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

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

Ninth Quarterly Report of the Compliance Monitors
February 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 Ninth Regular Report of the Monitors.

Contents:

I. ***Introduction***

Defendants have continued to improve across many of the indicators discussed. Reiterating our introduction from our Eighth Report, it will be clear to the reader that these continued gains have taken place notwithstanding the incomplete implementation of the "new model" of staffing the discharge planning services and despite an insufficient recordkeeping system. Therefore, we begin this report by noting these gains and by describing why we think that judging Defendants solely by the numbers will result in an incomplete and misleading conclusion on the part of the reader.

During this reporting period, Defendants made particularly notable improvements in the following areas:

- Comprehensive Treatment and Discharge Plan ("CTDP") timeliness (PI 3.1)[¥]
- Medicaid Application completion/submission timeliness (PI 5.1)
- Provision of Information to Department of Homeless Services ("DHS") after release (PI 10.2.2) [¥]

In many of the other measures, Defendants consolidated improvements previously made; some of these areas included:

- Timely enrollment in the Medication Grant Program ("MGP") (PI 5.3) [¥]
- Timely reactivation of Medicaid (PI 6.1.1)
- Provision of walking medications and prescriptions (PI 7.1)
- Provision of Referrals (PI 8.3) [¥]
- Public Assistance ("PA") Application completion/submission timeliness (PI 9.2) [¥]
- HRA 2000 Application submission (PI 10.1)
- Provision of Information to DHS prior to release (PI 10.2.1) [¥]
- Follow up calls (PIs 12.0, 12.1, 12.2, 12.3, and 12.4)

[¥] Measures marked indicate those for which we will be engaging in closer study with Defendants, as described in our Eighth Report at page 39.

In some areas, Defendants continue to fail to comply with our expectations, including:

- Inclusion of Class Member as Likely Seriously and Persistently Mentally Ill ("LSPMI") if on psychiatric medication (PI 2.3) ¥
- Medicaid Prescreen completion timeliness (PI 4.2)¥
- Provision of Appointments (PI 8.1) ¥

In addition, during this reporting period, the number of SPAN visitors nearly doubled compared to the eighth reporting period, and exceeded the previous high by over 30 clients. However, SPAN was unable to conduct as many inreach sessions as they expected, in part because of issues related to clearance or to coordination with the jail-based discharge planners. The SPAN reorganization has been proceeding much more slowly than we anticipated: this has resulted in reduced services to Class Members and to incomplete reallocation of the resources saved by the closing of the Staten Island SPAN office.

During the current reporting period, Defendants placed more Class Members directly into a program shelter than in any other period for which we have data. Defendants developed a more sophisticated questionnaire by which they will assess homeless status, which should enable them to meet the housing needs of a higher number of Class Members. In addition, Defendants informed us of a new approach to the HRA 2000: rather than engaging in some type of assessment, they will simply offer supportive housing to all Seriously and Persistently Mentally Ill ("SPMI") Class Members. This approach properly leaves the assessment aspect to HRA.

Defendants have also made positive strides in the areas of assisting eligible Class Members in obtaining benefits through the Social Security Administration ("SSA") and the Veteran's Administration ("VA"), though much work remains to be done. In addition, HRA has developed a policy to assist eligible Class Members in applying for food stamps

prior to release, a tangible step forward. Defendants are aggressively pursuing means to implement the requirements of Justice Braun's 2003 order regarding Temporary Medicaid.

However, as we have said, just looking at the numbers is misleading. Each of the tasks taken in isolation do not a clinically appropriate discharge plan make; rather, the individual parts must be crafted together to fit each individual Class Member. As we stated in the introduction to our last report:

> "Having created the essential building blocks of the various discharge planning tasks themselves, the challenge now becomes to meld the distinct requirements of the Stipulation into a coherent system capable of assessing the needs of Class Members and then providing discharge planning services in accordance with the Stipulation to qualified and consenting Class Members."

We believe that at least the following elements must be included in this system:

- A working communication system that allows for and in fact requires sharing of information among the staff responsible for creating the discharge plan;
- A more individualized approach to assessment that considers the gathering of pre-incarceration treatment information;
- Longitudinal contact with the Class Member so that the plan may evolve and be refined as circumstances change and as more information is gathered; and
- A quality improvement program designed to build on past successes and minimize earlier problems.

We discussed these issues at length in our Eighth Report and incorporate that discussion here by reference.

Defendants continue to take issue with our approach to understanding the context and meaning of the figures they provide regarding their compliance with measures which require completion within a specified timeframe. Defendants also take issue with our opinion as to the types of system changes which will be required

- for them to ultimately achieve compliance with these obligations, and
- to permit the evaluation of their compliance with obligations to perform a task in an appropriate manner.

They assert that we are substituting our judgment as to how the system should function in place of the system as agreed to in the Stipulation. We note that some of the performance measures negotiated by the Parties and memorialized in ¶142 (b), (c), (d) and (i) of the Stipulation unambiguously require Defendants to perform certain tasks in an "appropriate" or "clinically appropriate manner." This goes to the manner in which Defendants' complete certain tasks, and not merely to the timeframe within which those tasks are accomplished.

For more than a year, we have attempted to engage the Parties, and more assiduously Defendants, in a discussion as to what standards we should require in satisfaction of these obligations. There are three aspects of this issue that require resolution:

1. What are the standards against which Defendants are to be measured?
2. How will Defendants need to alter their system of care in order to meet these standards?
3. How will Defendants need to alter their recordkeeping in order for us to monitor their performance against these standards?

We have gone to considerable lengths to move this discussion forward on the theory that Defendants would be more likely to meet mutually-agreed upon standards which grew out of frank dialogue; we thought this a fair and effective way to proceed. To this end, we eschewed reporting on these measures in reports filed with the Court, and we have not unilaterally imposed definitive standards by which to measure Defendants' compliance. Rather, we stated principles of sound assessment and discharge plan development, and we made suggestions regarding how Defendants might go about attaining or approximating them. Further, we made suggestions as to how Defendants could, in the process, reasonably limit the operational burdens placed upon them such as by proposing the use of proxy groups (see report 7 at pp. 48-49).

In taking this approach, we have, as Class Counsel correctly point out in their comments, exceeded any explicit authority granted to us in the Stipulation, which in ¶149 requires us to report on all of the performance measures every 120 days after the first year of monitoring.

We urge Defendants to engage more fully in the joint-effort we seek. Reasonable minds could differ regarding precisely which circumstances, for example, require that Defendants seek collateral information or prior records when assessing a Class Member's post-discharge needs. However, it is not reasonable to develop a system which as a matter of routine does not attempt to consider such data in cases where such data may be relevant. This is an example of the type of issue we seek to resolve collaboratively with Defendants. If Defendants evince a willingness to work with us - in an expedient and focused manner - to develop equitable and productive standards related to the requirements in ¶¶5, 42, 43, 44, and 142 (b)(c)(d)(i), we remain amendable to so doing; in any event, we must promptly develop and implement standards upon which to base reports to the Court regarding Defendants' compliance in these areas.

In several places below, the reader will note that we find much on which to commend Defendants, and conversely, that we find a number of areas in which we are critical. Regardless of any particular finding, we commend especially the general approach taken by the Department of Health and Mental Hygiene ("DoHMH") to the management of the parts of the system for which they have responsibility. That said, with respect to the basic foundational changes which we believe to be necessary, we have yet to see much in the way of actual improvements: they have improved much given the limitations of the existing

system, but they have yet to demonstrate effective improvements to the system itself so that those limitations no longer exist.

We intend over the next several months to focus on three of these areas. ***First***, we have already begun to explore in a more formal way the validity of the Citrix database system in which discharge planning efforts are recorded and from which all data is provided to us. To the extent that our study finds that portions of the data in Citrix do not accurately reflect discharge planning efforts as recorded in the chart or as they actually happened, such inaccuracy would call into question any finding we have made based upon the monthly reports provided by Defendants. Conversely, to the extent that our study reveals an acceptable level of congruence[1] between the clinical record and Citrix, we can limit any questions concerning data to specific cases which raise questions. It is imperative that we do more than simply question this data. Defendants' suggestion that we conduct a study to evaluate inconsistencies between information sources and to further evaluate the potential ramifications of those inconsistencies is a sound idea. We intend to formally conduct a study in which we compare the data in Citrix to that in the medical record. This should assist the Court, the Parties and us in understanding the meaning of the data in Citrix.

A corollary to this area is the issue of the interrelatedness of data provided by different Defendant agencies. We have repeatedly raised questions regarding the meaning of data related to one specific task that comes from different agencies. This generally relates to data provided by HRA as it informs the data provided by DoHMH. We have yet to reach

[1] We agree with Defendants that we should develop a clear definition of what level of congruence is acceptable prior to initiating this study. We will invite participation of the Parties in overall development of the design of this study, including this issue.

any firm understanding of this problem and have suggested that direct observation of the ways in which HRA collects, stores and reports data may be a way to shorten the process.

Secondly, we have in section II.F. below discussed our approach to the Appropriateness measures. For the reasons described below, we have taken a particular approach to these measures, distinct from our more routine, data-oriented approach. Paramount among these reasons is our belief that the records, as they are collected now, do not contain information required to complete the more complex tasks such as SPMI assessment or development of a clinically appropriate discharge plan which Defendants are required to perform. Thus, and by extension, they do not routinely contain the level of information we require to make the necessary judgments as to whether Defendants in fact have met these requirements. While we recognize that the entire recordkeeping and assessment system cannot be changed overnight, and while we acknowledge that Defendants have been moving in some necessary directions toward the development of an electronic medical record, it remains the case that without significant changes being made both to the content of the medical records (i.e. what information is captured) as well as to the way in which medical records are maintained, we are unable to make these important determinations as to Defendants' performance. This will be an important area for us to focus on with Defendants over the next reporting period.

Thirdly, DoHMH has, as we noted, listed several of the measures which they wish to study more closely with us. We have initiated this process with DoHMH and found it very useful, and we intend to continue working on this project over the coming period.

II. ***Process***

A. **Activities of the Monitors**

During this reporting period, we focused on preparing a Confidential Report for the Parties regarding the "appropriateness" tasks. We designed and began conducting a series of studies comparing data in the paper medical record (the "chart") to the data contained in the Discharge Planning database ("Citrix"). In addition, we initiated an important process with DoHMH of joint review of the issue of late CTDP's.

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

Paragraph 87 of the Stipulation requires Defendants to explore the feasibility of establishing a system to assess Class Members for Supplemental Security Income ("SSI"), Social Security Disability Insurance ("SSD") and Veterans Administration ("VA") Benefits, and for the completion and submission of applications for these benefits prior to the Class Member's release from the correctional system. Paragraph 86 obligates Defendants to explore the feasibility of establishing a system to permit Class Members to submit Food Stamps applications before they are released so that the applications can be processed while they are incarcerated. Defendants are required to confer with the compliance monitors at least every six months as to their efforts to implement the systems described in both paragraphs. In previous reports we included extensive discussion of these efforts, most recently in our Eighth Report beginning at page 11.

In response to our request, Defendants provided us with information regarding their work on these issues. We conducted no meetings with Defendants specifically on these

issues during this reporting period, though we did discuss matters related to them during other meetings focusing on data reporting.

