

# 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:

1 Section 1. The mental hygiene law is amended by adding a new article  
2 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.

10 As used in this article, the following terms shall have the following  
11 meanings:

12 1. "Advisory board" means an advisory board established within the  
13 office of addiction services and supports pursuant to section 26.02 of  
14 this article.

15 2. "Approved uses" means any substance use disorder related services,  
16 supports, or programs including but not limited to substance use educa-  
17 tion and prevention campaigns, prevention services, treatment programs  
18 with an emphasis on medications to treat substance use disorder, harm  
19 reduction interventions, crisis services, treatment for co-occurring  
20 mental health disorders, housing services, programs that assist those  
21 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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1 pregnant women and babies with neonatal abstinence syndrome and to  
2 assist local governments with services and expenses of providing correc-  
3 tional facility-based substance use disorder treatment with an emphasis  
4 on medications to treat substance use disorder and transition services  
5 programs and related services, or other programs that are consistent  
6 with the list of uses defined in any statewide opioid settlement agree-  
7 ment.

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

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

12 5. "Government entity" means (a) departments, agencies, divisions,  
13 boards, commissions and/or instrumentalities of the state of New York  
14 excepting the department of law, and including, notwithstanding any law  
15 to the contrary, the department of financial services, the superinten-  
16 dent of the department of financial services, and the New York liqui-  
17 dation bureau, and (b) any governmental subdivision within the bounda-  
18 ries of the state of New York, including, but not limited to, counties,  
19 municipalities, districts, towns and/or villages, and any of their  
20 subdivisions, special districts and school districts, and any depart-  
21 ment, agency, division, board, commission and/or instrumentality there-  
22 of.

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

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

27 8. "Opioid settlement fund" means the fund created by the statewide  
28 opioid agreements and section ninety-seven-bbbbb of the state finance  
29 law, the funds of which shall be used or distributed by the commissioner  
30 for the purposes of preventing addiction and reducing the harms caused  
31 by the overdose and substance use disorder epidemic consistent with the  
32 terms of any statewide opioid settlement agreement.

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

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

37 11. "Statewide opioid settlement agreements" means agreements of  
38 statewide applicability, including but not limited to consent judgments,  
39 consent decrees filed or unfiled, and related agreements or documents  
40 between the state represented by the department of law, and certain  
41 opioid manufacturers, distributors, dispensers, consultants, chain phar-  
42 macies, related entities, and/or the New York subdivisions, to provide  
43 remuneration for conduct related to the manufacture, promotion, dispens-  
44 ing, sale, and/or distribution of opioid products. Copies of such agree-  
45 ments, including any amendments thereto, shall be kept on file by the  
46 attorney general, who shall make such available for inspection and copy-  
47 ing pursuant to the provisions of article six of the public officers  
48 law.

49 § 26.02 Implementation.

50 1. Powers and duties. (a) Each year the commissioner, in consultation  
51 with the commissioner of health, the commissioner of the office of  
52 mental health, and any other agency that provides or regulates approved  
53 uses, shall allocate funds contained within the opioid settlement fund,  
54 established pursuant to section ninety-seven-bbbbb of the state finance  
55 law, consistent with and subject to the terms of any statewide opioid  
56 settlement agreement. Each New York subdivision shall, as a condition of

1 the receipt of such funds, certify at the end of each fiscal year for  
2 which it receives such funds that all funds provided to it under this  
3 provision of the agreements were spent on projects and programs that  
4 constitute approved uses and provided that such New York subdivision  
5 complies with the reporting requirements set forth in this article.

6 (b) Each year the commissioner, in consultation with the commissioner  
7 of health, the commissioner of the office of mental health, and any  
8 other state agency that provides or regulates approved uses, shall set  
9 aside funds, consistent with the terms of any statewide opioid settle-  
10 ment agreements, for spending to: (i) fund state projects that consti-  
11 tute approved uses, and (ii) carry out the duties of the office of  
12 addiction services and supports and advisory board under this article,  
13 including oversight and administration of the opioid settlement fund and  
14 the advisory board. No more than two percent of funds received by the  
15 state that are required by any statewide opioid settlement agreement to  
16 be used for approved uses may be used in any fiscal year for oversight  
17 and administrative costs for the opioid settlement fund and the advisory  
18 board.

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

28 (d) The commissioner, in consultation with the commissioner of health,  
29 the commissioner of the office of mental health, and any other state  
30 agency that provides or regulates approved uses, and with the advice and  
31 consent of the advisory board, shall have the ability to amend the list  
32 of approved uses to add or remove approved uses at specified intervals  
33 in response to changing substance use disorder needs in the state. Cate-  
34 gories and subcategories may be added or removed from the list of  
35 approved uses only with the approval of not less than three-fourths of  
36 the members of the advisory board.

