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:

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

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

4. [~~Such~~] **Notwithstanding subdivision eleven of section four of this chapter, such** fund shall consist of money received by the state [~~as a result of the settlement of 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 unfiled, actual or potential, and whether arising under common law, equity, or any provision of law, and all other monies appropriated, credited, or transferred thereto from any other fund or source pursuant to law~~] **pursuant to any statewide opioid settlement agreements 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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moneys shall remain in such fund unless and until directed by statute or appropriation.

5. Notwithstanding subdivision eleven of section four of this chapter, or subdivision sixteen of section sixty-three of the executive law, [~~monies~~] **moneys** from the opioid settlement fund shall be available following appropriation by the legislature and shall only be expended on eligible expenditures as defined in section 25.18 of the mental hygiene law for prevention, treatment, harm reduction and recovery services related to substance use disorders and co-occurring mental illnesses in New York state pursuant to the terms of the statewide opioid settlement agreements as defined in section 25.18 of the mental hygiene law. Funding shall be distributed regionally and to ensure adequate geographic disbursement across the state in accordance with the statewide opioid settlement agreements. In addition to programs and services overseen by the office of addiction services and supports, funding may also be expended on programs and services overseen by the department of health, the office of mental health, the division of housing and community renewal or any other agency that may oversee an appropriate program or service that is considered an eligible expenditure as provided under section 25.18 of the mental hygiene law. Funding decisions shall include an emphasis on supporting 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.

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

§ 25.18 Statewide opioid settlements.

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

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

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

(iii) to provide substance use disorder treatment and early recovery programs for youth and adults, with an emphasis on programs that provide a continuum of care that includes screening and assessment for substance use disorders and co-occurring disorders, active treatment, family involvement, case management, relapse management for substance use and other co-occurring behavioral health disorders, vocational services, literacy services, parenting classes, family therapy and counseling services, crisis services, recovery services, evidence-based treatments, medication-assisted treatments, including medication assisted treatment provided in correctional facilities, psychiatric medication, psychotherapy 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~~] **and/or**

(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~~], **excluding** the department of financial services, **provided however, the department of financial services shall be considered a government entity for purposes of claims or proceedings filed by it against Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and/or Janssen Pharmaceutica, Inc.;** 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 **entered into on or after June first, two thousand twenty-one by the office of the attorney general**, 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 **which are consistent with subdivision sixteen of section sixty-three of the executive law**. 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 are consistent with the approved uses and terms of the statewide opioid settlement agreement. Such expenditures shall be distributed regionally and in accordance with the statewide opioid settlement agreements to ensure adequate geographic disbursement across the state.

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

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

(c) Advisory board establishment and responsibilities. 1. The opioid settlement board is hereby established under the office of addiction services and supports to provide recommendations on how funding received by the opioid settlement fund pursuant to section ninety-nine-nn of the state finance law shall be allocated by the legislature. Recommendations shall be [~~evidenced-based~~] evidence-based and may take into consideration federal, state or local initiatives and activities that have shown to be effective in preventing and treating substance use disorders as well as maintaining recovery and assisting with the collateral effects of substance use disorders for individuals and their families or support system. Such recommendations shall also take into account any gaps in access to services or programs identified as eligible expenditures and incorporate mechanisms for measurable outcomes for determining the effectiveness of funds expended. The office and any other relevant agency that provides or regulates eligible expenditures shall provide any necessary staff, resources and technical assistance to assist with the functions of the advisory board. Such assistance shall be supported pursuant to an appropriation by the legislature, in accordance with the statewide opioid settlement agreements.

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

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

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

(ii) two appointments by the governor;

(iii) [~~two~~] three appointments by the temporary president of the 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[~~,~~] **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 unfiled, 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

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 (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 unfiled, actual or potential, and whether arising under common law, equity, or any provision of law~~] **deposited to the opioid settlement fund established in section ninety-nine-nn of this chapter**.

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