

Kentucky



Total Funds

\$483 million¹

Allocation

50% to Opioid Abatement Trust Fund and 50% to local governments

Mechanism

Legislation (KRS §§ [15.291](#), [15.293](#), and [15-295](#))² and emergency regulations ([40 KAR 9:010E](#) and [40 KAR 9:020E](#))

Key Takeaways

Detailed parameters on permitted uses. [Kentucky law](#) is detailed compared to many states in the framework it creates for permitted uses of settlement funds.³

Significant role for Opioid Abatement Advisory Commission (OAAC). The [OAAC](#) directly allocates monies from the 50% Opioid Abatement Trust Fund share, but is also empowered to monitor spending from the local government share, to make spending and policy recommendations, and to promulgate regulations.⁴

Public reporting. Kentucky requires detailed public reporting on expenditures by grantees of the Trust Fund, but there is no explicit requirement in state law for public reporting on localities' spending of their share, although local governments must submit this information to the OAAC.⁵

Background

Kentucky law establishes the state's 50-50 allocation of funds between the Opioid Abatement Trust Fund (Trust Fund) and Kentucky localities.⁶ Authorized uses (described as "criteria") of funds in Kentucky's law range widely, from "evidence-informed treatment, recovery support, harm reduction, or other appropriate services to individuals with OUD and co-occurring SUD/MH issues" who are justice-involved⁷ to reimbursement for past expenditures on medications for opioid use disorder (MOUD) in outpatient or residential settings.⁸

The [Kentucky Opioid Abatement Advisory Commission](#) (OAAC) awards monies directly from the Trust Fund based on the criteria for permitted uses⁹ and localities receive funding from the 50% local government share based on negotiation class distribution metrics in [MDL 2804](#) (National Prescription Opiate Litigation).¹⁰ Jurisdictions receiving monies from the local government half must still certify that their spending is consistent with the criteria in [KRS § 15.291\(5\)](#) and must ensure that no less than 85% of their proceeds received from that share go toward opioid abatement.¹¹

This resource is current as of 6/6/2023. For the most up-to-date information, please visit <https://www.opioidsettlementtracker.com/settlementspending>.



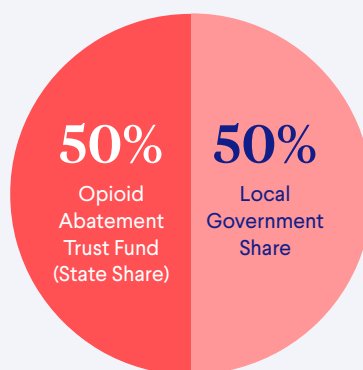
Background

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Relative to similarly composed bodies in many other states, the OAAC has a significant role and robust powers to directly allocate funds, monitor spending, and make recommendations, amongst other duties.¹²

Decision-Making Process

ALLOCATION OF SETTLEMENT FUNDS



50% OPIOID ABATEMENT TRUST FUND (STATE SHARE)

The Opioid Abatement Trust Fund holds 50% of Kentucky's opioid settlement funds, which may be awarded by the Opioid Abatement Advisory Commission (OAAC) to any entity or governmental agency via a grant application process.¹³ "Entity" is broad, encompassing, e.g., corporations, partnerships, LLCs, and unincorporated nonprofit associations.¹⁴ The Commission uses the detailed parameters in [state law](#)¹⁵ on permitted uses and an application review process that is outlined in emergency regulations from the Commission.¹⁶

The application process to the OAAC for Opioid Abatement Trust Fund Monies is as follows:

- An application is submitted via the [OAAC grant portal](#)
- OAAC reviews applications on a continuous basis according to a range of [criteria](#),¹⁷ such as:
 - Applicant's record of effectively utilizing settlement funds previously
 - Geographic reach and extent to which project would reach un(der)served populations
 - Incorporation of relevant partnerships
 - Alignment with evidence-based practices

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Decision- Making Process

(Continued)

- Funding recipients submit quarterly certifications using [OAAC Certification Form](#). To see a map and inventory of OAAC grants to date, go [here](#). Examples of funded projects include \$250,000 to the Legal Aid Society, Inc. in 16 counties, over \$10 million in funding to support behavioral health treatment options across 12 counties as part of the [SB 90](#) Behavioral Health Conditional Dismissal Pilot Program, and \$250,000 as part of a statewide grant to [Chrysalis House](#), a treatment and recovery support provider focused on women with substance use disorders (SUDs).

