

A TOUGH PILL TO SWALLOW: STATES STRUGGLE TO TRANSPARENTLY ALLOCATE OPIOID SETTLEMENT FUNDS FOR RURAL ADDICTION

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ABSTRACT

As opioid settlement funds pour into states and localities, the pressing question is if victims will ever reap the benefits of those dollars. Although settlement money will not cure the death and anguish caused by Big Pharma, the funds must be maximized to reach their full potential for victims. Despite some smart spending decisions and good intentions, lack of transparency and starkly different allocation processes adopted by states lead to questionable government decisions. This Note promotes stronger transparency, oversight, and accountability to ensure these funds are appropriately allocated toward meaningful treatment and prevention efforts.

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As long as epidemics remain profitable, companies will continue to redevelop new drugs and harm more people. This Note argues that solely making improvements to the allocation process is meaningless if companies and the government repeat past mistakes. Demands to improve the healthcare system and value consumer health must be taken seriously to stop unnecessary deaths.

I. INTRODUCTION

More than \$50 billion in opioid settlement money is being disbursed to state and local governments.¹ This devastating epidemic has killed over 250,000 Americans from prescription opioid usage alone.² This is before even considering those currently in a “dope sick” state.³ To respond to this harm, national settlements were reached with major contributors to the crisis.⁴ Urban states are receiving a significant portion of these funds, partly because of population density.⁵ Consequently, rural communities and counties are left behind, even though they were harbingers of the epidemic.⁶

When rural counties eventually receive opioid settlement money, they often struggle to determine where those funds should be allocated.⁷ Allocating funds to

1. Aneri Pattani, *\$50 Billion in Opioid Settlement Cash Is on the Way. We're Tracking How It's Spent*, KFF HEALTH NEWS (Mar. 30, 2023) [hereinafter *\$50 Billion in Opioid Settlement Cash Is on the Way. We're Tracking How It's Spent*], <https://kffhealthnews.org/news/article/opioid-drugmakers-settlement-funds-50-billion-dollars-khn-investigation-payback/> [<https://perma.cc/MW6G-8CFH>].

2. *Id.*

3. Brian Rinker, *What 'Dope Sick' Really Feels Like*, KFF HEALTH NEWS (Feb. 8, 2019), <https://kffhealthnews.org/news/what-dope-sick-really-feels-like/> [<https://perma.cc/YG6K-6G6G>].

4. See *Executive Summary of National Opioid Settlements*, NAT'L OPIOID SETTLEMENT (May 6, 2024), <https://nationalopioidsettlement.com/executive-summary> [<https://perma.cc/Z2ZT-CSST>]; *Understanding the Opioid Overdose Epidemic*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION: OVERDOSE PREVENTION (June 1, 2024), <https://www.cdc.gov/overdose-prevention/about/understanding-the-opioid-overdose-epidemic.html> [<https://perma.cc/G633-AXMF>].

5. See Brad McElhinny, *As \$26 Billion Opioid Settlement Is Announced, West Virginia Is a No*, METRONews (July 21, 2021, at 15:44 CT), <https://wvmetronews.com/2021/07/21/as-26-billion-opioid-settlement-is-announced-west-virginia-may-hold-out/> [<https://perma.cc/93C9-ZCRD>].

6. Aneri Pattani & Rae Ellen Bichell, *In Rural America, Deadly Costs of Opioids Outweigh the Dollars Tagged to Address Them*, KFF HEALTH NEWS (Dec. 12, 2022), <https://kffhealthnews.org/news/article/rural-america-opioid-settlement-funds-inequity/> [<https://perma.cc/AN3X-WHXH>].

7. See LAST WEEK TONIGHT, *Opioid Settlements: Last Week Tonight with John Oliver* (HBO), at 03:09–16:19 (YouTube, May 16, 2024), <https://www.youtube.com/>

respond to the crisis is not a small task, but it is not the first time the nation has dealt with addiction at this level.⁸ The United States has missed opportunities to focus on rehabilitation—as seen in the tobacco crisis.⁹ For rural communities, various factors have contributed to the poor response, including: stigma; out-migration of young people; structural stressors of living in rural America; and limited knowledge of rehabilitation efforts factor into the poor response.¹⁰

The United States must learn to combat drug addiction, and that response should be centered on rural communities. This requires reevaluating the settlement agreements to improve future processes and ensure transparency at the national, state, and local levels. Without this transparency, it is difficult to evaluate whether support is going straight to victims or to a state slush fund. Federal legislation must be passed in conjunction with allocations to ensure a crisis like this never happens again. These solutions must be prioritized as another wave of the opioid crisis—the fentanyl epidemic—is already here and devastating communities.¹¹

II. HISTORY OF THE OPIOID CRISIS AND ITS IMPACT ON RURAL AMERICA

Opioids claimed their first victim thousands of years ago.¹² The opium poppy plant was used in ancient Greece by Hippocrates himself to remedy afflictions.¹³ Even then, opioids were understood to “[stand] for sleep, but also death.”¹⁴ By 1910, doctors realized that modern usage of this drug could cause addiction and

watch?v=Io0yuH1CiA0 [https://perma.cc/YP9H-WR9V]; see Caleb McCullough, *Iowa’s Opioid Settlement Funds Unspent After Legislators Fail to Agree*, THE GAZETTE (Apr. 27, 2024, at 5:30 CT), <https://www.thegazette.com/state-government/iowas-opioid-settlement-funds-unspent-after-legislators-fail-to-agree/>.

8. See Micah L. Berman, *Using Opioid Settlement Proceeds for Public Health: Lessons from the Tobacco Experience*, 67 U. Kan. L. Rev. 1029, 1054 (2019).

9. See *id.* at 1029–30.

10. See generally Katherine M. Keyes et al., *Understanding the Rural–Urban Differences in Nonmedical Prescription Opioid Use and Abuse in the United States*, AM. J. PUB. HEALTH, Feb. 2014, at e52 (describing how systemic stressors and lack of resources contribute to a rise in nonmedical opioid abuse in rural communities).

11. See Kaitlin Sullivan, *Fentanyl Plus Stimulants Drives ‘Fourth Wave’ of Overdose Epidemic in the U.S.*, NBC NEWS (Sep. 14, 2023, at 04:00 CT), <https://www.nbcnews.com/health/health-news/fentanyl-stimulants-drives-fourth-wave-overdose-epidemic-us-rcna104953> [https://perma.cc/4SSE-5LC7].

12. See PATRICK RADDEN KEEFE, *EMPIRE OF PAIN: THE SECRET HISTORY OF THE SACKLER DYNASTY* 185 (2021).

13. *Id.*

14. *Id.*

death.¹⁵ Therefore, they decelerated prescription.¹⁶ This was standard practice until the mid-1990s when drug manufacturer Purdue Pharma (Purdue) marketed a drug initially developed for chronic cancer pain to Americans with nonmalignant pain.¹⁷ Purdue stated their product had a “time-release” formula that diminished the threat of addiction.¹⁸ Despite the legitimate concerns with opioid addiction, OxyContin managed to gain FDA approval on December 28, 1995, due in large part to bribery.¹⁹

The mass prescription of OxyContin kicked off the first wave of the epidemic in the 1990s.²⁰ “By 2010, enough prescription opioids were sold to medicate every adult in the United States with a dose of 5 milligrams . . . every 4 hours for 1 month.”²¹ “Prescription opioid sales in the United States quadrupled from 1999 to 2010.”²² The waves that followed saw the rise of synthetic opioids.²³ The second wave in 2010 began with rapid increases in overdose deaths involving heroin, and the third wave in 2013 involved illegally made fentanyl.²⁴

A. Rural Impact

The tragedy of prescription opioid usage has been unveiled in several television series, such as *Dopesick* and *Painkiller*.²⁵ The dramas portray stories of blue-collar workers, teens, and wealthy executives who become hooked on Oxycontin.²⁶ Although these series were dramatized, rural communities are

15. *Id.* at 187.

