

National Prescription Opiate Litigation Funds

DHS Proposal for State Fiscal Year 2024

April 1, 2023



**WISCONSIN DEPARTMENT
of HEALTH SERVICES**

2021 Wisconsin Act 57 Summary

2021 Wisconsin Act 57 requires the Department of Health Services (DHS) to submit to the Joint Committee on Finance (JCF) by April 1 of each year a proposal for expending settlement proceeds paid to the state from the National Prescription Opiate Litigation (NPOL), Case No. MDL 2804. Per Act 57, 30 percent of the NPOL settlement proceeds will be allocated to DHS for purposes that comply with the settlement agreement or court order. DHS is required to submit a plan to JCF for spending settlement proceeds by April 1 of each year for the next fiscal year and requires JCF approval via the 14-day passive review process before it can expend the NPOL settlement funding. Approval is also required if DHS seeks to deviate from the proposed plan in the future. The remaining 70 percent of the settlement proceeds will be provided to local governments that were party to the litigation.

Overview of Settlements and DHS Plan

As of March 1, 2023, opioid agreements with the nation’s three major pharmaceutical distributors (Cardinal, McKesson, and AmerisourceBergen) and Johnson & Johnson remain the only finalized settlements making payments to Wisconsin as part of the NPOL. Based on the terms of the settlements, the State of Wisconsin will receive \$8 million on July 15, 2023.

The Wisconsin Department of Justice continues to litigate several other opioid settlements with additional manufacturers and distributors. These settlements remain in flux with no solid timetable for resolution.

For 2023, DHS proposes to invest settlement funds in a variety of strategies that will provide support across the continuum of prevention, harm reduction, treatment, and recovery. The entire amount of funding anticipated for 2023 is allocated in the plan.

Below is a table summarizing the initiatives and allocation amounts for this proposal. Each initiative is covered in more detail in the following sections of this document.

Table 1: DHS Proposed Strategies for 2023

Increase the availability of Narcan® and fentanyl test strips statewide via existing DHS programs (p.10)	\$4 million
Capital Projects (p.13)	\$3 million
K-12 evidence-based substance use prevention curriculums or programs (p.14)	\$1 million
TOTAL	\$8 million

Strategies were selected for this initial plan based upon consideration of the following background information:

- Analysis of opioid data and surveillance collected by DHS and other state agencies.
- Review of current opioid strategies supported by state and federal funds, including whether these strategies could be successfully expanded or enhanced with additional funds.
- Identified needs not currently funded by DHS due to resource limits or restrictions.
- Best practices from the United States Department of Health & Human Services – Overdose Prevention Strategy.¹
- Information and input collected from citizens and stakeholders collected via the public survey open January-February 2023:
 - o DHS received over 4,000 survey responses, with representation from all 72 counties and 11 federally recognized tribes. Those who submitted

¹ <https://www.hhs.gov/overdose-prevention/>

surveys included people who work in the areas of prevention, harm reduction, treatment, and recovery, including healthcare, law enforcement agencies, EMS, fire departments, those who work in the criminal justice system, treatment providers, those who work with children and/or families impacted by substance use, individuals who support friends or family members with opioid use/substance use disorders, and who have lived experience with opioid use/substance use disorders.

