

Research question

When 42 U.S.C. § 10805(c)(2)(B) provides for the PAIMI Advisory Council and their Protection and Advocacy agency to jointly develop the annual priorities, 42 C.F.R. § 51.22(a) to jointly establish annual program priorities and policies, 42 C.F.R. § 51.23(a)(2) to work jointly in the development of policies and priorities, does that include budget decisions (allocation of expenditures), especially in light of 42 C.F.R. § 51.23(c) requiring the Protection and Advocacy agency to provide the PAIMI Advisory Council with detailed budget information?

Expanded report • All Federal

Summary

The joint development requirements under 42 U.S.C. § 10805(c)(2)(B), 42 C.F.R. § 51.22(a), and 42 C.F.R. § 51.23(a)(2) do encompass budget and expenditure allocation decisions as a substantive component of the joint development process — but with an important structural limitation: the governing authority retains ultimate decision-making authority over system operations, including final budget approval. **The PAIMI Advisory Council's role is one of genuine, substantive joint participation in the development of priorities and policies (which necessarily includes resource allocation decisions)**, not merely passive receipt of information. This conclusion is strongly supported by the text of 42 C.F.R. § 51.23(c), which requires the P&A system to provide the Advisory Council with detailed fiscal data expressly to enable the Council to review existing program policies, priorities, and performance outcomes — a functional purpose that would be meaningless if the Council had no substantive role in decisions about how resources are allocated to implement those priorities.

The Statutory Framework: Joint Development of Annual Priorities

The PAIMI Act, enacted in 1986, establishes a two-tier governance structure for each state's Protection and Advocacy system. Under 42 U.S.C. § 10805(c)(2), the governing authority is responsible for the planning, design, implementation, and functioning of the system, and — consistent with that responsibility — must jointly develop the annual priorities of the system with the advisory council [42 USCA § 10805](#). The advisory council, in turn, is charged with advising the system on policies and priorities to be carried out in protecting and advocating the rights of individuals with mental illness [42 USCA § 10805](#).

The statute does not use the word "budget" or "expenditures" in connection with the joint development mandate. However, the phrase "annual priorities of the system" is broad and programmatic in nature. Priorities are not abstract goals — they are

operational commitments that necessarily require the allocation of staff time, financial resources, and organizational capacity. **A priority that receives no funding is not a genuine priority.** This functional reality is directly reflected in the implementing regulations.

The Regulatory Framework: Budget Considerations Are Integral to Joint Priority Development

The implementing regulations at 42 C.F.R. § 51.22(a) require that each P&A system's governing authority "jointly with the advisory council, annually establish program priorities and policies" [42 CFR § 51.22](#). This language is mandatory and bilateral — both the governing authority and the advisory council are participants in the establishment of priorities and policies, not merely in their discussion.

The most direct textual link between budget decisions and the joint development requirement appears in 42 C.F.R. § 51.24(a), which elaborates on the program priorities requirement [42 CFR § 51.24](#). That regulation states that program priorities and policies shall be established annually by the governing authority, jointly with the advisory council, and that in developing priorities, consideration shall be given to, at a minimum, case selection criteria, the availability of staff and monetary resources, and special problems and cultural barriers faced by individuals with mental illness [42 CFR § 51.24](#). **The explicit inclusion of the availability of monetary resources as a mandatory consideration in the joint priority-development process directly ties budget and expenditure allocation to the joint development mandate. The Advisory Council must be part of the process that weighs how available resources will be allocated across competing priorities** — because that allocation is inseparable from the act of setting priorities.

The Advisory Council's own regulatory mandate under 42 C.F.R. § 51.23(a)(2) requires it to work jointly with the governing authority in the development of policies and priorities [42 CFR § 51.23](#). This is not a passive or advisory-only role. The regulation uses the same "jointly" language as § 51.22(a), establishing a mutual obligation. The Advisory Council is also required to provide independent advice and recommendations to the system under § 51.23(a)(1) [42 CFR § 51.23](#), which further supports a substantive, not merely ceremonial, role in the development process.

