CENTRAL HEALTH

Lack of Financial Control Over Providers’ Spending of Millions in Public Funds is Failing the Legislature, County Taxpayers and the Poor
I. Executive Summary

I. Central Health, the Travis County Healthcare District, has failed to financially oversee and control the expenditure of hundreds of millions of public funds by its third-party healthcare providers. Central Health’s failures constitute not only unacceptable stewardship of Travis County taxpayers’ dollars, but appear to violate Texas statutory and constitutional laws intended to protect taxpayers and provide care to the poor. Travis County Commissioners’ Court, which has legislatively-mandated financial oversight responsibility for Central Health and its unelected volunteer board, should immediately order an independent, third-party performance audit of Central Health’s payments to its major providers (those who receive least $35-$70 million annually in tax dollars). Based on the independent auditor’s findings, Travis County Commissioners should order and implement strong financial controls and procedures for Central Health. Furthermore, during the session interim, the Texas Legislature should study financial reforms of hospital districts, a major component of the state’s healthcare safety net.

A. Central Health, unlike Texas’ other major urban hospital districts, serves primarily as a payor of funds to third-party healthcare providers, and not as an actual health care provider itself. Its major providers include Dell Medical School (“DMS”), the Community Care Collaborative (“CCC”), Ascension Seton (“Seton”), CommUnityCare (“CUC”), and Sendero Health Plans (“Sendero”). Central Health has a current budget of $506 million dollars.

To ensure public funds to third-party vendors are spent effectively and in compliance with state law, the Texas Legislature and Texas Constitution require all governmental entities to implement financial controls, monitor and inspect third-party expenditures, and require reporting of the expenditures of their public funds. Central Health, as a government health care payor, should require and implement, at a minimum, standard healthcare payor contractual provisions and procedures for financial accountability and transparency.

B. Central Health, however, has failed to serve taxpayers, the poor, and the Legislature, by abdicating through its contracts and practices its legal duty to control and account for third-party providers’ expenditures of public funds. As a healthcare payor, Central Health’s health care provider contracts should “reflect essential provisions of a typical provider agreement” that protect the payor’s financial interests.
Health Plan Provider Agreement Essentials Checklist (LexisNexis Practice Guidance Journal, April 2019) Health Plan Provider Agreement Essentials Checklist (lexisnexis.com). Standard healthcare provider provisions include compensation, billing, and payment, maintenance of records, and termination clauses. Id. See also Jason Brocks, Health Plan Network Provider Agreement Essentials (Lexis-Nexis Practical Guidance Journal: Healthcare Practice Special Edition, April 2019). Remarkably, Central Health's Affiliation Agreement with UT-Austin contains none of the standard payor contract provisions to protect taxpayers, as detailed below. For example, Central Health's Affiliation Agreement with UT-Austin fails to specify what services Central Health will pay for, fails to set out a payment formula, and fails to allow Central Health to inspect, audit and require regular reporting of the medical school's expenditure of its public funds.

C. Although Central Health as a state-created special purpose district must comply with state-required accountability and transparency laws, it has not done so. The state law and Government Accountability Standard Board requirements are designed to ensure that government third-party providers spending public funds are in compliance with state law restrictions and providing authorized services efficiently and effectively. Even after Central Health's limited performance audit assessment five years ago identified major financial control and transparency problems, Central Health has taken no steps to come into compliance with the state's accountability laws.

Central Health's complete lack of standard healthcare payor accountability provisions in its Affiliation Agreement with UT-Austin renders its $280 million dollars in payments to the Dell Medical School an illegal gift of public funds. In fact, UT-Austin’s official budget documents reveal that it actually considers Central Health’s annual payments to DMS a gift –that DMS may spend however it wants, regardless of state law requirements or the health care needs of Travis County's poor.

D. Similarly, Central Health's Master Agreement with Seton is problematic. The agreement establishes the Community Care Collaborative as a joint non-profit entity to run the hospital district's integrated delivery system and dispense healthcare funds to third-party providers; the agreement, however, delegates Central Health's governmental authority over these public functions to Seton, a private party.
While the agreement on the surface appears to provide Central Health 51% majority control over the CCC, in fact the contract requires Seton’s approval as well as Central Health’s for all decisions of any significance. Seton has veto power over Central Health’s core health care responsibilities: Seton (a private provider) must approve any Central Health providers, any changes in eligibility for Central Health’s Medical Access Program (“MAP”), and Central Health’s strategic plan for the countywide Integrated Delivery System (IDS).

E. The CCC and CUC have transparency deficiencies as to their uses of Central Health’s public funds because they both maintain they are not subject to the Texas Public Information Act (“TPIA”). CCC is a private, nonprofit corporation that runs Central Health’s integrated delivery system for the poor and dispenses much of Central Health funds. The CUC is a private, nonprofit corporation that serves as an affiliated Federal Qualified Health Center (“FQHC”) and provides much of the primary care for Central Health’s patients. Both maintain that as private non-profits that they are not subject to the TPIA’s requirements to publicly produce records, including documents showing the details of how each has spent tens of millions of dollars annually in Central Health funds. Their position, supported by Central Health, is antithetical to public transparency of the CCC’s and CUC’s expenditure of taxpayer funds. This results in financial black holes that are unacceptable for government-funded activities.

II. Central Health Should Have Standard Payor Financial Controls

II. Central Health functions principally as a governmental payor of funds to third-party providers of healthcare for the poor; therefore, it should, at a minimum, have basic, standard provisions for financial control, accountability, and reporting. Central Health, as it acknowledges, functions differently than other major hospital districts in Texas. It serves essentially as a payor of third-party providers, rather than it being a healthcare provider: “Central Health is unique in that it does not own or operate a hospital but delivers care to residents through strong partnerships with key healthcare providers in the community.” Central Health Fiscal Year 2022 Approved Budget, p. 9.
Direct health care services to Travis County’s poor are actually delivered by third-party service providers, including the Dell Medical School, the Community Care Collaborative, CommUnityCare Health Centers, Sendero Health Plans, Integral Care, and smaller providers. In short, Central Health functions like Medicaid and Medicare, which do not themselves provide health care, but pays, monitors, and holds accountable third-party providers for health care services. The government’s role as health care payor is different than when the government itself provides the healthcare services, such as VA hospitals and Harris Health do, with its main responsibility being monitoring the use of its funds by third-party providers.


