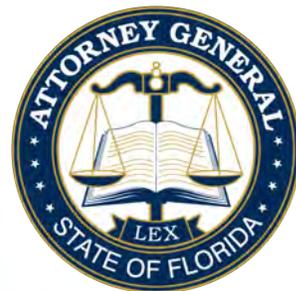




Opioid Litigation

Settlements and Allocation Approach

Florida Association of Counties Annual Meeting

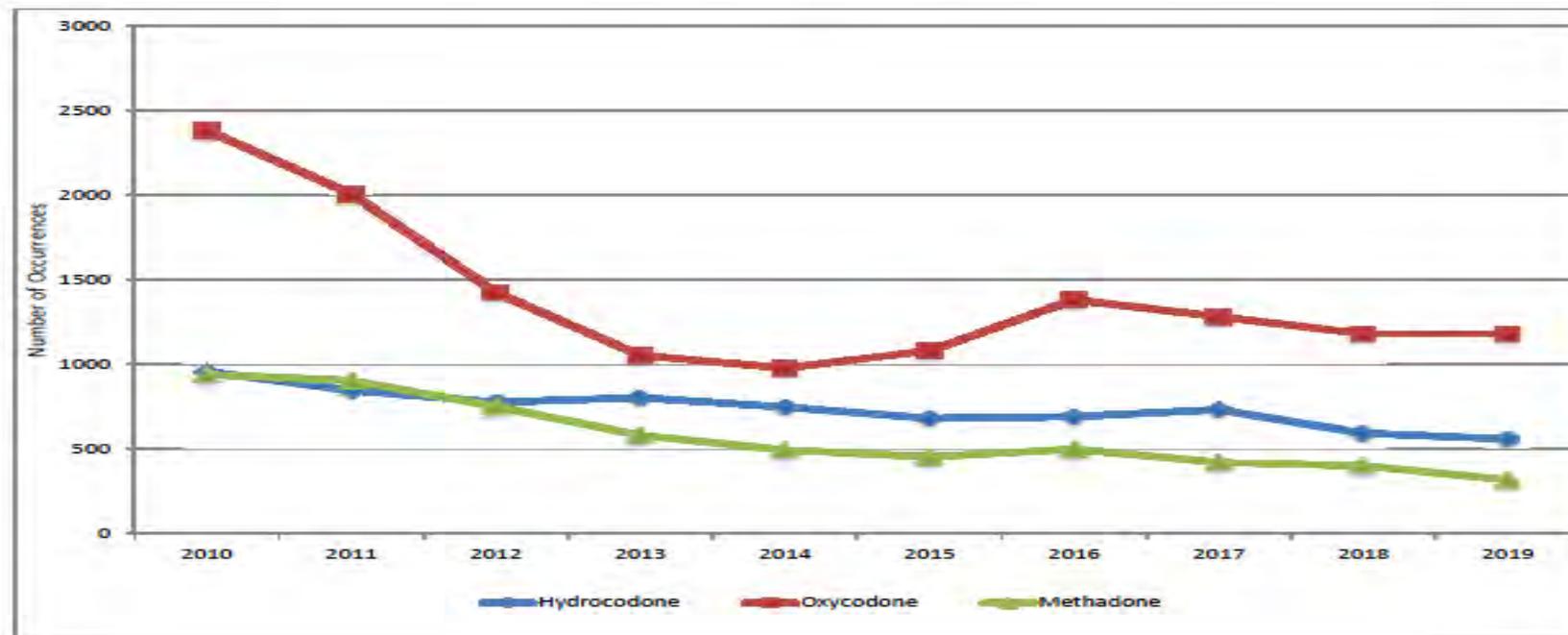


John Guard
Chief Deputy Attorney General

July 1, 2021

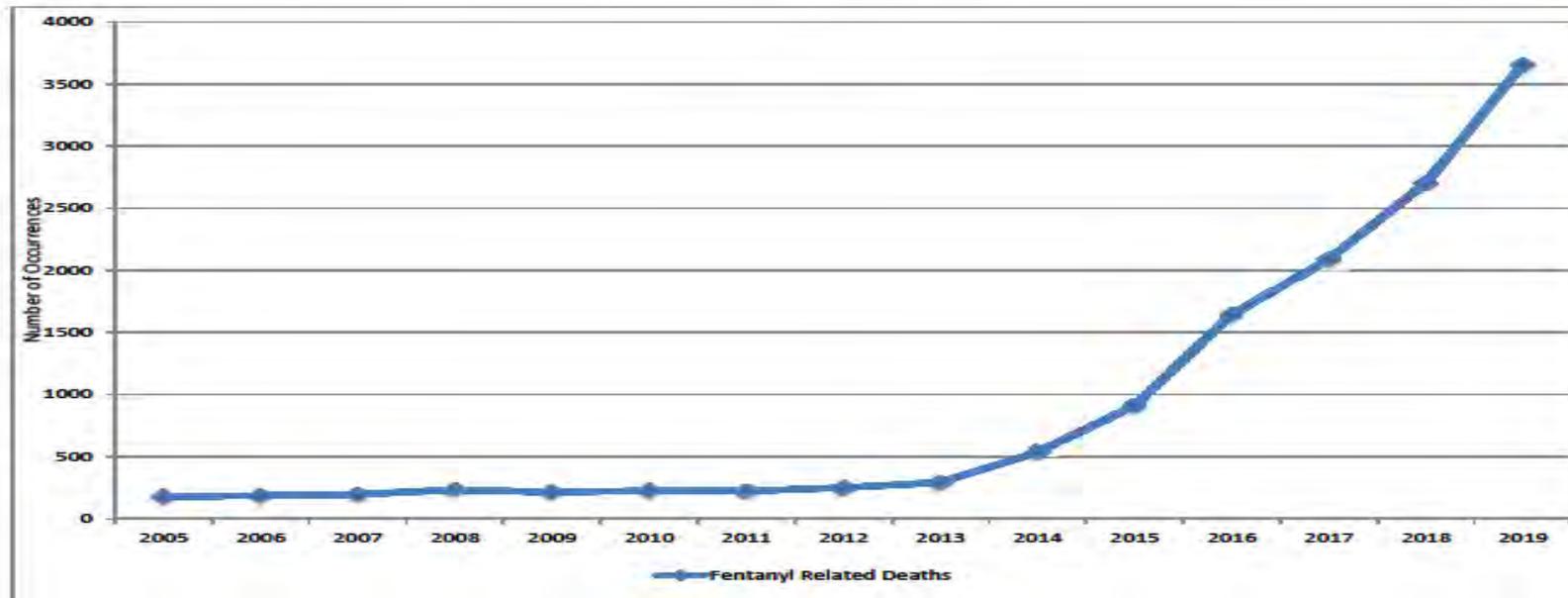
Oxycodone Deaths (2010-19)

