Index No. 117882/99

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

BRAD H., *et al.*,

Plaintiffs,

-against-

THE CITY OF NEW YORK, *et al.*,

Defendants.

SIXTH REGULAR REPORT OF THE COMPLIANCE MONITORS
February 7, 2005

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

Sixth Regular Report of the Compliance Monitors
February 7, 2005

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 sixth regular report of the Monitors.

Contents:

OVERVIEW

In this brief overview, we will summarize what we see as the main messages of this report. Defendants have expended significant efforts towards improving their data collection and reporting systems. Defendants have continued their efforts regarding key upstream issues such as CDTP timeliness and initiation of the Medicaid prescreenings. At the same time they expanded their focus sequentially on important tasks which occur later in the discharge planning process. While overall their level of performance is improved as compared to the earlier part of the reporting period for our last report (June and July 2004), for a number of measures the marked spike in performance reported in August has either leveled-off or shown a decrease in months of September, October and November, 2004, the most recent months for which we have data. At this time, there is some uncertainty in our minds as to whether this leveling off reflects actual performance or if it relates to data collection changes (or a combination).

I. Introductory Comments

A. Data

Defendants have expended significant efforts towards improving their data collection and reporting systems. The monthly reports they provide have become progressively more complete. In their efforts to assure complete and accurate data, they have not met their deadlines for providing us with this data as outlined in our last report. While we concur that completeness and accuracy are important, we urge continued efforts to improve the efficiency of the reporting process.

In our October 13, 2004 report, we opened with a detailed overarching description of our questions regarding the data provided by Defendants, noting that Defendants for the first time were able to provide us with data that they believed to be reliable and accurate. Both in the opening section and throughout our analysis of the data in the last report, we noted numerous areas where we had questions about the data. We continued to have questions regarding Defendants' data submissions for this report. We modified our approach to understanding the data provided by Defendants in their monthly reports. First, we posed a series of questions meant to supplement and clarify these data. After receiving initial responses, we forwarded additional queries to augment our understanding of the response. We implemented this procedure to ensure to the extent possible a mutual understanding of the data provided by Defendants.[1] This procedure served to narrow areas about which we had questions, but despite this modified approach, we remain uncertain as to the meaning or calculation of some of the defendants' data. We will continue to explore these issues through the development of the draft Data Dictionary.

In comments to the draft of this Report, Defendants noted that they believed that it may be premature to draw conclusions from their data, both because of small sample sizes in many of the data elements and because they have only been

[1] We already have found this procedure to be useful. In some cases we had questions about how the Defendants produced certain data. After posing detailed questions, the explanations regarding some of these questions allayed our concerns. In another instance we noticed discrepancies in the data which Defendants acknowledged after we provided an explication of our thinking. This makes clear to us the importance of having a full exchange with the Defendants on these topics as well as the need for us to probe the data which is provided to us in a proactive fashion. We will continue to work on improving our ability to do both in the coming months.

able to provide data for 6 months. Class Counsel, in their reaction to the draft, raised concerns that the data remains difficult to understand.

Toward the end of this reporting period, we were able to retain the services of a highly qualified statistician and a data management expert.[2] Our intent is to utilize this expert consultation to assist us in better understanding and analyzing the data provided by Defendants as well as the systems used by Defendants for collecting and reporting their data concerning performance. Immediately following this report, we will initiate discussions with Defendants regarding how our experts will assist us in these tasks. We expect this process to allow us to (a) more directly assess the reliability and validity of the data provided by Defendants, (b) suggest improvements in data collection, data management and reporting where appropriate, and (c) draw firm conclusions regarding Defendants' performance after our concerns regarding the data have been resolved. Until such a time, all of our conclusions regarding Defendants' performance should be considered preliminary.

Additionally, we will use our expert statistician to assist us in addressing Defendants' objections regarding the raising of our interim performance expectations. Defendants' repeatedly commented that they believe our raising of our expectations on various measures to be premature. We only raised our expectation where we observed that Defendants are at or are approaching our interim expectation. We intend to have our statistical expert assess Defendants'

[2] The experts retained for these purposes are Bruce Levin, Ph.D., Professor and Chair and Richard Buchsbaum Senior Data Manager, both of Columbia University's Mailman School of Public Health, Department of Biostatistics.

data over time so that we can be clearer as to the meaning of their data and its trends. This will be a helpful piece of information for us to consider as we decide on the next level of performance expectation.

One of our goals is to develop a flow-chart method for presenting Defendants' performance in a sequential and visual manner. In addition, this format will permit us to more easily view the interconnectedness of the various discharge planning elements. We are currently working to develop a prototype that follows discharge planning from the prescreen through the Medicaid and MGP processes. Our initial draft of this chart is included as Appendix A. This chart includes references to the performance measures (in red).

B. Appropriateness measures

The development of standards and methods for assessing the appropriateness of various tasks performed by the Defendants is a crucial next task in our monitoring.[3]

In order to devise a fair and comprehensive approach to our monitoring of these measures, we, during the past reporting period:

- developed a draft chart review instrument to capture information related to these measures
- conducted extensive piloting and refinement of this instrument
- requested comments from the Parties regarding this instrument
- attempted to conduct staff interviews to clarify current practices and to understand the significance of documentation in the medical records related to these areas
- conducted meetings with Defendant's and Plaintiff's experts both jointly and separately so that the approach we devise could take into account their suggestions and opinions.

[3] Performance measures 2.2, 2.4, and 3.2

On December 30, 2004, we forwarded our then current version of this chart review instrument to the Parties for review. We received comments from Defendants, and are awaiting comments from Class Counsel. We were unable to reach a mutually acceptable approach with DOHMH to conducting the staff interviews we desired. As a result, we will proceed with the development of this monitoring process without the benefit of these discussions.

On January 12, 2005, we conducted a conference call with Dr. Bruce David from DOHMH and Dr. Jeffrey Metzner, the expert retained by Class Counsel in this cause. This meeting was useful in understanding the respective positions of the experts on overarching issues we have yet to resolve. These questions include:

- What level of documentation we expect to see in a record related to various tasks such as the assessment of whether a Class Member is seriously and persistently mentally ill?
- How we shall interpret silence in the chart with regard to these and other assessments?
- What is a reasonable level of expectation of the jail-based clinicians regarding the contacting of collateral sources of information (e.g. outside treatment providers, family members)?
- What is a reasonable level of expectation of the jail-based clinicians regarding obtaining records from previous incarcerations within the New York City Department of Corrections?

We will proceed with this matter as follows:

- We will await further comments from the Parties regarding our draft chart review instrument and will consider these comments as we refine our instrument
- We will conduct, as appropriate, follow up meetings with the Parties and the experts
- Within 30 days of the publication of this report on February 7, 2005, we will promulgate measures for the assessment of these "appropriateness" areas.

- During the three months following the completion of our measures, we will, as needed, work with the Defendants as they develop the revised assessment forms, policies and procedures, and trainings which we believe will be required to attain compliance with the measures we devise.
- During this period, we will issue monthly progress reports to the Parties based upon our work with the Defendants as they develop the forms, policies and trainings described above, and based upon our site visits, chart reviews, as well as interviews with staff and Class Members. We do not plan to file these reports with the Court.

At the end of this period, we will commence formal monitoring of these measures based upon the final version of the instrument we develop.[4]

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 a part of this effort, we continued to develop our own tracking system for use in recording and analyzing data from the cases we reviewed. We successfully retained experts in statistics and data management, upon finalization of the budget modification we requested, at least for the current fiscal year.[5]

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

[4] The term "final version" does not connote that we will not modify and refine the measure as needed.

[5] The funds to retain these experts became available on or about November 23, 2004. We understand that this amendment was signed on or about January 21, 2005 and that subsequently it has been registered with the Controller's Office. To our knowledge, it is currently awaiting the signature of the Health Commissioner. This amendment allocates funds through June 30, 2005 for consultation in these areas, and thus we anticipate the need for additional funds in the next fiscal year.

- Defendants' development and finalization of procedures for providing us with requisite access consistent with the Court's confidentiality ruling
- Defendants' development of a reliable and mutually understood data collection and reporting system for our use
- a budget modification regarding statistical and data management expertise

During this reporting period, we conducted our first joint meeting with the Parties since our initial meeting shortly after our monitoring commenced. This meeting focused on the function of SPAN, Class Members' access to benefits including food stamps, and the "Pilot Project" described in ¶¶34-35. 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 have had ongoing, periodic communication with Plaintiffs' counsel as well.

b. Defendants Responses to Our Data Requests

As of this report, 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 Defendants' performance. Defendants are 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 monthly reports by the 15th day of the following month, a goal which they have not yet attained. Defendants noted in comments to the draft Report there have been changes in the processes they use to generate these monthly reports. At least

over the next reporting period, their aim is to provide each monthly report at the end of the following month.

In addition to this, Defendants have prepared a draft Data Dictionary, a detailed document defining how they derive data for inclusion in the monthly reports. This document is currently under review by our statistical and data experts. We intend to arrange for joint meetings with DOHMH and our experts in order to discuss this document and to ensure that we are in agreement with Defendants' definitions of the various measures. In addition, we intend to have our experts review with Defendants the complete description of the structure of the database in which data are collected. Finally, we intend to discuss with Defendants a mechanism for them to provide us with all of the data[6] entered into each data element so that we have a complete understanding of the performance rates they provide. 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.

This mechanism, while an important step forward, has not been perfected as of this date. Defendants informed us that their reporting delay occurred because they recently replaced the primary individual responsible for compiling these reports. In addition, they advised us that they have spent a substantial amount of time developing

[6] We have frequently asked Defendants to clarify how they developed the denominator for a given measure. We believe that Defendants' telling us up front how they produce each rate (i.e. where the numbers for the numerator and denominator, including all exclusions, come from, as well as providing us with the actual numbers for each data element making up the rate) will minimize the need for us to seek *ad hoc* clarification as we prepare our reports. We are exploring additional measurement techniques to correct for some of the denominator-related questions we have raised.

the data definitions, which to some extent diverted their attention from preparing the monthly reports.

There remain some areas in which Defendants have asserted that data required for the performance measures is more appropriately compiled by the monitoring team. These elements are:

- 2.1 presence of LSPMI form in chart
- 2.2 appropriateness of LSPMI assessment
- 2.4 appropriateness of SPMI assessment
- 3.2 appropriateness of projected discharge planning needs
- 3.2.2 breakdown of selective refusers
- 10.1.1 outcomes of HRA 2000 applications
- 13.1 provision of documentation regarding discharge planning to inmates
- 13.2 offer of discharge planning services in native language or via interpreter
- 13.3 reoffer of discharge planning services to Class Members who have previously refused

Defendants further asserted that the data requested regarding the results of the prescreenings is not relevant to their performance, and they have declined to provide this information.[7] In addition, in comments to the draft Report, Defendants objected to our monitoring of some of the above elements, including the breakdown of selective refusers, the outcomes of HRA 2000 applications, and the reoffer of discharge planning services. Their objections are based largely on their view that these elements reflect actions that are outside of the scope of our monitoring.

We disagree. We believe that it is necessary for us to make these inquiries because the information will either:

[7] Class Counsel, in comments to the draft Report, point out that pursuant to ¶120 of the Stipulation, we "shall have access to all... information... that [is] reasonably necessary, in [our] judgment, to determine whether Defendants are complying with the terms of this Settlement Agreement." To clarify our request, this information is necessary for us in fully assessing Defendants' compliance with the subsequent step of completing Medicaid applications.

- allow us to understand whether their discharge planning efforts produce actual benefit(i.e. Class Members are linked to the services they need), or
- allow us to understand the overall cascade of the discharge planning activities.

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 again, as in our report of October 13, 2004, we incorporate it by reference.

Since the time of our last report, DOHMH received approval from the New York State Department of Health to use a revised consent form for release to the monitors of protected HIV information or the copying of protected substance abuse information. DOHMH devised a detailed policy and procedure which we initially found acceptable subject to revisions which we suggested. We provided to DOHMH our general approval of the forms and policy along with our remaining reservations.[8] In the time between our issuance of the draft report and our finalization of this Sixth Report, we reached agreement with DOHMH on the contents of a policy and procedure which will govern this process. We received the final, signed version of this policy on February 3, 2005. It is important that Defendants disseminate and implement this procedure expeditiously.

[8] Our reservations regarding this policy as it is being developed include concerns about the ability of DOHMH to respond to our requests within a timeframe appropriate to our needs. DOHMH has agreed to work with us to ensure that we are able to resolve any problems in a mutually acceptable way.

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 Supplemental Security Income ("SSI"), Social Security Disability Income ("SSDI") and Veterans Benefits, and to discuss their progress with us at least every six months. A detailed discussion of Defendants' prior efforts regarding Social Security and Veterans' benefits has been included in our previous reports and is referenced here. We have had no meetings with Defendants regarding these issues since our October 13, 2004 report. In their response to us for this report, Defendants summarized their efforts to connect with the Social Security and Veterans Administrations ("SSA" and "VA" respectively).

Reinstatement of Social Security Benefits

Defendants reported that a letter they "addressed to the SSA Regional Coordinator requesting electronic rather than paper transfer of Bounty information has received a positive response."[9] They indicated that there is a planned meeting with the DOC Information Technology Staff in early January. We understand that as of January 25, 2005, DOC IT staff had provided SSA "with all the information requested to develop a transfer protocol and confirmed with MIS staff in the Regional SSA office that the information was 'everything that was needed'. DOC has requested a status report from SSA staff and is awaiting a response."

[9] As is well known, SSA encourages local jurisdictions, through a bounty arrangement, to terminate or suspend SSI benefits upon incarceration. In our last report, we noted that Defendants were exploring this electronic data sharing with SSA. We support this, but only if the same electronic data sharing will be used to assist in reinstating benefits where appropriate. If electronic data sharing will be used only to terminate or suspend benefits upon incarceration, it will obviously have no beneficial effect on discharge planning.

In addition, Defendants reported that they recently received permission from SSA to place a phone call on the day prior to release to the SSA Field Office to schedule an appointment to apply for reinstatement of SSI. Upon financial review, SSI would be restored in 30 days.

Applications for Social Security Benefits

In our last report, we recommended that Defendants consider the SSA procedures for establishing an Institutional Agreement with SSA, in order to assist appropriate Class Members in applying for SSI or SSDI benefits.[10] In addition, we recommended that Defendants contact other jurisdictions to learn how they have addressed this issue. At the time of our last report, Defendants had recently initiated discussion with SSA regarding the establishing of a pre-release agreement. Further discussion was tabled as they reviewed ongoing efforts with the Fortune Society, which was conducting training on completing SSI applications and was to provide assistance to inmates at Rikers Island. In addition, at that time, Defendants were exploring the possibility of having SSA Field Office Staff outstationed onto Rikers Island for this purpose.

At the time of our draft Report, Defendants reported that further progress on this depended on:

1. a review of the experience of the Fortune Society and Phase Piggy Back in developing a protocol for assisting inmates in the completion of SSI applications,

[10] Even in the absence of such an agreement, there are mechanisms for assisting incarcerated Class Members in applying for SSI benefits prior to release. Class Counsel, in their comments on the draft Report, advised us that a discharge planner may call SSA at 800-772-1213 and begin the application process by phone for individuals who are less than 90 days from release. In addition, eligible individuals can apply for Social Security disability coverage (SSDI) online at http://www.socialsecurity.gov/applyfordisability/.

