



This Week in New York

Covering New York State and City Government

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In the News – State



Comptroller DiNapoli Releases Analysis of Executive Budget

Comptroller Encourages Transparency During MRT II's Deliberations, Raises Concerns About Accounting Changes

Despite projections for healthy gains in tax receipts and continued growth in the economy, the State Fiscal Year (SFY) 2020-21 Executive Budget reflects significant fiscal challenges related, in part, to higher than expected spending in the Medicaid program, according to an analysis released by New York State Comptroller Thomas DiNapoli.

The Comptroller noted that more than a third of the Executive's proposed \$7 billion gap-closing plan remains to be identified by the Medicaid Redesign Team II (MRT II), creating uncertainty for Medicaid beneficiaries, providers, local governments, and the state budget.

Comptroller DiNapoli also raised concerns about transparency and accountability, including proposed statutory changes that could distort the reporting of the State's revenue and spending and allow the Executive to spend beyond the amounts approved by the legislature. Other proposals would weaken oversight.

“New York’s economy is expanding but the state is still facing a serious budget gap. It’s imperative the Medicaid Redesign Team seek broad input on the root causes and options for addressing rising Medicaid costs,” Comptroller DiNapoli explained. “There is limited time for deliberations before the budget deadline. The state needs to identify long-term solutions for the millions of New Yorkers that rely on Medicaid and the taxpayers who will be footing the bill. Failure to effectively solve the Medicaid problem may result in harmful impacts in other areas of the budget this year and going forward.”



The MRT II is charged with identifying savings that can lead to financial sustainability of the program, including meeting the goal of having “zero impact on local governments and zero impact on beneficiaries.” The budget also proposes linking state funding of the local share of certain Medicaid costs to the property tax cap. It is unclear how the budget proposals or any recommendations by the MRT II will achieve these potentially conflicting goals, according to the Comptroller.

The Executive budget assumes a second consecutive deferral across fiscal years of \$1.7 billion in Medicaid costs. Comptroller DiNapoli said the deferrals are troubling reminders of historical practices that resulted in a large accumulated structural deficit.

Comptroller DiNapoli's analysis also raised concerns about the Medicaid Global Cap. The cap was established in 2011 to promote cost containment efforts, but actions since then have moved various elements of Medicaid spending into or out of the cap. The shifting of the \$1.7 billion into SFY 2019-2020, an effort to avoid exceeding the cap, contributed to the ongoing delay in addressing the program's increasing fiscal challenges.

The Comptroller also urged the Executive to remove language to require the comptroller's cash-basis reports to classify receipts and disbursements in accordance with provisions established by budget legislation. This proposal raises a potential conflict with the State Constitution, which grants the Comptroller the power to determine accounting methods, and is troubling with respect to transparency and accuracy in financial reporting. Related to this issue, proposed new language would broadly authorize netting of certain revenue against disbursements. Among other concerns, the Comptroller asserted, this would cloud the picture of spending growth and potentially results in significant expenditures beyond the appropriations approved by the legislature.

Comptroller DiNapoli's report also finds:

- School Aid would increase by \$826 million, or 3 percent, to \$28.5 billion in the coming school year. This increase is less than the 4 percent growth allowable under a statutory limit related to personal income in the state.
- Funding for most local governments aid programs would be held flat, continuing a trend in recent years of decreases or level funding in such areas. These include Aid and Incentives for Municipalities, also known as AIM, the largest unrestricted aid program for local governments, as well as major funding for streets, highways and bridges.
- Total capital spending over the current and next four years is projected at \$66.7 billion, little changed from the estimate based on the SFY 2019-20 Enacted Budget. Projected transportation spending is increased \$3.3 billion, partly offset by certain unspecified reductions from the previous plan. The budget would appropriate \$3 billion for the Metropolitan Transportation Authority's 2020-2024 capital program, although funding sources are not identified.
- The budget recommends presenting a \$3 billion Restore Mother Nature General Obligation (GO) Bond Act to the voters that, if approved, would provide funding to restore habitats, reduce flood risks, improve water quality, protect open space, expand the use of renewable energy and support other environmental projects. Comptroller DiNapoli said that having voters weigh in on new state debt is a sound approach.
- The Executive anticipates elimination of 2,500 state prison beds in the coming fiscal year, and a \$181.5 million reduction in spending for the Department of Corrections and Community Supervision, partly reflecting budget language that would authorize additional prison closures.



