

Minutes of the Meeting of October 13, 2022
Pennsylvania Opioid Misuse and Addiction Abatement Trust

Attendees

- Tom VanKirk– Chairperson
- Jim Gregory – Trustee
- Steve Jasper – Trustee
- Robert Postal – Trustee
- Benton Kathy – Trustee
- Christine Tartaglione – Board Member
- Gene Digirolamo – Board Member
- Shea Madden – Board Member
- Kevin Boozel – Board Member
- Erin Dalton – Board Member
- Jen Smith – Board Member
- David Wade – PAOAG
- Jim Donahue – PAOAG
- Tyler Ritchie – PAOAG
- Brianna Trout – PAOAG via phone

Meeting Minutes

- Tom provided a summary of the first meeting with 7 people named as trustees. It was important to get things moving in order to get payments out. Other trustees have been added since the first meeting and brought up to speed. Three banks were interviewed to see who would handle funds. Wilmington Trust was chosen, based on cost and experience with settlements. The Wilmington Trust bank account was set up, and received the first payment from national fund. The first payment went out to all entities who submitted their information in. Minutes will eventually be posted and approved for Sunshine Act purposes.
- David Wade provided a summary of payments at this point. In total, \$40.9 million was received, and counting payments made today, approximately \$40.5 million has been paid out to subdivisions. An additional payee group will be sent to Wilmington Trust today for processing. There is missing information for 2 Counties, 1 District Attorney (DA), and 12 municipalities. The Trust has received the second payment from distributors, approximately \$46 million. It is anticipated that additional funds of \$44 million will come from J&J, however we are waiting in line to receive funds from the national administrator behind the “Incentive A” which Pennsylvania did not earn.
- Tom asked what it takes to be an Incentive A State.
 - David said that Incentive A states are those that have ensured full peace within the state. That means every municipality over 10k, every municipality that has litigated, every special district, and all of the covered special districts are signed

on to the Settlement and resolved their claims. PA does not meet Incentive A because of litigation by Philadelphia and Allegheny Counties' DA suits. Approximately fifteen municipalities that have not signed on, many from Allegheny County. Allegheny County is working on getting them signed on.

- Erin Dalton said that there are two issues, but is working on the municipalities.
- David said there is a third issue, that there are hospital districts that may qualify. The Attorney General did not believe they qualify, but the Distributors and JJ believe that they do. Research is being done to determine if the municipalities release will preempt the hospital districts. David does not believe it is a major issue. The 25 states that are Incentive A are predominantly smaller states with less municipalities.
- David gave an update on attorney's fees. The attorney's fees are still being calculated by the Special Master, and the Trust will cover verified expenses. The Special Master has not released those numbers yet. Once that is determined, those will be sent to the Fee Fund. The second payee payment should be faster, because we have everyone's info and issues were corrected.
- Commissioner Kevin Boozel asked if there was a document that could be added to the drop box with a schedule of payments.
 - David advised he would update the spreadsheet to clarify anticipated dates for payment schedules. December 2023 will be when the regular "scheduled" payment begin.
- Commissioner Robert Postal asked why Mifflin County wasn't included for J&J's payment.
 - David clarified they will be receiving funds. Had Mifflin County or the DA litigated, then they would have received a share of the 15%.
 - Robert Postal said he asked the DA about litigating.
 - David Wade summarized the difficulty regarding DA claims. The OAG believes it has the ability to wipe out DA claims, and that is currently in litigation. David Wade does not advise other subdivisions start litigation, but that is each party's choice.
- Jim Gregory said Blair County received their first installment; they are using the money to provide opiate addiction treatment to the prison population, which would have typically been from the general fund. He asked if Philadelphia and Allegheny Counties did not receive money.
 - David advised those Counties have received their funds, and it is the County DA's who have not.
- David corrected an earlier statement, and said \$46 million has been received so far, and that in total approximately \$90 million will go out by year's end.

