



## HOW NORTH CAROLINA WOULD USE OPIOID SETTLEMENT FUNDS: FREQUENTLY ASKED QUESTIONS ON THE MEMORANDUM OF AGREEMENT BETWEEN STATE AND LOCAL GOVERNMENTS IN NORTH CAROLINA

### GENERAL QUESTIONS

#### 1. What is the North Carolina Memorandum of Agreement (NC MOA)?

The NC MOA governs how North Carolina would use the proceeds of any future national settlement or bankruptcy resolution with five companies over their role in fueling the opioid epidemic. The five companies are the “big three” drug distributors (Cardinal, McKesson, and AmerisourceBergen), the opioid manufacturer Johnson & Johnson, and the opioid manufacturer Purdue Pharma (now in bankruptcy proceedings). Throughout this FAQ, the term “opioid settlement funds” refers to the proceeds of any future national settlement or bankruptcy resolution with any of these five companies.

#### 2. Why is the NC MOA important?

The opioid epidemic has taken the lives of more than 16,000 North Carolinians, torn families apart, and ravaged communities from the mountains to the coast. Just as we began to make progress in combatting the epidemic, the COVID-19 pandemic caused a new wave of isolation, despair, drug misuse and overdose death. Individuals, families, and entire communities continue to suffer and struggle.

The opioid epidemic was fueled by irresponsible marketing and inadequate monitoring on the part of opioid makers and distributors. Settlements with the big three drug distributors and Johnson & Johnson, and a resolution of the Purdue Pharma bankruptcy proceedings, have the potential to bring as much as \$850 million to North Carolina over an 18-year period to support state and local efforts to address the epidemic.

The NC MOA is an important step forward in our collective effort to hold these companies accountable for their behavior and to direct much-needed resources to communities across the state as they work to address the epidemic and its aftermath.

3. What are the most important features of the NC MOA?

**All funds to address the opioid epidemic.** The NC MOA provides that all opioid settlement funds will be used to address the opioid epidemic, with an emphasis on high-impact strategies and collaborative strategic planning.

**Maximum resources to North Carolina communities.** For our state to receive the maximum payout under any national settlements with the big three drug distributors or Johnson & Johnson, all relevant parties – including the state itself, all 100 counties, and all large and medium-sized municipalities – would have to sign onto the NC MOA and those national settlement agreements.

To achieve that goal, and to maximize resources flowing to communities on the front lines of the epidemic, the NC MOA would direct settlement funds as follows:

- 15% to the state (which the General Assembly would have authority to appropriate on a wide range of strategies to address the epidemic)
- 80% to local governments, including all 100 counties plus 17 municipalities, allocated among those counties and municipalities through a formula developed by attorneys representing local governments in national litigation
- An additional 5% percent into an incentive fund for any county (and any municipality in that county already receiving settlement funds under the NC MOA) in which the county itself and every municipality with at least 30,000 residents (based on 2019 population totals) in the county signs the NC MOA

**High level of transparency and accountability.** The NC MOA offers a high level of transparency and accountability for the use of opioid settlement funds by local governments, including special revenue funds subject to audit, annual financial and impact reports, and a public dashboard showing how they are using settlement funds to address the epidemic.

4. How does the NC MOA ensure that opioid settlement funds would be spent on strategies to address the epidemic?

Any national settlement with the big three drug distributors or Johnson & Johnson, and any resolution of the Purdue Pharmacy bankruptcy matter, will direct state and local governments to use most opioid settlement funds to address the epidemic.

Consistent with this principle, the NC MOA offers local governments two options:

- Under Option A, a local government may fund one or more strategies from a shorter list of evidence-based, high-impact strategies to address the epidemic.
- Under Option B, a local government may fund one or more strategies from a longer list of strategies after engaging in a collaborative strategic planning process involving a diverse array of stakeholders at the local level.

5. What are the Option A strategies?

Under Option A, local governments may use opioid settlement funds to support programs or services listed below that serve persons with Opioid Use Disorder (OUD) or any co-occurring Substance Use Disorder (SUD) or mental health conditions. Specifically, under Option A, local governments may use opioid settlement proceeds to fund:

1. Collaborative strategic planning
2. Evidence-based addiction treatment
3. Recovery support services
4. Recovery housing support
5. Employment-related services
6. Early intervention programs
7. Naloxone distribution
8. Post-overdose response teams
9. Syringe service programs
10. Criminal justice diversion programs
11. Addiction treatment for incarcerated persons
12. Reentry programs for recently incarcerated persons

(See NC MOA Exhibit A for additional detail.)

