



KANSAS ATTORNEY GENERAL
DEREK SCHMIDT

A Brief Overview of the Opioids Settlements

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About Me

- ▶ Assistant Attorney General
- ▶ Admitted to the Bar in 2016
- ▶ Joined the AG's Office 2019
- ▶ Primary Role is Opioid Litigation and Settlement Implementation
- ▶ Subject-Matter Expert on Opioid Litigation, NOT Opioid Abatement Best Practices



Outline

- ▶ Overview of Announced Settlements
- ▶ Distribution Quirks and Uncertainties
- ▶ Duties Under the Announced Settlements
- ▶ Abatement Strategies
- ▶ The Kansas Fights Addiction Act
- ▶ Future Obligations and Developments



Announced Settlements

- ▶ Overview
 - ▶ Five Settlements Announced
 - ▶ ~\$195 million over 18 years
 - ▶ Balloon and Long Tail
- ▶ McKinsey and Associates
 - ▶ ~\$4.8 million over 5 years
 - ▶ ~\$4.1 million already received with three additional payments of \$205K expected
- ▶ Mallinckrodt PLC (Bankruptcy)
 - ▶ Between ~\$745 million to ~\$1 billion to all states
 - ▶ Between ~\$5.9 and \$8.4 million to Kansas over between 1 to 8 years
 - ▶ Uncertainty in valuation of bankruptcy assets, prepayment by Mallinckrodt, and trust operating expenses



Announced Settlements

- ▶ The Distributors
 - ▶ ~\$21 billion for all states
 - ▶ ~\$150 million for Kansas over 18 years
 - ▶ More money earlier in the settlement than later
 - ▶ Potential for early payment
 - ▶ Uncertainty on settlement administrator expenses
- ▶ Janssen/Johnson & Johnson
 - ▶ ~\$5 billion to all states
 - ▶ ~\$35 million to Kansas over 10 years
 - ▶ Nearly identical to Distributors settlement terms
 - ▶ Vast majority will be paid within the first two years of the settlement



Announced Settlements

- ▶ Purdue Pharma (Bankruptcy)
 - ▶ ~\$5 billion to all states
 - ▶ ~\$40 million to Kansas
 - ▶ Paid from between 10 to 18 years.
 - ▶ Extreme uncertainty due to current posture in the appellate courts related to release of the Sackler family.



Distribution Quirks and Uncertainties

- ▶ All distributions subject to different settlement terms, settlement payment schedules, and administrator expenses.
- ▶ Bankruptcy vs Settlement
 - ▶ Bankruptcy cases will involve bankruptcy trustees and separate bankruptcy trusts, which leads to additional expenses.
 - ▶ Settlements often include more terms imposed on the State, but should have lower expenses which means more coming to the State.
 - ▶ Settlements also include clearer access to attorney's fee funds, which means more for the state
- ▶ Prepayment and Accelerated Payment
 - ▶ Defendants are able to accelerate some payments
 - ▶ J&J will accelerate the majority of their obligation as we have 100% litigating subdivision participation
 - ▶ The option leads to uncertainty on amount in any given year
- ▶ Balloon and Long Tail

**See disclaimer



Duties Under the Announced Settlements

- ▶ Abatement is the Exclusive Purpose
 - ▶ At least 85% of the money must go for abatement purposes
 - ▶ Under the bankruptcies no more than 5% of the money can go towards non-abatement purposes
 - ▶ We want to keep our expenses at 5% to comply with all settlements
- ▶ Tracking and Reporting
 - ▶ Prove How the Money Was Spent
 - ▶ Report regularly to:
 - ▶ Legislature
 - ▶ Bankruptcy Trustees
 - ▶ Settlement Administrators



