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Executive 2020-21 State Budget

Joint Legislative Budget Testimony

NYSAC
NEW YORK STATE
ASSOCIATION OF COUNTIES

UPDATED

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Hon. Jack F. Marren, President

Hon. Daniel P. McCoy, Albany County Executive

Stephen J. Acquario, Executive Director

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Thank you for the opportunity to speak to the joint budget committees today.

Given time constraints, I will provide amended verbal remarks and the Committee can find more detail in the written testimony on these and other issues of importance for New York counties and New York City.

Overall Goals

The main goal for counties during this state budget cycle is to protect local taxpayers by preserving the local Medicaid cap. Over the past decade, the Governor and Legislature have helped save local property taxpayers through a 3-step process:

1. Imposing a local property tax cap;
2. Enacting a Local Medicaid Growth Cap; and
3. Limiting the expansion of state required spending and minimizing cost shifts from the state to local governments.

Protect Local Taxpayers, #KeepTheCap

The state has long acknowledged that requiring counties and New York City to pay for a share of Medicaid, along with a wide variety of other state social services programs, increases local taxes to levels that far exceed the norm in other states. The statutory local share contribution in New York is $7.6 billion annually. But the amount paid is less than this due to fiscal savings provided to counties under the Affordable Care Act.

This required local share of Medicaid costs in New York is more than what is paid by all the remaining counties in the country **combined**. This does not include voluntary Medicaid matching payments that are made by counties under DSH and IGT's to support county-owned health facilities in other states. The $7.6 billion is also more what than 43 individual states pay in matching funds to support their respective Medicaid programs.

In short, there is ample evidence that New York's counties provide significant fiscal support to the state Medicaid program.

Multiple New York governors have proposed plans to take on full financial responsibility for the state designed and controlled Medicaid program. None have succeeded in full, but there have been critical victories along the way.

The first major realignment of fiscal responsibility occurred in 1983. At the time, the state called for a five-year plan under which the state would take responsibility for 90 percent of the non-federal share of Medicaid. While this proposal was not enacted, the state did take responsibility for 80 percent of the non-federal share of long-term care costs. In 1983, long term care costs were the fastest growing aspect of Medicaid and comprised 46 percent of all Medicaid costs.

In 2005, after a huge expansion in Medicaid eligibility and benefits that led to a spike in local taxes, Governor Pataki proposed capping local Medicaid cost growth at no more than 3 percent of the 2005 base year ($183 million in annual growth).

In 2012, after enactment of the local property tax cap, Governor Andrew Cuomo proposed a zero percent county growth cap to provide mandate relief for counties and to help lower property taxes and preserve vital local services.

"The Budget provides significant mandate relief in Medicaid spending for all counties and New York City. The Budget includes a state takeover of growth in the local share of Medicaid costs and implements a phased takeover of local government Medicaid administration expenses...The phased takeover of local government administrative costs of Medicaid will accomplish statewide economies of scale, lead to associated savings and help New York achieve reforms proposed at the State and Federal levels."

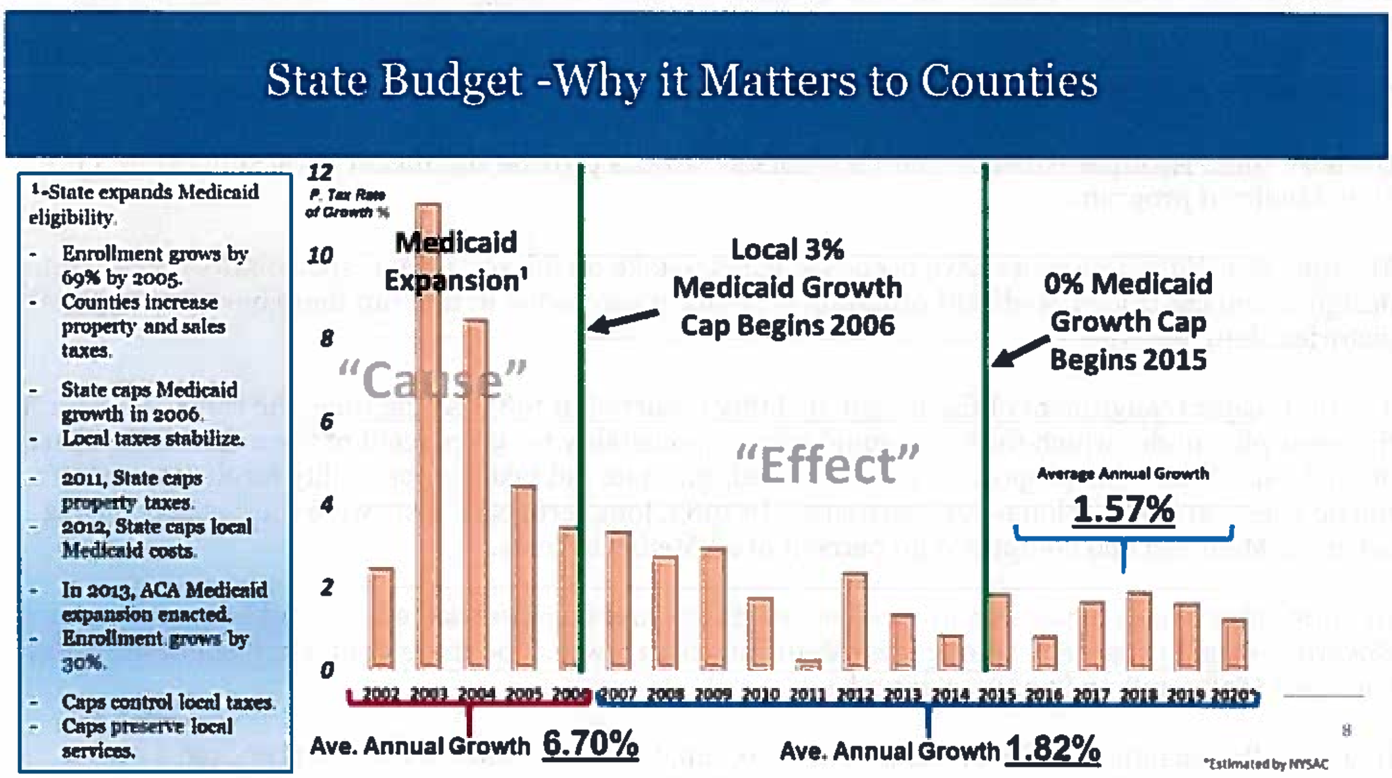
~ State Budget Press Release

Appendix A provides a more detailed breakdown of the history of Medicaid in New York State.

Enacting the Medicaid growth caps worked exceptionally well. They did exactly what they were designed to do, and they remain the most successful mandate relief and property tax growth reduction initiatives ever implemented by the state.

Unfortunately, the executive budget proposal aims to undo this mutually achieved success that has protected local taxpayers by keeping taxes lower and maintaining local services. This would have devastating results and bring us back to a time of significant fiscal stress.

