



Montana

Total Funds

\$80 million¹

Allocation

70% to the Abatement Trust,
15% to participating local
governments, and 15% to the state

Mechanism

Allocation agreement between the state and local governments ([Montana Distributors' and Janssen Opioid Settlement Memorandum of Understanding and Amendment to Montana Distributors' and Janssen Opioids Settlement Memorandum of Understanding](#))²

Key Takeaways

Default allocation. Montana is one of a handful of states to use the national settlement agreements' default allocation scheme, which allocates 70% of funds to an abatement account devoted solely to future opioid remediation uses (i.e., the Montana Opioid Abatement Trust)³ then splits the remaining 30% evenly between the state and local governments.⁴

Commitment to future "opioid remediation." Montana's approved purposes are the forward-looking abatement strategies and programs described in the national settlement agreements' [Exhibit E](#).⁵ Monies in the Trust, however, must be spent on the MOU's specific definition of "opioid remediation,"⁶ which highlights state-specific priority strategies, such as polysubstance use prevention and fentanyl-related supports for law enforcement.⁷

Public reporting. Montana's allocation agreement does not include any requirements to publicly report opioid settlement expenditures or enforcement provisions to address misspent funds.⁸

Background

This resource is current as of 5/11/2023. For the most up-to-date information, please visit <https://www.opioidsettlementtracker.com/settlementspending>.

The [Montana Distributors' and Janssen Opioid Settlement Memorandum of Understanding](#) (MOU) establishes the allocation of the state's settlement monies, and the [Amendment to Montana Distributors' and Janssen Opioids Settlement Memorandum of Understanding](#) (Amendment) clarifies certain MOU provisions related to local governments. After a 5.5% set-aside for the Montana Attorney Fee Back-Stop Fund,⁹ 15% of funds are allocated directly to the State of Montana Fund,¹⁰ 15% is allocated directly to the Local Government Fund,¹¹ and 70% of funds are allocated directly to the Montana Opioid Abatement Trust (Trust).¹² Settlement monies in the Trust are overseen by an Advisory Committee.¹³



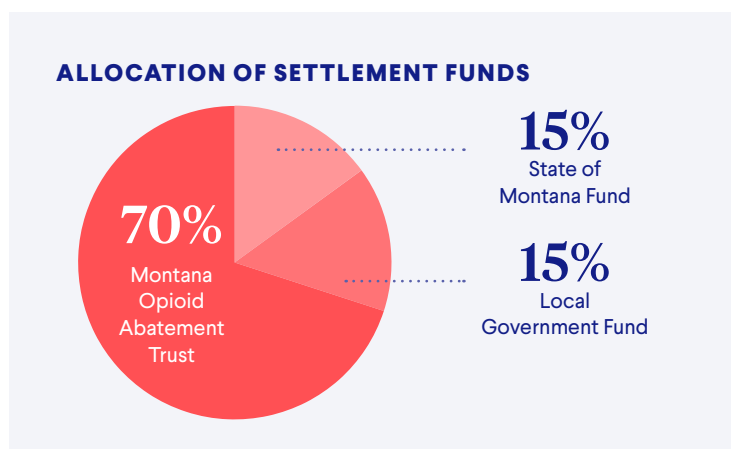
Montana

Background

(Continued)

Settlement monies allocated to the State of Montana Fund and the Trust must be used for Approved Purposes.¹⁴ Approved Purposes is defined to mean forward-looking abatement strategies and programs identified by the national settlement agreements (e.g., for approved uses outlined in [Exhibit E](#) such as prevention, harm reduction, treatment, and recovery services).¹⁵ Monies in the Trust are additionally bound by the state's specific definition of "opioid remediation,"¹⁶ which elaborates upon [Exhibit E's](#) "non-exhaustive list of expenditures" with "polysubstance use prevention strategies," "decreas[ing] the oversupply of licit and illicit opioids, including Fentanyl," and "support for law enforcements addressing the impact of opioid-related substance abuse in the communities they serve, including misuse or illicit use of heroin and/or Fentanyl," among other strategies.¹⁷

Decision-Making Process



70% MONTANA OPIOID ABATEMENT TRUST

Seventy percent (70%) of the state's settlement funds are held in the private, non-profit [Montana Opioid Abatement Trust](#) (Trust) created by the Attorney General.¹⁸ Monies in the Trust must be spent at the state, regional, or local levels on the MOU's specific definition of "opioid remediation" discussed above.¹⁹ Specifically, 80% (or 56% of total settlement funds) of Trust monies are allocated to participating abatement regions according to the percentages in [Exhibit B](#).²⁰ The remaining 20% (or 14% of total settlement funds) may be used for "statewide programs, innovation, research, and education,"²¹ with any funds not spent on those strategies redistributed to participating abatement regions according to [Exhibit B](#).²²



Montana

Decision- Making Process

(Continued)