- Tom asked if some of that \$90 million would need to be set aside for attorney's fees, David advised yes, \$14 million will go to fees plus an additional unknown amount for litigation costs. David believes we will be given a figure of what the maximum would be for litigation costs, add that to the fees owed and then pay that to the fee fund. Once that's done, the Trust will allocate the remaining funds and pay it out. Any of the litigation costs money that isn't used once costs are determined will then be rolled into the attorney's fee payment for next year.
- Tom summarized his experience with the Special Master who has been appointed to calculate the Attorneys Fees. The Special Master has dealt with cases before, and asks that Tom approve his payments when he puts them in. Tom believes he is reasonable.
- Steve Jasper asked about Incentive A. If Pennsylvania is not incentive A, what are they?
 - David answered, all Incentive A does is prevent the moratorium. In the Distributors settlement, it means that there is no penalization if someone goes and sues. J&J gives Incentive A an accelerated payment over 3 years, instead of the typical timeline.
- David discussed other settlements: A settlement worked out with bankruptcy court for Mallinckrodt, \$40 million total, \$7 million should be received by Pennsylvania this year. Jim Donahue confirmed amounts. David advised the AG's recommendation would be to add that to the J&J tranche, but is looking into the reporting requirements. Tom added that in case anyone had missed this information, any additional Opioid Settlements will flow into the Trust, including future ones, like Mallinckrodt. The Trust will then distribute the settlements to participating subdivisions.
 - David said there may be complications that require Mallinckrodt be kept separate
- David stated that other settlements include Teva and Allergan, which will generate approximately \$200 million for Pennsylvania (\$5 billion nationally). This will be paid out over 12 years. The structure and paperwork is still ongoing. There are other defendants, in the pharmacy space, and work is ongoing but there is nothing definite yet. Hoping to reach a conclusion sooner rather than later.
- Gene DiGirolamo asked about Purdue Pharma. Jim Donahue answered, a deal was worked out with their bankruptcy which was opposed by numerous entities. The deal was appealed to the District Court, and then to the 2nd Circuit. We are still waiting for 2nd Circuit to make a decision, and it is expected that whatever the decision is it will be appealed to the Supreme Court. It is not known when any money may come from Purdue, as the bankruptcy could take a number of years. The main issue on appeal is over third party releases provided to the Sacklers. The OAG has not charged Purdue criminally, as neither Purdue nor the Sacklers have any presence in PA.
- At 9:52am, Tom asked if the meeting could be recorded as the Senator that had to log off. No one raised an issue with being recorded.
- Tom brought up the issue of the Trust's administrative work. This work includes setting up Zoom calls and complying with Sunshine Act. The Trust needs to decide whether to pay someone, such as a CPA firm, Law Firm, or just clerical work from someone who is

competent. The OAG may end their current role of doing clerical work by the end of the year. The Trust needs to hire someone for 2023. The Trust is entitled to take as much as 1% to pay for administrative fees, 1.3mil out of 130mil is 1%, so Tom proposes 0.1%, or \$130,000.

