



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: RS2021-1235, **Version:** 1

A resolution authorizing the Metropolitan Government to join the State of Tennessee and other local governments as participants in 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; 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, certain pharmaceutical distributors and a manufacturer 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 proposed opioid litigation settlements; and,

WHEREAS, the State of Tennessee, non-litigating counties, and representatives of various local governments involved in the Opioid Litigation have proposed 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, participation in the settlements and Tennessee Plan 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 Tennessee Plan in substantially the form attached as Exhibit "A" as well as 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 AmerisourceBergen Corporation, Cardinal Health, Inc., McKesson Corporation, Janssen Pharmaceuticals, Inc., and Johnson & Johnson.

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 as participants in the Tennessee State-Subdivision Opioid Abatement Agreement and approving related settlement agreements. 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 that settlement as well as the agreement that allocates settlement funds between the State of Tennessee and its subdivisions.

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.

If the settlements are adopted nationwide, the Distributors will pay a maximum of \$21 billion over 18 years and J&J will pay a maximum of \$5 billion over nine years. A substantial majority of state have already joined the settlements, but for the agreements to become effective, a critical mass of subdivisions must sign onto the settlements by January 2, 2022.

Tennessee will be eligible to receive more than \$613 million over 18 years, dependent on all settlement incentives being reached. The vast majority of funds will be dedicated to future opioid abatement and remediation programs benefiting all regions of the state. Additionally, up to \$92 million will be paid directly to Tennessee counties and cities. Funds will begin as soon as April 2022.

The settlements also subject the companies to court orders requiring them to make changes in how prescription opioids are distributed and sold, with more accountability and oversight in this process.

The settlement also sets aside separate funds for attorneys' fees and litigation expenses, including \$1.6 billion for subdivisions represented by private lawyers. Outside counsel for subdivisions will seek compensation from

this fund through an application procedure overseen by court-appointed arbiters.

The Tennessee General Assembly passed legislation earlier this year to create an Opioid Abatement Fund and an independent Tennessee Opioid Abatement Council. This legislation addresses the allocation of funds for these settlements and allows for maximizing settlement payments to Tennessee through a process that would release state and subdivision claims against these companies. Additionally, a Tennessee-specific state-subdivision agreement has been reached with representatives of the state's subdivisions that furth addresses the allocation provisions in the settlements and sets out a structure for the distribution of abatement funds from pending bankruptcy plans.

Pursuant to the agreements and statutory provisions, and assuming maximum payments, approximately \$613 million in abatement funds paid to Tennessee and its subdivisions will be allocated as follows:

- Subdivision Fund: 15% of the funds will be paid directly to counties and certain municipalities the 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 Metropolitan Council approve this resolution, which would authorize the Metropolitan Government to participate in the State-Subdivision Opioid Abatement Agreement.