6. What are the Option B strategies?

Option B includes a wider array of strategies that would be allowed under any national settlement with the big three drug distributors or Johnson & Johnson, or under a resolution of the Purdue Pharma bankruptcy proceedings. This includes an array of strategies that:

- A. Treat Opioid Use Disorder (OUD)
- B. Support people in treatment and recovery
- C. Provide connections to care
- D. Address the needs of criminal-justice-involved persons with OUD
- E. Address the needs of pregnant or parenting women and their families
- F. Prevent over-prescribing of opioids
- G. Prevent misuse of opioids
- H. Prevent overdose deaths and other harms (harm reduction)
- I. Support first responders
- J. Promote leadership, planning, and coordination
- K. Fund relevant training and research

(See NC MOA Exhibit B for a current version of the Option B national strategy list.)

7. What is the Option B collaborative strategic planning process?

Under Option B, a local government may fund one or more strategies from the longer list of national strategies after engaging in collaborative strategic planning at the local level. This involves:

- Engaging a wide array of local stakeholders
- Exploring the root causes of drug misuse, addiction, and overdose death in the area
- Identifying and evaluating potential strategies to address the epidemic
- Looking for opportunities to fill gaps in existing programs, align strategies, and combine opioid settlement funds with other sources of funding
- Offering comprehensive recommendations to the county board, city council, or other governing body

(See NC MOA Exhibit C for additional detail.)

8. Are regional solutions allowed?

Yes. Multiple counties and municipalities are allowed and encouraged to work together to address regional challenges and pursue regional solutions. Among other provisions, the NC MOA allows several local governments to engage in a single collaborative strategic planning process if they believe it will be efficient and advantageous for them to do so.

9. How does the NC MOA ensure transparency and accountability by local governments receiving opioid settlement funds?

The NC MOA provides a high level of transparency and accountability, including the following measures:

**Special Revenue Fund.** In order to receive any funds under any opioid settlement or bankruptcy resolution, a local government must first establish a separate special revenue fund for the receipt and expenditure of opioid settlement funds. (See NC MOA sections D & E.6.)

**Financial and compliance audits.** The use of special revenue funds is subject to a range of financial and compliance audits. The State Auditor and Department of Justice have access to persons and records concerning the expenditure of opioid settlement funds. (See NC MOA section F.)

**Special budget item or resolution.** In order to spend opioid settlement funds from the special revenue funds, a local government must pass a budget or separate resolution specifically authorizing the expenditure of the funds, including the amount to be spent, the strategy or strategies to be funded, and the relevant period of time. (See NC MOA section E.6.)

**Option B report and recommendations.** For local governments that elect Option B, the collaborative strategic planning process will result in a public report and recommendations. (See NC MOA section E.5 and Exhibit C, right-hand column.)

**Annual financial reports.** Any local government that spends opioid settlement funds will be required to file annual financial reports. (See NC MOA section F.6 and Exhibit E.)

**Annual impact information.** Any local government that spends opioid settlement funds will be required to file impact information on an annual basis. (See NC MOA section F.6 and Exhibit F.)

**Statewide public dashboard.** A statewide dashboard will enable members of the public to view the special budget items or resolutions, reports and recommendations, annual financial reports, and annual impact information described above for each local government receiving or spending opioid settlement funds. (See NC MOA section F.6.)

## **NATIONAL OPIOID LITIGATION, SETTLEMENT TALKS, AND BANKRUPTCY PROCEEDINGS**

10. How many North Carolina local governments are engaged in national litigation against opioid manufacturers or distributors?

Seventy-six counties and eight municipalities have filed lawsuits in federal court to hold opioid manufacturers or distributors accountable for their role in fueling the opioid epidemic.

11. What is the status of these cases?

The federal cases have been consolidated for pretrial proceedings into so-called Multi-District Litigation (MDL) in Cleveland, Ohio. The opioid MDL has consolidated roughly 3,000 lawsuits from nearly every state. The lawsuits allege that opioid manufacturers misrepresented the risks associated with prescription opioids; that opioid distributors did not properly monitor shipments of prescription opioids to pharmacies across the country; and that these actions contributed to the opioid epidemic that continues to ravage North Carolina and the nation.

12. How large is the potential settlement with the big three drug distributors plus the drug maker Johnson & Johnson?

The big three drug distributors and the drug maker Johnson & Johnson have announced their willingness to consider a global settlement of all the cases that have been or could be filed against them by state and local governments for a total of \$26 billion, with details of such a settlement still under discussion.

