

Pennsylvania



Total Funds

\$1.07 billion¹

Allocation

15% to the state and 85%
to local governments

Mechanism

Allocation agreement between
the state and local governments
([Opioids Trust & Allocation
Order](#)), legislation ([72 Pa. Stat. Ann.
§ 1792-A.1](#))²

Key Takeaways

Local emphasis. Pennsylvania allocates 85% of its settlement funds to local governments, including 70% to participating counties and 15% to participating litigating subdivisions.³ The remaining 15% of funds are allocated to the Commonwealth for appropriation by the General Assembly.⁴

Public reporting. Counties and the Philadelphia Department of Public Health must submit an annual report to the Trust that details their settlement expenditures and includes the amount of settlement funds they received but did not spend in the previous calendar year.⁵ The reports must be filed by March 15 each year,⁶ and will be publicly reported by the Trust.^{7,8} However, no public reporting requirements apply to the 15% state share.⁹

18-month spending window. Participating counties and litigating subdivisions must spend opioid settlement funds within 18 months of receiving them unless the funds are designated for a multi-year capital project.¹⁰

Background

Pennsylvania's [Opioids Trust & Allocation Order](#) (Allocation Order) establishes the Pennsylvania Opioid Misuse and Abatement Trust (Trust) and allocates 15% of settlement funds to the state, 70% to counties, and 15% to litigating subdivisions.¹¹ [State law](#) establishes the Opioid Settlement Restricted Account (State Account) to house the state's share of settlement funds,¹² and monies in the State Account may be used only if appropriated by the Pennsylvania General Assembly.¹³ All settlement funds, regardless of allocation, must be used for approved purposes in accordance with [Exhibit E](#) of the Distributor and Janssen settlement agreements, such as to expand prevention, harm reduction, treatment, and recovery services.¹⁴

The Allocation Order provides that the Trust is governed by a 13-member Board of Trustees,¹⁵ who are responsible for receiving and investing settlement monies,¹⁶ reviewing local government certifications and annual reports,¹⁷ disbursing annual settlement shares to the state and local governments,¹⁸ and preparing a public annual report.¹⁹ The Board of Trustees includes a secretary of one of the

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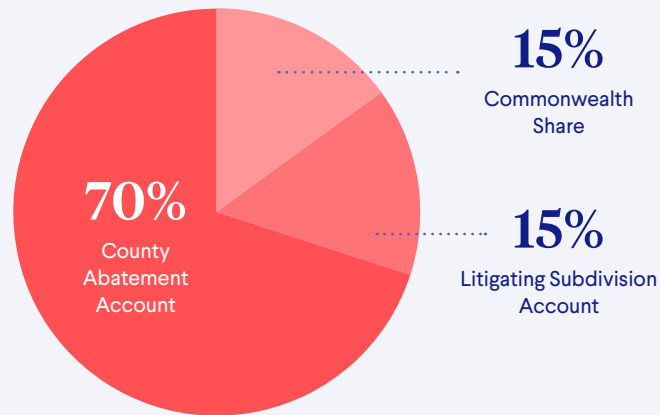
Background

(Continued)

Commonwealth’s health and human services agencies or their designee appointed by the governor,²⁰ four legislative member trustees appointed by legislative leaders,²¹ seven regional trustees appointed by specified county or city officials,²² and a chairperson appointed by the governor and who is a non-voting member except in cases of a tie.²³ Legislative and regional members both serve two-year terms with varying rules on reappointment,²⁴ while the term for a secretary of one of the Commonwealth’s health and human services agencies or their designee may not exceed 8 years.²⁵ Counties are encouraged to designate trustees with specific types of expertise such as physicians with specialized training in the treatment of substance use disorder, certified peer support specialists, and individuals in recovery from substance use disorder.²⁶ Current members of the Board of Trustees are listed [here](#). The Board of Trustees may use up to 1% of Trust monies for administrative expenses.²⁷

