

HOUSE HUMAN SERVICES COMMITTEE
ROBIN WEISZ, CHAIR
FEBRUARY 8, 2023

TESTIMONY BY
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DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
HOUSE BILL NO. 1447

Mr. Chairman and members of the House Human Services Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of House Bill No. 1447, with proposed clarifying amendments.

To date, the Consumer Protection Division has participated in 11 national opioids investigations and settlements including opioid manufacturers, distributors, pharmacies/retailers and consultants or marketers.

The gross amount of anticipated opioid settlement payments over as long as 18 years (which is the Purdue Pharma case still in bankruptcy) and is between \$62 million and \$70 million plus. However, it is impossible to indicate any exact amount or other certain amount because of the complications in calculating or receiving any specific amounts for each settlement. Administrative fees and other deductions are constantly made to some extent before the receipt of the actual settlement distributions. In addition, these gross settlement amounts depend upon participation by the political subdivisions. For past settlements, that participation level has been very high for North Dakota's political subdivisions. The reason for the final payment formula considering the political subdivision participation percentages is that the settling parties want "global peace" in terms of releases by not only the State but any political subdivisions that have sued or could possibly sue the opioid entities. Therefore, the formula rewards states with higher monetary distributions for higher level of political subdivision participations.

There likely are no further opioid settlements pending, and certainly not with any significant anticipated settlement distributions. This far, the Attorney General has already received \$9.2M in national settlement proceeds.

We certainly support the legislative appropriation of all settlement funds and our primary interest with HB1447 simply is to ensure that all monies in the fund are used in compliance with the court ordered restrictions imposed in each of the settlements. The funds must be used for opioid remediation and there is an exhibit in each of the settlement judgments approved by the court. In some of the settlements it is designated as "Exhibit E List of Opioid Remediation Uses" and I have attached it as an exhibit to this testimony. The approved uses are broad and include certain core strategies from approved uses for treatment, prevention, and other strategies. These are the only approved uses for these funds. The funds cannot be used for any other purposes such as infrastructure, law enforcement etc. Expenditure of any funds for uses that are not approved may

result in contempt of court proceedings with sanctions available under the North Dakota Century Code and also could result in the loss or suspension of future settlement distributions to the State. The settlements and court judgments require future reporting on the State's expenditures of funds.

Therefore, the Attorney General is requesting the following proposed amendments:

Page 1, line 11, after "used" insert "in compliance with any court ordered restrictions and"

Page 1, line 16, after the period insert "The fund does not include monies not retained by the state pursuant to law or court order."

The Medicaid Fraud Control Unit also encourages the approval of these amendments. The Unit participates in multistate, national, civil settlements and, as a result of those settlements, receives monetary recoveries. Some of those recoveries may qualify as opioid litigation funds; however, there are federal regulations which direct that a portion of any recoveries that the Unit obtains must be used to reimburse FMAP (Federal Medical Assistance Percentage) funding the State initially received. The language of the amendment would allow the Unit to adhere to those regulations and contribute the remaining recoveries into the opioid settlement fund pursuant to this Bill.

One other concern is the Opioids Advisory Committee. Your committee should be aware that the opioid advisory committee must remain in existence, because it is required by the court ordered settlements and approved bankruptcy plans. Also, the Attorney General has five upcoming settlements in which we need sign-on from political subdivisions. The advisory committee is essential to get those sign-ons (at least from subdivisions represented by private litigation counsel). Without these subdivision participations, the State could lose as much as 55-62% of the settlement funds in the five upcoming settlements, which would amount to between \$14-16 million of a maximum of \$26.7 million for those five settlements. Furthermore, for some of the settlements, including the Mallinckrodt, Purdue Pharma and other bankruptcy settlements, North Dakota is required to have the Advisory Committee to receive any of the settlement funds.

The Attorney General respectfully recommends that the House Human Services Committee adopt the Attorney General's proposed amendments and give House Bill 1447 a "Do Pass" recommendation with those amendments.

Thank you for your time and consideration. I would be pleased to try and answer any questions.