

TITLE 75. ATTORNEY GENERAL
CHAPTER 50. OPIOID SETTLEMENT PAYMENTS AND ABATEMENT GRANTS

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions [NEW]

75:50-1-1 through 75:50-1-2 [NEW]

Subchapter 2. Opioid Settlement Payments [NEW]

75:50-2-1 [NEW]

Subchapter 3. Opioid Abatement Grants [NEW]

75:50-3-1 through 75:50-1-7 [NEW]

AUTHORITY:

Political Subdivisions Opioid Abatement Grants Act, 74 O.S. 2021, §§ 30.1–30.8, specifically § 30.7(G) (giving the Attorney General authority to proposed rules for the Board’s approval).

ADOPTION:

December 20, 2023

EFFECTIVE:

Immediately upon Governor's approval

EXPIRATION:

Effective through September 14, 2024, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY RULES:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The promulgation of these emergency rules is necessary to protect the public health, safety or welfare and to avoid serious prejudice to the public interest. See 75 O.S. 2021, § 253(A)(1) (a) and (e).

GIST/ANALYSIS:

The Oklahoma Opioid Abatement Board proposes these emergency rules to fulfill the requirements of the Board under the Political Subdivisions Opioid Abatement Grants Act, 74 O.S. 2021, §§ 30.1–30.8. The emergency rules set forth a process for political subdivisions to apply for and receive opioid grant awards or other amounts as may be agreed to by a legal settlement for the abatement of opioid-related costs to the State of Oklahoma and its political subdivisions. The emergency rules also specify what required documentation that political subdivisions must submit to demonstrate governing body approval for seeking opioid funds from the Board. Additionally, the rules include an appeals process with specific grounds for appeal; requirements for merger or dissolution; reporting requirements and processes; subsequent applications for grant money; and procedures for recipients who spend the opioid grant awards on or for non-approved purposes. The rules set forth a table for weighing statutory factors for the distribution of opioid funds to non-litigating political subdivisions in the opioid distributors and retailers & Allergan settlements. Finally, the rules provide for a tier-based awards for maximum

available funding by political subdivision type and population or enrollment.

CONTACT PERSON:

Thomas Schneider, Deputy General Counsel, (405) 521-3921,
thomas.schneider@oag.ok.gov or rules@oag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

SUBCHAPTER 1. GENERAL PROVISIONS

75:50-1-1. Purpose

This chapter sets forth rules, including standards and criteria, for, and operations and distributions of, the Opioid Abatement Board created by the Political Subdivisions Opioid Abatement Grants Act (74 O.S. §§ 30.3–30.8).

75:50-1-2. Definitions

The following words or terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Political Subdivisions Opioid Abatement Grants Act, codified at 74 O.S. §§ 30.3–30.8.

"Applicant" means any eligible participant that has submitted an application for an opioid grant award to the Board.

"Application" means the Opioid Abatement Grant Application approved by the Board.

"Approved Purpose" or "Approved Purposes" means the same as 74 O.S. § 30.5(1) and uses of funds that are reasonable and necessary for the proper and efficient performance and administration of the grant project, and allocable to the grant project.

"Board" means the Oklahoma Opioid Abatement Board established by 74 O.S. § 30.7.

"Contract" means the agreement between the Board and a Recipient setting forth responsibilities of Recipients regarding the use of opioid grant award funds.

"Eligible participant" means the same as 74 O.S. § 30.5(3).

"Form" means Opioid Abatement Grant Award Quarterly Reporting Form approved by the Board.

"Nonapproved purpose" or "Nonapproved purposes" means the same as 74 O.S. § 30.5(4).

"Opioid funds" means the same as 74 O.S. § 30.5(5).

"Opioid grant awards" means the same as 74 O.S. § 30.5(6).

"Political subdivision" means the same as 74 O.S. § 30.5(9).

"Recipient" means any eligible participant that has applied for and received an opioid grant award.

"Revolving Fund" means the Oklahoma Opioid Abatement Revolving Fund established under 74 O.S. § 30.6.