Historical Overview of Hydrocodone, Oxycodone and Methadone Occurrences
(Present and Cause)
2010 to 2019



Fentanyl Deaths (2005-19)

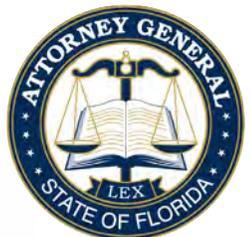
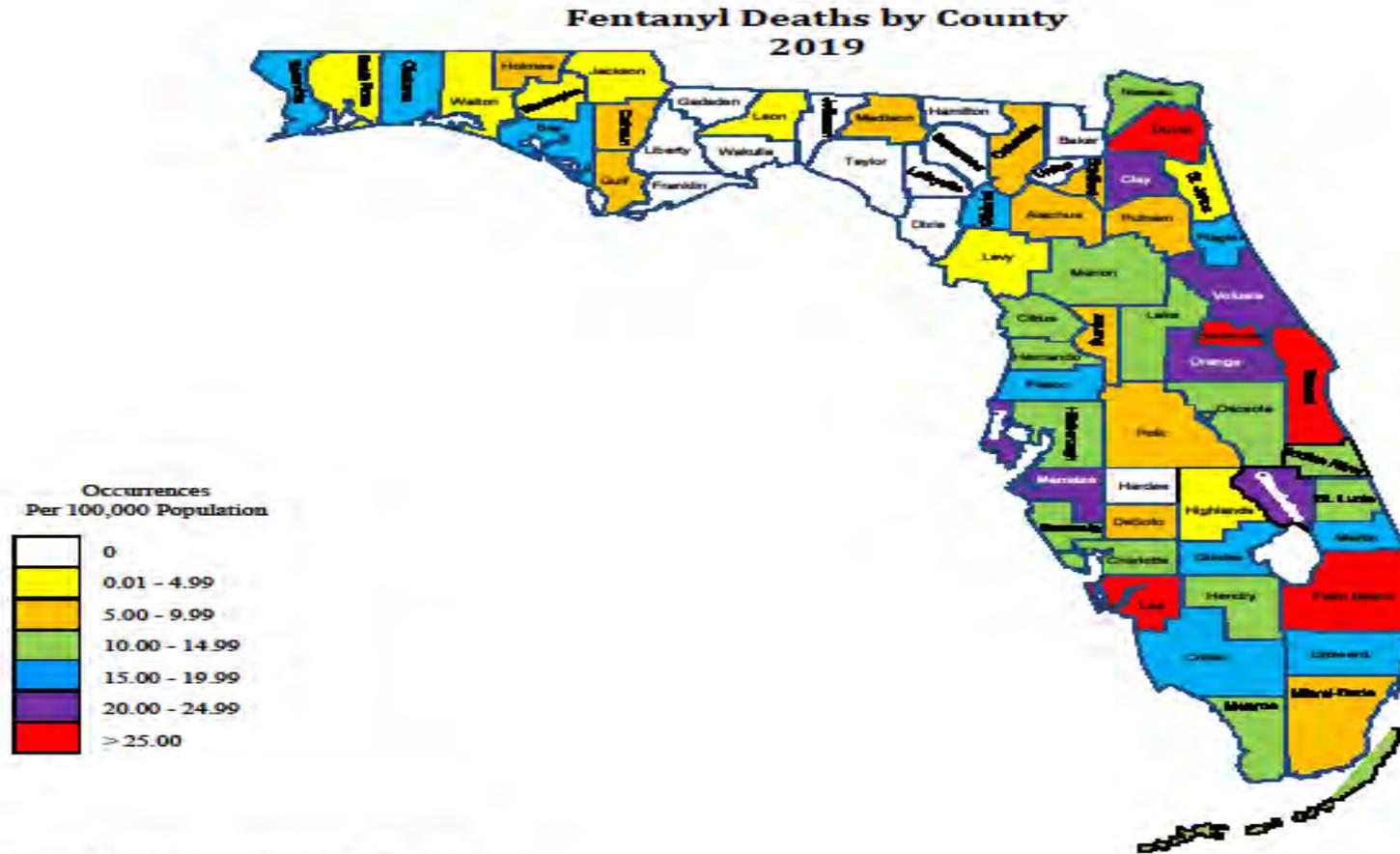
Historical Overview of Fentanyl Occurrences¹
(Present and Cause)
2005 to 2019



¹Prior to 2016, the number of fentanyl occurrences indicated includes occurrences of fentanyl analogs. Starting in 2016, fentanyl analogs were tracked separately.

