



**North Carolina
Association of
County Commissioners**

Opioid Litigation Settlement Overview

Issue and Litigation Background

Counties are on the frontlines of the opioid epidemic, which has imposed significant and ongoing devastation throughout North Carolina. More than 16,000 lives have been lost and local governments have spent an untold amount of money on opioid-related costs for healthcare, criminal justice, and social services.

Given the far-reaching impact of the opioid crisis, 76 counties and eight municipalities have filed lawsuits in federal court to hold accountable several companies involved in manufacturing, marketing, promoting, and distributing prescription opioid drugs. The federal cases, which include roughly 3,000 lawsuits from nearly every state have been consolidated into Multi-District Litigation (MDL).

Local governments and the state are hopeful that a National Settlement Agreement with some of the companies involved in the MDL may be forthcoming, along with additional potential proceeds from a bankruptcy resolution involving opioid manufacturer Purdue Pharma. Under the national settlement and bankruptcy resolution (taken together), up to \$850 million could be allocated to North Carolina to address the opioid epidemic.

Settlement Fund Allocation Model

The potential settlement money would be allocated among states based on population and the local impact of the opioid crisis, as determined by public health statistics related to opioid misuse. The potential payments would occur over an 18-year period. The allocation formula also includes an incentive that increases the payment amounts as more North Carolina counties and municipalities join the settlement.

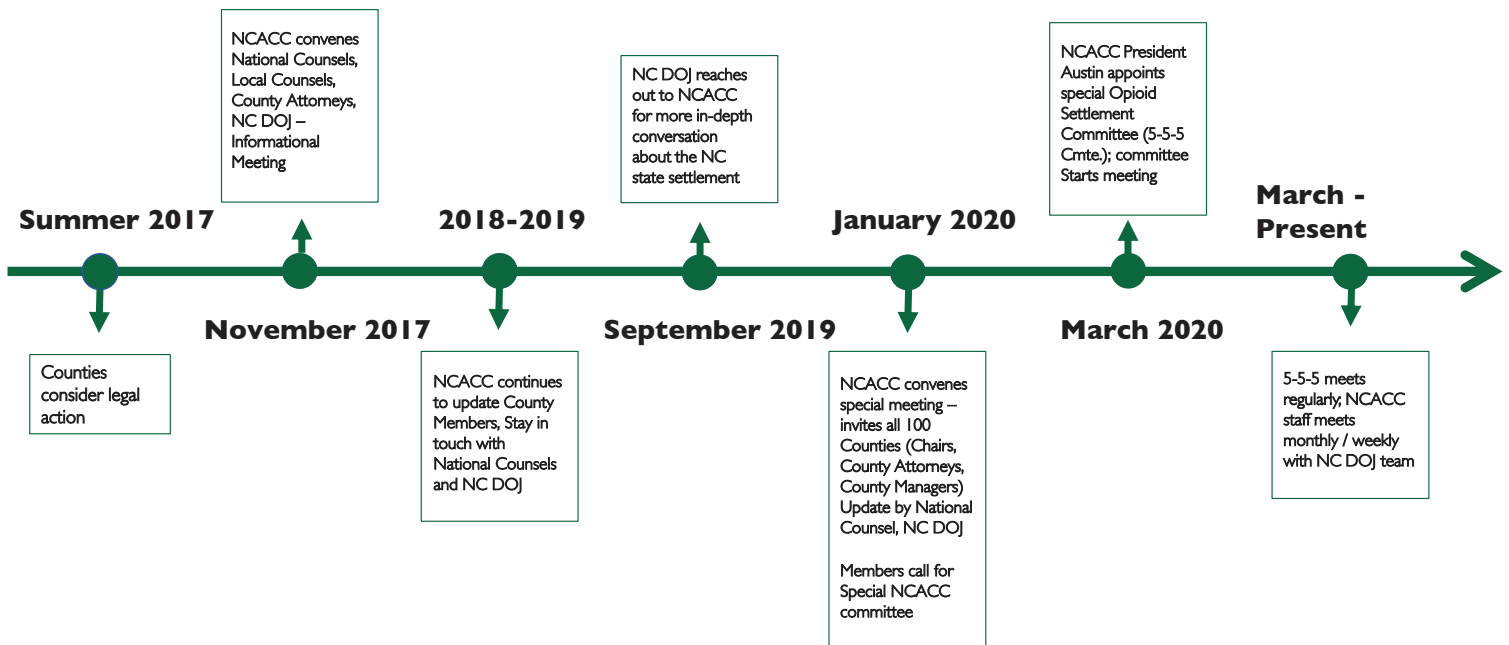
In anticipation of potential opioid settlement funds, the North Carolina Association of County Commissioners (NCACC) and the North Carolina Department of Justice (DOJ) have been working closely together over the past 18 months on a plan to maximize North Carolina's share to ensure that resources reach communities as quickly, effectively, and directly as possible.

