



January 9, 2026

OPINION
OF
RAÚL TORREZ
Attorney General

Opinion No. 2026-01

To: State Representative Andrea Reeb

Re: Attorney General Opinion – Permissible Use of Opioid Settlement Money

Question

Is it permissible for Curry County and the City of Clovis to use opioid settlement funds distributed through the New Mexico Opioid Allocation Agreement to partially fund a behavioral health facility that will “undoubtedly”—but not specifically—provide services to individuals suffering from opioid use disorder?

Short Answer

Based on the question posed, such use is not permitted. The use of these funds to build a general behavioral health facility is not permitted, even if some of the patients ultimately treated at the facility suffer from opioid use disorder. In order to make use of the funds, a more precise allocation of the funds to address opioid issues is necessary. For instance, it may be permissible to use the funds to pay operational expenses of the facility, in proportion to the percentage of expenses used to treat opioid patients.

Background

As a consequence of the harms caused by opioid use and abuse, the State of New Mexico, along with other states and political subdivisions, filed a series of lawsuits against pharmaceutical manufacturers, distributors, and retailers. *See, e.g., State ex rel Balderas*, D-101-CV-2017-02541 (N.M. 1st Jud. Dist., filed Sept. 7, 2017). These lawsuits resulted in several very similar settlement agreements with various entities in the pharmaceutical industry. New Mexico entered into agreements with Johnson & Johnson (a/k/a Janssen), Allergan, Teva Pharmaceuticals, the pharmaceutical distributors, and some smaller companies (“Settlement Agreements”). New Mexico’s agreement with Johnson & Johnson (“Janssen Settlement Agreement”) is representative of these Settlement Agreements.

The Settlement Agreements provided for the creation of State-Subdivision Agreements, in which the settling state reaches agreement with the subdivisions of that state regarding the allocation, distribution, and/or use of funds allocated to that state and to participating subdivisions in that state. *See* Janssen Settlement Agreement, § I(78). The State of New Mexico and its subdivisions entered into three of these State-Subdivision Agreements, concerning the distribution funds from four different national Settlement Agreements.¹ The State-Subdivision Agreement concerning the combined funds from the settlements with Janssen and the distributors (“Janssen State-Subdivision Agreement”) is representative of these agreements.

The Janssen State-Subdivision Agreement requires that “[e]very Participating Local Government shall create a separate fund or project on its financial books and records that is designated for the receipt and expenditure of each entity’s portion of the LG Share, called the ‘LG Abatement Fund.’” Janssen State-Subdivision Agreement, § C(1). The money from this fund cannot be comingled with other funds of the local government. *Id.* In addition, the Agreement requires that “[e]xcept as provided herein or as provided by court order, 100% of the State Share and the LG Share, regardless of allocation, shall be utilized only for Opioid Related Expenditures.” *Id.* § B(6). While the Agreement provides for the setting aside of funds to pay attorneys’ fees in the event that these fees are not paid out of the Settlement Agreements themselves, it contains no other provision for alternative use of the funds.

“Opioid Related Expenditures” are defined as those listed in Exhibit E of the Settlement Agreement. This Exhibit describes three types of expenditures that might be relevant to this Opinion:

Provide the full continuum of care of treatment and recovery services for OUD (Opioid Use Disorder) and any co-occurring SUD/MH (Substance Use Disorder/Mental Health) conditions, including supportive housing, peer support services and counseling, community navigators, case management, and connections to community[-]based services.

Exhibit E to Settlement Agreement, § B(2).

Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, including supportive housing, recovery housing, housing assistance programs, training for housing providers, or recovery housing programs that allow or integrate FDA approved medication with other support services.

Id. § B(4).

Hire or train behavioral health workers to provide or expand any of the services or supports listed above.

¹ New Mexico also entered into its own settlement agreements with some of the other defendants.

Id. § B(16).

In the opinion request, Rep. Reeb describes a joint project of Curry County and the City of Clovis, in conjunction with several other local governments in Eastern New Mexico, to build a behavioral health center that will “undoubtedly” serve some individuals suffering from opioid use disorder. Rep. Reeb seeks this office’s opinion as to whether Clovis and Curry County can partially use funds from the State-Subdivision Agreement opioid settlement funds “to build and construct a crisis triage center and short-term inpatient rehabilitation facility (including furniture, fixtures, and equipment), in addition to providing services.”

As described below, the use of the settlement funds for construction of a behavioral health center that will serve patients with a wide variety of mental health issues would not be a compliant use of the Settlement Funds. However, once the facility is built, operational expenses directly related to the treatment of patients with opioid use disorder, including treatment of these patients for co-occurring mental health issues, would be a compliant use.

Analysis

Under New Mexico contract law, “[a]bsent ambiguity, provisions of contract need only be applied, rather than construed or interpreted.” *Richardson v. Farmers Ins. Co. of Ariz.*, 1991-NMSC-052, ¶ 7, 112 N.M. 73. The provision in the State-Subdivision Agreement that the money be spent in its entirety on “Opioid Related Expenses,” as delineated in Exhibit E of the Settlement Agreement, is unambiguous. Thus, this provision needs to be applied as written, so any expense that is not encompassed by Exhibit E of the Settlement Agreement is not a permitted use of funds. The clauses described by Rep. Reeb in the opinion request exclusively pertain to services to patients with opioid use disorder. While it also mentions other mental health or substance use issues, the State-Subdivision Agreement only allows for treatment of those issues when they are “co-occurring” with opioid use disorder. Thus, the treatment of patients who do not suffer from opioid use disorder would not be a permissible use of funds from the State-Subdivision Agreement. Accordingly, it would not be appropriate to use the funds to construct a facility that will “undoubtedly”—but not specifically—treat patients with opioid use disorder. The facility would need to be wholly dedicated to that purpose for its construction to be properly funded using State-Subdivision Agreement funds.

However, once the facility is constructed, it would be perfectly appropriate to use funds to pay the share of operational expenses that could be directly attributed to the treatment of patients with a diagnosis of opioid use disorder, as well as any concurrent diagnoses attached to those patients. The facility would need to adopt precise accounting practices to ensure that use of State-Subdivision Agreement funds are limited to these specifically intended purposes.

Conclusion

The City of Clovis and Curry County can use their opioid settlement money to treat patients with opioid use disorder at the proposed behavioral health facility. However, they may not use the money for the construction of any facility that is not wholly dedicated to opioid use disorder.

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RAÚL TORREZ
ATTORNEY GENERAL

/s/ Lawrence M. Marcus
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