

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

SB 1282 (Bates)  
Version: April 18, 2022  
Hearing Date: April 26, 2022  
Fiscal: Yes  
Urgency: No  
ME

**SUBJECT**

Opioid Master Settlement Agreement

**DIGEST**

This bill requires specified opioid settlement agreement funds to be spent by the state pursuant to the priorities described in the bill and are arguably inconsistent with the Janssen Settlement Agreement, Distributor Settlement Agreement, and California State-Subdivision Agreements that govern the use of the specified funds.<sup>1</sup> As drafted, the bill could jeopardize the flow of opioid settlement agreement funds to the State of California as well as jeopardize the use of the settlement funds in California.

**EXECUTIVE SUMMARY**

According to the Johns Hopkins Bloomberg School of Public Health, “[o]ver 500,000 people have died from opioid overdoses since 1999 [and] an estimated 93,000 people died from opioid overdoses in 2020, more than in any other year.”

Historic settlement agreements were entered into by various state attorneys general and opioid distributors McKesson, AmerisourceBergen, Cardinal Health, and manufacturer Janssen/Johnson & Johnson. These distributors and manufacturer agreed to resolve their opioid liabilities nationwide in a \$26 billion settlement. These settlements designate that California’s share is up to approximately \$2.2 billion. The use of these funds is governed by the Distributor Settlement Agreement, Janssen Settlement Agreement, California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Distributor Settlement, and California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Janssen Settlement. The settlements are being effectuated through the entry of stipulated judgments in Superior Court that effectuate and incorporate the terms of the settlement. The distributor

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<sup>1</sup> The Janssen Settlement Agreement, Distributor Settlement Agreement, California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Distributor Settlement, and California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Janssen Settlement are available at <https://oag.ca.gov/opioids> [available as of April 23, 2022].

judgment has already been entered by the Superior Court of Alameda County. The Attorney General is in the process of entering the Janssen settlement.

This bill is inconsistent with the settlement agreements and the California State-Subdivision Agreements and, if enacted, may lead to litigation that can restrict the flow of funds to the state and possibly to local jurisdictions.

This bill has no known support. It is opposed by the League of California Cities, the California State Association of Counties, the City Attorney of San Francisco, and the Consumer Attorneys of California who, together with the Steinberg Institute, caution that this bill could impede the flow of opioid settlement funds to the State of California.

If this bill passes the Senate Judiciary Committee it will next be heard in the Senate Committee on Health on April 27, 2022.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the Attorney General as the chief law officer of the state. (Cal. Const. art. V, § 13.)
- 2) Provides that the Attorney General is the head of the Department of Justice and has charge, as attorney, of all legal matters in which the state is interested, as specified. (Gov. Code §§ 121510 & 12511.)

This bill:

- 1) Provides that the Legislature finds and declares that the availability of opioid settlement funds provided to the state and to local health departments represents a unique opportunity for significant investment in preventing and addressing addiction in California's homeless population.
- 2) Defines fund as the California Opioid Settlement Fund.
- 3) Defines "Master Settlement Agreement" as the National Opioid Settlement agreement announced on February 25, 2022 by the Attorney General of the State of California between California and other states and the leading United States opioid product manufacturers, Cardinal Health, McKesson, AmerisourceBergen, and Johnson & Johnson.
- 4) Defines "State's share of funds" as that portion of payments received from the Master Settlement Agreement designated for use by the state in California.

- 5) Specifies that this bill is not intended to limit expenditures for programs to the amount provided by the fund.
- 6) Establishes the California Opioid Settlement Fund in the State Treasury.
- 7) Provides that the total amount of the state's share of funds received pursuant to the Master Settlement Agreement shall be deposited in the fund.
- 8) Provides that distribution of funds from the fund shall be made by annual appropriation of the Legislature consistent with the following requirements to the extent permissible under the terms of the Master Settlement Agreement: at least 60 percent of the funds appropriated from the fund shall be used to provide addiction-related services for people who are homeless or at risk of becoming homeless; and no more than 10 percent of all funds appropriated from the fund each year may be used on mass media campaigns.
- 9) Provides that priority shall be given to appropriations for all of the following activities: (1) creating new, or expanding existing, substance use disorder treatment facilities within the Behavioral Health Continuum Infrastructure Program; (2) operating substance use disorder treatment facilities; (3) diverting people with opioid addiction from the justice system directly into addiction-specialized treatment; (4) providing and funding training and resources to first and early responders encountering opioid-related emergencies; (5) securing and funding housing for at-risk-of-addiction foster youth; (6) securing and funding wraparound treatment costs within homeless housing programs for individuals who are experiencing homelessness and addiction to opioids or are at risk of addiction to opioids; (7) expanding programs that treat people simultaneously experiencing homelessness and opioid addiction, including programs that insist on sobriety as a condition of participation; and (8) increasing school-based interventions to prevent drug addiction in vulnerable and at-risk-of-addiction youth.

