

**MEMORANDUM  
NO. 2021-020**

TO: ANNE GERWIG, MAYOR  
JOHN MCGOVERN, VICE MAYOR  
MICHAEL DRAHOS, COUNCILMAN  
MICHAEL NAPOLEONE, COUNCILMAN  
TANYA SISKIND, COUNCILWOMAN

CC: Jim Barnes  
Senior Staff  
Chevelle Addie

FROM: Laurie S. Cohen *LS*

DATE: April 20, 2021

RE: Opioid Litigation

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As discussed during the last Village Council meeting, the Mayor recently received a letter concerning the opioid litigation, wherein the Florida Attorney General is asking local governments to enter into a Memorandum of Understanding ("MOU"). The MOU addresses the allocation and use of the proceeds from any settlement with the pharmaceutical companies<sup>1</sup> as between the State and local governments. This memo summarizes the key points in the MOU.

**Funds Must be Allocated for Approved Purposes.** Except for those amounts used for administrative costs and the Expense Fund<sup>2</sup>, the MOU requires that all funds obtained through a settlement ("Opioid Funds") be utilized for Approved Purposes which are defined as:

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

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<sup>1</sup> Referred to in the MOU as the Pharmaceutical Supply Chain Participants.

<sup>2</sup> The parties agree that in any negotiation every effort will be made to cause Pharmaceutical Supply Chain Participants to pay costs of litigation, including attorneys' fees, in addition to any agreed to Opioid Funds in the settlement. To the extent that a fund sufficient to pay the entirety of all contingency fee contracts for local governments in the State of Florida is not created as part of a settlement by a Pharmaceutical Supply Chain Participant, the parties agree that an additional expense fund for attorneys who represent local governments (the "Expense Fund") shall be created out of the City/County fund for the purpose of paying the hard costs of a litigating local government and then paying attorneys' fees. The amount of funds that shall be deposited into the Expense Fund is contingent on the percentage of litigating local governments participating in the settlement. If fewer than 85% of the litigating local governments (by population) participate, then the Expense Fund shall not be funded.

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.

The MOU also requires that the parties utilize a percentage of the Opioid Funds for programs and strategies prioritized by the U.S. Department of Justice and/or the U.S. Department of Health & Human Services ("Core Strategies"). The State is trying to obtain an agreement from the federal government to limit or reduce its ability to recover or recoup monies from the State and local governments in exchange for prioritization of funds for certain projects. If no agreement is reached with the federal government, then the requirement that a percentage of the Opioid Funds be utilized for Core Strategies will be removed.

**Fund Distribution.** The MOU provides that all Opioid Funds will initially go to the State and then be divided into the following three funds after deducting costs of the Expense Fund: (1) the City/County Fund, which consists of 15% of all Opioid Funds allocated to the State; the specific amounts allocated to individual counties and municipalities shall be determined by the Negotiation Class Metrics found at <https://allocationmap.iclaimsonline.com>; (2) the Regional Fund, which is specific to counties and paid based on a sliding scale between 30% and 40% of all Opioid Funds allocated to the State of Florida; and (3) the State Fund, which consists of the remaining 45% to 55% of the total settlement amounts allocable to the State of Florida. As previously mentioned, all funds must be spent on Approved Purposes.

**Opioid Abatement Taskforce.** The MOU calls for the State to create an Opioid Abatement Taskforce or Council to advise the Governor, the Legislature, the Department of Children and Families ("DCF"), and local governments on the priorities that should be addressed as part of the opioid epidemic and to review how monies have been spent and the results that have been achieved with the Opioid Funds. The Taskforce will have 10 members equally balanced between state and local government and receive additional support from DCF. Except for the Attorney General or her designee, members will be appointed and serve a two-year term. The Taskforce will meet quarterly and publish an annual report detailing how monies were spent in the previous fiscal year. Additionally, the State and each local government must provide information to DCF as to how they intend to spend Opioid Funds in the upcoming fiscal year.

**Settlement Negotiations.** If the State begins negotiations with a Pharmaceutical Supply Chain Participant that is separate and apart from a multi-state negotiation, the State shall include local governments that are part of the Negotiating Committee (a three-member group comprised of the Attorney General or her designee, one county representative, and one municipality representative) in the negotiations. No settlement will be recommended or accepted without the affirmative votes of the Negotiating Committee. When negotiating multi-state or local government settlements, to the extent practicable and allowed by other parties to the negotiation, the parties agree to communicate with members of the Negotiating Committee regarding the terms of any other Pharmaceutical Supply Chain Participant settlement.

**Dispute Resolution.** One or more of the local governments or the State may object to an allocation or expenditure of Opioid Funds solely on the basis that the allocation or expenditure at issue (a) is inconsistent with the Approved Purposes; (b) is inconsistent with the distribution scheme set forth above; or (c) violates the limitations set forth herein with respect to administrative costs or the Expense Fund. There shall be no other basis for bringing an objection to the approval of an allocation or expenditure of Opioid Funds.

The Resolution approving the MOU will be placed on the April 27<sup>th</sup> agenda for your approval. In the meantime, if you have any questions about the MOU or the opioid litigation in general, please do not hesitate to contact me.