

Key Points

- New Mexico received at least \$884 million in opioid settlement revenue. That revenue was split in equal amounts between the state, local governments, and outside counsel fees.
- New Mexico will pay \$249.4 million in outside counsel fees, 28.2 percent of total opioid settlement revenues.
- New Mexico's Procurement Code regulations offer limited oversight regarding outside counsel contracts for public cases. These lag various national benchmarks.
- Substance Use Disorder outcomes continue to deteriorate in New Mexico and the funds gained from opioid settlements need to be targeted towards programs and treatments that are tested and work.

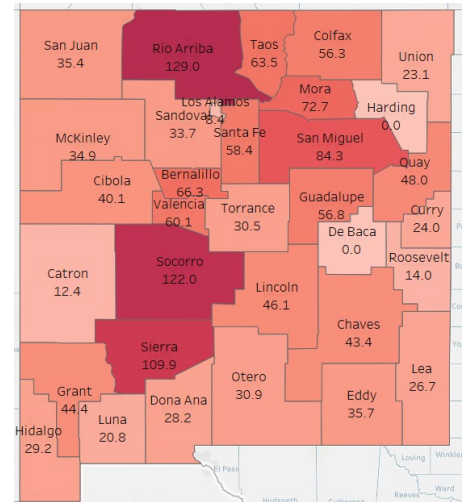
Summary

In 2021, 1,029 New Mexicans died of drug overdoses (roughly 3 people a day), with the state seeing nearly 200 thousand residents living with substance use disorders (SUD). Additionally, multiple counties in New Mexico carry overdose rates many times higher than the national rate and the state's overall overdose rates are among the worst in the nation. Despite efforts to curb these numbers, they have continued to deteriorate over a number of years. The national opioid settlement represents one of the biggest public health settlements ever, and a historic opportunity to address substance use disorders and potentially save lives. To accomplish these goals, and utilize the funds generated by the settlements, coordinated investment among state and local entities is paramount. However, settlement payouts are spaced out over extended periods of time and are hampered by the state paying uniquely high outside counsel fees, thus diminishing the amount of funds New Mexico can utilize for SUD treatment.

Beginning in 2017, the New Mexico Attorney General entered the state into a series of lawsuits against pharmaceutical manufacturers, distributors, and retailers for their roles in exacerbating the opioid crisis. The state successfully settled with six entities, generating \$884 million for remediation of the opioid crisis. To date, the state has received at least \$90 million. Most of the revenues have been invested in the opioid settlement permanent fund, which will make annual distributions around \$5 million per year to the opioid crisis recovery fund, from which the Legislature will make programmatic appropriations. In addition to state revenues, local governments have received at least \$108 million. Most of New Mexico's opioid crisis remediation revenues have yet to reach state coffers. This is due to the structure of the settlement agreements, which allowed payments to be spread out over time instead of as a lump sum, which favors opioid companies.

As enumerated in settlement agreements and in statute (Section 6-4-29 NMSA 1978), revenues must be used to support treatment of opioid use disorders and any co-occurring substance use disorder or mental health conditions through evidence-based or evidence-informed programs or strategies. Spending on research and evaluation of programs is also allowable.

County Overdose Death Rates 2021 (deaths per 100 thousand people)



Source: NM DOH Bureau of Vital Records and Health Statistics death data; UNM/GPS population estimates

The New Mexico Results First Model estimates the lifetime cost of an illicit drug-use disorder is \$245 thousand in New Mexico.

The model estimates the lifetime cost of alcohol use disorder is \$154 thousand.

The overall estimates cost of substance use disorders in New Mexico is \$39 billion.

