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# Wisconsin Legislative Council

## ACT MEMO

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Prepared by: Tom Koss, Staff Attorney

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### 2021 Wisconsin Act 57 [2021 Assembly Bill 374]

### Settlement of the Multidistrict Opiate Litigation

2021 Wisconsin Act 57 governs the settlement the federal court proceedings titled *In re: National Prescription Opiate Litigation*, Case No. MDL 2804, and any proceeding filed in Wisconsin circuit court that contains allegations and seeks relief substantially similar to those in Case No. MDL 2804 (the opiate litigation.).

## COOPERATION BY ATTORNEY GENERAL

More specifically, the act requires the Attorney General to cooperate with local governments that are parties in the opiate litigation, if all of the following conditions are met:

- The Joint Committee on Finance (JCF) approves the proposed settlement agreement using the procedure under s. 165.08 (1), Stats.<sup>1</sup>
- The settlement agreement identifies 30 percent of the settlement proceeds as payable to the state.
- The settlement agreement identifies 70 percent of the settlement proceeds as payable to local governments in Wisconsin that are parties in the opiate litigation.

If the above conditions are met, the Attorney General must cooperate with the local governments that are parties to the opiate litigation to enter into a joint settlement agreement of the legal or equitable claims of the state and the claims of local governments regarding opioids with any person that has engaged in the manufacture, marketing, promotion, distribution, or dispensing of an opioid product.

## EXPENDITURE OF SETTLEMENT PROCEEDS

The act also requires that the state and local governments spend their settlement proceeds according to certain requirements, as described below.

### Expenditure by the State

The state's settlement proceeds must be allocated to the Department of Health Services (DHS) and may be spent for any purpose that complies with a settlement agreement or order of the court. In order to spend the settlement proceeds, DHS must submit a proposal of expenditure to JCF by April 1 of each year, for the next fiscal year.

After receiving DHS' proposal of expenditure, JCF has 14 working days to schedule a meeting for the purpose of reviewing the proposal. If JCF schedules a meeting for the purpose of reviewing the proposal, DHS may spend the funds only upon gaining JCF approval. If JCF does not schedule a

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<sup>1</sup> Generally, this procedure requires the Department of Justice (DOJ) to submit to JCF a proposed plan to settle, compromise, or discontinue a civil action prosecuted by DOJ. The settlement, compromise, or discontinuance may only occur if JCF approves the proposal. [s. 165.08 (1), Stats.]

meeting within 14 days, DHS may spend the funds as described in its proposal. Additionally, if DHS seeks to deviate from its proposal, it must submit a proposal for the deviation to JCF, and the proposed deviation is then subject to the same review provisions as the original proposal for expenditure.

## **Expenditure by Local Governments**

The settlement proceeds for local governments may be paid directly only to local governments that are parties in the opiate litigation. A local government that receives settlement proceeds must deposit the funds in a segregated account that is subject to several requirements. Funds in the segregated account:

- Are considered funds of the local government and may not be commingled with any other funds.
- May only be spent for approved opioid abatement purposes, as identified in the settlement agreement or in a court order.
- May not be used to substitute for budgeted funds from other sources.
- May be allocated to another political subdivision in the state if the recipient of the funds agrees to spend them only for approved opioid abatement purposes.
- May be pooled between local governments if each local government complies with reporting requirements.
- Are subject to the local government's typical audit process.

A local government that receives settlement proceeds must submit a report to DOJ and JCF by May 1 of each year. The report must include the amount of money in the segregated account as of December 31 of the previous year and an accounting of the receipts and disbursements from the segregated account in the previous year.

The act also specifies that a local government may sell its right to receive any payment under a settlement agreement for cash or other consideration, and may pledge, grant a lien on, or grant a security interest in payments to effectuate the sale. The sale must be approved by a majority of the local government's governing body, and the proceeds of the sale must be deposited in the segregated account.

Finally, the act allows a local government to use part of its settlement proceeds to pay for attorney fees if a separate fund created in a settlement agreement for opiate litigation is insufficient to pay the entire amount of attorney fees and expenses.

## **CLAIMS BY NONPARTIES TO OPIATE LITIGATION**

The act prohibits a political subdivision of the state (or an officer or agent of a political subdivision of the state) that was not a party to the opiate litigation as of June 1, 2021, from doing any of the following:

- Maintaining a claim to proceeds of any settlement agreement described above.
- Maintaining or commencing any claim related to opioids against a defendant in the opiate litigation that would be released in a settlement agreement described above, if the party bringing the claim were party to the settlement agreement.

The act specifies that a local government with a lawsuit or claim pending as of June 1, 2021, may maintain that lawsuit or claim.

**Effective date:** July 1, 2021

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