The Budget Information Requirement Under § 51.23(c): Enabling Substantive Participation

The strongest textual argument that budget decisions fall within the joint development mandate comes from 42 C.F.R. § 51.23(c) [42 CFR § 51.23](#). That provision requires each P&A system to provide its advisory council with reports, materials and fiscal data to enable review of existing program policies, priorities and performance outcomes. **The**

submissions must be made at least annually and must report expenditures for the past two fiscal years, as well as projected expenses for the next fiscal year, identified by budget category — including salary and wages, contracts for services, and administrative expenses — and including the amount allotted for training of each of the advisory council, governing board, and staff 42 CFR § 51.23.

The operative phrase is "to enable review." The regulation does not say the fiscal data is provided merely for informational purposes or for the Council's general awareness. It is provided to enable the Council to review existing program policies, priorities, and performance outcomes. This language creates a functional connection: the Council receives budget data so that it can meaningfully evaluate whether the P&A system's resource allocation is consistent with the jointly developed priorities and policies. A council that can review budget data against program priorities is necessarily a council that participates in the process of determining how resources should be allocated to implement those priorities.

The Governing Authority's Retained Ultimate Authority

While the joint development requirement encompasses budget considerations, the relationship between the governing authority and the Advisory Council must be understood through the lens of the mandatory joint development requirement. The statute and regulations establish that the governing authority is responsible for planning, design, implementation, and functioning, and must jointly develop annual priorities with the advisory council 42 USCA § 10805 42 CFR § 51.22. The statute uses mandatory language requiring joint development rather than language suggesting the governing authority has unilateral final decision-making power 42 USCA § 10805.

The regulatory framework creates a genuine collaborative process in which both the governing authority and Advisory Council participate in establishing priorities and policies. The Advisory Council must be meaningfully involved in the development of priorities and policies, including the resource allocation decisions that give those priorities operational meaning. While the statute assigns responsibility for planning, design, implementation, and functioning to the governing authority, it mandates joint development of annual priorities, creating a collaborative rather than purely hierarchical relationship 42 USCA § 10805 42 CFR § 51.22.

The Integrated Reading of the Regulatory Scheme

Reading the statute and regulations as a coherent whole, the following framework emerges:

First, the governing authority and Advisory Council must jointly develop annual priorities and policies, and that joint development process must include consideration of the

availability of monetary resources [42 CFR § 51.24](#). This means budget allocation — how funds are distributed across program priorities — is a subject of joint development, not solely a governing authority prerogative.

Second, the P&A system must provide the Advisory Council with detailed fiscal data, including past expenditures and projected future expenses by budget category, expressly to enable the Council to review whether program policies, priorities, and performance outcomes are being implemented as jointly developed [42 CFR § 51.23](#). This provision would be largely superfluous if the Advisory Council had no substantive role in budget-related decisions.

Third, the governing authority is responsible for the system's planning, design, implementation, and functioning, and must jointly establish program priorities and policies with the advisory council [42 USCA § 10805](#) [42 CFR § 51.22](#). The mandatory joint development requirement creates a collaborative relationship in which the Advisory Council participates substantively in priority-setting and the resource allocation decisions that implement those priorities.

Practical Implications

In practice, the joint development requirement means that a P&A system cannot unilaterally determine how PAIMI grant funds are allocated across program priorities without meaningful Advisory Council participation in that process. The Advisory Council must be given the opportunity to participate in discussions about how resources will be distributed — for example, how much funding will be allocated to litigation versus outreach, or how staff resources will be assigned to different priority areas. The § 51.23(c) budget information requirement ensures the Council has the fiscal data necessary to engage meaningfully in those discussions.

The joint development obligation is process-oriented: the Council must be a genuine participant in the development of priorities and the resource allocation decisions that implement them. The governing authority's responsibility for planning, design, implementation, and functioning must be exercised consistent with the mandatory requirement to jointly develop annual priorities with the advisory council.

A P&A system that presents the Advisory Council with a completed budget for ratification — rather than involving the Council in the development of the budget as an expression of jointly developed priorities — would likely not satisfy the joint development requirement. Conversely, a P&A system that involves the Advisory Council in substantive discussions about resource allocation during the annual priority-setting process, provides the required fiscal data, and then makes final budget decisions consistent with the jointly developed priorities would be in compliance with the regulatory scheme.

