



**children's  
defense fund  
new york**

# **Testimony for the Joint Legislative Hearing on the 2023-2024 New York State Health/Medicaid Executive Budget**

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**February 28, 2023**

# Joint Legislative Hearing Testimony: 2023 – 2024 New York State Health/Medicaid Executive Budget

## About the Children’s Defense Fund – New York

Children’s Defense Fund – New York (CDF-NY) thanks the chairs of the Assembly Ways and Means Committee and the Senate Finance Committee for the opportunity to submit testimony on the 2023 – 2024 New York State Health/Medicaid Executive Budget Proposal.

CDF-NY is a non-profit child advocacy organization that works statewide to ensure every child in New York has a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in life and a successful passage to adulthood with the help of caring families and communities. As the New York office of the Children’s Defense Fund (CDF), a national organization with roots in the Civil Rights Movement, we are committed to advancing racial equity and to leveling the playing field for marginalized New York children, youth and families. We envision a state – and a nation – where marginalized children flourish, leaders prioritize their well-being and communities wield the power to ensure they thrive. CDF-NY provides a strong, effective and independent voice for children. We pay particular attention to the needs of children living in poverty, children of color and those with disabilities. CDF-NY strives to improve conditions for children and youth through research, public education, policy development, direct service, organizing, and advocacy in direct partnership with the communities we serve. We seek to build and amplify community power to ensure that marginalized children, youth and families can thrive, access opportunities, and experience authentic joy. Our policy priorities are racial justice, health equity, education justice, child welfare, youth justice and economic mobility. To learn more about CDF-NY, please visit [www.cdfny.org](http://www.cdfny.org).

## New York must prioritize the health and wellbeing of its most marginalized children, youth, families and communities.

As New Yorkers prepare to enter the fourth year of the COVID-19 pandemic, which continues to compromise the health, safety and stability of our children, youth, families and communities – and has highlighted and exacerbated long-standing inequities disparately affecting communities of color – prioritizing the health and wellbeing of our State’s marginalized communities is more urgent than ever before. This directive is especially critical given that, pre-pandemic, one in five children in New York – that’s almost 800,000 children – lived in poverty, with Black and Latinx children more than twice as likely as white children to live in poverty statewide.<sup>1</sup> We must act with urgency to center the needs of the

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<sup>1</sup> U.S. Census Bureau, American Community Survey 5-Year Detailed Estimates. To view CDF-NY’s county data profiles, please visit <https://cdfny.org/county-profiles/>.

youngest New Yorkers and to create a State where marginalized children and youth can not only grow but thrive and experience authentic joy.

CDF-NY has long believed that budgets are moral documents that convey a society's priorities. While the focus of this testimony is the Health/Medicaid Executive Budget Proposal's impacts on children and youth, we know that our young people do not exist in a vacuum. Their health, livelihoods and well-being are inextricably linked to the health, livelihoods and well-being of their families and communities. Healthy adults and caregivers are better able to provide for their children and families – which, for so many New York families, is more critical than ever. We thereby stand alongside our partners in calling for a State Budget that improves the health and wellbeing of New York's most marginalized populations.

## I. Childhood lead exposure and poisoning threaten the health and wellbeing of the youngest New Yorkers.

The Executive Budget does not make adequate investments towards combatting childhood lead poisoning in New York. Childhood lead poisoning is an urgent – albeit entirely preventable – moral crisis in our State, undoubtedly one of the greatest public health threats to New York's children and youth. New York has more known cases of children with elevated blood lead levels than any other state in our nation,<sup>2</sup> with childhood lead exposure rates for many communities across our State and in New York City five to six times higher than those in Flint, Michigan at the peak of its water crisis.<sup>3</sup> New York's older housing stock – our State carries the oldest housing inventory among the 50 states – places our residents at a particularly high risk of exposure to lead hazards.<sup>4</sup> The COVID-19 pandemic has only worsened the burdens of childhood lead exposure and poisoning, with children spending increased amounts of time in homes where they may be exposed to lead and amidst declines in well-child visits, where lead tests are typically administered to young children.<sup>5</sup> Furthermore, at the height of the pandemic, many of our State's county health departments were forced to redirect already-scarce childhood lead poisoning prevention resources to pandemic response efforts.

The health effects of childhood lead exposure are irreversible and there is no known safe level of lead in children, a fact affirmed by the Centers for Disease Control and Prevention's reduction of the blood lead reference value from 5 µg / dL to 3.5 µg / dL in

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<sup>2</sup> "Blood Lead Levels (µg / DL) among U.S. Children < 72 Months of Age, by State, Year, and Blood Lead Level (BLL) Group", Centers for Disease Control and Prevention, accessed November 10, 2021, <https://www.cdc.gov/nceh/lead/docs/cbls-national-data-table-508.pdf>.

<sup>3</sup> "Special Report: Despite Progress, Lead Hazards Vex New York," *Reuters*, November 14, 2017, <https://www.reuters.com/investigates/special-report/usa-lead-newyork/>.

<sup>4</sup> Katrina Smith Korfmacher, Emily A. Benfer and Matthew Chachère, "Lead Laws and Environmental Justice in New York," *The New York Environmental Lawyer*, Vol. 39, No. 1 (November 22, 2019), <https://ssrn.com/abstract=3492119>.

<sup>5</sup> "More Childhood Lead Poisoning Is a Side Effect of Covid Lockdowns," *The New York Times*, March 11, 2021, <https://www.nytimes.com/2021/03/11/health/virus-lead-poisoning-children.html>.

October 2021.<sup>6</sup> An estimated 28,820 New York children born in 2019 (approximately 12 percent of our State’s birth cohort for that year) will have blood lead levels above 2 µg / dL, the lowest level at which the effects of childhood lead exposure are well documented.<sup>7</sup> Even low levels of lead in the blood have been shown to affect children’s intelligence quotient (IQ), academic achievement, ability to concentrate, hearing and speech.