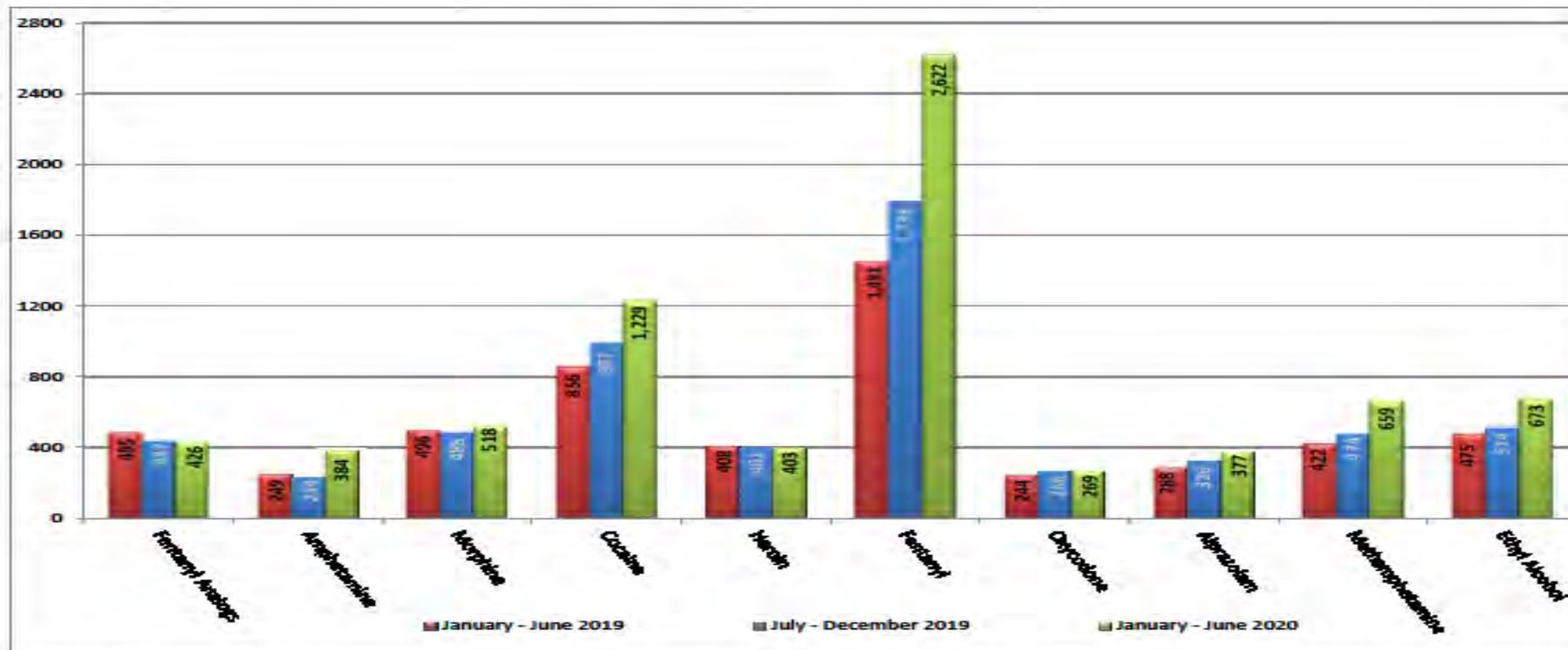


Fentanyl Deaths 2019



Comparison of Drug Caused Deaths

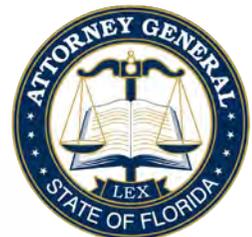
Comparison of Drug Caused Deaths
January 2019 to June 2020



Note: Not all drugs are included in the above chart.

2020 Medical Examiners Commission Interim Drug Report

Page 7



Growth of Fentanyl

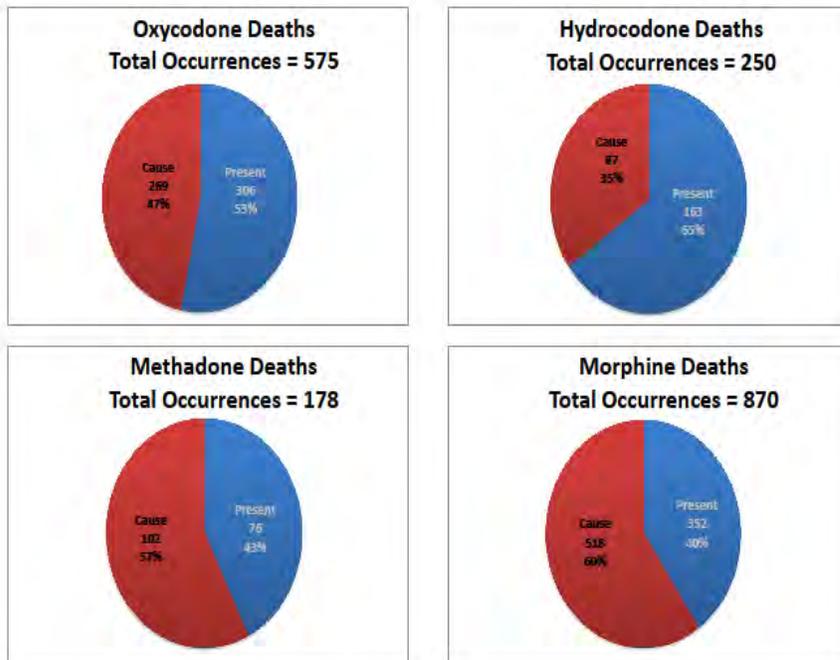
- U.S. Customs and Border Patrol has seized 3,920 pounds of fentanyl at the southwest border in the last five months.
- Year over year, 253.79% increase.
- That is enough Fentanyl to kill the entire U.S. population 3 times over.