SUBCHAPTER 2. OPIOID SETTLEMENT PAYMENTS

75:50-2-1. Distributors and retailers & Allergan settlement payment disbursement process for non-litigating political subdivisions

(a) This section shall only apply to non-litigating political subdivisions that elected to participate in the opioid distributors and retailers & Allergan settlements and submitted a participation form waiving any future claims against the named defendants, Allergan, AmerisourceBergen, Cardinal Health, CVS, McKesson Corp., Walgreens, and Walmart.

(b) The Board shall conduct disbursement of opioid grant awards from the Revolving Fund.

(c) Such opioid grant awards shall be awarded amongst the different Applicants based on the following criteria:

(1) the number of people per capita suffering from opioid use disorder in the participating political subdivision, or in the absence of such information, the opioid prescription rate in the political subdivision compared to the national average opioid prescription rate;

(2) the number of opioid overdose deaths in the participating political subdivision;

(3) the amount of opioids distributed within the participating political subdivision; and

(4) the amount of attorney fees and allowable expenses associated with legal services agreements directly related to opioid litigation incurred as part of legal services agreements entered into before May 21, 2020.

(d) Disbursements from the Revolving Fund shall be computed using the table set forth in Appendix A to these rules, factoring in the above criteria, to compute the final grant award amounts for applicants. To the extent that any of the criteria are allocated by another manner or process, Appendix A is deemed satisfactory for determining the weight of each criterion.

SUBCHAPTER 3. OPIOID ABATEMENT GRANTS

75:50-3-1. Opioid grant application process

(a) The Board shall provide the Application on the Office of the Attorney General's website. The Attorney General may, acting on behalf of the board, digitize the entire application process.

(b) Applications will be reviewed by the Board, which will allocate funds consistent with the requirements under the Act and subchapter 2, section 1, subsection c of this chapter.

(c) The Board may delegate review of completed applications to the Office of the Attorney General and to whomever it finds qualified, capable, and possessing necessary capacity.

(d) Applicants shall sign and return to their completed applications to the Office of the Attorney General via mail or by electronic means as determined by the Office of the Attorney General.

(e) Public trusts shall submit the most recent copy of their declaration of trust or trust indenture with their application.

(f) Applicants must submit data correlating to any criteria requested by the Board, including the criteria set forth subchapter 2, section 1, subsection c.

(g) Grant applicants must apply for a grant award using the procedures, forms, and certifications prescribed by the Board. Any incomplete applications or applications lacking in sufficient detail may be returned to the applicant for completion, corrections, or

supplementation. In the event an application remains incomplete or lacking in sufficient detail, the Attorney General may deny the application on the Board's behalf. The applicant submitting the denied application may then appeal the decision to the Board pursuant to section 5 of this subchapter.

(h) Each grant applicant must designate an authorized official and must submit to the Board or its designee, the following:

(1) a resolution from the grant applicant's governing body that, at a minimum, designates an authorized official to act on the grant applicant's behalf and authorizes the authorized official to submit a grant application;

(2) the authorized official's title, mailing address, telephone number, and email address; and

(3) the grant applicant's physical address.

A grant applicant or grant recipient must notify the director as soon as practicable of any change in the information provided under subsection (a) of this section. If there is a change of authorized official, a grant applicant or grant recipient must also submit to the director a new resolution from the grant applicant's governing body that, at a minimum, designates an authorized official to act on the grant applicant's behalf.

(i) Multiple (two or more) applicants may submit a joint application reflecting a collaborative and coordinated effort or project and will be eligible for a joint grant award as described in section 3, subsection f of this subchapter and Appendix F.

75:50-3-2. Opioid grant award restrictions and requirements

(a) Upon submitting an application, an applicant must also submit a memorialized plan for the utilization or expenditure of opioid funds. Such plan may be in the form in a resolution or equivalent government action adopted by the political subdivision and submitted to the Board with the application. Documentation evincing such government action may include, but is not limited to, the following:

(1) A resolution, as allowed by law, adopted through a publicly cast and recorded vote;

(2) An ordinance, or its equivalent, that has been approved through a publicly cast and recorded vote; or

(3) An abatement plan or budget that has been approved through a publicly cast and recorded vote.

