



# Department of Health and Human Services

## NOTICE OF TRIBAL CONSULTATION

July 20, 2022

**MARK J. KRUEGER, ESQ.**

CHIEF DEPUTY ATTORNEY GENERAL  
BUREAU OF CONSUMER PROTECTION  
NEVADA OFFICE OF THE ATTORNEY  
GENERAL

**STEPHANIE WOODARD, PSY.D.**

LICENSED PSYCHOLOGIST  
DHHS SENIOR ADVISOR ON BEHAVIORAL HEALTH  
STATE OF NEVADA  
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

# Introduction

- ▶ Opioids Litigation and Recoveries
- ▶ Resilient Fund for Nevada
- ▶ State Needs Assessment and Plan
- ▶ Grant funding and eligibility
- ▶ County (or regional counties) and tribal governmental agencies needs assessments and plans
- ▶ Contact information
- ▶ Conclusion and Questions

# Review of Opioids Litigations and Bankruptcies

- ▶ State of Nevada Litigation
  - ▶ Trial date set for April 17, 2023
  - ▶ Currently in discovery
- ▶ County Litigations
  - ▶ Various stages, Some are stayed
  - ▶ Some are in the Multi-District Litigation (MDL)
- ▶ Tribal Litigation
  - ▶ More than 400 of the 574 federally recognized tribes have opioids related litigation
  - ▶ All in the MDL
- ▶ Bankruptcies
  - ▶ Purdue Pharma
  - ▶ Mallinckrodt

# Johnson & Johnson and The Distributors National Settlements with Native American Tribes

- ▶ Law360 (and other publications) reported on February 1, 2022, Native American Tribes agreed to settle opioid related claims with Johnson & Johnson and major opioid distributors in an amount of nearly **\$590 million**.
  - ▶ “Johnson and Johnson has agreed to pay ... **\$150 million** over two years.”
  - ▶ “AmerisourceBergen Corp., Cardinal Health, Inc. and McKesson Corp. have agreed to pay **\$440 million** over seven years.”
- ▶ All 574 federally recognized tribes “will be eligible to participate in the new settlements if they choose to.”
- ▶ **Majority of funding must be used for Abatement of the Opioids Epidemic:**
  - ▶ “[Majority of funding] will go to drug treatment and related programs provided by tribes and tribal health care organizations.”

# Johnson & Johnson and The Distributors National Settlements with States and Local Governments

- ▶ J&J Settlement: **\$53,508,792.64**
- ▶ The Distributor Settlement (McKesson, Cardinal Health and Amerisourcebergen): **\$231,679,409.03**
- ▶ TOTAL OF BOTH SETTLEMENTS: **\$285,188,201.67**
- ▶ **The Settlement Agreements and Bankruptcy Court Orders require that the funds be used for abatement.**

# One Nevada Agreement On Allocation of Opioid Recoveries

**Nevada, All Nevada counties, and All Nevada opioid litigating cities are signatories to the One Nevada Agreement on Opioid Recoveries. This agreement:**

- ▶ Fairly and equitably allocates recoveries from opioid settlements and bankruptcies between the signatories.
- ▶ Shares lead litigator costs which are deducted prior to allocation.
- ▶ Provides a mechanism for CMS Medicaid costs, if any, to be deducted prior to allocation.
- ▶ **Requires use of the money for abatement of the opioids epidemic through evidence-based programs and services in line with those provided for in SB390 (2021).**
- ▶ **Requires annual reports on the use of the funds to ensure compliance.**
  - ▶ The State and local governments may use up to the amount in a court order or 8%, whichever is less, to manage the use of the money.

# Lead Litigator Costs

## **Lead litigator costs deducted from the McKinsey settlement:**

- ▶ \$16,538,249.51

## **Estimated lead litigator costs to be deducted from the first J&J settlement:**

- ▶ Costs are estimated to be approximately \$10 million (by July 2022).

## **Estimated lead litigator costs to be deducted from the second J&J and all Distributors settlements:**

- ▶ \$0.00

## **Note:**

- ▶ CMS Medicaid costs if any, not deducted.