Source: LFC Files

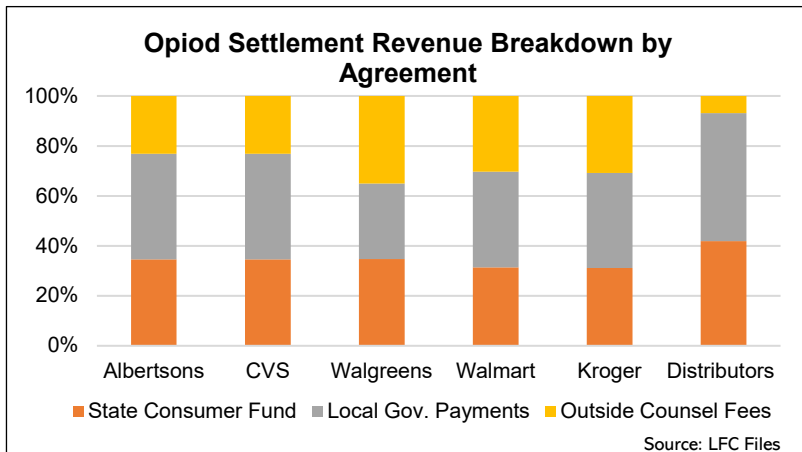
Contingency Fees

Total Opioid Settlement Revenue by Beneficiary (in millions)

Entity	State	Local Govs.	Outside Counsel	Total Settlement Amount
Albertsons	\$6.8	\$8.3	\$4.5	\$19.6
CVS	\$6.5	\$7.9	\$4.4	\$18.8
Walgreens	\$156.9	\$136.4	\$158.5	\$451.8
Kroger	\$26.3	\$32.2	\$26.0	\$84.5
Walmart	\$46.4	\$57	\$45.0	\$148.2
Distributors	\$67.9	\$82.9	\$11.0	\$161.9
Totals	\$310.9	\$324.5	\$249.4	\$884.8

Settlement totals exclude revenues that covered litigation costs incurred by New Mexico.
Source: LFC Files

In 2019, two years after filing the initial complaint, the Attorney General’s office chose to remove New Mexico from the national settlement between Walmart, Walgreens, CVS, Kroger, Albertsons, and other states. Instead, the office contracted with private law firms to pursue the suit. As a result of this arrangement with these entities, New Mexico will pay \$238.4 million in outside counsel fees and will receive \$243.0 million in state payments and \$241.6 million in local government payments.



In addition to the settlements with Walmart, Walgreens, CVS, Kroger, and Albertsons, the state will also receive revenue from settlements with several opioid distributors and manufacturers. New Mexico remained in the national settlement agreement framework against the opioid distributors, resulting in a settlement payout structure that differed from the outside counsel structure. The payment structure of the national distributor settlement, totaling roughly \$68 million, prioritized New Mexico. The state will receive \$67.9 million, local governments will receive \$82.9 million, and the state will pay \$11.0 million in outside counsel fees.

In total, of the \$884.8 million that New Mexico is receiving from these six entities, \$310.9 million will go to the state, \$324.5 million will go to local governments, and \$249.4 million will go to outside counsel fees. The fees, 28.2 percent of total remediation funds, will be mostly paid to outside counsel in six years.

While higher outside counsel fees may be expected for states that chose to pursue cases outside a national framework, New Mexico's rates were still far higher than the three other states that chose to pursue cases individually. States that participated in the national agreements with Walmart, Walgreens, and CVS paid between 10.8 percent and 11.5 percent of total settlement amounts to outside counsel. Additionally, other states that choose to utilize outside counsel in the Walgreens settlement had lower contingency fee rates than New Mexico. According to news reports,

- Florida paid 9 percent
- West Virginia paid 15 percent (preliminary) and
- Nevada paid 22.8 percent.

For the entities the state settled with directly, the state would have paid \$88.9 million if New Mexico's outside counsel received the same rate as national lawyers or \$112.8 million if they had received the average rate as the other three states using private counsel for the Walgreens settlement.

Of the six settlements, two have structures that allow opioid companies to make payments of up to 20 years. This makes the settlements less valuable than they would have been as lump sum payments, due to inflation. This makes coordination between the variety of agencies in the executive and the Legislature paramount to ensure the opioid remediation funds are disbursed and used properly.

