

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1274

(Delegate Rosenberg, *et al.*)

Appropriations and Health and
Government Operations

Finance

Opioid Restitution Fund

This bill establishes the Opioid Restitution Fund to retain any revenues received by the State relating to specified opioid judgments or settlements. The fund may be used only for specified opioid-related programs and services. The Governor must develop and report specified information. **The bill takes effect July 1, 2019, subject to specified contingencies.**

Fiscal Summary

State Effect: Because the bill does not directly affect the total amount of funds available to Maryland under any opioid judgment or settlement, it is not anticipated to significantly affect overall State finances, as discussed below. The fund can be administered and the bill's requirements can be handled with existing resources.

Local Effect: Local health departments and other local entities may benefit from the prescribed uses of the fund, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: The fund is a special, nonlapsing fund. Any interest earnings of the fund must be credited to the fund. The fund consists of all revenues received by the State from any source resulting, directly or indirectly, from any judgment against, or settlement with, opioid manufacturers, opioid research associations, or any other person in the opioid

industry relating to any claims made or prosecuted by the State to recover damages for violations of State law.

The fund may only be used to provide funds for:

- improving access to medications proven to prevent or reverse an overdose;
- supporting peer support specialists and screening, brief intervention, and referral to treatment services for hospitals, correctional facilities, and other high-risk populations;
- increasing access to medications that support recovery from substance use disorders;
- expanding the Heroin Coordinator Program, including for administrative expenses;
- expanding access to crisis beds and residential treatment services;
- expanding and establishing safe stations, mobile crisis response systems, and crisis stabilization centers;
- supporting the Health Crisis Hotline;
- organizing primary and secondary school education campaigns to prevent opioid use, including for administrative expenses;
- enforcing the laws regarding opioid prescriptions and sales, including for administrative expenses;
- research regarding and training for substance use treatment and overdose prevention, including for administrative expenses; and
- supporting and expanding other evidence-based interventions for overdose prevention and substance use treatment.

Money expended from the fund is supplemental to and is not intended to supplant funding that otherwise would be appropriated for such programs and services. Except as specified, money expended from the fund may not be used for administrative expenses.

Governor's Reporting Requirements

The Governor must develop key goals, objectives, and performance indicators relating to substance use treatment and prevention efforts. At least once annually, the Governor must consult with substance use treatment and prevention stakeholders to identify recommended appropriations from the fund.

Additionally, by November 1 each year, the Governor must report to the General Assembly (1) an accounting of the total funds expended from the fund in the immediately preceding fiscal year, by use, jurisdiction (if applicable), and budget program and subdivision; (2) the

performance indicators and progress toward achieving developed goals and objectives; and (3) the recommended appropriations from the fund.

Effective Date and Contingencies

The bill takes effect contingent on a judgment by a State or federal court against, or settlement with, opioid manufacturers, opioid research associations, or any other person in the opioid industry relating to any claims made or prosecuted by the State to recover damages for violations of State law. The bill must take effect on the date that specified notice from the Attorney General is received by the Department of Legislative Services.

Current Law: Chapters 172 and 173 of 1999 established the Cigarette Restitution Fund (CRF), which is supported by payments made under the Master Settlement Agreement (MSA). Through MSA, settling tobacco manufacturers pay the litigating parties – 46 states, five territories, and the District of Columbia – substantial annual payments in perpetuity. The use of CRF is restricted by statute. Activities funded through CRF include the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; substance abuse treatment and prevention; the Breast and Cervical Cancer Program; Medicaid; tobacco production alternatives; legal activities; and nonpublic school support.

Background: The Office of the Attorney General (OAG) filed charges in September 2018 against Insys Therapeutics for multiple violations of the Consumer Protection Act. Insys manufactures an extremely potent opioid, Subsys, approved only for treating breakthrough pain in adult cancer patients. According to the statement of charges, Insys and local health care providers circumvented the limited approval and targeted “off-label” patients without cancer, including patients with chronic pain syndrome, knee pain, back pain, and migraines. Additionally, the statement of charges alleged that more than 90% of Subsys prescriptions written or filled in Maryland were written for patients who never should have received the drug and that Insys provided tens of thousands of dollars to prescribers as inducements to prescribe Subsys to patients.

Additionally, *The Baltimore Sun* reports that, in January 2019, the Board of Public Works approved a contract in which outside lawyers from three firms will help the State investigate the opioid industry for potential future litigation.

For information on the State’s growing opioid crisis see **Appendix – Opioid Crisis**.

State Fiscal Effect: Because the bill does not directly affect the total amount of funds available to Maryland under any judgment or settlement, it is not anticipated to materially affect overall State finances. In the absence of the bill, this analysis assumes the monies would be received as special funds within OAG’s Division of Consumer Protection (with

a portion potentially directed to the general fund). Under the bill, the monies are instead directed to a new special fund. The bill charges the Comptroller and Treasurer with accounting for and holding the fund, respectively. The bill also establishes how the monies may be expended; otherwise, under the assumption above, the monies would be used to fund OAG activities and presumably compensate outside counsel who assisted in the investigation.