Each year, over 18,000 New York children are identified as having blood lead levels at or above 5 µg / dL. Such lead exposure can result in serious neurological and physical damage to children, impacting lifelong health and educational attainment and causing anemia, hypertension, immunotoxicity, renal impairment and toxicity to reproductive organs.<sup>8</sup> Further acute and chronic effects of an elevated blood lead level include appetite loss, constipation, abdominal colic, behavioral issues, hearing and balance issues, encephalopathy, growth retardation, delayed sexual maturation, increased dental caries and cardiovascular and renal diseases.<sup>9</sup> Lead exposure is particularly dangerous for pregnant women, and can cause gestational hypertension, low birth weight and impaired fetal development.

### **a. Childhood lead exposure and poisoning are racial and environmental injustices.**

Pervasive racial and socioeconomic disparities exist in New York’s burden of childhood lead poisoning, with our State’s children of color and low-income children disparately affected. New York’s children of color and low-income children are most likely to live in high lead-risk housing (pre-1978 housing in poor condition) and to live in households that may lack the financial capacity to reduce lead hazards. In 2005, more than half of New York children identified with blood lead levels over 10 µg / dL lived in just 68 of the over 1600 zip codes in our State, most of which encompassed communities of color in older urban areas.<sup>10</sup> The majority of New York zip codes with the highest proportion of lead poisoning cases are located within Buffalo, a city whose population is mostly comprised of communities

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<sup>6</sup> Ruckart PZ, Jones RL, Courtney JG, et al. Update of the Blood Lead Reference Value — United States, 2021. MMWR Morb Mortal Wkly Rep 2021; 70:1509–1512. DOI: <http://dx.doi.org/10.15585/mmwr.mm7043a4>.

<sup>7</sup> “Value of Lead Prevention,” Altarum, accessed November 10, 2021, <http://valueofleadprevention.org/calculations.php?state=New+York>.

<sup>8</sup> Cindy Mann, Kinda Serafi, Arielle Taub, “Leveraging CHIP to Protect Low-Income Children from Lead,” Manatt Health, January 2017, <https://www.shvs.org/wp-content/uploads/2017/01/SHVS-Manatt-Leveraging-CHIP-to-Protect-Low-Income-Children-from-Lead-January-2017.pdf>.

<sup>9</sup> Kent Bennett, Jennifer Lowry, Nicholas Newman, “Lead Poisoning: What’s New About an Old Problem?,” *Contemporary Pediatrics*, 32 (April 1, 2015), <https://www.contemporarypediatrics.com/view/lead-poisoning-whats-new-about-old-problem-0>.

<sup>10</sup> Katrina Smith Korfmacher, Emily A. Benfer and Matthew Chachère, “Lead Laws and Environmental Justice in New York,” *The New York Environmental Lawyer*, Vol. 39, No. 1 (November 22, 2019), <https://ssrn.com/abstract=3492119>.

of color <sup>11</sup> and a city in which children from neighborhoods of color are twelve times as likely as children from predominantly white neighborhoods to have elevated blood lead levels. <sup>12</sup>

A study of Rochester children found that even after adjusting for environmental exposures, behaviors, socioeconomic status, and dietary intake, Black children were at higher risk of elevated blood lead than their peers of other races. By 24 months of age, Black children's blood lead concentration was approximately 62.6 percent (3.1 µg / dL) higher than white children's blood lead concentration after controlling for these other risk factors. <sup>13</sup>

Immorally and tragically, Buffalo and Rochester rank within the top ten list of large U.S. cities with the highest child poverty rates. Buffalo ranks number six nationally with a child poverty rate of 42.3%. Rochester ranks number two nationally with a child poverty rate of 48.2%. New York's clear distribution of childhood lead poisoning along racial and socioeconomic lines affirms lead poisoning as grave racial and environmental injustices – and makes the need to act swiftly to prevent it even more of a moral imperative.

## **b. Childhood lead exposure and poisoning hinder New York's economic viability.**

In addition to the dangerous health effects and stark racial and socioeconomic injustices of childhood lead exposure, lead exposure poses a significant financial burden on our families and our State. Childhood lead exposure among New York children born in 2019 is projected to cost our State \$6.4 billion through reduced lifetime productivity; premature mortality; increased spending on health care utilization, education and social assistance; <sup>14</sup> and also contributes to costs associated with juvenile and adult incarceration.

Aside from these societal costs of childhood lead poisoning, families of lead-exposed children face substantial immediate and long-term costs. Potential costs to families include costs associated with immediate medical intervention; costs associated with treatment of lead-related attention deficit hyperactivity disorder (ADHD) and special education services for lead-poisoned children; and parental work loss due to time taken off to care for a lead-poisoned child. Families are sometimes forced to spend enormous sums on chelation therapy, which ultimately may not result in total rehabilitation. Furthermore, families whose children are poisoned by lead do not always have the ability to move out of an unsafe home and into one that is free from lead hazards. Currently, lead-impacted New York families are

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<sup>11</sup> "Eliminating Lead Poisoning in New York: A National Survey of Strategies to Protect Children," Columbia Law School Health Justice Advocacy Clinic, October 2019, [https://web.law.columbia.edu/sites/default/files/microsites/clinics/health-advocacy/final\\_lead\\_poisoning\\_prevention\\_best\\_practices\\_report\\_october\\_2019\\_final.pdf](https://web.law.columbia.edu/sites/default/files/microsites/clinics/health-advocacy/final_lead_poisoning_prevention_best_practices_report_october_2019_final.pdf).

<sup>12</sup> "The Racial Equity Dividend: Buffalo's Great Opportunity," University at Buffalo Regional Institute and Make Communities, 2018, <http://racialequitybuffalo.org/files/documents/report/theequitydividendfinaljune2018.pdf>.

