

ARKANSAS OPIOIDS MEMORANDUM OF UNDERSTANDING

Whereas, the people of the State of Arkansas and its communities have been harmed by misfeasance, nonfeasance, and malfeasance committed by certain entities within the Pharmaceutical Supply Chain; and,

Whereas, the State of Arkansas, through its Attorney General, the Counties, through their elected representatives, and nearly all of the Cities, through their elected representatives, are separately engaged in litigation seeking to hold Pharmaceutical Supply Chain Participants accountable for the damage caused by their misfeasance, nonfeasance, and malfeasance; and,

Whereas, the State, through its Governor and Attorney General, the Counties, through their elected representatives, and the Cities, through their elected representatives, share a common desire to abate and alleviate the impacts of that misfeasance, nonfeasance and malfeasance throughout the State of Arkansas;

Now therefore, the State, the Counties, and the Cities, enter into this Memorandum of Understanding relating to the allocation and use of the proceeds described and the establishment of injunctive provisions in Settlements with Pharmaceutical Supply Chain Participants. Through Settlement, the State, the Counties, and the Cities seek (1) adequate and timely recovery of funds used to abate and alleviate the opioid crisis; (2) to establish a proposed framework for funding programs at state-wide, regional and local levels in accordance with the Approved Purposes; (3) the recovery of costs and reasonable attorneys' fees incurred by the State, the Counties, and the Cities in investigating and pursuing legal and equitable claims against Pharmaceutical Supply Chain Participants; and (4) to establish injunctive provisions which require Pharmaceutical Supply Chain Participants to refrain from engaging in harmful business practices and to implement business practices that support the Cities', the Counties', and the State's efforts to abate and alleviate the opioid crisis.

Section 1: Definitions

As used in this Memorandum of Understanding:

1.1. "Approved Purpose(s)" shall mean evidence-based, evidence-informed, or promising activities, programs, or strategies that –

1.1.1. Expand the availability of treatment for individuals affected by substance use disorders;

1.1.2. Develop, promote and provide evidence-based substance use prevention strategies;

1.1.3. Provide substance use avoidance and awareness education;

1.1.4. Decrease the oversupply of licit and illicit opioids;

1.1.5. Support recovery from addiction services performed by qualified and appropriately licensed providers;

1.1.6. Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) issues;

- 1.1.7.** Support people in treatment for and recovery from OUD and any co-occurring SUD/MH issues;
- 1.1.8.** Provide connections to care for people who have – or are at risk of developing – OUD and any co-occurring SUD/MH issues;
- 1.1.9.** Address the needs of persons with OUD and any co-occurring SUD/MH issues who are involved – or are at risk of becoming involved – in the criminal justice system;
- 1.1.10.** Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH issues, and the needs of their families, including babies with neonatal abstinence syndrome;
- 1.1.11.** Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids;
- 1.1.12.** Support efforts to discourage or prevent misuse of opioids;
- 1.1.13.** Support efforts to prevent or reduce overdose deaths or other opioid-related harms;
- 1.1.14.** Support law enforcement expenditures relating to the opioid epidemic;
- 1.1.15.** Educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs;
- 1.1.16.** Support efforts to provide leadership, planning, and coordination to abate the opioid epidemic;
- 1.1.17.** Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis;
- 1.1.18.** Support infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH issues, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy list (e.g., health care, primary care, pharmacies, prescription drug monitoring programs, etc.);
- 1.1.19.** Support opioid abatement research; and,
- 1.1.20.** The payment of attorneys’ fees and associated litigation expenses related to litigation against Pharmaceutical Supply Chain Participants.
- 1.2.** “Cities” shall mean all cities of the first class, cities of the second class, and incorporated towns within the geographic boundaries of Arkansas through their elected representatives.
- 1.3.** “Cities Distribution Agreement” shall mean an agreement among the Cities as to the allocation, distribution, and use of the Cities Opioid Settlement Fund for the Approved Purposes and consistent with any restrictions on the use of Opioid Funds contained within any settlement agreements and all orders approving any settlements.

1.4. “Cities Opioid Settlement Fund” shall mean a fund allocated, after payment of attorneys’ fees and associated litigation expenses, pursuant to the Cities Distribution Agreement for the benefit of the Cities.

1.5. “Counties” shall mean all 75 Counties within the geographic boundaries of Arkansas through their elected representatives.

1.6. “Counties Distribution Agreement” shall mean an agreement among the Counties as to the allocation, distribution, and use of the Counties Opioid Settlement Fund for the Approved Purposes and consistent with any restrictions on the use of Opioid Funds contained within any settlement agreements and all orders approving any settlements.

