


STATEMENT OF EMERGENCY
40 KAR 9:020E

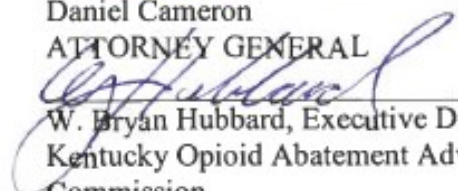
The opioid crisis is the greatest public safety challenge of our time. We see its effects every day in every corner of the Commonwealth. It is reflected in our child abuse and neglect statistics, in our crime numbers, and in our human trafficking reports. We see it in the halls of our schools, the streets 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 certain opioid distributors and a manufacturer, which will return nearly \$478 million to the Commonwealth to address the opioid epidemic. The Commonwealth’s counties, consolidated local governments, and urban-county government administer half of the settlement proceeds. KRS 15.293 requires the counties, consolidated local governments, urban-county governments, and cities of the Commonwealth to submit certifications that any use of these funds is consistent with the criteria in KRS 15.291(5). This emergency regulation establishes the framework for those certifications so that work of healing from the opioid crisis may begin.

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 Kentucky Opioid Abatement Advisory 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.



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 9:020E. Local government 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 permit the

8 Kentucky Opioid Abatement Advisory Commission (the “Commission”) to promulgate

9 administrative regulations to administer funds received by the Commission and to oversee the

10 use of funds received under KRS 15.293(4). KRS 15.293 requires each recipient of funds under

11 KRS 15.293(4) to submit certifications that the use of such funds is consistent with the criteria in

12 KRS 15.291(5), a description of the use of such funds, and other information as the Commission

13 requests through the promulgation of administrative regulations. Therefore, this administrative

14 regulation establishes the procedure for a county, consolidated local government, urban-county

15 government, or city of the Commonwealth that receives funds under KRS 15.293(4) to certify

16 use consistent with KRS 15.293.

17 Section 1. Covered Governmental Bodies. Any county, consolidated local government, urban-

18 county government, or city in the Commonwealth that received or will receive opioid funds

19 under KRS 15.293(4) shall be a covered governmental body.

20 Section 2. Duties of Covered Governmental Bodies.

21 (1) Consistent with KRS 15.293(4)(c)(2), covered governmental bodies shall submit quarterly

1 certifications to the Commission due on the following dates of the calendar year:

2 (a) March 31;

3 (b) June 30;

4 (c) September 30; and

5 (d) December 31.

6 (2) Covered governmental bodies shall submit certifications using the KYOAAC
7 Certification Form, which is incorporated by reference in 40 KAR 9:010.

8 (3) Certifications are required until the recipient exhausts all funds received pursuant to
9 KRS 15.291 or 15.293 and until the recipient has submitted a certification stating that all such
10 funds have been exhausted.

11 Section 3. Noncompliance.

12 (1) Noncompliance shall include:

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

15 (b) Failure to meet certification submission deadlines; or

16 (c) Failure to expend funds in conformity with the enumerated purposes set forth in KRS
17 15.291, pursuant to KRS 15.293(5).

18 (2) The Commission shall require covered governmental bodies to reimburse the Commission for
19 any funds expended in a noncompliant manner.

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

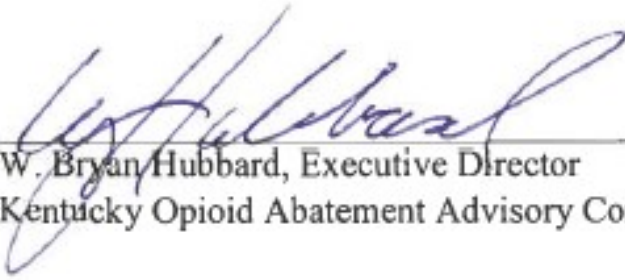
READ AND APPROVED:



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 of 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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

40 KAR 9:020 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 covered governmental bodies that receive settlement funds from certain opioid-related litigation to submit certifications on the use of such funds.*
- (b) The necessity of this administrative regulation: *This administrative regulation is necessary to establish a process for ensuring compliance by covered governmental bodies that receive 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 covered governmental bodies to certify that funds were used consistent with KRS 15.291.*
- (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 certify use and compliance with statutes in the use of 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 covered governmental bodies that receive settlement funds from certain opioid-related litigation.*

(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: *Covered governmental bodies will have to submit the required certifications and maintain the required records in accordance with the administrative 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, which are difficult to estimate at this juncture, to comply with this administrative regulation; 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): *A covered governmental body that complies with the administrative regulation will avoid the potential consequences of noncompliance.*
- (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, which are difficult to estimate at this time, in implementing this regulation; other costs for implementation are not anticipated.*
 - (b) On a continuing basis: *N/A.*
- (6) What is the source of funding to be used to the implementation and enforcement of this administrative regulation: *The 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 9:020E

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 covered governmental bodies 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 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 certification of the use 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 related 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. *As a result of the opioid settlements, covered governmental bodies shall qualify for funds that they shall use in ways to save on associated costs of opioid and substance abuse. At this time, the Department of Law is unable to provide an estimate for the amounts that will be received from these opioid settlement funds.*

- (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, the Commission is unable to estimate the cost to the regulated entities during the first year or subsequent years.*
- (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.*