37 2. Rule promulgation. The commissioner, in consultation with the  
38 commissioner of health, the commissioner of the office of mental health,  
39 and any other state agency that provides or regulates approved uses, may  
40 issue rules and regulations necessary to effectuate the requirements of  
41 this section.

42 3. Oversight and auditing. The commissioner, in consultation with the  
43 commissioner of health, the commissioner of the office of mental health,  
44 and any other state agency that provides or regulates approved uses,  
45 shall engage in oversight and audits of services, supports, and programs  
46 funded through the opioid settlement fund.

47 4. Reporting requirements. (a) Consistent with and subject to any  
48 statewide opioid settlement agreement, each New York subdivision that  
49 receives funds from the opioid settlement fund under any statewide  
50 opioid settlement agreements shall annually provide to the office of  
51 addiction services and supports a detailed accounting of the spending of  
52 such funds required by any statewide opioid settlement agreement to be  
53 used for approved uses as well as analysis and evaluation of the  
54 services, supports and programs it has funded. Such accounting shall be  
55 provided on or before November first each year. The office of addiction  
56 services and supports may withhold future funds from any New York subdi-

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

3 (b) The commissioner shall annually provide the speaker of the assem-  
4 bly and the temporary president of the senate a detailed accounting of  
5 the spending of all monies in the opioid settlement fund, any spending  
6 by the direct share subdivisions, any spending by New York city and  
7 Nassau and Suffolk counties, as well as an analysis and evaluation of  
8 the services, supports and programs funded. The evaluation shall  
9 include a disparity impact analysis using local data to identify racial  
10 and ethnic minorities at highest risk for health disparities, low health  
11 literacy, and currently or historically underserved by existing  
12 substance use disorder and co-occurring disorder treatment services.  
13 This accounting shall be provided on or before February first each year.  
14 In consultation with the advisory board, the commissioner shall also  
15 report annually the results of research funded by funds from these  
16 agreements, the status of any outstanding audits, and the non-binding  
17 recommendations of the advisory board.

18 5. Advisory board. There is hereby established within the office of  
19 addiction services and supports an advisory board on addressing the  
20 overdose and substance use disorder epidemic consisting of nineteen  
21 members. The board shall appoint a member as chairperson by majority  
22 vote. Each member of the advisory board shall have one vote, with all  
23 actions being taken by an affirmative vote of the majority of present  
24 members.

25 (a) Appointments to the advisory board. The board shall consist of the  
26 commissioner of the office of addiction services and supports or his or  
27 her designee; the commissioner of health or his or her designee; the  
28 commissioner of the office of mental health or his or her designee; two  
29 members appointed by the governor; two members appointed by the attorney  
30 general; one member appointed by the mayor of the city of New York; two  
31 members appointed by the temporary president of the senate; and two  
32 members appointed by the speaker of the assembly. The remaining seven  
33 members shall be appointed from a list of nominees submitted by the New  
34 York state association of counties, as follows: two from the governor,  
35 one from the attorney general, two from the temporary president of the  
36 senate, and two from the speaker of the assembly. Such appointments  
37 shall be made no later than sixty days after the effective date of this  
38 article. Advisory board membership shall include persons, to the extent  
39 practicable, who have expertise or experience, and/or education in  
40 public health policy and research, board certification in addiction  
41 medicine or addiction psychiatry, substance use disorder and addiction  
42 prevention and treatment, mental health services, harm reduction, recov-  
43 ery services, public budgeting, and to the extent practicable shall also  
44 include individuals with lived experience with substance use disorder  
45 including those receiving medication to treat substance use disorder,  
46 and also include representatives of communities that have been dispro-  
47 portionately impacted by the enforcement and criminalization of  
48 addiction and the historic approaches to preventing and treating  
49 substance use. Additionally, the membership of the board shall be repre-  
50 sentative of the racial and ethnic demographics of the state and reflect  
51 the geographic regions of the state. Each member shall be appointed to  
52 serve three-year terms and in the event of a vacancy, the vacancy shall  
53 be filled in the manner of the original appointment for the remainder of  
54 the term.

55 (b) Meetings of the advisory board. The advisory board shall hold no  
56 fewer than six public meetings annually, to be publicized and located in

1 a manner reasonably designed to facilitate attendance by residents  
2 throughout the state. The advisory board shall function in a manner  
3 consistent with New York's open meetings law, and with the Americans  
4 with disabilities act. A majority of the appointed voting membership of  
5 the advisory board shall constitute a quorum.

