Index No. 117882/99

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

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

Plaintiffs,

-against-

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

Defendants.

EIGHTH REGULAR REPORT OF THE COMPLIANCE MONITORS
October 6, 2005

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

Eighth Regular Report of the Compliance Monitors
October 6, 2005

By Order of the Honorable Richard F. Braun, dated and So Ordered on May 6, 2003, Henry Dlugacz and Erik Roskes ("Compliance Monitors" or "Monitors"), were appointed to monitor and report on Defendants' compliance with the terms and provisions of the Stipulation of Settlement ("Stipulation") resolving the outstanding issues in this cause. Per ¶149 of the Stipulation, the Monitors are to issue written reports every 120 days after the first year following the Implementation Date. This constitutes the 8th regular report of the Monitors.

Contents:

I. Introduction

Overview

It should be clear to any reader of this report that Defendants continue to report increased compliance figures across a broad range of individual performance indicators, with tasks performed by DoHMH and its contractor demonstrating particularly notable gains. As will be seen below, they have accomplished this despite a 25% vacancy rate across all discharge planning positions, and a 37% vacancy rate among the masters level discharge planning staff. Additionally, these gains have been realized in the context of on-going difficulties with record-keeping. Thus, assuming that the data accurately reflect the reality in the institutions, these improvements must result from the substantial collective efforts of both line and supervisory staff. DoHMH leadership impresses us as continuing its commitment to "getting the job done." Of special note, are the improvements reported herein regarding the voice mail system, timely completion of the CTDP (see Figure 3), timely completion of Medicaid prescreens (see Figures 6 and 7) and the provision of referrals to Class Members with unknown release dates (see Figures 13 and 14).

Having created the essential building blocks of the various discharge planning tasks themselves, the challenge now becomes to meld the distinct requirements of the Stipulation into a coherent system capable of assessing the needs of Class Members and then providing discharge planning services in accordance with the Stipulation to qualified and consenting Class Members. This will be done by transforming the individual efforts of DoHMH staff and its contractors into a coherent system, and by connecting the jail-based discharge planners to the other agencies, both City and community-based, needed to formulate and bring to fruition clinically appropriate discharge plans for Class Members.

We remain cognizant that Defendants agreed to implement a process rather than to guarantee a specific outcome for a given individual, but this process cannot be artificially divorced from a system-wide result. Significantly, the creation of a process requires an interweaving of individual requirements into a system of discharge planning, whether or not a specific result obtains in any individual situation. The paragraphs of the Stipulation do not create free-standing obligations to be viewed only as isolated entities; rather, they are the individual components meant to create a system of discharge planning. The "process" is a series of actions meant to bring about a result, in this case a functioning system, in accordance with the Stipulation, capable of formulating and implementing an appropriate and adequate discharge plan for eligible and consenting Class Members. We have focused initially – and we believe correctly so – on individual measures starting with earlier events in the discharge planning cascade (upstream) and moving to later events (downstream) so that the system could create in a reasonable, sequential, and attainable order the building blocks out of which a coherent system of discharge planning could be created.

In this Introduction, we will focus on three areas we believe that Defendants must address if they are to take the considerable improvements they have made on a set of isolated steps and build them into a successful discharge planning program that provides Class Members with the services required under the Stipulation, which in turn will increase the likelihood that they will successfully reenter our community. These areas are: (A) Integration of Services, (B) Communication, and (C) Quality Improvement.

A. Integration of Service

While the success of appropriate and adequate discharge planning requires a degree of motivation on the part of the Class Member, a system which relies on the incarcerated,

mentally disabled individual to self-generate this motivation and to bridge the systemic gaps inherent in such a far-flung undertaking is not likely to produce tangible benefits for a significant number of people. Some Class Members are insufficiently treated in the community and are ultimately incarcerated specifically because they lack – as a function of their disability – the capacity to self-motivate and self-actualize a comprehensive plan to deal with the difficulties they face in multiple facets of their lives – food, shelter, medical care, entitlements, social relations and the like. The remedy to this problem lies in the creation of an integrated system of care; some aspects of such a system are directly within the scope of Defendants' obligations under the Stipulation, while others are not. Such a system emphasizes communication among various staff and agencies. Further, this type of integrated system is built on an organizational and technological infrastructure that supports a global view of the client rather than being made up of individual entities that specialize only in completing one task. Finally, such a system encourages creativity at the level of the staff-client relationship in order to solve the problems faced by the client at that moment. At times this will take the form of accessing additional patient records, at other times it will mean driving a SPMI Class Member to a residential program which will be his or her place of residence in the community; at still other times it may require HRA to train discharge planning staff regarding the documentation a Class Member will require to complete an application for Food Stamps. In all examples the organizing principle is the same: the system must provide the structure and integration of which the individual at present is incapable.[1]

[1]This approach is well-illustrated by an example outside of the requirements of the Stipulation. Assertive Community Treatment ("ACT") teams are accepted by the treatment community as a best practice in the treatment

The revised model of discharge planning, developed by DoHMH, and discussed in detail herein and in our prior reports provides for a reasonable degree of longitudinal contact between discharge planning staff and the Class Member as well as for case conferences between mental health and discharge planning staff. Unfortunately, Defendants have not fully realized these advances because of recruitment and retention issues within the discharge planning program. For example, CDTPs are reviewed as per policy on a regular basis, but in our experience, while the diagnosis and SPMI designation are updated at times, the discharge planning content of these plans rarely changes. Case conferences between discharge planning and mental health staff appear to focus on the initial treatment plan and so do not connote ongoing gathering of information and the development of an increasing understanding of the Class Member and his or her needs over time.

We are confident that Defendants will address these issues over the coming reporting period in an effort to better integrate the services they seek to provide.

B. Communication

The integration of services demanded by the monumental task undertaken by Defendants pursuant to this Stipulation can only be built upon a framework of effective communication. We have in our prior reports emphasized the importance of this in

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of "SPMI" clients. Many of the primary tenets of their success are fully applicable to the success of the system Defendants seek to create:

1. Active engagement of client.
2. Cross training of staff so that they understand (and to some degree can perform) each other's functions.
3. Providing treatment in vivo rather than waiting for the client to come to a particular location to receive a particular service (this is relevant for example to issue of SPAN conducting in reach in the jails and outreach in the courts).
4. Team members actually can provide services rather than simply broker them. (It is possible that SPAN would be more successful in utilization and outcome if they provided direct case management services to non-SPMI clients rather than simply referring them.)

several contexts, including discussions of communications technologies, the importance of obtaining collateral information, and the role of the medical record. In terms of building a successful discharge planning program, we will focus on communication among various parties, including (1) discharge planning staff – Class Member, (2) Defendant staff – Defendant staff, and (3) Defendant staff – outside personnel.

1. Discharge planning staff – Class Member Communication

Discharge planning staff must communicate with Class Members. Defendant staff must seek to ensure that Class Members understand their post-release plans and are educated as to where they must go upon discharge to receive follow up services. Additionally, a successful discharge planning process will seek to educate Class Members regarding the requirements and expectations of the programs and agencies they will attend. Such requirements may include both behavioral expectations and required documentation. In addition to ensuring that there are adequate staff to provide Class Members with and educate Class Members regarding discharge planning services, Defendants should work to ensure that these staff are culturally competent to work and communicate with the clientele.

2. Communication among Defendant staff

This system must be able to communicate within itself. This includes communication between services (e.g., discharge planning and mental health); between shifts; across institutions within the New York City Correctional system; and across various admissions. In addition, open lines of communication between the various Defendant agencies should be maintained, to ensure that shared responsibilities are met through the close coordination required. While Defendants

have improved substantially in their ability to accomplish this by introducing e-mail, by creating a functional voice-mail system, and by introducing meetings between mental health and discharge planning to review initial CDTP, much work remains to be done. Access to well maintained and readily available medical records from both current and previous incarcerations, while not sufficient in and of itself, is a necessary and fundamental component of adequate staff communication. It is still not uncommon for staff to see a Class Member without a current medical record, and we have no indication that mental health or discharge planning staff attempt to access and review previous records. A system which relies upon the Class Member to fill in these gaps is insufficient to the task and will precipitate failures of discharge planning in some cases.

3. Communication outside of the New York City correctional system

Additionally, a corrections-based discharge planning system must have regular and reliable communication with the world beyond the jail. This, at times, will include contact with collateral sources of information regarding the Class Member's functioning and living situation in the community (e.g., family members and community treatment providers), as well as with the organizations which will be responsible for the post-release care and treatment of the Class Member. Additional important outside contacts may include attorneys and the Court system itself.

Outside service providers such as clinics, residences, and hospitals can shed invaluable light on what treatment strategies and discharge plans were or were not effective in the past. Additionally, effective discharge planning requires that staff develop working relationships with program staff to which they refer clients. Family

contact can be crucial to understanding the support system to which the Class Member will return and to clarifying symptoms and functioning, both of which are important in making correct diagnoses and SPMI determinations.

Using SPAN to address the need for an organizing entity is one of the primary conceptual breakthroughs of this Stipulation. In order to more effectively perform this function SPAN must become more fully integrated into the various systems responsible for discharge planning – (a) pre-release in-reach into the jails; (b) outreach to the Courts so that SPAN becomes a known entity in the court system; and (c) outreach to community agencies, both those to whom SPAN refers Class Members and those who might potentially refer Class Members to SPAN.

Defendants have made great strides in developing the infrastructure required for communication to happen. They have a fairly functional network with email at the point of service. The voice mail system has greatly improved, as will be discussed below. The task at hand is to ensure that Defendant staff are able to utilize these communications tools as they work with Class Members in developing comprehensive discharge plans.

C. Quality Improvement

An essential and often under-recognized aspect of creating a well-functioning system is the development of a meaningful program of quality improvement (QI), sometimes referred to as quality assurance, performance improvement, or similar terms. Defendants should be systematically studying the results of their efforts as well as actively engaging class members in assessing the adequacy of the system they strive to develop. As it relates to the development of an integrated service such as that we have described, this QI effort would, for example, review cases of returning clients to determine if clinical staff

took into account the earlier encounter when developing the later discharge plan. For example, the following questions could be asked in such a QI model:

- Should the class member be referred to a different program this time around?
- Was the substance abuse aspect of the Class Member's diagnosis adequately addressed by the discharge plan on the previous incarceration?
- Did the Class Member actually appear at the program to which he or she was referred?
- Would transportation have made a difference?
- Would SPAN outreach to the Court have assisted this individual in completing his discharge planning when he was released at Court the last time he was incarcerated?
- Was there sufficient coordination between LINK and the jail discharge planning staff?

These types of questions should be posed and systematically studied by defendants in order to enhance the likelihood of success in subsequent discharge planning. The goal of this QI review would not necessarily be to identify individual problems in individual cases – that would properly be the role of clinical supervisors. The outcome of such a QI effort would be to identify systemic problems that interfere with the provision of quality services and to develop interventions targeted at resolving those problems.[2]

Conclusion

We recognize the strides that Defendants have made since the implementation date. Much of this effort has rested upon individual Defendant agencies, especially DoHMH and its contractor. We believe that cross-agency leadership will need to focus efforts on ensuring

[2] We believe that Defendants are already undertaking such efforts. In the event that this is so, we suggest that a structure be devised so we are aware of the results of some of these important endeavors. We respect the value of unadorned, internal review of problem areas; nonetheless, having Defendants conduct agreed-upon studies and reviewing these efforts and their results with us permits them a higher degree of management prerogative than the alternative approach of a parallel, competing effort undertaken by the Monitoring team.

that all of the improved "parts" are forged into a coherent, integrated whole. Even diligent and focused attention by individual employees of individual agencies will ultimately prove insufficient without a clear sense of a global inter-agency mission. We offer in these introductory remarks our guidance regarding overall direction and some suggestions as to approaches to these difficult tasks. Ultimately, the responsibility for developing and implementing a discharge planning system which comports with the requirements of the Stipulation falls to the management of the various Defendant agencies.

II. Process

A. Activities of the Monitors

During this reporting period, we continued to engage in our routine activities such as meeting with DoHMH management, visiting SPAN, and conducting reviews of mental health and discharge planning records in the various jails. In addition, we continued to refine our understanding of the data system as it currently exists. We developed a set of "flow sheets" designed to improve our understanding of the interrelationships of the various discharge planning tasks. We forwarded this document to the Parties for discussion. Given this more sophisticated interlinked view of the discharge planning system, we also began making a series of suggestions to Defendants as to how the data dictionary should account for these relationships, rather than simply viewing each task in isolation.

In addition, we visited each of the Prison Wards (one at Bellevue and the other at Elmhurst), within the limitations on our access pursuant to the ongoing litigation regarding

this issue.[3] We also began engaging in meetings with line staff after substantial negotiation with Defendants.

B. 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 Benefits ("VA"), 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. In previous reports we included extensive discussion of these efforts, most recently in our Seventh Report beginning at page 16.

We met with Defendants on July 21, 2005, at which time they provided a detailed update as to their progress in creating the systems needed to permit eligible Class Members access to these entitlements. Additionally, we conducted a joint meeting with the Parties on September 1, 2005 specifically related to Food Stamps, and have reviewed various correspondence between the Parties on related topics.

[3] On April 18, 2005, Justice Braun ruled that "the stipulation of settlement… covers the inmates in the forensic units at Bellevue… and Elmhurst Hospitals… and that it is reasonable for the compliance monitors to monitor defendants' performance in connection with the settlement agreement as to those inmates." Defendants appealed, invoking an automatic stay. This stay was partially vacated, allowing us to visit the Prison Wards and talk with Class Members there, but not to review their records nor to discuss their cases with staff as we are permitted to do in the other jails. This matter is still being considered by the Appellate Division..

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

Defendants continue to believe that an electronic method of identifying Class Members who are potentially eligible for SSI or SSD (and in fact Veteran's benefits as well) is most workable over the long term. To that end, they report that they have been working toward developing an electronic method of transmitting "bounty" information from DOC to the Social Security Administration ("SSA"), as they now rely on a manual transmission of this information. As we noted in our last report, this will require modifications to the DOC Inmate Information System ("IIS") which would permit Defendants to readily identify candidates for reinstatement of benefits; these modifications are ongoing at present.[4]

Defendants report that DOC has retained the consultant responsible for making the programming modifications so that they can put this system into action. The consultant is scheduled to define the scope of work during the month of September, with work to begin in October. Defendants to did not provide a projected time-frame for completion of this task, so we state here the importance of the work which we trust will be assigned the proper level of urgency within the agency.

Constructively, Defendants are no longer prepared to wait passively for the completion of this technical work to at last commence concrete action in this area. They report that they are working on a pilot project to "test processes and procedures for

[4] SSI is suspended after an inmate is incarcerated for a complete calendar month; after it has been suspended for 12 months, the benefits are terminated, requiring a new application. Prior to that time, re-instatement is possible. In contrast, SSD remains in effect during the incarceration until such a time as the person is convicted of a felony, at which time benefits are suspended. The person, however, is not required to submit a new application, but rather can apply for reinstatement, or what is referred to as a "re-determination," upon his/her release.

assisting Brad H SPMI inmates in applying for or having reinstatement of benefits."

Defendants report that they held a meeting on August 18, 2005 among DoHMH, DOC and SSA and agreed to do the following during this month:

- "manually identify SPMIs who may be eligible for reinstatement using the written 'bounty' [footnote omitted] reports provided by SSA to DOC for the month of September;
- "provide SSA with demographic and release date information on those SPMIs so that SSA can identify those SPMIs who can be reinstated;
- "have discharge planners work with SSA to establish appointments for the financial review necessary to complete the reinstatement process post-release; and
- "have SSA staff conduct telephone interviews with a small group of SPMIs (likely 10-15 inmates) to assist them in completing SSI applications. SSA will work with the discharge planners for those inmates served through this pilot application effort to get the appropriate medical releases and other documentation needed for their application packages."[5]

Defendants' plan upon reviewing these activities to determine how they will need to adjust their efforts as they move to the computerized system of identification. They will continue their collaboration with the SSA Astoria Field Office which they report to be very forthcoming in these efforts.[6] We read the City's approach as essentially a pilot project with an outcome evaluation leading to readjustment as indicated in light of experience; this appears to us to be a proper way of introducing such a complex task. We request that Defendants keep us informed as to the progress and the results of this pilot project.

[5] As noted in our last report, Defendants chose not to pursue our suggestion of creating an institutional agreement with SSA, but they do believe that they will ultimately need to codify this arrangement. We, again, are less concerned with the style of the agreement than with its result.

[6] While their activities are beyond the scope of our authority in this matter, we wish to commend this SSA office for this constructive engagement with City officials in this important public health endeavor.

2. Veterans Benefits

Defendants report that they plan upon using the same modification to the IIS discussed above to assist them in electronically identifying those Class Members who might be eligible for Veteran's benefits. As a result of contact made by the City, the VA has agreed to conduct benefits briefings with inmates in the New York City Correctional system, beginning at EMTC in the "early fall." Defendants report that the VA will likely conduct these meetings in large group settings which will include both SPMI and non-SPMI Class Members. They conceive of these sessions as including "available benefits for veterans and individualized counseling in applying for benefits." Defendants report that DOC is exploring "opportunities to provide space for VA staff to conduct" these activities. We know that space is always at a premium in correctional facilities and again emphasize that these activities are critical to the provision of appropriate discharge services to an often needy and ill sub-set of the Class; as such, the space needs required by the VA must be afforded a priority commensurate with the importance of the task.

3. Food Stamps

As noted above, we convened a meeting of the parties on September 1, 2005, to discuss Defendants' movement toward "establishing a system that would permit Class Members to submit Food Stamps applications before their Release Date and that would permit the processing of those applications while they are incarcerated" as required in ¶86 of the Stipulation. The Parties engaged in serious discussion regarding two main mechanisms of applying for these benefits on behalf of Class Members prior to release, without coming to resolution regarding which would be preferred.

One of these mechanisms would involve a "pending" process, whereby discharge planning staff could assist Class Members in applying for food stamps at any point in the incarceration. HRA would then "pend" the application until such time as the Class Member was released up to 90 days. This process requires a waiver from State Office of Temporary and Disability Assistance ("OTDA"), which HRA has now received. However, OTDA did not grant all of the requests of the City, and the City is considering how best to implement this specific procedure.

The second procedure was suggested months ago by Class Counsel, and would permit the discharge planner to complete the food stamps application and keep it on file within the jail. When that Class Member is released, the discharge planner could then date the application (assuming no information had changed) and fax it to HRA for consideration. This would not require a "pending" of the application, and to our understanding would not require any type of waiver. The obvious disadvantage is that, in many cases, staff do not learn of a release until after it has taken place. Additionally, because of the late date of submission relative to release, it would not permit the "the processing of those applications while [the Class Member is] incarcerated", as required in ¶86.

We asked that the Parties consider these options and determine which would be preferable. We suggested that the Parties consider a pilot project to assist them in determining which course of action HRA should pursue. This approach could address several legitimate interests of the Parties. If carefully conceived, it would allow the City to explore the efficacy of different approaches to this benefit without committing beforehand to (or being held responsible for) a specific course of action or overly impinging on the management prerogatives of its leaders. Similarly, it would permit

Parties to assess the results of the two proposed methods in finalizing the procedure to be used. In our view, this "experiment" would result in the formalization of a procedure that is known to be more effective, easier to use, and/or less draining on resources. The current stalemate will not produce the desired result: the availability of food stamps for those Class Members who need them. We strongly suggest that the Parties consider and build upon our proposal. The City has a quite correct desire for finality – knowing what course of action, if properly executed, will be considered a discharge of its duties under this section of the Stipulation. Similarly, Class Counsel have an important interest in knowing whether a particular approach will actually assist their clients in obtaining an important benefit, before agreeing to one approach or another. We, of course, remain at the disposal of the Parties to assist in what must be on-going efforts to resolve this impasse. With or without mutual agreement on how to proceed, it remains the Defendants' sole responsibility to comply with the terms of the Stipulation.

We also strongly suggested that HRA provide information or training to the discharge planning staff regarding the information that they use in considering food stamps applications, and especially regarding what documents an individual must have to be considered for food stamps.

Defendants advised us as we were preparing this draft report that they are continuing to explore the various issues we posed to them.

4. Conclusion

These efforts to explore the systems to connect eligible Class Members with basic benefits such as SSI, SSD, Veteran's benefits and Food Stamps are of the utmost importance. Empirical evidence makes it increasingly clear that access to benefits is

critical to positive outcomes with individuals who are mentally disabled. This is so in effectuating reductions in homelessness[7] and in the ability of released inmates to access mental health treatment.[8] We are encouraged to see focused attention in this area, resulting in some positive movement, and advise in the strongest possible terms that the Defendants aggressively build upon these efforts.

C. Reorganization with DoHMH

1. Change of leadership

Health Care Access and Improvement (HCAI), the division of DoHMH which is responsible for implementation of that agency's obligations under the Stipulation, has undergone both personnel and structural changes. There is a new Deputy Commissioner for HCAI. Reporting to the Deputy Commissioner are an Assistant Commissioner for Correctional Health Services (CHS), which includes mental health care; an Assistant Commissioner for Forensic Behavioral Health, responsible for discharge planning and oversight of the SPAN and LINK contracts; and an Executive Director for Regulatory Compliance and Outcomes Management, responsible for clinical data systems and

[7] See e.g. Gains TAPA Center for Jail Diversion, Enrolling Jail Diversion Program Participants in Medicaid, SSI, and SSDI, East Access Net/Teleconference August 25, 2005, citing work by Sullivan, 2000. PowerPoint presentation available at http://www.gainsctr.com/html/resources/presentations.asp. Downloaded September 15, 2005.

[8] Specifically, in this case research has shown that seriously mentally inmates with Medicaid released from an urban jail system utilized mental health services at two times the rate of those inmate who did not. (Joseph P. Morrissey, Medicaid Benefits and Recidivism of Mentally Ill Person Released from Jail, revised draft, December 8, 2004.) A second study found that those seriously mentally ill inmates who had Medicaid at the time of release accessed services significantly faster than those without Medicaid. (See, Joseph P. Morrissey, Henry J. Steadman et al, Medicaid Enrollment and Mental Health Service Use by Mentally Ill Persons Following Jail Release, Cecil G. Sheps Center for Health Services Research, University of North Carolina at Chapel Hill, draft, June 4, 2004). A review of both of these studies were summarized in a document entitled "How and Why Medicaid Matters for People with Serious Mental Illness Released From Jail," published by the Council of State Governments. Downloaded September 14, 2005.

reporting. Each of these three positions report directly to the Deputy Commissioner for HCAI, who reports to the Commissioner of the Department of Health.

2. Staffing

Defendants provided us with the following update regarding their progress in implementing their important vision for the overall structure of discharge planning services:

Table 1: Staffing in the Jails

FACILITY	Model	Masters level dcp staff		Bachelors level dcp staff	
	new or old?	filled positions	vacant positions	filled positions	vacant positions
AMKC (C-71)	New	1	2	2	1
AMKC (C-95)	New	5	1	4	0
ARDC	Partial	1	1	1	0
EMTC	New	2	2	3	0
GMDC	Partial	1	1	2	0
GRVC	New	0.5	0	1	0
NIC/WEST	New	0.5	0	1	0
OBCC	Partial	1	1	1	1
RMSC	New	5	0	3	0
BBKC	Old	0	1	1	0
VCBC	Old	0	1	1	0
TOTALS		17	10	20	2

In comparing this table to Defendants' staffing levels in the last two reports, it is evident that Defendants made no net progress toward attaining their staffing goals. In fact there has been some regression. Presently, there are two more vacancies in the masters level positions. One jail (BBKC) previously reported to be operating with the new staffing model is now reported to be operating in the old model, while another jail (OBCC) changed from the old model to a "partial" model. The overall bachelors level staffing is unchanged.

As we understand it, a jail operating under the new model has both bachelors and masters level staff, who split the duties consistent with their training and expertise. Defendants have indicated that they consider a jail to be "partially" under the new model if it "does not have the full complement of staff allocated to that facility." Given that definition, we questioned the inclusion of AMKC C-71 or EMTC as operating in the new staffing model. In response to our inquiries, Defendants explained that these institutions where fully staffed throughout the 8th reporting period, but that there were vacancies in positions at the precise time we made our information request. This explanation does clarify Defendants' rationale for including these jails as operating under the "new" model, but at the same time brings into focus their continued problems with retention of qualified staff.

Defendants did not provide us with caseload information. They noted that "[t]eams of social workers are assigned to each jail. There are no assigned caseloads. On an as needed basis, staff are authorized for overtime so that all patient needs are addressed. Thus, given the distribution of work among the staff, and the fluid nature of that work from person to person, reporting on caseload is not practical." We disagree with this statement. In fact, valuable information, if not staff-specific caseloads, can be derived from just a few simple calculations.[9]

[9] Defendants, in comments to this report, reiterated that "a 'caseload' model is not used for staffing assignments" and suggested that "a 'service center' model" would be a more accurate description of current practice than a caseload model. They define the service center model as: "Whoever arrives with a service need on a particular day will receive that service. However, the needs change from day to day, as do the identities of the individuals who receive the services." In our view, a pure service center model is inadequate if Defendants are to achieve a longitudinal model of providing discharge planning services, as we understand them to be attempting. We recognize the complexity of this given the turnover in the jail setting. However, we are aware that such calculations are routinely made in managing systems such as this one in order to best allocate available resources. Regardless of the actual model, in any case, we reiterate that we are simply asking for numbers: how many Class Members are present in each jail in a given period of time and how many staff are responsible for meeting their needs.