2. the design of a feasible protocol among affected agencies (DOC, DOHMH, HRA) regarding preparation of required SSI application materials, and

Defendants also noted at that time that there are two other providers in New York (HIRE, Inc., and Partnership for the Homeless) which are "slated to begin to work on SSI applications in the Rikers setting but do not yet have relationships with DOC. DOC will reach out to these providers before the meeting in early January to solicit their participation as well."

Defendants in comments to our draft Report provided us with more information about this. Specifically, they advised us that "DOC has completed initial discussions with all of the non-profits that have received HOPE grants from SSA, including HIRE and Partnership for the Homeless, about their planned implementation of these grants. By the terms of the grant, each organization is required to serve fifty (50) clients each year. DOC is working with each organization to determine what role they can play in assisting Brad H SPMI class members with applications for SSI benefits."

Finally, Defendants have begun researching how other jurisdictions have developed collaborative relationships with SSA. These included 3 state-level agencies and two local jurisdictions. Of most relevance to this case, Defendants learned that Los Angeles County has been working with SSA for about 5 years, initially on reinstatement of benefits but later on new applications as well. Defendants provided us with some detail regarding what they have learned from the Los Angeles system. We recommend that Defendants continue to work with the staff at the Los Angeles facility, that they request copies of relevant policies, procedures, and forms used there, and that they obtain information from that system regarding their rates of success in linking inmates to needed benefits upon release. In addition,

we suggest that they explore with Los Angeles the obstacles and barriers that jurisdiction has faced in implementing and managing this collaboration over the past five years. We anticipate a discussion during which Defendants advise us as to what they have learned from Los Angeles and how it may be useful in the New York DOC system.

Veteran's Benefits

Defendants reported that they recently established contact with staff in the VA who can assist in determining the VA status of 30 to 40 randomly selected inmates who report prior military service each month. In order to be able to take advantage of this, the Department of Corrections Information Technology Division is creating a field in the DOC Inmate Information System ("IIS") to store veteran status as collected on the 239 Intake form. In addition, Defendants have learned that "the VA has outreach staff which provides on site assistance to individuals seeking veterans' benefits." Further, Defendants, in comments to the draft Report, indicated that DOC is "completing a contract for the retention of consultant services for an overall upgrade of its IIS system." In addition, DOC reportedly is working with the regional office of the VA to determine what information would be needed for an electronic transfer of information between the two agencies. We anticipate regular updates and further information regarding these efforts between now and our next report.

While at this time it is uncertain how many Class Members will ultimately be found eligible to receive the services of the VA, it will be of substantial benefit to

those who are.[11] Upon finding that a Class Member is a Veteran and is eligible for services through the VA, the job of the discharge planner becomes much simpler and more straightforward, as nearly all clinical services can be provided through the VA system. In addition, the need for Medicaid and public assistance may be reduced or made moot, as the VA provides financial as well as medical benefits for many of its beneficiaries.

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" have begun to move forward. To date, we have received no information leading us to conclude that it would not be feasible for Defendants to develop such systems. Further, 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 are pleased to see that Defendants have exerted efforts in this arena since our last report. We have made several recommendations regarding further action in our last report and above, and we believe that aggressive and sustained attention is necessary in order to develop a system whereby eligible class members are linked to these important federal benefits. We anticipate updated information from Defendants' regarding their progress in these areas between now and our next report.

[11] Nationally, 12% of jail inmates are found to be veterans [information available from the Bureau of Justice Statistics, at http://www.ojp.usdoj.gov/bjs/pub/pdf/pji96.pdf (accessed January 17, 2005)]. Additionally, incarcerated veterans have been found to be more likely than the non-veteran population to have a mental illness (see http://www.ojp.usdoj.gov/bjs/pub/pdf/vpj.pdf, accessed January 17, 2005).

e. Food Stamps

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) "confer with the Compliance Monitors at least every six months regarding their efforts to implement such a system."

In our October 13, 2004 report at pages 22-24, we described a meeting we held with Defendants on September 8, 2004 about this issue. We incorporate that discussion here by reference.

After our consideration of the information provided by HRA, we recommended in our last report 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 noted in comments to the draft report that

"Commissioner Eggleston will be sending a follow-up letter to USDA Undersecretary Suzanne Biermann shortly."

In comments to the draft of our October 13, 2004 Report, Class Counsel suggested 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 noted that there is no requirement that they file applications for separate benefits simultaneously and that the Food Stamp Act and relevant regulations permit people to apply at any time. They suggested 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 suggested in our last report that Defendants consider this possible mechanism for assisting Class Members in applying for Food Stamps. We reiterate that suggestion here, as it appears to us that this approach is sufficiently sound and logical to warrant serious exploration.

In their initial response to our request for follow up information for the preparation of this report, Defendants noted that they had

> "recently received an encouraging letter from the USDA which advises that it has spoken with the State's Office of Temporary and Disability Assistance ("OTDA"), and that OTDA has agreed to submit a waiver request which would allow HRA to forego the expedited food stamp screening interview and issue food stamp benefits from the date of release from incarceration, or 30

days, which ever is less. We believe that this may lead to a resolution of this issue."

Subsequently, Defendants forwarded to us a set of correspondence that includes this response. Defendants also noted that they have held no further meetings with Class Counsel regarding this issue.

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. That said, like Defendants, we are encouraged by this development and look forward to further movement regarding this issue, which was stalled for a considerable period of time. Regarding this work *during the current reporting period,* we find that Defendants have demonstrated best efforts to work toward securing necessary approvals from federal and State officials in procuring food stamps for Class Members. Given the ongoing nature of this collaboration between Defendants, OTDA and USDA, "best efforts" during the next reporting period will require aggressive and sustained initiatives toward a finalization of this mechanism.

We request ongoing updates as they occur, including the forwarding of any correspondence between Defendants and relevant state or federal agencies. Should Defendants secure approval to develop a policy or procedure for the application for food stamps for Class Members prior to release, we request that Defendants forward these to us for review as per ¶127.

f. Reorganization within DOHMH

1. Structural Changes

DOHMH remains committed to moving 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 response to our requests in preparation for this report, Defendants provided the following table:

Table 1. State of Implementation of New Model

			Masters level		Bachelors level	
FACILITY	Model	target date for new model	filled	vacant	filled	vacant
AMKC C-71	NEW	N/A	3	0	2	1
AMKC C-95	NEW	N/A	5	0	3	0
ARDC	PARTIAL*	TBA	1	1	1	1
EMTC	NEW	N/A	3	0	3	0
GMDC	PARTIAL*	TBA	1	2	2	0
GRVC	OLD	TBA	0	1	1	0
NIC/WEST	OLD	TBA	0	1	1	0
OBCC	OLD	TBA	0	2	2	0
RMSC	NEW	N/A	5	0	3	0
BBKC	NEW	N/A	1	0	1	0
VCBC	OLD	TBA	0	1	1	0
TOTALS			19	8	20	2

*PARTIAL = There is a Social Worker staff working in the building but there are also Social Work vacancies.

For our last report, Defendants reported as follows:

	Model
AMKC C-71	NEW
AMKC C-95	NEW
ARDC	PARTIAL
EMTC	NEW
GMDC	OLD
GRVC	OLD
NIC/WEST	OLD
OBCC	OLD
RMSC	NEW
BBKC	NEW
VCBC	NEW

The only changes in the discharge planning operational model to occur during this reporting period were at GMDC, which moved partially into the new model, and at VCBC which has returned to the old model. Defendants are not able to project target dates for jails to begin operating in the new model. At the staffing level, the data indicates no net positive changes: for our last report the vacancy rate among master's level positions was 30%, and it remains so at this time. For bachelor's level positions, the vacancy rate in October was 5% and at this time it is 9%. It is clear from the data that Defendants' progress in implementing the new model system-wide has stalled.[12]

[12] Defendants, in comments to the draft of this Report, disagree with the conclusion that the implementation of the new model has "stalled", agreeing only to the extent that they have encountered difficulty recruiting and retaining staff. Defendants have continued to recruit for the vacant positions. They asserted that the new model "continues to yield better service delivery as evidenced by the overall increase in performance improvement by discharge planning staff." We would need building-by-building data to confirm this assertion, as such improvements should be expected mainly in the buildings operating in the new model. Henceforth, we will request that data regarding discharge planning be provided not only for the system as a whole but also for each building separately.

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3. Communications Capability/Technological Issues

There remain serious technological problems with the phone and voice mail system used by discharge planning staff. We tested the voice mail system during this reporting period and found that between 53% and 67% of calls placed to discharge planning staff extensions during off hours were not answered by voice mail but ring continuously. Our data regarding our test calls to the discharge planner's assigned phone numbers demonstrate a fairly sporadic pattern of voice mail pickup. For example, every call ever made during these tests to GRVC was answered by a voice mail, every other call made to one of the extensions at AMKC was answered by voice mail, and only one call to NIC/West has been answered.[13] Every institution at some point and at least one extension has had functioning voice mail. We include this detailed discussion to illustrate that our experience is congruent with the proposition that the telephone infrastructure within DOC is not currently capable of supporting consistently reliable voicemail for the discharge planners.

Given that this appears to be a system-wide infrastructure problem, we raised this at our joint meeting with the Parties on November 4, 2004. At that time, there was some constructive discussion regarding exploration of alternatives to the current landline phone/voicemail and networking systems. Potential alternatives include the use of pagers with voice mail capability or an answering service.

[13] Notably, at the two current jails not located on Rikers Island, our calls have been consistently answered by a voice mail pickup, but staff there reportedly are unable to program a personalized outgoing message.

DOHMH advised us on January 26, 2005, that because it has become clear that DOC will be unable to provide consistently reliable voice mail technology in the near future, DOHMH was considering the use of a centralized call-in number for return phone calls in order to implement the "pilot project" as per ¶¶34-35. This number would be answered live during business hours and would have a reliable voice mail pickup during off hours. Messages received for specific staff or regarding specific inmates would be forwarded to the relevant jail-based mental health or discharge planning staff. The staff handling these calls would maintain a log of the phone calls received. We concur that this solution would be functional for this specific purpose, though we have concerns that it would in the end be less useful as a general mechanism for communication between discharge planners and community treatment providers, family members, and other potentially valuable collateral sources of information.

We support the initial 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.5 below) and, more importantly, with discharge planners' ability to coordinate aftercare plans with community agencies, Class Members' families and attorneys. It is imperative that Defendants address these technological problems quickly, and that they consider all reasonable alternatives in order to solve this problem in the absence of a major infrastructure overhaul.

4. Longitudinal Approach to Discharge Planning

As described in our last report, we continue to observe many cases in which there appears from record review to be a single contact with discharge planning. However, we have begun to observe isolated cases where there is documentation of multiple contacts between a Class Member and his/her discharge planner. These charts include evidence that discharge planners use later visits to continue work done in earlier visits. In our view, the new model, in which discharge planners will carry caseloads of Class Members for whose discharge planning they are responsible, is the framework on which this type of discharge planning activity is based. We note again that movement toward the implementation of this new model appears to have stalled over this reporting period. 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 planners and Class Members will be highly beneficial – and indeed in many instances is indispensable – to appropriate discharge planning.

g. Class Members Hospitalized on Prison Wards

The Court held a conference on this matter on January 27, 2005.

III. Content

A. Performance Indicator Data (NOTE: unless stated otherwise, cases included in these data sets are those Class Members ***released*** during the month of interest.)

Since the October 13, 2004 Report, Defendants began reporting data using the format outlined in Appendix 4 of the June 7, 2004 Report. Our review of these data will permit us to comment regarding Defendants' compliance with the Performance Indicators as set forth in Appendix 3 of that Report. In addition, the use of a consistent reporting format will permit us to compare data from each reporting period to that of previous periods to determine Defendants' progress over time towards meeting our performance expectations. Finally, consistent with our earlier data requests for our prior reports, we requested other data of Defendants to include information relevant to but not covered specifically by the Performance Indicators. In this section, we will analyze data relating explicitly to the various performance measures, and we will defer analysis of data not directly related to the performance measures to later sections.

Previously, we raised questions about the completeness and accuracy of some of the data in the discharge planning MIS. As described in detail above, we recently retained expert consultants who will be assisting us in analyzing these questions.

During this reporting period, we continued to conduct regular visit to the jails where we reviewed active and archived medical charts. Much of our focus during this period was on the ongoing development of our approach to monitoring the "appropriateness" as described above. However, we continued to collect some

information regarding the simple completion of tasks, and, where relevant, these will be included in our discussion below.

a. Performance Measure 1.1: Initial Assessment

This measure focuses on the requirement that a mental health clinician evaluates a potential Class Member within 72 hours of referral for a mental health assessment. During the last two reporting periods, Defendants reported as follows in Table 3:

Table 3. Measure 1.1. Initial Assessment

Report 5			Report 6			
June	July	August	September	October	November	Expected
94%	95%	96%	97%	97%	97%	95%

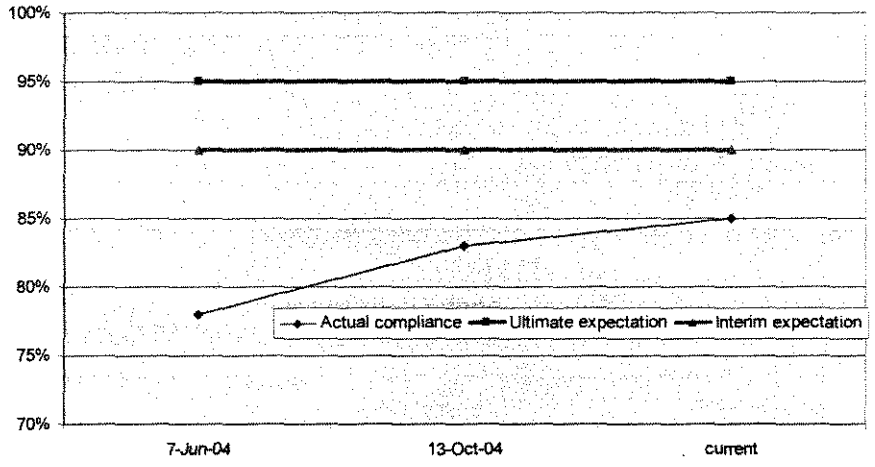
Defendants' performance continues to meet our ultimate expectation for this measure. At this time, we will discontinue routine chart reviews for the monitoring of this task. We will examine this task more intensively only if we have reason to believe (from Defendants' data, our periodic checks, or anecdotal information) that compliance has become problematic. We recommend that Defendants continue their internal quality assurance efforts in this area.

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

While our chart reviews during this reporting period focused on the development of a methodology to be employed in monitoring of the "appropriateness" standards, we continued to collect some information for use in tracking various elements of discharge planning. Of the 106 unique charts

available for review for this data element, 90 (85%) contained the LSPMI questionnaire.[14] These data indicates continued, but slowed, improvement in Defendants' performance on this task, over the last three reporting periods.

