

**Recommendations on the
Proposed 2007-08 Executive Budget**



NYSAC
NEW YORK STATE
ASSOCIATION OF COUNTIES

February 2007

Hon. Lucille M. McKnight
President

Stephen J. Acquario
Executive Director

The New York State Association of Counties is a bipartisan municipal association serving all 62 counties of New York State including the City of New York. Organized in 1925, NYSAC's mission is to represent, educate and advocate for member counties and the thousands of elected and appointed county officials, including county executives, legislators, supervisors, administrators, commissioners and other county employees who deliver essential state and local services to the public.

Medicaid

1. Medicaid Cap Implementation

The Executive Budget fully implements the local Medicaid Cap, which limits local Medicaid payments in 2007 to \$6.5 billion, an increase of 3.1 percent over 2006.

NYSAC Recommendation:

Accept the full implementation of the Local Medicaid Cap.

2. Medicaid Cap Technical Amendment

A technical change to the local Medicaid Cap statute directs that local payments would continue to be applied to the State Medicaid program and not be an offset to general State spending. While this change has no fiscal impact, it changes negotiated public policy.

Currently, the State appropriates the federal and state share of Medicaid in their budget and counties appropriate the local share. Under the current Medicaid Cap statute, effective January 1, 2008, the State is required to appropriate both the State and local share of Medicaid in the State budget. Payments counties make under the Medicaid Cap would not go into the Medicaid account, but be used as an offset to general State spending.

The provision in the current Medicaid Cap has no State or local fiscal impact and provides greater budget transparency. With the State appropriating the full cost of the Medicaid program, policy makers would have a much more accurate picture of State Medicaid spending.

NYSAC Recommendation:

Reject the Medicaid Cap Technical Amendment and preserve the historic Medicaid Cap statute.

3. Medicaid Cost Containment Impacting County Nursing Facilities

Counties that operate public nursing homes will be negatively impacted by many of the specific Medicaid cost containment proposals recommended by the Governor, including:

- the elimination of the nursing home inflationary trend factor,

Medicaid, continued

- Elimination of the Nursing Home Quality Improvement Demonstration Program,
- a Phase-out of the Workforce Recruitment and Retention Allocations, and
- the imposition of a Medicaid-only case mix

The Medicaid-only case mix is particularly burdensome to county nursing homes as case mix calculations are changed to only include Medicaid residents and not residents covered by Medicare or other payments. County Nursing Homes tend to have a higher mix of Medicaid patients than other classes of nursing home.

Preliminarily, NYSAC has estimated that the gross impact of these changes to public nursing homes is approximately \$30 million.

NYSAC Recommendation

Mitigate the negative impact of these Medicaid cost containment proposals on county nursing facilities to preserve the unique safety net mission of these public providers. Reductions in federal and State Medicaid reimbursement to county nursing facilities have a direct negative impact on local real property taxpayers.

4. Public Nursing Facility Grants

The Executive Budget preserves the public nursing facility grants enacted as part of the 2006-07 State Budget to provide fiscal relief to public nursing facilities.

Under the current plan, public nursing homes receive \$5 million in 2006-07, \$15 million in 2007-08, \$35 million in 2008-09 and \$100 million in 2009-10 and years thereafter. In calendar year 2008, the public facilities should receive \$30 million based on their ratio of Medicaid patient days, paid on a quarterly basis.

Even with these grants, county nursing facilities are operating with structural deficits that continue to burden local real property taxpayers.

NYSAC Recommendation

Support a revision to the current public nursing home grant phase in schedule to provide the full \$100 million in 2007-08 while not increasing State expenditures over the 3 year phase-in period.

Welfare/Child Welfare

1. OCFS Training School Retroactive Rate Increases

Last September, counties were advised by the Office of Children and Family Services (OCFS) that the rates for the local share of court placement of youth into residential detention facilities that they operate would increase by approximately \$28 million in 2006, an increase reaching as high as 51 percent. In addition, OCFS notified counties that retroactive payments would be required from January 2001 through 2005, representing a local impact of approximately \$110 million.

