
OLR Bill Analysis

sHB 5044

AN ACT IMPLEMENTING THE GOVERNOR'S BUDGET RECOMMENDATIONS REGARDING THE USE OF OPIOID LITIGATION PROCEEDS.

SUMMARY

This bill establishes an Opioid Settlement Fund as a separate non-lapsing fund administered by a 35-member Opioid Settlement Advisory Committee with assistance from the Department of Mental Health and Addition Services (DMHAS).

Under the bill, the fund must contain moneys the state receives from opioid-related judgements, consent decrees, or settlements finalized on or after July 1, 2021 (see BACKGROUND). Moneys must be used prospectively and only for specified substance use disorder abatement purposes.

If the DMHAS commissioner and the attorney general certify that a judgment's, consent decree's, or settlement's purpose is inconsistent with the fund's intent, the bill establishes a process for them to deposit the moneys into an alternative account or fund, which includes, among other things, reporting to the Public Health Committee before doing so.

Among other things, the bill:

1. generally requires proceeds from any state settlement to be allocated only to municipalities with an agreement to participate in the settlement and adhere its terms;
2. requires the DMHAS commissioner to obtain the advisory committee's approval before making or refusing to make fund disbursements;
3. prohibits the DMHAS commissioner from making fund disbursements unless the Office of Policy and Management

- (OPM) secretary verifies that the funds appropriated in that fiscal year's budget for substance use disorder purposes at least equal the total amount appropriated in the prior fiscal year's budget;
4. requires the advisory committee to hold quarterly public meetings and specifies that it terminates when all settlement moneys are received and disbursed, unless the state anticipates receiving additional moneys;
 5. specifies that disbursements do not supplant or replace any other funds that would have otherwise been used for the same purposes (e.g., insurance benefits or governmental funding);
 6. requires fund recipients to annually file with the advisory committee, starting by October 1, 2023, a report for the prior fiscal year that details the effectiveness of funded programs, services, supports, or resources; and
 7. requires the advisory committee, starting by January 15, 2023, to annually report on the fund to the Appropriations and Public Health committees.

EFFECTIVE DATE: July 1, 2022

§§ 2 & 4 — OPIOID SETTLEMENT FUND

Fund Establishment

The bill establishes an Opioid Settlement Fund as a separate non-lapsing fund administered by the Opioid Settlement Advisory Committee that the bill also establishes (see below).

Under the bill, the fund must contain certain moneys the state receives that are intended to address opioid use, related disorders, or the impact of the opioid crisis. This includes moneys (1) received from any judgement, consent decree, or settlement paid by any defendant that is finalized on or after July 1, 2021, and (2) related to opioid production, distribution, dispensing, and other opioid-related activities. Moneys remaining in the fund at the end of a fiscal year remain in the fund and do not revert to the General Fund.

However, if the DMHAS commissioner and the attorney general certify that the purpose of a judgment, consent decree, or settlement are inconsistent with the fund's intent, the bill permits them to deposit the moneys into an alternative fund or account if they do the following:

1. report the certification in writing to the Opioid Settlement Advisory Committee and include any alternative fund or account they identified and the reasons for depositing the moneys into it and
2. jointly report to the Public Health Committee on the intended use of the moneys in the alternative fund or account.

Fund Balance and Inventory

The bill requires the State Treasurer to determine the Opioid Settlement Fund balance annually by July 1.

Additionally, starting by December 31, 2022, the State Treasurer must annually report to the Opioid Settlement Advisory Committee an inventory of fund investments and the fund's net income as of the most recent fiscal year.

