

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1722

H.P. 1277

House of Representatives, May 19, 2021

**An Act To Ensure Access to All Paths to Recovery for Persons
Affected by Opioids Using Money Obtained through Litigation
against Opioid Manufacturers**

(EMERGENCY)

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WARREN of Hallowell.
Cosponsored by Senator: President JACKSON of Aroostook.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the substance use crisis, driven significantly by opioids, has killed
4 thousands of Maine residents, including 380 individuals who died of drug overdoses in
5 2019 alone, and devastated families and communities across the State; and

6 **Whereas,** the Maine Attorney General has filed lawsuits against companies involved
7 in opioid drug production, including opioid manufacturers and distributors, designed to
8 hold them responsible for lives lost and provide resources to remediate harm caused by
9 their products; and

10 **Whereas,** funds derived from settlement of or damages granted in these lawsuits are
11 anticipated to begin being distributed within the biennium, and it is imperative for public
12 health and safety that all money received by the State as a result of lawsuits related to opioid
13 manufacturers and distributors immediately be used to help remediate and abate the opioid
14 and substance use crisis, by supporting all paths to recovery through opioid use prevention,
15 intervention, treatment and recovery services, including the use of all United States Food
16 and Drug Administration approved opioid addiction medications and expanded access to
17 detoxification, relapse prevention, patient assessment, individual treatment planning,
18 counseling, services for co-occurring mental illness, provider education, recovery supports,
19 diversion control, adequate reimbursement rates and other best practices; and

20 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
21 the meaning of the Constitution of Maine and require the following legislation as
22 immediately necessary for the preservation of the public peace, health and safety; now,
23 therefore,

24 **Be it enacted by the People of the State of Maine as follows:**

25 **Sec. 1. 5 MRSA §203-A,** as enacted by PL 1991, c. 532, §1 and affected by §2, is
26 amended to read:

27 **§203-A. Accounts established due to court orders or other settlements**

28 Unless specifically ordered by the court to do otherwise or for revenue or money
29 received under section 203-B, the Attorney General shall work with the Treasurer of State
30 to deposit any revenue or money received as a result of any court order, court settlement or
31 other agreement into an other special revenue account of the State and all interest must be
32 credited to the General Fund. When, pursuant to a court order or settlement, the Attorney
33 General receives money that is specifically designated for antitrust enforcement or for
34 enforcement of the Maine Unfair Trade Practices Act, the Attorney General is authorized
35 to expend such funds for expert witness fees, copying of documents, transcripts and any
36 other purpose in accordance with the court order. Any interest on such funds, unless
37 otherwise ordered by the court, must be credited to the General Fund. The Attorney
38 General shall provide an accounting of such funds to the Legislature in a form and as
39 determined by the Office of Fiscal and Program Review.

40 **Sec. 2. 5 MRSA §203-B** is enacted to read:

41 **§203-B. Funds received pursuant to court orders or other settlements of opioid crisis**
42 **litigation**

1 Notwithstanding section 203-A and unless specifically ordered by the court to do
2 otherwise, the Attorney General shall work with the Treasurer of State to deposit any
3 revenue or money received as a result of any court order or other agreement resulting from
4 litigation against or any court settlement with an opioid manufacturer, opioid research
5 association or any other person in the opioid industry relating to claims made by or
6 prosecuted by the State into the Opioid and Substance Use Abatement Fund under section
7 203-C. The Attorney General shall provide an accounting of such funds to the Legislature
8 in the form and as determined by the Office of Fiscal and Program Review.

9 **Sec. 3. 5 MRSA §203-C** is enacted to read:

10 **§203-C. Opioid and Substance Use Abatement Fund**

11 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
12 following terms have the following meanings.

13 A. "Agonist" means a medication that binds to a receptor of a cell in a human body,
14 activating the cell and creating a response or effect in the body as intended by use of
15 the medication.

16 B. "Antagonist" means a medication that binds to a receptor of a cell in a human body
17 without activating the cell, decreasing the receptor's ability to be activated.

18 C. "Diversion control" means the prevention of the diversion of lawfully prescribed
19 medication for an illegal or illicit purpose.

