

# STATE OF NEW YORK

6395--B

2021-2022 Regular Sessions

## IN ASSEMBLY

March 17, 2021

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:

1 Section 1. The state finance law is amended by adding a new section  
2 99-nn to read as follows:

3 § 99-nn. Opioid settlement fund. 1. There is hereby established in the  
4 joint custody of the state comptroller and the commissioner of taxation  
5 and finance a special fund to be known as the "opioid settlement fund".

6 2. Money allocated to the opioid settlement fund shall be kept sepa-  
7 rate and shall not be commingled with any other funds in the custody of  
8 the state comptroller.

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

15 4. Such fund shall consist of money received by the state as a result  
16 of the settlement of litigation with entities that manufactured, sold,  
17 distributed, dispensed or promoted opioids, made in connection with  
18 claims arising from the manufacturing, marketing, distributing, promot-  
19 ing or dispensing of opioids, as well as any funds received by the state  
20 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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1 assurance of discontinuance, or other legal instrument resolving any  
2 claim or cause of action against manufacturers, distributors, dispensers  
3 or vendors of opioids and related entities arising out of activities  
4 alleged to have contributed to increases in opioid addiction, whether  
5 filed or unfiled, actual or potential, and whether arising under common  
6 law, equity, or any provision of law, and all other monies appropriated,  
7 credited, or transferred thereto from any other fund or source pursuant  
8 to law. All monies shall remain in such fund unless and until directed  
9 by statute or appropriation.

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

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

34 § 25.18 Statewide opioid settlements.

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

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

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

51 (iii) to provide substance use disorder treatment and early recovery  
52 programs for youth and adults, with an emphasis on programs that provide  
53 a continuum of care that includes screening and assessment for substance  
54 use disorders and co-occurring disorders, active treatment, family  
55 involvement, case management, relapse management for substance use and  
56 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 unfiled, 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

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

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

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

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

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

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

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

52 10. On or before November first of each year, beginning one year after  
53 the initial deposit of monies in the opioid settlement fund, the rele-  
54 vant commissioners, in consultation with the advisory board, shall  
55 provide a written report to the governor, temporary president of the  
56 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.