16. *Id.*

17. *See id.* at 206.

18. *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 210 (2024).

19. *See KEEFE, supra* note 12, at 195–96.

20. *Understanding the Opioid Overdose Epidemic, supra* note 4.

21. Keyes et al., *supra* note 10, at e53.

22. JOHNATHAN H. DUFF ET AL., CONG. RSCH. SERV., IF12260, THE OPIOID CRISIS IN THE UNITED STATES: A BRIEF HISTORY 1 (2022).

23. *Understanding the Opioid Overdose Epidemic, supra* note 4.

24. *Id.*

25. *See* ROTTEN TOMATOES TV, *Dopesick Limited Series Trailer*, at 00:27 (YouTube, Sep. 15, 2021) [hereinafter *Dopesick Limited Series Trailer*], <https://www.youtube.com/watch?v=BUGY-8kpHNI> [<https://perma.cc/J5U3-N6MR>]; ROTTEN TOMATOES TV, *Painkiller Limited Series Trailer*, at 01:08 (YouTube, July 11, 2023) [hereinafter *Painkiller Limited Series Trailer*], <https://www.youtube.com/watch?v=-QV0guCS1ZE> [<https://perma.cc/9UCU-N2CV>].

26. *See Dopesick Limited Series Trailer, supra* note 25, at 00:27; *see Painkiller Limited Series Trailer, supra* note 25, at 01:08.

battling the repercussions of the crisis.²⁷ Prescription opioids contribute to a larger share of drug overdose deaths than synthetic opioids in rural areas.²⁸ Generally, opioid usage rates tend to be higher in urban counties.²⁹ But opioid mortality rates have increased in the rural Midwest by 1,600% and in the rural Northeast by 1,141% between 1999 and 2016, which was much more than their metro counterparts.³⁰ Nonmedical prescription opioid misuse is a growing problem in “states with large rural populations, such as Kentucky, West Virginia, Alaska, and Oklahoma.”³¹ In some states “drug overdose death rates . . . were higher in rural counties than in urban counties: California, Connecticut, Maryland, New York, North Carolina, North Dakota, Vermont, and Virginia.”³²

Despite the stereotype that rural communities attract less crime and drug usage than urban counties, rural communities have arguably dealt with more challenges in dealing with this crisis due to social and economic challenges.³³ Rural communities tend to have an aging population and a high percentage of blue-collar workers, and therefore, more opportunities to treat chronic pain.³⁴ For example, in rural Appalachia, opioids are embedded as part of the culture.³⁵ Because opioids are often prescribed to maintain workflow in heavy labor occupations, high demand for opioids creates opportunities for illegal markets amongst close-knit communities.³⁶

Young people are leaving rural communities, resulting in lower-wage employment opportunities and an unstable labor market.³⁷ There are two main issues with this: (1) harsh economic conditions in the area for the aging population;

27. SHANNON M. MONNAT & KHARY K. RIGG, CARSEY SCHOOL OF PUB. POL’Y, UNIV. OF N.H., *THE OPIOID CRISIS IN RURAL AND SMALL TOWN AMERICA* 1 (2018), <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1342&context=carsey> [<https://perma.cc/N49D-ABYW>].

28. *Id.*

29. *Id.*

30. *Id.* (finding a 158% increase in “large central metro counties,” 507[%] increase in “large fringe metro counties,” and 429% increase in “medium/small metro counties” between 1999–2016).

31. Keyes et al., *supra* note 10, at e52.

32. MERIANNE ROSE SPENCER, MATTHEW F. GARNETT & ARIALDI M. MINIÑO, U.S. CTR. FOR DISEASE CONTROL, *URBAN–RURAL DIFFERENCES IN DRUG OVERDOSE DEATH RATES*, 2020, at 4 (2022), <https://www.cdc.gov/nchs/data/databriefs/db440.pdf> [<https://perma.cc/6XDT-6QEZ>].

33. *See* MONNAT & RIGG, *supra* note 27, at 3.

34. Keyes et al., *supra* note 10, at e54.

35. *Id.*

36. *Id.*

37. MONNAT & RIGG, *supra* note 27, at 4.

and (2) economically impacted young individuals who decide to stay.³⁸ It is “difficult for these places to muster the financial and human capital to fight back against the opioid scourge” when young people leave.³⁹ Therefore, economic conditions and unemployment create greater vulnerability for drug usage, especially amongst overworked, blue-collar workers.⁴⁰ Young people who decide to stay may not have as much upward mobility, leaving them economically deprived and with drug dependencies from “downward social drift.”⁴¹

Lastly, stigma is a major concern for blue-collar workers that tend to downplay pain.⁴² This is due to the fact that the “[d]ifficulty [of] maintaining anonymity in communities where ‘everyone knows everyone’ can sometimes cause people to discontinue treatment or avoid it altogether.”⁴³ Addiction is already difficult to combat in any community, but if these trends continue, the impact in rural America will be detrimental. As urban areas see spikes in fentanyl abuse, it is vital to recognize problems and address opioid addiction head-on to prevent another crisis.

B. History of Litigation

Legal battles ensued against manufacturers, like Purdue, throughout the epidemic.⁴⁴ Many of these lawsuits were unsuccessful.⁴⁵ In the early 2000s, plaintiffs brought personal injury claims on behalf of individual patients.⁴⁶ These personal injury suits were not effective because drugs like OxyContin were FDA-approved, thus arguing failure to warn and defective design was unsuccessful.⁴⁷ Individual plaintiffs also sued healthcare providers for negligently prescribing opioids.⁴⁸ Those lawsuits never got at the root of the problem—the manufacturers.

38. Keyes et al., *supra* note 10, at e54–55.

39. MONNAT & RIGG, *supra* note 27, at 4.

40. Keyes et al., *supra* note 10, at e54.

41. *Id.*

42. MONNAT & RIGG, *supra* note 27, at 3.

43. *Id.*

44. KEEFE, *supra* note 12, at 423.

45. Rebecca L. Haffajee & Michelle M. Mello, *Drug Companies’ Liability for the Opioid Epidemic*, 377 NEJM 2301, 2301 (2017).

46. *Id.*

47. *Id.*

48. Oliver Kassenbrock, *When Designed Outcomes Are “Unforeseeable”*: Proximate Causation in the Opioid Crisis, 56 UNIV. ILL. CHI. L. REV. 259, 269–71 (2023) (citing *Halloran v. Kiri*, 173 A.D.3d 509 (N.Y. App. Div. 2019) (finding that it was not unforeseeable that plaintiff would die from overdose after showing signs of addiction after doctor kept prescribing opioids)).

