

# STATE OF NEW YORK

6479

2021-2022 Regular Sessions

## IN SENATE

April 30, 2021

Introduced by Sen. AKSHAR -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health

AN ACT to amend the mental hygiene law, the state finance law and the executive law, in relation to implementing statewide opioid settlement agreements and creating an opioid settlement fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The mental hygiene law is amended by adding a new article 26 to read as follows:

### ARTICLE 26

#### STATEWIDE OPIOID SETTLEMENT AGREEMENTS

##### Section 26.01 Definitions.

##### 26.02 Implementation.

##### 26.03 Limitation on authority of government entities to bring lawsuits.

##### § 26.01 Definitions.

As used in this article, the following terms shall have the following meanings:

1. "Advisory board" means an advisory board jointly established within the office of mental health and the office of addiction services and supports pursuant to section 26.02 of this article.

2. "Approved uses" means any opioid or substance use disorder related services, supports, or programs that fall within the list of uses defined in any statewide opioid settlement agreement.

3. "Direct share subdivision" means every county of New York outside the city of New York and Nassau and Suffolk counties.

4. "Government entity" means (a) the state of New York and each of its departments, agencies, divisions, boards, commissions and/or instrumentalities, and (b) any governmental subdivision within the boundaries of the state of New York, including, but not limited to, counties, municipalities, districts, towns and/or villages, and any of their subdivi-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 sions, special districts and any department, agency, division, board,  
2 commission and/or instrumentality thereof.

3 5. "New York subdivisions" means each county, city, town, or village  
4 in the state of New York.

5 6. "Participating entities" means participating entities as such term  
6 is defined in any statewide opioid settlement agreement.

7 7. "Opioid settlement fund" means the fund created by the statewide  
8 opioid agreements and section ninety-seven-bbbbb of the state finance  
9 law, the funds of which shall be used or distributed by the commissioner  
10 of mental health and the commissioner of addiction services and supports  
11 for the purposes of opioid abatement.

12 8. "Released entities" means released entities as such term is defined  
13 in the statewide opioid settlement agreements.

14 9. "Statewide opioid settlement agreements" means settlement agree-  
15 ments, and related documents, entered into by the state and certain  
16 opioid manufacturers, distributors, and related entities. Copies of such  
17 agreements, including any amendments thereto, shall be kept on file by  
18 the attorney general, who shall make such available for inspection and  
19 copying pursuant to the provisions of article six of the public officers  
20 law.

21 § 26.02 Implementation.

22 1. Powers and duties. (a) Each year the commissioner of mental health  
23 and the commissioner of addiction services and supports, in consultation  
24 with the commissioner of health, shall allocate funds contained within  
25 the opioid settlement fund, established pursuant to section ninety-sev-  
26 en-bbbbb of the state finance law, consistent with and subject to the  
27 terms of any statewide opioid settlement agreement. Each New York subdi-  
28 vision shall, as a condition of the receipt of such funds, certify at  
29 the end of each fiscal year for which it receives such funds that all  
30 funds provided to it under this provision of the agreements were spent  
31 on projects and programs that constitute approved uses and provided that  
32 such New York subdivision complies with the reporting requirements set  
33 forth in this article.

34 (b) Each year the commissioner of mental health and the commissioner  
35 of addiction services and supports, in consultation with the commission-  
36 er of health, shall set aside funds, consistent with the terms of any  
37 statewide opioid settlement agreements, for spending to: (i) fund state  
38 projects that constitute approved uses, and (ii) carry out the duties of  
39 the office of mental health, the office of addiction services and  
40 supports and the advisory board under this article, including oversight  
41 and administration of the opioid settlement fund and the advisory board.

42 (c) The commissioner of mental health and the commissioner of  
43 addiction services and supports, in consultation with the commissioner  
44 of health, and with the advice of the advisory board, shall have the  
45 ability to amend the list of approved uses to add additional approved  
46 uses at specified intervals in response to changing opioid and substance  
47 use disorder needs in the state. Categories and subcategories may be  
48 removed from the list of approved uses only with the approval of not  
49 less than three-fourths of the members of the advisory board.

