Index No. 117882/99

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS Part 8

BRAD H., ***et al.*****,**

Plaintiffs,

-against-

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

Defendants.

TWELTH REGULAR REPORT OF THE COMPLIANCE MONITORS

February 6, 2007

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, Trial Part 8

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

Twelfth Quarterly Report of the Compliance Monitors
February 6, 2007

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

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I. Introduction

Prior to the initiation of this lawsuit in 1999, Defendants had programs in place to identify and stabilize mentally ill inmates incarcerated in the New York City jail system, but they had no system to plan for the post-release needs of this high risk population. Seen in this context, Defendants have accomplished much since the implementation date of the Settlement Agreement in 2003. Among their accomplishments, they now have

- a discharge planning program within the jails,
- SPAN offices to provide a place for Class Members to go following release to continue with discharge planning,
- an ability to submit Food Stamps and SSI applications for Class Members prior to release, and
- assessment tools that include information vital to the discharge planning process.

In addition, they have made significant progress towards a new MIS system which will improve record-keeping, staff communication and liaison with outside treatment providers. Finally, DoHMH has over the past year begun altering some of its operations in order to improve service delivery. For example, DoHMH:

- created an improved method of identifying some Class Members as LSPMI via the pharmacy database,
- responded to concerns raised by women and added a second van for transportation, and
- created new forms and adapted existing forms to better capture data consistent with the dual missions of treatment and discharge planning.

However, much remains to be done if Defendants are to create a cohesive discharge planning system which is staffed with a sufficient number of adequately trained personnel who can provide individualized services to a transient population with a multitude of psychiatric, medical and social problems. Discharge planning cannot occur in isolation. It is, by its nature, the process of connecting people with treatment, benefits and support systems.

In the jail-setting, this means that the underlying task is to promote continuity of treatment and benefits through the pre-incarceration, incarceration, and post-incarceration phases of a person's life. Success requires that pertinent information is obtained, assessed and communicated. This essential integration of information requires a coherent administrative, technological, and organizational system that Defendants have had difficulty attaining. It forms the context for the challenges they face in coming months and years and for much of the discussion which follows.

The fragmented nature of the current discharge planning program results from several factors which we will discuss in greater detail throughout the report. These factors include

- the bifurcated administrative structure of the mental health and discharge planning functions,
- difficulties with recruitment and retention within the discharge planning program, and
- problems in fully implementing a number of well-conceived new assessment forms and policies.

Defendants' focus on details as opposed to the "big-picture" would appear in part to be a ***product*** of our inability to commence monitoring of the performance measures which gauge whether a task was completed appropriately. Were we reporting on these measures, Defendants' attention might turn more steadily to the question of ***how*** (as opposed to ***when*** or ***whether***) a task was completed. To some extent, the focus on detail and timeline – as opposed to quality of the discharge planning process – is promoted by the nature of the Stipulation itself which at once makes Defendants accountable for a detailed process while paying little attention to positive outcomes resulting from that process.

In another sense, Defendants' focus on details rather than the "big picture" is a ***cause*** of our inability to commence monitoring of the "appropriateness" measures. Virtually every recommendation we have made regarding altering procedures, creating new forms and

engaging in new processes which we believe are required to assess the quality of these services was met with initial resistance. Current leadership appears to have a broader understanding of the principles underlying the Stipulation and to resolving problems they and we have identified. Nonetheless, Defendants' prior resistance has substantially set back our ability to monitor these important aspects of their performance.

In this report we will discuss many issues related to compliance data provided by Defendants. Foremost among these are the concordance study of the current MIS system and the status of the new electronic medical record and data system that DoHMH has worked so hard to develop. This is scheduled for "rollout" this month. While it will entail a labor-intensive period of piloting, staff training and trouble-shooting, in the long run it should represent a major improvement over the current system permitting enhanced oversight of the program by DoHMH managers as well as enhanced service-delivery. Additionally, it will permit us to engage in important monitoring activities which have proved problematic to date.

In the next section we will provide a brief overview of the litigation with a focus on unresolved issues.

II. Brief History of *Brad H. et al v. City of New York et al*, Including a Review of Ongoing Litigation

This class action litigation was originally filed in August 1999 on behalf of mentally ill inmates housed in the New York City jails. Plaintiffs sought declaratory and injunctive relief to require the City to provide discharge planning services consistent with New York Mental Hygiene Law § 29.15, 14 N.Y.C.R.R. 587 et seq. and Article I, §§ 5 and 6 of the New York State Constitution to these and other similarly situated mentally ill inmates. Paragraph 1 (bb) of the subsequent Stipulation of settlement defined discharge planning as

> ". . . the plan describing the manner in which an individual will be able to receive a clinically appropriate level of continuing mental health treatment – as well as assistance in applying for other necessary treatment, services and benefits – immediately upon his or her release from or transfer out of a City Jail. . ."

Plaintiffs asserted that the City's alleged failure to provide discharge planning violated the above-referenced state statutes, regulations and constitutional provisions. They further alleged that failure to provide discharge planning in accordance with these requirements violated professional standards which view discharge planning as a fundamental component of sound psychiatric care,[1] as well as contributing to a destructive cycle of arrest and re-arrest for these inmates.[2]

Following a period of vigorous litigation, Justice Richard F. Braun issued a preliminary injunction which directed Defendants to provide discharge planning to the plaintiff class in accordance with New York Mental Hygiene Law § 29.15 and 14 N.Y.C.R.R. 587 et seq.

On August 8, 2000, Justice Braun certified the class to include:

> "all inmates (a) who are currently incarcerated or who will be incarcerated in a correctional facility operated by the New York City Department of Correction ("City Jail"), (b) whose period of confinement in City Jails lasts 24 hours or longer, and (c) who, during their confinement in City Jails, have received, are receiving, or will receive treatment for a mental illness; provided, however, that inmates who are seen by mental health staff on no more than two occasions during their confinement in any City Jails and are assessed on the latter of those occasions as having no need for further treatment in any City Jail or upon their release from any City Jail shall be excluded from the class."

[1] See, for example, Sederer and Rothschild, *Acute Care Psychiatry*, Baltimore: Williams and Wilkins, 1997, in which one of "the four critical areas of assessment" is described as "what problem(s) must be addressed to restore safety and equilibrium to enable the patient to leave acute care?" Inasmuch as the jail functions much like an acute inpatient setting, a similar clinical mission must be attributed to the providers within the jail.

[2] See, for example, Cuellar AE, Snowden LM, Ewing: Criminal Records of Persons Served in the Public Mental Health System (2007) 58 *Psychiatric Services* 114: "[A]lmost a quarter of persons with serious mental illness were arrested in a ten-year period…. [***A***]***rrest was not associated with meaningful increases in service use, pointing to potential missed opportunities to reconnect those individuals to treatment***" (emphasis added).

Following negotiations, the Parties reached a settlement memorialized in the Stipulation and Settlement of January 8, 2003. While admitting no fault or liability, the City agreed to a complex, multi-agency set of processes in order to provide appropriate discharge planning the Class. In accordance with ¶¶108-113 of this Stipulation, we were appointed on May 6, 2003 ". . .to monitor the provision of Discharge Planning in City Jails and Defendants' compliance with the terms of [the] Agreement." Paragraph 193 provides for the termination of prospective relief five years after monitoring begins unless the Court finds "that Defendants have not complied with the terms of this Settlement Agreement over the preceding two years," upon which finding the Agreement may be extended for two years.

This is the 12th Regular Report we have issued in fulfillment of these duties. In November, 2006, by order of The Honorable Jacqueline W. Silbermann, Chief Administrative Judge for the First Judicial District, all cases involving the City of New York pending before Justice Braun were randomly reassigned. This process resulted in the assignment of the instant matter to Justice Shafer. Although there is no litigation currently pending before the trial court in this matter, ¶ 200 of the Stipulation provides that:

> "The Court shall maintain continuing jurisdiction over this proceeding for the term of this Agreement, and any disputes concerning this Agreement shall be resolved by the Court upon motion of either party, or upon such notice as the Court may direct."

As a result, we now file this report with Justice Shafer.[3]

Although we are well over three years into the remedial phase of this litigation there remain unresolved several fundamental areas, some of which are the subject of continued litigation and discussion:

[3] Because of this recent reassignment we have at times presented the material in this report in a longitudinal, historical context, providing some background information and timelines where we thought it useful.

(a) composition of the class;
(b) provision of temporary Medicaid to eligible Class Members pursuant to ¶61 of the Stipulation;
(c) resolution of questions we have raised regarding compliance data provided by Defendants;
(d) commencement of our monitoring of Defendant's compliance with the measures we set forth pursuant to ¶142 (b)(c)(d)(i)(m).

The course of litigation related to items (a) and (b) are outlined on Timeline 1: Key Litigation Events. The events related to our monitoring of appropriateness (item (d)) are outlined on Timeline 2: Key Events Related to Appropriateness Measures. These unresolved areas will be discussed in turn:

A. Membership Status of Inmates Detained on Prison Wards

This issue arose very early in the course of our monitoring. On October 10, 2003, Class Counsel requested that we evaluate the case of a Class Member who committed suicide shortly after release from jail (see our Special Report of November 17, 2003). We made a number of recommendations in our report on this case, chief among them being that "a determination must be made as to whether arrestees who…are hospitalized immediately subsequent to arrest and before spending any time incarcerated in a non-hospital setting, are to be considered class members during their hospitalization." If the answer to this was in the affirmative, then the corollary requirement would be to provide these individuals with discharge planning services pursuant to the litigation while hospitalized.

In our Third Quarterly Report, on March 8, 2004, we formally recommended that a determination be made regarding the Class Membership status of detainees initially housed on prison wards, and further that they be provided with discharge planning consistent with the requirements of the Stipulation while on the prison wards. In our

Fourth Quarterly Report, on June 7, 2004, we reiterated these recommendations. Defendants objected, correctly indicating that they were free to resolve problems addressed in our recommendations in any way they saw fit; i.e. they articulated their position that they are not obligated to accede to our recommendations (¶129)[4]. Because, as of that time, the Parties had been unable to reach any conclusion as to the Class Membership status of these individuals, and the court had not ruled on the matter, we made a determination that these individuals hospitalized on these "prison wards" were included in the class certified by the Court, and that we would treat them as Class Members for monitoring purposes.[5]

On October 6, 2004, as we were preparing our Fifth Report and after we indicated our intention "to request a conference with the Court to begin the process of establishing a framework to provide us with definitive guidance as to whether the patients residing on these prison wards are Class Members,… Defendants served us with copies of their Notice of Motion and accompanying papers in which they request that 'the Court find the Compliance Monitors' determination to include as Class Members those inmates located in the Hospital Units to be unreasonable and vacate that determination….'"[6] This resulted in the ongoing legal process of attempting to reach a resolution on this fundamental question of whether these most ill detainees are in fact Class Members.

In their initial briefings, Defendants articulated their view that, because the status of detainees and inmates housed on prison wards was not explicitly included in the

[4] Paragraph 129 provides: "Defendants shall not be required to accept any recommendation of the Compliance Monitors or Class Counsel pursuant to ¶ 107 and ¶¶ 127 - 128 above; provided, however, that Defendants shall notify the Compliance Monitors and Class Counsel if Defendants reject any such recommendation within seven days after such recommendation was received by Defendants."
[5] See Fourth Quarterly Report, June 7, 2004, pp. 73-79 for extensive discussion of our reasoning and conclusion.
[6] Fifth Report at p. 33.

settlement discussions, it was implied that they were not a part of the Class. Conversely, Class Counsel argued that this silence as to their status indicated a clear agreement that they were in fact a part of the Class. The Court is referred to the motions and briefings on this issue from late 2004 for details of these arguments. Justice Braun held oral arguments on January 27, 2005. On April 18, 2005, the Court issued its order denying Defendants' motion to vacate our decision that these individuals are Class Members.

On May 16, 2005, Defendants filed notice of their appeal of this ruling. In the interim, however, we were granted access to the prison wards and limited access to inmates and detainees housed there, but no access to records, staff, or the remainder of the materials to which we are routinely provided access as we monitor Defendants' compliance with the requirements of the Stipulation. Based on this limited access, we conducted site visits during June, 2005 to each of the two remaining operational prison wards[7] where we interviewed inmates and detainees. We described these visits in our Eighth Report of October 6, 2005, as follows:

> "Our discussions with patients revealed the full range of discharge planning needs that would be expected from a sampling of those housed in an acute care inpatient unit of large urban jail system. This was a multi-problem, acutely ill group of patients, at least one of whom was living in a State Hospital prior to arrest (in fact, this Class Member's crime was committed in the State Hospital). Some were homeless. Some expected to be released in the foreseeable future, while others anticipated a lengthy period of evaluation followed by possible long-term hospitalization or incarceration….
>
> "While we may arrange follow up visits, we see little to gain from on-going, isolated, discussions with patients on the units in the absence of collateral information or an ability to report our findings in any meaningful fashion. We await an expedited ruling by the Appellate Division on this matter, so that we may know how, or whether, we will be able to continue with our monitoring efforts there."[8]

[7] Bellevue Hospital Prison Ward and Elmhurst Hospital Prison Ward.
[8] Eighth Report at pp. 28-29.

In summary, at that time, our conclusion was that these limited visits were not true monitoring. We decided to await an outcome of the appeal of Justice Braun's ruling.

On October 27, 2005, the Parties made their oral arguments before the Appellate Division. On October 3, 2006, the Appellate Division affirmed Justice Braun's determination that detainees and inmates housed on the prison wards are Class Members. On October 17, 2006, Defendants filed their Notice of Motion for Reargument or in the Alternative for Leave to Appeal. To date those motions have not been decided. Thus, at this time, the status of these individuals is that they are Class Members, but in view of the ongoing litigation, their right to obtain the benefits of class membership along with our ability to monitor their discharge planning is stayed pursuant to CPLR sec. 5519.

These events are outlined on Timeline 1: Key Litigation Events.

B. Paragraph 61: Provision of Temporary Medicaid to Class Members

Paragraph 61 of the Stipulation reads:

> "For each Class Member determined as a result of the Pre-Screening Process to be eligible for the reactivation of Medicaid benefits, such benefits shall be reactivated as of the later of (a) his or her Release Date or (b) the date on which the Pre-Screening Process is completed."

A Class Member may have had active Medicaid in the year prior to his or her known or projected Release Date. Defendants, per ¶58, are obligated to reactivate Medicaid for such people. The Pre-Screening Process permits Defendants to determine whether a Class Member has active Medicaid, needs reactivation or is ineligible for Medicaid. Paragraph 59 requires Defendants to initiate the Pre-Screening Process no later than on the date which the CTDP is completed and to complete that process within three business days of initiation.

Paragraph 61 is meant to ensure that Class Members who remain incarcerated a sufficient period of time and are eligible for reactivation of Medicaid have those benefits activated—and thus are able to pay for continued treatment—upon their release.

In June, 2003, Defendants moved the Court to modify this requirement, arguing that in order to meet the requirements of this section they would have to violate Federal and New York State law and regulations. In an opinion dated November 11, 2003, included as Appendix 1, Justice Braun modified ¶61 by:

> "adding language to the end of the current version of subpart (b) so that it will now read 'the date on which the Pre-Screening Process is completed, where the Class Member has provided necessary documentation before the completion thereof, pursuant to Social Services Law §366-a (2) (a)'; adding as '(c)', the substitute subparagraph (b) sought by defendants, with additional language at the end thereof, so that the subpart will read "seven business days after the date on which the Pre-Screening Process is completed, where an investigation is deemed necessary, pursuant to Social Services Law §366-2 (2) (a)', and . . .because the receipt of medicaid at the earliest possible appropriate time is of such significant importance to assist the plaintiffs class members, by adding as (d) 'where it appears that a Class Member is in immediate need and an investigation is deemed necessary, temporary Medicaid benefits shall be granted pending completion of an investigation', as required by Social Service Law §§ 2 18),133…"

We interpreted this to mean that ¶61 should be read as follows:

> For each Class Member determined as a result of the Pre-Screening Process to be eligible for the reactivation of Medicaid benefits, such benefits shall be reactivated as of the later of
>
> (a) his or her Release Date;
> (b) the date on which the Pre-Screening Process is completed, where the Class Member has provided necessary documentation before the completion thereof, pursuant to Social Services Law § 366-a (2) (a);
> (c) seven business days after the date on which the Pre-Screening Process is completed, where an investigation is deemed necessary, pursuant to Social Services Law §366-a (2) (a); or
> (d) where it appears that a Class Member is in immediate need and an investigation is deemed necessary, temporary Medicaid benefits shall be granted pending completion of an investigation.

Consistent with this understanding on June 28, 2004 we promulgated performance measures consistent with the Court's opinion:

6. Activation and reactivation of Class Members Medicaid benefits (¶142g)
   6.1. Reactivation of Medicaid
   6.1.1. [# of class members whose prescreenings result in a finding of "reactivate" who have their Medicaid reactivated as of the later of (a) his or her Release Date, (b) the date of the prescreening completion provided necessary documentation is produced, or (c) within 7 days of the date on which the Pre-Screening Process is completed where an investigation is deemed necessary] ÷ [# of class members whose prescreenings result in a finding of "reactivate"]
   6.1.2. **Temporary Medicaid:** [# of CMs whose prescreenings result in a finding of "reactivate", who require further investigation and are in "immediate need" who are granted temporary Medicaid benefits] ÷ [(# of CMs whose prescreenings result in a finding of "reactivate", who require further investigation and are in "immediate need") – (those who refuse this service)]
   6.1.3. threshold: 95% compliance

Defendants took an appeal of the November 2003 order, but Justice Braun was upheld by the First Department (8 AD3d 141 [1st Dept. 2004] *lv. denied*, 4NY3d 702 [2004]). We thought this matter to be fully and finally litigated on December 21, 2004 when the Court of Appeals denied Defendants leave for further appeal. In our Eighth Report of October 6, 2005, at pp. 33-37, we noted that it was then two years since the Court's original modification of this the final order in this matter and that Defendants had yet to commence implementation. The City then informed us that compliance with Justice Braun's November 2003 order would require adoption of a new local rule and that this rule required state agency approval (New York State Department of Health ("DOH") and/or Office of Temporary and Disability Assistance ("OTDA".) By letters dated September 9, 2005 and September 13, 2005 respectively, these state agencies denied the City's request for this modification.

On January 9, 2006, Defendants, initiated an Article 78 proceeding, against DOH and OTDA, styled as City of New York v. Novello et al. They also named the Brad H. class as respondents. That proceeding was originally assigned to Justice Shafter but was subsequently reassigned to Justice Braun as a related proceeding. On July 7, 2006, Justice Braun granted Class Counsel's motion to dismiss the Petition as against the Class, and on July 11, 2006 denied their motion to intervene. As their motion to reargue was denied, Class Counsel were no longer a party to the proceedings at that point. There was further motion practice during the summer of 2006 whereby the Court denied the State's motion to dismiss and received submissions on all outstanding motions. During the course of this litigation it became clear that the City's original application failed to account for Class Members who presented at SPAN offices in the community.[9] As a result, the City withdrew its request that the Court order the State to adopt the local rule proposed by HRA, substituting a prayer for relief that the Court simply order the State to take all required action which would permit the City to comply with the paragraph 61 as modified by the Court's Order.

However, on October 24, 2006, Justice Braun issued an order recusing himself from the Article 78 proceeding. Subsequently, the matter was reassigned to Justice Eileen A. Rakower. By two Orders and Decisions dated December 7, 2006 (see Appendix 2), Justice Rakower:

- denied the City's "application for an order declaring that 'the State, in denying the City the authority to provide certain class members with "temporary medicaid benefits" as required in the Order, failed to perform duties enjoined upon them by

[9] Class Members who are released from custody prior to the completion of the CTDP and who appear at a SPAN office within 30 days of that release are entitled to have SPAN initiate and complete Pre-screening (¶60) and, if they are eligible, to subsequent reactivation of their Medicaid benefits (¶61).

law and made a determination in violation of lawful procedure, that was affected by error of law, and that was arbitrary and capricious and an abuse of discretion'"

- denied the City's application "for an order directing [the state agencies] to provide the City with the requisite authority to provide 'temporary Medicaid benefits' as specified in the 2003 Order"
- ordered that "OTDA's cross motion to dismiss the action against it [was] moot."
- denied "the Brad H class's motion to re-argue its motion to intervene as Petitioner…"

In denying the City's application, the Court opined that the "City can alleviate the burden of laying out funds pending investigation and reimbursement by beginning the Medicaid investigation process while the class members are still incarcerated in City correctional facilities…." The Court further noted that the city "also has the option of urging the proper legislative bodies to address what City believes to be a void in applicable statutes…."

On January 8, 2007, Defendants filed their notice of appeal of Justice Rakower's order and decision. Thus the ultimate outcome remains subject to further litigation. We conclude that, while the meaning of ¶61 as modified by Justice Braun's order of November, 2003 is fully litigated and is consistent with our understanding as indicated above, the City still lacks the means to implement this important requirement of the Stipulation. More than three years after Justice Braun's original ruling, and two and one-half years after we first promulgated our performance measures which included a measure pertaining to compliance with ¶61, we have been unable to commence monitoring of this obligation.

These events are outlined on Timeline 1: Key Litigation Events.

C. Resolution of Questions Raised Regarding Compliance Data

Inasmuch as our monitoring in this case largely involves our understanding of the discharge planning provided to the Class, we rely heavily on data provided by

Defendants, and primarily by DoHMH. We were first provided data for our Fourth Quarterly Report (June 7, 2004), which was submitted to the Court one year after we began monitoring. Since then, we have continuously called this data into question, as the MIS seemed both incapable of providing the data we required,[10] and because the data provided has never appeared to be consistent with our understanding of individual Class Members' cases based on review of the medical records themselves.

After we repeatedly expressed these concerns in our subsequent Reports, Defendants in December, 2005, requested that we conduct a study to evaluate directly the concordance of the data contained in the MIS with information that we would obtain from the medical records. After much discussion with our experts, with Defendants and with Class Counsel, we finalized the parameters of this study and began to gather data during the current reporting period. This study is discussed in more detail in Section IV.B.1.

D. Issues Related to Monitoring of Certain Performance Measures

Paragraphs 140-147 of the Stipulation fully discuss the development of performance measures which we are required to promulgate to measure Defendants' compliance with their obligations. In summary, we were to establish these measures within six months of the implementation (¶140); they are to reflect in our judgment any practical limitation on providing or implementing discharge planning in City Jails (¶140); the measures are to be expressed in terms of compliance percentages (¶141). Paragraph 142 directs us as to the categories for which we are to establish measures:[11]

[10] See, e.g., Fourth Report, p. 38.
[11] This list is not exhaustive: Paragraph 144 provides: "The Compliance Monitors may establish performance goals in such other areas as necessary to effectuate the terms of this Agreement."

a. Timely assessment of Class Members for inclusion in the Class;
b. Appropriate assessment of whether Class Members are Seriously and Persistently Mentally Ill;
c. Appropriate assessment of whether individuals assessed at the Initial Assessment as needing further mental health assessment and/or treatment are likely Seriously and Persistently Mentally Ill;
d. Completion of clinically appropriate Comprehensive Treatment and Discharge Plans for Class Members;
e. Completion and processing of Medicaid prescreening for Class Members;
f. Enrollment of eligible Class Members in MGP and submission of Medicaid applications;
g. Activation and re-activation of Class Members' Medicaid benefits;
h. Provision of medications and/or prescriptions to Class Members;
i. Making appropriate community referrals and/or appointments for Class Members;
j. Submission and processing of SNA and TANF applications for potentially eligible Class Members who are deemed to be SPMI;
k. Provision of transportation to Class Members who are deemed to be SPMI or likely SPMI;
l. Follow-up with Class Members who are deemed to be SPMI in the areas of housing placement and community referrals or appointments; and
m. Arranging appropriate housing placements for eligible Class Members."

The monitoring of some of these measures — a, e, f, g, h, j, k, and l — can in theory be accomplished by a straightforward process whereby we establish a formula which delineates a denominator of Class Members eligible for a particular service within a specified timeframe. Defendants can then provide a numerator (the number of that group to whom they provided the service in a timely manner). Given a mutual understanding of how to define these two groups (eligible and received) and a dependable method of data collection and analysis, Defendants could in essence self report compliance to us. However, as we discuss in section II.C above and in sections IV.A. and IV.B.1. below, this process has not been as straightforward as we had anticipated.

Importantly, several of these measures – b, c, d, i, and m – require more than a numerical calculation; rather, they require us to assess the appropriateness of ***how*** Defendants accomplished a particular task, rather than simply ***whether*** or ***when*** they did

so. In other words, these ask us to measure the quality of the services provided, not simply the quantity of services provided. We have referred to these as the "appropriateness measures", as they related more to the manner and "appropriateness" of how certain key tasks are performed: For example, we are required to determine whether the assessment of whether a Class Member is Seriously and Persistently Mentally Ill was done appropriately, or whether Defendants' projection of post-discharge needs was clinically appropriate. Pursuant to ¶143, we are to make these judgments in light of the range of the accepted clinical standards and practices. As we discuss in more detail in Section III.C., while we have promulgated these measures, our goal of reaching a fair and workable method of making these assessments has resulted in a prolonged process. As such, our monitoring of these "appropriateness" measures has yet to begin.

These events are outlined on Timeline 2: Key Events related to Appropriateness Measures.