Legal practice checklists for drafting basic healthcare provider agreements identify the following standard payor provisions: “compensation, billing, and payment,” “network participation,” “provider licensing and insurance,” “provider credentialing,” “maintenance of records,” and “termination” clauses. Id. In addition, Central Health as a government payor must provide the necessary accountability and transparency to demonstrate that its third-party providers are spending public funds in compliance with state law and that their services are effective and efficient. See Report, infra, pp.16-18.
B. This report discusses below in detail the major deficiencies in Central Health's financial controls and oversight of third-party providers' expenditures, including:

- Central Health's abdication of its legal responsibility to control, monitor, and account for Dell Medical School's expenditures of $280 million in public funds. (Infra., pp. 11-19);

- Central Health's delegation to Seton, through their joint nonprofit the CCC, of its governmental responsibility to set public healthcare policy for the county's poor as well as direct the operations of its Integrated Delivery System for the poor. (Infra., pp. 24-27);

- The CCC's past performance and its future responsibilities, in light of the fact Seton and Central Health are in a protracted payment dispute and neither has contributed funding to the CCC in the last two years. (Infra., pp. 27-28);

- The CCC's and CUC's absence of public transparency in their uses of Central Health's funds because they maintain they are not subject to the Texas Public Information Act. (Infra., pp 23-24, 28-30);

- The lack of accountability and transparency related to its Central Health funds by the CUC, its affiliated FQHC and major primary care provider. (Infra, pp 28-30);

- Central Health's antagonistic relationship with its HMO Sendero and failure to make improvements in their relationships. (Infra., pp. 30-31);

- Central Health's high administrative expenses for serving as a payor, which should result in lower costs since being a payor is much less complicated and expensive than running a countywide hospital provider system. (Infra., p.31);

- Central Health's lack of openness and public engagement relating to its future plans for its massive $300 million contingency reserve (Infra., p.31);
- Central Health's lack of transparency and public engagement as to its new plans to become a major health care provider in addition to its current role as a payor (Infra, p. 32);

- Central Health's deficiencies in its health equity assessment and in providing equitable access to needed primary and specialty health care services where and when the poor need them (Infra, pp 9-10);

- Central Health's inability in twenty years to establish an effective, equitable integrated delivery system. ((Infra, pp. 21-23); and

- Central Health's repeated deviations from its principal constitutional and statutory purpose: to serve the healthcare needs of poor county residents. These deviations include funding economic development (the Downtown Innovation District) and public health programs, which however valuable are beyond its statutory authority to provide direct healthcare services to the county's poor.
III. 2017 Assessment Ignored

III. Central Health financial accountability and transparency problems were identified five years ago by Germane Solutions, when it conducted a limited performance assessment on behalf of Central Health. Today, Central Health still has not addressed these accountability and transparency issues and has failed to implement the assessment’s recommendations. As a result, Central Health’s accountability and transparency problems appear to have worsened in the last five years since Germane Solutions’s assessment. See Central Health Red Flags Report (Health Equity First, March 2022). (https://www.healthequityfirst.com/red-flag-report).

A. Germane Solutions began its limited performance assessment on behalf of Central Health in 2017 and released its report in early 2018. Its 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.” Germane Solutions Assessment Report (Jan. 2018), p. 34 (emphasis added).

Germane 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 [itself] 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)

Germane Solutions found additionally that Central Health lacks transparency and public trust in its third-party providers’ use of public funds. Germane Solutions conducted local community
interviews and found "[c]oncerns about communication with the public and accountability related to the use of Central Health funds once they were received by partner organizations... and a desire to understand how this funding supports Central Health's primary mission to the underserved." Id., p.10. The interviews revealed the public's "[d]esire to understand whether Central Health's various partnerships were in fact generating a 'positive return on investment' in terms of incremental community benefit." Id.

Germane also identified health care accessibility and equity for the poor as a major public concern. Id. Its community interviews revealed “concerns about the lack of access to select specialties... Questions regarding how/where care is currently being delivered.” Id.

B. Germane Solutions made specific recommendations to address Central Health’s deficiencies related to its third-party providers.

1. Germane recommended that “Central Health needs to make concerted efforts to take more control of the care delivery process through structural changes (where available), demand increased open communication/ follow up from its partners, and enhanced feedback mechanisms that allow them to remain in touch with the needs of the community.” Id., pp. 38-39 (emphasis added).

2. It recommended implementing specific expenditure controls and transparency as to the Dell Medical School's use of Central Health's $35 million annual payments: "It is important to note that almost all the [major hospital district] comparators have dollar flows to an affiliated medical school...The difference is that for the other peer institutions, these dollar flows can be cleanly linked back to the costs associated with physician and resident time and overall program support - whereas this linkage is less concrete in the case of Central Health." Id., pp. 34-35. (emphasis added).

3. Germane identified from its community interviews that healthcare accessibility and equity were vital for Central Health to fulfill its mission.
The report found: “Theme #1: Concerns about how Central Health can address and track the changing needs of the Austin/Travis County Community...Concerns about the lack of access to select specialties...Questions regarding how/where care is currently being delivered...” Id., p. 10. Based on these community concerns, Germane pointed Central Health to research showing that “[t]here are well-documented disparities and inequities in access to care based on income, educational attainment, race or ethnic background, and other social determinants of health – all of which must be considered when designing a care delivery system.” Id., p. 36. (emphasis added).

C. Central Health, however, has taken little to no steps since 2017 to improve its accountability, transparency, and accessibility in response to the Germane Solutions’ assessment.

In Central Health’s official reply to Germane, it acknowledged the paramount importance of effective financial accountability measures for the use of public funds: “In light of limitations on controlling expenditures after funds have been transferred from Central Health, the use of reporting from provider partners to present outcomes and mission alignment with serving low income and uninsured residents is paramount.” Id., pp. 34-35 (emphasis added). Tellingly, however, Central Health’s reply made no concrete commitments to implement any specific accountability and transparency reforms. And nearly five years later, Central Health has not taken any meaningful steps to implement reforms. Id.

Three areas where Central Health has failed to implement the recommendations of its own 2017 assessment are:

- Central Health has failed since 2017 to take any action to account for the uses by the Dell Medical School ("DMS") of an additional $175 million in taxpayer funding. See Central Health Red Flags Report (Health Equity First, March 2022), pp 9-10. Central Health and DMS still refuse to disclose details of the quantity and quality of healthcare provided to the poor for Central Health's $35 million annual payment in public funds. Id., at 9.
• This is despite repeated promises by both to do so. Id., p. 9. Nor has Central Health disclosed and accounted for millions in additional funds it has directly or indirectly paid out to DMS—above and beyond its $35 million annual DMS payments—for specialty health services, academic research, and other medical school programs (known and unknown). UT Austin Fiscal Year 2022 Operating Budget (August 2021), pp. G35- G41. For example, it is unknown why the CCC is paying $500,000 to the medical school for “legal affairs.” Id, G-39. After Central Health’s transfer of $280 million in eight annual payments of Travis County residents’ property taxes to DMS—and after six years of medical school operations—Central Health and DMS surely finally owe county taxpayers, county and state officials, and the poor a full accounting of how much, if any, direct health care to the poor DMS has provided. They also have a right to know now whether any healthcare DMS provided was efficacious and equitable.

• Central Health’s public reporting on the uses of its funds by other third-party providers besides DMS is still inadequate. There is no meaningful accountability and transparency of the uses of Central Health’s public funds by its major healthcare provider partners: CommUnityCare (its Federally Qualified Health Center); the Community Care Collaborative (its nonprofit entity that manages its “integrated delivery system” and disburses much of its funds and federal DSRIP funds); and Seton (for for-pay hospital and specialty healthcare services for the poor as well as community charity care as a non-profit hospital). Red Flag Report.

The public and state and local officials have a right to know how Central Health’s public funds have been spent by its healthcare providers—both to provide accountability as well as to be able to make health care improvements in the future. Central Health’s Board’s failure in this regard is an abdication of its fiduciary duty to financially control, account for, and fully disclose the use of its public funds.
• Central Health has failed to implement meaningful improvements in accessibility and equity for the poor's healthcare in Travis County. Despite the 2017 performance assessment’s emphasis on the importance of access and equity, Central Health has taken little concrete action to address these key issues. While Central Health recently has begun to talk about health equity, its health equity plan lacks significant community input and is based on an unrepresentative, flawed health care assessment.

