

## 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 (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 June 16, 2016. On July 2015, the Administration on Intellectual and Developmental Disabilities (AIDD) within the Administration on Community Living (ACL) published its final rules for the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the DD Act 42 U.S.C. 15001 et seq.). The DD Rules (45 CFR Parts 1385, 1386, 1387 and 1388) were published in the Federal Register on July 27, 2015 and became effective on August 26, 2015 are final. SAMHSA will need time to review the DD Rules to determine whether any of the current PAIMI rules need to be revised, as appropriate. This approach is consistent with methods of legal analysis.

The DD Act of 1975 (42 U. S. C. 6001 *et seq.*) established the State protection and advocacy (P&A) systems 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's protections to eligible individuals with significant (severe) mental illnesses (adults) and significant emotional impairments (children/youth) at risk for abuse and neglect while residing in public or private residential care and treatment facilities.

The PAIMI Act was amended in 2000. The amendments created a 57<sup>th</sup> PAIMI Program, the American Indian Consortium (AIC). The AIC was established under the DD Act (42 U.S.C. 6042) and PAIMI Act 42 U.S.C. 10802 (8)]. The PAIMI Act of 2000 states that the term "individual with mental illness means, except as provided in section 10804 (d) of this title, an individual . . . who satisfies the requirements of subparagraph (A) and lives in a community setting, including their own home" [at 42 U.S.C. 10802 (4) (B) (ii)]. P&A systems may serve persons living in a community setting, including their own homes; however, they ***must give service priority to PAIMI-eligible individuals who reside in public and private care and treatment facilities*** [42 U.S.C.10804 (d)].

The PAIMI Act formula grants provided by SAMHSA 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 state P&A systems rests with AIDD/ACL, which is the lead agency for the federal protection and advocacy (P&A) programs. SAMHSA/CMHS is responsible for carrying out the mandates of the PAIMI Act at 42 U.S.C. 290 bb-31(b)(7).

The PAIMI Act requires the Secretary of HHS to promulgate final regulations to carry out the legislation [at 42 U.S.C. 10826 (b)]. In October 1997, SAMHSA 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 (The PAIMI Final Rule 42 CFR Part 51).

During the current 3-year cycle (2013 - 2016), AIDD/ACL finalized the DD Rules on August 26, 2015. SAMHSA needs sufficient time to review the new DD Rules and as appropriate revise the PAIMI Rules accordingly. SAMHSA is requesting an extension for the PAIMI Rules which will expire on June 16, 2016.

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 OMB-approved user of the PHS Grant Application (Form PHS 5161-1) OMB 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 – the Advisory Council Report (ACR). [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 –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, SAMHSA, the Social Security Administration (SSA), and the Rehabilitation Services Administration (RSA) within the Department of Education facilitate assessment of a state P&A system's compliance with the programmatic, administrative, operational, and fiscal/grants management requirements of the PAIMI Act and Rules and identify the remedial actions needed to resolve these issues. Each state P&A system with compliance issues must develop and submit a written Corrective

Action Plan (CAP) and when necessary, quarterly Implementation Status Reports (ISR) on the progress of its corrective and/or remedial actions. Each fiscal year, approximately seven (7) state P&A systems are monitored by SAMHSA/CMHS.

**42 CFR 51.23 (a) (3) Advisory Council Report (ACR)**– Each state P&A system’s PAIMI Advisory Council (PAC) must submit an annual report to SAMHSA/CMHS. The ACR is the council’s independent assessment of its P&A system’s PAIMI Program activities. The report is submitted with 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 allotment. Information in a P&A system’s application is mandated by the PAIMI Act and Rules, respectively at 42 U.S.C. 10805 and 42 CFR Part 51, as well as, the HHS Code of Regulations 45 CFR Part 75 and the HHS Grants Policy. The CMHS PAIMI Program Officers and the SAMHSA Program Specialists from the Office of Financial Resources, Office of Financial Advisory Services, Division of Grants Management review each state P&A system application for programmatic and fiscal compliance. State P&A systems are contacted by CMHS and/or SAMHSA staff to clarify information provided, to obtain missing application components and to ensure that all proposed program activities are within the scope of the PAIMI Act. Each annual application is reviewed with the state P&A system’s PPR and ACR for that same fiscal year. The review ensures that the information provided by each state P&A system is accurate and consistent with the goals, objectives submitted with its application and that the system complies with the terms and conditions of its 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 an ACR section prepared by the PAC that highlights its activities and accomplishments for the preceding fiscal year. Each fiscal year, SAMHSA uses the PPR information to prepare a summary report that aggregates the data, e.g., number of clients served, issues resolved, individuals trained/educated, facilities visited, etc. This information is used to prepare a PAIMI Program summary report each fiscal year. The summary reports for each fiscal year will be included in SAMHSA's biennial report to the Secretary on PAIMI Program activities. SAMHSA's biennial report will be submitted to the AIDD/ACL. AIDD/ACL is mandated by the DD Act to prepare the Secretary's biennial report of federal disability activities for the President, Congress and the National Council on Disability (NCD) (at 42 U.S.C. 15005). AIDD/ACL will include the SAMHSA biennial PAIMI Program report as an appendix to the Secretary's report to the President, Congress and the NDC.

