



Guide for Community Advocates On the Opioid Settlement Michigan



Total Funds

\$776 million¹

Allocation

50% to the state, 50% to local governments

Mechanism

Michigan State Subdivision Agreement; Legislation; and Executive Order No. 2022-12

Background

Key Takeaways

Michigan's allocation of settlement dollars is governed by a Subdivision Agreement, legislation, and executive order.

The legislature will direct use of funds from the Michigan Opioid Healing and Recovery Fund.

An Opioid Advisory Commission will provide input and recommendations to help guide the use of the state's funds.

Commission meetings and the Commission's annual report are opportunities to engage in and monitor the process.

In Michigan, the allocation and use of opioid settlement dollars are governed by a Subdivision Agreement,² legislation,³ and executive order.⁴ The Subdivision Agreement provides for the 50-50 split between state and local governments, as well as the level of funding offset for an administrative fund, a litigation local government attorney fee fund, and a special circumstances fund. Exhibit A of the subdivision Agreement establishes the allocation percentages for each locality (i.e., counties, cities, townships, etc.) that signed on. For example, Flint City will receive approximately 2.85% whereas Ionia County will receive approximately 0.53%.⁵ Importantly, local governments whose final allocation percentage is less than .0023% will receive all of their funding up front in the first settlement payment.⁶

Two pieces of legislation lay out the parameters for the establishment of the Michigan Opioid Healing and Recovery Fund (SB 993) and the Opioid Advisory Commission (SB 994). These bills were signed in May 2022.⁷

- **SB 993**, codified at [MCL § 12.253](#): The Michigan Opioid Healing and Recovery Fund sits within the state's Department of Treasury and the Department is responsible for expending money from the fund as directed by the legislature. Importantly, the Opioid Healing and Recovery Fund will receive proceeds resulting from *any* judgment or settlement related to the opioid overdose crisis.⁸ Additionally, money from the fund may not be used to supplant existing government-funded programs and does not lapse at the end of the year into the General Fund.⁹
- **SB 994**, codified at [MCL § 4.1850](#) and [4.1851](#): The Opioid Advisory Commission sits within the Legislative Council, which is a bipartisan, bicameral body

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Background

(Continued)

of legislators that supports the state legislature.¹⁰ The Opioid Advisory Commission's overall mandate is to "review local, state, and federal initiatives and activities related to education, prevention, treatment, and services for individuals and families affected by substance use disorders and co-occurring mental health conditions, and establish priorities to address substance use disorders and co-occurring mental health conditions, for the purpose of recommending funding initiatives to the legislature,"¹¹ and to submit an annual report to the governor, attorney general, and legislative leaders that will be described later in this document.

Governor Whitmer's Executive Order No. 2022-12 updates the Michigan Opioids Task Force ("Task Force"), initially created by executive order in 2019. Specifically, the most recent Executive Order reconstitutes the Task Force as an advisory body within the Michigan Department of Health and Human Services ("MDHHS") and requires that the Task Force participate on behalf of the state in any opioid-related bankruptcy or settlement where government participation is required to collect funds,¹² amongst a wide range of more general responsibilities and functions.

Decision-making Process



The Department of Treasury will manage the state's portion of the settlement funds, which are held in the Michigan Opioid Healing and Recovery Fund.¹³

Beginning in 2023, the legislature will benefit from the Opioid Advisory Commission's ("Commission") recommendations on funding initiatives. The Commission must also produce an annual report that is submitted to legislative leadership which contains the following:

- i. A statewide evidence-based needs assessment
- ii. Goals and recommendations, including the rationale supporting the goals and recommendations, sustainability plans, and performance indicators
- iii. An evidence-based assessment of the prior use of money appropriated from the state's Opioid Healing and Recovery Fund
- iv. Recommended funding for tasks, activities, projects, and initiatives to support the Commission's objectives
- v. As applicable, additional legislation needed to accomplish the objectives of the Commission¹⁴

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Decision-making

Process

(Continued)

It is important to understand that the Commission's recommendations and the findings from its annual report are merely advisory and not binding on the legislature.

