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LEARNING FROM PAST MISTAKES

Maximizing the Impact of Michigan's Opioid Settlement Funds

Last year, more than 112,000 people nationwide—including nearly 3,000 in Michigan—died from drug overdoses according to data from the U.S. Centers for Disease Control and Prevention. Since 2000, opioid overdose deaths have grown tenfold in Michigan. Michigan now ranks 22nd among all U.S. states for drug overdose deaths. This epidemic impacts thousands of Michiganders each year, as well as their families, friends, and communities. It's one of the greatest public health crises in our lifetime.

The overwhelming nature of the opioid epidemic led state and local governments to seek financial relief from the opioid industry—the manufacturers, distributors, and pharmacies responsible for promoting and encouraging widespread opioid use and misuse. This litigation has resulted in multi-billion-dollar settlements aimed at remediating the damages of the epidemic and preventing future harm.

The opioid epidemic has been two decades in the making and is becoming a multi-generational public health emergency.

This brief highlights the lessons learned from the mistakes of the tobacco settlement and how they can inform more effective use of opioid settlement funds in Michigan.

The opioid settlement strategy bears similarities to the strategy used against the tobacco industry in the 1990s. At the time, the Tobacco Master Settlement Agreement (MSA) was hailed as a victory for states and for public health. But decades later, there has been little to no impact on smoking and tobacco use (including vaping).

The tobacco MSA is now widely viewed as a major missed opportunity to leverage a significant source of revenue to reduce smoking and tobacco use. Tobacco remains the leading cause of preventable deaths in the United States.[i]

Tobacco litigation settlements: The disappointing reality

On November 23, 1998, attorneys General from 46 states signed a Master Settlement Agreement (MSA) with the five largest tobacco companies in the United States. The agreement capped a long legal battle to hold the tobacco industry accountable for the harm to state residents, and the subsequent state Medicaid costs associated with tobacco use. The MSA placed significant limitations on the tobacco industry. Specifically, it:

- Limited advertising directed at youth. Tobacco companies were prohibited from using cartoon characters and were banned from selling apparel or other merchandise with tobacco logos.
- Required the tobacco industry to fund an independent foundation focused on reducing teenage smoking. Initially named the American Legacy Foundation, it has been renamed The Truth Initiative and is now the largest nonprofit public health organization with the mission of eliminating tobacco use, vaping, and nicotine addiction.
- Required the tobacco industry to fund national anti-smoking education campaigns and public service announcements for five years after the MSA was put into effect.
- Required the tobacco industry to contribute over $200 billion to states through 2025 and then in perpetuity afterwards based on tobacco sales in each state.

To date, Michigan has received over $6 billion in tobacco settlement funds, but because the MSA did not specify how states were to spend the funds, little of the funding was used to directly address smoking cessation and prevention strategies.

To receive and distribute Master Settlement Agreement funds, the Michigan legislature enacted three statutes. Public Act 94 of 1999 and Public Act 489 of 2000 created the Michigan Merit Award Trust Fund and the Michigan Tobacco Settlement Fund, respectively. Public Act 244 of 1999 provided a mechanism for tobacco companies not part of the original settlement to make payments to the state and for the state to levy assessments on companies that chose not to participate.[ii,iii]

Initially, 30 percent of settlement funds were allocated to the Merit Trust Fund, a fund used to pay for student scholarships. Later, this increased to 75 percent. The remaining funds were deposited into the Tobacco Settlement Trust Fund.[vi]

The Tobacco Settlement Trust Fund has historically been used to fill gaps in the state budget. Trust funds that are not expended move into the state General Fund and can be appropriated at the discretion of the legislature.

Later, the funds were securitized to provide up-front payments of revenue. In 2005, $400 million was securitized to establish the 21st Century Jobs Fund, administered by the Michigan Economic Development Corporation. In 2007, $415 million was securitized to balance the state budget. As a result, it was estimated in 2013 that payment of this debt service represented more than 24 percent of annual tobacco settlement funds.[iv]

In 2002, the Michigan Reallocation of Tobacco Revenue Amendment sought a constitutional amendment to redirect the use of tobacco settlement funds to public health and healthcare purposes. But with nearly two-thirds of the electorate against it, the proposal failed. Currently, Michigan's tobacco MSA funds are so completely absorbed into the state budget that they garner little notice except for press releases from the attorney general's office announcing receipt the annual payments.

The MSA's main goals were to recover funds spent for Medicaid costs, decrease smoking among youth, and fund tobacco prevention programs. But tobacco settlement funding has not delivered on any of these goals because it has not been used to address public health needs.

Today, there is little data on what impact, if any, settlement funds had on tobacco cessation and prevention at the local or national level.[v]

Although the adult smoking rate has decreased since 2011, smoking and tobacco use continue to be the largest cause of preventable deaths—higher than deaths from AIDS, automobile accidents, murder, suicide, alcohol, and other drugs combined—and contribute to nearly one-third of all cancer deaths.[vi,vii]

The hope and intention of the settlement suit was for states to use settlement dollars to fund tobacco cessation and prevention programs, and to cover supplemental Medicaid costs associated with smoking related illness and death. However, in almost all cases, that did not happen. The state of Michigan, for example, has allocated far less than the 12 percent that the CDC recommends for tobacco abatement and has received a failing grade from the American Lung Association for its level of tobacco cessation and prevention funding.[viii]

In unpacking the root causes of the lack of public health impact, many have noted shortcomings in the tobacco settlement itself:

- There were no guidelines or guard rails on how tobacco settlement funds were to be spent.

