

# Ten Indicators to Assess the Readiness of State and Local Governments to Receive the Opioid Settlement Funds

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December 2021



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# Preparing for the Opioid Litigation Funds

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States have begun to receive money as a result of litigation filed against companies involved in the manufacturing, distribution and dispensing of opioid pharmaceuticals. For example, in early 2021 McKinsey & Company (a consulting firm that worked with opioid manufacturers) [settled](#) with states for close to \$600 million. Once settlements with opioid distributors and Johnson & Johnson are finalized and the Purdue Pharma bankruptcy case is settled, states and local governments will receive additional dollars. There are also various pending lawsuits against other opioid manufacturers, including Teva and Endo Pharmaceuticals, that may provide more resources to help states and localities abate the opioid crisis.

If they have not already, state and local officials should begin taking action now to prepare for the influx of these dollars and ensure that they are used to save the most lives. Legislation is one tool that states and local jurisdictions can use to prepare for the funds; [many states](#) have already passed such legislation.

With [funding](#) from the Office of National Drug Control Policy, the Legislative Analysis and Public Policy Association--in collaboration with the O'Neill Institute for National and Global Health Law at the Georgetown University Law Center, the Center for U.S. Policy, and Brown and Weinraub--has prepared [model legislation](#) (the Opioid Litigation Proceeds Model Act) for states to use; local jurisdictions can adapt this legislation for their needs. In states that have not yet passed an opioid litigation proceeds act, this model may be used to draft and propose a new bill. In states that have already passed an opioid litigation proceeds act, the model may be used to supplement and refine the existing law to optimize the public health benefits of the opioid litigation proceeds. Additionally, state attorneys general may use the model as a guide in negotiating future opioid litigation settlement agreements. State and local substance use agencies may be able, however, to take many of the steps laid out in this document on their own without legislation.

To assess their overall readiness and guide their next steps, policymakers should review what their jurisdiction has done to prepare for the influx of funds. In particular, they should review the set of ten indicators outlined below. The indicators are drawn from the [Principles for the Use of Funds From the Opioid Litigation](#), which outline the process state and local jurisdictions should use to determine how to spend opioid litigation funds, and have been endorsed by over sixty organizations.

The indicators are laid out in the following domains:

- *Spending the Money To Address Substance Use;*
- *Establishing an Effective Process;*
- *Informing Evidence-Based Decision-Making; and*
- *Promoting Transparency.*

After listing the ten indicators, this document explains each of them in detail. Additionally, this document provides specific actions jurisdictions can take in order to align with each indicator.

# Ten Indicators to Assess the Readiness of State and Local Governments to Receive the Opioid Settlement Funds

## Spending the Money To Address Substance Use

1. *Has the jurisdiction established a dedicated fund for dollars received as a result of the opioid litigation?*
2. *Is all of the money coming to the jurisdiction as a result of the opioid litigation required to be spent addressing substance use?*
3. *Is there a prohibition on using money from the litigation to supplant existing spending on substance use?*

## Establishing an Effective Process

4. *Is there a requirement that dollars be spent on evidence-based or evidence-informed practices?*
5. *Has the jurisdiction created a formal agreement for regional collaborations?*
6. *Does the process support meaningful input and participation by:*
  - a. *the public,*
  - b. *public health leaders with substance use expertise,*
  - c. *people with lived experience,*
  - d. *people from communities of color, and*
  - e. *others with relevant expertise?*

## Informing Evidence-Based Decision-Making

7. *Is there a recent, public assessment of substance use services and needs, broken down by race/ethnicity, that can guide funding decisions?*
8. *Has the jurisdiction conducted a recent, public review of its own laws, regulations and policies and their racial impact to identify obstacles to using settlement funds and support programs based in evidence and equity?*

## Promoting Transparency

9. *Does the jurisdiction have a publicly available dashboard or annual report that tracks and shares information about progress toward jurisdiction-wide substance use goals, with data and goals by key demographics, including race, ethnicity and gender?*
10. *Has the jurisdiction committed to a regular public evaluation of the use of settlement funds that includes sections on how the funds have supported:*
  - a. *evidence-based care,*
  - b. *youth prevention, and*
  - c. *equity?*

# Ten Indicators to Assess the Readiness of State and Local Governments to Receive the Opioid Settlement Funds

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## Section 1: Spending the Money to Address Substance Use

### 1. *Has the jurisdiction established a dedicated fund for dollars received as a result of the opioid litigation?*

Establishing a dedicated fund for all of the money from opioid-related litigation coming to a state or local jurisdiction will promote transparency around the use of opioid litigation dollars, facilitate public input in the decision-making process, and can help engage traditionally underserved groups such as communities of color that face ongoing discrimination.

