

# 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 (SAMHSA) is requesting Office of Management and Budget (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 CFR Part 51). The current approval under OMB Control Number 0930-0172 will expire on October 31, 2022.

On July 27, 2015, the Administration on Intellectual and Developmental Disabilities<sup>1</sup> (AIDD) within the Administration for Community Living (ACL) published in the Federal Register, published its final rules for the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.), commonly known as the DD Act. The DD Rules (45 CFR Parts 1326, 1327, and 1328) became effective on August 26, 2015. SAMHSA reviewed the DD Rules and determined that no revisions to the PAIMI Rules were needed. This approach is consistent with methods of legal analysis.

The DD Act of 1975 (42 U.S.C. 15001 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 and a 57<sup>th</sup> PAIMI Program for the American Indian Consortium was established [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 [ibid at 42 U.S.C. 10802 (4) (B) (ii)]. P&A systems may serve persons living in a community setting, including their own homes (ibid); however, ***they must give service priority to representing PAIMI-eligible persons with mental illness as defined in subparagraphs (A) and (B) (i) of section 10802 (4) of this title*** [ibid at 42 U.S.C. 10804 (d)].

The Children's Health Act of 2000 (at 42 U.S.C. 290ii) added requirements to protect and promote the rights of residents of general hospitals, nursing, intermediate care or other health care facilities. Entities supported with funds appropriated to any federal

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<sup>1</sup> Renamed the Administration on Disabilities (AoD). AoD includes the Administration on Intellectual and Developmental Disabilities (AIDD) and the Independent Living Administration (ILA).

department or agency are mandated to be free from physical or mental abuse, corporal punishment or other restraints or involuntary seclusions imposed for purpose of discipline or convenience. Each facility, to which the PAIMI Act applies, is mandated to notify an appropriate agency, determined by the Secretary of the Department of Health and Human Services (HHS), of each death at the facility while a patient is restrained or placed in seclusion.

Under the PAIMI Act, SAMHSA provides formula grants that support 57 governor-designated, AIDD-approved P&A systems located in each of the 50 states, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, U.S. Virgin Islands, the District of Columbia (Mayor) and the tribal councils for Navajo Nation and Hopi who comprise the American Indian Consortium located in the Four Corners region of the Southwest. At the federal level, AIDD/ACL is the lead agency for the federal protection and advocacy (P&A) programs. Per 42 U.S.C. 290bb-31 (b) (8), the Director of the Center for Mental Health Services (CMHS) is responsible for carrying out the mandates of the PAIMI program.

The PAIMI Act at 42 U.S.C. 10826 (b) requires the Secretary of HHS to promulgate final regulations to carry out the legislation. On October 15, 1997, SAMHSA promulgated the final PAIMI Rules, which implemented authorized activities of state P&A systems that serve individuals with severe mental health disabilities and severe emotional impairments, at risk for abuse, neglect, and rights violations, as defined in the Act.

During the current 3-year cycle (2019 - 2022), SAMHSA reviewed and determined that no revisions to the PAIMI Rules were needed. On October 31, 2022, the PAIMI Rules will expire. SAMHSA is requesting that the rules be extended for another three (3) years (2022 - 2024).

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 Public Health Service (PHS) Grant Application (Form PHS 5161-1) under 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 of HHS. The PPR includes a section completed by the system's PAIMI Advisory Council – the *Advisory Council Report* (ACR). [Note: The response burden for the PPR was approved by OMB in June 2020 under control number 0930-0169].

**42 CFR 51.10 - Remedial Actions.** Each state P&A system selected for a monitoring site visit or desk audit/document review shall provide written responses to any programmatic or fiscal findings and recommendations issued by SAMHSA, the grantor

agency. Annual PAIMI program monitoring site visits or desk audits/document reviews to selected P&A systems, annual review of P&A grantee applications, PPRs and ACRs, information from SAMHSA's Office of Financial Resources (OFR)/Office of Financial Advisory Services (OFAS) and the Division of Grants Management (DGM)/Formula Grants Branch (FGB) are all reviewed and documented in SAMHSA official file folders. SAMHSA PAIMI Program Officers and DGM Grants Management Specialists regularly collaborate on P&A system fiscal issues and information provided by the federal P&A system partners (AIDD, the Social Security Administration (SSA), and the Rehabilitation Services Administration (RSA) within the Department of Education). Regular intra-agency and inter-agency communication facilitates assessment of a state P&A system's compliance with federal programmatic, administrative, operational, and fiscal/grants management requirements and the identification of grantee remedial actions to resolve them. Each state P&A system with compliance issues must develop and submit a written Corrective Action Plan (CAP) and quarterly Implementation Status Reports (ISR) on the progress of its corrective or remedial actions. Each fiscal year, approximately six state P&A systems are monitored by SAMHSA – at least five monitoring site visits and one desk audit/document review.