<sup>13</sup> Bruce P. Lanphear, Richard Hornung, Mona Ho, Cynthia R. Howard, Shirley Eberly, Karen Knauf, "Environmental Lead Exposure During Early Childhood," 140, no. 1 (2002): 40 – 47, <https://dx.doi.org/10.1067/mpd.2002.120513>.

<sup>14</sup> "Value of Lead Prevention," Altarum, accessed November 10, 2021, <http://valueofleadprevention.org/calculations.php?state=New+York..>

unable to even file claims to recoup their financial losses, because their landlords' insurance policies do not cover lead paint risk exposure.

Improving New York State's lead poisoning prevention policies will help prevent the harmful, lifelong impacts of lead poisoning that is disproportionately impacting children and families experiencing poverty and children of color and their families and communities as well as help our State realize tremendous economic gains in the short and long-term. The financial burden of childhood lead poisoning to our State and its families necessitates the need for the State to sufficiently fund and end this tragically long-standing and entirely preventable health crisis.

## **New York must make bold, necessary investments to combat and end childhood lead poisoning.**

In order to once and for all make childhood lead poisoning a disease of the past, New York must make bold, necessary investments in its children, youth and families who are at risk, which disproportionately consist of those experiencing poverty and living in communities of color. Accordingly, the Lead Free Kids New York (LFKNY) coalition, which CDF-NY co-founded and co-leads, recommends that our State act swiftly by taking the following actions in the Budget:

### **i. Allocate an additional \$50 million to support the existing and additional counties within the Childhood Lead Poisoning Primary and Secondary Prevention Programs**

An additional \$50 million in funding will enable New York State's Childhood Lead Poisoning Primary and Secondary Prevention Programs to expand and continue to implement programs to bolster lead poisoning prevention efforts to prevent elevated blood lead levels in children. These increased funds will enable the most at risk communities to have the primary prevention activities they need to prevent and end childhood lead poisoning in their communities. Additionally, this allocation will cover the critical costs for counties to conduct secondary prevention activities by providing timely case management and follow-up services to children identified as having elevated blood lead levels, including \$36 million to cover costs for children with blood lead levels of 5  $\mu\text{g}$  / dL.

The number of New York State counties tasked with conducting primary prevention of childhood lead poisoning recently rose from 15 to 20, with no additional funds allocated to account for this increased number of counties. Functionally, this has meant cuts to all existing programs – even those with significant successes, like the City of Rochester – during a time of increased childhood lead exposure. Furthermore, the sharp rise in inflation has meant that without an increase in funding, programs have had to make the difficult decision of either keeping wages stagnant or employing fewer staff. It is thereby critical to increase the allocated funding to adequately support the Childhood Lead Poisoning Primary and Secondary Prevention

Programs, if we want to be a State that goes from worst to best regarding this preventable childhood health crisis.

## **ii. Strengthen and expand Part T of the Executive Budget's Health and Mental Hygiene Article VII Legislation**

We support the Governor's efforts to expand action on rental properties that may have lead paint hazards, including an allocation of \$20 million to support landlords who need financial assistance with lead paint remediation. To ensure an effective program, we seek to strengthen Part T of the Executive Budget's Health and Mental Hygiene Article VII Legislation to ensure that it includes single-family dwellings, which can be just as likely if not more likely (as is the case in Rochester) to contain lead hazards than dwellings with more units. To ensure that the Department of Health creates a strong and enforceable program, the Budget must use mandatory rather than discretionary language. The State must require that the proposed registry and certifications of residential dwellings are made available in a publicly searchable database, so as to foster compliance with existing federal regulations requiring disclosure of lead paint and lead hazard records to potential tenants and buyers.

Furthermore, while the Executive Budget specifies a tri-annual inspection basis for lead paint hazard certification of residential dwellings qualifying for registration, lead paint conditions can deteriorate well before the three-year timeframe for property reinspection. Unless a property has had *a//* lead paint permanently abated, there is no guarantee whatsoever that paint that is not peeling or damaged at the time of inspection will not begin to fail in the ensuing three years. In order to ensure that marginalized children and families who are renting are not stuck living in harmful and dangerous conditions, they and other interested parties must have a right to seek injunctive and other relief where property has lead hazards.

## **iii. Increase funding for the New York State Children's Environmental Health Centers (NYSHECK) from \$4 million to \$5 million**

The New York State Children's Environmental Health Centers (NYSHECK) were launched in 2017 by the New York State Department of Health to meet the environmental health needs of families and communities in all 62 counties in New York State. It is critical to allocate an additional \$1 million in funding for the New York State Children's Environmental Health Centers (NYSHECK) with the Environmental Protection Fund, so that the funding of these Centers can reach \$5 million, and so that the Centers can best meet the needs of marginalized children and families who have been impacted by the preventable crisis of childhood lead poisoning.

## **iv. Provide \$10 million to the Division of Housing and Community Renewal (DHCR) as grants to landlords to conduct lead abatement**

The State must provide \$10 million to the Division of Housing and Community Renewal (DHCR) as grants to landlords to conduct lead abatement. These funds must be tied to protections for renters, or marginalized families with children.



**v. Pass Landlord Insurance for Lead Based Paint | S. 88 (Ryan) / A. 1687 (Rivera)**

While New York has become number one in the nation for childhood lead poisoning, our State laws have allowed New York's landlords and insurance companies to not be accountable to marginalized children, families, and their communities for this preventable childhood disease in rental properties. S. 88 (Ryan) / A. 1687 (Rivera) would prohibit insurers providing liability coverage to rental property owners from excluding coverage for losses or damages caused by exposure to lead-based paint. Prohibiting the exclusion of coverage for losses or damages caused by exposure to lead-based paint would, in turn, ensure that lead poisoning victims are able to be adequately compensated for their medical bills and other lead-exposure related expenses and damages. S. 88 / A. 1687 thereby prohibits insurance companies from denying claims for when children are poisoned by lead in their own homes, through no fault of their own. Furthermore, the bill would proactively encourage landlords to prevent lead-related harm from occurring in the first place by incentivizing them to find and fix lead hazards in their properties without fearing the repercussions of accidental exposures.

