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2018 NACo

LEGISLATIVE CONFERENCE

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THE OPIOID CRISIS: UPDATES ON OPIOID-RELATED LITIGATION

FLORIDA'S RESPONSE TO THE OPIOID CRISIS

Melissa McKinlay

Mayor, Palm Beach County

THE STATISTICS

FLORIDA - 2016

- Total drug-related deaths increased by 22 percent (2,126 more)
- 5,725 opioid-related deaths were reported, which is a 35 percent increase (1,483 more)
- 6,658 (24 percent more) individuals died with one or more prescription drugs in their system
- Deaths caused by heroin increased 30%
- Deaths caused by fentanyl increased 97%
- More people were killed by fentanyl and heroin in the first half of 2016 than in all of 2015
- 14 Deaths Per Day = more deaths per day than at the height of the Pill Mill Crisis (8 per day)
- Have been under a Governor-declared Public Health Crisis Declaration since May 2017

FLORIDA MEDICAID EXPENSES

- \$4.1 million/day spent on hospital-related medical expenses alone
- Medicaid billed as primary insurer from heroin & opioid overdoses = \$2.1 billion (2015)
- \$842 million Neonatal Abstinence Syndrome Treatment Costs over 6 years
 - 2014 = 1,903 babies born with NAS
 - 2016 = 4,215 babies born with NAS

PALM BEACH COUNTY – THE LAST TWO YEARS

- Nearly 1200 overdose deaths
- Nearly 9000 overdose related calls to County Fire Rescue
- Over 9300 treatment admissions (2015/16)
- A 509% increase in overdose deaths in a 4yr period
- A 1041% increase in spending on Narcan, \$200k in 2016
- Over \$13 million spent on Fire Rescue calls (\$1500 per call)
- Neonatal Abstinence Syndrome cases increased 174%
- ONLY 24 publicly financed residential detox beds in a County with 1.4 million people

PALM BEACH COUNTY RESPONDING

In the last year....

- Approved detailed strategic plan
- Committed \$3 million over two years
- Hiring Drug “Czar” and 2 Medical Examiners
- Lead the effort to seek state public health declaration
- Developed a Heroin Task Force & a Sober Home Task Force under leadership of State Attorney
- Fire Rescue Pilot Project
- Creating Strategic Prevention Framework/School Partnership
- Law Enforcement & Judicial Partnerships Creating Diversion Programs Prior to Arrest
- Addiction Receiving Facility
- Actively Pursuing Litigation

FLORIDA LITIGATION UPDATE

Florida Attorney General Action:

- Florida is part of a multi-state investigation of manufacturers and distributors of opioids. Currently, 41 attorney generals are involved.
- Joined a separate coalition of 37 attorney generals in asking American's Health Insurance Plans to examine policies to ensure they are not aiding the national opioid crisis
- Currently interviewing for outside counsel for litigation
- Attended a conference with Federal Judge & parties involved in Multi-District Litigation lawsuits re: exchange information and preliminary settlement discussions.

JURISDICTION	HIRING COUNSEL	HIRED COUNSEL	FILED LAWSUIT
Alachua County			X
Bay County		X	
Broward County		X	
City of Dade City	X		
City of Delray Beach			X
Escambia County	X		
City of Jacksonville/Duval County		X	
City of Miami	X		
Miami-Dade County		X	
Osceola County		X	
Palm Beach County	X		
City of Panama City Beach		X	
Pasco County		X	
Pinellas County		X	
City of Sarasota		X	

Potential Causes of Action

- Florida Deceptive and Unfair Trade Practices Act
- Negligence
- Misrepresentation
- Public Nuisance
- Unjust Enrichment
- RICO
- Fraud

Possible Defendants

Distributors: (affiliates and subsidiaries are not all listed)

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

Manufacturers: (affiliates and subsidiaries are not all listed)

- Purdue Pharma, L.P.
- Cephalon, Inc.
- Janssen Pharmaceuticals, Inc. (Johnson & Johnson)
- Endo Pharmaceuticals, Inc.
- Actavis, Inc.
- Insys Therapeutics, Inc.
- Teva Pharmaceutical Industries, LTD
- Mallinckrodt Pharmaceuticals

Pharmacies: (affiliates and subsidiaries are not all listed)

- Walgreens
- CVS
- Walmart
- Costco

THE OPIOID CRISIS: UPDATE ON NEW YORK STATE OPIOID RELATED LITIGATION

Stephen J. Acquario, Esq.
Executive Director, New York State Association of Counties



NYSAC[®]
NEW YORK STATE
ASSOCIATION OF COUNTIES



OVERVIEW

The epidemic of overdoses and deaths from the abuse of prescription painkillers and heroin has devastated countless families and communities across the country. And it is not limited by demographic, economic, or geographic limitations.

