



Total Funds

Over
\$400 million¹

Allocation

70% to litigating local
governments and 30% to the state

Mechanism

Allocation agreement between the state and local governments ([Wisconsin State-Local Government Memorandum of Understanding](#)), agreement between local governments ([Wisconsin Local Government Memorandum of Understanding](#)), legislation ([Wis. Stat. § 165.12](#))²

Key Takeaways

30-70 allocation. Wisconsin allocates 30% of settlement funds to the Wisconsin Department of Health Services and 70% of funds to litigating local governments.³

Public reporting and enforcement. Neither Wisconsin state law nor the state's allocation agreements include any requirements to publicly report opioid settlement expenditures or establish any enforcement provisions to protect against the misuse of settlement funds. However, the state and local shares are subject to intrastate reporting requirements: local governments must file annual expenditure reports with the Wisconsin Department of Justice and the state legislature's Joint Committee on Finance (Joint Committee),⁴ and the Wisconsin Department of Health Services (DHS) must file an annual spending plan with the Joint Committee.⁵ DHS has also posted its annual spending plan and quarterly spending reports on its [website](#).

Background

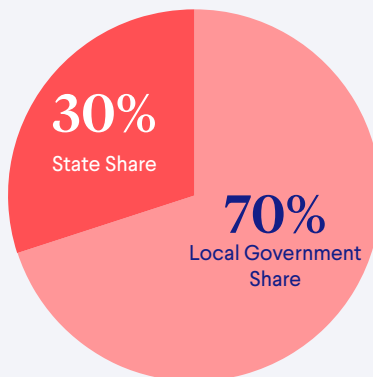
This resource is current as of 6/5/2023. For the most up-to-date information, please visit <https://www.opioidsettlementtracker.com/settlementspending>.

Wisconsin [state law](#) and the [Wisconsin State-Local Government Memorandum of Understanding](#) (State-Local MOU) allocate 30% of settlement funds to the state and 70% of settlement funds to litigating local governments according to the percentages in [Exhibit A](#) of the [Wisconsin Local Government Memorandum of Understanding](#) (Local MOU).⁶ The Wisconsin Department of Health Services (DHS) must develop an annual plan for spending the state's share of settlement funds, which may be reviewed and modified by the state legislature's Joint Committee on Finance.⁷ Except for any attorney fees paid out of the local government share, all settlement funds, regardless of allocation, must be spent on approved uses consistent with applicable settlement agreements (e.g., the uses listed in [Exhibit E](#) of the distributor and Janssen settlement agreements), such as to expand prevention, harm reduction, treatment, and recovery services.⁸



Decision- Making Process

ALLOCATION OF SETTLEMENT FUNDS



30% STATE SHARE

Thirty percent (30%) of Wisconsin’s opioid settlement funds are directed to the state and allocated to the Wisconsin Department of Health Services (DHS) for approved uses consistent with applicable settlement agreements (e.g., the uses listed in [Exhibit E](#)).⁹ By April 1 each year, DHS must submit its proposal for how to spend the state’s share of settlement funds for the next fiscal year to the state legislature’s Joint Committee on Finance (Joint Committee).¹⁰ If the Joint Committee notifies DHS within 14 working days after submission that it has scheduled a meeting to review the spending proposal, DHS may not spend the funds until the Joint Committee approves the proposal.¹¹ The same process applies if DHS seeks to modify its spending plan during a fiscal year.¹²

STATE SPENDING EXAMPLE

The Wisconsin Department of Health Services’ fiscal year 2023 settlement spending plan, as modified and approved by the Joint Committee, totals \$31 million and includes funding for renovations or construction of care and treatment facilities (\$10 million), tribal nation needs (\$6 million), Narcan and fentanyl test strips (\$5 million), law enforcement agency needs (\$3 million), room and board costs for Medicaid members in residential SUD treatment (\$2.5 million), medication treatment (\$2 million), a hub-and-spoke health home pilot program (\$1 million), after-school prevention programs (\$750,000), an overdose alert system (\$500,000), and school-based prevention programs (\$250,000). The [DHS website](#) includes information about how these funds were allocated, including through open requests for applications. DHS’ proposed fiscal year 2024 spending plan is available [here](#).¹³



Decision- Making Process

(Continued)

70% LOCAL GOVERNMENT SHARE

Seventy percent (70%) of Wisconsin's opioid settlement funds are directly allocated to litigating local governments according to the percentages in [Exhibit A](#) of the [Wisconsin Local Government Memorandum of Understanding](#).¹⁴ Aside from any amounts deducted for attorney fees,¹⁵ local governments must use all settlement funds for approved uses consistent with applicable settlement agreements (e.g., the uses listed in [Exhibit E](#)), such as to expand prevention, harm reduction, treatment, and recovery support services.¹⁶ Local governments must use their settlement funds to supplement, not supplant, other funding sources,¹⁷ and must keep their settlement funds in a segregated account to avoid commingling the funds with other local government monies.¹⁸ A local government may give their settlement funds to another local government so long as the local government receiving the funds is required to use the money for approved uses.¹⁹ Local governments also may sell their right to receive settlement funds if the sale is approved by a majority vote of the local government's governing body (e.g., county board of supervisors) and the proceeds from the sale are deposited into a segregated account for spending on approved uses.²⁰

LOCAL EXAMPLE

Rock County, Wisconsin formed an Opioid Settlement Workgroup, comprised of members from public health, human services, county administration, and law enforcement. The working group administered an opioid settlement survey, held public listening sessions, and conducted key informant interviews to inform the development of recommendations for the use of opioid settlement funds. The [recommendations and an accompanying report](#) were presented to the Rock County Board of Supervisors, who will ultimately decide how to allocate settlement funds.