**vi. Pass the Lead-Based Paint Disclosure Act | S. 2353 (Kavanagh) / A. 4820 (Rivera)**

While federal law requires sellers or lessors of pre-1978 housing to disclose to buyers or renters any knowledge of lead-based paint in the dwelling, it does not require them to investigate for lead paint in the home – and there is no incentive to do so. Consequently, purchasers and renters – who are disproportionately children and families of color experiencing poverty – are unwittingly moving into hazardous homes, perpetuating the childhood lead crisis. If enacted, S. 2353 (Kavanagh) / A. 4820 (Rivera) would close this gap by requiring residential property owners to test for lead-based paint before selling or leasing their property (if it has not been done previously) and to file a report with the New York State Department of Health to better track and address lead poisoning. Mandated disclosure of lead-paint test results would ensure that New York's tenants and homeowners can choose to move into buildings free of unknown lead hazards. Furthermore, by making such information public, the private market will incentivize proactive repair and maintenance to address lead paint hazards.

**vii. Pass the Renovation, Repair and Painting Act | S. 2191 (Bailey) / A. 434 (Bronson)**

A significant number of childhood lead poisoning cases in New York can be attributed to home renovation, repair and painting (RRP) activities performed in homes containing lead-based paint, which can easily spread toxic dust if not performed safely. While federal law requires lead-safe work practices and training for RRP work in pre-1978 dwellings, the United States Environmental Protection Agency's (EPA) enforcement capacity in New York is quite limited. In fact, only 3.5 EPA inspectors



currently oversee Region 2, a vast geographic area that encompasses New Jersey, Puerto Rico and the Virgin Islands in addition to New York – including over 6.4 million homes in our State alone. In 2019, the EPA completed just seven RRP enforcement actions in New York.<sup>15</sup> *S. 2797* (Bailey) / *A. 434* (Bronson) would enable New York to assume administration of RRP rules and to conduct training, certification and enforcement of the RRP. It would also enable New York to collect contractor fees (currently paid to the EPA) to cover costs and strengthen enforcement. In doing so, New York would join a growing number of states that are currently authorized to administer and enforce RRP rules in their states and who have tailored their RRP programs to meet their individual needs. Enacting this policy is estimated to protect approximately 140,000 New York children under the age of six and 483,600 New York homes undergoing renovation from lead exposure each year.<sup>16</sup>

### **New York must fully leverage CHIP funding as a path forward.**

In order to successfully combat the childhood lead poisoning crisis, New York must fully leverage every potential funding stream. A Children’s Health Insurance Program (CHIP) Health Services Initiative (HSI) is a policy tool that would enable New York to triple its current state spending on childhood lead poisoning prevention by drawing down additional federal funding through CHIP for our State and its localities to use on lead poisoning prevention efforts.<sup>17</sup> Lead exposure testing, prevention and abatement initiatives to protect marginalized children are authorized uses of HSIs under CHIP authority.<sup>18</sup> In recent years, a number of states have successfully implemented HSIs for precisely this purpose, paving the way for New York to also take action. A New York HSI totaling \$75 million per year could fund a comprehensive lead hazard reduction strategy with components, including lead testing and abatement, case management, lead rental certification, workforce development and legal assistance for tenant families whose child has an elevated blood lead level.

## **II. New York must ensure equity, access and quality of telehealth service provision statewide.**

Telehealth holds great potential to improve access to critical health services throughout the duration of the pandemic and beyond, particularly for New Yorkers facing barriers to in-person visits and those living in areas with provider shortages. As New Yorkers

<sup>15</sup> “Lead-Safe Renovation, Repair, and Painting Activities in New York State: Analysis of the Proposal for State Management of the RRP Rule,” Community Foundation for Greater Buffalo, February 2020, [https://ppgbuffalo.org/files/documents/lead\\_rrp\\_activities\\_in\\_nys.pdf](https://ppgbuffalo.org/files/documents/lead_rrp_activities_in_nys.pdf).

<sup>16</sup> “Lead-Safe Renovation, Repair, and Painting Activities in New York State: Analysis of the Proposal for State Management of the RRP Rule,” Community Foundation for Greater Buffalo, February 2020, [https://ppgbuffalo.org/files/documents/lead\\_rrp\\_activities\\_in\\_nys.pdf](https://ppgbuffalo.org/files/documents/lead_rrp_activities_in_nys.pdf).

<sup>17</sup> “Leveraging CHIP to Protect Low-Income Children from Lead,” State Health Value Strategies, January 2017, <https://www.shvs.org/wp-content/uploads/2017/01/SHVS-Manatt-Leveraging-CHIP-to-Protect-Low-Income-Children-from-Lead-January-2017.pdf>.

<sup>18</sup> “Frequently Asked Questions (FAQs): Health Services Initiative,” Centers for Medicare & Medicaid Services, January 12, 2017, <https://www.medicare.gov/federal-policy-guidance/downloads/faq11217.pdf>.

increasingly turn to telehealth to meet their health needs, it is incumbent upon our State to ensure equity, access and quality of telehealth service provision.

