



Opioid Settlement Funds: Recommended Uses for the State's Allocation April 2023

Summary

County behavioral health agencies seek changes to the proposed uses of the state's portion of the Opioid Settlement Funds as outlined in the January Budget to ensure California is able to more effectively and urgently address the state's overdose crisis in an era of fentanyl and address substance use and opioid use disorders through a framework of prevention, harm reduction, and treatment to expand the long-term impact of these funds.

Background

As a result of two national opioid crisis-related settlements from July 21, 2021, Janssen Pharmaceuticals ("Janssen") and the "big three" distributors, McKesson, AmerisourceBergen, and Cardinal Health ("Distributors") will have to pay a total of \$26 billion for opioid remediation and other expenses over the course of 9 to 18 years, respectively. California will receive more than \$2 billion in funding as a result. This multi-year investment presents a unique opportunity to fund and expand the SUD systems within California over the next two decades.

As a part of the Settlement Agreements, there are three pots of funding allocated as follows:

- 15% is allocated directly to the State of California for future opioid remediation.
- 70% is allocated to the Abatement Accounts Fund for qualifying cities and counties ("Participating Subdivision") for future opioid remediation.
- 15% is allocated to the Plaintiff Subdivision Fund for future opioid remediation, reimbursement for past opioid-related expenses, and for legal fees.

The Problem

The largest category of this funding, the Abatement Accounts Fund, has a list of [prescribed allowable expenditures](#) written into the Settlement Agreements, and the Plaintiff Subdivision Fund is further limited in uses as well.

However, the 15% directly allocated to the State of California can be used more broadly for future opioid remediation. Given the broader allowable uses of this category and the historic underfunding of SUD prevention and services in California, CBHDA recommends consideration of a more strategic approach on how to more effectively use the state's 15% allocation in a way to drive and sustain long-term change on substance use disorders.

Additionally, CBHDA strongly recommends that California’s definition of opioid remediation explicitly includes expanding the availability of the full range of FDA-approved medications for opioid use disorder, including the opioid medications methadone and buprenorphine. The overprescribing prevention policies attached to this settlement that are applicable to opioids prescribed for pain should not encumber any medications FDA approved for, and being used to treat, opioid use disorder.

Recommendations

CBHDA respectfully requests consideration of the following recommended uses for the state’s allocation of Opioid Settlement Funds to ensure that state funds are more coordinated with local Opioid Settlement Funds and leveraged to make headway in addressing the opioid crisis in California.

Prevention, harm reduction, and treatment are core public health strategies foundational in addressing substance use disorders. County safety net systems have few sustainable funding sources to support these core activities. CBHDA outlines specific recommendations below:

Prevention: Currently, the state has prioritized much of its first round of Opioid Settlement Funds for prevention efforts (e.g., the Naloxone Distribution Project and education and awareness campaigns). CBHDA appreciates the drive to further fund this essential area. However, there continues to be limited sources of funding to support primary prevention activities. CBHDA recommends this as an ongoing category for allowable uses, including:

- Education, awareness, and positive youth development activities
- Development and capacity-building of prevention provider networks
- Expansion of community-based coalitions
- Enhancement of data collection efforts to assess the scope of use
- Funding for the distribution and community education of Naloxone and other opioid antagonists appropriate for opioid overdose reversal
- Establishment of a better statewide mechanism for tracking opioid antagonists

Harm Reduction: Harm reduction is a proven strategy for engagement into treatment but requires leadership and support from federal, state, and local governments. Opioid settlement dollars can be deployed to advance California’s harm reduction efforts through various strategies, including, but not limited to, the following:

- Funding pilot projects, including safe consumption sites and projects focused on unhoused populations
- Funding to develop statewide harm reduction syringe services, including the full range of safer use supplies
- Flexible funding to reduce barriers to services where restrictions in federal funding exist

Treatment: Despite advancements in the last five to seven years to fund inpatient and residential drug treatment through Medi-Cal, more funding is needed to support and sustain SUD treatment. Potential SUD treatment uses include, but are not limited to:

- MAT services, including the full range of medication services for opioid, alcohol, tobacco, and off-label medication services that are clinically effective to treat SUDs
- SUD services, including MAT services for those who are incarcerated to aid in community reentry and continuation of treatment
- Support the expansion of county SUD treatment systems, especially where services are non-Medi-Cal reimbursable
- Enhance and improve SUD data exchange with investments in electronic health records and data sharing between systems
- Funding for effective evidence-based-practices and research

Housing: These dollars could also be spent on housing infrastructure and operational costs to assist with SUD recovery, including funding for:

- Room and board facilities
- Recovery residences and recovery bridge housing
- Sober living centers
- Permanent supportive housing
- Renovations and expansion of existing sites to increase capacity and patient care
- Establishment of new facilities, including building purchases, as approved

Workforce: It is CBHDA’s understanding that DHCS has allocated \$51 million of its share of the Opioid Settlement Funds to SUD provider workforce training for FY 2022-23. This is a welcome and important use of these dollars, and continued funding for hiring and retention will be significant.

