

Exhibit A

**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 BETHANY SEXTON
IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Bethany Sexton, state as follows under the pains and penalty of perjury.

Personal Experience and Educational Background

1. I am Chief Transformation Officer at Renown Health, the parent company of Regional Medical Center ("Renown Hospitals"), a Plaintiff in this action. I have been employed by Renown Health for seven (7) years.
2. As a member of Renown Health's executive team, my responsibilities include oversight of payer contracting, value-based care, including Renown's clinically integrated network, Western Clinical Alliance, Renown Accountable Care, and Renown Direct Contracting Entity. Additionally, I serve as a member of our population health services organization executive team.
3. Prior to my current role at Renown Health, I worked as a health care leader for more than ten (10) years, including as Vice President of Strategic Initiatives, Vice President and Administrator for the Department of Medicine, and Vice President of Revenue Cycle.

4. I hold an undergraduate degree from the Western Washington University in Business Administration, and a Masters of Business Administration from the University of Nevada, Reno.
5. The information set forth in this affidavit is based on my personal knowledge.

Renown Health and the Population It Serves

6. Renown Health is an integrated healthcare system based in Reno, NV. It is northern Nevada's largest locally governed, not-for-profit healthcare network.
7. Formerly known as the Washoe Health System, Renown Health was founded as a clinic in 1862 during a smallpox outbreak. That clinic became the area's first hospital when Nevada became a state in 1864. Over the next century, Washoe Health System would establish pediatric, cardiac, and cancer centers in northern Nevada.
8. Today, Renown Health includes four hospitals, 100 sites for primary, urgent, and specialty care; telehealth; an integrated, provider-sponsored health insurance plan and accountable care organization that serves more than 150,000 members across northern Nevada.
9. Renown Health has more than 6,000 employees and 1,500 physician-providers. According to the National Research Corporation, in 2018, Renown Health was responsible for an additional 6,790 indirect jobs and had a \$2.4 billion overall economic impact for the region it serves.
10. Renown Health, through Renown Hospitals, provides the region's only Level II Trauma Center, serving over 1 million people and 100,000 square miles from Sacramento to Salt Lake City. This broad reach allows Renown Health to provide desperately-needed health and medical services to those living in remote, rural communities.

11. Renown Health provides over two-thirds of the hospital care for Northern Nevada's Medicaid population. Renown Hospitals' payer mix is approximately 19% Medicaid, 40% Medicare, and 31% private insurance. Government-payer reimbursement is well below Renown Hospitals' cost, so Renown must rely on private insurance reimbursement to offset those losses.
12. Renown Hospitals also provide the area's first and only children's emergency room, which was opened in 2009, and is the region's only Children's Miracle Network Hospital.
13. Since 2014, Renown has participated in a Medicare Shared Savings Program ACO through the CMS Innovation Center. These efforts have delivered over \$12 million in savings, which have been shared with CMS and reinvested in care delivery programs across the health network along with shared savings to community provider partners.
14. In 2020, Renown Health established Western Clinical Alliance, a clinically-integrated network focused on improving patient outcomes and lowering the overall cost of care. Along with partnering with community physicians, Renown Health is affiliated with the University of Nevada, Reno School of Medicine, establishing Nevada's first fully integrated health system.
15. For rural Nevada and regions in Northeastern California, Renown is the safety-net provider for patients with chronic conditions and other serious health conditions. Given the vast health disparities that Nevada's residents experience, including high mortality rates for chronic conditions such as heart disease, cancer, chronic respiratory disease and mental health, Renown has shifted to care for the overall population's health and has set out to combat Nevada's history of ranking near the bottom of overall health rankings in the United States.

16. Renown Health is a member of the American Hospital Association, a Plaintiff in this action.

17. Renown Health recently submitted comments to the Departments in connection with their 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 Renown Health

18. Under current Nevada law, Renown is subject to arbitration for determining rates paid by non-contracted payers for emergency services. *See* Nevada Assembly Bill 469. Since January 2020, when the relevant Nevada law went into effect, Renown has participated in fifty-nine (59) such arbitrations, either subject to the state Office of Community Health Affairs (OCHA) or independent arbitration processes set forth in Nevada law. Given this frequency of arbitrations over the past two years (*i.e.*, on average, more than one every other week), I am confident that Renown will be engaged in similar arbitrations under the federal No Surprises Act as soon as March 2022. In fact, I anticipate Renown Health would continue to see increased frequency of cases moving to arbitration due to the presumption included in the interim final rule titled “Requirements Related to Surprise Billing; Part II,” 86 Fed. Reg. 55,980 (Oct. 7, 2021), which incentivizes insurers to enter such arbitrations rather than maintain contracts for services. Renown Hospitals expect that payors will immediately demand arbitrations under this Rule because the “presumed” amount would be significantly lower than Renown’s current reimbursement rates.

19. Absent the QPA-presumption, Renown Hospitals would have many factors outlined by Congress in the No Surprises Act in its favor. For example, Renown Hospitals’ level of training, experience, and quality outcomes measurements are high relative to others in the

region (*e.g.*, Renown Hospitals was recently selected as Nevada’s Number 1 rated hospital by U.S. News and World Report). Similarly, Renown Hospitals are the premier teaching sites in the region, as evidenced by its recent 50-year affiliation agreement with the University of Nevada, Reno Medical School. These factors, and others favorable to Renown Hospitals, are significantly undermined by the QPA-presumption adopted by the Departments.

