

ONE KENTUCKY OPIOID SETTLEMENT MEMORANDUM OF UNDERSTANDING

General Principles

- The people of the Commonwealth of Kentucky and Kentucky communities have been harmed by the opioid epidemic, which was caused by entities within the Pharmaceutical Supply Chain.
- The Commonwealth of Kentucky, *ex rel.* Daniel Cameron, Attorney General (the “State”), and certain Participating Local Governments are separately engaged in litigation seeking to hold the Pharmaceutical Supply Chain Participants accountable for the damage they caused.
- The Commonwealth and the Participating Local Governments share a common desire to abate and alleviate the impacts of the Pharmaceutical Supply Chain Participants’ misconduct throughout the Commonwealth of Kentucky.
- The Commonwealth and the Participating Local Governments enter into this One Kentucky Opioid Settlement Memorandum of Understanding (“MOU”) to approach Settlement negotiations with the Pharmaceutical Supply Chain Participants.
- This MOU has been drafted collaboratively to maintain the Parties’ existing or potential legal claims (to the extent legally cognizable) while allowing the Parties to cooperate in exploring all possible means of resolution.
- Nothing in this MOU binds the Parties to a specific outcome. Any resolution under this MOU will require a subsequent acceptance by the Commonwealth and the Participating Local Governments of a final opioid Settlement plan.

A. Definitions

As used in this MOU:

1. “Approved Purpose(s)” shall mean those uses identified in the agreed Opioid Abatement Strategies attached as Exhibit A.
2. “Litigation” means existing or potential legal claims against Pharmaceutical Supply Chain Participants seeking to hold them accountable for the damage caused by their misfeasance, nonfeasance, and malfeasance relating to the unlawful manufacture, marketing, promotion, distribution, or dispensing of prescription opioids.
3. “Opioid Funds” shall mean monetary amounts obtained through a Settlement as defined in this MOU.
4. “Participating Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State that have chosen to sign on to this MOU. The Participating Local Governments may be referred to separately in this MOU as “Participating Counties” and “Participating Cities and Towns” (or “Participating Cities or Towns” as appropriate).
5. “Parties” shall mean the Commonwealth and the Participating Local Governments.
6. “Pharmaceutical Supply Chain” shall mean the process and channels through which licit opioids are manufactured, marketed, promoted, distributed, or dispensed.
7. “Pharmaceutical Supply Chain Participant” shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, or dispensing of licit opioids.
8. “Settlement” shall mean the negotiated resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant when that resolution has been jointly entered into by the Commonwealth and the Participating Local Governments.
9. “Trustee” shall mean an independent trustee who shall be responsible for the ministerial task of releasing the Opioid Funds that are in trust

as authorized herein and accounting for all payments into or out of the trust.

B. Distribution

1. All Opioid Funds allocated to the Commonwealth of Kentucky from settlement in the multi-district litigation or in bankruptcy proceedings shall be divided with 50% to the Commonwealth (“State Share”) and 50% to the Participating Local Governments (“LG Share”).¹
2. All Opioid Funds, regardless of allocation, shall be utilized in a manner consistent with the Approved Purposes definition set forth in Exhibit A. Compliance with this requirement shall be verified through reporting, as set out in Section F.
3. The LG Share will be distributed directly to each Participating Local Government by the national settlement administrator or through a designated Trustee but shall not pass through the State Treasury. The Trustee shall be appointed by the boards of the Kentucky Association of Counties and The League of Cities. The Participating Local Government share shall be distributed as set forth in Section 8(2). The share for each Participating County, including its constituent Participating Cities and Towns shall be determined using the Negotiation Class Formula resulting in a percentage share as set forth in the table in Exhibit B.
4. Participating Counties and their constituent Participating Cities and Towns may distribute the funds allocated amongst themselves in any manner they choose. If the county and its cities and towns cannot agree on how to allocate the funds, Exhibit C reflects the methodology for which a default allocation that will apply. The default allocation formula uses historical federal data showing how the specific county and the cities and towns within it have made opioids-related expenditures in the past. If the county or any cities or towns within a county do not sign on to this MOU and subsequent Settlement, and if

¹ This MOU assumes that any opioid settlement for Native American Tribes and Third-Party Payors, including municipal insurance pools, will be dealt with separately.

the Participating Local Governments cannot agree on how to allocate the funds amongst themselves, they shall reallocate the funds proportionally amongst themselves by applying this same methodology to only the Participating Local Governments in the Region.

