation Agreement with Dell Medical School provides little to no recordkeeping and accountability controls on DMS's uses of Central Health’s $35 million annual payments. Thus, these government payments appear to be an unconstitutional gift of public funds under the Texas Constitution, Article III, Sec. 52. An example of Central Health's lack of financial and accountability controls in the agreement is its exclusion of Central Health's ability to inspect and audit DMS's uses of its funds. **Central Health is expressly excluded as a governmental authority under the agreement’s requirement that DMS must**
provide access to documents to governmental authorities. Section 9.5.1 of their agreement states that “each party shall make available, upon written request of any Governmental Authority or any of its duly authorized representatives, this Agreement, and books, documents, and records of such party. UT-Austin and Central Health's Affiliation Agreement (July 2014) , p. 30. https://www.centralhealth.net/wp-content/uploads/2014/07/UT-Austin-CH-and-CCC-Affiliation-Agreement-Fully-Executed.pdf . However, Central Health and DMS are inexplicably excluded from the agreement's definition of governmental authority, exempting DMS from any record inspections by Central Health: "‘Governmental Authority’ means: (i) any nation or government; (ii) any federal, state, county, province, city, town, municipality, local, or other political subdivision thereof or thereto… excluding, in all such categories, Central Health and UT.” Id., p. 8 (emphasis added).

Also contrary to standard contract provisions that specify how providers shall report their services to payors, the agreement purports to allow DMS to decide on its own what is acceptable to report to Central Health: DMS “shall periodically inform Central Health and the CCC through the JAC and other means acceptable to UT as to the nature of the Permitted Investments being supported by such Permitted Investment Payments.” Id., p. 14, section 4.7 (emphasis added). It is incomprehensible why Central Health and DMS, as governmental entities, attempted to exclude each other from recordkeeping requirements.

The second example of Central Health's relinquishment of standard payor financial controls is the agreement’s absence of a payor right to recoupment of funds or to coordination of benefits. Affiliation Agreement, p. i-ii. As a result, when Central Health is owed money back for duplicate third-party payments by others (such as private insurers or the federal government), it has no authority to recoup its taxpayer funds from DMS. Needless to say, the absence of recoupment provisions is highly unusual in payor-provider contracts.

3. Texas Attorney General opinions and Texas case law have held repeatedly that a local government’s “transfer of funds to a local development corporation [or other entity] must serve a public purpose, and must be subject to adequate controls, contractual or otherwise, to ensure that the public purpose is accomplished. See Key v. Commissioners
Court, 727 S.W.2d 667,669 (Tex. App.-Texarkana 1987, no writ). Although a political subdivision may not make an unrestricted grant of funds to a private, nonprofit corporation, it may contract with it to provide services or accomplish a public purpose that the county is authorized to provide. For example, while a county may not donate funds to a private hospital, it may contract with it to provide medical care for its indigents and to assist in providing ambulance services in the county." Tex. Attorney General Opinion No. JC-0335 (2001), p. 7 (emphasis added). See the seminal case of Texas Municipal League Intergovernmental Risk Pool v. Texas Workers' Compensation Commission, 74 S.W.3d 377 (Tex. 2002).

4. Central Health and Ascension Seton contend that a performance evaluation of Ascension Seton should not occur because of their protracted dispute over Central Health's payments and Seton's provider services. (The dispute is rumored to shortly be in litigation). According to Central Health’s Fiscal Year 2021 Financial Statement, p. 29, “On September 3, 2020, Central Health sent a Notice of Breach to Seton that specified material breaches of the [Omnibus Services] Agreements have occurred.”

https://www.centralhealth.net/wp-content/uploads/2022/01/Travis-County-Healthcare-District-db-a-Central-Health-Financial-Statements_9-30-2021.pdf. Countering, “Seton provided an impending notice to Central Health of a funding deadlock. Central Health responded that Seton did not make good faith efforts to negotiate and agree to funding of the CCC fiscal year 2021 annual budget.” Id. The parties, as a result, will not conduct a performance evaluation of Ascension Seton, either because Seton will block such an audit because of their outstanding dispute, or Central Health's ability to conduct an unbiased, trusted evaluation is compromised. Therefore, the commissioners must hire an agent to conduct the performance audit of Ascension Seton.

Central Health has abdicated its statutory duties to require its third-party providers to keep and provide access to documents essential for financial accountability and controls over Central Health's public funds. If, like Central Health, the Commissioners' abdicate their authority to require financial controls for Central Health and its providers, then there will be no one to fairly evaluate Central Health's financial controls and the uses or misuses of hundreds of
millions of public dollars by its powerful providers. This is an absurd result that undermines the Legislature's statutory intent.

**IV. Conclusion.** County commissioners clearly have authority to inspect all hospital district-related documents and perform any accounting and auditing functions needed to ensure hospital districts are accountable to the public and in compliance with state law. The Legislature's purpose, in providing commissioners' broad authority to audit and order financial controls and procedures for hospital districts, would be undermined if its statutory provisions were interpreted to allow Central Health to contract away its duty to require third-parties to allow access to records, as well as to not implement financial controls over third-party provider expenditures of public funds.

**APPENDIX**

**TEXAS HEALTH & SAFETY CODE PROVISIONS**

Sec. 281.049. PURCHASING AND ACCOUNTING METHODS AND PROCEDURES.

(a) The commissioners court may prescribe:

(1) the method of making purchases and expenditures by and for the district; and
(2) accounting and control procedures for the district.

(b) The commissioners court by resolution or order may delegate its powers under Subsection (a) to the board.

(c) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.

(d) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section.

Sec. 281.053. DISTRICT INSPECTIONS.

(a) The district may be inspected by a representative of the commissioners court or the Department of State Health Services.

(b) A district officer shall:

1) admit an inspector into the district facilities; and
2) on demand give the inspector access to records, reports, books, papers, and accounts related to the district.

Sec. 281.073. DISPOSITION OF DISTRICT RECORDS.
(a) The preservation, microfilming, destruction, or other disposition of the records of a district is subject to Subtitle C, Title 6, Local Government Code.
(b) The period that medical records are retained shall be in accordance with rules relating to the retention of medical records adopted by the executive commissioner and with other applicable federal and state laws and rules.

TEXAS LOCAL GOVERNMENT CODE

Sec. 203.021. DUTIES AND RESPONSIBILITIES OF GOVERNING BODY. The governing body of a local government, including a commissioners court with regard to nonelective county offices, shall:
(1) establish, promote, and support an active and continuing program for the efficient and economical management of all local government records;
(2) cause policies and procedures to be developed for the administration of the program under the direction of the records management officer;
(3) facilitate the creation and maintenance of local government records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the local government and designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and persons affected by the activities of the local government;