

Opioid Settlement Executive Summary for Tennessee Subdivisions

Tennessee has joined a broad coalition of states and local political subdivisions in reaching nationwide settlements with the three largest pharmaceutical distributors – AmerisourceBergen Corporation, Cardinal Health, Inc., and McKesson Corporation (“Distributors”) – and manufacturer Janssen Pharmaceuticals, Inc., and its parent company, Johnson & Johnson (collectively “J&J”). If the settlements are fully adopted nationally, the Distributors will pay a maximum of \$21 billion over 18 years and J&J will pay a maximum of \$5 billion over nine years. A substantial majority of states have already joined the settlements, but for the agreements to become effective, a critical mass of subdivisions must sign onto the settlements by January 2, 2022.

Settlement Overview

If the critical mass of subdivision participation is reached and the settlements become effective:

- Tennessee will be eligible to receive more than \$613 million over 18 years, with these maximum payments dependent on all settlement incentives being reached. The vast majority of these funds will be dedicated to future opioid abatement and remediation programs, benefiting all regions of the state. Additionally, up to \$92 million of these funds would be paid directly to Tennessee counties and cities.
- Payments will begin to flow to the state and subdivisions as soon as April 2022. There are two payments scheduled for 2022, and the J&J agreement allows for some additional payments to be accelerated if a state has reached certain subdivision participation levels or otherwise resolved subdivision claims. It is expected that Tennessee will be eligible for maximum payments in 2022, allowing for a substantial and immediate impact to be made in combating the opioid crisis through new and expanded abatement programs.
- In addition to the financial components, the settlements will also subject the companies to court orders requiring them to make changes in how prescription opioids are distributed and sold, with far more oversight and accountability throughout that process. These changes, which include an independent monitor, are designed to help prevent deliveries of opioids to problematic pharmacies where diversion is occurring. The distributors will be required to establish and fund a centralized, independent clearinghouse using detailed data analytics to keep close track of opioid distribution throughout the country and raise red flags for suspicious orders. J&J will be prohibited from selling or promoting opioids for ten years.
- The settlements also set aside separate funds for attorneys’ fees and litigation expenses, including \$1.6 billion for subdivisions represented by private lawyers. These outside counsel for subdivisions are strongly encouraged to seek compensation from this fund through an application procedure overseen by three court-appointed arbiters.

Tennessee Structure

Tennessee has been preparing for these settlements and the opportunity they present to deliver substantial funding to needed abatement and remediation programs. Earlier this year, the General Assembly passed legislation creating an Opioid Abatement Fund and an independent Tennessee Opioid Abatement Council.¹ The legislation, which Governor Bill Lee signed into law on May 24, 2021, also addresses the allocation of funds for these settlements and allows for maximizing settlement payments to Tennessee through a process that would release state and subdivision claims against these companies. Additionally, a Tennessee-specific state-subdivision agreement has been reached with representatives of the state's subdivisions that further addresses the allocation provisions in these settlements and also sets out a structure for the distribution of abatement funds from pending bankruptcy plans.

Pursuant to these agreements and statutory provisions (and assuming maximum payments), approximately \$613 million in abatement funds paid to Tennessee and its subdivisions from the Distributor and J&J settlements will be allocated as follows:

