Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN MEDICAL ASSOCIATION, AMERICAN HOSPITAL ASSOCIATION, *et al.*, *Plaintiffs*, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.* *Defendants.*	Civ. Action No. _____

DECLARATION OF CATHERINE M. ROSSI
IN SUPPORT OF PLAINTIFFS' MOTION FOR STAY PENDING JUDICIAL REVIEW, OR IN THE ALTERNATIVE, A PRELIMINARY INJUNCTION

I, Catherine M. Rossi, state as follows under the pains and penalty of perjury.

Personal Experience and Educational Background

1. I am Vice President of Health System Contracting at UMass Memorial Health Care, Inc. ("UMass Memorial Health"), a Plaintiff in this action. I have been employed by UMass Memorial Health for twenty-two (22) years.
2. My responsibilities at UMass Memorial Health include leading Managed Care Contracting, Provider Relations, and Managed Care Operations for the largest health care delivery system in Central and Western Massachusetts, which includes a tertiary academic medical center, housing a Level 1 trauma center, Neonatal Intensive Care Unit, Solid Organ & Bone Marrow Transplant programs, and the region's only electronic Intensive Care Unit (eICU); three community hospitals, 1,800 physician network, specialty pharmacy, and full complement of behavioral health, substance use disorder and ancillary services.
3. Prior to working at UMass Memorial Health, I managed integrated delivery system and ancillary provider contracts for Tufts Health Plan.

4. I have a Bachelor's Degree in Economics from the University of Massachusetts Amherst.

5. The information set forth in this affidavit is based on my personal knowledge and information provided by my colleagues at UMass Memorial Health.

UMass Memorial Health and the Population It Serves

6. UMass Memorial Health is the largest healthcare system in Central and Western Massachusetts. It is a non-profit healthcare system that provides healthcare accessible for all, regardless of ability to pay.

7. UMass Memorial Health is the clinical partner of UMass Chan Medical School (f/k/a University of Massachusetts Medical School), which is the Commonwealth's first and only public medical school.

8. The creation of UMass Memorial Health was authorized by state legislation in 1997 that approved the merger of the nonprofit Memorial Hospital and the public University of Massachusetts Medical Center. While allowing the merger of these entities into a new private, nonprofit system, the legislation also mandated that UMass Memorial Health permanently fulfill a unique, three-part public mission: (1) to provide highly specialized clinical services unavailable elsewhere in Central Massachusetts, (2) to provide free care to indigent patients, and (3) to support the Commonwealth's only public medical school. (*See* Chapter 163 of the Acts of 1997). Consistent with that mission, UMass Memorial Health is the primary provider of highly specialized clinical services across Central Massachusetts, and it provides substantial annual support payments to the Commonwealth's public UMass Chan Medical School.

9. In addition to this statutory mission, UMass Memorial Health's Mission Statement is: "UMass Memorial Health is committed to improving the health of the people of our diverse

communities of Central Massachusetts through culturally sensitive excellence in clinical care, service, teaching and research." *See* Mission, Vision, and Values, UMass Memorial Health, *available at* https://www.ummhealth.org/about-us/mission-vision-and-values.

10. UMass Memorial Health also has a "Community Benefits Program," the mission of which is to improve "the health status of all those it serves and to address the health problems of the poor and other medically underserved populations." *See* Community Benefits Program, UMass Memorial Health, *available at* https://www.ummhealth.org/about-us/community-benefits-program. Through this Community Benefits Program, UMass Memorial Health provides residents of Central Massachusetts with vital programs such as mobile medical and dental care, senior services, youth programs, and more. *See id.*

11. UMass Memorial Health includes four hospitals: UMass Memorial Medical Center (Worcester), UMass Memorial Health – HealthAlliance-Clinton Hospital (Fitchburg, Clinton and Leominster), UMass Memorial Health – Marlborough Hospital (Marlborough), and UMass Memorial Health - Harrington Hospital (Southbridge).