Memorandum of Agreement

NCACC formed a Working Group comprised of five county commissioners, five county managers, five county attorneys and NCACC staff to collaborate with DOJ on a model to distribute potential settlement funds to all 100 counties to use on programs, services, and strategies to address the epidemic. The culmination of this collaborative work is the North Carolina Memorandum of Agreement (NC MOA), which governs how North Carolina would use its share of opioid settlement funds. Under the NC MOA, all opioid settlement funds would be directed 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 slated to receive settlement funds) 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

The NC MOA also includes transparency and accountability measures 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.



Counties are on the front lines of the opioid epidemic

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.

Counties are on the front lines of the opioid crisis, which has imposed significant and continuing costs on our healthcare, criminal justice, and social service systems. To respond to opioid related public health and safety needs, North Carolina counties and the State have had to draw mostly on taxpayer funds.

76 counties are part of national litigation to hold opioid drug companies accountable

Given the far-reaching impact of the opioid crisis, the State along with 76 counties and 8 municipalities in North Carolina have filed lawsuits in federal court and launched investigations to hold accountable several companies involved in manufacturing, marketing, promoting, and distributing prescription opioid drugs. The federal cases have been consolidated for pretrial proceedings into a Multi-District Litigation (MDL) in Cleveland, Ohio. The opioid MDL consolidated roughly 3,000 lawsuits from nearly every state.

The lawsuits allege that opioid manufacturers “grossly misrepresented the risks of long-term use of those drugs for persons with chronic pain,” and that pharmaceutical distribution companies “failed to properly monitor suspicious orders of those prescription drugs — all of which contributed to the current opioid epidemic.” Four companies, Johnson & Johnson, AmerisourceBergen, Cardinal Health, and McKesson, have announced their willingness to enter into a global settlement of the cases filed against them for a combined \$26 billion.

In preparation for a National Settlement Agreement, NCACC and DOJ joined forces to maximize funds to North Carolina

Local governments and the State are hopeful that a National Settlement Agreement with these four companies may be forthcoming, with potentially more to follow. Importantly, the terms of the National Settlement Agreement will require, among other things, that most settlement funds received by the State and Local Governments be devoted to opioid remediation activities to the maximum extent possible.

Additionally, local governments and the State anticipate that the ongoing bankruptcy proceedings of opioid manufacturer Purdue Pharma may be resolved before the end of the year with a settlement providing \$4-5 billion from Purdue and the Sackler family to state and local governments nationwide. The bankruptcy court is expected to

order these funds be used for opioid remediation activities.

Under the national settlement and bankruptcy resolution (taken together), up to \$850 million could be allocated to North Carolina for opioid remediation. The money will be allocated among states based on population and the local impact of the opioid crisis, based on several public health statistics related to opioid misuse. The precise amount will depend not only on the final terms of the National Settlement Agreement and bankruptcy resolutions, but also on whether North Carolina qualifies for incentive structures that increase the payment amounts as more counties and municipalities join the settlement.

The expected settlements and bankruptcy resolution would involve this money being paid out over an 18-year period. The settlement payments would be front-loaded, so that more money is available sooner to local governments to remedy the opioid problems in their communities. As a result, payments in the first three years would be higher than the average annual payment.

In anticipation of a National Settlement Agreement and Purdue bankruptcy resolution, the North Carolina Association of County Commissioners (NCACC) and the North Carolina Department of Justice (DOJ) have been working closely together over the past 18 months on a plan to maximize North Carolina's share of settlement funds to ensure the resources reach communities as quickly, effectively, and directly as possible.

North Carolina Department of Justice Representatives:

- Swain Wood, First Assistant Attorney General and General Counsel
- Kevin Anderson, Senior Deputy Attorney General and Director, Consumer Protection Division
- Daniel Mosteller, Special Deputy Attorney General
- Blake Thomas, Deputy General Counsel
- Steve Mange, Senior Policy Counsel

North Carolina Association of County Commissioners Representatives:

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To assist with this effort, NCACC formed a Working Group to collaborate with DOJ on an allocation model to distribute settlement funds to all 100 counties. NCACC Past President and Yadkin County Commissioner Kevin Austin appointed a special NCACC Opioid Settlement Committee to help craft settlement options in conjunction with NCACC staff. That committee, also known as the 5-5-5 Committee, consists of five County Commissioners, five County Managers, and five County Attorneys.

