

Morgan Lewis

MEMORANDUM

TO: Trustees of the Warehouse Employees Union Local No. 730 Health and Welfare Fund
FROM: Jim Kimble
Merle DeLancey
DATE: December 17, 2021
SUBJECT: Purdue Pharma Bankruptcy Distribution

SUMMARY: The Fund may be eligible for a distribution related to Purdue Pharma's bankruptcy. The application for a distribution will likely be time-intensive. Furthermore, the distribution can only be spent on addiction treatment, and 50% of any distribution must be used for specified programs. Therefore, the Trustees should first determine if the Fund can feasibly use any distribution. If there is a use for the distribution, Associated Administrators should determine the time and cost of compiling the necessary data. Assuming that the data can be compiled efficiently, counsel will work with Associated to complete and submit an application.

A. Background

As part of its Chapter 11 bankruptcy reorganization, Purdue has established a \$365 million Third-Party Payor (TPP) Trust to pay claims from insurer companies and health plans. To be eligible for a distribution, the Fund or counsel will need to complete the TPP Abatement Claim Form (attached), following the instructions outlined in this memo.

The deadline to submit the Form is a moving target. The deadline will be 60 days after the effective date of the reorganization plan; however, the reorganization plan is being appealed, and the plan also cannot become effective until after Purdue's criminal sentencing hearing. Purdue is required to provide 14 days' notice of the effective date. We expect the deadline for a distribution claim to be no earlier than late February.

B. Calculation of Distribution

1. Identify the number of participants prescribed one of the drugs on the NDC List (attached) between 1/1/2008 and 12/31/2019. Count each participant only once, regardless of the number of prescriptions.
2. Identify the number of unique prescriptions paid, all or in part, by the Fund for the drugs on the list between 1/1/2008 and 12/31/2019.
3. Identify the dollar amount paid by the Fund for the drugs identified in No. 2.
4. Identify the number of unique participants identified in No. 1 that were diagnosed with an Opioid Use Disorder (OUD), under one of the ICD codes under the OUD ICD 9 and 10 List (attached).

5. For all participants identified in No. 4, state the dollar amount paid for OUD medical claims using the codes listed in the OUD Medical Claims Codes List (attached).
6. Finally, identify the total number of participants, including covered dependents, covered by plan as of 1/1/2020.

The sum of Nos. 3 and 5 will yield the Fund's "maximum eligible amount." However, the Fund will not receive this amount. Instead, the Fund's maximum eligible amount will be divided by the total of all claimants' maximum eligible amounts. The resulting fraction will be multiplied by the \$365 million in funds to yield the amount of the Fund's distribution. It is not possible to accurately estimate the amount of the distribution, as many TPP claimants have not publicly reported the amount of their Purdue spend. But note that Blue Cross has well over \$1 billion in claims that will be filed against the TPP Trust, meaning that the Fund's entitlement will be significantly lower than the maximum eligible amount.

C. Use of Distribution

The Fund will need to spend all of its distribution on approved medication assisted treatment (MAT) and approved treatment programs, or attorneys' fees. Additionally, at least 50% of the distribution must be spent on programs. Approved MATs and programs are attached. Note that the approved programs include mental health and substance abuse disorder programs generally and are not just for OUD. For example, programs include expanding telehealth networks and availability, counseling, psychiatric support, and other treatment and recovery support services.

RECOMMENDATION: Before committing resources to drafting and submitting an application, the Trustees should determine, first, if there is a feasible use for a distribution. If so, Associated should estimate the time and cost it will take to collect the information required. Assuming that the data can be compiled efficiently, counsel will work with Associated to complete and submit an application.