It effects individuals of every age, race, and gender.

The CDC reported that in 2016 more than 11 million people abused prescription drugs. The number of drug overdose deaths has never been higher, and the majority of these deaths, 66% in 2016, involved opioids.

WHAT ARE OPIOIDS?

Opioids are a class of drugs that include the illegal drug heroin, synthetic opioids such as fentanyl, and pain relievers available legally by prescription, such as oxycodone (OxyContin[®]), hydrocodone (Vicodin[®]), codeine, and morphine.

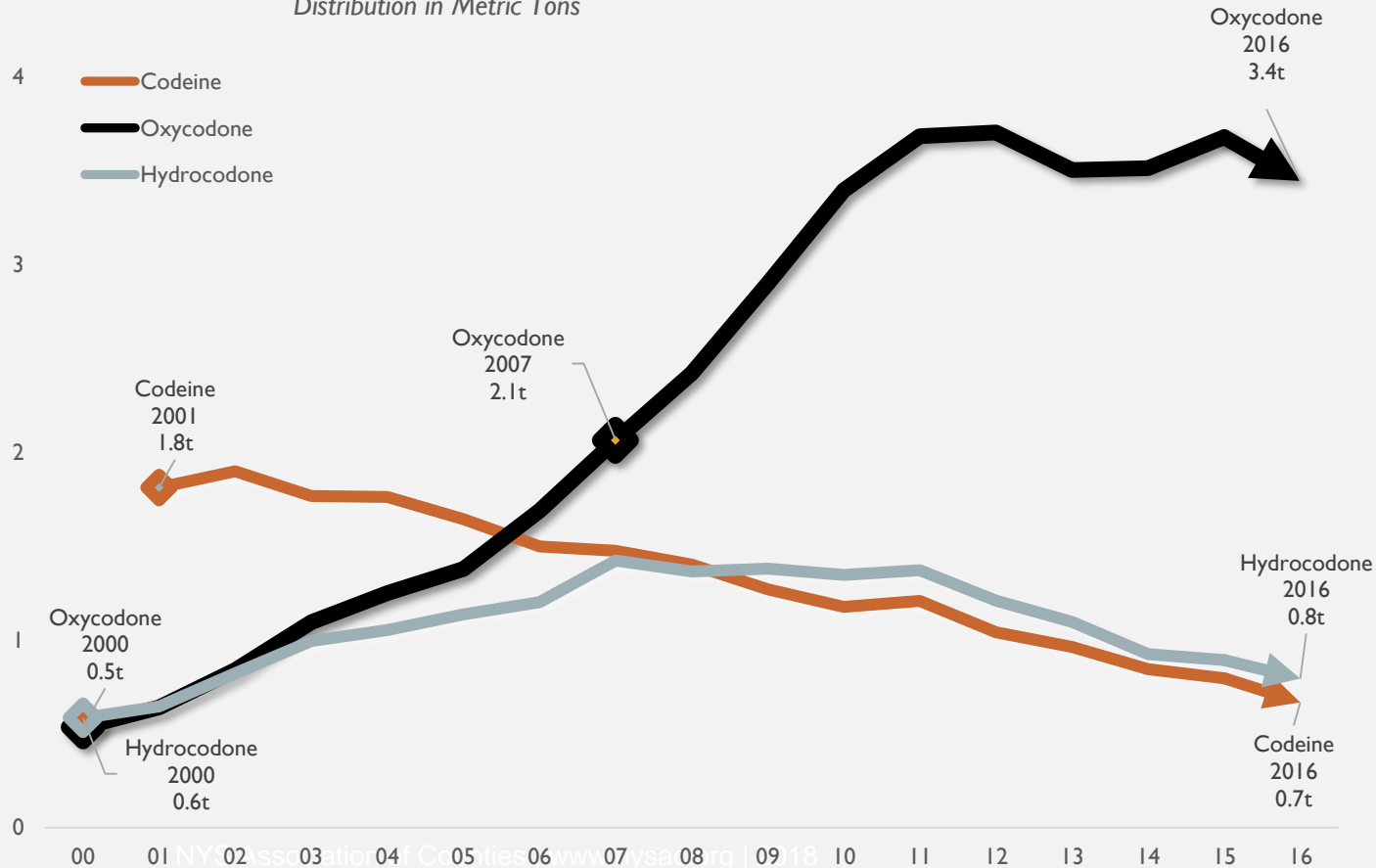
Opioid pain relievers are generally safe when taken for a short time and as prescribed by a doctor, but because they produce euphoria in addition to pain relief, they can be misused (taken in a different way or in a larger quantity than prescribed, or taken without a prescription).

