

GRANT MANUAL



MICHIGAN INDIGENT
DEFENSE COMMISSION

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This Grant Manual is created for the convenience of stakeholders seeking information about compliance with the MIDC's standards and the contracts issued to indigent criminal defense systems pursuant to an approved plan and cost analysis. The Commission makes policy determinations regarding funding for the standards. The MIDC's staff serves as liaisons between stakeholders and the Commission and are responsible for bringing novel questions to the Commission for consideration and action. This manual is designed to capture decisions that the Commission has made through action on prior plans and costs for compliance with the standards. This manual will be revised regularly to reflect policy decisions by the Commission and made available on the Commission's public website. Notifications of updates will be communicated to local funding units.

The MIDC Act, in its entirety, is the primary document governing MIDC activities and should be referred to for full context of excerpted materials in this manual.

General Authority

The Michigan Indigent Defense Commission ("MIDC") Act is found at MCL §780.981 *et seq.*

Relevant Provisions of the MIDC Act for Standards, Compliance, and Reporting

The MIDC Establishes Standards for Indigent Defense

The MIDC is responsible for "[d]eveloping and overseeing the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that indigent criminal defense services providing effective assistance of counsel are consistently delivered to all indigent adults in this state consistent with the safeguards of the United States constitution, the state constitution of 1963, and this act." MCL §780.989(1)(a).

The MIDC Creates Rules and Procedures for Compliance Plans for Indigent Criminal Defense Systems

The MIDC has the authority and duty to establish “rules and procedures for indigent criminal defense systems to apply to the MIDC for grants to bring the system’s delivery of indigent criminal defense services into compliance with the minimum standards established by the MIDC.” MCL §780.989(1)(g).

Indigent Criminal Defense System Creates Compliance Plan

“No later than 180 days after a standard is approved by the department, each indigent criminal defense system shall submit a plan to the MIDC for the provision of indigent criminal defense services in a manner as determined by the MIDC and shall submit an annual plan for the following state fiscal year on or before **October 1** of each year. A plan submitted under this subsection must specifically address how the minimum standards established by the MIDC under this act will be met and must include a cost analysis for meeting those minimum standards. The standards to be addressed in the annual plan are those approved not less than 180 days before the annual plan submission date. The cost analysis must include a statement of the funds in excess of the local share, if any, necessary to allow its system to comply with the MIDC's minimum standards.” MCL §780.993(3) (**emphasis added**).

Local Share

The local share refers to “an indigent criminal defense system's average annual expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC under this act, excluding money reimbursed to the system by individuals determined to be partially indigent. Beginning on November 1, 2018, if the Consumer Price Index has increased since November 1 of the prior state fiscal year, the local share must be adjusted by that number or by 3%, whichever is less.” MCL §780.983(i).

“[A]n indigent criminal defense system shall maintain not less than its local share. If the MIDC determines that funding in excess of the

indigent criminal defense system's share is necessary in order to bring its system into compliance with the minimum standards established by the MIDC, that excess funding must be paid by this state.” MCL §780.993(7). **The requirement for spending the local share is activated by the need to spend in excess of that total. The statute does not dictate the order in which the state dollars and local share be spent during the contract year. The local share can be contributed at any time during the contract year.**

“An indigent criminal defense system must not be required to provide funds in excess of its local share. The MIDC shall provide grants to indigent criminal defense systems to assist in bringing the systems into compliance with minimum standards established by the MIDC.” MCL §780.993(8).

Approval of Compliance Plans

“The MIDC shall approve or disapprove all or any portion of a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within **90 calendar days** of the submission of the plan and cost analysis. If the MIDC disapproves any part of the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and, for any disapproved portion, submit a new plan, a new cost analysis, or both within **60 calendar days** of the mailing date of the official notification of the MIDC's disapproval. If after 3 submissions a compromise is not reached, the dispute must be resolved as provided in section 15. All approved provisions of an indigent criminal defense system's plan and cost analysis must not be delayed by any disapproved portion and must proceed as provided in this act. The MIDC shall not approve a cost analysis or portion of a cost analysis unless it is reasonably and directly related to an indigent defense function.” MCL §780.993(4) **(emphasis added)**.

Duty of Compliance with Approved Plan

“Within 180 days after receiving funds from the MIDC ... an indigent criminal defense system shall comply with the terms of the grant in bringing its system into compliance with the minimum standards established by the MIDC for effective assistance of counsel. The terms of a grant may allow an indigent criminal defense system to exceed 180 days for compliance with a specific item needed to meet minimum standards if necessity is demonstrated in the indigent criminal defense system's compliance plan. The MIDC has the authority to allow an indigent criminal defense system to exceed 180 days for implementation of items if an unforeseeable condition prohibits timely compliance.” MCL §780.993(11).

The MIDC Reviews Systems for Compliance

The MIDC will be “[i]nvestigating, auditing, and reviewing the operation of indigent criminal defense services to assure compliance with the commission's minimum standards, rules, and procedures.” MCL §780.989(1)(b).

