

Consumers Union

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Southwest Regional Office

1300 Guadalupe, Suite 100

Austin, Texas 78701

512-477-4431 ■ 512-477-8934 (fax)

Reggie James, Director

Lisa McGiffert, Contact

mcgilli@consumer.org

512-477-4431 x115

Kathy Mitchell

Research Manager

Melissa Thrailkill

Research



City Should Relieve Seton of All Responsibility for Deliveries, Family Planning and Emergency Contraception at Brackenridge to Safeguard Reproductive Services

On October 25th, the City of Austin postponed any decision about renegotiating the Brackenridge Hospital lease with Seton. The Council must decide whether women who wish to receive a full range of family planning and obstetrical services will be treated fairly, equitably, and without discrimination at Brackenridge. Changes to the lease agreement with Seton became mandatory after the Catholic Bishops this summer changed the “Ethical and Religious Directives for Catholic Health Care Services” which prohibits Seton from providing or cooperating with the provision of sterilization, birth control, emergency contraception after rape, and family planning counseling.

The city staff and Seton management have proposed to split obstetric care at Brackenridge by creating a second obstetrics unit on Brackenridge’s 5th floor. This floor would be staffed by city employees and managed as a separate “hospital within a hospital.” At a cost to the City of \$6 to \$7 million, the new hospital will take all women who need services that are prohibited under the Catholic Bishop’s Ethical Directives and other overflow OB patients. Under the staff proposal, most women will continue to give

birth and receive obstetric care in the Seton-run birthing unit on the 2nd floor of the hospital.

The proposal resembles a “hospital within a hospital” concept offered early in the process by an ad-hoc group of health care advocates and women’s organizations, and therefore garnered early (if tentative) support. The Ad-Hoc group (which included Consumers Union, Gray Panthers, Planned Parenthood, TARAL, Women’s Health and Family Planning Association, NOW, League of Women Voters, People’s Clinic, and Austin-Travis County Citizens Health Care Network) initially proposed to keep OB services united, preferably at Brackenridge, and that the costs of accommodating Seton’s Catholic directives be paid by Seton and not the taxpayers of Austin.

The Ad-hoc group and city staff have had active discussions for several months regarding concerns and city staff proposals as they have developed. As the details have emerged, several groups have converged in support of a version of the “hospital within a hospital” that is slightly different from the city staff proposal.

Consumers Union and others now propose that the city take over all birthing

and obstetric services including emergency contraception and family planning for all women who choose Brackenridge Hospital. Any money the city has budgeted to pay for additional obstetric space on the 5th floor should be used to expand the total number of obstetric beds and end the current capacity crunch in the existing birthing center. This can be done either through expansion on the second floor, or on the 5th floor, but the city should control the entire space devoted to OB after the build out.

“Seton and the Catholic hierarchy have made it very clear that they simply cannot provide a full range of reproductive services to women without moral conflicts,” said Lisa McGiffert of Consumers Union. “The ethical directives appear to prohibit even the indirect support of these services through the kinds of shared work for admissions and nursing staff required to appropriately sort women under the city proposal. So we believe the best approach is to simply take all these services completely out of their hands. This will eliminate any possibility of conflict and ensure that all women who come to the city’s public hospital have unobstructed access to reproductive services.”

Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education, and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union Southwest Regional Office is dedicated to advocating the consumer interest, particularly of low income consumers, and to promoting the growth of the public interest movement in the Southwest.



First floor entrance to Brackenridge Hospital, the city owned public hospital now leased to Seton. The city proposes to take back the fifth floor of the hospital and provide tubal ligations, family planning counseling, and other services prohibited under the Ethical Directives.

The Ethical Directives

The Ethical Directives are essentially a statement of the theological basis for the Catholic health care ministry. The first Directive specifies that Catholic institutional health care service “must be animated by the Gospel of Jesus Christ and guided by the moral tradition of the church.”¹

In keeping with the Catholic tradition, the Ethical Directives spur Catholic hospitals towards a wide range of community services focusing on those most in need, but also prohibit reproductive services that have traditionally been available at government and other hospitals, which are not and should not be bound by the precepts of any particular religion.

The ethical standards reinforced at the recent Bishop’s Conference include service to the poor, the uninsured and the underinsured. The Bishops demand that the Catholic ministry “distinguish itself by

service to and advocacy for those people whose social condition puts them at the margins of our society...” These are laudable goals for any hospital administration, and particularly for those who manage a public hospital. Brackenridge is a public hospital that has a long tradition of serving low income and uninsured families, and Seton has continued this tradition as agreed in the lease. According to Texas Department of Health reports, Seton supports about \$19.9 million in charity care at Brack.