Assembly Speaker Heastie Lays out FY 2020-21 Higher Education Plan

Assembly Speaker Carl Heastie announced that the Assembly's State 2020-21 proposed budget would build on the Assembly Majority's commitment to supporting public education for all. The proposed plan would make investments in the State University of New York (SUNY) and City University of New York (CUNY), reject proposed tuition increases, provide new funding for non-tuition expenses, and invest in community colleges.

Elimination of TAP Gap

In 2011, NYSUNY 2020 was enacted to establish a predictable tuition plan that allows each SUNY and CUNY campus to raise tuition over a period of five years. When it was enacted, SUNY and CUNY agreed to assume the cost differential between the maximum Tuition Assistance Program (TAP) award and the actual cost of tuition. This differential causes a loss in revenue for the systems, often referred to as the "TAP gap." The Assembly's proposed SFY 2020-21 Budget includes \$50 million in funding for SUNY and CUNY to help close this gap.

Rejection of Proposed Tuition Increases

Over the last nine years, tuition at SUNY and CUNY schools has increased by \$2,300, or 40 percent. The Assembly will again reject any proposed tuition increase beyond Academic Year (AY) 2021 in the proposed SFY 2020-21 Budget.

Martin Luther King Jr. Scholarship Fund for Non-Tuition Expenses

The Assembly's proposed SFY 2020-21 Budget will include \$20 million to establish a Martin Luther King Jr. Scholarship Fund that would help offset non-tuition costs (e.g. room and board, fees, transportation, textbooks and other education-related expenses) for low income students that are receiving a TAP award.

In the News – City



Attorney General James To Sue NYC For Fraudulent Practices By the Taxi And Limousine Commission

Charges TLC Knowingly Misled Taxi Medallion Purchasers by Publishing False Prices

New York Attorney General Letitia James this week sent a **notice of claim** for \$810 million to the City of New York, alleging that it fraudulently inflated the price of thousands of yellow taxicab medallions and profited from it over a 14-year period.

An investigation by the Office of the Attorney General revealed that, between 2004 and 2017, the New York City Taxi and Limousine Commission (TLC) marketed the licenses for thousands of taxi medallions to purchasers as investments and conducted auctions of these medallions in a manner which artificially inflated prices by hundreds of millions of dollars. The city not only engaged in a scheme that defrauded medallion owners, but continued to further market these medallions at overvalued rates even after internal reports raised warnings about the inflated values.

“These taxi medallions were marketed as a pathway to the American Dream, but instead became a trapdoor of despair for medallion owners harmed by the TLCs unlawful practices,” Attorney General James. “The very government that was supposed to ensure fair practices in the marketplace engaged in a scheme that defrauded hundreds of medallion owners, leaving many with no choice but to work day and night to pay off their overpriced medallions. What’s worse is that the TLC knew their actions were affecting some of the city’s most financially exposed immigrant families.”



In the notice of claim — required to be served to the city comptroller before legal action can commence — Attorney General James makes clear that the Office of the Attorney General intends to file a lawsuit against the City of New York if relief is not agreed to be paid within 30 days. Funds recovered will go towards restitution for medallion owners, as well as damages and disgorgement. Additionally, Attorney General James seeks injunctive relief to halt the TLC from continuing this unlawful conduct in the future.

Since 1937, the TLC has controlled all sales of new medallions through auctions and has overseen all transfers of medallions between third parties. A medallion licenses a driver to accept “street hails” and to charge a fare that is regulated and set by the TLC. There are currently more than 13,600 taxi medallions in New York City.

According to the Attorney General, the City of New York and the TLC have promoted ownership of taxi medallions as “a solid investment with steady growth,” claiming that its “return” was “better than the stock market.” The TLC has also claimed that the high value of taxi medallions could be used as collateral for a loan, to pay for a home or a college education, or to fund one’s retirement.

