

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 419

(Senator Feldman, *et al.*)

Finance

Appropriations

Opioid Restitution Fund - Appropriation of Settlement Funds and Grant Program

This bill requires that settlement funds received in accordance with the Final Distributor Agreement of July 21, 2021, as amended, and the Janssen Settlement Agreement of July 21, 2021, as amended, be appropriated as agreed upon in the State-Subdivision Agreement of January 21, 2022, as amended. The Secretary of Health must establish and administer a grant program for the distribution of funds to political subdivisions of the State pursuant to the specified State-Subdivision Agreement. The Attorney General must identify and designate the controlling version of any agreement or amendment. The bill also makes a conforming change. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: No effect in FY 2022. General fund expenditures increase by \$48,500 in FY 2023 for the Opioid Operational Command Center (OOCC) to hire one contractual employee; the Governor's proposed FY 2023 budget includes funding for this position. Future year expenditures reflect annualization and ongoing expenses associated with the position. The Office of the Attorney General can implement the bill with existing budgeted resources. Revenues are not affected.

Local Effect: None. While local revenues and expenditures increase pursuant to the specified settlement agreements, the increases are not a direct result of the bill.

Small Business Effect: None.

Analysis

Current Law: Chapter 537 of 2019 establishes the Opioid Restitution Fund (ORF), a special fund to retain any revenues received by the State relating to specified opioid

judgments or settlements, which may be used only for opioid-related programs and services.

On July 21, 2021, a \$26 billion global settlement was announced by opioid manufacturer Johnson & Johnson (Janssen Settlement Agreement) and McKesson, Amerisource Bergen, and Cardinal Health (Final Distributor Agreement). On September 8, 2021, Maryland Attorney General Brian E. Frosh announced Maryland’s participation in the global settlement. Maryland is expected to receive approximately \$500 million as part of the settlement. A copy of the Janssen Settlement can be located [here](#). A copy of the Final Distributor Settlement Agreement can be located [here](#).

In fiscal 2022, ORF received approximately \$12 million from the \$573 million global settlement agreement with McKinsey & Company for its role in marketing opioids, including OxyContin.

For information on the State’s ongoing opioid crisis, please refer to the **Appendix – Opioid Crisis**.

State Expenditures: General fund expenditures increase by \$48,482 in fiscal 2023, which accounts for a 120-day start-up delay. This estimate reflects the cost of hiring one full-time contractual grants administrator to establish and administer a grant fund. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$41,139
Operating Expenses	<u>7,343</u>
Total FY 2023 Expenditures	\$48,482

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

OCC advises that it was previously identified as the office responsible for administering any funding received by ORF. In anticipation of receiving funds from the global settlement, the Governor’s proposed fiscal 2023 budget includes the funds necessary to hire one full-time contractual grants specialist to administer ORF, consistent with the estimate above. However, the bill requires the Secretary of Health to establish and administer a grant fund to distribute ORF monies to political subdivisions of the State. Thus, to the extent that additional staff beyond what is included in the Governor’s proposed fiscal 2023 budget is

needed to administer the specified grant program, general fund expenditures increase by an additional amount. This estimate assumes all distributions under the grant program are made within a five-year period; however, if they extend beyond that, a regular full-time staff position is needed instead. Likewise, if they are completed within a shorter period, costs for the contractual position are mitigated in the out-years.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1086 (Delegate Rosenberg) - Appropriations.

Information Source(s): Department of Budget and Management; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2022
fnu2/jc Third Reader - March 18, 2022

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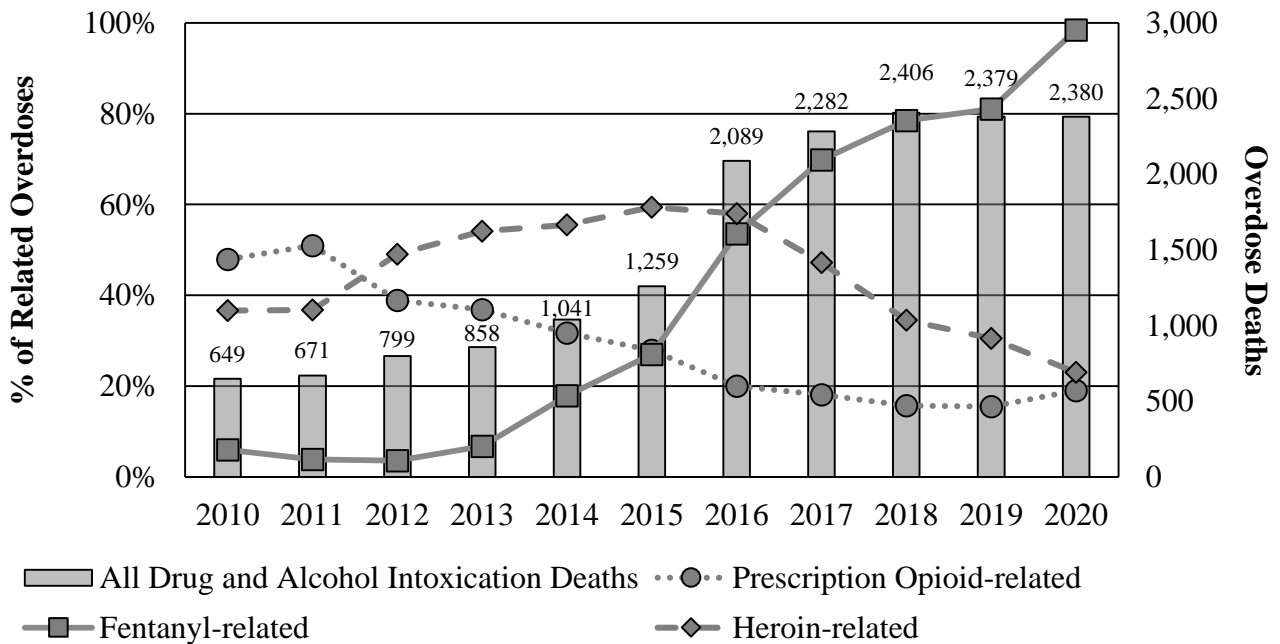
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Appendix – Opioid Crisis

