

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 739
Finance

(Senator Hester)

Algorithmic Addiction Fund - Establishment

This bill establishes the Algorithmic Addiction Fund to retain any revenues received by the State relating to specified judgments or settlements against technology or social media companies and conglomerates. The fund may be used only for specified algorithmic addiction-related spending. The Maryland Department of Health (MDH) must administer the fund. The Secretary of Health must (1) develop key goals, objectives, and performance indicators related to algorithmic addiction treatment and prevention; (2) consult with stakeholders at least once each year, as specified; and (3) by November 1 each year, report to the General Assembly on the fund, as specified. **The bill generally takes effect June 1, 2024, subject to specified contingencies.**

Fiscal Summary

State Effect: Because establishment of the special fund does not directly affect the total amount of funds available to Maryland under any specified judgment or settlement, it is not anticipated to significantly affect overall State finances, as discussed below. MDH general funds likely increase by an indeterminate amount to administer the fund beginning in the fiscal year in which the bill's contingency is met, as discussed below.

Local Effect: Local health departments, local school systems, and other local entities may benefit from the prescribed uses of the fund, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary:

Algorithmic Addiction Fund

The fund is a special, nonlapsing fund. The fund consists of (1) all revenues received by the State from any source resulting, directly or indirectly, from a judgment against, or settlement with, technology conglomerates, technology companies, social media conglomerates, or social media companies relating to claims made or prosecuted by the State to recover damages for violations of State law; (2) any funds appropriated in the State budget; and (3) any interest earnings of the fund.

The fund may be used only to provide funds for:

- conducting a needs assessment throughout the State to determine where resources are needed and best practices for algorithmic addiction prevention, intervention, and treatment;
- improving and strengthening access to services proven to treat the mental and physical health impacts associated with algorithmic addiction;
- algorithmic addiction intervention services;
- algorithmic addiction prevention services;
- research and training for algorithmic addiction treatment and prevention, and social media and youth mental health, including administrative expenses; and
- supporting and expanding other evidence-based interventions for algorithmic addiction prevention and treatment.

If there are any funds in the Algorithmic Addiction Fund after satisfying the above requirements, MDH may use the unspent funds for youth mental health services. Money expended from the fund is supplemental to and is not intended to supplant funding that otherwise would be appropriated for such programs and services. Except as specified, money expended from the fund may not be used for administrative expenses.

Secretary of Health Requirements

The Secretary of Health must (1) develop key goals, objectives, and performance indicators related to algorithmic addiction treatment and prevention; (2) consult with algorithmic addiction treatment and prevention stakeholders at least once each year to identify recommended appropriations from the fund; and (3) by November 1 each year, report to the General Assembly on the fund. The annual report must include:

- an accounting of total expenditures from the fund in the immediately preceding fiscal year by (1) use; (2) jurisdiction (if applicable); and (3) budget program and subdivision;
- the performance indicators and progress toward achieving the goals and objectives as developed by the Secretary; and
- the recommended appropriations from the fund that the Secretary has identified in consultation with stakeholders.

Revenues Received from a Judgment or Settlement

Any appropriation of revenues that are received directly or indirectly from a judgment against or settlement with technology and social media companies and conglomerates must be made in accordance with the allocation and distribution of funds as agreed on in any State-subdivision agreement as amended. The Attorney General must identify and designate the controlling version of the specified agreement. Additionally, the Secretary of Health must establish and administer a grant program for the distribution of funds to political subdivisions in accordance with any State-subdivision agreement, as amended.

Effective Date and Contingency

The bill is contingent on a judgment by a State or federal court against, or settlement with, technology or social media conglomerates or companies relating to any claims made or prosecuted by the State to recover damage for violations of State law. The bill takes effect on the date that a specified notice from the Attorney General is received by the Department of Legislative Services.

Current Law:

Cigarette Restitution Fund

Chapters 172 and 173 of 1999 established the Cigarette Restitution Fund (CRF), which is supported by payments made under the Master Settlement Agreement (MSA). Through the MSA, settling tobacco manufacturers pay the litigating parties – 46 states, 5 territories, and the District of Columbia – substantial annual payments in perpetuity. The distribution of MSA funds among the states is determined by formula.

The use of CRF funds is restricted by statute. The Governor must include appropriations from CRF in the annual budget bill equivalent to the lesser of \$100.0 million or 90% of the funds estimated to be available to CRF in the fiscal year for which the appropriations are made. At least 30% of the appropriations must be made to Medicaid. At least 50% of the appropriations must be dedicated to the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; specified activities

of the Southern Maryland Agricultural Development Commission; and other programs that serve specified purposes. For each fiscal year for which appropriations are made, 0.15% of CRF must be appropriated for the purposes of enforcement of Title 16, Subtitle 5 of the Business Regulation Article (which governs escrow requirements for nonparticipating tobacco product manufacturers). Any additional appropriations from CRF may be made for any lawful purpose.

Chapter 348 of 2023 requires CRF to include a separate account consisting of payments received by the State from any judgment, settlement, penalty, offer of compromise, or any other enforcement action related to the sale and marketing of electronic smoking devices. Distributions from the separate account may be used, consistent with any other provision of State law, to supplement general fund appropriations for specified programs that aim to reduce the use of tobacco products by individuals younger than age 21.