12. In addition to its fully equipped medical centers, UMass Memorial Health also includes a home health and hospice program, and community-based physician practices. UMass Memorial Health also has invested in a range of health related joint ventures in the Central Massachusetts region, including an affiliation with CareWell Urgent Care to provide regional urgent care services and a joint venture with Shields Health Care to establish The Surgery Center in Shrewsbury, Massachusetts where UMass Memorial Medical Group physicians and other local physicians provide high-quality, low-cost outpatient surgery services. UMass Memorial Health also has invested in joint ventures with Shields Health Care to offer lower-cost imaging and Quest Diagnostics to offer lower-cost outpatient

laboratory services. UMass Memorial Health also includes Community Healthlink, the region's largest comprehensive provider of behavioral health, substance use disorder and homelessness services.

13. UMass Memorial Health has over 1,800 active or affiliated medical staff, 3,166 registered nurses, and more than 16,000 employees in over 22 communities. Its team includes specialists who are nationally acclaimed for their expertise and leadership in areas such as heart and vascular care, orthopedics, cancer, diabetes, surgery, newborn intensive care, children's services, women's services, and emergency medicine and trauma.

14. UMass Memorial Health also includes the only designated Level I Trauma Center for adults in Central Massachusetts and the region's only Level III Neonatal Intensive Care Unit, which provides expert care for ill or premature newborns.

15. In 2019 alone, UMass Memorial Health had more than 220,000 emergency department visits and more than 1.5 million outpatient visits.

16. UMass Memorial has been a pioneer in telemedicine, operating a telestroke program which has enabled community hospital emergency physicians and first responders to diagnose and transfer stroke patients for life-saving treatment. It also operates the region's only electronic Intensive Care Unit (eICU), staffed with intensivists at its flagship Academic Medical Center, allowing critical care patients to remain in lower cost community hospitals with 24/7 remote monitoring, coordinating care in concert with on-site clinicians.

17. In 2021, UMass Memorial launched a new Hospital at Home acute care model pursuant to the Center for Medicare and Medicaid Services (CMS) Hospital Without Walls program.

18. UMass Memorial Health serves some of the most vulnerable patients and communities in Massachusetts. It treats over 50% of inpatient Medicaid cases in Central Massachusetts.

Each of its hospitals is designated by the Commonwealth of Massachusetts as "High Public Payer," a label assigned only to hospitals for which 63% or more of gross patient service revenue is attributed to government payers, and each is located in a city or town that is lower-income than the state median. The City of Worcester, where UMass Memorial Medical Center is located, is the second largest city in Massachusetts and, per the U.S. Census, had a median annual household income of $48,139 for 2015-2019, compared to the statewide median annual household income of $81,215. By race and ethnicity, the city of Worcester's 2020 U.S. Census population is 49% White, 25% Hispanic or Latino, 14% Black or African American, and 7% Asian, compared to statewide demographics of 68% White, 13% Hispanic, 7% Black and 7% Asian.

19. UMass Memorial Health relies upon fair and appropriate payment rates from commercial insurers to counterbalance financial losses associated with serving MassHealth patients and implementing its statutorily-mandated mission. Even with appropriate commercial rates, given its high public payor mix and statutory obligations, UMass Memorial Health is financially challenged. In twenty-five (25) years since its founding in 1997, UMass Memorial Health has had a negative operating margin in seven (7) of those years and in years in which it has had a positive operating margin it averaged only 2.28%. Over the course of these 25 years, UMass Memorial Health's overall average operating margin has been only 1.26% per year.

20. UMass Memorial Health is a member of the American Hospital Association, a Plaintiff in this action.

21. UMass Memorial Health recently submitted comments in connection with the Interim Final Rule, entitled "Requirements Related to Surprise Billing; Part II," 86 Fed. Reg. 55,980 (Oct. 7, 2021) ("IFR").

The Impact of the IFR's Unlawful Presumption on UMass Memorial Health

22. The presumption in favor of the Qualified Payment Amount ("QPA") included in the interim final rule titled "Requirements Related to Surprise Billing; Part II," 86 Fed. Reg. 55,980 (Oct. 7, 2021), will strain UMass Memorial Health's resources, make it more difficult for our providers to treat our patients, and thereby frustrate our non-profit health system's statutorily-imposed mission.

