

Maine



Total Funds

\$130 million¹

Allocation

50% to the Recovery Fund, 30% to political subdivisions, and 20% to the state Attorney General

Mechanism

Allocation agreements between the state and local governments ([Amendment to Maine State-Subdivision Memorandum of Understanding and Agreement Regarding Use of Settlement Funds, Maine State-Subdivision Memorandum of Understanding and Agreement Regarding Use of Settlement Funds - 2023, Maine School Administrative Units' Inclusion in Maine's Recovery Fund](#)), legislation ([MRS Tit. 5 Sec. 203-A, 203-B, 203-C](#))²

Key Takeaways

Maine Recovery Fund and Council. Half of Maine's opioid settlements is held in the Maine Recovery Fund,³ which is overseen by the 15-member Maine Recovery Council.⁴

Multiple MOUs. Maine prepared for its "second wave" of settlements with opioid retailers CVS, Walgreens, and Walmart by developing a separate MOU.⁵ Maine's 2023 MOU includes new provisions (e.g., prohibiting supplantation uses of funds from subsequent opioid settlements)⁶ and alters certain provisions of the original MOU (e.g., substituting the Maine Recovery Council for the legislature in several passages).⁷

Public reporting. The Maine Recovery Council must create a dashboard to publish data on expenditures from the Maine Recovery Fund.⁸ However, no public reporting requirements apply to the 20% of settlement funds allocated to the state Attorney General and 30% of funds allocated directly to local governments.

This resource is current as of 5/8/2023. For the most up-to-date information, please visit <https://www.opioidsettlementtracker.com/settlementspending>.



Background

Maine allocates 50% of its opioid settlement funds to the Maine Recovery Fund, 30% to subdivisions, and 20% to the state Attorney General.⁹ A [state law](#) authorizes the Attorney General to deposit opioid settlement funds into the Maine Recovery Fund (Fund),¹⁰ which was established by the [Maine State-Subdivision Memorandum of Understanding and Agreement Regarding Use of Settlement Funds \(MOU\)](#).¹¹ [State law](#) also establishes the Maine Recovery Council and requires it to direct disbursements from the Fund for approved uses.¹² Three percent (3%) of monies in the Fund are reserved for Maine’s school districts pursuant to the [Maine School Administrative Units’ Inclusion in Maine’s Recovery Fund agreement](#) (School MOU).¹³ All settlement funds, regardless of allocation, generally must be spent on approved uses, which are defined to include the prevention, harm reduction, treatment, and recovery strategies listed in the national settlement agreements’ [Exhibit E](#).¹⁴

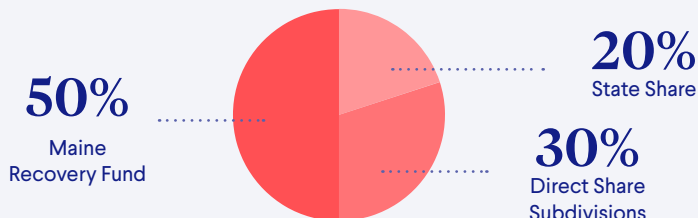
Maine’s original MOU applied only to proceeds from the Distributor and Janssen settlements and the Purdue and Mallinckrodt bankruptcies.¹⁵ The state developed a similar but distinct MOU ([2023 MOU](#)) that applies to any opioid settlements reached after the Distributor and Janssen settlements (i.e., “subsequent opioid settlements”).¹⁶ Finalization of the 2023 MOU requires the signatures of the Attorney General and [litigating counties, cities, and towns](#).¹⁷ The 2023 MOU maintains the 50%/30%/20% allocation among the Fund, subdivisions, and state Attorney General,¹⁸ including a [3% set aside](#) of Fund monies for Maine’s school districts,¹⁹ but it both includes new provisions and substantively alters certain provisions of the original MOU. For example, the 2023 MOU requires that funds from subsequent opioid settlements be used to supplement, rather than supplant, other funding streams,²⁰ and it substitutes the Maine Recovery Council for the legislature in several passages.²¹



Maine

Decision- Making Process

ALLOCATION OF SETTLEMENT FUNDS



50% MAINE RECOVERY FUND

Fifty percent (50%) of the state’s settlement monies are held in the Maine Recovery Fund (Fund),²² disbursements from which are directed to approved uses by the Maine Recovery Council (Council).²³ Three percent (3%) of monies in the Fund are earmarked for grants to Maine’s school administrative units.²⁴ The Council, which has adopted [bylaws](#),²⁵ otherwise has “broad discretion” around how to spend funds,²⁶ including for administrative supports.²⁷ Any uncommitted monies at the end of the year remain part of the Fund.²⁸