# Resilient Fund for Nevada

## The Resilient Fund for Nevada:

- ▶ Was created by SB390 (2021), now codified in NRS 433.712 through NRS 433.744.
- ▶ Is the fund where the State's portion of recoveries is deposited after payment of lead litigator costs and fees.
- ▶ Is managed by DHHS to fund the State Plan – NRS 433.738.
- ▶ **Requires the funds to be used to abate the opioids epidemic through evidence-based programs and services.**



# State and Local Governments Opioid Settlement Litigation Funding Distribution

## AG Settlement Funding

- Settlement Funding Received
- Costs and Fees Removed
- Remainder to One Nevada Allocation Agreement

## One Nevada Agreement

- Counties and cities Funds allocated to Counties and cities to be used for abatement
- Requires reporting
- State Funds to be deposited in the Fund for Resilient Nevada
- Requires funds be spent consistent with SB390

## Fund for Resilient Nevada

- Managed by DHHS
- Establish State Needs Assessment
- Determine funding priorities in State Plan
- Funding distributed through State agency budget allocations
- Possible distributions through State procurement processes
- Requires county (or regional counties) and tribal governmental agencies needs assessments and plans
- Requires Legislative and DHHS reporting

# Deposits to the Resilient Fund for Nevada

Total Actual and Estimated Deposits into the Resilient Fund for Nevada from all State and Local Government settlements after lead litigator costs and fees are deducted:

- ▶ **\$44,772,121.14 is expected by the end of July 2022.**
  - ▶ This includes McKinsey settlement deposit to Resilient Fund for Nevada (2021):  
**\$28,461,750.49.**
  - ▶ Fees from McKinsey settlement of \$5,407,732.59 were deferred and will be deducted from the J&J first payment.
- ▶ See next slide for total expected recoveries from J&J and Distributor settlements to date.
- ▶ **See second slide for total expected recoveries for deposits into the Resilient Fund for Nevada from J&J and Distributor settlements to date.**

**INITIAL J&J Payment***(assumes no default in payments)**(CMS Medicaid Costs, if any, not included)**(Costs for Initial J&J Payment is estimated)*

<u>Settlement Name</u>	<u>Estimated Payment Date</u>	<u>Estimated Payment Month</u>	<u>State and Signatories of One Nevada Agreement Share of Settlements</u>	<u>Estimated Costs</u>	<u>Estimated Total Amount to be Allocated</u>	<u>Attorney Fees</u>	<u>Estimated Total Allocation after Fees</u>	<u>Estimated Allocation Date</u>
J&J	2022	April	\$50,833,353.00	\$10,000,000.00	\$40,833,353.00	\$6,841,383.33	\$33,991,969.67	July 2022

