

Nebraska Opioid Remediation Advisory Committee

OVERVIEW: OPIOID LITIGATION SETTLEMENTS

Nebraska's "Opioid Prevention & Treatment Act" (2020)

Neb. Rev. Stat. §§71-2485 to 71-2490

- Purpose of the Act is to “provide for the use of dedicated revenue for opioid-disorder-related treatment and prevention.”
- Requires spending from the Recovery Fund to comport with the terms of each settlement agreement.
- Requires DHHS to provide annual report regarding use of funds and “the outcomes achieved from such use.”
- Created the “Nebraska Opioid Recovery Fund” to which any settlement monies obtained by the Attorney General are credited. *All **state** dollars allocated under any opioid settlement agreement must go into this fund regardless of the terms of the settlement agreement.*

Nebraska's "Opioid Recovery Fund"

- Current principal balance is \$2,147,213.96 which is comprised of the first payment from the McKinsey & Company settlement.
- All funds received from any opioid defendants that are designated for the State will be deposited in the Opioid Recovery Fund.
- Any settlement monies that are designated for political subdivisions are not deposited in the Opioid Recovery Fund.
- DHHS must account for the expenditures from the Opioid Recovery Fund on an annual basis.

Overview of Opioid Settlement Status: Primary Defendants

Manufacturers:



Manufacturers in Bankruptcy:



Distributors:



Marketer :



Overview of Opioid Settlements: McKinsey & Company

- In February, 2021 McKinsey settled with 47 States, DC, and 5 US Territories for \$573,919,331.
- Payments are made over five years with the first payment constituting the bulk of the settlement award.
- Nebraska's total settlement share is \$2,590,561.
 - Nebraska's first payment of \$2,147,213 was received in March.
 - Nebraska will receive four (4) additional annual payments of \$110,836 each.

Overview of Opioid Settlements:

”The Distributors”: AmerisourceBergen, Cardinal, McKesson

- Tentative national settlement with states and political subdivisions announced July 21, 2021, with a total potential value of **\$18,554,013,691.10** paid out over a total of 18 annual payments.
- Nebraska’s total allocable share is 0.4291907949%
- Nebraska’s maximum total sum would be **\$81,680,641.76 over 18 years.**
- Annual Amount Varies Based on “Bonus” Metrics. Bonuses are Based on the Number of Political Subdivisions that sign on to the Agreement.
- Base Amount Total = \$43,797,665.37
 - Base + Minimum Bonus = \$55,742,483.19
 - Base + Intermediate Bonus = \$63,705,695.08
 - Base + Maximum Bonus = \$79,632,118.85 + Additional Restitution* of \$2,048,522.91 = \$81,680,641.76

*Because Nebraska did not engage outside legal counsel, it is entitled to an additional restitution amount of \$2,048,522.91 which will also go to the Nebraska Opioid Recovery Fund.

Overview of Opioid Settlements:

”The Distributors”: AmerisourceBergen, Cardinal, McKesson

Funds are allocated under the Settlement into 3 “buckets”

1. “Abatement Fund” = 70% of Total
 2. “State Share” = 15% of Total
 3. “Political Subdivision Share” = 15% of Total
- Per the Opioid Prevention and Treatment Act, the State Share and Abatement Fund are combined into the Opioid Recovery Fund. Therefore the Opioid Recovery Fund comprises 85% of Nebraska’s Total Share = \$69,428,545.50 over 18 payments.
 - The 15% that comprises the “political subdivision share” is divided according to a schedule created by the Plaintiffs Executive Committee, the attorneys representing political subdivisions nationally. 15% of Nebraska’s Total Share = \$12,252,096.26 over 18 payments.

Overview of Opioid Settlements: Johnson & Johnson

Tentative national settlement with states and political subdivisions announced July 21, 2021, with a total potential value of **\$4,534,615,385** paid out over a total of 9 annual payments

Nebraska's total allocable share is 0.4313919963%

Nebraska's maximum total share would = \$19,561,967.83 + Additional Restitution of \$399,206.92
= **\$19,961,174.75**

As with the Distributor's Settlement, Funds are allocated under the J&J Settlement into 3 "buckets"

1. "Abatement Fund" = 70% of Total
 2. "State Share" = 15% of Total
 3. "Political Subdivision Share" = 15% of Total
- Per the Opioid Prevention and Treatment Act, the State Share and Abatement Fund are combined into the Opioid Recovery Fund (85%). The 15% that comprises the "political subdivision share" is divided according to a schedule created by the Plaintiffs Executive Committee, the attorneys representing political subdivisions nationally, totaling \$2,994,176.

