



DATE: January 4, 2024

Behavioral Health Information Notice No.: 24-003

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 Programs
California Association of Social Rehabilitation Agencies
California Consortium of Addiction Programs and Professionals
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 Association of California
County Drug & Alcohol Administrators
The League of California Cities

SUBJECT: California Plaintiff Subdivision Use of Opioid Settlement Funds Allocated from the California Subdivision Fund

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

REFERENCE: National Opioid Settlement Agreements and California State-Subdivision Agreements with pharmaceutical distributors McKesson, Cardinal Health, and AmerisourceBergen, opioid manufacturers Teva, Allergan, Janssen Pharmaceuticals and Johnson & Johnson, 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 Teva and Allergan, 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 Teva, Allergan 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 funds 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 settlement agreements and 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). To ensure funds are used for opioid response and remediation efforts, 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

¹ Cities and Counties that are eligible to receive monies from the CA Abatement Accounts Fund are listed in Appendix 1 to the 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 High Impact Abatement Activities (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 Subdivisions and Plaintiff Subdivisions.

³ Plaintiff Subdivisions are those cities and counties that are allocated a share of the CA Subdivision Fund. A Plaintiff Subdivision's allocated share of the CA Subdivision Fund can be found under the Plaintiff Subdivision Percentage of Appendix 1.

Plaintiff Subdivisions are required to coordinate with the Settlement Fund Administrator to ensure receipt of the allocated amounts. Plaintiff 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.⁴

This guidance letter pertains to Plaintiff Subdivisions that are receiving funds from the CA Subdivision Fund through California's Opioid Settlements. Plaintiff Subdivisions are defined as Subdivisions located in California that filed a lawsuit, on behalf of the Subdivision and/or through an official of the Subdivision on behalf of the People of the State of California, against one or more Opioid Defendants prior to October 1, 2020. California's Opioid Settlements refer to opioid settlements with Janssen, the Distributors, Teva, Allergan, and the Pharmacies, and any future settlements which follow a similar structure. This guidance does not pertain to funds received from bankruptcy matters such as Mallinckrodt plc, which will be addressed through separate guidance.

Plaintiff Subdivisions should contact their city attorney/county counsel or outside counsel working on opioid matters for additional guidance pertaining to the CA Subdivision Fund.

CA SUBDIVISION FUND ALLOWABLE EXPENDITURES

Funds received from the opioid settlements, including the CA Subdivision Fund, are intended to be used toward opioid remediation. The National Opioid Settlement Agreements define "opioid remediation" as "care, treatment, and other programs and expenditures 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". Pursuant to the California State-Subdivision Agreements, allocations from the CA Subdivision Fund shall be used to fund future opioid remediation efforts and to reimburse past opioid-related expenses, which may include fees and expenses related to opioid litigation.

Plaintiff Subdivisions may roll over funds from year to year or combine their allocations from multiple opioid settlements to pay for allowable expenditures. While the California State Subdivision Agreements impose time restrictions on when funds from the CA Abatement Accounts Fund must be expended or encumbered, the agreements do not impose similar time restrictions on funds from the CA Subdivision Fund. Plaintiff Subdivisions that continue to have questions regarding periods of expenditure for funds from the CA Subdivision Fund should contact their city attorney/county counsel or outside counsel working on their opioid-related matters. Further, Plaintiff Subdivisions

⁴ Resources for Plaintiff Subdivisions can be found on the [California Opioid Settlements](#) webpage.

combining allocations from the CA Subdivision Fund and CA Abatement Accounts Fund must ensure that expenditures are eligible under each fund. For instance, Plaintiff Subdivisions may not use funds from the CA Abatement Accounts Fund to pay for past opioid litigation expenses, pursuant to the California State-Subdivision Agreements.

Plaintiff Subdivisions with questions regarding their use of the CA Subdivision Funds for opioid remediation activities may contact DHCS for additional guidance. Plaintiff Subdivisions with questions regarding their use of the CA Subdivision Fund for litigation expenses should refer to their city attorney/county counsel or outside counsel handling their opioid-related matters.

Reasonable Administrative Costs

The National Opioid Settlement Agreements allow for reasonable related administrative expenses for opioid remediation activities as qualifying expenditures for the CA Subdivision Fund. Plaintiff Subdivisions are encouraged to adhere to the policies listed in DHCS' Reasonable Administrative Costs policy, which is Enclosure 1 of BHIN 24-002, California Participating Subdivision Use of Opioid Settlement Funds Allocated from the California Abatement Accounts Fund.

OPIOID SETTLEMENT ACCOUNTING

Plaintiff Subdivisions receiving funds from opioid settlements must track all deposits, reallocations, and expenditures. Each Plaintiff 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, Plaintiff Subdivisions' expenditures and uses of funds from the opioid settlements will be subject to the normal budgetary and expenditure process of the Plaintiff Subdivision. DHCS recommends that Plaintiff Subdivisions follow the Generally Accepted Accounting Principles for accounting methods and practices for allocations received from opioid settlements.

Reallocating Funds

While there is no option for Plaintiff Subdivisions to opt out of receiving payments from the CA Subdivision Fund, Plaintiff Subdivisions may reallocate their funds to another Plaintiff Subdivision after receiving payment from the Settlement Fund Administrator. Plaintiff Subdivisions that choose to reallocate their funds must report these reallocations during DHCS reporting periods. Plaintiff Subdivisions that accept reallocated funds must report on the amount received and relevant expenditures during DHCS reporting periods.