Opioid Restitution Fund

Chapter 537 of 2019 established the Opioid Restitution Fund (ORF), a special fund to retain any revenues received by the State relating to specified opioid judgments or settlements, which may be used only for opioid-related programs and services. Chapter 270 of 2022 specifies that ORF may be used for programs, services, supports, and resources for evidence-based substance use disorder (SUD) prevention, treatment, recovery, or harm reduction that have the purpose of currently authorized outcomes and activities. ORF may also be used for:

- evidence-informed SUD prevention, treatment recovery, or harm reduction pilot programs or demonstration studies that are not evidence based if the advisory council (discussed below) determines that emerging evidence supports funding or that there is a reasonable basis for funding with the expectation of creating an evidence-based program and approves the use of money for the pilot program or demonstration study; and
- evaluations of the effectiveness and outcomes reporting for SUD abatement infrastructure, programs, services, supports, and resources for which the fund is used.

On July 21, 2021, a \$26 billion global settlement was announced by opioid manufacturer Johnson & Johnson (Janssen Settlement Agreement) and McKesson, Amerisource Bergen, and Cardinal Health (Final Distributor Agreement). On September 8, 2021, Maryland Attorney General Brian E. Frosh announced Maryland's participation in the global settlement. Maryland is expected to receive approximately \$500 million as part of the settlement. A copy of the Janssen Settlement can be located [here](#). A copy of the Final Distributor Agreement can be located [here](#). In fiscal 2022, ORF received approximately \$12 million from the \$573 million global settlement agreement with

McKinsey & Company for its role in marketing opioids, including OxyContin. The fiscal 2024 budget directs \$36.2 million to ORF, reflecting years one, two, and three of settlement payments from Janssen and distributors.

Chapters 84 and 85 of 2022 required that settlement funds received in accordance with the Final Distributor Agreement of July 21, 2021, as amended, and the Janssen Settlement Agreement of July 21, 2021, as amended, be appropriated as agreed upon in the State-Subdivision Agreement of January 21, 2022, as amended. The Secretary of Health must establish and administer a grant program for the distribution of funds to political subdivisions of the State pursuant to the specified State-Subdivision Agreement. Chapter 356 of 2023 clarified that funds received by ORF in accordance with any other opioid-related court or administrative judgment or settlement agreement involving the State and one or more of its political subdivisions must be appropriated as required under the court or administrative judgment or settlement agreement. Furthermore, the Secretary of Health must establish and administer a grant program for the distribution of funds to political subdivisions of the State pursuant to such judgments or agreements.

Chapter 270 established the Opioid Restitution Fund Advisory Council to report by November 1 each year on its findings and recommendations regarding the allocations of money from ORF, consistent with authorized uses of the fund and considering (1) the number of people per capita with a SUD in a jurisdiction; (2) disparities in access to care in a jurisdiction that may preclude persons; (3) the number of overdose deaths per capita in a jurisdiction; (4) the programs, services, supports, or other resources currently available to individuals with an SUD in a jurisdiction; and (5) disparities in access to care and health outcomes in a jurisdiction. The Governor must consult at least twice annually with the advisory council to identify recommended appropriations from ORF.

State Fiscal Effect: Because creation of the special fund does not directly affect the total amount of funds available to Maryland under any judgment or settlement, it is not anticipated to materially affect overall State finances. In the absence of the bill, this analysis assumes the monies would be received as special funds within the Office of the Attorney General's (OAG) Division of Consumer Protection (with a portion potentially directed to the general fund). Under the bill, the monies are instead directed to a new special fund. The bill charges the Comptroller and Treasurer with accounting for and holding the fund, respectively. The bill also establishes how the monies may be expended; otherwise, under the assumption above, the monies would be used to fund OAG activities and presumably compensate outside counsel who assisted in the investigation.

MDH likely requires additional personnel and resources to administer the fund, develop key goals, and issue a report, but actual overall costs are dependent on the amount of funds received. As the bill prohibits monies in the fund from being used for administrative purposes (with the exception of those related to research and training for algorithmic

addiction treatment and prevention and social media and youth mental health), general fund expenditures increase by an indeterminate amount to administer the fund beginning in the fiscal year in which the bill's contingency is met and the fund takes effect.

Local Fiscal Effect: To the extent that awards are received through litigation or settlement and accrue to the fund, and grants from the fund are awarded to local health departments, local school systems, or other local entities to help address algorithmic addiction, local revenues and expenditures increase, potentially significantly.

Additional Comments: In October 2023, 41 states and the District of Columbia filed a 233-page complaint in the U.S. District Court for the Northern District of California against Meta Platforms, Inc.; Instagram, LLC; Meta Payments, Inc.; and Meta Platforms Technologies, LLC. The complaint generally alleges that Meta builds addictive features into its social media platforms (*e.g.*, Instagram and Facebook) that harm children, specifically the mental health of children.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1119 (Delegate Rosenberg) - Appropriations and Economic Matters.

Information Source(s): Maryland Association of County Health Officers; Office of the Attorney General; Maryland State Department of Education; Department of Budget and Management; Comptroller's Office; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2024
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