

**Kansas Opioids Memorandum of Understanding between the Attorney General, the  
League of Kansas Municipalities, and the Kansas Association of Counties**

Whereas the people of the State of Kansas and its communities have been harmed by the Opioid Epidemic due to the misfeasance, nonfeasance, and malfeasance committed by certain entities within the Pharmaceutical Supply Chain; and

Whereas, the State of Kansas, through its Attorney General, and certain Political Subdivisions, through their elected representatives and counsel, that separately have claims or potential claims seek to hold Pharmaceutical Supply Chain Participants accountable for the damages caused by their misfeasance, nonfeasance, and malfeasance; and

Whereas, the State of Kansas, through its Attorney General and its Political Subdivisions share a common desire to abate and alleviate the impacts of the opioid epidemic caused by that misfeasance, nonfeasance, and malfeasance throughout the State of Kansas; and

Whereas, in furtherance of that goal, during the 2021 Legislative Session, the Kansas Legislature passed the Kansas Fights Addiction Act, House Bill 2079, to address the use of funds received from opioid litigation and establish limits on future opioid litigation by municipalities; and

Whereas, House Bill 2079 contemplates the distribution of settlement funds received from the opioid litigation to non-litigating municipalities and litigating municipalities who have entered into an agreement to waive their claims according to a formula negotiated between the Attorney General, the League of Kansas Municipalities, and the Kansas Association of Counties; and

Whereas, Kansas's share of settlement funds from certain national settlement agreements will be maximized only if all necessary Kansas Political Subdivisions participate; and

Whereas, the intent of the Kansas Fights Addiction Act and this Memorandum are to capture all funds dedicated by any settlement agreement to the State or to any Kansas Political Subdivision, including funds dedicated by the terms of any settlement agreement solely for the use by the State or by a Kansas Political Subdivision.

Whereas the moneys in the Municipalities Fight Addiction Fund shall be expended for projects and activities that prevent, reduce, treat, or mitigate the effects of substance abuse and addiction or to reimburse the municipality for previous expenses related to substance abuse mitigation or arising from covered conduct.

Now, therefore, the State of Kansas and its Political Subdivisions through their respective representatives, the League of Kansas Municipalities and the Kansas Association of Counties, subject to completing formal documents effectuating the Parties' agreement, enter this Memorandum

of Understanding ("MOU") to maximize and facilitate the distribution of the proceeds of national settlement agreements allocated to the State of Kansas and its Political Subdivisions.

## A. Definitions

As used in this MOU:

1. "Approved Purpose(s)" shall mean projects and activities, including, but not limited to law enforcement, that prevent, reduce, treat, or mitigate the effects of substance abuse and addiction or to reimburse the State or Political Subdivisions for previous expenses related to substance abuse mitigation or arising from covered conduct, subject to any limitations on uses imposed on specific Settlement Funds by any agreement entitling the State or Political Subdivision to those Settlement Funds. Moneys in the Municipalities Fight Addiction fund may also be used by State and Political Subdivisions for the payment of litigation costs, expenses or attorney fees related to opioid litigation, except that a Political Subdivision shall first seek payment from applicable outside settlement sources or settlement fee funds prior to utilizing moneys from the Municipalities Fight Addiction fund for such payments, expenses, or fees.
2. "Covered Conduct" shall mean any conduct covered by opioid litigation that resulted in payment of moneys into the Kansas Fights Addiction fund.
3. "Expanded Population" shall be the sum of the population of all Political Subdivisions in the State, notwithstanding that persons may be included within the population of more than one Political Subdivision.
4. "Maximizing Settlement" refers collectively to the J&J National Settlement, the Distributor National Settlement, the Purdue Bankruptcy Settlement, the Mallinckrodt Bankruptcy Settlement, Insys Bankruptcy Settlement, and any future settlements that utilize a bonus structure for litigating entity and/or population participation.
  - a. "J&J National Settlement" means a national settlement agreement with Johnson & Johnson and its related corporate entities concerning alleged misconduct in the manufacture, marketing, promotion, reporting, distribution, and/or dispensing of opioids.
  - b. "Distributor National Settlement" means a national settlement agreement with pharmaceutical distributors AmerisourceBergen, Cardinal Health, McKesson, and their related corporate entities concerning alleged misconduct in the marketing, promotion, reporting, distribution, and/or dispensing of opioids.
  - c. "Purdue Bankruptcy Settlement" means any national settlement with non-federal government entities, including States and their political subdivisions, in the Purdue Bankruptcy Plan as approved by the Court in *In re: Purdue Purdue Pharma, L.P.*, Case No. 19-23648, which is pending in the United States Bankruptcy Court for the Southern District of New York.
  - d. "Mallinckrodt Bankruptcy Settlement" means any national settlement with non-federal government entities, including State and their political subdivisions in the Mallinckrodt Bankruptcy Plan as approved by the Court in *In re: Mallinckrodt PLC*,