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

Defendants have operationally separated their efforts to assist Class Members in filing new applications for SSI from their work on reinstating benefits to Class Members previously found eligible. This is a reasonable approach as the tasks faced are fundamentally different.

a. New Applications for SSI

In our last report, we reported that Defendants were initiating a collaborative effort with the SSA Astoria Field Office in order to "test processes and procedures for assisting Brad H SPMI inmates in applying for or having reinstatement of benefits." As a result of these discussions, DoHMH provided the names of specific consenting Class Members[2] to SSA. SSA screened these individuals to exclude those receiving SSI prior to incarceration (and who would therefore require reinstatement rather than a new application). Defendants reported that

> "[t]he first round of telephone interviews of candidates was conducted by SSA on September 27th, 28th, and October 4, 2005. Each telephone interview is approximately two hours in length. A total of eight interviews and applications were completed out of a total of fifteen possible candidates on these dates. The second round of telephone interviews took place on November 22 and 23, 2005. Of the twelve possible candidates on these dates, eight interviews were completed,

[2] Class Members selected were
- sentenced, SPMI Class Members
- with between 30 and 120 days remaining prior to release and
- who were not being assisted by the HOPE grantee organizations.

resulting in five applications. DoHMH is waiting to be advised by SSA on its review of these applications."

Defendants provided the following information as to why only a subset of the candidates completed this process:

Table 1: SSI Applications Prior to Release

	Oct05	Nov05
# referred to SSA for interview	15	14
Decompensated, unable to be interviewed	1	2
Spanish speaking, no interpreter	1	0
Ran out of time, unable to be interviewed	3	0
Active SSI, no need for interview	2	0
Disqualified due to distant release date	0	1
"not eligible for SSI" per SSA	0	6
Total interviews conducted	8	5

Further, Defendants reported that

> "[t]here has been a recent and significant personnel change at the Astoria District SSA Office. The District Manager with whom DoHMH and DOC have been working on the pilot efforts regarding SSI benefits has recently left the office due to illness. As a result, there has been a delay in receipt of information regarding the telephone interview process as well as the status of review of completed Brad H. SSI applications. A third round of telephone interviews had been scheduled to occur on December 6th and 13th. DoHMH submitted consent materials to SSA for 12 possible candidates for those dates. Those interviews have not taken place and SSA has thus far not responded regarding next steps."

We have cause for both optimism and pessimism given this report. While their outcomes remain uncertain at this time, the interviews that have taken place represent real and constructive progress. That said, it is concerning that progress has apparently stalled with the departure of the Astoria Office District Manager. We strongly encourage Defendants to work to reestablish effective communication and collaboration with the SSA. Defendants may find it

constructive to again contact the Regional Office as it is important that Defendants not lose momentum in building upon these positive developments.

b. Reinstatements of SSI benefits[3]

Each month, Defendants provide the names of new inmates to SSA. SSA responds with an "annotated list, known as 'the Bounty List,' which identifies those inmates who had active SSI at admission." Defendants have begun using the Bounty List

> "to identify SPMI inmates who may be candidates for reinstatement of SSI benefits upon release. DOC uses the IIS system to identify inmates on the Bounty List who are Brad H. Class Members and notes their release dates…. For any inmate who is SPMI, sentenced with a known release date, has 26 or fewer days until release, and has had SSI benefits suspended for twelve months or less, Discharge Planners will set up an appointment for that inmate to report to the SSA post-release, for a reactivation interview."

Defendants indicated that an error occurred during their initial attempt at implementing this procedure. DoHMH mailed the list of potential candidates directly to SSA around the same time that the Field Office Manager with whom they were working unexpectedly left her position. We do not understand the nature and ramifications of this error and request further clarification from Defendants.

Defendants reported that

> "DOHMH and DOC are in the process of fine tuning the specifications of the IT programming regarding assisting Brad H class members in accessing SSI benefits. DOC expects this to be completed very shortly. After the specifications are completed, DOC plans to complete the programming project by late March 2006."

[3] In our Eighth Report, at footnote 4, we explained the criteria for inactivation and reinstatement of SSI benefits.

We anticipate reporting on this modification and its outcomes vis-à-vis the *Brad H.* Class in our next report, and we request timely updates as to the progress of these efforts.

c. Social Security Disability Insurance (SSD)

Paragraph 87 requires Defendants "to explore the feasibility of a system for the assessment of Class Members' eligibility for SSI, SSD, other Social Security Benefits… and the completion and submission of applications for such benefits on behalf of Class Members before their Release Date." 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. Once Defendants have developed a functional system for accessing SSI benefits on behalf of eligible Class Members, we will turn our attention to other Social Security Benefits, such as SSD.

2. Veteran's Benefits

Defendants reported that, "[a]s a result of a series of meetings and discussions among the Mayor's Office, DOHMH, DOC and the United States Department of Veterans Affairs, an initial Benefits Briefing occurred at the Eric M. Taylor Center on December 6, 2005." Class Members were solicited for this in multiple ways, including the posting of flyers, spreading the word via program officers, and announcements at mealtimes. In addition, referrals were solicited from DoHMH as they conducted their assessments. The target population included inmates reporting a history of military service. As described in our Eighth Report, these briefings will be conducted as large group meetings in which available benefits for veterans will

be described. Individuals who so desired would then be able to speak to the VA representative in a one-on-one basis.

Defendants reported a number of "glitches" in this process. For example, inmates who desired to attend the briefing on VA benefits were requested to indicate their interest on a sign-in sheet. Among the information requested was their date of discharge, which many understood to inquire about their date of discharge from military service. The intent of the question was to ascertain an inmate's projected released from DOC custody. Some inmates who were expected to attend the briefing instead went to work on the day of the briefing and were therefore unavailable to attend. Regarding this latter problem, Defendants reported that "[i]n the future, DOC will have supervisors oversee this aspect of the process so that as many inmates as anticipated can attend."

Due to these glitches, 18 inmates attended the first briefing rather than the 30 that were expected. Six of the 18 were SPMI. Defendants reported that

> "[a]pproximately ten inmates took advantage of this offer.[4] No claims paperwork was completed on that day. Instead, inmates were given instructions regarding the correct office to call at the VA in order to file claims, as appropriate, following discharge."[5]

As noted above,

[4] Defendants did not provide information about why only a subset of the candidates completed this process.

[5] In response to our inquiries Defendants provided the following clarification:

> "The VA does not prepare claims for institutionalized individuals prior to release. A post-release visit to the VA is needed to complete a claim. At that visit, a letter of release from Rikers needs to presented. However, there is one exception. In the case of an honorably discharged individual with a service related disability which occurred in the military, the VA will complete the claim paperwork prior to release from Rikers. It would then be necessary for that inmate to mail to the VA his DD214 [discharge papers] and any medical evidence available. A post-release visit to the VA is needed to complete the claim. At that visit, a letter of release from Rikers needs to be presented. It has been our intent to facilitate claim filing for SPMIs with the VA for VA benefits, where possible. In our upcoming discussions with the VA, we will explore whether there are circumstances that could make claim filing pre-release feasible in future sessions, i.e. known release date within a defined period after briefing, etc."

> "DOHMH and DOC are in the process of fine tuning the specifications of the IT programming regarding assisting Brad H class members in accessing Veteran's benefits. DOC expects this to be completed very shortly. After the specifications are completed, DOC plans to complete the programming project by late March 2006."

We anticipate reporting on this modification and its outcome vis-à-vis the *Brad H.* Class in our next report.

3. Food Stamps

In our last report, we reviewed the outcome of a meeting held in early September, 2005, regarding Defendants' obligations under ¶86 of the Stipulation that they "explore the feasibility of establishing a system that would permit Class Members to submit Food Stamps application before their Release Date and that would permit the processing of those application while they are incarcerated." This paragraph further requires Defendants to "use best efforts to secure necessary approvals… to implement such a system…" At that meeting the Parties did not reach agreement regarding a process for applying for food stamps for possibly eligible Class Members. Part of the issue was that, while Defendants had received the requested waiver from State Office of Temporary and Disability Assistance ("OTDA"), this waiver did not grant all of the requests of the City. At the time of our last report, Defendants had not yet determined how best to implement the procedure permitted by this waiver.

On November 21, 2005, Defendants reported by email that

> "the issues created by the waiver as identified by HRA have now been resolved. Accordingly, in satisfaction of our obligations under paragraph 86 of the Stipulation, Defendants can now implement a system which will allow SPMI Class Members to submit Food Stamp applications prior to their Release Dates, and to have those applications processed during their incarceration. Please note that the State has advised that, as with other food

> stamp recipients, such individuals will need to re-certify their eligibility within 6 months of the registration of that application, as required by State regulation.
>
> "Defendants are revising their procedures so that this system can be implemented as soon as possible. In accordance with our obligations under paragraph 127 of the Stipulation, such procedures will be forwarded to you for your review and comment at least 14 days prior to the date they are to become final."

On December 21, 2005, Defendants provided us with in initial draft of a modified procedure that included within it the food stamp waiver procedures. We provided feedback to Defendants regarding the policy, and they have incorporated our suggestions in their final draft. Defendants informed us that "HRA would like to begin to train its staff and implement these procedures as soon as possible." Pending final implementation, this appears to be a long-awaited constructive step toward meeting the obligations of ¶86. We look forward to attending trainings on the use of the updated policy, and to following developments as Defendants implement this new policy.

C. **Operations of DoHMH**

1. Staffing

DoHMH reported that, during the current reporting period, they achieved a net gain of three master's prepared discharge planners, increasing from 18 to 21 staff at this level and leaving six vacancies. The complement of bachelor's level staff remained constant at 20, with two vacancies. The increase in the master's level personnel has moved two jails (VCBC and BBKC) from the old to the new model. Defendants reported that three jails (AMKC C-71, GMDC and OBCC) were operating "partially" in the new model at the end of this reporting period, while eight jails (AMKC C-95, ARDC, EMTC, GRVC, NIC/West, RMSC, BBKC and

VCBC) are operating fully in the new model (despite residual vacancies at the master's level in three of these jails).

Defendants objected to our request for caseload information as we prepared our Eighth Report, and we did not request such information for this report. Rather, we requested information regarding the actual positions. We will work with DoHMH to develop a better understanding of this information.

In conclusion, DoHMH was able to increase their master's level staff by 17% during this reporting period. There remain a total of 8 vacant Bachelor's or Master's level positions, which continue to handicap Defendants in completing the many tasks required by the Stipulation. The key to improving this situation will be to continue to actively recruit to fill vacancies while simultaneously working to improve retention. We have discussed several ways to do this in our Eighth Report at page 23.

For over a year, we have been concerned with DoHMH's inability to fully realize the "new model." As we have repeatedly mentioned, we support both the objectives of this model and the rationales which underpin it. DoHMH has realized some positive gains in this area over this past reporting period. Nonetheless, the recruitment and retention of sufficient numbers of qualified staff is a rate limiting step in the creation of the system of individualized discharge planning contemplated by the Stipulation. When viewed over the course of more than two years of attempting to implement the new model, this rate of progress is insufficient. We request that DoHMH provide to us a detailed summary of all efforts they have made toward the recruitment and retention of the qualified staff necessary to implement

this model. Upon review of this information with DoHMH, a decision can be made as to whether the new model is attainable or not. If it is, all reasonable efforts should be made to attain this laudable goal. If not, DoHMH should develop for review and discussion alternative approaches to the provision of appropriate, individualized discharge planning services.

2. Updated documentation and policies

On December 14, 2005, DoHMH provided to us updated drafts of the following two forms:

- Discharge Plan
- Discharge Plan Update

The "Discharge Plan" is a form to be utilized by the discharge planners as an internal guide to be used as they work to provide the Class Member with the services s/he requires. The "Discharge Plan Update" will be completed only when there is a change in status that requires amendment of the initial plan. Discharge planners will continue to look to the CTDP/DSN and the Treatment Plan Updates for indications that the status and requirements of the Class Member have changed. We have provided feedback to Defendants regarding these documents.

During this reporting period, we continued to work with DoHMH regarding the revised instructions for completion of the LSPMI form. We reached an agreement on the form and substance of these changes on November 23, 2005. DoHMH reports that it is in the process of implementing these revised instructions.