OPIOID SETTLEMENT REPORTING

The California State-Subdivision Agreements require that all Participating Subdivisions receiving funds from the settlements prepare written reports at least annually regarding the use of those funds, until those funds are fully expended and for one year thereafter. This reporting requirement applies to funds received from the CA Subdivision Fund by Plaintiff Subdivisions. Plaintiff Subdivisions must complete reporting with DHCS, certifying that all funds received through the settlements have been used in compliance with the National Opioid Settlement Agreements and the California State-Subdivision Agreements.

DHCS Reporting

DHCS has created an online form to collect reports from Plaintiff Subdivisions regarding the use of settlement funds.⁵ The online form is required to be utilized by Plaintiff 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. Plaintiff Subdivisions are responsible for reporting on opioid remediation activities funded through their settlement allocations, including any opioid remediation activities implemented by subrecipients. Subrecipients may not complete or submit reports through the online form. It is the responsibility of the Plaintiff Subdivision to develop a process for obtaining all information necessary from subrecipients to complete their annual reporting requirements.

Documentation required for a Plaintiff 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 opioid remediation program/activity correlates to the areas described as Exhibit E of the National Opioid Settlement Agreements, if applicable;
- A brief narrative summary to provide background on the purpose of each program/activity;
- An account of amounts directly reallocated to, or received from, other Plaintiff

⁵ Plaintiff Subdivisions that also receive funds from the CA Abatement Accounts Fund will report on the use of those funds in the same form used for CA Subdivision Fund reporting. Plaintiff Subdivisions will be required to report on allocations and expenditures by settlement and fund type.

- Subdivisions, if applicable⁶; and
- An account of non-opioid remediation expenditures,⁷ including how such funds were used.

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

Table 2. Reporting Timeframes for Initial Opioid Settlement Funds

Month/Year	Milestone
Sep 30, 2023⁸	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

Upon receiving all reports from Plaintiff Subdivisions, DHCS will prepare an annual state report regarding the use of the settlement funds, including expenditures from the CA Subdivision Fund, 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.

National Settlement Administrator Reporting

Plaintiff Subdivisions using monies from the CA Subdivision Fund for purposes that do not qualify as Opioid Remediation (as defined in the National Opioid Settlement

⁶ Amounts reallocated refers to CA Subdivision Funds a Plaintiff Subdivision distributes to, or receives from, another Plaintiff Subdivision after receipt of their allocation from the National Settlement Administrator.

⁷ Non-Opioid Remediation expenses include, but are not limited to, funds used to pay opioid- related attorneys' fees, investigation costs, or litigation costs. Plaintiff Subdivisions who choose to allocate CA Subdivision Fund payments toward non-Opioid Remediation purposes must complete bi-annual reporting with the Settlement Fund Administrator describing the use of those funds. Plaintiff Subdivisions can contact the Settlement Fund Administrator or visit the National Opioid Settlements [webpage](#) for more information on Non-Opioid Remediation Use reporting.

⁸ 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.

Agreements) must report these expenses to the relevant defendant and the Settlement Fund Administrator. Non-Opioid Remediation expenses include, but are not limited to, funds used to pay opioid-related attorneys' fees, investigation costs, or litigation costs. Plaintiff Subdivisions who choose to allocate CA Subdivision Fund payments toward non-Opioid Remediation purposes must complete bi-annual reporting with the Settlement Fund Administrator describing the use of those funds. Plaintiff Subdivisions can contact the Settlement Fund Administrator or visit the National Opioid Settlements [webpage](#) for more information on Non-Opioid Remediation Use reporting.

DHCS Report Review

DHCS will review reporting forms submitted by Plaintiff Subdivisions to verify compliance with the National Opioid Settlement Agreements and California State-Subdivision Agreements. DHCS may contact Plaintiff Subdivisions to clarify information provided during annual reporting periods and request corrections to inconsistencies in reporting. Plaintiff Subdivisions instructed to amend their reports will receive technical assistance to ensure proper documentation of their expenditures.

Failure to Report

Plaintiff 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 Plaintiff Subdivision's primary contact. It is the responsibility of the Plaintiff Subdivision to ensure their primary contact's information is correctly listed with DHCS.

OPIOID SETTLEMENT TECHNICAL ASSISTANCE

DHCS offers technical assistance to Plaintiff Subdivisions interested in reviewing opioid remediation activities, expense tracking, and reporting requirements. Plaintiff 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. Plaintiff 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, Plaintiff Subdivisions must review the California Opioid Settlements Allowable Expenditures resource, the Allocating Opioid Settlement Funds: Guiding Principles for Participating Subdivisions resource, and the California Opioid Settlement Funds Frequently Asked Questions (FAQs)

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resource prior to submitting a request.⁹

3. Plaintiff 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 Plaintiff 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 Plaintiff Subdivision's question(s). If DHCS determines that more information is needed, the Plaintiff Subdivision will receive an email containing clarifying questions and/or a request for a Technical Assistance meeting.
6. The Plaintiff Subdivision must respond to DHCS' question(s) via email. If a Technical Assistance meeting is scheduled, DHCS and the Plaintiff Subdivision will meet and discuss the Plaintiff Subdivision's inquiry. DHCS and the Plaintiff 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

⁹ Opioid Settlement Fund resource documents created by DHCS can be found on the California Opioid Settlements webpage: <https://www.dhcs.ca.gov/provgovpart/Pages/California-Opioid-Settlements.aspx>.