

COLORADO OPIOIDS SETTLEMENT
MEMORANDUM OF UNDERSTANDING

COLORADO OPIOIDS MOU

- Nationwide settlements have been reached with the “Big 3” opioid distributors (McKesson, Cardinal Health, and AmerisourceBergen) and Johnson & Johnson to resolve claims by state and local governments that these companies contributed to the opioid epidemic.
- The Colorado MOU establishes the framework for distributing and sharing these settlement proceeds throughout Colorado.
- Local governments and the State prepared the Colorado MOU, which prioritizes regionalism, collaboration, and abatement.
- On August 26, 2021, Colorado Attorney General Phil Weiser signed the Colorado Opioids Settlement MOU.
- In order to receive the full settlement payments for all of Colorado, strong participation by local governments signing on to the Colorado MOU is necessary.

APPROVED PURPOSES OF SETTLEMENT FUNDS

- All settlement funds must be used only for Approved Purposes
- Approved Purposes are a long and broad list of uses that focus on abatement strategies
- Examples of Approved Purposes:

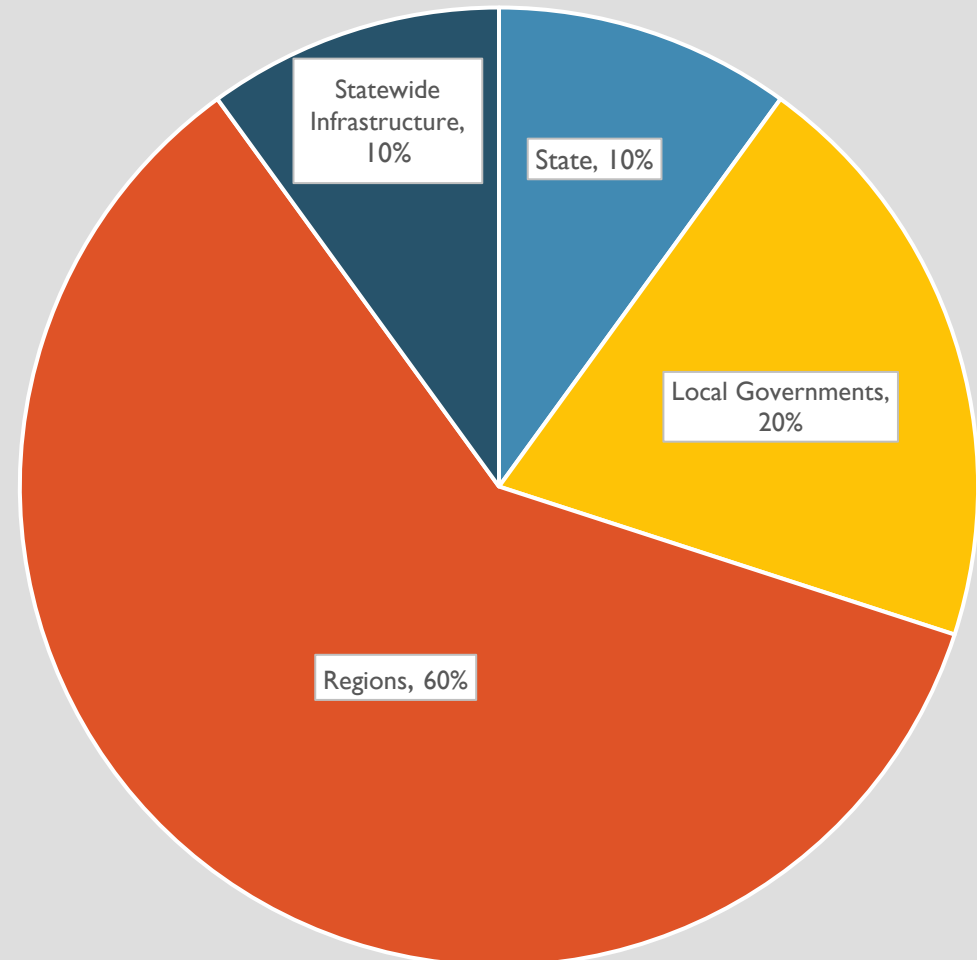
Expand availability of treatment, including Medication-Assisted Treatment (MAT), for Opioid Use Disorder (OUD) and any co-occurring substance use or mental health issues.