3. Communications

In our Eighth Report, we reported on the improvements Defendants had made in their information infrastructure. Staff have reported to us that they find this

infrastructure useful in their work. We have not conducted any checks on the voice mail system during the current reporting period but will conduct spot checks periodically. We again encourage Defendants to maintain the infrastructure needed to support all staff in doing their jobs effectively.

4. Chart Access, Electronic Records

In our prior reports, we have reviewed the difficulties that clinical and discharge planning staff face when forced to work with their client in the absence of the medical record. It remains a frequent occurrence that staff include as a part of their documentation caveats such as "patient seen without record." Many staff in fact have a rubber stamp that they utilize to ensure this documentation. Staff should not be put in a position as a routine matter of having to see patients and provide clinical and discharge planning services in the absence of the medical record.[6] Defendants are responsible for ensuring that this is a rare rather than a routine occurrence. We recognize the difficulties in developing and implementing a comprehensive electronic medical record, and we are aware that Defendants have begun developing such a system. We strongly support this effort and again urge Defendants to move expeditiously in this direction. Such a system will serve them well, both in caring for incarcerated individuals and in tracking the services they deliver. The latter benefit, as it applies to our monitoring of this case, is discussed below.

[6] The quality of many key discharge planning tasks can be negatively affected by this difficulty. For example, a Class Member's CTDP is developed based on his/her detailed psychosocial assessment and psychiatric evaluation. The HRA 2000 application is to be accompanied by copies of the completed psychosocial and psychiatric evaluations. It is difficult for us to imagine how these tasks can be completed in an appropriate, individualized and clinically meaningful manner if the individual completing them does not have access to the material that should be contained in the medical record. For example, completing an HRA 2000 without this material might result in HRA making a finding of ineligibility or a lower level of eligibility than would have been the case had they had access to all available information.

D. **Prison Wards**

In our Eighth Report, at page 27, we discussed the complex legal history relating to our access to the Prison Wards. Defendants' appeal of Justice Braun's decision of April 18, 2005, was argued before the Appellate Division on October 27, 2005. We await the outcome of this appeal.

E. **SPAN Reorganization**

As described on page 41 of Seventh Report and page 30 of our Eighth Report, we supported DoHMH's proposal to temporarily close the Staten Island SPAN office for a six month period. DoHMH was to reallocate funds to the creation of a dedicated inreach team deployed in the City's jails. The team was to consist of Supervisor, a Discharge Planner and a Discharge Planning Technician. The motivational inreach sessions were to increase from one to three times weekly and serve a total of approximately 72 class members weekly. SPAN was to assign staff to conduct inreach at the Central Cashier's Office on the other two days per week. Although we raised the question of what other duties staff would perform when not engaged in these specific inreach activities, we supported this plan, along with a temporary reduction in SPAN office hours, because of the strong indications that inreach was successful in engaging Class Members and increasing utilization rates of this important aspect of the discharge planning system.

SPAN temporarily closed its Staten Island Office on October 14, 2005. SPAN also reported that it implemented plans to make Staten Island Class Members aware of how they could access services through the Brooklyn SPAN office, and they advised us that calls to the Staten Island office are forwarded to the Brooklyn office. They report that

since that time, "[a]pproximately six individuals who reside in Staten Island have utilized Brooklyn and Manhattan SPAN offices."

The rest of the planned reorganization has not gone smoothly, and as of the date of this writing, Defendants have not complied with the terms of their agreement with Class Counsel. According to DoHMH and SPAN, the primary areas of difficulty are (1) staffing of the dedicated in reach teams; and (2) DOC-related issues such as clearance for SPAN staff and transport of class members for inreach sessions.

According to SPAN, they have "implemented recruitment efforts" for the three positions, and they have identified a candidate for the discharge planner position. Our understanding is that the need for new recruitment was precipitated by the resignation of some or all of the employees of the now-closed Staten Island SPAN office. SPAN reports a current overall complement of eight direct service lines: four discharge planners; two supervisors, one assistant director and one discharge planner technician, the latter two being new positions. SPAN further states that the current staffing levels do not permit them to station staff at the Central Cashier's Office.

In response to our inquiries about the progress of the SPAN reorganization and the reasons for the low levels of inreach reported below, DoHMH and SPAN indicated that in addition to their staffing difficulties, there were some persistent problems in conducting inreach sessions. SPAN informed us that inreach sessions were scheduled on several dates in November but did not take place for a variety of reasons. Specifically,

- sessions were scheduled on Rikers Island for November 8 and 10 but did not take place because of clearance issues;
- clearance problems also prevented scheduled presentations at BBKC on November 9 and 10;

- SPAN reported that DOC scheduling issues prevented the Rikers presentation planned for November 15 from taking place
- a planned BBKC presentation did not take place on November 15 because DOC did not provide sufficient space or an officer;
- a lack of preparedness by jail-based discharge planners caused the cancellation of the planned November 17 session at BBKC (SPAN attributes this to the presence of a new discharge planning supervisor); and
- SPAN staffing issues reduced the number of sessions for the week of Thanksgiving so that only one occurred on November 22.

Data regarding inreach visits conducted during the reporting period will be presented below, in section III.B.2.

We note that SPAN reported that DOC plans upon issuing service provider passes to them to ease access and that they are meeting monthly with jail-based discharge planners in order to increase inreach success; however, the clearance problems described, which date back at least to the prior reporting period, are not acceptable and significantly decrease the likelihood that this very constructive experiment aimed at more effectively using available resources is successful.

This is hardly the result intended in closing the Staten Island SPAN office. We approved this proposal very specifically as a *six-month trial* designed expressly to increase inreach activities. We have no basis for evaluating this trial as three months after the Staten Island closure the redeployment has not happened. Defendants must complete this redeployment immediately:

- the vacant positions must be filled;
- DOC must provide routine and easy access, as well as adequate space, for the inreach staff[7]; and
- SPAN and jail-based discharge planning staff must coordinate this service.

[7] In comments to our draft report defendants indicate that DOC "has accepted applications from SPAN staff for DOC identification cards and Gate 1 passes. These applications are being processed, and [they] expect the cards and passes to be issued shortly."

Court Out-Reach

Paragraph 40 of the Stipulation requires SPAN to

> "visit courthouses while criminal courts are in session to encourage Class Members who are determined likely to be released from DOC custody directly from courthouses (such determinations being provided to SPAN Office Staff by Defendants) to visit SPAN Offices and utilize services provided by SPAN Offices."

We noted on page 31 of our Eighth Report that Defendants were not complying with this important provision but that we were deferring our demand that Defendants arrange a site visit to the courts in connection with this requirement essentially because of their admission that no court out reach was occurring and because of their efforts to engage the Office of Court Administration ("OCA") in providing assistance which permit them to come into compliance with this obligation.

While Defendants presently remain out of compliance with paragraph 40 of the Stipulation, they did report recent, more focused efforts in this area. According to information provided by DoHMH, on October 31, 2005 representatives from Defendant agencies DoHMH and DOC attended a meeting with SPAN, OCA, and the Center for Court Innovations ("CCI"), to explore ways for SPAN to gain access to the courts so that it might fulfill its obligations under the Stipulation. A follow up telephone call was held with a representative of OCA on December 23, 2005, and a follow-up meeting was conducted by DOC and DoHMH on December 28, 2005.

DoHMH reported that in reviewing the issue, the parties identified several challenges to compliance with ¶40. In cases where a Class Member's discharge is arranged prior to his or her court appearance, the Class Member is released directly from court rather than returning to the holding pens. Presumably, this would limit

DOC's ability to be of assistance in these cases, as the Class Member would not return to DOC custody, but rather is released by court personnel responsible to OCA, which is not a party to this litigation.[8]

Court officers and other OCA personnel are not aware of a Defendant's designation as a Class Member and do not have access to the IIS system. Presumably, this limits their ability to encourage a Class Member to visit SPAN in the event of release.

An additional concern is that in identifying a Class Member as such by providing a SPAN brochure (or presumably, otherwise encouraging the Class Member to utilize SPAN) could violate his or her confidentiality. We assume that Defendants express this concern because the Class is composed of those assessed as having some type of mental health-related need.

Additionally, the group discussed the issues of identifying appropriate space within the various courthouses for SPAN to have a presence.

In one important step forward, DOC agreed to make SPAN brochures available to inmates and detainees being held in the court pens. While not full compliance with the terms of the Stipulation, this could serve the function of reminding Class Members of the importance of proceeding directly to SPAN should they be released from court, and would provide important information such as the address and hours of operation of the SPAN offices. A possible collateral benefit would be the publicizing of information concerning SPAN to court personnel, thus increasing awareness in the courthouse of this important service. DOC agreed to explore whether it could distribute SPAN brochures. A potential problem with this solution is volume: if these were to be

[8] This would imply that DOC could assist in cases where the release is not pre-arranged.

distributed to all inmates attending court from the correctional system, DOC estimates that this would amount to over 1,500 daily. The issue thus arises about identifying the resources to print this number of brochures, especially given that the majority of them would be discarded without being read.

DOC further agreed to explore a number of potentially useful ideas including:

- providing information to OCA about an inmate's membership in the Class by utilizing the 44A, a document which they use to communicate other information regarding individuals to OCA, and
- providing court production lists to SPAN.

DoHMH is also requesting that DOC explore the possibility of distributing SPAN brochures with the Metro Cards they already distribute to arrestees upon their release.

According to DoHMH, OCA has agreed to explore the possibility of:

- "[U]se of daily CRIMS list which has defendants and attorney names for SPAN;" This would permit SPAN to contact the attorney directly for a targeted group of Class Members, thus possibly avoiding concerns regarding confidentiality or protected information vis-à-vis the court or court personnel.
- "[D]istributing brochures to all inmates being released from the courts" and
- Providing of space in the court house for SPAN.

Regarding the last, crucial, point, DoHMH informed us that OCA requires a detailed proposal before it is willing to further discuss the possibility of providing space to SPAN. We request that DoHMH provide us with a copy of this proposal for review and comment before it is sent to OCA.[9]

Defendants are also discussing additional potentially constructive ideas such as mass mailings to the criminal bar about the availability of SPAN services; conducting a pilot at RMSC to have DOC distribute SPAN brochures to all inmates upon intake, and

[9] Defendants have agreed to provide this to us.

proposals to OCA to permit SPAN to distribute information to all criminal parts about its services.

Class Counsel have made a series of constructive suggestions along these same lines such as the placement of SPAN posters in the court holding pens; the distribution of information about SPAN to defense attorneys and clerks; and making SPAN information available for Corrections Officers to distribute to inmates who are released from Court . We add to that possibility of distributing cards in the court holding pens to prisoners with borough-specific information concerning the location and contact information of the local SPAN office.

It appears to us that at long last Defendants are engaged in serious efforts to comply with the spirit and potentially the letter of the requirements of ¶40. It is useful that the Parties engaged the assistance of CCI in this process, as they have a strong track-record of successful development of interagency collaboration within the court system. We recognize that OCA is not obligated in any manner under this agreement, but are hopeful that the Defendants will be successful in conveying the importance of permitting SPAN a presence in the criminal parts of the New York City court system. We are willing to be of any assistance possible to the Parties as they build upon these efforts, including but not limited to attending meetings with OCA and reviewing the proposal they will submit to OCA.

Further, we strongly suggest that the Parties engage in discussions aimed at implementing ¶40. We would be pleased to facilitate or contribute to those discussions if the Parties are amenable. In the meantime, Defendants remain out of compliance with ¶40 and should continue their efforts as outlined above.

