

Supplantation is Not an “Approved Purpose” for Opioid Settlement Funds

This guidance is issued by the Colorado Opioid Abatement Council’s (COAC) to ensure the proper use of Opioid Settlement Funds as mandated by the national opioid settlement agreements and the Colorado Opioid Settlements Memorandum of Understanding– which require opioid settlement dollars be used to expand and sustain meaningful, forward-looking responses to the opioid crisis. This guidance specifically addresses “supplantation” *i.e.* or inappropriate replacement of existing funds.

What is Supplantation?

The Colorado Opioid Abatement Council (COAC) defines” supplantation” in the context of Opioid Settlement Funds as:

*To deliberately replace or reduce existing federal, state, or locally allocated funds with **Opioid Settlement Funds**. Opioid Settlement Funds are to be used to create, maintain, and/or expand program activities. Opioid Settlement Funds are not to be used to replace or reduce existing federal, state, or local funds that have already been appropriated or allocated for the same purpose.*

Opioid Settlement Funds are to be Used to Create, Maintain, or Expand – Not to Supplant

The COAC recommends that Opioid Settlement Funds are used to create, maintain, or expand effective programming. Supplantation is not an “Approved Purpose” for Opioid Settlement Funds.

Opioid Settlement Funds are available as a result of litigation against, and settlement with, opioid manufacturers, opioid distributors, retail pharmacies, and other companies that contributed to creating and continuing the opioid crisis. All nationwide opioid settlement agreements include a listing of “Approved Purposes” for Opioid Settlement Funds set out in Exhibit E.

The Colorado Opioids Settlement Memorandum of Understanding (“MOU”) also requires that 100% of Opioid Settlement Funds be used for “forward-looking strategies to abate the opioid epidemic”, and the MOU expressly states that Opioid Settlement Funds be used for the “Approved Purposes” identified in the national opioid settlement agreements.

To help understand what inappropriate supplantation of Opioid Settlement Funds may look like, please see the examples on the next page.

Examples of Inappropriate Supplantation of Opioid Settlement Funds:

- **Offsetting Existing Budgets:** A County faces a budget shortfall and takes an existing budget line item of \$20,000 in the County budget for an existing co-responder program. The County re-allocates the money to the animal shelter and replaces the re-allocated funds with \$20,000 in Opioid Settlement Funds.
- **Backfilling Cuts:** A city reduces its budget for behavioral health services by \$500,000 and then uses \$500,000 in Opioid Settlement Funds to restore the department to previous funding levels.
- **Paying for Previously Approved Expenses:** A state planned last year to fund peer workforce development programs with tax dollars. The state then substitutes Opioid Settlement Dollars for the tax funds and re-allocates those unexpended tax dollars for road repairs.

Examples of Appropriate Non-Supplantation Uses of Opioid Settlement Funds:

- **Expiration of Temporary Funding:** A public health department received short-term funding from American Rescue Plan Act (ARPA) to fund care coordinators to conduct outreach to opioid vulnerable populations and connect them to services. The department exhausts all ARPA funds and begins funding the program with Opioid Settlement Funds.
- **Expanding a Program Previously Limited by Budget Constraints:** A city has an opioid harm reduction outreach team funded through local tax revenue that works 3 days a week due to limited funding. The city expands the opioid harm reduction outreach team to operate 5 days a week using Opioid Settlement Funds. Opioid Funds can only cover two additional days a week of programming.
- **Covering Cost After Grant Funding Ends:** A County ran an evidence-based medication-assisted treatment (MAT) program for recovery from opioid addiction funded through a state grant. The state grant expires and there is no opportunity to continue funding, and no other local funds available, so the County uses Opioid Settlement Funds to maintain that program.

For more guidance, see the Quick Reference Chart on the next page

Supplantation Guiding Questions

Yes/No Quick Reference Chart

Guiding Question	If Yes	If No
Was this existing activity, service, or program already funded with local, state, or federal dollars?	✗ <i>Likely supplantation.</i> Using settlement funds in place of existing funds is generally not allowed, unless the original funding source is expired or depleted.	✓ <i>Likely acceptable.</i> No existing funding is being replaced.
Are we reducing or reallocating local or state funding because we expect to use settlement funds instead?	✗ <i>This is supplantation.</i> Settlement funds must not be used to “free up” existing funds for other uses.	✓ <i>Likely acceptable.</i> No existing funds are being cut or redirected.
Is this replacing an opioid abatement program previously funded with one-time or temporary funds (like ARPA, grants, or COVID emergency funds) that have ended?	✓ <i>Generally acceptable.</i> Settlement funds can be used when previous one-time funding has ended with no renewal. While not ideal, settlement funds may be used to maintain existing, evidence-based and effective opioid abatement programs in a case where an original funding source is disrupted, if no other funding source is available.	✗ <i>May be supplantation</i> if original funding was ongoing and not yet exhausted.
Is this expense expanding or enhancing an existing opioid abatement program beyond its current level of service?	✓ <i>Not supplantation.</i> This is an appropriate use of settlement funds to expand services or scope of an opioid abatement program.	✗ <i>Could be supplantation</i> if no additional value is added and you're just shifting costs.
If Opioid Settlement Funds weren't available, would the local government still fund this program with other resources?	✗ <i>Likely supplantation.</i> If the program was already prioritized for funding, using settlement dollars displaces those funds.	✓ <i>Likely acceptable.</i> If the opioid abatement program would not be sustained otherwise.
Was this expense already budgeted before the Opioid Settlement Funds became available?	✗ <i>Likely supplantation.</i> If it was already in the budget, switching to settlement funds could be problematic.	✓ <i>Likely acceptable</i> if the opioid abatement program has not been previously budgeted for by other funds.