

STATE OF NEW YORK

6395--B

2021-2022 Regular Sessions

IN ASSEMBLY

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Introduced by M. of A. WOERNER, McDONALD, JONES, ASHBY, TAGUE, McMAHON, GRIFFIN, WALSH -- read once and referred to the Committee on Alcoholism and Drug Abuse -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, the mental hygiene law, and the executive law, in relation to establishing an opioid settlement fund

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

Section 1. The state finance law is amended by adding a new section 99-nn to read as follows:

§ 99-nn. Opioid settlement fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "opioid settlement fund".

2. Money allocated to the opioid settlement fund shall be kept separate and shall not be commingled with any other funds in the custody of the state comptroller.

3. Money expended from such fund shall be used to supplement and not supplant or replace any other funds, including federal or state funding, which would otherwise have been expended for substance use disorder prevention, treatment, recovery or harm reduction services or programs. Provided further, general operating funds or baseline funding shall not be reduced due to monies expended from the fund.

4. Such fund shall consist of money received by the state as a result of the settlement of litigation with entities that manufactured, sold, distributed, dispensed or promoted opioids, made in connection with claims arising from the manufacturing, marketing, distributing, promoting or dispensing of opioids, as well as any funds received by the state as a result of a judgment, stipulation, decree, agreement to settle,

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

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assurance of discontinuance, or other legal instrument resolving any claim or cause of action against manufacturers, distributors, dispensers or vendors of opioids and related entities arising out of activities alleged to have contributed to increases in opioid addiction, whether filed or unfiled, actual or potential, and whether arising under common law, equity, or any provision of law, and all other monies appropriated, credited, or transferred thereto from any other fund or source pursuant to law. All monies shall remain in such fund unless and until directed by statute or appropriation.

5. Notwithstanding subdivision eleven of section four of this chapter, or subdivision sixteen of section sixty-three of the executive law, monies from the opioid settlement fund shall be available following appropriation by the legislature and shall only be expended on eligible expenditures as defined in section 25.18 of the mental hygiene law for prevention, treatment, harm reduction and recovery services related to substance use disorders and co-occurring mental illnesses in New York state pursuant to the terms of the statewide opioid settlement agreements as defined in section 25.18 of the mental hygiene law. Funding shall be distributed regionally and to ensure adequate geographic disbursement across the state in accordance with the statewide opioid settlement agreements. In addition to programs and services overseen by the office of addiction services and supports, funding may also be expended on programs and services overseen by the department of health, the office of mental health, the division of housing and community renewal or any other agency that may oversee an appropriate program or service that is considered an eligible expenditure as provided under section 25.18 of the mental hygiene law. Funding decisions shall include an emphasis on supporting programs that are culturally, linguistically and gender competent, trauma-informed, evidence-based and, where appropriate, employ individuals with lived experience as part of the services provided.

§ 2. The mental hygiene law is amended by adding a new section 25.18 to read as follows:

§ 25.18 Statewide opioid settlements.

(a) Definitions. As used in this section, the following terms shall have the following meanings: 1. Eligible expenditures shall include services and programs that are consistent with the approved uses and terms of the statewide opioid settlement agreement and include but not be limited to, programs:

(i) to prevent substance use disorders through an evidence-based youth-focused public health education and prevention campaign, including school-based prevention and health care services and programs to reduce the risk of substance use by school-aged children;

(ii) to develop and implement statewide public education campaigns to reduce stigma against individuals with a substance use disorder, provide information about the risks of substance use, best practices for addressing substance use disorders, and information on how to locate services that reduce the adverse health consequences associated with substance use disorders or provide treatment for substance use disorders;

(iii) to provide substance use disorder treatment and early recovery programs for youth and adults, with an emphasis on programs that provide a continuum of care that includes screening and assessment for substance use disorders and co-occurring disorders, active treatment, family involvement, case management, relapse management for substance use and other co-occurring behavioral health disorders, vocational services,

1 literacy services, parenting classes, family therapy and counseling
2 services, crisis services, recovery services, evidence-based treatments,
3 medication-assisted treatments, including medication assisted treatment
4 provided in correctional facilities, psychiatric medication, psychother-
5 apy and transitional services programs;