Tracking Funds and Accountability

- Although the 30% “state share” of settlement funds allocated to the Wisconsin Department of Health Services (DHS) is technically subject only to intrastate reporting to the Joint Committee on Finance,²¹ DHS has posted its annual spending plan and quarterly reports on its [website](#).
- Local governments receiving opioid settlement funds must file an annual report with the Wisconsin Department of Justice and Joint Committee on Finance detailing the amount of settlement funds they received and spent during the previous year,²² as well as the total amount of money in the local government’s segregated opioid settlement account as of December 31 of the previous year.²³ However, neither state law nor Wisconsin’s allocation agreement requires local governments to publicly report their settlement expenditures.²⁴
- Local governments must include their segregated opioid settlement account in their typical audit process.²⁵

Engaging in the Process

- [Subscribe](#) to the Wisconsin Department of Health Services email list to receive alerts, reports, newsletters, and event invitations regarding the state’s overdose crisis.
- Watch for [grant opportunities](#) posted by the Wisconsin Department of Health Services, as well as those from litigating local governments.
- Advocate for the creation of advisory structures at the state and local levels to provide input and recommendations on uses of opioid settlement funds. Push for the meaningful inclusion of people with lived experience.
- Wisconsin has fewer obvious channels to engage on settlement spending than many states. Push for that to change! Reach out to your state and local government representatives for more information about how settlement funds will be spent in your community.



Additional Resources

WISCONSIN DEPARTMENT OF HEALTH SERVICES

Dose of Reality: Opioid Settlement Funds

Fiscal Year 2023 Quarter 2 Report

Fiscal Year 2023 Quarter 3 Report

DHS Proposed Fiscal Year 2024 Settlement Spending

The Opioid Epidemic: You Spoke, We Continue to Listen

Dose of Reality: Safer Use/Harm Reduction



References

Last updated June 5, 2023.

1. From settlements with distributors McKesson, AmerisourceBergen, Cardinal Health and manufacturer Johnson & Johnson only. Wisconsin 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 "Wisconsin" for state-specific participation information) and OpioidSettlementTracker.com's [Global Settlement Tracker](#) for more information.
2. Wisconsin's original allocation agreement (i.e., the State-Local MOU) appears limited to the Distributor and Janssen (i.e., Johnson & Johnson) settlement agreements, but the state law governing opioid settlement funds applies more broadly. See State-Local MOU recitals (defining "Settling Defendants" and "Settlement Agreements"); Wis. Stat. § 165.12(1) (defining "opiate litigation" as "the proceedings titled In re: National Prescription Opiate Litigation, Case No.: MDL 2804 and any proceeding filed in a circuit court in this state containing allegations and seeking relief that is substantially similar to allegations contained and relief sought in Case No.: MDL 2804."). 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. For example, a subsequent [Wisconsin State-Local Government Memorandum of Understanding for the Allocation of Opioid Settlement Proceeds](#) (Subsequent State-Local MOU) includes substantially similar terms as the original State-Local MOU and applies to additional settlements (Walgreens, Walmart, CVS, Teva, and Allergan). See Subsequent State-Local MOU recitals (defining "Settling Defendants" and "Settlement Agreements"). The Subsequent State-Local MOU also authorizes the Attorney General to "extend this MOU to apply to future settlements with other entities who engage in or have engaged in the manufacture, marketing, promotion, distribution or dispensing of an opioid analgesic, specifically related to the covered conduct by Defendants in the Litigation.") Subsequent State-Local MOU § 12. See also Subsequent State-Local MOU § 7 (requiring parties "to comply with the terms of the Settlement Agreements, including but not limited to (a) a requirement that a certain percentage of the Settlement Payment be spent on remediation, and (b) that at least 70% of a Settlement Payment be used solely for future Opioid Remediation as defined by the Settlement Agreements.")
3. Wis. Stat. § 165.12(2); State-Local MOU § A(3). See also State-Local MOU § A(4) ("100% of the 'Additional Restitution Amount' identified in both Settlement Agreements shall be paid to the State and deposited with the Department of Health Services.")
4. Wis. Stat. § 165.12(4)(c).
5. Wis. Stat. § 165.12(3).
6. Wis. Stat. § 165.12(2); State-Local MOU §§ A(3), A(7); Local MOU § 5. See also State-Local MOU § A(4) ("100% of the 'Additional Restitution Amount' identified in both Settlement Agreements shall be paid to the State and deposited with the Department of Health Services.")
7. Wis. Stat. § 165.12(3).
8. Wis. Stat. §§ 165.12(3)(a), (4)(b)(2), (6); State-Local MOU § A(5).
9. Wis. Stat. §§ 165.12(2)(b), (3)(a); State-Local MOU § A(3)-(5).
10. Wis. Stat. § 165.12(3)(a).
11. Wis. Stat. § 165.12(3)(a). Conversely, DHS may spend the funds described in its proposal if the Joint Committee does *not* provide DHS with such notification within 14 working days after DHS submits its proposal. Wis. Stat. § 165.12(3)(a).
12. Wis. Stat. § 165.12(3)(b).
13. See also "[Dose of Reality: Opioid Settlement Funds - State fiscal year 2024 funding](#)" ("We expect to receive \$8 million in opioid settlement payments in state fiscal year 2024. We submitted our plan for this funding to the Joint Committee on Finance March 29, 2023. [View the plan](#) []. A committee member objected to the plan April 18, 2023. It is now up to the Joint Committee on Finance to schedule a meeting to discuss and approve a plan for this funding. Our plan was based in part on the priorities highlighted by the people who responded to an online survey. [View a summary of the survey results](#) [].")



