


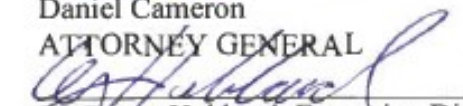
**STATEMENT OF EMERGENCY**  
**40 KAR 9:010E**

The opioid crisis is the greatest public safety challenge of our time. We see its effects every day in every corner of the Commonwealth. It is reflected in our child abuse and neglect statistics, in our crime numbers and in our human trafficking reports. We see it in the halls of schools, the streets of our communities and in our homes. Yet there is reason for hope. In February 2022, Attorney General Daniel Cameron announced the finalization of an historic \$26 billion settlement with opioid distributors and a manufacturer, which will return nearly \$478 million to the Commonwealth to address the opioid epidemic. To administer the Commonwealth's half of these settlement funds, the General Assembly created the Kentucky Opioid Abatement Advisory Commission within the Office of the Attorney General and charged the Commission with establishing a process for eligible opioid abatement programs to apply for settlement dollars. This emergency regulation, the work of a Commission committed to starting the work of addressing the terrible effects of the opioid crisis, establishes the process for eligible recipients to receive funding for opioid abatement work.

As required by KRS 13.190(7)(a), this emergency regulation is needed pursuant to KRS 13A.190(1)(a)1 to meet an imminent threat to public health, safety, and welfare. On or about November 3, 2022, the Office of the Attorney General received the first settlement payment. Because the Commonwealth's citizens have and continue to experience the effects of the opioid crisis, an ordinary administrative regulation is not sufficient because there is no justifiable reason to delay the distribution of the settlement funds for the many months it would take under the ordinary administrative regulation process. With the Commission having toured the Commonwealth to listen to the many victims of this opioid crisis, and because KRS 15.291 permits the use of such emergency regulations so that "funds may be distributed more quickly and efficiently to combat the opioid epidemic," this emergency regulation is warranted and appropriate. In compliance with KRS 13A.190(8)(b)3, attached are the relevant settlement agreements with Johnson & Johnson, Cardinal Health, McKesson, and AmerisourceBergen, as well as the Kentucky Office of Drug Control Policy's 2021 Overdose Fatality Report. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

  
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Andy Beshear  
GOVERNOR

  
\_\_\_\_\_  
Daniel Cameron  
ATTORNEY GENERAL

  
\_\_\_\_\_  
W. Bryan Hubbard, Executive Director  
Kentucky Opioid Abatement Advisory  
Commission

1 DEPARTMENT OF LAW

2 Kentucky Opioid Abatement Advisory Commission

3 (New Emergency Administrative Regulation)

4 40 KAR 9:010E. General application procedure.

5 RELATES TO: KRS 15.291, KRS 15.293

6 STATUTORY AUTHORITY: KRS 15.291, KRS 15.293

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.291 and 15.293 require the  
8 Kentucky Opioid Abatement Advisory Commission (the “Commission”) to promulgate  
9 administrative regulations to administer funds received by the Commission. Therefore,  
10 this administrative regulation establishes the application procedure for funding requests  
11 under KRS 15.291 and 15.293, the duties required of the Commission, the duties required of  
12 those that receive Commission funds, and other related issues.

13 Section 1. Definitions.

14 (1) “Entity” has the same meaning as its definition in KRS 14A.1-070.

15 (2) “Governmental agency” has the same meaning as its definition in KRS 65.940.

16 (3) “Member(s)” refers to any of the Commission members contemplated by KRS  
17 15.291(2), whether voting or non-voting.

18 Section 2. Eligible Applicants.

19 (1) Any entity or governmental agency that submits an application that conforms with  
20 the requirements herein; that meets the criteria in KRS 15.291(5); and that is not debarred or  
21 suspended from contracting with the Commonwealth shall be an eligible entity or governmental

1 agency.