6 (c) Payment and ethics. Members of the advisory board shall receive no  
7 compensation but shall be reimbursed for reasonable expenses. The  
8 members of the advisory board and all staff shall be subject to the  
9 applicable provisions of the public officers law. Members of the board  
10 shall not take any action to direct funding from the opioid settlement  
11 fund to any entity in which the member or their family members have any  
12 interest, direct or indirect, or receive any commission or profit what-  
13 soever, direct or indirect. Each such member of the board shall recuse  
14 themselves from any discussion or vote relating to such interest.

15 (d) Staff and administration. The office of addiction services and  
16 supports and any other agency that provides or regulates approved uses  
17 shall provide staff to assist with the functions of the advisory board.

18 (e) Responsibilities. The advisory board shall make evidence-based  
19 recommendations regarding specific opioid settlement priorities and  
20 expenditures from the opioid settlement fund. In carrying out its obli-  
21 gations to provide such recommendations, the advisory board may consider  
22 local, state and federal initiatives and activities related to educa-  
23 tion, prevention, treatment, harm reduction, recovery, and other  
24 services and programs for individuals and families experiencing and  
25 affected by substance use disorder; recommend statewide or regional  
26 priorities to address the state's overdose and substance use disorder  
27 epidemic; recommend statewide or regional funding with respect to  
28 specific programs or initiatives; recommend measurable outcomes to  
29 determine the effectiveness of funds expended for approved uses; and  
30 monitor the level of permitted administrative expenses. Such recommen-  
31 dations shall also take into account where gaps in access to current  
32 services included in the list of approved uses currently exist and how  
33 to best fill such gaps, including through partnerships between various  
34 subdivisions and entities in order to create a comprehensive system of  
35 services and care. To the extent the commissioner chooses not to follow  
36 a recommendation of the advisory board, he or she shall make publicly  
37 available, within fourteen days after such decision is made, a written  
38 explanation of the reasons for the decision and allow fourteen days for  
39 the advisory board to respond to such public explanation.

40 Additionally, the advisory board shall be responsible for overseeing  
41 and reporting on services, supports and programs related to addressing  
42 the overdose and substance use disorder epidemic, developing priorities,  
43 goals and recommendations for spending on such projects and programs,  
44 working with the department of health to develop measurable outcomes for  
45 such projects and programs, and making recommendations for policy chang-  
46 es and research to fund and oversee other projects and programs related  
47 to addressing the overdose and substance use disorder epidemic, includ-  
48 ing for outside grants.

49 § 26.03 Limitation on authority of government entities to bring  
50 lawsuits.

51 No government entity shall have the authority to assert released  
52 claims against entities released by the state department of law in a  
53 statewide opioid settlement agreement executed by the state department  
54 of law and the released party on or after March twelfth, two thousand  
55 twenty-one. Any action filed by a government entity after June first,  
56 two thousand nineteen asserting released claims against a manufacturer

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

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

5 § 97-bbbbbb. Opioid settlement fund. 1. There is hereby established in  
6 the joint custody of the comptroller and the commissioner of taxation  
7 and finance a special fund to be known as the opioid settlement fund.  
8 Notwithstanding subdivision eleven of section four of this chapter or  
9 any law to the contrary, such fund shall consist of all moneys received  
10 by the state represented by the department of law, as a result of the  
11 settlement of litigation with opioid manufacturers, distributors,  
12 dispensers, consultants, chain pharmacies, and related entities made in  
13 connection with claims arising from the manufacture, promotion, dispens-  
14 ing, sale, and/or distribution of opioid products, as well as any funds  
15 received by the state represented by the department of law as a result  
16 of a judgment, stipulation, decree, agreement to settle, assurance of  
17 discontinuance, or other legal instrument resolving any claim or cause  
18 of action against manufacturers, distributors, dispensers, consultants,  
19 chain pharmacies, and related entities arising out of activities alleged  
20 to have contributed to increases in opioid addiction, whether filed or  
21 unfiled, actual or potential, and whether arising under common law,  
22 equity, or any provision of law, and all other moneys appropriated,  
23 credited, or transferred thereto from any other fund or source pursuant  
24 to law. Such moneys shall include, but not be limited to, funds  
25 received by the state for a state abatement fund as defined in any  
26 statewide opioid settlement agreement.