### COMMENTS

#### 1. Stated need for the bill

According to the author:

Walk around any community in California and the reality of the State's homelessness crisis is evident to everyone. Although the Legislature has spent more than \$17 billion since 2018-19 for homelessness programs, over 160,000 Californians sleep in their cars, tents and shelters every night. Unfortunately, many of those same individuals are impacted by addiction to drugs, alcohol and opioids, further exacerbated by their unsafe and unstable living

arrangements. While there are many sources of revenue to fund treatment and prevention, there are also constant calls for more resources.

At the same time that California is grappling with this unprecedented homelessness and addiction crisis, the State and local governments will receive nearly \$2 billion in settlement funds from a lawsuit against major pharmaceutical firms over the next two decades. As per the provisions in the settlement agreement, this money must be spent on addiction treatment and prevention. This bill would require a meaningful allocation (60 percent or more) from the State government's pool of settlement fund resources be devoted to help homeless or at-risk-of-homelessness individuals experiencing addiction. Furthermore, priority should be given to creating new or expanding existing substance use disorder treatment facilities within the Behavioral Health Continuum Infrastructure Program, divert those with opioid addiction from the criminal justice system directly into addiction-specialized treatment, secure and fund housing for at-risk-of-addiction foster youth, secure and fund wraparound treatment costs within homeless housing programs for individuals experiencing homelessness and addiction to opioids, and increase school-based interventions to prevent drug addiction in vulnerable and at-risk-of-addiction youth, among other activities. Lastly, the bill stipulates that no more than 10 percent of all money annually appropriated from the fund be used on mass media campaigns.

2. The bill may tie up settlement funds destined to help California

In their opposition letters, the League of California Cities, California State Association of Counties, the San Francisco City Attorney's Office, and Consumer Attorneys of California explain that the opioid settlement agreements and California State-Subdivision Agreements resulted from years of significant negotiations between the Attorney General, California local governments, Opioid distributors (McKesson, AmerisourceBergen, Cardinal Health), and Opioid manufacturer Janssen. They express concerns about the bill threatening the settlement agreements, subdivision agreements, and ultimately hindering the flow of settlement funds for use in California.

As explained by the Consumer Attorneys of California:

The bill would create inconsistencies within the settlement terms of the statewide allocation agreement reached in the opioid litigation, and could lead to litigation and potentially upend the agreement itself. The agreement is considered the largest and most complex civil litigation agreement in U.S. history. Over 400 California counties and cities relied on this agreement to participate in the national settlement agreement and release their claims and waive certain rights against defendants. This bill purports to solve a problem that has already been solved with far greater consideration and in more detail and may harm the agreement itself.

[ . . . ]

SB 1282 seeks to unlawfully disrupt that allocation exposing the state to litigation and the settlement funds to being withheld should a state agency, a county, a city, or the defendants choose to file a lawsuit or writ similar to *National Asian American Coalition v. Newson*, 33 Cal.App.5th 993 (2019), wherein a writ of mandate was granted to re-transfer settlement funds wrongfully diverted. This could result in litigation that could prevent or slow the flow of important abatement funds to California communities in need, including homeless populations, communities of color and others.

The Steinberg Institute concurs and writes that they “worry that the bill in print may undermine the flow of funds to the state from the Master Settlement Agreements.”

3. The Settlement Agreements and California State-Subdivision Agreements specify that the State of California Allocation must be used for future opioid remediation

Historic settlement agreements were entered into by various state attorneys general and opioid distributors McKesson, AmerisourceBergen, Cardinal Health, and manufacturer Janssen/Johnson & Johnson. These distributors and manufacturer agreed to resolve their opioid liabilities nationwide in a \$26 billion settlement. The state of California and over 400 California counties and cities agreed to release their claims against these three distributors and manufacturer in reliance on the settlement agreements and California state-subdivision agreements. These settlements designate that California’s share is up to approximately \$2.2 billion. The use of these funds are governed by the Distributor Settlement Agreement, Janssen Settlement Agreement, California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Distributor Settlement, and California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Janssen Settlement.<sup>2</sup> These agreements provide that the settlement agreement funds shall be allocated as follows: 15% to the State Fund, referred to in the California State-Subdivision Agreement as the “State of California Allocation”; 70% to the Abatement Accounts Fund, referred to in the California State-Subdivision Agreement as the “CA Abatement Accounts Fund”; and 15% to the Subdivision Fund, referred to in the California State-Subdivision Agreement as the “CA Subdivision Fund”.

The Settlement Agreements and California State-Subdivision Agreements provide that the State of California Allocation shall be used by the State for “future Opioid Remediation.”

