



**DEPARTMENT OF JUSTICE**  
OFFICE OF THE ATTORNEY GENERAL

DATE: February 03, 2022

TO: Representative Rob Nosse Members of the House Committee on Behavioral Health

FROM: Kimberly McCullough, Legislative Director, Oregon Department of Justice

SUBJECT: HB 4098 Alcohol and Drug Policy Commission Bill

For over fifteen years, Oregon has been actively involved in efforts to hold the opioid industry accountable for its role in fueling the opioid crisis that has so severely impacted our communities. Fortunately, that hard work—which has involved efforts by Oregon’s Department of Justice and legal teams working for numerous Oregon counties and the City of Portland—has been coming to fruition.

Later this month, we expect national settlements with Johnson & Johnson and three major opioid distributors to finalize. We are also anticipating finalization of a bankruptcy plan related to litigation with Purdue Pharmaceuticals. And finally, we are actively engaged in litigation with Endo, the promoter of an Opana, and extended-release opioid similar to OxyContin.

The opioid crisis is impacting our Oregon communities in severe and pervasive ways. These various legal efforts will bring money to Oregon to help us turn the tide.

Deciding how we spend these funds is a crucial policy matter and will have far-reaching implications. This is an all-hands-on-deck situation that requires collaboration and that we step out of our various silos to work together. That is why we are incredibly grateful for the collaboration of Oregon’s cities and counties in developing a plan for distribution of the national opioid settlement funds.

In December of last year, we reached an agreement with Oregon’s cities and counties about the process for distribution of the Johnson & Johnson and big-three distributors settlement funds and future multistate litigation that involves the state and local government. Under our intrastate allocation agreement, a portion of these national settlements will go directly to Oregon’s cities and counties to be used for prevention, treatment and recovery services at the local level. The remainder of the settlement funds will come to the State of Oregon to be used for regional and statewide prevention, treatment and recovery services and for investment into the development of a unified and evidence-based state system for collecting, analyzing and publishing data about the availability and efficacy of substance use prevention, treatment and recovery services across the state. It is the mechanism for distribution of the funds coming to the state that I am here to talk to you about today.

Although we do not yet have an official amendment, we are grateful to Representative Sanchez and the Alcohol and Drug Policy Commission for their willingness to amend these provisions into HB 4098. Attached to this testimony, you can see the framework we submitted to Legislative Council to draft the amendment.

As you will see in the framework, this amendment will create an opioid settlement prevention, treatment and recovery board. That board will include equal membership and voting power for the state and local government. It will also include a representative of a Community Mental Health Program, an individual from an organization advocating for individuals with substance use disorders or someone with lived experience, an individual representing part of our public safety system, two members of the legislature, and the State Court Administrator or designee. Relevant to this bill, the board will include the ADPC Executive Director, and funding decisions made by the board will be guided and informed by the Oregon's Strategic Plan as developed by the ADPC.

Again, we appreciate and thank Representative Sanchez and the ADPC for their willingness to amend these provisions into HB 4098, and we look forward to continued collaboration.

**Contact:**

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## **Framework for Enabling Legislation – Opioids Settlement Funds**

### **Amendment to HB 4098**

- Creation of an Opioid Settlement Prevention, Treatment and Recovery Fund (PTR Fund)
  - Will receive funding from the national opioid settlements
    - Current settlements:
      - Parties on our side:
        - Agreements describe our side of the litigation as the “Settling States” and “Participating Subdivisions”
        - Here in Oregon, that is the State of Oregon and all cities/counties over 10,000 population
      - Agreements are with:
        - McKesson, Cardinal, and Amerisource Bergen
        - Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc.
      - Date of agreements:
        - July 21, 2021 is the initial date of the agreements, but it isn’t the effective date (which is pending).
        - Our intrastate allocation agreement refers to the date of the agreements as follows: “dated as of July 21, 2021, and any revision thereto”
    - Future settlements:
      - Add provision will make it possible to deposit funds coming to the state from future opioid settlements into the PTR Fund and distribute those funds through the PTR Board
      - In addition to the two settlements listed above, there will eventually be additional funds that will come to the state to be deposited in this fund. Right now, we anticipate funds from the Purdue Bankruptcy, but we hope for more.
      - Section 8 of the Intrastate Allocation Agreement describes these future funds as coming from “future multistate opioid settlements with distributors, manufacturers, and pharmacies.”

