

Michigan



Total Funds

\$776 million¹

Allocation

50% to the state and 50%
to local governments

Mechanism

Allocation agreement between the state and local governments ([Michigan State-Subdivision Agreement for Allocation of Distributor Settlement Agreement and Janssen Settlement Agreement](#)), legislation (MCL §§ [12.253](#), [4.1850](#), [4.1851](#)), and Executive Order ([No. 2022-12: Michigan Opioids Task Force](#))²

Key Takeaways

No supplantation for state share. Monies expended from the state's share of settlement funds (i.e., Opioid Healing and Recovery Fund) must create or supplement programs or services, not supplant other government funding streams.³

Lack of public reporting. To date, Michigan's Agreement and state law do not contain requirements for public reporting of settlement spending. However, the Opioid Advisory Commission's [2023 Annual Report](#) included recommendations for more transparency.⁴

Background

In Michigan, the [State-Subdivision Agreement](#) (Agreement) allocates 50% of settlement monies to the state and 50% directly to local governments.⁵ Michigan [state law](#) established the Michigan Opioid Healing and Recovery Fund (Fund) to hold the state's share of monies⁶ and the [Opioid Advisory Commission](#) (OAC) to assess the impact of money appropriated from the Fund, amongst other responsibilities.⁷

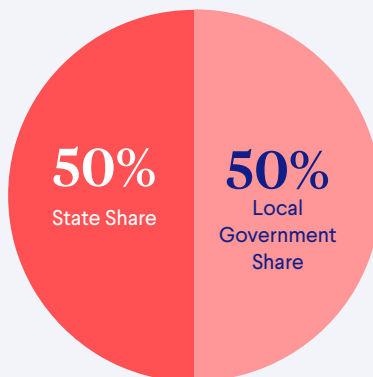
With the exception of modest deductions from the Local Government share detailed in a later section,⁸ the Agreement requires settlement payments to the state and local governments be used for opioid remediation, "except as otherwise allowed by the Settlements,"⁹ with a minimum of 70% of payments going solely toward forward-looking remediation.¹⁰ Further, the Agreement adopts by reference the national settlements' definition of "opioid remediation"¹¹ and thereby those agreements' non-exhaustive list of qualifying expenditures in [Exhibit E](#). However, monies from the state's share (i.e., Opioid Healing and Recovery Fund) must create or supplement programs or services, not supplant other government funding streams.¹²

This resource is current as of 6/6/2023. For the most up-to-date information, please visit <https://www.opioidsettlementtracker.com/settlementspending>.



Decision- Making Process

ALLOCATION OF SETTLEMENT FUNDS



50% STATE SHARE

The state's 50% share of opioid settlement funding is held in the Opioid Healing and Recovery Fund (Fund), which is managed by the Department of Treasury as a non-lapsing fund that can only be expended through legislative appropriation.¹³ The state must also use Fund monies to supplement, not supplant, existing funding streams.¹⁴ Notably, Michigan's [state law](#) is flexible in that monies from the Fund need to be spent "in a manner and for purposes consistent with the opioid judgment, settlement, or compromise of claims from which the money was received."¹⁵ In other words, Michigan does not impose additional parameters on the permitted uses of its opioid settlement funds, in contrast to many states.

In 2022, the Michigan legislature appropriated \$23,200,000 from the Fund to the Michigan Department of Health and Human Services (MDHHS) in order to "create or supplement opioid-related programs and services."¹⁶ A limited breakdown of how some of these funds have been directed [is provided](#) in the OAC's 2023 report.¹⁷ Beginning in 2023, the legislature can consult the Opioid Advisory Commission's (OAC) recommendations on funding initiatives, which are a required component of the OAC's annual report,¹⁸ to be discussed in further detail below. The OAC's recommendations to the legislature and other stakeholders are advisory and non-binding.



