

# The County Perspective

## 2021 Federal Priorities

**New York State Association of Counties**



**NYSAC**  
— NEW YORK STATE —  
ASSOCIATION OF COUNTIES

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# TRANSPORTATION AND INFRASTRUCTURE INVESTMENT

New York's counties support congressional efforts to enact a comprehensive 21<sup>st</sup> century transportation and infrastructure investment and reform package.

## **Advance funding for a comprehensive infrastructure investment proposal**

**Counties across New York State (outside of New York City) have identified more than \$9.4 billion in infrastructure funding needs to support more than 1,100 priority projects.** Fully funding these projects could create or save up to **200,000 jobs** that will help local economies as they recover from the economic devastation wrought by the pandemic.

**Preserve existing federal matching rates.** Locally owned roads and bridges account for 87 percent of New York State's 110,000 miles of roadways and 50 percent of the state's 18,000 bridges. These local transportation systems are the backbone of our economic, public safety, and security assets. They need significant federal support. Counties do not support previous proposals that dramatically lower existing federal matching shares necessary to maintain and enhance our transportation and other infrastructure.

## **Rural Cellular Coverage.**

The federal government must prioritize and incentivize rural cellular deployment to increase equity across the nation.

- Many areas of New York are either underserved or not served at all by cellular phone carriers, preventing access to education, economic advancement, and emergency services.
- Americans are increasingly dependent on cellular phones. According to a study released in 2017 by the Center for Disease Control, 50.8% of US households rely solely on cellular phones—up from 24.5% in 2009. The percentage of young adults and renters who rely solely on cell phone service higher for 25-29-year-olds at 72.7%. Still, many rural areas throughout the United States remain either unserved or underserved by cellular carriers.
- Cell phones and the requisite cell coverage are often the first link of our emergency response chain. Americans who live in or travel to these areas cannot reach emergency services when they need them.
- The Federal Communications Commission (FCC) designates the Universal Service Administrative Company (USAC) to administer the Universal Service Fund. The USAC established the High Cost Program to provide funding to telecommunications carriers to deliver service to rural areas where the market alone cannot support the cost to provide telecommunications services.

**Balance federal grant support with public private partnerships.** While New York's counties support public-private partnerships for project development, most of these projects will attract private investment that gravitates toward bigger projects that draw mass ridership and user fee opportunities. Under these circumstances, transportation projects in most of our counties will not be able to attract private investment because they are not big enough. This is also the case for most of the nation's 3,000 plus counties. Areas that cannot attract private investment still need federal grants to properly invest in the future of our transportation systems.

**Preserve the tax-exempt status of municipal bonds.** Tax-exempt municipal bonds are a critical tool for counties to facilitate the budgeting and financing of long-range investments in infrastructure. Without this tax exemption counties would pay more to raise capital, resulting in reduced spending on roads and bridges, decreased economic development, and higher taxes or user fees.

**Preserve and promote the long-term solvency of the Highway Trust Fund.** Congress must consider an “all of the above” approach to ensure the solvency of the Highway Trust Fund, including public private partnerships (where appropriate), infrastructure banks, and user fees that keep pace with inflation, technology advancements, and construction costs.

**Reform the regulatory process to speed the construction of transportation projects that utilize federal funding.** The current federal regulatory process for environmental review and other requirements can add years to the completion time, and significant costs for essential local and regional transportation projects. Reforms can be made to streamline the process and garner faster approvals, while still addressing important environmental, public health and safety concerns. New York counties support proposals that will shorten this approval and review time including a single point of contact for federal project review and approval, and one environmental review for a green light on construction.

**Foster a safe and secure transportation system.** Counties and local governments play a central role in maintaining, building, and ensuring a safe and secure transportation system.

The ability of counties and other municipalities to create and maintain a safe and efficient infrastructure network is necessary for trade, economic development and revitalization, job creation and retention, schools, agriculture, health and hospital facilities and emergency responders, as well as the general traveling public. Strong and efficient regional transportation and infrastructure systems support broad national goals and contribute to the nation’s overall GDP, health, safety and security. This is why increased federal funding for local transportation and infrastructure is so vital, and why this issue has remained one of NYSAC's top federal priorities.

The American Society of Civil Engineers 2017 Infrastructure Report provided a D+ grade to the state of our nation’s overall infrastructure including roads, bridges, mass transit, water, energy, dams, levees, among others. The report is developed and updated every 4 years and the nation has failed to improve the overall grade for more than 20 years. The lack of investment inhibits our ability to compete economically, threatens the safety of the public, and weakens our national security. We can no longer kick the can down the road on infrastructure investment and the federal government is best situated to take the lead on implementation.

