

CAUSE NO. D-1-GN-17-005824

REBECCA BIRCH, RICHARD
FRANKLIN III, AND ESTHER
GOVEA,

Plaintiffs,

v.

TRAVIS COUNTY HEALTHCARE
DISTRICT d/b/a CENTRAL
HEALTH, and DR. PATRICK LEE, in
his official capacity only,

Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS

To the Honorable Judge of Said Court:

Health for Travis County (“HTC”) submits this Amicus Curiae Brief to express support for the Plaintiffs in the above-referenced case and to present the Court with additional relevant facts and context that may aid the Court in resolving the issues presented in this case. HTC has been deeply involved in ensuring that our taxpayer dollars are used to fund healthcare for Travis County residents experiencing poverty in accordance with the law. And so, HTC’s experience provides a unique perspective that helps inform the implications of Central Health’s allocation of funds to Dell Medical School without ensuring that those funds are used to provide healthcare for persons experiencing poverty—which is the subject of the pending lawsuit. HTC supports Plaintiffs and urges the Court to grant their Motion for Summary Judgment. For support, HTC offers the following:

Statement of Amicus Curiae Interest

Health for Travis County is a community-based coalition, consisting of LULAC District VII, a former and founding Central Health board member, and local organizations and individuals focused on healthcare justice for the unserved and the underserved in Travis County. HTC advocates for health care for the poor in our County and has long been concerned about Central Health's diversion of tens of millions in tax dollars intended for the poor's health care being spent on the medical school, economic development, and other unrelated activities. HTC has appeared numerous times over the years before the Central Health Board of Managers to request that Central Health discontinue the transfer of public funds to the Dell Medical School in order to appropriately spend this annual \$35 million on patient care for the poor. Those efforts have been unsuccessful, and so, HTC has an interest in this lawsuit, and more specifically, in Plaintiffs' request that this Court mandate Central Health to follow the law and limit its spending of public funds to providing health care for the poor, as it is legally required to do.

No fee was paid or is to be paid for the preparation of this Amicus Curiae Brief.

What's at Stake

According to the 2023 U.S. Census, there over 150,000 persons living in poverty in Travis County; this represents a little over 11% of the overall County population (1.3 million). About 20% of the County's population (or about 300,000 persons) are without health insurance. Latinos represent the highest uninsured rate at 39.3% of the total uninsured. The uninsured rate for Latinos is based on 2022 data on the Behavioral Risk Factor Surveillance System (BRFSS) from the Texas Department of State Health Services.

It is commonly accepted that the lack of coverage increases the death rate by anywhere from 44% to 126%, with an average 85% higher death rate.¹ It therefore follows that increasing coverage benefits would be expected to generate measurable improvements in community health status.

In 2012, through a tax ratification election, voters approved a tax rate of \$0.120 per \$100 valuation. At the time, Central Health and the Dell Medical School promised voters that funds from the property tax increase would go to clinical care for the poor at the medical school. Central Health's CEO vowed that the tax increase "would increase Central Health's annual revenue by \$54 million, with \$35 million of that permanently earmarked for services provided to needy patients by the proposed medical school's faculty, students and residents, who are physicians in training."² This turned out to be a false promise.

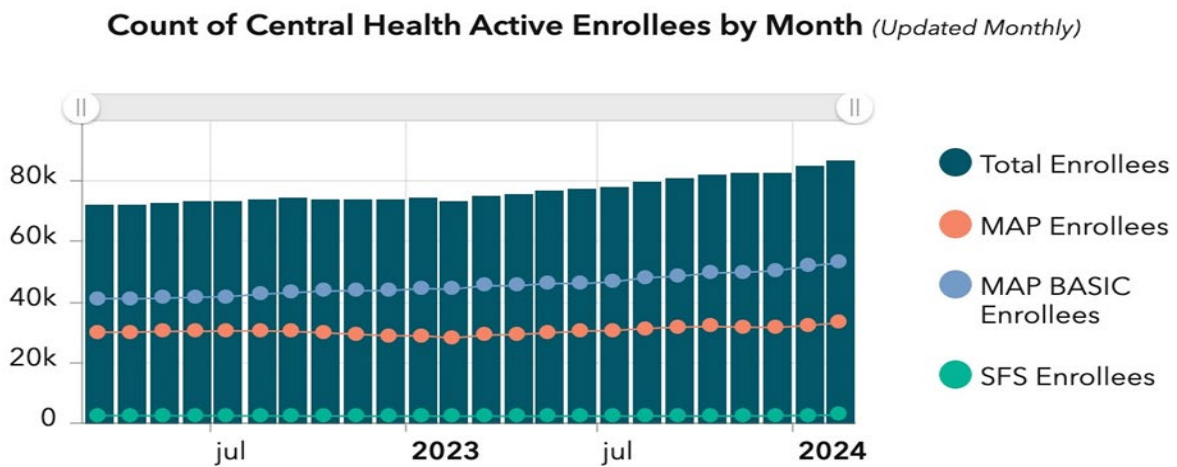
HTC's primary concern is that Central Health is not serving its targeted population. For purposes of its Medical Access Program Basic (MAP Basic), Central Health in their MAP Program defines its target population as less than 200% of the Federal Poverty Level, or \$62,400 annual income for a family of four, per the Federal Health and Human Services.