20 **2. Opioid and Substance Use Abatement Fund.** The Opioid and Substance Use
21 Abatement Fund, referred to in this section as "the fund," is established as a nonlapsing,
22 revolving fund administered by the Attorney General to remediate and abate opioid and
23 other substance use disorders in the State. The fund is funded by revenue or money
24 received pursuant to section 203-B and other public and private sources. Any interest
25 earned from investment of money in the fund, unless otherwise ordered by the court, must
26 be credited to the General Fund. The Maine Opioid and Substance Use Abatement
27 Advisory Commission under section 203-D shall direct the Attorney General to award
28 money from the fund to carry out the purposes of the fund under subsection 4, for
29 reimbursement of past expenses related to the fund and for reimbursement for the cost of
30 administering the fund.

31 **3. Prohibition on use of fund.** The fund may not be used to purchase additional
32 quantities of the same brand of medications donated to the State pursuant to the terms of a
33 settlement agreement reached as a result of litigation with entities that manufactured, sold,
34 distributed or promoted prescription opioids.

35 **4. Purposes.** The purposes of the fund are to remediate and abate the opioid and
36 substance use crisis and support any recognized path to achieving recovery through opioid
37 and substance use prevention, intervention and treatment in all appropriate settings
38 including community-based, hospital and corrections facilities, including:

39 A. Establishing and ensuring equal access to all United States Food and Drug
40 Administration approved addiction medications, including agonist, partial agonist and
41 antagonist medications, for the treatment of substance use disorders, including alcohol
42 use disorder and opioid use disorder, and relapse prevention following detoxification;

- 1 B. Increasing capacity in various settings of care including residential centers,
2 hospitals and correctional facilities for inpatient detoxification and medically managed
3 withdrawal, including access to all United States Food and Drug Administration
4 approved medications for medically managed withdrawal and treatment including
5 agonist medications for maintenance treatment and antagonist medications for relapse
6 prevention following opioid detoxification while in the settings of care;
- 7 C. Increasing access to patient assessment, individual treatment planning, counseling
8 and treatment for co-occurring mental illness;
- 9 D. Increasing residential and recovery housing, community recovery centers and
10 recovery coaches and peer supports;
- 11 E. Expanding and enhancing diversion control;
- 12 F. Enhancing capacity and resources in emergency departments and in other hospital
13 departments to address opioid overdose and establish similar programs for alcohol use
14 disorder;
- 15 G. Enhancing screening, intervention and referral to treatment services by primary
16 care providers, hospitals, correctional facilities and other medical facilities;
- 17 H. Establishing or expanding treatment alternatives that provide psychosocial supports
18 and medication-assisted treatment to expand access to care in rural areas including
19 mobile health services, telehealth and pharmacist administration of medication;
- 20 I. Establishing statewide provider education relative to medications and support
21 services for substance use disorders;
- 22 J. Providing appropriate rates for reimbursement to health care and other providers for
23 services delivered in treating patients with substance use disorders and co-occurring
24 mental illness within the framework of prevention, intervention, treatment and
25 recovery in order to build staff and service capacity; and
- 26 K. Other best practices relative to the prevention and treatment of and recovery from
27 opioid and other substance use disorders.
- 28 **5. Priority for medication and services.** Priority for medication and services
29 provided by a program or other effort funded by the fund to benefit a person affected by
30 opioid or other substance use disorders must be given to:
- 31 A. A person who is uninsured or underinsured;
- 32 B. A person who has returned to or is reentering the community from a correctional
33 facility or a correctional or criminal justice rehabilitative setting;
- 34 C. A person in a health care setting in which medication is not covered by the person's
35 insurance, including a detoxification facility, inpatient facility or residential facility;
36 and
- 37 D. A person in an emergency department or other hospital inpatient department.
- 38 **6. Limitation of funding.** A disbursement from the fund may not supplant federal
39 funding or state appropriations directed toward opioid and substance use prevention,
40 intervention, treatment and recovery or revenue or money received by the State to purchase
41 medication as a result of a court order or settlement of litigation with entities that
42 manufactured, sold, distributed or promoted prescription opioids prior to the creation of the

1 fund. Disbursements from the fund must continue until such time as the funds in the fund
2 are exhausted.

3 **Sec. 4. 5 MRSA §203-D** is enacted to read:

4 **§203-D. Maine Opioid and Substance Use Abatement Advisory Commission**

5 **1. Establishment.** The Maine Opioid and Substance Use Abatement Advisory
6 Commission, as established in section 12004-J, subsection 19, referred to in this section as
7 "the commission," is created to review information concerning the opioid crisis and opioid
8 and substance use prevention, treatment and recovery and make binding directives
9 directing the Attorney General to award money from the Opioid and Substance Use
10 Abatement Fund pursuant to section 203-C.