**Annual J&J and Distributor Payments***(assumes no default in payments)**(CMS Medicaid Costs, if any, not included)*

<u>Settlement Name</u>	<u>Estimated Payment Date</u>	<u>Estimated Payment Month</u>	<u>State and Signatories of One Nevada Agreement Share of Settlements</u>	<u>Estimated Costs</u>	<u>Estimated Total Amount to be Allocated</u>	<u>Attorney Fees</u>	<u>Estimated Total Allocation after Fees</u>	<u>Estimated Allocation Date</u>
Distributors	2022	May	\$9,897,161.96	\$0.00	\$9,897,161.96	\$1,658,210.12	\$8,238,951.84	July 2022
Distributors	2022	July	\$10,401,434.73	\$0.00	\$10,401,434.73	\$1,742,697.98	\$8,658,736.75	July 2022
Distributors	2023	July	\$10,401,434.73	\$0.00	\$10,401,434.73	\$1,742,697.98	\$8,658,736.75	July 2023
Distributors	2024	July	\$13,018,868.99	\$0.00	\$13,018,868.99	\$2,181,233.42	\$10,837,635.57	July 2024
J&J	2025	April	\$2,675,439.64	\$0.00	\$2,675,439.64	\$448,253.89	\$2,227,185.75	April 2025
Distributors	2025	July	\$13,018,868.99	\$0.00	\$13,018,868.99	\$2,181,233.42	\$10,837,635.57	July 2025
Distributors	2026	July	\$13,018,868.99	\$0.00	\$13,018,868.99	\$2,181,233.42	\$10,837,635.57	July 2026
Distributors	2027	July	\$13,018,868.99	\$0.00	\$13,018,868.99	\$2,181,233.42	\$10,837,635.57	July 2027
Distributors	2028	July	\$15,311,758.47	\$0.00	\$15,311,758.47	\$2,565,393.26	\$12,746,365.21	July 2028
Distributors	2029	July	\$15,311,758.47	\$0.00	\$15,311,758.47	\$2,565,393.26	\$12,746,365.21	July 2029
Distributors	2030	July	\$15,311,758.47	\$0.00	\$15,311,758.47	\$2,565,393.26	\$12,746,365.21	July 2030
Distributors	2031	July	\$12,871,078.28	\$0.00	\$12,871,078.28	\$2,156,471.93	\$10,714,606.35	July 2031
Distributors	2032	July	\$12,871,078.28	\$0.00	\$12,871,078.28	\$2,156,471.93	\$10,714,606.35	July 2032
Distributors	2033	July	\$12,871,078.28	\$0.00	\$12,871,078.28	\$2,156,471.93	\$10,714,606.35	July 2033
Distributors	2034	July	\$12,871,078.28	\$0.00	\$12,871,078.28	\$2,156,471.93	\$10,714,606.35	July 2034
Distributors	2035	July	\$12,871,078.28	\$0.00	\$12,871,078.28	\$2,156,471.93	\$10,714,606.35	July 2035
Distributors	2036	July	\$12,871,078.28	\$0.00	\$12,871,078.28	\$2,156,471.93	\$10,714,606.35	July 2036
Distributors	2037	July	\$12,871,078.28	\$0.00	\$12,871,078.28	\$2,156,471.93	\$10,714,606.35	July 2037
Distributors	2038	July	\$12,871,078.28	\$0.00	\$12,871,078.28	\$2,156,471.93	\$10,714,606.35	July 2038
<b>Totals</b>			<b>\$285,188,201.67</b>	<b>\$10,000,000.00</b>	<b>\$275,188,201.67</b>	<b>\$46,106,132.20</b>	<b>\$229,082,069.47</b>	

STATE OF NEVADA  
*(assumes no default in payments)*  
*(CMS Medicaid Costs, if any, not included)*

<u>Settlement Name</u>	<u>Estimated Payment Date</u>	<u>Estimated Payment Month</u>	<u>Gross Allocation</u>	<u>Fees at 19%</u>	<u>Net Allocation</u>
Initial J&J Payment	2022	April	\$17,909,508.63	\$3,402,806.64	\$14,506,701.99
Distributors	2022	June	\$4,340,895.24	\$824,770.10	\$3,516,125.14
Distributors	2022	July	\$4,562,069.27	\$866,793.16	\$3,695,276.11
Distributors	2023	July	\$4,562,069.27	\$866,793.16	\$3,695,276.11
Distributors	2024	July	\$5,710,075.94	\$1,084,914.43	\$4,625,161.51
J&J	2025	April	\$1,173,447.83	\$222,955.09	\$950,492.74
Distributors	2025	July	\$5,710,075.94	\$1,084,914.43	\$4,625,161.51
Distributors	2026	July	\$5,710,075.94	\$1,084,914.43	\$4,625,161.51
Distributors	2027	July	\$5,710,075.94	\$1,084,914.43	\$4,625,161.51
Distributors	2028	July	\$6,715,737.26	\$1,275,990.08	\$5,439,747.18
Distributors	2029	July	\$6,715,737.26	\$1,275,990.08	\$5,439,747.18
Distributors	2030	July	\$6,715,737.26	\$1,275,990.08	\$5,439,747.18
Distributors	2031	July	\$5,645,254.93	\$1,072,598.44	\$4,572,656.49
Distributors	2032	July	\$5,645,254.93	\$1,072,598.44	\$4,572,656.49
Distributors	2033	July	\$5,645,254.93	\$1,072,598.44	\$4,572,656.49
Distributors	2034	July	\$5,645,254.93	\$1,072,598.44	\$4,572,656.49
Distributors	2035	July	\$5,645,254.93	\$1,072,598.44	\$4,572,656.49
Distributors	2036	July	\$5,645,254.93	\$1,072,598.44	\$4,572,656.49
Distributors	2037	July	\$5,645,254.93	\$1,072,598.44	\$4,572,656.49
Distributors	2038	July	\$5,645,254.93	\$1,072,598.44	\$4,572,656.49
		<b>TOTAL</b>	<b>\$120,697,545.22</b>	<b>\$22,932,533.63</b>	<b>\$97,765,011.59</b>