Figure 1. Measure 2.1. LSPMI Present in Chart



In our last report, given the improvement we reported, we raised our expectation to 90%. Defendants have not met that expectation. We suggest that Defendants study this process in order to develop interventions that will increase compliance at least to our interim goal. We anticipate discussion with them regarding their efforts in this area.

c. Performance Measure 2.2: Appropriateness of LSPMI Assessment

As noted, we are in the process of developing a standard for this measure. Please see above section I. B.

[14] Delinquent cases for this measure included case #s 822, 830, 832, 838, 862, 871, 874, 884, 885, 898, 899, 904, 906, 908, 914, and 947. See Confidential Appendix E (made available only to the Parties for use in evaluating cases found by our chart reviews to be out of compliance).

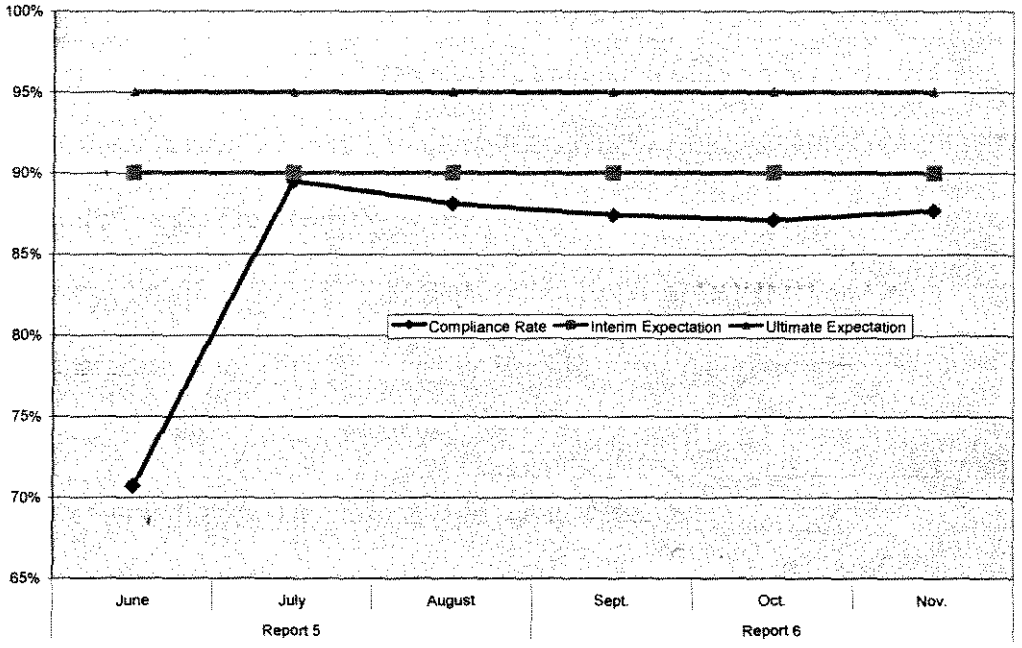
d. Performance Measure 2.3: Inclusion of Class Members as LSPMI if on Psychiatric Medications

This measure is intended to evaluate Defendants compliance with ¶27 of the Stipulation, which requires that Class Members receiving specified psychiatric medications to treat a psychiatric condition 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:

Table 4. Measure 2.3. Inclusion as LSPMI if on Medications

Report 5			Report 6			
June	July		Sept.	Oct.	Nov.	Expected
70.7% 477/675	89.5% 484/541	88.1% 424/481	87.4% 402/460	87.1% 412/473	87.7% 463/528	90%

Figure 2. Inclusion as LSPMI if on Medications



Our chart review findings were similar to the findings reported by Defendants. During the previous reporting period, the data revealed evidence

of increased levels of compliance for this measure. That improvement has plateaued during the current period. We suggested in our last report that Defendants educate mental health staff responsible for completing the LSPMI questionnaire regarding this requirement in order to improve compliance on this measure. As Defendants have not achieved the level of compliance we required in our interim goal of 90%, we will not yet raise our expectation for this measure. We suggest that Defendants explore the plateau in their compliance rate for this measure and develop interventions designed to improve compliance to meet our interim goal. We anticipate discussion with Defendants regarding their efforts in this area.

e. Performance Measure 2.4: Appropriateness of SPMI Assessment

As noted, we are in the process of developing a standard for this measure. Please see above section I. B.

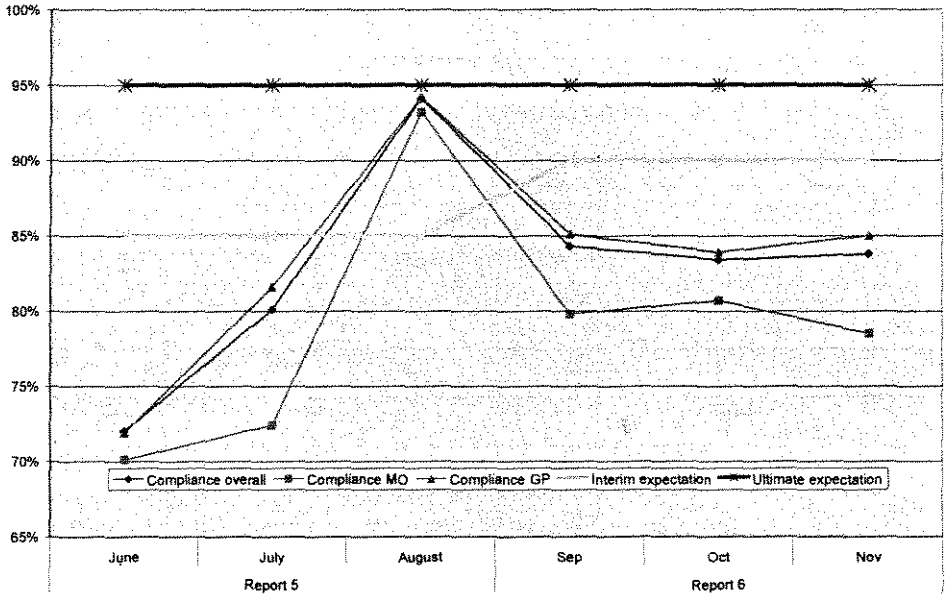
f. Performance Measure 3.1: Timeliness of CTDP

Paragraphs 16 and 17 of the Stipulation require Defendants to complete a CTDP for Class Members in General Population ("GP") within 15 days of the initial assessment. They must complete a CTDP for 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 90%, Defendants reported in Table 5:

Table 5. Measure 3.1. Timeliness of CTDP

	Report 5			Report 6			
	June	July	August	Sep	Oct	Nov	Expected
Overall	72% 469/655	80.1% 549/685	94.1% 585/622	84.3% 551/654	83.4% 605/725	83.8% 650/776	90%
MO	70.1% 75/107	72.4% 76/105	93.2% 82/88	79.8% 87/109	80.7% 92/114	78.5% 106/135	90%
GP	71.9% 394/548	81.6% 473/580	94.2% 503/534	85.1% 463/544	83.9% 512/610	85.0% 542/638	90%

Figure 3. Timeliness of CTDP



We noted in our last report the impressive improvement reported by August, 2004 on this measure. These data indicate that performance dropped in September and plateaued since. Defendants have not met our interim expectation of 90%.

We note here the differential between the compliance rate in GP versus the rate in MO. This difference is statistically significant. During this reporting period, the odds on timely completion of the CTDP in GP (5.54) were in fact

about 40% greater than the odds on timely completion of the CTDP in MO (3.90).

In our June 7, 2004 report, we reviewed data provided by DOHMH regarding the timing of late CTDP's relative to the due date. DOHMH did not provide this information for our October 13, 2004 report, and at that time, given the improvement by August, we did not think it necessary. However, given the current noncompliance specifically in the MO, we requested these timeliness curves for CTDP's done for Class Members housed in these units. Defendants reported as follows:

Table 6. Timing of Late CTDP's

Days beyond due date	October	November
1 Day	2	7
2 Days	0	1
3 to 7 Days	4	8
8 to 14 Days	3	4
15 to 30 Days	4	2
Over 30 Days	2	3
Not Done Prior to D/C	7	4

These data indicate as follows:

Table 7. Analysis of Late CTDP's

	October	November
< 1 week late	27.3%	55.2%
>1 week late	40.9%	31.0%
Never done	31.8%	13.8%
>1 week late or never done	72.7%	44.8%

Because the CTDP is the path to virtually all discharge planning provided to incarcerated Class Members, it is especially important that Defendants

achieve compliance with the timely completion requirement. We note the improvement seen over the past few months. However, we also note here that in the MO, the compliance rate is 80% over this reporting period, and that, some of the delinquent CTDP's (32% in October, and 14% in November) were never completed prior to the Class Member's release.

In this analysis we separate those for whom the CTDP was late but was completed within 1 week of the due date, from those for whom the CTDP was over a week late or was not done at all. We think this distinction important because as the delay in completing the CTDP gets progressively longer, the delay in all subsequent discharge planning becomes increasingly problematic.[15]

As more time passes, it becomes progressively more likely that a Class Member will be released prior to the actual completion of the CTDP. Thus, it is imperative that Defendants continue the improvement noted between October and November. We recommend targeted quality improvement efforts by the Defendants in this area and request that they provide us with the results for review.

In conclusion, 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. While

[15] At present, we measure Defendants' actual performance on subsequent discharge planning tasks as coming due effective the actual date of the CTDP (or some intervening event), and not from the due date of the CTDP. However, late CTDPs cause all subsequent discharge planning activities to be similarly late over the overall time course of an incarceration, even if each one is completed in an isolated timely fashion. Thus, while CTDPs which are completed within a week after the due date cause relatively less delay in subsequent discharge planning, this delinquency nonetheless does have potentially adverse effects.

this effort yielded significant improvement initially, the rate of improvement appears to have plateaued. We are especially concerned about the lower compliance observed in the MO, and about those cases in which the CTDP was never completed due to tardiness, as the MO is the location where more seriously mentally ill inmates are likely to be housed. We anticipate further discussion regarding Defendants' efforts to understand and improve both the overall compliance rate and also the specific differences between the MO and the GP that we have observed. We maintain our expectation at 90% for the next reporting period because of the Defendants inability to meet this interim objective for this crucial task.

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

As noted, we are in the process of developing a standard for this measure. Please see above section I. B.

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 95%, Defendants reported in Table 8:

Table 8. Measure 4.1. Timely Initiation of Prescreens

	Report 5			Report 6			
	June	July	August	Sep	Oct	Nov	Expected
In DOC	76.6% 111/145	90.5% 266/294	94.1% 585/622	100% 400/400	100% 447/447	100% 447/447	95%
SPAN	100% 51/51	100% 49/49	100% 46/46	100% 46/46	100% 73/73	96.7% 29/30	95%

According to this data, Defendants have met our ultimate expectation of 95% over the past two reporting periods for this task, both in SPAN and in the jails.

Our chart reviews, however, indicate that it is not uncommon for a record containing a completed CTDP to contain neither evidence of refusal nor a prescreening form. This is an example of an area where we need to have a better understanding of how Defendants' produce the data they report so that we can better compare that data to information from our chart reviews.[16]

i. Performance Measure 4.2: Timely Completion of Medicaid Prescreening

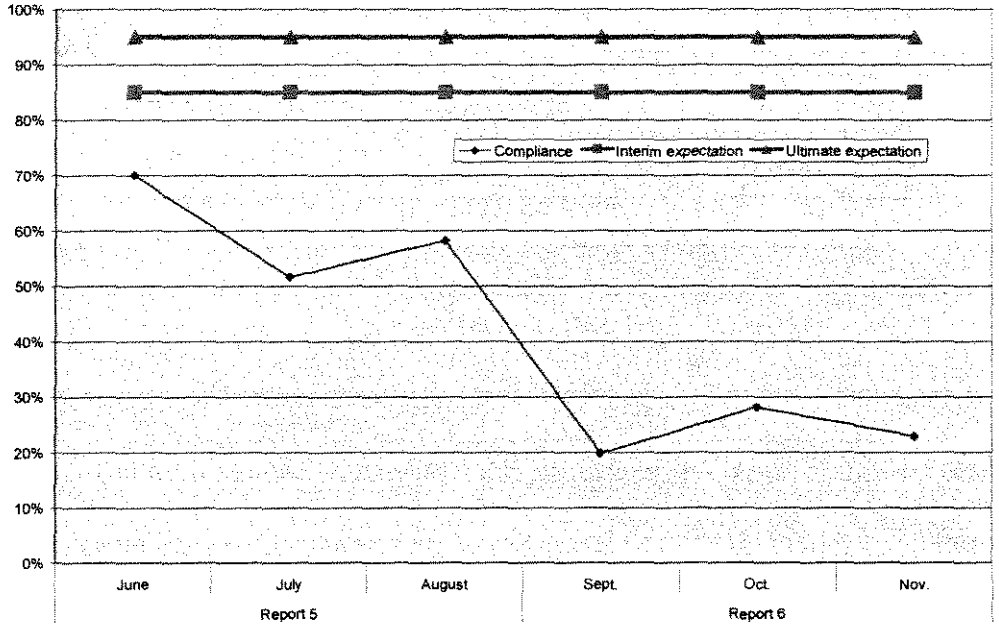
Subsequent to the initiation of the Prescreening process, HRA is required to complete the Prescreening by responding to it within 3 business days. The Prescreening process requires collaboration between DOHMH and its discharge planners with HRA and its Brad H. Unit. This performance measure, as such, measures these agencies' joint performance. Against our expectation of 85%, Defendants reported in Table 9:

[16] As noted below in footnote 17, it appears to us that Defendants are equating the Medicaid prescreen initiation with the DSN completion. In our view, these are two separate procedures, and we believe that the prescreen initiation date and time should be entered separately in to the MIS from the DSN completion date and time.