Local Governments

Opioid settlement agreements are distributed pursuant to the New Mexico Opioid Allocation Agreement (NMOAA). Exhibit C of that agreement lists the share of the local government amount that will be distributed to each participating local government entity. Some revenues have been or will be distributed to local governments as a lump sum while others will be paid out over time. The table in the sidebar is an estimate of both lump-sum and annual revenue by entity.

The below table is an estimate of the specific payout timeline for Albuquerque, Dona Ana County, Santa Fe County, and McKinley County.

Estimated Annual Opioid Revenues for Select Local Governments
(in millions)

Year	Albuquerque	Dona Ana County	Santa Fe County	McKinley County
FY25	\$2.45	\$0.76	\$0.49	\$0.19
FY26	\$1.96	\$0.61	\$0.39	\$0.15
FY27	\$1.96	\$0.61	\$0.39	\$0.15
FY28	\$1.89	\$0.59	\$0.38	\$0.15
FY29	\$3.94	\$1.23	\$0.79	\$0.31
FY30	\$3.94	\$1.23	\$0.79	\$0.31
FY31	\$3.94	\$1.23	\$0.79	\$0.31
FY32	\$3.73	\$1.16	\$0.75	\$0.29
FY33	\$3.73	\$1.16	\$0.75	\$0.29
FY34	\$3.73	\$1.16	\$0.75	\$0.29
FY35	\$3.73	\$1.16	\$0.75	\$0.29
FY36	\$3.73	\$1.16	\$0.75	\$0.29
FY37	\$3.73	\$1.16	\$0.75	\$0.29
FY38	\$1.03	\$0.32	\$0.21	\$0.08
FY39	\$1.03	\$0.32	\$0.21	\$0.08

Note: this table presents an estimate and does not include actuals from FY22, FY23, or FY24. Accordingly, totals will not sum to the amounts presented in the "Opioid Settlement Revenues to Local Governments" table.

Source: NMOAA Exhibit C, LFC Files

This analysis uses total local government settlement revenues and the distribution schedule from the NMOAA to estimate revenue for each local government. Actual revenues should be monitored and updated.

Overdose Deaths. In 2021, Rio Arriba, Socorro, Sierra, and San Miguel Counties had the highest rates of overdose deaths in the state, all exceeding 80 deaths per 100 thousand population. The overdose death rates in Cibola, Socorro, Sierra, and Valencia Counties all increased rapidly during the pandemic, largely driven by fentanyl. See Appendix A for the count of overdose deaths by county.

Estimated Opioid Settlement Revenues to Local Governments
(in millions)

Region	% of total	Estimated settlement revenues		
		Lump-sum Amt.	Avg. Annual Amt.	Total after FY39
Albuquerque City	22.8%	\$23.93	\$3.11	\$73.88
Bernalillo County	18.6%	\$19.58	\$2.55	\$60.45
Dona Ana County	7.1%	\$7.45	\$0.97	\$22.99
Rio Arriba County	4.6%	\$4.84	\$0.63	\$14.93
Sandoval County	4.6%	\$4.79	\$0.62	\$14.80
Santa Fe City	4.5%	\$4.78	\$0.62	\$14.74
Valencia County	3.8%	\$4.03	\$0.52	\$12.43
San Juan County	3.8%	\$4.02	\$0.52	\$12.40
Santa Fe County	3.5%	\$3.70	\$0.48	\$11.41
Eddy County	2.6%	\$2.73	\$0.36	\$8.44
Otero County	2.6%	\$2.71	\$0.35	\$8.36
Chaves County	2.5%	\$2.67	\$0.35	\$8.23
Lea County	2.0%	\$2.15	\$0.28	\$6.62
Grant County	1.8%	\$1.90	\$0.25	\$5.86
McKinley County	1.8%	\$1.89	\$0.25	\$5.82
Taos County	1.7%	\$1.83	\$0.24	\$5.66
San Miguel County	1.7%	\$1.75	\$0.23	\$5.41
Curry County	1.4%	\$1.48	\$0.19	\$4.56
Lincoln County	1.2%	\$1.28	\$0.17	\$3.96
Sierra County	1.0%	\$1.08	\$0.14	\$3.35
Luna County	0.84%	\$0.88	\$0.11	\$2.72
Cibola County	0.77%	\$0.81	\$0.11	\$2.51
Colfax County	0.74%	\$0.78	\$0.10	\$2.42
Socorro County	0.74%	\$0.77	\$0.10	\$2.39
Torrance County	0.71%	\$0.74	\$0.10	\$2.30
Los Alamos County	0.59%	\$0.62	\$0.08	\$1.92
Roosevelt County	0.54%	\$0.57	\$0.07	\$1.75
Quay County	0.47%	\$0.50	\$0.06	\$1.54
Hidalgo County	0.20%	\$0.21	\$0.03	\$0.64
Mora County	0.19%	\$0.20	\$0.03	\$0.62
Guadalupe County	0.19%	\$0.20	\$0.03	\$0.61
Catron County	0.11%	\$0.12	\$0.02	\$0.37
Union County	0.11%	\$0.12	\$0.02	\$0.36
De Baca County	0.07%	\$0.07	\$0.01	\$0.21
Harding County	0.01%	\$0.01	<\$0.01	\$0.03

