



COUNTY OF HUMBOLDT

For the meeting of: 3/21/2023

File #: 23-375

To: Board of Supervisors

From: County Counsel

Agenda Section: Consent

Vote Requirement: Majority

SUBJECT:

Resolution Approving the County of Humboldt's Participation in Nationwide Opioid Litigation Settlements with Teva, Allergan, CVS, Walgreens and Walmart and Authorizing the Humboldt County Counsel's Office to Take Any and All Reasonable and Necessary Actions to Implement the Settlements, Secure Settlement Funds and Fulfill the County of Humboldt's Prior Agreement to Compensate Outside Counsel

RECOMMENDATION(S):

That the Board of Supervisors:

1. Adopt the attached resolution approving the County of Humboldt's participation in nationwide opioid litigation settlements with Teva, Allergan, CVS, Walgreens and Walmart and authorizing the Humboldt County Counsel's Office to take any and all reasonable and necessary actions to implement the settlements, secure settlement funds and fulfill the County of Humboldt's prior agreement to compensate outside counsel; and
2. Direct the Clerk of the Board to provide the Humboldt County Counsel's Office with one (1) fully executed certified copy of the attached resolution for further processing.

SOURCE OF FUNDING:

General Fund (1100)

DISCUSSION:

In March 2018, the Humboldt County Board of Supervisors ("Board") authorized the County of Humboldt to participate in nationwide litigation against the manufacturers, wholesalers and distributors of prescription opioid painkillers. In preparing and pursuing the litigation, the County of Humboldt retained the services of Keller Rohrbach, a national law firm with extensive experience in opioid-related litigation.

In July 2021, nationwide settlements were reached to resolve all opioid litigation brought by states and local political subdivisions against the three (3) largest pharmaceutical distributors, McKesson, Cardinal Health and AmerisourceBergen ("Distributors"), and against manufacturer Janssen

Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, “J&J”). Under the terms and conditions of the 2021 National Opioid Settlements, the Distributors will pay up to Twenty-One Billion Dollars (\$21,000,000,000.00) over eighteen (18) years, and J&J will pay up to an additional Five Billion Dollars (\$5,000,000,000.00) over no more than nine (9) years. In addition to the monetary proceeds, the 2021 National Opioid Settlements also provided for injunctive relief that required changes to the Distributors’ and J&J’s conduct, which include, without limitation, all of the following:

- Creation of a clearinghouse through which the distributors will be required to account not only for their own shipments, but also the shipments of the other distributors, to detect, stop and report suspicious opioids orders.
- J&J will not market or sell any opioid products in the next ten (10) years and will cease lobbying concerning prescription opioids for ten (10) years.
- J&J will make the clinical trial data for its discontinued opioids available for medical research.

In November 2021, the Board authorized the County of Humboldt to participate in the 2021 National Opioid Settlements. Pursuant to the terms and conditions of the 2021 National Opioid Settlements, the County of Humboldt stands to receive up to approximately Twenty Million Dollars (\$20,000,000.00) over the settlement period.

In late 2022, agreements were announced with three (3) pharmacy chains, CVS, Walgreens and Walmart, and two (2) additional manufacturers, Allergan and Teva. In January 2023, each of those pharmacy chains and manufacturers confirmed that a sufficient number of states had agreed to the settlements to move forward. As with the 2021 National Opioid Settlements, states and local governments that want to participate in the 2022 National Opioid Settlements now will have the opportunity to “opt in.” The greater the level of subdivision participation, the more funds will ultimately be paid out for abatement. Assuming maximum participation, the 2022 National Opioid Settlements require:

- Teva to pay up to Three Billion Three Hundred Forty Million Dollars (\$3,340,000,00.00) over thirteen (13) years and to provide either One Billion Two Hundred Million Dollars (\$1,200,000,000.00) of its generic version of the drug Narcan over ten (10) years or Two Hundred Forty Million Dollars (\$240,000,000.00) of cash in lieu of product, as each state may elect.
- Allergan to pay up to Two Billion Twenty Million Dollars (\$2,020,000,000.00) over seven (7) years.
- CVS to pay up to Four Billion Nine Hundred Million Dollars (\$4,900,000,000.00) over ten (10) years.

- Walgreens to pay up to Five Billion Five Hundred Twenty Million Dollars (\$5,520,000,000.00) over fifteen (15) years.
- Walmart to pay up to Two Billion Seven Hundred Forty Million Dollars (\$2,740,000,000.00) in 2023, and all payments to be made within six (6) years.

In addition to providing billions of dollars for abatement, the 2022 National Opioid Settlements also impose changes in the way the settling defendants operate their businesses, including, without limitation:

- Teva and Allergan have agreed to strict limitations on their marketing, promotion, sale and distribution of opioids, including, without limitation, a ban on: promotion and lobbying; rewarding or disciplining employees based on volume of opioid sales; and funding or grants to third parties.
- Walmart, CVS and Walgreens are required to implement changes in how they handle opioids, including, without limitation, addressing their compliance structures, pharmacist judgment, diversion prevention, suspicious order monitoring and reporting on red-flag processes, as well as blocked and potentially problematic prescribers.