Regular use—even as prescribed by a doctor—can lead to dependence and, when misused, opioid pain relievers can lead to overdose incidents and deaths.

-National Institute on Drug Abuse

THE OPIOID CRISIS: DISTRIBUTION OF CODEINE & RELATED SYNTHETICS

Codeine & Related Synthetics
Distribution in Metric Tons



Oxycodone distribution peaked in 2012 in New York while the 2016 distribution of

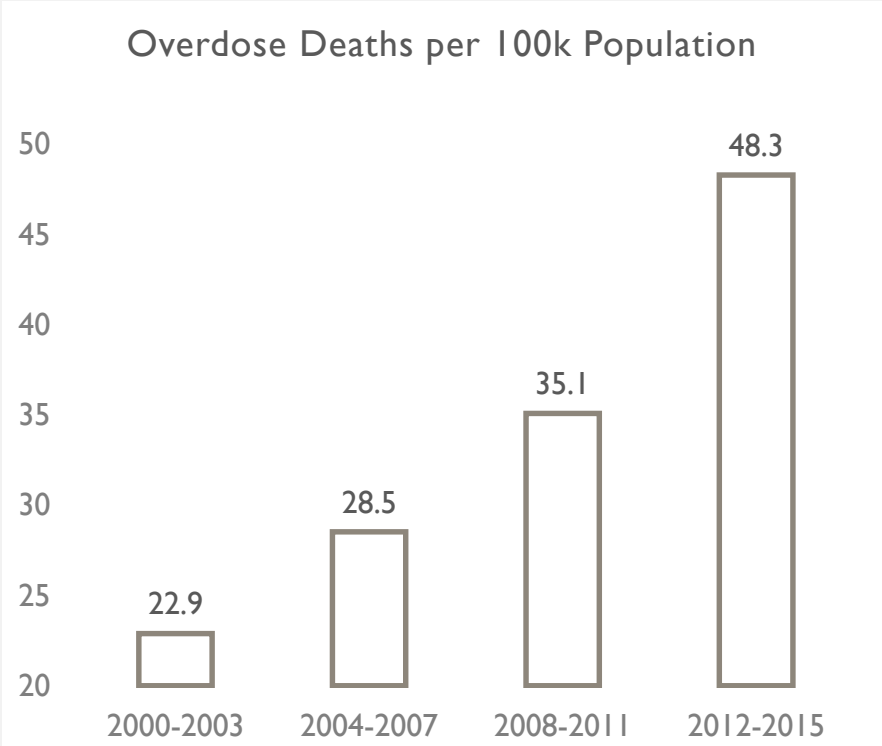
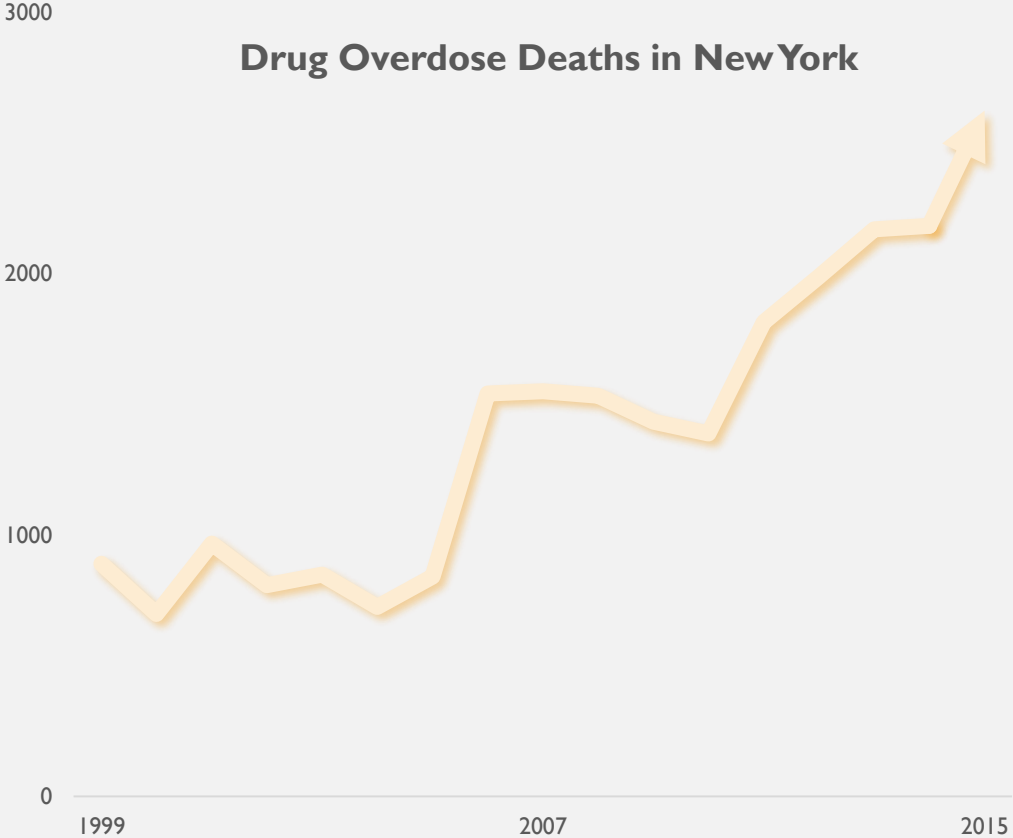
3.4 Metric Tons¹

