

# New Mexico



## Total Funds

\$195 million<sup>1</sup>

## Allocation

55% to local governments and  
45% to the state

## Mechanism

Allocation agreement between the state and local governments ([New Mexico Opioid Allocation Agreement](#) and [Addendum to the New Mexico Opioid Allocation Agreement](#)), legislation (N.M. Stat. Ann. §§ [6-4-28](#) and [6-4-29](#))<sup>2</sup>

## Key Takeaways

**Opioid Settlement Restricted Fund, Crisis Recovery Fund.** State law creates the Opioid Settlement Restricted Fund to hold the state's share of settlement monies and the Opioid Crisis Recovery Fund which receives a defined distribution from the Restricted Fund each year for opioid remediation spending as directed by the legislature.<sup>3</sup>

**Permitted uses.** The Allocation Agreement defines permitted expenditures by reference to [Exhibit E](#) of the Distributor and Janssen settlement but state law imposes additional requirements for opioid remediation spending from the Opioid Crisis Recovery Fund (i.e., the state's share).

**Public reporting.** New Mexico has made no explicit promises to publicly report opioid settlement expenditures.

## Background

New Mexico state law establishes the [Opioid Settlement Restricted Fund](#) (Restricted Fund) and the [Opioid Crisis Recovery Fund](#) (Recovery Fund), and defines opioid remediation expenditures.<sup>4</sup> The [New Mexico Opioid Allocation Agreement](#) (Agreement) directs 45% of funds to the state and 55% to local governments.<sup>5</sup> Both state law and the Agreement address permitted uses of funds<sup>6</sup> with some contrasts.

Under the Agreement, all funds must be used for Opioid Related Expenditures regardless of their allocation.<sup>7</sup> Opioid Related Expenditures are defined as spending consistent with [Exhibit E](#) of the Distributor and Janssen settlements (included word for word in the Agreement as [Exhibit B](#)), which includes prevention, harm reduction, treatment, and recovery supports.<sup>8</sup> Importantly, local governments may not use funds from their share to reimburse expenses incurred prior to the applicable settlement agreement.<sup>9</sup>

*This resource is current as of 9/6/2023. For the most up-to-date information, please visit <https://www.opioidsettlementtracker.com/settlementspending>.*



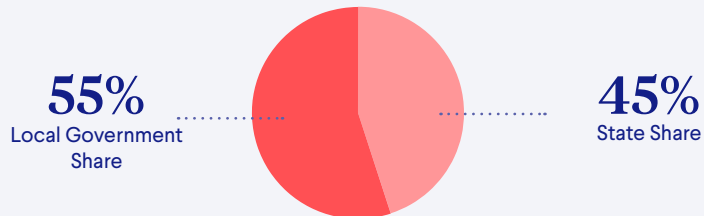
## Background

(Continued)

State law governs the use of monies from the Opioid Restricted and Recovery Funds, which do not include the 55% local government share of settlement monies. Recovery Fund monies appropriated by the state legislature must be spent on “opioid remediation expenditures,”<sup>10</sup> which are defined as expenditures on care, treatment, and other programs consistent with the distributor settlement.<sup>11</sup> This definition is not confined to forward-looking expenditures and state law also stipulates that Recovery Fund monies are to be used for statewide and regional programs, with priority given to evidence-based<sup>12</sup> strategies that address the needs of individuals impacted by the justice system, reduce “opioid-related harms,” and provide treatment and connections to care, amongst other goals.<sup>13</sup> A portion of Recovery Fund monies may also be allocated toward research or evaluation efforts.<sup>14</sup>

## Decision-Making Process

### ALLOCATION OF SETTLEMENT FUNDS



### 55% LOCAL GOVERNMENT SHARE

The [Allocation Agreement](#) (Agreement) directs 55% of funds to Local Governments, and these funds are divided across Regions—a Region can take different forms, such as a single city (e.g., Albuquerque City) or a county and all of its participating cities (e.g., Eddy County alongside Artesia City and Carlsbad City).<sup>15</sup> [Exhibit C](#) of the Agreement describes each Region’s share of funds. Regions with more than one member can collectively agree to have the funds shared amongst themselves in any manner they choose, with the default allocation from [Exhibit G](#) of the national settlements applying in the absence a specific agreement.<sup>16</sup> Local governments may pool their portions of the Local Government Share (LG Share) with one another or with the state.<sup>17</sup> The Agreement also provides for 15% of the LG Share to be deposited into the New Mexico Backstop Fund to compensate as needed attorneys for litigating local governments who did not recover an amount equal to a 15% contingency fee via the National Attorney Fee Fund.<sup>18</sup> The cost of a settlement administrator is divided evenly between the state’s share and localities’ share.<sup>19</sup>