The Central Health’s Board voted in February 2022 to adopt an “equity”-focused Service Delivery Strategic Plan. It purports to serve as a guide to improving health equity for Travis County’s low-income population and is based on a 2022 community health care assessment by Guidehouse, Inc., which apparently charged Central Health $600,000.

Central Health's 2022 healthcare assessment is flawed and unrepresentative. Guidehouse appears to have performed little original work, using primarily existing health assessments that Central Health had conducted previously. Guidehouse's own 2022 assessment was flawed in that its underlying surveys were racially unrepresentative and reflect too small of a sample. Safety-Net Community Health Needs Assessment Report (Guidehouse, February 10, 2022) (https://www.centralhealth.net/wp-content/uploads/2022/02/20220209_CH_Safety-Net-Community-Needs-Health-Assessment_FINAL.pdf); Central Health: Voice of the People (Guidehouse, February 2022) (https://www.centralhealth.net/wp-content/uploads/2022/02/20220209_CH_Voice-of-the-Community_FINAL.pdf).

A few examples of the flaws in Central Health’s community survey upon which its 2022 healthcare assessment and “equity” plan are based:

• The community interviews failed to survey a key constituency: poor residents not currently served through MAP by Central Health. Central Health’s contractors primarily surveyed patients already covered by MAP: “Central Health’s staff queried the current MAP and MAP Basic member database to identify persons ages 18+ who spoke either English or Spanish and lived in a Travis County ZIP code.” Central Health: Voice of the People, p. 10. It seems rather deficient to fail to survey for a future equity and accessibility plan the poor who are currently not served.
• The survey sample was too small and racially unrepresentative, an obvious problem for an equity accessibility report. A total of only 120 MAP patients completed the phone survey. Id. Only 15 had received emergency care at a hospital or urgent care in the last year. Id., p. 17. Of the 47 people asked if they had health insurance coverage, only 25 were Hispanic/Latino and only 2 were African-American. Id., pp 28, 34. This sampling is obviously racially unrepresentative of Travis County's safety-net population, undermining the validity of the assessment and “equity” plan.

• Questionable Quality. Not all of the 120 survey participants were even asked the same questions, further questioning the survey's validity. Only the 47 online survey participants were asked if they were uninsured, the healthcare benefits they have access to, and the zip code in which they reside. Id.

In conclusion, Central Health's Board and staff have failed in the last five years to address and rectify its documented deficiencies in controlling, monitoring and accounting for the use of its funds by third-party providers—and consequently in evaluating and improving the effectiveness, efficiency, and equity of their health care services to the poor. Central Health's continuous deficiencies appear to be caused by structural problems that require legislative changes by the Texas Legislature and/or new strict financial controls and procedures imposed by the Travis County Commissioners, pursuant to Tex. Health & Safety Code, Sec 281.049(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."))
IV. $35M Without Financial Controls

IV. Central Health has no financial controls over Dell Medical School’s use of Central Health's $35 million annual payments. Dell Medical School's unsupervised and unrestricted uses of its public funds appears to be an unconstitutional gift from Central Health.

A. The UT-Austin and Central Health Affiliation Agreement is abnormal, because it lacks standard payor provisions for Central Health to be able to financially control, monitor, and account for DMS uses of its public funds. The parties’ relationship is governed by their Affiliation Agreement of July 14, 2014; this agreement, however, has no standard accountability and transparency provisions that would protect Central Health's funds as the payor. See Jason Brocks, Health Plan Network Provider Agreement Essentials (Lexis-Nexis Practical Guidance Journal: Healthcare Practice Special Edition, April 2019). Health Plan Network Provider Agreement Essentials (selangorbar.org).

Standard healthcare payor provisions are well-known and include:

- “Compensation, billing, and payment” provisions that “[i]nclude “compensation amounts,” “[r]equire providers to accept the agreed-upon payment amounts from the health plan as payment in full for all services,” “[d]efine clean claims with reference to applicable state insurance laws,” “[d]escribe healthcare claims submission and provider billing processes”, [and] “[c]learly set out any recoupment rights....”;

- Maintenance of records provisions that “[r]equire providers to create and maintain patient (member) medical records in a manner that meets the standard of care for their profession,” “[r]equire providers to keep medical records for at least 10 years,” and “[p]rovide health plans with the right to access medical records and other books and records relevant to the provider’s participation in the plan”;

- “Provider licensing and insurance” provisions that “require providers to maintain professional licenses,” “[s]pecify the minimum professional liability insurance that the provider should maintain,” and “require active medical staff membership on the medical staff of a hospital;
• Provider credentialing provisions that “[r]equire providers to cooperate with the health plan’s credentialing process”;

• Network Participation terms as to "the specific networks to which the provider agrees to participate";

• Termination provisions that “[r]etain the right for the health plan to terminate providers...” and “[l]ist the most common reasons for termination by the health plan.”

The Affiliation Agreement has none of these standard contractual provisions to protect taxpayers and to control and account for DMS’s expenditures of Central Health’s funds. As detailed below, the agreement has no payment formula, no itemization or detailed reporting of services rendered, no mandatory recordkeeping, no obligation to provide full access to inspect documents or audit expenditures, no apportionment or recoupment provisions for excess payments, no physician licensing and liability insurance requirements, and no termination clauses for the provider’s failure to perform satisfactorily. UT-Austin, CCC, and Central Health Affiliation Agreement (July 14, 2014).

B. The Affiliation Agreement attempts to allow DMS contractually to have unrestricted discretion to spend Central Health’s public funds, contrary to normal payor-provider contract provisions that itemize exactly which services the provider will be paid for. The Affiliation Agreement seeks to authorize DMS -- in its discretion-- to use CH funds for almost anything. DMS may use Central Health's public funds for “permitted investments” “in its discretion” for its “on-going operations,” its “administration infrastructure,” and “other related activities and functions”:

With respect to this Agreement, Permitted Investments include the provision of direct operating support to UT that will be used by UT in its discretion to facilitate and enhance the (i) development, accreditation, and on-going operation of the UT Austin Dell Medical School and its administrative infrastructure, (ii) recruitment, retention, and work of the UT Austin Dell Medical School Faculty, Residents, Medical Students, researchers, administrators, staff, and other clinicians, and (iii) other related activities and functions as described in the Recitals to this Agreement. Affiliation Agreement, p. 9 (emphasis added)
By incorporating into the definition of DMS’s “permitted investments”, four “recital” pages of undefined DMS activities, the agreement seeks to authorize DMS to spend Central Health's public funds with essentially little to no restrictions. Id., pp. 2-6. The amorphous “recital” language appears to authorize DMS to spend, in its discretion, the funds on any “activities or functions” related to undergraduate medical education (pp. 3-4, last clause); continuing professional education (p. 3, bullet 4; p.14, section 4.2.3); general academic research (p. 3, bullets 5-7); p. 4, clause 2.; clinical research (p. 15, section 4.2.9); administration (p. 9, section 4.6); academic programs (p. 3, bullet 1); general population health studies (p. 3, bullet 7; p. 15, section 4.2.9); commercialization of innovation and research (p 3, bullet 6); and care of paying patients (p 2., clause 3). Id. Also, unlike a standard payor-provider contract, the agreement lists no specific restrictions or prohibitions on what DMS may spend Central Health's funds on. Id., pp. i-ii.

None of these contractually “authorized” DMS activities constitute the delivery of direct health care to the poor in Travis County-- Central Health’s constitutional mission. Tex. Const. Art IX, Sec 4. Nor is there any reasonable time limit under the agreement on how long DMS may use Central Health's funds in its discretion to develop the medical school and its infrastructure. See Id., p. 5, clause 1. The agreement provides that DMS may use CH’s funds for operating and administering a medical school– and provide no healthcare for the poor– for an initial 25-year period and with additional 25-year extensions upon agreement.

