



COAC Remedial Action Procedures

According to Section F.12 of the Colorado Opioids Settlement Memorandum of Understanding (MOU), the Colorado Opioid Abatement Council (COAC) may take remedial action against a Region that is misusing Opioid Funds. Specific remedial action is left to the discretion of the COAC, but it may include withholding future funds or requiring reimbursement of misused funds.

Regions shall have the opportunity to challenge any remedial action taken by the COAC, and the COAC shall publish procedures to allow for an alleged offending Region to make such a challenge. The COAC shall publish these procedures by July 29, 2022.

Below are the Administrative Committee's recommended procedures for the COAC to take remedial action against an alleged offending Region and for Regions to challenge such a determination by the COAC.

I. Definitions

- 1) Unless otherwise defined here, all Definitions in the MOU are hereby incorporated into these Proposed Procedures.
- 2) The "Colorado Opioid Abatement Council" or "COAC" is the "General Abatement Fund Council," or any committee or subcommittee thereof, as described in Section C of the MOU.
- 3) The "Final Remedial Order" shall have the same meaning as described in Section VI.6.a below.
- 4) The "First Notice of Remedial Action" shall have the same meaning as described in Section IV.1 below.
- 5) The "MOU" is the Colorado Opioids Settlement Memorandum of Understanding executed by Attorney General Philip J. Weiser on behalf of the State of Colorado on August 26, 2021 and first entered by the Denver District Court in *State of Colorado v. McKesson Corporation, et al.*, Case No. 2022CV30867, Final Consent Judgment and Dismissal with Prejudice (Mar. 31, 2022).
- 6) The "Notice of Appeal" shall have the same meaning as described in Section VI.2 below.
- 7) The "Notice of Remedial Challenge" shall have the same meaning as described in Section V.1 below.

- 8) The “Notice of Remedial Determination” shall have the same meaning as described in Section V.7.b below.
- 9) The “Order of Remedial Action” shall have the same meaning as described in Section V.1.b below.
- 10) “Region” shall have the same meaning as described in Section F of the MOU.
- 11) A “Region’s Fiscal Agent” shall have the same meaning as described in Section F.5 of the MOU.
- 12) “Regional Share” shall have the same meaning as described in Section B.2 of the MOU.
- 13) The “Remedial Appeal” shall have the same meaning as described in Section VI.3 below.
- 14) The “Remedial Challenge” shall have the same meaning as described in Section V.2.a below.
- 15) The “Remedial Challenge Hearing” shall have the same meaning as described in Section V.3 below.
- 16) The “Second Notice of Remedial Action” shall have the same meaning as described in Section IV.5 below.

II. Standard

- 1) The COAC may take remedial action against a Region that engages in the following conduct:
 - a. A Region’s expenditure(s) from the Regional Share did not comply the Region’s 2-year plan, or if amended, with such amendments to the Region’s 2-year plan;
 - b. A Region’s expenditure(s) from the Regional Share were not used for Approved Purposes;
 - c. A Region’s expenditure(s) from the Regional Share did not comply with the terms of the MOU or of any Settlement; or
 - d. A Region otherwise misused its allocation from the Regional Share.

- 2) If the COAC has cause to believe a Region is or was engaged in conduct warranting remedial action under Section II.1, the COAC may conduct a reasonable investigation of the alleged conduct, including by:
 - a. Making reasonable requests for documents or other information to the alleged offending Regional Council and/or other persons or entities with relevant information; and
 - b. Conducting reasonable interviews of members from the alleged offending Regional Council and/or other individuals with relevant information.
- 3) If the COAC determines it more likely than not that an alleged offending Region engaged in conduct warranting remedial action under Section II.1, the COAC may take such remedial action as it determines is appropriate under the circumstances.
- 4) Unless otherwise required by these Due Process Procedures, the COAC, in its sole discretion and in accordance with the MOU, may delegate some or all of its responsibilities in these Due Process Procedures to a committee of COAC members and may request any administrative or other support from any governmental entity(ies) represented by one or more COAC members.

III. Remedial Action

- 1) The COAC in its sole discretion may take remedial action against an alleged offending Region and determine what remedial action is appropriate. When deciding whether remedial action is warranted and what remedial action is appropriate, the COAC may consider several factors, including but not limited to:
 - i. The amount of Opioid Funds at issue;
 - ii. The nature of the alleged offense;
 - iii. Any prior offenses by the alleged offending Region;
 - iv. The circumstances surrounding the alleged offense; or
 - v. The alleged offending Region's cooperation with the COAC's investigation of the alleged offending conduct.
- 2) The nature of remedial action taken by the COAC against an alleged offending Region is left to the sole discretion of the COAC and may include,

but not be limited to, withholding Opioid Funds owed to the Region or requiring the offending Region to reimburse improperly expended Opioid Funds.

