



## HARM REDUCTION AND OVERDOSE PREVENTION Fact Sheet

# Supplantation in the Context of Opioid Settlement Funds

## Introduction

Legislators and other public officials are currently deciding how to distribute over \$55 billion awarded to state and local governments from opioid-related lawsuit settlements.<sup>1</sup> One of the many issues they are facing is whether and how to restrict or prohibit the use of those funds to replace existing funding streams rather than to make additional investments in areas such as substance use disorder prevention, harm reduction, and evidence-based treatment. For example, Blair County, Pennsylvania reportedly spent about \$320,000 of opioid settlement funds on a drug court the county had been operating with other funding sources for more than two decades, effectively swapping the source of funding rather than using settlement funds to start a new initiative.<sup>2</sup>


This practice, termed “supplantation,” is not generally addressed by the terms of the major opioid settlement agreements.<sup>3</sup> However, some states have enacted laws, rules, or guidelines that restrict or prohibit such supplantation. Precise definitions and mechanisms for enforcement vary by state. This fact sheet provides a description and brief analysis of how various states are addressing this issue, including how they have defined “supplantation” and how restrictions on supplantation in the context of opioid settlement funds, where they exist, are monitored and enforced.

## Definitions

According to a recent Kaiser Family Foundation report, 13 states<sup>4</sup> and Washington, D.C. restrict supplantation in the context of opioid settlement funds.<sup>5</sup> Some broadly prohibit the practice across all settlement funds, while others apply restrictions only to funds controlled by local governments, settlement councils, or other entities. Most of these restrictions are found in legislative provisions, but some are incorporated into the agreements themselves or in documents that govern the distribution of funds. Some settlement documents do not explicitly restrict supplantation, but require funds to be used for “forward-looking” expenditures, or words to that effect. Examples of these various approaches are provided below.

## Legislative Restrictions

- **Connecticut:** Opioid settlement funds cannot supplant or take the place of any other funds that would have otherwise been spent for the same purpose.
  - “Moneys expended from the fund for the purposes set forth in subsection (d) of this section shall be supplemental to, and shall not supplant or take the place of, any other funds, including, but not limited to, insurance benefits or local, state or federal funding, that would otherwise have been expended for such purposes. [...] As used in this subdivision, “supplemental” means additional funding, consistent with the




provisions of this section, for substance use disorder abatement infrastructure or a substance use disorder abatement program, service, support or resource to ensure that funding in the current fiscal year exceeds the sum of federal, state, and local funds allocated in the previous fiscal year for such substance use disorder abatement infrastructure, program, service, support or resource.”<sup>6</sup>

- **Kansas:** Opioid settlement funds cannot be used to supplant other funding sources.
  - “Moneys in the Kansas fights addiction fund shall be expended [...] to qualified applicants for projects and activities that prevent, reduce, treat or mitigate the effects of substance abuse and addiction. Any such expenditure for a grant shall not be used to supplant any other source of funding.”<sup>7</sup>
- **Michigan:** Opioid settlement funds must be used to create or supplement programs and services, not to replace funds that would have otherwise been spent.
  - “Money in the Michigan opioid healing and recovery fund must be used to create or supplement programs or services. The money must not be used to replace any other governmental funds that would otherwise have been appropriated or expended for any other program or service.”<sup>8</sup>
- **Nevada:** Opioid settlement funds cannot be used to supplant existing funding.
  - “Money expended from the Fund must not be used to supplant existing methods of funding that are available to state, regional, local or tribal agencies.”<sup>9</sup>
- **New York:** Opioid settlement funds cannot be used to supplant or replace other funds that would have otherwise been spent.
  - “Money expended from [the opioid settlement] fund shall be used consistent with the terms of any statewide opioid settlement agreements as defined in section 25.18 of the mental hygiene law. Moneys of the fund shall be used to supplement and not supplant or replace any other funds, including federal or state funding, which would otherwise have been expended for substance use disorder prevention, treatment, recovery or harm reduction services or programs.”<sup>10</sup>
- **Vermont:** Opioid settlement funds cannot be used to supplant or replace existing funding.
  - “Disbursements from the Opioid Abatement Special Fund shall supplement and not supplant or replace any existing or future local, State, or federal government funding for infrastructure, programs, supports, and resources, including health insurance benefits, federal grant funding, and Medicaid and Medicare funds.”<sup>11</sup>