# PUBLIC HEALTH INVESTMENTS

## Support COVID-19 County Response Efforts

Local health departments (LHDs) are on the front lines of preparing communities to respond to a range of disasters, including the recent global outbreak of a respiratory illness caused by a novel coronavirus. Across the country, LHDs are responsible for assessing people for the risk of contracting the disease; finding and testing persons of interest who have recently traveled to China or who are exhibiting symptoms; monitoring anyone who has been in close contact with people under investigation; and arranging for isolation and quarantine when necessary. LHDs also work with health care providers to ensure they know what to look for, and how to report, suspected cases. They also work with community partners to disseminate credible information, calm fears, and dispel myths.

Emergencies strain the entire public health system, and health departments are already diverting staff from other projects to respond to COVID-19. These strategies are not sustainable and run the risk of compromising other critical work, such as efforts to prevent the spread of HIV and fight the opioid crisis. LHDs need sustained, predictable, and increased federal funding to support their work.

**Counties in New York State urge the federal government to provide \$15 billion in emergency supplemental funding for the public health response to the novel coronavirus.** We encourage you to support the direct allocation of resources to all counties that would be distributed based on population. These funds should be flexible and available to cover direct expenses or replace lost revenue as a result of the pandemic, all with appropriate federal oversight. **This proposal has been championed by Senator Schumer and we encourage you to support these efforts as a first step in negotiations.**

We also encourage you to modify the CARES Act funding of \$150 billion for state and local governments (over 500,000) to allow these funds to be used in an unrestricted basis, including replacing lost revenue and covering COVID-19 expenses.

## Support Enhanced FMAP Share.

The best way to help our state and counties is through an increase in federal Medicaid assistance through FMAP and additional federal aid to help the state and counties replace a portion of the tax revenues we have lost in response to stopping the spread of the virus.

Governor Andrew Cuomo as the chair of the National Governor's Association has sent correspondence to Congress requesting two critical inclusions with respect to enhanced FMAP. Specifically, the Governor is requesting an increase to enhanced FMAP assistance to 14% with an unemployment escalator. **Counties strongly support this request.**

As we have stated during negotiations on H.R. 6201 (2020), it is critical to include political subdivisions to be eligible for the FMAP who are presently responsible for paying Medicaid. The following language has been approved as part of H.R. 6201, and we urge that this language remain as part of this new stimulus package. This will ensure that counties receive a share of any additional FMAP assistance.

Specifically, we need to ensure this previously adopted language is not altered in the next federal stimulus bill:

*(c) REQUIREMENT FOR CERTAIN STATES.—Section 1905(cc) of the Social Security Act (42 U.S.C. 1396d(cc)) is amended by striking the period at the end of the subsection and inserting “and section 6008 of the Families First Coronavirus Response Act, except that in applying such treatments to the increases in the Federal medical assistance percentage under section 6008 of the Families First Coronavirus Response Act, the reference to ‘December 31, 2009’ shall be deemed to be a reference to ‘March 11, 2020’.”.*

## **Medicaid Disproportionate Share (DSH) Hospital Payments**

Congress established the Medicaid Disproportionate Share (DSH) program in 1981 to ensure state Medicaid programs provided adequate payments to public hospitals whose patient populations were disproportionately composed of low-income Medicaid and uninsured populations.

New York State receives over \$1.8 billion annually in federal DSH payments, which leverages state funds and provide a total of \$3.7 billion in combined state and federal resources for hospitals.

Even though New York has fewer uninsured people since enactment of the Affordable Care Act, federal DSH payments remain a key funding source for many hospitals across the state. Congress has delayed the implementation of these federal funding cuts each year since 2014, but they are set to begin in May of 2020 if no further action is taken by congress to again delay the cuts. If the DSH cuts are advanced, New York hospitals would lose over \$600 million in federal funds, or 33%, and these cuts would double in size in 2021.

**Counties urge the federal government to continue to delay these funding cuts until such time as a sustainable solution for the preservation of the program is reached.**

## **Preserve the Affordable Care Act and the State/Federal Medicaid Partnership**

Federal entitlement reform is always under consideration in Washington, and in the 115th Congress the Affordable Care Act and Medicaid were targeted for cuts. Major health legislation introduced in 2017 would have cut federal funding for Medicaid by one-fourth, or \$800 billion over the next decade. While these efforts were ultimately unsuccessful, they normalized methods for changing the Medicaid program through models such as a per capita funding cap or a fixed dollar block grant.