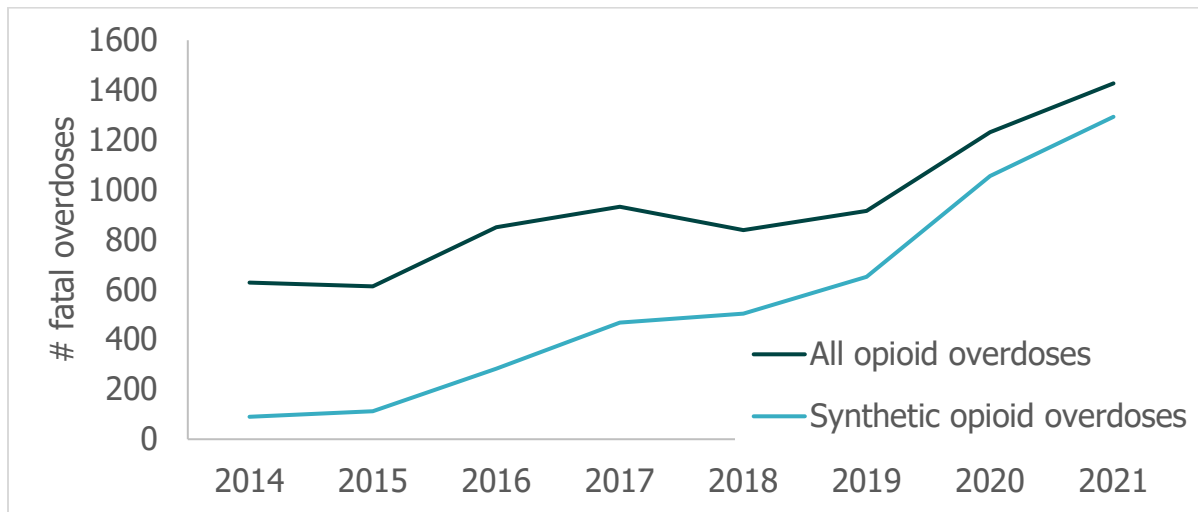
DHS intends to continue coordination around the areas of investment with other political subdivisions, including counties and some municipalities, receiving the remaining 70 percent of settlement proceeds, with the goal of leveraging all settlement funds received by the state and ensuring non-duplicative efforts. It is imperative for all recipients to work together to create the greatest impact possible with these funds in our state. Over the past year, DHS has worked closely with the Wisconsin Counties Association (WCA) to support their efforts to their members. WCA has hosted three opioid summits for members to better understand the terms of the settlements, processes to determine best use of funds, and reporting requirements. DHS has been asked to participate in all three summits and appreciate this partnership. At the summits DHS has provided information on state level initiatives, shared assistance available to counties, and listened to better understand their plans and decision-making regarding use of the settlement funds. DHS remains committed to working closely with county and local governments to ensure that both state and local investments of settlement proceeds are aligned in supporting local efforts and needs.

Current State of the Opioid Epidemic in Wisconsin

The national opioid crisis is categorized in three waves. The first wave began around 1999 when deaths involving opioids began to rise following an increase in opioid prescriptions to treat pain. The second wave began around 2010 when deaths involving heroin began to rise as it became cheaper and more accessible than prescription opioids. The third and most recent wave began in 2014 when deaths involving synthetic opioids, such as fentanyl, began to rise.

The experience in Wisconsin has been no different. Wisconsin's opioid crisis began in the late 1990's and has been evolving since. The number of annual overdose deaths from synthetic opioids continues to rise. Despite showing signs of slowing prior to the COVID-19 pandemic, the number of yearly opioid overdose deaths in Wisconsin increased sharply again in 2020. In 2020, a record high of 1,231 people died of opioid overdose (a 34% increase from 2019), only to increase further by 16% to 1,427 deaths in 2021. Like other states, opioid overdose deaths in Wisconsin continue to be increasingly driven by synthetic opioids such as fentanyl. In 2016, synthetic opioids were involved in 1 of every 3 fatal opioid overdoses in Wisconsin; by 2021 synthetic opioids were involved in 9 out of 10 of these deaths.²

Figure 1: Number of overdose fatalities attributed to opioids (2014-2021)



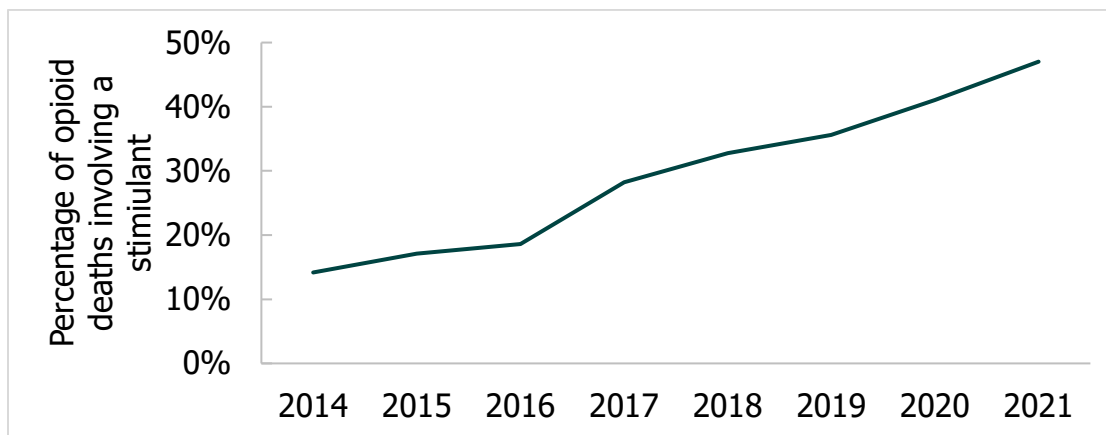
Polysubstance Use

Polysubstance use, using more than one substance at the same time or within a short period of time either intentionally or unintentionally, may contribute to increasing opioid overdose fatalities. In more recent years, Wisconsin has seen a rise in opioid overdose deaths involving cocaine and other psychostimulants (e.g., methamphetamine). The

