SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS Part 23

BRAD H., *et al.*,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	Index No. 117882/99
	:	Braun, J.
THE CITY OF NEW YORK, *et al.*,	:	
	:	
Defendants.	:	

Fifth Regular Report of the Compliance Monitors
October 13, 2004

By Order of the Honorable Richard F. Braun, dated and So Ordered on May 6, 2003, Henry Dlugacz and Erik Roskes ("Compliance Monitors" or "Monitors"), were appointed to monitor and report on Defendants' compliance with the terms and provisions of the Stipulation of Settlement ("Stipulation") resolving the outstanding issues in this cause. Per ¶149 of the Stipulation, the Monitors are to issue written reports every 90 days during the first year following the Implementation Date, and every 120 days thereafter. This constitutes the fifth regular report of the Monitors.

Contents:

OVERVIEW

In this brief overview, we will summarize what we see as the main messages of this report.

A. PROCESS

Defendants have continued to make changes within the organizational structure of DOHMH both at administrative and line levels. These have not yet been fully implemented. We support ongoing efforts in this regard.

Defendants have for the first time provided us with regular monthly reports based on data contained in the discharge planning MIS. These data are essential to our monitoring efforts. We recognize the immense efforts that DOHMH has expended in order to begin to develop a data reporting process as we have required. Having said that, there remain a number of unresolved issues regarding these data, the method of calculation used for some data points, the relationship of MIS data to data contained in medical records, and the analysis of each set of data provided. Among other things, given the unresolved questions surrounding some of this data, we are not certain whether reported improvements in compliance rates reflect actual improvements in performance , enhancements in data capture and reporting, or some combination. This is one reason we will place a high priority on completing arrangements for statistical and data management assistance so that we can begin to more fully and expertly assess these issues.

B. CONTENT

Defendants have demonstrated sustained improvements in performing the threshold tasks which lay the foundation for discharge planning functions, what we

have referred to as "upstream issues." Specific examples include mental health assessments and completion of the CTDP. Taken together, this suggests that with a reasonable degree of frequency Defendants should now be able to correctly identify and develop plans to meet the post-discharge needs for many Class Members. Additionally, while it is a positive development that Defendants are now performing timely mental health assessments, completing SPMI forms, and completing CDTP's in a reasonably timely manner for many Class Members, we have only made preliminary efforts at assessing the quality or appropriateness of these tasks. This will be a "next step" to which we will devote much of our efforts in the next reporting period.

However, most of these upstream tasks are performed by mental health (as opposed to discharge planning) staff. We did not find similar improvements in many of the dependent or downstream requirements.

Our findings regarding performance are summarized in spreadsheet form in Appendix 4. We also summarize our findings in the conclusion of the section regarding performance measures, found on pp. 86-89. NOTE: This spreadsheet and the summary section regarding performance should not be read out of context but ***must*** be referenced back to the text. The reader who simply uses the spreadsheet or summary to evaluate Defendants' performance will miss a number of subtleties in the data, including (1) trends seen month by month, (2) discussions of the meanings of the data and uncertainties we have regarding how the data was collected, reported and analyzed, (3) suggestions we make regarding improving or refining the data, and (4) our final recommendation(s) regarding each data point.

Our main conclusion regarding the performance measures is that Defendants remediation efforts and our monitoring should begin to focus in two new directions:

- Appropriateness of assessments of various kinds (as distinct from the mere presence of these assessments)
- Progressively downstream events in the discharge planning cascade

---

I. General Caveat Regarding all Numbers and Percentages Discussed in this Report

The reader will note that this Report contains many recitations of figures, both as absolute numbers and percentages. They appear throughout, particularly in the sections which attempt to measure the extent of Defendants' compliance with the performance measures we issued on June 28, 2004. They appear in text, appendices, and the many tables we include at various points in the Report. In some instances, these statistics represent our calculations based upon data we compiled independently. We gathered data predominately through random reviews of the Mental Health and Medical Records Defendants create for each Class Member, and in some instances, through reviews of the Management Information System ("MIS") maintained by Defendants for each Class Member. However, the greater part of the numbers presented are direct transcriptions of numbers reported to us by Defendants, some of which we analyze; others we simply report "as is."

We emphasize these statistics for several reasons. First, the Stipulation at paragraph 141 requires the performance goals to "be expressed in terms of a percentage of eligible Class Members . . . for whom each goal shall be achieved." Second, while anecdotal information is indispensable in understanding the context and meaning of any

numbers reported, in the absence of numerical data it is impossible to accurately and fully assess compliance with all aspects of an intricate settlement being implemented in such a complex system. Third, we believe that fundamental fairness requires that, to the extent practicable, Defendants understand what level of performance they must attain to achieve a finding of substantial compliance with the Stipulation. A numerical benchmark, while imperfect, is the closest approximation available for implementing this goal across the system.

We acknowledge that Defendants put considerable effort into improving their data collection and reporting mechanisms over this past reporting period. Further, we recognize that, for the first time, they were able to produce a monthly report with many of the data fields we require. It is only in the past four months that DOHMH has begun to express confidence that the numbers they provide to us are fully accurate. This is a positive development.

Nonetheless, we convey in various forms throughout this Report that while we note the effort and in some cases acknowledge improvement in data reporting, we do not fully share Defendants' confidence that we are being provided with fully accurate and meaningful data in all areas. Indeed, it may well be the case that the data are of variable accuracy, according to the particular function measured and the degree to which defendants have focused on a specific function. We consider a questioning of the data provided to be a responsibility inherent in our role as objective monitors and reporters of fact. A failure to do so could lead to intolerably misleading results as numbers reproduced in tables carry with them an aura of scientific certainty.

It is self evident that figures placed in tables and analyzed in narrative, are only as meaningful and accurate as the data collection and reporting process itself. This is a major reason we have placed a high priority on securing expert consultation in data management and statistics: for us to better assess the meaning of the data we receive and the conclusions we may legitimately draw from them. Until we secure this expertise, which we believe we will soon be able to do, we think it important to raise issues presented to us by the data. To do so we need not *and do not* question the integrity of the people providing or compiling these data. Defendants are attempting to fine-tune and in some cases implement *de novo* a complex data reporting system which strives to integrate data from various sources across agency lines. To say that data appears to us to be questionable means just that: it raises questions of one type or another. It does not mean that we have reason to believe that we are being provided with false or deliberately misleading data. Nonetheless, to report data about which we have questions may indeed be misleading on our part should we fail to acknowledge the questions we have when reviewing or analyzing them.

As to specifics, at times we question what appears to be internally inconsistent data reporting[1]. In at least one instance, the denominators used to calculate the percentages DOHMH provided for us lead us to the conclusion that Defendants are misreading the requirements of the Stipulation[2], while at other times the denominators utilized cause us to question the completeness of the data collection process.[3] We consider these issues in the context of questions raised by our limited probe comparing

[1] Examples of this issue are evident in our discussion of the Prescreen initiation/completion process in §§III.B.1.h. and i. below. In addition although they corrected it in comments to the draft Report, Defendants initially provided internally inconsistent data regarding SPAN.
[2] See §III.B.1.dd. below regarding follow up calls.
[3] For example, see §III.B.1.j. below.

data contained in the mental health/medical records with that in the MIS.[4] We consider this raising of questions particularly useful to our fact-finding process when Defendants provide answers which raise our level of confidence in the data provided.

Taken as a whole, these concerns cause us to believe that it would be irresponsible of us to simply take the figures reported to us at face value without making explicit our concerns. Having said that, this far into the monitoring phase of this case, we are loathe to simply say that we remain unconvinced of usefulness of the data and thus refuse to report it. Rather, in the interest of moving the process forward, we chose to report what we are given, draw the tentative conclusions we believe flow from these data, at the same time noting the concerns raised to us by these numbers. At times, our conclusion may be that Defendants *appear to be* in compliance based on the data provided. We feel more confident in this conclusion when chart reviews or other independent validation is consistent with Defendants' data. Nonetheless, given our ongoing questions about the data, such conclusions in general remain preliminary. Again, it is for this very reason that we have expended substantial effort in working with DOHMH to reach an agreement which will permit us to retain the expert consultation in statistics and data management we require to address these concerns more cogently. DOHMH's plan to develop a data dictionary making explicit the definitions and formulae they utilize in developing data for our reports should also be helpful in this regard. Thus, we hope to be able to more clearly state in the future that we have a reasonable degree of confidence in the numbers we report (and thus the conclusions we draw from them), or that we fail to have such confidence in which case we will outline the basis for this

[4] See §III.A.

determination and refrain from reporting as to that particular figure. We plan upon taking this approach based upon our firmly held belief that to do otherwise would be a gross abdication of our responsibilities as monitors.

II. PROCESS

a. Activities of the Monitors

During this reporting period, we continued to review records and interview Class Members confined in the New York City Department of Correction ("DOC"), as well as those receiving services at a SPAN office. As a part of this effort, we continued to develop our own database for use in tracking and analyzing the cases we reviewed. DOHMH provided the services of a database manager and developer to assist us with the development of this database.

We spent a significant amount of time working with Defendants on the following issues:

- the findings contained in our reports
- our requests for data in a timely and reliable way
- Defendants' response to the Court's ruling on confidentiality, and their development of procedures for providing us with requisite access consistent with that ruling
- Defendants' development of a reliable and mutually understood data collection and reporting system for our use
- our request for assistance from Defendants regarding the development of our own monitoring database
- a budget modification regarding statistical and data management expertise
- a suitable budget for the current fiscal year

In addition, we continued to hold regular oversight/informational meetings with Deputy Commissioner James Capoziello, the Director of the Division of Health Care Access (HCIA) and Improvement of DOHMH and his staff. We conducted meetings with Plaintiffs' counsel as well.

b. Defendants Responses to Our Data Requests

Per our continued requests, Defendants have developed a mechanism for the provision of the much of the data required pursuant to the performance indicators published on June 28, 2004. Defendants identified DOHMH as the lead agency responsible for providing us with an integrated data report. Regarding the data required by the performance measures, they will be utilizing the format set out by us in Appendix 4 of our June 7, 2004 report, as modified to include the newer items outlined in our final version of the performance measures, distributed on June 28, 2004. DOHMH agreed to provide us with these reports according to the following timeline:

- June data July 23
- July data August 20
- August data September 10
- subsequent data the 15th of the following month

This mechanism, while an important step forward, has not been perfected as of this date. A number of the measures require other agencies to transmit data to DOHMH in order for that data to be included in an integrated report. Defendants appear to be working to improve the data capture and reporting system to allow us to receive, synthesize and report to the parties and the Court regarding their compliance with the performance measures.

One point is worth emphasizing regarding the timing of this report. Initially, our draft was due on September 15, 2004 with a final report to the Court on October 5, 2004. With the limitations described above, DOHMH is now producing monthly data reports, but with the then extant schedule, DOHMH would not have been able to provide us with August data with sufficient time for us to analyze and include that

data set in the instant report. As a result, our report would have only included June and July's data. All parties share the Monitors' interest in having a data set which is as complete as possible upon which to base our findings. DOHMH in particular believed that the inclusion of the August data would likely show continued improvement, and thus highlight their efforts in a positive light. The logical solution was in our view a week extension of the deadline for us to issue the final report and an accelerated production by DOHMH of the August data. We discussed this with DOHMH which agreed to provide us the August report by September 10, 2004 (rather than the previously promised September 17, 2004, which would have been too late for us to include in our draft report even with the extension). Class Counsel, too, was forthcoming in agreeing to a one-time week-long extension of all relevant timelines. Having reached this consensus, we wrote to the Court on July 30, 2004 requesting leave to provide the final report on October 13, 2004, rather than October 6 as would have been the due date according to the Stipulation (¶149). Justice Braun assented to this request. We lay out this process in relative detail because it represents in our view a small but important achievement. The Monitors were able to identify a minor adjustment which would lead to a more complete and meaningful report. DOHMH, with its interest in having this data included, was able to accelerate its data collection and production process to allow for this, something they would not previously have had the technical ability to accomplish. Class Counsel agreed to this extension which was in the interests of completeness and cooperation. We appreciate and commend the parties' flexibility in coming to this consensus.

c. Confidentiality and Access to Records

Our June 7, 2004 report at pages 5-10 contained a detailed discussion of the issues surrounding confidentiality statutes and regulations as they relate to our access to Class Members' records. This discussion included reference to the Stipulation of Settlement as well as to subsequent motions by the parties and rulings by the Court. We will not repeat this discussion but incorporate it by reference.

Since the last report, we engaged in discussions with Defendants on this matter and jointly developed the following, as yet unimplemented, procedure:

1. Class Members will be asked to sign a New York State Department of Health-approved Consent Form permitting release of HIV related information to the Monitors. At the first Comprehensive Treatment and Discharge Plan ("CTDP")/Discharge Service Needs ("DSN") meeting, Discharge Planners will request that Class Members authorize the release and or copying of the pertinent information for a period of one year.[5] We agreed to this timing for the following reasons:
    i. Asking Class Members earlier in the process runs the risk that, because they have not engaged adequately in the treatment and discharge planning processes, they may be
        - unwilling to sign the form
        - unwilling to pursue further treatment and discharge planning.
    ii. This event represents the initiation of the actual discharge planning process required by the Stipulation.

[5] Class Members will be given the option to authorize disclosure for a different period of time.

We recognize that by delaying the consent procedure, a plurality of Class Members will not be offered this consent procedure due to rapid releases from jail.

2. We will be permitted full and rapid access to any chart containing this signed consent form. The form will be placed on colored paper so that charts containing this form should be readily identified to clinical and records personnel familiar with the charts.
3. For those charts not containing a signed consent form, either due to the refusal of the Class Member to sign the form or because the Class Member was never offered the opportunity to consent, the following procedures will apply:
    i. For closed cases, Defendants will develop a redaction procedure for HIV related information in keeping with Justice Braun's Order on this issue dated March 22, 2004 and with Public Health Law §2782. Once a procedure for obtaining consent from Class Members is implemented, Defendants will have a gradually decreasing redaction burden over time as an increasing number of closed charts will contain signed releases. Defendants have provided us with an example of a certification form to be used by the medical records staff responsible for this redaction process. This form reflects the relevant elements required by section 3122-a of the Civil Practice Law & Rules of the State of New York

(CPLR), for certification of business records. As such, it is acceptable to the Monitors.

ii. For Class Members still incarcerated (or coincidentally seen at SPAN during a monitoring visit), the Class Member will be offered an interview with the Monitor (or Monitors' staff) during which interview s/he will be offered the opportunity to sign the above referenced consent.

At this time, the consent form has not been finalized, primarily because of reported delays encountered by DOHMH in reaching key New York State Department of Health attorneys.[6] In a recent communication, DOHMH reported that they "are in process of identifying the staff who will review medical records for protected content, operationalizing procedures, and scheduling training for these staff." They further advised us that they are "hopeful" that the process will be completed "within the next couple of weeks." We will continue to work with Defendants to operationalize these procedures and begin implementing it in the jails.

d. Access to Social Security and Veteran's Benefits

The Stipulation at ¶87 requires Defendants to explore the feasibility of connecting eligible Class Members to available SSI, SSDI and Veterans Benefits, and to discuss their progress with us at least every six months. A detailed discussion of Defendants' efforts regarding Social Security and Veterans' benefits is included in our June 7, 2004 report at pages 11-14 and is referenced here.

[6] In accordance with the Public Health Laws, consent forms regarding the release of HIV-related information must be approved by the NYS Department of Health.

Social Security Benefits

Since that report, we held a meeting on July 21, 2004 with Defendants regarding this issue, where Defendants described a meeting with the Social Security Administration (SSA) Regional Office held early in the year. Defendants have concerns regarding the paperwork required for a Supplemental Security Income ("SSI") application. They also have concerns regarding the role of the state Disability Determination Service ("DDS"), the entity required to make rulings on eligibility for SSI benefits. Defendants reported exploring the possibility of electronic data sharing to permit easier identification of those inmates and detainees who previously had benefits and who could potentially have the benefits restored without a new application. However, Defendants reported that when they approached SSA regarding the development of electronic data sharing for thus purpose, SSA Regional Office responded that "there is no time or resources to do this". Defendants told us that they were pursuing this issue at higher levels within SSA.

