

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky State Corrections Commission
(Amendment)

500 KAR 10:040. Program review.

RELATES TO: KRS 196.700 - 196.736

STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.735 requires the Kentucky State Corrections Commission to evaluate each community corrections program on an annual basis. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation provides for review of the community corrections program.

Section 1. Review Process.

(1) During each fiscal year, the administrator shall inspect and examine the fiscal and program records of each grant to determine compliance with the program plan and prepare a compilation of the reports for the commission. The administrator shall provide the compilation and the grant reports each quarter to the commission.

(2) Each fiscal year, the administrator shall compile the grant program results into an annual report. The commission shall review this report and may adopt all or portions of it for the annual evaluation required by KRS 196.735.

Section 2. Programmatic and Fiscal Reports.

(1) A grant recipient shall file a programmatic report and fiscal report regarding activity for the preceding period on a schedule provided in writing to a grant recipient by the administrator. Information for the programmatic and fiscal reports shall be input into the online electronic grants management system.

(a) The fiscal report shall outline the grant funds expended for the reporting period, including:

1. The total grant award;

2. The amounts expended in the reporting period. Expenditures shall be listed by budget category, including:

a. Personnel;

(i) Gross salary;

(ii) Fringe benefits; and

(iii) Employer costs;

b. Contractual services;

c. Travel;

d. Training;

e. Equipment costs; or

f. Operating expenses.

3. The balance of remaining grant funds for the grant cycle;

(b) The program report shall outline program outcomes for the reporting period, including:

1. Number of new program participants and total number of grant participants served;

2. Number of successful program completions and unsuccessful discharges from the program, with average length of time in the program;

3. Number and type of program violations incurred;

4. Number and type of program services received;

5. Amount of restitution or child support paid by participants;

- 6. Participation in community service;
- 7. Number of drug tests administered with aggregate results;
- 8. Number of participant referrals to other agencies for services;
- 9. Participant demographics; and
- 10. Any other relevant information about program operation during the reporting period.

(2) The grantee shall maintain individual client files. Information supplied to the commission for report or statistical purpose shall be by client identification number or client initials.

(3) All records shall be retained in accordance with the retention schedule for Kentucky State Agencies published by the State Libraries, Archives, and Records Commission.

Section 3. Additional Information.

(1) A grantee shall present the progress of its program and oversight by the board to the commission at its meeting upon request.

(2) The administrator shall obtain an annual independent audit of each grant recipient. The administrator shall provide a summary of the audit results to the commission.

Section 4. ~~Section 3.~~ Compliance Issues.

(1) If the administrator determines that there is reasonable cause to believe that a program or facility is not in substantial compliance with current requirements of the grant, or the program plan under which it was funded,

(a) The administrator may:

- 1. Investigate compliance;
- 2. Request additional supporting documentation;
- 3. Engage in additional monitoring; or
- 4. Take other actions as needed to determine compliance; and

(b) A notice of the findings concerning compliance shall be submitted to the commission.

(2) If information concerning a compliance issue is received and the chair of the commission determines that there is a significant risk of dissipation of funds, the chair may suspend all or any portion a grant until the commission meets and considers the matter.

(3) The commission may suspend all or any portion of a grant or revoke the grant if it is determined by the commission that the board is not in substantial compliance or has not made satisfactory progress in achieving substantial compliance.

~~(a)~~ Suspension.

~~(a)~~ ~~1.~~ Notice of the suspension shall be sent in writing to the grant recipient and board within five (5) business days of the decision to suspend funds.

~~(b)~~ ~~2.~~ The notice shall identify specific~~provide specific actions for the grant recipient to correct~~ deficiencies and corrective steps necessary for the grant recipient to demonstrate~~during the suspension and address~~ compliance with the grant requirements.

~~(c)~~ ~~3.~~ The grant recipient shall provide a corrective action plan to correct deficiencies during the suspension.

~~(d)~~ The grant recipient shall provide ~~progress~~ reports as indicated in the suspension notice to the administrator.

~~(e)~~ ~~4.~~ The administrator shall monitor the grant recipient's progress in correcting the deficiencies and shall provide a report to the commission of the grant recipient's progress.