*et al.*, Case No. 20-12522, which is pending in the United States Bankruptcy Court or the District of Delaware.

- e. "Insys Bankruptcy Settlement" means any national settlement with non-federal government entities, including States and their political subdivisions in the Insys Bankruptcy Plan as approved by the Court in *In re: Insys Therapeutics, Inc., et al.*, Case No. 19-11292, which is pending in the United States Bankruptcy Court for the District of Delaware.
5. "Maximizing Settlement Funds" refers collectively to the J&J National Settlement Funds, the Distributor National Settlement Funds, the Purdue Bankruptcy Settlement Funds, the Mallinckrodt Bankruptcy Settlement Funds, Insys Bankruptcy Settlement Funds, and any future settlements that utilize a bonus structure for litigating entity and/or population participation.
- a. "J&J Settlement Funds" shall mean monetary amounts allocated to the State of Kansas and its political subdivisions in the J&J National Settlement.
  - b. "Distributor National Settlement Funds" shall mean monetary amounts allocated to the State of Kansas and its political subdivisions in the Distributor National Settlement.
  - c. "Purdue Bankruptcy Settlement Funds" shall mean monetary amounts allocated to the State of Kansas and its political subdivisions in the Purdue Bankruptcy Settlement.
  - d. "Mallinckrodt Bankruptcy Settlement Funds" shall mean monetary amounts allocated to the State of Kansas and its political subdivisions in the Mallinckrodt Bankruptcy Settlement.
  - e. "Insys Bankruptcy Settlement Funds" shall mean monetary amounts allocated to the State of Kansas and its political subdivisions in the Insys Bankruptcy Settlement.
6. "Parties" shall mean the State of Kansas, the League of Kansas Municipalities, and the Kansas Association of Counties.
7. "Pharmaceutical Supply Chain" shall mean the process and channel through which opioids or opioid products are manufactured, marketed, promoted, distributed, dispensed, or prescribed.
8. "Pharmaceutical Supply Chain Participants" shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, reporting, distribution, dispensing of, or prescription of any opioid analgesic.
9. "Political Subdivision" shall mean any Kansas city or county.
- a. "Litigating City" or "Litigating County" shall mean a Political Subdivision that filed or became a party to opioid litigation in court prior to January 1, 2021, or received approval from the Attorney General to file or become a party to opioid

litigation and has filed or become a party to opioid litigation on or after January 1, 2021.

- b. "Nonlitigating City" or "Nonlitigating County" shall mean a Political Subdivision that has not filed or became a party to opioid litigation.
10. "Population" shall refer to the published Certified Kansas Population by County estimates produced by the Kansas Division of the Budget released on July 1, 2021.
  11. "Release and Assignment Agreement" shall mean an agreement between the Attorney General and a Litigating City or Litigating County, by which a Litigating City or Litigating County releases its legal claims arising from covered conduct to the Attorney General and assigns any future legal claims arising from covered conduct to the Attorney General, in substantially the same form of the agreement attached hereto as Exhibit A.
  12. "Standard Settlement" shall mean a negotiated pre-judgement resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant that includes the State and Political Subdivisions. Standard Settlement shall not include any Maximizing Settlement.
  13. "Standard Settlement Funds" shall mean base monetary amounts obtained through a settlement before any bonus structure for litigating entity and/or population participation. Standard Settlement Funds do not include any Maximizing Settlement Funds.
  14. "State" shall mean the State of Kansas acting through its Attorney General.
  15. "Settlement Funds" shall mean Standard Settlement Funds and Maximizing Settlement Funds.