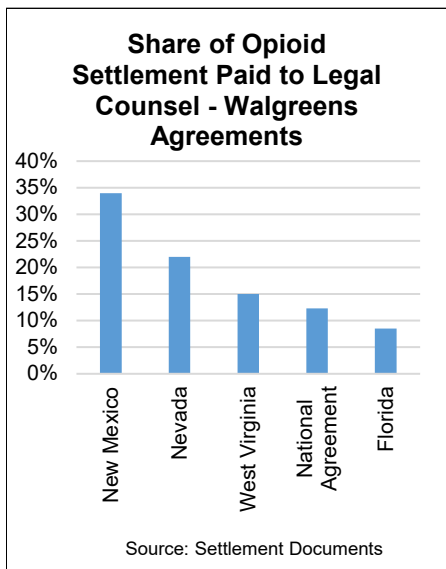
Note that the state's agreement with Walgreens specifies a 15-year timeline to local governments with annual payouts that vary between \$3.7 million and \$11.9 million each year. For a year-by-year breakdown, readers should consult Exhibit E2 and Exhibit C of the settlement agreement. Similarly, the state's national settlement with various distributors and manufacturers will result in payments over 18 years with some variation in payments by year. Readers should consult that settlement for a more detailed analysis of local government revenues.

Source: NMOAA Exhibit C, LFC Files

Case Study: Walgreens Opioid Settlement

New Mexico selected outside counsel to settle with Walgreens and resolve claims against the company. New Mexico settled with the company for \$453 million and received \$47 million from the company's national settlement. The \$500 million will be distributed into several buckets over 15 years.

The state's portion totals \$157 million, local government's portion is \$136 million, and outside counsel fees are \$158 million. The remainder will be paid to cover costs associated with the national settlement. The timeline of payments also reduces funds available for appropriation. The state will receive annual payments of between \$6.9 million and \$12.3 million for 15 years. Outside counsel will receive payments of between \$11.8 million and \$53.2 million for six years. By the time outside counsel has received its full payments, New Mexico will have received \$46 million, 26 percent of New Mexico's total settlement.



Implementation and Coordination Risk

An August 2023 LFC report estimates the overall lifetime costs of substance use disorders in New Mexico to be \$39 billion. In 2020, the Department of Health estimated 204 thousand New Mexicans were living with a substance use disorder (SUD). The effects of untreated SUD contribute to poor outcomes for the state, including high rates of substance-related deaths and high rates of child maltreatment. In 2020, the two leading caregiver risk factors for child maltreatment in New Mexico were drug and alcohol use. Additionally, DOH reports New Mexico's persistent substance use challenges contribute to poverty, crime, unemployment, and domestic violence.

