

FOR-NY: NYS 2018 Opioid Surcharge Proposal

Introduction

On January 16, 2018, Governor Cuomo announced the following budget proposal:

“A new surcharge of 2 cents per milligram of active opioid ingredient on prescription drugs, directing all proceeds to the Opioid Prevention, Treatment and Recovery Fund. This new fund will support on-going efforts to respond to the epidemic.”

This policy briefing includes four sections:

- 1) What does the budget proposal say?
- 2) Who will support the proposal/who will oppose the proposal
- 3) History of the proposal state-wide and nationally
- 4) Conclusion

What does the budget proposal say?

Who pays for the Opioid Surcharge?

Fiscal Year 2019 Article VII Revenue Bill Part CC amends the tax law by adding a new article 20-c to establish an opioid epidemic surcharge. The new section of the law imposes a

“Surcharge on the sale of any opioid of two cents per morphine milligram equivalent sold. Such surcharge shall be imposed on the first sale of such opioid in the state, except that such surcharge shall not apply when such sale is to any program operated pursuant to article thirty-two of the mental hygiene law. This surcharge shall be charged against, and be paid by, the establishment making the first sale of such opioid in the state, and shall not be added as a separate charge or line item on any invoice given to the customer or otherwise passed down to the customer.”

“Establishment” is defined as “any person, firm, corporation or association required to be registered with the education department pursuant to section sixty-eight hundred eight or section sixty-eight hundred eight-b of the education law...”

Sixty-eight hundred eight of the education law outlines the requirements to be registered as a pharmacy.

Section sixty-eight hundred eight-b of the education law defines “nonresident establishment” which shall mean any pharmacy, manufacturer, wholesaler, or outsourcing facility located outside of the state that ships, mails or delivers prescription drugs or devices to other establishments, authorized prescribers and/or patients residing in this state. Such establishments shall include, but not be limited to pharmacies that transact all business through the use of the internet.”

Analysis: While it is unclear if it is solely the pharmacy covering the cost of the surcharge (could it also be the manufacturer according to section 6808-b?), it is clear that this legislation means for the tax burden to not be on the customer.

Where does the money from the surcharge go?

The surcharges, interest, and penalties imposed by this article...shall be to the credit of the opioid prevention, treatment and recovery account established pursuant to section ninety-seven-aaaaa of the state finance law.

National News

Opioids shouldn't be a doctor's first resort –Wall Street Journal

Gubernatorial candidate proposes surcharge on opioids – Associated Press

To curb opioid epidemic, California bill would tax painkillers to fund treatment – LA Times

Can We Tax Away The Opioid Crisis? – Kaiser Health News

Senators Propose Tax on Opioid Pain Meds – Pain News Network

Should an Opioid Tax Be a Tool to Fight an Epidemic? – AJMC

Here's how many people who die as a result of senate tax cut on booze – Washington Post

State News

Pharma Industry Scorns Governor's Opioid Surtax Proposal – New York Law Journal

Proposed state opioid surcharge draws supports, questions - Newsday

Legislation

Alaska 30th Legislature (2017-2018)

California State Legislature (2017-2018)

US 115 Congress (2017)

This account shall also consist of moneys received from any litigation or enforcement actions initiated against opioid pharmaceutical manufacturers, distributors and wholesalers.

Moneys of the opioid prevention, treatment and recovery account, when allocated, shall be available...to support programs operated by the New York State Office of Alcoholism and Substance Abuse Services or agencies certified, authorized, approved or otherwise funded by OASAS to provide opioid treatment, recovery and prevention and education services and to provide support for the prescription monitoring program registry if established.

This article shall take effect on July 1, 2018.

Questions:

- Will this money support OASAS' current budget freeing up money to fill the gaps in the deficit or will this be new "extra" money in addition to the \$26 million increase?
- How will this money be used exactly?

Who will support / oppose this legislation?