Financial Reporting

“The MIDC shall ensure proper financial protocols in administering and overseeing funds utilized by indigent criminal defense systems, including, but not limited to, all of the following:

- a) Requiring documentation of expenditures.
- b) Requiring each indigent criminal defense system to hold all grant funds in a fund that is separate from other funds held by the indigent criminal defense system.
- c) Requiring each indigent criminal defense system to comply with the standards promulgated by the governmental accounting standards board.” MCL §780.993(14).

Unexpended Grant Funds

“If an indigent criminal defense system does not fully expend a grant toward its costs of compliance, its grant in the second succeeding fiscal year must be reduced by the amount equal to the unexpended funds.

Identified unexpended grant funds must be reported by indigent criminal defense systems on or before **October 31** of each year. Funds subject to extension under subsection (11) must be reported but not included in the reductions described in this subsection. Any grant money that is determined to have been used for a purpose outside of the compliance plan must be repaid to the MIDC, or if not repaid, must be deducted from future grant amounts.” MCL §780.993(15) (**emphasis added**).

Overspending on Services

“If an indigent criminal defense system expends funds in excess of its local share and the approved MIDC grant to meet unexpected needs in the provision of indigent criminal defense services, the MIDC shall recommend the inclusion of the funds in a subsequent year's grant if all expenditures were reasonably and directly related to indigent criminal defense functions.” MCL §780.993(16).

Compliance Planning by Indigent Defense Systems

Resources Available on the MIDC's Website

- The MIDC Standards
- White papers for MIDC Standards 1-4
- *Delivery System Reform Models: Planning Improvements in Public Defense* (MIDC, December 2016)
- *Position Paper on Attorney Fees after the Passage of the MIDC Act* (MIDC, Summer 2016)
- Department of Treasury correspondence regarding adult indigent criminal defense funds

Compliance Plan Components

Identification of System

All compliance plans will need to address the following general information:

- ✓ **The authorizing official submitting the plan and signing the contract terms of the funding consistent with the approved plan**

- ✓ The **point(s) of contact** for the submitted plan (phone, email, address)
- ✓ A local financial contact for the post award fiscal administration
- ✓ Trial court funding unit(s) and court(s) included in the plan
- ✓ The identification of stakeholders or committee members involved in the planning process
- ✓ Collaborative plans must list all systems and trial courts associated with the plan

Compliance with Approved Standards

The submitted plan will address each standard individually. A statement is required to identify and expand on the current or existing state of the system's process or work in subject the area of the standard. The submission will then need to highlight the changes or enhancements needed to achieve the standard, if any.

Cost Analysis

A cost analysis (**budget**) for the ~~implementation~~ **compliance plan** and ~~issues related to each standard~~ **must be submitted in the format approved by the MIDC. Costs cannot be excessive.** Reasonableness will be stressed and a list or guideline for permissible costs **is included in this manual.** ~~will be provided. It will be difficult for this guideline to be exhaustive of all possible financial scenarios.~~ To minimize rejections after official submission, systems should contact their MIDC Regional Manager, before submissions, to discuss compliance plan costs that pose situations not addressed in guidelines.

Local Share

The MIDC Act requires maintenance of a certain level of funding by the local system(s), defined as the local share. The calculation of the local share involves the capture of expenditures for adult indigent defense costs for the three fiscal years preceding enactment of Public Act 93 of 2013. The costs are then offset by the corresponding collections or payments for court appointed counsel services in the same time period on behalf of defendants made by either an individual or an agency.

Beginning in FY2019, all systems calculated and certified The submission shall identify a methodology employed to achieve their local share. A certification of the local share calculation, acknowledged through local official authorization, shall be was a requirement of the original compliance plan and cost analysis. For FY2020, the local share was increased by 2.2% pursuant to MCL §780.983(i). The local share will be adjusted to 2.1% for FY2021. MIDC grant funds Awards will then be are calculated as the sum of the approved cost analysis per standard offset by the local share. Any system seeking to modify its local share due to errors in the original calculation must contact its Regional Manager. Modifications are subject to review of the methodology by the Grant Manager and approval by the Commission.

Fund Established

A condition of award to the local system(s) shall include the grantee securing and supplying to the MIDC a resolution from the local legislative branch (board of commissioners, city council) for the creation of a new fund within the local chart of accounts. The sole purpose of this fund shall be for accepting the grants funds from the MIDC and charging all plan-related costs to this fund. As a condition or assurance upon accepting the award, this fund will allow for better management of the grant funds and monitoring by the local and state interested parties. All adult indigent criminal defense funding (local share and MIDC grant award) must be deposited into the fund. The local fund description shall allow for any fund balance not to revert to the general fund at the close of a fiscal year. Rollover funds will be used for expenditures that cross fiscal years as well as unexpended funds to be used for future compliance expenditures.