F. **Appropriateness Measures**

On pages 5-10 of our Eighth Report we discussed at length our over-arching impression that Defendants were reaching a critical juncture in their efforts to gain compliance with their obligations under the Stipulation: Defendants reported, and continue to report presently, noteworthy gains in rates of compliance in meeting our many of our individual performance expectations. These improvements must be consolidated into a functioning system of integrated discharge planning. This process requires focused and sustained effort in improving the assessment methodology, including the synthesis of all information available. This will require improved communication within the treatment/discharge planning team across institutions and longitudinally across incarcerations, as well as with important sources of information outside of the correctional system such as community treatment providers and significant others. We outlined the need for enhanced communication and integration by

- improving the quality and availability of clinical records,
- developing a system and protocol for the timely retrieval and review of records from Class Member's prior incarceration within the NYC/DOC, and
- developing a system enabling staff to request and review pertinent information from collateral sources.

On December 14, 2005, we provided a second confidential report to the Parties. There, we outlined our findings regarding the provision of clinically appropriate discharge planning services. Based on these findings, we put forth recommendations regarding changes that we believe will improve the quality of the services provided to Class Members.

We have decided to write separate, private reports on the appropriateness measures largely out of the hope that doing so for limited period of time would engender serious and open discussion of issues and topics which do not readily lend themselves to an either/or approach. Our assessment of these issues requires records which coherently and comprehensively portray a picture of a Class Member's community functioning and reaction to treatment over time. Most of the charts we have reviewed simply do not contain the level of detail on which we can fairly base determinations as to whether any reasonable "appropriateness" standard was met. While we commend what appears to be current leadership's willingness to re-think the system's approach to assessment and diagnosis, as well as the steps which DoHMH has taken to move towards an electronic medical record, they have not to date instituted any of the systemic changes which would lead to us (or them) being able to routinely locate in the clinical record the type of comprehensive information which would make it possible to accurately assess the appropriateness of, for example, the identification of post-discharge needs.[10]

We have also delayed reducing our findings to numerically-based rates of compliance, but rather have focused on using case examples to illustrate systemic

[10] A number of points are worth noting in relation with this issue:
(1) The clinical leadership of PHS was vacant for a significant period of time.
(2) DoHMH's highest level psychiatrist, who has apparently been driving the welcome focus on assessment, has resigned. Additionally, the Deputy Commissioner at DoHMH responsible for correctional health including Brad H implementation has resigned effective January 27, 2006. Stable leadership in both the public and private Defendant partners is essential to bringing to life the type of mission-shift we see as needed in this area, as well as in providing direction in implementing all aspects of the Stipulation. We understand that people in leadership positions do accept new challenges and move on to other positions. However, the lack of a stable leadership team in the primary Defendant health care agencies has proved problematic both to our efforts to work with Defendants and for Defendants themselves in creating a vision for what they are attempting to accomplish and what their work plan is for achieving these goals.
(3) As we discuss elsewhere in this and in our prior reports, DoHMH has had difficulty over time in instituting its "new" model which would support the kind of longitudinal assessment required for appropriately identifying post discharge needs. Sufficient levels of qualified staff is another level of stability essential to achieving compliance with these aspects of the Stipulation.
(4) Defendants must update their policies and procedures to reflect their current service delivery model.

issues. As noted above, in a significant number of cases there is insufficient information available in the record to adequately judge the sufficiency of SPMI assessments or projection of post-discharge needs at any but the most basic level: e.g. mental health issues require referral to a mental health clinic. Additionally, our reviews indicate that LINK does not routinely inform jail-based discharge planners of the details of the treatment plans they are devising for their clients. We do not as a rule see documentation from LINK in the charts which we review. Thus, for a significant number of SPMI Class Members we have literally no way to review the appropriateness of the treatment plans devised except, again, on the most basic level: SPMI Class Member who requires an intensive case manager.[11]

Thus, until Defendants institute systemic revisions to their assessment, information gathering and clinical documentation process, and until they provide us with a means of evaluating the appropriateness of the discharge plans devised by LINK, we will be unable to effectively rate a significant number of charts in a "yes" or "no" manner on the question of the appropriateness of the discharge plan. We will continue to evaluate these measures and will report privately to the Parties as long as we believe that this approach is useful to the Parties in understanding Defendants' performance.

G. **Paragraph 61**

At page 33 of our Eighth Report, we noted that Defendants had yet to implement the modifications of ¶61 of the Stipulation contained in Justice Braun's Order of

[11] The Parties both responded to this issue in comments to our draft report. Defendants indicated that "DoHMH is working with LINK to improve coordination of information regarding treatment plans." Class Counsel note that "pursuant to ¶¶120 and 170 of the Stipulation, [we] are to have access to all records generated by contractors." They further urge us to "require Defendants to produce LINK records." We request of Defendants a prompt and full explanation as to what their plans they have to make LINK-generated treatment plans available for our review (and not unimportantly, the review of discharge planning and mental health staff). The nature of their response will guide our course on this matter.

November 11, 2003.[12] At the time of that report in October, 2005, Defendants reported to us that they anticipated implementing the Court's order "shortly," but that this was contingent upon securing authorization from the pertinent State agencies, the New York State Department of Health ("DOH") and the New York State Office of Temporary Disability ("OTDA"). Defendants represented that HRA had submitted a proposed local rule to the State which, if approved, would permit it to implement the court's order; and that HRA was developing an internal plan to begin providing temporary Medicaid to Class Members once they received the required approvals. Defendants further represented that they had engaged in discussions with both DOH and OTDA in attempts to gain their assistance in this matter.[13]

On September 23, 2005, Defendants provided us with copies of two letters, one from DOH and one from OTDA, rejecting HRA's proposed local rule. While recognizing the obstacles faced by Defendants, we also noted that much time had passed since the date of the Court's order, and that Defendants were out of compliance with this requirement.

On January 9, 2006 the City filed an Article 78 proceeding, Index number 40093/06, in New York State Supreme Court, County of New York, against the State challenging its decision to reject HRA's proposed local rule, which would have given HRA the authority necessary to comply with the Court's modification of ¶61. The petition asserts that court intervention is required to resolve the conflict which it alleges has arisen between, on the one hand, Justice Braun's order that HRA to provide

[12] We noted at that time that while this order had been the subject of extensive litigation, the matter was at that point fully and finally litigated and that, in our opinion, "the time [had] come to for Defendants to commence implementation of this obligation."

[13] At the time of our last report of October 6, 2005 Defendants also noted that HRA must be satisfied that the appropriate anti-fraud measures were in place before the Court's order could be implemented.

temporary Medicaid to certain Class Members under particular circumstances, and, on the other hand, the State agencies' denial of HRA's proposed local rule which HRA asserts is required before it can lawfully implement this aspect of the Court's Order.

It is our expectation that this litigation will lead to a final resolution of this matter and the timely implementation of Justice Braun's 2003 Order. At this point we are not aware of which Court will adjudicate this petition, which to our knowledge is returnable on March 8, 2006, though we do note that the *Brad H* Court retained jurisdiction over this case in ¶200 of the Stipulation.[14] We plan upon following the course of this litigation closely.

III. ***Content***

A. **Performance Indicator Data**

The structure of this Settlement places a premium on data as a primary method of monitoring and directs the monitors to articulate compliance in numerical terms. As such, it is vital that Defendants use systems of data collection and calculation which result in accurate representations of their rates of compliance for each Performance Measures we put forth.

In virtually all of our previous reports we discussed some aspect of our uncertainty about the accuracy of the data contained in Citrix and/or the articulation of our measures contained in Defendants' Data Dictionary upon which the monthly reports are

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

based.[15] Commendably, during this last reporting period, DoHMH also had substantive discussions with Class Counsel regarding how data is collected and reported. This in turn led Class Counsel to make a number of observations about the data reporting system, which they articulated in a letter dated November 2, 2005, which also contained a series of information requests. Defendants in turn in a letter dated November 21, 2005 agreed to provide Class Counsel with some of the requested information. In this same letter, Defendants requested that we undertake a study of the comparability of data contained in Citrix and in the medical records.[16]

We have worked over time with Defendants to understand the data, the problems inherent in the data, and potential solutions to these problems. We have agreed to conduct a study examining the congruence of the Citrix information with information contained in the medical record. In principle, we agree with DoHMH's representation of the discharge planning system as described in the flowcharts they have developed. However, at present, we believe that they are unable to provide us with data that reflects a holistic understanding of the process as described in these flowcharts. The fact that DoHMH has not implemented this methodology is a primary source of our confusion regarding the interaction of the various data points highlighted in the performance measure sections below.

[15] See for example, our Fifth Report, dated October 13, 2004, at pp. 35-40, we outlined a series of findings based on a probe study comparing the charts to Citrix. These findings included:

- lack of consistency in documentation regarding SPMI status, both within a single medical chart and between the paper chart and the MIS
- inadequate documentation regarding changes in SPMI status in either direction
- lack of awareness of inmates being on medications at the time of the LSPMI determination
- absence of key forms from medical charts (including the prescreening form)
- absence of information in the MIS which has been documented in the chart (e.g. the date of an appointment made for a Class Member with a known release date).

[16] Class Counsel, in their comments to the draft of this report, also noted that they do not believe that DoHMH conducts systematic audits of the accuracy of the data in Citrix.

An understanding of the accuracy of Citrix is important because:

- all data provided to us for our monthly reports is generated from Citrix;
- in the absence of the chart, discharge planners rely on the data in Citrix for making clinical judgments and decisions; and
- Citrix is a major means of communication among discharge planning staff in different jails and between the jail-based staff and the SPAN staff.

DoHMH has put much effort into developing an improvement on the current Citrix system for use by discharge planning. The most recent information provided by DoHMH is that the development of this new data system remains on target for implementation in the summer or fall of 2006. If properly conceived, this new system should replace Citrix and alleviate the concerns about its accuracy at least for future reports.[17] While we understand that the City's procurement process is highly complex and cumbersome, this issue is too fundamental to abide additional delay beyond that timeframe, if we are to accept the imminent creation of this new system as a reason to postpone changes we require to the form of monthly report Defendants produce.[18]

Because so much relies upon the accuracy of the data Defendants provide us, we initiated a probe of the accuracy of Citrix during this past reporting period, prior to receiving Defendants' request that we conduct a more comprehensive study of this subject. Our plan is to provide the Parties with a document describing the methodology we utilized in conducting this probe as well as our preliminary findings. We expect that this information will serve as a basis for the Parties to provide us their suggestions as we develop an approach to the study Defendants request. After considering these

[17] Evaluating the accuracy of Citrix is still important despite this pending improvement because such a study will create the context for understanding all previously reported data derived from Citrix.
[18] This timeframe is already drawn out significantly. When we first were informed of the development of the new data system in a meeting with DoHMH in December 2004, it was projected to be on line in "about a year." As recently as July, 2005, we were given a target start date of March 2006 for the new data system.

suggestions we will finalize an approach to this study and expect to report our findings in our Tenth Regular Report of June, 2006.

In several of the individual sections below,[19] we reiterate our objection to the use of the delay codes for hospitalization and for court appearances. The issue of whether to "exclude" these cases from the calculations has been the source of considerable discussion and disagreement between the Parties and between Defendants and us. Defendants are certainly entitled to make us aware of their views as to why these exclusions should continue, but ultimately it is the Monitors who set the performance measures and calculations per ¶140 of the Stipulation. We have understood two primary reasons Defendants wish to continue to use these exclusions:

1. First, they believe that it is proper to exclude what they refer to as "unclean" cases from this type of numerical consideration, a proposition we do not accept.[20]
2. Second, they argue that there is significant technical difficulty involved in having Citrix handle these cases in the way we think proper.[21]

Defendants, in their comments, noted that "when a particular case is flagged with the 'delay code,' it does not mean that the required activity was necessarily delayed beyond the normal time frame; it merely means that some event occurred which could have caused a delay" (emphasis in the original). In fact, when they examined those cases excluded from PI 1.1 for these two reasons, "virtually every class member received the service within the 72 hour timeframe despite the existence of a medical or court delay code." This imprecision in reporting is exactly what we would ask that

[19] PIs 1.1, 3.1, 5.1, and 9.2.
[20] See for example pp 8-13 of our Seventh Regular Report of June 6, 2005 where we discuss this issue in detail and propose what we see as workable and fair solutions to this problem. Further, we noted that new data-system could be an important aspect of providing Defendants with the technical ability to provide the data in the way we think necessary to monitor compliance. See, also, p. 39 of our Eighth Regular Report.
[21] We have permitted them to delay addressing this technical issue given the initial timeframes we were given for completion of a new and more sophisticated data management system.

