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To: The Honorable Joseline A. Peña-Melnyk
Chair, House Health and Government Operations Committee

From: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

Subject: **House Bill 0571 -- Overdose Response Program – Opioid Overdose Reversal Drugs – Choice of Formulation and Dosage (Support with Proposed Amendments)**

We have reviewed House Bill 571, “Overdose Response Program – Opioid Overdose Reversal Drugs – Choice of Formulation and Dosage.” This bill would amend § 13-3103 of the Health – General Article to enable those who dispense overdose reversal drugs to choose the drugs and doses they dispense. Responders who dispense overdose reversal drugs have or are likely soon to have choices in the drugs and doses that they utilize for overdose reversal, choices that we understand may relate to the efficacy of these products. House Bill 571, therefore, will be of significant benefit for Maryland’s residents and communities, who continue to suffer under the opioid crisis.

Efforts of the Office of the Attorney General (OAG) to halt and provide relief from the illegal marketing, sale, and distribution of opioids in Maryland have begun to provide potential funding for, among other things, the direct purchase of overdose reversal drugs or contributions of support to programs that purchase these drugs. The State and its subdivisions received approximately \$60.4 million in 2022 that may be used for a variety of purposes, including overdose reversal programs. These funds came from settlements with Johnson & Johnson and three major pharmaceutical distributors that the General Assembly expressly incorporated into § 7-331(h) of the State Finance & Procurement Article last year so that they could be deposited in and expended from the Opioid Restitution Fund (ORF).

While the State’s recoveries under these settlements have begun to flow in, OAG has continued and will continue for some time to investigate and pursue recoveries from a variety of additional actors who contributed to the opioid crisis. We anticipate that additional ORF funding will become available in the future.

Under current law, however, Maryland lacks the ability to swiftly incorporate requirements that accompany additional settlements or judgments without asking the General Assembly to amend

This bill letter is a statement of the Office of Attorney General’s policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us

the Opioid Restitution Fund (ORF) or other provisions on a case-by-case basis. The new requirements are consistent with the spirit of the statutes that the General Assembly has enacted – amounting to technical tweaks, within the broad contours and policies of the existing ORF and related statutes – but the requirements have been imposed by courts or other parties in national settlements and are limited to the particular settlements or judgments in which they arise. The need to incorporate such requirements has arisen between legislative sessions. Legislation enacted last year enabled the State to receive funding from the Johnson & Johnson and distributors settlements, *see* State Finance & Procurement § 7-331(h)(2) as currently enacted, and to distribute that funding through the Opioid Restitution Fund Advisory Council (ORFAC) process, *see* Health – General § 7.5-303. But it did not incorporate certain requirements of other settlements or expected settlements that have been necessary to enable the State to receive additional revenues.

As a result, payments to the State related to some resolved or likely soon-to-be-resolved matters have been delayed or are likely to be delayed under the existing statutory framework. An example is the Mallinckrodt bankruptcy resolution, which requires the State to (1) adopt certain local participation requirements that necessitate tweaking ORFAC’s structure, and (2) authorize expenditures by the State of certain subdivision grants according to procedures not currently authorized by section 7-331(h)’s specific incorporation of the Johnson & Johnson and distributors settlements.

To prevent the delay and complications that may arise from the need to seek implementing amendments to the ORFAC and ORF statutes from session to session before funding can be accepted and distributed, OAG is proposing amendments to SB571 that would: (1) amend Health-General § 7.5-303 to enable the Attorney General to designate subcommittees of ORFAC to meet certain structural requirements set by specific judgments and settlements; and (2) amend State Finance & Procurement § 7-331(g) to enable the receipt and use of future settlement proceeds and incorporation into state law of certain limitations on the specific use of funding from particular settlements. Such restrictions will always apply only to the particular settlements or judgments that impose them.

Our Office also recommends that the General Assembly change the effective date of HB 571 to July 1, 2023, rather than October 1, 2023, in order to permit the more rapid receipt and expenditure of funds under the Mallinckrodt bankruptcy plan and other potential settlements that can be used to purchase overdose reversal drugs or fund overdose reversal programs.

For the foregoing reasons, we urge the Committee to favorably report HB 571 with the following amendments:

**HB0571 – Overdose Response Program – Opioid Overdose Reversal Drugs – Choice of Formulation and Dosage
OAG Amendments**

Proposed Amendment

On page 2, line 32 replace “October” with “July”.

