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

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

**Third Quarterly Report of the Compliance Monitors**
March 8, 2004

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

Contents:

## I. Introduction

As discussed in the Second Quarterly Report, we circulated this report in draft form, with a ten day comment period for the parties, prior to publishing a final version.

## II. Activities of the Monitors

Since the date of our last report, we have engaged in the following major activities:

A. We began to more formally review charts and interview Class Members, pursuant to our duties as described in §IV.C of the Stipulation. We focused primarily on three of the jails on Rikers Island: Anna M. Kross Center ("AMKC"), Rose M. Singer Center ("RMSC"), and to a lesser extent Eric M. Taylor Center ("EMTC").

B. We finalized negotiations with and hired a Clinical Social Worker to assist us in our duties.[1] He signed his contract with Defendants' fiscal agent on January 7, 2004 and has been making weekly visits to the jails on Rikers Island. Additionally, he is visiting SPAN offices and meeting key personnel. We accompanied him during his initial visits to facilitate his adjustment to this monitoring position as well as familiarize him with the roles of the mental health and discharge planning staff within the New York City correctional system. Additionally, we sought to clarify the parameters we identified for him vis-à-vis chart reviews, Class Member interviews, and data collection. In addition, he began to familiarize himself with SPAN and its role with respect to the Stipulation.

[1] His name is Jerome Marton. A state certified social worker, with over thirty years' of clinical and administrative experience, we believe that he will significantly enhance our monitoring operations.

C. We recruited for and filled our administrative assistant position. The candidate we selected signed his contract with the fiscal agent on February 4, 2004, and will commence his work the week of February 16th.

D. We continued our search for a qualified statistician who will assist us in our analysis of the data that we receive from Defendants.

E. During this quarter, we emphasized the development of performance indicators pursuant to §IV.D. of the Stipulation. On December 8, 2003, we promulgated a draft of these performance indicators for review and comment by the parties. Following a lengthy period of analysis, we held initial meetings to review these indicators with Defendants on January 28, 2004 and with Class Counsel on February 5, 2004.

F. We developed a draft version of a monthly data report for use by Defendants. During our January 28, 2004 meeting, we discussed this with them as well.

G. We met with Council Member Margarita Lopez at her invitation to discuss the progress of the monitoring of this matter.

H. We observed two training sessions conducted by the Department of Health and Mental Hygiene ("DOHMH") for mental health and discharge planning staff on the substance of the Stipulation and the Defendants' requirements under the Stipulation, as well as one of two scheduled training sessions conducted by Cicatelli Associates, Inc. which sought to enhance the discharge planners' skills in engaging challenging clients.

III. Monitoring of Jail-Based Services

A. Since the time of our Second Quarterly Report, we focused most of our monitoring activities on two facilities, AMKC and RMSC. We selected these jails because of their central role in the provision of mental health care to Class Members. RMSC is the only jail housing women inmates, so all non hospital-based mental health care is provided in this venue. Thus, RMSC contains all levels of sub-acute care from intake and general population ("GP") up through the mental observation unit ("MOU"). AMKC is the men's jail housing the largest number of Class Members treated in an MOU, as well as the Mental Health Center, which is the highest level of care within the system outside of the hospital, indicating its central role in the provision of services to the most seriously mentally ill inmates. AMKC also contains a large number of Class Members housed in general population beds.

We elected to focus on a small number of jails at any given time for several reasons. First, as indicated in the above section, we retained a clinical social worker, who will serve as a significant source of information from the jails. We believe that this strategy will help him accommodate to the setting as well as increase his effectiveness. By focusing on one or two jails for an extended period, he will establish relationships with clinical and correctional staff which will allow him to use his time more efficiently. In addition, he will be able to return to Class Members more than once, enabling him to gather longitudinal data regarding the discharge planning process. In time, he will rotate his attention to other facilities.

B. Mr. Marton spent a substantial period of time reviewing the Stipulation and relevant policies provided to us by Defendants. As he familiarized himself with the assessment, treatment and discharge planning requirements outlined by the Stipulation, he began to create a standardized chart review and structured Class Member interview instrument that we are piloting and refining presently. This instrument will serve as a guide that will permit rapid, consistent and complete chart review and client interview.

C. In conversation with mental health and discharge planning staff in AMKC and RMSC, we have discovered that there was some initial variation in the development of routine coordination between these two distinct services. For example, in the MOU at AMKC, we have been advised that regular meetings between mental health and discharge planning began in late January. Similarly, we have been informed that such meetings recently began at RMSC. At the time of our visits, these meetings were apparently not yet taking place in the GP within AMKC (which is staffed separately from the MOU, given the size of the jail) but we are now advised by Defendants that this procedure is fully implemented in all facilities. We are very supportive of this positive development, as we discuss further below.[2]

D. At the same time along with Mr. Marton, we have been proceeding with chart reviews and Class Member interviews. To date, he has reviewed a total of 53

[2] Although this precise procedure is beyond any specific requirement contained in the Stipulation, it is our opinion that such meetings will clearly assist the discharge planners in more efficiently carrying out the many tasks outlined in the Stipulation. Thus, these meetings comport with the overall intent– and will further an essential component--of the Stipulation: to make discharge planning services available to those Class Members accepting of them.

charts, 27 at AMKC and 26 at RMSC. Of these Class Members, 23 were housed in general population and 30 in a mental observation unit. He has also conducted targeted interviews with some of these Class Members. His chart reviews have focused on the following data elements:

- Date of incarceration
- Date of medical assessment
- Date of mental health assessment
- Date of comprehensive treatment and discharge plan ("CTDP")
- Date of first discharge planning documentation
- Presence and completion of Likely Severe and Persistent Mentally Ill ("LSPMI") form

Appendix 1 contains a confidential list of all cases included in this review. At times, we will refer to specific case numbers. The Parties will be provided in the next week with a listing of these cases including names, book and case numbers, and dates of remand (all taken from the DOHMH data sent to us on a quarterly basis).

Methodology

In general, and as relates specifically to the chart reviews reported on below, we select charts using a weighted, random method of review; that is, charts are selected for review essentially at random, but with varying emphasis on a variety of factors. Our basic procedure is as follows:

1. The "Brad H. list" is a list of inmates with an "M" designation in the Inmate Information System ("IIS"). This daily report is requested, or if that is unavailable, the most current available list is substituted.
2. Cases are generally selected from among those Class Member incarcerated for more than 35 days and less than 75 days.[3]
3. Cases are randomly selected for review having last names starting with different letters of the alphabet.[4]
4. Requests are made to include those residing on a mental observation unit and those in the general population.
5. The list generated is handed to the clerk in the records room with a request for "any six" or some other number which are available at that particular time.
6. At SPAN the selection was purely random as charts were removed from the file cabinet without any selection process.

Factors which may cause the sample to be less than fully random include:

- an occasional response to an issue raised by plaintiffs in their monitoring memos (there is one such case in the sample on which this report is based);
- follow-up chart review on the occasion where a Class Member requests to speak with the monitors or their clinical social worker;

[3] On two or three occasions, charts were reviewed of Class Member who had been incarcerated for up to 90 days.

[4] As noted, this is from time-to-time not the case when we look at the chart of a specific Class Member who has come to our attention either from the plaintiffs' reports or by the Class Member him or herself initiating contact.

- the unavailability of what we estimate to be 40% of the charts we request at that particular time (this may be random in nature, or there may be some selection process involved which has an effect upon the availability of certain Class Members' records).

It should also be noted that the Monitors have initiated, and will continue to develop internal checks on quality and inter-rater reliability as they assess a sample of the charts reviewed by the clinical social worker and the data he reports from them.

The charts reviewed related to Class Members who entered the Department of Correction ("DOC") between August 19, 2003 and January 14, 2004. We recognize that this activity resulted in our monitoring and collecting data from a small number of Class Members housed in only two of the facilities.[5] We are also aware that many of the charts we reviewed included services offered and delivered prior to the organizational changes recently put into place by Defendants which are calculated to improve service delivery. Charts were selected with a number of goals in mind. Both in our own chart-reviews and in the directions we provided to the clinical social worker we engaged, we reviewed a weighted randomized sample.

Bearing this in mind, we outline our findings below.

Date of medical assessment: in 50 of 53 charts (94%), the medical assessment was dated on the same day or the day following admission to the facility. Two

[5] It is notable, however, that the AMKC Mental Health Center ("MHC") receives inmates from all other male jails who need the highest level of care available within the DOC setting. Thus, these MHC inmates and their records are a window into the care and discharge planning services at other jails.

Class Members initially refused the medical assessment, causing the assessment to be completed outside of the prescribed period; these cases shall be removed from the numerator and the denominator. In the remaining case (Case 1 in the Table of Cases Reviewed, Appendix 1), there was no information available in our chart review as to why the assessment was done 2 days after intake. Thus, Defendants were compliant with ¶14 of the Stipulation in 50 out of 51 occasions, or 98%.

**CONCLUSION**: Based on our chart reviews, Defendants are in compliance with the timeliness of the medical assessment 98% of the time.

Date of mental health assessment: in 41 of 53 charts reviewed (77%), the mental health assessment was completed within 3 days of the medical assessment. (In two cases, it was actually done before the medical assessment; on at least one of these occasions, the Class Member initially refused the medical assessment.) Thus, in 12 of 53 charts (23%), the mental health assessment occurred between 4 and 33 days after the medical assessment. Eight of these cases reflected Class Members who were not referred to mental health upon intake but were subsequently were referred; these cases will be removed from the numerator and the denominator for the purpose of this initial analysis. (It should be understood that such cases should not altogether evade review. As our ability to monitor cases becomes more sophisticated and complete and includes regular reports from the Discharge Planning MIS, we are optimistic that we will be able to review these cases based on the actual date of the referral to mental health.) Two of these individuals refused the mental health assessment at least once, thus forcing the

late assessment; these cases also are removed from the numerator and the denominator. Thus, we find that in 2 of 43 cases (or 4.7%) (Cases 11 and 30 in Appendix 1), Defendants were out of compliance with the timelines for completion of the mental health assessment contained in ¶15 of the Stipulation

**CONCLUSION:** In 41 of 43 of cases (95%), Defendants were in compliance with the requirement to perform the mental health assessment within 3 days of the medical screening.[6]

Date of CTDP: Paragraphs16-17 of the Stipulation outline the requirement that CTDPs be done within 7 days of the initial mental health assessment for inmates housed on an MOU and within 15 days of the initial mental health assessment for those housed in GP. We reviewed the charts of 23 individuals housed in GP and 31 housed in an MOU to test compliance with this requirement. None of these cases involved inmates released before the due date of the CTDP, as a result of our sampling of cases **currently incarcerated** in the DOC.

