



NGA Opioid Litigation Settlement Funds Summit

OVERVIEW

On July 27-28, 2023, the National Governors Association Center for Best Practices (NGA Center) convened the Opioid Litigation Settlement Funds Summit in Cleveland, Ohio, with representatives from 18 Governors' offices to engage in peer-to-peer discussions and share ideas on how to optimize the use of opioid settlement funds.

The Centers for Disease Control and Prevention estimates that nearly 110,000 Americans died from drug overdoses in 2022. Of these, an estimated 84,000 (76%) involved opioid drugs.¹

While most opioid overdoses are connected to illicit fentanyl use, the opioid overdose epidemic can trace its origins to the overprescribing of opioid drugs beginning in the 1990s. This resulted in thousands of lawsuits brought by states, localities, and patients and their families against opioid manufacturers and distributors as well as drug retailers.

To settle many of these lawsuits without admitting wrongdoing, more than \$50 billion is being made available to states and localities through various agreements. These settlements vary in amounts and distribution periods, with some being provided over as long as 18 years.² The largest of these to date was reached when a "national settlement agreement" was made in July 2021 for \$26 billion³ and was fully agreed to in January 2022.⁴ Under this agreement, at least 70% of funds awarded to states and localities must be spent on current and future "opioid remediation,"⁵ with a non-exhaustive list of approved uses in the master settlement agreement.⁶ The incentive for directing such a large percentage of funds was to avoid the diversion of funds from their intended purposes, as had occurred under the Master Tobacco Settlement Agreement. Although the opioid national settlement agreement has a default distribution of funds among states, localities and a statewide abatement fund, a state may change its distribution by statute or agreement; thus, the distribution of settlement funds among the states has a myriad of formats.

Funds under the national settlement agreement began to flow to states in 2022, so states are now contemplating how they can optimally use this large pool of funds and how they can ensure that funds are spent responsibly, both now and in future years. The NGA Center convened this Summit to give Governors' offices the opportunity to hear from experts and to share thoughts among peers about best practices, successes and challenges.

DISCUSSION

States are in different stages of receiving, disbursing and monitoring opioid litigation proceeds; however, discussion at the Summit elucidated overriding themes regarding where state leadership can help ensure effective use of the funds and the opportunities they could provide to address opioid use. Summit participants heard from national organizations and state representatives who have made progress in addressing these challenges.

Governors can use their executive authority, including via executive order, to use settlement funds immediately.

During the Summit, participants discussed many actions that were taken at the direction of Governors' offices to guide the use of settlement funds. This highlighted Governors' ability to use executive orders to, as permitted by law, direct executive branch agency actions. The availability of settlement funds allows Governors to take immediate action. For instance, in May 2023, Georgia Governor Brian Kemp issued an executive order establishing the Georgia Opioid Settlement Advisory Commission.⁷ This fulfilled the state's commitments under the national settlement agreement and a memorandum of understanding with local authorities to establish the necessary government participation mechanism to begin collection and disbursement of opioid settlement funds. Illinois Governor JB Pritzker issued a similar executive order in his state.⁸

Governors can bring together stakeholders and use their convening authority to discuss short- and long-term funding priorities.

Governors can use their powers of convening and raising awareness of long-term planning to ensure the funds are used productively. The 18-year disbursement timeframe of settlement funds presents a unique opportunity for some specific challenges. Governors can use their unique ability to convene the correct groups of stakeholders and community participants to ensure that a diversity of voices are at the table. Additionally, when state spending is attuned to state budgets that are usually on two-year timeframes, disbursements require a longer planning approach. During their term in office, Governors can establish a foundation of institutional memory and procedural consistency to counter inevitable staffing or stakeholder changeover.

Oversight of expenditures is needed.

The national settlement agreement advises that a majority of funds be dedicated to a statewide abatement fund,⁹ whose board oversees the expenditure of funds and can swiftly dedicate funds as needed. This oversight, independent of a political process, was deemed necessary to ensure an equitable distribution of funds at local levels. The fund could also be structured so its leadership reflects the interests of a number of constituencies with differing levels of expertise and lived and living experience.

In Rhode Island, Governor Dan McKee issued an executive order¹⁰ operationalizing the Governors' Overdose Task Force as a statewide alliance of peers, professionals, state agency partners, and community harm reduction and recovery partners, including

workgroups composed of state agency leaders, expert advisors and community partners.¹¹ The Task Force is responsible for making recommendations to the state's Opioid Settlement Advisory Committee (OSAC).¹² The OSAC reviews these recommendations, along with the priorities of community partners, and makes recommendations to the Secretary of the Executive Office of Health and Human Services for the Governor's annual budget request, which includes funding for executive branch agencies to address the overdose crisis. This process ensures a wide variety of voices in the fiscal planning process so that funds are dedicated to a range of entities to help address the state's priorities to respond to the overdose epidemic.

