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

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

Seventh Regular Report of the Compliance Monitors

June 6, 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. This constitutes the Seventh regular report of the Monitors.

Contents:

I. Introductory Comments

A. Overview of Progress to Date

We have been monitors of this settlement for two years. During this time, we have seen dramatic changes in the way in which Defendants have approached the task of providing discharge planning services to Class Members. When we began, we observed a very disjointed discharge planning program, with tasks divided among four separate groups of discharge planners. These groups were unable to provide any real discharge planning as we would have envisioned it. For the past year and a half, Defendants have been working to implement what we have termed the "new model", wherein all discharge planning services are provided to a Class Member by a single discharge planning team which includes masters and bachelors level personnel who will divide tasks based on their expertise and training. This new model is incompletely implemented, but there is no question that this approach is a part of the reason for the improvements we have observed.

For example, one of the major potential benefits of the "new model" is that Class Members will have a single individual discharge planning team managing their case over an extended period of time during the incarceration. It should naturally flow from this model that Class Members will be able to establish a more therapeutic alliance with their discharge planners. As this model is implemented, one would expect to see, for example, a gradually falling refusal rate, as it can be expected that refusals will drop as the therapeutic alliance improves.[1]

As this report will make clear, Defendants' performance on many variables improved substantially over the course of our monitoring to date. While the Stipulation dictates that

[1] We recognize that this benefit is limited by the frequent movement of inmates from jail to jail and from unit to unit, such that they may still change discharge planners at times.

access to documents and records shall be the principal method of measuring compliance, we must interpret information contained therein, including the data which reflect this improvement, in the context of the overall purpose of the Stipulation: to provide discharge planning to the members of the class. With this understanding, we must expand our vision to ensure that these impressively improving statistical trends carry over into a process whereby most Class Members are discharged from the New York City correctional system with complete arrangements for their follow up mental health care and the means to pay for it.

When we began, Defendants were unable to provide us with any real data regarding the overall discharge planning process. Since June 2004, we have been receiving regular monthly reports pulled from the discharge planning MIS ("Citrix"). These reports are based on our Performance Indicators and are Defendants' attempts to provide us with the data we require. Over the past year, Defendants substantially improved the monthly reports, both in terms of completeness and quality (see section below). Further, Defendants have allowed us to collaborate with them on the development of the data dictionary. While we question specific aspects of the data regularly in this and in prior reports, and continue to work with DoHMH on refinements and revisions, the fact that these monthly reports exist at all is a demonstration of improved compliance with the Stipulation as well as of Defendants' commitment to provide us with the information we need to monitor their performance.

We have consistently approached our monitoring of this settlement as moving from "upstream" issues to "downstream" issues. Following, we encouraged the Defendants to follow a similar methodology as they worked on the formidable task they agreed to undertake. As such, it was logical for them to place initial emphasis on fundamental tasks such as the CTDP upon which others depend, and on creating the architecture for a data

reporting mechanism. Having made important if incomplete gains in these areas, Defendants next turned their attention to improving performance with individual measures which showed low compliance figures. This, too, was consistent with the approach we suggest.

That said, it is inadequate to examine the performance measures or the many discharge planning tasks in a vacuum. The tasks are related to one another, and many of the "downstream" tasks are entirely dependent on "upstream" tasks. We have concerns that, while compliance rates on each task viewed alone may be high, when looking at the overall multistep process, multiplying the compliance rates together results in a less impressive overall compliance rate from beginning to end. For example, a process that involves 5 steps, each of which is completed successfully 90% of the time will result in the overall process being completed only 59% of the time ($= 0.9^5$). We believe that more attention must be paid to the ways in which the tasks relate to one another and to keeping compliance as high as possible in each step of a sequence.

As described in our last report, we recently hired data management and statistical experts. Defendants have engaged in a detailed discussion of the performance measures and their data dictionary with us and with our data management expert, and this collaborative approach has been helpful already. In this report, we will regularly point out areas where there remain questions about the meaning of the data provided to us (especially the denominators) as well as areas in which we will need to do more work on defining the data elements. We fully expect that this process will conclude promptly and in a satisfactory manner.

In summary, we have observed significant improvements overall and in some of the specific discharge planning areas. There remains much work to do, both for us and the Defendants. The fact that we point out many areas where work remains should not detract

from our recognition of the progress which Defendants achieved to date. These improvements are, in our view, the direct result of the internal accountability promoted by DoHMH. This permitted Defendants to begin to impose structure on what was a chaotic and disjointed system.

B. Data

The analysis of the data provided by the Defendants represents a central aspect of our monitoring of this Stipulation of Settlement. We require accurate and informative on the precise "questions" we posed in our performance measures.

Defendants made considerable advances toward providing us with intelligible and transparent data over this reporting period. Working with Defendants, aided by the invaluable assistance of the data management expert we retained, we have agreed upon a working iteration of the Data Dictionary which serves as a definitional guide to the meaning of the data we receive.

The Data Dictionary is the document which allows us to understand whether Defendants are answering the question we have asked, and thus, whether they are providing us with responsive answers. While this document will require some refinement, it represents a major accomplishment for DoHMH. We will call some of definitions into question as we discuss the many data elements below, and will recommend adjustment to the data dictionary when we believe that the current definition does not provide us with data relevant to our query.[2] These more detailed questions aside, there remain, however, three overarching issues:

[2] Based upon our productive discussions with DoHMH and our extensive review, we are in the process of preparing a comprehensive listing of the revisions to the Data Dictionary which will be necessary to accomplish this. We expect that the precise form of the Data Dictionary will continue to evolve over the course of our monitoring to reflect this type of technical correction as well as when substantive changes require revisions.

1. Alteration of the cohort in each monthly report

Until this time, we requested that Defendants provide us with data based upon a cohort of class members released during a given month. This approach has the advantage of permitting us to see how tasks attributable to cases released in a given month related to one another. Given the fairly basic nature of Defendants data management system, and given that we were interested in understanding the system as a whole to the extent possible, we began this way to capture information on "completed cases". In other words, we were interested in understanding how discharge planning worked from incarceration to release. This approach also carried with it a significant disadvantage as we attempted to understand changes in Defendants' performance from month-to-month: for a class member released in March, for example, Defendants may have performed an upstream task such as the initial CTDP several months earlier. Thus, the data from March provides a measure of Defendants' performance over a range of time across different measures. This also has the effect of diluting the impact of remedial measures taken by Defendants in any given month, and of making it more difficult to identify downward trends quickly so that they can be rapidly addressed.

We have been discussing moving toward a system of data collection and reporting which would measure and report performance for all tasks completed during the month of interest. In this way, we could more accurately measure performance in a specific month, making an analysis of trends from month to month more informative. This approach, when coupled with a complete reporting of numbers which go into the calculation of the denominators of the performance measures as discussed below, will for the first time permit us to understand and report on the actual number of class members who were

potentially eligible for a given service in any given month and to compare that to the number who actually received that service.[3]

2. Modification of data reporting

We have had considerable discussion with Defendants' about moving toward a data reporting system which begins with a base number of all class members in the month of interest who were potentially subject to the tasks described in any given measure, and then shows the numbers of class members falling into any agreed-upon exception to the obligation to provide that service (e.g., refusal). In other words, rather than simply providing a numerator and a denominator, where all exclusions have already been removed from the denominator, Defendants would provide us with a denominator where these exclusions are visible. For example, when reporting on compliance on a specific task, rather than seeing simply 555/570 on the data report, we would see an entry such as [555/(650-50-20-10)] where 650 are eligible for the service, 50 were excluded due to refusal, 20 excluded due to medical and 10 excluded due to court. Thus, we would be able to fully understand Defendants' performance on this task.

We believe that we have a general agreement with DoHMH to move in this direction, which will for the first time allow for truly transparent data reporting. While, pursuant to our specific requests on certain items, Defendants began to provide some of this

[3] In their comments to our draft report Defendants request that we link this proposed change in cohort to the development of the new data-system which DoHMH expects to have in place by the end of the year. Class Counsel, in their comments, suggest a period of transition during which Defendants report the figures based upon both cohorts. Both of these ideas warrant serious consideration and further discussion. We will, as we have noted, be suggesting revisions to the current report as well as to the new database DoHMH is developing to accommodate our monitoring needs. We expect to continue to receive updates regarding the progress of this data system development and would expect to be included in the development of those aspects of the new system relevant to our monitoring. Should this timeline hold, we will wait until the new system comes on line before expecting reports based on this changed cohort. If Defendants lag substantially behind this timeline, we will consider ways to alter the cohort before the new data system is finalized.

information for this report, it is important that we have this information on a routine rather than ad hoc basis.[4]

3. "Clean cases"

There is one area in which we currently have not yet reached agreement with Defendants: the concept of "clean cases" introduced by DoHMH.

Under this approach, Defendants exclude from their denominators on time-sensitive measures cases for which the timelines are interrupted for a legitimate reason, for example court appearances. We reject this approach and assert that Defendants should "stop the clock" on these cases for the period of time a Class Member is unavailable for a given task and then restart the clock when he or she then again becomes available.[5] In our last report, we suggested a method for dealing with this issue: a calculation of the number of days the Class Member was "at risk" for a given service or task.

Defendants object to this formulation on both technical and conceptual grounds. First, they point out that their current database is not capable of conducting such complex calculations; second, they note that it is not essential to account for each and every case, and assert that part of our role as experts is to account for the obstacles inherent in

[4] Defendants note that providing this information is time consuming and suggest, in their comments to the draft report that they "comply in a prioritized and incremental manner." While we are mindful of the demands made upon Defendants, this information is essential to our understanding of the data overall. We will promptly suggest ways in which Defendant might accomplish this essential task both in the new data system they will develop and in the interim.

[5] Class Counsel suggests that this approach unfairly permits Defendants to gain additional time allowances where a Class Member was unavailable for a given service even though Defendants were legitimately making no attempts to provide this service during the period of Class Member unavaibility. An example would be where a Class Member housed in General Population has a court appearance on day 3 of the 15 day period to complete a CTDP/DSN. This interruption would not hinder Defendants' ability to perform the required task within the allotted time because they would not be seeking the Class Member on day 3 to complete and review the CDTP. This situation is in contrast to a situation where a Class Member has an unscheduled court appearance on day 14 of the 15 day period and Defendants seek to evaluate the Class Member on that day but cannot do so because of the previously unknown court appearance. We have sympathy with the issue as raised by Class Counsel here, particularly because such a large number of Class Members will at minimum have court appearances early on in their incarceration. We intend to work with Defendants as they develop the new data system to account for these complex variables.

providing services within the correctional host environment. In their comments, Defendants raised the following additional objections to our approach to this issue:

(a) The "clean case" approach "ensures that compliance is being appropriately assessed for all cases that did not have a 'legitimate interruption,' which is [in Defendants' view] the intent of the PI."

(b) "[I]n developing plans of correction, [including cases which did have interruptions]… it… becomes burdensome to sort through cases that require some improvement with those that cannot be improved upon by virtue of the circumstance."

(c) "From an operational standpoint, trying to accommodate those who had legitimate interruptions may undermine efforts to keep the majority with stated timelines."

We address Defendants' concerns in turn. As to the technical issue, we accept the assertion that Defendants' current database does not have the technical capacity to perform the analysis we think necessary. When DoHMH moves to their new database system, we expect that they will be able to provide a day-by-day accounting for each case, thus eliminating any potential technical problem.

We recognize our role of applying our knowledge to the analysis and that the concept of substantial compliance, by definition, entails less than 100% accuracy. However, applying these principles leads us to the opposite conclusion. We do not object to the exclusion of "unclean" (i.e., interrupted) cases because it causes the sample to be less than 100%. Rather we find this unacceptable *precisely because of our knowledge of the nature of providing services in a correctional system*: tasks which are interrupted by events such as hospitalization or court appearances are, in our experience, more likely to

"fall through the cracks" of the system than are tasks done in order and within the timeframes to which the system is routinely accustomed. Thus, our objection to this approach is based upon our opinion that these cases may be qualitatively distinct from the universe of "clean cases" and that, therefore, systematic exclusion of these cases may artificially elevate Defendants' rates of compliance. Further, we already account for these obstacles in two ways: expected rates of compliance are not 100%, and we would permit the tolling of the clock for the time a Class Member is unavailable.

Moreover, we reject Defendants' additional rationales for persisting in this method of measuring compliance. First, our intention in authoring the performance measures related to timeliness was not to ensure that Defendants meet their obligations only for uninterrupted cases; rather, it was to fairly account for these difficulties in the calculation of expected rates of compliance.

Second, because, based upon our experience, we believe that significantly interrupted cases may be qualitatively distinct from more routine situations, corrective plans must take these interruptions specifically into account rather than ignoring them. For example, if Defendants were to find that CDTP's were frequently completed late or not at all for Class Members who had court appearances for multiple days in the last week of the allotted timeframe for completion of the CDTP, they might institute a system to "flag" such cases in the receiving room and complete this task on the 3-11 shift following court. If, however, in contrast, Defendants were to find that the preponderance of their difficulties in timely completion obtained in cases without such interruptions, they might correctly focus remedial efforts on their general tracking system.

Third, we do not accept the assertion that such "interrupted cases" are "outliers" in the sense of being rare or unexpected events. Indeed, court appearances are the norm, not the exception, for inmates early in an incarceration. Additionally, given the multi-problem nature of the correctional population, issues such as medical appointments and hospital stays are certainly to be expected when developing service delivery models in this environment. Some of these interruptions make a dramatic difference (e.g. a court process on day 15 of the CTDP time period). Other interruptions, which may last longer, do not make a difference in completing a given task (e.g. a court process on days 3-7 of the 15 day CTDP time period. Accounting for all of these interruptions in the same way is unacceptable. Furthermore, a data reporting protocol that does not account for these cases is unacceptable.

Simply put, we reject the notion that cases with interruptions are fairly excluded from compliance calculations.

We propose the following possible ways of dealing of this issue. Until Defendants move to the new database they expect to have in place by the end of the year, we request that they provide us with the number of cases they excluded from each denominator because of a delay. This, in conjunction with the move to contemporaneous reporting of tasks by month discussed above, should permit us to have a true reading of the number of Class Members potentially entitled to a particular service or task in any given month.

One way to approach an understanding of the meaning of these cases would be for Defendants to provide us with the name, book and case number and NYSID number of each Class Member being excluded for this reason. We could then conduct targeted chart reviews on a statistically significant sample to ascertain how Defendants' compliance for

this subset of the population compares to their compliance for the non-excluded group for any given task. If the rate of compliance for any task is above or below the rate for the rest of the population in a statistically significant manner, we will consult with our statistical expert as to how we can accurately distribute these cases and thus calculation an accurate compliance rate which takes this group into account.[6]

A second and perhaps simpler way to deal with these cases would be to conduct two separate analyses and to report a range of compliance rather than a simple number. Thus, if Defendants reported 75% compliance on a task (say, 300 of 400), and they reported that 100 individuals were excluded because of a legitimate time delay for court or medical reasons, we could report that their compliance was between 75% (300 of 400) and 60% (300 of 500). This latter value would include the assumption that, at worst, none of the 100 excluded cases had the task completed in a timely fashion with a tolling of the clock. Further, this calculation would include an assumption that Defendants' compliance on the 100 excluded cases *did not exceed* their baseline compliance rate. Our report would indicate that Defendants compliance on this task was in the 60-75% range.[7]

Related to, but distinct from, the issue of agreed upon definition addressed by the Data Dictionary is the issue of the integrity of the data provided. The two main areas of concern are

[6] While expressing differing overall views on this subject, both parties are unopposed to our review of a sample of these records and Defendants agree to provide the identifying data which such a review would require. We will proceed with this approach without in any fashion conceding that it is appropriate to exclude such cases from more systematic data reporting.

[7] Defendants comment that "[i]f the 'not clean' cases are factored in, it muddles the performance level by combining those who should have received a timely service with those who were not available to receive a timely service." We disagree and assert that our approach that would permit "tolling" of the clock where appropriate would provide Defendants and us with a more complete picture of the "real world" of jail discharge planning. It is inaccurate to claim that Defendants have achieved, for example, a compliance rate of 85%, when 20% of the cases were dropped from the analysis for an early unavailability that should not have interfered with the completion of the task.

- the way in which data is collected and entered into the system, and
- the quality of the database which manipulates those data to produce reports.

Our data expert reviewed Defendants database. While not comprehensive or particularly sophisticated, he found this database to be adequate. The structure is simple, with a limited number of tables, and with most data coming from a table representing class members with one row per member. The advantage of this simplicity is that processing errors are unlikely and data extraction and reporting are simple. The disadvantage of this is that the database cannot accurately capture data for class members whose history does not match the simple data structure. In a system with such a simple structure, the burden of capturing data accurately falls on the data collection and data entry processes, rather than on the database itself. A more complex database, which could capture class member data in more detail and with more complexity,

- could reduce the number of class members whose data is not "clean" and therefore could not be applied to a performance indicator; and
- would allow for more examination of data quality through analysis, instead of relying on procedural review of the data collection and entry processes (as is now the case).

Given that the database appears adequate at present, we are left with the unexplored questions regarding the quality and reliability of the data collection and data entry procedures. We intend to work with Defendants to develop a method for evaluating the data entry procedure. We began to examine the fidelity of the data contained in Citrix to that contained in the medical record (see below at page 39).

As discussed, plans are underway for an upgrade of the data system, which may address many of these issues. DoHMH informed us that they selected a vendor to develop this new system and they will now be entering into negotiations to conclude a contract for this important service. They expect that this process will take two to three months to complete

and that the product could be operational by the end of the year. We strongly encourage this critical development and also note the importance of including our suggestions and taking into account our queries so that this new system can address the issues we have raised. Should Defendants permit, we and our staff will collaborate with DoHMH as this system is in development.

An ongoing concern, however, is data coming from agencies other than DoHMH. Currently, these do not have even the database infrastructure of DoHMH (or, if they do, Defendant have not provided it to us), and thus the source and accuracy of their data are less transparent than DoHMH. This is true even when DoHMH is the conduit through which we receive data from other agencies. This last point is directly tied into our continued inability to compare data sets from two sources (e.g. HRA and DoHMH). We do not expect that the new database will directly address this issue.

One simple way of attempting to reconcile these two data sets in the short term would be for DoHMH to forward to HRA a list of the Class Members who comprise the cohort about which they are reporting on. HRA, then, could match this list with their information and report on the same cohort for their measures. This approach, it would seem to us, could at least as a temporary measure permit some rudimentary comparison between the data sets. Defendants note that they attempted this method and did not find it fruitful. The complex task of providing discharge planning for Class Members is fundamentally a multi-agency process, requiring coordination of various systems to work effectively. For this reason, the ability to compare and analyze data from disparate agencies is essential for both operational and monitoring purposes. As a result, if Defendants are unable to provide us with comparative and comparable data sets between these two agencies, we will need to examine HRA's data

collection and generation system. This will enable us to obtain a more complete understanding of the process by which their reports are generated so that we may fully understand compliance on the measures that rely on these reports. In addition, this process will assist us in our understanding of the data HRA produces which forms the context for understanding the compliance rates reported by other agencies.

II. Process

A. Activities of the Monitors

During this reporting period, we conducted a series of meetings including the data managers from DoHMH and our database expert. These meetings focused on a very detailed review of the data dictionary in draft form, and they ended with the recent publication of the data dictionary.[8]

In addition, we continued our ongoing work interviewing Class Members and reviewing their medical records. We began to more intensively review Class Members' records contained in the Citrix database.

During this period, we also continued to pilot and refine our appropriateness measures (see below).

Finally, we continued to hold monthly meetings with DoHMH to review their progress toward implementing multiple changes in the system, including changes targeting the process of discharge planning, as well as the data reporting process and the meaning of the actual data as it reflects on this progress. We also held *ad hoc* meetings and phone conferences with other Defendant agencies.

[8] It should be recognized, however, that as we continue working with the database, we will be updating the data dictionary to more accurately provide us with data required for our evaluation of Defendants' performance. Some of our suggestions regarding these alterations are included throughout this report; others will shortly be presented to DoHMH in a more comprehensive manner.

B. Confidentiality and Access to Records

During this reporting period, Defendants commenced implementation of the agreed confidentiality and disclosure form and accompanying policy, as described in the February 7, 2005, report. We and our staff began requesting that Class Members sign this form when we meet with them, and we understand that line staff started including the consent form as a part of the paperwork included in the initial Comprehensive Treatment and Discharge Plan ("CTDP") meeting, as per the policy.[9] Over time, we expect that an increasing number of the records we require for review will contain already executed consents for release of information. This will improve our ability to access records rapidly, and it will also reduce any burden on Defendants' staff associated with our review of medical, mental health and discharge planning records.

C. Access to Social Security, Veteran's and Food Stamps 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. In addition, the Stipulation, at ¶86, requires Defendants to explore the feasibility of establishing a system to obtain food stamps for Class Members. We included a detailed discussion of Defendants' prior efforts regarding these benefits in our previous reports and reference those discussions here.

On April 20, we held a meeting with Defendants to review their continuing efforts to develop needed linkages in order to ensure that Class Members have access to needed

[9] Late in the reporting period, we learned that the staff was not using this form in one of the jails. DoHMH reported that would hold a meeting with the staff in this jail to ensure that they implemented the policy.

benefits, including Social Security, Veterans and Food Stamps benefits. Defendants reported as follows:

Social Security Benefits – Reinstatement of Benefits

Defendants indicated that they have begun to explore the use of the "bounty agreement" as a potential way to identify Class Members who might be eligible for reinstatement of benefits. In our February 7, 2005 report, we noted that Defendants had reported to us that they were beginning to explore the information technology requirements needed to conduct the information transfer electronically. As of that time, Defendants indicated that DOC had "requested a status report from SSA staff and is awaiting a response." In their comments to the draft Report, Defendants reported that they have "succeeded in transforming the transmission of bounty information from SSA from a manual paper transmission to an electronic transfer between SSA and DOC. This electronic transfer sets the platform for inclusion of such information on an inmate record in the IIS and identifying an inmate's status as a candidate for reinstatement for DOC and DOHMH staff." We anticipate learning more about the utility of this arrangement for the identification of Class Members eligible for reinstatement of benefits over the next reporting cycle.

In our April 20, 2005 meeting, Defendants expressed their preference for an electronic data sharing capacity, both for use in reporting newly incarcerated inmates to SSA and in assisting potential beneficiaries in having their benefits reinstated before or shortly after release. Defendants reported that they have a contract for new programming within the IIS. They advised us that this contract involves many issues within and beyond the scope of the Brad H. requirements, and that it will be a long process. In their

comments, Defendants further noted that this consultant "will be available to start work part-time in mid-June, but is committed to working on a long list of projects in the DOC queue, including several items (maintenance changes essential to keeping the IIS functioning, and other time-sensitive, litigation-driven requirements) which must be addressed immediately. DOC is devising a priority schedule for this work over the summer months. We are exploring whether and how DOC can structure the Brad H programming work as part of this summer project schedule to avoid undue delay."

In our last report, we also noted that the SSA had granted permission to make a phone call the day prior to release to the SSA Field Office to schedule an appointment for reinstatement. Defendants reported in their comments that "[they]are working with DOHMH to institute a system of telephone calls to SSA on the day prior to Rikers release for purposes of SSI re-instatement, when applicable, for Class Members. This approach is dependent, however, on the ability to clearly identify those SPMIs eligible for reinstatement." Thus, in principle, upon the development of the an improved capacity to identify candidates for reinstatement, in part related to the electronic data transfer described above, this telephone procedure would provide a mechanism for assisting those identified in obtaining the needed benefits. During the April 20, 2005, meeting, Defendants reported no progress in this regard other than to indicate that they planned to include this issue in their upcoming meeting with SSA (perhaps as soon as May 9, 2005).

In our meeting of April 20 Defendants agreed that in addition to these interagency procedures, it would probably be useful to inform Class Members that they could simply walk into their local SSA office and have their benefits reinstated following release in the event that no other prior arrangements were put in place by discharge planning staff.

Social Security Benefits – New Applications

In our last two reports, we have suggested that Defendants pursue the development of an Institutional Agreement with SSA. During our April 20, 2005, meeting, Defendants indicated that they believed there may be some problems developing this agreement because of "SSA's concerns about lead time before release". SSA reportedly has developed an agreement with the State DOC, which is able to provide much more lead time prior to a predictable release than is the case within the City DOC. In addition, Defendants reported on some of what they have learned regarding an SSA Field Office inreach to a State Prison located within the City.

In a letter dated May 12, 2005 addressed to Class Counsel, Defendants described their communication with "individuals involved in discharge planning in the New York State prisons." They identified a number of problems[10] faced by the State prisons in obtaining SSI for state inmates nearing release, including:

- Inadequate lead time prior to release, primarily because parole board hearings which result in a release within "2 weeks to 2 months" after the hearing. This is outside of the 90-120 day lead time preferred by SSA.
- A very low approval rate before or after release.
- Problems contacting inmates after release.
- "OTDA requir[ing] an overly-diligent pursuit of all medical records regarding an applicant's disability and treatment."
- OTDA being "overburdened and frequently delayed in its responses."

In their comments to the draft Report, Defendants noted that "SSA has expressed a preference for providing phone assistance, rather than on-site assistance, as a way to maximize productivity as they look to incorporate this work into their daily schedule of

[10] Class Counsel, in comments to this Report, note correctly that Defendants are not obligated to ensure that Class Members *obtain* benefits. Rather, ¶87 requires Defendants "to assist Class Members in obtaining… benefits". In Class Counsel's words, Defendants' "focus must be on completing and submitting applications as that is the extent of their commitment under the settlement agreement." Thus, these problems, inasmuch as they interfere with successful *completion* of the application and eligibility determination process, do not preclude Defendants from seeking ways to assist Class Members in *initiating* the application process.

application appointments for the general public." At the May 9, 2005 meeting, during which representatives from the Astoria SSA Field Office were present, Defendants and SSA developed a

> "framework for telephone assistance by SSA staff from its Astoria field office, which will be less formal than the institutional arrangement recommended by the Monitors, but a process that, once tested, we may likely need to codify.
>
> "Under this arrangement, defendants would need to provide the Astoria SSA Field Office with a list of SPMI Brad H. Class Members for screening. Astoria will review each name for SSI status and on the basis of outcome, will arrange for either the initiation of applications or of reinstatements by way of telephone interviews. SSA indicates that each application assistance encounter will require 1½ hours on the telephone. Astoria will forward applications to OTDA for review of the disability claim and will require defendants to provide signed medical releases as well as available health information from Rikers for each Class Member. The date on which the screening list is sent to the Astoria Field Office, whether by fax or by e-mail, will be deemed the protective filing date for the applicant."[11]

Defendants itemize several potential logistical barriers to successful implementation of this procedure, which is clearly analogous to the Medicaid prescreening-application procedures described in the Stipulation.[12] These barriers include:

- arranging for adequate and somewhat private space for such interviews. This item will require detailed planning by DOC and DOHMH to address security and logistics issues in the Rikers setting.
- Providing the SSA office with a screening list in advance of such phone interviews that identify potential applicants with specific demographics, such as name, social security number, date of birth, post-release contact address.[13]
- Providing viable post-release contact information to SSA for follow-up regarding the application and/or medical information.
- Having a designated and ready contact at Rikers facilities to arrange the phone interview appointments, prepare inmates for such encounters, provide update

[11] Time will tell if these arrangements are adequate to the need presented by inmates with mental illness housed in DOC facilities on Rikers. We note here for consideration that this procedure, which hinges on the collaboration of the Astoria Field Office, may not attend to the needs of Class Members housed in DOC facilities located off Rikers Island (currently VCBC and BBKC, as well as the prison wards if Justice Braun's holding is upheld on appeal). We suggest Defendants approach other field offices to assist with Class Members housed in other facilities if this arrangement with the Astoria office proves successful.