For the system as a whole, during this reporting period, there were, on average, 467 Class Members who had received a CTDP and who were released to the community each month.[10] About 30% of the released Class Members who had a CTDP completed refused all services during this reporting period, leaving about 327 Class Members each month who accepted all or some discharge planning services. Assuming static staffing levels, there was a total of 37 discharge planning staff across the system. Assuming that little time was spent working with global refusers, aside from reoffers of services in some instances, each discharge planning staff member was responsible for the discharge plans of just under 9 Class Members leaving the system each month.

Alternatively, assuming the division of labor envisioned by DoHMH and described to us by the discharge planning staff we interviewed, each masters level staff member was responsible for arranging aftercare for about 19 Class Members and each bachelors level staff member was responsible for applying for entitlements for about 16 Class Members leaving the jail in a given month.

By comparison, if discharge planning were to be fully staffed, each masters level staff member would have been responsible for planning aftercare for about 12 Class Members leaving the system that month, and each bachelors level staff member would have been responsible for applying for entitlements for about 15 Class Members. These calculations do not take into account jail-jail variability, but those calculations could be

[10] Inasmuch as each individual Class Member's release destination is often unknown until late in an incarceration, this analysis will underestimate the actual number of cases to be handled by a discharge planner. At a minimum, some staff time will be needed just to ascertain which Class Members are likely to be released to the community and therefore need discharge planning services, and which Class Members are not likely to need these services.

easily performed as well, and staffing could then be assigned based on the numbers of releases from each jail.[11]

An alternative calculation would take the entire caseload of Class Members in jail at a given time and divide them over the staffed positions. DoHMH provides us with a biweekly listing that includes all individuals with an "M" designation, the vast majority of whom are class members. In their July 25, 2005, report, they indicated that there were 3530 such individuals. If this is the entire caseload, then the current caseload size is 3530/37 = 95 cases per staff member. Divided by staffing category, the ratios are 208 per masters level staff member and 177 per bachelors level staff. However, if all staff positions were filled, the ratios would drop to 131 per masters level staff and 160 per bachelors level staff. Approximately 30% of those with an "M" designation are released prior the completion of the CTDP, and approximately 30% of the Class refuses all discharge planning services. Accounting for this drop-off, the ratio of staff to Class Member drops to 102 per masters and 87 per bachelors level staff at current staffing levels, or to 64 per masters and 78 per bachelors level staff at full staffing levels.

We see these two models as representing the floor (those who have the most urgent needs as they are to be released during the month – even if only known after the fact) and the ceiling (all individuals who are eligible for discharge planning services.) The actual number of Class Members to be served by a specific staff member at any given time will be determined by a combination of the needs and desires of the Class Members as well as by the day-to-day discretion exercised by line staff and supervisors in the field. Staff

[11] We note that this simple calculation does not account for turnover across the system or for jail-jail transfers, both of which are significant impediments to efficiently providing needed discharge planning services.

overburdened by high client demand (exacerbated by high staff vacancy rates) are less likely to engage in individualized assessment and engagement of Class Members, or to devote time to seemingly secondary but actually critical tasks such as contacting collateral sources of information.

Sound oversight requires an analysis of the workload performed by staff so that sufficient and responsible staffing levels can be determined. This is true on a systemwide basis in terms of overall staffing, but becomes even more crucial in times of staff shortage when deciding how to deploy limited staff among units and across shifts.

We are quite aware of the various confounding factors which inhibit a clear-cut assessment of workload in the correctional setting. The function of the institution must be considered as intakes, discharges, transfers, and length of stay all influence the numbers and type of staff required as well as the times of day they are required. To name but a few:

- The degree of acuity of need among the population is influenced by the presence of a mental observation unit or lack thereof.
- A sentenced population will create somewhat distinct demands than will a more fluid detainee population.
- Women at times present with needs and issues distinct from their male counterparts.
- Ineffective record-keeping not infrequently leads to duplicative or inconsistent efforts.[12]

Further, any study of required staffing must take into account the lack of efficiency built into the host environment, in this case the jail system with its alarms, counts, and

[12] While highly undesirable in terms of continuity of care, and inefficient in terms of monetary expenditures, if a discharge planner is unable to ascertain whether or how a particular task has been completed, it is preferable to do it him or herself rather than risk it not happening at all. Until such a time as the fundamental issue is comprehensively addressed, staffing levels will need to account for this additional systemic inefficiency.

chronic lack of program space. All of these complexities make it more rather than less important to attempt to allocate staff in a rational way. Even if individual caseloads are not calculated, the question of how to deploy most efficiently the staff available must be addressed.

We suggest that Defendants consider looking at and providing to us more sophisticated versions of the calculations we describe above as well as conducting a time-motion study of discharge planning functions. An additional method of addressing this issue would be through the use of Citrix to track workload demand by building as a guide toward staff allocation.

We have previously stated our belief that effective discharge planning is based on the longitudinal contact between the discharge planning staff and their clients. The use of overtime demonstrates some investment on the part of DoHMH to ensure that all needs are met, but this comes at a cost; overuse of overtime frequently leads to staff burnout and retention problems. Further, the practice of pulling staff from one jail to another to cover empty positions, while it may serve to satisfy policy-based staffing requirements, does not provide such services in the context of ongoing relationships with a client.

We believe that Defendants' recruitment efforts have failed. If Defendants are to successfully implement this staffing model, a decision will need to be made that this is a high priority budget line, and Defendants will need to develop the kinds of incentives that will draw competent professionals to this work. These may include salary differentials, academic and training opportunities, and the like, as we noted in our last report at p. 31.

3. Updated documentation and policies

DoHMH provided for our review and comment a revised Discharge Service Needs ("DSN") form (which appears to be designed to be a joint product of mental health and discharge planning staff at the time of the CTDP) and a new Discharge Planning form (to be used by the discharge planning staff). We provided some suggestions for revision and thought, which DoHMH accepted and will incorporate into their implementation. Overall we believe that these forms represent an improvement over the ones currently in use. For example, the revised DSN will permit a summary of what the Class Member has received in the past, an issue which we believe to be of crucial importance for current planning as well as quality review, as well as a place to indicate housing status and current needs. The Discharge Planning form should, for the first time, permit a comprehensive assessment of post release needs by the discharge planning staff; this represents a change from current operations in which discharge planning staff must rely solely on a checklist completed by the mental health staff. We note that this approach is fundamentally sound but like other constructive aspirations of DoHMH will require improved success in the recruitment and retention of clinically trained discharge planners. With such staff in place, it will streamline the decision-making process and place the locus of responsibility for development of a clinically sound discharge plan where it properly belongs – with the discharge planners; however, without sufficient numbers and stability of clinically trained discharge planners, Defendants run the significant risk of having staff with insufficient background or training making important decisions which affect the clinical appropriateness of the plans.

Defendants also provided us with draft revised instructions for completion of the LSPMI form. We have as of yet been unable to follow up with Defendants to discuss this document or to provide feedback about it. We support the effort to look at the process of evaluation for LSPMI with a "fresh eye" and look forward to working with Defendants on this over the next reporting cycle.

4. Communications

Defendants have demonstrated impressive improvement in the reliability of the electronic communications tools during this reporting period. When we have had the opportunity to discuss this issue with staff, they reported using email with regularity in the course of their work, including use of email to attempt to coordinate discharge planning efforts when Class Members are transferred from one jail to another. In addition, they indicated that they have been using voice mail with regularity to receive calls from other staff in other jails, and at times from outside agencies and from families. As we discuss elsewhere, the creation of a fully functioning system of discharge planning requires that Defendants provide discharge planners the operational ability to communicate effectively both within and outside of the Rikers Island system of care. As the needed communications infrastructure is put into place, the next step will be to work to change the institutional culture of service providers with the New York City correctional system so that they more routinely consider outside sources of information.

On Sunday, September 4, 2005, we conducted another spot-check of the voice mail system. The results are dramatically different from our past checks on this system. In our past checks, 27%-47% of the attempted calls resulted in contact with a voicemail that clearly identified the number as a discharge planning number. In contrast, during this

check, of the 27 calls made, 22 (81.5%) were picked up by a voice mail that clearly identified the number as a discharge planning office. Four (14.8%) of the 27 numbers were picked up by a voice mail whose outgoing message did not clearly identify the office as a discharge planning or any other office; rather it simply noted the staff member's name or was a non-descriptive outgoing message. Only one number (3.7%) (546-1258) was not picked up at all. This is a remarkable improvement and, if our spot check reflects the usual reality, demonstrates that substantial improvements have been made to the electronic infrastructure required to support the work of the discharge planning staff.

In contrast, there continue to be intermittent outages of the network on which the discharge planning database is built. Staff reported that these outages are unpredictable – many weeks may go by during which it works well, and then a problem occurs that results in frequent outages for several weeks at a time. This is a problem that interferes both with data entry and with data retrieval. When the network is down, staff are unable to enter data regarding their work in real-time. Additionally, staff are unable to use the database to determine what has been done in the past. This is a very serious issue in the New York City correctional system where charts are not reliably available at the point of service. While the database is not an "electronic medical record," from a discharge planning perspective it can be seen as such on those frequent occasions when charts are not available and when staff must perform tasks in the absence of the chart.

We recognize the difficulty of maintaining a network such as this. However, if Defendants' efforts are to succeed, it is imperative that all relevant Defendant agencies

work together to ensure consistent access to the database. Defendants must continue to build upon the important gains made to date.

5. Chart Access, Electronic Records

Since the inception of our monitoring we were struck by the pervasive difficulty staff encounter in obtaining timely access to records so that they may review the assessments and efforts of their colleagues on the treatment team and add contemporaneous notations to the records. In our chart reviews and discussions with staff, we have found that it remains a common practice for staff to work with a Class Member without benefit of the record; this includes but is not limited to supervisors reviewing the work of mental health clinicians making critical threshold assessments. A related problem is that work completed by one clinician or discharge planner may not be placed in the record prior to the transfer of the Class Member to another institution. This at times results in duplicative or contradictory efforts by staff. Finally, it is the norm that staff does not request records from prior incarcerations within the New York City correctional system.

In our prior reports, we have suggested that the preferred solution to this problem is the development of an electronic medical record system, which would permit simultaneous multiple user access to the record for both reading and writing purposes. We were recently advised by DoHMH that they are initiating the process of developing such a system and are revising forms with an eye to including them in this electronic record system. We urge Defendants to prioritize this, as the medical record is often the only form of clinical communication that exists in a correctional system as complex as that in New York.

D. Prison Wards

Commencing on page 37 of our Seventh Report we described in detail the path of the litigation related to Justice Braun's declaration that our determination that inmate-patients housed on the currently two Prison Wards were Class Members under the Stipulation was "reasonable", as were our plans "to monitor defendants' performance under the stipulation as to those inmates." We further noted that the legal uncertainty regarding the issue of class membership for this group of people dated back at least to the time of our Special Report of November 17, 2003. As of June 6, 2005, the date of our last report, we were waiting for Defendants to conclude the specific arrangements for the site visits we agreed upon within the limitation imposed by the Appellate Division's ruling of June 2, 2005:

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

These arrangements were indeed concluded, and we conducted site visits to the Bellevue Hospital Prison Ward on June 9, 2005 and the Elmhurst Hospital Prison Ward on June 15, 2005. We had limited but cordial contact with leadership personnel at those units, who described the overall functioning of the wards and facilitated our meetings with patients on the units. As ordered by the First Department, our visits were limited to physical access to the patients on the units so that we interviewed a number of those housed there, but we did not review their medical records or have any substantive discussions with staff regarding these individuals.

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.

Defendants' position regarding the status of these individuals and our review of their cases was stated as follows in an email from the Law Department on June 8, 2005:

> "[T]he City has never considered these inmates a part of the Class in this action, and the Order finding them to be class members has been stayed pending the City's appeal. Additionally, the discharge planning services provided to these inmates under Mental Hygiene Law 29.15 are not an issue in this action, and therefore beyond the scope of the Settlement. Thus, although the Court has granted you access to the inmates, this visit is not pursuant to the Settlement and, therefore, the results of your interviews may not be shared with plaintiffs' counsel."

Until the class membership status of these individuals has been decided, or until the Parties reach an agreement regarding our communicating our findings, we will not include any details regarding our interviews with them in our reports.

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.[13]

[13] We understand that briefing is complete and that oral argument before the Appellate Division is set for October 18, 2005.

E. SPAN Reorganization

Beginning on page 41 of our Seventh Report we discussed the pending proposal by SPAN and DoHMH to temporarily close the Staten Island SPAN office for a six month period with the funds reallocated to the creation of a dedicated In-Reach Team to be deployed within the City's jails. Connected with this, we provided our assent for a concomitant and temporary modification of the hours of operation of the remaining four SPAN offices, pursuant to Paragraph 36 of the Stipulation. We noted that this would permit us and the Parties to evaluate the overall impact of these proposed changes and assess the wisdom of making these revisions permanent. We made our support of this six month pilot project contingent upon the budget-neutrality of the endeavor. We reiterated and continue to emphasize here the centrality of an effective and efficient SPAN operation to any comprehensive system to provide discharge planning for Class Members.

Our current understanding is that the Parties agreed to a six month implementation of this plan according to the details we described and as provided for in the attached memorandum (Appendix A). DoHMH advises us that the pilot is scheduled to commence on October 14, 2005 and that SPAN staff is engaged in "intensive outreach" to the community so that the appropriate entities are aware of this change. We are hopeful that this effort will prove constructive and will serve as a basis for greater utilization of this crucial service.

Two aspects of SPAN reorganization warrant special attention: Court Outreach and SPAN Inreach.

1. Court Out-Reach

Paragraph 40 of the Stipulation requires SPAN to conduct outreach visits to the Criminal Courts to "encourage Class Members who are determined likely to be

released… to visit SPAN offices and utilize services." Defendants are not complying with this important requirement, but for the reasons described on page 44 of our Seventh Report we deferred our requested site-visits to the Court areas. We did so in order to give the Parties an opportunity to resolve this issue as part of their discussions regarding the overall reorganization of SPAN services. To our knowledge, this did not occur and so we will renew our efforts to monitor this issue.

Given that we believe that these court outreach efforts are not occurring, we request that Defendants develop a plan to commence this activity. In our opinion, this function is essential to an increased utilization of SPAN as it will (1) serve to make Court personnel aware of the services SPAN offers; and (2) assist Class Members directly upon release from Court rather than put the onus on them to locate and present themselves to the SPAN office. As we stated above, integration of services and the coordination of efforts form the foundation of programs that successfully reach individuals who have serious mental illnesses.

In their comments to our draft report, Defendants informed us for the first time that DoHMH has "previously submitted a proposal concerning SPAN outreach to the New York State Office of Court Administration," and that despite their efforts to follow up, they had yet to receive a response. It is positive that Defendants, who, of course, would need to coordinate such efforts with the court system, have apparently at last begun to make efforts in this regard. That said, given how long this has been an unresolved issue which we have been attempting to monitor, we find it unacceptable that Defendants only now have made us aware that they have made efforts to begin performing this requirement of the Stipulation. We request that Defendants provide this proposal to us

immediately for review. We interpret their response to confirm that they do not currently engage in out-reach activities to the courts. Assuming that Defendants will expeditiously provide us with this information, we will defer our insistence upon a site visit until we have been able to assess the proposal Defendants put forth as well as the efforts they have expended in realizing their plan for coming into compliance with this provision. Additionally, Defendants must communicate with us more proactively on this and other important pending issues.

2. In-Reach

SPAN is required by ¶39 of the Stipulation to conduct inreach visits to the jails to meet with Class Members and to encourage them to use the SPAN offices after release. In our past two reports we described the value these visits have in prompting Class Members to avail themselves of SPAN's services. Indeed, one of the major elements of the reorganization is the creation of a "full time Dedicated In-Reach Team" to conduct these inreach visits.[14] We anticipate that these inreach visits will continue to have positive value and would expect the number of visits and the number of Class Members educated during these visits to increase as a result of the reallocation of staff.

F. Appropriateness Measures

On June 30, 2005 we distributed to the Parties our first confidential report regarding the "appropriateness measures" we discussed starting on page 46 of our Seventh Report. We will continue our monitoring of these issues and will provide our next private report to the Parties shortly after the completion of this Report. After receiving reactions to that report

[14] The proposal outlines a procedure whereby this team would conduct inreach visits three days a week between 12:15 and 1:45 pm. We intend to engage in discussion with DoHMH regarding other tasks to be assigned to this team.

from the Parties, we will determine when to begin including these measures in our future Regular Reports to the Court.

G. Paragraph 61

Justice Braun's Order of November 11, 2003 (upheld on appeal) modified paragraph 61 of the Stipulation to include the following:"(d) where it appears that a Class Member is in immediate need and an investigation is deemed necessary, temporary Medicaid benefits shall be granted pending an investigation." This matter was the subject of on-going litigation for a considerable period of time, but to our understanding has been fully and finally litigated since December 21, 2004 when the Court of Appeals denied Defendants' request to permit a direct appeal on the matter. Thus, since that time Justice Braun's original modification of the Stipulation has represented the settled iteration of Defendants' obligations on this matter.

As we noted on page 46 of our Sixth Report of February 7, 2005, Defendants had yet to begin capturing data regarding this measure. At that time, this appeared reasonable to us as the requirement had only become clear less than two months prior.

Defendants are currently not complying with the requirements of this paragraph as modified by the Court. Almost nine months after the Court of Appeals denied leave for a direct appeal, and almost two years after Justice Braun's original ruling, the time has come for Defendants to commence implementation of this obligation.

In response to our inquiries, Defendants reported progress toward implementation of this requirement of which we were previously unaware. Counsel for Defendants informed us that the City "anticipates" that implementation of this modification will commence "shortly." This assessment, however, appears contingent upon Defendants securing authorization from pertinent State agencies.

Defendants further reported that HRA "will reimburse providers for expenses incurred by class members who are eligible for the 'immediate need' medical assistance benefit ordered by the Court." They note, however, that while HRA determines eligibility for benefits, "pursuant to Social Services Law § 17(a), the State determines the policies upon which public assistance and care shall be provided within the state, by the state and by the local government units. The State is responsible for developing and maintaining a plan for medical assistance. See Social Services Law § 363-a." As a result, Defendants assert that because this modification affects Medicaid, they cannot proceed with implementation of the Court's ruling absent either (1) implementing State regulations or (2) authorization from the State.

Defendants further informed us that although HRA forwarded the Court's decision to the State and opened discussions concerning the necessary authorization, "the State does not intend to issue amended regulations to implement the Court's decision on a statewide basis."

Defendants went on to state that in May 2005, "HRA began discussions with representatives from New York State Office of Temporary and Disability Assistance ("OTDA") and the State Department of Health ("DOH") regarding the adoption of a local rule – a draft of which was shared with the State – which would allow HRA to provide the enhanced benefit to eligible class members as part of a local plan." It is Defendants' assessment that neither agency appears willing to authorize this proposed local rule.

Last month, Defendants informed us, "HRA formally presented to OTDA and DOH a proposed local district plan to provide assistance and care as an immediate need to eligible Brad H class members." According to Defendants, "[t]here [were] four (4) possible outcomes to this proposal: (1) the State could indicate its approval, in which case the plan becomes effective immediately; (2) the State could take no action, in which case the plan becomes

effective in 30 days from the date it was sent; (3) the State may wish to negotiate the provisions of the proposed local rule, in which case HRA would be willing to engage in such discussions to achieve the results it needs to implement the Court's order; or (4) the State may oppose the adoption of the local rule."

On September 23, 2005, as part of their response to the draft of this Report, Defendants provided us with copies of two letters, one from the state Department of Health ("DOH") and the other from the state Office of Temporary and Disability Assistance ("OTDA"), indicating that each agency disapproved HRA's request for the proposed local rule.[15] These letters are attached to this report as Appendix B.

Defendants further advised that HRA is developing "a program" to provide temporary Medicaid to eligible class members. This would likely involve the distribution of a "time-limited" letter to class members which could be presented to providers informing them they HRA "will pay the cost of covered services incurred" until an expiration date noted in the letter. The City further informed us that "The text of the letter is under discussion, and may request providers to wait a brief period before submitting bills for payment, to allow the class member's Medicaid case to be re-activated. As most of the subject class members are expected to have their Medicaid cases re-activated and Medicaid benefits will be paid retroactive to the date of release, this brief delay will enable HRA to process these payments through the usual manner, without any negative impact on the provider. However, HRA is

[15] DOH noted that "[t]here is no authority in State or federal law for the provision of Medicaid benefits to a person who has not been found eligible for those benefits. Immediate medical needs that arise during the application process may be met by a hospital…. In addition, Medicaid benefits are to be provided to a person found eligible for a period of three months prior to the month of application, if a person is otherwise eligible during that period. In this way, a person who has incurred medical bills or has paid for medical care during the application period may obtain relief."

OTDA indicated that it "has no authority to provide medical assistance."

still considering the appropriate mechanism by which to pay for bills submitted prior to the re-activation date. Additionally, before this process can be adopted, HRA must be satisfied that appropriate anti-fraud measures are in place." Defendants further advised that the City "hopes" to have the various procedures in place so implementation of the Court's order can commence "shortly" after the required approvals are secured.

The following issues or tasks remain outstanding and must be resolved before the City will realize compliance with Justice Braun's order:

1. Now that the state has disallowed HRA's proposed local rule, Defendants must explore alternative avenues for achieving compliance with this modification of the Stipulation.

2. The City must complete the "program" it is developing to implement the temporary Medicaid requirements of paragraph 61. (This need not—and according to Defendants will not—await approval by the State.)

3. In the event that HRA ultimately receives authorization to proceed with implementation of the Court's order, the following tasks remain outstanding:
    a. HRA must finalize the text of the letter regarding temporary Medicaid which will be given to Class Members;
    b. HRA must finalize the appropriate mechanism by which HRA will pay for bills submitted prior to the re-activation date;
    c. HRA must finalize the anti-fraud measures discussed above;
    d. Defendants must develop appropriate policies and procedures for all affected agencies.

We appreciate the substantial obstacles faced by Defendants in securing the required approvals, but also remain cognizant that much time has passed since the Court's ruling on this matter. In the event that they can ultimately secure the assent of the pertinent State agencies, Defendants do control the pace of all aspects of this implementation requiring policies and procedures related to Mayoral agencies. We are encouraged to receive reports that Defendants made substantive efforts over the past reporting period in this area and, urge them to move with all possible speed toward the implementation of this important benefit.

In conclusion, Defendants remain out of compliance with the Court's order, but it appears that they require State approvals before they can attain compliance. Now that they are aware of the State's administrative determinations regarding the proposed local rule, we encourage them to continue considering alternate means of achieving compliance with Justice Braun's order, which has not been reversed or in any way modified during years of appellate litigation up to and including the Court of Appeals.[16]

III. Content

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

Our major effort during this reporting period has been to work with our database consultant to develop an integrated flowchart for the collection and analysis of Defendants' data. We believe that this will improve our and the Parties' understanding of the discharge planning system as a longitudinal and dynamic process. This is an ongoing effort; we are unable at this time to alter our analysis of the data as we have not yet completed this process. We have forwarded this information to the Parties and expect to begin a discussion with them during the next reporting period regarding the flowsheets and the ways in which we believe the data should be collected and reported.

Therefore, this report will contain analysis of Defendants' data that is similar to that contained in our last several reports. Defendants continue to provide us with monthly reports in the format which we have requested previously.[17,18]

[16]We will consider what steps, if any, would be useful and appropriate for us to further explore a resolution to this matter.

[17] As per our last report, we reserve judgment at present as to the reliability of data culled from the Citrix system, as we are not certain that this accurately reflects the actions taken by discharge planning staff. We refer the reader to pp 52ff of our 7th Report (June 6, 2005) for a more complete explanation of our position and the reasons behind it.

In many of the measures discussed below, we will include some discussion of the "exceptions" or "exclusions" (we will use these terms interchangeably) to the denominator. In addition to the data regarding numbers of cases Defendants excluded, they provided us with a set of computer reports regarding the actual cases excluded for the various reasons, permitting us to begin to examine these cases in more detail.

Fundamentally, we oppose blanket exclusion for delays related to medical reasons or court appearances. We outlined our reasons for this opposition to Defendants' position at pp. 8-12 of our last report. At times below, we will highlight our opposition to such exclusions; however, when we are silent on the specific issue, we remain opposed to this type of exclusion on clinical, management and monitoring grounds.

During the interim between our issuing our draft Report and our publication of this final Report, we engaged in a series of productive discussions with DoHMH, a Defendant key to the successful implementation of the Settlement.

Until now, Defendants have expressed their belief that our reporting and expectations did not fully account for the impediments they face in meeting our performance goals, as provided for in paragraph 149(c). However, to date they have not routinely provided us with any detailed explanation of the precise impediments they faced in attempting to improve performance in specific areas; nor have they routinely informed us of what remedial actions they have attempted in their efforts to attain compliance. Additionally, in only circumscribed instances, have they demonstrated to us evidence of seriously considering or implementing the recommendations we have made for overcoming those impediments per paragraph

[18] DoHMH has used different denominators in reporting on different measures. For some measures, the denominator they use is "Class Member with a completed CTDP released to the community." As a part of our work with DoHMH on refining the data reports that they provide to us, we will ensure that the denominators used correspond to our intent as stated in our performance measures.

149(c). As a result, we have considered in a general manner the impediments to providing service within a jail setting of which we are aware from our experience in correctional environments, and we incrementally raised our expectations as we saw Defendants approaching, reaching or exceeded our interim performance targets.

Constructively, DoHMH recently proposed a modified approach in selected areas where they have experienced difficulty in attaining full compliance. After discussion and revision, we have accepted this approach, and in these specific areas we are suspending our previously stated intent to raise the expectations for these measures.