Guidelines for Drafting Compliance Plans

The following information captures decisions that the Commission has made through action on prior plans and costs for compliance with the standards. In reviewing compliance plans, the Commission will generally

limit approval of costs to those necessary to implement the MIDC's standards. Novel questions will be brought to the Commission for decision.

~~Cross-Standard~~ General Principles

Prosecutors, Judges, Magistrates

The MIDC Act charges the Michigan Indigent Defense Commission with the authority to develop, oversee implementation, enforcement and modification of minimum standards, rules and procedures to ensure that *indigent criminal defense services* providing effective assistance of counsel are delivered to all indigent adults in the State of Michigan. The Commission will not provide funding for prosecutors, judges, or magistrates to perform their duties. The Commission remains mindful that “defense attorneys who provide indigent criminal defense services are partners with the prosecution, law enforcement, and the judiciary in the criminal justice system.” MCL 780.989(4).

Administrator for Delivery Systems

A funding unit considering the use of a managed assigned counsel system or public defender administrator must use a licensed attorney in good standing with the State Bar of Michigan for all duties involving management or oversight of attorneys or cases within the system.¹

Defense Attorneys – Direct Service Providers

All attorneys identified by the funding unit to provide direct representation to indigent defendants must be licensed attorneys in good standing with the State Bar of Michigan and are bound by the Michigan Rules of Professional Conduct. Until approval of Minimum Standard 8, Economic Disincentives or Incentives, funding unit employees or contract providers shall be given reasonable compensation.

¹ See MIDC meeting minutes, June 2017; MRPC 5.4(c).

Non-Lawyers – Direct Service Providers and Interdisciplinary Defense Teams

Provided they are used to comply with minimum standards, MIDC grant funds can be used to hire employees or independently contract with licensed private investigators, or experts in any field recognized in the criminal justice community, to assist the defense.

Public Defender and Managed Assigned Counsel Systems

Systems may choose to set up regional or local delivery system reform models such as public defender offices or managed assigned counsel programs to meet the minimum standards.² Set-up and operational costs of the office should be included. Lease or rent payments for offices of funding unit employees providing direct services and their staff are permissible expenses.

A compliance plan may include the cost of the State of Michigan's basic bar dues for attorneys employed full time by the system. MIDC grant funding is not permitted for membership in sections or local bar associations.³

A compliance plan may include the cost of malpractice insurance for attorneys employed full time by the system.⁴ Rates should be commensurate with those offered by the National Legal Aid and Defender Association's preferred carrier.

Hiring of Ancillary Staff

~~Depending on the plan, many systems intend to~~ Many systems will hire indirect or ancillary service providers to implement the standards. Ancillary staff refers to personnel outside of assigned counsel and their support staff. Most often these positions include jail staff to facilitate attorney-client communication pursuant to Standards 2 and 4. Other positions include clerks or court staff. These positions must be reasonably and directly related to implementation of the standards to

² MIDC staff members are able to assist systems with hiring considerations, but ~~will not~~ cannot serve as a voting member in any employment decision-making process.

³ See MIDC meeting minutes, October 2019.

⁴ See MIDC meeting minutes, July 2019.

qualify for MIDC grant funding. Supplanting of existing positions is not permitted. Progress regarding all hiring as set forth in the plan must be included in the quarterly reports, and all hiring decisions must be made within 180 days from the initial distribution of grant funds.

Cost Allocation

Systems seeking to include cost allocation or indirect costs for employees are allowed. Funding that exceeds 10% of the personnel and fringe benefit (total) is subject to additional scrutiny and must include any methodology for determining the costs.⁵

Reimbursement for Overspending

A system that spends in excess of the prior year's total system cost can seek reimbursement as a separate line item in the subsequent cost analysis for services.

Regional Cooperation

The Commission urges efficient models of providing indigent defense. In some communities, multiple funding units may collaborate to deliver indigent defense services. The statutory authority for multiple counties cooperating in a regional delivery system model can be found in the Urban Cooperation Act of 1967, at MCL §124.501 et seq.

Travel

Rates can be found online at <http://www.michigan.gov/dtmb/0,5552,7-150-9141-13132--,00.html> will be appended to the grant contract. Unless local rates apply, any travel related expenses requested for compliance planning shall not exceed the rates provided by the "Schedule of Travel Rates" and the general policies for reimbursement of travel adopted by the State of Michigan.

Absent extraordinary circumstances, no grant funds for out-of-state travel will be allowed in any awarded for compliance plans. Travel to visit a client housed in custody in another state constitutes an extraordinary circumstance.

⁵ See MIDC meeting minutes, June 2019.

Travel for training out of state will only constitute an extraordinary circumstance if it is necessary to secure specialized training for public defender staff that is not available in Michigan.⁶ Public defender offices may seek funding for newly-hired attorneys with fewer than two years of experience practicing criminal defense in Michigan to participate in one basic skills acquisition class in an out of state training program. Systems must pursue any financial aid available to fund attendance for an employee's attendance at an out of state training program.