President Donald Trump declared the opioid crisis a public health emergency in October 2017 and stated there would be forthcoming litigation against opioid manufacturers.⁴⁹ After the declaration, a flood of lawsuits against opioid manufacturers were filed.⁵⁰ In December of that year, the United States Judicial Panel on Multidistrict Litigation transferred over 100 government claims against manufacturers.⁵¹ The lawsuits argued several causes of action, including that the manufacturers “over-promoted opioids for long-term use to treat chronic pain; that they minimized the risks of addiction; that they encouraged excessive prescribing that created a larger supply for potential diversion; and that they created a ‘public nuisance’ by taking these actions.”⁵²

For example, in 2021, the Attorney General of Oklahoma sued opioid manufacturers Johnson & Johnson, Purdue, and Teva for violating Oklahoma’s public nuisance statute.⁵³ The state eventually settled with all but Johnson & Johnson.⁵⁴ The Attorney General argued Johnson & Johnson used deceptive marketing practices to “overstate[] the benefits of opioid use, downplay[] the dangers,” and did not provide adequate long-term evidence of the effect of drug usage.⁵⁵ The district court found for the State, ordering Johnson & Johnson to fund the State’s abatement plan.⁵⁶ The Supreme Court of Oklahoma overturned the ruling, finding the district court went too far and that public nuisance law does not extend to the manufacturing, marketing, and selling of prescription opioids.⁵⁷ The lawsuit in Oklahoma was not atypical; prosecutors pursuing pharmaceutical

49. Haffajee & Mello, *supra* note 45, at 2304–05; Regina LaBelle, *Opioid Litigation Proceeds are Filling State and Local Government Coffers; It’s Time for the Federal Government to Get Involved*, O’NEIL INST., GEO. L. (July 11, 2024), <https://oneill.law.georgetown.edu/opioid-litigation-proceeds-are-filling-state-and-local-government-coffers-its-time-for-the-federal-government-to-get-involved/> [<https://perma.cc/5LJT-XL5V>] (noting that the Trump Administration, however, did not play an active role in the litigation, leaving it to the states).

50. Catherine M. Sharkey, *The Opioid Litigation: The FDA is MIA*, 124 DICK. L. REV. 669, 670 (2020).

51. *Id.*

52. *Id.*

53. State *ex rel.* Hunter v. Johnson & Johnson, 499 P.3d 719, 721 (Okla. 2021).

54. *Id.* at 722.

55. *Id.* at 721.

56. *Id.* at 722.

57. *Id.* at 723–26 (showing that the Court applies the nuisance statutes to unlawful conduct that “annoys, injures, or endangers the comfort, repose, health, or safety of others”).

companies have often had disappointing results.⁵⁸ That disappointment was put on full display when the Department of Justice sued Purdue.⁵⁹

In response to a surge of lawsuits, the Sackler family, the owners of Purdue, “initiated a ‘milking program,’ withdrawing from Purdue approximately \$11 billion—roughly 75% of the firm’s total assets—over the next decade.”⁶⁰ In 2019, Purdue filed Chapter 11 bankruptcy with a plan that would release them from opioid-related claims and block future lawsuits.⁶¹ This plan included compensation for victims and creditors.⁶² The United States Supreme Court ruled the bankruptcy code does not allow discharging claims against a non-debtor without the consent of the affected parties.⁶³ The Court indicated that although the bankruptcy judge has certain conferred authorities, they cannot discharge a debtor’s debt without consent.⁶⁴ Since the Sackler’s did not place all their assets on the table for distribution to creditors and they sought discharge of widespread fraud and willful injury claims, they were foreclosed from relief.⁶⁵

Essentially, the Sackler family used bankruptcy court to shield themselves from future liability in the lawsuits against them.⁶⁶ Victims who grudgingly signed on to the Sackler deal in hopes of receiving some sort of compensation are now out of luck.⁶⁷ The dissent in *Harrington v. Purdue Pharma L.P.*, stated the majority’s decision to rewrite the Bankruptcy code left opioid victims “deprived of the substantial monetary recovery that they long fought for and finally secured after years of litigation.”⁶⁸ The fight is long from over, but many states are now

58. See, e.g., *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 227 (2024).

59. *Id.*

60. *Id.* at 204.

61. *Id.* at 211.

62. *Id.* at 227–28.

63. *Id.* at 205 (discharging claims in a bankruptcy plan releases creditor claims against third-party non-debtors; it is generally only possible with the non-debtor’s consent or if the court finds it fair and equitable).

64. *Id.* at 218, 227.

65. *Id.* at 205 (“The code generally reserves discharge for a debtor who places substantially all of their assets on the table . . . [a]nd, ordinarily, it does not include claims based on ‘fraud’ or those alleging ‘willful and malicious injury.’”).

66. Benjamin Hart, *Will the Infamous Sacklers Finally Face a Reckoning?* N.Y. MAG.: INTELLIGENCER (July 1, 2024), <https://nymag.com/intelligencer/article/supreme-court-purdue-ruling-a-reckoning-for-the-sacklers.html>.

67. *Id.*

68. *Harrington*, 603 U.S. at 227 (Kavanaugh, J., dissenting). In November of 2025, a federal bankruptcy court approved a settlement against Purdue. The agreement allows entities that cease future litigation to collect, while those that opt out of payment can choose to pursue individual litigation in the future. The agreement requires the Sacklers to surrender a portion

receiving money from settlement agreements made with some of the biggest opioid manufacturers.⁶⁹

III. THE NATIONAL SETTLEMENT AGREEMENTS

Due to the volume of lawsuits filed against opioid manufacturers, national settlement agreements were reached with the three largest pharmaceutical distributors (McKesson, Cardinal Health, and AmerisourceBergen), pharmaceutical manufacturers (Allergan, Teva, Janssen Pharmaceuticals, Inc., and its parent company, Johnson & Johnson), and pharmacy chains (CVS, Walgreens, and Walmart).⁷⁰ The companies will pay their share over several years, amounting to more than \$50 billion for participating states.⁷¹ States have the option to participate, and if so, the state's attorney general must decide within a certain number of days if the state will join the settlement.⁷² The national settlements all have a provision that the participating state must join an agreement to cease litigation activity to receive funds and injunctive relief.⁷³

A. Rural Versus Urban Disbursements

The settlement agreements are a “culmination of many years of intense negotiations” by state attorneys general and prosecutors.⁷⁴ The decision makers

of Purdue Pharma and pay up to \$7 billion over 15 years to participating state governments and individuals. Geoff Mulvihill, *Judge Formally Approves Opioid Settlement for Purdue Pharma and Sackler Family Members Who Own the Company*, PBS NEWS (Nov. 18, 2025, at 11:15 AM ET), <https://www.pbs.org/newshour/nation/judge-formally-approves-opioid-settlement-for-purdue-pharma-and-sackler-family-members-who-own-the-company> [<https://perma.cc/6NMR-UZAV>].

69. *Executive Summary of National Opioid Settlements*, *supra* note 4.

70. *Id.*

71. *Id.*; *\$50 Billion in Opioid Settlement Cash Is on the Way. We're Tracking How It's Spent*, *supra* note 1.

72. *Frequently Asked Questions About the National Opioid Settlement*, NAT'L OPIOID SETTLEMENT (Oct. 11, 2025, at 18:20 CT), <https://nationalopioidsettlement.com/faq-explanatory-charts/faq/> [<https://perma.cc/QYK9-NS9B>].

