

Delaware



Total Funds

\$100 million¹

Allocation

100% to the Prescription Opioid Settlement Fund

Mechanism

Allocation Agreement between the state and local governments ([Remediating Opioids Across Delaware through State-Municipal Abatement Partnership \(“ROADS MAP”\) Agreement](#)), legislation (Del. Code tit. 16 Secs. [4808B](#), [5195](#), [5196](#), [5196A](#), [5196B](#))²

Key Takeaways

All shares in one Fund. 100% of funds — both the state and local shares — sit in the Prescription Opioid Settlement Fund.³

Prescription Opioid Settlement Distribution Commission (POSDC). The POSDC — composed of local and state government representatives, members of the public, and people representing a substance use disorder advocacy group and the “addiction recovery system”⁴ — is tasked with making recommendations to the state’s Behavioral Health Consortium,⁵ which ultimately distributes funds.⁶

100% public reporting. The POSDC must publish an annual report that describes all Prescription Opioid Settlement Fund amounts awarded and disbursed, both on approved expenditures and administrative expenses, on its [website](#).⁷

Background

The [Remediating Opioids Across Delaware through State-Municipal Abatement Partnership \(“ROADS MAP”\) Agreement: State-Subdivision Agreement](#) (Agreement) allocates 100% of settlement moneys (*sic*) to the Prescription Opioid Settlement Fund created by [state law](#).⁸ Fund monies may only be used to remediate and reduce opioid-related harms or for uses that are otherwise “consistent with the terms of the settlement, judgment, or other source of the moneys (*sic*).”⁹ The [Prescription Opioid Settlement Distribution Commission \(POSDC\)](#) created by [state law](#) to make recommendations on settlement spending is also tasked with ensuring that settlement funds are not diverted to other purposes.¹⁰ The Agreement explicitly references the national settlement agreements’ [Exhibit E](#),¹¹ which outlines approved uses such as prevention, harm reduction, treatment, and recovery services.

This resource is current as of 4/24/2023. For the most up-to-date information, please visit <https://www.opioidsettlementtracker.com/settlementspending>.



Decision- Making Process

ALLOCATION OF SETTLEMENT FUNDS



100% PRESCRIPTION OPIOID SETTLEMENT FUND

The [Prescription Opioid Settlement Fund](#) holds both the state and local shares of settlement dollars.¹² Fund monies may not supplant existing funding streams,¹³ and administrative expenses are capped at 5% of the Fund's annual deposits.¹⁴ Fund monies are distributed by the state's [Behavioral Health Consortium](#) based on recommendations from the [Prescription Opioid Settlement Distribution Commission](#) (POSDC).¹⁵ The POSDC is a subcommittee of the Consortium,¹⁶ and its purpose is to establish "a coordinated and consensus driven effort to repair the harm done to communities [in Delaware] by the opioid crisis."¹⁷

In creating its recommendations, the POSDC must review suggestions from the state's Behavioral Health Consortium, [Addiction Action Committee](#), [Overdose System of Care Committee](#), and [Drug Overdose Fatality Review Committee](#).¹⁸ It must also seek input from interested public and private groups and individuals,¹⁹ hold public hearings to provide a platform for public comment on the use of funds,²⁰ and use data to inform its work.²¹ The Consortium uses the POSDC's recommendations to distribute Fund monies in three ways:

1. Awarding grants.
2. Directing the Department of Health and Social Services' Secretary to enter contracts.
3. Distributing funds to state agencies and local governments to be administered as directed by the POSDC.²²

SETTLEMENT FUND SPENDING EXAMPLES

In April 2023, the POSDC voted to allocate \$3 million in grants to 40 service providers and state partners. Grantees included a peer-led recovery home operator and participating municipalities.²³

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Decision-Making Process

(Continued)

Importantly, if the Consortium chooses not to adopt a POSDC recommendation, it must provide the POSDC a written explanation and allow the POSDC to revise its recommendation.²⁴ Ultimately, the Consortium is unable to distribute Fund monies without a “conforming recommendation” from the POSDC.²⁵ Money distributed by the Consortium will be disbursed from the Settlement Fund by the state’s Treasurer after authorization by the Consortium’s chair, the Director of the Office of Management and Budget, the Controller General, and co-chairs of the Joint Finance Committee.²⁶

PRESCRIPTION OPIOID SETTLEMENT DISTRIBUTION COMMISSION (POSDC)