In conclusion, there are four major areas in this case that remain unresolved at this late date within the monitoring appointment. Ironically, two of these issues — the composition of the class[12] and the requirements of paragraph 61 of the Stipulation — related to concepts that should have been resolved at the settlement stage of this litigation. The other two major unresolved matters – the monitoring of appropriateness measures and resolution of our questions concerning the compliance data concerning tasks not requiring our judgment as to "appropriateness" – relate directly to the practice of our monitoring. We had hoped that they could have been resolved much earlier on, and that we would have moved on to active

[12] In addition to the formally litigated aspect of this question relating to Class Members on the Prison Wards, we have continually raised the question of how to appropriately include in the class those who refuse in-jail mental health services but are entitled to discharge planning services. After considerable debate, we believe that we have reached a consensus concerning the proper approach to this situation (See Eleventh Report at pp. 64-66).

monitoring of these areas. This did not occur. The pending sunset of the Stipulation, the recent reassignment of this case to a new Justice at this late date, and these significant unresolved questions together present a substantial degree of uncertainty well into the remedial phase of this litigation: there are significant areas which remain unmonitorable, and the term of monitoring has less than 18 months remaining.

III. **The Process of Discharge Planning**

A. *Staffing*

1. Leadership

DoHMH's oversight of its obligations under the Stipulation has undergone numerous changes during the three and a half years of our monitoring. These have involved a shift in the division of DoHMH which is responsible for these activities, changes in the organizational structure within that division, as well as personnel changes in the specific people occupying given titles. These changes are highly relevant to the progress they have made as they have consolidated responsibility for the services Defendants provide. Over time, this consolidation has resulted in forward movement that likely would not have occurred with the earlier, more fragmented division of responsibility.

We review these changes here because we believe that in doing so, we can highlight a fundamental dilemma we have faced during the course of our monitoring. Taking a long view, many of these changes have in general been positive as they have moved DoHMH toward consolidation of oversight of the mental health and discharge planning programs. We strongly support the approach of current leadership, which has worked with us more collaboratively and openly than prior management.

To review briefly, at the time we began monitoring in May 2003, the Mental Health Division of DoHMH was the primary locus of responsibility for the implementation of discharge planning under the settlement agreement. In early 2004, in order to consolidate management of all health and mental health operations (including discharge planning) within the jails, oversight was transferred to the Division of Health Care Access and Improvement (HCIA). We agree with Defendants that this fundamental shift in administering these operations has improved DoHMH's ability to provide necessary services.

However, since then, there have been a number of changes, outlined on Timeline 3: Changes in Leadership. Each change has brought with it delay, disruption, and changes of course. While any given individual change in leadership or approach may indeed be positive or constructive, the changes themselves slowed Defendants' progress. For example, after a period of examining their organizational structure, mental health and discharge planning now report to the same assistant commissioner. This has enabled them to create complementary and consistent policies and to plan a unified and coordinated CQI program. As these changes took place, we attempted to make allowances for new leadership to implement useful changes. Further, we understand that changes within large public systems do not occur rapidly. In the end, however helpful and positive, these numerous changes in leadership have necessarily resulted in a staccato, inefficient type of progress.

Notwithstanding these criticisms, current leadership appears to be moving in the right direction in its approach to necessary policy changes and implementation of procedures necessary to fulfill all aspects of the Stipulation.

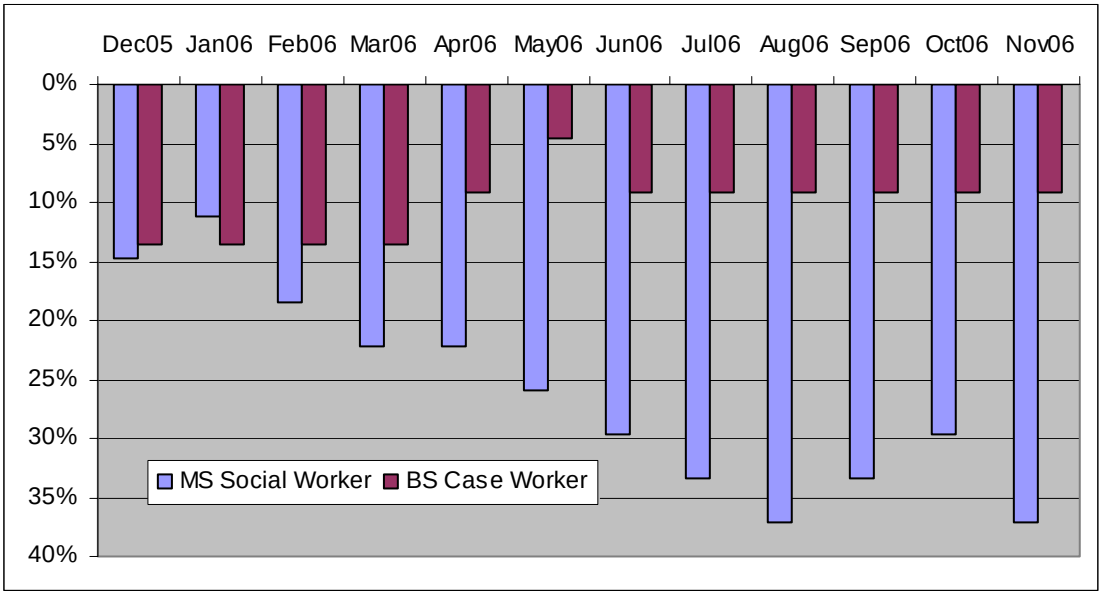
2. Line Staff

In our Tenth Report, beginning at p. 18, and subsequently in our Eleventh Report, beginning at p. 8, we outlined our concerns regarding DoHMH's continuing inability to fully staff the discharge planning program. Despite proposing and implementing this "new model" over three years ago, the program has never achieved full staffing, and in fact we demonstrated in our last report a continued and dramatic reduction in social work positions which were filled, peaking at a 33% vacancy rate by July 2006. Unfortunately, despite attempts at remediating this problem, and despite a brief improvement, the staffing inadequacies continued during the current reporting period.

Table 1: Staffing Pattern

	FACILITY	Masters level dcp staff		Bachelors level dcp staff	
		filled	vacant	filled	vacant
August 2006	AMKC (C-71)	3	0	3	0
	AMKC (C-95)	3	3	3	1
	RNDC	1	1	1	0
	EMTC	2	1	3	0
	GMDC	2	0	2	0
	GRVC	0	0.5	1	0
	NIC/WEST	0	0.5	1	0
	OBCC	1	1	1	1
	RMSC	3	3	3	0
	BBKC	1	0	1	0
	VCBC	1	0	1	0
	TOTALS	***17***	***10***	***20***	***2***
September 2006	AMKC (C-71)	3	0	3	0
	AMKC (C-95)	3	3	3	1
	RNDC	1	1	1	0
	EMTC	2	1	3	0
	GMDC	2	0	2	0
	GRVC	0	0.5	1	0
	NIC/WEST	0	0.5	1	0
	OBCC	2	0	1	1
	RMSC	3	3	3	0
	BBKC	1	0	1	0
	VCBC	1	0	1	0
	TOTALS	***18***	***9***	***20***	***2***
October 2006	AMKC (C-71)	3	0	3	0
	AMKC (C-95)	4	2	3	1
	RNDC	1	1	1	0
	EMTC	3	0	3	0
	GMDC	2	0	2	0
	GRVC	0.5	0	1	0
	NIC/WEST	0.5	0	1	0
	OBCC	1	1	1	1
	RMSC	2	4	3	0
	BBKC	1	0	1	0
	VCBC	1	0	1	0
	TOTALS	***19***	***8***	***20***	***2***
November 2006	AMKC (C-71)	3	0	3	0
	AMKC (C-95)	4	2	3	1
	RNDC	1	1	1	0
	EMTC	3	0	3	0
	GMDC	2	0	2	0
	GRVC	0.5	0	1	0
	NIC/WEST	0.5	0	1	0
	OBCC	0	2	1	1
	RMSC	2	4	3	0
	MDC	0	1	1	0
	VCBC	1	0	1	0
	TOTALS	***17***	***10***	***20***	***2***

Figure 1: Vacancy Rates



In our prior reports,[13] Table 1 contained a column indicating whether the jail was operating in the new model (where tasks are split between masters level social workers and bachelors level caseworkers) rather than in the original model (in which there were four different types of discharge planners, some of whom were located in the jails, others of whom were centrally located in downtown Manhattan). This column has been removed from the table above. Currently, Defendants assert that "all facilities are now operating under the new model, although there are vacancies…. This is accomplished through the use of temporary Social Work staff and scheduled overtime."

We included in our Eleventh Report[14] an extensive discussion of DoHMH's inability to staff the discharge planning program, especially the social work positions. Not only has this situation not improved, it has actually worsened since our last report. We also noted in our last report that the situation was of particular concern in

[13] See, for example, Eleventh Report, p. 10.
[14] See Eleventh Report, pp. 9-15.

C95 and in RMSC. The table above indicates an improvement in C95's staffing pattern but a worsening of staffing in RMSC, where only 2 of 6 social work positions were filled at the end of the reporting period.

Given Defendants' ongoing difficulties staffing these positions, we concluded in our last report that:

> "Defendants are faced with the choice of either (1) continuing to try to fill these positions, using new methods to attract and retain qualified candidates, or (2) developing a different approach to organizing discharge planning services. The option of continuing down the current road – using the same techniques to recruit and retain staff to work within the same model of service delivery – is no longer reasonable."

For this report, Defendants provided us with the following information regarding their corrective actions regarding the staffing of the discharge planning program.

- In July 2006, DoHMH Division of Health Care Access and Improvement (HCAI) met with Human Resources and obtained a "blanket approval" for both the social worker and caseworker positions. This "allows hiring to occur on an on-going basis without the delay of waiting for a posting to be approved," effective July 7, 2006.
- In addition, HCAI is exploring broadening the position to include other related degrees, including BSW, MA Counseling, MA/BA Criminal Justice. They indicate that this is a slow process which requires approval from the Department of Citywide Administrative Services.[15]
- DoHMH "created a standardized salary structure for …Social Workers," effective July 26, 2006. DoHMH reported that they hired four new social work staff and have five more being processed under this new structure.
- DoHMH is "exploring the possibility of recruitment and/or retention bonuses through HR."
- HCAI held an internal job fair in August which resulted in thirteen new suitable candidates, of whom three were offered positions. They are planning a second such job fair in late January.

[15] While we support DoHMH's interest in broadening the pool of potential staff able to perform the functions required by the discharge planning program, it is important that any staff hired come to the job with the requisite skill-set and receive the on-going training and supervision needed to assimilate complex clinical information and create linkages with appropriate community providers.

- Defendants placed ads in the New York Times, the Non-profit Times and City Limits, as well as online ads at socialworkjobbank.com and socialservice.com.
- Defendants continue to use temporary social workers.

While staffing the caseworker positions has not been nearly as difficult, Defendants have sustained regular turnover among these staff as well, and they continue to operate with just over 90% staffing. Regarding these vacancies, Defendants reported:

> "Vacancies have not been a problem for caseworkers. There is a current NYC Caseworker civil service list. Under the civil service law a pool is called and all departments with vacancies are required to attend to fill their vacancies. Once a vacancy has been identified, we create a To-be-name action which is forwarded to HR. This action follows the normal process of twelve to fourteen approvals all the way to OMB. Once OMB approves the TBN action, HR is required to request a certification list to hold a pool. When HR receives the certification they send letters out to all eligible candidates on the list. HR then notifies FBHS of the date and location of the pool. This entire process can take up to four months. This process cannot be by-passed to hire individuals from outside the pool."

DoHMH indicated in their response to us that a pool was held on December 21, 2006. Given these limitations, it is unsurprising that DoHMH cannot maintain a full complement of caseworkers: if a departing staff member is obligated to provide only 2 weeks notice, but filling that position takes four months, the discharge planning management will never be able to keep up with the personnel changes.

DoHMH also reported that they have begun to provide more trainings for the discharge planning staff. They provided us with a detailed calendar of these trainings, reproduced here:

Date	Topic
9/27/06	Overview of Mental Health Systems: SPOA, ACT, ICM, SCM, BCM, and LINK
10/4/06	Housing Options Assessment and Referrals
10/11/06	Mental Health Housing Options
10/18/06	Psychiatric Information and the HRA 2000
10/25/06	Case examples and Completion of HRA 2000
11/15/06	Clinical Interventions in Placement Work I
12/6/06	Clinical Interventions in Placement Work II
12/13/06	Clinical Interventions in Placement Work III
12/20/06	Clinical Interventions in Placement Work IV

We strongly support the efforts by DoHMH to improve recruitment and, especially, retention of qualified staff. We support Defendants' practice of promotion from within, a practice which is uniquely reinforcing to staff who are accomplished in their field. As stated in our last report, while we believe the current staffing model is a great improvement on the original model of discharge planning, it is only effective if there are sufficient numbers of adequately trained staff to implement it.

Defendants take the position that

> "We have been able to achieve and maintain compliance with the performance indicators despite the programmatic staff vacancies. The model is fully implemented in all facilities in spite of the vacancies. This is accomplished through the use of temporary Social Work staff and scheduled overtime."[16]

We accept the principle implied in this statement that if Defendants are able to meet all of the requirements of the Stipulation and our performance measures, the precise level staffing they attain would be a purely internal matter, beyond our brief

[16] In their comments, Defendants stated:

"DoHMH will continue to engage in efforts to engage and retain a full complement of social workers and case workers. That being said, we make several observations:

1. "There is a difference between a 'vacancy' for a full-time position which may be filled by a trained individual who happens to be in the employment status of 'temp' and having an unfilled position.
2. "Use of qualified employees on overtime basis is not the equivalent of an unfilled shift.
3. "There is no basis for the assumption that use of temporary staff represents a failure to produce a 'cadre of staff capable of fulfilling the requirements of the Stipulation.'"

in this case. This, however, assumes a fact not in evidence: that Defendants have achieved and maintained compliance with all of the measures we developed.

Putting aside for the moment our questions concerning the monthly data provided by Defendants (see section IV.A.1), those figures go only to the completion or time-based measures. As we describe in detail in section III.C, we have yet to begin assessing compliance with the "appropriateness" measures. It is in these areas that Defendants' means of covering vacant positions or shifts are most likely to create difficulties in compliance. A simple example should serve to illustrate the point: Performance Measure 3.1[17] relates to "Timeliness of the CTDP." This measure requires that for Class Members housed in General Population, Defendants are to create an individualized, Comprehensive Treatment and Discharge Plan ("CTDP") within 15 days of the initial assessment. For those housed in a Mental Observation Unit ("MOU"), the timeline is 7 days from completion of the assessment. Defendants have put much effort into developing tracking methods which allow them to know when a CTDP is due, and they divert resources to completing this task in a timely manner—i.e., before the 7 or 15 period lapses. In cases where a position is open, mental health staff can be shifted to a building to produce the required document within the requisite time-frame.

Similarly, under DoHMH's new policy, a comprehensive discharge plan is to be completed by discharge planning staff within 7 business days of the CTDP. A masters-level social worker working in one building can be temporarily reassigned

[17] See Appendix 3 for the entire set of Performance Measures

when it is time to complete the newly developed[18] comprehensive discharge planning form. As this is a new procedure, there is as yet no specific performance measure relating to this task. For records containing this discharge planning-generated Comprehensive Discharge Plan, we will consider this plan and its updates, as opposed to the mental health-generated CTDP, to be a more definitive expression of Defendants' projection of a Class Member's post discharge needs pursuant to performance measure 3.2.

While necessary at present because of high turnover, redeploying staff to meet ***timeliness*** requirements for these tasks is unlikely to produce a work product of sufficient ***quality***. The projection of post-discharge needs (i.e. the CTDP) and the creation of a ***clinically appropriate*** plan (i.e. the Comprehensive Discharge Plan) to provide for those needs are two of the most basic and important tasks Defendants are required to perform under this Stipulation. For this reason, pursuant to ¶142 (d), we created performance measure 3.2: Appropriateness of Projection of Post Discharge Needs. By its nature this task is multi-disciplinary, requiring teamwork to assimilate biopsychosocial data from a variety of sources. It demands a complex and at times sophisticated understanding of the client which is singularly difficult to attain for a worker who is placed in a setting on a temporary basis, whether by virtue of cross-coverage/overtime or by working as a temporary employee.

The "new model" as we understood it, was designed to attain this level of teamwork and assessment. That is why staffing levels, and staff turnover and morale, are relevant our inquiry. It is precisely here where overtime and temporary staff often

[18] But, see section III.C concerning the degree of implementation of these new forms.

fail to address the need: while fill-in staff can meet deadlines, they will by definition not know the client in the same way that his regular clinician will. Therefore, temporary and overtime staff will meet deadlines but will otherwise likely fall short in many cases when we assess the clinical appropriateness of treatment and discharge planning.

In their comments, Defendants stated: "To the extent that staff hiring and retention is made more difficult by reason of the correctional setting in which such personnel are to be placed and Discharge Planning is to be provided, then it is incumbent upon the Monitors to take this into account in setting the performance indicators. (Settlement Agreement at ¶ 140)."

Paragraph 140 requires us to take into account "any practical limitations on providing Discharge Planning and implementing Discharge Plans in the City Jails" when establishing performance goals. As such, ¶140 does not relate directly to staffing at all, but rather to what level of performance staff are required to attain in operationalizing the obligations of the Stipulation. Inasmuch as the correctional environment and city regulations make hiring difficult, Defendants must themselves account for these barriers and alter their staffing model accordingly. We request a meeting with DoHMH and any other relevant City agencies (such as HR and DCAS, to whom Defendants referred in their discussion of changing hiring requirements and salary structure) to better understand these barriers.[19]

[19] In their comments, Defendants stated that "DoHMH will be happy to participate in future discussions with the Monitors about staffing issues. However, DoHMH is a mayoral New York City Agency which must operate within the confines of City rules and processes concerning staff hiring, salaries and procurement."

B. *Updated Documentation and Policies*

Starting at page 15 of our Eleventh Report of October 6, 2006, we discussed in detail DoHMH's efforts to update their documentation and policies related to assessment and discharge planning. We noted with approval the revised approved mental health policies and the many ongoing updates to forms used by staff to document mental health, discharge planning, and LINK assessments. We outlined in detail that some forms were introduced, while others were yet to be finalized or implemented as well as the fact that revisions to the discharge planning policies were not yet completed. These changes and their status at this time are summarized in the following table:

Table 2: Status of Updates to Policies and Forms

Item	Last action	Date	Current Status
Mental Health Policies	Approved and Finalized	7/2006	Finalized
Discharge Planning Policies	Monitors comments forwarded to DoHMH	10/2006	Pending finalization
Mental Health Forms	Approved and Finalized	6/2006	Partially implemented[20]
Discharge Planning Forms	Finalized	6/2006	Partially implemented[21]
LINK Form	Monitors comments forwarded to DoHMH	8/2006	Pending finalization

Overall, our support of these developments was based on several factors. Generally, they reflected current leadership's apparent commitment to a complete review of mental health and discharge planning services.[22] Once fully and properly implemented, these changes would

- enhance the clarity and quality of the program's expectations of mental health and discharge planning staff;

[20] While most of the mental health forms have been fully implemented, one key form has not been: the collateral contact form is present in only 13% of the charts we have reviewed (see section III.C.).
[21] These forms are found in the records only 15% of the time (see section III.C.).
[22] See section III.A.1 above for a discussion of how leadership changes have adversely affected the pace of positive change over the course of our monitoring.

- guide staff to presume acceptance of service and to collect much of the information required to make sound assessments of a Class Member's post release needs; and
- improve the documentation available in the records which would
  - make the chart more useful as a means of communication among the people providing services to Class Members, and
  - document the information we required to begin an assessment of the appropriateness measures.

However, as we outline in greater detail in Section III.C. below, DoHMH has yet to fully implement many of these improvements in documentation. Further, the Discharge Planning Policies themselves are not yet finalized, though, in their comments to a draft of this Report, DoHMH indicated that they will be completed "shortly." On one level, it is quite understandable that DoHMH would make introduction of its new data system (see Section III.D.) the top focus of its efforts: once the new system is completed, management can ensure that staff complete forms and processes by the rules they write into the system itself. While understandable, this prioritization of the new data system fails to address two important issues:

- failure to finalize the discharge planning policies leaves staff at this late stage of the process without a clear and official roadmap of how to conduct business (this is particularly important within the context of a bifurcated mental health/discharge planning service delivery system); and
- it forces further delay or limitation of our monitoring of the appropriateness measures as discussed in Section III.C. below.

C. *Appropriateness Measures*

Since at least our Third Report of March, 2004 (starting on page 48) we have described our efforts to devise a manner of assessing the appropriateness measures, described in detail in Section II., above. While the task is complex, the delay in beginning this important part of our monitoring has stemmed primarily from the fundamental fact that, in our view, the records maintained by Defendants do not routinely contain vital

information which would permit us to make sound judgments concerning the appropriateness of these tasks. This is so for both procedural and structural reasons.

- Procedurally, management did not require staff to collect the information upon which staff could rationally base clinical and discharge planning decisions.
- Structurally, management did not provide the forms or tools staff could use to document the information they gathered or the decisions they made.

Over time we have resisted Class Counsel's insistence that we find Defendants out of compliance with the measures themselves in all instances where we simply do not find sufficient documentary evidence that these tasks were done appropriately. We have done so for two primary reasons:

1. we wanted to preserve the principle that clinical staff making judgments as they assess a patient are due reasonable deference to those judgments; and
2. over the past 18 months, DoHMH has made some impressive strides in creating new forms and policies which, once fully implemented, would go a long way toward providing the required information.

We opted not to engage in an abstract debate over the significance of a chart which neither confirmed nor negated that, for example, an appropriate discharge plan was created. Instead, we thought it preferable to foster a process whereby Defendants instituted structural and procedural changes which would promote clinically appropriate discharge planning as well as enabling our assessment of it. As a result, as described in Section III.B., we have worked to reach an agreement with DoHMH concerning their policies and forms. More substantively, we have issued to Confidential Reports to the Parties, the first on June 30, 2005, and second on December 14, 2005. These reports discuss the issues related to the appropriateness of clinical assessments and of discharge planning which we encountered during chart reviews; these reviews raised concerns which would have to be addressed in our ultimate monitoring of these appropriateness measures. These reports were not filed with the Court as our intent was to generate open

discussion of the issues raised. However, at this stage of the process we no longer have the luxury of extending this process further. The pending sunset of our monitoring period as well as Defendants' failure to comply with the timetables we set forth for fully implementing the required innovations, demand that we move this stalled process forward.[23]

In our last two Reports, we explained in detail why we have not yet been able to assess Defendants' compliance with the appropriateness performance measures 2.2, 2.4 and 3.2. In our Eleventh Report, beginning at page 17, we outlined specific steps that we would take in moving toward being able to conduct these assessments. That discussion, and relevant discussions in earlier Reports, are included here by reference.

During the current reporting period, we reviewed 336 charts,[24] examining them for the presence of information required if we are to assess Defendants' compliance with these measures. Specifically, we looked for charts containing a collateral information contact form[25] and a discharge plan form. These chart reviews occurred between October 4, 2006 and December 18, 2006. For reference, DoHMH implemented the use of the collateral information contact form on June 19, 2006, and they implemented the use of the Discharge Plan Form on June 12, 2006. Charts were selected based on a relative recency of intake to ensure that they underwent their intake after the new collateral information and discharge plan form policies were supposed to have been implemented. They were also selected for an adequate length of stay to ensure that they were in jail

[23] The leadership changes described in Section III.A.1. above resulted in inconsistent management of this aspect of the case and set back our ability to monitor the appropriateness of the work performed by Defendants.
[24] These cases are included in Confidential Appendix 4.
[25] We accept for the purposes of this review the requirement by DoHMH that their staff seek collateral data for Class Members who are identified at medical intake as being on Brad H. Medications per the most recent Brad H Medication list. We do not accept that this is the only group of Class Members for whom collateral data should be sought.

long enough to reach the point in time where the discharge plan would be required.[26] Within these criteria, cases were selected at random from the Brad H list in each facility.

Of the 336 charts reviewed for the presence of the collateral information form, 206 (61.2%) cases were not identified at medical intake as being on psychiatric medications, while 130 (38.6%) were identified as being on psychiatric medications upon intake. Seventeen (13.1%) of the 130 Class Members identified as being on psychiatric medications at intake contained a collateral contact form, while 113 (86.9%) did not.[27]

Of the 336 charts reviewed for the presence of a Discharge Plan Form, 284 (84.5%) were reviewed beyond the time point where a Discharge Plan Form would be expected to be seen in the chart. Forty-two of these cases (14.8%) contained the Discharge Plan Form, while 242 (85.2%) did not.

It is evident that Defendants have been unable to successfully implement these minimum requirements that would permit us to evaluate whether they are providing appropriate discharge plans.[28] We are faced with a choice of allowing them more time to

[26] As a general rule, for Class Members referred at the time of intake, we would expect that after 31 days, a discharge plan should be in the record. Assumptions underlying this length of stay requirement include referral to medical within 1 day of intake, mental health intake within 3 days of medical intake, CTDP within 15 days of mental health intake, and Discharge Plan Form within 11 days (7 business days with two intervening weekends) of CTDP.

[27] In addition, we identified some cases where the Class Member was not identified at medical intake as being on Brad H. medications where the Class Member later told a mental health evaluator that he/she was on such medications. In 4 of these cases, the record contained evidence that the mental health staff member sought collateral information. These cases are not included in the overall numbers because they do not fit the criteria of the policy as developed by DoHMH, but in our view such efforts reflect the standard of practice in clinical settings.

[28] In their comments, DoHMH indicated that it

> "agrees that staff must do a better job of ensuring that relevant documents are completed and incorporated into Class Members' health records, specifically including Likely SPMI forms, collateral information for Class Members receiving psychotropic medications and the new Discharge Plan forms.
>
> "To that end, DoHMH/CHS has created a unitary Quality Assurance system whereby the SDAU (Service Delivery Assessment Unit) will providing [sic] ongoing assessment of Vendor mental health and DoHMH discharge planning documentation. The SDAU is a unit comprised of six nurses, a nurse-supervisor and a nurse-director which reviews approximately 3,000 medical

implement these procedures or of finding them out of compliance on any measure relating to appropriateness.