Decision- Making Process

(Continued)

OPIOID ADVISORY COMMISSION (OAC)

The OAC was established through legislation, with a mandate 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.”¹⁹ This is accomplished in part through the submission of an annual report to the governor, attorney general, and legislative leadership that covers the following:

- A statewide evidence-based needs assessment²⁰
- Goals and recommendations, including the rationale supporting the goals and recommendations, sustainability plans, and performance indicators, which must include consideration of harm reduction efforts and disparities in access to harm reduction programs and resources.²¹
- An evidence-based assessment of the prior use of money appropriated from the state’s Opioid Healing and Recovery Fund, including the “extent to which such expenditures abated the opioid crisis in the state.”²²
- Recommended funding for tasks, activities, projects, and initiatives to support the OAC’s objectives²³
- As applicable, additional legislation needed to accomplish the objectives of the OAC²⁴

You can find the OAC’s 2023 Annual Report [here](#), which contains a wealth of information, analysis, and recommendations. A shorter “key takeaways” document is available [here](#).

The OAC 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,”²⁵ and who are intended to reflect the state’s geographic diversity.²⁶ All voting members are appointed by legislative leadership, two of whom are selected from shortlists that are submitted by the governor and the Attorney General, respectively.²⁷ The Director of MDHHS or their designee serves as an ex officio member without a vote, as does the Legislative Council Administrator or their designee.²⁸ Seven (7) voting members constitutes a quorum and a majority vote is required for the OAC to take any action.²⁹ Current members of the OAC can be found [here](#). Initial members serve varying terms (up to a maximum of three years for a single term)³⁰ and can be removed by concurrence of the senate majority leader and the speaker of the house for “incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.”³¹ OAC meetings must occur at least quarterly, although they can be more frequent.³²



Decision- Making Process

(Continued)

50% LOCAL GOVERNMENT SHARE

Fifty percent (50%) of Michigan’s opioid settlement funding is distributed directly to localities according to the percentages in [Exhibit A](#) of Michigan’s Agreement. Per the Agreement, litigating local governments that were bellwether “early birds” in pursuing litigation receive an upward adjustment to their share.³³ Additionally, local governments whose final allocation percentage is less than .0023% will receive all of their funding up front in the first settlement payment.³⁴

With the exception of modest deductions from the local governments’ 50% share for an Administrative Fund, local attorneys’ fees, and a Special Circumstances Fund,³⁵ the Agreement requires settlement payments to local governments to be used for opioid remediation, “except as otherwise allowed by the Settlements,” with a minimum of 70% of payments going solely toward forward-looking remediation.³⁶ Outside of these relatively minimal requirements, funds from the Local Government share will likely be expended according to normal budget processes.

LOCAL PLANNING EXAMPLE

Macomb County created a budget for the nearly \$2.5 million it has received thus far from the national opioid settlements. Areas addressed by the proposal are diverse, ranging from the creation of a residential treatment center to supporting people reentering the community from incarceration.³⁷

Tracking Funds and Accountability

- Michigan’s [Agreement](#) and state law do not contain requirements for public reporting of settlement spending at the state or local levels. However, the Opioid Advisory Commission’s [2023 Annual Report](#) included recommendations for more transparency.³⁸
- The Department of Treasury’s management of the Opioid Healing and Recovery Fund is limited to receiving funds, expending funds upon legislative appropriation, and auditing of account funds.³⁹ As the [OAC flagged in its 2023 Annual Report](#), “[t]his does not include specific tracking and reporting of settlement dollars earmarked...appropriated...or in the process of expenditure.”⁴⁰
- 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 by March 30.⁴¹ This provides a starting point for tracking and accountability.
- Neither the Agreement nor state law address enforcement provisions for misspent funds.