At the same time, the Catholic bishops also ask Catholic care givers to distance themselves from acts that are “intrinsically immoral” under Catholic religious belief. These acts include the provision of contraceptives, sterilization, prenatal diagnosis (when undertaken with the intent of aborting an

unborn child with a serious defect) and possibly even provision of advice about contraception or sterilization.

The Directives have already placed Emergency Room caregivers in the awkward position of only providing emergency contraception to rape victims whose tests

demonstrate that they are not ovulating and no conception has, in fact, occurred.² In other words, only women who don’t really need emergency contraception are eligible to get it under the Directives. City staff has yet to clarify how victims of rape will be served

under the new plan.

The Catholic Bishops in Summer 2001 revised the Directives to remove an appendix that appeared to elaborate ways in which Catholic hospitals could permissibly work with other providers who may not share the Catholic church’s views on sterilization, abortion, contraception and family planning. By removing the appendix, the Bishops intended to “reaffirm the ethical standards of behavior in health care that flow from the church’s teaching about the dignity of the human person.”³

Without the appendix, the rules for cooperation with other health providers—like the cooperative agreement that city staff plan to create in order to effectively sort women between the two proposed obstetric units—draw a stark line between permissible services and impermissible services.

For example, at public meetings about the staff’s proposal to split OB care between two floors, members of the Brackenridge Oversight Committee and members of the public have asked whether family planning counseling (including counseling about the availability of sterilization on the city’s floor and all types of contraception) can be provided to women who give birth in Seton’s 2nd floor birthing center. While city staff promise that counseling can be provided to all women (regardless of where they give birth) by city health care staff and physicians, the ethical directives appear to contradict that commitment.

“Cooperation, which in all other respects is morally licit, may need to be refused because of the scandal that might be caused.” (Ethical Directive No. 71) The Directives refer us to the Catechism of the Catholic Church for an understanding of “scandal.”

According to Catechism No. 2287, “Anyone who uses the power at his disposal in such a way that it leads others to do wrong becomes guilty of scandal and responsible for the evil that he has directly or indirectly encouraged.” Clearly, this Directive is designed to discourage Catholic hospital staff from standing idly by while city staff

“If, after appropriate testing, there is no evidence that conception has occurred already, [a rape victim] may be treated with medications that would prevent ovulation, sperm capacitation or fertilization.”

--Ethical Directive No. 36 which goes on to strictly prohibit any removal, destruction or interference with the implantation of a fertilized ovum.

advise women in the Catholic administered unit about services that might violate Catholic doctrine.

The idea that Seton staff cannot support reproductive services like emergency contraception or tubal ligation

City/Seton Against Taking Back All OB	Consumers Union's Questions
If the city takes back OB care at Brackenridge, it will unfairly diminish Seton's ability to go after managed care contracts. (statement of David Coats to Brackenridge Oversight Board, Oct. 11)	Presumably, the city would be happy to participate with Seton in managed care contracts as separate but coordinated parties. Managed care companies already contract with multiple entities in order to provide the full range of services and a choice of providers to consumers. Does the city believe that it could not coordinate managed care contract participation with Seton?
Seton argues that OB services are important to its business plan because patients who have a good experience with the birthing center will think of Brackenridge for their future hospital needs.	This will be true no matter who administers the OB unit. A woman who has a positive experience with the hospital, will remember that experience and return to Seton for other services. Does Seton believe that women who give birth on the 5th floor will not have this positive experience or remember Brackenridge for future needs?
If the city takes the OB services, it will diminish the quality of care available in Brackenridge (example used, a woman who has a heart attack while giving birth will be rushed to the ICU but have no OB care).	No, it will only limit the services to be provided by Seton employees. Doctors who serve the city's OB unit should be able to continue their privileges at Seton in order to follow OB patients who must be transferred to another unit for any reason. Most of these doctors are residents already employed by Central Texas Medical Foundation, which Seton operates. Perhaps Seton intends to limit the CTMF doctor's privileges?
It will endanger high risk infants because they will need to be formally transferred from one hospital to another in order to be moved to the NICU, and the NICU will be part of a hospital that has no OB services.	Currently, Children's is already an administratively separate hospital with a separate medical staff, and Seton "transfers" babies from Brack to Children's when they must go to the NICU. Children's does not have OB services. Doctors who serve the city's OB unit should be able to continue their privileges at Brackenridge in order to follow infants who must be transferred to another unit for any reason, just as they do today at Children's. Does the city believe that Seton will limit privileges to CTMF or other doctors?
Seton might no longer run NICU if the city took back all OB care. Seton states that if the city takes back all OB (including neo-natal) it would require the creation of two separate critical care infrastructures.	Since NICU is part of Childrens and receives children from all over the region, it does not make sense that Seton would give up this work. What would compel the city to take back NICU? The city should leave NICU under Seton management and establish a close relationship with Seton through the contract. Under any hospital within a hospital scenario, a close cooperative working relationship will be essential to delivering quality of care to both city and Seton run facilities. Does the city believe that its relationship to Seton will be substantially different if the city controls OB, or only 5th floor OB?
Seton says that if the city takes all OB care, it will take all high risk pregnancies. Mother or baby might need to be transferred to a critical care unit (NICU or ICU). Renaissance Womens Center did not accept high risk pregnancies.	Currently patients in OB are transferred to ICU down the same halls and using the same staff as we project to use if patients are transferred under the new management arrangement. The only difference is the paperwork that will follow as these patients are formally admitted to the Seton part of the hospital. Transfers from Renaissance meant physical transfers across town in an ambulance, a rather different patient care issue. Does Seton believe that Seton and city employees will be unable to transfer emergency patients from city areas to Seton areas effectively? Will this also be a problem if the city controls only the 5th floor?
It will cost too much.	The city announced that it would cost \$7.8 million to \$10 million to operate all OB services on the 2nd floor including the cost of the already proposed expansion for that part of the hospital (\$6-7 million). There has been little elaboration of this estimate, or the estimated cost of the OB expansion plan already developed by Seton.

