Index No. 117882/99

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

BRAD H.*, et al.*,

Plaintiffs,

-against-

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

Defendants.

ELEVENTH REGULAR REPORT OF THE COMPLIANCE MONITORS

October 6, 2006

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

Eleventh Regular Report of the Compliance Monitors
October 6, 2006

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

Contents

I. Introduction

This introduction highlights some of the main issues discussed in this report. The most important change in this Report is our decision not to report data based in the discharge planning MIS.[1] This was a difficult decision for us to make, as it severely limits discussion of Defendants' reported performance on many of the key discharge planning tasks. However, given our questions as to the accuracy of these data, we believe that it is the only responsible decision we can make at this time. While our concerns regarding the discharge planning MIS should become moot when Defendants complete their new data system, DoHMH is not scheduled to implement this system until February 2007 at the earliest. In the meantime, we have endeavored to work with the Parties to design a study of the data contained in the discharge planning MIS as it relates to information contained in the medical and administrative records. This process has gone more slowly than we anticipated. At this point, we have reached an agreement in principle with DoHMH regarding the methodology and parameters of the study. We continue to work to finalize plans for this study and have outlined a timetable for conducting the study. This is discussed in more detail in Sections V. B. 1 and V. B. 2.

Defendants made significant strides in other areas during this reporting period. Most notably, DoHMH completed revisions to the policies governing mental health assessment and treatment and worked toward completing similar revisions to the discharge planning policies. DoHMH also revised or developed many of the forms required for the full implementation of these updated policies. These forms should be easily adaptable to

[1] The discharge planning MIS is commonly referred to by all parties to this case as "Citrix". Inasmuch as Citrix is a specifically branded product used by Defendants to provide staff with remote access to the discharge planning MIS, it is not the actual source of the data Defendants provide. Therefore, we will no longer refer to the discharge planning MIS as "Citrix."

electronic format once the appropriate electronic infrastructure becomes available. Once fully implemented, these forms and policies should provide us with the information we require to monitor the performance measures which require an assessment of appropriateness. This is an ongoing process, and one which we anticipate will continue in an iterative fashion as new issues are identified. This process is discussed in more detail in Section IV. B.

In this report, we express continued concern regarding the staffing levels within the discharge planning program. Defendants are unable to adequately fill the master's-level discharge planning positions called for in their "new model". We make suggestions regarding ways to address this problem in Section IV. A. Defendants have repeatedly noted that they are not under an obligation to implement any particular model or achieve any specified staffing level. However, we are of the opinion that Defendants cannot achieve the fundamental goals of the Stipulation without adequate implementation of some reasonable model for providing discharge planning service.

We now enter the last two years of the five-year monitoring period provided for in §IV of the Stipulation. Over time, it has become increasingly clear to us that the Stipulation's focus on micro-level requirements – often with strict timelines – can impede the development of an integrated model of mental health care and discharge planning. As long as Defendants must focus their energy on meeting specified timelines, for example, they will be less likely to attend to issues not delineated in such detail but which may be as or more helpful to meeting Class Members' specific post-discharge needs and which may be necessary to meet the fundamental goals of the Stipulation. The Stipulation tends to emphasize process over outcome. This is connected to both Defendants' overly narrow

view of the commitments they have undertaken as well as an understandable diversion of resources toward meeting these technical requirements. This combination of limited vision and natural emphasis on attaining clear cut measures of compliance is detrimental to a focus on the essential, underlying goal of the Stipulation—the creation of a functioning system of individualized discharge planning which identifies inmates with mental illness in need of aftercare planning, assesses those needs appropriately, and attempts to create the linkages required so that the identified Class Member has the opportunity to continue in and pay for treatment following release.

This relates closely to the staffing issue. Defendants' chronic short-staffing, combined with the drive to meet the process-oriented requirements outlined in the Stipulation, means that the available staff must be diverted from one place to another and from one task to another to meet the requirements. They will therefore be unavailable to develop the longitudinal relationships that we believe to be a necessary precondition to the provision of clinically appropriate, individualized discharge planning services.[2] We hope that our overt statement of this predicament will initiate an open discussion as to how to mature the discharge planning services beyond the individual, easily quantifiable aspects of the Stipulation.

While we are at times critical of the current state of discharge planning, Defendants, particularly DoHMH, continue to work well with us. We see current leadership as committed to coming into compliance with the requirements of the Stipulation and to

[2] We recognize that many Class Members will be released very quickly, precluding the development of any sort of longitudinal relationship with a discharge planner; in these cases, rapidly establishing a rapport and meeting timelines may be all that can be done. However, for Class Members who remain incarcerated for longer periods, the development of a relationship over time will allow for progressive individualization of the discharge plan. In other words, the engagement and individualization of efforts (and our judgment as to appropriateness of those efforts) should be proportional to the length of stay.

resolving problems that we and they have identified. In some areas, such as the development of the new data system, they correctly assert that this work is not specifically required by the Stipulation.[3] In this area, Defendants demonstrate a commitment toward creating a workable discharge planning record keeping system. We take the position that, absent a record-keeping system that is useful both at the data entry level and at the end user level, Defendants will be unable to meet their specific obligations. We commend DoHMH for its commitment to creating the necessary infrastructure. We anticipate that the constructive working-together approach that DoHMH have engaged in with us will continue over the coming reporting periods.

II. Prison Wards

In our Eighth Report, at page 27, we discussed the complex legal history relating to our determination to consider patients housed on the Prison Wards to be Class Members. Defendants' appeal of Justice Braun's decision of April 16, 2005 finding our determination to be reasonable was argued before the First Department of the Appellate Division, on October 27, 2005.

On October 3, 2006, just prior to the publication of this final Report, the Appellate Division affirmed Justice Braun's declaration that, contrary to Defendants' assertion, our determination that detainees and inmates housed on prison wards are Class Members was

[3] Class Counsel point out in their comments that, while the specific nature of the discharge planning MIS is not delineated in the Stipulation, ¶125 does require the discharge planning MIS to

> "accurately reflect current information for each Class Member…. Although the Settlement does not require Defendants to develop any specific type of data system, it does obligate them to provide reports requested by the Monitors… and, if feasible, to modify the Discharge Planning MIS to produce reports requested by the Monitors…. Defendants have chosen to develop a new data system."

Thus, while Defendants are correct that they are not *per se* obligated to develop the system they are currently developing, they are obligated to maintain a system that meets the requirements of the Stipulation. If properly implemented and managed, the system DoHMH is currently developing should meet the requirements of the Stipulation vis-à-vis reporting requirements; further, it should also significantly improve documentation of clinical encounters and provide a powerful tool for DoHMH to manage and direct its system.

reasonable, and that these individuals are therefore within our monitoring purview. We understand that Defendants are reviewing this decision and that they may have further appeal options. In the meantime, we will develop a mechanism to monitor Defendants' provision of discharge planning services to Class Members housed on the prison wards.

III. Paragraph 61

We have previously described the complex course of modifications to the Stipulation's requirements related to temporary Medicaid. See our Eighth Report at pp. 33-37 and our Tenth Report at pp.36-38 for details.

As previously noted, the City commenced an Article 78 proceeding against two New York State agencies challenging their decisions to reject HRA's proposed rule which would have enabled the City to comply with Justice Braun's Order at least as to still-incarcerated Class Members. The adoption of an additional rule is required before HRA can lawfully implement the Court's November 11, 2003 Order modifying paragraph 61 of the Stipulation. This proceeding has now been transferred to Justice Braun.

In July of this year, the Court granted Class Counsel's motion to dismiss the Petition as against the Class, but denied Class Counsel's motion to intervene. Class Counsel moved to reargue its denied motion to intervene but at least as of now the Class is not a party to the action. On August 21, 2006, the Court denied the State's motion to dismiss the Petition. The State defendants answered on August 28, 2006. The court conducted a conference on August 31, 2006, where it received submissions on the outstanding motions. The City withdrew its request that the Court order the State to adopt the precise local rule proposed by HRA. Its current prayer for relief is essentially that the Court order

the State to take whatever action is required to permit the City to comply with the Court's modification of paragraph 61 of the Stipulation.

Our efforts to monitor this requirement are stalled pending a resolution of this litigation, which we foresee ultimately being decided at the appellate level.

IV. The Process of Discharge Planning

A. *Staffing*

Before we engage in a discussion of discharge planning staffing, we report that DoHMH has promoted a new Acting Assistant Commissioner for Correctional Mental Health Services. Over the past few months we have worked extensively with the psychiatrist they selected. We believe that his promotion is a great step forward, in that he appears to have a vision for quality care and coordination of that care among the various mental health and discharge planning disciplines. Additionally, DoHMH has now consolidated discharge planning, mental health, and data management related to these tasks under the same Assistant Commissioner. We expect this new administrative structure to bring improved collaboration among the various services involved, which include those provided directly by the City as well as those provided by the city's contractor.

We included an extensive discussion of discharge planning staffing in our Tenth Report, beginning at page 18. In the discussion which follows, we provide a context for understanding our perspective.

Any successful service requires certain minimum building blocks. These include clear programmatic goals, sufficient numbers of adequately trained staff, and an administrative structure which allocates the tasks required of staff in a way

reasonably calculated to achieve the program's goals. Early in our monitoring of this Stipulation, Defendants presented a reconfigured programmatic model for discharge planning, referred to as the "new model." DoHMH subsequently identified what it apparently believed to be a sufficient staffing pattern for this reorganized discharge planning program, consisting of a complement of 27 master's level social workers and 22 bachelor's level caseworkers.

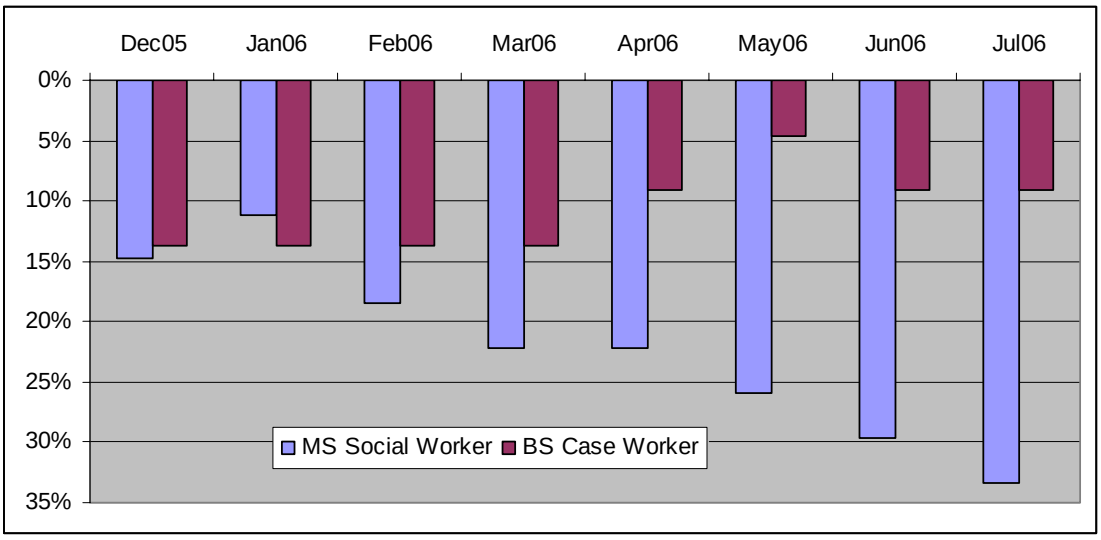
We have supported the move toward this approach to providing discharge planning because it represented a significant improvement over the previously existing model. Our support for this has been focused primarily on the actual day-to-day work that discharge planners are to do. Briefly summarized, we believe that the new model better allows for clinically appropriate, individualized discharge planning than did the old model. Tasks and job descriptions are more efficiently and logically arranged and better related to the flow of work in the jails. The new model may or may not represent a "best practice" approach to providing these services, and it may or may not be the model we would suggest if we were presented with the issue *de novo*, but it was clearly a reasonable and preferable alternative to the prior discharge planning staffing model. Unfortunately, as the information below indicates, Defendants have never achieved their designated staffing pattern. As a result, they have not adequately implemented the new model.

For this report, Defendants provided us with monthly snapshots of their staffing, as shown in the table and graph on the following pages.

Table 1: Staffing Pattern

	FACILITY	Model new or old?	Masters level positions Filled	Masters level positions Vacant	Bachelors level positions filled	Bachelors level positions vacant
April 2006	AMKC (C-71)	Partial	3	0	2	1
	AMKC (C-95)	New	4	2	4	0
	ARDC	New	2	0	1	0
	EMTC	New	2	1	3	0
	GMDC	Partial	1	1	2	0
	GRVC	New	0.5	0	1	0
	NIC/WEST	New	0.5	0	1	0
	OBCC	Partial	1	1	1	1
	RMSC	New	5	1	3	0
	BBKC	New	1	0	1	0
	VCBC	New	1	0	1	0
	TOTALS		21	6	20	2
May 2006	AMKC (C-71)	Partial	3	0	2	1
	AMKC (C-95)	New	4	2	4	0
	ARDC	Partial	1	1	1	0
	EMTC	New	2	1	3	0
	GMDC	Partial	1	1	2	0
	GRVC	New	0.5	0	1	0
	NIC/WEST	New	0.5	0	1	0
	OBCC	Partial	1	1	2	0
	RMSC	New	5	1	3	0
	BBKC	New	1	0	1	0
	VCBC	New	1	0	1	0
	TOTALS		20	7	21	1
June 2006	AMKC (C-71)	Partial	3	0	2	1
	AMKC (C-95)	New	4	2	3	1
	ARDC	Partial	2	0	1	0
	EMTC	New	2	1	3	0
	GMDC	Partial	1	1	2	0
	GRVC	New	0.5	0	1	0
	NIC/WEST	New	0.5	0	1	0
	OBCC	Partial	1	1	2	0
	RMSC	New	3	3	3	0
	BBKC	New	1	0	1	0
	VCBC	New	1	0	1	0
	TOTALS		19	8	20	2
July 2006	AMKC (C-71)	Partial	3	0	3	0
	AMKC (C-95)	New	3	3	3	1
	ARDC	Partial	2	0	1	0
	EMTC	New	2	1	3	0
	GMDC	Partial	1	1	2	0
	GRVC	New	0.5	0	1	0
	NIC/WEST	New	0.5	0	1	0
	OBCC	Partial	1	1	1	1
	RMSC	New	3	3	3	0
	BBKC	New	1	0	1	0
	VCBC	New	1	0	1	0
	TOTALS		18	9	20	2

Figure 1: Vacancy rates



This snapshot demonstrates the worsening of a persistent retention problem the master's level social worker category when compared with Table 1 in our Tenth Report: Since January 2006, when 24 (89%) of the 27 master's level positions were staffed, Defendants have lost one-quarter of their master's level staff. The losses of most concern among the master's level staff were sustained in two of the key jails in the system – C95 (a large, multi-purpose, general population jail for men) and RMSC (the only jail housing women).