2 Section 3. Application.

3 (1) To apply for funding, the entity or governmental agency shall submit an application using the  
4 “OAAC Grant Portal,” available at [https://ag.ky.gov/Priorities/Tackling-the-Drug-](https://ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/Opioid-Abatement-Advisory-Commission-.aspx)  
5 [Epidemic/Pages/Opioid-Abatement-Advisory-Commission-.aspx](https://ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/Opioid-Abatement-Advisory-Commission-.aspx). To apply, an applicant shall  
6 be required to become an approved state vendor.

7 (2) Non-conforming or incomplete applications shall not be considered.

8 Section 4. Review of Applications.

9 (1) The Commission shall review applications on a continuous basis.

10 (2) Should the Commission request supplementation of an application, or otherwise inquire  
11 about an application, the point of contact shall acknowledge receipt within seven (7) calendar  
12 days and subsequently respond to the Commission in a timely manner. Failure to do so shall  
13 result in the application being deemed withdrawn.

14 (3) Contingent upon available funding, the Commission shall fund an application in whole or  
15 in part, provided the funding does not exceed the sum requested in the application.

16 (4) In awarding funds, the Commission shall consider the following factors:

17 (a) Compliance with applicable law;

18 (b) The entity or governmental agency’s record and responsibility in utilizing effectively  
19 any funds received previously from the Commission or from the counties, consolidated local  
20 governments, urban county governments, and cities of the Commonwealth, as described in  
21 KRS 15.293(4);

22 (c) The geographic reach of the application;

23 (d) Amounts received by an entity or governmental agency from the Commission or from

1 the counties, consolidated local governments, urban county governments, and cities of  
2 the Commonwealth, as described in KRS 15.293(4);

3 (e) The utility and effectiveness of any part of the application;

4 (f) The extent to which Kentucky residents are served by the application;

5 (g) The extent to which prior allocations from the Commission have served similar  
6 purposes;

7 (h) The extent to which the application proposes to serve a portion of the population that  
8 otherwise would not receive such service;

9 (i) The extent to which the application proposes to incorporate relevant partnerships that  
10 are likely to increase the efficiency and effectiveness of programming;

11 (j) The extent to which the application proposes, among other things, to educate the  
12 public about opioid misuse and opioid use disorder, reduce the occurrence of opioid misuse and  
13 opioid use disorder, promote resistance to opioid misuse and opioid use disorder, promote the  
14 effective treatment of opioid use disorder, and/or combat the effects of opioid misuse, including  
15 co-occurring mental health issues;

16 (k) The extent to which the application activities align with accepted evidence-based  
17 practices; and/or

18 (l) The sufficiency of records to validate the requested amounts.

19 Section 5. Recipients' Duties.

20 (1) Entities and governmental agencies that receive funding shall submit quarterly certifications  
21 to the Commission due on the following dates of the calendar year:

22 (a) March 31;

23 (b) June 30;

1 (c) September 30; and

2 (d) December 31.

3 (2) Entities and governmental agencies shall submit certifications using the KYOACC  
4 Certification Form.

5 (3) Certifications are required until the recipient exhausts all funds received from the  
6 Commission and until the recipient has submitted a certification stating that all such funds have  
7 been exhausted.

8 (4) Separate certifications are required for each funding award.

9 Section 9. Noncompliance.

10 (1) Noncompliance shall include:

11 (a) Materially falsified information in any certifications filed pursuant to or required by  
12 KRS 15.291, KRS 15.293, or related regulations;

13 (b) Failure to meet certification submission deadlines; and

14 (c) Failure to expend funds in conformity with the enumerated purposes set forth in KRS  
15 15.291, pursuant to KRS 15.293(5).

16 (2) The Commission shall require entities or governmental agencies to reimburse the  
17 Commission for any funds expended in a noncompliant manner.

18 (3) The Commission shall require noncompliant entities or governmental agencies to forfeit any  
19 remaining funds received from the Commission.

20 (4) The Commission shall bar noncompliant entities or governmental agencies from receiving  
21 funds from the Commission.