Decision-Making Process

ALLOCATION OF SETTLEMENT FUNDS



15% COMMONWEALTH SHARE

Fifteen percent (15%) of Pennsylvania’s opioid settlement funds are allocated to the state and distributed from the Trust to the Opioid Settlement Restricted Account (State Account) established by state law.²⁸ Monies in the State Account must be appropriated by the General Assembly and used for purposes consistent with [Exhibit E](#) of the Distributor and Janssen settlement agreements, such as to expand prevention, harm reduction, treatment, and recovery services.²⁹



Decision- Making Process

(Continued)

STATE SPENDING EXAMPLE

In the 2023 fiscal year budget, the General Assembly appropriated \$22.545 million from the State Account to the Department of Drug and Alcohol Programs (DDAP) for opioid use disorder treatment and abatement programs.³⁰ DDAP awarded almost \$9 million to establish or expand crisis stabilization services in four counties,³¹ and more than \$6 million to 19 “organizations to establish or expand substance use disorder (SUD) services, community outreach[,] and education to underrepresented communities struggling with the opioid overdose crisis.”³²

70% COUNTY ABATEMENT ACCOUNT

Seventy percent (70%) of Pennsylvania’s opioid settlement funds are deposited into the Trust’s County Abatement Account and distributed to participating counties (or an organization designated by a participating county) according to the percentages in [Exhibit 1](#) of the Allocation Order.³³ The Trust will notify participating counties of the amount of funds each county will receive by September 1 of each year,³⁴ and participating counties must submit to the Trust the certification in [Exhibit 2](#) of the Allocation Order and a list of payees by November 15 of each year.³⁵ Participating counties must spend their settlement funds on uses consistent with [Exhibit E](#) of the Distributor and Janssen settlement agreements, such as to expand prevention, harm reduction, treatment, and recovery services.³⁶ Counties must spend their funds within 18 months of receiving them unless the funds are for a multi-year capital project.³⁷ The Allocation Order specifies that counties should spend their settlement funds “equitably across the [c]ounty.”³⁸ Participating counties will likely use their normal budgeting and decision-making processes to expend these funds.

LOCAL EXAMPLE

In June 2022, the Dauphin County Board of Commissioners adopted a resolution establishing an Opioid Remediation Grant Program. The [Grant Program](#) will make annual awards to implement opioid remediation strategies outlined in [Exhibit E](#) of the Distributor and Janssen settlement agreements, with a preference for strategies listed in Schedule A such as naloxone distribution, medication treatment for opioid use disorder, and support for pregnant and postpartum people. Eligible entities include municipalities and non-municipal entities that are sponsored by a municipality or the county. The Dauphin County Opioid Remediation Advisory Board will advise the Dauphin County Board of Commissioners on funding decisions.



Decision- Making Process

(Continued)

15% LITIGATING SUBDIVISION ACCOUNT

Fifteen percent (15%) of Pennsylvania's opioid settlement funds are deposited into the Trust's Litigating Subdivision Account and distributed to participating litigating subdivisions.³⁹ One-quarter (25%) of these funds are allocated to Delaware County, Carbon County, and the City of Philadelphia.⁴⁰ Participating district attorneys will receive a share based on half of the population of the county they serve,⁴¹ while litigating special districts will receive a share based on 10% of the population they serve.⁴² The remaining funds are distributed to participating litigating subdivisions by population,⁴³ subject to specified minimum payment amounts.⁴⁴

The Trust will notify participating litigating subdivisions of the amount of funds each subdivision will receive by September 1 of each year,⁴⁵ and participating litigating subdivisions must submit to the Trust the certification in [Exhibit 3](#) of the Allocation Order and a list of payees by November 15 of each year.⁴⁶ Participating litigating subdivisions must spend their settlement funds on uses consistent with [Exhibit E](#) of the Distributor and Janssen settlement agreements, such as to expand prevention, harm reduction, treatment, and recovery services.⁴⁷ Participating litigating subdivisions must spend their funds within 18 months of receiving them unless the funds are for a multi-year capital project.⁴⁸ Participating litigating subdivisions will likely use their normal budgeting and decision-making processes to expend these funds.