As of fall 2021, Delaware, Idaho, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah and Virginia have all already passed [legislation](#) establishing such a fund; [Cuyahoga County](#), Ohio has also done so.

Section IV of the [Opioid Litigation Proceeds Model Act](#) provides sample language that states and local jurisdictions can use to set up their dedicated funds.

**Action Item:** State and local policymakers should pass legislation establishing a dedicated fund for dollars from the opioid settlements.

### 2. *Is all of the money coming to the jurisdiction as a result of the opioid litigation required to be spent addressing substance use?*

Depending on the terms of each legal case, states and local jurisdictions may be able to spend money that they get from the opioid litigation on items unrelated to substance use. For example, New York State [deposited some of the money](#) it received from the settlement with McKinsey into its general fund. Accordingly, states should pass legislation that opioid litigation proceeds received by a state and its local jurisdictions be spent exclusively on addressing substance use disorders; local subdivisions should also pass legislation requiring that opioid litigation proceeds be spent exclusively to address substance use.

One straightforward way to do this is to require all of the funds received by a state or local jurisdiction from litigation around the opioid epidemic to go into the dedicated fund (see Indicator #1). Should a state or local jurisdiction not have established a dedicated fund, they may pass legislation requiring that money that goes to the general treasury as a result of the litigation be spent solely on substance use.

To the degree possible under the terms of any settlement or other legal action, jurisdictions should permit funds from the opioid litigation to be spent on substance use broadly rather than on opioids narrowly. Many people with opioid use disorder also use other substances; programs should be able to meet their needs holistically. Additionally, as the substance use epidemic changes over time--with the dramatic [rise](#) in stimulant use as one example--flexibility in the use of the dollars will help jurisdictions meet the various needs of the people who live there.

Additionally, jurisdictions should permit flexibility in the types of substance use programs that can be funded. Strong evidence supports programs in substance use prevention, treatment, recovery and harm reduction (see Indicator #4). As discussed later in this document (see Indicator #7), jurisdictions should conduct a services and needs assessment to identify which areas are in need of additional support.

It may be appropriate to reserve a small percentage of the dollars coming to the state to cover the administrative costs associated with convening public health experts to make spending decisions, and managing and disbursing the funds.

Section IV of the [Opioid Litigation Proceeds Model Act](#) provides sample language about restricting the use of dollars to substance use prevention, treatment, recovery and harm reduction programs, services and supports and resources.

**Action Item:** State and local policymakers should pass legislation requiring that all opioid litigation proceeds go into the dedicated opioid litigation fund, or are otherwise required to be spent on programs to address substance use prevention, treatment, recovery, and harm reduction.

### **3. *Is there a prohibition on using money from the litigation to supplant existing spending on substance use?***

Even if there is a requirement that all of the opioid litigation proceeds must be spent on substance use prevention, treatment, recovery, and harm reduction, jurisdictions may be tempted to replace existing spending on substance use with the new opioid litigation dollars.

To prevent this from occurring, jurisdictions should pass legislation that specifically requires that money from the opioid litigation cannot supplant existing funding. Additionally, states should pass laws to make sure that local subdivisions cannot supplant their own funding with opioid litigation dollars. Section IV of the [Opioid Litigation Proceeds Model Act](#) provides sample language about preventing the supplantation of existing spending.

**Action Item:** State and local policymakers should pass legislation that prohibits replacing existing spending with dollars from the opioid litigation.

## **Section 2: Establishing an Effective Process**

### **4. *Is there a requirement that dollars be spent on evidence-based or evidence-informed practices?***

At this point in the epidemic, researchers have built a sizable body of evidence indicating which prevention, treatment recovery and harm reduction strategies work and, just as importantly, which do not work. To make sure that the dollars are spent to save the most lives, state and local policymakers should institute requirements that their jurisdictions spend all of the funds on evidence-based or evidence-informed strategies. Directing the dollars to evidence-based programs is critical given the ongoing nature of the epidemic and the need to maximize return on investment.

