



SPONSOR: Sen. Hansen & Sen. Delcollo & Sen. Henry &  
Rep. Hudson & Rep. Keeley  
Sens. Ennis, McDowell, Poore, Sokola, Townsend,  
Walsh; Reps. Bennett, Mitchell, Mulrooney, Paradee

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 176

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE CREATING A PRESCRIPTION OPIOID IMPACT FUND.

1 WHEREAS, Delaware, like the rest of the United States, is in the midst of an opioid overdose epidemic; and

2 WHEREAS, in 2016, opioids killed more than 42,000 people and 40% of those deaths were from prescription  
3 opioids; and

4 WHEREAS, in 2016, the number of opioid overdose deaths were 5 times higher than the number of opioid  
5 overdose deaths in 1999; and

6 WHEREAS, the prescribing rates for prescription opioids among adolescents and young adults nearly doubled  
7 from 1994 to 2007; and

8 WHEREAS, from 2015 to 2016, Delaware had the second highest increase in drug overdose deaths; and

9 WHEREAS, in 2016, 308 Delawareans died from drug overdoses; and

10 WHEREAS, since 2009, more people in Delaware have died from a drug overdose than from a motor vehicle  
11 injury; and

12 WHEREAS, in 2016, Delaware's prescription rate of high dose opioids was the highest in the nation; and

13 WHEREAS, in 2016, Delaware's prescription rate of long-acting/extended-release opioid pain relievers was the  
14 highest in the nation; and

15 WHEREAS, in Delaware, opioids were prescribed at a rate of 870,046 prescriptions totaling 1,104,210,408  
16 morphine milligram equivalents ("MME") in 2015; 831,021 prescriptions totaling 1,050,799,858 MME in 2016; and  
17 759,521 prescriptions totaling 925,238,704 MME in 2017; and

18 WHEREAS, higher dosages of opioids are associated with a higher risk of overdose and death and higher dosages  
19 have not been shown to reduce pain over the long term; and

20 WHEREAS, 4 in 5 new heroin users started out misusing prescription painkillers; and

21 WHEREAS, in 2016, 3 percent of Delaware's eighth grade students reported using a prescription drug illegally;  
22 and

23 WHEREAS, nationally, Medicaid pays for 25% of the adults who receive residential treatment for opioid  
24 addiction, while 10% of the adults who receive residential treatment are unemployed; and

25 WHEREAS, nationally, Medicaid pays for 37% of the adults who receive outpatient treatment for opioid  
26 addiction, while 20% of the adults who receive outpatient treatment are unemployed; and

27 WHEREAS, Buprenorphine, sold under the brand name Suboxone, is an opioid used to treat opioid addiction and  
28 40% of the total Buprenorphine spending in Delaware in 2016 was by Medicaid; and

29 WHEREAS, the Behavioral Health Consortium provides oversight of behavioral healthcare and substance use  
30 treatment in Delaware and includes the Addiction Action Committee, which coordinates a comprehensive approach to the  
31 addiction epidemic in this State; and

32 WHEREAS, the FY19 Governor's Recommended Budget requests \$100,000 for Substance Use Disorder Services  
33 and Naloxone for First Responders; \$328,500 for 20 additional Sober Living Beds; and \$990,000 for Emergency Room  
34 Consultations.

35 NOW, THEREFORE:

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

38 Section 1. Amend Part IV, Title 16 of the Delaware Code by making deletions as shown by strike through and  
39 insertions as shown by underline as follows:

40 Chapter 48B. Prescription Opioid Impact Fund.

41 § 4801B. Findings and purpose.

42 (a) It is the intent of the General Assembly that the Prescription Opioid Impact Fund be established under this  
43 chapter to fund prevention and treatment of opioid addiction. In establishing the Prescription Opioid Impact Fund, the  
44 General Assembly finds as follows:

45 (1) The Prescription Opioid Impact Fund is needed to prevent and respond to the dramatic increase in  
46 opioid addiction in this State.