5-5-5 Committee and North Carolina MOA

County Commissioner Members

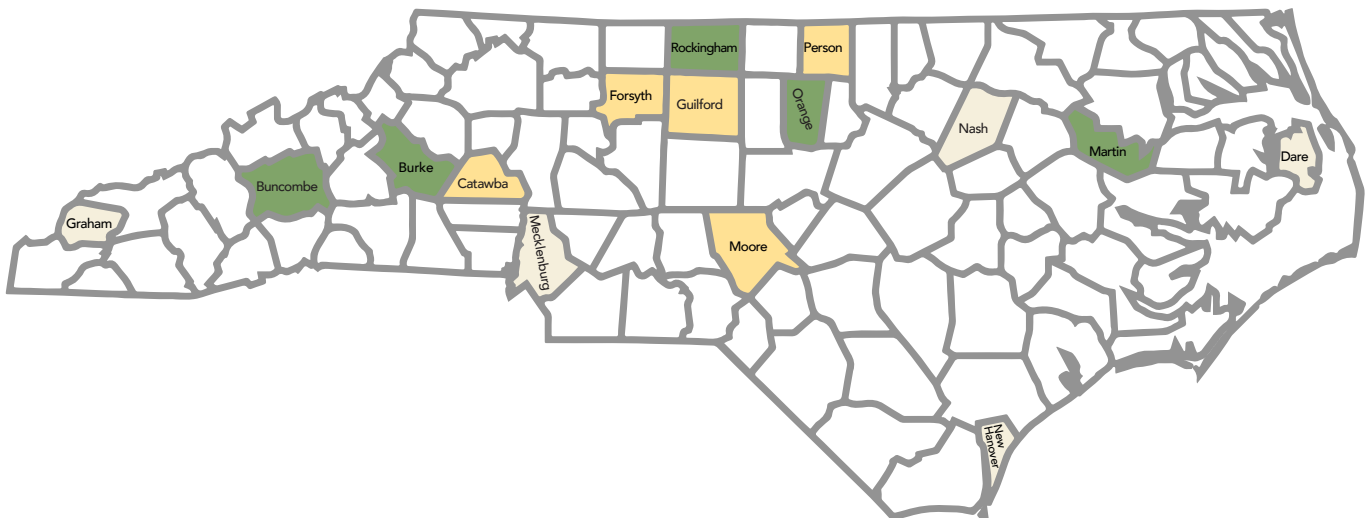
- Jasmine Beach-Ferrara, Buncombe County Commissioner
- Johnnie Carswell, Burke County Commissioner
- Sally Greene, Orange County Commissioner
- Reece Pyrtle, Rockingham County Commissioner
- Ronnie Smith, Martin County Commissioner

County Attorney Members

- Ron Aycok, Special Counsel - Person County
- Debra Bechtel, Catawba County Attorney
- Misty Leland, Moore County Attorney
- Mark Payne, Guilford County Attorney
- Gordon Watkins, Forsyth County Attorney

County Manager Members

- Chris Coudriet, New Hanover County Manager
- Dena Diorio, Mecklenburg County Manager
- Becky Garland, Graham County Manager
- Zee Lamb, Nash County Manager
- Bobby Outten, Dare County Manager



NCACC, 5-5-5 Committee, and DOJ devised a pathbreaking MOA to bring opioid settlement funds directly to communities

Working closely together, NCACC staff, the 5-5-5 Committee and representatives from DOJ developed the Memorandum of Agreement (MOA), which all counties and municipalities are urged to sign.

This pathbreaking agreement recognizes the critical role of North Carolina counties in delivering human and social services to county residents. It directs substantial resources to local governments on the front lines of the opioid epidemic while ensuring that these resources are used in an effective way to address the epidemic.

Opioid settlement funds will be distributed among local governments according to the National MDL Opioid Allocation Class Model, which is a formula developed by local governments' attorneys that allocates funds in proportion to

where the opioid crisis is the most severe. The model accounts for the number of pills dispensed, number of opioid overdose deaths, and number of people suffering from opioid use disorder. A county's allocation percentage will not change over the term of the MOA.

Opioid settlement funds received in North Carolina from the national settlement will be allocated as follows:

- 80% will go to Local Governments listed in the MOA to address the opioid epidemic,
- 15% will go to the State of North Carolina,
- and the remaining 5% will be used for a County Incentive Fund for any county (and any municipality in that county slated to receive settlement funds) in which the county itself and every municipality of a certain size signs the NC MOA.

As explained in more detail below, all of these funds must be used only on opioid remediation activities.