Use of Funds

The bill requires the fund's moneys to be used only in accordance with the controlling judgement, consent decree, or settlement, as confirmed by the attorney general and after the committee's and the OPM secretary's approval. It restricts use of the moneys to the following substance use disorder abatement purposes:

1. statewide, regional, or community substance use disorder needs assessments to identify structural gaps and needs to inform fund expenditures;
2. infrastructure (e.g., personnel, buildings, equipment) required for evidence-based substance use disorder prevention, treatment, recovery, or harm reduction programs (e.g., syringe service programs and naloxone distribution), services, and supports;

3. programs, services, supports, and resources for evidence-based substance use disorder prevention, treatment, recovery, or harm reduction (i.e., an attempted or actual reduction in the adverse consequences of substance use, including by addressing the underlying causes and conditions);
4. evidenced-informed substance use disorder prevention, treatment, recovery, or harm reduction pilot programs or demonstration studies that are not evidenced-based, but are approved by the advisory committee as an appropriate use of moneys for a limited time period the advisory committee sets, so long as it assesses whether the evidence supports funding the programs or studies or if the evidence provides a basis to fund them with an expectation of creating an evidence base for them;
5. evaluating the effectiveness and outcomes reporting for substance use disorder abatement infrastructure, programs, services, supports, and resources for which the fund's moneys were disbursed, including the (a) impact on access to harm reduction services or substance use disorder treatment or (b) reduction in drug-related deaths;
6. at least one publicly available data interface the DMHAS commissioner manages to aggregate, track, and report (a) substance use disorders, overdoses, and drug-related harms; (b) spending recommendations, plans, and reports; and (c) outcomes of programs, services, supports, and resources for which the fund's moneys were disbursed; and
7. expenses to (a) administer and staff the fund and the advisory committee, as permitted by the controlling judgment, consent decree, or settlement and (b) manage, invest, and disburse the fund's moneys.

The bill requires the fund's moneys to be used prospectively, and not to reimburse expenditures from before July 1, 2022, unless a court order requires a refund to the federal government.

Under the bill, “evidence-based” means meeting one of the following evidentiary criteria:

1. meta-analyses or systematic reviews have found the activity, practice, program, service, support, or strategy to be effective;
2. evidence from a scientifically rigorous experimental study, including a randomized controlled trial, shows that the activity, practice, program, service, support, or strategy is effective; and
3. multiple observational studies from locations within the U.S. indicate that the activity, practice, program, service, support, or strategy is effective.

Eligibility for Fund Disbursements

The bill requires proceeds from any state settlement of claims against a defendant to be allocated only to municipalities that (1) execute an agreement to participate in the settlement and (2) adhere to the agreement’s terms. However, it does not preclude or limit an allocation or disbursement to benefit residents within a municipality that does not execute an agreement or adhere to an agreement’s terms.

Under the bill, government and private providers are eligible to receive fund moneys for programs, services, supports, and resources for prevention, treatment, recovery, and harm reduction.

Fund Disbursement Process

The bill requires the DMHAS commissioner to obtain the Opioid Settlement Advisory Committee’s approval before making or refusing to make fund disbursements. The commissioner must adhere to the advisory committee’s decisions about fund disbursements, provided they are permissible expenditures (i.e., qualify as one of the substance use disorder abatement purposes described above).

The bill specifies that the commissioner’s role in distributing the fund’s moneys after the advisory committee approves it is administrative and not discretionary.

The bill prohibits the commissioner from making fund disbursements unless the OPM secretary sends the advisory committee a letter verifying that the funds appropriated and allocated in the fiscal year's budget for substance use disorder purposes for prevention, treatment, recovery, and harm reduction, are in an amount that at least meets the total amount of funds appropriated and allocated in the previous fiscal year's budget.

Under the bill, DMHAS must make fund disbursements in a way that is consistent with any limitations a controlling court order sets on the uses of litigation proceeds. If the court order allows expenditures other than or in excess of what the bill authorizes, DMHAS must adhere to the bill's limitations on using the funds. Conversely, if the bill permits expenditures other than or in excess of what the controlling court order authorizes, DMHAS must adhere to the order's limitations.

Supplemental Funds

Under the bill, fund disbursements do not supplant or replace any other funds that would otherwise have been used for the same purposes (e.g., insurance benefits or governmental funding). Instead, they are additional ("supplemental") funds to ensure that the current fiscal year funding exceeds the total of federal, state, and local funds allocated in the previous fiscal year for substance use disorder abatement, infrastructure, program, service, support, or resource.

