WEST VIRGINIA CODE CHAPTER 5 ARTICLE 31

WV Legislature

§5-31-1. Legislative findings.

(a) The citizens of West Virginia, its local governments, and its communities have entered into a memorandum of understanding. The memorandum of understanding known as the West Virginia First Memorandum of Understanding was filed in the Circuit Court of Kanawha County, calling for, inter alia, the creation of the West Virginia First Foundation.

(b) The citizens of West Virginia, its local governments, its communities, and the Legislature are committed to ensure that all opioid funds received in settlement of litigation in the cases which are the subject of the memorandum of understanding are used in a manner consistent with evidence-based strategies, programming, and services used to expand the availability of treatment for individuals affected by substance use disorders and addiction; to develop, promote, and provide evidence-based substance use prevention strategies; to provide substance use avoidance and awareness education; to engage in enforcement to curtail the sale, distribution, and promotion or use of opioids and other drugs; to decrease the oversupply of illicit opioids; and to support recovery from addiction performed by qualified providers.

(c) The creation of a private foundation will advance the goal of abating the opioid epidemic by providing a long-term steady stream of money to fund the efforts by both private and governmental entities.

(d) All 55 counties and virtually all participating municipalities, representing 99.6 percent of the population of West Virginia, have executed the memorandum of understanding.

(e) The circuit court of Kanawha County in Civil Action No. 19-C-9000, has adopted and approved the memorandum of understanding and the abatement structure created in the memorandum of understanding, including, but not limited to, the creation of a private foundation for the purposes set forth in the memorandum of understanding.

WV Legislature

§5-31-2. Definitions.

"Approved purposes" means those purposes set forth in Appendix A of the memorandum of understanding for which expenditures are authorized.

"Expert panel" means the group of individuals, appointed by the governing board, having substantive expertise in the fields of substance abuse, mental health, law enforcement, finance, health care policy, and management to assist the foundation.

"Foundation" means the West Virginia First Foundation created under the memorandum of understanding.

"Governing board" means the board of directors for the non-profit foundation recognized in §5-31-3 of this code.

"Local governments" means the counties and municipalities that are parties to the memorandum of understanding.

"Memorandum of understanding" means the West Virginia First Memorandum of Understanding approved by order and entered by the circuit court of Kanawha County as referenced in §5-31-1 *et seq*. of this code.

"Opioid funds" means funds that are obligated to be transferred or are transferred to the foundation from any source, including, but not limited to, those settlements subject to the terms of the memorandum of understanding.

"Order" means the order of the circuit court of Kanawha County referenced in §5-31-1 *et seq*. of this code adopting and approving the memorandum of understanding and the abatement structure created in the memorandum of understanding, including, but not limited to, the creation of a private foundation for the purposes set forth in the memorandum of understanding.

"Region" means any of the six geographic regions established pursuant to the order and Exhibit B of the memorandum of understanding.

WV Legislature

§5-31-3. West Virginia First Foundation.

A private foundation in keeping with the order, known as the West Virginia First Foundation, that qualifies under Internal Revenue Code Section 501(c)(3), and created by the parties to the memorandum of understanding is recognized. The foundation shall have a governing board, an expert panel, and other additional and regional entities necessary for the purpose of receiving and disbursing opioid funds and other purposes set forth in the order and the memorandum of understanding. The operation of the West Virginia First Foundation shall be governed by its articles of incorporation and any by-laws adopted consistent with the provisions of the memorandum of understanding and the order.

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§5-31-4. West Virginia First Foundation Board composition; executive director.

(a) The governing board shall consist of 11 members representing:

(1) The interests of the State of West Virginia. The Governor shall appoint five members to the governing board with the advice and consent of the Senate. The Governor may not appoint more than one member from a region, unless authorized by a vote of four of the six governing board members selected by the regions; and

(2) The interests of local government. The local governments in each of the six regions shall make the selection of the governing board member to represent their region.

(b) The terms for governing board members shall be staggered three-year terms. Governing board members may be reappointed.

(c) Governing board members shall serve as fiduciaries of the West Virginia First Foundation separate and apart from any representational capacity of the entity approving the governing board member. Members of any regional governing structure shall also serve as fiduciaries of their region separate and distinct from any representational capacity of the entity appointing the member.

(d) Governing board members should have expertise in a variety of disciplines, such as substance abuse treatment, mental health, law enforcement, pharmacology, finance, and health care policy and management. Drawing governing board members from these disciplines will help to ensure that the governing board makes appropriate and prudent investments in order to meet short-term and long-term goals and ensure that expenditures by the governing board are consistent with the mission and purpose of the foundation.

(e) The Attorney General shall appoint an executive director after consultation with the board. The governing board may reject the Attorney General's selection of the executive director only on the affirmative vote of eight members of the governing board. The executive director shall have at least six years of experience in health care, finance, and management and is responsible for the management, organization, and preservation of the public/private partnership's records. The executive director may be removed by the governing board upon the concurrence of the votes of three fourths of the members of the governing board.

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§5-31-5. Audits and annual reports.

(a) The operations of the foundation and the entities it supervises are subject to audit and review by the Attorney General.

(b) Each local government shall submit an annual financial report to the foundation no later than April 30 of each year specifying the amounts spent on approved purposes within the region during the previous fiscal year. A report for each region shall be prepared no later than 30 days thereafter. Each region's report shall incorporate the information disclosed in each local government's annual report. Each region's report shall specify: (1) The amount of opioid funds received; (2) the amount of opioid funds disbursed or applied during the previous fiscal year, broken down by categories of approved uses; and (3) impact information measuring or describing the progress of the approved use strategies. The foundation shall publish a consolidated report detailing annual financial expenditures within 15 days of the last day of the state fiscal year covered by the report.

WV Legislature