

# *Howard County, Maryland*

*Howard County Office of Law*

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February 25, 2022

Lonnie R. Robbins, Chief Administrative Officer  
Howard County Department of County Administration  
3430 Court House Drive  
Ellicott City, Maryland 21043

RE: Testimony in Support of Council Bill No. 16-2022 – Establishment of Opioid Abatement Special Revenue Fund

Dear Mr. Robbins:

My office supports the adoption of Council Bill No. 16-2022, which would establish the Opioid Abatement Special Revenue Fund (the “Fund”) as new subtitle 14 of Title 20 of the Howard County Code. Establishment of the Fund is necessary before Howard County (the “County”) may receive payments for settling certain of its claims against specific defendants in *In Re: National Prescription Opiate Litigation*, U.S. District Court for the Northern District of Ohio, MDL 2804, and as provided in a certain agreement between the State of Maryland and its subdivisions. Under the settlements, the County is estimated to receive up to \$12.7 million dollars for spending on opioid abatement over a period of years, with annual payments beginning in 2022.

## **The Litigation**

In the spring of 2019, the County filed a nine-count, 156-page complaint in the Circuit Court for Howard County against certain manufacturers, distributors, and dispensers of prescription opiates, seeking damages and equitable relief against them because their violations of Maryland common and statutory law and the Howard County Code caused injury to the County and its residents. Broadly speaking, certain defendants promoted opioids deceptively and illegally to significantly increase sales and generate billions of dollars in revenue, while other defendants failed to maintain effective controls, and to investigate, report, and take steps to terminate suspicious orders. As a direct consequence, the rampant use, overuse, and abuse of opioids have overwhelmed much of the United States, including Howard County and its residents.

The County’s case was subsequently transferred and consolidated with thousands of similar lawsuits in the multi-district litigation (the “MDL”) pending in the U.S. District Court for the Northern District of Ohio styled as *In Re: National Prescription Opiate Litigation*, MDL 2804. Because of the sheer magnitude of the MDL, the immediate need for funds for nationwide abatement efforts, the risks of protracted litigation on funding such efforts, and the total damage claims far exceeding the resources of the defendants, presiding Judge Dan Aaron Polster has pressed the parties from the start of the MDL to settle their claims. Further, while a relatively small number of opioid

lawsuits are pending in state courts instead of the MDL, decisions on the merits in those cases have been mixed, thus giving both sides additional incentive to settle.

### **The National Settlement Agreement**

Following almost three years of intense negotiations, in July 2021, the MDL plaintiffs reached a proposed national settlement with manufacturer Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. and Janssen Pharmaceutica, Inc. (collectively “Janssen”), and with distributors McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (collectively “Distributors”). The Distributors will pay a maximum of \$21 billion over eighteen years, while Janssen will pay a maximum of \$5 billion over no more than nine years, with approximately \$22.8 billion in settlement proceeds payable to state and local subdivisions. The actual dollar amounts will generally depend on the final level of participation by states and subdivisions nationwide. Last August numerous states, including Maryland, opted-in to the settlement, and this January a sufficient number of subdivisions, including the County, did so as well and, consequently, on February 25, 2022, Janssen and the Distributors indicated they will proceed with the national settlement agreement. The national settlement will likely produce the largest recovery in the MDL, though other settlements are anticipated in the future with other defendants.

The national settlement agreement will allow for a broad range of approved abatement uses by state and local governments. Developed in consultation with the nation’s leading public health experts, the list of pre-approved uses includes a wide range of intervention, treatment, education, and recovery services, so that state and local governments can decide what will best serve their communities.