CTDPs for those in GP: The reviewer located CTDP's in 17 of the 23 charts (74%). Two of the charts missing this document were for Class Members whose

[6] This situation could well illustrate the overall approach to monitoring we have elected to follow. Should this finding sustain through a reasonable reporting period with a significant sample including reliable data, we would not think it a useful expenditure of our (or the Defendants') efforts to place great emphasis on the monitoring of this requirement. Additionally, while we have broken a number of tasks into their component parts, should acceptable findings such as this continue regarding the "end result" or "deliverable" of this function, we would not think it necessary to monitor or to have Defendants collect data on and report each component step. To follow this hypothetical through, should overall compliance begin to fall over the life of the monitoring of this Settlement, it might be useful to examine the smaller steps required in fulfilling this requirement essentially as a "diagnostic tool." I.E., when faced with valid, consistent findings of compliance in a given area, we would move away from detailed monitoring of that particular measure, towards less intensive checking of the end result. However, should these investigations indicate possible "back-sliding" in a given area, we would renew a more detailed, step-by-step approach in an effort to rapidly pinpoint the cause of the apparent downward trend. This approach should allow us and the Defendants to focus resources and attention where they will be most useful, and should permit the Defendants the ability to target remedial efforts in an efficient manner.

CTDP was not yet due at the time of the review; these charts will be excluded from the analysis. Two other cases included documentation of an ongoing refusal of mental health services subsequent to the initial assessment. For the purposes of this review and analysis, these cases will also be excluded. Thus, a 17 of 19 charts (89%) had the CTDP present. (Cases 11 and 37 in Appendix 1 did not have a CTDP).

Of the 17 GP charts that had CTDPs, 11 (65%) met the 15 day timeline. In those cases in which the deadline was not met, the CTDP was done 16, 18, 20, 20, 24 and 24 days after the initial assessment., revealing deviances of 1, 3, 5, and 9 days respectively. Our chart review was unable to find a documented reason for the late CTDP in these six cases (Cases 27, 28, 29, 50, 52, and 53 in Appendix 1).

**CONCLUSION**: Defendants completed timely CTDPs for 11 of 17 Class Members (65%) housed in GP in a manner consistent with ¶17 of the Stipulation.

CTDPs for those in MOU: The reviewer located a CTDP in 26 of the 30 charts (87%) included in the analysis. None of the four charts missing evidence of the CTDP included any documentation regarding the absence of this document, and all of the CTDP's were due by the time of the review; as a result, they will be **included** in the analysis (Cases 2, 6, 12, and 14 in Appendix 1). Of the Class Members whose charts contained late CTDPs, three were noted to have spent some time in GP. All three of these charts were noted to have the CTDPs done within the 15 day requirement for Class Members housed in GP and therefore will be dropped from the denominator. No explanation for the lateness of the CTDP could be identified in the other charts with late CTDPs.

For completeness, if these three cases are included in the GP analysis, the compliance rate for timeliness of CTDPs in GP increases to 14/20 (70%). This exclusion of these cases from the MO analysis should not imply that we will continue to treat the charts of patients who cycle between general population and the MOUs in this manner. We were informed that Defendants have adopted the following approach to these Class Members.

- Class Members who move from MO to GP during the interim period between the initial assessment and the CTDP due date, who have not yet had a CTDP, will have the CTDP come due on day 15 from the initial assessment.
- Class Members who move from GP to MO during the interim period between the initial assessment and the CTDP due date, who have not yet had a CTDP, will have the CTDP come due on day 7 from the transfer into the MO. We note that this could result in a CTDP being performed as late as day 21 from the initial assessment. Defendants indicated that they believe that to require the MO staff to do a CTDP quickly after transfer does not make clinical sense, as the MO staff will not have had time to fully assess the Class Member just after a transfer. Given that a transfer to MO indicates a deterioration in function which requires a new assessment and the development of a new treatment plan, this seems to us to be a sensible clinical practice.

Of the 23 MO charts that had CTDPs and did not reflect Class Members known to have spent time in GP, 16 (70%) met the 7 day timeline. In those cases

in which the deadline was not met, the CTDP was done, 8, 8, 12, 15, 17, 17, and 47 days after the initial assessment, revealing deviances of 1, 5, 8, 10, and 40 days respectively. Our chart review was unable to find a documented reason for the late CTDP in these cases (Cases 4, 5, 13, 18, 25, 43 and 44 in Appendix 1).

One case in which we found the CTDP to be done 47 days after the initial assessment must be more closely examined (Case 5 in Appendix 1): the Class Member was incarcerated and received both her medical screening and initial mental health assessment on November 20, 2003. The Class Member was noted to have been housed at various times on both GP and MOU. She was hospitalized at the Elmhurst Hospital Prison Ward (EHPW) from December 19 until December 29, 2003. Her CTDP was done on January 6, 2004. The series of events would indicate that this Class Member had the type of clinically acute presentation which might make discharge planning of particular importance. We suggest that the Defendants focus attention on this type of circumstance because systems are more likely to breakdown when inmates transfer among a variety of levels of care in rapid succession[7].

**CONCLUSION:** Our finding is that 16 of 27[8] charts (59%) of Class Members housed on an MOU had a CTDP done in a timely manner, consistent with ¶16 of the Stipulation.

[7] This comment is not meant to imply a finding that Defendants are not (or are) focusing on this type of case, but, rather is meant to highlight the importance of doing so.

[8] See above footnote – three Class Members were excluded from this analysis because they spent some time in GP and the timeliness for a GP-related CTDP was met in these cases. However, the four who did not have a CTDP were not dropped from the denominator given the absence of documentation as to why they did not have the CTDP done.

Presence of fully and appropriately completed LSPMI questionnaire: 29 of 53 charts reviewed[9] (55%) had a fully and appropriately completed LSPMI questionnaire.[10] Of the 23 charts in which the LSPMI questionnaire was either not present or not fully or appropriately completed, the cases may be broken down as follows:

| | AMKC | RMSC | Total |
|---|---|---|---|
| MO | 7 | 9 | 16 (70%) |
| GP | 4 | 3 | 7 (30%) |
| Total | 11 | 12 | |

With the caveat that this relates to a very small sample, we do have concerns that Defendants appear to be having more difficulty completing this task in the MOUs, where we would hypothesize a greater prevalence of SPMI Class Members.[11]

Date of first discharge planning documentation: It is our understanding that the trigger for involvement of the discharge planning staff is the transmission of

[9] These charts all were records of Class Members for whom an initial mental health assessment had been done and was on the chart.

[10] In contrast with the situation discussed in footnote 6, this would indicate a requirement which would warrant detailed monitoring from us and sustained, step by step attention from DOHMH.

[11] Initially, we examined as a threshold matter whether the LSPMI form was present, fully, or appropriately completed as these would be requisite elements of adequately identifying which Class Members would be entitled to additional rights which flow from that finding. As we refine our review process, we will increasingly report separately those charts which do not contain a form, as opposed to those in which it is not fully or not appropriately completed. At this point, our definition of "inappropriate" or "inadequate" is early and developing: examples of our finding that the LSPMI determination was deficient in some way include

- A finding of "not LSPMI" or "undetermined" when the class member is on medication(s) on the Brad H. list
- A finding of "not LSPMI" when there is clear documentation of psychiatric symptoms that should cause the rater to consider the class member as possibly SPMI
- A class member who has a mental health diagnosis and a GAF score <50 and is rated "not LSPMI" or "undetermined"
- A finding of "LSPMI" for a class member whose only diagnosis is a substance use disorder (this demonstrates inappropriate over-inclusiveness and may reflect inadequate training of the raters)

As we learn more about this process and refine our assessment procedure, we will be able to report findings regarding the nature of deficiencies, if any, we encounter.

the data contained in the CTDP/DSN from the mental health staff to the discharge planning staff. Thus, we will analyze those charts containing a CTDP for the purposes of understanding the timeliness of the involvement of discharge planners in a Class Member's case.

We could locate a CTDP in 43 of the charts we reviewed. These charts were reviewed between 12 and 119 days after the CTDP was done. In 15 of these charts (35%), there was no documentation by discharge planning that we could locate. In two of these charts (Cases 43 and 49 in Appendix 1), there was some indication that the class member had refused discharge planning, either within a mental health note or within the DSN form, but there was no signed declination form. For the purposes of this analysis, these cases will be added back to the numerator as cases with adequate documentation.[12] In a third chart, the CTDP documented that there were no further mental health needs. However, this inmate's DSN identified outpatient substance abuse treatment as a discharge need. At the time of the CTDP, he had been seen twice. However, he was seen again, at the request of DOC, due to a death in the family, the day after his CTDP. Thus this man is a class member and will be included in this analysis (Case 27 in Appendix 1).

Of the 28 charts with documentation of contact with a discharge planner, this contact occurred between 1 and 46 days after the CTDP date. For the purposes of this analysis, we are not differentiating between those Class Members who accepted discharge planning services and those who refused discharge planning

[12] However, the absence of a signed declination form is of concern to us and we suggest this be evaluated by Defendants.

services – we are simply tracking the timing of the contact relative to the CTDP. In other words, we are simply counting the dates until the first discharge planning documentation, even if the content of that documentation only indicated that the class member refused the services offered. This data does not include Class Members who refused discharge planning offered by mental health staff who may not have ever been referred to the discharge planning staff. For these cases, the average time between the CTDP and the first documented discharge planning contact was 9 days, the median was 7 days and the mode was 7 days.

In order to better understand the implications of the presence or absence of discharge planning documentation, and by extension, discharge planning services, we examined a subset of cases and used the data downloads from DOHMH to find proposed or actual release dates for these individual cases. In 12 of 28 cases (43%) with documentation by discharge planning staff, the only documentation reflected a refusal of all discharge planning services. Of the 16 cases whose charts had evidence of discharge planning activity (i.e. the patient accepted at least some of the discharge planning services offered), 1 was found to have a possible discharge date, and 15 were found to have no discharge date information in the data provided by DOHMH.