For all measures in which Defendants have not reached the final expected performance threshold or have failed to sustain performance at the final expected performance threshold for at least two consecutive months, Defendants and Monitors will explore whether there are practical limitations on providing discharge planning and implementing Discharge Plans in the Jails with respect to these specific measures, pursuant to ¶ 140 of the Settlement Agreement; or, whether there are alternative or additional methods of attaining the performance goal. DoHMH views the following process as their way of providing assistance to the Monitors with respect to ¶ 149(c) of the Agreement, requiring us to analyze and discuss any impediments to meeting the performance goals and to make recommendations for overcoming these impediments.

The Monitors will suspend any further increases to Performance expectations thresholds for these performance measures at this time to allow for implementation of the processes described below. The specific indicators which will be subject to this process are 4.2; 5.3.1; 8.3; 10.2; 12.1; and 12.2.

DoHMH has committed to do the following:

- After consultation with the Monitors, DoHMH will perform a targeted analysis of each deficient PI, identifying each factor/barrier which is causing or contributing to such deficiencies.

- After consultation with the Monitors, and taking into consideration their recommendations for overcoming these impediments pursuant to ¶ 149 (c), DoHMH will design measures, techniques or corrective actions to overcome these barriers.

- DoHMH will meet monthly and/or as needed with the Monitors to report on proposed analyses, results of analyses, and proposed interventions.

- DoHMH will implement interventions and observe progress over a three -month period, providing Monitors with monthly updates as to progress regarding the intervention.

The Monitors and DOHMH have agreed to assess the status at completion of this three month period, after which the Monitors will determine whether:

- Remediation has been successful

- DOHMH is failing to use best efforts to achieve higher performance

- There are practical limitations/barriers which impede higher level of performance which cannot be overcome through reasonable means, and the final expectation for the PI should be established at a lower level.

- A further evaluation period is required to determine if the full effect of the remediation has been achieved

- Further exploration is needed to ensure that all impediments have been correctly identified

- Further refinement of the remedial efforts is needed.

Additionally, Defendants will conduct similar internal reviews of measures for which they have failed to achieve our already raised expectation. They will communicate with us regarding these internal reviews as they take place to ensure that we fully understand the

impediments they face and the remedial efforts they have implemented to overcome the impediments.

We firmly believe that this methodology has many benefits to all Parties in this matter. This is the type of approach that we have promoted throughout our monitoring efforts. DoHMH will provide us with a much fuller understanding of the obstacles they encounter, while at the same time engaging in more transparent, targeted investigations and remedial actions in areas where they are out of compliance. We in turn will be able to more accurately report not only on a performance rate for a given measure but also on the reality behind the numbers. In the end, Class Members will be better served because

- Defendants have identified impediments and altered their process to overcome them, resulting in higher compliance with the requirements of the Stipulation; or
- Defendants convince us that they cannot reasonably perform at higher levels, and we therefore agree to permit them to use their limited resources more efficiently in other areas.

The end result is a more transparent process which will allow us to publish much more complete and informative reports.

1. Performance Measure 1.1: Initial Assessment

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

Table 2: PI 1.1. Timely Initial Assessment

	Report 5	Report 6	Report 7	Report 8
Compliance	94.9% 2872/3026	96.8% 2985/3082	97.5% 4156/4261	97.8% 4344/4443

Defendants reported the following exclusions from the denominator:

Table 3: PI 1.1. Exclusions

	Apr05	May05	Jun05	Jul05
Released in <72 hours	41	48	38	33
Medical delay	4	5	1	1
Court delay	1	6	7	4
Total exclusions	46	59	46	38

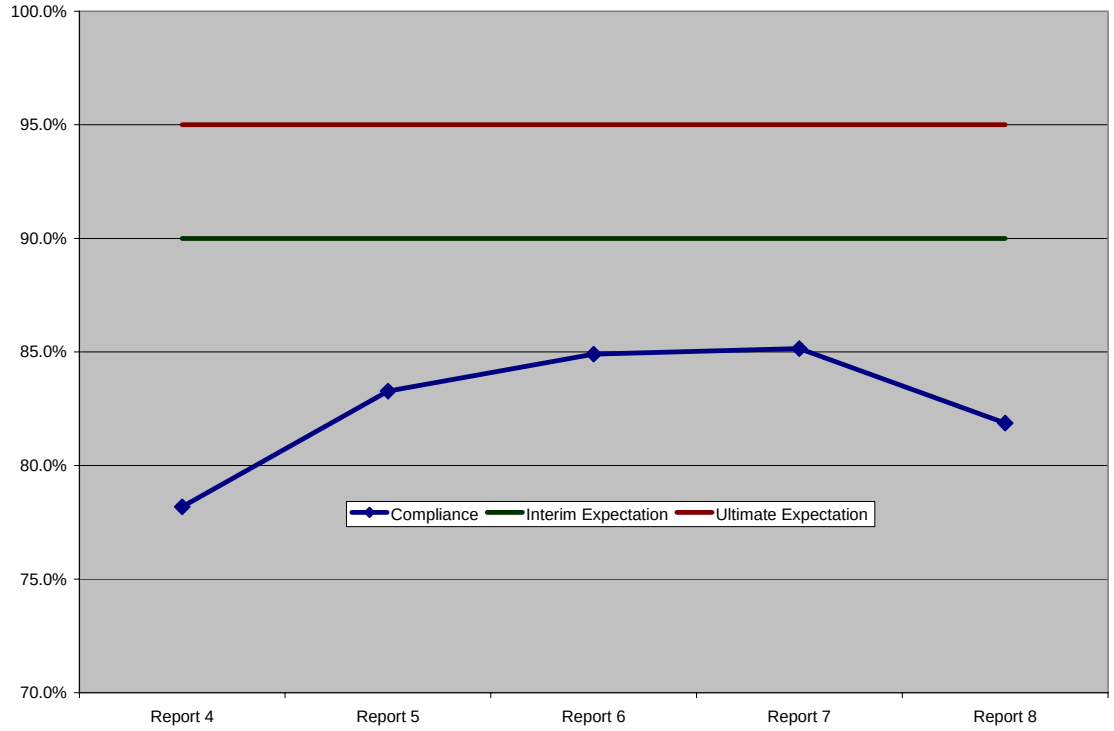
Thus, for example, Defendants report that a total of 1239 individuals in the May 2005 cohort were referred to mental health. After 59 cases are excluded, Defendants' resulting denominator in May for this measure is 1180. As noted in prior reports, we do not accept as a rule delays for medical or court reasons. Defendants did clarify one important issue related to these exceptions: having excluded a Class Member from consideration for one measure (for example the Initial Mental Health Assessment), they do *not* exclude that person from the denominator for subsequent measures (such as the LSPMI determination).[19] Defendants have achieved >95% compliance over the past three reporting periods.

[19] We anticipate that, upon implementation of Defendants' new data system, we will be capturing data regarding services provided during the month, rather than services provided to a cohort of Class Members released during the month. While this will have the disadvantage of dis-connecting the sequential process, we believe that this disadvantage will be counterbalanced by allowing us a more contemporaneous "snapshot" view of the entire system during that month.

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

During this reporting period, we reviewed a total of 342 charts for this measure. We found a LSPMI form in 281 (82.2%) of these charts.[20] This represents a decrease of 3% in compliance rates since the last report.

Figure 1: PI 2.1. LSPMI Form in Chart



In our last report, we suggested that Defendants study this process to develop interventions to increase compliance on this measure. We strongly reiterate this suggestion here. This would appear to us to be a problem best targeted by a Quality Improvement effort. The LSPMI assessment is a key procedure that must be completed

[20] Three of the charts (cases 1566, 1597, and 1659) had a LSPMI form that was completed 4, 9 or 18 days after the initial assessment, but for the purposes of this measure, we count these cases in compliance. Charts that we found not to include a LSPMI form during our reviews were: 1525, 1527, 1529, 1531, 1538, 1553, 1587, 1588, 1591, 1594, 1616, 1617, 1619, 1629, 1630, 1635, 1652, 1657, 1665, 1667, 1668, 1674, 1688, 1698, 1704, 1709, 1713, 1714, 1715, 1717, 1719, 1720, 1721, 1728, 1730, 1738, 1741, 1745, 1749, 1763, 1769, 1770, 1772, 1777, 1780, 1781, 1785, 1786, 1788, 1789, 1807, 1810, 1827, 1828, 1832, 1833, 1848, 1851, 1853, 1860, and 1862.

if the approximately 30% of Class Members released prior to the CTDP, half of whom are SPMI, are to receive the appropriate and required discharge planning services. At this time, we find Defendants out of compliance for this measure.

In their comments to the draft Report, Defendants object to our finding that they are out of compliance on this measure because the LSPMI form, although required by the Stipulation, is not the only mechanism they use to include Class Members in the LSPMI category. In addition to the use of the LSPMI form, "DoHMH receives a 'dump' from its pharmacy database, identifying all inmates who are in receipt of Brad H medications. There is an automatic default in CITRIX which, in turn, identifies these individuals as LSPMI." They correctly note that "[t]he purpose of the LSPMI category is to ensure that patients with mental health needs who are released from jail prior to completion of the CTDP receive the benefits of class membership.[21] Such a purpose is accomplished through DoHMH's methodology, because the LSPMI identification has in fact occurred and class entitlements are assured." In fact, they point out that their data-dump methodology results in overinclusion of Class Members as LSPMI because it does not exclude those who are taking medications on the Brad H. list for non-mental health indications.

If we agreed that the LSPMI form and the data dump methodology captured identical groups of class members, we might concur that the method better able to complete the task should be performed and monitored. However, it is clear that the use of this "data dump" methodology cannot be viewed as a replacement for the use of the LSPMI form.

[21] In fact, the purpose of the LSPMI identification is to ensure that, if released, these individuals are treated as Class Members who are SPMI.

Some Class Members may be classified as LSPMI for reasons other than being on Brad H. medications. For this group, the only currently available way to correctly classify them and ensure that they receive the services to which they are entitled upon release prior to a CTDP is to complete the LSPMI form.

In addition, as shown below, Defendants have not met our expectation on the Performance Indicator 2.3 entitled "Inclusion of Class Members as LSPMI if on Psychiatric Medications," a measure based on the data-dump procedure Defendants hold forth as a potential replacement to the use of the LSPMI form.

Finally, we note that we have been reporting this finding for the past three reports, and at no prior time have Defendants suggested that the LSPMI form methodology be replaced by the data-dump methodology. We reject this approach as fundamentally unsound at the present time, primarily because of our concerns, raised above and in prior reports, (1) regarding the validity of the data contained in Citrix, (2) regarding the connections between Citrix data and the data in the medical records, and (3) regarding the availability of the Citrix system at all times. Even if it is the case that Citrix contains the "gold standard" data, if it is unavailable at the time an individual Class Member is leaving, then the data is useless in guiding the mental health and discharge planning staff.

Therefore, we reiterate that Defendants must strive to improve their ability to include the LSPMI form in the medication record if they are to attain compliance with this measure.

3. Performance Measure 2.2: Appropriateness of LSPMI Assessment

As discussed above, we will circulate a private report to the Parties regarding this measure, within a few weeks of the publication of this Report.

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

This measure is intended to evaluate Defendants compliance with ¶27 and ¶30 of the Stipulation, which in the event of a precipitous release requires Defendants to include as LSPMI for the purposes of discharge planning Class Members receiving specified psychiatric medications to treat a psychiatric condition. This is an important aspect of the Stipulation, as a substantial minority of Class Members is released precipitously and before a definitive diagnosis can be made. For example, during the current reporting period, defendants indicated that between 29% and 32% of individuals "with an M designation"[22] were released prior to having the Comprehensive Treatment and Discharge Plan ("CTDP") completed. If these Class Members are released prior to a definitive SPMI determination, this requirement ensures that they will receive all services due them as if they had been found to meet full SPMI criteria. Thus, the prescription of these medications is a "proxy" for SPMI status. Against our current expectation of 90%, Defendants reported:

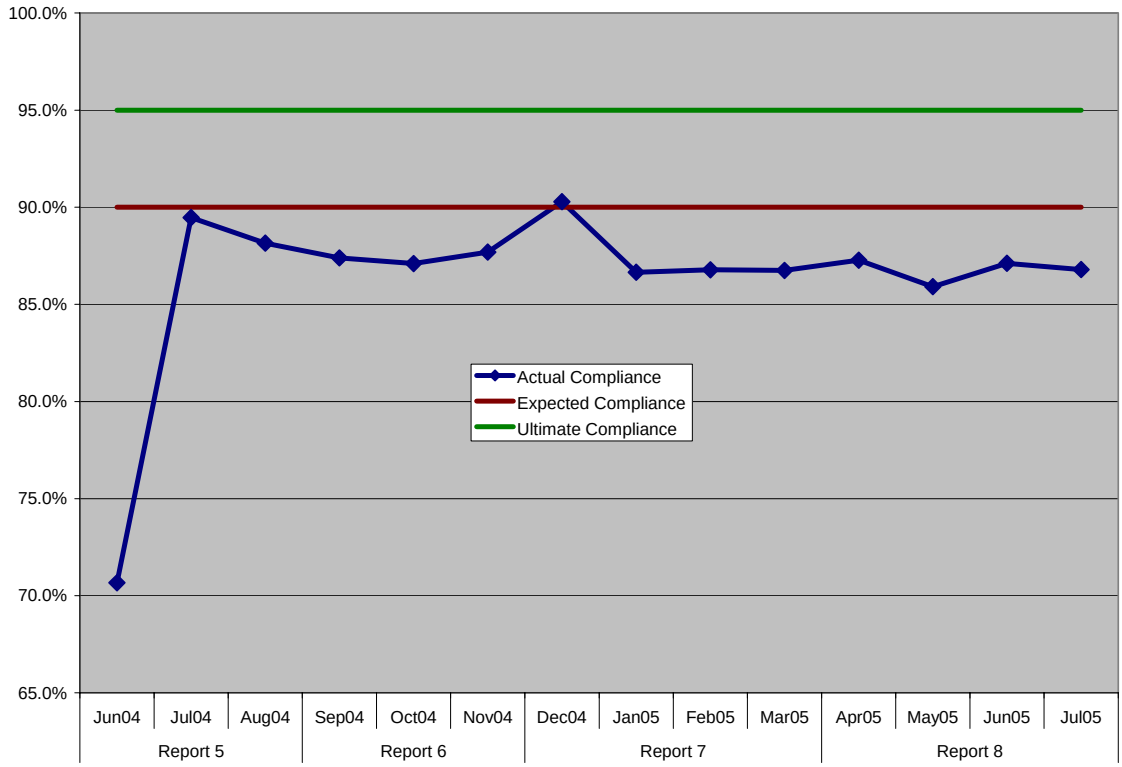
Table 4: PI 2.3. Inclusion as LSPMI if on Medications

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Compliance	70.7%	89.5%	88.1%	87.39%	87.1%	87.7%

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance	90.3%	86.7%	86.8%	86.8%	87.3%	85.9%	87.1%	86.8%

[22] An "M" designation in Defendants' database indicates that the individual was seen by mental health. Most, though not all, of these individuals ultimately become Class Members.

Figure 2: PI 2.3. Inclusion as LSPMI if on Medications



The plateau described in our last two reports has continued for the third consecutive reporting period, covering an entire year. While in theory any leveling of compliance rates may represent that Defendants have reached the ceiling – the maximum result that Defendants will attain for this measure – we do not accept that this is the case absent an analysis of detailed information regarding the nature of the barriers faced by defendants, the remedial efforts they have undertaken to overcome those barriers, and the efficacy of those efforts. In this instance, we believe that it is not the ceiling, not only because we do not have such information to review, but also because of the conceptual simplicity of this task.[23] All that is required is to note that the Class Member is on psychiatric medication

[23] Defendants object to the use of the term "conceptual simplicity," noting correctly that this does not translate into ease of operationalization. However, this objection stands at odds with their objection noted above regarding the

and (with rare exceptions for those individuals prescribed psychiatric medication for non-psychiatric reasons) to rate that Class Member as LSPMI.

Until now, we have simply suggested that Defendants explore reasons for this continued noncompliance and develop interventions designed to resolve systemic problems in classifying as LSPMI or SPMI those precipitously released individuals who are taking psychiatric medications during their incarceration. DoHMH advised us in a meeting on July 20, 2005 that they had altered the data management system to try to improve their data capture for this measure. They recognized at that time that this change had not achieved the desired goal, which is clearly demonstrated by the figure above. They further indicated that they have explored the process and believe that there is a disconnect between the prescriber of the medications and the person who completes the LSPMI form, and that these tasks are often done in isolation and without knowledge of the other task. At times, they report that the LSPMI form is completed prior to the actual prescription of medication.[24]

A potential solution to this problem would be to alter the data entry process such that latest LSPMI form information would overwrite any prior entries in the discharge planning database. A more satisfactory long term solution would be the development of an electronic medical record that would capture this data as it happened. We intend in the coming reporting period to explore this process in detail with Defendants.

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inclusion of the LSPMI form in the charts. In fact, there, Defendants object to our findings of noncompliance specifically based on the data dump methodology that is the basis for this measure.

[24] The instructions for the completion of the LSPMI form read, in part: "This form is to be completed at the initial assessment by mental health staff AND when the patient is started on a Brad H. Medication List medication, if that occurs later." In such cases, we would accept a LSPMI rating of "not LSPMI" (assuming other criteria were not met) on the first LSPMI form, because the Class Member was not prescribed medication at the time the form was completed. The LSPMI rating would then be redone per policy at the later time of the prescription of medications, permitting the prescription to be taken into account in the second LSPMI rating.

5. Performance Measure 2.4: Appropriateness of SPMI Assessment

As discussed above, we will circulate a private report to the Parties regarding this measure, within a few weeks of the publication of this Report.

6. Performance Measure 3.1: Timeliness of CTDP

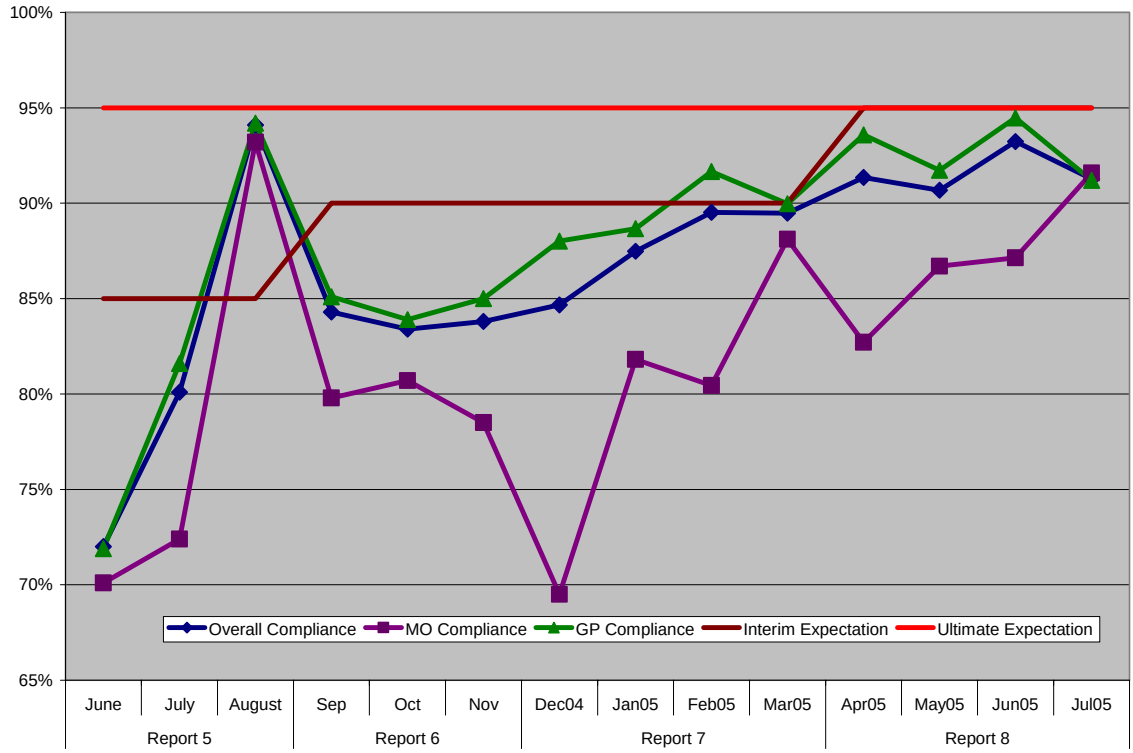
Paragraphs 16 and 17 of the Stipulation require Defendants to complete a CTDP for Class Members in General Population ("GP") within 15 days of the initial assessment. They must complete a CTDP for Class Members in Mental Observation ("MO") Units within 7 days.[25] This measure is designed to test Defendants' compliance with these requirements. Against our expectation of 95%, for the current reporting period, Defendants reported:

Table 5: PI 3.1. Timely Completion of CTDPs

	Report 8			
	Apr05	May05	Jun05	Jul05
Overall Compliance	91.3% 718/786	90.7% 749/826	93.2% 771/827	91.3% 607/665
MO Compliance	82.7% 134/162	86.7% 150/173	87.1% 122/140	91.6% 98/107
GP Compliance	93.6% 584/624	91.7% 599/653	94.5% 649/687	91.2% 508/557

[25] There is a formal exception to this expectation that we have accepted. For Class Members transferred from GP to MO after the initial assessment, the due date for the CTDP will be 7 days after the transfer, not 7 days after the initial assessment.

Figure 3: PI 3.1. Timely Completion of CTDPs



It is evident that the improvement noted in overall compliance and in compliance in both the GP and the MO individually has continued during the current reporting period. As a rule, compliance in the MO continues to lag behind compliance in the GP, although they appear to be converging during this reporting period.

Exclusions

Defendants reported the following information regarding exceptions to the denominator for this measure for the May 2005 cohort:

Table 6: PI 3.1. Exclusions from CTDP

	Apr05	May05	Jun05	Jul05
# CMs with initial assessment	1141	1231	1218	1025
Released before CTDP due[26]	271	316	289	291
Medical delay	5	8	15	6
Court delay	11	5	12	4
Transfer to MO[27]	2	8	9	5
"Refused delay code"	66	68	66	54
Total exclusions	355	405	391	360
# Eligible for CTDP	786	826	827	665

Thus, using May 2005 as an example, Defendants reported that a total of 1231 members of the cohort had initial assessments, leaving 826 as the denominator for the overall group in this cohort once all exceptions are accounted for. As we indicated above, we do not accept as a rule the medical and court delays. Especially for this measure, where Defendants have 7 or 15 days to complete the task, it is imperative to have a more sophisticated sort of delay code than a simple "on-off" switch. While the numbers are small, the concept is important, especially given the cascading nature of the discharge planning process.

Defendants, in their comments to the draft report, take exception to our suggestion regarding more sophisticated handling of medical and court delay codes. They state that the fact that the Stipulation provides them with 7 or 15 days to complete the CTDP (depending upon whether the Class Member is housed in General Population or Mental Observation housing) does not mean "that the CTDP could have been done properly and meaningfully at any time within that time period." Rather, they note that this period,

[26] These numbers are not the same as those included as line 3.1.4. ("# (and %) of CMs and inmates with an "M" designation released from jail, who had an initial MH assessment, but who were released prior to the CTDP due date") on the performance measure data reports DoHMH provides to us each month. There, they reported that in the four months of the current reporting period, 346, 381, 352 and 331 individuals were released prior to the CTDP respectively. We are uncertain as to the reason for this disparity.
[27] Excluded from GP only.

based upon the Board of Corrections Minimum Standards, recognizes that "this [the 7 or 15 days respectively] was the amount of time necessary for appropriate observation." They go on to note that they may not be aware in advance of a Class Member's court date or hospital transfer and that in essence to hold them accountable for these timeframes creates a standard they cannot meet and is contrary to the dictates of paragraphs 6 and 9 of the Stipulation.

We agree with Defendants that performing this task too soon, especially in the MO where staff should be performing substantial observation of Class Members, may be inappropriate. We accept that Defendants have operationalized the CTDP procedure to ensure that the task is attempted and completed near the end of the prescribed time, to allow for necessary observation and information gathering. Therefore, we believe that court and medical delays are intrusive to this process ***only when they occur at or near the end of the prescribed time and only when it in fact interferes with an attempt to complete the task***. We intend to explore ways of operationalizing a method for identifying and monitoring these cases with DoHMH. Specifically, we anticipate that the new data management system currently under development will be able to accurately handle this type of case identification method.

We had extensive discussion with DoHMH regarding the nature of the exception "refused delay code." It is our current understanding that this includes individuals who refuse the CTDP and never are seen again by mental health as well as those who refuse the CTDP and are seen at a later date for a CTDP. For the latter group, the term "refused delay code" appears accurate, in that it is the Class Member's refusal that precipitates the delay.

The former group, however, is a potentially complex group of individuals. Mental health staff may deal with these refusals in different ways. Some individuals may simply be told to "come back if you change your mind." These would then be determined, according to ¶18, not to be Class Members, if it was determined that no further mental health intervention was clinically indicated, and if they were not prescribed medications. Other individuals, however, might correctly be allowed to refuse, but might still be assessed by the clinician to be in need of mental health follow up. These people would be included in the class certified by the Court (page 2 of the Stipulation), despite the refusal of mental health treatment, but they would not be designated a Class Member pursuant to ¶18 (if they were not on psychiatric medications). Defendants argued in their comments that ¶18 represents the operational definition of Class Membership for individuals not on medications: the definition there is "shall be designated a Class Member as of the date of completion of his or her CTDP." Based on this definition, Defendants argue that individuals who refuse further mental health follow up, not being Class Members, would not be eligible for discharge planning services. Defendants acknowledge that a "patient who refuses mental health services or completion of the CTDP [and who] is [in] receipt of psychiatric medication for treatment of a mental condition. . . is a class member pursuant to paragraph 27." They go on to assert that it "may not be possible for discharge planning staff to assist him/her because of their refusal of services." In their latter formulation, we believe Defendants misunderstand the distinction between refusing mental health services and refusing discharge planning services. We believe that Defendants must put in place a mechanism for offering discharge planning services to individuals who meet any Class Member definition, including those who meet the

definition due to prescription of psychiatric medications but who have refused mental health care, even to the extent of not having a CTDP completed.