~~(f)~~ ~~5.~~ The commission shall review the grant recipient's progress as soon as practicable, but not more than 120~~ninety (90)~~ days, after the sending of the report by the administrator to determine whether to:

1. ~~{a.}~~ Continue the suspension with instructions to the grant recipient concerning correction of the deficiencies;
2. ~~{b.}~~ End the suspension and resume the grant funding because the grant recipient has:
 - a. ~~{(i)}~~ Sufficiently corrected the deficiencies; or
 - b. ~~{(ii)}~~ Put into place satisfactory steps to achieve compliance within a reasonable time; or
3. ~~{c.}~~ Revoke the grant recipient's funding for that fiscal year.

Section 5. Termination of Grant Program.

- (1) The commission shall terminate project funding for the following reasons:
 - (a) The application was made under false pretenses or information;
 - (b) The applicant is mishandling grant funds;
 - (c) The applicant is noncompliant with award conditions;
 - (d) The applicant fails to comply with reporting requirements; or
 - (e) The applicant is unable to carry out the project as described in the application.
- (2) If the commission decides to revoke funding:
 - (a) The administrator shall notify the grant recipient and board in writing within five (5) business days specifying the reason for the revocation and giving the grant recipient a reasonable time to close out the grant or seek funding from other sources.
 - (b) Additional funds shall not be dispersed to the grant recipient for that fiscal year; and
 - (c) The commission may require the return of unexpended grant monies.

Section 6. Review Request.

- (1) A grantee may request a review of the finding to suspend or revoke grant funding by filing a request in writing with the grant administrator no later than five (5) business days after receipt of the finding.
 - (a) A request for review shall be limited to consideration of information only if it appears that a material fact was overlooked or misinterpreted.
 - (b) A grant recipient shall not request review for any other matter.
 - (c) Requests for review shall be submitted to Department of Corrections, Attn: State Corrections Commission Grant Administrator, P.O. Box 2400, Frankfort, Kentucky 40602-2400.
- (2) The chair of the commission or designee shall review the request and issue a written decision within thirty (30) days. The decision shall be final.

Section 7. End of Grant Close Out.

- (1) Once the grant period expires or a project is terminated, the grantee shall submit a final fiscal report and programmatic report detailing activity for the entire grant period. The administrator shall provide the grantee a due date for the final reports for the grant period. The due date shall not surpass thirty (30) days after the grant period expiration or termination of funds.
- (2) The project shall remain subject to an audit of the grant expenditures for that fiscal year.
- (3) The commission may require the return of unexpended grant monies.
 - (a) If the grant recipient is instructed to return unexpended grant funds, the grant recipient shall provide a check made payable to the Kentucky State Treasurer as soon as practicable, but no later than thirty (30) days after receipt of the notice.
 - (b) If the grant recipient does not return funds as requested, the grantee may be subject to the following actions:
 1. Withholding of future awards for the project, program, or board; or
 2. Other actions that may be legally available, including civil remedies.

~~[(b)] [Revocation. If the commission decides to revoke funding:]~~

~~[1.]~~

~~[a.] [The administrator shall provide written notice to the grant recipient and board within seven (7) days; and]~~

~~[b.] [Additional funds shall not be dispersed to the grant recipient for that fiscal year; and]~~

~~[2.] [The commission may require the return of unexpended grant monies.]~~

~~[(4)] [If the grant recipient is instructed to return the unexpended funds, the grant recipient shall provide a check made payable to the Kentucky State Treasurer as soon as practicable, but not later than thirty (30) days, after receipt of the notice.]~~

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on August 25, 2022 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

KERRY HARVEY, Cabinet Secretary and Commission Chairperson

APPROVED BY AGENCY: September 14, 2022

FILED WITH LRC: September 15, 2022 at 11:45 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 30, 2022 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, 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 was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 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: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation provides for review of the community corrections programs and grant awards for compliance with KRS 196.710.

(b) The necessity of this administrative regulation:

is: This administrative regulation is needed to establish the review process for grants and compliance with the statutes for board actions.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the Secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

It complies with the requirement to have administrative regulations and establishes the review process for grants and board statutory requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment adds a section for program and fiscal reports. It adds options for an administrator when a program or facility is not in compliance. It also adds requirements for notification of suspension and a correction plan. It also adds a section for termination of a grant program.