References

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14. Wis. Stat. § 165.12(2)(c); State-Local MOU §§ A(2), A(3)(ii), A(7); Local MOU § 5. *But see* Local MOU § 4 (providing that the Escrow Agreement shall allocate 30% of settlement funds to the state, 56% of funds to local governments, and 14% of funds to an Attorney Fees Account).
15. *See* Wis. Stat. § 165.12(6) (“If a separate fund created in a settlement agreement for the opiate litigation is insufficient to pay the entire amount of attorney fees and expenses owed by local governments, a local government may use a portion of the amounts payable to local governments ... to supplement amounts owed by the local government for attorney fees and expenses.”); Local MOU §§ 2 (“Pursuant to Wis. Stat. § 165.12(6) a sum up to but in no event exceeding an amount equal to 20% of the total proceeds from the Settlement Agreements attributable to Local Governments shall be deposited into the Attorney Fees Account. ... Any excess amounts remaining in the Attorney Fee Fund after funds have been allocated and paid to counsel shall revert back to the Local Governments and the escrow agent shall allocate such sums to Local Governments based on the allocation set forth on Exhibit A, which assigns each Local Government a percentage share.”), 3 (“Opioid Funds shall not be considered funds of the Local Government unless and until such time as an allocation is made to the Local Government following funding of the Attorney Fees Account”), 4 (“The Escrow Agreement shall allocate Opioid Funds as follows: (i) 30% to the State of Wisconsin (‘State Share’); (ii) 56% to Local Governments (‘LG Share’); and (iii) 14% to the Attorney Fees Account.”). *See also* State-Local MOU § A(6) (requiring local governments to report specified information to the Attorney General and Joint Committee on Finance if they use any portion of settlement funds directly allocated to them for attorney fees).
16. Wis. Stat. § 165.12(4)(b)(2); State-Local MOU § A(5). *See also* Local MOU § 2 (“A minimum of 80% of the Settlement proceeds attributable to Local Governments shall be paid to each Local Government’s segregated Opioid Abatement Account, which may be expended only for approved uses for opioid abatement as provided in the Settlement Agreements and supporting Memorandums of Understanding.”)
17. Wis. Stat. § 165.12(4)(b)(3) (“A local government may not use moneys from the segregated account to substitute for budgeted moneys from the other sources.”)
18. Wis. Stat. § 165.12(4)(b)(1).
19. Wis. Stat. § 165.12(4)(b)(4). *See also* Wis. Stat. § 165.12(4)(b)(5) (“Local governments may combine moneys from their segregated accounts if each local government conforms to the reporting requirement under [Wis. Stat. § 165.12(4)(c)].”)
20. Wis. Stat. § 165.12(5). For example, a local government could sell the right to funds it is entitled to receive over an 18-year settlement period in exchange for a smaller amount of money that is paid immediately.
21. Wis. Stat. § 165.12(3).
22. Wis. Stat. § 165.12(4)(c)(2). The reports must be submitted by May 1 annually. Wis. Stat. § 165.12(4)(c).
23. Wis. Stat. § 165.12(4)(c)(1). *See also* State-Local MOU § A(6) (“If any portion of the LG Share is used for the payment of owned attorney fees as authorized under Wis. Stat. § 165.12(6), the Local Governments shall report to the Attorney General and the Joint Committee on Finance the amount of the payment(s) and provide the contract(s) under which the attorney fees are purportedly owed.”)
24. *See* OpioidSettlementTracker.com’s [“States’ Initial Promises to Publicly Report Their Opioid Settlement Expenditures.”](#)
25. Wis. Stat. § 165.12(4)(b)(6).