In summary, we believe that there are 3 types of refusers of mental health care, some of whom are entitled to discharge planning services under the stipulation:

- people who refuse all mental health care and are assessed by mental health staff not to need further follow up,
- people who refuse all mental health care but are assessed by mental health staff to be in need of further follow up, and
- people who are prescribed psychiatric medication but refuse other mental health services.

In our view, the latter two groups both fall into the definition of the class certified by the Court. Only the third group falls into the class as defined by ¶¶18 and 27. This complexity is not captured in the current exclusion format or report. We have asked that DoHMH consider this information and develop a more sophisticated mechanism for reporting it to us.

Analysis of Late CTDPs

As discussed in our last report, from a quality of care standpoint, there are qualitative differences in cases in which the CTDP was completed late versus those in which the CTDP was never done, and there are qualitative differences between cases in which the CTDP was done shortly after the deadline versus those done long after the deadline. Defendants provided us with data on cases in which the CTDP was completed late or not completed. Defendants reported as follows for the current reporting period:

Table 7: Late and uncompleted CTDPs

	Apr05		May05		Jun05		Jul05	
	Late	No	Late	No	Late	No	Late	No
1 Day	10	1	6	4	5	0	1	3
2 Days	4	3	8	1	1	0	5	1
3 to 7 Days	14	3	16	5	14	3	12	6
8 to 14 Days	8	2	13	4	9	2	3	3
15 to 30 Days	8	0	6	1	6	3	4	3
Over 30 Days	8	6	5	8	3	8	5	11
Total	52	15	54	23	38	16	30	27

Table 8: Late and uncompleted CTDPs in GP

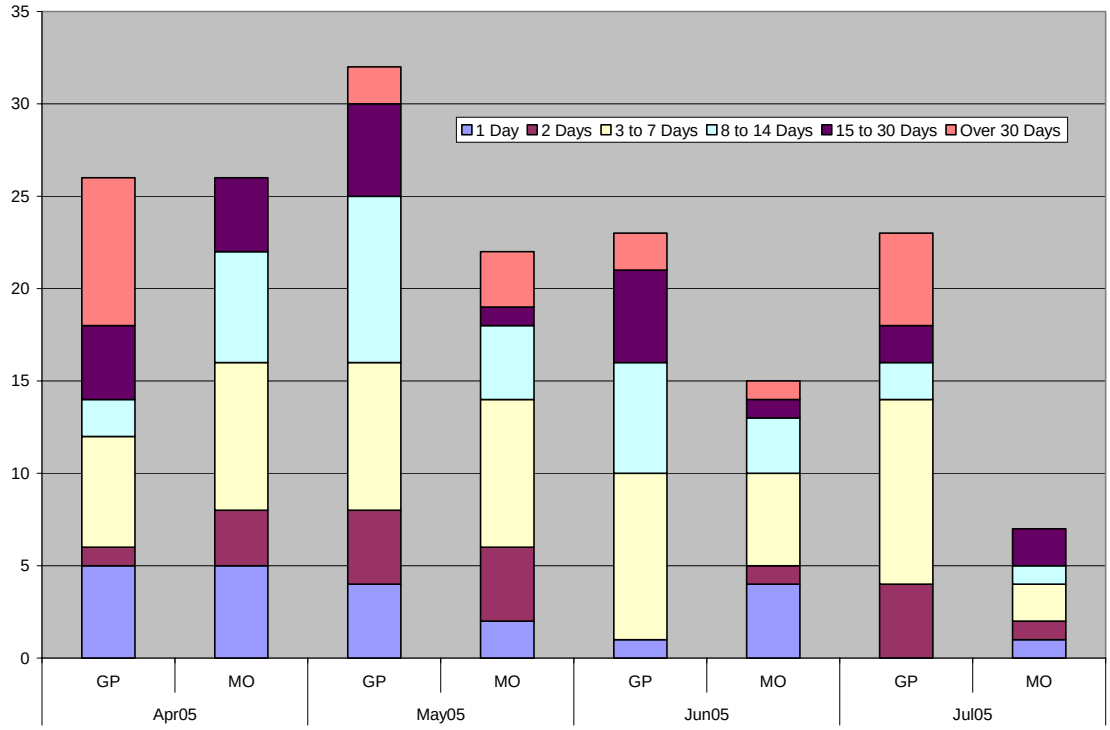
	Apr05		May05		Jun05		Jul05	
	Late	No	Late	No	Late	No	Late	No
1 Day	5	0	4	3	1	0	0	2
2 Days	1	3	4	1	0	0	4	1
3 to 7 Days	6	3	8	5	9	3	10	5
8 to 14 Days	2	2	9	4	6	2	2	3
15 to 30 Days	4	0	5	1	5	2	2	3
Over 30 Days	8	6	2	8	2	6	5	11
Total	26	14	32	22	23	13	23	25

Table 9: Late and uncompleted CTDPs in MO

	Apr05		May05		Jun05		Jul05	
	Late	No	Late	No	Late	No	Late	No
1 Day	5	1	2	1	4	0	1	1
2 Days	3	0	4	0	1	0	1	0
3 to 7 Days	8	0	8	0	5	0	2	1
8 to 14 Days	6	0	4	0	3	0	1	0
15 to 30 Days	4	0	1	0	1	1	2	0
Over 30 Days	0	0	3	0	1	2	0	0
Total	26	1	22	1	15	3	7	2

Viewed graphically, the late CTDPs are broken out as follows:

Figure 4: Late CTDP Comparison



This graph makes it clear that a larger proportion of late CTDPs in MO are done within 7 days of the due date.

We have dichotomized the late CTDPs at day 7, as follows:

Table 10: Dichotomization of Late CTDPs

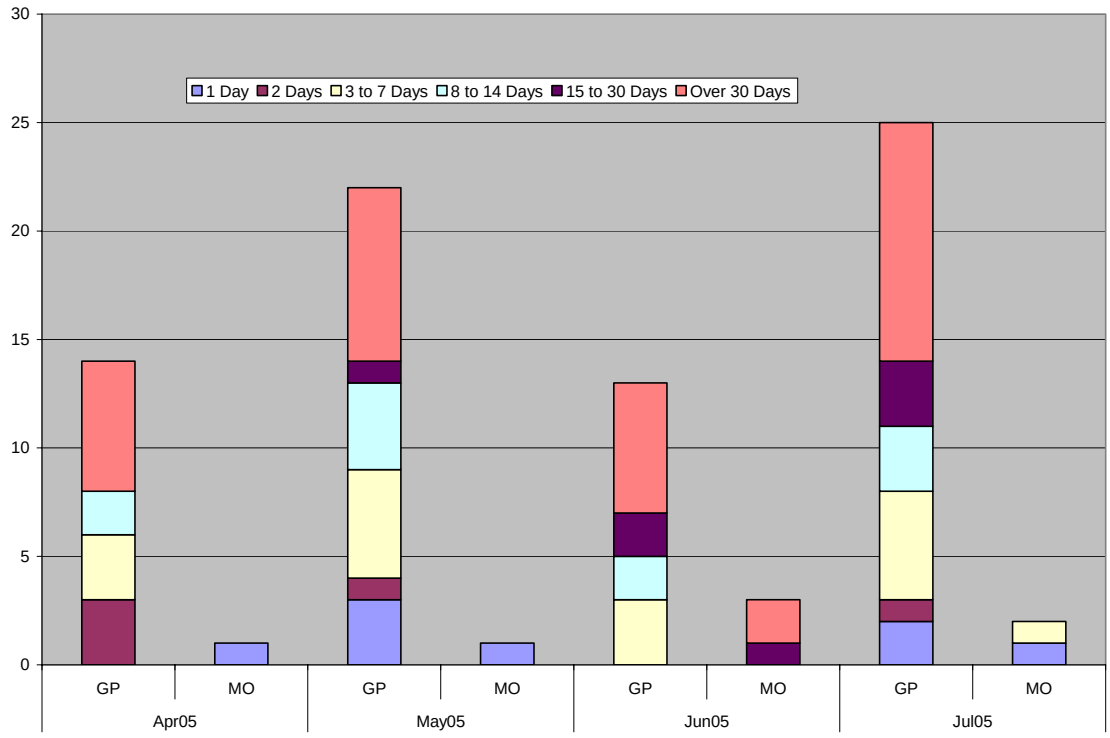
	Apr05			May05			Jun05			Jul05		
	All	GP	MO	All	GP	MO	All	GP	MO	All	GP	MO
≤7 days late	28	12	16	30	16	14	20	10	10	18	14	4
>7 days late	26	16	10	24	16	8	18	13	5	12	9	3
% of late cases done within 7 days of deadline	52%	43%	62%	56%	50%	64%	53%	43%	67%	60%	61%	57%

In our last report, Defendants indicated that between half and two thirds of late CTDPs were done within 7 days of the deadline. Current data replicates this finding. We

note that this overall finding is driven by poorer performance within the GP as compared to the MO; in the MO, two thirds of late CTDPs were completed within 7 days of the deadline (though this performance dropped somewhat in July), perhaps reflecting increased attention to Class Members housed in the MO overall given the increased severity of illness among MO inmates.

Viewed graphically, the cases in which the CTDP was not done appear as follows:

Figure 5: No CTDP analysis



This graph demonstrates that rarely is a case missed in the MO, while it happens more regularly in the GP. We are not clear on the breakdown of the "not done CTDPs" by days from the due date and require clarification from DoHMH.

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

Table 11: Overall Completion of the CTDP

	Dec04	Jan05	Feb05		Apr05	May05	Jun05	Jul05
total done on time	674	594	615		718	749	771	607
	84.7%	87.5%	89.5%		91.3%	90.7%	93.2%	91.3%
total done late	68	52	60		52	54	38	30
	8.5%	7.7%	8.7%		6.6%	6.5%	4.6%	4.5%
total not done	54	33	12		15	23	16	27
	6.8%	4.9%	1.7%		1.9%	2.8%	1.9%	4.1%
TOTAL[28]	796	679	687		786	826	827	665

While this data is incomplete, it may reflect a gradual improvement over time both in completing CTDPs overall and in completing them within the required deadline. We note that there is a higher percentage of CTDPs that never were done in the July cohort.

Conclusions

Defendants continue to gradually improve in their timely completion of the CTDPs and are slowly approaching our expectation of 95% compliance with this requirement. Further, for those cases not in compliance with the timelines, a minority were completed within a week of the deadline, though performance here was better in the MO. Finally, Defendants continue to reduce the number of cases in which the CTDP was not completed.[29] We anticipate further improvements during the coming reporting period.

[28] Where these totals do not add up (e.g. in April, June, and July), we have accepted the totals provided in the monthly data reports. We are uncertain as to whether the missing cases were done on time, late or not at all.

[29] It is important that Defendants strive to eliminate these cases for several reasons. First, they are Class Members who have a right to discharge planning, but they might not get those discharge planning services because it is the CTDP that initiates the discharge planning process. (Defendants point out that in some instances they provide discharge planning services to in the absence of a CTDP – however, it is far from clear that this is done in every eligible case.) Additionally, as these cases cannot be assumed to enter the discharge planning process, they cannot

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

As discussed above, we will circulate a private report to the Parties regarding this measure, within a few weeks of the publication of this Report.

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

Defendants continue to report 100% compliance for the initiation of the prescreening both in the jails and at SPAN (measure 4.1), a task they equate with the completion of the CTDP as discussed in our last report at pp. 65-66.

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

Table 12: PI 4.2. Completion of Medicaid Prescreens

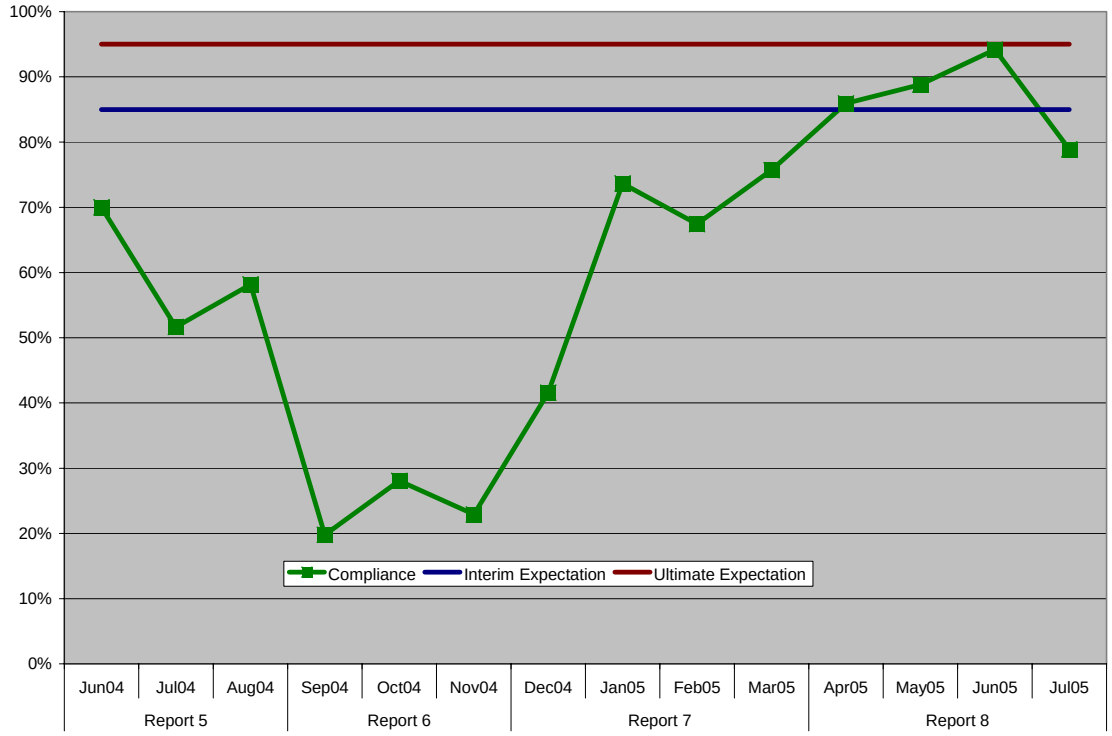
	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Compliance	70.0% 91/130	51.6% 63/122	58.2% 167/287	19.8% 37/187	28.1% 62/221	22.9% 47/205

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance	41.6% 74/178	73.6% 109/148	67.4% 87/129	75.7% 134/177	86.0% 104/121	88.8% 127/143	94.2% 194/206	78.9% 86/109

be included as "compliant" or "noncompliant" cases in later steps of the discharge planning process. Thus, they cannot be included in our data.

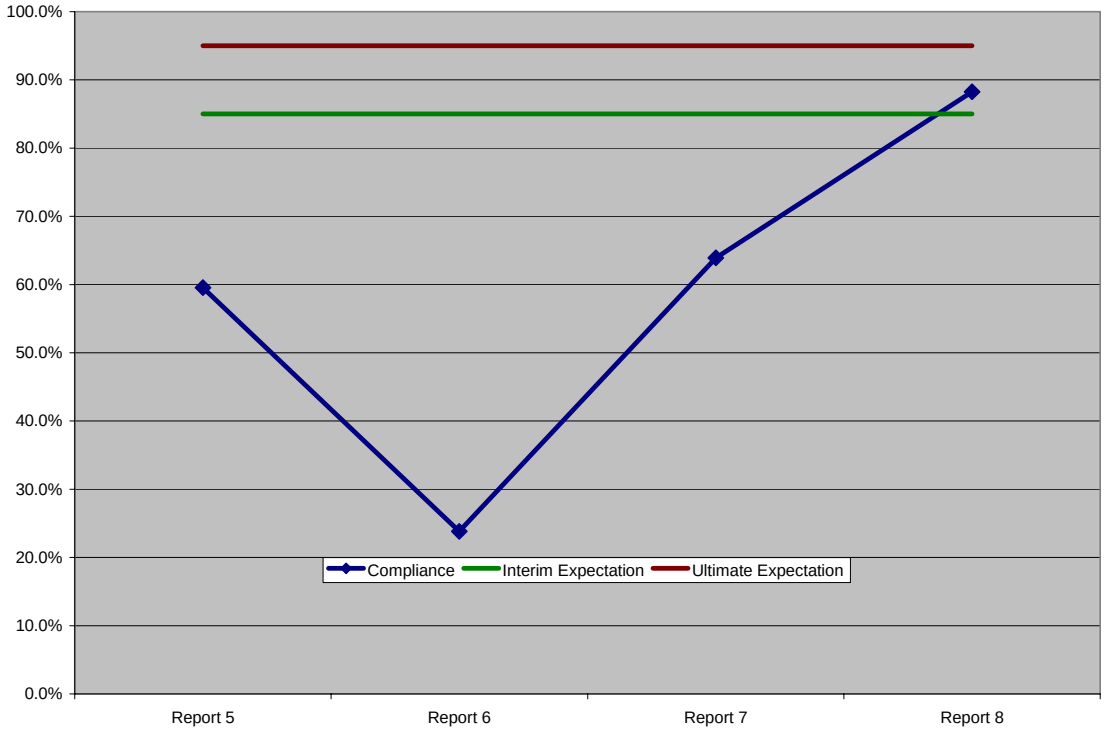
A complete understanding of the pathways a Class Member can take through the system would at times require that these Class Members be added back into the denominators for certain later steps. We are not here signaling an intention to recalculate the manner of rating compliance we have outlined to date, but rather to note the utility of this exercise for understanding the later, real-world effects of Defendants' non-compliance with tasks which come due early in the process. Such an understanding also serves to support our requirement of high levels of substantial compliance where they are attainable for individual tasks – it is only when compliance is high on multiple sequential tasks that there is any hope that a majority of Class Members will receive the needed services at the end of that sequence. We will engage in this type of analysis where we believe it will assist in understanding how the various requirements of the Stipulation influence one another. This analysis would reduce the ultimate yield at the end of the sequence, but would more accurately describe the receipt of tangible discharge planning services by Class Members.

Figure 6: PI 4.2. Completion of Medicaid Prescreens



Defendants' performance on this task continued to improve until the latest month for which we have data, when there was a decline in the rate of compliance they reported for the group of Class Members released to the community in July 2005. Over the reporting period as a whole, Defendants met the requirement 88.3% of the time (511/579). A graph demonstrating Defendants performance by reporting period is helpful in viewing the progress to date:

Figure 7: PI 4.2. Completion of Medicaid Prescreens



We note that the July 2005 report for this measure includes many fewer cases. Defendants advised us that they too are aware of this and have determined after investigation that this resulted from a pervasive data entry error related to a procedure change they introduced. They have initiated staff training and supervision to remedy this. However, because the data is provided based on a cohort of Class Members released to the community in the given month, the effect of this systematic error will be seen over the coming months.

Defendants removed excluded cases from the denominator for measure 4.2. During that month, the following exclusions were provided:[30]

[30] We remain uncertain as to the meaning of the exclusion "MA prescreen determination N/A".

Table 13: PI 4.2. Exclusions from Prescreens

	Apr05	May05	Jun05	Jul05
# CMs released to community with CTDP completed[31]	466	496	522	384
CMs refusing all discharge planning	146	149	140	130
CMs refusing prescreening specifically	82	89	102	78
CMs whose MA prescreen determination N/A	6	11	13	8
CMs with no SSN (delayed completion)	4	1	2	0
CMs with medical delay	22	19	11	12
CMs with court delay	43	35	28	20
CMs with refusal delay	42	49	20	27
total exclusions from denominator for 4.2	345	353	316	275
# Eligible for Prescreen	121	143	206	109

Thus, using May as an example, Defendants advised us that a total of 496 Class Members who had a CTDP completed were released to the community during the month. Thus, accounting for the exclusions, a total of 143 prescreens should have been completed in May. Data reported above indicates that 127 of 143 were completed within the required timeline.

Within this data, we find the exclusions for medical and court delays especially confusing.[32] Given the nature of the Defendants' data reporting for this measure, we believe that there should be no delays for these reasons that were not already included as delays in the CTDP completion. This is true because (1) Defendants equate the initiation of the prescreen to the completion of the CTDP and (2) the completion of the prescreen does not require the presence or participation of the Class Member. We therefore argued that for this measure, there should only be at most 299 exclusions and the denominator therefore should be 197. If this were the case, the compliance rate would instead be 127/197 or 64.5%.

[31] As discussed in the introduction to this section, we believe this to be the wrong statement of the cohort to be included for consideration for this measure.
[32] Defendants inform us that they are working to create more informative descriptions of these exclusions.

In discussion with DoHMH, they made clear that from a procedural standpoint, the completion of the CTDP and the initiation of the prescreen are often not contemporaneous. Because of staffing limitations and timing issues, the prescreen may be initiated before or after the CTDP. Thus, there may indeed be delayed prescreen initiations for court or for medical reasons when the CTDP did not have such delays. We applaud Defendants' holding themselves to a stringent standard (completing all prescreens within 3 business days of the CTDP, regardless of initiation timing) but Defendants must develop a more coherent reporting mechanism be developed regarding exclusions.

Defendants provided us with data regarding the nature of the noncompliant cases:

Table 14: Overview of Noncompliant Prescreens

	Apr05	May05	Jun05	Jul05
# Completed Timely	104 86.0%	127 88.8%	194 94.2%	86 78.9%
# Completed Late	11 9.1%	8 5.6%	9 4.4%	18 16.5%
# Not Done	6 5.0%	8 5.6%	3 1.5%	5 4.6%
Denominator	121	143	206	109

This data supports Defendants' explanation of the falloff in compliance during July as being generated from the data entry problem: there is a marked increase in late prescreens, but the rate of prescreens not completed is fairly stable.

Overall, pending further discussion of the correct exclusions and denominators, Defendants have met our interim performance expectation of 85% for measure 4.2. In our draft Report, we indicated an intent to raise the expectation for this measure to our final expectation of 95%. Consistent with our agreement with DoHMH, described above,

we are deferring implementing this change pending the results of the process described in that agreement.

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

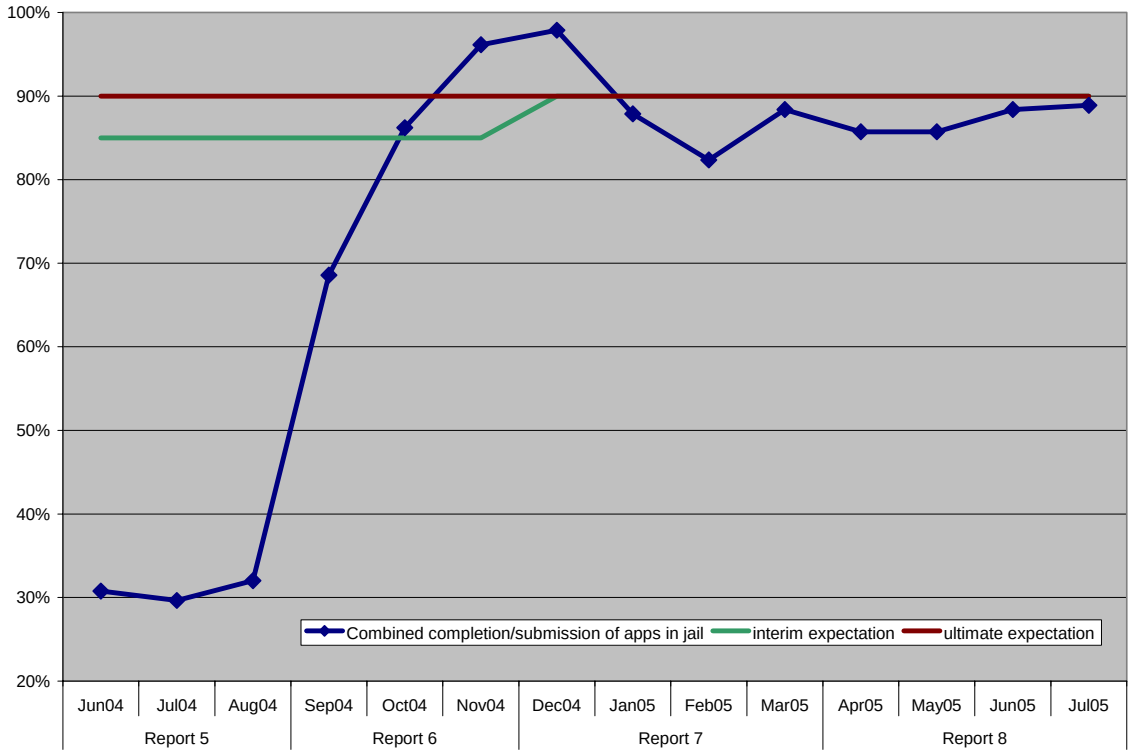
Measure 5.1 tests Defendants' compliance with the combined requirement to complete and submit Medicaid applications, for those Class Members requiring such applications, within 5 business days of the completion of the prescreen if the Class Member is in a jail. Due to their having achieved a high level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

Table 15: PI 5.1. Completion and Submission of Medicaid Applications from Jails

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Combined completion/submission of MA Applications	31% 8/26	30% 8/27	32.0% 16/50	68.57% 24/35	86.2% 25/29	96.2% 25/26

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Combined completion/submission of MA Applications	97.9% 46/47	87.9% 29/33	82.4% 28/34	88.4% 38/43	85.7% 30/35	85.7% 30/35	88.4% 38/43	88.9% 24/27

Figure 8: PI 5.1. Completion and Submission of Medicaid Applications from Jails



It is apparent that Defendants continue to approach the performance expectation of 90% for this measure.