73. *Id.*; *see, e.g.*, CVS SETTLEMENT AGREEMENT 15, 44 (2023), <https://nationalopioidsettlement.com/wp-content/uploads/2024/03/2022-12-09-CVS-Global-Opioid-Settlement-Agreement-with-2023-02-03-Technical-Correctios-and-2023-09-29-and-2023-12-15-Updates.pdf> [<https://perma.cc/8R5L-UBJX>]; WALGREENS SETTLEMENT AGREEMENT 15 (2022), <https://nationalopioidsettlement.com/wp-content/uploads/2022/12/Walgreens-Multistate-Agreement-and-Exhibits.pdf>, [<https://perma.cc/FWR9-NGMN>].

74. *Executive Summary of National Opioid Settlements*, *supra* note 4; *Opioids*, NAT'L ASS'N OF ATT'YS GEN. (Oct. 11, 2025, at 18:22 CT), <https://www.naag.org/issues/opioids/> [<https://perma.cc/YZ7A-PTN3>].

included 14 states that worked closely with other states and territories.⁷⁵ The National Association of Attorneys General (NAAG) says state funding amounts were determined by “the overall degree of participation by both litigating and non-litigating state and local governments[,]” and “using a formula that takes into account the impact of the crisis on the state—including the number of overdose deaths, the number of residents with substance use disorder, the quantity of opioids delivered—and the population of the state.”⁷⁶

The explanation by NAAG is not clear. There is no indication of what weight they gave to each factor.⁷⁷ Although the settlement funds were intended to help the most vulnerable communities, the funds allocated to states and counties tend “to scale up by population.”⁷⁸ In fact, former West Virginia Attorney General, Patrick Morrissey, has rejected settlements, referencing the favoritism of large states over small.⁷⁹ Morrissey instead opted for litigation and negotiation outside of the settlement agreements.⁸⁰ “I will keep fighting to protect West Virginia and will not allow larger states to dictate how we hold defendants accountable for their actions[,]” said Morrissey.⁸¹ For comparison, California is receiving \$4 billion in overall funds from settlement agreements, Florida is receiving \$3.52 billion, and Texas \$2.8 billion.⁸² Whereas some of the hardest hit rural states are receiving less: Ohio \$1.84 billion, New Hampshire \$268.57 million, and Maine \$236.35 million.⁸³ The unbalanced disbursement does not only occur on the state level, but also the subdivision level.⁸⁴ For example, rural Pamlico County had the highest rate of opioid overdose deaths in North Carolina.⁸⁵ Pamlico County is receiving just under

75. *Opioids*, *supra* note 74.

76. *Id.*

77. *See id.*

78. *See* Pattani & Bichell, *supra* note 6.

79. McElhinny, *supra* note 5.

80. *Id.*

81. *Id.*

82. *Guides for Community Advocates on the Opioid Settlements*, VITAL STRATEGIES (Dec. 7, 2024, at 11:22 CT), <https://www.opioidsettlementguides.com> [<https://perma.cc/8UF7-8XUT>] (indicating each state’s received settlement funds, accessible by clicking on each state’s link under “Opioid Settlement Funds: State-Level Guides” and viewing the amount listed under the “Total Funds” section).

83. *Id.* (indicating each state’s received settlement funds, accessible by clicking on each state’s link and viewing the amount listed under the “Total Funds” section).

84. *Frequently Asked Questions About the National Opioid Settlement*, *supra* note 72 (explaining how within a settling state, a subdivision can include “all county, municipal, and township governments and any other subdivision that has filed a lawsuit that falls within the release provisions of the agreements”).

85. Pattani & Bichell, *supra* note 6.

\$1.45 million in opioid settlement funds from 2022 until 2039.⁸⁶ In contrast, Wake County, home of Raleigh, receives over \$67 million in opioid settlement funds from 2022 until 2039.⁸⁷ Rural communities have been dealt an unfair hand with settlement funds. Even if the playing field was leveled, there is no certainty these communities would use the settlement funds appropriately. Instead, they might repeat past mistakes, as seen with the tobacco settlements, where funds were often misused and failed to address the core issues.

B. Are the Opioid Settlements Repeating the Same Mistakes from the Tobacco Crisis?

The settlement agreements display requirements for fund usage.⁸⁸ At least 85% of the state's funds must be used for abatement of the opioid epidemic.⁸⁹ But what constitutes abatement? Many skeptics pose this query since the tobacco crisis settlement failed to properly address addiction.⁹⁰

In 1998, 52 states and territories settled with the largest tobacco companies in the United States, making the Master Settlement Agreement (MSA).⁹¹ Similar to the opioid crisis, the tobacco settlement banned settling states from seeking future legal recourse.⁹² It was vital for states to allocate these funds responsibly, as failure to do so would prevent them from seeking additional support if addiction rates continued to soar—unfortunately, they did not rise to the challenge.

86. *Local Spending Plans*, CORE-NC: CMTY. OPIOID RES. ENGINE FOR N.C. (Oct. 11, 2025, 18:25 CT), <https://ncopioidsettlement.org/trends/spending-plans/> [<https://perma.cc/88QL-K5WM>] (under the purple North Carolina interactive map, choose the icon to the right of “Download spending plan data for all local governments”; then choose the “payments totals” tab on the Excel document; then locate the record for Pamlico County).

87. *Id.* (under the purple North Carolina interactive map, choose the icon to the right of “Download spending plan data for all local governments”; then choose the “payments totals” tab on the Excel document; then locate the record for Wake County).

88. *See generally Executive Summary of National Opioid Settlements*, *supra* note 4 (describing how the funds from settlement agreements must be used for abatement, and how the settlements impose changes to how some of the settling defendants conduct their business as fund usage requirements).

89. *Id.*

90. Berman, *supra* note 8, at 1034, 1058.

91. *The Master Settlement Agreement*, NAT'L ASS'N OF ATT'YS GEN. (Oct. 11, 2025, at 18:26 CT), <https://www.naag.org/our-work/naag-center-for-tobacco-and-public-health/the-master-settlement-agreement/> [<https://perma.cc/TG5D-LT7S>].

92. Berman, *supra* note 8, at 1037.

Less than 3% of the money was actually spent on recovering from the tobacco crisis.⁹³ Unlike the opioid settlements, the tobacco settlements did not have binding provisions requiring states to use funds “on tobacco prevention and cessation.”⁹⁴ Most states used this money as a slush fund to fill random expenses such as “budget shortfalls, subsidize tax cuts, and support general government services.”⁹⁵ For example, in North Carolina, none of the state’s \$4.6 billion share was spent on remediation.⁹⁶ Rather, it was spent on improving a horse park, building a tobacco museum, and manufacturing a plant that later processed tobacco products.⁹⁷

There has been a span of approximately 23 years between the tobacco settlement and the opioid settlements, during which we have seen positive changes. First, there is a requirement for opioid abatement.⁹⁸ The settlement funds that can be used to fill budget shortfalls are capped at 15%.⁹⁹ Second, Exhibit E—a subsection in each national settlement agreement—lays out a non-exhaustive list of core strategies for opioid funding.¹⁰⁰ For instance, some strategies include: drug distribution for opioid-related treatment; support programs for those recovering from opioid usage; outreach programs to stop pill mills; and other such funding strategies.¹⁰¹ The national settlement agreements, however, do not require states to disclose where funds are allocated.¹⁰² This means some accommodating states disclose 100% of their funds, while some disclose 0% and expect citizens to trust the process.¹⁰³

93. PENNLDIVIDEO, *How to Optimize the Opioid Settlements*, at 06:10 (YouTube, Feb. 14, 2023), <https://www.youtube.com/watch?v=mJotYammiC8> [<https://perma.cc/S92T-BUC4>].

