



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: RS2023-2086, **Version:** 1

A resolution authorizing the Metropolitan Government to join the State of Tennessee and other local governments in amending the Tennessee State-Subdivision Opioid Abatement Agreement and approving the related settlement agreements.

WHEREAS, the opioid epidemic continues to impact communities in the United States, the State of Tennessee, and the Metropolitan Government of Nashville and Davidson County (“Metropolitan Government”); and,

WHEREAS, the Metropolitan Government has suffered harm and will continue to suffer harm as a result of the opioid epidemic; and,

WHEREAS, the State of Tennessee and some Tennessee local governments, including the Metropolitan Government, have filed lawsuits against opioid manufacturers, distributors, and retailers, including many federal lawsuits by Tennessee counties and cities that are pending in the litigation captioned In re: National Prescription Opiate Litigation, MDL No. 2804 (N.D. Ohio) (“the Opioid Litigation”); and,

WHEREAS, the Metropolitan Government has previously joined settlements with three pharmaceutical distributors and a manufacturer; and,

WHEREAS, certain pharmaceutical distributors and retail pharmacy chains have proposed settlements that the Metropolitan Government finds acceptable and in the best interest of the community; and,

WHEREAS, the Tennessee legislature enacted Public Chapter No. 491 during the 2021 Regular Session of the 112th Tennessee General Assembly, which was signed into law by Governor Bill Lee on May 24, 2021, and addresses the allocation of funds from certain opioid litigation settlements; and,

WHEREAS, there is currently proposed legislation that would apply the statutory provisions passed in 2021 to the new manufacturer and retail pharmacy chain settlements; and,

WHEREAS, the State of Tennessee, non-litigating counties, and representatives of various local governments involved in the Opioid Litigation have adopted a unified plan for the allocation and use of certain prospective settlement and bankruptcy funds from opioid related litigation (“Settlement Funds”); and,

WHEREAS, the Tennessee State-Subdivision Opioid Abatement Agreement (the “Tennessee Plan”), attached hereto as “Exhibit A,” sets forth a framework of a unified plan for the proposed allocation and use of Settlement Funds; and,

WHEREAS, amendments to the Tennessee Plan, attached hereto as “Exhibit B,” would extend its terms to the proposed settlements, streamline accounting for certain settlement funds, and address the allocation of certain funds from a manufacturer in bankruptcy; and,

WHEREAS, participation in the settlements by a large majority of Tennessee cities and counties will materially increase the amount of settlement funds that Tennessee will receive from pending proposed opioid settlements.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: The Metropolitan Government finds that its participation in the Tennessee Plan is in the best interest of the Metropolitan Government and its citizens because such a plan would ensure an effective structure for the commitment of Settlement Funds to abate and seek to resolve the opioid epidemic.

Section 2: The Metropolitan Government expresses its support for a unified plan for the allocation and use of Settlement Funds as generally described in the Tennessee Plan.

Section 3: The Metropolitan Mayor is expressly authorized to execute the amendments to the Tennessee Plan in substantially the form attached as Exhibit "B" and to execute any formal agreements necessary to implement a unified plan for the allocation and use of Settlement Funds that is substantially consistent with the Tennessee Plan and this Resolution.

Section 4: The Metropolitan Mayor is expressly authorized to execute any formal agreement and related documents evidencing the Metropolitan Government's agreement to the settlement of claims and litigation specifically related to Teva Pharmaceutical Industries, Ltd., Allergan Finance, LLC, CVS Health Corporation, Walgreen Co., Walmart, Inc., and any other settlement of opioid-related claims that Tennessee has joined.

Section 5: The Metropolitan Mayor is authorized to take such other action as necessary and appropriate to effectuate the Metropolitan Government's participation in the Tennessee Plan and these settlements.

Section 6: This resolution shall take effect from and after its adoption, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This resolution authorizes the Metropolitan Government to join the State of Tennessee and other local governments in amending the Tennessee State-Subdivision Opioid Abatement Agreement and approving the related settlement agreements. The Council previously approved participation in this settlement pursuant to Resolution No. RS2021-1235. This settlement resolves years of complex litigation related to the opioid epidemic.

The Metropolitan Government filed suit in 2017 in *Metropolitan Gov't v. Purdue Pharma, L.P., et al.*, in the Middle District of Tennessee. That lawsuit became part of the nationwide multi-district litigation that resulted in the settlement at issue in this resolution. This resolution seeks to authorize Metro's participation in an amendment to that settlement, which amends the settlement agreements to include numerous other opioid distributors and retailer defendants.

This is a settlement 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 ("J&J"). This litigation alleged various claims arising out of the manufacture and distribution of opioids. Metro is a named plaintiff in this litigation.

In November 2021, the Council approved Metro Nashville's participation in the agreement between the State of Tennessee and its political subdivisions (including Metro) as to how settlement funds will be distributed. Metro has received millions of dollars related to this settlement and will continue to receive funds for the next 17 years. The Metropolitan Department of Health is actively developing recommendations for the use of the funds with input from community-based organizations and relevant departmental stakeholders. The recommendations will be presented to the Mayor's Office for consideration and then a plan will be presented to the Metropolitan Council for consideration and approval.

The amendment to the settlement agreement under consideration includes settlement of claims against Teva Pharmaceutical Industries, Ltd., Allergan Finance, LLC, CVS Health Corporation, Walgreen Co., and Walmart, Inc. The settlement distribution between states and subdivisions in the revised agreement is identical to the original agreement. The amendment merely rolls in the additional defendants based on those same terms with the settlement amounts that the new defendants have agreed to pay.

The distribution in the original and amended agreement are as follows:

- Subdivision Fund: 15% of the funds will be paid directly to counties and certain municipalities that participate in the settlement. It is anticipated that these funds will be used for opioid abatement-related purposes.
- Abatement Fund: 70% of the funds will be paid into a new, statutorily created Opioid Abatement Fund. By law, these funds are placed in a trust and must be spent on future opioid abatement and remediation programs and expenditures. Funds are controlled by the independent Tennessee Opioid Abatement Council. 35% of funds, however, must be directed to counties participating in the settlements, and each county will determine how to spend its share of these funds on approved abatement programs in their communities.
- State Fund: 15% of the funds will be paid directly to the State. It is anticipated that these funds will be used for opioid abatement-related purposes.

The Metropolitan Department of Law recommends the Council approve the amended settlement agreement.