

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 2528

INTRODUCER: Appropriations Committee

SUBJECT: Trust Funds/Opioid Settlement Trust Fund

DATE: February 10, 2022

REVISED: _____

ANALYST

Sneed

STAFF DIRECTOR

Sadberry

REFERENCE

ACTION

AP Submitted as Comm. Bill/Fav

I. Summary:

SB 2528 creates the Opioid Settlement Trust Fund within the Department of Children and Families (DCF). The bill:

- Creates the Opioid Settlement Trust Fund (trust fund) for appropriated funds received from the Department of Financial Services (DFS) Opioid Settlement Clearing Trust Fund.
- Requires unencumbered trust fund balances to revert to the DFS Opioid Settlement Clearing Trust Fund.
- Provides for termination of the trust fund on July 1, 2026, unless terminated sooner.

The bill takes effect on July 1, 2022.

II. Present Situation:

History of the Opioid Crisis in Florida

According to the National Institute on Drug Abuse:¹

- “In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates” and
- “This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.”

Between the early 2000s and the early 2010s, Florida was infamous as the “pill mill capital” of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the country.²

¹ National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), available at <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited Nov. 29, 2021).

² Lizette Alvarez, *Florida Shutting ‘Pill Mill’ Clinics*, *The New York Times* (Aug. 31, 2011), available at <http://www.nytimes.com/2011/09/01/us/01drugs.html> (last visited Nov. 29, 2021).

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.³ “In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100.”⁴

As reported at the time by the Florida Attorney General’s Opioid Working Group:

Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000 (63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven lives per day were lost to opioids in Florida in 2015. Overall, the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).⁵

Early in 2017, the federal Centers for Disease Control and Prevention (CDC) declared the opioid crisis an epidemic.⁶ Shortly thereafter, on May 3, 2017, Governor Rick Scott signed Executive Order 17-146 declaring the opioid epidemic a public health emergency in Florida.⁷

House Bill 21 (2018)

In 2018, the Florida Legislature passed CS/CS/HB 21 (Chapter 2018-13, Laws of Florida) to combat the opioid crisis. CS/CS/HB 21:

- Required additional training for practitioners on the safe and effective prescribing of controlled substances;
- Restricted the duration of prescriptions for Schedule II opioid medications to three days or up to seven days if medically necessary;
- Reworked the PDMP statute to require that prescribing practitioners check the PDMP prior to prescribing a controlled substance and to allow the integration of PDMP data with electronic health records and the sharing of PDMP data between Florida and other states; and
- Provided for additional funding for treatment and other issues related to opioid abuse.

³ See Chapters 2009-198, 2010-211, and 2011-141, Laws of Fla.

⁴ Attorney General’s Opioid Working Group, *Florida’s Opioid Epidemic: Recommendations and Best Practices*, 7 (Mar. 1, 2019), available at [https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/\\$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf](https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf) (last visited Nov. 29, 2021).

⁵ *Id.*

⁶ See Exec. Order No. 17-146, available at <https://www.flgov.com/wp-content/uploads/2017/05/17146.pdf>. (last visited Mar. 12, 2021).

⁷ *Id.*

Status of the Opioid Crisis after HB 21

There is some evidence that the passage of HB 21 reduced opioid use in Florida. For example, one study that reviewed pharmacy prescriptions claims for a health plan serving more than 45,000 Floridians found that on average, the number of enrollees per month that began opioid use between April of 2019 and August of 2019 dropped from 5.5 per 1,000 patients to 4.6 per 1,000 patients.⁸

Unfortunately, with the onset of the COVID-19 pandemic, the incidence of opioid use disorder and resulting overdose deaths has once again risen. A report from Project Opioid details provisional data from the department showing that deaths from drug overdoses have increased by 43 percent between 2019 and 2020, from 56 deaths per 100,000 in 2019 to 94 deaths per 100,000 in 2020. Additionally, fentanyl, an extremely potent opioid drug, is the leading cause of overdose deaths in Florida, and the incidence of fentanyl overdose deaths increased by 38 percent, from 2,348 in 2019 to 3,244 in 2020.⁹

State Opioid Response Project in the Department of Children and Families

Since Fiscal Year 2017-2018, the DCF Office of Substance Abuse and Mental Health has administered the State Opioid Response Project (SOR). The project is funded by federal grants received from the Substance Abuse and Mental Health Services Administration (SAMHSA).¹⁰ SOR is designed to address the opioid crisis and reduce opioid-related deaths by providing a comprehensive array of evidence-based prevention, medication-assisted treatment (MAT), and recovery support services. These services target indigent, uninsured, and underinsured individuals with opioid use disorders or opioid misuse. SOR funds have also been used to expand the Overdose Prevention Program at the DCF, which distributes and trains community-based responders on the use of naloxone (Narcan®), a life-saving medication that reverses opioid overdoses.