94. Berman, *supra* note 8, at 1036.

95. Derek Carr, Corey S. Davis & Lainie Rutkow, *Reducing Harm Through Litigation Against Opioid Manufacturers? Lessons From the Tobacco Wars*, 133 PUB. HEALTH REPS. 207, 209 (2018).

96. LAST WEEK TONIGHT, *supra* note 7, at 07:07.

97. *Id.* at 07:17.

98. NAT’L OPIOID SETTLEMENT, DISTRIBUTOR SETTLEMENT AGREEMENT, E-13 (2022) [hereinafter DISTRIBUTOR SETTLEMENT AGREEMENT], https://nationalopioidsettlement.com/wp-content/uploads/2022/03/Final_Distributor_Settlement_Agreement_3.25.22_Final.pdf [<https://perma.cc/S5WG-5ZXZ>].

99. LAST WEEK TONIGHT, *supra* note 7, at 08:44–09:20.

100. DISTRIBUTOR SETTLEMENT AGREEMENT, *supra* note 98, at E-1.

101. *Id.* at E-4 to -11.

102. *Id.* at L-14.

103. See Christine Minhee, *Will Opioid Settlements Be Spent in Ways That Bolster the Public Health Response to Drug Use?*, OPIOID SETTLEMENT TRACKER (Oct. 28, 2025, at 11:59 CT), <https://www.opioidsettlementtracker.com/expenditures> [<https://perma.cc/MV9L-BRMQ>].

Out of the states that decided to disclose 100% of their funds, a gap still needs to be filled. Some states “just [squeak] by, meeting the letter of the law but falling far short of communicating to the public in a clear and meaningful manner.”¹⁰⁴ For example, Idaho’s spending fell under the approved uses.¹⁰⁵ They used some of their money for “school-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse.”¹⁰⁶ But it is still not clear what the state did and if the programming was effective.¹⁰⁷ Ultimately, even if schools disclose all their funding, they could still use their funds for one-time drug abuse prevention, such as creating a social media campaign or having a speaker come to an assembly, and that would suffice the prevention measures outlined in the settlement agreement.¹⁰⁸

Some states and counties have used their funds in questionable ways. Louisiana allocated 20% of its funds directly to sheriffs, “with no requirement to report how and where the money is spent.”¹⁰⁹ In Wyoming County, the chief of police in Oceana mentioned using funds for a rehab treatment facility, but instead, the settlement funds were put toward purchasing a new police cruiser.¹¹⁰ Kalamazoo County in Michigan purchased an almost \$200,000 body scanner that helps jails detect contraband someone might smuggle under clothing or inside their bodies.¹¹¹ While there has been improvement since the tobacco era, there is still

(displaying specific percentages on the interactive map when the cursor hovers over individual states).

104. Aneri Pattani, *We Checked Up on the States that Promise Transparency on Opioid Settlement Funds*, KJZZ PHX. (Nov. 7, 2024, at 10:13 MT), <https://www.kjzz.org/npr-top-stories/2024-11-07/we-checked-up-on-the-states-that-promise-transparency-on-opioid-settlement-funds> [https://perma.cc/3FK7-9QDS].

105. *Id.*

106. *Id.*

107. *See id.*

108. *See id.*

109. Drew Hawkins, *Louisiana Will Get \$325M from a Major Opioid Settlement. Advocates Want to Know How It Will Be Spent*, WWNO NEW ORLEANS PUB. RADIO (July 18, 2023, at 09:11 CT), <https://www.wwno.org/public-health/2023-07-18/louisiana-will-get-325m-from-a-major-opioid-settlement-advocates-want-to-know-how-it-will-be-spent> [https://perma.cc/AQT8-P4SG].

110. Allen Siegler, *Struggling with Opioid Epidemic, Wyoming County Wrestles with How to Spend Settlement Funds*, MOUNTAIN STATE SPOTLIGHT (June 2, 2023), <https://mountainstatespotlight.org/2023/06/02/wyoming-county-opioid-settlement-wv/> [https://perma.cc/5T9F-XPA3].

111. Aneri Pattani, *Using Opioid Settlement Cash for Police Gear Like Squad Cars and Scanners Sparks Debate*, KFF HEALTH NEWS (Oct. 23, 2023), <https://kffhealthnews.org/news/article/using-opioid-settlement-cash-for-police-gear-like-squad-cars-and-scanners-sparks-debate/> [https://perma.cc/JJE2-ZKSP].

considerable opportunity for transparency to enhance opioid dollars to aid those affected by the crisis.¹¹²

IV. ALLOCATION CONSIDERATIONS

If the process of doping Americans for profit of corporations continues, then future settlement agreements and allocation processes must be more transparent and effective.¹¹³ There must be changes to improve the federal, state, and local allocation process. This Note also proposes an end to the cycle by putting more stringent standards on the FDA, monitoring and regulating physicians, and lowering prescription drug prices.

A. Federal Level Oversight

The biggest question when it comes to opioid money is, where is it going? Since some state and local governments are not disclosing their processes, it is difficult to determine if the funds are helping victims.¹¹⁴ Members of Congress realized the potential issues with the opioid allocations and do not want to repeat the past.¹¹⁵ Therefore, they have demanded oversight of the funds.¹¹⁶ Representative Marcy Kaptur has proposed legislation three times since 2019 that demands federal oversight of the settlements.¹¹⁷ In 2024, the Opioid Settlement Accountability Act was introduced.¹¹⁸ The bill outlined what settlement monies should be used for and barred the federal government from using a provision of Medicaid to take a part of states' opioid settlement funds.¹¹⁹ The bill was introduced to ensure that the funds are not treated "as piggy banks for politicians

112. Aneri Pattani, *Proposed Federal Law Would Put Limits on Use of \$50 Billion in Opioid Settlements*, NPR (Jan. 22, 2024, at 05:00 ET) [hereinafter *Proposed Federal Law Would Put Limits on Use of \$50 Billion in Opioid Settlements*], <https://www.npr.org/sections/health-shots/2024/01/22/1225764203/opioid-settlements-law-addiction-crisis> [https://perma.cc/L5TU-XKCH].

113. See *The Impact, Challenges, and Promises of the Opioid Settlement Funds*, CHESS HEALTH: BLOG (July 11, 2024), <https://www.chess.health/blog/the-impact-challenges-and-promises-of-the-opioid-settlement-funds/> [https://perma.cc/JHY2-HHMK].

114. *Proposed Federal Law Would Put Limits on Use of \$50 Billion in Opioid Settlements*, *supra* note 112.