Tracking Funds and Accountability

- Each local government receiving opioid settlement funds must annually certify to the Trust that they will use the funds for purposes consistent with [Exhibit E](#) of the Distributor and Janssen settlement agreements.⁴⁹
- Counties and the Philadelphia Department of Public Health must submit an annual report to the Trust that details their settlement expenditures and includes the amount of settlement funds they received but did not spend in the previous calendar year.⁵⁰ The reports must be filed by March 15 each year,⁵¹ and will be publicly reported by the Trust.^{52,53} No public reporting requirements apply to the 15% state share.⁵⁴
- The Trust must withhold funds from any local government that fails to file the annual certification(s) required by the Allocation Order by December 10 each year.⁵⁵
- The Board of Trustees may reduce or withhold payments from local governments that use settlement funds for non-approved purposes or fail to comply with annual reporting requirements.⁵⁶
- Pennsylvania's open meetings law (i.e., the Sunshine Act) applies to meetings of the Trust.⁵⁷

Pennsylvania



Engaging in the Process

- Attend meetings of the Board of Trustees, which generally must be open to the public,⁵⁸ although prior meetings have not included opportunities for public comment. The [Trust's website](#) includes information about how to join future meetings, meeting agendas, and minutes from previous meetings.
- [Reach out](#) to the Trust to pose questions or request information.
- Pennsylvania 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 localities could create advisory bodies that include directly affected people or hold town halls to receive public feedback.
- Check out Community Education Group's [Appalachia Opioid Remediation \(AOR\) Local Opioid Settlement Spending Database](#) and sign up for their AOR email alerts [here](#). CEG's AOR initiative provides opioid settlement spending updates from the 13 states of Appalachia.⁵⁹

Additional Resources

PA OPIOID MISUSE AND ADDICTION ABATEMENT TRUST

PENNSYLVANIA DEPARTMENT OF HEALTH

Opioid Awareness

COMMONWEALTH OF PENNSYLVANIA

Opioid Data Dashboard



References

Last updated June 6, 2023.

