



Legislative Fiscal Bureau

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November 30, 2021

TO: Members
Joint Committee on Finance

FROM: Bob Lang

SUBJECT: Department of Justice Request for Approval of Opioid Settlement Agreements

On November 23, 2021, the Department of Justice (DOJ) submitted a request to the Joint Committee on Finance (JFC), pursuant to s. 165.12(2) of the statutes, for the approval of two settlement agreements. One agreement is with Johnson and Johnson, an opioid manufacturer, and the other is with three major pharmaceutical distributors -- AmerisourceBergen, Cardinal Health, and McKesson. These agreements would resolve legal claims against those companies from actions that contributed to the opioid addiction epidemic, and will be carried out through a consent order entered in a Wisconsin Circuit Court.

Background

2021 Wisconsin Act 57 created s. 165.12 of the statutes, which addresses the state's response to the National Prescription Opiate Litigation, Case Number MDL 2804 and any proceeding filed in a Circuit Court in Wisconsin containing allegations and seeking relief that is substantially similar to allegations contained in, and relief sought, in that case.

The act requires the Attorney General to cooperate with local governments that are parties in the litigation, if: (a) the Joint Committee on Finance approves the proposed settlement agreement using procedures that requires DOJ to submit to JFC a proposed plan to settle, compromise, or discontinue a civil action prosecuted by DOJ; (b) the settlement agreement identifies 30% of the settlement proceeds as payable to the state; and (c) the settlement agreement identifies 70% of the settlement proceeds as payable to local governments (71 counties and 16 municipalities) in Wisconsin that are parties in the opiate litigation.

All moneys payable to the state must be allocated to the Department of Health Services (DHS) to expend for purposes that comply with any settlement agreement or order of the court. DHS is required to submit to the Committee, by April 1 of each year until the moneys are expended, a

proposal to expend the moneys in the next state fiscal year, which the Committee may approve under a 14-day passive review process. DHS may revise its spending plan by obtaining the Committee's approval for the revision under the 14-day passive review process.

Local governments are required to deposit proceeds to segregated accounts, not commingled with other funds, and use the funds solely for the purposes specified in the settlement agreements or by court order. Local governments may not use these funds to substitute for budgeted moneys from other sources, and must submit a reports to DOJ and the Committee by May 1 annually that identifies funding in each segregated account as of December 31 of the previous year, and an accounting of receipts and disbursements from the account in the previous calendar year. Subject to certain restrictions, local governments may sell the right to receive any payment if the proceeds from the sale are deposited in the segregated account, and may allocate or pool funds with other local governments to carry out approved opioid abatement purposes.

Fiscal Effect

According to DOJ, the agreements with opioid manufacturers would combine to provide for maximum nationwide payments totaling \$26 billion, with approximately \$23.9 billion available to fund efforts to abate the opioid addiction crisis (with an estimated \$2.1 billion allocated for other restitution and attorney fees). AmerisourceBergen, Cardinal Health, and McKesson would pay up to \$21 billion over 18 years. Johnson & Johnson would pay up to \$5 billion over nine years.

The funds would be distributed to states according to the allocation agreement reached among states. Wisconsin is expected to receive 1.7582560561% of approximately \$23.9 billion, which would be approximately \$420.2 million over 18 years. Distribution of funds between the State of Wisconsin and its local governments, and the use of those funds, will be controlled through the Wisconsin State-Local Government MOU that was reached, consistent with s. 165.12(2)(b) and (c) of the statutes. Based on the statutory division of funds, it is estimated that over time local governments would receive approximately \$294.2 million, and the state's share would be approximately \$126.0 million. In addition, the state is expected to receive approximately \$9.6 million in additional restitution, which would be deposited with DHS. The Department indicates that "DOJ intends to forgo the recovery of costs and attorneys' fees in these matters and for all that restitution to be added to the state share of the settlement for that purpose."

Under the settlement agreements, the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), would be authorized to recover the federal share of Medicaid-funded costs state and local governments expended for opioid treatment services. However, it is not known how much, if any, CMS would recover under this provision from the state and local share of the settlement proceeds.

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