Committee on Mental Health, Disabilities and Addiction

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**The Council of the City of New York**

# Briefing paper OF THE HUMAN SERVICES Division

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**COMMITTEE ON MENTAL HEALTH, DISABILITIES AND ADDICTION**

*Hon. Linda Lee, Chair*

#### June 30, 2022

**Oversight: Tracking the Opioid Settlement Fund and its Related Programs**

**Int. No. 404-2022:** By Council Members Lee, Ayala, Brewer, Louis, Nurse, Krishnan, Kagan, Menin, Marte, Farías, Williams, Holden, Schulman, Dinowitz, Ossé, Abreu, Restler, Avilés, Bottcher and Ariola

**Title:** A Local Law in relation to a report tracking the opioid settlement fund

1. **Introduction**

 On June 30, 2022, the Committee on Mental Health, Disabilities, and Addiction, chaired by Council Member Linda Lee, will hold a hearing entitled, “Tracking the Opioid Settlement Fund and its Related Programs.” The Committee will hear Introduction Number 404-2022 (Int. No. 404), sponsored by Council Member Lee, A local law in relation to a report tracking the opioid settlement fund. Among those invited to testify are representatives from the New York City Department of Health and Mental Hygiene (DOHMH), community-based providers, advocates, and other interested parties.

1. **Background**

*Opioid Use Disorder in America*

Opioid use disorder and its related overdose deaths is an epidemic in the United States (U.S.), declared a national public health emergency in 2017.[[1]](#footnote-1) In the mid- to late-1990’s, several pharmaceutical companies released to market opioid pain relievers – substances that work in the nervous system of the body or in receptors of the brain to reduce the intensity of pain[[2]](#footnote-2) – and began a mass educational and promotional campaign to convince doctors, regulators, and patients that these pain medications were non-addictive.[[3]](#footnote-3) This campaign was incredibly successful: when Purdue Pharma introduced OxyContin – one such pain medication – in 1996, sales grew from $48 million to almost $1.1 billion in 2000.[[4]](#footnote-4) By 2004, OxyContin had become a leading drug of abuse in the United States.[[5]](#footnote-5)

To date, since 1999, more than 932,000 people have died a drug overdose, and in 2020, almost 75% of overdose deaths involved an opioid.[[6]](#footnote-6) It is important to note that opioid deaths include prescription opioids, heroin, and synthetic opioids (such as fentanyl), and that many addictions begin with legally acquired prescription opioids and move to illicit opioids like heroin.[[7]](#footnote-7) Of patients that are prescribed opioids for chronic pain, between 21 and 29% misuse those prescription opioids, and between 8 and 12% develop an opioid use disorder.[[8]](#footnote-8) Of those who misuse prescription opioids, between 4 and 6% transition to use of heroin.[[9]](#footnote-9) According to the Centers for Disease Control and Prevention (CDC), the total "economic burden" of prescription opioid misuse alone in the United States is $78.5 billion a year, when factoring in the costs of healthcare, lost productivity, addiction treatment, and criminal justice involvement.[[10]](#footnote-10)

The COVID-19 pandemic exacerbated the existing overdose crisis both in New York and nationally, due to increases in mental illness and stressors, disruptions to supply chains, which promoted people to seek substances from less familiar suppliers, and social distancing/isolation, which has left some to “take drugs alone…making it less likely someone will be there to call 911 or administer Narcan.”[[11]](#footnote-11) A White House drug policy office analysis showed an 11.4% increase in fatalities during the first four months of 2020, while a New York Times analysis estimated the increase to be 13%.[[12]](#footnote-12) According to the American Medical Association (AMA), while drug overdose deaths in the U.S. fell in 2018 for the first time in years, as of July 20, 2020, “more than 35 states have reported increases in drug-related deaths and other concerns with drug use and mental illnesses…with some municipalities reporting overdose death rates increasing by as much as 60 percent.”[[13]](#footnote-13) In response, the AMA urged governors and state legislatures to adopt new Substance Abuse and Mental Health Services Administration and Drug Enforcement Administration guidelines, which include the removal of barriers such as prior authorizations for medications used to treat opioid disorders.[[14]](#footnote-14)

*Opioid Use Disorder in New York*

 In New York State, the number of overdose deaths involving opioids increased every year between 2010 and 2017, with an overall increase of over 200% in those years (1,074 deaths to 3,224).[[15]](#footnote-15) In that same time period, the number of overdose deaths involving commonly prescribed opioids, such as Vicodin or Oxycodone, increased by 41.7% (737 deaths to 1,044).[[16]](#footnote-16) And while there was a 10% decrease in 2019 (939 deaths involving commonly prescribed opioids), preliminary data from 2020 indicates a significant increase.[[17]](#footnote-17) Similar to national trends, in New York State, opioid overdose deaths involves prescription pills, heroin, synthetic opioids, and a combination of multiple types of opioids:[[18]](#footnote-18)



