



Opioid Crisis Update

- ▶ In 2020, drug overdose deaths **rose nearly 30%** in the United States to a **record high** of 93,000.
- ▶ Opioid overdose deaths hit a **record 69,000** in the United States.
- ▶ In Texas, drug overdose deaths also increased by 31.9%, driven primarily by opioid overdose deaths.
- ▶ The opioid overdose death increase was driven by fentanyl and other synthetic opioids.
- ▶ Attorney General Paxton's [website](#) has information to protect Texans from the nation's opioid crisis by educating them about the dangers of misusing prescription opioids.

Sources:

"Provisional Drug Overdose Death Counts." Centers for Disease Control: National Center for Health Statistics (last accessed July 23, 2021), <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>

"U.S. Drug-Overdose Deaths Soared Nearly 30% in 2020, Driven by Synthetic Opioids." Betsy McKay, Wall Street Journal (July 14, 2021), <https://www.wsj.com/articles/u-s-drug-overdose-deaths-soared-nearly-30-in-2020-11626271200>



Opioid Settlements: A Billion Dollars for Texas

- ▶ On **July 23, 2021**, Attorney General Paxton announced global settlements had been reached with the three major opioid distributors **McKesson**, **Cardinal Health**, and **Amerisource Bergen**, and opioid manufacturer **Johnson & Johnson**.
 - Both settlements are a combined historic **\$26 billion**.
 - The distributors' settlement is for **\$21 billion**.
 - J&J's settlement is for **\$5 billion**.
 - The settlements include injunctive relief that changes the industry.
- ▶ Texas could receive as much as **\$1.17 billion from the distributors** and **\$268 million from J&J** for almost **\$1.5 billion**, most of which is targeted for opioid abatement.
 - The actual amount Texas receives will depend upon the participation of cities, counties, and other political subdivisions in the state.
 - Texas has 30 days to decide to join both settlements.



Opioids Settlements: Overview

- ▶ Injunctive Relief in the Settlements:
 - J&J is enjoined from manufacturing, selling, and promoting opioids for 10 years.
 - Distributors must establish a centralized clearinghouse jointly overseen by states and distributors.
 - Distributors will be required to take certain measures to detect suspicious orders.



Opioids Settlements: Overview

- ▶ Mechanics of the Monetary Settlement:
 - Texas's overall allocation is 6.29% of the Global Amount – potentially almost **\$1.5 billion** over 18 years from:
 - Distributors - **\$1.17 billion** over 18 years.
 - J&J - over **\$268 million** over 9 years.
 - Annual payments are split into base and incentive payments as follows:
 - Distributors - 55% base, 45% incentive
 - J&J - 45% base, 55% incentive
 - All incentive payments deal with preventing future litigation by subdivisions and incentivizing subdivision sign on.



Distributors Incentive Payments (1 of 2)

- ▶ Distributors' incentive payments (45% of total) are split into A, B, C, and D.
 - Incentive A is 40% of the total payment
 - Incentive B is 25% of the total payment
 - Incentive C is 15% of the total payment
 - Incentive D is 5% of the total payment

- ▶ **Incentive A (bar against subdivision litigation)** = 40% of total payment and is achieved by:
 - Legislative bar or court ruling that terminates existing and bars future claims by subdivisions (including special districts); or
 - Releases on behalf of all general-purpose subdivisions (10,000+ population), larger school and hospital/health districts, AND all currently litigating subdivisions; or
 - Combination of these approaches.



Distributors Incentive Payments (2 of 2)

- ▶ **Incentive B (resolution of current subdivision litigation) = 25% of total payment and is achieved by:**
 - Early participation and release from subdivisions and special districts representing at least 85% of the “Litigating Population.”

- ▶ **Incentive C (resolution of litigating and nonlitigating subdivision claims) = 15% of total payment and is achieved by:**
 - Early participation and release by litigating subdivisions and primary subdivisions (30,000+ populations); 60% population threshold.

- ▶ **Incentive D (no new subdivision litigation) = 5% of total payment and is achieved by:**
 - After 5 years, if no new litigation by a subdivision, including by a covered special district (school, fire, health/hospital).



J&J Incentive Payments (1 of 2)

- ▶ J&J's Incentive Payments (55% of total) slightly differ, but similar concepts.
 - Incentive A is 50% of the total payment
 - Incentive B is 30% of the total payment
 - Incentive C is 20% of the total payment
 - Incentive D is 5% of the total payment

- ▶ **Incentive A (bar against subdivision litigation) = 50% of total and is achieved by:**
 - Releases from ALL non-litigating subdivisions (10,000+ populations) and non-litigating covered special districts AND all litigating subdivisions and litigating special districts; or
 - Legislative bar against all subdivisions and special districts; or
 - Combination of above.