50 2. Rule promulgation. The commissioner of mental health and the  
51 commissioner of addiction services and supports, in consultation with  
52 the commissioner of health, may issue rules and regulations necessary to  
53 effectuate the requirements of this section.

54 3. Oversight and auditing. The commissioner of mental health and the  
55 commissioner of addiction services and supports, in consultation with  
56 the commissioner of health, shall engage in oversight and audits of

1 services, supports, and programs funded through the opioid settlement  
2 fund.

3 4. Reporting requirements. (a) Consistent with and subject to any  
4 statewide opioid settlement agreement, each New York subdivision that  
5 receives funds from the opioid settlement fund under any statewide  
6 opioid settlement agreements shall annually provide to the office of  
7 mental health and the office of addiction services and supports a  
8 detailed accounting of the spending of such funds as well as analysis  
9 and evaluation of the services, supports and programs it has funded.  
10 Such accounting shall be provided on or before November first each year.  
11 The office of mental health and the office of addiction services and  
12 supports may withhold future funds from any New York subdivision that is  
13 delinquent in providing such reporting, until the required report is  
14 submitted.

15 (b) The commissioner of mental health and the commissioner of  
16 addiction services and supports shall annually provide the speaker of  
17 the assembly and the temporary president of the senate a detailed  
18 accounting of the spending of all monies in the opioid settlement fund,  
19 any spending by the direct share subdivisions, any spending by New York  
20 city and Nassau and Suffolk counties, as well as an analysis and evalu-  
21 ation of the services, supports and programs funded. This accounting  
22 shall be provided on or before February first each year. In consultation  
23 with the advisory board, the commissioners shall also report annually  
24 the results of research funded by funds from these agreements, the  
25 status of any outstanding audits, and the non-binding recommendations of  
26 the advisory board.

27 5. Advisory board. There is hereby jointly established within the  
28 office of mental health and the office of addiction services and  
29 supports an advisory board on addressing the opioid epidemic consisting  
30 of seventeen voting members, and a non-voting chairperson. Each member  
31 of the advisory board shall have one vote, with all actions being taken  
32 by an affirmative vote of the majority of present members.

33 (a) Appointments to the advisory board. The governor shall appoint  
34 four voting members, and the non-voting chairperson, to the advisory  
35 board. The speaker of the assembly and the temporary president of the  
36 senate shall each appoint two voting members, the minority leader of the  
37 senate and the minority leader of the assembly shall each appoint one  
38 voting member, and the attorney general and the mayor of the city of New  
39 York shall each appoint one voting member. The remaining five voting  
40 members shall be appointed by the governor upon recommendation of the  
41 following: one from the New York state association of counties, one from  
42 the conference of local mental hygiene directors, one from the alcohol-  
43 ism and substance abuse providers of New York state, one from friends of  
44 recovery - New York, and one from the coalition of medication assisted  
45 treatment providers and advocates. Such appointments shall be recom-  
46 mended no later than sixty days after the effective date of this arti-  
47 cle. Advisory board membership shall include persons, to the extent  
48 practicable, who have expertise, experience, and education in public  
49 health policy and research, medicine, substance use disorder and  
50 addiction treatment, mental health services, harm reduction, public  
51 budgeting, and also include representatives of communities that have  
52 been disproportionately impacted by opioid addiction. Additionally, the  
53 membership of the board shall be representative of the racial and ethnic  
54 demographics of the state and reflect the geographic regions of the  
55 state. Each member shall be appointed to serve three-year terms and in

1 the event of a vacancy, the vacancy shall be filled in the manner of the  
2 original appointment for the remainder of the term.

3 (b) Meetings of the advisory board. The advisory board shall hold no  
4 fewer than six public meetings annually, to be publicized and located in  
5 a manner reasonably designed to facilitate attendance by residents  
6 throughout the state. The advisory board shall function in a manner  
7 consistent with New York's open meetings law, and with the Americans  
8 with disabilities act. A majority of the appointed voting membership of  
9 the advisory board shall constitute a quorum.