Support:

- **Division of the Budget:** This income will help to fill the budget deficit.
- **Addiction and Recovery Advocates:** This funding is intended to add money to the budget for the sole purpose of helping prevent opioid addiction; treat opioid addiction and support services for people in recovery from opioid addiction.
 - o **The Legal Action Center:** Has already come out in support of this legislation

Oppose:

- **Manufactures of Opiates; the NYS Business Council; Local Chambers of Commerce; Pharmacies:** This is an added cost as well as added work (filing deadlines; paperwork; etc.)
- **Health Insurance Companies**
- **Consumer Advocates:** Though the legislation declares that this will not be an added cost on consumers, consumer advocacy groups already dealing with extremely high health care and medical costs, may be cautious.

History of the Proposal

Friends of Recovery- New York Supported a one cent tax per milligram in March 2017. This proposal was met with both support and some opposition, particularly from pharmaceutical companies and pain management advocates.

In **California**, Kevin McCarney (D, Sacramento) Introduced Assembly Bill No, 1512 establishing the Opioid Addiction Prevention and Rehabilitation Act which would impose a tax on and after July 1, 2018, upon the distribution of opioids by a manufacturer to a wholesaler from the manufacturer, as those terms are defined, at the rate of \$0.01 per milligram of active opioid ingredient.

Advocates for the California tax saying it would raise tens of millions of dollars for treatment. (Caffrey, 2017)

In **Alaska** Representative Kreiss-Tompkins (D, Southeast Island) introduced House Bill No. 196, "An Act relating to a tax on certain opioids; relating to the alcohol and other drug abuse treatment and prevention fund; and providing for an effective date." According to the legislation under the Opioid Tax, An excise tax of one cent on a morphine milligram equivalent of opioid is levied in the state. The tax is levied when a person:

- (1) imports an opioid into the state from outside the state for sale;
- (2) makes, manufactures, or fabricates an opioid in the state for sale in the state; or
- (3) ships or transports an opioid to a retailer in the state for sale by the retailer.

In **Oklahoma**, State Representatives have drafted legislation that would levy a 10 percent tax on the first sale of opioids in Oklahoma — most likely to a distributor. The proceeds would go to the Oklahoma Department of Mental Health and Substance Abuse Services for opioid treatment.

While manufacturers and distributors are meant to absorb the tax on that first sale, rather than passing it on to patients and insurance companies on subsequent sales, it isn't clear whether the bill could prevent them from doing so. Opioids prescribed to treat addiction, such as methadone and buprenorphine, would be exempt from the tax.

Before a tax increase could become law, it would have to garner support from three-quarters of both houses of the Legislature, and Governor Mary Fallin would have to sign off. Efforts to squeeze around those rules by labeling taxes and fees promptly went down before the Oklahoma Supreme Court, blowing a \$215-million hole in the budget, which lawmakers have yet to fully close. Despite the obstacles, State Representative Tim Downing (R) said he thought the opioid tax could pass the Legislature — and even if it didn't — voters could approve it through a ballot question in November.

In **Congress**, US Senator Joe Manchin, D-West Virginia (with Ms. Klobuchar, Mrs. Sheehan, Mr. King, Ms. Heitkamp, Ms. Baldwin, and Mr. Nelson) has re-introduced a federal opioid tax to fund treatment; his state has the highest per-capita death rate from opioids in the nation. The legislation is entitled the “Budgeting for Opioid Addiction Treatment Act,” dubbed the “LifeBOAT Act.”

The bill amends the Public Health Service Act, creating a “permanent funding stream” requiring any increase in federal revenues from the fee after rebates and discounts are subtracted to be distributed to states under the Substance Abuse Prevention and Treatment Block Grant program. The states must use the funds exclusively for substance abuse (including opioid abuse) efforts in the states, including: (1) specified treatment programs, and (2) the recruitment and training of substance use disorder professionals to work in rural and medically underserved communities.

The federal legislation creates a rebate or discount for certain cancer and hospice patients, but otherwise this is a tax on consumers.

Advocates for the tax say it's a way to make drug companies and wholesalers help pay treatment costs after the suppliers have been blamed for fueling the addiction crisis in the first place.