The [Opioid Litigation Proceeds Model Act](#) provides a definition of “evidence-based”; generally, evidence-based practices can be thought of as those that are based on the best available research. Section IV and other Sections of the [Opioid Litigation Proceeds Model Act](#) provides sample language on the role of evidence in making funding decisions.

Several compilations of evidence-based practices have been published (see the [Opioid Principles website](#) for a list of these resources). For example, [Evidence Based Strategies for the Abatement of Harms from the Opioid Epidemic](#) describes the following programs that are supported by the strongest level of evidence:

- The use of methadone and buprenorphine, in combination with other supports as appropriate, to treat opioid use disorder.
- Contingency management, cognitive behavioral therapy, and family therapy, especially when used in conjunction with medications for opioid use disorder.
- Recovery supports such as self-help/mutual-support groups and drug-free housing.
- Team-based and medical models, such as the Collaborative Care Model and Short-term Inpatient Linkage to Primary Care that connect and support individuals to OUD and other behavioral health treatments.
- Harm reduction approaches including naloxone distribution and syringe services programs.
- Family Skills Training Interventions to mitigate harms experienced by children whose parents misuse opioids.

Additionally, evidence-informed strategies are those that may not have been tested in a new setting or with a different population. Should jurisdictions decide to fund evidence-informed strategies, they should also provide sufficient funding to conduct an evaluation of the intervention in order to build the evidence base. Finally, jurisdictions should avoid strategies that are not supported by evidence

**Action Item:** State and local policymakers should require that funds from the opioid litigation are spent on evidence-based programs or evidence-informed programs that will generate additional data on their effectiveness.

## **5. Has the jurisdiction created a formal agreement for regional collaborations?**

Depending on the specific terms of any agreements, dollars may be spread across many local governments. In order to ensure that these dollars are used most effectively, state public health leaders should take the lead in facilitating partnerships between: a) the state and local/regional governments, and b) neighboring local governments within the region. When appropriate, state public health leaders should build collaborations with tribal governments around the use of the dollars.

Regional collaborations can help communities meet the varied needs of those with substance use disorders and minimize unnecessary duplication of efforts. For example, after assessing the needs of the region as a whole, one community may invest in services to assist pregnant and postpartum people with substance use disorders, while another community may fund transitional housing for people from the region who have substance use disorders. Counties could work together to develop an integrated data and reporting system with shared infrastructure, or explicitly pool their dollars for other joint initiatives.

In fact, the settlement agreements with the opioid distributors and Johnson & Johnson encourage states to reach agreements with their local subdivisions on how to divide up and use the settlement dollars.

As one example, state and local leaders in Colorado developed a [plan](#) to give 60% of the money from the settlements to nineteen regions in the state. Another 20% will go to local governments, which may decide to contribute their share to the regional effort as well. Another 10% will go to an infrastructure fund and the last 10% to work on statewide issues.

In some smaller states, the terms of the settlement may mean that all of the dollars go to the state government. Should this be the case, including local officials as part of the decision-making process will help make sure that the funds are used effectively.

**Action Item:** State and local policymakers should establish formal agreements that outline how they will collaborate on the use of the funds and prevent duplication of program efforts.

## **6. Does the process support meaningful input and participation by:**

- a. the public,**
- b. public health leaders with substance use expertise,**
- c. people with lived experience,**
- d. people from communities of color, and**
- e. others with relevant expertise?**

State and local jurisdictions need to establish an appropriate process to determine how the funds will be spent; many states have already set up councils to make these decisions. Policymakers should ensure that the individual tasked with leading the council, or other decision-making body, has a background in public health and expertise in addiction and substance use. Such public health leaders may be found at a variety of locations: state or local public health agencies; local colleges or universities; community-based organizations; and other groups that address substance use prevention, treatment, recovery and harm reduction.

Including individuals with a background in public health will help council leaders critically examine the scientific evidence to determine which programs and policies have a proven track record of success and which do not.

Public health experts are also well-positioned to evaluate rapidly evolving interventions in real time, including determining if new interventions implemented elsewhere are applicable to the local context. In addition, local public health practitioners' knowledge of existing state and local infrastructure will facilitate efficient expansion and implementation of programs.

