



Overview of the National Opioid Settlements and North Carolina Memorandum of Agreement (MOA)

Updated August 2023

This high-level overview covers:

- A. National Settlement Agreements
- B. North Carolina Legal Framework
- C. Allocation of Funds in North Carolina
- D. Use of Funds by Local Governments
 - 1. Special Revenue Fund
 - 2. Spending Authorization
 - 3. Option A and Option B
 - 4. Annual Meeting
- E. Reporting of Funds by Local Governments
 - 1. Local Spending Authorization Report
 - 2. Option B Report and Recommendations
 - 3. Annual Financial Report
 - 4. Annual Impact Report
- F. Additional Resources

***Note:** This high-level overview is not a legal document and should not be relied upon for legal guidance. If there is a discrepancy between this overview and any of the national or state opioid settlement documents, the settlement documents take precedence.*

A. NATIONAL SETTLEMENT AGREEMENTS

The Wave One Settlements, Wave Two Settlements, and bankruptcy resolutions described below have the potential to bring approximately \$1.5 billion to North Carolina state and local governments to address the opioid epidemic from 2022 through 2038.

The Wave One Settlements resolved litigation about opioid-related misconduct that many state and local governments brought against three drug distributors – Cardinal, McKesson, and AmerisourceBergen – as well as the drug maker Johnson & Johnson and its subsidiary Janssen.

The Wave Two Settlements resolved litigation about opioid-related misconduct brought by many state and local governments against three retail pharmacy chains – CVS, Walmart, and Walgreens – as well as the drug makers Allergan and Teva.

Bankruptcy Proceedings:

- **Mallinckrodt**: As a result of the bankruptcy reorganization plan approved by the U.S. Bankruptcy Court for the District of Delaware, which became effective in June of 2022, the drug maker Mallinckrodt is required to pay approximately \$35 million over eight years to address the opioid overdose crisis in North Carolina.
- **Endo**: An agreement was reached with drug maker Endo in August of 2022 that would provide approximately \$14 million over 10 years to address the opioid overdose crisis in North Carolina. As part of the agreement, Endo filed for bankruptcy, and a bankruptcy court must approve the settlement's final terms (expected by late 2023).
- **Purdue**: A bankruptcy plan involving the drug maker Purdue Pharma and its owners (the Sackler family) has been tied up in litigation and is now on appeal to the U.S. Supreme Court. In the event the litigation is resolved, and the bankruptcy plan proceeds, an estimated \$100 million in additional funds could be coming to North Carolina to address the opioid overdose epidemic.

B. NORTH CAROLINA LEGAL FRAMEWORK

The North Carolina legal framework includes two key documents:

The Memorandum of Agreement (MOA) governs the allocation, use, and reporting of proceeds from the Wave One Settlements and bankruptcy resolutions described above.

The Supplemental Agreement for Additional Funds (SAAF) concerns the Wave Two settlements. The SAAF provides that the MOA governs the allocation, use, and reporting of proceeds from the Wave Two Settlements in the same way that the MOA governs the allocation, use, and reporting of proceeds from the Wave One Settlements and bankruptcy resolutions (with one minor exception, discussed below, concerning the overall allocation of Wave Two settlement funds).

C. ALLOCATION OF FUNDS IN NORTH CAROLINA

Overall Allocation of Funds:

The MOA provides that funds from the Wave One Settlements and bankruptcy resolutions are allocated as follows:

- 15 percent to the state
- 85 percent to local governments

The SAAF provides that funds from the Wave Two Settlements are allocated as follows:

- 15 percent to the state
- 84.62 percent to local governments (versus 85 percent in the MOA)
- 0.38 percent to a “Local Counsel Fee Fund” to compensate private attorneys based in North Carolina that have represented local governments in opioid litigation

The North Carolina General Assembly decides how to spend the 15 percent state share of opioid settlement proceeds, subject to the general requirement in the national settlements and MOA that opioid settlement funds be spent to address the opioid overdose epidemic.

Allocation of Funds Among Local Governments:

Local governments entitled to receive direct payments under the settlements are the 100 North Carolina counties plus 17 municipalities that either filed suit against the defendants, or had a population of 75,000 or more in 2019, or both. Five municipalities entitled to receive funds – Cary, Charlotte, Concord, Gastonia, and Raleigh – have directed their opioid settlement funds to their respective counties.

The allocation of opioid settlement funds among local governments is derived from the allocation model developed at the national level by the outside counsel for local governments. For a schedule of estimated payments to local governments receiving opioid settlement funds, visit the Community Opioid Resources Engine (CORE-NC) at <https://ncopioidsettlement.org/> and click on Data Dashboards – NC Payment Schedule.