Table 9. Measure 4.2. Timely Completion of Prescreens

Report 5			Report 6			
June	July	August	Sept.	Oct.	Nov.	Expected
70.0%	51.6%	58.2%	19.8%	28.1%	22.9%	85%
90/130	63/122	167/287	37/187	62/221	47/205	

Figure 4. Timely Completion of Prescreens



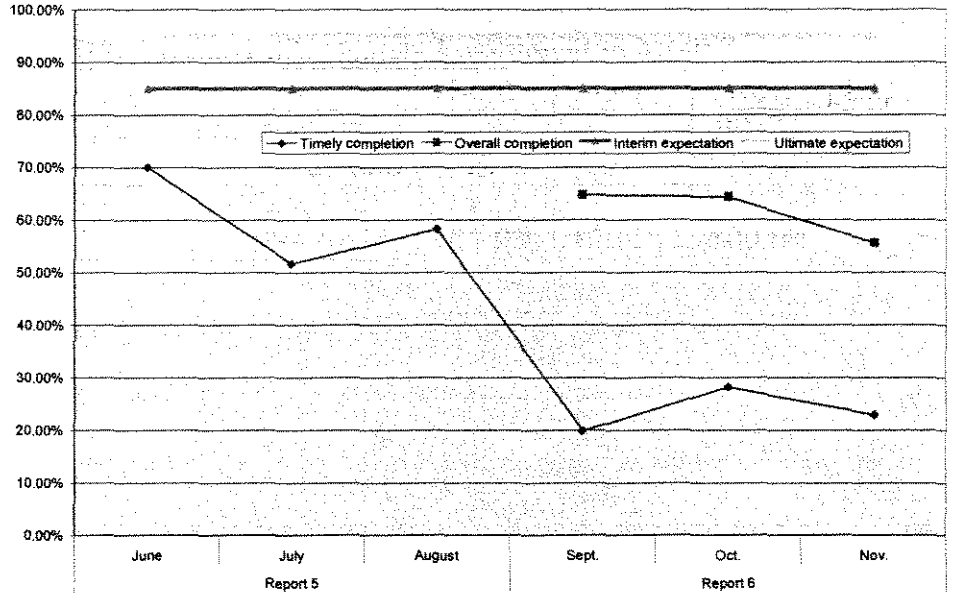
Defendants reported separately from their monthly reports the following data regarding the number of prescreenings completed, whether timely or late, during the current reporting period. Combining these numerators with the denominator in our Table 9 above (taken from Defendants' monthly reports) indicates the following overall rate of completion of the prescreenings during the reporting period:

Table 10. Overall Completion of Prescreens

	Sept	Oct	Nov	Total
# Completed prescreens	121	142	114	377
Overall completion rate	64.7%	64.3%	55.6%	61.5%
	121/187	142/221	114/205	377/613

Superimposing this data on Figure 3 above yields the following graph, indicating there would be continued failure to meet the performance expectation even if all completed were included.

Figure 5. Overall Completion of Prescreens



Because of the difference in the way this data has been calculated, it cannot be compared to prior reporting periods.

Defendants demonstrated a significant failure to complete the prescreenings throughout this reporting period. This is most prominent when looking specifically at timely completion of the prescreening. Even if all late completions are included, Defendants continue to fail to complete this task at an acceptable rate, completing just 62% (377 of 613) of all prescreenings required during this reporting period.

Responding to our query as to the very low timely completion rate, Defendants indicated that they were following a "sequential approach to

improving performance", analogous to our "upstream first" approach to monitoring. They note that they have achieved 100% compliance on the prescreen initiation task. They report that they have identified the problem underlying the low prescreen completion rate as relating to the transmission of the prescreening from the discharge planning staff to HRA. They further indicated that they have put "corrective actions" in place.[17]

That said, we note that including timely and late prescreens still results in an inadequate completion rate. We recognize that some Class Members might be released before a late prescreen could be completed. However, in our view, it is unlikely that over 1/3 of Class Members would be released during this 3 day period. We recommend that whatever corrective action is implemented account not only for factors causing late transmissions of prescreens but also for any other factor resulting in delinquencies on this task. We also anticipate more information and discussion regarding the nature and objective of this corrective action in order that we may better understand any changes we observe in Defendants' compliance with this measure over time.

[17] DOHMH describes these corrective actions as making improvements in teamwork between mental health and discharge planning staff and in beginning the prescreening process earlier. These changes appear to be focused on the initiation of the prescreen. While we support these modifications in the abstract, it is not clear how these changes relate to the specific problem highlighted by the data in this section, which indicate deficient ***completion*** of the Prescreen. We have requested further clarification.

In comments to the draft Report, Defendants provided us with slightly more information about these modifications. It has become clearer to us that Defendants appear to consider the initiation of the prescreen to be identical to the performance of the DSN. In fact, the draft data dictionary for this measure notes that "prescreening is the completion of the Discharge Service Needs (DSN) form", which completed at the time of the CTDP. Defendants advised us in comments that "the completion of the DSN starts the clock running for completion of the prescreening process." We have concerns that Defendants are equating two conceptually separate tasks – the DSN and the Medicaid prescreen. We intend to clarify this directly with Defendants, and we will reevaluate our findings and our performance expectations on measures 4.1 and 4.2 if this seems warranted.

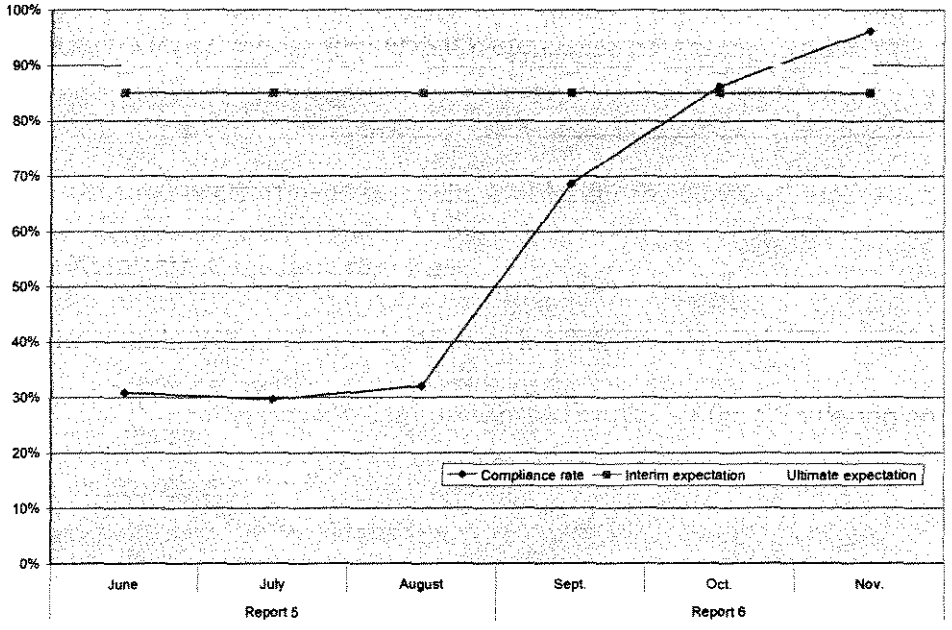
j. Performance Measures 5.1 and 5.2: Timely Completion/Submission of Medicaid Applications for Class Members

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. In the jails, against our expectation of 85% for measure 5.1, Defendants reported in Table 11:

Table 11. Measure 5.1. Timely Medicaid Applications (Jails)

Report 5			Report 6			
June	July	August	Sept.	Oct.	Nov.	Expected
30.8%	29.6%	32.0%	68.57%	86.2%	96.2%	85%
8/26	8/27	16/50	24/35	25/29	25/26	

Figure 6. Timely Medicaid Applications (Jails)



Defendants reported that they calculated the denominator for this measure as follows:

Table 12. Denominator Calculation for Measure 5.1

	September	October	November
# CM's who appear eligible and need new application	46	46	42
CM's released before application was due	3	1	4
CM's unavailable for this application (i.e. initially refused and later agreed, court, hospital)[18]	6	10	12
CM's who refuse this service	2	6	0
Denominator	35	29	26

[18] Putting aside for discussion the ongoing uncertainty about the Class Membership status of inmates housed on prison wards, we question the exclusion of these groups from this calculation. It appears to us that a more accurate approach to these groups of Class Members would be to toll the clock during the time in which the Class Member is unavailable because of court or hospital , and then restarting the clock upon their becoming available for the service. We accept the exclusion of Class Members who refuse the service and never change their minds. However, for Class Members who refuse temporarily, and at some later date accept the service, we would permit the 5 day clock to be restarted at the time they accept the service.

Defendants, in comments to the draft of this Report, strongly objected to our determination that the clock should be tolled for Class Members who are unavailable due to court or initial refusal and then restarted should the Class Member later become available. Their objections relate to the technical difficulty involved in creating a data-collection system capable of performing this analysis, as well as to the perceived lack of utility of including these Class Members because of their "relatively small" numbers. Additionally, they point out that this approach of excluding such Class Members is consistent with our role in understanding and taking into account the limitations placed upon Defendants by the system in complying with the Stipulation.

We remain unconvinced that it is appropriate to exclude these Class Members from analysis because our experience is that people whose path to services diverges from usual procedures (e.g., due to refusal or transfer) form a sub-group which is more likely to "fall through the cracks" of the system than is the general population.

At the same time, we acknowledge Defendants' assertion that they currently lack the technical capacity to account for Class Members who are subject to these diversions due to court, initial refusal, or (at present) hospitalization. We plan to monitor the services provided to these Class Members through a combination of targeted chart review and data analysis. The data portion of this effort may form part of the solution to more than one of the denominator-related questions we have raised in connection with the Defendants' data in a number of areas. The problem arises because including or excluding a Class Member from the denominator is an all or nothing proposition which fails to completely account for the continuum of information which is available. Statisticians frequently address this problem through the use of the "rate per person-time unit" measure, whereby the denominator is devised by calculating the number of days during which the person is available for a particular type of service. This approach would take into account the time the person was unavailable for a service without completely removing that person from the universe of people who should have potentially received that service. At the same time, Defendants would not be penalized for failure to provide services to someone who was unavailable. We intend to work out this issue with Defendants as part of discussions regarding the draft data dictionary and the data-collection system.

We note that in prior reporting periods we have consistently been told that about 1/3 of all completed prescreens result in a finding of "need new application." The top line of the table above indicates that this outcome continues to apply, as the numbers in this line for each month comes fairly close to 1/3 of the number of completed prescreens (see Table 10 above). However, as noted above, only 62% (377 of 613) of the prescreens that should have been completed during this reporting period were completed, so that the number of Medicaid applications completed is necessarily fewer than the number of Class Members who would have been found to be eligible for a Medicaid application had more Prescreenings been completed. We expect that, as we develop our flowsheet analysis of the entire discharge planning process, we will be better able to analyze Defendants' performance on multi-step discharge planning tasks.

Thus, this data reflects marked improvement in compliance regarding the timely completion and submission of Medicaid applications for Class Members *identified by Defendants as being potentially eligible for Medicaid.* Given this improvement, we now raise our performance expectation to our ultimate goal of 90% compliance with this task.

Regarding SPAN's completion of Medicaid applications (measure 5.2), Defendants continue to report 100% compliance for all months of this reporting period. Defendants continue to exceed our performance expectation of 95% for this task.

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."

Defendants object to this simple statement regarding MGP eligibility, citing their earlier description of exceptions to MGP eligibility (see our Fourth and Fifth Reports) and citing correspondence between the State OMH and Defendants dated September 2002.[19]

That said, it appears to us that the purpose of this requirement is to ensure that Class Members believed to be eligible for Medicaid, 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. The Defendants corrective action plan (dated November 29, 2002, in response to the correspondence from OMH) itself indicates that "MGP enrollment will... be

[19] This correspondence indicates that, at that time, OMH "remain[ed] concerned about underutilization and proper usage of the Medication Grant Program." We, too, are concerned about underutilization, at the same time recognizing that Defendants must comply with the program's requirements. While this has been an ongoing issue for at least the last 8 months, Defendants have only provided us with this document as of February 2, 2005. While Defendants indicated that this document made clear that the exceptions they postulated, we are not as yet certain how this document provides insight into the various exceptions that are asserted by Defendants. This will require further investigation and discussion with the Parties.

provided to all individuals who were receiving mental health treatment and on psychotropic medication while incarcerated and who are being released from NYC Correctional facilities."[20] Against our expectation of 85%, Defendants reported in Table 13:

Table 13. Measure 5.3. Timely Enrollment in MGP

	Sept.	Oct.	Nov.	Expected
Provision of MGP upon release	27	28	89.3% 25/28	85%
Provision of MGP on first SPAN visit	100.0%	100.0%	100.0%	85%

DOHMH provided us with the number of MGP cards provided in September and October. For November, they indicated that they had developed a mechanism for the production of a rate of compliance. Defendants informed us that the denominator they used for this measure was:

[20] According to State OMH, "Individuals who qualify for this program are those released from jails/prisons and discharged from hospitals who require medications to treat mental illness. Each county determines who within these settings would qualify for the program." See http://www.omh.state.ny.us/omhweb/Med_Grant/faq.htm.

In our Fourth Report, we noted that Defendants had postulated the following exceptions from MGP eligibility:

1. Not incarcerated long enough to allow enrollment in MGP
2. Refused all discharge planning services
3. Not eligible for Medicaid
4. Has Medicaid with surplus
5. Illegal alien status
6. Has active Medicaid status upon release
7. Medicaid application cannot be submitted within 7 days of release
8. Class Member not on medication at time of release
9. Under the age of 18
10. Will be transferred to State custody or to a hospital and not released to the community
11. Released from court rather than jail and does not appear within 7 days of release at a SPAN office, unless SPAN can verify that a Medicaid application was submitted within 7 days of release

In that report, we noted that we believed the denominator of the measure already accounted for items 1,2,3,4,6,7 and part of 11 (regarding this last, see our Fourth Report, page 60, footnote 39). We have since accepted exception 8 and exception 10. We anticipate discussion with Defendants that will include the development of an appropriate data definition for this element that includes and captures all acceptable exceptions. Further, we request, again, that Defendants provide us with definitive explanations regarding their rationale for the remaining exceptions (5, 9, and 11).

all Class Members released to the community from jail with a completed CTDP who were on psych meds in jail and walking meds upon release, who did not refuse all discharge planning services, who did not refuse an MGP card, whose prescreening determination is not "Active" or "Reactivated,", or, whose "Release Date" is less than the Medicaid prescreening determination date + 10 business days, and, who has an empty "MGP Ineligible Field".

Because of the complex nature of this measure, and in particular, the denominator, we believe that we can only understand Defendants' reports by reviewing in detail the actual data in the MIS. Defendants, in comments, indicated their ongoing review of the data dictionary's definition of this measure and their willingness to discuss this with us in the near future. At the very least, we will need a detailed understanding of how the exceptions to this measure are calculated.

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

Table 14. Analysis of SPAN Enrollment in MGP

	Sept.	Oct.	Nov.
# of SPAN visitors	62	73	46
Provision of MGP on first SPAN visit	26	24	6
# given appointments to receive continued medications	40	25	20

Defendants reported SPAN provides an MGP card to all Class Members who appear at SPAN within 7 days of release and who they do not know to have Medicaid.[21,22]

[21] SPAN can determine if a Class Member has active Medicaid during the first visit if the information has been entered into the CITRIX database by Discharge Planning staff. This information is not always known to DCP staff prior to a SPAN appointment. It is for this reason, as a safety-net protocol, that SPAN begins a Medicaid application on the date of the first visit for all Class Members and subsequently completes the process for those who are in need and present the required documentation.

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, with the caveats and concerns noted above, we find Defendants currently to be meeting our expectations for measure 5.3.2. We will continue to monitor this and look forward to discussion with DOHMH and SPAN regarding our question about this data.

1. 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.

The litigation regarding this measure has been concluded. The current status of this requirement 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

[22] ¶73 indicates that a Class Member who appears at SPAN more than 7 days after release and who has not had a Medicaid application submitted on his/her behalf is ineligible for MGP. However, this 7 day rule does not appear to apply to Class Members who appear at SPAN more than 7 days after release but who ***did*** have a Medicaid application submitted prior to release, unless it is *always* the case that a determination of eligibility for Medicaid is made within that 7 day time period. If such is the case, by the time the individual appeared at SPAN >7 days after release, s/he would either be found to be ineligible for Medicaid or s/he would already have Medicaid. Either way, the individual would not be eligible for MGP.