Fentanyl Seized Per Month by Weight (lbs) at Southwest Border		
	2020	2021
Jan.	136	683
Feb.	248	777
March	245	647
April	246	879
May	233	934
YTD Total:	1108	3920

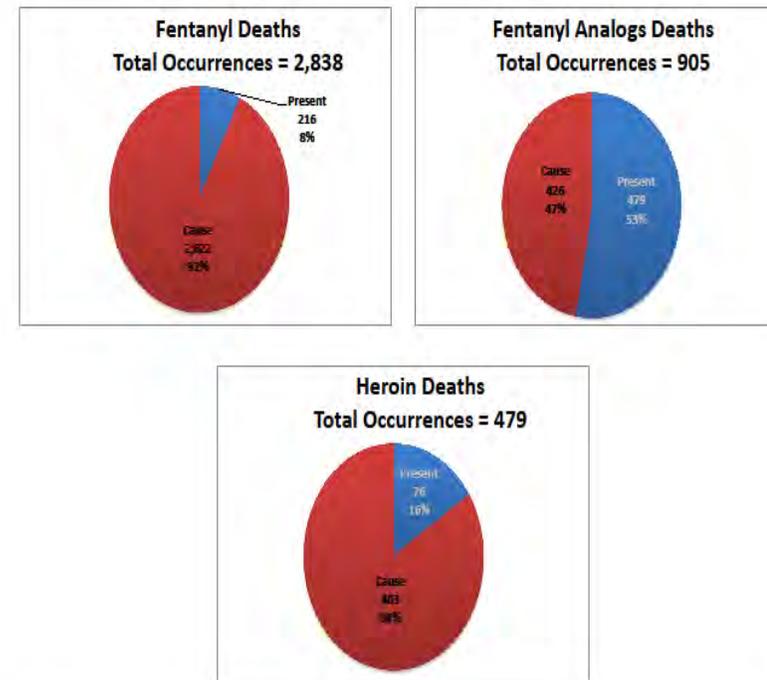


Present v. Cause Analysis

Drug Detected at Death: Cause vs. Present

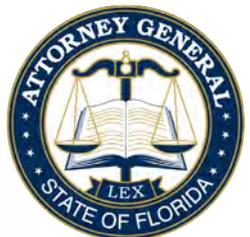


Drug Detected at Death: Cause vs. Present



Litigation Background

- The State and between 90-120 Florida subdivisions have sued the different manufacturers, distributors and dispensers of Opioid Products depending on which Defendant.
- There are more than 3,000 subdivisions nationwide suing.
- There is limited money. This is not tobacco litigation. Dividing the pot up means small slivers and we need to achieve the biggest bang possible with limited dollars.
- In Purdue with 135 subdivisions filing a claim, the State's claim was over 84% of the Florida/subdivision total. Subdivisions accounted for less than 16% the total.
- In Purdue nationwide, the States' claims were approximately 80% of the total non-federal government claims. Subdivisions' claims were roughly 20% of the total non-federal government claims.



Settlement Negotiation History

- Negotiations have been ongoing for three years on a nationwide/multistate basis with active participation by subdivision national counsel (the “PEC”) including several lawyers representing Florida cities and counties.
- Purdue Pharma filed a Chapter 11 bankruptcy in 2019. It recently filed its plan and a confirmation hearing is set for August 2021. Florida has led negotiations that form the basis of the plan, and a Florida county, Broward, sits on the ad hoc committee representing subdivisions in the bankruptcy.
- There is likely to be a multistate agreement with Distributors in the next thirty to sixty days or window will close.
- There is likely to be a multistate agreement with Johnson & Johnson in the next thirty to sixty days, but negotiations lag Distributors.



Purdue Plan

- Purdue requires all monies (other than fees and costs, which are in a separate bucket) to be utilized for abatement.
- Proceeds from Purdue paid over 9-10 years through the State.
- The payments are uneven. Payments are larger in middle years.
- Expected distributions to non-federal, non-tribal government entities is \$4B-\$4.5B.
- Requires 75% of the creditors to vote in favor to confirm plan.



Distributor Settlement

- On deal as currently, publicly reported, top line numbers are \$21B over 18 years (includes fees and offsets).
- Just over \$18.5B (excluding fees and credits). More flexibility in use than JJ or Purdue because of length, but substantially all must go to forward looking opioid remediation.
- Deal has a series of bonuses related to subdivision sign-on or not litigating in the future.
- In order to maximize amounts, agreement requires subdivisions to release their claims or legislative or judicial bar barring and releasing subdivision claims.
- Subdivision's filing claims later can cause suspended payments and offsets. The level of suspension or offset will vary depending on the number of states and subdivisions participating initially and in the first five years.



