

STATE OF NEW YORK

7870

IN SENATE

January 14, 2022

Introduced by Sen. RIVERA -- 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 Assembly, do enact as follows:

1 Section 1. Subdivisions 3, 4 and 5 of section 99-nn of the state
2 finance law, as added by chapter 190 of the laws of 2021, are amended to
3 read as follows:

4 3. Money expended from such fund shall be used consistent with the
5 terms of any statewide opioid settlement agreements as defined in
6 section 25.18 of the mental hygiene law. Moneys of the fund shall be
7 used to supplement and not supplant or replace any other funds, includ-
8 ing federal or state funding, which would otherwise have been expended
9 for substance use disorder prevention, treatment, recovery or harm
10 reduction services or programs. [~~Provided further, general operating~~
11 ~~funds or baseline funding shall not be reduced due to monies expended~~
12 ~~from the fund.~~]

13 4. [~~Such~~] Notwithstanding subdivision eleven of section four of this
14 chapter, such fund shall consist of money received by the state [~~as a~~
15 ~~result of the settlement of litigation with entities that manufactured,~~
16 ~~sold, distributed, dispensed or promoted opioids, made in connection~~
17 ~~with claims arising from the manufacturing, marketing, distributing,~~
18 ~~promoting or dispensing of opioids, as well as any funds received by the~~
19 ~~state as a result of a judgment, stipulation, decree, agreement to~~
20 ~~settle, assurance of discontinuance, or other legal instrument resolving~~
21 ~~any claim or cause of action against manufacturers, distributors,~~
22 ~~dispensers or vendors of opioids and related entities arising out of~~
23 ~~activities alleged to have contributed to increases in opioid addiction,~~
24 ~~whether filed or unfiled, actual or potential, and whether arising under~~
25 ~~common law, equity, or any provision of law, and all other monies appro-~~
26 ~~priated, credited, or transferred thereto from any other fund or source~~
27 ~~pursuant to law~~] pursuant to any statewide opioid settlement agreements
28 as defined in section 25.18 of the mental hygiene law. All [~~monies~~]

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

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1 ~~monies~~ shall remain in such fund unless and until directed by statute or
2 appropriation.

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

25 § 2. Section 25.18 of the mental hygiene law, as added by chapter 190
26 of the laws of 2021, is amended to read as follows:

27 § 25.18 Statewide opioid settlements.

28 (a) Definitions. As used in this section, the following terms shall
29 have the following meanings: 1. Eligible expenditures shall include
30 services and programs that are consistent with the approved uses and
31 terms of the statewide opioid settlement agreement ~~[and] as defined in~~
32 ~~this section, which may only~~ include ~~[but not be limited to, programs]~~:

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

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

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

55 (iv) to provide harm reduction counseling and services to reduce the
56 adverse health consequences associated with substance use disorders,

1 including overdose prevention and prevention of communicable diseases
2 related to substance use, provided by a substance use disorder service
3 provider or qualified community-based organization;

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

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

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

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

17 2. "Government entity" means (i) departments, agencies, divisions,
18 boards, commissions and/or instrumentalities of the state of New York
19 ~~[including]~~, excluding the department of financial services, provided
20 however, the department of financial services shall be considered a
21 government entity for purposes of claims or proceedings filed by it
22 against Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-
23 Janssen Pharmaceuticals, Inc., and/or Janssen Pharmaceutica, Inc.; the
24 superintendent of the department of financial services~~[,]~~; and ~~[the New~~
25 ~~York liquidation bureau, provided however it shall not include]~~ the
26 department of law; and

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

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

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

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

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

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

47 8. "Statewide opioid settlement agreements" means agreements of state-
48 wide applicability entered into on or after June first, two thousand
49 twenty-one by the office of the attorney general, including but not
50 limited to consent judgments, consent decrees filed or unfiled, and
51 related agreements or documents between the state and certain opioid
52 manufacturers, distributors, dispensers, consultants, chain pharmacies,
53 related entities, and/or the New York subdivisions, to provide remunera-
54 tion for conduct related to the manufacture, promotion, dispensing,
55 sale, and/or distribution of opioid products which are consistent with
56 subdivision sixteen of section sixty-three of the executive law. Copies

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

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

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

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

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

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

48 3. The opioid settlement board shall consist of [~~nineteen~~] twenty-one
49 members appointed as follows:

50 (i) the commissioner of addiction services and supports, the commis-
51 sioner of mental health, [~~and~~] the commissioner of health, and the
52 director of the division of budget, or their designees [~~,-serving as~~
53 ~~ex-officio non-voting members~~];

54 (ii) two appointments by the governor;

55 (iii) [~~two~~] three appointments by the temporary president of the
56 senate;

(iv) [~~two~~] three appointments by the speaker of the assembly;
(v) [~~two~~] one appointments by the attorney general;
(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~~] three from the governor, one from the temporary president of the senate, [~~two~~] one from the speaker of the assembly, one from the minority leader of the senate^[7] and 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, public finance, 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 at least 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, and the opioid settlement advisory board. Such report shall be presented as a consolidated dashboard and be made publicly available on the respective offices' websites. The report shall, to the extent practicable after making all diligent efforts to obtain such information, include the following ~~[information]~~: (i) the baseline funding for any entity that receives funding from the opioid settlement fund, prior to the receipt of such opioid settlement funds; (ii) how funds deposited in the opioid settlement fund had been utilized in the preceding calendar year, including but not limited to: (A) the amount of money disbursed from the fund and the award process used for such disbursement, if applicable; (B) the names of the recipients, the amounts awarded to such recipient and details about the purpose such funds were awarded for, including what specific services and programs the funds were used on and what populations such services or programs served; (C) the main criteria utilized to determine the award, including how the program or service assists to reduce the effects of substance use disorders; (D) an analysis of the effectiveness of the services and/or programs that received opioid settlement funding in their efforts to reduce the effects of the overdose and substance use disorder epidemic. Such analysis shall utilize evidence-based uniform metrics when reviewing the effects the service and/or program had on prevention, harm reduction, treatment, and recovery advancements; (E) any relevant information provided by the New York subdivisions pursuant to this section; and (F) any other information the commissioner deems necessary ~~[for the legislature to determine appropriate future awards and]~~ to help inform future appropriations and funding decisions, and ensure such funding is not being used to supplant local, state, or federal funding.

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

§ 3. Paragraph (b) of subdivision 16 of section 63 of the executive law, as amended by chapter 190 of the laws of 2021, 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, stipu-

lation, 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; (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] and/or~~ (7) ~~[moneys obtained as a result of a settlement agreement which resulted from 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, 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 unfilled, actual or potential, and whether arising under common law, equity, or any provision of law]~~ state moneys received as part of any statewide opioid settlement agreements as defined in section 25.18 of the mental hygiene law, to be spent on eligible expenditures as defined in section 25.18 of the mental hygiene law.

§ 4. Paragraph (b) of subdivision 11 of section 4 of the state finance law, as amended by chapter 190 of the laws of 2021, is amended to read as follows:

(b) Paragraph (a) of this subdivision shall not apply to (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, agreement to settle, assurance of discontinuance, or relevant instrument resolving the claim or cause of action; (3) moneys recovered or obtained by a state agency or a state official or employee acting in their official capacity 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

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

30 § 5. This act shall take effect on the same date and in the same
31 manner as chapter 190 of the laws of 2021, takes effect.