1.7. “Counties Opioid Settlement Fund” shall mean a fund allocated, after payment of attorneys’ fees and associated litigation expenses, pursuant to the Counties Distribution Agreement for the benefit of the Counties.

1.8. “Medicaid Claw Back” shall mean amounts paid to the Federal Government relating to the State’s claim for damages under the Medicaid Fraud False Claims Act, Ark. Code Ann. §§ 20-77-901, et seq.

1.9. “National Fee and Expenses Fund” shall mean any national fee and expense fund established for the payment of attorneys representing Counties and/or Cities. In no event shall any National Fee and Expense Fund be used to create federal jurisdiction, equitable or otherwise, over the State, the Counties, and/or the Cities, nor shall the National Fee and Expenses Fund require participation in a class action or signing a participation agreement as part of the criteria for participation in the National Fee and Expense Fund.

1.10. “Negotiating Committee” shall mean a four-member group comprised of one representative for each of (1) the Arkansas Governor; (2) the Arkansas Attorney General; (3) the Executive Director of the Association of Arkansas Counties, and (4) the Executive Director of the Arkansas Municipal League (collectively, “Members”), or their designees. The Committee shall be chaired by the Attorney General or her designee.

1.11. “Opioid Funds” shall mean monetary amounts and the value of products provided in lieu of monetary amounts obtained through a Settlement as defined in this Memorandum of Understanding.

1.12. “Parties” shall mean the State, the Counties, and the Cities.

1.13. “Pharmaceutical Supply Chain” shall mean the process and channels through which Controlled Substances are manufactured, marketed, promoted, distributed, or dispensed.

1.14. “Pharmaceutical Supply Chain Participant” shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid.

1.15. “State” shall mean the State of Arkansas acting through its Governor and Attorney General.

1.16. “Settlement” shall mean the negotiated resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant when that resolution has been jointly entered into by the State, the Counties, and the Cities.

Section 2: Allocation of Settlement Proceeds

2.1 Nothing in this MOU should alter or change any City's, County's or the State's rights to pursue its own claim(s). Rather, the intent of this MOU is to join all parties to seek and negotiate binding settlement or settlements with one or more Pharmaceutical Supply Chain Participants for all parties within Arkansas.

2.2 All Opioid Funds shall be divided with 1/3 going to the Cities ("Cities Share"), 1/3 going to the Counties ("Counties Share"), and 1/3 going to the State ("State Share"). All Opioid Funds, regardless of allocation, shall be utilized in a manner consistent with the Approved Purposes, any settlement agreements, and all orders approving settlements.

2.3 The Cities Share shall be allocated as follows:

2.3.1 27% of the Cities Share of any settlement, with any Pharmaceutical Supply Chain Participant, shall be reserved in an interest-bearing account ("Cities Opioid Fee and Expense Fund") for the payment of attorneys' fees and associated litigation expenses.

2.3.2 After the reservation described in Section 2.3.1, 100% of the remaining Cities Share shall be directed to the Cities Opioid Settlement Fund and be distributed pursuant to the Cities Distribution Agreement.

2.3.3 Counsel for the Cities shall only be paid a fee from their clients' respective share(s).

2.3.4 Counsel for the Cities have agreed to seek payment of attorneys' fees and associated litigation expenses from applicable outside sources or fee funds ("National Fee and Expenses Fund") prior to seeking to be paid pursuant to contingency fee agreements with the Cities in exchange for the Cities' promise to guarantee payment of fees and expenses under now existing contracts.

2.3.5 If payment of fees and expenses paid to counsel for Cities from a National Fee and Expenses Fund is insufficient to satisfy the guarantee of payment of fees and expenses then Counsel shall be paid from the Cities Opioid Fee and Expense Fund to make up any difference.

2.3.6 Any residual amounts left in the Cities Opioid Fee and Expense Fund, after the payments to Counsel, shall be deposited into the Cities Opioid Settlement Fund.

2.3.7 In the event a City merges, dissolves, or ceases to exist, the allocation percentage for that City shall be redistributed equitably based on the composition of the successor City. If a City for any reason is excluded from a specific settlement, the allocation percentage for that City shall be redistributed equitably among the participating Cities.

2.3.8 The Cities Share shall be paid to the Cities Opioid Fee and Expense Fund and the Cities Opioid Settlement Fund (Collectively, "Cities Funds") under a settlement, or by an administrator designated in the settlement documents, who shall hold the funds in trust in a segregated account to benefit the Cities to be promptly distributed as set forth herein and in the Cities Distribution Agreement.