The 15-member POSDC includes, among others, representatives of the state legislature and local governments, members of the public (appointed by the Governor and Attorney General), and people representing a substance use disorder advocacy group and the “addiction recovery system” (appointed by the Attorney General and Governor, respectively).²⁷ The Attorney General and Governor co-chair the POSDC.²⁸

LOCAL GOVERNMENT COMMITTEE

The POSDC is also tasked to create a Local Government Committee to provide recommendations on Fund distributions,²⁹ and only participating subdivisions will receive monies directly from the Settlement Fund.³⁰ The Local Government Committee must include representatives from each of Delaware’s three counties, as well as a representative of a municipal government.³¹ If the POSDC chooses not to take up a recommendation from the Local Government Committee, it must provide a written explanation and allow the Local Government Committee to respond.³² A POSDC resolution established four additional standing committees, including one focused on “Public Outreach and Community Input.”³³

Tracking Funds and Accountability

- The POSDC must publish an annual report that describes all Prescription Opioid Settlement Fund amounts awarded and disbursed, both on approved expenditures and administrative expenses, on its [website](#).³⁴
- The POSDC may only take official action with the approval of a majority of its members, and only if those members are present in a *public meeting*.³⁵
- The Behavioral Health Consortium (of which the POSDC is a subcommittee) oversees not just settlement monies, but also all entities in the state, private and public, that are connected to behavioral healthcare and substance use treatment.³⁶

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Engaging in the Process

- The state General Assembly articulated a specific intent for settlement funds to be used to “maximize harm reduction.” Harm reduction organizations and communities disproportionately affected by the overdose crisis should feel empowered to reach out to the POSDC, whose decision-making process must include the perspectives of “affected communities.”³⁷
- The Consortium’s quarterly meetings are public and include a dedicated public comment period.³⁸ Future meeting dates and past meeting minutes can be found on the Consortium’s [website](#).
- The POSDC must meet at least three times a year,³⁹ seek public input,⁴⁰ and hold public hearings.⁴¹ [News reports](#) and [official documents](#) indicate that the POSDC has met at least twice, but information about how to attend future POSDC meetings and past meeting minutes is scant.
- Apply for funding: the POSDC website states that a grant round will launch in “early 2023.” [News reports](#) indicate that \$12 million will be made available via grants, and that the office of Lt. Gov. Hall Long, a POSDC co-chair, will hold public town halls to solicit community input on how grant funds should be allocated.⁴² A past funding round allowed eligible non-profit organizations to apply for up to \$100,000.⁴³
- Subscribe to the POSDC’s [mailing list](#) to receive future updates about its work.

Additional Resources

DELAWARE OFFICE OF THE LT. GOVERNOR

[Prescription Opioid Settlement Distribution Commission \(POSDC\)](#)

[Behavioral Health Consortium](#)

PRESCRIPTION OPIOID SETTLEMENT DISTRIBUTION COMMISSION

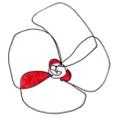
[Resolution No. 2023-1 Establishing Standing Committees and Initial Charters](#)

DELAWARE DRUG OVERDOSE FATALITY REVIEW COMMISSION

[2022 Annual Report](#)

DELAWARE BEHAVIORAL HEALTH CONSORTIUM AND PEW CHARITABLE TRUSTS

*[Substance Use Disorder Treatment Policy
Recommendations for the State of Delaware](#)*

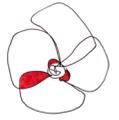


References

Last updated April 24, 2023.