MIDC grant funding is not permitted for purchasing or leasing automobiles.

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⁶ See State of Michigan LARA Out of State Travel Request Authorization form C-100.

Planning for Compliance with MIDC Approved Standards

Standard 1 – Training and Education

General Requirements

Michigan Indigent Defense Commission (MIDC) Standard 1 requires that attorneys shall annually complete at least twelve hours of continuing legal education. Attorneys with fewer than two years of experience practicing criminal defense in Michigan shall participate in one basic **multi-day (minimum of 16 hours)** skills acquisition class.

Pursuant to MIDC Standard 1.D, system practices that require assigned counsel to subsidize mandatory training will not be approved. Training shall be funded through compliance plans submitted by the local delivery system or other mechanism that does not place a financial burden on assigned counsel.

Standard 1 is an annual training requirement for every attorney each **calendar year. Participation in a basic skills acquisition course (skills training) counts towards the annual continuing legal education requirement.**

In the compliance plan, provide the **names and P#s of all attorneys** who will provide indigent defense in the year covered by the compliance plan. Further identify in that category ~~how many of those attorneys~~ **who** have practiced criminal defense for two years or less.

All attorneys providing services in the system should be included in the compliance plan, regardless of whether the attorney practices in other systems. Funding for training and individual training requirements may vary by system. In the event of duplicate registration for a single event, the source of payment should default to the funding unit based on the address listed for the attorney in the bar journal. Deviation from the default is allowed if doing so is necessary to meet the requirements of the standard.

In the plan and cost analysis, describe whether the training is part of the 12 hours of annual continuing legal education (CLE) and/or skills training for new lawyers.

Please see the MIDC's website at <https://michiganidc.gov/cle/> for more information.

Permissible Costs

For **new training programs**, identify the cost of set-up and implementation including personnel, contractors, equipment, supplies, and operating expenses **including meals at a group rate**. For **existing training programs**, identify the number of attorneys to be trained, the courses or programs that will be attended with a cost of registration/tuition (using a rate of ~~no more than \$30~~ \$25 per credit hour), travel, and other expenses **incurred by the trainees**. **Attorneys will not be reimbursed at any rate for their time spent in or traveling to training sessions.**

No printed materials will be funded if digital materials are provided for training purposes.

Memberships

For webinars, such as the National Association for Public Defense, use an annual rate of ~~\$30~~ \$20/per criminal defense attorney for membership and access to programming.

For the Michigan State Appellate Defender Office's (Criminal Defense Resource Center) online resources, use an annual rate of \$50/per criminal defense attorney for membership and access to programming.

MIDC Grant funding will not be awarded for membership to the National Association for Criminal Defense Lawyers (NACDL), the Criminal Defense Attorneys of Michigan (CDAM), or the Institute for Continuing Legal Education (ICLE).

Communication and Plans for Reporting

Attorneys identified by the funding unit to represent adults charged with crimes in the particular system **may** will receive communications

from the MIDC's staff regarding training opportunities and requirements for compliance with Standard 1. The MIDC staff will work to efficiently coordinate the statewide roster of attorneys and assist with communicating progress towards compliance with the standard. All attorneys must complete their training and education requirements by December 31 **of each calendar year**, ~~2019~~ to remain eligible to continue to receive assignments in the following compliance plan year.

Each system **must** provide a plan for reporting CLE attendance to the MIDC for data collection purposes, pursuant to Michigan Supreme Court Administrative Order 2016-2. Documentation of attendance must be submitted to the MIDC no later than 30 days after completion of the course(s). This documentation should be sent to LARA-MIDC-CLE@michigan.gov.

Standard 2 – Initial Interview

General Requirements

This standard requires that when a client is in local custody, counsel shall conduct an initial client intake interview within three business days after appointment. When a client is not in custody, counsel shall promptly deliver an introductory communication so that the client may follow-up and schedule a meeting. Attorneys should **be prepared to** complete a voucher form for all assigned cases indicating time spent on the assignment, including when and where the initial interview occurred. **Alternatively, systems must indicate a method for verifying timely interviews.** Sample vouchers **are** will be available on the MIDC's website.

This standard further requires a confidential setting for these interviews in both the courthouse and jail. **Upon request by an attorney, the system must accommodate the ability to pass legal materials between an attorney and an in-custody client.**

Permissible Costs

If it is necessary to create or alter building space to provide a confidential setting for attorneys and their clients, renovation expenses are allowed up to a maximum of \$25,000 per location. Requests exceeding \$25,000 will be reviewed with higher due diligence and considered with accompanying documentation for justification.

For all systems undergoing construction to create confidential space, a detail regarding progress on the project will be required quarterly.

If public defender offices need additional attorneys to comply with the initial interview standard, funding units may seek grant funds for personnel.