C. The Affiliation Agreement lacks all standard health care services provisions for Central Health’s (and thus the taxpayers’) protection. The absent contract provisions include payment formulas, mandatory recordkeeping requirements, the right to inspect and audit records, the regular reporting of services delivered, recoupment and apportionment provisions, credentialing mandates, and personnel licensing and liability insurance requirements.
1. The Affiliation Agreement purports to exclude Central Health from access to any DMS records of the services DMS provided with $280 million in Central Health taxpayer funds. The agreement specifically excludes Central Health from the provision that DMS must provide governmental authorities with requested documents, leaving Central Health with no ability to access DMS documents. Section 9.5.1 states that “[e]ach 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. Id., p. 30. However, Central Health and DMS are expressly excluded from the agreement’s definition of governmental authority, exempting DMS from any requirement to allow Central Health to inspect its records: “‘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 provisions that detail the service and other reports providers must produce 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, would exclude each other from reporting requirements and prevent financial transparency and accountability.

2. The Affiliation Agreement also does not require DMS to produce any itemization of its services, any list of complaints or problems relating to its services, or any basis for the $35 million payment. Id., pp. i-ii. Without access to DMS records, and without any itemization of DMS’s services, Central Health has no ability to financially account for DMS expenditures of its public funds. Central has abdicated its financial supervision and control over DMS’s expenditures.

3. Health care services agreements normally have provisions to authorize the payor to recoup any excess payments or to receive reimbursement or apportioned payment for any additional payments for the same services. But under its Affiliation Agreement with DMS, CH has no right to reimbursement, to apportion joint costs, or coordinate benefits that would fairly allocate costs funds between DMS and Central Health. Id., pp i-ii.
DMS keeps all such excess or additional funds; there is no contractual mechanism for Central Health to recoup public funds back from DMS. Obviously, this is not beneficial to Central Health’s taxpayers.

4. The agreement has no standard payor requiring the allocation of the medical school personnel’s salaries paid for by Central Health but having nothing to do with Central Health’s mission to provide healthcare for the poor. Central Health pays the majority of many medical school personnel's salaries, even though these faculty and other employees spend, according to their contracts, little to no time on healthcare for the poor. They spend their time on unrelated activities such as undergraduate medical education, academic research, school administration, and caring for paying patients. There is no allocation, fair or otherwise, between Central Health and DMS of Central Health-funded salaries for DMS activities unrelated to Central Health.

5. Nor does the agreement authorize reimbursement to Central Health when DMS receives outside funding for the same work previously paid for by Central Health. Central Health has paid the majority of the salaries of numerous DMS personnel who work principally on academic research. DMS has often received grant funds and gifts for these researchers’ salaries, but DMS does not reimburse Central Health for duplicate payments from other sources. DMS simply keeps the excess funds from multiple sources. Lastly, there is no coordination of benefits provision. When DMS personnel get paid by Central Health for specialty health care services (in addition to the $35 million lump sum payment), DMS sometimes receives additional payments from other third-party payers for the same services. Yet, DMS does not coordinate the benefits with Central Health, keeping both payments for itself, which is unusual and unfair to Central Health’s taxpayers.

The agreement’s lack of standard allocation, apportionment and reimbursement provisions between Central Health and DMS is abnormal and unfairly benefits the payee DMS. It is unfair to Travis County taxpayers, for these funds should go back to Central Health to reduce their tax burden or increase health care for the poor.
D. Although the Affiliation Agreement does not allow Central Health or the public to obtain documents related to DMS's uses of Central Health's funds, one can glean a little from UT-Austin's approved, official budgets. These budget show that DMS is spending tens of millions of Central Health funds on expenditure categories having nothing to do with health care for the poor. UT-Austin Approved Operating Budget Fiscal Year 2022, pp. G-35- G-41. https://www.utsystem.edu/sites/default/files/documents/report-state/2021/annual-operating-budget-ut-austin/aus-final-bud-07-13-2021.pdf.

UT-Austin's regent-approved, 2022 operating budget includes DMS's budget; it reveals that Central Health funds broad DMS expenditure categories that do not indirectly include health care services: $800,000 for communications, $500,000 for development, $1.1 million for strategy and partnerships, $1.7 million for business affairs, $900,000 for student affairs, $900,000 for professional education, $900,000 for undergraduate medical education, $900,000 for medical education, $200,000 for the Value Institute, $200,000 for the Design Institute, $400,000 for health disparity studies, $1.4 million for unspecified research, $1.4 million for DMS facilities, and $2.2 million for DMS technology. Id., pp G-35- G-41. It should be noted that DMS's budget fails to indicate how much, if any, of CH's $35 million annual payment is being spent on direct health care for poor residents of Travis County.

E. DMS's receipt of an annual lump sum payment of $35 million--with unlimited discretion and no financial controls--constitutes a complete abdication of financial accountability by Central Health. It also may violate state recordkeeping and accountability laws. As a hospital district, Central Health is a special-purpose governmental entity. Tex. Const. Art. IX, Sec 4. By statute, hospital districts are explicitly subject to the state's recordkeeping requirements for local governments. Texas Health and Safety Code, Section 281.073(a) states: “The preservation, microfilming, destruction, or other disposition of the records of a district is subject to Subtitle C, Title 6, Local Government Code[Chapter 203].”
1. The Texas Local Government Code, Chapter 203, mandates recordkeeping requirements that local governmental entities such as Central Health must “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).

Central Health has neglected to require DMS, nor has DMS maintained or produced, “adequate and proper documentation” of DMS’s “functions, policies, decisions, procedures and essential transactions” related to its uses of Central Health’s funds (as explained above). Without these documents, Central Health lacks “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.” Id. (emphasis added). Central Health simply has no ability to show that DMS is spending its $280 million in taxpayer funds in compliance with state laws or that DMS is using the funds efficiently and effectively to provide healthcare for the poor.

2. Central Health’s non-existent accounting control and recordkeeping requirements for DMS also violate mandatory Government Accounting Standards Board (GASB) directives. GASB standards require Central Health to have sufficient financial controls to ensure its funds are being spent effectively and in compliance with state law: “GASB standards are recognized as authoritative by state and local governments, state Boards of Accountancy, and the American Institute of CPAs.” Government Accounting Board Standards, “About the GASB” (About the GASB). Texas law requires local governments such as Central Health to comply with GASB’s standards: “GASB establishes generally accepted accounting principles (GAAP) for state and local governments but has no enforcement authority. However, some states (including Texas) enact laws requiring compliance with GASB standards....” Texas Office Comptroller, “The Reporting Requirements for Annual Financial Statements for State Agencies and Universities.” Governmental Accounting Standards Board (GASB)- Reporting Requirements for Annual Financial Reports (texas.gov).
GASB standard No. 34 specifies that a local government's financial controls must demonstrate that its public funds are being spent in compliance with state law restrictions: “The Board also emphasized the usefulness of the governmental fund structure and the use of fund accounting as a control mechanism and a means of reporting compliance with legal and other restrictions on the use of financial resources ...” Statement Number 34 of the Governmental Accounting Standards Board: Basic Financial Statements - Management Discussion and Analysis - State and Local Government (June 1999), p. 80 (emphasis added). It is essential, GASB commentary explains, that “[a]t a minimum, governments should provide information to assist in evaluating whether the government was operated within the legal constraints imposed by the citizenry... because, in a democracy, it is critically important for governments to communicate information that will help users evaluate compliance with laws and regulations governing the raising and spending of public moneys.” Id., p. 77 (emphasis added).