Under the agreement, an overall allocation percentage is calculated for each state. The percentage is a blend (85%/15%) of subpercentages calculated at both the state and subdivision levels. The subpercentage for each state is based on population adjusted for the proportionate share of the impact of the opioid epidemic using reliable, detailed, and objective national data, including: (1) the amount of opioids shipped to the state; (2) the percentage of opioid-related deaths that occurred in the state; and (3) the number of people who suffer opioid use disorder in the state. Similarly, the subpercentages for each subdivision are calculated based on each subdivision’s proportionate share of the nationwide impact of the opioid epidemic using the same data. Adjustments were made to reflect the severity of impact because the oversupply of opioids had more deleterious effects in some locales than others. Ultimately, the model allocates settlement funds in proportion to where the opioid crisis has caused harm.

Maryland’s overall allocation percentage is 2.1106090494% and its severity factor is 115.2160%. Under the agreement, the State stands to receive approximately \$395 million over the payout period. Settlement proceeds must be allocated within a state in accordance with default allocation terms set out in the national settlement agreement or the terms of any qualifying agreement between a state and its subdivisions. Maryland and its subdivisions have the latter.

## **The State-Subdivision Agreement**

On January 21, 2022, the State and fifty-eight of its sixty qualifying subdivisions entered into the State-Subdivision Agreement between the State of Maryland and Local Governments on Proceeds related to the Settlement of Opioids Litigation. Broadly speaking, the agreement defines terms and provides for certain terms and conditions; the use of settlement proceeds; the deposit, distribution, and allocation of settlement payments; the calculation of subdivision allocation percentages; and the audit of settlement proceeds and enforcement. A subdivision's allocation is based on population (25%) and three factors (75%): (1) the number of persons suffering opioid use disorder in the subdivision; (2) the number of opioid overdose deaths that occurred in the subdivision; and (3) the amount of opioids distributed within the subdivision. Under the agreement, the total maximum distribution to the County is estimated to be \$12,754,681. The County's actual distribution will be somewhat lower as two qualifying subdivisions are not participating.

As a Maryland subdivision receiving funds under the National Settlement Agreement and the State-Subdivision Agreement, the County must establish a separate, special revenue fund "consistent with State law for the purpose of receiving and spending direct payments" that the Settlement Administrator makes to the County. *See* State-Subdivision Agreement, p. 5, Section II(g). *See also* p. 4, Section I(l) (defining "Local Abatement Fund"); p. 7, Section IV(a)(2)(B) (tying payment of non-competitive grant to Qualifying Charter County to establishment of Local Abatement Fund); p. 2, Section I(k) ("Qualifying Charter County" includes Howard County). Because the first payments under the National Settlement Agreement are anticipated in the second quarter of 2022, establishment of the County's Local Abatement Fund is imperative.

## **Council Bill No. 16-2022**

Council Bill No. 16-2022 (the "Bill") was pre-filed February 24, 2022 for introduction March 7, 2022. If adopted, the Bill would fulfill the County's obligation under the State-Subdivision Agreement to establish a Local Abatement Fund. In pertinent part, the Bill:

- Establishes an Opioid Abatement Special Revenue Fund, also known as a Local Abatement Fund (the "Fund"), as required by the State-Subdivision Agreement.
- Provides for the Fund to receive and spend payments made to the County under the National Settlement Agreement and the State-Subdivision Agreement, to keep interest earnings, and to spend Fund revenue in accordance with the County budget.
- Limits use of the Fund to uses permitted by the National Settlement Agreement, Section 7-331(f) of the State Finance and Procurement Article ("Section 7-331(f)"), and the State-Subdivision Agreement.
- Provides the Fund is a special, non-lapsing revenue fund, as required by the State-Subdivision Agreement, Section 7-331(f), and Section 611 of the Howard County Charter.

We note that House Bill 1086 and Senate Bill 419 are pending in the General Assembly and would conform Section 7-331 to the National Settlement Agreement and the State-Subdivision Agreement. If adopted, amended Section 7-311 would become effective June 1, 2022.

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Please let me know should you have any questions or follow-up regarding our support for Council Bill No. 16-2022.

Sincerely,

**HOWARD COUNTY OFFICE OF LAW**



Gary W. Kuc  
County Solicitor

Cc:

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Amanda Mihill, Senior Assistant County Solicitor  
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