

# **The Protection and Advocacy Program for Individuals with Mental Illness (PAIMI) Regulations - 42 CFR Part 51**

## **SUPPORTING STATEMENT**

### **A. JUSTIFICATION**

#### **1. Circumstances of Information Collection**

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) 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, 2010. The Developmental Disabilities Assistance and Bill of Rights Act of 1975 [42 U.S.C. 6001 et seq., hereafter referred to as the DD Act], was amended on October 30, 2000 [now 42 CFR 15001, et seq.]. Since the last extension request by SAMHSA, the Administration on Developmental Disabilities (ADD) within the Administration of Children and Families, HHS, withdrew its proposed revisions of the DD Rules (regulations) [45 CFR Part 1385, Chapter XIII, as amended in 2000], from departmental review.

In 1975, the DD Act 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 Children's Health Act of 2000 (CHA) amended the PAIMI Act. The CHA created a 57<sup>th</sup> PAIMI Program for the American Indian Consortium (the Hopi and Navajo Nations in the Southwest (the Four Corners area) [42 U.S.C. 10802 (8)]. It also expanded the PAIMI Act definition of "individual with mental illness" to include persons living in a community setting, including their own homes\* [at 42 U.S.C. 10802(B) (ii)], and provided each P&A system with the option to represent these individuals [at 42 U.S.C. at 0804(d)]. [\*Each P&A system must give service priority to PAIMI-eligible individuals who reside in public and private care and treatment facilities].

The CHA, at Parts H - *Requirement Relating to the Rights of Residents of Certain Facilities* [42 U.S.C. at 290ii -290ii-2], and 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], also authorizes 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.

The PAIMI Act now provides formula grant support to 57 governor-designated P&A systems in each State, the District of Columbia, the American Indian Consortium, and the jurisdictions of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands). At the Federal level, lead administrative responsibility for the P&A systems, rests with the ADD. CMHS, within SAMHSA, is responsible for carrying out the PAIMI Act [42 U.S.C. 10801 et seq.] and Rules [42 CFR Part 51].

The PAIMI Act [at 42 U.S.C. 10826 (b)] requires the Secretary HHS to promulgate final regulations to carry out the legislation. In October 1997, the PAIMI Final Rule promulgated regulations for the implementation of authorized activities of State protection and advocacy (P&A) systems that serve individuals with severe mental health disabilities and severe emotional impairments, at risk for abuse, neglect, and civil rights violations while residing in public or private care or treatment facilities, as defined in the Act.

During the current 3-year cycle (2008 -2010), ADD withdrew its proposed rules from departmental review. In October 2009, SAMHSA/CMHS submitted its proposed revisions to the PAIMI Rules to the department. These rules are awaiting review by the Office of the General Counsel. This request is to extend the current rules before they expire in February 2010.

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

**42 CFR 51.5(b-d) - Annual Application** – To receive an annual allotment each State P&A system is required to submit an annual application with specific information. [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 visit shall provide written responses to any programmatic and/or fiscal 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 site visit. 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 (PAC) in each State P&A system to submit material for the annual PPR 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 PAC with reports, materials, and fiscal data to facilitate its review of existing PAIMI program policies, priorities and performance outcomes. This information shall include: its expenditures for the past two fiscal years; its projected expenses for the next fiscal year; identify each expense by budget category (e.g., salary and wages, contract services, administrative expenses, etc.); and, the amounts allotted for training of staff and PAC and governing board (as applicable) members.