13. Will the Purdue Pharma bankruptcy proceedings result in additional funds to address the opioid epidemic?

We anticipate that the Purdue Pharma bankruptcy proceedings may provide an additional \$4-5 billion to support state and local efforts to address the opioid epidemic across the country.

14. How does all this relate to the McKinsey settlement that was announced in February 2021?

The McKinsey settlement is separate and apart from the potential settlements with the big three drug distributors and Johnson & Johnson, and from the Purdue Pharma bankruptcy proceedings.

In February 2021, Attorney General Josh Stein and other attorneys general from across the nation reached a \$573 million settlement with one of the world's largest consulting firms, McKinsey & Company, over the company's role in advising opioid companies how to promote their drugs and profit from the opioid epidemic.

As part of the settlement with McKinsey, the state of North Carolina will receive nearly \$19 million over five years, with the vast majority coming this year. The McKinsey settlement requires that the state use these settlement proceeds to fund strategies to address the opioid epidemic. Within these parameters, it will be up to the North Carolina General Assembly to decide how to spend the McKinsey settlement proceeds.

15. Apart from the settlement talks with the big three drug distributors and Johnson & Johnson, the Purdue Pharma bankruptcy proceedings, and the recent McKinsey settlement, is there other opioid-related litigation brought by state and local governments?

Yes. There is litigation in federal and state courts against other opioid manufacturers, including Allergan, Endo, and Teva, and bankruptcy proceedings involving the opioid maker Mallinckrodt. And there is litigation in federal and state courts against CVS, Rite Aid, Walgreens, Walmart, and other pharmacy chains over their role in the opioid epidemic.

Even in the event of settlements with the big three drug distributors and Johnson & Johnson and a resolution of the Purdue Pharma bankruptcy proceedings, this other litigation will continue and may (or may not) result in additional settlements or resolutions to support state and local efforts to address the opioid epidemic.

## **ALLOCATION OF OPIOID SETTLEMENT PROCEEDS**

16. How would funds be divided among the states in the event of settlements with the big three drugs distributors and Johnson & Johnson or a resolution of bankruptcy proceedings involving Purdue Pharma?

If there are settlements with the big three drug distributors or Johnson & Johnson, or a resolution of bankruptcy proceedings involving Purdue Pharma, or a combination of these, settlement funds would be allocated among states based on population and the impact of the opioid crisis on each state, taking into account several public health measures.

17. What is the maximum amount North Carolina could receive if there are settlements with the big three drugs distributors and Johnson & Johnson, and a resolution of bankruptcy proceedings involving Purdue Pharma?

North Carolina could receive up to \$850 million over a period of 18 years to support state and local efforts to address the opioid epidemic, in the event of national settlements with the big three drug distributors and Johnson & Johnson, as well as a resolution in the Purdue Pharma bankruptcy proceedings. The settlement payments to North Carolina (and other states) would be front-loaded, with payments in the first three years higher than payments in the remaining 15 years of the settlement.

18. How many local governments in North Carolina are expected to receive payments as part of any settlement with the big three drug distributors or Johnson & Johnson or bankruptcy resolution involving Purdue Pharma?

Under the NC MOA, all 100 counties – including those that have engaged in litigation against the opioid defendants and those that have not engaged in such litigation – would receive settlement payments.

In addition, 17 municipalities would receive settlement payments – including the eight municipalities involved in the national litigation and nine other municipalities with a population of 75,000 or greater (based on 2019 population totals). Like the 100 counties, all municipalities receiving settlement funds are subject to the terms and requirements of the NC MOA (including the establishment of special revenue funds subject to financial and compliance audits, filing of annual financial and impact reports, and all of the other procedural and reporting requirements described in the NC MOA).

Residents of all municipalities in North Carolina – including those that receive settlement funds and those that do not – stand to benefit from county and state programs and services supported with opioid settlement funds.

19. How are settlement or bankruptcy funds allocated among the North Carolina counties and municipalities receiving such funds?

Under the NC MOA, settlement funds are allocated among the 100 counties and 17 municipalities through a formula developed by attorneys representing local governments in national litigation. The resulting percentage allocations are shown in NC MOA Exhibit G.

20. What is the maximum amount a particular county or municipality could receive under the terms of the MOA, and how would that be calculated?

We anticipate that North Carolina could receive up to \$850 million over a period of 18 years in the event of national settlements with the big three drug distributors and Johnson & Johnson as well as a resolution in the Purdue Pharma bankruptcy proceedings, as noted above.

