

CAUSE NO. _____

SETON FAMILY OF HOSPITALS AND
SETON HEALTHCARE FAMILY

Plaintiffs,

v.

TRAVIS COUNTY HEALTHCARE
DISTRICT D/B/A CENTRAL HEALTH

Defendant.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

201ST, DISTRICT COURT

_____ JUDICIAL DISTRICT

**PLAINTIFFS’ ORIGINAL PETITION
AND APPLICATION FOR DECLARATORY RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Seton Family of Hospitals (n/k/a Ascension Seton) and Seton Healthcare Family (n/k/a Ascension Texas) (hereinafter “*Plaintiffs*” or “*Seton*”) files this Original Petition against Defendant Travis County Healthcare District d/b/a Central Health (“*Defendant*” or “*Central Health*”), and for causes of action would show unto the Court as follows:

I. DISCOVERY CONTROL PLAN AND RELIEF

1. Plaintiffs intend to conduct discovery under Level 3, as provided by the Texas Rules of Civil Procedure.
2. Plaintiffs seek monetary relief over \$1,000,000 and non-monetary relief, as provided by Rule 47 of the Texas Rules of Civil Procedure.

II. PARTIES

3. Ascension Seton and Ascension Texas are each a Texas non-profit corporation, with their principal place of business in Travis County, Texas.
4. Travis County Healthcare District d/b/a Central Health is a hospital district created

under Chapter 281 of the Texas Health and Safety Code, with its principal place of business in Travis County, Texas. Defendant may be served with the citation and a copy of this Original Petition to Mike Geeslin, President and CEO Central Health, 1111 E. Cesar Chavez St., Austin, Texas 78702, or wherever else he may be found.

III. JURISDICTION AND VENUE

5. Venue and jurisdiction are proper in Travis County, Texas, under Texas Civil Practices and Remedies Code § 15.002, since all of the events giving rise to this cause of action occurred in Travis County, Texas and the damages sought are in excess of the minimum jurisdictional limits of this Court.

IV. INTRODUCTION

6. For over 120 years, Seton has pursued a mission to provide critical healthcare services for Travis County's most economically vulnerable residents.

7. In 1995, Seton contracted with the City of Austin to create a public/private relationship to provide services (including hospital and outpatient services) to support the safety net population. Defendant was authorized by the voters of Travis County in 2004, and assumed the governmental responsibility to coordinate, process and provide healthcare services for the safety net population of Travis County. In 2013, Seton and Defendant agreed to create a new integrated healthcare delivery system to better serve and coordinate the delivery of healthcare services for the safety net population.

8. Through this unique public-private collaboration, the parties have saved and improved thousands of lives by providing equitable access to healthcare throughout the community, and have done so while maintaining the lowest tax rate of the six largest safety net hospital districts in the state.

9. Despite these achievements, the parties could not resolve their differences regarding Defendant's breach of its contractual obligations. For over five years, Defendant has disregarded the contractual limitation on enrollment for the Medical Access Program ("*MAP*") and has far exceeded the agreed upon number of individuals the program was funded to support. Defendant has unilaterally over-enrolled the program and refused to provide appropriate funding to support the much-needed healthcare of these additional patients.

10. Seton has continued to provide high quality equitable care for all enrolled MAP patients despite this financial shortfall and intends to continue to perform its obligations under the existing agreements. Unable to find a reasonable and amicable solution after more than three years of negotiations, Seton is left with no option other than to seek legal intervention to require Defendant to fulfill its contractual obligations.

V. BACKGROUND FACTS FOR BREACH OF CONTRACT

A. The Parties Enter Into Contractual Agreements For the Delivery of Certain Healthcare Services

11. In 2013, Seton and Defendant entered into several agreements designed to result in an integrated healthcare delivery system ("*IDS*"). Those agreements include two foundational agreements critical to this dispute: (a) the Amended and Restated Master Agreement ("*Master Agreement*") and (b) Omnibus Services Agreement ("*Omnibus Agreement*"), together referred to as the "2013 Agreements." The 2013 Agreement also served as the basis for the formation of the Community Care Collaborative ("*CCC*") as a jointly owned entity which would help fund and coordinate the integrated delivery system.

