

SUPPORTING STATEMENT

Protection and Advocacy Programs for Individuals with Mental Illness (PAIMI) Regulations - 42 CFR Part 51 (OMB No. 0930-0172)

A. JUSTIFICATION

1. Circumstances of Information Collection

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services is requesting OMB approval for an extension of the information collection requirements applicable to the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Final Rule [42 Code of Federal Regulations (CFR) Part 51]. The current approval under OMB No. 0930-0172 expires on February 28, 2007. The DD Act was amended on October 30, 2000. The ADD revisions of the DD Rules (regulations) [45 CFR Part 1385, Chapter XIII, as amended in 2000], are currently under review by the Department.

In 1975, the Developmental Disabilities Assistance and Bill of Rights Act (the DD Act) [42 U. S. C 6041, *et seq.*], established the State protection and advocacy (P&A) system to protect and advocate the rights of persons with developmental disabilities. In 1986, the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act [42 U.S.C. 10801 *et seq.*] extended the DD Act protections to eligible individuals with significant (severe) mental illnesses (adults) and significant emotional impairments (children), at risk for abuse, neglect, and civil rights violations while residing in public or private residential care and treatment facilities. On October 17, 2000, the PAIMI Act was amended to create a 57th State P&A system, the American Indian Consortium in Farmington, New Mexico, and to allow State P&A systems the option of servicing PAIMI-eligible persons living in the community, including their own homes.* [*Service priority is given to PAIMI-eligible individuals residing in public and private care and treatment facilities].

The PAIMI Act provides formula grant support to 57 governor-designated P&A systems in each State, the District of Columbia, and the territories (the American Indian Consortium, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands). Administrative responsibility at the Federal level rests with the Administration on Developmental Disabilities (ADD) in the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS) for the DD Act. The Center for Mental Health Services (CMHS) in the Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS is responsible for carrying out the provisions of the PAIMI Act [42 U.S.C. 10801 *et seq.*].

The PAIMI Act [42 U.S.C. 10826 (b)] required the Secretary of the Department of Health and Human Services (the Secretary) to promulgate final regulations to carry out the legislation. The PAIMI Final Rule [42 CFR Part 51] promulgated regulations for the implementation of authorized activities of State protection and advocacy (P&A) systems that serve individuals with

severe mental illnesses and severe emotional impairments, at risk for abuse, neglect, and civil rights violations while residing in a public or private care or treatment facility, as defined in the Act.

The Children's Health Act of 2000 (CHA), Part H, *Requirement Relating to the Rights of Residents of Certain Facilities* [42 U.S.C. at 290ii -290ii-2] and Part I, *Requirement Relating to the Rights of Residents of Certain Non Medical, Community-based Facilities for Children and Youth* [42 U.S.C. at 290jj-1 – 290jj-2], and the PAIMI Act, authorized the State P&A systems to receive reports involving incidents of restraint, seclusion, and related deaths in certain facilities, such as, nursing homes, interim care facilities, general hospitals, and non medical, community-based facilities for children and youth. Within the next 3-year cycle, it is expected that the DD Rules will be finalized. Once the DD Rules are final, the PAIMI Rules will be revised to conform, as appropriate, to them, the PAIMI Act of 2000, and the CHA. If the DD Rules are finalized within this 3-year cycle, the process to revise the PAIMI Rules will commence within the same cycle.

OMB approval is requested for the following list of citations related to information collection language (reporting):

42 CFR 51.5(b-d) - Annual Application – Each State P&A system is required to submit an annual application for funding and specifies minimum contents for the application. [Note: The PAIMI Program is an approved user of the PHS Grant Application (Form PHS 5161-1), approved by OMB under control number 0920-0428].

42 CFR 51.8 - Annual Report - Each State P&A system that receives a formula grant funded under the PAIMI Act is required to submit an *Annual Program Performance Report* (PPR) in a format designated by the Secretary. [Note: The response burden for this report is approved by OMB under control number 0930-0169].