[12] We recommend that Defendants consider the broadening of the prescreening process and forms to include information required both by HRA for use in Medicaid prescreening and by SSA for use in screening for previous eligibility for benefits. We note that we previously identified this analogy in our Fifth Report (October 13, 2005) at p. 18.

[13] Again, we suggest that the Medicaid prescreening form contains all the required information for this process.

information as may be requested by SSA while the inmate remains incarcerated and confirm the actual release of any inmate assisted through this telephone process.[14]

- Setting the threshold length of stay group for whom this approach would be appropriate. SSA has indicated that they would likely only pursue this phone application assistance for inmates whose length of stay exceeds 30 days, and would ideally want to work with inmates with lengths of stays of 90 to 120 days.[15]

Defendants further reported that the SSA HOPE (Homeless Outreach Projects and Evaluation) grantees, the Fortune Society and Phase Piggy Back, had just recently conducted their first inreach sessions within the DOC facilities. These grantees each met with eight individuals identified as Seriously and Persistently Mentally Ill ("SPMI") and homeless. Each grantee met its quota under the grant, but each said it wanted to continue working within the DOC in order to assist more clients. Defendants indicated that they believe that the grantees are funded to complete the initial application and to assist the applicant in moving through the process until s/he receives benefits (presumably including filing necessary appeals, transporting applicants to appointments, etc.).

Defendants readily recognized that this is a more comprehensive approach than any they can take alone. For example, while a jail-based discharge planner can assist a Class Member in completing an application, the Class Member would be responsible for making any appointments or filing any appeals later on. Similarly, while SPAN or HRA

[14] It appears to us that this task would be ideally delegated to the master's level discharge planning staff, who should be able to both gather and organize the needed information and to provide the necessary support to the Class Member through this process.

[15] We recognize that SSA prefers to have several months during which to process applications. Should Defendants wish to pilot this procedure with city-sentenced Class Members who are SPMI, generally housed in RMSC and EMTC (both of which are fully operational in the "new model" – see below), we would support this during the initial implementation phase. However, over time, we would expect to see this broadened to all Class Members who are SPMI; even if it is unlikely that the process will be completed during the incarceration, this is no reason not to begin the process, which will protect the filing date for benefits once eligibility is granted. In addition, even for those Class Members released shortly after the application is completed, needed follow up may be coordinated by LINK, defined in the stipulation as "Case Management Services contracted for by Defendants in which LINK workers meet with clients during their transition from a City Jail to the community to assist them in gaining access to needed services."

staff can recommend that a Class Member file an application for SSA benefits, they cannot follow the person through the process or assist in appeals. Defendants indicated in their response memo to us on April 25, 2005, that they would provide us with documentation regarding the "scope of work for the HOPE grantees" so that we will have a fuller picture of what these agencies do in assisting Class Members in applying for benefits.

On May 16, 2005, the date of our draft Report, Defendants provided us with documentation regarding the HOPE grants.[16] We have now reviewed this document. The services to be provided by the grantees include:

- Conduct outreach activities to locate homeless individuals with disabling impairments
- Provide direct assistance to homeless individuals in the application process, including
    - Scheduling appointments to apply for benefits
    - Understanding the need to sign the forms
    - Completing application paperwork
    - Communicating effectively with SSA when filing claims
- Assist claimants in finding needed documentation
- Provide existing medical evidence
- Arrange for any necessary medical examinations
- Assist claimants in attending consultative examinations
- Provide information regarding the effect that a claimant's impairment has on ability to perform work
- Maintain contact with claimant throughout the determination process and help claimant respond to requests for further information
- Assist claimants with filing appeals
- Assist claimants with participating in electronic applications
- Collaborate with other organizations as necessary[17]

Grantee agencies are permitted to "establish and implement pre-release procedures"[18] as well.

[16] Social Security Administration. Program: Cooperative Agreements for Homeless Outreach Projects and Evaluation (HOPE); Program Announcement No. SSA-OPDR-03-02. Federal Register: September 26, 2003, Volume 68, Number 187, Pages 55698-55709.
[17] Ibid, at 55702.

It is evident that the grantees provide notable support to Defendants in linking a limited number of Class Members with SSA benefits. These grantee agencies are only obligated to serve 16 inmates. The scope of service further limits the target population to homeless individuals. For those individual Class Members served by the grantee agencies, however, the services are comprehensive. In conclusion, these grants can be instructive to Defendants in demonstrating that homeless Class Members may successfully obtain needed benefits. We encourage Defendants to replicate these efforts to the overall group of Class Members whom they believe may be entitled to SSI.

Social Security Benefits – Conclusion and Recommendations

As noted above, Defendants held a follow up meeting with SSA on May 9, 2005. In their comments to the draft Report, they provided us with more information regarding their efforts to link Class Members to benefits available through SSA. They advised us that they intend to review all of the above issues with SSA, now that they have "demonstrated an ability to identify potential candidates" for SSA benefits. In our draft Report, we suggested that Defendants

- continue to pursue an Institutional Prerelease Agreement,[19]
- again raise the issue of SSA staff being "outstationed" to Rikers Island and other DOC facilities, and
- consider ways to expand the reportedly successful initial inreach visits by the HOPE grantees.

In addition, we encourage Defendants to prioritize the technological improvements to the IIS that are integral to serving the needs of the population of Class Members. Until

[18] Ibid, at 55703.
[19] Defendants have apparently concluded that they will not be able to develop an institutional agreement. We are not concerned with the style of the working agreement with SSA. If Defendants are able to develop any workable solution that results in the outcome of interest, it would be acceptable to us.

Defendant implement these improvements and relatively easy data sharing with SSA is possible, we suggest that Defendants

- develop a mechanism to use the information provided to SSA for bounty purposes to also identify individuals who might be eligible for reinstatement of benefits upon release;
- consider ways to use this information in efforts to encourage the Class Member to independently apply for or seek reinstatement of benefits;
- consider ways to use SPAN office staff to assist potential SSA beneficiaries in applying for benefits or seeking reinstatement;
- develop a mechanism for the completion of phone applications for SSA benefits for potential beneficiaries.

Finally, we recognize that SSA may have difficulty coping with the short and unpredictable length of stay inherent in the DOC. However, this problem is inherent in any local jail. We strongly encourage Defendants to explore whether other local jails have successfully negotiated Institutional Agreements despite the short and unpredictable length of stay.[20] We made some suggestions in this vein in our February 7, 2005 report, and we reiterate them here. We commend Defendants for their communication with State prison staff regarding the SSI process and encourage them to continue to pursue all leads.

Veterans Benefits

In our February 7, 2005, report, we indicated that Defendants had developed a contact within the Veteran's Administration ("VA")A to assist in determining if inmates reporting military veteran status were eligible for VA benefits. In part, DOC intends to solve some of the recordkeeping aspects of this process by improving this aspect of the IIS in the aforementioned IT improvement contract.

During our April 20, 2005, meeting, Defendants reported that they forwarded to the VA the names of over 700 inmates reporting veteran status and providing a social

[20] Defendants, in comments, reported that they have learned that most of the discharge planning work and benefits-linkage done in LA County is conducted on the day of release in a social services center outside the jail system. They are continuing to attempt to make contact with the Cook County (Chicago) system.

security number.[21] Of these names, only 14 (2%) were found by the VA to be veterans under the SSN provided. It is not at all clear that this finding indicates that only 2% of those reporting prior military service are actually veterans. Rather, it may reflect that the people polled reported an inaccurate social security number.[22] As a follow up, Defendants plan to have a meeting with representatives from the VA to determine how to deal with this problem. One possible solution Defendants intend to pursue is to request that VA benefits advisors come into DOC to meet with identified veterans to assist them in seeking benefits where appropriate. Defendants recognize that it is their burden to identify veterans, but they are hopeful that the VA will then assist the veteran in pursuing benefits. We suggested that Defendants consider broadening the scope of inquiry to include other support services available to veterans including, for example, so-called "Vet Centers".

In comments, Defendants reported that they have initiated contact with Vet Centers and within the VA regarding "the possibility of having VA benefits advisors visiting Rikers jails, speaking with inmates who self-report as veterans, establishing a relationship with these individuals, and then performing a follow-up data match against VA records which, once vet status is confirmed, would be followed up with another face-to-face meeting for either the reinstatement of establishment of veterans benefits. We are

[21] The SSN is the required unique identifier used by the VA system.

[22] Indeed, as we noted in previous reports the Department of Justice found in 2000 that "at the end of 1998 there were an estimated 225,700 veterans in the nation's prisons and jails. About 13 percent of state prison inmates, 15 percent of federal inmates and 12 percent of local jail inmates reported having served in the U.S. armed forces. These data are based on personal interviews with nationally representative samples of prison and jail inmates during which they provided information about their military service and criminal and personal backgrounds." Additionally, a 2003 study by McGuire, Rosenheck and Kasprow of veterans incarcerated in the Los Angeles jail system was able to identify 1,676 veterans incarcerated in that system between May 1, 1997 and October 1, 1999. They did so through a VA outreach program, Greater Los Angeles Healthcare System, which according to the article performs assessments of veterans in both community and jail settings. McGuire, J, Rosenheck, R, Kasprow, W, Psychiatric Services 54:201-207, February 2003.. While veterans may be incarcerated at distinct rates in different jurisdictions, all the data of which we are aware indicates that some significant sub-group of Class Members ought to be veterans in the NYC DOC.

confirming a meeting with VA representatives to further understand the working elements of this approach on June 6th."

Food Stamps

In our April 20, 2005, meeting, Defendants advised us that "HRA has started a conversation with the State" regarding the possibility of a waiver from USDA. Since that meeting, in their April 25, 2005 response to our queries for this report, Defendants further advised that "HRA is continuing to work with the New York State Office of Temporary and Disability Assistance to obtain the requisite waiver from the United States Department of Agriculture to permit submission and pending the processing of Food Stamp applications for Brad H class members while they are incarcerated."[23] Defendants also reported that they considered Class Counsel's suggestion that the waiver might not be needed. Class Counsel cited the joint SSI/FS application, which apparently can be filed prior to release.[24] Defendants reported that this procedure does not work because it requires SSA to forward the Food Stamp Application to the local jurisdiction – and according to Defendants' research, SSA is not doing so.[25] Finally, Defendants indicated that they are "exploring the feasibility of submitting a faxed Food Stamp application to HRA on the day of release," per Class Counsel's suggestion. We posed several clarifying questions on these issues, including a request for a "timeline or estimate for

[23] By email on May 16, 2005, Defendants advised us that a waiver request was submitted to USDA on May 5, 2005. These requests are typically handled by USDA within 45-60 days. We will more fully explore this process, discuss it with the Parties, and modify this section of the final report as indicated.

[24] By email on May 16, 2005, Defendants informed us that "Under 7 CFR 273.2(c)(1) institutionalized individuals can apply simultaneously for SSI and Food Stamps. However, unlike a joint PA/ Food Stamp application made to the local social services district, the SSI/ Food Stamp application goes to the Social Security Administration directly. SSA later forwards the Food Stamp application to the local social services district. The local district is then directed to consider the date of release as the application date. See, 7 CFR 273.2(g). There is also information in the federal register at 54 FR 4249 explaining the application process."

[25] We request more information in the coming reporting period regarding this research and its findings. If SSA is failing to comply with its requirements in this regard, we request information regarding Defendants efforts to remedy this situation.

determination" regarding this suggestion. Defendants responded in a May 16, 2005 email that DoHMH and HRA are working together on this issue but did not provide a timeline as to when a procedure might be developed or implemented. Further, Defendants reported that in their March meeting, Class Counsel indicated that faxing of these applications was "merely a 'stop gap' measure. In light of this position, defendants assert that any efforts undertaken by [Defendants] in this connection are, by Class Counsel's own characterization, not required by the Settlement and, thus, purely voluntary. As such these efforts should not be subject to compliance review by the monitors at this time."

We disagree with Defendants' assertion. According to ¶86, "Defendants shall explore the feasibility of establishing a system that would permit Class Members to submit Food Stamps applications before their release date…." Irrespective of Class Counsel's position regarding this procedure for applying for Food Stamps, it is ultimately our role to determine whether Defendants sufficiently explored the feasibility of establishing the system needed. Therefore, if faxed applications are to be considered as a part of this system, then they clearly are included in this requirement. The development of this (or any other) system to assist Class Members in applying for Food Stamps falls within our purview.

Defendants, in their comments to the draft Report, stated:

> "HRA made its best efforts to obtain the proper waiver. Unfortunately, the process is complicated and involves other government agencies over which HRA has no control. Defendants also disagree that there is a lack of communication with HRA on this issue. The waiver process required submissions to both the state and federal government and a waiting period for responses. During that waiting period, there was nothing to report the Monitors. As you have been advised, the waiver was sent to the USDA and a response is pending."

Class Counsel, in their comments, stated:

> "We cannot understand why Defendants have gone through the cumbersome process of seeking a USDA waiver, since we cannot see what USDA regulation or policy stands in the way of applying for Food Stamps prior to release, and Defendants have articulated none. Their former excuses about the WMS seem to have evaporated after many months of reiteration. Defendants report that the joint SSI/FS application which can be filed prior to release does not work because SSA is required to forward the Food Stamps application to HRA. We question why the Defendants cannot send the Food Stamps application directly to HRA. We suggest that they begin this procedure. In addition, Defendants have failed to implement our suggestion to fax a Food Stamps application on the day of release but instead state that they are exploring the feasibility of doing so. It is unacceptable that they have taken no action."

Conclusions

In conclusion, we are pleased with the efforts that Defendants are finally exerting in these directions. We recognize the difficulty of the position that Defendants are in, given that in each of these areas, multiple agencies in different jurisdictions are involved. We share the frustration expressed by both Parties with the slow pace of progress.

However, Defendants are not demonstrating the proactive approach we requested to communicating with us about their progress, the obstacles they face in expediting it, and their efforts to overcome those obstacles. We know that coordinating with other agencies at state and federal levels is a complex and at times exasperating task. That is the reason Defendants must act more assertively if they are to have any hope of resolving the barriers they face in linking Class Members to these benefits.

We conclude that it is feasible to assess Class Members' eligibility for SSI and VA benefits and to submit needed applications on behalf of eligible Class Members (per ¶87),[26] and therefore we will be monitoring the efforts exerted by Defendants to develop

[26] Defendants take issue with this conclusion. Specifically, in their comments, they argue that "it is premature for the Monitors to render a conclusion at this time that it is feasible to execute a system and process for assessment of Class Members' eligibility until a practical and workable structure and process has been developed and tested."

and implement the necessary procedures. Further, we conclude that Defendants did not over this reporting period put forth best efforts with regard to Food Stamps.

- Defendants are not assertively pushing the issue internally. With the exception of filing for a wavier, we can identify no real movement since our last report on this issue.
- Defendants are not pursuing what seems to be a reasonable suggestion made by Class Counsel with the vigor that we expect, or sufficiently explained why it is not worth pursuing.

Finally, Defendants are not affirmatively communicating their progress on any of these issues to us, but rather are awaiting our queries.

Defendants disagree with our finding regarding Food Stamps, while Class Counsel agree with our finding. Given the widely disparate views on this issue, we believe that the quickest and most efficacious way to resolve it is in a joint meeting focusing only on this issue among relevant Defendant agencies, Class Counsel, and ourselves. We intend to schedule this meeting immediately upon the publication of this report.

We hesitate in making these findings, because Defendants are moving, however slowly, in a positive direction. Our intent here is to indicate that while Defendants are exerting effort, they do not, in our view, represent the resolute quality which we equate with "best efforts." More importantly, in our view Defendants are not putting forth the level of effort which will be required if success is to ensue. We will amend these findings in future reports should Defendants demonstrate a more assertive and affirmative approach to these issues.

D. Reorganization within DoHMH

1. Changes at Executive and Administrative Levels within Defendant Agencies

We recently learned that the Director of the Division of Health Care Access and Improvement ("HCAI") within DoHMH, under whose guidance many of the

improvements to the discharge planning system have been made, has stepped down effective mid June, 2005. Similarly, effective April 29, 2004, the Medical Director for Psychiatry within Prison Health Services resigned her position. These changes are important, in that they represent both risk and opportunity for Defendants. Finding appropriate replacements for these positions is essential if Defendants are to consolidate the improvements made to date and build upon them over the coming period.[27]

2. Structural Changes and Implementation of the New Plan

DoHMH reported that they are continuing to push forward with efforts to implement the "new model" of integrated discharge planning. Despite continued recruitment and retention difficulties, Defendants extended the new model to two new jails during this period. However, there was no net gain in overall staffing; in fact, there is one more vacancy now than we reported in our last report.

Table 1. Progress toward complete implementation of new discharge planning model during current reporting period.

FACILITY	Model		Masters level dcp staff				Bachelors level dcp staff			
	new or old?		filled positions		vacant positions		filled positions		vacant positions	
	February 7 report	June 6 report	February 7 report	June 6 report	February 7 report	June 6 report	February 7 report	June 6 report	February 7 report	June 6 report
AMKC (C-71)	NEW	NEW	3	3	0	0	2	2	1	1
AMKC (C-95)	NEW	NEW	5	**4**	0	**2**	3	**2**	0	**1**
ARDC	PARTIAL	PARTIAL	1	1	1	1	1	1	1	1
EMTC	NEW	NEW	3	3	0	0	3	3	0	0
GMDC	PARTIAL	PARTIAL	1	1	2	1	2	2	0	0
GRVC	OLD	NEW	0	0.5	1	0	1	1	0	0
NIC/ WEST	OLD	NEW	0	0.5	1	0	1	1	0	0
OBCC	OLD	OLD	0	0	2	2	2	2	0	0
RMSC	NEW	NEW	5	5	0	0	3	3	0	0
BBKC	NEW	NEW	1	0	0	1	1	1	0	0
VCBC	OLD	OLD	0	1	1	1	1	1	0	0
TOTALS			19	19	8	8	20	19	2	3

[27] In a meeting with DoHMH on May 25, 2005, we met the interim Director for HCAI. A new Director/Deputy Commissioner has been appointed and will take his position effective July 5, 2005. We are unaware if the Medical Director position within PHS has been filled.

As can be seen in this table, during this reporting period DoHMH converted two jails from the old model to the new, more integrated model of service delivery. Defendants apparently achieved this result despite essentially flat staffing levels (though there is one more vacancy among bachelor's level case workers during this reporting period). We note that Defendants re-deployed one Masters level Social Worker position to work part time in two jails, enabling them to spread the new model without added staff.

Defendants define "partial" implementation as follows: "Caseworkers are assisting Social Workers with appointments and referrals and conversely Social Workers are assisting Case workers with entitlement." The unit previously housed at 346 Broadway was responsible for benefits and for referrals to community agencies. It is now located on Rikers Island. DoHMH is in the process of redeploying staff to Rikers as a result.

We concluded in our February 7, 2005 report that Defendants' progress toward complete implementation of the new model was stalled. We support Defendants' efforts to restructure their staff creatively, as they have done, while remaining concerned about continued difficulties in recruitment and retention. As we have pointed out over an extended period of time, this model is especially relevant to the critical need to follow discharge planning cases longitudinally. Over the long run, Defendants will be unable to provide adequate discharge planning services across the system if they have inadequate staff – in numbers and expertise – to perform the work. At the same time we acknowledge Defendants' efforts in this area, we note clearly that Defendants will need to develop still new approaches to better recruitment and retention if they are succeed.[28]

[28] Typical remedies to this problem involve creating salary incentives for service; opportunities for professional, educational, and career advancement; and improvement in the work environment. Staff required to perform complex professional tasks must be compensated accordingly and must be provided with a professional environment in which to perform these functions.

Defendants did not provide us with "target dates" for implementation of the new model in jails not currently operating under the new model. They indicate that they are unable to provide us with this data as it is contingent on recruitment. They recognize that they face difficult hurdles in filling these positions. We will not ask for this information in the future, and have deleted this column from the table above.

3. Updated Documentation and Policies

Defendants advised us that they undertook a thorough review of the forms used within the mental health and discharge planning programs for the assessment of individuals with mental illness. They further advised us that they completed changes to the forms used by the discharge planning staff and were continuing to work on the forms used by mental health staff. In addition, they initiated a review and update of the policies driving the discharge planning program. As of the date of our draft report, Defendants had not provided us with these forms or policies for our review. On May 17, 2005, DoHMH provided us with revised versions of a revised Discharge Service Needs (DSN) form and a new "Discharge Plan" form. We will ask some clarifying questions and provide comments in the near future. We continue to await copies of other forms which are under development, and any revised policies related to discharge planning and assessment.

4. Communications and other Technology Issues

In previous reports we reviewed extensively the technological problems Defendants face, including difficulties with voice mail, network access, and other forms of telecommunication such as fax machines and pagers. It is our view that Defendants will not be able to completely implement the Stipulation in the absence of dramatic

improvements in these important infrastructure elements, which are part and parcel of any business, health care entity or public service venture in today's world. For example, in some cases, we believe that collateral information is required if staff are to correctly diagnose Class Members, determine their SPMI status, or develop appropriate discharge plans. Given the nature of busy providers both inside the jails and in the community, reliable telecommunication technology is essential to obtaining this information and therefore to perform these tasks.

We recognize, however, that building the necessary infrastructure may not be entirely within any individual Defendant agency's purview, and in addition that creating this infrastructure requires substantial investment. In the end, while we believe these changes would further the care and maintenance of the Class Member and broader DOC population, we are forced to accept current realities in this area.

Voice Mail

Given those limiting realities, Defendants have demonstrated some creativity. For example, in the absence of reliable voice mail at the point of service, Defendants have elected to use a centralized call back number for the Pilot Project required by ¶¶34-35. The use of this number for the pilot project began on March 28, 2005. We anticipate being able to draw some conclusions about the Pilot Project in our next report, which will allow Defendants nearly a six month period of working with the new system.

That said, voice mail is useful for much more than the Pilot Project. In our view, and as we described in our February 7, 2005 report and above, we see both voice mail and email as integral tools in the mental health and discharge planning staff's arsenals.

Without them, we are frankly at a loss to see how discharge planners can hope to develop needed linkages that will be available to Class Members after release.

Our monitoring indicates that significant problems continue in this regard. On April 27, 2005 in the early morning, we contacted 11 phone numbers provided to us by DoHMH. These are phone numbers that are reportedly assigned to discharge planning staff. One of these numbers was a "non-working number in the NY DOC". At six of these numbers, there was neither an answer nor a pickup by a voice mail account. At two numbers, there was a voice mail that simply included the assigned staff member's name but did not indicate the role of that staff member, so we are unable to conclude that this is a discharge planning number or some other staff member.[29] Finally, at two numbers, the call was picked up by a discharge planner. She informed us that one of the numbers has working voice mail, which she or other staff check daily. She indicated that it the voice mail account frequently has messages and that the voice mail is useful in completing her work. At the second number (in the same jail), she indicated that this number did not have working voice mail. Thus, voice mail is working in no more than 3 of 11 (27%) of numbers at this time. If the two non-identified voice mail accounts are in fact not discharge planners, then the voice mail is working at only 1 of 11 numbers called (9%). In comparison, in our past probes of discharge planning staff voice mail accounts, the voice mail was found to be working at between 27% and 47% of the numbers called. Thus the current probe, at best, matches our previously lowest finding.

[29] Even if this is a discharge planner, it is important that the staff member identify him or herself as such so that callers know they have called the right (or wrong) number. Nobody responded to the message we left at either of these numbers to confirm that the voice mail was that of a discharge planner or of some other staff person.

Network

We have only recently begun working with the DoHMH database ("Citrix") with any frequency. Our primary intent is to determine how data in the paper medical record and data in Citrix align with each other. However, in our work with Ctirix, we encountered technological problems with this system. At times, we understand that the "network is down". This very basic deficit is problematic in that it causes access to Citrix to be unreliable. Often, in our experience in the field, when technology becomes unreliable, a staff member who may initially be ill inclined to use it will reject it completely. Thus, what could be a useful adjunct or even the basic framework of all recordkeeping becomes unreliable as staff neglect to use it either for data entry or data retrieval.

DoHMH informed us that staff simply wait until the "network is up" before doing the required data entry. However, this does not address the issue of a discharge planner who has a Class Member in his/her office, for whom the chart is unavailable (as charts frequently are) and who needs information that could be retrieved from Citrix (e.g. status of a prescreening, or of an application for medical assistance or public assistance, or appointments which have been made). The discharge planner has only a limited amount of time with the Class Member, and thus the meeting could become less useful or completely non-useful than it could have been, had the information been available. Given many Class Members' impulsivity and lack of patience, conducting these meetings without timely access to the required information increases the risk that the Class Member will refuse to engage with discharge planners on subsequent visits.

Conclusion

We have been told on many occasions that these problems are simply part and parcel of providing services on Rikers Island, and that a comprehensive remedy would require a complete overhaul to the lines coming onto the Island. We do not view this entirely as a DOC problem. While DOC may be the technical owner of the lines and platforms on which the technologies are built, there are relatively direct ramifications to Defendants' overall compliance with the Stipulation, as outlined in this section. While, again, we recognize that a complete overhaul requires a capital infusion and work that will proceed over years, we believe that this must be given higher priority if Defendants are to achieve substantial compliance with the many aspects of the Stipulation that rely on these technologies. In the interim, we encourage Defendants[30] to aggressively pursue other creative solutions to these problems.[31]

[30] This problem will require the collaborative efforts of at least DOC and DoHMH. Some of our suggestions would require new technology, and some would require policy changes on the part of DOC (e.g. restrictions on electronic devices).

[31] For example, we question the basic assumption that all lines coming onto Rikers Island (or into any other jail) must be "owned" by DOC. Could DoHMH directly contract for dedicated lines?

Another solution might be develop a contract to improve pager technology and to permit mental health and discharge planners to carry pagers that have voice mail options. Discharge planners could be issued portable email/pager devices (e.g. BlackBerry, Sidekick) to be used to receive messages. Many more basic pagers also are capable of receiving brief text messages from email accounts as well as numeric pages from a telephone.

A third option would be to expand the existing centralized call in number by developing a contract with an answering service (human or electronic) to permit a centralized call in number for all discharge planners. These services can be easily found on the Internet. This service would allow anyone wishing to reach a discharge planner to leave a message for that person. If it is manned by a human operator, that operator could email the messages directly to the discharge planners, as we understand is currently being done. If electronic, it would likely require the discharge planner to regularly call in, though some electronic services can produce generic emails to the person called to indicate that "you have a voice mail".

Yet another option might be internet mediated phone service or "VOIP". On March 16, 2005, DoHMH informed us that they were exploring this but were pessimistic because some of the buildings are not hardwired but use Ethernet technology, and they believed that this infrastructure would not support VOIP. However, we have not to date heard about Defendants' ultimate conclusion regarding this potential solution.

This should not be viewed as an exhaustive list but should rather be viewed as examples of the kinds of solutions that can be utilized to resolve this problem.