Including people with lived experience on the council is particularly important to ensure their perspectives inform decision-making. Given the stigma against the use of medications for addiction treatment, people using methadone or buprenorphine as part of their recovery should be explicitly included as part of the process. One model for including those directly affected in the decision-making process is the Ryan White Program, which requires that at least one-third of the members of the Community Planning Councils that allocate funds receive program services themselves.

Any council or other entity that is established should also include people from communities of color and other communities that have been affected by historical patterns of discrimination, such as Indigenous and LGBT+ communities. This can help ensure that funding decisions do not perpetuate or worsen existing disparities. A recently-conducted services and needs assessment (see Indicator #7) can help the jurisdiction identify groups that may benefit from active inclusion in the process.

Jurisdictions that have established councils to aid in the decision-making process should be sure that the people on the committee have a variety of backgrounds relevant for the work of the committee, including, but not limited to: family members of people with lived experience; prevention, treatment, recovery and harm reduction service providers, law enforcement personnel, and social service organizations.

Finally, whatever process is used, the public should have a chance to provide input and recommendations as well. This could be done by providing a time for public input at council meetings, and/or through an open docket where members of the public can submit written comments. If the council holds in-person meetings, some of these meetings should be held at locations where members of affected communities can easily participate. The council should also ensure that they are responsive to public input through a response to comments or other reflective forms of communication.

Section V of the [Opioid Litigation Proceeds Model Act](#) provides sample language around the establishment and composition of a council.

**Action Item:** State and local policymakers should ensure that the process set up to determine how opioid litigation funds are spent explicitly includes public health leaders with substance use expertise; people with lived experience; people from communities of color; and others with direct experience and expertise; and that the public has opportunities to provide input.

### Section 3: Informing Evidence-Based Decision-Making

#### 7. *Is there a recent, public assessment of substance use services and needs, broken down by race/ethnicity, that can be used to guide funding decisions?*

In order to make decisions around how the new dollars should be spent to save the most lives, states and local jurisdictions should conduct a detailed needs assessment to understand the patterns of substance use in their areas, substance use-related morbidity and mortality, existing programs and services, and the gaps in those services. Trends related to the opioid crisis have continued to diverge for people of color in many communities and addressing health disparities is key to a comprehensive solution; therefore, sub-analyses by race/ethnicity are warranted.

This [guide](#) from the state of Maryland delineates the process for conducting a needs assessment. As one example, a recent [needs assessment](#) in Idaho lays out trends in substance use in the state and identifies areas of particular concern.

To the degree possible, needs assessments should include data and analyses on subgroups, including race, ethnicity, gender, socioeconomic status, and other variables that may affect outcomes. By disaggregating data into these subgroups, it is easier to see the impacts and successes of programs on different groups. There may be value in including members of groups in need of increased support in specific areas as part of the planning for the distribution of the funds (see Indicator #6). Massachusetts has passed [legislation](#) to allow for linked data sets to more precisely identify key gaps in treatment services that can serve as targets for implementation and tracking.

As part of the review of existing programs and services, the needs assessment should identify any programs that are not evidence-based or evidence-informed so that funders can consider redirecting resources elsewhere.

Should a jurisdiction not have a recent needs assessment, policymakers should direct the development of one. This process should be led by the state or local public health agency,

which may have access to data not available to the general public. This process should be intentionally designed to elicit the feedback of people who use drugs and/or have or have had a substance use disorder. This needs assessment should be conducted and made public prior to the disbursement of funds from the opioid litigation.

Given resource constraints, state and local governments may consider partnering with local community-based organizations or academic institutions to provide additional insight and analyses for the needs assessment.

Jurisdictions should plan on updating this assessment regularly--annually if possible--to make sure that they are making decisions based on the most recent information.

Section IV of the [Opioid Litigation Proceeds Model Act](#) provides sample language around the use of opioid litigation funds to conduct a needs assessment.

**Action Item:** State and local policymakers should ensure that a needs and services assessment has been conducted recently. For example, a jurisdiction may require the completion of such an assessment before any dollars are disbursed.

**8. *Has the jurisdiction conducted a recent, public review of its own laws, regulations and policies and their racial impact to identify obstacles to using settlement funds to support programs based in evidence and equity?***

State and local jurisdictions should examine their own laws, regulations and policies to determine if any pose barriers to accessing evidence-based care. This review may be a task to explicitly charge any councils that have been established to provide recommendations or decisions on how to spend the money from the opioid litigation.