As the chart below describes, the Medicaid expansion in the early 2000's decimated county budgets, increasing property taxes and sales taxes over multiple years, while also forcing reductions in local services. The local Medicaid caps kept property tax annual average growth below the rate of inflation for the last 15 years, with average growth around 1.4 percent since 2011.



SFY '21 Executive Budget Proposal

The Executive Budget proposal includes three separate initiatives that would impact the Medicaid local share that counties pay in support of the state program. The Governor's budget proposes a series of "Medicaid Local District Spending Reforms" that are as follows:

1. **Capping eFMAP Federal Fiscal Benefits to Counties.** The executive budget proposes to cap the amount of federal savings that can accrue to counties and New York City from the Affordable Care Act but does not cap the federal savings that can accrue to the state. As proposed, the county federal fiscal benefit would be capped, and those savings would effectively be transferred to the benefit of the state financial plan.

   County Concern:
   It is our understanding that the congressional intent of this proposal was to ensure that early adopter states that had already expanded Medicaid eligibility prior to the enactment of the Affordable Care Act (ACA) would benefit fiscally from the enhanced federal match provided under the ACA. As a matter of fairness and equity, the ACA included this language for these states – including New York - to ensure that they benefited as other states would from the enhanced federal Medicaid match upon implementation of the ACA.

   The New York Congressional delegation, led by Senator Charles Schumer, championed this language. It was the intent of delegation members that these savings be shared proportionately with counties based on the respective share of nonfederal matching funds they provided in the 2009 base year in support of the state Medicaid program. The executive budget proposal appears to cap the total savings that can accrue to counties and then redirect those savings to the state. Taking this action would change the proportionate savings accruing to counties as expected under federal law. Additionally, the cost increases absorbed by counties from the Medicaid expansion in the early 2000's are part of the local share Medicaid payment base as of 2009. Limiting these federal savings, we believe, is contrary to congressional intent.

2. **Require Counties and New York City to Adhere to the 2 Percent Property Tax Cap or Lose the Benefits of the State Funded Local Medicaid Growth Cap.** This proposal requires that counties adhere to the 2 percent property tax cap in order to continue receiving the fiscal benefits of the state cap on local Medicaid costs. If a county fails to stay under the tax cap, or if New York City's property tax levy grows more than the county property tax cap allows, then the jurisdiction would lose the benefit of the combined state value of the state funded Medicaid caps. A county may seek a hardship waiver from the tax cap penalty. This provision is effective April 1, 2020.

   For the past several years, most counties have been able to stay under the property tax cap. However, the ability to do so relies heavily on several factors, including an ongoing strong economy, no new costs imposed on counties by the state or federal government, and the absence of an unexpected natural disaster. New York City has estimated a loss of $1.1 billion had this provision been in place in 2019.

3. **Adhere to a Local Share Medicaid Costs Increase of No More than 3 Percent.** NYSAC seeks clarity on how these local share costs will be calculated. It appears that if a county's local share cost and associated savings exceeds three percent in any given year, the

county is required to refund any excess benefit over three percent back to the state. This provision is effective for state fiscal year 2022 and beyond.

2019 Estimate
Counties have sought clarity from the State on how this calculation is to be implemented. NYSAC has collected data from 34 counties, representing about 77% of the local Medicaid spend outside of New York City. These counties have conducted their own analysis of this proposal, and determined that if it had been in place in 2019 their loss would have been more than $91 million. If this trend holds true for the remaining counties, the negative impact would have been about $123 million.

2018 Estimate
The same analysis conducted using 2018 data results in an estimated negative impact of $246 million for the counties outside of New York City.

These numbers pose a significant concern as most counties are not prepared to handle losses of this magnitude over any sustained period. More troubling still is the fact that the loses are highly volatile - even in the earlier years of the MRT reforms when the state identified that costs were under firm control. It is not uncommon to see a county that has no impact one year then see a penalty that is 5-10 percent of their tax levy the following year.

There is $150 million in annual fiscal savings for the state attached to these combined proposals for 2021, 2022, 2023 and 2024. For 2021, the aggregate allowable inflationary property tax cap growth at two percent would equal about $104 million.

Counties want to work with the state to control Medicaid costs. We hope to restore some of the cost control functions that we have lost over the years, or have been absorbed by the OMIG, state contractors and providers. Many enrollment assessment tools counties utilized to determine Medicaid eligibility for long term care services have been eliminated by the state, ended as a result of litigation or centralized into web-based applications controlled by the state.

Counties will provide a list of recommendations to the MRT that can improve efficiency and ensure the integrity of the Medicaid program so it is sustainable for future generations.

We remain concerned that even with additional tools in place counties will still not be able to keep the growth in their net savings under three percent. In the years when the state said Medicaid costs were under control (SFY 2014 and 2015, for example) counties for which data is readily available still saw their net local savings grow by far more than three percent. Counties also do not have enough control over the total inputs to the health system that, while not part of the Medicaid Global Cap calculation, will be part of each county's annual local costs and net savings calculation , including:

- Reimbursement rates for health care providers;
- Prescription drug & durable medical equipment costs;
- County demographics – disability, aging and longevity;
- Rates of illness (incidence, prevalence and morbidity)
- Minimum wage increases, which by 2024 will be over 12 percent of the total Department of Health general fund Medicaid budget according to the State Financial Plan (p.98); and
- Benefit design and eligibility thresholds.

We do not fully understand how changes under a second round of MRT savings will solve this problem, when the first round of MRT did not manage to do so.

County Medicaid Administrative Functions

State Takeover of Medicaid Administrative Functions

As part of the zero percent growth cap enacted in 2012, the state also sought to centralize and streamline Medicaid eligibility and enrollment functions to improve conformity across the state, enhance program integrity and ease implementation of the ACA. As part of this process, the state Department of Health assumed all Medicaid eligibility and enrollment functions from the counties and New York City by 2018.

But the state has fallen short of a full takeover of the Medicaid administrative functions. In regard to the continued delay in the administrative takeover, the 2018 Annual Report stated:

> *"The State assumption of Medicaid administrative functions is behind schedule due to delays in the System Integrator's ability to add the needed Medicaid functionality to the NYState of Health. Functionality is expected to be added to the system in 2019 to enable the phased completion of the transition of the majority of MAGI population in WMS to NYState of Health. Efforts are underway to explore options to accelerate the completion of the remaining MAGI functionality as well as the non-MAGI functionality. Until functionality is added to a modernized eligibility system, no additional eligibility functions can be shifted from the counties to the State."*

Even though the State has not completed this administrative takeover as required by law, significant progress has been made. Across New York, nearly 60 percent of all Medicaid enrollments and eligibility determinations are made by the state. According to DOH, outside of New York City, the state completes 2 out of 3 Medicaid enrollments and eligibility determinations. In the four suburban counties outside of NYC - Nassau, Suffolk, Westchester and Rockland - the state completes 3 out of 4 Medicaid enrollments. In Rockland the state completes 7 out of 8 Medicaid enrollments.

