

**LOUISIANA
MENTAL HEALTH
ADVOCACY
SERVICE &
CHILD ADVOCACY
PROGRAM**

Budget Request Hearings

House Appropriations
Committee

Fiscal Year 2017-2018



submitted by:

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Mental Health Advocacy Service Budget Request Hearings FY 2017 - 2018

Notice was received from the House Committee on Appropriations of its intent to begin budget hearings relative to the FY 2016-17 budget and FY 2017-18 budget request beginning December 6, 2016.

Below is a description of the Mental Health Advocacy Service and its two activities, Mental Health Advocacy and the Child Advocacy Program, followed by responses to the committee's questions.

PROGRAM DESCRIPTION

MHAS is a statewide service established to provide legal counsel and representation to mentally disabled persons and to ensure that their legal rights are protected, *L.R.S. 28:2(14)*. MHAS handles virtually every civil commitment proceeding in Louisiana and provides legal representation on matters pertaining to legal competency and patient rights. The service furnishes legal representation during the initial stages of confinement and after commitment has occurred. MHAS also provides legal representation for children at risk of placement in mental institutions and children whose competency has been raised. Finally, MHAS, through the Child Advocacy Program (CAP), represents children in abuse and neglect proceedings in fourteen parishes (4,378 children served in FY16).

MENTAL HEALTH ADVOCACY

Civil commitment involves a "massive deprivation of liberty", *Humphrey v. Cady*, 405 U.S. 504, 509 (1972), which requires compliance with the mandates of due process. The right to counsel in commitment proceedings is guaranteed by Louisiana law, *L.R.S. 28:50 et seq.*, and by a federal court order, *Brad G., et al. v. Treen*, C.A. #81-1094 (E.D. La.), which require that legal counsel be provided during the initial stages of confinement of persons involuntarily confined for mental illness and substance abuse, at the commitment hearing, and after commitment has occurred. Louisiana laws requires MHAS to provide counsel to all patients requesting such service who are admitted by voluntary or involuntary admission, commitment, legal competency, change of status, transfer and discharge, *L.R.S. 25:64(A)(2)*. Persons admitted to treatment facilities, whether involuntarily, *L.R.S. 28:53(I) & 55(H)*, or voluntarily, *L.R.S. 25:52(F)*, shall be informed of the procedures for requesting release, the availability of counsel, information about MHAS, and the right to have counsel provided by MHAS, *L.R.S. 25:171 (K)*. Persons being civilly committed have a right to counsel, including a right to have counsel appointed to them by MHAS, *L.R.S. 25:54(C)*.

MHAS counsel must respond promptly to telephone calls from treatment facilities, visit patients confined in treatment facilities in the parish where the office is located and surrounding parishes, file petitions for probable cause and habeas corpus proceedings, represent patients in commitment proceedings, after commitment has occurred, and at periodic review hearings. MHAS counsel also provide training, address "systems" issues, represent respondents in interdiction cases and represent children being committed or at risk of institutionalization for mental health reasons or whose competency is at issue.

The number of civil commitment cases litigated by MHAS has increased from 1,106 in FY06 to 1,896 in FY16, an increase of nearly 800 cases in the past ten years. This is largely attributable to the movement of persons with mental illness out of costly institutional care into community based treatment. Unfortunately, there is a shortage of community based services available for the discharged patients, who as a result are more likely to be committed to a mental hospital again. This recidivism results in more court proceedings.

CHILD ADVOCACY PROGRAM

The Child Advocacy Program (CAP), an activity of MHAS, was established to provide for an effective and efficient system of providing qualified legal representation for children in abuse and neglect cases, *Ch. C. Art. 557 et seq.*

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In abuse and neglect proceedings the court must appoint qualified, independent counsel for the child, *Ch. C. Art. 607*. CAP attorneys are required to comply with the provisions of the Louisiana Supreme Court rules, which include child attorney standards. *Ch. C. Art. 560*. Attorneys visit the children before court, attend Family Team Meetings and other meetings impacting the child, receive ongoing training on child development, child abuse and other issues, file motions, and represent the child in numerous court proceedings.