 In New York City (and nationally), opioid overdose is the leading cause of accidental death, surpassing motor vehicle deaths, homicides, and suicides combined.[[19]](#footnote-19) Every four hours, someone dies of a drug overdose in New York City, 85% of which involves opioids.[[20]](#footnote-20) Fentanyl, a highly potent synthetic opioid, is involved in more than 78% of all overdose deaths in New York City.[[21]](#footnote-21) Inthe first two quarters of 2021, there were 1,233 overdose deaths in New York City, an increase from the 965 overdose deaths during the same period in 2020*.*[[22]](#footnote-22) The highest rates of overdose deaths were experienced in neighborhoods in Harlem and in the Bronx.[[23]](#footnote-23) By borough, overdose death rates were as follows:[[24]](#footnote-24)



*Attorney General’s Lawsuit and Opioid Settlement Fund*

In March 2019, Attorney General (AG) Tish James filed an extensive and comprehensive lawsuit against opioid manufactures and distributors, including: Purdue Pharma and its affiliates, members of the Sackler Family (owners of Purdue) and trusts they control, Janssen Pharmaceuticals and its affiliates (including its parent company Johnson & Johnson), Mallinckrodt LLC and its affiliates, Endo Health Solutions and its affiliates, Teva Pharmaceuticals USA, Inc. and its affiliates, Allergan Finance, LLC and its affiliates, McKesson Corporation, Cardinal Health Inc., Amerisource Bergen Drug Corporation, and Rochester Drug Cooperative Inc.[[25]](#footnote-25) The lawsuit alleged that these defendants committed years of “false and deceptive marketing,” ignored their “duties to prevent the unlawful diversion of controlled substances,” thus resulting in the creation of the current opioid epidemic ravaging New York, marked by “widespread addiction, overdose deaths, and suffering.”[[26]](#footnote-26)

Though much of the litigation is still pending, the following results have ensued from the AG’s lawsuit:[[27]](#footnote-27)

* Five drug manufacturers have settled claims with AG James for their role in the opioid epidemic;
* In June 2021, AG James announced a $230 million settlement that included an injunction against Johnson & Johnson to end their sale of opioids nationwide;
* In July 2021, McKesson, Cardinal Health, and Amerisource Bergen agreed to pay $1 billion to New York for their role in the opioid epidemic;
* In September 2021, AG James secured $50 million from Endo to combat the opioid crisis;
* In December 2021, AG James won an opioid trial against Teva Pharmaceuticals USA; and
* In December 2021, Attorney General James reached a $200 million agreement with Allergan.[[28]](#footnote-28)

While these settlements and trial results were achieved, New York State passed a law, S.7194/A.6395B, which requires funds from the opioid settlements and litigations to be deposited into an opioid settlement fund (OSF) for the development of new services and supports.[[29]](#footnote-29) Pursuant to this law, all OSF funds must be used for abatement efforts in communities devastated by the opioid epidemic and will not go towards the state’s general fund.[[30]](#footnote-30) The funds must be used in three broad categories: for (1) treatment, (2) prevention, and (3) broad strategies in abating the opioid epidemic.[[31]](#footnote-31) As part of the State law, a 21-member advisory board was created to make recommendations to the legislature for appropriation of moneys in the OSF, and there is a public reporting requirement for how the funds are being spent.[[32]](#footnote-32) This advisory board includes community-based providers, advocates, and City and State government officials.[[33]](#footnote-33) It is expected that over $1.5 billion will eventually be deposited into the OSF.[[34]](#footnote-34)

*New York City and the OSF*

 In April 2022, Mayor Eric Adams and AG James announced the first $286 million coming to New York City from the OSF, beginning with $11.5 million in the first week after the announcement.[[35]](#footnote-35) It is expected that the City will receive $88,943,457 in 2022, and up to $286,137,783 over the course of the payout of the different settlements.[[36]](#footnote-36) In June 2022, Mayor Adams announced (via a press release) the first round of investments of the OSF, with $150 million over the next five years to be spent as follows:[[37]](#footnote-37)