remained more than 50% higher than distribution in 2006 and was seven-fold higher than in 2000.

¹ – Greater than 3,400,000 Grams of Oxycodone distributed
² – Data Source: US Department of Justice. Automation of Reports and Consolidated Orders System (ARCOS). Springfield, VA: US Department of Justice, Drug Enforcement Administration; 2017. Available at <http://www.dea diversion.usdoj.gov/arcos/index.html>. Accessed July 25, 2017.

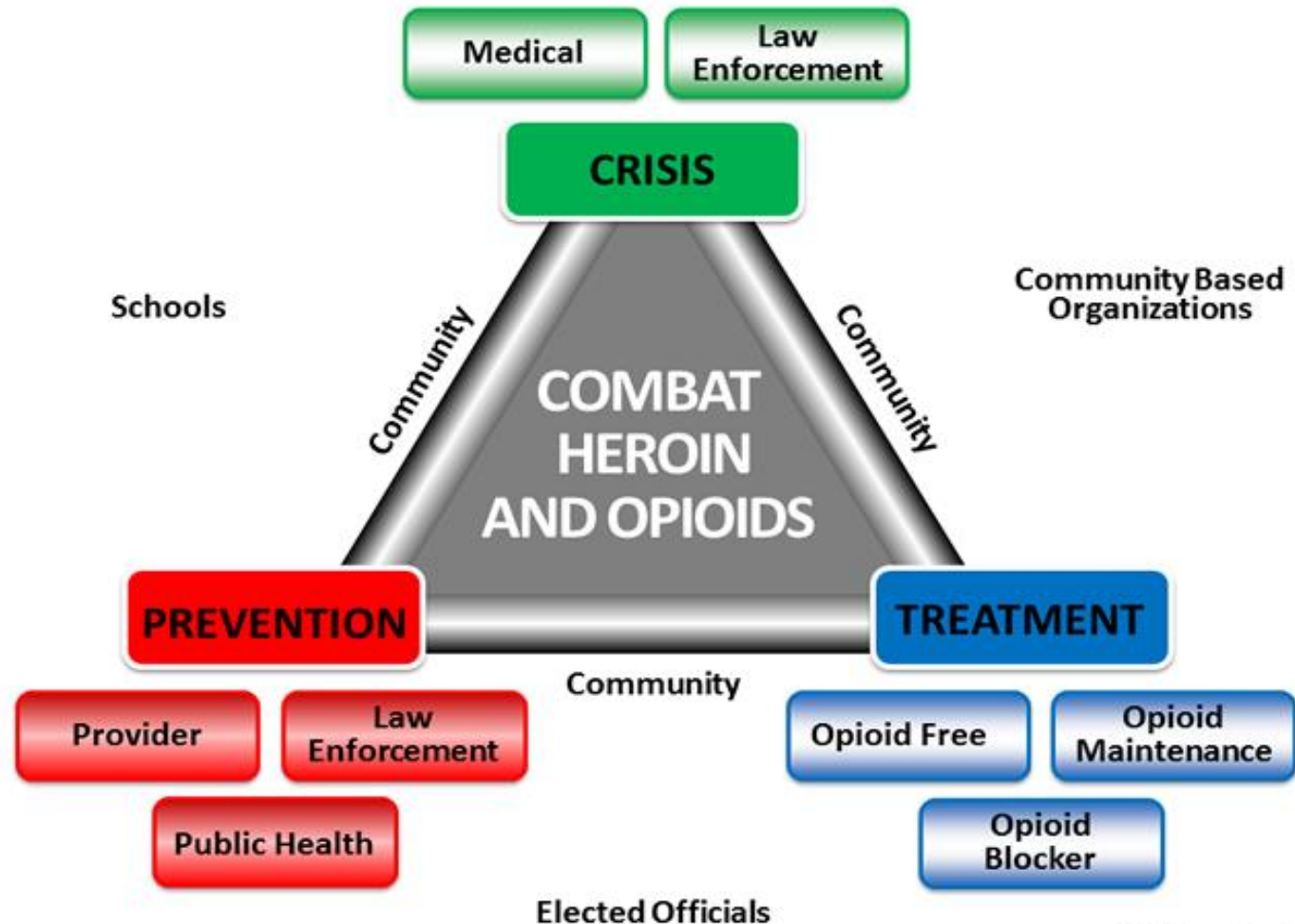
THE OPIOID CRISIS: NEW YORK STATE DRUG OVERDOSES

New York State **drug overdose deaths** continue to increase and are now nearly **3x** the annual rate from 1999.



*Centers for Disease Control and Prevention, National Center for Health Statistics. Underlying Cause of Death 1999-2015 on CDC WONDER Online Database, released December, 2016. Data are from the Multiple Cause of Death Files, 1999-2015, as compiled from data provided by the 57 vital statistics jurisdictions through the Vital Statistics Cooperative Program. Accessed at <http://wonder.cdc.gov/ucd-icd10.html> on Jul 26, 2017. ICD-10 Codes: X40-X44, X60-X64, X85, and Y10-Y14

MORE THAN LITIGATION: A THREE-PRONGED APPROACH



2018: OPIOID LITIGATION

Hundreds of states, counties and cities across the country have brought litigation against the manufacturers and distributors of opioid pain medications.

Briefly, this litigation brings claims against these parties for their role in creating the current state of the opioid epidemic, including deceptive marketing to physicians and distributing opioids in violation of state and federal law.

2018 OPIOID LITIGATION: DAMAGES BEING SOUGHT BY COUNTIES

Employee costs, including overtime, health insurance, workers compensation costs;

Criminal justice services, including medical examiner costs, storage of bodies, toxicology lab costs, police services, corrections, Narcan/naloxone training;

Mental health, including addiction counseling, substance abuse clinics;

Human services, including foster care, family and children services, public assistance for child care, hospital care, indigent burial services;

Court costs, including public defense services, prosecution, probation, specialized drug courts, juvenile courts and detention, surrogate court, DUI services.