IV. Notice of Remedial Action and Opportunity to Cure

- 1) If the COAC believes remedial action is warranted in accordance with Sections II and III above, and unless immediate action is required by the COAC to prevent violations of any Settlement or to protect the health and welfare of the public, the COAC shall provide the alleged offending Region notice of the alleged offending conduct. This notice shall be called the “First Notice of Remedial Action.”
 - a. The First Notice of Remedial Action shall, at a minimum, include in reasonable detail the following information:
 - i. A description of the conduct underlying the allegation(s);
 - ii. A reasonably detailed description of the basis for the COAC’s determination;
 - iii. When appropriate, the names or other identifying information of any persons or entities with information relevant to the conduct at issue;
 - iv. A good faith estimate of the amount of Opioid Funds at issue; and
 - v. The nature of the remedial action that could be imposed by the COAC and an advisement that any remedial action must be approved by two-thirds supermajority of the COAC as a whole.
 - b. The COAC’s submission of the First Notice of Remedial Action to the alleged offending Region’s Fiscal Agent and at least one other Participating Local Government in the Region shall be sufficient for providing notice to all Participating Local Governments in the Region.
- 2) Unless immediate action is required by the COAC to prevent violations of any Settlement or to protect the health and welfare of the public, the COAC shall give the alleged offending Region no less than 14 days to respond in writing to the First Notice of Remedial Action.
- 3) If the COAC determines it appropriate, the COAC may give the alleged offending Region an opportunity to cure the alleged offending conduct.

- 4) After the alleged offending Region is provided the First Notice of Remedial Action, and is provided an opportunity to respond and, if applicable, cure, the COAC shall consider the matter in a public meeting and vote on whether remedial action in accordance with Sections II and III above is warranted. If the COAC determines that no remedial action is warranted, then the COAC shall inform the alleged offending Region in writing and the matter will be closed.
 - a. The COAC's decision to take remedial action shall be approved by a two-thirds supermajority of the COAC as a whole.

- 5) Unless immediate action is required to prevent violations of any Settlements or to protect the health and welfare of the public, at least 14 days prior to implementing remedial action under Section IV.4 above, the COAC shall provide the alleged offending Region notice of the specific remedial action to be taken. If immediate action is required as determined by the COAC, this notice may be provided by the COAC at any time prior to the implementation of the remedial action. This notice shall be called "Second Notice of Remedial Action."
 - a. The Second Notice of Remedial Action shall, at a minimum, include the following information:
 - i. A reasonably detailed description of the conduct warranting remedial action;
 - ii. A reasonably detailed description of the basis for the COAC's determination;
 - iii. A description and/or citation to any documents or other evidence material to the COAC's determination;
 - iv. When appropriate, the names or other identifying information of any persons and/or entities with information material to the COAC's determination;
 - v. The amount of Opioid Funds at issue; and
 - vi. A sufficiently detailed description of the COAC's remedial action such that the alleged offending Region can be reasonably expected to comply with the proposed remedial action.

- 6) The COAC shall submit the Second Notice of Remedial Action to all Participating Local Governments in the alleged offending Region, including to the alleged offending Region's Fiscal Agent.

V. Challenging the COAC's Remedial Action

- 1) Within 14 days of receiving the Second Notice of Remedial Action, the alleged offending Region may submit notice to the COAC of its intent to challenge the COAC's determination. This notice shall be called "Notice of Remedial Challenge."
 - a. An alleged offending Region's Notice of Remedial Challenge shall include a summary of the basis for the Region's challenge and identify the Region's desired relief and may include a request for Remedial Challenge Hearing in accordance with Section V.3 below.
 - i. An alleged offending Region's Notice of Challenge may only seek modification or withdrawal of the remedial action proposed in the COAC's Second Notice of Remedial Action. No other relief, including any monetary relief, may be sought by an alleged offending Region's challenge.
 - b. If no Notice of Remedial Challenge is submitted, the COAC may convert its Second Notice of Remedial Action into an "Order of Remedial Action."
 - i. Unless otherwise directed by the COAC, the Second Notice of Remedial Action shall be converted to the Order of Remedial Action without a vote of the COAC needed, and a copy of the Order of Remedial Action shall be submitted to all Participating Local Governments in the alleged offending Region, including to the alleged offending Region's Fiscal Agent.
 - ii. The Order of Remedial Action is a final non-appealable order from which an alleged offending Region may not seek any judicial or other relief.
- 2) Within 35 days of submitting its Notice of Remedial Challenge, an alleged offending Region shall submit a written challenge to the COAC describing the basis for the alleged offending Region's challenge, detailing any evidence supporting the alleged offending Region's challenge, and identifying the desired relief sought by the alleged offending Region in accordance with Section V.1.a.i above.

