



# BUDGET AND POLICY BRIEF

## Office of the New York City Comptroller Scott M. Stringer

BUREAU OF FISCAL & BUDGET STUDIES AND BUREAU OF POLICY & RESEARCH

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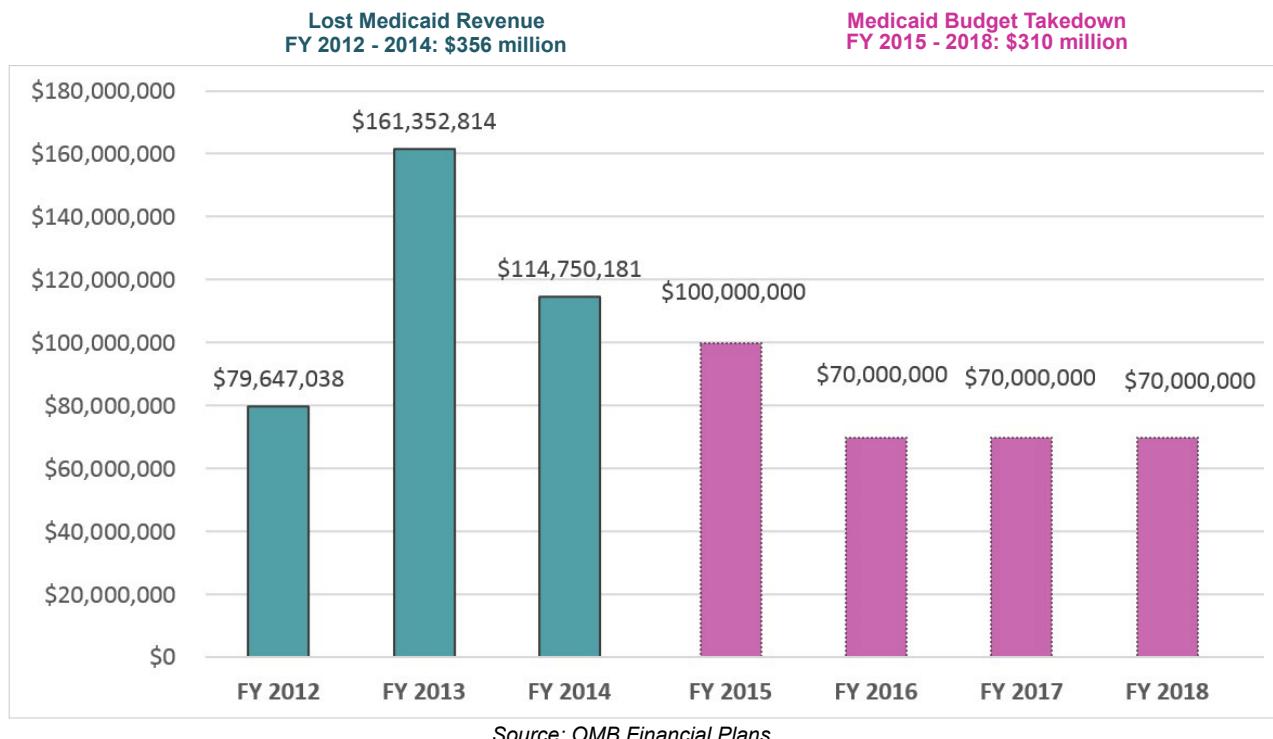
### Money Left on the Table

#### *A Review of Federal Medicaid Reimbursement to the New York City Department of Education*

The New York City Department of Education (DOE) failed to recoup a cumulative \$356 million in federal Medicaid dollars for eligible special education services between Fiscal Years 2012 and 2014, forcing the redirection of other City funds to cover the shortfall, according to a new analysis conducted by City Comptroller Scott M. Stringer. By way of comparison, \$356 million in lost revenues is more than the entire universal pre-kindergarten budget for FY 2015.

As the most recent Financial Plan shows, the failure to effectively manage special education reimbursements is not projected to improve in the near future. Compared to earlier financial plan projections, the current FY 2015 budget reflects downward Medicaid adjustments for fiscal years 2015 – 2018 of a cumulative \$310 million, the Comptroller's analysis found, for a total of \$666 million in unrealized federal dollars "left on the table" over a seven year span.

### MEDICAID REVENUE REDUCTIONS





For many years, the process used by DOE for recouping federal Medicaid funds for special education services has been opaque and ineffective, leaving the public in the dark concerning what policies and protocols DOE uses to systematically apply for these federal dollars.