There has been a simultaneous slight improvement in the bachelor's level staffing pattern, from 19 of 22 positions filled to the current 20 of 22. By the end of the reporting period, two positions were gained, one each in RMSC (the only jail for women) and C71 (the highest non-hospital level of care available for male Class Members), while one was lost in C95.

Defendants advised us that "partial" implementation of the new staffing model is a term used to indicate a jail that does not have "the full projected complement of Social Work staff." In our view, this definition means that, as of July, C71 should be

considered to be operating in the new model, while C95, EMTC, GMDC, OBCC and RMSC all should be considered to be operating only partially in the new model.[4]

Also of note is that, since Defendants began providing us with monthly data reports in December, 2005, OBCC and GMDC have never achieved full staffing of the Master's level positions. Similarly, in two of the key jails in the system – RMSC and EMTC[5] – full staffing of the Master's level complement has only been briefly attained. Neither jail has been fully staffed since January 2006.

In summary, Defendants have managed to recruit and retain a stable cadre of bachelor's level caseworkers. The same cannot be said of their efforts as to master's level social workers, where to date their efforts have faltered. We are forced to conclude that Defendants' efforts to fill the required staff positions have failed despite their extensive efforts.[6] Defendants are faced with the choice of either (1) continuing to try to fill these positions, using new methods to attract and retain qualified candidates, or (2) developing a different approach to organizing discharge planning services. The option of continuing down the current road – using the same techniques to recruit and retain staff to work within the same model of service delivery – is no longer reasonable.

Multiple reasons at both the micro and the macro levels lead us to this conclusion. At the micro level, regardless of how hard people work, some tasks cannot be

[4] In color versions of this report these cells are shaded pink in Table I above.
[5] Both of these jails house sentenced inmates whose date of release is known in advance. Given reasonably full staffing, structured and well-developed discharge planning should generally be achievable for this group. In addition, RMSC is the only jail housing sentenced or detainee female Class Members, so that any deficits in this facility affect the entire population of female Class Members within DOC.
[6] Defendants responded to this issue in their comments as follows: "DoHMH is continually assessing its methods for assuring adequate numbers of staff and exploring new or additional options. In additional to recent aggressive recruitment efforts, DoHMH has been working with a temp agency and is exploring the development of a new title."

completed without a minimum complement of staff. Defendants can surely require staff to move from jail to jail to meet time-based requirements, but this will only result in other tasks remaining incomplete elsewhere.

At the macro level, as long as the limited available staff are forced to do things in order to meet the technical requirements of the Stipulation, regardless of other needs, then other important aspects of discharge planning will never happen. Staff placed in a position of constantly having to struggle just to keep up with last minute deadlines (those occurring early in a Class Member's stay as well as those occurring at the very end) will not routinely be able to devote the time needed to address the crucial but time-consuming tasks of engagement, overcoming resistance, and relationship building which success requires, as Defendants clearly recognize (see discussion in section V. C. 5.: Pilot Project). Inadequate staffing inevitably makes longitudinal discharge planning, something which is difficult to quantify but which has demonstrable adverse ramifications if it does not happen, a lower priority than more measurable, time-sensitive tasks. Most importantly, as noted above, longitudinal work with a client, when possible, is the best way to engage that client in a treatment or discharge planning process. This allows for progressively more individualized and appropriate discharge planning over time.[7]

The current state of affairs necessarily interferes with the development of good staff morale, continuity of care and communication among providers which permit the development of a functioning service. The failure to implement the new model,

[7] We recognize that Defendants take a narrow view of their obligations regarding the determination of whether a mental health referral is appropriate, viewing the language in ¶44 as an exhaustive rendition of the criteria for this judgment. A longitudinal relationship is in many cases a necessary precondition for adequately performing the tasks in this list, even if the list of tasks is viewed as exhaustive and not as exemplary.

coupled with the detail-oriented nature of Defendants' obligations as outlined in the Stipulation promote a narrow focus on meeting specified, technical requirements, to the detriment of unifying these individual tasks into a vision of discharge planning based upon the individualized assessment of each client's needs.

DoHMH did not make us aware of any changes in its methods for attracting new staff or for retaining existing staff.[8] We urge DoHMH to think differently about this problem and suggest that it conduct a full reappraisal of its recruitment and retention efforts. Indeed DoHMH should consider whether it will ever be able to implement the new model. In addition to the details we discussed previously, we strongly recommend that this process include an examination of salary structure and job description. We further strongly recommend that this assessment consider reallocation of existing resources and responsibilities across the mental health/ discharge planning system. Taken together, the mental health and discharge planning staff comprise a large number of professionals with a diverse skill set. The mental health/discharge planning system is charged with a series of complex tasks ranging from assessment, diagnosis and treatment to the development and implementation of an appropriate aftercare plan. Defendants' approach to meeting the requirements of the Stipulation should examine the capabilities all of their staff bring to the challenge and how those skills can be most efficiently applied to ensure that necessary services are provided. We anticipate that the new Assistant Commissioner will develop a fresh approach to resolving this difficult problem, as he is well-situated to bring

[8] We again refer the Court to our discussion of this matter at pp. 22-26 of our Tenth Report.

together the senior staff required to conduct the "top-to-bottom" reassessment we suggest.

B. *Updated Documentation and Policies*

During the current reporting period, DoHMH finalized its current iteration of the policies that drive mental health care, and engaged in several revisions to those that drive discharge planning.[9] In addition, they updated and finalized many of the forms used by staff. We provided feedback to them during this process. The current versions represent significant improvements over prior iterations of both policies and forms. In terms of discharge planning, new forms for use in documenting the discharge plans fill significant gaps in documentation. All of the forms now presume that services will be accepted, rather than presuming refusal as was previously the case.

DoHMH developed two new discharge plan forms, including an initial Discharge Plan and a Discharge Plan Update. These forms are designed to be used to document in one place all aspects of the discharge plan developed for a given Class Member. The Update form is used to record changes over time as the discharge plan evolves. These forms were introduced for use on June 12, 2006.[10] Among the elements captured by this form is an assessment of the factors discharge planners should consider when making clinical referrals for Class Members as per ¶44 of the Stipulation. Importantly, both form and policy require staff to briefly indicate how

[9] Just prior to the completion of the draft of this Report, we received the next iteration of the key discharge planning policy (Policies XI-C, etc.); we intend to review this version after publishing this final Report.

[10] We rarely see these forms in the records, and we expect that Defendants will be using them more regularly over time. In their comments, DoHMH indicated that they "will be taking follow-up measures to ensure that staff are using the new forms."

they weighed the various factors required by paragraph 44 when arranging for post-discharge mental health care.

Two forms were developed to be used by LINK in communicating its plans for SPMI Class Members referred to this program. Analogous to the Discharge Plan forms, one serves as an initial record, the second as an update should the situation change. To our knowledge, these have not yet been finalized or implemented for use. According to the new draft policy XI-L, LINK will be providing monthly updates to the Discharge Planning staff,[11] with the final report submitted within 30 days after release. Once implemented, they will fill a major gap in discharge planning documentation and communication by rendering LINK's efforts transparent to the jail based staff.

DoHMH revised five mental health forms during the current reporting period:

- Mental Health Intake Form,
- Psychiatric Evaluation,
- Psychosocial Evaluation,
- Comprehensive Treatment Plan and Discharge Service Needs, and
- Comprehensive Treatment Plan and Discharge Service Needs Update.

As they developed these revised forms, they incorporated our suggestions where they found them appropriate, and where they fit with DoHMH's overall approach to this process. The major improvements, in our view, reflect the following:

- The new forms allow for a more longitudinal approach to diagnostic and functional assessment from intake through treatment plan development.
- The new forms assist the providers in completing a functional (SPMI) assessment consistent with State Office of Mental Health criteria.
- The new forms do not require the repeated gathering of similar information at different times, except where it serves a clinically useful purpose; this

[11] The policy also requires notification of Discharge Planning within 2 business days "if there is a significant change in the status of the service plan."

repetition was eliminated and replaced with questions relating to functional assessment.

- The new forms better assist providers in gathering prior history regarding diagnosis, functional status and treatment, including history from collateral information sources.
- The new forms, because of all of the above improvements, should assist mental health and discharge planning staff in projecting the specific post-release clinical and functional needs of each Class Member.
- The new Treatment Plan forms both solicit and allow for the documentation of specific input by the Class Member.

C. *Appropriateness Measures*

Hitherto, we have declined to systematically assess Defendants' performance on measures regarding the appropriateness of their work because the medical records did not, in our view, contain sufficient information upon which to base a judgment. The specific performance measures requiring this assessment include the appropriateness of the Likely SPMI Assessment, the appropriateness of the SPMI assessment, and the appropriateness of staff's projection of Class Members' post discharge needs.

In our Tenth Report, we outlined a three step process to be completed before we would be able to assess these measures. The first two steps involved the creation of "procedures for conducting comprehensive and appropriate assessments and preparing individualized discharge plans" and of "mechanisms to capture the work done by Defendant staff in such a way as to permit a judgment as to whether that work was done 'appropriately.'" As described above, DoHMH has engaged in sustained and productive efforts, which when fully implemented will address these two steps. The new mental health forms were finalized and approved for printing on August 21, 2006. Since June, 2006, the mental health staff have been charged with seeking outside information for Class Members who report current prescription of

psychotropic medication during their medical intake examinations.[12] There is as yet no new mechanism for reviewing information from prior incarcerations: DoHMH has initiated a process to develop an information system that will allow for rapid review of basic diagnostic and clinical information;[13] this process has just begun to move from the design to implementation phase.

After the following steps are completed, we should have minimally sufficient information available in the records to permit an assessment of measures 2.2, 2.4 and 3.2:

- Consistent and appropriate implementation of the collateral information protocol.
- Consistent and appropriate implementation of the new discharge plans and updates.
- Introduction of the LINK Status forms (initial and updates) followed by consistent and appropriate implementation.
- Finalization and implementation of procedures which will permit rapid review of relevant information from prior incarcerations in the event that a Class Member is re-incarcerated.

DoHMH has mostly completed the revisions to their forms and procedures necessary to acquire and document the information we need to assess the appropriateness of the discharge-planning work they do. Although advanced, these changes are in varying stages of development and implementation. Importantly, we now know the scope and content of the information which will be available to us once these revisions are finalized and routinely put into practice in the various facilities. As such, our work with Defendants to develop the instruments and processes to monitor

[12] Deceptively, these changes appear simple. In reality they require a basic shift in thinking for many of the staff providing mental health care and discharge planning services. As such, to implement them in a meaningful way will require on-going oversight, training and corrective actions by DoHMH and PHS supervisors.

[13] This information will include data vital for formulating an appropriate plan: past discharge plans and updates and aftercare letters/discharge summaries. It appears to us that the aftercare letters/discharge summaries will be applicable only to those Class Members released from jail or who appear at SPAN. Nonetheless, the discharge plan alone will include diagnosis, medications, SPMI status, previous referrals, and other essential information.

the appropriateness of their work can occur concurrently with DoHMH's efforts to finalize the design and to fully implement these important enhancements. This process will be a primary focus of our efforts upon completion of the discharge planning MIS concordance study (see section V. B. 2).

Our original Performance Measures were set forth in June, 2004. While we have not been able to monitor the appropriateness measures because DoHMH's recordkeeping, assessment instruments and policies did not support such judgments, Defendants are nonetheless obligated to achieve compliance with these measures. Now that Defendants have nearly finalized the new forms and procedures, we will allow them until December 31, 2006 to train staff and to implement the new procedures and the use of the new forms. While they are in this implementation stage, we will engage in two parallel tasks:

- we will engage DoHMH in a process of developing criteria by which we can determine if they completed tasks in an appropriate manner, and
- we will begin to monitor the presence of necessary documents in the charts as the first step toward formal monitoring of these measures.

While we are conducting chart reviews, we will also pilot the use of our developing appropriateness criteria. As of January 1, 2007, we will initiate monitoring, and DoHMH will be held to the standard we set in our performance measures.

D. *Electronic Medical Record Development*

As described in our Tenth Report at page 27, Defendants have several electronic record initiatives in progress. The most important to this case is the development of a completely new system for the capture of mental health and discharge planning data. Rather than rely on the transfer of information from a variety of paper sources into the current database ("discharge planning MIS"), staff will be performing real-time

data entry into this new system. We attended an impressive demonstration of the new system on June 8, 2006. This system, as demonstrated there, has several advantages over the current record-keeping procedures within DOC:

- It minimizes the need for repeated entry of demographic and other often-repeated information (e.g. diagnosis).
- It provides prompts and ticklers for tasks that must be completed by a certain time.
- It provides dropdown menus for commonly used entries.
- For some services, it prevents skipping of steps by requiring an entry before allowing the user to proceed forward.
- It permits prompt review of data from previous admissions.
- It ensures that pertinent information is available upon transfer within a given incarceration.
- It allows for real time managerial review of services delivered and difficulties encountered. Managers can track trends and tailor the analysis of data reports to fit even currently unforeseen needs.

In their response to our request for updates for this report, Defendants reported as follows:

> "The new case management data system completed the Inception phase in early August, which included a needs assessment of key stakeholders. The system is intended to act as an electronic mental health and discharge planning record that can easily interface with the DOC IIS system and the Rikers Island Intake System (RIIS), and will provide a more efficient means of communicating with other agencies such as HRA and DHS.
>
> "The current phase is the Elaboration which formalizes the workflows of each unit. This began in mid-August and is expected to be completed sometime in October.
>
> "The next two phases (Configuration of Documents and Development and Customization) have already begun within the Elaboration phase. Configuration will continue to evolve through other phases and is expected to be complete around the end of the year. Development is anticipated to be complete in October.
>
> "The following two phases (Acceptance and Testing and Training) are both slated to begin in mid-October and be completed in January, 2007.
>
> "The final phase (Documentation) is expected to be accomplished in late January which would allow the system to be implemented in early February."

