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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 166
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE AND THE LAWS OF DELAWARE RELATING TO THE DISTRIBUTION OF FUNDS FROM THE PRESCRIPTION OPIOID IMPACT FEE AND COURT SETTLEMENTS.

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

Section 1. Amend Chapter 48B, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 48B. Prescription ~~Opioid Impact Fund~~ opioid funds; litigation authority.

Section 2. Amend § 4802B, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as show by underline as follows and by redesignating accordingly:

§ 4802B. Definitions

For purposes of this chapter:

(2)a. "Government entity" means all of the following:

1. A governmental subdivision within this State, including a county, municipality, district, town, or village.

2. A subdivision, special district, department, agency, division, board, commission, officer, or instrumentality of an entity under paragraph (2)a.1 of this section.

3. A sheriff, school district or public school.

b. "Government entity" does not mean the Department of Justice or a statewide department, agency, division, board, or commission.

(8) "Released claims" means released claims as that term is defined in the statewide opioid settlement agreements, or, if not therein defined, the claims sought to be released in such statewide opioid settlement agreement.

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(9) "School district" means any of the following:

a. A school district as defined in § 1002 of Title 14.

b. A county vocational-technical high school district or county vocational-technical center district under Chapter 26 of Title 14.

(10) "Statewide opioid settlement agreement" means an agreement, including consent judgments, consent decrees filed or unfiled, and related agreements or documents, between this State, represented by the Department of Justice, and certain opioid manufacturers, distributors, dispensers, consultants, chain pharmacies, related entities, or the subdivisions of this State, to provide or allocate remuneration for conduct related to the manufacture, promotion, dispensing, sale, or distribution of opioid products.

Section 3. Amend Chapter 48B, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4803B. Prescription Opioid Impact Fund.

(a) A special fund known as the Prescription Opioid Impact Fund ~~("Fund")~~ (Impact Fund) is established and the State Treasurer shall invest the Impact Fund consistent with the investment policies established by the Cash Management Policy Board. The State Treasurer shall credit interest to the Impact Fund on a monthly basis consistent with the rate established by the Cash Management Policy Board. The Impact Fund shall be administered collectively with the Prescription Opioid Settlement Fund under § 5197 of this title.

(b) The following moneys must be deposited in the Impact 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 or written agreement arising from the civil action.~~ [Repealed.]

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

(c) Money in the Impact Fund must be used for activities in 1 or more of the following categories:

(1) Opioid addiction prevention.

(2) The following opioid addiction services:

a. Inpatient and outpatient treatment programs and facilities, including short-term and long-term residential treatment programs and ~~sober living facilities.~~ recovery residences.

b. Services relating to treating substance use disorder for the under-insured and uninsured.

c. Emergency assistance relating to prescription opioids, including purchasing pharmaceuticals used to reverse the effect of an opioid overdose.

d. Peer support programs.

e. Services to address adverse social determinants of health which act as a barrier to recovery, including family support services.

(3) The cost of administering this chapter, as follows:

a. No more than 15% of the money annually deposited into the Impact Fund may be used for administering this chapter including expenses incurred by the Prescription Monitoring Program under this chapter.

b. Entering into contracts to implement this chapter, including contracts entered into by the Secretary of the Department of Health and Social Services or the Secretary of State for administration of this chapter.

c. Costs incurred by the Attorney General to bring an action to enforce this chapter must be covered by the Impact Fund and are not subject to or included in the 15% cap on administrative expenses.

(d) Money in the Impact Fund may not be used to supplant existing state or local government funding.

(e) ~~The Secretary of the Department of Health and Social Services shall allocate the money in this Fund by awarding grants and entering into contracts. Before allocating money in this Fund, the Secretary shall review any recommendations provided by January 1 of the most recent calendar year from the Behavioral Health Consortium, Addiction Action Committee, and the Overdose System of Care Committee.~~ The Behavioral Health Consortium shall distribute the money in the Impact Fund based upon the recommendations of the Prescription Opioid Settlement Distribution Commission.

§ 4808B. Prescription Opioid Settlement Fund.

