



# Allegheny County Council

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## Legislation Text

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Motion of the Council of Allegheny County requesting that the Allegheny County Law Department prepare research into the feasibility of filing one or more lawsuits against major drug manufacturers and/or distributors in order to recover current and future damages to the County taxpayers resulting from the detrimental effects of opioid pharmaceuticals.

**WHEREAS**, according to statistics provided by the Centers for Disease Control (“CDC”) the rate of opioid overdose deaths has more than tripled from 2000 to 2015, with approximately 3 deaths per 100,000 population in 2000, and over 10 deaths per 100,000 in 2015, and

**WHEREAS**, as reported by the CDC, citing Rudd RA, Seth P, David F, Scholl L. *Increases in Drug and Opioid-Involved Overdose Deaths - United States, 2010-2015*. MMWR Morb Mortal Wkly Rep. ePub: 16 December 2016: “[r]egardless of the analysis strategy used, prescription opioids continue to be involved in more overdose deaths than any other drug, and all the numbers are likely to underestimate the true burden given the large proportion of overdose deaths where the type of drug is not listed on the death certificate. The findings show that two distinct but interconnected trends are driving America’s opioid overdose epidemic: a 15-year increase in deaths from prescription opioid overdoses, and a recent surge in illicit opioid overdoses driven mainly by heroin and illegally-made fentanyl. Both of these trends continued in 2015;” and

**WHEREAS**, citing the same source, the CDC additionally notes that the extent of the underreporting of opioid overdose deaths is potentially significant: “[i]n approximately 1 in 5 drug overdose deaths, no specific drug is listed on the death certificate. In many deaths, multiple drugs are present, and it is difficult to identify which drug or drugs caused the death (for example, heroin or a prescription opioid, when both are present).”; and

**WHEREAS**, the CDC also notes that, in 2015 there were more than 15,000 deaths involving synthetic prescription opioids (a classification that includes tramadol and fentanyl, but excludes methadone, natural opioids such as morphine and codeine, and semi-synthetic opioids like oxycodone, hydrocodone, hydromorphone, and oxymorphone) alone; and

**WHEREAS**, data compiled by the U.S. Drug Enforcement Agency and University of Pittsburgh indicates that there were 648 overdose deaths in Allegheny County in 2016 (this number was later reported to be slightly higher - 650 - based on information compiled by OverdosePA), an increase of at least 44% from 2015 and at least 270% from 2010, and noted that the increase was largely due to the abuse of fentanyl and heroin; and

**WHEREAS**, according to data compiled by the U.S. Drug Enforcement Agency and the University of Pittsburgh, the County experienced 52.97 overdose deaths per 100,000 residents in 2016, a rate that is over 2.5 times higher than the 19.9 accidental overdose deaths per 100,000 residents reported for New York City in 2016 by NYC Health; and

**WHEREAS**, the deleterious effects of addiction are borne by all of the County's residents and the 130 municipalities located within the County, as well as by the County's medical insurance and service providers, and EMS and other first responders; and

**WHEREAS**, according to the Pittsburgh Post-Gazette (Bradbury, *As the opioid epidemic grows, paramedics feel the weight of tragedy*, May 10, 2017), EMS providers are facing demands for their services that are rapidly approaching crisis levels, with 900 calls for EMS responses due to drug overdoses within the City of Pittsburgh alone in 2012, a number which grew to 2,300 in 2016 and which is expected to pass 3,000 in 2017; and

**WHEREAS**, according to that same Post-Gazette report, it is not atypical to have four or five EMS units responding to overdose calls within the City of Pittsburgh at the same time, a scenario that places great demands on the EMS system; and

**WHEREAS**, according to published reports, there were a total of 4,624 overdose deaths throughout the Commonwealth of Pennsylvania in 2016 - an increase of 37% from 2015 - and with opioids detected in 85% of the victims; and

**WHEREAS**, in testimony offered to Council's Committee on Public Safety on April 20, 2017, the Allegheny County Medical Examiner noted that the toxicology of overdoses is becoming increasingly complex as people are now taking different combinations of drugs, and that even the individuals who deal opioids illicitly do not necessarily know all of the contents of the drugs that they sell; and

**WHEREAS**, in that same testimony, the Medical Examiner also noted that opioids prescribed as pain medications frequently function as a gateway to other opioid use, and that at one point, the United States accounted for over 90% of the prescription opioid use in the world as the domestic trend towards medicating pain increased. The Medical Examiner further indicated that prescription opioids became quite profitable to prescription pharmaceutical manufacturers, and that manufacturers tended to emphasize the virtues of opioids as a pain relief strategy to doctors who might end up prescribing them while de-emphasizing any deleterious effects; and

**WHEREAS**, various governmental entities, including Erie, Nassau, and several other Counties in New York, Cabell and Kanawha Counties in West Virginia, Vinton, Belmont, Brown and Clermont Counties in Ohio, other units of government in Illinois, Mississippi, California and Washington, and the Cherokee Nation have pursued lawsuits against the manufacturers and/or distributors of pharmaceuticals containing opioids, alleging various legal arguments ranging from misrepresentation regarding the effectiveness or addictive qualities of the drugs to violation of their duty to monitor and report suspicious distributions of opioids under the terms of the federal Controlled Substances Act; and

**WHEREAS**, the Nassau County lawsuit, predicated upon the misrepresentation theory described above, states that the pharmaceutical manufacturers "knew that opioids were effective treatments for short-term post-surgical and trauma-related pain, and for palliative (end-of-life) care. Yet they also knew-and had known for years-that opioids were addictive and subject to abuse, particularly when used long-term for chronic non-cancer pain (pain lasting three months or longer, also called "chronic pain"), and should there not be used except as a last-resort" and that "the U.S. Food and Drug Administration ("FDA") has expressly recognized that there have been no long-term studies demonstrating the safety and efficacy of opioids for long-term use," and