Why Does the State Budget Matter to Counties?

In addition to the Medicaid proposals, the budget includes a series of funding cuts, state matching reductions or wholesale eliminations of state support for counties that amount to $288 million for counties outside of New York City. These include:

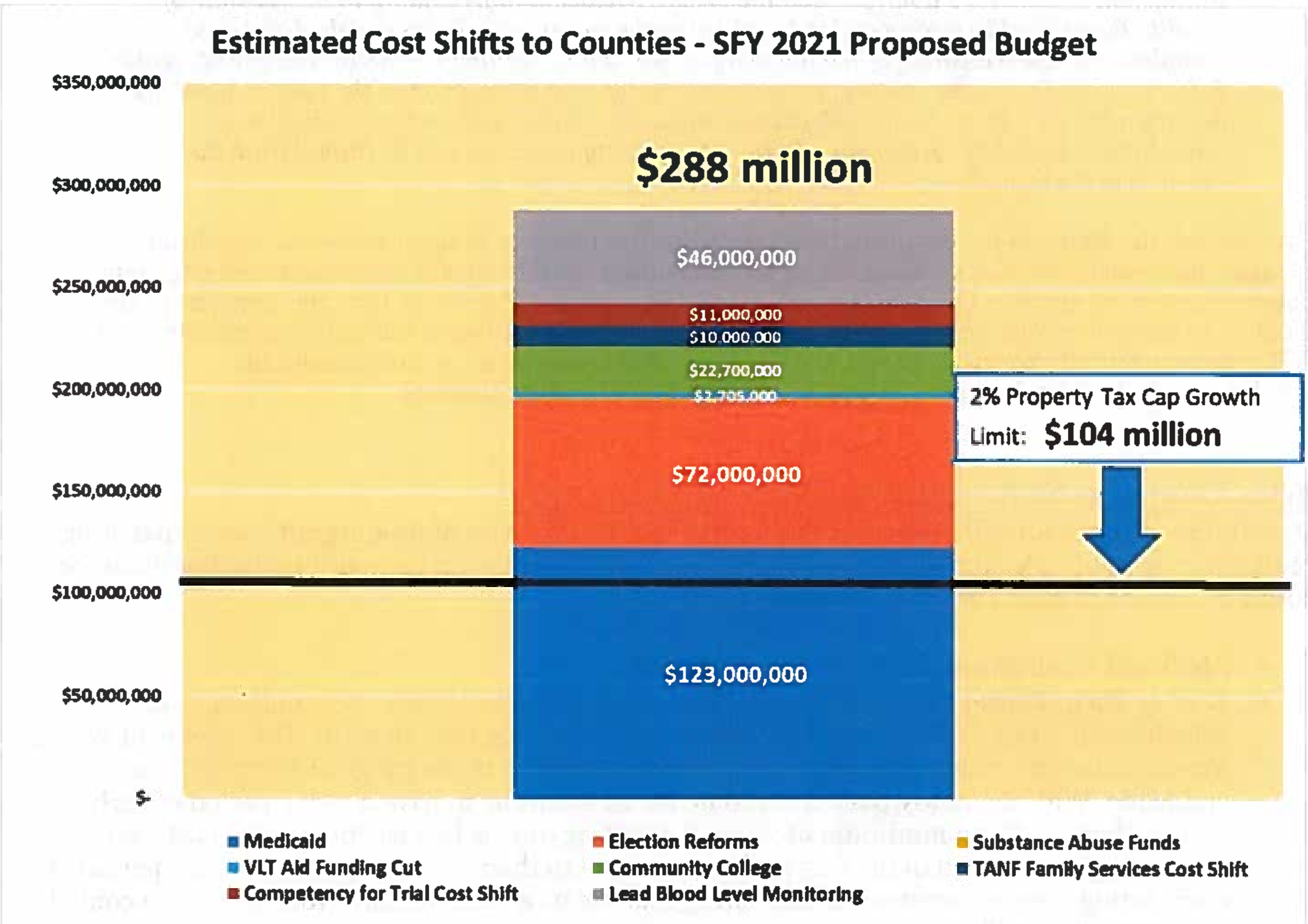
- *Medicaid Local Share increases* - $123 million
- *Loss of Early Voting State Funding & More Days of Early Voting* - $72 million. Election schedules in 2020 require three times more days of voting than in 2019. The League of Women Voters estimates that local election costs for 2020 will be in the range of $200 million statewide. With the newly passed mandate for all elections to have a 9-day period of early voting, there will be a minimum of 30 days of voting during this election cycle. Last year, counties spent more than the $25 million allocated to them by the state for a single period of early voting. These counties are estimating that the total cost for early voting in 2020 could be well over $200 million.
- *VLT Funding cut* - $2.7 Million
- *Community College Funding* reduction - $22.7 million
- *TANF FFFS Cost Shift* - $10 million
- *Substance Use Disorder Funding Cut* - $1 million

- *Loss of State Funds for 730 Mental Competency* - $11 million
- *No Funding to Support New Lead Blood Level Monitoring Thresholds Imposed by the State* - $46 million, according to NYS DOH data

New York City is projecting significantly higher negative impacts of $1.4 billion in total cuts, of which $1.1 billion is the result of a Medicaid cost shift to localities.

The executive budget does propose funding increases for several local programs, including Raise the Age, indigent legal defense services and Code Blue. But these funds are targeted for specific purposes and generally cannot be utilized elsewhere.

The chart below highlights the challenges counties will face if the recommended budget is adopted without any modifications. Counties will do everything possible to avoid breaching the property tax cap, but that likely will require local service cuts and repurposes other local resources, which have significant limitations in many counties.



Help Counties Preserve Scarce Resources

Public policies that help counties lower costs and ensure adequate local revenue are critically important. While recent state budgets have tried to limit the shifting of state costs onto counties, cost shifts still happen. Other state laws enacted over the years have eroded the county property and sales tax base, largely through the enactment of hundreds of tax exemptions targeted to specific groups of individuals, industries, products and services, all while failing to update the state tax code to keep pace with changes in the economy. The preponderance of state-promoted tax exemptions do not reduce the need to deliver services to the groups receiving tax breaks, but simply shift the burden of paying for these critical public services to a narrower tax base.

Providing Stability in County Resources

Counties require amendments to the final budget to provide safeguards to ensure compliance with the property tax cap and to maintain local services.