directly or indirectly casts doubt on the city staff proposal, which will rely heavily on Seton staff to screen patients at admission, in the ER, and elsewhere to ensure they are directed to the correct floor for services. For example, city staff believe that Seton nurses will continue to interview patients, asking them if they would like information about reproductive services. If patients want this information, they will be directed to city staff, or city staff will visit them under the current proposal.

Most of the public debate about the

change in ethical directives has focused on post-partum sterilization (tubal ligation). Currently, Brackenridge conducts about 400 tubal ligations per year. The staff plan assumes that most of these women come to Brackenridge after getting prenatal care and counseling at the City clinic system. The clinic staff will direct them to the new 5th floor hospital, which will need to be equipped with operating rooms for this purpose. But some women show up at the hospital with no prenatal care, and may want information about tubal ligation. Women

who arrive at the emergency room or the regular admissions area will also need to be directed to the floor where they will get the full range of counseling and services. Under the 5th floor proposal, this might place Seton staff who are doing intake of patients in violation of the Ethical Directives, which deems sterilization to be at the highest level of "intrinsically immoral" acts, just like abortion.

The plan to split women into two groups based on a religious imperative is inherently
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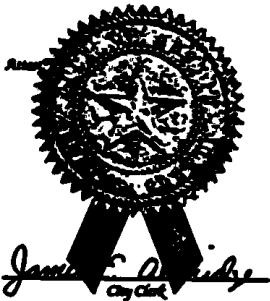
Proclamation

*Be it known by these presents that
I, Bruce Todd, Mayor of the City of Austin, Texas,
do hereby proclaim*

July 3, 1994

Brackenridge Hospital Day

*in Austin, and call on all citizens to join me in recognizing
Brackenridge Hospital as the oldest public hospital in Texas
which, after its opening on July 3, 1884, has grown into a major
medical center offering outstanding medical care to the people
of our community.*



Mayor
Bruce Todd

Esther O. Mackin

How We Got Here

1884: City of Austin opens Brackenridge Hospital.

1977: A city-hired consultant concludes that Brackenridge would annually lose \$20 million unless it were leased to a private management company.

1982: A council-appointed task force recommends again that the hospital be leased to a community-based, nonprofit organization.

1984: The council appoints another task force, which recommends that the city form a community-based nonprofit group to lease and manage the Brackenridge.

1992:

June: The city begins soliciting bids from companies interested in contracting with Brackenridge Hospital to enroll indigent patients in government programs such as Medicaid. Certicare proposes a three-year, \$1.8 million enrollment and collection contract with Brackenridge.

June: Certicare and sister company Spectrum pays Dorothy Wolfe, director of Brackenridge patient financial services, her first monthly payments for helping them get city contracts. She receives these payments until Dec. 1993. Russell Kyler, Brackenridge chief financial officer, signs a letter of intent with Certicare and sister company Spectrum Financial Services. It says that for an "introduction" that will lead to a contract between the two companies and Medical Center in Odessa, Kyler will receive 5 percent of fees the Odessa hospital pays Certicare or Spectrum—fees that started in September of 1992 and continued for several months. [Later, in 1997, Scott Garcia, Certicare President, and

Wolfe plead no contest to misdemeanor counts of making an illegal gift to a public servant.]

