

ASSEMBLY HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1488

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 14, 2022

The Assembly Human Services Committee reports favorably and with committee amendments Assembly Bill No. 1488.

As amended by the committee, this bill establishes a framework concerning funds resulting from the resolution of lawsuits brought by the State against opioid manufacturers, opioid distributors, and pharmacies, including settlement agreements and bankruptcy plans that resolve any outstanding legal claims.

Specifically, the bill establishes a dedicated, non-lapsing fund, to be known as the “Opioid Recovery and Remediation Fund.” The State Treasurer will be required to deposit into the fund the State’s share of moneys received as a result of the resolution of litigation concerning the opioid epidemic, provided that doing so is consistent with the terms of the resolution. Any interest and other income earned on moneys in the fund, and any other moneys that may be appropriated or otherwise become available for purposes of the fund, are to be credited to and deposited in the fund. Moneys paid to counties or municipalities or allocated for attorneys’ fees, costs, and related litigation expenses will not be considered to be part of the State’s share of moneys received as a result of a national opioid litigation resolution.

Moneys in the fund may only be dedicated and used for certain enumerated purposes outlined in the bill, including: providing treatment to people with opioid use disorders, as well as any co-occurring substance use disorder or mental health conditions; providing recovery support to the person and the person’s family; engaging in opioid use prevention efforts; assisting with avoidance of and transition from the criminal justice system for people with opioid use disorders and co-occurring conditions; providing services specific to pregnant people and parents who have an opioid use disorder; promoting appropriate prescribing practices for opioids; working to prevent and reduce opioid overdose deaths; training law enforcement concerning safe drug handling; promoting wellness for first responders experiencing trauma from responding to opioid emergencies; supporting initiatives to abate the opioid epidemic; administrative expenses; and supporting any strategies as may be required under an opioid litigation resolution.

The Department of Human Services (DHS) will be designated the lead agency for the State for purposes of directing the disbursement, allocation, monitoring, and use of the State's share of opioid litigation resolution moneys. The DHS will have the authority to promulgate emergency rules and regulations as are necessary to implement the bill, which emergency rules and regulations will expire after 18 months and will be subject to formal adoption, with or without revision, using the ordinary process for promulgating administrative rules and regulations. The DHS will be required to disburse moneys from the fund in consultation with the Opioid Recovery and Remediation Fund Advisory Council established under the bill, with an emphasis on supporting programs and strategies that are evidence-based or evidence-informed and with consideration given to providing equitable access for underserved communities. The disbursement and use of the funds will be subject to any terms and conditions in the opioid litigation resolution that resulted in the State receiving the funds, as well as any applicable agreements entered into with counties and municipalities concerning the use of opioid litigation resolution funds.

As amended, the bill specifies that moneys received from an opioid litigation resolution will supplement, and not supplant, funds that otherwise would have been used to carry out the purposes outlined in the bill, and no amount of those moneys may be used to reimburse the State or any of its counties or municipalities for past expenditures. The moneys may be used to refund the federal government its portion of the funds, if so required.

As amended, the bill establishes the Opioid Recovery and Remediation Fund Advisory Council, which will be charged with providing the DHS with general recommendations on the allocation of opioid litigation resolution funds, as well as policy modifications necessary to maximize the use of those funds. In carrying out this purpose, the council will provide the DHS with data concerning access to substance use disorder prevention and treatment programs and recovery services and solicit feedback from stakeholders, local providers, and advocates regarding the services needed to prevent and treat substance use disorders across the State.

The council will consist of 13 members, including: the Commissioner of Human Services, the Commissioner of Health, and the Attorney General, or their designees, who will serve ex-officio, and 10 public members appointed by the Governor, with three of the public members being appointed based on the recommendation of the President of the Senate and three of the public members being appointed based on the recommendation of the Speaker of the General Assembly. The public members are to possess knowledge and expertise in matters related to substance use disorder treatment, harm reduction, criminal justice, drug policy, behavioral health, health care

equity, health policy, and personal experience with substance use and substance use disorders.

All appointments to the council are to be made no later than the 60th day after the effective date of the bill. The public members will serve for two-year terms. The Governor will appoint a chairperson from among the public members. The council will organize upon the appointment of its members and will meet at the times and places as it designates. The members of the council will serve without compensation but may be reimbursed for necessary and reasonable expenses incurred in the performance of their official duties, subject to the availability of funds for this purpose. The DHS will provide staff and administrative support to the council. The council will be considered a “public body” for the purpose of complying with the provisions of the “Senator Byron M. Baer Open Public Meetings Act,” P.L.1975, c.231 (C.10:4-6 et seq.). The “New Jersey Conflicts of Interest Law,” P.L.1971, c.182 (C.52:13D-12 et seq.), will apply to all members of the council.