JJ Settlement

- On deal as currently, publicly reported, top line numbers are \$5B over 10 years with \$3.7B in first 3 years (includes fees and credits).
- Over \$4.2B over 10 years (excluding fees and credits).
- Like Distributors' settlement, amount is contingent on subdivision agreement or legislative or judicial bar releasing and barring subdivision claims.
- Sign-on is needed quicker than Distributors because of the accelerated pay out.



Expected Settlement Totals

Settlement	Nationwide expected monies (not including fees and set-offs)	Florida expected monies (not including fees and set-offs)
Purdue	\$ 4,299,000,000.00	\$ 302,043,441.00
Distributors	\$18,554,013,691.11	\$1,303,586,447.92
Johnson & Johnson	\$ 4,264,615,385.00	\$ 299,627,612.33

AMOUNTS ARE ESTIMATES AND SUBJECT TO CHANGE



Florida Total For All 3 Deals

\$1,905,257,501.25



Expected Settlement Totals for Florida by year

<u>Year</u>	<u>Purdue</u>	<u>Distributors</u>	<u>J&J</u>	<u>Total</u>
1	\$15,525,250.00	\$55,688,186.80	\$106,031,142.89	\$177,244,579.69
2	\$10,328,073.00	\$58,525,569.50	\$ 52,521,673.78	\$121,375,316.28
3	\$45,457,573.00	\$58,525,569.50	\$ 66,075,639.82	\$170,058,782.32
4	\$48,057,156.00	\$73,253,040.70	\$ 14,316,388.58	\$135,626,585.28
5	\$20,726,405.00	\$73,253,040.70	\$ 14,316,388.58	\$108,295,834.28
6	\$14,754,390.00	\$73,253,040.70	\$ 14,316,388.58	\$102,323,819.28
7	\$61,406,366.00	\$73,253,040.70	\$ 14,316,388.58	\$148,975,795.28
8	\$29,157,485.00	\$86,154,401.57	\$ 14,316,388.58	\$129,628,275.15
9	\$27,471,269.00	\$86,154,401.57	\$ 14,316,388.58	\$127,942,059.15
10	\$25,574,276.00	\$86,154,401.57		\$111,728,677.57
11		\$72,421,469.30		\$ 72,421,469.30
12		\$72,421,469.30		\$ 72,421,469.30
13		\$72,421,469.30		\$ 72,421,469.30
14		\$72,421,469.30		\$ 72,421,469.30
15		\$72,421,469.30		\$ 72,421,469.30
16		\$72,421,469.30		\$ 72,421,469.30
17		\$72,421,469.30		\$ 72,421,469.30
18		\$72,421,469.30		\$ 72,421,469.30

AMOUNTS ARE ESTIMATES AND SUBJECT TO CHANGE



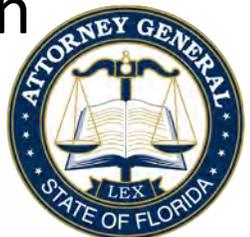
History of Allocation Discussions

- In 2019, Attorney General Moody held a meeting with subdivision outside counsel and some subdivision clients.
- After that meeting, we held more than twenty regional meetings with both outside counsel and a broader number of in-house attorneys and principals.
- During COVID, conversations slowed.
- In its place, negotiations began in earnest in Purdue regarding a national intrastate allocation default.
- After three months negotiation a deal was struck.
- After Purdue, discussions began again and in April 2021 the MOU was recached after significant negotiations.



Purdue Default Distribution

- If there is a Statewide Agreement, the Statewide Agreement controls.
- If no Statewide Agreement, monies are divided between regional and non-regional spend. Non-regional spend are monies that State has complete discretion to spend on abatement.
- Regional and non-regional spend varies from 70/30% for first \$1B to 50/50% for amounts over \$3.5B.
- Only monies that subdivisions get directly are monies if they are Qualified Block Grantee (limited to counties and parishes). Money is equal to their percentage of the regional spend utilizing negotiation class metrics from the MDL.



Qualified Block Grantee (Purdue)

- This is the Default absent a Statewide Agreement.
- It is limited to Counties with a population of 400,000.
- Population is based on U.S. Census estimate from July 2019 released April 2020.
- Have to have funded or otherwise managed an established, health care and/or treatment infrastructure (e.g., health department or similar agency) to evaluate, award, manage and administer a grant.
- Must make a good faith effort to reach an agreement with any city that has a population of 400,000 or more on how monies should be spent.