“A major barrier that those suffering from opioid addiction face is insufficient access to substance abuse treatment,” said Sen. Joe Manchin (D) of West Virginia. “This legislation will bridge that gap and make sure that we can provide treatment to everyone who makes the decision to get help. I look forward to working with my colleagues to get this bill passed so we can take another step forward in the fight against opioid abuse.”

“By establishing a reliable stream of funding, this bill will bolster treatment facilities across the country, increase the amount of services available, and support people as they fight back against addiction – all while doing so in a cost-effective way,” said Sen. King.

The opioid tax would raise an estimated \$1.5 billion to \$2 billion per year. In an interview with the Portland Press Herald, King said the fee would range between 75 cents and \$3 for a 30-day prescription, depending on the dose. He claimed many patients wouldn't have to pay the additional cost because their insurance would cover it.

King said treatment programs need funding, and tacking the cost onto the price of the drug is a fair way to do it, much like automakers are required to install seat belts and air bags in vehicles.

“The obvious way to fund this is to build it into the price of the drug,” said King. “The cost of the drug should reflect the danger of the drug.”

Although most of the press releases and public statements from the senators avoid using the word “tax” and refer to it as a fee, the bill itself doesn’t hide behind semantics. The legislation would apply to the sale of “any taxable active opioid” and would amend the Internal Revenue (IRS) Code to make it possible.

Dr. Andrew Kolodny, who heads the Opioid Policy Research Collaborative at Brandeis University, estimates \$6 billion is needed to “clean up the mess” made by drug makers and to ensure adequate treatment. According to Dr. Lewis Nelson, who chairs the Department of Emergency Medicine at Rutgers New Jersey Medical School, “Given the profits made from selling these products, despite the known risks, having the companies cover a portion of the harm is sensible.”

Similarly, in December 2016, Congresswoman Michelle Lujan Grisham introduced legislation to create a permanent source of funding for opioid treatment, prevention and research. The legislation was entitled the “Heroin and Opioid Abuse Prevention and Treatment Act” which would require opioid producers and manufacturers to pay 1-cent for every milligram of opioids they produce. The tax would generate about \$2 billion in revenue a year to expand access to substance misuse treatment and prevention programs, as well as fund new research on combating the opioid epidemic.

Critics of the tax strongly disagree with this approach, and say the costs will be passed to people with pain who are using the drugs legally.

Tobacco and Alcohol Taxes

Cigarette taxes have been a key tool in reducing smoking rates over the past 5 decades, but those taxes are levied at the point of sale. And unlike opioids, which can have a legitimate medical use, tobacco use is universally discouraged by public health experts. Alcohol taxes are a disincentive to purchase alcohol. Not only have taxes not kept up with inflation, but the federal government voted to cut alcohol taxes in the latest tax plan. According to the Brookings Institution, these cuts “will lead to more drinking and thus more alcohol-related deaths and violence.” Study after study has shown that when alcohol taxes go up, the mortality rate goes down. Why do higher alcohol taxes save lives? Because when alcohol is more expensive, people drink less of it. (Ingraham, 2017)

Conclusion

The surge of people dying in the opioid crisis continues to rise. Nationally, there were over 63,600 deaths in 2016 or-- 174 Americans dying per day. Overdose is now the leading cause of death for Americans under the age of 50. New York overdose deaths have climbed over 200 percent in the last five years. The overall burden to the state, including health care, criminal justice costs, and lost productivity, has ballooned into the billions of dollars. Given the \$4.4 billion shortfall in the New York State budget, a steady revenue stream of critically needed funding for prevention, treatment and recovery services is desperately needed to address the greatest public health crisis the nation has seen in generations.

The New York State Budget has a proposed opioid surcharge aimed at holding those who contributed to this crisis accountable, while reducing the demand for opioids in this saturated market. As individuals continue to struggle with prescription drug addiction, with no end in sight for grieving families who continue to lose loved ones to overdose death, it is time that those who played an active role in getting opioids into the marketplace, help resolve the crisis that ensued. Resources are needed now and for the foreseeable future so that people who are suffering from addiction are given the opportunity to lead full lives in recovery.