- Tom does not want to siphon any more money than is necessary. The Trust should avoid creating a bloated bureaucracy.
- Tom proposes the Trust create an Administrative Fund out of the next payment, and make any hiring needed to work through 2023. Wilmington Trust offered to set up an account and fund the account going forward, Tom does not think that is necessary. Tom proposes creating a fund of \$130k, and discuss who may be able to hire at the best possible rate to handle the Administrative Work. The AG will continue to work on the settlements, and the Trust will be responsible for making sure the money is distributed, provide accounting, and handle the oversight of whether the counties and subdivisions spent the money properly.
 - David advised some administrative costs could include: paying for a Trust zoom account; placing notices with a newspaper to comply with the Sunshine Act; and a web presence.
 - Tom intends for all of that to be covered by Administrative Fees.
- Recording actually started at 10:01am
- Kevin suggested CCAP for the Administrative Work, and is willing to bridge that communication.
 - Tom advised CCAP had previously indicated a lack of capacity to do it, but that may have been on Pro Bono basis. If CCAP is interested in being compensated to handle it, Tom would be in favor.
 - Gene agrees CCAP would be ideal.
 - Kevin is the Chairman, and could take care of revisiting the issue with CCAP. Tom believes they may be interested if they were compensated.
 - Robert Postal raised the issue that both he and Kevin Boozel are on the board. They will have to be conflicted out, and that the Trust will probably need to revisit this issue. The administrative fund should be created first, and that putting the money in a reserve account should be easy.
 - Jen Smith – agrees with CCAP, thinks they could handle the work well. She is concerned whether 130K would be enough up front. CCAP may not have the capability for dashboards or reports that the Trust may need, and technology is very expensive. Jen suggests taking a bit more than .1% to ensure the funds are there in case they are needed.
 - Tom advised he has been approached by a few other organizations who want to assist in tracking the money and how it is spent. The organizations want to see what are the most effective things that payees did, so that the organization can share the knowledge of what is effective. Tom believes everyone will like to implement the programs that many counties have found efficient.

- Jim Gregory asked about the issue in Virginia opioid relief spending complaints over the handling of administrative costs.
 - Tom stated the story was in the Local Richmond newspaper, Richmond Dispatch. The story was critical of opioid relief, as the money was supposed to go to help opioid addiction, but instead was going to bureaucracy. Jim Donahue asked for Tom's reaction, and his response was to be careful regarding what is spent on Administrative Fees. Tom stressed that the Trust should make every effort to spend it on actual programs.
- Steve agrees 130k may not be enough. He is already receiving questions about how money can be spent. Appendix E is pretty broad, and D&A authorities will want to know what appropriate expenditures are. They are concerned that they will need to pay the money back. Would be helpful to have someone to analyze and interpret what worked well. Steve suggested a law firm, or an individual to handle Exhibit E questions. Steve agrees CCAP would be good, and that it would be nice for the counties to have one person to go to with questions.
 - Tom raised another item he wanted to discuss. Counties want to know that they will not be penalized when expenditures are reviewed. If it is an authorized expenditure, they want to ensure it is going to the best use. Tom suggested creating a Trust committee to handle those questions. Tom asked for two other people in addition to himself to assist with this committee.
 - Kevin Boozel said that how the money comes through means Single County Authorities don't have to sign off on it, as it does not fit the mold of how money usually comes through from state. Jen and Kevin are trying to assist the SCAs in setting up a process for how to make best practices. While it may not be the funding stream that has a set list of things, there are best practices, evidence gathering, comparisons, and CCAP would be good on assisting with it too. It is not an exhaustive list as there are some things, and they are trying to find to new ways to use the money. Open to the committee communicating with CCAP committees.
 - Shea is an SCA, and is getting a lot of questions and calls. She wants to know how to field those questions and would like to be a part of the smaller committee as she has experience. Shea volunteers to do the small committee.
 - Kevin also volunteers to be on the small committee.
 - Robert said the Trust can't redo Exhibit E, and wants to encourage best practices. Trying something that maybe doesn't work is not a reason to withhold funds. Robert does not want to micromanage Exhibit E.
 - Tom agrees, but wants to make sure that Counties do not need to pay money back to the Trust. Tom wants to create a committee that can answer the subdivision questions and then let people make their own decisions.