(b) When submitting an application under section 1 of this subchapter, an applicant may not rely on a resolution or other general delegation of authority to a chief executive officer or equivalent position for seeking grants.

(c) All approved purposes listed in an Applicant's Application and Form shall relate to strategies, programming and services occurred on or after January 1, 2015, to be eligible for opioid grant award funding.

(d) For an Applicant to receive a grant award, the Board may, subject to terms under any settlement agreement related to the opioid pharmaceutical supply chain, require an applicant to execute a release of claims on a form created and approved by the Attorney General. The release form may be included in the Application. The release shall only apply to and release claims against any opioid supply chain participants or consultants for which the State of Oklahoma has joined a multi-party settlement or reached a settlement agreement with, including Purdue Pharmaceuticals, Teva Pharmaceutical

Industries Ltd., Endo Pharmaceuticals, AmerisourceBergen, Cardinal Health, McKesson Corp., McKinsey & Company, CVS, Allergan, Walmart, and Walgreens.

(e) To the extent that any recipient remains in litigation, it may elect to delay receipt of any disbursements of its opioid grant award on a form developed by the Office of the Attorney General staff.

(f) A recipient may contract or partner with a nonprofit organization or other applicant for the purpose of using its grant award for approved purposes; however, the grantee shall remain responsible for complying with all grant requirements. Any contract entered into by a grantee shall be done in compliance with applicable purchasing laws and guidelines.

(g) A recipient is not permitted to subgrant its grant award to a subgrantee. For the purposes of this chapter, "subgrant" means the provision of a grant award and whereby all the regulations and requirements that apply to the grantee are passed on to the subgrantee, making the grantee a pass-through entity. "Subgrantee" means any entity receiving the grant award through a subgrant from a grantee.

(h) In the event a recipient merges, dissolves or ceases to exist as described under 74 O.S. § 30.8(C), the recipient must give prompt notice to the Board and the Office of the Attorney General, including the following information:

(1) The amount of any remaining allocations of an awarded opioid grant award in excess of Five Hundred Dollars (\$500.00);

(2) The name of the proposed successor recipient, if any;

(3) Point of contact information for the proposed successor recipient, if any; and

(4) Utilize the Political Subdivision Opioid Abatement Grant Award Quarterly Reporting Form to submit a final report of expenditures prior to the merger, dissolution, or permanent closure.

(i) In its discretion, the Board shall determine whether any of the Recipient's remaining allocations shall be made to the proposed successor recipient, or returned to the Board. Any successor recipient shall meet the requirements to be a recipient prior to receiving the balance of the grant award disbursement. In addition, prior to receiving grant funds, the successor recipient must submit documentation requested by the Board and execute any and all documents required by the Board.

(j) All grant funding is contingent upon the availability of funds and upon approval of a grant application by the Board. Neither this subsection nor a grant agreement creates any entitlement or right to grant funds by a grant applicant.

75:50-3-3. Maximum grant awards

(a) The amount of a grant award is determined solely in the discretion of the Board. The Board is not required to fund a grant in the amount requested by the Applicant. Maximum grant awards are based on an applicant's population or enrollment and will fall into one of three respective tiers, with Tier 1 being for the smallest in population or enrollment and Tier 3 being the largest in population or enrollment.

(b) Applicant counties shall be eligible for grant award amounts as set forth in Appendix B.

(c) Applicant municipalities shall be eligible for grant award amounts as set forth in Appendix C.

(d) Applicant common education school districts shall be eligible for grant award amounts as set forth in Appendix D.

(e) Applicant technology school districts shall be eligible for grant award amounts as set forth in Appendix E.

(f) If two or more applicants submit a joint application as a collaborative effort or project, the joint effort or project(s) shall be eligible for grant award amounts as set forth in Appendix F.

