

MCLENNAN COUNTY
MENTAL HEALTH
MANAGED ASSIGNED COUNSEL PROGRAM
PLAN OF OPERATION

The McLennan County Mental Health Managed Assigned Counsel (MHMAC) Program is an initiative of McLennan County. On November 2, 2020, McLennan County contracted with Kaytee McMullan to provide legal representation for the mentally ill indigent of McLennan County charged with a felony or Class B or above misdemeanor (excluding Capital Murder). The MHMAC Program provides an attorney to any adult that is certified as indigent by McLennan County and the individual has been identified as a person suffering from mental illness or mental defect. Additionally, persons specified with clinically diagnosed as bipolar, schizophrenic, schizoeffective or suffering from major depression, will also be assigned a caseworker to provide assistance to the assigned attorney.

On November 2, 2020, the MHMAC Program will begin providing services as specified in the contract between McLennan County and Kaytee McMullan. Funding for the MHMAC Program is from a combination of grant money from the Texas Indigent Defense Commission and McLennan County with the county contribution increasing incrementally each year.

Program Budget (October 1, 2020 – September 30, 2021)

| | | |
|-------------------------|-----------|-----------|
| Contract Services | \$221,050 | |
| Salaries/Benefits/Taxes | | \$189,000 |
| Travel and Training | | \$21,000 |
| Contract Services | | \$1,200 |
| Equipment | | \$3,600 |
| Supplies | | \$6,250 |
| Total | | \$221,050 |

Job descriptions

The MHMAC Program will begin with the positions:

- Program Administrator/Attorney
- Case Manager
- Future Positions: Case Manager and Administrative Support

Program Administrator: The Program Administrator is responsible for the day-to-day management of the MHMAC Program. Primary duties are:

1. Supervise MHMAC Program staff
2. Develop and implement the annual budget
3. Fulfill TIDC reporting requirements
4. Manage assignment and/or removal of attorneys to cases as appropriate, including appeals

5. Assign case managers to the attorneys and clients referred to the MHMAC Program
6. Monitor the job performance of all attorneys on the MHMAC Attorney Panel
7. Present and/or coordinate a minimum of six hours of approved MCLE hours for attorneys on the Mental Health Panel annually.
8. Act as liaison with the state hospitals and other facilities handling defendants, who are incompetent.
9. Coordinate with the District and County Courts to expedite handling of MH cases.
10. Assist panel attorneys with coordination of services, and other services as may be required.
11. Coordinate with the Jail administration to expedite identification and assignment of counsel to designated inmates.
12. Ensure that the appropriate notices are sent to the attorney assigned to the case.
13. Handle requests for information from attorneys and court personnel.

Case Manager: Primary duties are (projected to be added in first quarter of operation):

1. Assist the assigned attorney by providing timely and accurate advice about appropriate options regarding the defendant's care
2. Communicate and work with client's community MH providers
3. Determine availability of social services, placement options, and the defendant's eligibility for these social services and placement options, make referrals as indicated.
4. Perform other duties as assigned by Program Administrator.
5. Assist with transition to probation where appropriate.

Maximum allowable caseload for each attorney on the Attorney Panel is:

The MHMAC Program is a form of a Contract Defender Program subject to the rules adopted by the Texas Indigent Defense Commission and ratified by the Texas Judicial Council, which became effective in 2007. In those rules, the following caseload standards, originally developed by the National Advisory Commission on Criminal Justice Standards and Goals in 1973, are set forth as follows:

| TYPE OF CASE: | MAXIMUM CASELOAD |
|-------------------|------------------|
| Felonies | 150 |
| Misdemeanors | 400 |
| Juvenile | 200 |
| Mental Health Act | 200 |
| Appeals | 25 |

These caseload standards are for all appointed cases, not just those cases that would fall under the MHMAC program. The appointments made under the MHMAC program would fall within those standards utilized by the Office of Indigent Defense. In other words, if an attorney receives 400 misdemeanor appointments by the OID, he would not be allowed additional misdemeanor appointments under the MHMAC program. The attorney's appointments under the MHMAC program would count towards the OID 400 cases appointment limit.

However, within the MHMAC itself, the program anticipates appointment of counsel in approximately 500 cases per year. Approximately 225 persons per month are matched in the TLETS CCQ system when they are booked into the McLennan County Jail. The TLETS CCQ system is the first mechanism used to identify defendants with mental illnesses as it shows whether a defendant has received mental health services through the state or local mental health agencies in the past. After the case is flagged or identified by CCQ or referral appointments are made to those determined to be indigent. The MHMAC Program intends to have at least 10 attorneys on its appointment list. Thus, the 10 attorneys would receive 50 appointments apiece annually, with the breakdown between misdemeanors and felonies dependent on what types of cases for which the attorney is qualified.