42 CFR 51.10 - Remedial Actions - Each State P&A system selected for a Federal fiscal, technical assistance and training, and/or an on-site monitoring review shall provide written responses to any review findings and recommendations issued by the grantor agency – CMHS/SAMHSA. The Federal *Summary Findings and Recommendations Report* assesses whether the State P&A system is in full compliance with the programmatic, administrative, operational and fiscal requirements of the PAIMI Act and Final Rules and whether the State P&A system will require remedial action to resolve the issues identified during the review. Each State P&A system with compliance issues shall develop and submit a written Corrective Action Plan (CAP) and quarterly Implementation Status Reports (ISR) on the progress of its corrective and/or remedial actions. Approximately six (6) State P&A systems are reviewed each fiscal year.

42 CFR 51.23(a)(3) Advisory Council Annual Report - Requires the PAIMI Advisory Council (AC) in each State P&A system to submit material for the annual report required under 42 CFR 51.8. [Note: The response burden for this report is approved by OMB under control number 0930-0169].

42 CFR 51.23(c) Materials for Advisory Council - At least annually, each State P&A system shall provide its PAIMI AC with reports, materials, and fiscal data to facilitate the council's review of existing PAIMI program policies, priorities and performance outcomes. The State P&A system submission to the AC shall report expenditures for the past two fiscal years and projected expenses for the next fiscal year, identified by budget category (e.g., salary and wages, contract services, administrative expenses, etc.), including the amount allotted for training of the AC, the governing board and staff.

42 CFR 51.25(b)(2) - Grievance procedure reports - Each State P&A system is required to provide its governing authority and PAIMI AC with an annual report that describes the grievances received, processed, and resolved by the system.

42 CFR 51.43 - Facility written statement of delay or denial - Specifies that any facility that delays or denies a State P&A system access to facilities, programs, residents or records covered by the Act or these regulations, must promptly provide a written statement of reasons.

2. Use of Information

Annual Application [42 CFR 51.5(b-d)]. The PAIMI Program application is used by each State P&A system to apply for its SAMHSA/CMHS grant allotment. The information requested in the application is mandated by the PAIMI Act and Rules [42 U.S.C. 10805, Title 45 CFR Part 74 and/or Part 92, and the PHS Grants Policy Statement [DHHS publication No. (ASH) 94-50,000 (Rev. April 1, 1994)]. The application is then compared to the information contained in a State P&A system's corresponding PPR for that year for consistency and adherence to the terms and conditions of the PAIMI grant award. Some of this information is used in the Secretary's bi-annual PAIMI Program Activities report to the President, the Congress and the National Disabilities Council and to demonstrate agency compliance with GPRA.

Annual Reports [42 CFR 51.8 and 42 CFR 51.23(a)(3)]: Each State P&A system is required to submit an annual PAIMI Program Performance Report (PPR) that highlights on its activities and accomplishments for the preceding fiscal year. SAMHSA/CMHS uses these reports to compile a national profile on P&A system trends, activities, and accomplishments for the Secretary DHHS. Since the DD Act was amended in 2000, ADD, the lead Federal P&A agency, prepares a biannual report on national State P&A system activities for the Secretary. The ADD report includes an overview of trends, case illustrations, training and educational activities, systemic and legislative issues, unmet needs and accomplishments for the State P&A system programs of the respective administrations. The SAMHSA annual summary of the State P&A systems' PAIMI Program activities are included appendices to ADD's biannual report for the Secretary. The Secretary then forwards the final report to the President, the Congress, and the National Council on Disabilities. The PAIMI Program appendices facilitate SAMHSA's ability to respond to administrative and/or congressional requests for information on specific State P&A system activities, identifies training and technical assistance activities, highlights trends and/issues of national significance, and provides valuable comparative program activity and

performance evaluation information. [See also, PAIMI Act - Reports by the Secretary, 42 U.S.C. 10824]. Each State P&A system is provided a copy of the Secretary's annual report to Congress for informational and/or comparative evaluation purposes, e.g., identification of new national or regional trends/activities, initiatives, strategies and legal remedies to address common issues, etc.