On the date of our draft of this Report (September 22, 2004), after we had distributed the report by email to the Parties, we received an email from Defendants outlining further efforts in this regard. As we briefly described in our June 7, 2004 Report, at page 12, we noted that Defendants reported their intention to pursue an electronic data sharing agreement that would permit identification of those inmates, including Class Members, who previously had SSI benefits and who might be eligible for reinstatement of these benefits. On July 30, 2004, the Deputy Commissioner of DOC for Budget and Finance wrote a letter to SSA Regional Office formally requesting this arrangement. Defendants informed us that they "have recently

received an update from [SSA] advising us that in-house discussion is on-going with the Office of the SSA General Counsel and with appropriate SSA MIS staff to determine what legal agreements and systems changes would be needed". We look forward to hearing more about this as it takes place.

Social Security Benefits as they relate to Public Assistance Applications

Related to this issue is the data reported by Defendants, discussed below, which indicates a very low rate of compliance with the requirement to assist Class Members in applying for Public Assistance (cash) benefits (See section III.B.1.t.). For the entire three months for which Defendants provided us with data, they reported that DOC released 864 SPMI Class Members. During this period, for 245 eligible Class Members, Discharge Planners filed a total of 31 Public Assistance ("PA") applications within the timelines required by the Stipulation. In comments on the draft of this Report, Defendants indicated that a total of 165 PA applications were filed altogether by Discharge Planners. Thus, 33% of those Class Members Defendants' found eligible for this service did not receive it, and were released from jail without applying for this assistance. Additionally, of the 864 total SPMI Class Members released during this period, 619 were not found eligible for this service and so did not receive it.[7]

We are also aware that, even if an application is submitted for PA benefits, the Class Member would still be required to appear at a HRA Job Center to have benefits started. The usual process is streamlined for Class Members but still requires specific

[7] Criteria for ineligibility include:
- Released prior to the PA application deadline
- Sentenced to serve State DOC time
- Refusal of this service
- Financial ineligibility

effort on the part of the potential beneficiary. Given that Defendants are having difficulty assisting Class Members in applying for public assistance benefits, and given that even the completion and submission of the application is not sufficient for Class Members to receive these benefits, we believe that it would be logical to assiduously pursue arrangements for as many Class Members as possible to be evaluated for eligibility for federal SSI benefits.[8] Not only does this carry the advantage of offloading the cost from the City and State to the Federal Government, but if the City were able to implement procedures to provide for these applications, many more Class Members would be granted cash support (and much more income on a monthly basis than is available via PA).

Social Security Benefits: Relevant SSA procedures

SSA procedures encourage the development of institutional agreements, to facilitate the referral process to SSI of individuals released from incarceration.[9] Prerelease Procedure – Institutionalization[10] and subsequent procedures on Prerelease Agreements-- Institutional[11], Processing Prerelease Cases [12] and Exhibits—Prerelease Procedure, Agreement, Referral[13] describe agreements and procedures for determining eligibility for SSI prior to release from a variety of institutions, including jails, prior to release so that benefits are available rapidly after release. The language

[8] This should comprise a parallel process: at the same time, Defendants should continue to work to improve their compliance with the requirements to help Class Members obtain public assistance benefits, especially since there may be some Class Members who will be ultimately ineligible for SSI but still eligible for public assistance.

[9] These procedures are contained in the Social Security Administration's Program Operating Manual Systems ("POMS") and are appended to this Report as Appendix 1. These procedures are readily available on the internet (start at http://policy.ssa.gov/poms.nsf/partlist?openview and click on SI link, then on SI 005 link, then scroll to relevant number).

[10] SI 00520.900, available via above instructions from the SSA website.

[11] SI 00520.910, available via above instructions from the SSA website.

[12] SI 00520.920, available via above instructions from the SSA website.

[13] SI 00520.930, available via above instructions from the SSA website.

contained in these SSA procedures indicates that SSA considers itself to bear the burden of establishing these institutional agreements. For example, Prerelease Agreements – Institutionalization: "C. Procedure – Establishing Agreements[14]

"Take the following steps to establish prerelease agreements with institutions in the service area. If an agreement cannot be worked out, check back after a time to see if new personnel are available and interested.

- "Identify all institutions within the service area with a potential prerelease population including (but not limited to):
  - "institutions for persons with mental disabilities;
  - "residences for persons with mental retardation;
  - "residences for persons with physical disabilities;
  - "nursing homes; and
  - "prisons.

"Attempt to establish a prerelease agreement if one has never existed, or if a previous agreement has fallen into disuse. Make a personal contact with institution staff and review the prerelease procedure. Consult with the RO, where appropriate, regarding DDS participation.

"Attempt to obtain a formal agreement with the institution, using the model agreement at SI 00520.930, Exhibit 2. This can be modified to meet the needs of the institution.

"***If the institution refuses to complete a formal agreement, attempt to establish an informal procedure which includes elements in B.3. and 4. above*** (emphasis added)[15]**.**

[14] SI 00520.910
[15] This clause implies that even when institutions are resistant to developing relationships with SSA, SSA is to continue to pursue the institution and make attempts to create these relationships.

"Review with the institution staff the case specific information which SSA needs to determine an individual's potential SSI eligibility.

"Where some agreement is made, designate the institution and FO contacts for referral and follow-up activity, orientation and training."

SI 00520.930 Exhibits – Prerelease Procedure, Agreement, Referral contains a model SSI Prerelease Referral. Essentially this model would require the transmission of the following information to SSA to begin a case:

- agency
- social worker
- building/unit
- phone number
- name of inmate
- anticipated date of release
- social security number
- date of birth

It appears to us that the form currently used by the Discharge Planners in the NYC jail facilities for Medicaid prescreening would suit this purpose, without any modifications (See Appendix 2).

Defendants informed us in the September 22, 2004 correspondence that they have begun discussion regarding "the parameters of a possible pre-release agreement with SSA". Defendants held a meeting with SSA and the New York State Office of Temporary and Disability Assistance ("OTDA") to discuss this process. Defendants were informed that the ideal timeline for full implementation of this process is for the process to begin 120 days prior to release, a time frame that is uncommon, but not

unheard of, among Class Members.[16] For other inmates, SSA informed Defendants that "a call can be placed to an 800 hotline to schedule an appointment to apply for or reinstate SSI benefits. This call preserves the filing date for such application or reinstatement. However, SSA advised that upon release, a client must undergo a financial review (assessment of current financial resources/needs) at an SSA office to complete the reinstatement or application process." After this meeting, further discussion was tabled until after the Fortune Society staff (see below) complete their training; further discussion is expected in the coming weeks.

New York City is not the only jail-system confronted with this complex issue. We are aware that other jurisdictions have made some progress in this area. Because it is a large, urban jail, the Los Angeles County jail's collaborative arrangement with SSI appears to us to be the most analogous to the New York system. This arrangement reportedly is successful in:

- helping released inmates get financial support,
- helping released inmates get mental health services, and
- reducing the number of inmates who were rearrested.[17]

We repeat our recommendation to Defendants that they gather as much detail as possible concerning the approaches to this issue taken by other jail systems.[18] While they will not find relevant all aspects of the experience of other jurisdictions, there is

[16] In the spreadsheet containing information regarding released Class Members forwarded to us on September 20, 2004, 3669 of 13676 (27%) of Class Members released since June 3, 2003 had lengths of incarceration longer than 139 days (120 days + the 19 day period for most Class Members to get to the due date of the first CTDP).

[17] Information provided in writing and during "Barriers to Reentry: Access to Benefits and Housing" Audio Training, National Law Center on Homelessness & Poverty, 7/21/2004.

[18] On September 14, 2004, Defendants informed us that they had attempted to contact the individuals who we had been informed were responsible for this arrangement in Los Angeles. They were unsuccessful in this attempt. We provided them with feedback both about the methodology of their efforts in this direction as well as about possible next steps.

much to learn from the failures as well as successes of others. Fact finding of this nature, followed by an analysis of the applicability to New York of each approach others utilized by other jurisdictions, would appear to us to be the logical way to develop a strategy to address this intricate but important undertaking.

Determination of Eligibility for SSI

In their September 22, 2004 correspondence, Defendants indicated that they met with representatives of SSA and OTDA to explore the possibility that OTDA could utilize the intake and assessment forms currently used by DOHMH in the jails as proxies for the current SSI application. SSA and OTDA responded that the forms used by DOHMH are "too general" to be substituted for the SSI application forms. Defendants report that they have begun to pursue other avenues to attempt to enable Class Members and other inmates to apply for SSI, including:

- The Fortune Society, a local non-profit, recently received an SSA HOPE Grant in order to provide benefits assistance to inmates at Rikers Island. Staff of the Fortune Society have been trained in the SSI application process.
- Defendants have "explored the possibility of having local SSA staff from the Astoria office come to Rikers Island to assist inmates in the application process. SSA advised us that a needs assessment will be performed to determine whether the staffing at the Astoria office is sufficient to permit such outstationed assistance."

Veteran's Benefits

Defendants also reported that they are beginning to consider how to link eligible Class Members to Veterans' benefits. As of the July 21, 2004 meeting, they advised us that it is difficult to verify an inmate's VA status which currently is based solely on self-report. This information is not included in the IIS nor in any other database maintained by Defendants. Our last report quoted Defendants as working to include

VA status in IIS, and in their September 22, 2004 correspondence, Defendants indicate that "there is a field on the DOC IIS system that can accommodate this information." Defendants were initiating conversations with the Mayor's Office of Veterans Affairs and the US Department of Veterans Affairs ("the VA") regarding how to connect appropriate Class Members to available services through the VA. In their September 22, 2004 correspondence, Defendants indicate that they have "discussed the need to work with the VA to devise a reliable and preferably electronic means to identify inmates, particularly Class Members, who have been veterans to link them to or reinstate their Veteran's Benefits".

Conclusions

At this time, we believe that Defendants efforts to "explore the feasibility of a system for the assessment of Class Members' eligibility for … Social Security Benefits and Veterans Administration Benefits" are moving forward. In our view, it would be highly beneficial, both for the relevant Class Members and for the City, if such systems could be developed. We believe that this obligation should be a higher priority for Defendants[19] and that this prioritization should be reflected in more aggressive pursuit of these mechanisms. In addition, Defendants have not affirmatively communicated with us on a routine basis at least every 6 months as required by ¶87, though they have begun to communicate more regularly of late.

[19] We recognize that Defendants must work with other agencies which are not parties to this case and which, like Defendants, have many other issues with which they must contend.

e. Food Stamps

Our last report concluded that no movement had been made in the pursuit of Food Stamps for Class Members. Paragraph 86 notes that as of the Execution Date of the Stipulation of Settlement the Defendants represented that it was "not feasible to submit Food Stamp applications" for incarcerated individuals. Within this context, the paragraph obligates Defendants to:

(1) "explore the feasibility of establishing a system" to

(a) permit Class Members to submit applications prior to their release and

(b) "permit the processing of those applications while they are incarcerated."

(c) "use best efforts to secure necessary approvals from federal and State officials to implement" a system permitting for permitting and processing Food Stamp prior to Class Members' Release Date.

(2) Defendants are, additionally obligated to "confer with the Compliance Monitors at least every six months regarding their efforts to implement such a system."

We had a meeting with Defendants on September 8, 2004 about this issue. There, HRA described the situation regarding waiving various requirements that permit Defendants to apply for PA for Class Members prior to release. Specifically, when an eligible, non-Class Member applies for public assistance in the community, she/he is granted immediate needs benefits during a 30 or 45 day period[20] before recurring benefits will be granted. HRA uses this 30/45 day period to assess the applicant for

[20] 30 days for Temporary Assistance to Needy Families ("TANF"), 45 days for Safety Net Assistance ("SNA") (see ¶¶78ff).

his or her ability to meet his needs in other ways – e.g. employment, SSI, or other mechanisms. For the purposes of the *Brad H* settlement, New York State granted permission to HRA to register PA applications from Class Members who are SPMI with the 30/45 day waiting period running concurrently with incarceration, if necessary. Thus, the period of time between submission of a PA application for an incarcerated SPMI Class Member and his or her release "counts" toward the 30/45-day waiting requirement as long as he or she is released within the 30/45-day window. In the event that the Class Member is not released within 30/45 days of the submission of the PA application, HRA may "pend" this application for a total of 90 days.[21]

Defendants report that they encountered the following pragmatic obstacle vis-à-vis Food Stamps applications. The Welfare Management System ("WMS"), the data management system used by the State to manage Public Assistance, Food Stamps and Medicaid, can only accept one application date for PA and Food Stamps. HRA advised us that, unlike PA benefits which are not retroactive to application date, Food Stamp benefits are retroactive to the application date. Because it is prohibited under USDA regulations for incarcerated individuals to receive Food Stamps, HRA asserts that they must deny this benefit to anyone who applies while still incarcerated.[22] HRA further informed us that in order to allow for Class Members to apply for and be approved for Food Stamps prior to release one of two events must occur: (a) either the USDA would need to change their regulations, or (b) New York State would need

[21] ¶79.
[22] HRA recognizes that it cannot prevent an incarcerated individual from ***applying*** for this benefit, but they will find such individuals ineligible for the benefit, citing USDA regulations.

to alter WMS to permit separate application dates (and would need to alter their policy regarding accepting applications for PA and Food Stamps on different dates).

In our Second Quarterly Report of December 8, 2003, we outlined early correspondence between the HRA Commissioner Verna Eggleston, Suzanne Biermann (Deputy Undersecretary, USDA), and Frances Zorn (Regional Administrator, Northeast Regional Office, USDA). This correspondence occurred between June 10, 2002 and September 18, 2003 and had not at that time led to any resolution of HRA's original request to develop a mechanism to "pend" Food Stamps applications on behalf of incarcerated Class Members. Defendants recently apprised us of further correspondence in February, 2004 between Suzanne Reilly (Agency Attorney, HRA), Frances Zorn, and Carolyn Karins (NY State Office of Temporary and Disability Assistance). At this point, the correspondence has not been fruitful in terms of devising a mechanism supporting the application of still-incarcerated Class Members.

From our meeting with HRA on September 8, 2004 and our review of the correspondence file on this matter, it appears to us that (the revision of the WMS system aside) the Federal government is the entity with the authority to make the regulatory changes which permit the needed procedure for "pending" Food Stamps applications to lawfully occur. For that reason, that we recommended that Commissioner Eggleston once again contact Deputy Undersecretary Biermann, who initially (according to the HRA staff with whom we met) appeared receptive to the concept of assisting incarcerated Class Members obtain Food Stamps. Defendants, in

comments to the draft report, indicated that "Commissioner Eggleston will be sending a follow-up letter to USDA Undersecretary Suzanne Biermann shortly."

In comments to the draft Report, Class Counsel suggested that there may be an alternative solution to this problem. They presented this as follows:

> "We… believe that there is a simple practical solution to the problem which Defendants should begin to undertake immediately: to submit separate PA and Food Stamps applications. A copy of the PA application can simply be copied and submitted when the Class Member is being released. In addition, Food Stamps applications can be submitted by SPAN."

Class Counsel note that there is no requirement that applications for separate benefits must be filed simultaneously and that the Food Stamp Act and relevant regulations permit people to apply at any time. They suggest that, on the day of release, discharge planners could have the Class Member sign the already completed application and submit it to HRA. Any required face to face meeting could occur subsequently. Class Counsel further suggested that knowing of potential eligibility for Food Stamps might encourage more Class Members to follow up at a Job Center. We suggest that Defendants consider this possible mechanism for assisting Class Members in applying for Food Stamps.

We accept HRA's assertion that any person, regardless of incarceration status, may apply for Food Stamps and that their applications will be considered. However, HRA informs us that, according to USDA rules, these applications will be denied. The remaining issue thus revolves around understanding Defendants' efforts to work with federal and State officials to develop a mechanism for allowing HRA and other

relevant agencies to meaningfully consider applications from incarcerated Class Members. Defendants are working with USDA to attempt to develop such a mechanism. In addition, Class Counsel suggested a possible way to circumvent the limitations set by USDA.

Defendants have not affirmatively communicated with us on a routine basis at least every 6 months as required by ¶86, though they have begun to communicate more regularly of late.

e. Reorganization within DOHMH

1. Structural Changes

DOHMH continues to move toward a more integrated discharge planning model, with the goal of reassigning all line discharge planning staff to the jails. In addition, Defendants are proceeding with the recruitment and engagement of new staff, including discharge planning staff with masters' level training.

2. Current State of Implementation of the Plan

In a communication of October 8, 2004 DOHMH advised us that the following buildings are currently operating under what is referred to as the "new model" for the discharge planning services:[23]

- Anna M. Kross Center (AMKC), including both C-95 (general population unit) and C-71 (mental health center)
- AMKC Mental Health Center (AMKC/C-71)
- Rose M. Singer Center (RMSC)
- Bernard B. Kerik Complex (BBKC)
- Vernon C. Bain Center (VCBC)

[23] The details of the new model were described in our June 7, 2004 report at pp. 28-29. Defendants informed us that there are no plans at this time for any changes in the model described there.