B The Opioid Advisory Commission has twelve (12) voting members with experience in “substance abuse prevention, health care, mental health, law enforcement, local government, first response work, or similar fields”¹⁵ and who are intended to reflect the state’s geographic diversity. Seven (7) voting members constitutes a quorum and a majority is required for the Commission to take any action.¹⁶

1. The Commission includes:
 - i. Ten (10) members appointed by legislative majority (8) and minority leadership (2)
 - ii. A member appointed by legislative leadership from a list of three (3) people provided by the Governor
 - iii. A member appointed by legislative leadership from a list of three (3) people provided by the Attorney General
 - iv. The Director of MDHHS or their designee serves as an ex officio member without a vote
 - v. The Legislative Council Administrator or their designee serves as an ex officio member without a vote.¹⁷

2. As of December 2022, current members are:

Cara Anne Poland, M.D., M.Ed. (Chair)	Patrick Patterson (Vice Chair)	Kelly Ainsworth
Bradley Casemore, MHSA, LMSW, FACHE	Judge Linda Davis	Katharine Hude, Esq.
Mona Makki	Scott Masi	Mario Nanos
Kyle Rambo, MPA	Cameron Risma, M.D.	Sarah Stoddard, PhD, RN, CNP, FSAHM, FAAN

3. The two ex officio members are Secretary Elizabeth Hertel and Jennifer Dettloff.¹⁸

C The process at the local government level for how funds will be used will vary. The next section suggests strategies for engaging in the process.

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Engaging in the Process

1. Attend Commission meetings, which must take place at least quarterly and be consistent with the Michigan Open Meetings Act.¹⁹ The schedule and notes from prior meetings can be found here: <http://council.legislature.mi.gov/Council/OAC>
 2. Monitor/advocate around the membership of the Commission and push for the meaningful inclusion of people with lived experience.
 3. Reach out to the Commission to provide feedback and offer your perspective on your community's needs and priorities: OAC@legislature.mi.gov
 4. Research and understand the process in your community, which may evolve over time. Attend meetings and provide feedback when local governments develop budgets or plans for allocation of the opioid settlement funds. Key decisionmakers could include a city council or a local health department, for example.
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Tracking Funds and Accountability

1. The notes from the proceedings of the Opioid Advisory Commission's meetings are available online and any writing that is used by the Commission in performing its official duties is subject to the Michigan Freedom of Information Act.²⁰
2. In 2022, Michigan conducted a survey among key stakeholders on priorities for the use of opioid settlement dollars: https://chrt.org/wp-content/uploads/2022/05/MDHHS_FinalOpioidsReport_May2022.pdf. The three topline priorities were recovery support services, prevention programming, and expansion of medications for opioid use disorder. Consider how stakeholders can ensure the legislature is responsive to community priorities in its appropriation of funds.
3. Remember that the Opioid Advisory Commission must provide an “evidence-based assessment of the prior use of money appropriated from the Michigan Opioid Healing and Recovery Fund” every year. This provides a natural leverage point for tracking and accountability.
4. Consider other mechanisms of promoting transparency in how funds are spent and related health outcomes, such as a state dashboard.

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Additional Resources

STATE-SPECIFIC RESOURCES

The Michigan Legislative Council

<http://council.legislature.mi.gov/Council/OAC>

Opioid Settlement Resource Center

<https://micounties.org/opioid-settlement-resource-center/>

TRIBAL RESOURCES

Tribal Opioid Settlements

<https://www.tribalopioidsettlements.com/>

TRACKER

OpioidSettlement Tracker.com (national)

<https://www.opioidsettlementtracker.com/>

WEBSITE

NACo Opioid Solutions Center

<https://www.naco.org/resources/opioid-solutions-center>

YOUTUBE VIDEO

Office Hours: Accessing Opioid Settlement Funding for Harm Reduction Programs with Christine Minhee

<https://www.youtube.com/watch?v=X7cWmhThEDc>

PRINCIPLES

Principles for the Use of Funds from the Opioid Litigation

<https://opioidprinciples.jhsph.edu/>

TOOLKIT

Opioid Settlement Toolkit for Community- Based Organizations

<https://www.social-current.org/reports/opioid-settlement-toolkit-community-based-organizations/>