From at least 2004 up through 2017, Attorney General James asserts, the TLC took numerous actions to inflate the price of medallions and increase its profits. First, the TLC set up an artificial floor below which bids are never accepted. The city also permitted taxicab brokers and other large owners to not only “bid up” the price of medallions, but also collude on pricing.

No later than 2011, the TLC knew that the price of a medallion had exceeded its underlying value, but failed to disclose that information to purchasers. Further, on at least 10 occasions in 2013 and 2014, the TLC published false and misleading medallion prices despite having exclusive oversight and approval over the sale of these medallions, according to the Attorney General.

This misinformation campaign led to highly inflated pricing, resulting in the cost of an individual taxi medallion sold at an auction increasing from \$283,300 in 2004 to \$965,000 in 2014. A fleet of two corporate medallions (owned by non-drivers) surged even more at auctions between 2004 and 2014, increasing from \$681,101 (or \$340,550 each) to \$2,420,500 (\$1,210,250 each) — a 255 percent increase.

Attorney General James, asserts, during this same period, New York City profited \$810 million by selling medallions and by collecting a five-percent transfer tax on third-party transfers. More than one-third of that sum — \$359 million — was made at three auctions alone conducted in a five-month period — between November 2013 and March 2014 — during which 400 newly-issued medallions were sold.

The TLC’s actions caused medallion prices to be inflated so significantly that the price for the medallions could not be supported or paid off by the income received through the operation of a taxicab at the fares regulated and set by the city itself, the Attorney General said.

The TLC is accused of common law fraud, unjust enrichment, and violations of both Article 23-A of the New York General Business Law and Section 63(12) of the New York Executive Law.

Individuals with additional information related to the TLC’s inflation of medallion prices should email Investor.Complaints@ag.ny.gov.

Briefs

NY State of Health Announces Record High Enrollment: More than 4.9 Million New Yorkers Enrolled

Enrollment through the Marketplace increased by over 150,000 from last year

NY State Health, the state's official health plan Marketplace, this week announced that over 4.9 million people, more than one in four New Yorkers, signed up for health coverage through NY State of Health during this year's Open Enrollment Period.

With an increase of 150,000 people over 2019, enrollment is at a record level, including more than 1 million people enrolled in Qualified Health Plans and the Essential Plan. Marketplace enrollment growth is consistent with New York's declining uninsured rate, which reached a low of 4.7 percent. Open Enrollment ran from November 1, 2019, through February 7, 2020.

ENROLLMENT HIGHLIGHTS: As of February 7, 2020:

Total Marketplace enrollment:	4,918,886
Medicaid enrollment through NYSOH:	3,397,390
Non-Medicaid program enrollment:	1,521,496
Qualified Health Plan	272,948
Essential Plan	796,998
Child Health Plus	451,550

Qualified Health Plan Enrollment Details:

Qualified Health Plan enrollment:	272,948
Share with financial assistance:	159,152 (58 percent)
Share without financial assistance:	113,796 (42 percent)
Share of enrollees who were new in 2020:	23 percent
Share of enrollees who renewed for 2020:	77 percent

Essential Plan Enrollment Details:

Essential Plan enrollment:	796,998
Share of enrollees who were new in 2020:	12 percent
Share of enrollees who renewed for 2020:	88 percent

While the 2020 Open Enrollment Period for Qualified Health Plans has ended, individuals who have a Qualifying Event may be eligible for a Special Enrollment Period. Individuals eligible for the Essential Plan, Medicaid or Child Health Plus can enroll year-round.

Medicaid Redesign Team II Long Term Care Advisory Group

The State Department of Health announced the members of the Medicaid Redesign Team II (MRT II) Advisory Group on long term care. The purpose of the Advisory Group is to generate proposals on long term care for presentation to the MRT II in early March.

Members of the Advisory Group include: Hany Abdelaal, DO President, VNSNY Choice; Emma DeVito President & CEO of Village Care; Gedalia Klein COO, Northern Services Group; Scott LaRue President & CEO, ArchCare; Bryan O'Malley Executive Director, Consumer Directed Personal Assistance Association of New York State; T.K. Small Director of Policy at Concepts of Independence; Gregory Turchan President & COO, Premier Home Health Care Services, Inc.; Sandi Vito Executive Director, 1199 SEIU Training and Employment Funds; and Pat Wang President & CEO of Healthfirst.