6 (iv) to provide harm reduction counseling and services to reduce the
7 adverse health consequences associated with substance use disorders,
8 including overdose prevention and prevention of communicable diseases
9 related to substance use, provided by a substance use disorder service
10 provider or qualified community-based organization;

11 (v) to provide housing services for people who are recovering from a
12 substance use disorder. Such housing services shall be appropriate,
13 based on the individual's current need and stage of recovery. Such hous-
14 ing services may include but are not limited to supportive housing
15 services;

16 (vi) to support community-based programs that reduce the likelihood of
17 criminal justice involvement for individuals who have or are at risk of
18 having a substance use disorder;

19 (vii) to provide programs for pregnant women and new parents who
20 currently or formerly have had a substance use disorder and newborns
21 with neonatal abstinence syndrome; and

22 (viii) to provide vocational and educational training for individuals
23 with or at risk for a substance use disorder.

24 2. "Government entity" means (i) departments, agencies, divisions,
25 boards, commissions and/or instrumentalities of the state of New York
26 including, the department of financial services, the superintendent of
27 the department of financial services, and the New York liquidation
28 bureau, provided however it shall not include the department of law; and

29 (ii) any governmental subdivision within the boundaries of the state
30 of New York, including, but not limited to, counties, municipalities,
31 districts, towns and/or villages, and any of their subdivisions, special
32 districts and school districts, and any department, agency, division,
33 board, commission and/or instrumentality thereof.

34 3. "Participating entities" means participating entities as such term
35 is defined in any statewide opioid settlement agreement.

36 4. "Opioid settlement fund" means the fund created by the statewide
37 opioid agreements and section ninety-nine-nn of the state finance law,
38 the funds of which shall be used or distributed by the commissioners, as
39 authorized by the legislature by statute or appropriation, for the
40 purposes of preventing addiction and reducing the harms caused by the
41 overdose and substance use disorder epidemic consistent with the terms
42 of any statewide opioid settlement agreement.

43 5. "Released claims" means released claims as such term is defined in
44 the statewide opioid settlement agreements.

45 6. "Released entities" means released entities as such term is defined
46 in the statewide opioid settlement agreements.

47 7. "New York subdivisions" means each county, city, town, village, or
48 special district in the state of New York.

49 8. "Statewide opioid settlement agreements" means agreements of state-
50 wide applicability, including but not limited to consent judgments,
51 consent decrees filed or unfilled, and related agreements or documents
52 between the state and certain opioid manufacturers, distributors,
53 dispensers, consultants, chain pharmacies, related entities, and/or the
54 New York subdivisions, to provide remuneration for conduct related to
55 the manufacture, promotion, dispensing, sale, and/or distribution of
56 opioid products. Copies of such agreements, including any amendments

1 thereto, shall be kept on file by the attorney general, who shall make
2 such available for inspection and copying pursuant to the provisions of
3 article six of the public officers law.

4 (b) Eligible expenditures for opioid settlement funds. 1. The legisla-
5 ture shall appropriate funds to be used for eligible expenditures that
6 are consistent with the approved uses and terms of the statewide opioid
7 settlement agreement. Such expenditures shall be distributed regionally
8 and in accordance with the statewide opioid settlement agreements to
9 ensure adequate geographic disbursement across the state.

10 2. New York subdivisions shall apply to the appropriate agency for
11 funding for eligible expenditures consistent with the terms of any
12 statewide opioid settlement agreement. Any New York subdivision which
13 receives funding pursuant to this section shall be required to annually
14 certify to the appropriate state agency in which funding was received
15 that such New York subdivision is utilizing such funds in accordance
16 with the requirements of this section and section ninety-nine-nn of the
17 state finance law.

18 3. Each New York subdivision shall provide a detailed accounting of
19 how the funds were used as well as an analysis and evaluation of the
20 services and programs funded. Such information shall be included in the
21 report provided pursuant to paragraph ten of subdivision (c) of this
22 section.

