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February 22, 2022

To: The Honorable Delores G. Kelley  
Chair, Finance Committee

From: Brian E. Frosh  
Attorney General

Re: SB0419 (HB1086) – Opioid Restitution Fund – Appropriation of Settlement Funds –  
**Support**

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Chair Kelley, Vice Chair Feldman, and distinguished Members of the Finance Committee, I am Brian Frosh and I'm here to urge a favorable report on Senate Bill 419. That legislation, introduced by Senator Feldman at our request, will facilitate the State-Subdivision Agreement we entered into in January 2022 ("Agreement") to allocate Maryland's share of the settlement proceeds.

In July 2021, in the culmination of years of investigations and settlement discussions led by state attorneys general from around the country, almost every state (including Maryland) and national counsel for local subdivisions (including most of Maryland's subdivisions) entered into preliminary settlement agreements with (a) the nation's three largest distributors of prescription drugs – Cardinal Health, Amerisource Bergen, and McKesson – and (b) the opioid manufacturer Janssen (a Johnson & Johnson subsidiary) that resolve the states' and their subdivisions' claims for illegal conduct in the sale and marketing of opioids.

The settlements are valued at a maximum of up to \$26 billion dollars over 18 years, of which just over \$2 billion is set aside to pay for private counsel attorney's fees and to pay additional funds to states – like Maryland – that did not use private counsel in their investigations of the defendants.

Maryland's maximum share is 2.11 percent of the national amount, or up to about \$492 million; Maryland obtained a higher share than its population would indicate because the opioid crisis hit Marylander harder than it hit other states. Eighty-five percent (85%) of the money must be used for a variety of authorized evidence-based or evidence-informed opioids abatement

programs, such as programs providing treatment for substance use disorders and overdose reversal medicines, among numerous other options.

The \$26 billion nationally and \$492 million for Maryland, however, are *maximum amounts*. How much Maryland ultimately receives depends on the level of participation of the State's subdivisions (the defendants want global peace from litigation that has been or could be brought by state and local government entities). To get the full \$492 million, Maryland needs to have 100 percent participation by subdivisions meeting the requisite population thresholds.

The settlement agreements left it to states to recruit their individual subdivisions for participation, a process that took place between July 2021 and January 2022 (although subdivisions may still join). To enable the states to do so, the settlement agreements provided that individual states and their subdivisions could determine how to allocate settlement proceeds within the states.

Together with the Maryland Association of Counties ("MACo"), the Maryland Municipal League ("MML"), officers and counsel for the State's, and I ultimately entered into the Agreement that is the subject of SB 419. That Agreement allocates funds to the subdivisions as follows:

- 15 percent will be paid directly to the Maryland Opioid Restitution Fund ("ORF") created by State Finance & Procurement Art. § 7-331 for use by the State in accordance with that section.
- 60 percent is paid to the ORF for use as follows:
  - 15 percent of the overall settlement is for use by the State for abatement programs in its discretion or through a grant program through which the State may provide funding to subdivisions that do not otherwise receive an allocation under the agreement. The State must establish a competitive grant program for these subdivisions, but the decision whether to grant funding is in the State's discretion.
  - 45 percent of the overall settlement must be distributed by the State in grants to local governments that filed lawsuits or that have populations of 10,000 or more. These funds must be placed into separate local opioid abatement funds designed like the ORF and may be spent only on evidence-based or evidence-informed opioids abatement programs.
- 25 percent is paid directly to participating subdivisions that litigated or have populations greater than 10,000. These subdivisions may use up to 60 percent of this amount for reimbursement of past abatement expenses but must use at least 40 percent for future abatement programs.

Through this process, we were able to obtain the participation of 58 of the 60 required subdivisions that filed litigation or have populations of more than 10,000 residents. This constitutes just over 90 percent of the relevant population for purposes of determining how much

the State and its subdivisions receive under the settlement agreements. Without the two jurisdictions that declined to participate (Baltimore City and Baltimore City Public Schools) the State will receive collectively about \$395 million of the \$492 million available under the settlement over 18 years. Payments in 2022 will occur in April and July.

By providing for the appropriation, distribution, and expenditure of settlement proceeds according to the State-Subdivision Agreement, Senate Bill 419 will enable us to abide by the Agreement's terms. The legislation would apply only to these specific settlement proceeds. If enacted, SB 419 should take effect on the earliest available date in order to ensure that the State and its subdivisions are ready to receive the 2022 payments.

For all the foregoing reasons, I urge a favorable report on SB 419.

cc: Finance Committee Members