12. Following execution of the 2013 Agreements, changes to the delivery of healthcare services have continued to move to outpatient settings, federal funding of services for the safety net population have been reduced, and the Travis County safety net population has grown

substantially. The 2013 Agreements contemplated the parties would work cooperatively to expand services and funding, and would enter into “Definitive Amendments” to their agreements to reflect the evolution of health care delivery with the changes in the community. The parties outlined specific long-term goals, including expansion of the MAP program, to be the subject of future Definitive Amendments.

13. The 2013 Agreements address the scope of the MAP program, set limits on MAP enrollment, define covered benefits available to MAP enrollees, establish compensation to be received by Plaintiff for providing services to MAP enrollees, and sets forth the mutual approvals required to make changes to MAP. Despite the good faith expectations of future changes and expansion of the MAP program, the parties have not executed a single “Definitive Amendment” to the 2013 Agreements.

B. Central Health Over-Enrolls the MAP Program

14. Beginning 2017, Defendant began to disregard the agreed contractual limits on permitted MAP enrollment. Despite both formal and informal requests to Defendant to exercise its ability to manage MAP enrollment within the contract limits, Defendant has continued to increase enrollment, which is now more than 20% greater than permitted.

15. The limitations on MAP enrollment were deliberately negotiated by the parties, together with the scope of healthcare services to be provided by Seton and the compensation Seton would receive for such services. The MAP enrollment limitations are a material element of the Omnibus Agreement, and may be increased only by a “Definitive Amendment.”

16. Section 4.6 of the Omnibus Agreement provides that if the number of Unique MAP Enrollees exceeds 25,000, Central Health will “*take all actions reasonably necessary to reduce as*

soon as reasonably possible the number of Unique MAP Enrollees to a number that is equal to or less than the number of Baseline MAP Enrollees.”

17. Seton requested Defendant identify and undertake the actions necessary to reduce the number of MAP enrollees, but the requests were disregarded by Defendant. Accordingly, on May 10, 2022, Seton provided notice to Defendant of Defendant’s breach of Section 4.4 of the Omnibus Agreement, which limits the number of “Unique MAP Enrollees” to not more than 25,000 persons per month.

18. If Defendant wants to maintain MAP enrollment above 25,000, Section 4.6 contemplates the parties would first negotiate compensation to Plaintiffs for the additional services. No such agreements have been reached.

19. Despite the notice and opportunity to cure its breach of the Omnibus Agreement, Central Health has continued to expand MAP enrollment and reached 30,507 Unique MAP Enrollees in July 2022. Seton provides data on monthly basis regarding the services provided to MAP enrollees, and Central Health is fully aware of the increased costs incurred due to Defendant’s breach.

20. As a direct result of Central Health’s breach of Section 4.4 and Section 4.6 of the Omnibus Agreement, Seton has incurred tens of millions of dollars in extra-contractual costs to deliver health care services to the over-enrolled number of MAP enrollees.

C. Defendant Fails to Cooperate and Communicate as Contractually Required

21. The Master Agreement addresses the broader relationship of the parties, particularly regarding the intent to maximize the availability of government funding for healthcare services and to use the CCC to further the goals of joint development of an IDS for serving the safety net population. In breach of its contractual commitments under the Master Agreement,

Defendant has embarked on a new strategy to develop its own provider network and service delivery model, with integration into the existing systems only as required.

22. Section 4.17 of the Master Agreement, titled “Mutual Cooperation and Communication,” includes the agreement that “[t]he parties will in good faith cooperate and communicate with each other as reasonably necessary (and will respond to reasonable questions from the other party) regarding their operations and activities in the course of performing their duties contemplated by this Agreement.” Defendant has intentionally and strategically decided to limit its cooperation and communication with Plaintiffs with respect to the IDS.

