It has been 18 months since the final settlement of the long-awaited multidistrict litigation case 2804, the largest of the opioid litigation lawsuits against the manufacturers and the distributors, including McKesson Corp, AmerisourceBergen, and Cardinal Health, and the manufacturer/distributor Johnson & Johnson. Payments from the $26 billion deal began in May 2022 to 46 participating states and local jurisdictions and will continue over the next 18 years. Proceeds from litigation against generic drug manufacturers, consultants, and pharmacies will soon become available. The bankruptcy settlement of Purdue Pharma, which is now being reviewed by the US Supreme Court, could bring another $6 billion to the table. All told, how these funds will be spent is likely to be a $56 billion question.

Looming over the opioid settlement decisions are the memories of the tobacco Master Settlement Agreement of the 1990s when less than 3% of funds were used toward tobacco prevention and cessation programs. The majority of funds from the Tobacco Master Settlement were deposited into states’ general funds with no guidance or oversight on their expenditures. Dollars were used to fill budget gaps, fill potholes, and, in some instances, were used to subsidize tobacco farming. To avoid a repeat of this experience, many of the opioid settlements come with default guardrails requiring participating jurisdictions to spend at least 70% of the funding to address the present and future overdose and addiction crisis. These settlements, however, allow for spending up to 15% to reimburse past expenses related to the opioid epidemic and another 15% for other uses altogether. Whether 70% or 100% of the funds are used to save lives today and in the future, how specific funding decisions are to be made, and where the funds will go are all questions for the participating states and localities. Four key questions will determine whether these historic settlements make a meaningful difference in an epidemic still killing more than 100,000 US individuals per year from overdose.

Who Decides?

A portion of the funds will be allocated at the state level, and a portion at the local level; how much for each varies by state. To manage the process, some states have created oversight boards. Some of these boards will ultimately decide what programs are funded, whereas others only have advisory power with the final approvals being made by the governor or attorneys general’s offices. For some smaller jurisdictions, local employees may single-handedly decide what programs to fund. Scrutiny is appropriately increasing on who these decision-makers are and whether they have conflicts of interest.

A best practice is for states to convene groups working to address the harms of addiction and publicly share the details of fund distribution. In Colorado, for example, the Colorado Office of the Attorney General partnered on its disbursement strategy with a range of governmental and nonprofit organizations, including the Colorado Consortium for Prescription Drug Abuse Prevention, the Colorado Health Institute, Colorado Counties, Inc, and the Colorado Municipal League. A key component of Colorado’s strategy has been the development of the Colorado Opioid Settlement Memorandum of Understanding, which provided the framework for the disbursement of opioid settlement funds to 19 regions, local governments, an infrastructure fund, and a state fund.
How Transparent?

The settlements do not require public disclosures about the dollars to be spent on opioid remediation; they are only required to report on the up to 15% that may be used toward “other expenditures.” A best practice is to amend this default and make a formal declaration to publicly report 100% of their expenditures. For example, in New Jersey, the state’s Memorandum of Understanding between state and local governments requires the state to report annually to the public the expenditures from the states’ 50% share. Also, participating local governments must publicly report expenditures of their allocated half of the settlement funds.

Issues of transparency in Ohio made national news because the OneOhio Recovery Foundation, which is overseeing the state’s opioid settlement funds, was sued by Harm Reduction Ohio for not making its records publicly available. On the other end of the spectrum, Rhode Island’s Executive Office of Health and Human Services, which oversees 80% of the state’s settlement funds, designated a section of its existing website for all materials related to the opioid settlements. These materials include live streams and recordings of meetings, meeting materials including meeting minutes and slides, and proposed budgets and funding plans. Several other jurisdictions and locales are similarly building out their existing dashboard or planning new portals to track opioid settlement spending.

What Will Be Funded?

A best practice for jurisdictions is to integrate spending from the opioid settlement into a broader strategy that considers local needs, available federal grant funds, and policies related to health insurance, law enforcement, addiction treatment, and harm reduction. For example, a county in a state that did not expand Medicaid for adults under the Affordable Care Act may need to spend more funds on direct treatment services than a county in a state that did expand Medicaid and consequently has a low rate of uninsured individuals. Such a county might instead direct more funding to services, such as harm reduction, that are difficult to fund through other existing mechanisms.

As another example, Minnesota has integrated settlement funds into existing infrastructure to blend resources. The state’s Opioid Epidemic Response Advisory Council oversees this process. Other states and local jurisdictions, like Nevada and Wisconsin, have funded new statewide needs assessments, or coordinated stakeholder listening sessions and gathered local feedback to ensure that opioid settlement spending is informed by data and local experience.

Experts, including public health scholars and substance abuse experts, have put together several guides and evidence-based strategies to help states and localities make funding decisions, but there is no requirement to use them. The engagement of knowledgeable health professionals can help direct funding to effective efforts, such as access to all forms of medication for addiction treatment approved by the US Food and Drug Administration, harm reduction services, and peer support services. Equally important are advocates who are working to avoid scenarios where settlement funds are directed toward programs and institutions that may not make a difference or may actually be harmful. Examples of such expenditures include those for abstinence-based education, family separation through the child welfare system, and equipment for law enforcement.

How Will Progress Be Measured?

It is not too early to ask about plans for monitoring and evaluating the use of the funds. In fact, a proactive plan for tracking outcomes can help to inform requests for proposals and other infrastructure and staffing decisions. In North Carolina, a partnership between the University of North Carolina Injury Prevention Research Center, the North Carolina Association of County Commissioners, and the North Carolina Department of Health and Human Services has created a
dashboard in which the public will be able to track the effect of each dollar used by counties from the opioid settlements. Each jurisdiction in North Carolina is required to complete an annual report that outlines what programs were funded, how well the intervention performed, and how the program has affected individuals or the community. Since the opioid settlement funds will be dispersed over the next 18 years, outcome measures can inform redirection of funding over time.

At this early stage, state and local jurisdictions can use these 4 questions as a pressure test of their current process. If states’ plans are not clear on decision-making power, transparency, funding investments, and oversight, they run the risk of missing a critical opportunity. Now is the moment to take first steps in the right direction.

ARTICLE INFORMATION
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