

United States Senate

WASHINGTON, DC 20510

September 25, 2023

Dr. Rahul Gupta
Director
Office of National Drug Control Policy
1800 G Street, NW
Washington, DC 20006

Dear Director Gupta:

Over the next 15 years, state and local governments are poised to receive more than \$50 billion from national opioid settlements.¹ This funding, drawn from the profits that pharmaceutical companies made by overprescribing opioids and underselling their potential dangers, presents a significant opportunity to redistribute ill-gained earnings to the people who the opioid epidemic harmed. We must take full advantage of these settlements to combat this crisis, therefore we urge the Biden administration to closely track opioid settlement fund spending, to ensure that populations in need of additional support receive it and to avoid duplicative federal efforts.²

In 2014, several states and localities sued drug manufacturers Purdue Pharma, Teva, Johnson & Johnson, Cephalon, Janssen Pharmaceuticals, Endo Health Solutions, and Actavis PLC.³ As the complaint stated, “a pharmaceutical manufacturer should never place its desire for profits above the health and well-being of its customers. When marketing a drug, a pharmaceutical manufacturer must tell the truth, which means ensuring that its marketing claims are supported by science and medical experience. Defendants broke these simple rules.”⁴ Seven years later, state attorneys general and localities reached settlement agreements with pharmaceutical opioid distributors, opioid manufacturers, and pharmacies, which included more than \$50 billion in funds going directly to state and local governments.⁵

The precise terms of these agreements vary, but most of the settlements stipulate that states use at least 85 percent of the money they receive on opioid abatement, such as addiction

¹ Hoag Levins, *Will States and Counties Spend Their National Opioid Settlements Effectively?*, U. Penn. Leonard David Inst. of Health Econ. (Feb. 14, 2023), <https://ldi.upenn.edu/our-work/research-updates/will-states-and-counties-spend-their-national-opioid-settlements-effectively/>.

² Aneri Pattani, *Repeating History: California County Plug Budget Gap With Opioid Settlement Cash*, KFF Health News (Aug. 2, 2023), <https://kffhealthnews.org/news/article/repeating-history-california-county-plugs-budget-gap-with-opioid-settlement-cash/>.

³ John Schwartz, *Chicago and 2 California Counties Sue Over Marketing of Painkillers*, New York Times (Aug. 24, 2014), <https://www.nytimes.com/2014/08/25/us/chicago-and-2-california-counties-sue-drug-companies-over-painkiller-marketing.html>.

⁴ *City of Chicago v. Purdue Pharma L.P. et al.*, Case No. 14-cv-04361, Compl. ¶1 (N.D. Ill. July 17, 2014), <https://s3.documentcloud.org/documents/1279494/final-chicago-complaint-redacted.pdf>.

⁵ Plfs.’ Exec. Comm., *Executive Summary of National Opioid Settlements*, Nat’l Opioids Settlement (accessed Sept. 11, 2023), <https://nationalopioidsettlement.com/executive-summary/>.

treatment and prevention.⁶ Most settlements do not require public reporting of the 85 percent of funds earmarked for opioid remediation; only the 15 percent of unrestricted, non-opioid remediation funds are subject to a public reporting requirement.⁷ Some states have committed to publicly report all of their settlement expenditures.⁸ Others have made no public reporting commitments, beyond the mandated 15 percent.⁹ However, the structure of the settlement reporting requirements is such that it incentivizes states *not* to report how they spend the settlement funds; in this “honor code” system, non-reporting is assumed to be evidence of opioid-related expenditures.

These opioid litigation settlements are second in size and scope only to the 1997 tobacco settlement agreement, in which states and localities entered into a \$368 billion master settlement agreement with tobacco companies.¹⁰ In the following decades, states spent only approximately 2.7 percent of the tobacco settlement funding on smoking prevention and cessation programs;¹¹ the vast majority of spending went to state and local general spending, infrastructure, and other areas unrelated to harms the lawsuit alleged the tobacco companies caused.¹² Some experts have referred to the tobacco settlements as “cautionary precedent.”¹³

The opioid settlements — more strongly tethered to addressing the opioid epidemic — will give state and local governments an opportunity for historic investments to address this crisis. But we cannot risk looking back decades from now at these settlements as a squandered opportunity. Already, nongovernmental entities are tracking the settlement funding and seeing a wide disparity in spending transparency and the amount of non-opioid-related funding.¹⁴ Meanwhile, the Biden administration and Congress are deciding how to spend billions of dollars in federal funding to address the opioid epidemic, with no clear understanding of how federal efforts will interact with state and local initiatives. As the Chair of Michigan’s Opioid Advisory Commission has noted, “[w]e can’t really identify the impact of those [settlement] dollars if we

⁶ See Plfs.’ Exec. Comm., *Frequently Asked Questions About the 2022 National Opioid Settlements with Teva, Allergan, Walmart, Walgreens, and CVS*, Nat’l Opioids Settlement at 13 (accessed Aug. 7, 2023), <https://nationalopioidsettlement.com/wp-content/uploads/2023/02/2022-National-Opioids-Settlements-FAQs-02-02-2023.pdf>.