## Decision- Making Process

(Continued)

### LOCAL SPENDING EXAMPLE

In January 2023, the Bernalillo County Commission approved the use of \$975,000 in settlement funds to support an 11-month marketing campaign, community awareness training and presentations, and improvements to the keepNMalive.com website.<sup>23</sup>

Counties and cities receiving funds from the LG Share must designate a separate LG Abatement Fund for receiving and expending their funds and may not commingle these funds with other monies.<sup>20</sup> Funds in an LG Abatement Fund may only be used toward Opioid Related Expenditures (i.e., spending consistent with [Exhibit E](#) of the national settlements).<sup>21</sup> Importantly, LG Abatement Fund monies may not be used to reimburse expenses incurred prior to the applicable settlement—the Agreement does not impose this same limitation on the state’s 45% share.<sup>22</sup> Outside of these requirements, funds from the LG Share will likely be expended according to normal budget processes.

### 45% STATE SHARE

Forty-five percent (45%) of New Mexico’s opioid settlement monies are allocated to the state.<sup>24</sup> Aside from the state’s contribution toward half of the cost for a settlement administrator under the Agreement, these funds must be used only for Opioid Related Expenditures.<sup>25</sup>

The state’s 45% share is placed in the Opioid Settlement Restricted Fund (Restricted Fund),<sup>26</sup> a non-reverting fund in the state treasury that was established by state law and which is separate from the general fund.<sup>27</sup> The Restricted Fund includes monies from the Distributor and Janssen settlements and “opioid settlements” broadly speaking,<sup>28</sup> but expressly excludes the Local Government Share.<sup>29</sup> Money from the Restricted Fund may be appropriated only to the Opioid Crisis Recovery Fund (Recovery Fund) and for no other purpose.<sup>30</sup> State law establishes 5% distributions from the Restricted Fund to the Recovery Fund starting in July 2024 and ongoing.<sup>31</sup> Once monies are placed in the non-reverting Recovery Fund, they are expended through legislative appropriation and may only be used for opioid remediation expenditures and according to other parameters in state law.<sup>32</sup>

### OPIOID REMEDIATION EXPENDITURES FROM THE OPIOID CRISIS RECOVERY FUND

- *Legislative appropriation needed to spend from the Recovery Fund.*
- *Statewide and regional programs.*
- *Priority to evidence-based strategies<sup>33</sup> that address goals listed in state law<sup>34</sup> and a portion of funds may be allocated to research or evaluation of uses of Recovery Fund monies.<sup>35</sup>*
- *Spending must be consistent with the distributor settlement agreement.<sup>36</sup>*



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## Tracking Funds and Accountability

- There is no requirement in New Mexico's Allocation Agreement or in state law for public reporting on opioid settlement expenditures at the state or local levels.<sup>37</sup>
- New Mexico law provides for an annual audit, which will include a review of the state's share of settlement funds and each LG Abatement Fund.<sup>38</sup> Where misspending is identified, the state or local government must redirect funds from another source to an Opioid Related Expenditure to be eligible for further settlement distributions.<sup>39</sup> There are no enforcement provisions in the Agreement or in state law outside of this audit process but in July 2023, New Mexico's state auditor asserted that "[t]ransparency and accountability are crucial in ensuring that these settlement dollars fulfill their intended purpose."<sup>40</sup>

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## Engaging in the Process

- New Mexico has fewer obvious channels to engage on settlement spending than many states. Push for that to change! Reach out to the state and your local government for more information on how settlement funds will be spent in your community.
- Encourage opportunities for community input on the use of funds at the state and local levels. For example, the state and/or its Regions and localities could create advisory bodies that include directly impacted people or hold townhalls to receive public feedback.
- Monitor legislative appropriations, which is how monies from the Recovery Fund will be allocated.
- Learn more about the [Overdose Prevention and Pain Management Advisory Council](#) (Council). The Council does not have a stated role on opioid settlement spending in any of New Mexico's mechanisms, but it is charged with "reviewing the status of overdose prevention and pain management standards and education efforts."<sup>41</sup> You can subscribe to updates, view minutes and information about future meetings, or even [submit an application](#) to participate [here](#). For questions, contact Paul Maldonado ([paul.maldonado@state.nm.us](mailto:paul.maldonado@state.nm.us)).