1993:

January-March: Kyler begins revealing his deal with Certicare and Spectrum to other city staff, and information travels upward from Assistant City Attorney Sandra Bockelman to City Manager Camille Barnett.

Feb.: City Council creates the Austin Hospital Authority to study feasibility of leasing the hospital and operating it independently of city management.

April: The City Council awards a \$300,000 contract to Spectrum, which is never implemented due to the conflict of interest.

May: Kyler submits his resignation at the request of Byron Marshall, assistant city manager overseeing the hospital. Kyler goes to work for Divisional Consultants, Corp., a sister company of Certicare.

Nov.: Richard Lewis, Kyler's replacement, discovers that, due to accounting errors, Brackenridge revenue during the fiscal year ending Sept. 30, 1993 was at least \$7.5 million less than recorded.

1994:

Jan: Mayor Bruce Todd holds a late-night news conference to announce that the Brackenridge annual losses reached \$21 million. He says the losses are unrelated to the Kyler scandal.

City Manager Camille Barnett resigns, over Brackenridge controversies. Jesus Garza named acting city manager.

Feb.: Dorothy Wolfe, director of patient financial services at Brackenridge, resigns and quickly leaves town. Bockelman, the first city official notified of Kyler's agreement with Certicare, quits.

March: Brackenridge hospital lays off 14 people.

May:

- The City Council approves creation of a committee of city, medical and community representatives to look for a new management system that would remove Brackenridge from direct City Hall control.

- The Hunter Group, a management company specializing in troubled hospitals, moves in to run Brackenridge temporarily. David Coats, senior vice president of Hunter Group, named temporary Brackenridge CEO. Also, the Council gives the Certicare work of enrolling patients in government programs to a new company, MAPA Inc.

June: The 35 person committee appointed by the city recommends two avenues for Brackenridge management: an independent operating authority (the Austin Hospital Authority) appointed by City Council or a nonprofit corporation, both separate from City Hall. The committee also recommended that the city seek creation of a hospital district with taxing powers to finance health care for the poor.

June: A grand jury indicts Kyler, Dorothy Wolfe, Certicare-Spectrum executives Howard Zorn and Scott Garcia and the two companies for violating laws against gifts to public servants and official misconduct.

Aug: The City Council voted to allow the city manager to negotiate a lease, turning over Brackenridge Hospital and its equipment to the Austin Hospital Authority.

Dec. City officials, including Mayor Bruce Todd, recommend that the city council reject the proposal under which an independent authority (in this case the AHA) would lease Brackenridge for 30 years. They say they want a better deal regarding the financing of the hospital.

1995:

January:

- The City Council passes a resolution *requiring* the city to complete its lease negotiations with the Austin Hospital Authority by Feb. 11. A mediator will help with these negotiations.

- (Two weeks later) City manager Jesus Garza asks Seton Medi-

cal Center to put forth a proposal to manage Brackenridge in order to provide the council a private as well as public (AHA) option. David Coats states that Brackenridge will unlikely survive as a free-standing hospital.

Feb: City Council authorizes negotiations with Seton to take over full management of Brackenridge under a 30-year lease.

March: Due to continuing power outages, Brackenridge Administrator David Coats declares a “public calamity,” and bypasses normal bidding procedures for an estimated \$25,000 in repairs. According to the Austin American Statesman, inspection reports dating back to at least 1993 cite a “series of electrical problems, including inadequate testing of emergency generators.” Repairs will take 18 months.

May: Concerns about Seton proposal arise. Some worry specifically about reproductive services, including sterilization procedures and the “morning-after” pill. Seton President Charles Barnett promises that although Seton does not provide such services at its other hospitals, those offered by Brackenridge will continue. Seton would work with the city to create an oversight board to ensure this, he says. Garza says the proposed deal with Seton will be “seamless,” adding that he doesn’t think the public will see “much change.” City groups criticize the city for not seeking public input in its negotiations with Seton.

Sept.: City signs lease agreement with Seton.

Oct.: Seton health care system reaches an agreement to buy the Shivers Cancer Center’s two radiation therapy facilities in Austin. This addition makes Seton the only local cancer care provider offering all three cancer treatments.

1996

July: Seton opposes the Texas Department of Mental Health and Mental Retardation’s proposal to sublease state land for the Heart Hospital of Austin, claiming it will duplicate heart services, affecting funds that help the hospital subsidize charity care. The Heart Hospital of Austin opened recently.

Sept.: Seton announces a plan in which it will assume responsibility of in-school health care across Austin’s 96-campus district. This makes Seton the nation’s first Catholic health system to provide health services in public schools.