Opioid Overdose Deaths

Maryland continues to be among the states hit hardest by the opioid epidemic with the fourth-highest overdose death rate in the nation, according to the most recent federal data. In 2018, the State experienced the deadliest year on record for overdose deaths, due almost exclusively to the continued presence of fentanyl. However, preliminary data from the Opioid Operational Command Center (OCCC) indicates that the first six months of 2021 have surpassed the first six months of all prior years on record. **Exhibit 1** shows the total overdose deaths in the State from 2010 through 2020 and the prevalence of prescription opioids, fentanyl, and heroin in contributing to overdose deaths.

Exhibit 1
Overdose Deaths and Substance Prevalence
Calendar 2010-2020

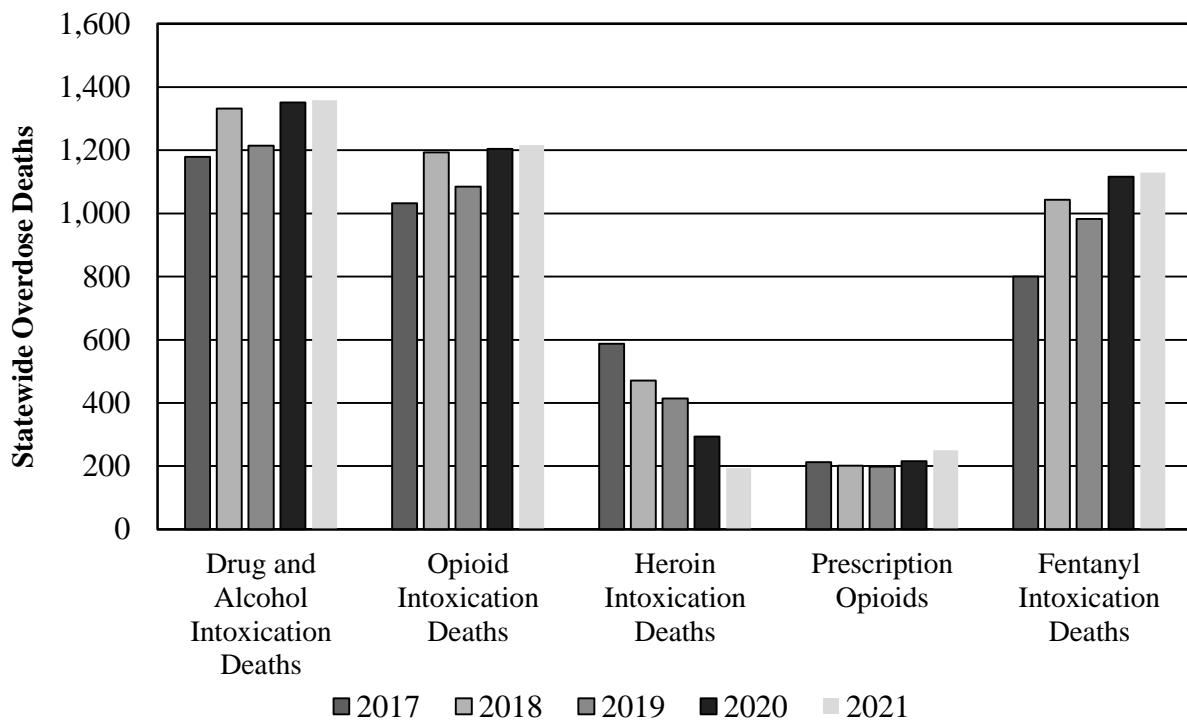


Source: Maryland Department of Health

The COVID-19 Pandemic and the Opioid Epidemic

Preliminary data for 2020 and 2021 suggests that the COVID-19 pandemic has contributed to increases in intoxication fatalities related to nearly all major drug categories in Maryland with the exception of heroin-related deaths, which continued to decline. OCCC data indicates that the total number of overdose deaths in Maryland for the first six months of 2021 outpaced the number of deaths during the first six months of 2018, the State’s previous high watermark for fatalities. **Exhibit 2** shows total overdose deaths from all substances and overdose deaths involving opioids, heroin, prescription opioids, and fentanyl for the first six months of calendar 2017 through 2021.

