



## MISSOURI PUBLIC HEALTH AUTHORITY Legal Technical Assistance

# Opioid Settlement Funds and Harm Reduction Services

### Questions Presented:


1. What are the permitted uses of opioid settlement funds in Missouri?
2. What are the drug paraphernalia laws in Missouri, and how might they impede provision of syringe service programs?

### Summary:

States and local governments have sued companies involved in the production and distribution of opioids for the role of their business practices in contributing to a rise in overdose deaths. Missouri participated in several national lawsuits against opioid manufacturers and distributors and was awarded roughly \$458 million through settlement agreements.<sup>1</sup> The state will maintain some of the funds while also distributing funds to local governments.<sup>2</sup> The Missouri Department of Mental Health has established the State of Missouri's Opioid Settlement Reporting Website to publicly report on the expenditures of settlement funds.<sup>3</sup> Though states and local jurisdictions have some degree of discretion in choosing how to spend their settlement funds, there is a detailed list of approved uses, and any use must be in accordance with state law.<sup>4</sup>

Under Missouri's drug paraphernalia law, entities are not permitted to operate syringe service programs. Also called syringe exchange or needle exchange programs, these services typically collect used syringes, provide sterile syringes, and offer additional harm reduction services or connections to resources.<sup>5</sup> In recent years, legislators have introduced proposals to authorize syringe service programs and safe consumption sites; however, none of the bills have become law. Local public health agencies may provide access to opioid antagonist medications, vaccinations, infectious disease testing, harm reduction education, and connections to community-based organizations.

For additional legal information on harm reduction services, please explore the resources available from the Network for Public Health Law's [Harm Reduction Legal Project](#).<sup>6</sup>



*The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their jurisdiction.*

**Discussion:**

In 2022, the Missouri Department of Health and Senior Services released the Missouri Opioid Overdose and Bloodborne Infection Vulnerability Assessments.<sup>7</sup> That year, the Department reported 2,180 overdose deaths among Missouri residents.<sup>8</sup> The Department identified 23 counties as most vulnerable to opioid overdoses and 23 counties as most vulnerable to bloodborne infections.<sup>9</sup> Most of the counties identified as most vulnerable are in the southern part of the state, but overdose fatalities affect Missourians throughout the state.

Opioid settlement funds, under the terms of the agreements and state law, must be used to address this public health issue and support opioid addiction treatment and prevention. The Memorandum of Understanding between the state and its political subdivision sets out the allocation of funds: the state share of the settlement funds is 60 percent while litigating subdivisions (political subdivisions that initiated opioid-related litigation on or before January 1, 2021) will receive 40 percent.<sup>10</sup> Non-litigating subdivisions will receive funds from the state share in the amount allocated by provisions of the settlement agreements.

**1. Uses of Opioid Settlement Funds and Harm Reduction Services in Missouri**


**a. Opioid Settlement Funds**

Missouri participated in several national lawsuits against opioid manufacturers and distributors and was awarded hundreds of millions of dollars, and there are pending cases remaining.<sup>11</sup> The Missouri Department of Mental Health has established the State of Missouri's Opioid Settlement Reporting Website to publicly report on the expenditures of settlement funds.<sup>12</sup> Though states and local jurisdictions have some degree of discretion in choosing how to spend their settlement funds, there is a detailed list of approved uses, and any use must be in accordance with state law.<sup>13</sup> Broadly, the categories are treatment, prevention, and other opioid use disorder abatement strategies.<sup>14</sup> The state legislature enacted Missouri Revised Statute 196.1050 which specifies that the proceeds of opioid settlements, "shall only be utilized to pay for opioid addiction treatment and prevention services and health care and law enforcement costs related to opioid addiction treatment and prevention. Under no circumstances shall such settlement moneys be utilized to fund other services, programs, or expenses not reasonably related to opioid addiction treatment and prevention."<sup>15</sup>

On March 1, 2024, the Department of Mental Health submitted its first annual report to the Missouri General Assembly on the use of opioid settlement funds.<sup>16</sup> There are also third-party entities tracking the distribution and uses of settlement funds with detailed information about Missouri.<sup>17</sup>

**b. Resources Regarding the Use of Opioid Settlement Funds in Missouri**

In Missouri, St. Louis County published a Substance Use Action Plan for 2022-2024, which may serve as a resource to other counties.<sup>18</sup> The Plan outlines the goals, actions, and opportunities for the county's Department of Public Health and its partners. St. Louis County is a charter county and may have different authorities than noncharter counties; please consult your attorney if you have questions about the ordinances and services your specific county may implement.<sup>19</sup>



The Missouri Foundation for Health developed a resource called Reducing Opioid Deaths in Missouri: Harm Reduction Strategies, which offers suggestions for harm reduction initiatives in the state.<sup>20</sup> One of the recommendations — the decriminalization of fentanyl test strips — went into effect in 2023, exempting fentanyl testing mechanisms from the state’s drug paraphernalia definition.<sup>21</sup>

Vital Strategies, a public health organization, published a Guide for Community Advocates on the Opioid Settlement, which provides a snapshot of the allocation of opioid settlement funds in Missouri.<sup>22</sup> The Guide includes a summary of how the funds will be split between the state and its political subdivisions, as described in the Memorandum of Understanding, and includes information about the public reporting requirements.

