

November 8, 2021

SENATE BILL NO. 3867

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 3867 with my recommendations for reconsideration.

The bill would establish a dedicated, non-lapsing fund, the "Opioid Recovery and Remediation Fund," into which would be deposited any moneys that are allocated to or otherwise received by the State as a result of a settlement agreement entered into with, or litigation undertaken against, opioid manufacturers and distributors related to claims arising from the manufacture, marketing, distribution, or dispensing of opioids. These funds would be dedicated to and used only for the purposes of supplementing substance use disorder prevention and treatment programs and services in the State, consistent with the terms of settlements made in connection with claims arising from the manufacture, marketing, distribution, or dispensing of opioids.

The bill directs that the moneys in this Fund be annually appropriated to the Department of Human Services ("DHS"), for allocation to appropriate programs and services related to substance use disorder treatment, prevention, education, and analysis. The bill establishes an "Opioid Recovery and Remediation Fund Advisory Council," which would make recommendations to the DHS on allocations from the Opioid Recovery and Remediation Fund.

I commend the sponsors for being forward-thinking and proactive in introducing this bill and giving high priority in shepherding it through the legislative process. Recognizing the potential urgency of having these mechanisms in place should these litigation matters be finally resolved during the summer, the Legislature, to its credit, acted swiftly to pass this bill through both Houses and present it for my signature. However, until a final agreement is in place, these national opioid litigation resolutions are by nature subject to change, as they are the product of ongoing negotiation among

numerous stakeholders and parties, including several drug manufacturers and distributors, multiple states' attorneys general, and attorneys representing a large number of individual state subdivisions throughout the country. The legislation introduced and passed in June could not anticipate or account for the multitude of modifications and clarifications made to the evolving litigation settlement agreements as the negotiation process continued through the summer months.

Now that some of these litigation matters have been or are on the verge of being finalized, we have a more concrete understanding of what is needed in the law, both to help the State of New Jersey and our participating counties and municipalities comply with the terms and conditions of these settlement agreements and to maximize our ability to direct and utilize the settlement proceeds for the laudable intended purpose of addressing opioid use disorder and co-occurring substance use disorder or mental health conditions. The amendments I am recommending would modify the provisions of the bill to better conform to the structure and terms of the settlement agreements as they currently stand, as well as to enable us to maximize the use of these funds for the precise purposes for which they are intended.

Accordingly, I herewith return Senate Bill No. 3867 and recommend that it be amended as follows:

- | | |
|--|---|
| <u>Page 2, Section 1, Line 11:</u> | Delete "The" and insert "To the extent consistent with the terms of a national opioid litigation resolution subject to this act, the" |
| <u>Page 2, Section 1, Line 11:</u> | Delete "any" and insert "the State's share of" |
| <u>Page 2, Section 1, Line 12:</u> | Delete "that are allocated to or otherwise received by the State" and insert "received" |
| <u>Page 2, Section 1, Lines 13-15:</u> | Delete in their entirety |
| <u>Page 2, Section 1, Line 16:</u> | Delete "of opioids" and insert "such resolution" |

Page 2, Section 1, Line 19:

After "fund." insert "For purposes of this section, moneys paid to counties or municipalities or allocated for attorneys' fees, costs, and related litigation expenses shall not be considered to be part of the State's share of moneys received as a result of a national opioid litigation resolution."

Page 2, Section 1, Line 21:

Delete "of supplementing substance use disorder prevention"

Page 2, Section 1, Lines 22-25:

Delete in their entirety and insert "described in subsection e. of this section, and subject to applicable requirements of the relevant national opioid litigation resolution or agreement entered pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

(2) The Department of Human Services shall be designated the lead agency for the State for purposes of directing the disbursement and allocation of the State's share of any moneys that are allocated to or otherwise received by the State as a result of a national opioid litigation resolution and for monitoring the use of moneys disbursed to counties or municipalities under a national opioid litigation resolution or agreement entered pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) and, in coordination with the State Comptroller and the Attorney General, ensuring that the use of such moneys complies with the purposes set forth in this act and is consistent with the terms of the applicable national opioid litigation resolution or agreement entered pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill)

(a) The department shall have primary responsibility for ensuring that the various reporting, compliance, and administrative functions imposed upon the State pursuant to the terms and conditions of any national opioid litigation

resolution or agreement entered pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) are performed, and shall serve as the single point of contact for the State for submission to any settlement fund administrator or trustee requests for disbursements of funds.