- We will also need LFO to authorize an Other Funds limitation to create authority for the PTR Board to disburse funds
- Creation of an Opioid Settlement Prevention, Treatment and Recovery Board (PTR Board)
  - Organized administratively under Oregon Health Authority
    - NOTE: OHA will not control the board, but is simply the administrative home for it and for any associated staffing
  - State and local government to have equal representation, with additional members agreed upon by state and local government
  - Co-chaired by one state representative and one local government representative
- Members of PTR Board to include:
  - 6 members appointed by the governor (without senate confirmation):
    - Governor's office policy advisor
    - Representative of the Oregon Department of Justice
    - Representative of the Oregon Health Authority
    - Executive Director of the Alcohol and Drug Policy Commission or designee
    - Chair of the Measure 110 Oversight and Accountability Council or designee
    - Representative of Department of Human Services
  - 6 members appointed by the governor, from a list of candidates provided by the Association of Oregon Counties and the League of Cities
    - An individual representing Clackamas County, Washington County or Multnomah County
      - Note that these are the litigating counties with a population over 400,000 as of the initial date of the settlement agreements (July 21, 2021)
    - An individual representing a Clatsop County, Columbia County, Coos County, Curry County, Jackson County, Josephine County, Lane County, or Yamhill County
      - Note that these are the litigating counties with a population under 400,000 as of the initial date of the settlement agreements (July 21, 2021)

- An individual representing the City of Portland
      - Note that this is the only litigating city
    - An individual representing a city with a population over 10,000 as of July 21, 2021
    - An individual representing a city with a population under 10,000 as of July 21, 2021
    - A representative from the Coalition of Local Health Officials
  - 3 members appointed by the governor, from a list of candidates provided by the 12 members of the board listed above (the goal here is to ensure these members are mutually agreed to by the state and local governments):
    - A representative of a Community Mental Health Program (CMHP)
    - An individual from an organization advocating for individuals with substance use disorders or someone with lived experience (who has experienced a substance use disorder)
    - An individual representing part of our public safety system (including law enforcement, first responders, jail commanders)
  - One non-voting member of the House of Representatives appointed by the Speaker of the House
  - One non-voting member of the Senate appointed by the Senate President
  - The State Court Administrator or designee (non-voting member)
- PTR Board directed to attempt to reach consensus
  - If there is a lack of consensus, decisions must at least be majority support
  - Objections shall be documented
- No fewer than 4 public meetings annually
  - Publicized to facilitate attendance
  - Subject to open meetings laws
- Must include processes for receiving input from the public regarding funding decisions made by the PTR Board, including opportunity for comment at each PTR Board meeting and a method for submitting written comments and proposals to the PTR Board
- Allocation of funding by the PTR Board:
  - Funding decisions determined by majority vote of the Board
  - No more than 5% of the PTR Fund may be spent on administration of the PTR Board and the PTR Fund

- Must dedicate a portion of the funding toward development of a unified and evidence-based state system for collecting, analyzing and publishing data about the availability and efficacy of substance use prevention, treatment and recovery services across the state
- Remaining funds limited to funding statewide and regional programs
  - These programs must be limited to future Approved Abatement Uses set out in Exhibit E of the national settlement agreements (this is required by the national settlements)
  - Pulling from Exhibit E, here are the categories where funding may be spent:
    - Support treatment of Opioid Use Disorder (“OUD”) and any co-occurring Substance Use Disorder or Mental Health (“SUD/MH”) conditions through evidence-based or evidence-informed programs or strategies
    - Support people in recovery from OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies
    - Provide connections to care for people who have—or are at risk of developing—OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies
    - Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies
    - Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, and the needs of their families, including babies with neonatal abstinence syndrome (“NAS”), through evidence-based or evidence-informed programs or strategies
    - Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies

- Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies
  - Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies
  - Education of law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.
  - Provision of wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.
  - Support efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the opioid epidemic through activities, programs, or strategies
  - Support training to abate the opioid epidemic through activities, programs, or strategies
  - Support opioid abatement research
- Decisions of the PTR Board guided and informed by:
    - The Alcohol and Drug Policy Commission [Strategic Plan](#), and any subsequent amendments or updates to the Strategic Plan
    - Ongoing evaluation of efficacy of funding allocations
    - Evidence-based strategies and best practices
    - Input from the public
    - Equity considerations for underserved populations (rural, BIPOC, etc.)
    - Any settlement agreements related to the funds deposited into the PTR Fund (including the two agreements that we know about now, and any future agreements related to future funds)
  - 18-year sunset
    - These funds will be coming to the state for the next 18 years, after which the board will not be necessary.

*This document was prepared by the Oregon Dept of Justice, in consultation with Oregon's cities and counties, the ADPC, and the governor's office*