Abatement Strategies

- ▶ Each Settlement and Bankruptcy Imposes Duty to Limit Funds to Opioid (Substance Use) Abatement Purposes
- ▶ 15-Page Abatement Strategies List from J&J/Distributors is Illustrative
- ▶ Examples
 - ▶ Expanding access to treatment
 - ▶ In-Patient Care
 - ▶ MAT
 - ▶ Out-Patient Support Groups or Rehabilitation Programs
 - ▶ Harm Reduction
 - ▶ Warm Transfer Programs
 - ▶ OD Intervention Training for First Responders
 - ▶ NARCAN
 - ▶ Diverting SUD Patients Away From Addiction

**See disclaimer



Kansas Fights Addiction Act

- ▶ K.S.A. 75-775 to -781
- ▶ Established the Kansas Fights Addiction Fund and the Municipalities Fight Addiction Fund
 - ▶ 75% of all recovery goes to the KFAF
 - ▶ 25% of all recovery goes to the MFAF
- ▶ Established the Grant Review Board
- ▶ Directs All Recovery to Opioid and Substance Use Abatement
- ▶ Allowed for Contracting the Sunflower Foundation for Support and Financial Management
 - ▶ Includes temporary investment of opioid funds to maximize potential for additional resources
- ▶ Directs \$200 thousand each year to the Kansas prescription drug monitoring program (K-TRACS)

**See disclaimer



Grant Review Board

- ▶ K.S.A. 75-778 & -781
- ▶ 11 member board appointed by a variety of stakeholders
 - ▶ 6 votes necessary to approve each grant
 - ▶ Members from each congressional district
- ▶ May adopt rules and procedures for operation, conduct hearings, receive testimony, and gather information to assist its decision making powers, duties, and functions.
- ▶ Annual Report
 - ▶ By March 1 of each year
 - ▶ To the Speaker, President of the Senate, Governor, and AG
 - ▶ Includes
 - ▶ Accounting of moneys deposited into and expended from the KFAF
 - ▶ Summary of each approved grant
 - ▶ Explanation of compliance
 - ▶ Any other relevant information

**See disclaimer



Grant Evaluation Guidelines

- ▶ K.S.A. 75-778
- ▶ The Board shall consider 5 factors when evaluating grants
 - ▶ Not less than 1/8 of the total amount of moneys granted each calendar year is in each congressional district
 - ▶ Consider science- and data-driven substance abuse prevention, reduction, treatment, or mitigation strategies
 - ▶ Consult with the Kansas Prescription Drug and Opioid Advisory Committee, the Kansas Department of Health and Environment, the Kansas Insurance Department, and other appropriate public and private entities to ensure coordination of drug abuse and addiction prevention and mitigation efforts
 - ▶ Approve grants to qualified applicants for projects and activates that prevent, reduce, treat or mitigate the effects of substance abuse and addiction
 - ▶ Consider the sustainability of any programming after grant funds are exhausted



Grant Evaluation Guidelines

- ▶ When evaluating grants, the Board may:
 - ▶ Establish conditions for the award of grants and require assurance and subsequent review to ensure such conditions are satisfied
 - ▶ Give preference to qualified applicants that are not otherwise seeking or receiving funds from opioid litigation
 - ▶ Give preference to grants that expand availability of certified drug abuse treatment programs authorized by K.S.A. 2021 Supp. [21-6824](#)
 - ▶ Nonprison sanction to a certified drug abuse treatment program



Municipalities Fight Addiction Fund

- ▶ K.S.A. 75-777(d)
- ▶ Cities and Counties that chose to participate in the Municipalities Fight Addiction Fund shall receive their share of any opioid recovery received by the state
- ▶ Over 200 municipalities, representing over 85% of the Kansas population chose to participate
- ▶ These payments are to be in addition to any payment a city or county seeks as part of a grant from the Board



Future Developments

- ▶ Purdue Bankruptcy in appellate limbo
- ▶ Opioid litigation continues throughout the country with other defendants that may lead to future settlements
- ▶ We anticipate receiving funds for well over a decade



Questions?

- ▶ For questions outside of a public meeting, please route them through the board's counsel, and I will answer them as soon as possible.

