

**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.)

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Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

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BILL: SPB 7028

INTRODUCER: For consideration by the Appropriations Committee on Health and Human Services

SUBJECT: Trust Funds/State Opioid Settlement Trust Fund/Agency for Health Care Administration

DATE: March 20, 2023      REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. McKnight	Money		<b>Pre-meeting</b>

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**I. Summary:**

SPB 7028 amends section 20.425, Florida Statutes, establishing the Opioid Settlement Trust Fund within the Agency for Health Care Administration. The purpose of the trust fund is to abate the opioid epidemic in accordance with the settlement agreements reached by the state in opioid-related litigation or bankruptcy proceedings. The trust fund will receive funds as provided in the General Appropriations Act.

The bill is effective July 1, 2023.

**II. Present Situation:**

**Trust Funds**

*Establishment of Trust Funds*

A trust fund may be created by law only by the Legislature and only if passed by a three-fifths vote of the membership of each house in a separate bill for that purpose only. Except for trust funds being re-created by the Legislature, each trust fund must be created by statutory language that specifies at least the following:

- The name of the trust fund.
- The agency or branch of state government responsible for administering the trust fund.
- The requirements or purposes that the trust fund is established to meet.
- The sources of moneys to be credited to the trust fund or specific sources of receipts to be deposited in the trust fund.<sup>1</sup>

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<sup>1</sup> Section 215.3207, F.S.

### ***Florida Constitution Requirement for Trust Funds***

The Florida Constitution requires that state trust funds must terminate not more than four years after the effective date of the act authorizing the initial creation of the trust fund.<sup>2</sup> By law the Legislature may set a shorter time period for which any trust fund is authorized.<sup>3</sup>

### ***Review of Trust Funds***

The Legislature must review all state trust funds at least once every 4 years,<sup>4</sup> prior to the regular session of the Legislature immediately preceding the date on which any executive or judicial branch trust fund is scheduled to be terminated,<sup>5</sup> or such earlier date as the Legislature may specify.<sup>6</sup>

The agency responsible for the administration of the trust fund and the Governor, for executive branch trust funds, or the Chief Justice, for judicial branch trust funds, must recommend to the President of the Senate and the Speaker of the House of Representatives whether the trust fund should be allowed to terminate or should be re-created.<sup>7</sup> Each recommendation must be based on a review of the purpose and use of the trust fund and a determination of whether the trust fund will continue to be necessary.<sup>8</sup> A recommendation to re-create the trust fund may include suggested modifications to the purpose, sources of receipts, and allowable expenditures for the trust fund.<sup>9</sup>

When the Legislature terminates a trust fund, the agency or branch of state government that administers the trust fund must pay any outstanding debts or obligations of the trust fund as soon as practicable.<sup>10</sup> The Legislature may also provide for the distribution of moneys in that trust fund. If no such distribution is provided, the moneys remaining after all outstanding obligations of the trust fund are met must be deposited in the General Revenue Fund.<sup>11</sup>

### **Opioid Settlements**

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.<sup>12</sup>

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 and a half years, with Florida receiving a total of \$1.3 billion. Additionally,

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<sup>2</sup> Art. III, s. 19(f)(2), Fla. Const.

<sup>3</sup> *Id.*

<sup>4</sup> Section 215.3208(1), F.S.

<sup>5</sup> Pursuant to Art. III, s. 19(f), Fla. Const.

<sup>6</sup> Section 215.3206(1), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 215.3208(2)(a), F.S.

<sup>11</sup> Section 215.3208(b), F.S.

<sup>12</sup> See Florida Attorney General, *Attorney General Moody secures relief for opioid crisis*, <https://myfloridalegal.com/opioidsettlement> (last visited Feb. 24, 2023).

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.<sup>13</sup>

In addition to the Johnson & Johnson settlement the state has entered into settlement agreements with the following entities: Endo Health Solutions, CVS Health Corporation, CVS Pharmacy, Inc., Teva Pharmaceuticals Industries Ltd., Allergan Finance, LLC., Walgreen Boots Alliance, Inc., and Walgreen Co., and Walmart.<sup>14</sup> These agreements total approximately \$3.2 billion to be received by the state with some of the funds sent directly to local governments over a period of up to 18 years.

In 2022, the Legislature created a Opioid Settlement Clearing Trust Fund in the Department of Financial Services to serve as the depository of opioid settlement funds.<sup>15</sup> Funds received from the settlements will be deposited into the clearing trust fund and then transferred from the clearing trust fund to various agencies to implement the appropriations as provided in the General Appropriations Act.<sup>16</sup>

### **Agency for Health Care Administration**

The Agency for Health Care Administration (AHCA) is created in s. 20.42, F.S. It is the chief health policy and planning entity for the state and is responsible for the state's estimated \$37 billion Medicaid program that serves an estimated 5.5 million Floridians,<sup>17</sup> as well as health facility licensure, inspection, and regulatory enforcement. It licenses or certifies and regulates 40 different types of health care providers, including hospitals, nursing homes, assisted living facilities, and home health agencies. In total, the AHCA licenses, certifies, regulates or provides exemptions for more than 48,000 providers.<sup>18</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 20.425, F.S., to create the Opioid Settlement Trust Fund within the Agency for Health Care Administration (AHCA). The purpose of the trust fund is to abate the opioid epidemic in accordance with the settlement agreements reached by the state in opioid-related litigation or bankruptcy proceedings.

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<sup>13</sup> Florida Attorney General, *Attorney General Moody announces new settlement for \$65 million with opioid manufacturer Endo and finalization of Johnson & Johnson Opioid Settlement*, (Jan. 18, 2022) available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/DBE8B56810857CB3852587CE00776C03> (last visited Feb. 24, 2023).

<sup>14</sup> See Florida Attorney General, *Attorney General Moody secures relief for opioid crisis*.

<sup>15</sup> Chapter 2022-161, Laws of Florida.

<sup>16</sup> Section 17.42, F.S.

<sup>17</sup> See Social Services Estimating Conference, *Medicaid Caseloads and Expenditures, February 20 and 23, and March 1, 2023, respectively*, available at <http://edr.state.fl.us/Content/conferences/medicaid/execsummary.pdf> (last visited Mar. 14, 2023).

<sup>18</sup> See the Agency for Health Care Administration, Division of Health Quality Assurance <http://ahca.myflorida.com/MCHQ/index.shtml> (last visited Mar. 14, 2023).

The Department of Financial Services shall transfer any amount specified in the General Appropriations Act from the Opioid Settlement Clearing Trust Fund to the AHCA's opioid settlement trust fund.

Any unencumbered balance remaining at the end of the fiscal year and any encumbered balance remaining undisbursed on September 30 of the same calendar year reverts to the Opioid Settlement Clearing Trust Fund.

As required by the Florida Constitution, the Opioid Settlement Trust Fund terminates on July 1, 2027, unless terminated sooner or recreated by the Legislature. Additionally, the trust fund is required to be reviewed as provided in s. 215.3206, F.S., before its schedule termination.

The bill is effective July 1, 2023.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Article III, s. 19(f)(1) of the Florida Constitution specifies that a trust fund may be created or re-created only by a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

Article III, s. 19(f)(2) of the Florida Constitution specifies that state trust funds must terminate not more than four years after the effective date of the act authorizing the initial creation of the trust fund. By law the Legislature may set a shorter time period for which any trust fund is authorized.

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:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 20.425 of the 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.