Distribution of Abatement Funds Arising From US Opioid Litigation

The US overdose epidemic has led to extensive litigation by states and localities against opioid manufacturers, distributors, and pharmacies.1 The largest settlement in this litigation to date includes the major pharmaceutical distributors in the US, along with the pharmaceutical manufacturer Janssen, which provides up to $26 billion in abatement over an 18-year period.2,3 In addition, Teva recently reached a tentative $4.25-billion settlement over opioid litigation, Purdue remains in bankruptcy with the prospect of an approximately $6-billion settlement as part of the company’s restructuring, and bankruptcy proceedings against manufacturers Mallinckrodt and Insys are underway.

The billions of dollars arising from abatement litigation must be divided among states. One approach to this challenge would be to distribute funds in proportion to counts of adverse outcomes, such as the number of overdose deaths, in each state. The argument for this strategy would be that funds should flow based on the numbers of individuals affected or at risk.

An alternative approach would divide funds based on the intensity of the epidemic’s impact in each state, as reflected by rates of adverse outcomes. The rationale would be that the harms of the overdose epidemic do not just accrue to individuals, one at a time; states, and the agreement is unclear about the specific approach used.

On one hand, the agreement identifies as key factors (1) the total volume of opioids; (2) number of overdose deaths; and (3) number of individuals with opioid use disorders, suggesting it is based on counts of these harms across states. At the same time, however, the agreement states that allocation will be adjusted “to reflect the severity of impact because the oversupply of opioids had more deleterious effects in some locales than in others;”7 indicating a role for rates. “Ultimately,” the settlement concludes ambiguously, “the model allocates settlement funds in proportion to where the opioid crisis has caused harm.”

While the formula governing the distribution of abatement funds is unclear, the distribution of dollars across states has been published.2,3 States’ shares of funds from the distributor settlement range from 0.2% for North Dakota to 9.9% for California, with a mean (median) distribution of 2.5% (1.5%) and an IQR of 0.6% to 2.4%. The distribution of funds in the Janssen agreement are highly similar, although, because not all states participated in the litigation in the same way, they include West Virginia and accord Oklahoma a smaller share than in the distributor case.

There are other models that have been used to divide money across states to address opioid-related harms. In 2018, Congress provided $1 billion to states for prevention, treatment, and recovery supports as part of the State Opioid Response grant program. Congress instructed the Substance Abuse and Mental Health Services Administration (SAMHSA) to divide the funding using “the most objective and reliable measure of drug use and drug-related deaths,” with the additional requirement to set aside and distribute 15% of funds to “the states with the highest mortality rate related to opioid use disorders.”8 Moreover, each state could not receive less than $4 million, or 0.4%.8

In March 2022, litigating parties announced terms governing the use of abatement funds arising from the $26-billion settlement with pharmaceutical distributors and Janssen.6 According to these terms, the funds will first be divided among states. Then, within states, funds will be distributed between the state itself and localities. However, the parties did not release the formula used to calculate the distribution of funds across communities, towns, counties, and states experience larger challenges as a greater share of their population is affected. In many small towns, for example, local infrastructure is insufficient to meet current needs, and thus new treatment clinics must be built, new recovery programs launched, and new vocational programs deployed.4,5

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SAMHSA’s allocation, in contrast with the distributor allocation, is moderately associated with the overdose death rate, while panels G and H indicate that neither model’s allocation is correlated with prescribing rates. While these analyses are of the distributor settlement alone, analyses of the allocation for the Janssen settlement yield virtually identical conclusions, as do analyses that vary the years (2018-2022, 2018, or 2019 alone) used to derive estimates of the statistics used in eFigure 1 in the Supplement.

Although the differences between the distributor and SAMHSA’s approaches may seem modest, the resultant differences in the moneys allocated to states are not, with states standing to gain, or lose, hundreds of millions of dollars as a result. eFigure 2 in the Supplement compares the allocation of abatement funds as outlined in the distributor agreement with the hypothetical allocation of the $21 billion to the same states using SAMHSA’s approach as others have recommended, transparency can and should extend beyond distribution of funds to the use of funds and to evidence of the impact of abatement investments. Fortunately, there is an enormous body of evidence on which to base abatement interventions and remarkable scientific consensus regarding what needs to be done.9

ARTICLE INFORMATION
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REFERENCES