



December 6, 2022

RE: Opioid Settlement Fund Advisory Board

Dear Chairwoman Pantin and Members of the Board,

Thank you for your dedication in serving on the Opioid Settlement Advisory Board (“OSFAB” or “Board”). The Office of Addiction Services and Supports (“OASAS”), the Office of Mental Health (“OMH”), and the Department of Health (“DOH”) (collectively “Agencies”) appreciate the extensive time and energy you devoted to developing the written report of recommendations dated November 1, 2022 (“Annual Report”), regarding specific opioid abatement priorities and expenditures from the Opioid Settlement Fund (“Settlement Fund”) for Approved Uses (as defined by the New York Opioid Settlement Sharing Agreement (“Settlement Agreement”).

The Board was created pursuant to Chapter 171 of the Laws of 2022 and **Mental Hygiene Law § 25.18**. It is established under OASAS and became a fully constituted board on June 14, 2022. As provided for in the law and the Settlement Agreement, the Board is tasked with acting in an advisory capacity, and among other things, with providing recommendations for spending on projects and programs related to addressing the opioid epidemic.

By November 1<sup>st</sup> of each year, the OSFAB is required to submit a report to the Governor and New York State Legislature outlining its official recommendations for Settlement Fund spending. The recommendations contained within the Annual Report are required to be evidence-based and should consider Federal, State, and local initiatives and activities that have shown to be effective in preventing and treating substance use disorders as well as maintaining recovery and assisting with the collateral effects of substance use disorders for individuals and their families or support systems.

The Agencies thoroughly reviewed and carefully analyzed the proposed recommendations and share the Board’s commitment to ensuring the settlement funds are dedicated in the most efficient and effective way possible to responding to the opioid epidemic in New York State. The Agencies will implement the Board recommendations for Fiscal Year 2023 to the extent practicable where the categorical recommendations are:

- limited to the allocation of the Opioid Settlement Fund Monies; and
- do not violate State or Federal Laws, rules, and/or regulations; and
- do not violate the New York State Constitution, specifically, regarding the authority to direct and spend State monies; and
- do not create a recurring cost for the State that is not fully funded by Opioid Settlement Fund Monies; and
- in compliance with court ordered Opioid Settlement Agreements.

As provided in Section V(B) of the Settlement Agreement, if the State rejects a Board recommendation it must provide a written explanation of the reasons for its decision within 14 days of that decision. Moreover, the Board may respond to the State's decision within 14 days of receipt of such decision.

In compliance with this requirement, the State rejects the following Board recommendations:

Appendix A, Section 1 (pg. 25), Harm Reduction Investments

- “As reflected in the meeting minutes, all dollars for Harm Reduction will go to the Department of Health for appropriate disbursement with collaboration with other agencies.”

This recommendation violates the New York State Constitution, specifically, the Board does not have the authority to direct and spend State monies. The authority to direct and spend State monies lies with the Executive and the Legislature.

Appendix A, Section 1(b) (pg. 27), Harm Reduction Investments, Funding to the DOH

- “Overdose Prevention Centers
  - Understand the benefits and address any perceived or real negatives
  - Develop public messaging
  - Work on compliance/risk/policies
  - Find potential sites around the state
  - Pilot Heroin Assisted Treatment within an OPC”

This recommendation violates State and Federal Laws, rules, and/or regulations. There are both Federal and State statutes, as well as case law, that currently prohibit the operation of Overdose Prevention Centers (“OPCs”) and allocation of State monies for OPCs. Further, OPCs violate various State and Federal substance-related laws, including laws that make it illegal to use, open, or maintain property where any controlled substance is consumed.

On behalf of the Agencies, and all the people of New York State, thank you for your dedication and service.

Sincerely,



Chinazo Cunningham, M.D.  
Commissioner

cc: Honorable Andrea Stewart-Cousins  
Honorable Liz Krueger  
Honorable Pete Harckham  
Honorable Carl Heastie  
Honorable Helene Weinstein  
Honorable Phil Steck

501 7<sup>th</sup> Avenue | New York, New York 10018-5903 | [oasas.ny.gov](https://oasas.ny.gov) | 646-728-4760

1450 Western Avenue | Albany, New York 12203-3526 | [oasas.ny.gov](https://oasas.ny.gov) | 518-473-3460