Through SOR, the DCF deploys behavioral health consultants to support child protective investigators and a team of qualified medical professionals to assist with MAT capacity building, training, and technical assistance. Recovery support services include the establishment of residences using the Oxford House® Model, implementation of Recovery Community Organizations, employment of Recovery Oriented Quality Improvement Specialists, and expansion of the Veterans information and referral service, MyFLVet Helpline. SOR funds support curricula development for medical schools and buprenorphine induction programs within hospital emergency departments.

Additionally, the SOR grant funds are being utilized for methadone and buprenorphine maintenance because controlled trials demonstrate their effectiveness in retaining individuals in care, and reducing illicit opioid use and opioid-related mortality. The grant funds are also used

⁸ Juan M. Hincapie-Castillo, et al., Changes in Opioid Use After Florida's Restriction Law for Acute Pain Prescriptions, *JAMA Netw Open*. 2020 Feb; 3(2): e200234, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7049083/>, (last visited Nov. 29, 2021).

⁹ Project Opioid, A Pandemic Fueling an Epidemic in Florida in 2020, available at https://projectopioid.org/wp-content/uploads/2020/12/PO-2020-Data-Study-Final_New-Section.pdf (last visited Nov. 29, 2021).

¹⁰ SAMHSA has allocated federal grant awards to the Florida DCF of \$380.9 million during the 2017-2018 through 2021-2022 fiscal years.

for extended release naltrexone which blocks the effects of opioids and is approved for the prevention of relapse to opioid dependence. The DCF has allocated SOR funds to each region of the state to contract for behavioral health services through regional systems of care or managing entities.¹¹

Opioid Litigation

Florida joined a multi-state coalition of 48 states and the District of Columbia to sue pharmaceutical companies, distributors, and dispensing companies that had major roles in producing or promoting opioid products that helped to fuel the nation's opioid epidemic.¹²

In July of 2021, three of the largest pharmaceutical companies settled litigation related to the opioid crisis. Based on the settlement agreement, the three companies collectively will pay up to \$21 billion over 17.5 years, with Florida receiving a total of \$1.3 billion. Additionally, Johnson & Johnson will pay up to \$5 billion over nine years, with Florida receiving almost \$300 million from that agreement. Previous settlement funding generated more than \$300 million for Florida opioid abatement, which brings the collective opioid efforts for Florida to \$1.9 billion. The settlement funding must be used to support opioid treatment, prevention and recovery services.¹³

III. Effect of Proposed Changes:

Section 1 amends s. 20.195, F.S., to create the Opioid Settlement Trust Fund within the Department of Children and Families for funds received from the Department of Financial Services Opioid Settlement Clearing Trust Fund through nonoperating transfers and requires unencumbered trust fund balances at fiscal year-end to revert to the DFS Opioid Settlement Clearing Trust Fund. The proposed bill also provides for termination of the trust fund on July 1, 2026, unless terminated sooner.

Section 2 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹¹ Office of Attorney General, Attorney General Ashley Moody News Release at January 18, 2022, *available at* <https://www.myflfamilies.com/service-programs/samh/opioidSTRP.shtml> (last visited Feb. 4, 2022).

¹² See Attorney General, *Florida Opioid Settlements Portal*, <https://app.smartsheet.com/b/publish?EQBCT=415e64f86a0c4df39302ed3f371915d9> (last visited Feb. 6, 2022).

¹³ Department of Children and Families, Florida's State Opioid Response Project, *available at* <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/DBE8B56810857CB3852587CE00776C03> (last visited Feb. 4, 2022).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This trust fund will receive nonoperating transfers from the DFS Opioid Settlement Clearing Trust Fund. The amount of funds received from DFS will be based on the total funds annually appropriated to the DCF Opioid Settlement Trust Fund. Any encumbered balance in the DCF trust fund at fiscal year-end that remains undisbursed by December 31 of the same calendar year will revert (be refunded) to the DFS trust fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 20.195, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