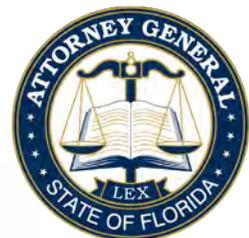
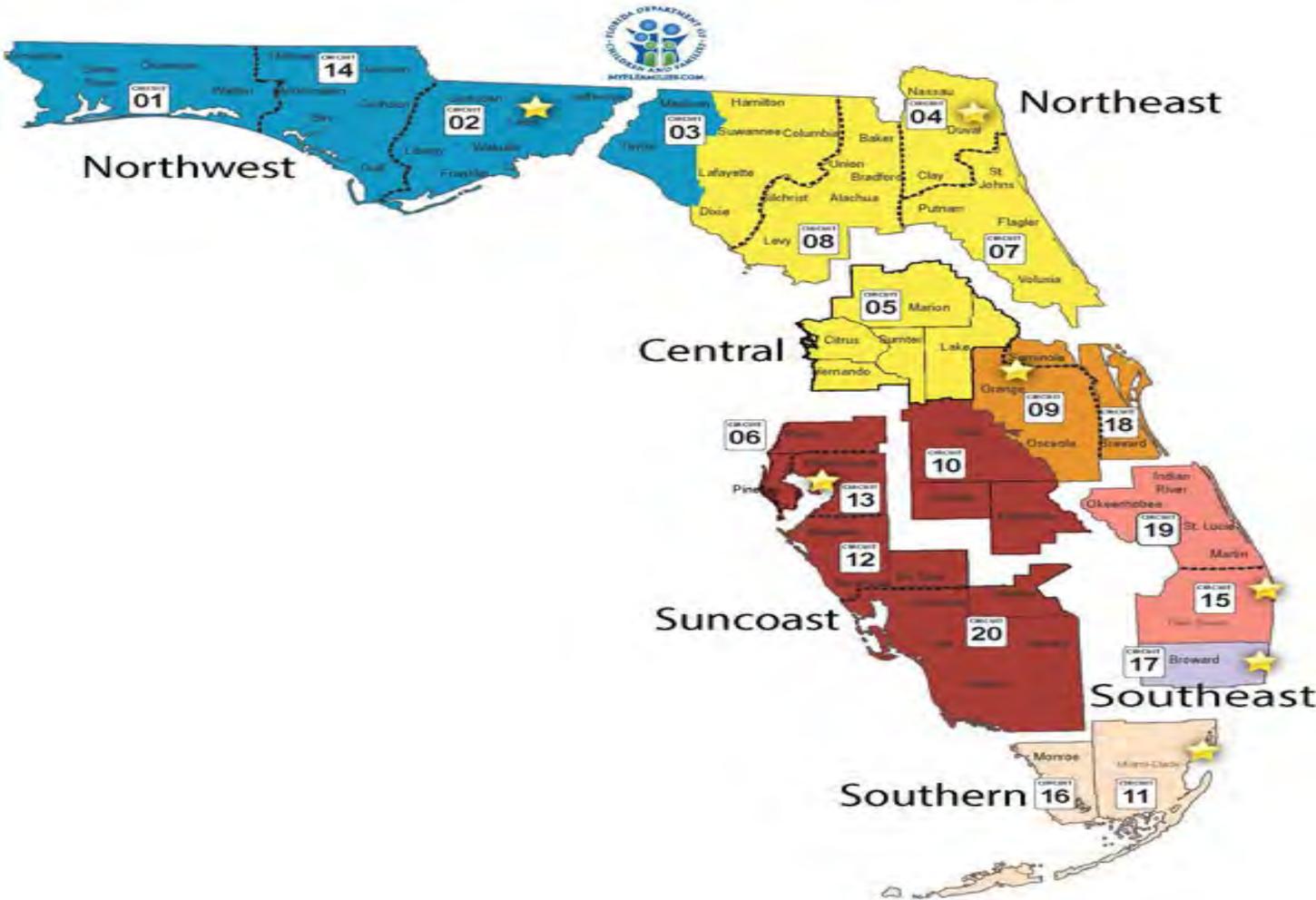


Non-qualified counties

- Money is spent in regions.
- Regions are your SAMHSA (Managed Entity) regions.
- Requires expenditure in region. If mixed between qualified and non-qualified. Monies are to be spent for services in non-qualified counties
- Requires a “Government Participation Mechanism,” i.e. a Statewide Advisory Council with participation of subdivisions to make recommendations on how monies should be spent.



Managed Entity Regions in Florida



Florida's Managing Entities

Big Bend Community Based Care, Inc. d/b/a NWF Health Network

- Serving Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington counties.

Broward Behavioral Health Coalition

- Serving Broward county.

Central Florida Behavioral Health Network, Inc.

- Serving Charlotte, Collier, DeSoto, Glades, Hardee, Highlands, Hendry, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk and Sarasota counties.

Central Florida Cares Health System

- Serving Brevard, Orange, Osceola and Seminole counties.

Lutheran Services Florida

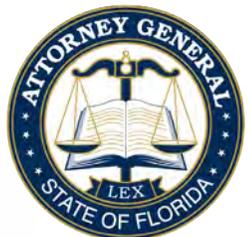
- Serving Alachua, Baker, Bradford, Citrus, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Hernando, Lake, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns, Sumter, Suwannee, Union and Volusia counties.

South Florida Behavioral Health Network, Inc. d/b/a Thriving Mind South Florida

- Serving Miami-Dade and Monroe counties.

Southeast Florida Behavioral Health Network

- Serving Indian River, Martin, Okeechobee, Palm Beach and St. Lucie counties.



What other states are doing on allocation?

- Ohio (30% Subdivisions, 55% Foundation, 15% States)
- Arizona (44% State, 56% Subdivision)
- Texas (15% Subdivision, 70% Abatement, 15% State)
- New York (48% State, 52% Subdivision)
- Kentucky (50% State, 50% Subdivision)



Florida Proposal

- All monies spent on opioid abatement
- Divides monies into three buckets (City/County Fund, Abatement Fund, State Fund) vs. two buckets (Regional Fund, Non-regional Fund)
- Ensures every subdivision gets some money to spend on opioid abatement by creating a City/County Fund
 - 15% of whole
 - Divided using negotiation class metrics from MDL
 - Can pool or direct money to other subdivision (e.g. City to County)
- Keeps regional fund concept with Abatement Fund utilizes a modified qualified county concept.
- Abatement fund concept is similar to the non-regional spend in Purdue default allocation. It is to be spent regionally based on negotiation class metrics.
- Abatement Fund ranges in size between 40% to 30% of total.
- Abatement Fund size changes by year not by amount of money received.
- Attempts to incentivize attorneys to not collect on fee contracts.



