With Billions at Stake, States Plan Dividing Purdue Opio
Money

Co-Founder and Managing Partner Harry Nelson was interviewed by Bloomberg Law regarding dividing purdue opioid money

From the article:

Billions from the Purdue Pharma bankruptcy could fund wider use of opioid overdose treatments, programs for babies bor addicted, and support programs for mothers and people in jail, according to a draft proposal obtained by Bloomberg Law.

While not all parties have agreed on whether to accept Purdue's proposed $10 billion settlement to end the company's liability for its role in the opioid crisis, the states and local governments have been negotiating a tentative agreement on h to divvy up the money—regardless of the final dollar amount.

Purdue declared bankruptcy last year, and the "abatement plan term sheet" outlines how an extensive group of states, cit counties and other governmental claimants in the reorganization would "commit the public funds allocated to them to such future abatement."

The proposal is not without criticism. Public health lawyers and addiction specialists fear it will create an uneven patchwo tactics with some communities investing in less effective approaches that lack supporting evidence.

Further complicating things, the Justice Department wants a multi-billion dollar piece of the Purdue pie.

The prospective agreement, circulated in early June, but still the most current, according to sources, would be incorporate into the drugmaker's plan in bankruptcy to resolve more than 3,000 lawsuits related to its sale and marketing of addictive painkillers.

Billions Sought

The Justice Department reportedly wants more than $11 billion from Purdue in criminal and civil penalties. It's unclear ho that will affect negotiations, but typically more claimants in a bankruptcy add up to smaller payouts for every one else. In t case, it could mean less money to alleviate the crisis. A DOJ spokeswoman declined comment.

"The money that goes to the federal government is going to be the least likely to be spent on any services or intervention, said Harry Nelson, founder of the Los Angeles-based health-care firm Nelson Hardiman, who is following the case but no involved.

Many lawyers expect any funds that DOJ recovers to go to the general government coffers.

"My preference was always to get funds to where they would do the most good," said Booth Goodwin, a former U.S. Atto and partner in Goodwin & Goodwin LLP in West Virginia. "My view is that the place where funds do the most good is generally not in the U.S. Treasury."

In addition, the document notes that the draft "presumes signoff by and support of the federal government, including an agreement that the federal government will also forego its past damages claims."

"DOJ's entry almost certainly affects the other claimants in the bankruptcy," Goodwin said.

However, the DOJ will only be able to pursue money for any alleged wrongdoing since 2007 because justice officials struck a $635 million deal that year with the company resolving any alleged prior wrongdoing, Nelson said.

Officials in New York Attorney General Letitia James' office, which is reportedly leading the states in these negotiations, said conversations are ongoing, all states have a seat at the table, and no final deal has been reached.

Approved Spending

States want every dollar to go toward approved abatement strategies, and that can be interpreted fairly broadly, according to an outline in the final 14 pages of the document.

That includes funding for distribution of the overdose prevention medication Narcan and training, medication-assisted treatment with drugs like buprenorphine and methadone, and screening and interventions for pregnant and postpartum women who may have been using opioids.

"One thing they all agree on is that the great majority of the money from these settlements should be spent on abating this epidemic," said Mike Moore, a former attorney general of Mississippi who is representing Ohio, Arkansas, Mississippi, and Louisiana in the bankruptcy proceedings.

The states also want to help health care providers better connect the dots between an emergency room overdose and effective treatment and recovery services. That could translate into states and local governments using funds to hire more social workers or even providing more basic services such as housing, transportation, and job placement for people in recovery.

The document would also allow state and local governments to spend money on treating people who have been incarcerated, needle-exchange programs, advertising, school programs, and educating medical providers.

"The plan has some terrific components," said Jennifer Oliva, an attorney and public health policy professor at Seton Hall Law School in Newark, N.J.

Money could also be spent on harm-reduction services, which emphasize helping patients minimize any risks or negative side effects associated with their substance use even if they aren't ready to quit. The approach emphasizes the rights of the individual and the importance of helping people live another day in the hope they will eventually be ready for full detox and treatment.

Plan Has Flaws

Despite those promising aspects, the plan isn't without flaws, said Benjamin Miller, chief strategy officer for Well Being Trust, a national mental health foundation that also does policy work on addiction.

"This is essentially putting more money into things we are already doing," he said. "Putting more money into a system that is already broken is not necessarily going to fix anything."

The issue is that the abatement plan allows every local government and state to pick and choose which of the approaches they prefer—and some states may pursue some of the more problematic solutions, Oliva said. Notably, the money could also be used to fund more law enforcement to specifically address opioids.

This may lead to more "punitive tactics and sanctions at the expensive of proven-effective treatment, education, and research," Oliva said.

Another problem is that the proposal would allow law enforcement agencies, including the Drug Enforcement

Administration, warrantless access to any local, state, or national database tracking drug use and overdoses, she said.

“We need to admit our long-term strategy of drug interdiction and control is a costly failure and reallocate the billions of dollars that we waste on drug wars annually to evidence-based harm reduction strategies,” Oliva said.

Other Parties

While the draft agreement doesn’t explain how much would be allocated for each state because the total dollar figure remains unknown, the plan outlines a complex proposal for dividing the money between states and local governments, with an undetermined percentage going to American Indian tribes.

In addition, the document acknowledges that “a portion of the Purdue estate will also need to be dedicated to personal injury claimants”—meaning individuals harmed by opioids and babies born addicted. That proposal is being developed separately from the plan for state and local governments.

The mediation process should resolve efforts to certify class claims brought by personal injury claimants, as well as private health insurance purchasers, public school systems, and hospitals treating opioid abuse patients, an official committee of unsecured creditors said in a July court filing.

If necessary, plaintiff requests to file class proofs of claim against Purdue will be heard after mediation concludes.

All the states and local governments would have 60 days from the final agreement to reach deals for how to divide the money between municipal and state coffers, according to the document.

Mediation

Purdue, its creditors, the governments and opioid victim groups have been engaged in a mediated negotiation process as part of the company’s Chapter 11 case for several months, with the court pushing for a conclusion by Aug. 31.

The drugmaker, which amassed enormous wealth from the production and sale of OxyContin, is trying to build on its more than $10 billion settlement proposal that would hand the company over to a creditor trust.

Judge Robert Drain of the U.S. Bankruptcy Court for the Southern District of New York authorized a multi-party mediation process in March as about half of the nation’s state governments refused to sign onto the initial agreement, saying it didn’t go far enough.

Read the full article

Settlement opponents have been looking into whether members of the Sackler family, which founded Purdue, have more money to contribute than what they’ve offered. The family has said it will pay at least $3 billion to resolve claims against them and the company.

“This case presents an unusual challenge for a bankruptcy judge, with a radical number of competing parties at stake,” Nelson said.

“This is arguably the most ambitious settlement plan ever undertaken by a bankruptcy court,” he added, noting “what a nightmarish ‘herding of cats’ the court is faced with.”