**WHEREAS**, increasing numbers of government agencies have begun seeking reimbursement for some of the health and social costs related to opioid abuse - which some published reports estimate to be in excess of \$55 billion each year - with damages sought including the cost of building and maintaining treatment facilities, reimbursement of Medicaid and other governmental expenses related to the treatment of addicts, including the payment for unnecessarily prescribed opioids and purchasing the means to treat overdoses, reimbursement for added law enforcement and medical personnel to treat the opioid epidemic, and reimbursement for costs of prosecutions and jails; and

**WHEREAS**, on June 1, 2017, HR 363, “A Resolution urging the Governor and the Office of the Attorney General to file lawsuits against pharmaceutical companies that engage in practices that caused the ongoing opioid epidemic within this Commonwealth,” was introduced and referred to the Pennsylvania House of Representatives’ Committee on Health with goals for the Commonwealth similar to those intended for the County by this Motion; and

**WHEREAS**, suits and other enforcement actions have proven successful, with the largest drug distributor in the United States paying \$150 million to resolve a U.S. Department of Justice investigation into its failure to track suspicious orders, two drug distributors paying \$35 million to the State of West Virginia to settle a suit over their distribution of allegedly suspiciously large quantities of opioids to the state, a drug manufacturer paying \$24 million to the State of Kentucky and \$4 million to Pike County, Kentucky to settle a suit over its marketing strategy that allegedly understated the addictive qualities of a particular prescription opioid, the manufacturer of Oxycodone resolving a Drug Enforcement Agency investigation of its distribution activities by paying a \$35 million settlement, an opioid manufacturer settling a deceptive marketing suit with the State of Illinois for \$4.5 million, and another manufacturer paying \$1.6 million to two California counties to settle litigation in which it was asserted that the manufacturer understated the risks of opioids while exaggerating their benefits, all within the last two calendar years; and

**WHEREAS**, in 2007 Purdue Pharma, L.P. the manufacturer of OxyContin and three of its executives, including its president and its top lawyer pled guilty in a criminal action as individuals to misbranding. This guilty plea led Purdue Pharma to paying \$470 million to state and federal agencies and over \$130 million to plaintiffs and attorneys who had filed civil lawsuits, all alleging that the manufacturer had knowingly understated the risk associated with using the drug; and

**WHEREAS**, last month different news organizations reported that Purdue Pharma, L.P. had started settlement talks with various state attorney generals to create a global settlement; and

**WHEREAS**, in 1998 the tobacco companies settled with the state Attorneys General of 46 states, five U.S. territories, the District of Columbia agreeing to pay a minimum of \$206 billion over the first 25 years of the agreement; and

**WHEREAS**, it is the judgment of Council that Allegheny County’s unique position as the home to 130 municipal governments, 54 hospitals (as reported by PA Hometown Locator), 109 municipal police departments (as reported by a 2016 study conducted by Carnegie Mellon University’s Students for Urban Data Systems group), and 47 designated EMS providers (as denoted by the County website) virtually necessitates that the County act on its own and on behalf of these other municipalities and agencies in order to investigate the possibility of recovering damages from those parties directly contributing to high costs to the taxpayers in the form of increased social services, policing, EMS services, and other expenditures, in order to mitigate the impact of the same, and

**WHEREAS**, it is further the judgment of the Council that the County should investigate the possibility of recovering damages on behalf of or in cooperation with the 130 municipalities within Allegheny County that have been similarly affected by the rapid increase in opioid abuse, as well as EMS and other service providers who have also experienced similar deleterious effects; and

**WHEREAS**, it is further the judgment of Council that the abuse of both recreational and prescription drugs has led to a decline in quality of life and public safety, particularly for those residents located in communities most impacted by the presence of narcotics, and that the documented surge in opiate abuse throughout Western Pennsylvania and the Commonwealth has detrimentally impacted the lives of residents, and

**WHEREAS**, it is the duty of this Council and the County to protect County's residents to the greatest extent practicable against this clear and present danger to their health, safety and welfare; and

**WHEREAS**, the County Solicitor indicated on December 6, 2017 that a request for qualifications (RFQ) seeking law firms with expertise in this area of litigation was about to be published by the County, with the goal of both seeking compensation for damages suffered by the County as a result of increasing opioid addiction and reaching a long term strategy for abating the trend of increasing opioid misuse; and

**WHEREAS**, the above-referenced RFQ was released on December 8, 2017 and is hereto attached to this Motion.

**NOW, THEREFORE, IT IS MOVED THAT THE COUNCIL OF ALLEGHENY COUNTY,**

Does hereby support and applaud the actions of the County Solicitor and the Chief Executive in issuing the hereto attached RFQ, and further requests that the County Law Department in cooperation with the Allegheny County Court of Common Pleas, any and all Allegheny County Offices and Departments in and/or any law firm (s) identified as having applicable expertise via the RFQ process to determine Allegheny County's costs associated with the opioid epidemic, while utilizing the said law firm retained via the RFQ process to continue to research the feasibility of undertaking legal action against manufacturers of opiate-based pharmaceuticals, to determine which pharmaceutical manufacturers and/or distributors have demonstrated culpability in manufacturing, promoting, and/or distributing products that were inherently dangerous if misused, either through misrepresentation of those products' benefits or hazards, or through neglecting their duties under the federal Controlled Substances Act, or through any other legal reasoning that the Law Department deems viable.