Additional Provisions

On page 2, line 31, before “SECTION 2”, INSERT:

Health – General § 7.5-303

(a) The Council consists of the following members:

- (1) One member of the Senate of Maryland, appointed by the President of the Senate;
- (2) One member of the House of Delegates, appointed by the Speaker of the House;
- (3) The Deputy Secretary for Behavioral Health, or the Deputy Secretary’s designee;
- (4) The Deputy Secretary for Health Care Financing, or the Deputy Secretary’s designee;
- (5) The Attorney General, or the Attorney General’s designee;
- (6) The Executive Director of the Opioid Operational Command Center, or the Executive Director’s designee;
- (7) Three individuals appointed by the Governor:
 - (i) One of whom represents a community-based opioid treatment program;
 - (ii) One of whom represents a community-based substance use disorder and mental health treatment programs; and
 - (iii) One of whom is a public health expert engaged in harm reduction services;
- (8) Three individuals appointed by the Secretary:
 - (i) One of whom is an individual in recovery from a substance use disorder;
 - (ii) One of whom is a family member of an individual who has experienced an overdose; and
 - (iii) One of whom is an individual disproportionately impacted by substance use disorders and disparities in access to care;
- (9) One individual designated by the Executive Director of the Maryland Association of Counties; and
- (10) One individual designated by the Executive Director of the Maryland Municipal League.

(b) Members appointed by the Governor and by the Secretary under subsection (a) of this section shall, to the extent practicable:

- (1) Reflect the geographic regions of the State;
 - (2) Be representative of at-risk populations; and
 - (3) Reflect the ethnic, gender, and cultural diversity of the State.
- (c) The Council shall designate a chair from among the membership of the Council.
- (d)(1)(i) The term of a member appointed by the Governor or the Secretary under subsection (a) of this section is 2 years.
- (ii) The terms of the members appointed by the Governor and the Secretary under subsection (a) of this section are staggered as required by the terms provided for members of the Council on October 1, 2022.
 - (iii) At the end of a term, a member continues to serve until a successor is appointed and qualifies.
 - (iv) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.
- (2) A member appointed by the Governor or the Secretary under subsection (a) of this section may serve for a maximum of two consecutive terms.
- (3) Notwithstanding any other provisions of this subsection, all members serve at the pleasure of the Governor.
- (e) A member of the Council:
- (1) May not receive compensation as a member of the Council; but
 - (2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.
- (f) With the consent of the Council, the chair may designate additional individuals with relevant expertise to serve on a committee of the Council in an advisory capacity.

(G) (1) WHEN REQUIRED BY A COURT OR ADMINISTRATIVE ORDER OR A SETTLEMENT AGREEMENT ENTERED INTO BY THE ATTORNEY GENERAL, THE ATTORNEY GENERAL MAY DIRECT THAT A SUBCOMMITTEE BE FORMED IN ACCORDANCE WITH THE REQUIREMENTS OF THE COURT OR ADMINISTRATIVE ORDER OR SETTLEMENT, WHICH SHALL BE COMPOSED OF SUCH MEMBERS OF THE COUNCIL AND SHALL COMPLY WITH PROCEDURES THE ATTORNEY GENERAL SHALL DESIGNATE TO

EFFECTUATE THE REQUIREMENTS. UNLESS THE REQUIREMENTS PROVIDE OTHERWISE, THE CHAIR OF THE COUNCIL OR ANY MEMBER THE CHAIR SHALL DESIGNATE SHALL BE CHAIR OF THE SUBCOMMITTEE.

(2) ANY SUBCOMMITTEE DESIGNATED BY THE ATTORNEY GENERAL PURSUANT TO SUBSECTION (G)(1) SHALL FUNCTION ONLY FOR PURPOSES OF THE COURT OR ADMINISTRATIVE ORDER OR SETTLEMENT AGREEMENT REQUIRING ITS EXISTENCE, EXCEPT THAT IF MULTIPLE COURT OR ADMINISTRATIVE ORDERS OR SETTLEMENT AGREEMENTS CONTAIN IDENTICAL REQUIREMENTS, A SUBCOMMITTEE MAY FUNCTION FOR PURPOSES OF ALL IDENTICAL COURT OR ADMINISTRATIVE ORDERS OR SETTLEMENT AGREEMENTS.

AND

State Finance & Procurement § 7-331

(a) In this section, “Fund” means the Opioid Restitution Fund.

(b) There is an Opioid Restitution Fund.

(c) The purpose of the Fund is to retain the amount of settlement revenues deposited to the Fund in accordance with subsection (e)(1) of this section.

(d)(1) The Fund is a special, nonlapsing fund that is not subject to § 7-302 of this subtitle.

(2) The State Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(e) The Fund consists of:

(1) 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; and

(2) the interest earnings of the Fund.