Current Opioid Settlement Totals

Assuming Nebraska achieves all necessary political subdivision support to achieve its payment bonuses under the J&J and Distributors Settlements,

McKinsey Total (State Only) = **\$ 2,590,561**

Johnson & Johnson Total (State and Local) = **\$19,961,175**

Distributors Total (State and Local) = **\$81,680,642**

\$104,232,878

What Can Settlement Funds be Used For?

Exhibit “E” in both Distributors and J&J Settlements contain a list of approved uses for settlement funds, including, but not limited to:

- Treatment of OUD and any co-occurring SUD / MH conditions
- Full continuum of care of recovery services
- Research
- Prevention education
- Law enforcement and first responder training and related law enforcement expenditures
- Restitution for unpaid treatment costs to providers or patients.
- Capital costs for opioid use disorder treatment facilities.

Allocating Nebraska's Settlement Share

- One state entity, DHHS-DBH, accounts for approved use and receipt of State funds from national settlement administrator or bankruptcy court to be deposited in Nebraska's Opioid Recovery Fund held by the Treasurer.
- Settlement allocation within the state will be equitable across existing regions (Nebraska is using its 6 Behavioral Health regions).
- DHHS-DBH can leverage existing SAMSHA grant administration to allocate and account for funds based on regional allocation model.
- Settlement envisions state / local task force to recommend opioid abatement priorities and expenditures if not in Statute.

Allocating Nebraska's Settlement Share: Advisory Committee Structure

The J&J and Distributors settlements require an “Opioid Settlement Remediation Advisory Committee balanced between state and local members to “provide input and recommendations regarding remediation spending from (the Nebraska Opioid Recovery Fund)”.

Allocating Nebraska's Settlement Share: Advisory Committee Principles

- The Advisory Committee's sole purpose is to provide recommendations for use of opioid remediation (abatement) funds.
- Recommendations must comport to the Opioid Prevention and Treatment Act and the terms of any Settlement Agreements.
- Recommendations should achieve regional equality.
- Recommendations should be evidence-based and objectively prioritized.
- Meetings of Advisory Committee are held according to the Open Meetings Act and recommendations are presented publicly for feedback.

Allocating Nebraska's Settlement Share: Advisory Committee Timeline

1. Advisory Committee holds meetings throughout Spring / Summer (2022)
2. Funding made available to the Opioid Recovery Fund (July 2022)
3. Distributions made from Opioid Recovery Fund (Fall 2022).

Direct Shares for Municipalities & Counties

- All 93 Counties + 16 Nebraska Municipalities Are Eligible for a “Direct Share”. (See EXHIBIT “G” for both Settlements for the complete list).
- The Direct Share is portion of the 15% of Nebraska’s total allocable share based on population.
- The Direct Share received by any municipality must be used for abatement purposes as defined by the agreements.
- To Receive a Direct Share and be eligible to receive funding from Nebraska’s Opioid Recovery Fund, counties and eligible municipalities must sign on to the J&J and Distributors Settlement Agreements.
- As of January, 2022 all eligible cities and counties have signed-on to both agreements.