In anticipation that DoHMH would have fully implemented their procedures for capturing necessary information by January 1, 2007, we also piloted a form that we will use effective the next reporting period to formally assess Defendants' compliance with these measures. As of this time, Defendants have not complied with our expectation, set out in our Eleventh Report at pp. 17-19, to have the necessary documents in the chart. That said, we will initiate monitoring of these measures effective immediately, and we will include in our reports the total number of cases reviewed, the percentage of cases that contained the necessary documents and the percentage of those cases in which we found them to have provided appropriate treatment and discharge planning.

D. *Electronic Medical Record Development*

Defendants continue to make strides in the development of the new electronic record keeping system. We discussed their progress in our last Report beginning at page 19.

On December 20, 2006, we attended a demonstration of the system as it has been developed to date. The program will permit multiple simultaneous users to work in one patient's record, a dramatic improvement over the current system, in which records are so frequently unavailable at the point of service that staff routinely use rubber stamps reading "chart unavailable." The record-keeping system will force steps to occur in a

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charts per month for purposes of assessing contractual performance indicators, and performs similar targeted medical chart reviews for HCAI."

We agree that this will be a useful mechanism for improving Defendants' awareness of the frequency with which its staff follow required procedures and that it will allow for feedback to supervisors and line staff as to compliance with those procedures. More generally, it is constructive that DoHMH is introducing a systematic Quality Assurance approach to studying problem areas in service delivery within discharge planning and that they have chosen to consolidate quality management for mental health and discharge planning. This view is emblematic of current leadership's understanding that notwithstanding the bifurcation at an administrative level, discharge planning services are inextricably bound to mental health services.

defined sequence, consistent with policies and practices mandated by administration (including the steps required by the Stipulation). Staff will be provided with daily reminders of work to be done. The system includes the capacity for changing the workflows as management learns more about how the system works and identifies problems or mismatches.

In addition to creating a system of recordkeeping designed to enable clinical staff to perform the required tasks in a timely manner, the new system will allow for managers at all levels to create reviews of their staff's performance, at a systemwide level, a specific unit level, and the provider level. Rather than having to wait for reports to be completed by staff, the system permits realtime reviews of performance. With this capacity, the data that Defendants provide to us will be much more automated and timely. In addition, by replacing the two disparate sources of clinical information (the paper record and the MIS), we will be more certain that the information we receive from Defendants accurately reflects the work that they performed.

Regarding the implementation and timelines for this new system, Defendants reported:

- "The system has been designed in separate modules. Mental Health, as the 'entry' into the system, will be the first module introduced. Each module represents a series of 'forms' that relate to specific services. The system will provide a comprehensive menu of all mental health services and is designed to promote efficient tracking of patients throughout the jails, proactive scheduling for all necessary services, decision support for clinical staff and a significantly more robust reporting capability. The design has already gone through several levels of review and revision. There is a commitment by the vendor to begin submitting final 'forms' within this module by January 5, 2007. As each form is approved by DOHMH, that version will be off-loaded from the development site into production. Simultaneously, mental health staff will begin to receive training as forms are 'approved'. Training will occur in ½ day components. As staff members 'graduate' from the training sessions, they

will be able to begin using the system to complete assigned tasks. It is anticipated that mental health staff training will begin in mid- to late January and continue through February. At the completion of the training, we will move to reporting mental health data from the new system.

- "The Discharge Planning module is concurrently being loaded into the development site. In January, DCP will be presented with a first draft of 'forms'. Since most of these forms have been recently developed by DCP, we do not expect the revision process to be as lengthy as the mental health revisions. It is anticipated that the DCP forms will be complete by the end of January. If so, DCP training can be accomplished concurrently with mental health training. If so, we are projecting that around March, DCP should be ready to report through the new system as well.

- "The remaining modules have all been discussed and planned. These include SPAN and LINK, as contracted providers, to directly enter data and report results. Homeless services, entitlements and hospitalizations also have corresponding data fields available for reporting purposes.

Thus, DoHMH remains on a path toward initiating the use of this system in the first two month s of 2007. They project that they will begin providing data from the new system beginning in March of 2007. It is less clear when they will be able to replace the manual reporting system which extracts data from the current MIS with data derived exclusively from the new system. We anticipate discussions with DoHMH regarding phasing in the new system (from a data reporting perspective) and a contemporaneous phasing out of the old system.

E. *SPAN Reorganization*

According to the New York City Department of Corrections[29] the City's jails had 103,813 admissions during the 2006 fiscal year. During that same period, the average census was 13,497. This included non-sentenced detainees with uncertain release dates who had an average length of stay of 46.7 days, and it included sentenced inmates as

[29] NYC-DOC Website, accessible at: http://www.nyc.gov/html/doc/html/stats/doc_stats.shtml; downloaded January 5, 2007

well. Sentenced inmates serving sentences of under a year had an average length of stay for this group was 37 days.[30] Over the course of our monitoring, approximately 1000-1100 Class Members have been released every month. Unlike a hospital setting where discharge is based primarily upon clinical condition, release from the correctional system is driven by forces unconnected to the provision of treatment and discharge planning need.

The sometimes rapid and often precipitous, unplanned release of these Class Members represents a major challenge to Defendants as they seek to provide Class Members with discharge planning services. The Stipulation deals with this issue in two primary ways. First, it demands stringent timelines in an effort to ensure that discharge planners connect with as many Class Members as possible before they are discharged. Also, in a true innovation, the Parties created a safety net in the Stipulation, acknowledging that even with aggressive efforts at early engagement, some portion of Class Members will be discharged before their aftercare plans are complete.

This safety net is provided by the "SPAN" offices, which are required to be located in all five boroughs within one-half mile of the criminal court.[31] These offices are equipped to deal with a Class Member's need for continued discharge planning services such as on-going medication, assistance with a Medicaid application, or emergency shelter. Conceptually, they fill a major gap in a system attempting to provide discharge planning services to this population.

However, utilization has lagged well below what one would expect (see section IV.C.2. below).

[30] Id.
[31] Stipulation at ¶36.

In October, 2005, with our support and the consent of Class Counsel, SPAN closed the Staten Island Office, with an intent of using the resources to provide other functions that they asserted would increase the cost-effectiveness of its function. These new operations are described in detail below, and they include conducting Class Member sessions in Central Property, increasing the frequency of inreach sessions within the various jails, and conducting outreach sessions in the criminal courts. In addition, as we prepared this report, DoHMH and SPAN informed us that SPAN was

> "going to begin reaching out into the community, specifically DHS shelters and drop-in centers, to reach Brad H class members that may have not received services or have refused services. BRC SPAN staff will be using the Citrix refusal report to outreach to the class members by sending them letters. Two weeks after the date of the letter SPAN will follow-up with a telephone call to the class member and/or family member. SPAN will have their internal MIS personnel add a field to their database so that they may start tracking community outreach. This way they will be able to report on it monthly, quarterly and annually."

We commend SPAN and DoHMH for this innovative approach to engaging Class Members who had declined services.[32] While we accept the firm principle that discharge planning services under the Stipulation are and must be voluntary, we have been critical of Defendants' willingness to accept Class Member refusal without question and without consideration of the need to return to refusing Class Members at various points in the incarceration and release process. We look forward to receiving reports as to this effort and its outcome.

1. Central Property

In their last report, DoHMH advised us that SPAN staff was assigned to the Central Cashier's Office twice weekly. At that time, they reported that they had

[32] We suggest that Defendants consider developing a similar approach to reaching out more assertively to refusers in the jails themselves.

provided SPAN information and brochures to 123 people, of whom 31 (25.2%) reported receiving mental health services while incarcerated. Four (12.9%) of these individuals later presented at a SPAN office for follow up services.

The twice-weekly staffing pattern has continued. During the current reporting period, SPAN approached and provided information to 236 individuals, of whom 85 (36.0%) reported having received mental health services. However, none of these 85 individuals subsequently reported to a SPAN office.

In our last report, we specifically requested that Defendants respond to Class Counsel's reminder that, in the April 2005 agreement (see Appendix 5) to modify the structure of SPAN services, SPAN "explore the 'possibility of obtaining a dedicated space from DOC in the Central property area to conduct assessments or brief intakes.'"

In their comments, Defendants stated they conduct brief intake assessments at Central Property twice weekly but cannot do more in-depth assessments as "the space lacks sufficient privacy for these more detailed encounters." They are "exploring with DOC alternative locations near Central Property." We are considering a visit to the Central Property location to assess the suitability of the space available and of alternative spaces and to observe the SPAN assessment process.

DoHMH informed us that, in addition to hiring new staff using the resources recouped in the closure of the Staten Island SPAN office, they intend to purchase a laptop computer with wireless internet capability and a cellular phone for SPAN staff to use at Central Property. This will "enable SPAN staff to conduct a brief intake and access Citrix and make referrals when indicated while at Central Property." We

strongly support this move on the part of SPAN toward a more mobile, flexible approach. We urge them to consider similar technological support solutions to Court Outreach and to Community Outreach efforts, discussed below.

2. Increased Inreach

SPAN continues to conduct motivational sessions on the Mental Observation Units three times per week, on Mondays, Wednesdays and Fridays. During the current reporting period (August through November, 2006), Defendants Reported as follows:

Table 3: SPAN Inreach Sessions, from summary memos provided by SPAN

Month	Jail	# of sessions	# of CMs	Average # CMs/session
July[33]		13	137	10.5
August	C71, RMSC	12	151	12.6
September	C71, GMDC	12	138	11.5
October	VCBC	8	75	9.4
November	RNDC	7	64	9.1
TOTAL		39	428	11.0

DoHMH also provided us with complete logs of inmates for each of the months within the current reporting period. This data is summarized as follows:

Table 4: SPAN Inreach Sessions, from attendance logs

Month	Jail	# of dates	# of CMs	Average # CMs per date
August	C71, RMSC	12	151	12.6
September	C71, GMDC	11	139	12.6
October	VCBC	8	69	8.6
November	RNDC	5	63	12.6
TOTAL		36	422	11.7

In their reports to us, SPAN indicated a variety of reasons for the reduced number of dates on which they were able to provide inreach sessions, including:

- Discharge Planning failed to inform SPAN of actual presentation time. When SPAN arrived to conduct presentation inmates had been assembled and sent

[33] July data is included here for informational purposes as it was unavailable at the time we produced our last report. The July numbers are not included in the totals for the reporting period.

back to their housing areas. DoHMH later clarified this in an email: "DCP did not fail to advise SPAN of the time of the group…. The SPAN visit did not occur because the DOC Programs Captain misunderstood the request of the DCP supervisor" and there was resulting confusion as to the time of the session.

- Holiday (Columbus Day, Veterans Day, Thanksgiving Friday)
- Count was off/alarm/tactical search/no movement (4 dates in October and November). As a result there was no movement.
- "No census."
- Inmate suicide at facility.

Regarding the first bullet point, DoHMH advised us that "the corrective action plan is for [SPAN and Discharge Planning] to work more closely with DOC to ensure that they understand the needs of SPAN on the day of the group session."

In an email exchange, DoHMH clarified that "no census" occurred late in the month in a small jail (MDC). By this point in the month, SPAN had already connected with all Class Members who were willing to engage in an inreach session. DoHMH has now instituted a policy requiring SPAN to conduct inreach sessions in a different facility which has an MO Unit[34] if they have exhausted the population in one facility. In our draft, we recommended that DoHMH and SPAN consider whether conducting these sessions for an entire month in one jail is a wise approach, or whether it might make more sense to rotate at shorter intervals. Perhaps the MIS could provide guidance as to the Class Member caseload in each jail. Defendants' comments indicate that they intend to alter the rotation more frequently.

We also note that SPAN was much less successful in conducting inreach sessions in the last two months of the reporting period. In contrast to the earlier months of the reporting period, during which they conducted 24 sessions reaching a total of 289

[34] The reason to require that they find a jail with an MO is because the session can be held right on the MO unit – there is no need for SPAN, DCP and DOC to coordinate space or inmate movement. Jails with MO include AMKC (C71), OBCC, EMTC, RMSC, GMDC, RNDC, AND GRVC/NIC (MHAUII).

class members, they only conducted 15 sessions (a 37.5% reduction) reaching 139 Class Members (a 51.9% reduction) during the latter two months of the reporting period. For comparison, during the last reporting period, SPAN conducted an average of 12 inreach sessions each month. This level had been achieved at the end of our Tenth Reporting period, so the reduction in October and November must be viewed in light of a seven month period during which 12 sessions had been conducted every month, on average.

The SPAN inreach sessions appear to be reaching a similar number of Class Members as SPAN had reported in our last reporting period:

Table 5: Comparison: SPAN inreach data over last two reporting periods

Report	# of sessions	# of Class Members	# of Class Members per session
11	48	488	10.2
12	39	428	11.0

In our last report, we included Class Counsel's expressed concern that SPAN was not conducting more inreach sessions. In their April 13, 2005, memo proposing the closure of the Staten Island SPAN office, the essential rationale for closing that office was premised on the apparent success that the "Motivational Orientation sessions" (i.e. inreach sessions) had in increasing the likelihood of a later visit to a SPAN office. SPAN proposed realigning its resources to create a dedicated inreach team that would "conduct a total of nine sessions weekly… [reaching] a total of seventy-two individuals…weekly."

Defendants reported in their comments to the draft of this Report that, subsequent to the April 2005 agreement,

> "there was a shift in the scheduling protocol achieved through discussions with DOC whereby that agency agreed to lift its original limitation on the size of the audience, which had originally been

established at an 8-person maximum. This had the effect of combining the three back-to-back sessions in a particular jail and reaching a larger audience without the need for successive DOC interventions and escorts. Currently, the DoHMH supervisor prepares a list of at least 40 to 50 Class Members [footnote omitted] who would be invited to a particular inreach session, and gives this list to DOC one week prior to the presentation. The Supervisor meets with the DOC Program Captain and Security Captain as necessary to determine the meeting area, time of the presentation and coordination/status of SPAN staff clearance. Shortly before the presentation, DOC calls to the housing areas, and ensures that Class Members on the list are escorted or given passes to attend the inreach session. DOC provides sufficient space so that if all Class Members on the list were to choose to attend a particular session, that they would be allowed to do so....

"Ultimately, SPAN cannot be held accountable for the ultimate number of Class Members who choose to participate; the sessions are made available to large groups of Class Members, and Defendants are ready and willing to make the presentations to many more than 24 Class Members per day. DOHMH/SPAN will not always succeed in persuading this number of clients to actually attend the sessions. We should, perhaps, have been more clear with the April proposal that we would target or attempt to reach 24 Class Members per day but could not guarantee actual attendance. Tables 3 and 4 could create a misleading impression that SPAN is violating its agreement with Class Counsel because the average number of Class Members per date is less than 24.

"DoHMH and SPAN have agreed that additional efforts will be made to increase the number of SPAN inreach sessions. To that end, SPAN and DOHMH will:

- "Schedule outreach sessions three days per week during holiday weeks
- "Enhance communication with DOC regarding actual presentation times to avoid any future misunderstandings
- "Collaborate with DOC in the event of an alarm or extended lock-down in a particular facility to attempt to shift the inreach session to a different facility
- "Expand the schedule of the inreach team so that beginning on February 5, 2007, the team will conduct 3 inreach sessions per day (two sessions in the morning at one jail, and an afternoon session in a different jail)."

Class Counsel in their comments to a draft of this report note that Defendants created this proposal as a means of using resources more efficiently by closing the

dramatically underutilized Staten Island SPAN Office. Class Counsel point out that this agreement, which changed the requirements of the Stipulation, should be viewed with the same seriousness as the Stipulation itself. As such, Defendants' unilateral change in how it is operating runs counter to a specific requirement of this agreement. However, we accept that there are operational justifications for the change implemented by SPAN in running fewer, larger group inreach sessions. In our view, as long as they attempt to engage at least the 72 individuals per inreach-week that they had agreed to in the April 13, 2005 agreement, they are fulfilling the spirit of this agreement in this regard. However, we suggest that Defendants engage in discussion with Class Counsel regarding this proposed revision to the agreement which was based on the April 13, 2005, proposal.

DoHMH informed us in their comments that most of the savings from the closing of the Staten Island SPAN Office relate to personnel shifts allowing them to engage in increased inreach and outreach activities. They also informed us that they continue to "incur rent and related costs from the physical space in Staten Island," for reasons unclear to us. We require Defendants to provide to us within 4 weeks of the publication of this final report on February 6, 2007 a detailed fiscal accounting of how the cost savings from the closure of the Staten Island SPAN office over a year ago were applied directly back into SPAN operations in the context of the Brad H. case.

3. Court Outreach

DoHMH and SPAN clarified for us their procedure for conducting these court outreach sessions, previously described beginning at p. 23 of our Eleventh Report. In

that discussion, Defendants reported that "in most cases, the Class Member could not be contacted

> 'for reasons beyond SPAN's control. For example, of the Class Members expected to be in court on a particular day, a great number are not, in fact, produced on the anticipated date. In June, for example, 127 Class Members were anticipated to be in court on a scheduled date, and only 44 were produced. Then, of the number of Class Members who actually attend their court appearance, the predominant number are not released from Court. Thus, the number of Class Members who actually are available for an encounter with SPAN staff shrinks very significantly. DoHMH is working with SPAN to improve its processes to achieve a higher rate of successful contacts.'"

We expressed our incredulity that DOC failed to produce a criminal defendant on 2/3 of scheduled court appearances and requested further clarification.[35]

DoHMH and SPAN now report that they have "instituted monthly meetings to address the mutually identified low contact numbers and address specific issues impeding the process." They have modified the procedure described at pp. 24-25 of our Eleventh Report as follows:

- SPAN identifies/targets [Class Members] on a preliminary basis, one month in advance. It prints a list of the [Class Members] who are scheduled to be seen in court for the month.
- SPAN then selects smaller subgroups of the list who they believe they will be successful at reaching by targeting the courtroom that has multiple or the most [Class Members] scheduled to appear. Logistically, SPAN staff cannot be in the 107 court parts. They target the part that has the most [Class Members] scheduled to attend.

[35] Defendants advised us in their comments that

> "it is patently not the case that DOC fails to produce a criminal defendant on 2/3 of scheduled court appearances. Indeed, court production figures Department-wide generally exceed 90%, and 99.8% for trial deliveries. One entirely plausible explanation is that the court date has been changed after it was first obtained by SPAN, as the Monitors opined in footnote 16 to their Eleventh Report. It also is possible that a number of these Class Members were not medically cleared for court. Without further details as to the incidents in question, however, DOC cannot offer the precise explanation at this time."

However, Defendants also commented that "SPAN… updates its information the day before the scheduled court visit and will adjust the court assignment as necessary if it appears that a different court part is likely to be more productive." Thus, we still do not understand why DOC did not produce the Class Member to the courtroom where SPAN was expecting that Class Member two thirds of the time, as noted above.

- The list is then reviewed daily, including the day before, to ensure that there were no changes to the court list. If there are changes, SPAN is able to adjust and better target [Class Members]. Our experience shows great variability, as there are days when no parts are scheduled for multiple [Class Members], and, other days when there are 8 [Class Members] scheduled in a single part.

In addition, DoHMH and SPAN responded to our concern regarding the high number of individuals who they had reported to have been "not produced" for their scheduled court date: "The numbers of CM's "not produced" was based on the SPAN report that the [Class Member] did not appear in the part as scheduled – the [Class Member] may have been produced in another courtroom. HCAI will be looking into this issue further with SPAN."

During the current reporting period, DoHMH and SPAN reported as follows:

Table 6: Effectiveness of Court Outreach Sessions

Month	Targeted	Released from targeted courtrooms	Accepted	Refused
August	64	2	0	2
September	94	6	1	3
October	29	2	0	0
November	29	2	0	1
Total	216	12	1	6

These data imply that only very rarely is a Class Member who SPAN has identified as appropriate for court outreach actually released from the courtroom to which they conduct that outreach. Only a single Class Member was reported to have "accepted" SPAN's outreach.[36] We are unsure what happened to the 5 Class Members who were released from the targeted courtroom but who neither "accepted" nor "refused."

DoHMH informed us that they "will be seeking more detailed information from SPAN about the unsuccessful contacts with targeted Class Members." In addition, they

[36] We are uncertain as to whether this means the Class Member accepted the outreach meeting or if he/she actually attended a SPAN office.

> "informed SPAN that it is time to expand Court Outreach to another borough. It was agreed upon that the next borough to roll out Court Outreach will be Manhattan and that they will begin this process on February 2, 2007. FBHS instructed SPAN staff that it has been six months since the role out of Court Outreach and that it is time to have an evaluation done. SPAN will be evaluated on the following:
>
> - # Targeted
> - # of CM seen
> - # of those accepting service
> - # of those refusing services
> - # staff and hours spent conducting outreach
> - Separate column for manpower hours (annual salary of employees assigned to task)
>
> BRC SPAN will be required to report back to FBHS by January 5, 2007 with a Corrective Action Plan regarding staffing and quality assurance."[37]

It appears that SPAN's efforts to engage Class Members at criminal courts have been ineffective. In their comments, Defendants indicated a willingness to discuss this with us in one of our meetings with them. We are considering conducting monitoring visits to the jails to understand how the list is developed and modified over time and to the courts to observe the outreach process.

In conclusion, Defendants have now established the operational framework in order to fully implement their agreement of April 13, 2005. In addition, they have articulated a willingness to establish performance reviews, which we anticipate they will share with us as they try to improve the effectiveness of SPAN operations. We remain concerned that SPAN has not maximized its use of the resources accrued from the closing of the Staten

[37] Along with their comments, Defendants provided a "BRC-SPAN Staffing Corrective Action Plan" outlining efforts to fill SPAN vacancies. This plan includes details as to hiring efforts but is silent as to quality assurance and appears unrelated to the specific issue of court outreach. We note with concern that SPAN "currently has 6 vacancies."

Island Office and as per above request further clarification regarding these savings and the use to which they have been put.

F. *Social Security, Veterans, and Food Stamps Benefits*

Paragraph 87 of the Stipulation requires Defendants to explore the feasibility of establishing a system to assess Class Members for Supplemental Security Income ("SSI"), Social Security Disability Insurance ("SSD") and Veterans Administration ("VA") Benefits, and for the completion and submission of applications for these benefits prior to the Class Member's release from the correctional system. Paragraph 86 obligates Defendants to explore the feasibility of establishing a system to permit Class Members to submit Food Stamps applications before they are released so that the applications can be processed while they are incarcerated. Defendants are required to confer with the compliance monitors at least every six months as to their efforts to implement the systems described in both paragraphs. Beginning at page 26 of our Eleventh Report, we discussed Defendants' progress in assisting Class Members to obtain these benefits.

We have previously discussed DOC's Enhancement Support Center as well as Defendants' efforts to include SSA and the VA in these EMTC- and RMSC-based centers. The support center is designed to offer "satellite space", with necessary communications infrastructure, for nonprofits and governmental entities serving inmates. Previously, Defendants informed us that SSA and the VA both declined to participate in the EMTC Service Center. They reported that SSA is able to handle "the current volume by telephone interview." However, in their comments to the draft Report, they now note that "SSA has expressed an interest in participating in both Support Centers. DOC is in

discussions with SSA to explore this further." We anticipate further information as these discussions proceed.

1. Supplemental Security Income (SSI) and Social Security Disability Insurance (SSD)

   a. New Applications for SSI

      We previously reported that Defendants had developed a telephone interview mechanism for assisting Class Members in applying for SSI benefits. They began this process in a jail housing male sentenced inmates (EMTC), and were planning to extend it to female inmates at RMSC.

      For our Eleventh Report, Defendants advised us that they continued to complete these applications for eligible and willing inmates, both at EMTC and at RMSC. Defendants currently report that they offer "SSI telephone interviews *at EMTC* in order to begin the process of the SSI application while the inmate is still at Rikers Island" (emphasis added). According to Defendants, this process facilitates access to SSI after Class Members return to the community. They further advise that the interviews, which are conducted in the discharge planning area within the EMTC Law Library, take approximately one hour to complete. Their data is summarized in the following table[38]:

Table 7: SSI Telephone Interviews: New Applications and their Outcomes: August-November 2006

Jail	# offered phone application	# completing application[39]	Found Eligible	Denied	Pending medical review	Re-incarcerated[40]
EMTC	55	51 (93%)	3 (6%)	8 (16%)	38 (75%)	2 (4%)
RMSC	19	0 (0%)	--	--	--	--

[38] These data indicate that SSI telephone interviews are also offered in RMSC – consistent with the intent evinced in Defendants' previous reports on this subject – but that all 19 women refused to participate.
[39] Reasons for non-completion among the male inmates included: 1 discharged before the interview; 1 hospitalized; 2 transferred.
[40] We are uncertain as to the relationship between the completion of an SSI application and a later "reincarceration".

Defendants noted with appropriate concern that not a single woman accepted this service. They indicated that "the Social Security Administration has agreed to conduct an informational session for the women at RMSC and training for the Discharge Planning staff in January. [DoHMH] will start tracking the reasons for refusal of the telephone interviews." They also correctly note that "women were more likely to participate in the Hope Grant interviews." While we commend management for its concern about this issue and its attempts at gaining more information and providing more training, we suggest that Defendants' approach must address this finding in the context of the extraordinary rates of refusal of other services among the RMSC population (see section IV.B.4 on Medicaid Applications, section IV.B.11 on Transportation, and section IV.C.4 on Attorney Contacts.).