This is a dramatic step forward which has come about as a result of a commendable investment of human and financial resources.[14] It should greatly improve treatment, discharge planning, clinical documentation, and managerial supervision of the program, and it should address our concerns regarding data reporting.

We coordinate with DoHMH to arrange a meeting in the near future to receive further updates in greater detail regarding the development and progress of the new data system. We understand that the new system will include quality assurance testing to be developed by DoHMH Bureau of Informatics and Information Technology (BIIT). We anticipate ongoing clarification regarding this from Defendants.

In addition, as discussed above, Defendants have discussed modifying their internal systems to enable clinicians evaluating new intakes to readily review basic information from prior incarcerations. DoHMH will develop training to ensure that all clinical staff are equipped to use the new system.

Finally, Defendants continue to explore whether they can access other systems to provide collateral information regarding state hospital admissions.

E. *SPAN Reorganization*

In our Tenth Report on pages 28-30 we reported to the Court that SPAN had not implemented the terms of the April 13, 2005 agreement to temporarily close the

[14] Quite unfortunately from a monitoring perspective, it will be year or more before these efforts bear fruit. The new data system's current projected rollout date is early February, 2007. Assuming that there is a rapid learning curve, the first month for which data can be expected optimistically to be entered into the new database would therefore be February or March. The first full monitoring period for which data will be derived completely from this new system would be April – July, 2007, allowing us to include it in our Fourteenth Report, due October 6, 2007.

Staten Island SPAN office and use the resources saved to fund a variety of new initiatives aimed at increasing SPAN utilization among Class Members.

At this time, Defendants report that "SPAN Office redeployment as outlined in the April 13, 2005 memo has been fully implemented." To support this statement, they report the following actions:

1. Central Property

SPAN staff is now assigned to the Central Cashier's office on Tuesdays and Fridays where they attempt to engage Class Members returning to Rikers to claim property as well as those who are being released from custody. They report that they do so by providing an overview of SPAN services and distributing SPAN brochures.

SPAN reports that it approached and distributed brochures to 123 people at the Central Cashier's office between May and July of this year. Of those, 31 reported that they had received mental health services during the course of their incarceration. Four of these Class Members (12.9%) subsequently reported to a SPAN office.

Class Counsel, in their comments, point out that

> "merely distributing brochures to Class Members does not go far enough in properly explaining to Class Members the services SPAN has to offer. In the April 2005 agreement, SPAN undertook to explore the 'possibility of obtaining a dedicated space from DOC in the Central property area to conduct assessments or brief intakes.'"

We request specific information as to this issue during the next reporting period.

2. New Positions

Defendants report that the closing of Staten Island SPAN office freed the resources to create and hire an Assistant Program Director and Discharge Planner Technician. SPAN filled these positions in April, 2006. In addition, in May, a Program Supervisor for the Manhattan SPAN was hired.

3. Increased in-reach

SPAN reports that they now conduct motivational sessions on the Mental Observations units three times per week, on Mondays, Wednesdays, and Fridays. This is a very positive development. Defendants reported that they conducted a total of 35 sessions for 351 Class Members during April, May and June.[15] If this level of performance continued during July, clearly Defendants will have reached many more Class Members during the current reporting period due to this increased frequency of inreach sessions. However, Class Counsel point out that DoHMH "agreed to the temporary closing of the Staten Island SPAN office so that those resources could be redirected toward expanding in-reach efforts…. Defendants have not come close to fulfilling their agreement to conduct nine in-reach sessions per week."

4. Court Out-reach

We addressed the status of Defendants' compliance with ¶40 of Stipulation on pages 30-32 of our last report. At that time we reported that:

> "Defendants are concentrating on attempting to 'implement outreach efforts which do not rely solely on distribution of written materials, but rather would put SPAN personnel in the courts to

[15] 137 Class Members attended inreach sessions in July, bringing the total number for the reporting period to 488, but we do not know how many inreach meetings were conducted in July.

> encourage class members to utilize its services.' Defendants expect to submit a proposal shortly for our review as to how they will accomplish this."

During a meeting with DoHMH on June 8, 2006, they informed us that SPAN had begun to engage in court outreach in the Brooklyn Criminal Court on May 22, 2006. Their approach does not require assistance from the Office of Court Administration, something which Defendants previously had reported to be a hurdle to their compliance with ¶40.

Defendants explained their procedure as follows:

> "SPAN assigned one FTE staff person to visit criminal courts in Brooklyn daily (5 days per week, except when courts are closed) to encourage class members to utilize SPAN services. SPAN performs the following:
>
> - "Prints the court report daily from Citrix one month in advance by borough, court part, location, and confirmation that client has consented to release of information to attorney
> - "In the event that the report shows that a particular client has not signed such a consent, SPAN will contact Director of Discharge Planning Office at [telephone number] to request that jail-based discharge planners attempt to obtain such consent
> - "In the event that a client does not sign the release, SPAN staff can still attempt to meet the client in court but, due to confidentiality concerns, may not contact attorney or discuss Brad H class membership status with the attorney
> - "These reports are to be cross-referenced to ascertain changes and schedules changed accordingly
> - "Prepares a proposed weekly schedule one week in advance, organized in a manner that will optimize the number of client contacts, and emails or faxes copy [fax number] of schedule to [named staff]. It is understood that there will be some adjustments to the schedule on the actual court date, depending on the final scheduling of court appearances
> - "Contacts the attorneys prior to court date to inform them of desire to meet with released clients immediately following court appearance

- "Contacts the court clerks to ascertain the time of day (AM or PM session) that the client will be seen by the judge and adjusts final schedule as needed
- "Meets clients who are released from custody during court appearance per schedule and encourages them to utilize SPAN services; if client is willing to visit SPAN, the staff member should offer to accompany the class member to the SPAN office and return to the courthouse or arrange for another SPAN staff member to accompany the class member to the office
- "Prepares monthly report for DoHMH indicating the number of attorneys contacted, the number of clients seen in court, number of clients accepting services, number of clients declining services, and the number of clients unreachable and the reason.
- "Periodic evaluations of the process will be conducted."

Defendants' preliminary reports are that, during May – July, 153 Class Members' names "were submitted for possible out-reach at the Brooklyn Courts," SPAN made contact with 5 Class Members, and that of those 1 person accepted services.

DoHMH indicated that in most cases, the Class Member could not be contacted

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

We appreciate this clarification as to the reasons as to why it is difficult for SPAN to successfully engage Class Members at court, though we find it inconceivable that DOC produces defendants on their scheduled court date only one-third of the

time.[16] We anticipate further discussion of this issue with Defendants over the coming reporting period, especially regarding DoHMH and SPAN's efforts "to achieve a higher rate of successful contacts."

5. Services for Class Members residing in Staten Island

Defendants report that they continue to make services available to Staten Island residents at the Brooklyn (or any other) SPAN office. They further inform us that both individual Class Members and the LINK programs are made aware of this, particularly EAC-LINK which serves Brooklyn and Staten Island. Calls to the Staten Island office are forwarded to the Brooklyn Office, and operators answering calls to the City's number for government information and non-emergency services (311) provide this information as well.

Defendants now have in place the staffing and structures which allow for their compliance with the obligations of the Stipulation and their April, 2005 agreement with Class Counsel, though in some instances Defendants have not fully implemented the changes to which they agreed. We will closely monitor the results of these efforts over time. This will require improved data-reporting mechanisms.

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

Paragraph 87 of the Stipulation requires Defendants to explore the feasibility of establishing a system to assess Class Members for Supplemental Security Income ("SSI"), Social Security Disability Insurance ("SSD") and Veterans Administration ("VA") Benefits, and for the completion and submission of applications for these

[16] We suspect that this low rate relates to SPAN's procedure of identifying Class Members a month in advance. It is conceivable that many Class Members' court dates are changed in the intervening time. This would result in IIS being updated as to the next court date, outside of SPAN's awareness, resulting in SPAN's expecting Class Members who no longer have a scheduled court appearance on that date and who are therefore not produced.

benefits prior to the Class Member's release from the correctional system. Paragraph 86 obligates Defendants to explore the feasibility of establishing a system to permit Class Members to submit Food Stamps applications before they are released so that the applications can be processed while they are incarcerated. Defendants are required to confer with the compliance monitors at least every six months as to their efforts to implement the systems described in both paragraphs. Beginning at page 9 of our Tenth Report, we discussed Defendants' progress in assisting Class Members to obtain these benefits.

In their responses to our requests for data regarding SSI applications, Defendants noted that "the Settlement Agreement does not require the defendants to obtain information on the outcome of the application." Nonetheless, Defendants "have established a mechanism to receive feedback on the outcomes of the applications." We commend them for doing so, primarily because we believe that staff performing any task in a vacuum, without feedback of any kind, rapidly come to believe that the task is proforma and that their work is wasted. This dynamic often leads to burnout in jail and other settings where outcomes often are not known, such as emergency departments or acute care settings. Knowing the outcomes of this work provides staff with a sense of the "payoff" for their efforts; over time, managers will be able to use this information in making appropriate decisions regarding use of resources.

In our last report, we discussed the DOC's proposed Enhancement Support Center, to be located within EMTC. This center would offer "satellite space", with necessary communications infrastructure, for nonprofits and governmental entities serving inmates. At the time of our Tenth Report, Defendants were cautiously

optimistic that SSA would be utilizing this space, once concerns as to electronic security were resolved. As of this report, however, for reasons unknown to us, neither SSA nor VA have agreed to station their personnel in this center.

From an administrative standpoint, during the current reporting period the responsibility for spearheading Defendants' efforts to develop working alliances with SSA and VA was transferred from the Mayor's Office of Health Insurance Access to DoHMH Division of Health Care Access and Improvement.

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

   a. New Applications for SSI

      In our Tenth Report, we informed the Court that Defendants had developed a telephone interview mechanism for assisting Class Members in applying for SSI benefits. They began this process in a jail housing male sentenced inmates (EMTC), and were planning to extend it to female inmates at RMSC. During the tenth reporting period, they offered the service to 47 inmates, of whom 34 (72%) were able to complete the process. No outcomes information was available at that time.

      For this reporting period, Defendants advised us that they continued to complete these applications for eligible and willing inmates, both at EMTC and at RMSC. Their data is summarized in the following table:

Table 2: SSI Telephone Interviews: New Applications: April - June 2006

Jail	# offered phone application	# completing application[17]	# accepted	# denied	# pending
EMTC	43	35 (81%)	0	15	18[18]
RMSC	6	0	--	--	--

Defendants summarized phone interview outcome data over the six month period for January to June, 2006, as follows:

Table 3: New Application Outcomes: Telephone Interviews: January- June, 2006

# of new applications	Approved	Denied	Pending medical review	Other[19]
68	2 (3%)	39 (57%)	25 (37%)	2 (3%)

In several of our prior reports, we discussed the HOPE grants by which DOC assists eligible inmates and detainees in connecting to benefits. These are attractive to Defendants as the services are funded by the grant, and therefore require of Defendants only a minimal investment of personnel and time. Class Members assisted by the HOPE grantees are specifically excluded from the telephone interview process described directly above. Data relating to the applications completed by the HOPE grantees is presented in the following table:

Table 4: HOPE Grantee New Applications: April - June 2006

Jail	# Class Members referred	# completing application
EMTC	57	14 (25%)
RMSC	24	24 (100%)

Comparing Table 2 and Table 4, it is striking that the willingness of male inmates to complete the telephone interview offered by discharge planning staff is so much greater than their apparent willingness to work with the

[17] Reasons for non-completion among the male inmates included: 4 inmate refusers, 2 released on or prior to the date the interview was to take place, and 2 rescheduled due to inter-facility transfers. All six female inmates refused the offer.
[18] Total does not equal 35: in one case, the process could not be completed due to lack of follow up on the part of the Class Member, and in the other, SSA did not provide an outcome.
[19] These two inmates reportedly died while the application was being processed.

HOPE Grantees, and that the opposite is true even more dramatically for women.

Regarding the 57 male Class Members referred to the HOPE grantees during this period, Defendants provided the following breakdown:

- 14 applications were completed
- 8 Class Members refused
- 4 Class Members were found ineligible[20]
- 18 Class Members were "no shows"
- 1 Class Member had benefits suspended[21]
- 5 Class Members had benefits reinstated
- 1 Class Member was given a "walk in appointment"
- 1 Class Member had his appointment "rescheduled"
- 5 Class Members had "currently active" benefits

As this is the first time we have received such data, we require further discussion if we are to understand the implications of these data.

Defendants also provided aggregated data regarding "SSA information provided by SSA, including Hope Grant application (April – June 2006)." This data, shown in the following table, does not include outcomes on reinstatements.

Table 5: Outcomes of New SSI Applications: April - June 2006

Total new applications	136	
Approvals	8	6%
Denials	53	39%
Pending medical review	43	32%
Outcome unavailable	32	24%

[20] It is not clear to us whether this means the Class Members were ineligible for the HOPE grantee process, or if they were found to be ineligible for SSI after the application process was completed.

[21] Presumably, this Class Member was ineligible for a new application via the HOPE grantee process because his benefits would be reinstated through HRA directly. However, it is not clear why this inmate is reported separately from the line below regarding Class Members who had benefits "reinstated."

As it is unclear whence this total number of new applications was derived,[22] we are unable to comment on this information, other than regarding the relative rate of approvals.

In their response to our request for this information, Defendants commented that they are "not optimistic that this effort will prove worthwhile given the amount of time needed for coordination and the rarity of successful outcomes." We share Defendants' frustration with the SSI application process, a frustration we have experienced in our own practices. It is well known that SSI applications are more often than not denied on first pass, and that most applicants must file at least one appeal before receiving benefits for which he or she is eligible.[23] This prolonged process often extends beyond the term of detention or incarceration of most Class Members. Clearly, Defendants would prefer that the effort for the initial application come from an outside agency (e.g. the HOPE grantees) or perhaps from SSA itself.

On the other hand, successful SSI applications bring significant benefits to the city and to the applicants, both in terms of a cash benefit for the eligible beneficiary and in terms of its typical link to medical assistance. Both of these outcomes offload substantial costs from the city to the federal government. Aside from any obligation the Defendants may have to

[22] The number does not seem to relate to the numbers presented above.