- a. This written challenge shall be called the “Remedial Challenge” and shall not exceed 21 double-spaced typed pages, including any attachments.
- 3) An alleged offending Region may request a hearing before the COAC. This hearing shall be called “Remedial Challenge Hearing.”
 - a. An alleged offending Region’s request for a Remedial Challenge Hearing shall be included in its Notice of Remedial Challenge.
 - b. A Remedial Challenge Hearing, if requested, shall be conducted no later than 120 days after the COAC’s receipt of an alleged offending Region’s Remedial Challenge.
- 4) A Remedial Challenge Hearing shall be conducted before the COAC as a whole unless the alleged offending Region requests the hearing be conducted before a third-party hearing officer.
 - a. An alleged offending Region’s request for a third-party hearing officer shall be included in the Region’s Notice of Remedial Challenge. If no request is included in the Notice, then the hearing shall be conducted by the COAC as a whole.
 - b. If an alleged offending Region requests that its Remedial Challenge Hearing be conducted before a third-party hearing officer, the COAC shall grant such a request, however, the COAC shall have sole discretion to appoint the third-party hearing officer.
 - c. No more than 21 days after the COAC appoints a third-party hearing officer, the alleged offending Region shall enter into a contract with the third-party hearing officer for its services.
 - i. The contract shall state unequivocally that the third-party hearing officer will at all times act independent from the alleged offending Region.
 - ii. The contract shall also state unequivocally that all costs associated with services provided by the third-party hearing officer shall be paid by the alleged offending Region.
 1. Costs associated with a third-party hearing officer’s services may not be paid from any Opioid Funds.

- iii. The alleged offending Region shall submit the contract with the third-party hearing officer to the COAC within 5 days of its execution.
 - d. Failure to comply with the terms of this Section V.4.b shall result in an immediate denial of the alleged offending Region's challenge under this Section V, which shall be a final non-appealable order from which the alleged offending Region may not seek any judicial or other relief.
 - e. For purposes of the Remedial Challenge Hearing, a third-party hearing officer shall stand in the stead of the COAC. If a third-party hearing officer is appointed in accordance with this Section V.4, all terms in Sections V.3-7 shall apply to the third-party hearing officer as if it were the COAC.
- 5) The Remedial Challenge Hearing shall take no more than 6 hours over the course of no more than two consecutive or non-consecutive business days.
- 6) At its Remedial Challenge Hearing, the alleged offending Region may present documents, witnesses, or other information relevant to the COAC's Second Notice of Remedial Action.
 - a. The 6-hour time limit for the Remedial Challenge Hearing may be extended by the COAC.
 - b. Witnesses, documents, or other information intended to be presented by the alleged offending Region at the Remedial Challenge Hearing shall be submitted to the COAC no less than 30 days prior to commencement of the hearing. The COAC may, at its discretion, refuse to hear from any witnesses or consider any documents or other information not submitted within this timeline.
 - c. Members of the COAC may ask questions of the alleged offending Region or any other persons or entities about any documents or other information relevant to the Remedial Challenge Hearing and may examine witnesses presented by the alleged offending Region. The COAC may request additional documentation and witnesses as needed to further understand the information presented by the alleged offending Region. Such inquiries by the COAC shall be included within the timeframe detailed in this Section V.6.
- 7) The COAC shall consider the information presented in the alleged offending Region's Remedial Challenge and at the Remedial Challenge Hearing, if one was conducted, and within 60 days of the hearing's conclusion, or within 40

days of receiving a Remedial Challenge without a request for hearing, shall make a determination on the alleged offending Region's challenge.