² Wisconsin Department of Health Services. *Data Direct: Opioid Death Module*. Wisconsin Department of Health Services. Accessed July 20, 2022. <https://www.dhs.wisconsin.gov/opioids/deaths-county.htm>

type of stimulant most commonly involved in polysubstance overdoses varies dramatically by region. For example, psychostimulants such as methamphetamine are more commonly found in the Northern and Western regions of the state, while cocaine is more commonly found in the Southeastern region.³ In 2014, less than 15% of fatal opioid overdoses involved both opioids and stimulants; in 2021, nearly 50% of opioid overdose deaths involved stimulants (Figure 2). This is notable because while opioid overdoses are significantly more common than stimulant overdoses, rates of overdose involving *both* substances are growing faster than those involving either drug alone.⁴

Figure 2: Percentage of fatal opioid overdoses involving a stimulant (2014-2021)



Disproportionate Impact

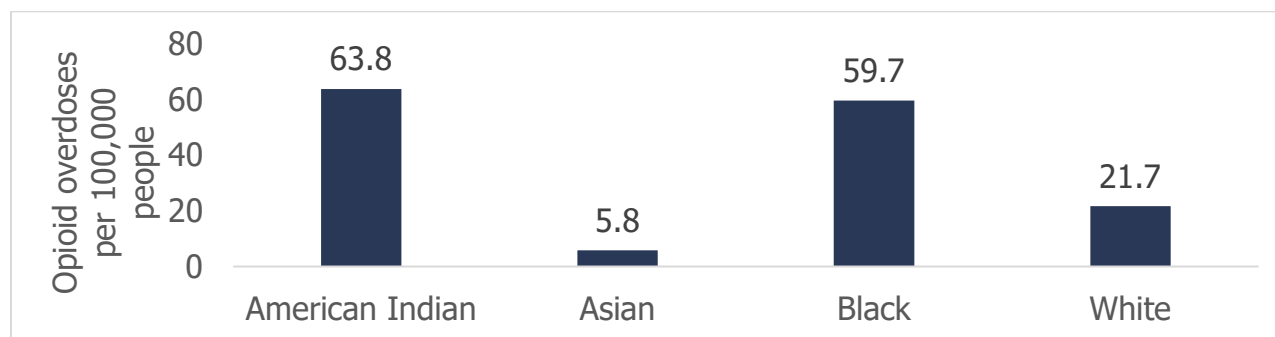
People of color continue to be overrepresented among opioid-related deaths in Wisconsin (Figure 3).⁵ In 2021, the rate of fatal opioid overdose among the American Indian population has grown to more than 2.5 times higher than the state average. In 2014, the American Indian population had a lower opioid overdose death rate per 100,000 than the state average (7.0 vs 10.9).

³ Wisconsin Department of Health Services. Department of Health Services Vital Records Death Certificate Data. Accessed February 1, 2023.

⁴ Wisconsin Department of Health Services. Department of Health Services Vital Records Death Certificate Data. Accessed February 1, 2023.

⁵ Wisconsin Department of Health Services. Department of Health Services Vital Records Death Certificate Data. Accessed February 1, 2023.

Figure 3: Opioid-related overdose deaths per 100,000 by race in 2021



Another demographic group with consistently higher rates of opioid overdose death in the state is men. Every year since 2014, rates of fatal opioid overdose among men have been around twice as high as those among women, with the gap growing even wider in 2021 (34.4 per 100,000 for men and 14.9 per 100,000 for women).⁶ Along with higher death rates, men are also seen in the hospital more than women for opioid overdoses. The gap is especially wide for emergency department visits (71.2 per 100,000 vs 36.3 Per 100,000).⁷