Conclusion

Along with DHCS’ allocation of funding towards workforce training, the state’s FY 2022-23 Opioid Settlement Fund dollars have been prioritized for prevention efforts (e.g., the Naloxone Distribution Project and education and awareness campaigns). While workforce and prevention are two of the important categories of services and efforts in need of funding, as noted above, areas of harm reduction, treatment, and housing support should be included in future fiscal years.

CBHDA believes that the state’s allocation must be closely coordinated with the public safety net which today funds SUD treatment and recovery services for both Medi-Cal and privately insured Californians with no other SUD treatment options. We are in the midst of a public health crisis and urge the state to consider partnership with our SUD experts at the local level to maximize our state’s investment of Opioid Settlement Agreement funding, and ensure that state and local funding is strategically coordinated.

CBHDA appreciates the current efforts by the state to provide much needed funding in both workforce and prevention. We hope that careful consideration will be taken of our above recommendations, and we look forward to engaging further with the state on these issues.

Frequently Asked Questions

What are the Janssen & Distributors Opioid Settlement Funds?

These funds – totaling \$26 billion – come from two distinct settlements: Janssen Pharmaceuticals (“Janssen”), and the “big three” distributors, McKesson, AmerisourceBergen, and Cardinal Health (“Distributors”), offering to settle to resolve their liabilities in over 3,000 opioid crisis-related lawsuits nationwide. The National Janssen & Distributors Settlement Agreements from July 21, 2021, outline the allocation of funds, the allowable expenditures for the funds, and other requirements associated with their use and disbursement.

How much will California receive as a result of these settlement agreements?

California will be receiving over \$2 billion from these two settlements. The Distributors will make their payments to California over the course of 18 years, while Janssen will make payments over the course of 9 years.

How will the settlements be distributed?

The funding for these two settlements is broken down as follows:

- 15% is allocated directly to the State of California for future opioid remediation.
- 70% is allocated to the Abatement Accounts Fund for qualifying cities and counties (“Participating Subdivision”) for future opioid remediation.
- 15% is allocated to the Plaintiff Subdivision Fund for future opioid remediation, reimbursement for past opioid-related expenses, and for legal fees.

Who will receive an allocation of the Abatement Accounts Fund?

To determine whether your city or county qualifies for the Abatement Accounts Fund and the Plaintiff Subdivision Fund, you can refer to **Appendix 1** of the [Janssen California State-Subdivision Agreement](#) and [Distributors California State-Subdivision Agreement](#). As of November 2022, qualifying county and city recipients have already received their first payments.

Cities and counties with a population of less than 10,000 people are not eligible for an allocation from the Abatement Accounts Fund. This means that **Alpine and Sierra** will not be receiving an allocation of these funds. The other fifty-six counties qualify as Participating Subdivisions and will be receiving funds.

Please note that the percentages in the columns listed next to your city or county may not be reflective of the exact percentage that will be allocated to your city or county, however the Abatement Percentage column should not change. Further information can be found in the disclaimer in [Appendix 1](#).

What occurs if a city declines their share of the allocation of the Abatement Accounts Fund?

If a qualifying city declines their share of the allocation, then their share will be paid to their county if the county is a Participating Subdivision. As found in [Appendix 1](#), each qualifying city in California sits within a county that is a Participating Subdivision.

The city must provide notice to the Settlement Fund Administrator at least 60 days prior to the payment date if they decline their allocation. A city can also decline a portion of their share if they so choose, with that portion reverting to their county if it is a Participating Subdivision.

What are the allowable expenditures for the Abatement Accounts Fund?

The Department of Health Care Services (DHCS) has provided a helpful guide to understanding the breakdown of allowable expenditures for cities and counties receiving funds as Participating Subdivisions, which can be found [here](#).

The allowable expenditures are categorized into two sections:

1. High Impact Abatement Areas (“HIAA”): Cities and counties must spend at least 50% of the Abatement Accounts Fund in a given calendar year on any of the five designated HIAs, which include:

- Providing matching funds or operating costs for substance use disorder facilities with an approved BHCIP infrastructure project;
- Creating new or expanding SUD treatment infrastructure, which could include cost overruns for BHCIP projects;
- Addressing needs of communities of color and other vulnerable populations disproportionately impacted by SUD,
- Supporting diversion from justice involvement for individuals with SUDs, including through training for first responders, as well as activities that support harm reduction, restorative justice, diversion, deflection, and employment; and,
- Youth prevention.

DHCS is authorized to add to this list but prohibited from removing listed areas.

2. Opioid Remediation Uses - Core Strategies and Approved Uses subsections: Any remaining funds can be spent on activities outlined in two subsections: Approved Uses and Core Strategies, with priority given to the Core Strategies.