DOE continues to struggle to accurately estimate reimbursement. For instance, of the \$15 million in budgeted Medicaid revenue for FY 2013, DOE only realized \$5.6 million, leaving a hole of \$9.4 million that had to be filled with City funds. The current revenue budget for FY 2014 is a combination of money received and claims billed. Budgeted revenues were reduced from \$117 million to \$50 million. Of that, DOE has received only \$2.2 million and has billed for just an additional \$1,809.

DOE described the challenges of recouping federal funding for Medicaid-eligible services at a City Council hearing in 2012, attributing its reimbursement difficulties to policy changes made at the State level following a federal audit in 2005 and a subsequent settlement with the Department of Justice in 2009. These policy changes included heightened licensing, credentialing and compliance requirements for service providers and documentation requirements related to services provided to students as examples of particularly onerous regulations. DOE also referenced the sheer number of students with special needs in the City system — more than 170,000 — for whom such documentation was potentially required.

Notwithstanding the challenges posed by new requirements in the wake of the 2009 settlement, the recent history of DOE's Medicaid reimbursement program shows a consistent pattern of high estimates for attainable revenue, followed by sharply reduced projections at each subsequent step of the budget cycle. Using the City's own figures and projections, the Comptroller's analysis has exposed a timeline of mismanagement:

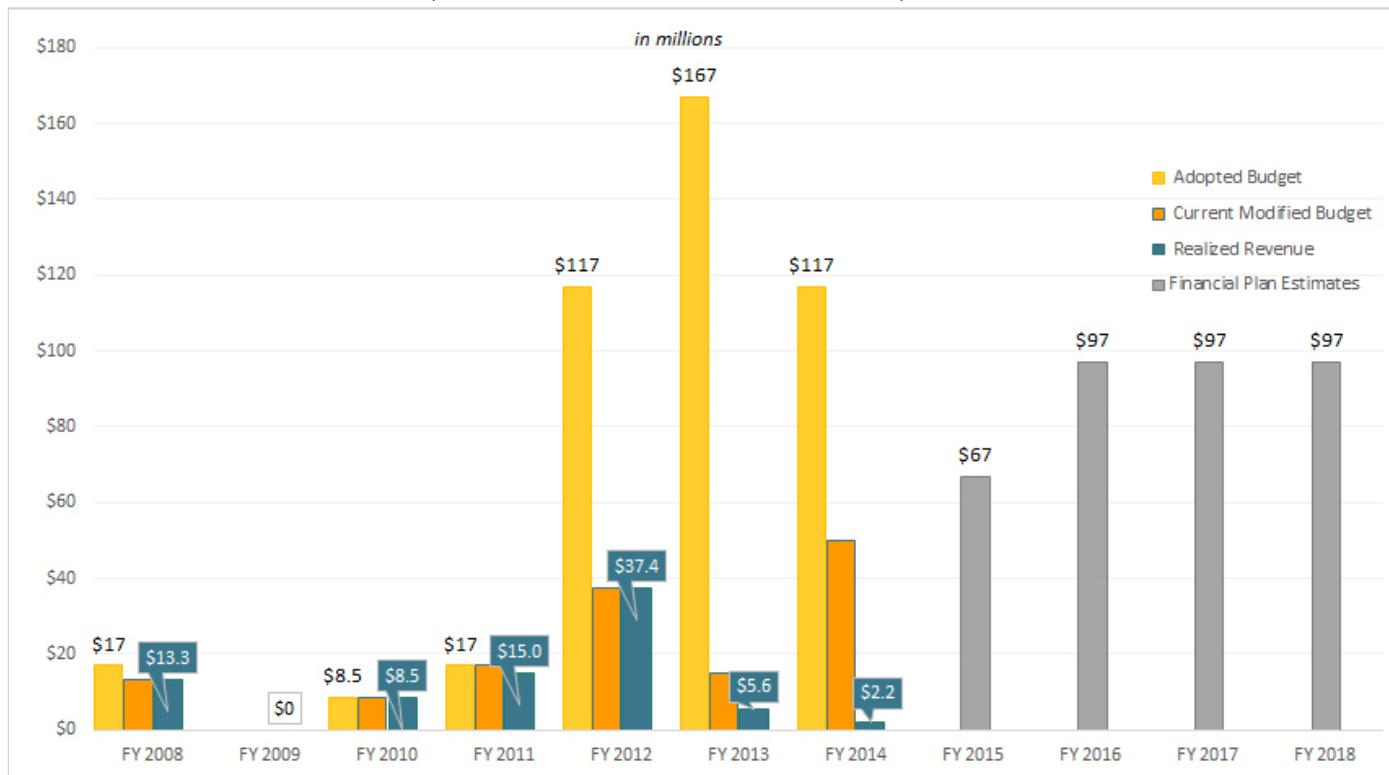
- The FY 2012 Adopted Budget projected that DOE would be able to successfully claim \$117 million in Medicaid reimbursement for special education services for that year.
- In the spring of 2012, the City's FY 2013 Executive Budget modified that expectation downwards by \$79.6 million — nearly 70 percent — to \$37.4 million in projected federal reimbursement for special education services. And that reimbursement also included claims from earlier years.
- The projected revenue in the FY 2013 Adopted Budget was \$167 million. The estimate was adjusted downward throughout year, reflecting DOE's low claiming activity. Ultimately, DOE was only able to claim \$5.6 million for eligible services — merely three percent of its initial projection.
- In the Executive Budget for FY 2014, released in April of 2013, and in nearly every Financial Plan since, DOE's Medicaid yearly revenue budget of \$167 million was again adjusted downwards to reflect its low claiming activity.
- To date, DOE has only received \$2.2 million for FY 2014's expenses.
- Taken together, in fiscal years 2012 through 2014, the City failed to recoup a cumulative \$356 million in revenue.
- Compared to earlier plans, the FY 2015 Adopted Budget reflects downward adjustments to each year of the financial plan — a cumulative \$310 million for fiscal years 2015 - 2018. In short, if there is no course correction, the City is poised to lose another \$310 million in federal funds that could support citywide services.

