

West Virginia



Total Funds

\$572 million¹

Allocation

72.5% to the West Virginia First Foundation, 24.5% to local governments, 3% to the state

Mechanism

Allocation agreement between the state and local governments ([West Virginia First Memorandum of Understanding](#)), legislation ([WV Code Chapter 5 Article 30](#))²

Key Takeaways

Foundation control. West Virginia, unlike most states,³ created a private, non-profit foundation to house most of its funds.⁴ The West Virginia First Foundation's Board of Directors distributes its 72.5% share of funds across statewide programs and to the six regions described in the MOU's [Exhibit B](#).⁵ Local governments will receive their 24.5% share directly,⁶ and the remaining 3% is placed in escrow for use by the Attorney General.⁷

Unique litigation history. West Virginia is unique for resolving its state government claims against the "big three" distributors much earlier than most states ([2017](#)) and its localities' claims against the "big three" much later ([2022](#)). The [West Virginia First Memorandum of Understanding](#) (MOU) applies only to opioid settlements reached after a certain date.⁸

Public reporting. The West Virginia First Foundation is required to publish an annual consolidated report detailing settlement expenditures by the state's six regions.⁹

Background

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

The [West Virginia First Memorandum of Understanding](#) (MOU) allocates 72.5% of opioid settlement funds to the West Virginia First Foundation, 24.5% of funds to local governments, and 3% of funds to the state.¹⁰ The West Virginia First Foundation was recognized through [state legislation](#).¹¹ Regardless of allocation, West Virginia's settlement dollars must be spent on "Approved Purposes" such as expanding treatment availability and engaging in drug-related law enforcement.¹² West Virginia's [Exhibit A](#), which outlines approved purposes, differs from the national settlement agreements' [Exhibit E](#) by excluding syringe service programs from its "Core Strategies" list and including law enforcement funding to curtail the oversupply of "licit and illicit opioids."¹³ Localities may use up to one-half of their settlements funds to reimburse for past expenditures if those expenditures were consistent with approved purposes under [Exhibit A](#) of the MOU (including past "law enforcement and regional jail fees").¹⁴



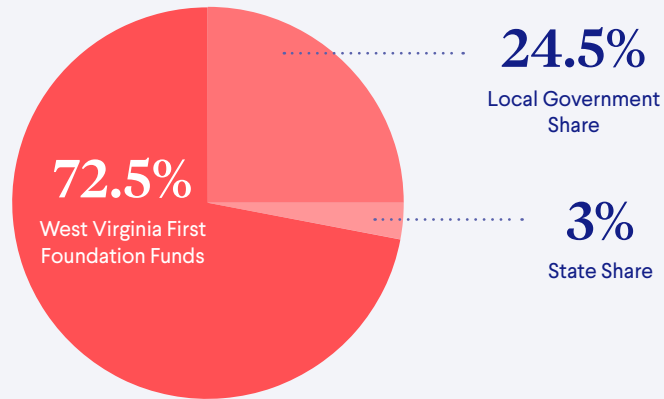
Decision-Making Process

LOCAL SPENDING EXAMPLES

Kent Carper, the President of the Kanawha County Commission, promised that “the county will not spend a penny of the money before holding a meeting for public comment,” according to news reports.²⁹

Wood County Commission President Blair Couch plans to use the county’s share to reimburse the county for jail bills, sheriff’s expenses, and attorney fees associated with the opioid overdose crisis, noting that the Sheriff’s Department and prosecutor’s offices are short-staffed.³⁰

ALLOCATION OF SETTLEMENT FUNDS



72.5% WEST VIRGINIA FIRST FOUNDATION FUNDS

The West Virginia First Foundation (Foundation) is overseen by an 11-member governing Board and an Attorney General-appointed executive director.¹⁵ The Board is tasked to establish procedures for disbursing its 72.5% share of funds,¹⁶ and a Board-appointed Expert Panel is tasked to assist the Board with its decisionmaking¹⁷ and advise West Virginia’s six regions on spending settlement funds.¹⁸

Though a forthcoming set of bylaws will ultimately govern the Foundation’s specific operations,¹⁹ the MOU provides that 20% of the Foundation’s annual budget will be spent on West Virginia’s six regions during its first seven years in operation and disbursed using fixed Regional Share Calculations.²⁰ Each region’s own governance structures will decide which projects to fund using their regional share.²¹ After seven years, Foundation Share funds will be “disburse[d] by the Board for Approved Purposes ... based on an evidence-based evaluation of need after consultation with the Expert Panel.”²²

WEST VIRGINIA FIRST FOUNDATION BOARD

The Board includes five members appointed by the governor with the senate’s advice and consent,²³ and six members selected by the local governments of each region to represent regional interests.²⁴ (See [Exhibit B](#) for a regional map.) The Expert Panel “should” include experts in substance abuse treatment, mental health, law enforcement, pharmacology, finance, and healthcare policy and management.²⁵



Decision-making Process

(Continued)

24.5% LOCAL GOVERNMENT SHARE

Local governments will receive their “LG Share” of funds directly and according to the percentages listed in the MOU’s [Exhibit C](#).²⁶ They may use up to half of their share as reimbursements for past abatement expenditures, provided that spending is recorded via resolution or similar action and so long as the past expenditures were consistent with the Approved Purposes in [Exhibit A](#) of the MOU.²⁷

