

PROTECTION & ADVOCACY FOR INDIVIDUALS WITH MENTAL ILLNESS (PAIMI):

PAIMI's Mandate:

1. Protect and advocate for the rights of individuals with mental illness through activities to ensure the enforcement of the Constitution and Federal and State statutes.
2. Investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

Eligibility for PAIMI:

To be eligible for services from the PAIMI program, an individual must satisfy the definition of "individual with mental illness" contained in the PAIMI Act. The definition covers those individuals that have significant mental illness or emotional impairment as determined by a mental health professional **and** who is:

- a. an inpatient or resident in a facility rendering care or treatment (even if the whereabouts of the person are unknown); or
- b. in the process of being admitted or transported to a facility rendering care or treatment; or
- ** c. involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from conviction for a criminal offense.

Further, P&As are permitted to provide assistance to persons who had a significant mental illness or emotional impairment and have been discharged from a facility, but only with respect to matters which occur within 90 days of discharge from the facility.

Finally, as amended by the Children's Health Act of 2000 (Public Law 106-310, October 17, 2000), coverage under the Act is expanded to allow P&A services for a person with a significant mental illness or emotional impairment who "lives in a community setting, including their own home." However, the amendment further provides that such coverage under the Act shall apply, and thus, persons living in the community shall be eligible for services under the PAIMI Program, only when the total allotment under the Act for any fiscal year is \$30 million or more. (This threshold was reached in fiscal year 2001.) Finally, the Act provides that in such a case, the P&A "must give priority to representing persons with mental illness" who reside in a facility rendering care or treatment.

****NOTE:** CMHS said that individuals who are missing or deceased also are covered under the PAIMI Act provided they meet all of the criteria of the above

definition. The Act does not specifically say this; however, CMHS has interpreted the definition this way since death is covered in the definitions of "abuse" and "neglect."

Scope of PAIMI's services:

PAIMI can address only those issues raised by an eligible individual (i.e., an individual with a mental illness) that arise:

- a. during the individual's transportation or admission to a facility;
- b. during the individual's time of residency in the facility;
- c. within 90 days after the individual is discharged from the facility;
- d. at any time with respect to a person who lives in a community setting, but only if the appropriation for the fiscal year equals or exceeds \$30 million.

Legal Authority:

Protection and Advocacy for Individuals with Mental Illness Act
42 U.S.C. 10801 *et seq.*
45 CFR Part 51

Key Definitions:

1. **Individual with Mental Illness** (See definition discussed above, which is found at 42 U.S.C. 10802(4) and 45 CFR 51.2).
2. **Facility** (42 U.S.C. 10802(3) and 45 CFR 51.2) includes any public or private residential setting that provides overnight care accompanied by treatment services. Facilities include, but are not limited to the following: general and psychiatric hospitals, nursing homes, board and care homes, community housing, juvenile detention facilities, homeless shelters, and jails and prisons, including all general areas as well as special mental health or forensic units.
3. **Care or Treatment** (45 CFR 51.2) means services provided to prevent, identify, reduce or stabilize mental illness or emotional impairment such as mental health screening, evaluation, counseling, biomedical, behavioral and psychotherapies, supportive or other adjunctive therapies, medication supervision, special education and rehabilitation, even if only "as needed" or under a contractual arrangement.
4. **Abuse** (42 U.S.C. 10802(1) and 45 CFR 51.2) means any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with mental illness, and includes acts such as: rape or sexual assault; striking; the use of excessive force when placing an individual with mental illness in bodily restraints;

the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations; verbal, nonverbal, mental and emotional harassment; and any other practice which is likely to cause immediate physical or psychological harm or result in long-term harm if such practices continue.

5. **Neglect** (42 U.S.C. 10802(5) and 45 CFR 51.2) means a negligent act or omission by an individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an individual with mental illness or which placed an individual with mental illness at risk of injury or death, and includes an act or omission such as: the failure to establish or carry out an appropriate individual program plan or treatment plan for an individual with mental illness; the failure to provide adequate nutrition, clothing, or health care to an individual with mental illness; or the failure to provide a safe environment for an individual with mental illness, including failure to maintain adequate numbers of appropriately trained staff.