(a) A special fund known as the Prescription Opioid Settlement Fund (Settlement Fund) is established and the State Treasurer shall invest monies in the Settlement Fund consistent with the investment policies established by the Cash Management Policy Board. The State Treasurer shall credit interest to the Settlement Fund on a monthly basis consistent with the rate established by the Cash Management Policy Board. The Settlement Fund shall be administered collectively with the Prescription Opioid Impact Fund under § 5197 of this title.

(b) The Settlement Fund shall hold all monies collected by the State and its subdivisions as a result of the terms of statewide opioid settlement agreements, judgments, or other recoveries in connection with a defendant's actual or alleged liability for contributing to the opioid crisis in Delaware that must be used for purposes of remediating or abating the opioid crisis in Delaware.

(c) All money in the Settlement Fund is continuously available for expenditure under § 5197 of this title and spending limits imposed by the General Assembly, including for salaries and other routine operating expenses of the Settlement Fund or the Prescription Opioid Settlement Distribution Commission.

(1) Annually, $300,000 or 5% of the total annually deposited into the Settlement Fund, whichever is greater, may be used for administering this chapter and § 5196 through § 5197 of Title 16.

(2) Money appropriated by the General Assembly to implement this chapter and § 5196 through § 5197 of Title 16 must be reimbursed from the Funds.

(d) Money in the Settlement Fund must be used for activities in 1 or more of the following categories:

(1) For services that remediate the harm caused by opioids.

(2) To reduce harm caused by opioids.

(3) Consistent with the terms of the settlement, judgment, or other source of the monies.

(e) Money in the Settlement Fund may not be used to supplant existing state or local government funding.

(f) Money in the Settlement Fund does not lapse at any time and must not be transferred to or commingled with any other fund.

(g) The Behavioral Health Consortium shall distribute the money in the Settlement Fund based upon the recommendations of the Prescription Opioid Settlement Distribution Commission.

§ 4809B. Limitation on authority of government entities to bring lawsuits.

No government entity has the authority to assert released claims after February 28, 2021 against entities released by the Department of Justice in a statewide opioid settlement agreement executed by the Attorney General and the released party.

Section 4: Section § 4807B of Title 16 of the Delaware Code is hereby repealed.

Section 5. Amend Subchapter VIII-A, Chapter 51, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as show by underline as follows:

Subchapter VIII-A. Behavioral Health ~~Consortium.~~ Consortium; Prescription Opioid Distribution Commission.

§ 5195. Behavioral Health ~~Consortium.~~ Consortium; Prescription Opioid Distribution Commission.

(a) ~~There is established a~~ The following are established:

(1) The Behavioral Health Consortium, referred to in this subchapter as the "Consortium."

(2) The Prescription Opioid Settlement Distribution Commission, a subcommittee of the Consortium, referred to in this subchapter as the "Commission."

(b)(1) The Consortium shall provide oversight of the State's private and public bodies or entities that affect behavioral health-care and substance use treatment to ensure the delivery of quality care.

(2) The Commission is established to distribute the money in the Prescription Opioid Settlement Fund, "Settlement Fund," under § 4808B of this title, and the Prescription Opioid Impact Fund, "Impact Fund", under § 4803B of this title.

a. The purpose of the Commission is to establish a coordinated and consensus driven effort to repair the harm done to communities in this State by the opioid crisis.

b. Delaware is a high harm state with significant numbers of overdose deaths reported each year.

c. The powerful, addictive qualities of opioids cause people who are suffering from substance use disorder to face a long road to recovery. The challenges of recovering from an addiction to opioids also has a tremendous impact on families, friends, and other loved ones, and first responders and the health care system must expend significant resources to address the opioid crisis.

d. The Commission shall distribute settlement monies, as well as opioid impact fees, to ensure that the use of settlement proceeds and impact fees is coordinated to abate the opioid crisis in Delaware and not diverted to other purposes. It is the intent of the General Assembly that monies from statewide opioid settlement agreements and the prescription opioid impact fee are used to maximize harm reduction from the opioid crisis and to provide Delawareans with a coordinated opportunity to provide input on the best ways to spend these monies in order to abate the opioid crisis. The Commission will also ensure that decisions on how to spend opioid-related funds are based on the consensus of stakeholders through a process that considers the views and experiences of affected communities.

e. For purposes of this subchapter, "statewide opioid settlement agreement" means as defined in § 4802B of this title.

f. The terms of statewide opioid settlement agreements, bankruptcy plans, or other agreements for the payment of monies by defendants in opioid-related litigation may provide a framework for how the monies may be used to remediate the harm caused by the opioid crisis. The Commission must comply with all applicable terms when disbursing monies derived from such settlements.

g. In order to increase the amount of settlement dollars allocated to Delaware, it is the intent of the General Assembly that all state and local governments participate in this coordinated process for all settlement monies to flow into the Prescription Opioid Settlement Fund and the Prescription Opioid Impact Fund.