47 (2) The Prescription Opioid Impact Fund is needed to protect the public health, safety, and general  
48 welfare of the citizens of this State.

49 (3) There is a direct connection to the number and strength of opioids prescribed to citizens of this State  
50 and the rates of opioid addiction and overdose deaths.

51 (4) Pharmaceutical manufacturers receive profit in exchange for the ability to sell their products in this  
52 State.

(5) The Prescription Opioid Impact Fund will pay for a proportionate share of the cost of opioid substance abuse treatment, prevention, and facilities needed to serve the population impacted by these pharmaceutical products.

(6) By paying a proportionate share of the cost of opioid addiction treatment and prevention, the pharmaceutical manufacturers receive assistance in promoting responsible product use and offset the negative effect that these products have on Delaware residents.

(b) It is the intent of this chapter to ensure that adequate public funds are available to do all of the following:

(1) Prevent more individuals from becoming addicted to opioids.

(2) Provide funding for the Prescription Monitoring Program.

(3) Provide opioid addiction treatment to all Delawareans who have opioid addiction.

(4) Fund emergency medical assistance to treat opioid overdoses.

#### § 4802B. Definitions.

For purposes of this chapter:

(1) “Impact fee” means a payment of money imposed upon a pharmaceutical manufacturer, as a result of selling a prescription opioid to an individual in Delaware, to pay for a proportionate share of the cost of preventing and treating opioid addiction.

(2) “Morphine milligram equivalent” or “MME” means the conversion factor used to calculate the strength of an opioid using morphine dosage as the comparative unit of measure.

(3) “Prescription opioid” means a drug that is a controlled substance under Chapter 47 of this title and Title 21 of the Code of Federal Regulations and is either an opiate, derived from the opium poppy, or an opiate-like synthetic drug. “Prescription opioid” does not include Buprenorphine.

(4) “Prescription Monitoring Program” or “PMP” means the program established under § 4798 of this title.

(5) “Secretary” means the Secretary of the Department of Health and Social Services.

#### § 4803B. Prescription Opioid Impact Fund.

(a) A special fund to be known as the Prescription Opioid Impact Fund (“Fund”) is established and shall be invested by the State Treasurer consistent with the investment policies established by the Cash Management Policy Board. The State Treasurer shall credit interest to the Fund on a monthly basis consistent with the rate established by the Cash Management Policy Board.

(b) The following moneys must be deposited in the Fund:

(1) All impact fees collected by the State under to § 4804B of this title.

(2) All funds received by the State as the result of a civil action relating to opioids unless otherwise specifically designated by a court order.

(3) Any other money appropriated or transferred to the account by the General Assembly.

(c) Money in the Fund may be used by the Secretary only to carry out the purposes of this chapter, including the following activities:

(1) Opioid addiction prevention.

(2) Opioid addiction treatment including for the following:

a. Residential treatment programs and facilities.

b. Reimbursement of State Medicaid expenditures up to no more than 25% of the money annually deposited into the Fund.

c. Services for the under insured and uninsured.

d. Emergency assistance, including purchasing Naloxone.

(3) Research regarding opioid addiction and treatment.

(4) Surveillance of prescription opioids, including no greater than 10% of the money annually deposited into the Fund for administering the PMP.

(5) The costs of administering this chapter, up to no more than 10% of the money annually deposited into the Fund, except as necessary for the Attorney General to bring an action in law to address a violation of this chapter.

(d) The Behavioral Health Consortium, as established under § 5195 of this title, in consultation with the Addiction Action Committee, as established under § 5198 of this title, shall make recommendations to the Secretary regarding the expenditure of money in this Fund.

(e) Money appropriated by the General Assembly to implement this chapter must be reimbursed from money received under this section.

§ 4804B. Prescription Opioid Impact Fee.

(a) Manufacturers of prescription opioids dispensed in this State must pay a Prescription Opioid Impact Fee ("Fee") of \$0.01 per MME dispensed.

(b) The total amount of the Fee will be calculated quarterly using the information in the PMP.