While telehealth can increase access to health services for many New Yorkers, CDF-NY urges the Legislature to remember that the digital divide continues to plague communities across our State and disproportionately impacts New Yorkers of color. In New York City, nearly 60 percent of Black and Latinx households (compared to over 80 percent of white households) have a computer in the home, with broadband usage lower in Black and Latinx homes than in white homes. Around a quarter of Black and Latinx New York City households can only access the Internet via their smartphones.<sup>19</sup> These families may find themselves at the mercy of homes and neighborhoods with limited connectivity. The inequity of New York's technological divide is even more stark for Black and Latinx families living in poverty and deep poverty. Only 54 percent of all New York City households with incomes under \$20,000 have internet in the home<sup>20</sup> and such disparities are echoed throughout our State, making telehealth services likely unattainable for the most marginalized New Yorkers. For families struggling to pay rent or put food on the table, the internet may simply be out of reach – meaning marginalized New York families will still need access to high quality, in-person health services. Telehealth also poses language barriers to individuals with limited language proficiency, and is not always fully accessible for individuals with disabilities. Furthermore, telehealth may lead to increased cost-shifting to patients, as patients may end up paying 'duplicate' copays for health episodes where a telehealth visit results directly in an in-person follow-up visit.

Furthermore, it is important that the State recognize the patient privacy concerns that can be posed by telehealth visits. A lack of secure housing, or a lack of privacy in a difficult home environment, can serve as strong barriers to adolescents seeking out behavioral or reproductive health care services via telehealth, particularly for those who share rooms with siblings or lack access to their own electronic devices, or for those whose home environments are the reason they are seeking out such services in the first place. For youth experiencing abuse at the hands of individuals living in their home, telehealth is simply an unthinkable option, leaving them without any emotional support and amplifying the mental trauma of the abuse. It is critical that our State increase access to in-person behavioral health services for these young people, or designate and fund community safe spaces where they can privately and confidentially utilize telehealth services, particularly given the troubling recent increases in suicide attempts and psychiatric emergencies among young New Yorkers generally<sup>21</sup> and among Black youth in particular,<sup>22</sup> and the alarm that the

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<sup>19</sup> "The State of Black New York," New York Urban League, November 2020, [https://ad1a3eae-9408-4799-abebe-aa6ebc798f5b.usrfiles.com/ugd/ccf12e\\_06a44ca4995a40d7944b361219f9a6d8.pdf](https://ad1a3eae-9408-4799-abebe-aa6ebc798f5b.usrfiles.com/ugd/ccf12e_06a44ca4995a40d7944b361219f9a6d8.pdf).

<sup>20</sup> "The State of Black New York," New York Urban League, November 2020, [https://ad1a3eae-9408-4799-abebe-aa6ebc798f5b.usrfiles.com/ugd/ccf12e\\_06a44ca4995a40d7944b361219f9a6d8.pdf](https://ad1a3eae-9408-4799-abebe-aa6ebc798f5b.usrfiles.com/ugd/ccf12e_06a44ca4995a40d7944b361219f9a6d8.pdf).

<sup>21</sup> "In COVID-Era New York, Suicidal Kids Spend Days Waiting for Hospital Beds," Center for New York City Affairs, January 2021, [https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/601775c3f0007e386c5924e0/1612150213177/1\\_In+Covid-Era+New+York%2C+Suicidal+Kids+Spend+Days+Waiting+for+Hospital+Beds.pdf](https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/601775c3f0007e386c5924e0/1612150213177/1_In+Covid-Era+New+York%2C+Suicidal+Kids+Spend+Days+Waiting+for+Hospital+Beds.pdf).

<sup>22</sup> "Black Youth Suicide in New York: An Urgent Crisis," Children's Defense Fund – New York, March 2021, <https://www.cdfny.org/wp-content/uploads/sites/3/2021/05/Black-Youth-Suicide-in-New-York-An-Urgent-Crisis.pdf>.

Surgeon General, American Academy of Pediatrics (AAP) and American Academy of Child and Adolescent Psychiatry (AACAP) have sounded on child and adolescent mental health.<sup>23</sup>

The State must ensure that its efforts to expand telehealth services do not unintentionally and disparately harm marginalized New Yorkers. The Executive Budget proposes to increase access to telehealth by allowing Medicaid providers to bill for EVisits, which are digital, patient-initiated interactions between a patient and a provider that can resolve non-urgent conditions using an online portal or other electronic modality. While this provision would increase access to telehealth services for Medicaid beneficiaries, it is also potentially problematic in that it may incentivize plans and providers serving Medicaid patients to offer more or all of their services via telehealth, thereby worsening access issues for marginalized New Yorkers and communities of color.

### **CDF-NY urges the State to fund an independent evaluation of telehealth equity, access and quality.**

As our State's children and families increasingly turn to telehealth to meet their healthcare needs, CDF-NY urges the Legislature to provide funding for an independent analysis of equity, access and quality of telehealth services being delivered across our State, particularly with regards to behavioral health services for young people. We must also remain vigilant to potential issues with the quality of telehealth service provision that replaces in-person care, particularly for Early Intervention (EI) services and how telehealth could affect integrated practices.

Additionally, the State should eliminate copays for telehealth visits which directly result in in-person office visits, so that patients are not required to pay two copays for the same visit reason.

### **III. New York must repeal its Medicaid Global Cap.**

The Governor's Executive Budget reflects the continuation of the Medicaid Global Cap enacted in FY 2012 and recommends funding consistent with last year's update to the allowable growth calculation. Due to this update, the Cap is calculated by basing it on the five-year rolling average of Medicaid spending projections within the National Health Expenditure Accounts produced by the Centers for Medicare and Medicaid Services (CMS) actuary. The FY 2024 Executive Budget reflects \$11 billion in additional Medicaid spending growth between FY 2023 and 2027 as compared to the prior Global Cap growth metric. While this change was intended to allow for growth and account for age and acuity of enrollees, it ultimately keeps the Cap in place, which is in and of itself problematic.

