TESTIMONY BEFORE CONGRESS
BY GABRIEL FELDMAN

I. Introduction

Hello, my name is Dr. Gabriel Ethan Feldman. I would like to thank Congressman Issa, Congressman Gowdy, Congressman Jordan and the other committee members for convening this hearing on Medicaid accountability and reform. My statement will focus on my whistleblower experience, assisting the federal government in recovering $70 million dollars that was improperly billed for New York City's Personal Care Services Program (PCSP).

II. Qualifications/Background/Experience

I was born in Brooklyn, and have lived on Manhattan's Upper West Side in studio apartments for most of the last 20 years. I am a registered Democrat.

I received my medical degree from the Sackler School of Medicine in Tel Aviv, Israel. I have a Masters Degree in Public Health from New York Medical College, and an M.B.A. and a Masters in Health Administration (M.H.A.) from Georgia State University. I am board certified in preventive medicine and public health, and I hold an active medical license in New York State.

I am proud to say that I am still employed as a Local Medical Director (LMD) for New York City's Personal Care Services Program (PCSP), which is the same position I held in 2009 when I first filed my *qui tam* complaint. The PCSP is locally operated by New York City's Human Resource Administration (HRA) agency.

I worked as a PCSP Local Medical Director from 1990 through 1993, and returned to work there in 2006 until today. As a Local Medical Director, or LMD, I am responsible for impartially evaluating a client's home health care needs and appropriateness for the PCS Program.

III. The PCS Program

Not every state even has a Personal Care Services (PCS) Program. The federal Medicaid Act was amended in 1990 to permit states to offer PCS as an optional home health care benefit. States that choose to implement a PCS Program are required to set forth "reasonable standards" for determining individual eligibility, and for the extent of medical assistance that could be provided. New York State opted to have a Medicaid PCSP, and continues to offer the most generous and comprehensive Personal Care Services program in the world.

In New York State, the regulations governing the PCSP say that the program is intended to provide *"some or total assistance with personal hygiene, dressing and feeding and nutritional*

and environmental support functions" which are "essential to the maintenance of the patient's health and safety in his or her own home…" [18 N.Y.C.R.R. § 505.14 (a)(1)]. New York State regulations also say that personal care services are only provided if they are "medically necessary" for patients with physical and mental conditions that are "stable."

The PCSP has two levels - Level I services are confined to basic housekeeping, while Level II services also include assist with daily personal functions such as bathing, dressing, ambulation and toileting. PCS aides do not provide any skilled nursing care or monitoring.

While the State is ultimately responsible for overseeing the PCS Program and for providing a fair hearing appeals process, the program is run day-to-day at the county level. Thus, the PCS program is run quite differently in New York City than it is in upstate or rural counties, such as Onondaga, Dutchess, or Orange.

My false claims case involved Medicaid clients receiving PCS services either on a sleep-in (where the assistant sleeps in the home of the beneficiary), or split-shift (where two or more always awake assistants are provided in two separate shifts) basis. Sleep-in (or live In) service costs approximately $75,000 per year per patient, while split shift care costs approximately $150,000 per year per patient.

In 2009, the year my *qui tam* Complaint was filed, New York State spent $49.3 billion on Medicaid. About 43% of that, or $21.2 billion, was on long-term care, while $9.7 billion was

spent on home health and personal care services. These figures are by far, the highest in the country. Nationwide, Medicaid now spends most of its funds on long term care, not on primary or preventive care. And for the last 20 years, Medicaid clients in New York City have received far more PCS service hours than any group in the country. This was likely due, in part, to poor oversight, and a prior culture of "padding" hours out of sympathy or guilt, or simple inertia, at both the state and local levels.

IV. Governing State Regulations

While New York State has a dense set of regulations that dictate the criteria for admission to and reauthorization of PCS Program benefits, I frequently found myself at odds with city-level staff and my own supervisors regarding the determination of level of service.

In New York State, those of us who work in the PCS system are all under tremendous pressure from advocacy groups, politicians, administrative law judges, and family members of clients to rubberstamp service requests for individuals who do not meet the state regulatory requirements for medical necessity for the services requested. Not surprisingly, my colleagues and I find our independent medical recommendations regarding home care needs routinely overridden by the city 'powers that be', or by Administrative Law Judges (ALJs) who are not required to have any formal medical, nursing or disability training.

Throughout my employ, my decisions were overridden and PCS care was commonly, and inappropriately, awarded to individuals with severely deteriorating, likely unstable conditions. Some clients could have posed a risk to themselves or the workers around them, as these clients often had serious mental health, dementia or behavioral issues that were not fully controlled. However, it's important to state clearly - virtually all clients can be cared for at home, very few need long term institutionalization, but some might have benefited from short term inpatient or rehab care.

When an LMD suggested that a client was no longer appropriate for the PCS program or that a service level was not medically necessary or appropriate, we were labeled as "unfeeling bureaucrats" by advocacy groups and angry family members. Thus, until recently, a culture of non-accountability and non-compliance to PCS state regulations made it far too easy for local social service offices to spend billions in taxpayer money without regard to common sense oversight, or the state's rules.

V. Decision to be a Whistleblower

Despite complaints to appropriate internal parties, the culture of indifference to state regulations, and the taxpayer, persisted in New York City. Even though I feared for my job, I was tired of seeing more and more waste in the Medicaid PCS system, while hundreds of thousands of poor children in my state had no health insurance at all. I contacted Levy Phillips & Konigsberg, and decided to become a whistleblower.

