

## **Colorado Opioids Settlement MOU: Frequently Asked Questions**

### **1. What does this “settle” and why does Colorado need an MOU?**

Nationwide settlements have been reached with the “Big 3” opioid distributors (McKesson, Cardinal Health, and AmerisourceBergen) and Johnson & Johnson to resolve claims by state and local governments that these companies contributed to the opioid epidemic. The claims being settled include those raised by local governments in the national multi-district litigation (“MDL”), *In Re: National Prescription Opiate Litigation*, MDL 2804 (N.D. Ohio). More information about these settlements can be found at <https://nationalopioidsettlement.com/>.

The Colorado MOU establishes the framework for distributing and sharing these settlement proceeds throughout Colorado. Local governments and the State prepared the Colorado MOU, which prioritizes regionalism, collaboration, and abatement. It is expected that the Colorado MOU will also be used for settlements with other opioid defendants in the future. Colorado Attorney General Phil Weiser signed the MOU on August 26, 2021.

### **2. Who put together the Colorado MOU?**

Local government officials from across Colorado were involved in the negotiation of the Colorado MOU with the Attorney General’s Office. County commissioners, mayors, county and city attorneys, and other stakeholders came together with the assistance of Colorado Counties, Inc. (“CCI”) and the Colorado Municipal League (“CML”) to establish the framework and negotiate the details of the Colorado MOU.

### **3. How much money will Colorado receive and over what period of time?**

Funds from the Big 3 and Johnson & Johnson settlements will be distributed over a period of years. The Big 3 distributors will pay a maximum of \$21 billion over 18 years, while Johnson & Johnson will pay a maximum of \$5 billion over no more than nine years. In total, up to approximately \$22.8 billion in settlement proceeds will be payable to state and local subdivisions nationwide. Each state receives a percentage of that recovery, and Colorado’s share is up to a maximum of approximately \$400 million.

However, as discussed more below, Colorado will receive its maximum share of settlement payments only if enough local governments sign on to the deal. Also, the settling defendants have the option to “walk away” from the deals if there is not enough participation, so it is important that a “critical mass” of local governments signs on soon. Otherwise, the entire deal could fall through.

### **4. How can we maximize Colorado’s recovery?**

The MOU was designed to ensure that as many local governments as possible would agree to its terms. Strong participation from local governments is needed to receive the full settlement payments for all of Colorado. The Big 3 and Johnson & Johnson settlements include incentive

payments based on how many governments participate. For more information on the incentive payments, please see the graphics below:

