

DATE: January 4, 2024

Behavioral Health Information Notice No: 24-002

TO: California Alliance of Child and Family Services
California Association for Alcohol/Drug Educators
California Association of Alcohol & Drug Program Executives, Inc.
California Association of DUI Treatment Program
California Association of Mental Health Peer Run Organizations
California Association of Social Rehabilitation Agencies
California Consortium of Addiction Programs and Professional
California Council of Community Behavioral Health Agencies
California Hospital Association
California Opioid Maintenance Providers
California State Association of Counties
Coalition of Alcohol and Drug Associations
County Behavioral Health Directors
County Behavioral Health Directors Association of California
County Drug & Alcohol Administrators

SUBJECT: California Participating Subdivision Use of Opioid Settlement Funds
Allocated from the California Abatement Accounts Fund.

PURPOSE: To provide guidance to California's Participating Subdivisions on the
use and reporting requirements for funds received from the California
Abatement Accounts Fund.

REFERENCE: National Opioid Settlement Agreements and California State-
Subdivision Agreements with pharmaceutical distributors McKesson,
Cardinal Health, and AmerisourceBergen, and opioid manufacturers
Allergan, Janssen Pharmaceuticals, Johnson & Johnson, Teva, and
pharmacies Walgreens, Walmart, and CVS.

BACKGROUND

In 2022, California Attorney General Rob Bonta announced the final settlement agreements with prescription opioid manufacturer Janssen Pharmaceuticals and Johnson & Johnson (collectively, Janssen) and pharmaceutical distributors McKesson, Cardinal Health, and AmerisourceBergen (collectively, Distributors). In 2023, Attorney General Bonta announced proposed multistate settlements with opioid manufacturers Allergan, Teva, and pharmacies Walgreens, Walmart, and CVS (collectively, the Pharmacies). These settlements mark the culmination of years of negotiations to resolve more than 3,000 opioid-related lawsuits and related investigations brought by state and

local governments across the country and will provide substantial funds for the abatement of the opioid crisis in California. California and its cities and counties stand to receive up to \$1.8 billion for substance use prevention, harm reduction, treatment, and recovery from Allergan, Teva, and the Pharmacies. This is in addition to the up to \$2.2 billion California is expected to receive from the Janssen and Distributors settlements. Payment timeframes vary by settlement and can last up to 18 years. California, and counsel representing a group of cities and counties, agreed on a proposed allocation of recoveries that California will receive pursuant to these opioid settlements. A summary of the allocation can be found in Table 1.

Table 1. California Opioid Settlement Fund Distribution

Fund Type	Recipient(s)	Allowable Uses
CA Abatement Accounts Fund (70%)	CA Participating Subdivisions ¹	Funds must be used for future opioid remediation in one or more of the areas described in Exhibit E of the National Opioid Settlement Agreements; AND No less than 50% of the funds received in each calendar year will be used for one or more High Impact Abatement Activities. ²
CA Subdivision Fund (15%)	CA Plaintiff Subdivisions ³	Funds must be used towards future opioid remediation and to reimburse past opioid-related expenses, which may include litigation fees and expenses.
California State Fund (15%)	The State of California	Funds must be used for future opioid remediation.

Payments to the State of California (California State Fund), Participating Subdivisions (CA Abatement Accounts Fund) and the Plaintiff Subdivisions (CA Subdivision Fund) will be distributed by the Settlement Fund Administrator, BrownGreer PLC (BrownGreer). California has named the Department of Health Care Services (DHCS) as the oversight and monitoring entity for opioid settlement funds, pursuant to the California State-Subdivision Agreements and Government Code, Title 2, Division 3, Part 2, Chapter 6, Article 2, Section 12534. All Subdivisions are required to coordinate with the Settlement Fund Administrator to ensure receipt of the allocated amounts. All Subdivisions are also required to report to DHCS to ensure the opioid settlement funds are expended as required under the National Opioid Settlement Agreements and the California State-Subdivision Agreements, until at least one year after all funds from the settlements are fully expended.

¹ Cities and Counties that are eligible to receive monies from the CA Abatement Accounts Fund are listed in Appendix 1 of the relevant California State-Subdivision Agreements. Only cities and counties that are CA Participating Subdivisions may receive funds from the CA Abatement Accounts Fund. A city or county's allocated share is listed under Abatement Percentage in Appendix 1.