23. One glaring example is Defendant’s recent public announcement of its intent to become a significant direct clinical service provider (with plans to hire an additional 100 employees to support this initiative) without engaging Seton in any way about such plans or jointly discussing the impact on the IDS. The contractual obligation of communication and cooperation is intended to ensure joint planning so the limited resources available to support the IDS and the safety net population may be maximized. Defendant has wholly discarded this obligation in favor of a unilateral, siloed approach which will duplicate existing infrastructure, fragment the health care delivery system and thereby weaken the overall reach of the safety net system in Travis County.

24. Another clear and ruinous example of Defendant’s failure to cooperate was its decision not to make an intergovernmental transfer (“IGT”) for Disproportionate Share Hospital (“DSH”) funding in fiscal year 2021, informing Seton of this critical decision after the fact. There is no dispute about the unilateral right of Defendant to elect out of making an IGT, including for DSH, even if the IGT would benefit the IDS. However, Defendant’s actions materially breached the 2013 Agreements because Defendant failed to provide the advanced notice necessary to allow

Seton to ensure its continued eligibility to participate fully in the DSH program and maximize available state and federal funding.

25. Section 4.2 of the Master Agreement specifically provides: “*The parties agree to collaborate to maximize the amount of state and federal funds that may lawfully be available to build and operate the IDS, including . . . to compensate providers within the CCC Provider Network, including Seton, for health care and other services . . .*” In this situation, Defendant purposefully withheld information from Seton about its decision to stop funding the IGT for DSH despite knowing the importance of DSH funding to support the IDS, and despite the known risk that Seton could be excluded from full participation in DSH funding as a result of the decision. The right of Central Health to cease funding the IGT does not excuse Defendant’s failure to collaborate so alternatives could be developed to ensure DSH funding would not be decreased for the vulnerable Travis County population.

26. Accordingly, Seton hereby asserts causes of action against Defendant for breach of the Omnibus Agreement and the Master Agreement.

VI. BACKGROUND FACTS FOR DECLARATORY RELIEF

27. Lacking the political will to manage MAP enrollment or fairly compensate Seton for the additional services, Defendant has attempted to re-interpret the 2013 agreements to fabricate an alleged breach by Seton. In a letter to Plaintiffs dated June 8, 2022, Defendant stated: “*Ultimately, Central Health believes that a core issue in this Dispute is the fact that Ascension has taken numerous steps over time to reduce the number of (a) available appointments in clinics that effectively serve MAP and Charity Care patients; (b) MAP and Charity Care patient encounters provided or arranged by Ascension across all service lines and service locations; and (c) MAP and Charity Care patients Ascension actually serves.*”

28. Defendant incorrectly contends that two provisions of the Omnibus Agreement (Sections 2.1 and 5.8.2) articulate a requirement that Seton continue to see at least the same number of patients, including within each specialty, as were seen by Seton in 2013. To state this another way, Defendant's claims Seton is contractually obligated to deliver the same number of appointments that it delivered to the safety net population in 2013. Defendant's interpretation is contrary to the plain language of the Omnibus Agreement and conflicts with one of the fundamental purposes of the 2013 Agreements – to move primary care and other services to more appropriate and cost-effective care settings.

29. No provision in the 2013 Agreements imposes an obligation to see a minimum number of patients. The language and structure of the 2013 Agreement provide for Seton to see all patients – within the contractual limits – who present or are referred for the agreed upon covered services.

30. Unable to point to an express provision in the 2013 Agreements, Defendant attempts a tortured interpretation of the phrase “Current Level of MAP Services” in the Omnibus Agreement. The actual definition of “Current Level of MAP Services” is imbedded within the definition of “MAP Healthcare Services” in the Omnibus Agreement. This definition addresses the type or nature of services to be provided – rather than the number of appointments – by expressly referencing those services listed on Annex C: *“MAP Healthcare Services” shall mean the physician services, inpatient and outpatient hospital, diagnostic and surgical services and procedures, and the other services, procedures and supplies described in Annex C hereto, which the parties acknowledge is the level of services that Seton is contractually obligated to provide immediately prior to the Effective Date of this Agreement by Seton to MAP Enrollees (“Current Level of MAP Services”).”*

31. Annex C to the Omnibus Agreement lists the type of services which are included as “MAP Healthcare Services” and which the parties agreed would be provided by Seton for MAP patients. Absent from Annex C is any reference to a minimum number of appointments or encounters because the “Current Level of MAP Services” is about the scope of services not the volume of services.