In addition to requiring financial controls to ensure legal compliance, GASB requires that an agency's controls be sufficient to be able to evaluate programmatic effectiveness: “Inherent in the concept of operational accountability is a broad interpretation of the meaning of stewardship of public resources. Stewardship comprises not only the safekeeping of all resources, capital as well as financial, and compliance with all requirements for their use (fiscal accountability), but also the efficient and effective use of resources to meet authorized service objectives and all obligations undertaken by the government on an ongoing basis (operational accountability).” Id., p. 82. (emphasis added).

Central Health does not have in place the financial controls required by GASB. The Affiliation Agreement contains no specific payment provisions, no recordkeeping requirements, no reporting of services provided, and no ability to audit expenditures.

F. Because Central Health’s financial controls and accountability are non-existent for DMS’s expenditures of its funds, Central Health may be violating the state constitutional requirement in Article III, Section 52(a) that local governments must have sufficient controls to ensure public funds are spent in compliance with state laws.
DMS considered and treated Central Health's public funds as a gift of unrestricted funds. UT-Austin's official operating budgets reveal that DMS considered Central Health's $35 million annual transfer as unrestricted funds to be used however UT wanted-- and not as required by statute or in the best interests of the poor's health care. In two ways, DMS's budgets classified Central Health's funds as gifts of unrestricted funds:

1. UT-Austin's Budget Summary lists Central Health's annual payment as “State/Local Sponsored Programs- Nonoperating,” for which Central Health expects nothing in return (i.e., a gift). UT System Operating Budget Summary FY2022, p. 28. https://www.utsystem.edu/offices/budget-and-planning/operating-budget-summaries. Central Health's $35 million payment is found in the UT-Austin Budget Summary under “State And Local Sponsored Programs - Nonoperating.” Id. The summary’s glossary defines “State And Local Sponsored Programs - Nonoperating” as “[f]unding received from state or local governments for which no exchange of goods or services is perceived to have occurred. This typically includes Texas Research Incentive Program awards from the State of Texas and funding for the U. T. Austin Medical School provided by the local health care district.” Id., p. 8 (emphasis added). CH’s $35 million to DMS even serves as a specific example for this category as well as constituting the only funds in the category in UT-Austin’s Budget.

By listing Central Health's payment in DMS's budget as “state and local sponsored programs- non-operating,” UT-Austin is declaring that DMS owes Central Health nothing in exchange for its $35 million in local property taxes, and DMS can use these Central Health funds however it pleases. In contrast, UT-Austin's Budget places federal, state and local "operating: sponsored programs" in restricted revenue categories for which commensurate value is expected in return. Id., p. 7, 28.
2. UT-Austin's Budget also labels the $35 million annual payment as “designated funds,” meaning Central Health's payments are considered unrestricted funds. UT-Austin's Budget lists Central Health $35 million annual payment in the budget section for “designated funds.” See, e.g., UT-Austin FY 2022 Budget, G-35. UT-Austin has strict budgetary rules on classifying revenues, and it defines "designated funds" as funds under UT management’s discretionary control: "Designated funds (19-accounts) are allocated by The University of Texas at Austin's governing board or management to use for special purposes and to provide services to the university and to the community. These funds can be modified by management at any time.” UT-Austin Handbook of Business Procedures Section, 2.2.3. (emphasis added). https://afm.utexas.edu/hbp/part-2/2-3-designated-funds. Again, UT-Austin fails to recognize that Central Health funds are tax dollars subject to mandatory legislative restrictions.

3. The Texas Constitution, Article III, Section 52(a) provides that local governments’ “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.” Tex. Attorney General Opinion No. JC-0335 (2001), p. 7 (emphasis added). Article III, Section 52 states, in relevant part: “[T]he Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever. . . .” In the leading case of Texas Municipal League Intergovernmental Risk Pool v. Texas Workers' Compensation Commission 74 S.W.3d 377 (Tex. 2002), the Texas Supreme set out a three-part test for whether this anti-gift constitutional provision has been violated: “Specifically, the Legislature must: (1) ensure that the statute's predominant purpose is to accomplish a public purpose, not to benefit private parties; (2) retain public control over the funds to ensure that the public purpose is accomplished and to protect the public's investment; and (3) ensure that the political subdivision receives a return benefit.” (emphasis added). Here, Central Health's transfer of public funds to DMS purports to have no contractual or other financial controls, and the transfer was treated by DMS as an unrestricted gift. Neither the state constitution nor good governance countenance a gift of public funds.
G. There is a noticeable contrast between the absence of financial accountability and transparency provisions in Central Health and DMS's Affiliation Agreement and their presence in both Central Health and Seton’s Omnibus Health Care Services Agreement (June 1, 2013) and in Seton and UT-Austin’s Affiliation Agreement (October 15, 2014). While the Central Health and UT-Austin Affiliation Agreement lacks any standard contract provisions protecting payors, the Central Health and Seton Health Care Services Agreement possesses these provisions. Their Health Care Services Agreement delineates Seton’s and Central Health’s specific duties (Articles 2-3, pp. 8-14; Article 5, pp. 16-24) and itemizes the specific medical care services that Seton will provide (Annex, C-1- C-10). It sets out detailed patient eligibility requirements (Annex, B-3- B-30), sliding scale co-payments (Annex, B-1- B-2), and the terms and method of payment (B-14- B-16). It requires Seton to keep and maintain appropriate medical records (Section 2.7, p. 9; Section 8.19, p. 34) as well as periodically provide to Central Health service reports (Section 2.14, pp. 12-13).

The Central Health and Seton Omnibus Health Services Agreement explicitly calls for public accountability, authorizing Central Health to monitor Seton’s performance (Section 5.8, pp. 18-19) and to possess the right to inspect and audit (Section 8.18, p. 34). It has reimbursement (Section 5.9, p. 20) and coordination of benefit provisions (Section 5.13, p.24). It requires Seton to be credentialed and licensed (Sections 2.4.-2.5, 2.9, pp. 8, 10-11 ), to maintain liability insurance (Section 2.8, pp. 9-10), to provide a network (Section 4.9, pp. 26-27), and to be terminated for a variety of reasons. (Section 6, pp. 29-37). (It should be noted that the agreement with Seton appears to have vague charity care provisions and payment formulas, but that is not part of this report).

Similarly, the Seton and UT-Austin Affiliation Agreement has typical payor-provider provisions, unlike Central Health’s Affiliation Agreement with UT-Austin. These provisions cover compensation (Section 10.42, pp. 78-79), access to medical and other records (Section 24, pp. 98-99), reimbursement and allocation (Sections 3.3, 6.2.2, pp. 17, 33), licensing and accreditation (Section 6.43, p.37), liability insurance (Section 10.4.2. p. 79); networks (Section 7.3, pp. 41-43), and termination (Sections 20-21, pp. 88-93).
In conclusion, there is no reason that Central Health's Affiliation Agreement with the medical school should not contain standard payor provisions, like those in the Central Health and Seton Omnibus Health Services Agreement and the UT-Austin and Seton Affiliation Agreement.