[23] One study investigating applications for SSI and SSD benefits found that the average time between application and acceptance was 5 months for those accepted on first pass, and 15 months for those requiring one or more appeals. The acceptance rate was 46% on first pass, and for the 2/3 of individuals who chose to appeal, the acceptance rate rose to 73%. Benitez-Silva, H, et al. An Empirical Analysis of the Social Security Disability Application, Appeal, and Award Process. 6 *Labour Economics* 147, 1999. Additionally, data available from SSA indicates that about 35% of applications are approved following the initial application (http://www.ssa.gov/policy/docs/statcomps/ssi_asr/2004/sect11.pdf).

implement these measures if feasible, a complete cost-benefit analysis regarding their usefulness should consider these potential, long-range benefits. While we generally support outcome-based studies as an important component of such an analysis, any definitive judgments regarding the usefulness of these endeavors are premature given that Defendants' have only in the past few months begun to exert efforts toward this end, and in light of the longer-term nature of possible benefits.[24]

b. Reinstatements of SSI Benefits

In our Tenth Report, we outlined the efforts made to take advantage of the newly established electronic information transfer between SSA and DOC. This electronic transfer, intended for use in suspending newly incarcerated SSA beneficiaries' benefits, can also be used to assist Defendants in identifying individuals potentially eligible to have those suspended benefits reinstated.

During the current reporting period, Defendants reported as follows:

Table 6: Appointments for SSI Reinstatements: April - June 2006

	EMTC	RMSC
# identified	25	3
# who scheduled appointment[25]	17	3
# who refused	8	0

[24] An approach which might increase the likelihood that these efforts would be beneficial over the long term would be for Class Counsel to assist Class Members whose applications are denied who wish to pursue appeals.
[25] The reinstatement process requires an appointment with SSA after release, which may be coordinated with LINK if LINK is a part of the Class Member's release plan.

It is not clear to us whether the five individuals who were reported to have benefits reinstated via the HOPE grantees (see above) are included in these data.

It is notable that the majority of those found by this process to be potentially eligible for reinstatement consented to the first step in the process – the scheduling of an appointment with SSA. Clearly, this is the most that Defendants can do during an incarceration; whether Class Members keep this appointment after release will depend on their own desires and motivation and the assistance they receive in this regard from their community providers. To the extent that Class Members who are SPMI are followed by the various LINK programs, DoHMH retains an enhanced ability to monitor and affect these outcomes.

c. SSD Benefits

Given that relatively few Class Members can be expected *a priori* to be eligible for SSD or other social security benefits, we have focused our attention on SSI alone. In addition, we now understand that there is a single, joint application, which SSA uses to determine eligibility for both SSI and SSD benefits. In the relatively unusual case of a Class Member who is eligible for SSD, this application and the SSA evaluation process should meet these Class Members' needs. Henceforth, we will not specially monitor SSD.

2. Veterans Benefits

In our Tenth Report, beginning at page 14, we informed the Court that Defendants were working to increase the frequency of VA benefits briefings for

inmates potentially eligible for VA benefits. In these briefings, representatives from the VA homeless outreach unit present information to groups of inmates and then take individual questions and offer claims assistance. One of the primary problems with this process is the difficulty Defendants have had identifying inmates with prior military service.[26] In our Tenth Report, we summarized two ways Defendants were considering to overcome this problem. However, it is evident that the VA is not as willing a partner as is SSA, and Defendants have continued to have some difficulty engaging with them.

During the current reporting period, Defendants and the VA held a benefits briefing on June 20, 2006. We attended this briefing as observers. Approximately 20 inmates attended, of whom DOC reported that 4 were Class Members. All four of these Class Members completed applications for the VA to use in determining their eligibility. Outcomes of these applications were not available.

Defendants also reported that, during April – June 2006, 96 Class Members were "identified," but 91 had "no record of services".[27] We presume these data relate to the Defendants' data matching process with the VA, whereby Defendants provide lists of individuals who self-identify as veterans to the VA. The VA then

[26] We recognize that military service is a necessary, but not sufficient, criterion for determining eligibility with the VA. Other criteria include the type of discharge and the development of a "service-connected" disability. However, from the perspective of the providers in the jails, the threshold for identifying potentially eligible inmates is a service record of any kind.

[27] The word "services" here is ambiguous. It is unclear whether this means that these 91 Class Members had no record of service in the military or whether they had no record of having received clinical services or benefits through the VA. If the former, then it clearly indicates that the mechanism for identifying veterans has a very high false positive rate. However, if the latter, we would think that this procedure provides excellent case-finding for people potentially eligible for VA services but who have never sought them.

cross-matches this list with their rolls to identify those with true service records. Of the five Class Members with service records, four completed applications.[28]

Class Counsel indicated in their comments that

> "Defendants' obligation under paragraph 87 of the Settlement is to develop a system to assist Class Members in obtaining VA Benefits…. Defendants' obligations are not met by simply making efforts to engage the VA. If these efforts do not yield a system to assist Class Members in applying for benefits, Defendants are obligated to do so through other means."

We agree that Defendants must continue to aggressively pursue means to identify eligible veterans among the Class Member population, and that once such Class Members are identified, to "implement a system to assist [them] in obtaining such benefits." We urge Defendants to pursue all available means to bring the VA to the table as a partner in this process, including working with the VA Regional Office directly, partnering with the Mayor's Office on Veterans Affairs, and partnering with advocacy organizations that work with veterans.

3. Food Stamps

In our Tenth report, at pp. 18-19, we summarized a process whereby Defendants were able to overcome obstacles to the application for Food Stamps by Class Members while still incarcerated. The policy was finalized and approved in February, 2006.

On April 17, 2006, we requested that Defendants provide us with "a monthly tally of the number of Food Stamp applications they receive and process each month for Brad H Class Members." We reiterated this request on May 5, and

[28] Presumably, these are the four who attended the June 20 benefits briefing.

again on May 9. Since that time, we have not followed up further on this issue, and to date, we have received no response to this request.[29]

V. Data issues

A. *Reconciliation of Data from Different Sources*

In our Tenth Report, at page 38, we reviewed our concerns as to the relationship of the various data sources which we must consider in our monitoring of this case. We reported that Defendants agreed to provide us with data sets from HRA regarding the Medicaid and Public Assistance applications submitted on behalf of Class Members. For this purpose, we provided spreadsheets to Defendants outlining the format in which we wished to receive this information.

HRA provided this information regarding Medicaid.[30] Some of the information will be discussed below. In addition, HRA provided the requested information for Public Assistance for a portion of the reporting period. This will also be discussed below.

[29] Class Counsel request that we find Defendants out of compliance with their obligations to respond to our requests, citing ¶¶ 120, 123, and 124. We will not yet do so, anticipating that Defendants will provide us with the requested information forthwith.

[30] Defendants commented on this, indicating that "There is a misunderstanding concerning the source of the data described in these sections of the draft report. The spreadsheet containing certain information regarding Medicaid applications was not produced by HRA, but rather by DoHMH using information contained in Citrix." Further, Defendants "object, once again, to the attempts by the Monitors to cross-walk data between two different City agencies."

After our discussions with Defendants several months ago, we believed that this data was to be provided by HRA, not by DoHMH. Our specific purpose for receiving data from HRA was to assist us in understanding how DoHMH and HRA data interrelate. See, for example, our discussion regarding "Reconciliation of Data from Different Sources" at pp 38-39 of our Tenth Report, where we said, in relevant part: "Defendants offered to provide us with two data sets generated by HRA and DoHMH…."

B. *Performance Indicator Data*

1. Decision to Refrain from Reporting Data Originating in the Discharge Planning MIS

Regardless of any findings we make regarding the outcome of the discharge planning MIS Concordance Study (see below), Defendants have committed to developing a new data system.[31] (See Section II. D. above for a discussion of this new system.) Having attended a demonstration of the new system, currently in development, we agree that, if implemented correctly, it will likely mitigate our concerns as to the accuracy of the data that makes up the performance reports. At present, this is slated to be rolled out in early February, 2007.

We strongly support Defendants' efforts in this regard. That said, assuming the current timeline holds, the first report that will contain data completely provided by the new system will be our Fourteenth Report, to be published on or about October 6, 2007 (which will contain data from April through July, 2007). Optimistically, then, all data provided for this and our next two reports will be generated from the current system, an unacceptable result given the frequency and significance of our unanswered questions concerning the data it produces.

As noted below, our questions regarding the data provided led Defendants to request that we conduct a concordance study in order to determine definitively how accurately the data in the discharge planning MIS reflects information from other sources. These findings will allow us to evaluate whether the monthly data reports, predominately derived from the discharge planning MIS, are of sufficient

[31] See discussions of Defendants' plans regarding this system going back at least to our Seventh Report of June, 2005.

accuracy to permit us to use them as a basis upon which to make unqualified findings regarding compliance. In order to best conduct this study, we engaged in iterative reviews with the Parties. This prolonged process has prevented our completing the study in time for this Report.

This study is of paramount importance because, per ¶193 of the Stipulation, the termination of prospective relief is directly linked to Defendants having achieved compliance with the terms of agreement during the preceding two years. We have now entered that crucial period. This places us in a position where we must choose between the following alternatives:

- Present data about which we continue to have questions, or
- Decline to present data about which we continue to have questions.

In addition, we are faced with another choice:

- Conduct the discharge planning MIS concordance study to try to resolve our questions about the data, or
- Await the implementation of the new data system.

After giving these alternatives much consideration, we elected to decline to present data that relies on the current database in this report. Previously, we made the judgment that it was constructive to the process to report data while simultaneously articulating our concerns regarding the data. Now, with the solution to many of the outstanding issues forthcoming, albeit three reporting cycles away, and with the commencement of the last two years of the allocated five-year monitoring period, we reach a different conclusion. At this time, given the salience of current phase of our monitoring of the Settlement Agreement, we no longer see it as constructive to present data on which we are unwilling to rely

for the purposes of making definitive compliance determinations. We will report on and discuss other data that is not reliant on the discharge planning MIS.

We will also go forth, as described below, with conducting the discharge planning MIS concordance study. Once completed, we will once again consider reporting on data derived from the discharge planning MIS because it should be possible to analyze those data in light of the results of the study. The study may show that data derived from the discharge planning MIS is reasonably accurate and may be relied upon to make definitive findings regarding compliance, or it may demonstrate that the data contained in the discharge planning MIS is sufficiently faulty as to be unreliable from the perspective of understanding Defendants' performance. In either instance, the study should permit us to discuss the compliance figures reported by defendants in the clear-cut manner which we believe the process, the parties and the Court require at this stage of the monitoring process. In the meantime, we urge Defendants to implement their new system as quickly as possible.

2. Discharge Planning MIS Concordance Study

Paragraph 141 of the Stipulation requires that we assess Defendants' compliance with the Stipulation as a numerical percentage. Paragraph 124 requires that Defendants report information to us, in the manner we request, from the "Discharge Planning MIS."

Defendants initially were unable to provide data to us, and for our first three reports, we relied on data on a limited number of mental health and discharge planning tasks which we collected during our site visits. For our fourth report, for

the first time, Defendants began to provide us with population based data from the Discharge Planning MIS.

We published our performance measures on June 28, 2004.

Beginning in June, 2004, Defendants began providing partial data on a monthly basis in the service of our monitoring their performance on the various performance measures. Over the next year and a half, Defendants refined their reporting in an effort to provide information consistent with the formulae making up the performance measures.

In our Fifth Regular Report, the first report which included data provided monthly by defendants, we began questioning the accuracy of the data they provided. In order to address the repeated questions we have had concerning the degree of concordance between data contained in the medical record and other documentary sources of information[32] and those contained in the discharge planning MIS, Defendants, on December 12, 2005, asked that we perform a study to test the reliability of their data. We were hoping to finalize and complete the study during the current reporting period in order to publish our findings here. We have spent much of the past nine months developing this study and discussing the proposal with the Parties, particularly DoHMH. Constructively, the methodology we have developed was to a large degree congruent with the approaches put forth by the Parties.

[32] The data Defendants provide to us purports to be an accurate representation of the work they performed on behalf of Class Members. As it is impossible to compare reality to the data in the discharge planning MIS, the medical record and other administrative sources of relevant data are the closest available proxy for the actual events recorded in the discharge planning MIS.

On September 11, 2006, we reached an agreement in principle with DoHMH as to the methodology and parameters of the study.[33] In addition, on September 21 and 26, 2006, we held discussions with Class Counsel regarding the study design. An updated study design based on these discussions with the Parties was forwarded to the Parties on September 28, 2006. We anticipate commencing the study during October, 2006.

3. Collaborative Studies with DoHMH and Monitors

As we discussed in our last report at pp. 42-43, we conducted the first phase of several collaborative studies with DoHMH, in which we jointly reviewed records relevant to performance indicators where Defendants have had difficulty in meeting our performance expectations.[34] These studies identified specific problems that appeared to be interfering with Defendants' meeting the compliance standards we set on the measures studied.

In their comments to the draft of this report, DoHMH notes that they "made various corrective actions on the basis of information derived from its collaborative studies with the Monitors, and discussed these actions in various meetings with the Monitors." They also note that "an additional purpose of the collaborative studies[35] was to determine whether there are systemic barriers in the jail environment that cannot be overcome through reasonable additional

[33] In their comments, DoHMH concurred as to our assertion in this sentence. They indicated that they "do not necessarily agree that this is the most appropriate way to assess the reliability of its monthly data reports" and that they believe that it is "unclear what conclusions or analyses may appropriately be drawn from this study." They "reserve[d] the right to draw differing conclusions than those of the Monitors or the Plaintiffs."
[34] In addition, we have deferred collaborative study of measure 9.2. This study has yet to be scheduled.
[35] See, for example, Defendants' comments and proposal regarding these studies, summarized in our Eighth Report at pp. 40-41.

corrective actions, and thus suggest that PI targets have not been established at a realistic and consistently achievable level."

We acknowledge these dual purposes of these studies, but our agreement with DoHMH concerning these studies amounts to a three phase process:

1. identify problems in completing certain tasks, suggest potential remedial actions
2. implement remedial actions, jointly review results of attempted remediation
3. if persistent efforts toward remediation prove unsuccessful, consider reevaluation of performance targets.

We have nearly completed phase 1 (measure 9.2 notwithstanding), but we have not yet been provided with sufficient information regarding remedial actions taken to rectify the problems identified. Defendants did not provide what we consider to be sufficient information regarding the remedial actions they undertook in response to our joint findings or of the outcomes which resulted from those remedial efforts; as such, any consideration of review of the performance targets, while a possible ultimate outcome of this process, is premature.