OCFS has disregarded their administrative responsibility by not updating rates since 2001 and are presently asking property taxpayers to pay for their mistake.

NYSAC was disappointed to learn that the Executive Budget does not hold counties harmless for this expense and that, instead, it provides for a five-year payment plan. Specific timing for the re-payment plan has not yet been determined and is therefore not outlined in the budget. However, a retroactive billing of this magnitude, even over five years, will force counties to cut essential services to children and increase property taxes to cover this unanticipated expense.

The Executive Budget includes the creation of a new “Youth Facility Per Diem Special Revenue Account,” for the purpose of dealing with counties’ per diem billings. The new account will allow the Governor and Legislature to view and monitor (via the Office of the State Comptroller) all account activity and improve transparency. Currently, only OCFS has access to this information.

NYSAC Recommendation

Reject the five year payment plan and hold counties harmless for this retroactive rate increase. In addition, we recommend that all future rate increases from OCFS require at least 120 days notice to accommodate local budgeting timeframes. Should OCFS fail to adequately perform its administrative responsibility in the future, fiscal sanctions against the agency should apply.

2. Child Welfare Funding

The Executive Budget continues open-ended funding for Child Welfare Services with an increase of \$84 million this year, which brings the total from \$381.7 million to \$465.6 million. Also, the Executive Budget proposes making permanent the 2002 Child Welfare Financing Reform and Committee on Special Education Reform. Under current law, these initiatives are scheduled to sunset on June 30, 2007.

Welfare/Child Welfare, continued

NYSAC believes that child welfare funding deserves a much stronger, renewed commitment from the State and that the current funding mechanism should not be made permanent.

NYSAC Recommendation

Extend for one-year the current child welfare funding mechanism in order to preserve 65 percent State reimbursement for services that protect our most vulnerable children.

5. Preventive Services Contracts

The Executive Budget proposes that, effective January 1, 2008, counties will be required to provide preventive services through performance-based contracts. Counties will be required to implement these performance or outcome-based provisions for preventive services. Should the county fail to comply with the new requirements, OCFS will have the authority to limit State reimbursement to counties for certain expenditures.

NYSAC Recommendation:

Reject fiscal penalties associated with performance-based contracts. NYSAC supports performance measurement that promotes specific goals and positive policy objectives. The local fiscal penalties associated with the current proposal will discourage, rather than foster, innovation in service delivery to these vulnerable children.

6. Flexible Fund for Family Services (FFFS)

The Flexible Fund for Family Services (FFFS) is proposed at \$1.008 billion, which reflects a \$4 million dollar increase over 2006-07. However, there are specific carve-outs in this plan, including \$35 million for Summer Youth Employment; and \$3 million for non-residential domestic violence.

While the structure of the FFFS theoretically provides for county flexibility, the reality of counties' existing child welfare commitments, as well as the extraordinarily high demand for services, has rendered most of the funding for counties "inflexible."

Welfare/Child Welfare, continued

The Governor has earmarked \$35 million for the Summer Youth Employment program. There is appropriation language that delineates if a county chooses to not use all of the funds for costs of the Summer Youth program, that money can be transferred to the credit of the county's allocation of the FFFS; provided, however, that a minimum of \$32 million is spent.

Counties appreciate the newly proposed flexibility of the Summer Youth Employment money and believe that a number of counties will take advantage of this option. However, it should be noted that the flexibility for this money will be utilized by counties largely because they have such tremendous existing demands for other services, such as day care.

NYSAC Recommendation

Accept the FFFS as proposed. However, any additional funds available above \$1.008 billion should be set aside specifically for day care.

Public Health

1. Early Intervention Cost of Living Adjustment (COLA)

The Early Intervention COLA was adopted last year as part of a larger plan for human services providers, and is retroactive to October 2006.

The COLA has not yet been implemented for Early Intervention providers. NYSAC believes this COLA is unnecessary, given the significant increase in the cost of EI services. From the inception of the program until 2002 alone, the cost of EI services increased 43 times and, on average, accounted for fully 20 percent of local health department budgets, dwarfing the cost of any other public health program.