11 **2. Membership.** The commission consists of 15 members as follows:

12 A. The Attorney General or the Attorney General's designee, who serves as chair of
13 the commission;

14 B. The Commissioner of Health and Human Services or the commissioner's designee;

15 C. The director of the opioid response unit within the Governor's Office of Policy
16 Innovation and the Future or the director's designee;

17 D. One member of the Senate, appointed by the President of the Senate;

18 E. One member of the House of Representatives, appointed by the Speaker of the
19 House of Representatives;

20 F. One member representing families impacted by the opioid crisis, appointed by the
21 Attorney General;

22 G. One member with expertise in drug treatment, appointed by the Attorney General;

23 H. One member representing the substance use prevention community, appointed by
24 the Attorney General;

25 I. One member representing the substance use recovery community, appointed by the
26 Attorney General;

27 J. One member with lived experience with substance use disorder, appointed by the
28 Attorney General;

29 K. One member representing law enforcement, appointed by the Attorney General;

30 L. One member representing reentry supports for currently and formerly incarcerated
31 individuals and their families, appointed by the Attorney General;

32 M. One member representing pretrial services, appointed by the Attorney General; and

33 N. Two members representing municipalities in the State impacted by the opioid crisis,
34 appointed by the Attorney General.

35 **3. Terms.** A member of the commission appointed under subsection 2, paragraph D
36 or E serves during the legislative term for which the member was elected. Members of the
37 commission appointed under paragraphs F to N may serve no more than 2 terms of 3 years,
38 except that the first member of the commission appointed under each of paragraphs F to H
39 serves an initial term of 2 years and the first member of the commission appointed under

1 each of paragraphs I to L serves an initial term of one year and may be appointed to a 3rd
2 term.

3 **4. Meetings.** The commission shall meet at least twice within each calendar year. Six
4 members of the commission constitute a quorum for the transaction of business. Each
5 member of the commission has one vote, with all actions being taken by an affirmative
6 vote of the majority of members present.

7 **5. Compensation.** Members of the commission are entitled to be reimbursed for
8 necessary travel and lodging expenses incurred in the performance of their duties.

9 **6. Attorney General.** The Attorney General shall:

10 A. Carry out commission recommendations and directives pursuant to section 203-C,
11 subsection 2;

12 B. At least twice annually, consult with substance use treatment and prevention
13 stakeholders, including consumers, providers, families, advocates, public health and
14 addiction professionals and individuals with expertise in systemic racism and structural
15 health inequity, to develop key performance indicators relating to substance use
16 treatment and prevention efforts, review relevant data and identify recommended
17 allocations, grants and contracts for disbursement of the Opioid and Substance Use
18 Abatement Fund to persons, departments and organizations to present to the
19 commission to carry out the purposes of section 203-C, subsection 4; and

20 C. Beginning February 15, 2022 and each year thereafter, provide a report on the
21 previous year's receipts, disbursements, allocations and awards disbursed under section
22 203-C to the joint standing committee of the Legislature having jurisdiction over health
23 and human services matters.

24 **Sec. 5. 5 MRSA §12004-J, sub-§19** is enacted to read:

25 **19.**

26 Substance Use Maine Opioid and Substance Use Expenses Only 5 MRSA
27 Prevention, Abatement Advisory Commission §203-D
28 Treatment and
29 Recovery

30 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
31 takes effect when approved.

32 SUMMARY

33 This bill directs all funds awarded through opioid litigation and settlements to the
34 Opioid and Substance Use Abatement Fund administered by the Attorney General for the
35 purpose of remediating and addressing the substance use crisis in Maine through
36 prevention, intervention, treatment and recovery. These funds may not supplant federal
37 funding or state appropriations directed toward prevention, intervention, treatment and
38 recovery or funds received from prior opioid litigation and settlements or court orders.

39 The bill also establishes the Maine Opioid and Substance Use Abatement Advisory
40 Commission to review opioid and substance use related information and determine how
41 Opioid and Substance Use Abatement Fund funds are to be spent to carry out the purposes
42 of the fund. The bill requires the Attorney General to convene, at least twice annually, a

1 stakeholder group to develop and review performance indicators and to develop and
2 provide recommendations concerning disbursements and allocations from the fund to
3 recommend to the commission. The bill requires the Attorney General to award fund funds
4 as directed by the commission and to annually report and provide information about
5 received and expended funds to the joint standing committee of the Legislature having
6 jurisdiction over health and human services matters.