



MEMO

County Administrator

Robert W. Wilson
701-241-5770
wilsonro@casscountynd.gov

TO: County Commissioners
FROM: Robert W. Wilson
DATE: August 11, 2022
SUBJECT: Update – Opioid Litigation Settlement Payments

On August 1st Tracy Peters briefed the Board on a settlement notification Cass County received related to the nationwide opioid litigation. The notice included a distribution schedule to various funds and political subdivisions in North Dakota. Ms. Peters also informed the Board of several other settlement requirements she learned about during follow-up conversations with our litigation counsel. At that time the full scope of timeframes and requirements was not clear and the Commission tabled action until the meeting on August 15, 2022. The County Administrator and State's Attorney's Office were directed to gather additional information and report back to the Board.

Mr. Burdick, Ms. Peters and Mr. Wilson met with our litigation counsel, Roxanna Pierce and co-counsel on August 10, 2022. From this conversation it was clear the current settlement and proposed payment are two elements in a series of settlements and payments that should be understood collectively.

Current Settlement:

The attached information from distribution administrator Brown Greer is related to one of multiple settlements anticipated to provide compensation to North Dakota entities including Cass County. It involves opioid manufacturer Johnson and Johnson (Janssen) and distributors AmerisourceBergen, Cardinal Health and McKesson.

The first payment to Cass County from the Janssen settlement will be received before the end of August in the amount of \$20,461.69. A second payment in the same amount will be received before the end of 2022. Beginning in 2023, yearly payments in the amount of \$20,461.69 will continue for 13 years. (Total amount: \$306,925.)

Our litigation counsel has advised Cass County should consider the following actions at the meeting on August 15th:

- to create an 'Opioid Abatement Fund' to receive the initial – and future – settlement payments.
- Direct County Administrator Robert Wilson, as the 'Authorized Official' to register Cass County with the National Opioids Settlements Portal

PO Box 2806
211 Ninth Street South
Fargo, North Dakota 58108

www.casscountynd.gov

Additional Settlements:

Additional settlements are likely and will involve different defendants, amounts, payment schedules and perhaps different fund administrators. Additional settlements are anticipated involving Purdue Pharma, Allergan Pharmaceuticals, Teva Pharmaceuticals, Walgreens (pharmacy), Walmart (pharmacy) and CVS (pharmacy).

Use of Settlement Funds:

Settlement funds must be used for opioid addiction mitigation efforts and recipients must set up a committee and develop a plan to utilize settlement proceeds. There is no deadline to set the committee or form the plan. Opioid committees are often 2-3 individuals, but that does not appear to be a requirement.

Joint Use of Funds:

One of the questions on August 1st was if multiple recipient organizations could form a joint committee and jointly allocate funds. Direction from our litigation counsel is that nothing in the settlement agreement that prevents recipients from partnering with other recipients to coordinate the use of funds. Payments made in 2022 will be made to individual entities, but it appears payments could be made jointly in future years.

General Settlement Terms:

In accordance with the settlements negotiated with Attorneys General across the country, the distribution of funds between state and local governments varies widely from state to state. In North Dakota, all of the settlement terms described above apply to the 15% of the total award going to local governments. An additional 15% is distributed directly to state government. The remaining 70% is directed to an Abatement Fund.

North Dakota Abatement Fund:

Our litigation counsel has advised that portions of the Abatement Fund must be directed to various regions of the state. Per the terms of the settlement agreement a committee must also be formed to identify uses of the Abatement Fund. Cass County has been encouraged to work closely with our Attorney General's Office and the State Legislature to understand and be involved in the committee make-up and prioritization of Abatement Fund resources. This year the North Dakota Abatement Fund will receive \$2,062,524.90 from this settlement. Over the course of the settlement payout, it appears this fund will receive \$15,468,936.75.

SUGGESTED MOTION: To create an 'Opioid Abatement Fund' to receive the initial and future settlement payments, and designate County Administrator, Robert Wilson as the 'Authorized Official' to register Cass County with the National Opioids Settlements Portal.