Of the 25 cases in this subset of Class Members who did not have discharge planning documentation, 3 Class Members refused mental health services, and 2 charts were reviewed prior to the CTDP due date. Twenty cases remain in this analysis.

We found:

| | AMKC | RMSC | Total |
|---|---|---|---|
| MO | 7 | 3 | 10 |
| GP | 8 | 2 | 10 |
| Total | 15 | 5 | 20 |

It is notable that although the total number of charts reviewed in the two jails was approximately equal, AMKC charts were more likely to be without documentation by discharge planners. Of the 20 cases in this subset for which there was no documentation from discharge planning, two (10%) were found to have a potential release date.

E. Summary and conclusions regarding monitoring of jail based discharge planning services[13]

| **Task** | **Present in X/Y cases** | **Percent compliance** |
|---|---|---|
| Medical Assessment -timeliness | 50/51 | 98% |
| Mental Health Assessment - timeliness | 41/43 | 95% |
| CTDP – presence in chart – GP inmates | 17/19 | 89% |
| CTDP – timeliness – GP inmates | 11/17 | 65% |
| CTDP – timeliness – GP/MO transfer inmates | 14/20 | 70% |
| CTDP – presence in chart – MO inmates | 26/30 | 87% |
| CTDP – timeliness – MO inmates | 16/27 | 59% |
| LSPMI questionnaire – presence in chart and appropriate completion | 29/52 | 56% |
| First discharge planning note – presence in chart | 28/43 | 65% |

Initial Assessments: When summarized in the above table, it is clear in this relatively basic analysis that Defendants have been highly compliant in the earliest tasks required of them by the Stipulation: the medical screen and the initial mental health assessment. While these functions are essential to adequate

[13] Please refer to the statement above regarding the limited sample size.

discharge planning, this high rate of compliance is to be expected as these requirements in the Stipulation are recitations of previously established aspects of the service-delivery model within the New York City jail system.

CDTPs: Regarding the presence of the CTDPs in the chart, Defendants achieve 89% compliance overall. However, a substantial number of these CTDPs were done late: only 65% were on time for GP inmates and only 52% were on time for MO inmates. This percentage, assuming it accurately reflects the broader picture of compliance, is significantly below what we expected to find. Because of both the centrality to system-wide mental health care of the two buildings from where the samples were drawn and the long-standing nature of the timing requirements for completion of the CDTP's, we would have projected higher and more consistent rates of compliance in this area. If this finding is borne out following more extensive investigation, we will strongly suggest focused remedial action. The Stipulation requires the timely completion of the CDTP—which, along with the DSN, documents the assessment of discharge planning needs and triggers the involvement of the discharge planners with a Class Member. Adding to our concern, the sample drawn from the MOU had a lower rate of CTDP completion than the sample drawn from the GP. Note again that the MOU is where the most severely ill Class Members are housed. At minimum, we strongly recommend that Defendants undertake a comprehensive examination of this critical issue.

LSPMI questionnaires: Our initial monitoring effort regarding the completion of the LSPMI questionnaire examined in combination both the presence and the

appropriate completion of this document. A total of 65% of the charts reviewed met both of these criteria.

Discharge Planning Documentation: Discharge planning notes were present in 65% of charts reviewed containing a CTDP. Including the six charts without a CTDP which had come due and which were devoid of documentation as to the absence of this document, the compliance rate falls to 28/48 or 58%.

Summary and Recommendations: We recognize that we have only reviewed a small number of charts in two of the DOC facilities. With those caveats in mind, we conclude:

1. Defendants are doing an excellent job performing the initial medical and mental health assessments.
2. Defendants are regularly out of compliance with CTDP timelines. This is of particular concern in the MO setting, where the most seriously ill Class Members (excluding those who are hospitalized) are housed.
3. We will withhold any conclusions regarding the findings related to the LSPMI questionnaire until we have been able to sort out the presence of the document and the appropriateness of the clinician's rating, but encourage Defendants to maintain close scrutiny of this crucial aspect of the settlement.
4. While the Stipulation is silent regarding how quickly Defendants are to begin the discharge planning process *per se*, CHS policy XI-B §A.4. indicates that the mental health staff are to notify the document control discharge planners regarding inmates who are "deemed" Class Members

at the time of the initial assessment. Similarly, §B.4. requires the mental health staff to notify discharge planners of inmates who are designated Class Members. CHS policy XI-C, §A.5. requires mental health staff to immediately notify document control discharge planners of inmates who accepted some or all offered discharge planning services at the time of the CTDP. §B.7. requires the document control discharge planner to immediately notify the client contact discharge planner upon receipt of the DSN. §B.8. requires the client contact discharge planner to immediately interview the Class Member and begin the discharge planning process. §B.9. outlines the efforts a client contact caseworker must undertake for Class Members who are unavailable at the time of the initial referral.

Reading policies XI-B and C together, it appears that these policies require a very quick response on the part of discharge planning. A fair reading of these policies reveals that the intent of the policy is that discharge planners should be initiating the discharge planning process within a day or two of the CTDP.[14]

[14] This reflects our best understanding of these policies. Plaintiffs have asserted that discharge planning is to begin "immediately" upon the completion of the CTDP. In contrast, Defendants note that there are many issues (e.g. scheduling, class member availability, information flow, and time for collaboration between discharge planning and mental health staff.

However, the policies as currently written mirror the complexity of the current system, which as we note the Defendants are striving to streamline. (For example, XI-C, §I.A.5 requires the clinician to forward the DSN and consent form to the discharge planning staff "immediately" but then indicates that an administrator's signature is necessary before this can be done.) We believe that the current policy reflects the current system: there are simply too many steps and different agents involved at these steps for things to be expected to go smoothly. The system is at once too intricate in its procedures and too diffuse in its assignment of accountability for a positive end result. We support Defendants' efforts to streamline the system and suggest that these policies be rewritten to operationalize the new system as it is developed.

A significant number of Class Members' charts - 35% - contained no evidence reflecting any discharge planning contacts.[15] For those who did have contact with discharge planning documented, the average date of this first contact was 9 days after the CTDP, and the median finding was 7 days after the CTDP, reflecting a substantial delay in this contact. This is more than academic; we found in our Second Quarterly Report that about 1% of Class Members are released each day over the first thirty days of an incarceration. Thus, for each day's delay in discharge planning, about 30 Class Members are released without having had the opportunity to work with a jail based discharge planner. The validity of our analysis does not turn upon whether this precise rate of attrition is accurate: our point is simply to reiterate that there is a high rate of attrition and therefore timely completion of discharge planning tasks is highly important. As we've stated in previous reports, when it comes to discharge planning for incarcerated mentally disabled individuals within a large, urban jail setting, time is of the essence.

As we stated previously (*supra*, p. 5), we believe that Defendants could at least partially resolve these problems by instituting more regular communication and collaboration between the mental health and discharge planning services. We strongly support the development of regular meetings for this purpose. Defendants advised us that such meetings are

[15] We are including in "those who had documented discharge planning efforts" those Class Members who were not available for discharge planning, provided that the reason for their unavailability was documented in the medical record.

now taking place in all jails and both in MO and GP settings. However, they indicated that because of the nature of the workload these meetings are not occurring at a set time due to the need for more flexible scheduling. These meetings are a positive development and we support the use of ad hoc meetings to address specific, pressing situations. However, based on our experience in a variety of settings, we believe that it is important to conduct regularly scheduled meetings to avoid the inevitable replacement of meetings with other, admittedly important work.

Additionally, Defendants recently advised us that in January, they consolidated the reporting lines for the Mental Health services and the Discharge Planning services under one DOH/DMH Deputy Commissioner. We support this organizational change, as it was in our view a necessary (if not sufficient) step towards creating a more organized and accountable discharge planning system. Please see section XII below for further discussion.

We have great concerns about our finding that Defendants are regularly out of compliance with CTDP timelines. We also have concerns about delays in the initiation of the discharge planning process and about the number of charts we reviewed that had no evidence of any discharge planning activity. We are loath to perform more in depth assessment of "downstream" issues (see section on performance indicators, below) until Defendants are doing an adequate job with the tasks included in this basic "upstream" analysis.

CASE STUDY

On February 4, 2004, we were asked by Class Counsel to look into one particular case, Ms. X. This class member had been incarcerated early in 2004. The medical assessment took place on day 2 of her incarceration and the initial mental health assessment on day 3. During her medical assessment, she indicated that she was on psychiatric medications. The mental health assessment recommended counseling and medication. On day 12, she saw a psychiatrist who made diagnoses of schizophrenia, polysubstance abuse and rule out posttraumatic stress disorder. He did not have the chart available at the time of his evaluation. He prescribed medications for this patient.

The CTDP was due on day 17, as this was a patient residing in general population. At our request, Mr. Marton reviewed the class member's chart on February 10. Ms. X. was unavailable for an interview because she had been released recently. Mr. Marton found that the class member was seen by discharge planning on day 27, 2 days prior to her release. At that time, she accepted the following discharge planning services:

- medication upon release
- span information
- rights brochure
- mental health placement

A follow up plan was created that would provide the class member with mental health and substance abuse services that, while not integrated, appear to be

adequate for her diagnoses. She was provided with medications, prescriptions, and documentation of her appointments.

We are including a summary of this case because it underscores the importance of the CTDP. The CTDP leads directly to the DSN which evaluates the need for aftercare planning. As such it is the first "upstream" procedure introduced in the Stipulation which was not previously an established part of the delivery model. Further, it is the key doorway through which Class Members must pass in order to access all subsequent discharge planning services. Without its proper completion, little if any discharge planning staff involvement can be expected until release is imminent. We reiterate our intention to very closely monitor this upstream issue because it is our belief that, if this step is not done and done well nearly every time, measures of downstream issues are meaningless. While the outcome was that she did have the benefit of some last minute services, it is our view that better, more complete, and perhaps more integrated services could have been provided had the system worked as contemplated by the Stipulation.

While this is only one case, it highlights the CTDP as the key issue at this point. Overall, our chart reviews found that CTDPs are present in charts only 88% of the time (excluding from analysis those not due at the time of our review), and they are timely only 60% of the time.