² DHCS may add HIAA to this list throughout the program period but may not remove from it. When deciding whether and which activities to add to the HIAA list, DHCS will make reasonable efforts to consult with stakeholders, including Participating

³ Plaintiff Subdivisions are cities and counties that are allocated a share of the CA Subdivision Fund. A Plaintiff Subdivision's allocated share is listed under the Plaintiff Subdivision Percentage of Appendix 1 of the relevant California State-Subdivision Agreements

This guidance letter pertains to Participating Subdivisions (California's participating cities and counties) receiving funds from the CA Abatement Accounts Fund through California's Opioid Settlements. Specifically, this guidance relates to funds from opioid settlements with Janssen and the Distributors, as well as any future opioid settlements which follow a similar structure, including proposed settlements with Allergan, Teva, and the Pharmacies. This guidance does not pertain to funds received from bankruptcy matters, such as Mallinckrodt plc, which will be addressed through separate guidance.

CA ABATEMENT ACCOUNTS FUND ALLOWABLE EXPENDITURES

Exhibit E of the Settlement Agreements

All funds received from the CA Abatement Accounts Fund and if applicable, any interest earned on these funds, must be expended on future opioid remediation activities focused on prevention, intervention, harm reduction, treatment, and recovery services in California communities. Participating Subdivisions shall pursue one or more opioid remediation strategies from the areas listed in [Exhibit E](#) of the National Opioid Settlement Agreements. Priority should be given to the core opioid remediation strategies as listed under "Core Strategies" in Schedule A of Exhibit E.

High Impact Abatement Activities (HIAA)

California state officials, in partnership with counsel representing cities and counties, have agreed on a list of opioid remediation activities to prioritize within the State of California. These priorities, referred to as HIAA, can be found in the respective California State-Subdivision Agreements. Pursuant to the California State Subdivision Agreements, DHCS may add to this list (but not delete from it) by designating additional HIAA.⁴ DHCS will make reasonable efforts to consult with stakeholders, including Participating Subdivisions, before adding additional HIAA to this list.

Pursuant to the California State-Subdivision Agreements, no less than 50% of the funds received by a Participating Subdivision from each of the respective settlements in each calendar year, must be used for one or more of the HIAA listed below:

- [High Impact Abatement Activity 1: Provision of matching funds or operating costs for substance use disorder \(SUD\) facilities within the Behavioral Health Continuum Infrastructure Program \(BHCIP\).](#)

Authorized in 2021, the [BHCIP](#) allows entities to use funds to "construct, acquire, and rehabilitate real estate assets or invest in needed mobile crisis infrastructure to expand the community continuum of behavioral health treatment resources." Funds

⁴ DHCS does not have the authority to modify the HIAA language from these agreements.

received from the opioid settlements may be used for matching funds or operating costs for SUD facilities within the BHCIP.

- [High Impact Abatement Activity 2: Create new or expanded SUD treatment infrastructure.](#)

Infrastructure, in this case, is defined as the physical or programmatic costs to expand or create new SUD treatment, including treatment that addresses co-occurring mental health disorders and SUD. Physical infrastructure may include, but is not limited to, the purchase of buildings or the renovation of facilities and related equipment. Programmatic infrastructure may include, but is not limited to, resources that expand access to and the availability of SUD treatment (for example, access to Medication for Addiction Treatment, personnel costs, telehealth costs, and/or Electronic Health Records systems).

- [High Impact Abatement Activity 3: Addressing the needs of communities of color and vulnerable populations \(including sheltered and unsheltered homeless populations\) that are disproportionately impacted by SUD.](#)

Opioid remediation activities specifically addressing the needs of those at risk of developing an SUD within communities of color, including racial and/or ethnic minorities, and vulnerable populations. Vulnerable populations include, but are not limited to, individuals with limited or no access to health care, individuals experiencing adversities related to socioeconomic status, gender, sexual orientation, and/or mental health conditions, unhoused individuals, pregnant and parenting individuals, and/or at-risk children and youth.

- [High Impact Abatement Activity 4: Diversion of people with SUD from the justice system into treatment, including by providing training and resources to first and early responders \(sworn and non-sworn\) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction.](#)

Diversion is a term used to describe intervention approaches that redirect individuals with an SUD away from formal processing in criminal justice settings and into treatment, recovery, and/or other support services. Diversion strategies include pre-arrest, pre-arraignment, and pre-trial activities aimed at directing an individual towards a treatment or care program as an alternative to imprisonment. Activities related to interdiction or criminal investigation, apprehension, and processing are not considered diversion.