E. Class Members Hospitalized on Prison Wards

Our question regarding class membership for people housed on the Prison Wards operated by Defendants dates back at least to our Special Report of November 17, 2003. In our report of June 7, 2004 we discussed at length the difficulties this uncertainty presented, and announced our determination, absent agreement by the parties or direction from the Court, that our monitoring authority extended to people housed on these Prison Wards. Consistent with this determination, we sought in June 2004 to conduct a site visit to the Bellevue Hospital Prison. Defendants declined to facilitate this visit on the grounds that the status of the people residing on these units was still to be determined and that they did not concede such patients to be Class Members. Subsequent discussions with the Parties did not lead to a resolution of this matter.

On October 6, 2004, Defendants served us with copies of their Notice of Motion in which they asked the Court to declare unreasonable and vacate our determination that patients residing on the Prison Wards are Class Members under the Stipulation of Settlement, and our intention to monitor Defendants' provision of discharge planning to those individuals. On January 27, 2005 the Court held a conference and heard oral argument on this motion.

On April 19, 2005 we received from Class Counsel an opinion containing Justice Braun's declaration that the "compliance monitors' determination is reasonable to include inmates housed in the forensic units located at Bellevue, Kings County, and Elmhurst Hospitals, and that is reasonable for the compliance monitors to monitor defendants' performance in connection with the settlement agreement as to those inmates."[32]

[32] On or about April 22, we also received Notice of Entry of this opinion as well as Justice Braun's decision and order of April 15, denying Defendants' motion.

Pursuant to this ruling, we commenced internal preparations for monitoring of these units. On April 20, 2005 Defendants indicated to us the likelihood that they would appeal this decision, and that they would then invoke their right to an automatic stay pending resolution of the appeal process.[33] On April 21, 2005, we renewed our request of June, 2004 that Defendants make arrangements for us to conduct a monitoring visit to the Bellevue Hospital Prison Ward on May 4, 2005. Defendants again indicated their likely intention to seek an appeal and reiterated their view that such a visit was, as a result, premature.

On May 16, 2005 Defendants filed a Notice of Appeal from the portion of Justice Braun's Order declaring as reasonable our determination to "include as class members those inmates receiving mental health treatment at one of the forensic units… and to monitor defendants' performance under the settlement agreement in connection therewith." See Appendix C.

On May 23, 2005, Class Counsel informed us that the Parties were before a Judge of the First Department on Class Counsel's motion to have lifted on an interim basis the automatic stay of Justice Braun's Order invoked by Defendants. Judge Betty Weinberg Ellerin's Order of May 23, 2005, denied Plaintiff's motion for interim relief, but ordered an expedited decision on the motion to have the stay lifted. Judge Ellerin also granted the monitors "access to the prison wards in the interim." See Appendix C. The motion was to be decided by the full Court on June 1, 2005.

Following this we requested of Defendants a list of all inmates housed on the Prison Wards, and that Defendants forward to us the records, redacted as required to comply with Justice Braun's confidentiality Order, of each fifth person on that list.

[33] We assume without knowing that relates to the provisions of section 5519 of the CPLR.

Defendants responded that our obtaining records of patients on the prison wards was not authorized by Judge Ellerin's order or discussed with the Court, and that Defendants would not comply with our request for such records.

On the evening of May 26, 2005, we proposed to Defendants that they arrange for us to conduct a monitoring visit the Bellevue Hospital Prison ward at a mutually convenient time We noted that we would be unable to conduct a monitoring visit prior June 1, 2005, the date set for decision of the expedited motion, primarily because of the need to consider the Parties' comments to our draft report and issue a final report by June 6, 2005. As a result, we requested that the Defendants arrange this visit in the two weeks following June 6, 2005.

Subsequently, we had various communications with the Parties, and the Parties exchanged letters to the Court related to this matter. In his May 31 letter to the First Department, Counsel for the Defendants informed the Court that Defendants accepted our proposal that we conduct a monitoring visit to the Bellevue Hospital Prison ward during the specified time period.

On June 2, 2005, the Appellate Division handed down the following ruling on Class Counsel's motion to lift the stay:

> "It is ordered that the motion is granted to the extent of continuing the interim relief granted by order of a Justice of this Court dated May 23, 2005, and clarifying same to indicate that 'access' refers only to the monitors having physical access to the prisoners, and directing that the appeal be perfected for the October 2005 term. The motion is otherwise denied". See Appendix C.

At this time, we will commence monitoring to the extent permitted by the above ruling. We believe that this order permits us to interview inmates housed on prison wards on an ongoing basis until a final decision is made regarding the status of these inmates vis-à-vis class membership. We contacted Defendants requesting a contact person to arrange the logistics of the visit. As of the date of this writing Counsel for the Defendants has not been

able to make specific arrangements for our initial visit, though he indicated by email on June 2, 2005 that he is "relatively confident that a visit can be arranged for next week" as we requested.

F. Supportive Housing and the SPMI Question

On April 8, 2005, in response to our queries, HRA forwarded to us a number of documents including a procedure regarding the processing of HRA 2000 Applications. We held a conference call with Counsel from HRA on April 28, 2005 regarding the connection made between the HRA 2000 and a Class Member's status as SPMI. It is now our understanding that the HRA 2000 and prior iterations were developed specifically in order to streamline the process of assisting individuals previously referred to as Chronically Mentally Ill, then as Seriously Mentally Ill, and currently as Severely and Persistently Mentally Ill, in obtaining appropriate levels of supportive housing. For individuals who are not SPMI, but who have other problems causing them to require supportive housing (e.g. mental retardation, HIV/AIDS), there are other mechanisms to obtain that housing. Thus, in the absence of any agreement of the Parties or direction from the Court to the contrary, we now consider this a settled issue. Our approach to monitoring will limit the universe of class members potentially entitled to supportive housing to the SPMI sub-group.

That said, it becomes ever more important to correctly identify Class Members as SPMI (i.e. to avoid false negatives). Given that supportive housing is obtained by the mechanism of the HRA 2000, and given that ¶89 requires Defendants to complete the HRA 2000 (which stems directly from the HRA 1995, cited in the Stipulation), this and related paragraphs of the Stipulation may correctly be added to the expanded list of discharge planning services due to Class Members who are SPMI. While not all individuals who are SPMI require

supportive housing, it is imperative that Defendants have a mechanism for evaluating Class Members for this particular need and, when they correctly identify a need for supportive housing, follow through by completing and submitting the HRA 2000 on behalf of those Class Members. Pursuant to our request, Defendants agreed to shortly provide us with the criteria they will employ to determine whether to refer a SPMI class member for supportive housing. We look forward to reviewing the approach Defendants will take in making this important determination. In addition, there may be other types of supportive housing, accessed through mechanisms other than the HRA 2000, for which Class Members may be eligible. Defendants should consider these housing options for those Class Members who are not SPMI but who are in need of housing.

G. Proposal to Reorganize SPAN

In our report of February, 2005 we noted with approval the Parties' recent and apparently productive meeting focused on ways to increase the utilization of SPAN and improve efficiency of its operations. These discussions focused on a budget-neutral manner to reduce the hours of SPAN operation and possibly eliminate the Staten Island office with efficiencies reinvested in increased in-reach. Inreach demonstrably improves the likelihood that a Class Member will utilize this vital service.

We continue to note the centrality of SPAN to a comprehensive discharge planning schema for Class Members, both structurally as a partial remedy to the often precipitous discharge of the detainee population, and also because of the characteristics of the multi-problem clients who do utilize its offices.

The latter point is again demonstrated by the most recent data received from March. Almost six out of 10 class members presenting at a SPAN office during that month were

identified as Seriously and Persistently Mentally Ill ("SPMI") or likely so ("LSPMI"). Close to 45% of this same cohort had co-existing mental health and substance abuse disorders ("MICA"). Strikingly, over half were identified as homeless.

It is in this context that DoHMH has submitted for our review and comment a proposal to:

(1) temporarily close the Staten Island SPAN office for a six-month period;
(2) reallocate the funds to create a "full-time Dedicated In-Reach Team" which would conduct Motivational Orientation sessions on Rikers Island; and
(3) modify the hours of operation of the remaining four SPAN offices to 9:00AM to 6:00PM.

For the reasons discussed below, we strongly support this proposed trial with the following conditions:

(1) any permanent realignment of SPAN services growing out of the experience with the six-month trial closing must be budget neutral;[34] and
(2) our consent to the modification of the hours of SPAN office operation, pursuant to paragraph 36 of the Stipulation, should also be considered temporary, to be made permanent only in the event of a comprehensive agreement between the Parties as to the overall restructuring of SPAN services and operation.

Thus, we would envision the modification of hours to run roughly concurrently with six-month temporary closing of the Staten Island SPAN office. This will permit us and the Parties to evaluate the overall impact and effectiveness of the proposed modifications as to locations and hours as we (Defendants, Plaintiffs and the monitors) consider the wisdom of making the proposed arrangement permanent, either in its current form or as modified in light of experience.

As we see it, the highlights of the plan including the following:

[34] This concept must take into account the likelihood that DoHMH will during the trial period continue to incur certain fixed costs such as rent for the Staten Island Office which could not be allocated to in-reach services during the pendancy of the trial. However, in the event that this ultimately leads to a restructuring of SPAN and the permanent closing of the SPAN office, our support of this proposal is contingent upon the expectation that the savings generated would then be fully reinvested in other SPAN services which are beneficial to Class Members.

- Temporarily close Staten Island SPAN for six months[35]
- Reallocate funds to create full-time in-reach teams
- Increase scheduled in-reach sessions from once weekly to three times weekly on Rikers Island for a total of at least seventy two attendees weekly.
- Station staff at the Central Property Office in an attempt to engage class members picking up their property there
- Lease a van to transport team
- Provide services to Class Members residing in Staten Island at Brooklyn or other SPAN offices; providing carfare and escort by staff for those who so require; accept collect calls
- Extensive community awareness campaign regarding changes
- Change hours of operation at all locations to 9:00AM- 6:00PM.[36]

Overall, we expect that these changes will be beneficial to the Class and will increase the utilization of this important service. DoHMH is currently proposing to expand in-reach sessions to three times per day three times a week for a total of nine sessions. Nine sessions with approximately eight class members per session, would reach approximately seventy two people per week, or roughly 288 monthly. We would also expect to see benefit from well-executed case-finding at the Central Property Office.

We have some suggestions as to how this thoughtful proposal could be made more effective. We suggest DoHMH consider ways to utilize the van which will be leased to transport staff for other purposes. For example, it could be used to transport class members

- from Staten Island to another borough, or
- from Rikers Island to a program or SPAN office in the event that a class member at central property accepts services.

[35] Data provided by DoHMH reveal that, during this reporting period, only five (5) discrete individuals (3.6% of the total) utilized the Staten Island SPAN office during the four-month reporting period. Inexplicably, four out of those five visited SPAN during the month of December, meaning that only one Class Member reported to the Staten Island SPAN office in the months of January,05 (0); February ’05 (1) and March ’05 (0).

[36] DoHMH notes that in March no Class Members appeared at an office after 5:00PM and that in the past those who have were not newly released from Court but rather individuals who were released to the community several days prior to coming to SPAN. Thus, unlike a group presenting directly upon release, we do not see these Class Members as being at significant risk of being lost to follow up should SPAN close earlier. Presumably, they would be aware of the changed hours and have arrived an hour or two earlier. In additional support of this aspect of their proposal, DoHMH notes that SPAN workers “all too frequently” arrive at the office to find Class Members already waiting for them. Additionally, they note that these hours of operation would be better matched with other services providers, thus improving their efficiency.

In other words, this van should be conceptualized as having multiple uses that will augment the transportation functions explicitly provided for in the Stipulation as well as for transportation that will be needed with the implementation of the altered SPAN function. While the notion of stationing workers at the Central Property Office on Rikers is an excellent one, it will require a dedicated area in order to be effective. The proposal as presented offers a comprehensive manner of providing notice to the community of the Staten Island office's temporary closing, including mass mailings. We suggest that this effort also include information reminding the community of consumers, providers and public defenders of the availability of SPAN in general. Expanded in-reach might also include non-Rikers locations such as BBKC, VCBC and, in the event that Justice Braun's Order is upheld on appeal, the Prison Wards.

Court Out-Reach

While Defendants' proposal does not directly address this, the still-outstanding issue of out reach by SPAN to the Courthouses is directly connected to the above discussion. As we noted in our last report, paragraph 40 of the Stipulation requires SPAN to conduct outreach visits to the Criminal Courts to "encourage Class Members who are determined likely to be released… to visit SPAN offices and utilize services." As outlined in our February 7, 2005 report, over the past year we have requested that Defendants facilitate the site-visits we think necessary to monitor compliance with the requirements of this paragraph. Defendants urged us to postpone this request as the Parties were working together to possibly restructure SPAN services overall. Over the objections of Class Counsel, we agreed to defer these visits to give the Parties an opportunity worked together on these issues. However, we noted at that time that we would "revive our efforts to conduct monitoring visits as originally planned should

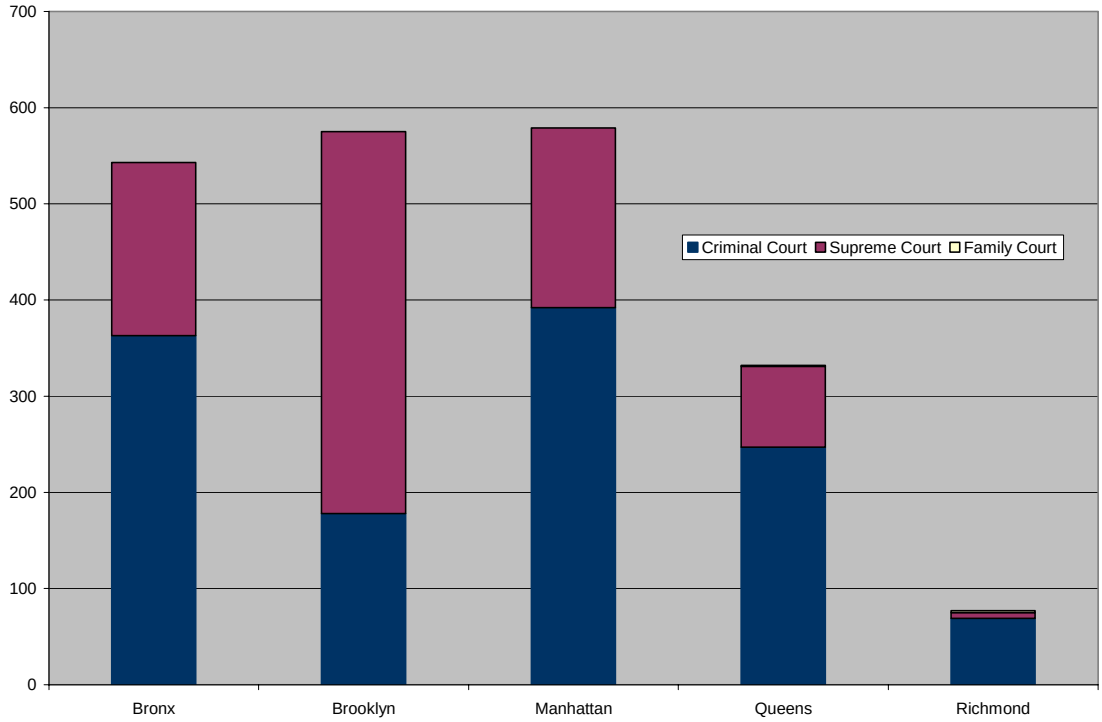
the process we describe[d] [of reaching agreement to alter SPAN's operational model] fail to adequately address the issue of SPAN outreach to the court."

In correspondence on May 12, 2005, we received information relevant to this issue. Defendants reported that a total of 2106 Class Members were released from Courts in New York during 2004. Assuming a relatively constant rate of about 1000 Class Members released per month, this means that about 1/6 of Class Members were released from Court. These cases can be broken down as follows:

Table 2: Court Releases during 2004

	Bronx	Brooklyn	Manhattan	Queens	Richmond
Criminal Court	363	178	392	247	69
Supreme Court	180	397	187	84	6
Family Court				1	2
Total	543	575	579	332	77

Figure 1: Court Releases during 2004



The graph suggests that given limited resources, SPAN could target Bronx, Brooklyn and Manhattan, and specifically the Criminal Courts in Bronx and Manhattan and the Supreme Courts in Brooklyn, to maximize its chances of finding and offering assistance to Class Members at the time of their Court Release.[37]

We are aware of Defendants' putative concerns regarding confidentiality as well as some apparently constructive discussions as to specific courts where meaningful out-reach might commence. We strongly urge that the Parties address this issue as part of the discussions of the above-mentioned proposal and that Defendants focus on this aspect of out-reach in addition to the planned enhancements on Rikers Island.

In the meantime, we renew our intention to conduct these visits but will not yet seek to initiate them in order to give the Parties an additional opportunity to derive a remedy within the context of the overall SPAN realignment discussions.

H. Appropriateness measures

In our last report of February 7, 2005, we noted that we considered the development of standards and methods for assessing performance measures 2.2 (Appropriateness of SPMI/LSPMI assessment); 2.4.(Appropriateness of SPMI classification at the time CTDP is completed); and 3.2 (Appropriateness of projection of post discharge need) to be a crucial next step for us to undertake. We reported the comprehensive methodology we devised for developing these standards. This included extensive internal piloting and discussions with the Parties and their respective experts. At that time, we were still awaiting comments from Class Counsel.

[37] We are struck by the Brooklyn numbers, which suggest that the data Defendants provided may have been inadvertently reversed for Brooklyn. Additionally, we encourage the Parties to revive discussions concerning outreach to Class Members involved with the Mental Health Court in Kings County.

Subsequent to the publication of our last report, we received comments from Class Counsel on the initial draft, promulgated revised measures and chart review instruments, and received additional reaction from the Parties. During this entire period, we continued our internal piloting and review of the approach, based in large part on extensive chart review.

On April 6, 2005, we issued to the Parties our chart review instrument along with some commentary indicating how we intended to approach the use of this form. Reproduced below is an edited version of our guidelines and discussion of our approach which was provided to the parties.

It is important to note that each of these performance indicators measures the performance of multiple actions on the part of mental health and/or discharge planning staff. As such, there are many places where Defendants may not meet this standard. For example, if the LSPMI assessment is separated into its component parts, there are at least 11 areas that require some action or judgment on the part of the clinician completing this assessment. These component parts must be viewed as a whole, and therefore we believe that if any one is completed incorrectly, it represents a potential failure on the part of Defendants to meet the standard. That said, we recognize that not all errors result in an adverse consequence in the discharge planning process. Therefore, we noted on our case review form several times areas where we will limit our review of Defendants' performance to an assessment of how it relates to the discharge planning process.

We recognize the concept of "harmless error". For example, from a strictly procedural standpoint, a Class Member who is under age 18 is ineligible for SPMI status by State OMH regulation. Erroneously completing the LSPMI form and finding that the Class Member is not LSPMI on the merits could result in a finding of failing to meet the standard for this

measure as promulgated on our review form, but no harm is done as this Class Member cannot be considered LSPMI.

In addition, we have introduced the concept of employing proxies for the identification of sub-groups within the SPMI population who may be at increased risk, and suggest that defendants have a heightened level of expectation of service providers in terms of collection and analysis of collateral sources of information for class members falling into these categories. We suggest a mechanism for identifying Class Members at highest risk for adverse outcomes if appropriate discharge planning is not provided. We take the stance that individuals with certain risk factors including, but not limited to, individuals on psychiatric medications (either prior to incarceration or prescribed by a psychiatrist during incarceration), individuals who are homeless, and individuals who have been psychiatrically hospitalized within the year prior to incarceration are at higher risk for a poor outcome if discharge planning is not provided to them.[38] For individuals with these risk factors, we believe that more aggressive information gathering is required in order to develop appropriate discharge plans. Some of this information will be useful for the eventual rating as to SPMI status, and some will be more relevant for the development of the actual discharge plan.

The final measure (3.2) relates to the appropriate identification of post-discharge needs. This area requires us to review the discharge plan as it is reflected on the DSN and to compare that discharge plan to the needs of the Class Member. This requires a more synthetic and comparative approach on the part of the monitor. This is a multifaceted performance standard, and involves the following:

[38] While we are committed to the concept of "proxies" for high risk, we are willing to reassess the actual proxy risk factors we have chosen in light of our experience and the experience of Defendants.

- the matching of post-release services to the clinical and social needs of the Class Member
- the selection of services given the requirements encapsulated in ¶44 of the stipulation
- modifications in projected post-release services given the changing clinical status of the Class Member
- modifications in projected post-release services given the changing acceptance or refusal of such services by the Class Member

Initially, it is our intent to focus primarily on the first two bullets, as we do not believe that it is logical to consider the latter two bullets if Defendants have not demonstrated adequate performance at the time of the initial projection of Class Members' post-release needs.

As noted above, we are recommending that Defendants develop a mechanism for prioritizing Class Members at higher risk of poor outcomes absent comprehensive discharge planning. We note that Defendants are obligated to provide discharge planning to all Class Members, but we also recognize that some Class Members have more urgent needs than others. In order to develop a treatment and discharge plan that is likely to be acceptable and useful to the Class Member, we suggest that for Class Members who have certain risk factors, described above, Defendants should be more assertive in seeking information[39] they need to develop an appropriate plan. We term these risk factors "proxies" in that we view them as markers of heightened need. Such heightened need should prompt heightened attention.

In evaluating Defendants' performance on measures 2.4 and 3.2, we will rely heavily on documentation of receipt and review of collateral information, or in the absence of such information, documentation of the attempts to obtain collateral information.[40] Among the

[39] I.e. prior records, collateral information and interviews, etc.

[40] Defendants note their objection to this expectation as constituting a "new obligation which was not undertaken by the Defendants under their negotiated Settlement." Nonetheless, they report that they are working on protocols to "achieve a higher level of documented outreach efforts in appropriate cases to obtain prior medical records, either through prior CHS medical records or through community providers." They further note that this will not be done for each patient and that they may not use severity of illness as the basis for deciding whether to attempt these efforts. First, we commend Defendants for beginning efforts toward this important end. We must be kept informed of their efforts and progress in this regard. We remain convinced that it is necessary to attempt to obtain collateral

most valuable, and in principle most easily obtained, sources of collateral information we expect to see are references to reviews of old records from prior incarcerations. In the past, we have been advised regularly that old records are often, or routinely, unavailable at the point of service.

We find this stance unacceptable. The American Medical Association's (AMA) ethical standards for physicians, underscores the importance of maintaining records in its policy E-7.05 entitled Retention of Medical Records (see Appendix A-1). This policy begins with the statement that "[p]hysicians have an obligation to retain patient records which may reasonably be of value to a patient." Paramount to any specific legal requirements in a particular jurisdiction, the AMA requires that "[i]n deciding whether to keep certain parts of the record, an appropriate criterion is whether a physician would want the information if he or she were seeing the patient for the first time."[41]

This is precisely the issue which we are attempting to address here: the singular value of knowing what treatment approaches—and by extension what discharge planning efforts[42]—

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information in "appropriate cases''; at the same time we are open to discussion with Defendants as to identifying the circumstances under which staff should be required to engage in these efforts. We remind Defendants that there are two specific areas of obligation to which this information may be especially relevant: (1) in assessment of the functional aspects of LSPMI/SPMI determination; and (2) in the creation of a clinically appropriate treatment and discharge plan. Any suggestion Defendants may put forth to define which cases are "appropriate" for this heightened effort must at minimum address these areas.

[41] We are cognizant that Defendants have a policy and practice of retaining previous records for a ten year period. We also acknowledge Defendants' position, as stated in their comments to the draft report, that they do not believe it is of "reasonable value" to systematically pull past records "in all cases." Our point, though, is somewhat distinct from these objections. The AMA's criterion for guiding the decision of whether to retain records implicates clinical assessment and treatment processes, and, therefore, assumes a clinical use of the records in certain cases, not the mere prohibition on disposing of them. The current system, to our understanding, does not permit the treater routine and timely acquisition of previous records, nor does it provide guidance as to when these records should be sought. The proxy groups we posit are our initial approach to defining high risk groups for which Defendants should make efforts to obtain additional information to guide discharge planning and the LSPMI/SPMI assessment. Other reasonable groups might include those presenting a diagnostic enigma or those for whom previous discharge planning was unsuccessful. As stated, we are willing to discuss these details with the Defendants, but do not find the status quo reasonable or acceptable.

[42] The AMA's guidance on the point of continuity of care—and by extension discharge planning—is equally forceful. Ethical principle E-10.01 (Appendix A-2) entitled Fundamental Elements of the Patient-Physician Relationship provides in relevant part that "[t]he patient has the right to continuity of health care. The physician has

were attempted in the past, and developing present treatment planning with an awareness of the outcomes of these previous efforts. Because, as noted above, we introduced some new concepts to our approach to the monitoring of this measure, we required a more extended comment, discussion, and piloting period that we had initially envisioned. As a result, we have not been issuing the monthly progress reports we described in our last report.

III. Content

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

During the past reporting period, we held several meetings with Defendants during which we, our database consultant and Defendants database managers discussed in detail the structure of the database generating the monthly monitoring reports. These discussions included a detailed analysis of the elements of the data provided to inform us as to Defendants' performance on the Performance Indicators ("PIs"). The use of a consistent reporting format has borne fruit in our being able to track changes in performance month by month over this and the prior two reporting periods. In addition to these meetings, Defendants provided our database consultant with copies of the current database for his analysis. While the system is not yet perfected, it has gradually improved over the past year.

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an *obligation* to cooperate in the coordination of medically indicated care with other health care providers treating the patient. The physician may not discontinue treatment of a patient as long as further treatment is medically indicated, without giving the patient reasonable assistance and sufficient opportunity to make alternative arrangements for care." (Emphasis added). In our view, this obligation would go in both directions: it is an ethical obligation on the part of community treatment providers, within the legitimate constraints imposed by relevant law, to cooperate with efforts by correctional health care staff to obtain needed information. In addition, this obligation places an independent ethical obligation upon the treating physicians within the correctional system to make the efforts discussed and, in our view, included in the second sentence of the AMA ethical principle E-10.01 cited above. In our view, the spirit of this obligation applies to multiple incarcerations of the same individual within the system as well as to transfers among buildings. Clearly, this obligation *cannot* be fulfilled by an individual physician or health care provider within the correctional system; however, we believe that it becomes the system's responsibility to create the context in which a particular practitioner might reasonably meet these obligations.

During this reporting period, we conducted an exploratory study of the fidelity of the data in Citrix to that contained in the medical record maintained in the jails. For a prior report we conducted a very limited probe of only several cases, which indicated to us that this should be an area of further inquiry. This current review revealed that Citrix appeared to have fewer blank screens and was overall more reliable than we previously thought; nonetheless, the results indicated that more extensive review is required. Because we now believe that the database itself is at least minimally adequate, the discrepancies we uncovered reinforce to us that the data collection and entry process should be our next area of inquiry. We include this study at this point in the report to ensure that, while we accept the data provided to us for the time being, we have not assured ourselves that the data contained in Citrix completely reflects actions and assessments as they have occurred at the point of service.

For this review, we compared the most recent relevant chart entry on several key data-points to the analogous CITRIX screens for 62 randomly selected closed cases. All cases were discharged between October 13, 2004 and April 15, 2005. Fifty seven of the 62 cases were released between January 4, 2005 and March 23, 2005. We reviewed all charts between the dates of February 17, 2005 and May 5, 2005, all following discharge; and CITRIX records were reviewed between April 18, 2005 and April 28, 2005. We chose closed records so that we could compare the most recent chart entry (e.g., most recent CTDP/DSN update) with the most recent CITRIX entry, in an attempt to replicate the information which would be available to SPAN on a given Class Member for whom they did not have a medical record. In this way, we sought to not only test the reliability of CITRIX information, but also to gain an appreciation of how any discrepancy might cause a misdirection of SPAN's efforts in this situation.