Emergency Department Visits

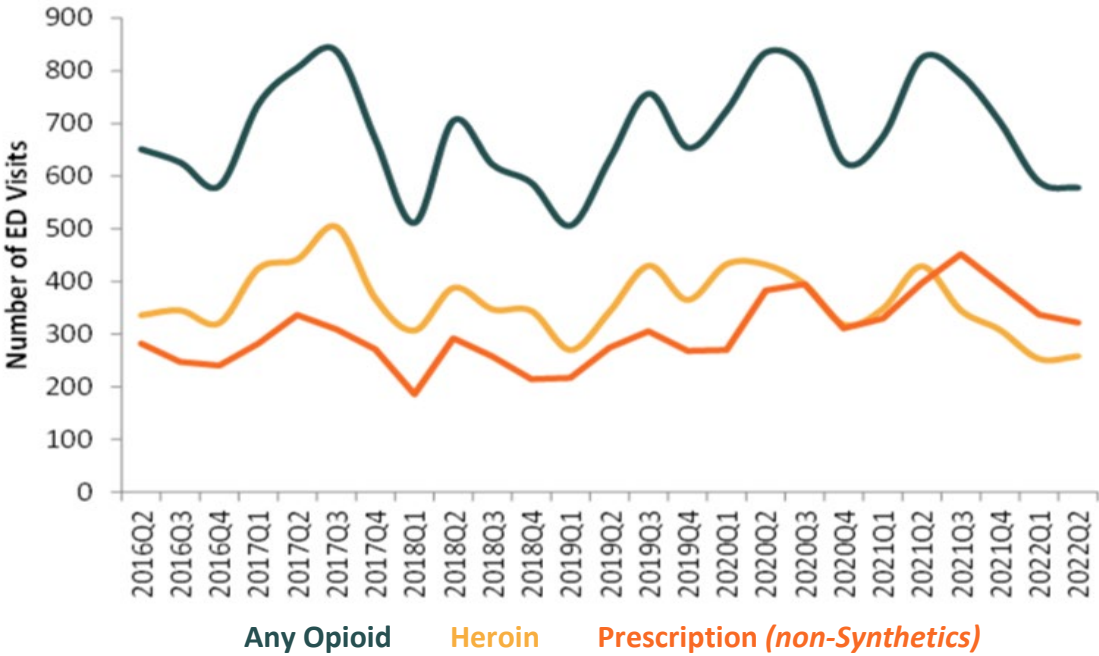
Despite opioid overdose deaths increasing between 2020 and 2021, the number of opioid-related emergency department (ED) visits remained relatively steady. The total number of ED visits in 2021 was similar to the total number of visits in 2020 (3027 in 2020 vs 3133 in 2020). Until 2021, heroin had been involved in more ED visits than prescription opioids, but that trend appears to have shifted mid-2021. The decline in heroin-related ED visits is consistent with a sharp decline in heroin-related deaths in 2021. The number of heroin-related deaths in Wisconsin decreased almost 40% to 162 deaths from 2020 to 2021 (this is down from a peak of 415 heroin-related deaths in 2017).

⁶ Wisconsin Department of Health Services. Department of Health Services Vital Records Death Certificate Data. Accessed February 1, 2023.

⁷ Wisconsin Department of Health Services. *Data Direct: Opioid Hospital Module*. Wisconsin Department of Health Services. Accessed February 1, 2023.

<https://www.dhs.wisconsin.gov/opioids/hospitalizations-county.htm>

Figure 4: Number of opioid-related emergency department visits by drug type



Treatment Services

While opioid-related deaths have continued to increase in the state, the number of people receiving county-authorized treatment has declined almost 35% from 2017 to 2021. Practitioners working in treatment centers across the state have suggested that the decline in people receiving treatment is due to the inability of the centers to run at full capacity as a result of challenges in recruiting and maintaining staff.