NYSAC Recommendation

Reject the retroactive and prospective COLAs for EI providers.

2. Early Intervention Third Party Health Insurance

The Executive Budget seeks to improve the State audit capabilities within the Early Intervention (EI) Program by adding five new audit staff and attempts to improve third party health insurance collections by proposing stricter requirements on insurance carriers to reimburse for EI costs. Reimbursement for an EI program service, which is a covered service under the policy or contract, will be at rates established by the State Health commissioner. In addition, coverage will not be denied based on:

- the location where services are provided;
- the duration of the child's condition and/or that the child's condition is not amenable to significant improvement within a certain period of time as specified in the policy; or
- that the provider of services is not a participating provider in the insurer's network.

Visit limitations will continue to apply to EI services; however, any visits used for EI program services won't reduce the number of visits otherwise available. Also, upon the insurer's receipt of written notice from a county, the insurer will be required to provide the county with information on the extent of the benefits available to an insurer under that policy. No insurer, including an HMO, will be able to refuse to renew an accident and health insurance policy or contract or refuse to renew an accident and health insurance policy or contract solely because the applicant or insured is receiving EI services.

Public Health, continued

Commercial insurance payment to help finance the EI Program was intended in the enabling legislation, is included in State and local budgetary assumptions, and was a cornerstone in the design of the program. However, loopholes in current law have permitted commercial insurers to unilaterally decline coverage and unfairly shift this responsibility to taxpayers for the past fourteen years.

Counties outside NYC doubled the amounts billed in EI services to commercial insurers in just two years time. In 2002, counties billed commercial insurers \$62.3 million, exceeding the amounts billed to Medicaid. Despite these efforts, the overall rate of recoupment actually dropped, from 14 percent in 2000 to 12 percent in 2002. The median county rate of recoupment remains in the single digits. Although 44 percent of children in the EI Program in 2005 had commercial insurance, commercial insurance paid for only 1 percent of the costs. Approximately 70 percent of reconciled commercial insurance claims were denied.

Counties are required to bill commercial insurers despite low collections, or they face fiscal penalties from State auditors. As a result, counties have to waste administrative resources to submit insurance claims that are by and large denied payment.

The EI Program consumes a substantial and growing percentage of local public health budgets. Without the intended contribution of commercial insurers, the viability of the Early Intervention program, as well as other public health services, is threatened.

NYSAC Recommendation

Accept the Governor's proposal.

Education

1. Temporary Preschool Special Education Taskforce

The Executive Budget includes the creation of a Temporary Pre-School Special Education Taskforce, which will be chaired by the Commissioner of Education or his designee. The seventeen members of the taskforce will include: representatives of the departments of Education and Health, Division of the Budget, Council on Children and Families, the Commission on Quality of Care and Advocacy for Persons with Disabilities, the Office of Mental Retardation and Developmental Disabilities, school districts, counties and preschool special education providers.

The specific charge of the Taskforce is to study and submit recommendations related to:

- The appropriate relationship between preschool special education and other early childhood and special education programs
- Approaches to improve transition from the EI system to preschool special education and from preschool special education to school-age special education
- Ways to enhance delivery of special education programs and services to children attending universal pre-k or other publicly-funded pre-k programs in the least restrictive environment
- The current rate-setting methodology for preschool special education programs and services and make recommendations for improvement; and
- A comparative study of NY and other States' delivery of preschool services, financing approaches and other best practices.

The Taskforce must reach its conclusions on or before November 15, 2007 and report to the Governor, Senate Majority Leader, Assembly Speaker, Director of the Budget and the Board of Regents on the taskforce's conclusions and recommendations.

The Pre-School Special Education program creates a significant financial impact on local property taxpayers, yet State policy limits a county's administrative ability and restricts their fiscal oversight. The reimbursement methodology which governs the preschool program is a cost-based tuition reimbursement system that rewards high costs and increased spending, rather than encouraging quality service at the most reasonable cost. This methodology has proven to be unaccountable and precludes counties from actively managing or controlling

Education, continued

costs that directly impact their budgets, while decisions made by school districts, under authority granted them by the State Education Department (SED) have little bearing on their own bottom-line. Because of the current statutory framework and the expansion of services, these programs represent one of fastest growing burdens on local property taxes in the State.

