

Using Opioid Settlement Funds in County Public Defense Systems



How counties can maximize use of their opioid settlement funding by directing funds to public defense

- Embed social workers in public defender offices to diagnose and coordinate treatment options
- Jail reentry specialists to coordinate services and medication for release
- Client advocates to connect to services
- Peer navigators with lived experience to make appointments
- Homeless coordinators to connect with housing
- Youth advocates to redirect youth towards positive programming

How much money is available to my county?

The final figures are incomplete as some settlements are still pending, but here's a short list:¹

- California is estimated to receive \$2.05 billion from the Janssen Distributors Settlement Agreements for now through 2028, a combination of 3,000 lawsuits involving Janssen Pharmaceuticals (parent company of Johnson and Johnson), and the "big three" distributors, McKesson, AmerisourceBergen, and Cardinal Health
- California and its cities and counties stand to receive up to \$1.8 billion for substance use prevention, harm reduction, treatment, and recovery from Teva, Allergan and the Pharmacies. California is likely to receive settlements that are still pending:²
 - \$470 million - CVS
 - \$510 million - Walgreens
 - \$265 million - Walmart
 - \$205 million - Allergan
 - \$275 million - Teva

Read an overview of the funding sources from the Department of Health Care Services [here](#). The Office of the Attorney General also has a summary available [here](#).

On [this page](#), you'll find two links that include payments already made to your jurisdiction (including dollar amounts and payment date) [here](#) and [here](#).

Where does the money go?

The Department of Health Care Services (DHCS) will provide oversight and monitoring for funds received through opioid settlements, pursuant to the California State Subdivision Agreements.³

15% - California State Fund to the State of California for future opioid remediation activities.⁴ DCHS has released several grant opportunities for these funds.

70% - California Abatement Accounts Fund to Participating Subdivisions (local cities and counties) for opioid remediation activities to be used over the next 18 years.

- Must be used for prevention, intervention, harm reduction, treatment and recovery services in California communities.
- List of eligible opioid remediation activities are in [Exhibit E](#) of the National Opioid Settlement Agreements.
- At least 50% of the California Abatement Accounts Fund must be used for [High Impact Abatement Activities \(HIAA\)](#), as defined by DHCS in this [memo](#). Some examples of HIAA activities public defense systems could spearhead are:
 - HIAA 2: Creating or expanding substance abuse disorder treatment infrastructure.
 - HIAA 3: Addressing the needs of communities of color and vulnerable populations (including homeless).
 - HIAA 4: Diversion of people with substance abuse disorder from the justice system into treatment and implementing best practices for outreach, diversion and deflection, employability, restorative justice and harm reduction.⁵
 - HIAA 5: Interventions to prevent drug addiction in vulnerable youth.

15% to California Subdivision Fund to Plaintiff Subdivisions for future opioid remediation activities and to reimburse past opioid-related expenses. These are annual disbursements for the next 18 years to counties and cities. These funds are for future opioid remediation projects and reimbursing past opioid-related expenses.

County reporting obligations

Counties must track what they spent their money on and report this back to DHCS every September 30th. The next report will be due September 30th, 2024. Here is [the form you will use to report](#).

The types of activities that can be reported for approved use of these funds (from Exhibit E) include subcategories that public defense systems can support, such as:

- Support People in Treatment and Recovery
- Connect People Who Need Help to the Help They Need (Connections to Care)
- Address the Needs of Criminal Justice-Involved Persons

Restrictions on how your county can spend the money

Examples of unallowable expenditures include, but are not limited to:⁶

- Paying for law enforcement activities related to interdiction or criminal investigation, apprehension, and processing.
- Paying the salaries and benefits of individuals not performing opioid remediation activities.
- Supplanting / replacing state, county, and/or city funds for an activity.

Reasons to consider funneling opioid funds through your county's public defense system:

- **Attorney client privilege allows for confidential communications that encourage candor:** Treatment works best when it is voluntary. Because of the attorney-client privilege, clients can communicate their needs without fearing punishment or collateral consequences to their employment, housing, benefits, or child custody.
- **Services can start sooner:** Public defender staff can assess people for services at the start of the representation, rather than waiting until the case is resolved and the person is sentenced.
- **Early access:** Public defenders and staff meet clients at a time when they may be receptive to intervention. Offering treatment in lieu of penal consequences may be appealing to clients who have not been able to succeed in treatment on their own.
- **Triggers to substance abuse can be addressed:** Client advocates and peer navigators can meet other needs which improve stability, such as housing, employment, medical care, or helping them get a driver's license.
- **Can increase public safety and reduce recidivism:** System-involved people need access to the treatment and support they need to succeed in recovery.
- **Jailing increases overdoses:** Law enforcement is not the solution: over-policing and over-jailing contribute to the problem, increasing fatal and non-fatal overdoses.⁷

What other states are doing with opioid settlement funds

Virginia: \$224,745 was awarded to the Virginia Indigent Defense Commission (VIDC) to embed re-entry and recovery specialists in 7 public defender offices.⁸

Kentucky: 4 civil legal aid agencies will receive a combined \$1 million for civil legal assistance, along with advice, and coordination with other community resources.⁹

Pennsylvania: \$3 million invested in county drug courts and diversion programs to support addiction treatment as an alternative to incarceration.¹⁰

ENDNOTES

¹ Department of Healthcare Services information on California's Opioid Settlements, available [here](#).

² Behavioral Health information notice, Allowable Uses and Reporting Requirements, dated July 11, 2023, available [here](#).

³ Department of Healthcare Services home page on Opioid Settlements, available [here](#). See also Department of Public Health's information page, available [here](#).

⁴ Pursuant to [Government Code, Title 2, Division 3, Part 2, Chapter 6, Article 2, Section 12534](#) this money goes to the Department of Health Care Services. Some grants have already been released, available [here](#). The legislature appropriates this money through the normal state budgetary process.

⁵ The tracking tool defines diversion as: "Diversion is a term used to describe intervention approaches that redirect individuals with an SUD away from formal processing in criminal justice settings and into treatment, recovery, and/or other support services. Diversion strategies include pre-arrest, pre-arraignment, and pre-trial activities aimed at directing an individual towards a treatment or care program as an alternative to imprisonment. Activities related to interdiction or criminal investigation, apprehension, and processing are not considered diversion."

⁶ Behavioral Health information notice, Allowable Uses and Reporting Requirements, dated July 11, 2023, available [here](#).

⁷ Bradley, Ray et. al., *Spatiotemporal Analysis Exploring the Effect of Law Enforcement Drug Market Disruptions on Overdose, Indianapolis, Indiana, 2020-2021*, (June 7, 2023), American Journal of Public Health, available [here](#).

⁸ Virginia Opioid Abatement Authority news release, August 21, 2023, available [here](#).

⁹ Buckel, Krista. "Attorney General Cameron Announces Over \$8 Million in Grants to Fight the Opioid Epidemic in the Commonwealth." April 27, 2023, available [here](#).

¹⁰ State Opioid Response II Funding, Pennsylvania Department of Drug and Alcohol Programs, available [here](#).