* Strengthening Harm Reduction and Treatment in Communities​
	+ Sustaining and expanding hours and services at the city’s existing Syringe Service Programs (SSPs) that operate Overdose Prevention Centers (OPCs)​ to reduce risk of overdoses among people who use drugs and offer them connections to other services and supports, like treatment.
	+ Expanding access to Street Health Outreach and Wellness (SHOW) mobile harm reduction clinics and connections to provide care in communities hardest hit by the overdose epidemic.
* Expanding Support for Treatment Optimization Strategies
	+ Supporting additional staff within the city’s public hospital system to expand their emergency department substance use consult team to 24/7 operations across 11 hospitals.
	+ Training the behavioral health workforce to build expertise in addressing co-occurring psychiatric and substance use disorders.
* Strengthening Community Support for People Who Use Drugs and Their Families
	+ Expanding support for the families of drug overdose decedents by connecting them to critical mental health and social services supports in the crucial window following a death and according to their particular needs.[[38]](#footnote-38)

According to the Mayor’s June press release, there are three pools of fund money from the OSF designated for New York City: (1) The first pool will flow through the AG; (2) The second pool will flow through the State Office of Addiction and Substance Abuse Services (OASAS), guided by the Opioid Settlement Board; and (3) The third pool is a direct-to-localities funding mechanism for approved uses.[[39]](#footnote-39) Through these pools, New York City will receive approximately $286 million over the next 18 years, including the $150 million over the next five years discussed above.[[40]](#footnote-40)

1. **Conclusion**

At today’s hearing, the Committee looks forward to hearing from the Administration, providers, and community advocates about the City’s plans and oversight mechanisms for the opioid settlement fund.

1. **Legislation**

**Int. No. 404**

This legislation would require the DOHMH, or another agency designated by the mayor, to report on the opioid settlement fund on a monthly basis, beginning July 1, 2022. The report would include the total amount of money in the settlement fund, the total money withdrawn from the settlement fund, where the money is being spent, the number of New Yorkers benefiting from the fund, and a timeline of when the fund will be depleted.

The bill would take effect immediately and would be deemed repealed upon depletion of all monies in the opioid settlement fund.

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| Int. No. 404 By Council Members Lee, Ayala, Brewer, Louis, Nurse, Krishnan, Kagan, Menin, Marte, Farías, Williams, Holden, Schulman, Dinowitz, Ossé, Abreu, Restler, Avilés, Bottcher and Ariola A Local Law in relation to a report tracking the opioid settlement fund Be it enacted by the Council as follows: Section 1. a. Definitions. For the purposes of this chapter, the following terms have the following meanings:Department. The term “department” means the department of health and mental hygiene or such other agency or entity as the mayor may designate.Opioid settlement fund. The term “opioid settlement fund” means the monies paid or to be paid to New York city as a result of the attorney general’s lawsuit against opioid manufacturers and distributors, including, but not limited to, Purdue Pharma and its affiliates, members of the Sackler family and trusts they control, Janssen Pharmaceuticals and its affiliates, including its parent company Johnson & Johnson, Mallinckrodt LLC and its affiliates, Endo Health Solutions and its affiliates, Teva Pharmaceuticals USA, Inc. and its affiliates, McKesson Corporation, Cardinal Health Inc., Amerisource Bergen Drug Corporation and Rochester Drug Cooperative Inc.b. No later than July 1, 2022, and every month thereafter, the department shall submit to the mayor and the speaker of the council, and post on such department’s website, a report disclosing the following information for the previous month:1. The total amount of monies in the opioid settlement fund, including any new monies entered;2. The total amount of monies withdrawn, spent or committed to be spent in the opioid settlement fund;3. Where the monies in the opioid settlement fund have been spent or committed to be spent, including the name and description of any city-run program, the name and description of any city-contractor and the name and description of any vendor to the city;4. The number of New York city residents participating in or benefiting from city, contractor or vendor programs receiving opioid settlement funds, disaggregated by zip code, gender, ethnicity and languages spoken; and5. A timeline of when the department expects the monies in the opioid settlement fund to be depleted and any plan for continuing services after the monies are depleted.§ 2. This local law takes effect immediately and is deemed repealed upon depletion of all monies in the opioid settlement fund.   SILLS # 894705/13/22   |

1. “The Drug Overdose Epidemic: Behind the Numbers,” Centers for Disease Control and Prevention, available at <https://www.cdc.gov/opioids/data/index.html>; see also, “What is the U.S. Opioid Epidemic?,” U.S. Department of Health and Human Services, available at <https://www.hhs.gov/opioids/about-the-epidemic/index.html>. [↑](#footnote-ref-1)
2. *Id*. [↑](#footnote-ref-2)
3. #  See, e.g., “Opioid Overdose Crisis,” National Institute of Drug Abuse (NIDA), available at <https://nida.nih.gov/research-topics/opioids/opioid-overdose-crisis>; see also, Van Zee A. The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy. *Am J Public Health*. 2009;99(2):221-227. doi:10.2105/AJPH.2007.131714.