(b) The necessity of the amendment to this administrative regulation:

It provides detailed instructions for the review process to ensure compliance with the statutes and administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes:

The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How the amendment will assist in the effective administration of the statutes:

It makes the review process clearer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This affects approximately thirty or more governments or organizations applying for or awarded grants by the commission, the Justice and Public Safety Cabinet, and the Department of Corrections (DOC).

(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:

The boards and grantees will have to follow the meeting and reporting requirements. The DOC administrator assigned to the commission spends approximately forty hours to review program and fiscal aspects of submitted quarterly reports to ensure grantees are in compliance. The DOC administrator also notifies grantees of non-compliance issues and compiles and presents grantee program and fiscal reports to the commission.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The cost to an applicant to meet reporting requirements depends on the amount of time dedicated by the applicant. Applicant time spent collecting required documentation is unpredictable. DOC administrative staff for the commission dedicates approximately eighty hours to inspection of program and fiscal aspects of submitted quarterly reports to ensure grantees are in compliance. Further time is spent seeking corrections and additional information from grantees if reporting is not sufficient (approximately twenty hours). In total, the administrator dedicates approximately 50% of the administrator's time toward the compliance of this regulation over the course of the fiscal year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Grant awards will be more transparent. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Approximately two grantee staff dedicate eighty hours per quarter in providing oversight for grantee compliance and report compliance. This results in costs of approximately \$5,000.00. Annual audit costs by a certified public accountant are approximately \$15,400.00 and is paid from part of the allocation by the General Assembly. The majority of grantee reporting time is focused on audit requirements and gathering financial and programmatic records to compile reports. If non-compliance issues occur, the corresponding time to correct may arise over the course of two weeks resulting in a possible cost of approximately \$2,500.00. The DOC administrator for the commission dedicates approximately 100 hours toward the compliance of this regulation resulting in cost of \$3,125.00. The DOC administrator costs listed in question (4)(b) are expected to continue.

(b) On a continuing basis:

Annual training of grantees is anticipated. The DOC administrator for the commission arranges the meeting, communicates with attending grantees, and compiles handouts. Annual salary costs are incurred by the Department as a staff member administers the program. An estimated cost for grantee time and travel is included in grant funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Funds allocated by the legislature to the commission.

(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:

An increase in fees or funding is not anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

Fees are not established or increased in this administrative regulation.

(9) TIERING: Is tiering applied?

No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE

(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 impacts approximately thirty or more governments or organizations applying for or awarded grants by the commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 15A.160, 196.035, 196.710

(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.

(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?

Revenue is not anticipated.

(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?

Revenue is not anticipated.

(c) How much will it cost to administer this program for the first year?

\$643,500 is anticipated for grant funds for FY23. In addition, there are salary costs incurred by the Department as a staff member administers the program.

(d) How much will it cost to administer this program for subsequent years?

Grant funds may be increased by the General Assembly. Annual salary costs are incurred by the Department as a staff member administers the program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

Receiving grant funds from the community corrections grant program may provide cost savings to regulated entities by funding services, which provide an alternative to incarceration decreasing costs associated with incarceration and increasing program completion rates. Examples of services may include substance abuse treatment, mental health treatment, housing assistance, transportation services, hygiene, and health prevention efforts. Provision of grant funds allows agencies to maximize other funding sources to enhance overall services provided, such as

program capacity or provision of additional services. Expanded programming/services for participants reduces costs associated with unsuccessful program participation, often necessitating repeat program participation. Further, provision of services reduces medical/social service needs that communities incur (such as continued substance use, homelessness, medical treatment, etc.). Overall, estimated cost savings is indeterminable.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Receiving grant funds from the community corrections grant program may provide cost savings to regulated entities by funding services which provides the same preventative cost avoidance in subsequent years.

(c) How much will it cost the regulated entities for the first year?

There is no cost incurred for regulated entities under this regulation.

(d) How much will it cost the regulated entities for subsequent years?

There is no cost incurred for regulated entities under this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation is not expected to have a major economic impact.