5. If the LG Share for a given Participating Local Government is less than \$5,000, then that amount will instead be distributed to the county in which the Participating Local Government is located to allow practical application of the abatement remedy. If the county did not sign on to the Settlement as defined herein, they are not eligible for distribution from the LG Share as set forth in B(3).
6. The Commonwealth Share shall be paid by check or wire transfer directly to the State by the national settlement administrator consistent with K.R.S.48.005(3).
7. The State Share shall be used only for (1) Approved Purposes within the State or (2) grants to organizations for Approved Purposes within the State pursuant to H.B. 427.
8. The LG Share shall be used only for (1) Approved Purposes by Participating Local Governments.

C. Participation of Cities and Towns

1. If a Participating County does not achieve 100% participation of its cities and towns with populations greater than 10,000 within the period of time required in a Settlement document for subdivision participation, the remaining portions of the LG Share that were otherwise available to the Participating County will be reallocated to the LG Share for the Participating Counties which have achieved 100% participation of their cities and towns in accordance with the percentages described in Sections B(2), C(1), and C(3), and set forth in Exhibits B and C.

D. Payment of Counsel and Litigation Expenses

1. The Parties anticipate that any National Settlement will provide for the payment of all or a portion of the fees and litigation expenses of certain state and local governments.
2. If the court in *In Re: National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio) or if a national Settlement establishes a common benefit fund or similar device to compensate attorneys for services rendered and expenses incurred that have benefited plaintiffs generally in the litigation (the “Common Benefit Fund”), and requires certain governmental plaintiffs to pay a share of their recoveries from defendants into the Common Benefit Fund as a “tax,” then the Participating Local Governments shall first seek to have the settling defendants pay the “tax.” If the settling defendants do not agree to pay the “tax,” then the “tax” shall be paid from the LG Share prior to allocation and distribution of funds to the Participating Local Governments.²
3. Any Participating Local Government that seeks attorneys’ fees and expenses from the Litigation shall seek those fees and expenses first from the national Settlement. In addition, anticipating that any national Settlement will not have a fee fund sufficient to pay the entirety of the amounts owed to counsel by Participating Local Governments under their contingency fee contracts, the Parties agree that the Participating Local Governments will create a supplemental attorney’s fees and costs fund (the “Local Government Fee and Expense Fund”).
4. The Local Government Fee and Expense Fund is to be used to compensate counsel for Participating Local Governments that filed opioid lawsuits by September 1, 2020 (“Litigating Participating Local Governments”). Allocation of payments out of the Local Government Fee and Expense Fund shall be determined by a committee consisting

² This paragraph shall not apply to any Settlement with distributors McKesson, Amerisource Bergen, and Cardinal Health or manufacturer Johnson & Johnson

of one representative from each of the Litigating Participating Local Governments (the “Opioid Fee and Expense Committee”). The

Opioid Fee and Expense Committee shall, on its own or through the appointment of a third-party neutral, build a mathematical model to calculate allocation of payments to counsel from the Local Government Fee and Expense Fund, which shall be based on each Litigating Participating Local Government’s share under the Negotiation Class Metrics and the rate set forth in their contingency contracts (the contracts must be provided by counsel for a Litigating Participating Local Government in order for counsel to be eligible to receive payments from the Local Government Fee and Expense Fund).