## IV. Monitoring of SPAN Services

### A. Data regarding SPAN service provision

We were provided with the following data from SPAN, covering calendar year 2003:

| | N | % | Total # CMs [16] | % |
|---|---|---|---|---|
| Sentenced | 290 | 64% | 547 | 16% |
| Court released | 166 | 36% | 2914 | 84% |
| Total SPAN visits | 456 | | 3461 | |

Many more sentenced Class Members are using SPAN services than those released at court. This is not expected based on the prevalence of incarcerated Class Members who had known release dates. While we believe that SPAN can certainly be helpful to sentenced individuals, this raises the following questions[17]:

1. Why do sentenced Class Members require the assistance of SPAN in completing their discharge planning? More specifically, why were these tasks not completed by the jail based discharge planners?
2. Given the much higher number of non-sentenced releases – 84% of those in the DOHMH data we were provided have no projected release date – why are they much less likely to use SPAN services?

B. Reviews of cases at SPAN

We have been able to spend a limited amount of time reviewing cases at SPAN offices. During our first monitoring (as opposed to orientation) visit to a SPAN office, we were able to review 6 cases. One of the cases, in retrospect, was

[16] These numbers were taken from the "In Jail" data provided by DOHMH on February 9, 2004. We have included those with a "projected release date" in the "sentenced" line and those with no "projected release date" in the "court released" line.

[17] We recognize that there are cases in which sentenced inmates may have very short sentences and therefore be released before discharge planning (and even mental health assessments) can be completed. We understand that one of the main purposes of SPAN is to complete discharge planning services that could not, because of the unpredictable nature of the release process, be completed in the jails. However, sentenced inmates have, by definition, predictable release dates. Therefore, the relative rate of utilization of SPAN by sentenced inmates given their relative rarity in the jails is striking.

not a class member and will not be reviewed here. Another class member came to SPAN many months after release and will also not be reviewed here. We will include our raw observations of the other four cases:

1. Case 2: There was limited information available for this case. Release date was 12/3/03. The Class Member refused discharge planning services at Rikers on 12/2/03. SPAN records are silent as to whether the client was offered, received or refused discharge planning services prior to 12/2/03. Data was only available from the discharge planning database. No Rikers mental health or discharge planning records were available; the only available information was the information from the Class Member and from the discharge planning database. No SPMI information was available in the database. SPAN arranged for MH follow-up.
2. Case 3: A Rikers discharge planner indicated that individual refused discharge planning, but the discharge planning note indicated that the Class Member was being referred to SPAN. The Rikers discharge service needs (DSN) form indicated that the Class Member was to be referred to a specific outpatient program. The SPAN worker referred the client to a distinct program which provided a similar level of care. The SPAN staff member did not document a clinical or logistical rationale for this change in the plan, so we are unable to evaluate this decision. Also, SPAN discharge planner made a referral for the Class Member for outpatient services, but no appointment date or time were documented.

3. Case 5: SPAN documentation indicated that the Class Member was incarcerated on 8/24/03, the CDTP was completed on 9/9/03, and jail discharge planning staff became involved on 9/29/03. The Class Member was released on 10/19/03. The discharge planning database indicated no aftercare referrals. SPAN documentation indicated that following release from Rikers, the Class Member underwent detoxification at Beth Israel[18] and went to SPAN on 11/21/03. There was no evidence of clinical documentation from the jail in the SPAN record; all information relating to discharge planning activity in the jail was taken from the discharge planning database.
4. Case 6: This was a case in which limited chart information was forwarded from Rikers to SPAN. The records available at SPAN indicate that the Rikers discharge planner made no referrals apart from referring the individual to SPAN.

While these cases were reviewed in a preliminary fashion, our review process indicated several issues regarding the exchange of information between the jail-based discharge planners and SPAN.

- The SPAN records do not contain much of the information that would make for easy communication between SPAN and jail providers or for subsequent monitoring efforts. For example, SPAN records do not contain Book & Case numbers, the primary identifier used in the jail setting.

[18] The timing of this detoxification vis-à-vis his release from Rikers is unclear in the SPAN chart.

- SPAN staff requests information for all Class Members released from city jails who come to the SPAN office, but the information faxed to them was not inclusive of the data needed to complete the Case Review form. Sometimes discharge planning documentation was available, but generally, the Mental Health Intake, the psychiatric assessment, psychosocial assessment, the CDTP and the Discharge Service Needs form were not available in a timely manner. Although this sample includes only six charts, nonetheless in only 1 case was documentation forwarded by Rikers staff to SPAN on the same day as the request; in 3 cases there was no documentation contained in the record; and in 2 cases the material arrived in 2 and 5 days respectively.
- When documents from the jails are available at SPAN, some of the faxed copies were not readable. Most troubling was that SPMI status was not included in the faxed material. None of the SPAN charts included a complete set of records to assist the SPAN worker with follow-up services. Hence, while the discharge planning database may indicate dates of when evaluations are completed, these dates are not particularly useful to the discharge planner in the field.
- When the jail chart is not available, it makes the job of SPAN exceedingly difficult to do well. As a practical matter, the SPAN staff have limited time, perhaps 2 hours, to assess the class member's needs, with no expectation that the Class Member will return for a later visit once data is available. In two of the cases, SPAN staff was unable to

determine if appointments or referrals (as appropriate) had been made for the Class Member. We, also, could not ascertain this information from the records. While it is conceivable that the Class Members had refused such services in the jail or had been determined not to need them by the mental health or discharge planning staff, this cannot be assumed by SPAN, or by us.

- The quality of SPAN services seemed acceptable, given the limited information they receive from city jails. It appeared to us they referred all presenting Class Members to appropriate aftercare programs, and workers attempted to follow through with cases to complete appropriate referrals.

In summary, based on this very limited review, it appears that SPAN is doing an acceptable job given the limitations imposed upon them: at times partial or untimely access to relevant information, and a small number of Class Members currently availing themselves of the important services SPAN has to offer. In future reviews, we will pay close attention to the following issues:

- timeliness of the jail discharge planners' responses to SPAN request for records, pursuant to CHS policy XI-C.
- completeness of the response by jail discharge planners to SPAN request for records
- utility of the records received at SPAN
- "continuity of care": i.e. does SPAN continue in a relatively seamless fashion the discharge planning activities begun in the jails?

In the immediate future, we recommend at a minimum that unique identifiers be included as a matter of course in the SPAN records.

V. DHS Services

Data forwarded from DHS for the time period November 1, 2003 through January 30, 2004:

| | Not SPMI | SPMI |
|---|---|---|
| # of Class Members entering a DHS shelter | 12 | 12 |
| # of Class Members going directly to program shelter | 11 | 2 |

Two of 12 SPMI Class Members (17%) were placed directly into a program shelter at the time they presented to the shelter system (one on the day of release, and the other later, but on the first day he presented to the shelter system). In contrast, 11 of 12 (92%) of the non-SPMI Class Members were admitted directly to a program shelter. A total of 13 of 24 Class Members (or 54%) were placed directly in a program shelter by DHS. ¶96 requires that Defendants "use best efforts to place a sentenced Class Member directly in a designated Program Shelter or Mental Health Program Shelter on his or her Release Date." It is evident that Defendants are able to make arrangements for some Class Members who meet the criteria outlined in ¶96 to be admitted directly to a program shelter. Future monitoring of this aspect of the Stipulation will need to include consideration of the exclusion criteria as outlined in ¶96.

## VI. HRA Services – Medicaid

### A. Data regarding the prescreening process

Summary of reported data regarding Medicaid prescreening for Class Members in jail, November 1, 2003 through January 31, 2004

| Task | N | % |
|---|---|---|
| Number of prescreenings completed | 967 | |
| Number rejected[19] | 245 | 25% |
| Number found with still active Medicaid | 245 | 25% |
| Number active, needing and given recertification | 17 | 2% |
| Number requiring reactivation and reactivated | 263 | 27% |
| Number needing Medicaid applications | 197 | 20% |

Summary of reported data regarding Medicaid prescreening for Class Members by SPAN, November 1, 2003 through January 31, 2004

| Task | N | % |
|---|---|---|
| Number of prescreenings completed | 107 | |
| Number rejected | 2 | 2% |
| Number found with still active Medicaid | 41 | 38% |
| Number active, needing and given recertification | 1 | 1% |
| Number requiring reactivation and reactivated | 36 | 34% |
| Number needing Medicaid applications | 23 | 21% |

These data are remarkably consistent, both when one compares the jail and SPAN findings, and when one compares the percentages to the findings in the Second Quarterly Report. For the purposes of our analysis, we consider the "rejected" prescreenings as complete in the sense that HRA has done what it can do given the status of the class member or the form of the information provided. If the rejection is for absent or illegible information, it is, of course, incumbent on the discharge planning staff to

[19] Prescreenings are rejected for the following reasons:
- the class member's Social Security number was inaccurate or was missing from the prescreening form,
- the class member was not being released from incarceration in that same month,
- the class member had no projected release date (and, therefore, was ineligible to receive Medicaid benefits), or
- the prescreening form had information missing or was illegible.

complete the form and return it to HRA for a review. Naturally, many less prescreenings are rejected at SPAN as all SPAN clients have already been released and are eligible on that basis for the prescreening process to be completed.

A total of 3208 Class Members were released between November 1, 2003 and January 31, 2004. Of this number, 2198 had a length of stay 23 days or longer and were eligible for discharge planning services.[20] Only 967 prescreenings were done, indicating that Defendants **did not conduct** prescreenings for 56% of eligible Class Members. This is consistent with our finding in the Second Quarterly Report that 58% of those eligible for prescreens did not have them done. Assuming that one third of Class Members refuse all discharge planning services (based on prior reporting), the number eligible for this service would drop to about 1465 Class Members. If 10% of the remainder was referred to mental health at some later point, and thus dropped from the "23 day" assumption, the number eligible for this service drops to about 1325. Based on these crude assumptions, the prescreenings would have been done in 73% of eligible cases. Clearly, this remains an unacceptable finding. First, it is unacceptable to have to base this or any finding on the kinds of assumptions posited above. Secondly, 73% is an unacceptable compliance

[20] This finding is taken from the DOHMH database. The assumption of 23 days or longer is based on the assumption that by day 22, all prescreenings should be completed (see ¶¶ 14-17, 59 for relevant timelines). Note that this finding is a minimum finding as those Class Members housed on an MOU would be eligible for discharge planning services at day 8, well before day 20, so that our conclusions represent conservative, Defendant-favorable conclusions.

rate for a task as basic and straightforward as the Medicaid prescreenings. We are hopeful that the introduction of a reliable, accurate and complete database will assist us in refining the analysis and minimize the need to make these types of assumptions. In the interim, we strongly recommend attention be paid to this important and basic task.