H. Without financial controls over the health care services (if any) DMS has provided the poor for Central Health’s $35 million annual payment, it is impossible to determine if these funds have been used effectively, efficiently or equitably. Without standard financial controls and access to records, there can be no accountability or transparency for DMS’s expenditures. Nor is there any way to evaluate the quality and value of any DMS medical care for the poor, or the effectiveness of its part in the Integrated Delivery System. The Affiliation Agreement’s failure to provide standard accountability provisions (much less best practices) precludes Central Health from complying with state law and GASB. Its Affiliation Agreement is the antithesis of financial accountability and transparency.

V. Failed to Fulfill its Core Promise

V. Central Health has failed to require DMS to fulfill its core promise to be an “essential” part of an integrated delivery system (IDS) for the poor. Section 4.2 of the Affiliation Agreement states that “the UT Austin Dell Medical School and the [Seton] Teaching Hospital are considered by Central Health and the CCC as essential elements of this IDS along with Community Clinics, mental health facilities, and other providers and outpatient clinics.” Id., p. 14 (emphasis added).

A. DMS agreed in its Affiliation Agreement with Central Health to make the medical school’s comprehensive health care services fully available to Travis County residents, including the poor. The agreement states that “UT will make available, through the Seton 162b Entity or UT Austin Dell Medical School provider practice entities…clinical services at clinics and other facilities acting as providers for the IDS, including the Teaching Hospital, Dell Children’s Medical Center, and other reasonably accessible facilities and clinics... this participation will include Faculty and Residents providing a comprehensive range of medical services and clinic experiences to residents of Travis County...” Id., pp. 15-16 (emphasis added).
DMS further expressly agreed that it would provide these comprehensive health care services equally, and without discrimination, to Central Health’s MAP and other patients:

UT Austin Dell Medical School provider practice entities will accept MAP (or its successor) patients, Charity Care Enrollees, members of any health plan owned by Central Health and the CCC, any residents participating in any program of the IDS and uninsured patients, in the same manner and pursuant to procedures that ensure the same access as other patients of the Seton 162b Entity or UT Austin Dell Medical School provider practice entities regardless of the patient’s age, gender, race, color, religion, origin, sexual orientation, disability, health status, insurability, genetic information, source of payment, or utilization of medical or mental health services... Id. (emphasis added)

B. Nevertheless, Dell Medical School’s physicians’ practice group provides specialty healthcare services to Central Health’s patients in only two limited specialty areas; as a result, DMS is not a fully functioning partner in a comprehensive, integrated delivery system for the poor. UT Health Austin, DMS’s practice group, refuses to take Central Health MAP patients except for musculoskeletal and women’s health problems. UT Health Austin’s webpage, on the coverages that it will accept, states that it will take only “CCC MAP/MAP BASIC – (limited to the Musculoskeletal Institute and Women’s Health Institute).” (https://uthealthaustin.org/patient-resources/insurance-billing).

DMS apparently accepts only these two limited specialty services because Central Health pays DMS an additional $4.7 million annually for this care on top of its $35 million annual lump payment. UT-Austin Approved Operating Budget FY2021, p. G-38 – G-39 (women's health payments from Central Health (CH): $2.21 million; musculoskeletal payments from Central Health: $2.49 million). While UT Health Austin provides high-quality treatments for paying patients with heart attacks, childhood leukemia, lung cancer, diabetes, COVID, dementia, and many other life-threatening illnesses, it does not provide this care for Central Health’s poor patients. See UT Health Austin webpage: https://uthealthaustin.org/conditions; UT-Austin Approved Operating Budget FY2022, p. G-37- G-41.
Since DMS provides care to Central Health patients only in these two limited specialty areas, indisputably DMS is not fulfilling its contractual agreement to provide comprehensive, equitable integrated healthcare services to the county's poor. DMS has failed to honor its contractual commitment to serve as an essential component of Central Health's integrated delivery service for the poor as well as providing Central Health patients equal healthcare without discrimination. Central Health apparently has done nothing to remedy this apparent major breach of DMS's contractual obligations.

VI. Nonprofit Used to Impede Financial Accountability

VI. Central Health’s partnership with the private, nonprofit Community Care Collaborative has been used to impede financial accountability and transparency of Central Health-funded expenditures. The CCC is a 501(c)(3) nonprofit corporation that, in its own words, is “a public/private partnership between Central Health and Seton Healthcare family designed to better manage the care of the shared safety-net population. Through partnerships with contracted service providers, CCC provides a coordinated continuum of healthcare services. CCC also administers the county-based indigent care program called the Medical Access Program (MAP)...” DY 9-10 RHP 07 Plan Update (Provider Info Sheet). It also serves as the Central Texas distributor of federal Medicaid Delivery System Reform Incentive Payment (“DSRIP”) funds. CCC FY2021-FY2020 Financial Statements, p. 9.

A. CCC’s raison d’être, as an intermediary conduit for Central Health, has always been unclear; this is even more true since 2020 when CCC’s partners Central Health and Seton stopped providing CCC funding and CCC discontinued producing a public budget. Whatever the benefits, if any, of CCC serving as a conduit for dispersing funds for Central Health, CCC’s position that it as a private nonprofit corporation is not subject to the Texas Public Information Act (TPIA) has precluded financial accountability and transparency of its expenditures and activities. It should be noted that CCC has disbursed, with little to no transparency, $844.2 million in Central Health, Seton, DSRIP, and other funds. See CCC Financial Statements, FY2014-FY2022.
B. There has never been a clear explanation why Central Health has transferred its $35 million annual payment indirectly to the DMS through the CCC, rather than Central Health simply sending the funds directly to the medical school. Nor is there any apparent need for CCC as an intermediary to make Central Health’s health care payments to Seton, or to disburse DSRIP funds to DSRIP project participants, rather than Central Health simply making these payments itself. One would think Central Health had the ability to perform these basic payor functions itself. It also does not appear that the CCC is needed to manage the integrated delivery system for the poor, because as the payor of all the providers, it could play this coordinating role.

1. It is contended by critics that the CCC was established as a private intermediary, at least in part, to obscure the uses of Central Health and DSRIP funds by the medical school and third-party providers. Central Health received voter approval in the November 2012 election to raise $35 million in new property taxes to pay for a medical school “consistent with Central Health’s mission.” It would seem to provide much more accountability and transparency for Central Health, which is subject to the TPIA, to send the $35 million in public funds directly to DMS. Instead, Central Health has sent tax dollars to the CCC, which has commingled Central Health’s funds with Seton’s and DSRIP’s, before disbursing the commingled funds to DMS and providers. By using the CCC as a funding conduit—which Central Health and CCC both claim is not subject to the TPIA—Central Health has made it nearly impossible to account for and trace CCC’s funding to DMS and other providers. (See the CCC’s position that it is not subject to the TPIA in Tex. Atty. Gen. OR2017-28916). https://www2.texasattorneygeneral.gov/opinions/openrecords/51paxton/orl/2017/pdf/or201728916.pdf

2. Whatever the purpose for establishing the CCC, it is undeniable that its use as a conduit has greatly impeded public accountability and trust related to Central Health’s funding and activities. CCC has undermined Central Health’s financial transparency by refusing to publicly provide detailed programmatic and accounting records of the CCC’s expenditures and activities on Central Health’s behalf.
VII. Central Health has attempted through its use of the CCC to delegate its governmental authority and control over funding the poor’s health care in Travis County to Seton, a private party.