¹ The average death rate for 100,000 adults with an average age around 45 is over 300 deaths annually. <https://www.cdc.gov/nchs/data/databriefs/db427-tables.pdf#3>. For those without coverage, the death rate is understandably higher, with the leading study indicating anywhere from 44% to 126% higher death rate, and an average of an estimated 85% higher death rate, or over 250 additional (300*85%) deaths annually. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2775760/>.

² Roser and Haurwitz, "The Facts About Prop. 1," Austin American-Statesman (October 21, 2012), <https://www.statesman.com/story/news/local/2012/10/21/questions-answers-about-proposition-1-the-proposed-health-care-tax-increase/9912172007/>; *see also* Varney and Dunbar, "How Central Health, Seton & UT's Medical School Want to Change Health Care Forever," (KUT, August 8, 2013), <https://www.kut.org/health/2013-08-08/how-central-health-seton-uts-medical-school-want-to-change-health-care-forever>; Kanin, "The Med School Solution: Can a Central Health/UT-Austin/Seton Medical School Project – And Its Spinoffs – Fill the Gaps In Travis County Health Care?," Austin Chronicle (September 14, 2012), <https://www.austinchronicle.com/news/2012-09-14/the-med-school-solution/all/>.

MAP enrollees are defined as 100% or less of the Federal Poverty Level or \$31,200 annual income for a family of four. It's the MAP-eligible population—those at 100% or less of the Federal Poverty Level—that HTC is most concerned about, because many are not receiving healthcare.

Over the last 20 years, Central Health has only served about 25,000+ member-enrollees of MAP. This is only 17% of the poverty population. The below chart is from Central Health's recent enrollee dashboard:



What is at stake is that over 91,000 Travis County low-income residents are eligible for Central Health's Medical Access Program, but are not receiving healthcare services because of an alleged lack of Central Health funds. HTC maintains that Central Health can serve our poverty population and uninsured by enrolling more of our population in Central Health's Medical Access Program (MAP) and by providing services from Central Health's clinic system, CommUnityCare's 27 clinics, and other local primary and specialty healthcare providers. In terms of impact to community health status, increasing coverage

benefits among the 91,000 MAP-eligible population would be expected by health experts to generate measurable improvements in community health status.

The problem, however, is that Central Health is not directing its funds to healthcare for our poverty population, as it vowed to do.

Central Health’s Lack of Transparency and Misuse of Taxpayer Funds

Central Health has diverted public funds to Dell Medical School without any accountability to serve the poverty and indigent healthcare population, as it is legally required to do.

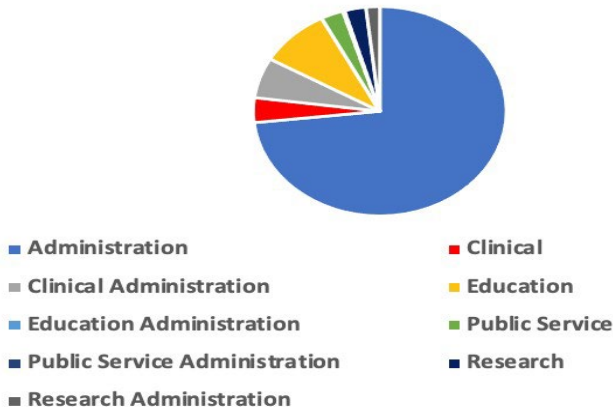
Many community advocates, including Health for Travis County, have for years appeared before the Central Health Board of Managers requesting that Central Health review its \$35 million payment to the Dell Medical School, because there was no transparency as to whether the Dell Medical School was spending public funds in accordance with State law. Community advocates noted that there was mounting evidence that the Dell Medical School was using the public funds for uses other than indigent healthcare. The evidence from this lawsuit validates those concerns.

