

Process for 2022 Opioid Settlement Payments - FAQs for Tennessee Counties and Cities

This document is intended to provide Tennessee counties and cities with information regarding the process for 2022 settlement payments pursuant to the settlement agreements resolving opioid claims with the three largest pharmaceutical distributors – AmerisourceBergen Corporation, Cardinal Health, Inc., and McKesson Corporation (“Distributors”) – and manufacturer Janssen Pharmaceuticals, Inc., and its parent company, Johnson & Johnson (collectively “J&J/Janssen”). This document is subject to correction and being updated. The terms of the settlement agreements and the Tennessee State-Subdivision Opioid Abatement Agreement are controlling and are not amended or in any way affected by this document. Copies of these agreements, the 2021 opioid settlement legislation, an earlier FAQ describing the settlement and how funds are allocated, and other materials can be found at this website: <https://www.tn.gov/attorneygeneral/working-for-tennessee/filings-of-interest/opioids.html>.

1. What settlement payments will be made in 2022?

There will be multiple payments released to cities and counties in calendar year 2022. Efforts are being made to combine certain disbursements, though some details are still being worked out:

Distributor payments: The Distributors deposited their initial payment into an escrow account last year and have also made their 2022 payment into the national fund. These payments will be disbursed to the states and their qualifying subdivisions (counties and cities) on a rolling basis as disbursement information is gathered and processed by the settlement administrator. The disbursement of the first Distributor payment is underway, and the second payment should be disbursed in the next few months.

J&J/Janssen payments: J&J/Janssen has deposited its first two payments. It is expected that these two payments will be disbursed to the states and their qualifying subdivisions in the next few months, following the disbursement of the initial Distributor payment. Additionally, because Tennessee qualifies for Incentive A due to its statutory release of claims against these companies, the state and its subdivisions are also eligible to have several additional J&J/Janssen payments accelerated and made later this year.

All of these payments consist of three main parts: 1) Subdivision Fund payments made directly to counties and cities eligible to receive direct payments; 2) State Fund payments made directly to the state’s general fund; and 3) Abatement Fund payments made to the Tennessee Opioid Abatement Trust Fund, which is administered by the state’s Opioid Abatement Council.¹

¹ By statute, 35% of the Abatement Fund payments to the Tennessee Opioid Abatement Trust Fund from these settlements is to be directed to the counties to be used for future opioid abatement on Council-approved programs. Those funds will run through the trust fund and will come later. They are separate from the direct payments the counties are receiving from the Subdivision Fund.

2. Which Tennessee subdivisions are receiving direct payments?

Pursuant to the two settlement agreements and the Tennessee State-Subdivision Agreement, Subdivision Fund payments are allocated to participating cities and counties listed in Exhibit G of the settlement agreements. There are 151 counties and cities eligible to receive direct payments from the Subdivision Fund from the Distributor settlement and 130 counties and cities eligible to receive such payments from the J&J/Janssen settlement. (All counties are eligible under both settlements. There are more cities eligible under the Distributor settlement than the J&J/Janssen settlement because a number of smaller cities sued the Distributors but not J&J/Janssen.)

To receive direct Subdivision Fund payments from a settlement, a county or city listed in Exhibit G must join the settlement and become a Participating Subdivision. (All subdivisions listed in the updated exhibits have done this.) Additionally, subdivisions that have litigated claims against the Distributors and/or J&J/Janssen must have a dismissal order entered.

3. How does the disbursement process work for the initial Distributor payment?

The payments being made in 2022 will be on a rolling basis as settlement administrator BrownGreer works to gather necessary information and process the payments. BrownGreer has sent emails out to all 151 Tennessee counties and cities eligible to receive direct disbursements from the first Distributor payment. That email explains how to set up a subdivision account on an online portal, where payment instructions and W-9 forms can be submitted. We expect to be able to use the submitted information for future payments as well, including those for the J&J/Janssen settlement.

Once a subdivision has completed all the payment requirements, it will be scheduled to receive its disbursement of the initial Distributor payment. BrownGreer will direct those payments, which will come from an account with Wilmington Trust, the bank for the administrator. Right now, disbursements are being made twice a month. The first disbursement expected to include payments to Tennessee subdivisions is the payment scheduled for the end of July. As subdivisions complete their payment requirements – such as submitting their payment instructions – they will be added to the payment schedule.

4. How will the distribution process work for the other payments?

Generally, the disbursement of the second Distributor settlement payment and the J&J/Janssen payments will follow the same process as the initial Distributor payment. Counties and cities receiving direct payments will be provided with information regarding the Subdivision Fund allocation amounts for each subdivision prior to the payment. BrownGreer will process the payments using the information subdivisions provide to the payment portal.

Details regarding the timing of these payments are still being worked out as BrownGreer has been focused on the initial Distributor payment. It is currently anticipated that at least the first

and second J&J/Janssen payments will be combined and that they will be separate from the second Distributor payment. It is expected that these additional payments will start rolling out nationally in late August or September.

5. Are there restrictions on the use of the settlement payments?

Both the Distributor and J&J/Janssen settlement agreements state that the parties to the agreement intend for Settlement Fund payments to be used for “Opioid Remediation” and there are a number of provisions in the agreements related to the use of funds. (The “Settlement Fund” in the agreements includes the Abatement Fund, the State Fund, and the Subdivision Fund, which is the source of the direct payments to cities and counties.) Though there is other relevant language in the agreements, the central language regarding the use of funds can be found in Section V.B of the Distributor agreement and Section VI.B of the J&J/Janssen agreement.

The definition of “Opioid Remediation” is substantially the same in both agreements. “Opioid Remediation” means care, treatment and other programs and expenditures designed to: (1) address the misuse and abuse of opioid products; (2) treat or mitigate opioid use or related disorders; or (3) mitigate other alleged effects of the opioid abuse crisis, including on those injured as a result of the opioid abuse crisis. Exhibit E to both settlement agreements provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation. Qualifying expenditures may include reasonable related administrative expenditures.