We have previously discussed the HOPE grants by which DOC assists eligible inmates and detainees to apply for SSI benefits. These are attractive to Defendants as the services are funded by the grant. Class Members assisted by the HOPE grantees are specifically excluded from the telephone interview process described directly above. Data relating to the applications completed by the HOPE grantees is presented in the following table:

Table 8: HOPE Grantee New Applications: August - November 2006

Jail	N	refused	applications completed	"claim initiated"	"suspended"	"given walk in appt"	"going upstate"
EMTC	52	29	3	6	13	0	1
RMSC	54	0	51	2	0	1	0

It is remarkable that, in contrast to the data in Table 7, no women refused the HOPE Grantees' offer of assistance in completing a new SSI application.

Defendants defined the categories in the table above as follows:

- "Application Completed" -- Hope Grant Provider completed the application with the Class Member on the date that they came to the facility.
- "SSI/SSD Suspended" -- It was determined by the Hope Grant Provider that the Class Member had SSA and it was suspended while they were incarcerated.
- "No Encounter" -- The Class Member failed to meet with the Hope Grant representative.
- "Application Previously Filed" -- The Class Member informed the Hope Grant participant that they filed an application previously and was hoping that they can expedite the application.
- "Claim Initiated By Phase Piggyback/Claim Initiated By Fortune Society" -- The application ***and supporting documentation*** was obtained and submitted to SSA.
- "Going Upstate" -- The Class Member is State Sentenced.

This list does not include an explanation of "given walk in appointment". We note that there were no cases reported fitting the categories of "no encounter" or "application previously filed."

b. Reinstatements of SSI Benefits

In our Tenth Report, we discussed the efforts Defendants undertook to utilize the newly established electronic information transfer between SSA and DOC. This electronic transfer, intended for use in suspending newly incarcerated SSA beneficiaries' benefits, can also be used to assist Defendants in identifying individuals potentially eligible to have those suspended benefits reinstated. For our Eleventh Report we reported that 25 men at EMTC were identified for this process. Of that group, 17 accepted while 8 refused. Among the women,

Defendants identified 3 who were eligible for reinstatement, all of whom agreed to go forward with the process.

During the current reporting period, Defendants reported as follows:

Table 9: Appointments for SSI Reinstatements, August-November 2006

	EMTC	RMSC
# identified as eligible for reinstatement	24	8
# who agreed and scheduled appointment[41]	5	8
# who refused	19	0

It is striking that all eight of the women identified as eligible for reinstatement for SSI apparently agreed to proceed with the reinstatement process, while all 19 of the women eligible for a telephone interview concerning a new application declined this service when offered by discharge planning staff (as opposed to the Hope Grantees). Thus, over two reporting periods 100% (n=11) of women identified as eligible for reinstatement accepted this service.

c. SSD Benefits

For the reason described in our Eleventh Report we will not specifically monitor SSD.

2. Veterans Benefits

In our Tenth Report, beginning at page 14, we reported on Defendants' efforts to increase the frequency of VA benefits briefings for inmates potentially eligible for VA benefits. In these briefings, representatives from the VA homeless outreach unit present information to groups of inmates and then take individual questions and offer claims assistance. In our Eleventh Report we noted that one briefing was conducted

[41] The reinstatement process requires an appointment with SSA after release, which may be coordinated with LINK if LINK is a part of the Class Member's release plan.

by the VA and that approximately 20 people attended, 4 of whom where Class Members.

For this reporting period, Defendants reported that one briefing was conducted and that it was attended by five Class Members. DoHMH reports that it awaits "a response from DVA[42] on the outcomes of applications for these individuals."

Defendants also reported that, during August-November they submitted the names of 285 Class Members who were assessed as SPMI to the VA for a "crosscheck against their records." However, "no reported matches were found."

In a positive development, Defendants report that as of October 6, 2006 the Harlem Veterans Center "began providing weekly support groups and individual counseling at the EMTC Support Center to those who self-report as Vets. Since that time, they have provided services to eighteen (18) inmates, seven (7) of whom were Class Members." It is worthy of further exploration that relying solely on inmate self-report the Vet Center identified seven Class Members who were veterans while the cross match with the VA produced not a single "hit." We recognize that these attempts to identify veterans are dissimilar, but we nonetheless find it concerning that the data match[43] did not result in the identification of any veterans, while the Vet Center was able to positively identify veterans.

3. Food Stamps

In our Tenth report, at pp. 18-19, we summarized a process whereby Defendants were able to overcome obstacles to the application for Food Stamps by Class

[42] Department of Veterans Affairs.
[43] This data match is Defendants' suggested mechanism for identifying veterans – see, for example, our Fifth Report at p. 21 and our Sixth Report at p. 15 for early descriptions of the conceptual development of this data match.

Members while still incarcerated. The policy was finalized and approved in February, 2006.

On April 17, 2006, we requested that Defendants provide us with "a monthly tally of the number of Food Stamp applications they receive and process each month for Brad H Class Members." We reiterated this request by email on May 5, and again on May 9. Since that time, we have not followed up further on this issue, and to date, we have received no response to this request.

In our Eleventh Report, at p. 36, footnote 29, we noted that Class Counsel request that we find Defendants out of compliance with their obligations to respond to our requests, citing our authority to receive information (both documentary and electronic) under ¶¶ 120, 123, and 124. At that time, we were unwilling to do so, anticipating that Defendants would soon provide us with the requested information. They have not done so. Therefore, at this time, we find that Defendants have not complied with our request pursuant to these paragraphs. We require that Defendants provide us with this information, both retrospectively back to April, 2006 and prospectively on a monthly basis.

In their response to the draft Report, Defendants advised us that

> "DoHMH has engaged in further discussions with HRA concerning food stamp data and can now provide monthly tallies of food stamp applications: this will be the same number as the number of PA applications reported for PI 9.3 in our monthly data reports. Such applications are submitted on a common application form along with public assistance and it is the practice of HRA to register the client for both food stamp and cash assistance benefits."

Assuming this to be true retrospectively, Defendants' report indicates that they submitted a total of 322 food stamps applications during the current reporting period

(91 in August, 62 in September, 100 in October, and 69 in November). However, we have called Defendants definition of measure 9.3 into question over the past several reporting periods (see section IV.B.9 below) and therefore are unwilling to conclude that this report accurately describes the number of food stamps applications pending detailed discussion with relevant Defendant agencies.

IV. **Data Issues**

A. *IIS Data Dump*

In our Eleventh Report, at pp. 55-57, we reviewed our understanding of a specific data field "relstatus". This field is purported to contain information "dumped" from the Inmate Information System (IIS) run by DOC into the discharge planning MIS. The codes included in this field describe the type of release for each Class Member. Possible entries include TS (time served), EXP (expiration of sentence), ROR (released on recognizance, and BP (bail paid), among others. The implication is that Defendants could in fact know whether a Class Member was released at court or at the end of a sentence. Defendants have repeatedly asserted that they cannot know this. When we brought this to their attention in the Eleventh Report, Defendants indicated that the field "has not been reliably populated with the necessary codes."

While we have concerns that the databases are not used effectively, our primary concern relates to the relationship of this field, and the information therein, to the data provided to us by Defendants for measures 3.2, 4.1, 4.2, 5.1, 5.3, 6.1, 7.1, 8.1, 8.3, 9.2, 10.1, 10.2 and 12.4. All of these measures require specific entries in the "relstatus" field, and Defendants indication that the field is not "reliably populated" calls Defendants' reports for all of these measures into doubt.

In our Eleventh Report, we asked that DOC "immediately provide us with more information about this issue as well as a remedial plan of action to remedy this problem promptly. They have failed to do so.[44] We require that they immediately provide us with a detailed explanation of the problem and their remedial plan. This is extremely important because DoHMH's new discharge planning/mental health data system will be as reliant on IIS data as was the old system. Thus, DoHMH will not be able to fix this problem inasmuch as it will be receiving unreliable data from IIS.

B. *Performance Indicator Data*

1. Progress of Discharge Planning MIS Concordance Study

Paragraph 141 of the Stipulation dictates that we measure Defendants' compliance with our performance measures as a percentage of compliant cases over total relevant cases. For many of the completion or time-based measures, we are to rely on data provided by Defendants themselves from their Management Information System ("MIS"), although ¶124 required that they report information in the manner we request. As we have previously reported, we have raised questions concerning the accuracy of the compliance data Defendants derive from the MIS. Specifically, our reviews and limited studies have suggested that these data, at least at times, are not concordant with documentation found in the medical record, which in most instances we hold to be the most accurate approximation of the services Defendants have in reality provided to Class Members. This has caused us to question the extent to which

[44] In their comments to the draft Report, Defendants indicated that "DOHMH is making preparations to utilize the DOC fields. [They] will under separate cover prepare a data dictionary formula to share with the Monitors, and can thereafter implement the modification in Citrix." We have not received this as of the date of this Report.

we could responsibly draw (and report to the Court) conclusions based upon the data generated by this MIS system.

A lengthy and at times parallel process has unfolded by which we

1. worked with Defendants to develop an acceptable "data dictionary" which would define the data elements and calculations which DoHMH would use to provide compliance figures;

2. worked with the Parties to develop a mutually acceptable methodology to study the concordance between the MIS system and Defendants' administrative and medical records;[45] and

3. provided feedback to DoHMH as it has endeavored to create and begin implementation of an impressive new electronic medical record and data reporting system which is scheduled to begin "rollout" in February of this year.

On December 20, 2006, we attended the second demonstration of this system. We are convinced that proper implementation will address many important problems which have hampered both Defendants' performance and our monitoring of it. These include questions concerning

- the concordance between the medical record and the MIS system;
- the lack of flexibility of the current MIS which Defendants state limits their ability to calculate some of the measures in the way we require;
- the frequently unavailable, ambiguous, and disorganized medical records; and
- Defendants' asserted inability to obtain and review Class Members' records from prior incarcerations.[46]

Even an optimistic timeline for implementation of this new system would mean that our Fourteenth Report, scheduled for publication on October 6, 2007, would be

[45] We commenced this study under the observation of representatives from DoHMH and Class Counsel on November 29, 2006 and to date have completed review of approximately 50 records. All Parties have agreed that a sample of 400 records will be required to gain the level of confidence we desire. While we will rededicate our efforts to the completion of this study promptly upon filing this report, it should be clear that it will take a considerable amount of time to finish data collection, and to analyze and report on our findings.

[46] It is important to note that the last two of these issues relate directly to our ability to assess compliance with the "appropriateness measures" discussed in section III.C.

the first report to contain a full data-set derived from this system.[47] As a result of our uncertainties, starting with our last report of October 6, 2006 we refrained from reporting data derived from the MIS. We will continue to decline to report these data until the one of two events transpire:

1. we conclude the MIS concordance study and are either
    a. satisfied as to the level of concordance the findings reveal, or
    b. are able to recalculate the compliance data reported by Defendants in light of the study's findings; or,

2. the new data system is fully implemented and we are satisfied that we are receiving data from that system which will permit accurate determinations regarding compliance from that date forward.

Timeline 4 outlines some key dates and events related to our questions concerning the data and DoHMH's response to those concerns. These concerns have been discussed previously in our Fourth Report (pp. 37-38), our Fifth Report (pp.36-37), our Sixth Report (pp. 2-5), our Seventh Report (pp. 2-15 and 52), our Eighth Report (pp. 37-38), our Ninth Report (p. 33-37), our Tenth Report (pp. 39-42) and our Eleventh Report (pp. 39-41).

2. Collaborative Studies with DoHMH and Monitors

During the current reporting period, our focus was on finalizing the plans for and implementing the MIS Concordance Study (see section IV.A.1. above). Neither we nor the Defendants pursued these studies during this reporting period.

3. Performance Measure 2.1: Presence of LSPMI in Chart

Some important entitlements flow to Class Members who are assessed as Seriously and Persistently Mentally Ill (SPMI). However, this assessment is not

[47] This optimistic timeline assumes that the new system is completely implemented by March 31, 2007, so that data from April onward (i.e. the months covered in the October 6, 2007 report) will be derived entirely from the new system.

made until the individual is determined to be a Class Member (¶26). Some seriously ill people will be discharged before this determination is made at the time of the CTDP. To account for this, the Stipulation creates a presumption that certain people are likely to be classified as SPMI ("LSPMI") at the CTDP. Paragraph 24 requires Defendants to assess this likelihood at the time of initial assessment, while ¶25 delineates the specific questionnaire which Defendants are to use to document this assessment. It is the presence of this required questionnaire which this measure monitors.[48]

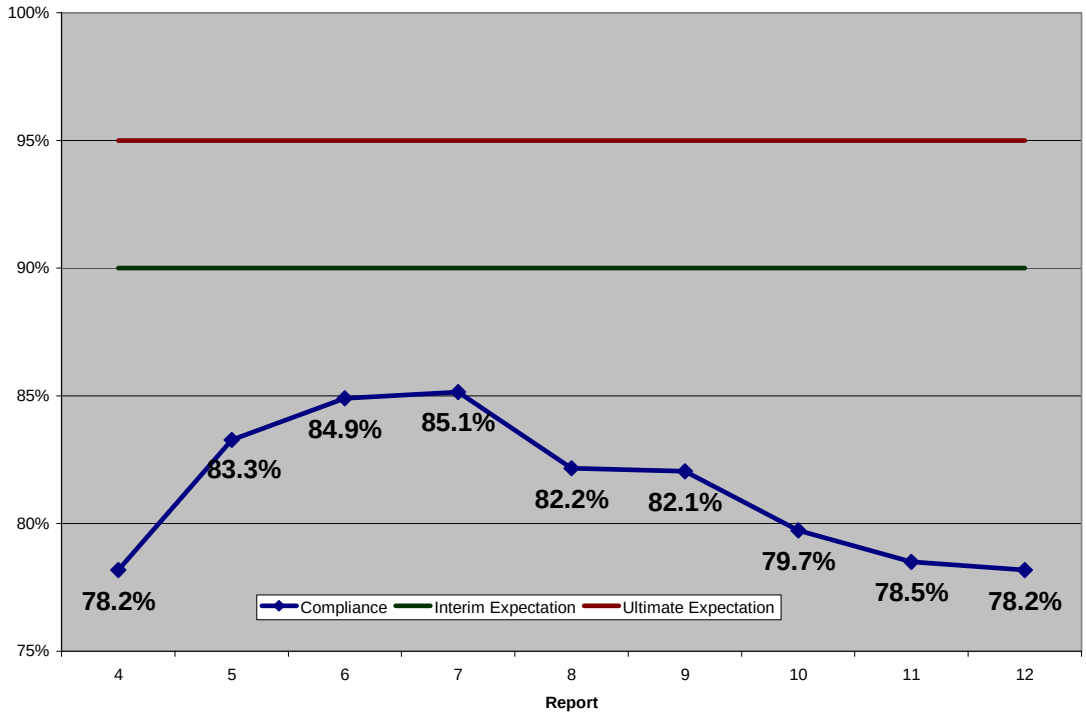
We discussed this issue more fully on pp. 42-44 of our last report where we noted an overall compliance rate of 78.5%. For this report we reviewed 55 charts.[49] 43 (78.2%) of these records had a completed LSPMI form, while the remaining 12 (21.8%) did not have the form in the chart. Comparing these findings to prior periods' results in the following table and graph:

Table 10: PI 2.1: Presence of LSPMI in Chart

Report	4	5	6	7	8	9	10	11	12
Compliance	78.2%	83.3%	84.9%	85.1%	82.2%	82.1%	79.7%	78.5%	78.2%
Numerator	86	234	90	86	281	32	59	84	43
Denominator	110	281	106	101	342	39	74	107	55

[48] The use of this form was modified in mid-2006. An explanation of this modification is included in our Tenth Report at pp. 45-48.
[49] Confidential appendix 4 provided to the Parties with our Draft Report contains identifying information regarding the charts we reviewed.

Figure 2: PI 2.1: Presence of LSPMI in Chart



Defendants continue to perform poorly on this task. To date, their remedial actions have consisted of education and retraining of providers and of providing staff with reminders of the requirement to complete this form. The data demonstrate that these remedial efforts have been ineffective. At this point, DoHMH indicates that they expect to see improvement once the new data system is on line. We agree that if implemented as we expect, this should resolve Defendants' poor compliance on this measure. As of now, we find them to remain out of compliance on this measure at this time.

4. Performance Measure 5.1: Timely Completion of Medicaid Applications

The Stipulation at ¶63 requires Defendants to assist eligible Class Members in "completing and submitting an application for Medicaid." Having active Medicaid is important for many Class Members as a means of accessing and paying for needed psychiatric (and other medical) services following release. Paragraph 64 allows

discharge planners three business days from completion of the Presceening Process to complete this application and two further business days in which to submit the completed application to HRA. We have collapsed this into a standard which provides for 5 business days for the total process.

In the Eleventh Reporting period, DoHMH and HRA began providing us with data regarding Medicaid applications. For this Report, Defendants provided us with data relating to 215 Class Members released during the reporting period whose prescreen resulted in a finding of "need new application." However, we only received the November information on January 30, 2006.

In their comments, Defendants indicated that these data come from the Citrix MIS system. We need to consider the implications of this information which is just now becoming known to us. They also noted that our initial request had not included a column for the delay codes, and that they believed that our analysis therefore failed to account for these delay codes. Because of our late receipt of this information, we were unable to complete a logical analysis of the data in time to include it in this Report. We agree that the information relating to the delay codes is important in analyzing the information and request that Defendants continue to include it in their reports going forward.

In our Eleventh Report, we also found that women were disproportionately included among refusers of this service. During August through October, 2006, we found as follows:

Table 11: Medicaid Application: Refuser Analysis

	Accept	Decline	Total
Men	120	11	131
	91.6%	8.4%	
Women	2	36	38
	5.3%	94.7%	
Total	118	51	169

These data indicate a dramatic difference in the acceptance rate of men (91.6%) and women (5.3%) for this service.

5. Performance Measure 6.1.2: Provision of Temporary Medicaid

Section II.B. above outlines the current status of the litigation surrounding this issue. Defendants remain unable to comply with this requirement in that they have not received the necessary authority from the State. On January 8, 2007, Defendants filed a notice of appeal of Justice Rakower's denial of their application for an order directing the State to provide the City with the requisite authority to provide temporary Medicaid benefits as required by Justice Braun's order of 2003.

6. Performance Measure 6.2: Mailing of Medicaid Cards

a. Temporary Medicaid Cards

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 the State Department of Health ("DOH") will have been able to provide a permanent Medicaid card, that Class Member will be able to access services in the community. DoHMH provides information it receives from HRA for this measure. Including the current reporting period,

DoHMH has reported 100% compliance over five straight reporting periods (20 months). Over this time, they have provided a progressively larger number of cards/month:

Table 12: PI 6.2: Temporary Medicaid Cards

Report	7	8	9	10	11	12
Temporary MA Cards/month	63.25	116.75	145.5	165.25	197.75	227

We have asserted that the number of temporary cards provided should be ***less than or equal to*** the (a) number of reactivated Medicaid cases plus (b) the number of Medicaid applications submitted. In the past, Defendants explained their understanding of who should be receiving a Temporary Medicaid Card as follows: "inmates (a) whose Medicaid cases are successfully reactivated… and (b) [w]hose Medicaid applications [are] submitted and found to be eligible." We agree that this is a more precise definition but one which requires reporting on the outcomes of the Medicaid applications submitted on behalf of incarcerated Class Members.

Unfortunately, as we have discussed above in detail, we are not currently engaging in analysis of data that is dependent on the discharge planning MIS. Therefore, we have not reported on data provided to us by DoHMH relating to PI 5.1 (timely completion of Medicaid Applications). For this reason, we are unable to compare the number of temporary Medicaid cards provided to DoHMH data regarding applications and reactivations completed, as we have done in the past.

In a meeting on June 20, 2006, HRA informed us that the number of temporary Medicaid cards provided should be equal to the number of activations and reactivations. However, HRA is blind to which Class Members are released

into the community, as opposed to being transferred to an upstate prison or a state hospital at the end of their DOC incarceration. They provide temporary cards for all of these Class Members, while DoHMH reports only on discharge planning activities for Class Members who are released to the community. Thus, it is not surprising that there would be a significantly larger number of cards provided by HRA than one would expect from the DoHMH data. This goes a long way toward explaining the disparity in the two reports. HRA has just started giving us this additional information. We suggest that Defendants develop a mechanism to permit them to know when preparing the performance data which Class Members were released to the community and which were not. We also will consider working with Defendants to analyze a sample of cases in greater depth to determine if HRA's explanation does in fact account for the disparity in the numbers reported to us.

b. Permanent Medicaid Cards

For this reporting period, we did not request data regarding the provision of permanent Medicaid cards from the vendor retained by the New York State Department of Health for this purpose. They have operated at very high levels of efficiency in the past.

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

Paragraph 47 requires Defendants to provide Class Members who appear at SPAN with appointments at a mental health program. Against a performance expectation of 95%, Defendants reported 100% compliance with this expectation for all months during the reporting period, with an average of 22-26 appointments

provided each month. SPAN continues to comply with this requirement at high levels in meeting the needs of Class Members who elect to take advantage of their services.

8. 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. HRA assures us that they provide all eligible individuals who appear at a job center with needed emergency benefits during the initial visit. Thus, our expectation regarding compliance for this measure is 100%. Defendants reported that 100% of all Class Members meeting the above criteria were provided with emergency benefits, consistent with our expectation. They provided these benefits to a total of 325 Class Members during the reporting period, or about 81 per month.

Pursuant to our specific request, Defendants provided us with monthly reports relating to those Class Members who filed PA applications during the prior 6 months. These files included information on 321 Class Members who filed PA applications during the current reporting period (August through November, 2006). Regarding the outcomes of these applications, Defendants informed us that the code for "single issuance" equated to the provision of benefits "when immediate needs are given."

Thus, we have interpreted this information to equate to those cases where emergency benefits were provided.

During the current reporting period, HRA reports the following outcomes for the applications filed:

Outcome of Application	N
• Pending	293
• Withdrawn	9
• Rejected	13
• Single Issuance	0
• No outcome listed	6
Total	321

None of the applications had the outcome "single issue". For comparison, in our Eleventh Report, 5 of 364 cases had the outcome "single issue", compared to the DoHMH report of 68 Class Members per month receiving emergency benefits.

In their comments, Defendants noted that our description

> "appear[s] to reflect a misunderstanding of the HRA spreadsheet. The term "single issue" and the code "SI" as used in the spreadsheet, refer to instances in which individuals received emergency benefits ***only***, as opposed to individuals who received emergency benefits ***as well as*** ongoing benefits. The Monitors' misunderstanding of what seems like a discrepancy in the data likely relates to the fact that the spreadsheet does not indicate that there are individuals who receive both emergency ***and*** ongoing benefits. DoHMH's data, on the other hand, lists all of the individuals who received emergency benefits, including those who receive ongoing benefits as well."

Our description of the data provided to us exactly mirrors our description of this issue in our Eleventh report (p. 58). At that time, Defendants did not provide us with this explanation of the meaning of the code SI. If we understand Defendants' clarification, the data they provide us indicates that no Class Members were provided with emergency benefits *only* (i.e. emergency benefits but not ongoing benefits)

during the reporting period. The codes as provided are unable to tell us how many Class Members received both emergency and ongoing benefits.

We have two difficulties with this explanation. First, we are dismayed that Defendants would have constructed a data reporting mechanism that is unable to provide us with the information we requested: the number of individuals provided emergency benefits. Secondly, Defendants' clarification does not fully withstand scrutiny when we examined the data they submitted:

- DoHMH advised us in its monthly reports for this reporting period that HRA provided a total of 325 Class Members with emergency benefits.
- The HRA data, however, indicates that at most, 321 Class Members could have been provided with emergency benefits, depending on when the 13 cases were rejected and when the 9 cases were withdrawn (before or after emergency benefits were provided). This assumes that every single application resulted in the provision of emergency benefits and the approval for ongoing benefits (except for those rejected or withdrawn), an assumption which requires substantial proof before we will accept it.

Thus, our question remains: what is the genesis of the report that 325 Class Members were provided with emergency benefits? It is insufficient for Defendants to provide us with information which is not explicitly responsive to our inquiry and then critique our misinterpretation of that information. Rather, aware of the question we are attempting to answer, they should provide a clear and comprehensive answer to that question.

In conclusion, it continues to be impossible to reconcile data from HRA with the reports from DoHMH. Even if every pending case, every rejected case, every withdrawn application and every application for which no outcome was listed received emergency benefits, the data still do not quite match.

We recognize that there are many Class Members for whom applications are completed in one month who are not released until a later month. HRA data relates to those applications filed in a given month, while DoHMH data sets relate to Class Members released during a particular month. We understand that these groups are not identical. Further, we understand that the emergency benefits cannot be provided until a Class Member appears at an HRA office after release to complete the process. It is plausible that this difference in reporting mechanisms leads to the two data sources being irreconcilable. As we strive to better understand Defendants performance in this regard, we anticipate that future reports from HRA will indicate those Class Members who received emergency benefits ***only*** as well as those Class Members who received ***both*** emergency and ongoing benefits.

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

In our Eleventh Report, at pp. 59-60, we indicated that we no longer accept Defendants' redefinition of this performance measure and that we would decline to report further on this measure until Defendants begin reporting in a manner consistent with the measure as we wrote it. To our knowledge, Defendants have not changed their method of reporting on this measure. Defendants will remain out of compliance with this measure until they report data which is compiled in a manner consistent with our measure and which demonstrates that they meet the performance expectation.

10. Performance Measure 11.1: Provision of Transportation from Jail to Residence or Shelter

This measure is designed to measure Defendants' compliance with the obligations defined in ¶101 of the Stipulation. Defendants are obligated by the Stipulation, as

articulated in measure 11.1, to provide transportation from jail to a residence in the community[50] or to a shelter to SPMI or LSPMI Class Members with projected release dates. Defendants continue to report 100% compliance.