(c) Manufacturers of prescription opioids dispensed in this State will be sent an invoice for the Fee due under this section quarterly, beginning after the close of the first full quarter after [the effective date of this Act].

(d) Manufacturers of prescription opioids must pay the Fee 1 month after the date of an invoice.

(e) When a manufacturer of prescription opioids fails to pay the Fee within 1 month after the date of an invoice, the penalty is \$100 a day or 10 % of the Fee due, whichever is greater. In addition, any unpaid Fee bears interest at the rate of 1% a month.

(f) No person may increase the retail price of a prescription opioid sold in this State to recover the cost of this Fee.

#### § 4805B. Enforcement.

(a) Except to the extent inconsistent with specific provisions of this chapter, the provisions of Chapter 5 of Title 30 shall govern the collection, review, and appeal of deficiencies of the Fee imposed by this chapter, and any interest and penalties thereon, and claims for refund of overpayment of the Fee imposed by this chapter.

(b) The Attorney General may bring an action in law to enforce this chapter or to recover direct economic damages resulting from a violation, or both. Any attorney fees recovered in an action to enforce this chapter must be remitted to the Fund.

#### § 4806B. Policies and procedures.

The Secretary shall work with the Division of Professional Regulation and the Department of Finance to develop necessary policies and procedures to implement this chapter.

#### § 4807B. Annual report.

Beginning November 1, 2019, the Secretary shall prepare and submit to the Governor and the General Assembly a report on the income and specific expenditures under this chapter. This report must include all of the following:

(1) The amount of money collected in Prescription Opioid Impact Fees.

(2) The amount and recipient of each grant or State allocation from the Prescription Opioid Impact Fund.

(3) The amount by which agency budget requests for money from the General Fund is reduced by money from the Prescription Opioid Impact Fund.

(4) To the extent possible, the report must include how many individuals were assisted by the expenditures.

### SYNOPSIS

Delaware leads the nation in the number of prescription opioids dispensed and drug overdose deaths. Prescription opioids lead directly to opioid addiction. The dramatic increase in opioid addiction has increased the need for money to pay for prevention and treatment of opioid addiction, including residential treatment, monitoring of prescriptions, Medicaid costs for opioid addiction treatment, providing naloxone to emergency responders, and a general shortage of all levels of treatment for opioid addiction.

This Act creates a Prescription Opioid Impact Fund funded by a Prescription Opioid Impact Fee ("Fee") that is paid by pharmaceutical manufacturers. The Fee will be assessed quarterly in the amount of \$0.01 per MME, the morphine milligram equivalent. Assessing the Fee based upon the amount of MME in each dose of the manufacturer's opioid drugs that are dispensed directly correlates the fee to the impact that manufacturer has on the need for opioid addiction prevention and treatment in this State. The amount of the Fee is determined by data already entered into the Prescription Monitoring

Program, which includes all prescription opioids dispensed to individuals by pharmacists. Because the Prescription Monitoring Program data does not include prescription opioids that are administered in hospitals, used to treat addiction, or are provided directly to patients by a hospice providers, those prescription opioids are not assessed the Fee. The Fee may not be passed along to consumers.

The Fees will go to a Prescription Opioid Impact Fund ("Fund") and will be used to pay for opioid addiction and treatment. The Secretary of the Department of Health and Social Services will allocate the money from the Fund after receiving recommendations from the Addiction Action Committee and the Behavioral Health Consortium. No more than 10% of the revenue in the Fund may be used to pay for the administrative costs of implementing this Act except if funds are necessary for the Attorney General to file an action to enforce this chapter. If the Fee is not paid, it is collected under the procedure in Chapter 5 of Title 31. The Secretary must submit a report to the Governor and General Assembly by November 1 of each year, in advance of the annual budget process.

Over the past 3 years, a \$0.01 per MME Fee on prescription opioids dispensed in the State would have generated approximately \$11 million in 2015; \$10 million in 2016; and \$9 million in 2017.

Author: Senator Hansen