- Erin supports the idea of hiring administrative work, and agrees \$130K may be a little low. CCAP make sense, agrees counties do not want their funding taken back, and believes the Trust should start collecting meta-data so that we can see what is happening across the commonwealth. Focus on whether it is evidence based, or is it new ideas that are being tested. Erin is supportive of evaluating the types of things used by subdivisions.
 - Tom endorsed the last point, and likes the focus on not what benefits came from a funding stream, but more whether the program worked or not.
- Tom believes his \$130K administrative fund was rejected, but would like to make it far less than 1%. Tom asks the Trust consider \$260K or raise it to \$200k?
 - Kevin Boozel suggested \$250k.
- Gene DiGirolamo motions for \$250K be the Administrative fund. Steve Jasper seconds the motion. All vote in favor. No oppositions. Kevin Boozel and Robert Postal abstained.
- The Trust clarifies that this is just to set the funds aside for now. If the funds are not completely spent, the remaining will be put back into the Trust to be distributed.
- David will work with Wilmington Trust to set up a bank account.
- Tom asked for who volunteered to be on the subcommittee, Kevin, Jen, and Shea
 - Kevin clarified that this is an advisory position, and that the decisions ultimately come from the Board. Agreed to attend and participate the committee meetings.
- The Committee was determined to consist of Tom, Kevin, Jen and Shea.
- Kevin asked about approaching CCAP.
 - Tom asked Kevin to contact Lisa to discuss what we want to do generally, and if CCAP would accept funding to do the administrative work and set up a website. Kevin will see if Lisa would be willing to have that conversation. Tom would like to have a meeting to discuss this, which would include Tom, Robert, Steve, David, and Kevin. Tom believes it will have to be an RFP, and that those who are a part of CCAP would have to abstain.
- Robert asked about money going to the counties, does it need deposited in an interest bearing account or not.
 - Tom advised the money that came into the State had to be in an interest bearing account, is unsure if counties need to do that as well.
 - Kevin advised yes, it would make sense, however any interest gathered should be used toward the same goal, and that the Trust does not want anyone to sit on the money. A payee does not have to spend it all immediately, but they can't just sit on making interest. The payments are structured as a lump sum up front, and with more payments over 2-4 years. There is a fiduciary duty to put it in interest bearing, but it must go into opiate treatment and quickly.
- Robert believes there is an 18 month period to spend the money, which includes reserving the money for some other use.

- David clarified that the 18 month limit is in the Trust document, but that is for a regularly scheduled payment every December. The first payments are complicated, as there are multiple payments in one year. David said it is up to Trust to determine the penalty if the timing is breached.
- Tom asked David to draft a memo to go to all of the Payees, advising that the Trust created the Subcommittee. Payees can submit their requests for advice to the Subcommittee, and can also ask questions about interest bearing accounts.
- Shea has had 2 counties request to hold the money for 5 years to see which programs work best, and asked if the Memo could address that counties should not do that.
- Question was raised if counties can use any of the funds for county administrative costs. Tom believes administrative costs for any county should be no more than 1% of its payment. Tom states there may be reason to spend some money on administrative costs.
 - David will add to the Memo that counties should not hold the money for too long. The other advice will be that regarding purely administrative costs, if it is for an opioid program administration that is one thing. If it is just a 5-10% chunk off the top for purely county administration, then that may not be allowed.
 - Robert said maybe they should allow county administrative fees, but hasn't concluded it one way or the other. If it is \$1,000 that sounds reasonable, but not a large amount. Unsure if it is a big issue.
 - Tom said the administrative costs for counties should be no more than 1%.
 - Erin advised that Allegheny is not taking administrative costs, but wants to discuss what the amount is for smaller counties if it is an issue. The amount taken should be justified.
 - Robert said he could justify the cost, as it will be a cost to do that work.
 - Steve raised the point that not all smaller counties are the same. Some counties do not have a human-services department, and that drug and alcohol may be a non-profit. This may create an administrative costs for the county, but then the drug and alcohol commission will also have an administrative fee.
 - Robert said this is similar to his county, and that a reasonable costs may be \$750. The county will need to justify it, but that is a small amount.
 - Tom restated that the limit is 1% for administrative fees, from the Trust down to all payees.
- David asked if Robert could reach out to Huntingdon County. Huntingdon did not consent at first to be in the program, but may eventually come around.
- Tom would like to have another meeting around the first week of December, and would like to have an in person meeting. Tom recognizes travel can be imposing. Tom asks everyone give their availability and willingness to meet in person.
 - Kevin said that if it is scheduled quarterly and well in advance, then it is easier to attend in person.
- Meeting adjourned.