## Non-Legislative Restrictions

- **California:** The terms of some opioid settlements require that funds are used to supplement and not supplant other funds.
  - State legislation requires that opioid settlement funds be used for opioid remediation in accordance with the terms of the judgment or settlement from which the funds were received.<sup>12</sup> In the McKinsey & Company settlement, for example, the judgment specified that the State of California’s portion of the settlement funds would be used by the state to support efforts to remediate the opioid crisis, and would “supplement, and not supplant, other funds used for these purposes.”<sup>13</sup>
- **Massachusetts:** The State-Subdivision Agreement and Abatement Terms restrict supplantation of opioid settlement funds and require that funds are used instead to supplement and strengthen resources.
  - The Massachusetts State-Subdivision Agreement for Statewide Opioid Settlements states: “Abatement Funds shall be used solely to supplement and strengthen, rather than supplant, resources for prevention, harm reduction, treatment, and recovery.” The Massachusetts Abatement Terms state, more specifically: “The Commonwealth and its municipalities have a shared commitment to using abatement funds



recovered from statewide opioid settlements to supplement and strengthen resources available to Massachusetts communities and families for substance use disorder prevention, harm reduction, treatment, and recovery in a matter that: [...] encourages innovation, fills gaps and fixes shortcomings of existing approaches; supplements rather than supplants resources for prevention, harm reduction, treatment, and recovery; includes evidence-based, evidence-informed, and promising programs; and takes advantage of the flexibility that is allowed for these funds.”<sup>14</sup>

## Less Specific Language

Six states – Colorado<sup>15</sup>, Illinois<sup>16</sup>, Michigan<sup>17</sup>, Montana<sup>18</sup>, Ohio<sup>19</sup>, and Rhode Island<sup>20</sup> – use the terms “forward-looking” or “future” in settlement documents to describe how opioid settlement funds should be used. Depending on the specific context and additional guidance issued by the parties responsible for distributing funds, these terms may not be sufficient to prohibit or restrict supplantation. States that currently use such language and wish to restrict or prohibit supplantation may wish to issue more specific guidance on the use of settlement funds.

No states were found in this research to use “forward-looking,” “future,” or similar terms in legislation. All legislative provisions reviewed explicitly use the term “supplant,” except Michigan, which uses the term “replace.”

## Enforcement


States have implemented various mechanisms to ensure general compliance with opioid settlement fund expenditure requirements, primarily including monitoring and regular reporting. Few states, however, have an explicit mechanism to enforce anti-supplantation requirements. Examples of both types of approaches are provided below.

### General Enforcement

- **California**
  - California names the Department of Health Care Services as the oversight and monitoring entity for settlement funds. Cities and counties receiving funds from the opioid settlements are required to submit written reports at least annually regarding the use of those funds.<sup>21</sup>
- **Massachusetts**
  - Massachusetts requires participating municipalities to submit annual reports on their expenditures, which describe efforts to solicit community input regarding how funds should be spent, the funds that were received and expended, the abatement strategies that were selected, and efforts to address service disparities and inequity. All reports are made public to support full transparency of the use of opioid abatement funds.<sup>22</sup>
- **Nevada**
  - State legislation requires the recipients of municipality grants to annually submit to the Department of Health and Human Services a report concerning the expenditure of the money that was received and the outcomes of the projects on which that money was spent.<sup>23</sup>

### Specific Anti-Supplantation Enforcement

- **Connecticut:** State legislation requires that the Office of Policy and Management send a letter each year verifying that opioid settlement funds are used for the intended purposes and that the funds allocated are at least as much as in the previous year’s budget.
  - “The commissioner shall not disburse moneys from the fund during any fiscal year unless the Secretary of the Office of Policy and Management transmits to the committee a letter verifying that funds appropriated and allocated in such fiscal year’s budget for substance use disorder abatement infrastructure, programs, services, supports and resources for prevention, treatment, recovery and harm reduction are in an



amount not less than the sum of the funds for such purposes appropriated and allocated in the previous fiscal year's budget.”<sup>24</sup>

- **New York:** State legislation requires that the relevant commissioners provide a written report each year that includes how opioid settlement funds are being used and any information that would help ensure the funding is not being used to supplant existing funding.
  - “On or before November first of each year, beginning one year after the initial deposit of monies in the opioid settlement fund, the relevant commissioners, shall provide a written report to the governor, temporary president of the senate, speaker of the assembly, chair of the senate finance committee, chair of the assembly ways and means committee, chair of the senate alcoholism and substance abuse committee, chair of the assembly alcoholism and drug abuse committee, and the opioid settlement advisory board. Such report shall be presented as a consolidated dashboard and be made publicly available on the respective offices' websites. The report shall, to the extent practicable after making all diligent efforts to obtain such information, include the following:
    - (ii) how funds deposited in the opioid settlement fund had been utilized in the preceding calendar year, including but not limited to:
      - (F) any other information the commissioner deems necessary to help inform future appropriations and funding decisions, and ensure such funding is not being used to supplant local, state, or federal funding.”<sup>25</sup>

## Model Legislation

In 2021, the Office of National Drug Control Policy funded the creation of a Model Opioid Litigation Proceeds Act (“Model Act”) that addresses the use of opioid settlement funds. A recent report from the Johns Hopkins Bloomberg School of Public Health<sup>26</sup> on states’ readiness to receive opioid settlement funds recommended that jurisdictions pass legislation that specifically requires that funds from the opioid litigation not supplant existing funding. The report suggested the Model Act as a reference for sample language prohibiting the supplantation of existing spending, including an enforcement mechanism. The sample language is below:

Expenditures supplementary.—Monies expended from the Fund for the purposes set forth in subsection (c) shall be supplemental to, and shall not supplant or take the place of, any other funds, including insurance benefits or local, state, or federal funding, that would otherwise have been expended for such purposes. The [Treasurer] shall not disburse monies from the Fund during any [state] fiscal year unless the Governor and the leaders of the legislative chambers transmit to the Council a letter verifying that funds appropriated and allocated in such fiscal year’s state budget for substance use disorder abatement infrastructure, programs, services, supports, and resources for prevention, treatment, recovery, and harm reduction are no less than the sum of the funds for such purposes appropriated and allocated in the previous fiscal year’s state budget. All funds appropriated for substance use disorder abatement infrastructure, programs, services, supports, and resources for prevention, treatment, recovery, and harm reduction shall be made available for disbursement during the fiscal year for which they are appropriated and if not fully expended, shall be made available in each subsequent fiscal year until fully expended.

States that wish to restrict or prohibit supplantation may wish to consider incorporating this language or language substantially similar in legislation, regulation, or binding agreements.

## Conclusion

The Model Act,<sup>27</sup> the Johns Hopkins Bloomberg School of Public Health,<sup>28</sup> and the National Governors Association<sup>29</sup> have identified non-supplantation as a best practice. For states looking to restrict or prohibit supplantation, the Model Act and the examples in this fact sheet of enforceable restrictions implemented by some states may provide guidance for the creation of enforceable restrictions on the use of settlement funds.



## Examples and Resources

### Hypothetical Examples

- In 2022 and 2023, a large county had spent approximately \$100,000 annually on the provision of medications for opioid use disorder (MOUD) in county jails. In 2024, the county received \$1 million from an opioid settlement and used \$100,000 of those funds to continue the MOUD program at the same level as before, directing the money that had previously been spent on MOUD to general jail operations. This is a clear example of supplantation.
  - To supplement rather than supplant the funds, the county could add funds from the opioid settlement agreement to its existing budget for jail-based MOUD, so that the total amount spent on those services exceeds \$100,000.
- In 2023, a state agency received a \$150,000 one-year grant to purchase and distribute naloxone. The grant funding ended at the end of 2023. In 2024 the state received opioid settlement funds and allocated \$150,000 of those funds to re-start the naloxone distribution program. Because the 2023 grant funding was time-limited and would have ceased regardless of the opioid settlement funds becoming available, this is likely *not* supplantation.

### Resources for Further Reading

- Legislative Analysis and Public Policy Association: [Model Opioid Litigation Proceeds Act](#)
- Johns Hopkins Bloomberg School of Public Health: [Ten Indicators to Assess the Readiness of State and Local Governments to Receive the Opioid Settlement Funds](#)
- Department of Justice: [Supplanting Guide Sheet](#)
- The NonProfit Times: [Use Grants To Supplement, Not Supplant](#)


This document was developed in June 2024 by Nina Shields and Corey Davis at the Network for Public Health Law's Harm Reduction Legal Project ([harmreduction@networkforphl.org](mailto:harmreduction@networkforphl.org)). The Network for Public Health Law promotes public health through non-partisan educational resources and technical assistance. This document is provided for informational purposes only and does not constitute legal advice or legal representation. Neither provision of this document nor any communications with the Network for Public Health Law and its staff create an attorney-client relationship. For legal advice, please contact an attorney in your state.

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## References

- <sup>1</sup> Opioid Settlement Tracker. 2024, July 14. *Global Settlement Tracker*, <https://www.opioidsettlementtracker.com/globalsettlementtracker>.
- <sup>2</sup> Pattani, A. 2024, April 15. *Swap Funds or Add Services? Use of Opioid Settlement Cash Sparks Strong Disagreements*. KFF Health News. <https://kffhealthnews.org/news/article/opioid-settlement-money-controversy-replacement-funds-budget-supplantation-addiction-services/>. We provide this as an illustrative example and do not intend to suggest drug courts as a priority use of settlement funds.
- <sup>3</sup> See, e.g., National Opioid Settlement. 2023, February 8. *Teva Global Opioid Settlement Agreement*. <https://nationalopioidsettlement.com/wp-content/uploads/2023/08/Final-Teva-Global-Settlement-Agreement-and-Exhibits-8.29.23.pdf>; National Opioid Settlement. 2023, January 9. *Janssen Settlement Agreement*. <https://nationalopioidsettlement.com/wp-content/uploads/2023/01/Janssen-agreement-03302022-FINAL2-Exhibit-G-as-of-1.9.23.pdf>; National Opioid Settlement. 2023, February 3. *CVS Settlement Agreement*. <https://nationalopioidsettlement.com/wp-content/uploads/2024/03/2022-12-09-CVS-Global-Opioid-Settlement-Agreement-with-2023-02-03-Technical-Corrections-and-2023-09-29-and-2023-12-15-Updates.pdf>
- <sup>4</sup> The states are Connecticut, Delaware, Kansas, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Vermont, Virginia, and Wisconsin.
- <sup>5</sup> Pattani, A. 2024, April 15. *Swap Funds or Add Services? Use of Opioid Settlement Cash Sparks Strong Disagreements*. KFF Health News. <https://kffhealthnews.org/news/article/opioid-settlement-money-controversy-replacement-funds-budget-supplantation-addiction-services/>
- <sup>6</sup> Conn. Pub. Acts 22-48 Sec. 2(f)(6).
- <sup>7</sup> Kan. Stat. Ann. § 75-777(b).
- <sup>8</sup> Mich. Comp. Laws § 12.253(3).
- <sup>9</sup> Nev. Rev. Stat. Ann. § 433.732(7).
- <sup>10</sup> N.Y. State Fin. Law § 99-NN(3).
- <sup>11</sup> Vt. Stat. Ann. tit. 18, § 4774a.
- <sup>12</sup> Cal. Gov. Code § 12534.
- <sup>13</sup> *The People Of The State Of Cali v. McKinsey & Company, Inc.*, RG21087649.
