

MEMORANDUM

From: Iowa Attorney General's Office
DATE: December 30, 2022
RE: Opioid Settlement Agreements

1) Summary of the Opioid Settlement Agreements

As of the date of this memo, settlement agreements resolving opioid-related legal claims have been finalized with the following Defendants:

1. Pharmaceutical Distributors: AmeriSource Bergen, Cardinal Health, and McKesson Corporation
2. Johnson & Johnson/Janssen
3. Mallinckrodt
4. McKinsey & Co.

The first three agreements take the form of Consent Judgments entered in Polk County District Court. The fourth agreement with Mallinckrodt plc is one component of the company's bankruptcy plan, which was approved by the U.S. Bankruptcy Court in the District of Delaware and became effective in June 2022.

In addition to these four agreements, the State's claims against Purdue Pharma and related companies have been resolved through a bankruptcy plan approved by the U.S. Bankruptcy Court for the Southern District of New York. However, because that plan is the subject of an appeal pending before the Second Circuit Court of Appeals, the status of that resolution is unclear.

The State has also recently signed onto five additional settlement agreements resolving opioid-related legal claims with the following companies:

1. Teva
2. Allergan
3. Walmart
4. Walgreens
5. CVS

It is anticipated these agreements will be presented to Iowa subdivisions for joinder in early 2023 and then, assuming sufficient participation, will be finalized by mid-2023.

Finally, the State is also a creditor in the bankruptcy filed by opioid manufacturer Endo International plc, in August 2022. A multistate group reached an agreement with Endo and some lienholders prior to that filing to resolve State claims against the company. However, that agreement must be approved by the Bankruptcy Court in the context of an overall bankruptcy plan, which has not yet been finalized.

2) Uses of the Settlement Funds

In Iowa, all opioid settlement fund must be used for future Opioid Remediation based on the requirements of the settlement agreements, the Mallinckrodt bankruptcy plan, and the Iowa Memorandum of Understanding, as explained further below.

a. Requirements of the Distributors' and Janssen Settlement Agreements

The Distributors' and Janssen settlement agreements require that at least 85% of the settlement funds¹ be used for Opioid Remediation.² "Opioid Remediation is defined as

Care, treatment, and other programs and expenditures....designed to (1) address the misuse and abuse of opioid programs, (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. Exhibit E provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation.³ Qualifying expenditures may include reasonable related administrative expenses.⁴

Further, the agreements require that a State-Subdivision Agreement governing allocation of the settlement funds must require that "at least seventy percent (70%)" of the amounts used for Opioid Remediation, "be used solely for future Opioid Remediation"⁵ (emphasis added).

If a State or Subdivision uses any of the 15% of its Abatement Funds for purposes other than Opioid Remediation, it is required to identify those amounts and report them to the Settlement Fund Administrator and the settling companies. The Agreements state that such use is disfavored and that it is the intent of the Parties that such reporting, "shall be available to the public."⁶

Similar requirements are included in the pending settlement agreements with Teva, Allergan, CVS, Walgreens and Walmart.

The Mallinckrodt Bankruptcy Plan similarly requires that funds paid to public creditors be used for opioid abatement. Funds paid through the Mallinckrodt matter are managed by the National Opioid Abatement Trust (NOAT) II under Trust Distribution Procedures (TDPs) approved by the Bankruptcy Court. The TDPs require that 100% of the funds paid to public creditors, such as the State and the Subdivisions, be used for "approved purposes" to abate the opioid crisis.⁷ Approved purposes are identified on Schedule B of the NOAT II TDPs, which is

¹ This requirement does not apply to funds designated for private, outside counsel attorneys' fees and costs.

² See Distributors Settlement [Agreement](#) (DSA), Section V.B.1; Johnson & Johnson/Janssen Settlement [Agreement](#) (JSA), Section V.B.1.

³ Exhibit E is attached to this memorandum for convenience.

⁴ DSA Section I.SS; JSA Section SS.

⁵ DSA Section V.D.1; JSA Section V.D.1.

⁶ DSA Section V.B.2; JSA V.B.2.

⁷ National Opioid Abatement Trust (NOAT) II Trust Distribution Procedures (available [here](#)).

identical to Exhibit E in the settlement agreements. Unlike the settlement agreements, there is no allowance for any settlement funds to be used for anything other than abatement activities.

b. Requirements of the Iowa MOU

In addition to the settlement agreements and Mallinckrodt bankruptcy plan, in December 2021 the State of Iowa and its counties and larger cities have entered into a Memorandum of Understanding ([MOU](#)) governing the allocation of opioid settlement funds among them. This functions as a “State Allocation Agreement” under the agreements and bankruptcy plan.

Like the agreements and bankruptcy plan, Iowa’s MOU imposes requirements on the use of the settlement funds. Specifically, Paragraph B.7 of the Iowa MOU requires that all the Abatement Funds distributed to the State and Subdivision shares (aside from funds subject to the Iowa Backstop Fund) be used for Opioid Remediation expenditures incurred after the MOU’s Effective Date.