Corrective Action Plans and Implementation Status Reports (42 CFR 51.10): Corrective Action Plans (CAP) and Implementation Status Reports (ISR) are used to evaluate and monitor the progress made by State P&A systems after a Federal on-site monitoring review and issuance of a Federal summary findings and recommendations report indicating the need for remedial and/or corrective action due to programmatic or fiscal management weaknesses.

Reports, Materials and Fiscal Data [42 CFR 51.23(c)]: Each State P&A system provides its Advisory Council (AC) with reports, materials and fiscal data to facilitate the council's review of existing PAIMI program policies, priorities, activities and performance outcomes.

Grievance Procedure [42 CFR 51.25(b)(2)]: This annual report, provided by the State P&A system to its governing authority and the AC, describes the system's grievance procedures including the number of grievances received, processed and resolved by the P&A.

Facility Written Statement of Delay or Denial (42 CFR 51.43): This information is intended to determine the degree of facility noncompliance and/or resistance to State P&A system requests for access.

3. Improved Information Technology

Efforts to improve information technology and reduce the State P&A system collection and reporting burdens will be fully implemented after the DD and PAIMI Regulations are finalized. To facilitate State P&A system preparation of the PAIMI annual program performance report, SAMHSA has made the documents electronically accessible via the Internet to each P&A system in WordPerfect or Microsoft Word format. These reports and the correction action plans/ implementation status reports may be submitted by e-mail to the SAMHSA/CMHS PAIMI Program Coordinator.

SAMHSA grants management staff has made the PAIMI Program application available for formula and block grants. The PAIMI Program application is available via www.grants.gov. However, until HHS decisions are made regarding PKI signature specifications, it will be necessary to receive a single hard copy of the application with the required signatures from each State P&A system.

4. Efforts to Identify Duplication

The PAIMI Program is a singular, unduplicated program, and this information is not available or accessible from other sources.

5. Information Collection Involving Small Businesses

Small businesses or other small entities are neither involved in nor impacted by this program.

6. Consequences if Information is Collected Less Frequently

An annual PAIMI PPR, including a section prepared by the AC, is required from each State P&A system [42 U.S.C. 10805(7)]. Annual PPR data collected from State P&A systems is summarized and included in the Secretary's annual report to the President, the Congress, and the National Council on Disabilities [42 U.S.C. 10824]. To collect State P&A system PPR data less frequently is a violation of the statutory requirement that a report be transmitted to the Secretary on January 1 of each year [42 U.S.C.10805 (7)] and will result in untimely, inaccurate and inappropriate information on P&A system activities, trends, and issues of national significance to the President and Congress.

The CAP and ISR enable Federal program officials to monitor and evaluate the effectiveness of a State P&A system's activities initiated in response to a *Summary Findings and Recommendations Report* issued after a Federal on-site visit.

7. Consistency with the Guidelines

The data collection complies with 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

A notice soliciting public comments on these regulations was published in the *Federal Register*, Friday, May 26, 2006 (Vol. 71, No. 102, p. 30433). No comments were received.

To ensure consistency on data collection and report requirements within the Federal P&A Programs, at the direction of OMB, SAMHSA is currently collaborating with the ADD, the Rehabilitation Services Administration (RSA), within the Department of Education, the P&A for Traumatic Brain Injury Program, within the Health Resources Services Administration (HHS), and the Social Security Administration to develop a consolidated annual P&A system Program Performance Report format for all Federal P&A agencies. Also, SAMHSA, ADD, and RSA are Federal partners on the Interagency Council on Developmental Disabilities (ICDD) which coordinates, collaborates, and funds via an inter-agency agreement, the technical assistance and training contract for the State P&A systems.

Key consultants on reporting issues were:

Federal P&A System Program Officials

Jacqueline Ezzell	Program Specialist, ADD	(202) 690-5905
Carol Dobak	Program Specialist, RSA	(202) 205-9315
Jennifer Deboy	Project Officer, SSA	(410) 965-8658

Non-Federal Organizations

The ICDD contract was awarded to the Technical Assistance and Support Center (TASC), the training division of the National Disability Rights Network (NDRN), formerly, the National Association of Protection and Advocacy Systems or NAPAS. This 5-year competitive contract, which is in its second year, provides training and technical to the State P&A systems. ADD administers the NDRN contract which is funded through separate interagency agreements with SAMHSA, RSA and SSA.