J&J Incentive Payments (2 of 2)

- ▶ **Incentive B (resolution of current subdivision litigation)** = 30% of total payment and is achieved by:
 - Early participation and release from subdivisions and special districts representing at least 75% of the “Litigating Population.”

- ▶ **Incentive C (resolution of litigating and nonlitigating subdivision claims)** = 20% of total payment and is achieved by:
 - Early participation and release by primary subdivisions (30,000+ populations); 60% population threshold.

- ▶ **Incentive D (no new subdivision litigation)** = 5% of total payment and is achieved by:
 - After 5 years, if no litigation by a covered special district (school, fire, health/hospital) survived a motion to dismiss and/or no settlements to resolve litigation by those covered special districts.

- ▶ The value of J&J incentives decrease the longer it takes for subdivisions to participate



Distributors: Offsets and Suspension of Payments

- ▶ If a subdivision who hasn't sued decides to sue later, there is a suspension of payments and a potential offset of those payments.
- ▶ Applies to a suit for a claim of more than \$10 million, the claim is covered by the release, and the claim survives 6-9 months past a threshold motion to dismiss.
- ▶ Size of the suspension and a potential offset depend on several factors, but the distributors' deal applies a maximum offset in the amount of 67% against the suspension and/or future payments.
- ▶ If that lawsuit is resolved, suspended payments resume.



J&J Offsets and Suspension of Payments

- ▶ Similar to Distributors.
- ▶ If a subdivision with a population of over 10,000 hasn't previously sued decides to later sue, and survives a motion to dismiss, there is a suspension of payments.
- ▶ If that lawsuit is resolved, suspended payments resume. J&J's deal applies a more limited offset of the payment obligation against the suspension and/or future payments, but only against incentive payments.
- ▶ Future litigation by certain special districts doesn't trigger the above, but instead falls under Incentive D.



Goal: Bring the Most Money to Texas (Slide 1 of 2)

- ▶ Combination of approaches for Texas to maximize funds with the participation of litigating subdivisions and nonlitigating subdivisions.
- ▶ For example, the largest Incentive under both is Incentive A (40% in distributors, 50% in J&J). This can be obtained by getting releases for past and future claims from all litigating subdivisions and special districts, all general-purpose subdivisions over 10,000 population, and covered special districts.
- ▶ Texas has 128 litigating subdivisions:
 - 110 Counties.
 - 5 Cities.
 - 10 Hospital Districts.
 - 3 School Districts.
- ▶ Texas has 406 general purpose subdivisions with a population of over 10,000 (309 nonlitigating and 97 litigating).
- ▶ Texas has 44 school districts and 15 hospital districts that fit in the settlement district population thresholds.



Goal: Bring the Most Money to Texas (Slide 2 of 2)

- ▶ Currently, the best option for Texas to maximize incentive funds is likely with a combination B and C approach.
- ▶ Using the distributors' deal as an example:
 - Incentive A (40%) requires:
 - Releases from all 309 nonlitigating (10,000+ population) subdivisions, 44 school districts, 15 Hospital Districts AND
 - Releases from all 128 litigating subdivisions.
 - This requires participation and releases from almost 500 subdivisions.
 - Incentive B (25%) plus Incentive C (15%):
 - Releases from all 128 litigating subdivisions AND
 - 95% of primary subdivisions (30,000+population), which is at least 144 counties and cities.
 - This is a smaller universe of 272 subdivisions.
- ▶ Note: these numbers don't include Emergency Special Districts, which count as Fire Districts under the terms of the settlements.



How Settlement Dollars Flow into Texas

- ▶ By signing on to the Settlement and executing a release, you increase the funds coming into Texas and will be entitled to a portion of the funds that Texas receives.
 - Texas and Participating Subdivisions alike get direct payments under the settlement.
 - Cities and Counties will also get funding for abatement programs from the Opioid Council.
- ▶ Question: If my county signs up and executes a release, how do I get dollars to my county?
- ▶ Answer: SB 1827 (87R) and the Texas Term Sheet



Texas Term Sheet and SB 1827

- ▶ Goal of the Texas Term Sheet: Provide Texans in **all 254 counties** with the opportunity for funding for education, prevention, and treatment of opioid abuse.