Qualified Counties (Florida Proposal)

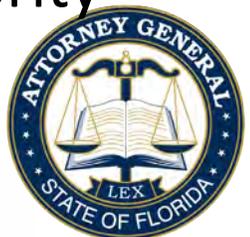
- Qualified counties receive their share along with the share of cities in a county that join.
- Allows larger counties that have infrastructure and already are providing some level of services to expand services for their citizens.
- Meant to encourage cooperation and collaboration between cities and counties.



Qualified Counties (Florida Proposal)

To be a Qualified County and receive a share of the Regional Fund to directly spend under the Florida Proposal, a county must:

- have a Population of at least 300,000 individuals (utilizes the same population data currently as Purdue);
- have an opioid taskforce of which it is a member or operates in connection with its municipalities or others on a local or regional basis;
- have an abatement plan that has been either adopted or is being utilized to respond to the opioid epidemic ;
- currently provide or contracts with others to provide substance abuse prevention, recovery, and treatment services to its citizens ; and
- have or enter into an agreement with a majority of Municipalities (Majority is more than 50% of the Municipalities' total population) related to the expenditure of Opioid Funds.



Florida County Population (above 300,000)

.Brevard County, Florida	601,942
.Broward County, Florida	1,952,778
.Collier County, Florida	384,902
.Duval County, Florida	957,755
.Escambia County, Florida	318,316
.Hillsborough County, Florida	1,471,968
.Lake County, Florida	367,118
.Lee County, Florida	770,577
.Manatee County, Florida	403,253
.Marion County, Florida	365,579
.Miami-Dade County, Florida	2,716,940
.Orange County, Florida	1,393,452
.Osceola County, Florida	375,751
.Palm Beach County, Florida	1,496,770
.Pasco County, Florida	553,947
.Pinellas County, Florida	974,996
.Polk County, Florida	724,777
.St. Lucie County, Florida	328,297
.Sarasota County, Florida	433,742
.Seminole County, Florida	471,826
.Volusia County, Florida	553,284



Non-qualified counties

- All other counties along with counties that do not meet the requirements to be qualified counties are treated as non-qualified counties.
- Monies are to flow like current SAMHSA grants to Managing Entities to be spent, like Purdue default.
- An Advisory Commission will be created with equal subdivision membership to advise the State on how monies should be spent.



Sliding Scale for the Regional Fund

Regional Fund Sliding Scale- The Regional Fund shall be calculated by utilizing the following sliding scale of the Opioid Funds available in any year:

Years 1-6:		40%
Years 7-9:		35%
Years 10-12:		34%
Years 13-15:		33%
Years 16-18:		30%



Cash Flow under Florida Proposal

<u>Year</u>	<u>Total</u>	<u>City/County</u>	<u>Abatement</u>	<u>State</u>
1	\$ 177,244,579.69	\$ 26,586,686.95	\$ 70,897,831.88	\$ 79,760,060.86
2	\$ 121,375,316.28	\$ 18,206,297.44	\$ 48,550,126.51	\$ 54,618,892.33
3	\$ 170,058,782.32	\$ 25,508,817.35	\$ 68,023,512.93	\$ 76,526,452.04
4	\$ 135,626,585.28	\$ 20,343,987.79	\$ 54,250,634.11	\$ 61,031,963.38
5	\$ 108,295,834.28	\$ 16,244,375.14	\$ 43,318,333.71	\$ 48,733,125.43
6	\$ 102,323,819.28	\$ 15,348,572.89	\$ 40,929,527.71	\$ 46,045,718.68
7	\$ 148,975,795.28	\$ 22,346,369.29	\$ 59,590,318.11	\$ 67,039,107.88
8	\$ 129,628,275.15	\$ 19,444,241.27	\$ 51,851,310.06	\$ 58,332,723.82
9	\$ 127,942,059.15	\$ 19,191,308.87	\$ 51,176,823.66	\$ 57,573,926.62
10	\$ 111,728,677.57	\$ 16,759,301.64	\$ 44,691,471.03	\$ 50,277,904.91
11	\$ 72,421,469.30	\$ 10,863,220.40	\$ 28,968,587.72	\$ 32,589,661.19
12	\$ 72,421,469.30	\$ 10,863,220.40	\$ 28,968,587.72	\$ 32,589,661.19
13	\$ 72,421,469.30	\$ 10,863,220.40	\$ 28,968,587.72	\$ 32,589,661.19
14	\$ 72,421,469.30	\$ 10,863,220.40	\$ 28,968,587.72	\$ 32,589,661.19
15	\$ 72,421,469.30	\$ 10,863,220.40	\$ 28,968,587.72	\$ 32,589,661.19
16	\$ 72,421,469.30	\$ 10,863,220.40	\$ 28,968,587.72	\$ 32,589,661.19
17	\$ 72,421,469.30	\$ 10,863,220.40	\$ 28,968,587.72	\$ 32,589,661.19
18	\$ 72,421,469.30	\$ 10,863,220.40	\$ 28,968,587.72	\$ 32,589,661.19

AMOUNTS ARE ESTIMATES SUBJECT TO CHANGE



Side by side-Purdue v. Florida Proposal (funds)

Purdue

- All monies spent on opioid abatement
- If no Statewide Agreement, two buckets- most subdivisions don't get anything to directly spend.
- Regional fund is between 70-50%
- Regional fund changes on money received not time.

Florida Proposal

- All monies spent on opioid abatement
- Three-buckets. Ensures every subdivision gets some money
- Abatement Fund (regional fund) ranges in size between 40-30% of total.
- Abatement Fund size changes by year not by amount of money received.