1997: Seton invests in Renaissance Women’s Center of Austin, designed to provide 12 new obstetric beds for labor, delivery and post-partum stays. Seton owns about 30% of the center.

1998:

April: Seton acquires assets of the Central Texas Medical Foundation, a graduate medical education program of the Travis County Medical Society for \$1.1 million. The program includes 28 physician faculty members who train 77 resident physicians at Brackenridge, its children hospital, and six outpatient clinics. In order to provide residency training at Brackenridge Hospital, the society established the foundation in 1971 with financial support from the City of Austin. Under this arrangement, Seton will become responsible for employment of the resident physicians and the foundation administrative and support staff.

Aug.: City Manager Jesus Garza announces that the city is negotiating an amendment to the Brackenridge Hospital lease agreement. The new agreement makes the city, rather than the Daughters of Charity religious order, responsible for providing sterilizations by employing city-paid nurses and surgical technicians in Brackenridge. It appears no input from the public was sought.

Sept.: Catholic ethicists and Bishop John McCarthy of the Roman Catholic Diocese of Austin review Seton hospital’s agreement to allow church-banned services to be performed at Brackenridge. If the Vatican believes that the lease violates Catholic moral teaching, Seton is in danger

of losing the Catholic Church’s sponsorship for its facilities.

Oct.: Seton makes a deal with the City of Luling to run its 30-bed hospital. To comply with the Catholic directives, the hospital will no longer perform elective sterilizations. Luling City officials say those needing those services can travel north to Austin, or south to San Antonio.

Nov.: The Travis County Commissioners Court unveiled a plan to close four of five Travis County health clinics, sending poor patients to Seton Healthcare Network doctors. Seton, due to its Catholic affiliation, would pay other doctors to provide family planning services or send patients who need birth control to city clinics, private doctors or Austin Regional Clinic sites.

Winter: Seton breaks ground on new hospitals in north and south Austin.

1999: The Vatican says it wants to tighten health-care directives on Catholic and secular partnerships. Prior, the Vatican had sent several letters to Bishop McCarthy instructing him to stop sterilizations at Brackenridge.

March: City Council hires Caton Services Inc. for five years (for \$286,000 in year one) to provide registered nurses and surgical technicians for sterilization and other procedures that Seton staff cannot perform under the Ethical Directives.

2000

June: The Roman Catholic Diocese of Austin announces that it will add a new bishop, Gregory M. Aymond, to take the place of Bishop McCarthy after he retires. Aymond is expected to bring a “more conservative voice to a diocese considered as moderate.”

Aug.: Seton Healthcare Network announces it will sell its in-home nursing and medical equipment services. Seton had already closed a clinic for seniors in Northwest Austin.

2001

January: Pope John Paul II announces that Austin’s Bishop John McCarthy is officially retired.

Feb.: Renaissance Women’s Center (in which Seton invested in 1997) closes.

June: U.S. Roman Catholic bishops decide to “tighten reins” on Catholic-run hospitals, saying reproductive sterilization is “intrinsically immoral” and will not be allowed. Seton may no longer offer certain reproductive services, including sterilization, at “city-owned” Brackenridge. Although Austin contracts with a separate company, Caton Services, Inc., to perform sterilizations, Seton officials say it still did not give Seton enough separation from the process.

Aug.: Mayor Kirk Watson and City Manager Jesus Garza propose that the city create a separately licensed “hospital within a hospital” for women seeking sterilization procedures after childbirth. This “hospital” would be on the fifth floor.

Sept.: Renaissance Women’s Center reopens at North Austin Medical Center, operated by St. David’s HealthCare Partnership with Columbia/HCA. St. David’s intends to expand birthing capacity to meet local demands. An Austin American Statesman article states that in the last 12 months, Seton has also expanded its birthing capacity at Seton Southwest and Seton Northwest facilities to meet the demand.

Oct.: Brackenridge Hospital Oversight Committee recommends that the city take over all OB care at Brackenridge, and that Seton pay for any renovations. The Committee further recommends that, if the city splits OB care between the 5th and 2nd floor, specific lease and ordinance changes will be needed to strengthen public accountability and quality of care.

SOURCE: This timeline was compiled from stories published in the Austin American Statesman and the Austin Business Journal.



Brackenridge is an emergency and trauma center for the central Texas region. The Seton/City negotiations hit a snag over access to emergency contraception for women who arrive in the emergency room after a rape. Catholic directives prohibit Seton from providing emergency contraception unless tests show the woman is not ovulating and cannot become pregnant anyway.

...Continued from page 3

difficult, and may in fact continue to present religious problems for the Bishops—even if we can work out a system that presents no barriers to the full range of services for women. The City should not engage in a complex system of patient sorting when it could more thoroughly solve the Ethical dilemma by simply placing all obstetric care back under direct city management.