Related Issues

- Whether a P&A system's failure to meaningfully involve the Advisory Council in the joint development process constitutes a violation of PAIMI grant conditions that could result in SAMHSA disallowance of grant expenditures
- The extent to which the Advisory Council's independent advice and recommendations under 42 C.F.R. § 51.23(a)(1) can address budget matters outside the formal annual priority-setting process
- Whether the conflict-of-interest provisions under 42 C.F.R. § 51.26 — which apply to members of both the governing authority and advisory council with respect to contracts, subcontracts, and expenses — affect the Advisory Council's participation in budget decisions involving specific vendors or contractors
- The relationship between the PAIMI Advisory Council's joint development role and the public comment requirement under 42 C.F.R. § 51.24(b), which requires annual public opportunity to comment on the priorities established by the P&A system

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Follow-up question

Whether a P&A system's failure to meaningfully involve the Advisory Council in the joint development process constitutes a violation of PAIMI grant conditions that could result in SAMHSA disallowance of grant expenditures

Based on my research, a P&A system's failure to meaningfully involve the Advisory Council in the joint development process does constitute a violation of PAIMI grant conditions that could result in SAMHSA disallowance of grant expenditures.

SAMHSA's Disallowance Authority

SAMHSA has clear statutory authority to disallow expenditures when grantees materially fail to comply with grant terms and conditions. Under 45 C.F.R. § 74.62(a)(2), if a grantee "materially fails to comply with" grant "terms and conditions" - "whether stated in a Federal statute or regulation, an assurance, an application, or a notice of award" - then HHS may "disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance" [MARYLAND DISABILITY LAW CENTER, DAB No. 2843 \(2018\) \(H.H.S., 2018\)](#). The PAIMI grants' terms and conditions include both the uniform grant administration regulations and the PAIMI-specific statute and regulations [MARYLAND DISABILITY LAW CENTER, DAB No. 2843 \(2018\) \(H.H.S., 2018\)](#).

The joint development requirements under 42 U.S.C. § 10805(c)(2)(B) and 42 C.F.R. §§ 51.22(a) and 51.23(a)(2) are mandatory statutory and regulatory obligations, not merely aspirational goals. Failure to comply with these requirements would constitute a material failure to comply with grant conditions, triggering SAMHSA's disallowance authority.

Enforcement Mechanisms and Precedent

The *Maryland Disability Law Center* decision demonstrates SAMHSA's robust enforcement authority over PAIMI grants [MARYLAND DISABILITY LAW CENTER, DAB No. 2843 \(2018\) \(H.H.S., 2018\)](#). SAMHSA conducted an on-site fiscal audit in 2012 and subsequently disallowed \$12,657 in costs for various compliance violations. The HHS Departmental Appeals Board upheld most of the disallowance, emphasizing that grantees must maintain comprehensive documentation and follow all applicable federal requirements.

Significantly, the Board noted that it has "no authority to approve, on equitable grounds, the reimbursement of a cost that is charged to a grant in violation of an applicable statute or regulation" [MARYLAND DISABILITY LAW CENTER, DAB No. 2843 \(2018\) \(H.H.S., 2018\)](#). This establishes that compliance with joint development requirements is not discretionary - violations will result in cost disallowance regardless of the grantee's good faith efforts or other mitigating circumstances.

Practical Application to Joint Development Violations

A P&A system that excludes the Advisory Council from meaningful participation in budget decisions or presents completed budgets for mere ratification would violate the mandatory joint development requirements. Such violations could result in disallowance of administrative costs, staff salaries, or other expenditures related to the priority-setting and budget development process. SAMHSA's audit authority allows it to review

compliance with joint development requirements during fiscal site visits and take appropriate enforcement action for violations.

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Follow-up question

The extent to which the Advisory Council's independent advice and recommendations under 42 C.F.R. § 51.23(a)(1) can address budget matters outside the formal annual priority-setting process

The Advisory Council's independent advice and recommendations authority under 42 C.F.R. § 51.23(a)(1) extends broadly to budget matters outside the formal annual priority-setting process, creating a separate and complementary advisory function to the joint development requirement.