4. Performance Measure 2.1: Presence of LSPMI in Chart

We discussed this issue on pp. 45-48 of our last report where we noted an overall compliance rate of 79% while at the same time noting an apparent drop-off for cases admitted in 2006. For this report we reviewed 107 charts.[36] Eighty-four (78.5%) of these records had a completed LSPMI form, while the remaining

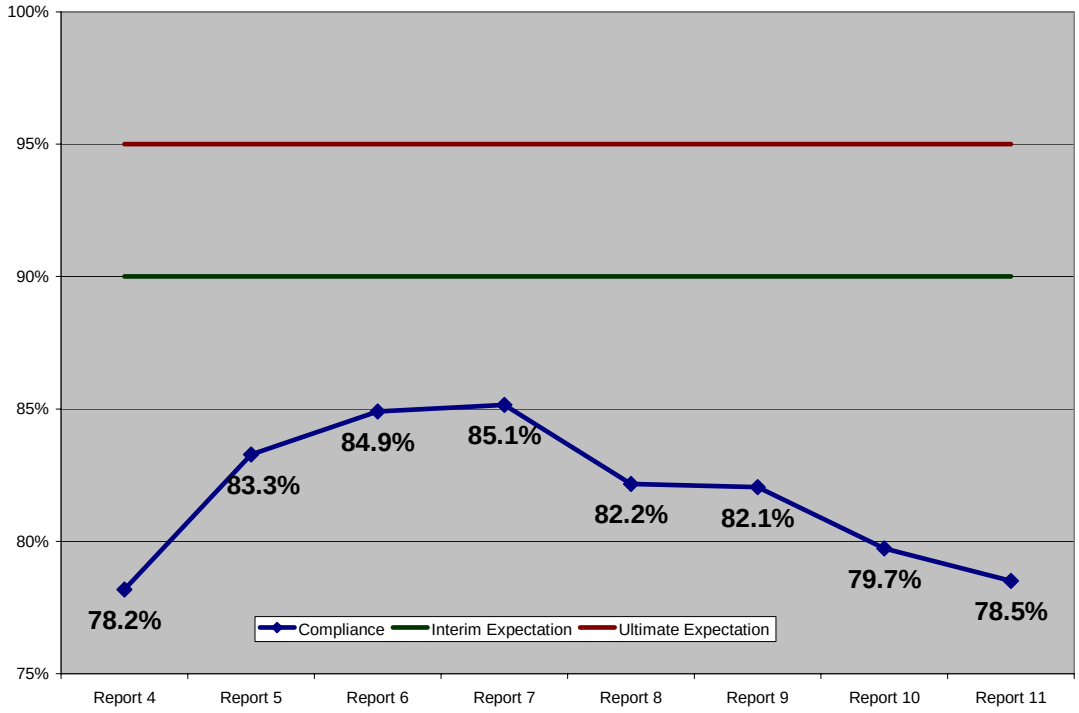
[36] The confidential appendix provided to the Parties with our Draft Report contains identifying information regarding the charts we reviewed.

23 (21.5%) did not have the form in the chart. Comparing these findings to prior periods' results in the following table and graph:

Table 7: PI 2.1: Presence of LSPMI in Chart

Report	4	5	6	7	8	9	10	11
Compliance	78.2%	83.3%	84.9%	85.1%	82.2%	82.1%	79.7%	78.5%
Numerator	86	234	90	86	281	32	59	83
Denominator	110	281	106	101	342	39	74	103

Figure 2: PI 2.1: Presence of LSPMI in Chart



During the time period from Report 4 through Report 7, Defendants' performance rose steadily, peaking at 85% in the seventh reporting period. Since then, Defendants' performance on this task has declined steadily, apparently impervious to training and supervision conducted by DoHMH and its vendor.

Analyzing the cases in more detail, a pattern emerged: charts in which the LSPMI form was absent disproportionately consisted of records for Class Members for whom the initial assessment was performed by a psychiatrist. In 5

of these 20 cases, the initial assessment was performed by a psychiatrist.[37] These findings are preliminary in nature, but they suggest an obvious remedy. We will study this issue more systematically.

5. Performance Measure 2.2: Appropriateness of LSPMI Assessment
6. Performance Measure 2.4: Appropriateness of SPMI Assessment

As discussed above in Section IV.C., Defendants have made a number of improvements in their procedures and documentation during the current reporting period. DoHMH only recently began to implement many of these improvements; others appear to be following soon. We believe that these changes will assist staff in capturing and documenting the information needed for us (and for Defendants' own managers) to determine whether assessments and discharge plans are completed appropriately. We intend to work with DoHMH to develop tools for this monitoring during the coming reporting period.

7. Performance Measure 3.1: Timeliness of CTDP

As discussed in detail above, we are refraining from reporting data that is dependant on the discharge planning MIS. However, there remain process issues with how the measure is calculated, which we will discuss here. These issues will remain relevant regardless of the data system used to calculate the measure, because they reflect the programming of the equation that provides the performance value, rather than the numbers that go into the equation.

[37] We do not report this as a percentage because we did not routinely capture this information; our finding is impressionistic only. In the future, we will routinely collect information as to the discipline of the first evaluator to determine more definitively whether this results in disparate compliance with this requirement.

Exclusions

First, in our last report, at p. 54, footnote 20, we clarified that Class Members transferred to MO must be included in calculations of performance, consistent with our mutual understanding of the appropriate timeline. DoHMH informed us that, effective the April 2006 monthly report, the data for this measure included data for Class Members transferred from GP to MO with the accepted timeline requirements. In addition, DoHMH provided us with recalculated data going back a year indicating that including these cases changed the reported performance by only a few tenths of a percent.

Second, in our last report, also at p. 54, we reiterated our objection to the blanket exclusion of medical and court delays in this measure. We expect that the new data system will be able to accommodate a more sophisticated approach to these delay codes that reflect the ***actual interference*** of the hospitalization or court date with the completion of the CTDP.

Refusers of Mental Health Care

We examined the connection between refusal of mental health treatment and potential Class membership on pages 56-63 of our last report. There, we discussed the different possible paths to inclusion in the Class as outlined in the class certification and in ¶¶18, 19, and 27 of the Stipulation. Some people who refuse mental health treatment while incarcerated are still entitled to avail themselves of certain rights granted in the Stipulation. The threshold questions are:

- among refusers of mental health assessment and treatment, who is included in the Class; and
- how do those refusers who are Class Members access discharge planning services?

DoHMH's policies did not provide a practical mechanism for this to occur for people who refused mental health treatment prior to the completion of their CTDP but otherwise did meet the criteria for inclusion in the Class. We concluded by requesting that DoHMH present us with a draft policy addressing the issues raised.

As mentioned in section IV. B., DoHMH undertook a comprehensive review of its mental health and discharge planning policies. We had the opportunity to review and comment on these policies, some of which are relevant to this issue, and engaged in much discussion with DoHMH leadership as to how they intended staff to implement them.

The policies on point are Policy INT 3 (Informed Consent); Policy INT 5 (Refusal of Mental Health Treatment and/or Medication), Policy INT 6 (Evaluation of Inmate's Ability to Refuse Treatment or Give Informed Consent), Policy MH 5 (Treatment Plans), Policy MH 11 (Discharge Planning), Policy MH 13 (Follow-up of missed appointments), Policy MH 14 (Termination of Mental Health Treatment), Policy MH 26 (Mental Observation Unit), and Policy MH 31 (Psychotropic Medications). Taken as a whole, these policies (if properly implemented and carried out by mental health staff) provide an operationally practical method for offering discharge planning services to most Class Members who refuse mental health treatment.

Most people who refuse mental health treatment as an expression of their mental illness, commonly referred to as incompetent refusers, should be placed on the Mental Observation Unit.[38] The criteria for admission to the MOU must be read in light of the statement in policy INT 5 that, while patients placed in an MOU retain a right to refuse treatment they "will not be terminated from treatment… [and] will be encouraged to participate in their care and evaluation and will receive treatment planning." This means that they will receive a CTDP, the triggering event for connection with discharge planning services, within seven days of placement in the MOU. Because the DSN is tied to the CTDP, patients placed on an MOU who refuse treatment will still be evaluated for aftercare needs.[39]

The group of refusers of treatment housed in general population, then, should be comprised almost exclusively of those who retain decision-making capacity regarding acceptance or refusal of mental health treatment after being provided with necessary information on which to base a decision to consent to or refuse treatment, as described in Policy INT 3. These are the so-called competent

[38] We based this understanding on our discussions with DoHMH leadership. In addition, we base our understanding on MH policy 26 which includes among its criteria for MOU placement a person presenting with "an Axis I or Axis II disorder [who meets] one or more of the following conditions:

- "A clinically determined need for a period of mental health observation to clarify diagnostic or behavioral risk issues;
- "Significant patient vulnerability to psychological decompensation…;
- "A level of functioning that would prevent the patient from safely residing in GP or PC housing;
- "Psychiatric decompensation in patients undergoing detoxification for opioid dependence;
- "Patients awaiting court appearances upon return from a State Forensic Facility who have been clinically determined by staff at the Rikers Island Mental Health Center at the Anna M. Kross Center not to require a higher level of care during their legal proceedings…."

These categories should cover most incompetent refusers who are not placed in the Mental Health Center or a hospital prison ward.

[39] This is important because the class certified by the court includes those who have been assessed as needing treatment ***either*** in jail ***or*** upon release.

refusers. It should be noted that even this group is afforded subsequent opportunities to engage in treatment in accordance with Policy INT 5.[40]

Under this schema, placement in the MOU should become a workable proxy for people who refuse assessment or treatment due to symptoms of their mental illness. This is the group of refusers most likely to require current treatment or observation and aftercare in the community. This group would receive a CTDP and DSN and as such would fall into any definition of class membership. The only group of treatment refusers left unaccounted for in terms of class membership are those housed in GP. In our opinion, a person who genuinely falls into the category of competent refuser of services in GP pursuant to a well-conducted assessment and the policy of face-to-face informed refusal on at least two occasions has made a reasoned decision to refuse treatment with all of its sequelae.[41]

The reliance upon proper placement in the MOU for incompetent refusers of mental health treatment as a proxy for class membership places appropriate assessment front and center. False negatives - those who are permitted to remain

[40] This policy provides that mental health staff has one business day to go to the housing area to encourage non-emergency refusers of service in GP to accept assessment and must repeat this procedure again within seven days. This procedure is reinstituted upon an additional referral. Presumably, in the event that these face-to-face contacts with mental health staff reveal the possibility that the person may be an "incompetent refuser" the patient would be transferred to an MOU for observation and would therefore receive a CTDP.

[41] We note here that if competent refusal of mental health treatment for inmates housed in GP results in a diminution of the right to discharge planning, this discussion must be made part of the informed consent discussion described in Policy INT 3. The "course of treatment to be followed" as well an "explanation of the possible effects if treatment is not followed", both properly provided for in INT 3, must include a discussion of any possible need for post-release treatment as well as the loss of connection to DCP. This relates to the connected issue of refusal of discharge planning services among class members—it is the mental health staff who are charged with presenting the possibility of such services in the first instance, and who are further charged with re-offering discharge planning services at every subsequent treatment plan review to those who refuse. As such, it is imperative that they engage Class Members in a discussion of the possibilities of acquiring and the possibly harmful effects of refusing to engage in discharge planning.

in GP when they should properly have been transferred to an MOU - will remain a significant source of concern. Constructively, the remedy to any difficulties in effectuating appropriate transfer to the MOU will benefit the entire treatment system and indeed the safe functioning of the institution, as a well-conducted assessment followed by appropriate treatment is the cornerstone of any system of care. We will follow this issue closely not only through our discussions with management and staff but also by reviewing records of non-Class Members pursuant to ¶150.

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

   As discussed above in Section IV.C., Defendants have made a number of improvements in their procedures and documentation during the current reporting period. Many of these improvements have only recently been implemented, and others appear to be following soon. We believe that these changes will assist staff in capturing and documenting the information needed for us (and for Defendants' own managers) to determine whether assessments and discharge plans are completed appropriately. We intend to work with DoHMH to develop tools for this monitoring during the coming reporting period.

9. Performance Measure 5.1: Timely Completion of Medicaid Applications

   As discussed in Section V. B., we will not be reviewing data based on the discharge planning MIS until we resolve our questions as to that data. However, as discussed in Section V. A., HRA provided us with its own data regarding Medicaid applications.

These data covers the Medicaid prescreen and application dates for 287 Class Members, all released during June, 2006. Of these 287 Class Members, a total of 64 prescreens resulted in a finding of "New Application Needed."

Table 8: Medicaid Application Completion Data

	N	%
Application Completed within 7 days[42] of Prescreen Determination	44	68.8%
Application Completed beyond 7 days of Prescreen Determination	9	14.1%
Class Member refused Application	8	12.5%
Class Member Released before the 7 day period elapsed	3	4.7%

Based on this data from HRA, and accounting for exclusions for Class Members who refuse or who are released prior to the due date, new applications were completed in a timely fashion in 44 (83.0%) of 53 cases. This data calls our previous conclusions that Defendants are meeting the 90% compliance expectation into doubt.

In response to this report, Defendants sent us another presentation of the data regarding the 64 cases identified as needing a new Medicaid application. Specifically, they indicated that there were 13 refusers, 3 who initially refused and later accepted ("refused delay"), one medical delay and one court delay.[43] Thus, from the 64, they exclude 18 cases, resulting in a denominator of 46. Their analysis indicates that the application was completed on time in 42 of 46 eligible cases (91%).

We have reviewed their analysis and do not agree with their interpretation of the data provided. First, while they identify 13 refusers, three of these refusers

[42] The actual performance measure requires this to be completed within 5 business days, a criterion we are unable to apply directly to the data provided in Excel format. We have converted this into 7 days, which accounts for the two weekend days. We recognize that the Memorial Day Holiday intervened in one case, which is included in the last line of the table as having been released before the 7 day period elapsed.

[43] Defendants did not provide data regarding any of these delay codes, which are integral to the calculation of Defendants' performance, in the initial data set.

had a date entered into the column "new application date". This indicates that these cases more properly should be considered "refused delay." However, two of these new application dates occurred within the 7 day time period, indicating that there was in fact no delay. In addition, one of the cases they identify as "refused delay" was done within the 7 day time period. Thus, we find that there are only 10 refusers, and that there are 3 "refused delay". Finally, the case coded as "medical delay" had a new application completed within the 7 day time period, indicating that in fact there was no delay at all. Thus, instead of reducing the denominator by 18, we suggest it should only be reduced by 14.