Engaging in the Process

- Subscribe to email notifications of OAC meetings by sending a request to: opiod-advisory-comm-join@listserver.legislature.mi.gov
- The minutes from the proceedings of the OAC's meetings are [available online](#) and any writing that is used or prepared by the OAC in performing its official duties is subject to the freedom of information act.⁴²
- In 2022, the state of Michigan [conducted a survey](#) among key stakeholders on priorities for the use of opioid settlement dollars. 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.
- Use the OAC's 2023 Annual Report as a tool—it included [useful recommendations](#) like strengthened public reporting on the use of settlement funds and the deliberate facilitation of community engagement and collaborative strategic planning. It also articulates principles like the inclusion of people with lived experience and focusing on social determinants of health.⁴³

Additional Resources

STATE OF MICHIGAN

MDHHS Interactive Data Dashboard and 2022 Opioids Strategy

Michigan Opioids Task Force Annual Report (2020)

Opioid Advisory Commission 2023 Annual Report

Change. At your own pace (find harm reduction services)

Get Help Now (map to locate SUD services)

MICHIGAN ASSOCIATION OF COUNTIES OPIOID SETTLEMENT RESOURCE CENTER

UNIVERSITY OF MICHIGAN – OPIOID RESEARCH INSTITUTE

HARM REDUCTION MICHIGAN



References

Last updated June 6, 2023.

1. From settlements with distributors McKesson, AmerisourceBergen, Cardinal Health and manufacturer Johnson & Johnson only. Michigan is also participating in several settlements that are likely to be finalized later this year, e.g., CVS, 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 "Michigan" for state-specific participation information) and OpioidSettlementTracker.com's [Global Settlement Tracker](#) for more information.
2. Michigan's Allocation Agreement and its 50-50 split of funds between the state and local governments is expressly limited to the Distributor and Janssen settlements. Agreement I.W, II.3. However, Michigan law creating the Opioid Healing and Recovery Fund and the Opioid Advisory Commission is not confined to the Distributor and Janssen settlements. MCL §§ 12.253(2), 4.1851(13) (c)(iii). The Opioid Healing and Recovery Fund will receive "all proceeds received by [Michigan] as a result of any judgment, settlement, or compromise of claims pertaining to violations, or alleged violations, of law related to the manufacture, marketing, dispensing, or sale of opioids" with the exception of proceeds received under the Medicaid false claims act. MCL § 12.253(2). Executive Order No. 2022-12 also defines the role of the Michigan Opioids Task Force as "a Government Participation Mechanism for purposes of *any opioid-related bankruptcy or settlement* in which a government participation mechanism is needed to effectuate Michigan's collection of the claim." EO 2022-12(2)(a) (emphasis added). 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. MCL § 12.253(7).
4. [Michigan Opioid Advisory Commission 2023 Annual Report](#) (see, e.g., page 32). See also KHN's "[The Right to Know: Where Does Your State Stand on Public Reporting of Opioid Settlement Cash?](#)" interactive transparency map and OpioidSettlementTracker.com's [Global Settlement Tracker](#) for more information.
5. Agreement II.3. This applies only to the Distributor and Janssen settlements. Check out the Michigan Association of Counties' [Opioid Settlement Resource Center](#), which includes a helpful breakdown of how different settlements are to be allocated in Michigan.
6. MCL § 12.253(1)-(2).
7. MCL § 4.1851(13).
8. Agreement II.4. See Agreement I.A (the "Administrative Fund" is defined as 0.3% of the Local Government Share); Agreement II.9 (Attorney fees); and Agreement II.10 (Special Circumstances Fund).
9. Non-opioid remediation expenditures are capped at 15% under the national settlements.
10. Agreement II.2. See the [Distributor](#) and [Janssen](#) settlements, *Sections V.B.1, V.B.2*.
11. Agreement I.P. [Distributor](#) (Section I.SS) and [Janssen](#) (Section I.47) settlements ("Opioid Remediation" means care, treatment, and other programs and expenditures (including reimbursement for past such programs or expenditures except where this Agreement restricts the use of funds solely to future Opioid Remediation) designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of the opioid abuse crisis, including on those injured as a result of the opioid abuse crisis. Exhibit E provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation. Qualifying expenditures may include reasonable related administrative expenses.").
12. MCL § 12.253(7).
13. MCL § 12.253(1), (4), and (6).
14. MCL § 12.253(7).
15. MCL § 12.253(6). State law also permits appropriations to the state Attorney General to "pay for costs and reasonable attorney fees incurred in the pursuit of an opioid judgment, settlement, or compromise of claims, except for a pursuit under the Medicaid false claim act." MCL § 12.253(8).
16. [2022 Act, No. 166](#).
17. [Michigan Opioid Advisory Commission 2023 Annual Report](#) (see page 15).



