STATE OF NEW YORK

2466--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

Introduced by M. of A. REYES, GOTTFRIED, JACOBSON, PERRY, FRONTUS, MONTESANO, HEVESI, SIMON, CLARK, MEEKS, McMAHON, McDONALD -- 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

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 established within the office of addiction services and supports pursuant to section 26.02 of this article.

2. "Approved uses" means any substance use disorder related services, supports, or programs including but not limited to substance use education and prevention campaigns, prevention services, treatment programs with an emphasis on medications to treat substance use disorder, harm reduction interventions, crisis services, treatment for co-occurring mental health disorders, housing services, programs that assist those involved in the criminal legal system, community-based services for

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

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pregnant women and babies with neonatal abstinence syndrome and to assist local governments with services and expenses of providing correctional facility-based substance use disorder treatment with an emphasis on medications to treat substance use disorder and transition services programs and related services, or other programs that are consistent with the list of uses defined in any statewide opioid settlement agreement.

3. "Commissioner" means the commissioner of the New York state office of addiction services and supports.

4. "Direct share subdivision" means every county of New York outside the city of New York and Nassau and Suffolk counties.

5. "Government entity" means (a) departments, agencies, divisions, boards, commissions and/or instrumentalities of the state of New York excepting the department of law, and including, notwithstanding any law to the contrary, the department of financial services, the superintendent of the department of financial services, and the New York liquidation bureau, 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 subdivisions, special districts and school districts, and any department, agency, division, board, commission and/or instrumentality thereof.

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

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

8. "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 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.

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

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

11. "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 represented by the department of law, 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.

§ 26.02 Implementation.

1. Powers and duties. (a) Each year the commissioner, in consultation with the commissioner of health, the commissioner of the office of mental health, and any other agency that provides or regulates approved uses, 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, in consultation with the commissioner of health, the commissioner of the office of mental health, and any other state agency that provides or regulates approved uses, 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 addiction services and supports and advisory board under this article, including oversight and administration of the opioid settlement fund and the advisory board. No more than two percent of funds received by the state that are required by any statewide opioid settlement agreement to be used for approved uses may be used in any fiscal year for oversight and administrative costs for the opioid settlement fund and the advisory board.

(c) The commissioner shall, to the extent possible, allocate funds from the opioid settlement fund, to support programs that are culturally, linguistically, and gender competent, trauma-informed, evidence-based and, where appropriate, employ individuals with lived experience as part of the services provided. Monies allocated by the settlement fund shall also be used to reduce disparities in health outcomes and to address harmful social determinants of health for underserved individuals and communities, including racial and ethnic minorities.

(d) The commissioner, in consultation with the commissioner of health, the commissioner of the office of mental health, and any other state agency that provides or regulates approved uses, and with the advice and consent of the advisory board, shall have the ability to amend the list of approved uses to add or remove approved uses at specified intervals in response to changing substance use disorder needs in the state. Categories and subcategories may be added or 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, in consultation with the commissioner of health, the commissioner of the office of mental health, and any other state agency that provides or regulates approved uses, may issue rules and regulations necessary to effectuate the requirements of this section.

3. Oversight and auditing. The commissioner, in consultation with the commissioner of health, the commissioner of the office of mental health, and any other state agency that provides or regulates approved uses, 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 addiction services and supports a detailed accounting of the spending of such funds required by any statewide opioid settlement agreement to be used for approved uses 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 addiction services and supports may withhold future funds from any New York subdi-

vision that is delinquent in providing such reporting, until the required report is submitted.