Defendants provided data regarding 236 Class Members for whom transportation was offered during the reporting period. A total of 176 (74.6%) accepted this offer. The following table compares the results over the past six reporting periods:

Table 13: PI 11.1:Acceptance of Transportation Offers

Report	7	8	9	10	11	12
Rate of Acceptance	200/562 36%	225/512 44%	161/302 53%	203/350 58%	163/318 51%	176/236 75%
EMTC	62%	65%	76%	89%	97%	99%
RMSC	0%	0%	4%	12%	2%	6%

During this reporting period, the percentage of cases accepting this service increased by half. However, as in prior periods, there is a marked disparity in the acceptance rates when comparing men to women.[51] The following table illustrates this disparity:

Table 14: PI 11.1: Transportation by Gender

	Accept	Decline	Total
EMTC	172	2	174
RMSC	4	58	62
Total	176	60	236

Comparing this table to Table 13 in our Eleventh Report, to Table 44 in our Tenth Report, Table 43 in our Ninth Report, and the discussion at p. 97 of our Eighth Report, it is evident that the overall increase from 51% to 75% was accompanied by a reduction in the proportion of women making up the entire group:

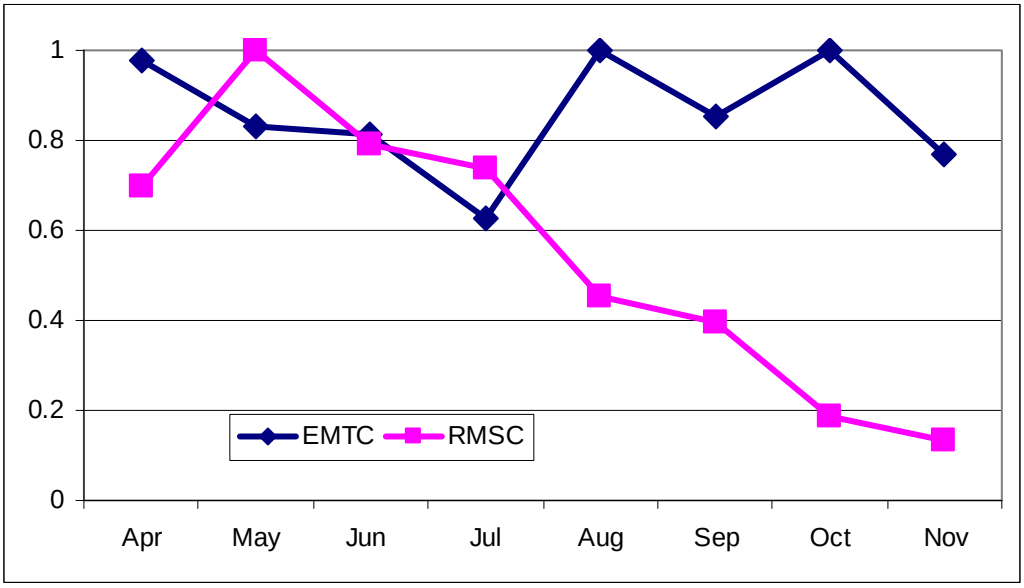
[50] Our position has been that this term includes residential programs to which sentenced SPMI or LSPMI Class Members will be released. See our Eighth Report at page 4.
[51] Paragraph 103 makes explicit that the transportation-related requirements of ¶¶101-102 apply "only if the Class Member wishes to accept the transportation services offered."

Table 15: PI 11.1: Percentage of Cohort which was Female

Report	8	9	10	11	12
Percentage of cohort which was female	32.2%	31.5%	39.7%	48.1%	26.3%

Thus, in this reporting period, the overall increased acceptance rate for this service was produced by asking fewer women (who continue to refuse this service more than 9 times out of 10), and not by an increased rate of acceptance among men (who continue to accept nearly every offer). It is striking when reviewing the numbers of Class Members offered this service each month that the number of women offered the service gradually fell over the last two reporting periods, while the number of men offered the service remained relatively constant:

Figure 3: Reduction of Number of Women Offered Transportation



In their comments to the draft Report, Defendants reported that "[t]here are two factors that result in smaller numbers of offers to female class members at RMSC: fewer numbers of SPMI Class Members and fewer numbers of sentenced female Class Members… sentenced females generally represent a small percentage of

inmates than sentenced males." We will continue to monitor this downward trend among the women.

For this report, Defendants included the reasons why 58 of 62 women offered this service refused it, as follows:

• Desired the Metrocard rather than a ride home	24	41.4%
• Leaving with WPA	15	25.9%
• Night discharge	8	13.8%
• Plans to go somewhere other than residence or shelter	4	6.9%
• Someone meeting her upon release (family, friend)	3	5.2%
• To be picked up by LINK	2	3.4%
• Civilly Committed upon release	1	1.7%
• INS detainer	1	1.7%
• Total	58	

Summarizing, of the 58 women who refused this service, 27 (46%) asserted an alternative plan for transportation (Metrocard or friend/family). Four women indicated a desire to go somewhere other than their residence or an emergency or I/A shelter. For an additional 19 (33%), another program or agency was going to provide them with transportation from Rikers Island (LINK, WPA, civil commitment or INS). The remaining 8 (14%) were "night discharges". None of these "night discharges" appear on Defendants' report regarding Class Members released outside of required timelines (see section IV.C.3 below).[52]

We are struck by this list of reasons for refusal. While DoHMH did not report the two male Class Members' reasons for refusing this service, it is remarkable that so many women elected to leave Rikers Island by other means while men apparently did not. Additionally, it is evident that women do not refuse for the primary reason

[52] See section IV.C.3 below for an explanation of these 8 cases. Three were released pursuant to court order and therefore should not be considered eligible for this service. The other 5 were apparently released during "daylight hours" (though three of them were released late in the day). For these 5 cases, we have no reason for their refusal of transportation.

suggested previously by Defendants: concern for their safety on a van with male Class Members. This issue appears to have disappeared since DoHMH has provided separate van service for women, and yet the high percentage of refusal has continued.

We continue to be perplexed not only by the marked disparity in acceptance rates between the two jails. Further, we have pointed out the dramatic reduction in the overall number of offers of this service made to women during the current reporting period. Defendants in the past have asserted, correctly, that they are responsible only for the offers, and not for whether individuals accept the offers. However, were we in Defendants' position, we would examine this disparity in acceptance rates intensively to understand why these offers are accepted at such a high rate among the male Class Member population in an attempt to learn how we could better reach the women.

These data fail to convince us that Defendants are in compliance with respect to offering transportation to women. In the context of high refusal rates of other services (including Medicaid, SSI applications and attorney contacts), we propose a targeted study – to including record reviews, staff and Class Member interviews – of discharge planning in order to understand the root causes of the high refusal rates in RMSC. In the draft of this Report, we proposed conducting this study in concert with DoHMH and its staff, but in comments to the draft of this Report, Defendants indicated that DoHMH does "…not feel that such a study would be sufficiently productive at this time." As a result, will we conduct this inquiry into the widely disparate refusal rates among women unilaterally. See Section IV.B.14 for details.

11. Performance Measure 11.2: Provision of Transportation from SPAN to Residence or Shelter
12. Performance Measure 11.3: Provision of Transportation from Intake/Assessment Shelter to Program Shelter

These measures are designed to measure Defendants' compliance with the obligations defined in ¶102 of the Stipulation. Defendants continue to report 100% compliance. Defendants are obligated by this paragraph to provide transportation from SPAN to a SPMI Class Member's residence or shelter or from an I/A Shelter to the assigned Program Shelter. For the current reporting period, they reported as follows:

Table 16: PI 11.2 and 11.3: Transportation

	Compliance Rate
11.2	100% (5/5)
11.3	100% (2/2)

These numbers are consistent with prior reports. We will continue to follow these reports.

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

In our Tenth Report at pp. 111-113, we reviewed the situation regarding the provision of brochures and documentation thereof. Given our findings, we made a strong recommendation that "DoHMH must update the forms they use to document that they are providing brochures to Class Member. [Mental health and] discharge planning staff must be trained as to the purpose of these brochures, the use of the updated form and the fact that the two brochures are in fact different." To our knowledge, DoHMH has not acted on this recommendation over the past 7 months.

However, they reported in their comments that they are "building an element into [their] new database which will capture provision of Brad H brochures to clients. [They] will train staff on this issue."

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

In our Eleventh Report, at pp 64-66, we discussed our views regarding the balance Defendants must strike between respecting a Class Member's right to decide whether to participate in or refuse discharge planning and the requirement to provide these services to Class Members. DoHMH's current policy MH 11 requires that mental health staff offer discharge planning to the Class Member each time they complete a CTDP or TPR. Acceptance or refusal of discharge planning is to be documented on the DSN or DSN-Update form completed at that time.

Our chart reviews reveal significant implementation issues related to documenting these reoffers. These problems can be broken down by date, as DoHMH altered the DSN form used in the jails on or shortly after August 21, 2006. The form used prior to this time was problematic in that the clinician completing it had a choice only of checking "declined DCP services" and entering a date, or simply leaving it blank (presumably indicating acceptance of all services). At times, clinicians entered "N/A" in the space for a date (also presumably indicating acceptance).

The new DSN and DSN-Update forms, first introduced in August of 2006, allow for more precise documentation. First, and most importantly, the form begins with a check-box for "accepted discharge planning services." We have strongly suggested an approach that presumes acceptance rather than one that presumes refusal as these forms previously did. In our opinion, beginning a process by asking if someone

refused a service puts the clinician in a mindset of expecting refusals; this in turn inevitably colors the therapeutic interaction in a way that promotes refusal. By presuming acceptance, the new form reflects a more appropriate approach. The new form also permits clearer documentation of "declined all" versus "declined some" services.

Despite this, we continue to have a difficult time interpreting documentation of refusals and acceptances in the medical record. Our reviews revealed a number of records containing discrepancies between the DSN/Update (completed by mental health staff) and discharge planner documentation. For example, there are records in which mental health staff implied or overtly indicated acceptance of discharge planning service on the DSN or DSN-Update, but also in which discharge planning staff had the Class Member sign a declination form indicating refusal of all or some services. In some cases, these forms were completed on the same date. We recognize that a Class Member might answer a question differently to two different staff, even on the same day, for a variety of reasons. At a minimum, the second staff person to see the Class Member should be closing the loop by working with the Class Member to understand the reason(s) behind the disparate responses. At times, discussing the case with the first clinician to try to identify ways in which to determine what the Class Member really wants may be helpful as well. In many cases, the chart was unavailable to the clinicians and discharge planners involved and so they were operating without knowledge of what transpired during previous contacts with staff. We conclude that cases with disparate documentation regarding acceptance/refusal of

discharge planning services often reflect inadequate communication within the team, whether directly between providers or via the medium of the medical record.

In some cases, we found that staff used the checkboxes on the DSN forms for "declined services" incorrectly, in that the date entered is the date of an original declination form (perhaps weeks earlier). In these cases, the form implies that the Class Member was not in fact reoffered services as per policy, but rather that the form simply was used to document a prior refusal of services. This reflects a poor understanding of the purpose of the form and the purpose of the policy. There are substantial training needs in this regard.

A further level of difficulty relates to the roles of various staff. The primary example of this is DoHMH's use of the two different discharge planning job titles to cross-cover for each other to try to ensure that all tasks are completed. We have observed this confusion when reviewing charts. Our discussions with discharge planning managers confirm this blurring of roles between the job titles. We have frequently questioned the meaning of a declination form completed by a caseworker on which the Class Member is noted to have declined all discharge planning services. Does this mean that the Class Member declined all services ***offered by a caseworker***? Or does this mean that the caseworker offered all services (including those typically completed by a social worker) and the Class Member declined them? According to DoHMH, the answer is entirely case-specific, requiring a detailed knowledge of staffing patterns and staff utilization for a particular unit on any given day. In some instances, the caseworker would be acting within his/her title and only offering caseworker services. In others, the caseworker would be working overtime "out of

title" and would be expected to offer all services. On some occasions, a progress note may include information needed to determine the meaning of the refusal. The only other way to know would be to have specific internal knowledge about the coverage of that facility on that day – clearly a difficult prospect retrospectively. This long explanation relates to lack of clarity about reoffers of services because it is not always clear from the record what was refused in the first place; that being so, it could not possibly be clear to the discharge planning staff working with the Class Member what services should be reoffered, and further it could not be clear to us which services should have been reoffered.

A specific issue relating to the need for reoffers of refused services presents itself at RMSC where all women on Rikers Island are housed. We again express our concerns regarding the striking gender disparity in refusal rates. This finding, now evident for transportation, Medicaid applications, SSI applications and attorney contacts, is entirely inapposite with our experience with incarcerated women, who tend to seek help more, not less, than do men. As we concluded in our Eleventh Report, we believe it likely that this apparent pattern of extremely high refusal rates among women suggests systemic problems in engaging women within RMSC. We are concerned that this problem may relate to the social work staffing levels in RMSC, as described in Section III.A.2 above.

To better understand this issue, we will conduct a study of the ways in which discharge planning services are offered to women in RMSC. This study will involve interviews of Class Members and staff, review of records, and observations of the engagement and discharge planning processes. We are interested in understanding

what efforts Defendants have made in improving their ability to engage women successfully in the discharge planning program.

In addition, we now request specific reports (both for global refusal and for specific refusal of each service for which refusal is an option) on refusal rates of all discharge planning services, broken down by jail. As outlined in the conclusion, below, Defendants indicate that "it is not feasible… to produce a meaningful report on refusal rates in the jails by facility. Other than the Rose M. Singer Center for female inmates, Class Members are typically housed in multiple facilities." We anticipate that the new record-keeping system will be able to produce such reports as a matter of routine, which will be helpful not only to our understanding of this issue but which could be used by managers at all levels to receive feedback on refusal rates. In the interim, we request that Defendants provide us with refusal rates for RMSC and combined refusal rates for the male jails.

In conclusion, we have great concerns that line and supervisory staff do not approach Class Members with a comprehensive and sophisticated understanding of their roles in assisting Class Members reintegrate into the community at the end of their incarcerations. Their approach to the reoffer process demonstrates a spotty understanding of the policy among the mental health staff as to the requirement to reoffer services to Class Members who have refused. In our view, the development of the new record-keeping system (described above in section III.D.) offers Defendants an excellent opportunity to provide staff with realtime assistance in making decisions regarding the need to reoffer services and in documenting the work that they have done in this regard.

Defendants responded to this issue as follows: "DoHMH will amend its forms to clarify instructions regarding declinations of services." We anticipate an opportunity to review these forms and instructions prior to implementation.

SPAN has already begun to approach refusing Class Members on their own (see section III.E. above). We strongly suggest that DoHMH develop analogous approaches to Class Members who have refused discharge planning services in the jails.

C. *Data Unrelated to Performance Indicators*

1. DHS Placement Directly in Program Shelters

The Stipulation at ¶96 requires that "DHS shall use best efforts to place a sentenced Class Member directly in a designated Program Shelter or Mental Health Program Shelter on his or her release date…." Over the past seven reporting periods, Defendants reported:

Table 17: Direct Placement in Program Shelter

Report	6	7	8	9	10	11	12	12 (corrected)
Placed Directly in Program Shelter	3/13	11/22	15/46	18/49	37/75	11/52	7/50	7/29
	23%	50%	33%	37%	49%	21%	14%	24%

Data in this table is derived by combining the monthly reports provided to us by Defendants for elements which they have numbered 12.4.4. During the current period, a smaller percentage of those who presented were placed directly into a program shelter. In their comments, Defendants reported that the denominator used in the table above includes all Class Members presenting to the shelter system, not just those who are sentenced. They indicated that 29 of the 50 Class Members who presented to the shelter system were sentenced, and argue that this should be the cohort to be considered for this section of our report. Using this as the denominator,

the table above was corrected. Further, they expressed their desire to provide us with the number of **sentenced** Class Members reporting to the shelter system going forward.

We agree that this is the correct way to view Defendants actions vis-à-vis direct placement in program shelters as required by the Stipulation. We anticipate that, going forward, Defendants will provide us with the total number of Class Members presenting to a shelter and the number of ***sentenced*** Class Members presenting to a shelter. We will continue to report on the rate of direct placement of this latter group in program shelters as our only data-based window into the efforts exerted by Defendants.

In our Eleventh Report at pp. 67-69, we included a discussion of a variety of objections made by Defendants to our portrayal of this information. This discussion is incorporated here by reference. We reiterate explicitly that this requirement ***is not a performance measure***, and that Defendants are only obliged to exert "best efforts" to place sentenced Class Members directly into program shelters. We understand the many reasons that a specific Class Member might not be placed directly into a program bed. Reiterating our conclusion in our last Report, should Defendants desire us to evaluate whether the efforts they exert in this regard constitute "best efforts" in some way other than examining the percentage of eligible individuals placed directly into a program shelter, we invite them to offer us their suggestions as to how we might do so. One way for us to assess this would be to conduct monitoring visits to DHS shelters and offices to observe directly how they handle specific referrals of sentenced Class Members who would best be served in program shelters.

Defendants responded to our suggestion that a site visit might be useful in understanding how referrals of Class Members are processed as follows:

> "DHS met with the Monitors in June 2006, at which time DHS explained in depth how a Class Member is directly placed in a program shelter and the reasons that may prevent a direct placement, such as the lack of bed availability. The Monitors asked several questions and became quite familiar with DHS's direct placement process. DHS also provided the Monitors with a copy of DHS' Brad H. Procedure which describes, among other things, how the Agency directly places Class Members in shelter (see Procedure at 4). Therefore, the Monitors have sufficient information by which to assess DHS's process. Monitoring visits to DHS shelters and offices would not be instructive."

While the June 2006 meeting was helpful to us in understanding the DHS ***policy*** regarding referrals of eligible Class Members, the issues related to capacity, and the placement process for program beds, it is always the case that the best way to understand how a policy works is to view it in action at the point of service. This understanding informs the approach of most monitoring and accreditation bodies in the healthcare field. Therefore, we strongly disagree that visits would not be "instructive" and reiterate this suggestion as our only way (other than reporting on the data provided by Defendants) to truly understand how DHS works with these cases. Should Defendants propose an alternative way to determine if they are in fact exerting best efforts in this regard, we would be pleased to consider it.

2. SPAN

SPAN data regarding central property encounters, court outreach, and jail inreach, is discussed in detail in section III.E.1-3 above.

Regarding SPAN utilization,[53] Defendants reported as follows:

[53] As noted in our Eleventh Report at p. 71, data for that reporting period was flawed. Therefore it cannot be considered in understanding trends relating to SPAN utilization and was eliminated from this table.

Table 18: SPAN Utilization and Clientele

Report	6	7	8	9	10	12
# of SPAN Visitors	191	132	128	227	214	206
Homeless	32.6%	37.5%	43.5%	42.8%	40.2%	34.7%
SPMI/Likely SPMI	45.9%	53.4%	57.0%	51.6%	44.9%	53.9%
% of SPAN CMs who attended inreach session	18.8%	7.2%	4.4%	4.2%	13.1%	7.3%
% of released CMs who attended inreach session	6.2%	3.1%	2.9%	5.5%	8.9%	9.0%
After 5pm	3.3%	2.4%	3.0%	6.0%	5.1%	5.8%
Bronx		21.4%	23.0%	24.9%	21.1%	18.0%
Brooklyn		32.9%	28.3%	34.1%	35.5%	40.8%
Manhattan		33.6%	30.9%	24.9%	32.5%	30.6%
Queens		8.6%	10.9%	13.7%	10.8%	10.7%
Staten Island		3.6%	7.0%	2.4%	n/a	n/a

These data indicate that the Manhattan and Brooklyn SPAN offices continue to account for the majority of the SPAN visits. A large percentage of SPAN's clientele are Class Members who are homeless and/or SPMI/LSPMI. However, in contrast to our past findings, during the current reporting period, there is a slight underrepresentation of Class Members who had attended an inreach session among the visitors to SPAN.

The data over time indicate that, while the absolute number of SPAN clients remains small, the level of need of the clientele is great. More than 1/3 of SPAN visitors are homeless, and about half of them were SPMI or LSPMI.

3. Time of Release

Paragraph 32 requires DOC to release all Class Members during daylight hours and in no event earlier than 8:00am, the only exceptions being those who are released directly from court, after posting bail, or pursuant to a court order requiring immediate release. During the last two reporting periods, DOC reported compliance with this expectation in over 99% of cases. During the current reporting period,

Defendants reported that, overall, 1154 of 1176 (98%) of eligible Class Members were released within the required timeframe. Four of the Class Members released outside the required timeframe were released to a program requiring early release (we have previously accepted this as a legitimate reason for release outside this timeframe). Discounting these 4 cases, 18 (1.5%) of the overall caseload was released outside the required timeframe.

In our Tenth Report, we reduced our expectation for this task from 100% to 99%, to accommodate the fact that perfection is unobtainable and that the stipulation requires "substantial compliance" rather than compliance in each individual instance. However, as time of release was one of the foundations of this case, we requested information regarding every noncompliant case.

The following table includes all information provided to us by Defendants on this matter:

Table 19: Time of Release: Noncompliant Cases

JAIL	TIME OF RELEASE	JAIL	TIME OF RELEASE
EMTC	5:52	RMSC	21:42
EMTC	7:36	RMSC	20:24
EMTC	7:36	RMSC	21:43
EMTC	21:46	RMSC	21:24
EMTC	3:26	RMSC	18:21
EMTC	6:55	RMSC	17:49
EMTC	7:45	RMSC	21:42
EMTC	6:17	RMSC	20:50
EMTC	20:34		
EMTC	16:39		
EMTC	2:16		
EMTC	17:00		
EMTC	5:57		
EMTC	18:06		

The cases shaded in grey were released to the Osborne Association or to Samaritan Village, programs which require early morning release.

Defendants previously reported that they did not identify any systemic problems and therefore did not implement any remedial efforts. In conclusion, during this reporting period, Defendants compliance with this requirement dropped from >99% to 98.5%. We are unaware as to whether Defendants have implemented any remedial efforts in this area, or whether they believe remedial efforts are warranted. In order to attain the 99% limit, DOC would have had to release 7 of the 18 noncompliant cases during daylight hours. This suggests that a more systematic approach to understanding these noncompliant cases is indicated.

In response to this section, Defendants comments include a lengthy explanation regarding 8 cases listed as "night discharges." From the context of their comments, it is unclear if these 8 cases refer to 8 of the 22 cases listed above or if they relate to the 8 cases included as "night discharges" in section IV.B.10. These latter cases included the listing "night discharge" as a reason for refusing transportation.

Defendants' comments indicate that 3 cases were released during daylight hours but after the operational definition of "daylight hours" of 8am-4pm. They assert that these are not non-compliant, as the Class Members were in fact released while it was still daylight. Further, they indicate that DOC "uses seasonal data to ensure that Class Members are released during "daylight" hours consistent with ¶32." This contradicts DOC Operations Order 03/03 (as cited in our Fourth Report at p. 15) which provides that "Inmates with this indicator [M indicating in need of mental health discharge planning] will be discharged between 0800 hours and 1600 hours only, unless bailed out, or released pursuant to court order requiring immediate release."

In the past, we have accepted that cases released during daylight hours, even if outside a strict 8am – 4pm timeframe, are compliant with ¶32 of the Stipulation. We suggest that DOC and DoHMH coordinate their policies and reporting mechanisms so that there is a unitary definition across the agencies as to the meaning of "daylight hours." All this aside, this explanation of why these cases should not be considered "night discharges" does not explain why they were not provided with transportation.

Defendants also indicated that 3 cases were released pursuant to court orders and thus would be excluded from the temporal requirements of release per ¶32.[54] Finally, they indicated that two Class Members reported as "night discharges" were erroneously timed out by discharge planning staff at 9:56 PM rather than 9:56 AM. They are confident that the release in fact took place in the morning because contemporaneous documentation by DOC staff was timed at 9:58 AM. While this does indicate that these cases were not released outside the required timelines, it does not explain why transportation was not provided to them.

4. Attorney Contacts

Paragraphs 34-35 of the Stipulation requires Defendants to engage in a pilot study of the utility of seeking release date information from Class Members' attorneys. Specifically, the monitors are to assess: "(a) whether the information obtained by Defendants… is generally beneficial in Discharge Planning and (b) if so, whether Defendants should be required to continue such efforts and expand such efforts to other City Jail facilities." Our prior reports have detailed the difficulty we have had in understanding the information provided by DoHMH and the remedy we conceived

[54] This would, of course, also exclude them from the requirement to provide transportation (except from SPAN or an I/A shelter).

for this problem. In our last report, we summarized the results of that reporting period and concluded "Defendants must continue to make attorney contacts for Class Members housed in C71 and in the MO at RMSC." We allowed the Defendants to try to disprove our conclusion by rigorously following our method for documenting these calls, and if they could demonstrate by doing so over a three month period of time that, in fact, our conclusion was erroneous, we would reconsider our finding.

Defendants, however, continued to make the contacts not only in the MO setting but also in the GP setting in AMKC and RMSC. For the past four reporting periods, Defendants reported that they generated lists of those eligible for attorney contacts as follows:

Table 20: Pool Development for Pilot Project

Report[55]	9				10			
	AMKC		RMSC		AMKC		RMSC	
	C71	C95	MO	GP	C71	C95	MO	GP
total Ms	121	265	34	394	295	685	202	605
No contact info	43	137	4	124	73	169	0	0
Refused	53	50	27	252	117	313	190	524
Known release date in IIS	0	26	0	0	0	63	0	0
Total pool	25	52	3	18	105	140	12	81
% included in pool	21%	20%	9%	5%	36%	20%	5.9%	13%
Report	11				***12***			
	AMKC		RMSC		***AMKC***		***RMSC***	
	C71	C95	MO	GP	***C71***	***C95***	***MO***	***GP***
total Ms	257	715	150	596	***271***	***744***	***156***	***545***
No contact info	36	561	0	0	***65***	***626***	***0***	***0***
Refused	99	41	138	552	***95***	***31***	***139***	***466***
Known release date in IIS	0	37	0	0	***0***	***28***	***0***	***0***
Total pool	122	76	12	44	***111***	***59***	***17***	***79***
% included in pool	48%	11%	8.0%	7.4%	***41%***	***7.9%***	***11%***	***14%***

[55] Report 9 includes data from October and November, 2005, Report 10 includes data from December 2005-March 2006, and Report 11 includes data from April-June 2006.