#### **B. Allocation of Standard Settlement Funds**

1. All Standard Settlement Funds shall be divided with 25% going to the Municipalities Fight Addiction Fund and 75% going to the Kansas Fights Addiction Fund.
2. The 25% of Standard Settlement Funds going to the Municipalities Fight Addiction Fund shall be divided with 50% going to cities and 50% going to counties.
3. The city share of the Standard Settlement Funds of the Municipalities Fight Addiction Fund shall be allocated per capita by population of each city subject to the following:
  - a. Any Litigating City that enters a Release and Assignment Agreement prior to January 1, 2022, shall be entitled to Standard Settlement Funds. In the event a Litigating City does not enter a Release and Assignment Agreement prior to January 1, 2022, the allocation percentage for said City shall be redistributed equally per capita to the remaining eligible cities.

- b. To be eligible for an allocation of Standard Settlement Funds, prior to January 1, 2022, nonlitigating cities must pass a resolution stating the city has previous or expected expenses related to substance abuse or addiction mitigation or other covered conduct in excess of \$500 and the city can utilize the Standard Settlement Funds in accordance with the approved purposes. This resolution must be submitted to the Attorney General along with any other required documents necessary to distribute funds. In the event a Nonlitigating City does not pass such resolution prior to January 1, 2022, the allocation percentage for said City shall be redistributed equitably to the remaining eligible cities.
  - c. In the event an eligible city merges, dissolves, or ceases to exist, the allocation percentage for said City shall be redistributed equitably to the remaining eligible cities.
- 4. The county share of the Standard Settlement Funds of the Municipalities Fight Addiction Fund shall be allocated per capita by population of each county subject to the following:
  - a. Any Litigating County that enters a Release and Assignment Agreement prior to January 1, 2022, shall be entitled to Standard Settlement Funds. In the event a Litigating County does not enter a Release and Assignment Agreement prior to January 1, 2022, the allocation percentage for said County shall be redistributed equally per capita to the remaining eligible counties.
  - b. To be eligible for an allocation of Standard Settlement Funds, prior to January 1, 2022, nonlitigating counties must pass a resolution stating the county has previous or expected expenses related to substance abuse or addiction mitigation or other covered conduct in excess of \$500 and the county can utilize the Standard Settlement Funds in accordance with the approved purposes. This resolution must be submitted to the Attorney General along with any other required documents necessary to distribute funds. In the event a Nonlitigating County does not pass such resolution prior to January 1, 2022, the allocation percentage for said County shall be redistributed equitably to the remaining eligible counties.
  - c. In the event an eligible county merges, dissolves, or ceases to exist, the allocation percentage for said County shall be redistributed equitably to the remaining eligible counties.
- 5. The Political Subdivision share shall be paid directly to the Political Subdivision to be held in a segregated account to be used for Approved Purposes. Funds in this special revenue fund shall not be commingled with any other money or fund of the city or county. Although Political Subdivisions may make contracts with or grants to a nonprofit, charity, or other entity, Political Subdivisions may not assign to another entity their rights to receive payments from the Municipalities Fight Addiction Fund.

