
DIGEST

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HB 1045 Original

2022 Regular Session

Freeman

Abstract: Establishes the Opioid Litigation Proceeds Fund (OLP fund) for deposit of monies received pursuant to opioid litigation and creates the Opioid Litigation Proceeds Council ("council") in the La. Dept. of Health to oversee distribution and use of such monies.

Proposed law establishes the OLP fund in the treasury as a special fund and requires deposit into the fund of all proceeds received by the state in connection with legal claims made against manufacturers and distributors of prescription opioid analgesics, pharmacies that dispensed prescription opioid analgesics, and related parties, regardless of whether such proceeds are received as a lump sum or series of payments to be made over a period of time. Requires monies in the fund to be invested in the same manner as monies in the state general fund. Provides that interest earned on investment of monies in the fund shall be credited to the fund. Requires unexpended and unencumbered monies in the fund at the end of the fiscal year to remain in the fund. Authorizes the treasurer to deposit into the fund any gifts, grants, donations, bequests, or other monies received by Louisiana on the fund's behalf.

Proposed law defines "proceeds" to mean damages, penalties, attorneys' fees, costs, disbursements, refunds, rebates, or any other monetary payment made or paid by any defendant manufacturer or distributor of prescription opioid analgesics, pharmacy that dispensed prescription opioid analgesics, or related party to Louisiana by reason of any judgment, consent decree, or settlement, after payment of any costs or fees required by court order.

Proposed law restricts use of monies in the fund to the following purposes:

- (1) Statewide or community substance use disorder needs assessments to identify structural gaps and needs to inform expenditures from the fund.
- (2) Infrastructure required for evidence-based substance use disorder prevention, treatment, recovery, or harm reduction programs, services, and supports.
- (3) Programs, service, supports, and resources for evidence-based substance use disorder prevention, treatment, recovery, or harm reduction.
- (4) Evidence-informed substance use disorder prevention, treatment, recovery, or harm reduction pilot programs or demonstration studies that are not evidence-based but are approved by the council as an appropriate use of monies for a limited period of time as specified by the council.

- (5) Evaluations of effectiveness and outcomes reporting for substance use disorder abatement infrastructure, programs, services, supports, and resources for which monies from the fund were disbursed, such as impact on access to harm reduction services or treatment for substance use disorders, or reduction in drug-related mortality.
- (6) One or more data interfaces managed by the Louisiana Department of Health to aggregate, track, and report, free of charge and available online to the public, data on substance use disorder, overdoses, and drug-related harms; spending recommendations, plans and reports; and outcomes of programs, services, supports, and resources for which monies from the fund were disbursed.
- (7) Expenses incurred in administering and staffing the fund and the council, provided that such expenses annually shall not exceed 4% of the fund's balance as of July 1 of the current fiscal year.
- (8) Expenses associated with managing, investing, and disbursing monies in the fund provided that such expenses annually shall not exceed 2% of the fund's balance as of July 1 of the current fiscal year.

Proposed law further requires the state treasurer to issue a public report each July, submitted to the legislature and made available on the Dept. of the Treasury's website, specifying at a minimum all of the following:

- (1) An inventory of fund investments as of June 30 of the year the report is issued.
- (2) The net income the fund earned in the immediately prior fiscal year.
- (3) The dollar amount and the percentage of the fund balance incurred for expenses of administering and staffing the fund and council during the immediately prior fiscal year.
- (4) The dollar amount and the percentage of the fund balance incurred for expenses associated with managing, investing, and disbursing monies in the fund during the immediately prior fiscal year.

Proposed law establishes the council in the La. Department of Health. Requires the council to ensure that proceeds received by the state pursuant to the provisions of this Subpart are allocated and spent on Louisiana substance use disorder abatement infrastructure, programs, services, supports, and resources for prevention, treatment, recovery, and harm reduction and to ensure robust public involvement, accountability, and transparency in allocating and accounting for the monies in the fund.

Further establishes the composition of the council as follows:

- (1) The attorney general, or his designee.

- (2) The president of the Senate or his designee.
- (3) The speaker of the House of Representatives or his designee.
- (4) The secretary of the Department of Health or his designee.
- (5) One member appointed by the governor.
- (6) One member appointed by the La. Police Jury Association.
- (7) One member appointed by the La. Municipal Association.
- (8) One member appointed by the La. Behavioral Health Advisory Council.
- (9) One member appointed by the Advisory Council on Heroin and Opioid Prevention Education.

Requires that each member of the council must be a resident of Louisiana. Establishes terms for council members as follows: ex officio council members serve terms concurrent with the term of their office; members appointed by the governor, the La. Police Jury Assn. and the La. Municipal Assn. each serve an initial term of two years and members appointed pursuant the La. Behavioral Health Advisory Council and the Advisory Council on Heroin and Opioid Prevention Education each serve an initial term of three years. Thereafter, each appointed member shall serve three-year terms. Further provides that vacancies shall be filled in the manner of the original appointment and for the remainder of the unexpired term.

Proposed law provides that the member appointed by the governor shall serve as chair for the inaugural term of the council. Thereafter, the council shall elect a chair from amongst its membership by a majority vote.

Establishes the following powers and duties for the council:

- (1) Recommend and approve policies and procedures for administration of the council and for the application, awarding, and disbursement of monies from the fund to be used for the purposes set forth in this Subpart.
- (2) Recommend and approve goals, objectives and their rationales, sustainability plans, and performance indicators relating to:
 - (a) Substance use disorder prevention, treatment, recovery, and harm reduction efforts.
 - (b) Reducing disparities in access to prevention, treatment, recovery, and harm reduction programs, services, supports, and resources.
 - (c) Improving health outcomes in traditionally underserved populations, including but not limited to those who live in rural or tribal communities, persons of color, and formerly incarcerated individuals.