- There were no accountability, transparency, or reporting requirements to ensure that money was directed toward tobacco programming.
- There were no requirements or infrastructures to support evaluations, share data, or measure the impact of investments.
- The perpetual funding formula was based on tobacco sales, which creates a symbiotic relationship between states and the tobacco industry, providing no real incentive for states to reduce smoking or tobacco use.

Opioid litigation settlements: What's different?

In 2021, a number of settlements were reached to resolve litigation brought by states and local governments against the three largest pharmaceutical distributors of opioids—McKesson, Cardinal Health, and AmerisourceBergen—as well as the manufacturer of opioids, Janssen Pharmaceuticals (and its parent company, Johnson & Johnson). These 2021 settlements, which are already being distributed, amount to up to $26 billion dollars over 18 years.

Other opioid settlements were finalized in January 2023 with three pharmacy chains—CVS, Walgreens, and Walmart—and manufacturers Allergan and Teva. These settlements will result in additional funding for state and local governments.

Michigan is expected to receive over $1.5 billion over the next 18 years from the various opioid litigation settlements.

Billions of dollars in opioid settlement funds and new regulations on the opioid industry

In addition to the $26 billion settlement with opioid distributors and manufacturers, it is estimated that other settlements could generate up to another $18.4 billion.[ix]

- $3.3 billion from Teva over thirteen years or $1.2 billion of its generic version of the drug Narcan over 10 years or $240 million of cash in lieu of product, at the discretion of each state.
- $2 billion from Allergan over seven years.
- $4.9 billion from CVS over ten years.
- $5.5 billion from Walgreens over fifteen years.
- $2.7 billion from Walmart over six years.

The opioid settlements will also impose changes on the industry itself:

- Opioid distributors will need to create a clearinghouse to track opioid shipments and monitor for and prevent suspicious opioid orders.
- Janssen and Johnson & Johnson will not be permitted to market or sell opioid products and will cease all lobbying concerning prescription opioids for the next ten years.
- Teva and Allergan will have strict limitations on lobbying, marketing, promotion, sale, and distribution of opioids.
- And Walmart, CVS, and Walgreens will need to increase safety, improve red-flagging and reporting suspicious prescribing trends, and strengthen compliance structures.

Unlike the tobacco master settlement agreement, the national opioid settlements provide clearer guardrails for allocating and spending funds as they flow to states and local municipalities.

Under both the 2021 and 2023 settlements, at least 85 percent of the funds are to be used by participating states and local governments to fund opioid epidemic abatement, with 70 percent of the funds restricted to funding future abatement efforts.[x]

State and local governments must allocate the funds in the following ways:

- Distribution is proscribed: 50 percent to local and county government municipalities and 50 percent to the state.
- Use of funds is limited to opioid-related remediation and is governed by Exhibit E–List of Opioid Remediation Uses, which outlines an extensive list of evidence-based opioid remediation approaches.
- Reporting is required for non-opioid remediation uses such as lawyers' fees, investigation fees, cost of administering the settlement, or litigation fees.
- The settlements are time-limited and future revenue is not based on sales, taxes, or other gains stemming from the sale or distribution of opioids.

Within Michigan, the structure and process for receiving and distributing the settlement funds is governed by legislation (MCL 12.253, 4.1850 and 4.1851) and by Executive Order 2022-12. Together, along with the parameters set forth in the settlement agreements, there are multiple layers of potential oversight and guidance for the use of opioid settlement funds.

- MCL 12.253 created the Michigan Opioid Healing and Recovery Fund, which sits within the Michigan Department of Treasury. The treasury spends the money as appropriated by the legislature. Unexpended funds cannot be moved into the General Fund, so unlike the tobacco settlement funds, opioid settlement funds cannot be repurposed to fill budget gaps or fund unrelated programs.
- MCL 4.1850 and MCL 4.1851 created the Opioid Advisory Commission (OAC) that sits within the Michigan Legislative Council and functions as an advisory body of experts and people with lived experience. The OAC recommends strategies and funding priorities to the legislature and MDHHS and produces an annual report that is publicly available.
- Executive Order (No. 2022-12) reconstitutes the Michigan Opioids Task Force as an advisory body within the Michigan Department of Health and Human Services (MDHHS).

Effective use of opioid settlement funds: Progress and opportunity

To date, there has been a tremendous amount of work by the state and legislature to develop strategies and plans for directing opioid settlement funds to priority areas. In 2023, the OAC published its first annual report, which provided some important recommendations (some of which overlap with work the state has developed since the report's release earlier in 2023):

- Increase awareness of the Bloomberg/Hopkins principles to provide guidance to the state and local governments in developing spending plans and implementing programs.
- Enhance reporting requirements to improve communication and information sharing about spending and implementation.
- Monitor the state's portion of the opioid settlement.
- Promote cross-branch partnerships, information sharing, and collaborative strategic planning to support informed decision making and data-driven recommendations.