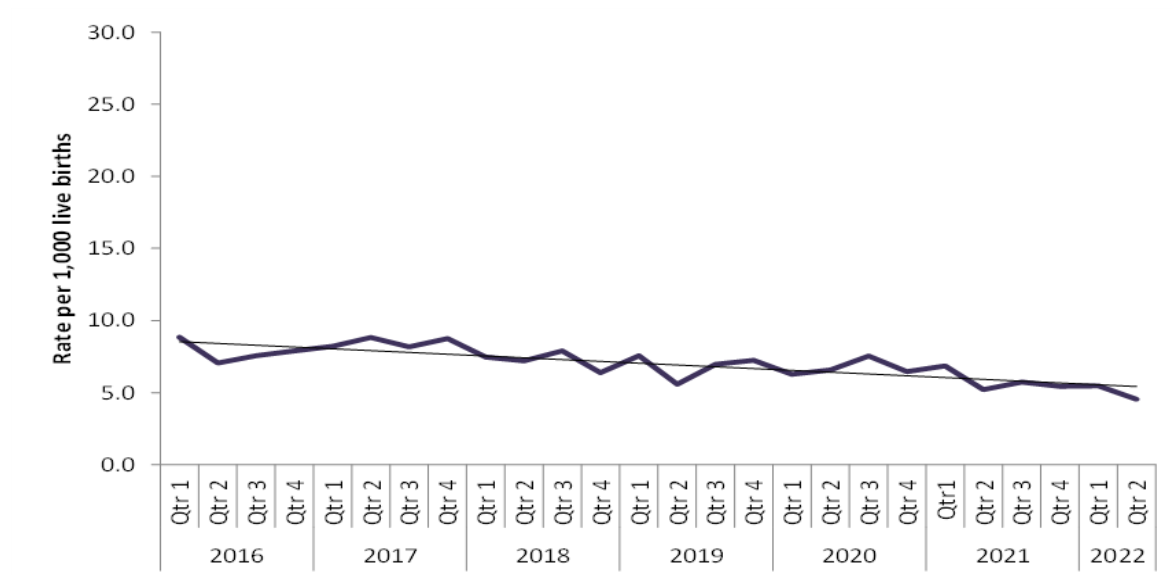
Neonatal Abstinence Syndrome (NAS)

While most opioid events have increased in the last five years in Wisconsin, the number of babies being born with neonatal abstinence syndrome (NAS) has been declining steadily (Figure 5). The rate has decreased from a high of 8.8 per 1000 live births in 2016 to a low of 4.6 per 1000 live births in 2021.⁸ The rate of 4.5 per 1000 live births during the second quarter of 2022 was the lowest rate recorded over the last 6 years.

⁸ Wisconsin Hospital Association: Inpatient Hospital Discharge Data and Vital Records, Births. Accessed February 1, 2023.



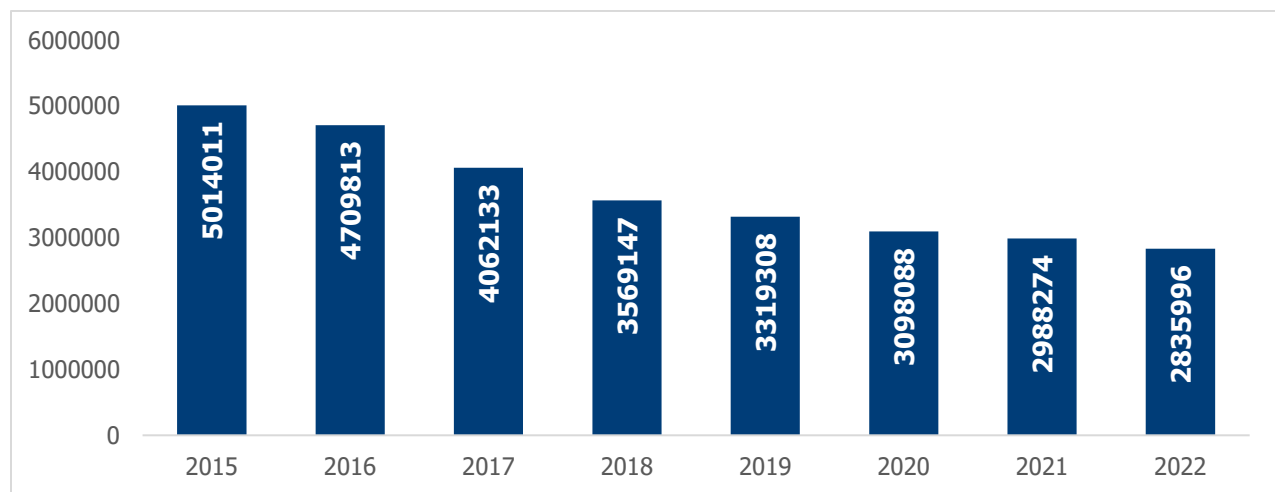
Figure 5: Number of babies born with neonatal abstinence syndrome per 1,000 live births



Prescribing Practices

After Wisconsin implemented measures to decrease opioid overprescribing, prescriptions began to decrease in Wisconsin. Opioid prescription dispensing fell every year from 2015 to 2022, a decrease of over 55% during this timeframe.⁹

Figure 6: Number of opioid prescriptions dispensed over time (2015-2022)