OPIOID ABATEMENT ADVISORY COMMISSION (OAAC)

State law establishes the OAAC, including its membership, meeting requirements and duties.¹⁸ Chaired by the Attorney General or their designee, the OAAC includes nine voting and two non-voting members representing a range of stakeholders, including the Secretary for the [Cabinet for Health and Family Services](#) or their designee, someone from the [University of Kentucky HEALing Communities](#) team, appointees by the Attorney General representing “victims of the opioid crisis”¹⁹ and “law enforcement,”²⁰ as well as two non-voting members appointed by legislative leadership.²¹ Generally speaking, OAAC members serve terms concurrent with holding their office (state AG, Treasurer, and CHFS Secretary or their designees), staggered two year terms (the other 6 voting members), or at the pleasure of their appointing authorities (non-voting legislative appointees).²² Current members of the OAAC can be found [here](#).

The OAAC is required by law to meet at least twice each calendar year,²³ but has [met monthly](#) throughout 2023. In addition to its regular meetings, the OAAC has formed more specialized subcommittees²⁴ and held a number of townhalls. Meetings of the OAAC must be held in accordance with Kentucky’s Open Meetings law.²⁵ The OAAC is required by state law to have a website on which it publishes its minutes, funding awards, and reports from funding recipients.²⁶

In addition to its grant-making role to expend the 50% Opioid Abatement Trust Fund share, the OAAC is empowered to develop priorities for spending,²⁷ work with state agencies and other stakeholders to develop metrics,²⁸ make recommendations for policy changes (including statutory or regulatory changes),²⁹ and to promulgate regulations to carry out its duties.³⁰



Decision- Making Process

(Continued)

50% LOCAL GOVERNMENT SHARE

The 50% local government share includes funding that goes to counties, consolidated local governments, urban-county governments, and cities according to negotiation class distribution metrics in [MDL 2804](#) (National Prescription Opiate Litigation).³¹ Where those metrics would result in a city receiving a total of less than \$30,000 in any individual settlement, judgment, or bankruptcy proceeding, the payment is instead made to the county, consolidated local government, or urban-county government in which that city is located.³²

Absent a small portion of the local government share that can be directed toward attorneys' fees, localities must spend no less than 85% of their proceeds from this share on opioid abatement.³³ Spending must be consistent with the framework in [state law](#), including the limited set of expenditures authorized for reimbursement, and the more extensive list of 29 strategies for forward-looking opioid remediation spending.³⁴ Outside of these requirements, funds from this share will likely be expended according to normal budget processes.

LOCAL SPENDING EXAMPLE

In Louisville, Community Health Administrator Ben Goldman sought approval from a subcommittee of the City Council to spend \$85,000 of settlement monies to create two new peer support specialist positions.³⁵

Tracking Funds and Accountability

- The OAAC must publish “reports of funding” on its website from recipients of Opioid Abatement Trust Fund monies.³⁶ However, it is not yet clear how detailed these reports will be. State law stipulates that grantees of Trust Fund monies will submit a certification that funds were used in accordance with approved uses, but also a “description of the use of such funds” and other information requested by the OAAC.³⁷ It is possible the OAAC [funding map](#) is considered to satisfy this requirement, as [the OAAC Certification Form](#) contains no description of expenditures.³⁸
- Localities receiving monies from the 50% local government share must also submit a quarterly [Certification Form](#) to the OAAC.³⁹ It is unclear from the OAAC’s emergency regulations on these submissions whether the barebones [Certification Form](#) will meet the requirement for a “list of fund recipients and amounts [and] a description of the use of the funds” in state law.⁴⁰ Importantly, there is no requirement in state law that this information be published on the OAAC website.