⁷ Christine Minhee, *Public Reporting – Explainer*, Opioid Settlement Tracker (accessed Aug. 7, 2023), <https://www.opioidsettlementtracker.com/publicreporting/#explainer>.

⁸ *Id.* (the states are Arizona, Colorado, Connecticut, Delaware, Florida, Idaho, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, North Carolina, Oregon, South Carolina, and Utah).

⁹ *Id.*

¹⁰ Jan Hoffman, *Companies Finalize \$26 Billion Deal with States and Cities to End Opioid Lawsuits*, N.Y. Times (Feb. 25, 2022), <https://www.nytimes.com/2022/02/25/health/opioids-settlement-distributors-johnson.html>; *Inside the Tobacco Deal : Full Chronology*, PBS News (accessed Sept. 11, 2023), <https://www.pbs.org/wgbh/pages/frontline/shows/settlement/timelines/fullindex.html>.

¹¹ *A State-by-State Look at the 1998 Tobacco Settlement 24 Years Later*, Campaign for Tobacco-Free Kids (upd. Jan. 13, 2023), <https://www.tobaccofreekids.org/what-we-do/us/statereport>.

¹² Nicolas Terry & Alia Hoss, *Opioid Litigation Proceeds: Cautionary Tales From The Tobacco Settlement*, Health Affairs (May 23, 2018), <https://www.healthaffairs.org/content/forefront/opioid-litigation-proceeds-cautionary-tales-tobacco-settlement>.

¹³ *Id.*

¹⁴ See Aneri Pattani, *Repeating History: California County Plug Budget Gap With Opioid Settlement Cash*, KFF Health News (Aug. 2, 2023), <https://kffhealthnews.org/news/article/repeating-history-california-county-plugs-budget-gap-with-opioid-settlement-cash/>.

don't know how they're being used.”¹⁵ Unfortunately, there appears to be little to no federal involvement in overseeing the utilization of these funds.¹⁶

The severity of an opioid epidemic felt by every community across the country and that costs the American public trillions of dollars annually requires us to leverage to the fullest extent possible every dollar available to combat it.¹⁷ As you have recognized, “expanding access to treatment for substance use disorder, lifesaving interventions like naloxone, and recovery support services will reduce the harms of addiction and the overdose epidemic.”¹⁸ To maximize our response, we must understand how funding from the federal government interacts with local and state spending drawn from the opioid settlements.

To better understand the work of the Office of National Drug Control Policy (ONDCP) in overseeing and supporting state use of the national opioid settlement funds in accordance with the settlement agreements, we request written answers to the following questions no later than October 20, 2023:

1. Please describe how ONDCP will oversee faithful utilization of the settlement funds.
2. Has ONDCP considered requiring states that receive federal opioid use disorder or substance use disorder funding to adhere to and publicly report on the opioid abatement stipulations of the settlement agreements? If so, how? If not, why not?
3. Has ONDCP identified how states may appropriately use the settlement funds for opioid abatement— much like the Centers for Disease Control and Prevention made recommendations to the states on how they could use funds from the tobacco master settlement agreement for tobacco cessation?
4. Has ONDCP worked with states to ensure that the allocation of settlement funds is equitable and need-based? If so, how? If not, why not?

Thank you for your time and consideration. We look forward to your prompt response.

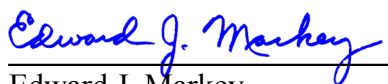
Sincerely,

¹⁵ *Id.*

¹⁶ Aneri Pattani, *Biden promised a watchdog for opioid settlement billions, but feds are quiet so far*, NPR (Apr. 20, 2023), <https://www.npr.org/sections/health-shots/2023/04/20/1170921912/opioid-settlement-billions-federal-watchdog-missing>.

¹⁷ Press Release, *JEC Analysis Finds Opioid Epidemic Cost U.S. Nearly \$1.5 Trillion in 2020*, Congressman Don Beyer (Sept. 28, 2022), <https://beyer.house.gov/news/documentsingle.aspx?DocumentID=5684#:~:text=Adapting%20a%20methodology%20used%20by,likely%20to%20continue%20to%20increase>.

¹⁸ Aneri Pattani, *Biden promised a watchdog for opioid settlement billions, but feds are quiet so far*, NPR (Apr. 20, 2023), <https://www.npr.org/sections/health-shots/2023/04/20/1170921912/opioid-settlement-billions-federal-watchdog-missing>.



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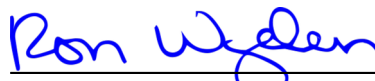
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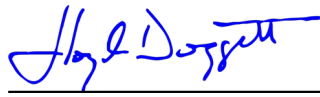
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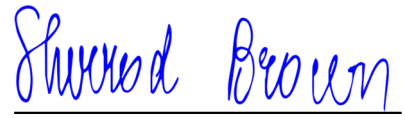
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