Defendants work to avoid: we are interested in the actual performance on the measures we have set out.

Our plan is to engage in a final round of additional discussions with Defendants regarding how they use these "exclusions" during this next reporting period. In addition, we will closely monitor the progress of the implementation of the new data system. It is our hope that we will reach agreement with Defendants as to a method of performing these calculations which is acceptable to all concerned and that this understanding will form the basis for inclusion or exclusion from the denominator of any given class member from any given measure. We anticipate that these revisions will be included in codes and design for the new data system. Finally, as noted above, it is also our hope that work on the development of the new data system will proceed apace. In the event that we are either unable to reach an understanding with Defendants, or that work on the new data system is unduly delayed, we will recalculate and report compliance rates based upon our determination of which cases should be redesignated for inclusion.

In summary, it is of critical importance to all interested parties as well as to the integrity of our monitoring process that we expediently resolve to a reasonable degree of certainty any remaining questions regarding the compliance data provided by Defendants. We see this as a process requiring the following:

1. Sustained action by Defendants to implement the new data system which should be configured to reflect the updated flowcharts. This should be completed without further delay.
2. The Citrix study which Defendants requested that we conduct. We will provide our methodology and preliminary findings from our probe to the Parties who will provide feedback. We will then develop and conduct a comprehensive study of Citrix.

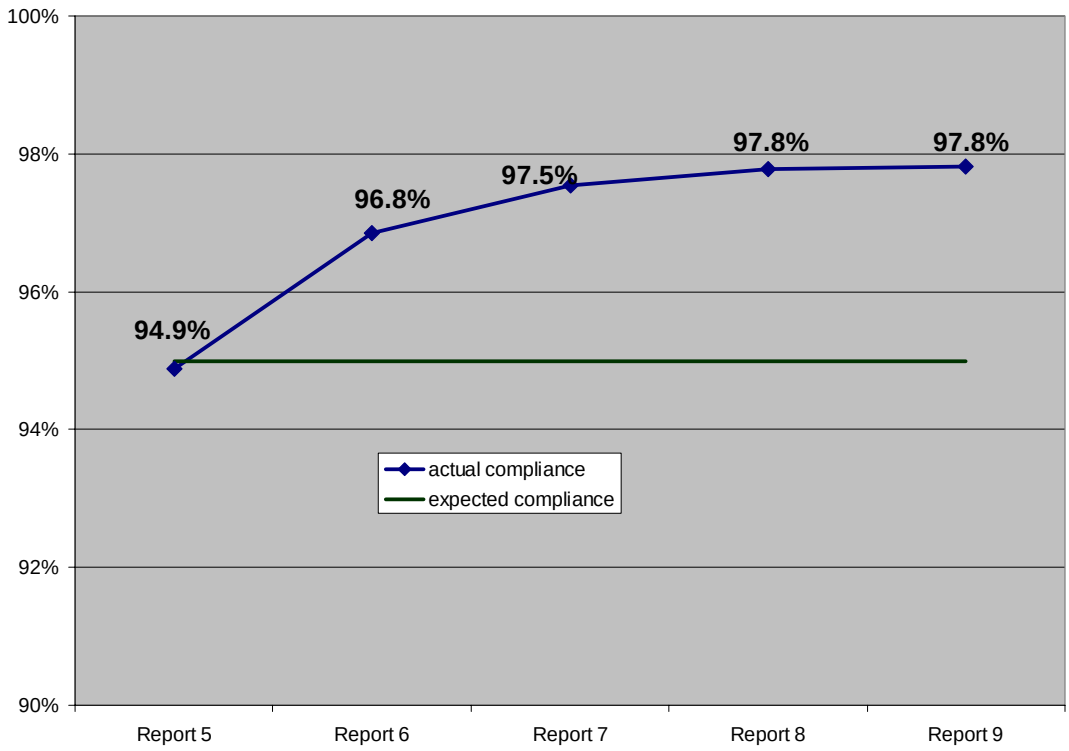
1. Performance Measure 1.1: Initial Assessment

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

Table 2: PI 1.1: Initial Assessment

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	94.9%	96.8%	97.5%	97.8%	97.8%
Numerator	2872	2985	4156	4344	4026
Denominator	3026	3082	4261	4443	4116
Expected Compliance	95%	95%	95%	95%	95%

Figure 1: PI 1.1: Initial Assessment



Defendants reported the following exclusions from the denominator:

Table 3: PI 1.1: Exclusions from Initial Assessments

	Report 8	Report 9
# referred to MH	4632	4283
Released in <72 hours	160	145
Medical delay	11	4
Court delay	18	18
Total exclusions	189	167

As noted above and in our prior reports, we do not accept as a rule delays for medical or court appearance reasons. If these cases were added back into the denominator and assumed to have all been completed beyond the 72 hour time limit, Defendants would have been compliant in 97.3% of cases during the current reporting period.

Defendants continue to achieve high levels of compliance with this requirement.

2. Performance Measure 2.1: Presence of LSPMI in Chart

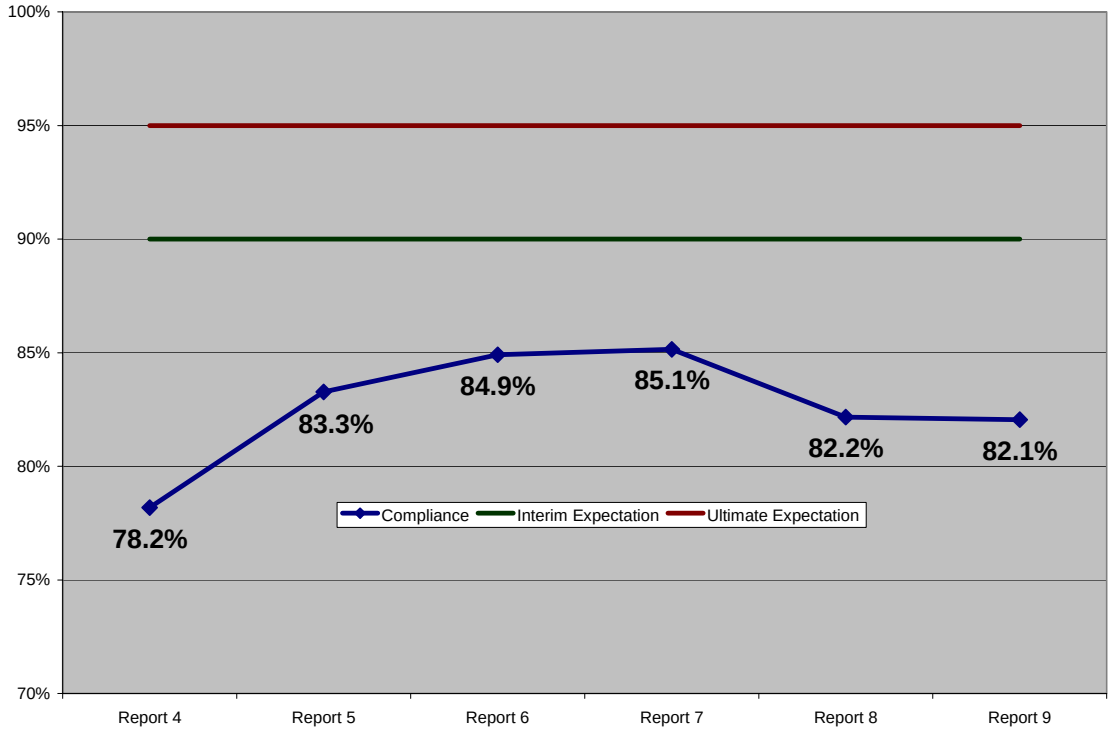
During this reporting period, we conducted a review of this measure in which we requested 49 charts. Thirty nine of the charts requested were ultimately made available to us for this review.[22] Thirty two (82.1%) of the 39 charts included the LSPMI form. Table 4 and Figure 2 below illustrate Defendants' performance over the past six reporting periods.

Table 4: PI 2.1: Presence of LSPMI in Chart

	Report 4	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	78.2%	83.3%	84.9%	85.1%	82.2%	82.1%
Numerator	86	234	90	86	281	32
Denominator	110	281	106	101	342	39
Interim Expectation	90%	90%	90%	90%	90%	90%
Ultimate Expectation	95%	95%	95%	95%	95%	95%

[22] Nine charts could not be located, and one chart requested was a "turnaround" and was not included in this review. DoHMH typically locates a higher percentage of records in response to our requests.

Figure 2: PI 2.1: Presence of LSPMI in Chart



Our finding from this small cohort is strikingly similar to prior findings for this measure, and the data demonstrate that Defendants continue to fall below the expected performance.

In our last report at pp. 44-45, we included an extensive discussion of Defendants' objection to our method of calculating compliance with this measure. We include this discussion by reference and reiterate our ongoing suggestion made in the last three reports that "Defendants study this process to develop interventions to increase compliance on this measure." We further request that they share the results of any studies they have made regarding their compliance on this measure with us.

Defendants, in their comments, reiterated their suggestion that we calculate this measure differently. They note that the LSPMI rating in Citrix is generated from a

pharmacy data dump. Defendants argue that, because "[t]he purpose of the LSPMI designation is to ensure the delivery of required benefits upon discharge," we ought to consider them compliant in chases which are designated as LSPMI in Citrix even where no form is present in the chart. They requested that we review our data to determine if there were such cases and to exclude these cases from the denominator for this type of study.

We have done so, and we found that in 5 of the 7 cases in which there was no LSPMI form in the chart, there was in fact a LSPMI rating in Citrix. We also found in Citrix that 35 of the 39 cases (89.7%) had a LSPMI rating entered in the database. Of the four cases with no LSPMI rating in the database, 2 had a LSPMI form in the chart, as of the date of review. The following table illustrates the lack of overlap:

Table 5: Presence of LSPMI in Chart and in Citrix

		Chart		
		present	absent	total
Citrix	present	30	5	35
	absent	2	**2**	4
	total	32	7	39

We do not agree with Defendants that the fact that there are two potential sources of LSPMI information negates their obligation to complete the LSPMI assessment as embodied in the LSPMI form, or that a LSPMI designation in Citrix fully meets the purpose of the requirement that the evaluation form be present in the medical record. While many Class Members may be LSPMI based solely on the prescription of medication, the form requires staff to conduct an evaluation of the case based on the State OMH criteria for severe and persistent mental illness. This

is important because the findings on the LSPMI form should guide staff in developing a plan to further evaluate the case. For example, the form might indicate that the clinician could not determine whether the Class Member had a designated diagnosis, or whether he or she functioned in the community in a manner consistent with a SPMI determination. These findings should focus the assessment efforts of mental health staff as they move toward a more definite SPMI determination conducted at the time of the CTDP.

In addition, the results described above underscore that, at times, there is a lack of congruence of information in Citrix as compared to the medical record. With respect to this measure, a LSPMI rating recorded in Citrix, absent the documentation on a more comprehensive LSPMI assessment, is simply a check box that is not amenable to monitoring. A simple example is a case in which a Class Member is prescribed medication on the Brad H list but is also designated as not being LSPMI. In such a case, the clinician must document the rationale behind this designation on the LSPMI form.

