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# Opioid Settlement Funds: Do Not Neglect Patients With Pain

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Viewpoint

# Opioid Settlement Funds—Do Not Neglect Patients With Pain

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The opioid crisis has escalated in the setting of the COVID-19 pandemic to new extremes and has claimed more than half a million lives in the US since 2000.[1] Lawsuits to address the civil and criminal liability of drug companies and other groups have originated from federal, state, local, and tribal jurisdictions.[2] When successful, there will likely be billions of dollars and significant discretion as to how these funds are spent. Several groups have produced reports with principles to address the toll of addiction using settlement funds (**Table**). However, they lack actionable strategies to address the needs of patients with pain, including patients with chronic pain who are receiving long-term opioid therapy. Persons with pain should not be neglected and deserve better treatment.

## Patients With Pain, the Opioid Crisis, and Unintended Consequences

Opioid companies preyed on the vulnerability of more than 100 million patients in the US with pain, who were seen as a large and lucrative population to target.[3] Opioid medications represent a therapeutic option to consider in the context of caring for patients with pain when the risks and benefits are appropriately weighed and therapy goals are continually evaluated. However, pharmaceutical companies encouraged inappropriate prescribing with higher doses and longer durations than necessary, resulting in dangerous and deadly exposures. In response, efforts to curtail opioid prescribing have spanned federal regulation, state laws, and professional guidelines. While opioid use has decreased since peaking in 2012, clinicians in the US still prescribe far in excess of other countries.[4]

It would be inappropriate to consider reductions in opioid prescribing without understanding their unintended consequences on patients, who have encountered improper tapering, abandonment, difficulties accessing pain care, and stigma associated with chronic pain. Reports of aggressive and abrupt tapering of long-term opioid therapy, described by patients and cataloged in insurance claims data,[5] were alarming enough to prompt an US Food and Drug Administration Drug Safety Communication in April 2019, federal guidance on tapering opioids, and an anticipated revision of the Centers for Disease Control and Prevention guideline for prescribing opioids later this year.

National efforts to build the capacity for more physicians to treat opioid use disorder (OUD) have been largely accomplished through OUD training for primary care physicians; however,

**Table. Reports on How Opioid Settlement Funds Should Be Spent**

| Organization | Report | Key details relevant to patients with pain | Website address |
|---|---|---|---|
| Addiction Solutions Campaign | Opioid Settlement Priorities: Recommendations From the Addiction Solutions Campaign | Mentions clinician education on opioid prescribing for chronic pain | https://www.lac.org/resource/opioid-settlement-recommendations-from-the-addiction-solutions-campaign |
| Arnold Foundation | Evidence based Strategies for Abatement of Harms From the Opioid Epidemic | Includes a policy suggestion to limit supply of opioid analgesics via:<br>• Clinician education on pain management<br>• Clinical health system interventions for pain care | https://www.lac.org/resource/evidence-based-strategies-for-abatement-of-harms-from-the-o |
| Johns Hopkins School of Public Health | Principles for the Use of Funds From the Opioid Litigation | Does not mention pain | https://opioidprinciples.jhsph.edu/ |
| FXB Center for Health and Human Rights at Harvard University | From the War on Drugs to Harm Reduction: Imagining a Just Response to the Overdose Crisis | Recommends promoting evidence-based and compassionate pain management | https://fxb.harvard.edu/warondrugstoharmreduction/ |

enormous gaps in access to care persist for long-term opioid users who do not meet the criteria for OUD. Recent work by Lagisetty and colleagues[6] has revealed that patients with chronic pain taking opioids would be denied care at more than half of primary care clinics. Patients with chronic pain and those using opioids may require more time and effort, thereby furthering physician burnout in the primary care community.[7] In addition to time pressures and education gaps in managing pain, the lack of a clear cause or discernable pathophysiologic process for many chronic pain conditions when first evaluated in the clinical setting further limits access for patients with pain and leaves them feeling misunderstood or underestimated.

## Legal Precedent

Including patients with pain as a part of opioid settlement funds is consistent with legal precedent. Other large settlements have addressed underlying problems in addition to compensating victims. For example, when Volkswagen settled claims of defrauding customers by misrepresenting emissions compliance, $4.7 billion was used for environmental programs to improve air quality by mitigating emissions and to invest in clean-vehicle research.[8] In contrast, the $206 billion settlement between the tobacco industry and 46 states in 1998 lacked clear provisions for the use of funds to address the harms of smoking.[9] Consequently, only a small fraction of funds have gone to preventing tobacco use. Instead, states used funds for everything from construction of a jail to a sprinkler system for a public golf course. To ensure that patients with pain receive some benefit from the settlement, a portion of the funds should be dedicated to support pain care and research.