During the current reporting period, 85% of the Class Members considered were excluded from the pool for various reasons. For comparison, during the Ninth reporting period, 88% of the Class Members were excluded; during the Tenth reporting period, 81% were excluded, and during the Eleventh reporting period, 85% were excluded. Just as in the last two periods, women were far more likely to refuse to allow this contact. An additional distinction between the last two reporting periods and earlier reports is that over 40% of the men in the MO setting permitted this contact and provided information for staff to use.

During the current reporting period, 266 Class Members were included in the pool for whom attorney contacts were attempted. We received information regarding attempted contacts for all of these Class Members. Unlike previous reporting periods, Defendants made use of the tools we provided for them to report on this task. The calls made resulted in the following contacts:

Table 21: Pilot Project outcomes

Result of attempted contact	N	%
Information provided by attorney/staff	43	16.2%
Phone message left on voice mail	197	74.1%
Phone message left with staff	20	7.5%
Phone call not answered	2	0.8%
Other	4	1.5%
Total	266	

Of the 217 cases in which a message was left, the call was returned in 51 cases (24%). Thus, contact was made in 94 of the 266 cases (35%).

In 44 cases (17% of the entire pool, 47% of those in which contact was made), the attorney was able to provide either a "next court date" (40 cases) or a "release date" (4 cases).

Thus, of the 266 contacts attempted, 17% resulted in information "generally beneficial to Discharge Planning" efforts. This represents a continued increase in the positive results.

DoHMH engaged in post-hoc analysis of the utility of the information obtained. Following the 40 cases in which the defense counsel provided a next court date, they found that the Class Member was in fact released at that court date in 10 cases (25%) while in the remaining 30 cases the Class Member was not released at that time. Defendants did not provide us with the raw data underlying this analysis. The conclusion DoHMH would take away from this post-hoc analysis is that even when a call appears successful because the attorney provided information regarding a release date or next court date, the information itself is only accurate in one quarter of the cases where it is obtained.

The difficulty we have with this post-hoc analysis is that it is impossible to know *a priori* in which quarter of the cases the information will in fact be an accurate predictor of future events. We reiterate our understanding of the Stipulation at § I. 1. ¶rrr, where "Release Date" is defined as "the date on which an individual was, or ***is expected to be***, released from incarceration in a City Jail" (emphasis added). As we said in our Eleventh Report on this issue (p. 76):

> "In a jail setting, the term 'expected release' implies a degree of uncertainty. For example, as a rule, staff and detainees (and, in fact, defense counsel) may harbor an expectation of release at a coming court date, though in some such cases, that release may not happen for any number of reasons.... [G]iven the nature of the detainee population, a next court date is in many cases the closest estimate there is to an "expected" release date, and the entire purpose of the attorney contacts is to try to obtain information regarding which Class Members are in fact likely to be released at the coming court appearance."

Thus, it is unsurprising to us, as it should be to Defendants, that defense counsel's provision of next court dates are not guarantees of release on those dates. We are certain that Defendants understand this, and we also are aware that Defendants treat a next court date as a potential release date for certain purposes.[56] We conclude as we did in our Eleventh Report that the purpose of the attorney contact is not to obtain a guaranteed release date but to try to obtain "a next court date that was previously unknown to discharge planning staff, because this information is the only means of gauging the likelihood that a specific Class Member will be released or not."

As we have done elsewhere, we reviewed a number of randomly selected medical records for information related to this task. During the current reporting period, we reviewed 49 charts between October 9 and December 18, 2006.[57] Our findings were as follows:

Table 22: Chart Reviews: Attorney Consent

	Signed Consent in Chart		Consent Declined	N/A[58]
	YES	NO		
RMSC-MO	6	9	0	0
C-71	7	23	1	3
Total	13	32	1	3

Thus, of 45 cases not excluded due to refusal or being otherwise ineligible, only 13 charts (29%) included a signed consent. The other 32 (71%) had no information in the chart as to the consent or lack thereof. This causes us specific concern as to the validity of the information Defendants provide to us regarding their performance in

[56] For example, HRA requires a known release date or a "next court date" in order to reactivate Medicaid, a task they cannot complete without such a date. We have been advised that HRA requires this precisely because they are precluded by law from reactivating Medicaid for a current inmate, but they are permitted to do so if there is a prediction as to when the person will be released.
[57] These cases are included in Confidential Appendix 4.
[58] The three cases labeled "n/a" include two whose CTDP had not been completed and one in which the Class Member was unable to recall his attorney's name.

this area. Defendants responded to this finding by noting the need for improved training and reminding staff of the need to obtain consent for this contact. They noted that "[r]esolution of this issue will be aided by the implementation of our new database, but we agree that we must take immediate steps to redress."

In conclusion, Defendants provided data regarding attorney contacts that was much more useful for this report. We concluded in our Eleventh Report that we were requiring Defendants to continue to make the contacts for Class Members housed in the MO in C71 and in RMSC.

The Parties entered into this aspect of their Agreement for a reason. Based upon our experience in the field, contacting attorneys would logically be designed to address a fundamental challenge confronted by any jail system seeking to provide discharge planning to a transient population: ignorance as to when detainees are going to be released from jail complicates the discharge planning process. Gaining knowledge of a Release Date from an attorney could assist in the development of an individualized, clinically appropriate discharge plan. It may be that contacting attorneys for this cohort is not the most productive way to ameliorate the problem posed to discharge planning efforts by uncertain release dates.

DoHMH now proposes an alternative mechanism for obtaining this information. Rather than expending substantial staff efforts to attempt to contact defense counsel, which results in useful information in a very small percentage of cases, they offer the following proposal:

> "DoHMH/CHS has a Coordinating Manager for Mental Health Services. One of her responsibilities is to receive telephone calls from family members, community representatives and attorneys for patients who receive mental health services in the jails. In Calendar Year 2006,

she fielded 611 such calls. Approximately 50 percent of the calls received were from attorneys or judges. In January of 2006, 47 calls were received and 23 were from the Legal Aid Society or judges. In October 2006, she received 77 calls and 55 were from Legal Aid or the court. Finally, for the duration of the attorney pilot project for this quarter (August through November 2006), discharge planners received information from attorneys in only 44 cases, despite more than 266 attempted contacts. In contrast, during this same period, the Coordinator Manager for Mental Health Services received 230 calls, of which approximately half were from inmate attorneys raising concerns or providing collateral information needed for appropriate mental health care and discharge planning.

"DoHMH now proposes to expand its Coordinator Manager role so that she will perform twice yearly outreach to Legal Aid and other large criminal defense organizations, to instruct attorneys on the information needed for appropriate discharge planning (release date being a high priority), and encourage them to contact her with such information. She will, in turn, convey relevant release date information to discharge planning staff. This approach will have the particular advantage of providing a single point of contact to attorneys for mental health and discharge planning, and we believe will result in a more unified relationship with the defense bar. We will track the effectiveness of this approach by monitoring the call volume.

We accept this proposal in principle. It is evident that even when Defendants conduct the "pilot project" calls and collect data in the requested format, these calls are not as informative as had been hoped. In addition to relieving staff of this time consuming activity, their proposal has several advantages:

- There is already an established mechanism for receiving calls from the community and passing information to relevant staff.
- The single contact point integrates mental health and discharge planning community contacts to permit the exchange of more information than just release dates.
- This mechanism broadens the attorney contacts to all jails, not just AMKC and RMSC.
- The attorneys who affirmatively call this single number will be more likely to have useful information and more likely to be able to engage with the treatment and discharge planning staff in a meaningful way.
- Attorneys who make contact to provide or request other information can be asked if they are aware of potential release dates.

Notwithstanding our agreement in principle with this new approach, we expect that treatment and discharge planning staff will continue to use their judgment in affirmatively reaching out toward any collateral information source, ***including defense counsel***, in specific cases where they believe that this information will be helpful.

Prior to allowing DoHMH to discontinue its affirmative requirement to attempt to contact attorneys, we will meet with DoHMH and its Coordinator Manager to understand the operational details of her work and to discuss the nature of her outreach to defense counsel and other relevant entities.

V. Conclusion

In this Report, we briefly summarized the history of the case for the convenience of the newly assigned Court. In doing so, we highlighted key events in the case, including those related to the litigation, settlement and monitoring of the case; to subsequent litigation regarding Class Membership definition and ¶61 of the Stipulation; and to issues that preclude our effective monitoring in several important areas.

During this reporting period, we once again declined to report on compliance data provided to us from the discharge planning MIS because we believe that these data may not be concordant with information in the medical records. Instead, we have spent much of our time since the Eleventh Report finalizing the procedure for and initiating the study, requested by Defendants, as to the concordance of data in the discharge planning MIS with information contained in the medical record. Inasmuch as our concerns regarding the MIS will be resolved going forward with Defendants' new data system, our concerns will be mooted. However, there will still be concerns regarding data provided to us prior to the new system.

We anticipate continuing this study immediately after completing this report and expect to be able to include the findings from that study in our next report.

There remain two nettlesome ongoing areas of litigation that interfere with our monitoring of this case. First, the Class Membership status of inmates and detainees housed on the Prison Wards is still the subject of appeal (see section II.A and Timeline 1). At this point, the Appellate Division has not ruled on Defendants' motions of October 17, 2006, so Justice Braun's ruling of April 18, 2005 remains stayed. Similarly, the litigation regarding ¶61 (section II.B. and Timeline 1) is ongoing and precludes our monitoring of this requirement. On January 8, 2007, Defendants filed a notice of appeal of Justice Rakower's orders of December 7, 2006 which denied Defendants' application for an order directing the State to provide the City with the authority it says it requires in order to provide temporary Medicaid benefits.

We would like to highlight two of the findings in this report which we believe warrant special attention.

A. *Refusal of Services and Gender*

Since our Sixth Report of June 6, 2005, we have noted that women are reported to be much more likely to refuse some services than are men. We have observed this pattern over two years with respect to transportation (section IV.B.10) and for shorter time periods for other services, such as Medicaid applications (section IV.B.4), SSI applications[59] (section III.F.1) and attorney contact calls (section IV.C.4). In fact, ***nearly every time we have asked for information related to refusal which could be analyzed by gender, we have observed this pattern.***

[59] To their credit, Defendants express concern over the high refusal rate of SSI applications among women; we suggest that they should be similarly concerned in all areas where women refuse services at high rates.

Our experience in correctional systems has consistently shown that women tend to be more likely to seek and accept help for mental health and social problems than are men. Thus, we have expressed and continue to express our surprise and frank incredulity regarding our findings within the NYC DOC. Defendants have not been able to explain why women have such a high rate of refusal of services, and we cannot discern from the information available to us why this would be so.

Thus, at this time, rather than engaging in continued speculation, we make two requests of Defendants:

- First, we request that Defendants provide us with detailed information regarding refusal rates divided by jail. This will enable us to better understand refusal rates across the different jails, and will permit easy analysis of the relationship of refusal of services to gender. We reiterate that Defendants are ***not obligated*** to obtain consent but only to offer the required services. However, studying refusal rates by jail permits us and Defendants to better understand how service delivery varies across the system and may offer insight into how to improve service delivery in sites where problems are identified.[60]

- Second, in our opinion, the findings to date in the women's jail demand a more systematic study of refusal rates there and, for comparison, in other jails. We therefore will conduct a study of the engagement and discharge planning processes in RMSC as a way to better understand the high refusal rates.

B. *Delay in Defendants Implementation of Changes Necessary for Monitoring*

Defendants have continued to move ahead in many areas, the most important of which is their development of a new electronic record keeping system. This will bear fruit in many ways, including

1. generally improving recordkeeping,
2. improving communication among team members, and
3. providing enhanced capacity for managing care at all levels.

[60] As noted above in section IV.B.14, Defendants indicate that they cannot provide meaningful data by jail as it relates to men, because of frequent movement of Class Members among the jails. Given this limitation, which we anticipate will be resolved with the new data system, we request that they provide us with refusal rates in RMSC and a combined data set on refusal rates in all of the jails housing men.

In addition, we anticipate that this new system will provide us with data that is more complete and which provides a more accurate picture of Defendants' performance. Unfortunately, this process has taken much longer than was originally projected (see section III.D and Timeline 4 for details).

Another area in which Defendants have been slow in responding to monitoring requirements is the adoption and implementation of necessary procedures for the monitoring of the "appropriateness" measures (section III.C and Timeline 2). In part, the delay here is entwined with the repeated changes in the management team that had oversight of the Defendants' management of the discharge planning program (section III.A.1 and Timeline 3).

These delays take on added salience given the timeline under which we operate. As "[t]he provisions of this Agreement shall terminate at the end of five years after monitoring by the Compliance Monitors begins," the ramification of these delays is that some key aspects of the Stipulation will not be monitored at all, or only for a brief period of time, during the term of the agreement. As such, we express our discomfort with the continued uncertainty in so many areas of this case.

In addition to these important themes, we summarize here the findings, requests for clarification, and recommendations we have made in this report.

1. Defendants must continue to work assiduously to meet their set goals regarding the implementation of the new data system. (Section III.D). This advance will greatly benefit their work both at the line service provision level and at all management levels. In addition, this advance will resolve many of the longstanding issues we have had with Defendants' performance and with their reporting on their performance. We anticipate being able to report on all of the Performance Measures, including those on which we have been unable to report since the Tenth Reporting period.

2. Defendants continue to be unable to fully staff the Social Work complement of the discharge planning program. (Section III.A.2)

3. Defendants continue to fail to include required forms in the medical record chart. (Section III.C)

4. Defendants proposed some constructive approaches regarding SPAN in-reach and out-reach. However, they continue to fail to meet the specific obligations in the SPAN agreement with Class Counsel. With respect to this, we request that DoHMH and SPAN provide us with a fiscal accounting of the budget, demonstrating the reinvestment of the funds realized by the closure of the Staten Island SPAN Office. (Section III.E)

5. Defendants have not provided us with their remedial plan regarding the correct population of the "relstatus" field. (Section IV.A)

6. Defendants are out of compliance with Performance Measure 2.1: LSPMI form in chart. (Section IV.B.3)

7. Measure 6.2 (Temporary Medicaid Cards): Defendants have not developed a mechanism to permit them to know which Class Members are being released to the community (as opposed to state prison or hospital) in order to more accurately report on this measure. (Section IV.B.6.a)

8. Defendants are out of compliance with Performance Measure 9.1: emergency benefits. We requested a clearer explanation of the information provided by HRA on this issue. (Section IV.B.8)

9. Defendants are out of compliance with Performance Measure 9.3: registration of PA applications on day of receipt. We requested that defendants report on this measure as written. They will remain out of compliance until they do so. (Section IV.B.9)

10. Defendants are out of compliance with Performance Measure 11.1: transportation from jail. This finding is based on the extremely low acceptance rate among women. (Section IV.B.10)

11. Defendants are out of compliance with Performance Measure 13.1: provision of brochures. We recommended that DoHMH develop updated forms to document the giving of the brochures and as well as providing training to staff. (Section IV.B.13)

12. Defendants put forth a constructive proposal for attorney contacts which we have accepted in principle as an adequate substitute for the "pilot project" activities.

During the coming reporting period, our priorities will be as follows:

- We will complete the MIS-Concordance study. (Section IV.B.1)
- We will initiate evaluation of the appropriateness measures, within the limitations described above. (Section III.C)
- We will conduct an observational study of the engagement and discharge planning processes at RMSC. (Sections IV.B.10 and 14)

Our next report comes due on June 6, 2007. Per our set timelines, data and other information from Defendants will be due to us six weeks prior to that date, on April 25, 2006. Our draft will be released on May 16, 2007, and we will require any comments back by the end of the day on May 25, 2007.

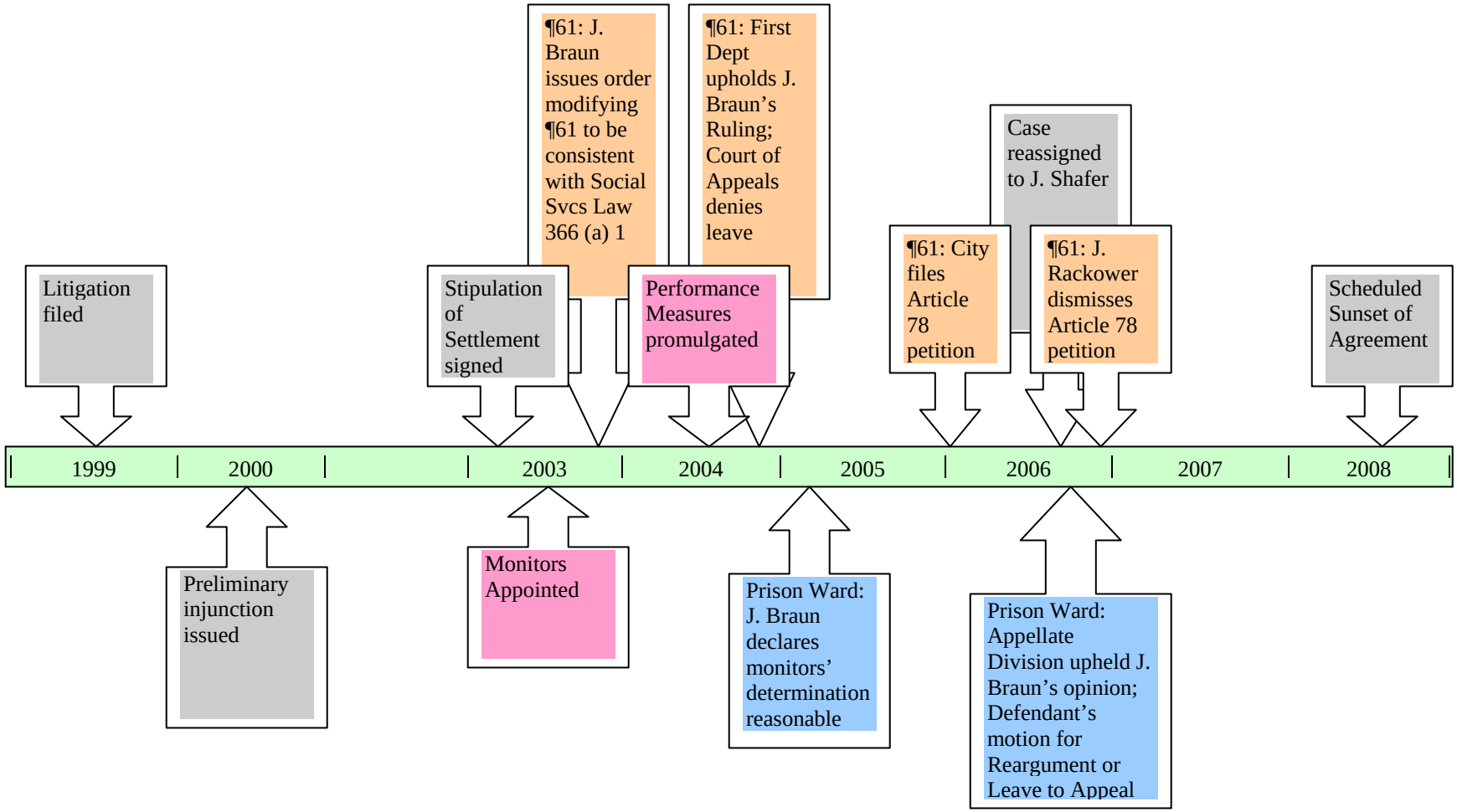
We hope that this report is useful to the Court and to the Parties.