Defendants provided the following data regarding the noncompliant cases:

Table 16: Overview of Noncompliant Medicaid Applications

	Apr05	May05	Jun05	Jul05
# Completed Timely	30 85.7%	30 85.7%	38 88.4%	24 88.9%
# Completed Late	2 5.7%	5 14.3%	3 7.0%	3 11.1%
# Not Done	3 8.6%	0 0.0%	2 4.7%	0 0.0%
Denominator	35	35	43	27

Given the small data set, we cannot identify a clear pattern in these noncompliant cases.

Defendants provided the following information regarding exclusions from this measure:

Table 17: PI 5.1. Exclusions from Medicaid Application

	Apr05	May05	Jun05	Jul05
# Prescreened: "need new application"	40	51	61	42
Refused MA application	2	6	6	5
Medical delay	1	2	3	3
Court delay	0	3	5	2
Released before Prescreen + 5BD	2	3	2	4
Refused delay	0	2	2	1
Total Exclusions	5	16	18	15
# Eligible for new MA application	35	35	43	27

For example, in May, 51 of the prescreens completed for Class Members released in that month resulted in a finding of "need new application." Sixteen of these individuals were excluded, as summarized above, leaving 35 Class Members eligible for a new Medicaid application.

Defendants reported the following information regarding the outcomes of the prescreening, the importance of which has been discussed in earlier reports.[33]

Table 18: Breakdown of Medicaid Prescreening Outcomes

	Apr05	May05	Jun05	Jul05
# with active Medicaid	61 53.5%	72 56.7%	104 53.9%	47 54.7%
# needing reactivation	21 18.4%	26 20.5%	38 19.7%	12 14.0%
# needing new applications	25 21.9%	24 18.9%	45 23.3%	26 30.2%
# of old codes (active/reactivated)	7 6.1%	5 3.9%	6 3.1%	1 1.2%
Total # of Prescreens submitted	114	127	193	86

As we have noted in prior reports, we believe that the number of prescreens that result in a finding of "need new application" is the number of applications that should be completed and submitted.

[33] See, for example, pp. 68-69 of our Seventh Report.

Defendants explained that, although the data regarding the outcomes of the Medicaid prescreens are based on those done within the required time frames, the data regarding the Medicaid applications completed and submitted includes those Class Members who had the prescreening done on time and whose result was "need new application" as well as those Class Members whose prescreening was done late and whose result was "need new application." Therefore, the denominator in Table 15 regarding numbers of applications done is higher than the number reported for prescreening outcomes of "need new application" in Table 18. We reminded DoHMH that, at least since our last report, we have requested that they provide us not only with numerators and denominators but with all information required to create those numerators and denominators. While Defendants have been helpful in providing us with exceptions to a number of the denominators, they have not developed a mechanism to routinely provide us with all of the information we require in order to fully understand their performance. The measure under discussion here is an example of why we need this information. DoHMH has agreed to set up a joint meeting with HRA to discuss this and other interagency data reconciliation issues, although they note their objection to our requirement.

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

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

In our last report, at pp. 69-73, we included a discussion of the remaining exclusionary elements to the denominator for measure 5.3, which evaluates Defendants'

performance in providing eligible Class Members with MGP cards. At present, the only remaining area of disagreement involves the question of whether individuals who are under age 18 are eligible for MGP. Defendants have provided us with no further documentation on point, although in comments to our draft report they indicate that they requested information about this from the State Office of Mental Health, and have yet to receive a response.[34]

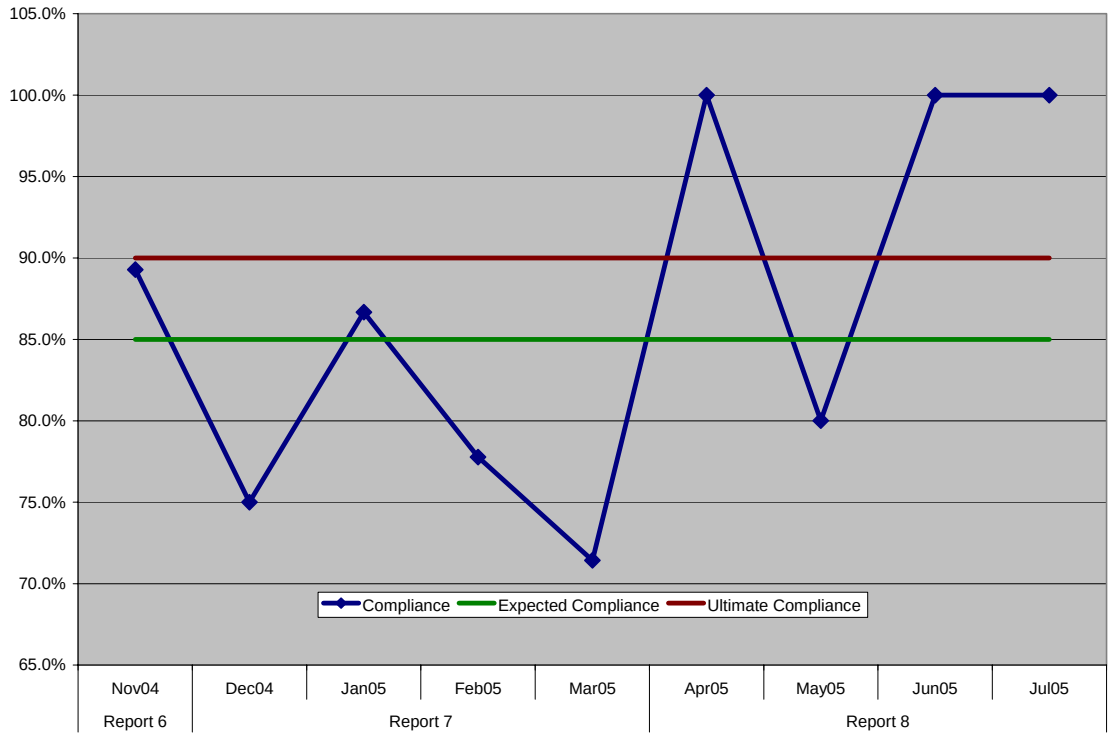
The purpose of this requirement is to ensure that Class Members believed to be eligible for Medicaid, who almost by definition are eligible for and in need of mental health services after they are released from the DOC, are able to access these services. Our current measure reads: [#of class members 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)]. Against our expectation of 85%, Defendants reported:

Table 19: PI 5.3.1. Provision of MGP Cards from Jails

	Report 6			Report 7				Report 8			
	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance	NC 27	NC 28	89% 25/28	75% 6/8	87% 13/15	78% 7/9	71% 5/7	100% 4/4	80% 4/5	100% 4/4	100% 7/7

[34] We were not aware of this effort until after we issued our draft report. As in any area, we cannot note Defendants efforts at responding to our requests or attaining compliance if we are not made aware of them.

Figure 9: PI 5.3.1. Provision of MGP Cards from Jails



Considering the entire data set for this reporting period, Defendants reported providing an MGP card to 19 of 20 (95%) of eligible Class Members during this reporting period. This represents a notable improvement from prior reporting periods and it exceeds both our interim and our ultimate expectations of compliance. In our draft Report, we indicated an intent to raise the expectation for this measure to our final expectation of 90%. Consistent with our agreement with DoHMH, described above, we are deferring implementing this change pending the results of the process described in that agreement.

That said, the numbers remain very small. Defendants provided us with the following information regarding exceptions from this measure.

Table 20: PI 5.3.1. Exclusions from MGP

	Apr05	May05	Jun05	Jul05
# of CMs released to community with CTDP completed	466	496	522	383
1. global refusers	146	149	140	130
2. CMs without prescriptions on release	185	193	251	137
3. CMs refusing Medicaid applications	41	50	43	39
4. CMs refusing Prescreen	12	13	16	7
5. CMs refusing MGP card	4	8	6	7
6. CMs not on medications for mental illness in jail	12	9	13	12
7. CMs prescreened as active Medicaid at prescreen	42	44	26	29
8. CMs with active Medicaid	8	8	7	7
9. CMs prescreened as "active/reactivated" or "reactivated" or whose release date is > prescreen determination + 7 days	9	8	11	7
10. CMs ineligible for MGP due to "not in time frame"	1	6	1	1
11. CMs ineligible for MGP due to "Medicaid ineligible"	2	1	4	1
12. CMs ineligible for MGP due to "short incarceration"[35]	0	2	0	0
TOTAL EXCLUSIONS	462	491	518	377
# Eligible for MGP card	4	5	4	6

Defendants reported that a total of 496 Class Members included in the cohort for May 2005 had CTDPs completed, so the denominator for this measure would be 5 (=496-491). As in our last report, exclusions 1-9, 11 and 12 appear proper to us. Regarding exclusion 10, Defendants' initial clarification was that the phrase not in time frame indicates that the "Medicaid application for the class member has not been completed and cannot be completed within seven days of release, which is a requirement for the MGP card." We have initiated a discussion with DoHMH so that we may better understand this exclusion.

11. Performance Measure 6.1.1: Timely Reactivation of Medicaid

Defendants are obligated to reactivate Medicaid for a Class Member "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

[35] "Short incarceration" includes those Class Members eliminated from the denominator because they were released after the CTDP but before the completion of the prescreening.

the Pre-Screening Process is completed where an investigation is deemed necessary."[36]

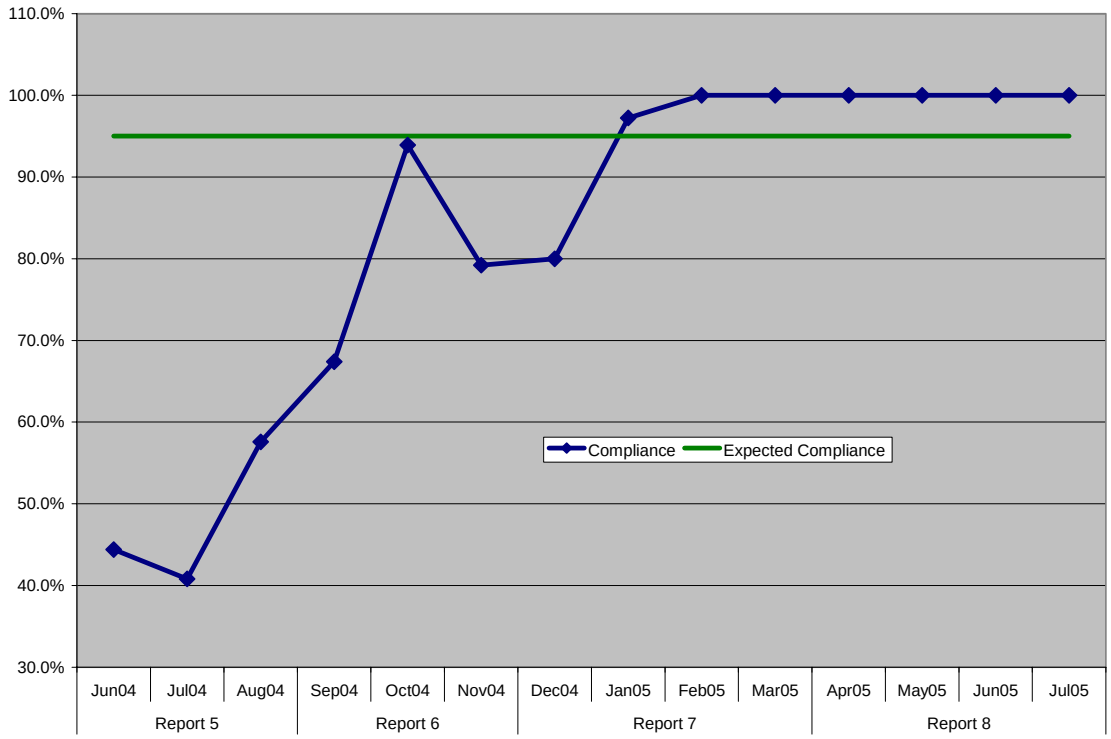
Defendants reported as follows:

Table 21: PI 6.1.1. Reactivation of Medicaid

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Compliance	44.4% 63/152	40.8% 64/157	57.6% 132/229	67.4% 66/98	93.9% 46/49	79.2% 42/53

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance	80.0% 48/60	97.2% 35/36	100.0% 19/19	100.0% 22/22	100.0% 23/23	100.0% 17/17	100.0% 25/25	100.0% 15/15

Figure 10: PI 6.1.1. Reactivation of Medicaid



Defendants' improved performance, noted in our last report, has been sustained during the current reporting period. At page 77 of our last report, we noted that the

[36] Reference: Performance Measure 6.1.1.

overall numbers of reactivations had dropped fairly dramatically, as can be seen here in Table 21. There, we speculated that in part this was related to poor performance on Medicaid prescreens during the Sixth reporting period. As noted above, performance on the prescreens has improved dramatically, with the caveats noted.

We raised the drop in absolute numbers with DoHMH. They believe that their reporting has been more accurate over the past year since they revised their methodology for calculating and reporting this data-point. However, this explanation does not account for the drop-off from September 2004 (denominator = 98) through July 2005 (denominator = 15).

DoHMH correctly note that they must exclude from consideration for reactivation of Medicaid those Class Members who have no projected release date or next court date in the database. This information is "dumped" from the DOC IIS into the discharge planning database, and it has been our experience that many inmates have some date in the IIS for a next court date, accurate or not. In their comments, they reported that they "have discovered that a high number of cases have no 'next court date' or 'projected release date'" and that they will review this further.

DoHMH speculated that at earlier points, cases without a known next court date or projected release date were included in the denominator; such cases no longer are included in the denominator for this measure. While we accept this as theoretically possible, it does not seem likely to account for such a large decrease as the data indicate. DoHMH agreed to look into this and to provide us with more information.

Another issue we raised with DoHMH is the finding that the denominators reported here do not match the prescreening outcome data for "needs reactivation" summarized above in Table 18. We compare the data in the table below:

Table 22: Variance between Prescreen Outcomes and Reactivations of Medicaid

	Apr05	May05	Jun05	Jul05
Prescreen result "needs reactivation"	21	26	38	12
Number reactivated	23	17	25	15
Variance	9.5%	-34.6%	-34.2%	25.0%

DoHMH explained that the data regarding "number reactivated" in this table includes those cases where the prescreening was done on time as well as those done late, but the top line only includes those done on time. Thus, in April and July, more people were reactivated than one would expect, because all prescreens are included in the group for the second line of the table. This does not, however, explain the finding for May and June. DoHMH speculated that this could be related to cases with no projected release date or next court date. We look forward to further clarification of this issue.

12. Performance Measure 6.1.2: Provision of Temporary Medicaid

Defendants have not yet begun to report data regarding the provision of Temporary Medicaid. Above, in Section II. G., we discussed the status of Defendants' efforts to meet the requirements of Justice Braun's order of November 11, 2003, vis-à-vis this task. There, we summarized Defendants efforts to date. Therefore, while Defendants are out of compliance on this measure at this time, we note their efforts to develop a system whereby they can implement the Court's order.

13. 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, said Class Member will be able to access services in the community. DoHMH provides information they receive from HRA for this measure.

Defendants reported as follows:

Table 23: PI 6.2. Temporary Medicaid Cards

Report 6	Report 7				Report 8			
Nov04	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
100.0% 68/68	100.0% 68/68	100.0% 51/51	100.0% 57/57	100.0% 77/77	100.0% 91/91	100.0% 100/100	100.0% 106/106	100.0% 170/170

In our last report, at p. 79, we outlined our explanation of who we would expect to receive a temporary Medicaid card. It is our belief 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 their comments, 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.

Continuing the analysis begun in our last report:

Table 24: Medicaid Cards: Comparison to Reactivations and Applications for Medicaid

		Nov04	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
5.1	Medicaid applications submitted	25	46	29	28	38	30	30	28	24
6.1.1	reactivated Medicaid cases	42	48	35	19	22	23	17	25	15
	Sum (5.1) + (6.1.1)	67	94	64	47	60	53	47	53	39
6.2	temp cards provided	***68***	68	51	***57***	***77***	***91***	***100***	***106***	***170***

Again, in most months for which data is available, Defendants are in fact providing more temporary Medicaid cards than we would expect for the cohort of Class Members released during that month. Defendants noted in their comments that we are attempting to correlate two different cohorts of class members. Whereas DoHMH, in their reporting on the performance measures, use as their cohort those Class Members released during a month of interest, HRA reports on tasks completed during a given month. This argument would not appear to us to be valid for this particular measure, as only Class Members who are released and who meet appropriate criteria should be receiving this service – i.e. unlike many discharge planning services, it is not a service that could be done months prior to release. We believe that we will understand this information only after we review the process by which HRA derives this data. We will request access to this information pursuant to ¶123 upon completion of this report.

b. Permanent Medicaid Cards

As described in our last report, we are satisfied that the state's vendor for the provision of permanent Medicaid cards is operating in compliance with the expectations of the Stipulation. We have not requested any information on this measure for the current report. We will conduct occasional spot checks on this issue.

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

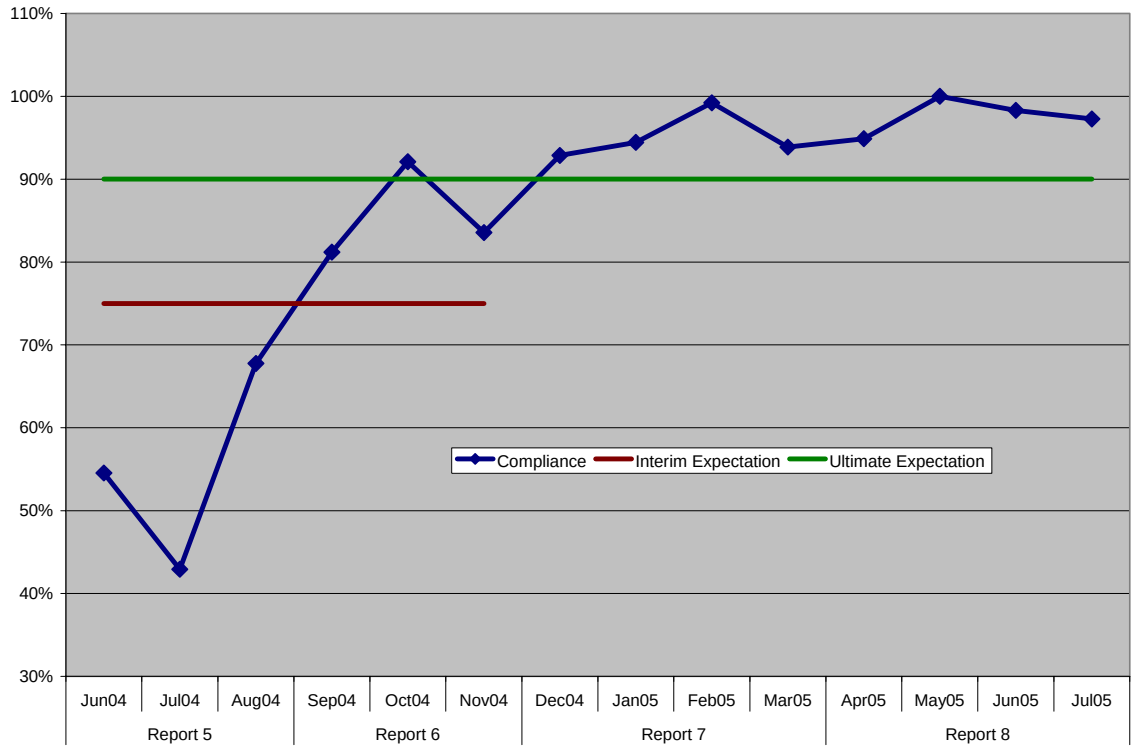
This measure includes three submeasures relating to the various obligations of Defendants to provide Class Members with medications and/or prescriptions for medications. For those Class Members who are released from jail, Defendants are obligated to provide medications for 7 days and prescriptions to cover a further 21 days (¶52, performance measure 7.1.1). For Class Members released from court (and therefore unable to get medications from the jail), Defendants are obligated to assist the Class Member in obtaining medications via different procedures depending on the timing of their appearance at SPAN. If the Class Member appears at SPAN on the day of release, ¶54 requires SPAN to coordinate with CHS in obtaining up to a 7 day supply of medications and an appointment at a community provider so that the Class Member may continue to receive the medications (performance measure 7.1.2). If the Class Member appears on days 2-30 after release, SPAN's role is limited to referring the Class Member to a community provider able to see the Class Member promptly to assess for ongoing treatment needs (¶55, performance measure 7.1.3). Given Defendants rapidly improving performance documented in our last report, we raised our performance expectation to 90%, the ultimate expectation outlined in our performance indicators. Against this compliance expectation, Defendants reported:

Table 25: PI 7.1. Provision of Medications

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
7.1.1	54.5% 150/275	42.9% 209/487	67.8% 206/304	81.2% 82/101	92.1% 105/114	83.6% 122/146
7.1.2	100% 8/8	100% 7/7	100.0% 12/12	100.00% 8/8	100.0% 7/7	100% 8/8
7.1.3	100% 4/4	100% 12/12	100.0% 39/39	100.00% 32/32	100.0% 6/6	100% 5/5

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
7.1.1	92.9% 117/126	94.4% 102/108	99.2% 128/129	93.9% 153/163	94.9% 130/137	100.0% 141/141	98.3% 116/118	97.3% 107/110
7.1.2	100.0% 4/4	100.0% 5/5	100.0% 2/2	100.0% 9/9	100.0% 3/3	100.0% 14/14	100.0% 6/6	100.0% 4/4
7.1.3	100.0% 5/5	100.0% 5/5	100.0% 2/2	100.0% 8/8	100.0% 12/12	100.0% 22/22	100.0% 14/14	100.0% 7/7

Figure 11: PI 7.1.1. Walking Medications and Prescriptions upon Release from Jail



Defendants provided the following information regarding exclusions from the denominator for this measure:

Table 26: PI 7.1.1. Exclusions from Walking Medications and Prescriptions

	Apr05	May05	Jun05	Jul05
CMs on meds, not refusing DCP services	249	260	260	202
CMs refusing walking meds	16	17	22	18
CMs refusing prescriptions[37]	0	1	0	1
CMs "whose walking meds determination is N/A"[38]	93	99	116	71
CMs "whose prescription determination is N/A"	3	2	4	2
Total Exclusions	112	119	142	92
Eligible for Walking Medications	137	141	118	110

Based on this data, it appears clear that Defendants have achieved and sustained compliance on measure 7.1.1. We will continue to follow this measure closely as it is one of the cardinal aspects of this case. We anticipate further information regarding the various exceptions to the denominator in the future as the Defendants update their data collection and reporting systems.

Defendants continue to report very high levels of compliance with all of these measures.

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

Paragraph 45 obligates Defendants to provide Class Members whose release dates are known or projected in advance with appointments for community mental health follow up upon their release. Like measure 7.1, this issue is one of the foundational issues in this litigation. Successful discharge planning includes the provision of medications for those who need them, but this is only helpful if the medication provided bridges a gap between two treatment providers. Given improvements in performance during the seventh

[37] This exclusion covers only those Class Members who *accepted* the walking medications but who *refused* the prescriptions. Those who refused walking medications and prescriptions are counted in the line above.
[38] This exclusion covers those Class Members who were released at court or bailed out, and therefore could not be provided with medications or prescriptions prior to release. The next exclusion covers those who were not given prescriptions only.

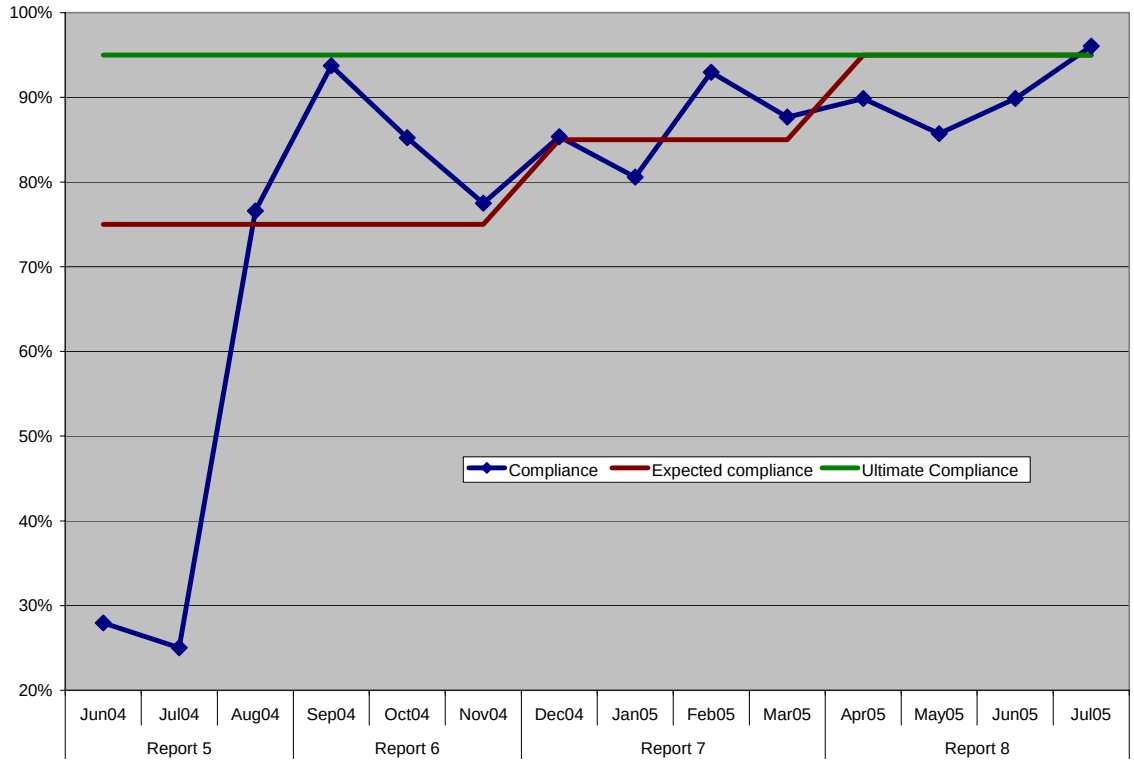
reporting period, we increased our expectation to 95%. Against this increased interim compliance expectation, Defendants reported:

Table 27: PI 8.1. Provision of Appointments to Class Members with Known Release Dates

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Compliance	28.0% 26/93	25.0% 34/136	76.6% 72/94	93.8% 45/48	85.2% 52/61	77.5% 62/80

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance	85.4% 70/82	80.6% 54/67	93.0% 66/71	87.7% 64/73	89.9% 62/69	85.7% 66/77	89.9% 62/69	96.1% 73/76

Figure 12: PI 8.1. Provision of Appointments to Class Members with Known Release Dates



Defendants reported the following information regarding exceptions from the denominator for May 2005:

Table 28: PI 8.1. Exclusions from Appointments

	Apr05	May05	Jun05	Jul05
CMs with CTPDs completed	466	496	522	383
Global Refusers	146	149	140	130
Appt/Referral Refusers	118	129	135	96
Unknown release date	133	142	178	82
TOTAL Exclusions	397	420	453	308
Total eligible for appointment	69	76	69	75

For example, Defendants indicate that 496 individuals in the May 2005 cohort had CTDPs completed and that the total number of individuals eligible for an appointment was therefore 76 (=496-420).[39]

The data demonstrate that Defendants maintained the improvements observed during the last two reporting periods but were unable to consistently achieve further improvements. Combining the data for this reporting period, we find that Defendants provided appointments to 263 of 291 eligible Class Members (90.4%), falling short of the 95% performance expectation. While they are out of compliance, we note the upward trend at the end of this reporting period. We encourage strenuous efforts to attain compliance on this important task.