Finally, a simple "yes" or "no" in Citrix, while helpful in ensuring that services are provided upon imminent and unplanned release, does not communicate the full meaning of the LSPMI evaluation to other professionals involved in the treatment or discharge planning for Class Members.

For these reasons, we reject Defendants' assertion that the absence of the forms in the chart constitutes "harmless error." At this time, we find Defendants out of compliance with this performance measure.

3. Performance Measure 2.2: Appropriateness of LSPMI Assessment

As noted above in Section II.F., we reviewed the "appropriateness" measures in a confidential report to the parties, issued on December 14, 2005.

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

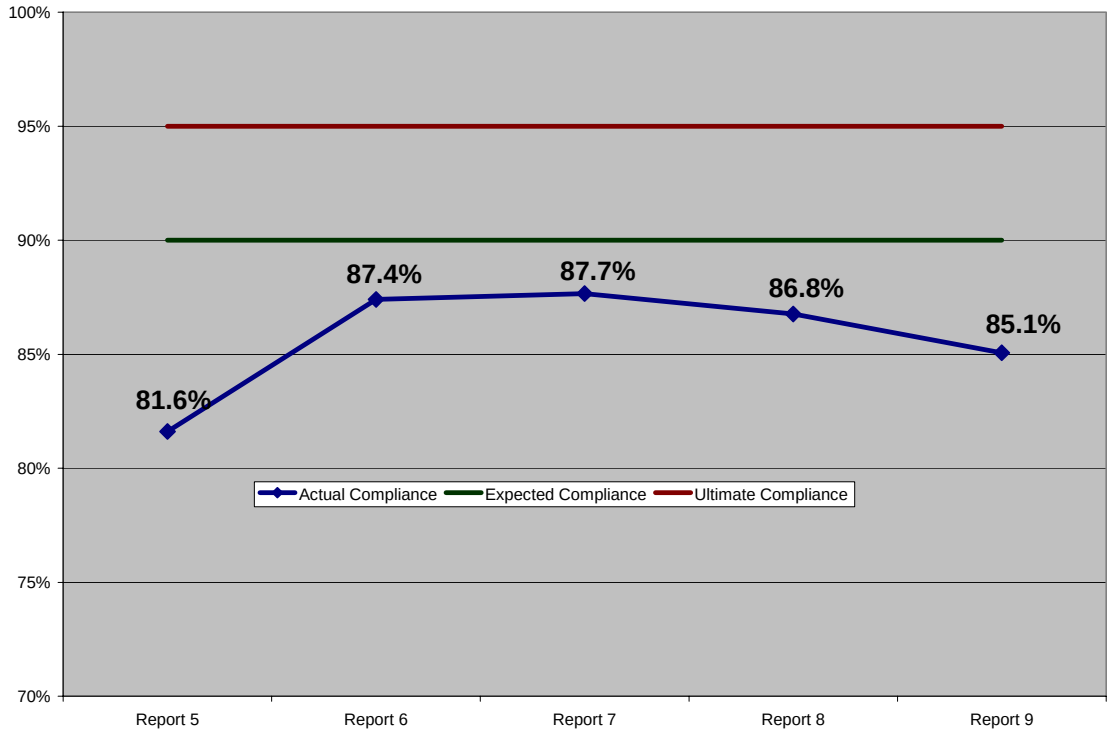
This measure is intended to evaluate Defendants compliance with ¶¶27 and 30 of the Stipulation, which in the event of a precipitous release requires Defendants to include as LSPMI for the purposes of discharge planning Class Members receiving specified psychiatric medications to treat a psychiatric condition. This is an important aspect of the Stipulation, as a substantial minority of Class Members is released precipitously and before a definitive diagnosis can be made. For example, during the current reporting period, defendants indicated that between 29% and 37% of individuals "with an M designation"[23] were released prior to having the Comprehensive Treatment and Discharge Plan ("CTDP") completed. If these Class Members are released prior to a definitive SPMI determination, this requirement ensures that they will receive all services which would be due them if found to meet full SPMI criteria. Thus, the prescription of these medications is a "proxy" for SPMI status. Against our current expectation of 90%, Defendants reported:

Table 6: PI 2.3: Inclusion of Class Members as LSPMI if on Psychiatric Medications

	Report 5	Report 6	Report 7	Report 8	Report 9
Actual Compliance	81.6%	87.4%	87.7%	86.8%	85.1%
Numerator	1385	1277	1890	1809	1692
Denominator	1697	1461	2156	2085	1989
Expected Compliance	90%	90%	90%	90%	90%
Ultimate Compliance	95%	95%	95%	95%	95%

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

Figure 3: PI 2.3: Inclusion of Class Members as LSPMI if on Psychiatric Medications



In prior reports, we have presented this data on a month-to-month basis. We present it in aggregated form here, as the monthly variations have been relatively small over the past year. In our last three reports, we described Defendants' performance on this task as a "plateau"; at best, this continues to be the case. However, there is a slight downgoing trend over the past two reporting periods. The change observed during the current reporting period is significant at the P=0.12 level, indicating that such a trend could occur by chance with a probability of about 0.12.

This downward trend raises significant concern regarding Defendants' efforts to remedy this particular issue. We discussed our concerns regarding this measure and the "plateau" we observed at length in our Eighth Report, beginning at page 47 and incorporate that discussion here by reference. Defendants' efforts to improve data

capture appear to have failed. Defendants further hypothesized that "there is a disconnect between the prescriber of the medications and the person who completes the LSPMI form, and that these tasks are often done in isolation and without knowledge of the other task." In our Eighth Report, we suggested that Defendants explore solutions to this problem. On October 31, 2005, DoHMH provided us with a set of measures for which they intended to conduct targeted analysis due to noncompliance.[24] This will be one of the measures for which we conduct targeted study with DoHMH during the coming period.

5. Performance Measure 2.4: Appropriateness of SPMI Assessment

As noted above, we reviewed the "appropriateness" measures in a confidential report to the parties, issued on December 14, 2005.

6. Performance Measure 3.1: Timeliness of CTDP

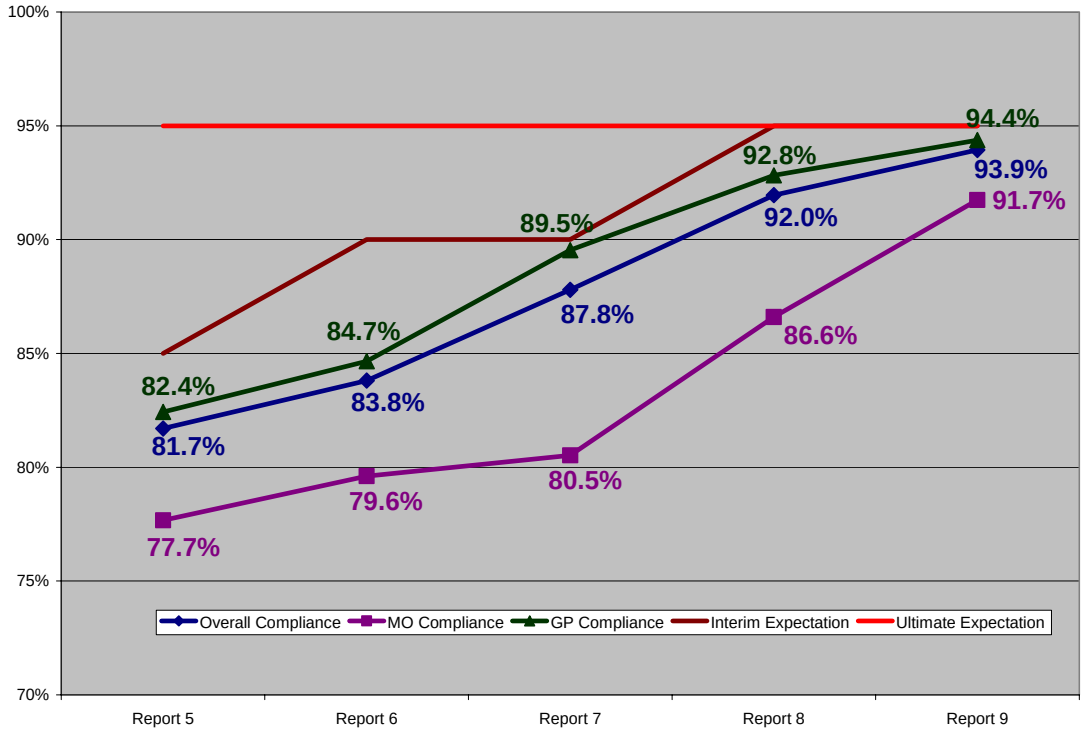
Paragraphs 16 and 17 of the Stipulation require Defendants to complete a CTDP for Class Members in General Population ("GP") within 15 days of the initial assessment. They must complete a CTDP for Class Members in Mental Observation ("MO") Units within 7 days.[25] This measure is designed to test Defendants'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

[24] These measures include 2.3, 3.1, 4.2, 5.3.1, 8.1, 8.3, 9.2, and 10.2.
[25] There is a formal exception to this expectation that we have accepted. For Class Members transferred from GP to MO after the initial assessment, the due date for the CTDP will be 7 days after the transfer, not 7 days after the initial assessment.

Table 7: PI 3.1: Timely Completion of CTDP

	Report 5	Report 6	Report 7	Report 8	Report 9
Overall Compliance	81.7%	83.8%	87.8%	92.0%	93.9%
Overall Numerator	1603	1806	2683	2845	2589
Overall Denominator	1962	2155	3056	3094	2756
MO Compliance	77.7%	79.6%	80.5%	86.6%	91.7%
MO Numerator	233	285	467	504	411
MO Denominator	300	358	580	582	448
GP Compliance	82.4%	84.7%	89.5%	92.8%	94.4%
GP Numerator	1370	1517	2209	2340	2178
GP Denominator	1662	1792	2467	2521	2308
Interim Expectation	0.85	0.9	0.9	0.95	0.95
Ultimate Expectation	0.95	0.95	0.95	0.95	0.95

Figure 4: PI 3.1: Timely Completion of CTDP



Again, we present this data in aggregated form, as we believe this to be a better representation of Defendants' performance over time. Defendants have continued to improve in their performance on this task in a gradual but consistent fashion, both with respect to Class Members housed in General Population ("GP") and those

housed in the Mental Observation Units ("MO"). This trend is statistically significant at the P<0.0001 level over the five reporting periods for the GP and MO groups individually and for the combined group. In addition, the improvement seen in the MO during the current reporting period when compared to the eighth reporting period was significant at the p<0.01 level, while the improvement in the GP during this period was significant at the p<0.05 level. Together, this suggests strongly that the improvement seen is due to Defendants efforts and not to chance.

Exclusions

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

Table 8: PI 3.1: Exclusions from CTDPs

	Report 9			
	Aug05	Sep05	Oct05	Nov05
# CMs with initial assessment	1082	986	1029	1156
Released before CTDP due	323	307	249	317
Medical delay	2	3	1	6
Court delay	8	3	6	1
Transfer to MO[26]	12	16	16	29
"Refused delay code"	54	48	41	55
Total exclusions	399	377	313	408
# Eligible for CTDP	683	609	716	748

As we discussed in our Eighth Report at page 51, we do not accept as a rule delays for medical or court reasons. We discussed this at length there and reiterate that it is our view that court and medical delays are acceptable as delay codes "***only***

[26] Class Counsel in their comments express concern regarding the allowance of 7 days beyond the point of transfer from GP to MO. See our Seventh Report at p. 59 and our Eighth Report at pp. 51-52 for a discussion of this matter. We have permitted this additional time because we believe that the transfer and the reasons for it demand a comprehensive reassessment of the Class Member's clinical status. Simply performing a *pro forma* CTDP shortly after the transfer to meet a strict timeline will not enhance the creation of an individualized and appropriate discharge plan.

when they occur at or near the end of the prescribed time and only when it in fact interferes with an attempt to complete the task." We anticipate that the new data system, expected to go online during the summer of 2006, should be sophisticated enough to sort relevant court and medical delays from those that are not relevant to the completion of this task.