The \$356 million in lost revenue from the past three years was covered by supplanting funds from other areas of DOE's budget, drawing money from classrooms, facilities, lunches and textbooks.



## DOE'S MEDICAID REVENUE BUDGET

EXPECTED, MODIFIED AND REALIZED REVENUES, FY 2008 - 2018



Source: OMB Financial Plans and NYC Financial Management System database

Absent immediate correction, these losses will continue through FY 2015 and beyond. Indeed, the FY 2015 Adopted Budget and accompanying financial plan already reflects the Administration's limited expectations for DOE Medicaid reimbursement going forward. The budget preemptively decreased expected revenue by \$100 million for FY 2015 compared to earlier plans, and lowered the bar for DOE by reducing each of the out-years of the plan by \$70 million.

The foregone revenue from FYs 2012 through 2014, together with the \$310 million reduction to the current Financial Plan amounts to \$666 million in potentially lost revenue.

### A. BACKGROUND & HISTORY

The New York City Department of Education (NYC DOE) serves 1.1 million students in 1,800 schools, some 170,000 of whom are students with special needs. The unique needs of these students

can range from speech and language challenges to hearing, visual and physical differences, learning and intellectual disabilities and autism.<sup>1</sup>

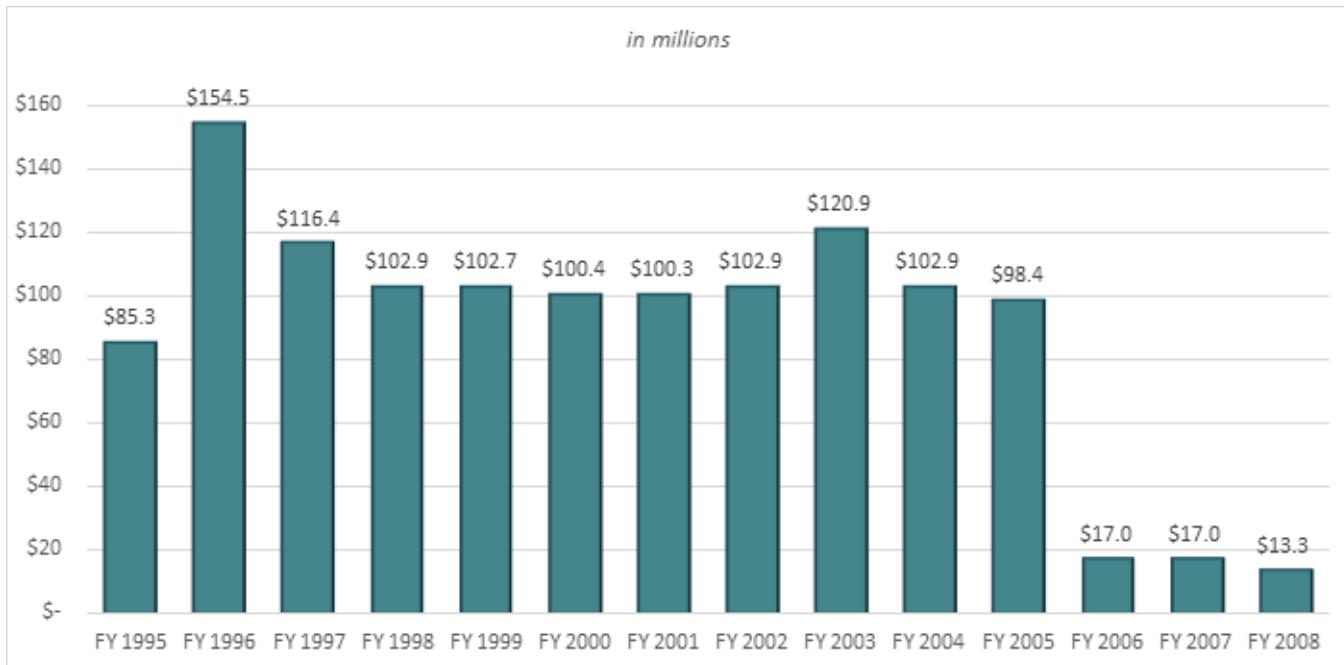
Under the federal Individuals with Disabilities Education Act (IDEA), school districts must provide students with disabilities a Free Appropriate Public Education (FAPE), defined as the “provision of education and related services without cost to the person with a disability or his or her parents or guardians.”<sup>2</sup> Such services and therapies are outlined in a legal document that school districts and families develop to address the needs of students with disabilities called an “Individualized Education Program” (IEP). IEPs may include speech, occupational and physical therapy, counseling, hearing and vision support, assignment of assistive technology devices, and specialized transportation to and from school.<sup>3</sup>