1. From settlements with distributors McKesson, AmerisourceBergen, Cardinal Health and manufacturer Johnson & Johnson only. Pennsylvania 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 "Pennsylvania" for state-specific participation information) and OpioidSettlementTracker.com's [Global Settlement Tracker](#) for more information. See also Hennen A. Pa. opioid settlement shrinks after counties forgo participation. The Center Square. https://www.thecentersquare.com/pennsylvania/article_f283d16a-f5bd-11ed-bb35-5f714b73de3d.html. Published May 18, 2023. Accessed June 6, 2023.
2. Both the Pennsylvania Allocation Order and the state law establishing the Opioid Settlement Restricted Account apply to all opioid-related settlements. See Allocation Order §§ III(N)-(O) (defining "Settlements" and "Other Settlement(s)"), V(A) (providing that the Pennsylvania Opioid Misuse and Addiction Abatement Trust shall receive and distribute funds from both "Settlements" and "Other Settlements"); 72 Pa. Stat. Ann. § 1792-A.1(b) (providing that the Opioid Settlement Restricted Account shall include any "[m]oney received by a State agency as a result of a settlement, litigation, enforcement action or a court-ordered distribution pursuant to a Bankruptcy Code (11 U.S.C. § 101 et seq.) approved plan, arising from claims made by the Commonwealth related to the marketing, manufacturing, sale, promotion, distribution, prescribing or dispensing of opioids.") 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. Allocation Order § II(A)(1)(b)-(c).
4. Allocation Order § II(A)(1)(a); 72 Pa. Stat. Ann. § 1792-A.1(b).
5. Allocation Order § V(D)(11).
6. Allocation Order § V(D)(11).
7. Allocation Order § VI(A)(6).
8. We understand the Allocation Order as providing for public reporting of both the 70% of monies in the County Abatement Account and 15% of monies in the Litigating Subdivision Account. See OpioidSettlementTracker.com's "[States' Initial Promises to Publicly Report Their Opioid Settlement Expenditures](#)." However, the Allocation Agreement explicitly requires only intrastate reporting by counties and the city of Philadelphia and implies that similar intrastate reporting requirements apply to other litigating subdivisions. See Allocation Order §§ V(D)(11) (requiring only counties and "the Health Department of the city of the First Class" (i.e., Philadelphia) to submit annual spending reports to the Board of Trustees), X(C)(1) (providing for the Board of Trustees to withhold subsequent payments to a county or subdivision if "a County or Litigating Subdivision ... fails to provide the Board of Trustees with an annual report of its spending"), VI(A)(3) (requiring Trust to review annual reports on spending to ensure compliance with the settlement terms), VI(A)(6) (requiring Trust to prepare an annual report and accounting which shall be made public). See also Mahon E, Giammarise K. Pa. opioid settlement money: What you need to know. Spotlight PA. <https://www.spotlightpa.org/news/2023/05/pa-opioid-settlement-money-explained/>. Published May 18, 2023. Accessed June 6, 2023.
9. See OpioidSettlementTracker.com's "[States' Initial Promises to Publicly Report Their Opioid Settlement Expenditures](#)."
10. Allocation Order § V(D)(10).
11. Allocation Order § II(A)(1).
12. 72 Pa. Stat. Ann. § 1792-A.1(a)-(b).
13. 72 Pa. Stat. Ann. § 1792-A.1(c).
14. Allocation Order § V(B). A beneficiary of the Trust also may petition the court overseeing the Trust to "allow spending on an item of abatement not contained in Exhibit E, provided such spending is deemed by the Court to reduce incidence or rate of opioid addiction and overdose deaths in the Commonwealth." Allocation Agreement § VIII(F).