(g) The total population or enrollment for applicants that are public trusts solely benefiting one or more eligible participants shall be eligible based on the subdivision(s) they benefit. If a public trust benefits more than one type of political subdivision, the public trust will be eligible for maximum available funding under the tier appendix for which the majority of its beneficiary-political subdivisions are.

(h) A public trust's population or enrollment will be limited to the population or enrollment of the subdivision(s) that the public trust benefits as set forth in the declaration of trust or trust indenture.

(i) An interlocal cooperative formed under title 70 of the Oklahoma Statutes that is determined to be a local educational agency will be considered a school district, as that term is defined in 51 O.S. § 152.

(j) The Board reserves its discretion to award an amount greater than the proposed maximum available funding amounts in Appendices B-F under the following circumstances:

(1) An applicant demonstrates extraordinary need for opioid abatement funding resources, warranting a reasonable increase; or

(2) sufficient funds remain available for increasing award amounts as may be determined by the Board, subject to the Board's due diligence in evaluating applications.

75:50-3-4. Application review and disbursement process; allowable costs

(a) Grant applications may be reviewed according to the following process: (1) initial screening, (2) peer review, and (3) Board review and approval. Applications submitted to the Board shall be scored using the scoring rubric in Appendix G.

(b) The Board shall conduct disbursement of opioid grant awards from the Revolving Fund.

(c) In awarding opioid abatement grants, the Board shall determine grant awards based the criteria set forth in subchapter 2, section 1, subsection c of this chapter and any other criteria it deems necessary and appropriate for the proper and wise use of opioid funds. This criteria may be included in the scoring rubric or in the Board-approved application.

(d) Following approval of grant amounts, all recipients shall receive a copy of the Contract, which they must complete and return to the Office of the Attorney General prior to receiving a disbursement of funds. The Contract can be returned by mail or electronic means as determined by the Office.

(e) Recipients shall receive their grant award in the form of equal quarterly distributions.

(f) Applicants may request the first two payments be combined in their application submission to provide start-up funding for their project or abatement plan. The remaining balance of the grant award will disbursed in the same manner set forth in subsection e of this section.

(g) The Board shall set the grant term in a public cast and recorded vote at a properly noticed meeting.

(h) For good cause shown, Recipients in good fiscal and programmatic standing may request the Board to authorize a one-time carryover of up to forty percent (40%) of their grant award distributions following the expiration of the initial grant term. To be considered for a carryover authorization, the Recipient must submit a written request no later than 120 calendar days prior to expiration of the initial grant term, which must include:

(1) a timeline of events beginning on the date of grant award;

(2) a detailed explanation why the grant project is not expected to be completed within the grant term; and

(3) if applicable, supporting documentation demonstrating good cause.

(i) Grant funds may not be used for costs that will be reimbursed by another funding source. The Board may require a grant recipient to demonstrate through accounting records that funds received from another funding source are not used for costs that will be reimbursed by the Board.

75:50-3-5. Grant award appeals

(a) If an applicant wishes to appeal a grant award decision of the Board, the applicant may submit an appeal in writing to the Board within twenty (20) days of notification of a grant award decision.

(b) Appeals are limited to the following Board decisions:

(1) Denial of funding for projects,

(2) Denial of specific fund use requests, and

(3) Denials of an application.

(c) Partial funding of projects are not to be deemed as denials and thus are non-appealable.

(d) An applicant will be granted a hearing in front of the Board. The Board may limit the amount of time for argument from both the appealing applicant and the Board staff. The hearing shall be recorded and any oral or written testimony must be given under oath. After the hearing, the Board may amend or affirm their original decision in writing.

(e) The decision of the Board following the hearing will be final and non-reviewable.

75:50-3-6. Remaining unencumbered balance

Following disbursement, any remaining unencumbered balance in the Revolving Fund shall be available for the Board to award as supplemental grants to eligible Participants, provided such awards shall only be utilized by eligible Participants for Approved Purposes.