CDF-NY has long warned that our State's Medicaid Global Cap creates an arbitrary and artificial shortfall for vital services that enable New Yorkers to remain healthy and

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<sup>23</sup> "AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health," American Academy of Pediatrics, October 19, 2021, <https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health/>.

independent members of society and to provide for themselves and their families. The Cap fails to properly account for the true growth in health care costs and predictable demographic shifts due to an aging population and increased health needs during natural disasters or pandemics, such as the one we are currently in. The nine months following the COVID-19 pandemic's arrival in New York saw a 12 percent growth in Medicaid enrollment with over 700,000 new enrollees – a strong affirmation of Medicaid's important role in responding to population health demands during times of economic downturn.

If the Medicaid Global Cap remains in place, future Medicaid budget 'gaps' will become a regular occurrence and could result in additional drastic cuts to our State's Medicaid program, such as those enacted in the Fiscal Year 2021 Budget. Furthermore, it is important to note that the Medicaid Global Cap effectively limits the amount of federal funding New York can receive for its Medicaid program.

CDF-NY thereby calls on the Legislature to protect our State's Medicaid beneficiaries – including the more than two million marginalized children, which includes one out of every three New Yorkers and one out of every two births in New York – by:

- (1) Eliminating the Medicaid Global Cap and replacing it with a global budgeting system that is based on demand for services;
- (2) Raising revenue to balance our State budget;
- (3) Making smart, long-term investments that are more likely to substantially bend the Medicaid cost curve; and
- (4) Ensuring that Medicaid consumers and independent consumer advocates comprise a substantial portion (more than one-third) of any body making recommendations regarding Medicaid policy and budget goals.

#### **IV. Our State must expand health coverage for New Yorkers.**

Despite the coverage gains our State has made in recent years, too many New York families – and disproportionately families of color – still lack affordable and comprehensive health coverage, harming both their mental well-being in addition to their physical health. While passing the New York Health Act would provide universal coverage for all New Yorkers, health coverage for children and families can and must be improved – and racial disparities reduced – by:

- **Expanding Immigrant Health Coverage** | Immigrant New Yorkers have been at the forefront of New York's fight against COVID-19, comprising one-third of our State's essential workers and playing a key role in all sectors of our battle against the pandemic. This ongoing exposure has contributed to disparate outcomes in COVID-19 infection and death, which have disproportionately afflicted immigrant communities of color. Another important driver of this inequity is the ongoing disparity in access to health care caused

by the exclusion of undocumented New Yorkers from health insurance coverage due to their immigration status.

By allocating \$345 million to create a state-funded Essential Plan for all New Yorkers who are up to 250 percent of the Federal Poverty Level and who are currently excluded from coverage due to their immigration status *S. 2237 (Rivera) / A. 3020 (Gonzalez-Rojas)*, our State can offer coverage to the estimated 154,000 uninsured, marginalized New Yorkers who are currently uninsured because of their immigration status. It is estimated that 46,000 New Yorkers would enroll in the program annually once fully implemented. This would not only ensure that all children and families have access to health care but it would also save the state millions of dollars. New York spends \$544 million on Emergency Medicaid (NYS DOB data) for immigrants every year—this \$544 million could be repurposed for other priorities. Additionally, NYC would save \$100 million by retiring its NYC Cares program, since that population would be eligible for health insurance.

Furthermore, the Governor's Budget proposal backs away from her prior promise to include immigrant coverage in the State's 1332 Waiver application. While the Waiver application was supposed to use the existing federally-funded Basic Health Plan/Essential Plan Trust Fund to pay for immigrant coverage and to increase the Essential Plan income eligibility for all New Yorkers who are up to 250 percent of the Federal Poverty Level, the Waiver language presented in the Governor's Budget proposal inexplicably excludes immigrants. Including immigrants in the State's 1332 Waiver budget language alone will generate at least \$500 million in State savings that can be spent on other legislative priorities. It is critical to seek immigrant coverage through the Waiver application.

○ **Implementing Continuous Medicaid and Child Health Plus Eligibility Through Age 6** | Nearly half of all children and over three-quarters of children living in poverty in New York receive health coverage under Medicaid and Child Health Plus. Our State can safeguard the health of the youngest New Yorkers (and particularly, of our young New Yorkers of color); protect children against insurance churn and coverage losses; and offer continuity of care during a period of critical growth and development by implementing continuous Medicaid and Child Health Plus eligibility for children through the age of 6. Doing so would increase access to care for the youngest New Yorkers, including behavioral health services and timely preventive care services such as vaccinations. Furthermore, the burden of enrolling a child in care during those years would be lifted from parents and renewal processing for managed care organizations and state systems would be reduced.

## **New York should increase funding for enrollment assistance and outreach.**

Over 100,000 marginalized New York children are currently uninsured. While most of these children are eligible for health coverage, their families are often unaware of the free or affordable coverage options available to them. Furthermore, even when New Yorkers are aware of coverage options, fragmented and confusing plan options often create barriers for consumers. Navigators, who can provide in-person assistance to families seeking health

coverage and clarify often-complicated enrollment procedures, have helped over 300,000 New Yorkers enroll in coverage since 2013. While we applaud the fact that the Navigator program received its first 1-year cost-of-living increase in the Executive Budget, more must be done for our navigators. The State must increase the health insurance navigator budget from \$27.2 million to \$38 million to guarantee high-quality enrollment services for New Yorkers and to reflect ten years without appropriate increases. The State must also allocate \$5 million to fund community-based organizations so that they are able to conduct outreach in communities with high uninsured rates and educate consumers about coverage options. This is particularly important in immigrant communities where policies like public charge have left a chilling effect.