According to allocation formulas negotiated as part of the 2022 National Opioid Settlements, California stands to receive approximately ten percent (10%) of the settlement proceeds, of which approximately forty percent (40%) of the proceeds will go to the State of California and approximately sixty percent (60%) will be distributed to participating counties and cities. Based on preliminary estimates, the County of Humboldt expects to receive up to approximately Sixteen Million Dollars (\$16,000,000.00). The settlement funds will be paid over a fifteen (15) year period. This is a preliminary estimate as the amount of funds received is dependent upon the level of settlement participation by various cities and counties within the state.

As with the 2021 National Opioid Settlements, the 2022 National Opioid Settlements require at least eighty-five percent (85%) of the settlement funds going directly to participating states and subdivisions be used for abatement of the opioid epidemic. The settlement funds will be available for a broad range of approved abatement uses, including, without limitation, the provision of intervention, treatment, education and recovery services. Further information regarding the 2021 and 2022 National Opioid Settlements, including, without limitation, copies of the settlement agreements, participation forms, flowcharts and frequently asked questions, can be found on the National Opioid Settlement website at: <http://www.nationalopioidsettlement.com>.

The law firm of Keller Rorhbach, who is currently acting as outside counsel for the County of Humboldt with regard to the nationwide opioid litigation, has performed valuable services in helping bring about the 2021 and 2022 National Opioid Settlements. The 2021 and 2022 National Opioid

Settlements provide that fifteen percent (15%) of the settlement funds will be allocated to a California Subdivision Fund, available only to local governments in California that filed lawsuits against one (1) or more of the opioid defendants before October 1, 2020 (“Participating Subdivisions”). The California allocation agreements allow Participating Subdivisions to use their share of the Subdivision Fund to pay for contingent fees or costs incurred by outside counsel, so long as such fees do not exceed a total contingent fee of fifteen percent (15%) of the total gross recovery of the Participating Subdivision. Participating Subdivisions must execute a “back-stop agreement” signed by outside counsel and the California Office of the Attorney General. Once executed, the Participating Subdivision may instruct the settlement administrator Brown & Greer to withhold up to fifteen percent (15%) of the payments allocated to the Participating Subdivision to be used to pay outside counsel fees. In turn, outside counsel agrees to limit its contingent fee to fifteen percent (15%) of the total gross recovery that the Participating Subdivision receives, a portion of which will be paid from the national settlement Contingency Fee and Cost Funds.

In essence, entering into a back-stop agreement will provide the County of Humboldt a mechanism to pay contingent fees from settlement funds rather than the Humboldt County General Fund, and will reduce the amount that Humboldt County is required to pay Keller Rohrback from the sliding scale of up to twenty percent (20%) provided in the original attorney engagement and contingency fee agreement that was entered into in March 2018, to a flat cap of fifteen percent (15%), reduced to an estimated twelve percent (12%) after the national funds are applied. Humboldt County’s proportional share of actual costs incurred in the litigation will also be reduced by amounts available from the national settlement Cost Fund.

Accordingly, staff recommends that the Board adopt the attached resolution approving the County of Humboldt’s participation in nationwide opioid litigation settlements with Teva, Allergan, CVS, Walgreens and Walmart and authorizing the Humboldt County Counsel’s Office to take any and all reasonable and necessary actions to implement the settlements, secure settlement funds and fulfill the County of Humboldt’s prior agreement to compensate outside counsel.

FINANCIAL IMPACT:

Adoption of the attached resolution will allow the County of Humboldt to receive up to approximately Sixteen Million Dollars (\$16,000,000.00) over a fifteen (15) year period. The County of Humboldt will incur minimal costs associated with the staff time needed to fulfill the annual reporting obligations to demonstrate use for approved opioid abatement activities.

STAFFING IMPACT:

There are no direct staffing impacts associated with adoption of the attached resolution.

STRATEGIC FRAMEWORK:

The recommended actions support the Board of Supervisors’ Strategic Framework by protecting vulnerable populations, creating opportunities for improved safety and health and providing community-appropriate levels of service.

OTHER AGENCY INVOLVEMENT:

California Office of the Attorney General

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may choose not to adopt the attached resolution approving the County of Humboldt's participation in nationwide opioid litigation settlements with Teva, Allergan, CVS, Walgreens and Walmart and authorizing the Humboldt County Counsel's Office to take any and all reasonable and necessary actions to implement the settlements, secure settlement funds and fulfill the County of Humboldt's prior agreement to compensate outside counsel. However, this alternative is not recommended as participating in the 2022 National Opioid Settlements is critical to the County of Humboldt's ongoing efforts to provide intervention, treatment, education and recovery services necessary to effectively combat the opioid epidemic.

ATTACHMENTS:

1. Resolution Approving the County of Humboldt's Participation in Nationwide Opioid Litigation Settlements with Teva, Allergan, CVS, Walgreens and Walmart and Authorizing the Humboldt County Counsel's Office to Take Any and All Reasonable and Necessary Actions to Implement the Settlements, Secure Settlement Funds and Fulfill the County of Humboldt's Prior Agreement to Compensate Outside Counsel

PREVIOUS ACTION/REFERRAL:

Board Order No.: I-4; D-7

Meeting of: 3/27/18; 11/9/21

File No.: 18-238; 21-1664