Since the settlements, the landscape of substance use disorders (SUDs) has evolved. Fentanyl and methamphetamine have surpassed heroin and prescription opiates as leading causes for overdose deaths. Alcohol use disorder treatment options and policy attention lag compared with opioid treatment options and policy attention.

New Mexico faces systematic obstacles that make addressing the harms of opioids in communities challenging. Only one-third of SUD patients receive treatment, and lack of data regarding behavioral health services makes it very difficult to identify trends and treatment participation and utilization. New Mexico is currently in a behavioral health shortage. According to the Health and Human Services Department, only 18 percent of the state's behavioral health needs are met, and an additional 90 providers are needed to end the designation.

To address these barriers, stakeholders like the state Behavioral Health Collaborative (BHC), the Department of Health, and others should improve collaboration and coordination. New Mexico risks duplicating or underleveraging available resources without coordination. The BHC's statutory role positions the organization to play a strategic role in developing a comprehensive plan to address substance use disorders in the state. LFC has previously noted the BHC should enhance its overarching coordinating role.

Opioid Settlement Revenue Appropriations

For FY24, the legislature appropriated \$21 million of the opioid settlement funds to remediate damages. \$9 million went to improve direct service provision, including investments in medication-assisted treatment (\$4.5 million) and behavioral health initiatives (\$2.5 million), and \$12 million to enhance systems designed to address consequences of the opioid crisis.

For FY25, the legislature continued most of these appropriations, such as \$2.5 million for the Department of Health’s medication assisted treatment (MAT) program. The 2024 general appropriations act also increased funding for the Health Care Authority/Human Services Department voucher and supports for housing and New Mexico Correctional Department’s MAT program in correctional facilities.

Disparities in SUD outcomes across the state make it important that agencies coordinate to ensure opioid settlement revenues reach the communities where the need is the highest.

Maximizing Settlement Impact

Researchers have offered insights into how opioid settlement revenues can be used to maximize the public health impacts. The University of Southern California Schaeffer Opioid Policy Tools and Information Center (OPTIC) offers four major insights.¹

First, while root causes of opioid-related deaths are diverse, they share some common themes, like lack of economic opportunity, financial instability, housing insecurity, persistent physical pain, feelings of despair, helplessness, and untreated mental health issues. Addressing these issues will better impact root causes than just focusing on the opioids as the cause of harm.

Second, evidence suggests no single policy or program can address the unique characteristics of the opioid crisis in a community. Practitioners—in collaboration with appropriators—should weigh the evidence that a program or policy will work, then clearly define how to measure success.

Third, studies show that giving individuals access to evidence-based treatment for opioid use disorder and keeping them in treatment are effective ways to reduce opioid-related harms, and this strategy can be inexpensive. OPTIC researchers note that barriers to access can be reduced by expanding insurance coverage for buprenorphine treatment, reducing patient cost, eliminating prior authorization for treatment, and incentivizing providers to treat these patients by offering higher reimbursements.

Lastly, what began as an opioid crisis has ballooned into a polysubstance crisis. Policies should be pursued that also influence use and treatment of other addictive substances rather than narrowly considering impacts only on opioid outcomes and harm.

Opioid Settlement Revenue Appropriations (in thousands)

Agency: Purpose	FY24	FY25
DOH: Medication assisted treatment (MAT)	\$2,500	\$2,500
DOH: MAT in tribal communities	\$1,000	\$1,000
NMCD: MAT in correctional facilities	\$1,000	-
HSD: SBIRT	\$2,000	-
HSD: Expand CCBHCs	\$1,500	-
ECECD: Improve infant mental health	\$1,000	\$1,000
HSD: Expand behavioral health telehealth services	\$1,000	\$1,000
HSD: Ongoing Costs of Opioid Epidemic	-	\$5,500
CYFD: Safe care	\$1,000	-
CYFD: CARA	\$1,000	-
HSD: CARA	-	\$1,839
UNM: ECHO	\$800	\$800
UNM: Child psychiatric hospital	\$1,000	\$1,000
HSD: Increase vouchers and supports for housing	\$2,000	\$2,288
PED: Pilot mental health wellness rooms in schools	\$200	\$200
ECECD: Support childcare assistance programs	\$5,000	-
Total Appropriations	\$21,000	\$17,127