In keeping with the above, we focused our analysis of three central determinations: LSPMI, SPMI and housing status. Additionally, rather than simply tally how many entries chart entries matched the CITRIX data, we only counted an entry as discrepant if, in our judgment, the discrepancy would likely have an adverse effect on discharge planning. By way of example, if the latest DSN were to indicate that a Class Member had housing, but CITRIX informed that he or she was homeless, we would not consider that an discrepancy likely to adversely effect planning. This is true because, if such a Class Member were to present at SPAN and the staff there only had access to CITRIX, the most detrimental result would be that they might offer housing assistance to a Class Member who in fact had a place to live.[43] If, on the other hand, the most recent CTDP/DSN update indicated that the Class Member was thought to be homeless upon release and CITRIX either stated that he was domiciled or was silent on the question, that discrepancy might have a considerably negative influence on the service offered (or, more accurately, the lack of service offered).

Specifically, we found discrepancies between the chart and CITRIX notations regarding the LSPMI determination in 1 out 57 cases (1.8%).[44] The most recent CTDP and CITRIX entries concerning the SPMI determination were inconsistent in a way likely to negatively affect discharge planning in 12 out of 62 or 19% of the cases studied.[45] Additionally, in 12 out of 62 or 19% of the cases we reviewed, the most recent CTTP/DSN update indicated that the Class Member required housing assistance upon release, but CITRIX either indicated that

[43] This assumption is only valid to the extent that we are correct that the chart is the "gold standard" for information which is not the result of a direct 'data dump".
[44] Cases 8 and 11. Again, this figure only represents the number where we saw the likelihood of a detrimental outcome. Note that the denominator does not include 4 of the cases in this study: these are cases in which our initial chart review was incomplete for this particular data element. The identity of the cases was provided to the parties in the form of a Confidential Appendix.
[45] Cases 2,7,9,15,24,32,35,41,45,50,55,61.

he or she was domiciled or was silent on the issues of housing.[46] It is interesting to note that there is little overlap among these groups with only one case[47] falling into the discrepant category on both LSPMI and SPMI, and only two cases[48] discrepant in SPMI and housing status. It is important that we continue to explore with Defendants the issues raised by this probe because of the implications for both data reporting and service delivery.[49]

The sections below constitute our detailed analysis of the data provided by Defendants, often looking back over the past three reporting periods. In analyzing this data, we have at times raised the performance expectation going forward given Defendants' prior performance. In the past, we made these decisions based on the basis of the raw numbers provided by Defendants as well as on our opinion that these changes were reflective of interventions implemented by Defendants. In this report, we have begun to make these decisions in a more sophisticated way. Specifically, we explored the data (over the entire 10-month period for which data) on measures for which Defendants appear to be improving over time to determine if this improvement is statistically significant (i.e. if the improvement is due to something other than chance, presumably an action taken by Defendants). Where we find that the improvement is both statistically significant and clinically and operationally meaningful, and where Defendants have met interim goals based on improvements in their

[46] Cases 2,4,7,13,22,23,31,39,43,44,57,63.
[47] Number 41
[48] Numbers 2 and 7.
[49] In comments to the draft report Defendants informed us that they had begun "a more formal process to review data integrity as their Medical Records Coordinator performs "random reviews." Further, they advise that they will continue to "work toward improvement in [the area of consistency between Citrix and the Medical Charts], not only through the development of the new data system but by continued staff training." We look forward to a better understanding of these efforts at the same time we continue our own monitoring of this important issue.

procedures, we have raised the expectation accordingly.[50] Details of selected analyses are contained in the Statistical Appendix B.

1. Performance Measure 1.1: Initial Assessment

This measure focuses on the requirement that a mental health clinician evaluate a potential Class Member within 72 hours of referral for a mental health assessment. Defendants continue to achieve very high levels of compliance on this measure, and thus we have collapsed each reporting period. Over the last three reporting periods, Defendants reported as follows:

Table 3: PI 1.1. Timely Initial Assessment

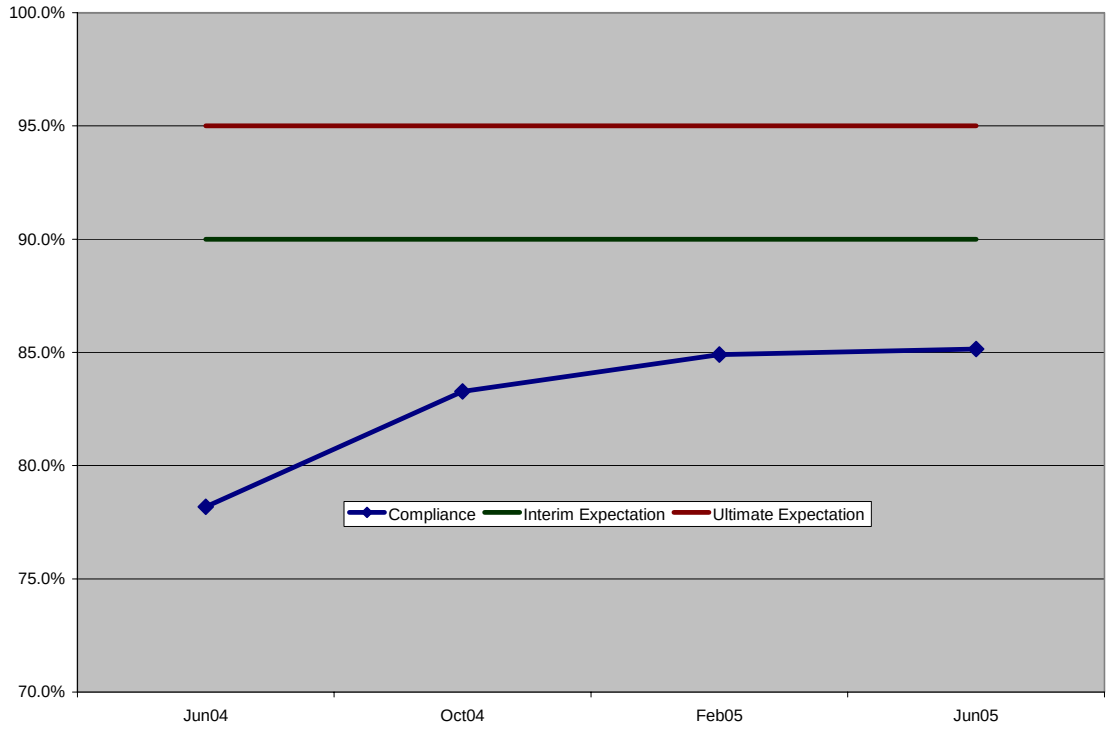
	Report 5	Report 6	Report 7
actual compliance	94.9%	96.9%	97.5%
expected compliance	95%	95%	95%

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

We reviewed a total of 101 charts for this measure, and we were able to identify a LSPMI form in 86 of these charts (85%).[51] This represents minimal change from the last report.

[50] In cases where Defendants provide us with clinical or programmatic reasons not to raise the performance expectation, we will consider this information and we may alter our decision accordingly.
[51] Cases without the LSPMI form were #s 1356, 1360, 1363, 1370, 1376, 1378, 1402, 1426, 1445, 1448, 1455, 1460, 1463, 1467, and 1469.

Figure 2: PI 2.1. LSPMI Form in Chart



We reiterate our suggestion made in the last report 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.

3. Performance Measure 2.2: Appropriateness of LSPMI Assessment

As we outlined in our last report, given the recent publication of the standard for measures relating to appropriateness, we will provide baseline data regarding our reviews to the parties privately.

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

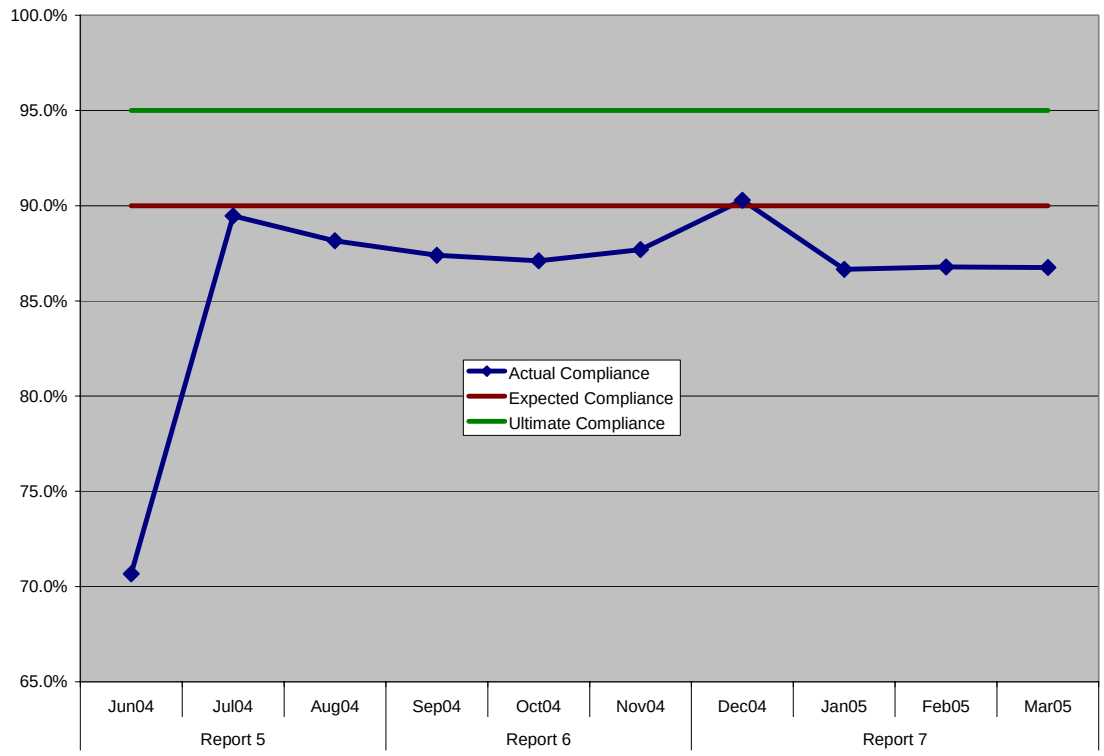
This measure is intended to evaluate Defendants compliance with ¶27 of the Stipulation, which in the event of a precipitous release requires Defendants to include as LSPMI for the purposes of discharge planning Class Members receiving specified psychiatric medications to treat a psychiatric condition This is an important aspect of the

Stipulation, as a substantial minority of Class Members is released precipitously and before a definitive diagnosis can be made. The requirement that Defendants include as LSPMI Class Members who are taking prescribed psychiatric medications for psychiatric reasons early in their incarceration ensures that, if they are released, they receive all services due to them as if they had been found to meet full SPMI criteria. Thus, the prescription of these medications is a "proxy" for SPMI status. Against our current expectation of 90%, Defendants reported:

Table 4: PI 2.3. Inclusion as LSPMI if on Medications

	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Actual Compliance	70.7%	89.5%	88.1%	87.39%	87.1%	87.7%	90.3%	86.7%	86.8%	86.8%
	477/675	484/541	424/481	402/460	412/473	463/528	511/566	422/487	407/469	550/634

Figure 3: PI 2.3. Inclusion as LSPMI if on Medications



In our February 7, 2005 (6th) report, we noted that the improvement seen during Report 5 had plateaued. The Figure clearly demonstrates that this plateauing continued through the current period, after a brief spike in December 2004. We therefore reiterate our suggestion that Defendants explore reasons for this continued noncompliance and develop interventions designed to resolve any problems with this aspect of care.

5. Performance Measure 2.4: Appropriateness of SPMI Assessment

As we outlined in our last report, given the recent publication of the standard for measures relating to appropriateness, we will provide baseline data regarding our reviews to the parties privately.

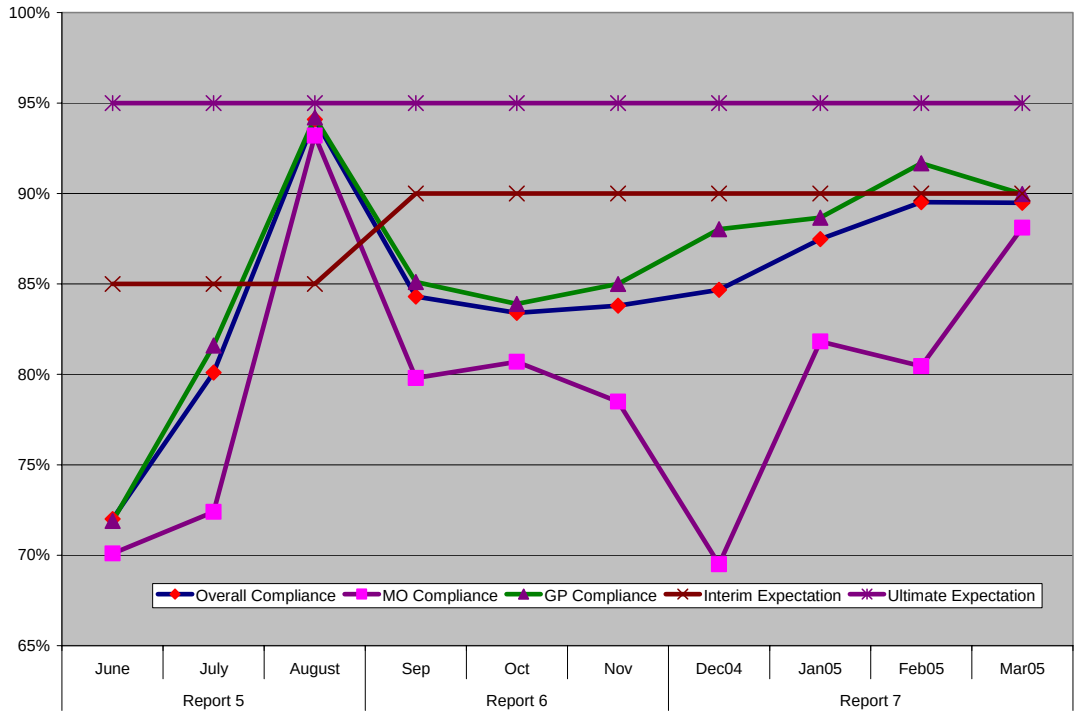
6. Performance Measure 3.1: Timeliness of CTDP

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%, for the current reporting period, Defendants reported:

Table 5: PI 3.1. Timely Completion of CTDPs

	Dec04	Jan05	Feb05	Mar05
Overall Compliance	674/796 84.7%	594/679 87.5%	615/687 89.5%	800/894 89.5%
MO Compliance	98/141 69.5%	99/121 81.8%	107/133 80.5%	163/185 88.1%
GP Compliance	573/651 88.0%	493/556 88.7%	506/522 91.7%	637/708 90.0%
Expected Compliance	90%	90%	90%	90%

Figure 4: PI 3.1. Timely Completion of CTDPs

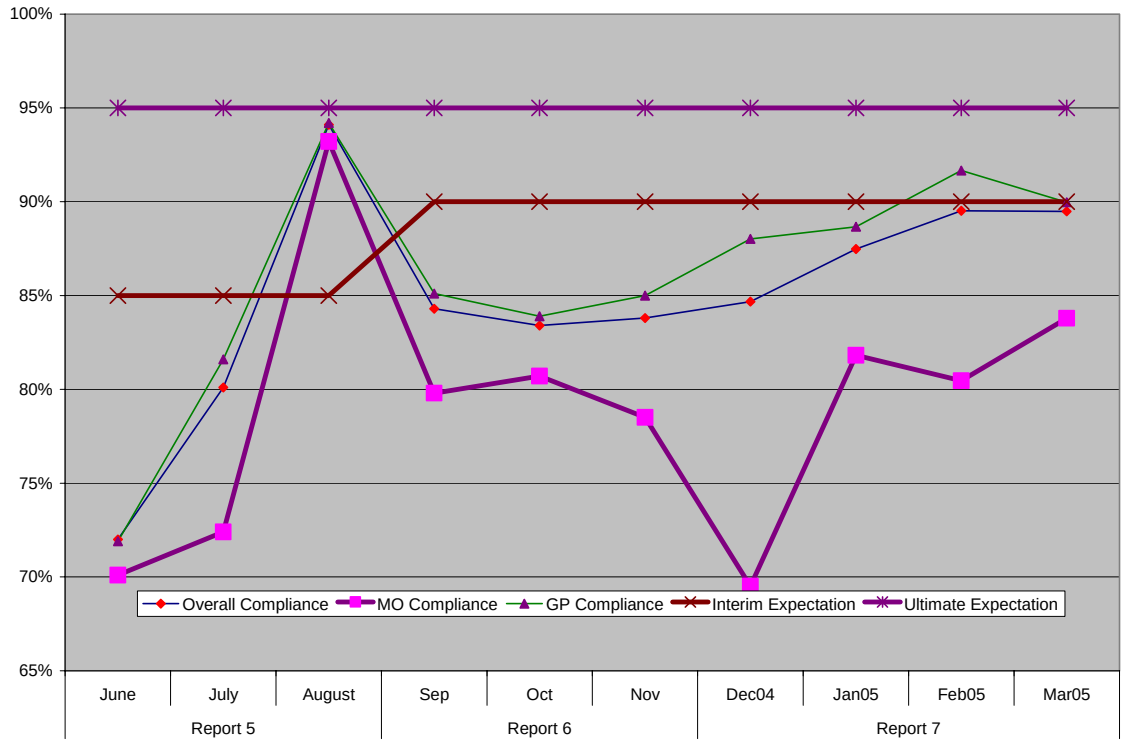


In our Sixth Report, we noted Defendants' performance on this measure had plateaued, as can be seen in the figure above. During the current reporting period, it is evident that there has been a slow overall improvement, with the overall performance falling just short of our interim expectation of 90%.

In addition, there appears to have been a dramatic improvement in Defendants' performance on the timely CTDP completion rate in the mental observation units ("MO"). In part, this improvement is related to a recent change in how Defendants developed the data they provide to us. According to ¶¶16-17 of the Stipulation, Defendants have 7 days to complete a CTDP for individuals housed on the MO and 15 days to complete this task for individuals in general population ("GP"). If read strictly, this would lead at times to a clinician in the MO having to complete a CTDP by day 7 for a Class Member transferred to the MO on, for example, day 6. In other words, the CTDP

would be due before the clinician had a chance to conduct interviews, develop a relationship with the individual, or obtain needed historical information. This makes little clinical sense, because of the need to re-evaluate treatment goals and the patient's needs based upon the changed circumstance which necessitated the need for transfer to the MOU. Therefore, months ago, we agreed that the clock would "start ticking" for CTDP timeliness for individuals transferred to the MO from the date of the transfer, rather than the prior date of the initial assessment. In other words, if a Class Member is transferred from the GP to the MO even as late as day 14 from the initial assessment, the MO staff would have a full 7 days to conduct its assessment before the CTDP would be due. It has been our understanding that Defendants had been reporting data based on this timeline. However, Defendants advised us that only in March did they begin to report in this way. They indicated that they "manually adjusted by adding 8 Class Members as "on time" based upon CTDP being completed within 7 days of transfer from GP to MO." Removing these 8 cases would result in the following graph:

Figure 5. Uncorrected Data regarding Timely Completion of CTDPs in MO



It is apparent that the correction applied by Defendants results in an improvement in the reported rate of compliance on this measure, and that the correction brings their performance in the MO much closer to their overall performance level for timely completion of the CTDPs.

We conducted several analyses of this data. First, we analyzed the raw data supplied by Defendants for the period covering Jun04 through Feb05. This analysis indicated that this apparent improvement seen in compliance with the timely completion of the CTDP in the MO may not, in fact, represent a true improvement. A logistic regression analysis finds that timely completion of the CTDP in the MO increased by about 2% per month during the 9 months for which this data was analyzed, an improvement that is indistinguishable from chance. By distinction, improvement in the CTDP in GP during this time period occurred at a rate of 13% per month, a highly significant finding.

However, upon later receiving data for March, we conducted a reanalysis that included the March data and that accounted for the Defendants' altered method for including Class Members as timely in the MO. The results now demonstrate that the improvements observed in both the MO and GP are, in fact, statistically significant, and that the timely completion in the MO increased by about 6% per month, while timely completion in the GP increased by about 12% per month. The details of these analyses are contained in Statistical Appendix B.

Analysis of Late CTDPs

Table 6: Late CTDPs

	Dec04	Jan05	Feb05
1 Day	7	5	13
2 Days	5	6	8
3 to 7 Days	24	17	20
8 to 14 Days	13	9	8
15 to 30 Days	11	7	3
Over 30 Days	8	8	8

While we analyzed the data separately for GP and MO, this analysis was no more informative than the data taken together. While we fully expect that Defendants will meet our compliance expectation, we recognize that completing a CTDP late is better than not completing one at all. Further, there is a qualitative difference between a minimally late CTDP as compared to one done very late. Given that there is a steady attrition rate for Class Members, and further, given that all discharge planning begins with and flows from the CTDP, each additional day of lateness increases the likelihood Class Members will leave the system with no or inadequate discharge planning. Thus we have dichotomized at 7 days.

Table 7: Dichotomization of Late CTDPs

	Dec04	Jan05	Feb05
7 days late or less	52.9%	53.8%	68.3%
>7 days late	47.1%	46.2%	31.7%

We note that Defendants improved in February, when only one-third of the late CTDPs were more than 7 days late. It is imperative that Defendants both reduce the number of late CTDPs (our performance measure) as well as the degree of lateness for those which are late.

Defendants reported in Table 4 above on their performance regarding the timely completion of the CTDP. Combining this data with the data they provided in Table 5, regarding late CTDPs, results in the following:

Table 8: Overall Completion of CTDP

	Dec04	Jan05	Feb05
total done on time	674 84.7%	594 87.5%	615 89.5%
total done late	68 8.5%	52 7.7%	60 8.7%
total not done	54 6.8%	33 4.9%	12 1.7%
TOTAL	796	679	687

This data indicates that Defendants have substantially improved regarding CTDPs not done at all. This is clearly where they have made gains in their compliance with our measure, as the total done late numbers have not improved.

Conclusions

Defendants improved in their timely completion of the CTDPs, and they met our interim expectation of 90% compliance with this measure. Therefore, we now raise our expectation to our ultimate expectation of 95%.

In addition, Defendants have improved in terms of reducing the percentage of very late (>7 days) CTDPs as compared to minimally late (7 days or less) CTDPs. Finally,

while there is some uncertainty, Defendants appear to be improving with respect to CTDP's not completed at all. We anticipate further improvements during the coming reporting period.

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

As we outlined in our last report, given the recent publication of the standard for measures relating to appropriateness, we will provide baseline data regarding our reviews to the parties privately.

8. Performance Measures 4.1 and 4.2: Timely Initiation and Completion of Medicaid Prescreening

Measure 4.1 tracks Defendants' performance on the initiation of the Medicaid prescreening. Defendants report as follows:

Table 9: PI 4.1. Initiation of Medicaid Prescreens.

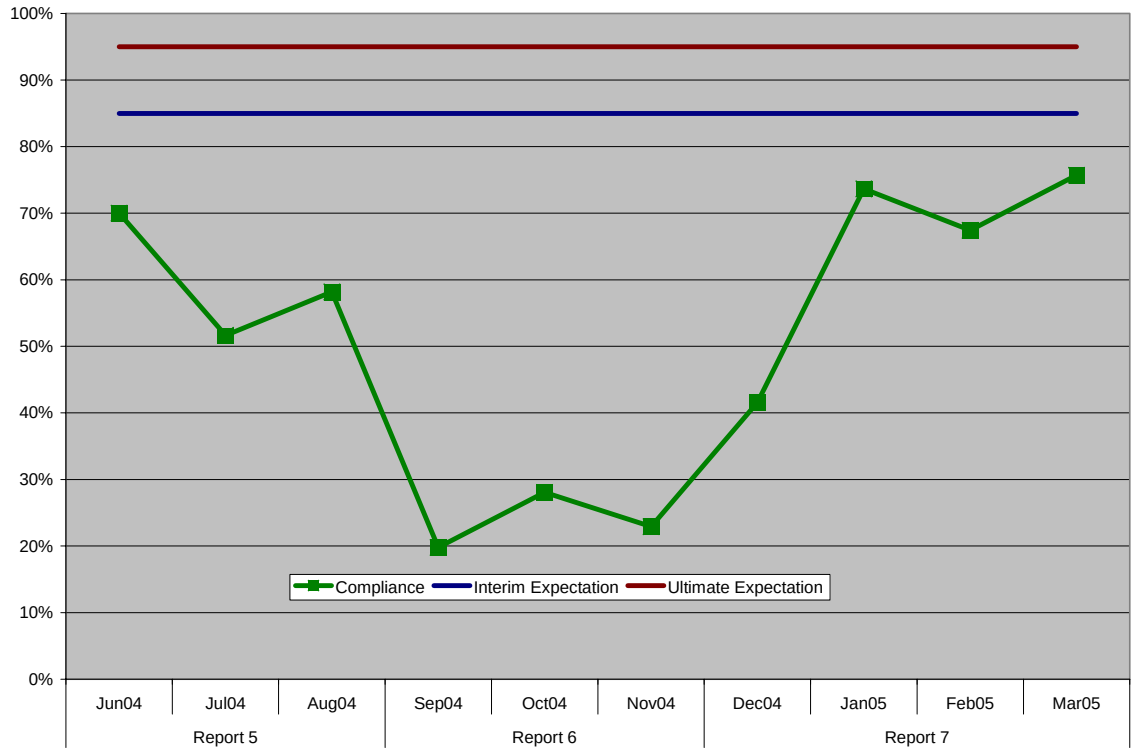
	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Jails	77% 111/145	90% 266/294	94% 585/622	100% 400/400	100% 447/447	100% 447/447	100% 444/444	100% 428/428	100% 415/415	100% 550/550
SPAN	100% 51/51	100% 49/49	100% 46/46	100% 46/46	100% 73/73	97% 29/30	97% 36/37	100% 41/41	100% 38/38	100% 59/59

Measure 4.2 evaluates Defendants' performance on the completion of the prescreen. Defendants report as follows:

Table 10: PI 4.2. Completion of Medicaid Prescreens.

	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Compliance	70% 91/130	52% 63/122	58% 167/287	20% 37/187	28% 62/221	23% 47/205	42% 74/178	74% 109/148	67% 87/129	76% 134/177
Expected Compliance	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%

Figure 6: PI 4.2. Completion of Medicaid Prescreens.



Defendants have consistently reported 100% compliance for measure 4.1.1, which we articulated in our original performance measure as follows:

> [# of prescreenings initiated by jail based discharge planners by the date of the CTDP] ÷ [(# of Class Members with completed CTDPs) – (class members who refuse this service)]

We developed this measure in this way because following our review of the Stipulation along with Defendants' policies regarding the prescreening process, we believe the initiation of the prescreening to be a discrete process, separate and distinct from the CTDP/DSN. Our understanding is that the CTDP represents the culmination of the initial assessment by the mental health staff, and the DSN translates that assessment into a set of "orders" to the discharge planning staff. Upon receiving this DSN, the discharge planners are to, among other things, "initiate" a prescreening. We developed measure 4.1 to assess Defendants' performance specifically on this initiation task.