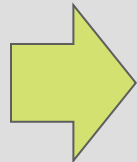
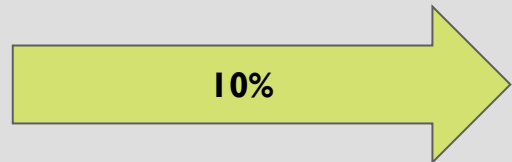
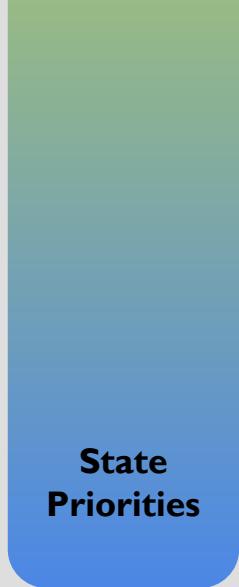
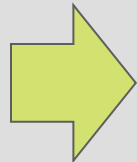
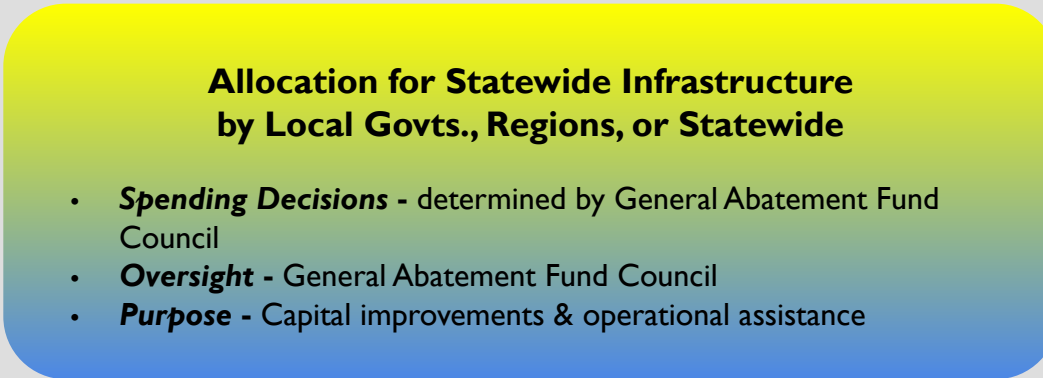
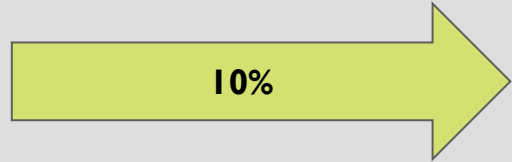
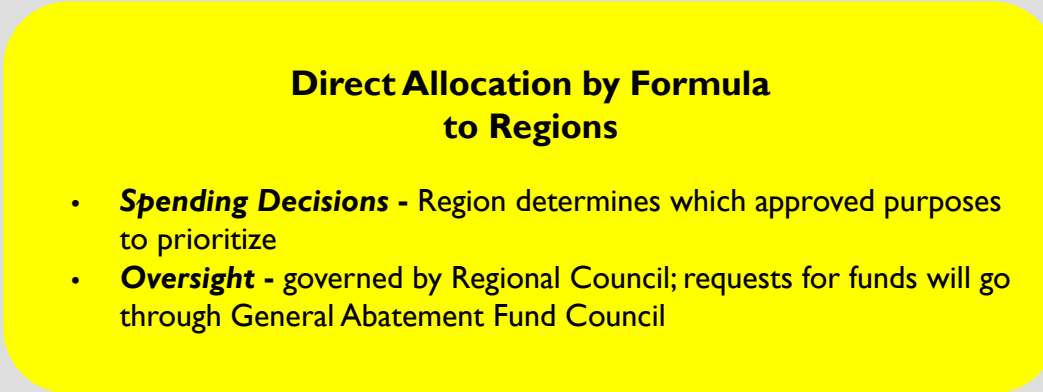
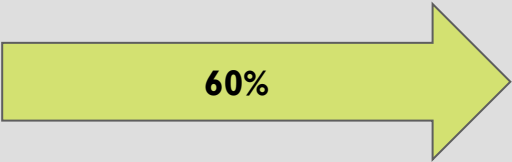
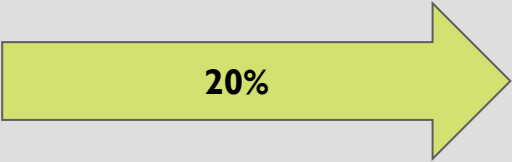
The full continuum of care of recovery services for OUD and any co-occurring substance use or mental health issues, including supportive housing, residential treatment, medical detox services, peer support services and counseling, community navigators, case management, and connections to community-based services.