 **Ongoing state and local coordination and discussion are key.**

To ensure funds are being spent effectively, states and localities must work together. Program information should be shared, and spending decisions coordinated. Discussions should be held at all levels – state, county, municipality and community – to determine where funds would be most impactful in a particular location. These discussions need to be more than one-time events to ascertain what is most effective, what programs and initiatives are working, and where support or connections with other communities is needed or could benefit others in the state. It will be helpful to states and localities to provide ongoing technical assistance to community groups as they implement new programs or seek data.

Virginia's "Gold Standard"¹³ policy provides a financial incentive for cities and counties to use the portions of the settlement they receive directly (30% of the total settlement) for 100% abatement purposes that align with the statutory requirements for awards of funds allocated for them from the Commonwealth's Opioid Abatement Fund. While these requirements are stricter than the settlement terms, the strong financial incentive helps ensure the Commonwealth and localities streamline their resources and focus primarily on abatement efforts including shared goals to treat, prevent or reduce opioid use. Virginia Governor Glenn Youngkin has established initiatives to complement the use of these funds, including "Right Help, Right Now," a behavioral health plan that includes use of opioid abatement funds to reduce youth fentanyl poisonings¹⁴ and an executive order to implement a comprehensive plan to address fentanyl use, which includes actions in prevention, treatment, public safety and data collection.¹⁵

 **Ensure funding of evidence-based and innovative practices.**

Using funds for programs with records of efficacy fosters public acceptance that the funds are being spent efficiently. It may also serve as an impetus to encourage wider adoption of evidence-based practices that have not previously received public funds or been adopted within a community, as has been the case for the use of some harm reduction measures to prevent infectious diseases.¹⁶ This does not mean, however, that innovative interventions should be overlooked. The involvement of community-level groups will likely be a springboard for interventions whose wider adoption might be further explored.

During the administration of NGA Chair Utah Governor Spencer Cox, the Utah Opioid Response Blueprint¹⁷ was published by the Utah Opioid Task Force to provide guidance to jurisdictions, particularly jurisdictions lacking a local opioid response plan. The Blueprint, prepared by the Opioid Settlement Advisory Committee, recommends using evidence to guide spending as one of the core principles in determining opioid litigation settlement allocations.

Conduct asset mapping of existing funds.

Determining where funds should go relies upon knowing where funds are already being spent. It is also important that the mapping assess smaller population units to understand the needs of specific localities. For instance, in a number of states, there is an inequitable distribution of funds to rural areas. While opioid litigation proceeds may seem like a considerable sum, at current levels over an 18-year period, it breaks down into an amount that pales in comparison to annual Medicaid funding for opioid use disorder and is also less than current annual funding from the U.S. Department of Health and Human Services. Gauging where these assets are being used will allow states to use the settlement funds to identify and fill gaps or supplement ongoing program needs without supplanting existing funding.

The OneOhio plan, first announced by Ohio Governor Mike DeWine in March 2020, was created to provide a mechanism for the distribution of opioid settlement funds. The plan was agreed to by counties, cities and localities representing 85% of the state's population. Under the plan, most of the settlement funds are dedicated to the OneOhio Recovery Foundation. The Foundation will develop and oversee the funding of short- and long-term planning that local communities need for an effective response.¹⁸ Accordingly, the state is using the opioid settlement as a platform to assess where current funding is allocated and to plan for future funding needs.

Data systems need to be timely and accurate.

Data, particularly real-time data, is critical to the success of any opioid overdose response plan. They can show what interventions are promising but under-supported. Data may also serve to foster support for implementing interventions in locales that have not yet adopted them; this is particularly true for some harm reduction practices. Work at the local level to improve data collection may be necessary because data at the local level does not necessarily coincide with federal data sets that often assess larger populations. Data collection provides an opportunity for Governors to take a long-term view of reducing overdose deaths. Data can show the efficacy of strategies and can thus provide Governors with an opportunity to establish an agenda to address opioid use that survives a Governor's term in office.

North Carolina's Duke-Margolis Center for Health Policy has developed an Opioid Abatement Needs and Assessment Tool,¹⁹ an interactive data tool to develop and disseminate resources and tools to guide state, county and municipal investments of opioid settlement resources that are in support of sustainable, recovery-oriented systems of care responsive to community needs.

Ensure that programs are designed to address equity concerns.

Data show that overdose deaths have been increasing in Black and indigenous communities.²⁰ Funds should be dedicated to exploring and addressing the roots of these disparities, some of which are linked to social determinants of health.

There are also disparities in access to funds at the community level. Grassroots groups often have small staffs and may lack the ability to maneuver the bureaucratic

processes to acquire funds. States and localities should work with community groups to provide mechanisms for easier ways to apply for and obtain settlement funds.

It will also be necessary to monitor inequity issues over the course of the settlement period, as data may change during the years and decades of the settlement.

Physical infrastructure and workforce investments should be carefully fashioned.

Although funds can be used to address physical infrastructure needs, care must be taken to ensure that the resulting capital projects are used for a considerable length of time to address opioid use disorder. Some states have crafted agreements that require reimbursement or reversion of property rights if needs change and a capital project is no longer being used as originally planned. Also, as capital projects are developed, workforce and staffing considerations should be considered in localities throughout a state, especially in less populated areas.