Defendants advise us, however, that they do not conceptualize measure 4.1 in this same way. Rather, they operationalized it in the data dictionary to represent the "initiation of discharge planning services" and defined this as the CTDPDATE (the field in Citrix which captures the date the CTDP/DSN was completed). Thus, by definition, this can only be 100%.

Defendants' rationale for conceptualizing it in this way is their belief that "if we used [the monitors'] original formula, it created a loophole for Discharge Planning whereby being late in step one (sending a document) [i.e. the prescreen initiation] would then produce an artificially high performance level achievement in step 2 (providing the service) [i.e. the prescreen completion]. We believe that we held ourselves to a higher standard by driving step 2 toward legitimate compliance." In other words, Defendants assume that the prescreen initiation occurs on the date of the CTDP and hold themselves to a standard of completing the prescreening process within 3 business days of the CTDP regardless of when the actual initiation occurred. We commend Defendants for the seriousness of intent this approach displays. Nonetheless, this "bundling" of tasks is acceptable *only if the compliance standard is being met*; should compliance on a bundled set of tasks prove problematic, it is will become necessary to explore the tasks separately to identify the cause..

Defendants then remove excluded cases from the denominator for measure 4.2. For March, the following exclusions were provided:[52]

[52] We are uncertain what "MA prescreen determination N/A" means, but given the low number, we are ignoring it for the purpose of this analysis.

• CMs refusing all discharge planning	170
• CMs refusing prescreening specifically	89
• CMs whose MA prescreen determination N/A	6
• CMs with no SSN (delayed completion)	1
• CMs with medical delay	16
• CMs with court delay	48
• CMs with refusal delay	43
• total exclusions from denominator for 4.2	373
• thus, denominator for 4.2 = 550 - 373	177

During this reporting period Defendants improved their performance on measure 4.2 as they articulate it. They approached but not met our interim expectation for this measure. For the purposes of this report, and the next report, we will accept this "bundling" of the initiation and the CTDP date. Should Defendants continue to be unable to meet our expectation for measure 4.2 by the time we prepare our next report, we will need to examine in detail the factors leading to continued noncompliance. Among the possible reasons may be that there are problems in the initiation of this process that cannot be understood with the current "bundling" of this measure as described above, and we will at that time request that Defendants unbundle the initiation of the prescreen from the CTDP and report separately.

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

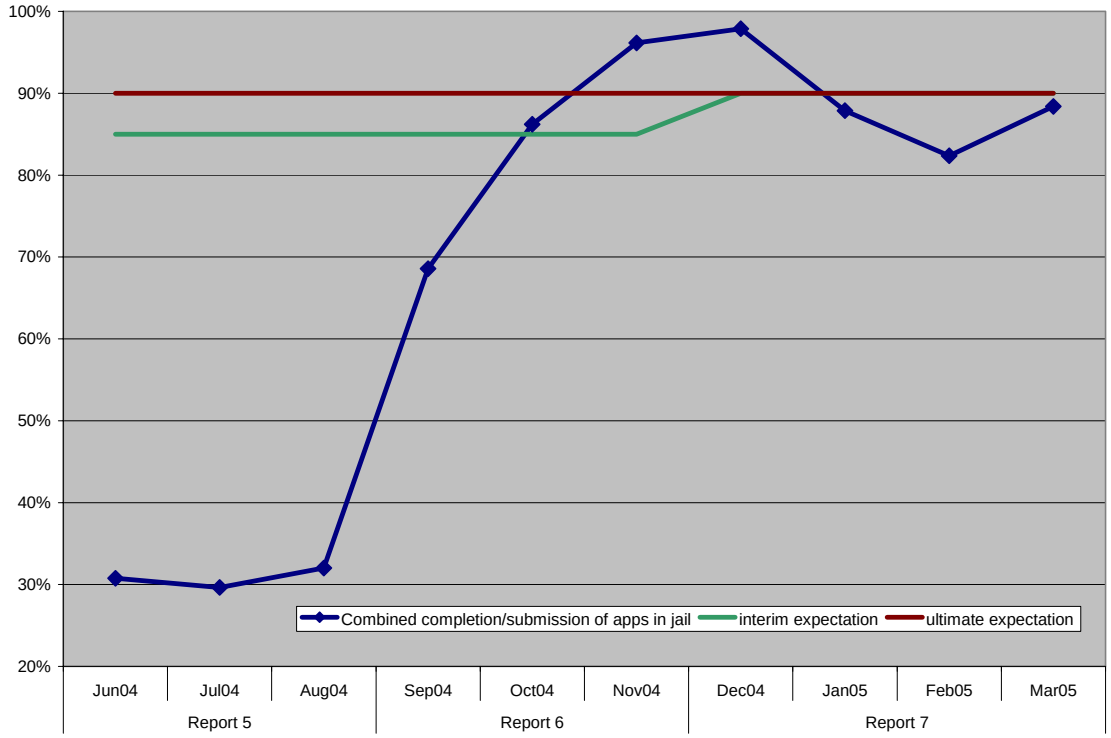
Measure 5.1 tests Defendants' compliance with the combined requirement to complete and submit Medicaid applications, for those Class Members requiring such applications, within 5 business days of the completion of the prescreen if the Class Member is in a jail. Due to their having achieved a high level of compliance on this measure, we increased our expectation to 90% (the ultimate performance level we outlined in our Performance Measures) in our last report. During the time period June

2004 through March 2005, Defendants' performance on this task improved by about 45% per month, significant at the $p<0.0001$ level. Defendants report as follows:

Table 11: PI 5.1. Completion and Submission of Medicaid Applications from Jails.

	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Combined completion/ submission of MA apps	31% 8/26	30% 8/27	32.0% 16/50	68.57% 24/35	86.2% 25/29	96.2% 25/26	97.9% 46/47	87.9% 29/33	82.4% 28/34	88.4% 38/43
interim expectation	85%	85%	85%	85%	85%	85%	90%	90%	90%	90%
ultimate expectation	90%	90%	90%	90%	90%	90%	90%	90%	90%	90%

Figure 7: Completion and Submission of Medicaid Applications from Jails.



In this section of our last report, we included a detailed discussion of our questions regarding the denominator for this measure, the rationale for excluding certain cases, and the Defendants' response at that time to our concerns. We have not addressed this issue directly for this report as it relates to this specific measure.

For several reports, however, we have requested information from Defendants regarding the outcomes of the Medicaid prescreens. Our need for this information relates

solely to its importance in understanding the denominator for this measure: Defendants should only be considering for Medicaid applications those Class Members whose prescreens result in a finding of "need new application." Logically, we cannot understand the overall compliance with this measure if we do not understand its input.

For this report, Defendants provided us only with data regarding prescreening outcomes for February 2005:

• Active/Reactivated (old code)	14
• Active	47
• Reactivated	20
• New Application needed	21
• Unknown	1
• Not Done	26
• Total	129

It has not been clear to us how this data is related to the data reported in the table above. We are continuing to seek clarification from Defendants on this issue.[53]

Regarding measure 5.2, Defendants continue to report 100% compliance with their requirements regarding Medicaid applications for Class Members who appear at a SPAN office.

10. 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."

[53] In their comments, Defendants indicate a willingness to continue to work with us to develop our understanding of the meaning of these data.

Defendants have objected to this simple statement regarding MGP eligibility, citing their earlier description of exceptions to MGP eligibility (see our last three reports) and citing correspondence between the State OMH and Defendants dated September 2002.[54]

For a considerable period of time, Defendants have enumerated eleven exceptions to MGP eligibility, and we have unsuccessfully sought documentation from the Defendants as to the basis for the assertion that Class Members who would otherwise be eligible for MGP but for their falling into one of these categories are not entitled to benefits under the MGP program. In our Fourth Report, we narrowed our area of inquiry to three of these asserted exceptions—illegal alien status; under the age of 18; released from court rather than jail and does not appear at a SPAN office within 7 days of release unless SPAN can verify that a Medicaid application was submitted within 7 days of release—agreeing that our denominator for this measure took the other exceptions into account.

In preparation for this report, DoHMH provided the following update and documentation.

Illegal Alien

Defendants now inform us that they no longer aver that illegal alien status renders one ineligible for MGP benefits, thus further narrowing the unresolved issues to the age and Medicaid application questions.

Timing of Medicaid Application

As to the Medicaid application question, Defendants provided us with a Local Commissioners Memorandum from the New York State Department of Health dated September 1, 2000 and received at DoHMH on September 6, 2000. This directive,

[54] 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.

signed by two Deputy Commissioners indicates in relevant part, that "Medications and other services necessary to prescribe and administer medication will be available to individuals who have applied for Medicaid prior to or within one week of discharge or release from a hospital… or a forensic or similar mental health unit of a prison or jail." Defendants further direct our attention to Appendix I Laws of New York, 1999 Chapter 408 ("Kendra's Law"). Section 15 (a) provides that "[c]ounties or the city shall use such grants to provide medications prescribed to treat mental illness for individuals for whom the process of applying for medical assistance benefits has been commenced prior to or within one week of discharge or release…" Additionally, see the Stipulation, at ¶73. Taken together, we are persuaded that this is a legitimate exception to MGP eligibility and thus will modify our performance measure and approve the section of Data Dictionary excluding Class Members released from court rather than jail and not appearing within 7 days of release at a SPAN office, unless SPAN can verify that a Medicaid application was submitted within 7 days of release.[55]

Under 18 years of age

In support of this exclusion Defendants provided us with a copy of Kendra's law and directed our attention to the Local Commissioners Memorandum cited above. In our view, both documents are off point. The Local Commissioners Memorandum makes no mention of any age requirement for MGP eligibility. Additionally, while Kendra's Law at section 9.60(c)(1) does provide a minimum age of 18 for a person to

[55] While we now find this acceptable as a category of exclusion, we emphasize the important of SPAN having rapid and reliable access—either from CITRIX, the medical record or preferably both—to information regarding all relevant aspects of a class member's care and discharge planning during the preceding incarceration. It would be unacceptable for SPAN to deny an MGP card to a Class Member for whom an application was submitted within the required parameters, simply because they were unaware that this had been done.

be the lawful subject of an Assisted Out-Patient Treatment Order ("AOT"), there is no such requirement noted in section 15 which authorizes the MGP program. While MGP funding is provided for in the same statute as the provisions for AOT, there is no indication in the structure or language of the statute or in the practice in the community for a linking of the two. Indeed, it is quite clear that many Class Members who are regularly provided MGP cards—and legitimately so—would not meet the non-age-related statutory criteria for an AOT order. As noted on the State OMH webpage,[56] "the Medication Grant Program is intended for those individuals being released or discharged from jail/prison or hospitals who require medication(s) to treat mental illness and for whom a Medicaid application is being processed. This population may or may not include AOT candidates."

We requested further information from Defendants to substantiate this age-based exception. In comments to the draft report, Defendants noted that the eligibility criteria for an out patient commitment order under Kendra's Law was not the proper authority for the requirement for adulthood, but continue to assert that lack of majority is a legitimate exclusionary criterion. They now inform us that verbal communication with the Director of Reimbursement Services for the State Office of Mental Hygiene ('OMH") indicated that "the MGP program in New York State, approved by OMH,, is for adults only." We will further assess the acceptability of this exclusion by requesting additional documentation from Defendants on this point and by making inquiry of OMH to clarify this issue. If this further investigation reveals that the City is currently prohibited from providing MGP cards to minors, we will make the appropriate amendments to our Performance Indicators. At long last, we are

[56] http://www.omh.state.ny.us/omhweb/Kendra_web/kQMisc.htm

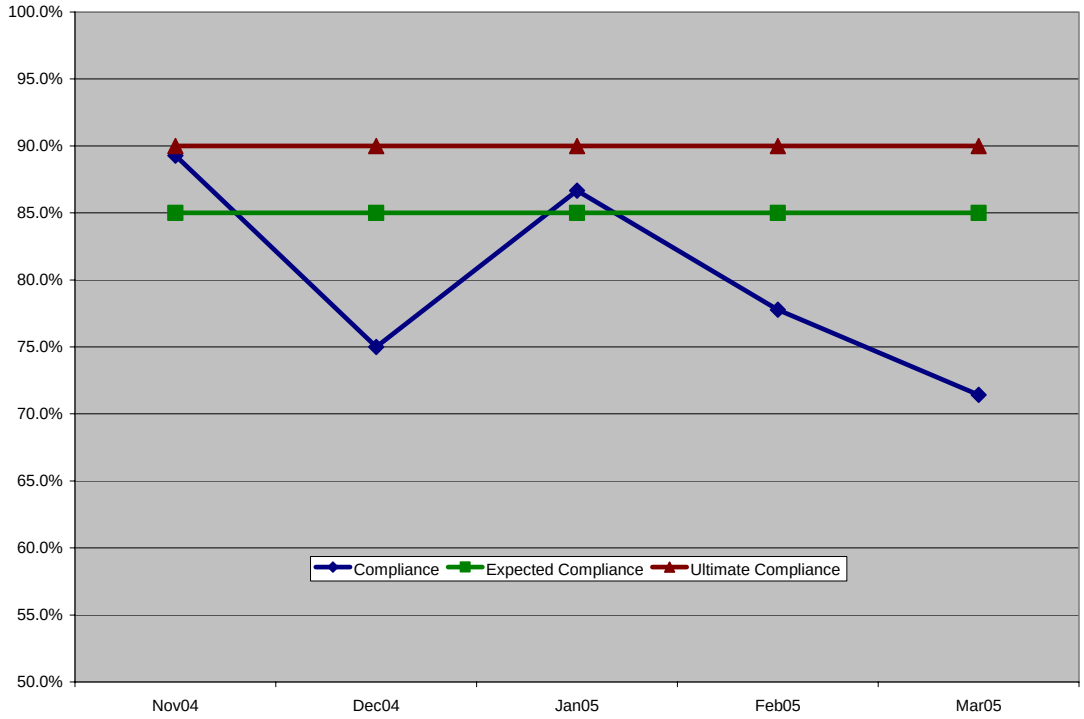
close to having the information we required to craft an appropriate denominator for this measure.

In summary, 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 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." Against our expectation of 85%, Defendants reported:

Table 12: PI 5.3.1. Provision of MGP Cards from Jails

	Report 6			Report 7			
	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Compliance	NC 27	NC 28	89.3% 25/28	75.0% 6/8	86.7% 13/15	77.8% 7/9	71.4% 5/7
Expected Compliance	85%	85%	85%	85%	85%	85%	85%

Figure 8: PI 5.3.1. Provision of MGP Cards from Jails



The figure demonstrates Defendants' inability to meet the compliance expectation during three of the five months included in the data set. However, the numbers are very small, making it difficult to draw any firm conclusions regarding this finding. For example, had Defendants provided one more MGP card in March, they would have been in compliance 85.7% of the time and would have met the interim expectation. With the assistance of our statistical expert we will further develop an approach to the analysis of data for measures with small sample sizes.

We (along with Class Counsel) have regularly expressed concern that so few MGP cards are provided by Defendants. We have hitherto been unable to address this issue, as we have in the past been unaware of the actual numbers of Class Members excluded from the denominator for the many reasons posited as legitimate exceptions by Defendants. We received for this report a breakdown of the numbers excluded in the denominator for this measure:

Reason for Exclusion	N
1. global refusers	170
2. CMs without prescriptions on release	226
3. CMs refusing Medicaid applications	41
4. CMs refusing Prescreen	19
5. CMs refusing MGP card	3
6. CMs not on medications for mental illness in jail	4
7. CMs prescreened as active Medicaid at prescreen	40
8. CMs with active Medicaid	10
9. CMs prescreened as "active/reactivated" or "reactivated" or whose release date is > prescreen determination + 7 days	21
10. CMs ineligible for MGP due to "not in time frame"	7
11. CMs ineligible for MGP due to "Medicaid ineligible"	1
12. CMs ineligible for MGP due to "court release"	1
TOTAL EXCLUSIONS	543

According to Defendants, the excluded cases are removed from an initial denominator of 550, the number of Class Members released to the community who had a CTDP completed. For this measure, it appears proper to us to exclude from analysis those Class Members not released to the community (i.e. who were criminally or civilly committed to another institution on release from DOC). Reviewing the itemized exclusions above, we concur that exceptions 1-9 and 11-12 are legitimate exceptions and represent cases properly precluded from receiving an MGP card. However, we are not certain what exception 10 means. We intend to discuss this further with Defendants.

A second issue regarding these exclusions concerns the propriety of summing these exclusions to derive the total of 543. We requested clarification regarding whether cases could be "double counted" in these exclusion categories (e.g. Excluded for refusing, and also excluded as having active Medicaid). Our database expert confirmed after review of the query process with Defendants that there is no systematic double counting. However, this is accomplished manually by a specific individual. As such, Defendants avoid this problem in a manner which is both labor intensive and too specifically tied to one person. We anticipate that the new data system will automate these tasks.

For the purpose of discussion and a more full understanding of the data provided for measure 5.3.1, what is clear from the denominator data is that indeed it is possible that the vast majority of Class Members would be properly excluded from consideration for an MGP card. We appreciate Defendants' having provided us with this information as it makes much more clear that the universe of Class Members receiving MGP cards is a small subset of the total Class Member group. We look forward to ongoing clarifications of the issues we identify above.

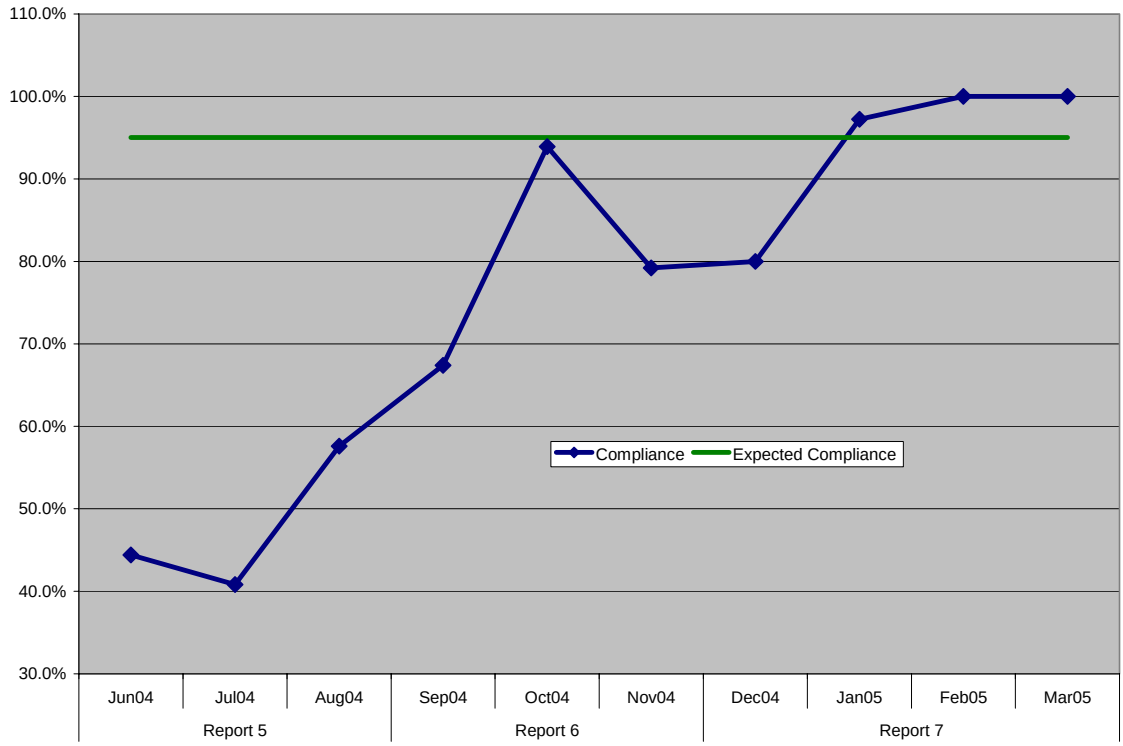
11. Performance Measure 6.1.1: Timely Reactivation of Medicaid

As alluded to above, the litigation regarding this measure, which evaluates Defendants compliance with the requirement to reactivate Medicaid for relevant Class Members according to a defined set of temporal criteria, has been concluded. Defendants reported:

Table 13: PI 6.1.1. Reactivation of Medicaid

	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Compliance	44.4% 63/152	40.8% 64/157	57.6% 132/229	67.4% 66/98	93.9% 46/49	79.2% 42/53	80.0% 48/60	97.2% 35/36	100.0% 19/19	100.0% 22/22
Expected Compliance	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%

Figure 9: PI 6.1.1. Reactivation of Medicaid



Defendants' performance on this measure improved over this reporting period, exceeding our expected level of compliance. Notably, the overall numbers in both the numerator and the denominator are much lower than they had been in the past. In our last report, at footnote 23, we speculated that a part of the reason for the reduction in the denominator related to Defendants' poor compliance on the Medicaid prescreens. While this may indeed be the case, in that reactivation is a downstream event that requires the performance of several sequential upstream tasks, there may be proper exceptions that reduce the pool of Class Members eligible for this particular task. In order to fully understand these findings, we would require the full data, including data regarding all exclusions from the denominator as well as from all upstream tasks. This was not one of the denominators we specifically requested in preparing for this report. We anticipate being able to conduct a full analysis in future reports.

12. Performance Measure 6.1.2: Provision of Temporary Medicaid

In our last report, we summarized the litigation alluded to above, in which the Court required Defendants to provide temporary Medicaid for those Class Members with an "immediate need" while an investigation proceeded. At that time, Defendants had not developed a mechanism for providing us with this data, given the recency of the conclusion of the litigation. To date, Defendants have neither developed a data dictionary definition for this measure nor provided us with any data regarding it, noting that the data element is currently being developed.

In reviewing the comments we received to the draft report, we agree with Class Counsel that the "litigation regarding the provision of temporary Medicaid was concluded in December." Class Counsel further assert that "[d]efendants have had ample time to begin providing temporary Medical for those Class Members with an 'immediate need' while a complete investigation proceeded." Class Counsel urges us to make a finding of non-compliance in this area, a finding we will make in our next report if we are not satisfied with Defendants' movement toward compliance with the substance of Justice Braun's order and with their ability to provide us data on this measure. We expect to have direct discussions with and updates from HRA in the coming weeks in this regard.

13. Performance Measure 6.2: Mailing of Medicaid Cards

<u>Temporary Medicaid Cards</u>

Defendants are obligated to provide temporary Medicaid cards to all Class Members whose Medicaid is activated or reactivated, per ¶¶66-68 of the Stipulation. The purpose of this is to ensure that, should a Class Member be released after Defendants have

completed the process to activate or reactivate Medicaid, but prior to the time when DOH will have been able to provide a permanent Medicaid card, said Class Member will be able to access services in the community. DoHMH provides information they receive from HRA for this measure.

Defendants reported as follows:

Table 14: PI 6.2. Temporary Medicaid Cards

Report 6	Report 7			
Nov04	Dec04	Jan05	Feb05	Mar05
100.0% 68/68	100.0% 68/68	100.0% 51/51	100.0% 57/57	100.0% 77/77

Absent a clear explanation of the denominator for this measure, we are unable to fully understand this data. We believe that the number of temporary Medicaid cards should be less than or equal to the number of reactivated Medicaid cases plus the number of Medicaid applications submitted. Defendants have correctly noted regularly that they are not responsible *per se* for the outcomes of Medicaid applications. We concur that where there is doubt, discharge planning staff should submit the application even if there is a chance it will be rejected for procedural, technical or clinical reasons. This means that only some portion of the applications submitted will not be approved.

Our comparative analysis of this data indicates as follows:

Table 15: Medicaid Cards: Comparison to Reactivations and Applications for Medicaid

		Nov04	Dec04	Jan05	Feb05	Mar05
5.1	Medicaid applications submitted	25	46	29	28	38
6.1.1	reactivated Medicaid cases	42	48	35	19	22
	Sum (5.1) + (6.1.1)	67	94	64	47	60
6.2	temp cards provided	***68***	68	51	***57***	***77***

According to this analysis, Defendants are in fact in the highlighted months reporting providing more temporary Medicaid cards than their data regarding reactivations and new

applications imply that they should be providing. We anticipate a detailed discussion of Defendants process for providing the temporary cards as well as their method of collecting and reporting the data on this process.

Permanent Medicaid Cards

The State Office of Temporary and Disability Assistance (OTDA) is responsible for the provision of permanent Medicaid cards, which it outsources to a private vendor, as described in previous reports. In our October 13, 2004 report, we reported that the State provided nearly 95% of the permanent cards on the day of approval, and the remainder on the next day. For this report, we received a printout from DOH for January of 2005. During January, they reported that 100% of 69,280 cards were mailed without delay. Of note is that no cards at all were issued in January until the 14th of the month. According to DOH, the reason for this is that OTDA changed contractors in mid January. At this point, we find that no further routine monitoring of this procedure is necessary. We will only seek further information from OTDA should questions be raised about the provision of permanent Medicaid cards[57].

14. 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

[57] Again, we thank the Counsel's Office at DOH for their helpfulness in providing and explaining this data.