- Eric M. Taylor Center (EMTC)
- "partially" at the Adolescent Reception Detention Center (ARDC)[24].

DOHMH further informed us that their order of priority to convert new buildings to this model is:

- ARDC;
- George Motchan Detention Center (GMDC);
- George R. Vierno Center(GRVC);
- West Facility (WF)
- Otis Bantum Correctional Center (OBCC).

The precise schedule for the completion of this change, according to DOHMH, depends upon the start-dates for new masters' level staff.

DOHMH informed us that joint case conferences are held between mental health and discharge planning staff at least once a day in all jails. In AMKC, RMSC and EMTC, such case conferences are held twice a day. DOHMH reports that these meetings are regarded as useful.

3. Staffing

Defendants are continuing to recruit new staff. In addition, as the new model is being implemented, DOHMH is redeploying staff from the central location at 346 Broadway to the institutions. Defendants report that they are finding recruitment and retention to be challenging, and they continue to report a number of vacant or unfilled positions, with some new hires resigning shortly after commencing employment. They indicate in their comments to the draft of this Report that they intend to begin conducting on-site interviews of potential staff at Rikers Island in

[24] "Partially" indicates that "One Social worker has started… effective 10/4/04, and is in the process of completing an orientation phase; there is one additional social worker vacancy for this building."

order to "expose potential staff hires directly to the work environment." We agree that this strategy should help ensure a more efficient hiring process.

Currently, DOHMH has an allocation for twenty seven masters-level social workers with nineteen currently employed. One person is due to commence work on October 18, 2004. DOHMH reports that it identified four additional social workers who are in various stages of the DOHMH hiring process. They further report that interviews are scheduled. Table 1 summarizes the status of staffing for discharge planners.

Type	Positions Allocated	Currently employed	Buildings with current opening(s)	In hiring process	Interviews scheduled
MS	27	19	ARDC, GMDC, GRVC, NIC, OBCC, WF	4	3
BA	22	21	GRVC		

Table 2 summarizes the information provided to us regarding foreign language capability of discharge planning staff.

Building	Language capability of MSW	Language capability of case worker
AMKC/C-71	French (2)	French (1)
AMKC C-95	None	Spanish (2), French (1)
ARDC	none	none
BBKC	Spanish (1)	none
EMTC	none	French (1),Spanish (1)
GMDC	none	none
GRVC	none	none
NIC	none	none
OBCC	none	none
RMSC	French (1), Creole (1), Croatian (1), Spanish (1)	none
VCBC	none	none
West	none	none

4. Communications Capability/Technological Issues

DOHMH continues to work to provide its staff with the technology they require in order to adequately meet the requirements of the Stipulation. Despite these efforts and some important gains, the results remain uneven. They report that all discharge planning staff have email accounts that are available in the jails in which they work. In addition, they have contemporaneous access to the MIS. This is an improvement since the last report, when DOHMH advised us that the staff had access to email only in a single location at Rikers Island. Email and the MIS are generally available, although Defendants continue to report what they characterize as "relatively infrequent" outages[25] of the network system. They indicate that these outages do not interfere with their operations. They advised us in comments that they "expect that problems of MIS outages will improve significantly in the near future upon replacement of the Citrix servers," scheduled to take place over the weekend of October 9.

Defendants reported that all jails now have voice mail, but that there are serious technological problems with the phone system. This results in frequent outages of the voice mail system. We tested the voice mail system three times during this reporting period and found that 60% of calls placed to discharge planning staff extensions during off hours are not answered by voice mail but ring continuously. DOHMH informed us on August 12, 2004, that they have implemented their own daily testing of the system and that the results of this

[25] We will continue to request more specific information about the frequency and duration of these outages. The most recent outages occurred on October 5, in most facilities, lasting 4 hours. A more limited outage, affecting only OBCC, occurred on October 6.

testing indicate that outages persist. Additionally, Defendants advised us in comments to the draft Report that "DOC has upgraded the status of DOHMH regarding complaints of outages to their helpdesk, thereby allowing complaints from DOHMH and its vendor to be handled in the same manner and within the same timeframes as complaints from DOC employees. While this will not necessarily eliminate outages, it should decrease the amount of time that voicemail is out of service."

We support the progress made by Defendants in providing staff with these tools which we believe are essential to their job performance. We remain concerned, however, with the problems in the voice mail and computer networking systems, which we believe will interfere both with the pilot project (see §III.B.1.f below) and, more importantly, with discharge planners' ability to coordinate aftercare plans with community agencies and Class Members' families and attorneys. It is imperative that Defendants address these technological problems quickly. We have been told that this is a system-wide infrastructure issue that causes telephone and other electronic communication problems throughout Rikers Island and that the solution would be a major upgrade of electronic access. We intend to discuss this further with DOC.[26]

5. Public Relations

It is our understanding, based on follow up correspondence from Defendants, that SPAN posters in English and Spanish are now visible in all discharge planning and mental health areas. Defendants further informed us that they will

[26] Problems at Rikers do not explain difficulties with voicemail at VCBC or at BBKC.

confirm with DOC that these posters are hanging in other areas not managed by DOHMH.[27] Defendants also informed us that brochures regarding Discharge Planning Services and regarding SPAN Offices, in English and Spanish, are being distributed to Class Members in all buildings.

6. Longitudinal Approach to Discharge Planning

We continue to observe many cases in which there appears from record review to be a single contact with discharge planning. In these instances, this sole contact occurs at the time of the initial CTDP/DSN. We remain concerned that discharge planners in such cases do not develop a longitudinal understanding of the Class Member which would be required for appropriate referrals in many cases. In our view, this approach results in a very reactive discharge planning process: the existing staff simply do not work with these cases except to be sure to (1) meet policy-driven timelines for the initial contact and (2) ensure that Class Members about to be released are provided with whatever services they requested. DOHMH has made clear to us that a central element of the revised discharge planning model they are in the process of implementing (see section I.F.2. above) would be the requirement that discharge planners maintain caseloads of Class Members and that they "follow their clients throughout their incarceration or until transfer to another facility (when the client will be transferred to the caseload of another discharge planner)." We withhold judgment at this time as to the extent to which this structural change will sufficiently rectify this situation; we are convinced, however, that an expectation of regular contact between discharge

[27] In our June 7 Report, at p. 88, we suggested that they be placed in housing and visit areas.

planners and Class Members will be highly beneficial to appropriate discharge planning.

f. Class Members Hospitalized on Prison Wards

We discussed the issue of the class definition regarding patients hospitalized on the three prison wards operated by Defendants on pages 73-79 of our June 7, 2004, report. At that time, we noted that we found it problematic for our monitoring that unresolved issues of class definition remained more than one year into the remedial phase of this cause. We discussed at length the obstacles this posed for us as monitors as well as our intention, absent agreement by the parties or direction from the Court, to treat the patients housed on these prison wards as Class Members for monitoring purposes.[28] Specifically, in footnote 52 of that report, we stated our intention to conduct site visits to these units. Consistent with this determination, we requested in June of this year that Defendants arrange for us to have access to the Bellevue Hospital Prison Ward.[29] Counsel for the Defendants declined to arrange for this access on the basis that the status of patients residing on the prison wards was as of yet undetermined, and that the City did not concede that patients in these units were Class Members. Since that time, we discussed this matter with both parties but it

[28] We found untenable the uncertainty as to whether (1) on one hand we were ignoring the putative rights under the Stipulation of an acutely ill group of people should we never request to monitor discharge planning services on these units; or, (2) alternatively if we were potentially over-extending the reach of our authority as Monitors should we attempt to conduct site visits to the prison wards. In this context we made the decision to attempt to conduct a monitoring visit to a prison ward. We made this decision based upon all of the information made available to us by the Parties as well as our collective professional knowledge, with the intent of resolving this issue definitively. In both our written reports and verbal discussions with the Parties, we repeatedly made clear that we considered our determination on this matter subject to revision based upon the mutual assent of the parties, or direction from the Court.

[29] In our discussion with counsel for the Defendants we offered to limit our monitoring activities to those patients housed on this prison ward who were transferred from a Rikers jail or Borough House as opposed to those who were remanded "forthwith" from the Court to the hospital.

remains unresolved. We believe that we would be remiss in our obligations to permit this to issue remain dormant, as it appears to us that no provisions exist to provide discharge planning to this population in a manner consistent with the Stipulation of Settlement .[30]

In the draft of this Report issued on September 22, 2004, we announced our intention, absent any agreement or intervention by the parties, to request a conference with the Court to begin the process of establishing a framework to provide us with definitive guidance as to whether the patients residing on these prison wards are Class Members. On October 6, Defendants served us with copies of their Notice of Motion and accompanying papers in which they request that "the Court find the Compliance Monitors' determination to include as Class Members those inmates located in the Hospital Units to be unreasonable and vacate that determination. . ."[31] Thus, it appears to us that the process is now underway to provide us the guidance we seek so that we can properly perform our duties.

g. SPAN Outreach in Criminal Courts

Paragraph 40 contains two obligations. The first is that Defendants are to notify SPAN of "Class Members who are determined likely to be released from DOC custody directly from courthouses." The second obligation is that SPAN is to conduct visits to the courthouses to "encourage [such] Class Members … to visit SPAN offices and utilize services." We have on multiple occasions over the past four

[30] This is so at least as far as we can determine in the absence of monitoring visits to these faculties.
[31] Defendants' Memorandum of Law In Support of Defendants' Motion Concerning the Hospital Units at 21.

months requested that Defendants arrange visits to areas within criminal courts where SPAN may be conducting these outreach visits.

In June of this year, Defendants rejected our request that they arrange a site-visit to the Courts.[32] At that time, we narrowed the scope of the proposed site-visit to relate specifically to the access required to evaluate the degree to which Defendants are complying with their obligations under ¶40. Defendants, in comments to the draft Report, object to our proposal based on the assertion that the court holding areas are not areas in which discharge planning takes place. Regardless of how the court visits by SPAN are characterized, it is clear that ¶40 obligates SPAN to make these visits, based on information they receive from Defendants regarding "Class Members determined likely to be released… directly from courthouses." Our opinion is that we would be remiss in our obligations to simply permit this issue to go unaddressed, as we regard oversight of SPAN's obligations as one of the central tasks of our monitoring.

We are not entirely clear as to whether Defendants' comments to our draft report constitute a formal denial of our request.[33] In a procedural sense, we see this issue as analogous to the "prison ward" issue discussed above: We are faced with a question regarding the scope of our monitoring authority, about which the parties have conflicting interpretations which do not appear amenable to resolution. The issue is not incidental, but rather in our view goes to a fundamental aspect of the Stipulation. In the absence of agreement by the Parties or direction from the Court, we chose to

[32] We of course understand that Courthouses are public places and that we may literally "visit" a Courthouse without the facilitation or assent of Defendants. However, such a visit as a member of the public would not in our view be sufficient to fulfill our monitoring roles.

[33] In the absence of monitoring visits to the Courthouses, we do not know whether or in what manner SPAN is performing this important function.

commence the process of reaching a resolution by requesting a narrowly defined monitoring visit. If we cannot resolve this informally, we intend to seek clarification from the Court as to our role vis-à-vis this aspect of the Stipulation.

III. Content

A. Consistency Probe: a Comparison of Paper and Electronic Records

Previously, we were hopeful that we would be able to access the discharge planning MIS remotely via the internet. DOHMH informed us that this is not possible, but that we may access the MIS at a downtown Manhattan location and at the Eric M. Taylor Center ("EMTC") at Rikers Island. Our reviews of the MIS continue to result in the finding of numerous empty fields.[34] As we noted in our last report, not only does this interfere with our ability to monitor Defendants' performance, but it deprives Defendants' from managing their services directly, and most importantly, it deprives (when a complete Mental Health Record is not available in a timely manner) Defendants' line discharge planning staff, both in the jails and at SPAN, from contemporaneous access to up-to-date clinical and discharge planning information they need if they are to comply with the Stipulation.

[34] Defendants in comments to the draft Report note correctly that "there will always be some empty fields in MIS" given that not all fields are relevant to all Class Members and that there are time lags during which some information is available in the record but not yet in the MIS. Our concern is that among these empty fields are key aspects of clinical assessment and management, such as diagnosis and medications. It remains unclear to us, and therefore of concern, why these fields (especially diagnosis, which is a very early element of clinical care) should be empty for any Class Member. Defendants indicated in their comments that "the Discharge Planning program has instituted a reconciliation process to make sure that appropriate fields are populated."

On July 28, 2004, in order to evaluate the internal consistency of recordkeeping and to test the relationship between data contained in the medical record and data contained in the MIS, the two monitors conducted a site visit to EMTC during which we interviewed Class Members, reviewed their charts, and reviewed their MIS entries. We interviewed 10 Class Members in a group. Four of them agreed to individual interviews, at which point we requested and received consents to review their records. We found a notable number of inconsistencies among these information sources. Generally speaking, we believe that information placed in the medical record and in the MIS ought to be internally consistent, and that the MIS should reflect accurately the care and discharge planning actually provided to the Class Members. This is especially important because Defendants' data regarding discharge planning will largely come from the MIS.

In summary, we identified the following issues:

1. lack of consistency in documentation regarding Serious and Persistent Mental Illness ("SPMI") status, both within a single medical chart and between the paper chart and the MIS
2. inadequate documentation regarding changes in SPMI status in either direction[35]

[35] Documentation of Class Members as SPMI or as not-SPMI is required by ¶¶ 28 and 31 respectively. Paragraph 28 indicates primarily that Defendants will periodically re-assess Class Members as to SPMI status and "immediately" redesignate in the record and MIS the SPMI status if the re-assessment indicates the redesignation is appropriate. Paragraph 31 creates the additional obligation of documenting in the Class Member's Mental Health Record the "basis" (which we read as the development of a new historical or clinical rationale) for any redesignation from SPMI or LSPMI to non-SPMI. Read together, we understand Defendant's obligations following an initial assessment of a Class Member's SPMI or LSPMI status to be: (a) periodically re-assess status; (b) immediately designate in the Mental Health Record any change (in

3. lack of awareness of inmates being on medications at the time of the Likely SPMI ("LSPMI") determination
4. absence of key forms from medical charts (including the prescreening form)
5. absence of information in the MIS which has been documented in the chart (e.g. the date of an appointment made for a Class Member with a known release date)
6. overall chaotic nature of the paper charts (which we have commented on in prior reports, and which is acknowledged as an issue by DOHMH.)

Many of our findings simply represent inadequate recordkeeping. However, we have identified certain key findings that in our opinion reflect lack of compliance with central aspects of the Stipulation. For example, the Stipulation is clear at ¶26 that SPMI status is to be recorded both in the Mental Health Record and in the MIS. The rationale for this requirement self evident from an operational perspective: clinicians using the chart need to know this in order to provide the appropriate discharge planning, and clinicians not using the chart but using the MIS (e.g. at SPAN) also must have access to this information. Similarly, at ¶125 and in Exhibit A, the Stipulation requires the inclusion of certain fields in the MIS so that discharge planning events may be recorded and

either direction) in SPMI/LSPMI status; (c) immediately designate in the MIS any change (in either direction) of SPMI/LSPMI status; (d) recording in the Mental Health Record the basis for any change from SPMI/LSPMI to not SPMI. These requirements are included explicitly in CHS policy XI-C, §A.6, Revision 6/3/03. Our understanding of Defendants' current practice (also per CHS policy XI-C, §A.6, Revision 6/3/03) in this regard is to utilize the regular CDTP/DSN update forms, performed every 15 days to indicate their most recent designation regarding SPMI status in the Mental Health Record (obligation "b" above). They do so utilizing a check-off next to the phrase "SPMI" in the DSN update form. We need to gather further information as to whether the treatment review process as currently undertaken constitutes a periodic re-assessment (obligation "a" above) as well as whether Defendants have any mechanism for inputting into the MIS a change in SPMI/LSPMI status (obligation "c" above).

tracked. On June 30, 2004, we provided DOHMH with our findings regarding the inconsistencies we found. We specifically noted that it raises questions if there is imprecision when comparing the paper charts to the MIS, any reports from Defendants based on data contained in the MIS.

In a subsequent meeting on August 12, 2004, DOHMH informed us that it authorized the health care vendor to explore the purchase of new charts that will permit better organization of clinical records.[36] DOHMH indicated that they believe that an additional factor contributing to the state of the records may also be "the amount of loose paper floating around."[37] DOHMH indicated that they are "reevaluating the process for how the charts flow around our system" in an effort to minimize the problems raised by loose paper.