We explored the gender of the cases listed as refusers (discounting the delay issue for the purposes of this analysis) and found that 8 of the 13 (62%) were women. In contrast, 5 of the 51 (10%) of the non-refusers were women. For comparison, 27% of the released Class Members to date (12542 of 46357) are women. Thus, these data indicate that only 5 of 13 eligible women (38%) accepted this service, as compared with 46 of 51 eligible men (90%) who accepted this service.

Regarding the numerator, there is one case not listed as being excluded who had no date entered into the new application date field – presumably this is the case that did not have the service provided. In addition, there are five cases whose new application date occurred beyond the 7 day time period but who had no delay code entered. Thus, there were 6 cases that were completed late or not completed with no reason provided.

Putting this together, we find that the task was completed in 44 of 50 cases (88%), using Defendants corrected information. This is closer to the 90% cutoff and alleviates some of our concern, while it simultaneously highlights the importance of Defendants' providing us with full and accurate data on which to base our determinations as to compliance with the performance measures.

10. Performance Measure 6.1.2: Provision of Temporary Medicaid

Section III above outlines the current status of the litigation surrounding this issue. Defendants remain unable to comply with this requirement in that they have not yet received the necessary authority from the State, against which it is currently litigating this issue.

11. Performance Measure 6.2: Mailing of Medicaid Cards

a. Temporary Medicaid Cards

Defendants are obligated to provide temporary Medicaid cards to all Class Members whose Medicaid is activated or reactivated, per ¶¶66-68 of the Stipulation. The purpose of this is to ensure that, should a Class Member be released after Defendants have completed the process to activate or reactivate Medicaid, but prior to the time when the State Department of Health ("DOH") will have been able to provide a permanent Medicaid card, that Class Member will be able to access services in the community. DoHMH provides information it receives from HRA for this measure. Including the current reporting period, DoHMH has reported 100% compliance over five straight reporting periods (20 months). Over this time, they have provided a larger number of cards/month as time has progressed:

Table 9: PI 6.2: Temporary Medicaid Cards

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

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

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

However, HRA did provide us with Medicaid reactivation and application data regarding 287 Class Members, all released during June 2006. Of these cases, 89 resulted in a reactivation. A further 64 were prescreened as "need new application." Of these, an application was completed and sent to HRA for 53, and 27 of these Class Members were found to be eligible for Medicaid. This data represents June 2006, during which a maximum of 116 individuals

(89+27) were released with active or reactivated Medicaid. For June, Defendants reported providing 206 Temporary Medicaid Cards, far more than the 116 cases eligible for such a card as the HRA data would imply.

In a meeting on June 20, 2006, HRA informed us that the number of temporary Medicaid cards provided should be equal to the number of activations and reactivations. However, HRA is blind to which Class Members are released into the community, and which Class Members are transferred to an upstate prison or a state hospital at the end of their DOC incarceration.[44] They provide temporary cards for all of these Class Members, while DoHMH reports only on discharge planning activities for Class Members who are released to the community. Thus, it is not surprising that there would be a significantly larger number of cards provided by HRA than one would expect from the DoHMH data. This goes a long way toward explaining the disparity in the two reports. HRA has just started giving us this additional information. We intend to work with Defendants to analyze a sample of cases in greater depth to determine if HRA's explanation does in fact account for the disparity in the numbers reported to us.

b. Permanent Medicaid Cards

For this reporting period, the New York State Department of Health provided us with information regarding the timely provision of permanent Medicaid cards during the period from November 2005 through July 2006.

[44] Class Counsel correctly point out that, while HRA is blind to which Class Members are not released to the community, DOC and DoHMH are not. One means to resolve this issue would be for HRA and DoHMH or DOC to work together to provide the data we require to monitor their performance.

DOH continued to assist us by responding promptly to our request. The information is summarized in the following table:

Table 10: PI 6.2: Permanent Medicaid Cards

Delay:	none	1 day	2 day	3 day	4+ day
November	114519	2	0	0	0
December	115615	500	0	0	0
January	118707	0	0	0	0
February	107100	0	0	0	0
March	134108	21	0	0	0
April	109538	0	0	0	0
May	118295	2654	0	0	0
June	119302	4	0	0	0
July	111744	0	0	0	500[45]
Total	1048928	3181	0	0	500
	99.65%	0.30%			0.05%

We have been advised that the 2654 delayed cards in May (just over 2% of the total for the month), delays which occurred on the just two days, related to a network transmission problem between the State and its vendor. It is evident that the State and its vendor continue to provide cards in a timely fashion, with very rare exceptions.

12. Performance Measure 7.1: Provision of Medications/Prescriptions

For reasons discussed above, we decline to present data on this measure, which is derived from the discharge planning MIS. However, we raise one issue from a conceptual perspective. In our last report, at pp. 86-87, we reviewed text from the programming language used to derive performance data. One of the fields making up this measure is entitled "relstatus." The information in this field comes directly from IIS as a data dump. It includes as one possible entry "TS", which we were told stands for "time served". This code represents distinct cases from others such as "EXP" (expiration of sentence), "ROR" (released on

[45] These 500 cases were all related to a specific problem on one date in July.

recognizance), “BP” (bail paid), etc. This implies that, in contrast to Defendants’ prior assertions, the IIS system has the potential to distinguish Class Members released with “time served” from those released on bail, at court, or in other specified ways.

In their comments to the draft Report, Defendants acknowledged the potential utility of these codes in identifying Class Members released with “time served” as opposed to those released at expiration of sentence (a meaningful distinction vis-à-vis this and several other performance measures), but they report that the fields are not properly populated. Our review of the programming language regarding calculation of the performance measures indicates that the relstatus item is integral in Defendants’ determination as to whether a Class Member is properly discharged. This field determines whether a Class Member is eligible for certain services upon release. At this time, we do not know if Defendants’ comments imply that this field is left blank or is incorrectly populated. If this field is not populated – i.e. is blank or empty – the result would be that the Class Member would not be considered eligible for some of these performance measures (measures 3.2, 4.1, 4.2, 5.1, 5.3, 6.1, 7.1, 8.1, 8.3, 9.2, 10.1, 10.2 and 12.4 all require an entry in the relstatus field). This would render these denominators artificially low, and could thereby inflate Defendants’ performance. If the field is populated in error, the impact is less clear, but still raises questions as to the accuracy of the data provided which is dependant upon this field. Defendants’ explanation above causes us great concern, as this field is one of the major

determinants of which Class Members are eligible for these discharge planning services.

We request that DOC immediately provide us with more information about this issue as well as a remedial plan of action to remedy this problem promptly.

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

Paragraph 47 requires Defendants to provide appointments to Class Members who appear at SPAN. Against a performance expectation of 95%, Defendants reported 100% compliance with this expectation for all months during the reporting period, with an average of about 27 appointments provided each month. SPAN continues to comply with this requirement at high levels in meeting the needs of Class Members who elect to take advantage of their services.

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

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

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

These criteria, especially the last, considerably shrink the pool of eligible individuals against which Defendants' performance is to be measured. HRA assures us that they provide eligible individuals who appear at a job center with needed emergency benefits during the initial visit. Thus, our expectation regarding compliance for this measure is 100%. Defendants reported that 100%

of all Class Members meeting the above criteria were provided with emergency benefits, consistent with our expectation. They provided these benefits to a total of 271 Class Members during the reporting period, or about 68 per month. Unless we are able to more closely review the means by which HRA collects and reports these numbers, we are unable to monitor this process beyond reporting the numbers provided.

Pursuant to our specific request, Defendants provided us with two spreadsheets, one purportedly for June (filename BradHcase0606) and the other purportedly for July (filename BradHcase0607). However, these two files contained identical data.

These two files included information on 364 Class Members who filed PA applications during March, April and May, 2006. Regarding the outcomes of these applications, Defendants informed us that the code for "single issuance" equated to the provision of benefits "when immediate needs are given." Thus, we have interpreted this information to equate to those cases where emergency benefits were provided.

During the time period covered in this data set, a total of 5 applications had the outcome "single issue". While this data set reflects only a portion of the reporting period, it seems difficult to reconcile this uncommon outcome with the report taken off the Defendants monthly data reports that an average of 68 Class Members per month were provided with emergency benefits.

As this is the first time we have received this information from HRA, we anticipate discussion of the implications of these data to assist us in fully understanding it.

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

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

This may be the best that HRA can do as a standalone agency. To fully report on the measure as written, HRA and DoHMH must collaborate to provide the appropriate numerator and denominator. They have yet to do so.[46] Apart from the language in ¶140 which states that it is the monitors who "shall establish performance goals," the most objectionable aspect of this unilateral reformulation of the measure is that it eliminates from consideration the transmission of the application from the discharge planner to HRA. *A priori*, this would seem to be the most likely source of difficulty in complying with the measure as we wrote it.

[46] Defendants in their comments "object to the statement that 'HRA and DOHMH must collaborate to provide the appropriate numerator and denominator' as such a requirement is the Monitors' unilateral creation of an obligation not specified in the Settlement Agreement." We disagree. We established the measure, as described above, pursuant to ¶140ff and consider this information necessary to monitor Defendants' compliance. Defendants are therefore obligated to provide information consistent with the measure we established. Whether this requires the cooperation of more than one Defendant agency is irrelevant as long as our request is not challenged as unreasonable or beyond our scope of authority pursuant to ¶ 119 or does not require Defendants to modify their existing software or hardware (¶124.)

Based on the redefined cohort, and against an expectation of 95%, Defendants report as follows:

Table 11: PI 9.3: Registration of PA Applications

Report	6	7	8	9	10	11
Compliance	95.0%	99.6%	98.6%	99.5%	100.0%	100.0%
	493/519	445/447	351/356	389/391	434/434	407/407

For reasons discussed above, we did not analyze Defendants' data regarding the timely completion of data based on the discharge planning MIS. Therefore, we are unable to repeat the analysis comparing the number of PA applications registered to the number of PA applications actually submitted (measure 9.2). The separate PA data supplied by Defendants is silent on the issue of registration of the applications.

Class Counsel commented that, because HRA reported numbers based on an alteration to the denominator, these numbers do not represent compliance with the performance measure. They argued that, because this is not useful in assessing compliance, we should not report on it at all. We anticipate that Defendants will be able to report on the measure as written in the coming reporting period. We will not report further on this measure until we receive data on the measure consistent with the measure as we wrote it.

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

This measure is designed to measure Defendants' compliance with the obligations defined in ¶101 of the Stipulation. Defendants are obligated by the Stipulation, as articulated in measure 11.1, to provide transportation from jail to a

home or shelter to those Class Members with projected release dates. Defendants continue to report 100% compliance.

Defendants provided data regarding 318 Class Members for whom transportation was offered during the reporting period. A total of 163 (51%) accepted this offer.[47] The following table compares the results over the past five reporting periods:

Table 12: PI 11.1: Acceptance of Transportation Offers

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

As in prior periods, there is a marked disparity in the acceptance rates when comparing men to women. The following table illustrates this:

Table 13: PI 11.1: Transportation by Gender

	Accept	Decline	Total
EMTC	160	5	165
RMSC	3	150	153
Total	163	155	318

Overall, the rate of acceptance remains stable. However, the rate of acceptance among women (2%) remains exceedingly low. The findings here confirm our previous reports that women reject this service far more than men. The apparent increase in the acceptance rate among men continues to increase, indicating that this is a service accepted by nearly all male sentenced SPMI Class Members. While we previously reported[48] on Defendants' exploration of reasons

[47] In our draft, we reported that the acceptance rate was 39% (127/327). Defendants provided us with an updated and corrected transportation report, in response to questions we raised about this information in our draft report.
[48] See, for example, our Tenth Report at pp. 103-104.

for the high level of refusal by women as compared with men, we are unaware of any further work in this regard.

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

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

Table 14: PI 11.2 and 11.3: Transportation

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

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

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

In our last report at pp. 111-113, we reviewed the situation regarding the provision of brochures. Given our findings, we made a strong recommendation that "DoHMH must update the forms they use to document that they are providing brochures to Class Members. Discharge planning staff must be trained as to the purpose of these brochures, the use of the updated form and the fact that

the two brochures are in fact different." To our knowledge, DoHMH has not acted on this recommendation.

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

Cultural competence is an essential component of adequate service delivery. This is particularly so in the culturally and linguistically diverse New York City jail population. While this concept encompasses multiple aspects, the ability of staff to describe and provide services in a language that a Class Member understands and can speak[49] is the most straight-forward manifestation of this important value. Our measure reflected the importance of this competency to engagement and service delivery.

However, we have not found a meaningful way of measuring the delivery of discharge services in the Class Member's native language; further, in our view, Defendants' current evaluation and assessment forms pay sufficient attention to this issue by requiring staff to evaluate the Class Member's ability to speak English effectively and to consider the need for an interpreter in any given case.[50] As a result, we will terminate this measure in the sense that we will no longer consider how to systematically collect and report data in accordance with performance measure 13.2. However, this issue may present itself in the context of our assessment of appropriateness of services.

[49] This can be accomplished with multilingual staff or by using trained professional interpreters.
[50] We are aware that recently published regulations govern this issue for health care in the community and recommend these standards to Defendants as a guide for appropriate ways of handling this important issue.

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

A reasonable approach to individuals who refuse offered services is a fundamental element of any treatment or case management program. In this instance, the correct approach must balance the voluntary nature of the services offered with the responsibility to encourage Class Members' participation in discharge planning services. A responsible balance cannot be achieved without an understanding of the characteristics of the population to which the program is designed to provide service. Many Class Members have had life experiences which foster a mistrust of people in authority, including both correctional staff and mental health professionals. Further, a certain percentage of Class Members who refuse services do so incompetently, because of transient and potentially remediable factors such as untreated psychosis, intoxication or withdrawal from substances, or acute crises precipitated by their arrest.[51] This is especially likely to occur early in the incarceration before the person is stabilized.

In their recently revised mental health policy (MH 11), Defendants struck a reasonable balance in dealing with this issue. Section 3 (b) of that policy states:

> "Patients retain the right to decline some or all discharge planning services at any time. Mental Health staff will offer or re-offer a referral to discharge planning services to each patient at time of Comprehensive Treatment and Discharge Plan (CTDP) or subsequent Treatment Plan Review (TPR). The patient's acceptance or refusal of discharge planning service will be recorded on each Discharge Service Needs form (DSN)."

[51] See Section V.B.7. above for a discussion of this concept.