¹ See “Strategies for Effectively Allocating Opioid Settlement Funds,” <https://www.rand.org/health-care/centers/optic/tools/fund-allocation.html>

Procurement Practices

A November 2023 opinion from the State Ethics Commission (SEC) found contingent-fee contracts are subject to the Procurement Code. Procurement practices for large settlements like opioid settlements exist to safeguard against undue influence, quid pro quo conduct, and the appearance thereof.

The SEC opinion states the Procurement Code constrains state agencies in selecting outside counsel to “maximize the value of public funds and maintain a functioning procurement system.” Additionally, the opinion states that the payment for outside counsel, which traditionally comes from the “property” gained through litigation, is property of the state and, therefore, public monies, which must be used pursuant to the Procurement Code.

Current Procurement Code practices require a transparent and competitive bidding process. The state should consider additional regulation that leads to the selection of contracts that prioritizes New Mexico and its litigation goals.

Other state legislatures have adopted procurement requirements and other restrictions to protect the public interest in maximizing the value of public funds.

Other State Policies

At least 22 states have statutory guidance limiting contingency fee awards with state agencies. Many of the laws are based on the model Private Attorney Retention Sunshine Act (PARSA) and the Transparency in Private Attorney Contracting (TIPAC) Act.

PARSA-model laws generally require legislative oversight or approval for contracts over \$1 million and prohibit the state from paying fees of more than \$1,000 per hour when the total fee recovery is divided by the number of hours actually worked. TIPAC-model laws generally require an attorney general to issue a finding that a contingency-fee agreement is in the best interest of the state and that contracts and fee payments be publicly posted. TIPAC laws also generally place caps on the total fees outside counsel can receive, whether as a percentage of the recovery or a cumulative cap. For example, in Kentucky, contingency fees are capped by the following schedule:

- 20 percent if the amount recovered is less than \$10 million;
- 15 percent if the amount recovered is between \$10 million and \$15 million;
- 10 percent if the amount recovered is between \$15 million and \$20 million; and,
- 5 percent if the amount recovered is greater than \$20 million.

Had New Mexico implemented a TIPAC model statutory framework aligned with Kentucky, contingency fees paid to outside counsel could have been as low as \$40 million, potentially saving state and local governments as much as \$183 million.

Other attorneys general have acted independently of state legislatures to limit the use of contingency fee arrangements through administrative regulations.

States with Laws Limiting State Agency Contingency Fee Arrangements



Source: LFC Files

Appendix A: Overdose Deaths by County, 2021

County	Total Deaths	Death Rate per 100,000
Bernalillo	456	66.28
Santa Fe	81	58.44
Dona Ana	57	28.22
Sandoval	47	33.71
Rio Arriba	45	129.00
Valencia	43	60.12
San Juan	39	35.37
Chaves	29	43.38
McKinley	22	34.90
Otero	22	30.88
San Miguel	21	84.28
Taos	21	63.46
Eddy	20	35.67
Lea	18	26.70
Socorro	17	121.99
Lincoln	12	46.15
Cibola	11	40.15
Curry	11	24.00
Sierra	10	109.92
Grant	9	44.41
Colfax	6	56.25
Luna	5	20.81
Torrance	4	30.50
Quay	*	*
Roosevelt	*	*
Guadalupe	*	*
Los Alamos	*	*
Mora	*	*
Catron	*	*
Hidalgo	*	*
Union	*	*
De Baca	*	*
Harding	*	*
New Mexico	1,029	50.63

Notes: * Counts of less than 3 are suppressed.

Rates are per 100,000 population and age adjusted to the US 2000 standard population.

Source: NM DOH Bureau of Vital Records and Health Statistics death data; UNM/GPS population estimates