23 (c) Advisory board establishment and responsibilities. 1. The opioid
24 settlement board is hereby established under the office of addiction
25 services and supports to provide recommendations on how funding received
26 by the opioid settlement fund pursuant to section ninety-nine-nn of the
27 state finance law shall be allocated by the legislature. Recommenda-
28 tions shall be evidenced-based and may take into consideration federal,
29 state or local initiatives and activities that have shown to be effec-
30 tive in preventing and treating substance use disorders as well as main-
31 taining recovery and assisting with the collateral effects of substance
32 use disorders for individuals and their families or support system.
33 Such recommendations shall also take into account any gaps in access to
34 services or programs identified as eligible expenditures and incorporate
35 mechanisms for measurable outcomes for determining the effectiveness of
36 funds expended. The office and any other relevant agency that provides
37 or regulates eligible expenditures shall provide any necessary staff,
38 resources and technical assistance to assist with the functions of the
39 advisory board. Such assistance shall be supported pursuant to an
40 appropriation by the legislature, in accordance with the statewide
41 opioid settlement agreements.

42 2. The opioid settlement board may make recommendations to the legis-
43 lature regarding the addition or removal of any eligible expenditures in
44 response to changing substance use disorder needs in the state. No
45 recommendation may be made to remove an eligible expenditure without
46 three-fourths approval of present board members.

47 3. The opioid settlement board shall consist of nineteen members
48 appointed as follows:

49 (i) the commissioner of addiction services and supports, the commis-
50 sioner of mental health, and the commissioner of health, or their desig-
51 nees, serving as ex-officio non-voting members;

52 (ii) two appointments by the governor;

53 (iii) two appointments by the temporary president of the senate;

54 (iv) two appointments by the speaker of the assembly;

55 (v) two appointments by the attorney general;

56 (vi) one appointment by the mayor of the city of New York; and

(vii) seven appointments from a list of nominees submitted, pursuant to a statewide opioid settlement agreement, by an association of counties that represents at least ninety percent of the counties in New York, counting both by number of counties and by population at the time such statewide opioid settlement agreement was finalized. Such appointments shall be selected as follows: two from the temporary president of the senate, two from the speaker of the assembly, one from the minority leader of the senate, one from the minority leader of the assembly and one from the attorney general.

4. Each member shall be appointed to serve three-year terms and in the event of a vacancy, the vacancy shall be filled in the manner of the original appointment for the remainder of the term. The appointed members and commissioners shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties as board members.

5. Every effort shall be made to ensure a balanced and diverse board, representing the geographic regions and racial and ethnic demographics of the state as well as those with lived experiences of a substance use disorder. Appointed members shall have an expertise in public and behavioral health, substance use disorder treatment, harm reduction, criminal justice, or drug policy. Further, the board shall include individuals with personal or professional experience with substance use and addiction issues and co-occurring mental illnesses as well as providing services to those that have been disproportionately impacted by the enforcement and criminalization of addiction.

6. The chairperson of the board and the vice chairperson shall be elected from among the members of the board by the members of such board. The vice chairperson shall represent the board in the absence of the chairperson at all official board functions. A majority of the voting members of the board shall constitute a quorum.

7. Members of the board shall not take any action to direct funding from the opioid settlement fund to any entity in which they or their family members have any interest, direct or indirect, or receive any commission or profit whatsoever, direct or indirect. Members of the board shall recuse themselves from any discussion or vote relating to such interest.

8. The board shall meet quarterly, to ensure recommendations are updated and consistent with the needs of the state. Such meetings shall be held in accordance with article seven of the public officers law and pursuant to the federal americans with disabilities act of nineteen hundred ninety, as amended.

9. On or before November first of each year, beginning November first, two thousand twenty-one, the board shall provide their recommendations for how such funds shall be appropriated, consistent with the requirements of this section and section ninety-nine-nn of the state finance law. Such recommendations shall be provided in a written report to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the senate alcoholism and substance abuse committee and the chair of the assembly alcoholism and drug abuse committee.