### **C. Allocation of Maximizing Settlement Funds**

1. All Maximizing Settlement Funds shall be divided with 25% going to the Municipalities Fight Addiction Fund and 75% going to the Kansas Fights Addiction Fund.
2. The 25% of Maximizing Settlement Funds going to the Municipalities Fight Addiction Fund shall be divided with 50% allocated to cities and 50% allocated to counties.
3. The city and county shares of the Maximizing Settlement Funds of the Municipalities Fight Addiction Fund shall be allocated per capita **subject to** the following:
  - a. Any Litigating City or Litigating County that enters a Release and Assignment Agreement prior to January 1, 2022 shall be entitled Maximizing Settlement Funds. In the event a Litigating City or Litigating County does not enter a Release and Assignment Agreement prior to January 1, 2022, the allocation percentage, if any, for said City or County shall be redistributed equally per capita, subject to section C.3.c. and C.3.d below, to the remaining eligible cities and counties.
  - b. To be eligible for an allocation of Maximizing Settlement Funds, prior to January 1, 2022, nonlitigating cities and counties must pass a resolution, consistent with paragraphs B.3.b. and B.4.b. above, stating the city or county has previous or expected expenses related to substance abuse or addiction mitigation or other covered conduct in excess of \$500 and the county can utilize the Maximizing Settlement Funds in accordance with the approved purposes. This resolution must be submitted to the Attorney General along with any other required documents necessary to distribute funds. In the event a Nonlitigating City or County does not pass such resolution prior to January 1, 2022, the allocation percentage for said City or County, if any, shall be redistributed equally per capita, subject to section C.3.c. and C.3.d below, to the remaining eligible cities and counties.
  - c. The allocation of Maximizing Settlement Funds to the cities shall be distributed:
    - i. to Litigating Cities that have entered a Release and Assignment Agreement according to each such Litigating City's population proportional to the total population of all cities in Kansas, multiplied by 1.25; and
    - ii. the balance, thereof, distributed to all eligible non-litigating cities, according to each such City's population proportional to the total population of all cities in Kansas.
  - d. The allocation of Maximizing Settlement Funds to the counties shall be distributed as follows:
    - i. 50% of the total allocation of Maximizing Settlement Funds to the counties shall be distributed to all counties, subject to the limitation of sections C.3.a. and C.3.b, in Kansas, according to each such county's population proportional to the total population of all counties in Kansas;

- ii. 50% of the total allocation of Maximizing Settlement Funds to the counties shall be distributed to the Litigating Counties that have entered a Release and Assignment Agreement and shall be dispersed per capita proportional to the total population of Litigating Counties;
  - iii. This 50% assumes that 100% of Litigating Counties are participating. If less than 100% of Litigating Counties participate, this 50% to the Litigating Counties is reduced by the corresponding reduction in the settlement.
    - 1. For example, in the Distributors' Settlement Incentive B, if only 95% of the Litigating Subdivisions participate, the incentive is lowered from 100% to 60%. In that instance, the Maximizing Settlement Funds to the Litigating Counties would be 30% ( $50\% (.5) \times 60\% (.6)$ ).
  - iv. Nothing in paragraph C.3.d.ii., shall prohibit a Litigating County from being awarded a distribution pursuant to paragraph C.3.d.i.
- e. Maximizing Settlement Funds shall be distributed directly to the eligible Political Subdivisions, both cities and counties, by the Attorney General or in some other manner consistent with the provisions 2021 Kansas House Bill 2079.
- f. Maximizing Settlement Funds distributed to the eligible Political Subdivisions shall be held in a segregated account by the respective Political Subdivisions to be used for Approved Purposes. Funds in this special revenue fund shall not be commingled with any other money or fund of the Political Subdivision. Although Political Subdivisions may make contracts with or grants to a nonprofit, charity, or other entity, they may not assign to another entity their rights to receive Maximizing Settlement Funds.

#### **D. Use of Settlement Funds**

1. Regardless of allocation, all Settlement Funds shall be used in a manner consistent with the Approved Purposes. Prior to using any Settlement Funds as reimbursement for previous expenses related to substance abuse mitigation or arising from covered conduct, a Political Subdivision shall pass a resolution stating that its previous expenses related to substance abuse mitigation or arising from covered conduct are greater than or equal to the amount of funds that the Political subdivision seeks to use for reimbursement. Each Political Subdivision that receives any Settlement Funds shall request moneys, report on expenditures, and monitor the use of Settlement Funds consistent with the terms of this MOU, Kansas State Law, and with the terms of any Maximizing Settlement which provides funds to the Municipalities Fights Addiction Fund.
2. If a Political Subdivision spends any Settlement Funds on an expenditure inconsistent with the terms of this MOU, the political subdivision shall have 60 days after discovery of the expenditure to cure the inconsistent expenditure through payment of such amount for Approved Purposes



through budget amendment or repayment.

3. Political Subdivisions may pool Settlement Funds with other Political Subdivisions to cooperatively expend pooled Settlement Funds for Approved Purposes or deposit their Settlement Funds in the Kansas Fights Addiction fund to be distributed by the Kansas Fights Addiction grant review board.
4. Litigating Cities and Litigating Counties may only use their own respective shares of Settlement Funds to reimburse the payment of litigation costs, expenses or attorney fees related to opioid litigation. In order for Litigating Cities and Litigating Counties to use Settlement Funds from the Municipalities Fight Addiction Fund to reimburse the payment of litigation costs, expenses or attorney fees related to opioid litigation, such Litigating City or Litigating County must first seek payment from applicable outside settlement sources or settlement fee funds, consistent with 2021 Kansas House Bill No. 2079.