23. To be clear: UMass Memorial fully supports prohibiting "surprise billing," provided that insurers are prohibited from unilaterally determining out-of-network rates and providers and insurers are equally incentivized to negotiate reasonable reimbursement rates. However, any rate setting that too strongly favors insurers and/or does not take into account the unique patient population of a provider or sets out-of-network rates below a provider's in-network contracted rates will have severe consequences for patients and providers.

24. I am aware that some insurance providers are already leveraging this interim final rule in an attempt to lower rates because they believe that they can pay reduced amounts to out-of-network providers under the rule's presumption in favor of the QPA. For example, I have reviewed a letter from Blue Cross Blue Shield NC to its providers stating that "the Interim Final Rules provide enough clarity to warrant a significant reduction in your contracted rate with Blue Cross NC." I am also aware that this letter demanded "an immediate reduction in rates" to be followed by negotiation of final rates "in light of the QPA amounts established in accordance with the upcoming Rules."

25. Based on my 22 years of experience at UMass Memorial, I am confident that national and local insurers in the Massachusetts market will soon similarly threaten to terminate their provider contracts if providers are unwilling to accept substantial rate reductions. *First*, given the structure of the Blue Cross Blue Shield (BCBS) Association, Blue Cross Blue Shield of Massachusetts and other BCBS plans are known to apply similar approaches to contracting, often relying on BCBS Association rules as a defense for their tactics. *Second*, in 2015, a commercial insurer administering an indemnity insurance plan for Commonwealth of Massachusetts state employees refused to negotiate rates as a result of a state law (MGL c32A, Sect. 20) prohibiting balance billing beyond deductibles and copayments. This law had the effect of permitting the insurer to unilaterally determine provider rates with no recourse for providers other than to refuse to accept patients enrolled with this plan. The insurer's inpatient hospital rates were priced below Medicare rates for a commercial population, and physician rates were priced approximately 45% below their direct competitors, which offered HMO and PPO products for the same book of business, since the legislation was specific to the Commonwealth Indemnity plan. Like Blue Cross Blue Shield North Carolina more recently, this insurer was prepared to leverage the incentives created under state law to unilaterally set reimbursement rates below cost and fair market value, which would have had severe financial effects on UMass Memorial Health and forced it to terminate its contract with the insurer. This situation was resolved at the eleventh-hour through the intervention of the Governor's office and local legislators and the insurer ultimately agreed to negotiate market competitive rates. Given this recent history, however, I am confident that insurers will apply a similar strategy, only now using the Interim Final Rule as their leverage.

26. As in 2015, there is simply a point at which an insurers' demands to reduce reimbursement rates will become so financially costly to UMass Memorial Health that it will have to accept those severe economic losses (and alter its services accordingly) or terminate its contracts with these insurers altogether. These outcomes would cause an array of irreparable financial, operational, and reputational harm to UMass Memorial Hospital and create access issues for patients.

27. Most directly, when forced to accept out-of-network reimbursement rates based on a presumptive QPA rate, UMass Memorial Health is likely to receive upwards of thirty percent (30%) less than it otherwise would receive. Being forced to accept commercial reimbursement rates that low will severely strain our resources and exacerbate the losses already incurred as a result of the cost gap under governmental programs.

28. Although precise numbers vary based on the characteristics of individual non-profit hospitals, experts recommend that nonprofit hospitals achieve an operating margin of no less than 2.5 percent annually in order to be able to reinvest in critical assets such as capital and workforce to benefit the patients they serve. *E.g.*, Alex Kacik, *Operating margins stabilize, but not-for-profit hospitals still vulnerable*, Modern Healthcare (Apr. 26, 2019), https://www.modernhealthcare.com/providers/operating-margins-stabilize-not-profit-hospitals-still-vulnerable; Christopher Cheney, *Mission and Growth: Intersections for Nonprofit and For-Profit Health Systems*, Healthleaders Media (Sept. 4, 2019), https://www.healthleadersmedia.com/clinical-care/mission-and-growth-intersections-nonprofit-and-profit-health-systems. Due to its costly, statutorily-mandated mission and high public payor patient mix, UMass Memorial Health rarely achieves this target. However, this margin target does not account for the additional burden

Disproportionate Share Hospitals bear with respect to subsidizing free care and underinsured patients. Reductions in commercial insurance reimbursements associated with implementation of the Interim Final Rule will severely impede the ability of UMass Memorial Health to satisfy each prong of its statutorily-mandated mission.