Other systems may need to change contracting or assigned counsel compensation policies. Funding units, using a contract or rotating assignment system, shall pay attorneys for the initial interview in all assigned criminal cases. Attorneys shall be compensated a reasonable fee for the initial interview, **including mileage and travel expenses for**

clients who are not in local custody. Confidential video visits are permissible for initial interviews with in-custody defendants.

Efficient use of technology (such as the use of Polycom systems) and existing space in courthouses and jails in lieu of construction projects is encouraged to ensure and facilitate confidential interview space. Equipment can be included in the cost analysis of the compliance plan.

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Standard 3 – Investigation and Experts

General Requirements

This standard requires counsel to conduct an independent investigation. When appropriate, counsel shall request funds to retain an investigator to assist with the client’s defense. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution’s case. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance.

Funding units may seek grant funds to employ licensed investigators as needed to comply with Standard 3, and/or seek grant funds to contract with investigators or any expert witness identified as necessary to assist with the defense of an indigent client. ~~Funding Units may seek grant funds for a **line item expense** for this purpose. A forthcoming MIDC publication on allowable expenses will describe the maximum funding for this purpose.~~

Non-assigned (i.e., retained, *pro bono*) counsel representing adult clients who become indigent during the course of the representation and who are in need of expert or investigative services may seek use of indigent defense funding for these resources from the system pursuant to case law⁷ and/or the local system’s policy.

Permissible Costs

Expenses for investigators will be considered at hourly rates not to exceed \$75. Expenses for expert witnesses will follow a tiered level of compensation based on education level and type of expert⁸ not to exceed these amounts:

- High School or Equivalent \$30/hr
- Associate’s Degree \$50/hr
- Bachelor’s Degree \$70/hr

⁷ See, e.g., *People v. Kennedy*, 502 Mich. 206 (2018).

⁸The table of expert hourly rates is adopted from the guidelines published by the North Carolina Indigent Defense Services Commission. Variations will be considered on a case-by-case basis.

- Master's Degree \$85/hr
- Crime Scene and Related Experts \$100/hr
- CPA/Financial Expert \$100/hr
- Pharmacy/PharmD \$125/hr
- Information Technology Experts \$150/hr
- Ph.D./Licensed Doctor \$200/hr
- **Medical Doctor \$250/hr**
- **MD with Specialty (e.g., Psychiatrist, Pathologist) \$300/hr**

Unless there is a demonstrated need, Each indigent defense system will be limited to a capped amount of funds for investigators and experts based on the total new circuit adult criminal filings within the jurisdiction in the most recent calendar year, as reported and certified with the State Court Administrative Office. Systems within district courts of the 3rd class are considered in Tier I unless special circumstances are presented.

- 0 - 499 cases/year = Tier I - \$10,000
- 500 - 999 cases/year = Tier II - \$25,000
- 1,000 - 9,999 cases/year = Tier III - \$50,000
- Over 10,000 cases/year = Tier IV - To be determined bases on further discussion and review of records of the system(s)

All funding units **must** will have an approved line item for using experts and investigators in the local court system. The funding unit should reimburse these service providers directly based upon a proper accounting of time spent during the grant reporting period. **Attorneys Systems should report** will also indicate on individual voucher forms whether an expert or investigator was **requested, approved, or denied used** in a particular case to ensure compliance with the standard. **The MIDC rates should be used unless a higher rate is specifically authorized by a system for the case. Experts and investigators should be reimbursed for travel related to their work on a case.**

Standard 4 – Counsel at First Appearance and Other Critical Stages

General Requirements

Every system in Michigan is required to ~~make have~~ an attorney **available present** for an adult charged with a crime facing the loss of his or her liberty. All persons determined to be eligible for indigent criminal defense services shall also have appointed counsel at pre-trial proceedings, during plea negotiations and at other critical stages, whether in court or out of court. **A “critical stage” is any proceeding involving the potential for loss of liberty.** ~~Each system must comply with the plan for providing this service within 180 days of receipt of funding from the MIDC.~~

This Standard does not prevent an adult charged with a crime from representing themselves during any proceeding, including the arraignment. All defendants should be given an opportunity to meet with counsel prior to an arraignment where liberty is at stake. Information about waiving counsel should be provided by the court system, preferably by counsel employed to meet this standard.

In virtually all systems, the attorney at the first appearance is not necessarily going to be the attorney appointed to the case. Attorneys providing this service should ~~account for their time separately and, depending on the plan,~~ be paid consistent with the approved costs for these services.

Systems will be required to report specific information about every arraignment including the number of total arraignments and breakdown of representation in any of the following categories: retained counsel, assigned counsel, waiver of counsel by defendant, or counsel not ~~present~~ **required.** **Guilty pleas submitted to courts outside of the arraignment process (“counter” pleas or “plea by mail”) must be tracked and reported by the system. Systems that will not accept a guilty plea at arraignment and will issue personal bonds do not need to**

make an attorney available at the initial appearance before a magistrate or judge.