(b) The department shall be authorized to make determinations regarding disbursement and allocation of the State's share of such proceeds in accordance with the requirements or terms of such resolutions or agreements entered pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), which may include designations of regions for the allocation of the State's share of such proceeds, in addition to taking such other actions as may be assigned or required to be performed by the lead agency or single point of contact for the State under the terms of any national opioid litigation resolution or agreement entered pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

(c) The department shall receive and review reports from all counties and municipalities regarding their expenditure of any moneys received by the county or municipality as a result of a national opioid litigation resolution.

(d) The department is authorized to adopt, amend, or repeal regulations as necessary to carry out the intent and provisions of P.L. , c. (C.) (pending before the Legislature as this bill) and, notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the department may adopt rules and regulations necessary or proper to enable it to carry out the department's duties, functions, and powers with respect to this act immediately upon filing proper notice with the Office of Administrative Law."

Page 2, Section 1, Line 26:

Delete "(2) The Legislature shall annually appropriate" and insert "(3) Notwithstanding any other law to the contrary, there is hereby appropriated: (a)"

Page 2, Section 1, Line 28:

After "in" insert "accordance with the provisions of subsections d., e., and f. of this section; and (b) moneys paid to the State as a result of a national opioid litigation resolution that have been allocated to such counties or municipalities in accordance with the terms of the national opioid litigation resolution or agreement entered pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), and to the extent necessary to effectuate such resolution, which shall be used in accordance with the provisions of subsections e. and f. of this section.

d. Notwithstanding section 2 of P.L.1999, c.129 (C.56:8-14.3), section 15 of P.L.2003, c.76 (C.56:8-133), and the "New Jersey False Claims Act," P.L.2007, c.265 (C.2A:32C-1 et seq.), the department shall direct the allocation and disbursement of moneys in the Opioid Recovery and Remediation Fund established by this section, and shall do so in"

Page 2, Section 1, Line 31:

After "programs" insert "and strategies"

Page 2, Section 1, Lines 31-32:

Delete "culturally and gender competent, trauma-informed"

Page 2, Section 1, Line 32:

After "evidence-based" insert "or evidence-informed"

Page 2, Section 1, Line 34:

Delete "where" and insert "in making such allocations shall consider equitable access for underserved communities Statewide."

Page 2, Section 1, Lines 33-47:

Delete in their entirety

Page 3, Section 1, Lines 1-11:

Delete in their entirety and insert "e. Moneys, other than attorneys' fees, costs and expenses related to litigation, that are allocated to or otherwise received by the State or any county or municipality as a result of a national opioid litigation resolution shall be

dedicated and used, consistent with the terms of an applicable national opioid litigation resolution or agreement entered pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), for the purpose of addressing opioid use disorder and any co-occurring substance use disorder or mental health conditions through evidence-based or evidence-informed practices or strategies that may include, but are not limited to, the following:

(1) Supporting treatment of opioid use disorder and any co-occurring substance use disorder or mental health conditions through evidence-based or evidence informed programs or strategies;

(2) Supporting individuals in recovery from opioid use disorder and any co-occurring substance use disorder or mental health conditions through evidence-based or evidence-informed programs or strategies, including but not limited to providing support services to the families of such individuals;

(3) Providing connections to care for people who have, or are at risk of developing, opioid use disorder and any co-occurring substance use disorder or mental health conditions through evidence-based or evidence-informed programs or strategies;

(4) Addressing the needs of persons with opioid use disorder and any co-occurring conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies;

(5) Addressing the needs of pregnant or parenting persons with opioid use disorder and any co-occurring substance use disorder or mental health conditions, and the needs of their families, including babies with neonatal abstinence syndrome, through evidence-

based or evidence-informed programs or strategies;

(6) Supporting efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies;

(7) Supporting efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies;

(8) Supporting efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies;

(9) Educating law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs;

(10) Providing wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events;

(11) Supporting efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the opioid epidemic through activities, programs, or strategies;