75:50-3-7. Grant award quarterly reporting, oversight, and compliance

(a) The grant recipient is responsible for managing the day-to-day operations and activities supported by the grant agreement and is accountable to the Board for the performance of the grant agreement, including the appropriate expenditure of grant award funds and all other obligations of the grant recipient. The grant recipient must maintain a sound financial management system that provides appropriate fiscal controls and accounting procedures to ensure accurate preparation of reports required by the grant agreement and adequate identification of the source and application of grant funds awarded to the grant recipient. Grant recipients must comply with: (1) the terms and conditions of the grant agreement; (2) all applicable state or federal statutes, rules,

regulations, or guidance applicable to the grant award. A grant recipient is the entity legally and financially responsible for compliance with the grant agreement, and state and federal laws, rules, regulations, and guidance applicable to the grant award.

(b) The Attorney General will, on behalf of the Board, maintain oversight and monitor compliance of expenditures by Recipients to ensure that any use complies with approved purposes as defined under the Act. As a part of the oversight and monitoring, the Attorney General and Board may conduct desktop or on-site reviews. During an on-site review, a grant recipient must provide the Board or Attorney General with access to all records, information, and assets that the Board or Attorney General determines are reasonably relevant to the scope of the on-site review.

(c) At a minimum, Recipients will be monitored through a quarterly reporting process.

(d) The Board shall utilize the Political Subdivision Opioid Abatement Grant Award Quarterly Reporting Form ("Form") to maintain oversight and confirm compliance with the Act. All Recipients must submit quarterly reports using the Form in order to continue receiving or using opioid grant award proceeds. The Form shall be provided on the website of the Oklahoma Office of the Attorney General. Completed quarterly reports shall be returned to the Office of the Attorney General via mail or by electronic means as determined by the Office of the Attorney General. Quarterly reports shall be due on the last day of the month immediately following the conclusion of a quarter. If an opioid grant award is received during a quarter, a recipient is not required to submit a report for the remainder of the initial quarter until the conclusion of the next quarter for which reports for the initial quarter and the first full quarter shall be due.

(e) For the purposes of this chapter, quarters shall run by calendar year. January, February, and March shall be Quarter 1; April, May, and June shall be Quarter 2; July, August, and September shall be Quarter 3; and October, November, and December shall be Quarter 4.

(f) At the Board's discretion and at any time, the Board, may request any additional data and reporting information that the Board deems necessary to substantiate that grant funds are being used for the intended purpose and that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement. Further, at the Board's discretion and at any time, the Board may request any records from or audit the books and records of a grant recipient or conduct an on-site review at a grant recipient's location to verify that the grant recipient has complied with the terms, conditions, and requirements of the grant agreement, and any applicable laws, rules, regulations, or guidance relating to the grant award. If it is determined that a Recipient is using opioid grant award proceeds out of compliance with Board procedures or has utilized such proceeds for non-approved purposes, the Board authorizes the Attorney General to immediately suspend the Recipient's use of the grant award proceeds and notify the Recipient.

(g) The Board may resume disbursements to the non-compliant recipient once it has determined the recipient has adequately remedied the cause of such suspension.

(h) For the purposes of the Act, an adequate remedy may include, but not be limited to the following:

(1) refunding an amount equal to the amount spent on nonapproved purposes or a reduction to future disbursements in the amount equal to the amount spent on nonapproved purposes.

(2) reducing or terminating a grant when the Recipient is found to be noncompliant,

the Recipient and Board agree to the reduction or termination of a grant award, when grant funds are no longer available to the Board, or if conditions exist that make it unlikely that objectives of the grant award will be accomplished; or (3) other remedies available under applicable laws, rules or regulations.
(i) The Board authorizes the Attorney General to negotiate adequate remedies with non-compliant recipients for presentation and approval by the Board.