⁹ Wisconsin Department of Safety and Professional Services. *Controlled Substance Dispensing Statistics*. Accessed February 1, 2023. <https://pdmp.wi.gov/statistics/controlled-substance-dispensing>

In summary, in 2021 Wisconsin saw more opioid-related deaths than any year in the state's history. These deaths have been increasingly fueled by fentanyl and other synthetic opioids, often unknowingly mixed with other substances. Groups who have been disproportionately affected since the epidemic began (American Indians and Black individuals, men in their 30s) continued to have higher rates of death and hospitalization over the last year. Recent state efforts have been successful in attenuating overprescribing of opioids, increasing access to naloxone, and promoting public awareness and harm reduction efforts. Building upon these efforts, Wisconsin will continue to be a leader in combating the national opioid epidemic.

Strategy 1: **Increase the availability of Narcan® and fentanyl test strips statewide via existing DHS programs**

Harm reduction is a set of practical strategies and ideas aimed at reducing negative consequences associated with drug use.

The goal of harm reduction is to reduce the harms associated with substance use, to reduce risk behaviors before they lead to injury, to improve health and social function, and to prevent progression to a disorder and subsequent need for specialty substance use disorder services.^{10 11} Harm reduction consists of providing information about substance use risks, normal or safe levels of use, and strategies to quit or cut down on use and use-related risk behaviors, and facilitating patient initiation and engagement in treatment when needed. These services may be considered the bridge between prevention and treatment services. For individuals with more serious substance use, these services can serve as a mechanism to engage them with treatment.¹²

Since the pandemic, record numbers of opioid-related overdoses and deaths have been seen nationally. Data from 2021 demonstrates the trajectory continues to trend upward. Investing in harm reduction strategies will save lives and provide an immediate impact by either reversing an overdose or preventing one from happening in the first place. Survey participants from across all Wisconsin counties and tribes identify providing and increasing the provision of the overdose reversal medication naloxone/Narcan® and fentanyl test strips as the top harm reduction priorities. DHS proposes to invest in five harm reduction initiatives with settlement funds received in 2023:

- \$1.5 million to maintain the availability of Narcan® statewide via the DHS Narcan® Direct program through community provider agencies.
- \$500,000 to maintain a statewide distribution of fentanyl test strips via the DHS Fentanyl Test Strip Direct program through community providers.
- \$1 million to sustain the EMS Leave Behind Program implemented by DHS using last year's settlement funds, providing EMS agencies with Narcan® and fentanyl test strips.
- \$750,000 to sustain the DHS Law Enforcement Narcan® Direct program
- \$250,000 to sustain providing fentanyl test strips to law enforcement agencies participating in the DHS Law Enforcement Narcan® Direct program. DHS will begin supporting this with last year's settlement funds.

¹⁰ Center for Substance Abuse Treatment. Brief interventions and brief therapies for substance abuse. Rockville, MD: Substance Abuse and Mental Health Services Administration; 1999. (Treatment improvement protocol (TIP) series, No. 34). (HHS Publication No (SMA) 12-3952)

¹¹ American Society of Addiction Medicine. ASAM patient placement criteria for the treatment of substance-related disorders. 2nd ed. Chevy Chase, MD: American Society of Addiction Medicine, Inc; 2001.

¹² <https://www.ncbi.nlm.nih.gov/books/NBK424859/#ch4.r17>

Funding to maintain the availability of Narcan® statewide via the DHS Narcan® Direct program through community provider agencies

Narcan® is the nasal spray formulation of naloxone, a drug used to reverse opioid overdoses. In the fall of 2019, DHS established its Narcan® Direct program which provides Narcan® to community agencies at no cost. These community agencies in turn distribute the Narcan® to people at risk for an opioid overdose and people who may witness an opioid overdose. People receive the free Narcan® after completing a training provided by the community agencies.

DHS continues to see positive outcomes via Narcan® Direct. With more than 100 community agencies currently partnering with DHS on Narcan® Direct, the access and availability of Narcan® statewide is greater than ever. The program lays a solid foundation across the state which we hope counties and other providers will supplement, creating an even greater reach statewide. DHS has been able to grow and sustain the Narcan® Direct program over the years through one-time funds via the federal government and also last year's settlement funds. In order to maintain the current program level, ongoing support from settlement funds is needed. This \$1.5 million will directly support the community providers who are part of the Narcan® Direct program. This includes county public health departments, tribal health clinics, recovery community organizations, syringe access programs, and opioid treatment programs.