32. Once the definition of “Current Level of MAP Services” is understood, it is clear Section 2.1 of the Omnibus Agreement creates no obligation for Seton to provide a specific volume of appointments: *“In accordance with the terms and subject to the conditions set forth in this Agreement, . . . Seton shall provide MAP Healthcare Services at the Current Level of MAP Services to MAP Enrollees. Access to MAP Healthcare Services shall continue at the current level of MAP Healthcare Services unless a change is agreed upon pursuant to Section 5. 5 of the Agreement.”*

33. Section 5.8.2.1, the second contract clause relied upon by Defendant, is equally unhelpful in creating an obligation for a minimum number of appointments. This contract provision establishes a performance standard based upon access to care for the Baseline MAP Enrollees (25,000), not a minimum number of appointments for those enrollees: *“Seton shall be deemed to have satisfied the foregoing Performance Standards relative to access to care, unless: . . . or (c) subject to Section 4, Seton does not continue to treat monthly at Seton-Sponsored Facilities at least the average monthly number (or such other statistical measure of patient volume on which the parties hereto may mutually agree) of MAP Enrollees and Charity Care Patients as required by the Baseline MAP Enrollees or Baseline Charity Enrollees, or other numbers as have been agreed upon in a Definitive Amendment.”* (emphasis added). It is undisputed that Seton has provided the required Healthcare Services not only to the permitted Baseline MAP Enrollees (not to exceed 25,000), but to all the MAP Enrollees seeking MAP Healthcare Services.

34. As a further indication of Defendant's efforts to reinterpret the 2013 Agreements, Defendant's correspondence has included charts showing a declining number of appointments and patient encounters since 2013. The charts not only falsely suggest that there is a minimum volume of appointments, but they also include appointments for non-MAP Healthcare Services. MAP Healthcare Services covers only inpatient care, emergency room visits and outpatient specialty care, and does not include outpatient primary care (e.g., family medicine, internal medicine, pediatrics, etc.). Defendant's charts include all appointments, and intentionally fail to acknowledge the joint transition of primary care services to CommUnityCare (Defendant's sponsored federally qualified health center) and others community providers.

35. Additional evidence the parties understood the scope of specialty services (as subset of MAP Healthcare Service) to be provided by Seton was contractually limited is found in the Agreement for Specialty Care Services ("*Specialty Care Agreement*"), which was executed contemporaneous with the 2013 Agreements by Seton and the CCC (with approval by Defendant).

36. The purpose of the Specialty Care Agreement is to provide additional access for specialty appointments, beyond the access to be provided under the Omnibus Agreement. Unlike the Omnibus Agreement, the Specialty Care Agreement identifies "Baseline Appointments" as "the number of appointments per month per specialty clinic" provided under the Omnibus Agreement, and "Additional Specialty Care Appointments" as those appointments to be provided by Plaintiff in excess of the "Baseline Appointments." The CCC then compensates Seton for providing the "Additional Specialty Care Appointments" to MAP patients. The chart from the Specialty Care Agreement establishing the baseline number of appointments per month, per specialty is reproduced below:

| Expanded Specialty Clinic | Baseline Appointments (visits per month) |
|----------------------------------|---|
| Cardiology | 12 |
| Dermatology | 13 |
| Endocrinology | 13 |
| ENT | 10 |
| GI | 28 |
| Neurology | 48 |
| Pulmonary | 7 |
| Renal/HTN | 10 |
| Ortho | 33 |
| Rheumatology | 13 |

| Non-Expanded Specialty Clinics | Baseline Appointments (visits per month) |
|---------------------------------------|---|
| Allergy/Asthma | 8 |
| Cast Clinic | 19 |
| General Surgery | 25 |
| Hematology/Oncology | 40 |
| Ophthalmology | 14 |
| Podiatry | 11 |
| Surgery Trauma | 1 |
| Urology | 19 |

37. With the approval of Central Health, Seton has been paid by the CCC for the “Additional Specialty Care Appointments” within the scope of the “Expanded Specialty Clinics”. The Specialty Care Agreement continues to be in place today, after multiple amendments and extensions with no change to the number of “Baseline Appointments.”