PUTNAM COUNTY EXECUTIVE RESPONSE



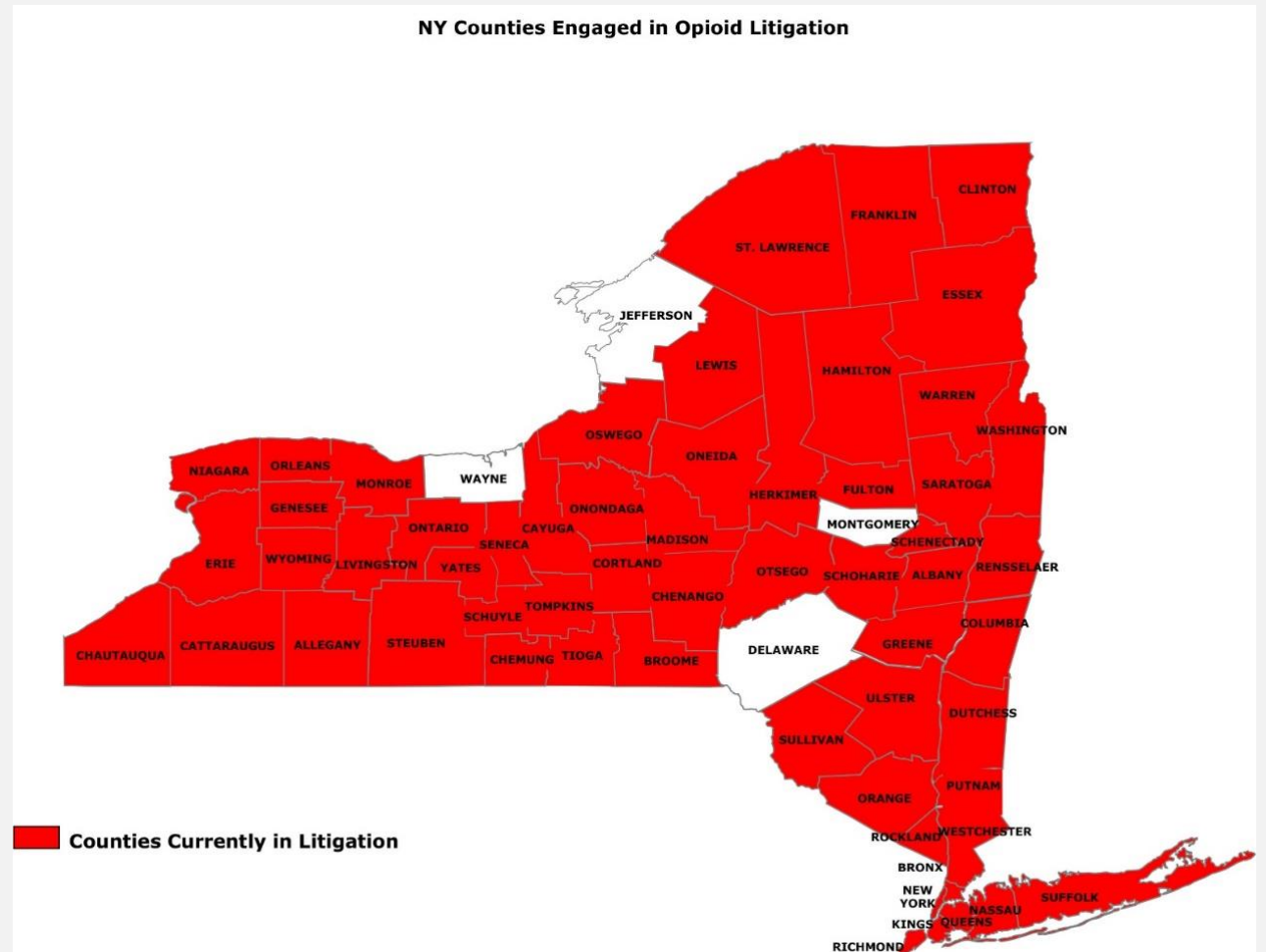
NYSAC PRESIDENT:
HON. MARYELLEN ODELL,
PUTNAM COUNTY EXECUTIVE

“Heroin and opioid use is a major public health and safety crisis and the cost to our community is not limited to pain and suffering of the individuals impacted,” said Odell. Unfortunately, there is also a taxpayer impact, including massive resources used in public health, law enforcement, the court system, mental health and social services, coroner and medical examiner, and many other programs and services. The County has significant damages and we will aggressively pursue those damages through litigation.”

The goal of the litigation is to fully compensate Putnam County for unnecessary costs incurred because of prescription opioid abuse, including workplace costs relative to loss of productivity, healthcare costs such as abuse treatment, and criminal justice costs.

NEW YORK STATE LAWSUITS AS OF MARCH 2018: A MAJORITY OF NY COUNTIES HAVE FILED OR RETAINED ATTORNEYS

- Over 50 NYS counties have either filed or retained counsel and are in the process of filing, as well as NYC and several of the larger cities.
- Most New York cases are filed in State Court.
- The New York cases have been moving ahead on a “fast track,” quicker than the rest of the country.



NEW YORK STATE COORDINATION MOTIONS AND DISCOVERY

- Defendants have filed motions to dismiss which have been fully opposed by the Counties. Oral argument is scheduled for February 28th and March 19th.