Until the late 1980s, the cost of educational services provided to students — including those with special



## NYC DOE MEDICAID REIMBURSEMENT HISTORY

REALIZED REVENUES, FY 1995 - 2008



Source: NYC Office of the Comptroller CAFRs

needs — was covered through a combination of State and City funds.<sup>4</sup> However, in 1988, Congress amended the Social Security Act to authorize the use of federal Medicaid dollars to pay for select special education services for students with disabilities.<sup>5</sup>

A year later, following implementation of the federal law, New York State established the “Preschool/School Supportive Health Services Program (SSHSP),” also known as “Medicaid in Education.”<sup>6</sup> Jointly administered by the New York State Department of Health (NYS DOH) and New York State Education Department (NYSED), the goal of SSHSP was to support the efforts of school districts and counties across the State to acquire federal reimbursement for “medically necessary services provided to Medicaid-eligible students with disabilities,” as outlined in students’ IEPs.<sup>7</sup>

### Federal Audit

Between 1995 and 2005, relying on New York State guidelines, DOE averaged \$108 million a year in Medicaid reimbursement, ranging from \$85.2 million to \$154.5 million at its peak in 1996.

In 2001, the United States Department of Justice (DOJ) and Office of the Inspector General (OIG) launched an investigation of Medicaid claims practices in New York State school districts and counties, including New York City. The investigation followed whistleblower complaints filed by a Watertown, NY speech therapist against New York State and Jefferson County, for the improper collection of Medicaid reimbursements for services rendered to children in several school districts.<sup>8</sup> These complaints, and subsequent litigation, triggered the U.S. OIG to conduct a full-scale audit of SSHSP.

In 2002, OIG launched a series of six New York State-centered audits, three of which focused on the City Department of Education’s Medicaid claims practices in speech therapy, transportation, and other services provided to children with special needs.<sup>9</sup> During the period that OIG conducted these audits, the New York State Department of Health announced it would “pend” all processed NYC DOE claims, essentially denying their approval for federal payment in School Year (SY) 2004/2005, for the first time, NYC DOE did not submit claims for the vast majority of Medicaid-eligible services.



In 2005, OIG released findings of its NYC DOE audits, revealing troubling deficiencies and compliance issues in the City's claims practices, which were guided by State procedures. OIG concluded that, in total, the City and State had acquired some \$1.078 billion in Medicaid funds that should have been "disallowed."<sup>10</sup> Following these audits, DOE experienced a dramatic decline in Medicaid reimbursement. For both Fiscal Years 2006 and 2007, DOE was only able to claim \$17 million. Reimbursement for FY 2008 dropped further, to \$13.3 million.

In July 2009, the DOJ, OIG, Centers for Medicare and Medicaid Services (CMS) and New York State reached a settlement agreement in which the State agreed to return \$539.75 million to the federal government, \$100 million of which would be paid back by New York City over ten installments of \$10 million each.<sup>11</sup> DOE was prohibited from submitting for any Medicaid reimbursement that year, as per State directive.