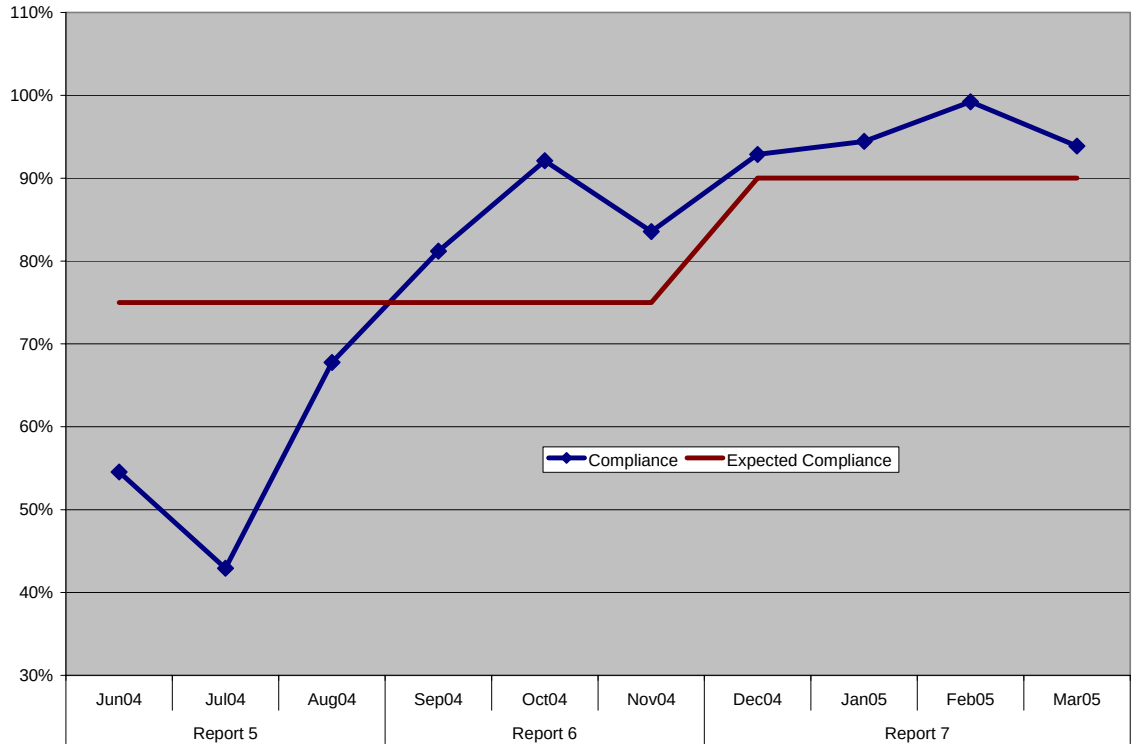
their appearance at SPAN. If the Class Member appears at SPAN on the day of release, ¶54 requires SPAN to coordinate with CHS in obtaining up to a 7 day supply of medications and an appointment at a community provider in order to continue to receive the medications (performance measure 7.1.2). If the 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). Given Defendants rapidly improving performance documented in our last report, we raised our performance expectation to 90%, the ultimate expectation outlined in our performance indicators. Against this compliance expectation, Defendants reported:

Table 16: PI 7.1. Provision of Medications

	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
7.1.1	55% 150/275	43% 209/487	67.8% 206/304	81.19% 82/101	92.1% 105/114	83.6% 122/146	92.9% 117/126	94.4% 102/108	99.2% 128/129	93.9% 153/163
7.1.2	100% 8/8	100% 7/7	100.0% 12/12	100.00% 8/8	100.0% 7/7	100% 8/8	100.0% 4/4	100.0% 5/5	100.0% 2/2	100.0% 9/9
7.1.3	100% 4/4	100% 12/12	100.0% 39/39	100.00% 32/32	100.0% 6/6	100% 5/5	100.0% 5/5	100.0% 5/5	100.0% 2/2	100.0% 8/8

Measure 7.1.1. can be viewed graphically:

Figure 10. PI 7.1.1. Walking Meds and Prescriptions



These data indicate that Defendants sustained their improvements on this measure over this reporting period. Since September, 2004, they have surpassed our expected level of compliance for this measure. We note that data provided by SPAN regarding the number of SPAN visitors fairly closely matches data provided by DoHMH in the performance measure reports for this reporting period with respect to those Class Members who attended SPAN on the date of release from jail (line 7.1.2), but less closely matches data regarding Class Members who appeared at SPAN on a later date (line 7.1.3). The comparative data is presented in the following table:

Table 17: Medications from SPAN: Comparison of SPAN generated data to DoHMH generated data

	Dec04	Jan05	Feb05	Mar05
SPAN data 7.1.2	4	5	3	9
PI data 7.1.2	4/4	5/5	2/2	9/9
SPAN data 7.1.3	11	21	15	21
PI data 7.1.3	5/5	5/5	2/2	8/8

While a possible explanation is that Class Members released during one month who appear at SPAN in the following month would only be included in the data related to 7.1.3, one would expect this data to be normalized after a few months, and one should expect over a longer period of time (e.g. a four month reporting period) to see that the numbers presented by SPAN should approximate those presented in the PI data set. This is not the case. We anticipate discussion regarding this data with Defendants to assist us in understanding how these two data sets relate to one another.

In conclusion, it is evident that Defendants have focused substantial effort in ensuring that Class Members are able to obtain needed medications, both from jail and from SPAN. During this reporting period, they met our performance expectation.

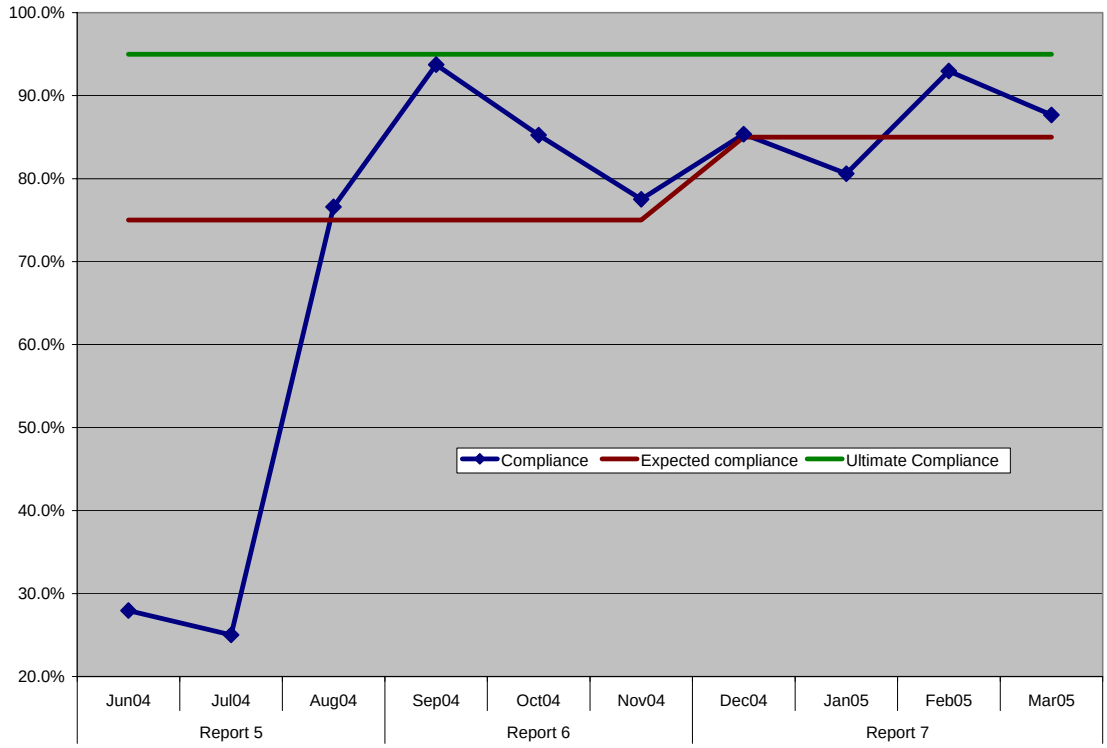
15. Performance Measure 8.1: Provision of Appointments to Class Members with Known/Projected Release Dates

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. Given improvements in performance during the last reporting period, we increased our expectation to 85%. Against this increased interim compliance expectation, Defendants reported:

Table 18: PI 8.1. Provision of Appointments to Class Members with Known Release Dates

	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Compliance	28.0% 26/93	25.0% 34/136	76.6% 72/94	93.8% 45/48	85.2% 52/61	77.5% 62/80	85.4% 70/82	80.6% 54/67	93.0% 66/71	87.7% 64/73

Figure 11: PI 8.1. Provision of Appointments to Class Members with Known Release Dates



This is another of the measures for which we requested and received specific information regarding exclusions from the denominator.[58] We did so because we are interested in understanding completely how Defendants derive the performance data for this important task. Defendants provided us with the following information for March.

- Global Refusers 170
- Appt/Referral Refusers 137
- Unknown release date 170
- TOTAL Exclusions 477

Given that, as noted above, the cohort for March included 550 Class Members who were released to the community and who had a CTDP done prior to their release, Defendants calculate the denominator used for March as 550 minus all exclusions (477) = 73 individuals. In reviewing these data, we raised the question as to whether Defendants'

[58] We expect to move rapidly towards a data reporting system which will routinely provided us with this information in all areas.

system of data analysis might inadvertently over-count exclusions by counting more than once a Class Member falling into more than one exclusionary category. As a result, we inquired of DoHMH as to their procedure to avoid this result. In consultation with our data expert, we reviewed the mechanisms Defendants employ in this regard. We found that the specific steps which Defendants take to ensure that this "double counting" does not occur were adequate. However, they are done manually by a specific individual. As such, they are both labor intensive and too specifically tied to one person. We anticipate that the new data system will automate this process.

Accepting these exclusions at face value would explain what at first blush would seem to be a gross underestimate of the cohort of Class Members who should have appointments made.

The data demonstrates that Defendants maintained the improvements observed during the last reporting period but were unable to consistently achieve further improvements. During this reporting period, averaging the overall data, we find that Defendants met the expectation of 85%: they provided appointments to 254 of 293 eligible Class Members (86.7%). Overall, from June 2004 through March 2005, Defendants' performance on this measure increased by approximately 40% per month, which is significant at the $p<0.0001$ level. Therefore, we will now raise the expectation for this measure to our ultimate expectation of 95%.

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

Paragraph 47 requires Defendants to provide appointments to Class Members who appear at SPAN requesting mental health care. Against a performance expectation of 95%, Defendants reported:

Table 19: Provision of Appointments by SPAN

	Dec04	Jan05	Feb05	Mar05
Compliance	100.0% 28/28	100.0% 40/40	100.0% 24/24	100.0% 40/40

With the exception of February, this information matches the data provided by SPAN. During February, SPAN reported providing 29 appointments. We are unsure if this represents a data entry error on the part of SPAN, or if there is some other problem underlying this discrepancy. However, in the other months of this reporting period, SPAN's report matches the data supplied for the performance indicator. SPAN is therefore meeting the compliance expectation of 95%.

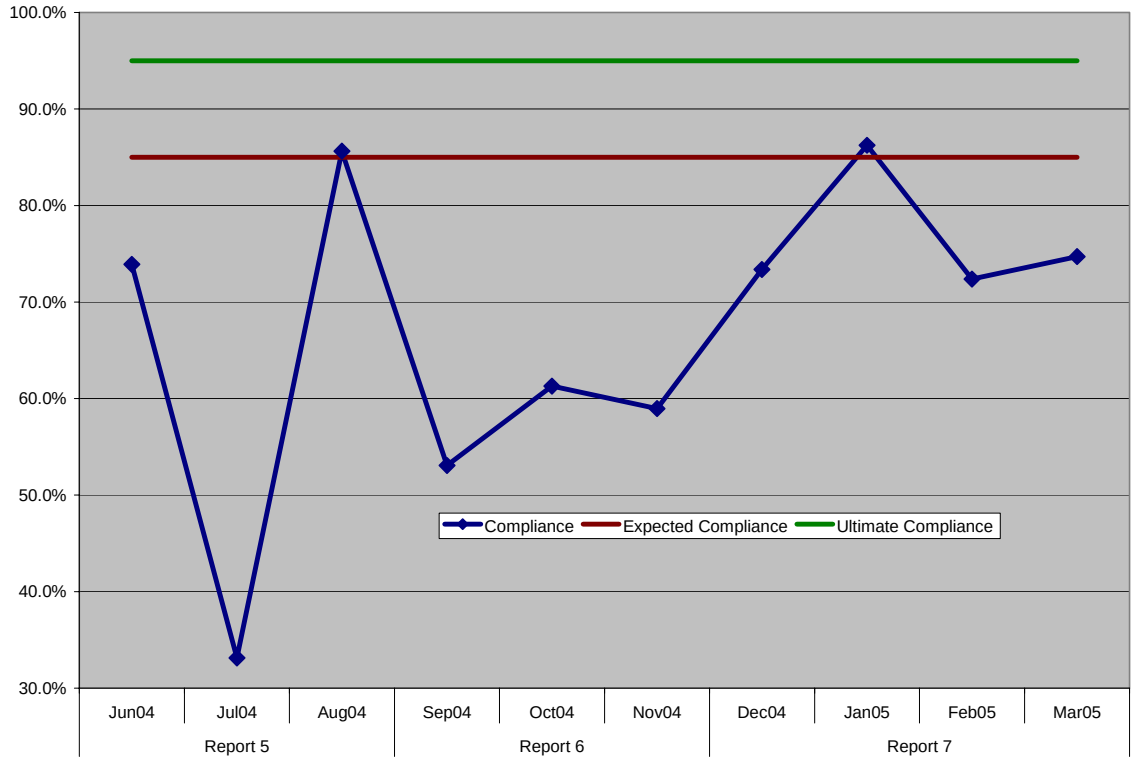
17. Performance Measure 8.3: Provision of Referrals to Class Members without Known/ Projected Release Dates

Paragraph 46 of the Stipulation requires the provision of referrals to Class Members released from jail without known or projected release dates. This has been one of the more difficult tasks for Defendants to perform, based on their inability to meet or approach our interim performance expectation of 85%. For this reporting period, Defendants reported:

Table 20: PI 8.3. Referrals for Class Members with Unknown Release Dates

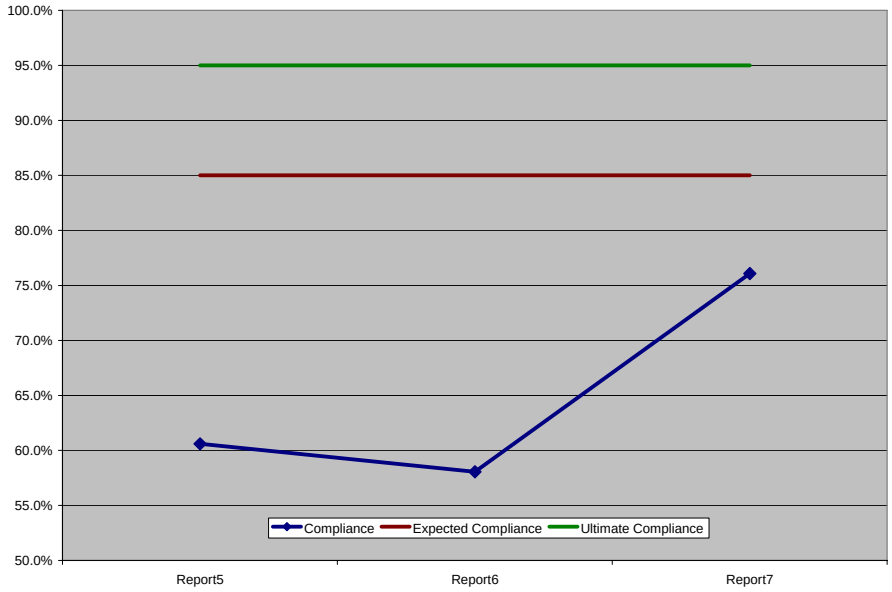
	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Compliance	73.9%	33.1%	85.6%	53.1%	61.3%	59.0%	73.4%	86.2%	72.4%	74.7%
numerator	17	52	137	69	95	92	102	94	97	127
denominator	23	157	160	130	155	156	139	109	134	170
Expected Compliance	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%
Ultimate Compliance	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%

Figure 12: PI 8.3. Referrals for Class Members with Unknown Release Dates



For this measure, given the widely variant rates of compliance from one month to the next, it may be helpful to view the data averaged over the reporting period:

Figure 13: PI 8.3. Referrals. Averaged over each Reporting Period



This analysis makes it clear that Defendants improved compliance on this measure by more than 15 percentage points during this reporting period. Further statistical analysis indicates that when compared to the data included in reports 5 and 6, there was a statistically significant improvement in the Dec04-Mar05 data. See the Statistical Appendix B for the details of this analysis. Defendants must continue to exert substantial effort toward achieving substantial compliance as we defined it in our performance measure.

For this measure, we requested further information regarding the construction of the denominator. For March, Defendants provided us the following information:

• Global Refusers	170
• Appt/Referral Refusers	137
• CMs with Known release date	73
• Total Exclusions	380

As outlined above regarding measure 8.1, there were 550 eligible class members, of whom 380 were excluded from consideration for this task. Therefore, the denominator for March was 170 (see Table above).

In conclusion, we accept for now that Defendants are calculating the denominators in a manner consistent with our performance indicator. Defendants continue to have difficulty achieving compliance with this measure, though they demonstrated statistically and operationally significant improvement during this reporting period. We will not yet raise our expectation for this measure, but we expect to see the improvements continue.

18. 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 21: PI 9.1. Provision of Emergency Benefits

	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Compliance	100% 15/15	100% 32/32	100% 34/34	100.0% 20/20	100.0% 24/24	100.0% 28/28	100.0% 25/25

As we concluded in our last report, Defendants are meeting our 100% compliance expectation. We intend in the future to further explore this process and the data management systems from which these reports are generated.

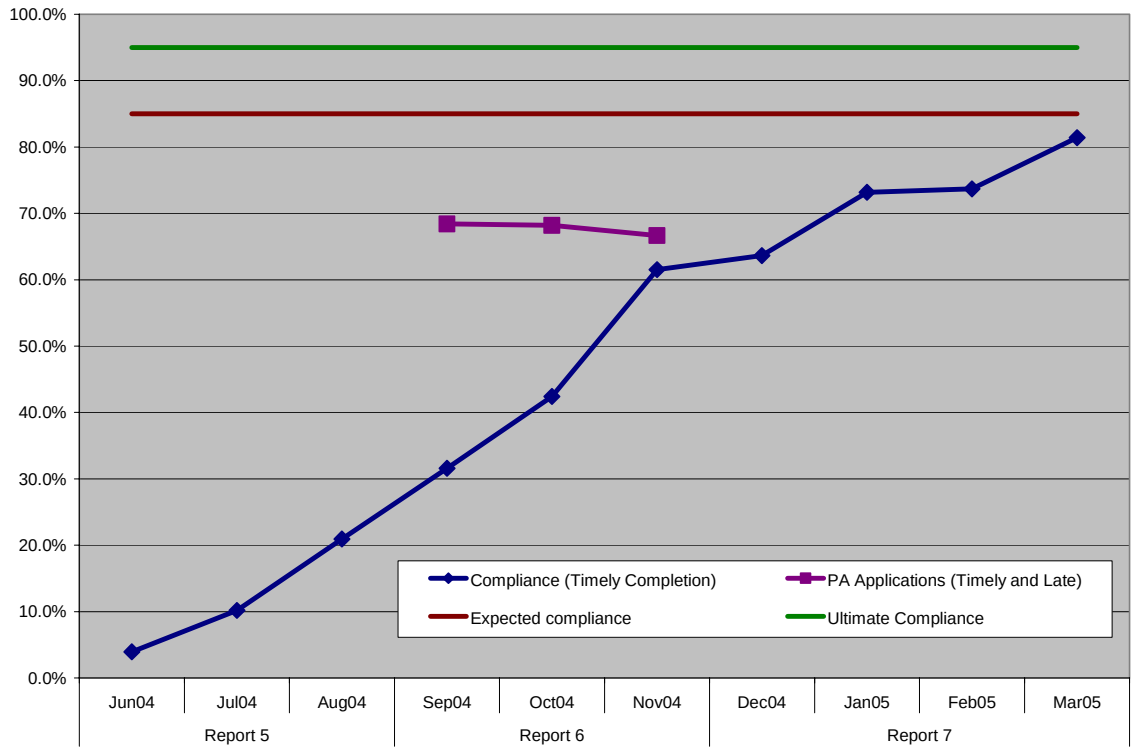
19. Performance Measure 9.2: Timely Completion/Submission of Public Assistance Applications

Paragraph 78 requires Defendants to assist Class Members who are SPMI in applying for public assistance benefits and outlines timelines for this process. This is a task that Defendants hitherto have had some difficulty performing, according to the data which they have provided. Against our interim expectation of 85% compliance, Defendants reported:

Table 22: PI 9.2. Completion and Submission of PA Applications

	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Compliance (Timely Completion)	3.9% 2/51	10.2% 11/108	20.9% 18/86	31.6% 18/57	42.4% 28/66	61.5% 24/39	63.6% 28/44	73.2% 30/41	73.7% 28/38	81.4% 35/43
PA Applications (Timely and Late)				68.4% 39/57	68.2% 45/66	66.7% 26/39				
Expected compliance	85%	85%	85%	85%	85%	85%	85%	85%	85%	85%
Ultimate Compliance	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%

Figure 14: PI 9.2. Completion and Submission of PA Applications



The graph makes it clear that Defendants have continued to slowly and steadily improve their performance on this task. By the end of this reporting period, they were approaching our interim expectation. We neither requested nor received the data regarding overall completion of the PA application for this period, but Defendants compliance with the timely completion indicates that they have resolved to some extent whatever problems they were having in the last reporting period regarding overall completion of the PA applications.

For this report, we were provided upon our request with information concerning the denominator and the various exclusions for the March data. Defendants reported as follows:

• Non-SPMI	188
• Global refusers	170
• PA application refusers	99
• "Previously Active" PA	1
• "PA Ineligible"	2
• Delay code: Medical	8
• Delay code: Court	15
• Delay code: Refused	11
• Released before CTDP + 5 business days	13
• Total exclusions	507

Again, noting that a total of 550 Class Members in March both were released to the community and had a CTDP done, the denominator for this measure is calculated by Defendants as 550 minus 507 = 43.

We again have several issues with Defendants analysis as summarized above. First, as we have discussed with them, we do not accept as an ongoing exclusion cases who were excluded due to delays for medical or court reasons. While these cases might properly have this task delayed, and while Defendants might currently be technically unable to provide information for these "non-clean" cases, at some point, we expect that they will develop the technical sophistication to provide information regarding these cases.

Additionally, ¶78 (a) of the Stipulation requires Defendants to complete the PA application in jail within 3 business days of the date of the CTDP. Defendants are then to submit the application within 2 business days of its completion [¶78 (b)]. We joined these time periods together in our performance measure, for simplicity's sake. However, these remain two separate tasks, at least conceptually. We believe that the last exclusion

above should properly read "Released before CTDP + 3 business days" or, more accurately, "Released before completion of PA application". We believe that, once the application has been completed, it should be submitted to HRA even if the Class Member has been released in the interim, so that, should that Class Member appear at a Job Center, the information will be available and s/he will more rapidly receive needed benefits.

With these caveats in mind, we recognize the continued improvement Defendants have demonstrated on this task and this measure. We anticipate further discussion regarding the calculations making up this data element. For now, we hold our expectation at 85%.

20. 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. Based on a cohort Defendants have defined in the Data Dictionary as "applications processed at HRA during the monthly reporting period", they report as follows:

Table 23: PI 9.3. Registration of PA Applications at HRA on Day of Receipt

	Report 6			Report 7			
	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Compliance	97.0% 159/164	91.2% 217/238	100.0% 117/117	99.4% 164/165	100.0% 120/120	100.0% 71/71	98.9% 90/91
Expected Compliance	95%	95%	95%	95%	95%	95%	95%

Defendants have advised us in the past that delinquent cases are due to "WMS system problems that are out of HRA's control" and 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."

We do not have a full understanding of the meaning of this data and how it relates to data provided for measure 9.2. Thus, undertaking the most Defendant-friendly analysis and comparing the numerator from measure 9.3 (the number of PA applications successfully registered on the day of receipt) to the denominator from measure 9.2 (the number of PA applications due), we find that in each of the past two reporting periods, there are always substantially more PA applications reported as registered than were in fact submitted during the month. Were we to take the numerator from measure 9.2 (the number of PA applications submitted to HRA), the variances in the table below would be even higher.

Table 24: Comparison of PA Applications Submitted to PA Applications Registered

		Report 6			Report 7			
		Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
9.2 (denom)	PA applications required	57	66	39	44	41	38	43
9.3 (num)	PA applications registered	159	217	117	164	120	71	90
	variance (# of cases)	102	151	78	120	79	33	47
	variance (percentage)	279%	329%	300%	373%	293%	187%	209%

We recognize that the data for measure 9.2 comes from the DoHMH discharge planning MIS (Citrix) while the data for measure 9.3 comes from HRA directly. We also recognize that Citrix measures case-based data (performance data) while HRA provides monthly tasks they have done (i.e. "production data").

In comments, Defendants reiterate the differences in the ways that DoHMH and HRA generate data, as we described. They point out that these numbers will not "even out" because the reports relate to different cohorts: DoHMH reports on all Class Members released in a given month, and HRA reports on all tasks completed in a given month. We accept that this difference may account for the variances in the table above. Given this difference, Defendants presently are unable to report meaningfully on measure 9.3, as we

have conceptualized it, for the cohort of interest to us: the group of Class Members released in a given month. They advised us that they "will consider what steps, if any, can reasonably be taken to make reporting on this issue more meaningful." We anticipate clarification of this issue over the next reporting period.

This caveat aside, Defendants appear to be accomplishing this task to a high degree of compliance.

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

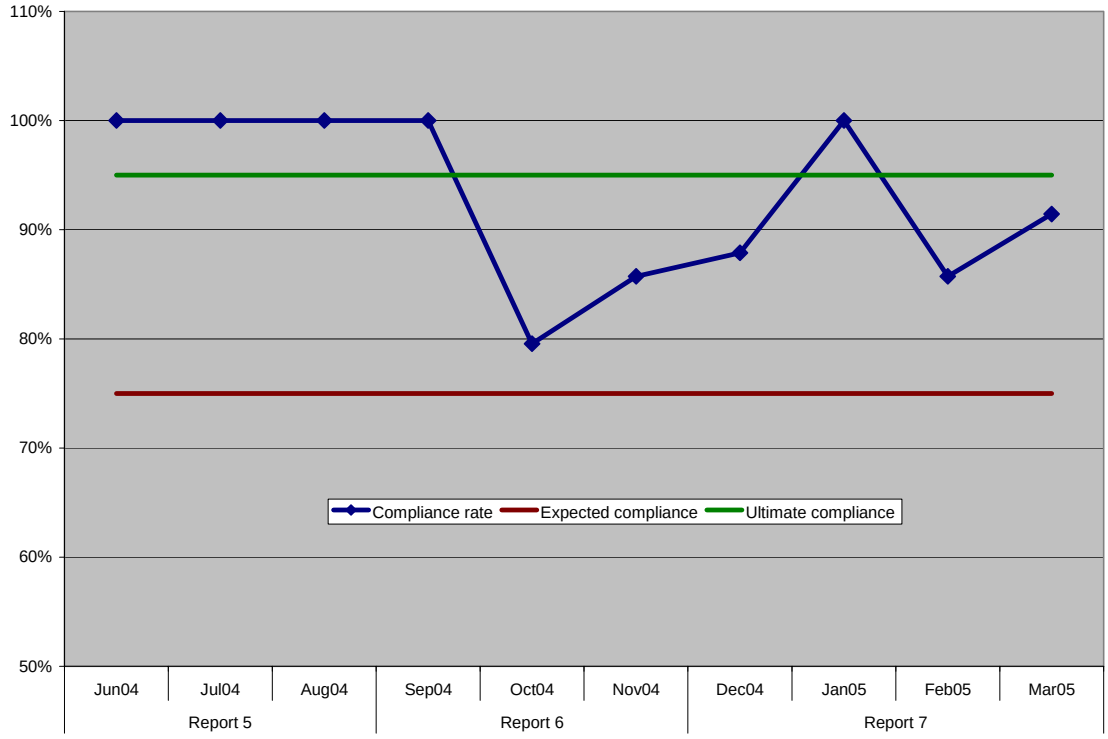
As discussed above in Section II. G., we now recognize that the HRA 2000 is a form to be used for applying for supportive housing for individuals who meet OMH SPMI criteria. Barring some other agreement by the Parties or a directive from the Court to the contrary, we intend to monitor this requirement consistent with such a definition, which is currently incorporated in the Data Dictionary. We noted above, and reiterate here, that it is imperative that Defendants have a clear set of criteria that they use to decide which Class Members are "in need of supportive housing" (¶89). We would suggest that DoHMH and HRA collaborate in the development of the criteria to be used by discharge planners in making this decision, to avoid on the one hand being overinclusive and spending time completing applications for Class Members who will not be approved and on the other hand missing Class Members who would be approved and for whom supportive housing might be the intervention needed to assist the Class Members in integrating successfully into the community after release.