### **c. Opioid Antagonists and Missouri’s Naloxone Standing Order**

State law authorizes the director of the Department of Health and Senior Services, if they are a physician, or a physician acting on behalf of the director, to issue a statewide standing order for an opioid antagonist or addiction mitigation medication.<sup>23</sup> The current statewide standing order for naloxone<sup>24</sup> is in effect as of August 22, 2023 and remains in effect until August 22, 2024.<sup>25</sup> The standing order permits a pharmacist to provide naloxone to those who are at risk of overdose or a friend, family member, or other person in the position to help in the case of an overdose. Any pharmacist dispensing naloxone under the standing order, is immune from criminal or civil liability or disciplinary action so long as they act with good faith and reasonable care.<sup>26</sup> The law also makes it legal for any person to possess an opioid antagonist or addiction mitigation medication.<sup>27</sup>

Local public health agencies may purchase naloxone (under the brand name Narcan) directly.<sup>28</sup> Settlement funds may be used for this purpose.


### **i. Overdose Good Samaritan Law**

Missouri law protects from liability for certain crimes those who seek or obtain medical assistance for someone who is experiencing a drug or alcohol overdose and those who are the subject of a good faith request for medical assistance.<sup>29</sup> Commonly referred to as the “Overdose Good Samaritan Law,” this statute aims to reduce overdose fatalities by offering some assurances to witnesses who call for medical assistance in the event of an overdose or who are the subject of a good faith request for assistance. Under this law, evidence gathered as a result of someone seeking medical assistance for an overdose cannot be used to arrest, charge, prosecute, or convict an individual for possession of a controlled substance or drug paraphernalia; keeping a nuisance property; violation of a restraining order; or violation of probation or parole.<sup>30</sup>

## **2. Drug Paraphernalia Laws**

Drug paraphernalia laws in Missouri pose a barrier to the operation of syringe service programs. Also called syringe exchange or needle exchange programs, these services typically collect used syringes, provide sterile syringes, and offer additional harm reduction services or connections to resources.<sup>31</sup> State law defines drug paraphernalia to include “[h]ypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances or imitation controlled substances into the human body.”<sup>32</sup> Under the state’s criminal code,

- the unlawful distribution, delivery, or sale of drug paraphernalia with intent to distribute, deliver, or sell drug paraphernalia knowing, or under circumstances in which one reasonably should know, that it will be



used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or an imitation controlled substance,<sup>33</sup>

- the unlawful possession of drug paraphernalia if a person knowingly uses, or possesses with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body, a controlled substance or an imitation controlled substance;<sup>34</sup> and
- the unlawful manufacture of drug paraphernalia with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or an imitation controlled substance<sup>35</sup>

are punishable offenses. These provisions effectively ban syringe service programs from operating in the state.

Though the terms of the opioid settlement agreements allow for the funds to be used for syringe service programs, at this time state law does not.<sup>36</sup> Note, however, that there are known syringe service programs operating within Missouri.<sup>37</sup>

#### **a. Legislation to Legalize Syringe Service Programs**

In the last five years, state legislators have introduced several bills to carve out an exemption under the state's criminal law to allow entities registered with the Department of Health and Senior Services to legally operate syringe exchange programs.<sup>38</sup> The proposals have not become law.


#### **b. Legislation to Legalize Safe Consumption Sites**

Legislators have also introduced bills that, if enacted, would authorize the establishment of safe consumption facilities, including those operated by local public health agencies.<sup>39</sup> Safe consumption sites, or supervised consumption services, are designated facilities where people can use drugs under supervision.<sup>40</sup> The proposed legislation included allowing for the provision of sterile injection supplies among other public health and harm reduction services.<sup>41</sup> The proposals have not become law.