22 (5) The Commission shall report noncompliance to the Department of Law for determination as  
23 to whether further action is necessary to ensure compliance with opioid-related agreements.

1 Section 10. Commission Appointments. The terms of members appointed pursuant to KRS  
2 15.291(3)(b) shall begin upon the Commission's first meeting.

3 Section 11. Incorporation by Reference.

4 (1) The following material is incorporated by reference:

5 (a) "OAAC Grant Portal," available at <https://ag.ky.gov/Priorities/Tackling-the-Drug->  
6 [Epidemic/Pages/Opioid-Abatement-Advisory-Commission-.aspx](https://ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/Opioid-Abatement-Advisory-Commission-.aspx); and

7 (b) KYOACC Certification Form, December 2022.

8 (2) These materials shall be inspected, copied or obtained, subject to copyright law, at the  
9 Office of the Attorney General Capital Complex East, 1024 Capital Center Drive, Suite 200,  
10 Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

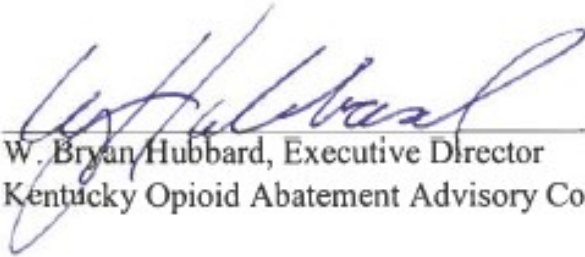
**READ AND APPROVED:**



\_\_\_\_\_  
Daniel Cameron, Attorney General  
Department of Law

12-21-22

\_\_\_\_\_  
Date



\_\_\_\_\_  
W. Bryan Hubbard, Executive Director  
Kentucky Opioid Abatement Advisory Commission

12-21-22  
\_\_\_\_\_  
Date

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on February 21, 2023, at 1:00 p.m. Eastern Time at 1024 Capital Center Drive, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing shall be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you shall submit written comments on the proposed administrative regulation. Written comments shall be accepted through midnight on February 28, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**Contact person:** Alison Chavies, Office of the Attorney General  
1024 Capital Center Drive  
Frankfort, Kentucky 40601-3449  
Phone: 502-696-5638  
Fax: 502-564-2894  
Email: [alison.chavies@ky.gov](mailto:alison.chavies@ky.gov)



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

40 KAR 9:010 E

Contact Person: Alison Chavies

Phone: 502-696-5638

Email: alison.chavies@ky.gov

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: *This administrative regulation establishes the process for administering the settlement funds from certain opioid-related litigation.*
  - (b) The necessity of this administrative regulation: *This administrative regulation is required by KRS 15.291(7) and is necessary to establish a process for administering the settlement funds from certain opioid-related litigation.*
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: *This administrative regulation conforms to the content of the authorizing statutes, KRS 15.291 and 15.293, because it establishes a process for administering opioid-related settlement funds, while adhering to the statutory goals of KRS 15.291 and 15.293.*
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: *This administrative regulation will assist in the effective administration of KRS 15.291 and KRS 15.293 by defining the rules and methods used to apply for and distribute the opioid-related settlement funds. The administrative regulation will also further the statutes' goal of providing accountability in the use of such funds.*
  
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:  
*N/A*
  - (a) How the amendment will change this existing administrative regulation: *N/A*
  - (b) The necessity of the amendment to the administrative regulation: *N/A*
  - (c) How the amendment conforms to the content of the authorizing statutes: *N/A*
  - (d) How the amendment will assist in the effective administration of the statutes: *N/A*
  
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: *This administrative regulation will affect all those eligible entities and governmental agencies—as defined by KRS 14A.1-070 and KRS 65.940, respectively—that apply for and are awarded funds by the Commission.*
  
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: *An entity or governmental agency seeking funding from the Commission must comply with this regulation.*

- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): *There shall be minor administrative costs to comply with this administrative regulation. Those costs are difficult to estimate at this juncture. The Commission does not anticipate any other costs for compliance.*
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): *An entity or governmental agency that complies with this administrative regulation will be eligible for funding from the Commission for opioid abatement.*
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
  - (a) Initially: *The Department of Law shall bear administrative costs in implementing this regulation, which are difficult to estimate at this time. The Commission does not anticipate any other costs for implementation.*
  - (b) On a continuing basis: *N/A*
- (6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: *The Kentucky Opioid Abatement Advisory Commission is funded by proceeds from the opioid-related settlements, judgements, and bankruptcies referenced in KRS 15.293.*
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: *There is no need to increase funding to implement this administrative regulation.*
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: *This administrative regulation neither establishes nor increases any fees.*
- (9) TIERING: Is tiering applied? *Tiering is not appropriate because the administrative regulation applies equally to all those entities and governmental agencies regulated by it.*

## FISCAL NOTE

40 KAR 9:010 E

Contact Person: Alison Chavies

Phone: 502-696-5638

Email: alison.chavies@ky.gov

- (1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? *This administrative regulation will impact the Department of Law because the Department of Law is charged with the administration of the Commission. The regulation will also impact any counties, consolidated local governments, urban county governments, and cities of the Commonwealth that receive any opioid-related monies referenced by KRS 15.291 or 15.293.*
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. *KRS 15.291 and/or 15.293 require and authorize the action taken by this administrative regulation.*
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. *The administrative regulation facilitates the distribution of certain opioid-related settlement funds; therefore, this regulation does not generate any revenue. However, as a result of the opioid settlements, local governments shall qualify for funds that they shall then expend on opioid abatement. At this time, an estimate for the amounts relevant local governments will receive from these opioid settlement funds cannot be provided.*
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? *See 3 above.*
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? *See 3 above.*
  - (c) How much will it cost to administer this program for the first year? *At this time, an estimate of the cost to the Department of Law to administer this program cannot be provided. However, the Department of Law will make funding requests to the Commission, per KRS 15.291 and 15.293, as appropriate to offset the Department of Law's relevant costs.*
  - (d) How much will it cost to administer this program for subsequent years? *See 3(c) above.*

Revenues (+/-): *N/A*  
Expenditures (+/-): *Expenditure amounts will be determined by receipt of settlement funds and the manner in which the Commission expends such funds.*  
Other Explanation: *N/A*

- (4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect. *The administrative regulation facilitates the distribution of certain opioid-related settlement funds; therefore, this regulation does not save entities specific costs. However, as a result of the opioid settlements, eligible entities and governmental agencies shall qualify for funds that they shall use in ways to save on associated costs of opioid and substance abuse. At this time, an estimate for the amounts relevant entities or governmental agencies will receive cannot be provided.*
- (a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? *See 4 above.*
  - (b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? *See 4 above.*
  - (c) How much will it cost the regulated entities for the first year? *At this time, estimates of the cost to the regulated entities and governmental agencies cannot be provided.*
  - (d) How much will it cost the regulated entities for subsequent years? *See 4(c).*  
Cost Savings (+/-): *N/A*  
Expenditures (+/-): *Expenditure amounts will be determined by receipt of settlement funds and the manner in which the regulated entities expend such funds.*  
Other Explanation: *N/A*
- (5) Explain whether this administrative regulation will have a major economic impact: *This administrative will not have a major impact as it will not incur costs upon state or local government or regulated entities, in aggregate, of more than \$500,000.*

## SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The “OAAC Grant Portal” is the web-based portal, available at <https://www.ag.ky.gov/Priorities/Tackling-the-Drug-Epidemic/Pages/Opioid-Abatement-Advisory-Commission-.aspx>, through which eligible entities and government agencies shall submit applications to the Kentucky Opioid Abatement Advisory Commission.

The “KYOAAC CERTIFICATION FORM” is the 1-page form that, where applicable, entities governmental agencies, and covered governmental bodies shall complete to demonstrate compliance with the awards received in accordance with KRS 15.293. The KYOAAC CERTIFICATION FORM is attached.