My complaint was filed under seal, and I hoped the issue would be resolved quietly. After the case was unsealed, however, New York City defiantly proclaimed that they would win in the end. My case was heavily litigated before Judge Jed Rakoff in the Southern District of New York City. I continued to show up for work each day. Family, friends and co-workers that understood my efforts comforted me and supported me throughout the two-year long case process.

With the assistance of my attorneys at Levy, Phillips and Konigsberg, I feel strongly that my actions will eventually help expand and strengthen the safety net in New York State, so that more people will ultimately benefit from more equitably allocated resources. My case will also help ensure that the taxpayer has more confidence in how their money is spent.

VI. Problems still exist

New York City's Medicaid program is still in dire need of reform. Many providers refuse to accept Medicaid, outcomes are mediocre, and a million people in New York City still have no health insurance at all. Higher spending has not led to better outcomes, higher patient satisfaction, or to better access to care. Medicaid simply does not excel with regard to quality, access, cost, or oversight in New York City. This must change.

If we are to expand access, ensure quality, and promote accountability and sustainable cost growth, we simply must have better oversight of our public benefit programs. With regard to the PCS Program, I would like to see more oversight of Administrative Law Judges (ALJ's) who hear appeals of Medicaid clients who are denied service requests. ALJ's routinely overturn clearly supported medical decisions, and may be vulnerable to the same pressures that we all face when we have to follow regulations meant to protect both Medicaid beneficiaries and the taxpayer.

The Medicaid Industrial Complex is thriving in this country, and especially in New York City. I hope that my whistleblower experience will raise awareness on both sides of the aisle that if we are to expand health care access to needy citizens, we must better ensure that scarce taxpayer dollars are spent in the most cost effective and equitable manner possible. Opening dialogues, like the one we are having here today, is another great step. Thank you and I am happy to answer any questions.

Gabriel E. Feldman, MD, MPH, MHA, MBA, FACPM

Public Health Professional

Senior executive with over 20 years experience in the administration of **infectious disease control, tobacco and cancer control, long-term care, personal care services home health care** programs.

Former National Director at the American Cancer Society

Board Certified in preventive medicine with proven successes securing and managing million-dollar **grant funds** for the largest citywide **public health** department in the country.

Focused on civic **policies, long term care,** and other strategic public health courses of action.

Professional Experience

New York Health Services Review Organization, New York, NY — Oct 2006–Present

CASA Local Medical Director and On-site Reviewer

- **Division of Medicaid Long-term Home Care – PERSONAL CARE SERVICES**
- Made home visits; performed **quality assurance and utilization review** home health care audits

Thomson Gardiner-Caldwell US – Healthcare Division, Montvale, NJ — May 2006-Present

Associate Scientific Director

- Public Health Consultant

New York City Department of Health & Mental Hygiene, New York, New York — Aug 2002–Sept 2005

Director of Cancer Prevention & Control; Tobacco Control Program Specialist

- Chief spokesman for cancer interventions, therapy and preventions – recruited & hired directly by Tom Frieden
- **Authored** clinician & public educational brochures
- Developed clinical practice guidelines
- Secured and acted as principal investigator securing a $1 million grant
- Served as **chief policy expert** on all New York City cancer programming and select tobacco control projects
- Served on hospital liaison team for Department of Health and Mental Hygiene **bioterrorism** and smallpox vaccination initiative

PDxMD & ArcMesa, Atlanta, GA — Feb 2000–Feb 2001

Web Health, Content Consultant

American Cancer Society, Atlanta, GA — Jan 1998–Jan 2000

National Director – Colorectal Cancer and Prostate Cancer Division of Cancer Control

- Analyzed clinical drug trials and provided media commentary
- Created the Primary Care **Prostate Cancer Policy Consortium**
- Authored national informational brochures for the public
- Provided **expert commentary** in response to print, web, television, and other media requests

New York City Department of Health, New York, NY — Nov 1993–Dec 1997

Medical Specialist

- **Expert witness** for Civil Detention Cases Bureau of Tuberculosis Control – **Division of Regulatory Affairs**
- Oversaw citywide *Directly Observed Therapy Program*
- Provided **expert testimony** in court cases; all court cases were won

New York County Health Services Review Organization, New York, NY — Oct 1990–Nov 1993

Local Medical Director and On-site Reviewer

- **Division of Medicaid Long-term Care**
- Made home visits; performed **quality assurance and utilization review** home health care audits
- *Practice obligation*

Lawrence Hospital, Bronxville, NY — Aug 1987–Jul 1988

House Physician

- Performed emergent, inpatient care
- *Practice obligation*

Education

Georgia State University, **MBA, MHA**, 2002

New York Medical College, **MPH, General Public Health**, 1990
Clinical Preventive Medicine Resident

St. Joseph's Hospital, 1987
Rotating Intern

Sackler School of Medicine**, Tel Aviv, Israel**, **MD**, 1986

Brandeis University**, BA**, 1982

Conversant in **Hebrew,** Knowledge of **Spanish**

Board Certification, Licensure and Commendations

Board Certified, General Preventive Medicine and Public Health, 1993

New York State Medical License,# 171312, Since 1987

Prior Fellow–American College of Preventive Medicine

Commencement Salutatorian, 1986, Sackler School of Medicine

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: GABRIEL ETHAN FELDMAN

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2009. Include the source and amount of each grant or contract.

NONE / N/A

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

NONE / N/A ONLY LAKELIFT

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

NONE / N/A

I certify that the above information is true and correct.

Signature: [signature]

Date: 4/23/12