- Core Strategies:
 1. Naloxone Distribution
 2. MAT Distribution and Opioid Treatment (includes outpatient, inpatient, residential, as well as recovery housing with services)
 3. Pregnant and Postpartum Women
 4. Expanding Treatment for Neonatal Abstinence Syndrome (NAS)
 5. Expansion Of Warm Hand-Off Programs and Recovery Services (includes emergency department services, treatment for co-occurring SUD and mental health conditions, wraparound housing, transportation and other services, as well as workforce expansion)
 6. Treatment for Incarcerated Populations
 7. Prevention Programs
 8. Expanding Syringe Service Programs
 9. Evidence-Based Data Collection and Research Analyzing the Effectiveness of the Abatement Strategies Within the State

- Approved Uses:
 1. Part One: Treatment
 - OUD Treatment
 - Support for People in Treatment and Recovery (through evidence-based or evidence-informed programs and strategies to include housing, peers, stigma reduction, wraparound and other services and supports)
 - Connections to Care (includes training, staffing, and technology investment to increase outreach, screening, identification, referrals, and warm handoffs to care)
 - Addressing the Needs of Justice Involved Populations
 - Addressing the Needs of Pregnant and Postpartum Women and their Families, Including Babies with NAS

 2. Part Two: Prevention
 - Overprescribing Prevention
 - Misuse Prevention (includes public education and media campaigns, drug take-backs, coalition work, school and youth outreach, etc.)
 - Harm Reduction

 3. Part Three: Other Uses
 - First Responders (includes education and support for secondary trauma)
 - Leadership Planning and Coordination
 - Training
 - Research

Is there a date that the funds must be used by, and if so, what happens to the funds that have not been used?

Yes. If the Participating Subdivision does not spend their allocated amount of the Abatement Account funds within five years from the date of receipt, then their share will revert to the State.

However, for capital outlay projects, qualifying cities or counties will have seven years from the date of receipt to expend the funds otherwise these funds will revert to the State.

What is the State's role with regards to the settlement funds' allocation and uses?

DHCS is the oversight entity for the distribution of the Janssen & Distributors Opioid Settlement Funds. Their responsibilities include monitoring qualifying cities and counties for compliance, designating additional high-impact abatement activities, conducting related stakeholder engagement, and preparing annual reports.

If DHCS determines that there is noncompliance with the Janssen & Distributors Settlement Agreements, there are a few steps it can take. DHCS is first required to meet and confer with the city or county. If no resolution occurs, then DHCS may conduct an audit within one year of the request to meet and confer, unless additional time to resolve the issue is agreed upon in writing. If after the parties meet and confer and DHCS conducts its audit with no resolution, then the State may bring a motion or action in court to resolve the concern or enforce the requirements.

There is a five-year limitation on the State conducting an audit or bringing a motion or action in court regarding a specific expenditure of funds.

Additional resources, including a PowerPoint and a recorded webinar, regarding DHCS' oversight responsibilities can be found on [DHCS' website](#).

What are the reporting requirements for qualifying cities and counties who receive the funds?

Participating Subdivisions that receive the funds will need to file annual reports to DHCS on expenditures for their review, and must do so until those funds are fully expended and for one year thereafter. A county is not responsible for overseeing and reporting funds sent directly to cities, unless those funds have reverted to the county.

What is the timeline for reporting expenditures?

As of November 2022, Participating Subdivisions have already received their first payments. And future Janssen and Distributors payments are expected to be made annually in June and July, respectively, beginning in 2023.

Initially, DHCS required that expenditure reports for the FY 22-23 payments be due by August 31, 2023. However, given the need for additional time to report on these funds, DHCS has extended the deadline to September 30th, 2023.

Where can I find more information about the Janssen & Distributors Opioid Settlement Funds?

Additional information about the Janssen & Distributors Opioid Settlement Funds can be found on [DHCS' website](#). You can find both the national and California-specific settlement agreements, recorded listening sessions from DHCS, and allowable expenditures for both of these settlements.

I have heard about other opioid crisis-related settlements, where can I find information about them?

There are currently additional proposed opioid settlements that are pending resolution. These are with opioid manufacturers Teva and Allergan and pharmacies Walmart, Walgreens, and CVS (“Pharmacies”). You can find additional information, including an FAQ, regarding the pending opioid crisis-related settlements on the [California Office of the Attorney General Opioid Webpage](#). These various settlements are expected to provide substantial additional funds for opioid remediation efforts in California, as well as other states.

The sign-on deadline for cities and counties to indicate their desire to join these pending settlements is May 2, 2023. If you did not receive this [notice](#), please email opioidsettlement-localgovernment@doj.ca.gov.

If I have additional questions, who should I reach out to at CBHDA?

Please feel free to reach out to Jacob Mendelson jmendelson@cbhda.org or Elissa Feld efeld@cbhda.org with any additional questions.