### DISTRIBUTORS: Base and Incentives

	Incentive A	Incentive B	Incentive C	Incentive D																																						
<p><b>Base 55%</b> <b>Incentives 45%</b> <b>Net Abatement Amount</b></p> <hr/> <p>Incentives are earned by obtaining releases from subdivisions and limiting additional subdivisions from filing suit.</p> <hr/> <p>During the first two years, States that settle are treated as if receiving full base and incentive.</p> <p><small>Illustrative only- Executed Agreements Control.</small></p>	<p>Incentive A provides for payment of all but Incentive D payments in exchange for near full peace.</p> <p><b>Incentive A is earned by:</b></p> <ul style="list-style-type: none"> <li>Passing a Statute or court ruling that terminates existing and bars future claims by subdivisions (including special districts);</li> <li>Receiving releases on behalf of (i) all general purpose subdivisions above 10,000 population, (ii) larger school and hospital/health districts, and (iii) all currently litigating subdivisions; or</li> <li>A combination of these approaches that results in a complete bar of existing and future claims (e.g., legislation barring future claims combined with 100% participation by litigating subdivisions).</li> </ul>	<ul style="list-style-type: none"> <li>Incentive B is not relevant if a State earns Incentive A.</li> <li>Incentive B is up to 25%.</li> <li>Incentive B is earned by obtaining releases from litigating subdivisions.</li> </ul> <p><b>Incentive B Sliding Scale:</b></p> <table border="1"> <thead> <tr> <th>Participation or Case-Specific Resolution Levels</th> <th>Incentive B Award</th> </tr> </thead> <tbody> <tr><td>85%</td><td>30%</td></tr> <tr><td>86-90%</td><td>40%</td></tr> <tr><td>91-94%</td><td>50%</td></tr> <tr><td>95-99%</td><td>60%</td></tr> <tr><td>99-99.9%</td><td>95%</td></tr> <tr><td>100%</td><td>100%</td></tr> </tbody> </table> <p>Not structured in time periods, as with Incentive B under the J&amp;J Agreement.</p>	Participation or Case-Specific Resolution Levels	Incentive B Award	85%	30%	86-90%	40%	91-94%	50%	95-99%	60%	99-99.9%	95%	100%	100%	<ul style="list-style-type: none"> <li>Incentive C is not relevant if a State earns Incentive A.</li> <li>Incentive C is up to 15%.</li> <li>Incentive C is earned by getting larger (population of 30,000) non-litigating and any-sized litigating counties and cities to join the deal.</li> </ul> <p><b>Incentive C Sliding Scale:</b></p> <table border="1"> <thead> <tr> <th>Participation, Release, or Resolution Levels</th> <th>Incentive C Award</th> </tr> </thead> <tbody> <tr><td>60-69%</td><td>25%</td></tr> <tr><td>70-74%</td><td>35%</td></tr> <tr><td>75-79%</td><td>40%</td></tr> <tr><td>80-84%</td><td>45%</td></tr> <tr><td>85-89%</td><td>55%</td></tr> <tr><td>90-92%</td><td>60%</td></tr> <tr><td>93%</td><td>65%</td></tr> <tr><td>94%</td><td>75%</td></tr> <tr><td>95-97%</td><td>90%</td></tr> <tr><td>98-99%</td><td>95%</td></tr> <tr><td>100%</td><td>100%</td></tr> </tbody> </table> <p>There is no timing element.</p>	Participation, Release, or Resolution Levels	Incentive C Award	60-69%	25%	70-74%	35%	75-79%	40%	80-84%	45%	85-89%	55%	90-92%	60%	93%	65%	94%	75%	95-97%	90%	98-99%	95%	100%	100%	<p>5% share of the State's total Abatement Fund allocation (see page 20). Payable starting in year 6 through year 18.</p> <p><b>Qualifying Criteria</b></p> <ul style="list-style-type: none"> <li>State must have had no later Litigating Subdivisions bring suit and proceed past preliminary motions.</li> </ul>
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<p><b>Base 45%</b> <b>Incentives 55%</b> <b>Global Settlement Abatement Amount</b></p> <hr/> <p>Incentives are earned by obtaining releases from subdivisions and limiting additional subdivisions from filing suit.</p> <p><small>Illustrative only- Executed Agreements Control.</small></p>	<p>Incentive A provides for payment of all but Incentive D payments in exchange for near full peace.</p> <p>Earning Incentive A also causes substantial payments, the first three years of payments, accelerated and paid within 90 days.</p> <p><b>Incentive A is earned by:</b></p> <ul style="list-style-type: none"> <li>Passing a Statute or court ruling that terminates existing and bars future claims by subdivisions (including special districts);</li> <li>Receiving releases on behalf of (i) all general purpose subdivisions above 10,000 population, (ii) larger school and hospital/health districts, and (iii) all currently litigating subdivisions; or</li> <li>A combination of these approaches that results in a complete bar of existing and future claims (e.g., legislation barring future claims combined with 100% participation by litigating subdivisions).</li> </ul>	<ul style="list-style-type: none"> <li>Incentive B is not relevant if a State earns Incentive A.</li> <li>Incentive B is up to 30%.</li> <li>Incentive B is earned from obtaining releases from litigating subdivisions.</li> </ul> <p><b>Incentive B Sliding Scale:</b></p> <table border="1"> <thead> <tr> <th>Participation or Case-Specific Resolution Levels</th> <th>Incentive B Award</th> </tr> </thead> <tbody> <tr><td>75%</td><td>50%</td></tr> <tr><td>76%</td><td>52%</td></tr> <tr><td>77%</td><td>54%</td></tr> <tr><td>78%</td><td>56%</td></tr> <tr><td>79%</td><td>58%</td></tr> <tr><td>80%</td><td>60%</td></tr> <tr><td>85%</td><td>70%</td></tr> <tr><td>90%</td><td>80%</td></tr> <tr><td>95%</td><td>90%</td></tr> <tr><td>100%</td><td>100%</td></tr> </tbody> </table> <p><small>Timing element Incentive B is structured in time periods and states will receive a percentage of sliding scale payments depending on when they reach 75% of litigating subdivisions signed on: (a) 0-210 days = 100% of sliding scale; (b) 211-365 = 75% of sliding scale; and (c) 366-2 years from effective date = 50% of sliding scale.</small></p>	Participation or Case-Specific Resolution Levels	Incentive B Award	75%	50%	76%	52%	77%	54%	78%	56%	79%	58%	80%	60%	85%	70%	90%	80%	95%	90%	100%	100%	<ul style="list-style-type: none"> <li>Incentive C is not relevant if a State earns Incentive A.</li> <li>Incentive C is up to 20%. It breaks Incentive C in two parts.</li> <li>Incentive C is earned by getting larger (population of 30,000) litigating and non-litigating counties and cities to join the deal. 5% is awarded for obtaining a State's ten largest general purpose subdivisions (cities and counties).</li> </ul> <p><b>Incentive C Sliding Scale:</b></p> <table border="1"> <thead> <tr> <th>Participation, Release, or Resolution Levels</th> <th>Incentive C(1) Award</th> </tr> </thead> <tbody> <tr><td>60%</td><td>40%</td></tr> <tr><td>70%</td><td>45%</td></tr> <tr><td>80%</td><td>50%</td></tr> <tr><td>85%</td><td>55%</td></tr> <tr><td>90%</td><td>60%</td></tr> <tr><td>91%</td><td>65%</td></tr> <tr><td>92%</td><td>70%</td></tr> <tr><td>93%</td><td>80%</td></tr> <tr><td>94%</td><td>90%</td></tr> <tr><td>95%</td><td>100%</td></tr> </tbody> </table> <p>There is no timing element.</p>	Participation, Release, or Resolution Levels	Incentive C(1) Award	60%	40%	70%	45%	80%	50%	85%	55%	90%	60%	91%	65%	92%	70%	93%	80%	94%	90%	95%	100%	<p>5% share of the State's total Abatement Fund allocation (see page 20). Payable starting in year 6 through year 18.</p> <p><b>Qualifying Criteria</b></p> <ul style="list-style-type: none"> <li>State must have had no later Litigating Subdivisions bring suit and proceed past preliminary motions in the 5 years following the Effective Date.</li> </ul>
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## 5. Is participation limited to litigating entities?