Montana's MOU establishes 14 Abatement Regions: Nine Metropolitan Abatement Regions consisting of counties with a population of 30,000 or more and which have city-county health departments capable of administering settlement funds (i.e., Yellowstone, Missoula, Gallatin, Flathead, Cascade, Lewis & Clark, Silver Bow, Ravalli, and Lake Counties) and five Multi-County Abatement Regions, which are the Montana Department of Health and Human Services' Health Planning Regions described [here](#).²³ Each Abatement Region must create its own governance structures to administer settlement funds equitably across its region,²⁴ including ensuring that participating local governments have input on opioid remediation administration and funding decisions.²⁵ Abatement Regions may collaborate to submit joint funding proposals.²⁶ The amendments to Montana's MOU also allow a participating local government to establish its own governance structure to access and administer its share of Trust monies independent of its Abatement Region.²⁷

The Trust is administered by a 10-member Advisory Committee (Committee) and its Executive Director,²⁸ who is appointed by the Attorney General.²⁹ The Committee creates guidance for Abatement Regions, local governments, and other groups to develop and submit proposals for Trust funding using input from the state, regions, local governments, and other stakeholders.³⁰ The Committee must facilitate collaboration among the state, regions, and participating local governments to enhance information sharing about overdose crisis abatement efforts.³¹ Although the Committee is instructed that its “budgeting for operating expenditures should be conservative and carefully limited,” the MOU does not explicitly cap the Committee’s or regions’ administrative expenses.³² Monies in the Trust are disbursed to participating Abatement Regions after the Committee determines that a proposal meets the criteria for opioid remediation and approved purposes.³³ Otherwise, the Committee’s role is truly advisory only:³⁴ it exists to provide “professional advice” to regions when requested,³⁵ but it may not deny a regions’ or local governments’ distribution proposal so long as the proposal seeks funds for permissible uses.³⁶



Montana

Decision- Making Process

(Continued)

ABATEMENT TRUST ADVISORY COMMITTEE

The Abatement Trust Advisory Committee's (Committee) 10 members contain an equal number of state and local government representatives.³⁷ The Committee must meet by telephone or video conference at least once every three months and must strive to meet in person at least once per year.³⁸ At least one member of the Committee must represent state law enforcement agencies and one member may be a family member of a person with lived experience of opioid use disorder; all other members must come from the medical, public health, mental health, or substance use disorder fields.³⁹ The Metropolitan Regions select three of the Committee's ten members, the Multi-County Regions and Director of the Department of Health and Human Services each select two members, and the Attorney General selects three members.⁴⁰ The Abatement Regions determine for themselves how to select their representatives for the Committee,⁴¹ and current regional representatives can be found [here](#).⁴² Terms limits are three years, and Committee members may serve more than one term.⁴³

15% STATE OF MONTANA FUND

Monies in the State of Montana Fund are allocated for approved purposes determined by "a separate committee made up of representatives from the Attorney General and the Montana Department of Health and Human Services."⁴⁴ This committee is described as separate from the Advisory Committee but is otherwise not addressed by the MOU.

15% LOCAL GOVERNMENT FUND

Monies in the Local Government Fund are distributed directly to participating local governments according to the percentages in [Exhibit B](#),⁴⁵ and non-participating local governments' amounts are reallocated to the Abatement Trust for use by their regions.⁴⁶ Monies in the Local Government Fund are not explicitly restricted to "opioid remediation" or "approved purposes." Localities likely will use their normal budgeting and decision-making processes to expend these funds.



Montana

Tracking Funds and Accountability

- Montana's allocation agreement does not include any requirements to publicly report opioid settlement expenditures or enforcement provisions to address misspent funds.⁴⁷ This means that Montana is merely subject to the national settlement agreements' requirement that non-opioid remediation spending (no more than 15%) be eventually reported to the public.⁴⁸
- The Advisory Committee is ultimately responsible for ensuring that monies from the Trust are spent on approved purposes and for an accounting of all Trust disbursements.⁴⁹
- The Trust and its fund recipients must operate transparently and are subject to audit. Its operations are subject to open meeting and public records laws as well.⁵⁰

Engaging in the Process

- Participate in future virtual town halls hosted by the [Montana Association of Counties](#) (MACo). Recordings of two past town halls, from March 2023 and November 2022, are posted on MACo's [website](#).
- Montana has fewer obvious channels to engage on settlement spending than many states. Push for that to change! Reach out to your elected leaders for more information about how settlement funds will be spent in your community and statewide.
- Write to the [officials](#) authorized to receive localities' settlement funds as well. You can write to Rusty Gackle, the Interim Executive Director of the Advisory Committee, at rusty@montanaopioid.org.⁵¹
- Other contacts listed include secondary contact and MACo employee Eric Bryson (ebryson@mtcounties.org); Emily Sirney, who receives questions about the settlement portal and regarding authorized officials (esirney@browngreer.com); and Nancy Everson, a MACo employee who fields questions about allowable uses of funds and local budget questions (neverson@mtcounties.org).



Montana

Additional Resources

MONTANA ASSOCIATION OF COUNTIES

National Opioid Settlement

Opioid Settlements Virtual Town Hall Recording (March 2023)

Opioid Settlement White Paper

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Opioids

MONTANA SUBSTANCE USE DISORDER TASK FORCE

Strategic Plan 2020-2023



References

Last updated May 11, 2023.