#### **E. Distribution of Settlement Funds**

1. Prior to the initial distribution, and in no event later than March 1, 2022, the Parties shall negotiate a Settlement Funds Distribution Procedure. The Settlement Funds Distribution Procedure will operate as an extension of this agreement, and shall be interpreted as incorporated within this agreement in whole.
2. For 2022, Settlement Funds shall be distributed as soon as reasonably practicable, and, such funds shall be distributed no later than June 1, 2022.
3. For all years after 2022, Settlement Funds shall be distributed annually no later than April 1 of the respective year.
4. Expenses for the administration of the distribution of settlement funds, pursuant to the Settlement Funds Distribution Procedure, shall be shared proportionally among the Parties.

#### **F. Enforcement**

1. This MOU is enforceable only by the parties. Political Subdivisions shall not have direct enforcement rights under this MOU; *however*, Political Subdivisions shall have the right to bring disputes arising from the terms of this MOU to (i) the League of Kansas Municipalities for cities; (ii) the Kansas Association of Counties for counties, or (iii) to the Kansas Attorney General's Office for either cities or counties. Any party receiving a dispute from a Political Subdivision must comply with the terms of the dispute resolution terms of this MOU within 30 days of receipt of the dispute from the Political Subdivision.

2. If a Party has a dispute under the terms of this MOU, either on its behalf or on the behalf of a Political Subdivision, the Party shall notify the remaining Parties about the dispute. Within 45 days of notice of a dispute and at the earliest convenience of all involved, the Parties shall meet and confer to resolve the dispute. Any resolution to the dispute shall be agreed upon by unanimous agreement of the parties and reduced to writing. In the event that the dispute is raised by a Party on behalf of a Political Subdivision, the writing detailing the resolution shall be delivered to the Political Subdivision within 30 days of the date of the resolution.
3. In the event that the parties are unable to reach a unanimous resolution, the disputing party may seek enforcement of the terms of the MOU in the District Court of Shawnee County, Kansas.

#### **G. Amendments**

The Parties agree to make such amendments as necessary to implement the intent of this agreement.

#### **H. Preservation of Records**

Any Political Subdivision receiving Settlement Funds shall maintain for a period of at least three years, records of all Settlement Fund expenditures and documents underlying those expenditures, so that it can be verified that these funds are being or have been utilized in a manner consistent with this MOU.

#### **J. Notice of Additional Settlements**

The State of Kansas, through the Office of the Attorney General shall, in a timely manner, notify the parties to this agreement of the receipt of settlement funds and any new settlements subject to disbursement according to this agreement. Notice may be given in any manner reasonably calculated to inform the parties of the action having taken place.

#### **K. Conflicts with other Agreements**

The parties to this MOU acknowledge that the purpose and intent of this agreement is to combat the opioid crisis by creating a strategy tailored to Kansas in compliance with House Bill 2079. Therefore, by entering into this agreement, the parties agree and acknowledge that the distribution, expenditure, and oversight of opioid funds as discussed herein shall be governed by this MOU. This MOU, its exhibits, attachments, and amendments, if any, contains the entire agreement between the Parties. If any term contained in this MOU conflicts with any allocation plan, apportionment plan, distribution methodology, or abatement plan that is created by, or subject to the discretion of, some other individual, entity, or court outside the State of Kansas, the parties agree that the terms of this MOU shall control.

#### **L. Counterparts**

This MOU may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute the same MOU. This MOU may be executed via electronic signature and may be considered to have the same legal effect as if it were the original signed version.

#### **M. Waiver**

The failure by a party to strictly enforce this MOU shall not constitute a waiver by that party under this MOU.

#### **N. Governing Law**

This MOU shall be construed in accordance with the laws of the State of Kansas.

#### **O. Severability**

In the event any provision of this MOU is found to be invalid or unenforceable, that provision shall be stricken and the remainder of the MOU shall be applied as if the stricken provision were not part of the MOU.