**42 CFR 51.25(b) (2) - Grievance procedure reports** - Each State P&A system is required to provide its governing authority and PAC 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)]. Each State P&A system uses the SAMHSA/CMHS approved application to apply for its annual PAIMI Program grant allotment. Information in the application is mandated by the PAIMI Act and Rules [respectively, 42 U.S.C. 10805 and 42 CFR Part 51], Titles 45 CFR Part 74 and/or Part 92, and the Grants Policy Directives (GPD). The Awarding Agency Grants Administration Manual (AAGAM) implemented the GPD (for all OPDIVs except NIH) and replaced the PHS Grants Policy Statement [DHHS publication No. (ASH) 94-50,000 (Rev. April 1, 1994)]. The Federal Project Officers (FPO) compare each State P&A system application to the information contained in the system's corresponding PPR for that year, e.g., for consistency of information, and adherence to the terms and conditions of their PAIMI grant award, etc. The information from each State P&A system's PAIMI PPR is used to demonstrate SAMHSA/CMHS compliance with GPRA and is included in the Secretary's bi-annual PAIMI Program activities report to the President, the Congress and the National Council on Disability (NCD) [42 U.S.C. 15 05.

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 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. The DD Act of 2000 now requires that ADD, the lead Federal P&A agency, to prepare 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 of the federally funded State P&A system programs. ADD includes the SAMHSA/CMHS annual summary of the P&A systems' PAIMI Program activities as an appendix to ADD's biannual report. The Secretary then forwards ADD's final report to the President, the Congress, and the NCD.

The PAIMI Program appendix facilitates SAMHSA/CMHS' ability to timely respond to administrative and/or congressional requests for information on specific State P&A systems, to identify specific program related training, technical assistance, to highlight trends and/issues of national significance, and to provide 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 the President.

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 following a Federal on-site visit and the issuance of a *Summary Findings and Recommendations Report*. This report identifies the P&A system's strengths, challenges and the remedial and/or corrective actions needed to resolve its programmatic and/fiscal compliance issues and management weaknesses.

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

Grievance Procedure [42 CFR 51.25(b)(2)]: This annual report, that must be provided by each State P&A system to its governing authority and PAC, describes the system's grievance procedures, e.g., the number of annual 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 continue. These improvements are reviewed in 3-year cycles when the annual PPR is revised [OMB 0930- 0169, expires on 3/31/2011]. To facilitate State P&A system preparation of the annual PAIMI PPR, SAMHSA made the documents electronically accessible to each P&A system, e.g., via the Internet in WordPerfect or Word format. The P&A systems may submit this information by e-mail. The post-monitoring visit CAP and ISR are sent to the attention of the CMHS PAIMI Program Coordinator, e.g., e-mail, regular mail, etc.

The SAMHSA Division of Information Technology in collaboration with the Grants Management Office (GMO) staff made the PAIMI Program application available on [www.grants.gov](http://www.grants.gov). HHS decisions regarding PKI signature specifications are pending and each P&A system is currently required to send a hard copy of its application with the required signatures to the GMO.

### 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 PAC, is required from each State P&A system [42 U.S.C. 10805(7)]. Each year SAMHSA/CMHS summarizes the data and information collected from the annual PPRs into a report that is then included as an appendix to the Secretary's biannual report on disabilities to the President, the Congress and the NCD [42 U.S.C. 10824]. To collect PPR data less frequently is a violation of the statutory requirement that each State P&A system submit a report to the Secretary on January 1 of each year [42 U.S.C.10805 (7)]. Untimely PPR submission will result in untimely, inaccurate and inappropriate information on P&A system activities, trends, and issues of national significance to the President, the Congress, and the NCD.

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 monitoring 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*, Tuesday, October 6, 2009 (Vol. 74, p. 51280). No comments were received.

To keep abreast of State P&A system activities, the other Federal P&A Programs within HHS (ADD and HRSA), the Social Security Administration (SSA), and the Rehabilitation Services Administration (RSA), and SAMHSA currently collaborates at least once a month on issues of mutual concern, e.g., programmatic and fiscal issues identified during Federal monitoring visits. SAMHSA, ADD, and RSA serve on the Interagency Council on Developmental Disabilities (ICDD) and coordinate, collaborate, and fund via separate inter-agency agreements with ADD, the technical assistance and training contract for the State P&A systems.