Permissible Costs

Funding Units with public defender systems may seek grant funds to hire defense attorneys to comply with the standard for counsel at first appearance.

Funding units using a contract or rotating assignment system shall pay attorneys for the first appearance in a criminal case. A flat-rate can be paid to an attorney to be available on an on-call basis; until the approval of Standard 8 providing more specific guidelines, counsel shall be paid a reasonable fee.

The use of technology is encouraged. Attorneys may use telephone or video services to facilitate the appearance at arraignment.

In addition to all trial proceedings, funding under this standard can include defense attorney representation or participation in the following matters:

- Criminal contempt and/or show-cause hearings
- District to Circuit Court appeals
- Problem Solving Courts and Swift and Sure Sanctions Probation Programs
- *Extradition hearings*
- *Expungement proceedings*
- *Restitution matters*

Standard 5 – Independence from the Judiciary

This proposed standard has not been approved by the Department of Licensing and Regulatory Affairs. However, many systems have submitted compliance plans seeking independent administration of the delivery system.

A managed assigned counsel system (hereafter, “MAC”) is a model that can be used either in coordination with the public defender office or alone to provide indigent defense services in communities at the trial level. This system has independence with oversight by a government-appointed or non-profit agency commission, or by the Executive Branch. MAC is an ideal system to guarantee participation of a vibrant private bar in the delivery of indigent defense.

As with a public defender office, a county or regional MAC can be a very good way to comply with the MIDC standards and best practices:

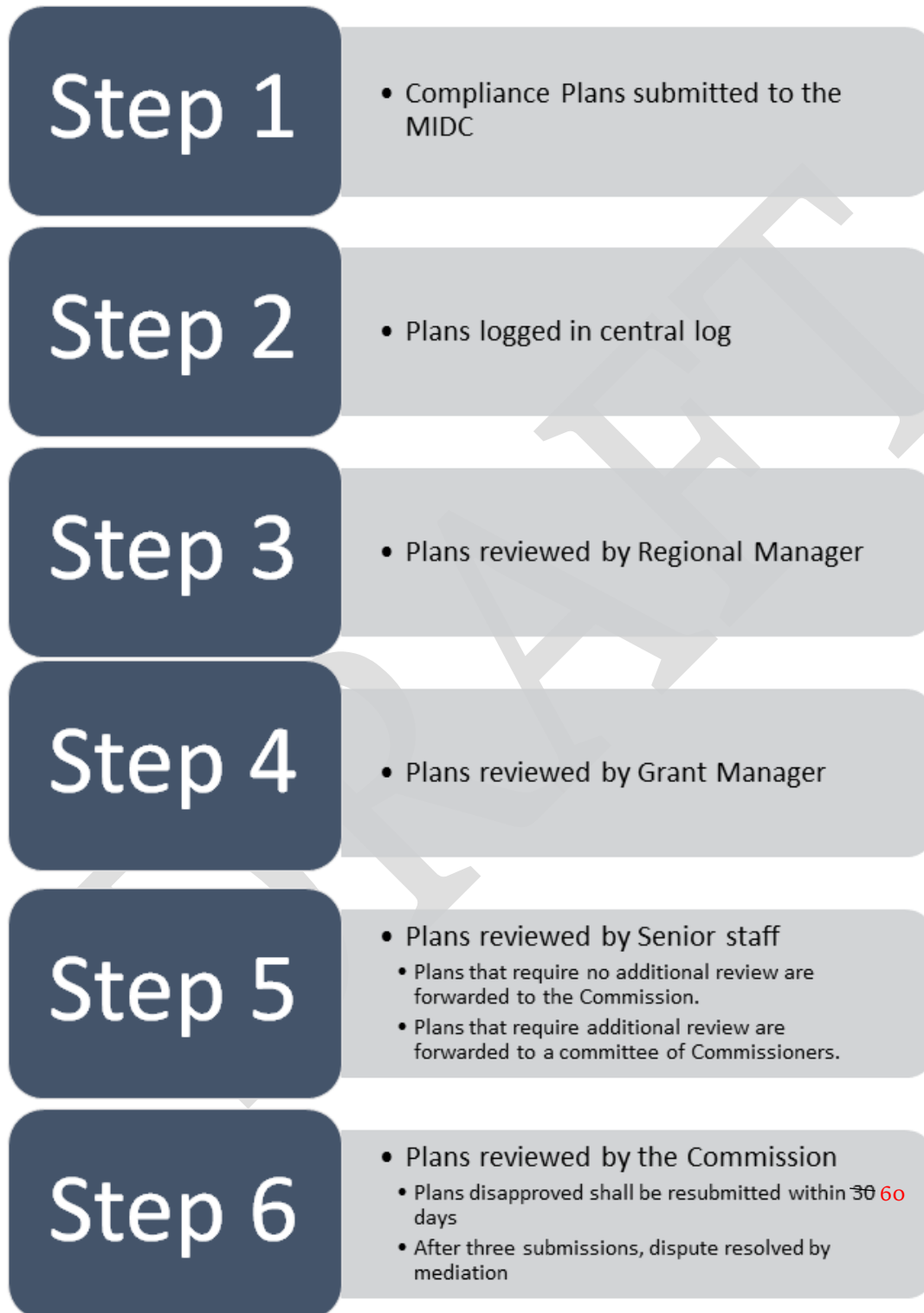
- MAC can coordinate a program to train attorneys to work on assigned cases;
- MAC can provide resources for prompt meetings with clients and condition participation on these meetings;
- MAC can coordinate contracting of investigators or experts, and even retain investigators on staff;
- MAC can specifically assign counsel at first appearance.

