

South Dakota



Total Funds

\$52 million¹

Allocation

70% to the state and
30% to participating local
government subdivisions

Mechanism

Allocation agreement between
the state and local governments
([South Dakota Opioid Settlement
Memorandum of Agreement](#)),
legislation ([2022 S.D. HB 1038](#))²

Key Takeaways

Advisory Committee, DSS, and the Legislature. South Dakota's Prescription Opioid Abuse Advisory Committee will make recommendations to the Department of Social Services (DSS) on uses of the state's 70% of funds, which the legislature ultimately appropriates through its normal budget process and assigns to DSS for implementation.

Local Funding. Participating local governments will be able to decide for themselves how they will spend their 30% share.

Public reporting. The state must publish online an annual report detailing the [Opioid Abatement and Remediation Fund's](#) 70% share of expenditures.³

Background

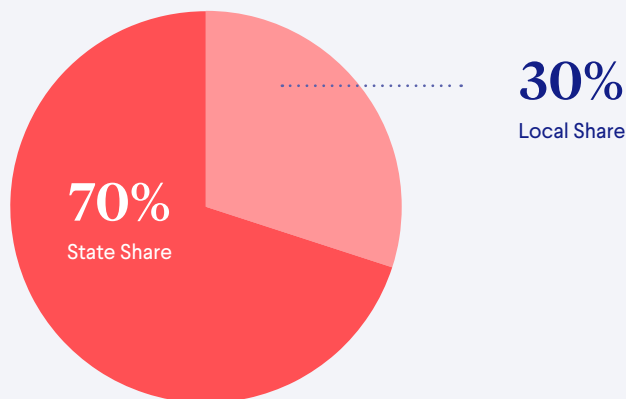
The [South Dakota Opioid Settlement Memorandum of Agreement](#) (MOA) allocates 70% of opioid settlement funds to the state and 30% of funds to participating local government subdivisions.⁴ Both the state and local shares must be spent on "Approved Uses," which the MOA defines as the list of uses set out in its [Exhibit A](#) and includes prevention, harm reduction, and treatment services.⁵ Neither the state nor local governments may reimburse themselves for prior Exhibit A-related expenditures.⁶

*This resource is current as of
4/6/2023. For the most up-to-date
information, please visit [https://
www.opioidsettlementtracker.
com/settlementspending](https://www.opioidsettlementtracker.com/settlementspending).*



Decision- Making Process

ALLOCATION OF SETTLEMENT FUNDS



70% STATE SHARE

South Dakota's Prescription Opioid Abuse Advisory Committee (Committee)⁷ will provide formal recommendations to the Secretary of the Department of Social Services (DSS) regarding the state's 70% share of opioid settlements, which sit within the Opioid Abatement and Remediation Fund created by [state law](#).⁸ The DSS Secretary must make a "good-faith effort" to incorporate these recommendations into the state's annual budget and publicly note and inform the Advisory Committee of any substantial deviations.⁹ The South Dakota Legislature then ultimately appropriates these moneys through its normal budget process to DSS for specific expenditures.¹⁰

Importantly, it is part of the Committee's mandate to "ensure that the State and Participating Local Governments have *equal* input into the distribution of the Statewide Share."¹¹ The 22-member Committee is made up of six state government-recommended representatives,¹² six local government representatives recommended by mayors from the state's five [Behavioral Health Regions](#), five expert representatives from various fields, and five "at-large representatives who bring a perspective related to opioid abatement."¹³ In January, 2023, the Committee recommended the following priorities for South Dakota's "year one" distribution of State share funds:¹⁴

- Support the PDMP, Controlled Substance Registry, and Take Back Programs
- Implement an Opioid Overdose Follow-Up Program
- Make funding available for Communities and Providers
- Establish a fund for continuation of key state level efforts



Decision-Making Process

(Continued)

Both [DOH's Prescription Opioid Abuse Prevention Initiative](#) and [Avoid Opioid's Advisory Committee](#) pages list the Committee's current members.

30% LOCAL SHARE

Participating local governments' 30% share will be distributed directly to South Dakota's 68 "partnering" counties and cities.¹⁵ Localities must certify before and after using funds that they will only be spent on Approved Uses (i.e., [Exhibit A](#)).¹⁶ The MOA also requires participating counties to "regularly consult with and receive input" from the counties' cities and towns and make "reasonable and good faith efforts" to secure their collaboration on the use of opioid funds.¹⁷ The lists of participating and non-participating local governments may be found in [Appendix D of Avoid Opioid SD's 2022 Annual Report](#).

Tracking Funds and Accountability

- The state must publish an annual report detailing the [Opioid Abatement and Remediation Fund's](#) 70% share of expenditures online by December 31 each year.¹⁸ Participating local governments are only required to annually report their localized share expenditures to the [Prescription Opioid Abuse Advisory Committee](#).¹⁹
- The Advisory Committee ultimately oversees certification of the Fund's activities, but South Dakota's localities can hold the state responsible for misspent settlement funds as well.²⁰ However, the power to enforce the terms of South Dakota's state-local agreement belongs only to the state and local governments themselves, not to non-profit organizations or community advocates.