NYSAC Recommendation

Accept the Governor's proposal.

2. Pre-school Special Education Appropriation Language

Appropriation language for the Pre-school Special Education Program, as in previous years, narrowly defines county claims for reimbursement; specifically, claims that are eligible to be first claims paid out of the fiscal year 2007-08 appropriation or, in the event of insufficient appropriation, to be first claims against subsequent appropriations. This language creates the opportunity for the State to continually rollover to subsequent fiscal years, pending local claims for the two years immediately proceeding any given fiscal year. In addition, claims that do not meet this "first paid" criteria either because of the year in which the costs were incurred or because of the timing of State approval, are continuously and progressively delayed.

NYSAC opposes the current appropriations language as it perpetuates enormous delays in program reimbursement to counties, thus, exacerbating the fiscal impact of the Preschool Program on local property taxpayers.

NYSAC Recommendation

Modify the current Pre-school Special Education appropriation to ensure sufficient appropriations and to permit prompt payment of all pending State aid claims submitted by counties for reimbursement of costs incurred in the 4410 Preschool Special Education Program.

Aid to Local Governments & Mandate Relief Measures

1. Aid to Municipalities

Aid to Municipalities (AIM), also known as State revenue sharing, was restructured in the Executive Budget Proposal to provide increased financial assistance to targeted distressed municipalities. To facilitate this restructuring, AIM funding was eliminated for 81 towns and villages throughout the State, including a significant cut of over \$328 million in revenue sharing to the City of New York.

NYSAC Recommendation

Reject the elimination of AIM funding for certain municipalities. NYSAC recognizes the need to support certain distressed municipalities, but we feel that these increases should not be at the expense of other municipalities, especially the City of New York.

2. Shared Municipal Services Incentive Program

The Executive Budget continues funding for the Shared Municipal Services Incentive Program at 2006-2007 levels (\$25 million). The program will no longer allocate specific outlays for individual awards categories, as in the two past grant cycles, but will this year provide grants of up to \$200,000 per municipality with priority given to initiatives that include:

- distressed municipalities,
- consolidations or mergers of municipalities,
- shared services including school districts,
- shared highway services,
- shared health insurance, and
- countywide shared services programs.

Also, \$10 million of the \$25 million dollar allocation will provide consolidation incentive aid in the form of a recurring 25 percent AIM increase to municipalities that merge or consolidate beginning in 2007-08. This will leave \$15 million for the other priority categories.

NYSAC Recommendation

Accept the Governor's SMSI proposal with the following modifications. We suggest that the SMSI grant funding level be increased to \$50 million dollars, with \$40 million of the total allocation made available to programs that involve the six key priority categories.

Aid to Local Governments & Mandate Relief Measures, continued

3. Aid to Municipalities that host Video Lottery Gaming Facilities

The Executive Budget amends State Finance Law to limit eligibility for General Fund aid to municipalities that host a video lottery gaming facility. New York City will be excluded from eligibility effective in the 2007-08 State fiscal year. Beginning fiscal year 2008-09, this aid will be provided only to high need municipalities, as measured by federal poverty rates. This will mean a \$3.4 million dollar loss for counties that host VLT facilities in 2008-09.

Municipalities that host Video Lottery Gaming Facilities incur higher costs to maintain local roads and traffic infrastructure, provide increased public safety services to both the facility itself and individuals that frequent these facilities and have the expense of many other “unseen costs” as a host municipality. The proposed change would force these costs, which are currently offset by the VLT aid, to be borne by the property taxpayers of the municipalities that host these facilities.

NYSAC Recommendation

Reject the Governor’s proposal.

4. Wicks Law

The Executive Budget calls for the reform of the Wicks Law requirements, increasing the bidding threshold to \$1 million for upstate projects and \$2 million for New York City projects. Additionally, the proposed plan calls for the new threshold to be adjusted annually based on the Producer Price Index for new school building construction. The plan requires general contractors to submit a sealed list of sub-contractors when bidding on public contracts under \$1 million dollars upstate and \$2 million dollars in New York City. Municipalities that choose to utilize a project labor agreement would be exempt from Wicks Law requirements.