Also in our Eighth Report, at pages 52-54, we discussed the meaning of the "refused delay code" for this measure. This group includes a fairly consistent 5% or so of the overall group. In that report, we also discussed our understanding of the terms and intent of the Stipulation as they relate to people who refuse mental health treatment. Defendants have vigorously objected to our initial interpretation. It is essential that we resolve the foundational question of the extent to which the benefits of Class Membership extend to individuals who refuse to participate in early assessment and treatment. To this end, we request that the Parties provide us with a detailed recitation of their position on this question, which includes reference to the Class certified by the Court, ¶¶18, 19 and 27, and any other relevant source material. We expect that this process will either lead to an agreement or will provide us with sufficient information upon which to make a determination regarding the status of individuals who refuse assessment or treatment prior to the CTDP. If not, we intend to seek clarification from the Court.

Table 9: PI 3.1: Relative Rates of Exclusions

	Report 8		Report 9	
	N	% of all exclusions	N	% of all exclusions
# CMs with initial assessment	4615		4253	
Released before CTDP due	1167	77.2%	1196	79.9%
Medical delay	34	2.3%	12	0.8%
Court delay	32	2.1%	18	1.2%
Transfer to MO	24	1.6%	73	4.9%
"Refused delay code"	254	16.8%	198	13.2%
Total exclusions	1511		1497	
# Eligible for CTDP	3104		2756	

This aggregated analysis of the exceptions indicates that the profile of exceptions has changed over the past reporting period. The relative incidence of exclusion for transfer to MO has tripled, while the incidence of exclusions for medical and court delays and for refusal delay all have decreased. We are not prepared as yet to draw any conclusions about this finding, but will follow it over time.

Analysis of Late and Uncompleted CTDPs

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

Table 10: PI 3.1: Late/Incomplete CTDP analysis

	Late CTDP				No CTDP			
	Report 8		Report 9		Report 8		Report 9	
	GP	MO	GP	MO	GP	MO	GP	MO
1 Day	10	12	11	4	5	3	5	0
2 Days	9	9	4	2	5	0	0	0
3 to 7 Days	33	23	18	8	16	1	9	1
8 to 14 Days	19	14	5	2	11	0	1	1
15 to 30 Days	16	8	7	2	6	1	6	1
Over 30 Days	17	4	7	2	31	2	18	1
Total	104	70	52	20	74	7	39	4

These data indicate that Defendants have been able to reduce the number of cases in which the CTDP was not done or was done late. In addition, the relative proportion of MO cases whose CTDP was done late was reduced from 40% of the total to 28% of the total, indicating special effort to reduce late CTDPs in this more vulnerable subset of the population.

As in our Eighth Report, we dichotomized the late CTDPs at day 7, under the assumption that a CTDP completed less than a week after the deadline has passed still allows for the completion of many required discharge planning tasks and misses a relatively small number of Class Members due to attrition from the system. Defendants' data can be summarized as follows:

Table 11: PI 3.1: Dichotomization of Late CTDPs

	GP		MO	
	Report 8	Report 9	Report 8	Report 9
1 to 7 days	52	48	44	20
> 7 days	52	29	26	8
% of late cases done within 7 days of deadline	50.0%	62.3%	62.9%	71.4%

These data indicate two major findings:

- Defendants continue to quickly "catch" late CTDPs in the MO at a higher rate than in GP; and
- Defendants have improved in their performance in both MO and GP over the past reporting period.

We note that it is fundamentally easier to keep track of inmates housed in MO, given the increased clinical attention; this may explain the dichotomy between this finding in MO versus GP.

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

Table 12: PI 3.1: Overall Completion of CTDPs

	report 7	report 8	report 9
total done on time	1883 87.1%	2845 91.7%	2589 93.9%
total done late	180 8.3%	174 5.6%	105 3.8%
total not done	99 4.6%	81 2.6%	48 1.7%
TOTAL	2162	3104	2756

These data demonstrate that Defendants have achieved fairly dramatic reductions in both late and uncompleted CTDPs over the three reporting periods for which they have provided data.

During this reporting period, we began to compare charts with Citrix in a collaborative effort with DoHMH in an effort to ascertain the reasons for cases reported as not having had a CTDP completed on time. On December 21, 2005, with representatives from DoHMH, we conducted a review of 32 charts.[27] These

[27] This was the first of a series of targeted studies aimed at developing a better understanding of difficulties Defendants appear to be having meeting our expectations on certain of our measures.

represented the 32 of the 39 Class Members in the October, 2005 cohort[28] who were reported as having their CTDP's done late. Our findings were as follows:

1.	No documentation of reason	16	50.0%
2.	CTDP done on time, data entry error[29]	8	25.0%
3.	"poorly coordinated services"	3	9.4%
4.	CM was "not produced"	2	6.3%
5.	CM attending religious service	1	3.1%
6.	CM attending visit	1	3.1%
7.	CM refused	1	3.1%

This process of joint analysis was very constructive and yielded a number of informative results:

1. Jointly reviewing charts with DoHMH, we were able to agree upon interpretations of the records in virtually all cases, the only exception being the proper manner of dealing with refusals, a broader issue which requires resolution beyond the scope of this specific analysis.
2. In half the charts reviewed, there was no documentation of a reason for the lateness. This is in itself an important finding as it relates to both quality of care and quality of documentation.
3. It is notable that in at least 8 (25%) of the 32 cases reviewed, there was a failure to properly enter data into Citrix, resulting in a data report that inaccurately represented Defendants' compliance on this task.[30]
4. In this instance, this joint analysis did not reveal evidence of systematic barriers which would prevent Defendants from attaining our original threshold for performance and would not support an argument to reduce the performance expectation.

Conclusions

Defendants continue to gradually improve and have nearly achieved the performance expectation of 95% for this measure. This improvement can be

[28] The cohort is all Class Members released during the month.
[29] This is a straightforward data entry problem: the CTDP's were easily located in the chart and were, in fact, completed on time.
[30] Because the cohort consisted of Class Members whose CTDPs were done late and were therefore reported as noncompliant, the finding of errors in this data resulted in, and could only result in, improvements in Defendants actual compliance numbers. A complete study would examine cases reported to be in compliance as well as cases reported to be out compliance, and the findings might be that Defendants actual compliance was higher than, lower than or equal to the reported compliance.

observed in a variety of ways and has taken place both in the GP and in the MO. Improvements can be observed as well in the proportion of late cases completed within a week of the deadline, indicating an improved ability to "catch" these cases, especially in the MO. Additionally, the number of cases in which the CTDP was simply not completed was cut by about one-third over the past reporting period. Finally, it is possible that Defendants would have been able to report a compliance rate above our expectation had their data entry been 100% accurate. Therefore, at this time, we conclude that Defendants should be able to meet or exceed a 95% completion rate for this task.

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

As noted above in Section II.F., we reviewed the "appropriateness" measures in a confidential report to the parties, issued on December 14, 2005.

8. Performance Measure 4.1: Timely Initiation of Medicaid Prescreening

For the first time, Defendants began reporting rates of performance on the timely initiation of the Medicaid prescreening, consistent with our Performance Measure as set forth on June 28, 2004. Prior to this reporting period, they had equated the completion of the CTDP with the initiation of the prescreening, whether or not the prescreening was done at that time. Their stated goal was to hold themselves to a higher standard on the next task in the cascade, i.e. the *completion* of the Medicaid prescreening within 3 business days of the CTDP. While we have applauded Defendants' articulated desire to hold themselves to a more stringent standard on measure 4.2, we have consistently argued that this approach provides us

with an incomplete picture of Defendants' *actual* performance on the tasks set forth in the Stipulation and measured by our Performance Measures.

Beginning with the October, 2005 data set, Defendants produced for us the following data:

Table 13: PI 4.1: Timely Initiation of Medicaid Prescreens

	Oct05	Nov05
Compliance	70.3%	92.1%
	123/175	197/214
Interim Expectation	75%	75%
Ultimate Expectation	95%	95%

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

Table 14: PI 4.1: Exclusions from Denominator

		Oct05	Nov05
	CM released to the community with CTDP	427	492
1.	Refused all Discharge Planning services	125	133
2.	Refused Medicaid Pre-screening Initiation	83	106
3.	Medicaid Pre-screening determination is N/A	7	7
4.	Refused delay code	37	32
	Total Exclusion	252	278
	# Eligible for Prescreening	175	214

Defendants properly exclude Class Members from consideration in this measure if they have refused this task or all discharge planning. Defendants also properly exclude from consideration from this measure (*timely* initiation of the prescreen) those Class Members who refused initially, but then changed their minds (exclusion # 4). Defendants noted that all of these Class Members had the prescreen initiated upon their acceptance of this service. DoHMH informs us that exclusion number 3 relates only to Class Members who are not New York City residents.

Thus, Defendants are able to calculate the denominator for this measure and their data is transparent. As defendants have only begun reporting on this measure, we will await a further reporting period before considering where their performance is relative to our interim and ultimate expectations.

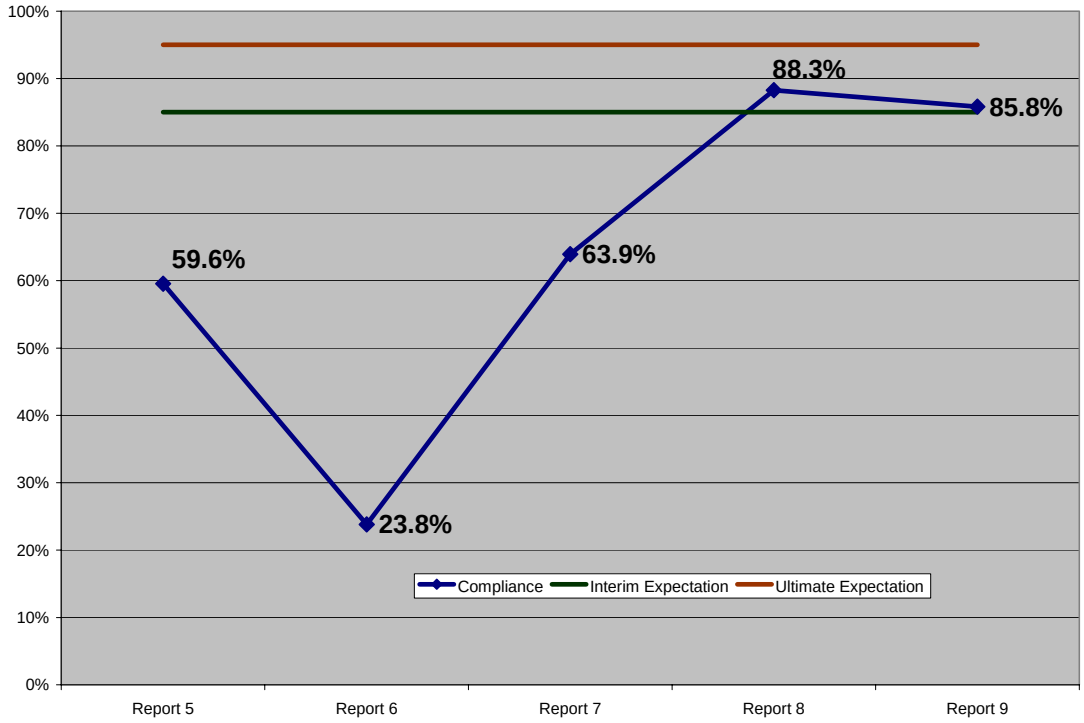
9. Performance Measure 4.2: Timely Completion of Medicaid Prescreening

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

Table 15: PI 4.2: Timely Completion of Medicaid Prescreens

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	59.6%	23.8%	63.9%	88.3%	85.8%
Numerator	321	146	404	511	575
Denominator	539	613	632	579	670
Interim Expectation	85%	85%	85%	85%	85%
Ultimate Expectation	95%	95%	95%	95%	95%

Figure 5: PI 4.2: Timely Completion of Medicaid Prescreens



The figure makes clear that the dramatic improvement in performance observed over the past two reporting periods has ended during the current reporting period. We noted in our Eighth Report that Defendants had discovered a data entry error related to this measure during July 2005 and had remedied this, but that because of the way the cohort is selected, the effects of this error could be expected to be observed over coming months. It is unclear what the meaning of this error is vis-à-vis the performance achieved during the current reporting period.