The CAPs and ISRs are used to evaluate and monitor the progress made by PAIMI program grantees following a federal on-site visit or desk audit/review. The report from the monitoring site visits or desk audits/document reviews summarizes SAMHSA's recommendations and compliance findings of the state P&A system's PAIMI Program in the following areas: governance; advisory council; the administration of legal and advocacy services; and fiscal/financial management system.

**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. 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, Expiration date June 30, 2023].

**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, 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 system 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; 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 Web-based Block Grant Application System (WebBGAS) 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 at 42 U.S.C. 10805 and 42 CFR Part 51, respectively, including, the HHS Code of Regulations, Title 45 CFR Part 75 and the HHS Grants Policy. PAIMI Program Officers (PPO) from the CMHS/Division of State and Community Systems Development and Grants Management Specialists (GMS) from the Office of Financial Resources (OFR), Division of Grants Management (DGM), Formula Grants Branch (FGB) review each state P&A grant application for programmatic and fiscal compliance. P&A grantees are contacted by their assigned PPO or GMS when additional information or revisions are needed. Each annual application is compared with the grantees PPR and ACR for that same fiscal year (FY). The review ensures that the information provided by each P&A grantee is accurate and fully compliant with the requirements of the PAIMI Act, PAIMI Rules, the PAIMI Program Assurances and the Terms and Conditions of their Notice of Award.

Annual Reports [42 U.S.C. 10805 (a) (7), 42 CFR 51.8, and 42 CFR 51.23(a) (3)]: On January 1, each state P&A system is required to submit an annual PAIMI PPR, including an ACR section prepared by the PAC and signed by the council's Chairperson [PAIMI Act 42 U.S.C. 10807 (a) (7)]. Each PPR highlights a PAIMI grantee's activities and accomplishments for the preceding FY. Each year, SAMHSA uses the PPR and ACR information to prepare a summary report, the SAMHSA *PAIMI Program Activities Report* of aggregated data, e.g., the number of clients served, issues resolved, individuals trained/educated, facilities visited, etc. The summary reports shall include specific PPR and ACR information required under the PAIMI Act [at 42 U.S.C. 10824 (1) (A) – (E), (2) (A) – (D), (3) and (4) and (b)]. The SAMHSA annual summary reports are included as an appendix to the Secretary's biennial report of federal agency disability activities prepared by AIDD/ACL (The DD Act at 42 U.S.C. 15005) and submitted to the President, the Congress and the National Council on Disability (NCD) (ibid). *The Biennial Report to the Congress* is listed under AIDD Publications at <https://acl.gov/news-and-events/fact-sheets/publications-and-fact-sheets>.

## 3. Improved Information Technology

Efforts to improve information technology and reduce the PAIMI program data collection and reporting burdens for the P&A systems are reviewed in 3-year cycles when the PPR is due to expire. The current PAIMI PPR, including the ACR was approved on June 12, 2020 and will expire on June 30, 2023 (OMB 0930-0169). Each state P&A system must submit its annual PAIMI program applications, PPR and ACR electronically to SAMHSA through WebBGAS. WebBGAS provides each PAIMI program grantee with

access information that facilitates each grantees' ability to complete and submit its annual PAIMI application, PPR and ACR, respond to the PPO's request for revisions, etc.

#### 4. Efforts to Identify Duplication

The PAIMI program is a singular, unduplicated program, and its 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 [42 U.S.C. 10805(7)]. SAMHSA aggregates the data from each PPR and summarizes the information. Every other year SAMHSA submits a PAIMI activity summary report to AIDD/ACL. SAMHSA's report is included in the appendices to AIDD's biennial report on disability activities to the President, the Congress, and the National Council on Disabilities (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 P&A system activities, e.g., GPRA data, SAMHSA's biennial report for the Secretary, etc. The CAP and ISR enable SAMHSA program, grants management, and financial resources officials to monitor and evaluate the effectiveness of a state P&A system's activities initiated after a PAIMI Program monitoring site visit or desk audit/document review.

#### 7. Consistency with the Guidelines

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

#### 8. Consultation Outside the Agency

As required by 5 CFR 1320.8(d), the 60-Day FRN was published in the *Federal Register* on April 19, 2022 (87 FR 23186).

