

# Virginia's Opioid Settlements and the Opioid Abatement Authority

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Presented to the  
**Virginia Association of Counties**  
October 12, 2022

# Opioid Litigation involving States and state subdivisions

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- ✓ In late 2017 a federal judicial panel consolidated all federal opioid related litigation into single multi-district litigation (MDL).
- ✓ Has been described as the most complex civil case in US history.
- ✓ Virginia's settlements are based on agreements that were negotiated at the MDL level (nation-level) and entered as a final consent judgement by Richmond Circuit Court.

# Virginia's Participation in these Settlements

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- In Virginia, only the state and its direct subdivisions (cities and counties) can participate in these settlements.
- In late 2021-early 2022, the Virginia Attorney General's office worked with local attorneys and outside counsel representing localities, and with numerous associations, to encourage cities and counties to participate
  - ✓ Achieved 100% participation by the 133 cities and counties
  - ✓ Resulted in a signed MOU between the cities/counties and the Commonwealth
  - ✓ Local governments had to release any separate claims against the defendants.

# Virginia's MOU with Cities and Counties

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The MOU uses an allocation formula for cities and counties, based on harm per capita.

- Developed by Dr. Christopher J. Ruhm

UVA's Frank Batten School of Leadership & Public Policy

- Evaluated three variable for each city and county
  1. Virginia opioid-related emergency department visits
  2. Opioid-related deaths, as adjusted for known under-reporting of opioid deaths
  3. Opioid shipments (Morphine Milligram Equivalents (MMEs)) to localities.

# Three Key Elements Forming Virginia's Guidance for Opioid Settlement Fund Distribution

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- Settlement Agreements with the defendants (effective under Consent Judgment in the Circuit Court of the City of Richmond)
- Virginia's MOU with cities and counties
- *Code of Virginia* and in particular *Title 2.2, Chapter 22, Article 12*

*Should a difference exist between these guiding documents  
the Settlement Agreement / Court Order(s) generally will control*

# *Code of Virginia*, Title 2.2, Chapter 22, Article 12

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Established by the General Assembly in 2021

*Created the Opioid Abatement Authority as an **independent body** whose purpose is to abate and remediate the opioid epidemic in the Commonwealth through financial support from the Fund, in the form of grants, donations, or other assistance, for efforts to treat, prevent, and reduce opioid use disorder and the misuse of opioids in the Commonwealth.*

# OAA Board of Directors

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- Senator Todd Pillion (Chair)
- Dr. Sarah Melton (Vice Chair)
- Jim Holland (Treasurer)
- Victor Mckenzie (Secretary)
- HHR Secretary John Littel
- Delegate Jason Ballard
- Dr. James Thompson – Master Center
- Tim Spencer – Roanoke City Attorney
- Sharon Buckman – Piedmont CSB
- Daryl Washington – Fairfax CSB
- Sheriff Joe Baron – Norfolk City

# Who Can Receive Distributions from the OAA?

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- Only organizations that are parties to the legal action can receive distributions/grants
  - ✓ Participating Subdivisions - **Cities and Counties** that have signed the Virginia Settlement Memorandum of Understanding
  - ✓ **State Agencies**

*Cities, Counties, and State Agencies can partner with various organizations to provide services but they must adhere to procurement laws and must oversee the work*



## Settlements currently being paid to cities and counties in Virginia

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### ✓ “Distributors” Settlement:

- McKesson Corporation
- Cardinal Health, Inc.
- AmerisourceBergen Corporation

### ✓ Johnson and Johnson (Janssen Pharmaceuticals, Inc.)

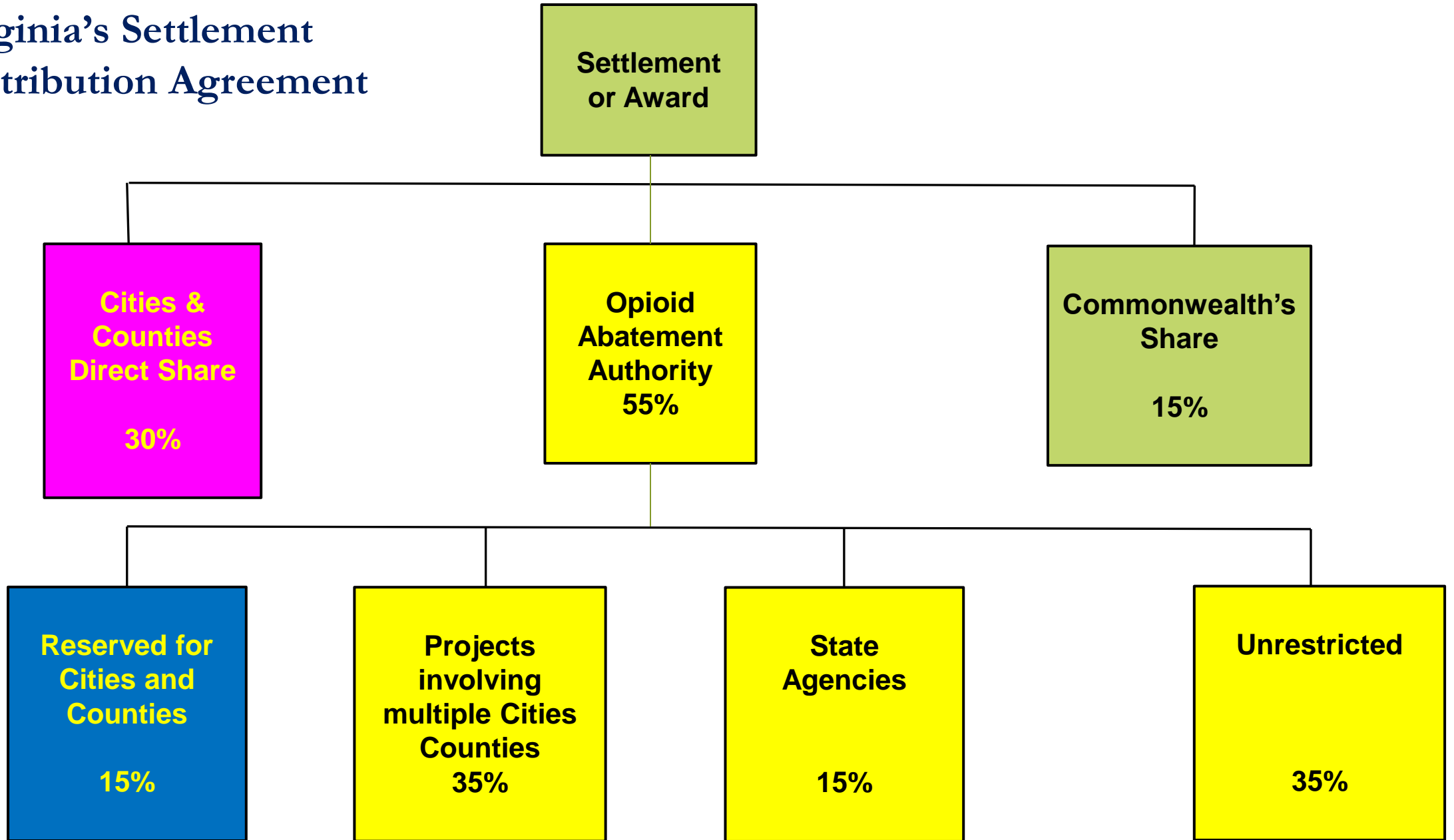
# More about the Distributors and Janssen Settlements

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- Distributors will pay a maximum of \$21 billion (nationwide) over 18 years
  - Requires a minimum of 85% be used for opioid remediation (statewide)
  - *Localities must either meet 85% or 100% depending on whether they had prior litigation*
- J&J / Janssen will pay a maximum of \$5 billion (nationwide) over ten years
  - Requires a minimum of 86.5% be used for opioid remediation (statewide)