ALLOCATION NOTICE

Payment Year: 1

Date of Notice: 6/30/2022

Deadline to Dispute Allocation: 7/21/2022

Expiration of 50 Days: 8/19/2022

Settling State

North Dakota

I. PAYMENT ALLOCATION DETERMINATION

This Notice is an official communication from the Directing Administrator of the National Opioid Settlements. A copy of this Notice has been sent to the Enforcement Committee and Settling Distributors pursuant to Section IV.B of the Distributor Settlement Agreement, dated as of July 21, 2021, as amended, between and among the Settling States, the Settling Distributors, and Participating Subdivisions (the "Distributor Settlement Agreement"). All capitalized terms used in this letter have the meanings ascribed to them in the Distributor Settlement Agreement.

Pursuant to Section IV.B and Exhibit M of the Distributor Settlement Agreement, North Dakota's Total Payment Year 1 amount is **\$1,678,167.94**, which is broken down in Table 1 in Attachment 1 to this Allocation Notice.

As provided under Section V.C of the Distributor Settlement Agreement, North Dakota has instructed the Directing Administrator to calculate the intrastate allocations pursuant to the national default. Using the default provisions, the Directing Administrator has allocated the Annual Payment as follows: (i) 15% to the State Fund, (ii) 70% to the Abatement Accounts Fund, and (iii) 15% to the Subdivision Fund, to be paid directly to the Subdivisions per the allocation percentages provided in Exhibit G of the Distributor Settlement Agreement. North Dakota has further instructed the Directing Administrator to allocate the Additional Restitution Amount in full to the State Fund. The intrastate allocations are included as Attachment 1 to this Allocation Notice.

Undisputed amounts allocated to the State Fund, the Abatement Accounts Fund, and Subdivision Fund for Participating Subdivisions will be paid no later than the date that is 50 days after the date of this Allocation Notice. Amounts allocated to the Subdivision Fund for Non-Participating Subdivisions will be held in Escrow until disbursements for Payment Year 2, provided the Subdivision becomes a Participating Subdivision by July 15, 2022. Any amounts held in Escrow for Non-Participating Subdivisions after that date will be reallocated and paid to the Abatement Accounts Fund.

II. YOUR RIGHT TO DISPUTE

Section IV.B.4 of the Distributor Settlement Agreement provides that within twenty-one (21) calendar days of receiving notice any party may dispute the calculation of the amount to be received by a Settling State or its Participating Subdivisions listed on Exhibit G as inconsistent with the terms of the Agreement. Written notice must be provided to the Settlement Fund Administrator, the Enforcement Committee, any affected Settling State, and the Settling Distributors identifying the nature of the dispute, the amount of money that is disputed, and the Settling State(s) affected.

A party has until the Deadline to Dispute Allocation listed at the top of this Allocation Notice to deliver a written notification of dispute. The amounts listed in this Allocation Notice will be deemed accepted if the Directing Administrator has not received a party's dispute before midnight Eastern Time on the deadline date. Submit your written request by email to DirectingAdministrator@NationalOpioidOfficialSettlement.com.

National Opioid Settlements



Any party affected by the dispute may object to the notification of dispute. Depending on the nature of the dispute, contested disputes must be resolved in either the court that entered a state's Consent Judgment or the National Arbitration Panel. The Directing Administrator will not disburse any funds potentially affected by a contested dispute until the dispute is resolved by the court or the National Arbitration Panel.

III. TO ACCEPT PAYMENT

If you do not dispute the payment, please create a Portal Account following instructions in the email, which will direct you to complete the Payment Election Forms and W-9 Forms to create payment instructions for any Settlement Payments.

IV. TO REALLOCATE PAYMENT

If you wish to reallocate your portion of the allocation to another Participating Subdivision or the Abatement Accounts Fund, you may do so by emailing DirectingAdministrator@NationalOpioidOfficialSettlement.com before the Deadline to Dispute Allocation included on the Allocation Notice. The Directing Administrator will not treat a reallocation request as a dispute.

