

OPIOID SETTLEMENT FUNDS STATE BRIEF

MARCH 2021



BACKGROUND

As the opioid overdose epidemic and addiction crisis rage across the United States, state, local, and tribal governments have begun levying lawsuits against pharmaceutical and drug distribution companies alleging that they fueled the crisis. The lawsuits seek to recover costs associated with the opioid overdose epidemic. While a majority of these local lawsuits have centralized into the [National Prescription Opiate Litigation \(MDL 2804\)](#), many other cases are continuing separately. Central to the lawsuits are [claims](#) that companies marketed opioids in a misleading way, downplayed the risks and exaggerated the benefits, and/or engaged in reckless distribution practices.

To the extent these matters end with settlements, it will not be the first time that states have received significant funds from legal settlements from companies that manufacture drugs. In 1998, 46 state Attorney's General and major tobacco companies entered into a settlement in which the tobacco companies agreed to pay a minimum of \$206 billion to states over the first 25 years of the agreement. Unfortunately, to date, [less than 3 percent](#) of all settlement dollars and generated funds from tobacco taxes have been allocated toward the funding of state and local tobacco control programs. Rather, state legislators used the funds to reduce state debt and finance other, unrelated projects such as infrastructure development. In order to avert a similar situation, some state legislators have begun introducing legislation that would direct funds from today's opioid-related litigation to a segregated opioid settlement fund, which could only be used to fund prevention, treatment, harm reduction, and/or recovery efforts.

ASAM POSITION

- Settlement funds should be used to expand the addiction treatment workforce, increase adoption of clinical best practices, and improve enforcement of mental health parity and consumer protection laws at the state level, as more fully described in this [White Paper](#), co-authored by ASAM.
- ASAM has endorsed the [Principles for the Use of Funds From the Opioid Litigation](#), developed by faculty at John Hopkins University. State opioid settlement fund legislation, should emphasize the following five principles:
 - Spend money to save lives
 - Use evidence to guide spending
 - Invest in youth protection
 - Focus on racial equity
 - Develop a fair and transparent process for deciding where to spend the funding
- Any board or other organization established to provide oversight and guidance on the use of opioid settlement funds should include addiction medicine specialists among its membership.
- States, local, and tribal governments should be cautious about agreeing to settlements that include in-kind medications for addiction treatment in lieu of funds, especially since these medications are often covered by an insurance company or health plan.



ASAM American Society of
Addiction Medicine

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FACTS

- The White House Council of Economic Advisers [estimated](#) the opioid crisis alone cost the United States \$696B in 2018 – or 3.4 percent of GDP – and more than \$2.5T from 2015 to 2018.
- While most opioid-related lawsuits will be settled out of court, the case of [Oklahoma v. Johnson and Johnson](#) did proceed to a bench trial in which the court ruled that Johnson & Johnson had engaged in activities which amounted to a public nuisance under Oklahoma law. Johnson and Johnson was ordered to pay \$572 million in damages.
- In September 2019, Purdue Pharma, the manufacturer of OxyContin, [filed](#) for Chapter 11 bankruptcy in an attempt to resolve litigation brought against it by state and local governments, as well as individuals. As part of a proposed plan, Purdue would pay \$10 billion to various parties.
- A \$26 billion [settlement](#) among thousands of state and local governments, as well as McKesson, Cardinal Health, AmerisourceBergen and Johnson & Johnson, is nearing finalization. These discussions have come under [recent scrutiny](#) due to the potential of settlement tax breaks.
- As of March 2021, Massachusetts is the only state to have enacted [legislation](#) creating an opioid settlement fund. [New York](#), [Virginia](#), [Illinois](#), [Kansas](#), and [Kentucky](#) are currently considering their own opioid settlement fund legislation.

RESOURCES

- [Principles for the Use of Funds From the Opioid Litigation](#)
- [Address Access to Care in the Opioid Epidemic and Preventing a Future Recurrence](#)
- [Your Guide To The Massive \(And Massively Complex\) Opioid Litigation](#)
- [Parties involved in opioid settlement litigation](#)
- [How Not to Spend an Opioid Settlement](#)
- [Where Science Says to Spend Any U.S. Opioid Settlement Money](#)
- [Evidence Based Strategies for Abatement of Harms from the Opioid Epidemic](#)
- [From the War on Drugs to Harm Reduction: Imagining a Just Response to the Overdose Crisis](#)