- *Make local sales tax rates permanent.* Historically, counties have had to request sales tax reauthorization every two years. Counties are supportive of making sales tax permanent at existing statutory rates, which would put them on equal footing with New York City. However, we do not support making counties renew at the local level every two years with a public hearing. In addition, we would ask that the state grant authority to the remaining counties, at local option, to raise their sales tax up to 4%. This would allow the last 6 counties with sales tax rates lower than 4% the ability to increase their rate upon the approval of a local law. The state did this for the 9-1-1 surcharge in 2017 when that function was centralized, allowing the last handful of counties to enact a local surcharge without stand-alone state legislation.
- *Reduce the cost of existing state programs and avoid the implementation of new ones.* Making the property tax cap permanent helps no one if future governors and Legislatures can simply add new cost burdens on counties and other municipalities. No new unfunded mandates legislation should be included as part of the final 2020-21 budget.
- *Exempt capital spending from the property tax cap calculation for counties, cities, towns and villages.* School districts are provided an exemption from their property tax cap calculation for capital construction costs, but this exemption is not provided to counties, cities, towns and villages. Local governments are delaying infrastructure projects to stay under the tax cap, which will undoubtedly have both economic and public service consequences in the future.

  The state exempts capital and other selected costs from its own two percent spending cap in order to make necessary investments in the future. Counties, cities, towns and villages similarly need to have capital costs removed from their respective property tax cap calculations so local communities can appropriately plan for and meet the needs of future generations.

Aging Services

Expanded EISEP Services

The executive budget proposes to include $15 million for EISEP services through local Offices for the Aging. This funding was included in the SFY '20 budget. Furthermore, the typical 25% local maintenance of effort match is exempt from this funding. The funds must be used to address the unmet needs of the elderly as reported to NYSOFA.

Counties support this continued investment.

Community College Funding

The executive budget reduces aid for community colleges by $31 million. The proposal would continue funding Community College Base Aid at $2,947 per full-time equivalent (FTE) student, maintaining the same level of FTE support as AY 2019-20. However, the Governor calls for eliminating the 98 percent funding floor that was instituted for AY 2019-20. The executive budget includes $431.2 million to support Base Aid, which is a decrease of $22.7 million from AY 2019-20, due to enrollment decreases and the elimination of the 98 percent hold harmless. Funding of $3 million for the Next Generation NY Job Linkage Program is continued, as well as $3 million for the SUNY Apprenticeship Program.

Counties support a restoration of the 98 percent funding floor that was included as part of the 2019-20 budget as well as an increase in Community College Base Aid.

Early Childhood Development and Children with Special Needs

Early Intervention Provider Rate Increase

Counties support the Governor's reforms to the early intervention program that seek to boost third-party insurance billings to ensure costs that should be paid by private insurance and Medicaid are, in fact paid. Since the implementation of the statewide fiscal agent, it has been the responsibility of the providers to exhaust third-party insurance billing before seeking reimbursement from counties and the state. These third-party collections continue to lag expected levels.

Our early intervention system is reaching a crisis point. Counties across New York are experiencing shortages in available providers, leaving our youngest population vulnerable to achieving the same social and educational growth as their peers. The executive budget provides a series of reforms, including the following.

- Amending Insurance Law as necessary to create a pay and pursue model for the program that stipulates insurers must pay an early intervention program service claim to a provider that participates in the insurer's provider network where the insurer's obligation to pay is reasonably clear, even though there may be a disagreement about whether the early intervention program service was medically necessary. Section one also allows insurers to initiate a non-expedited external appeal following payment of the early intervention program service claim to determine whether the early intervention program service was medically necessary. Finally, section one also provides that none of the Pay and Pursue changes prohibit an insurer from requiring pre-authorization for EI services. Commercial insurance funds less than 2 percent of total EI costs, although 42 percent of children have commercial insurance (around 25,400 children). This suggests that commercial insurers are approving 15 percent of provider claims. This proposal seeks to increase the percentage of total EI costs that commercial insurance funds.
- Expansion of the 5% provider rate increase to include all Early Intervention service provider types including service coordinators and evaluators using State invested dollars, while ensuring counties are held free from fiscal impact caused by such a rate increase
- Requiring market conduct examinations led jointly by DOH and DFS to ensure insurers are enforcing current rules and regulations and that providers are complying with current requirements.
- Clarifying benefit coverage that specifies coverage rules, including that insurers cannot offset coverage limits for therapies.

- Creating new regulations on network adequacy to specify that plans that have an adequate network must also have an adequate early intervention network.
- Updating billing codes to allow for more accurate billing.
- Streamlining the provider agreement process to accept existing Insurance Plan credentialed/approved practitioners as approved EIP.
- Deferring the Cost of Living Adjustment (COLA) Payment. The Budget defers FY 2021 SOFA COLA payment, saving $3.6 million in FY 2021.

Other recommendations:

- The State needs to implement reforms to ensure third party insurance collections are maximized in the Early Intervention Program, including:
  - Require that provider claims are filed within 60 days;
  - Ensure providers exhaust all appeals within the required timeline of the insurer before moving on to the next payer of record; and
  - Closely monitor any health insurance benefit changes in state-supported public health programs, such as Medicaid and CHP, to ensure new costs are not shifted to counties.

Counties support modifying Part N of the Education, Labor, Family Assistance bill to remove the requirement that counties fund a student with a disability placed in a residential school.

Recommendation:
§ 4405. Education Law:
a. Maintenance for a student with a disability placed in a residential school under the provisions of this article shall be a charge upon ~~the social services district~~ **the school district** wherein such child resides at the time of the commencement of the school year for which aid is to be paid. Financial responsibility for the maintenance of a student with a disability placed in a state school under the provisions of articles eighty-seven and eighty-eight of this chapter shall be in accordance with the provisions of such articles.

Recommendation:
Counties support the enactment of a covered lives assessment on third party commercial insurance for the purpose of assuring that commercial health insurance plans contribute a proportionate share of the payment for Early Intervention (EI) services provided to infants and toddlers with special needs and their families. In 2018 providers submitted claims to commercial Insurers totaling $76,498,012.57, but insurers paid just $12,034,496.61, or just approximately 16% of total claims. In contrast, Medicaid reimburses between 70-80% of claims submitted annually. EI is an important program with a steep growth curve: the cost of services and numbers of children enrolled have grown exponentially since the program began in 1993. EI consumes a large and growing percentage of local public health budgets, with the cost of EI often dominating that of any other single public health program, despite serving a small percentage of the population. Without the intended contribution of commercial insurers, the viability of the EI program, as well as other public health services, is threatened and places an undue and unnecessary burden on local and state governments.

In addition to the direct fiscal costs of third-party insurance claim denials, the current system poses an administrative burden on both providers and the insurers themselves. Third-party billing challenges have contributed to provider capacity problems, making existing providers no longer willing to serve the EI population, and serving as a disincentive to new providers. A covered lives assessment will provide relief to both providers and insurers in submitting, reviewing claims and adjudicating denied claims.