Over the next reporting period we will conduct chart reviews to determine the percentage of charts which contain documentation of an offer and/or re-offer of discharge planning services at the time of the CTDP and/or TPR. To understand the effects of this procedure, we will compile data on the number of instances in which a documented re-offer of discharge planning services led to the subsequent acceptance of those services. In cases where a re-offer of services resulted in those services being accepted, we will review the record to determine how quickly discharge planning staff initiated contact with the Class Member.

We request that DoHMH plan to collect universal data on this question of documented offer/re-offer of discharge planning services once it has implemented its new electronic medical record and data system. If they do so, these data will replace manual chart reviews to evaluate compliance with this measure.

We have previously highlighted the disparity in refusal rates between men and women. The most striking reports reflect refusal of transportation, but a similar pattern can be seen in other areas – for example in SSI applications, and in Medicaid Applications. We find it striking that women refuse so many services at rates so much higher than men, given the well known pattern that women tend to be more help-seeking than men.

While Defendants are not obligated to provide services in the face of an active refusal, they are obligated to offer services in a manner calculated to make the service attractive to the consumer. This pattern of high levels of refusals among women raises the questions of how these services are offered and what efforts are made at engagement of this population. These issues must be addressed before

we would be willing to entertain the idea that the answer lies in a gender-based differential between men and women in the rate of resistance to receiving discharge planning. As RMSC is the only facility housing women, transfers are not possible. Thus, if a specific jail housing men has high rates of refusal, this could be attenuated both by our lumping all male jail data together and by men being transferred from the problematic jail to another facility which achieves higher acceptance rates. We anticipate conducting more detailed study of the gender-specific nature of refusals in an attempt to determine exactly where the answer lies.

C. *Data Unrelated to Performance Indicators*

1. DHS Placement Directly in Program Shelters

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

Table 15: Direct Placement in Program Shelter

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

Data in this table is derived by combining the monthly reports provided to us by Defendants for elements which they have numbered 12.4.4. The number of Class Members who presented to a shelter during this reporting period was much lower than during the prior period. During the current period, a smaller percentage of those who presented were able to be placed directly into a program shelter.

Defendants noted in their comments that some Class Members would not be eligible for direct placement in program shelters for the following reasons:

1. have unplanned release dates (for whom DHS receives packages **after** their release)
2. have incomplete packages (that is, who did not stay at Rikers Island long enough for discharge planners to complete all the documents necessary for DHS to receive complete packages); and
3. enter shelter at a time when an appropriate program bed is unavailable.

We would think that category 1 would not apply to sentenced Class Members, the only group for which direct placement in program shelters is at issue. In general, we would concur that Class Members who have very brief stays in the jails, and who would thereby fall into category 2, would be legitimately excluded from consideration for direct placement in program shelters. Finally, category 3 is exactly why DHS must exert "best efforts" as opposed to incurring a particular obligation which is the subject of a numerical performance measure.

We met with DHS on June 29, 2006, where we discussed the way in which DHS assesses Class Members for admission to shelters. DHS uses a three stage process that includes triage, screening and transportation. At any point during the process, an individual may self-declare that s/he is a Brad H. Class Member. Alternatively, the database used by DHS may indicate that the individual is a Class Member. DHS uses the records provided by DoHMH to streamline its assessment process, which helps to avoid duplication of efforts. Files sent to DoHMH prior to release (for homeless Class Members with known release dates) or after release (for those without a previously known release date) are faxed into an electronic system, enabling easy forwarding of records to assessment sites.

As there is a high premium on program shelter beds, new intakes typically are assigned to an assessment shelter. While the rule is that beds are provided on a first come-first serve basis, on occasion, client-need can trump arrival time in prioritizing one intake over another.

During this meeting, DHS objected to our presentation of the data above as a percentage, noting that presenting it in this way could lead readers to conclude that this is a performance measure on which they are falling short. We believe that our placement of this section in a part of our report clearly labeled "unrelated to performance indicators" and our repeated caveats in this and prior reports should assist competent readers to correctly interpret this information. As we stated in our last report, we believe that the rate of placement of Class Members in program shelters, while not dispositive, and while not alone a reflection of Defendants' performance in this regard, informs us and the Court as to Defendants exertion of "best efforts" to place sentenced Class Members directly in program shelters, as required by ¶96.

This issue is the subject of much controversy. Reiterating as clearly as we can, Defendants ***are not obligated*** to place all sentenced Class Members in program shelters, nor are they obligated to place any particular percentage of eligible Class Members in program shelters. There are many reasons why this placement may be impossible on a given day or in a given case. Defendants, however, ***are obligated to exert best efforts*** to place sentenced Class Members in program shelters. We believe that a window into best efforts is to report on the rate of placement of sentenced Class Members in program shelters.

Class Counsel, in their comments, requested that we clarify our position on this issue:

> "it appears that you are trying to convey that the rate of placement of Class Members in program shelters is a measure of <u>whether</u> Defendants are exerting best efforts in this regard."

Defendants' responded to this comment in part as follows:

> "Despite your caveats, Plaintiffs will erroneously assert that DHS is not complying with its obligations (or is doing so poorly) because you have reported a low percentage, when (as Defendants have consistently maintained), a percentage here has no meaning whatsoever regarding DHS' performance or use of best efforts."

Both Parties emphasize only part of the issue. Our reporting on this task as a percentage or rate ***cannot alone be used to judge the efforts exerted by DHS***. Still, the rate of direct placement is nonetheless informative. While it is true that, as Defendants argued in their comments, "DHS may have zero direct placements one month if all of the class members entering shelter fall into the three categories above and would ***still*** be in compliance with paragraph 96," it would be illogical to assert that best efforts to make direct placements would never result in direct placement. If this were the case, the requirement should be discontinued. This unlikely possibility aside, we assume that where best efforts exist, they must have some effect in the real world.

We will continue to use percentages as a rough window into the extent of the efforts exerted until the Parties suggest a better mechanism for determining whether DHS is exerting "best efforts" as per ¶96. As DHS is no doubt in the best position to do so, we invite them to suggest alternative means of gauging the degree of its efforts.

2. SPAN

SPAN reported the following figures regarding jail inreach during this reporting period:

Table 16: SPAN Inreach Data

Month	Jail	# of sessions	# of CMs	Average # CMs/session
April	GRVC, NIC, NIC Annex, West Fac.	12	97	8.1
May	GMDC	12	125	10.4
June	AMKC C95	11	129	11.7
July	No data provided	--	--	--
TOTAL		35	351	10.0

SPAN reported only one instance of clearance problems, on June 14. This problem precluded their conducting the session that day.

During the last reporting period, SPAN conducted a total of 38 inreach sessions for a total of 398 Class Members. At the time, this represented nearly a doubling of the number of Class Members attending these sessions. Given that we were only provided with data for three months, not the four-month period we generally receive, it appears that Defendants continue to increase both the number of inreach sessions they conduct and the number of Class Members who attend them.

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

Table 17: SPAN Utilization: Borough Breakdown by Month[52]

	April	May	June	July	TOTAL
Bronx	13	15	10	--	38
Brooklyn	20	0	14	--	34
Manhattan	21	6	18	--	45
Queens	1	0	11	--	12
TOTAL	55	21	53	--	129

[52] Source: August 28, 2006 Memo from Defense Counsel to Monitors

Table 18: SPAN Utilization: SPAN User Characteristics[53]

Report	6	7	8	9	10	11
# of SPAN Visitors	191	132	128	227	214	204
Homeless	32.6%	37.5%	43.5%	42.8%	40.2%	42.7%
SPMI/Likely SPMI	45.9%	53.4%	57.0%	51.6%	44.9%	50.0%
% of SPAN CMs who attended inreach session	18.8%	7.2%	4.4%	4.2%	13.1%	8.82%
% of released CMs who attended inreach session	6.2%	3.1%	2.9%	5.5%	8.9%	10.6%
After 5pm	3.3%	2.4%	3.0%	6.0%	5.1%	6.7%
Bronx		21.4%	23.0%	24.9%	21.1%	29.5%
Brooklyn		32.9%	28.3%	34.1%	35.5%	26.4%
Manhattan		33.6%	30.9%	24.9%	32.5%	34.9%
Queens		8.6%	10.9%	13.7%	10.8%	9.3%
Staten Island		3.6%	7.0%	2.4%	n/a	n/a

There are inconsistencies in the SPAN utilization data from May. We receive two disparate sources of information (the monthly reports and the memo from Defense Counsel). The number of SPAN visitors reported in these two different sources for the reporting period are different. In addition, it is very unlikely that there would be no SPAN utilization in Brooklyn for an entire month. While Defendants provided corrections to the incorrect data regarding the SPAN inreach sessions, they did not do so regarding SPAN utilization.

Because of this serious question about the data we were provided, we will not engage in further analysis of these data but anticipate receiving internally consistent and accurate data for our next Report.

3. Time of Release

Paragraph 32 requires DOC to release all Class Members during daylight hours and in no event earlier than 8:00am, the only exceptions being those who are released pursuant to bail, court order requiring immediate release or directly

[53] Source: Monthly data reports provided by DoHMH, with the exception of the borough data in the last five lines which comes from the August 28, 2006 Memo from Defense Counsel. The data regarding utilization by borough (shaded boxes) in this table appears to be incomplete. Defendants did not provide full data for May utilization. In addition, no data was provided for July. See discussion below table for details. Note: The Staten Island SPAN Office was closed midway through the Ninth Reporting Period.

from court. During the last reporting period, DOC reported compliance with this expectation in over 99% of cases. During the current reporting period, Defendants reported that, overall, 99% of eligible Class Members were released within the required time frame.

We accepted Defendants proposition that Class Members released to a program that specifically requires a release outside the 8am-4pm time frame should be excluded from this requirement, as it makes little sense to dissuade Class Members from electing these programs or Defendants from offering the programs to Class Members.

In our Tenth Report, we reduced our expectation on this measure from 100% to 99%, to accommodate the fact that perfection is unobtainable and that the stipulation requires "substantial compliance" and not perfection. However, as time of release has been one of the foundations of this case, we requested information regarding each instance of noncompliance. During the current reporting period, Defendants advised us of the following cases which were released outside of the required timeframe:

Table 19: Releases Outside the Required Timeframe

Date	Jail	Time of release
4/15/06	EMTC	2208
4/24/06	EMTC	2125
5/26/06	EMTC	2247
5/26/06	RMSC	2038
6/2/06	RMSC	0039
6/3/06	RMSC	0104
6/3/06	EMTC	0153
6/6/06	RMSC	0037
7/10/06	RMSC	2102
7/20/06	EMTC	0100
7/21/06	EMTC	2226

This table demonstrates that while compliance remains high overall, occasional cases continue to fall through the cracks and are released at times well outside the requirements of the Stipulation. Five of the 11 cases above were released between midnight and 2 am, a time clearly inconsistent with any reasonable aftercare plan. We again request that Defendants attempt to understand what occurred in each of these noncompliant cases to identify any systemic problems that resulted in these late night releases, and that they advise us of any systemic problems they identify.

4. Pilot Project

Paragraphs 34-35 of the Stipulation requires Defendants to engage in a pilot study of the utility of seeking release date information from Class Members' attorneys. Specifically, the monitors are to assess: "(a) whether the information obtained by Defendants… is generally beneficial in Discharge Planning and (b) if so, whether Defendants should be required to continue such efforts and expand such efforts to other City Jail facilities." Our prior reports have detailed the difficulty we have had in understanding the information provided by DoHMH and the remedy we conceived for this problem. In our last report, we summarized the results of that reporting period and concluded that they were "fairly promising." We engaged in the first iteration of a cost-benefit analysis, to which Defendants objected and to which they have now responded.

For the past three reporting periods, Defendants reported that they generated lists of those eligible for attorney contacts as follows:

Table 20: Pool Development for Pilot Project

Report[54]	9				10				11			
	AMKC		RMSC		AMKC		RMSC		AMKC		RMSC	
	C71	C95	MO	GP	C71	C95	MO	GP	C71	C95	MO	GP
total Ms	121	265	34	394	295	685	202	605	257	715	150	596
No contact info	43	137	4	124	73	169	0	0	36	561	0	0
Refused	53	50	27	252	117	313	190	524	99	41	138	552
Known release date in IIS	0	26	0	0	0	63	0	0	0	37	0	0
Total pool	25	52	3	18	105	140	12	81	122	76	12	44
% included in pool	21%	20%	9%	5%	36%	20%	5.9%	13%	48%	11%	8.0%	7.4%

During the ninth reporting period, 88% of the Class Members were excluded from consideration for the pilot project; during the tenth reporting period, 81% were excluded, and during the current reporting period, 85% were excluded. Just as in the last two periods, women were far more likely to refuse to allow this contact. An additional distinction during the current reporting period is that nearly half the men in the MO permitted this contact and provided information for staff to use; this trend was evident in the Tenth reporting period as well.

During the current reporting period, 254 Class Members were included in the pool for whom attorney contacts were attempted. Of these, we received information regarding 251 Class Members for whom attorney contacts were attempted.

Table 21: Pilot Project outcomes

Result of attempted contact	N	%
Information provided by attorney/staff	54	21.5%
Phone message left on voice mail	154	61.4%
Phone message left with staff	20	8.0%
Phone call not answered	10	4.0%
Other	6	2.4%
No information as to result	5	2.0%
Total	251	

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

Of the 54 calls in which an attorney or designee was able to provide information immediately, 24 resulted in information we believe to be "generally beneficial to Discharge Planning" as per ¶35 (22 provided next court date, and 2 reported that the Class Member was being sent for a competency evaluation). This finding lends credence to the view that when attorneys or their staff are reached directly, they often provide helpful information: in nearly half of these 54 calls, the attorney or his/her staff provided this information.

Of the 172 calls resulting in a message being left, eight resulted in a call back providing a next court date and two resulted in a call back informing that the Class Member was to be state sentenced. While this is a very low rate of return, it is conceivable, and in our opinion likely, that there is a selection bias: attorneys lacking helpful information do not take the time to return the call.

Thus, of the 251 calls made, 34 (13.5%) resulted in information that we believe to have been "generally beneficial to Discharge Planning" efforts. In our last report, we noted that 11% of the contacts resulted in potentially useful information. In our Ninth Report, only 2% of contacts were reported to have resulted in useful information.