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 15:

Table 15. Measure 6.1.1. Reactivation of Medicaid

Report 5			Report 6			
June	July	August	Sept.	Oct.	Nov.	Expected
44.4% 63/152	40.8% 64/157	57.6% 132/229	67.4% 66/98	93.9% 46/49	79.2% 42/53	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. While compliance on this measure appears to be trending toward improvement,[23] we recommend that Defendants explore this process to determine how to further improve compliance. We anticipate discussion regarding this exploration and any findings and interventions that defendants undertake.

m. Performance Measure 6.1.2: Provision of Temporary Medicaid

Justice Braun's Order of November 11, 2003, concerning ¶61 altered ¶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

[23] We note that this trend in part may relate to the lower denominator seen this period. We have some concern that this lower denominator may be directly connected to the inadequate number of completed prescreens discussed above – if Class Members do not get through the prescreening process, by definition they cannot have their Medicaid reactivated.

Medicaid benefits shall be granted pending an investigation." This measure is designed to test Defendants' compliance with this requirement. Until very recently this issue remained the subject of ongoing litigation. Defendants pursued leave to appeal directly to the Court of Appeals, and thus this requirement was stayed. The Court of Appeals denied this request on December 21, 2004, and we became aware of this holding on January 6, 2005. Thus, at this time, we consider this matter to be fully and finally litigated. For monitoring purposes, we will monitor this measure based upon the Stipulation at ¶61, as modified by the original holding by Justice Braun dated November 12, 2003. At this time, we will implement monitoring of this measure, based on the performance measures we published on June 28, 2004. Defendants advised us in follow up comments to the draft Report that, due to the recent resolution of the litigation in this area, they have not yet begun capturing data regarding this measure.[24]

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.

[24] In our draft report, we reported that in Defendants' November monthly report, they had reported that 68 of 68 individuals were provided with temporary Medicaid. We have now been advised that this was entered in error in that monthly report and that Defendants have not yet begun to collect or report data on this measure.

As we did for the October 13, 2004, report, we contacted the Counsel's Office of the New York State Department of Health. On January 13, 2005, we received an email indicating that DOH would be providing us with the information we requested. We have not yet received this report and will include it in our next Report.[25]

Defendants reported that, in November, they provided temporary Medicaid cards to 68 of 68 Class Members (100%). Defendants report that the denominator used for this measure is "Class Members eligible for temporary Medicaid". We suggest that this is not the correct denominator, as it is inconsistent with the measure as stated in our PI document[26] and is inconsistent with HRA Policy regarding the provision of temporary Medicaid cards.[27] Specifically, there is nothing that ties the provision of temporary Medicaid cards to Temporary Medicaid. Our understanding is that temporary Medicaid cards are provided only to cover the interim period between which an individual has been found eligible for Medicaid (or had Medicaid reactivated) and the production and receipt of the permanent Medicaid card by the State's vendor. Given the uncertainty as to the data as reported, we will not as yet change our performance expectation (currently 75%) for this measure.

[25] The Monitors thank the Counsel's Office for its responsiveness to our inquiries.
[26] [# of temporary and permanent Medicaid cards mailed to home address or designated SPAN office] ÷ [(number of activated or reactivated Medicaid cases with a home address) + (number of activated or reactivated Medicaid cases in which the CM indicated SPAN as their mailing address)]
[27] MAP Procedure 00-14 (R2), Revised May 26, 2004.

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

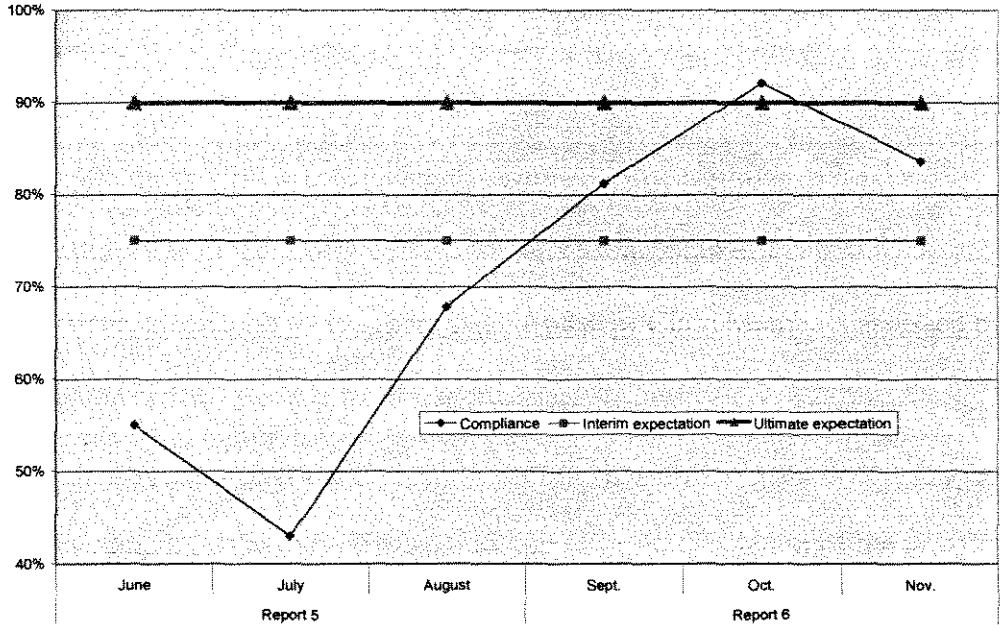
This measure includes three submeasures relating to the various obligations of Defendants to provide Class Members with medications and/or prescriptions for medications. For those Class Members who are released from jail, Defendants are obligated to provide medications for 7 days and prescriptions to 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, performance measure 7.1.3). Against our expectation of 75% compliance, Defendants reported in Table 16:

Table 16. Measure 7.1. Provision of Medications and Prescriptions to Class Members

	Report 5			Report 6			
	June	July	August	Sept.	Oct.	Nov.	Expected
7.1.1	55% 150/275	43% 209/487	67.8% 206/304	81.2% 82/101	92.1% 105/114	83.6% 122/146	75%
7.1.2	100% 8/8	100% 7/7	100% 12/12	100% 8/8	100% 7/7	100% 8/8	75%
7.1.3	100% 4/4	100% 12/12	100% 39/39	100% 32/32	100% 6/6	100% 5/5	75%

Measure 7.1.1 can be viewed graphically as follows:

Figure 7. Provision of Medications and Prescriptions Upon Release



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 in

most cases to accomplish this task relatively simply.[28] This data indicates substantial improvement in compliance with measure 7.1.1 and continued compliance with measures 7.1.2 and 7.1.3. Given the improvement seen in the compliance rates reported in the jails, we now raise our compliance expectation to our ultimate compliance expectation of 90%, set forth in our performance measures.

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. Like 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 this is only helpful if the medication provided bridges a gap between two treatment providers. Against an interim compliance expectation of 75%, Defendants reported in Table 17:

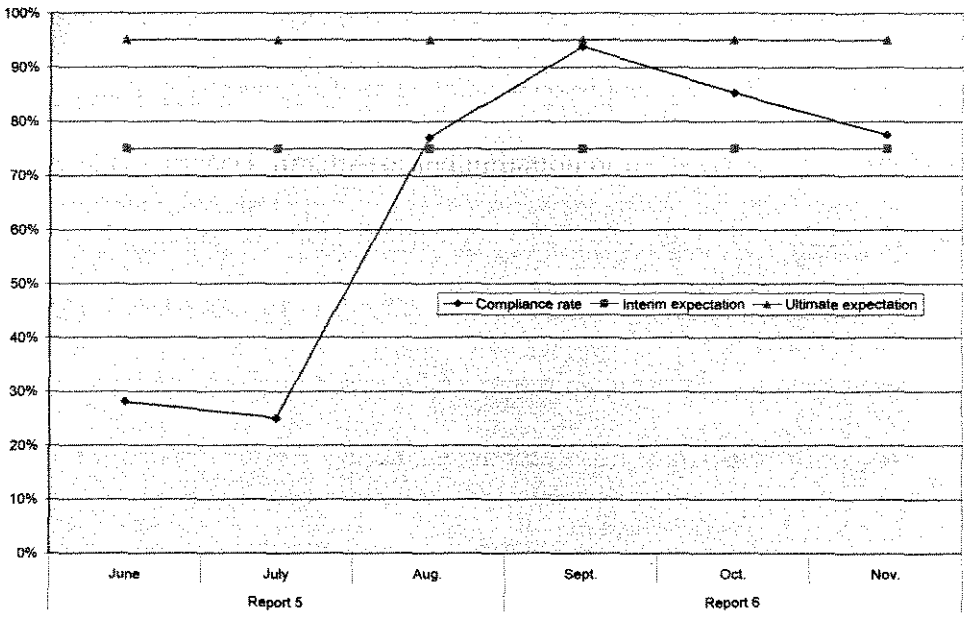
Table 17. Measure 8.1. Appointments for Class Members with Known/Projected Release Dates

	Report 5			Report 6			
	June	July	Aug.	Sept.	Oct.	Nov.	Expected
Compliance rate	28% 26/93	25% 34/136	77% 72/94	93.8% 45/48	85.2% 52/61	77.5% 62/80	75%

[28] Defendants, in comments to the draft Report, indicated that one of the main impediments to meeting this obligation relates to timing. Specifically, they noted that "If an inmate becomes eligible for class member status on a Friday afternoon and [is] released from jail over the weekend, DOC will not be able to read in IIS that that person has an "M" designation, and will not know to escort that member down to the clinic to receive his/her medications". If we find that Defendants continue to be unable to meet or exceed our expectation, we will explore this process in detail with Defendants to determine what impediments exist and to explore possible process changes targeted to improving Defendants' compliance.

Viewed graphically, Defendants' compliance appears as follows:

Figure 8. Appointments



It is clear from the graph that Defendants' compliance with this measure increased dramatically between July and September, approaching our ultimate compliance expectation, and then fell off gradually.

As in our last several reports, we have questions regarding how this measure is calculated. We have previously asserted that our understanding is that ¶¶45ff of the Stipulation require Defendants to provide an appointment for follow up mental health care for all Class Members who have a known release date. Given our concerns, we look forward to further discussion with Defendants. However, as Defendants' data indicates that they have surpassed our initial expectation of 75%, we will raise our expectation to 85% for the next reporting period.

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 interim expectation of 75%, Defendants reported nearly 100% compliance, as shown in Table 18:

Table 18. Measure 8.2. Provision of Appointments by SPAN

Month	# of new intakes that require an appointment	# refused	# who previously had appointment	# who had appointment made on same day	# who had appointment made the following day due to after 5 pm arrival	Equation	%
Sept	62	21	5	34	2	36/36	100%
Oct	73	15	14	42	2	44/44	100%
Nov	27[29]	7	6	12	2	14/14	100%
Quarter Total	162	43	25	88	6	94/94	100%

SPAN continues to achieve 100% compliance with this measure.

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 19:

Table 19. Measure 8.3. Referrals for Class Members with Unknown Release Dates

	September	October	November
Total Eligible	222	252	262
# who refused	92	97	106
Compliance Rate	53% 69/130	61% 95/155	59% 92/156

[29] Defendants noted: "This group may have inadvertently been under-reported due to a learning curve associated with the new draft data dictionary. It will be reviewed and updated if necessary by the end of January."

The compliance rates for this requirement appear to have plateaued and remain well below our expectation. We strongly suggest that Defendants conduct targeted explorations regarding this low rate of compliance and develop interventions to improve compliance. We anticipate discussion with Defendants regarding these efforts.

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 they provide individuals who appear at a job center and who are eligible with needed emergency benefits during the initial visit. Thus, our expectation regarding compliance for this measure is 100%. Defendants reported as follows:

Table 20. Measure 9.1. Emergency Benefits

	Sept	Oct	Nov	Expected
Compliance	100% 15/15	100% 32/32	100% 34/34	100%

It is evident that Defendants are providing those Class Members who appear at a Job Center with benefits. We intend at some future point to further explore Defendants' processes for determination of eligibility for these benefits and their data management systems regarding this obligation.

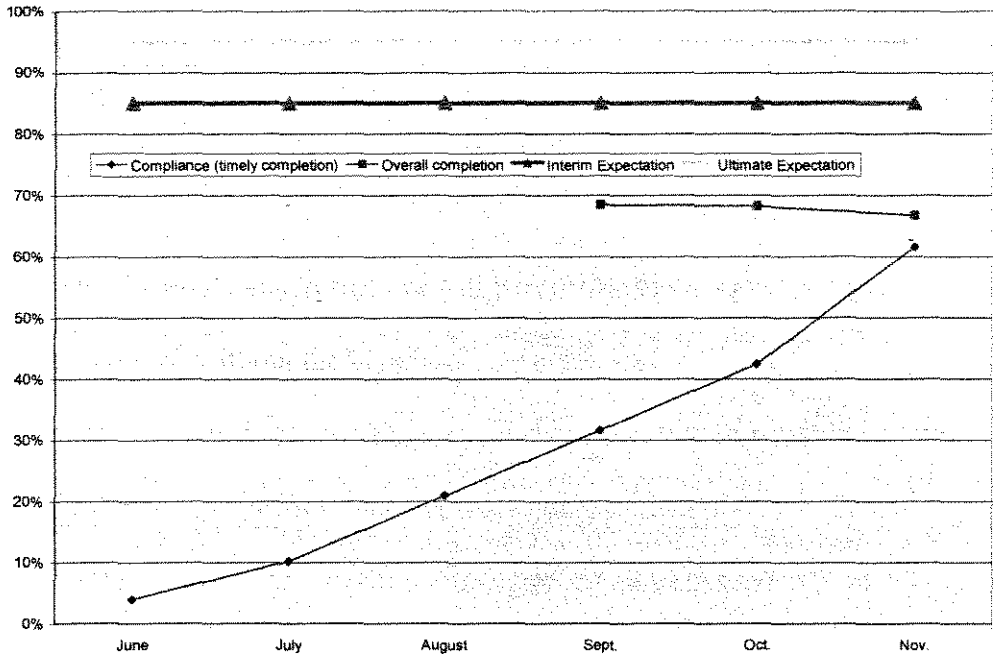
t. Performance Measure 9.2: Timely Completion/Submission of Public Assistance Applications

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 interim expectation of 85% compliance, Defendants reported in Table 21:

Table 21. Measure 9.2. Timely Completion and Submission of Public Assistance Applications

	June	July	August	Sept.	Oct.	Nov.	Expected
Compliance (Timely Completion)	3.9% 2/51	10.2% 11/108	20.9% 18/86	31.58% 18/57	42.4% 28/66	61.5% 24/39	85%
Overall rate of PA Applications				68.42% 39/57	68.18% 45/66	66.67% 26/39	

Figure 9. Public Assistance Applications



The data demonstrates that Defendants are steadily improving in their compliance with the timely completion and submission of PA applications. However, they continue to report that 67-68% of Class Members assessed by Defendants to be eligible for the service received it (timely or late). Noting this, we believe that Defendants will have difficulty achieving further improvement on the performance measure (timely completion of the task) as their timeliness compliance is approaching their overall level of completing the task (timely or late). 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 reported compliance rate for this measure continued to steadily climb over this reporting period. Despite this improvement,

Defendants remain out of compliance for this task. We suggest that Defendants undertake performance evaluation and improvement targeted to an understanding of this low rate of compliance and anticipate discussion with them regarding these efforts.