NYSAC believes that a covered lives assessment will provide a cost savings to the state and is requisite to responsible stewardship of public dollars. If accomplished, it will support and improve the provision of appropriate, high quality services to this most fragile population. NYSACHO recommends that a covered lives assessment should ideally match the Medicaid rate of reimbursement, and minimally provide the equivalent of 50% of eligible claims based on number of enrolled children with third party coverage (40M).

Election Reforms

Counties support many of the election reforms that have been passed by the Legislature and signed into law by the Governor and believe they can help improve voter engagement and turnout. However, it is necessary for the State to continue to provide some direct resources to help cover the implementation costs of these changes. Counties were supportive of the $24.7 million in capital and operating assistance that was included as part of the SFY 20 budget. The executive budget does not include funding for early voting implementation. The Governor's proposal states, "Early voting and the elimination of one primary election by combining Federal and State primary dates will also reduce the need for election day poll staffing. Through these actions, local boards of election will save an estimated $25 million in 2020 alone." Counties are grateful for this primary date change, which will prevent higher future costs on local taxpayers, but it does not provide additional resources for counties to administer the expanded early voting requirements in the 2020 election.

Counties support continued funding for early voting operating assistance.

We also believe it would be prudent to form a statewide taskforce of key election experts, including county officials, to study the local government costs of voting reforms and to have this taskforce make recommendations to the Legislature on future funding needs.

Provide Design Build Authority to Local Governments

The State has used design-build authority to build major infrastructure projects in recent years with great success. Projects have come in at lower costs and on time. This authority has also been granted to New York City on select projects. NYSAC supports providing full design build authority to New York City and other localities that are facing major infrastructure projects, subject to agreed-upon population and project costs thresholds. Local taxpayers can benefit from lower costs and short construction delays.

Judiciary and Court Related Matters

Parental Representation Caseload Relief

New York is a national leader in understanding the need for Family Court, and through the Family Court Act seeks to provide a system by which all interested parties and, most importantly, children, are protected. Family Court operates with a focus on providing solutions to families in need of support and helping individual family members with the safest and best path forward.

Currently, many state-mandated functions of Family Court are financed by local governments, including providing and paying for parental legal representation. Counties do their best to provide this service, however due to packed court calendars and caseloads and with limited fiscal resources, counties are struggling to ensure high level representation. The State needs to help counties provide fair and just execution of the Family Court Act through adequate funding and properly providing counsel to address the complex issues between family, parents, and children.

The next step is to provide the financing of parental representation in the Family Court system, currently mandated by the State and financed by counties and New York City. Counties, the State, and the Courts must work together to create efficiencies in the current system. By providing counties with a pilot funding program will be the start to address this need. Accordingly, the counties of New York are calling for a $5 million State aid pilot program that will target and support parental family court representation. This system will be vital to show the path forward on how together the State and the counties can work together to support families in need.

Indigent Defense

The Governor's budget proposal includes $254.81 million for counties for indigent defense purposes. This is an increase of $50 million in aid compared to 2019. Counties support this increase.

Market Based Judgment Interest Rate

Under New York State law, the interest rate for plaintiffs seeking to appeal a judgment is set at nine percent. This is vastly higher than current federal interest rates. The Governor's proposed budget would require that the rate of interest be calculated at a prevailing market rate identical to that used by the Federal Court System. Accordingly, the interest rate on all court judgments and accrued claims paid by public and private entities is based on the weekly average one-year constant maturity treasury yield. This bill would reduce the amount of interest paid by the State and by local governments on court judgments. Counties support this initiative and would encourage the Legislature to include this measure in the final budget.

District Attorney Salary Increase

For the fifth year in a row that the increase to district attorney salaries that, under state law, is tied to the state judge salaries, is not included in the executive budget proposal. This State inaction costs counties over $3.1 million per year. Counties encourage the Legislature to include this measure in both one-house budget bills.

Gaming

Native American Gaming

New York State is in the gaming and casino business. Over the past few decades, the State has authorized gaming on Indian reservations through compacts and legalized private casinos through legislation. These businesses are now directly or indirectly part of every county in New York. Under State law the gaming entities, including Native American-operated casinos, pay the State a percentage of gaming earnings and the State passes a portion of that revenue on to counties and the host communities. This funding is vital to meet the increased infrastructure, public safety, and social service needs that can accompany the expansion of legalized gambling. This system can and does work as long as a balance remains—the gaming facilities are marketable while the local governments are properly funded to meet resident services caused by the gaming entities.

Unfortunately, this balance no longer exists in New York's 16 western counties, which used to receive over $50 million annually from the State's portion of Seneca Nation gaming revenue. Early in 2017, a dispute between the Seneca Nation and the State arose over the language within the compact, leading the Nation to stop revenue sharing payments. The State, in turn, has stopped allocating any of the $50 million to the counties. However, the needed county government services have remained, and with a State-imposed tax cap, this lack of funding is putting an unnecessary strain on county governments and their residents. The Seneca Nation and the State of New York have elected to attempt to resolve this issue through arbitration and the courts, a process that has taken years.

NYSAC calls on the State of New York and the Seneca Nation to expeditiously resolve their differences and reach an agreement to avoid further harm to public safety and county service. NYSAC also calls on the State to make counties whole for past and current losses caused by this negotiation process so that local services and the residents that rely on those services are not impacted.

Elimination of Video Lottery Terminal (VLT Aid)

The Executive Budget eliminates VLT Aid outside of Yonkers. In FY '20, the State provided approximately $28.9 million of annual aid to the municipalities that host VLT facilities across the State. Of this amount, $19.6 million is distributed to the City of Yonkers. The proposed budget eliminates the other $9.3 million, which is split among 15 municipalities including 6 counties.

Counties urge lawmakers to reject this proposal.

Sports Gaming

The current law and New York Gaming Commission regulations allow for sports wagering exclusively onsite to the four commercial casinos and within the Native American casinos. These regulations do not permit online sports betting nor offer sports betting to a licensed off-site non-casino entity such as an OTB or racino.

Without future state legislative action more than half of all New York counties are not provided any revenue share to offset the public service needs that come with legalized sports gaming. This is because under current law while commercial casinos are required to share revenue on any type of gaming, Native American casinos share revenue from VLT spending.

Sports gaming requires an increase of county services Statewide including, but not limited to, departments impacted by increased gamble addition rates (Health, Social Services) and increased infrastructure needs (Highway).

Counties recommend that the state distribute a portion of revenue the State obtains from sports gaming to the counties in the Native American gaming zones (regions 3, 4 and 6). This State revenue cannot be taken from the portion dedicated to the counties in commercial zones as this revenue is already needed to offset the cost of the increased local government services.

Human Services

Counties oppose the following cuts:

- Child Welfare Services: Open-ended at 62% share; includes a $25 million funding decrease related to a proposed change to the child welfare threshold. Specifically, the amount LDSS must commit to the child welfare threshold under FFFS is increased by $40 million.
- Community Optional Prevention Services (COPS): Funding unchanged—however, existing COPS programs will end on September 30, 2020 as the state transitions into a more 'flexible'—but undefined—program on October 1, 2020.