The Council’s primary responsibility is to distribute monies from the Fund for approved purposes and ensure that these distributions comply with the MOU.²⁹ The Council is also responsible for an accounting of Fund monies and releasing money to recipients,³⁰ and must facilitate collaboration among the state, local governments, regional councils, and other groups to share overdose data and abatement best practices.³¹ The Council is required to meet at least twice each calendar year,³² and it has met nearly every month since November 2022.³³

MAINE RECOVERY COUNCIL

The 15-member [Maine Recovery Council \(Council\)](#) contains the 11 members described in the MOU and four members added by state law.³⁴ Four appointments are made by litigating subdivisions, two by the Governor, six by legislative leadership, and three by the Attorney General.³⁵ The Attorney General’s appointees must include a person with lived experience and a public health expert.³⁶ The four legislative appointments added to the Council by state law – one medical professional with direct experience providing medications for opioid use disorder, one representative of re-entry services, one representative from a non-profit community-based mental health treatment provider, and one representative from the harm reduction community³⁷ – should try to reflect Maine’s racial, ethnic, gender, and Indigenous diversity.³⁸ Members can serve up to two two-year terms, for a total of four years.³⁹ Current members of the Council are listed [here](#).



Maine

Decision- Making Process

(Continued)

30% DIRECT SHARE SUBDIVISIONS

Thirty percent (30%) of the state's settlement funds are allocated directly to 39 eligible local governments according to the percentages in [Exhibit 3](#) of the MOUs.⁴⁰ Local governments must spend these funds on approved uses,⁴¹ whether directly or in collaboration with federal, state, local, tribal, or private sector groups.⁴² Localities will likely use their normal budgeting and decision-making processes to expend their share of settlement funds.

LOCAL SPENDING EXAMPLE

The Westbrook City Council approved \$9,180 in opioid settlement funds for a summer youth prevention program at Westbrook Partners for Prevention.

20% STATE SHARE

The state's 20% share is allocated to the state Attorney General for spending on approved uses.⁴³

Tracking Funds and Accountability

- The [Maine Recovery Council](#) must create a dashboard to publish data on expenditures from the Fund.⁴⁴
- Entities receiving monies from the Fund must, by September 1 of each year, report to the Council how the funds were used for approved purposes.⁴⁵ The Attorney General then must compile these reports for legislative committees by October 1 of each year.⁴⁶
- The Attorney General also must submit a report to the legislature by February 1 of each year describing the activities of the Council, the status of the Fund, disbursements from the Fund, and outcomes of funded activities.⁴⁷
- No specific public reporting requirements apply to the 20% of settlement monies allocated to the Attorney General or 30% of monies directly allocated to local governments.
- The Council may request a public hearing on any legislative proposal or budget bill that affects the Fund, the purpose of which is to assess the level of support for the change among legislative committees. If there is committee support for the proposal, the Council may request a review and evaluation of the proposal, the results of which will be made available to the Council and relevant legislative committees.⁴⁸
- The Council must adhere to Maine's open meetings and open records laws described in Maine's [Freedom of Access Act](#).⁴⁹

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Engaging in the Process

- Monitor implementation of the Council's [bylaws](#),⁵⁰ which describe important mechanisms for public engagement in the oversight of Fund monies. The approved bylaws require, among other things, that the Council undertake a needs assessment that integrates public feedback at least once every two years and host regular public meetings.⁵¹ At least one meeting each year must include a public forum to receive public input.⁵²
- Attend Council meetings, which members of the public may observe but not participate in unless otherwise specified.⁵³ The Council must meet twice a year, either in person or virtually.⁵⁴ Information about how to join future meetings and past meeting minutes and recordings can be found on the Council's [website](#).
- Subscribe to Council notification emails on this [page](#). You can send questions, comments, and other feedback to the Council by filling out the form [here](#).
- The Attorney General appoints three members of the public to the Council. Watch for future vacancies and investigate ways to put forth names!