A. The Master Agreement between Seton and Central Health seeks to delegate to Seton Central Health’s authority to control the provision of the poor’s health care and to manage an Integrated Delivery System. While the agreement purports to provide Central Health 51% majority control of the CCC, all significant CCC decisions require Seton’s approval –nullifying Central Health’s statutory responsibility for and control over the poor’s health care under Texas law. Master Agreement Between Central Health And Seton (June 1, 2013).

The Texas Constitution and state law authorize publicly-created hospital districts to provide healthcare to the poor. See, e.g., Tex. Health and Safety Code, Section 281.002 (a). The Master Agreement appears on the surface to provide Central Health majority control over the CCC and to recognize its statutory authority to deliver health care services to the poor: “Central Health shall have a 51 % membership interest in the CCC, and Seton shall have a 49% membership interest in the CCC.” Id., Section 3.4 (p. 13). But the agreement’s exceptions to Central Health’s 51% majority control of the CCC completely swallow up Central Health’s authority and allow Seton to block Central Health’s control of any significant CCC decision: “The CCC Board shall have authority by majority vote to make all decisions and to take all actions for and on behalf of CCC except for (i) the Reserved Powers as set forth below in Section 3.8 and (ii) the Material Decisions set forth below in Section 3.9 which shall require a majority vote of the Central Health Board representatives and an affirmative vote of both Seton Board representatives at a meeting at which there is a quorum in order to become effective.” Id., Section 3.7 (p. 15). (emphasis added). Under the “reserve powers” exceptions to Central Health’s majority control, Seton has joint authority (veto power) over important statutory responsibilities of the hospital district. Id., Section 3.8 pp. 16-18.
These eighteen reserved powers, which require Seton’s approval, include:

- amending the CCC’s governance documents,
- accepting new CCC members,
- approving any agreements among Central Health and its affiliates (CUC, Sendero, DMS),
- agreeing to any contract over $100,000 (including provider contracts),
- approval of CCC’s budget,
- adoption of the strategic plans of the CCC and the IDS,
- the setting of the eligibility requirements for Central Health’s MAP patients and for the IDS,
- selecting the Medicaid DSRIP projects and providers (which involves nearly $500 million in funds),
- and approval of the funding for the Federal Qualified Health Centers, which provide the primary care for Central Health patients and include the CUC, the Lone Star Circle of Care, and the People’s Community Clinic.

In addition, Seton has joint control over CCC’s “material decisions,” which include the “composition and selection of the CCC Provider Network,” the “services to be offered by the CCC to the Covered Population [the poor],” and “approval of any application or request for any grants or awards, service agreements, or provider contracts.” Id., Section 3.9 (p. 18). Seton essentially can block any significant Central Health decision through the CCC related to the poor's health care in Travis County.

B. Through the Master Agreement, Central Health purports to give Seton authority to block any significant decisions of the CCC, which has been Central Health's main means for dispensing funds for the poor's healthcare and managing the IDS. Central Health inexplicably has tried to cede its statutory authority to provide healthcare for the poor to a private party, Seton, undermining public authority and accountability. This delegation of governmental authority to Seton, a private corporation, is questionable legally and as public policy.
First, the Legislature has not authorized Central Health to delegate its authority over providing for the poor's health care to a private party with its own, separate financial and other interests. Second, providing Seton with authority to control CCC's health care provider contracts appears to create a conflict of interest: for Seton has served the CCC as both a payor and provider for tens of millions of dollars a year. Although Seton competes with CCC's other local health care providers, Central Health has sought to authorize Seton to control CCC's multi-million dollar contracts with these providers.

C. Seton’s apparent conflict of interest in serving as both a payor decision maker and a provider for the CCC is a major reason, in our opinion, that the federal Health and Human Services’ Office of Inspector General found that the CCC had engaged in $83 million in illegal, impermissible provider-related donations. Texas Relied on Impermissible Provider-Related Donations to Fund the State Share of the Medicaid Delivery System Reform Incentive Payment Program,” U. S. Dept. of Health and Human Services, Office of Inspector General (August 2020), p. 9. (https://oig.hhs.gov/oas/reports/region6/61709002.pdf).

The Inspector General’s audit report found that under the Master Agreement Seton exercised control over the CCC, and therefore, served illegally as both the payor and provider: “CMS [Center for Medicare and Medicaid Services] disallowed the Federal [DSRIP] funds because the State’s share of the payments was derived from impermissible provider-related donations in the form of private hospitals [Seton](through entities they created and owned[CCC]) undertaking contracts to provide physician services in two public county hospital districts.” Id., p. 3.
D. The Texas Constitution prohibits governmental entities from delegating their statutory public authority to private entities. In the leading case of Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen, 952 S.W.2d 454, 469 (Tex. 1997), the Texas Supreme Court struck down the delegation of legislative authority to a private entity. The Court noted that “the basic concept of democratic rule under a republican form of government is compromised when public powers are abandoned to those who are neither elected by the people, appointed by a public official or entity, nor employed by the government.” Id. The Court established an eight-part test for whether a governmental entity has unconstitutionally delegated its governmental authority to a private entity. Id., at 472. Suffice it to say, the Master Agreement’s sweeping delegation of Central Health’s authority to Seton raises serious constitutional issues. And regardless of the delegation’s constitutionality, it is highly problematic public policy for a governmental body to turn over its public responsibilities to a private entity with apparent conflicts of interest. Id., at 472. The public and the poor are entitled to Central Health, the governmental body created for the poor’s healthcare in the county, to actually control the delivery of these public services and funds.

E. Whatever CCC’s intended role in the past, it has not been fulfilling this role for the last two years, and it apparently is not likely to do so in the future. Seton and Central Health are involved in a protracted contractual and funding dispute over Central Health’s payments to Seton for its patients’ care and Seton’s provision of charitable care as a non-profit hospital. According to Central Health’s Fiscal Year 2021 Financial Statement, p. 29, “[o]n 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-dba-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.
As a result of Seton and Central Health’s dispute, the CCC has little non-DSRIP funding and no budget. “[F]unding for the fiscal year 2021 CCC budget was not agreed to by the members [Seton and Central Health] of the CCC... the CCC has not adopted a public budget for two years”. Id. CCC has received in the last two years no payments from Central Health or Seton because of their dispute. CCC FY2021 and FY2020 Financial Statement, p. 4. Central Health and the CCC have provided little public information on the status of their dispute, despite its major impact upon the delivery of healthcare to the poor in Travis County. Central Health doesn’t appear to understand that public transparency and accountability is essential for public agencies performing public services with public funds.

VIII. CommUnityCare Funding Questions

VIII. Central Health lacks adequate accountability controls and transparency related to its funding of CommUnityCare.

A. The CUC is a Central Health-affiliated, 501(c)(3) nonprofit Federal Qualified Health Center (FQHC) that serves multiple-counties in Central Texas. CUC Strategic Plan 2022-2024, pp. 6, 10. https://communitycaretx.org/wp-content/uploads/2022/02/CUC-Strategic-Plan-2022-24.pdf. The CUC is a major component of the Travis County healthcare system for the poor, providing “approximately half of the local safety net population’s primary care services.” https://communitycaretx.org/about/). It, therefore, is imperative that CUC’s services funded by Central Health be fully accountable and transparent.

