

Summary of 2023 Amendments to Tennessee State-Subdivision Opioid Abatement Agreement

In addition to being asked to join five new settlements, Tennessee local governments are also being asked to approve amendments to the Tennessee State-Subdivision Opioid Abatement Agreement. There are three proposed amendments, which are summarized below. The settlement participation packet being sent to counties and qualifying municipalities by the national administrator will also include a form to approve the three amendments. The full text of the proposed amendments can be found on the following page.

Summary of Amendment 1:

This amendment simply applies the terms of the State-Subdivision Agreement to the five new settlements with Allergan, Teva, CVS, Walgreens, and Walmart. This will ensure that the structure and procedures that apply to the prior settlements with the three national pharmaceutical distributors and Johnson & Johnson will be the same for the new settlements. For example, the formula for using overdose and other data to allocate funds among the counties would be the same for the new agreements as with the existing ones.

Summary of Amendment 2:

Under the State-Subdivision Agreement, Subdivision Fund allocations for non-litigating municipalities with populations under 30,000 are directed to the counties. Consequently, these municipalities do not receive direct payments, but the money stays with the community. (This provision would continue to apply with the new settlements.) The current language of the provision also places a restriction on the use of the redirected funds, treating the redirected funds like money from the trust fund and unlike the other Subdivision Fund direct payments the county is receiving from the national administrator. This restriction would require a substantial amount of special accounting for a small amount of money. The amendment removes that requirement to streamline accounting for the counties.

Summary of Amendment 3:

The third amendment applies the State-Subdivision Agreement to funds from the Endo International plc bankruptcy. Since the Agreement was first negotiated, a group of East Tennessee counties and municipalities reached a settlement with the company, which later filed for bankruptcy. The amendment applies the bankruptcy provisions of the Agreement to Endo funds paid into the State's trust fund, including the provision to direct 35% of the funds to the counties. However, as the previously settling counties have had a substantial recovery from Endo, the amendment does not provide those nine counties a direct allocation. The amendment makes clear that the nine counties would be eligible to receive some of the remaining Endo funds as well as funds from other settlements.

Following Page: Text of Amendments

On the next page is the text of the amendments, which are set out as they should appear in the settlement packets from the national administrator.

Tennessee State-Subdivision Opioid Abatement Agreement – 2023 Amendments

The Tennessee State-Subdivision Opioid Abatement Agreement is amended as follows:

Amendment 1:

Pursuant to Section IV.A, this Agreement shall apply to the following Statewide Opioid Settlement Agreements, should they become effective:

- A. Allergan Public Global Opioid Settlement Agreement
- B. CVS Settlement Agreement
- C. Teva Global Opioid Settlement Agreement
- D. Walgreens Settlement Agreement
- E. Walmart Settlement Agreement

Amendment 2:

To allow for efficiency and more streamlined accounting, the fifth sentence in Section III.E.2 of the Agreement (“These redirected funds to certain counties shall be spent on future opioid abatement and shall be subject to the same statutory requirements as the Abatement Accounts Fund money the county receives from the Tennessee Opioid Abatement Fund.”) shall be considered deleted and given no effect.

Amendment 3:

Notwithstanding the exception provisions in Section IV.B.3 and Section V.C. of the Agreement, Section V shall apply to funds from the Endo International plc bankruptcy (*In re Endo International plc, et al.*, U.S. Bankruptcy Court, S.D.N.Y, No. 22-22549). As they have received funds from a prior settlement with Endo, the following counties shall not receive a share of the 35% of proceeds directed to counties pursuant to Section V.B: Carter, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi and Washington. However, nothing in this agreement shall limit the Opioid Abatement Council’s discretion in whether or not to approve any requested allocation from the remaining Endo proceeds or other funds to these counties or the municipalities participating in that prior settlement.

Note on adoption of amendments:

Amendment 1 shall be effective if approved as set forth in Section IV.B.2 of the Agreement. Amendments 2 and 3 shall be effective if approved as set forth in Section VII.D of the Agreement.