- Public Private Partnership Program Elimination: Funding eliminated ($3.6 million)

Counties support the following new funding streams:

- Federal Family First Transition Act Funding: $75 million in federal Family First Transition funding (NYC to receive $50 million related to an expiring demonstration waiver, with the remaining $25 million going to the state)
- New DV Pilot Program: $5 million added for services to individuals and families who have experienced domestic violence.

Code Blue Investment. In 2016, the Governor issued an Executive Order to direct local social services districts, working in consultation with State and local law enforcement and community-based organizations, to protect individuals experiencing homelessness from inclement winter weather when temperatures, including wind chill, decline to 32 degrees or below.

To support continued implementation of Code Blue efforts across the State, the FY 2021 executive budget memorializes the Governor's directive with a $13 million stand-alone appropriation. Counties support this assistance.

Increase Funding for the Summer Youth Employment Program. The budget increases funding for the Summer Youth Employment Program by $1 million, to $45 million. In 2019, approximately 19,000 youths were employed through the program.

Increase Use of Federal Grant for Child Welfare Services. The State currently requires at least $342 million of the $964 million Federal Temporary Assistance for Needy Families (TANF) Flexible Fund for Family Services (FFFS) grant be spent on child welfare services. The Budget increases that threshold by $40 million to $382 million. NYSAC estimates this will reduce state reimbursements to counties by $25 million.

Change Reimbursement of Family Assistance Programs for New York City. The State currently provides open-ended 90 percent reimbursement to New York City for eligible spending on Family Assistance and Emergency Assistance for Needy Families benefits. Under the Executive Budget, the reimbursement would change to 85 percent. The state estimates this will cost New York City $51 million in the first year. NYSAC opposes this proposal.

Public Health & Mental Health

Prison and Jail-Based Substance Use Disorder Services

The executive budget continues $3.75 million in funding to support medication-assisted treatment (MAT) in local jails and leverages federal funds to expand MAT to three additional DOCCS facilities. These programs will support inmates in recovery and link them to community-based services prior to their release, increasing their chances of success and reducing recidivism. Counties support permanent funding for these jail-based substance use disorder services.

In partnership with the Conference of Local Mental Hygiene Directors (CLMHD), NYSAC is recommending an appropriation of $7 million for the continuance of jail-based SUD treatment and transition services in every county jail in the state as follows:

SFY 2021 - Appropriation Request:

- Total appropriation request of $7 million
- Executive Budget Proposal $3.75 million + new $3.25 million

OMH 730 Competency Exams & Placement Costs

The action from OMH to meets its "savings target" for the agency would require counties to pay 100% of the costs of 730 competency restoration. The state is booking $10.9 million in "savings" from counties outside of NYC. NYC began paying 100% of its 730 costs last year. OMH is assuming that bail reform will decrease the number of 730 restorations.

Counties recommend that lawmakers restore the $10.9 million for counties to pay for 730 competency exams and placement costs.

Core Article 6 Public Health Aid

Increase resources to Article 6 base grants to ensure public health services are eligible for full reimbursement of local expenditures:

- From $650,000 to $750,000 in full service LHDs and $500,000 to $550,000 in partial service LHDs and in per capita reimbursement amount from 0.65¢ to $1.30.
- Allowance of reimbursement of fringe and indirect costs, either fully, or phased in, in recognition that these costs are part of retaining a quality public health workforce.
- Restoration of Article 6 funding cuts to New York City. Eligible expenses are reimbursed 100% by the state up to the amount of the base grant. Once a county exceeds its base grant reimbursement funding, LHDs receive 36% reimbursement from the state, and pay the remaining 64%, plus 100% of the costs associated with services that are ineligible for reimbursement, such as employee benefits. During the 2019-2020 Budget Process, a 16% cut in reimbursement to New York City Department of Health and Mental Hygiene was enacted. This translates to a loss of $59 million less revenue to support essential public health programs to New York City residents.

Drinking Water Enhancement Grant Funding

- Restore drinking water enhancement grant funding to $6 million;
- Increase drinking water enhancement grant funding to equal one percent of clean water infrastructure act appropriations, totaling $30 million;
- Consider policy recommendations that strengthen and facilitate partnerships across state agencies and between those state and local government entities that share primary responsibility for assuring access to safe drinking water;
- Recognize the negative impact that the last several years of funding constraints have had on both the local and state public health workforce and work together to identify ways to maintain and enhance the capacity of our public health infrastructure.

Lead Poisoning Prevention

Last year, New York State enhanced lead prevention activities by lowering the actionable blood lead level to 5 micrograms per deciliter (µg/dL). However, the current state investment of $9.7 million falls far short of the costs of implementing of the new lower elevated blood lead level.

Data indicates that $46 million dollars is needed to address the true cost of protecting children from exposure to lead hazards. This total factors in the average case costs and total anticipated increases in number of children requiring case coordination and environmental management follow-up.

- To better protect children, allocate $46M which reflects the true cost of local implementation.
- Any funding should be re-appropriated from Article 6 to the Lead Poisoning Prevention grant mechanism within the State budget.

Adult-Use Cannabis Legalization

In 2018, DOH issued a report recommending the State legalize non-medical use of marijuana. Ten states—Alaska, California, Colorado, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, and Washington—and Washington DC have already legalized cannabis for adult recreational use.

The State report acknowledges the difficulties that legalization is anticipated to present for local law enforcement. This legislation will also have other social and practical impacts that will place new responsibilities and service requirements on many county departments, including public health, public safety, mental health, substance abuse, consumer protection, economic development, and others.

There are several proposals in the Governor's adult-use cannabis legalization reform package. Some of which include:

- Like alcohol, only individuals age 21+ will be allowed to purchase and consume marijuana.
- Cannabis retail businesses will not be permitted to sell alcoholic beverages or allow gambling.
- A new state agency will be created to deal with medical marijuana, hemp, and cannabidiol (CBD).
- Counties will be able to opt-out of authorizing the cultivation, processing, distribution, and sale of adult-use cannabis. A city with a population over 100,000 can also elect to op-out if the county does not.
- All cannabis-infused products will have separate packaging for each serving, and it must be child-resistant.
- The legislation will address the damaging consequences of marijuana criminalization. This will include investing in the communities hit hardest by the War on Drugs.
- The State acknowledges the safety risks posed by marijuana being a cash-only industry, and relies on federal law changes that allow states to commercialize medical and recreational marijuana at their discretion without running afoul of federal drug trafficking laws.
- A four-step roadside test for marijuana driving impairment exists, but other tests – including a cheek swab – are under consideration.
- The Governor proposes to impose three taxes on recreational marijuana. The first tax is imposed on the cultivation of cannabis at the rate of $1 per dry weight gram of cannabis flower and $0.25 per dry weight gram of cannabis trim. The second tax is imposed on the sale by a wholesaler to a retail dispensary at the rate of 20 percent of the invoice price. The third tax is imposed on the same sale by a wholesaler to a retail dispensary at the rate of two percent of the invoice price, but it is collected in trust for and on account of the county in which the retail dispensary is located.

