



Levy County Board of County Commissioners Agenda Item Summary Form

1. **Name:** Heather Encinosa
2. **Organization/Title/Telephone:** Interim County Attorney
3. **Meeting Date:** Tuesday, September 21, 2021
4. **Requested Motion/Action:**

Requesting the Levy County Board of County Commissioners' approval of Resolution 2021-119 supporting a Memorandum of Understanding setting forth the framework of a unified plan for the proposed allocation and use of opioid settlement proceeds.

5. **Agenda Presentation:** Yes No N/A
6. **Time Requested:** 10 minutes
7. **Is this Item Budgeted (If Applicable):** Yes No N/A
8. **If no, State Action Required:**
a. **Budget Action:** N/A
b. **Financial Impact Summary Statement:** No financial impact
c. **Detailed Analysis Attached:** N/A
d. **Budget Officer Approval:** N/A

9. **Background: (Why is the action necessary, and what action will be accomplished) (All supporting documentation must be attached if any)**

Over the last 5+ years, plaintiffs consisting of numerous state and local governments filed lawsuits against various pharmaceutical supply chain participants seeking to hold these companies accountable for damages allegedly resulting from the opioid crisis. Many of these cases were thereafter consolidated into a class action lawsuit (the "litigation"). Almost 100 political subdivisions within Florida and the State itself have engaged in this litigation. Levy County is a party to the litigation.

Recently, the State of Florida distributed the attached Memorandum of Understanding ("MOU") to all counties proposing a methodology for governing the distribution of settlement proceeds obtained in relation to the litigation as well as may be obtained through a bankruptcy case involving Purdue Pharma L.P. and any additional settlements obtained related to opioid litigation.

At this stage, the State is seeking to gauge support for the proposed MOU amongst local governments. The State has represented that participation in the MOU by a large majority of Florida cities and counties will materially increase the amount of funds to Florida and should improve Florida's relative bargaining position during additional settlement negotiations. The State has also represented that failure to participate in the MOU will reduce funds available to the State and every other Florida city and county, including Levy County.

The MOU, which is attached hereto as Attachment 1, establishes a distribution scheme for any funds received pursuant to a settlement. All opioid funds would initially go the state and then be distributed into three funds:

(1) Bucket 1 - a City/County Fund to be distributed based upon a formula that includes population and other metrics;

(2) Bucket 2 - a Regional Fund which will include direct payments to counties over 300,000 in population or if a County is under 300,000 in population, to the "Managing Entities" which are corporations selected by and under contract with the Florida Department of Children and Families to manage the daily operational



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delivery of behavioral health services through a coordinated system of care. As the County does not meet the population threshold for a direct distribution under the Regional Fund, its allocation would go directly to its Managing Entity, which is the Big Bend Continuum of Care; and

(3) Bucket 3 - a State Fund.

It is important to note that any settlement funds are restricted to use on "Approved Purposes," which is defined as follows:

"Approved Purpose(s)" shall mean forward-looking strategies, programming and services used to expand the availability of treatment for individuals impacted by substance use disorders, to: (a) develop, promote, and provide evidence-based substance use prevention strategies; (b) provide substance use avoidance and awareness education; (c) decrease the oversupply of licit and illicit opioids; and (d) support recovery from addiction. Approved Purposes shall include, but are not limited to, the opioid abatement strategies listed on Exhibits A and B which are incorporated herein by reference.

Based upon information provided by the State, depending on the final settlement terms, it is projected that the County would receive between \$21,013.83 and \$39,025.69 directly under Bucket 1 (the City/County Fund). Again, these are restricted funds that must be used for opioid-related purposes. Additionally, the County would receive an allocation of between \$61,542.14 and \$114,292.54 under Bucket 2 (the Regional Fund). Bucket 2 funds would not be paid directly to the County, but would rather be paid directly to the County's Managing Entity. The MOU provides that the Managing Entity "shall endeavor to the greatest extent possible" to expend the monies in a manner that provides a benefit to Levy County. These funds would be paid over a period of years (estimated 10-18 years) under the terms of the proposed MOU.

As discussed above, the State has represented that participation in the MOU by a large majority of Florida cities and counties will materially increase the amount of funds to Florida and should improve Florida's relative bargaining position during additional settlement negotiations. In the event that an insufficient number of local governments express support for the MOU, the State has represented that Bucket 1 (the City/County Fund) may be eliminated entirely, which would result in the County not receiving any direct payments of settlement proceeds. Additionally, the State has further represented that it may initiate separate litigation against local governments that do not consent to the settlement to seek entry of an order providing that local governments are bound to the settlement terms.

Based on the foregoing, it appears that the adoption of the attached resolution (Attachment 2) supporting the MOU and the distribution methodology described therein is in the County's best interests. The MOU further authorizes the Chairman to execute any formal agreements in the future that are not substantially inconsistent with the MOU. In the event there are substantial changes to the MOU, this matter would come back to the Board for further direction.

Shayna Sacks of Napoli Shkolnik, PLLC has been representing Levy County in the ongoing opioid litigation and recommends approval of the proposed resolution approving the form of the MOU, as summarized above.



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10. Recommended Approval

- | | | | |
|-------------------------|---|-----------------------------|------------------------------|
| a. Department Director: | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| b. County Attorney: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| c. County Coordinator: | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| d. Other: | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |