ANNUAL REPORT 2022

DELAWARE PRESCRIPTION OPIOID
SETTLEMENT DISTRIBUTION COMMISSION



Foreword from the Commission Co-chairs

The opioid epidemic has devastated Delaware, claiming the lives of thousands of our loved ones and friends. In response to this crisis, the Delaware General Assembly created the Delaware Prescription Opioid Settlement Distribution Commission (the "Commission") to oversee the distribution of settlement funds from the national opioid litigation.

The Commission has been hard at work since its inception, and the 2022 Annual Report is a testament to its progress. The report outlines the Commission's activities and accomplishments over the past year, including the efforts to establish the legal framework and administrative structures to distribute millions of dollars in grants to support prevention, treatment, harm reduction, and recovery services.

The Commission's work is essential to addressing the opioid epidemic in Delaware. By ensuring that settlement funds are disbursed to qualified and dedicated organizations on the front lines of this crisis, the Commission is helping to save lives and make our communities safer.

We are grateful to the members of the Commission for their dedication and hard work. We are also grateful to the many stakeholders who have contributed to the Commission's work, including the Governor's Office, the Department of Justice, the Department of Health and Social Services, the Behavioral Health Consortium, the Office of Management and Budget, and the community at large.

Together, we can make a difference in the fight against the opioid epidemic. The Commission's work is a critical part of this effort, and we are confident that they will continue to make progress in the years to come.

Sincerely,

Lieutenant Governor Bethany Hall-Long

Betheny A. Hall-Jong

Attorney General Kathleen Jennings

Annual Report 2022

Delaware Prescription Opioid Settlement Commission

Executive Summary

This is the first Annual Report published by the <u>Prescription Opioid Settlement Distribution Commission (the "Commission")</u>. The report is intended to provide transparency into how Delaware is using the national opioid settlement money and other resources and to update the public on the Commission's activities for the year.

The Commission was created in October 2021 as a subcommittee of the <u>Behavioral Health</u> <u>Consortium (the "BHC")</u>. The Commission is charged with making recommendations to the BHC concerning the distribution of settlement funds that Delaware will receive over the next thirteenplus years from opioid manufacturers, distributors, and pharmacies for their roles in the opioid epidemic and opioid impact fees that the State collects from opioid manufacturers. In its first full year, the Commission focused on establishing a committee structure and administrative support needed to effectively discharge its duties, seeking input from the public, laying the groundwork to identify near-term opioid abatement strategies and needs, and planning for future activities.

Delaware Lieutenant Governor Bethany Hall-Long and Delaware Attorney General Kathleen Jennings are co-chairs of the Commission and are responsible for guiding its administration. They are joined by thirteen other Commission Members and assisted by a small team of staff who carry out the daily functions of the Commission. The BHC provides the Commission with the staff and administrative resources it needs to be successful. The Commission's Executive Director, Susan Holloway, leads a team of administrative staff and subject matter experts who are responsible for supporting Commission and committee activities, facilitating public meetings, maintaining the Commission's website, administering grants, and publishing an annual report.

This report begins with an overview of the Commission's purpose, then summarizes the national opioid settlements and the legal steps that Delaware took to establish the Commission. Next, the report highlights the Commission's primary activities for the year and provides a detailed accounting of the settlement funds received in 2022. Finally, the report provides a roadmap for 2023 and includes several attachments for additional information.

Purpose of the Commission

The Commission was created to establish a coordinated and consensus-driven effort to repair the harm done to communities in this State by the opioid crisis. The Commission is tasked with ensuring that decisions on how to spend opioid-related funds are based on the consensus of

stakeholders through a process that considers the views and experiences of affected communities. The Commission's ultimate responsibility is to make informed funding recommendations to the BHC concerning the distribution of opioid settlement funds and impact fees through grants, contracts, or distributions to State agencies and local governments.

A majority vote of the BHC must approve funding recommendations made by the Commission. The BHC is comprised of community advocates, law enforcement, healthcare professionals, and state leaders focused on developing action-based solutions to address prevention, treatment, and recovery for mental health and substance use disorders. The BHC and the Commission are both dedicated to ensuring that available funding is used responsibly and effectively to abate the opioid crisis by implementing evidence-based strategies, including effective treatment interventions, harm reduction services, recovery supports, and prevention efforts statewide.

Overview of the Opioid Settlements

As chronicled by lawsuits brought by over 3,000 state and local governments nationwide, the pharmaceutical industry – including opioid manufacturers, distributors, and pharmacies – played a significant role in the opioid epidemic and are being held accountable for their actions. Over the last several years, Attorneys General nationwide put maximum pressure on parties who fueled and benefited from the epidemic through investigations, litigation, and settlements. As a result of the lawsuits and subsequent settlement negotiations that were co-led by Delaware Attorney General Kathleen Jennings, opioid defendants will pay over \$50 billion in damages to participating states. Delaware is expected to receive over \$250 million from the opioid settlements.

Delaware's Opioid-Related Legislation

In 2019 and 2021, Delaware passed two pieces of legislation that established the legal framework for the administration of opioid settlement funds and opioid impact fees.

Senate Bill 34 (2019):

In response to the dramatic increase in opioid-related deaths, the Delaware Department of Justice ("DOJ") began investigating and initiating lawsuits against opioid defendants in 2017. In 2019, the General Assembly passed Senate Bill 34 (S.B. 34), which created an Opioid Impact Fee Fund ("OIFF") as a dedicated source of funding for the prevention and treatment of opioid use disorder. S.B. 34 imposed an impact fee on opioid manufacturers equal to one cent per morphine milligram equivalent ("MME") or one-quarter of a cent per MME for generic substitutions. OIFF collections started in 2020 and yielded approximately \$350,000 in 2021. Since then, annual collections have decreased as opioid prescriptions have declined.

Under S.B. 34, the monies from the OIFF are permitted to be used for opioid prevention and addiction services, such as inpatient and outpatient treatment programs, recovery residences, treatment for the underinsured and uninsured, Narcan distribution, and peer support programs. Originally, the Department of Health and Social Services ("DHSS") was responsible for making distributions from the OIFF. However, this changed with the passage of <u>Senate Bill 166</u> ("S.B. 166"), which gave responsibility to the Commission and the BHC.

Senate Bill 166 (2021):

In 2021, Delaware worked to establish the legal framework and administrative structures needed to manage opioid settlement proceeds. Those efforts culminated in the General Assembly's passage of S.B. 166, which Governor Carney signed into law in October 2021. S.B. 166 established the Opioid Settlement Fund ("OSF"). The monies from the OSF are permitted to be used for services that remediate and reduce the harm caused by opioids as long as they are consistent with the terms of the National Distributor Settlement Agreement. In addition to establishing the OSF, S.B. 166 details distribution guidelines and the roles and responsibilities of the Commission and the BHC (summarized below).

Commission Responsibilities:

- Make recommendations to the BHC regarding all distributions from the money in the OSF and OIFF.
- Set the dates, times, and places for Commission meetings and supervise the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports.
- Adopt rules or procedures governing the work of the Commission that include ethics standards and procedures to identify and address conflicts of interest.
- Establish a webpage dedicated to the work of the Commission and publish a list of the members, meeting notices, agendas, minutes, and reports.
- Ensure that any report produced by the Commission is distributed to members of the Delaware General Assembly, the Governor, the Director and the Librarian of the Division of Research of the Legislative Council, and the Delaware Public Archives.
- Establish a Local Government Committee to provide recommendations regarding the distribution of money from the OSF and OIFF
- Create additional committees as needed and appoint a member of the Commission to serve as the chair of each committee and the initial committee members. Individuals who are not members of the Commission may serve as members of a committee.
- Solicit and review any recommendations regarding the distribution of money from all of the following: the Behavioral Health Consortium, the Addiction Action Committee, the Overdose System of Care Committee, and the Drug Overdose Fatality Review Committee.

- Seek input from the public and private entities and individuals concerned with the intended purposes of the funds and conduct public hearings as necessary to provide an opportunity for public comment.
- Use data and evidence on community harm to guide distributions and procure reports to help guide the work of the Commission.
- Produce an annual report that includes all of the following:
 - The amounts and sources of monies received by the OSF.
 - The aggregate amount of monies received by the OIFF.
 - o By fund, the amounts and sources of any other monies received.
 - By fund, the contracts or grants awarded by the BHC, including the identity of each recipient, the amount of the award, the subject matter or program involved, and the primary terms and conditions of the award or contract.
 - By fund, the amounts disbursed in respect of approved contracts, grants and other authorized expenditures and administrative expenses, including amounts disbursed to qualifying local governments for local government block grants.

BHC Responsibilities:

- Distribute the money based on the recommendations of the Commission by awarding grants, directing the Secretary of DHSS to enter into contracts, or distributing funds to state agencies and local governments to be administered as directed by the Commission.
- Provide administrative support to the Commission.

Summary of Activities in 2022

To effectively launch the Commission after S.B. 166 was codified, Lt. Governor Bethany Hall-Long and Attorney General Kathleen Jennings recruited and onboarded Commission Members, coordinated with the BHC, and began meeting quarterly. In 2022, the Commission's primary activities included establishing the Local Government Committee and four standing committees, developing interim grant guidelines and procedures, conducting community listening sessions, publishing a public website, and working with the BHC to launch the initial grant funding round ("Phase 1A").

Committees:

In 2022, the Commission created five Committees to help carry out its primary activities. The Committees include the following:

• Local Government Committee ("LGC"): The LGC has the statutory authority to recommend to the Commission how to distribute money from the settlement funds. The LGC is responsible for ensuring that the funds are distributed in a way that benefits all of Delaware's communities.

- **Behavioral Health Resources Committee:** Responsible for identifying treatment and support services statewide and identifying gaps in the system. The committee is also responsible for developing recommendations on improving the state's behavioral health system.
- Governance Committee: Responsible for establishing ethics standards and monitoring conflicts of interest. The committee also ensures that the Commission is following the responsibilities identified in the DE code.
- Public Outreach and Community Input Committee: Determines and executes best practices for gathering stakeholder input and identifying trends in data/activities. The committee is responsible for ensuring that the Commission hears from various voices as it makes decisions about how to spend the settlement funds.
- **Budget and Reporting Committee:** Responsible for tracking receivables and expenditures and approving the annual report. The committee also ensures the Commission is accountable for using the settlement funds.

Guidelines, Agreements, and Grant Priorities:

In 2022, the Commission helped to develop interim <u>Guidelines</u> to govern the solicitation and vetting of grants under a limited, near-term grant program designated as Phase 1A. The Guidelines address prohibited uses, eligibility and screening criteria, and procedures for the grant application vetting process. The Commission also developed a form of <u>Grant Agreement</u> that details the terms and conditions that govern the distribution of funds to grant recipients in Phase 1A. All grant recipients must sign the Grant Agreement before receiving funding.

To frame the development of grant priorities, the Commission followed the core abatement strategies provided in the National Distributor Settlement Agreement and the guidance published by Johns Hopkins University, Bloomberg School of Public Health. The principles established by Johns Hopkins include the following:

- **Spend money to save lives:** Encourages jurisdictions to establish a dedicated fund designed to supplement (not supplant) existing funding sources over an extended period.
- Use evidence to guide spending: Encourages jurisdictions to fund initiatives demonstrated by research to work, remove policies that impede the implementation of evidence-based initiatives, and ensure sufficient data collection infrastructure.
- **Invest in youth prevention:** Encourages jurisdictions to fund evidence-based prevention programs that target youth and long-term evaluation efforts to measure effectiveness.
- **Focus on equity:** Encourages jurisdictions to direct significant funds to communities affected by years of discriminatory policies and now experiencing substantial increases in overdoses. Jurisdictions should fund programs in communities of color, support diversion

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¹ "Principles for the Use of Funds From the Opioid Litigation." Johns Hopkins Bloomberg School of Public Health. opioidprinciples.jhsph.edu/the-principles/. (Accessed 24 July 2023)

- programs (from arrest and incarceration), fund anti-stigma campaigns, and involve community members.
- **Develop a fair and transparent process for deciding where to spend funds:** Encourages jurisdictions to use data to identify areas of need, get input from different groups of people impacted by the epidemic, and ensure diverse representation.

Community Outreach and Listening Sessions:

In 2022, the Commission held a series of public listening sessions throughout Delaware, gathering valuable input from individuals and families impacted by the opioid epidemic. Parents, community members, and frontline workers shared their personal experiences, offering candid insights into the struggles and strengths facing our communities. These sessions went beyond collecting information, fostering open dialogue, identifying resource gaps, and generating a united call for effective solutions. The Commission recognizes the significant responsibility entrusted to it through these conversations, and we are committed to translating their invaluable perspectives into action. The listening sessions help shape our grant-making initiatives to address critical needs and will continue in 2023 and beyond.

Commission Website and Community Engagement:

To promote transparency and encourage public engagement, the Commission published a user-friendly website in collaboration with the Delaware Department of Technology and Information. The website includes essential information about the Commission, including access to meeting minutes, webinars, grant information, news, and more. The Commission also developed a community engagement plan that includes public meetings, community listening sessions, grant webinars, and an online survey. A primary goal of the community engagement plan is to establish consensus on how the opioid settlement funds should be spent.

Phase 1A Grant Application:

On December 1, 2022, the Commission launched the application process for Phase 1A with a budget of approximately \$3 million. The application period was open until December 28, 2022. For the first phase, the Commission decided to limit grants to \$100,000 or less based on the grant priorities established by the Commission. There were over one hundred applications from state agencies, local governments, nonprofit organizations, and local businesses, with a total request amount exceeding \$9 million.

The Commission reviewed the applications and made recommendations to the BHC in early 2023. However, this Report is limited to the Commission's activities in 2022. Therefore, the results from Phase 1A are not included here. Please visit the Commission's website for information related to 2023 activities.

Accounting Details

The Commission is required to publish an annual report that includes accounting details regarding monies received, monies distributed, and administrative expenses. This section summarizes the accounting details for the **OSF**, the **OIFF**, and the **Administrative Fund**, which includes money transferred from the OSF and OIFF.

Opioid Settlement Fund:

The table below includes the total amount of money received in the OSF in 2022 net of amounts sent directly to outside counsel by the settlement administrator, the opening balance from 2021,² and the amount of money transferred to the Administrative Fund.³ Payments for outside counsel fees and costs were remitted by the settlement administrator directly to the firms in amounts set by the applicable consent judgements and court orders.⁴ Although the Commission did not distribute grants in 2022, it voted to set aside \$3,000,000 for grant distribution in 2023.

	Source	Date Received	Amount Received by Outside Counsel	Amount Received by State	Total Payment Amount
1	McKinsey	February 2022	\$0	\$110,590.61	\$110,590.61
2	Johnson & Johnson/Jansen	December 2022	\$2,808,280.00	\$13,003,857.81	\$15,812,137.81
3	Distributors	November 2022	\$7,965,521.61	\$0	\$7,965,521.61
4	Opening Balance from 2021 (McKinsey)			\$2,142,4	142.48
5	Total Amount Received by the State in 2022			\$13,114	.448.42
6	Amount Transferred to Administrative Fund			-\$655,7	722.42

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² There was a beginning balance in 2022 from settlement funds received from McKinsey in calendar year 2021, net of amounts transferred to the Administrative Account.

³ Under S.B. 166, the Commission may allocate \$300,000 or 5% (whichever is greater) of the total annual amount deposited into the OSF for administrative expenses.

⁴ Pursuant to a court-ordered settlement resolving disputes with the State's outside counsel for its opioids-related litigation, certain initial abatement fund payments in the Distributors and Johnson & Johnson settlements were directed to the reimbursement of litigation expenses and payment of attorneys' fees. The State expects to recoup a substantial majority of these payments from separate dedicated non-abatement funds established under those and other opioids-related settlements. As of July 1, 2024, \$9,168,268.46 has already been received and credited to the OSF.

	Source	Date Received	Amount Received by Outside Counsel	Amount Received by State	Total Payment Amount
1	McKinsey	February 2022	\$0	\$110,590.61	\$110,590.61
7	Amount Set Aside for Phase 1A Grant Distribution in 2023			-\$3,000	0,000
8	END OF YEAR BALANCE FOR THE STATE IN 2022		\$11,601,	168.48	

Opioid Impact Fee Fund:

In 2022, the OIFF had an opening balance of \$1,040,508.76, which reflects monies transferred by DHSS in connection with the transition of duties and authority to the BHC and the Commission pursuant to S.B. 166. The Commission did not receive any interest payments on the balance during 2022 because the special fund rate set by the Cash Management Policy Board was 0%. Therefore, the balance at the end of the year remained the same.

	Details	Amount Received
1	Opening Balance from 2021	\$1,040,508.76
2	Total Amount Received in 2022	\$0
3	Amount Transferred to Administrative Fund	\$0
4	Amount of Interest Earned in 2022	\$0
5	END OF YEAR BALANCE 2022	\$1,040,508.76

OSF & OIFF Administrative Fund (Revenues & Expenses):

In 2021, the OIF & OIFF Administrative Fund had an opening balance of \$300,000. This reflects the administrative statutory set-aside portion from the McKinsey settlement payment. It also provides the total annual amount deposited into the Administrative Fund in 2022 and the total of expenses incurred via staff and consultants who administer the activities of the commission.

	Fund	Revenues	Expenses Category	Expenses Total
1	OSF Administrative Fund	\$655,722.42	Staff Salaries and Consultants	-\$196,108.77
2	OIFF Administrative Fund	\$0	N/A	\$0
3	Total Revenue in 2022			\$655,722.42
4	Beginning Balance from 2021			\$300,000
5	Total Expenses – Staff Salaries and Consultants			-\$196,108.77
6	END OF YEAR BALANCE 2022			\$759,613.65

Expected Activities and Priorities for 2023

The Commission expects a busy year in 2023, with at least two grant funding rounds going out to deserving agencies, localities, non-profit organizations, and local businesses statewide. As grants are disbursed, the Commission will begin to support recipients and monitor their progress according to the established agreements and deliverables. To ensure ongoing input from community members, the Commission will continue to implement its community engagement strategies across the state and apply learnings to effectively address the needs of Delaware residents. Here are the specific activities and priorities for 2023:

- **Phase 1A:** The Commission will work with Phase 1A award winners to establish clear deliverables and measure progress. The Commission expects to distribute the initial round of funding in early Summer 2023.
- **Phase 1B:** The second round of funding is set to launch in Summer 2023. In Phase 1B, the Commission plans to increase the cap on funding and distribute a much larger pot of funding than in Phase 1A. The Commission will implement a new grant management software called Bonfire to enhance the application process going forward. The Commission will also facilitate grant webinars and one-on-one technical assistance sessions for interested applicants.
- Community Engagement: The Commission is committed to maintaining an up-to-date website that promotes public input and engagement. In addition, the Commission will continue to implement its community engagement strategy and create opportunities for public input by facilitating community listening tours, hosting public meetings, and conducting surveys. These efforts help the Commission make decisions based on stakeholders' consensus and the affected communities' views and experiences.

• Collaboration with Other States: While each state is responsible for developing a unique process for allocating settlement funds, state leaders regularly connect to share information about effective strategies and promising practices. This collaboration has helped the Commission learn from the experiences of other states and develop a more practical approach to distributing settlement funds.

Conclusion

The Commission is committed to using the settlement funds fairly and equitably to address the opioid epidemic in Delaware. By working with the BHC, other agencies, and municipalities and engaging with the community, the Commission is confident that it can make a real difference in the lives of those affected by this crisis.

References

• "Principles for the Use of Funds From the Opioid Litigation." *Johns Hopkins Bloomberg School of Public Health*. opioidprinciples.jhsph.edu/the-principles/. (Accessed 24 July 2023).

Other Valuable Resources

- Johns Hopkins Bloomberg School of Public Health: Principles for the Use of Funds From the Opioid Litigation
- National Association of Attorneys General: Opioids
- Opioid Settlement Tracker
- Vital Strategies: Opioid Settlement Funds: State-Level Guides for Community Advocates
- National Academy for State Health Policy: State Approaches for Distribution of National Opioid Settlement Funding
- National Opioids Settlement

Attachment A: Composition of the Commission

Member	Name	Representative
Attorney General	Kathleen Jennings, Co-Chair	Attorney General
Governor	vernor Bethany Hall-Long, Co-Chair	
Secretary DHSS	Secretary Molly Magarik	Division Director Joanna Champney
Senate Minority Caucus Member	Appointed by Senate Pro Tempore	Senator Stephanie Hansen
Senate Majority Caucus Member	Appointed by Senate Pro Tempore	Senator Bryant Richardson
House Minority Caucus Member	Appointed by Speaker of the House	Rep. Michael Smith
House Majority Caucus Member	Appointed by Speaker of the House	Rep. Kendra Johnson
Public Member (DE Resident)	Appointed by the Governor	Dr. Tammy Anderson
Public Member (DE Resident)	Appointed by the Attorney General	David Humes
New Castle County Member	Appointed by New Castle County Executive with Advice and Consent of County Council	Kenneth Dunn
Kent County Member	Appointed by Kent County Administrator with Advice and Consent of Levy Court	Collin Faulkner
Sussex County Member	Appointed by Sussex County Administrator with Advice and Consent of County Council	Todd Lawson
Representative of Municipal Govt.	Appointed by Governor: Selected from a List of Names Provided by the League of Local Governments	Chief Ken McLaughlin
Representative of SUD Advocacy Group	Appointed by the Attorney General	Donald Keister
Representative of the Recovery System	Appointed by the Governor	Dr. Lynn Fahey Morrison

<u>Attachment B: Composition of the Subcommittees</u>

Subcommittee	Committee Members		
Comprised of leadership from ten local government entities throughout the state Ensures the interests of individuals within their respective geographical jurisdictions are represented in the decision-making	 Kenneth L. Branner, Jr. (Chair) - Town of Middletown Robert C. Johnson (Vice Chair) - Town of Smyrna Kenneth Dunn - New Castle County Colin Faulkner - Kent County Todd F. Lawson - Sussex County Kenneth McLaughlin - Town of Ocean View Robin R. Christiansen - City of Dover David Genshaw - City of Seaford Stu Markham - City of Newark Arthur J. Campbell - City of Milford Mike Purzycki - City of Wilmington 		
 Behavioral Health Resources Committee Identify treatment and support services statewide Identify gaps in the system through a gap analysis 	 Dr. Lynn Fahey Morrison (Chair) - Brandywine Counseling Rep. Kendra Johnson - DE House of Representatives, 5th District Keith Pettiford, Ph.D President, National Pan-Hellenic Council of New Castle Sandra Gibney, MD - Private Citizen Shynelle Bordley-Barnes, LPC, CADC - Private Citizen Cindy Bo - Nemours Children's Hospital Jennifer Shalk – Meadowwod Behavioral Health Hospital 		
 Determines, implements, and monitors practices and trainings related to ethics standards and conflicts of interest. Ensures the Commission is following all responsibilities as identified in the DE code. 	 Dave Humes (Chair) - Private Citizen Hunter Hastings, CADC (Vice Chair) Brenda Wise - DE Office of Management and Budget Karryl Hubbard - DE Department of Labor Charles Sawchenko, DE State Police Joanna Champney - DE Dept. of Health and Social Services Jackie Griffith - Delaware State University James Bonds - Boardroom Presentations Jasmine Minhas - ACLU of Delaware 		
Public Outreach and Community Input Committee • Determines and executes best practices for gathering stakeholder input.	 Dr. Tammy Anderson (Chair) - University of Delaware Debra Mason (Vice Chair) - City of Wilmington Renee Beaman - DHSS/DSSC Division Director 		

Identifies trends in data/activities.	 Cassandra Codes-Johnson - Delaware Dept. of Education Dorothy Dillard - Delaware State University Bernice Edwards - First State Community Action Agency Michelle Santana, Ph.D Canaan Baptist Church Holly Rybinski, CSPS, BS - Brandywine Counseling & Community Services MaryBeth Cichocki - Private Citizen Katie Capelli, MPH - Delaware Division of Public Health, Office of Health Crisis Response
 Budget and Reporting Committee Tracks receivables and expenditures Informs the Commission of fund balances and availability of funding considerations 	 Don Keister (Chair) - Attack Addiction Michael Jackson (Vice Chair) - Private Citizen Earnest (Trippi) Congo - Wilmington City Council Cliffvon Howell - Private Citizen Marcia S. Scott - Delaware League of Local Governments Dr. Marlene Saunders - Private Citizen Chris Locke - SL24 UnLocke the Light Foundation Hersh Patel, MD - Veteran's Affairs and Narrative Heal