NYC's Fair Workweek Law Stands Up in Court

New York State Supreme Court Rules State Law Does Not Preempt City's Fair Workweek Law

The New York State Supreme Court has upheld New York City's Fair Workweek Law and ruled that the law is not pre-empted by New York State wage and hour laws.

Under the Fair Workweek Law, which went into effect on November 26, 2017, fast food employers in New York City must give workers good faith estimates of when and how much they will work, predictable work schedules, premium pay for schedule changes, and the opportunity to work newly available shifts before hiring new workers. Fast food employers also cannot schedule workers to work a "clopening" unless workers consent in writing and are paid a \$100 premium to work the shift. Under the Law, retail employers must also give workers advance notice of work schedules and may not schedule workers for on-call shifts or change workers' schedules with inadequate notice

The International Franchise Association, Restaurant Law Center, and the New York State Restaurant Association challenged the City's law as it applies to fast food workers, claiming it conflicted with, and was broadly preempted by state labor law. In rejecting the claims, and upholding the law, the Court acknowledged that New York City's purpose in passing the law was to protect vulnerable workers from exploitation by unpredictable scheduling.

Since the law went into effect, DCWP has received more than 300 complaints about Fair Workweek, closed more than 130 investigations, and obtained resolutions requiring more than \$1,500,000 combined fines and restitution for more than 3,000 workers.

Governor Cuomo Releases 30-day Amendments

Governor Andrew Cuomo today released the 30-day amendments to the 2020-2021 Executive Budget. Specifics of the amendments can be accessed at the Division of Budget's Executive Budget website: <https://www.budget.ny.gov/pubs/archive/fy21/exec/fy21bills.html>.

Governor Cuomo Announces 30-day Amendment to Accelerate Renewable Energy Projects

Legislation to Create Office of Renewable Energy Permitting

Governor Andrew Cuomo today announced a 30-day budget amendment to establish the Accelerated Renewable Energy Growth and Community Benefit Act to streamline the process for siting large-scale renewable energy projects across New York.

Establish Office of Renewable Energy Permitting:

The new Office of Renewable Energy Permitting will utilize project siting standards with “environmental impacts common to types of renewable projects,” and include upfront mitigation measures to address those impacts. In addition, it will develop draft permits for public comment and ensure that complete applications are acted upon within one year, except in the case of certain former commercial and industrial sites, which will be reviewed within six months.

Clean Energy Resources Development and Incentives Program:

The Act also creates New York State Energy Research & Development Authority’s (NYSERDA) Clean Energy Resources Development and Incentives Program to advance new "Build-Ready" projects and prioritize the development of existing or abandoned commercial sites, brownfields, landfills, former industrial sites, and abandoned or otherwise underutilized sites.

Host Communities Benefit Program:

NYSERDA will also develop a Host Communities Benefit Program for build-ready site property owners and communities to receive incentives to host major renewable energy facilities. In addition, NYSERDA would have a consultative role in the development of Payment in Lieu of Taxes agreements, to ensure a just and level playing field for communities in assessing property taxes.

Grid Planning and Energy Delivery Constraint Relief (Transmission):

Developing a bulk transmission investment program that accelerates development through existing planning and development processes and directs the Public Service Commission to establish a distribution and local transmission system capital program.

Fix It, Don't Fine It: City Expands Relief for Small Businesses

City Will Provide Relief for 1st time Fines and Expand Violations Subject to Cure Periods

Mayor Bill de Blasio this week announced the City is expanding relief for small businesses, including eliminating fines for first time violations and expanding number of violations that will have cure periods.

Fines subject to relief include select Department of Buildings, Department of Environmental Protection, Department of Transportation, Department of Sanitation, and Department of Consumer and Worker Protection violations. The City will work with the City Council to review more than 75 violations. DOB and DOT can implement their own rule changes, and will begin providing additional relief in the fall.