(12) Supporting training to abate the opioid epidemic through activities, programs, or strategies;

(13) Supporting opioid abatement research;

(14) Supporting such other strategies as may be expressly identified in any national opioid litigation resolution; and

(15) Administrative expenses, subject to limits imposed by any national opioid litigation resolution or by any agreement entered pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

f. Moneys, other than attorneys' fees, costs and expenses related to litigation, that are allocated to or otherwise received by the State or any of its counties or municipalities as a result of a national opioid litigation resolution shall be used to supplement and shall not supplant Federal, State, county, or municipal funds, as the case may be, that otherwise would have been used to carry out the purposes delineated in this act, and no amount of such moneys shall be used to reimburse the State or any of its counties or municipalities for past expenditures, except as may otherwise be required to refund to the federal government a portion of the moneys.

g. For purposes of P.L. , c. (C.) (pending before the Legislature as this bill), "national opioid litigation resolution" means a settlement agreement, entered into by the Attorney General of New Jersey on behalf of the State and by other state attorneys general on behalf of their respective states, which provides for the participation of states, counties, and municipalities to resolve claims by the State attorneys general and counties and municipalities against opioid manufacturers, distributors, or pharmacies related to the manufacture, marketing, distribution, or dispensing of opioids, or a bankruptcy plan that has received final approval and that channels, releases, or otherwise finally disposes of such claims including those of the State and its counties and municipalities."

Page 3, Section 2, Line 16:

After "with" insert "general"

Page 3, Section 2, Line 21:

Delete "gather and evaluate State" and insert "provide"

Page 3, Section 2, Line 21:

After "data" insert "to the department"

Page 3, Section 2, Line 21:

After "regarding" insert "availability of, gaps in, and barriers to"

Page 3, Section 2, Line 22:

After "programs and" insert "recovery"

- Page 3, Section 2, Line 22: Delete "in order to"
- Page 3, Section 2, Lines 23-25: Delete in their entirety
- Page 3, Section 2, Line 39: After "by the" insert "Governor upon recommendation of the"
- Page 3, Section 2, Line 44: After "by the" insert "Governor upon recommendation of the"
- Page 3, Section 2, Line 46: Delete "behavioral"
- Page 3, Section 2, Line 46: After "health" insert "care equity"
- Page 3, Section 2, Lines 47-48: Delete "personal experience with substance use and addition issues" and insert "expertise in public health policy"
- Page 4, Section 2, Line 5: After "appointments." insert "The Governor shall appoint a chairperson from among the public members of the council to serve in such capacity at the pleasure of the Governor."
- Page 4, Section 2, Line 24: After "responsibilities." insert "f. To the extent permissible under the terms of a national opioid litigation resolution, the council shall 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 the national opioid litigation resolution that yielded such funds but did not participate in the resolution, provided that nothing in this subsection shall be deemed to prevent the council from exercising its discretion to make such recommendations should it desire to do so.
- g. The council shall be considered a "public body" for the purpose of complying with the provisions of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), and shall be subject to the provisions thereof. The "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.) shall apply to all members of the council."

Page 4, Line 25:

Insert new sections:

"3. (New section) The Attorney General, in consultation with the Commissioner of Human Services, is authorized to enter into an agreement with counties and municipalities concerning the allocation and expenditure of moneys allocated to the State and its counties and municipalities in any national opioid litigation resolution.

4. (New section) A county or municipality that directly receives moneys as a result of a national opioid litigation resolution shall establish an advisory council to provide input, advice, and recommendations on the disbursement and allocation of such moneys. Each respective advisory council shall consist of, but shall not be limited to, 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 addiction 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.

5. (New section) If any section, subsection, clause, or provision of this act shall be adjudged unconstitutional or to be ineffective in whole or in part, to the extent that it is not adjudged unconstitutional or is not ineffective, it shall be valid and effective and no other section, subsection, clause, or provision of this act shall on account thereof be deemed invalid or ineffective, and the applicability or invalidity of any section, subsection, clause, or provision of this act in any one or more instances or under any one or more circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance or under any other circumstances."

Page 4, Section 3, Line 26:

Delete "3." and insert "6."

Page 4, Section 4, Line 38:

Delete "4." and insert "7."

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor