



CITY OF CARSON

Legislation Text

File #: 2021-903, Version: 1

Report to Mayor and City Council

Tuesday, December 07, 2021

Consent

SUBJECT:

CONSIDER APPROVAL OF FORMS, AGREEMENTS, AND A RESOLUTION ALLOWING THE CITY OF CARSON TO PARTICIPATE IN THE NATIONAL OPIOID SETTLEMENTS (CITY COUNCIL)

I. SUMMARY

Various states, counties, and cities have been in litigation with the McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation. (collectively, the "Distributors") and Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, the "Manufacturer") (for purposes of this report, the Distributors and Manufacturer are collectively referred to as the "Settling Defendants"). The litigation concerns the distribution and manufacture of opioids that have contributed to the opioid addiction epidemic in the United States. Two tentative settlements have been reached with the Distributors and Manufacturer, respectively. The City Council is being asked to approve opting into the settlements, which would mean City would receive monies toward a range of approved abatement uses over a period of 18 years, including for intervention, treatment, education, and recovery services and in exchange, City would be agreeing to a very broad release of opioid-related claims in the lawsuit against the Settling Defendants. Unless City elects to directly administer the abatement programs, which would be rather onerous and likely impracticable given City's limited resources for these types of abatement measures, the monies would be released to Los Angeles County ("County") for County to administer the abatement measures. The deadline for City to formally opt into the settlements, effectuated by signing and returning the participation forms (Exhibits 1 and 2), is January 2, 2022.

II. RECOMMENDATION

1. APPROVE Settlement Participation Form for the City's participation in the National Opioid Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation; and

2. APPROVE Settlement Participation Form for the City's participation in the National Opioid Settlement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.; and
3. APPROVE the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement; and
4. APPROVE the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Janssen Settlement; and
5. WAIVE further reading and ADOPT Resolution authorizing the City Manager to execute the documents identified in Recommendation Nos. 1 through 4; and
6. AUTHORIZE the City Manager to carry out all necessary acts such that the City can participate in the National Opioid Settlements, including, but not limited to, the transmittal of the executed documents in Recommendation Nos. 1 through 4 (as necessary and applicable).

III. ALTERNATIVES

By not opting into the settlements and therefore, not releasing claims that may be available to City, City will reserve its option to file any actions against the Settling Defendants. However, any action filed would be subject to very strict court-imposed deadlines in effect requiring the entire case to be developed within a 90-day period.

IV. BACKGROUND

Various states, counties, and cities have been in litigation with the McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation. (collectively, the "Distributors") and Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, the "Manufacturer") (for purposes of this report, the Distributors and Manufacturer are collectively referred to as the "Settling Defendants"). The litigation concerns the distribution and manufacture of opioids that have contributed to the opioid addiction epidemic in the United States. Two tentative settlements have been reached with the Distributors and Manufacturer, respectively ("National Opioids Settlements").

In order to proceed, a "critical mass" of participation by States, cities and counties must be achieved. This critical mass is determined by the Settling Defendants in their sole discretion. If a critical mass is not achieved, then the National Opioids Settlements do not proceed and the litigation continues. At this juncture, a critical mass of States has already occurred, and now only a critical mass of participation by counties and cities is needed in

order for the settlements to move forward.

Assuming there is a critical mass to proceed, the payout amounts under the settlements with the Settling Defendants is contingent upon various factors, including the number of states, cities, and counties participating, with a maximum payout of \$21 billion over the course of 18 years by the Distributors and \$5 billion over no more than 9 years by the Manufacturer to all participating entities. A fraction of that amount will be received by California, its counties, and cities. The actual amount for the City is dependent on a number of variables, including, but not limited to, the number of California cities and counties participating, whether or not cities later sue the Settling Defendants, and certain actions that may be taken by the State of California. Further, the City's share of the potential amount is determined using three factors: (1) Opioid use disorder; (2) Opioid deaths; and (3) Opioid dosage. If the City participates, the funds will automatically be allocated to the County unless the City opts to receive the funds directly; however, there are certain onerous reporting and tracking requirements that City must adhere to should the City elect to receive the funds directly (see below).

By participating in the National Opioid Settlements, the City would be agreeing to a very broad release of opioid-related claims in the lawsuit against the Settling Defendants, which includes both known and unknown claims. However, not participating and litigating on its own means that the City would be required to comply with very strict deadlines with respect to litigation which it appears were established intentionally to dissuade independent litigation.