- [High Impact Abatement Activity 5: Interventions to prevent drug addiction in vulnerable youth.](#)

Intervention is a term used to define specific activities that reduce the risk of vulnerable youth developing an SUD. Vulnerable youth include but are not limited to youth in foster care, juvenile justice-impacted youth, youth from communities of color, and/or experiencing adversities related to socioeconomic status, gender, sexual orientation, mental health conditions, pregnant and parenting youth, and unhoused youth.

- [High Impact Abatement Activity 6 \(New\): The purchase of naloxone for local entities including for distribution and efforts to expand access to naloxone for opioid overdose reversals.](#)

Naloxone is a life-saving medication that reverses an opioid overdose while having little to no effect on an individual if opioids are not present in their system. Naloxone works by blocking the opioid receptor sites and reversing the toxic effects of the overdose. It has few known adverse effects and no potential for abuse. Naloxone comes in injectable and prepackaged nasal spray formulations.

Funds can be used to purchase naloxone for local entities, including, but not limited to:

- Harm reduction organizations, such as Syringe Service Programs;
- Community organizations, such as local opioid coalitions, youth substance use prevention organizations, or homeless service organizations;
- First responders, including fire, EMS, and police; and
- Schools, including K-12, local colleges and universities, or other educational institutions.

Funds may also be used to support evidence-based or evidence-informed programs that enhance access to naloxone for local distribution. This includes staff time for supporting navigation and access to naloxone.⁵ Strategies employed should focus on increasing availability and distribution of naloxone to first responders, overdose patients, individuals with SUD and their friends and family members, schools, community navigators and outreach workers, persons being released from incarceration, or other members of the general public.

⁵ Participating Subdivisions should ensure funds used to support staff time follow the indirect and administrative expense requirements listed in DHCS' Reasonable Administrative Costs Policy (Enclosure I).

Periods of Expenditure

Participating Subdivisions may roll over funds from year to year or combine their allocations from multiple opioid settlements to pay for allowable expenditures. Funds from the CA Abatement Accounts Fund must be expended or encumbered within five (5) years of receipt, or seven (7) years of receipt for capital outlay projects, as specified in the California State-Subdivision Agreements. Encumbrance in this instance refers to funds obligated or committed for a specific future opioid remediation expense. Funds not expended or encumbered within the five-year or seven-year timeframes must be reported in writing to DHCS and returned to the state. DHCS is creating a formal process for Participating Subdivisions to indicate funds that must be returned to the state and will post guidance to the DHCS Opioid Settlements webpage.

Reasonable Administrative Costs

The National Opioid Settlement Agreements allow for reasonable administrative expenses for opioid remediation activities as qualifying expenditures. Funds received from the CA Abatement Accounts Fund may be used to cover indirect and administrative expenses pursuant to DHCS' Reasonable Administrative Costs Policy (Enclosure I).

Training Related to Opioid Remediation

Exhibit E lists several training activities, including opioid related training for first responders, healthcare providers and behavioral health practitioners, law enforcement, government personnel, school staff, and community support groups. Participating Subdivisions may use funds received from the settlements on training activities if at least 50% of the content pertains to an eligible training activity designated in Exhibit E.

Participating Subdivisions must also ensure that:

- Expenses are proportional to the time staff spend in training;
- Expenses are not recovered as indirect costs (i.e., double charging); and
- Expenses are delineated by fund source (e.g., Janssen vs. Distributors Settlement) and fund type (e.g., CA Abatement Accounts Fund vs. CA Subdivision Fund) until all funds from the settlements are fully expended, and for one year thereafter.

CA ABATEMENT ACCOUNTS FUND UNALLOWABLE EXPENDITURES

Funds received from the CA Abatement Accounts Fund must be used for future remediation of the opioid crisis, and efforts should be focused on community-based public health approaches related to prevention, treatment, recovery, and/or harm reduction. Funded efforts must relate to one or more of the areas listed within Exhibit E pursuant to

the relevant National Opioid Settlement Agreements and California State-Subdivision Agreements.⁶

Examples of unallowable expenditures include, but are not limited to:

- Paying the salaries and benefits of individuals not performing opioid remediation activities;
- Covering indirect costs not in alignment with DHCS' Reasonable Administrative Costs policy;
- Paying for law enforcement activities or equipment (e.g., vehicles, apprehension or restraint devices, drug checking devices, etc.) related to interdiction or criminal investigation, apprehension, and processing;
- Covering travel costs (e.g., mileage, fuel, etc.) that are not directly related to an eligible opioid remediation activity;
- Paying for non-FDA approved medications;
- Paying for treatments not related to the treatment of SUD or mental health conditions;
- Paying for medical services or equipment not related to the treatment of SUD or mental health conditions (e.g., automated external defibrillators, first aid kits, extrication equipment, protective equipment);
- Developing infrastructure or investing in equipment not directly related to prevention, treatment, harm reduction or recovery services; and
- Paying for, investing in, or implementing service activities not included in CA HIAAs or Exhibit E, or other expenses not directly related to opioid remediation activities.