References

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15. Allocation Order § V(C). Although an earlier draft required the Board of Trustees to meet at least four times each year, the final Allocation Order requires only that the Board of Trustees “meet as frequently as the Chairperson determines is necessary to complete its work.” Allocation Order § V(D).
16. Allocation Order § VI(A)(1).
17. Allocation Order § VI(A)(2)–(3).
18. Allocation Order § VI(A)(4).
19. Allocation Order § VI(A)(6).
20. Allocation Order § V(C)(2).
21. Allocation Order § V(C)(3) (one member appointed by each of the speaker of the house, minority leader of the house, president pro tempore of the senate, and senate minority leader).
22. Allocation Order § V(C)(4). *See also* Allocation Order § V(C)(7) (“To qualify as a Regional Representative Trustee, an individual must reside in or have a principal place of business qualifying the individual for service on the Board of Trustees located in that region.”)
23. Allocation Order § V(C)(1) (“The Chairperson may not be an individual qualified to serve under any category of state-level members.”)
24. Allocation Order §§ V(C)(8)(a) (“Legislative member trustees shall serve terms not exceeding two years, which shall expire at the conclusion of each legislative session. Legislative member trustees may be re-appointed, with no limit on the number of times they may be reappointed”), V(C)(8)(b) (“Regional Representative Trustees shall serve two-year terms and may be appointed three times consecutively. No individual shall serve more than ten years during the individual’s lifetime as a Regional Trustee.”)
25. Allocation Order § V(C)(8)(c).
26. Allocation Order § V(C)(6). Listed professional classifications include: (1) a County Commissioner, member of County Council or County Executive; (2) SCA administrator or County Health Commissioner; (3) physician with specialized practice and training in the treatment of substance use disorder; (4) nurse with specialized practice and training the treatment of substance use; (5) certified peer support substance use disorder treatment provider/specialist; (6) licensed pharmacist; (7) emergency medical services provider; (8) re-entry specialist/service provider; (9) individual in recovery from substance use disorder; (10) parent or guardian of someone who has had opioid use disorder; and (11) a researcher with expertise in substance use from a college or university in Pennsylvania.
27. Allocation Order § V(D)(9) (“The Board of Trustees may use up to 1% of the Trust funds to retain such persons or firms to manage the investment, and distributions.”)
28. Allocation Order § II(A)(1)(a), V(D)(8); 72 Pa. Stat. Ann. § 1792-A.1(a)–(b).
29. 72 Pa. Stat. Ann. § 1792-A.1(c); Allocation Order § V(B). The Commonwealth also may petition the court overseeing the Trust to “allow spending on an item of abatement not contained in Exhibit E, provided such spending is deemed by the Court to reduce incidence or rate of opioid addiction and overdose deaths in the Commonwealth.” Allocation Agreement § VIII(F).
30. [Pennsylvania Act No. 1A of 2022](#).
31. [“Department of Drug and Alcohol Programs Awards \\$9 Million for Crisis Stabilization Services for Individuals with Co-Occurring Behavioral Health Disorders”](#) (February 8, 2023).
32. [“Shapiro Administration Awards \\$6 Million in Funding to Fight Overdose Deaths in Underrepresented Communities Across the Commonwealth”](#) (May 11, 2023).
33. Allocation Order §§ II(A)(1)(b), VII(A). Each participating county will receive at least \$1 million. Allocation Order § VII(A). The Trust must distribute funds to participating counties on or about December 15 each year. Allocation Agreement § V(D)(6).
34. Allocation Order § V(D)(2).
35. Allocation Order § V(D)(3). For Philadelphia, this certification is submitted by the Philadelphia Department of Public Health. *See* Allocation Order § V(D)(3) (providing that certification shall be submitted by “the Health Department of a city of the First Class...”). *See also* Allocation Order § V(D)(3) (“Multiple Counties and the Health Department of the city of the First Class, County Subdivisions and District Attorneys may file joint certifications for some or all of the funds allocated to them. A joint certification shall designate the amount to be paid out of the joint applicants’ allocation and the name and address of the payee.”)
36. Allocation Order § V(B). A participating county also may petition the court overseeing the Trust to “allow spending on an item of abatement not contained in Exhibit E, provided such spending is deemed by the Court to reduce incidence or rate of opioid addiction and overdose deaths in the