B. Data regarding Medicaid applications

Summary of Medicaid applications received by HRA for Class Members in jail, November 1, 2003 through January 31, 2004

| Task | N | % |
|---|---|---|
| Number of applications received by HRA | 168 | |
| Number of applications found eligible | 132 | 79% |
| Number of applications found ineligible | 22 | 13% |
| Number pending at the end of the reporting period | 14 | 8% |

Summary of Medicaid applications received by HRA for Class Members visiting SPAN, November 1, 2003 through January 31, 2004

| Task | N | % |
|---|---|---|
| Number of applications received by HRA | 9 | |
| Number of applications found eligible | 5 | 56% |
| Number of applications found ineligible | 1 | 11% |
| Number pending at the end of the reporting period | 3 | 33% |

Of the 197 Class Members in jail whose prescreening resulted in a finding of "need new application", 168 applications were received by HRA (85%). Only 9 of 23 (39%) SPAN prescreenings with a result of "need new application" resulted in an application received by HRA. We have no data regarding the rate at which Class Members who accept discharge planning in general specifically refuse the prescreening service, so it is difficult to know what role if any refusal played in this divergent finding – assuming some percentage of refusals, the rate of completion of

the applications would be somewhat higher. There is still the concern that a substantial number of those Class Members who should have prescreenings are not getting them, indicating that there are issues upstream to the Medicaid application adversely affecting this outcome. If 73% is an accurate approximation of the number of Class Members who receive a presceening, then the number of Class Members who had Medicaid applications submitted is 85% of 73% = 62%. This is clearly inadequate.

To fully evaluate the SPAN cases, we require more detail about the SPAN cases who were prescreened and those who had applications completed. It is conceivable and indeed likely based on the data included in our Second Quarterly report, that no Class Members visited SPAN more than once, that none of the Class Members who were prescreened at SPAN returned to SPAN to complete a Medicaid application, and that in fact these two groups represent two completely different cohorts. Thus, it is impossible to do more analysis of this data at this time.

C. Summary and conclusions

- Defendants are out of compliance with the requirement to conduct Medicaid prescreenings in at least 27% of cases.
- The prescreenings that are done result in the finding that a significant plurality of Class Members have still-active Medicaid, indicating that these Class Members are known to the social service and treatment systems. Another significant plurality result in a finding of

"reactivate", indicating that over 70% of those prescreened either have still-active or recently active Medicaid. Given this result, it is clear that the process is roughly capturing the correct cohort.

- In the jails, **for those Class Members who are prescreened and found to require a new Medicaid application**, Defendants are completing and submitting these applications 85% of the time. This demonstrates a fairly high level of initial compliance with this task.
- The majority of those Class Members who complete a Medicaid application are found eligible for Medicaid. Again, the Defendants are not wasting time with this task.
- Data for full assessment of these complex discharge planning tasks is incomplete. We are hopeful that this will be resolved as the Defendants develop an accurate, reliable and complete data system.

## VII. HRA Services – Public Assistance

HRA advised us that a total of 118 public assistance applications were "centrally registered"[21] between November 1, 2003 and January 31, 2004. Four Class Members (3.4%[22]) whose applications were centrally registered appeared at a job center.

[21] Central registration indicates that the application was received while the individual was incarcerated.
[22] We recognize that some of the Class Members who appeared at a job center may have had their applications submitted before the current reporting period. Nonetheless, we will perform calculations as if they were submitted during this reporting period, for two reasons: (1) over time, we will have longitudinal data from one reporting period to the next, and (2) we believe that for measures like this, it is relevant for the parties and the Court to understand the very low rate of class member follow through on tasks such as completing the public assistance process after release.

Seventeen Class Members who visited a SPAN office subsequently appeared at a Job Center. It is unknown how many SPAN clients were referred to Job Centers by SPAN.

Eleven Class Members were reported by HRA to be receiving some type of public assistance benefits at the end of the current reporting period. It is not known if other Class Members had been receiving benefits at an earlier part of the reporting period: Defendants indicated that the data from WMS does not easily provide this information.[23]

These data were received in a vacuum. As discussed below, we did not receive the data from Defendants pursuant to our request dated January 30, 2004 in time for us to understand their meaning and include them in this report. This makes it impossible to perform any further analysis of this data from HRA at this time.

## VIII. Access to Social Security and Veterans Administration Benefits

Paragraph 87 of the Stipulation requires Defendants to "explore the feasibility of a system for the assessment of Class Members' eligibility for SSI, SSD, other Social Security Benefits and Veterans Administration Benefits, and the completion and submission of applications for such benefits on behalf of Class Members before their Release Date, and Defendants shall implement a system to

[23] Communication from Jeffrey Dantowitz, February 12, 2004: "This number reflects only those individuals who are currently -- as of the date the data was obtained -- shown as active in WMS as receiving some public assistance benefit. Thus, it does not include individuals who received an emergency benefit during the reporting period, but were later found ineligible for recurring assistance." We have been informed that HRA is exploring ways to capture and report this information.

assist Class Members in obtaining such benefits, if such a system is feasible. Defendants shall confer with the Compliance Monitors at least every six months regarding their efforts to implement such a system." We last reported that a meeting was planned between Defendants and the Social Security Administration but that this meeting had not as yet taken place. We were recently informed by Defendants that they met with representatives from the Social Security Administration on February 9, 2004 to explore the feasibility of submitting SSI/SSD applications for Class Members incarcerated in the New York City Correctional system. Defendants indicated they discussed several options at this meeting which require additional exploration before a determination of whether they will be viable given the requirements and procedures required by the Social Security Administration. We are unaware as to whether similar process has begun regarding Veterans Benefits. We will continue to monitor progress on this important area.

## IX. Development of Performance Indicators

We recognize that the development of performance indictors represent one of the milestone tasks we are charged with, one with far-reaching implications extending throughout the life of our oversight of this matter. As such, we believe it incumbent upon us to provide the parties and the Court with an explanation of the underlying principles informing the difficult decisions we took in arriving at our ultimate conclusions. We intend to explain our decision-making process both

regarding the content of the measures themselves as well as the thresholds we have set for them.

**Overview**

We start first with the principle that the term "substantial compliance" by definition does not equate with literal performance of the terms of the settlement in all instances for each and every Class Member, as desirable as that goal might be from a societal viewpoint.

Related to this, our combined experience as clinicians, consultants, directors, and monitors in correctional settings ranging across systems in several states, make us aware of the genuine obstacles presented when undertaking the complex, interwoven tasks required by this (in some respects) unprecedented settlement. Within the jail setting, Class Members may move from institution to institution. They may be precipitously released, usually for non-clinical reasons. Additionally, the vicissitudes of service provision within the correctional system present other challenges such as lockdowns, counts, and court appearances which can impede staff attempting to provide services.

Cognizance of these restrictions, however, must not lead to complacence. These genuine obstacles can, if accepted too readily on face value, become facile excuses for inadequate efforts and results in providing services. We paid great attention to the issue of fairly accounting for these obstacles, while maintaining fidelity to the general and specific goals of the settlement.[24]

[24] We do not include these comments to imply that the Defendants are in fact "complacent", but rather to make explicit the thinking which informs our approach. Our concern – based upon our extensive collective experience in jail, prison and forensic hospital settings – is that these types of bars to service delivery in the

**Approach employed**

We carefully examined the required range of performance indicators contained in § IV.D. of the Stipulation of Settlement. We then broke each task down into its component parts, guided by the terms of the Settlement, and attempted to create an objective measure of each required step in the process.

When setting threshold performance numbers we divided the tasks required of Defendants into two groups: (1) those which already appeared to be an integral part of the pertinent system or which seemed essentially routine in nature, and (2) those which required a more fundamental retooling of the Defendants' operations. For the former, we generally set higher initial thresholds for compliance, while for the latter we tended to introduce the requirement more gradually over a number of years. We did this explicitly with the expectation that tasks already being done should present less difficulty for Defendants in terms of meeting performance expectations, while newer tasks will present Defendants with a "learning curve." Another primary factor we took into consideration was the centrality of a particular function to the overall success of the overarching goal of the settlement: the identification of those within the City jails who required mental health-related aftercare planning, and the provision of such planning to those individuals within the parameters set by the settlement.

correctional setting are quite real. However, upon systematic study (including both the nature and the incidence of each type of obstacle), the cause of and the solution to the problems often become clearer. We do not discount these obstacles but also do not accept them at face-value as reasons for inadequate or tardy discharge planning efforts. It would be very helpful to have baseline data on the types and incidence of such obstacles so that we are able to accurately account for them in future data analysis.

In addition to dividing tasks into the groups as noted above, we conceptualized a "chronology" of events in the actions that take place from intake through release and into the community. We have characterized these events as relatively "upstream" and "downstream" from each other. For example, the Medicaid application would be downstream relative to the CTDP for an incarcerated Class Member. The Prescreening would an interim event, downstream from the CTDP and upstream from the Medicaid application. As we have crafted the performance indicators, we have given more weight to certain upstream issues as they are key factors in the cascade of downstream events. Using the example, the CTDP would be relatively more important than the Medicaid application, because the latter cannot happen without the former having taken place. Thus, our default position has been to concentrate during this phase of monitoring on upstream issues; once we are confident that Defendants are compliant with these, we will turn our attention to downstream issues. Please note: we are not, and will not, ignore downstream issues – rather, with finite resources, we are expending our energies where we believe we can do the most good in the shortest time period.

**Solicitation of comments from the parties**

In our Second Quarterly Report, dated December 6, 2003, we committed to providing the Parties with a draft version of our performance measures and, further, to considering their comments in developing our final version. At the time of this writing, this process is ongoing. The following is our summary of the discussion to date:

Defendants' comments

We held a meeting with representatives from the Mayors Office of Health Insurance Access, the City Law Department, the Department of Health/Mental Hygiene, the Department of Correction, the Department of Homeless Services and the Human Resources Administration on January 28, 2004. At this meeting, a variety of issues were discussed concerning the draft performance goals and the data elements on which we wish Defendants to report. Their comments included:

- concern that thresholds were set too high given the lack of a reliable historical baseline, and their concern that we are not accounting sufficiently for aspects of the jail environment that might interfere with Defendants' ability to meet these thresholds
- concern that we have asked for many data elements which are not included in Exhibit A to the Settlement, thereby placing too much emphasis on data collection and reporting and risking error and diverting attention from service delivery
- concern that some of the items we are asking to measure fall outside the obligations of the stipulation (and therefore outside of our purview as monitors)
- concern about how we are selecting (or not selecting) priority items for monitoring performance
- many comments regarding the substance of what we are asking to measure

During this discussion, Defendants indicated that they have taken steps to improve their data collection capacity. Motivated in part by the data reported and discussed in our Second Quarterly Report, they have dramatically increased the number of data entry personnel, and they are learning how to assess the reliability and validity of the data in their database. At this meeting, we agreed to consider most especially data provided subsequent to January 15, 2004, when the new system was effectively in place. These and subsequent data will serve as a baseline for future measurements.