MAC could also comply with many proposed future standards including qualifications and evaluations of assigned counsel by having a framework for evaluating the attorneys on the roster and setting requirements for different sorts of cases. MAC can enforce caseload limitations on roster attorneys and establish fair compensation if properly resourced.

As a best practice, systems using a MAC administration model should create a process for reviewing or appealing decisions of the MAC administrator.

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Compliance Plan Submission



Compliance Reporting by Indigent Defense Systems

The contract executed between the MIDC and the local system is the primary source of information about specific reporting obligations. This portion of the guide is provided for the convenience of stakeholders seeking information about reporting.

Resources

Please consult the MIDC's website at <https://michiganidc.gov/grants/> for regularly updated information about reporting, webinars, checklists, and templates.

Distribution of Funding

The Department of Treasury ~~has~~ will established ~~the creation of~~ a new fund within the local chart of accounts. The sole purpose of this fund shall be for accepting the grants funds from the MIDC and charging all plan-related costs to this fund. The system's "local share" ~~must~~ **must** ~~should~~ also be deposited in this fund during the course of the grant contract period, **and no later than the end of the contract term**. ~~The local share contribution was determined by the funding unit through a certification process and approved as part of the total system costs. This fund will allow for better management of the grant and monitoring by the local and state interested parties. The local fund description shall allow for any fund balance not to revert to the general fund at the close of a fiscal year. Rollover funds will be used.~~ for expenditures that cross fiscal years.

Systems will work with the MIDC staff to finalize a budget consistent with the cost analysis approved by the MIDC. This process may require assignment of spending between state and local funding sources. Funding must only be used as set forth in the approved plan and cost analysis.

Systems will receive a contract from the MIDC upon approval of the system's compliance plan and cost analysis by the Commission. Once the contract is fully executed, ~~Upon finalization of the grant contract with each local funding unit,~~ the MIDC will distribute grants to the system

consistent with the approved budget and as set forth in the system's approved plan. The MIDC will distribute 50% of the approved state grant **within 15 days of the contract being executed by all parties.** ~~in October 2018, and~~ The timeframe for compliance with the approved plan will begin on the date of the initial distribution. Each system will submit a progress report describing compliance with the plan on a quarterly basis, together with a financial status report detailing expenses incurred that quarter. **If it is determined that the total amount of funding awarded in the previous year's grant was not fully expended or that grant money was used for a purpose outside of the compliance plan, those funds must be repaid to the MIDC, or if not repaid, must be deducted from future grant amounts. MCL 780.993(15).**

Dates for Distribution of MIDC Grant Funding

- Initial Advance of 50% of the state grant - Within 15 days of receipt of executed agreement
- 25% disbursement - May 15, 2020
- 25% disbursement - August 14, 2020 (final payment).

The above schedule of disbursement of funds is contingent after receipt of quarterly reporting as addressed in **the grant contract.** ~~this section and section 1.5 of this document. The financial status report (FSR) report must be submitted on the form provided by the MIDC/LARA and indicate:~~

Reporting Required

Financial Status Report (FSR)

Each system is required to provide a report on the expenses incurred for implementing the plan for indigent defense delivery. The system should use a form provided by the MIDC to detail the total system costs and identify the source of funding: the local share, MIDC funding, or other sources (i.e., Michigan Department of Corrections). ~~A report template is attached. All attorney services should be submitted on an MIDC invoice form, which will be available on the MIDC's website. This form requires tracking of time for each case, even in funding units~~

~~where payment is not calculated on an hourly rate. The FSR must be supported with documentation for the expenses to be eligible for reimbursement. Receipts for purchases, payroll, documentation, and vouchers from direct service providers should be attached to the FSR. It is not necessary to list every individual contractor (for example: attorneys) as long as the individual payments are detailed in appended documents.~~

Expenses are eligible for payment if incurred during the grant contract period (on or after October 1 **of the grant contract year**, ~~2018~~).

~~Eligible expenses for travel must be consistent with State of Michigan requirements, unless otherwise provided for in the approved budget.~~

Compliance Plan Progress Report (PR)

A short program report detailing in narrative form the system's progress towards fully implementing the compliance plan is required quarterly. This report should complement the FSR and offer context about the expenses incurred during the specified timeframe.