5. The Local Government Fee and Expense Fund shall be funded as follows: From any national Settlement, the funds to be deposited in the Local Government Fee and Expense Fund shall be 15.96% of the LG Share of each payment (annual or otherwise) to the State of Kentucky for that Settlement. No portion of the State Share shall be used for the Local Government Fee and Expense Fund or in any other way to fund any Participating Local Government’s attorney’s fees and costs.
6. The maximum percentage of any contingency fee agreement permitted for compensation shall be 25% of the portion of the LG Share attributable to the Litigating Participating Local Government that is a party to the contingency fee agreement, plus expenses attributable to that Litigating Participating Local Government. Under no circumstances may counsel collect more for its work on behalf of a Litigating Participating Local Government than it would under its contingency agreement with that Litigating Participating Local Government.
7. Any funds remaining in the Local Government Fee and Expense Fund in excess of the amounts needed to cover private counsels’ representation agreements shall revert to the Participating Local Governments according to the percentages set forth in Exhibits B and

C, to be used for Approved Purposes as set forth herein and in Exhibit A.

E. Compliance Reporting and Accountability

1. The Trustee shall provide an up-to-date accounting of payments into or out of the trust and/or its subaccounts upon written request of the State or a Participating Local Government.
2. The State, Regions, and Participating Local Governments may object to an allocation or expenditure of Opioid Funds solely on the basis that the allocation or expenditure at issue (1) is inconsistent with provision C(1) hereof with respect to the amount of the State Share or LG Share; (2) is inconsistent with an agreed-upon allocation, or the default allocations in Exhibits B and C, as contemplated by Section C(3); or (3) violates the limitations set forth in F(3) with respect to compensation of the Trustee. The objector shall have the right to bring that objection within two years of the date of its discovery to a superior court in Franklin County, Kentucky.
3. Out of the Opioid Funds, reasonable expenses up to 0.005% shall be paid to the Trustee.
4. The Parties shall maintain, for a period of at least five years, records of abatement expenditures and documents underlying those expenditures, so that it can be verified that funds are being or have been utilized in a manner consistent with the Approved Purposes definition.
5. Annually on or before January 31, each Participating Local Government shall provide to the Trustee a report detailing for the preceding calendar year (1) the amount of the LG Share received by the Participating Local Government. (2) the allocation of any awards approved (listing the recipient, the amount awarded, the program to be funded, and disbursement terms), and (3) the amounts disbursed on approved allocations. In order to facilitate this reporting, each Participating Local Government shall provide the information to the Trustee in a form prescribed by the Trustee.

6. At least annually, the State shall publish on its website a report detailing for the preceding time period (1) the amount of the State Share received, (2) the allocation of any awards approved (listing the recipient, the amount awarded, the program to be funded, and disbursement terms), and (3) the amounts disbursed on approved allocations. In addition, the State shall publish on its website the reports described in F(5) above.
7. If it appears to the Attorney General, a Participating Local Government has used Settlement funds for non-Approved Purposes, the Attorney General may on written request seek and obtain the documentation underlying the report(s) described in F(5), as applicable, including documentation described in F(4). The Participating Local Government receiving such request shall have 20 days to provide the requested information.
8. Following a request made pursuant to F(6) and when it appears that LG Share funds are being or have been spent on non-Approved Purposes, the Attorney General may seek and obtain in an action in a court of competent jurisdiction in Franklin County, Kentucky an injunction prohibiting the Participating Local Government from spending LG Share funds on non-Approved Purposes and requiring the return of the monies that it spent on non-Approved Purposes after notice as is required by the rules of civil procedure. So long as the action is pending, distribution of LG Share funds to the offending Participating Local Government temporarily will be suspended. Once the action is resolved, the suspended payments will resume, less any amounts that were ordered returned but have not been returned by the time the action is resolved.

F. Amendments

1. The parties agree to make such amendments as necessary to implement the intent of this agreement.

Participating Local Government: _____

Authorized Representative Name: _____

Date: _____ Signature: _____

ACCEPTED by the undersigned and executed this ____ day of _____,
2021.

KENTUCKY ATTORNEY GENERAL

Daniel Cameron