- Subdivision Fund. Fifteen percent (15%) of the abatement funds will be paid directly to counties and certain municipalities that participate in the settlement. These funds will be addressed through the subdivisions' normal budget process. To promote efficiency in the use of abatement funds and limit the administratively burdensome disbursements of amounts that are too small to add a meaningful abatement response, smaller, non-litigating municipalities do not automatically receive a direct allocation. Subdivision Fund allocations are directed to all participating counties, all participating municipalities with populations of 30,000 or more (or with an allocation percentage greater than 0.5%), and all other subdivisions that are deemed litigating subdivisions under the terms of the settlements. The allocation percentages for each such subdivision were determined by the subdivision counsel negotiating the national settlement agreements and were calculated using data reflecting the effect of the opioid crisis on the subdivision and the level of past public health expenditures by the subdivision.
- Abatement Fund. Seventy percent (70%) of the abatement funds will be paid into the new, statutorily-created Opioid Abatement Fund. By law, these funds are placed in a trust and must be spent on future opioid abatement and remediation programs and expenditures. Generally, these funds are controlled by the independent Opioid Abatement Council, which is required to seek input from communities across the state and from a diverse set of stakeholders in determining how funds will be best spent combating the opioid crisis. Pursuant to the 2021 legislation, however, 35% of the funds paid into the Opioid Abatement Fund from the Distributor and J&J settlements must be directed to the counties participating in the settlements, and each county will determine how to spend its share of these funds on approved abatement programs in their communities. Of course, communities across the state will also directly benefit from the abatement programs funded by the Opioid Abatement Council, which will make spending decisions for the 65% of funds not automatically directed to the counties.

¹ Public Chapter No. 491.

- State Fund. Fifteen percent (15%) of the abatement funds are paid directly to the State. These funds will be subject to the normal budgeting and appropriation process of future General Assemblies.

Subdivision Participation

It is vital for subdivisions to join during the initial sign-on period. First, there is the need to have very high levels of subdivision participation nationally for the companies to move forward with the settlements and for everyone to benefit from these agreements. Additionally, while the legislation should result in Tennessee maximizing settlement payments, this can be ensured by full joinder by certain categories of Tennessee subdivisions. Finally, joinder during the initial sign-on period maximizes the amount of funds available to an individual subdivision. Joining the settlement after the initial sign-on period could result in a subdivision missing an initial payment or having its payments reduced if the statutory release of claims has been enacted prior to its joinder.

For the subdivisions listed in Exhibit G of the settlement agreements, the joinder documentation will be done electronically using a DocuSign service. This process will allow for subdivisions to sign onto the settlement agreements and the Tennessee state-subdivision agreement. Each such subdivision should have received a settlement notice with additional information about the process, which begins by registering on the national settlement website: <https://nationalopioidsettlement.com>.

Next steps and timeline

Now: Each subdivision should register on the national settlement website: <https://nationalopioidsettlement.com>. The notice each subdivision received by mail and email provides its unique Subdivision Registration Code, which must be used to register. Registering is purely administrative. Registering does not mean that the subdivision has accepted the terms of the settlement and does not obligate the subdivision to do anything.

Next: Each subdivision, via its local legislative body, should adopt a resolution that authorizes a representative of the subdivision to execute the documents required to join the settlements. A model resolution has been prepared for the subdivisions' convenience and can be found on the Attorney General's Tennessee-specific website: <https://www.tn.gov/attorneygeneral/working-for-tennessee/filings-of-interest/opioids.html>. The model resolution may be adapted to the subdivisions' preferences and should be submitted to the subdivisions' legislative body (i.e. county commission) for approval.

By January 2, 2022: After an appropriate resolution is passed by each subdivision, the authorized representative should sign the Tennessee State-Subdivision Opioid Abatement Agreement, the Distributor Agreement, and the J&J Agreement, which can be signed electronically through DocuSign. The documents can be found at <https://nationalopioidsettlement.com>.

While the sign-on period lasts through January 2nd, each subdivision is encouraged to join as soon as possible. This will not only avoid end-of-the-year scheduling challenges, it will also help build momentum for the settlements as we work to meet the national subdivision participation threshold for the settlements to go into effect.

Additional information about the settlements and how they are implemented in Tennessee can be found on the state-specific website: <https://www.tn.gov/attorneygeneral/working-for-tennessee/filings-of-interest/opioids.html>. That site includes an FAQ document that provides some details regarding the allocation of funds among different types of subdivisions. If a subdivision is represented by an attorney with respect to opioid claims, that attorney should be promptly consulted. Additionally, specific inquiries to the Attorney General's Office may be made to a dedicated email account: TNopioidsettlementinfo@ag.tn.gov.