Plaintiffs' comments

On February 5, 2004, we met with Class Counsel to discuss their feedback regarding our proposed performance measures. Among their comments, they expressed the following general concerns:

- an overarching concern that Defendants will not be able to provide data that is valid and reliable
- a related concern that we are not using enough chart review in assessing the many tasks that the Defendants are obligated to do per the stipulation
- concern that we are attending too much to "upstream" issues and will be ignoring the later requirements (i.e. concern regarding our prioritization process)
- concerns that the thresholds were set too low
- many comments regarding the substance of what we are asking to measure

In our view, the progress made by the Defendants in meeting the requirement of the Stipulation of Settlement, would be greatly enhanced by improved

communication and collaboration between the parties during this remedial phase of the litigation. However, after initial discussions, our judgment was that the facilitation of meetings between the parties held little promise of helping them reach consensus on even a limited number of the differences between them on these or other issues—even to the extent of agreeing upon what aspects of non-compliance would be the most productive for the City to focus on first.

**Further development of the performance measures**

In the above context, we strove to balance the competing interests and objections expressed to us by the parties; after so doing, we find as follows:

We accept as valid the City's assertion that in certain instances the jail setting renders impossible the provision of all aspects of the Stipulation within the required timeframes. Some of these instances include court appearances by Class Members or security concerns (e.g. lockdowns and inmate counts). We have adopted the approach that it is incumbent upon Defendants, at least in the early stages of our monitoring, to provide documentation regarding specific instances where strict compliance was impossible. We then agree to exclude such cases, on an individual basis, from the base number used to calculate compliance with a specific indicator. In the language of our performance indicators, these cases will be eliminated from the denominator.

In line with this, if Defendants assert that a certain number of Class Members fail to receive a discharge planning service at all or in a timely fashion due to one of the exigencies of the jail setting, Defendants must provide data supporting this assertion. If, for example, it is asserted that 15% of Class Members are

unavailable for a CTDP on the due date because of conflicting court dates, data supporting this must be provided. It is conceivable that, over time, Defendants will demonstrate that these exigencies of the jail setting occur in a predictable way. Should this occur, we could build this predictability into our performance measure. For example, if in a given monitoring period, between 8% and 13% of CTDPs do not happen in a timely fashion because of court dates, we could build in an automatic 10% reduction in the denominator to account for this. Once we are able to do this, Defendants would no longer be required to supply us with this data.

It is evident that we are asking for a large amount of data. Defendants have, correctly, indicated that collecting, entering and reporting such data will demand a large allocation of resources, both financial and personnel. They have asserted that such resources will necessarily be taken from service delivery. Our response to this is that, in the absence of this data, we are unable to fully monitor the stipulation and its component parts. Absent this data, Defendants will be unable to demonstrate compliance with performance indicators we set. Finally, absent reliable, valid and complete data, we will be left with no option but to report based on anecdote, which will not result in fair monitoring for the Defendants. Anecdotal reports, while they may assist in focusing on the human element in a case like this, and while they provide context as to the *meaning* of discharge planning, do not describe a system which is expected to handle over 10,000 cases per year. Data is required if this is to be done.

Related to the above is the concept of margin of error. Even as the Defendants move towards, and we expect in due course achieve, a valid data collection and reporting system, any such methodology must take into account statistical margin of error. We must avoid a situation whereby Defendants are in essence required to achieve 100% compliance to account for the inevitable imperfections in data-collection. However, we do not agree to an across-the-board lowering of performance threshold to account for this valid concern. Rather, after receiving consultation with appropriate experts in statistics, we plan upon incorporating the concept of "margin of error" into our compliance thresholds. For example, if the level of compliance is set at 90% for a given requirement and we are convinced that the margin of error for the compilation of data for this task is plus or minus 4%, we would accept as "substantial compliance" a finding 86% compliance in this area.[25]

Similarly, we accept the concept that it is difficult to set realistic expectations for progress in the absence of valid baseline numbers. See discussion of this issue below. Nonetheless, in light of ¶140 of the Stipulation, we do not believe it prudent to delay the promulgation of performance measures until such data can be compiled; nor do we believe that the ultimate measure of compliance should be tied to the status quo. Rather, with the adjustments we have unilaterally made to the draft compliance thresholds, we plan upon adhering to the stringent

[25] This percentage is provided solely as an example to illustrate the proposed approach; as such, it should not be interpreted to indicate the appropriate number. This percentage will be developed after we have retained expert consultation in the field of statistics.

expectations of ultimate compliance we originally promulgated, with the following provisos:

- All may be raised or lowered based upon experience (ref ¶146)
- Despite the abstract desirability of Defendants working "full steam ahead" on all fronts, the reality is that large, complex bureaucracies exponentially increase their likelihood of success when they focus comprehensively and intensively on a limited number of tasks. We continue to adhere to the model whereby the measures guide the Defendants to focus first on key upstream issues. This, of necessity, requires patience regarding downstream issues, which will necessarily be out of compliance for a longer period of time. We believe that if Defendants focus on certain specific, key areas within the Stipulation, rather than trying to improve the entire system at one time, they will be better able to achieve ultimate and complete compliance with the Stipulation.
- Once valid baseline figures are set, and in consultation with the parties, we plan upon setting realistic, incremental improvement goals for each area, while maintaining, subject to revision, the ultimate compliance goal. Thus, for example, if the goal for task A is ultimately 90%, but valid baseline data reflect that the current level of compliance in that area is 30%, we might decide that a annual improvement of 15% would be realistic and demonstrate good faith efforts at improvement, despite what would be a continual finding of non-compliance in that area over a four-year period.

Overall, the performance indicators at this stage are detail oriented. We attempted as noted above to break performance into a variety of necessary – but taken in isolation – insufficient parts. As performance for the overall goal of any particular measure meets compliance thresholds, we will disengage monitoring of the component parts, along with the attendant data-collection requirements. Similarly, as an overall measure meets expectations of the course of time, we would diminish the intensity of our monitoring along with the reporting requirements.[26]

In addition to the performance measures we have already begun discussing with the parties, we have begun working on two additional measures. The first of these performance measures relates to the refusal rate and will attempt to characterize Defendants' responses to Class Members who refuse discharge planning. It is our intent to focus on this issue. We believe this issue to be crucial to the fundamental purpose of the Stipulation, and encourage Defendants to develop mechanisms for engaging Class Members who have initially refused discharge planning. Note that this does not imply that Defendants are responsible for a specific number of acceptances of service by Class Members, but rather that they must create systems and train staff in a way which is reasonably geared towards promoting acceptance. The training conducted by Cicatelli Associates, Inc., on engagement of the challenging client, referenced above, was a good start to this process.

[26] See footnotes 6 and 10 above.

The second measure in development will focus on the reliability and validity of the data we receive from Defendants. This of necessity will need to wait until we have a steady stream of data coming to us. We will also require some expert statistical advice on how to examine the data for its reliability and validity.

Some of the performance measures call for us to assess the appropriateness of a particular task, for example an assessment. While no such evaluation can be entirely devoid of subjective judgment, we endeavored to create general parameters to guide us and our staff in making such assessments. This should improve both inter and intra-rater reliability as well as add to the transparency of our process.

The principle here is that the Defendants' staff must be able to render judgments "in the field" without undue fear of being "second-guessed" by the monitors simply because we, in hindsight, could conjure an alternative assessment, diagnosis or course of action, as the case may be. This does not, however, mean that all actions and judgments properly evade our review. Below is a recitation of the *general* guidelines we developed to determine in which cases we will accept the reporting clinician's or discharge planner's judgment as memorialized in the medical record, and in which circumstances we will consider a judgment to be potentially improper:

Overall, we will use the standard of whether the assessment, plan, diagnosis, SPMI assessment, CDTP, and DSN fall within our understanding of the range of prevailing professional standards for such tasks. If they do, we will, as a general matter, give deference to the clinician's professional judgments. In such cases,

we will review for internal consistency and adherence to the prescribed timelines.[27] In reviewing such subjective assessments we will consider the following:

1. Is there sufficient information documented in the record to reasonably support the conclusion drawn?
2. Does the process revealed in the chart indicate that professional judgment was indeed applied? Factors we will consider in making this judgment include: ascertaining whether the process was completed in accordance with the policies and procedures of the relevant entity, and whether the conclusions drawn are reasonably supported by the facts and observations as documented in the record.
3. For SPMI/LSPMI, this review will include a systematic determination as to whether the State OMH criteria as modified by the Stipulation were applied.
4. If we accept the assessment and diagnosis, etc., as falling within prevailing professional standards[28] reasonably supported by the documented facts and

[27] We acknowledge that Class Members' diagnosis, treatment needs, psycho-social situation, and the appropriate discharge planning services which are so inextricably bound to these factors, may evolve over the course of an incarceration. Cognizant of this reality, we will not view the concept of "internal consistency" rigidly. Rather, a documented change in any of the above factors may indeed trigger a quite appropriate modification in discharge plans, as would a fluctuation in a Class Members willingness (in either "direction" ) to accept or reject certain services. In such cases, we would view "internal consistency" as plans reflective of such documented change in circumstance, assessment, or diagnosis.