Examples of 1st time fines forgiven:

- Failure to clean 18 inches from curb into the street (\$100 penalty)
- Excessive noise created by an air compressor (\$560 penalty)

Examples of fines added to cure list:

- Scale used for weighed items at supermarket/bodega not clearly in-sight of customer (\$75 penalty)
- Failure to disclose details about layaway plans (\$260 penalty)
- Failure to post clear price list at laundromats (\$375 penalty)

Coming Up

New York State

The Legislature is in session Monday February 24th through Thursday February 27th

Tuesday February 25th

To examine the effectiveness of current flooding emergency and mitigation efforts, and to discuss the need for future assistance due to the increase in extreme weather events

Legislative Commission on Rural Resources

Van Buren Hearing Room A, Legislative Office Building, 2nd Floor, Albany, 10 a.m.

Friday February 28th

To examine issues related to homelessness, housing insecurity and affordable housing, and identify potential legislative remedies

Joint Senate Standing Committee on Housing, Construction and Community Development and Committee on Social Services.

Room TBD, 250 Broadway, New York, 10 a.m.

New York City

Monday February 24th

Committee on Hospitals, Committee Room – City Hall, 10 a.m.

Committee on Housing and Buildings, Council Chambers – City Hall, 10 a.m.

Committee on Justice System, Council Chambers – City Hall, 10 a.m.

Committee on Oversight and Investigations, Committee Room – 250 Broadway, 14th Floor, 10 a.m.

Committee on Mental Health, Disabilities and Addiction, Committee Room – City Hall, 1 p.m.

Committee on Fire and Emergency Management, Committee Room – 250 Broadway, 16th Floor, 1 p.m.

Tuesday February 25th

Committee on Transportation, Council Chambers – City Hall, 10 a.m.

Committee on Technology, Committee Room – 250 Broadway, 14th Floor, 10 a.m.

Committee on Small Business, Committee Room – 250 Broadway, 14th Floor, 10 a.m.

Committee on Public Safety, Committee Room – City Hall, 10 a.m.

Committee on Environmental Protection, Committee Room – 250 Broadway, 16th Floor, 10:30 a.m.

Committee on Public Safety, Council Chambers – City Hall, 10:30 a.m.

Committee on Justice System, Council Chambers – City Hall, 10:30 a.m.

Committee on Economic Development, Committee Room – 250 Broadway, 16th Floor, 1 p.m.

Committee on Rules, Privileges and Elections, Committee Room – 250 Broadway, 14th Floor, 1 p.m.

Wednesday February 26th

Subcommittee on Zoning and Franchises, Committee Room – City Hall, 10 a.m.

Committee on General Welfare, Council Chambers – City Hall, 10 a.m.

Committee on Higher Education, Committee Room – 250 Broadway, 14th Floor, 10 a.m.

Committee on Health, Committee Room – 250 Broadway, 16th Floor, 11 a.m.

Committee on Housing and Buildings, Committee Room – 250 Broadway, 16th Floor, 11:30 a.m.

Subcommittee on Landmarks, Public Sitings and Dispositions, Committee Room – 250 Broadway, 16th Floor, 1 p.m.

Committee on Education, Council Chambers – City Hall, 1 p.m.

Committee on Parks and Recreation, Committee Room – 250 Broadway, 14th Floor, 1 p.m.

Thursday February 27th

Committee Finance, Committee Room – City Hall, 11 a.m.

City Council Stated Meeting, Council Chambers – City Hall, 1:30 p.m.

Friday February 28th

Committee on Immigration, Council Chambers – City Hall, 10 a.m.

Committee on Hospitals, Council Chambers – City Hall, 10 a.m.

Committee on Education, Committee Room – City Hall, 10 a.m.

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120 Broadway, 28th Floor
New York, New York 10271
Telephone (212) 652-3890
Facsimile (212) 652-3891

111 Washington Avenue, St. 401
Albany, New York 12210
Telephone (518) 449-3320
Facsimile (518) 449-5812

25 Hyatt Street, St. 202
Staten Island, New York 10301
Telephone (718) 943-1050
Facsimile (718) 943-1051