§§ 3 & 5 — OPIOID SETTLEMENT FUND ADVISORY COMMITTEE

Purpose

The bill establishes a 35-member Opioid Settlement Advisory Committee to ensure (1) proceeds received by the state are allocated and spent on the substance use disorder abatement purposes described above and (2) robust public involvement, accountability, and transparency in allocating and accounting for the fund's moneys.

Membership

Under the bill, the advisory committee consists of the following 28 government officials:

1. the OPM secretary and attorney general, or their designees;
2. the commissioners of children and families, mental health and addiction services, and public health, or their designees, who serve as ex-officio members;
3. the six top legislative leaders, or their designees;
4. 16 municipal representatives, appointed by the governor; and
5. the Commission on Racial Equity in Public Health executive director, or a commission representative the executive director designates.

Additionally, the DMHAS commissioner must appoint the following seven members:

1. two individuals in recovery from a substance use disorder or representing an advocacy group for such individuals;
2. one provider each of community-based substance use disorder treatment services for adults and adolescents, who are non-voting members;
3. one licensed addiction medicine health care professional with prescriptive authority (e.g., physician, physician assistant, or advanced practice registered nurse) who is a non-voting member; and
4. two family members of individuals with a substance use disorder.

Conflicts of Interest

Notwithstanding state law, the bill specifies that is it not a conflict of interest for a trustee, director, officer, or employee of an organization, or any person having a financial interest in the organization to serve as a member of the advisory committee. But to do so, the individual must (1) disclose his or her position or interest to all other advisory committee members and (2) abstain from any advisory committee deliberation,

action, or vote that specifically concerns the organization.

Appointments and Leadership

Under the bill, the DMHAS commissioner is the advisory committee chairperson.

The bill requires initial committee appointments to be made by October 1, 2022. Committee members, except ex-officio members, serve two-year terms and cannot serve more than two consecutive terms. Members may serve until a successor's appointment, except when a vacancy occurs, in which case the appointing authority must fill the vacancy for the rest of the term.

Under the bill, an appointing authority may remove an advisory committee member for misfeasance, malfeasance, or willful neglect of duty.

Meetings

The bill requires the advisory committee to hold quarterly public meetings, which may be called by the chairperson or a majority of its members. Members may attend meetings (1) in person, (2) remotely by audiovisual means, or (3) by audio-only means if the chairperson approves it.

A majority of the advisory committee's members constitutes a quorum for transacting business. If there is a quorum, all advisory committee actions must be taken by an affirmative vote of the members present and each voting member has one vote.

Under the bill, the advisory committee ends when all settlement moneys are received and disbursed, unless the attorney general certifies that the state anticipates receiving additional moneys.

Duties

Under the bill, the advisory committee must:

1. recommend and approve policies and procedures for its administration and criteria for applying, awarding, and

disbursing moneys from the Opioid Settlement Fund and

2. approve fund allocations.

Additionally, the advisory committee must recommend and approve goals and objectives, including their rationale, sustainability plans, and performance indicators related to:

1. substance use disorder prevention, treatment, recovery, and harm reduction efforts;
2. reducing disparities in accessing prevention, treatment, recovery, and harm reduction programs, services, supports, and resources; and
3. improving health outcomes in traditionally underserved populations, including those who live in rural or tribal communities, are members of ethnic minorities, or were incarcerated.

DMHAS Responsibilities

The bill requires DMHAS to employ a full-time advisory committee manager and provide public health research and policy expertise, support staff, facilities, technical assistance, and other resources to:

1. assist the advisory committee manager in planning and supporting the committee's functions, including ensuring that the state's opioid-related proceeds are allocated and spent according to the bill's requirements and
2. ensure robust public involvement, accountability, and transparency in allocating and accounting for the fund's moneys.