1. From settlements with distributors McKesson, AmerisourceBergen, Cardinal Health and manufacturer Johnson & Johnson only. Delaware is also participating in several settlements that are likely to be finalized later this year, e.g., CVS, Walgreens, Walmart, Allergan, and Teva. See KHN's "[The Right to Know: Where Does Your State Stand on Public Reporting of Opioid Settlement Cash?](#)" interactive transparency map (located mid-article; click "Delaware" for state-specific participation information) and OpioidSettlementTracker.com's [Global Settlement Tracker](#) for more information.
2. Neither Delaware's statutory scheme nor its allocation Agreement are limited by their definitions to the Distributor and Janssen Settlements (see Agreement 3(c), 1(xii) and Sec. 4808B(b)). Note that many states' mechanisms for opioid settlement spending were designed to comply with the requirements of the [Distributor](#) and [Janssen](#) settlement Agreements, which require (among other provisions) that a minimum of 85% of settlement funds be spent on opioid remediation expenditures. *Section V.B.1.* Subsequent settlements require varying thresholds of opioid remediation spend; the [CVS](#) and [Walgreens](#) Agreements, for instance, require a minimum of 95.5% and 95% opioid remediation spending, respectively. *Section V.B.1.* Keep an eye out for the ways states will amend their spending mechanisms, if at all, to comply with subsequent settlement terms.
3. Del. Code tit. 16 Sec. 4808B(b) and Agreement 3(a)-(d).
4. Del. Code tit. 16 Sec. 5196A(b)(1)-(11).
5. Del. Code tit. 16 Sec. 5196A(a).
6. Del. Code tit. 16 Sec. 5196B(b).
7. Del. Code tit. 16 Sec. 5195(c)(2).
8. Agreement 3(a)-(d) and Del. Code tit. 16 Sec. 4808B(a)-(b).
9. Del. Code tit. 16 Sec. 4808B(d)(1)-(3).
10. Del. Code tit. 16 Sec. 5195(a)(2), (b)(2)(d).
11. Agreement [preamble \(pg. 2\)](#).
12. Del. Code tit. 16 Sec. 4808B(b). See also Agreement 3(a)-(c).
13. Del. Code tit. 16 Sec. 4808B(e).
14. Or \$300,000, whichever is greater. Del. Code tit. 16 Sec. 4808B(c)(1). See also Sec. 4808(c)(2).
15. Del. Code tit. 16 Secs. 4808B(g), 5195(b)(2), 5196A(a). The Consortium was created to oversee the behavioral healthcare and substance use treatment activities of the state and its various entities. Del. Code tit. 16 Sec. 5195(b)(1). The Consortium also distributes monies from the [Prescription Opioid Impact Fund](#), created by [Del. Code tit. 16 Sec. 4803B\(a\)](#), which contains "impact fees" generated by the scheme described [here](#). The two funds are administered together, but only the Settlement Fund contains monies generated by opioid litigation. Sec. 4808B(b).
16. Del. Code tit. 16 Sec. 5195(a)(2).
17. Del. Code tit. 16 Sec. 5195(b)(2)(a).
18. Del. Code tit. 16 Sec. 5196A(g)(1)-(4).
19. Del. Code tit. 16 Sec. 5196A(h).
20. Del. Code tit. 16 Sec. 5196A(h).
21. Del. Code tit. 16 Sec. 5196A(i).
22. Del. Code tit. 16 Sec. 5196B(a)(1).
23. See "[State commission votes to begin allocating opioid settlement dollars.](#)"
24. Del. Code tit. 16 Sec. 5196B(a)(2).
25. Del. Code tit. 16 Sec. 5196B(a)(3).
26. Del. Code tit. 16 Sec. 5196B(b)(1)-(4).
27. Del. Code tit. 16 Sec. 5196A(b)(1)-(11).
28. Or their designees. Del. Code tit. 16 Sec. 5196A(c). Lt. Gov. Bethany Hall-Long currently co-chairs the Commission together with Attorney General Kathleen Jennings.
29. Del. Code tit. 16 Sec. 5196A(e).
30. Agreement 3(d).
31. Del. Code tit. 16 Sec. 5196A(e)(1), Agreement 2(b).
32. Del. Code tit. 16 Sec. 5196A(e)(3).
33. See <https://ltgov.delaware.gov/wp-content/uploads/sites/27/2023/04/POSDC-Resolution-Estab.-Standing-Committees-signed.pdf>.
34. Del. Code tit. 16 Sec. 5195(c)(2).
35. Del. Code tit. 16 Sec. 5196A(d)(1).
36. Del. Code tit. 16 Sec. 5195(b)(1).
37. Del. Code tit. 16 Sec. 5195(b)(2)(d) ("The Commission will also ensure that decisions on how to spend

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References

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- opioid-related funds are based on the consensus of stakeholders through a process that considers the views and experiences of affected communities.”)
38. See, e.g., <https://ltgov.delaware.gov/wp-content/uploads/sites/27/2023/03/1.17.23-Meeting-Agenda.pdf>
 39. Del. Code tit. 16 Sec. 5196A(d)(2).
 40. Del. Code tit. 16 Sec. 5196A(h).
 41. Del. Code tit. 16 Sec. 5196A(h).
 42. See “[State commission votes to begin allocating opioid settlement dollars](#)”
 43. See <https://ltgov.delaware.gov/wp-content/uploads/sites/27/2022/12/Opioid-Fund-Distribution-Guidelines-Under-100k-12.1.22.pdf>.