

Summary of the Mental Health Settlement Trust

Prepared for the Children, Families, Health, and Human Services Interim Committee
April 2010

Background

In October 2007, then-Attorney General Mike McGrath filed suit against Eli Lilly and Co. over the way in which the company had marketed an anti-psychotic drug known as Zyprexa. The drug was approved for treating bipolar disorder and schizophrenia. The lawsuit contended that Eli Lilly also marketed and sold the drug for unapproved uses with potentially significant side effects.

Attorney General Steve Bullock settled the suit for \$13 million in February 2010.

The settlement agreement set aside about \$616,500 to reimburse the Montana Medicaid program for costs it paid when recipients bought Zyprexa for off-label uses. But the bulk of the money — \$9.5 million — went into the Mental Health Settlement Trust. Money from the trust fund will be used to pay for mental health programs or services that meet criteria set out in the settlement agreement.

Eligible Projects

The settlement allows the trust fund to be used for the following activities:

- efforts to educate and inform medical providers about appropriate prescribing practices for patients with mental illness;
- efforts to educate and train law enforcement officers in crisis intervention techniques and resources;
- crisis intervention services for mentally ill people who come into contact with the criminal justice system;
- programs or services for people transitioning from an inpatient mental health treatment setting to an outpatient or independent living setting;
- children's mental health programs; and
- peer-to-peer services.

How the Money Will Be Allocated

The settlement agreement names former Montana Supreme Court Justice John Warner as the trustee of the fund. In that role, Justice Warner will decide how the funds will be used. However, the trust document requires him to appoint a committee to advise him concerning operation of the trust and the ways in which the funds should be distributed.

The advisory committee must be made up of seven people, appointed as follows:

- a mental health service provider;
- an employee of the Addictive and Mental Disorders Division of the Department of Public Health and Human Services (DPHHS);
- an employee of the Children's Mental Health Bureau of DPHHS;
- a law enforcement representative familiar with programs and services relating to crisis intervention and jail diversion;
- a representative of a mental health advocacy organization;
- a representative of a Service Area Authority, selected from nominees submitted by the three SAAs; and
- a Montana college or university faculty member knowledgeable in mental health.

Status of Trust Activities

By early April, the state had received the settlement funds and placed the money in an account managed by the state Board of Investments. In addition, Justice Warner was in the process of selecting members of the advisory committee.

Justice Warner expects the committee to meet for the first time in late May or early June. At that time, committee members will consider:

- proposed working policies;
- criteria for applying for funds from the trust; and
- how the funds should be distributed and the timeline for distribution.

Frequently Asked Questions

Two questions have been raised by legislators about the settlement agreement:

- Why weren't the settlement funds put into the general fund to be appropriated during the next legislative session?

Under 17-8-101(1), MCA, money deposited in the state treasury from a non-state or non-federal source — such as settlement of a lawsuit — is not subject to legislative appropriation if its use is restricted by the terms of an agreement, such as the trust agreement created through the settlement with Eli Lilly.

- If the trust fund is receiving \$9.5 million, how will the remaining money be spent?

About \$10 million of the \$13 million settlement will be spent through the mental health trust fund and the payment made to the Montana Medicaid program. The remainder was used to pay attorneys' fees and court costs.