For the current period, Defendants reported as follows:

Table 25: PI 10.1. Submission of HRA 2000 Applications

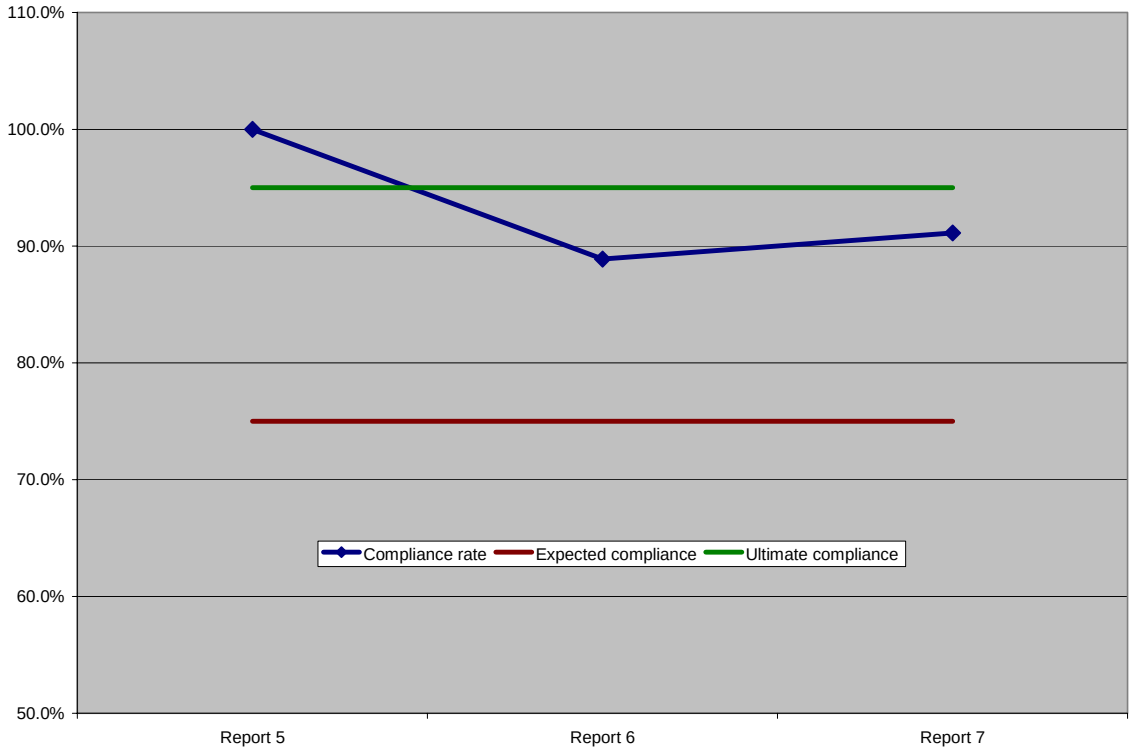
	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
Compliance rate	100% 10/10	100% 10/10	100.0% 22/22	100.0% 47/47	79.5% 35/44	85.7% 30/35	87.9% 29/33	100.0% 28/28	85.7% 24/28	91.4% 32/35
% of SPAN visitors believed to be appropriate for supportive housing	4.1% 3/74	11.4% 5/44	45.3% 34/75	35.5% 22/62	12.3% 9/73	28.3% 13/46	22.9% 11/48	0.0% 0/57	31.8% 14/44	22.0% 13/59
% of CMs released from Jail believed to be appropriate for supportive housing	1.0% 10/ 971	1.0% 10/ 1000	2.1% 22/ 1055	4.8% 47/ 971	4.3% 44/ 1032	3.2% 35/ 1079	3.0% 33/ 1108	2.9% 28/ 974	3.0% 28/ 927	2.8% 35/ 1252

Figure 15: PI 10.1. Submission of HRA 2000 Applications by Month



Given the variation in this month-by-month view, we have re-analyzed this data by reporting period:

Figure 16: Submission of HRA 2000 Applications by Reporting Period



We have previously noted that SPAN consistently identifies many more of their clients as "in need of supportive housing" than do jail based discharge planners. This data can be seen in the last two lines of the table above. However, our analysis was poorly informed by the kind of data we need to fully understand this information. While we do not have before us an explanation of criteria used by discharge planning staff, either at SPAN or in the jails, it is obvious that we should not use as our denominator the total number of released Class Members in the last line of the above table.

For March, Defendants have informed us (see above) that a total of 550 Class Members were released *to the community* who remained in jail long enough to have the CTDP completed. Of this group, 188 were not SPMI, leaving 362 as the universe of SPMI Class Members reaching the CTDP while in jail who were ultimately released to

the community. A further 170 were reported to be global refusers. Surely some percentage of this group was SPMI, and thus that percentage would need to be removed from consideration for this service. Thus, the actual denominator should be at most 362, and likely somewhat lower, to account for global refusers, specific refusers of this service, and those not believed to be "in need of supportive housing. Therefore, the percentage in the last line of the above table should be ≥ 9.7%. This still indicates that SPAN is more than twice as likely to find its clients "in need of supportive housing". However, this variance is much more acceptably explained by selection bias. In other words, we are more likely to believe that SPAN visitors may seek SPAN services specifically because of a need for housing. In fact, other SPAN data (regarding homelessness rate, see below) bear this out. We hope to receive this kind of information going forward, to permit more accurate and complete understanding of the data provided.

During this reporting period, Defendants appear to be exceeding our interim expectation of 75%, albeit with the above caveats regarding how Defendants select Class Members for this service and regarding the appropriate denominator for this measure. Therefore, we will raise our expectation at this time to 95%.

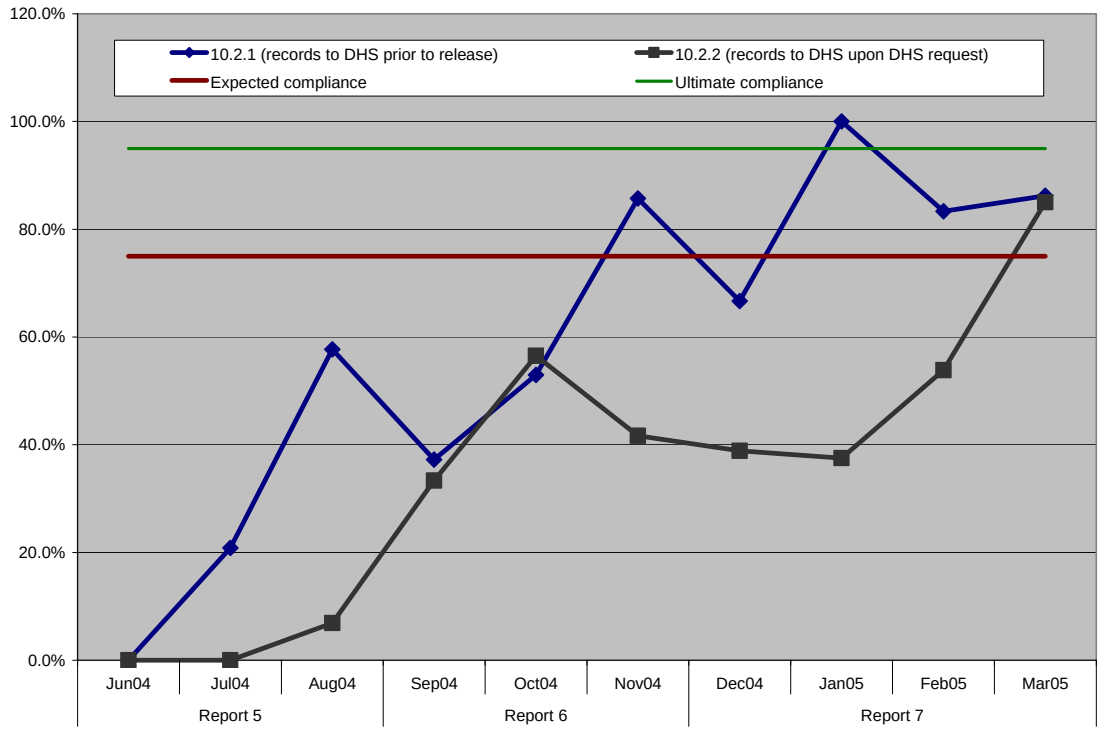
22. Performance Measure 10.2.1: Sharing of Information with DHS of Homeless Class Members with Projected Release Dates
23. Performance Measure 10.2.2.: Timely Provision of Information to DHS for Class Members Presenting to DHS After Release

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 26: PI 10.2. Provision of Records to DHS

	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
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	66.7% 10/15	100.0% 14/14	83.3% 15/18	86.2% 25/29
10.2.2	0.0% 0/??	0.0% 0/??	6.9% 2/29	33.3% 1/3	56.5% 13/23	41.7% 5/12	38.9% 7/18	37.5% 9/24	53.8% 7/13	85.0% 17/20
# homeless on incarceration	27	87	132	51	61	53	57 7.2%	43 6.0%	53 8.0%	60 6.9%
# homeless on release	5	39	70	71	80	19	33 4.2%	36 5.0%	31 4.7%	49 5.7%

Figure 17: PI 10.2. Provision of Records to DHS, by Month



As with most of the measures discussed herein, we will require a more complete understanding of the makeup of the denominator of these measures. Statistically, Defendants' performance is increasing on both of these measures. For 10.2.1, performance increased by about 38% per month ($p<0.0001$) and for 10.2.2, performance increased by about 35% per month ($p<0.0001$). Given the obvious improvement on measure 10.2.1, we now will raise our expectation for that measure to our ultimate

expectation of 95%. However, it is not nearly as clear that Defendants' performance on measure 10.2.2. is consistently increasing and we will defer changing our expectation here until we have further data points.

Defendants continue to report rates of homelessness which are markedly below those reported in the national literature or in studies specifically focusing on the New York City Correctional System. We discussed in some detail in our February 7, 2005, report. As noted in the above table, DoHMH continues to report that, at the time of release, between 4% and 6% of the Class Members are homeless.

During our March 16, 2005 meeting with DoHMH, we raised this issue and requested clarification regarding Defendants' process for ascertaining the housing status of Class Members. We were advised that, while Defendants also find these numbers to be lower than they would have expected, they attributed these findings to Class Members' low self-report regarding homelessness. Because, in the absence of collateral information (for example, attorneys, family, community treatment providers), this can only be measured by self-report, the method of acquiring such self reports is paramount. We recognize that both the content of the inquiry and the approach of the inquirer regarding homelessness can markedly alter the results obtained.

In our last report, we cited a study performed in the NYC DOC regarding homelessness.[59] The investigators used a brief series of structured questions designed to elicit accurate information regarding the recent housing status of recently incarcerated inmates within the DOC. Such an approach is preferable to simply asking the question: "Are you homeless?" In the context of DoHMH's updating the forms used for their

[59] 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.

assessment process, we urge DoHMH to consider adopting this approach for the assessment of housing status of inmates.

24. Performance Measure 11.1: Provision of Transportation from Jail to Residence or Shelter
25. Performance Measure 11.2: Provision of Transportation from SPAN to Residence or Shelter
26. 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

Table 27: PI 11. Transportation

	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
11.1	100% 47/47	100% 62/62	100% 132/132	90.20% 46/51	100% 50/50	100% 68/68	100.0% 54/54	100.0% 46/46	100.0% 52/52	100.0% 48/48
11.2	100% 14/14	100% 20/20	100% 12/12	100% 6/6	100% 6/6	100% 5/5	100.0% 1/1	n/a 0	100.0% 2/2	100.0% 1/1
11.3	2	0	0			100% 2/2	83.3% 5/6	100.0% 1/1	n/a 0	100.0% 1/1

As with our last report, 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. This information is summarized in the following table:

Table 28: Comparison of Transportation at RMSC and EMTC

	accepted	declined	total offers
overall	200 35.6%	362 64.4%	562
EMTC	200 62.1%	122 37.9%	322
RMSC	0 0.0%	240 100.0%	240

In addition to the data reported for November 2004 in our last report, we now have information regarding five months of transportation offers from RMSC and EMTC. Over this time, not one inmate from RMSC is reported to have accepted transportation. In our

last report, we made strong suggestions to Defendants to explore reasons for this differential acceptance rate. In that report, we outlined our view that, while Defendants are responsible for implementing a process and not necessarily responsible for guaranteeing any particular outcome, a finding such as this calls the process as implemented into question. It is inconceivable to us that, if the transportation service is offered properly, not one woman out of a total of 279 would make use of this service.

In contrast, nearly 2/3 of the men in EMTC accepted the offered transportation. This finding is entirely consistent with everything else we know about refusal rates among Class Members for the variety of services offered as part of the discharge planning process.

To reiterate our comments regarding this information in the last report:

> 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[60]
> - 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.
>
> 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

[60] 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.

> 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.

Given that we made these suggestions in our last report, it is surprising to us that Defendants have apparently not followed up on this issue, and that we are reporting the exact same finding over a four month period. In our performance measure, we have permitted Defendants to exclude refusers, as we believe that Defendants cannot be fully held accountable for the choices of Class Members. That said, this finding in RMSC indicates to us a fundamentally flawed process in making offers of transportation. Simply excluding refusers, when everyone is a refuser, makes meaningless the measure we have articulated. Unless Defendants are able to explain the finding in a way that we find acceptable, or to remedy the situation in RMSC by the time of our next report, we will have no choice other than to find Defendants out of compliance on this measure, at least as it applies to the women inmates at RMSC.

Defendants continue to transport occasional Class Members from SPAN to a residence or from an intake/assessment shelter to a program shelter. They appear to be meeting this obligation.

27. Performance Measure 12.1: Follow-up Contacts for SPMI Class Members Provided with Appointments
28. Performance Measure 12.2: Follow-up Contacts for SPMI Class Members Provided with Referrals

Defendants' follow-up requirements regarding appointments and referrals are outlined in ¶49 of the Stipulation. Defendants reported

Table 29: Follow up Calls Related to Mental Health Aftercare and Housing

	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
12.1	60% 36/60	92% 23/25	74% 14/19	80.60% 29/36	76.90% 30/39	90.50% 19/21	97.2% 35/36	100.0% 33/33	100.0% 11/11	93.8% 15/16
12.2	45% 35/78	53% 18/34	93% 25/27	60% 15/25	73.50% 25/34	66.70% 16/24	77.3% 34/44	100.0% 41/41	100.0% 15/15	100.0% 15/15

The following graphs present this data visually.

Figure 18: PI 12.1. Follow Up Calls Regarding Appointments

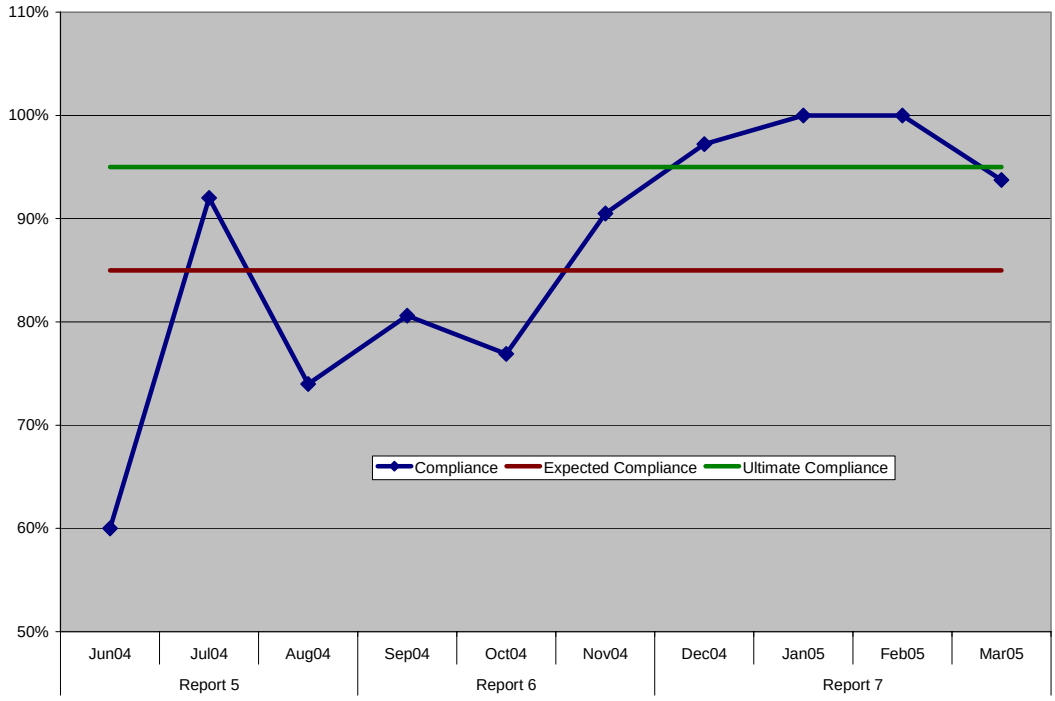
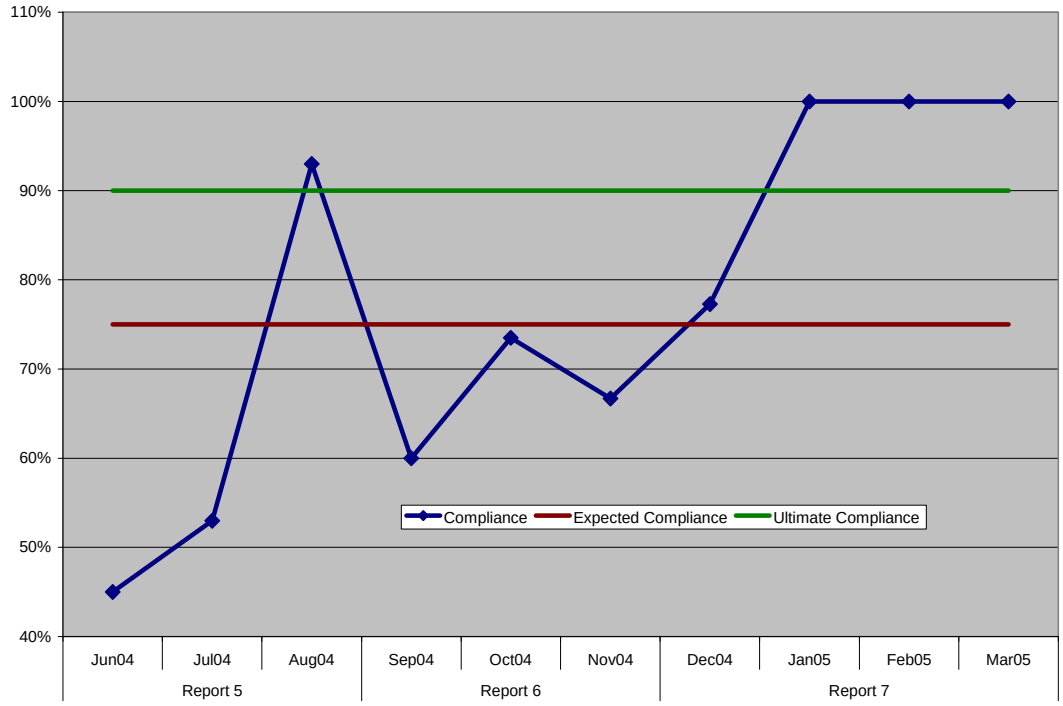


Figure 19: PI 12.2. Follow Up Calls Regarding Referrals

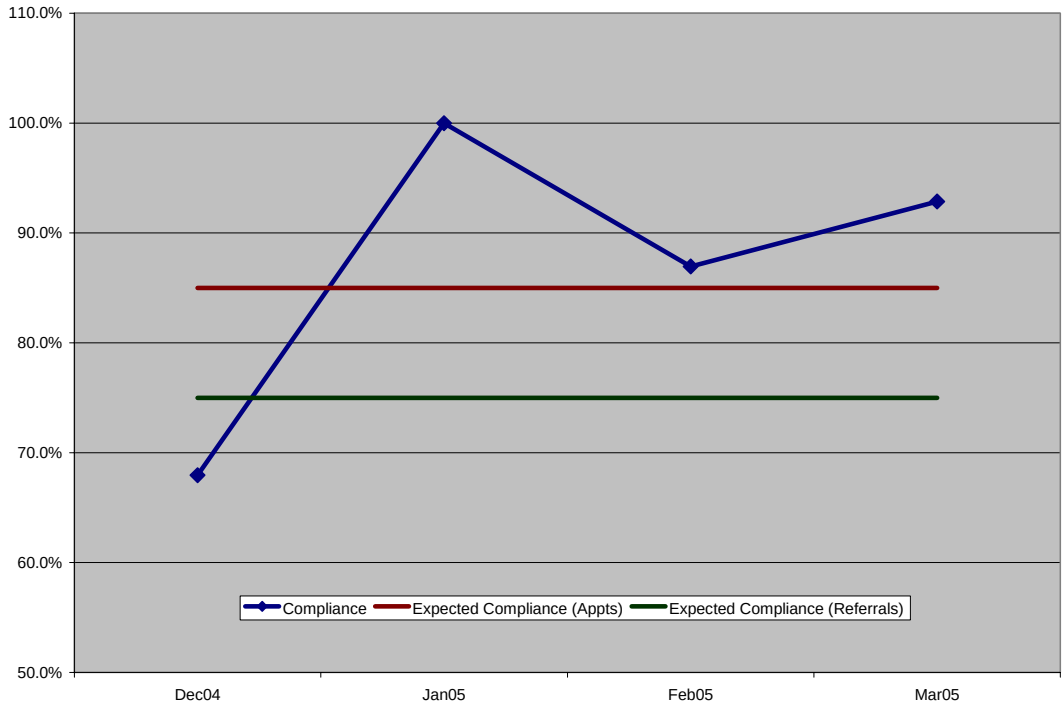


Defendants only during this reporting period began reporting on follow-up calls made by jail-based discharge planners (as opposed to those made by LINK, which they had been reporting on previously). During this reporting period, they provided us with combined data for follow up calls regarding appointments and referrals, as follows:

Table 30: PI 12.0. Follow Up Calls from Jail Based Discharge Planners re: Appointments and Referrals

Dec04	Jan05	Feb05	Mar05
67.9%	100.0%	87.0%	92.9%

Figure 20: Follow Up Calls from Jail Based Discharge Planners re: Appointments and Referrals



While Defendants are doing well from the perspective of meeting both interim expectations for these calls, we have requested that Defendants separate out data regarding calls made to follow up on appointments made by discharge planner and regarding calls made to follow up on referrals.

It is evident that, during the last reporting period, Defendants have met or exceeded our interim expectation for measures 12.1 and 12.2. This is supported by statistical analysis which finds that for measure 12.1, the Defendants have demonstrated an improvement of about 35% per month, and for measure 12.2., the Defendants have demonstrated an improvement of about 34% per month (both significant at the $p<0.0001$ level). For measure 12.0, we will await further data points before considering raising our expectation. Therefore, at this time, we will raise the level of compliance required to our ultimate expectation for these measures. Henceforth, Defendants will be obligated to

comply with measure 12.1 (and the relevant part of 12.0) for 95% of cases, and to comply with measure 12.2 (and the relevant part of 12.0) for 90% of cases.

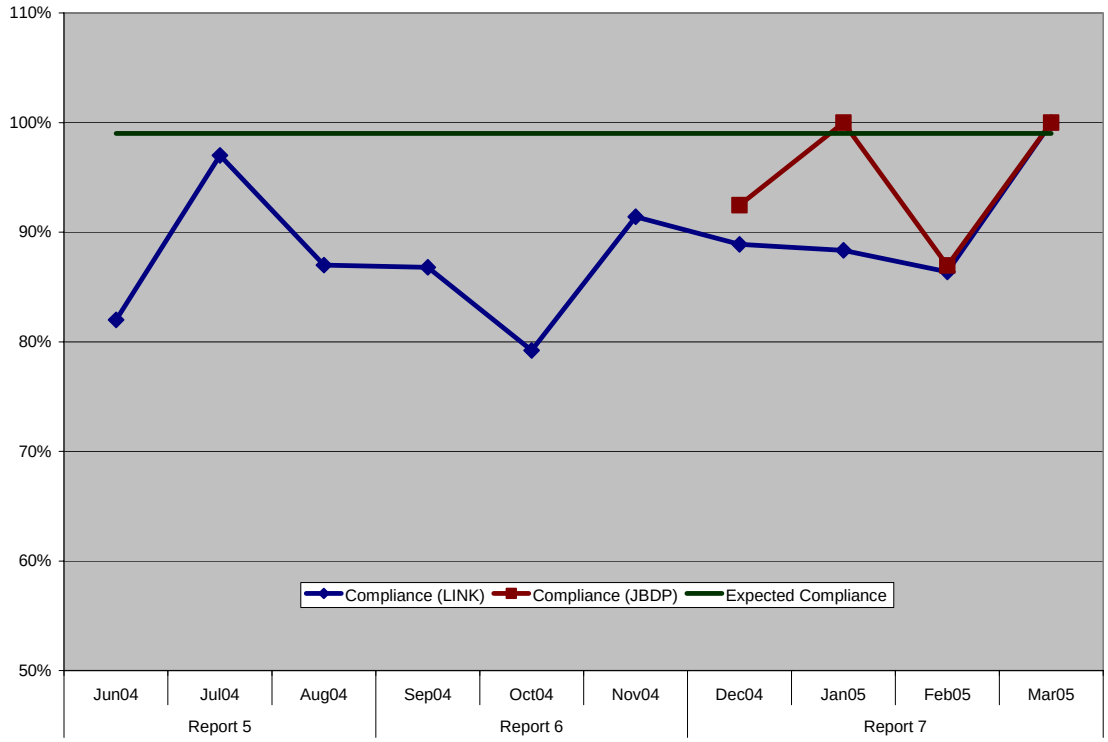
29. Performance Measure 12.3: Follow-up Contacts for SPMI Class Members Regarding Appropriateness of Housing
30. Performance Measure 12.4: Offer of Assistance to Procure More Appropriate Housing

Defendants' follow-up requirements regarding appropriateness of housing are outlined in ¶100 of the Stipulation. Defendants reported

Table 31: PI 12.3. Follow Up Calls Regarding Appropriateness of Housing

	Report 5			Report 6			Report 7			
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
From LINK	82% 46/56	97% 34/35	87% 26/30	86.80% 33/38	79.20% 38/48	91.40% 32/35	88.9% 48/54	88.3% 53/60	86.4% 19/22	100.0% 24/24
From JBDP							92.5% 49/53	100.0% 47/47	87.0% 60/69	100.0% 65/65

Figure 21: PI 12.3. Follow Up Calls Regarding Appropriateness of Housing

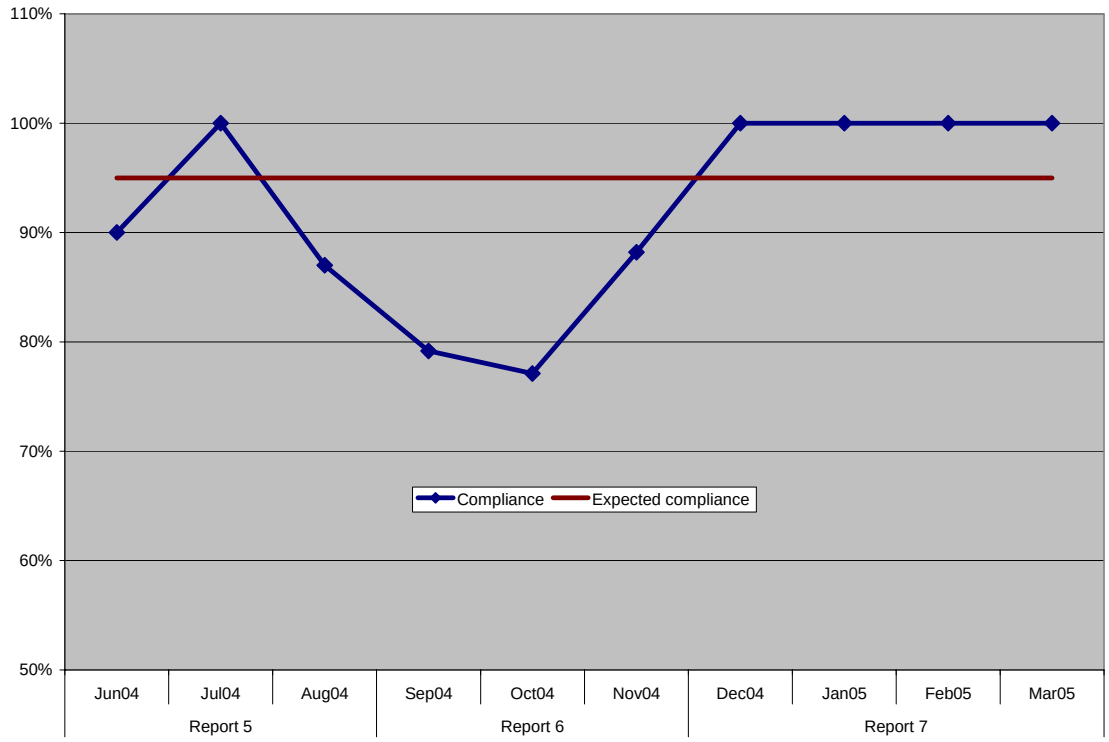


When Defendants successfully reach a Class Member and are able to determine that the Class Member's housing is not "clinically adequate and appropriate", the individual speaking with the Class Member is obligated to offer to assist the Class Member in procuring more appropriate housing. Regarding this obligation, Defendants reported:

Table 32: PI 12.4. Offer to Procure More Appropriate Housing

Report 5			Report 6			Report 7			
Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05
90%	100%	87%	79.17%	77.10%	88.20%	100.0%	100.0%	100.0%	100.0%
35/39	13/13	26/30	19/24	27/35	15/17	22/22	18/18	6/6	11/11

Figure 22: Offer to Procure More Appropriate Housing



Defendants have now met and exceeded our performance expectation for this measure. However, we note that the absolute numbers have fallen over this reporting period, despite Defendants having made many more calls during this reporting period. We will continue to monitor this task.