For example, some states and local jurisdictions have barriers to accessing methadone and buprenorphine, the two medications with the most evidence as to their effectiveness, that go beyond federal restrictions. Examples of such local barriers are prohibitions on new methadone clinics and restrictions on the ability of nurse practitioners to prescribe buprenorphine.

As examples of what a review of regulations and policies can look like, The Pew Charitable Trusts has examined state policies and made recommendations in [Wisconsin](#), [Louisiana](#), [Washington DC](#), [Maine](#), and other jurisdictions.

These reviews should include an assessment of whether any of these laws, regulations or policies--or their implementation--are contributing to disparate outcomes in communities of color or other groups. For example, although drug use is similar among different racial groups, Black individuals are [more likely](#) to be incarcerated for drug use. While no law explicitly targets Black individuals for arrest, inequitable implementation of police surveillance in communities of color contributes to the disparity. Policymakers should implement evidence-based strategies to reduce this and other disparities.

Once state and local policymakers have identified policies that are inhibiting the use of evidence-based practices, they should take steps--such as passing legislation or revising regulations--to remove them and monitor the effect of the removal.

**Action Item:** State and local policymakers should require the review of existing policies to ensure that they do not interfere with evidence-based practices. This task could, for example, be charged to a council that has been set up to decide how to distribute opioid settlement funds. The legal review should be paired with a racial impact assessment of the jurisdiction's substance use policies, including drug-related arrests.

## Section 4: Promoting Transparency

### 9. **Does the jurisdiction have a publicly available dashboard or annual report that tracks and shares information about progress toward jurisdiction-wide substance use goals, with data and goals by key demographics, including race, ethnicity and gender?**

As seen with other large national and international crises, like the COVID-19 pandemic, data surveillance is an essential component of a public health response. Data can be used to monitor progress of interventions, effectively allocate resources, increase partnerships, and promote transparency. While many states and localities already collect large quantities of data, many do not have the infrastructure necessary to effectively use the data to inform decision-making. Increasing data capacity and linking existing data through [data partnerships](#) can increase localities' ability to more accurately identify, assess, and track impacts of drug-policy related policies and interventions.

Disseminating this information to the public can be done through several methods such as a data dashboard or annual reports. Jurisdictions should be sure to include:

- Outcomes that align with strategic goals (see [Denver's Opioid Response Strategic Plan](#) as an example);
- Data points that allow analysis by race, ethnicity, gender, age, income, geography, and time;
- Linkages across data sets; and
- An accessible public interface.

Rhode Island's [dashboard](#) clearly delineates a number of key categories, breaks data down by race/ethnicity, and connects the data to the state's action plan.

If jurisdictions increase their investment in data surveillance and dissemination, they may also want to consider using the opioid litigation funds to expand their existing workforce to match the increased needs.

**Action Item:** If one does not already exist, state and local policymakers should require the establishment of a publicly-available dashboard or annual report.

### 10. **Has the jurisdiction committed to a regular public evaluation of the use of settlement funds that includes sections on how the funds have supported:**

- evidence-based care,**
- youth prevention, and**
- equity?**

Jurisdictions should annually assess the effectiveness of the programs that are receiving funding from the opioid settlements and detail the findings in a public report; this approach will increase transparency and accountability. The report should include the specific objective(s) of the programs receiving funding, and qualitative and quantitative data describing progress towards those objectives.

In particular, the report should contain sections on:

- Evidence-based Care.** Each program that receives funding should have a description of the evidence supporting the use of that intervention. Should the evidence still be in development, the section should contain information on why the committee believes that it is likely that the program will improve outcomes and how.

- b. *Youth Primary Prevention.* Evidence-based youth primary prevention programs have a significant positive return on investment yet remain significantly underfunded. The report should include information on the adequacy of youth prevention programs in the jurisdiction.
- c. *Equity.* Jurisdictions may need to implement different strategies in order to reach communities of color and other underserved communities. For example, communities of color have [less access](#) to buprenorphine than white communities at baseline. Accordingly, jurisdictions will need to target investments that address and do not perpetuate disparities. The annual report should include a section that specifically discusses how the settlement funds are being used to address equity.

Section VII of the [Opioid Litigation Proceeds Model Act](#) provides sample language about publicly reporting around the use of the opioid litigation funds.

**Action Item:** States and local policymakers should require the public release of an annual report that describes how the dollars have been used, with sections on evidence-based care, youth primary prevention and equity.