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 monitoring report that summarizes the SAMHSA/CMHS findings and recommendations of the state P&A system in the areas of program (governance, advisory council and administration of legal and advocacy services) and fiscal (financial) management.

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 September 30, 2017 ]. 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 Word format. The P&A systems must submit their applications electronically to via a website developed by the state P&A system technical assistance/training contractor information by e-mail to the attention of the SAMHSA, Office of Financial Resources, Division of

SAMHSA/CMHS in collaboration with the Office of Financial Resources/Office of Financial Services provides each State P&A system with electronic copies of the annual PAIMI Application. 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

The PAIMI Act requires each state P&A system to submit an annual PAIMI PPR, including a section prepared by the PAC [ at 42 U.S.C. 10805 (7)]. SAMHSA aggregates the data and summarizes the information collected from each PPR. Every other year SAMHSA will submit a summary report to AIDD/ACL for inclusion as an appendix to the Secretary's biennial report on federal disability activities for the President, Congress, and the NCD. See the PAIMI Act at 42 U.S.C. 10824 and the DD Act at 42 U.S.C. 15005. To collect PPR data less frequently violates 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)]. Late PPR submissions result in untimely, inaccurate and incomplete information on state P&A system activities, information that is used by SAMHSA for the annual PAIMI Program GPRA data and the biennial report for the Secretary. The CAP and ISR enable SAMHSA program, grants management and financial advisory 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* on April 5, 2016 (Vol. 81, p. 19611). Five comments were received. See attachments A for comments and attachment B for SAMHSA's response.

To keep abreast of State P&A system trends, issues and activities, SAMHSA currently partners with other federal P&A agencies – AIDD/ACL (the lead) 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 (IAA) administered by AIDD.

Key consultants on reporting issues were:

*Federal P&A System Program Officials*

Jennifer Johnson Director of the Office of Program Services AIDD/ACL (202) 795-7371

Clare Barnett Program Specialist AIDD/ACL (202) 795-7371

David Jones Lead Program Specialist RSA (202) 205-9315

Lisa Stallworth Auditor/Team Lead SAMHSA/OFR/OFAS (240) 276-1402

Jeffery Hunter Auditor/Team Lead SAMHSA/OFR/OFAS (240) 276-2008

*Non-Federal Organizations*

The AIDD/ACL 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. In September 2015, NDRN was awarded a 5-year, sole-source contract to provide training and technical assistance to the state P&A systems. AIDD administers this contract, as well as the annual interagency agreement (IAA) that is funded by SAMHSA/CMHS and RSA and the IAA that is funded by SAMHSA and RSA.

Before revising its annual PAIMI PPR, which will expire on September 30, 2017, SAMHSA consulted with its federal partners (AIDD/ACL, RSA and the Social Security Administration). It also posted 60 and 30 day *Federal Register Notices* on the 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	--	--	--	--	--	--
<b>Total</b>	<b>57</b>	<b>--</b>	<b>--</b>	<b>184</b>	<b>--</b>	<b>\$ 134,920</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 \$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, they attempt 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

\$45,000 for salaries, which includes 285 hours for the FPO reviews and follow up of each PPR report [approximately 5 hours per report x 19 reports per FPO x 3 FPO X \$70 an hour = \$19,950 and 60 hours (20 hours per FPO x 3 FPOs for supervisory review x \$80 = \$4800]; and, (4) staff review of each CAP and ISR - approximately \$2,800 [three (3) GS 13 FPOs X \$70 hour X 10 hours for each CAP/ISR review and follow-up X 7 annual reviews = \$14,700 and one GS-14 at \$80 hr. x 5 hours X 7 reviews = \$2,800].

### 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 National Council on Disability (NCD). The PAIMI Program Office staff will contact a P&A system whenever clarification and/or additional information is needed, i.e., to review an application, ACR and/or PPR, to request assistance for a state resident, etc.

The DD Act of 2000 requires that the Secretary submit a biennial 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/ACL includes the SAMHSA PAIMI Program summary of activity reports as appendices to the Secretary’s biennial 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**

<u>Tasks</u>	<u>Target Completion Date</u>
Preparation of PPRs by respondents	October 1 - December 31 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 (CAP) and Implementation Status Reports (ISR)**

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 the P&A system’s CAP is not accepted the CAP, then it 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

SAMHSA is accepted by is due 90 days after it 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 the ACR section from the PAC, displays the OMB approval number, approval date and the expiration date on the cover page in the upper right-hand corner [currently, OMB 0930-0169, which will expire on September 30, 2017].

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.

## Attachments

Attachment A

Comments

Attachment B

SAMHSA's Response to the Comments