### **3. Additional Resources to Guide Decision-making**

There are several resources available regarding harm reduction services and the use of opioid settlement funds. The Johns Hopkins Bloomberg School of Public Health published five guiding principles for jurisdictions to consider in the use of opioid settlement funds.<sup>42</sup> The principles are: spend the money to save lives; use evidence to guide spending; invest in youth prevention; focus on racial equity; and develop a fair and transparent process for deciding where to spend the funding. Additional resources include the following:

- a. [A Quick “How-To” Guide for Understanding Opioid Settlements State-to-State](#) - National Association of County & City Health Officials
  - i. Background on the settlements and resources for state and local decision-makers.
- b. [Implementation Tools](#) – Johns Hopkins Bloomberg School of Public Health

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- i. Primer on Spending Funds from the Opioid Litigation: A Guide for State and Local Decision Makers
  - ii. Ten Indicators to Assess the Readiness of State and Local Governments to Receive the Funds
  - c. [Strategies for Effectively Allocating Opioid Settlement Funds](#) – RAND
    - i. Provides guiding principles and recommendations for addressing root causes of overdose deaths.
  - d. [Toolkits to Help #EndOverdose](#) – Vital Strategies
    - i. Toolkits for harm reduction providers including information for those who use drugs alone; supporting pregnant and parenting people who use drugs; expanding first response; and less punitive approaches to people who use drugs.
  - e. [Opioid Solutions Center](#) – National Association of Counties
    - i. Information and tools including strategies for the use of opioid settlement funds, examples of county initiatives, and quick guides on policy and actions.
  - f. [Equity Considerations for Local Health Departments on Opioid Settlement Funds](#) – National Association of County & City Health Officials
    - i. A checklist to guide local health officials through priority-setting on the use of opioid settlement funds.

To request technical assistance on harm reduction law and policy, please contact the Network for Public Health Law’s Harm Reduction Legal Project at [harmreduction@networkforphl.org](mailto:harmreduction@networkforphl.org).

This document was developed by Susan Fleurant, JD, MPH, Staff Attorney, Network for Public Health Law – Mid-States Region. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.


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## SUPPORTERS

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- <sup>1</sup> NationalOpioidSettlement.com, Missouri, <https://nationalopioidsettlement.com/states/missouri/>; Mo. Dep't of Mental Health, "Summary of National Settlements," <https://moopioidsettlements.dmh.mo.gov/Settlement/SettlementFundSummary>.
- <sup>2</sup> Memorandum of Understanding Between the State of Missouri and its Political Subdivisions on Proceeds Relating to the Settlement of Opioid Litigation (Feb. 18, 2022), <https://nationalopioidsettlement.com/wp-content/uploads/2022/03/Missouri-AG-signed-Memorandum-of-Understanding-with-Client-Signature-Page.pdf>.
- <sup>3</sup> Mo. Dep't of Mental Health, Missouri Opioid Settlements, <https://moopioidsettlements.dmh.mo.gov/>.
- <sup>4</sup> Mo. Dep't of Mental Health, "Allowable Use List," <https://moopioidsettlements.dmh.mo.gov/Resources/AllowableUses>; Mo. Rev. Stat. § 196.1050.
- <sup>5</sup> Centers for Disease Control and Prevention, Syringe Services Programs, <https://www.cdc.gov/ssp/index.html>.
- <sup>6</sup> See, e.g., Network for Public Health Law, Harm Reduction Laws in the United States (Sept. 2020), <https://www.networkforphl.org/wp-content/uploads/2020/12/50-State-Survey-Harm-Reduction-Laws-in-the-United-States-final.pdf>.
- <sup>7</sup> Mo. Dep't of Health and Senior Servs., Missouri Opioid Overdose and Bloodborne Infection Vulnerability Assessments, <https://health.mo.gov/data/opioids/pdf/vulnerability-assessments-full-report-2022.pdf>.
- <sup>8</sup> Mo. Dep't of Health and Senior Servs., Drug Overdose Dashboard – Fatal Overdoses, <https://health.mo.gov/data/opioids/>.
- <sup>9</sup> Mo. Dep't of Health and Senior Servs., Missouri Opioid Overdose and Bloodborne Infection Vulnerability Assessments pp. 21-25, <https://health.mo.gov/data/opioids/pdf/vulnerability-assessments-full-report-2022.pdf>.
- <sup>10</sup> Memorandum of Understanding Between the State of Missouri and its Political Subdivisions on Proceeds Relating to the Settlement of Opioid Litigation (Feb. 18, 2022), <https://nationalopioidsettlement.com/wp-content/uploads/2022/03/Missouri-AG-signed-Memorandum-of-Understanding-with-Client-Signature-Page.pdf>. The Bankruptcy Settlement Funds will be divided as follows: 85 percent to the state share and 15 percent to the litigating subdivisions.
- <sup>11</sup> Mo. Dep't of Mental Health, "Summary of National Settlements," <https://moopioidsettlements.dmh.mo.gov/Settlement/SettlementFundSummary>.
- <sup>12</sup> Mo. Dep't of Mental Health, Missouri Opioid Settlements, <https://moopioidsettlements.dmh.mo.gov/>.
- <sup>13</sup> Mo. Dep't of Mental Health, "Allowable Use List," <https://moopioidsettlements.dmh.mo.gov/Resources/AllowableUses>; Mo. Rev. Stat. § 196.1050.
- <sup>14</sup> Mo. Dep't of Mental Health, "Allowable Use List," <https://moopioidsettlements.dmh.mo.gov/Resources/AllowableUses>.
- <sup>15</sup> Mo. Rev. Stat. § 196.1050.
- <sup>16</sup> Mo. Dep't of Health and Senior Servs., "First Annual Report to the Missouri General Assembly on Opioid Settlement Funds," <https://moopioidsettlements.dmh.mo.gov/PublicReports/AnnualReport>.
- <sup>17</sup> OpioidSettlementTracker.com, <https://www.opioidsettlementtracker.com/>.
- <sup>18</sup> St. Louis County, MO, Substance Use Action Plan 2022-2024, [my.stlouiscountymo.gov/st-louis-county-departments/public-health/health-data-and-statistics/community-health-research/substance-use-action-plan1/](https://my.stlouiscountymo.gov/st-louis-county-departments/public-health/health-data-and-statistics/community-health-research/substance-use-action-plan1/).
- <sup>19</sup> Mo. Ass'n of Counties, Counties by Classification, <https://www.mocounties.com/missouri-county-classifications>.
- <sup>20</sup> Mo. Found. For Health, "Reducing Opioid Deaths in Missouri: Harm Reduction Strategies," <https://mffh.org/wp-content/uploads/2022/09/Reducing-Opioid-Deaths-in-Missouri-Harm-Reduction-Strategies.pdf>. Note that research has suggested that naltrexone is not as safe as other treatment options including buprenorphine-based drugs or methadone. See, e.g., Maia Szalavitz, Vivitrol, Used to Fight Opioid Misuse, Has a Major Overdose Problem, Scientific American (Sept. 13, 2023), <https://www.scientificamerican.com/article/vivitrol-used-to-fight-opioid-misuse-has-a-major-overdose-problem/>.
- <sup>21</sup> Mo. Rev. Stat. § 579.088.
- <sup>22</sup> Vital Strategies, "Guide for Community Advocates on the Opioid Settlement: Missouri," <https://www.vitalstrategies.org/wp-content/uploads/Missouri-Opioid-Settlement-Fact-Sheet.pdf>.
- <sup>23</sup> Mo. Rev. Stat. § 195.206(2).
- <sup>24</sup> Naloxone is a medication that can reverse an opioid overdose.