Additional Resources

OFFICE OF THE MAINE ATTORNEY GENERAL

[Opioids](#)

[Resources for Implementing the Opioid Settlements](#)

[Opioid Settlement Payments \(Distributors / Janssen and Mallinckrodt\)](#)

[2023 Opioid Settlements](#)

[Opioid Settlements and the Maine Recovery Council \(February 2023\)](#)

MAINE RECOVERY COUNCIL

[Reports](#)

[Bylaws \(February 2023\)](#)

GOVERNOR'S OFFICE OF POLICY INNOVATION AND THE FUTURE

[Maine Opioid Response 2021 Strategic Action Plan](#)

[Maine Drug Data Hub](#)



References

Last updated May 8, 2023.

1. From settlements with distributors McKesson, AmerisourceBergen, Cardinal Health and manufacturer Johnson & Johnson only. Maine 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 "Maine" for state-specific participation information) and OpioidSettlementTracker.com's [Global Settlement Tracker](#) for more information.
2. Although Maine's "Amendment to Maine State-Subdivision Memorandum of Understanding and Agreement Regarding Use of Settlement Funds" (MOU) is limited to the "National" (Distributor and Janssen), Purdue, and Mallinckrodt settlements (see MOU II.A, I.E), a 2023 version of the MOU (2023 MOU) applies to "any" "statewide settlement reached with a non-bankrupt manufacturer of, distributor of, or pharmacy prescribing, opioids subsequent to the National Opioid Settlement." See 2023 MOU II.A, I.J. 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 other ways states might amend their spending mechanisms, if at all, to comply with subsequent settlement terms.
3. MOU II.C(3); 2023 MOU II.C(3).
4. MOU II.D, III; 2023 MOU II, III; Me. Rev. Stat. tit. 5, § 203-C(2)-(3).
5. See AG's "[2023 Opioid Settlements](#)"
6. 2023 MOU II.B.
7. *Compare, e.g.,* MOU IV.C *with* 2023 MOU IV.D.
8. MOU III re: "Transparency" (A); 2023 MOU III re: "Transparency."
9. MOU II.C(1)-(3); 2023 MOU II.C(1)-(3).
10. Me. Rev. Stat. tit. 5, § 203-B.
11. MOU IV.A. See *also* 2023 MOU IV.A (authorizing the Maine Recovery Fund to receive payments from subsequent opioid settlements).
12. Me. Rev. Stat. tit. 5, § 203-C(2). The Maine Recovery Council is referring to as the "Maine Recovery Fund Council" in the MOUs.
13. See [Maine School Administrative Units' Inclusion in Maine's Recovery Fund](#).
14. MOU I.A, II.B; 2023 MOU I.B, II.B. The original MOU discusses a backstop fund that contains 7% of each payment made to participating subdivisions from the Distributor and Janssen settlements. Private counsel for the subdivisions may only apply for these monies for a "shortfall." MOU I.E, V.
15. MOU I.E., II.A. The reference to "National Distributor Settlement" in MOU II.A is presumably intended to refer to "National Opioid Settlement" as defined in MOU I.E, which includes the "National Distributor and J&J Settlements Agreement."
16. 2023 MOU II.A, I.J.
17. AG's "[2023 Opioid Settlements](#)."
18. 2023 MOU II.C.
19. See [2023 Maine School Administrative Units' Inclusion in Maine's Recovery Fund](#) (2023 School MOU).
20. 2023 MOU II.B. The original MOU does not include this anti-supplantation language. MOU II.B.
21. 2023 MOU I.B and, e.g., 2023 MOU IV.D,E.
22. MOU II.C(3) and 2023 MOU II.C(3).
23. Me. Rev. Stat. tit. 5, § 203-C(2). "Examples of approved uses are reversing overdoses through naloxone or other FDA-approved drugs, expanding the availability of medication assisted treatment for Mainers struggling with opioid use disorder, helping Mainers avoid opioid use through evidence-based prevention programs, and providing additional special education resources to Maine school administrative units." [Maine Recovery Council](#).
24. School MOU 2; 2023 School MOU 2. Grants are not limited to litigating school administrative units, although "[a]pplications from Maine Litigating School Administrative Units shall be given a reasonable plus factor in consideration of grants." School MOU and 2023 School MOU re: "Allocation of School Administrative Unit Funds." The Recovery Council must invite proposals for projects that supplement opioid abatement services in school administrative units. School MOU and 2023 School MOU re: "Grant Process." It must prioritize applications from school administrative units that