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

Paragraph 47 requires Defendants to provide appointments to Class Members who appear at SPAN, using the criteria outlined in ¶44. Against a performance expectation of 95%, Defendants reported 100% compliance with this expectation for all months during the reporting period.

[39] The number 76 is slightly inconsistent with the actual denominator reported as 77 in Table 27. Similarly, in July, the numbers are slightly off.

Table 29: PI 8.2. Provision of Appointments by SPAN

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance	100.0% 28/28	100.0% 40/40	100.0% 24/24	100.0% 40/40	100.0% 32/32	100.0% 34/34	100.0% 37/37	100.0% 32/32

SPAN appears to be performing at high levels with respect to this measure.

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

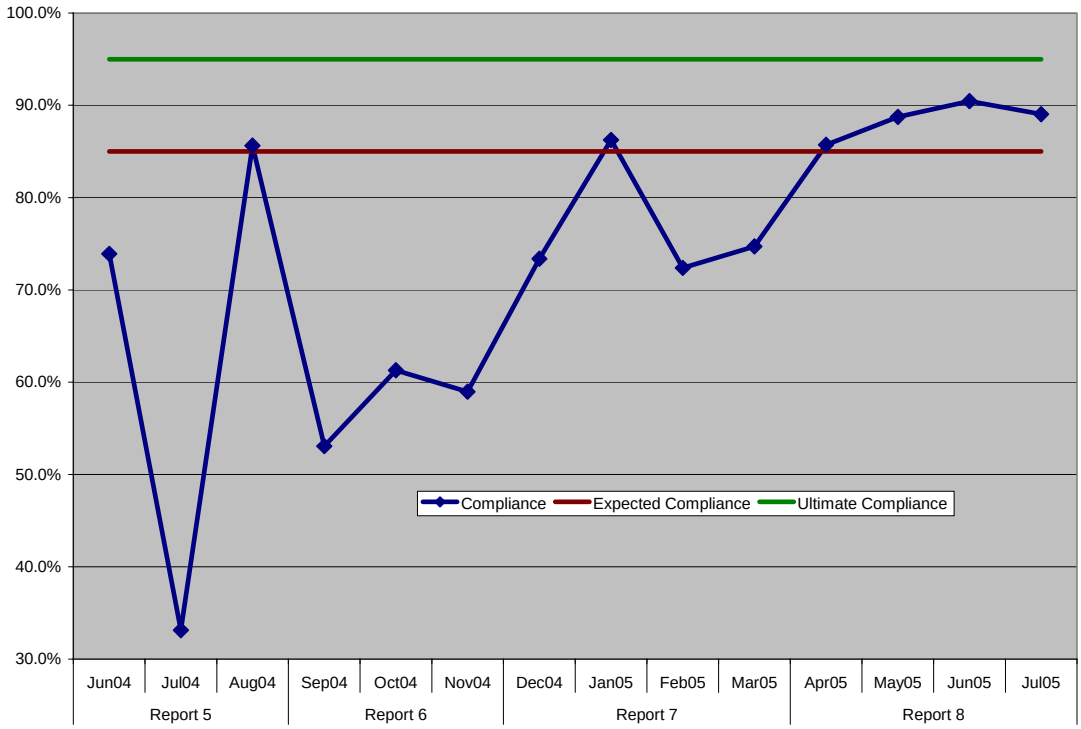
Paragraph 46 of the Stipulation requires the provision of referrals to Class Members released from jail without known or projected release dates. This has been one of the more difficult tasks for Defendants to perform, based on their inability to meet or approach our interim performance expectation of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

Table 30: PI 8.3. Referrals for Class Members with Unknown Release Dates

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Compliance	73.9%	33.1%	85.6%	53.1%	61.3%	59.0%
numerator	17	52	137	69	95	92
denominator	23	157	160	130	155	156

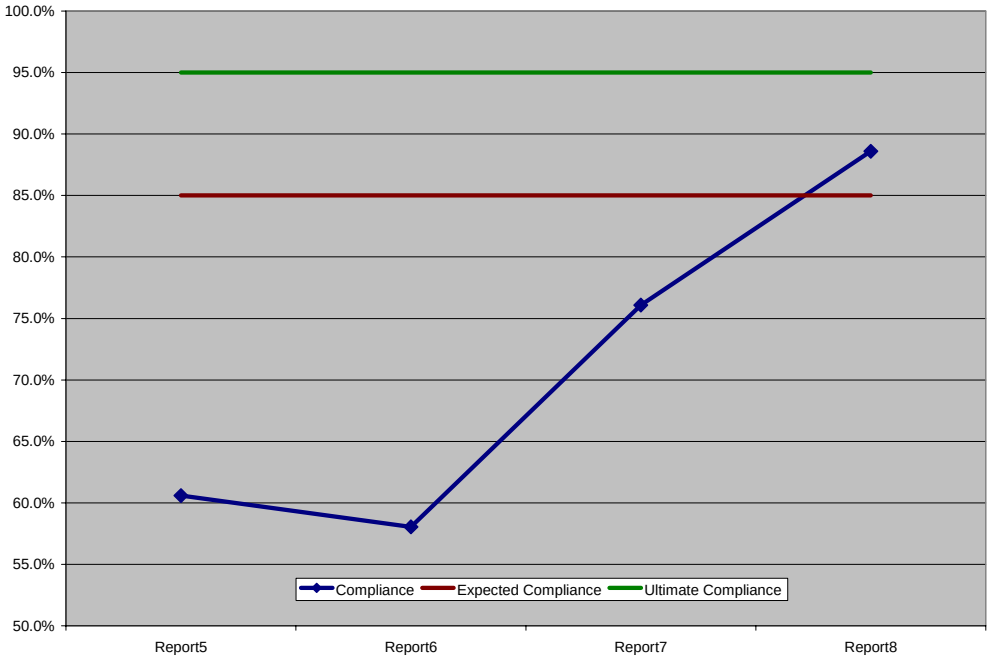
	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance	73.4%	86.2%	72.4%	74.7%	85.7%	88.7%	90.4%	89.0%
numerator	102	94	97	127	114	126	161	73
denominator	139	109	134	170	133	142	178	82

Figure 13: PI 8.3. Referrals for Class Members with Unknown Release Dates



As we did in our last report, we present this data averaged over each reporting period:

Figure 14: PI 8.3. Referrals Averaged over each Reporting Period



This analysis makes it clear that Defendants have continued to improve in their performance on this task and have exceeded our interim expectation of 85%. This conclusion is supported by a test of non-inferiority conducted by our statistical expert.

Defendants provided us with the following information regarding exceptions from the denominator for this measure:

Table 31: PI 8.3. Exclusions from Referrals

	Apr05	May05	Jun05	Jul05
CMs with CTPDs completed	466	496	522	383
Global Refusers	146	149	140	130
Appt/Referral Refusers	118	129	135	96
CMs with Known release date	69	76	69	76
Total Exclusions	333	354	344	302
Total eligible for referral	133	142	178	81

For example, Defendants indicate that 496 individuals in the May 2005 cohort had CTDPs completed and that the total number of individuals eligible for an appointment was therefore 142 (=496-354).

In our draft Report, we indicated an intent to raise the expectation for this measure to our final expectation of 95%. Consistent with our agreement with DoHMH, described above, we are deferring implementing this change pending the results of the process described in that agreement.

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

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

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

These criteria, especially the last, considerably shrink the pool of eligible individuals against which Defendants' performance is to be measured. We have been assured by HRA that they provide 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. Further exploration of this data is contingent upon our reviewing the process by which HRA concludes that they meet the performance standard.

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

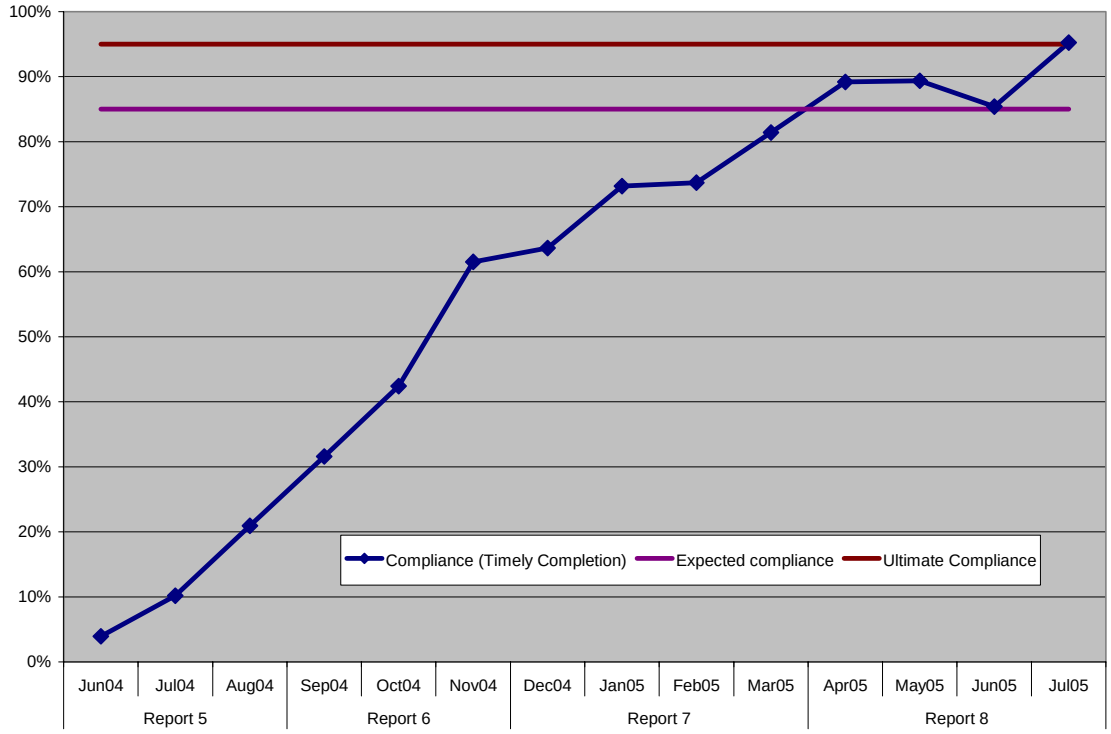
Paragraph 78 requires Defendants to assist Class Members who are SPMI in applying for public assistance benefits and outlines timelines for this process. This is a task that Defendants hitherto had some difficulty performing, according to the data which they have provided. Against our interim expectation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

Table 32: PI 9.2. Completion and Submission of PA Applications

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Compliance (Timely Completion)	3.9% 2/51	10.2% 11/108	20.9% 18/86	31.6% 18/57	42.4% 28/66	61.5% 24/39

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance (Timely Completion)	63.6% 28/44	73.2% 30/41	73.7% 28/38	81.4% 35/43	89.2% 33/37	89.4% 42/47	85.4% 41/48	95.2% 20/21

Figure 15: PI 9.2. Completion and Submission of PA Applications



It is evident that Defendants have continued the slow improvement noted in the last report. Combining the results for the current reporting period, Defendants completed 136 of 153 (88.9%) PA applications within the required timeframe and have exceeded our interim expectation of 85%. This conclusion is supported by a test of non-inferiority conducted by our statistical expert.

Defendants provided the following information regarding the noncompliant cases:

Table 33: Overview of Noncompliant Cases

	Apr05	May05	Jun05	Jul05
# Completed Timely	33 89.2%	42 89.4%	41 85.4%	20 95.2%
# Completed Late	0 0.0%	3 6.4%	2 4.2%	1 4.8%
# Not Done	4 10.8%	2 4.3%	5 10.4%	0 0.0%
Denominator	37	47	48	21

As with the Medicaid application data, it is difficult to identify patterns given the size of this data set, though the July data is certainly promising both in the improved overall compliance and in the absence of cases for which this task was not done. We will continue to monitor these data in coming reporting periods.

Defendants provided the following data regarding exclusions from this measure:

Table 34: PI 9.2. Exclusions from Public Assistance Applications

	Apr05	May05	Jun05	Jul05
# released to community with CTDP completed[40]	466	496	522	384
Refused all DCP	146	149	140	130
Not SPMI	148	147	178	129
Refused PA application	92	118	122	79
"Previously Active" PA	2	1	0	1
"PA ineligible"	1	1	2	2
Delay Code: Medical	8	5	4	4
Delay Code: Court	11	9	9	4
Delay Code: Refused[41]	10	5	7	10
Released before CTDP + 5 business days	11	14	12	4
Total Exclusions	429	449	474	363
Eligible for PA Application	37	47	48	21

For example, Defendants indicate that 496 individuals in the May 2005 cohort had CTDPs completed and that the total number of individuals eligible for a PA application is therefore 47 (=496-449). We reiterate here our disagreements with the exceptions for the medical and court delay codes and about the timing required in the last listed exclusion for the completion of the PA application.[42]

Given Defendants' continued improvement in their performance on this measure, we now raise our expectation to our ultimate requirement of 95% compliance.

[40] As discussed in the introduction to this section, we believe this to be the wrong statement of the cohort to be included for consideration for this measure.
[41] This exclusion covers those who initially refused the PA application but accepted it at a later date. It is distinct from the exclusion for those who refused the service and never changed their minds.
[42] See our Seventh Report at pp. 91-92.

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

This measure tracks the timely registration of PA applications at HRA upon receipt. We recognize that HRA has defined a cohort for this measure that is different from that we defined in our Performance Indicator. Rather than using our denominator of [# of PA applications submitted by discharge planners in the jails], HRA has based this on a denominator of [PA applications received by HRA]. Based on this cohort, Defendants report as follows:

Table 35: PI 9.3. Registration of PA Applications at HRA on Day of Receipt

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

	Report 8			
	Apr05	May05	Jun05	Jul05
Compliance	95.6% 86/90	100.0% 81/81	98.7% 74/75	100.0% 110/110

Repeating the analysis outlined at p. 93 of our last report, we find once again that many more applications reportedly are registered at HRA than were submitted for the cohort of Class Members included in each month's data:

Table 36: Comparison of PA Applications Submitted to PA Applications Registered

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

	Report 8			
	Apr05	May05	Jun05	Jul05
PA applications submitted	37	47	48	21
PA applications registered	86	81	74	110
variance (# of cases)	49	34	26	89
variance (percentage)	232%	172%	154%	524%

Defendants have not provided us with any updated information as to how to relate the data provided in measures 9.2 and 9.3. We have requested a joint meeting with DoHMH and HRA to discuss this and similar data correlation issues.

This caveat aside, Defendants continue to report meeting our expectation on this task.

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

Defendants are obligated in ¶89 of the Stipulation to assist those Class Members whom they determine to be "in need of supportive housing" in obtaining said housing. The Defendants clearly acknowledge "the value of supportive housing for clients with serious mental health needs." In our past reports, and most clearly in our last report at p. 94, we raised the question of how exactly Defendants make this determination. We have accepted that SPMI status is a necessary criterion for accessing supportive housing using the HRA 2000 application.

We have had some preliminary discussions with Defendants at both administrative and line staff levels, and our best understanding to date is that discharge planners equate a report of expected homelessness upon release with the need for supportive housing.

While homelessness may well be a criterion for certain types of supportive housing (especially that provided for by the New York/New York agreement), it is not a necessary criterion for all types of supportive housing. We anticipate further and more detailed discussion of this assessment going forward, with mental health staff, discharge planning staff as well as the clinicians at HRA who evaluate these applications.

For the current reporting period, Defendants reported as follows:

Table 37: PI 10.1. Submission of HRA 2000 Applications for Supportive Housing

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Compliance rate	100% 10/10	100% 10/10	100.0% 22/22	100.00% 47/47	79.5% 35/44	85.7% 30/35
% of SPAN visitors believed to be appropriate for supportive housing	4.1% 3/74	11.4% 5/44	45.3% 34/75	35.5% 22/62	12.3% 9/73	28.3% 13/46
% of CMs released from Jail believed to be appropriate for supportive housing	1.0% 10/971	1.0% 10/1000	2.1% 22/1055	4.8% 47/971	4.3% 44/1032	3.2% 35/1079

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05[43]	May05	Jun05	Jul05
Compliance rate	87.9% 29/33	100.0% 28/28	85.7% 24/28	91.4% 32/35	89.7% 26/29	100.0% 35/35	97.5% 39/40	100.0% 20/20
% of SPAN visitors believed to be appropriate for supportive housing	22.9% 11/48	0.0% 0/57	31.8% 14/44	22.0% 13/59	25.5% 13/51	23.8% 15/63	23.8% 15/63	20.8% 11/53
% of CMs released from Jail believed to be appropriate for supportive housing	3.0% 33/1108	2.9% 28/974	3.0% 28/927	2.8% 35/1252	6.2% 29/466	7.1% 35/496	7.7% 40/522	5.2% 20/384

[43] In this report, in the bottom section of the table, we have altered our methodology. Starting during this reporting period, DoHMH provided us with numbers for "Class Members released to the community during the month who had a CTDP completed." During previous reporting periods, we did not have this information and relied on the total Class Member cohort released during the month. This results in overlarge denominators and thus smaller percentages in the last line of the table through Report 7.

Figure 16: PI 10.1. Submission of HRA 2000 Applications (by month)

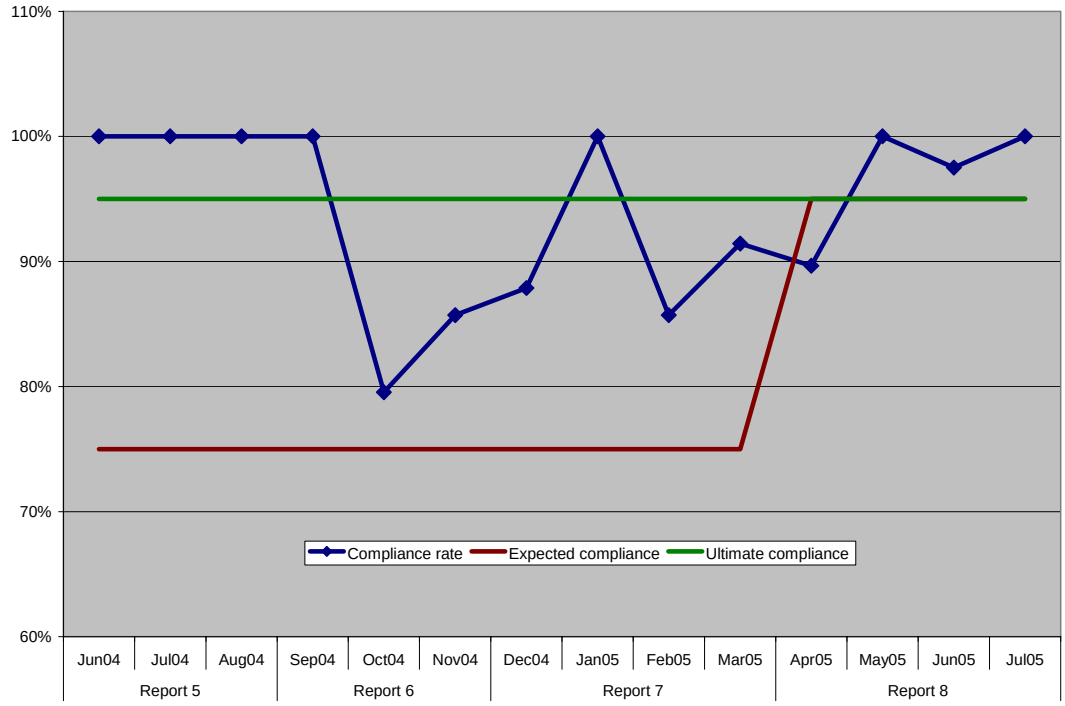
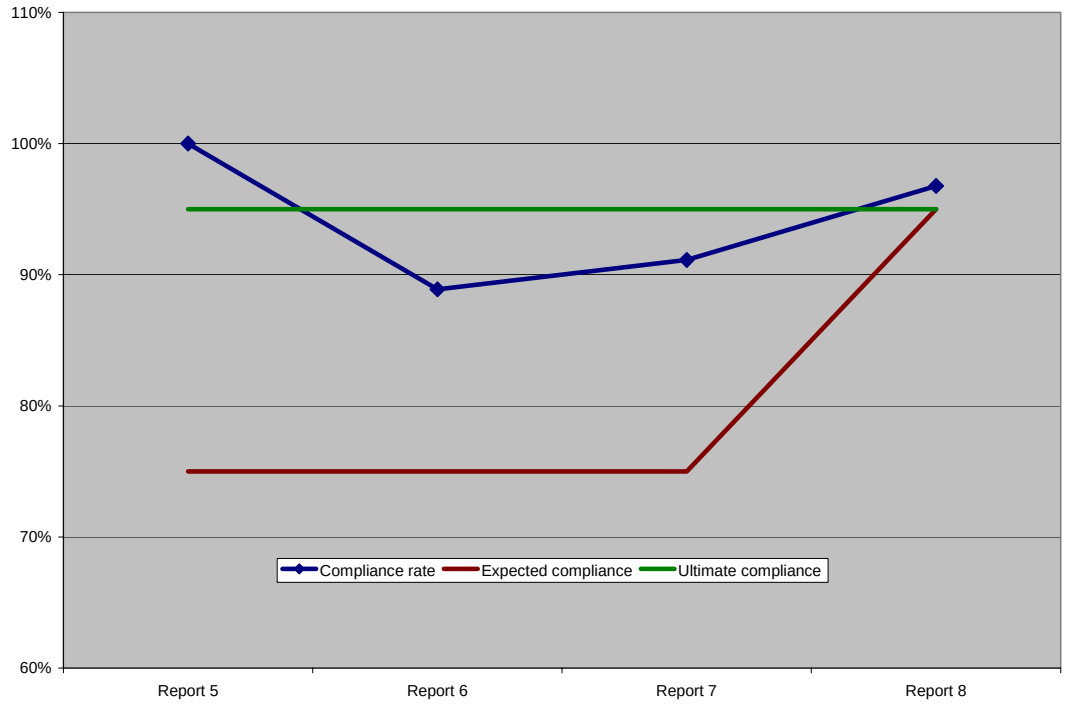


Figure 17: PI 10.1. Submission of HRA 2000 Applications (by reporting period)



As discussed in detail in our last report, at pp. 96-97, and as noted above, we are uninformed as to the criteria used for the determination that a particular Class Member is "in need of supportive housing", and we are therefore unable to fully understand Defendants' performance on this task. Defendants, in response to our draft report, indicate that they are "working to further develop such criteria." We look forward to seeing the results of their efforts in the near future. At the present time, it remains unclear to us why so many more SPAN visitors should be "in need of supportive housing", as assessed by the SPAN staff, than is the case with incarcerated Class Members.

DoHMH has pointed out in the past that the decision to present at SPAN is made entirely by the Class Member, so the group is self-selected. As a result, the SPAN group is not comparable to the Class Member cohort as a whole. It is logical that those with the most intensive and urgent needs – e.g. homeless people – would utilize SPAN, while those with less immediate needs might try to manage on their own. We suggest a targeted QI review of SPAN utilizers to determine how many of them use SPAN due to short incarcerations during which discharge planning could not be completed, how many had refused discharge planning while incarcerated, and how many simply had incomplete discharge planning despite adequate time and acceptance of the services. We request that DoHMH share the results of such a study with us.

Defendants provided the following information regarding Class Members excluded from consideration for this service:

Table 38: PI 10.1. Exclusions from HRA 2000/Supportive Housing

	Apr05	May05	Jun05	Jul05
# Released to community with CTDP completed[44]	466	496	522	384
Refused all discharge planning	146	149	140	130
Not SPMI	148	147	178	129
Refused HRA 2000 application	80	99	99	74
"N/A" status	63	66	65	31
Total Exclusions	437	461	482	364
# Eligible for HRA 2000	29	35	40	20

We do not understand the meaning of "N/A" status. DoHMH proposed substituting the term "not needed" to "indicate class members who are determined to not require supportive housing, and do not fit any other exclusion." Conceptually, we accept this category, as there will be those who, although putatively eligible, are not in actual need of supportive housing. Of course, DoHMH must appropriately assign people to this category and inform us of their methodology for assessing need. We would expect that this will assist us in understanding how, using May as an example, while 496 Class Members were released to the community during the month, only 35 were considered for an HRA 2000.