The funding units will be asked for basic information in each report to ensure the MIDC has the appropriate points of contact and authorizing officials, as well as a list of all attorneys **with P#s** assigned by the system to represent indigent adults charged with crimes. Approved compliance plans addressed each standard individually, and reporting should track compliance with the standards according to the plan. The progress report will mirror this approach and collect information regarding new case filings, assignments to attorneys, and compliance with Standards 1, 2, 3, and 4 as set forth in the approved plan. ~~A report template is attached.~~

Due Dates for Reporting

- Initial FSR and compliance report for October 1 – December 31 due on January 31st
- 2nd FSR and compliance report for January 1 – March 31 due on April 30th

- 3rd FSR and compliance report for April 1 – June 30 – due on July 31st
- Final FSR and compliance report for July 1 – September 30 – due **no later than on October 31, together with a report of the unexpended balance in the account used for adult indigent criminal defense services.**

Every system is required to annually submit a plan for compliance for the next state fiscal year **during the timeframe and in the manner established by the MIDC.**

Adjustments to Approved Plans or Budgets

The MIDC is mindful that many systems submitted a plan for compliance and cost analysis nearly one year prior to funding distribution. While adjustments to the cost analysis will be necessary in many instances, there should be no substantial changes to the delivery system method set forth in the plan itself without prior approval from the Michigan Indigent Defense Commission. A “substantial change” is one that alters the method of meeting the objectives of the standard(s) in the approved plan. For example, a system with an approved plan for a public defender office that would instead prefer to maintain a contract system would constitute a “substantial change” to the approved plan.

Any system seeking a substantial change to their **compliance plan** must contact their Regional Manager for guidance on that process, which will require a written request, justification for the change, and multi-level staff review prior to consideration by the Commission. Substantial changes to a compliance plan will not be recommended for approval to the Commission absent extraordinary circumstances.

Adjustments to a system’s approved **contract budget** must be communicated promptly to the Regional Manager ~~MIDC staff~~. **Once a cost analysis has been approved by the MIDC, the award total cannot increase, but adjustments within the award total can be allowed.** Please

contact your Regional Manager for guidance with budget adjustments. Budget adjustments will be processed with other quarterly reporting documents unless extraordinary circumstances require action sooner.

- **Deviation allowance:** If the adjustment involves redistributing less than 5% of the budget category total, (e.g., “equipment”), then the adjustment must be reported in the next quarterly FSA.
- A budget adjustment involving greater than 5% of the aggregate of all funding within a budget category requires prior written approval by the MIDC Staff and must be reported to the MIDC as soon after the Grantee is aware of the necessity of the Budget adjustment and reported in the Grantee’s quarterly report. ~~system must obtain prior approval for any adjustment to the contract budget involving 5% or more within the budget category.~~
- ~~A system must obtain prior approval for any adjustment between categories of funding.~~

The system is required to use the MIDC’s budget adjustment form for any budget adjustment request and must obtain approval of MIDC staff prior to making any changes to the contract budget.

All adjustments to the approved cost analysis will be reported to the MIDC during regularly scheduled meetings, or as requested by the Commission.

Evaluation of Plans

All systems will be reviewed for compliance with the MIDC's sStandards, the approved plan and the approved cost analysis. A complete rubric for evaluation is available on the MIDC's website, a portion of which is displayed below:

FUNDING UNIT: _____

Date of Required Compliance: _____

Date of Evaluation: _____

STANDARD 1	TOTAL POSSIBLE POINTS	TOTAL POINTS AWARDED	COMMENTS	
Has the attorney list been updated and submitted in the most recent quarter?	3			
Has a process been established and implemented to pay for and confirm attorney training (including for new attorneys to complete skills training)?	3			
Have attorneys either completed 12 hrs of CLE or been removed from the list?	<i>non-point question</i>			
STANDARD 2				
Have confidential meeting spaces been established or have sufficient steps been taken toward this end?				
In holding facilities/jails	3			
In courtrooms - out-of-custody clients	3			
In courtrooms - in-custody clients	3			
Are the confidential meeting spaces adequate?	<i>non-point question</i>			
Are defense attorneys using the confidential meeting space?	<i>non-point question</i>			
Are attorneys being appointed and notified in a timely and effective fashion?	3			
Is the system verifying invoices/other documents to ensure timely client interviews?	3			
Are attorneys being paid for initial interviews?	3			
Does the system have a process to manage attorney non-compliance?	<i>non-point question</i>			
Are all attorneys meeting with clients within 3 business days?	<i>non-point question</i>			
STANDARD 3				
Does a process exist for attorneys to seek funding for experts and investigators?	3			
Have attorneys been notified of the process?	3			
Are requests being tracked by the system?	<i>non-point question</i>			
Have any attorneys utilized this process?	<i>non-point question</i>			
What is the breakdown between requests granted and denied?	<i>non-point question</i>			