Key Provisions:

1. **42 U.S.C. 10805(a)(1)** mandates the services of the PAIMI program:
 - (a) A system established in a State under section 10803 of this title to protect and advocate the rights of individuals with mental illness shall:
 - (1) have the authority to:
 - (A) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;
 - (B) pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State; and
 - (C) pursue administrative, legal, and other remedies on behalf of an individual who:
 - (i) was an individual with mental illness; and
 - (ii) is a resident of the State, but only with respect to matters which occur within 90 days after the date of the discharge of such individual from a facility providing care or treatment.
2. **45 CFR 51.7** sets forth the requirements for "Eligibility for protection and advocacy services":

In accordance with **section 105(a)(1)(C) of the Act (42 U.S.C. 10805(a)(1)(C))** and the priorities established by the P&A system governing authority, together with the advisory council, pursuant to section 105(c)(2)(B) of the Act (42 U.S.C. 10805(c)(2)(B)), allotments may be used:

- (a) To provide protection and advocacy services for:
 - (1) Individuals with mental illness as defined in 42 U.S.C. 10802(4) and 10805(a), including persons who report matters which occurred while they were individuals with mental illness;
 - (2) Persons who were individuals with mental illness who are residents of the State, but only with respect to matters which occur within 90 days after the date of the discharge of such individual from a facility providing care or treatment; and
 - (3) Individuals with mental illness in Federal facilities rendering care or treatment who request representation by the eligible P&A system. Representation may be requested by an individual with mental illness, or by a legal guardian, conservator or legal representative.
- (b) To provide representation of clients in civil commitment proceedings if the P&A system is acting on behalf of an eligible individual to obtain judicial review of his or her commitment in order to appeal or otherwise challenge acts or omissions which have subjected the individual to abuse or neglect or otherwise violated his or her rights. This restriction does not prevent a P&A system from representing clients in commitment or recommitment proceedings using other resources so long as this representation does not conflict with responsibilities under the Act.

42 U.S.C. 10805(a)(4) and 42 CFR 51.41 and 51.42 grant P&As extensive authority to gain access to records and facilities in order to investigate abuse and neglect. For instance, P&As shall have access to the records of an individual with mental illness who is not competent to consent to their release and who does not have a guardian or whose guardian is a state agency if the P&A has probable cause to suspect abuse or neglect or has received a complaint. Also, P&As shall have reasonable unaccompanied access to facilities and to residents to investigate abuse and neglect or to conduct monitoring regarding health and safety.

**** Background Information regarding incarcerated individuals:** The following excerpt from the Preamble to the PAIMI regulations, 62 F.R. 53552 (October 15, 1997) gives further guidance on who is eligible for services from the PAIMI program. In particular, this excerpt focuses on those individuals who are involuntarily confined to a jail, prison, or some other detention facility.

The Department concurs that a system may assist prisoners or detainees with mental illness who are maintained within the general prison or jail population and who may receive mental health services from time to time as well as those who are maintained in special mental health units....

...The Department would like to clarify some confusion in the statute with regard

to jails and prisons. In section 102(3) of the Act jails and prisons are clearly listed as facilities. Yet section 102(4) in the definition of "individual with mental illness," indicates that such a person includes an individual who has a mental illness and "who is involuntarily confined in a municipal detention facility for reasons other than serving a sentence resulting from a conviction for a criminal offense." ...To clarify this ambiguity, the Department is expanding the definition of "individuals with mental illness" to include persons in a detention facility, jail or prison which provides overnight care or treatment, whether they have been convicted of a criminal offense or not, and whether the facility is municipal, State or Federal....

Authorized:

The PAIMI program was first authorized in 1986 with the enactment of the Protection and Advocacy for Mentally Ill Individuals Act.

Funding:

The PAIMI program received \$30 million in FY 2001, \$32.5 Million in FY 2002, \$33.8 million in FY 2003, and \$34.6 million in FY 2004.

Administered by:

The PAIMI program is administered by the Center for Mental Health Services, U.S. Department of Health and Human Services.