



Board Summary Report

File #: 21-746

Agenda Date: 10/26/2021

Agenda #:

To: Board of County Commissioners

Through:

Prepared By:

Ron Carl, County Attorney

Subject:

Opioid Litigation Settlement Documents

Purpose and Request:

The purpose of this item is to request approval of a resolution authorizing the Chair of the Board of County Commissioners to execute the following documents: 1) a Memorandum of Understanding (MOU) between Colorado counties/municipalities and the Colorado Attorney General regarding the statewide allocation of settlement funds from the nationwide opioid litigation, 2) settlement participation forms, including releases of claims, related to the big 3 opioid distributor (McKesson, Cardinal Health and AmerisourceBergen) and Johnson & Johnson (Janssen) settlements, and 3) an escrow agreement form (explained in more detail below).

Background and Discussion: In anticipation of the large \$20 billion plus settlements negotiated with the big 3 opioid distributors and John & Johnson, and potential future settlements with other defendants, representatives of counties and municipalities have negotiated a MOU with the Colorado Attorney General regarding the distribution of opioid litigation settlement funds. The final product as contained in the attached MOU has opioid settlement funds (both for current and future settlements) being distributed as follows: 20% directly to counties/municipalities that sign the MOU, 60% to regions of counties/municipalities (Arapahoe County will be its own single-county region), 10% to a special infrastructure fund, and 10% to the AG's Office. Pursuant to the MOU and the terms of the settlements, all of the settlement funds are required to be used for opioid abatement, with the exception that the MOU also provides for the payment of attorney's fees for the outside litigation attorneys that were retained by many counties/cities, including Arapahoe County, and whose work substantially contributed to the settlements. The attached resolution will authorize the Chair to execute the MOU. In addition, the resolution will authorize the Chair to execute two settlement participation forms that include releases of all claims, for the big 3 distributor and the Johnson & Johnson settlements. These forms are necessary for Arapahoe County to be able to participate in receiving a portion of the 20% share that will flow directly to local governments. In addition, under the structure of the settlements, the more local governments

that sign the participation forms the more funds overall the state will receive. Finally, the resolution also will authorize the Chair to sign an escrow form. The escrow agreement form authorizes CCI to escrow the MOU and participation forms until such time that counties and municipalities representing 95% of the state's population have signed the documents. The purpose of this is to ensure that there is sufficient collective participation within the state before the claims against the big 3 distributors and Johnson & Johnson are released, which was important to a number of local governments that were involved in the MOU negotiations. Additional background information about the purpose and structure of the MOU and the settlements is contained in the attached FAQ and PowerPoint documents.

Alternatives: The alternative is to not sign the MOU and other documents, and to continue to press forward with Arapahoe County's individual claims against the big 3 distributors and Johnson & Johnson, and the other opioid litigation defendants.

Fiscal Impact: The fiscal impact is that Arapahoe County and its region will begin to receive a share of opioid settlements funds that will be available to fund opioid abatement efforts. The total anticipated funds that will flow to Arapahoe County and its cities from just the settlements with the big 3 distributors and Johnson & Johnson is approximately \$28 million, to be paid out over a period of 18 years.

Alignment with Strategic Plan:

- Be fiscally sustainable
- Provide essential and mandated service
- Be community focused

Resolution: Attach a copy of the draft resolution.