Funding to maintain a statewide distribution of fentanyl test strips via the DHS Fentanyl Test Strip Direct program through community providers

Fentanyl has been the driving factor in the rise of overdoses and deaths nationally for the last five years. Fentanyl can now be found throughout the entire drug supply whether it be cocaine, heroin, methamphetamine, or counterfeit pills. Fentanyl test strips saves lives. Data from 2021 shows that fentanyl was present in 73% of all drug deaths in Wisconsin and was present in 91% of opioid-related deaths.¹³ Fentanyl test strips can identify the presence of fentanyl in multiple forms of drugs including injectable drugs, powders, and pills. Being aware of whether fentanyl is present allows people to implement additional harm reduction strategies to reduce or eliminate the risk of an overdose and death.

Using settlement funds from 2022, DHS established a Fentanyl Test Strip Direct program, modeled after the DHS Narcan® Direct program, creating a mechanism to distribute fentanyl test strips to partner agencies statewide. DHS has prioritized providers offering services and working directly with people actively using drugs. This includes county public health and human service departments, tribal health clinics, syringe access programs, community recovery organizations, and opioid treatment

¹³ Wisconsin Department of Health Services. *Data Direct: Opioid Death Module*. Wisconsin Department of Health Services. Accessed February 20, 2023. <https://www.dhs.wisconsin.gov/opioids/deaths-county.htm>

programs. These providers then disseminate fentanyl test strips directly to people at risk for an opioid overdose. This \$500,000 will allow DHS to maintain this program, continuing to support these provider agencies with fentanyl test strips.

Funding to sustain the EMS Leave Behind Program implemented by DHS using last year’s settlement funds, providing EMS agencies with Narcan® and fentanyl test strips.

EMS providers across the country and within Wisconsin have instituted public safety-based Leave Behind Programs. Using settlement funds from 2022, DHS has begun supporting EMS Leave Behind Programs. This program increases access to overdose prevention tools, including Narcan® and fentanyl test strip supplies. Leave Behind Programs allow EMS professionals to distribute, or “leave behind,” overdose prevention tools and resources at the scene of care, or after transport to a hospital, with the patient and/or their social networks (family, friends, roommates, etc.). This model presents an innovative opportunity to expand access to life-saving tools for individuals at high risk for overdose and death.

This \$1 million will allow DHS to sustain and potentially grow the program. DHS is currently in the process of awarding these funds, so evaluation of the implementation will determine if the funding amounts for the initial group of grantees was appropriate.

Funding to sustain the DHS Law Enforcement Narcan® Direct program

Using last year’s settlement funds, DHS was able to support the Law Enforcement Narcan® Direct program for a second year. This \$750,000 will allow DHS to sustain the program for a third year. In 2022, this program supported 133 law enforcement agencies statewide with free Narcan®. Agencies are able to use their supply when responding to a suspected overdose, providing it as a “leave behind” resource, or to administer on a law enforcement officer.

Funding to sustain providing fentanyl test strips to law enforcement agencies participating in the DHS Law Enforcement Narcan® Direct program

In the near few months, DHS will begin supporting law enforcement agencies currently participating in the DHS Law Enforcement Narcan® Direct program with the opportunity to apply for fentanyl test strips. This effort is being supported by last year’s settlement funds. This \$250,000 will allow DHS to support additional agencies if the requests exceed current funding amounts or build in sustainability for a second year of this program.

Strategy 2: Capital Projects

Funding to support capital projects was included in the 2022 JCF approved opioid settlement funds plan. DHS received 40 applications for this funding opportunity and were able to grant three awards. Given the robust response from statewide providers for these funds, DHS is once again proposing \$3 million for capital projects in this year's plan. Further funding to support these projects is a clear need statewide.

In an effort to continue increasing access to services throughout the state, there is a need for both new and updated facilities across Wisconsin. DHS wants to remain responsive to the needs of its stakeholders and affected communities. In some cases, it is the need for services in areas of the state where there are no existing facilities available. In other cases, there is a demonstrable need to renovate existing facilities to modern standards to meet service delivery requirements and better serve communities. If providers are not present, services are not available. The utilization of settlement funds provides a rare and exceptional opportunity for DHS to physically build capacity and support providers in this effort.

DHS will allocate \$3 million in settlement funds to support capital projects that will expand prevention, harm reduction, treatment and/or recovery services statewide. DHS intends to award 1-2 grants through a one-time funding opportunity. The competitive grant process will be based on demonstrated need, the expected number of people that will be served annually, demographics to be served, project readiness and anticipated completion date, and the scope of service to be provided.