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<sup>2</sup> The settlements are being effectuated through the entry of stipulated judgments in Superior Court that effectuate and incorporate the terms of the settlements. The distributors judgment has already been entered by the Alameda Superior Court. The Attorney General is in the process of entering the Janssen judgment.

The Settlement Agreements specify that:

“Opioid Remediation” means care, treatment, and other programs and expenditures (including reimbursement for past such programs or expenditures except where this Agreement restricts the use of funds solely to future Opioid Remediation) 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.

The Settlement Agreements provide a non-exhaustive list of expenditures that qualify as “Opioid Remediation.”<sup>3</sup>

Approved uses listed in the Settlement Agreements are:

A. Support treatment of *Opioid Use Disorder* and any co-occurring Substance Use Disorder or Mental Health conditions through evidence-based or evidence-informed programs or strategies, as specified.

B. Support people in recovery from *Opioid Use Disorder* and any co-occurring Substance Use Disorder or Mental Health conditions through evidence-based or evidence-informed programs or strategies, as specified.

C. Provide connection to care for people who have – or are at risk of developing---*Opioid Use Disorder* and any co-occurring Substance Use Disorder or Mental Health conditions through evidence-based or evidence-informed programs or strategies, as specified.

D. Address the needs of persons with *Opioid Use Disorder* and any co-occurring Substance Use Disorder or Mental Health conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies, as specified.

E. Address the needs of pregnant or parenting women with *Opioid Use Disorder* and any co-occurring Substance Use Disorder or Mental Health conditions, and the needs of their families, including babies with neonatal abstinence syndrome, through evidence-based or evidence-informed programs or strategies, as specified.

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<sup>3</sup> Qualifying expenditures may include reasonable related administrative expenses.

- F. Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of *opioids* through evidence based or evidence-informed programs or strategies, as specified.
- G. Support efforts to discourage or prevent misuse of *opioids* through evidence-based or evidence-informed programs or strategies, as specified.
- H. Support efforts to prevent or reduce overdose deaths or other *opioid*-related harms through evidence-based or evidence-informed programs or strategies, as specified.
- I. Support education of law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs and provision of wellness and support services for first responders and others who experience secondary trauma associated with *opioid*-related emergency events.
- J. Support efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the *opioid* epidemic through activities, programs, or strategies, as specified.
- K. Support training to abate the *opioid* epidemic through activities, programs, or strategies, as specified.
- L. Support *opioid* abatement research, as specified.

Each and every expenditure listed above that qualifies as “future opioid remediation” under the settlement agreements relates specifically to opioids.

The bill before this Committee specifies that priority shall be given to appropriations for eight delineated activities from the State of California Allocation. However, only three of the eight items the bill prioritizes for funding make clear that they are to be used in a manner related to opioids. This creates a conflict with the Settlement Agreements and California State-Subdivision Agreements which require all of the State of California Allocation to be used for future opioid remediation. Indeed, the bill allows a large portion, or even all, of the State of California Allocation to be used in a way that has no impact on future opioid remediation or does not focus on opioids. Moreover, it is unclear whether the bill’s three delineated activities that relate to opioids would qualify as future opioid remediation and thus would be properly funded by the State of California Allocation, and in conformity with the settlement agreements and subdivision agreements.

4. The Committee may wish to hold this bill to ensure California’s nearly \$2.2 billion share of opioid settlement funds are not tied up in litigation due to the bill’s inconsistencies with court judgments

The conflict between the bill and the settlement agreements and California State-Subdivision Agreements will expose the state to litigation risk as settlement participants and others may seek to force the state to adhere to their end of the bargain.<sup>4</sup> Additionally, the 400 plus counties and cities relied on the state subdivision agreement (as did the defendants) in deciding to accept the settlements. They have not agreed to the uses delineated in this bill. This changing of terms after the deal is done and cases are dismissed is ripe for litigation. Staff notes that there is a provision in the bill that the distribution of funds under the bill must be made to the extent permissible under the terms of the Master Settlement Agreement. However, the bill in print is so inconsistent with the settlement agreements and California State-Subdivision Agreements that it is difficult to construe how funds could be distributed under the bill and still conform to settlement agreements and California State-Subdivision Agreements. Accordingly, the Committee may wish to hold this bill.

**SUPPORT**

None known

**OPPOSITION**

California State Association of Counties  
Consumer Attorneys of California  
League of California Cities  
City Attorney of San Francisco  
San Francisco City Attorney’s Office

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: None known.

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<sup>4</sup> See *National Asian American Coalition v. Newsom*, 33 Cal.App.5th 993 (2019). In 2014, the National Asian American Coalition and other community groups filed a petition for writ of mandate and complaint for declaratory and injunctive relief in California Superior Court against the Governor, the Director of Finance, and the Controller seeking the immediate return of approximately \$350 million they alleged was unlawfully diverted from California’s portion of the National Mortgage Settlement agreement funds. It took over five years for the community groups to obtain the relief they sought.