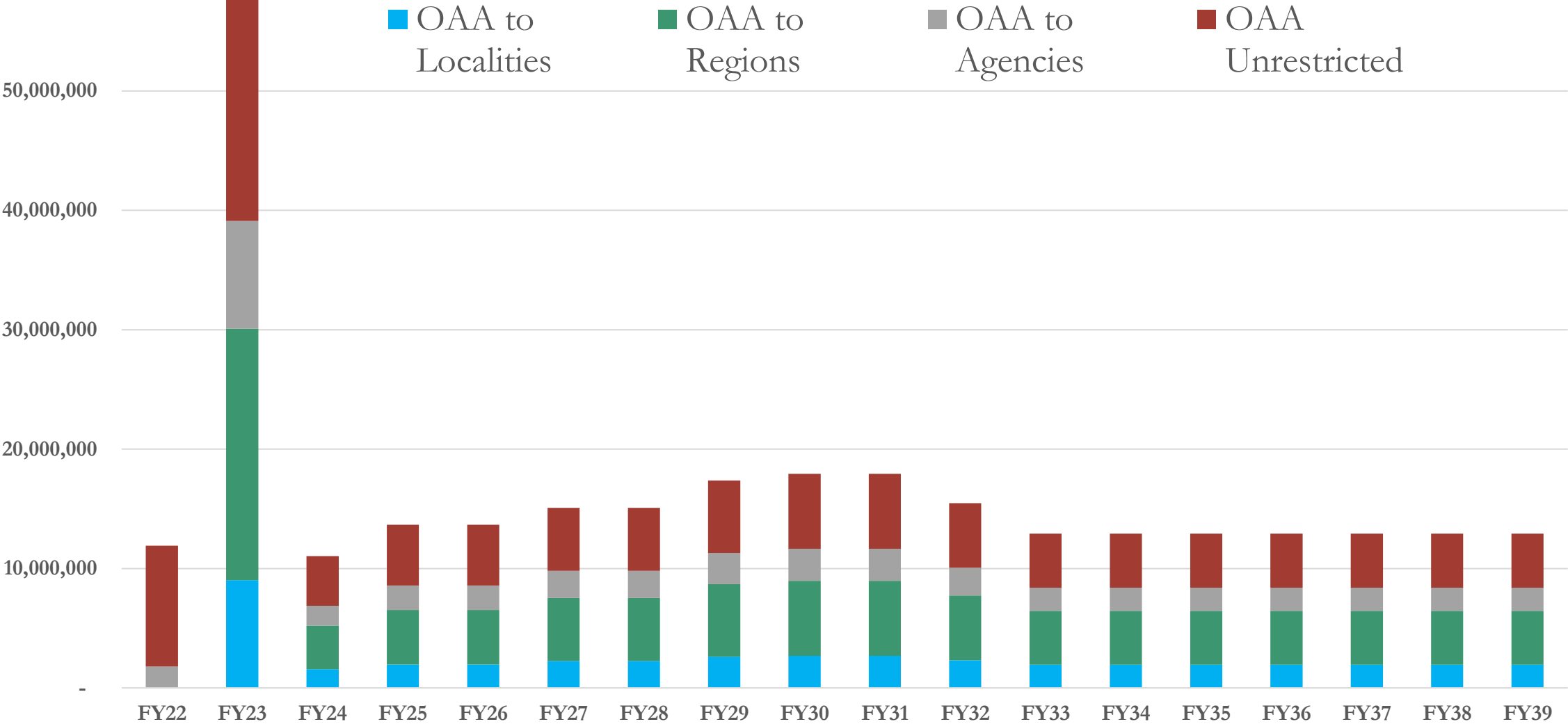
***Any use of any funds for non-remediation must be reported by the city/county to the court and to the defendant.***

# Virginia's Settlement Distribution Agreement



# Estimated OAA Settlement Distributions

## for Fiscal Years 2021 through 2039



# The Rules about how Direct Shares Can be used by Cities and Counties will be Different with each Settlement

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- For Distributors and Janssen, all the funds are intended for “abatement” efforts – and certain percentages are required.

## Distributors

- ✓ 85% statewide for abatement efforts
- ✓ 85% for each city or county that had been litigating prior to the settlement
- ✓ 100% for each city or county that had not been litigating

## Janssen

- ✓ 86.5% statewide and for each city and county
- ANY funds used for any purpose other than abatement must be reported to the settlement administrator, to the settling companies, and to the general public.
- Localities may need to keep detailed records for how each dollar of each settlement is spent

# Common Questions about Direct Distributions from the Distributors and Janssen Settlements

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**Q: Can a portion of the funds be spent on non-abatement activities?**

*In some limited cases, although it is “disfavored” and requires notification to the settlement administrator, the settling companies, and the general public.*

**Q: Can the funds be used for the locality to reimburse itself for prior expenses?**

*Not specifically addressed*

**Q: Can funds replace local expenditures (supplant)?**

*Not specifically addressed in the agreements.*

**Q: How is the agreement monitored? What are the record keeping requirements?**

*Not specifically identified in the agreements, except through judicial (civil) action.*

## OAA Funds will have a much more clear set of rules

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- 100% of the OAA's disbursements to cities, counties and state agencies must be spent on abatement efforts.
- There is no reimbursement of previous costs or supplanting allowed.
- No indirect charges allowed.
- Recipients must report outcomes to OAA on an annual basis, and allow OAA to monitor the programs.