Members of the general public, as well as some physicians, have suggested that the city could solve the problems posed by the ethical directives by simply removing all obstetric care units (already primarily located on the 2nd floor, but in reality spread over several other hospital floors) from the lease agreement. Existing plans to expand capacity of Brackenridge OB services, which have been under discussion within Seton for some time, should be adopted to resolve existing overcrowding problems. To ensure that victims of rape will be offered emergency contraception, this service should also be removed from Seton staff responsibility and handled by city staff.

Seton's Objections

According to its spokespeople, Seton does not want to give up birthing babies at Brackenridge. Pat Hayes, on behalf of Seton, explained to the Brackenridge Oversight Board on October 9 that their objection to

giving up administration of OB at Brackenridge did not stem from concern about money, but was instead motivated by Seton's larger plan to expand its obstetrical care throughout the region. Seton currently offers OB services (only those

approved by the Ethical Directives) at several of its other facilities.

In fact, since the inception of the lease agreement, Seton has significantly expanded its administration of care for women and kids. In 1996, Seton assumed responsibility of in-school healthcare services for Austin's 96-campus school district. This made Seton the nation's first Catholic health system to provide health services in public schools.

In 1997, Seton acquired Central Texas Medical Foundation, the graduate medical residency program for Brackenridge Hospital. Residents provide substantial direct care to women and babies in obstetrics. Seton also made a major investment in the Renaissance Women's Center of Austin, which eventually

"Anyone who uses the power at his disposal in such a way that it leads others to do wrong becomes guilty of scandal and responsible for the evil that he has directly or indirectly encouraged."

--Catechism cited in Ethical Directive No. 71 on principles of cooperation among health providers.

provided 18 new beds for labor, delivery, and post-partum care (the Renaissance Center closed this year and reopened as an affiliate of St. Davids). City staff states they intend to contract with CTMF for 5th floor services.

In 1998 and early 1999, Seton successfully expanded its provision of maternity services in the Austin area through private investment in its own facilities as well as public contracting. In the public sector, Seton contracted with the City of Luling to run its 30-bed hospital. To comply with the Catholic directives, the hospital no longer performs elective sterilizations. Luling City officials said at the time that women needing those services can travel north to Austin, or south to San Antonio.

Seton already offered comprehensive birthing services at Seton Medical Center on 38th Street, including a neo-natal unit. It has now added maternity beds at the new birthing center at Seton Southwest on FM 1826 and Seton Northwest on Research Blvd. Seton offers natural family planning through the Seton McCarthy Community Care Center. Ascension Health, Seton's parent company, is the largest nonprofit health service organization in the country with hundreds of institutions in 15 states and D.C. In all these locations, the Catholic facilities are free to provide health care within the prescribed limits of Catholic doctrine.

But Catholic doctrine should not dictate patterns of care at the city's public hospital. Nor should Seton's long-term strategic plan to expand Catholic maternity services throughout this region determine the city's actions with respect to women who give birth at the public hospital. Seton's business plan to expand its hospital services throughout the region has already had considerable success. Removing one OB unit is unlikely to damage Seton's strong position in this market, but it will safeguard reproductive services in Austin.

The Money

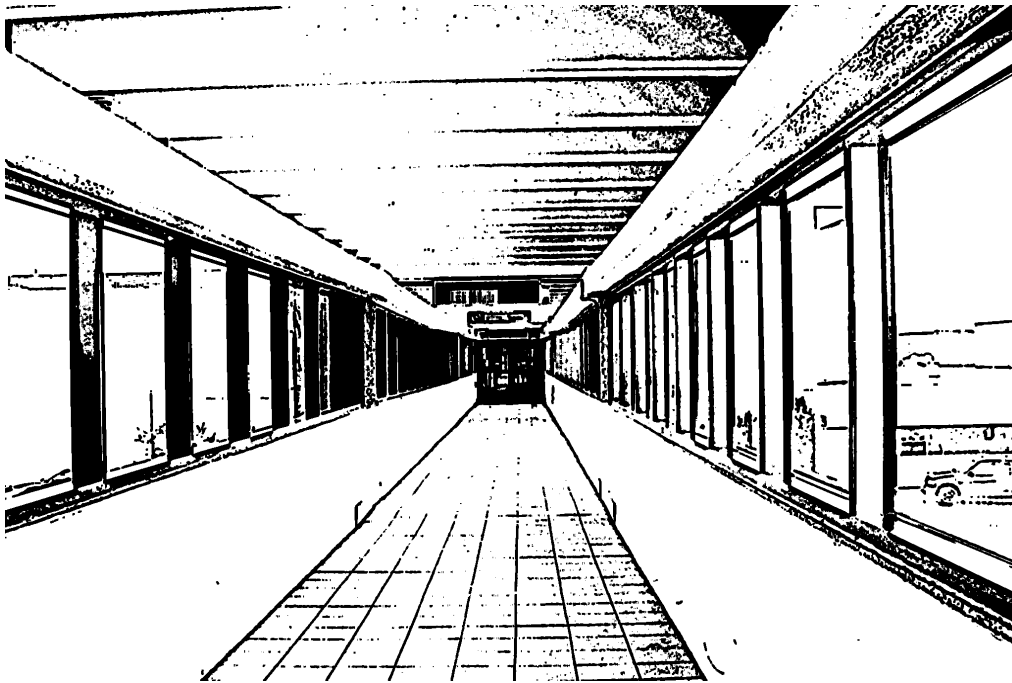
But perhaps it is about the money. After many people unsuccessfully asked Seton to provide information about the share of Brackenridge revenues derived from OB services, city staff finally announced that OB represented 34% of the hospital's "business" and that was just too large a chunk to ask Seton to give up and still manage the rest of the hospital.