The North Carolina MOA requires collaboration among localities and stakeholder engagement to maximize community impact

The MOA prescribes collaborative strategic planning and stakeholder involvement required for certain activities. Counties are required to hold annual meetings with municipalities within their borders to encourage collaboration and plan for permissible expenditures in the upcoming year. Local governments are also encouraged to engage in a strategic planning process to access additional expenditure options.

The MOA also establishes a Coordination Group composed of local government representatives, state government representatives, and others with relevant expertise will meet periodically to help coordinate and guide Local Governments with their work under the MOA. The Coordination Group includes twelve total representatives as follows:

- **Five Local Government Representatives**

Four appointed by the North Carolina Association of County Commissioners including:

- One county commissioner
- One county manager
- One county attorney
- One county local health director or consolidated human services director

One municipal manager appointed by the North Carolina League of Municipalities

- **Four Experts Appointed by the Department of Health and Human Services**

- Four appointed by the Secretary of the Department of Health and Human Services

- **One Expert Appointed by the Attorney General**

- One appointed by the Attorney General of North Carolina from the North Carolina Department of

Justice or another state agency

- **Two Experts Appointed by Legislative Leaders**

- 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
- One representative from the board or staff of the North Carolina Institute of Medicine with relevant expertise appointed by the President Pro Tem of the North Carolina Senate

The North Carolina MOA helps ensure opioid-related strategies are effective and consistent with the National Settlement Agreement

Under the MOA, local governments are required to deposit opioid settlement funds received in a special restricted revenue fund to account separately for the monies. The local government must include in its budget or pass a resolution authorizing the expenditure of opioid settlement funds, indicating the specific strategy it chose from the options outlined in the MOA.

Local governments may expend funds only on opioid remediation activities, as consistent with strategies outlined in the National Settlement Agreement.

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, including many strategies already deployed at the county level.

The Option A strategies include:

- evidence-based addiction treatment
- recovery support services
- recovery housing
- employment-related services
- early intervention programs
- naloxone distribution
- post-overdose response teams
- syringe service programs
- criminal justice diversion programs
- addiction treatment for incarcerated persons
- reentry programs

- 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 (as detailed in Exhibit C to the MOA). The longer list of Option B strategies – the full range of strategies that will be allowed under a national settlement or bankruptcy resolution – involve multiple strategies falling into these broad categories:
 - Provide treatment for Opioid Use Disorder (OUD)
 - Support people in treatment and recovery and provide connections to care
 - Address the needs of criminal-justice-involved persons with OUD
 - Address the needs of pregnant or parenting women and their families
 - Prevent over-prescribing of opioids and misuse of opioids
 - Prevent overdose deaths and other harms (harm reduction)

The North Carolina MOA includes measures to ensure transparency and track performance

Local governments have annual financial and impact reporting and audit requirements under the MOA to ensure opioid settlement funds are spent consistent with permissible purposes:

- Certain reports and resolutions from the local government’s governing body will be available for public access on a statewide opioid settlement dashboard.
- For every fiscal year in which a local government receives, holds, or spends opioid settlement funds, the county or municipality must submit annual financial and impact reports specifying the activities and amounts it has funded.
- The local government must maintain records of opioid settlement Fund expenditures and related documents for at least five years.
- The State Auditor and Department of Justice shall have access to persons and records related to the MOA and expenditures of Opioid Settlement Fund to verify accounts and data affecting fees for performance.
- The Local Government manager/administrator is the point of contact for questions that arise under the MOA.

Please Act by Signing MOA

In order to maximize North Carolina’s share of the national settlement and ensure that the funding continues, all counties and all municipalities above 10,000 in population need to sign the MOA between the State of North Carolina and Local Governments on proceeds relating to the Settlement of Opioid Litigation, as well as the eventual National Settlement Agreement.

All North Carolina counties that sign on will receive a portion of opioid settlement funds, regardless of whether they

5-5-5 Committee and North Carolina MOA



are litigants in the national opioid litigation or filed a proof of claim in Purdue Pharma's bankruptcy. Municipalities above 75,000 in population, and municipalities that previously filed litigation, will also receive funds directly. Smaller municipalities will benefit from the maximum possible level of funds being directed into their counties, and their counties are required by the agreement to work closely with all of their municipalities in making decisions about where to direct the funds.

The national settlement agreement is expected to provide the highest benefits to state and local governments that have 100% participation in signing on to their state agreements and the National Settlement Agreement. Therefore, it is important that all counties and referenced municipalities sign on to this proposed agreement.

It is advantageous to all North Carolinians for all local governments to sign onto the MOA and demonstrate solidarity in response to the opioid epidemic, and to maximize the share of opioid settlement funds received in the state to help abate the harm.



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