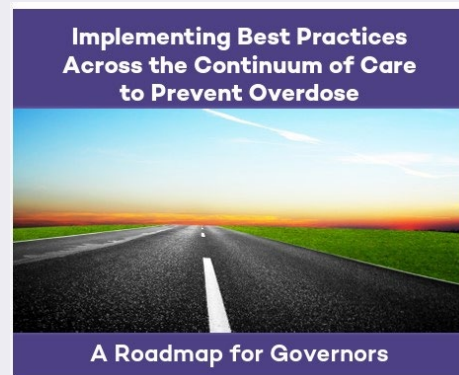
Have a process in place to resolve conflicts of interest.

Persons having responsibility over settlement funds may have other roles that could be an actual or perceived conflict of interest. In most states, existing conflict-of-interest laws will apply to commission or advisory board members. However, states should ensure that conflict-of-interest laws are robust, and that, in the interest of transparency and public confidence, individuals recuse themselves from decisions that may involve a conflict of interest.

To assist Governors in their efforts to address opioid overdoses and use their funds efficiently, NGA recently released the guide, “Implementing Best Practices Across the Continuum of Care to Prevent Overdose: A Roadmap for Governors.”²¹

The Roadmap presents Governors’ offices with actionable steps they can take to prevent overdoses and where needed funds could be devoted. The Roadmap is organized by four pillars along the substance use disorder continuum of care – Prevention, Harm Reduction, Treatment and Recovery – in addition to a fifth pillar, Foundations, which provides cross-cutting actions to help address any or all of the other pillars along the continuum. Each of the pillars in the Roadmap is organized by “routes,” which provide actionable policy recommendations for states; “destinations,” objectives associated with each recommendation along a route; “passengers,” key partners to involve in carrying out a recommendation and achieving the objectives at a destination; and “fuel,” the financial resources that may be available to support the work.

The Roadmap also suggests measures to evaluate the impact of the policy actions, as well as data resources and publications that provide more information. The resource also presents state spotlights to highlight states that are implementing best practices and embracing innovation.



CONCLUSION

There is considerable work ahead for Governors and states as opioid settlement funds continue to become available, in terms of both present planning to use the funds and planning for their investment and future use. Planning will be necessary to determine how to fund opioid abatement programs and initiatives sustainably after the settlement funds have been disbursed. This planning will likely need to be flexible given the ongoing bankruptcy issues involving Purdue Pharma²² and Mallinckrodt²³, as states may see their anticipated funding amounts decrease based on the outcomes of these cases. Accordingly, and notwithstanding the outcome of various bankruptcy proceedings, this fiscal planning will extend beyond any one Governor's term in office and needs to achieve widespread bipartisan support from legislatures, localities, communities and people affected by the overdose crisis.

This Summit highlighted the essential role Governors play in ensuring that opioid settlement funds are used to their fullest potential while not supplanting existing resources. Participants stressed the need for coordination and communication within and among all levels of implementation – Governors, state officials, localities, communities, community groups, and people with opioid use disorder or who have lost loved ones to an overdose. A Governor's power of convening is a strong tool, but this engagement must be ongoing to ensure that programs and funds are operating efficiently as the needs evolve. Parties also need to be transparent with each other; states stressed that cooperation among groups was best achieved when Governors' offices incentivized parties to act together.

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ENDNOTES

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- ² See Opioid Settlement Tracker at <https://www.opioidsettlementtracker.com/globalsettlementtracker/#statuses> Note that on July 28, 2023, the Department of Justice asked the U.S. Supreme Court to stop Purdue Pharma’s bankruptcy organization plan, which would provide \$5.5-6 billion in opioid litigation settlement funds, from proceeding, as the plan contains a provision that would shield the owners of Purdue Pharma, the Sackler family, from further opioid-related lawsuits. Dietrich Knauth, “US asks Supreme Court to delay Purdue Pharma bankruptcy settlement,” Reuters, July 31, 2023, accessed August 2023. <https://www.reuters.com/legal/us-asks-supreme-court-delay-purdue-pharma-bankruptcy-settlement-2023-07-28/>
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- ⁴ Brian Mann, “4 U.S. companies will pay \$26 billion to settle claims they fueled the opioid crisis,” National Public Radio (NPR), February 25, 2022, accessed August 2023. <https://www.npr.org/2022/02/25/1082901958/opioid-settlement-johnson-26-billion>
- ⁵ The settlement agreement defines “opioid remediation” as, “Care, treatment, and other programs and expenditures (including reimbursement for past such programs or expenditures except where this Agreement restricts the use of funds solely to future Opioid Remediation) designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of, including on those injured as a result of, the opioid epidemic. “Distributor Settlement Agreement,” National Opioids Settlement, accessed August 2023. https://nationalopioidsettlement.com/wp-content/uploads/2022/03/Final_Distributor_Settlement_Agreement_3.25.22_Final.pdf
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