## Steps to Address the Needs of Patients With Pain

Taken together, persons with pain experience misguided approaches to stopping long-term opioid therapy, reduced access to care, and stigma and have precedent for inclusion as part of the focus of opioid settlement funds. Moreover, it is known that more than 60% of those misusing opioids do so to relieve pain.[10] In response, entities entrusted with settlement funds may consider various options when deciding how to best allocate resources to address the needs of patients with pain, especially those with long-term opioid use. The 3 main areas of focus include the following.

### 1. Comprehensive Pain Management

The optimal approaches to caring for patients with pain, especially those with complex pain and opioid use, involve multiple health and medical disciplines, use multiple modalities of treatment, and pursue multiple lines of work. While access to centers of excellence has traditionally been limited, the explosion of telehealth can facilitate follow-up and continuity of care, especially for behavioral therapies. Furthermore, the richness of these collaborative environments affords unparalleled opportunities for education and research.

### 2. Implementation of Evidence-based Care Models to Improve Access, Quality, and Equity for Patients With Pain

Chronic pain programs should address gaps in multidisciplinary care, while acute pain programs should focus on use of nonopioid analgesics and the lowest appropriate dose of opioids when necessary. The Michigan Opioid Prescribing Engagement Network guidelines (https://michigan-open.org/prescribing-recommendations/) provide an example, as these guidelines identify ranges of recommended prescribing in the context of surgery that enable pain control while preserving patient satisfaction.

### 3. Acute and Chronic Pain Research

While the need for better analgesics without addictive potential is obvious, research focused on nonpharmacologic and noninterventional options for managing acute and chronic pain is critical. Moreover, implementation science approaches are necessary to ensure broad use of these treatments.

## Conclusions

It is clear that critical resources must be dedicated to patients affected by the opioid crisis. While some individuals may argue that diverting any funds away from reducing harm from OUD and addiction is inappropriate, it is also true that addressing the consequences of poorly treated pain and overprescribing should be an important focus for settlements. That involves addressing the needs of patients with pain, the primary group targeted by corporations and organizations. It is critical to ensure that funds are not diverted to efforts unrelated to the consequences of overprescribing. At the same time, it is equally important that these funds apply to the full spectrum of patients harmed through the opioid crisis—including patients with pain.

ARTICLE INFORMATION

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REFERENCES

1. Centers for Disease Control and Prevention. Multiple cause of death data on CDC WONDER. 2018. Accessed July 27, 2021. https://wonder.cdc.gov/mcd.html

2. Haffajee RL, Mello MM. Drug companies' liability for the opioid epidemic. *N Engl J Med*. 2017;377(24):2301-2305. doi:10.1056/NEJMp1710756

3. Marks JH. Lessons from corporate influence in the opioid epidemic: toward a norm of separation. *J Bioeth Inq*. 2020;17(2):173-189. doi:10.1007/s11673-020-09982-x

4. Degenhardt L, Grebely J, Stone J, et al. Global patterns of opioid use and dependence: harms to populations, interventions, and future action. *Lancet*. 2019;394(10208):1560-1579. doi:10.1016/S0140-6736(19)32229-9

5. Fenton JJ, Agnoli AL, Xing G, et al. Trends and rapidity of dose tapering among patients prescribed long-term opioid therapy, 2008-2017. *JAMA Netw Open*. 2019;2(11):e1916271. doi:10.1001/jamanetworkopen.2019.16271

**6**. Lagisetty P, Macleod C, Thomas J, et al. Assessing reasons for decreased primary care access for individuals on prescribed opioids: an audit study. *Pain*. 2021;162(5):1379-1386. doi:10.1097/j.pain.0000000000002145

**7**. Agarwal SD, Pabo E, Rozenblum R, Sherritt KM. Professional dissonance and burnout in primary care: a qualitative study. *JAMA Intern Med*. 2020;180(3):395-401. doi:10.1001/jamainternmed.2019.6326

**8**. Shepardson D. US judge approves $14.7 billion deal in VW diesel scandal. Accessed July 20, 2021. https://www.reuters.com/article/us-volkswagen-emissions/u-s-judge-approves-14-7-billion-deal-in-vw-diesel-scandal-idUSKCN12P22F

**9**. Estes J. How the big tobacco deal went bad. *New York Times*. October 6, 2014. Accessed July 20, 2021. https://www.nytimes.com/2014/10/07/opinion/how-the-big-tobacco-deal-went-bad.html

**10**. Substance Abuse and Mental Health Services Administration. Key substance use and mental health indicators in the United States: results from the 2019 National Survey on Drug Use and Health (HHS Publication No. PEP20-07-01-001, NSDUH Series H-55). Published September 2020. Accessed July 20, 2021. https://www.samhsa.gov/data/