- ▶ SB 1827 (87R) codifies the Texas Term Sheet and establishes the **Texas Opioid Council (Council)** to ensure that the funds recovered by Texas are allocated fairly and spent to remediate the opioid crisis in Texas, using efficient and cost-effective methods that are directed to the hardest hit regions in Texas while also ensuring that all Texans benefit from prevention and recovery efforts.

- ▶ 85% of the funds under the Settlement will be deposited into the Opioids Abatement Trust Fund:
 - 15% to directly to subdivisions.
 - 70% share to abatement programs.



Example Opioid Fund Allocations

- ▶ Assuming (1) your subdivision executes a release and signs on to the Texas Term Sheet, and (2) Texas receives maximum funds from the distributors and J&J, what kind of funding does that mean for my subdivision?
- ▶ Example 1 – direct payments to cities and counties:

Subdivision	Distributors	J&J	Total
City of Anna	\$9,006.91	\$2,070.23	\$11,077.14
City of Allen	\$312,717.10	\$71,877.61	\$384,594.71
City of Celina	\$18,145.83	\$4,170.80	\$22,316.63
Collin County	\$1,257,217.41	\$288,969.75	\$1,546,187.16
City of Frisco	\$402,268.17	\$92,460.80	\$494,728.97
City of Garland	\$417,091.12	\$95,867.84	\$512,958.95
City of McKinney	\$447,004.00	\$102,743.27	\$549,747.27
City of Sachse	\$23,224.44	\$5,338.11	\$28,562.55



Example Opioid Fund Allocations

- ▶ Assuming (1) your subdivision executes a release and signs on to the Texas Term Sheet, and (2) Texas receives maximum funds from the distributors and J&J, what kind of funding does that mean for my subdivision?
- ▶ Example 2 – Abatement allocations by Regions for Treatment Programs

Region	Distributors	J&J	Total
Region 9 (Dallas, Kaufman)	\$66,659,834.77	\$15,321,674.42	\$81,981,509.18
Region 18 (Collin, Denton, Grayson, Rockwall)	\$39,888,057.09	\$9,168,216.90	\$49,056,273.99



Opioid Lawsuits Timeline (1 of 3)

- ▶ In **September 2017**, Attorney General Paxton and a **bipartisan coalition of 40 other states** served investigative subpoenas and additional requests on eight companies that manufacture or distribute highly addictive opioids to evaluate whether manufacturers and distributors engaged in unlawful practices in the marketing, sale, and distribution of opioids.
- ▶ **May 15, 2018**, Texas filed a **lawsuit against Purdue Pharma** for violating state laws against deceptive trade practices and misrepresenting the risk of addiction to patients and doctors.
- ▶ On **September 4, 2019**, Attorney General Paxton announced that a **civil Medicaid fraud lawsuit** had been filed against pharmaceutical manufacturer **Johnson & Johnson** for misrepresentations made to the Texas Medicaid program about their dangerous opioid drug, Duragesic.
- ▶ Purdue Pharma files for Chapter 11 Bankruptcy in **September 2019**.



Opioid Lawsuits Timeline (2 of 3)

- ▶ In **February 2020**, Attorney General Paxton announced a global settlement framework between state attorneys general, local subdivisions, and Mallinckrodt (MKN). MKN is currently the largest generic opioid manufacturer in the United States. In the agreement, MKN agreed to pay **\$1.6 billion in cash** to a trust that will cover the costs of opioid addiction treatment and related efforts, with the potential for increased payment to the trust.
- ▶ On **May 13, 2020**, Attorney General Paxton reached a bipartisan agreement with Texas Counties and Cities in preparation for settlement with opioid defendants: **McKesson, Cardinal Health, ABDC, and Johnson & Johnson**. Texas is one of the lead states currently negotiating financial settlements with the nation's largest companies in the opioid supply chain.



Opioid Lawsuits Timeline (3 of 3)

- ▶ In **February 2021**, Attorney General Paxton and 46 states entered into a settlement with McKinsey, a consulting firm that assisted Purdue and others with their marketing of prescription opioids, for **\$583 million and injunctive relief**. The funds are earmarked to remediate the harms caused by the opioid epidemic and to recover the costs incurred in investigating and pursuing these claims.
- ▶ On **July 23, 2021**, Attorney General Paxton announced the global settlement had been reached with opioid defendants **McKesson, Cardinal Health, ABDC, and Johnson & Johnson**.



Next Steps

- ▶ To join the Settlement, Subdivisions need to:
 - Sign on the to settlement and execute releases; and
 - Execute the Texas Term Sheet.
- ▶ The deadline to sign on is approximately 120 days after the state sign-on period.
 - **JANUARY 2, 2022** is the likely sign on deadline.
- ▶ For more information, see [our website]