Support for children's services: Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

ALLOCATION OF SETTLEMENT FUNDS

- The Colorado MOU provides the framework for fairly dividing and sharing settlement proceeds among the state and local governments in Colorado. Under the Colorado MOU, settlement proceeds will be distributed as follows:
 - **10%** directly to the State (“State Share”)
 - **20%** directly to Participating Local Governments (“LG Share”)
 - **60%** directly to Regions (“Regional Share”)
 - **10%** to specific abatement infrastructure projects (“Statewide Infrastructure Share”)





GENERAL ABATEMENT FUND COUNCIL

- A General Abatement Fund Council (the “Abatement Council”), consisting of representatives appointed by the State and Participating Local Governments, will ensure that the distribution of opioid funds complies with the terms of any settlement and the terms of the Colorado MOU.
- The Abatement Council will consist of 13 members, seven appointed by the State and six appointed by the Participating Local Governments.

LOCAL GOVERNMENT SHARE (20%)

- 20% of the settlement funds will be paid directly to local governments.
- A local government that chooses not to participate or sign onto the Colorado MOU will not receive funds from the LG Share and the portion of the LG Share that it would have received will instead be re-allocated to the Regional Share for the region where that local government is located.
- A list of the percentage of settlement funds that will be allocated to each County Area (that is, the county government plus the municipalities within that county) is Exhibit D to the Colorado MOU. Those allocations are further broken down to an intracounty level in Exhibit E, which is a default allocation.