# New Mexico



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## Additional Resources

### **NEW MEXICO DEPARTMENT OF HEALTH**

[Opioid Safety & Overdose Prevention](#)

[Harm Reduction Program](#)

[Resources](#)

### **OPIOID PREVENTION AND PAIN MANAGEMENT ADVISORY COUNCIL**

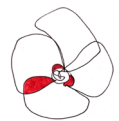
[2020 Advisory Council Recommendations](#)

[Current Members List](#)

[A Dose of Reality, including a treatment locator and information on where to obtain naloxone](#)

### **ASTHO BRIEF**

[The Role of Syringe Services Programs in New Mexico's Opioid Crisis Response \(2021\)](#)



## References

Last updated September 6, 2023.

1. From settlements with distributors McKesson, AmerisourceBergen, Cardinal Health and manufacturer Johnson & Johnson only. New Mexico has also individually resolved other litigation against, e.g., retail pharmacy chain operators Walmart, CVS, Albertsons, and Kroger Co. See [“Attorney General Balderas Announced \\$132 Million in Opioid Settlements with Walmart, CVS, and Albertsons”](#) and [“Attorney General Balderas Announces \\$58.5 Million Opioid Settlement with Smith’s Food & Drug Parent, the Kroger Co.”](#) 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 “New Mexico” for state-specific participation information) and OpioidSettlementTracker.com’s [Global Settlement Tracker](#) for more information.
2. New Mexico’s Allocation Agreement (March 2022) and subsequent Addendum (May 2023) apply to funds received from the Distributor and Janssen Settlement (See Agreement A.7) as well as the settlements with Allergan, Teva, and any national settlement agreements with “any other Pharmaceutical Supply Chain Participant” that are joined by New Mexico and participating local governments after March 1, 2023. See [Addendum to the New Mexico Opioid Allocation Agreement](#) (hereinafter “Addendum”). The State law establishing the opioid settlement restricted fund and the opioid crisis recovery fund encompasses the Distributor and Janssen settlement as well as “opioid settlements,” which is defined as “judgments or settlements arising from the liability of distributors of opioids, manufacturers of opioids, pharmacies for the selling of opioids or the consultants, agents or associates of distributors, manufacturers, or pharmacies.” See N.M. Stat. Ann. § 6-4-28(A)(1)-(2) and (H)(5). 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. N.M. Stat. Ann. §§ 6-4-28(A), (D)-(G), 6-4-29(A)-(C).
4. N.M. Stat. Ann. §§ 6-4-28, 6-4-29(D)(1)-(9) and (F)(3).
5. Agreement B.3, A.7, A.8. Addendum.
6. See N.M. Stat. Ann. § 6-4-29(D)(1)-(9) and Agreement B.6, A.3, Exhibit B.
7. Agreement B.6. Note that there are limited exceptions for funds directed toward the New Mexico Backstop Fund to cover local governments’ attorneys’ fees. Agreement B.3.
8. Agreement A.3, Exhibit B.
9. Agreement C.2.
10. N.M. Stat. Ann. § 6-4-29(B).
11. N.M. Stat. Ann. § 6-4-29(F)(3); See [Distributor](#) settlement (Section I.SS) (“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.”). See [Distributor settlement](#) (Section I.S.S) (“‘Opioid Remediation.’ Care, treatment, and other programs and expenditures (including reimbursement for past such programs and expenditure 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, including on those injured as a result of, the opioid epidemic. [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. An “evidence-based” activity, program, or strategy meets one or more of the following criteria: 1) systematic reviews or meta analyses have found it is effective; 2) evidence from a scientifically rigorous study demonstrates it is effective; 3) multiple observational studies from locations in the U.S. indicate it is effective See N.M. Stat. Ann. § 6-4-29(F)(2)(a)-(c).
13. N.M. Stat. Ann. § 6-4-29(B), (F)(1)-(9).