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Tracking Funds and Accountability

(Continued)

- Certifications submitted to the OAAC—whether by Trust Fund grantees or localities receiving monies from the local government share—are due on a quarterly basis: March 31, June 30, September 30, and December 31.⁴¹
- Falsified information on a quarterly certification, failure to meet certification submission deadlines, and misspending are all considered “non-compliance.”⁴²
- There are varying consequences for non-compliance. For Trust Fund grantees, funds expended in a non-compliant manner must be repaid to the OAAC, that funding recipient must forfeit remaining funds from the OAAC, and the OAAC bars that funding recipient from future Trust Fund monies. The OAAC also reports this non-compliance to the Department of Law to determine whether further action is necessary.⁴³
- For non-compliance by a locality receiving funds from the 50% local government share who still must submit certifications to the OAAC, additional funds may be withheld and the OAAC also reports the non-compliance to the Department of Law.⁴⁴

Engaging in the Process

- Scan the [website](#) of the Opioid Abatement Advisory Commission (OAAC), which contains meeting minutes and recordings, as well as details on future meetings that the public may attend. Meeting agendas in the past of the OAAC and its subcommittees contain a dedicated section for public comments so make your voice heard!
- Review OAAC’s awarded grants from the Trust Fund [here](#) to get a better understanding of what has received funding support in your community and watch for future information posted on the OAAC website about settlement expenditures.
- Consider engaging with the OAAC to encourage it to publicly share the reporting it receives on spending from the 50% local government share, which is not required to be posted on its website.
- Create an account to seek OAAC funding [here](#) and read this [FAQ](#) on the application process. Questions about the process can also be directed to kyoaac@ky.gov.
- Familiarize yourself with the criteria for permitted uses of opioid settlement funds in [Kentucky law](#).



Additional Resources

OFFICE OF THE ATTORNEY GENERAL

[Kentucky Opioid Abatement Advisory Commission](#)

[Opioid Settlement](#)

[KENTUCKY OFFICE OF DRUG CONTROL POLICY 2021 OVERDOSE FATALITY REPORT](#)

[UNIVERSITY OF KENTUCKY INJURY PREVENTION AND RESEARCH CENTER](#)

[Kentucky Resident Drug Overdose Rates by State and County](#)

[Training Tools](#)

[HEALing Communities Study](#)

[Sign-up for email updates](#)

[KENTUCKY HARM REDUCTION COALITION](#)



References

Last updated June 6, 2023.

1. From settlements with distributors McKesson, AmerisourceBergen, Cardinal Health and manufacturer Johnson & Johnson only. Kentucky is also participating in several settlements that are likely to be finalized later this year, e.g., CVS, Walgreens, Walmart, Allergan, and Teva. See KHN's "[The Right to Know: Where Does Your State Stand on Public Reporting of Opioid Settlement Cash?](#)" interactive transparency map (located mid-article; click "Kentucky" for state-specific participation information) and OpioidSettlementTracker.com's [Global Settlement Tracker](#) for more information.
2. Kentucky law is not limited by its terms to the Distributor and Janssen settlements. Rather, it also encompasses proceeds received from any settlement, judgment, or bankruptcy against any named defendant in [MDL 2804](#) (National prescription Opiate Litigation) and "any of their affiliates or subsidiaries related to opioid manufacturing, or distribution to the extent included in a settlement agreement." See KRS § 15.293(3)-(4). Note that many states' mechanisms for opioid settlement spending were designed to comply with the requirements of the [Distributor](#) and [Janssen](#) settlement agreements, which require (among other provisions) that a minimum of 85% of settlement funds be spent on opioid remediation expenditures. *Section V.B.1.* Subsequent settlements require varying thresholds of opioid remediation spend; the [CVS](#) and [Walgreens](#) agreements, for instance, require a minimum of 95.5% and 95% opioid remediation spending, respectively. *Section V.B.1.* Keep an eye out for the ways states will amend their spending mechanisms, if at all, to comply with subsequent settlement terms.
3. See KRS § 15.291(5). By contrast, many states simply rely on or directly incorporate [Exhibit E](#) of the Distributor and Janssen settlements.
4. KRS § 15.291(5)-(7).
5. See OpioidSettlementTracker.com's "[States' Initial Promises to Publicly Report Their Opioid Settlement Expenditures](#)." See also KRS § 15.291(7)(a) and KRS § 15.293(4)(c)(2).
6. KRS § 15.293(3)-(4).
7. KRS § 15.291(5)(b)(27).
8. KRS § 15.291(5)(a)(1)(b). Kentucky law is quite detailed on criteria for authorized use of settlement funds, including several areas eligible for reimbursement (costs related to outpatient and residential treatment services, including services for incarcerated people and abstinence-based treatment; emergency response services; and the costs of administering an opioid antagonist). KRS § 15.291(5)(a)(1)-(3). Beyond that, state law authorizes opioid settlement funding for prospective projects across twenty-nine (29) different areas. Examples include services targeted at people who have survived an overdose, supportive housing, crisis stabilization centers, training for practitioners, addressing Neonatal Abstinence Syndrome and home-based wraparound services, pre-trial services that connect people to evidence-informed treatment, and "any other project deemed appropriate for opioid-abatement purposes by the [Kentucky Opioid Abatement Advisory] [C]ommission." KRS § 15.291(5)(b)(29); see also KRS § 15.291(5)(b)(1)-(29).
9. KRS § 15.291(5).
10. KRS § 15.293(4)(b).
11. KRS § 15.295(4).
12. KRS § 15.291(5)-(7).
13. 40 KAR 9:010E(2)(1) (An eligible applicant for Trust Fund monies includes "any entity or governmental agency that submits an application that conforms with [these requirements]; that meets the criteria in KRS 15.291(5); and that is not debarred or suspended from contracting with the Commonwealth.").
14. The definition of "entity" is "a corporation, business or statutory trust, partnership, limited partnership, limited liability company, limited cooperative association, or unincorporated nonprofit association, governed as to its internal affairs by the laws of the Commonwealth of Kentucky." KRS § 14A.1-070(7).
15. KRS § 15.291(5).
16. 40 KAR 9:010E(4).
17. 40 KAR 9:010E(4). See the full list of the OAC's application review criteria in section 4 of these [emergency regulations](#). You can also find an FAQ [here](#) on the process of applying to the OAC for funding.
18. See generally KRS § 15.291.
19. KRS § 15.291(2)(a)(5).
20. KRS § 15.291(2)(a)(7).
21. KRS § 15.291(2)(b)(1)-(2).
22. KRS § 15.291(3)(a)-(c).