115. *Id.*

116. *Id.*

117. *Id.*

118. Opioid Settlement Accountability Act, H.R. 6956, 118th Cong. (2024).

119. *Id.* § 2.

to break open and play around with.”¹²⁰ But the bill has no “teeth,” as there are no consequences for states that do not comply with provisions.¹²¹ The bill echoes the same approved uses as the settlement agreements.¹²² While the bill is a conversation starter, Congress must introduce legislation that requires transparency for the opioid settlement. Noncompliance should result in consequences for states. After all, “accountability” is part of the bill name, yet the proposed legislation does not require it.¹²³

B. State and Local Level Transparency

More should be done at the state level to promote transparency and encourage public input.¹²⁴ “[F]unding decisions are not always executed transparently.”¹²⁵ “As a result, decision-makers may find it arduous to learn from each other’s mistakes or replicate each other’s success.”¹²⁶ A lot of these issues stem from the starkly different mechanisms states must use to disburse funding.¹²⁷ Specifically, some state legislatures directly appropriate funds¹²⁸ while others bestow judgment to nonprofits,¹²⁹ or more confusingly, to sheriffs.¹³⁰

Further, state advisory committees are not always required. An advisory committee “provide[s] input and recommendations regarding remediation

120. USREPMARCYKAPTUR, *Congresswoman Kaptur Floor Speech on Introduction of Bipartisan Opioid Settlement Accountability Act*, at 01:07 (YouTube, Jan. 11, 2024), <https://www.youtube.com/watch?v=176kcZEIndc> [<https://perma.cc/3S82-KSWC>].

121. *Proposed Federal Law Would Put Limits on Use of \$50 Billion in Opioid Settlements*, *supra* note 112.

122. *Id.*

123. *Id.*

124. *See The Impact, Challenges, and Promises of the Opioid Settlement Funds*, *supra* note 113.

125. *Id.*

126. *Id.*

127. *See generally Guides for Community Advocates on the Opioid Settlements*, *supra* note 82 (explaining how each state has its own process for disbursing funding and allocating opioid settlement funds).

128. *Washington’s Opioid Settlements*, VITAL STRATEGIES (Sep. 1, 2024), <https://www.opioidsettlementguides.com/washington> [<https://perma.cc/3GRT-G83G>].

129. *Ohio’s Opioid Settlements*, VITAL STRATEGIES (Sep. 1, 2024), <https://www.opioidsettlementguides.com/ohio> [<https://perma.cc/98QY-JL9N>].

130. *Louisiana’s Opioid Settlements*, VITAL STRATEGIES (Sep. 1, 2024), <https://www.opioidsettlementguides.com/louisiana> [<https://perma.cc/JC3Q-5E42>] (explaining how under Louisiana’s spending plan, 20% of settlement funds are allocated directly to local sheriffs, who have autonomy in deciding how the funds will be spent).

spending from that Settling State's Remediation Accounts Fund."¹³¹ The committee must also have an equal number of state and local representatives, and a system for receiving input from subdivisions and the public.¹³² The settlement agreements only require the creation of these councils if there is no state-subdivision agreement, allocation statute, or statutory trust.¹³³ Even if there is no formal agreement, there will be some mechanism to allocate funds.

Although advisory committees seem to be a safety net in case there is no formal allocation mechanism, they still should be required by each state so there is some oversight of opioid spending. For many states, no input is required by the community or advocates before the allocation process begins.¹³⁴ Rather, it is up to chance whether government entities will keep constituent interests in mind. In this political landscape, that is not likely. Some states attempt to fill in budget shortfalls with agreements.¹³⁵ For example, Arizona Attorney General Kris Mayes "won an emergency court order temporarily halting" Arizona's transfer of opioid funds that remedy budget shortfalls.¹³⁶ The budget was passed by the legislature and would transfer \$115 million in opioid settlement money to the Arizona prison system which the attorney general characterizes as a "blatant budget gimmick."¹³⁷ Without a council that directly disburses funds or provides recommendations, state legislatures may allocate the money based on politics.

At the local level, there is mass confusion regarding the allocation of funds. Since city councils do not have support, they often hand over money to the first person that requests it.¹³⁸ In the City of Vienna, West Virginia, a council member acknowledged that he did not know how to use the funds and then handed money

131. WALMART SETTLEMENT AGREEMENT 33, <https://nationalopioidsettlement.com/wp-content/uploads/2024/02/Walmart-Settlement-Agreement-2024.01.03.pdf> [<https://perma.cc/SH6F-KP95>].

132. CVS SETTLEMENT AGREEMENT, *supra* note 73, at 36.

133. *Id.* at 35–36.

134. See *Guides for Community Advocates on the Opioid Settlements*, *supra* note 82; Sam Mermin, Rebekah Falkner & Katie Greene, *Understanding Opioid Settlement Spending Plans Across States: Key Components and Approaches*, NAT'L ACAD. FOR STATE HEALTH POL'Y (Dec. 8, 2022), <https://nashp.org/understanding-opioid-settlement-spending-plans-across-states-key-components-and-approaches/> [<https://perma.cc/KF99-R4WL>].

135. See Stacey Barchenger, *Judge Halts Transfer of Opioid Settlement Cash to AZ Prisons After Attorney General Sues*, ARIZ. REPUBLIC (June 20, 2024, at 17:13 MT), <https://www.azcentral.com/story/news/politics/arizona/2024/06/20/attorney-general-wins-emergency-court-order-keep-opioid-settlement-money-from-budget-deal/74143448007/>.

136. *Id.*

137. *Id.*

138. See LAST WEEK TONIGHT, *supra* note 7, at 12:45–14:48.

to local police to buy a new police canine and SUV.¹³⁹ In a Pennsylvania county, officials approved spending to buy stickers that “warn people that it’s illegal to provide alcohol to anyone under age 21.”¹⁴⁰ Localities should implement their own advisory boards that recommend funding so that city councils have more guidance on community needs and are not pressured to throw money at the first individual who requests it.

These allocations require more thought and less political pressure. Legislators and city council members must defer to nonprofits and advisory councils to deter funds from going straight to another slush fund.¹⁴¹ Even though states are not required to implement a committee, states should look to a cross-sector of their community—including those with lived experiences and healthcare backgrounds—to make decisions.¹⁴² Councils and nonprofits should provide advice on how to handle requests for money so political pressures do not trickle in as they did in the tobacco crisis.

V. PROACTIVE MEASURES TO A DETER FUTURE CRISIS

The settlements can only do so much; they are just the beginning. As soon as the opioid funds are spent, there is bound to be another crisis if the government does not use opioids as a launching pad for sweeping reform. Deterring a future crisis includes limiting opioid-like drugs from entering the market. The state and federal government must work in tandem with the settlements to offer long-term solutions to addiction in America. This includes enforcing current ethics and drug approval regulations against the FDA, monitoring and regulating physicians so “Big Pharma” cannot prey on prescribers, and lowering drug prices to support a competitive market.

139. *See id.* at 20:15–22:24.

140. Ed Mahon & Kate Giammarise, *Records Obtained by Spotlight PA and WESA Reveal How Pa. Counties Used Tens of Millions in Opioid Settlement Dollars*, SPOTLIGHT PA (May 2, 2024), <https://www.spotlightpa.org/news/2024/05/records-obtained-by-spotlight-pennsylvania-and-wesa-reveal-how-pennsylvania-counties-used-tens-of-millions-in-opioid-settlement-dollars/> [<https://perma.cc/ZVE9-YXM5>].

