

Agenda Item Report



Winnebago County
The Wave of the Future

DATE: Monday, December 6, 2021

TO: WINNEBAGO COUNTY BOARD OF SUPERVISORS

FROM: MARY ANNE MUELLER, WINNEBAGO COUNTY CORPORATION
COUNSEL

RE: OPIOID SETTLEMENT

Background:

Nationwide settlements have been proposed to resolve all opioid litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors: McKesson, Cardinal Health and AmerisourceBergen ("Distributors"), and manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, "J&J"). These settlements will provide substantial funds to states and subdivisions for abatement of the opioid epidemic across the county and will impose transformative changes in the way the settling defendants conduct their business.

Policy Discussion:

Distributors will pay a maximum of \$21 billion over 18 years. J&J will pay a maximum of \$5 billion over no more than nine years. Of this potential \$26 billion- approximately \$22.8 billion in settlement proceeds will be payable to state and local subdivisions. Wisconsin is estimated to receive \$400 million of the settlement proceeds, with 70% of the funds going to the counties and 30% of the funds going to the state. Of the funds

going directly to participating states and subdivisions, at least 85% must be used for abatement of the opioid epidemic. Agreements also provide for injunctive relief that requires important changes to the Distributors' and J&J's conduct to better protect our nation's health and welfare. Injunctive relief includes creation of a clearinghouse through which the Distributors will be required to account not only for their own shipments, but also the shipments of the other distributors, in order to detect, stop, and report suspicious opioids orders. J&J (which ceased marketing opioids in 2015 and ceased selling opioids in 2020) will not market or sell any opioid products over the next ten years and has agreed to cease lobbying concerning prescription opioids for ten years. J&J also has agreed to make the clinical trial data for its discontinued opioids available for medical research.

Counties and cities need to sign a Participation Agreement and agree to release their claims in order to receive the settlement proceeds. Settlements require that a critical mass of both state and local governments "opt in" by **January 2, 2022**. After January 2, 2022, both sides have the option to walk away if there is not enough participation. Participation levels also affect how much money settling parties will receive. There is a need for nearly 100% participation in a state to receive 100% of the money. Participation is critical to maximize the dollars into Wisconsin.

The reasons to sign the Participation Agreement are numerous. First, this proposal is a product of years of litigation and settlement negotiations. Second, money is critical to the epidemic now. The CDC reports that 100,000 people have died of drug overdoses over the past year, a 30% increase from the year before, and many of these deaths have been fueled by opioids. Third, litigation poses a real risk. Fourth, further

insolvencies pose a real risk. Fifth, the Federal Court managing all cases has ordered that any non-participating entities will be in immediate active litigation with a 90-day deadline. Essentially the Court will make all those non-participating entities do the work of their entire case in 3 months.

Requested Action:

I am asking the Winnebago County Board of Supervisors to approve the proposed settlements and pass a Resolution authorizing the County Executive to sign the Participation Agreements to the Master Settlement Agreements and execute the accompanying Memorandums of Understanding.

Personnel and Finance: 3-0

Judiciary and Public Safety: 4-1