References

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- Commonwealth.” Allocation Agreement § VIII(F).
37. Allocation Order § V(D)(10).
 38. Allocation Order § V(D)(11) (“Funds should be spent equitably across the County in a way that most effectively abates the effects of the Opioid misuse and addiction within the judgment of the County Commissioners, County Executive and County Council.”)
 39. Allocation Order §§ II(A)(1)(c), VII(B). Litigating subdivisions include counties, county subdivisions (e.g., cities, townships, boroughs, school districts, and municipal authorities), and district attorneys that had filed litigation against opioid companies as of July 21, 2021. Allocation Agreement § III(I). The Trust must distribute funds to participating litigating subdivisions on or about December 15 each year. Allocation Agreement § V(D)(6).
 40. Allocation Order § VII(B)(1).
 41. Allocation Order § VII(B)(2). Funds allocated to a district attorney that is not participating in the settlement agreements are redistributed to participating district attorneys. Allocation Order § VII(D).
 42. Allocation Order § VII(B)(3).
 43. Allocation Order § VII(B).
 44. These minimum payment amounts are (1) \$100,000 for subdivisions with a population of less than 10,000; (2) \$250,000 for subdivisions with a population between 10,000 and 50,000; (3) \$500,000 for subdivisions with a population between 50,001 and 100,000; and (4) \$1 million for subdivisions with populations greater than 100,000. Allocation Order § VII(B)(4).
 45. Allocation Order § V(D)(2).
 46. Allocation Order § V(D)(4) (“Multiple Litigating Subdivisions may file joint certifications for some or all of the funds allocated to them.”)
 47. Allocation Order § V(B). A participating litigating subdivision also may petition the court overseeing the Trust to “allow spending on an item of abatement not contained in Exhibit E, provided such spending is deemed by the Court to reduce incidence or rate of opioid addiction and overdose deaths in the Commonwealth.” Allocation Agreement § VIII(F).
 48. Allocation Order § V(D)(10).
 49. Allocation Order § V(D)(3)-(4).
 50. Allocation Order § V(D)(11).
 51. Allocation Order § V(D)(11).
 52. Allocation Order § VI(A)(6).
 53. We understand the Allocation Order as providing for public reporting of both the 70% of monies in the County Abatement Account and 15% of monies in the Litigating Subdivision Account. See OpioidSettlementTracker.com’s “[States’ Initial Promises to Publicly Report Their Opioid Settlement Expenditures](#).” However, the Allocation Agreement explicitly requires only intrastate reporting by counties and the city of Philadelphia and implies that similar intrastate reporting requirements apply to other litigating subdivisions. See Allocation Order §§ V(D)(11) (requiring only counties and “the Health Department of the city of the First Class” (i.e., Philadelphia) to submit annual spending reports to the Board of Trustees), X(C)(1) (providing for the Board of Trustees to withhold subsequent payments to a county or subdivision if “a County or Litigating Subdivision ... fails to provide the Board of Trustees with an annual report of its spending”), VI(A)(3) (requiring Trust to review annual reports on spending to ensure compliance with the settlement terms), VI(A)(6) (requiring Trust to prepare an annual report and accounting which shall be made public). See also Mahon E. Giammarise K. Pa. opioid settlement money: What you need to know. Spotlight PA. <https://www.spotlightpa.org/news/2023/05/pa-opioid-settlement-money-explained/>. Published May 18, 2023. Accessed June 6, 2023.
 54. See OpioidSettlementTracker.com’s “[States’ Initial Promises to Publicly Report Their Opioid Settlement Expenditures](#).”
 55. Allocation Order § VIII(B).
 56. Allocation Order § X(C)(1) (“The County or Litigating Subdivision will have up to 3 months to cure the misspending or provide the annual report of its spending and receive its full payment. If it is not cured after 3 months, the Board of Trustees may reduce or withhold payments going forward, and re-allocate the difference to the Commonwealth Account.”) Only the Board of Trustees has authority to enforce the restrictions about how local governments spend settlement funds. Neither the state nor other subdivisions may challenge a subdivision’s use of funds. See Allocation Order §§ II(B) (“No subdivision may challenge another subdivision’s use of funds, but subdivisions in the same geographic region are encouraged to coordinate their use of Trust Funds allocated by this Order”), VIII(G)(3) (“No beneficiary shall have standing to challenge another beneficiary’s use of funds under this order or the Trust action with regard to another beneficiary.”)



References

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57. Allocation Agreement § VIII(C) (“The proceedings and meetings of this Trust shall be governed by the Sunshine Act, 65 Pa. C. S §§ 701-16.”) See also Mahon E, Giammarise K. Secret meetings by board overseeing Pa.’s \$1 billion in opioid settlements draw criticism. Spotlight PA. <https://www.spotlightpa.org/news/2023/06/pa-opioid-settlement-trust-secret-meetings-public-records/>. Published June 1, 2023. Accessed June 6, 2023 (noting allegations that the Trust has not fully complied with the Sunshine Act and the Trust’s position that it is not subject to the Pennsylvania Right-To Know Law, the state public records law).
58. See Allocation Agreement § VIII(C) (making the Trust subject to the Pennsylvania Sunshine Act).
59. AL, GA, KY, MD, MS, NY, NC, OH, PA, SC, TN, VA, WV.