No, participation is not limited to governments that filed suit in the opioid litigation. Money from these settlements will be used for opioid crisis abatement in communities across Colorado,

regardless of whether they have chosen to sue. The Colorado MOU does **not** allocate more funds to cities and counties that chose to file suit—all cities and counties in Colorado are allocated funds based on the same objective factors.

**6. How will settlement proceeds be divided within the state under the Colorado MOU?**

Under the Colorado MOU, settlement proceeds will be distributed as follows:

- 10% directly to the State (“State Share”)
- 20% directly to Participating Local Governments (“LG Share”)
- 60% directly to Regions (“Regional Share”)
- 10% to specific abatement infrastructure projects (“Statewide Infrastructure Share”)

**7. How will the money be spent?**

Under the Colorado MOU, all settlement funds must be used only for “Approved Purposes,” a long and broad list that focuses on abatement strategies. These strategies emphasize prevention, treatment, and harm reduction. Some examples of these strategies include training health care providers on opioid use disorder (“OUD”) treatment and responsible prescribing, expanding telehealth and mobile services for treatment, and increasing naloxone and rescue breathing supplies. The list of Approved Purposes is broad enough to be flexible for local communities, while ensuring that settlement funds are used to combat the opioid epidemic. The list of Approved Purposes is attached as Exhibit A to the MOU, unless the term is otherwise defined in a settlement.

