

STATE OF NEW YORK

7194

2021-2022 Regular Sessions

IN SENATE

June 5, 2021

Introduced by Sens. RIVERA, HARCKHAM -- read twice and ordered printed,
and when printed to be committed to the Committee on Rules

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 Assem-
bly, 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,
21 assurance of discontinuance, or other legal instrument resolving any
22 claim or cause of action against manufacturers, distributors, dispensers
23 or vendors of opioids and related entities arising out of activities
24 alleged to have contributed to increases in opioid addiction, whether
25 filed or unfiled, actual or potential, and whether arising under common

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

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1 law, equity, or any provision of law, and all other monies appropriated,
2 credited, or transferred thereto from any other fund or source pursuant
3 to law. All monies shall remain in such fund unless and until directed
4 by statute or appropriation.

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

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

29 § 25.18 Statewide opioid settlements.

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

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

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

46 (iii) to provide substance use disorder treatment and early recovery
47 programs for youth and adults, with an emphasis on programs that provide
48 a continuum of care that includes screening and assessment for substance
49 use disorders and co-occurring disorders, active treatment, family
50 involvement, case management, relapse management for substance use and
51 other co-occurring behavioral health disorders, vocational services,
52 literacy services, parenting classes, family therapy and counseling
53 services, crisis services, recovery services, evidence-based treatments,
54 medication-assisted treatments, including medication assisted treatment
55 provided in correctional facilities, psychiatric medication, psychother-
56 apy and transitional services programs;

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

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

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

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

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

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

(ii) 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 subdivisions, special districts and school districts, and any department, agency, division, board, commission and/or instrumentality thereof.

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

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

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

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

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

8. "Statewide opioid settlement agreements" means agreements of statewide applicability, including but not limited to consent judgments, consent decrees filed or unfiled, and related agreements or documents between the state and certain opioid manufacturers, distributors, dispensers, consultants, chain pharmacies, related entities, and/or the New York subdivisions, to provide remuneration for conduct related to the manufacture, promotion, dispensing, sale, and/or distribution of opioid products. 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.

(b) Eligible expenditures for opioid settlement funds. 1. The legislature shall appropriate funds to be used for eligible expenditures that

1 are consistent with the approved uses and terms of the statewide opioid
2 settlement agreement. Such expenditures shall be distributed regionally
3 and in accordance with the statewide opioid settlement agreements to
4 ensure adequate geographic disbursement across the state.

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

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

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

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

42 3. The opioid settlement board shall consist of nineteen members
43 appointed as follows:

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

47 (ii) two appointments by the governor;

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

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

50 (v) two appointments by the attorney general;

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

52 (vii) seven appointments from a list of nominees submitted, pursuant
53 to a statewide opioid settlement agreement, by an association of coun-
54 ties that represents at least ninety percent of the counties in New
55 York, counting both by number of counties and by population at the time
56 such statewide opioid settlement agreement was finalized. Such appoint-

ments 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, chair of the assembly ways and means committee, chair of the senate alcoholism and substance abuse committee and chair of the assembly alcoholism and drug abuse committee. Such report shall be presented as a consolidated dashboard and be made publicly available on the respective offices' websites. The report shall include the following information:

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

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

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

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

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

44 (b) Paragraph (a) of this subdivision shall not apply to any provision
45 in the resolution of a claim or cause of action providing (1) moneys to
46 be distributed to the federal government, to a local government, or to
47 any holder of a bond or other debt instrument issued by the state, any
48 public authority, or any public benefit corporation; (2) moneys to be
49 distributed solely or exclusively as a payment of damages or restitution
50 to individuals or entities that were specifically injured or harmed by
51 the defendant's or settling party's conduct and that are identified in,
52 or can be identified by the terms of, the relevant judgment, stipu-
53 lation, decree, agreement to settle, assurance of discontinuance, or
54 relevant instrument resolving the claim or cause of action; (3) moneys
55 recovered or obtained by the attorney general where application of para-
56 graph (a) of this subdivision is prohibited by federal law, rule, or

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

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

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

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

21 § 6. This act shall take effect immediately.