- a. The COAC may make the following determinations on an alleged offending Region's Remedial Challenge:
 - i. Withdraw all or part of the Second Notice of Remedial Action;
 - ii. Modify all or part of the Second Notice of Remedial Action;
 - iii. Leave all or part of the Second Notice of Remedial Action intact; and/or
- b. If the COAC finds that the offending Region's request for a Remedial Challenge or Remedial Challenge Hearing and/or its conduct during the challenge process outlined in this Section V were an abuse of these Due Process Procedures, the COAC may take additional remedial action as it deems appropriate in its sole discretion.
 - i. Additional remedial action taken under this Section V.7.b is not subject to challenge or appeal by the alleged offending Region.
- c. The COAC shall make a determination under Section V.7.a above by a simple majority vote of the COAC as a whole. The COAC shall make a determination under Section V.7.b by a two-thirds supermajority of the COAC as a whole.
- d. The COAC's determination under Section V.7 shall be called the "Notice of Remedial Determination" and shall, when taking any remedial action, include, at a minimum, the following information:
 - i. A reasonably detailed description of the conduct warranting remedial action;
 - ii. A reasonably detailed description of the basis for the COAC's determination;
 - iii. Citations to all documents or other evidence material to the COAC's determination;
 - iv. When appropriate, the names and other identifying information of any persons and/or entities with information material to the COAC's determination;

- v. The amount of Opioid Funds at issue; and
 - vi. A sufficiently detailed description of the COAC's proposed remedial action such that the alleged offending Region can be reasonably expected to comply with the proposed remedial action.
- e. Upon issuance of the Notice of Remedial Determination, the documents, witness testimony, and other information forming the basis for the COAC's determination, including the First and Second Notices of Remedial Action, the Remedial Challenge and all information presented at the Remedial Challenge Hearing, shall be deemed a closed and final record.
 - f. The COAC shall submit the Notice of Remedial Determination to all of the Participating Local Governments in the alleged offending Region, including to the alleged offending Region's Fiscal Agent.

VI. Appealing the COAC's Notice of Remedial Determination

- 1) After the COAC issues its Notice of Remedial Determination, the alleged offending Region shall have one opportunity to appeal.
- 2) Within 14 days of the COAC issuing the Notice of Remedial Determination, an alleged offending Region shall submit to the COAC notice, if any, of its intent to appeal. This shall be called the "Notice of Appeal."
 - a. If no Notice of Appeal is submitted, the COAC may convert its Notice of Remedial Determination into an Order of Remedial Action in accordance with Section V.1.b above.
- 3) Within 45 days of submitting its Notice of Appeal, an alleged offending Region shall submit a written appeal to the COAC. This shall be called the "Remedial Appeal."
 - a. An alleged offending Region's Remedial Appeal shall not exceed 15 double-spaced typed pages, including any attachments.
 - b. The record underlying the Notice of Remedial Determination is a closed and final record. As such, an alleged offending Region's Remedial Appeal shall only relate to the information provided in the COAC's First or Second Notice of Remedial Action, in the alleged offending Region's Remedial Challenge, or at the alleged

offending Region's Remedial Challenge Hearing. Information in an alleged offending Region's Remedial Appeal that is not included in the record shall not be considered by the COAC.

- 4) The COAC, at its sole discretion, may request a hearing related to an alleged offending Region's appeal, and may set reasonable parameters for such a hearing.
- 5) The COAC is the only body that shall consider an alleged offending Region's appeal.
- 6) Within 30 days of receiving an alleged offending Region's Remedial Appeal, or from the conclusion of an alleged offending Region's hearing, the COAC shall issue its determination on the alleged offending Region's appeal.
 - a. This determination shall be called the "Final Remedial Order" and shall include, at a minimum, the following information:
 - i. A reasonably detailed description of the conduct warranting remedial action;
 - ii. A reasonably detailed description of the basis for the COAC's determination;
 - iii. Citation to all documents or other information material to the COAC's determination;
 - iv. When appropriate, the names and other identifying information of individuals and/or entities with information material to the COAC's determination;
 - v. The amount of Opioid Funds at issue; and
 - vi. A sufficiently detailed description of the COAC's proposed remedial action such that the alleged offending Region can be reasonably expected to comply with the proposed remedial action.
 - b. If the COAC determines by a simple majority vote of the COAC as a whole that the remedial action and/or the basis for such remedial action in the Notice of Remedial Determination was unreasonable under the circumstances, the COAC shall modify or withdraw, in whole in or part, the Notice of Remedial Determination.

- 7) The COAC's Final Remedial Order is a final non-appealable order, from which an alleged offending Region may not seek any judicial or other relief.
- 8) The COAC shall submit the Final Remedial Order to all Participating Local Governments in the alleged offending Region, including to the alleged offending Region's Fiscal Agent.

VII. Miscellaneous

- 1) Any reference to dates shall be calendar dates.
- 2) Any notice required by these Due Process Procedures shall be deemed to have been effectively delivered or given and received on the date personally delivered to the respective party to whom it is directed, or when e-mailed to an address or addresses set forth by the COAC and regions