2.4 The Counties Share shall be allocated as follows:

2.4.1 27% of the Counties Share of any settlement, with any Pharmaceutical Supply Chain Participant, shall be reserved in an interest-bearing account (“Counties Opioid Fee and Expense Fund”) for the payment of attorneys’ fees and associated litigation expenses.

2.4.2 After the reservation described in Section 2.4.1, 100% of the remaining Counties Share shall be directed to the Counties Opioid Settlement Fund and be distributed pursuant to the Counties Distribution Agreement.

2.4.3 Counsel for the Counties shall only be paid a fee from their clients’ respective share(s).

2.4.4 Counsel for the Counties have agreed to seek payment of attorneys’ fees and associated litigation expenses from applicable outside sources or fee funds (“National Fee and Expenses Fund”) prior to seeking to be paid pursuant to contingency fee agreements with the Counties in exchange for the Counties’ promise to guarantee payment of fees and expenses under now existing contracts.

2.4.5 If payment of fees and expenses paid to Counsel for Counties from a National Fee and Expenses Fund is insufficient to satisfy the guarantee of payment of fees and expenses then Counsel shall be paid from the Counties Opioid Fee and Expense Fund to make up any difference.

2.4.6 Any residual amounts left in the Counties Opioid Fee and Expense Fund, after the payments to Counsel, shall be deposited into the Counties Opioid Settlement Fund.

2.4.7 In the event a County merges, dissolves, or ceases to exist, the allocation percentage for that County shall be redistributed equitably based on the composition of the successor County. If a County for any reason is excluded from a specific settlement, the allocation percentage for that County shall be redistributed equitably among the participating Counties.

2.4.8 The Counties Share shall be paid to the Counties Opioid Fee and Expense Fund and the Counties Opioid Settlement Fund (collectively, “Counties Funds”) under a settlement, or by an administrator designated in the settlement documents, who shall hold the funds in trust in a segregated account to benefit the Counties to be promptly distributed as set forth in herein and in the Counties Distribution Agreement.

2.5 The State Share shall be allocated as follows:

2.5.1 Any Medicaid Claw Back, if applicable to a settlement with a Pharmaceutical Supply Chain Participant, shall be paid from the State Share.

2.5.2 Counsel for the State shall be paid by the State.

Section 3: Settlement Negotiations

3.1 All Members of the Negotiating Committee, and their respective representatives, shall be notified of and provided the opportunity to participate in all negotiations relating to any Settlement that purports to resolve the claims of the Cities, the Counties, and the State against a Pharmaceutical Supply Chain Participant.

3.2 No Settlement Proposal can be accepted for presentation to the Cities, the Counties, and the State under this Memorandum of Understanding over the objection of any of the four Members of the Negotiating Committee. The Chair of the Negotiating Committee shall poll the Members at the conclusion of discussions of any potential settlement proposal to determine whether such objections exist. Although multiple individuals may be present on a Member's behalf, for polling purposes each Member is a single entity with a single voice.

3.3 Any Settlement Proposal accepted by the Negotiating Committee shall be subject to approval by the Cities, the Counties, and the State.

3.4 No one Member of the Negotiating Committee is authorized to speak publicly on behalf of the Negotiating Committee without consent from the other Committee Members.

3.5 The Cities, the Counties, and the State may withdraw from coordinated Settlement discussions detailed in this Section upon 5 days' written notice to the remaining Committee Members and counsel for any affected Pharmaceutical Supply Chain Participant. The withdrawal of any Member releases the remaining Committee Members from the restrictions and obligations in this Section.

3.6 The obligations in this Section shall not affect any Party's right to proceed with trial or, within 30 days of the date upon which a trial involving that Party's claims against a specific Pharmaceutical Supply Chain Participant is scheduled to begin, reach a case specific resolution with that particular Pharmaceutical Supply Chain Participant.

Acknowledgment of Agreement

We the undersigned have participated in the drafting of the above Memorandum of Understanding. This document has been collaboratively drafted to maintain all individual claims while allowing the Cities, the Counties, and the State to cooperate in exploring all possible means of resolution. Nothing in this agreement binds any Party to a specific outcome.



Hon. Asa Hutchinson
Arkansas Governor



Hon. Leslie Rutledge
Arkansas Attorney General



Chris Villines
Association of Arkansas Counties



Mark Hayes
Arkansas Municipal League