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), Social Security Administration (SSA) and the Rehabilitation Services Administration (RSA) within the Department of Education. The federal partners meet at least once a month (in person at AIDD or via teleconference) to discuss, coordinate and collaborate on P&A system issues. AIDD, SAMHSA and RSA fund the annual training and technical assistance (T/TA) contract for their respective P&A program grantees through separate annual inter-agency agreements (IAA) with AIDD. AIDD administers the T/TA contract. Key consultants on reporting issues were:

### *Federal P&A System Program Officials*

Lisa Stallworth	Program Coordinator, SAMHSA/CMHS	(240) 276-1402
Steven Dettwyler	Public Health Analyst, SAMHSA/CMHS	(240) 276-0311
Odessa Crocker	Branch Chief, SAMHSA/OFR/DGM	(240) 276-1078
Samuel Pierre	Program Specialist, ED/OSERS/RSA	(202) 245-6488
Ophelia McLain	Program Coordinator, AIDD/ACL	(202) 795-7401
Wilma Roberts	Program Specialist, AIDD/ACL	(202) 795-7449

### *Non-Federal Organizations*

On September 29, 2020, a 5-year sole-source P&A system T/TA contract was awarded by AIDD to the Technical Assistance and Support Center (TASC)/National Disability Rights Network (NDRN). AIDD administers the contract, which is funded by an annual inter-agency agreement (IAA). The IAA is funded by AIDD, SAMHSA and RSA. The PAIMI Act (at 42 U.S.C. 10825 Technical assistance) states “the Secretary shall use not more than 2 per cent of the amounts appropriated under section 10827 of this title (ibid, Authorization of appropriations) to provide technical assistance to eligible systems . . . .”

SAMHSA’s current annual PAIMI PPR and ACR (OMB Approval 0930-0169) expires on June 30, 2023. SAMHSA will publish 60 and 30 day *Federal Register Notices* for public comments 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

The PAIMI Act requires state P&A systems to “keep the records private to the extent of the law” [42 U.S.C. at 10806 (a) and the exceptions cited at 10806 (b)]. Each state P&A system must 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 PAIMI Rules (42 CFR 51.45 and 51.46) is evaluated by SAMHSA during the annual PAIMI program monitoring visits or desk audits/document reviews of selected P&A systems.

The information collection and report requirements cited in the Final Rule are 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 (\$)
<sup>2</sup> 51.8(a)(2) Program Performance Report	57	1	20	(1140) <sup>1</sup>	\$100 <sup>3</sup>	\$ 114,100
<sup>1</sup> 51.8(8)(a)(8) Advisory Council Report	57	1	10	(570) <sup>1</sup>	\$ 55 <sup>2</sup>	\$ 25,650
51.10 Remedial Actions: Corrective Action Plans & Implementation Status Reports	5	2	8	80	\$100	\$ 8,000
	5	3	2	30	\$100	\$ 3,000
51.23(c) Reports, materials and fiscal data provided to the Advisory Council	57	1	1	57	\$100	\$ 5,700
51.25(b)(3) Grievance Procedure	57	1	0.5	28.5	\$100	\$ 2,580
†51.43 Written denial of access by P&A system		--	--	--	--	--
<b>Total</b>	<b>57</b>	<b>-</b>	<b>41.5</b>	<b>196</b>	<b>--</b>	<b>\$159,030</b>

† 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.

<sup>2</sup> Responses and burden hours associated with these reports were approved under OMB Control No. 0930-0169.

<sup>3</sup> Based on the average salary paid to state P&A system staff, estimated at \$100 per hour, including fringe benefits. The \$55 per hour rate is the estimated compensation, if PAC members were P&A system employees rather than unpaid volunteers.

#### 14. Estimated Annual Cost Burden to the Government

It is estimated that the PPOs need 285 hours (5 hours per review x 57 grantees) to complete the first level review of the 57 PAIMI grantees PPRs (including the advisory council's section) and the application for the same fiscal year; PPO revision information or revision requests; and follow-up emails to the grantees and to WebBGAS (requesting access to new P&A staff, etc.). Per OPM Salary Table 2021-DCB, the estimated cost for four PPOs (GS-13s) to complete the first level review of the annual PAIMI Program applications and PPRs is \$18,408.15 based on the average GS-13/step 10 hourly rate of \$64.59 x 285 hours to review 114 documents.

The salary for the second level review conducted by the PAIMI Team Lead/Program Coordinator is estimated as \$8,700.48 based on 114 hours (2 hours per review x 57 grantees) x the GS-14/step 10 hourly rate of \$76.32. In addition, the salary for the third level review by two Branch Chiefs is estimated as \$4,350.24 based on 57 hours (1 hour at 30 minutes per report) x the GS-14/step 10 hourly rate of \$76.32 to review the annual applications and PPRs. The total costs estimated for the PPOs, Team Lead and Branch Chiefs is \$31,458.87 for the review of the PAIMI Program applications and PPRs.