(c)(1) The Consortium shall periodically report to the Governor and General Assembly, on a schedule to be determined by the Consortium, to recommend any potential legislative action that ensures quality delivery and expanded access to behavioral health care. The first report is due by April 16, 2018.

(2) Beginning January 1, 2022, the Commission shall produce an annual report, published on the Commission's website, that contains all of the following:

a. The amounts and sources of monies received by the Prescription Opioid Settlement Fund.

b. The aggregate amount of monies received by the Prescription Opioid Impact Fund.

c. By fund, the amounts and sources of any other monies received.

d. By fund, the contracts or grants awarded by the Consortium, including the identity of each recipient, the amount of the award, the subject matter or program involved, and the primary terms and conditions of the award or contract.

e. By fund, the amounts disbursed in respect of approved contracts, grants and other authorized expenditures and administrative expenses, including amounts disbursed to qualifying local governments for local government block grants.

(3) The Consortium and Commission shall provide a copy of each report under this subsection (c) to the Director and the Librarian of the Division of Research of Legislative Council and the Delaware Public Archives.

§ 5196. Organization and composition of the Consortium.

(a) The Consortium is composed of ~~25~~ 27 members, as follows:

(1) ~~Nine~~ Eleven individuals, or their designees, who are members of the Consortium by virtue of their respective positions, as follows:

j. The Attorney General, as co-chair of the Prescription Opioid Settlement Distribution Commission.

k. The chair of the Local Government Committee of the Prescription Opioid Settlement Distribution Commission.

§ 5196A. Organization and composition of the Prescription Opioid Settlement Distribution Commission.

(a) The Commission shall make recommendations to the Consortium regarding all distributions from the money in the Settlement Fund and the Impact Fund.

(b) The Commission consists of the following 15 members, or a designee selected by the member serving by virtue of their position:

(1) The Attorney General.

(2) The Governor.

(3) The Secretary of the Department of Health and Social Services.

(4) Two members of the Senate, 1 from the minority caucus and 1 from the majority caucus, appointed by the President Pro Tempore of the Senate.

(5) Two members of the House of Representatives, 1 from the minority caucus and 1 from the majority caucus, appointed by the Speaker of the House.

(6) One member of the public, who is a resident of this State, appointed by Governor.

(7) One member of the public, who is a resident of this State, appointed by the Attorney General.

(8) Three members representing each county government in Delaware, appointed as follows:

a. One member appointed by the New Castle County Executive, with the advice and consent of the County Council.

b. One member appointed by the Kent County Administrator, with the advice and consent of Levy Court.

c. One member appointed by the Sussex County Administrator, with the advice and consent of the County Council.

d.1. If a county is not participating in a statewide opioid settlement agreement in which the county government is eligible to participate, that county is disqualified from appointing a member under paragraphs (b)(8)a. through (b)(8)c. of this section until the county participates in the statewide opioid settlement agreement.

2. If a county is disqualified from appointing a member under paragraph (b)(8)d. of this section, the Governor shall appoint an additional representative from a municipal government under paragraph (b)(9) of this section, who serves until the county is qualified to appoint a member or the Governor appoints a replacement.

(9) One representative of municipal government, appointed by the Governor and selected from a list of 3 names provided by the Delaware League of Local Governments within the 60 days before a member's term expires or within 30 days after a vacancy. All of the following apply to the member appointed under this paragraph (b)(9):

a. Must rotate annually, on July 1 of each year, from among the municipal governments in this State.

b. Must not represent a municipal government that is not participating in a statewide opioid settlement agreement in which that municipal government is eligible to participate.

(10) One member representing a substance use disorder advocacy group, appointed by the Attorney General.

(11) One member representing the addiction recovery system, appointed by the Governor.