The National Opioids Settlements will allow for a range of approved abatement uses, which includes a range of intervention, treatment, education, and recovery services. However, the use of funds is restricted to the abatement uses identified in the settlement agreements (see Exhibit E of Attachments 6 and 7 and Section Section 4(B)(ii)(b) of Attachments 3 and 4). There are also significant public reporting and tracking requirements on the expenditures for such funds, which may make County receipt and expenditure of such funds more desirable for the City. For example, the settlement with the Manufacturer would require the following reporting and tracking:

- Preparation of annual written reports regarding the use of the funds. This report must include a certification that all funds received have been used in compliance with the Manufacturer settlement agreements. This report must be in a form that is approved by the California Department of Health Care Services ("DHCS").
- The City would be required to track all deposits and expenditures.
- Funds not used for a permitted purpose must be identified and included in the annual report (including any attorneys' fees, investigation costs, or litigation costs). This information must also be reported to the Manufacturer and the settlement fund administrator.

Additionally, the County is already required to utilize the funds toward opioid addiction/harm abatement activities within the County of Los Angeles based on data specific to the City of Carson. Unlike the City, the County already has the infrastructure and

programs in place to implement these abatement activities. City staff did explore the idea of giving the funds to nonprofits to implement the abatement programs which is allowed under the National Opioids Settlements to a limited extent but ultimately determined this was not a good option because at least 50% of the funds in each calendar year must be used for one or more “High Impact Abatement Activities” where it does not appear nonprofits are permitted to engage in those activities based on the limited allowable uses of the funds when the funds are given to nonprofits. The “High Impact Abatement Activities” are listed below:

- a. The provision of matching funds or operating costs for substance use disorder facilities within the Behavioral Health Continuum Infrastructure Program;
- b. Creating new or expanded Substance Use Disorder (“SUD”) treatment infrastructure;
- c. Addressing the needs of communities of color and vulnerable populations (including sheltered and unsheltered homes populations) that are disproportionately impacted by SUD;
- d. Diversion of people with SUD from the justice system into treatment, including by providing training and resources to first and early responders (sworn and unsworn) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction, and/or
- e. Interventions to prevent drug addiction in vulnerable youth.

For these reasons, it is recommended that the City allow the funds to be distributed to the County (as a default election simply by electing to participate in the settlements), particularly given that City is permitted to change the funding distribution delegation in the future more or less at any time in the event it is later determined that direct distribution to the City would be more beneficial.

In terms of enforcement, if DHCS believes that the use of settlement funds is inconsistent with the requirements, it must meet and confer with subdivision (i.e., the City), and if not resolved, DHCS may perform an audit. If the issue is not resolved, DHCS can bring a motion or action in court to resolve the concern or to enforce the terms of the settlement agreement/state-allocation agreement. There are also time limits on expenditure where money not expended or encumbered within 5 years of receipt must be transferred to the State. Again, these requirements only apply to the City if it elects to receive direct distribution and do not apply if the funds go to the County.

The National Opioids Settlements also provide for injunctive relief that requires changes to the Distributors’ and Manufacturer’s conduct. This includes the creation of a clearinghouse through which the Distributors will be required to account for their own shipments and the shipments of the other distributors, in order to detect, stop, and report suspicious opioids orders. In addition, the Manufacturer (which ceased marketing opioids in 2015 and ceased selling opioids in 2020) will not market or sell any opioid products in the next 10 years and has agreed to cease lobbying concerning prescription opioids for 10 years.

Approval of Recommendation Nos. 1 and 2 would authorize the City to participate in the National Opioid Settlements with the Settling Defendants on the terms and conditions of those settlement agreements. (Attachments 1 and 2)

Approval of Recommendation Nos. 3 and 4 would approve agreements with the State of California on the distribution and use of settlement funds, consistent with the National Settlement Agreements. (Attachments 3 and 4)

Approval of Recommendation No. 5 would authorize the City Manager to execute all documentation necessary to participate in the National Opioid Settlements. (Attachment 5)

Approval of Recommendation No. 6 would authorize the City Manager to carry out all necessary acts to allow the City to participate in the National Opioid Settlements, including the transmittal of the above-mentioned executed documents.

City Council approval and authorization for execution, submission, and receipt of all required documents must be completed before January 2, 2022.

V. FISCAL IMPACT

By opting into the settlements with direct payments to City, City could potentially receive approximately \$300,000 over a period of 18 years to be used toward opioid abatement programs. Opting into the settlements while allowing payments to be made to Los Angeles County over a period of 18 years would result in County implementation of abatement measures within the City, although the funds do not have to be used exclusively within the City.

VI. EXHIBITS

1. Settlement Participation Form for the City's participation in the National Opioid Settlement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (pgs. 7 - 9)
2. Settlement Participation Form for the City's participation in the National Opioid Settlement with Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (pgs. 10 - 12)
3. Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Distributor Settlement (pgs. 13 - 41)
4. Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Janssen Settlement (pgs. 42 - 70)
5. Resolution authorizing the City Manager to execute the documents identified above (pgs. 71 - 75)
6. Distributor Settlement Agreement (pgs. 76 - 681)

7. Manufacturer Settlement Agreement (pgs. 682 - 871)

Prepared by: City Attorney's Office