



Legislative Fiscal Bureau

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April 28, 2023

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Paper for the Committee's May 2, 2023, Meeting Under S. 13.10

Attached is a memorandum prepared by Anne Sappenfield, Director of the Legislative Council, on proposed settlements for cases submitted to the Committee by the Department of Justice.

The meeting will be held on Tuesday, May 2, in Room 412 East, State Capitol, beginning at 11:00 a.m.

BL/lb
Attachment

Wisconsin Legislative Council



Anne Sappenfield
Director

TO: MEMBERS, JOINT COMMITTEE ON FINANCE

FROM: Anne Sappenfield, Director

RE: Department of Justice Proposed Plans of Settlement

DATE: May 2, 2023

This memorandum summarizes five proposed plans of settlement relating to opioid litigation that the Department of Justice (DOJ) submitted to the Joint Committee on Finance (JCF) pursuant to s. 165.08 (1), Stats., in a letter dated April 17, 2023. Approval of settlements related to certain opioid litigation under s. 165.08, Stats., is required under s. 165.12, Stats., to effectuate the terms of the settlements and to distribute the funds to the state and local governments.¹ Specifically, DOJ seeks approval of the following proposed plans of settlement:

- Teva Global Opioid Settlement Agreement. [Agenda Item I.]
- Allergan Public Global Opioid Settlement Agreement. [Agenda Item II.]
- Walmart Settlement Agreement. [Agenda Item III.]
- Walgreens Settlement Agreement. [Agenda Item IV.]
- CVS Settlement Agreement. [Agenda Item V.]

The proposed plans of settlement relate to state and local government claims related to the opioid addiction crisis.² The plans will be carried out based upon each individual settlement, but also based upon s. 165.12, Stats., and a memorandum of understanding (MOU) among the state and local governments that are participating in the litigation and have agreed to join the settlements.

The total monetary penalty, nationwide, is over \$19.2 billion, more than \$16.2 billion of which is available to fund efforts to abate the opioid addiction crisis. The final amount will be determined by the overall degree of participation by both litigating and non-litigating state and local governments, and the amount includes payments to states that settled previously. The amounts break down as follows:

- Teva will pay up to \$3.34 billion over 13 years, with an additional \$1.2 billion in generic Narcan or \$240 million in cash in lieu of Narcan.
- Allergan will pay up to \$2.02 billion over seven years.
- Walmart will pay up to \$2.74 billion over six years.

¹ Section 165.12, Stats., governs the distribution of proceeds under the settlement of federal opioid litigation titled *In re: National Prescription Opiate Litigation*, Case No. MDL 2804, and any proceeding filed in Wisconsin circuit court that contains allegations and seeks relief substantially similar to those in Case No. MDL 2804.

² In 2022, the state and participating local governments entered into similar agreements with Johnson & Johnson, AmerisourceBergen, Cardinal Health, and McKesson.

- Walgreens will pay up to \$5.52 billion over 15 years.
- CVS will pay up to \$4.9 billion over 10 years.

Wisconsin will receive 1.7582560561 percent of the total amounts, with expected maximum payments to the state and local governments of \$324,294,590.79. The defendants will also be subject to injunctive relief included in the settlements, such as a prohibition from engaging in promoting or incentivizing the sale of opioids or opioid products, providing financial support to any third party that primarily engages in conduct that promotes opioids, or lobbying regarding certain opioid-related regulations.

TREATMENT OF STATE SETTLEMENT PROCEEDS UNDER 165.12, STATS.

Section 165.12, Stats., was created in 2021 Wisconsin Act 57, and includes requirements related to certain opiate litigation, including the proposed settlement agreements listed above. Under this statute, the Attorney General is required to cooperate with local governments that are parties to the opiate litigation in entering into a joint settlement agreement of the legal or equitable claims of the state, and the claims of local governments, regarding opioids with any party that has engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid product if all of the following are satisfied:

- JCF approves the proposed settlement agreement under s. 165.08 (1), Stats.
- The settlement agreement, or any document that effectuates the settlement, identifies 30 percent of the settlement proceeds as payable to the state.
- Such agreement or other document identifies 70 percent of the settlement proceeds as payable to local governments that are parties in the opiate litigation.

Settlement proceeds payable to the state must be allocated to the Department of Health Services (DHS). In order to expend these proceeds, DHS must submit a proposal of expenditure for the next fiscal year to JCF by April 1 of each year until all of the proceeds are expended. The DHS proposal is subject to passive review by JCF. Specifically, if the JCF cochairpersons do not notify DHS within 14 working days after the proposal is submitted that JCF has scheduled a meeting to review the proposal, DHS may expend the proceeds as described in the proposal. However, if the cochairpersons notify DHS that JCF has scheduled a meeting, DHS may expend the proceeds only upon approval of JCF. DHS must also notify JCF of any deviation from the proposal that it seeks to make.

STATE AND LOCAL GOVERNMENTS MOU

Distribution of the settlement proceeds must also comply with an MOU entered into by the state and participating local governments entitled, *Wisconsin State-Local Government Memorandum of Understanding for the Allocation of the Opioid Settlement Proceeds*. The MOU applies to the settlement agreements listed above and includes the following provisions, among others:

- Opioid settlement proceeds³ shall be allocated as follows: 30 percent to the state and 70 percent to local governments. These proceeds may not be considered funds of the state or any local government unless and until each annual distribution is made. [Item 3.]

³ The MOU defines “Opioid Settlement Proceeds” as “all funds allocated by a Settlement Agreement to the State or Local Governments for purposes of opioid remediation activities, as well as any repayment of those funds and any interest or investment earnings that may accrue as those funds are temporarily held before being expended on opioid remediation strategies.” The MOU provides that “‘Opioid Settlement Proceeds’ do **not** include the ‘Additional Restitution Amount’ (also known as additional remediation, or any other fund, proceed, or amount paid to States who did not utilize outside counsel), reimbursement of the United States Government, or separate funds identified in the Settlement

- The parties agree to comply with the terms of the settlement agreements, including a requirement that a certain percentage of the settlement payment be spent on remediation⁴ and that at least 70 percent of a settlement payment be used solely for future opioid remediation as defined by the settlement agreements. [Item 7.]
- The Attorney General may 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. To exercise this option, the Attorney General must send written notice to counsel for the local governments. The local governments will have 30 days from the date of the notice to express in writing any objection to the extension of the MOU to the settlements. If any local government objects to the extension of the MOU to the settlements, it may not be extended. [Item 12.]

Please let me know if I can provide any further assistance.

AS:ksm

Agreements as direct or indirect compensation for a Party's litigation fees, expenses, and/or costs." [Item 1.] However, the MOU also provides that 100 percent of additional restitution amounts must be paid to the state and deposited with DHS, and may be utilized only for purposes identified as approved uses for abatement in the settlement agreements. [Item 4.]

⁴ "Opioid Remediation" is defined in the settlement agreements as "care, treatment, and other programs and expenditures (including reimbursement for past such programs or expenditures except where this Agreement restricts the use of funds solely to future Opioid Remediation) designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of the opioid abuse crisis, including on those injured as a result of the opioid abuse crisis. Exhibit E 10 February 8, 2023 provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation. Qualifying expenditures may include reasonable related administrative expenses." [See Allergan Public Global Opioid Settlement Agreement, pp. 9-10.]