DHS will prioritize applicants proposing to serve regions of the state currently lacking providers and expecting to serve populations disproportionately affected by the opioid epidemic in our state. DHS will use several different data sets¹⁴ and published reports, including "Preventing and treating harms of the opioid crisis: An assessment to identify geographic gaps in services, and a plan to address these gaps,"¹⁵ to identify high need areas.

¹⁴ Wisconsin Department of Health Services. *Data Direct: Opioid Death Module*. Wisconsin Department of Health Services. Accessed July 20, 2022. <https://www.dhs.wisconsin.gov/opioids/deaths-county.htm>

¹⁵ <https://www.dhs.wisconsin.gov/publications/p02605.pdf>

Strategy 3: **K-12 evidence-based substance use prevention curriculums or programs**

DHS supports a variety of initiatives to prevent opioid access and availability, as well as raising awareness about using opioids safely, prescribing opioids responsibly, accessing data to inform strategy implementation, and addressing trauma, disparities and stigma related to substance use disorder.

The DHS prevention approach incorporates strategies addressed in the Office of National Drug Control Policy's 2011 report "Epidemic: Responding to America's Prescription Drug Abuse Crisis."¹⁶ Consistent with the expert recommendations in this report, along with public health, human services, and prevention experts, the DHS approach includes education, tracking and monitoring, proper medication disposal, and enforcement components. These prevention strategies are intended to decrease risk factors and enhance protective factors statewide. Successful and positive prevention results are comprehensive, multi-faceted, and locally collaborative.¹⁷

Prescription opioids, when used as prescribed by a doctor, can be helpful in treating a patient's moderate to severe pain; however, when misused they can have serious consequences including the development of a substance use disorder, overdose, and even death. High school students in Wisconsin participate in the Youth Risk Behavior Survey¹⁸, a confidential online youth survey conducted by the Centers for Disease Control and Prevention and the Wisconsin Department of Public Education. Results from the Wisconsin 2021 Youth Risk Behavior Survey¹⁹ report 11.2% of high school students (grades 9-12) have taken prescription pain medication (including drugs such as codeine, Vicodin, OxyContin, Hydrocodone, and Percocet) at least once in their life without a doctor's prescription or differently than a doctor told them to use it. High school females in Wisconsin report lifetime prescription pain medication misuse at a higher rate (14.1%) than males (8.2%).

The science is clear that the use of drugs during childhood and adolescence has the potential to disrupt brain function in the areas critical to motivation, memory, learning, judgment, and behavior control, because the brain is still developing. Protective factors in schools, such as school connectedness and positive peer relationships, can help students avoid engaging in risky behaviors and help students learn skills important to promoting healthy choices. K-12-based substance use prevention curriculums and programs can reduce the likelihood of a student's future substance use and impact

¹⁶ <https://obamawhitehouse.archives.gov/sites/default/files/ondcp/ndcs2011.pdf>

¹⁷ SAMHSA's Center for the Application of Prevention Technologies. (2016). Preventing prescription drug misuse: Programs and strategies. Retrieved from <https://www.edc.org/sites/default/files/uploads/preventing-prescription-drug-misuse-strategies.pdf>

¹⁸ <https://www.cdc.gov/healthyyouth/data/yrbs/index.htm>

¹⁹ <https://dpi.wi.gov/sspw/yrbs>

educational outcomes. These curricula and programs accomplish this by reducing risk factors and increasing protective factors. By helping students develop the knowledge, attitudes, and skills needed to make good choices, they are less likely to use substances.

Evidence-based K-12 curriculums and programming are plentiful and can target specific populations and geographic areas (urban versus rural). The Substance Abuse and Mental Health Services Administration Evidence-Based Practices Resource Center and several other organizations provide a list of strategies and implementation information for organizations and agencies.^{20 21}

Just as with last year's plan and in alignment with the priorities identified in the public input survey, DHS plans to partner with the Department of Public Instruction (DPI) and allocate \$1 million in settlement funds for this initiative. DPI will provide new aid dollars to school districts, independent charter schools, and private choice schools to implement evidence-based substance use prevention programming. In addition, DPI can use a portion of the funds to provide training and technical assistance to support grantees in implementation of the Alcohol and Other Drug Abuse program.

²⁰ <https://www.samhsa.gov/resource-search/ebp>

²¹ <https://www.edc.org/body-work/opioid-and-other-substance-misuse-prevention>