Additional "guiding principles" from counties include:

- Overall, recreational marijuana should be controlled in a similar manner as alcohol.
- Marijuana consumption should have its own "open container" law.
- Consuming marijuana in any establishment with a liquor license should be illegal.
- Selling marijuana-laced food products should not be permitted.
- The use of marijuana in any public assembly venue should be illegal.

- The cost of training police officers will be significant to counties, and as such should be addressed in any adult-use legalization law.

Counties recommend that in order to ensure adequate public safety, and public health needs are met, the State must change the retail tax from this new model of 2% to be held in a trust for and on the account of the county to the traditional sales tax arrangement of 4%. Marijuana retail sales revenue should be treated the same as alcohol.

Public Safety

Bail Reform. The executive budget states, "by dramatically reforming New York's bail system beginning January 1, 2020, and thereby significantly reducing the number of people held in jail prior to their trial, local governments across the State are expected to save more than $200 million in short and long-term avoided costs. Short-term local savings will come from avoiding variable costs such as overtime staffing, food, and laundry. In the longer-term, local jails should be able to reduce staffing and potentially close housing units."

Counties do not support this notion and encourage the Legislature and executive to include funding to aid counties in the administration of criminal justice reform.

Parole Violators

New York State counties incur substantial costs to construct and maintain jail facilities for inmate populations in accordance with standards set by the New York State Commission of Correction. The incarceration of parole violators in county jails is a costly requirement for counties. In the 2009-10 budget, the State eliminated reimbursements to counties for the cost of housing parole violators in county jails. Counties are mandated to pay for medical, hospital and dental expenses of parole violators incarcerated in county jails. The sheriff's department also incurs expenses for transport costs of parole violators and court appearances.

We ask the Legislature to transfer parole violators held in counties jails within 10 days to a state facility and pay reimbursement to counties for any costs they incur for housing state parole violators after 10 days in a local jail. Senate Bill 1368 (Ritchie) / Assembly Bill 3661 (Gunther) addresses this issue.

Achieving NextGen 9-1-1 Security

With recent advances in technology, it has become increasingly expensive - but necessary - for 9-1-1 call centers to accommodate the expanding needs of callers, and to use the latest information systems for rapid emergency response. For counties that still face challenges with basic radio communication interoperability, these upgrades will take longer and be more complex.

Counties operate and maintain 9-1-1 functions. New York is one of a handful of states that diverts 9-1-1 cellular surcharges for non 9-1-1 purposes. As a result, the system does not direct sufficient revenue to allow counties to properly maintain existing systems, while also preparing to implement the next generation of 9-1-1 technology required under federal law.

The cost of providing this level of service is borne by local taxpayers in the county where the PSAP is located. The price tag in New York State for NG 9-1-1 is expected to be $2.2 billion over the next 10 years. Until counties have access to a dedicated revenue stream to help pay for system upgrades and new communications equipment, becoming NG 9-1-1 capable will be out of reach for many areas.

The "Public Safety Surcharge." Under Section 186-f of the NYS Tax Law, $.50 of this $1.20 goes to the State's General Fund and is not dedicated to public safety. The remaining $.70 goes to a variety of public safety programs, including state agencies, to supplant General Fund appropriations. Since 2003, surcharge revenues have nearly tripled, from $66 million to over $200 million in 2018. If we are ever to achieve full NextGen 9-1-1 emergency response security the State must stop diverting these surcharges away from 9-1-1 enhancements and purposes.

Under current law, for the last two budget years, $10 million is authorized and targeted directly to PSAPs and up to $65 million is set aside for the provision of grants and reimbursements to counties administered by the State Interoperable Communications Grants (SICG) program, administered by the Division of Homeland Security.

NYSAC is asking that the state to release all funds authorized so far and to ensure that future authorizations are released in full in the budget year they are appropriated. As well as, include language that clarified this funding should be provided to counties annually. Getting these funding obligations on a regular schedule will provide certainty and build continuity as we upgrade and maintain existing systems and prepare for NextGen 9-1-1 development and roll out at the county level.

The goal of upgraded 9-1-1 systems is to make sure that all devices capable of connecting to the system can do so using voice, text, video images and other data formats to better inform the emergency responders to the situation they will be entering. In addition, upgraded systems will be able to better pinpoint an emergency caller that may be in a remote area of the state or skyscraper in New York City. Knowing a more precise location of those needing emergency services will improve outcomes and save lives. This cannot be accomplished without consistent and timely funding from the state.

Raising the Age (RTA) of Criminal Responsibility

NYSAC has been working closely with the Governor's office, the Legislature and the other agencies involved with Raise the Age since this historic bill was signed into law. We are supportive of the executive budget proposal that includes $250 million to continue implementation of this statute along with a re-appropriation of $221 million in prior year unspent funds.

In order to make the implementation of this law successful and to ensure diversion over detention, the state must invest in a myriad of prevention services, including:

- Fully cover all new costs associated with changing the age of criminal responsibility for counties, as well as New York City;
- De-link the adherence to the state property tax cap as an eligibility requirement for full state reimbursement of costs incurred to implement the new state mandate;
- Raise the minimum age that a youth can be charged as a juvenile delinquent from seven to twelve years old;
- Increase the maximum time for diversion services from four to six months for juvenile delinquents;
- Mandate that the state's evidence-based criteria account for existing local best practices;
- Allow probation the ability to make an application for a temporary order of protection as a part of the adjustment process;

- Establish a dedicated funding stream through DCJS/OPCA for 100% of all local probation costs including but not limited to probation personnel and evidence-based programming associated with the Raise the Age law;
- Eliminate the requirement of a sentence of a conditional discharge or probation for Leandra's Law cases when a defendant has been sentenced to a jail term or a term of imprisonment;
- Ensure that local probation departments receive 100% of all costs including but not limited to probation personnel associated with bail reform.

Upstate Cellular Coverage Taskforce

New York State has made historic investments in infrastructure and broadband availability. In 2015, the Governor launched the $500 million New NY Broadband Program to achieve statewide high-speed Internet access. After full implementation of the program, the state maintains that more than 99 percent of New Yorkers will have access to wired broadband. This is not accurate. There are several regions of the state that are still lacking broadband.

The lack of upstate cellular network coverage undermines economic growth, impacts communications and safety, and inhibits adoption of smart municipal infrastructure. In the Adirondack Park Region and other rural upstate areas with large coverage gaps, the issue of cellular deployment has been a major local concern.

As part of the executive budget, the Governor launched an Upstate Cellular Coverage Task Force to identify solutions and develop policies addressing the lack of coverage in areas of need. This Task Force consists of industry experts, community leaders, government officials, environmental representatives, and other key stakeholders.