To determine the maximum total amount that could go to any individual county or municipality (under the best-case scenario), the \$850 million total should be multiplied by 80%, to reflect the portion that will be directed to local governments for opioid remediation efforts, and then be multiplied by the percentage allocation for that county or municipality shown in NC MOA Exhibit G. For example, for a local government with a one percent allocation in NC MOA Exhibit G, the expected maximum would be \$850 million multiplied by .80 (eighty percent) times .01 (one percent) for a maximum of \$6.8 million.

In addition to that amount, a county or municipality may receive an additional (smaller) amount in connection with the incentive fund described in Section G to the MOA. The NC MOA directs five percent of all settlement funds flowing to the state into an incentive fund that would be divided among those counties (and any municipalities in those counties that stand to receive settlement funds under NC MOA Exhibit G) in which the county itself and every municipality in the county with at least 30,000 residents (based on 2019 population totals) signs the MOA.

21. Would opioid settlement payments to a county or municipality be spread out equally over 18 years?

No. Settlement payments to local governments are expected to be front-loaded, with payments in the first three years higher than payments in the remaining 15 years of the settlement.

22. What has to happen for North Carolina counties and municipalities to receive the maximum possible amount under the terms of the MOA and any national settlement agreements?

The precise amount that that our state as a whole would receive depends not only on the final terms of the settlement agreements and bankruptcy resolutions but also on whether North Carolina qualifies for incentive structures that would increase the payment amounts as more North Carolina counties and municipalities join the settlement.



For our state to receive the maximum payout under any national settlements with the drug distributors or Johnson & Johnson, all relevant parties – including the state itself, all 100 counties, and all large and medium-sized municipalities – would have to sign onto the NC MOA and those national settlement agreements. Conversely, North Carolina stands to lose hundreds of millions of dollars under the national settlement agreements if a significant number of counties or large- to medium-sized municipalities do not sign onto those agreements.

It should be noted that any national settlements with the big three drug distributors or Johnson & Johnson will prohibit ANY payment to ANY county or municipality that does not sign onto the national settlement agreements – and there will be reduced payments to any county or municipality that signs on late (after a yet-to-be-determined deadline).

23. How many local governments need to sign the NC MOA for the MOA to take effect?

The NC MOA will become effective when enough local governments have joined it to meet the support level required by one of the national settlement agreements or bankruptcy resolutions. This level of support has not been definitively established. However, we anticipate a requirement that counties and large- and medium-sized cities representing at least half of the state’s population will have to sign onto the NC MOU in order for it to take effect.

24. What happens if not enough local governments sign the MOA?

If the NC MOA does not become effective, North Carolina’s allocation will be governed by the default allocations that we anticipate will be included in the national settlement agreements with the distributors and Johnson & Johnson, and the resolution of the Purdue bankruptcy. We expect the default in the Purdue bankruptcy will directly provide funds to counties with a population above 400,000 (and NOT directly to counties with smaller populations). We anticipate that the default arrangement in the national settlement agreements would provide as little as 15% of state settlement funds in direct payments to local government and a substantially worse arrangement for local governments than the NC MOA provides.

**THE NC MOA COORDINATION GROUP**

25. What is the NC MOA coordination group?

The NC MOA creates a coordination group to help implement the NC MOA and address certain issues that may arise over the course of the 18-year settlements. (See NC MOA section E.7 and Exhibit D for details.)

26. What is the composition of the coordination group?

The coordination group will have twelve members, including:

- Five local government representatives (a county commissioner, county manager, county attorney, county local health director or consolidated human services director, and municipal manager);
- Four experts appointed by the North Carolina Department of Health and Human Services;
- One expert appointed by the North Carolina Attorney General; and
- Two experts appointed by legislative leaders, including
  - One representative from the University of North Carolina School of Government with relevant expertise appointed by the Speaker of the North Carolina House of Representatives; and
  - One representative from the board or staff of the North Carolina Institute of Medicine with relevant expertise appointed by the President Pro Tempore of the North Carolina Senate.

(See NC MOA Exhibit D for additional details.)

27. What are the responsibilities of the coordination group?

The coordination group will have a variety of responsibilities, including the following:

- To develop certain guidelines for audits required under the NC MOA;
- To make adjustments as needed to certain aspects of the NC MOA, including:
  - The high-impact strategies listed in NC MOA Exhibit A;
  - The collaborative strategic planning process described in NC MOA Exhibit C;
  - The annual financial report described in NC MOA Exhibit E; and
  - The impact information described in NC MOA Exhibit F.
- To work with counties, municipalities, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, other associations, foundations, non-profits, and other government or nongovernment entities to provide support to Local Governments in their efforts to effectuate the goals and implement the terms of the NC MOA.

(See NC MOA Exhibit D for additional details.)