DOHMH has also asserted that, the questions raised by our probe notwithstanding, they believe that the MIS contains accurate information. At this time, as we will discuss below, we consider the paper medical record (the "chart") to be the gold standard, albeit a very imperfect one. Our rationale is as follows: data regarding clinical and discharge planning encounters is, or should be, entered during or immediately after the encounter has taken place. As a general matter,

[36] Current records are kept in simple manila folders with clips on each half of the folder. This does not permit adequate separation and segmentation of the information in a readily accessible organizational system. New charts will likely consist of 4 or 6 sided folders so that information may be better organized. We encourage DOHMH to develop a uniform charting method so that all charts in all jails follow the same organizational structure and utilize the same forms.

[37] This comment relates to the fact that there is a single, unified medical record. When the record is in one place and the inmate is in another, as our chart reviews indicate occurs regularly, clinical personnel must document their care without concurrent access to the record. The paper that contains this documentation must then be forwarded to the medical records area where it can be filed in the chart. At times this leads to papers getting misplaced or misfiled. Another reason for loose papers is that many forms must be co-signed or authorized by supervisory personnel. This results in that form being kept out of the chart to await the second signature. Again, the paper must be forwarded to medical records, with the attendant risks of loss or misfiling.

clinical providers of all disciplines are trained in the importance of entering accurate and complete data into a clinical record. We have understood that written data has been forwarded to other staff for transcription into the MIS. This results in data loss inherent in any transcription of information. Thus, in our opinion, the MIS can only be as accurate as the medical record, and is likely less accurate.

That said, we have concerns even about the paper record. We previously recommended an electronic medical record. In our opinion, this single change would reduce the problems we have identified. Such a system would permit multi-user access, would allow for real-time capture of clinical data, and would permit the production of management reports for use by Defendants and by us in our monitoring role. Further, we believe that such a system would be far superior to a dual or parallel record, one on paper and another in a computer. Such a system could obviate the need for a separate discharge planning MIS. Defendants indicate that this is not a short term solution but is something they are willing to consider over the next few years.

In the end, we cannot accept without further exploration the assertion that the MIS is accurate. While we can continue to perform comparisons on small numbers of cases between the two data sources, we believe that the monitoring effort would be far better served, and would assist Defendants in achieving compliance sooner, if we had access to competent statistical and data management

experts with skills in evaluating data systems such as the MIS and with access to the data and the MIS.[38]

B. Monitoring of Discharge Planning Services

1. Performance Indicator Data

Since the last report, Defendants have begun reporting data using the format outlined in Appendix 4 of the June 7, 2004 report. NOTE: cases included in these data sets are those Class Members ***released*** during the month of interest. Thus, this will permit us to make some preliminary statements regarding Defendants' compliance with the Performance Indicators as set forth in Appendix 3 of that report. In addition, we requested other data of Defendants, consistent with our earlier data requests for our prior reports, that includes information not covered specifically by the Performance Indicators. In this section, we will analyze data relating specifically to the various performance measures, and we will defer non-performance measure data analysis to later sections.

In each section below, we will compare data provided by Defendants to data based on our chart reviews wherever possible. As noted above, our limited but directed review found frequent discrepancies between various sources of data, especially the paper medical record, and the discharge planning MIS. Underlying our comparison is our opinion that the paper medical record is the closest approximation of a "primary source" and that

[38] We have been clear for many months regarding our need to retain quality statistical and database experts. It appears after much negotiation that we will be able to retain such experts in the near future.

data drawn directly from the paper record is the most reliable. Our basis for this is that, to our understanding, information is entered into the paper record at the point of service most reliably. It is only very recently that data has been entered into the MIS anywhere near the point of service.[39]

Defendants point out to us in their response to our draft report that

> "Some discharge planning information is entered into CITRIX [the MIS] on the basis of source documents other than the medical record. This would include all discharge planning data entered at 346 Broadway. All data faxed from HRA or the "eligibility letters" mailed by HRA are entered into CITRIX on the basis of these respective documents. SPAN inreach sessions are not entered into the medical record."

We understand then that there are some types of information which might be entered into the MIS, and as such might be equally or more reliable than the chart. However, until we are able to retain competent statistical and data-management advisors who will assist us in conducting detailed analyses of the data contained in the MIS, our position will be that the charts themselves are the "gold standard," at least at least to questions of baseline clinical information such as diagnosis and medication.

[39] In their response to our draft report Defendants note that "Until DOHMH hired mental health data clerks and trained them to enter mental health data into CITRIX at Rikers Island, data entry was performed at the Department's downtown location. Downtown data entry staff were provided with logs maintained by mental health clinicians containing the critical data elements. The current practice calls for the mental health data clerks to use the medical charts as source documents for data entry into CITRIX. However, because the monthly cohort of Class Members is based on release during the reporting period, there will be a certain number of cases which preceded the data entry modifications, and for whom mental health log sheets were used."

During this reporting period (May 1-August 31, 2004), we reviewed a total of 401 medical records, including 70 SPAN records (10 Staten Island, 42 Manhattan, and 18 Bronx). Thus, 331 individual records from the various jails were included in this review. Charts reviewed more than once during this reporting period are not counted twice in the 331 total records.[40] For the purposes of the analysis of the data based on these record reviews, the most complete data from twice-reviewed records will be considered for analysis, as the record under review often changes over time as a Class Member proceeds through an incarceration and the attendant treatment and discharge planning process.

Of note here is that SPAN records are often incomplete at the time of our review, as it is relatively unusual for documents relevant to the provision of mental health care from the jail medical record to be included in the SPAN file in a timely manner. Of the 28 Class Member charts we reviewed at SPAN, 11 (39%) indicated that SPAN received records on the day of the visit, 11 (39%) indicated that SPAN received records after the day of the visit, and 6 (21%) indicated that SPAN had not received jail records at the time of our review. Thus, for the purpose of data analysis of jail medical records, SPAN records will frequently be excluded from our analysis. That said, we continue to recommend the development of improved procedures for the transmission of the jail record to SPAN in a meaningful time frame for SPAN to conduct adequate discharge planning.

[40] See prior reports to descriptions of our selection process.

In our June 7, 2004 report, we found that on only 30% of occasions were charts received at SPAN on the day of the Class Member's visit. We stated there: "if the record does not come on the day of the visit, and ideally within the 2 hours that SPAN generally has with a Class Member, it is not useful." Defendants, in their comments, object to this expectation, noting that "while this is a desired goal of the program, it is neither a performance standard nor will DOHMH be able to provide the information within this time frame in all instances." While we agree that this expectation is not, at this time, a performance standard, we assert, again, that without access to relevant clinical information, SPAN will be unable to provide adequate discharge planning services in an efficient and timely manner in many instances.

a. Performance Measure 1.1: Initial Assessment

This measure focuses on the requirement that inmates referred for a mental health assessment are to be seen by a mental health clinician within 72 hours of that referral. During the current reporting period, Defendants reported in Table 3:

June	July	August	Expected
94%	95%	96%	95%

We included the charts of 328 Class Members in our initial analysis. Of these Class Members, 16 refused to sign authorizations for our review of their charts and are not included in this analysis. Another 24 charts were unavailable at the time of review and are excluded from this analysis as well. One individual was referred for and refused mental health assessment on

several occasions and will also be removed from this analysis. Thus, a total of 287 charts are included in the analysis.

We found that 264 of the 287 cases (92%) received their initial mental health assessment within the 3 day time requirement as outlined in the Stipulation. This is consistent with our finding on this measure based on chart reviews in the June 7, 2004 report at page 70. Of the remaining 23 cases, the initial mental health assessment was late by between 1 and 39 days.[41] Explanations found in the chart for late assessments included Class Members spending some days in court, Class Members being transferred from one jail to another, Class Members being seen in other clinics, visits, and many charts without any explanation documented. However, in none of these cases did the reasons for lateness preclude the possibility of an earlier assessment date. Typically, during the 3 day period during which a Class Member could be seen for an assessment, she/he was in court, on a visit, or otherwise unavailable for only one or two of the allotted days. In other words, in none of these cases was there documentation of the Class Member's unavailability *throughout the 3 days allotted* for the mental health assessment.

One chart, # 642, was especially interesting from a recordkeeping perspective. This Class Member was incarcerated on 5/19/2004. On 5/20/2004, he was seen by the medical staff and referred to mental health, apparently because he reported being on a psychiatric medication in the past. According to the consultation sheet in the record, he was seen by mental

[41] Non-compliant cases on this measure included Case #s 360, 561, 583, 664, 425, 588, 524, 528, 745, 668, 562, 563, 715, 582, 578, 622, 420, 571, 615, 419, 642, 742, and 683.

health, but documentation of this contact (screening or assessment) could not be located in the record. On 6/11/2004, a second mental health consult was requested. Later that day, the Class Member was seen by mental health for a "screening", and this document refers to a 5/21 screening but is silent on any prior or subsequent assessment.[42] On 6/17/2004, a note records the Class Member's complaint about not being seen by mental health. He ultimately had a full assessment documented in the chart on 6/25/2004, 36 days after the original referral, and 14 days after the second referral. Chart #683 (39 days late) is similarly confusing and apparently missing documents regarding various mental health contacts. These charts and others like them underscore the problems relating to incomplete documentation. We reiterate here that while this makes our monitoring job difficult, it is much more important that it may interfere markedly with the provision of adequate assessment and transition planning.

In conclusion, Defendants are currently in compliance with this measure. If current or higher rates of compliance continue over the next reporting period, we will move from regular to periodic monitoring of this issue, returning to it more intensively only if we have reason to believe (from Defendants' data, our spot checks, or anecdotal information) that compliance has become problematic.

[42] Defendants, in comments on the draft Report, assert that the Class Member may have been screened out, i.e. believed not to need further mental health assessment, on 5/21. However, there was no documentation of the 5/21 contact in the chart at the time of our chart review, so we are unable to test Defendants' assertion.

b. Performance Measure 2.1: Presence of LSPMI Assessment in Chart

Of the 281 unique charts available for review for this data element, 234 contained the LSPMI questionnaire (83%). In our June 7, 2004 report at page 71, we found that at that time, our chart reviews found that defendants were in compliance in 78% of the charts reviewed. Our initial compliance expectation for this measure is 75%, and our ultimate compliance expectation is 95%. Thus, defendants have improved since the last report and are currently in compliance with our initial expectation on this measure. At this point, based on Defendants' rate of improvement on this measure, we raise our expectation to 90%.

c. Performance Measure 2.2: Appropriateness of LSPMI Assessment

Using a refined but still preliminary iteration of the guidelines we discussed on pages 48-50 of our March 8, 2004 Report for assessing the appropriateness of this and other more subjective tasks, we found that of the 232 charts included in this evaluation, 127 (55%) contained an appropriately completed LSPMI questionnaire. We have conducted this survey in order to develop an understanding of the range of quality of this document as it is completed by mental health staff. Examples of reasons for findings of non-compliance included:

- Class Members on medications assessed as "not LSPMI" or "can't determine" without required documentation[43]

[43] Defendants, in comments on the draft Report, request that we clarify whether this bullet represents missing LSPMI forms and therefore results in "double counting". This bullet is intended to describe LSPMI forms that are *present* but which do not contain required documentation as to why a Class Member

- Inconsistent documentation of diagnosis (e.g. a psychiatric assessment with a diagnosis of bipolar disorder, but the diagnosis recorded on the LSPMI assessment form is substance induced mood disorder, and there is no documentation of reasons for this difference)
- Global Assessment of Functioning ("GAF") scores that are grossly inconsistent with other documentation (e.g. a GAF clearly higher than other documentation would support)
- GAF scores that are inconsistent with the outcome of the LSPMI assessment (e.g. GAF rated as 45 but outcome of assessment is not LSPMI)

For comparison, in our June 7, 2004 report, we found that 59 of 86 (69%) of charts had appropriately completed LSPMI questionnaires.

In keeping with our stated approach, we will concentrate our efforts on elements of Stipulation sequentially. In other words, we have focused on upstream issues to be as certain as we can that Defendants have achieved compliance to the extent possible with early steps before focusing on downstream, later steps in the process. Similarly, we have been focusing on the **presence** of various steps until now, as it make little sense to focus on quality of something that does not happen in a large number of cases. We believe that it is time for us as well as for DOHMH to begin to examine questions of quality or appropriateness rather than simply the timeliness or completion of certain tasks required by the Stipulation as well as on tasks which occur later in the discharge planning process.

For example, clearly, it makes little sense to attempt to assess the appropriateness of a task such as a LSPMI Assessment or a CTDP when it is being done significantly beyond the deadline or not at all. At this time, to their

on Brad H. medications would be excluded from the LSPMI category. Thus it does not represent a "double count."

credit, DOHMH has made meaningful progress toward ensuring that requirements such as the LSPMI assessment and CTDP often occur within some reasonable proximity to the timelines required by the Stipulation. Therefore, we find it logical to begin an assessment of the appropriateness of the manner in which these tasks are completed. We recognize, and have discussed at length both in our reports and in face-to-face discussions with the parties, that the monitoring of the appropriateness of these tasks inevitably requires an element of judgment on our part. At this point, we believe that we understand the baseline regarding this measure. Our intention is to develop, to the extent possible, objective criteria to guide our entire monitoring team in the assessment of these areas. We have begun to explore both internally and with Defendants how to operationalize the definition of "appropriate" as it pertains to these tasks.[44] We invite the parties to participate in this process so that it may be as objective and comprehensive as possible. We have had one of what we hope will be a number of meetings with top DOHMH clinical leadership in which we reviewed records of specific Class Members as part of this process.

d. Performance Measure 2.3: Inclusion of Class Members as LSPMI if on Psychiatric Medications

This measure is intended to ensure that Defendants are in compliance with ¶27 of the Stipulation, which requires that Class Members who are on

[44] Both Parties have encouraged us in comments to pursue this vigorously. We intend to do so soon after the publication of this Final Report.

specified psychiatric medications are included as LSPMI for the purposes of access to needed discharge planning services in the event of a precipitous release. Against our current expectation of 90%, Defendants reported in Table 4:

June	July	August	Expected
70.7% 477/675	89.5% 484/541	88.1% 424/481	90%

As noted above, we found that 105 charts had an inadequately completed LSPMI form. In 22 (21%) of these particular charts, the Class Member was prescribed Brad H. medication(s) but was not found to be presumptively LSPMI at the time this form was completed. We found no documentation in these charts of an affirmative decision by the rater as to why the Class Member on Brad H. medication(s) was rated as not LSPMI. This suggests a possible remedy to a significant part of the noncompliance finding: educating mental health staff responsible for completing the LSPMI questionnaire regarding this requirement would reduce or eliminate the likelihood of our finding charts in which no affirmative decision or a wrong decision is made regarding Class Members on Brad H. medications.

e. Performance Measure 2.4: Appropriateness of SPMI Assessment

The assessment as to whether a Class Member is SPMI or not (as opposed to Likely SPMI or not) is made at the time of the CTDP. This assessment is to be reviewed at each Treatment Plan Review. The documentation of these assessments and reassessments in the medical record consists of a Yes/No

response to the query: "SPMI?" (see footnote 35 above). At the time of the CTDP and the first assessment regarding SPMI status (the focus of this measure), there may be supporting information for this assessment contained in the CTDP and accompanying psychiatric, psychosocial, or other mental health documentation. We have not seen a chart to date containing any documentation, as required by paragraph 31 of the Stipulation as to the rationale underlying the decision to change a Class Member's status from SPMI to not SPMI. The check-off method alone, absent other documentation, is clearly inadequate for complying with this requirement.

Thus, at this time, we are unable by chart review to assess Defendants' performance on this issue.

f. Performance Measure 3.1: Timeliness of CTDP

According to ¶¶16-17 of the Stipulation, Defendants are required to complete a CTDP on Class Members in General Population ("GP") within 15 days of the initial assessment. They must complete a CTDP on Class Members in Mental Observation ("MO") Units within 7 days. This measure is designed to test Defendants' compliance with these requirements. Against our current expectation of 85%, Defendants reported in Table 5:

	June	July	August	Expected
overall	72% 469/655	80.1% 549/685	94.1% 585/622	85%
MO	70.1% 75/107	72.4% 76/105	93.2% 82/88	85%
GP	71.9% 394/548	81.6% 473/580	94.2% 503/534	85%

It is clear from this data that there has been rather dramatic improvement on the timeliness of this task over this reporting period, and especially in August. This finding is very gratifying, and points to the salutary effect which can result from Defendants' sustained and intensive efforts at staff training and supervision.