# State Needs Assessment

## **NRS 433.734 Requires DHHS to create a State Needs Assessment and State Plan to abate the opioids epidemic. The State Needs Assessment:**

- ▶ Will aid DHHS in identify State evidence-based programs and services needed in each geographic area of the State to effectively abate the epidemic.
- ▶ Must be updated every 4 years and requires annual reports to the Nevada Legislature.

# Principles for the Use of Funds from the Opioid Litigation (Johns Hopkins; 2021)

Spend money to save lives

Use evidence to guide spending

Invest in youth prevention

Focus on racial equity

Develop a fair and transparent process for deciding when to spend the funding

# How Has DHHS Created the Statewide Needs Assessment?

- ▶ Created by:
  - ▶ Using the damages report in the opioid litigation, qualitative and quantitative data, and evidence-based practices;
  - ▶ Using community-based participatory research or similar methods to conduct outreach to groups impacted by opioids;
  - ▶ Through outreach to governmental agencies who interact with groups impacted such as public safety, corrections, courts, juvenile justice agencies, etc.; and
  - ▶ Through input and advisement from the Advisory committee and other sources including the public and regional, local and tribal agencies.

# State Plan

## **NRS 433.734 Requires DHHS to create a State Needs Assessment and State Plan to abate the opioids epidemic. The State Plan:**

- ▶ Will allow DHHS to determine which programs and services identified in the Needs Assessment should be prioritized for funding.
- ▶ **May be allocated to statewide projects** – NRS 433.738(2)(a).
  - ▶ Must be updated every 4 years and requires annual reports to the Nevada Legislature.
- ▶ **May be allocated through grants to regional, county, local and tribal governmental agencies and private-sector organizations whose work relates to opioid use disorder and other substance use disorders.** – NRS 433.738(2)(b).
  - ▶ Requires annual reports by grantees to DHHS on the use of the funds to ensure compliance.
  - ▶ In making award, DHHS is required to consider the applicants opioid-related recoveries or anticipated recoveries.



# Regional, Local (County) and Tribal Government Agencies Needs Assessments and Plans

- ▶ **Counties (or regional counties), as well as cities and tribes within the county or regional counties, are encouraged to work with the county or regional counties in creating needs assessments and plans.**
  - ▶ Helps to work together with the State, other regional, county, local and tribal governmental entities to prioritize funding and not duplicate efforts;
  - ▶ Helps to maximize the use of the money for programs and services; and
  - ▶ Helps with long-term planning for use of the money to abate the epidemic.
- ▶ County (or regional counties) and tribal governmental agencies may create needs assessments and plans, and those that do so:
  - ▶ Can get technical assistance from DHHS to do so.
  - ▶ Are eligible to apply and receive State funding to further collaborate on abatement programs and services.
  - ▶ Must update their needs assessments and plans not less than every 4 years.

# Eligibility for Grant Funding from the Resilient Fund for Nevada

- ▶ **To be eligible for grants from the Fund for Resilient Nevada, county (or regional counties) and tribal governmental agencies must create a needs assessment and a plan for combating the opioid epidemic and setting priorities for funding.**
- ▶ Created:
  - ▶ Using their damages report in their opioid litigation, qualitative and quantitative data, and evidence-based practices;
  - ▶ Using community-based participatory research or similar methods to conduct outreach to groups impacted by opioids;
  - ▶ Through outreach to governmental agencies who interact with groups impacted such as public safety, corrections, courts, juvenile justice agencies, etc.; and
  - ▶ Through input and advice from other sources including the public and regional, local and tribal agencies.