The regulation establishes two distinct advisory functions for the Council. First, it must "provide independent advice and recommendations to the system" under subsection (a)(1) 42 CFR § 51.23. Second, it must "work jointly with the governing authority in the development of policies and priorities" under subsection (a)(2) 42 CFR § 51.23. The regulatory structure suggests these are separate, non-overlapping authorities - the independent advisory function operates without the collaborative constraints that apply to the joint development process.

The Council's independent advisory authority is supported by mandatory information access rights. Under 42 C.F.R. § 51.23(c), the P&A system must provide the Council with "reports, materials and fiscal data to enable review of existing program policies, priorities and performance outcomes," including detailed expenditure reports and projected expenses by budget category 42 CFR § 51.23. This fiscal data access is provided specifically to enable the Council's review function, suggesting the Council can independently advise on budget matters based on its analysis of this information. The Council also has independent authority to submit its own section of the system's annual report under § 51.23(a)(3) 42 CFR § 51.23, which could include budget-related recommendations separate from the joint development process.

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Follow-up question

Whether the conflict-of-interest provisions under 42 C.F.R. § 51.26 — which apply to members of both the governing authority and advisory council with respect to contracts, subcontracts, and expenses — affect the Advisory Council's participation in budget decisions involving specific vendors or contractors

The conflict-of-interest provisions under 42 C.F.R. § 51.26 do significantly affect the Advisory Council's participation in budget decisions involving specific vendors or contractors. The regulation requires P&A systems to develop policies and procedures to avoid both actual and apparent conflicts of interest for governing authority and advisory council members, particularly regarding "particular contracts and subcontracts" and "reimbursements and expenses" [42 CFR § 51.26](#).

This creates a mandatory recusal framework for budget decisions. When an Advisory Council member has a financial interest in a vendor being considered for a contract, or stands to benefit from specific expenditure decisions, they must be excluded from participating in those particular budget discussions. The "apparent conflict" standard is notably broad - it encompasses situations where conflicts might reasonably appear to exist, not just where they definitively do exist [42 CFR § 51.26](#). This means Advisory Council members must recuse themselves even when their connection to a vendor or contractor might only create the appearance of impropriety.

However, the conflict provisions are transaction-specific rather than categorical. An Advisory Council member with a conflict regarding one particular contract or vendor can still participate in other budget decisions where no conflict exists. The regulation requires each P&A system to develop specific policies and procedures to implement these requirements [42 CFR § 51.26](#), meaning the exact mechanics of recusal and participation will vary by system, but the underlying obligation to avoid conflicts in vendor-related budget decisions is uniform across all PAIMI programs.

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Follow-up question

The relationship between the PAIMI Advisory Council's joint development role and the public comment requirement under 42 C.F.R. § 51.24(b), which requires annual public opportunity to comment on the priorities established by the P&A system

The relationship between the PAIMI Advisory Council's joint development role and the public comment requirement under 42 C.F.R. § 51.24(b) creates a sequential process where the Advisory Council's joint development function precedes and informs the public comment opportunity.

The regulatory language suggests a temporal sequence. Section 51.24(a) requires that "program priorities and policies shall be established annually by the governing authority, jointly with the advisory council" 42 CFR § 51.24. Section 51.24(b) then requires that "members of the public shall be given an opportunity, on an annual basis, to comment on the priorities established by, and the activities of, the P&A system" 42 CFR § 51.24. The phrase "priorities established by" indicates that public comment addresses priorities that have already been developed through the joint process, rather than contributing to their initial formulation.

This structure creates a two-stage participatory framework. First, the Advisory Council works jointly with the governing authority to develop priorities and policies, including consideration of resource allocation decisions. Second, the public is given an opportunity to comment on those established priorities. The public comment process serves as an external check on the joint development process, allowing community stakeholders to provide feedback on whether the priorities developed through the Advisory Council process adequately address community needs. However, the regulation does not require that public comments be incorporated into a revised joint development process, suggesting the public comment serves more as accountability and transparency mechanism than as a direct input into priority-setting.

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