References

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18. MCL § 4.1851(13)(c)(iv).
19. MCL § 4.1851(13)(b).
20. MCL § 4.1851(13)(c)(i)(A)-(D). The needs assessment component of the annual report must include 1) a summary of the funding landscape to address SUD and co-occurring mental health conditions in MI; 2) a discussion of how to prevent overdoses, address disparities in access to healthcare, and prevent youth substance use; 3) An analysis based on quantitative and qualitative data, of the effects on the state of Michigan of SUD and co-occurring mental health conditions; and, 4) a description of the most common risk factors associated with SUDs and co-occurring mental health disorders.
21. MCL § 4.1851(13)(c)(ii)(A)-(B). The goals and other required elements must relate to 1) SUD and co-occurring mental health conditions prevention, treatment, recovery, and harm reduction efforts; and, 2) reducing disparities in access to prevention, treatment, recovery, and harm reduction programs, services, supports, and resources.
22. MCL § 4.1851(13)(c)(iii).
23. MCL § 4.1851(13)(c)(iv)
24. MCL § 4.1851(13)(c)(v).
25. MCL § 4.1851(2)(a).
26. MCL § 4.1851(3).
27. MCL § 4.1851(2)(a)(v)-(vi).
28. MCL § 4.1851(2)(b)-(c).
29. MCL § 4.1851(2)(a)(i)-(vi). Eight (8) members are appointed by legislative majority leadership and 2 members are appointed by legislative minority leadership.
30. See MCL § 4.1851(5) (“Of the first voting members appointed, 4 shall be appointed to 1-year terms, 4 shall be appointed to 2-year terms, and 4 shall be 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 or until a successor is appointed under subsection (2), whichever is later.”).
31. MCL § 4.1851(7).
32. MCL § 4.1851(8).
33. Agreement II.5 (Local governments are entitled to a Litigation Adjustment of an additional percentage relative to their preliminary allocation percentage: 16% for Litigating Local Governments that served as a bellwether or filed suit in 2017; 12% for Litigating Local Governments that filed suit in 2018; and 8% for Litigating Local Governments that filed suit in 2019).
34. Agreement 1.E (defining “De minimis-share Local Government”) and Agreement II.6 on accelerated participation payments.
35. Agreement II.4. For a detailed explanation of these different funds, see Agreement I.A (the “Administrative Fund” is defined as 0.3% of the Local Government Share); Agreement II.9 (Attorney fees); and Agreement II.10 (Special Circumstances Fund).
36. Agreement II.2. See the [Distributor](#) and [Janssen](#) settlements, *Sections V.B.1, V.B.2*.
37. [“Macomb County officials developing plan for first \\$2.5 million in opioids-settlement funds.”](#)
38. [Michigan Opioid Advisory Commission 2023 Annual Report](#) (see, e.g., page 33). See also KHN’s [“The Right to Know: Where Does Your State Stand on Public Reporting of Opioid Settlement Cash?”](#) interactive transparency map and OpioidSettlementTracker.com’s [Global Settlement Tracker](#) for more information.
39. MCL § 12.253(5).
40. [Michigan Opioid Advisory Commission 2023 Annual Report](#) (see page 32).
41. MCL § 4.1851(13)(iii).
42. MCL § 4.1851(11).
43. [Michigan Opioid Advisory Commission 2023 Annual Report](#) (see pages 40-53).