



San Bernardino County

Legislation Text

File #: 5098, Agenda Item #: 37

REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY AND RECORD OF ACTION

November 16, 2021

FROM

STEVEN O'NEILL, Interim County Counsel, County Counsel

SUBJECT

National Opioid Settlement

RECOMMENDATION(S)

1. Approve Settlement Participation Form for San Bernardino County's participation in the National Opioid Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation.
 2. Approve Settlement Participation Form for San Bernardino County's participation in the National Opioid Settlement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.
 3. Approve the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement.
 4. Approve the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Janssen Settlement.
 5. Authorize the Chief Executive Officer to electronically execute the documents identified in Recommendation Nos. 1 through 4, above.
 6. Direct the Chief Executive Officer to transmit the documents identified in Recommendation Nos. 1 through 4, above, to the Clerk of the Board of Supervisors within 30 days of execution.
- (Presenter: Steven O'Neill, Interim County Counsel, 387-5455)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of the participation in the settlement and related agreements will not result in the use of Discretionary General Funding (Net County Cost) as the agreements will result in as much as \$65 million received by the County over 18 years. The estimated amount of \$65 million is a best-case scenario and the actual amount that will be received by the County is dependent on a number of variables, including, but not limited to, the number of California cities and counties participating, whether or not cities later sue the Settling Defendants, and certain actions that may be taken by the State of California. Additionally, there are significant restrictions on the use of the settlement funds, in accordance with the terms of the settlement documents.

BACKGROUND INFORMATION

On July 19, 2018, San Bernardino County filed a lawsuit in the United States District Court for the Central District of California and shortly thereafter, it was transferred to become part of the national opioid multidistrict

litigation (MDL) in Ohio. The MDL consists of thousands of cases involving numerous counties, cities and several states as plaintiffs. The cases all arise out of the plaintiffs' allegations that the defendants, consisting of opioid manufacturers, distributors, and pharmacies engaged in unlawful conduct causing the national opioid crisis.

The Plaintiffs' Executive Committee (consisting of various plaintiffs) for the MDL have reached a tentative national settlement with distributors McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (collectively, "Distributors"), and manufacturers Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the latter three collectively, "Janssen", and all collectively "Settling Defendants") in two separate agreements. Copies of the settlement agreements with the Distributors and Janssen are attached as Attachments A and B, respectively. These agreements are contingent upon a "critical mass" of states, counties, and cities agreeing to participate in the settlement. Whether or not a "critical mass" is met is determined at the sole discretion of the Settling Defendants.

The payout amounts under the settlements with the Settling Defendants is contingent upon various factors, including the number of states, cities, and counties participating, with a maximum payout of \$21 billion over the course of 18 years by the Distributors and \$5 billion over no more than nine years by Janssen to all participating entities. A fraction of that amount will be received by California, its counties, and subdivisions. The actual amount that will be received by the County is dependent on a number of variables, including, but not limited to, the number of California cities and counties participating, whether or not cities later sue the Settling Defendants, and certain actions that may be taken by the State of California. By participating in the settlements, the County would be dismissing all of its claims in the lawsuit against the Settling Defendants.

Approval of Recommendation Nos. 1 and 2 would authorize the County to participate in the national settlements with the Settling Defendants on the terms and conditions of those settlement agreements. Approval of Recommendation Nos. 3 and 4 would approve agreements with the State of California on the distribution and use of settlement funds, consistent with the national settlement agreements. These agreements are set forth in Attachments C and D. Approval of Recommendation No. 5 would authorize the Chief Executive Officer to execute all documentation necessary to participate in the settlement. All required documentation must be electronically executed and submitted through DocuSign. The documents to be executed consists of the Settlement Participation Forms for the settlement with the Distributors and Janssen (Attachments E and F), and the California State-Subdivision Agreements Regarding Distribution and Use of Settlement Funds (Attachments C and D).

PROCUREMENT

Not Applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, and Steven O'Neill, Interim County Counsel, 387-5455), on October 27, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404) on October 28, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on October 28, 2021.