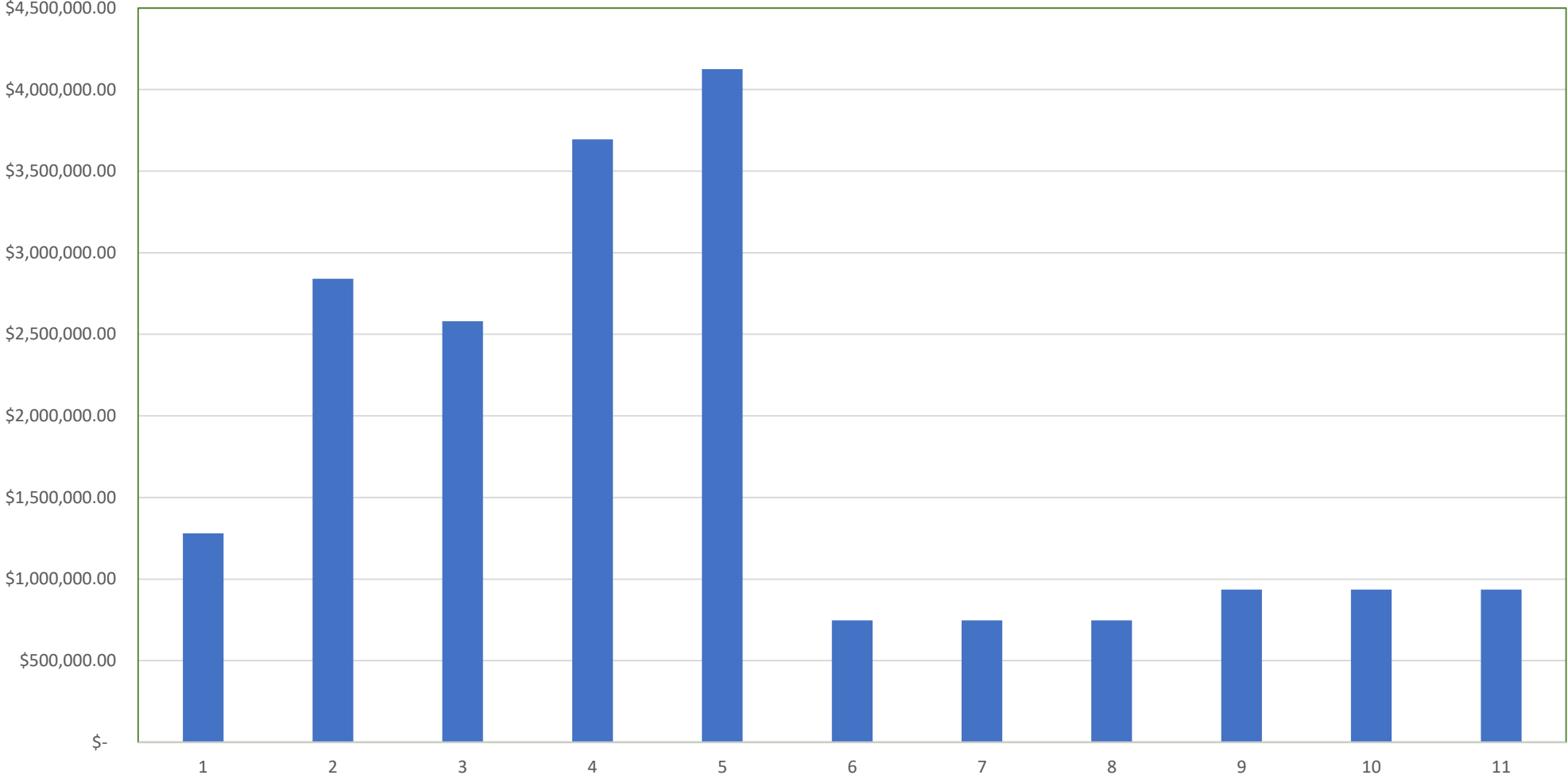
Timeline for Nebraska's Opioid Recovery Fund Deposits

- “Initial Participation Date”: January 26th, 2022 all eligible municipalities and all Nebraska counties agreed to participate in the Janssen and Distributors settlements.
- “Reference Date”: Defendants agreed to proceed with respective settlements. AG’s Press Release February 25, 2022.
- “Effective Date”: 60 days from the Reference Date, i.e. April 25, 2022.
- Between the reference state and the effective date each state must seek a consent judgment before funds will be released. **These necessary consent judgments were respectively entered by the Lancaster County District Court on April 12th for the Janssen case and on April 14th for the Distributors case.**