20. To be clear: Renown Health fully supports protecting patients from surprise billing and removing them from the middle of payment disputes between commercial health insurers and medical care providers—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 contracted rates will have severe consequences for patients and providers.
21. While the sustainability of our programs and organization are at stake, Renown will be forced to closely evaluate in which cases we will elect to participate in the IDR process at all, despite having a favorable case under the non-QPA factors. Our experience under Nevada state law demonstrates that arbitration is costly; the administrative, legal, and other cost-burden represents more than 25% of the disputed amounts. I also am aware that, under the No Surprises Act, the losing party must pay for the cost of the arbitrator, *see* 42 U.S.C. § 300gg-111(c)(5)(F)(i), which the federal government has estimated to be approximately \$400, *see* 86 Fed. Reg. 55,980, 56057 (“The fees charged by IDR entities in New York ranged from \$300 to \$600. In Texas, the state contracted with individual attorneys to

provide IDR entities. In Texas, fixed fees ranged from \$270 to \$6,000. Based on these ranges, the Departments estimate that on average the certified IDR entity fees will be approximately \$400.”). In our experience, those arbitration costs are much higher. For five of our cases alone, we have paid a total of \$265,000 in arbitration fees. These arbitration costs, which do not include substantial outside legal fees and internal resource demands, coupled with the far lower likelihood of success under the QPA-presumption, strongly disincentivizes Renown’s participation in the arbitration process at all, which further undermines the ability of Renown to maintain viable contracted rates with payers.

22. In addition, I am aware that some insurance providers are already leveraging this interim final rule in an attempt to lower rates because they believe they may pay reduced amounts as 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.”

23. I have seen through Renown’s experience with the Nevada law that insurers have taken a similarly aggressive stance towards us, with demands for under-market rates that are well below our costs, in order to force cases to arbitration. Insurers have a far greater motivation to pursue arbitration and the potential for even further reduced reimbursement, whereas emergency services providers such as Renown are obligated by EMTALA to provide services and bear the associated costs regardless of appropriate reimbursement. I believe this clear bias toward insurers will likely incentivize payers to consider non-contracted

status as a negotiating and long-term tactic. Insurers will likely forego negotiating longer term contracts at reasonable market rates (or will effectively do so by making unreasonable demands to arbitrarily drive reimbursement rates to below cost levels), let agreements with our hospitals lapse, and rely on this arbitration process that greatly favors them via the QPA-presumption.

24. This was most recently confirmed by a large national commercial insurer in a negotiation on December 2nd, 2021, whereby that insurer explicitly stated its intent to no longer contract for emergency services with Renown due to protections afforded by developments in the law.
25. Similarly, earlier this fall, another non-contracted insurer, Prominence refused to contract with Renown Health for emergency services. During negotiations, Renown contended that if it were required to accept rates from private third-party insurances equivalent to Prominence's offer for all of its acute and professional services, this would result in turning a viable entity into one that could not continue operating. Renown further explained that without the payments from private third-party insurances at contracted rates rather than Medicare rates, Renown Health would be unable to provide the same services that it provides to the uninsured and underinsured community in Northern Nevada.
26. The presumption that the "Qualifying Payment Amount" reflects the appropriate payment rate will have a significant and devastating impact to both Renown's financial viability, as well as our ability to serve the healthcare needs of our community. By substantially lowering reimbursement rates to levels that will no longer adequately offset the deficit experienced by Renown as a result of providing a majority of the government-sponsored and indigent care in our community, resources will be further strained, and our ability to

retain the breadth of comprehensive services required to serve all patients will be severely compromised. The healthcare landscape continues to face unprecedented challenges, including burgeoning insurance plan payment reductions and denials, labor and supply chain shortages, and higher acuity needs of our patients. All of these factors, coupled with payer-mix shifts reducing the privately-insured population and increasing the Medicaid and indigent population, have driven a diminishing bottom-line for Renown. This interim final rule would deliver a crippling blow to Renown's overall reimbursement for hospital services, which we have modeled to be a minimum of 10% reduction in net reimbursement. This drop in reimbursement would drive our otherwise positive system-wide margin into an untenable net loss.

27. As we have experienced with the Nevada statute, the impact of the "no surprises" arbitration rules will significantly increase the administrative burdens Renown already faces and further harm its financial position, which in turn will make it even more difficult to provide the same treatments to those patients who turn to us for their healthcare needs, many of whom are the most vulnerable in our communities, be they children or those from rural parts of our state. This severely undermines Renown Health's mission to "make a genuine difference in the health and well-being of the people and communities we serve," Our Story, Our Mission, Renown Health, *available at* <https://www.renown.org/about/our-story-and-mission/>,
28. Many of our region's most important services, such as trauma, Medicaid, and indigent women and children's care, and our children's hospital pediatric subspecialties, are made available primarily through Renown Health. As the region's only not-for-profit health system, we have been committed to providing as much local access to these critical and

comprehensive services as possible. I am gravely concerned that the negative financial implications of the QPA-presumption to Renown would leave these already-underfunded and over-burdened services with no alternative but to scale back services. Other services, such as mental health services so critical to serving our fragile Medicare and Medicaid populations, would also face potential reductions as a result of reduced health system revenues.

29. The effects of the QPA-presumption will not only undermine Renown Health's ability to maintain the wide breadth of comprehensive care we provide to our community, but it will likely impact our community's most vulnerable populations the most as resources go unfunded. Renown Health has built its reputation and goodwill on "making a genuine difference in the health and well-being of the people we serve." *Id.* If Renown is unable to provide the same level of services due to the deleterious financial implications of the QPA-presumption and/or is no longer an in-network provider for parts of the community for the same reason, our reputation and status with patients and existing community members will be irredeemably damaged.
30. Renown Hospitals will not be able to recoup its severe 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 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. § 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 Renown Hospitals

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.



Bethany Sexton
Chief Transformation Officer, Renown Health