The State must ensure that this task force develop real solutions and develop a funding mechanism to allow for the proper expansion of cellular service coverage. Counties support a PILOT program for select routes in the Adirondack and Catskill parks in the amount of $10 million to begin making investments in rural cellular.

Countywide Shared Services Initiative

In 2017, the Legislature created a two-year county-wide shared services initiative (CWSSI). This required county executives, chairs, or administrators to convene a panel of locally elected municipal leaders to create a shared services plan that might foster collaboration and find savings for local property taxpayers. These panels were required to submit these plans to the state Division of Budget in either October 2017 or October 2018, for implementation in 2018 or 2019 respectively.

The proposed executive budget re-appropriates more than $200 million in funding for the state match of first-year savings from county-wide shared services plans. Counties that implemented shared services plans in 2019 are eligible to receive matching funds from the State in calendar year 2020.

Additionally, legislation submitted with the budget will allow projects included in previous shared services plans that have not yet been implemented to be eligible for State matching funds when they are realized. While the executive budget maintains the requirement that all projects in a plan be implemented during the same 12-month period to receive matching funds, local governments may now decide whether to implement project beginning on either January 1 or July 1.

NYSAC supports a stronger incentive to expand the participation of other local government jurisdictions in the process - especially school districts and fire districts. The State should also be required to participate on any service sharing panel, since it has resources and assets that could be drawn upon to help reduce the costs, and therefore property tax burden, in each of our counties.

Since the counties are required to spend resources, time, and funding to coordinate these shared services panels - including hiring additional staff members or contracting with research agencies or consulting firms - we recommend the State allow counties reimbursement for expenses, reports, or seed money. This funding could come from the $225 million allocated by the State for matching funds for property tax savings.

Transportation

Increase the Consolidated Local Street and Highway Improvement Program (CHIPS) Competitive-Bid Threshold. We support the executive budget proposal to increase the CHIPS competitive-bid threshold from $250,000 to $750,000, allowing municipalities the option of performing any projects at or under the $750,000 threshold with their own workforce rather than bidding out the contract competitively. Last adjusted in 2011, the increase in the threshold is intended to mitigate the inflationary impacts of materials, labor, equipment and other construction-related costs. This proposal would provide municipalities more flexibility and control in the way they complete local street, highway, and bridge projects.

Local Roads and Bridge Funding

Counties support an increase in base CHIPs funding, or at a minimum, an appropriation for the harsh winter conditions experienced across the state already this year.

Veterans

Counties support our military veterans in a variety of ways, including through county veteran affairs offices throughout the state that provide direct services to those who have sacrificed so much for our state and our country.

The Governor's budget continues funding for New York State's Justice for Heroes grants. These provide $50,000 to each of five law schools offering innovative proposals to address veterans' unmet legal needs. The funding allows law schools to provide free legal assistance to veterans and their family members in practice areas, including foreclosure prevention and other consumer protection matters, family law assistance, discharge upgrade cases, and complex appeals regarding VA benefits.

NYSAC requests that lawmakers consider adding or expanding other veterans' programs, including:

- *Job Placement and Recruitment Options for Veterans,*
- *Sharing the DD-214 Forms with County Veteran Service Agencies,*
- *Create the New York State Division of Veterans' Services,*
- *Expand Veteran Court availability throughout the State,*
- *Expand the definition of a "Veteran" to include Reserve/ National Guard members,*

- *Provide veterans with hotel/motel tax exemptions,*
- *Expand the discount for hunting and fishing licenses,*
- *Expand the Discount on State Park Entrance Fees,*
- *Create a Veteran's to Green Energy jobs program, and*
- *Consider other programs to support our veterans.*

Importance of the 2020 Census

New York's counties recognize the importance of the decennial census and we have been working with the Governor's office to promote a full count. The decennial census counts help the federal government distribute more than $400 billion in funds annually for infrastructure and a variety of programs, and also help communities plan for future needs and deal with population-based programs. To that end, we need the state to provide the pledged funding to the counties participating in the state's full count committee plans.

Appendix A – State Medicaid Background:

New York Implements Medicaid (1966). The Medicaid program was signed into federal law on July 30, 1965 by President Lyndon B. Johnson as part of historic legislation also creating the Medicare program of health insurance for all elderly Americans. Medicaid is jointly funded: the federal government pays half of the program costs in New York, and the other half comes from nonfederal (State or local) sources. The federal government provides authorization and oversight for Medicaid, but states develop their own plans for administering the program. Federal law grants the states flexibility to raise a portion of the nonfederal half from local governments, and New York chose that option. The federal government would pay for 50 percent, the State would pay for 25 percent, and local districts–New York City and the 57 counties outside of New York City–would pay 25 percent.

State Takeover Efforts Rejected (1981). In 1981 the annual local share of Medicaid was already greater than $1 billion. Governor Hugh Carey sought to have the State take over the Medicaid local share over seven years. The Assembly passed Governor Carey's plan; however, the Senate rejected that proposal. Although the Senate Majority Leader publicly acknowledged that the local share was inappropriate because Medicaid is state-run, leaders could not agree on how to pay for the takeover.

Partial Takeover Success (1983). New York then sought a takeover of the majority of the local share. In 1983, the state proposed a five-year plan wherein the State would bear 90 percent of the nonfederal share. Again, the Senate blocked the plan, but a deal was reached for the State to take on 90 percent of Medicaid long-term care costs (primarily nursing homes and home care) to save local governments $429 million in the first year alone. This was a significant success because long-term care costs represented nearly half of Medicaid spending at that time. This policy helped alter significantly the financing of Medicaid. By 2004 local districts were paying 16 percent of New York's total Medicaid bill compared to 25 percent prior to the 1983 legislation.

Growth Cap Enacted (2005). By 2005 the local share of Medicaid surpassed $6 billion annually statewide ($4.3 billion in New York City and $1.8 billion in the rest of the state). Then State Comptroller Alan Hevesi estimated that local property taxes would need to increase by one-third over five years to keep up with the cost of the local Medicaid share under the status quo. In 2005 a cap on the local share was proposed as part of Governor George Pataki's executive budget and was enacted. The annual growth of the local share in the first three years (from 2006 through 2008) was capped at 3.5 percent, 3.25 percent, and 3 percent, respectively. Annually thereafter 3 percent of additional growth was permitted. Any cost growth above that level became the fiscal responsibility of the State.

Freezing Local Growth (2012). In 2011 Governor Andrew Cuomo took office, and in 2012 the Governor and Legislature enacted a phaseout of local cost growth, ultimately resulting in a freeze. Over the next three years, annual growth was reduced from 3 percent to 0 percent in 2015. Annually thereafter each local district's Medicaid local share could not exceed the 2015 level. All nonfederal costs above the frozen amount are now paid for by the State.