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- <sup>25</sup> Mo. Dep't of Health and Senior Servs., Naloxone HCL Dispensing Protocol (Aug. 22, 2023), <https://health.mo.gov/data/opioids/pdf/naloxone-standing-order.pdf>.
- <sup>26</sup> Mo. Rev. Stat. § 195.206(3)-(4); Mo. Rev. Stat. § 338.205.
- <sup>27</sup> Mo. Rev. Stat. § 195.206(5)
- <sup>28</sup> Mo. Dep't of Health and Senior Servs., Overdose Prevention and Response, <https://health.mo.gov/living/families/more/>.
- <sup>29</sup> Mo. Rev. Stat. § 195.205.
- <sup>30</sup> Mo. Rev. Stat. § 195.205.
- <sup>31</sup> Centers for Disease Control and Prevention, Syringe Services Programs, <https://www.cdc.gov/ssp/index.html>.
- <sup>32</sup> Mo. Rev. Stat. § 195.010(18)(k).
- <sup>33</sup> Mo. Rev. Stat. § 579.040.
- <sup>34</sup> Mo. Rev. Stat. § 579.074.
- <sup>35</sup> Mo. Rev. Stat. § 579.076.
- <sup>36</sup> Mo. Dep't of Mental Health, "Allowable Use List," <https://moopioidsettlements.dmh.mo.gov/Resources/AllowableUses>.
- <sup>37</sup> See, e.g., NASEN, Harm Reduction Locations, <https://nasen.org>.
- <sup>38</sup> See, e.g., Mo. SB 64 (2021), Mo. HB 1486 (2020), Mo. HB 168 (2019), Mo. HB 1620 (2019).
- <sup>39</sup> See, e.g., Mo. HB 2367 (2018), Mo. SB 989 (2020), Mo. SB 445 (2021).
- <sup>40</sup> National Harm Reduction Coalition, Overview of Supervised Consumption Services in the United States, <https://harmreduction.org/issues/supervised-consumption-services/overview-united-states/>.
- <sup>41</sup> See, e.g., Mo. HB 2367 (2018), Mo. SB 989 (2020), Mo. SB 445 (2021).
- <sup>42</sup> Johns Hopkins Bloomberg School of Public Health, "To Guide Jurisdictions in the Use of Opioid Litigation Funds, We Encourage the Adoption of Five Guiding Principles," <https://opioidprinciples.jhsph.edu/the-principles/>.