Exhibit 2
Overdose Deaths, First Six Months
Calendar 2017-2021



Source: Maryland Department of Health

Conversely, the State saw significantly fewer hospital emergency department (ED) visits during the first six months of 2020, with a 23.3% decline in visits for nonfatal opioid overdoses compared to the first half of 2019. Historically, the number of ED visits has a positive correlation with the number of opioid intoxication deaths. The inverse correlation

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shown between opioid overdose deaths and ED visits may be the result of concerns about visiting the ED due to COVID-19. However, the number of ED visits for 2021 was up by 23.4% over 2020, an increase of 5.6% over 2019.

Maryland Actions to Address the Opioid Crisis

Legislative Response: The General Assembly has passed numerous acts to address the State's opioid crisis, including prevention, treatment, overdose response, and prescribing guidelines.

- Chapters 571 and 572 of 2017 require the fiscal 2019 through 2021 proposed budgets to include rate adjustments for community behavioral health providers; require development of a plan to increase provision of treatment; expand access to naloxone; require the Maryland Department of Health (MDH) to distribute evidence-based information about opioid use disorders to health care facilities and providers; and prohibit health insurance carriers from applying a prior authorization requirement for certain substance use disorder (SUD) treatment drugs.
- Chapters 573 and 574 of 2017 expand drug education in public schools to include heroin and opioid addiction prevention; require local boards of education to require each public school to store naloxone and other overdose-reversing medication; and require institutions of higher education that receive State funding to establish a policy that addresses heroin and opioid addiction and prevention.
- Chapter 570 of 2017 requires a health care provider 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, with specified exceptions.
- Chapter 211 of 2018 requires MDH to identify a method for establishing a tip line for a person to report a licensed prescriber whom 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 policy for the collection and disposal of unused prescription medication.

- Chapter 532 of 2019 establishes programs for opioid use disorder screening, evaluation, and treatment (specifically medication-assisted treatment) in local correctional facilities and in the Baltimore Pretrial Complex.
- Chapter 537 of 2019 establishes the Opioid Restitution Fund, a special fund to retain any revenues received by the State relating to specified opioid judgments or settlements, which may be used only for opioid-related programs and services.
- Chapters 172 and 173 of 2020 authorize MDH to include comprehensive crisis response centers, crisis stabilization centers, crisis treatment centers, and outpatient mental health clinics in the list of emergency facilities published annually related to emergency mental health evaluations and require MDH to give the list to each local behavioral health authority.
- Chapter 547 of 2020 establishes a Crisis Intervention Team Center of Excellence in the Governor's Office of Crime Prevention, Youth, and Victim Services.
- Chapters 211 and 212 of 2020 require health insurance carriers to report on compliance with the federal Mental Health Parity and Addiction Equity Act.

Opioid Response During the COVID-19 Pandemic: In June 2020, OOC, in consultation with MDH and other State agencies, developed and released Maryland's COVID-19 Inter-Agency Overdose Action Plan to lay out a comprehensive strategy for coordinating response efforts.

Legal Actions Related to the Opioid Crisis: In October 2020, the U.S. Department of Justice announced a global resolution of its criminal and civil investigations of opioid manufacturer Purdue Pharma with an agreement that Purdue (1) plead guilty to a three-count felony related to conspiracy charges; (2) pay a criminal fine of \$3.5 billion; (3) pay an additional \$2.0 billion in criminal forfeitures; (4) pay a civil settlement of \$2.8 billion to resolve civil liability under the False Claims Act; and (5) emerge from bankruptcy as a public benefit company. However, the resolution was subject to approval by the bankruptcy court for the Southern District of New York, which rejected the bankruptcy settlement in December 2021.

In July 2021, a \$26 billion global settlement was announced by opioid manufacturer Johnson & Johnson and three of its distributors (McKesson, Amerisource Bergen, and Cardinal Health). On September 8, 2021, Maryland Attorney General Brian E. Frosh announced Maryland's participation in the global settlement. Maryland is expected to receive approximately \$500 million as part of the settlement.

Funding to Address the Opioid Crisis: The fiscal 2022 budget has more than \$978.0 million targeted toward mental health and substance abuse in Maryland, including \$296.0 million for SUD services, \$231.8 million for mental health and SUD treatment for the uninsured, and more than \$10.0 million to fund OCCC activities (\$5.0 million of which will be used for grants to local behavioral health authorities).