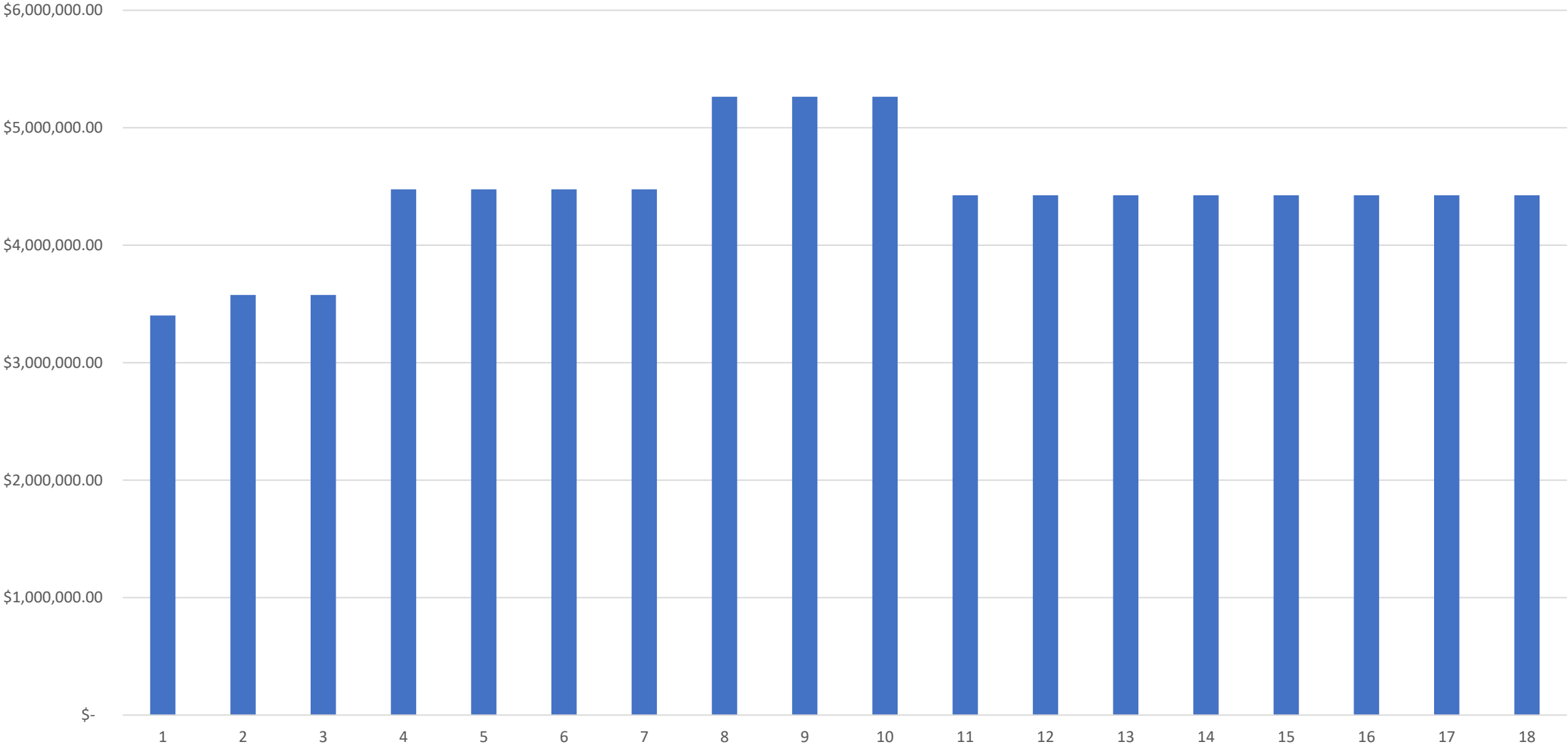
Base and Incentive Payments

- Nebraska will receive its base payment and maximum incentive payments (Incentive A and Incentive D) for both the Distributors and Janssen settlements.
- Settlement Payment Schedule is set forth in Exhibit “M” of both settlement agreements.
- For Distributors, Payment #1 is in escrow. Payments #1 and 2 will both be released to the states on July 15, 2022. Payments will continue through July of 2038.
- For Janssen, Payment #1 will be released 90 days from the effective date, i.e. on or after May 25, 2022. Payment #2 will be released in July of 2022. Payments will continue through June of 2031.