- (3) Approve awards of monies from the fund exclusively for permissible expenditures set forth in this Subpart.
- (4) Deny award of monies from the fund to parishes, municipalities, or localities found to have used a prior award of fund monies for a purpose other than an approved purpose. Upon determination by the council that the parish, municipality, or locality has adequately remedied the violation, the council may award monies to such parish, municipality, or locality.
- (5) Ensure allocations of money from the fund across the state, considering the following criteria, at a minimum:
 - (a) The number of people per capita with a substance use disorder in the state.
 - (b) Disparities in access to care that may preclude persons with substance use disorder from obtaining a diagnosis or receiving evidence-based treatment.
 - (c) The number of overdose deaths per capita in the state.
 - (d) The infrastructure, programs, services, supports, or other resources currently available to individuals with substance use disorders.
 - (e) Disparities in access to care and health outcomes across the state.

Proposed law requires the La. Dept. of Health to do the following:

- (1) Employ a full-time executive director of the council.
- (2) Provide public health research and policy expertise, support staff, facilities, technical assistance, and other resources to assist the executive director of the council with the meetings and functions of the council and the day-to-day activities required to fulfill the mission of the program.
- (3) Utilize, where feasible, appropriations from the general fund and existing infrastructure, programs, services, supports, or other resources to address substance use disorders, overdoses, and drug-related harms in the state.
- (4) Prepare for review and approval by the council goals, objectives and their rationales, sustainability plans, and performance indicators relating to substance use disorder prevention, treatment, recovery, and harm reduction efforts and reducing disparities in access to prevention, treatment, recovery, and harm reduction programs, services, supports, and resources.
- (5) Evaluate applications and recommend to the council awards and disbursements of monies from the fund exclusively for permissible expenditures set forth in proposed law.
- (6) Maintain oversight over the expenditure of monies from the fund to ensure monies are used exclusively for the purposes set forth in proposed law.
- (7) Require recipients of monies from the fund to provide an annual report to the council detailing the effectiveness of infrastructure, programs, services, supports, or resources

funded, including at a minimum all of the following:

- (a) How the recipient used the monies for their intended purposes.
 - (b) The number of individuals served by race, age, gender, or other demographic factor reported without personally identifying information.
 - (c) A specific analysis of whether the infrastructure, program, service, supports, or resources reduced mortality or improved prevention, treatment, harm reduction, or recovery outcomes.
 - (d) If a plan to ensure the sustainability of the infrastructure, program, service, support, or resources funded exists, a summary of such plan.
- (8) Implement and publish on the council's website policies and procedures for administration of the council and for the application, awarding, and disbursement of monies from the fund to be used for the purposes set for this in proposed law.
- (9) Publish on the council's website an annual report of the council's activities and effectiveness.

Proposed law requires the council to hold at least four public meetings per year. Authorizes a meeting to be called by the chair or by a majority of the council's members. Provides that the council is subject to present law (Open Meetings Law and the Public Records Law) and that members of the council are subject to present law (Code of Governmental Ethics).

Proposed law provides that a majority of the voting members constitutes a quorum for the transaction of business. Prohibits proxies and requires all votes to be viva voce.

Proposed law provides that the provisions of law establishing and governing the council shall terminate when all proceeds as defined in proposed law have been disbursed, unless the attorney general certifies that additional monies are anticipated.

Proposed law requires the La. Dept. of Health to create and maintain a website which shall include information such as council meeting dates; attendance, minutes of meetings, recipient agreements and reports required thereto.

Proposed law requires the council to disburse monies from the fund in a manner consistent with the limitations on uses of litigation proceeds set forth in any controlling court order, except to the extent any of the following conditions apply:

- (1) If the controlling court order permits expenditures other than or in excess of expenditures authorized pursuant to the provisions of proposed law, then the council shall adhere to the limitations on use of monies established in proposed law.
- (2) If the provisions of proposed law authorize expenditures other than or in excess of those authorized in a controlling court order, then the council shall adhere to the limitations on use of monies set forth in the court order.
- (3) If the controlling court order allocates litigation proceeds among specific geographic areas,

then the council shall disburse monies from the fund according to the allocations set forth in the court order.

Proposed law further requires annual reports by the La. Dept. of Health, beginning at least twelve months and no more than sixteen months after the initial deposit of proceeds into the fund is made. Requires such reports to be provided to the governor and the legislature and detailing the council's activities during the prior calendar year. Requires the reports to be published on the dept.'s website. Requires the following information, at a minimum:

- (1) The opening and closing balance of the fund for the reporting period.
- (2) An accounting of all credits to and expenditures from the fund.
- (3) The name of each recipient of fund monies, the amount awarded to each, and a description of what the funds will be used for, including the specific program, service, or resource funded, the population served, and the measures that the recipient will use to assess the impact of the award.
- (4) The primary criteria used to determine each recipient and its respective award amount.
- (5) A summary of information included in the report required pursuant to proposed law.
- (6) All applications for an award of monies from the fund received during the calendar year.
- (7) The performance indicators and progress toward achieving the goals and objectives developed pursuant to the provisions of this Subpart, including metrics on improving outcomes and reducing mortality and other harms related to substance use disorders.

Proposed law requires the La. Dept. of Health to promulgate rules and regulations necessary to implement the provisions of proposed law. Notwithstanding any provision of the present law (the Administrative Procedure Act), proposed law provides that the Joint Legislative Committee on the Budget shall be the sole committee with oversight over such rules.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 39:100.171-100.176)