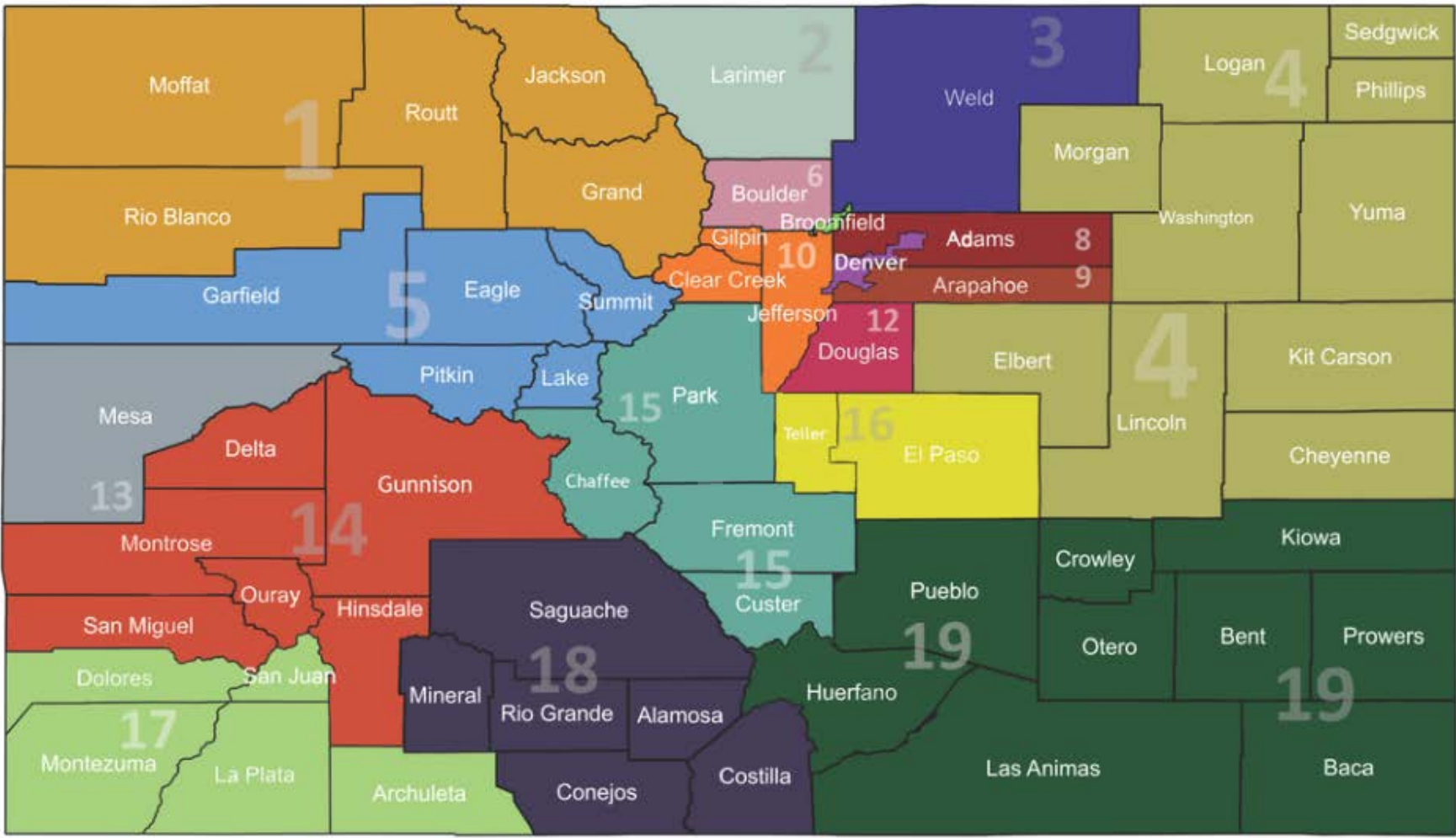
LOCAL GOVERNMENT SHARE (20%)

- The allocations to each County Area are based on three factors that address the relative severity of the opioid crisis: (a) the number of persons suffering from Opioid Use Disorder in the county; (b) the number of opioid overdose deaths in the county; and (c) the amount of opioids distributed within the county.
- The intracounty allocations are based on a default allocation model that will apply unless the local governments in a County Area enter into an agreement that provides for a different allocation model. These allocations are based on a model developed by health economist experts, which use data from the State and Local Governments Census on past spending relevant to opioid abatement.

REGIONAL SHARE (60%)

- 60% of the settlement funds will be allocated to single- or multi-county regions made up of local governments. Local governments in Colorado worked collaboratively to develop the Regional Map, which emphasizes existing local infrastructure and relationships.
- Allocations to regions will be calculated according to the percentages in Exhibit F to the MOU.
- A local government that chooses not to participate or sign onto the Colorado MOU shall not receive any opioid funds from the Regional Share and shall not participate in the Regional Councils.

Regions for the distribution of opioid settlement funds



Region 1	Region 5	Region 9	Region 13	Region 17
Region 2	Region 6	Region 10	Region 14	Region 18
Region 3	Region 7 (Broomfield)	Region 11 (Denver)	Region 15	Region 19
Region 4	Region 8	Region 12	Region 16	

REGIONS

- Cities that are in multiple counties may join all or some of the regions in which they are located.