(f) The Fund may be used only to provide funds for:

(1) programs, services, supports, and resources for evidence-based substance use disorder prevention, treatment, recovery, or harm reduction that have the purpose of:

(i) improving access to medications proven to prevent or reverse an overdose;

(ii) supporting peer support specialists and screening, brief intervention, and referral to

treatment services for hospitals, correctional facilities, and other high-risk populations;

(iii) increasing access to medications that support recovery from substance use disorders;

(iv) expanding the Heroin Coordinator Program, including for administrative expenses;

(v) expanding access to crisis beds and residential treatment services for adults and minors;

(vi) expanding and establishing safe stations, mobile crisis response systems, and crisis stabilization centers;

(vii) supporting the behavioral health crisis hotline;

(viii) organizing primary and secondary school education campaigns to prevent opioid use, including for administrative expenses;

(ix) enforcing the laws regarding opioid prescriptions and sales, including for administrative expenses;

(x) research regarding and training for substance use treatment and overdose prevention, including for administrative expenses; and

(xi) supporting and expanding other evidence-based interventions for overdose prevention and substance use treatment;

(2) evidence-informed substance use disorder prevention, treatment recovery, or harm reduction pilot programs or demonstration studies that are not evidence-based if the Opioid Restitution Fund Advisory Council, established under § 7.5-902 of the Health--General Article:

(i) determines that emerging evidence supports the distribution of money for the pilot program or that there is a reasonable basis for funding the demonstration study with the expectation of creating an evidence-based program; and

(ii) approves the use of money for the pilot program or demonstration study; and

(3) evaluations of the effectiveness and outcomes reporting for substance use disorder abatement infrastructure, programs, services, supports, and resources for which money from the Fund was used, including evaluations of the impact on access to harm reduction services or treatment for substance use disorders and the reduction in drug-related mortality.

(g)(1) The State Treasurer shall invest the money of the Fund in the same manner as other State money may be invested.

(2) Any interest earnings of the Fund shall be credited to the Fund.

(h)(1) Expenditures from the Fund may be made only in accordance with the State budget.

(2) For settlement funds received in accordance with the final distributor agreement of July 21, 2021, with McKesson Corporation, Amerisource Bergen Corporation, and Cardinal Health Incorporated, as amended, [or] the Janssen settlement agreement of July 21, 2021, as amended, **OR ANY OTHER OPIOIDS-RELATED SETTLEMENT OR COURT OR ADMINISTRATIVE JUDGMENT ENTERED INVOLVING THE STATE AND ONE OR MORE OF ITS POLITICAL SUBDIVISIONS:**

(i) appropriations from the Fund in the State budget shall be made in accordance with the allocation and distribution of funds to the State and its political subdivisions as agreed on in the State-subdivision agreement of January 21, 2022, as amended, **OR THE REQUIREMENTS OF, OR ANY SIMILAR AGREEMENT REACHED UNDER, ANY OPIOIDS-RELATED SETTLEMENT OR COURT OR ADMINISTRATIVE JUDGMENT ENTERED INVOLVING THE STATE AND ONE OR MORE OF ITS POLITICAL SUBDIVISIONS,** and

(ii) the Secretary of Health shall establish and administer a grant program for the distribution of funds to political subdivisions of the State in accordance with the State-subdivision agreement of January 21, 2022, as amended, **OR THE REQUIREMENTS OF, OR ANY SIMILAR AGREEMENT REACHED UNDER, ANY OPIOIDS-RELATED SETTLEMENT OR COURT OR ADMINISTRATIVE JUDGMENT ENTERED INVOLVING THE STATE AND ONE OR MORE OF ITS POLITICAL SUBDIVISIONS.**

(3) The Attorney General shall identify and designate the controlling version of any agreement or amendment described under paragraph (2) of this subsection.

(i)(1) Money expended from the Fund for the programs and services described under subsection (f) of this section is supplemental to and is not intended to take the place of funding that otherwise would be appropriated for the programs and services.

(2) Except as specified in subsection (f) of this section, money expended from the Fund may not be used for administrative expenses.

(j) The Governor shall:

(1) develop key goals, key objectives, and key performance indicators relating to substance use treatment and prevention efforts;

(2) subject to subsection (h)(2) of this section, at least twice annually, consult with the Opioid Restitution Fund Advisory Council to identify recommended appropriations from the Fund; and

(3) report on or before November 1 each year, in accordance with § 2-1257 of the State Government Article, to the General Assembly on:

(i) an accounting of total funds expended from the Fund in the immediately preceding fiscal

year, by:

1. use;
2. if applicable, jurisdiction; and
3. budget program and subdivision;

(ii) the performance indicators and progress toward achieving the goals and objectives developed under item (1) of this subsection; and

(iii) the recommended appropriations from the Fund identified in accordance with item (2) of this subsection.