Under a per capita cap, states would receive a fixed amount of federal funding per beneficiary category. Under a block grant, states would receive a fixed amount of federal funding each year, regardless of changes in program enrollment and mandates. If these cuts had been implemented it would have been devastating to the finances of New York’s counties and New York City, as the burden of caring for the low income and disabled populations would fall directly on them.

In New York, counties and New York City are required to contribute \$7.6 billion annually to pay for the costs of Medicaid. This annual contribution (not including disproportionate share matching payments to health facilities) is more than all counties combined nationally spend for direct Medicaid program costs. In addition, New York City and several counties maintain public hospitals that provide care for the indigent and needy. More than a dozen counties and New York City maintain and operate 22 nursing homes that are often a provider of last resort for the needy in their communities.

## **Recommendations**

### **Oppose Block Grants and Per Capita Caps or Other Federal Funding Cuts to Medicaid.**

New York counties support protecting the federal-state partnership structure for financing and delivering Medicaid services while maximizing flexibility to support local systems of care. Counties are opposed to measures that would further shift Medicaid costs from the federal government to



states and counties, including proposals to institute block grants or per capita caps.

- **Support Stabilizing the Affordable Care Act and Maintaining Enhanced Federal Medicaid Matching.** New York and its counties have benefited fiscally from the provisions of the Affordable Care Act related to the enhanced federal Medicaid match that is currently generating more than \$400 million annually in additional federal funding for counties to support Medicaid expansion costs under the Affordable Care Act. Overall, New York has seen a significant reduction in the number of uninsured due to the provisions of the Affordable Care Act. The uninsured rate in 2018 was just under five percent statewide, less than half of what it was before the Affordable Care Act (ACA) was enacted, and premiums in the individual market have remained more than 50% lower, after adjusting for inflation and before the application of federal tax credits, than they were before the ACA. Counties oppose federal actions that undermine the stability of the health insurance marketplaces established under the Affordable Care Act.

### **Strengthening the Tenth Amendment Through Entrusting States (STATES) Act**

Nearly three dozen states have legalized medical marijuana or the recreational use of marijuana for adults. New York State lawmakers are expected to consider the legalization of recreational marijuana during the 2020 Legislative Session. Legalization is anticipated to have implications for public health, public safety, criminal justice, the economy, and even the environment. Because marijuana is illegal under federal law, it is a cash-intensive industry. This makes “cannabusinesses” a target for internal and external theft and hinders its development as a regulated and accepted business—if a state so chooses to legalize the industry within its borders.

- Because of the disconnect between federal and state laws, and the expectation that New York State will soon legalize the recreational use of marijuana, New York counties support the enactment of legislation like the Strengthening the Tenth Amendment Through Entrusting States (STATES) Act and the Secure and Fair Enforcement (SAFE) Banking Act to ensure any legalization of marijuana in New York, and other states, is done under a process that facilitates a regulated and safe environment that balances public health and safety concerns while supporting economic development opportunities.

The Secure and Fair Enforcement (SAFE) Banking Act would solve a key logistical and public safety problem in states that have legalized medicinal or recreational cannabis and prevent federal banking regulators from: (1) prohibiting, penalizing or discouraging a bank from providing financial services to a legitimate state-sanctioned and regulated cannabis business, or an associated business (such as a lawyer or landlord providing services to a legal cannabis business); (2) terminating or limiting a bank’s federal deposit insurance solely because the bank is providing services to a state-sanctioned cannabis business or associated business; (3) recommending or incentivizing a bank to halt or downgrade providing any kind of banking services to these businesses; or (4) taking any action on a loan to an owner or operator of a cannabis-related business.

The bill also creates a safe harbor from criminal prosecution and liability and asset forfeiture for banks and their officers and employees who provide financial services to legitimate, state-sanctioned cannabis businesses, while maintaining banks’ right to choose not to offer those services.

The bill would require banks to comply with current Financial Crimes Enforcement Network (FinCEN) guidance, while at the same time allowing FinCEN guidance to be streamlined over time as states and the federal government adapt to legalized medicinal and recreational cannabis policies.

## Invest in Wastewater Treatment

In partnership with the New York State Association of County Health Officials (NYSACHO), **counties across the state are recommending a \$50 million statewide wastewater surveillance program for COVID-19 for New York** as part of the next stimulus package to bolster our ability to manage the second wave of the pandemic.

At present, we rely on COVID-19 cases and hospitalization data to provide alerts of increasing or decreasing transmission. However, we now know that this is not ideal for managing the public health crisis or for making important policy decisions because of two essential problems.

First, COVID-19 case numbers do not account for infections that do not get tested.

