SPONSOR: Rep. Hudson & Sen. Cloutier
Reps. Hensley, Ramone, D. Short, Wilson

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 358

AN ACT TO AMEND TITLES 30 AND 16 OF THE DELAWARE CODE RELATING TO OPIOID TAX, OPIATE STEWARDSHIP FUND, OPIATE ADVISORY COUNCIL, AND OPIATE SETTLEMENT PROCEEDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 30 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

Subchapter 56. Opioid tax

§ 5601. Definitions.

For purposes of this chapter:

(1) "Covered entity" means any manufacturer, producer, importer, or distributor of a taxable active opioid.

(2) "Purchase price" means the total value of anything paid or delivered, or promised to be paid or delivered, money or otherwise, in complete performance of a sale or purchase without any deduction on account of the cost or value of the property sold, cost or value of transportation, cost or value of labor service, interest or discount paid or allowed after the sale is consummated, any tax imposed by the State or any other expense.

(3) "Taxable active opioid" means any opiate or opioid having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having an addiction-forming or addiction-sustaining liability. It does not include a prescription drug that is used exclusively for the treatment of opioid addiction as part of a medically assisted treatment effort.

§ 5602. Administration of opioid tax.

(a) A tax is imposed and assessed on the gross receipts from the sale of taxable active opioids, to be paid by a covered entity, at the rate of 10% of the purchase price. The tax imposed by this section shall be charged against and paid by the covered entity and shall not be added as a separate charge or line item on any sales slip, invoice, receipt, or other statement or memorandum of the price given to the retail customer.

(b) The tax shall be imposed the first time a taxable active opioid is sold in this State and shall be collected and remitted by the seller pursuant to this chapter.

(c) The tax shall not be imposed on opioid products in the following circumstances:

(1) The product is exported for sale or use outside the State.

(2) The product is not subject to taxation by the State under any federal law.

(d) All taxes, interest, and penalties collected or received under this chapter shall be deposited with the State Treasurer to be held in the Opiate Stewardship Fund.

§ 5603. License requirements.

Any covered entity desiring to engage in the sale of taxable active opioids in this State shall first obtain a license from the Department of Finance and pay therefor a fee of $80. Such license shall be valid until January 1 at which time it may be renewed for a full year and every year thereafter, provided that the covered entity complies with the requirements of § 5604 of this chapter and makes application therefor and payment of $80.

§ 5604. Monthly report; collection of tax.

(a) A covered entity shall file with the Department of Finance, a monthly report on a form prepared by the Department, which shall show the quantity of taxable active opioid products sold in the State, and such other information as the Department may require.

(b) The report, together with any tax due under this chapter shall be returned by the twenty-fifth day of each calendar month.

(c) The Department of Finance may require the filing of reports and the remittance of tax on a less frequent basis at its discretion.

Section 2. Amend Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

Chapter 48B. Opiate Stewardship Fund and Advisory Council.

§ 4801B. Opiate Stewardship Fund created.

The General Assembly, in order to provide funding to address the many issues created by opiate abuse, hereby creates a special “Opiate Stewardship Fund”.

§ 4802B. Source of funds.

(a) All taxes, interest, and penalties collected or received under § 5602 of Title 30 shall be deposited to the Opiate Stewardship Fund.

(b) All settlement proceeds under § 4806B of this chapter shall be deposited to the Opiate Stewardship Fund.

§ 4803B. Use of fund.

(a) The State Treasurer shall have the power to invest the assets of the Opiate Stewardship Fund in a prudent manner. Any profits, interest, and dividends from such investments shall remain in the Fund and become part of the principal thereof.

(b) The funds in the Opiate Stewardship Fund shall be used only as authorized under this chapter.

§ 4804B. Opiate Stewardship Advisory Council.

(a) The Opiate Stewardship Advisory Council is established to confront the opioid addiction and overdose epidemic in this State and shall focus on:

(1) Emergency care and treatment resources relating to opioid overdose, including expanding access to naloxone or similar medications as may be available;

(2) A continuum of care and counseling for opioid-related substance use disorders

(3) Prevention and education, including public education and awareness, prescriber education, and development of sustainable opioid overdose prevention programs; and

(4) Services to ensure overdose prevention, public safety, community well-being, access to naloxone, or similar medication as may be available, and providing social services to families affected by opioid overdose events.