But this number was somewhat misleading. The city did not count Children's Hospital as part of the overall business, although Children's is a major, profitable component of Seton's lease with the city.

Further, "business" meant patients rather than revenue. Since most births are simple and low cost, OB naturally represents a far higher share of a hospital's patient count than it does of its revenue.

In early October, staff finally told the City Council that OB services at Brackenridge represented \$46 million in billed charges or 14% of billed charges, *not including the Children's Hospital*. "Billed charges" is also a misleading figure, because hospitals do not collect the full amount of their bill from payers like insurance companies or government benefits. Without actual revenue figures to illuminate the issues, we might go out on a limb and estimate that OB services represent 8% of actual hospital revenues, not including Children's,⁴ and an even smaller share of the total revenue for both facilities. The city proposal already provides that about one third of the patients (and probably a larger share of the revenues because patients who require tubal ligation will cost somewhat more) will move to the city-managed unit. Suddenly loss of the remaining portion of OB revenue does not seem as dire a situation as city staff initially claimed.

And there is one more financial issue that may affect Seton's decisions. The proposal calls for Seton to pay for the renovation of the 5th floor up front, but the city will pay this back with interest over 24 years. Initially, staff suggested that this loan might carry a 6% rate, which is a relatively high rate for a low risk municipal loan.



The second floor entrance to Brackenridge Hospital leads directly into the maternity care area. If the city retakes the second floor, patients would go directly from the parking area to the city's new "hospital within a hospital" without major changes to the structure of the building. The city has proposed ensuring direct access to the fifth floor by building a new elevator just inside these doors.

According to staff, the city's cost of money is usually lower than that, perhaps as low as 4%. The city will end up paying Seton \$11.3 to \$13.2 million for the construction if this loan is paid out evenly over the 24 years remaining in the contract.

Lowering the interest rate alone would save from \$1 to \$2.3 million. The city also has a "hospital fund" with enough money in it to pay this renovation up front. The interest on this loan appears to be an added benefit to Seton, even though the renovations themselves are necessitated by Seton's default on the contract. Finally, giving the renovation contract to Seton eliminates the city's obligation to bid out the work, use minority contractors, and otherwise comply with the usual public accountability requirements for a project of this size.

Conclusion and Recommendations

In 1994, it was de rigeur to assume that the private sector could provide government services better than government. Bruce Todd, then mayor of the City of Austin, promoted widespread privatization of city services, from the sale of the electric utility to the lease of Brackenridge Hospital. And city bureaucrats, anxious to get out of the customer service business, played along.

Today, public concern over electric rate spikes in California's deregulated electricity market bring a cautionary note to any discussion of privatizing basic services like our electric utility. And this summer's renegotiation with Seton over women's

health care reminds us that private entities, even the best of them, are motivated by different goals and values than the values we expect from government.

The current lease agreement spells out the City's commitment to women's reproductive services, referring to these services as "essential health services" (Lease Recitals) and "essential community services" that the City "demands" to be provided at Brackenridge (Sec. 8.9).

Most private companies that contract to provide government services expect to find ways to lower the cost of those services and thus make a profit. Nonprofit organizations take on government services as part of their mission. Where the mission of the organization collides with the values of the community, the relationship can become untenable and the government must assume its full responsibility to provide the services that citizens expect. In this case, the city must reassume a part of the responsibility for public health care that it passed to Seton six years ago.