The caseload standard for attorneys representing children in abuse and neglect proceedings is 100 cases per attorney.¹ A number of CAP attorneys are exceeding that caseload standard. Excessive caseloads mean that attorneys will be unable to perform the basic requirements for effective legal representation, which may be constitutionally required.²

RESPONSE TO COMMITTEE'S QUESTIONS

1. During the 2016 sessions, what did the department testify would be the effects of the FY 17 budget on services, staffing, and contracts?

At the time MHAS testified before the House Appropriations General Government Subcommittee on March 30, 2016, the proposed FY17 budget reduction stood at 30% of State General Fund. If those reductions came to reality MHAS would have had to close one to three offices, leaving 11-17 parishes across the state without constitutional and statutorily mandated legal representation in mental health and Child in Need of Care (CINC) legal proceedings. The state would find itself in violation of not providing these mandated services and in violation of federal court order.

Closure of these offices would have led to 860-1,495 clients losing their access to legal representation; specifically, 186-497 Mental Health Advocacy clients and 674-998 Child Advocacy Program clients.

At the Joint Legislative Committee on the Budget hearing April 12, 2016, Governor Edwards submitted recommendations for the investment of newly realized revenues, which included the recommendation that MHAS should be funded at a level to continue services in FY17 without reductions.

2. Compared to FY 16, what reductions, including services, staffing, and contracts, have been made in the department in FY 17?

Due to the investment of newly realized revenues to MHAS' FY17 budget, no reductions had to be made. MHAS is funded at a level to maintain a continuation of the constitutional and statutorily mandated services it has been charged with providing. The agency cannot reduce staffing without adversely impacting services, and currently has no contracts.

¹ *Recommendations for the Representation of Children in Abuse and Neglect Cases, National Association of Counsel for Children, Sec. III No. 2. Commentary:* "The NACC recommends that a full-time attorney represent no more than 100 individual clients at a time. This is the same cap recommended by the US Dept. of HHS Children's Bureau and the American Bar Association."

² "The court concludes that plaintiff foster children have both a statutory and constitutional right to counsel in all deprivation proceedings..." *Kenny A. v. Perdue, 356 F.Supp.2d 1353 (N.D. Ga. 2005)*

3. What reductions would the department make if there are mid-year reductions to the FY 17 budget?

If mid-year reductions are made to the FY17 budget, MHAS would first evaluate all non-personnel services related categories to determine what could be eliminated or reduced to meet the reduction. Such items would include cancelling the annual staff retreat, eliminating the purchase of updated law books, eliminating payments to medical experts which would provide immense benefits to MHAS' clients, and reducing supply and acquisition purchases.

As only 18% of MHAS' budget lies within its non-personnel services related categories, if the above measures are not enough to reach the reduction level MHAS would have to force attrition savings by leaving vacant positions open as long as necessary. This action would have an adverse impact on the quality of representation of MHAS' mental health and CINC clients as it would force remaining attorneys with their already full caseloads to assume the full caseload of the vacant position for an extended period of time.

4. Provide a brief overview of the FY 18 budget request compared to FY 17 by budget unit. What increases are requested in FY 18 and why are the increases necessary, including any new or expanded programs or services to additional populations? Are there any reductions in the FY 18 budget requests, including those as a result of annualizing reductions made in FY 17?

MHAS' FY17 Existing Operating Budget is \$3,472,341 and 34 T.O. positions. For FY18, the agency requested a continuation budget that amounted to \$3,733,959 and 41 T.O. positions. Specific adjustments requested are;