(b) The Council shall:

(1) Review all local, state, and federal initiatives, programs, and activities related to education, prevention, and services for individuals and families affected by opioid abuse;

(2) Ensure optimal allocation of available funding and alignment of existing state and federal funding to achieve the greatest impact;

(3) Establish priorities and actions to address the State's opioid epidemic for purposes of allocating funds and resources;

(4) Develop criteria and procedures to be used in awarding grants and allocating available funds from the Opiate Stewardship Fund; and

(5) Develop measurable outcomes to determine the effectiveness of the funds allocated under this chapter.

(c) The Council shall determine how funds from the Opiate Stewardship Fund are used.

§ 4805B. Opiate Stewardship Advisory Council membership.

(a) The Opiate Stewardship Advisory Council shall consist of the following 15 members, or a designee appointed in writing and in advance of a particular scheduled meeting or on a permanent basis by the member serving by virtue of position to serve at that member's pleasure:

(1) 2 members of the House of Representatives, 1 from the majority party appointed by the Speaker of the House, and 1 from the minority party appointed by the Minority Leader;

(2) 2 members of the Senate, 1 from the majority party appointed by the President Pro Tempore, and 1 from the minority party appointed by the Minority Leader;

(3) 1 member appointed by the Board of Pharmacy;

(4) 1 member appointed by the President of the Delaware Board of Medical Licensure and Discipline who is an emergency room physician;

(5) 1 member representing opioid treatment facilities appointed by the Governor;

(6) 1 member who is a paramedic appointed by the Governor;

(7) 1 member representing the Delaware Judiciary appointed by the Chief Justice of Delaware Supreme Court;

(8) 1 member of the Delaware Police Chief's Council appointed by the Governor;

(9) 1 public member who is a resident of Delaware and who has been impacted by the opioid epidemic appointed by the Governor. This member shall be selected by the Governor and serve as Policy Advisor to the Governor on behalf of the Advisory Council. This person shall also serve as Chair of the Advisory Council and shall, upon appointment, become a full-time employee of the State entitled to such compensation and benefits as determined in the annual budget act, provided, however, all such expense shall be paid from the funds collected in the Opiate Stewardship Fund;

(10) 1 member appointed by AtTack Addiction;

(11) 1 member representing a manufacturer of opiates appointed by the Governor;

(12) the Secretary of the Department of Safety and Homeland Security; and

(13) the Secretary of Delaware Health and Social Services.

(b) The Chair must convene the Advisory Council at least quarterly, and may convene other meetings as deemed necessary.

(c) Delaware Health and Social Services shall provide staff for administrative services for the Advisory Council and Chair until such time as the annual budget act determines staffing and resources necessary to support the Advisory Council and Chair.

(d) Except as determined in paragraph (a)(9) of this section, the members of the Advisory Council shall receive no compensation but may be reimbursed for reasonable expenses.

(e) All members shall serve until their replacement is appointed or they no longer hold the designated office necessary to be a member of the Advisory Council.

§ 4806B. Opioid Settlement Proceeds.

All funds resulting from the settlement of any civil legal matter relating to opioids, whether under a court order or a negotiated settlement out of court, that resolves such matter on behalf of the State of Delaware shall be deposited with the State Treasurer to be held in the Opiate Stewardship Fund unless otherwise specifically designated in a court order.

Section 3. This Act shall take effect 180 days after its enactment into law.

SYNOPSIS

In 2016, according to the Division of Forensic Science, 308 people died from overdoses in Delaware. To address the devastating effects that the opioid epidemic has had on the citizens and families of the state of Delaware, this Act will:

1.) Impose a tax on the first sale of opioids in the State at a rate of 10% of the purchase price. Revenue generated from the tax will be used to support opioid addiction treatment options in Delaware, including residential programs, as well as to educate the public on the dangers of opioid addiction and available treatment options in Delaware;

2.) Direct civil legal settlement proceeds resulting from matters related to opioids be deposited to the Opiate Stewardship Fund;

3.) Authorize the Governor to appoint and fund the position of the newly-created Policy Advisor. The full-time Policy Advisor will serve at the pleasure of the Governor and will be tasked with addressing only opioid addiction-related matters; and

4.) Establish the Opiate Stewardship Advisory Council. The council will be charged with prioritizing where revenue generated from the opioid tax is best spent in order to assist those who are addicted, as well as their families. This council – building on the progress made by the Behavioral Health Consortium and other related medical and state agency committees – will be a separate entity that is responsible solely for advising in the treatment-related tasks of the newly-created Policy Advisor.