(b) The commissioner 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. The evaluation shall include a disparity impact analysis using local data to identify racial and ethnic minorities at highest risk for health disparities, low health literacy, and currently or historically underserved by existing substance use disorder and co-occurring disorder treatment services. This accounting shall be provided on or before February first each year. In consultation with the advisory board, the commissioner 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 established within the office of addiction services and supports an advisory board on addressing the overdose and substance use disorder epidemic consisting of nineteen members. The board shall appoint a member as chairperson by majority vote. 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 board shall consist of the commissioner of the office of addiction services and supports or his or her designee; the commissioner of health or his or her designee; the commissioner of the office of mental health or his or her designee; two members appointed by the governor; two members appointed by the attorney general; one member appointed by the mayor of the city of New York; two members appointed by the temporary president of the senate; and two members appointed by the speaker of the assembly. The remaining seven members shall be appointed from a list of nominees submitted by the New York state association of counties, as follows: two from the governor, one from the attorney general, two from the temporary president of the senate, and two from the speaker of the assembly. Such appointments shall be made 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 or experience, and/or education in public health policy and research, board certification in addiction medicine or addiction psychiatry, substance use disorder and addiction prevention and treatment, mental health services, harm reduction, recovery services, public budgeting, and to the extent practicable shall also include individuals with lived experience with substance use disorder including those receiving medication to treat substance use disorder, and also include representatives of communities that have been disproportionately impacted by the enforcement and criminalization of addiction and the historic approaches to preventing and treating substance use. 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 the member or their family members have any interest, direct or indirect, or receive any commission or profit whatsoever, direct or indirect. Each such member of the board shall recuse themselves from any discussion or vote relating to such interest.

(d) Staff and administration. The office of addiction services and supports and any other agency that provides or regulates approved uses 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. 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, harm reduction, recovery, and other services and programs for individuals and families experiencing and affected by substance use disorder; recommend statewide or regional priorities to address the state's overdose and substance use disorder 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. Such recommendations shall also take into account where gaps in access to current services included in the list of approved uses currently exist and how to best fill such gaps, including through partnerships between various subdivisions and entities in order to create a comprehensive system of services and care. To the extent the 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 overdose and substance use disorder 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 overdose and substance use disorder epidemic, including for outside grants.

§ 26.03 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 state department of law in a statewide opioid settlement agreement executed by the state department of law and the released party on or after March twelfth, two thousand twenty-one. Any action filed by a government entity after June first, two thousand nineteen asserting released claims against a manufacturer

or distributor of opioid products shall be extinguished by operation of law upon being released by the department of law.

§ 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. Notwithstanding subdivision eleven of section four of this chapter or any law to the contrary, such fund shall consist of all moneys received by the state represented by the department of law, as a result of the settlement of litigation with opioid manufacturers, distributors, dispensers, consultants, chain pharmacies, and related entities made in connection with claims arising from the manufacture, promotion, dispensing, sale, and/or distribution of opioid products, as well as any funds received by the state represented by the department of law 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, consultants, chain pharmacies, and related entities arising out of activities alleged to have contributed to increases in opioid addiction, whether filed or unfiled, actual or potential, and whether arising under common law, equity, or any provision of law, and all other moneys appropriated, credited, or transferred thereto from any other fund or source pursuant to law. Such moneys shall include, but not be limited to, funds received by the state for a state abatement fund as defined in any statewide opioid settlement agreement.

2. Notwithstanding the provisions of subdivision eleven of section four of this chapter or any law to the contrary, the moneys in such fund shall only be appropriated or transferred consistent with the terms of any statewide opioid settlement agreements and pursuant to this chapter. Moneys of the fund may be suballocated or transferred to any other agency or department, or New York subdivision or government entity as defined in section 26.01 of the mental hygiene law for expenditure in accordance with such settlement agreement terms. Such moneys in the fund shall only be used for approved uses that are consistent with the terms of the statewide opioid settlement agreements and approved uses as defined pursuant to this chapter unless otherwise specified by such statewide opioid settlement agreements. Such moneys received by the state represented by the department of law that are required by any statewide opioid settlement agreement to be used for approved uses shall be used to supplement, and not supplant or replace, the level of federal or state funds expended for substance use disorder services, and such moneys shall be used exclusively for the purpose of funding the expansion or sustaining of existing services and workforce, and/or establishing new services and supports.

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 the office of addiction services and supports, or by an officer or employee of the office of addiction services and supports designated by the commissioner, 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 the office of addiction services and supports 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 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, chair of the senate committee on mental health, chair of the assembly committee on mental health and the state comptroller. Such report shall be made publicly available on the office of addiction services and supports and the department of health's website. Such report shall include how the moneys 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) the 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 moneys 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 or otherwise stipulates that all or a portion of such moneys shall be used to remediate or abate the harms caused by opioids.

§ 4. This act shall take effect immediately.