Sincerely,

BrownGreer PLC
Directing Administrator
250 Rocketts Way
Richmond, VA 23231

National Opioid Settlements



ATTACHMENT 1 - DISTRIBUTORS YEAR 1 PAYMENT ALLOCATION TO NORTH DAKOTA (As of 6/30/2022)

TABLE 1: YEAR 1 SUMMARY¹

		Restitution/ Abatement	Additional Restitution	Total Payment 1
1.	Total Allocation (From Enforcement Committee)	\$1,473,232.07	\$204,935.87	\$1,678,167.94
2.	Allocation Method	National Default		
3.	15% to State Fund (Plus 100% of Additional Restitution)	\$220,984.81	\$204,935.87	\$425,920.68
4.	70% to Abatement Accounts Fund	\$1,031,262.45	\$0.00	\$1,031,262.45
5.	15% to Subdivision Fund	\$220,984.81	\$0.00	\$220,984.81

TABLE 2: ALLOCATION TO SUBDIVISIONS

	Subdivision	Exhibit G State Allocation Percentage	Restitution/ Abatement	Additional Restitution	Total Payment 1
A. Participating Subdivisions					
1.	ADAMS COUNTY	0.32668593690%	\$721.93	\$0.00	\$721.93
2.	BARNES COUNTY	1.15964091200%	\$2,562.63	\$0.00	\$2,562.63
3.	BENSON COUNTY	0.82436188440%	\$1,821.71	\$0.00	\$1,821.71
4.	BILLINGS COUNTY	0.05311985580%	\$117.39	\$0.00	\$117.39
5.	Bismarck city	7.87200184750%	\$17,395.93	\$0.00	\$17,395.93
6.	BURKE COUNTY	0.13402722380%	\$296.18	\$0.00	\$296.18
7.	BURLEIGH COUNTY	5.92583217320%	\$13,095.19	\$0.00	\$13,095.19
8.	CASS COUNTY	9.25932070650%	\$20,461.69	\$0.00	\$20,461.69
9.	Devils Lake city	0.36226236190%	\$800.54	\$0.00	\$800.54
10.	DICKEY COUNTY	0.60646638830%	\$1,340.20	\$0.00	\$1,340.20
11.	Dickinson city	1.05733241090%	\$2,336.54	\$0.00	\$2,336.54
12.	DUNN COUNTY	0.50176152480%	\$1,108.82	\$0.00	\$1,108.82
13.	EDDY COUNTY	0.22279701270%	\$492.35	\$0.00	\$492.35
14.	Fargo city	12.86399660050%	\$28,427.48	\$0.00	\$28,427.48
15.	FOSTER COUNTY	0.39385465070%	\$870.36	\$0.00	\$870.36
16.	GOLDEN VALLEY COUNTY	0.22786318740%	\$503.54	\$0.00	\$503.54
17.	Grand Forks city	7.19999715380%	\$15,910.90	\$0.00	\$15,910.90
18.	GRAND FORKS COUNTY	5.46392965230%	\$12,074.45	\$0.00	\$12,074.45
19.	GRANT COUNTY	0.20936268180%	\$462.66	\$0.00	\$462.66
20.	GRIGGS COUNTY	0.20734268070%	\$458.20	\$0.00	\$458.20
21.	HETTINGER COUNTY	0.20966847530%	\$463.34	\$0.00	\$463.34

¹ Final payments to the State and/or Abatement Accounts Funds may vary by +/- \$0.01-\$0.05 to account for rounding to the nearest cent during Subdivision calculations.