10. On or before November first of each year, beginning one year after the initial deposit of monies in the opioid settlement fund, the relevant commissioners, in consultation with the advisory board, shall provide a written report to the governor, temporary president of the senate, speaker of the assembly, chair of the senate finance committee,

1 chair of the assembly ways and means committee, chair of the senate
2 alcoholism and substance abuse committee and chair of the assembly alco-
3 holism and drug abuse committee. Such report shall be presented as a
4 consolidated dashboard and be made publicly available on the respective
5 offices' websites. The report shall include the following information:
6 (i) the baseline funding for any entity that receives funding from the
7 opioid settlement fund, prior to the receipt of such opioid settlement
8 funds; (ii) how funds deposited in the opioid settlement fund had been
9 utilized in the preceding calendar year, including but not limited to:
10 (A) the amount of money disbursed from the fund and the award process
11 used for such disbursement, if applicable; (B) the names of the recipi-
12 ents, the amounts awarded to such recipient and details about the
13 purpose such funds were awarded for, including what specific services
14 and programs the funds were used on and what populations such services
15 or programs served; (C) the main criteria utilized to determine the
16 award, including how the program or service assists to reduce the
17 effects of substance use disorders; (D) an analysis of the effectiveness
18 of the services and/or programs that received opioid settlement funding
19 in their efforts to reduce the effects of the overdose and substance use
20 disorder epidemic. Such analysis shall utilize evidence-based uniform
21 metrics when reviewing the effects the service and/or program had on
22 prevention, harm reduction, treatment, and recovery advancements; (E)
23 any relevant information provided by the New York subdivisions pursuant
24 to this section; and (F) any other information the commissioner deems
25 necessary for the legislature to determine appropriate future awards and
26 ensure such funding is not being used to supplant local, state, or
27 federal funding.

28 (d) Limitation on authority of government entities to bring lawsuits.
29 No government entity shall have the authority to assert released claims
30 against entities released by the department of law in a statewide opioid
31 settlement agreement executed by the department of law and the released
32 party on or after June first, two thousand twenty-one. Any action filed
33 by a government entity after June thirtieth, two thousand nineteen
34 asserting released claims against a manufacturer, distributor, or
35 dispenser of opioid products shall be extinguished by operation of law
36 upon being released by the department of law in such statewide opioid
37 settlement agreement.

38 § 3. Section 19.07 of the mental hygiene law is amended by adding a
39 new subdivision (n) to read as follows:

40 (n) The office in consultation with the office of mental health, the
41 department of health, the division of housing and community renewal and
42 any other agency that may oversee an appropriate program or service
43 shall monitor and ensure funds appropriated pursuant to section ninety-
44 nine-nn of the state finance law are expended for services and programs
45 in accordance with such section.

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

49 (b) Paragraph (a) of this subdivision shall not apply to any provision
50 in the resolution of a claim or cause of action providing (1) moneys to
51 be distributed to the federal government, to a local government, or to
52 any holder of a bond or other debt instrument issued by the state, any
53 public authority, or any public benefit corporation; (2) moneys to be
54 distributed solely or exclusively as a payment of damages or restitution
55 to individuals or entities that were specifically injured or harmed by
56 the defendant's or settling party's conduct and that are identified in,