- Counsel representing the Plaintiffs have now spent many hours researching and opposing these motions.
- We have successfully argued that discovery is necessary now, as opposed to the usual waiting until motions to dismiss are decided.
- Judge Gargiulo has put the cases on a “fast track” and has permitted discovery.
- We have served discovery demands on the Defendants for discovery that we believe can help make an impact immediately on helping the counties fight the epidemic at the local level.



NEW YORK STATE COORDINATION JUDGE JERRY GARGUILO

- Cases have been coordinated together before State Trial Court **Judge Jerry Garguilo** in Suffolk County New York.
- Nearly twenty motions to dismiss have been filed and have been opposed by the Plaintiffs.
- Judge Garguilo is moving ahead quickly with the cases and has said he will make a decision within 60 days.
- **Late March conference to discuss the potential resolution of the cases has been scheduled.**



- Justice, Supreme Court, Appellate Term, Second Judicial Department, Appointed by Chief Administrative Judge A. Gail Prudenti, 2014 to Present
- Justice, Supreme Court, Suffolk County, Elected 2009-2022
- Former District Attorney of Suffolk County
- Former private practice, Jerry Garguilo, Attorney at Law

HISTORY: TOBACCO INDUSTRY MASTER SETTLEMENT AGREEMENT

State and County Led Litigation Resulted in the Master Settlement Agreement with the Tobacco Industry.