Local Fiscal Effect: To the extent that awards are received through litigation or settlement and accrue to the fund, and grants from the fund are awarded to local health departments or other local entities to help address the opioid crisis, local revenues and expenditures increase, potentially significantly.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Office of the Attorney General; Comptroller's Office; Maryland State Treasurer's Office; Maryland Department of Health; *The Baltimore Sun*; Department of Legislative Services

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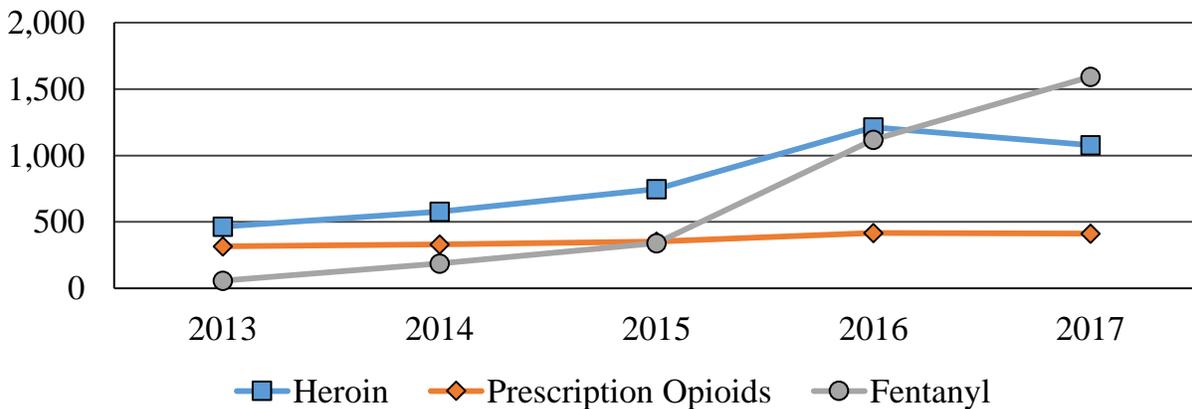
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Appendix – Opioid Crisis

Opioid Overdose Deaths

While heroin and prescription opioid deaths have begun to taper off, fentanyl deaths have continued to rise at a high rate. As seen in **Exhibit 1**, between 2016 and 2017, prescription opioid-related deaths in Maryland decreased negligibly by 1% (from 418 to 413) while heroin-related deaths decreased by 11% (from 1,212 to 1,078). However, fentanyl-related deaths increased by 42% (from 1,119 to 1,594). Between January and June 2018, there were 1,038 deaths related to fentanyl, a 30% increase over the same time period for 2017.

Exhibit 1
Total Number of Drug-related Intoxication Deaths
By Selected Substances in Maryland
2013-2017



Source: Maryland Department of Health

Federal Actions to Address the Opioid Crisis

In 2016, the Comprehensive Addiction and Recovery Act authorized over \$181 million annually, and the 21st Century Cures Act (CURES Act) authorized up to \$970 million to be distributed through the State Targeted Response to the Opioid Crisis Grants. The grants are to be used by states to increase access to treatment and reduce unmet treatment needs and opioid-related overdose deaths. In 2017, Maryland received a two-year, \$20 million grant for the prevention and treatment of opioid abuse. In March 2017, President Donald J. Trump signed an executive order establishing the President's Commission on Combating Drug Addiction and the Opioid Crisis. The commission issued

a final report in November 2017, with 56 recommendations, including a recommendation for federal block grant funding for state activities relating to opioids and substance use disorders.

In 2018, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act was passed. The legislation expands existing programs and creates new programs to prevent substance use disorders and overdoses, including reauthorization of the Office of National Drug Control Policy, new Centers for Disease Control and Prevention grants for states and localities to improve prescription drug monitoring programs, and funding to encourage research into nonaddictive painkillers. Additionally, the legislation partially lifts the restriction that blocks states from spending federal Medicaid dollars on residential addiction treatment centers by allowing payments for residential services for up to 30 days while also allowing Medicare to cover medication-assisted treatment (MAT) in certain settings for the treatment of substance use disorder.

Maryland Actions to Address the Opioid Crisis

The General Assembly passed several comprehensive acts during the 2017 session to address the State's opioid crisis, which addressed prevention, treatment, overdose response, and prescribing guidelines.