3% STATE SHARE

The state share will be held in escrow by the Attorney General’s office and used for litigation expenses.²⁸

Tracking Funds and Accountability

- Each local government in receipt of regional funds from the Foundation must annually report its expenditures to the Foundation, and each region must incorporate this information into its own annual reports to the Foundation as well.³¹
- The Foundation must then publish a “consolidated” expenditure report each year,³² though it is unclear whether these reports will include amounts not devoted to regional spending.³³

Engaging in the Process

- Keep an eye out for official communications from the West Virginia First Foundation. The Foundation, created in March 2023, will be governed by a set of forthcoming bylaws.³⁴
- The MOU states that the Foundation is to operate in a “transparent” manner,³⁵ and that its meetings “should” be open to the public.³⁶ Make sure that these sections of the MOU are implemented and enforced by demanding public access to the Foundation’s and regional decision-making processes.
- 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.³⁷



Additional Resources

COMMUNITY EDUCATION GROUP

[Appalachia Opioid Remediation \(AOR\) Local Opioid Settlement Spending Database and email list](#)

OTHER

[Orders from West Virginia's Opioid Litigation Mass Litigation Panel](#)

References

1. From settlements with distributors McKesson, AmerisourceBergen, Cardinal Health and manufacturer Johnson & Johnson only. West Virginia has also settled with CVS, Walgreens, Walmart, Allergan, and Teva. See [OpioidSettlementTracker.com's Global Settlement Tracker](#) and 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 "West Virginia" for state-specific participation information) for more information.
2. The West Virginia First Memorandum of Understanding applies to all opioid-related settlements entered on or after December 1, 2021. 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. But like Ohio, which has also pursued the non-profit foundation route.
4. MOU C.1.
5. MOU D.11.
6. MOU B.2(b)(i) and MOU A.6.
7. "If the 3% is not spent [by the AG on expenses incurred related to the opioid litigation] by December 31, 2026, then 1% goes to Local Governments and 2% goes to the Opioid Foundation." MOU B.2(b)(iii).
8. December 1, 2021 or later. MOU A.12.
9. W. Va. Code § 5-30-5(b); MOU C.14.
10. MOU B.2(b).
11. 2023 West Virginia Senate Bill 674.
12. Excepting McKinsey monies, per MOU A.8 and MOU B.2(a).
13. MOU Exhibit A Schedule A I.
14. MOU B.3.
15. W. Va. Code § 5-30-4(a) and (e). "The Attorney General shall appoint an executive director after consultation with the board. The governing board may reject the Attorney General's selection of the executive director only on the affirmative vote of eight members of the governing board. The executive director shall have at least six years of experience in health care, finance, and management and is responsible for the management, organization, and preservation of the public/private partnership's records. The executive director may be removed by the governing board upon the concurrence of the votes of three fourths of the members of the governing board." W. Va. Code § 5-30-4(e).
16. MOU C.10.
17. MOU C.9.
18. MOU C.11(f).
19. "The operation of the West Virginia First Foundation shall be governed by its articles of incorporation and any by-laws adopted consistent with the provisions of the memorandum of understanding and the order." W. Va. Code § 5-30-3.
20. MOU C.11(c). Regional Share Calculations are made by combining local government's individual shares in [Exhibit C](#) for all of the subdivisions in each county listed in [Exhibit B](#). MOU A.7.



References

(Continued)

21. MOU C.2.
22. MOU C.11(c).
23. W. Va. Code § 5-30-4(a)(1). *See also* MOU C.3(a) (“The five appointees are intended to be limited to one from any given Region. If special circumstances are shown, this provision may be waived by a vote of four of the six Local Government members”).
24. W. Va. Code § 5-30-4(a)(2). “The terms for governing board members shall be staggered three-year terms. Governing board members may be reappointed.” Sec. 5-30-4(b).
25. W. Va. Code § 5-30-4(d).
26. MOU A.6. *See also* <https://governor.ohio.gov/media/news-and-media/governor-dewine-announces-local-government-payments-from-national-opioid-settlement-begin-07152022>.
27. MOU B.2.
28. MOU B.2(a)(iii).
29. <https://wvpublic.org/west-virginia-reaches-landmark-settlement-with-big-three-opioid-distributors/>
30. <https://www.newsandsentinel.com/news/business/2023/01/wood-county-commission-hears-update-on-lawsuits-with-opioid-distributors/>
31. W. Va. Code § 5-30-5(b).
32. W. Va. Code § 5-30-5(b).
33. *See* OpioidSettlementTracker.com’s “[States’ Initial Promises to Publicly Report Their Opioid Settlement Expenditures.](#)”
34. “The operation of the West Virginia First Foundation shall be governed by its articles of incorporation and any by-laws adopted consistent with the provisions of the memorandum of understanding and the order.” W. Va. Code § 5-30-3.
35. MOU C.12.
36. MOU C.12.
37. AL, GA, KY, MD, MS, NY, NC, OH, PA, SC, TN, VA, WV.