Consumers Union strongly supports the recommendations of the Brackenridge Hospital Oversight Committee (BHOC) as adopted on October 22, 2001. Our own recommendations are as follows:

Long Term Recommendation

The City of Austin is currently paying Seton the same amount for charity care that it paid at the inception of the contract in 1995, although both patient volume and costs have certainly risen (real data about costs of service and revenues from different payers has not been provided by Seton).

By pushing the liability for any growth in charity care onto its partner in this lease agreement, the city has abrogated its long standing commitment to charity care. As a result, Seton now has the city over a barrel, because we will need to pay for charity care again if we cannot come to an agreement about reproductive services at Brackenridge. This abrogation of responsibility for the poorest in our city gives Seton leverage to limit services or otherwise default on the contract in the future without real concern that the city will back out. This must end.

In line with recommendations made repeatedly by numerous city-commissioned committees, **Consumers Union recommends that the city send a proposal to the voters to create a hospital district with taxing authority that will fund indigent care at Brackenridge and ensure the city's values as a community are upheld at the public hospital.**

Immediate Recommendations

- It is not in the best interest of women seeking obstetrical services from Brackenridge Hospital for the delivery of these obstetrical services to be split between two hospitals. The city should take back all obstetrical services.
- Because of the strict Catholic directives, Seton should be relieved of any responsibility for reproductive services in order to assure that women will receive full services and clear information about these services, including tubal ligations, emergency contraceptives, family planning services, termination of fetal anomalies, and medically indicated termination of pregnancy.
- City taxpayers should not pay for the renovations required by the change in the Catholic directives.

If the city decides to split services
If the city refuses to consider the recommendation above, then the city council must direct the staff to negotiate strong standards for oversight of the new bifurcated "City/Seton" OB care system, and require Seton to pay the necessary renovation costs.

Under this scenario, the following issues must be addressed:

- Seton should have no reproductive services responsibilities (see statement above). All of these services should be done on the fifth floor or by City staff.
 - For example, every woman giving birth at the Seton and the City facilities should be visited post-partum by a CITY nurse about family planning services.
 - For example, the Seton and Children's Hospital emergency room physicians and nurses should be educated about a protocol for women who present

at the emergency room who are candidates for receiving emergency contraceptives; that protocol should send the women to the fifth floor emergency treatment room (required by law to be staffed 24/7) or to the fifth floor pharmacy.

- The city council should not delegate all negotiation and execution authority to city staff in one motion. The staff should return to the council with a recommended negotiated lease for approval, and Council must retain the right to amend individual provisions if they are not acceptable. The City council should see what the staff negotiated prior to authorizing execution of the contract and the public should be allowed to comment on the negotiated conditions.
- The current lease agreement must be strengthened to protect the public's interest in the delivery of health care at Brackenridge Hospital. The lease provisions should be changed as follows:
 - Eliminate or amend Section 8.17 so that the next time Seton defaults on the lease, the first step the city must take will be to put the operation of Brackenridge out for bid in a public process. If that fails to bring in an acceptable contract, they can begin negotiating with Seton. During this process, Seton should be required to continue operating the hospital and to cooperate during a period of transition if the hospital is leased to another entity.
 - Add a lease provision that requires Seton to report separate Brackenridge financial information to the city and the Brackenridge Hospital Oversight Committee (BHOC) about all services covered by the lease agreement by service category. Financial information should include actual revenue by payer type and operating expenses.

- The renegotiation process relating to the cost and operating loss after two years of experience operating a separate city facility must be public.
- The Brackenridge Hospital Oversight Committee (BHOC) should oversee both facilities to ensure that they are providing comparable quality of care. The BHOC should have greater access to information in order to fulfill all of its responsibilities assigned in the lease agreement.
- New City ordinances must be passed to ensure responsible oversight:
 - Give the BHOC oversight authority of the new city run hospital. Add to their charge to make comparisons of the quality of care of the two separate OB units as well as the number of women referred to the city's unit, source of referral, and services required.
 - Require the city run hospital to provide comprehensive utilization reports and full financial disclosure of operations for the city run floor to the BHOC and clearly establish that this information is public information.

¹ Ethical and Religious Directives for Catholic Health Care Services, U.S. Bishops, Issue: 31:09, U.S. Conference of Catholic Bishops, June 15, 2001. (Hereafter, Ethical Directives.)

² Ethical Directive No. 36.

³ Ibid, Introduction.

⁴ In its charity care report for 2000 to the Texas Department of Health, Seton reports that Brackenridge cost of services in general amount to 48.14% of billed charges. If we assume that Brackenridge obstetric services basically cover their costs, as estimated by David Coats before the Oversight Board on October 9, 2001, then we would say that revenues are about \$23 million or 7-8% of billed charges.