141. *See* Aneri Pattani, *Here’s Who Controls the \$50 Billion Opioid Settlement Funds in Each State*, NPR (July 10, 2023, at 05:00 ET), <https://www.npr.org/sections/health-shots/2023/07/10/1186511362/heres-who-controls-the-50-billion-opioid-settlement-funds-in-each-state> [<https://perma.cc/Q5UJ-ZJGU>].

142. *See id.*

A. FDA Regulation

Stricter FDA regulation is one step in the right direction. The FDA was a huge contributor to the crisis.¹⁴³ Their missteps were characterized by the President's Commission on Combatting Drug Addiction as in-part causing the opioid crisis.¹⁴⁴ This was not a stretch because FDA officials had financial ties to pharmaceutical companies, making them vulnerable to quid pro quos.¹⁴⁵

The FDA enforces the Food, Drug, and Cosmetic Act.¹⁴⁶ This Act requires drug manufacturers to “demonstrate that their products are both safe and effective before they are marketed.”¹⁴⁷ Manufacturers must also demonstrate that “[t]he benefits of a drug must outweigh potential risks for specific indications listed on an FDA-approved label.”¹⁴⁸ The FDA failed to follow the Act when it approved Oxycontin and allowed Purdue to promote the drug with no warning of addiction.¹⁴⁹ Further, the FDA did not conduct adequate studies as required under the Act before approving.¹⁵⁰ Even when widespread addiction resulted, they continued to approve new opioid formulations.¹⁵¹ As a result, Purdue made billions, other companies began making their own drugs, and people became addicted.¹⁵²

OxyContin should not have been approved for nonmalignant uses. The FDA must comply with the requirement that “adequate and well-controlled studies” be proven before the drug can be approved and promoted.¹⁵³ And for those drugs approved, broad labeling of prescriptions should be limited, and explicit warnings should be made on future prescription drugs that pose a threat like opioids.¹⁵⁴ Following the law and protecting the public should not be hard, but when money is involved, even a once diligent employee can be corrupted.¹⁵⁵ For that reason, the

143. Andrew Kolodny, *How FDA Failures Contributed to the Opioid Crisis*, 22 AM. MED. ASS'N J. OF ETHICS 743, 744 (2020).

144. *Id.*

145. *Id.* at 745.

146. *See id.* at 744.

147. *Id.*

148. *Id.*

149. *Id.* at 744–45.

150. *Id.* at 745 (“Yet [the FDA] approved extended release oxycodone based on only one adequate and well-controlled study, a 2-week clinical trial in osteoarthritis patients.”).

151. *Id.*

152. *Id.*

153. *See id.*

154. *Id.* at 746.

155. KEEFE, *supra* note 12, at 225–26.

FDA should screen for potential conflicts of interest. For example, the FDA has outside experts who advise the government on drug approval.¹⁵⁶ These experts should be vetted by FDA staff to determine whether they are biased.¹⁵⁷ This same rule should be used for regular FDA applicants and employees. By following rigorous ethics rules, the FDA can contribute to the health of America, rather than lining Big Pharma's pockets.

B. Banning Physician Gifts and Pill Mills

Federal and state governments must pass legislation banning physician gifts and pill mills. One survey found 94% of physicians are in a marketing relationship with Big Pharma and accept industry payments or gifts, leaving room for inappropriate prescriptions.¹⁵⁸ The federal government passed the Physician Payments Sunshine Act in 2010 as part of the Patient Protection and Affordable Care Act.¹⁵⁹ The Act requires disclosure of aggregate gifts totaling \$100 or more.¹⁶⁰ The preemption provision in the Act does not prohibit states from creating more stringent requirements.¹⁶¹

Some states have tackled physician gifts in their own way, creating even stricter standards.¹⁶² In Vermont, gifts or payments totaling \$25 or more must be disclosed.¹⁶³ Minnesota even enacted an outright ban against physician gifts.¹⁶⁴ The state prohibits manufacturers from gifting in excess of \$50.¹⁶⁵ Massachusetts has “the most comprehensive restrictions on industry gifts in the nation.”¹⁶⁶ The state

156. *FDA Drug Panels Rife with Conflicts of Interest*, NBC NEWS (Apr. 26, 2006, at 09:21 CT), <https://www.nbcnews.com/health/health-news/fda-drug-panels-rife-conflicts-interest-flna1c9477885> [<https://perma.cc/29ZK-9GKD>].

157. *Id.*

158. David Grande, *Limiting the Influence of Pharmaceutical Industry Gifts on Physicians: Self-Regulation or Government Intervention?*, 25 J. GEN. INTERNAL MED. 79, 80 (2009).

159. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 6002, 124 Stat. 119, 689–96 (2010) (codified at 42 U.S.C. § 1320a–7h); *Physician Payments Sunshine Act*, MEDSTAR HEALTH (Oct. 11, 2025, at 18:56 CT), <https://www.medstarhealth.org/disclosure-of-outside-interests/physician-payments-sunshine-act> [<https://perma.cc/7K22-LZSP>].

160. Grande, *supra* note 158, at 80.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

bans all gifts except modest meals, drug samples, and indirect support for educational programs.¹⁶⁷

The federal government must implement legislation to ban physician gifts. These gifts have no other goal than to increase sales and boost company profit.¹⁶⁸ The federal government must take a step further than Minnesota and Vermont by following Massachusetts and issuing an outright ban.¹⁶⁹

Pill mills tremendously contributed to the opioid crisis. A pill mill is a “doctor, clinic or pharmacy that is prescribing or dispensing powerful narcotics inappropriately or for non-medical reasons.”¹⁷⁰ The largest manufacturer of opioids cultivated stable relationships with hundreds of doctors who would then write pain pill prescriptions purely for profit.¹⁷¹ Although Purdue introduced the blockbuster pill, another company, Mallinckrodt, “accounted for 27[%] of the opioid market compared with 18[%] for Purdue Pharma”¹⁷² Mallinckrodt files from a national lawsuit exposed how the company was aware doctors were running pill mills and how Mallinckrodt decided to continue service with them anyway.¹⁷³ The files show:

Company managers pressured sales representatives to find doctors who would write large numbers of prescriptions and then targeted them for continued business. They rewarded top performers with bonuses and overseas vacations; and fired those failing to meet quarterly sales goals. Three years after one sales rep cautioned that a dozen doctors in his region were running pill mills, illegal pain clinics that dispense large amounts of narcotics, five of them remained on the company’s preferred list of prescribers.¹⁷⁴

Mallinckrodt was not the only one using these tactics and will not be the last.

There are tools that allow states to identify pill mills, so governments are not depending on pharmaceuticals to do the right thing and stop prescribing when they

167. *Id.* at 80–81.

168. *Id.* at 82.

169. *Id.*

170. Pia Malbran, *What’s A Pill Mill?*, CBS NEWS (May 31, 2007, at 18:01 ET), <https://www.cbsnews.com/news/whats-a-pill-mill/> [<https://perma.cc/MJY6-L9L4>].

171. Meryl Kornfield, Scott Higham & Steven Rich, *Inside the Sales Machine of the ‘Kingpin’ of Opioid Makers*, WASH. POST (May 10, 2022), <https://www.washingtonpost.com/investigations/interactive/2022/mallinckrodt-documents-doctors-sales/>.