1 or can be identified by the terms of, the relevant judgment, stipu-
2 lation, decree, agreement to settle, assurance of discontinuance, or
3 relevant instrument resolving the claim or cause of action; (3) moneys
4 recovered or obtained by the attorney general where application of para-
5 graph (a) of this subdivision is prohibited by federal law, rule, or
6 regulation, or would result in the reduction or loss of federal funds or
7 eligibility for federal benefits pursuant to federal law, rule, or regu-
8 lation; (4) moneys recovered or obtained by or on behalf of a public
9 authority, a public benefit corporation, the department of taxation and
10 finance, the workers' compensation board, the New York state higher
11 education services corporation, the tobacco settlement financing corpo-
12 ration, a state or local retirement system, an employee health benefit
13 program administered by the New York state department of civil service,
14 the Title IV-D child support fund, the lottery prize fund, the abandoned
15 property fund, or an endowment of the state university of New York or
16 any unit thereof or any state agency, provided that all of the moneys
17 received or recovered are immediately transferred to the relevant public
18 authority, public benefit corporation, department, fund, program, or
19 endowment; (5) moneys to be refunded to an individual or entity as (i)
20 an overpayment of a tax, fine, penalty, fee, insurance premium, loan
21 payment, charge or surcharge; (ii) a return of seized assets; or (iii) a
22 payment made in error; ~~and~~ (6) moneys to be used to prevent, abate,
23 restore, mitigate or control any identifiable instance of prior or ongo-
24 ing water, land or air pollution; and (7) moneys obtained as a result of
25 a settlement agreement which resulted from litigation with entities that
26 manufactured, sold, distributed, dispensed or promoted opioids made in
27 connection with claims arising from the manufacturing, marketing,
28 distributing, promoting or dispensing of opioids, as well as any funds
29 received by the state as a result of a judgment, stipulation, decree,
30 agreement to settle, assurance of discontinuance, or other legal instru-
31 ment resolving any claim or cause of action against manufacturers,
32 distributors, dispensers or vendors of opioids and related entities
33 arising out of activities alleged to have contributed to increases in
34 opioid addiction, whether filed or unfiled, actual or potential, and
35 whether arising under common law, equity, or any provision of law.

36 § 5. Paragraph (b) of subdivision 11 of section 4 of the state finance
37 law, as added by section 1 of part HH of chapter 55 of the laws of 2014,
38 is amended to read as follows:

39 (b) Paragraph (a) of this subdivision shall not apply to (1) moneys to
40 be distributed to the federal government, to a local government, or to
41 any holder of a bond or other debt instrument issued by the state, any
42 public authority, or any public benefit corporation; (2) moneys to be
43 distributed solely or exclusively as a payment of damages or restitution
44 to individuals or entities that were specifically injured or harmed by
45 the defendant's or settling party's conduct and that are identified in,
46 or can be identified by the terms of, the relevant judgment, agreement
47 to settle, assurance of discontinuance, or relevant instrument resolving
48 the claim or cause of action; (3) moneys recovered or obtained by a
49 state agency or a state official or employee acting in their official
50 capacity where application of paragraph (a) of this subdivision is
51 prohibited by federal law, rule, or regulation, or would result in the
52 reduction or loss of federal funds or eligibility for federal benefits
53 pursuant to federal law, rule, or regulation; (4) moneys recovered or
54 obtained by or on behalf of a public authority, a public benefit corpo-
55 ration, the department of taxation and finance, the workers' compen-
56 sation board, the New York state higher education services corporation,

1 the tobacco settlement financing corporation, a state or local retire-
2 ment system, an employee health benefit program administered by the New
3 York state department of civil service, the Title IV-D child support
4 fund, the lottery prize fund, the abandoned property fund, or an endow-
5 ment of the state university of New York or any unit thereof or any
6 state agency, provided that all of the moneys received or recovered are
7 immediately transferred to the relevant public authority, public benefit
8 corporation, department, fund, program, or endowment; (5) moneys to be
9 refunded to an individual or entity as (i) an overpayment of a tax,
10 fine, penalty, fee, insurance premium, loan payment, charge or
11 surcharge; (ii) a return of seized assets, or (iii) a payment made in
12 error; ~~and~~ (6) moneys to be used to prevent, abate, restore, mitigate,
13 or control any identifiable instance of prior or ongoing water, land or
14 air pollution; and (7) moneys obtained as a result of a settlement
15 agreement which resulted from litigation with entities that manufac-
16 tured, sold, distributed, dispensed or promoted opioids made in
17 connection with claims arising from the manufacturing, marketing,
18 distributing, promoting or dispensing of opioids, as well as any funds
19 received by the state as a result of a judgment, stipulation, decree,
20 agreement to settle, assurance of discontinuance, or other legal instru-
21 ment resolving any claim or cause of action against manufacturers,
22 distributors, dispensers or vendors of opioids and related entities
23 arising out of activities alleged to have contributed to increases in
24 opioid addiction, whether filed or unfiled, actual or potential, and
25 whether arising under common law, equity, or any provision of law.

26 § 6. This act shall take effect immediately.