Second, COVID-19 cases today represent transmissions from 1-2 weeks ago, and hospitalizations and deaths represent transmission from 4-8 weeks ago. Coronavirus RNA in our sewer systems can provide a 1 to 2-week early warning for increasing cases.

A Coronavirus Early Warning Wastewater Monitoring Platform is already in use in nearly a dozen counties and the City of New York, providing real-time information to guide decision-making and allocate medical resources. A \$50 million investment could immediately scale a statewide wastewater surveillance platform statewide. Real-time information on transmission would be available for every sewer system across the state for a year. An Open Data Observatory would tell where coronavirus transmission is rising, declining, or absent. Once we are past the coronavirus crisis, the platform could be repurposed for the next pandemic or to monitor other health trends.

## MCLs for PFOA/PFOS and Classify These Chemicals as Hazardous Substances

Counties across the state have been urging the U.S. Environmental Protection Agency (EPA) to set a country-wide maximum containment levels (MCL) for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) and classify these chemicals as hazardous substances. New York has already classified PFOA/PFOS as hazardous substances on the state level in recognition of their negative environmental and public health impact.

Establishing a MCL for these chemicals and classifying them as hazardous substances is vital to protecting the health, safety, and welfare of New Yorkers. Exposure to PFOA and PFOS has been linked to kidney cancer, testicular cancer, pre-eclampsia, thyroid disease, developmental defects in fetuses, liver tissue damage, and immune system impairments, among other potentially life-threatening conditions.

Additionally, the EPA should classify PFOA/PFOS as hazardous substances to allow states and local governments to drawdown funds necessary for remediation. To provide Americans, including the most sensitive populations, with a margin of protection from a lifetime of exposure to PFOA and PFOS from drinking water, EPA has established the health advisory levels at 70 parts per trillion.

While a health advisory is an initial step in combatting this crisis, a health advisory is not adequate enough to effectively remediate these chemicals. The EPA must set an MCL for PFOA and PFOS.



## **Support H.R. 1629/S.1015 “911 SAVES Act” (116<sup>th</sup> Congress)**

H.R. 1629, the 911 Saves Act directs the U.S. Office of Management and Budget to reclassify public safety telecommunicators from “Office and Administrative Support Occupations” to the category of “Protective Service Occupations.”

The federal government’s Standard Occupational Classification System (SOCS) sorts workers into occupational categories for statistical purposes, according to the nature of the work performed and, in some cases, on the skills, education or training needed to perform the work.

The 9-1-1 telecommunicators across the country are currently incorrectly categorized in the SOCS as an “Office and Administrative Support Occupation,” a category which includes secretaries, office clerks, and taxicab dispatchers. This classification fails to recognize the role these individuals play in public safety and homeland security, and their specialized training and skills and the uniquely stressful work environment.

By classifying these county positions into the “Protective Service occupations,” alongside police, firefighters, security guards, lifeguards, and others whose job it is to protect our communities, would better reflect the work they perform, and align the SOCS with related classification systems.

This legislation has 112 cosponsors in the House of Representatives and 24 cosponsors in the U.S. Senate. There are currently four members from the New York Congressional Delegation who cosponsor this legislation:

- Congressman John Katko
- Congresswoman Elise Stefanik
- Congressman Max Rose
- Congressman Tom Reed

## **Support H.R. 1329 “Medicaid Reentry Act” & H.R. 1345 “Partnership for County Health Care Costs Act” (116<sup>th</sup> Congress)**

Current federal law prohibits the use of federal funds and services, such as Medicaid and the Children’s Health Insurance Program (CHIP), for health care provided to inmates of a public institution – a category that includes our local jails. The policy, known as the Medicaid inmate exclusion, was originally enacted under the Social Security Act of 1965 and intended to prevent state governments from shifting inmate care costs to federal programs. However, this practice has had an unintended consequence of cutting off federal health benefits to local jail detainees who are awaiting trial.

Counties nationwide invest \$176 billion annually in community health systems and justice and public safety services, including the entire cost of medical care for all detained individuals. Counties own and operate 91 percent of local jails that see approximately 10.6 million individuals pass through each year with an average length of stay of 25 days. Although two-thirds of those detained in jails are pre-trial and presumed innocent, current federal law prohibits Medicaid and other federal safety-net programs from paying for their medical care, leaving counties responsible for the full cost of their health care, rather than the traditional federal, state and local partnership for safety-net services. As a result of this federal policy and high occurrences of mental and behavioral health issues and substance use disorders among inmates, county jails are now some of the largest behavioral health care providers in our communities.