## **V. New York Must Establish an Independent Office to Produce Racial and Ethnic Impact Statements for *All* Proposed Rules and *All* Legislation Leaving Committee**

New York's pervasive racial and ethnic disparities harm our State and must be urgently addressed through meaningful systemic change. The COVID-19 pandemic has provided irrefutable evidence of the long-standing, deeply-rooted racial inequities that have caused increasingly disparate outcomes in New York State and throughout the nation for far too long. These wide-ranging and long-standing inequities, encompassing such areas as healthcare access, involvement in the child welfare and youth justice systems, economic security, educational opportunity, access to safe and healthy housing, and workforce disparities, continue to harm New York's most marginalized children, youth, families, and communities. In fact, in a national comparison of state structural inequities, New York was recently classified as having among the highest structural racism and income inequality indexes in the United States.<sup>24</sup>

The clear urgency of taking decisive action to end New York's entrenched racial inequalities is particularly evident with regards to the racial and ethnic disparities in New York's alarmingly high poverty and child poverty rates. As noted in a report released by New York State Comptroller DiNapoli last December, almost 2.7 million New Yorkers, or 13.9 percent of our State's population, lived in poverty in 2021, compared to 12.8 percent of all Americans. Poverty rates are more than double for Hispanic New Yorkers compared to white, non-Hispanics, with one-fifth of New York's Hispanic population living below the poverty level in 2021. Black, Native Hawaiian and other Pacific Islander and American Indian New Yorkers experienced poverty at twice the rate of white New Yorkers in 2021.<sup>25</sup> Racial and ethnic disparities are particularly pervasive in New York's immoral child poverty crisis, with Black and Latinx children more than twice as likely as white children to live in poverty statewide and 10 to

<sup>24</sup> Patricia Honan, Tyson H. Brown, and Brittany King. August 6, 2021. "Structural Intersectionality as a New Direction for Health Disparities Research." *Journal of Health and Social Behavior*, 62(3), <https://doi.org/10.1177/00221465211032947>.

<sup>25</sup> New York State Comptroller Thomas P. DiNapoli, "New Yorkers in Need: A Look at Poverty Trends in New York State for the Last Decade," December 2022, <https://www.osc.state.ny.us/files/reports/pdf/new-yorkers-in-need-poverty-trends.pdf>.

13 times more likely than white children to live in poverty in Manhattan.<sup>26</sup> Asian Americans have the highest poverty rates in New York City, with Asian children 5 times more likely to live in poverty than white children in Manhattan.<sup>27</sup> Syracuse carries the highest child poverty rate in the nation among cities with at least 100,000 people (48.4 percent), with Buffalo and Rochester also ranking within the top ten list of large U.S. cities with the highest child poverty rates. These are but a few of the pervasive, wide-ranging and long-standing disparities and inequities that assault people and communities of color in our State and around the nation due to the racist impact of our policies and regulations.

Our State can lead the nation in embarking on the path to achieving equity in all policies by establishing an independent office to ensure that we no longer pass legislation or adopt rules without first examining whether these policies have the potential to create, eliminate, or perpetuate racial and ethnic disparities. Enacting new legislation and rules without first evaluating their potential to disproportionately impact our communities of color only perpetuates these disparities. In the absence of racial and ethnic impact assessment, legislation that “appears” race-neutral at face value can, in practice, adversely – and disparately – affect New York’s children and families of color. Just as our State legislators consider the fiscal and environmental impacts of new laws, so too must they examine the potential racial and ethnic impact of *a//* legislation and rule-making activity through the preparation of racial impact statements. By doing so, New York would join the growing rank of states who have acted to center racial equity in legislating by passing racial impact statement legislation<sup>28</sup> and would build on progress made in advancing racial equity in New York City through such efforts as EquityNYC and the racial justice ballot proposals spearheaded by the New York City Racial Justice Commission.

In order to implement this approach, our State will need to invest more resources in its legislative and rule-making processes. Furthermore, the evaluation of racial and ethnic impact needs to be insulated from politics – meaning the office producing the impact statements should be independent from both the Legislature and the Governor. Maintaining this independence will ensure that meaningful, unbiased impact statements are faithfully and consistently produced at an optimal level.

Undoing generations of racial and ethnic disparities and institutionalized harm demands an anti-racist approach that actively examines the role of legislative and regulatory action in perpetuating inequality in New York. In order to ensure that our laws truly advance racial and ethnic equity and in order to begin to dismantle systemic racism, New York should adopt:

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<sup>26</sup> U.S. Census Bureau, American Community Survey 5-Year Detailed Estimates. To view CDF-NY’s county data profiles, please visit <https://cdfny.org/county-profiles/>.

<sup>27</sup> U.S. Census Bureau, American Community Survey 5-Year Detailed Estimates. To view CDF-NY’s county data profiles, please visit <https://cdfny.org/county-profiles/>.

<sup>28</sup> Children’s Defense Fund – New York, “Leveraging Racial & Ethnic Impact Statements to Achieve Equity in *All* Policies: National Context,” July 22, 2022, <https://cdfny.org/wp-content/uploads/sites/3/2022/07/Racial-Ethnic-Impact-Statement-Legislation-National-Context-Updated-July-2022-1.pdf>.



- (1) The establishment of an independent office or entity tasked with producing racial and ethnic impact statements.
- (2) A requirement that all bills advancing out of committee in the legislature and amendments to bills must be accompanied by a racial and ethnic impact statement.
- (3) A requirement that all proposed rules must be accompanied by a racial and ethnic impact statement upon introduction.
- (4) A requirement that racial and ethnic impact statements must include an estimate of the impact of the proposed bill, proposed amendment or proposed rule on racial and ethnic minorities, and the basis for the estimate, including any specific data or other information relied upon.
- (5) A prohibition against enacting legislation or proposing rules that are found to increase racial or ethnic disparities.