For our June 7, 2004 report, DOHMH provided information regarding the timing of late CTDPs relative to the due date to us in tabular and graphical formats. We have included this timeliness curve as an element of our routine monthly report, although on the reporting table, this field is blacked out. We blacked it out because we recognize that this is not a numerical form of information. Nonetheless, at this time we request that this information be provided along with future monthly reports. We believe that such information is extremely valuable by providing us and the parties with clear information regarding the timing of late CTDPs. However, if the improvement in timeliness continues, this information will not be as useful and we will not require it.

Our chart reviews reveal the following information, summarized in Table 6:

	Compliance rate
GP	74.8% (110/147)
MO	77.1% (74/96)

These data are very similar to data reported above by DOHMH for June and July. We included as compliant cases in which Defendants attempted the CTDP but could not complete it on the due date because, per documentation,

the Class Member was in court on the due date.[45] Cases in GP were noncompliant by between 1 and 47 days, and cases in MO were noncompliant by between 1 and 62 days. Of the cases that were substantially late (beyond 15 days late), 2 of 4 in MO and 1 of 3 in GP appeared from our review to have had an intervening transfer from one jail to another as a part of the reason for the late CTDP.

Of the charts of Class Members housed in GP which we reviewed, 35 were out of compliance with the GP timeliness requirement. Eighteen of these cases, however, had the CTDP done within 5 days after the due date. Similarly, of the 29 noncompliant charts for Class Members housed in MO, 12 had the CTDP done by day 10, within 3 days of the due date. If these cases had been done within the required timelines, compliance rates for GP and MO would have been 88% and 83% respectively. Considering this time-curve data indicates that Defendants are within striking distance of compliance.

One further MO chart (641), not considered in the compliance rate reported in our table, is that of a person hospitalized at Bellevue for approximately 2 weeks from the date of incarceration. Our information is unclear as to whether he was processed in a Rikers or borough facility before going to the prison ward. His CTDP was done 5 days after he was transferred from Bellevue to Rikers Island. This chart was not included in the analyzed data but raises the still unresolved question of the extent, if any, of

[45] Cases determined to be out of compliance were, in the MO, case #s 383, 547, 549, 695, 699, 706, 687, 780, 544, 690, 353, 639, 684, 734, 715, 708, 777, 518, 515, 428, 739, and 773.

In GP, the following cases were found out of compliance in this regard: 569, 619, 636, 726, 742, 769, 779, 451, 564, 570, 623, 701, 731, 747, 512, 743, 443, 488, 587, 728, 662, 702, 367, 593, 700, 486, 745, 749, 572, 519, 596, 391, 644, 426, 740, 776, and 457.

Defendants' obligations under the Stipulation to patients housed on the Prison Wards. This issue is discussed more fully at Section 1.f. above.

We also found 3 charts in GP (516, 561, and 584) containing no CTDP at all, despite the fact that the due dates had passed. Additionally, there was one chart (521) that did not have a CTDP which we believe was not done due to early transfer from one jail to another. Finally, 1 chart (625) related to a Class Member who had refused mental health follow up during the 15 day window, and who thus did not receive a timely CTDP. In this last case, however, mental health was asked to see the Class Member again later in the incarceration to clear him for segregation, and he was cleared for segregation with a recommendation for mental health follow up. We believe that efforts should have been made in this case to complete a CTDP for this Class Member, given that the segregation clearance included a recommendation for ongoing follow up.[46] If we include these 5 charts in our denominator as not timely done, Defendants' compliance based on our chart reviews of GP cases falls to 110/150 or 73.3%.

Pulling Defendants' data together with our findings causes us to be cautiously optimistic. Defendants have represented that the CTDP and in particular the timeliness of the CTDP are one of the areas where they have provided their most intensive training and supervision for their staff. It

[46] Defendants, in comments to the draft Report, state that they believe it to be inappropriate to complete a CTDP on a Class Member who is being evaluated solely for segregation placement or who has refused mental health care. However, included in the documentation of the clearance for segregation, the mental health staff documented that they recommended further mental health follow up while the inmate was in segregation. Thus, we believe that attempts to complete a CTDP, or, alternatively, documentation of refusal of further mental health care, should have occurred.

appears to be paying off. That said, our own detailed reviews of randomly selected charts indicates that compliance may not be quite as high as Defendants data set would suggest. However, we are aware that our chart reviews rarely evaluated very recent charts, and only 10 charts of those we reviewed contained CTDPs completed in August. Thus the charts we reviewed may not represent those in which the Defendants' supervisory and training efforts have yet borne fruit.

In summary, for June and July, data from the MIS and from our chart reviews regarding compliance with the CTDP timeliness requirement were closely congruent. We recognize the dramatic improvements in timely completion of the CTDP Defendants reported for August. This is likely directly related to training and supervisory efforts by DOHMH regarding this important step in meeting the requirements of the Stipulation. Our chart reviews included very few CTDPs done in August and so do not as yet reflect this improvement. We will continue to monitor this closely given the recency of this jump in reported compliance.

g. Performance Measure 3.2: Appropriateness of Projected Post-Discharge Needs

Per our above discussion in section e., we have delayed our evaluation of the "appropriateness" of various tasks completed by Defendants until we are convinced that the tasks were being completed at all in a suitable number of cases. At this point, given that Defendants have improved in the completion of the CTDP in a timely fashion, we will begin to develop a mechanism with

operational criteria for monitoring the appropriateness of projected post-discharge needs, the assessment and documentation of which is incorporated into the treatment planning process. This will require the collaborative input of the parties, and especially of the relevant clinical managers and supervisors responsible for this task. We intend upon giving this task a high priority so that monitoring can commence promptly.

h. Performance Measure 4.1: Timely Initiation of Medicaid Prescreening

Defendants are required to initiate a Medicaid Prescreening process at the time of the CTDP (¶59) or at the time of the first appearance at SPAN (¶60), whichever comes first as a particular Class Member travels through the system. This measure tests Defendants' compliance with this requirement. Against our current expectation of 75%, Defendants reported in Table 7:

	June	July	August	Expected
In DOC	76.6% 111/145	90.5% 266/294	94.1% 585/622	75%
SPAN	100.0% 51/51	100.0% 49/49	100.0% 46/46	75%

Defendant's data indicates not only that they are performing beyond our interim expectation for this task in the jails but also that their performance is improving on this task and bringing them close to our ultimate expectation for this measure.

Of note is that this task occurs as required 100% of the time for Class Members who utilize SPAN offices.

i. Performance Measure 4.2: Timely Completion of Medicaid Prescreening

Subsequent to the initiation of the Prescreening process, HRA is required to complete the Prescreening by responding to it within 3 business days. Defendants in comments to the draft Report note that the Prescreening process requires the collaboration of DOHMH and its discharge planners and of HRA and its Brad H. Unit. This performance measure, as such, measures these agencies' joint performance. Against our expectation of 85%, DOHMH reported in Table 8:

June	July	August	Expected
70.0% 90/130	51.6% 63/122	58.2% 167/287	85%

We have concerns about the drop in compliance on this measure in July (51.6%), continuing into August (58%) as compared to the reported compliance rate of 70% in June. In addition, in our last two reports, we had extensive discussion about our concerns regarding low compliance rates for this conceptually and practically simple task. Rather than reiterate this discussion, or make attempts to compare current data to previously reported data that was collected in a different manner, we will simply urge Defendants to focus attention on this task over the next reporting period. In total, for the three months, DOHMH reported that 320 of 539 prescreens were completed within 3 business days.

Class Counsel, in comments to the draft Report, point out that, using August as an example, DOHMH reported that they initiated 585 prescreens in a timely fashion in the jails (see measure 4.1 above). Here, they report that

167 of 287 prescreens were completed on time. It seems unlikely to us that 298 (585-287) Class Members would have been released in the three day interim period between the initiation and completion of the prescreening. We request clarification from Defendants as to why the denominator for measure 4.2 should be so much lower than either the numerator or the denominator from measure 4.1.

Under separate cover, we received data on September 9, 2004 from the HRA Brad H. Medicaid Unit. This data, while not covering an identical time period, provides some insight as to where the problem may lie in Defendants' performance on this measure. For a similar and overlapping three month period (May through July), HRA reported the following data in Table 9:

	From jails	From SPAN
Fax referrals received	1139	203
Incomplete Faxes returned	324	16
Prescreens completed in 2 BD	857	187

From this data, HRA reports that it completes its portion of the prescreening task within 2 days of receipt as a rule. Thus, given reported high levels of compliance on measure 4.1 (initiation of the prescreen) and given HRA's data regarding their high level of compliance in rapidly completing the process for prescreens they receive, we suggest that this data indicates that there likely is a problem in the transmission of these forms to or from HRA.

Defendants, in their written comments to the draft Report, object to our requesting and receiving data "not relevant to the issue of City compliance with the Settlement Agreement." Among the data to which they object are the

data immediately above regarding HRA completion of the Medicaid Prescreens. Defendants are correct in their cautioning us not to make direct comparisons between HRA and DOHMH data on this specific measure. However, we find that these data, once completely understood with the help of Defendants' comments, assist us in defining Defendants' overall performance and in identifying more precisely possible problem areas in their performance. As such, we assert that these data are, in fact, highly relevant to our judgment of Defendants' performance on these measures. We intend to continue to request data that we see as helpful in understanding a performance area about which we have concern.

j. Performance Measures 5.1 and 5.2: Timely Completion/Submission of Medicaid Applications for Class Members

Upon completion of the Prescreening, some Class Members are found to require a new Medicaid application. Defendants' obligations in this regard are found in ¶¶ 64 and 65 of the Stipulation. Against our expectation of 85%, Defendants reported in Table 10:

	June	July	August	Expected
Timely Submission for incarcerated Class Members	30.8% 8/26	29.6% 8/27	32.0% 16/50	85%
Timely Submission for released Class Members whose prescreening was completed in jail	100.0%	100.0%	100.0%	85%
Timely submission for released Class Members whose prescreening was not completed in jail	100.0%	100.0%	100.0%	85%

The compliance with the Medicaid application process is 100% for those Class Members utilizing SPAN. However, for Class Members who remain

incarcerated but who are eligible for Medicaid, the data indicates very low compliance by Defendants.

Data supplied by HRA regarding the outcomes of the prescrenings they performed during the May-July 2004 period is as follows, Table 11:

Outcomes	From Jails	From SPAN
Still active Medicaid	293	73
Active but needing/given recertification	32	4
Reactivated within 7 BD	257	53
Need new application	275	57

This data indicates that approximately 90 Class Members prescreened per month in jail require a new Medicaid application. Assuming that this is a relatively stable number over the population of Class Members, we question the data reported by DOHMH above, in which they report as denominators that only a total of 103 Class Members should have had applications done (the denominators in the top line of Table 10). As noted above, we recommend that the agencies currently reporting these data separately develop mechanisms to provide this data in an integrated fashion. This will not only be of use to us in our monitoring duties but will also serve them over time by providing them with a better window into the services they are jointly delivering.

HRA also informed us that, during May-July, 2004, they received 144 Medicaid applications from CHS. This differs from DOHMH's report that they submitted 32 total applications between June and August. Defendants in comments to the draft Report correctly note that they submitted 32 applications according to the required timelines during this reporting period.

DOHMH did not provide us with the total number of applications it submitted (timely and late) during the reporting period. Without this information, we are unable to analyze this issue fully and request that Defendants in the future include in their data reports not only the number of Medicaid applications submitted timely but those submitted late as well.

k. Performance Measure 5.3: Timely Enrollment in the Medication Grant Program ("MGP")

Paragraphs 69ff outline Defendants' obligations to enroll eligible Class Members in the MGP. We understand the term "eligible Class Members" to include any Class Member

- "who appears eligible for Medicaid", and
- "whose Medicaid benefits have not been activated or reactivated as of the Class Member's Release Date."

The purpose of this requirement is to ensure that Class Members, who almost by definition are eligible for and in need of mental health services after they are released from the Department of Correction ("DOC"), are able to access these services. The MGP is a program designed specifically for individuals such as Brad H. Class Members who may be released from institutional care prior to the onset of a definitive benefits program such as Medicaid. Against our expectation of 85%, Defendants reported in Table 12:

	June	July	August	Expected
Provision of MGP upon release	NC	NC	NC	85%
Provision of MGP on first SPAN visit	100.0%	100.0%	100.0%	85%

DOHMH represents that while it can provide us with the number of MGP cards given, it does not collect information regarding the denominator of this measure (i.e. the number of Class Members eligible for an MGP card). In our June 7, 2004 report, at p. 60, we outlined our views regarding this measure and the appropriate denominator. As we said there, the appropriate denominator would appear to be "Class Members with a pending application for Medicaid". Defendants in comments to the draft of this Report object strongly to this characterization of the correct denominator, and they reiterate their list of exclusion criteria which we addressed in Footnote 39 at page 60 of our June 7, 2004 report. Defendants have not been able to provide us with a different mechanism for the calculation of their compliance for this measure and stated in their comments that they cannot do so. Additionally, Defendants note that the various exclusion elements outlined in our last Report are not included in Attachment A to the Settlement Agreement and imply that they are therefore not required to capture this data. We are unable to devise a way of measuring this other than for DOHMH to provide us the number of MGP cards given (the numerator) and the number of Class Members with a pending application for Medicaid at the time of release (the denominator). We invite consultation from the Parties to develop appropriate means to monitor this measure which at present appears unmonitorable, given Defendants refusal to provide us with the numerator and their inability to provide us with the denominator including all posited exclusions. In the meantime, we have no

basis and will continue to be unable to find that Defendants are in compliance with performance measure 5.3.1.

Defendants reported 100% compliance over the reporting period for the provision of MGP cards to SPAN visitors. Further evaluation of the data in Table 13 indicates:

	June	July	August
# of SPAN visitors	74	44	75
Provision of MGP on first SPAN visit	32	28 (18)[47]	32
# given appts to receive continued medications	30	18	35

This data raises the following question: why would entries in the second and third lines be different? Absent other information, we would consider it reasonable to assume that any visitor to SPAN who required an appointment to ensure continuation of medication treatment would also require an MGP card in order to pay for that medication, unless it were known for certain that a Class Member was a Medicaid beneficiary.

Regardless of the response to this question, it is clear that SPAN is providing MGP cards to all or nearly all of those Class Members who they identify as in need of this benefit. Thus we find Defendants currently to be in compliance with 5.3.2. We will continue to monitor this and look forward to discussion with DOHMH and SPAN regarding our question about this data.

[47] Different data sources are responsible for the lack of clarity in this number.

l. Performance Measure 6.1.1: Timely Reactivation of Medicaid

Some Class Members are found upon completion of the Prescreening either to have still-active Medicaid or to be eligible for reactivation of Medicaid. Our understanding is that Defendants view these two Prescreening outcomes, though theoretically different, as functionally identical, in that little or no affirmative effort need be made in order for the Class Member to have active Medicaid at the time of release.

This measure is the topic of ongoing controversy and is, to the best of our understanding, still being litigated. At present, we believe that the current status of this measure is as follows, based on ¶61 of the Stipulation and subsequent holdings by the Court:

> [# of Class Members whose prescreenings result in a finding of "reactivate" who have their Medicaid reactivated as of the later of (a) his or her Release Date, (b) the date of the prescreening completion provided necessary documentation is produced, or (c) within 7 business days of the date on which the Pre-Screening Process is completed where an investigation is deemed necessary] ÷ [# of Class Members whose prescreenings result in a finding of "reactivate"].

Against our expectation of 95%, Defendants reported in Table 14:

June	July	August	Expected
44.4% 63/152	40.8% 64/157	57.6% 132/229	95%

According to MAP Procedure 00-14 (R2) revision of May 26, 2004, HRA Brad H Unit staff, upon completion of the prescreening resulting in

"reactivate", are to take steps to ensure that the Class Member remains eligible and to reactivate his/her Medicaid case. We recommend that Defendants explore this process to determine how to improve compliance. This data calls into question HRA's assertions that "reactivation is automatic."

Class Counsel, in comments to the draft Report, informed us that they did not appeal the First Department's ruling upholding the Order of Justice Braun regarding extending the time for reactivation to seven days from the completion of Prescreening. They expressed their belief that "this aspect of the matter is now fully and finally litigated."

m. Performance Measure 6.1.2: Provision of Temporary Medicaid

Justice Braun's Order of November 11, 2003, concerning ¶61 and in response to Defendants' motion, alters ¶61 to include the following language: "(d) where it appears that a Class Member is in immediate need and an investigation is deemed necessary, temporary Medicaid benefits shall be granted pending an investigation." This measure is designed to test Defendants' compliance with this requirement. However, this issue is, possibly, the subject of ongoing litigation. Defendants informed us that they pursued (1) a request to have the First Department re-hear their appeal and (2) leave to appeal this portion of the Court's Order (and presumably the Appellate Division's affirmation of this aspect of the Order) to the Court of Appeals. We recently received a First Department Order dated October 5,

2004 denying Defendants' motions. We are as yet unclear if Defendants have exhausted their appeals in this matter.