OPIOID SETTLEMENT ACCOUNTING

Participating Subdivisions receiving funds from the CA Abatement Accounts Fund must track all deposits, reallocations, and expenditures. Each Participating Subdivision is responsible solely for the allocation(s) it receives. A county is not responsible for oversight, reporting, or monitoring of payments received by a city within that county. Unless otherwise exempt, Participating Subdivisions' expenditures and uses of funds from the opioid settlements will be subject to the normal budgetary and expenditure process of the Participating Subdivision. DHCS recommends that Participating Subdivisions follow Generally Accepted Accounting Principles for accounting methods and practices for allocations received.

⁶ Per the California State-Subdivision agreements, monies from the CA Abatement Accounts Fund will be used for future opioid remediation in one or more of the areas described in the List of Opioid Remediation Uses in Exhibit E. Interest earned from monies placed in an interest-bearing account must also be used towards eligible opioid remediation activities.

Participating Subdivisions may choose to place funds received from the CA Abatement Accounts Fund in an interest-bearing account, however, this is not required.

Participating Subdivisions that choose to place their allocations in an interest-bearing account must track and report on all interest earned. Participating Subdivisions must apply any earned interest towards eligible opioid remediation activities, as listed in Exhibit E.

Record Keeping

Participating Subdivisions must maintain books, records, documents, and other relevant evidence, including local accounting procedures and practices, to properly reflect direct and indirect costs related to their activities funded by the CA Abatement Accounts Fund. Participating Subdivisions should preserve these records for a minimum of five years after the expenditure is reported to DHCS. Participating Subdivisions should be able to delineate monies by fund source (e.g., Janssen vs. Distributors Settlement) and fund type (e.g., CA Abatement Accounts Fund vs. CA Subdivision Funds). If DHCS determines that a CA Participating Subdivision's use of CA Abatement Accounts Funds is inconsistent with eligible uses, records may be requested as part of a meet and confer, an audit, or legal action. In addition, Participating Subdivisions should consider tracking outcomes and other evaluation metrics related to activities funded by the settlements as further evidence of their opioid remediation efforts.

OPIOID SETTLEMENT REPORTING

The California State-Subdivision Agreements require that each Participating Subdivision receiving funds from the CA Abatement Accounts Fund prepare written reports at least annually regarding the use of those funds, until those funds are fully expended and for one year thereafter. Participating Subdivisions must certify that all funds received through the settlements have been used in compliance with the National Opioid Settlement Agreements.

DHCS created an online form to collect reports from Participating Subdivisions regarding the use of settlement funds. The online form is required to be utilized by Participating Subdivisions by the first reporting date of September 30, 2023, for all settlement funds received in fiscal year (FY) 2022/23 and ongoing each FY thereafter. Participating Subdivisions are responsible to report on activities funded through their opioid settlement allocations, including any activities implemented by subrecipients. Subrecipients may not complete or submit reports through the online form. It is the responsibility of the Participating Subdivision to develop a process for obtaining all information necessary from subrecipients to comply with their annual reporting requirements.

Documentation required for a Participating Subdivision to complete the DHCS reporting form includes, but is not limited to:

- Allocations and expenditures by settlement (e.g., Janssen Settlement or the Distributors Settlement) and the specific fund (e.g., California Subdivision Fund or the California Abatement Accounts Fund);
- An account of expenditures by program/activity;
- An indication of how each program/activity correlates to the California HIAA and/or Exhibit E of the National Opioid Settlement Agreements;
- A brief narrative summary to provide background on the purpose of each program/activity;
- An account of any interest earned on the settlement fund allocations, if applicable; and
An account of amounts reallocated to, or received from, other Participating Subdivisions, if applicable

If a Participating Subdivision received any funds directly from the National Opioid Settlement Administrator, it must report on those funds even if it later decides to reallocate those funds to another Participating Subdivision. Reallocations do not include funds automatically redirected to a county due to a local city not opting into direct payment.

Participating Subdivisions interested in rolling over or encumbering funds need to indicate this plan during reporting periods with DHCS.

