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To the Opioid Settlement Fund Advisory Board Chair and members:

Thank you to the Opioid Settlement Fund Advisory Board (“OSFAB”) for the opportunity to provide recommendations for spending Opioid Settlement Fund dollars in New York State. Legal Action Center (“LAC”) is a national non-profit organization that uses legal and policy strategies to fight discrimination, build health equity, and restore opportunity for people with arrest and conviction records, substance use disorders, and HIV or AIDS. For decades, LAC has been working to achieve equitable, accessible and affordable services for people with substance use disorders (SUD) and people who use or have used drugs (PWUD.)

No Supplantation

As the federal government continues to cut funding for substance use disorder treatment, harm reduction, housing, and other critical services that prevent overdoses and support people who use drugs and implement sweeping Medicaid cuts, dollars won through opioid settlements can look like an attractive way to fill impending budget gaps. However, this pot of money was won from lawsuits against the companies whose bad acts led to millions of lives lost to overdose. While the settlement board prepares its annual report and recommendations in the midst of federal funding cuts and shifting priorities away from person-centered care, it is imperative to remain focused on using these funds for their intended purpose- to alleviate the harms of the decades long war-on-drugs that has fueled and been fueled by criminalization and stigmatization of people, particularly Black, Latine, and Indigenous, who use drugs and people who have substance use disorders. The board must focus its recommendations on effective and equitable uses of these dollars.

New York State is on track to receive \$2.5 billion in settlement funds through 2040. While this is clearly a substantial sum, it is nowhere near enough to sustain the entire apparatus of substance use disorder (SUD) prevention, treatment, recovery and harm reduction systems as they face unprecedented federal cuts. Instead of using the relatively small annual receipts from opioid settlements to provide a band-aid where cuts have been made, New York State needs to be laser-focused on identifying long-term, sustainable and sizable funding streams, recognizing that without proper investments, the recent declines in the overdose rate will be reversed. In New York, there are untapped resources such as the Opioid Excise Tax that is currently directed to the general fund, as well as the Opioid Stewardship Fund, the State Cannabis Revenue Fund and opportunities for the legislature to create additional revenue streams to support these services.

Spending to Support Community-Based Organization

Putting aside the question of legality surrounding supplantation, decisions about spending these dollars to fill budget gaps, or to sustain the treatment, recovery and harm reduction system need to be more inclusive of the voices of people on the ground who are directly impacted by these funding decisions, including people who have suffered from overdoses as well as their friends and families. Grassroots and community organizations need to be prioritized for funding because they are serving the hardest to reach communities that continue to see disproportionately high rates of overdose, and ultimately, they are the ones that will suffer the most from federal funding cuts and shifts towards punitive approaches.

The OSFAB can do more to prioritize these grassroots groups, while recognizing it is ultimately up to OASAS and DOH to directly target their funding at smaller, on the ground organizations, and specifically those located in the highest needs communities. Organizations serving those most at risk of overdose such as providers that work closely with Black and Indigenous communities may not be aware of the settlement dollars, how to participate in the decision-making process or even how to apply for funds. Even those that do may not have the administrative resources to apply.

Additionally, it is not enough to identify spending buckets or priority groups. The OSFAB should include in their recommendations suggestions for specific, targeted programming, and urge OASAS to utilize every possible process under New York State law to engage in low-threshold procurement processes that prioritize funding for organizations with smaller budgets. Procurements should only be awarded to organizations that serve high-needs populations in high-needs areas, as identified by DOH overdose risk data.

Additionally, the OSFAB as well as OASAS can do more to include community-based organizations, grassroots, and directly impacted individuals in decision-making processes. Instead of just holding open-ended public comment periods at each OSFAB meeting, the OSFAB should invite feedback on specific topics, like “how to use settlement funds to support syringe-service providers” or “how can settlement funds be used for innovative approaches to overdose prevention.” The board should also submit portions of the annual report and recommendations for public feedback before it is officially released. And as we have recommended in the past, OSFAB meetings need to be held in more areas of the state.

Transparency and Accountability

As an advisory body, the OSFAB also has an essential accountability role to play. It isn't possible to continue to make recommendations about future spending without understanding past spending. LAC has strongly supported the settlement board's efforts to do this by working to access key data to help inform their recommendations from state agencies. We commend the board for making specific requests as official resolutions to OASAS and other relevant state agencies at board meetings throughout the year. The publicly available spending tracker that the board is meant to rely on is currently inadequate to assess prior year spending, which hinders the board's ability to make informed recommendations going forward. In fact, state law specifies the details about spending that are to be reported to the Governor, the legislature and in a publicly available tracker but the current tracker is not in compliance. The tracker lacks details that are required such as baseline funding of awardees, information about how award-decisions are made, or an analysis of the effectiveness of the funds. This information is necessary to assess the impact of the spending. The board needs to be able to evaluate outcomes to determine if funding types should be continued, expanded or scrapped.

There are also inconsistencies in reporting across grants and it is unclear which populations are being served, the metrics by which their success is being measured, and what other sources of funding contribute to certain services. More detailed reporting is needed to evaluate efficient use of dollars. For example, grants have been awarded to jails to purchase MOUD to comply with state law that mandates correctional facilities to provide it, however, data has not been made publicly available to evaluate which jails are receiving these funds or whether the dollars are being used efficiently. This information is needed to help the public and other relevant authorities review spending to ensure it is free from any fraud or waste. We urge the OSFAB to continue to request data for its own use, as well as to continue to urge state agencies to make as much data as possible available to the public through clear web trackers.

The opioid settlement funds continue to represent a critical opportunity to address the devastating impact of the overdose crisis and the war-on-drugs. To do so in a meaningful way, these funds must be used wisely, particularly in the current political climate where federal funds for prevention, harm-reduction, evidence-based treatment and recovery are all being slashed. Incorporating the voices of those who have been directly impacted by this crisis, as well as the community-based or grassroots organizations is critical. Transparency around decision making as well as reporting on dollars spent is paramount.

Thank you for your consideration. If you have additional questions or for more detailed information, please contact Christine Khaikin, Senior Health Policy Attorney at the Legal Action Center at ckhaikin@lac.org.