[28] We are not using this term in the strict sense which might be found for example in a malpractice litigation context. We employ it to describe our outlook that we will not substitute our own preference regarding a particular "judgment call" by a clinician; rather, we will look at whether decisions were made within a reasonable range of professional judgment. We collectively have over sixty years' of experience in providing assessment, treatment, supervision, program development, and monitoring oversight in this and other correctional and/or hospital systems and will bring to bear – as in our view contemplated by the Stipulation – our expert opinion as to whether a particular judgment falls outside of an acceptable range in any given case. The fact that there may be no document specifying "prevailing professional standards" for a given area, should not, in our view, preclude us from expressing our opinion where that appears to us to be warranted.

observations (even if we do not agree 100%) we will proceed with a review for internal consistency; i.e., if the person has a given diagnosis, is he/she assessed for aftercare which would be consistent with treatment for this diagnosis (or, is there adequate documentation indicating why not). Then, we will look at whether this is translated consistently to the DSN; and finally, we will attempt to determine whether appropriate efforts were made to secure what is needed.

5. In the event that the completion of the task (assessment, diagnosis, SPMI determination, etc.) falls outside of the prevailing professional standards, in our view, we will not consider ourselves bound by this deference. In such cases, when we consider it appropriate, we will comment on this and draw conclusions regarding the sequelae of this inappropriate determination. This would include cases where the conclusions drawn by staff are not supported by the evidence documented in the record, where there was a failure to follow the applicable policy (or in cases of the SPMI determination the State Office of Mental Health criteria as incorporated by reference into the Stipulation); where there is no evidence of a professional judgment being rendered; where the professional rendering the judgment is not appropriately trained or credentialed; or, where the conclusion drawn falls outside of the prevailing professional standard in the field, even though there is documentation in the record germane to the task in issue.

**Conclusion**

At this point, we are required to publish performance measures. Our plan upon final publication of this Report is to finalize and publish the Performance Measures, developed to be consistent with ¶142 of the Stipulation. We reserve the right to modify, add or eliminate performance measures as time passes based on our experience monitoring Defendants' performance.

## X. Development of the Monthly Report Request

Pursuant to ¶124 of the Stipulation, we have begun developing a monthly report request. The form and content of this data request will mirror the performance measures and was developed specifically with the performance measures in mind. It is our intent to have Defendants supply us as automatically and routinely as possible with the data we need to evaluate compliance with the performance measures. A draft of this request has been circulated among the parties. Defendants' concerns are similar to their concerns regarding the performance measures, and particularly relate to the quantity and complexity of the data we have indicated we will be requesting. We are currently reviewing their feedback and will promulgate this request at the same time that we publish our performance measures. We recognize that, to date, Defendants have not had a reliable system for reporting data and understand that they are currently working on resolving the problems in the data system (see section below).

## XI. State of Data Reporting Process

As we noted in our last report, we strongly believe that the integrity and fairness of our monitoring reports is greatly enhanced by the process of issuing a draft report with attendant comment period by the parties prior to distributing a final version. To that end, we outlined in our last report the following timeline.

| | |
|---|---|
| Circulate draft of report | 3 weeks prior to due date |
| End of comment period | 10 days prior to due date |
| Publish final draft of report | due date |

In keeping with the above and consistent with the understanding we arrived at with the Defendants at out meeting of January 28, 2004, we made a comprehensive data request on January 30, 2004. We requested that the City separate the reporting of data derived and entered into its database for the period of January15, 2004 – February 5, 2004. This was the result of the Defendants' representation that the data collected and entered during this time-period would be, as a result of their increased efforts regarding data entry, substantially more valid and reliable than would be figures from the preceding period. Further, Defendants represented that they would be able to provide these data by February 11, 2004. This plan was entirely acceptable to the monitors because it appeared to satisfy simultaneously the sometimes competing interests of receiving the most accurate data the Defendants are capable of producing and our strong preference for a comment period with the deadline for production of a report within the timeframe set by the Stipulation.

On February 11, 2004, we were informed by the Defendants that they would be unable to produce most of the requested data by the agreed upon date; rather, they suggested that it could be forwarded for our review by February 17, 2004, a six day delay. The monitors had previously arranged their schedules around the planned schedule outlined above. As a result, this six-day delay, if accepted, would have made it impossible both to retain a suitable comment period and to produce a final report on the due date of March 8, 2004.

Several potential solutions were put forth and weighed by the monitors:

1. Extend the entire timeline by agreement of the parties, with the monitors then seeking leave of the Court.
2. Write a report based upon the data provided to us by the submission deadline.
3. Write a draft without the requested data, and if said data comes later, include it with analysis in final report.

As we understand the situation, the Defendants approached the Plaintiffs regarding the possibility of an extension of time upon consent of the parties, but failed to gain their assent to an adjournment of the due date of the report.

Faced with the lack of agreement between the parties, we declined to approach the Court *sua sponte* and undertook to decide upon a course of action. When so doing, we were guided by the following principles:

1. A comment period is highly preferable with regard to both the process of our monitoring and the validity of our reports;

2. An overly truncated comment period would unduly prejudice the Defendants.
3. The Stipulation was So Ordered by the Court, and the timeline for reporting was neither arbitrary nor capricious.

After careful consideration of the above factors we have decided to issue a draft report with the full, previously contemplated comment period. Perforce, this report will be devoid of much of the information we had requested from the Defendants. It should be noted at this point that the Defendants subsequently did produce most of the data requested on February 17, 2004, although we have not yet been able to analyze these data or form conclusions as to the significance of particular figures. These and subsequent data will be requested and reported for the period from January 15, 2004—April 30, 2004 in our report of June 6, 2004 and will of course contain not only the figures reported but our analysis of those data.

In the meantime, we find it constructive to examine this series of events and believe that we can draw some important inferences from them on both a technical and process level.

It is irrefutable that the Defendants failed, as of the date of the Draft of this Report, to organize and maintain a reliable data base capable of producing data reports pursuant to our requests in a timely fashion, although they did later produce most of the data we requested. They have asserted that they developed the following comprehensive plan to remedy this situation. In correspondence submitted to us on February 17, 2004, the City represented that it has conducted a

review of the systems it utilizes for data entry and collection, and, that as a result it instituted a number of improvements.

a) Utilize mental health providers to collect data, and modify existing mental health log books to more efficiently collect data.

- Mental Health Unit Chiefs in each jail are now responsible for completing log sheets and faxing them on a daily basis to the Division of Health Care Access and Improvement ("HCAI") data entry staff at 225 Broadway.
- The model log sheets regarding the Initial Mental Health Assessment and the CTDP were revised so that they would capture the essential "*Brad H* "data elements. HCAI is now responsible for tracking the daily receipts of these log sheets, and is to follow- up with any particular jail in the event that a log sheet is late or missing.

b) Early notification to Discharge Planners of M Clients.

- Mental health staff are now directed to give a copy to discharge planners of each DOC "M" notification, to allow for earlier identification of Class Members.

c) More efficient distribution of CTDP's to Discharge Planning.

- Previously, discharge planners had to physically pick up copies of CTDPs from the jails. Defendants advise us that the procedure is revised so that the Mental Health Unit Chiefs in each jail give copies of completed CTDP's to the discharge

planning supervisors on a daily basis. These supervisors then fax the documents to 346 Broadway for data entry.

d) Computer Screen Change.

- To facilitate data entry by the two different sites, the computer screens were redesigned so that one screen shows the data fields to be entered at 225 Broadway (off of the MH logs), and another screen shows data fields for the discharge planners.

e) QA Process for M Notifications.

- HCAI and DOC have instituted a process for daily reconciliation of M notifications.

f) Removal of certain edits in database to eliminate data log jams.

- HCAI discovered that certain edits in the MIS program barred the population of certain fields unless earlier fields were populated. These edits have now been removed so that data can be entered upon receipt regardless of whether it precedes another activity.

g) Reassessment of data entry needs.

- DOHMH identified a need for additional data entry staff to deal with a backlog. Three full-time data entry staff ("temps") were assigned to the discharge planning staff at 346 Broadway, and nine other staff were given additional responsibilities for data entry.

- HCAI trained an additional six employees to perform data entry at 225 Broadway who can be assigned to perform *Brad H* data entry on an as-needed basis.

h) New fields to database.

- One of the MIS revisions was addition of a new field which can now indicate when a client refuses certain aspects of discharge planning rather than all discharge planning.

i) Future Data/Reporting Enhancements.

- DOHMH will be implementing interim changes to the current IT system to allow for more flexibility in user tracking and reporting. These changes are anticipated to be in place for the fourth quarterly data report.
- DOHMH has submitted a contract request through the Department of Information Technology and Telecommunications ("DOITT") for an independent consultant to review current IT capability and make recommendations.

We place great importance on the development and maintenance of a well designed, accurate, reliable and valid data collection system. This system will be the bedrock not only of our monitoring in this case, but will also provide Defendants with direct feedback regarding any changes they subsequently make in their organizational structure, staffing levels or procedures related to discharge planning.

While we are optimistic that these changes are likely to improve the Defendants' ability to accurately and reliably capture data and to provide us with the information we require to fulfill our duties, their inability to do so until very recently is troubling as it has implications beyond this particular report. The main concern we have about this inability to develop and maintain such a database is that, without it, neither we nor the Defendants can establish in a statistically meaningful manner what they are doing vis-à-vis the Class Members for whom they are responsible. We are hopeful that we will begin receiving data outputs that will be useful in subsequent reports.

Defendants' problems with data collection and reporting notwithstanding, we are greatly concerned with the inability of the parties to resolve even as basic an issue as "should we delay the report until data is available, or should we accept a report without this data knowing that another is to follow in three months?" We believe that our responsibility is to adhere to the requirements of the Court as defined by the Stipulation, and to the greatest extent possible to the commitment we made following the mutual assent of the parties—to provide reports in draft form prior to submitting a final version to the Court. Thus, this report was circulated as a draft on February 17 with provision for a 10-day comment period. We received comments from the Defendants on February 27, 2004 and plaintiffs on March 2, 2004 and gave them due consideration before promulgating this version.

## XII. Reorganization within DOHMH

### A. Macro level changes

At a February 23, 2004, meeting with Deputy Commissioner, Division of Health Care Access and Improvement ("HCAI") James Capoziello, and his staff, we received some additional details in this regard. As we understand it, until recently, the contract to provide health and mental health services on Rikers Island was overseen by the DOH/MH's Division of Health Care Access and Improvement, while the departmental division responsible for directly for the provision of discharge planning services, the Office of Forensic Behavioral Health Services, had reporting responsibility through a distinct division of DOH/MH, the Division of Mental Hygiene. Deputy Commissioner Capoziello informed us that the Office of Forensic Behavioral Health Services was recently transferred to the Division of Health Care Access and Improvement, under his oversight and leadership. The import of this is that both primary entities—health and mental health on Rikers Island on one hand, and the discharge planning staff on the other— are now responsible to the same Deputy Commissioner. This consolidation should, in our opinion, allow for improved lines of communication among providers of service, including mental health staff and discharge planning staff, enhanced management oversight, and increased coherence and consistency in the Department's efforts to meet its obligations under this Stipulation. We have agreed to regular meetings with Deputy Commissioner Capoziello and his staff so

that we can maintain open communication with the managers of the service providers primarily responsible for service delivery as required by the Stipulation as this seemingly positive development unfolds.