Side by side-Purdue v. Florida Proposal Qualified Counties

Purdue

- Limited to Counties
- With a population of 400,000
- Population is based on U.S. Census estimate from July 2019 released April 2020.
- Have to have funded or otherwise manage an established, health care and/or treatment infrastructure (e.g., health department or similar agency) to evaluate, award, manage and administer a Local Government Block Grant.
- Must make a good faith effort to reach an agreement with any city that has a population of 400,000 or more on how monies should be spent.

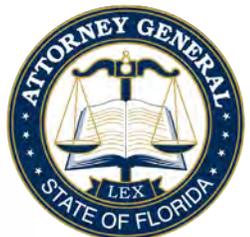
Florida Proposal

- Limited to Counties
- With a population of at least 300,000 individuals
- have an opioid taskforce of which it is a member or operates in connection with its municipalities or others on a local or regional basis
- have an abatement plan that has been either adopted or is being utilized to respond to the opioid epidemic
- currently provide or contracts with others to provide substance abuse prevention, recovery, and treatment services to its citizens
- have or enter into an agreement with a majority of Municipalities (Majority is more than 50% of the Municipalities' total population) related to the expenditure of Opioid Funds.



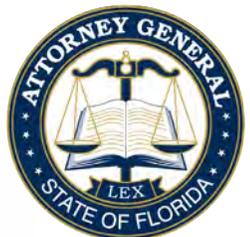
Attorney's Fees

- State's attorney's fees will be paid on top of amounts in this presentation.
- Subdivisions have a \$1.6B pot to divide amongst the 3,000 subdivision lawyers and the national lawyers.
- Participation requires waiver of fee contract.
- Local attorneys concerned about payment. Subdivisions feared attorneys would not waive contract.
- To deal, we have created a floor for local attorneys that varies depending on participation. At its highest (100% participation), it is 1.5%. Other States have higher floors: (1) Arizona (7.98%); (2) Ohio (11.05%); (3) Texas (9.3925% at the highest).



Approved Uses

- List developed consulting with state public health officials, subdivision public health experts, and talking with US Department of Health and Human Services.
- US Department of Health and Human Services provided what should be our priorities.
- Importance of the priorities is that the federal government will likely claim a claw back and we want to limit any claw back.
- Approved uses includes most intervention, treatment, education and recovery services. It is extremely broad. It was included in the packet we sent each of you.



Core Strategies

Schedule A

Core Strategies

States and Qualifying Block Grantees shall choose from among the abatement strategies listed in Schedule B. However, priority shall be given to the following core abatement strategies ("Core Strategies"), such that a minimum of ___% of the [aggregate] state-level abatement distributions shall be spent on [one or more of] them annually.¹

A. Naloxone or other FDA-approved drug to reverse opioid overdoses

1. Expand training for first responders, schools, community support groups and families; and
2. Increase distribution to individuals who are uninsured or whose insurance does not cover the needed service.

B. Medication-Assisted Treatment ("MAT") Distribution and other opioid-related treatment

1. Increase distribution of MAT to non-Medicaid eligible or uninsured individuals;
2. Provide education to school-based and youth-focused programs that discourage or prevent misuse;
3. Provide MAT education and awareness training to healthcare providers, EMTs, law enforcement, and other first responders; and
4. Treatment and Recovery Support Services such as residential and inpatient treatment, intensive outpatient treatment, outpatient therapy or counseling, and recovery housing that allow or integrate medication with other support services.

C. Pregnant & Postpartum Women

1. Expand Screening, Brief Intervention, and Referral to Treatment ("SBIRT") services to non-Medicaid eligible or uninsured pregnant women;
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for women with co-occurring Opioid Use Disorder ("OUD") and other Substance Use Disorder ("SUD")/Mental Health disorders for uninsured individuals for up to 12 months postpartum; and
3. Provide comprehensive wrap-around services to individuals with Opioid Use Disorder (OUD) including housing, transportation, job placement/training, and childcare.

D. Expanding Treatment for Neonatal Abstinence Syndrome

1. Expand comprehensive evidence-based and recovery support for NAS babies;
2. Expand services for better continuum of care with infant-need dyad; and
3. Expand long-term treatment and services for medical monitoring of NAS babies and their families.

¹ As used in this Schedule A, words like "expand," "fund," "provide" or the like shall not indicate a preference for new or existing programs. Priorities will be established through the mechanisms described in the Term Sheet.



Settlement Risks

- Not enough States could join and the deal could fall through.
- The federal government could claim entitlement to Medicaid claw back.
 - Have had discussions with DOJ. Little progress has been made.
 - Legislation was how this was solved in tobacco.
- Subdivision sign-on could limit recoveries or cause moratorium and offset to be triggered.
 - Tried legislation last session. Still possible.
 - Have judicial alternatives that we will also try simultaneously to take care of holdouts.
- Subdivision means more than cities and counties.
 - While we have tried to limit effect, there are other types of subdivisions that have sued these defendants and the defendants are trying to limit risks.
 - School Districts, Hospital Districts, and Fire Districts are a few. Four have filed in Florida: (1) Miami Dade Public Schools; and (2) 3 safety net hospitals (Sarasota, Volusia, and Broward).
 - Barring claims, especially future claims, would make settlement more certain.



Asks for each of you

- Review the proposal, discuss it with your counsel, and commission.
- Feel free to have a call with me to discuss your questions,
- Vote on Purdue's and Mallinckrodt's plans. Not voting is treated as a no vote.
- Review any Settlement that occurs, discuss it with your counsel, and commission.

