

# ASSEMBLY HUMAN SERVICES COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 1488

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 23, 2023

The Assembly Human Services Committee reports favorably Assembly Bill No. 1488 (1R) with committee amendments.

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 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: paying attorneys’ fees, costs, and related litigation expenses related to the national opioid litigation resolution; 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 the purpose 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 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. Moneys in the fund may be transferred to other State departments, as directed by the Commissioner of Human Services, in support of the purposes authorized under the bill, subject to the approval of the Director of Budget and Accounting.

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 Advisory Council, which will be advisory in nature and will be responsible for reviewing proposals, data, and analyses and engaging with stakeholders and community members to develop and provide recommendations on the allocation and distribution of opioid litigation resolution proceeds. In carrying out this purpose, the council will gather and evaluate data concerning access to substance use disorder prevention and treatment programs and recovery services and solicit feedback from stakeholders, local providers, advocates, individuals with lived experience with opioid use disorders, the academic community, and other experts and members of the public regarding the services needed to prevent and treat substance use disorders across the State. The council will also be responsible for reviewing and evaluating recommendations submitted by the public using an online portal that was established on August 31, 2022 to allow for the submission of recommendations from the public

concerning uses of opioid litigation resolution funds, as well as evaluating approaches taken by New Jersey and other states in administering funds resulting opioid litigation resolutions.

The council will comprise: 1) the Commissioner of Human Services, the Commissioner of Health, the Commissioner of Children and Families, and the Attorney General, or their designees, who will serve ex-officio; at least 10 public members appointed by the Governor, who are to possess certain experience, knowledge, and expertise in matters related to substance use disorder issues; and 3) such additional ex officio and public members as the Governor deems appropriate.

The Commissioner of Human Services or the commissioner's designee will serve as chairperson of the council. The council will organize upon the appointment of its members and will meet at the times and places as are requested by the Governor and as are required by the chairperson. 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 funding made available for this purpose. The DHS will provide staff and administrative support to the council. The public members of the council will serve at the pleasure of the Governor.

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 council may, but will not be required to, provide information and general recommendations to counties and municipalities concerning the expenditure of the share of proceeds from national opioid litigation resolutions allocated to those counties and municipalities, and may coordinate with any similarly situated county advisory council as the chairperson deems appropriate.

The council will expire 180 days after the all proceeds from opioid litigation resolutions are expended and the Department of Human Services issues its final report concerning the use of opioid litigation resolution funds.

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 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, and may, at the request of a municipality that

received opioid litigation resolution funds, provide recommendations to the municipality concerning the disbursement of the funds. Each county 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 county or such individual's designee. A county advisory council may include any additional members as the county deems necessary and appropriate.

No later than 12 months after the effective date of the bill, and annually thereafter until all proceeds from national opioid litigation resolutions have been expended, the DHS, in consultation with the Opioid Recovery and Remediation 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.

No later than 180 days after all proceeds from national opioid litigation resolutions have been expended, the DHS will be required to and issue a final report to the Governor and the Legislature concerning the State's expenditure of opioid litigation resolution proceeds, including: the amounts allocated; descriptions of the programs funded using the proceeds; community providers participating in funded programs; program outcomes; overall outcomes resulting from the expenditure of the proceeds, including changes in substance use disorder rates, overdose deaths, participation in substance use disorder treatment and recovery programs, successful treatment outcomes, outcomes involving dual diagnoses involving substance use disorders in combination with other behavioral health conditions, and expansion of substance use disorder and other behavioral health care provider and treatment capacity; and such other information and data as the DHS deems necessary to fully evaluate the use of opioid litigation resolution funds.

The DHS will be required to post the information and reports required under the bill on its Internet website.

This bill was prefiled 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 reported by the committee with amendments, Assembly Bill No. 1488 (1R) is identical to Senate Bill No. 783 (1R), which was also reported by the committee on this date with amendments.

COMMITTEE AMENDMENTS:

The committee amendments specify that opioid litigation resolution funds may be used to pay attorneys' fees and other expenses resulting from opioid litigation resolutions.

The committee amendments remove certain references to municipalities receiving opioid litigation resolution funds, including provisions requiring such municipalities to establish advisory councils to provide recommendations concerning use of the funds, and instead provide that county advisory councils may provide recommendations to municipalities concerning the use of opioid litigation resolution funds, if so requested.

The committee amendments authorize the Department of Human Services (DHS) to transfer opioid litigation resolution funds to other State departments, with the approval of the Director of Budget and Accounting.

The committee amendments revise the authorized uses of opioid litigation resolution funds to specify that they may be used to support efforts to prevent the development of opioid use disorders.

The committee amendments revise the definition of "opioid litigation resolution" to specify that it includes litigation involving individuals affiliated with an opioid manufacturer, opioid distributor, or pharmacy.

The committee amendments change the name of the "Opioid Recovery and Remediation Fund Advisory Council" to remove the word "fund," such that it will be called the "Opioid Recovery and Remediation Advisory Council."

The committee amendments revise a provision stating that the advisory council will be established in, but not of, the DHS, to instead provide that it will be established in the DHS.

The committee amendments eliminate a requirement that the advisory council provide certain information to DHS, and instead provide that it is to gather and evaluate certain information. The committee amendments specify that the advisory council is limited to an advisory role and revise its responsibilities and duties as they pertain to making recommendations to the DHS.

The committee amendments revise the membership of the advisory council to include the Commissioner of Children and Families among the ex officio members, to require that the Governor appoint at least 10 public members and to revise the qualification requirements of those members, to allow the Governor to appoint additional ex officio and public members as the Governor deems appropriate, and to remove a requirement that certain public members be appointed based on recommendations from legislative leadership.

The committee amendments provide that Commissioner of Human Services or the commissioner's designee will serve as chair of the advisory council, in lieu of the Governor naming the chair.

The committee amendments remove time-based term limits for the public members of the advisory council and instead provide that the public members will serve at the pleasure of the Governor.

The committee amendments remove a provision authorizing the advisory council to establish its own meeting schedule and instead provide that it will meet as requested by the Governor or as required by the chair.

The committee amendments remove language specifying that the advisory council is a public body for the purposes of State law.

The committee amendments provide that the advisory council will expire 180 days after all opioid litigation resolution funds are expended and the DHS issues its final report concerning use of the funds.

The committee amendments add a requirement for the DHS to issue a final report after all opioid litigation resolution funds are expended.

The committee amendments revise the synopsis of the bill to reflect the amendments and make technical change to correct capitalization and punctuation issues.