Additionally, the bill requires DMHAS to:

1. utilize, where feasible, General Fund appropriations and existing infrastructure, programs, services, supports, and other resources to address substance use disorders, overdoses, and drug-related harms;

2. prepare for the advisory committee's review and approval, the department's goals and objectives and their rationale, sustainability plans, and performance indicators related to (a) substance use disorder prevention, treatment, recovery, and harm reduction efforts and (b) reducing disparities in accessing prevention, treatment, recovery, and harm reduction programs, services, supports, and resources;
3. evaluate applications and make recommendations to the advisory committee for awarding contracts and fund disbursements for expenditures allowed under the bill;
4. disburse moneys, after receiving the advisory committee's final approval;
5. approve the suspension of fund allocations to recipients the advisory committee or DMHAS commissioner finds (a) are substantially out of compliance with applicable contracts, policies, procedures, rules, regulations, or state or federal law or (b) used their disbursements for purposes other than those approved under the bill (but allocations may be subsequently approved once the committee determines that the recipient adequately remedied the cause of the suspension);
6. maintain oversight of the fund's expenditures to ensure they are only used the purposes specified in the bill; and
7. implement and publish on its website the policies and procedures for (a) administering the advisory committee and (b) applying, awarding, and disbursing moneys from the fund.

Website

The bill requires DMHAS to create and maintain a website where the advisory committee must publish (1) meeting minutes, including records of all votes to approve fund expenditures; (2) recipient agreements and annual reports on fund recipients (see Fund Recipient Annual Report, below); (3) policies and procedures the advisory committee approves; and (4) its annual reports.

Annual Report

The bill requires the advisory committee to annually report, starting by January 15, 2023, to the Appropriations and Public Health committees on the following:

1. the fund's opening and closing balance for the most recent fiscal year;
2. an accounting of all fund expenditures and credits;
3. an inventory of fund investments as of the most recent fiscal year, and the net income the fund earned for the most recent fiscal year, as determined by the State Treasurer;
4. the name and description of each fund recipient as well as the award amount;
5. a description of each award's intended use, including the (a) specific program, service, or resource funded; (b) population served; and (c) measures the recipient will use to assess the award's impact;
6. the primary criteria used to determine each recipient and its award amount;
7. a summary of information included in the recipient annual reports (see Fund Recipient Annual Report, below);
8. all award applications received during the most recent fiscal year;
9. a description of any finding or concern about whether all fund disbursements, other than expenses the bill authorizes, supplemented, and did not supplant or replace, any current or future local, state, or federal government funding;
10. the performance indicators and progress toward achieving DMHAS's goals and objectives, including metrics on improving outcomes and reducing mortality and other harms related to

substance use disorders;

11. for the most recent fiscal year, the dollar amount and percentage of the fund balance incurred for (a) the fund's and advisory committee's administrative expenses and staffing and (b) the fund's expenses for managing, investing, and disbursing fund monies; and
12. an explanation of any funds certified by the DMHAS commissioner and attorney general as being inconsistent with the bill's intent and the account or fund where the funds were deposited.

The bill also requires the DMHAS commissioner to post the annual report on the department's website.

§ 3 — FUND RECIPIENT ANNUAL REPORT

The bill requires fund recipients to file with the advisory committee, starting by October 1, 2023, an annual report for the prior fiscal year that details the effectiveness of funded infrastructure, programs, services, supports, or resources, including:

1. how the recipient used the funds for their intended purposes;
2. de-identified information on the number of individuals served, delineated by race, age, gender, and any other relevant demographic factors;
3. a specific analysis of whether the infrastructure, program, service, support, or resources reduced mortality or improved prevention, treatment, harm reduction, or recovery outcomes; and
4. a summary of any plan to ensure the sustainability of the funded infrastructure program, service, support, or resources, if the plan exists.

BACKGROUND

Opioid Settlement Agreement

Connecticut is part of a recently approved \$26 billion multistate opioid settlement agreement with the following prescription drug manufacturers: AmerisourceBergen, Cardinal, McKesson, and Johnson & Johnson. All states and U.S. territories have signed on to the agreement and in Connecticut, all municipalities have joined.

The state is expected to receive approximately \$300 million over 18 years. (Municipalities will receive 15% of the state's allocation.) The settlement agreement requires funds to be used for opioid abatement, including expanding access to opioid use disorder prevention, intervention, treatment, and recovery.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 31 Nay 0 (03/11/2022)