Defendants further represent that by statute, the aspects of the Order for which they sought leave to appeal were stayed while this request was pending and until the completion of any subsequent appeals. The status of this stay is similarly unclear, given the lack of clarity regarding further appeals.

Our intention is to monitor Defendants' compliance with the various aspects of the Stipulation of Settlement in its current form, whatever that may be at any given point in time. As we were given to understand that this portion of the Court's Order was the subject of possible appeal and thus stayed, we did not monitor it as it was pending final resolution. We have posed to the Parties a series of clarifying questions aimed at determining an accurate assessment of the current state of this litigation. We will implement or modify the performance indicator as required by the ultimate outcome.

n. Performance Measure 6.2: Mailing of Medicaid Cards

The Stipulation at ¶¶66-68 requires Defendants to provide Temporary and Permanent Medicaid cards to Class Members. The obligation varies depending on when in the course of an incarceration-release process the particular Class Member becomes eligible for Medicaid.

HRA informed us that there has historically been no tracking mechanism for this data. Our understanding of the process as explained by DOHMH and HRA personnel is that temporary Medicaid cards are provided upon a finding

of eligibility and that there is no electronic data tracking for this action. MAP Procedure 00-14(R2) Revision of May 26, 2004, §2 outlines the procedure that the Brad H./Correctional Review Unit within HRA is to follow. This procedure requires HRA CRU personnel to "prepare… Temporary Medicaid Card… and forward as follows:

- mail to applicant, if a post-release community address provided;
- mail to the applicant in care of the SPAN office located in the borough selected by the applicant if no post-release community address provided…."

The provision of the permanent Medicaid card is performed by a State agency and the actual printing and mailing of the card itself is contracted by the State to a vendor.

In a meeting with HRA on September 8, 2004, Defendants and the Monitors agreed to the following:

- HRA will develop a mechanism to provide us with data regarding the mailing by HRA of temporary Medicaid cards to the relevant address[48];
- The Monitors will attempt to establish contact with the appropriate State agency responsible for the contract with the vendor who mails permanent Medicaid cards. This purpose of this contact will be to establish an understanding of the contract oversight which, according to HRA, requires the vendor to mail the cards within 5 days.

Pursuant to the understanding discussed above, the Monitors contacted the Counsel's Office of the New York State Department of Health. On September 27, 2004, one of the Monitors spoke with the attorney at the State DOH in charge of Medicaid-related matters, who expressed a willingness to

[48] In their response to our draft report, Defendants informed us that "HRA is currently developing a process to begin tracking the mailing of temporary Medicaid cards."

assist the Monitors in understanding the oversight New York State conducts with regard to the contract for mailing of permanent Medicaid cards to recipients.[49]

The DOH Attorney conveyed the following information. OTDA contracts with an entity called T-Tech to issue Medicaid cards. As such, OTDA monitors the contract, of which DOH is a beneficiary, with T-Tech and produces regular management reports showing the performance of the contractor. He further stated that by report there have never been any complaints about this function and that OTDA indicates that the contractor is meeting its timeframes.

In support of this assertion, the DOH Attorney forwarded to the Monitors the section relating to this function of a report generated on September 2, 2004 showing daily compliance for August of this year. The oversight does not distinguish between Brad H Class Members and other Medicaid recipients but according to both HRA and State DOH there is no reason to believe that the production of Medicaid cards for Class Members is handled in a distinct manner from the rest of the population. The report provided is reproduced as Appendix 3 and clearly demonstrates that, for August, a total of 102,027 cards were issued. Almost 95% were issued on the same day as the approval of the application for Medicaid, with the remainder being issued within one day. According to HRA, this is an automated process, triggered by the finding of eligibility being entered by HRA into WMS. We plan upon requesting this

[49] The Monitors thank the Counsel's Office for its responsiveness to our inquiries.

monitoring report again in the coming quarter. If this current report proves to be typical, we will be satisfied to a reasonable degree of certainty that we do not need to derive additional monitoring techniques for the portion of the Stipulation relating to issuance of permanent Medicaid cards.[50]

o. Performance Measure 7.1: Provision of Medications/Prescriptions to Class Members

This measure includes three submeasures relating to the various obligations of Defendants to provide Class Members with medications and/or prescriptions for medications. For those Class Members who are released from jail, Defendants are obligated to provide medications for 7 days and prescriptions to cover a further 21 days (¶52, performance measure 7.1.1). For Class Members released from court (and therefore unable to get medications from the jail), Defendants are obligated to assist the Class Member in obtaining medications via different procedures depending on the timing of their appearance at SPAN. If the Class Member appears at SPAN on the day of release, ¶54 requires SPAN to coordinate with CHS in obtaining up to a 7 day supply of medications and an appointment at a community provider in order to continue to receive the medications (performance measure 7.1.2). If the Class Member appears on days 2-30 after release, SPAN's role is limited to referring the Class Member to a community provider able to see the Class Member promptly to assess for ongoing treatment needs (¶55,

[50] Of course, should we become aware of additional information which calls into question this function, we will re-visit this determination.

performance measure 7.1.3). Against our expectation of 75% compliance, Defendants reported in Table 15:

	June	July	August	Expected
Provision of walking medications and prescriptions upon release from jail	55% 150/275	43% 209/487	67.8% 206/304	75%
Provision of medications to released Class Members who appear the same day at SPAN	100% 8/8	100% 7/7	100.0% 12/12	75%
Referrals for medications for released Class Members who appear on later days at SPAN	100% 4/4	100% 12/12	100.0% 39/39	75%

Given the foundational role of medication in the treatment of people with mental illness, we consider this a key element of this Stipulation. Additionally, at least from the jail-based perspective, staff ought to be able to accomplish this task relatively simply. While we find that SPAN is fulfilling its role adequately in this regard, there is significant room for improvement with respect to the jail-based role in providing Class Members with needed medication upon release. Compliance figures fell by 12 percentage points between June and July, although there was jump of 24.8% from July to August.

We note that the denominators in the first line of the Table 15 above appear to be highly variable. This raises the question as to why this would be so. While we may posit at present that the population of the Class would have similar needs over time, it is also possible that the Class changes over time, randomly or in some pattern. Defendants, in written comments to the draft Report, suggest the following as possible reasons for this variability:

- Random variations in the cohort of Class Members outside of the control of Defendants

- Organized efforts on the part of Defendants to affect these numbers (e.g. a current effort to minimize inappropriate prescription of psychiatric medications to inmates who do not require them)

In our view, the compliance figures regarding the provision of walking medications and prescriptions to Class Members leaving the jail facilities have begun to demonstrate improvement. However, compliance remains below our expectation and we have some concern about the dramatic drop in compliance seen in July. While conceptually, this task might appear straightforward, in reality it requires the collaboration of multiple actors and agencies, including DOHMH, the medical vendor and DOC staff. This is an important issue and we will continue to monitor it closely.

p. Performance Measure 8.1: Provision of Appointments to Class Members with Known/Projected Release Dates

Paragraph 45 obligates Defendants to provide Class Members whose release dates are known or projected in advance with appointments for community mental health follow up upon their release. Against a compliance expectation of 75%, Defendants reported in Table 16:

	June	July	August	Expected
Total	28% 26/93	25% 34/136	77% 72/94	75%
# with known release date	74	292	117	
SPMI	39% 14/36	24% 17/71	85% 34/40	

As noted above regarding measure 7.1, this issue is one of the foundational issues in this litigation. Successful discharge planning includes the provision of medications for those who need them but are only helpful if the medication

provided bridges a gap between two treatment providers. We are pleased to see that, in August, DOHMH reported dramatic gains on this measure for both SPMI and non-SPMI Class Members. We note here, as we did above, that the variation in the denominators requires some probing.[51] We will continue to monitor the compliance rate for this measure, including issues related to the proper denominator. Here, as in all aspects of our monitoring, the relevance of the denominator is that in the absence of a reasonable level of assurance that all eligible Class Members are included, no compliance figure reported to us or that we in turn analyze accurately describes compliance.

As in the last report, we have questions regarding this calculation. Using as the denominator the number of those released with a previously known release date, per the Table 16, the compliance rates change to 35% for June, 12% for July and 62% for August. Defendants, in written comments, object to this recalculation, asserting that many of the Class Members indicated as having been released with a "known release date" were actually sentenced to "time served" in court. Thus, their "known release date" was actually an "expiration of sentence date" which was not known in advance but which is reported as a "known release date" by the relevant databases. This date would not have been known to a discharge planner in advance, and thus Defendants object to our including these in the denominator for this measure.

In the past, we have requested that Defendants provide us with more information regarding Class Members released with a truly known release

[51] We recognize that the denominator may change for legitimate reasons over time as discussed above.

date as compared to those released at court with time served. They have not done so.

q. Performance Measure 8.2: Provision of Appointments to Released Class Members Appearing at SPAN

Similarly, ¶47 requires Defendants to provide appointments to Class Members who appear at SPAN requesting mental health care. Against an expectation of 75%, Defendants reported nearly 100% compliance, as shown in Table 17 which they provided to us in their comments to the draft Report:

Month	# SPAN visitors	# refused	# who previously had an appointment	# who had appointment made on the same day	# who had appointment made the following day due to after 5pm arrival	Equation	%
June	57*	9	5	28	6	34/34	100%
July	44	4	4	30	4*	34/34	100%
August	59*	3	9	33	3	36/37	97%
Total	160	16	18	91	13	104/105	99%

* Note – Error in prior SPAN monthly report submissions.

In their comments, Defendants indicated that this information is more accurate than information they had previously provided. SPAN generally is making appointments for Class Members who they perceive as needing them, either on the day of the visit, or the next day in the event of a late arrival.

r. Performance Measure 8.3: Provision of Referrals to Class Members without a Known/Projected Release Date

Paragraph 46 of the Stipulation requires the provision of referrals to Class Members released from jail without known or projected release dates. Against an expectation of 85% compliance, Defendants reported in Table 18:

	June	July	August	Expected
Total	73.9% 17/23	33.1% 52/157	85.6% 137/160	85%
# without known release date	897	708	938	
Attrition (released before CTDP)	30%	27%	28%	
Global Refusal rate	20%	19.3%	22.9%	
SPMI	80% 8/10	42% 26/62	47.9% 34/71	

As above, the compliance rates are quite variable and for SPMI Class Members particularly are notably poor for this key issue. This is so despite the positive report of 85% total compliance in August.

As above, we question the denominators used by Defendants in calculating these results. Based on values provided to us by Defendants for number of Class Members released with a known release date (see section q above), we calculated the number of Class Members released without a known release date. Clearly, there is a wide gap between the denominators used by Defendants and this set of numbers. While we recognize that there are exclusions for refusals, it seems to us to be highly unlikely that, for example, 360 individuals[52] ***specifically*** refused this service in August.

A third level of analysis raises the question of which Class Members should be considered eligible for receiving referrals prior to release.

[52] (938 less 28% attrition less 22.9% global refusal rate)-160 = 360

	June	July	August
Provision of walking medications and prescriptions upon release	150/275	209/487	206/304
Provision of appointments or referrals upon release	43/116	86/293	209/254

The first line of Table 19 above reiterates the first line of the Table 15 for indicator 7.1. The second line combines the numerators and denominators for indicators 8.1 (Table 16) and 8.3 (Table 18).

In our draft Report, we asserted that Defendants were not providing enough referrals as we believed that all Class Members released with walking medications and prescriptions should have been given a referral for follow up care. It is reasonable to assume that anyone leaving jail on psychotropic medication requires, at minimum, a reassessment for treatment needs in the community. While there may be Class Members who accept one service (e.g. medications on release) but refuse another (e.g. an appointment or referral for follow up care), we found it unlikely that so many Class Members who accepted or needed medication on release did not have arrangements made for that follow up care. At the time of the draft report, we articulated our belief that each of the Class Members ***eligible to have received medication upon release*** are also eligible for appointments or referrals upon release, absent a refusal of one or the other by the particular Class Member. Using these numbers as denominators for the current measure, we find that only 43 of 275 (16%) of Class Members released in June and only 86 of 487 (18%) in July were in compliance with this requirement.

Defendants in comments responded to this in part: "If a Class Member is on a Brad H medication at the time of their discharge, they will receive these medications/prescriptions upon release ***even if they have not been incarcerated long enough to receive a completed CTDP and/or an appointment or referral***" (emphasis added). Defendants appear to be correct: some Class Members will be released and are entitled to medications and prescriptions prior to having received a CTDP. It is only when Class Members reach the point of having a CTDP that appointments and referrals are considered. Thus these Class Members have not yet reached the point in the treatment/discharge planning process at which they are entitled to being linked to community care.

Proceeding with our calculation above, and recognizing that between 1/3 and 1/4 of inmates with an M designation leave prior to the CTDP, we make the assumption that the denominators above should be reduced by 1/3. Thus, in June, 43 of 180 (28%) should have been provided an appointment or referral and in July, 86 of 325 (26%) should have been so referred. Recognizing that some Class Members might refuse such a referral, we find unlikely that 3/4 of them would do so.

s. Performance Measure 9.1: Provision of Emergency Benefits to Eligible Class Members

Defendants are obligated in ¶¶84-85 to provide Class Members with emergency benefits. In order to be included in the denominator for this measure, a Class Member must

- be SPMI (¶76)
- be found to have "immediate needs" (¶84) and
- appear at a job center to receive benefits (¶85)

These criteria, especially the last, considerably shrink the pool of eligible individuals against which Defendants' performance is to be measured. We have been assured by HRA that the provision of emergency benefits is essentially automatic if the individual person meets the last two criteria. Thus, our expectation regarding compliance for this measure is 100%. Defendants were unable to provide data for June 2004, but they reported that, of 16 Class Members who visited a Job Center in July, 8 of 8 (100%) Class Members eligible for and received emergency benefits. Five of these individuals received expedited Food Stamps, and three received an Immediate Needs Grant. It is not clear what the outcome was for the remaining 8 Class Members who visited the Job Center during July. We have no data for August.

Defendants, in written comments, indicated that they do not consider outcomes regarding eligibility for public assistance benefits to be performance indicators under the Stipulation and that they will no longer provide us data on this issue. We question how we can effectively monitor this performance measure if we do not have data regarding the makeup of the denominator and how people are excluded from it.

Class Counsel, in written comments, "encourage the Compliance Monitors to test Defendants assurances about the provision of emergency benefits by visiting an HRA job center and meeting with staff and reviewing HRA's

database to determine if this assertion is accurate." We intend to make this request of Defendants at some future time.

t. Performance Measure 9.2: Timely Completion/Submission of Public Assistance Applications

Paragraph 78 requires Defendants to assist Class Members who are SPMI in applying for public assistance benefits and outlines timelines for this process. Against our expectation of 85% compliance, Defendants reported in Table 20:

June	July	August	Expected
3.9% 2/51	10.2% 11/108	20.9% 18/86	85%

As above, we would find it useful to explore the variability of the denominator in these monthly reports (but see comments above for Defendants' explanations regarding this variability), as we would expect a fairly constant number of Class Members eligible for a given service over time. According to our analysis of data provided by Defendants in comments, (see section II.D. above), a total of 165 Class Members had PA applications filed either timely or late. Thus, 67% of Class Members assessed by Defendants to be eligible for the service received it. Given that Defendants have not yet identified a mechanism to assist Class Members in obtaining federal benefits such as SSI, the benefits covered by this measure are likely to be these Class Members only source of financial support upon release.