NYSAC Recommendation

Reform the Wicks Law. A recent NYSAC survey has indicated that upstate public works projects are currently averaging a cost of between \$2 and \$5 million. Counties would be better served if the Wicks threshold were increased to between \$2 and \$5 million and specific more costly projects, such as county correctional facilities or large scale environmental projects, were exempted from the Wicks Law entirely.

Aid to Local Governments & Mandate Relief Measures, continued

5. Local Government Procurement

The Executive Budget expands local government procurement options by allowing municipalities to consider the "best value" versus the lowest bid and to purchase information technology products and services through cooperative purchasing under federal General Services Administration (GSA) contracts. The proposal also increases the competitive bidding threshold for commodities and public works projects to \$50,000 for purchase contracts involving more than \$20,000 in expenditures.

NYSAC Recommendation

Accept the Governor's recommendation; however, we would encourage the Senate and Assembly to expand the cooperative purchasing proposal to include a broader definition to allow localities to "piggy back" off all properly bid national contracts for government entities. This is the nationwide standard and New York is the only State that has not embraced the "piggy backing" concept and offered local governments this opportunity to save local tax dollars.

6. Collateral Source

The Executive Budget amends the collateral source offset rules for damage awards in personal injury and wrongful death actions to allow judgment awards against local governments and the State to be offset by both past and future compensation from collateral sources. This is current practice for actions against both private defendants and the federal government.

NYSAC Recommendation

Accept the Governor's proposal.

Local Taxes and Fees

1. Remote Hotel Bookings

In recent years a number of travel companies have contracted with New York hotel and motel operators to allow consumers to book accommodations through the websites and toll-free numbers. Under current law the travel companies are required to pay tax on the rent they pay the hotel operators but are not required to collect sales tax on their charges to customers because they do not qualify as operators of hotels under the Tax Law.

The Executive Budget Proposal seeks to remedy this discrepancy by:

- clarifying that the contractual right of a travel company to book a hotel room constitutes occupancy of a hotel room and is subject to sales tax;
- amending the New York City Administrative Code to conform the City's Hotel Room Occupancy Tax; and
- authorizing other municipalities, including 42 counties that have an existing local occupancy tax, to amend their local laws to conform to these new standards.

NYSAC Recommendation

Accept the Governor's proposal.

2. Enforcement of Sales Tax on sales to non-tribal members

In response to recent decisions made by the United States Supreme Court, the Governor's Executive Budget Proposal authorizes the Department of Taxation and Finance to begin enforcing the collection of sales tax on tribal and Indian sales of goods and services to non-tribal members. The budget also provides Oneida & Madison counties with \$2 million in interim financial assistance related to settlement of exiting Native American land claims.

NYSAC Recommendation

Accept the Governor's proposal.

Transportation

1. Consolidated Highway Improvement Program (CHIPs)

The Executive Budget reflects CHIPs funding at the third-year of the 5-year Capital Plan scheduled amount of \$296.5 million. This equates to a \$13 million cut total aid to local governments over the prior year.

In 2006-07 the Senate and Assembly recognized the importance of the CHIPs program to local roads and bridges and increased the funding by appropriation by \$20 million. This enhancement to CHIPs helped alleviate the effects of increasing costs of maintenance and construction work.

NYSAC Recommendation

Increase CHIPs funding to at least prior years levels.

2. Department of Transportation Aid Single Audit

The Executive Budget permanently extends the Department of Transportation's single audit program for transportation aid. This program, first implemented in 2000, requires counties to assume the State's audit responsibility for funding dispersed to them by the Department of Transportation. No other State agency relies on localities to perform audits of the agency's program expenditures.

This program has created less transparency and increased the complexity of local administration.

NYSAC Recommendation

Reject the Governor's recommendation and allow the single audit program to sunset.