The agreement runs in perpetuity, but the initial settlement of \$246 billion was distributed to states based on a variety of factors including population and Medicaid costs.

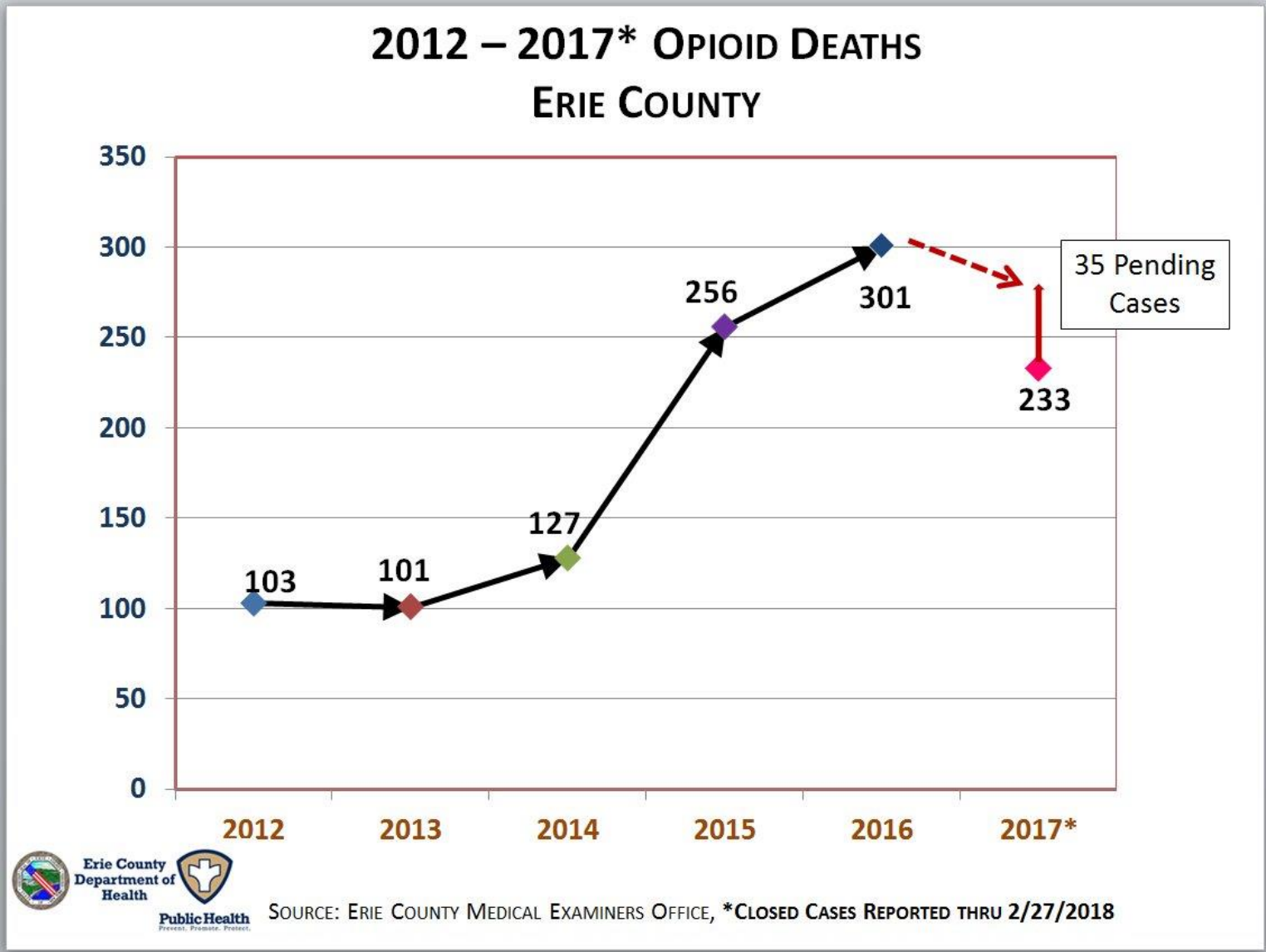
To date, nearly \$120 billion has been paid out to states.