In conclusion, the compliance rate in August was double that in July, and five times that in June. However, Defendants' compliance remains

substantially below our expectations. We will continue to closely monitor this measure.

u. Performance Measure 9.3: Registration of Public Assistance Applications on Day of Receipt at HRA

On July 22, 2004, we held a meeting with HRA. During this meeting, HRA agreed to provide us with information regarding the timely registration of PA applications. They provided data covering July 19, 2004 until August 18, 2004. The data indicates that of the 106 applications received during this time, 97 (91.5%) were registered on the day of receipt at HRA. The remaining 9 were registered on the day following receipt due to "WMS system problems that are out of HRA's control." This exceeds our preliminary compliance expectation of 75% and approaches our ultimate compliance expectation of 95%. If similarly high rates continue, we will raise our performance expectation to 95% with the next report.

v. Performance Measure 10.1: Submission of HRA 2000 Applications for Eligible Class Members

Defendants are obligated at ¶89 to assist Class Members "in need of Supportive Housing" in applying for such housing. Only those Class Members determined by Defendants to be in need of this type of housing are eligible for this service. Defendants reported in Table 21:

	June	July	August	Expected
# of CMs determined to be in need of supportive housing	10	10	22	
# of CMs for whom an HRA 2000 application was submitted	10	10	22	
compliance rate	100%	100%	100%	75%
# of HRA 2000 applications submitted by SPAN	3	5	34	
# of HRA 2000 applications submitted by Jail DPs	10	10	22	
% of SPAN visitors believed to be appropriate for supportive housing	4.1%	11.4%	45%	
% of CMs released from Jail believed to be appropriate for supportive housing[53]	1.0%	1.0%	2.1%	

While Defendants are completing this task for all Class Members whom they determine to be in need of supportive housing, we make the following observations regarding these data:

- First, we have been informed on many occasions by multiple staff responsible for the provision of mental health care and discharge planning that the housing section of the Stipulation (§III.H.5.) is only relevant to Class Members who are SPMI.[54]
- Secondly, we found interesting the different rates of completion of this task by SPAN as compared with discharge planners in the jails. Based only on these numbers, SPAN completes these applications 6 to 20 times more frequently (proportionally speaking) than do jail-based discharge planners.[55]

[53] Defendants reported that 971 Class Members were released in June, 1000 were released in July, and 1055 were released in August.

[54] Defendants, in comments to the draft Report, note that "[r]egardless of the language in the Stipulation Agreement regarding supportive housing, eligibility rules for this program expressly require that the client has a serious and persistent mental illness." They forwarded to us material that makes clear that, in the case of NYNY housing, eligibility hinges on

- SPMI status and
- Homelessness.

However, it is as yet unclear to us if SPMI status is required for all levels and types of supportive housing.

[55] Defendants, in comments, note several reasons why this may be so:

We request further information regarding how Defendants identify Class Members whom they believe are eligible for supportive housing.

w. Performance Measure 10.2.1: Sharing of Information with DHS of those Homeless Class Members with Projected Release Dates

x. Performance Measure 10.2.2: Timely Provision of Information to DHS for Class Members Presenting to DHS After Release

Paragraphs 94-95 of the Stipulation require Defendant agencies to share information regarding expedited placement of Class Members in Department of Homeless Services ("DHS") program shelters. Measures 10.2.1 and 10.2.2 are designed to monitor Defendants' compliance with this obligation. For these two measures, Defendants reported Table 22:

	June	July	August	Expected
10.2.1	0.0% No data	20.8% 5/24	57.7% 15/26	75%
10.2.2.	0 0/??	0 0/??	6.9% 2/29	75%
# homeless on incarceration	27	87	132	
# homeless on release	5	39	70	

It is difficult to craft an appropriate denominator for measure 10.2.1 as it is largely dependent on the self report of Class Members concerning their housing status as "homeless". This is difficult to predict because Class Members' reports regarding this status may be misinformed and is certainly subject to change over time. However, it appears to us that one logical denominator for measure 10.2.1 would be the number of Class Members

- Class Members may not realize they are homeless until they are released
- Homeless Class Members may be more likely to visit SPAN
- SPAN staff may be submitting applications without paying heed to eligibility requirements

- reporting that they expected to be homeless upon release at the time of their initial incarceration or their initial contact with mental health; and
- who had a projected release date.

Other data provided by Defendants indicate that approximately one-third of released Class Members had a projected release date prior to release. Thus, the data provided for July regarding indicator 10.2.1 appears to be valid in that the denominator of 24 is fairly close to one-third of the number of Class Members – 87 – reporting that they expected to be homeless upon release early in the incarceration. This is less true for August, during which 132 individuals reported being homeless on incarceration. We recognize that self-reports of homelessness change over time during an incarceration – in both directions – and are not intending to over-interpret this data but rather to use it as a check on the data's validity.

Regarding 10.2.2, DOHMH reported zeros for both June and July. We are not sure at this time whether this indicates that no requests were made of DOHMH by DHS for clinical information, or whether requests were made by DHS but were not responded to by DOHMH.[56] In August, for this measure, Defendants reported that DOHMH provided clinical information in a timely manner to DHS upon request only in 2 of 29 cases. We look forward to

[56] Defendants, in comments, assert that they have never been asked for this data. Our performance measure 10.2.2 clearly outlines the numerator and denominator for this measure. The measure reads: "[# of Class Members without projected release dates who were homeless upon release who had relevant information provided to DHS within 3 business days from the date of request] ÷ [# of Class Members without projected release dates who were homeless upon release who appeared in the DHS CRU database and for whom these records were requested]." The monthly report spreadsheet is designed to be used in concert with the Performance Measure document. If the spreadsheet is used in isolation, it could lead to confusion and incomplete data reporting, as is occurring for this measure.

working with DOHMH and DHS to improve performance on this task in the future.

y. Performance Measure 11.1: Provision of Transportation from Jail to Residence or Shelter
z. Performance Measure 11.2: Provision of Transportation from SPAN to Residence or Shelter
aa. Performance Measure 11.3: Provision of Transportation from Intake/Assessment (I/A) Shelter to Program Shelter

These three measures are designed to measure Defendants' compliance with obligations defined in ¶¶101-102 of the Stipulation. Defendants reported in Table 23:

	June	July	August	Expected
11.1	100% 47/47	100% 62/62	100% 132/132	85%
11.2	100% 14/14	100% 20/20	100% 12/12	85%
11.3	2	0	0	85%

This data implies that 100% of eligible Class Members (i.e. those who are SPMI and who are released from Jail {11.1} or who appear at a SPAN office{11.2}) receive the required transportation.

Defendants in comments assert that the following groups are excluded from consideration for this measure:

- Class Members who refuse the offer
- Class Members who are released at court or on bail
- Class Members who are sentenced to State DOC[57]

[57] This exclusion is not included in the current language of the performance measure but appears logical to us. We invite comments from the parties regarding changing measure 11.1 to accommodate this change. In the absence of objections before November 1, 2004, we will alter the performance measure to include this exclusionary criterion.

The consistent reports of 100% compliance with this measure indicates that by Defendants' count they are offering transportation to all Class Members who are eligible for this service, and that all Class Members who accept the offer receive the service.

The following data, combined with data reported above in Table 23, suggest that Defendants are reporting that the majority of SPMI Class Members are excluded for consideration for this service – Table 24:

	June	July	August
Transportation received	47	62	132
SPMI	248	303	313
Rate of SPMI receiving transportation	19%	20%	42%

It is notable that the number of Class Members receiving transportation services from jail doubled in August as compared with July.

While we acknowledge that Defendants have no control over the number of Class Members released on bail, at court or to State DOC, and limited control over refusals, we find it difficult to understand how between 60 and 80% of SPMI Class Members meet criteria to be excluded from the denominator of this measure. As Defendants assert these exclusions, we request that in future data reports, Defendants include data regarding the number of Class Members released on bail, at court, and to serve State time, and also regarding Class Members who refuse this specific service, in order that we may further test Defendants compliance on this measure.

DOHMH informed us that a number of Class Members refuse the offered transportation on the day of release because accepting that transportation

would require them to await the arrival of the DOHMH van.[58] We understand that a Class Member has the option of refusing any service provided for in the Stipulation. Given the apparent improvement in the provision of this service in August, we encourage Defendants to examine reasons for this improvement and to attempt to reinforce this trend in the future.

DHS reported to us that two Class Members were transported from intake shelters to program shelters in June, and none in July or August. Defendants did not provide us with data for this denominator – i.e. the number of SPMI/LSPMI Class Members assessed at I/A shelter and assigned to a program shelter less those who refused.[59]

bb. Performance Measure 12.1: Follow-up Contacts for SPMI Class Members Provided with Appointments
cc. Performance Measure 12.2: Follow-up Contacts for SPMI Class Members Provided with Referrals
dd. Performance Measure 12.3: Follow-up Contacts for SPMI Class Members Regarding Appropriateness of Housing

Defendants' follow-up requirements are outlined in ¶¶49 and 100 of the Stipulation. Defendants reported in Table 25:

[58] For the sake of clarity, we note clearly that we understand that some eligible Class Members will reject this service regardless of when the van leaves or how it is offered and do not assert here any intention to create any specific target rate for acceptance.
[59] Defendants, in written comments, state that they "have not been asked to report this information and DHS specifically does not track LSPMI information." Performance measure 11.3 reads: "[# of SPMI/LSPMI Class Members who receive transportation from a temporary emergency or I/A shelter to a program shelter] ÷ [(number of SPMI/LSPMI Class Members assessed at I/A shelter and assigned to a program shelter) – (those who refuse this service)]". We believe that this measure, as stated, requests the data noted from the Defendants in order for us to track compliance on this issue. See footnote 55 above.

	June	July	August	Expected
12.1	60% 36/60	92% 23/25	74% 14/19	85%
12.2	45% 35/78	53% 18/34	93% 25/27	75%
12.3	82% 46/56	97% 34/35	87% 26/30	99%

Per the Stipulation, these requirements are only relevant to those Class Members who are SPMI. We believe that these denominators are not accurate. In our view, the denominator for line 12.1 in Table 25 should be all SPMI Class Members who received appointments prior to release from jail (i.e. the numerator for measure 8.1). Similarly, the denominator in line 12.2 should be all SPMI Class Members who received referrals from jail based discharge planners prior to release (i.e. the numerator for measure 8.2). Finally, for measure 12.3, the denominator should be all SPMI Class Members released less those for whom no contact information was available to Defendants.[60] Thus, we believe the data presented above in Table 25 should appear as follows, Table 26:[61]

[60] Defendants assert that they need only make the contacts for individuals "for whom housing was provided". We disagree with this assertion and cite ¶100 of the Stipulation and our performance measure 12.3. Regarding excluding those individuals for whom no contact information was available, this is accounted for in the measure. If Defendants wish to exclude those cases from consideration, we request that they provide us with data supporting their exclusions.

[61] Table 26 contains numbers based on our hypotheses regarding our current best understanding regarding the denominators for these measures. As such, these should not be considered definitive findings.

	June	July	August	Expected
12.1	??% 36/26	68% 23/34	19% 14/72	85%
12.2	??%[62] 35/8	69% 18/26	83% 25/30	75%
12.3	19% 46/248	11% 34/303	8% 26/313	99%

We intend to hold further discussions with DOHMH about the correct way to craft the denominators for these measures so that Defendants' performance can be adequately and accurately measured.[63]

ee. Performance Measure 12.4: Offer of Assistance to Procure More Appropriate Housing

If Defendants identify Class Members whose housing is inappropriate to their needs, based on the follow up calls they make, they are obligated by ¶100 to offer assistance in procuring more appropriate housing. Defendants reported in Table 27:

	June	July	August	Expected
12.4	90% 35/39	100% 13/13	87% 26/30	95%

While the absolute numbers are low, the high rate of this offer indicates a good rate of compliance with this important requirement.

[62] We understand Defendants' data to indicate that 26 SPMI Class Members received appointments and that that 8 SPMI Class Members received referrals during June. Thus we do not understand how the 36 and 35 follow up contacts could have been made. We suspect there are data entry/reporting issues in this first month of data that cause this confusion. Defendants, in comments, responded: "There could be more follow-up contacts than referrals because of differences in the reporting periods. For example, a referral is made in May or June, and follow up calls are made in a different reporting period. Also, multiple follow-ups could be made for the same client."

[63] This is another example of an area where we believe that consultation with a statistical expert would allow us to deal with an open question in an expeditious, effective and accurate manner.

ff. Performance Measure 13.1: Provision of Documentation Regarding Discharge Planning Services to Inmates
gg. Performance Measure 13.2: Offer of Discharge Planning Made in Native Language or via Interpreter
hh. Performance Measure 13.3: Re-Offer of Discharge Planning Services to Class Members who have Refused

To date, we have not initiated monitoring of these measures. As with our measures regarding "appropriateness" aspects of Defendants' obligations, we have not yet operationalized these measures. We intend to develop ways to evaluate performance on these measures using a combination of chart review, Class Member interview and staff interview.

ii. Conclusions related to Performance Measures

Appendix 4 contains a brief summary spreadsheet containing aggregated findings regarding Defendants performance on the specific performance measures we have set forth. NOTE: This summary section regarding performance and the spreadsheet should not be read out of context but ***must*** be referenced back to the text. The reader who simply uses the spreadsheet or summary to evaluate Defendants' performance will miss a number of subtleties in the data, including (1) trends seen month by month, (2) discussions of the meanings of the data and uncertainties we have regarding how the data was collected, reported and analyzed, (3) suggestions we make regarding improving or refining the data, and (4) our final recommendation(s) regarding each data point.

For measures on which defendants approach, meet, or surpass our interim expectations, we have raised our expectation for the next report. These are highlighted in yellow on the spreadsheet and include:

- CTDP timeliness
- Timeliness of initiation of Medicaid Prescreen
- Timeliness of Medicaid application submission from SPAN
- Enrollment in MGP from SPAN
- Appointments for medications from SPAN
- HRA registration of Public Assistance applications on day of receipt
- Transportation from SPAN to residence or shelter

There was one measure on which we had set high initial expectations which have been met by defendants:

- Timely completion of initial mental health assessment

There was one measures on which we had set high initial expectations and which Defendants report meeting those expectations:

- Offer of assistance where housing is inadequate

However, as outlined above, we have questions about the data Defendants provided to us. We believe this data to be at times incomplete and have outlined our concerns in the relevant sections above.

There were a number of measures on which Defendants have not yet approached the interim expectation. These are highlighted in grey. These include:

- Appropriateness of LSPMI assessment[64]
- The inclusion as LSPMI those Class Members on Brad H. medications
- Timeliness of completion of Medicaid prescreening
- Provision of walking medications and prescriptions

[64] See above: this requires refinement of monitoring approach

- Provision of appointments and referrals to Class Members
- Sharing of information with DHS
- Follow up calls regarding compliance with appointments and referrals

There are a few areas in which data is insufficient or inconsistent, or for which the denominator requires clarification, and which prevents us from measuring Defendants performance. These are highlighted in blue and include:

- Enrollment in MGP from jail
- HRA 2000 applications
- Transportation from jail to residence or shelter
- Transportation from I/A shelter to program shelter
- Follow up calls for housing needs

Finally, in three areas, the Defendants fall far short of any reasonable expectation of compliance. These are highlighted in pink and are:

- Medicaid reactivation by HRA
- Timeliness of completion and submission of Medicaid applications
- Timeliness of completion and submission of Public Assistance applications

Regarding the completion and submission of the MA and PA applications, we believe that it is of note that these tasks are completed in a timely fashion far less than half the time. These are likely the two most complex tasks that are required of the discharge planners. Further, completing these applications requires information that is often not gathered as a routine matter by clinicians in a jail setting. We highlight this because we believe that Defendants, and in particular DOHMH, can develop mechanisms that promote the collection of this information and the streamlining of the process of completing these applications.

2. Other Data Unrelated to Performance Measures

a. Specific Case Reviews: Class Counsel brought two cases to our attention during this reporting period. The first case related to a man who was reincarcerated less than two weeks following his release from jail. Class Counsel reported to us that while he was a Class Member on medication during the first incarceration, he was not receiving medication throughout the first several weeks of the reincarceration. Class Counsel reported that they brought this case to the attention of DOHMH and were told that the old chart was unavailable for clinicians to review. Eventually, this person was placed in segregation. This case underscores the issue of continuity of care and the frequent inability to access old records from prior incarcerations. While old records would be useful for ongoing clinical care, they are a necessity when contemplating the planning of aftercare. In this case, reviewing the old record may have been of great assistance in understanding what discharge plan staff developed during his previous incarceration, what aspects of that plan were successful and which were not, and what implications, if any, these factors had for his discharge needs following the current incarceration.

The second case was that of a woman who spent about 6 months in jail. Our review of the record raises the following issues regarding this case:

- Early in her incarceration, there is documentation of her blanket refusal of discharge planning. Later on, her clinical status changed in part related to medical problems, and there is some evidence that she was accepting discharge planning, although we were unable to locate

any documentation as to whether or at what point she began to accept some or all services.