The PAIMI Program Monitors (PPM) prepare each CAP and the PPO assigned to that state P&A is responsible for reviewing each ISR. For these tasks, the estimated cost is \$5,167.20 based on two PPMs x five CAPs x 8 hours at \$64.59 per CAP. The PPO, whose state P&A was monitored, is responsible for reviewing the ISR submitted in response to the CAP. The cost for the PPOs review of the five CAPs x three ISRs per CAP x 4 hours per ISR x \$64.59 an hour is estimated at \$3,875.40. The estimated cost for the CAP/ISR review by the Team Lead and two Branch Chiefs is estimated as follows: 20 reports (five CAPs and 15 ISRs) x \$76.32 (hourly rate for GS-14/Step 10) x 2 hours per report) is \$3,052.80.

Overall, the estimated average annual cost of this assessment is \$75,013.

#### 15. Changes in Burden

There is no burden change.

#### 16. Time Schedule, Publication, and Analysis Plan

Each state P&A system has 90-days, from October 1, the start of the new fiscal year (FY), until December 31 to prepare its annual PAIMI PPR, including the advisory council's section. The PPR must be submitted to SAMHSA through WebBGAS on January 1 each year.

[PAIMI Rule 42 U.S.C. 10805 (a) (7)]. WebBGAS captures all grantee activities in real time, e.g., date application and PPR is started, percentage of progress, completion, and submission dates, etc. PPOs use WebBGAS to send their assigned grantees requests for revisions, etc., and emails, as appropriate, e.g., clarification or additional information and request for assistance from a state resident, etc.

The DD Act of 2000 requires the Secretary to submit a biennial report on federal disability program activities to the President, the Congress, and the National Council on Disability (NCD). SAMHSA prepares and submits its section of that report to AIDD, which is included in the appendices to the Secretary’s biennial report. AIDD makes the report available to the public when the Secretary’s final report is released to the President, the Congress, and the NCD.

**Time Table for Report Activities**

<u>Tasks</u>	<u>Target Completion Date</u>
Preparation of PPRs by respondents	October 1 - December 31
Respondents submit annual PPR to SAMHSA	January 1
First level PPR/ACR review by PPOs.	March 1
Second and Third level PPR/ACR reviews by Team Lead and Branch Chief	April 30
Prepare the Secretary’s biennial report on PAIMI Program activities	June 30
SAMHSA approves and submits the PAIMI activities report to AIDD/ACL for inclusion in the Secretary’s biennial report to the President.	September 30 (alternate years).

**Corrective Action Plan (CAP) and Implementation Status Reports (ISR)**

The final findings and recommendation reports and if applicable, the CAP for the state P&A systems selected for annual monitoring visits and desk audits/reviews must be completed with 180-calendar days. The 180-days includes preparation of the draft report, supervisory review of report, P&A report review for factual corrections, issuance of the final report to the P&A. If a CAP is required, the P&A has 60-calendar days to submit its plan. The PPO assigned to that state P&A has 30-calendar days to review it and either approve or disapprove it. If disapproved, the P&A must submit a revised CAP within 30-calendar days. Once the CAP is approved, the P&A must submit its first Implementation Status Report (ISR) within 120-calendar days. Subsequent ISRs must be submitted by the state P&A system every quarter until all CAP issues are resolved to the satisfaction of the PPO.

**Time Table for PAIMI CAP and ISR Activities**

<u>Tasks</u>	<u>Target Completion Date</u>
PAIMI Program Monitor (PPM) prepares the	60-calendar days

monitoring visit or desk audit/document review report & CAP.

The Branch Chief (BC) reviews the PPM's draft report and CAP.

30-calendar days of receipt

P&A sent draft report for factual/accuracy review.

30-calendar days after BC review.

The P&A responds to its draft report with comments (if needed).

30-calendar days.

PPM/BC responds and issues final report.

30-calendar days.

When required, the P&A submits its CAP.

60-calendar days from receipt of the final report and CAP.

PPO & PPM review, approve, or disapprove the CAP.

30-calendar days.

P&A ISR due each quarter.

First ISR due 120-days after the CAP is approved. An ISR is due every 120-calendar days until all programmatic issues are resolved.

#### 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, displays the OMB approval number, and expiration date on the cover page in the upper right-hand corner (OMB 0930- 0169 that will expire on June 30, 2023).

#### 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.