In their comments, Defendants articulated a position that the only information that would meet the standard of "generally beneficial to Discharge Planning" would be the provision of a "sentence date"[55] by the attorney. They reach this conclusion through a careful and restrictive reading of ¶¶34 and 35 taken together. Paragraph 34 discusses how, for this the pilot project, Defendants are to "use

[55] We presume that Defendants intend the term "sentence date" to mean the "expiration of sentence date".

reasonable efforts to ascertain the Release Date of each Class Member…." Paragraph 35 states in relevant part that the Monitors "shall assess (a) whether the information obtained by Defendants through the efforts described in §34 above is generally beneficial in Discharge Planning …." Defendants admonish us to read the phrase "generally beneficial in Discharge Planning" to mean generally beneficial in ascertaining previously unknown release dates.

We find this limiting interpretation compelling up until that point. However, Defendants go on to assert that the only information which would be beneficial in determination a previously unknown release is an actual sentence date, which we take to mean the day that a sentence expires. We agree with the specific connection set out that the information must relate to a potential release date, and that other helpful information that is unrelated to release date should not be considered a positive outcome pursuant to ¶¶34-35. However, we disagree with this very strict limiting interpretation articulated by Defendants.

The Stipulation, at § I. 1. ¶rrr, defines the term Release Date as "the date on which an individual was, or ***is expected to be***, released from incarceration in a City Jail" (emphasis added). In a jail setting, the term "expected release" implies a degree of uncertainty. For example, as a rule, staff and detainees (and, in fact, defense counsel) may harbor an expectation of release at a coming court date, though in some such cases, that release may not happen for any number of reasons. Further, Defendants' articulate an artificially stringent standard, in that a proportion of Class Members can be expected to be released at a court appearance. In brief, given the nature of the detainee population, a next court date

is in many cases the closest estimate there is to an "expected" release date, and the entire purpose of the attorney contacts is to try to obtain information regarding which Class Members are in fact likely to be released at the coming court appearance. The only circumstances in which a court date would not result in release would be if the case were adjourned or the defendant were sentenced to time beyond time served. All other court dates will result in some type of release (bail, release on recognizance, case dropped, adjourned in contemplation of dismissal, or defendant sentenced to time served).

In our opinion, therefore, the standard to be met is that an attorney provides a next court date that was previously unknown to discharge planning staff, because this information is the only means of gauging the likelihood that a specific Class Member will be released or not. Defendants' objection that next court date "already is available… through Citrix" via data dump from IIS is misplaced because, as can be seen in Table 21, cases where a release date is entered in IIS are not considered candidates for these calls.

Pilot Project Data Quality

The data Defendants provided to us regarding the pilot project calls contains obvious internal problems which cause us concern. There appear to be multiple entries regarding several of the cases in the spreadsheet reports. In some instances, the same case is listed in consecutive rows in what appear to be duplicate entries. Other Class Members are included in more than one month. While some of these entries may reflect follow up attempts, others appear to be duplicative in that the only change along the entire line is the number of the

month of the call (e.g. on the June spreadsheet, the date for a given name is 6/5/06, and for July, it is 7/5/06, with all other information being identical). Therefore, we believe these to be duplicated entries (i.e. bookkeeping errors) rather than new contacts. Finally, while we provided Defendants with an easy to use report format that would provide us with data in a usable form, the numerical errors contained in the data and the categories of outcomes recorded indicate that they have not been using this form as we requested in our October 10, 2005 memo. The majority of the entries in the reporting column labeled "outcome of successful contact" is "other", a singularly useless type of datum to enter: we can learn nothing from these cases.

Cost Benefit Analysis

In the draft of our Tenth Report, we engaged in a cost-benefit analysis in which we concluded that Defendants require 6.7 minutes per case in AMKC and RMSC for these calls, or approximately 50 hours per month. Assuming that 10 cases per month result in generally beneficial information, we concluded that this information costs Defendants about 5 hours per case.

Defendants objected to our assumptions in this analysis:

> "DoHMH previously expressed disagreement with the assumptions contained in the draft 10th quarterly report regarding the time spent conducting tasks associated with the pilot project. Basically, these assumptions did not include certain other tasks listed below or consider the class members' current pathology, especially those class members located at the Mental Health Center who may demonstrate serious impairments in functioning and judgment. Often these CM's require more patience and time to adequately explain the services. The working assumptions in the Monitors' proposal also do not realistically estimate the time it takes to engage mentally ill CMs in a discussion of their clinical condition and their legal situation. Such engagement is clearly a prerequisite

> for an informed consent process allowing a discharge planner to speak to the CM's attorney. DoHMH also asserts that the actual time allotments of the tasks are inaccurate. For example discussions with attorneys can take more than several minutes, especially if the attorney requires the consent form to be faxed before discussion, and/or if the attorney requires information on the program and the reasons for contacts. Additionally, the assumptions spent for data collection are not accurate. The Monitors have not considered that after the data is entered into the spreadsheet, the supervisor must review the submitted data from all staff, collate the data and forward it to the Director who then combines the data from both facilities, reviews it and submits it to the Assistant Commissioner for review and discussion. Therefore, administrative tasks and time is accounted for in the cost benefit analysis."

Defendants also offered a detailed response to our cost-benefit analysis, in which they disputed some of our original assumptions concerning the time required for subsets of the process.

We certainly agree with the thrust of Defendants' overarching assertions that engaging Class Members is an individual, complex and often time-consuming process. As Defendants indicated, the chart should be thoroughly reviewed. Staff must make efforts to engage the person through a discussion of his or her unique circumstance. Time and patience are, undoubtedly, of the essence.

This formulation holds true for discharge planning process as a whole, not only for the narrow issue of the pilot project. They are correct that reviewing the record, going through the process required for DOC to produce a Class Member for interview, and engagement of disorganized or regressed Class Members is time-consuming. This, however, leads to the point at which we disagree with Defendants' response: These are all processes which must be

done properly for ***any discharge planning service*** to succeed. It strikes us as inefficient for staff to expend all of the described effort simply to discuss attorney contact with the Class Member, as Defendants' response to our analysis implies that they do. Rather, a more reasonable approach would be to fold this discussion into the overall process of explaining and providing mental health and discharge planning services. Indeed, a Class Member who understands the importance of cooperation with discharge planning staff in general is much more likely to agree to attorney contact in the furtherance of a discharge plan. Seen in this way, most of these tasks are not fairly attributable only to the attorney contact process, but must be partially attributed to other parts of the overall discharge planning process.

Despite the flaws we identified in the data collection and reporting process and in the response to our cost-benefit analysis, we are able to draw certain conclusions as to this process.

First, we do not believe that Defendants made use of a tool which we developed for them in an effort to assist them in providing us with the information we required in order to judge their work on the pilot project. Their inability to use this tool correctly is puzzling to us.

That said, the data provided for this report is an improvement over prior reports, and we find as follows: the pilot project was clearly more efficient in the male MO as compared to GP or to any female setting. Given this finding, we make the following preliminary determination, as per ¶35: attorney contacts yield information "generally beneficial" to the determination of

release date in the MO setting.[56] We make this decision for the following reasons:

- the data indicate the utility of attorney contacts in the male MO setting; and
- allowing DoHMH to focus efforts and harness resources on a more limited population should result in improved engagement of the Class Members in MOU's, with a resulting improvement in their ability to pursue these calls and collect information properly.

Pursuant to this finding, Defendants must continue to make attorney contacts for Class Members housed in C71 and in the MO at RMSC, following the procedure generally outlined in ¶¶34-35 and outlined in more detail in our October 10, 2005 memo. Defendants may wish to properly implement the procedure correctly using the tool we provided for them. If, over the next reporting period, DoHMH provides us with correctly gathered and tabulated data for three or more months, demonstrating convincingly that, in fact, this procedure does not yield information generally beneficial to ascertaining release dates or potential release dates, we will reconsider this finding and our requirements regarding the circumstances under which they must continue to make these contacts.

VI. **Conclusion**

In this report, we have altered our approach to data reporting given that we have now entered the final two years of the Stipulation period. Most notably, because of our ongoing question as to its accuracy, we have declined to report on data provided from the

[56] While the rate of response is roughly the same for Class Members in GP and in MO, the pool of MO cases, especially in C71, includes a far higher percentage of potentially eligible Class Members than the pool in the other jails – see table 20. Parenthetically, we also believe that there is added utility in working with attorneys who represent sicker clients.

discharge planning MIS. This prevents us from discussing many of the performance measures in detail, a regrettable outcome of this decision, but one which is necessary: it makes little sense to engage in lengthy discussions regarding the meaning of the data when we have unanswered questions about the source data's accuracy. The remedy to this situation is the discharge planning MIS concordance study, which at least will provide an answer to the question: Are the data reliable? That answer will guide our future handling of the data. We anticipate finalizing the study procedures and commencing the study in October, after the publication of this Report.

In this report, we discuss several central issues related to the nature of DoHMH's obligations as to discharge planning efforts. Although related in subtle ways, these issues are not entirely amenable to description as a causal chain of events.

First, the Stipulation by its terms emphasizes process over outcome. As such, from the strict viewpoint of compliance with the literal obligation contained in the Stipulation, Defendants have much to lose should they, for example, regularly fail to submit a Medicaid application within two business days of its completion; anomalously, there is less concrete detriment to an assessment of Defendants' compliance with the strict terms of the Stipulation should they create a discharge plan which never produces any benefit to a Class Member who is reincarcerated multiple times over the course of several years. This is not entirely true, because, as discussed further below, the Stipulation does require that Defendants complete certain tasks "appropriately," in the judgment of the monitors.

Second, from the beginning of our monitoring of this settlement, Defendants have, as a matter of advocacy, forcefully asserted a limited and literal view of their obligations as well as our role as monitors. We understand their right to do so, but think it important to

describe this as the context for understanding a number of related phenomena as we believe that this view has hindered them from fulfilling some of the fundamental purposes of the individual mandates contained in the Stipulation. Defendants' limited view of their obligations continues despite the fact that under current leadership DoHMH has moved toward a more collaborative and holistic approach.

Third, at the time we began our monitoring of this case, DoHMH had an essentially unworkable discharge planning program structure. Recognizing this, they commendably proceeded to reorganize their discharge planning program in more logical fashion. As we have described in detail, however, DoHMH simply has been unable to recruit or retain sufficient numbers of adequately trained staff to implement this model. Inadequate staffing lowers morale, narrows the sense of mission, and in turn makes recruitment of skilled staff more difficult still. In view of the fact that DoHMH has never fully filled its complement of discharge planners, it is unsurprising that they assert a constricted view their obligations. Staff who must struggle to meet timelines and fill out paperwork because of staff vacancies will not be able to engage in the type of individualized approach we believe is required by the Stipulation and upon which success of the broader mission depends.

Fourth, commendably, DoHMH is currently invested in improvement of the assessment and clinical documentation process. However, since the inception of our monitoring, Defendants' assessment and documentation processes did not collect or record the type of information we thought necessary to fairly and adequately monitor the appropriateness of Defendants' projections of post-discharge needs and other crucial,

more clinically oriented tasks.[57] Primarily for that reason, we postponed our monitoring of those tasks. An unintended consequence of this is that we inadvertently promoted the very view with which we take exception—Defendants' emphasis on technical requirements over the creation of clinically appropriate discharge plans—by giving them a temporary reprieve on the appropriateness measures.

Fifth, Class Counsel, in their comments, made plain their view that the focus on meeting the technical requirements to the detriment of other important needs occurs *because of the inadequate staffing*, and further that, should Defendants have adequate discharge planning staff, this problem would vanish. We agree that DoHMH's ability to do both—meet timelines and other procedural requirements of the Stipulation and provide meaningful, appropriate discharge planning—has not been fully tested because of chronic staffing problems. However, as the discussion above should make clear, our view is somewhat more nuanced in that we acknowledge that the overall thrust of the requirements as well the numerical definition of compliance tilt the focus towards procedural and time-based tasks. We, further acknowledge that our decision to postpone monitoring of the appropriateness measures has contributed to this focus on form over substance.

We see these all of these issues as interconnected: In our opinion, Defendants' concrete interpretation of their literal obligations under the Stipulation is promoted both by the nature of the Stipulation itself but also by their persistent difficulties with recruitment and retention of clinically trained staff. Further, it is our opinion that, in

[57] As noted in our Sixth Report of February 7, 2005, at p. 6, given the absence of information, we were left with a choice to interpret silence as either indicating that a plan was appropriate or otherwise. Predictably, the parties had differing ideas as to how such silence in a chart should be viewed. We elected to defer any monitoring on this issue until such time as Defendants altered their clinical approach so as to gather and record the information required to make a true judgment based on data provided.

many ways, this focus on strict timelines and technical requirements hampers efforts to develop a more flexible approach to discharge planning. The new data system under development, and the leadership provided by the new Assistant Commissioner should allow DoHMH to address many of the deficits we have highlighted.

At this time, we remain unable to monitor several major issues, including:

- the appropriateness measures (2.2, 2.4, and 3.2),
- temporary Medicaid (¶61, measure 6.1), and
- discharge planning to individuals housed on prison wards.[58]

Our next report comes due on February 6, 2007. Per our set timelines, data and other information from Defendants will be due to us six weeks prior to that date, on December 26, 2006. Our draft will be released on January 16, 2007, and we will require any comments back by the end of the day on January 26, 2007.

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

Respectfully Submitted,

Henry A. Dlugacz
Digitally signed by Henry A. Dlugacz
DN: CN = Henry A. Dlugacz, C = US
Date: 2006.10.06 08:16:31 -04'00'

Henry Dlugacz
Compliance Monitor

Erik Roskes
Digitally signed by Erik Roskes
DN: CN = Erik Roskes, C = US, O = Brad H Compliance Monitor
Date: 2006.10.05 17:48:42 -04'00'

Erik Roskes
Compliance Monitor

[58] As noted in section II, the Appellate Division handed down its ruling on October 3, 2006, just as we were finalizing this Report. We will develop a mechanism to monitor services provided to Class Members housed on the prison wards.

ATTORNEY'S AFFIRMATION OF SERVICE

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

I, HENRY A. DLUGACZ, an attorney at law of the state of New York, and one of the Compliance Monitors in the matter of Brad H *et. al.,* against The City of New York, *et al.,* being duly sworn, say, depose, and affirm under penalty of perjury that on October 6, 2006, I caused to be served upon the parties named below the ELEVENTH REGULAR REPORT OF THE COMPLIANCE MONITORS by causing same to be hand delivered to the following persons at the last known address set forth after each name:

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Affirmed this day of
October, 2006

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Henry A. Dlugacz