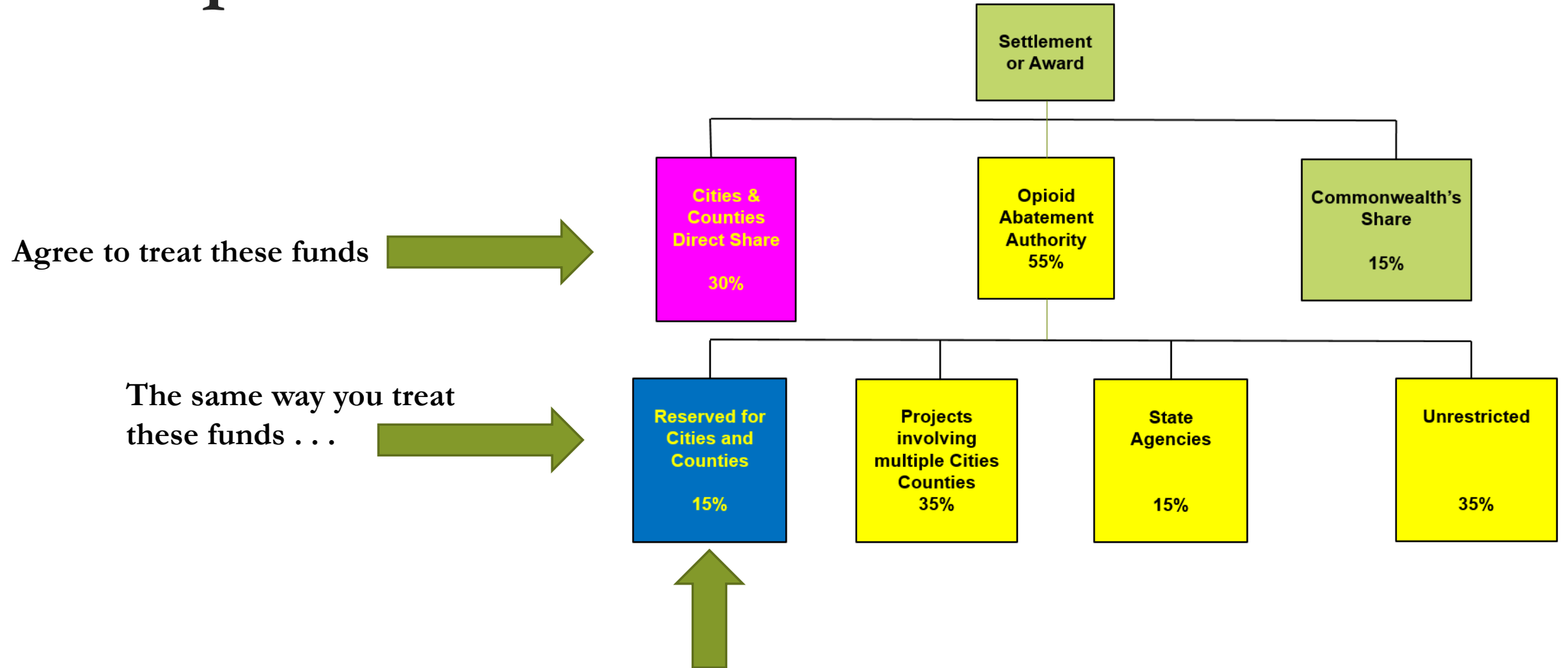
# OAA Rules are the “Gold Standard” Best Practice for Managing Opioid Funds

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- OAA rules fully meet the requirements – and the intent – of the settlements.
- If a city or county chooses to apply the OAA “gold standard” rules to all of their opioid distributions, that city or county will always be in compliance with the settlements, even when there are differences in the various settlements.
- Much less administratively complex.
- Benefits the entire Commonwealth since we are all bound together in the agreements.
- OAA will be able to partner with and support the city or county if any judicial / civil questions arise.



# Proposed Incentive



and the OAA will increase your reserved share by 25%

# A few more details about OAA funding

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15% set aside for reserved distributions to each city and county.

- Formula-driven – qualifying projects will result in funding being provided according to the formula
- Cities/counties will need to apply
- This is where OAA is considering an incentive to increase the amount of funding by 25%

35% for efforts where cities/counties are partnering with each other

- These could be either solicited or unsolicited projects
- Not formula-driven – the Board will use discretion in making these awards

15% for state agencies

- Could be solicited or unsolicited

35% will be “discretionary” and can provide additional awards by the OAA to the categories listed above

## For Discretionary Awards Higher Priority Will be Given to:

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1. Programs or organizations with established record of success
2. Programs in communities with a high incidence of opioid use disorder or opioid death rate, relative to population
3. Programs in a historically economically disadvantaged communities
4. Include a monetary match from or on behalf of the applicant, with higher priority given to an effort with a larger matching amount (*the match can be composed of opioid direct share funding*)

# Coordination

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- OAA funding and involvement provides an opportunity to ensure coordination between state agencies, local governments, CSBs, and non-governmental organizations in the delivery of opioid abatement and remediation efforts.
- Funding will reflect a statewide vision with local stakeholders driving implementation.
- Coordination with other sources of funding (i.e., Federal funds and other grants) to avoid duplication of efforts.

# Timeline for the OAA

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- Setting up the office and hiring staff – now through December
- Grants Committee being formed
- “Listening Sessions” to be held across the Commonwealth
- Plan to release grant and distributions guidance to cities and counties soon after the 1<sup>st</sup> of the year, and begin accepting applications
  - ✓ Simultaneously roll out technical assistance
- First round of awards by March/April timeframe

For more information

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