However, one of the purposes of a managed assigned counsel program is to assign cases according to the caseload that the attorney can handle and still provide competent, effective representation to his client. Thus, the MHMAC program requires the appointed attorney to notify the MHMAC Managing Attorney if he cannot handle any new appointments in the event the lawyer believes his workload (both appointed and retained cases of all types) is such that he is unable to meet the basic ethical obligations required of him in the representation of a client. In the event that the attorney believes he needs to withdraw from representation in any currently pending cases, the attorney must notify the MHMAC Managing Attorney of his intention to request withdrawal before filing any motion to withdraw with the appropriate court. If the attorney is allowed to withdraw, the subsequent appointment will be made through the MHMAC Program. If the attorney is not allowed to withdraw, he must obey the court's order while taking all steps reasonably feasible to insure that his client receives competent and diligent representation, and the MHMAC Program will provide the lawyer with whatever additional resources can be made available to assist the lawyer in continuing to represent the client(s) in a manner consistent with the Texas Disciplinary Rules of Professional Conduct. The MHMAC Program will not assign any new cases to the attorney, until such time that the attorney's caseload allows for new case appointments

Training for MHMAC Program personnel and Attorney Panel attorneys

The Program Attorney Director will attend the Indigent Defense Symposium presented by the Texas Indigent Defense Commission on indigent defense and obtain a minimum of twenty hours per year of Mandatory Continuing Legal Education.

A minimum number of MCLE hours are required for the panel attorneys. All attorneys on the Attorney Panel must have at least twelve hours of criminal defense-related courses each year as well as attend six of MCLE provided through the MHMAC Program.

The Case manager will be given the opportunity to attend as many mental health seminars as their schedule and the budget allows, with a target of at least one seminar per year for each worker. The Program Attorney Director will work with the Case manager to determine appropriate seminars and educational opportunities. To the extent these staff members are

licensed, they are required to maintain their license, which necessarily requires minimum, state-mandated training. Additionally, these staff members will be instructed on the office procedures and policies.

The MHMAC Program will identify and provide the information on continuing legal education to the attorneys placed on the MHMAC appointment list. The six hours will focus on dealing with criminal cases and mental health issues. This training is in addition to the CLE requirements in place for placement on the appointment lists in McLennan County under the Fair Defense Act.

Licensed investigators and expert witnesses used by attorneys assigned by the program

The attorneys that have a valid need for an investigator or expert witness shall make a written request to the Program Administrator; e-mail requests are acceptable. The Program Administrator will assist in locating investigator or expert as needed. The attorney is responsible for overseeing the investigator and expert witness activities.

Policy to ensure assignments are reasonably and impartially allocated among qualified Attorneys

The assignment system is based on the attorney's qualifications to be on the list for particular offenses and levels of offenses. Each attorney is required to submit an application specifying general and detailed information used by the Program Administrator to determine the attorney's qualifications to represent mentally-ill indigent defendants. The Program Administrator assigns all cases to panel attorneys.

Although the Program Administrator strives to assign the best-qualified attorney to each case, several rules are used when making assignments. First, any current attorney-of-record on the panel will be assigned. Second, the same attorney will be assigned if the defendant has had a positive attorney-client relationship in recent past with that attorney. A positive attorney-client relationship is assumed until otherwise informed. Judges at arraignment try to determine if there was a positive attorney-client relationship. The attorneys are encouraged to notify the Program Administrator as soon as possible if they believe a positive relationship does not exist. Third, attorneys are encouraged to notify the Program Administrator if there is a communication problem that merits removal of the assigned attorney and assignment of another attorney. Finally, the Program Administrator continuously monitors the caseloads of each attorney, ensuring reasonable and impartial allocation of the cases.

The panel attorneys shall comply with the Texas Disciplinary Rules of Professional Conduct and contact the Program Administrator with any issues or concerns.

Policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for that attorney that has not been waived by all affected clients.

Where co-defendants both qualify for appointment of counsel from the MHMAC program, the MHMAC program will appoint a separate attorney to each defendant. Co-Defendants shall not be represented by appointed attorneys, who are in the same law firm. No waiver of conflict from the co-defendants is acceptable.

The MHMAC program will coordinate with the Appointment Designee for Indigent Defense to ensure that attorneys with a conflict of interest are not appointed to represent co-defendants of a MHMAC defendant. MHMAC Program attorneys shall comply with the Texas Disciplinary Rules of Professional Conduct.

Description of anticipated overhead costs

The initial overhead costs of the MH include establishing office space in the courthouse, equipment, furniture, office technology, and startup office supplies. Reoccurring costs will include; office supplies, client management software subscription, salaries and seminar costs, including travel.