27 2. Notwithstanding the provisions of subdivision eleven of section  
28 four of this chapter or any law to the contrary, the moneys in such fund  
29 shall only be appropriated or transferred consistent with the terms of  
30 any statewide opioid settlement agreements and pursuant to this chapter.  
31 Moneys of the fund may be suballocated or transferred to any other agen-  
32 cy or department, or New York subdivision or government entity as  
33 defined in section 26.01 of the mental hygiene law for expenditure in  
34 accordance with such settlement agreement terms. Such moneys in the  
35 fund shall only be used for approved uses that are consistent with the  
36 terms of the statewide opioid settlement agreements and approved uses as  
37 defined pursuant to this chapter unless otherwise specified by such  
38 statewide opioid settlement agreements. Such moneys received by the  
39 state represented by the department of law that are required by any  
40 statewide opioid settlement agreement to be used for approved uses shall  
41 be used to supplement, and not supplant or replace, the level of federal  
42 or state funds expended for substance use disorder services, and such  
43 moneys shall be used exclusively for the purpose of funding the expan-  
44 sion or sustaining of existing services and workforce, and/or establish-  
45 ing new services and supports.

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

53 4. On or before February first each year, the commissioner of the  
54 office of addiction services and supports shall provide a written report  
55 to the governor, temporary president of the senate, speaker of the  
56 assembly, chair of the senate finance committee, chair of the assembly

1 ways and means committee, chair of the senate committee on health, chair  
2 of the assembly health committee, chair of the senate committee on alco-  
3 holism and substance abuse, chair of the assembly committee on alcohol-  
4 ism and drug abuse, chair of the senate committee on mental health,  
5 chair of the assembly committee on mental health and the state comp-  
6 troller. Such report shall be made publicly available on the office of  
7 addiction services and supports and the department of health's website.  
8 Such report shall include how the moneys of the fund were utilized  
9 during the preceding calendar year, and shall include:

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

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

14 (iii) the amount awarded to each recipient;

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

16 (v) a summary financial plan for such moneys which shall include esti-  
17 mates of all receipts and all disbursements for the current and succeed-  
18 ing fiscal years, along with the actual results from the prior fiscal  
19 year.

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

23 (b) Paragraph (a) of this subdivision shall not apply to any provision  
24 in the resolution of a claim or cause of action providing (1) moneys to  
25 be distributed to the federal government, to a local government, or to  
26 any holder of a bond or other debt instrument issued by the state, any  
27 public authority, or any public benefit corporation; (2) moneys to be  
28 distributed solely or exclusively as a payment of damages or restitution  
29 to individuals or entities that were specifically injured or harmed by  
30 the defendant's or settling party's conduct and that are identified in,  
31 or can be identified by the terms of, the relevant judgment, stipu-  
32 lation, decree, agreement to settle, assurance of discontinuance, or  
33 relevant instrument resolving the claim or cause of action; (3) moneys  
34 recovered or obtained by the attorney general where application of para-  
35 graph (a) of this subdivision is prohibited by federal law, rule, or  
36 regulation, or would result in the reduction or loss of federal funds or  
37 eligibility for federal benefits pursuant to federal law, rule, or regu-  
38 lation; (4) moneys recovered or obtained by or on behalf of a public  
39 authority, a public benefit corporation, the department of taxation and  
40 finance, the workers' compensation board, the New York state higher  
41 education services corporation, the tobacco settlement financing corpo-  
42 ration, a state or local retirement system, an employee health benefit  
43 program administered by the New York state department of civil service,  
44 the Title IV-D child support fund, the lottery prize fund, the abandoned  
45 property fund, or an endowment of the state university of New York or  
46 any unit thereof or any state agency, provided that all of the moneys  
47 received or recovered are immediately transferred to the relevant public  
48 authority, public benefit corporation, department, fund, program, or  
49 endowment; (5) moneys to be refunded to an individual or entity as (i)  
50 an overpayment of a tax, fine, penalty, fee, insurance premium, loan  
51 payment, charge or surcharge; (ii) a return of seized assets; or (iii) a  
52 payment made in error; ~~and~~ (6) moneys to be used to prevent, abate,  
53 restore, mitigate or control any identifiable instance of prior or ongo-  
54 ing water, land or air pollution; and (7) moneys obtained and distrib-  
55 uted under the terms of any statewide opioid settlement agreement, as  
56 defined in article twenty-six of the mental hygiene law, that provides

1 for all or a portion of the settlement moneys to be deposited into the  
2 opioid settlement fund established in section ninety-seven-bbbbb of the  
3 state finance law or otherwise stipulates that all or a portion of such  
4 moneys shall be used to remediate or abate the harms caused by opioids.

5 § 4. This act shall take effect immediately.