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

In our chart reviews, we frequently find documentation on a signature page regarding Class Members' receipt of "Brad H. Brochures." To our knowledge, there are three such brochures:

- Rights as a Class Member
- SPAN Services
- Services in Your Community.

While only the first two are specific to the Brad H. Settlement, we support the continued use of the third brochure as well.

However, we question the reliability of these signature pages because we have found at times that Class Members report on interview that, for example, while they signed the page, they recall receiving only one brochure. Additionally, we have observed these signature pages in jails that do not have a supply of the brochures available. Thus, we cannot at this time determine whether Defendants are in compliance with this measure.

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

Defendants reported that their bilingual mental health and discharge planning staff include the following languages:

Table 33: Language Capacities among Mental Health and Discharge Planning Staff

Spanish	25		Tagalog	1
French	17		Yiddish	1
Russian	5		Hindi	1
Creole	5		Tamil	1
Croatian	3		Malayalam	1
German	3		Swedish	1
Greek	2		Ukranian	1

In addition, when necessary, Defendants make use of a telephonic interpreter service.

We are unable through chart review to assess Defendants' use of interpreters or multilingual staff with non-English speaking Class Members. Defendants' current forms allow for clinicians to rate the Class Member's English speaking ability as good, fair or poor, and to separately note whether an interpreter is needed. We have no knowledge of how staff operationalize this rating, though we are aware that this is subjective, and we have observed widely variant ratings among staff in Class Members' charts. Finally, when the clinician finds that an interpreter is needed, there is no routine indication whether interpreter services were sought or obtained, or, when possible, if bilingual staff were involved in the evaluation.

We remain convinced that offering services in a linguistically appropriate and culturally sensitive manner are key aspects of the engagement process. We will need to reexamine our approach to the monitoring of this issue.

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

Defendants continue to object to this measure as establishing a performance indicator "regarding an action which is not required by the Settlement." Currently, between 28-31% of Class Member refuse all services. In this situation, we find an examination of this issue necessary to effectuate the terms and objectives of this Settlement. Of the charts we reviewed, 42 cases were identified in which the chart reflected that the Class Member had declined all or specific discharge planning services. This measure assesses Defendants' documentation of a re-offer of discharge planning services to Class Members who have previously refused services. We identified such a re-offer in 16 (38%) of these cases.[61] This reflects significant improvement from the last reporting period, during which we

[61] Cases which did not show evidence of reoffer included #s 1356, 1359, 1363, 1369, 1371, 1378, 1399, 1402, 1405, 1406, 1407, 1408, 1409, 1411, 1416, 1419, 1426, 1429, 1435, 1440, 1441, 1445, 1447, 1449, 1450 and 1465.

identified a 19% compliance rate on this measure, but is still far below our expectation of 95% compliance, and indeed any reasonable expectation for a system of care invested in engaging a clientele well known for its resistance to treatment.[62] As we noted in our last report, we expect this to continue to improve as the Defendants are able to more fully implement the new model.

B. Data Unrelated to Performance Indicators

1. DHS Placement Directly in Program Shelter

In February, we reported that 3 of 13 (23%) of Class Members who presented to DHS and who needed placement in a program shelter were directly placed there during that reporting period. For this reporting period, Defendants reported that 11 of 22 (50%) of Class Members requiring a program shelter were directly placed there.

We are obligated 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.

[62] We recognize that there may be times when a client refuses for understandable reality-based or identifiable clinical reasons, and that the best judgment of the team might be to defer a re-offer of services until such circumstances change or the person's symptoms improve. This approach would reflect the type of individualized assessment and approach to discharge planning we strongly encourage and which should be a natural outgrowth a fully implemented "new model". Until such a vision is realized, we will rely on rates of re-offer as a grosser but more straight-forward manner of assessing this measure.

2. SPAN

Defendants reported as follows during this reporting period:

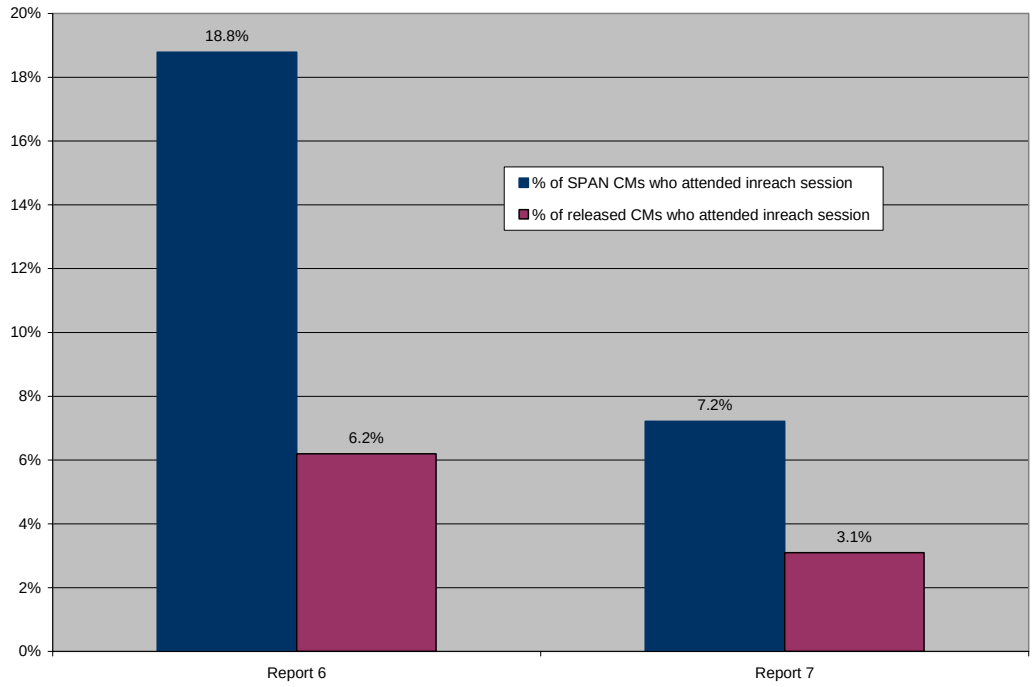
Table 34: SPAN utilization data

	Report 6	Report 7
Homeless	32.6%	37.5%
SPMI/Likely SPMI	45.9%	53.4%
% of SPAN CMs who attended inreach session	18.8%	7.2%
% of released CMs who attended inreach session	6.2%	3.1%
After 5pm	3.3%	2.4%
Bronx		21.4%
Brooklyn		32.9%
Manhattan		33.6%
Queens		8.6%
Staten Island		3.6%

It is clear that Class Members who are homeless, and those who are SPMI/Likely SPMI, are overrepresented among the SPAN clientele. These include the most at-risk Class Members.

In addition, inreach clearly is effective in generating SPAN utilization after release.

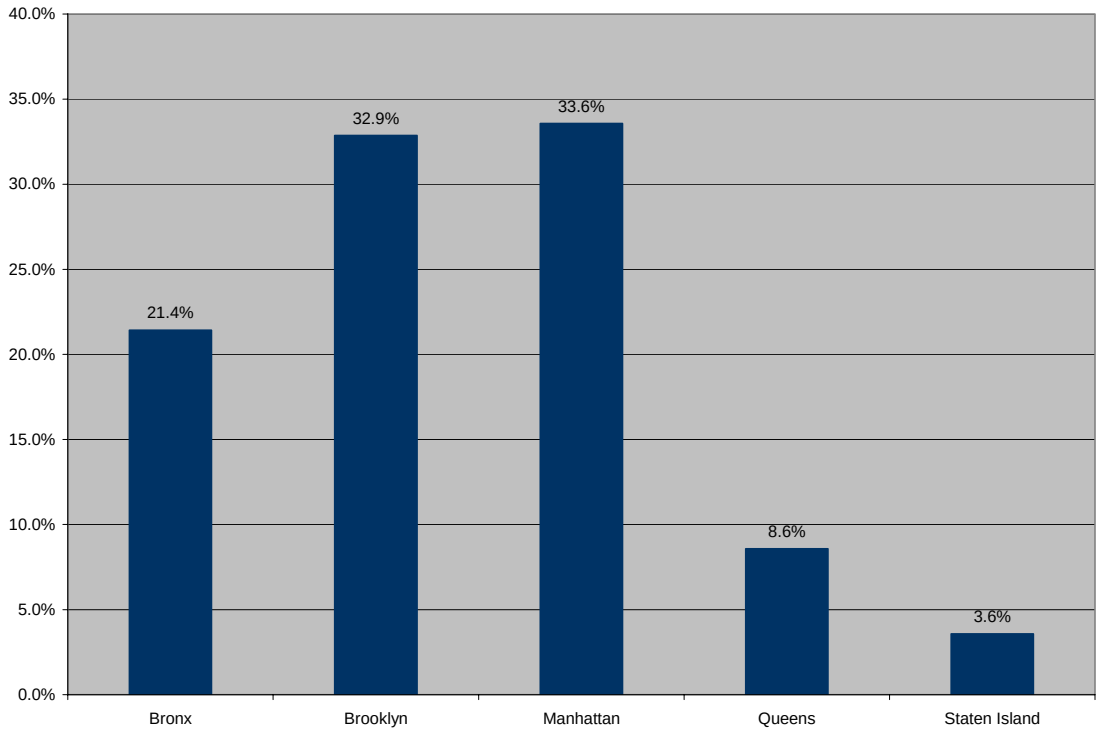
Figure 23: SPAN Inreach Data



We note with concern that, compared to the prior reporting period, SPAN conducted only 2 inreach sessions per month and included a much smaller percentage of the Class Member population in these sessions during this reporting period. We support the proposed changes to SPAN operations outlined above, in that we believe that if Defendants are able to reach more Class Members by conducting more inreach sessions, they can increase the utilization of SPAN, especially among the most seriously disabled Class Members.

Finally, it is evident that the Staten Island SPAN Office is the most underutilized of the SPAN Offices.

Figure 24: SPAN Utilization by Borough



3. Refusal Rates

Class Members continue to refuse all discharge planning services at a rate ranging from 28-31%. This is fairly consistent with prior refusal rates. As we previously noted,

we are not setting any specific goal for refusal rates, nor do we have any plans to do so. We are clear that Class Members have a right to refuse any or all services, including discharge planning. Class Members, however, might refuse for a variety of reasons, including:

(a) Symptoms of mental illness
(b) Stigma
(c) Language barriers
(d) Experience-based mistrust

We believe that Defendants should strive to reduce the rate of refusal which grow directly out of a class member's symptoms, a lack of understanding of the benefits of discharge planning or the risks of refusing it, or an inability to communicate with staff. While exceedingly difficult to operationalize, the way in staff explain and offer services to Class Members will undoubtedly have an effect upon refusal rates. A generally effective program of discharge planning will attempt to overcome resistance or language based refusals. The latter can be dealt with by an efficient use of interpreters; the former requires an individually-based, clinical understanding as to why a particular person refuses and what clinical approach might best engage that individual. Meaningful team meetings between discharge planning and mental health staffs as well as the complete implementation of the "new" model of discharge planning are important aspects of an approach to reducing refusal rates.

We suggest that Defendants conduct internal quality improvement reviews of the refusal rate to look at questions such as whether particular buildings or individual discharge planners have notably high or low rates of refusals[63] from the Class Members they attempt to engage. For example, as noted above, there is a marked discrepancy in

[63] Commonly referred to as "outliers".

the acceptance rate for transportation between EMTC and RMSC. Clearly, something different is taking place in these two jails.

Another area for exploration is the effect of a Class Member's belief that he or she will not be discharged to the community, but rather will serve a sentence in a State prison, on that Class Member's subsequent acceptance or refusal of discharge planning. While Class Members may often be correct about this, at times they are incorrect. If such Class Members' reports are taken at face value, and they subsequently are not sentenced to state time, they would then be released without discharge planning.

As Defendants have acknowledged, this population is inherently difficult to engage. Defendants retained outside training early on in the implementation of the Stipulation regarding "Engaging Challenging Clients."[64] Such efforts should be continually reinforced through training, supervision and internal quality assurance. Over time, this will have a positive impact on refusal rates for all reasons, but especially for reason (d) above.

4. Time of Release

According to paragraph 32 of the Stipulation, DOC is to release Class Members who are not released pursuant to bail, court order requiring immediate release or directly from court, during daylight hours and in no event earlier than 8:00a.m. Time of release was a core concern animating this litigation. Defendants should strive to approach 100% compliance in this area.

In our previous reports, we made reference to DOC Operations Order 03/03, which effectuates this obligation by requiring that Class Members not subject to one of the exceptions noted above are to be released between the hours of 8:00a.m and 4:00 pm.

[64] See our Third Quarterly Report, March 8, 2004, at page 3.

Because the number of daylight hours varies according to the time of year, and because Defendants define release as the approximate time the Class Member leaves the facility rather than the time they actually leave Rikers Island proper, this appears to us to be a responsible manner of operationalizing the time of release.

The following table reflects the compliance figures for this reporting period:

Table 35: Release Time Data

	Report 6				Report 7			
	Aug04	Sep04	Oct04	Nov04	Dec04	Jan04	Feb04	Mar04
EMTC	93.1% 162/174	90.1% 155/172	97.3% 143/147	91.8% 167/182	93.4% 155/166	87.2% 143/164	96.3% 157/163	
RMSC	99.1% 104/105	100.0% 81/81	100.0% 64/64	95.4% 82/86	97.1% 99/102	95.5% 63/66	94.9% 94/99	
global	95.3%	93.3%	98.1%	92.9%	94.7%[65] 254/268	89.6% 206/230	95.8% 251/262	97.3% 293/301

It appears from the data provided over the last two reporting periods that, in general, RMSC has better success meeting this requirement than does EMTC. Additionally, we are concerned about the drop in January, which was driven by a localized problem in EMTC. Defendants have informed us that some Class Members were released prior to 8am because the "M" was added after the discharge list was printed. Therefore, DOC was unaware that these individuals were Class Members. DOC has changed the system to eliminate "pre-printing the IIS screens." In addition, "the discharge planning supervisor will bring a daily list of newly entered inmates into Brad H status directly to the warden's office if the inmate's discharge falls within 2 days" of being made a Brad H. Class Member.

Defendants reported that other Class Members were released after daylight hours. The advised us that the "majority" of these cases were individuals housed "in other

[65] While DOC policy is to release all Class Members between 8am and 4pm as the operational definition of ¶32 of the Stipulation, Defendants advised us that two of these cases were actually released after 4pm but during daylight hours. We include these cases as compliant for this analysis.

classifications (Mental Health Center, punitive segregation, protective custody, etc)" which preclude their return to EMTC prior to the day of release. Whereas individuals housed in other facilities as part of a work detail may be returned to EMTC prior to the day of discharge, these other individuals cannot be returned early. DOC has implemented a procedure whereby "EMTC will give reminder calls to the other facilities in advance of the discharge date, and the other facilities will ensure that the inmates are produced at EMTC by 0800 on the day of discharge. EMTC will then ensure that these inmates are produced to Discharge Planning and their processing out of the facility expedited."

In our last report we noted that Class Counsel raised the concern that according to the reports they received that Class Members were required to wait for several hours on the day of their discharge in order to receive discharge planning paperwork and medications. We noted the potential concern that this practice or the rumors related to it might negatively influence what we view as an already high rate of refusal of discharge planning services. That apprehension aside, we view this procedure as having both potentially constructive and deleterious effects. To the extent that this "run through" the clinic on the way to release is done quickly and serves to provide medications and re-enforcement of established discharge plans, it might be useful; we could also see a valuable role for this practice to re-offer services to a Class Member who had been refusing but might accept certain services now that release was in fact imminent or who had only been incarcerated briefly. However, we view this practice as an inadequate substitute for longitudinal assessment and discharge planning for Class Members willing

to receive services who are incarcerated a sufficient length of time to obtain them over the course of their incarceration.

We visited EMTC to observe the discharge procedure. During this visit, we spoke with three Class Members who were being released in an attempt to gain an understanding of the day-of-release discharge planning process in the clinic. Two of the three Class Members refused transportation, one citing his belief that the transportation route would prevent him from retrieving his property, and the other indicating that the route "would take longer than the subway." The third Class Member, while accepting transportation, declined other discharge planning services.

These last minute discharge planning contacts potentially serve as opportunities to provide services that could not or were not provided earlier in an incarceration. For individuals who are incarcerated for only a few days, these may in fact be the only opportunity to link a Class Member to needed services or even to advise such a Class Member of his/her rights to discharge planning services. For Class Members who have previously refused all or some services, these visits may act to stimulate acceptance "now that you are on your way out the door." It is clear, however, that, except for those Class Members with the very shortest lengths of stay, these visits can only be seen as augmenting efforts at discharge planning that have occurred earlier in the incarceration. Ideally, these visits are the last in a chain of coordinated, longitudinal discharge planning efforts. Defendants, in the May 12, 2005, letter to Class Counsel, note that "[w]herever possible, discharge planning paperwork is completed prior to release. In those cases when discharge is not expected (i.e. Class Members released on bail), it takes approximately two hours to complete the paperwork." This does not seem unreasonable

to us, though we recognize that it may cause some Class Members to refuse to complete the process in lieu of a more rapid release from jail.

5. Pilot Project

During the reporting period for our February, 2005 report Defendants provided the following data regarding their attempts to implement the Pilot Project required by ¶34. They had contact information for a total of 297 attorneys for Class Members falling within the parameters of the Pilot Project. Of that group, they where able to speak with 126 (42%). Of the 126 attorneys with whom they were able to speak, 8 (6%, 3% of the total group) were able to provide release dates for their clients. Defendants were unable to reach 60% of the attorneys for whom they had information. The group they did reach was rarely able to provide release dates.

At that time we noted, among other things, that:

- Defendants had not solved the technological obstacles which prevented them from speaking with the majority of the attorneys.
- Defendants were unable to attempt contact with attorneys for 82% of the Class Members housed at RMSC and AMKC (the target group for the pilot) because they did not have contact information.
- Defendants' use of a centralized contact number will result in more valid data upon which to evaluate the usefulness of these efforts.
- We encouraged the Parties to build upon what appeared to us to be a constructive dialogue about how to overcome the technological shortcomings we have discussed, and noted our on-going suggestion to temporarily suspend the project.

For this reporting period, Defendants inform us that they had contact information for and attempted to contact 243 attorneys. A total of 108 or 44% responded, leaving 56% for whom Defendants were unable to establish any contact. Of the 108 attorneys with whom they had made contact, 9 were able to provide a release date. These 9 attorneys represent 6.6% of the attorneys with whom Defendants spoke and 3.7% of the total universe of attorneys for whom they had contact information.

As the above demonstrates, the data for this current reporting period are fundamentally unchanged from the previous findings. On March 28, 2005, Defendants began using the centralized call-back number which should provide more complete information that we received until this point. Currently, our plan is to analyze the data produced by Defendants over the next reporting period. In our next report of October 6, 2005, we plan upon making the requisite findings required by ¶34 as to whether the pilot should be continued or expanded.[66]

IV. Recommendations

For this report, we will divide our recommendations into two major categories: Process and Data.

A. Process

In our view, there are several changes that are in progress that relate to the process of discharge planning, and which we believe will improve this process. These primarily include the implementation of the "new model" and the proposed changes to the operation of SPAN. We believe that the new model, combined with the new organizational and administrative structure under which it operates, is responsible for much of the improvements we have described above. In addition, the SPAN realignment, if implemented, should result in increased SPAN utilization, serving as a safety net for those Class Members who are released with incomplete discharge plans. We urge Defendants to fully implement the "new model" and to pursue the proposed SPAN realignment with all possible speed.

[66] One issue has arisen which might inhibit our ability to accurately do this. In the information request we generated for this report, we requested all logs or other records which Discharge Planning maintains regarding this pilot project and were informed that no such logs have previously been kept. We are uncertain as to how these data are recorded and generated and thus have requested additional information from DoHMH. On May 13, 2005, they provided us with a "template" of a log sheet that they will be using to capture this data going forward. However, it remains unclear to us whence and how the data Defendants provided for this report was derived. We will require additional discussions on this topic.

We have operationalized performance measures 2.2, 2.4, and 3.2 related to the appropriateness of various tasks. In addition, we have shared our criteria regarding them with the parties. We will soon be forwarding our baseline data regarding these measures to the parties under separate cover. In the interim, we have discussed with Defendants the need to develop or alter their forms and policies so that their staff will be better equipped to gather the information needed to perform these tasks adequately and consistent with our expectations. Defendants have begun to alter their forms used for these purposes and to forward us drafts for review. Upon finalization, we anticipate that Defendants will need to train their staff regarding the correct use of the new forms. We look forward to observing these training sessions.

In our review of data provided by Defendants, we have identified a number of areas where Defendants have not made adequate progress, and we will highlight what we see as the key issues here.

1. Refusals

   We outlined our thoughts regarding refusals above. At this point, we simply reiterate that, while Defendants are not responsible for any particular Class Member's decision to refuse discharge planning services, we believe that they are responsible for developing a system that promotes acceptance of the services offered, and that they are responsible for ensuring that their staff has all necessary tools and training to engage this difficult clientele. We encourage Defendants to look critically at refusal rates, and at Class Members' reasons for refusal, and to develop quality improvement approaches to this problem. A relatively straightforward example of this problem relates to the differential refusal rate for transportation at the two affected jails (see above).

2. SSI/VA/Food Stamps

Defendants' progress in these areas has been frustratingly slow. In part, this relates to the difficulty of dealing with agencies in other jurisdictions. However, we would hope and recommend that Defendants become much more assertive in pursuing these important benefits for their clients.

3. Operational Criteria for HRA 2000

We have now resolved the question of whether SPMI status is required for Supportive Housing, and what if any relationship there is between SPMI status and the HRA 2000. It is our understanding that only Class Members who are SPMI are eligible to apply for supportive housing using the HRA 2000. We recommend that Defendants now view this as another special service due to SPMI Class Members. Defendants have agreed to "provide [us] with criteria for determining which SPMI clients should be referred for supportive housing."

4. Homelessness

Defendants find a much lower rate of homelessness than our experience and existing research in the area would lead us to expect. We again ask that Defendants inform us as to how they assess for homelessness status, and we recommend that Defendants look to research studies to develop more sophisticated ways to assess this.

Finally, while Defendants can be satisfied that we recognize the extensive work that underlies the improving rates of compliance on the measures taken in isolation, it is time to develop a more holistic view of the discharge planning process. While Defendants initially needed to approach this process as linear, with upstream events needing to be improved more quickly than downstream (dependent) events, at this time we recommend that the process be

viewed differently. All of the discharge planning end-points are the result of a series of individual tasks. These tasks cannot simply be viewed in isolation but must be viewed in a holistic manner. We anticipate that Defendants will build this approach into the fully operationalized new model. In addition, we anticipate that their new database will be able to provide more complete reports regarding the entire discharge planning process.

B. Data

DoHMH is in the process of developing a new, more sophisticated discharge planning database. We have worked hard with Defendants to ensure that they understand what data we need, the questions we are posing of the data, and the way in which we want this data presented. Over time, we have made many suggestions, and Defendants have steadily improved both in the quality of the data and in the relevance of the data they provide to the questions we have asked. There remain many areas of concern, but we are satisfied with the process whereby Defendants, and in particular, DoHMH, have worked with us to begin to resolve these concerns.

That said, there remain some areas of disagreement, most notably the treatment of so-called "clean cases." We recommend that, at the appropriate time, Defendants permit us and our staff to participate in the building of the database so that it is able to answer our questions with a minimization of ad hoc queries. This will make our work as well as Defendants' work much more straightforward.

Finally, there are other Defendant agencies responsible for implementing this settlement aside from DoHMH. While data coming from DoHMH has improved in quantity, in quality, and in relevance to our questions, data related to tasks performed by other agencies has not improved nearly as much. Some of this data must be hand-counted, and nearly all of this

data does not directly connect to data provided by DoHMH. We have made some recommendations in this regard, and we here reiterate the importance of comprehensive and collaborative approaches to the multiple tasks, and the resulting multiple data sets involved.

V. Conclusion

In this report, we have reviewed a large number of data points and processes that, together, make up Defendants' efforts toward providing a full scope of discharge planning services. As we noted in our introduction to this report, Defendants have improved in many areas and have made many positive changes since we began our involvement with this case two years ago. There remains, however, the difficult task of molding the fruits of these efforts into a fully implemented program of comprehensive, individualized discharge planning. In this report we tried to strike a balance between highlighting the improvements made, as well as the deficits identified. We hope that in the midst of the many graphs, figures and footnotes, the reader will not lose sight of either the prodigious efforts expended by Defendants and the real progress they have produced, or of the fact that there is much hard work left to be done before the fundamental objectives of the Stipulation become a reality. Ultimately, this Settlement is about providing discharge planning for people; rather than being an end in and of itself, the data is necessary as a way of attempting to objectively quantify whether these needs are being met.

Our next report comes due on October 6, 2005. Per our set timelines, data and other information from Defendants will be due to us six weeks prior to that date, on August 25, 2005. Our draft will be released on September 15, 2005, and we will require any comments back by the end of the day on September 23, 2005.

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

Respectfully Submitted,

Henry A. Dlugacz

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