

**The 1Protection 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 will expire on April 30, 2013. In 2008, the Administration on Developmental Disabilities (ADD) within the Administration of Children and Families published proposed regulations for the Developmental Disabilities Assistance and Bill of Rights Act, hereafter known as the DD Act, [42 U.S.C. 15001 et seq] in the Federal Register [Proposed Rules 45 CFR Parts 1385, 1386, 1387 and 1388, RIN 0970-AB11, Vol. 73, No.70, Thursday, April 10, 2008]. In June 2008, ADD received comments but did not finalize its rules. In July 2012, the Administration on Intellectual and Developmental Disabilities (AIDD) within the Administration of Community Living (ACL), formerly ADD/ACF, distributed copies of its proposed final regulations to the OPDIVS for review and comment. When the DD Rules are finalized, SAMHSA will revise its rules accordingly. This approach is consistent with methods of legal analysis.

In 1975, the DD Act [42 U. S. C. 6001 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/youth), 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 57th 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. 10804(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 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], also 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.

The PAIMI Act now provides formula grants that support 57 governor-designated, HHS approved, P&A systems in each state, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands), the District of Columbia (Mayor), and the tribal councils for the American Indian Consortium (Navajo Nation and Hopi tribe in the Southwest). At the federal level, lead administrative responsibility for the P&A systems, rests with the AIDD, the lead agency for the federal protection and advocacy (P&A) programs. CMHS is responsible for carrying out the mandates of the PAIMI Act [42 U.S.C. 290bb-31(b)(7)].

The PAIMI Act [at 42 U.S.C. 10826 (b)] requires the Secretary of 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 (2011 - 2013), AIDD presented its proposed rules for departmental review. This request is to extend the current PAIMI rules before they expire in April 2013.

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

42 CFR 51.5 (b), (c), and (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. The PPR includes a section completed by the system's PAIMI Advisory Council. [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. Annual PAIMI Program monitoring visits to selected P&A systems, annual review of P&A applications, PPRs and ACRs, information

from SAMHSA DGM on P&A system fiscal issues, and information provided by the federal P&A system partners (AIDD, HRSA, SAMHSA and RSA in the Department of Education) facilitate assessment as to whether the state P&A system are fully compliant with the programmatic, administrative, operational, and fiscal requirements of the PAIMI Act and Rules and identify remedial action needed to resolve the issues identified. 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 seven (7) state P&A systems are monitored by SAMHSA/CMHS 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; the identification of 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 members (as applicable).

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 number of individual (from P&A systems clients) and systemic (from any State resident) 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 must use the SAMHSA approved application to apply for its annual PAIMI Program grant. Information in a P&A system application is mandated by the PAIMI Act and Rules respectively, 42 U.S.C. 10805 and 42 CFR Part 51, as well as, Titles 45 CFR Part 74 and/or Part 92, and the HHS Grants Policy]. The CMHS PAIMI Program staff and the SAMHSA DGM Program Specialist will review each P&A system application submitted to information contained in its corresponding PPR for that year, e.g., for consistency of information, adherence to annual goals and objectives, and adherence to the terms and conditions of their PAIMI grant award, etc.

Annual Reports [42 CFR 51.8 and 42 CFR 51.23(a) (3)]: Each P&A system is required to submit an annual PAIMI PPR, including a section prepared by the PAC that highlights

its activities and accomplishments for the preceding fiscal year. Each fiscal year, SAMHSA will use the PPRs to compile a national profile that summarizes PAIMI Program activities, accomplishments, and expenditures by the P&A systems. It will also prepare a PAIMI program summary report of activities for each fiscal year. The summary report is submitted to the AIDD every other year. AIDD is responsible for preparing the Secretary's biannual report of federal disability activities for the President, the Congress and the National Council on Disability (NCD) [the DD Act at 42 U.S.C. 15005]. AIDD will include the SAMHSA PAIMI Activities report as an appendix to the Secretary's report.

The PAIMI Program summary report facilitates SAMHSA's ability to timely respond to administrative and/or congressional requests for information on specific State P&A systems, to identify specific program related training and technical assistance needs, 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 report that summarizes SAMHSA's programmatic and financial management assessments of its findings and recommendations. The monitoring report identifies the P&A system's strengths, challenges, and the remedial and/or corrective actions needed to resolve and programmatic and/fiscal compliance issues..

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)]: Each state P&A system must provide a written report that describes the number of annual individual and systemic grievances received, processed, and resolved to its governing authority and PAC.

Facility Written Statement of Delay or Denial [42 CFR 51.43]: This information determines 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 August 31, 2014]. 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 to the attention

of the SAMHSA, Office of Financial Resources, Division of Grants Management (DGM) with a courtesy copy to CMHS' PAIMI Program Coordinator. Also, the post-monitoring visit CAP and ISR are sent to the attention of the DGM and the CMHS PAIMI Program Coordinator, e.g., e-mail, regular mail, etc.

The SAMHSA Office of Management, Technology, and Operations in collaboration with the DGM staff made the PAIMI Program application available on www.grants.gov. HHS decisions regarding PKI signature specifications are pending.

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 not involved in or impacted by this program.

6. Consequences if Information is Collected Less Frequently

An annual PAIMI PPR from each P&A system, including a section prepared by the PAC, is mandated [42 U.S.C. 10805(7)]. SAMHSA aggregates the data and summarizes the information collected from each annual P&A system PPR. Every other year SAMHSA will submit a summary report to AIDD for inclusion as an appendix to the Secretary's biannual report on federal disability activities for the President, the Congress, and the NCD. [PAIMI Act at 42 U.S.C. 10824 and the DD Act at 42 U.S.C. 15005]. 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 results in untimely, inaccurate, and incomplete information on P&A system activities, e.g., GPRA data, the AIDD biannual report for the Secretary, etc.