10 (c) Payment and ethics. Members of the advisory board shall receive no  
11 compensation but shall be reimbursed for reasonable expenses. The  
12 members of the advisory board and all staff shall be subject to the  
13 applicable provisions of the public officers law. Members of the board  
14 shall not take any action to direct funding from the opioid settlement  
15 fund to any entity in which they or their family members have any inter-  
16 est, direct or indirect, or receive any commission or profit whatsoever,  
17 direct or indirect. Members of the board shall recuse themselves from  
18 any discussion or vote relating to such interest.

19 (d) Staff and administration. The office of mental health and the  
20 office of addiction services and supports shall provide staff to assist  
21 with the functions of the advisory board.

22 (e) Responsibilities. The advisory board shall make evidence-based  
23 recommendations regarding specific opioid settlement priorities and  
24 expenditures from the opioid settlement fund from which any approved  
25 expenditures shall be selected for approved uses. In carrying out its  
26 obligations to provide such recommendations, the advisory board may  
27 consider local, state and federal initiatives and activities related to  
28 education, prevention, treatment, services and programs for individuals  
29 and families experiencing and affected by opioid use disorder; recommend  
30 statewide or regional priorities to address the state's opioid epidemic;  
31 recommend statewide or regional funding with respect to specific  
32 programs or initiatives; recommend measurable outcomes to determine the  
33 effectiveness of funds expended for approved uses; and monitor the level  
34 of permitted administrative expenses. To the extent that either commis-  
35 sioner chooses not to follow a recommendation of the advisory board, he  
36 or she shall make publicly available, within fourteen days after such  
37 decision is made, a written explanation of the reasons for the decision  
38 and allow fourteen days for the advisory board to respond to such public  
39 explanation.

40 Additionally, the advisory board shall be responsible for overseeing  
41 and reporting on services, supports and programs related to addressing  
42 the opioid epidemic, developing priorities, goals and recommendations  
43 for spending on such projects and programs, working with the department  
44 of health to develop measurable outcomes for such projects and programs,  
45 and making recommendations for policy changes and research to fund and  
46 oversee other projects and programs related to addressing the opioid  
47 epidemic, including for outside grants.

48 § 26.03 Limitation on authority of government entities to bring  
49 lawsuits.

50 No government entity shall have the authority to bring released claims  
51 against the released entities. Any pending litigation filed after the  
52 effective date of this article asserting released claims brought by a  
53 government entity shall be dismissed with prejudice.

54 § 2. The state finance law is amended by adding a new section 97-bbbbb  
55 to read as follows:

1     § 97-bbbbbb. Opioid settlement fund. 1. There is hereby established in  
2 the joint custody of the comptroller and the commissioner of taxation  
3 and finance a special fund to be known as the opioid settlement fund.  
4 Such fund shall consist of moneys received by the state, as a result of  
5 the settlement of litigation made in connection with claims arising from  
6 the manufacture, marketing, distribution or dispensing of opioids.

7     2. The moneys in such fund shall only be appropriated or transferred  
8 consistent with the terms of any statewide opioid settlement agreements.  
9 If consistent with the terms of any such settlement agreements, moneys  
10 shall be used for public health education and prevention campaigns,  
11 treatment programs, harm reduction counseling services, housing  
12 services, and to assist local governments with services and expenses of  
13 providing jail-based substance use disorder treatment and transition  
14 services program pursuant to article nineteen of the mental hygiene law.

15     3. The moneys when allocated, shall be paid out of the fund on the  
16 audit and warrant of the comptroller on vouchers certified or approved  
17 by the commissioner of mental health, the commissioner of addiction  
18 services and supports or by an officer or employee of the office of  
19 mental health designated by the commissioner of mental health, or an  
20 officer or employee of the office of addiction services and supports  
21 designated by the commissioner of addiction services and supports in  
22 consultation with the advisory board established by section 26.02 of the  
23 mental hygiene law and consistent with the terms of the statewide opioid  
24 settlement agreements.