During this reporting period, Defendants reported improvement on this task and have exceeded the expectation of 95% for this measure.

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

Defendants are obligated in ¶¶94-95 of the Stipulation to facilitate direct placement in Program Shelters by providing DHS with clinical information prior to release for those Class Members released with a projected release date. For the current reporting period, Defendants reported as follows:

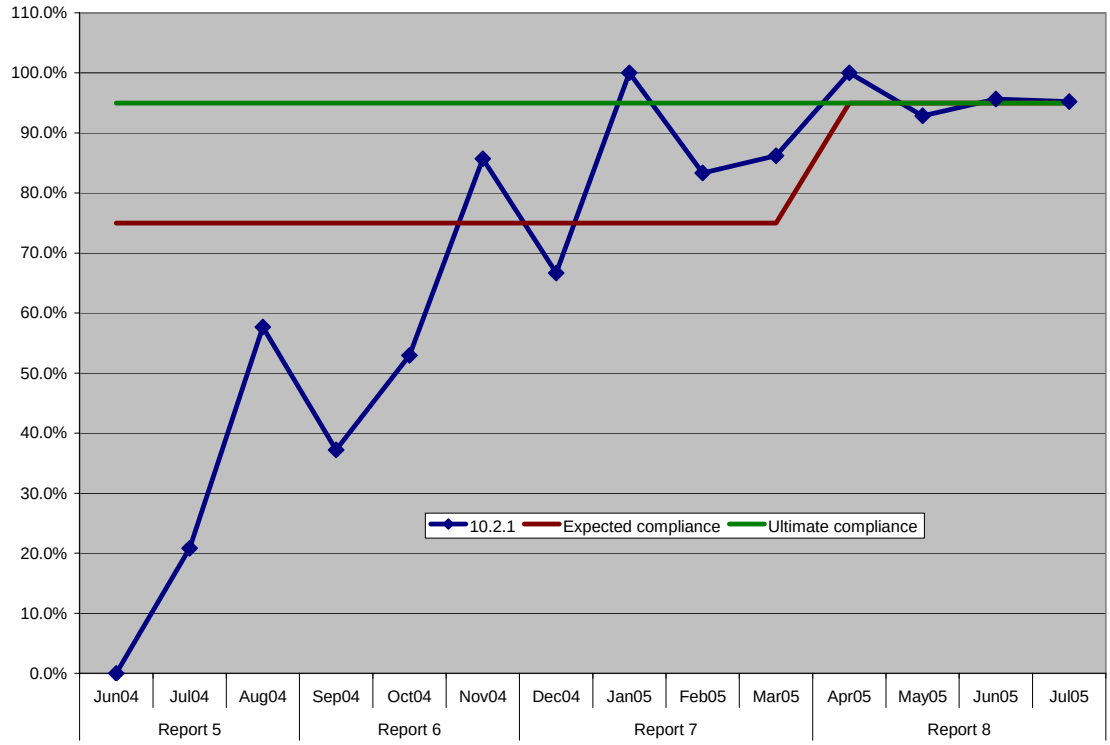
[44] As discussed in the introduction to this section, we believe this to be the wrong statement of the cohort to be included for consideration for this measure.

Table 39: PI 10.2.1. Provision of records to DHS prior to release for Class Members with projected release dates

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
10.2.1	0.0%	20.8% 5/24	57.7% 15/26	37.2% 16/43	52.9% 9/17	85.7% 6/7

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
10.2.1	66.7% 10/15	100.0% 14/14	83.3% 15/18	86.2% 25/29	100.0% 22/22	92.9% 13/14	95.7% 22/23	95.2% 20/21

Figure 18: PI 10.2.1. Provision of records to DHS prior to release for Class Members with projected release dates



For those Class Members recognized to be homeless during the current reporting period, Defendants were 96.3% compliant with this requirement during the current reporting period.

Defendants continue to report rates of homelessness lower than expected and inconsistent with the scientific literature on this subject. It is constructive that, as Defendants now report, that they have been "reviewing interview tools of other

organizations and [have] incorporated some of these interview techniques in conversations with class members concerning potential homeless status." We look forward to more fully understanding their approach to this important discharge planning issue. During this reporting period, Defendants provided information to DHS for about half of those Class Members reporting that they expected to be homeless upon release:

Table 40: Forwarding of records to DHS for Homeless Class Members

	Report 8				
	Apr05	May05	Jun05	Jul05	total
# homeless on release	35	38	48	32	153
records provided to DHS prior to release	22	13	22	20	77
rate	63%	34%	46%	63%	50%

DoHMH reported that those Class Members for whom information was not sent to DHS prior to release were Class Members who did not have a projected release date or who were believed to be state-sentenced. However, we continue to believe that Defendants are under-recognizing homelessness among Class Members. We anticipate that this procedure will lead to a more accurate assessment of the prevalence of homelessness among Class Members. DoHMH notes, however, that there is a disincentive for inmates to report themselves as homeless because of concerns that they will be excluded from some favorable criminal court dispositions.

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

Defendants are required by ¶¶94-95 of the Stipulation to provide records to DHS "promptly upon learning of the Class Member's release" for those Class Members who leave jail without having had said information forwarded prior to release. For practical reasons, we have articulated this performance measure to require a specific request from

DHS and have given Defendants a 3 business day window to respond to this request.

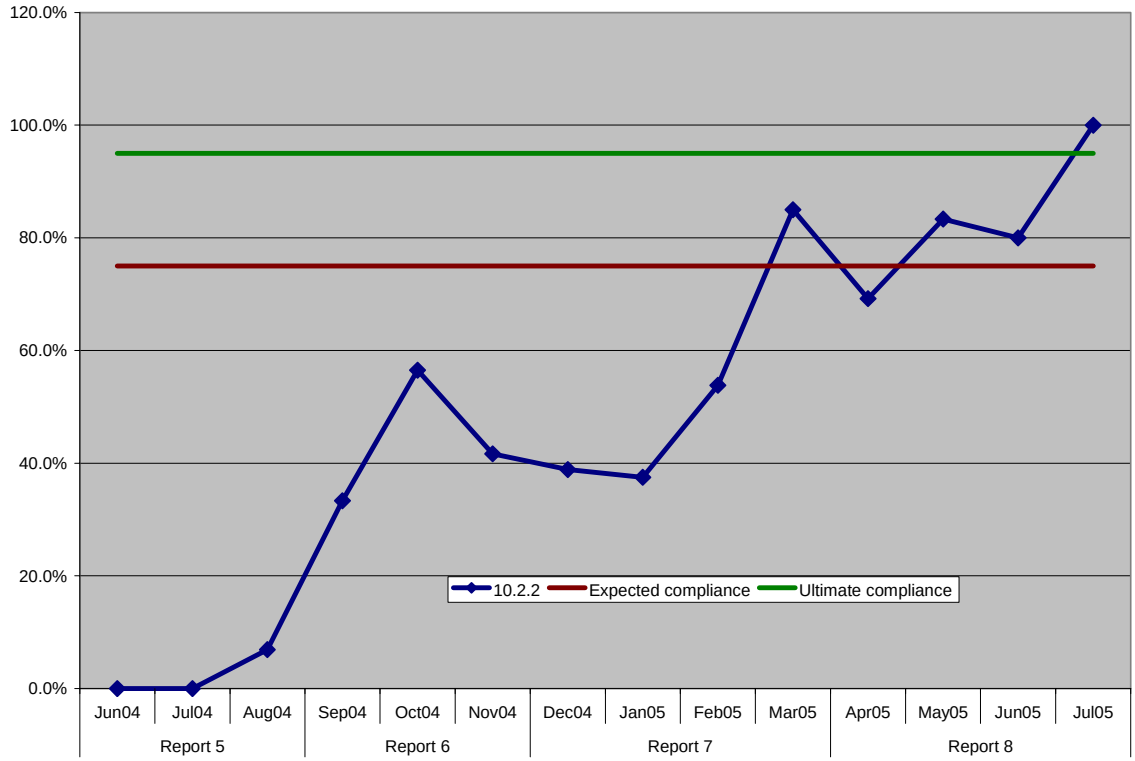
During the current reporting period, Defendants reported as follows:

Table 41: PI 10.2.2. Provision of records to DHS within 3 business days of request

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Compliance	0.0% 0/??	0.0% 0/??	6.9% 2/29	33.3% 1/3	56.5% 13/23	41.7% 5/12

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance	38.9% 7/18	37.5% 9/24	53.8% 7/13	85.0% 17/20	69.2% 9/13	83.3% 20/24	80.0% 16/20	100.0% 11/11

Figure 19: PI 10.2.2. Provision of records to DHS within 3 days of request



We do not compare this measure to the rate of homelessness reported by Defendants.

This measure is entirely based on that group of Class Members who appear at a DHS

shelter and about whom DHS requests information of the discharge planning program. As such, it is essentially a self-selected group of Class Members.[45]

It is evident that Defendants have exceeded our interim expectation of 75%. This conclusion is supported by a test of non-inferiority conducted by our statistical expert. In our draft Report, we indicated an intent to raise the expectation for this measure to our final expectation of 95%. Consistent with our agreement with DoHMH, described above, we are deferring implementing this change pending the results of the process described in that agreement.

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

These three measures are designed to measure Defendants' compliance with obligations defined in ¶¶101-102 of the Stipulation. Defendants continue to report 100% compliance with all three of these measures.

In response to our request, Defendants again provided us with information regarding acceptance of transportation by Class Members. In total, 512 Class Members from EMTC and RMSC were offered transportation. Of those, 225 (44%) accepted this offer and 287 (56%) declined. By comparison, the overall acceptance rate in the last report was 36%. At first blush this might appear to a result consistent with a reasonable, good faith effort to provide this important service. However, further analysis reveals that, again during this

[45] It could be argued that this group overlaps with the group contemplated in measure 10.2.1, as follows. Defendants are obligated to provide DHS with information prior to release for homeless Class Members who have a projected release date. In some cases, Defendants fail to do so. Some of these individuals then appear at a shelter and information is requested. At present, we will not consider this complication and will assume that these are two separate and unrelated groups.

reporting period, not a single one of the 165 women offered transportation accepted. Thus, all of the 225 acceptances came from among the male members of the cohort. This means that 225/347 (65%) of the men accepted this service while 0 of 165 women did. By comparison, 62% of men accepted transportation during the last reporting period. Thus, the improvement noted during this period relates directly to the proportion of men in the calculation: 10% more of the current group were men as compared to the group in the last reporting period.

Discussions with staff reveal some plausible factors which might contribute to but do not fully explain this finding:

1. The van comes first to EMTC, the institution for men and then comes later in the day for the women. The women, who according to reports are already awakened very early in the morning on the day of release, then must wait an additional period of time before the arrival of van, contributing to the likelihood of their declining this service in their haste to be released.

2. The high rate of sexual abuse histories[46] is posited to cause many women to feel uncomfortable riding in a van with men who would then become aware of their home or program addresses.

While we accept these as potential complicating factors in the provision of transportation to women, we find it inconceivable that not one woman over the past 9 months has been reported to accept transportation.

We have strongly suggested in our past two reports that DoHMH study this finding. At the time we prepared our draft report, they had not advised us of any plans to investigate or rectify this situation. Therefore, in our draft report, we indicated that we

[46] Various studies have reported prevalence rates of sexual assault in childhood or adulthood prior to incarceration of 33-59%. See the following reference for a summary of research on the prevalence of sexual abuse/assault among female prisoners: Lewis CF: Female Offenders in Correctional Settings. In *Handbook of Correctional Mental Health*, edited by CL Scott and JB Gerbasi. Washington: American Psychiatric Press, Inc., 2005.

would find Defendants out of compliance with the provision of transportation services to female Class Members within the New York City correctional system.

In their comments, they responded on two levels, one programmatic and the other legal.

- First, on a programmatic level, defendants informed us that they have been interviewing female class members to ascertain why they have been refusing the offer of transportation. Their findings indicated that female Class Members refuse transportation because of the waiting time for the bus and because of safety concerns related to traveling with male Class Members to their place of residence.

  To address these concerns, DoHMH is arranging "to offer female class members a bus several hours earlier which would not be shared by male class members, and currently anticipates a start date of October 1, 2005 for this modification of the benefit." In our view, their method of investigating the problem via class member interview, as well as their proposed remedy, are well-conceived.

- From a legal perspective, the Defendants' response demonstrates that there are two basic and different ways of viewing compliance with the Stipulation. Defendants assert, in essence, that their obligation to provide transportation to SPMI class members begins and ends with the ***offer*** of the service itself. In Defendants' view, this is so because "[i]nherent in this is that such class members must accept the offer of transportation. Defendants have wholly complied with this obligation, and there is no basis whatsoever for finding otherwise. While increasing utilization of transportation may be a worthwhile goal, it is not, and

cannot be, an obligation under the Stipulation, especially as the decision to accept or decline the offer rests solely with the class member."

We disagree with this formulation. It is axiomatic that class members may decline this benefit, both as a matter of common sense as well as under the express terms of the agreement. This does not release the Defendants from all responsibility for offering a service in a manner which is reasonable given the totality of the circumstances. For soon-to-be-released, female, SPMI inmates, such an approach must take into account the timing of the transportation offered as well as the well-documented rates of sexual abuse history among the population. To do otherwise would ignore what is common knowledge in the field of correctional mental health and thus in our view would constitute a lack of good faith efforts to effectuate the terms of the agreement under ¶101.

To illustrate this point, let us provide an extreme example. Say that Defendants offered transportation to female inmates on a bus well-known for having safety violations such as faulty brakes, and that as a result all women refused this service. Might we not agree that this service was indeed not really being offered in good faith? Similarly, given what we know about women in correctional systems, it is conceivable, and certainly testable as a hypothesis, that offering this service only by requiring that women who accept it must ride with male Class Members is tantamount to making them "an offer that they must refuse."

Having said all of this, we do not differ with Defendants as much as they appear to believe. We agree that under the Stipulation they cannot be held to any specific level of

acceptance of this service. Class Members have the right to make their own decisions regarding any discharge planning services, whether or not Defendants, the monitors, or their attorneys think that these decisions are in their best interests. But in a case such as this, where not a single female class member has ever accepted this service during the period for which we have received data, we believe that the facts speak for themselves: something is faulty in the manner the service is offered and/or the service itself. It follows that good faith efforts to implement this provision must include an examination of the reasons for this result followed by efforts at remediation consistent with the findings of the investigation. It is this approach which Defendants have now adopted. If properly executed, these efforts would in our view be consistent with good faith efforts to provide transportation to female SPMI Class Members; after a period of satisfactory implementation, we would be prepared to rescind the finding of non-compliance regardless of specific acceptance levels by female inmates.

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

Defendants have begun reporting separately on follow up calls made by discharge planners in the jails and those calls made by LINK. For calls made by jail-based discharge planners, Defendants have continued to combine calls made regarding appointments and those made regarding referrals, although they advised us that they will begin to report this separately beginning with the monthly report for September, 2005. For LINK, these follow up calls have been reported separately. For all of these follow up

calls, Defendants have exceeded the interim expectation. The data is presented in the following tables:

Table 42: PI 12.1 and 12.2 (a). Follow up calls regarding appointments and referrals made by jail-based discharge planners

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance	67.9% 53/78	100.0% 47/47	87.0% 60/69	92.9% 65/70	94.0% 47/50	100.0% 61/61	99.0% 101/102	100.0% 66/66
Expected Compliance (Appts)	85%	85%	85%	85%	85%	85%	85%	85%
Expected Compliance (Referrals)	75%	75%	75%	75%	75%	75%	75%	75%

Table 43: PI 12.1 and 12.2 (b). Follow up calls regarding appointments and referrals made by LINK

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Calls regarding Appointments	60% 36/60	92% 23/25	74% 14/19	80.60% 29/36	76.90% 30/39	90.50% 19/21
Expected	85%	85%	85%	85%	85%	85%
Ultimate	95%	95%	95%	95%	95%	95%
Calls regarding Referrals	45% 35/78	53% 18/34	93% 25/27	60% 15/25	73.50% 25/34	66.70% 16/24
Expected	75%	75%	75%	75%	75%	75%
Ultimate	90%	90%	90%	90%	90%	90%

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Calls regarding Appointments	97.2% 35/36	100.0% 33/33	100.0% 11/11	93.8% 15/16	100.0% 23/23	100.0% 20/20	100.0% 21/21	100.0% 17/17
Expected	85%	85%	85%	85%	95%	95%	95%	95%
Ultimate	95%	95%	95%	95%	95%	95%	95%	95%
Calls regarding Referrals	77.3% 34/44	100.0% 41/41	100.0% 15/15	100.0% 15/15	90.5% 19/21	100.0% 12/12	100.0% 27/27	100.0% 14/14
Expected	75%	75%	75%	75%	90%	90%	90%	90%
Ultimate	90%	90%	90%	90%	90%	90%	90%	90%

We have some question as to how these numbers are derived. In May 2005, for example, DoHMH reported that 281 of the 496 Class Members released to the community were SPMI. Of this group, 52 were eligible for referrals and 55 for appointments, accounting for a total of 107 of the 281. We did not get specific exclusion

reports for SPMI Class Members for these measures but for now, we accept that the remainder were legitimately excluded as discussed above. Defendants indicated in their comments that they would provide further data to improve our understanding of their performance.

Of the two groups, DoHMH reported that 48 of the 52 SPMI Class Members eligible for referrals were given referrals, and that 50 of the 55 SPMI Class Members eligible for appointments were given appointments. It is our belief that the population for whom follow up calls should be made is those SPMI Class Members who received the service required (either appointment or referral). Combining the calls made by the jail-based discharge planners with those made by LINK, it can be determined that a total of 93 calls were made in May 2005, not the total of 98 as would be expected by combining the total number of appointments and referrals actually made. While this is a small difference, we are concerned that this is yet another example of a disconnect in the data for a system that is designed to be interlinked and connected. DoHMH acknowledged that these numbers should be identical but were unaware as to why they are not. They agreed to examine this disconnect.

These results demonstrate that Defendants have achieved our ultimate compliance expectation for these calls during the current reporting period. In our draft Report, we indicated an intent to raise the expectation for follow up calls for appointments to our final expectation of 95%. In addition, we indicated an intent to raise the expectation for follow up calls for referrals to our final expectation of 90%. Consistent with our agreement with DoHMH, described above, we are deferring implementing this change pending the results of the process described in that agreement.

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

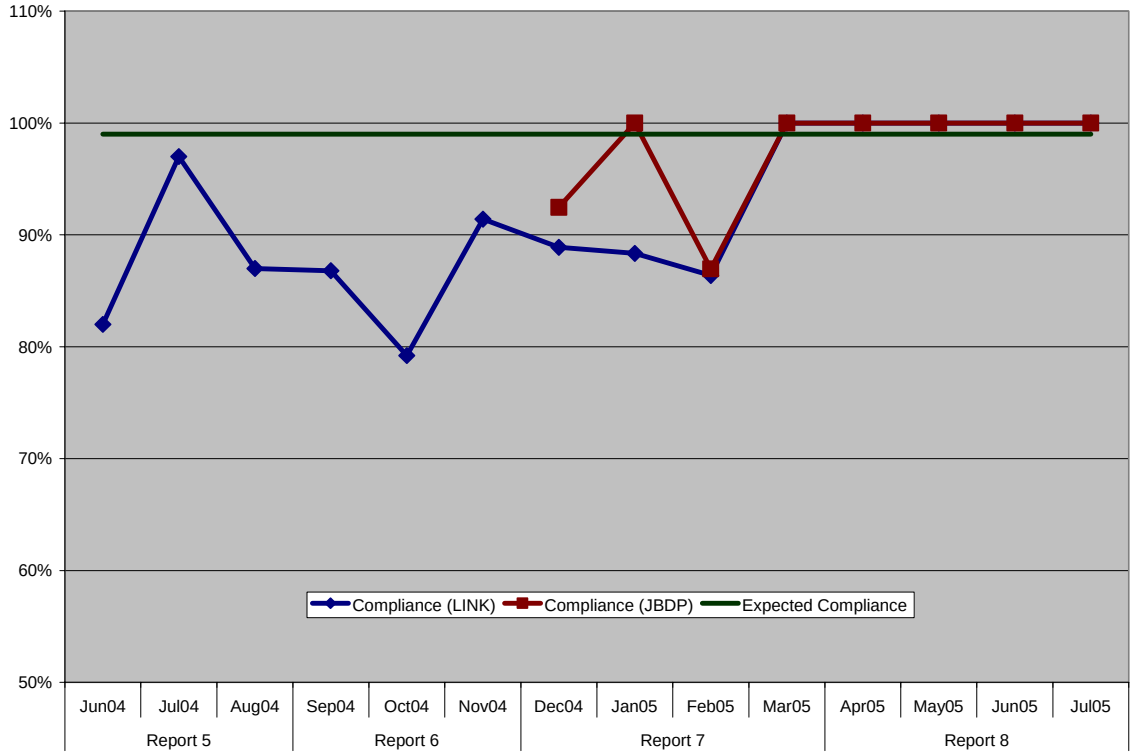
Defendants' follow-up requirements regarding appropriateness of housing are outlined in ¶100 of the Stipulation. Defendants reported:

Table 44: PI 2.3. Follow up calls regarding appropriateness of housing

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Compliance (LINK)	82% 46/56	97% 34/35	87% 26/30	86.80% 33/38	79.20% 38/48	91.40% 32/35

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance (LINK)	88.9% 48/54	88.3% 53/60	86.4% 19/22	100.0% 24/24	100.0% 29/29	100.0% 19/19	100.0% 30/30	100.0% 14/14
Compliance (JBDP)	92.5% 49/53	100.0% 47/47	87.0% 60/69	100.0% 65/65	100.0% 47/47	100.0% 30/30	100.0% 91/91	100.0% 38/38

Figure 20: PI 12.3. Follow up calls regarding appropriateness of housing



Defendants achieved 100% compliance for 12.3 during this reporting period, both for calls made by jail-based discharge planners and for those made by LINK. However, we have been provided with no data regarding the origin of the denominators used for this measure. Paragraph 100 requires Defendants to "use best efforts to contact each Class Member who has been determined to be SPMI within three days of his or her release from a City Jail to determine whether the Class Member's housing is clinically adequate…." Our performance measure articulates the denominator to include all released SPMI Class Members less those for whom no contact information is available.

Defendants advised us that, in May 2005, of the 496 Class Members released to the community having had a CTDP prior to release, 281 were SPMI. The data above reveals that a total of 121 SPMI Class Members were included for consideration for this service. Defendants elsewhere report a very low rate of expected homelessness upon release (homeless individuals by definition have no contact information). We have initiated discussions with DoHMH regarding the derivation of the denominator used in this measure, as we have concerns that all relevant Class Members are not being considered for these follow up calls. They speculated that a partial explanation of this variance may be due to their not contacting Class Members who had refused all discharge planning services, but they were not certain of this. We noted that our measure does not contemplate such an exclusion. While we agree with their argument that refusers need not be called (see below), Defendants may not independently change the measures we have set. We expect that Defendants will discuss any proposed alteration with us.

Neither in their comments nor at a clarification meeting we held with DoHMH prior to writing the draft report did they assert that these refusals accounted for the entire

differential. With respect to the follow up calls made by LINK, it is difficult for us to imagine how this could be refused in the context of overall work with a LINK case manager after release.

With respect to follow up calls made by jail based discharge planners, we agree with DoHMH that it is not reasonable to require DoHMH to contact individuals after release when they had refused all discharge planning services while in jail.[47]

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

Table 45: PI 12.4. Offer of Assistance When Housing Not Clinically Appropriate

	Report 5			Report 6		
	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04
Compliance (LINK)	90% 35/39	100% 13/13	87% 26/30	79.17% 19/24	77.10% 27/35	88.20% 15/17
Expected	95%	95%	95%	95%	95%	95%

	Report 7				Report 8			
	Dec04	Jan05	Feb05	Mar05	Apr05	May05	Jun05	Jul05
Compliance (LINK)	100.0% 22/22	100.0% 18/18	100.0% 6/6	100.0% 11/11	100.0% 15/15	100.0% 5/5	100.0% 9/9	100.0% 6/6
Compliance (JBDP)					n/a 0	100.0% 2/2	n/a 0	n/a 0
Expected	95%	95%	95%	95%	95%	95%	95%	95%

Defendants continue to report making offers to assist with housing when housing is found to be inadequate during the follow up call.

[47] In addition, Defendants stated their position that "the obligation to make follow-up calls clearly is intended to determine the appropriateness of housing that Defendants have affirmatively obtained, arranged and/or procured. There simply is no warrant for making such determination where the class member has prohibited defendants from making such housing arrangements." We disagree with Defendants' contention that the follow up obligation is linked ***only to housing arrangements Defendants have made*** for the Class Member. Paragraph 100 applies to all Class Members who are SPMI.

31. Performance Measure 13.1: Provision of Documentation Regarding Discharge Planning Services to Inmates
32. Performance Measure 13.2: Offer of Discharge Planning Made in Native Language or via Interpreter

We were unable to refine or adjust our approaches to these two measures during the current reporting period. We continue to believe that these are important issues.

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

Defendants have objected to our creation of performance indicators regarding actions "not required by the Settlement." However, ¶144 grants us the authority to "establish performance goals in such other areas as necessary to effectuate the terms of this Agreement." This measure is particularly important, given the frequent refusal of services of any kind by incarcerated individuals, and given the nature of mental illness in this population which may lead to the rejection of help offered. In our view, reoffers of services previously refused are necessary to effectuate the terms of the Stipulation. In any case, our interviews with discharge planning staff, summarized elsewhere in this report, indicate that, at the line staff level, at least in some facilities, it is the standard practice to reoffer services at least once to Class Members who had refused previously.