- Additionally, there is no documentation indicating that this high-risk individual was re-offered services following her refusal.[65] This case underscores the importance of accurate documentation of all aspects of discharge planning as well as the issue how to appropriately handle Class Members who fluctuate in their acceptance and refusal of discharge planning services.
- DOHMH provides Class Counsel and the Monitors with two biweekly spreadsheets:
    - One contains the names and other identifying information of all Class Members contemporaneously housed in the jails.
    - The second contains Class Members who have been released since the implementation of the Stipulation on June 3, 2003.

  We are unable to locate this Class Member on any data spreadsheet for Class Members housed in the jails during the entire length of this woman's incarceration. The first appearance we can find of this Class Member is in the "released" spreadsheet we received after her release. This kind of discrepancy calls into question the completeness of the data Defendants provide to us.[66]

[65] In their response to our draft report defendants note that they "have previously noted in [their] comments that [they] do not record in a patient's medical chart each time that they are re-offered services which were previously refused. This would be unnecessarily burdensome to the staff providing these services, and is not the type of information necessary to be placed in the medical record." We disagree and see this as appropriate practice, necessary for accurate monitoring, and easy to do. (Indeed, it could be accomplished with a stamp.)

[66] We are not questioning here the individuals responsible for data entry or for the maintenance of the database, but rather the accuracy and completeness of the data itself. Our understanding of these spreadsheets is that any individual with an M designation in the IIS is included. This Class Member would clearly have had such a designation within one or two days of incarceration, based on events documented in

b. DHS placement directly in program shelter

DHS advised us on September 3, 2004, that 4 SPMI Class Members were placed directly into program shelters during this reporting period, and that one such Class Member was successfully placed into a program shelter from an I/A shelter.

c. SPAN data

We received conflicting data sets regarding SPAN visitors, which made it difficult to conduct a reasonable analysis in our draft Report. Defendants sent us, in comments, corrected data, noting that their original data was erroneous. We believe it likely that our assertion that the data was inconsistent and unclear in our draft caused defendants to review and correct the data. This supports our practice of issuing a draft report for review by the parties, and it reinforces our practice of posing questions raised by the apparent inconsistencies or other problems we perceive in the data.

The conflict in this situation revolved around the number of SPAN clients served for the months of July and August. Given that the data was unclear even about the total number of SPAN visitors, we were unwilling to conduct detailed analysis of this data. Additionally, at this late date, we are unable to complete any further analysis but simply encourage Defendants to be certain of their data prior to providing it to us in the future.

her medical record. Thus, when we find examples such as this, it raises the question as to whether this is an isolated incident of missing data or whether it represents a pattern within this database.

The data, however, supports some of our findings in the June 7, 2004 report. There is a small but consistent utilization of SPAN after 5 pm. These visitors make up somewhere between 5 and 10% of the total SPAN clientele. To us, this precludes the option of closing SPAN at 5pm.

Approximately one third of SPAN visitors are homeless at the time they visit SPAN. Defendants report that 6-10% of Class Members report that they are homeless at the time of release. This indicates that a disproportionate number of homeless Class Members utilize the services of SPAN, for reasons noted above.

Defendants report that 20% of SPAN visitors in June and July had attended SPAN inreach sessions. Defendants also reported that about 4% of Class Members released during these two months had attended an inreach session. It appears to us that attendance at a SPAN inreach session predicts subsequent utilization of SPAN services. Of concern to us is what appears to be a drop-off in the number of Class Members attending SPAN inreach sessions per month. For the June 7, 2004 report, 139 Class Members had attended these sessions (46 per month). During June and July 2004, only 36 per month attended a session (a 22% falloff). Given that these sessions predict utilization of SPAN, we strongly recommend increasing the numbers of Class Members reached by these sessions.

Finally, defendants report that close to half of all SPAN clients are SPMI/LSPMI. Compared to data regarding the 25-30% prevalence of

SPMI/LSMPI among incarcerated Class Members, this indicates that people with more serious illnesses are more likely to utilize SPAN.

As noted above, given the limitations of the data, we are unable to conduct more detailed analysis. What we can conclude is that SPAN serves the most ill and needy group of Class Members and that the inreach sessions they conduct appear to result in increased utilization.

d. Refusal Rates

	Report 3	Report 4	June	July	August
# of Global Refusers			197	211	242
% of Global Refusers	33%	24%	20%	21%	23%

Data shown in Table 28 indicates that refusal rate over the past six months has remained stable, with a possible slight downward trend. It appears that the improvement on this measure after our March 8, 2004 Report is sustained.

In our June 7, 2004 Report, we cited data provided by Defendants regarding selective refusers. We find this data to be helpful in understanding the overall discharge planning preferences of the class as well as the staffing requirements of Defendants. For reasons unknown to us, Defendants did not provide this data for this report and appear to believe that we will collect data regarding selective refusers.

While we are concerned about refusal rates inasmuch as they reflect Defendants' engagement of Class Members in the discharge planning process, we require this data regarding global and selective refusals specifically

because refusal itself is an exclusion to nearly all of the performance indicators we have set pursuant to ¶140ff.

e. Time of Release (¶32)

Paragraph 32 of the Stipulation provides that Class Members shall be released from custody during daylight hours and in no event earlier than 8:00a.m. The exceptions to this requirement are for those Class Members released pursuant to bail or court order requiring immediate release, and those released directly from Court. As we noted in previous Reports, DOC in Operations Order 03/03, puts this obligation into effect by requiring that its personnel discharge prior to 4:00 p.m. Class Members not falling into one of the exceptions. Paragraph ¶32 read together with the implementing DOC Operations Orders, indicates, that such Class Members should be released between 8:00 a.m. and 4:00 p.m.[67]

The Monitors engaged in a series of correspondence with DOC aimed at providing the clarification needed so that DOC could develop a method of capturing and providing to us compliance data on this paragraph. In response to our inquiry, we received a memo dated August 25, 2004 from Jeffrey Dantowitz, Assistant Corporation Counsel, detailing a number of on-going difficulties encountered by DOC in attempting to measure and provide compliance data for this paragraph. The primary data-reporting issues are:

[67] A still unanswered question is DOC definition of "release" or "discharge": does this mean released from detainer or physically set free from the jail?

- IIS discharge reports prints the current month's data only
- Previous months' data are archived and difficult to retrieve.

Mr. Dantowitz informed us that DOC did save discharge reports from March and June of 2004. A summary of the information provided from these reports is as follows:[68]

Table 29

March, 2004	Sentenced[69] CM released	CM released between 8-4	Reason attributed for non-compliance	Remedial Action
RMSC	119 released	119 (100%)	N/A	N/A
EMTC	180 released	160 (89%)	a. Late notification from MH regarding CM designation b. Late return to EMTC from other facilities for those on work details.	a. MH now enters "M" itself b. DOC issued Command Level Order on 8/11/04 so that CM's are returned to EMTC from other facilities within 7 days of release.

[68] This information was, according to the memo from Mr. Dantowitz, gleaned from the IIS system and when necessary hand-written records such as Accompanying Cards and Detention Cards.

[69] Defendants assert that the obligation to release Class Members during daylight hours applies only to non-detainees (i.e. sentenced inmates) because detainees are only released pursuant to court order or posting of bail. At this point, we see no reason to dispute this way of characterizing the sub-group of the Class subject to the release requirements of ¶32.

Table 30

June, 2004	Sentenced CM released	CM released between 8-4	Reason attributed for non-compliance	Remedial Action
RMSC	146 released	134 (92%)	None of the 12 non-compliant cases had a release time recorded[70] and thus by default are considered out of compliance.[71]	Verbal Reprimands issued to staff responsible and facility issued a Programs Memorandum on this issue on August 17, 2004.
EMTC	178 released	169 (95%)	More than half of the noncompliant cases include Class Members who returned late from work details	As noted in the Table 29, DOC issued Command Level Order on 8/11/04 so that CM's are returned to EMTC from other facilities within 7 days of release.

Tables 29 and 30 above include information regarding cases released outside of the required time-frame as well as cases for which there is inadequate documentation on which to conclude that they were released within the required time frame.[72] Additionally, the tables outline remedial actions taken to date by Defendants regarding these cases. We look forward to more regular reports, on a monthly basis, regarding Defendants' compliance with this aspect of the Stipulation.

[70] At least at this point, we consider this a record-keeping problem.

[71] According to information from Defendants received on 9/13/04 via email, for 9 of the 15 cases, there is some evidence that they were released during the 0800-1600 time period. In some cases, signatures of supervisory DOC staff who typically work during day shift were present on the Accompanying Cards. Additionally, in some cases, there is evidence of discharge planning activity carried out during day shift. We agree with Defendants that "[w]hile this evidence is not itself definitive, it strongly suggests a higher compliance rate than 90% at RMSC." If these 9 cases are included as compliant, the compliance rate rises to 140/146 or 96%.

[72] At this point, DOC has not been able to provide us with any level of detail regarding the actual time of release other than "released during the mandated time frame" or "released outside the mandated time frame".

f. Pilot Project (¶¶34-35)

Defendants provided data regarding their efforts on this task. This data indicates that in July, a total of 32 contacts (25 phone contacts, 7 letters) were attempted for 16 individual Class Members.[73] In August, a total of 56 contacts (42 phone contacts, 14 letters) were attempted for 24 individual Class Members.[74] The spreadsheets containing this data include a column titled "RELANSWER."

Table 31

Response to Query of Defense Attorney	July	August
Information provided	0	2
Asked, not known	6	9
Asked, no reply	8	12
Blank	18	33
TOTAL	32	56

For July, 8 responses in this column read "asked, no reply"; 6 read "asked, not known"; and the remaining 18 are blank, indicating no attempt to contact the attorney (or if the attempt was made, it was not documented). Similarly, for August, in this column, 2 entries read "asked, info provided, 12 read "asked, no reply"; 9 read "asked, not known"; and the remaining 33 are blank. DOHMH informed us that this column reports the outcome of the attempts to contact attorneys.

DOHMH provided a separate set of data for contacts attempted specifically from C-71, the Mental Health Center located within AMKC. These data did not include Class Member information, but rather provided

[73] This data includes reference to 6 men housed in jails other than AMKC.
[74] This data includes reference to 5 men housed in jails other than AMKC.

aggregate numbers. Defendants attempted to contact 27 attorneys during August. They were able to reach 9 attorneys, but the attorneys could provide no release date information.

Overall the data presented for July and August, 2004, indicate that Discharge Planner obtained meaningful information regarding release dates in only two cases. Defendants have repeatedly asserted that the yield for this procedure is very low, and therefore not cost-effective or generally useful to discharge-planning efforts. We have countered this with our own assertion that, in the absence of reliable technology for Discharge Planners to receive return telephone calls, Defendants in fact do not know how efficacious these contacts are or could be.

According to data regarding the population of Class Members both within the jails and who have been released effective June 3, 2003 provided routinely to Class Counsel and the Monitors by Defendants,[75] there were 816 individuals in AMKC and 437 in RMSC with an M designation and no known or projected release date in the IIS on July 31, 2004. We understand this to be the group contemplated by ¶34 ("…each Class Member housed at Rose M. Singer Center of the Anna M. Kross Center whose Release Date is unknown to Defendants"). Of these 1253 potentially eligible Class Members, calls to attorneys were attempted for 88 (7%). This demonstrates that Defendants did not make efforts to contact attorneys for the vast majority of Class Members

[75] See the second case we discussed above for a description of one instance where we question the validity of this data source. Notwithstanding cases such as this, we believe that the use of this data source is adequate for a macro-level understanding of the universe of Class Members (or more precisely, detainees and inmates with an M designation).

as required by ¶34.[76] At the same time the data regarding the outcomes of the contacts that were attempted indicate that the efforts which DOHMH have engaged in to date have rarely resulted in information which is "generally beneficial to Discharge Planning," as described in ¶34.

This is our current understanding of the situation as relates to this Pilot Project, followed by our suggestion as to how best to approach it:

a. DOHMH is only attempting to contact attorneys for an insignificant minority of the Class Members described in ¶34; thus we find that they have not demonstrated "best efforts" in this regard.

b. We believe that Defendants' incentive to energetically pursue this project is limited by the low rate of success it has yielded to date, but in the absence of reliable voice-mail we are not yet convinced this is a reasonable baseline success rate (see section I.f.3. above).

c. If a similarly low rate of success were to continue despite best efforts at contacting attorneys in the context of a functional and generally reliable voice-mail system -- conditions not currently met-- we would agree with Defendants that these efforts do not yield information which is "generally beneficial" to discharge planning, and would not require them to continue with or expand the pilot project.

d. Rather than either dropping this concept as a failure before it has been adequately attempted on the one hand, or mandating the continuation of a less than serious and productive effort on the other, we suggest to

[76] Defendants, in comments, correctly note that Class Members must consent to these calls. We think it unlikely that 93% of Class Members would have refused this service.

the parties that they temporarily suspend this project until such as time as Discharge Planners have access to generally reliable voice-mail. At that time, we suggest that the project begin in earnest, focusing on Class Members housed on the Mental Observation Units in RMSC and AMKC and in the Mental Health Center. Under this proposal, Defendants would be required to attempt to contact each and every attorney for this more limited group and provide to the Monitors outcome data in a format agreed upon by the parties and the Monitors. The Monitors would actively follow and investigate these efforts and their results. At the end of a six-month period, the Monitors would make a final and binding determination as to whether best efforts were utilized by Defendants and whether these best efforts yielded information generally beneficial and make a final, binding determination as to whether they should continue.[77]

IV. Recommendations

Appendix 5 contains our prior recommendations in spreadsheet format. These have been condensed into one spreadsheet among themes. Recommendations which have been discontinued or replaced are shaded on this spreadsheet.

Based on our findings in the current report, we make the following new recommendations, which are included in spreadsheet form as Appendix 6.

[77] Our recommendation to suspend the pilot project, if adopted by the Parties, should not, of course, be read to imply that other contacts with attorneys should not pursued.

a. Develop formal orientation for new staff regarding the stipulation, SPMI definition, roles of MH and DCP staff, SPAN and LINK. This combines four of the old recommendations.

b. Temporarily suspend pilot project. When voice mail in place and reliable, limit population for these calls to AMKC and RMSC MO and MHC

c. Develop mechanism for the documentation of the rationale underlying re-designations from SPMI to non-SPMI.

d. Focus management and supervisory attention on discharge planning tasks in a progressively downstream approach.

e. Evaluate solutions to obtaining SSI and other benefits made by other large jail systems for possible use in NYC

f. Increase number of Class Members exposed to SPAN inreach sessions

V. Conclusion

This concludes our Fifth Report. Our next report, due on or about February 6, 2005, will include our analysis of data through December 2004. We will, as needed, produce interim reports.

We will summarize what we see as the main messages of this report.

A. PROCESS

Defendants have continued to make changes within the organizational structure of DOHMH both at administrative and line levels. These have not yet been fully implemented. We support ongoing efforts in this regard.

Defendants have for the first time provided us with regular monthly reports based on data contained in the discharge planning MIS. These data are essential to our monitoring efforts. We recognize the immense efforts that DOHMH has expended in order to develop a data reporting process as we have required. Having said that, there remain unresolved issues regarding the validity of the data, the method of calculation used for some data points, the relationship of MIS data to data contained in medical records, and the relationship of MIS data to actual discharge planning events. Among other things, given the questionable nature of some of this data, we cannot be certain that reported improvements in compliance rates reflect actual improvements in performance or improvements in data capture and reporting (or some combination).

B. CONTENT

Defendants have demonstrated sustained improvements in upstream discharge planning tasks. Specific examples include assessments and completion of the CTDP. Taken together, this suggests that with a reasonable degree of frequency Defendants should now be able to identify and develop plans to meet the post-discharge needs for many Class Members.

However, most of these are upstream tasks are performed by mental health (as opposed to discharge planning) staff. We did not find similar improvements in many of the downstream issues.

The message here is that Defendants remediation efforts and our monitoring should begin to focus in two new directions:

- Appropriateness of assessments of various kinds (as distinct from the mere presence of these assessments)
- Progressively downstream events in the discharge planning cascade

In closing, we thank the Parties for their continued cooperation and assistance with our monitoring efforts. Our next report is due on *Monday, February 7, 2005*. The draft report will be released to the Parties on *Tuesday, January 18, 2005*,[78] with the comment period ending at 5 pm on *Friday, January 28, 2005*. Data is due for the draft by 5 pm on *Monday, December 27, 2004*.[79]

We hope this report is useful to the Court and the Parties.

Respectfully Submitted,

Henry Dlugacz
Compliance Monitor

Erik Roskes
Compliance Monitor

[78] Delayed one day due to the official Holiday on January 17.
[79] We will discuss necessary accommodations with Defendants in order to include December data in this report.