The CAP and ISR enable SAMHSA program and grants management officials to monitor and evaluate the effectiveness of a state P&A system's activities initiated after a PAIMI Program monitoring visit.

7. Consistency with the Guidelines

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

8. Consultation Outside the Agency

The last notice soliciting public comments on these regulations was published in the *Federal Register*, Tuesday, February 5, 2013 (Vol. 78, p. 8159). No comments were received.

To keep abreast of State P&A system trends, issues and activities, SAMHSA currently

partners with other federal P&A agencies - AIDD (the lead), HRSA, and the Rehabilitation Services Administration (RSA) within the Department of Education. The federal partners convene at least once a month to discuss (in person at AIDD or via teleconference to discuss, coordinate, and collaborate on P&A system issues. SAMHSA and RSA fund an annual training and technical assistance contract for their respective P&A program grantees through separate annual interagency agreements administered by AIDD.

Key consultants on reporting issues were:

Federal P&A System Program Officials

Jennifer Johnson	Lead Program Specialist, AIDD	(202) 690-5982
David Jones	Lead Program Specialist, RSA	(202) 205-9315
Donelle McKenna	HRSA Program Manager	(301) 443- 9280
Lisa Stallworth	Accountant, SAMHSA/OFR/DGM	(240) 276-1402

Non-Federal Organizations

The AIDD awarded the ICDD P &A technical assistance and training contract to the Technical Assistance and Support Center (TASC), National Disability Rights Network (NDRN), formerly known as the National Association of Protection and Advocacy Systems or NAPAS. This 5-year contract, which is in its fourth year, provides training and technical to the State P&A systems. AIDD administers the IAA that is funded by SAMHSA and RSA.

Before revising its annual PAIMI PPR, which will expire in August 2014, SAMHSA consulted with its federal partners (AIDD, HRSA, and RSA). It also posted 60 and 30 day Federal Register Notices on proposed revisions to the PAIMI PPR reporting requirements. .

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 “keep the records private to the extent of the law” [42 U.S.C. at 10806(a), see also exceptions 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 privacy provisions of the PAIMI Rules [42 CFR 51.45 and 51.46] is evaluated by SAMHSA during the annual PAIMI Program monitoring visits to selected P&A systems.

The information collection and report requirements cited in the Final Rule are primarily composed of “aggregated summary” statistical data and there are 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)	\$75**	\$96,330
* 51.8(8)(a)(8) Advisory Council Report	57	1	10	(570)	\$55**	\$25,650
51.10 Remedial Actions: Corrective Action Plan	7	1	8	56	\$75	\$4200
Implementation Status Reports	7	3	2	42	\$75	\$3150
51.23(c) Reports, materials and fiscal data provided to the Advisory Council	57	1	1	57	\$75	\$ 3705
51.25(b)(3) Grievance Procedure	57	1	0.5	29	\$75	\$1885
†51.43 Written denial of access by P&A system	--	--	--	--	--	--
Total	57	--	--	184	--	\$134,920

* 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 \$75 per hour, including fringe benefits. The \$55 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, 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 which includes 143 hours for the FPO reviews and follow up of each PPR report [approximately 2.5 hours per report x \$70 an 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 fiscal year (FY) 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 P&A system activities that is included in the Secretary's report to the President, the Congress and the NCD. The PAIMI Program Office staff will contact a P&A system whenever clarification and/or additional information or PPR documentation is needed.

The DD Act of 2000 requires that the Secretary submit a biannual report on federal disability program activities to the President, the Congress, and the NCD. SAMHSA prepares and submits its section of that report, including data tables, which are forwarded to HHS for review and clearance. AIDD includes the SAMHSA PAIMI Program summary of activity reports as appendices to the Secretary's biannual report. When the Secretary's final report is released to the President, the Congress, and the NCDD, AIDD makes it available for public distribution.

Time Table for Report Activities

Tasks

Target Completion Date

Preparation of PPRs by respondents	October 1 - December 31
Respondents submit annual PPR to SAMHSA	January 1
Review of submitted PPR reports, preparation of annual report for the Secretary	July 1, every other year
CMHS staff review, edit, and submit the final draft of the Secretary's annual report to SAMHSA for review	August 31
SAMHSA reviews, approves the final report and submits to HHS.	September 30 in alternate years.

Corrective Action Plan and Implementation Status Reports

Within 150 days after completion of a SAMHSA monitoring visit to a State P&A system, a report summarizing the *findings and recommendations* is prepared. No later than 30 days after receipt of that monitoring report, a State P&A system shall provide SAMHSA with a CAP. SAMHSA has 30 days to review the CAP. If SAMHSA does not accept the CAP, the State P&A system must submit a revised plan. If SAMHSA accepts the CAP, then a quarterly ISR is required.

Time Table for CAP and ISR Activities

<u>Tasks</u>	<u>Target Completion Date</u>
SAMHSA PAIMI Program Monitoring Report	150 days after the visit visit.
P&A submits a CAP to SAMHSA	30 days after receipt of the SAMSHA monitoring report
SAMHSA issues a notice of acceptance or rejection of the CAP	30 days after receipt of the CAP.
P&A system submits its ISR to CMHS	Quarterly - first report is due
is due 90 days after it is accepted by SAMHSA	90 days after CAP is approved.

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, which will expire on August 31, 2014].

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 the use of statistical methods.