172. *Id.*

173. *Id.*

174. *Id.*

see signs of a pill mills.¹⁷⁵ Prescription Drug Monitoring Programs (PDMP) “are government-run systems that are used to track the prescribing and dispensing of certain medications . . . including controlled substances such as opioid painkillers.”¹⁷⁶ States in turn, are able to monitor healthcare providers and information is given to prescribers to ensure patients are not misusing medication.¹⁷⁷ Both PDMPs and pill mill laws (laws that regulate prescription medical practices) have shown some optimistic results in limiting pill mills,¹⁷⁸ but stopping the demand for these drugs through addiction services and harm reduction is ultimately key. States must utilize their PDMP and the federal government must increase funding for such databases to track opioid and other prescription drug usage. Further, states must implement pill mill laws to enhance the effectiveness of their PDMPs.¹⁷⁹ This would ensure doctors continue their oath to patients over profit.

C. Lowering Prescription Drug Prices

Lastly, the federal government must reduce prescription drug prices to encourage competition. A 2021 study by the RAND Corporation “found that prices in the United States were an average of 156[%] higher than prices in the comparison countries.”¹⁸⁰ One of the reasons for this issue is that pharmaceutical companies set their prices and go largely unchecked.¹⁸¹

Currently, the government is running a monopoly by giving pharmaceutical companies market exclusivity after FDA approval.¹⁸² A company has a period of product patent protection—generally five to seven years—before other competitors can enter the market and drive down drug prices.¹⁸³ Sometimes, drug companies take advantage of this system and make minor changes to a drug to

175. Amirreza Sahebi-Fakhrabad, Amir Hossein Sadeghi & Robert Handfield, *Evaluating State-Level Prescription Drug Monitoring Program (PDMP) and Pill Mill Effects on Opioid Consumption in Pharmaceutical Supply Chain*, HEALTHCARE, Feb. 2023, at 1, 2.

176. *Id.*

177. *Id.*

178. *Id.* at 14.

179. *Id.* at 13.

180. THOMAS WALDROP, CTR. FOR AM. PROGRESS, VALUE-BASED PRICING OF PRESCRIPTION DRUGS BENEFITS PATIENTS AND PROMOTES INNOVATION 1 (2021), <https://www.americanprogress.org/wp-content/uploads/sites/2/2021/09/ValueDrugPricing-report-1.pdf> [<https://perma.cc/J47P-3JPA>].

181. *Id.*

182. *Id.* at 3

183. *Id.*

establish a new patent so they can have a longer patent exclusivity period.¹⁸⁴ This leads to exorbitant prices for an even more extended period of time, as no other manufacturers can introduce a generic version of the drug, which may be better and cheaper.¹⁸⁵

Pharmaceuticals can dominate the field during their exclusivity period and base their drug on “what the system will bear.”¹⁸⁶ Not only does this pricing make it difficult for patients to access the drugs they need,¹⁸⁷ but the companies’ profit motive may lead to a toxic environment of over-prescription. Big Pharma argues that the prices of drugs reflect the cost of innovation.¹⁸⁸ In actuality, the House Oversight and Reform Committee found that, “From 2016 to 2020, 14 of the largest pharmaceutical companies spent \$577 billion on stock buybacks and dividends, \$56 billion more than they spent on research and development.”¹⁸⁹ The committee also found that “of \$521 billion dedicated to [research and development], ‘a significant portion’ of spending was devoted to suppressing generic competition by other drug companies, rather than developing new drugs.”¹⁹⁰ Therefore, the exclusivity period should be eliminated to encourage competition that would introduce innovative and safer drugs into the market.¹⁹¹

Additionally, product cost should be determined by value-based pricing. Value-based pricing is “paying for drugs in proportion with the benefits they provide to patients over existing drug options.”¹⁹² Prices are set through agencies that look at goals such as: (1) “limiting spending on drugs without a proven benefit,” (2) “promoting research into underinvested health conditions,” and (3) “advancing health equity.”¹⁹³ That way, prices can be based on the demand and efficacy of a product rather than an arbitrary number chosen by pharma executives.

Federal regulation sounds ideal in theory, but states must take the lead because more than two-thirds of Congress cashed checks from Big Pharma in the

184. *Id.*

185. *Id.*

186. *Id.* at 4.

187. *Id.* at 6.

188. *Id.* at 5.

189. *Id.*

190. *Id.*

191. *Id.* at 15.

192. *Id.* at 7.

193. *Id.* at 9.

2020 election.¹⁹⁴ Also, “opioid companies spent \$880 million on lobbying and campaign contributions—dwarfing the \$4 million spent by groups advocating limits on opioid prescribing, and (more surprisingly) exceeding by a factor of eight the gun lobby’s political spending”¹⁹⁵ Some states have taken pricing into their own hands by creating a Prescription Drug Affordability Board (PDAB) which is an “independent agency of the state government that works to help protect state residents and the health care system from high drug prices.”¹⁹⁶ These boards often have members with experience in healthcare and economics that can assess drugs and determine if their prices are fair.¹⁹⁷ For example, in Maryland, the PDAB attempts to establish “criteria for the state to negotiate with” pharmaceuticals and recommends upper limits for certain drugs.¹⁹⁸ Other states should adopt this approach. By doing so, it would not only motivate pharmaceutical companies to develop safer, more effective drugs, but it would also make essential medications more affordable for the public.

VI. CONCLUSION

America has a responsibility to those who fall into addiction because of systemic failures within the government’s healthcare framework. This crisis should not have happened, and it might not have if state and federal governments had done their part in limiting FDA approvals, regulating physicians, and lowering prescription drug prices. But the government did not do its part, and now the situation must be addressed appropriately. Therefore, the allocation process must be more transparent.

The federal government must pass legislation that requires transparency among the states. Without this, states have the autonomy to choose what they disclose under the settlement agreements. State and local governments must be more cohesive in their allocation processes and learn from each other’s mistakes. And they must use nonprofits and advisory councils as a mechanism for allocation; otherwise, political pressures may seep into the allocation process. By having an

194. Lev Facher, *More Than Two-Thirds of Congress Cashed a Pharma Campaign Check in 2020, New STAT Analysis Shows*, STAT (June 9, 2021), <https://www.statnews.com/feature/prescription-politics/federal-full-data-set/> [<https://perma.cc/EB9U-NKH8>].

195. Jonathan H. Marks, *Lessons from Corporate Influence in the Opioid Epidemic: Toward a Norm of Separation*, 17 J. BIOETHICAL INQUIRY 173, 178 (2020).

196. Mary Kekatos, *Maryland’s Drug Affordability Board Is a Step Closer to Setting Prescription Caps*, ABC NEWS (Oct. 22, 2024, at 13:56 CT), <https://abcnews.go.com/Health/marylands-drug-affordability-board-step-closer-setting-prescription/story?id=115018455> [<https://perma.cc/B2WX-AKGY>].

197. *See id.*

198. *See id.*

advisory committee with members from various sectors of the community, greater focus can be directed toward rural areas facing stigma and economic challenges rather than solely prioritizing urban communities.

Transparency measures may be exhaustive, but what is more exhaustive is having a loved one struggle or even die because of opioids. Money must be put into their treatment and not budget shortfalls. Transparency is the only way to ensure the government does that.