D. USE OF FUNDS BY LOCAL GOVERNMENTS

The use of opioid settlement funds by local governments is governed by the MOA. Key provisions of the MOA include the following:

1. Special Revenue Fund
2. Spending Authorization
3. Option A and Option B
4. Annual Meeting

[1] Special Revenue Fund: The MOA states that every local government receiving opioid settlement funds must create a separate special revenue fund, subject to audit, that is designated for the receipt and accounting of opioid settlement funds.

[2] Spending Authorization: Before spending opioid settlement funds in the special revenue fund, a local government must adopt a resolution that identifies the specific strategy or strategies the local government intends to fund and states the amount dedicated to each strategy over a specified period of time. In addition to this MOA requirement, the local government must abide by budgeting, preaudit, and other expenditure control requirements in the North Carolina Local Government Budget and Fiscal Control Act.

[3] Option A and Option B: A local government must spend opioid settlement funds on opioid remediation activities authorized under Option A or Option B as detailed in the MOA.

- Under Option A, a local government may fund one or more strategies from MOA Exhibit A, which is a shorter list of high-impact strategies to address the epidemic. This option allows for but does not require specific planning activities at the local level.
- Under Option B, a local government (1) engages in the collaborative strategic planning process described in MOA Exhibit C, (2) drafts a report and recommendations, the contents of which are described in the right-hand column of MOA Exhibit C; (3) formally presents the report and recommendations to its governing body; and (4) submits the report and recommendations to CORE-NC. Once the report and recommendations have been formally presented to the local governing body, the local governing body may then decide to fund one or more strategies from the shorter list of high-impact strategies listed in MOA Exhibit A or the longer list of strategies from the national settlement agreements in MOA Exhibit B.

[4] Annual Meeting: The MOA requires that each county receiving settlement funds hold at least one annual meeting open to the public, with all municipalities in the county invited to the meeting. One purpose of the meeting is to receive input from municipalities on proposed uses of the opioid settlement funds and to encourage collaboration among local governments.

E. REPORTING OF FUNDS BY LOCAL GOVERNMENTS

To comply with the MOA, local governments submit the following reports to the Community Opioid Resources Engine (CORE-NC):

[1] Local Spending Authorization Report: The local spending authorization report (discussed in Section D-2 above) is due to CORE-NC within 90 days of the date a local government adopts a resolution authorizing the expenditure of opioid settlement funds.

[2] Option B Report and Recommendations: If a local government chooses to proceed under Option B (discussed in Section D-3 above), the Option B report and recommendations are due to CORE-NC within 90 days of presentation to the governing body. The contents of the report and recommendations are described in the right-hand column of Exhibit C.

[3] Annual Financial Report: A local government that receives, holds, or spends opioid settlement funds during a fiscal year must file an annual financial report with CORE-NC within 90 days of the end of the fiscal year. The contents of the report are detailed in Exhibit E to the MOA (as modified by the Coordination Group).

[4] Annual Impact Report: A local government that receives, holds, or spends opioid settlement funds during a fiscal year must file an annual impact report with CORE-NC within 90 days of the end of the fiscal year. The contents of the report are detailed in Exhibit F to the MOA (as modified by the Coordination Group).

F. ADDITIONAL RESOURCES

For more detailed information about the national opioid settlement agreements, North Carolina Memorandum of Agreement (MOA), or related documents, readers are encouraged to visit NC DOJ's MorePowerfulNC website at <https://www.morepowerfulnc.org>. If you have a legal question about the opioid settlements or MOA, please contact NC DOJ at opioidsettlement@ncdoj.gov.

The Community Opioid Resources Engine (CORE-NC) (<https://ncopioidsettlement.org/>) is the resources and reporting hub for the North Carolina opioid settlements. If you have a question or suggestion about the CORE-NC website, please contact the CORE-NC website managers at the UNC Injury Prevention Research Center at opioidsettlement@unc.edu.

The North Carolina Association of County Commissioners provides assistance and support to counties as they seek to make the best use of opioid settlement funds. To learn more, contact NCACC at opioidsettlement@ncacc.org or visit <https://www.ncacc.org/opioidsettlement>

If you'd like to learn more about how particular local governments plan to spend opioid settlement funds, contact the county or municipality that interests you.

If you are a member of the media in need of further information, please contact Nazneen Ahmed (nahmed@ncdoj.gov) at NC DOJ.