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

This measure tracks the timely registration of PA applications at HRA upon receipt. For our last report, we received a sample of data covering mid-July through mid-August, during which Defendants reported 91.5% compliance. Based on a cohort Defendants have defined as "applications received and registered during the month", they report as follows:

Table 22. Measure 9.3. Registration of Public Assistance Applications

Sept.	Oct.	Nov.	Expected
96.95% 159/164	91.2% 217/238	100.0% 117/117	95%

In our last report, we noted that delinquent cases were registered on the day following receipt due to "WMS system problems that are out of HRA's control." Defendants noted that "[w]hen the State experiences problems with the WMS system, registration of PA applications may be delayed. It should be noted that if the WMS system is not operational, HRA protects the rights of the applicant by preserving the receipt date of the application once WMS returns to operation."

Defendants' compliance during this reporting period met our preliminary expectation of 95% for two of the three months in this reporting period.

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 According to ¶1.hhhh. of the Stipulation:

> "'Supportive Housing'" shall mean the full range of different models of housing and residential treatment in New York City that are designed to meet the needs of individuals with Mental Illness who require both housing and supportive services (including, but not limited to, community residences, residential care centers for adults, MICA community residences, supported housing, and apartment treatment programs)."

Only those Class Members determined by Defendants to be in need of this type of housing are eligible for this service. Defendants in practice treat the obligation to submit HRA 2000 applications as pertaining exclusively to Class Member receiving a SPMI designation. We have questioned this reading of the Stipulation, which in our view attaches to any Class Member determined to be in need of supportive housing.

In comments to our October 13, 2004 report, Defendants noted that "eligibility rules for this program expressly require that the client has a severe and persistent mental illness." If so, *de facto* this service would indeed be limited to SPMI Class Members.

To better understand whether this limitation did indeed exist, we requested a description of the eligibility criteria for the various levels of supportive

housing. In response, Defendants forwarded to us information regarding the 10 different levels of supportive housing available in New York City.[30]

Our review of the material provided reveals no support for the proposition that SPMI classification is a prerequisite for consideration for supportive housing at any level. With the exception of New York-New York housing, which specifically targets homeless individuals who meet State OMH SPMI criteria, no level of supportive housing cites either criteria or mentions the term SPMI. While some levels of supportive housing are more likely to select or target individuals who have serious mental illness (e.g. Supervised Community Residences, Adult Homes), others appear, from the description of the appropriate resident, to target much less seriously ill individuals, including some who do not meet OMH SPMI criteria. For example, Supported Housing is one level of care. Its description of the residential clientele reads as follows:

> Exclusively for people with mental illness who are ***able to live independently with minimal support services***.... Apartments shared by single adults are usually for persons of the same sex. Residents should be ***capable of seeking assistance if necessary***. Residents generally must be at least six months substance-free, able to ***take their medication independently*** and ***demonstrate a significant period of psychiatric stability***. Overall, residents should be able to meet their own daily needs and manage their household with minimal assistance from staff. (emphasis in original)

This description of the clientele appropriate for this level of housing appears to us to be inconsistent with the notion that an individual would have to meet the SPMI criteria. If SPMI status is in fact not required for supportive

[30] See www.cucs.org/option.htm

housing, then Defendants' reports of compliance regarding this measure will always underestimate those potentially eligible for this procedure. Defendants indicated in comments to the draft Report that they "are reviewing their policies concerning eligibility for supportive housing and will report their findings upon completion of their review." Just prior to our finalizing this report, we received additional information from the Defendants regarding this issue. Regarding Level I housing, they quote the State Office of Mental Health's ("OMH") "Supported Housing Guidelines," 2004 Draft at p.8, at providing that "all individuals served in this system must also have a primary diagnosis of severe and persistent mental illness." Further, Defendants note that Congregate Care Level II housing is governed by OMH regulations found at 14 NYCRR Part 595 which apparently provides that intent of this level of housing is to assist people who are classified as SPMI. We did not receive this information with sufficient time to fully assimilate its import or to compare it with the information provided by Class Counsel.

We anticipate an open discussion with both Parties as this is a fundamental issue which must be resolved expeditiously. In addition, we request from Defendants all relevant policies and procedures concerning the HRA 2000 and any other mechanism of access to supportive housing. In addition, we request that Defendants forward us any additional documents outlining all eligibility criteria for the various levels of supportive housing[31].

[31] It appears possible that one of the sources of misunderstanding of this issue is the way in which the terms "supported" and "supportive" housing are used in the Stipulation and the relevant rules and regulations.

During the sixty days following our filing of this report, we plan upon reviewing and discussing with the Parties the information they have provided as well as any additional material they may furnish. Additionally, we will conduct our own inquiry into what standards may be relevant to a determination of this issue. At the end of this sixty-day period, we will, based upon all of the information available to us, make a determination as to which members of the Class are entitled to this service and commence monitoring within the parameters of that determination.[32]

Defendants reported in Table 23:

Table 23. Measure 10.1. HRA 2000 Applications

	June	July	Aug.	Sep.	Oct.	Nov.	Expected
Compliance rate	100% 10/10	100% 10/10	100% 22/22	100% 47/47	79.5% 35/44	85.7% 30/35	95%
% of SPAN visitors believed to be appropriate for supportive housing	4.1% 3/74	11.4% 5/44	45% 34/75	35% 22/62	12% 9/73	28% 13/46	
% of CMs released from Jail believed to be appropriate for supportive housing[33]	1.0% 10/971	1.0% 10/1000	2.1% 22/1055	4.8% 47/971	3.4% 44/1032	2.8% 35/1079	

While Defendants completed this task for 89% of Class Members whom they determine to be in need of supportive housing during this reporting period, we make the following observations regarding these data:

- First, as noted above, we are still not clear as to the appropriate criteria for supportive housing. Thus, we think the data in the top line of the table above may overstate their performance.

[32] Should the Parties reach an agreement prior to the expiration of this 60-day period as to the scope of this requirement, we will be guided by that determination.

[33] Defendants reported that 971 Class Members were released in September, 1032 were released in October, and 1079 were released in November.

- Secondly, we note that SPAN completed these applications 4 to 10 times more frequently (proportionally speaking) than did jail-based discharge planners.[34]

We anticipate further discussion and review of how Defendants' identify eligible Class Members for this service so that we can more effectively monitor Defendants' compliance with this measure.

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

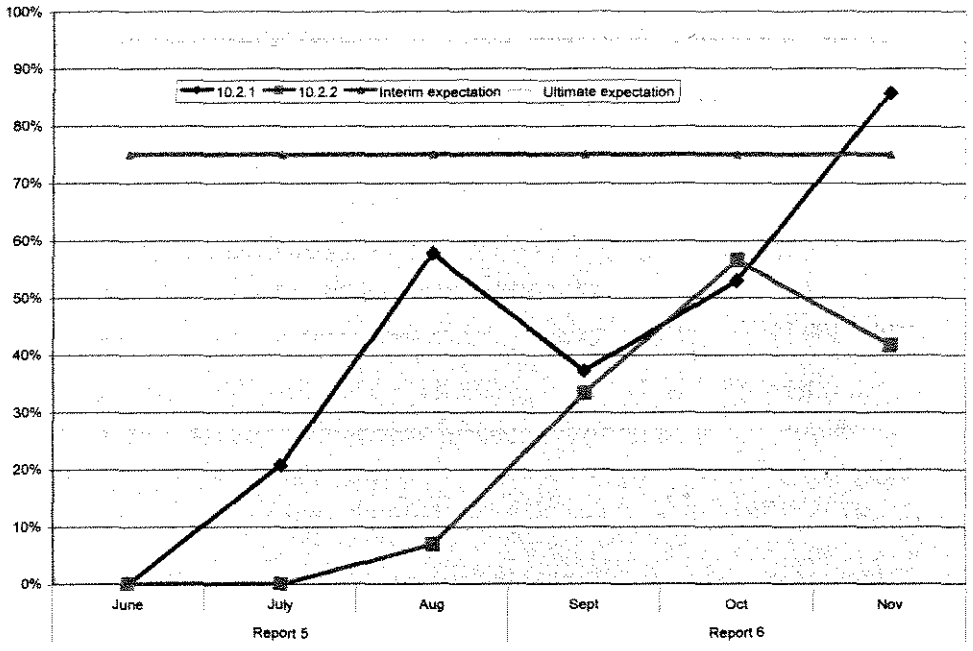
Paragraphs 94-95 of the Stipulation require Defendant agencies to share information in an effort to facilitate direct placement in Department of Homeless Services ("DHS") program shelters. Measures 10.2.1 and 10.2.2 are designed to monitor Defendants' compliance with this obligation. For these two measures, Defendants reported Table 24:

Table 24. Information Sharing with DHS

	June	July	Aug	Sept	Oct	Nov	Expected
10.2.1	0.0%	20.8% 5/24	57.7% 15/26	37.2% 16/43	52.9% 9/17	85.7% 6/7	75%
10.2.2	0 0/??	0 0/??	6.9% 2/29	33.3% 1/3	56.5% 13/23	41.7% 5/12	75%
# homeless on incarceration	27	87	132	51	61	53	
# homeless on release	5	39	70	71	80	19	

[34] Defendants, in comments to our last draft report noted several reasons why this may be so:
- 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

Figure 10. Information Sharing with DHS



Defining Class Members as homeless is largely dependent on the self report of Class Members concerning their housing status. The very low rate of reported homelessness among the cohort of Class Members is inconsistent with our knowledge of mentally ill inmates and with literature with which we are familiar.[35] Class Members' reports regarding this status may be misinformed and is certainly subject to change over time. However, we are well aware that self-reports of homelessness are to some extent contingent on the methodology employed to asses this status. We look forward to working with DOHMH and DHS to improve performance on this task in the future, as well as an exploration of how Defendants assess the housing status of Class Members.

[35] See, e.g. Michaels D, et al. Homelessness and Indicators of Mental Illness Among Inmates in New York City's Correctional System. *Hospital and Community Psychiatry* 43(2): 150-155, 1992. We intend to explore with Defendants their methodology for determining whether a Class Member is homeless upon release as part of our overall review of this aspect of the discharge planning process.

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 25:

Table 25. Transportation

	June	July	Aug.	Sep.	Oct.	Nov.	Expected
11.1	100% 47/47	100% 62/62	100% 132/132	90.2% 46/51	100% 50/50	100% 68/68	85%
11.2	100% 14/14	100% 20/20	100% 12/12	100% 6/6	100% 6/6	100% 5/5	85%
11.3	2	0	0			100% 2/2	85%

This data indicates that, except in September, 100% of Class Members found eligible for the services (i.e. those who are SPMI and who are released from Jail {11.1} or who appear at a SPAN office {11.2}) received the required transportation.

Defendants in comments assert that the following groups are excluded from consideration for this measure:[36]

- Class Members who refuse the offer
- Class Members who are released at court or on bail
- Class Members who are sentenced to State DOC[37]

[36] As with other measures, in the future, we will require the numbers that correspond to these exclusions.
[37] This exclusion was not included in the original language of the performance measure. However, upon Defendants' suggestion, we agreed that it is a logical exclusion. We amended performance measure 11.1 to accommodate this change on November 11, 2004.

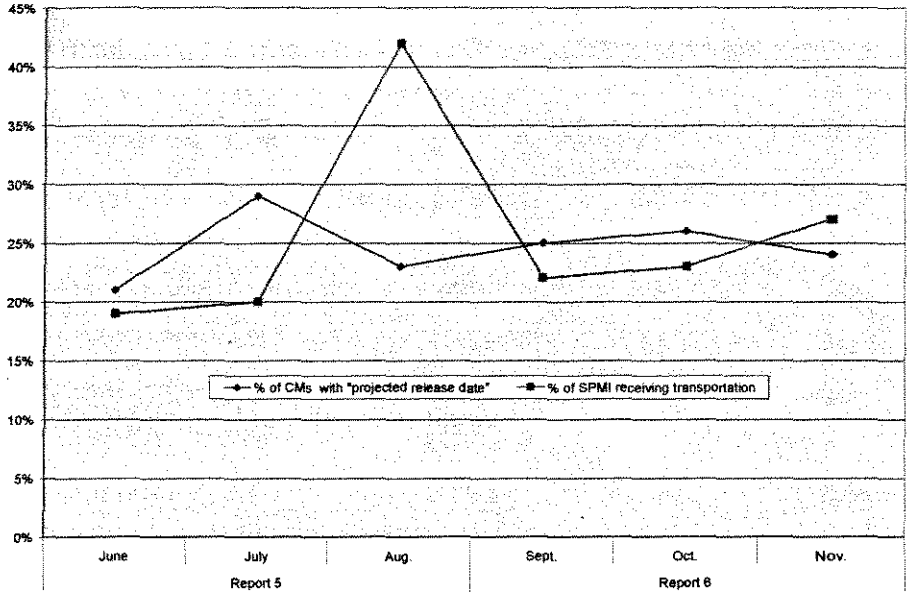
The consistent reports of 100% compliance with this measure indicates that by Defendants' count they are offering transportation to all Class Members who are eligible for this service, and that all Class Members who accept the offer receive the service.

The following data, combined with data reported above in Table 25, indicate that the majority of SPMI Class Members are excluded for consideration for this service – Table 26:

Table 26. Transportation Analysis: Rate of SPMI with Projected Release Date

	June	July	Aug.	Sept.	Oct.	Nov.
Transportation received	47	62	132	46	50	68
SPMI	248	303	313	213	215	253
Rate of "projected release date"	21%	29%	23%	25%	26%	24%
Rate of SPMI receiving transportation	19%	20%	42%	22%	23%	27%

Figure 11. Transportation Analysis



In the table above, the information regarding "Rate of 'projected release date'" relates to our determination as to the actual number of Class Members released during the month who had a projected release date. These data were derived from the spreadsheets sent to us biweekly by DOHMH.[38] We are assuming that SPMI Class Members are as likely to be released with a known release date as are the entire cohort of Class Members. The percentage of SPMI Class Members who received transportation is roughly equivalent to the percentage of Class Members released with a known release date.[39]

DOHMH provided us with a list of Class Members who had been offered transportation on or before the day of release, with an indication of who had accepted or declined this offer. 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.[40] Defendants forwarded to us information regarding every Class Member released in November whom they found to be eligible for transportation. This information revealed:

[38] Defendants object to using this data as a proxy for those Class Members released with a prospectively known release date, in part because this data includes Class Members released with "time served" as having a known release date. Once again, we ask Defendants to advise us as to how they intend to provide us with numbers specifically for Class Members released with a truly known release date.