Janssen Settlement Annual Payments (Projected)



Distributors Settlement Annual Payments (Projected)



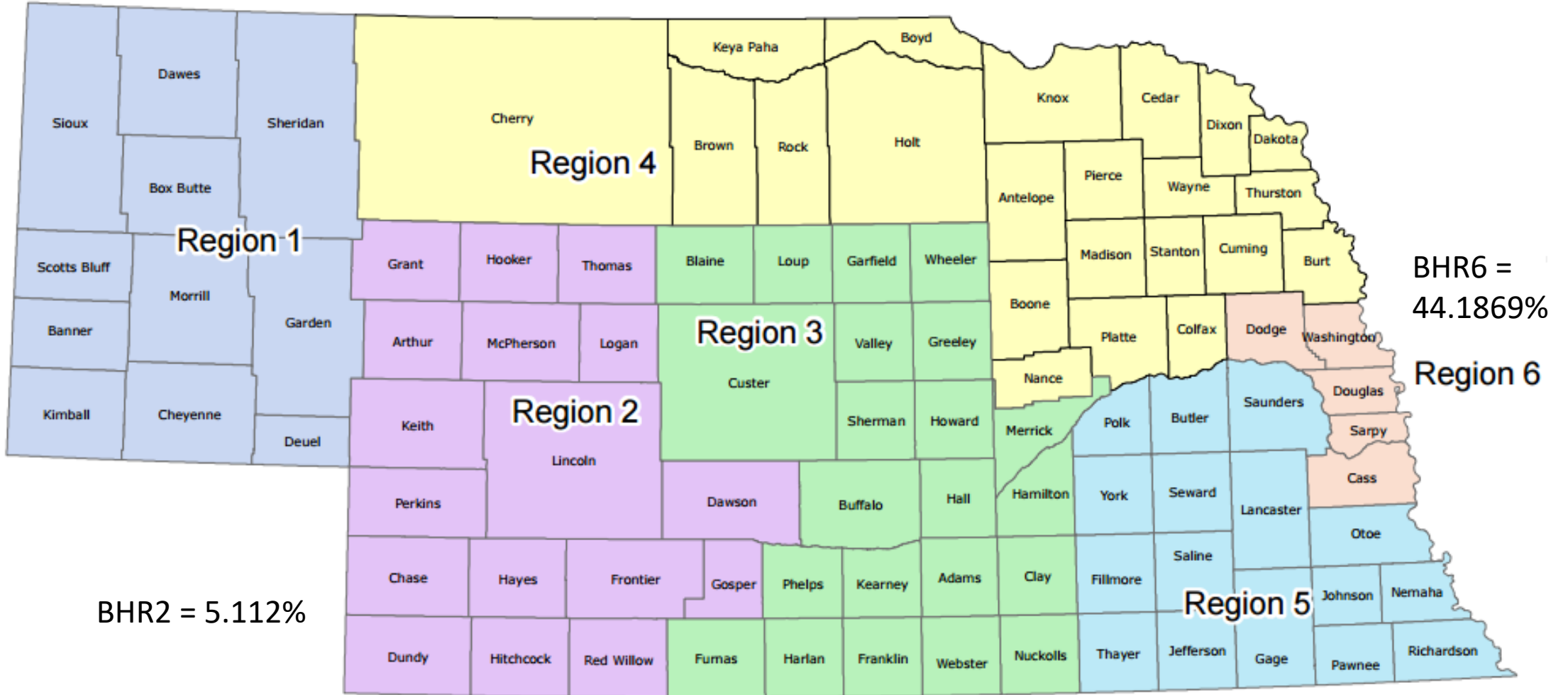
Spending Allocation for the Opioid Recovery Fund

- *At least* half of all annual payments received into the Opioid Recovery Fund must be “allocated and tracked to the regional level” (see Distributors Agreement Section V.E.2 and Janssen Agreement Section VI.E.2).
- Advisory Committee may allocate between 50% and 100% of the annual settlement payments received into the Opioid Recovery Fund to the regions (Behavioral Health Regions).
- Allocation between each region is determined by the Advisory Committee. Both the total regional allocations to all regions and the allocations amongst regions may be changed annually by the Advisory Committee so long as at least 50% is allocated regionally each year.
- INITIAL Regional Allocation Percentages are to be based on the allocation percentages to eligible subdivisions found in Exhibit “G” of both settlements. (See next slide)

Regional Allocations Per Eligible Cities and Counties Listed in Exhibit G

BHR1 = 5.4767%

BHR4 = 8.5833%



BHR6 = 44.1869%

Region 6

BHR2 = 5.112%

BHR3 = 10.8982%

BHR5 = 25.7421%