Testimony of Elliott Palevsky
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on behalf of
United Jewish Communities

March 14, 2006

Chairman Sundquist, Vice-Chairman King, Governor Bush, Governor Manchin and members of the Commission. My name is Elliott Palevsky and I am the Senior Executive Director of River Garden Senior Service System in Jacksonville, Florida, which includes the River Garden Hebrew Home, a recipient of Governor Bush's Gold Seal Award for Excellence in Long Term Care.

Today, I am here to testify on behalf of United Jewish Communities. UJC represents and serves 155 Jewish federations across North America. UJC and the Jewish federations are faith-based organizations that have created long-standing partnerships with government at all levels. Our extensive network of providers deliver health care services for the poor, elderly, and disabled regardless of race, religion or ethnicity, and include 170 nursing homes, 150 Jewish family and children's agencies, 25 Jewish vocational service agencies, and more than a dozen hospitals that collectively serve hundreds of thousands of people adding value - and values - to the services they provide each year. Within our long-term care continuum, approximately 250,000 older adults receive eldercare services each year.

It is important to note that through the many millions of dollars of charitable contributions, our nursing homes are able to provide a higher level and quality of care for each of our clients than would be possible from Medicaid funding alone. Our pursuit of excellence and our commitment to patient quality of care is a Jewish moral imperative. According to the great religious philosopher Maimonides, health care is a fundamental service that a community must make available to its residents.

Many of our agencies pre-date the establishment of the Medicaid program. With its inception four decades ago, Medicaid became a cornerstone of our federation's health delivery system for the disadvantaged particularly given our focus on long-term care. Given our long history of the program and our commitment to public-private partnerships, we embrace commonsense reform in the Medicaid system. We are concerned, however, that loopholes allowing the most egregious gaming of the system may have been left intact in the recently-passed Deficit Reduction Act while changes related to Asset Transfers are likely to inadvertently penalize the ethical provider by leaving people in their care for whom there is no reasonable expectation of payment from them, their families, or Medicaid. It is not realistic to assume that nonprofit (including faith-based) providers will be able to replace these funds with charitable contributions. Consequently, the fiscal viability of our homes will be significantly impaired, and in many instances some may even be forced to close their doors and leave older adults without the care they need.

Though a slim majority in Congress might have viewed the Asset Transfer provisions as a means to effect "behavioral change" necessary to curb abuse of the system, the Deficit Reduction Act will result in unintended negative consequences for our providers of nursing home care.

The new asset transfer language within the Deficit Reduction Act alters the "penalty phase," which is assessed to an individual who transferred assets and then applied for Medicaid within a five-year period. It extends the look back period by two years and changes the start of the penalty period from the date the asset transfer occurred to the time of application for Medicaid. In most cases, the new law will not yield "behavioral change" on the part of residents of a not-for-profit home who have chosen to give away tens of thousands of dollars (or in some cases hundreds of thousands) to their children, a charity or other organization. Instead, the change will harm the provider who will bear the burden of this new provision which will create a deep chasm of unreimbursed care for nursing homes.

In many cases the individual involved will already be in the nursing home anticipating that Medicaid coverage will apply under the previous asset transfer rules. While the nursing home resident is prohibited from accessing Medicaid during the penalty phase, that resident, in most instances, no longer controls the transferred asset and is destitute. *Yet, the nursing home for both ethical and legal reasons will not be able to transfer the resident from the facility.* Therefore, the nursing home will be forced to pick up the cost

of what has become uncompensated care. This new change in the law has the potential to cost our providers tens of millions of dollars.

In the coming months, UJC, in collaboration with our federations and other partners, will work to mitigate the negative impact caused by the new Asset Transfer provisions. We recommend three technical changes to the Deficit Reduction Act:

- First, we propose that new enhanced screening tools should be provided by the state Medicaid authority so that aging facilities are fully aware of the financial liabilities they are assuming from incoming patients before they are admitted.
- Second, we recommend establishing a two year moratorium on the penalty phase change to protect non-profit aging facilities in the short-term from assuming financial liabilities for current patients who had transferred assets prior to the passage of the Deficit Reduction Act.
- Third, we recommend clarifying the parameters of "undue hardship waivers", which the legislation introduced to partially remedy some of the negative ramifications of the penalty phase on providers. These funds will be exhausted soon after they become available, given that all Medicaid contractors will be able to access them. Insuring the solvency of these undue hardship waivers is pivotal as non-profit providers will need to seek relief.

As we look to the future, our healthcare system will continue to evolve as the Baby Boom Generation accesses long-term care services. I urge the committee to consider reforms that can realize savings as well as increase accountability in light of this increased need:

- **New tax incentives should be adopted to encourage private coverage of long term care expenses, including deductibility of payments for Long Term Care Insurance and establishing a new tax credit for expenses associated with family care giving.** This will alleviate some of Medicaid's burden in serving impoverished senior citizens. Educating Americans about the best ways to utilize the private sector for long term care needs should be a paramount public policy objective. It is our hope that one of the bright spots in the Deficit Reduction Act, the expansion of long-term care partnerships, will help more Americans access LTCI and only rely on Medicaid if their private insurance policies have been exhausted.
- **CMS, state Medicaid offices, and state auditors must become more aggressive in rooting out fraud, waste, abuse, and predatory practices.** For example, if existing regulations governing Estate Recovery were enforced, liens placed on a home of a decedent who had illegally transferred assets would often cover the costs of care and still provide a reasonable return to the heirs of the deceased. In addition, we need to close legal loopholes that encourage great sums of money to be protected through creative Medicaid Estate Planning.

I urge you to support our efforts to mitigate the potential harm to our network of quality non-profit faith-based providers and the many thousands of needy elderly they serve. Thank you in advance for considering these suggestions. I greatly appreciate the opportunity to speak before you and welcome the chance to respond to your questions.

For further information, please contact Jonathan Westin, UJC Assistant Legislative Director at (202) 736 – 5860 or via email at jonathan.westin@ujc.org.