[39] This analysis, as noted, relies on the assumption that the rate of projected release of the entire class applies equally to the subset of SPMI Class Members. This may or may not be accurate. Our analysis assumes that it is. A more precise analysis would require that we be given similar information regarding the number of SPMI Class Members released with a projected release date.

[40] For the sake of clarity, we note 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 announce here any intention to create any specific target rate for acceptance.

Table 27. Transportation: EMTC vs. RMSC

Jail	Timing of offer of transportation[41]	Accepted	Refused
EMTC (men)	0.00	68	33
RMSC (women)	3.66 (Range 0-15)	0	39

Our analysis of these data reveals this difference in acceptance rate is highly statistically significant. Assuming no association between the jail and rate of acceptance the probability of a difference this large or larger is less than one in 10 trillion. While we cannot entirely dismiss the possibility that there would be a difference in acceptance rate between male and female Class Members, we do not believe that this could account for this degree of disparity.

We strongly suggest that Defendants

- Explore the dramatic differential acceptance rate between men and women
- Explore the procedural differences in the timing of this offer to Class Members in the two jails[42]
- Consider other procedural differences that may result in the dramatic differential acceptance rate between the two jails.
- Develop a targeted quality improvement project to explore this issue and share the results with us.

Defendants, in comments to the draft Report, stated that they "do not believe that additional analyses and quality improvement projects are warranted until there is some showing that Defendants are not in compliance with the

[41] This indicates the difference between the day that the offer of transportation was made and the date of release. It is highly relevant because these are individuals who by definition are sentenced and have a projected release date known to the discharge planner (otherwise they would not be included in this measure). A "0" in this box indicates that the offer was made on the day of release itself. A number of +1 or more indicates that the offer was made so many days before the release date. The data is averaged by jail and indicates that in EMTC the practice is to routinely make the offer on the date of discharge.

[42] While one obvious suggestion is that the date of the offer vis-à-vis the projected release date is a key factor, it remains true that in 18 of the 39 cases in RMSC, the offer of transportation was made on the date of release. Even so, all of these Class Members declined the offer.

Stipulation." We disagree. An essential objective of this Stipulation of Settlement was to ensure that people with serious mental illnesses are released from jail to a known location where they could logically continue their treatment in the community. In this case, the different acceptance rates between the men in EMTC and the women in RMSC forces us to ask questions as to why such a difference should exist. We believe that Defendants should examine this as well.

While we understand that generally speaking the Stipulation requires Defendants to engage in a process rather than guarantee a specific outcome, rates of acceptance are relevant to understanding how effectively that process is effectuated. In this way, the rate of acceptance does have a direct bearing on compliance. A sustained rate of zero acceptance would lead us to one of two possible conclusions: (1) either the proffered service is utterly without perceived use to the Class Members, in which case we would encourage the parties to consider eliminating the requirement in question; or (2) there is some aspect as to how Defendants are offering the service in question which leads to an inevitable refusal on the part of every Class Member. The latter circumstance would, in our view, constitute effective lack of compliance with the mandated process. As to the instant situation, we have no reason to believe that no woman would find transportation useful, or that there is some specific characteristic of female class members which would cause them to universally refuse this service. Thus, we strongly urge Defendants to conduct the targeted studies we suggest.

Defendants reported to us that they transported two Class Members from intake shelters to program shelters in November, as required by the Stipulation. We look forward to further reports on this measure.

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 28:

Table 28. Follow-up Contacts

	June	July	Aug.	Sep.	Oct.	Nov.	Expected
12.1	60% 36/60	92% 23/25	74% 14/19	80.6% 29/36	76.9% 30/39	90.5% 19/21	85%
12.2	45% 35/78	53% 18/34	93% 25/27	60% 15/25	73.5% 25/34	66.7% 16/24	75%
12.3	82% 46/56	97% 34/35	87% 26/30	86.8% 33/38	79.2% 38/48	91.4% 32/35	99%

Per the Stipulation, these requirements only apply to those Class Members who are SPMI. In our October 13, 2004 report, we articulated the correct denominators for these measures. In our view, the denominator for line 12.1 in Table 28 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. Thus, we believe the data presented above in Table 28 should appear as follows, Table 29:

Table 29. Follow-up Contacts: Analysis

	June	July	Aug	Sep.	Oct.	Nov.	Expected
12.1	??% 36/26	68% 23/34	19% 14/72	64% 29/45	58% 30/52	31% 19/62	85%
12.2	??%[43] 35/8	69% 18/26	83% 25/30	22% 15/69	26% 25/95	17% 16/92	75%
12.3	19% 46/248	11% 34/303	8% 26/313	15% 33/213	18% 38/215	13% 32/253	99%

We understand from our review of the draft data dictionary prepared by DOHMH that they will be providing us with reports based on these corrected denominators effective the December 2004 monthly report.

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

Paragraph 100 obligates Defendants to offer assistance in procuring more appropriate housing to Class Members whose housing is inappropriate to their needs based upon the follow up calls Defendants make. Defendants reported in Table 30:

Table 30. Measure 12.4. Offer of Assistance to Improve Housing

June	July	August	Sep.	Oct.	Nov.	Expected
90% 35/39	100% 13/13	87% 26/30	79.17% 19/24	77.1% 27/35	88.2% 15/17	95%

[43] 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."

While the absolute numbers are low, the high rate of this offer indicates a good rate of compliance with this important requirement. Defendants noted in the draft data dictionary that these numbers are low because they had previously applied this task only to SPMI Class Members referred to LINK. Effective the December 2004 monthly report, they intend to include all SPMI Class Members in this follow up task.

ff. Performance Measure 13.1: Provision of Documentation Regarding Discharge Planning Services to Inmates

Based on our review of 144 charts, 40 Class Members refused all discharge planning. There were no Class Members who selectively declined written documentation regarding discharge planning (the "brochures").

gg. Performance Measure 13.2: Offer of Discharge Planning Made in Native Language or via Interpreter

We obtained a list from DOHMH of mental health and discharge planning staff who speak languages other than English. Our intention is to ensure that we are aware when a contact is made between a non-English speaking Class Member and a staff member who speaks his/her native language. In such cases, we would not expect that an interpreter would be used. We intend to begin evaluating this in the near future.

Defendants, in their comments to our draft Report, note that assessing individuals' language abilities is a complex endeavor. They note, correctly, that there are some individuals who "have strong bilingual skills but prefer to communicate in their primary language" as well as individuals who "cannot

adequately communicate in English". Additionally, "there may be differences in the clarity of spoken English among providers; patients may be able to understand some and not others." We acknowledge these complexities and will attempt to account for them as we monitor this performance measure.

hh. Performance Measure 13.3: Re-Offer of Discharge Planning Services to Class Members who have Refused

Of the 86 charts we reviewed for this element, 27 Class Members declined all or some discharge planning services (31%).[44] Of these 27 refusers, discharge planning was re-offered to only 5 Class Members (19%). In one case, two re-offers were made. In another case (case B), the initial reoffer of services resulted in the Class Member accepting some services. Our performance expectation is that defendants reoffer discharge planning services to 95% of Class Members who refuse initially. As the new model is fully implemented across the system (see above), we expect this to improve over time.

ii. Conclusions related to Performance Measures

Appendix B 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

[44] Class Members found to have declined all services included Case #s 872, 877, 878, 879, 880, 881, 882, 885, 886, 887, 949, and 958. Class Members who selectively declined discharge planning included 873, 899, 900, 901, 906, 907, 909, 911, 912, 913, 914, 946, 968, and C. Case B initially declined all services, and upon the first reoffer of services accepted some and declined others.

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 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:

- Completion/submission of Medicaid applications in the jails
- Provision of walking medications and prescriptions upon release
- Provision of appointments to Class Members with known/projected release dates

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

- Timely completion of the Medicaid prescreen
- Medicaid Reactivation
- Referrals for Class Members with unknown release dates
- Completion/submission of PA applications
- Information sharing with DHS (two measures)
- Follow up calls regarding mental health treatment and housing (three measures)

In our last report, we noted that Defendants were significantly out of compliance with our expectation regarding the completion and submission of Medicaid ("MA") and Public Assistance ("PA") applications. We noted that these are among the most complex tasks that are required of the discharge planners. At this time, Defendants have improved their performance on the

requirement to complete and submit MA applications but continue to show a deficiency regarding PA applications. We remain concerned about the low rate of PA application for the Class. While acknowledging the improvement in completing MA applications, we note that, because Defendants do not complete prescreenings for a significant percentage of eligible Class Members (38%) it is likely that a number of Class Members who are eligible for this service in fact leave jail without it. Thus, while Defendants are reporting a level of compliance with the MA application measure sufficient that we have raised our performance expectation in this area, we do not believe that their capacity has been fully tested because of poor performance on the upstream task of the Prescreen Completion. Simply put, Defendants cannot submit an application for a Class Member until they become aware of the need to do so. In that way, improvement with pre-screening requirement will increase the numbers of applications they must complete. This is another example of the way in which the individual measures must be understood as they affect and connect to one another produce an overall result.

B. Other Data

1. DHS placement directly in program shelter

DHS advised us that, of the 13 Class Members who presented to the shelter system during this reporting period, 3 Class Members (including 2 who were SPMI) were placed directly into program shelters. We are awaiting clarification

from Defendants regarding the number of these 13 Class Members who were city sentenced.

At this point in the process we intend to evaluate compliance with the "best efforts" requirements delineated in paragraph 96. In order to do so, we will need to refine the data DOHMH provides us in the monthly report in this area. This will permit us to both track numerical trends and to identify specific cases for examination in order to assess whether best efforts were indeed shown by Defendants in attempting to place eligible sentenced Class Members directly into a designated Program Shelter upon his or her release date. In addition, in order to understand Defendants' efforts in this area, we may need to evaluate the process DHS uses to determine eligibility for program shelters as well as to understand how DHS makes use of information forwarded to them by DOHMH.

2. SPAN

The Parties recently held a meeting focusing on ways to improve SPAN utilization by Class Members, and increasing the efficiency of SPAN's operation. Areas of discussion included the hours of operation, the maintenance of SPAN offices in Staten Island, and the potential for reallocation of personnel to increase SPAN inreach contacts with Class Members. We view this meeting as a very positive development as it demonstrates the potential which arises when the Parties' are willing to work together to solve problems that have developed as the Stipulation has been implemented.

Approximately one third of SPAN visitors are homeless at the time they visit SPAN. Defendants report that less than 10% of Class Members are homeless at the time of release.[45] This indicates that a disproportionate number of homeless Class Members utilize the services of SPAN.

Defendants also report that close to half of all SPAN clients are SPMI/LSPMI. This indicates that people with more serious illnesses are likely to utilize SPAN.

For this report, Defendants reported that, with the exception of October, Class Members who visited SPAN were 4 to 7 times more likely to have attended a SPAN inreach session during their incarceration than the baseline rate of SPAN inreach attendance. This is consistent with our finding in prior reports. Despite the overall low utilization of SPAN by Class Members after their release, this finding supports our proposition that SPAN inreach predicts later SPAN utilization.

There continues to be a small but consistent utilization of SPAN after 5 pm. During each of the three months of the current reporting period, 2 Class Members visited SPAN after 5. DOHMH provided us with a memorandum from SPAN dated January 6, 2005 indicating that Class Members who have utilized SPAN offices after 5:00 pm did so between the hours of 5:00pm and 5:30 pm. Additionally, this same correspondence reports that the Class Members reporting to a SPAN office after 5:00 pm did not do so directly from court; rather, the memo states, they presented at SPAN from two-seven days following release. If utilization after 5pm were more substantial, we would continue to require the

[45] See footnote 35 above.

current hours of operation. Alternatively, if late SPAN visitors with pressing discharge planning needs were coming directly from Court and we were convinced that these individuals would otherwise be lost to follow up, we might continue to require late hours of operation. However, the data reported above indicates that neither of these is the case.

DOHMH has proposed modifying the SPAN operation to include

- changing the hours of operation to allow closing at 5pm
- closing the Staten Island Office, with services to be provided to Class Members residing there via the Manhattan or Brooklyn offices[46]
- re-allocating staff to increase the number of SPAN inreach contact made

Defendants' proposal regarding the reallocation to increase inreach contacts includes both increasing the number of formal focus groups they conduct with Class Members as well as placing SPAN staff in a more informal way on MO units. This latter change would assist SPAN in reaching the most ill and at-risk Class Members.

Plaintiffs are amenable to working with Defendants on developing a new operational model for SPAN and have written to the Defendants indicating this. We support the proposal to alter the hours of operation. We also support the Parties' efforts to reach an accommodation regarding the reallocation of resources from the underutilized Staten Island SPAN office into the clearly demonstrated productive and useful in-reach process. As the Parties work toward these changes, we offer our assistance and welcome any opportunity to participate. However, our support is contingent on the reinvestment of any savings generated

[46] We have requested and are awaiting SPAN utilization by borough.

by these changes into SPAN operations. DOHMH, in a meeting with us on January 26, 2005, indicated that they would soon forward a proposal outlining their plans to enhance in-reach and reorganize SPAN services.

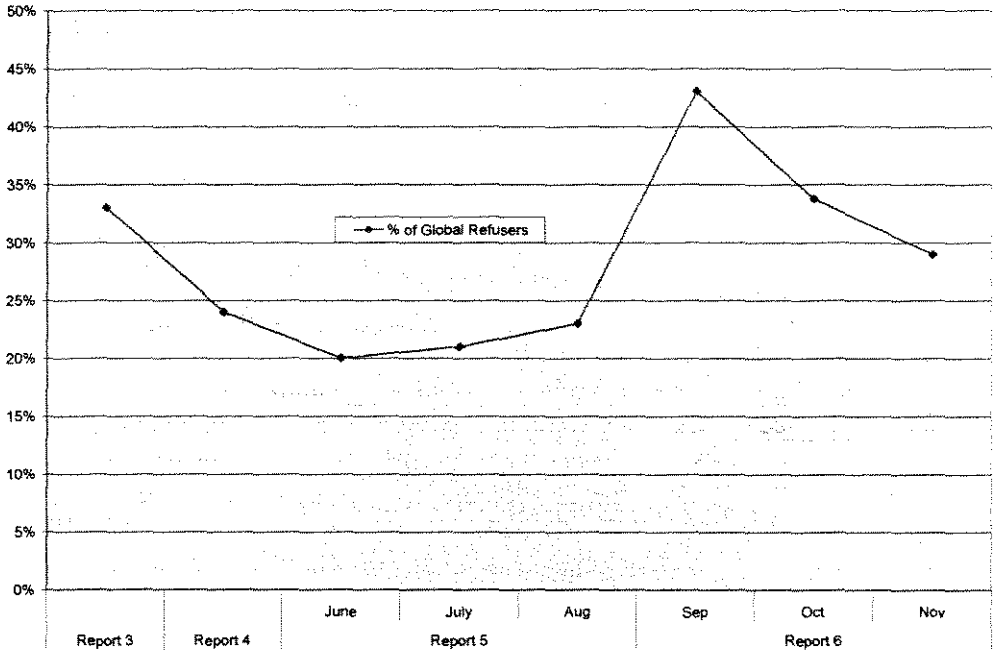
We previously requested that Defendants arrange access for us to conduct site-visits to the Court holding areas. Paragraph 40 requires SPAN to conduct outreach visits to the Courts to "encourage Class Members who are determined likely to be released ... to visit SPAN offices and utilize services." Defendants asked that we table this request. Class Counsel, in their comments to our draft Report, urge us to refrain from postponing our plans to visit the court areas. As the Parties are currently working toward an agreement regarding altering the SPAN operational model, we agree at this time to defer this planned visit as the Parties work together. It is important these talks continue in earnest. We will revive our efforts to conduct monitoring visits as originally planned should the process we describe above fail to adequately address the issue of SPAN outreach visits to the courts.