B. Clinical Staff Level Changes

Defendants recently advised us that DOHMH has been simultaneously recruiting for new positions and conducting relevant negotiations for changes involving existing staff. Essentially, DOHMH will be retaining some caseworkers currently assigned to the jails for certain tasks, including initial client contacts and pre-screening. Social Workers (MSW's) are being hired and assigned to the jails for the on-going contact with clients, coordination with mental health providers, and appropriate placements of clients into community programs. DOHMH will be reassigning current discharge planning staff working out of the 346 Broadway site in the senior community liaison and public health educator titles to other jobs within DOHMH.

DOHMH indicated that three master's level supervisors of discharge planning will start work on March 8, 2004. All new supervisors will be required to hold masters' degrees. These hires will increase the total number of supervisors from six to nine.

Seven new social workers (MSW's) were identified to work in the facilities, four of whom will commence employment on March 29, 2004. One candidate withdrew from consideration and three did not accept employment. DOHMH is continuing to recruit for additional master's-

level discharge planners, who will all be assigned to work in the jails rather than the downtown office. These discharge planners will be phased into the new assignments on a facility by facility basis, with the first assignments going to AMKC and RMSC. In total, the plan is to have 24 staff-level, master's trained discharge planners working directly with Class Members in the City's jails.

On March 5, 2004, Defendants provided us with the following details regarding this planned reorganization, which when it is completed will bring to the jail facilities all discharge planning staff with the exception of Patricia Brown, the Assistant Commissioner at DOH/MH who oversees these services. When the reorganization is completed, the staffing will include the following positions stationed within the City's jails:

- 1 Program Director - MSW
- 1 Deputy Director - Masters
- 1 Epidemiologist - MA
- 1 Coordinating Manager - MSW
- 9 Supervisors (4 BA, 1 MA Human Services, 1 MA Clinical Psych, 3 MSW)
- 24 Master's Level Discharge Planners
- 25 BA Level Caseworkers
- 9 Clerical Associates

On necessarily brief review, we are in support of the changes described. First, we believe that bringing the mental health and discharge planning staff into a single administrative home makes good organizational sense and should improve both relationships and accountability. We also support the increase in training

level of the staff providing direct discharge planning services to Class Members. This should assist the process in many ways: (a) these workers should be able to interact with mental health staff on a clinical level, allowing them to integrate an understanding of the current assessments of Class Members' conditions with aftercare needs and functioning in community; (b) more highly trained discharge planning staff should be better equipped to engage Class Members whose refusals are a function of their conditions (but see below); (c) these new staff should be equipped to be more pro-active in the formulation and implementation of clinically appropriate discharge plans. While we support the use of discharge planners who are relatively less trained in performing some of the more "routine" tasks (including basic information gathering and completion of prescreening forms), we do have concern that these staff will provide the initial contact with the class member. We believe that more highly trained staff will be better able to engage resistant clients and may reduce the rate of refusal. We will refrain from further comment until we have had a chance to review these changes in greater detail and to discuss them with Defendants. We have several meetings with Defendants in the near future and will keep these changes on the agenda.

## XIII. Review of Prior Report Recommendations

We are in the process of developing a routine procedure for tracking the progress Defendants are making toward addressing the problems identified in our Reports. At times, we have chosen to make suggestions regarding this remediation, and at other times we have not. By the time of our next Report, we

should be able to introduce this new tool which can be used not only by us in our monitoring efforts but also by Defendants in guiding their efforts in remediation.

## XIV. Conclusion and Summary

This concludes our Third Quarterly Report. In closing, we will summarize some of our findings and the limitations of the conclusions that we have drawn.

First, it is clear that Defendants have made and are continuing to exert immense efforts to date in bringing about change within the system that provides discharge planning services to Class Members in the jails of New York. While we remain critical of various areas of the actual discharge planning process, as well as fundamental aspects of the service-delivery model, this in no way should be interpreted to mean that we believe the Defendants are not making good faith efforts.

Some of the content areas where we believe Defendants fall short at this stage of the implementation of discharge planning services include:

- Data collection and reporting inadequacies. This problem is very serious in that any measures are called into question if the validity of the data is not solid and reliable. **Data is one of the fundamental aspects of our monitoring approach and must be made reliable and valid. While Defendants have advised us that they have improved the data collection and reporting system, we have yet to see evidence of this improved system.**
- We continue to be concerned about inadequate coordination between entities working with Class Members. This has been evident in the following dyadic

relationships that have not appeared to promote collaborative care of the Class Member with attention paid to appropriate discharge planning:

- Mental health-Discharge planning personnel within the jails. We are aware that DOHMH is in the process of implementing changes which should improve these collaborations and promote coherent discharge planning efforts. **As noted, Defendants advised us of certain changes in the staffing pattern and location of staff within the facilities. We hope to see evidence of these changes in practice during the coming quarter. We continue to strongly support changes both at the "local" level (such as regular staff meetings that include members of mental health and discharge planning staff within a jail) and at upper administrative and managerial levels (such as the recent consolidation of these two services under the administration of a single Deputy Commissioner within DOHMH). In our view, these are the type of structural and procedural changes which are necessary to bring coherence to the service-delivery model for mental health care and discharge-planning services.**
- Jail-based discharge planning-CRU/Benefits unit. This collaboration is overly reliant on potentially undependable communication technology. **We have recommended and continue to recommend that DOHMH expedite the system change that has been**

**contemplated and also that adequate infrastructure and communication technology be provided for these staff.**

- Jail-based discharge planning-SPAN. Based on our preliminary review of a handful of SPAN cases, we have concerns regarding SPAN's apparent inability to get access to the complete set of records they would need from the jail. Given that the typical SPAN visitor comes only once to SPAN (per data provided for our Second Quarterly Report), **it is imperative for Defendants to develop a mechanism for the timely forwarding of this important clinical information in a useful way to SPAN.** Conceptually, an electronic medical record, for which SPAN could be granted read-only access, would resolve this issue. Until Defendants develop such a system, attention should be paid to other ways to solve this problem.

- We continue to be concerned with the record keeping as it reflects both discharge planning activities and the clinical functions related to them within the DOC facilities. There are two major issues that we have identified.
  - Charts are regularly unavailable when they are requested. This is true not only for our requests but, of more concern, for clinician, discharge planner and SPAN requests. It is a common occurrence to read a note which contains the words "chart unavailable". This may result in fragmentation of care, which in turn may result in inadequate discharge planning.

- Charts are also regularly found to be disorganized, although this appears to be variable by facility. When charts are not well-organized it produces uncoordinated efforts, and may result in inadequate discharge planning. In addition, we believe that the disorganization of the medical records contributes in some degree to areas in which we find the Defendants appearing to be out of compliance.[29]

There are a number of possible ways to solve these problems, including the creation of a more organized paper record (e.g. using six sided folders or loose-leaf notebooks with sections), the creation of more stringent record keeping procedures, and the use of computerized technology. **We recommend that an electronic medical record be implemented that would allow multiple simultaneous users to read and write to the record. Until this is developed, at the very least, the DOHMH discharge planning MIS should be available to all discharge planners in all jails.** This would provide them with more up to date information and reliance on a single point of contact will be unnecessary.

- Our reviews focused for this reporting period on the most upstream issues: the initial assessments, the SPMI determination, the CTDPs, and the initiation of discharge planning. We have already discussed our rationale for focusing on these upstream tasks.

[29] For example, when we note that a certain number of charts do not contain documents such as a SPMI form, a CTDP or a discharge planning note, it is possible that these tasks were both done and documented, but that they never found their way into the medical record.

Process issues include:

- The confidentiality issue raised in our Second Quarterly Report has not, to our knowledge, been resolved to date. We look forward to a resolution of this issue in favor of our unfettered access to information regarding Class Members contained in both medical records and databases.
- Related to the above, we are concerned about our lack of easy access to the various databases used by Defendants to track discharge planning activities. We were informed early on in our monitoring that a web-based read only version of the discharge planning database was to be made available to us; this has not occurred. While we have been provided with basic demographic information regarding Class Members from this database, Defendants have not provided us with access to the databases as per ¶123. We do note that DOC has been looking into providing us with reasonable access to the IIS but this has not yet been finalized.[30]
- DOC has been extremely helpful in our gaining access easily to the clinic and housing areas so that we are able to spend our time efficiently in reviewing records and interviewing inmates.
- Mental health and discharge planning staff for the most part have been helpful to us during our visits. We have not had difficulties in obtaining charts or meeting with Class Members. Given space limitations in the facilities, this has not always gone smoothly, but this does not seem to reflect ill intent on

[30] Among other reasons, it would be particularly useful for us to have ready access while in the jails to the date on which a Class Member receives the "M" designation in the IIS.

the part of the staff as much as it relates to their need to continue their work while we are on site.

- We continue to work with Defendants regarding the development of routine monthly data reports and special data requests for each Quarterly Report. We are concerned with the slow rate of progress in these areas.
- Fully aware of the nature of the adversarial process, we continue to encourage the parties to develop improved collaboration to the greatest extent possible in the furtherance of the goals of the Stipulation.

NEXT STEPS:

- Ongoing monitoring with particular attention to upstream issues.
- Development of a Microsoft Access database for maintaining records of our monitoring efforts and for our use in evaluating the data we collect.
- Continued efforts to recruit and hire a statistical expert
- Concurrent with or shortly after our release of this Report, we will be continuing our work on the development and finalization of:
  - Performance Measures, pursuant to ¶140ff.
  - Request for a Monthly Statistical Report from Defendants
- We plan to reopen the question of our access to the various databases containing Class Member information, including the discharge planning MIS, the DOC IIS, and others, as per ¶123.

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

Respectfully submitted,

| | |
|---|---|
| Henry Dlugacz | Erik Roskes |
| Compliance Monitor | Compliance Monitor |