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22.	Jamestown city	0.70246642880%	\$1,552.34	\$0.00	\$1,552.34
23.	KIDDER COUNTY	0.30747828390%	\$679.48	\$0.00	\$679.48
24.	LA MOURE COUNTY	0.30360882030%	\$670.93	\$0.00	\$670.93
25.	Lisbon city	0.13724246580%	\$303.29	\$0.00	\$303.29
26.	LOGAN COUNTY	0.16413317990%	\$362.71	\$0.00	\$362.71
27.	Mandan city	1.12629325100%	\$2,488.94	\$0.00	\$2,488.94
28.	MCINTOSH COUNTY	0.28700776270%	\$634.24	\$0.00	\$634.24
29.	MCKENZIE COUNTY	1.23125539260%	\$2,720.89	\$0.00	\$2,720.89
30.	MCLEAN COUNTY	1.13846618370%	\$2,515.84	\$0.00	\$2,515.84
31.	MERCER COUNTY	1.12410712160%	\$2,484.11	\$0.00	\$2,484.11
32.	Minot city	2.89096273390%	\$6,388.59	\$0.00	\$6,388.59
33.	MORTON COUNTY	2.67036361180%	\$5,901.10	\$0.00	\$5,901.10
34.	MOUNTRAIL COUNTY	1.11428938670%	\$2,462.41	\$0.00	\$2,462.41
35.	NELSON COUNTY	0.47409750600%	\$1,047.68	\$0.00	\$1,047.68
36.	OLIVER COUNTY	0.22282347560%	\$492.41	\$0.00	\$492.41
37.	PEMBINA COUNTY	1.25300054340%	\$2,768.94	\$0.00	\$2,768.94
38.	PIERCE COUNTY	0.72845740440%	\$1,609.78	\$0.00	\$1,609.78
39.	RAMSEY COUNTY	1.27343431060%	\$2,814.10	\$0.00	\$2,814.10
40.	RANSOM COUNTY	0.61836734130%	\$1,366.50	\$0.00	\$1,366.50
41.	RICHLAND COUNTY	2.43094936980%	\$5,372.03	\$0.00	\$5,372.03
42.	ROLETTE COUNTY	1.81980345920%	\$4,021.49	\$0.00	\$4,021.49
43.	SARGENT COUNTY	0.57736749240%	\$1,275.89	\$0.00	\$1,275.89
44.	SHERIDAN COUNTY	0.08958866850%	\$197.98	\$0.00	\$197.98
45.	SIOUX COUNTY	0.66662096430%	\$1,473.13	\$0.00	\$1,473.13
46.	SLOPE COUNTY	0.04709072570%	\$104.06	\$0.00	\$104.06
47.	STARK COUNTY	3.35267413380%	\$7,408.90	\$0.00	\$7,408.90
48.	STEELE COUNTY	0.24349393870%	\$538.08	\$0.00	\$538.08
49.	STUTSMAN COUNTY	1.97588603770%	\$4,366.41	\$0.00	\$4,366.41
50.	TOWNER COUNTY	0.18074893910%	\$399.43	\$0.00	\$399.43
51.	TRAILL COUNTY	1.05876434760%	\$2,339.71	\$0.00	\$2,339.71
52.	WALSH COUNTY	2.05210947290%	\$4,534.85	\$0.00	\$4,534.85
53.	WARD COUNTY	3.48498420970%	\$7,701.29	\$0.00	\$7,701.29
54.	WELLS COUNTY	0.43466043830%	\$960.53	\$0.00	\$960.53
55.	West Fargo city	1.84170591710%	\$4,069.89	\$0.00	\$4,069.89
56.	WILLIAMS COUNTY	2.30673694060%	\$5,097.54	\$0.00	\$5,097.54
57.	Williston city	1.50169738170%	\$3,318.52	\$0.00	\$3,318.52
58.	SUB-TOTALS	96.914362962%	\$214,166.02	\$0.00	\$214,166.02

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B. Non-Participating Subdivisions²					
59.	BOTTINEAU COUNTY	0.6564106964%	\$1,450.57	\$0.00	\$1,450.57
60.	BOWMAN COUNTY	0.3537618912%	\$781.76	\$0.00	\$781.76
61.	CAVALIER COUNTY	0.4775832577%	\$1,055.39	\$0.00	\$1,055.39
62.	DIVIDE COUNTY	0.1925705034%	\$425.55	\$0.00	\$425.55
63.	EMMONS COUNTY	0.7218887252%	\$1,595.26	\$0.00	\$1,595.26
64.	MCHENRY COUNTY	0.3973374621%	\$878.06	\$0.00	\$878.06
65.	RENVILLE COUNTY	0.2860845016%	\$632.20	\$0.00	\$632.20
66.	SUB-TOTALS	3.0856370376%	\$6,818.79	\$0.00	\$6,818.79
TOTALS		100.0000%	\$220,984.81	\$0.00	\$220,984.81

² Amounts allocated to the Subdivision Fund for Non-Participating Subdivisions will be held in Escrow until disbursements for Payment Year 2, provided the Subdivision becomes a Participating Subdivision by July 15, 2022. Any amounts held in Escrow for Non-Participating Subdivisions after that date will be reallocated and paid to the Abatement Accounts Fund.