- **Non-recurring (-\$28,696)**
 - Acquisitions (-\$20,696)
 - IAT Agreement with Louisiana Supreme Court (-\$8,000) – Excess budget authority that is not needed in FY18
- **Inflation \$3,749**
- **Compulsory (-\$19,283)**
 - Reduction due to two employees who retired and whose replacements earn less
- **Workload \$257,888/+4 T.O. positions**
 - Attorney 1/2/3 (Baton Rouge) – MHAS currently has two CINC attorneys assigned to represent children in abuse and neglect proceedings in East Baton Rouge Parish. As of 9/23/2016 the combined caseload of these two attorneys was 300, and the volume of cases in EBRP has been steadily rising since 2012.
 - Attorney 1/2/3 (Lake Charles) – MHAS currently has three CINC attorneys assigned to represent children in abuse and neglect proceedings in Calcasieu Parish. As of 9/23/2016 the CINC caseload of that office was 442 children.
 - Administrative Coordinator 2 (New Orleans) – MHAS' New Orleans office currently has no administrative support. The four attorneys assigned to this office need to have administrative support to efficiently manage their time and productivity, as well as to focus on the representation of their clients.
 - Administrative Coordinator 2, Part-time (Shreveport) – MHAS' Shreveport office currently has a part-time administrative support position, which is inadequate to meet the needs of a law office with five attorneys.

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- **Other \$47,960/+3 T.O. positions, -3 Job Appointment positions**
 - Means of Financing Substitution – Currently, MHAS receives \$174,555 from the Louisiana Department of Health/Office of Behavioral Health. MHAS requests that these funds be directly appropriated to the agency by State General Fund.
 - Statewide IT Services – Would allow MHAS to enter into an agreement for IT services for its eight offices statewide and for preservation and support of its case management/data collection program, PRIME.
 - Acquisitions - Replacement of computers that have reached their maximum life usage.
 - Conferences – Would allow staff attorneys to attend out-of-state legal conferences.
 - Training – Provides for specialized legal training, including trial practice and appellate procedure.

- 5. Has the department added any positions, including classified, unclassified, and other charges positions, in FY 17? If so, how many and what positions? Did the department request additional positions in the FY 18 budget request? If so, how many and what positions.**
 - Positions Added, FY17
 - None
 - Positions Requested, FY18 (Workload Adjustments)
 - Attorney 1/2/3 (Baton Rouge)
 - Attorney 1/2/3 (Lake Charles)
 - Administrative Coordinator 2 (New Orleans)
 - Administrative Coordinator 2 (Shreveport), Part-time

- 6. Provide a summary of changes in salaries from FY 16 to FY 17, including performance adjustments, promotions, or any other changes in salaries. Provide a summary of requested changes in salaries from FY 17 to FY 18, including performance adjustments, promotions, or any other changes in salaries.**
 - Salary Changes, FY16 to FY17
 - Promotion (Four Employees)
 - 6.5(g) Increase (Two Employees)
 - Salary Changes Requested, FY17 to FY18
 - Merits (All Classified Employees)
 - Career Progression Group (One Employee)

- 7. What budget adjustments have been made since the initial appropriation to your department? How much in each means of finance has been appropriated to each agency since the initial appropriation?**

Outside of the proposed mid-year reduction of \$50,000 outlined in the Governor’s unilateral reduction authority discussed at the JLCB meeting 11/18/2016, no budget adjustments have been made since the initial appropriation.

8. Do your spending and staffing levels match the priorities of your department?

Yes. The purpose of the agency is to provide a service to Louisiana's citizens and the agency's budget and staffing levels reflect this as 82% of MHAS' total budget is in personnel services.

9. Provide the top 5 performance measures that give the outcomes in your department. How do you rank nationally based on these priority measures?

1. Percentage of adult and juvenile patients in mental health facilities with trained legal representation: 100%
2. Percentage of children in abuse and neglect cases with trained legal representation in courts served: 100%
3. Percentage of commitment cases settled before trial: 43%
4. Percentage of commitment cases where patient is discharged or diverted to less restrictive setting or committed short term: 59%
5. Percentage of juvenile competency proceedings in which the juvenile is diverted from institutionalization: 51%

There are no national rankings for these performance indicators.

10. Provide a list of all sources of revenue that are not appropriated. These funds could include restricted or off budget accounts. Also, please provide the amount anticipated to be used in FY 17, the amount in FY 18, and any balance or reserve amount for each source or revenue.

MHAS has no revenue that is not appropriated.