

## What is the North Carolina Memorandum of Agreement (NC MOA)?

- Seventy-six counties and eight municipalities have filed lawsuits in federal court to hold accountable several companies involved in manufacturing, marketing, promoting, and distributing prescription opioid drugs.
- Local governments and the state are hopeful that a National Settlement Agreement with the companies involved in national opioid litigation may be forthcoming, along with additional potential proceeds from a related bankruptcy resolution.
- The proposed North Carolina Memorandum of Agreement (NC MOA) governs how North Carolina would use its share of opioid settlement funds and includes a high level of transparency and accountability.
- Under the NC MOA, all opioid settlement funds would be directed as follows:
  - 15% to the state (which the General Assembly would have authority to appropriate on a wide range of strategies to address the epidemic)
  - 80% to local governments, including all 100 counties plus 17 municipalities, allocated among those counties and municipalities through a formula developed by attorneys representing local governments in national litigation
  - An additional 5% percent into an incentive fund for any county (and any municipality in that county receiving settlement funds) in which the county itself and every municipality with at least 30,000 residents (based on 2019 population totals) in the county signs the NC MOA

## Why should municipalities sign the NC MOA?

- For North Carolina to receive the maximum payout under any potential national opioid settlements it is important that all 100 counties, and all large and medium-sized municipalities sign onto the NC MOA and those national settlement agreements.
- The NC MOA is designed to maximize the share of opioid settlement funds received in the state to help abate the harm caused by opioids and ensure the resources reach communities as quickly, effectively, and directly as possible.
- Residents of all municipalities in North Carolina – including those that receive settlement funds and those that do not – stand to benefit from county programs and services supported with opioid settlement funds.
- It is advantageous to all North Carolinians for all local governments to sign onto the MOA and demonstrate solidarity in response to the opioid epidemic.

## By signing the NC MOA, what resources could municipalities receive?

- Under the national settlement and bankruptcy resolution (taken together), up to \$850 million would be allocated to North Carolina for opioid remediation over an 18-year period.
- The potential settlement money would be allocated among states based on population and the local impact of the opioid crisis, as determined by public health statistics related to opioid misuse.
- The allocation formula also includes an incentive that increases the payment amounts as more counties and municipalities join the settlement.
- **The national settlement agreement is expected to provide the highest benefits to state and local governments that have 100% participation in signing on to their state agreements and the National Settlement Agreement.**
- If the NC MOA is adopted by all 100 counties and the following 17 municipalities, these local governments would be eligible to receive direct funding from the “Local Abatement Fund,” which accounts for 80% of North Carolina’s total allocation. \*This group includes the eight municipalities involved in the national litigation and nine other municipalities with a population of 75,000 or greater - based on 2019 population totals. *(Percentage allocations are shown in NC MOA Exhibit G).*
- **Under the MOA, 17 municipalities could receive direct funding including:** Asheville, \*Canton, Cary, Charlotte, Concord, Durham, \*Fayetteville, Gastonia, \*Greensboro, Greenville, \*Henderson, \*Hickory, High Point, \*Jacksonville, Raleigh, \*Wilmington, \*Winston-Salem (*\* denotes municipalities that are party to the national settlement litigation*).

## If a municipality gets opioid settlement funds, how could the money be spent?

- Any national opioid settlement and bankruptcy resolution will direct state and local governments to use most opioid settlement funds to address the epidemic. Consistent with this principle, the NC MOA offers local governments two options:
  - A. Under Option A, a local government may fund one or more strategies from a shorter list of evidence-based, high-impact strategies to address the epidemic.
  - B. Under Option B, a local government may fund one or more strategies from a longer list of strategies after engaging in a collaborative strategic planning process involving a diverse array of stakeholders at the local level.

# Information for Counties to Discuss the NC MOA with Municipal Partners



- Under Option A, local governments may use opioid settlement funds to support programs or services listed below that serve persons with Opioid Use Disorder (OUD) or any co-occurring Substance Use Disorder (SUD) or mental health conditions. Specifically, under Option A, local governments may use opioid settlement proceeds to fund the following: *(See NC MOA Exhibit A for additional detail)*
  1. Collaborative strategic planning
  2. Evidence-based addiction treatment
  3. Recovery support services
  4. Recovery housing support
  5. Employment-related services
  6. Early intervention
  7. Naloxone distribution
  8. Post-overdose response teams
  9. Syringe service programs
  10. Criminal justice diversion programs
  11. Addiction treatment for incarcerated persons
  12. Reentry programs for recently incarcerated persons
  