VI. CAUSES OF ACTION

A. Breach of Contract – Omnibus Agreement

38. Seton incorporates the preceding paragraphs as if stated fully herein.

39. Ascension Seton and Defendant are parties to a valid and enforceable contract. Defendant has materially breached the Omnibus Agreement by repeatedly and consistently exceeding the contractual terms for the number of permitted MAP enrollees, in violation of Sections 4.4 and 4.6 of the Omnibus Agreement.

40. Defendant’s material breach of the Omnibus Agreement has directly and proximately caused damage to Ascension Seton for which Ascension Seton now seeks redress.

B. Breach of Contract – Master Agreement

41. Seton incorporates the preceding paragraphs as if stated fully herein.

42. Ascension Texas and Defendant are parties to a valid and enforceable contract. Defendant has materially breached the Master Agreement by failing to cooperate and communicate with Plaintiff.

43. Defendant's material breach of the Master Agreement has directly and proximately caused damage to Ascension Texas for which Ascension Texas now seeks redress.

C. Request for Declaratory Judgment

44. Plaintiffs incorporate the preceding paragraphs as if stated fully herein.

45. Pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, Ascension Seton seeks a declaratory judgment to declare the rights, status and other legal relations of the parties and provisions of the Omnibus Agreement at issue in this case. Ascension Seton seeks a declaration from the Court that:

- a. The 2013 Agreements do not obligate Seton to provide a minimum number or patient appointments or patient encounters on an annual basis.
- b. Plaintiff is not in breach of the Omnibus Agreement by failing to provide the number of patient appointment or patient encounters which were provided in 2013;
- c. Seton has, in all material respects, met its obligations with respect to the Current Level of Services, as that term is defined and used in the Omnibus Agreement;
and
- d. Defendant is in material breach of the Omnibus Agreement by allowing MAP enrollment to exceed the "Baseline MAP Enrollment" on a consistent and repeated basis.

VII. ATTORNEY’S FEES AND COSTS

46. Under Section 37.004 and Chapter 38 of the Texas Civil Practice & Remedies Code, and Section 11.2 of the Master Agreement and Section 8.8 of the Omnibus Agreement, Plaintiffs hereby assert their entitlement to the recovery of its reasonable attorney’s fees and costs incurred in pursuing this matter and enforcing their rights.

VIII. CONDITIONS PRECEDENT

47. All conditions precedent to Plaintiffs’ claims have been satisfied, have otherwise occurred, or have been waived.

IX. RULE 193.7 NOTICE

48. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiffs hereby give actual notice to all parties that any and all documents produced in this matter may be used at any pre-trial proceeding and/or the trial of this matter, without the necessity of authenticating such documents.

X. JURY DEMAND

49. Plaintiffs hereby demand a trial by jury in accordance with the Texas Rules of Civil Procedure 217.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Ascension Seton and Ascension Texas respectfully request that Defendant Travis County Healthcare District d/b/a Central Health be cited to appear herein and that, following a final trial on the merits, Plaintiffs be awarded the following relief:

- (i) a final judgment in favor of Plaintiffs;
- (ii) an award all recoverable damages in favor of Plaintiffs;
- (iii) enter a declaration as set forth above;

- (iv) an award of attorney's fees and costs incurred herein;
- (v) award Plaintiffs pre- and post-judgment interest at the maximum rate allowed by law;
- (vi) award Plaintiffs any other relief, whether at law or in equity, to which they show themselves justly entitled.

Respectfully submitted,

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