Respectfully Submitted,

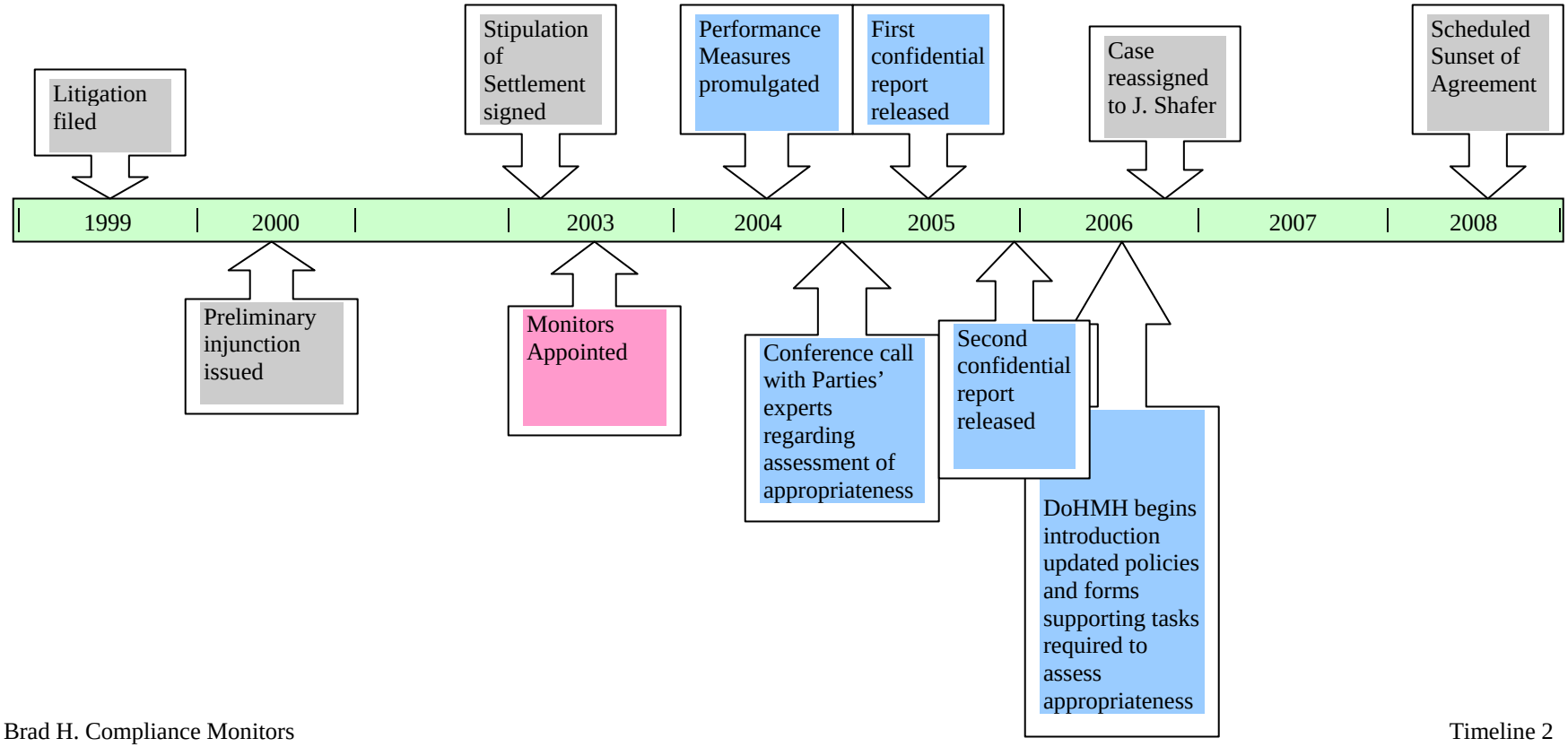
Henry Dlugacz
Compliance Monitor

Erik Roskes
Compliance Monitor

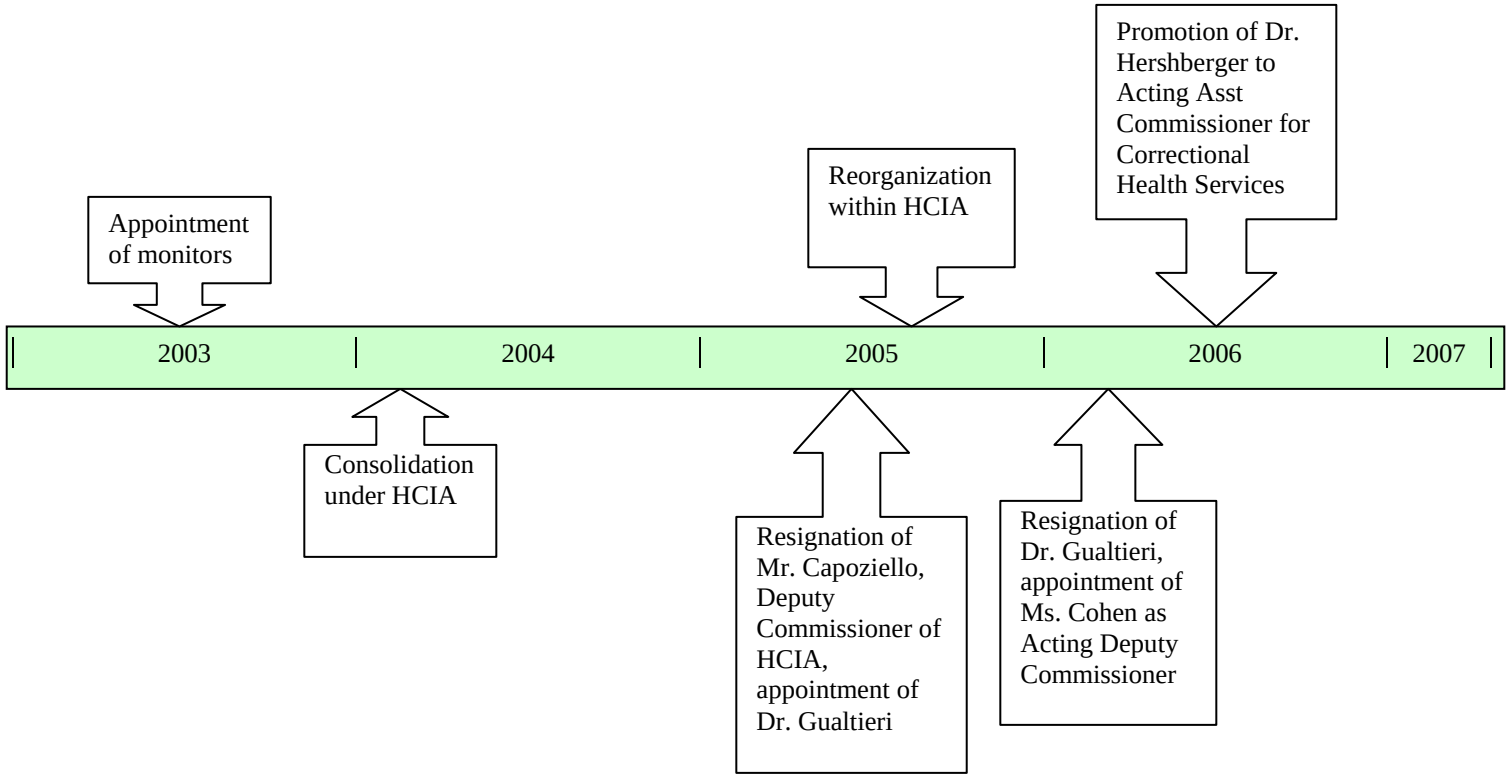
Key Litigation Events



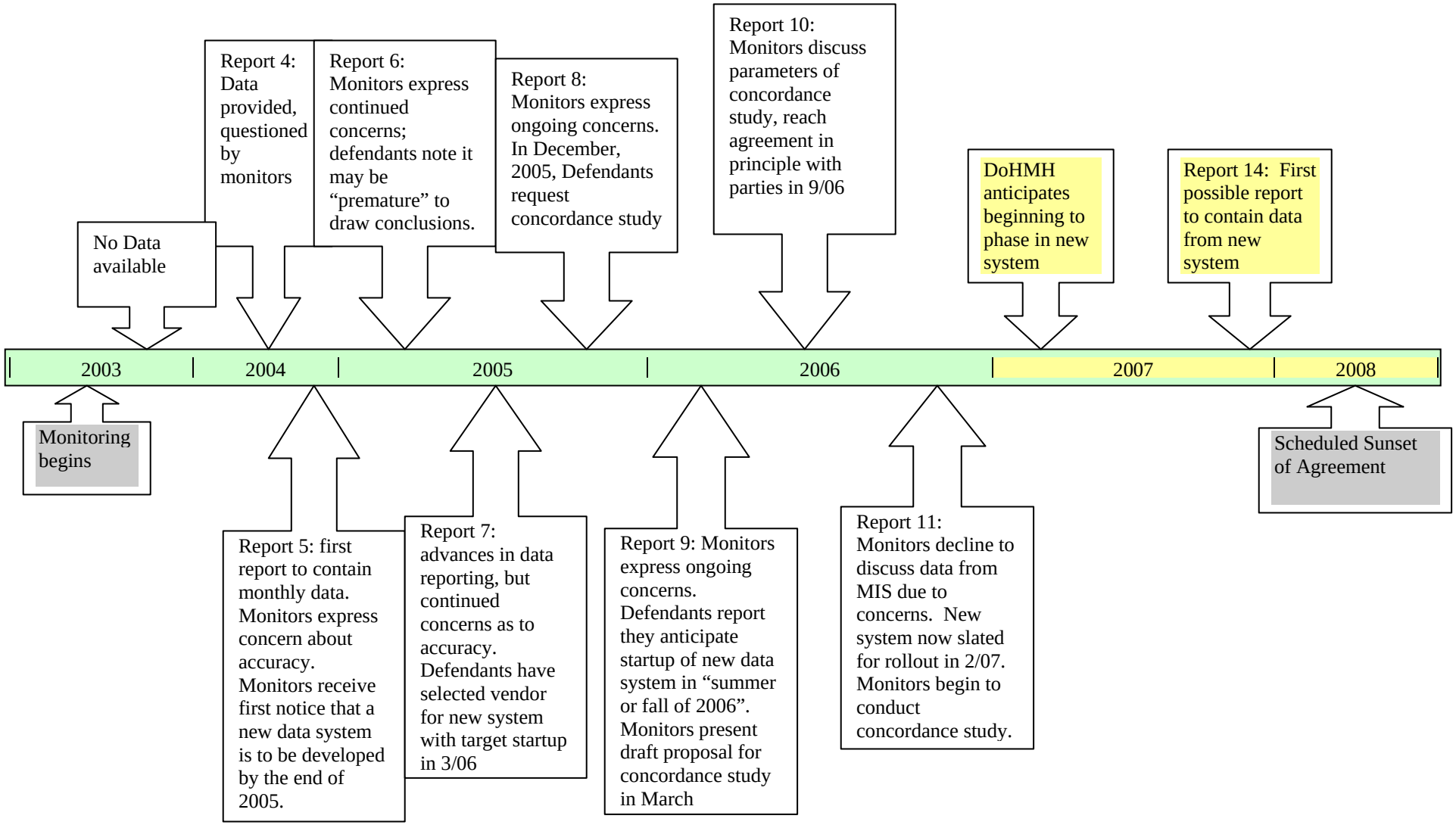
Key Events related to Appropriateness Measures



Changes in Leadership



Data Issues


No Data available
Report 4: Data provided, questioned by monitors
Report 6: Monitors express continued concerns; defendants note it may be "premature" to draw conclusions.
Report 8: Monitors express ongoing concerns. In December, 2005, Defendants request concordance study
Report 10: Monitors discuss parameters of concordance study, reach agreement in principle with parties in 9/06
DoHMH anticipates beginning to phase in new system
Report 14: First possible report to contain data from new system
2003
2004
2005
2006
2007
2008
Monitoring begins
Report 5: first report to contain monthly data. Monitors express concern about accuracy. Monitors receive first notice that a new data system is to be developed by the end of 2005.
Report 7: advances in data reporting, but continued concerns as to accuracy. Defendants have selected vendor for new system with target startup in 3/06
Report 9: Monitors express ongoing concerns. Defendants report they anticipate startup of new data system in "summer or fall of 2006". Monitors present draft proposal for concordance study in March
Report 11: Monitors decline to discuss data from MIS due to concerns. New system now slated for rollout in 2/07. Monitors begin to conduct concordance study.
Scheduled Sunset of Agreement

ATTORNEY'S AFFIRMATION OF SERVICE

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, HENRY A. DLUGACZ, an attorney at law of the state of New York, and one of the Compliance Monitors in the matter of Brad H *et. al.,* against The City of New York, *et al.,* being duly sworn, say, depose, and affirm under penalty of perjury that on February 6, 2007, I caused to be served upon the parties named below the TWELTH REGULAR REPORT OF THE COMPLIANCE MONITORS including all appendices by causing same to be hand delivered to the following persons at the last known address set forth after each name:

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Attorney for Class

Affirmed this day of
February, 2007

_____
Henry A. Dlugacz

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. RICHARD F. BRAUN J.S.C. PART 23

Justice

0117882/1999

H., BRAD et al.

vs

CITY OF NEW YORK et al.

SEQ 15

MODIFY ORDER/JUDGMENT

INDEX NO.

MOTION DATE 9/25/03

MOTION SEQ. NO.

MOTION CAL. NO.

The following papers, numbered 1 to 7 were read on this motion to/for modify class actn's Settlmnt and judgment

	PAPERS NUMBERED
Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits	2-3, 6-7
Replying Affidavits	4-5

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is granted to the extent of modifying paragraph 6(f) of the stipulation/stipulation to the effect that the following is added to the end of subpart (f) ", where the Class Member has provided necessary documentation before the completion thereof, pursuant to Social Services Law § 366-a(2)(a)"; the following as subpart (c), the substitute paragraph (b) brought by defendants omits the following language at the end thereof, "where an investigation is deemed necessary pursuant to Social Services Law § 366-a(2)(a)" and adding as (d) "where it appears that a Class Member is in immediate need, temporary medicaid benefits shall be granted pending completion of an investigation," and the amended order and judgment is amended accordingly. This constitutes the decision and order of this Court. See separate Opinion.

ENTER:

Dated: New York, New York, November 11, 2003

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 23

----------X

BRAD H., and ROBERT K., MICHAEL R., SUSAN T., and KEVIN W. on behalf of themselves and all others similarly situated,

Index No. 117882/99

Plaintiffs,

OPINION

-against-

THE CITY OF NEW YORK; Hon. Rudolph W. GIULIANI, Mayor of the City of New York; the NEW YORK CITY HEALTH AND HOSPITALS CORP.; Dr. Luis R. MARCOS, M.D., President of the New York City Health and Hospitals Corp.; the NEW YORK CITY DEPARTMENT OF HEALTH; the NEW YORK CITY DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND ALCOHOLISM SERVICES; Dr. Neal L. COHEN, M.D., Commissioner of the New York City Department of Health and Commissioner of the New York City Department of Mental Health, Mental Retardation and Alcoholism Services; the NEW YORK CITY DEPARTMENT OF CORRECTION; Mr. Bernard B. KERIK, Commissioner of the New York City Department of Correction; the NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; Mr. Jason A. TURNER, Administrator of the New York City Human Resources Administration; ST. BARNABAS HOSPITAL; and Dr. Ronald GADE, M.D., President of St. Barnabas Hospital,

Defendants.

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RICHARD F. BRAUN, J.:

This is a class action. This court, as upheld by the Appellate Division, First Department, ordered in granting a preliminary injunction that defendants afford plaintiffs class members, who are

prisoners of New York City jails treated therein for mental illness, discharge planning upon their release, contrary to how the vast majority of the prisoners had been treated prior to this court's decision (*Brad H. v City of New York*, 185 Misc 2d 420 [Sup Ct, NY County], *affd for reasons stated below*, 276 AD2d 440 [1st Dept 2000]). On the eve of trial, and while motions were pending, including to hold defendants in contempt of court after a long hearing thereon held before this court, the action settled. After a fairness hearing, required in this class action pursuant to CPLR 908, this court approved the parties' stipulation of settlement, and signed the amended final order and judgment.

Defendants now move to modify one paragraph of the stipulation of settlement. By stipulation, the motion was also deemed to be a motion to modify the "amended final judgment and order".

Paragraph 61 of the stipulation of settlement now states:

> For each Class Member determined as a result of the Pre-Screening Process to be eligible for the reactivation of Medicaid benefits, such benefits shall be reactivated as of the later of (a) his or her Release Date or (b) the date on which the Pre-Screening Process is completed.

Defendants want the stipulation of settlement to be modified so that the paragraph reads:

> For each Class Member determined as a result of the Pre-Screening Process to be eligible for the reactivation of Medicaid benefits, such benefits shall be reactivated as of the later of (a) his or her Release Date or (b) seven business days after the date on which the Pre-Screening Process is completed[.]

Defendants' attorneys argue that they rushed in negotiating the final settlement and thus did not show their clients the final version of the stipulation of settlement that contained the time period in subpart (b) of paragraph 61. Defendants argue that, if they are held to that provision, they would

be violating Federal and New York State laws and regulations. Plaintiffs class members contend that the provision is a key one of the settlement in that a reactivation of medicaid benefits is of critical importance to the plaintiffs class members upon their release from jail or as soon thereafter as possible.

Courts favor stipulations of settlement, particularly those made in "open court" (CPLR 2104), and will only set them aside upon a showing of good cause, including fraud, collusion, mistake, accident, or that an attorney had no authority to enter into a settlement on behalf of the party that he or she represents (*see Hallock v State of New York*, 64 NY2d 224, 230 [1984]), or where a party inadvisably, inadvertently, or improvidently entered into the settlement (*Matter of Frutiger*, 29 NY2d 143, 150 [1971]). A court has the inherent power to vacate its own judgments, based on inadvertence, mistake, fraud, surprise, or excusable neglect (*Matter of McKenna v County of Nassau, Off. of Court Attorney*, 61 NY2d 739, 742 [1984]).

Social Services Law § 366-a (1) requires that a person must apply for medicaid to his or her local social services department. Upon receiving such an application, the department must verify the applicant's eligibility. Where the applicant cannot provide necessary documentation (usually the case of someone who is being released from jail and would not normally have sufficient documents with him or her in jail), the department has to promptly investigate his or her eligibility (Social Services Law § 366-a [2]). After receiving the application and completing any necessary investigation, the department must determine the applicant's eligibility for medicaid, and, if eligible, the amount of assistance and its commencement date (Social Services Law § 366-a [3] [a]) .

Defendants have shown that in most instances they need to perform an investigation in accordance with Social Services Law § 366-a (2), and that the normal course of investigation would take the time period in the proposed amendment. Thus, requiring defendants to follow paragraph 61 in the stipulation of settlement would force them to act illegally, and consequently defendants have

demonstrated that they are entitled to the modification sought in the stipulation of settlement, and amended final order and judgment (*see Rampe v Giuliani*, 281 AD2d 609 [2nd Dept 2001]; *390 W. End Assocs. v Baron*, 274 AD2d 330, 332 [1st Dept 2000]). However, this court has the discretionary power to relieve defendants from the stipulation of settlement, and amended final order and judgment upon such terms as this court deems just (*see 1420 Concourse Corp. v Cruz*, 135 AD2d 371, 373 [1st Dept 1987], *appeal dismissed* 73 NY2d 868 [1989]). Therefore, the motion has been granted upon such terms, by this Court's separate decision and order, to the extent of amending paragraph 61 of the stipulation of settlement by adding language to the end of the current version of subpart (b) so that it will now read "the date on which the Pre-Screening Process is completed, where the Class Member has provided necessary documentation before the completion thereof, pursuant to Social Services Law § 366-a (2) (a)"; adding as "(c)", the substitute subparagraph (b) sought by defendants, with additional language at the end thereof, so that the subpart will read "seven business days after the date on which the Pre-Screening Process is completed, where an investigation is deemed necessary, pursuant to Social Services Law § 366-a (2) (a)", and in keeping with this court's equitable, discretionary power, because the receipt of medicaid at the earliest possible appropriate time is of such significant importance to assist the plaintiffs class members, by adding as (d) "where it appears that a Class Member is in immediate need and an investigation is deemed necessary, temporary medicaid benefits shall be granted pending completion of an investigation", as required by Social Services Law §§ 2 (18), 133 (*see Henrietta D v Giuliani*, 119 F Supp 2d 181, 185 [US Dist Ct, EDNY 2000]; *cf. Pastore v Sabol*, 230 AD2d 835, 836 [2nd Dept 1998] [where the claims for temporary medicaid assistance, pursuant to Social Services Law § 133, were dismissed as academic because plaintiff and plaintiffs-intervenors had received medicaid benefits retroactive to the date of

their applications]). The amended final order and judgment is awarded accordingly.

Dated: New York, New York
November 12, 2001

RICHARD F. BRAUN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EILEEN A. RAKOWER J.S.C. Justice

PART 5

City

INDEX NO. 400093/06

MOTION DATE

- v -

MOTION SEQ. NO. 01

Novello

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1, 2
Answering Affidavits — Exhibits	3, 4, 5, 6, 7, 8
Replying Affidavits	9, 10, 11, 12
and other	13, 14, 15, 16, 17, 18, 19, 20.

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

Dated: 12/8/06

EILEEN A. RAKOWER J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SETTLE ORDER / SUBMIT ORDER
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

----------X

THE CITY OF NEW YORK,

Petitioner,

For a Judgment Under Article 78 of the New York CPLR

Index No. 400093/06

- against -

ORDER AND DECISION

ANTONIA C. NOVELLO, as Commissioner of the New York State Department of Health; THE NEW YORK STATE DEPARTMENT OF HEALTH; ROBERT DOAR, as the Commissioner of the New York State Office of Temporary Disability; THE NEW YORK STATE DEPARTMENT OF TEMPORARY DISABILITY; and BRAD H., ROBERT K., MICHAEL R., SUSAN T., and KEVIN W., on behalf of themselves and all others similarly situated,

(Mot. Seq. 1)

Respondents

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EILEEN A. RAKOWER, J.S.C. :

The City of New York ("City") petitions this court to order the State of New York ("State"), through its proper agencies, to make provisional medicaid payments pending application, investigation and determination of whether an individual is eligible. Presently, no provisional payments are made. Rather, once a person is deemed medicaid eligible, payments are made and the City is reimbursed, retroactively, covering services rendered up to three months prior to the date of the application.

Persons in need of immediate medical attention receive treatment at hospital emergency rooms regardless of their Medicaid status. City argues that "requiring class members to seek treatment from a hospital deprives class members of the ability to select their care giver." Whether or not one can select their care giver may indeed be affected by one's status as "medicaid eligible" versus "pending determination as

001

to whether one is medicaid eligible." The question before this Court is whether the legislature has authorized benefits to be paid by the State only when patients have already been found to be eligible for medicaid, or is there an avenue for the State to provide interim relief.

City relies on the prior decision of Justice Richard Braun, discussed below, to demonstrate that such an avenue not only exists, but has been upheld by the Appellate Court and establishes the foundation for the relief it claims is mandated here.

By Order dated July 7, 2006, Justice Richard Braun dismissed this petition as against Brad H., Robert K., Michael R., Susan T. And Kevin W. and all others similarly situated ("Brad H. class"). The Brad H. class began a class action in 1999 against the City and various City agencies (Brad H., *et al.* v. the City of New York) alleging that the City failed to provide adequate discharge planning for class members who were prisoners of New York City jails and who had been treated therein for mental illness. That action was settled by a Stipulation of Settlement executed on January 8, 2003, ("Stipulation"). The Stipulation included a means by which class members who had active Medicaid coverage within the twelve months before their anticipated release date could have that coverage reactivated upon their release from jail.

City moved in June 2003 for an order modifying the Stipulation. By Order dated November 11, 2003, ("2003 Order") Justice Richard Braun modified paragraph 61 of the Stipulation to say

> For each Class Member determined as a result of the Pre-Screening Process to be eligible for the reactivation of Medicaid benefits, such benefits shall be reactivated as of the later of (a) his or her Release Date or; (b) the date on which the Pre-Screening Process is completed where the class member has provided necessary documentation before the completion thereof pursuant to Social Services Law §366-a(2)(a); (c) seven business days after the date on which the Pre-Screening Process is completed where an investigation is deemed necessary pursuant to Social Services Law §366-a(2)(a); (d) where it appears that a class member is in immediate need and an investigation is deemed necessary, temporary medicaid benefits shall be granted pending completion of an investigation.

The 2003 Order amending the stipulation, including the Court's reliance on Social Service Law § 133 as requiring the granting of temporary Medicaid benefits was upheld by the Appellate Division, First Department. (8 AD3d 142 [1st Dept. 2004], *lv. denied*, 4 NY3d 702 [2004]).

Petitioner City of New York ("City") moves for an order declaring that State respondents New York State Department of Health ("DOH") and the New York State Office of Temporary and Disability Assistance ("OTDA") failed to perform duties imposed upon them by the 2003 Order. City asserts that their inaction is arbitrary and capricious and an abuse of discretion. City now seeks the Order of this Court authorizing the City to provide "temporary Medicaid benefits" pursuant to the 2003 Order. Justice Braun, by order dated October 24, 2006, recused himself and the matter was administratively re-assigned to this Court.

Specifically, at issue here, is that provision of the 2003 Order which requires that "where it appears that a class member is in immediate need, and an investigation is deemed necessary, temporary medicaid benefits shall be granted pending completion of an investigation . . .." The First Department, in affirming the Order, stated:

> The stipulation of settlement needed further modification, pursuant to Social Services Law § 133, to require the grant of temporary Medicaid benefits pending the completion of an investigation for class members in immediate need. The language of the statute is clear, providing for temporary assistance and care pending any investigation relating to benefit eligibility. By definition, temporary assistance and care includes "medical assistance for needy persons" (Social Services Law § 2[18], § 363). Contrary to defendant's contention, § 133 is applicable to Medicaid benefits (see e.g. Henrietta D. v. Giuliani, 119 F. Supp. 2d 181, 215 [EDNY], *appeal dismissed* 246 F.3d 176)."(Brad H., et al. v. The City of New York, 8 AD3d 142 [1st Dept. 2004], *lv. denied*, 4 NY3d 702 [2004]).

The State argues that the Court's Order cannot be interpreted as compelling DOH to automatically give pre-investigation Medicaid benefits to all persons in the class action because DOH was not a party to that litigation, did not have a full and fair opportunity to be heard and therefore could not explain to a Court why the Order is

contrary to public policy. The 2003 Order directed City to provide benefits. Essentially, City seeks indemnification from the State for its agreement to provide temporary benefits.

Further, DOH argues that it simply lacks the authority to pay Medicaid benefits for services rendered to people who have not been determined to be eligible for the program. DOH contends that its determination is in accordance with Federal and State law; and thus, it cannot be said that their actions are in excess of jurisdiction, arbitrary and capricious, or based on an error of law.

Social Service Law section 133 provides: "If it shall appear that a person is in immediate need, temporary assistance or care shall be granted pending the completion of an investigation." Social Service Law section 2(18) provides that "Public assistance and care includes . . . medical assistance for needy persons . . .." "Medical assistance" has been found to refer to Medicaid. (See, Henrietta D. v. Giuliani, 119 F. Supp. 2d 181, 215 [EDNY], *appeal dismissed* 246 F.3d 176 (holding that the City's failure to provide Medicaid benefits to the Plaintiff class was violative of New York State Social Service law. It should be noted that all class members in Henrietta D. v. Giuliani, *supra,* were all Medicaid eligible.)

The State contends that DOH is the "single State agency" responsible for adopting regulations to implement the Medicaid program and OTDA lacks the authority to grant pre-investigation Medicaid benefits. The authority to supervise the administration of the Medical Assistance Program was transferred to DOH in 1996. To the extent that OTDA may provide reimbursement for temporary pre-investigation grants, that is limited to the programs that OTDA presently administers and none of OTDA's programs provide medical assistance.

The Medicaid program, by its own mandate, provides for the payment of some or all of the medical expenditures that are furnished to "an eligible person." (Social Service Law § 365-a(2)). The legislature carved out two exceptions, where certain persons may be presumed eligible and receive pre-determination Medicaid benefits. The first are applicants who are hospitalized and may be presumed eligible for sixty days upon discharge to a nursing facility, hospice or to certain home care providers when the applicant "reasonably appears" eligible for Medicaid and meets certain other criteria. The second are pregnant women who may be presumed eligible for prenatal care and other Medicaid services for a limited period when a qualified provider

determines, based on preliminary information, that the woman's family income does not exceed a certain amount. Granting benefits under these limited circumstances is statutorily authorized (see, Social Service Law § 364-I and New York City Rules and Regulations §§ 360-3.7(a)-(d). The legislature made no other provision for temporary medicaid benefits.

Recognizing that applicants may have medical needs prior to being found Medicaid eligible, DOH directs those with immediate medical needs to a hospital licensed under Article 28 of the Public Health Law which is eligible to receive Medicaid funds. State Law requires hospitals to furnish medically necessary emergency care regardless of a patient's ability to pay. Hospitals also maintain facilities which provide out-patient medical care to persons who require it. Additionally, class members are eligible for the Medication Grant Program which provides all eligible persons with a means to pay for medication and medication monitoring. Any individual can still receive medically required treatment regardless of whether the funds for the treatment are provided by the City or by the State. If an applicant is later determined to be Medicaid eligible, the hospital or the applicant will then be reimbursed by the State for their expenditures, not only for services rendered during the investigation process, but also for a period of up to three months before they applied for Medicaid.

City seeks to have this Court add another class of persons[1] for whom an exception exists (Social Service Law § 364-I and New York City Rules and Regulations §§ 360-3.7(a)-(d)).

> There is a [] presumption that the Legislature has investigated and found facts necessary to support the legislation * * * as well as the existence of a situation showing or indicating its need or desirability * * * Thus, if any state of facts, known or to be assumed, justify the law, the court's power of inquiry ends * * * Under the doctrine of separation of powers, courts may not legislate * * * or extend legislation. *Matter of Malpica-Orsini*, 36 N.Y.2d 568 at 570-571(1975).

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[1] The 2003 Order pertains to a class of persons who were incarcerated (individuals who are incarcerated cannot receive Medicaid benefits) and were seeking to be "reactivated." The City concedes that not every member of this class will be found to be eligible upon reexamination.

The Legislature has determined the manner in which the Medicaid program will be administered and it has permitted pre-investigation temporary Medicaid benefits under cited circumstances.

The City can alleviate the burden of laying out funds pending investigation and reimbursement by beginning the Medicaid investigation process while the class members are still incarcerated in City correctional facilities. Many of the class members affected by the 2003 Order were Medicaid eligible before they were incarcerated and their benefits were terminated only when they went to jail.

City also has the option of urging the proper legislative bodies to address what City believes to be a void in the applicable statutes (SSL § 364-I, 18 NCYRR §§ 360.3.7 (a)-(d)) to enable the State to provide the funding of temporary pre-investigation Medicaid benefits under the circumstance presented.

Wherefore, it is hereby

ORDERED that Petitioner's application for an order declaring that "the State, in denying the City the authority to provide certain class members with "temporary medicaid benefits" as required in the Order, failed to perform duties enjoined upon them by law and made a determination in violation of lawful procedure, that was affected by an error of law, and that was arbitrary and capricious and an abuse of discretion" is denied, and it is further

ORDERED that Petitioner's application for an order directing Respondents to provide the City with the requisite authority to provide "temporary Medicaid benefits" as specified in the 2003 Order is also denied, and it is further

ORDERED that OTDA's cross-motion to dismiss the action against it is moot.

This constitutes the decision and order of the court.