To ensure that settlement funds are in fact used only for Approved Purposes, a General Abatement Fund Council (the “Abatement Council”) will be formed. This committee will consist of thirteen representatives appointed by the State and Participating Local Governments to ensure opioid funds are spent in compliance with the terms of the settlements and the Colorado MOU.

**8. How will direct payments to local governments be allocated?**

Under the Colorado MOU, 20% of the settlement funds will be paid directly to local governments. A list of the percentage of settlement funds that will be allocated to each County Area (that is, the county government plus the municipalities within that county) is Exhibit D to the Colorado MOU. Those allocations are further broken down to an intracounty level in Exhibit E, which is a default allocation.

The allocations to each County Area are based on three factors that address the relative severity of the opioid crisis: (a) the number of persons suffering from Opioid Use Disorder in the county; (b) the number of opioid overdose deaths in the county; and (c) the amount of opioids distributed within the county (measured in Morphine Milligram Equivalent units).

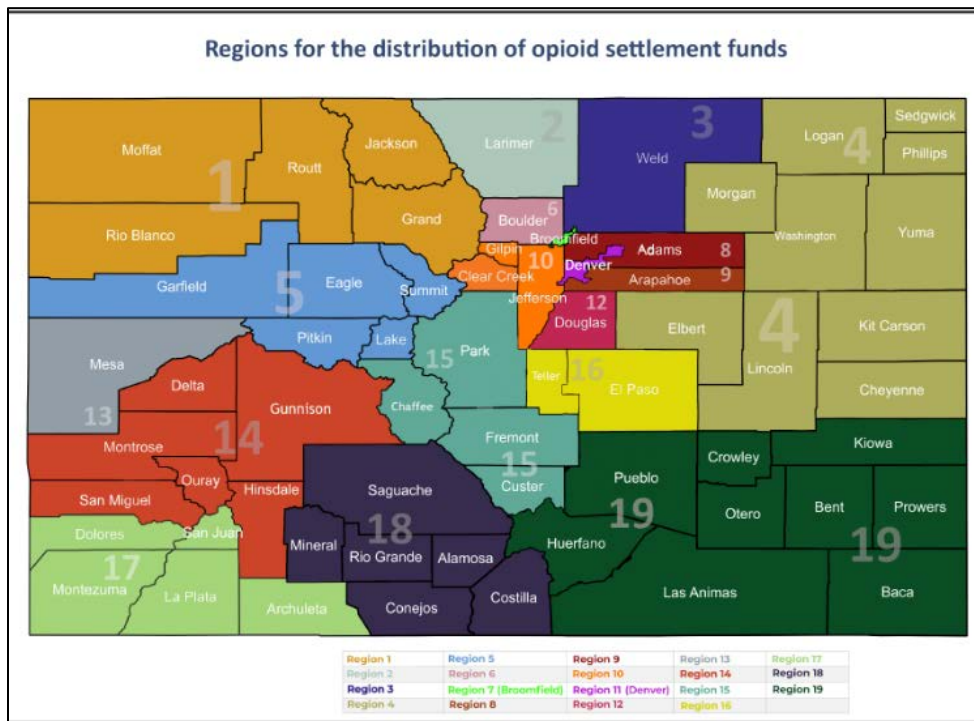
The intracounty allocations in Exhibit E are based on a default allocation model that will apply unless the local governments in a County Area enter into an agreement that provides for a

different allocation model. These allocations are based on a model developed by health economist experts, which use data from the State and Local Governments Census on past spending relevant to opioid abatement.

A local government that chooses not to participate or sign onto the Colorado MOU will not receive funds from the LG Share and the portion of the LG share that it would have received will instead be re-allocated to the Regional Share for the region where that local government is located.