Central Health also owns assets utilized by CommUnityCare under an equipment and facilities agreement. Central Health has a contractual agreement with CommUnityCare to provide clinical services...” Id., p. 31. “CommUnityCare provided services in the amount of $51.6 million.” Id. CUC also provides “other healthcare related activities [unspecified] with financial support from Central Health.” Id. Central Health has joint responsibilities for CUC's budget with CUC's Board. Central Health Financial Statement for Fiscal Year 2021, pp. 7, 17. CH also appoints 2 of CUC’s 15 board members, and CUC's current chair is a long-time former board member of Central Health. (https://communitycaretx.org/boardofdirectors).

C. There is little accountability of CUC's expenditures and activities funded by Central Health because CUC maintains it is not subject to the Texas Public Information Act. As a private non-profit, CUC does not consider itself subject to the Texas Public Information Act, although it is an integral part of Central Health and spends tens of millions of Central Health taxpayer funds. Neither the CUC nor its partner Central Health make the CUC's documents publicly available.

Central CUC documents for financial accountability are not available, including financial accounting details showing what CUC spends Central Health funds on, accounting records showing whether Central Health funds are segregated and not spent on unauthorized activities, and performance evaluations of the quality and quantity of care for Central Health funds. Without this essential information, there is no real public accountability and transparency.
There are concerns:

- that CUC’s contract with Central Health may be significantly different than for the other FQHC providers, such as, apparently receiving an unitemized, lump-sum payment rather than having a basic fee-for-service arrangement;

- that CUC has not conducted, or at least publicly produced, appropriate performance evaluations of the effectiveness, efficiency, and equity of CUC’s healthcare and other services;

- about the effectiveness of CUC’s role in Central Health’s IDS for the poor;

- about the quality of Central Health’s control and monitoring of CUC's uses of its funds;

- about the appropriateness and duplication of CUC administrative expenses paid for by Central Health;

- that Central Health funds may be being spent on CUC programs that are not allowed by state law, including care for paying patients that are not eligible for Central Health assistance, workforce development programs, non-healthcare social services, and public health programs for the non-poor. See CUC Strategic Plan for 2022-2014, pp. 5-15.

- that CUC operates in multiple Central Texas Counties (Find a Health Center (hrsa.gov) and it is unknown whether it has control to prevent the spending of Central Health funds outside Travis County, which is prohibited by state law. Texas Health and Safety Code, Sections 281.002, 281.046.

- that it is unknown why the CUC is paying $1.2 million to DMS for internal medicine and women’s health and whether Central Health is the ultimate source of the funds. UT Austin Approved Operating Budget Fiscal Year 2022 (Aug. 19 2021), p. G-38
IX. Neglected Affiliated Non-Profit HMO Sendero

IX. Central Health has not supported its affiliated, non-profit HMO Sendero.

A. Sendero Health Plans, Inc. (“Sendero”) is a Central Health-affiliated, nonprofit HMO that “provides services related to the Affordable Care Act [ACA] in an eight-county service area.” Central Health Fiscal Year 2021 Financial Statements, p. 17. “Sendero is a discrete component unit of Central Health. Sendero is legally separate from Central Health and is a single-member 501(c)(3) corporation, wholly owned by Central Health.” Id. “There is a financial benefit/burden relationship between Central Health and Sendero in that Central Health has historically provided financial support to Sendero in the form of funding for risk-based capital levels ... Sendero is expected to pay any debts it incurs with its own resources.” Id.

Sendero provides health coverage to high-risk, expensive Central Health eligible residents. “In 2021 Central Health continued to provide funding for a premium assistance program for high risk patients enrolled in Sendero Health Plans that served over 680 people.” Id., p.6. In 2018, however, Central Health's Board sought to discontinue Sendero’s coverage; it backed down only after pressure from the public and the Commissioners’ Court. Ken Martin, “Last-Ditch Effort to Save Sendero,” (September 20, 2018) (https://theaustinbulldog.org/last-ditch-effort-to-save-sendero/)

B. Sendero's coverage of high-risk poor persons benefits those receiving coverage as well as Central Health. As an Affordable Care Act ("ACA") insurer, Sendero receives from the federal government substantial additional risk-adjusted payments for its high-risk insureds. Central Health, however, cannot receive these higher payments because it is not an ACA insurer. Therefore, if Central Health covered these high-risk people, it would have to absorb much higher costs than Sendero. Central Health, in short, benefits financially from Sendero covering these high-cost, eligible residents, allowing it to provide healthcare to more poor.

Unfortunately, the parties’ problems in their troubled relationship have continued. Sendero has recently applied to the State to expand into Medicaid—with its own resources— to further expand health care access for poorer patients. Yet Central Health’s Board appears indifferent at best and hostile at worst to Sendero’s application. Video of Central Health Board Meeting (May 25, 2022), Item 7 (https://www.youtube.com/watch?v=Ka21rL-Ixmc)
X. Other Accountability Deficiencies

X. Other major potential Central Health accountability concerns and deficiencies. Other serious concerns, besides those above, have been raised about Central Health and will be very briefly mentioned below:

A. Central Health appears to have high administrative expenses, which it understates to the public. The NAACP and LULAC's Red Flag Report questions whether Central Health’s reported 3% administrative costs are understated and appear misleading. Central Health Red Flag Report (March 2022), pp. 11-17. Central Health’s Approved 2022 budget states that it spends only 3% on administrative expenses. CH FY 2022 Budget, p. 49. The Red Flag Report’s analysis indicates, however, that its actual administrative expenses as a payor may be 35% or higher. The report notes that Central Health includes in “health care delivery” costs many administrative and operational expenses that are not normally considered direct healthcare services. Id. For example, Central Health’s 2022 budget states it will provide $491.5 million in purported “healthcare delivery,” but only 20% consists in direct “health care services” ($101.59 million); the rest consists of “healthcare operations and support,” “reserves, appropriated uses & transfers” and other, smaller non-health care items. CH 2022 Budget, pp. 39-40.

B. As a governmental entity, Central Health has a duty to be transparent and explain fully its future plans and what its enormous increase in contingency reserves is for. Unfortunately, CH has been vague and guarded about the purpose of its $300 million contingency reserve funded by local property taxes. CH FY 2022 Approved Budget Book, pp. 22, 54.

C. Questions have been raised about whether Central Health should begin to transform its IDS before assessing fully why its prior IDS efforts have failed. Red Flag Report, p.p. 17-18. While it would appear to be best practices to conduct a performance audit to evaluate the strengths and weaknesses of its current IDS before spending millions on a new one, Central Health apparently has not done so. Id. Nor has Central Health sought to meaningfully include the community in this important public decision.
D. Central Health is revamping its system model, from being solely a payor to being a payor and a major provider, with little public discussion or engagement. This huge increase in the complexity of Central Health’s responsibilities in becoming a provider should not be taken without a performance audit and a robust public discussion— which again Central Health has not had. Red Flag Report, pp. 17-18.

XI. Conclusion

XI. Central Health has failed to provide legally-required financial controls and oversight over third-party providers’ uses of hundreds of millions of dollars in Travis County taxpayer funds. Three action steps should be taken to address these concerns. First, the Travis County Commissioners should immediately order a comprehensive, independent third-party performance audit. Second, the Texas Legislature should study reforms to:

1) require additional mandatory financial controls over and transparency of Central Health's funds and its affiliates; and

2) to provide better board governance and county oversight. Third, the Texas Legislature and Travis County should pass and implement new laws and orders to ensure Central Health better serves the poor, taxpayers, and the Legislature.
CENTRAL HEALTH

Lack of Financial Control Over Providers’ Spending of Millions in Public Funds is Failing the Legislature, County Taxpayers and the Poor