The State and City also agreed to take steps aimed at preventing future fraud, abuse and false Medicaid billing claims, via (a) the implementation of a compliance and integrity program; and (b) the submission of a new State Plan Amendment (SPA) that detailed "the nature and scope of Medicaid coverage and reimbursement including provider qualifications and encounter-based billing methodology."<sup>12</sup>

The City has never been able to achieve the reimbursement rates it did between 1995 and 2005. The 2010 reimbursement was \$8.5 million and the 2011 reimbursement was \$17 million. In 2012, revenue of \$37.3 million was a cumulative reimbursement for services from prior years when DOE was unable to comply with the State's claiming protocol.

### **State Plan Amendment**

Following the settlement between the State and the Federal government in July 2009, NYSED's Medicaid in Education Unit informed State school districts that until a new State Plan Amendment (SPA) was

in place, they could not submit claims for services rendered after July 1, 2009.<sup>13</sup>

In 2010, the Centers for Medicare and Medicaid Services approved New York State's SPA retroactive to September 2009, which once again permitted school districts to submit claims for a defined set of Medicaid-eligible services provided to students with disabilities.

These included:

- Medical Evaluations
- Medical Specialist Evaluations
- Psychological Evaluations
- Audiological Evaluations
- Physical Therapy
- Occupational Therapy
- Speech Therapy
- Psychological Counseling
- Skilled Nursing
- Special Transportation

Since that time, New York State has exercised exceptional caution in its submission of Medicaid claims for eligible services. Part of this caution is driven by the State's publication of a series of "Medicaid Alerts," which provide school districts guidance on exactly how, when and for what they can submit claims.<sup>14</sup> Between 2005 and 2014, the State released nearly 60 Medicaid Alerts, 16 of them in 2013 alone which, among other things:

- Suspended claims for administrative activities tied to the claims process;<sup>15</sup>
- Restricted the range of claims that districts could submit for transportation;<sup>16</sup>
- Increased requirements that providers had to meet to order and make referrals for reimbursable services;<sup>17</sup>



- Narrowed the timeframe/window during which districts could submit claims — from 22 months to just 12;<sup>18</sup> and
- Disenrolled New York State § 4201 schools — serving deaf, blind and multiply disabled students — as Medicaid billing providers.<sup>19</sup>

## Uncertain Future

While motivated by a desire to limit potential clawbacks against the State and its municipalities, these restrictive standards have served as a significant barrier in school districts' efforts to seek full reimbursement for Medicaid-eligible services rendered to students with disabilities. However, even within the existing structure, there is room to improve City-level processes that have long prevented NYC DOE from successfully recouping Medicaid funds. Making headway in these areas is critical, as the additional federal funds could be directed to address and support the needs of students in classrooms across the City.

In 2013 testimony before the New York City Council's Education Committee regarding the Fiscal Year 2014 Preliminary Expense Budget, former DOE Chancellor Dennis Walcott indicated that DOE was working to set up claimable areas of Medicaid, including speech, occupational and physical therapy, and nursing and transportation, so that reimbursement collection could reoccur automatically.<sup>20</sup>

Furthermore, according to the Chancellor's testimony, DOE had created "internal controls" and worked to develop "expert staff" in the area. This, he asserted, combined with a newly approved contract with the Public Consulting Group aimed at managing Medicaid requirements, would lead to an estimated potential annual claim of \$24 million.<sup>21</sup>

More than a year later, it remains unclear what progress, if any, DOE has made on any of these fronts. DOE's website does not currently provide information on:

- Personnel responsible for Medicaid reimbursement and compliance;
- Progress made in developing a coherent team to recoup the federal funds;
- The status of DOE's system to automatically collect Medicaid reimbursement for specific services, or;
- The success or failure of the operation as a whole to collect the federal dollars.

## B. RECOMMENDATIONS

The NYC Department of Education must improve its claims process so that City dollars are not supplanting available federal funding. DOE must clarify any problems in the claims process so that it can recoup its spending on Medicaid eligible special education services.

The Comptroller calls on DOE to convene a joint City, State and Federal task force to study methods of maximizing DOE's return on its on Medicaid spending. With over 1.1 million students, the New York City school district is the largest in the nation. While DOE must ensure it is doing all it can to properly claim for services provided, the state and federal governments should not abandon their respective responsibilities towards New York City children. Red tape and bureaucracy should not stand in the way of DOE being reimbursed for the vast array of services provided. When reimbursement to New York City better aligns with its expenses, it will be able to reinvest hundreds of millions of dollars back into our City, our children and our future.



## ENDNOTES

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