SAMHSA has consulted with the other Federal agencies that administer P&A programs and will revise its annual PAIMI PPR, including the AC section, once a final consolidated sample PPR reporting format is developed and the FRN notice is published. Various revisions to the PAIMI Rules will also be amended after the DD Act of 2000 rules are promulgated. The following State P&A system staff commented on the PPR reporting requirements and the facility access provisions: executive directors, PAIMI Program Coordinators, mental health advocates, legal directors and PAIMI AC members. The Supporting Statement Justification for the PAIMI Annual Report [OMB 0930-0169], will expire in May 2007. A separate OMB package will be submitted in 2007 related to the PAIMI PPR, including the AC section, pending OMB approval of the proposed consolidated PPR.

9. Payments to Respondents

Other than the annual formula grants awarded by SAMHSA to each State P&A system for activities mandated under the PAIMI Act, no additional payments or gifts are made.

10. Assurance of Confidentiality

State P&A systems are mandated to “maintain the confidentiality of such records to the same extent as is required of the provider of such services” [42 U.S.C. at 10806(a), see also exceptions to confidentiality, cited at 10806(b)]. Each State P&A system is required to protect all client records and identifying data from loss, damage, tampering, or use by unauthorized individuals. Compliance with confidentiality requirements is reviewed by Federal program officials during annual on-site monitoring reviews of selected State P&A systems.

The confidentiality issues are not relevant to the information collection and report requirements cited in the Final Rule, because the annual PPR is primarily composed of “aggregated summary” data and contains no personal identifiers.

11. Questions of a Sensitive Nature

There are no questions of a sensitive, individual nature included in this report.

12. Estimate of Annual Hour Burden

The estimated annual burden under the PAIMI Final Rule is summarized below:

42 CFR Citation	Number of Respondents	Responses per Respondent	Burden/Response (Hrs.)	Total Hour Burden	Hourly Wage Cost (\$)	Total Hour Cost (\$)
* 51.8(a)(2) Program Performance Report	57	1	26	(1482)	\$65**	(\$)96,330
* 51.8(8)(a)(8) Advisory Council Report	57	1	10	(570)	\$45**	(\$)25,650
51.10 Remedial Actions: Corrective Action Plan	7	1	8	56	\$65	\$3640
Implementation Status Reports	7	3	2	42	\$65	\$2730
51.23(c) Reports, materials and fiscal data provided to the Advisory Council	57	1	1	57	\$65	\$ 3705
51.25(b)(3) Grievance Procedure	57	1	0.5	29	\$65	\$1885
†51.43 Written denial of access by P&A system	--	--	--	--	--	--
Total	57	--	--	184	--	\$133,940

* Responses and burden hours associated with these reports are approved under OMB Control No. 0930-0169.

** Based on the average salary paid to State P&A system staff, estimated at \$65 per hour, including fringe benefits. The \$45 per hour rate is an estimate of compensation if the AC members were P&A system employees and not unpaid volunteers.

† There is no burden estimate associated with this program provision. State P&A systems report that when a facility denies a P&A system access to the facility, a client or records, the P&A attempts to resolve the dispute through negotiation, conciliation, mediation and other non-adversarial techniques. Only after exhausting standard non-legal remedies provided under State and Federal laws will the P&A system file a formal complaint in the appropriate Federal District court. See also the PAIMI Act, Legal Actions. 42 U.S.C. 10807(a) and the PAIMI Final Rule 42 CFR 51.32 (Resolving Disputes).

NOTE: Burden for the annual application [42 CFR 51.5(b-d)] is approved at a standard level per application under OMB control number 0920-0428.