**9. How will payments to Regions be allocated?**

Under the Colorado MOU, 60% of the settlement funds will be allocated to single- or multi-county regions made up of local governments. Local governments in Colorado worked collaboratively to develop the Regional Map, which emphasizes existing local infrastructure and relationships. The regional map is below, as well as included in the Colorado MOU as Exhibit C:



For more information on the percentages of settlement funds that will be allocated to each Region, please see Exhibit F of the Colorado MOU.

**10. How will the Regions be governed?**

Each Region will create its own “Regional Council” consisting of members from the constituent local governments to determine what Approved Purposes to fund with the Region’s allocation. The Regional Council will have the power to make spending decisions in the Region. The Regions will designate a fiscal agent prior to receiving any settlement funds. Regional governance models are attached to the Colorado MOU as Exhibit G. Each Region may draft its

own intra-regional agreements, bylaws, or other governing documents to determine how the Regional Council will operate. Each Regional Council will provide expenditure data to the Abatement Council on an annual basis.

### **11. How will the Statewide Infrastructure Share work?**

Many stakeholders have expressed a need for capital improvements across Colorado, and particularly in underserved areas, to abate the opioid crisis. The Colorado MOU directly addresses this by allocating 10% of settlement funds going to these projects. This money will be distributed by a statewide committee based on need. The Abatement Council will establish and publish policies and procedures for the distribution and oversight of the Statewide Infrastructure Share, including processes for local governments or regions to apply for opioid funds from the Statewide Infrastructure Share.

### **12. How will attorneys' fees and expenses be paid?**

The Attorney General and local governments have agreed to a "Back-Stop Fund" for attorneys' fees and costs. The attorneys' fee provision in the Colorado MOU equitably allocates the cost of attorneys' fees across all local governments, while also allowing non-litigating entities to share in the 25% premium for releases signed by the litigating entities in the "Big 3" distributor and Johnson & Johnson settlements.

Before a law firm can apply to the Back-Stop Fund, it must first apply to any national common benefit fee fund. The Back-Stop Fund will only be used to pay the difference between what law firms are owed and the amount they have received from a national common benefit fee fund. Attorneys' fees are limited to 8.7% of the total LG Share and 4.35% of the total Regional Share. No funds will be taken from the Statewide Infrastructure Share or State Share.

A committee will be formed to oversee payments from the Back-Stop Fund. The committee will include litigating and non-litigating entities. Importantly, any excess money in the Back-Stop fund, after attorneys' fees and costs are paid, will go back to the local governments.

### **13. Why is this a great result for local governments?**

The Colorado MOU will ensure effective and efficient use of funds without dilution or diversion of opioid settlement money to unrelated purposes or unnecessary overhead expenses. In the Colorado MOU the local governments control 80% of the settlement funds.

- Bottom-Up Approach – The need is at the local level, so the resources should be, too.
- Local Voices – The communities bearing the brunt of this burden must have a meaningful seat at the table to make decisions about where resources go.
- Flexibility – The Colorado MOU provides an opportunity for local governments to decide how to entrust their own regional funds without unnecessary red tape.

#### **14. How do I sign the MOU?**

Along with the MOU, each local government will need to sign a Colorado Subdivision Participation Form for each of the settlements (the “Big 3” distributor settlement and the Johnson & Johnson settlement) releasing their claims and stating they are participating in the settlements and signing the MOU.

A copy of the Participation Forms and the MOU with signature pages for each local government is available [on this website/by contacting AG’s office?]. It can be signed by [city/county rep?] and should be submitted to the Colorado Attorney General’s Office at \_\_\_\_\_.

If you have any questions, please reach out to Heidi Williams of the Colorado AG’s office at [Heidi.Williams@coag.gov](mailto:Heidi.Williams@coag.gov) or Keller Rohrback L.L.P. at [opiods@kellerrohrback.com](mailto:opiods@kellerrohrback.com).