APPENDIX A. OPIOID DISTRIBUTION CALCULATION TABLE [NEW]

Criteria Number	Description of Criteria	Weight of Criteria
1	Number of people per capita suffering from opioid use disorder in the participating subdivision, or in the absence of such information, the opioid prescription rate in the political subdivision compared to the national average opioid prescription rate	20%
2	Number of opioid overdose deaths in the participating political subdivision	40%
3	Amount of opioids distributed within the participating political subdivision	40%

APPENDIX B. COUNTY TIERS [NEW]

Tier Number	Population range	Proposed maximum available funding
1	Up to 25,000	\$75,000.00
2	25,001-75,000	\$150,000.00
3	75,001 or more	\$300,000.00

APPENDIX C. MUNICIPALITY TIERS [NEW]

Tier Number	Population range	Proposed maximum available funding
1	Up to 15,000	\$60,000.00
2	15,001-100,000	\$125,000.00
3	100,001 or more	\$250,000.00

APPENDIX D. COMMON EDUCATION SCHOOL DISTRICT TIERS [NEW]

Tier Number	Enrollment range	Proposed maximum available funding
1	Up to 2,000	\$35,000.00
2	2,001-15,000	\$75,000.00
3	15,001 or more	\$150,000.00

APPENDIX E. TECHNOLOGY SCHOOL DISTRICT TIERS [NEW]

Tier Number	Enrollment range	Proposed maximum available funding
1	Up to 5,000	\$35,000.00
2	5,001-15,000	\$75,000.00
3	15,001 or more	\$150,000.00

APPENDIX F. COLLABORATIVE MULTI-APPLICANT TIERS [NEW]

Tier Number	Population or Enrollment range	Proposed maximum available funding
1	Up to 100,000	\$175,000
2	100,001-500,000	\$350,000
3	500,000 or more	\$750,000

APPENDIX G. SCORING RUBRIC [NEW]

Applications should be scored based on their demonstration of evidence provided in each of the criteria. Reviewers should look for evidence that the application will support abatement of the opioid epidemic within the political subdivision. Reviewers should ensure that the proposed use of funds aligns with both the statutorily-approved purposes and the need as expressed in the application. Applications should demonstrate a clear need for opioid abatement, provide a compliment to any existing programs within the community and a plan for ensuring funds are managed, spent and reported transparently and efficiently in accordance with the grant terms and restrictions.

Criteria	Total Points Available	Point Values			
Use of Funds (Question 11)	20 points	0 Narrative shows no use of funds for abatement	10 Weak use of funds for abatement	15 Good use of funds for abatement	20 Strong use of funds for abatement
Demonstrated Need for Funds (Question 12)	25 points	0 No justification	10 Limited justification	18 Adequate justification	25 Strong justification
Capacity for Implementation (Question 13)	15 points	0 No capacity for project management	5 Weak capacity for project management	10 Good capacity for project management	15 Strong capacity for project management
Evidence Base for Proposed Projects (Question 14)	25 points	0 No evidence of future success	10 Weak evidence of future success	18 Good evidence of future success (evidence-informed)	25 Strong evidence of future success (evidence-based)
Community Partnership and Support (Question 15)	15 points	0 No alignment with existing community efforts	5 Weak alignment with community efforts	10 Moderate alignment with community efforts	15 Strong alignment with community efforts

Subtotal Points	100 Points				
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Bonus Points Criteria	Total Points Available	Point Values	
Applicant has received \$0 in opioid settlements or opioid-related litigation (checked "No" on questions 7-10)	5 points	0	5
Applicant proposes a new project (checked first box on question 11b)	15 points	0	15
Applicant has secured 50% or more of maximum available funding in matching funds from other sources	10 points	0	10

Total Points	130 Points
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ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of the new Chapter 50, Opioid Settlement Payments and Abatement Grants, which was considered adopted by the Oklahoma Opioid Abatement Board on Wednesday, December 20, 2023, under the emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S. § 250 et seq.

I, the undersigned, do hereby attest that such rules were finally adopted in substantial compliance with the Administrative Procedures Act.



Thomas R. Schneider
Deputy General Counsel
Oklahoma Office of the Attorney General
Oklahoma Opioid Abatement Board
December 21, 2023