13. Estimated Annual Cost to Respondents

There are no capital or start-up, operations, maintenance or purchase of services costs that exceed standard business expenses associated with these regulations.

14. Estimated Annual Cost Burden to the Government

Federal costs associated with the PAIMI regulations are: (1) staff costs associated with review of the State annual reports (approved under 0930-0169) is approximately \$12410 for salaries, which includes: (1) 143 hours for the PAIMI Program officers to review and follow up on each State P&A report [approximately 2.5 hours per P&A report] x \$70 = \$10010 and 10 hours for supervisory review x \$80 = \$800]; and (2) staff costs associated with receipt and review of CAP and ISR of approximately \$1600 [one GS-15 at \$80 hr. x 20 hours = \$1600].

15. Changes in Burden

There is no change in the annual burden estimates.

16. Time Schedule, Publication and Analysis Plan

Each State P&A system is provided 90 days - from the start of the new Federal fiscal year on October 1 until December 31 - to prepare its annual PAIMI PPR. The PAIMI Act mandates that each State P&A system submit its annual PPR to SAMHSA by January 1. Before starting the PPR review process, SAMHSA logs the date that each PPR is received. Information extracted from each annual PAIMI PPR is used to provide a national profile of State P&A system activities which is then consolidated into a report for the Secretary. SAMHSA via CMHS staff will contact State P&A systems whenever PPR clarification and/or additional information or documentation is needed.

The DD Act of 2000 requires that the State P&A system report to the President and Congress be submitted bi-annually. CMHS continues to prepare an annual report, including statistical tables, which it forwards to SAMHSA for review and clearance. SAMHSA forwards the cleared report to HHS for additional review and final approval. The SAMHSA final reports are included as appendices to the ADD's bi-annual report to the President, the Congress, and the National Council on Developmental Disabilities (NCDD). Once the final report is released to the President, the Congress, and the NCDD, it is available for public distribution from SAMHSA.

Time Table for Report Activities

<u>Tasks</u>	<u>Target Completion Date</u>
Preparation of Reports by respondents	October 1 - December 31
Respondents submit annual reports to SAMHSA via CMHS	January 1
Review of submitted reports, preparation and submission of Annual report for the Secretary	March 1
CMHS staff review, edit, and submit the final draft of the Secretary's annual report to SAMHSA for review	March 30
SAMHSA staff review and edit the final report, sign off by the SAMHSA Administrator and submission to HHS.	April 30

Corrective Action Plan and Implementation Status Reports: No later than 90 days after completion of a Federal on-site monitoring review of a State P&A system, a *Summary of Findings and Recommendations Report* is prepared by the Federal review team. No later than 45 days after receipt of the Federal summary report, a State P&A system shall provide CMHS with a CAP. Federal officials have 30 days to review the CAP. If the CAP is not accepted by the Federal Project Officer, the State P&A system must submit a revised CAP that is responsive to CMHS' concerns. If CMHS accepts the CAP, then quarterly ISRs are required.

CMHS does not require State P&A systems to submit copies of the other reporting requirements, such as, reports, materials and fiscal data provided to the AC and the grievance procedures/processes. These types of reports are used solely by the State P&A systems to administer their programs.

Time Table for CAP and ISR Activities

<u>Tasks</u>	<u>Target Completion Date</u>
Federal <i>Summary of Findings and Recommendations Report</i>	90 days after on-site review
State P&A submits a CAP	45 days after receipt of <i>Summary of Findings</i> . . .
CMHS issues a notice of acceptance or rejection of CAP	30 days after receipt of CAP
P&A system submits ISRs to CMHS	Quarterly - first report is due 90 days after CAP is accepted by CMHS

15. Display of Expiration Date

This item is not applicable to the Final Rule. The *Annual Program Performance Report* format, which includes a section from the PAIMI Advisory Council, displays the date of expiration and the OMB approval number [upper right-hand corner of the cover page].

16. Exceptions to Certification Statement

This collection of information involves no exceptions to the Certification for Paperwork Reduction Act submissions.

B. STATISTICAL METHODS

This regulation does not involve use of statistical methods.