(c) The Attorney General and Governor, or their designees, shall co-chair the Commission and shall be responsible for guiding the administration of the Commission by, at a minimum, doing all of the following:

(1) Notifying the individuals who are members of the Commission of the formation of the Commission, and, if applicable, notifying a person of the need to nominate or appoint members.

(2) Setting a date, time, and place for the initial organizational meeting.

(3) Supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports.

(4) Establishing a webpage dedicated to the work of the Commission and publishing a list of the members of the Commission and the person who appointed them, meeting notices, agendas, minutes, and reports.

(5) Ensuring that any reports produced by the Commission is distributed to members of the Delaware General Assembly, the Governor, the Director and the Librarian of the Division of Research of Legislative Council, and the Delaware Public Archives.

(d)(1) A quorum of the Commission, or any committee of the Commission, is a majority of its current members. Official action by the Commission, including making findings and recommendations, requires the approval of the majority of the Commission members present at a public meeting where a quorum of the Commission is present.

(2) The Commission shall meet no less than 1 time every 4 months.

(3) The Commission shall adopt rules or procedures governing the work of the Commission that include ethics standards and procedures to identify and address conflicts of interest. The Commission's rules and procedures must be consistent with the terms of the sources of funds under § 4808B of this title.

(4) The Behavioral Health Consortium shall provide administrative support to the Commission.

(e) The Commission shall establish a Local Government Committee that shall provide recommendations to the Commission regarding the distribution of money from the Settlement Fund and Impact Fund.

(1) The Local Government Committee must include the 3 members representing county government under paragraph (b)(8) of this section and the member representing municipal government under paragraph (b)(9) of this section and may include additional representatives from municipal governments.

(2) The chair and members of the Local Government Committee are selected in the same manner as other committees under subsection (f) of this section.

(3) If the Commission does not adopt the recommendations of the Local Government Committee, the Commission shall provide a written explanation of the decision and provide an opportunity for the Local Government Committee to respond.

(f) The Commission co-chairs may create additional committees. The Commission co-chairs shall appoint a member of the Commission to serve as the chair of each committee and the initial committee members. Additional committee members may be appointed or removed by the chair of each committee. Individuals who are not members of the Commission may serve as a member of a committee.

(g) The Commission shall solicit and review any recommendations regarding the distribution of money from the Settlement Fund and the Impact Fund from all of the following:

(1) The Behavioral Health Consortium.

(2) The Addiction Action Committee.

(3) Overdose System of Care Committee.

(4) Drug Overdose Fatality Review Committee.

(h) The Commission shall seek input from the public and private entities and individuals concerned with the intended purposes of the Funds and shall conduct public hearings as necessary to provide an opportunity for public comment.

(i) The Commission shall use data and evidence on community harm to guide distributions and may procure reports to help guide the work of the Commission.

§ 5196B. Distributions from the Prescription Opioid Settlement Fund and the Prescription Opioid Impact Fund.

(a)(1) The Consortium shall distribute the money in the Prescription Opioid Settlement Fund (Settlement Fund) and the Prescription Opioid Impact Fund (Impact Fund) based on the recommendations of the Commission by awarding grants, by directing the Secretary of the Department of Health and Social Services to enter into contracts, or by distributing funds to State agencies and local governments to be administered as directed by the Commission.

(2) If the Consortium does not adopt a recommendation of the Commission, the Consortium shall provide a written explanation of the decision and the Commission may revise that recommendation to the Consortium.

(3) The Consortium may not make a distribution from the Settlement Fund or Impact Fund without a conforming recommendation from the Commission for the distribution.

(b) The disbursement of money from the Settlement Fund and the Impact Fund, distributed by the Consortium, shall be made by the State Treasurer upon authorization by all of the following, on a form designed for this purpose by the chair of the Consortium and the State Treasurer:

(1) The chair of the Consortium.

(2) The Director of the Office of Management and Budget.

(3) The Controller General.

(4) The co-chairs of the Joint Finance Committee.

(c) The Director of the Office of Management and Budget may waive the requirements under Chapter 69 of Title 29 for distributions made by the Consortium.

Section 6. Amend Chapter 37, Volume 82 of the Laws of Delaware by repealing Section 3 in its entirety.