To the extent permissible under the terms of a national opioid litigation resolution, the council will not be required to, and may refrain from, making recommendations for expenditures that would primarily benefit counties or municipalities that were eligible to participate in opioid litigation but did not participate in the resolution of the litigation; however, the council will retain the discretion to recommend any expenditures it deems appropriate.

The Attorney General, in consultation with the Commissioner of Human Services, will be authorized to enter into agreements with counties and municipalities concerning the allocation and expenditure of moneys allocated to the State and its counties and municipalities resulting from the resolution of opioid litigation. A county or municipality that directly receives moneys as a result of a national opioid litigation resolution will be required to establish an advisory council to provide input, advice, and recommendations on the disbursement and allocation of the moneys. Each county or municipal advisory council will, at a minimum, consist of a member possessing expertise in substance use disorder treatment or prevention, a member representing a provider of behavioral health or substance use disorder treatment in the community, a member with personal experience with substance use and substance use disorder issues, the county prosecutor or the county prosecutor’s designee, and an individual authorized to appropriate funds on behalf of the governing body of the municipality or county, as the case may be, or such individual’s designee. A county or municipal advisory council may include any additional members as the county or municipality deems necessary and appropriate.

No later than 12 months after the effective date of the bill, and annually thereafter, the DHS, in consultation with the Opioid Recovery and Remediation Fund Advisory Council, is to report to the Governor and to the Legislature on the details of the allocations made

with the funds appropriated from the Opioid Recovery and Remediation Fund. The information will include the allocation amount, a description of the program being funded, a list of involved community providers, the goals of the program, and the outcome measures to be used to determine program efficacy. The DHS will be required to additionally post this information on its Internet website.

This bill was pre-filed for introduction in the 2022-2023 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed

As amended and reported by the committee, Assembly Bill No. 1488 is identical to Senate Bill No. 783 (1R).

COMMITTEE AMENDMENTS:

The committee amendments add language clarifying that the disbursement and use of moneys from opioid litigation resolutions will be subject to the terms of the resolution and any agreements entered into with county and municipal governments concerning the use of litigation resolution funds received by the county or municipality. The amendments clarify that the bill applies to any resolution of litigation against opioid manufacturers, opioid distributors, and pharmacies related to the opioid epidemic, including legal settlements and bankruptcy plans that resolve the legal claims.

The committee amendments clarify that the requirements of the bill do not apply to funds paid to counties or municipalities, to funds allocated to attorney's fees, and to funds allocated for costs related to the opioid litigation.

The committee amendments revise the purposes for which opioid litigation resolution funds may be used to provide an enumerated list of specific purposes involving substance use disorder prevention, treatment, and recovery, as well as related services and programs. The amendments specify that opioid litigation resolution funds are to supplement, rather than supplant, existing funds that are used for those same purposes.

The committee amendments clarify that the Department of Human Services (DHS) is the designated lead agency for the purposes of directing the disbursement, allocation, and use of opioid litigation resolution funds, as well as for complying with any reporting, compliance, and administrative functions.

The committee amendments grant the DHS emergency rulemaking authority for the purposes of implementing the bill.

The committee amendments revise the duties of the Opioid Recovery and Remediation Fund Advisory Council to replace a requirement that the council gather and evaluate data concerning substance use disorder prevention and treatment programs to determine coverage gaps, to instead require the council to provide the DHS with data concerning the availability of, gaps in, and barriers to prevention and treatment programs, as well as recovery services.

The committee amendments revise the authority to appoint members to the advisory council to provide that, in lieu of the President of the Senate and the Speaker of the General Assembly making appointments to the council, the Governor will make those appointments upon the recommendation of the President of the Senate and the Speaker of the General Assembly. The amendments also revise the qualification and experience requirements for several of the public members.

The committee amendments provide that the Governor will name the chair of the advisory council, rather than the advisory council selecting a chair from among the public members.

The committee amendments add language directing that the advisory council generally avoid recommending that counties and municipalities receive opioid litigation resolution funds if the county or municipality had the opportunity to participate in the resolution but did not. However, the amendments expressly provide that the council retains the discretion to make any recommendations it deems appropriate.

The committee amendments expressly provide that the advisory council is to be considered a public body for the purposes of State open public meetings laws, and that the members of the council are subject to the State conflicts of interest laws.

The committee amendments authorize the Attorney General to enter into agreements with counties and municipalities concerning the allocation and expenditure of opioid litigation resolution monies received by the State and its counties and municipalities.

The committee amendments require a county or municipality that receives opioid litigation resolution monies to establish an advisory council, and set forth requirements concerning the membership of county and municipal advisory councils.

The committee amendments make various technical changes involving grammar, outdated terminology, and syntax.