- <sup>14</sup> Mass.gov. *Massachusetts State-Subdivision Agreement for Statewide Opioid Settlements* <https://www.mass.gov/doc/march-4-2022-ma-subdivision-agreement/download>.
- <sup>15</sup> Colorado Attorney General. 2021, August 25. *Colorado Opioids Settlement Memorandum Of Understanding*. <https://coag.gov/app/uploads/2021/10/1-Colorado-Opioid-MOU.pdf>.
- <sup>16</sup> Illinois.gov. 2022, August 30. *Executive Order 2022-19*. <https://www.illinois.gov/government/executive-orders/executive-order.executive-order-number-19.2022.html>.
- <sup>17</sup> National Opioid Settlement. 2021, November 16. *Michigan State-Subdivision Agreement for Allocation of Distributor Settlement Agreement and Janssen Settlement Agreement*. <https://nationalopioidsettlement.com/wp-content/uploads/2022/01/Michigan-State-Subdivision-Agreement-1.5.22-with-Signature-and-Exhibit.pdf>
- <sup>18</sup> Montana Legislature. 2022, November 1. *Montana Distributors and Janssen Opioid Settlement Memorandum of Understanding*. <https://leg.mt.gov/content/Publications/fiscal/2025-Biennium/Section-D/Session/Knudson-Opioid-Settlement-Funds.pdf>.
- <sup>19</sup> One Ohio Foundation. 2021, July 28. *One Ohio Memorandum of Understanding*. <https://static1.squarespace.com/static/63039e77ef9043374638573c/t/633b2874a42ea851812ddf1d/1664821365993/ORF-MOU.pdf>.
- <sup>20</sup> Rhode Island Attorney General. 2022, January 21. *Rhode Island Memorandum of Understanding Between the State and Cities and Towns Receiving Opioid Settlement Funds*. <https://riag.ri.gov/media/2936/download>
- <sup>21</sup> Department of Health Care Services. *California's Opioid Settlements*. <https://www.dhcs.ca.gov/provgovpart/Pages/California-Opioid-Settlements.aspx>
- <sup>22</sup> Bureau of Substance Addiction Services. *Guidance for Municipalities Utilizing Opioid Settlement Abatement Payments*. <https://www.mass.gov/info-details/guidance-for-municipalities-utilizing-opioid-settlement-abatement-payments#reporting-requirements-for-municipalities->
- <sup>23</sup> Nev. Rev. Stat. Ann. § 433.740(3).
- <sup>24</sup> Public Act No. 22-48 Sec. 2(f)(6).
- <sup>25</sup> N.Y. Mental Hyg. Law § 25.18(c)(10).

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- <sup>26</sup> Johns Hopkins Bloomberg School of Public Health. 2021, December. *Ten Indicators to Assess the Readiness of State and Local Governments to Receive the Opioid Settlement Funds*. <https://opioidprinciples.jhsph.edu/wp-content/uploads/2022/04/Opioid-Litigation-Funds-Prep.pdf>.
- <sup>27</sup> Legislative Analysis and Public Policy Association. 2021, October 21. *Model Opioid Litigation Proceeds Act*. <https://legislativeanalysis.org/model-opioid-litigation-proceeds-act/>.
- <sup>28</sup> Johns Hopkins Bloomberg School of Public Health. 2021, December. *Ten Indicators to Assess the Readiness of State and Local Governments to Receive the Opioid Settlement Funds*. <https://opioidprinciples.jhsph.edu/wp-content/uploads/2022/04/Opioid-Litigation-Funds-Prep.pdf>.
- <sup>29</sup> National Governors Association. 2023, October. *NGA Opioid Litigation Settlement Funds Summit*. [https://www.nga.org/wp-content/uploads/2023/10/2023\\_Opioid\\_Post\\_Meeting\\_Issue\\_Brief\\_Oct2023.pdf](https://www.nga.org/wp-content/uploads/2023/10/2023_Opioid_Post_Meeting_Issue_Brief_Oct2023.pdf).