# DHHS Support for Regional, Local (County), and Tribal Agencies' Needs Assessments and Plans

- ▶ NRS 433.740(1)(b) requires DHHS to coordinate and provide support to regional (multiple counties), local (county) and tribal governmental agencies to conduct and develop needs assessments and plans.
- ▶ This is critical for establishing programs to abate the opioids epidemic and to make recoveries work smarter and do more.
- ▶ DHHS does this by:
  - ▶ Contracting with a vendor for technical assistance;
  - ▶ Assisting with resources and methodology for community-based participatory research; and
  - ▶ Assisting with data reports by region through the DHHS' Office of Analytics.

# Grant Funding Caveat

- ▶ **NRS 433.740(4) Requires Notification and Possible Repayment of Grant Funding:**

- ▶ “If a regional, local or tribal governmental entity that receives a grant pursuant to paragraph (b) of NRS 433.738 later recovers money through a judgment or a settlement resulting from litigation concerning the manufacture, distribution, sale or marketing of opioids:
  - ▶ (a) The regional, local or tribal governmental entity must immediately notify the Department; and
  - ▶ (b) The Department may recover from the governmental entity an amount not to exceed the amount of the grant or the amount of the recovery, whichever is less.”

- ▶ **NRS 433.740(5) Requires updated needs assessments and grants:**

- ▶ “A regional, local or tribal governmental entity that receives a grant pursuant to paragraph (b) of subsection 2 of section 9.6 of this act shall conduct a new needs assessment and update its plan for the use of the grant at intervals prescribed by regulation of the Department, which must be not less than every 4 years.”

# What is Needed Now



- ▶ **County (or regional counties) and tribal governmental agencies should:**
  - ▶ Create needs assessment and Plans as soon as possible;
  - ▶ Designate a point of contact with DHHS;
  - ▶ Reach out to community stakeholders for support to develop needs assessments and plans (coalitions, providers, etc.);
  - ▶ Collaborate and coordinate work with other counties, as well as cities and tribes within those counties, to establish programs and services to abate the opioids epidemic; and
  - ▶ Coordinate with DHHS to ensure the programs are working together.

# How to Start

## **DHHS Contacts:**

Dawn Yohey

[d.yohey@dhhs.nv.gov](mailto:d.yohey@dhhs.nv.gov)

Joan Waldock

[j.waldock@dhhs.nv.gov](mailto:j.waldock@dhhs.nv.gov)

# Conclusion and Questions

Thank you!

# References

- ▶ One Nevada Agreement:

[https://ag.nv.gov/Hot\\_Topics/Opioid\\_Epidemic/](https://ag.nv.gov/Hot_Topics/Opioid_Epidemic/)

- ▶ Senate Bill 390 (81<sup>st</sup> Session 2021) NRS 433.732 through NRS 433.744:

<https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8095/Text#>

<https://www.leg.state.nv.us/Division/Legal/LawLibrary/NRS/NRS-433.html#NRS433Sec732>

- ▶ Advisory Committee for A Resilient Nevada (ACRN):

[https://dhhs.nv.gov/Programs/Grants/Advisory\\_Committees/ACRN/ACRN\\_Members/](https://dhhs.nv.gov/Programs/Grants/Advisory_Committees/ACRN/ACRN_Members/)

- ▶ Attorney General's Substance Use Response Working Group (SURG):

[https://ag.nv.gov/About/Administration/Substance\\_Use\\_Response\\_Working\\_Group\\_\(SURG\)/](https://ag.nv.gov/About/Administration/Substance_Use_Response_Working_Group_(SURG)/)

- ▶ Johns Hopkins Principles for Uses of Fund from the Opioid Litigation:

<https://opioidprinciples.jhsph.edu/>