## References

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14. N.M. Stat. Ann. § 6-4-29(E).
15. “Region” consists of either: (1) a single Participating County that does not have any Participating Cities, (2) a single Participating County and all of its Participating Cities or (3) a single Participating City. Two or more Regions may at their discretion form a group (“Multicounty Region”). Regions that do not choose to form a Multicounty Region will be their own Region.” Agreement B.4.
16. Agreement B.5.
17. Agreement C.4.
18. Agreement D.3.
19. Agreement B.1.
20. Agreement C.1.
21. Agreement C.2, A.3.
22. Agreement C.2 (“Funds in a LG Abatement Fund may be expended by a Local Government only for Opioid Related Expenditures. For avoidance of doubt, funds in a LG Abatement Fund *may not be expended for costs, disbursements, or payments made or incurred prior to the Settlement.*”) (emphasis added).
23. [“County Commission Approved Opioid Settlement Funds for Fentanyl Prevention Education and Awareness Campaign”](#)
24. Agreement B.3.
25. Agreement B.6. Opioid Related Expenditure means “an expenditure consistent with the categories enumerated in Exhibit E to the Distributor Master Settlement Agreement and the J&J Master Settlement Agreement.” Agreement A.3.
26. Note that legislation creating the Restricted Fund was signed by the governor only two days before legislative appropriations of approximately \$21 million to six New Mexico agencies and the University of New Mexico, which may be expended through FY2024. The agencies are the Early Childhood Education and Care Department, Human Services Department, Department of Health, Children, Youth and Families Department, Corrections Department, and Public Education Department. See [HB2](#), the General Appropriations Act of 2023, Section 11 (Additional Supplemental Health and Human Services Appropriations). See also [“Drug Money: New Mexico to use \\$500M in settlement funds to aid in opioid recovery and prevention efforts.”](#) It is unclear what proportion of this \$21 million was derived from the state’s 45% share of the Distributor and Janssen settlements versus monies from settlements with other defendants. For example, in December 2022, state Attorney General Balderas announced the resolution of litigation against retail pharmacy chain operators Walmart, CVS, and Albertsons that resulted in over \$132 million for New Mexico. See [“Attorney General Balderas Announces \\$132 Million in Opioid Settlements with Walmart, CVS, and Albertsons”](#).
27. N.M. Stat. Ann. § 6-4-28(A). Appropriations and donations may also be placed into the Restricted Fund. Any income from the Restricted Fund is credited to the Fund. N.M. Stat. Ann. § 6-4-28(B).
28. “Opioid settlements” is defined in state law as “judgments or settlements arising from the liability of distributors of opioids, manufacturers of opioids, pharmacies for the selling of opioids or the consultants, agents or associates of distributors, manufacturers or pharmacies.” N.M. Stat. Ann. § 6-4-28(H)(5).
29. N.M. Stat. Ann. § 6-4-28(C).
30. N.M. Stat. Ann. § 6-4-28(D).
31. The first of these distributions will occur on July 1, 2024, and will be equal to “five percent of the average year-end market value of the opioid settlement restricted fund for the immediately preceding fiscal year.” N.M. Stat. Ann. § 6-4-28(E). In July 2025, the distribution is calculated based on the preceding two calendar years. N.M. Stat. Ann. § 6-4-28(F). Beginning in July 2025 and thereafter, the distribution is equal to 5% of the average of the year-end market values of the Restricted Fund for preceding three calendar years. N.M. Stat. Ann. § 6-4-28(F).
32. See generally N.M. Stat. Ann. § 6-4-29..
33. An “evidence-based” activity, program, or strategy meets one or more of the following criteria: 1) systematic reviews or meta analyses have found it is effective; 2) evidence from a scientifically rigorous study demonstrates it is effective; 3) multiple observational studies from locations in the U.S. indicate it is effective See N.M. Stat. Ann. § 6-4-29(F)(2)(a)-(c).
34. State law identifies nine different goals, such as providing treatment and connections to care, addressing the needs of pregnant or parenting women with OUD or people impacted by the justice system, prevention of opioid over-prescribing, and wellness and support services for first responders. N.M. Stat. Ann. § 6-4-29(D)(1)-(9).
35. N.M. Stat. Ann. § 6-4-29(E).



## References

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36. N.M. Stat. Ann. § 6-4-29(F)(3)(a)-(c); See [Distributor settlement](#) definition of “opioid remediation” (Section I.SS) (“Opioid Remediation” means “[c]are, 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.”)
37. See OpioidSettlementTracker.com’s [“States’ Initial Promises to Publicly Report their Opioid Settlement Expenditures”](#).
38. See Agreement C.3; N.M. Stat. Ann. §§ 12-6-1 – 12-6-15 (Audit Act); note that these provisions around annual audits for state and local agencies are not specific to opioid settlement funds or spending.
39. Agreement C.3. The State Auditor must confirm this “redirection” of funding has occurred.
40. See [Shedding Light on Opioid Settlement Funds: A Path to Transparency, Accountability](#).
41. [Opioid Safety Provider Resources—About the Advisory Council](#)