REGIONAL GOVERNANCE

- Each region will create its own “Regional Council” to determine what Approved Purposes to fund with that region’s allocation from the Regional Share.
- Regional governance models are attached to the Colorado MOU as Exhibit G.
- Each region may draft its own intra-regional agreements, bylaws, or other governing documents to determine how the Regional Council will operate, subject to the terms of the Colorado MOU.
- Each Regional Council will provide expenditure data to the Abatement Council on an annual basis.

STATE SHARE (10%)

- 10% of settlement funds will be allocated directly to the State for statewide priorities in combating the opioid epidemic.
- The State maintains full discretion over distribution of the State Share anywhere within the State of Colorado.
- On an annual basis, the State shall provide all data on expenditures from the State Share, including administrative costs, to the Abatement Council.

STATEWIDE INFRASTRUCTURE SHARE (10%)

- 10% of the settlement funds will be allocated to a Statewide Infrastructure Share to promote capital improvements and provide operational assistance for the development or improvement of infrastructure necessary to abate the opioid crisis anywhere in Colorado.
- The Abatement Council shall establish and publish policies and procedures for the distribution and oversight of the Statewide Infrastructure Share, including processes for local governments or regions to apply for opioid funds from the Statewide Infrastructure Share.

ATTORNEYS' FEES AND EXPENSES

- The work that was done by the litigating entities and their law firms in the litigation has substantially contributed to achieving the settlements that are currently being offered and those that are anticipated in the future.
- The attorneys' fee provision equitably allocates the cost of attorneys' fees, while also allowing non-litigating entities to share in the 25% premium for releases by the litigating entities in the "Big 3" distributor and Johnson & Johnson settlements.

ATTORNEYS' FEES AND EXPENSES

- The Attorney General and local governments have agreed to a “Back-Stop Fund” for attorneys’ fees and costs. Before a law firm can apply to the Back-Stop Fund, it must first apply to any national common benefit fee fund. The Back-Stop Fund will only be used to pay the difference between what law firms are owed and the amount they have received from a national common benefit fee fund.
- Attorneys’ fees are limited to 8.7% of the total LG Share and 4.35% of the total Regional Share. No funds will be taken from the Statewide Infrastructure Share or State Share.
- A committee will be formed to oversee payments from the Back-Stop Fund. The committee will include litigating and non-litigating entities. Importantly, any excess money in the Back-Stop fund, after attorneys’ fees and costs are paid, will go back to the local governments.

ADDITIONAL SETTLEMENT DOCUMENTS

Local governments should sign **four** documents:

1. The **MOU**;
2. The **Subdivision Settlement Participation Form** that releases subdivisions' legal claims against **Johnson & Johnson**;
3. The **Subdivision Settlement Participation Form** that releases subdivisions' legal claims against **AmerisourceBergen, Cardinal Health, and McKesson**; and
4. The **Colorado Subdivision Escrow Agreement** that ensures subdivisions' legal claims are released only when 95% participation by local governments has been reached, which secures significant incentive payments under these settlement agreements.

MOU PARTICIPATION & TIMELINE

- A copy of the MOU and additional documents . It can be signed by the body or individual with authority to approve and execute the documents on behalf of your county or municipality
- All signed documents should be sent by **November 5, 2021** to CCI or CML via email or mail to:

For Counties	For Municipalities
Colorado Counties, Inc. 800 Grant, Ste 500 Denver, CO 80203 Email: Kiley Burress - KBurress@ccionline.org Katie First - KFirst@ccionline.org	Colorado Municipal League 1144 N. Sherman St. Denver, CO 80203 Email: opioidsettlement@cml.org

MOU PARTICIPATION & TIMELINE

- It is projected that settlement funds from the “Big 3” distributor/Johnson & Johnson settlements could be made available as soon as July 2022 and will be distributed within Colorado according to the MOU.
- As mentioned in the Attorneys’ Fees section, there is a 25% incentive payment for all litigating entities to participate. Additional incentives of 15% and 5% also apply.
- Additional information is available here: <http://www.coag.gov/opioids>



THANK YOU