Chapters 571 and 572 of 2017, the Heroin and Opioid Prevention Effort and Treatment Act, among other things, require (1) the Behavioral Health Administration to establish crisis treatment centers that provide individuals in a substance use disorder crisis with access to clinical staff; (2) the Maryland Department of Health (MDH) to establish and operate a toll-free health crisis hotline; (3) certain health care facilities and systems to make available to patients the services of health care providers who are trained and authorized under federal law to prescribe opioid addiction treatment medications, including buprenorphine; (4) each hospital to have a protocol for discharging a patient who was treated for an overdose or identified as having a substance use disorder; (5) the Governor's proposed budget for fiscal 2019 through 2021 to include specified rate adjustments for community behavioral health providers; (6) the Department of Public Safety and Correctional Services and MDH to develop a plan to increase the provision of substance use disorder treatment, including MAT, in prisons and jails; (7) authorization of the provision of naloxone through a standing order and guidelines to co-prescribe naloxone to high-risk individuals; and (8) the expansion of private insurance coverage for opioid use disorders by prohibiting certain carriers from requiring preauthorization for a prescription drug used for treatment of an opioid use disorder that contains methadone, buprenorphine, or naltrexone.

Chapters 573 and 574 of 2017, the Heroin and Opioid Education and Community Action Act (Start Talking Maryland Act), require (1) the State Board of Education to expand an existing program in public schools to encompass drug addiction and prevention education that includes instruction related to heroin and opioid addiction and prevention and information relating to the lethal effect of fentanyl; (2) each local board of education to establish a policy requiring each public school to obtain and store naloxone and other overdose-reversing medication to be used in an emergency situation; (3) each local board of education or local health department to hire a sufficient number of community action officials or develop and implement a program that provides community relations and education functions that coordinate forums and conduct public relations efforts; and (4) specified institutions of higher education in Maryland to establish a policy that addresses heroin and opioid addiction and prevention, including awareness training for incoming students, obtaining and storing naloxone, and campus police training.

Chapter 570 of 2017 requires a health care provider, on treatment for pain and based on the provider's clinical judgment, to prescribe the lowest effective dose of an opioid and a quantity that is no greater than that needed for the expected duration of pain severe enough to require an opioid that is a controlled dangerous substance (CDS). The quantity limitations do not apply to opioids prescribed to treat a substance-related disorder; pain associated with a cancer diagnosis; pain experienced while the patient is receiving end-of-life, hospice, or palliative care services; or chronic pain.

In January 2017, Governor Lawrence J. Hogan issued an executive order establishing an Opioid Operational Command Center (OOCC) to facilitate collaboration between State and local public health, human services, education, and public safety entities to combat the heroin and opioid crisis. OOCC will (1) develop operational strategies to continue implementing the recommendations of the Governor's Heroin and Opioid Emergency Task Force; (2) collect, analyze, and facilitate data sharing relevant to the heroin and opioid epidemic; (3) develop a memorandum of understanding among State and local agencies regarding sharing and collection of health and public safety information and data relating to the epidemic; (4) assist and support local agencies in the creation of opioid intervention teams; and (5) coordinate the training of and provide resources for State and local agencies addressing the threat to the public health, security, and economic well-being of the State.

In March 2017, Maryland became the first state to declare a state of emergency for the opioid crisis, activating the Governor's emergency management authority and enabling increased and more rapid coordination between the State and local jurisdictions. In conjunction with the declaration, Governor Hogan included a supplemental budget appropriation of \$10 million, part of a \$50 million, five-year commitment.

In July 2017, \$22 million was appropriated for fiscal 2018, including \$10 million in CURES Act funding, to be used for prevention, treatment, and enforcement activities. Prevention efforts include distribution of opioid intervention teams for each jurisdiction, a

public awareness campaign, funding to train community teams on overdose response and linking to treatment, a pilot program to create school-based teams for early identification of the problems related to substance use disorders, and distribution of opioid information to health care facilities and providers that offer treatment. Enforcement initiatives include funding to disrupt drug trafficking organizations for the heroin coordinator program and to increase MDH's regulatory oversight of CDS. Treatment funding will be used to expand treatment beds and implement a tracking system to identify available beds; improve access to naloxone; establish a 24-hour crisis center in Baltimore City; expand use of peer recovery support specialists; expand Screening, Brief Intervention, and Referral to Treatment to hospitals and parole, probation, and correctional facilities; increase access to MAT; expand law enforcement diversion programs; and improve the State's crisis hotline.

In 2018, the General Assembly expanded upon the comprehensive legislation of the prior year. Chapter 149 of 2018 authorizes an emergency medical services provider or law enforcement officer to report an actual or suspected overdose to an appropriate information technology platform. Chapter 211 of 2018 requires MDH to identify a method for establishing a tip line for a person to report a licensed prescriber who the person suspects is overprescribing certain medications. Chapters 215 and 216 of 2018 require a health care provider to advise a patient of the benefits and risks associated with a prescribed opioid or co-prescribed benzodiazepine. Chapters 439 and 440 of 2018 require a general hospice care program to establish a written policy for the collection and disposal of unused prescription medication and require a program employee to collect and dispose of a patient's unused medication on the death of the patient or the termination of a prescription.