3. Refusal Rates

Table 31. Refusal Rates

	Report 3	Report 4	June	July	Aug	Sep	Oct	Nov
# of Global Refusers			197	211	242	172	151	124
% of Global Refusers	33%	24%	20%	21%	23%	43%	34%	29%

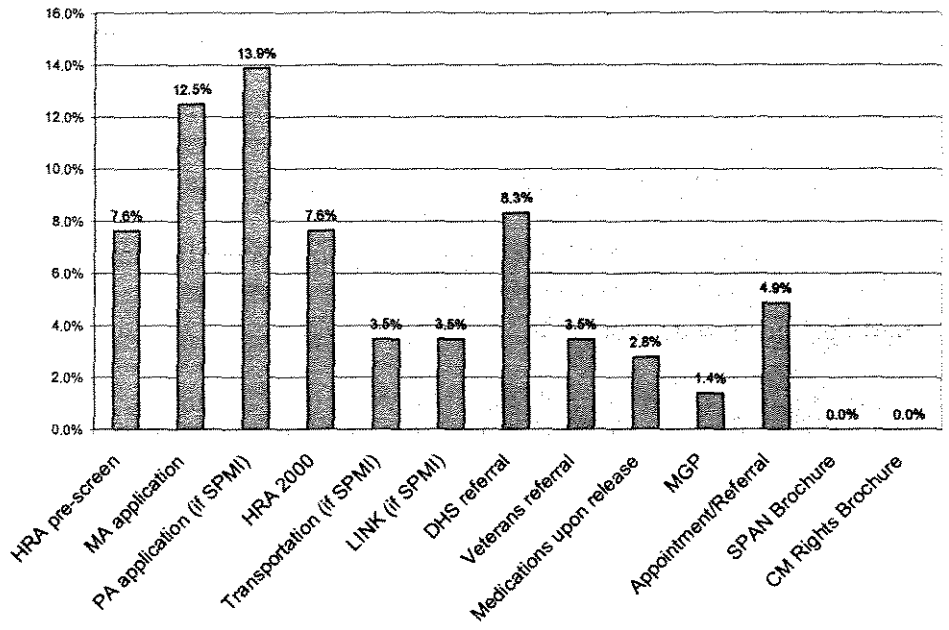
Figure 12. Global Refusal Rate



In our reviews of 86 records, we found that 12 of the Class Members (14%) refused all discharge planning services, and another 15 (17%) selectively refused at least one service.[47] The following illustrates the percentage of Class Members who selectively refused a particular Discharge Planning service.

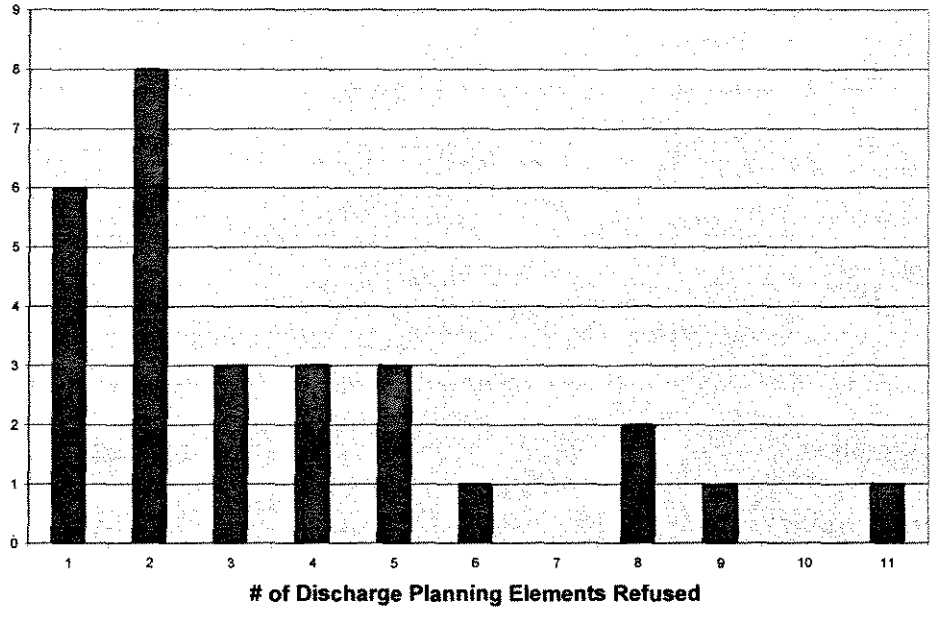
[47] See footnote 44 above.

Figure 13. What do Selective Refusers Refuse?



Half of the Class Members who selectively refused services refused only one or two of the services. The following illustrates the distribution of the selective refusers by number of services refused.

Figure 14. How Many Services do Selective Refusers Refuse?



Refusal of discharge planning services is not in and of itself a performance measure. However, refusals are frequently exclusions from the various measures. As such, they are informative of the overall performance of Defendants. In addition, it is our view that refusal rates (1) to some extent vary with the nature of the engagement process of Class Members by mental health and discharge planning staff and (2) can be positively affected by training, education and monitoring.

4. 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.[48]

In response to a specific request sent out in preparation for this report, Defendants reported:

[48] After numerous requests, Defendants informed us in comments to the draft Report that release is defined as "the approximate time that the inmate leaves the facility intake area [the area in the jail where inmates are processed out]." Because most jails are on Rikers Island, inmates in Island jails who have completed their processing still must await transportation off island. There may be some lag time between the time of official release (which is what the data includes) and the time that the inmate actually leaves Rikers Island.

Table 32. Time of Release

	EMTC	RMSC
August '04	93.10% 162/174	99.05% 104/105
September '04	90.12% 155/172	100.00% 81/81
October '04	97.28% 143/147	100.00% 64/64
November '04	91.76% 167/182	95.35% 82/86

Defendants report releasing nearly all Class Members with known release dates during the hours required. In the material they forwarded to us, they also note that data for months prior to November 2004 was erroneous because some of the inmates who were released outside of the required hours were in fact not Brad H. Class Members. The reason for this error was that at an earlier point in their incarceration, there was an "M" entered in the Discharge Planning MIS which was later removed. However, until November, these cases were included as Class Members and so there were more cases included at variance with the time of release requirement.

Class Counsel, in comments to the draft Report, requested that we "investigate reports that inmates are required to wait on their day of discharge for several hours to receive their discharge planning paperwork and medications." If these reports turn out to be accurate we would share Class Counsel's concern that a delay encumbered by Class Members at the time of release might cause some Class Members to refuse discharge planning in order to be released more quickly. Further, if it becomes known that discharge planning will result in delayed release, as may happen by rumor in a jail setting, this may precipitate refusals

well before the date of release. We plan to investigate these reports by observing the release process and by interviewing staff and Class Members regarding their beliefs about discharge planning and the release process.

5. Pilot Project (¶¶34-35)

Paragraph 34 of the Stipulation requires the Defendants to use reasonable efforts to ascertain the release dates of Class Members housed at RMSC and AMKC during a six month period. These efforts are to include, but are not limited to, a utilization of DOC's IIS computer system as well as attempts to contact Class Members' attorneys.

Following that period, the Monitors are to assess whether the information obtained through this process is (a) generally beneficial to Discharge Planning, (b) if it is whether the Defendants should be required to expand these efforts to other facilities, and (c) whether the Defendants used "reasonable efforts" to ascertain Class Members' Release Dates. The Stipulation further provides that in the event the Monitors find that the Defendants did not use reasonable efforts, we are given the power to extend the period of the trial for an additional six months.

We discussed this issue at length in our last report starting on page 98 and incorporate this discussion by reference. At that time, we found that Defendants did not demonstrate "best"[49] efforts because of the very limited number of attempts to contact attorneys. Further, we noted that the success rate of obtaining

[49] Upon review we note that the threshold in the Stipulation is "reasonable" efforts as opposed to "best" efforts and our finding at that time should be read to connote that we did not believe that Defendants had demonstrated "reasonable" efforts.

useful information was limited but that we could not ascertain a reasonable baseline rate in the absence of reliable voice-mail for discharge planners.

We suggested temporary suspension of the pilot until such a time as the Discharge Planners had access to a generally reliable voicemail system, something which has yet to occur. After this was achieved, we would then suggest a resumption of the project focusing intensive efforts on Class Members housed in the MO in these two facilities.

This suggestion was the subject of discussion at a plenary meeting we held with the Parties on November 4, 2004. At that time both Parties expressed a willingness to pursue this suggestion, with Class Counsel indicating that their acceptance of the concept of a moratorium was contingent upon a date certain for obtaining the required communication capabilities for the Discharge Planners and an unspecified penalty should the Defendants fail to meet this deadline. In response to our inquiries Defendants indicated that they were amenable to our suggestion but rejected Class Counsel's attached conditions. To our knowledge, Defendants have not to date responded directly to Class Counsel with a counterproposal.

However, as discussed above in the "Communications" section (II.f.3. above), Defendants proposed the use of a centralized call-back number for the use of staff and defense attorneys in order to better implement the pilot project. As noted

above, while we have concerns about the wider utility of this solution, it appears to us to be acceptable for this limited purpose of conducting the pilot project.[50]

Defendants provided data regarding their efforts on this task during this reporting period.

Table 33. Pilot Project

	Aug	Sept	Oct	Nov	Totals
Number of Class Members for whom attorney contact information was available	69	92	58	85	297
Number of attorneys spoken to	27	43	28	28	126
Number of attorneys unable to provide information	25	38	27	28	118
Number of attorneys able to provide a release date	2	5	1	0	8
Number of attorneys that did not respond	42	49	30	57	178

Overall the data indicate that Discharge Planners obtained information regarding release dates in eight cases (6% success rate based on actual attorney contact, 3% based on all attempted contacts). 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. There are two aspects to this position:

1. Defendants are unable to reach 60% of the attorneys for whom they have contact information.
2. Even when there is contact made, attorneys rarely can provide useful information regarding release date. This data indicates that attorneys could provide a release date in 6% of the cases in which contact was made.

We do not believe that Defendants have solved the technological problems to permit discharge planners to effectively reach attorneys. We believe that the centralized call-back proposal outlined above will provide more valid

[50] These efforts—to provide reliable voice-mail or its equivalent to the Discharge Planners within the jails and setting up a central call-in number to receive important information regarding Class Members from the community—need not and should not be seen as mutually exclusive. A short-term solution can be implemented while a longer-term more comprehensive approach is devised.

information. However, we agree with the second point in that attorneys appear to be able to provide release dates in a small minority of cases.

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, there were 1306 individuals in AMKC and RMSC with an M designation and no known or projected release date in the IIS on August 23, 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 1306 potentially eligible Class Members, Defendants indicate in Table 33 above that attorney contact information was available for 235 (18%) during September, October and November. Thus, Defendants were unable to attempt to contact attorneys for the remainder of this group.

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 attempted to contact attorneys for 18% of the Class Members described in ¶34. According to DOHMH, this minority represents all Class Members for whom they were provided attorney contact information and were given consent to make the contact. Defendants advised us that they do not track information regarding the number of Class Members who refused consent, nor do they track information regarding the number of Class Members who were unaware of any attorney contact information.

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 II.f.3. above).

c. If a similarly low rate of success were to continue despite reasonable efforts at contacting attorneys in the context of a functional and generally reliable call-back system,[51] 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 suggested in our last report that the Parties temporarily suspend this project until Defendants can resolve the technological shortcomings described above. In our November 4, 2004 meeting with the Parties, we observed an emerging and encouraging willingness on the part of both Parties to consider creative solutions to this problem. We encourage the Parties to continue to work together. In addition to considering alternative communication technology, we suggest that the Parties also consider what

[51] Such as the proposal made for a centralized call-back phone number.

other reasonable efforts could be made to ascertain Class Members' release dates or to identify Class Members' attorneys.[52]

IV. Recommendations

Appendix C contains our prior recommendations in spreadsheet format. These have been condensed into one spreadsheet among themes. Recommendations which we discontinued or replaced are shaded grey on this spreadsheet. Recommendations whose status has been changed have that status shaded in yellow. Some of the areas that we suggest Defendants focus heavily on include:

a. the apparent "stall" in the progress towards implementing the new organizational model for discharge planning across the system
b. working with us and our staff, finalize the Data Dictionary so that all parties are clear as to the meaning of the many data points contained in the monthly reports
c. evaluate the differential performance on the provision of transportation between the two jails for which this is relevant.

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

a. Evaluate the lower performance on timely CTDP completion in the MO
b. Evaluate low performance with timely Prescreening completion
c. Evaluate low performance with making referrals for Class Members with unknown release dates.

[52] Cf. ¶34 which reads, in part, "Such efforts shall include ***but not be limited to*** attempting to contact the Class Member's defense attorney, if appropriate, and consulting the IIS" (emphasis added).

V. Conclusion

This concludes our Sixth Report. Our next report, due on or about June 6, 2005, will include our analysis of data through March, 2005. 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 continued to provide us with regular monthly reports based on data contained in the discharge planning MIS as well as information from other agencies. They have worked steadily to improve the quality of these reports and to provide us with more of the data which we have requested. These data are essential to our monitoring efforts. We recognize the substantial 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). We have recently retained experts in data management and

statistics and will work with Defendants toward an increased understanding of the data and its meaning vis-à-vis Defendants actual performance.

B. CONTENT

Defendants have demonstrated sustained improvements in upstream discharge planning tasks. Specific examples include assessments and completion of the CTDP, especially in GP. 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. Defendants have also focused on progressively downstream issues (e.g. the prescreening initiation, the completion of Medicaid applications) and have made some headway in these areas. We believe that improvements tend to reflect focused supervisory and training efforts in specific areas. The challenge for Defendants will be to sustain improvements that have been made while expanding their focus to include a broadening scope of tasks as required by the Stipulation. It is possible that the plateau effect we have seen in a number of areas, and especially the timeliness of the CTDP, reflects this process: initial great improvement while sustained attention is focused on that area, with a falloff in performance when the focus moves on.

In closing, we thank the Parties for their continued assistance with our monitoring efforts. Our next report is due on *Monday, June 6, 2005*. The draft report will be released to the Parties on *Monday, May 16, 2005*, with the comment period ending at 5 pm on *Thursday, May 26, 2005*. Data is due for the draft by 5 pm on *Monday, April 25, 2005*.

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

Respectfully Submitted,

Henry Dlugacz
Compliance Monitor

Erik Roskes
Compliance Monitor