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References

1. Note that this total is limited to funds received from settlements with McKesson, Cardinal Health, AmerisourceBergen, and Johnson & Johnson. Additional money may be available through other settlement agreements.
2. <https://www.michigan.gov/ag/-/media/Project/Websites/AG/opioids/Resource-Documents/Michigan-State-Subdivision-Agreement-for-Distributor-and-Janssen-Settlement-Agreements.pdf?rev=7b72e1184d3f4dbd9ed200c5b8318cd7>, accessed November 29, 2022
3. SB 993 available at <http://www.legislature.mi.gov/documents/2021-2022/publicact/pdf/2022-PA-0083.pdf>; SB 994 available at <http://www.legislature.mi.gov/documents/2021-2022/publicact/pdf/2022-PA-0084.pdf>
4. https://content.govdelivery.com/attachments/MIEOG/2022/09/29/file_attachments/2283519/EO%202022-12%20Opioids%20Task%20Force%20%28220928%29%20%28with%20signature%29.pdf, accessed November 29, 2022.
5. <https://www.michigan.gov/ag/-/media/Project/Websites/AG/opioids/Resource-Documents/Michigan-State-Subdivision-Agreement-for-Distributor-and-Janssen-Settlement-Agreements.pdf?rev=7b72e1184d3f4dbd9ed200c5b8318cd7>, accessed November 29, 2022; see pages 169–176 for final allocation percentages.
6. Id. See Section II.6
7. <https://www.michigan.gov/whitmer/news/press-releases/2022/05/19/governor-whitmer-signs-bills-fighting-opioid-crisis>, accessed November 30, 2022.
8. MCL § 12.253(2) (“The state treasurer shall deposit all proceeds received by this state as a result of any judgment, settlement, or compromise of claims pertaining to violations, or alleged violations, of law related to the manufacture, marketing, distribution, dispensing, or sale of opioids into the Michigan opioid healing and recovery fund except for proceeds received under the Medicaid false claim act.”).
9. MCL § 12.253(7)–(4).
10. “The Speaker of the House and the Senate Majority Leader each appoint six members of their chamber. At least two of each body must be members of the minority party. These leaders also appoint three alternates. The Constitution directs the legislature to appropriate funds for the Legislative Council’s operations which include providing bill drafting, research, and other services to the members of the legislature.” <http://council.legislature.mi.gov/Council/Index>, accessed November 30, 2022.
11. MCL § 4.1811(13)(b)
12. Subsection 2(a) of Executive Order No. 2022–12, https://content.govdelivery.com/attachments/MIEOG/2022/09/29/file_attachments/2283519/EO%202022-12%20Opioids%20Task%20Force%20%28220928%29%20%28with%20signature%29.pdf, accessed November 30, 2022.
13. Money from this fund must be appropriated by the state legislature. In 2022, the Michigan legislature appropriated \$23,200,000 from the fund to MDHHS in order to “create or supplement opioid-related programs and services...” <http://www.legislature.mi.gov/documents/2021-2022/publicact/pdf/2022-PA-0166.pdf>. Accessed 12/7/2022.
14. MCL § 4.1811(13)(b)–(c)
15. MCL § 4.1811(2)(a)
16. MCL § 4.1811(9)
17. MCL § 4.1811(2)(a)–(c)
18. <http://council.legislature.mi.gov/Council/OAC>, accessed November 30, 2022. Note that terms of Commission members vary. Of the first voting members appointed, 4 are appointed to 1-year terms, 4 are appointed to 2-year terms, and 4 are appointed to 3-year terms, as determined by the senate majority leader and the speaker of the house of representatives. After the first appointments, the term of a voting member of the opioid advisory commission is 3 years. MCL § 4.1811(5). A Commission member may be removed by the senate majority leader and the speaker of the house of representatives for “incompetence, dereliction of duty, malfeasance, or nonfeasance in office, or any other good cause.” MCL § 4.1811(7).
19. MCL § 4.1811(8) and (10)
20. MCL § 4.1811(11)