Initial reporting timeframes for Participating Subdivisions are listed in Table 2.

Table 2. Reporting Timeframes for Opioid Settlement Funds

Month/Year	Milestone
Sep 30, 2023⁷	Expenditure reports for SFY 2022-2023 due
Sep 30, 2024	Expenditure reports for SFY 2023-2024 due
Sep 30, 2025	Expenditure reports for SFY 2024-2025 due
Sep 30, 2026	Expenditure reports for SFY 2025-2026 due
Sep 30, 2027	Expenditure reports for SFY 2026-2027 due

⁷ For the first reporting period covering SFY 2022-2023, DHCS will allow a one-time grace period for expenditure form submissions and will accept submissions until October 31, 2023.

Upon receiving all reports from Participating Subdivisions, DHCS will prepare an annual state report regarding the use of the settlement funds until those funds are fully expended and for one year thereafter. This report will be made publicly available on the DHCS website. In each year in which DHCS prepares an annual report DHCS will also host a meeting to discuss the annual report and the Opioid Remediation activities being carried out by the State and Participating Subdivisions.

DHCS Report Review

DHCS will review reporting forms submitted by Participating Subdivisions to verify compliance with the National Opioid Settlement Agreements and California State-Subdivision Agreements. DHCS may contact Participating Subdivisions to clarify information provided during annual reporting periods and request corrections to inconsistencies in reporting. Participating Subdivisions instructed to amend their reports will receive technical assistance to ensure proper documentation of their expenditures. Failure to provide clarifying information or correct inconsistencies in financial reporting may result in a meet and confer with DHCS, an audit, or legal action.

Failure to Report

Participating Subdivisions that do not submit their reports by the prescribed deadlines will receive an electronic notice via email from DHCS regarding the missing report. The electronic notice will be sent to the Participating Subdivision's primary contact. It is the responsibility of the Participating Subdivision to ensure their primary contact's information is correctly listed with DHCS. Failure to submit a timely report may result in a meet and confer with DHCS, an audit, or legal action.

OPIOID SETTLEMENT TECHNICAL ASSISTANCE

DHCS offers technical assistance to Participating Subdivisions interested in reviewing eligible opioid remediation activities, expense tracking, and reporting requirements. Participating Subdivisions interested in receiving guidance from DHCS must follow the process listed below to request technical assistance. Any guidance provided by DHCS does not indicate approval of expenditures or expense accounting under these settlements.

Requesting Technical Assistance

1. Participating Subdivisions should first consult with their city attorney, county counsel, and/or outside counsel representing their city or county on opioid-related litigation.
2. If questions remain, Participating Subdivisions must review the California Opioid Settlements Allowable Expenditures resource, the Allocating Opioid Settlement Funds: Guiding Principles for Participating Subdivisions resource, and the

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California Opioid Settlement Funds Frequently Asked Questions resource prior to submitting a request.⁸

3. Participating Subdivisions interested in receiving technical assistance from DHCS should complete the Opioid Settlement Technical Assistance Form and send their completed form to DHCS at OSF@dhcs.ca.gov.
4. DHCS will confirm receipt of the Technical Assistance Form. If a Participating Subdivision does not receive a confirmation email after three (3) business days, they should follow up with DHCS to ensure the form was received.
5. DHCS will review the Technical Assistance Form and respond to the Participating Subdivision's question(s). If DHCS determines that more information is needed, the Participating Subdivision will receive an email containing clarifying questions and/or a request for a Technical Assistance meeting.
6. The Participating Subdivision must respond to DHCS' question(s) via email. If a Technical Assistance meeting is scheduled, DHCS and the Participating Subdivision will meet and discuss the Participating Subdivision's inquiry. DHCS and the Participating Subdivision will continue to follow up as needed.

QUESTIONS

Information about use and reporting of opioid settlement funds can be found on the DHCS Opioid Settlements webpage. Questions can be directed to OSF@dhcs.ca.gov.

Information about opioid litigation and settlement participation can be found on the California Attorney General's Opioid Settlements webpage. Questions can be directed to OpioidSettlement-LocalGovernment@doj.ca.gov.

Information about settlement payments can be found on the National Settlement Administrator's [webpage](#). Questions can be directed to DirectingAdministrator@NationalOpioidOfficialSettlement.com

Sincerely,

Original signed by

Marlies Perez, Chief
Community Services Division

Enclosures

⁸ Opioid Settlement Fund resource documents created by DHCS can be found on the [California Opioid Settlements](#).