However, since the OAC is an advisory body, specific legislative action (where allowable) or collaboration with MDHHS or other stakeholders would be required to implement these recommendations.

In addition to the work of the OAC, MDHHS has developed and launched an Opioid Settlements website. The site functions as a clearinghouse for local communities, substance use disorder treatment and recovery organizations, and Michigan residents to find information about the opioid settlements and state spending plans, services and supports for local communities, planning resources, and technical assistance.

The website also includes a spend plan programming planning document (logic model) that sketches out the multitude of efforts currently underway within the state of Michigan to help coordinate work and detail opioid settlements spending plans. An important feature of the plan includes the identification of outputs as well as the inclusion of specific equity outputs which place equity front and center of MDHHS efforts, laying the groundwork for statewide evaluation.

While short- and long-term outcomes are yet to be developed, the website and plan are steps in the right direction. The 2023 MDHHS Opioid Annual Report contains detailed data on overdoses, death rates, emerging trends as well as a score of other data documenting the opioid crisis in Michigan. It also provides updates on spending plan progress and discusses future planned efforts.

The Opioid Task Force provides opportunities for stakeholder collaboration and coordination as well as engagement with members of the public, those with lived experience, and those working on the front lines of the opioid crisis. As part of MDHHS' overall opioid crisis response, it is one piece of many processes and work being done to address the crisis and implement settlement funding.

Much has been accomplished in planning, bringing stakeholders to the table, and putting the necessary structures in place to leverage the opioid settlement funds. However, without strong collaboration, there is a risk of duplication of effort between the work of MDHHS and the OAC in executing their charges.

The Five Conditions of Collective Impact

Common agenda: Participants collaborate to develop a shared vision. They have a common understanding of the problem and the best way to address it.

Shared measurement: Participants agree to collect data and measure impact in the same ways to learn from their efforts, track progress, and ensure success.

Mutually reinforcing activities: Participants act individually, but they align their efforts through mutually reinforcing activities.

Continuous communication: Participants communicate openly and consistently to build trust, discuss challenges, share learnings, and improve efforts.

Backbone support: A neutral third party with trained staff supports the collaborative, bringing participants together regularly to advance the work.

Source: Hanelybrown, J, Karia, J and Kramer, M. (2012). Channeling change: Making collective impact work. *Stanford Social Innovation Review*. Stanford University.

Partnership and collaboration could be fostered through a neutral facilitator that brings all parties to the table, including state and local government leaders, leaders and stakeholders outside of government, and people with lived experience.

Opportunities to create a cohesive system for Michigan

Michigan is at a crossroads. There is an opportunity to learn from the past to develop a robust, cohesive system for addressing opioid use disorder, including recovery, harm reduction, treatment, and prevention that can meet the needs for special populations and ensure equity.

To do this, some next steps could include:

1. **Employ a collective impact framework to maximize collaboration and success.** Michigan is at the beginning stages of a profound opportunity to improve the system of care for those with an opioid use disorder. But there is a major risk that efforts will become siloed and competitive. The collective impact model provides a way to bring all stakeholders to the table in pursuit of a shared vision, mutually reinforcing tactics, an agreed upon evaluation strategy, shared learnings, and continuous quality improvement. The model is tried and tested and is designed to foster equity in a variety of ways.
2. **Engage a neutral facilitator to support collaboration, cooperation, and progress**. Include the executive and legislative branches, technical assistance providers, researchers, local governments, treatment and recovery providers, and people with lived experience. Work to build trust, facilitate regular communication, enable data sharing, support shared learnings, and engage in collective problem solving.
3. **Develop a statewide evaluation to monitor and track implementation and the impact of efforts to address the opioid epidemic.** Encourage local municipalities to evaluate their efforts as well. For smaller municipalities, consider working in collaboration with others to pool or supplement resources. Explore technical assistance opportunities and partner with local public health departments to help with community engagement, monitoring, data collection, and reporting. There are elements of data collection and monitoring in place, but they need to be built out into a statewide evaluation to synthesize learnings and create continuous improvement cycles as work progresses. Any statewide evaluation should be conducted by a neutral third-party to provide objective reporting and assessment.
4. **Develop shared metrics of success for both local and state investments.** Metrics should include a focus on implementing and administering the opioid funds, as well as overarching, mutually agreed upon outcome and impact measures. Stakeholders should commit to identifying and, where necessary, collecting the data necessary to accomplish the established goals of the collective. Ensure that data is accessible for reporting and evaluation purposes.
5. **Improve reporting and communication by creating more readily accessible, user-friendly reports, data dashboards, and other communications.** There is a wealth of data being collected, monitored, and reported on the opioid crisis across MDHHS and the OAC. However, these efforts could be better coordinated to avoid duplication of effort. Additionally, data needs to be curated and presented in ways that are easily digestible to the public and policymakers to make findings and recommendations more actionable. Ideally, this would be done at both state and local levels.

Citations

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