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

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

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

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

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

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

§ 26.02 Implementation.

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

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

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

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

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

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

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

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

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

(a) Appointments to the advisory board. The governor shall appoint four voting members, and the non-voting chairperson, to the advisory board. The speaker of the assembly and the temporary president of the senate shall each appoint two voting members, the minority leader of the senate and the minority leader of the assembly shall each appoint one voting member, and the attorney general and the mayor of the city of New York shall each appoint one voting member. The remaining five voting members shall be appointed by the governor upon recommendation of the following: one from the New York state association of counties, one from the conference of local mental hygiene directors, one from the alcoholism and substance abuse providers of New York state, one from friends of recovery - New York, and one from the coalition of medication assisted treatment providers and advocates. Such appointments shall be recommended no later than sixty days after the effective date of this article. Advisory board membership shall include persons, to the extent practicable, who have expertise, experience, and education in public health policy and research, medicine, substance use disorder and addiction treatment, mental health services, harm reduction, public budgeting, and also include representatives of communities that have been disproportionately impacted by opioid addiction. Additionally, the membership of the board shall be representative of the racial and ethnic demographics of the state and reflect the geographic regions of the state. 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.

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

(c) Payment and ethics. Members of the advisory board shall receive no compensation but shall be reimbursed for reasonable expenses. The members of the advisory board and all staff shall be subject to the applicable provisions of the public officers law. 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.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) the amount awarded to each recipient;

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

(v) a summary financial plan for such monies which shall include estimates of all receipts and all disbursements for the current and succeeding fiscal years, along with the actual results from the prior fiscal year.

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

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

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

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