Engaging in the Process

- Take advantage of opportunities to provide your feedback directly and keep an eye out for news from the [Advisory Committee](#). The committee will meet twice annually and "establish a process for receiving input from South Dakota communities, provider organizations, and cities and counties" and "consider ... proposals for opioid abatement strategies and responses."²¹
- Review and share the state's annual report of opioid settlement expenditures, which the state will make available online each year.
- Encourage the state to publish localities' reported spending online as well. You can also engage directly with your local government to promote information sharing.
- Keep an eye on DOH's [Funding Opportunities and Grant Information](#) page.²²

South Dakota



Additional Resources

SOUTH DAKOTA DEPARTMENT OF HEALTH

Prescription Opioid Abuse Prevention Initiative

**SOUTH DAKOTA DEPARTMENT OF HEALTH AND DEPARTMENT
OF SOCIAL SERVICES**

AvoidOpioidSD.com

SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES

Funding Opportunities and Grant Information

Opioid Settlement Update



References

Last updated April 6, 2023.

1. From settlements with distributors McKesson, AmerisourceBergen, Cardinal Health and manufacturer Johnson & Johnson only. South Dakota 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 "South Dakota" for state-specific participation information) and OpioidSettlementTracker.com's [Global Settlement Tracker](#) for more information.
2. The South Dakota state law establishing the Opioid Abatement and Remediation Fund applies to any settlement or judgement relating to opioids, S.D. Codified Laws § 34-20B-116(1), but it is unclear whether the South Dakota Opioid Settlement Memorandum of Agreement applies to all such settlements. 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. South Dakota MOA VI.F.
4. This allocation applies to "[m]oney received from the National Settlement Agreement involving Johnson & Johnson, AmerisourceBergen, Cardinal Health, and McKesson, and a Bankruptcy Resolution concerning Purdue Pharma, L.P. entered into by the State and the Participating Local Governments." [2022 South Dakota House Bill 1038](#).
5. MOA III.A and I.A. South Dakota's Exhibit A differs from the national settlement agreements' [Exhibit E](#).
6. "Regardless of allocation, all Opioid Funds must be used in a manner consistent with the Approved Purposes definition. No Opioid Funds will be used as restitution for past expenditures. Rather, Opioid Funds must be used in a present and forward-looking manner." MOA III.A.
7. Advisory Committee membership rules are listed in MOA IX. Unlike many states' opioid settlement advisory committees, South Dakota's Prescription Opioid Abuse Advisory Committee oversees much more than opioid settlement spending. The State used its CDC Overdose Data to Action grant to establish the South Dakota Department of Health Opioid Program, and the Committee was appointed as part of the grant to review opioid use data for the state and develop strategies for preventing prescription opioid misuse and abuse. [DOH's Prescription Opioid Abuse Prevention Initiative, Avoid Opioid's Advisory Committee, Opioid Abuse Advisory Committee 1/6/2023 meeting minutes](#).
8. [S.D. Codified Laws § 34-20B-116](#); MOA IV.A. See also [South Dakota Opioid Abuse Advisory Committee Meeting, 1/6/2023 slides](#). (see slides 63-64)
9. MOA IX.D.
10. S.D. Codified Laws § 34-20B-116; MOA IV.A.
11. MOA IX.A.
12. South Dakota's Department of Health, Department of Social Services, Board of Pharmacy, Board of Medical & Osteopathic Examiners, a representative of the Attorney General's Office, and a member of the Legislature. MOA IX.B(1)
13. MOA IX.B(2).
14. [South Dakota Opioid Abuse Advisory Committee Meeting, 1/6/2023 slides](#).
15. Those with populations over 10,000. MOA II.A-B; MOA IV.A
16. MOA VI.A-B. and [South Dakota Opioid Abuse Advisory Committee Meeting, 1/6/2023 slides](#).
17. MOA III.D. Participating local governments are given the option to direct their allocations to the Statewide Share, which will also absorb non-participating local governments' unallocated Localized Shares.
18. "By December 31 of each calendar year, the state shall publish in a report online detailing for the preceding fiscal year: 1) the amount of the statewide share received, 2) the amount of the statewide share expended and a description for each program of activity receiving funds, 3) the amount of any grants awarded — listing the recipients, amounts awarded, amounts disbursed, disbursement terms, and programs, strategies, and projects funded." MOA VI.F.



References

(Continued)

19. "By January 31 of each calendar year, each participating local government shall certify to the advisory committee that all opioid funds expended during the preceding calendar year were used in accordance with this MOA on projects, programs, and strategies that constitute approved uses. In submitting this certification, each participating local government shall include a report detailing for the preceding calendar year: 1) the amount of the localized share received by the participating local government 2) the amount of localized share expended by the participating local government – broken down by funded project, program, or strategy 3) the amount of any allocations awarded by the participating local government – listing the recipients, amounts awarded, amounts disbursed, disbursement terms and projects, programs, or strategies funded." MOA VI.B.
20. MOA VI.C-E.
21. MOA IX.C.
22. Both the "Statewide" and "Localized" Shares "must be used only for (1) Approved Uses within the State of South Dakota [or by Participating Local Governments], or (2) grants for Approved Uses." MOA III.B-C.