Key consultants on reporting issues were:

*Federal P&A System Program Officials*

Carol Cohen	Team Leader, SSA	(410) 965-5040
J.C. Gridley	Program Specialist, ADD	(202) 690 - 8776
Jim Doyle	Program Specialist, RSA	(202) 205-9315
J. Martin-Heppel	Director TBI Program, HRSA	(301) 443- 2259

*Non-Federal Organizations*

The ADD awarded the ICDD contract 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 final year, provides training and technical to the State P&A systems. ADD also administers the NDRN contract funded by SAMHSA, HRSA, and RSA.

Before revising its annual PAIMI PPR, including the PAC section, SAMHSA consulted with its Federal partners (ADD, HRSA, RSA, SSA). It also obtained comments on the PPR reporting requirements and the facility access provisions from State P&A system staff, e.g., executive directors, PAIMI Program coordinators, mental health advocates, legal directors, and PAC members.

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. P&A system compliance with the confidentiality provisions of the PAIMI Rules [42 CFR 51.45 and 51.46] is evaluated by the FPO during annual on-site monitoring visits to selected 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” statistical data and 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	--	--	--	--	--	--
<b>Total</b>	<b>57</b>	<b>--</b>	<b>--</b>	<b>184</b>	<b>--</b>	<b>\$133,940</b>

\* Responses and burden hours associated with these reports were 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 the estimated compensation if PAC members were system employees rather than 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 the non-legal remedies, provided under State and Federal laws will a P&A system file a formal complaint in the appropriate Federal District court. See also, the PAIMI Act at 42 U.S.C. 10807(a) - Legal Actions and the PAIMI Final Rule at 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 review of each of the 57 annual PPRs (approved under 0930-0169), includes approximately \$12, 410 for salaries (includes 143 hours for the FPO reviews and follow up of each PPR report [approximately 2.5 hours per report x \$70an hour = \$10,010 and 10 hours for supervisory review x \$80 = \$800]; and, (2) staff review of each CAP and ISR - approximately \$1,600 [one GS-14 at \$80 hr. x 20 hours = \$1,600].

### 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 has 90 days - from the start of the new Federal Fiscal Year (FFY) on October 1 until December 31 - to prepare its annual PAIMI PPR. The PAIMI Act mandates that each State system submit its annual PPR to SAMHSA by January 1 [42 U.S.C. 10805(7)]. Before starting its review process, SAMHSA date stamps each PPR received. Information from each annual PPR provides a national profile of State P&A system activities that is included in the Secretary's report to the President, the Congress and the NCD. The CMHS FPO will contact their assigned State P&A system whenever PPR clarification and/or additional information or documentation is needed.

The DD Act of 2000 requires that the Secretary submit a bi-annual State P&A system report to the President, the Congress, and the NCD. SMHSA/CMHS prepares and submits its section of that report, including data tables, which it forwards to SAMHSA for review and clearance. SAMHSA sends its report to HHS for additional review and final approval. ADD includes the SAMHSA annual reports as appendices to the Secretary's bi-annual report on disabilities. When the final report is released to the President, the Congress, and the NCDD, ADD makes it available for public distribution.

**Time Table for Report Activities**

<u>Date</u>	<u>Tasks</u>	<u>Target Completion</u>
	Preparation of PPRs by respondents	October 1 - December 31
	Respondents submit annual PPRs to SAMHSA via CMHS	January 1
	Review of submitted PPR 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 visit to a State P&A system, a *Summary of Findings and Recommendations Report* is prepared by the Federal monitoring team. No later than 45 days after receipt of the Federal summary report, a State P&A system shall provide CMHS with a CAP. The FPO has 30 days to review the CAP. If the FPO does not accept the CAP, the State P&A system must submit a revised plan that is responsive to CMHS’ concerns. If CMHS accepts the CAP, then a quarterly ISR is 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 PAC. 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>Date</u>	<u>Tasks</u>	<u>Target Completion</u>
	Federal <i>Summary of Findings and Recommendations Report</i>	90 days after on-site visit.
	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 it ISR to CMHS

Quarterly - first report  
is due 90 after it is  
accepted by CMHS.

17. 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 PAC, displays the OMB approval number date and expiration date on the cover page in the upper right-hand corner [currently, OMB 0930-0169, expires on March 31, 2011].

18. 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.