During this reporting period, we reviewed a series of records examining them for documentation regarding reoffers of discharge planning services for those Class Members who had refused these services on an earlier date.

For the purposes of this review, we allowed a one month period of time from the refusal of discharge planning services for staff to make a reoffer. If we found no evidence of a documented reoffer after a month, we rated the case as out of compliance. If less than a month elapsed between the refusal and our review of the record, we did not

consider the case in our analysis. Additionally, we made the assumption that if a Class Member was seen after a refusal by discharge planning staff, that a reoffer of previously refused services was made even if that reoffer was not specifically documented. In addition, we counted as a "reoffer" a chart in which the Class Member was documented to have refused services early on and who was only again seen by discharge planning on the day of release. Finally, we did nothing to assess how discharge planning staff account for the reason(s) behind a refusal, treating all refusals at face value alone. In our view, these are very weak criteria for the assessment of this task. We have initiated our review in this lenient manner as a kind of "exploratory study" to determine the baseline rate of these reoffers at present.

The table summarizes these results as well as results from the past two reporting periods:

Table 46: PI 13.3. Reoffers of Discharge Planning to Previously Refusing Class Members

	Report 6	Report 7	Report 8
Global Refusers			29.3% 17/58
Specific Refusers			70.2% 59/84
All Refusers	18.5% 5/27	38.1% 16/42	53.5% 76/142

Defendants continue to demonstrate improvement in this task, though they remain far below our expectation of 95% compliance.[48] This may represent inadequate service delivery, inadequate documentation, or a combination.

[48] Global refusers found to have no reoffer included #s 1526, 1531, 1534, 1537, 1559, 1577, 1586, 1587, 1590, 1592, 1594, 1595, 1632, 1635, 1642, 1646, 1647, 1668, 1690, 1713, 1748, 1750, 1751, 1752, 1778, 1780, 1781, 1785, 1786, 1855, 1858, 1859, 1863. Specific refusers found to have no reoffer included #s 1715, 1720, 1726, 1736, 1747, 1788, 1792, 1817, 1819, 1821, 1822, 1848.

We are struck by the disparate findings between reoffers made to global refusers versus those made to specific refusers. The most likely explanation is that specific refusers have ongoing contact with discharge planning staff to complete the services they had accepted; during these contacts, we assume without further information and for the purpose of this discussion only that reoffers of the refused services are made. As such contacts are not routine for global refusers, some other mechanism must be developed to ensure that reoffers are made to this group.

B. Data Unrelated to Performance Indicators

1. DHS Placement Directly in Program Shelter

Defendants have reported as follows:

Table 47: Placement of SPMI Class Members Directly into Program Shelter

	Report 6	Report 7	Report 8
Placed Directly in Program Shelter	3/13 (23%)	11/22 (50%)	15/46 (33%)

Data in this table is derived by combining the monthly reports provided to us by Defendants for element 12.4.4. The data dictionary is unclear as to the exact group of Class Members which DOHMH considers for this element. We will clarify this in future work with Defendants. Our intention is that this information will tell us the percentage of SPMI Class Members who appeared at a DHS shelter who Defendants placed directly into program shelters.

Defendants correctly note that their "obligation… is to use its 'best efforts' to place sentenced Class Members directly" into program shelters and that they therefore cannot be held accountable to achieve a specific level of performance. Further, they note that "there is no measure of performance associated with this obligation." They believe that our reporting

in of data in this way is "misleading, as it incorrectly suggests that Defendants are not complying with their obligations." We do not intend to use these data to hold Defendants accountable to any particular rate of direct placement in program shelters. However, we believe that expressing these data as "the rate of SPMI Class Members who appeared at a DHS shelter who were placed directly in program shelters" is informative as to Defendants efforts in this regard. Clearly, this obligation falls both on the discharge planning staff (who must provide information in a timely and useful way to DHS) as well as on DHS (which must make use of that information and make best efforts to find program beds when needed).

In our last report, we concluded that in order to best understand these data and evaluate Defendants' compliance with their obligation to put forth best efforts at direct placement, we would need to better understand the process by which Defendants determine eligibility for placement in a program shelter as well as to understand how DHS uses the information it receives from DoHMH in making these determinations. We have not yet done so, and therefore we simply present the data and note that the absolute numbers have increased in each subsequent reporting period.

2. SPAN

SPAN is required to conduct inreach sessions in the jails to promote Class Member utilization of SPAN after release. They reported as follows:

Table 48: SPAN Inreach Visits

	Apr05	May05	Jun05	Jul05
# of SPAN inreach visits	3	4	4	0
jail visited	GRVC	RMSC	GMDC	0
# of CMs included in visits	30	51	47	0

We were advised that "[t]here was one inreach sessions [sic] scheduled in July, however SPAN could not gain access to Rikers due to problem with clearance." As a result, SPAN

indicated that they could not conduct sessions during July. In our last report, we noted that SPAN had performed a reduced number of SPAN inreach sessions and that fewer Class Members were reached during these sessions. While they appear to have conducted about one session/week during this reporting period (excluding July), the relative number of Class Members attending these sessions remains low (see Figure 21 below). We anticipate that SPAN will be able to educate many more Class Members once the reallocation plan is implemented.

Regarding SPAN utilization, Defendants reported as follows during this reporting period:

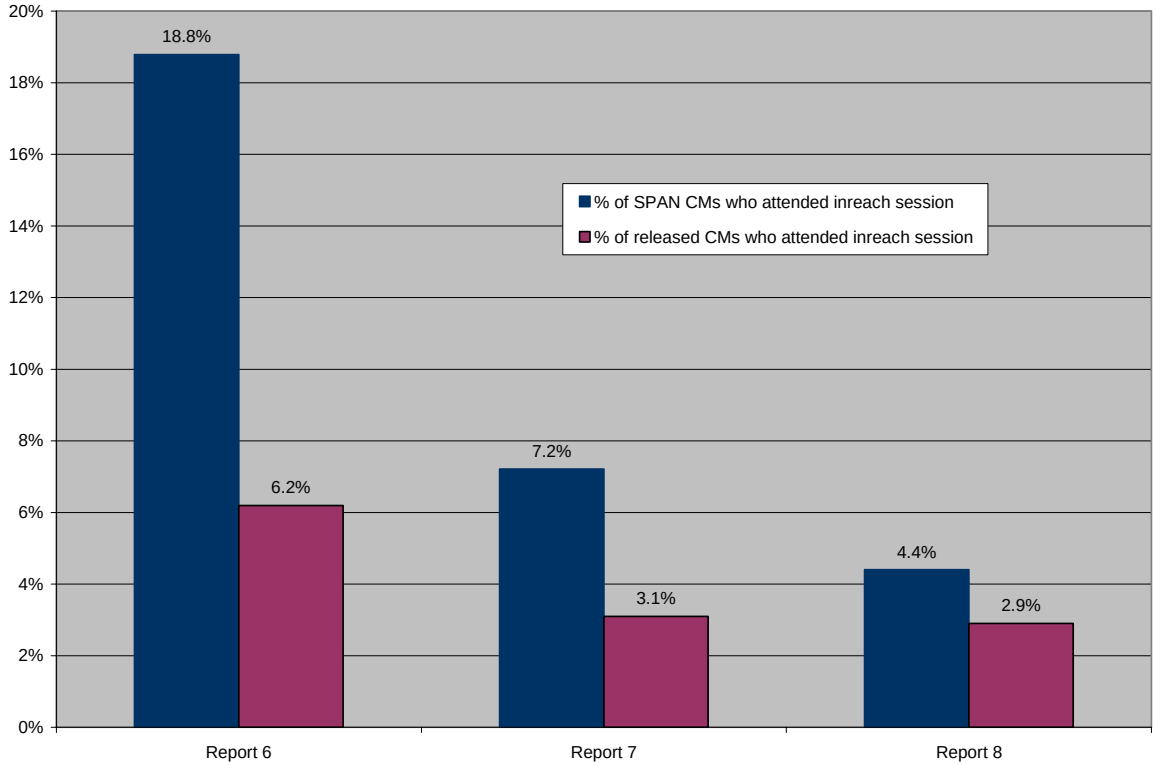
Table 49: SPAN Utilization

	Report 6	Report 7	Report 8
Homeless	32.6%	37.5%	43.5%
SPMI/Likely SPMI	45.9%	53.4%	57.0%
% of SPAN CMs who attended inreach session	18.8%	7.2%	4.4%
% of released CMs who attended inreach session	6.2%	3.1%	2.9%
After 5pm	3.3%	2.4%	3.0%
Bronx		21.4%	23.0%
Brooklyn		32.9%	28.3%
Manhattan		33.6%	30.9%
Queens		8.6%	10.9%
Staten Island		3.6%	7.0%

Once again, the data demonstrate that Class Members who are homeless, and those who are SPMI/LSPMI, are overrepresented among SPAN clientele. SPAN thus serves a valuable role in the provision of services to this most needy subset of Class Members.

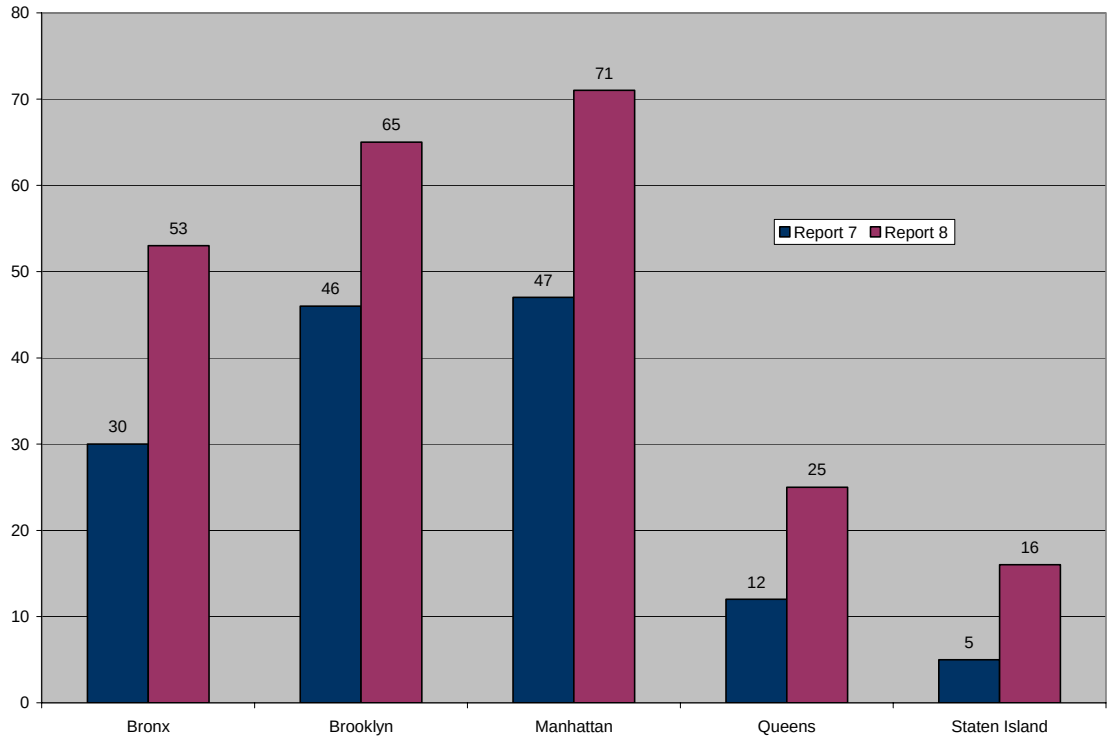
In this graph, it appears that during the current reporting period inreach was relatively less effective at generating SPAN visits. As discussed above, no sessions were conducted during July, which would reduce any positive impact these visits would have.

Figure 21: SPAN Inreach Data



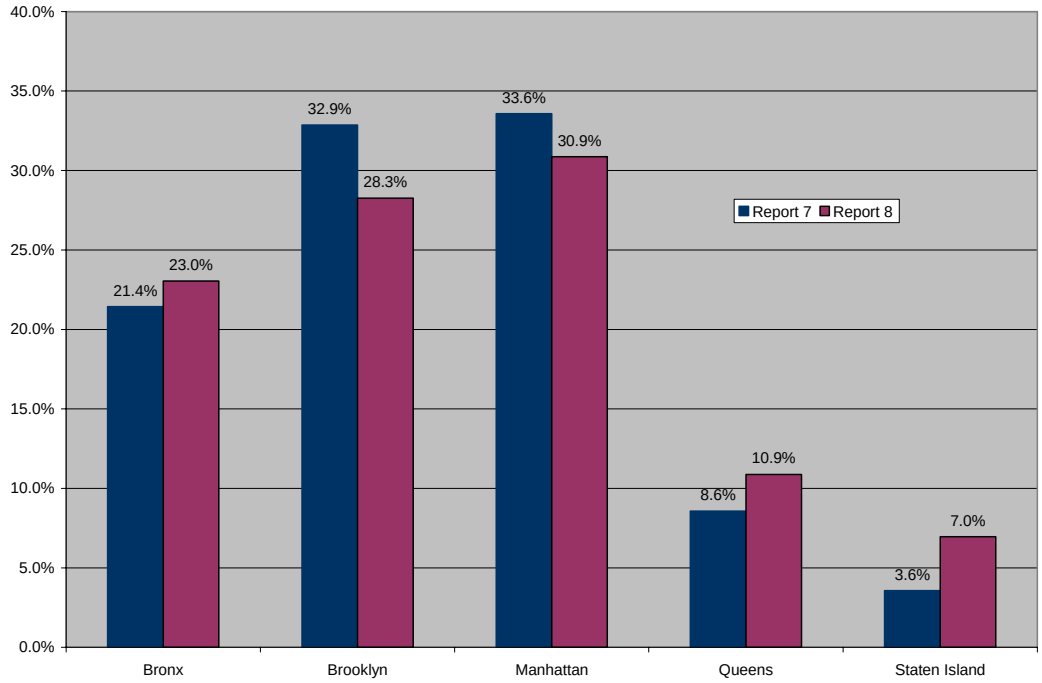
Overall, the usage of SPAN during this reporting period increased by 64%, from 140 visits to 230 visits. This increase was observed in all boroughs. This is very positive trend, which Defendants should continue to build upon.

Figure 22: SPAN Visits by borough



It is clear that the vast majority of SPAN visitors – over 80% - utilize the Bronx, Brooklyn and Manhattan offices. The following graph portrays the borough office use as a percent of total use during the two reporting period for which we have data. With minor differences, this appears consistent over the past two reporting periods.

Figure 23: SPAN utilization by borough



It is notable that the relative proportion of Staten Island usage doubled. This was driven entirely by data from July, when more Class Members used the Staten Island SPAN office – 7 – than in any other month for which we have data. Unless this increased utilization by Class Members in Staten Island continues, we see no reason to alter the plan for SPAN realignment. However, we suggest that Defendants examine the use of the Staten Island office during August and September in the event that this peak in July reflects a substantial change in the level of need in that borough; such a finding would make it even more important that Defendants facilitate use of other SPAN offices by Staten Island residents.

3. Refusal Rates

Class Members refused all discharge planning at a rate of 27-34% during this reporting period, consistent with findings in prior reporting periods. We made some suggestions in our last report (see pp. 113-114) about ways in which Defendants could approach this problem in

an effort to reduce refusals by Class Members, recognizing that Defendants are not obligated to achieve any specific level of acceptance of services offered. We are unaware of whether Defendants have pursued any of these suggestions.

During this reporting period, we conducted interviews with eight discharge planning staff from three facilities, including managers, masters level social workers, and bachelors level caseworkers. These staff reported as a group that, when a Class Member refuses the offer of discharge planning, they routinely reoffer these services. Some discharge planners reoffer once, while others reoffer twice, before finally "taking no for an answer". It was unclear to us whether the number of reoffers varied by staff member or by jail. One of the masters level social workers reported a "very low – less than 10%" rate of refusal, while most others estimated that 20 or 30% refused. The staff member indicating the less than 10% refusal rate also reported frequent acceptance after the initial refusal. Some of the staff with whom we spoke had a sophisticated understanding of refusals as stemming from two main causes:

- active symptoms of mental illness, versus
- a general mistrust of the staff as not truly invested in helping them

Regarding the former cause, these staff indicated that they awaited a remission of symptoms before making the reoffer, a practice of individualized assessment that appears logical to us.

It is constructive that staff at the line level see as a part of their role attempting to engage those who refuse discharge planning to increase the likelihood that they will come to accept services when needed. We encourage Defendants to consider the suggestions we made as they develop their approach to assessing and attempting to engage Class Members who refuse services. Additionally, we encourage Defendants to consider as a QI project

comparing refusal rates between different jails and between clinicians to determine if there are any best practices in place in the jails at this time.

4. Time of Release

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

In our previous reports, we made reference to DOC Operations Order 03/03, which effectuates this obligation by requiring that DOC release Class Members not subject to one of the exceptions noted above between the hours of 8:00a.m and 4:00 pm. Because the number of daylight hours varies according to the time of year, and because Defendants define release as the approximate time the Class Member leaves the facility rather than the time they actually leave Rikers Island proper, this appears to us to be a responsible manner of operationalizing the time of release.[49]

The following table presents data over the past twelve months:

[49] Defendants correctly note in their comments that, while the Operations Order may be a useful way of operationalizing the requirement contained in ¶32, it is the requirements of ¶32 to which they are to be held accountable.

Table 50: Releases during "Daylight" Hours

	Report 5	Report 6			Report 7		
	Aug04	Sep04	Oct04	Nov04	Dec04	Jan05	Feb05
EMTC	93.1% 162/174	90.1% 155/172	97.3% 143/147	91.8% 167/182	93.4% 155/166	87.2% 143/164	96.3% 157/163
RMSC	99.1% 104/105	100.0% 81/81	100.0% 64/64	95.4% 82/86	97.1% 99/102	95.5% 63/66	94.9% 94/99
global	95.3% 266/279	93.3% 236/253	98.1% 207/211	92.9% 249/268	94.8% 254/268	89.6% 206/230	95.8% 251/262

	Report 8				
	Mar05	Apr05	May05	Jun05	Jul05
EMTC			94.4% 168/178	94.8% 145/153	98.7% 148/150
RMSC			97.9% 93/95	100.0% 75/75	97.5% 77/79
global	97.3% 293/301	95.0% 246/259	95.6% 261/273	96.5% 220/228	98.3% 225/229

Defendants continue to report that >95% of sentenced individuals are released during the required time period. Therefore, at this time, we will not examine the reasons for noncompliance in specific cases more closely.

5. Pilot Project

In our last report, we noted that Defendants had initiated a centralized call-back mechanism to better accommodate return calls from attorneys given the inadequate telecommunications system within the jails. We indicated that we would analyze data provided by Defendants using this new mechanism and would render a decision as to the utility of the attorney contacts as required by ¶34. This plan was based on our belief that Defendants would be able to provide us with data regarding these contacts. In preparing for this report, we requested that Defendants "provide us with logs of your data regarding your attempts to contact attorneys and regarding return calls received from attorneys since you implemented the centralized call-back number."

On September 9, 2005, we received a spreadsheet from Defendants that was put forth as a replica of the log that they utilize to track these calls. After many attempts to clarify the information provided, we learned that this was an incomplete source of information. Since then, they provided us with an updated data set relating to these calls. This report indicates that calls were made for a total of 72 different Class Members.[50] It appears that two sets of calls were recorded for 4 Class Members on this list, and three sets of calls were recorded for one class member. Twenty seven of the Class Members included were housed in RMSC, 27 in C95 and 18 in C71. It appears that one call resulted in the provision of a release date by the attorney. Two other attorney contacts appear to imply that release date is contingent on the Class Member being accepted into a "program".

We were unable to determine how useful these attorney contacts are from the data Defendants provided to us. We have agreed to develop a format for these reports for use by DoHMH; it is our intent to provide this to them as soon as possible after the completion of this Report. At that time, we will set a 6 month period for which we will require them to provide us with this data, at the end of which we will make a final decision as to the need to continue contacting attorneys.

IV. Conclusion

In our last report, we began our conclusion by noting that the implementation of the new staffing model and the proposed changes to the operation of SPAN could be expected to improve the process of discharge planning. Part of our thinking was that improvement in those areas

[50] For reasons unclear to us, 6 Class Members were included on this list despite not being able to provide contact information regarding their attorneys.

In addition, we are struck by how many fewer Class Members were included in this data set than in prior reporting periods. For example, in our last report, DoHMH reported that they had contact information for 297 Class Members' attorneys; here they report that they had this in only 66 cases.

would lead to an enhanced integration of discharge planning services. In our introduction above, we emphasized the need to better integrate discharge planning staff into the various systems which participate in the discharge planning and post release service delivery process. This should lead to an ability to create more comprehensive, integrated, and clinically appropriate discharge plans that account for the needs of any individual Class Member.

Defendants have demonstrated improvements over the past months in the performance of many of the different tasks that make up a discharge plan. They have exerted much effort toward improving their performance on these tasks in response to the Performance Indicators we developed.

The task now is to shape these individual elements into an integrated system of discharge planning. Gaining the benefit of this type of system will require Defendants to integrate their thinking about discharge planning to include consideration of less concrete aspects of care such as changes in clinical condition; the interplay between substance abuse problems, mental illness, and other medical problems; and the psychosocial situation to which the class member will return after discharge. Defendants can accomplish this by continuing to emphasize strong leadership and a firm sense of the mission encapsulated by ¶¶4-9 of the Stipulation within each Defendant agency and at the interagency, City-wide level.

Our next report comes due on February 6, 2006. Per our set timelines, data and other information from Defendants will be due to us six weeks prior to that date, on December 26, 2005. Our draft will be released on January 16, 2006, and we will require any comments back by the end of the day on January 26, 2006.

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

Respectfully Submitted,

Henry Dlugacz
Compliance Monitor

Erik Roskes
Compliance Monitor

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.

STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

September 9, 2005

Richard J. O'Halloran, Esq.
General Counsel
Human Resources Administration
Office of Legal Affairs
180 Water St., 25th floor
NY, NY 10038

Re: Brad H., *et al* v. City of New York

Dear Mr. O'Halloran:

I am in receipt of your letter of August 16, 2005 by which you request that the Department of Health (DOH) and the Office of Temporary and Disability Assistance (OTDA) approve a local rule pursuant to 18 N.Y.C.R.R. §300.6. Inasmuch as your request concerns the Medicaid program, a DOH responsibility, OTDA is without jurisdiction to consider your request. I understand that OTDA will respond to that effect under separate cover.

The Human Resources Administration's request for approval of a local rule to permit a Medicaid pre-investigation grant for immediate needs of Brad H. class members who meet certain conditions is denied. There is no authority in State or federal law for the provision of Medicaid benefits to a person who has not been found eligible for those benefits. Immediate medical needs that arise during the application process may be met by a hospital licensed under Article 28 of the Public Health Law. In addition, Medicaid benefits are to be provided to a person found eligible for a period of three months prior to the month of application, if a person is otherwise eligible during that period. In this way, a person who has incurred medical bills or has paid for medical care during the application period may obtain relief.

Please call me if I can provide clarification of DOH's position in this regard.

Sincerely,

Donald P. Berens, Jr.
General Counsel

cc: K. Kuhmerker
B. Wing
B. Rice
G. Macmillan

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NEW YORK 12243-0001
(518) 474-4152
(518) 486-6255 - Fax

George E. Pataki
Governor

Robert Doar
Commissioner

September 13, 2005

Richard O'Halloran, Esq.
General Counsel
New York City Human Resources Administration
180 Water Street
25th Floor
New York, NY 10038

Dear Mr. O'Halloran:

This letter is in response to your letter to Donald P. Berens, Esq. and John P. Bailly, Jr., forwarding a proposed local rule on behalf of the New York City Human Resources Administration. The proposed local rule would authorize immediate needs grants for temporary medical assistance benefits to be provided to certain "Brad-H" class members. The New York State Department of Health will be responding to you separately.

OTDA is disapproving your proposed local rule. OTDA can approve and provide State and federal reimbursement for temporary pre-investigation grants only to the extent that it could approve and provide reimbursement for "regular" grants once eligibility has been determined. In effect, a pre-investigation grant is a prepayment of a grant for which a person has applied. OTDA has no authority to provide medical assistance. The authority to supervise the administration of the Medical Assistance Program was transferred to the Department of Health in 1996. Therefore, OTDA cannot authorize pre-investigation grants for medical assistance.

If you have any questions concerning this matter, please contact Mr. Bailly at (518) 474-9502.

Sincerely,

Robert Doar

This Appendix C is intentionally blank as it contains a confidential listing of Class Members whose records were reviewed in connection with this Eighth Report. The parties are referred to the confidential appendix (then "Appendix B") they received on September 15, 2005 in connection with the draft of this Eighth Report. That appendix is unchanged, and is herein incorporated by reference as Confidential Appendix C to this final report.

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, being duly sworn, say, depose, and affirm under penalty of perjury that on October 6, 2005, I caused to be served upon the parties named below the EIGHTH REGULAR REPORT OF THE COMPLIANCE MONITORS by causing same to be hand delivered to the following persons at the last known address set forth after each name:

DEBEVOISE & PLIMPTON
CHRISTOPHER K. TAHBAZ, ESQ.
919 Third Avenue
New York, New York 10022
Attorney for Class

MICHAEL A. CARDOZO
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THE CITY OF NEW YORK
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JOHN A. GRESHAM, ESQ.
NEW YORK LAWYERS FOR
THE PUBLIC INTEREST
151 West 30th Street, 11th Floor
New York, New York 10001
Attorney for Class

Affirmed this day of
October, 2005

_____
Henry A. Dlugacz
Compliance Monitor