25     4. On or before February first each year, the commissioner of mental  
26 health and the commissioner of addiction services and supports shall  
27 provide a written report to the temporary president of the senate,  
28 speaker of the assembly, chair of the senate finance committee, chair of  
29 the assembly ways and means committee, chair of the senate committee on  
30 health, chair of the assembly health committee, chair of the senate  
31 committee on alcoholism and substance abuse, chair of the assembly  
32 committee on alcoholism and drug abuse, minority leader of the senate,  
33 minority leader of the assembly, ranking members of all such committees  
34 listed in this subdivision, and the state comptroller. Such report shall  
35 be made publicly available on the office of mental health, the office of  
36 addiction services and supports and the department of health's website.  
37 Such report shall include how the monies of the fund were utilized  
38 during the preceding calendar year, and shall include:

39     (i) the amount of money dispersed from the fund and the award process  
40 used for such disbursements;

41     (ii) names of recipients and the amount of awards awarded from the  
42 fund;

43     (iii) the amount awarded to each recipient;

44     (iv) the purposes for which such awards were granted; and

45     (v) a summary financial plan for such monies which shall include esti-  
46 mates of all receipts and all disbursements for the current and succeed-  
47 ing fiscal years, along with the actual results from the prior fiscal  
48 year.

49     § 3. Paragraph (b) of subdivision 16 of section 63 of the executive  
50 law, as added by section 4 of part HH of chapter 55 of the laws of 2014,  
51 is amended to read as follows:

52     (b) Paragraph (a) of this subdivision shall not apply to any provision  
53 in the resolution of a claim or cause of action providing (1) moneys to  
54 be distributed to the federal government, to a local government, or to  
55 any holder of a bond or other debt instrument issued by the state, any  
56 public authority, or any public benefit corporation; (2) moneys to be

1 distributed solely or exclusively as a payment of damages or restitution  
2 to individuals or entities that were specifically injured or harmed by  
3 the defendant's or settling party's conduct and that are identified in,  
4 or can be identified by the terms of, the relevant judgment, stipu-  
5 lation, decree, agreement to settle, assurance of discontinuance, or  
6 relevant instrument resolving the claim or cause of action; (3) moneys  
7 recovered or obtained by the attorney general where application of para-  
8 graph (a) of this subdivision is prohibited by federal law, rule, or  
9 regulation, or would result in the reduction or loss of federal funds or  
10 eligibility for federal benefits pursuant to federal law, rule, or regu-  
11 lation; (4) moneys recovered or obtained by or on behalf of a public  
12 authority, a public benefit corporation, the department of taxation and  
13 finance, the workers' compensation board, the New York state higher  
14 education services corporation, the tobacco settlement financing corpo-  
15 ration, a state or local retirement system, an employee health benefit  
16 program administered by the New York state department of civil service,  
17 the Title IV-D child support fund, the lottery prize fund, the abandoned  
18 property fund, or an endowment of the state university of New York or  
19 any unit thereof or any state agency, provided that all of the moneys  
20 received or recovered are immediately transferred to the relevant public  
21 authority, public benefit corporation, department, fund, program, or  
22 endowment; (5) moneys to be refunded to an individual or entity as (i)  
23 an overpayment of a tax, fine, penalty, fee, insurance premium, loan  
24 payment, charge or surcharge; (ii) a return of seized assets; or (iii) a  
25 payment made in error; ~~[and]~~ (6) moneys to be used to prevent, abate,  
26 restore, mitigate or control any identifiable instance of prior or ongo-  
27 ing water, land or air pollution; and (7) moneys obtained and distrib-  
28 uted under the terms of any statewide opioid settlement agreement, as  
29 defined in article twenty-six of the mental hygiene law, that provides  
30 for all or a portion of the settlement moneys to be deposited into the  
31 opioid settlement fund established in section ninety-seven-bbbbb of the  
32 state finance law.

33 § 4. This act shall take effect immediately. Effective immediately,  
34 the addition, amendment and/or repeal of any rule or regulation neces-  
35 sary for the implementation of this act on its effective date are  
36 authorized to be made and completed on or before such effective date.