First, Central Health is spending public funds on items that are not consistent with the hospital district’s constitutional purpose and statutory authority, which is to provide medical and hospital care to needy Travis County residents. Tex. Const. art. IX, Sec. 4; Tex. Health & Safety Code § 281.002. The most recent Central Health 2023 Audit, itself, acknowledges that “under State law, counties are required to provide medical services for indigent patients.” Budget and accounting records that were provided in the course of this litigation reflect that Central Health is not complying with this legal mandate (as shown

below). Dell Medical School itself has classified only 10% of its expenditures of Central Health’s funds as clinical and clinical administration, and 90% as education, research, public service, and general administration, as illustrated below:

Mission	Amounts	Percentages
Administration	(\$171,468,316)	73.30%
Clinical	(\$8,937,791)	3.82%
Clinical Administration	(\$14,592,569)	6.24%
Education	(\$21,231,746)	9.08%
Education Administration	\$59,869	-0.03%
Public Service	(\$6,659,993)	2.85%
Public Service Administration	(\$586,530)	0.25%
Research	(\$6,392,984)	2.73%
Research Administration	(\$4,120,753)	1.76%
Total	(\$233,930,813)	100.00%

Central Health Spending by Mission



Second, Central Health has failed to provide basic financial controls over Dell Medical School’s expenditures of its public funds. Central Health’s Affiliation Agreement with Dell Medical School fails to include standard financial controls to monitor and account for Dell Medical School’s uses of Central Health’s \$35 million annual payments.

In sum, Central Health has provided public funds intended for indigent healthcare to Dell Medical School, and Dell Medical School has expended tens of millions of these funds on non-medical care. The \$35 million annual payment transferred from Central Health to the Dell Medical School from FY2014 to FY2023 totals over \$350 million. From FY2014 to FY2021, Dell Medical School spent over \$233.9 million of Central Health's funds, with only 10% related to clinical care and clinical administration. The remaining 90% was spent on administration, education, and research. And yet, there are no financial controls requiring Dell Medical School to be transparent about how it's using funds provided by Central Health—taxpayer funds.

Impacts of Central Health's Actions

The annual \$35 million that Central Health diverts to Dell Medical School represents substantial public resources. In 2021, Central Health spent \$140.4 million on healthcare delivery. If the \$35 million provided to Dell Medical School had been allocated in accordance with the law, it would have significantly increased Central Health's budget allocation for healthcare delivery by 25% (\$140.4 million/\$35 million). These amounts are especially material in terms of impact to care delivered.

Central Health's \$35 million payment to Dell Medical School substantially decreases the amount of medical and hospital treatment that Travis County's poor can receive. Based on Central Health's healthcare delivery spending of \$140.4 million, Central Health's annual amount diverted to the Dell Medical School of \$35 million could have funded an additional 18,000 MAP enrollees annually (\$140.4 million/70,000

enrollees=\$2,005x18,000 enrollees=\$35 million). This, in turn, could have reduced the number of annual deaths attributable to lack of healthcare coverage.

The poverty population should not be sacrificed because of Central Health's non-care-related expenditures. Central Health's actions are a direct diversion of community resources meant for the poor, perpetuate the painful history of segregation and racism that stains Austin's history, and cannot remain unaddressed.³

Conclusion

Central Health has funded tens of millions in Dell Medical School's expenditures—expenditures that cannot be considered as providing healthcare for the poor. By providing over \$350 million in public funds to the Dell Medical School, without ensuring that the funds are being used to provide healthcare for the poor, Central Health is neglecting its primary mission, which is to serve the poverty population and under- and uninsured. The funds that have been diverted to the Dell Medical School could have funded a significant number of Travis County's poverty population with healthcare services. Instead, the funds have been used by Dell Medical School for its nonmedical missions and as a slush fund to fill in its budget gaps.

Accordingly, HTC urges the Court to:

1. Grant Plaintiffs' final summary judgment and enter a declaratory judgment that as a matter of law, Central Health has acted outside its legal authority by spending

³ “Despite growing interest in understanding how social factors drive poor health outcomes, many ... remain reluctant to identify racism as a root cause of racial health inequities... Structural racism refers to the totality of ways in which societies foster racial discrimination through mutually reinforcing systems ... (including) health care. These patterns and practices in turn reinforce discriminatory beliefs, values, and distribution of resources.” *The Lancet*, “Structural Racism and Health Inequities in the USA” (2017).

substantial public funds illegally without financial controls on non-medical care or other unauthorized services;

2. Enjoin Central Health from spending public funds on activities that do not constitute medical care services to eligible recipients as defined by the Texas Constitution, Article IX, Section 4 and Chapter 61 of the Texas Health & Safety Code; and
3. Restrict Central Health from expending any public funds without complying with financial controls and accountability under Article III, Section 52 of the Texas Constitution and Texas Health & Safety Code Chapter 281.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true and correct copy of the above filing was provided on May 9, 2024 to the parties listed below via electronic service to their designated counsel:

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