DATED: December 7, 2006

EILEEN A. RAKOWER, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EILEEN A. RAKOWER J.S.C. Justice

PART 5

Citty

INDEX NO. 400093/06

MOTION DATE

- v -

MOTION SEQ. NO. 003

Novello

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for

NYS SUPREME COURT RECEIVED DEC 11 2006 IAS MOTION SUPPORT OFFICE

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-3
Answering Affidavits — Exhibits	4-5-6
Replying Affidavits	8-9

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

FILED
DEC 11 2006
NEW YORK COUNTY CLERK'S OFFICE

Dated: 12/8/06

EILEEN A. RAKOWER J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SETTLE ORDER/JUDGMENT TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

----------X

THE CITY OF NEW YORK,

Petitioner,

For a Judgment Under Article 78 of the New York CPLR

Index No.
400093/06

- against -

ORDER AND DECISION

ANTONIA C. NOVELLO, as Commissioner of the New York State Department of Health; THE NEW YORK STATE DEPARTMENT OF HEALTH; ROBERT DOAR, as the Commissioner of the New York State Office of Temporary Disability; THE NEW YORK STATE DEPARTMENT OF TEMPORARY DISABILITY; and BRAD H., ROBERT K., MICHAEL R., SUSAN T., and KEVIN W., on behalf of themselves and all others similarly situated,

(Mot. Seq. 3)

Respondents

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EILEEN A. RAKOWER, J.S.C. :

Recitation as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	**Numbered**
Motion to Re-Argue, Memorandum of Law, Affirmation and Exhibits in Support	1, 2, 3
Affirmation in Opposition, Verified Answers, Memorandum of Law, Affidavit and Exhibits in Support	4, 5, 6, 7
Reply Memoranda of Law in Support of motion to Re-Argue	8, 9

By Notice of Motion dated March 17, 2006, Respondents Brad H., Robert K., Michael R., Susan T., and Kevin W., on behalf of themselves and all others similarly situated (Brad H. class) moved to dismiss the Article 78 petition against

them and moved to intervene as party petitioners in this action. Specifically, the Brad H. class argues that they were improperly joined as respondents both because there is no action that the class can take to effectuate the relief sought by the City and because causes of action under Article 78 proceedings are limited to actions against a "body or an officer" and private individuals do not fall into the statutory definition of "body or officer."

By Order dated July 7, 2006, the Court dismissed the petition against the Brad H. class respondents and by opinion dated July 11, 2006, the class's motion for intervention was denied. On August 21, 2006, the Brad H. Class filed a Notice of Motion to Re-argue its motion to Intervene as Petitioner. By Order dated October 24, 2006, Justice Braun recused himself and the matter was administratively re-assigned to this Court.

Upon reading the foregoing papers, it is ordered that the motion to re-argue is denied.

WHEREFORE, it is hereby

ORDERED that the Brad H. class's motion to re-argue its motion to intervene as Petitioner is denied.

DATED: December 7, 2006

EILEEN A. RAKOWER, J.S.C.

PERFORMANCE MEASURES

1. Timely Assessment of Class Members for Inclusion in the Class (¶142a)
   1.1. Initial Assessment: Percentage of referrals to mental health who are seen by mental health within 72 hours of the screen
      1.1.1. [# of inmates referred to MH who are seen by MH within 72 hours] ÷ [(# of referrals to MH) – (those unavailable throughout the 72 hour period due to court involvement) – (those unavailable due to intervening hospitalization) – (those who are released in the interim)]
      1.1.2. threshold: 95% compliance

2. SPMI/Likely SPMI assessments
   - **2.1. LSPMI assessment: Percentage of those assessed by mental health for whom a LSPMI questionnaire is present in the chart**
     - 2.1.1. [# of charts with LSPMI questionnaire] ÷ [# of inmates assessed as needing further MH tx during the initial assessment]
     - 2.1.2. threshold:
       - 2.1.2.1.75% compliance by October 6, 2004
       - 2.1.2.2.95% compliance (ultimate target)
   - **2.2. Appropriateness of LSPMI assessment** (this measure will only be applied to cases who have had an initial assessment but who were released prior to the CTDP being completed)**:**
     - 2.2.1. [# of LSPMI questionnaires appropriately completed] ÷ [# of charts reviewed]
     - 2.2.2. threshold: 90% compliance
   - **2.3. Inclusion of Class Members on *Brad H* medications for psychiatric reasons**
     - 2.3.1. [# of Class Members on *Brad H* medications for psychiatric diagnosis who are classified as LSPMI] ÷ [(# of Class Members on *Brad H* medications for psychiatric diagnosis) – (# of Class Members on Brad H medications for psychiatric reasons not classified as LSPMI for a documented justification)]
     - 2.3.2. threshold:
       - 2.3.2.1.90% compliance by October 6, 2004
       - 2.3.2.2.95% compliance (ultimate target)
   - **2.4. Appropriateness of SPMI classification at time that the Comprehensive Treatment and Discharge Plan (CTDP) is completed**
     - 2.4.1. [# of Class Members appropriately classified as SPMI at time of CTDP] ÷ [# of Class Members having CTDP completed]
     - 2.4.2. [# of Class Members appropriately classified as not SPMI at time of CTDP] ÷ [# of Class Members having CTDP completed]
     - 2.4.3. threshold: 95% compliance

3. Completion of clinically appropriate CTDP's for Class Members (¶142d)

3.1. Timeliness of the CTDP

3.1.1. [# of CTDP's completed in the appropriate time[1]] ÷ [(# of Class Members still incarcerated on or after due date for CTDP) – (# of Class Members who refused this procedure) – (# of Class Members unavailable for this procedure)]

3.1.2. threshold:

3.1.2.1.85% compliance by October 6, 2004

3.1.2.2.95% compliance (ultimate target)

3.2. Appropriateness of projection of post discharge needs

3.2.1. [# of CTDPs or discharge plans in which the projected post discharge needs appear to be appropriate] ÷ [# of cases reviewed][2]

3.2.2. threshold: 90% compliance

[1] See ¶¶16-17 for definition of "appropriate timeframe".

[2] For the purpose of this measure, the CTDP or discharge plan closest in time to the release date (for those CM's already released) will be reviewed.

4. Completion and processing of Medicaid Prescreening for Class Members (¶142e)

4.1. Initiation of Prescreening at appropriate time

4.1.1. [# 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)]

4.1.2. [# of prescreenings initiated by SPAN staff on date of first visit by class members released before CTDP is done who appear at SPAN within 30 days of release who are assessed as being in need of and appear potentially eligible for Medicaid] ÷ [(# of class members released before CTDP is done who appear at SPAN within 30 days of release who are assessed as being in need of and appear potentially eligible for Medicaid) – (class members who refuse this service)]

4.1.3. threshold:

4.1.3.1.75% compliance at October 6, 2004

4.1.3.2.95% compliance (ultimate target)

4.2. Completion of Prescreening by HRA within 3 business days

4.2.1. [# of prescreenings completed within 3 business days of initiation] ÷ [# of prescreenings]

4.2.2. threshold

4.2.2.1.85% compliance at October 6, 2004

4.2.2.2.95% compliance (ultimate target)

5. Enrollment of eligible Class Members in MGP and submission of Medicaid applications (¶142f)

5.1. Completion and submission of Medicaid applications for incarcerated Class Members

5.1.1. [# of incarcerated Class Members who are eligible for this benefit and have completed prescreening who have Medicaid application completed and submitted to HRA within 5 business days of prescreening] ÷ [(# of Class Members who appear eligible for Medicaid and whose prescreening is completed with the result "Need New Application") – (class members who refuse this service)]

5.1.2. threshold:

5.1.2.1.85% compliance at October 6, 2004

5.1.2.2.90% compliance (ultimate target)

5.2. Completion and submission of Medicaid applications for released Class Members

5.2.1. **Accelerated completion/submission measure:** [# of "SPAN intakes" who are eligible for this benefit and have completed prescreening while incarcerated who have Medicaid application completed and submitted on the day of the first SPAN visit] ÷ [(# of Class Members who appear eligible for Medicaid this benefit and whose prescreening is completed and whose prescreening is completed with the result "Need New Application") – (those for whom additional documentation must be obtained) – (those who refuse this service)]

5.2.2. [# of "SPAN intakes" who are eligible for this benefit and have prescreening completed at SPAN who have Medicaid application completed and submitted to HRA within 5 business days of prescreening] ÷ [(# of Class Members who appear eligible for Medicaid and whose prescreening is completed and whose prescreening is completed with the result "Need New Application") – (class members who refuse this service)]

5.2.3. threshold:

5.2.3.1.85% compliance at October 6, 2004

5.2.3.2.95% compliance (ultimate target)

5.3. Enrollment in MGP at appropriate time

5.3.1. [#of class members enrolled in MGP on release date] ÷ [(# of class members released whose Medicaid application is pending) – (those who refuse medication and/or prescriptions upon release) – (those whose release date is > 7 days after the Medicaid prescreen determination date) – (those who are ineligible for MGP) - (those who refuse this service)]

5.3.2. [# of class members enrolled in MGP on first SPAN visit] ÷ [(# of class members released who have not had Medicaid activated or reactivated) – (those who are not on medication) – (those who are ineligible for MGP) - (those who refuse this service)]

5.3.3. threshold:

5.3.3.1.85% compliance at October 6, 2004

5.3.3.2.90% compliance (ultimate target)

6. Activation and reactivation of Class Members Medicaid benefits (¶142g)

6.1. Reactivation of Medicaid[3]

6.1.1. [# of class members whose prescreenings result in a finding of "reactivate" who have their Medicaid reactivated as of the later of (a) his or her Release Date, (b) the date of the prescreening completion provided necessary documentation is produced, or (c) within 7 business days of the date on which the Pre-Screening Process is completed where an investigation is deemed necessary] ÷ [(# of class members whose prescreenings result in a finding of "reactivate") – (# of CMs whose prescreenings result in a finding of "reactivate", who require further investigation and are in "immediate need") – (those who refuse this service)]

6.1.2. **Temporary Medicaid:** [# of CMs whose prescreenings result in a finding of "reactivate", who require further investigation and are in "immediate need" who are granted temporary Medicaid benefits] ÷ [(# of CMs whose prescreenings result in a finding of "reactivate", who require further investigation and are in "immediate need") – (those who refuse this service)]

6.1.3. threshold: 95% compliance

6.2. Mailing of Medicaid Cards (per ¶¶66-68)

6.2.1. [# of temporary and permanent Medicaid cards mailed to home address or designated SPAN office] ÷ [(number of activated or reactivated Medicaid cases with a home address) + (number of activated or reactivated Medicaid cases in which the CM indicated SPAN as their mailing address)]

6.2.2. threshold:

6.2.2.1.75% compliance at October 6, 2004

6.2.2.2.95% compliance (ultimate target)

[3] This measure is subject to change based on the status of ¶61 and its ongoing litigation.

7. Provision of medications and/or prescriptions to Class Members (¶142h)

7.1. Provision of medication to Class Members who require them

7.1.1. [# of Class Members released from jail while on prescribed psychotropic medications who receive 7 day supply of psychotropic medications and prescriptions for a 21 day supply of same medications] ÷ [(# of Class Members released from jail who were taking psychotropic medications in jail) – (those for whom reasons for refusal to provide these medications is documented) – (those who refuse this service)]

7.1.2. [# of Class Members released at court who appear the same day at SPAN who were on psychotropic medications on the day of release for whom CHS pharmacy called in a 2-7 day supply of medication at a community pharmacy] ÷ [(# of Class Members released at court who appear the same day at SPAN who were on psychotropic medications on the day of release) – (those for whom reasons for refusal to provide these medications is documented) – (those who refuse this service)]

7.1.3. [# of Class Members released at court who appear at SPAN ≥ 1 day and ≤ 30 days after release who were on psychotropic medications on the day of release who were referred with transmission of clinical information to an appropriate community treatment site where the Class Member could be assessed for and receive continued prescriptions] ÷ [(# of Class Members released at court who appear at SPAN ≥ 1 day and ≤ 30 days after release who were on psychotropic medications on the day of release) – (those who refuse this service)]

7.1.4. threshold:

7.1.4.1.75% compliance at October 6, 2004

7.1.4.2.90% compliance at October 6, 2006 and thereafter

8. Making appropriate community referrals and/or appointments for Class Members (¶142i)

8.1. Provision of appointments to Class Members with known release dates who are assessed as needing continued mental health care

8.1.1. [# of Class Members released from jail with previously known release dates for whom appointments are made at appropriate community agencies] ÷ [(# of Class Members released from jail with previously known release dates) – (those who refuse this service)]

8.1.2. threshold

8.1.2.1.75% compliance by October 6, 2004

8.1.2.2.95% compliance (ultimate target)

8.2. Provision of appointments to released Class Members who visit SPAN within 30 days of their release

8.2.1. [# of eligible Class Members released from jail who appear at a SPAN office within 30 days of release for whom appointments are made during the first SPAN visit and scheduled at appropriate community agencies] ÷ [(# of SPAN intakes) – (those for whom appointments have already been made[4]) – (those who refuse this service)]

8.2.2. threshold: 95% compliance

8.3. Provision of referrals to Class Members who do not have known release dates who are assessed as needing continued mental health care (¶46)

8.3.1. [# of Class Members who have had CTDP completed who were released with unknown release dates who received referrals to appropriate community agencies] ÷ [(# of Class Members who had a CTDP completed who were released with unknown release dates) – (those who refuse this service)]

8.3.2. threshold:

8.3.2.1.85% compliance at October 6, 2004

8.3.2.2.95% compliance (ultimate target)

[4] This exclusion contemplates class members who were unaware of the appointment that had been made by jail based discharge planners, LINK, or other agencies.

9. Submission and processing of SNA and TANF applications for potentially eligible Class Members who are deemed to be SPMI (¶142j)

9.1. Emergency Benefits

9.1.1. [# of class members eligible for emergency benefits of any kind who have those benefits provided] ÷ [# of class members eligible for emergency benefits]

9.1.1.1.threshold: 100% compliance at October 6, 2004

9.2. Completion and submission of PA applications within the required time

9.2.1. [(# of SPMI Class Members who are potentially eligible for this benefit who have PA application completed and submitted to HRA within 5 business days of CTDP) ÷ [(# of SPMI Class Members who appear eligible for Public Assistance) – (# of SPMI class members who are unavailable for this service) – (# of SPMI Class Members who are released before this service can be provided) – (# SPMI class members who refuse this service)]

9.2.2. threshold

9.2.2.1.85% compliance by October 6, 2004

9.2.2.2.95% compliance (ultimate target)

9.3. Processing and pending of the applications (¶78)

9.3.1. [# of PA applications registered on the day of their receipt at HRA] ÷ [# of PA applications submitted by discharge planners in the jails]

9.3.2. threshold:

9.3.2.1.75% compliance at October 6, 2004

9.3.2.2.95% compliance (ultimate target)

10. Provision of housing to Class Members in need of housing

10.1. Supportive Housing

10.1.1. [# of Class Members who had HRA 2000 application completed and submitted to HRA] ÷ [(# of Class Members assessed as needing supportive housing) – (those who refuse this service)]

10.1.2. threshold:

10.1.2.1. 75% by October 6, 2004

10.1.2.2. 95% (ultimate compliance)

10.2. Information transfer to DHS regarding Class Members who are, or are expected to be, homeless upon release

10.2.1. [# of Class Members who have projected release dates[5] who are expected to be homeless upon release who have relevant information[6] forwarded to DHS prior to release] ÷ [(# of Class Members who have projected release dates who are expected to be homeless upon release) – (those who refuse this service)]

10.2.2. [# of Class Members without projected release dates[7] who were homeless upon release who had relevant information provided to DHS within 3 business days from the date of request] ÷ [# of class members without projected release dates who were homeless upon release who appeared in the DHS CRU database and for whom these records were requested]

10.2.3. threshold

10.2.3.1. 75% by October 6, 2004

10.2.3.2. 95% (ultimate compliance)

[5] The term "projected release dates" includes class members with prospectively known or predicted release dates and by definition exclude those with "time served" sentences, who only have known release dates after the fact.

[6] ¶94

[7] The term "without projected release dates" is intended to include any class member who was released without prior knowledge of the release on the part of the discharge planning staff. Thus, it includes class members who are bailed out and who were last believed to be homeless and class members who were released at court and who were last known to be homeless.

11. Provision of transportation to Class Members who are SPMI or LSPMI (¶142k)

11.1. Transportation from jail to the Class Member's residence or to a temporary emergency or I/A shelter

11.1.1. [# of Class Members who receive transportation from jail to an identified residence or to a temporary emergency or I/A shelter] ÷ [(number of SPMI/LSPMI Class Members released) – (those who were released on bail or pursuant to court order requiring immediate release) – (those who refuse this service)]

11.1.2. threshold:

11.1.2.1. 85% compliance by October 6, 2004

11.1.2.2. 95% compliance (ultimate target)

11.2. Transportation from SPAN to Class Member's residence or to a temporary emergency or I/A shelter

11.2.1. [# of SPMI/LSPMI Class Members released at court who receive transportation from SPAN to an identified residence or to a temporary emergency or I/A shelter] ÷ [(number of SPMI/LSPMI Class Members released at court who visit SPAN within 30 days of release) – (those who refuse this service)]

11.2.2. threshold:

11.2.2.1. 85% compliance at October 6, 2004

11.2.2.2. 95% compliance (ultimate target)

11.3. Transportation from I/A shelter to program shelter

11.3.1. [# of SPMI/LSPMI Class Members who receive transportation from a temporary emergency or I/A shelter to a program shelter] ÷ [(number of SPMI/LSPMI Class Members assessed at I/A shelter and assigned to a program shelter) – (those who refuse this service)]

11.3.2. threshold:

11.3.2.1. 85% compliance at October 6, 2004

11.3.2.2. 95% compliance (ultimate target)

12. Follow up with Class Members who are SPMI in the areas of housing placements and community referrals or appointments (¶142l) and arranging appropriate housing placements for eligible class members (¶142m)

12.1. Follow up for class members given mental health appointments prior to release

12.1.1. [# of SPMI Class Members who received appointments for whom the agency was contacted within the appropriate time period] ÷ [# of SPMI Class Members who were released who had appointments made at community mental health programs]

12.1.2. threshold:

12.1.2.1. 85% compliance by October 6, 2004

12.1.2.2. 95% compliance (ultimate target)

12.2. Follow up for class members given mental health referrals prior to release

12.2.1. [# of SPMI class members who were referred to community mental health programs for whom the agency was contacted within 3/5 days of release] ÷ [# of SPMI Class Members who were released who were referred to community mental health programs prior to their release]

12.2.2. threshold:

12.2.2.1. 75% compliance by October 6, 2004

12.2.2.2. 90% compliance (ultimate target)

12.3. Housing

12.3.1. Contact SPMI Class Members to determine whether housing is clinically adequate and appropriate

12.3.1.1. [# of SPMI Class Members for whom attempted contacts were made within three days of release to determine appropriateness of housing] ÷ [(number of released SPMI Class Members) – (those for whom no contact information is available)]

12.3.1.2. threshold: 99%

12.4. Offer assistance to procure more appropriate housing

12.4.1. [# of SPMI Class Members found to have inappropriate housing who were offered assistance in procuring more appropriate housing] ÷ [(number of SPMI Class Members found to have inappropriate housing) – (those who refuse the offer of this service)]

12.4.2. threshold: 95% compliance

13. Engaging Class Members in the Discharge Planning Process

13.1. Provision of written explanation of discharge planning services available to class members (cf. ¶¶19, 21 and 37)

13.1.1. [# of inmates with documentation of provision of written description of discharge planning services available to Class Members] ÷ [# of Class Members]

13.1.2. threshold:

13.1.2.1. 75% compliance by October 6, 2004

13.1.2.2. 95% compliance (ultimate threshold)

13.2. Offer of discharge planning services in culturally appropriate manner

13.2.1. [# of non-English speaking inmates who were offered mental health and discharge planning services in their native language or via an interpreter] ÷ [# of non-English speaking inmates]

13.2.2. threshold

13.2.2.1. 75% compliance by October 6, 2004

13.2.2.2. 95% compliance (ultimate threshold)

13.3. Reoffer of discharge planning services for Class Members who refused such services (per CHS policy XI-C, revised 6/3/2003, ¶A. 7.)[8]

13.3.1. [# of documented attempts to offer discharge planning services in native language or via interpreter at CTDP/DSN updates to Class Members who had previously refused such services] ÷ [# of CTDP/DSN updates for these Class Members]

13.3.2. threshold: 95% compliance

[8] "Inmates who declined all or some discharge planning services at the first session with the clinician shall subsequently be afforded the opportunity to participate in the program. The clinician shall afford such inmates the opportunity to participate in the program ***each and every time that the clinician completes the Discharge Service Needs – Update Form and/or conducts the Treatment Plan Review with the inmate***" (emphasis added).

This Appendix 4 has been left intentionally blank. It contains confidential information which has been provided to the Parties under separate cover.

Memorandum

To: Patricia R. Brown
From: Eve Abzug, Donnell Tillman
Cc: Connie Neils, Muzzy Rosenblatt
Re: Proposal to Close Staten Island SPAN
Date: April 13, 2005

Proposal to Close the BRC SPAN Office in Staten Island

BRC SPAN is proposing that the Staten Island Office be temporarily closed for a period of six months and that the funds be reallocated to the creation of a full-time Dedicated In-Reach Team. This team will conduct Motivational Orientation sessions on Rikers Island. This technique has a proven record of success in making inmates aware of our services so they are more likely to visit one of our offices when they are released.

Program

The proposed Dedicated In-Reach Team, consisting of a Supervisor, Discharge Planner and Discharge Planner Technician, would allow SPAN to increase the number of Motivational Orientation Sessions on Rikers Island from once a week to three times a week on Mondays, Wednesdays and Fridays. SPAN would conduct a total of nine sessions weekly. The first session would begin at 12:15PM, the second session at 12:45PM and the third session at 1:15PM. Eight individuals would be scheduled to participate in each session; twenty four individuals would be seen on each scheduled day. A total of seventy-two individuals would participate in motivational orientation sessions weekly. Participation in these motivational orientation sessions will be tracked through the use of a sign-in sheet indicating the date/location of session, individual's name and book & case number.

On the two remaining days, the Dedicated In-Reach Team would be stationed at the Central Cashier's Office where they would attempt to engage those class members picking up their property. A rotational schedule would be set up to allow the staff to spend one day in the office so they could address client and other program related issues. We are proposing that a van be leased so the team can be transported on and off the Island with maximum efficiency.

We believe that the program would work best if BRC SPAN was provided with dedicated space in Central Property to conduct assessments or brief intakes.

Staffing Pattern

The Supervisor, who reports to the BRC SPAN Program Director, would be directly responsible for the overall operation of the team. The Supervisor would work with the Department of Health and Mental Hygiene (DMH) and the Department of Correction (DOC) personnel to coordinate schedules, visits and clearance. He/she would plan and conduct the Motivational Sessions with the assistance of the Discharge Planner and Discharge Planner Technician. Also, the Supervisor would be responsible for overseeing the team with regard to client issues and other program related matters.

The Discharge Planner, who reports to the Supervisor, would participate in planning and conducting Motivational Sessions. The Discharge Planner would be responsible for working with clients and addressing other program needs.

The Discharge Planner Technician, who reports to Supervisor, would also participate in Motivational Sessions and serves clients in the office as well.

Serving Staten Island

Clients who reside in Staten Island and desire SPAN services can go to the Brooklyn SPAN office or any other SPAN office for services. We propose that 90 days prior to the temporary Staten Island Office closing, SPAN staff conduct intensive outreach to inform the Staten Island community of the temporary closing of the Staten Island SPAN office. Information regarding the temporary closing of the Staten Island SPAN office will also be posted in the current Staten Island SPAN office building indicating new addresses, telephone numbers and travel directions.

SPAN staff will initiate a mass mailing campaign. The campaign will consist of sending letters regarding the closing of the Staten Island SPAN office to the Staten Island Public Defender's Office, mental health, substance abuse, housing, medical and criminal justice programs in the Staten Island community. This information will be shared and announced at the Staten Island Mental Health Committee meetings in the months prior to the closing.

SPAN will provide carfare for clients who travel from Staten Island to other boroughs for services. For those clients who are not able to travel to other SPAN offices independently, a SPAN staff member will be available to escort the client. For those clients who report having no money, the client may ride the Staten Island Ferry FREE of charge and

telephone the SPAN office upon arrival in Manhattan. SPAN staff will meet the client at the Ferry and escort them to another SPAN office. Collect telephone calls WILL be accepted.

Staff Relocation

Dedicated In-Reach staff would relocate to the Brooklyn SPAN office located at 408 Jay Street, Suite 203, Brooklyn, NY. The Brooklyn SPAN office which currently accommodates five staff members is spacious enough to accommodate the additional three staff members although we recommend the construction of cubicles to allow privacy when conducting client interviews.

Modification of Offices Hours Proposal

We are proposing that the SPAN hours of operation be modified to 9:00AM to 6:00PM in all boroughs. Currently, the SPAN offices, with the exception of Manhattan, are open from 10:00AM to 7:00PM. Manhattan is open from 10:00AM to 8:00PM. Originally, SPAN office hours were extended to accommodate those Brad H. Class Members who were being released from court at 5:00PM. The few Class Members that do report to SPAN after 5:00PM are not released from court but are actually sentenced released and have been in the community for several days. Thus, the hours after 5:00PM tend to be under utilized. Also, since it is customary for social service agencies to open at 9:00AM and earlier and close at 5:00PM our offices cannot reach other agencies during our last few hours of operation. And, all too frequently, staff arrives at the SPAN offices in the mornings to find that clients are already waiting. Synchronizing our office hours with those of other agencies makes much more sense for client services as well as making our operations more efficient.