1. From settlements with distributors McKesson, AmerisourceBergen, Cardinal Health and manufacturer Johnson & Johnson only. Montana 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 "Montana" for state-specific participation information) and OpioidSettlementTracker.com's [Global Settlement Tracker](#) for more information.
2. Montana's MOU is limited by its definitions to the Distributor and Janssen Settlements (see MOU A.4). 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. MOU C.1, D.3(b).
4. MOU D.3(a), (c). See also [Distributor Settlement Agreement Sec. V.C\(1\)-\(2\)](#) ("Base payments for each Settling State will then be allocated fifteen percent (15%) to its State Fund, seventy percent (70%) to its Abatement Accounts Fund, and fifteen percent (15%) to its Subdivision Fund. ... Incentive payments ... will be allocated fifteen percent (15%) to its State Fund, seventy percent (70%) to its Abatement Accounts Fund, and fifteen percent (15%) to its Subdivision Fund. Amounts may be reallocated and will be distributed as provided in Section V.D," which describes reallocation of funds via "State-Subdivision Agreement or other means").
5. MOU A.8, A.4. The Montana Association of Counties also links to [Exhibit E](#).
6. MOU D.3(b), A.7. See also MOU D.9-11, D.14.
7. MOU A.7.
8. See OpioidSettlementTracker.com's "[States' Initial Promises to Publicly Report Their Opioid Settlement Expenditures.](#)"
9. MOU E.6-10 (describing permissible use only in instances of a "shortfall"). See also MOU Amendment ("The Montana Attorney Fee Back-Stop Fund shall be funded by 5.5% of the total settlement funds paid to the State of Montana. Fifty percent (50%) of the Montana Attorney Fee Back-Stop Fund shall be allocated to the Montana Attorney General's Back-Stop Sub-fund and fifty percent (50%) to the Litigating Local Government Attorney Fee Back Stop Sub-Fund. The Attorney General's Fund shall be used in the Attorney General's sole discretion").
10. MOU D.3(a).
11. MOU D.3(c).
12. MOU D.3(b).
13. MOU C.2, D.3(b).
14. MOU C.1, C.14, D.4, D.5.
15. MOU A.8, A.4. The Montana Association of Counties also links to [Exhibit E](#).
16. MOU D.3(b), A.7. See also MOU D.9-11, D.14.
17. MOU A.7.
18. MOU D.3(b), C.1.
19. MOU D.3(b).
20. MOU D.7.
21. MOU D.12.
22. Amendment re: D.7 and D.12.
23. MOU B.1-3, D.7. The multi-county regions include only the participating local governments in their boundaries. MOU B.3. Non-participating local governments will not receive funds and their shares will be reabsorbed by the Trust. MOU B.4. The five multi-county and nine metropolitan regions are described in [Exhibit A](#). See also The Montana Association of Counties' [regional map](#).
24. MOU D.9-10.
25. MOU D.9.
26. MOU D.13.
27. Amendment re: D.4 and D.9.
28. MOU C.2, D.5.



References

(Continued)

29. MOU C.2. The Executive Director is selected by the Attorney General from a list of three Committee members provided by the Committee itself. MOU C.8. Aside from the family member of a person who died of overdose and representatives from the Division of Criminal Investigation or the Montana Highway Patrol, the Committee will choose candidates who have at least six years of management experience in substance use disorder, mental health, "and/or" public health. MOU C.9.
30. MOU C.12.
31. MOU C.16.
32. MOU D.11. Under the national settlement agreements, 70% of a state's total settlement funds must be spent on prospective or "future" opioid remediation uses. *Distributor Settlement Agreement* Sec. V.D(1)-(2), I.SS.
33. MOU D.3(b), D.14.
34. The Committee does not have rulemaking authority beyond drafting its own bylaws. MOU C.13.
35. Amendment re: C.12.
36. Amendment re: C.12.
37. MOU C.3.
38. MOU C.6.
39. MOU C.4.
40. MOU C.3.
41. MOU C.5 ("Unless the Committee determines otherwise...").
42. See also [Opioid Settlement White Paper](#).
43. "In the first year, two members from the Metropolitan Regions and one member from the Multi-County Regions will have a one-year term, one member representing the Department of Health and Human Services and one member representing the Attorney General will have two-year terms, and the remaining members will have three-year terms." MOU C.5.
44. MOU D.4, A.1.
45. MOU D.3(c), D.8. See also [Letter from AG Knudsen to the City of Missoula \(November 2022\)](#).
46. MOU D.8.
47. See [OpioidSettlementTracker.com's "States' Initial Promises to Publicly Report Their Opioid Settlement Expenditures."](#)
48. Section V.B.2 of the *Distributor* and *Janssen* settlement agreements. See also [OpioidSettlementTracker.com's "Most Settlement Agreements Do Not Require Public Reporting of Opioid Remediation Expenditures."](#)
49. MOU C.14, D.14.
50. MOU D.15.
51. [Opioid Settlement White Paper](#).