29. To make matters worse, UMass Memorial Health is under severe strains because of COVID-19, not only because of cancelled elective services (which we anticipate we will eventually recover), but also due to increased costs associated with increased acuity of patients and new infection control protocols, staffing and supplies, and now vaccine administration (all of which are here to stay). Our Academic Medical Center is over capacity with bed shortages for both medical/surgical and critical care patients, while our community hospitals are currently at capacity but having difficulty staffing for an increased and volatile census. UMass Memorial is struggling with a staffing crisis and is paying a premium for overtime and temporary help. While we received Federal Relief Funds, these funds were insufficient to fully cover the incremental cost increases, resulting in a shortfall of more than $20,000,000 in 2020. The losses expected from the Interim Final Rule will severely exacerbate those existing pandemic-related strains. As a general matter, then, the Interim Final Rule is a serious obstacle to fulfilling UMass Memorial Health's mission of "improving the health of the people of our diverse communities."

30. As a result of the QPA-presumption and its financial impacts, UMass Memorial will face difficult decisions regarding continuing to provide certain high-cost services and community-based programs, as well as other vital health services in low-income neighborhoods. For example, as a result of the QPA presumption, UMass Memorial would lose access to the resources necessary to subsidize already-underfunded services like

community-based mobile medical services for indigent families and youth, food insecurity assistance care, and pediatric asthma intervention for low-income youth in coordination with community partners. These "Community Benefit Programs" and other low-income health services already operate in the red, and the financial impact of the QPA-presumption will have a devastating effect on our ability to fund them going forward. In addition, if UMass Memorial Health's insurance contracts are terminated altogether because the health system cannot accept insurers' demanded cuts in reimbursement rates or insurers do not offer participation since they can rely on the QPA-presumption to force lower rates, large numbers of residents of Central Massachusetts will lose access to UMass Memorial Health for non-emergent services. These newly out-of-network patients could be redirected by the insurers to higher-cost hospitals in Boston, adding a range of new burdens on them and the region's self-funded employers.

31. All of these consequences of the QPA-presumption will not only adversely impact UMass Memorial Health's ability to fulfill its mission of providing care to the Central Massachusetts community, but also will cause significant reputational harm to our non-profit institution. UMass Memorial Health has built its reputation and goodwill within the Central Massachusetts community on its ability to "make outstanding care accessible for all, regardless of ability to pay." About Us, UMass Memorial Health, *available at* https://www.ummhealth.org/umass-memorial-health/about-us. Indeed, as our website says, "UMass Memorial Health is the health and wellness partner of the people of Central Massachusetts. Through pain and pandemics, our commitment to our communities never wanes. We use knowledge and innovation to create breakthrough medicine. To create jobs. To make life better for those we serve." *Id.* If UMass Memorial Health is no longer an in-

network provider for the Central Massachusetts community, and thus patients can no longer obtain the same care at UMass Memorial Health, then our reputation with former patients and existing community members will be irredeemably damaged.

32. UMass Memorial Health will not be able to recoup its financial losses resulting from the unlawful features of the IFR, including and especially if it is forced to participate in an independent dispute resolution process that applies the IFR's illegal presumption. It is my understanding that The No Surprises Act, Pub. L. 116-260, provides that an arbitrator's decision is generally not subject to judicial review. *See* 42 U.S.C. Id. § 300gg-111(c)(5)(E)(i)(II). Likewise, it is my understanding that the Administrative Procedure Act waives sovereign immunity for federal agencies only in actions "seeking relief other than money damages." 5 U.S.C. § 702. Accordingly, the losses that UMass Memorial Health (and the Central Massachusetts community) will suffer as a result of the illegal presumption applied under the IFR cannot be recouped in court and are irreparable.

Signed under penalty of perjury on this 6th day of December, 2021.

Catherine M. Rossi
Vice President, Health System Contracting
UMass Memorial Health Care, Inc.