Additionally, Paragraph B.8 of the MOU requires that at least 75% of the Abatement funds be used for the “Core Strategies” listed on Exhibit E, and allows 25% of the funds to be used for other permitted purposes.

c. Use of Settlement Funds for Ineligible Purposes is Prohibited

Under the settlement agreements, the Defendant companies may seek to enforce the agreements if they believe one or more States is not complying with the 85% threshold described above. The agreements contemplate potential remedies for such a breach to include the Defendants seeking to reduce their national payments by a certain amount or seeking to reduce payments to specific States and Subdivisions that are out of compliance with the spending restrictions.⁸ Defendants could bring such an enforcement action in an Iowa District court.

The agreements also allow a Subdivision to enforce the terms against a Settling State based upon an allegation that the State’s uses of the Abatement Funds are inconsistent with Exhibit E, in the absence of a State-Subdivision Agreement.⁹ A State can enforce against a Subdivision for the same reason.¹⁰ However, because Iowa has a State-Subdivision MOU, the State is likely not subject to that requirement.

Under the Mallinckrodt Bankruptcy Plan, the NOAT II Trustees are charged with ensuring compliance with the TDPs and monitoring for compliant use of the settlement funds.

⁸ DSA Section VI.C.2; JSA VI.C.2.

⁹ DSA Section VI.D.1; JSA VI.D.1.

¹⁰ DSA Section VI.D.2; JSA Section VI.D.2.

3) Amount of Settlement Funds

Below is a chart summarizing the maximum settlement payments the State of Iowa and its Subdivisions can expect to receive over the term of each agreement. It is important to note the following regarding these figures:

- These figures assume full participation by all eligible Iowa counties and cities in non-finalized settlement agreements.
- The overall amount received by Subdivisions in non-bankruptcy settlements will be reduced by withholding of up to 15% for private attorneys' fees, pursuant to the terms relating to creation of the Iowa Backstop Fund in the MOU.
- The figures in the starred settlements are estimates and are less certain because they are part of complex bankruptcy resolutions.
- Of the McKinsey funds, \$600,350.70 will be received in fiscal years 2023-2025 and paid into the Opioid Settlement Fund (OSF) created under Iowa Code Section 12.51. The remaining \$4,066,928.30 is allocated to the Consumer Education and Litigation Fund (pursuant to Iowa Code Section 714.16C) because it was received in fiscal years 2021-2022, prior to the passage of H.F. 2537.

	Last Fiscal Year of Payment Term (No. Years)	(A) Maximum State Share	(B) Maximum Subdivision Share	(C) Maximum Iowa Share (A + B)
Allergan	2029 (7)	\$ 6,966,121.16	\$ 6,674,313.67	\$ 13,640,434.83
CVS	2033 (10)	\$ 16,140,596.15	\$ 15,874,095.13	\$ 32,014,691.29
Distributors	2039 (18)	\$ 73,987,790.02	\$ 70,313,064.68	\$ 144,300,854.70
Endo	TBD			
J&J/Janssen	2032 (11)	\$ 16,944,084.63	\$ 16,229,950.01	\$ 33,174,034.64
Mallinckrodt*	2031 (9)	\$ 3,917,573.10	\$ 3,917,573.10	\$ 7,835,146.19
McKinsey	2025 (5)	\$ 4,667,279.00	\$ -	\$ 4,667,279.00
Purdue*	TBD (9)	\$ 12,500,000.00	\$ 12,500,000.00	\$ 25,000,000.00
Teva	2036 (13)	\$ 13,593,036.56	\$ 13,282,084.94	\$ 26,875,121.50
Walgreens	2037 (15)	\$ 19,163,802.42	\$ 19,104,584.53	\$ 38,268,386.95
Walmart	2023 (1)	\$ 10,101,719.78	\$ 9,949,123.92	\$ 20,050,843.71
Total		\$ 177,992,002.82	\$ 167,884,789.98	\$ 345,836,792.96

Attached to this memorandum is a chart for each non-bankruptcy settlement showing these amounts broken down in a year-by-year format.

The following amounts have already been received by the State and Subdivisions in fiscal year 2023 or are anticipated to be received in early calendar year 2023:

	State Share	Subdivisions Share	Total
Distributors Payment 1	\$3,843,658.66	\$2,675,259.61	\$6,518,918.27
Distributors Payment 2	\$3,156,761.99	\$2,811,567.40	\$7,783,418,84
J&J/Janssen Payments 1-5	\$12,239,486.03	\$10,755,704.94	\$24,315,739
Mallinckrodt	\$567,573.09	\$567,573.09	\$1,135,146.18
Total	\$19,807,479.77	\$16,810,105.04	\$36,617,584,81