References

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23. KRS § 15.291(4)(b).
24. Prevention, Treatment and Recovery, and Reform and Compliance.
25. KRS § 15.291(4)(a).
26. KRS § 15.291(7)(a).
27. KRS § 15.291(6)(b).
28. KRS § 15.291(6)(c).
29. KRS § 15.291(6)(d).
30. KRS § 15.291(7)(b).
31. KRS § 15.293(4)(b).
32. KRS § 15.293(4)(b).
33. KRS § 15.295(1) and (4).
34. KRS § 15.293(4)(c)(2)(a) (“Each county, consolidated local government, urban-county government, or city of the Commonwealth that receives any proceeds under paragraph (b) of this subsection shall submit, on an annual basis a certification that the funds were used consistent with the criteria in KRS § 15.291(5)..”).
35. “[Louisville officials approve funds to hire overdose quick response team members.](#)” The same article goes on to note that funds are set aside for Metro Health and Wellness (i.e., the health department) to use, but that expenditures “need approval by the [City] council to officially spend that money.”
36. KRS § 15.291(7)(a).
37. KRS § 15.293(4)(c).
38. The OAAC Certification form is an affirmation under penalty of perjury that funds were used consistent with state law. Funding recipients are required to maintain records for five years that can authenticate the appropriate use of funds, which the OAAC may inspect.
39. KRS § 15.293(4)(c)(2)(a); 40 KAR 9:020E.
40. KRS § 15.293(4)(c)(2)(a)
41. 40 KAR 9:010E, Section 5; 40 KAR 9:020E, Section 2.
42. 40 KAR 9:010E, Section 9(1)(a)-(c); 40 KAR 9:020E, Section 3(1)(a)-(c).
43. 40 KAR 9:010E, Section 9(2)-(5).
44. KRS § 15.293(4)(c)(2)(d); 40 KAR 9:020E, Section 3(3). The OAAC’s emergency regulations also indicate that non-compliance by a local government will “require covered governmental bodies to reimburse the Commission for any funds expended in a noncompliant manner” but since these monies are from the local government share and not the 50% Trust Fund share controlled by the OAAC, the basis for this reimbursement is unclear. 40 KAR 9:020E, Section 3(2).