Master Settlement Agreement - Tobacco			
Payments to States 1999 - 2017			
(\$ in Millions)			
State	Payments 1999 thru 2017	State	Payments 1999 thru 2017
Alabama	\$1,889	Nebraska	\$728
Alaska	\$498	Nevada	\$764
Arizona	\$1,890	New Hampshire	\$819
Arkansas	\$996	New Jersey	\$4,610
California	\$14,824	New Mexico	\$715
Colorado	\$1,690	New York	\$15,157
Connecticut	\$2,349	North Carolina	\$2,780
Delaware	\$493	North Dakota	\$527
Georgia	\$2,848	Ohio	\$5,781
Hawaii	\$833	Oklahoma	\$1,397
Idaho	\$454	Oregon	\$1,507
Illinois	\$5,351	Pennsylvania	\$6,506
Indiana	\$2,374	Rhode Island	\$912
Iowa	\$1,156	South Carolina	\$1,429
Kansas	\$1,075	South Dakota	\$440
Kentucky	\$1,959	Tennessee	\$2,825
Louisiana	\$2,743	Utah	\$621
Maine	\$949	Vermont	\$583
Maryland	\$2,678	Virginia	\$2,370
Massachusetts	\$4,831	Washington	\$2,685
Michigan	\$5,113	West Virginia	\$1,167
Missouri	\$2,590	Wisconsin	\$2,488
Montana	\$545	Wyoming	\$336
FL, MN, MS, TX - settled separately		Total 1999-2017	\$119,516

TOBACCO LITIGATION – MASTER SETTLEMENT AGREEMENT

- In New York, the MSA payments were split equally between the State and counties - \$15 billion in total so far.
- The payments were allotted to counties based on population and Medicaid costs:
 - \$7.5 billion to the state
 - \$7.5 billion to counties
- County involvement in the opioid industry litigation is important - counties need to protect their legal rights by getting involved early.
- The litigation stems from corporate claims that these drugs were not addicting, among other items.
- Many view these two litigation events as similar.

THROUGH ERIE COUNTY INTERVENTION, TREND IS GOING DOWN





Mark O'Connell
Wisconsin Counties Association





The Opioid Crisis: Updates on Opioid-Related Litigation

2018 NACo Legislative Conference
Washington, D.C.



BACKGROUND

- The CDC estimates the cost of unintentional opioid-related overdose deaths in NC was **\$1.3 billion** in 2015
- From 1999-2016, opioid-related overdose deaths increased by **more than 800%**
- Estimated that nearly **four people** die each day in NC from accidental drug overdose

Data from the NC Opioid Action Plan



NCACC BACKGROUND

- Firms Started contacting the Association in late summer 2017
- Summary provided to NCACC Board of Directors in early October
- Webinar held with County Attorneys in mid-October
- NCACC is working with NC Attorney General
- Forum for County Attorneys held Nov. 15; goal was to provide information and forum for discussion
- Presentations from two law firm groups and the Office of the Attorney General
- Continuing webinars and updates provided from law firms and Attorney General's office
- NCACC is not endorsing specific group



NORTH CAROLINA COUNTY LIST OF LEGAL ACTIVITY

- North Carolina has 100 counties
- 22 have filed
- More expected

Bladen	Resolution declaring Opioid Crisis a public nuisance adopted, 12.18.17
Brunswick	Resolution declaring Opioid Crisis a public nuisance and authorizing county to retain legal counsel adopted, 12.4.17
Buncombe	Lawsuit filed, 11.14.17
Burke	Lawsuit filed, 2.1.18
Cabarrus	Retained counsel, 2.22.18
Catawba	Public Nuisance Resolution adopted, 12.20.17; Lawsuit filed, 1.11.18
Cleveland	Retained counsel, 2.6.18
Gaston	Public Nuisance resolution adopted and retained counsel, 1.12.18
Guilford	Retained counsel, 2.16.18
Mecklenburg	Retained counsel, 1.10.18
New Hanover	Lawsuit filed, 12.14.17
Onslow	Lawsuit filed, 12.4.1
Orange	Retained counsel, 1.30.18
Person	Adopted resolution and retained counsel, 1.22.18
Pitt	Adopted resolution and retained counsel, 1.18.18
Randolph	Retained counsel, 1.2.2018
Rockingham	Lawsuit filed, 12.12.17
Rutherford	Lawsuit filed, 12.15.17
Stokes	Resolution; retained counsel, 1.22.18
Surry	Lawsuit filed, 12.15.17
Wilkes	Retained counsel, 1.19.18
Yadkin	Lawsuit filed, 12.17.17



SURVEY OF STATE ASSOCIATIONS

- Early 2018, NCCAE conducted survey of state associations, status of litigation
- 15 responses
- Key Observations:
 - States in various stages of process and understanding of complex legal issue
 - Major national firms engaged, local firms are active with commissioners
 - Various approaches to engaging with States Attorneys Generals
 - No clear template for damages estimation
 - A need for unified communications to assist in best outcome for counties / NACo January call / NCCAE Taskforce created



QUESTIONS