- The Option B strategies include a wider array of strategies than would be allowed under any national settlement or under a resolution of bankruptcy proceedings. This includes strategies that: *(See NC MOA Exhibit B for a current version of the Option B national strategy list)*
  - A. Treat Opioid Use Disorder (OUD)
  - B. Support people in treatment and recovery
  - C. Provide connections to care
  - D. Address the needs of criminal-justice-involved persons with OUD
  - E. Address the needs of pregnant or parenting women and their families
  - F. Prevent over-prescribing of opioids
  - G. Prevent misuse of opioids
  - H. Prevent overdose deaths and other harms (harm reduction)
  - I. Support first responders
  - J. Promote leadership, planning, and coordination
  - K. Fund relevant training and research
  
- Under Option B, a local government may fund one or more strategies from the longer list of national strategies after engaging in collaborative strategic planning at the local level. This involves: *(See NC MOA Exhibit C for additional detail)*
  - Engaging a wide array of local stakeholders

- Exploring the root causes of drug misuse, addiction, and overdose death in the area
- Identifying and evaluating potential strategies to address the epidemic
- Looking for opportunities to fill gaps in existing programs, align strategies, and combine opioid settlement funds with other sources of funding
- Offering comprehensive recommendations to the county board, city council, or other governing body

## What is the allocation formula used to determine North Carolina's portion of opioid settlement funds, the county-by-county allocations, and allocations to eligible municipalities?

- The allocation model for the NC MOA is derived directly from the allocation model developed at the national level by experts retained by the outside counsel for local governments. (\*Counties and municipalities that are party to the national litigation may want to refer to their local counsels for more information on how the national allocation model was developed).
- The national allocation model (the "Allocation Model"), available at [allocationmap.iclaimsonline.com](http://allocationmap.iclaimsonline.com), is based on the level of historical opioid usage, abuse, and deaths in each county, calculated using national data that is collected for each county, rather than population. The Allocation Model gives equal weight to each of these three factors (described in more detail below). Thus, a hypothetical county with an OUD percentage of .3%, and overdose deaths percentage of .2% and an amounts of opioids percentage of .16% would receive an overall allocation of .22%. A county's litigating status is not a factor. The three-factors used to determine the allocation of potential opioids settlement proceeds among counties include:
  - A. Opioid Use Disorder ("OUD").** Under this factor, each county is assigned a percentage derived by dividing the number of people in the county with OUD by the total number of people nationwide with OUD. The Model uses data reported in the National Survey on Drug Use and Health ("NSDUH") for 2017. The data is accessible at <https://bit.ly/2HqF554>.
  - B. Overdose Deaths.** This factor assigns to each county a percentage of the nation's opioid overdose deaths. The percentage is based on Multiple Causes of Death ("MCOB") data reported by the National Center for Health Statistics ("NCHS"), the Centers for Disease Control ("CDC") and the Department of Health and Human Services ("DHHS"). The data so reported is adjusted using a standard, accepted method (the "Ruhm Adjustment") designed to address the well-established under-reporting of deaths by opioids overdose.

**C. Amount of Opioids.** This factor assigns to each county a percentage of the national opioids shipments during 2006-2016 (expressed as morphine molecule equivalents, or MMEs) that produced a negative outcome. This percentage is based on data reported by the U.S. Drug Enforcement Agency (“DEA”) in its ARCOS (Automation of Reports and Consolidated Orders System) database. Each county’s share of national shipments is multiplied by the higher of two ratios: (1) the ratio of the percentage of people in the county with OUD to the percentage of people nationwide with OUD; or (2) the ratio of the percentage of people in the county who died of an opioids overdose between 2006-2016 to the national percentages of opioids overdose deaths during that time.

## What is the “Incentive Fund”?

- The 5% Incentive Fund is intended to help local governments sign onto the NC MOA. It will go directly to eligible local governments as a direct allocation as well and can be used for opioid remediation activities as set forth in the NC MOA.
- A county or municipality may receive an additional (smaller) amount in connection with the incentive fund described in Section G to the MOA. The NC MOA directs **five percent** of all settlement funds flowing to the state into an incentive fund that would be divided among those counties (and any municipalities in those counties that stand to receive settlement funds under NC MOA Exhibit G) in which the county itself and every municipality in the county with at least 30,000 residents (based on 2019 population totals) signs the MOA.
- If everyone signs onto the agreement, local governments can expect to receive as much as 85% of the opioid settlement funds that come to North Carolina.

## What is timeline for getting resolutions passed in support of the NC MOA?

- All counties and municipalities should sign the agreement as soon as possible. If all counties and municipalities above 30,000 in population sign onto the agreement without delay, we expect local governments will receive **as much as 85% in direct allocations** from any forthcoming national opioid settlement funds.
- However, if the NC MOA does not go into effect, we anticipate that North Carolina’s allocation will be governed by the default allocations included in the national settlement agreements. We expect the default arrangement would provide **as little as 15%** of state settlement funds in direct payments to local governments.