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References

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- are poorly funded or most impacted by overdose, that target children under the age eight, that leverage matching funds, that are replicable elsewhere, and are financially self-sustaining. School MOU and 2023 School MOU re: "Allocation of School Administrative Unit Funds" (a)-(g). Examples of aligned uses include grants for direct services, for multi-disciplinary programs, and to develop special education and abatement models with statewide applicability. School MOU and 2023 School MOU re: "Illustrations of Uses."
25. MOU III re: "Governance"; 2023 MOU III re: "Governance." Discussion of bylaw drafts may be tracked in the Council's [meeting minutes](#). The Council otherwise has no rulemaking authority. MOU III re: "Governance" (a); 2023 MOU III re: Governance (a).
 26. [AG's 1/28/2022 press](#).
 27. MOU III re: "Legal Representation"; 2023 MOU III re: "Legal Representation."
 28. The original MOU required specific legislative approval to spend unencumbered balances that had lapsed back into the Fund. MOU IV.C. The 2023 MOU instead provides that the Recovery Council may expend these funds in the same manner as other monies in the Fund. 2023 MOU IV.D. The 2023 provision supersedes the original provision. See 2023 MOU IV.D ("Notwithstanding any provision to the contrary in Section IV.C of the 2022 State-Subdivision MOU...").
 29. MOU III re: "Duties"; 2023 MOU III re: "Duties." See also Me. Rev. Stat. tit. 5, § 203-C(2).
 30. MOU III re: "Governance" (b); 2023 MOU III re: "Governance" (b).
 31. MOU III re: "Collaboration"; 2023 MOU III re: "Collaboration."
 32. MOU III re: "Duties"; 2023 MOU III re: "Duties."
 33. [AG's Recovery Fund annual report \(2023\)](#).
 34. MOU III re: Membership and Sec. 203-C(3).
 35. MOU III re: "Membership," "Subdivision Members," "State Members," "Public Members"; 2023 MOU III re: "Membership," "Subdivision Members," "State Members," "Public Members"; Me. Rev. Stat. tit. 5, § 203-C(3).
 36. MOU III re: "Public Members"; 2023 MOU III re: "Public Members."
 37. Me. Rev. Stat. tit. 5, § 203-C(3)(A)-(D).
 38. Me. Rev. Stat. tit. 5, § 203-C(3).
 39. MOU III re: "Terms"; 2023 MOU III re: "Terms."
 40. MOU I.B, II.C(2); 2023 MOU I.C, II.C(2). Eligible local governments (i.e., "Direct Share Subdivisions") include "a plaintiff subdivision that has filed a complaint against a Pharmaceutical Supply Chain entity and/or a subdivision with a population equal to or greater than 10,000." MOU I.B; 2023 MOU I.C. "Maximum Distributor and Johnson and Johnson Payments to Maine Participating Subdivisions" available [here](#).
 41. MOU I.A, II.C(2); 2023 MOU I.B, II.C(2).
 42. MOU II.D; 2023 MOU II.C.
 43. MOU II.C(1); 2023 MOU II.C(1). See also 2023 MOU II.C ("Because the State did not hire outside counsel, any funds for attorney fees that the State receives from the Supplemental Opioid Settlements will be deposited into the Attorney General's share.")
 44. MOU III re: "Transparency" (A); 2023 MOU III re: "Transparency."
 45. MOU IV.H; 2023 MOU IV.H.
 46. MOU IV.H; 2023 MOU IV.H. These reports must also "summarize the activity in any [directly related] funds or accounts...." *Id.*
 47. Me. Rev. Stat. tit. 5, § 203-C(5).
 48. 2023 MOU IV.I. Note that the original MOU *required* a public hearing whenever there was a legislative proposal affecting the fund, and a review and evaluation if there was committee support for the proposal. MOU IV.I. The 2023 MOU merely allows the Maine Recovery Council to request such a public hearing, review, and evaluation. 2023 MOU IV.I.
 49. MOU III re: "Transparency"; 2023 MOU III re: "Transparency."
 50. Discussion of bylaw drafts may be tracked in the Council's [meeting minutes](#).
 51. Bylaws Sec. 2.2, Sec. 4.1-2.
 52. Bylaws Sec. 4.2.
 53. [Maine Recovery Council](#).
 54. MOU III re: "Duties"; 2023 MOU III re: "Duties."