Congress is currently considering legislation that would amend the Social Security Act to allow pre-trial jail detainees to keep their federal health benefits while awaiting trial – and restore the federal, state and local partnership in funding and delivering health services to justice-involved individuals. In the U.S. House of Representatives, Reps. Paul Tonko (D-N.Y.) and Michael Turner (R-Ohio) introduced bipartisan legislation, the Medicaid Reentry Act ([H.R. 1329](#)), that would restore Medicaid benefits to inmates for the 30-day period prior to their release from jail. Also in the U.S. House, Rep. Alcee Hastings (D-Fla.) introduced the Restoring the Partnership for County Health Care Costs Act ([H.R. 1345](#)), which would remove limitations on Medicaid, Medicare, Supplemental Security Income (SSI) and the CHIP for pre-trial detainees of jails, detention centers and prisons.

In the U.S. Senate, Senator Ed Markey (D-Mass.) has introduced [proposals](#) with NACo’s support in recent months that would improve care coordination for justice-involved individuals by requiring states to suspend – rather than terminate – Medicaid benefits for inmates.

H.R. 1329 currently has seven cosponsors, of which none are from New York State other than the sponsor, Congressman Paul Tonko.

H.R. 1345 currently has twenty-one cosponsors, including Congresswoman Yvette Clark (NY-9) and Congressman Jerrold Nadler (NY-10).

# TAX FAIRNESS POLICY

## Addressing Unfair SALT Federal Tax Reform Limits

Recent federal tax reforms enacted by congress included a significantly unbalanced tax change that overturned 150 years of federal-state fiscal precedent under which the federal government agreed and understood that it was counterproductive and unfair to impose a “defacto” double tax on state residents. To avoid unfair “double taxation” the federal government provided a federal tax deduction for state and local taxes paid to specifically avoid the application of federal taxes on top of state and local taxes already paid—effectively taxing income that is never available to the taxpayer. A large share of these state and local taxes are raised to meet federal laws and policy objectives that provide for the public good including health care, a free and appropriate education, and public safety and security.

The state and local tax (SALT) deduction cap also falls disproportionately on a small number of states, effectively requiring these states to finance a large share of the entire cost of the federal corporate and individual tax cuts according to joint committee on taxation estimates. The cost also falls on many two income middle class households by creating a federal tax penalty for married people.

At a minimum, congress should eliminate the marriage penalty created under the current SALT deductibility cap that imposes the same \$10,000 cap on an individual as it does on a married couple. For a married couple, the SALT cap should be no less than \$20,000. Nearly all parts of the federal tax code work to avoid penalizing marriage by doubling individual tax deductibility limits, estate tax thresholds and gift limits to ensure balance. Alternatively, provisions that eliminate the SALT deductibility cap entirely, or for incomes under a certain income threshold, should be considered.

New Yorkers pay some of the highest property taxes in the nation, along with a progressive income tax rate. As a result, many homeowners (particularly in downstate areas where home prices are generally very high) pay much more than \$10,000 in combined income and property taxes. It is important to note that the federal tax changes related to SALT impact downstate areas much differently than most of upstate. However, the negative fiscal impacts generated downstate, because of their size, hurts the whole state. They also undermine the ability of local governments to raise revenue to support state and federally mandated spending.

For decades, New York State has been a donor state to the federal government. This means we send far more in federal income taxes to Washington than we get back in federal grants and aid. In the most recent year this imbalance was nearly \$40 billion. The SALT limitations unfairly shift even more revenues from New York State, and a handful of others, and redistributes that money to the rest of the nation. The imbalance experienced by donor states like New York, reduces our overall GDP growth, while enhancing the GDP of “donee” states that receive a larger share of federal payments (which allows them to have lower state and local taxes). A better balance needs to be found on the SALT provisions going forward.

We support the House passage of the “Restoring Tax Fairness Act” to undo the cap on SALT deductibility and we hope to work with our Federal partners to secure a long-term solution that protects the taxing authority and responsibilities of states and local governments.

## **Support H.R. 3883 “Restore the Partnership Act” & H.R. 300 “Unfunded Mandates Information and Transparency Act” (116<sup>th</sup> Congress)**

County governments are responsible for the implementation of federal and state policies and regulation at the local level. Their engagement between intergovernmental partners is essential to the execution of policies and programs. H.R. 3883, Restore the Partnership act was introduced to facilitate dialogue between federal, state, local and tribal government officials by creating the Commission on Intergovernmental Relations of the United States. County governments would also benefit from the provisions of H.R 300, Unfunded Mandates Information and Transparency Act, which would increase transparency to unite all levels of government.

H.R. 300 currently has five cosponsors, including Congressman Thomas Suozzi (NY-3).