 [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. *Id*. [↑](#footnote-ref-5)
6. “The Drug Overdose Epidemic: Behind the Numbers,” Centers for Disease Control and Prevention, available at <https://www.cdc.gov/opioids/data/index.html>. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. “Opioid Overdose Crisis,” National Institute of Drug Abuse (NIDA), available at <https://nida.nih.gov/research-topics/opioids/opioid-overdose-crisis>. [↑](#footnote-ref-8)
9. *Id*. [↑](#footnote-ref-9)
10. *Id*. [↑](#footnote-ref-10)
11. *Id*. [↑](#footnote-ref-11)
12. #  Leaving Jail, Kicking Heroin, and Then Facing the Pandemic, Gothamist, Aug. 13, 2020, <https://gothamist.com/news/leaving-jail-addicts-face-growing-opioid-crisis-during-pandemic>.

 [↑](#footnote-ref-12)
13. American Medical Association Advocacy Research Center, September 8, 2020, Issue brief: Report of increases in opioid-related overdose and other concerns during the COVID pandemic, from <https://www.ama-assn.org/system/files/2020-09/issue-brief-increases-in-opioid-related-overdose.pdf> [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. NYS Opioid Annual Report 2021, Department of Health, available at <https://www.health.ny.gov/statistics/opioid/>. [↑](#footnote-ref-15)
16. *Id*. [↑](#footnote-ref-16)
17. *Id*. [↑](#footnote-ref-17)
18. *Id*. [↑](#footnote-ref-18)
19. “Prevent Overdose,” DOHMH, available at <https://www1.nyc.gov/site/doh/health/health-topics/alcohol-and-drug-use-prevent-overdose.page>. [↑](#footnote-ref-19)
20. “Unintentional Drug Poisoning (Overdose) Deaths: Quarter 2, 2021, New York City,” April 2022, DOHMH. [↑](#footnote-ref-20)
21. “Overdose Continues to Rise in NYC as Harm Reduction Programming Scales Up,” Apr. 14, 2022, DOHMH, available at <https://www1.nyc.gov/site/doh/about/press/pr2022/overdose-increases-as-harm-reduction-program-scales-up.page>. [↑](#footnote-ref-21)
22. “Unintentional Drug Poisoning (Overdose) Deaths: Quarter 2, 2021, New York City,” April 2022, DOHMH. [↑](#footnote-ref-22)
23. *Id*. [↑](#footnote-ref-23)
24. *Id*. [↑](#footnote-ref-24)
25. “Attorney General James Files Nation's Most Comprehensive Suit Against Opioid Distributors And Manufacturers,” Website of the AG, Mar. 28, 2019, available at <https://ag.ny.gov/press-release/2019/attorney-general-james-files-nations-most-comprehensive-suit-against-opioid>. [↑](#footnote-ref-25)
26. *Id*. [↑](#footnote-ref-26)
27. *Id*. [↑](#footnote-ref-27)
28. *Id*. [↑](#footnote-ref-28)
29. *Id*. [↑](#footnote-ref-29)
30. *Id*. [↑](#footnote-ref-30)
31. This information was learned from briefings from the AG’s Office. [↑](#footnote-ref-31)
32. S.7194/A.6395B, available at <https://www.nysenate.gov/legislation/bills/2021/s7194>. [↑](#footnote-ref-32)
33. *Id*. [↑](#footnote-ref-33)
34. “Attorney General James Files Nation's Most Comprehensive Suit Against Opioid Distributors And Manufacturers,” Website of the AG, Mar. 28, 2019, available at <https://ag.ny.gov/press-release/2019/attorney-general-james-files-nations-most-comprehensive-suit-against-opioid>. [↑](#footnote-ref-34)
35. “Mayor Adams and Attorney General James Fight Opioid Crisis With First of $286 Million in Payments for New York City,” Office of the Mayor, Apr. 21, 2022, available at <https://www1.nyc.gov/office-of-the-mayor/news/233-22/mayor-adams-attorney-general-james-fight-opioid-crisis-first-286-million-payments#/0>. [↑](#footnote-ref-35)
36. *Id*. [↑](#footnote-ref-36)
37. #  “Mayor Adams Announces how Opioid Settlement Fund Dollars Will lay Pathbreaking way Forward for Services and Support,” Office of the Mayor, June 29, 2022, available at <https://www1.nyc.gov/office-of-the-mayor/news/457-22/mayor-adams-how-opioid-settlement-fund-dollars-will-lay-pathbreaking-way-forward-for> (The text following quotes the Mayor’s press release).

 [↑](#footnote-ref-37)
38. *Id*. [↑](#footnote-ref-38)
39. *Id*. [↑](#footnote-ref-39)
40. *Id*. [↑](#footnote-ref-40)