## **VI. New York must make investments to increase rates for Early Intervention (EI) service providers and to eradicate racial disparities in EI service provision.**

Our State's livelihood depends on the health and well-being of *all* of our children, including infants and toddlers with developmental delays and disabilities. These children continue to experience difficulties accessing federally mandated, state-administered Early Intervention (EI) services that could enable them to catch up to their peers or prevent their delays from worsening during a time when such services are most impactful and cost-effective.

New York's EI payment rates are currently lower than they were in the mid-1990s, forcing experienced, high-quality providers to close their doors or to stop taking EI clients. Due to provider shortages, an alarming number of children identified as needing EI services have less access to quality services and face waitlists and delays, despite the fact that federal law requires timely EI service delivery. The COVID-19 pandemic has only exacerbated these access issues, causing disruption of in-person EI services and inequities in accessing teletherapy services. Furthermore, our State's children of color do not have the same access to services as compared to their White peers. Non-Hispanic, white children are more likely to be referred to the EI program at a younger age than children of most other races and ethnicities; more likely to have their EI services initiated within 30 days; and less likely to have services delayed by a discountable reason.<sup>29</sup>

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<sup>29</sup> New York State Department of Health, Bureau of Early Intervention, "Executive Summary: Early Intervention Program Data: Race and Ethnicity For the Period July 2017-June 2020," August 2021, [https://www.health.ny.gov/community/infants\\_children/early\\_intervention/docs/summary\\_eidata\\_race\\_ethnicity.pdf](https://www.health.ny.gov/community/infants_children/early_intervention/docs/summary_eidata_race_ethnicity.pdf).

CDF-NY is upset that the Executive Budget does not direct the \$28 million in new revenue made available through the Covered Lives assessment towards an increase in provider reimbursement rates. Improving provider reimbursement is crucial to ensuring that EI providers remain in the system and that new providers join the system. It is imperative that the increased resources available to the EI program through the Covered Lives assessment be used to strengthen the program by increasing reimbursement rates – not to offset spending reductions for the State and its counties, when the health, vitality, and future of marginalized infants and toddlers with developmental delays and disabilities are at stake. The State must increase rates for all EI providers and evaluators by 11 percent to move New York State closer to meeting the needs of all young children in New York with developmental delays or disabilities. The State must also institute higher rates or rate add-ons to cover higher costs of in-person service delivery to ensure all children who need in-person services have access to them. The State must also conduct a comprehensive assessment of the methodology used to determine payment for all EI evaluations, services and service coordination and re-set rates accordingly (*S.7798*). Furthermore, New York must require that the New York State Bureau of Early Intervention publish an annual report with data by county and disaggregated by race and ethnicity about referrals, assessments, enrollment, and timely receipt of services.

## **VII. New York must permanently restore \$6 million in funding for our State’s school-based health centers (SBHCs).**

An additional \$6 million in permanent funding is needed to restore prior budget cuts to New York’s school-based health centers (SBHCs) and to ensure their long-term financial stability. The State must also maintain \$17,098,000 in general fund (non-Medicaid) revenues for SBHCs including a Legislative Add of approximately \$2 million, and increase wraparound funding to School-Based Mental Health Clinics so services can be more comprehensive, inclusive, and effective.

Our State’s 255 SBHCs provide vital physical and mental health care services to over 250,000 New York children and youth statewide, the majority of whom are Medicaid recipients. These Centers fill care gaps in our State’s most medically underserved communities, where children may have limited access to comprehensive health services due to financial, geographical and other barriers to care. SBHCs are staffed with a team of health care professionals and provide a wide range of preventive, primary care, emergency, dental, mental health and reproductive health services to students. Services are provided on-site in schools to all students at no cost and regardless of insurance coverage or immigration status. For some youth, SBHCs are their only source for counseling, health screenings, reproductive care and immunizations. SBHCs are a powerful tool for reducing racial and ethnic disparities. According to the New York State Department of Health, 12 percent of youth served by SBHCs are uninsured, 44 percent are Latinx and 27 percent are Black or African American. Sufficiently funding SBHCs is a racial justice issue.

SBHCs prevent unnecessary hospitalizations, reduce emergency room visits, improve school attendance and avoid lost workdays for parents. SBHCs thereby improve both health and educational outcomes by helping to identify health barriers to learning (HBLs) – medical issues that when missed or undermanaged, can hinder children’s ability to learn and succeed in school. SBHCs also save our State money. It is critical that the State increase its investment in SBHCs and consequently, in the health of marginalized New York children.

## **VIII. New York must expand the population of students that can receive Medicaid-covered school health services**

During this time of especially great need, our State must seize every opportunity to reach our children where they are and to provide them with access to critical, life-saving and sustaining health and mental health services. Amidst the national decline in children receiving primary and preventive care services during the pandemic, bolstering the capacity of New York schools to meet the health needs of our students is imperative. New York can expand access to critical health services for thousands of additional students by submitting a Medicaid State Plan Amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS) to permit public schools to bill Medicaid for health services delivered to all Medicaid-covered students, not just those with Individualized Education Programs (IEPs). Doing so would enable New York to not only expand its population of students accessing Medicaid-reimbursable school health services, but also to join California, Massachusetts, Connecticut and the growing rank of states currently leveraging federal Medicaid dollars to provide needed health services to students.<sup>30</sup> By enabling more students – particularly marginalized students of color in crisis – to receive high quality health services at school, this policy change would also enable New York to address the persistent health disparities that have been magnified by the COVID-19 pandemic.

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<sup>30</sup> “Schools Are Key to Improving Children’s Health: How States Can Leverage Medicaid Funds to Expand School-Based Health Services,” Healthy Schools Campaign, January 2020, <https://healthyschoolscampaign.org/dev/wp-content/uploads/2020/02/Policy-Brief-1-28-20.pdf>.

## Conclusion

Thank you for your time and consideration. The Children's Defense Fund – New York looks forward to working with you on a State budget that improves the health and well-being of children, youth and families in marginalized communities in New York.

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