Economic Development

1. Empire Zones

The Executive Budget maintains the Empire Zone Program and anticipates the creation of three new zones in Putnam, Yates and Hamilton Counties to establish a zone in each of New York's 62 counties. The Budget does, however, eliminate State funding for local zone administration.

NYSAC Recommendation

Support the Empire Zone program and restore local zone administration funding.

Public Protection

1. Judicial Pay Increases

When salaries increase for judges and justices of the Unified Court System, counties are mandated to raise the salaries for their District Attorneys as delineated in section 183-a of the Judiciary Law.

Section 183-a states that each county having a population of more than five hundred thousand, with the exception of NYC, shall receive an annual salary equivalent to that of a justice of the State Supreme Court together with such additional compensation as the legislative body of such county may provide by local law.

The district attorney of each county having a population of more than one hundred thousand and less than five hundred thousand, or any county which has designated such office as a full-time position shall receive an annual salary equivalent to that of county judge in the county in which the District Attorney is elected or appointed, together with such additional compensation as the legislative body of such county may provide by local law.

The 21-day amendments to the Executive Budget included an additional \$1.1 million to offset the local impact of this mandated pay increase for District Attorneys, outside New York City. However, the salary increase proposed by the Governor will be retroactive to April 1, 2005 and if counties are required to increase local salary increases on a retroactive basis, the statewide impact would be approximately \$6 million dollars to all localities, including New York City.

NYSAC Recommendations

Support the judicial pay increase consistent with past practice and hold counties and New York City harmless for this State mandated requirement.

2. Parole Violators

On any given day, there are approximately 4,400 Technical and New Arrest Parole Violators housed in county jails throughout New York State representing a statewide local daily impact of approximately \$875,000.

The Executive Budget Proposal includes a plan to amend the parole violator hearing process to reduce the amount of time an alleged parole violator spends in a local jail. The Department of Correctional Services may contact with localities to transfer alleged parole violators to certain State Correctional Facilities prior to their parole revocation hearing, provided the hearing would be conducted using video conferencing between the State and local facilities.

Public Protection, continued

This process is designed to satisfy due process requirements which require hearings to be held in the county where the alleged violation took place.

Counties are looking for further clarification of this process. We are generally supportive of any straightforward proposal aimed at removing State inmates from local facilities. NYSAC has formed an Ad-Hoc Committee on parole violators in county facilities and is working with various State agencies and the Legislature to determine the potential cost savings and assure the ultimate viability of this proposal.

NYSAC Recommendation

Accept the Governor's proposal

3. State Prison Closure Commission

The Executive Budget includes a Temporary State Commission on Prison Capacity to examine existing Department of Correctional Service's (DOCS) capacity and to identify and recommend facilities for closure as the State's prison population has steadily declined since 1999.

Also included is a proposal to convert existing DOCS facilities into transitional centers where inmates would spend up to six months preparing themselves for release. These programs would offer inmates access to services such as substance abuse treatment, employment opportunities, adequate housing and other support services prior to release into the community. The Executive proposes hiring additional parole officers to provide support and supervision for these individuals after their release.

NYSAC is concerned that significant reductions in prison bed space may result in longer waiting periods for the State to remove state ready inmates and parole violators in local correctional facilities. We are generally supportive of any efforts to develop comprehensive re-entry services aimed at reducing recidivism and State inmate stays in local jails as part of a comprehensive criminal justice reform plan designed to relieve the burden of housing State prisoners in county correctional facilities. However, NYSAC would like to see the State use existing facilities slated for closure as Regional Revocation Centers where alleged parole violators would be transferred after they violate the terms of their parole.

NYSAC Recommendation

Modify the Governor's proposal to ensure that counties are not burdened by the housing of state prisoners in local correctional facilities.

Public Protection, continued

4. Aid to Defense

The Indigent Parolee Representation Program, (IPP) allows counties to offset a portion of their defense expenses for costs associated with the defense of indigent parolees who violate the terms of their parole. Counties can submit these expenses and receive reimbursement for a percentage of their costs. However, this program was left unfunded in the Executive Budget.

NYSAC Recommendation

Restore funding for the Indigent Parolee Representation Program.