Defendants removed excluded cases from the denominator for measure 4.2. The following information regarding exclusions was provided:

Table 16: PI 4.2: Exclusions from Denominator

	Report 9			
	Aug05	Sep05	Oct05	Nov05
# CMs released to community with CTDP completed	412	402	427	492
Refused all discharge planning	135	98	125	133
Refused prescreening specifically	79	77	83	106
MA prescreen determination N/A	7	6	7	7
Did not have prescreen initiation			2	5
No SSN (delayed completion)	1	21	20	20
Medical delay	11	18		
Court delay	18	18		
Refusal delay	28	38		
total exclusions from denominator for 4.2	279	276	237	271
# Eligible for Prescreen Completion	**133**	**126**	**190**	**221**

Beginning in October 2005, Defendants no longer used the last three exclusions here, as these cases were excluded from earlier measures. Rather, the only exclusions beyond refusals are Class Members whose prescreening determination was "n/a,"[31] Class Members whose prescreen completion was delayed due to no

[31] DoHMH informs us that this exclusion relates only to Class Members who are not New York City residents.

Social Security Number,[32] and those Class Members who never had the prescreening initiated.

One concern is that the numbers of individuals eligible for prescreen completion in October and November appears to be more than the number of Class Members who had or should have had their prescreening initiated. For example, in November, 197 of 214 eligible Class Members had their prescreens initiated on time. Even if all of the remainder had them initiated late, it is unclear to us how 221 Class Members could be eligible for having the prescreen completed. In addition, data provided by DoHMH suggests that 199 of 221 prescreens were completed on time. We had difficulty understanding how this could be the case. In response to our inquiry contained in our draft report, DoHMH when they report Medicaid Prescreening Initiation data, they exclude from the denominator those Class Members who initially refuse this service, but change their minds and come to accept it at a latter date. They then include these Class Members in their reported compliance rates for Medicaid Prescreening Completion because, they state, they provide this service in a timely manner. This is an example of how the way in which numbers are currently compiled and reported to us makes it exceedingly difficult if not impossible to gain a full understanding of the system as a whole.

Defendants provided data regarding the nature of the noncompliant cases:

[32] Defendants reported that of these 62 cases during the reporting period, in all but 2 cases, staff ultimately were able to complete the prescreening.

Table 17: PI 4.2: Aggregated Timely vs. Late vs. Not Done

	Report 8	Report 9
# Completed Timely	511	575
	88.3%	85.8%
# Completed Late	46	72
	7.9%	10.7%
# Not Done	22	23
	3.8%	3.4%
Denominator	579	670

Overall, pending further discussion, Defendants have met our interim performance expectation of 85% for measure 4.2 for the second straight reporting period, albeit at a somewhat lower level than during the last reporting period. Aggregating the results over the two reporting periods, it is evident that the rate of "not done" remained identical; the decrease in the overall compliance was due to an increase in late completion of the task.

In our Eighth Report, we agreed to hold off on raising our expectation pending an assessment process Defendants were planning to implement to understand why they were not meeting the standard for this measure. We anticipate conducting an exploratory study of this issue in concert with DoHMH, similar to the study conducted regarding late CTDPs described above. Upon completing this study, we will derive further conclusions regarding this measure.

10. Performance Measures 5.1 and 5.2: Timely Completion and Submission of Medicaid Applications

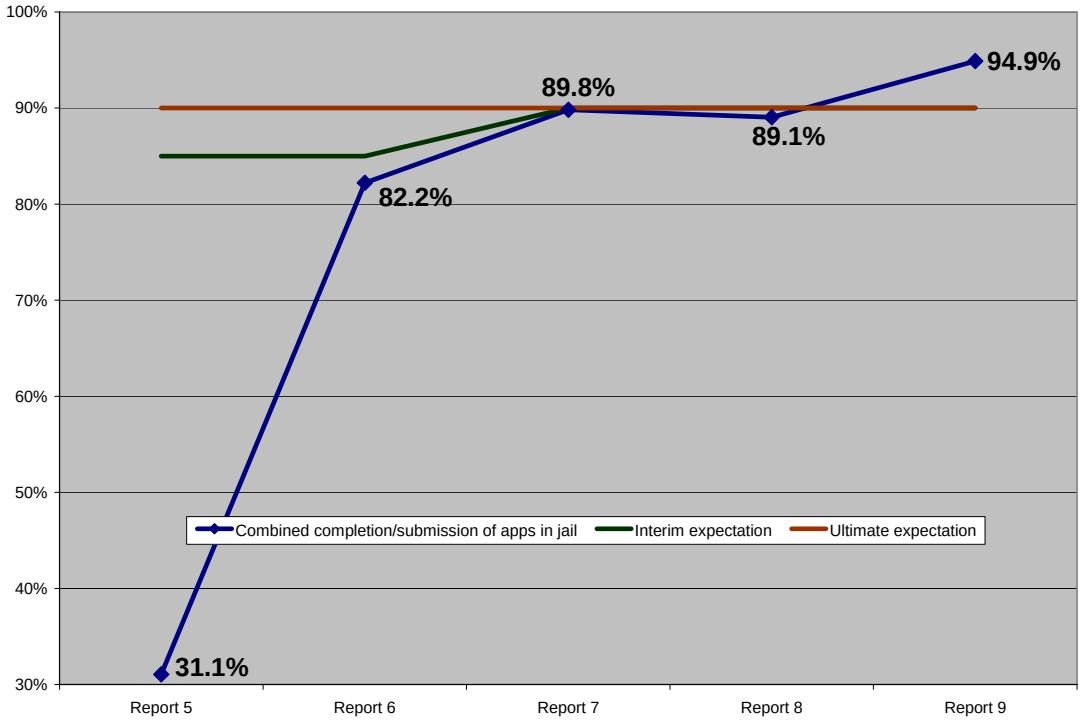
Measure 5.1 tests Defendants' compliance with the combined requirement to complete and submit Medicaid applications, for those Class Members requiring such applications, within 5 business days of the completion of the prescreen if the Class Member is in a jail. Due to their having achieved a high level of compliance

on this measure, we increased our expectation to 90% (the ultimate performance level we outlined in our Performance Measures) in our Sixth Report. Defendants report as follows:

Table 18: PI 5.1: Timely Completion and Submission of Medicaid Applications from Jail

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	31.1%	82.2%	89.8%	89.1%	94.9%
Numerator	32	74	141	122	93
Denominator	103	90	157	137	98
Interim expectation	85%	85%	90%	90%	90%
Ultimate expectation	90%	90%	90%	90%	90%

Figure 6: PI 5.1: Timely Completion and Submission of Medicaid Applications from Jail



During this reporting period, Defendants exceeded the performance expectation during all months. Defendants improvement over the five reporting periods is statistically significant at the $p<0.0001$ level; their improvement from Report 8 to Report 9 is significant at the $p<0.05$ level.

Defendants provided the following data regarding the compliant and noncompliant cases during the past two reporting periods:

Table 19: PI 5.1: Timely, Late and Uncompleted Medicaid Applications

	Report 8	Report 9
# Completed Timely	122 87.1%	93 94.9%
# Completed Late	13 9.3%	4 4.1%
# Not Done	5 3.6%	1 1.0%
Denominator	140	98

It is evident from this information that Defendants have improved both in meeting the timeliness requirement and in minimizing the number of Class Members who did not have the MA application completed at all.

Defendants provided the following information regarding exclusions from this measure:

Table 20: PI 5.1: Exclusions from Denominator

	Report 8	Report 9
# Prescreened: "need new application"	194	178
Refused MA application	19	33
Medical delay	9	5
Court delay	10	16
Released before Prescreen + 5BD	11	14
Refused delay	5	12
Total Exclusions	54	80
# Eligible for new MA application	140	98

We note that the proportion of refusals of this service rose from 9.8% (19/194) to 18.5% (33/178), during this reporting period. We are unsure what this means, given that we have only two reporting periods worth of information. We will simply follow this over time to determine if any patterns arise. It is also unacceptable that

over 10% of the cohort evade our review simply by being excluded for medical or court reasons.[33]

Defendants reported the following information regarding the outcomes of the prescreening, the importance of which has been discussed in earlier reports.[34]

Table 21: Breakdown of Medicaid Prescreening Outcomes

	Aug05	Sep05	Oct05	Nov05
# with active Medicaid	62	51	81	91
	57.9%	45.9%	51.3%	45.7%
# needing reactivation	23	23	47	63
	21.5%	20.7%	29.7	31.7%
# needing new applications	22	35	28	44
	20.6%	31.5%	17.7%	22.1%
# of old codes	0	2	2	1
(active/reactivated)	6.1%	6.1%	6.1%	6.1%
Total # of Prescreens submitted	107	111	158	199

In our Eighth Report, at pages 66-67, we discussed our concerns regarding the relationship of this data to that provided for measure 4.2 (Completion of Medicaid Prescreening) above. We reiterate our concern here; we anticipate that when Defendants are able to complete their new data system, we will have access to all of the information we require in order to fully understand Defendants' performance. As it stands now, all we are able to do is report what Defendants report to us and to raise questions where appropriate.

As in prior reports, we note that the data does not appear to be interrelated. For example, in October, Defendants reported for measure 4.2 that 189 individual Class Members had the prescreening completed, of whom 158 had it completed on time. Of these 158, 28 were found to need a new Medicaid application. However, in the exclusion data provided for measure 5.1, Defendants report that 39 individual Class

[33] See above for our general approach to these delay codes and for a discussion of Defendants views of this issue.
[34] See, for example, pp. 68-69 of our Seventh Report.

Members were found to need a new application during October.[35] Eighteen of these individuals were excluded for various reasons, resulting in the denominator of 21 for the month of October. Similar analyses can be performed for other months.

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

11. Performance Measure 5.3: Timely Enrollment in the Medicaid Grant Program ("MGP")

In our Seventh Report at pages 69-73, and again in our Eighth Report, at pages 67-68, we reviewed the status of the exceptions Defendants posited for this measure, regarding enrollment in the Medicaid Grant Program. As of our Eighth Report, the only remaining area of disagreement was Defendants assertion that individuals under age 18 are ineligible for MGP. On November 30, 2005, State OMH wrote to DoHMH and indicated that "a minor may be eligible for MGP if he or she meets all of the other criteria, including Medicaid eligibility…. [A]s a practical matter, it is typically the case that a minor will not be eligible for MGP, because they will not be individually eligible for Medicaid." Thus, *age alone* is not an exclusionary factor; rather, because minors generally are not eligible for Medicaid, they will therefore not generally be eligible for MGP. DoHMH has now agreed to remove this exclusion.

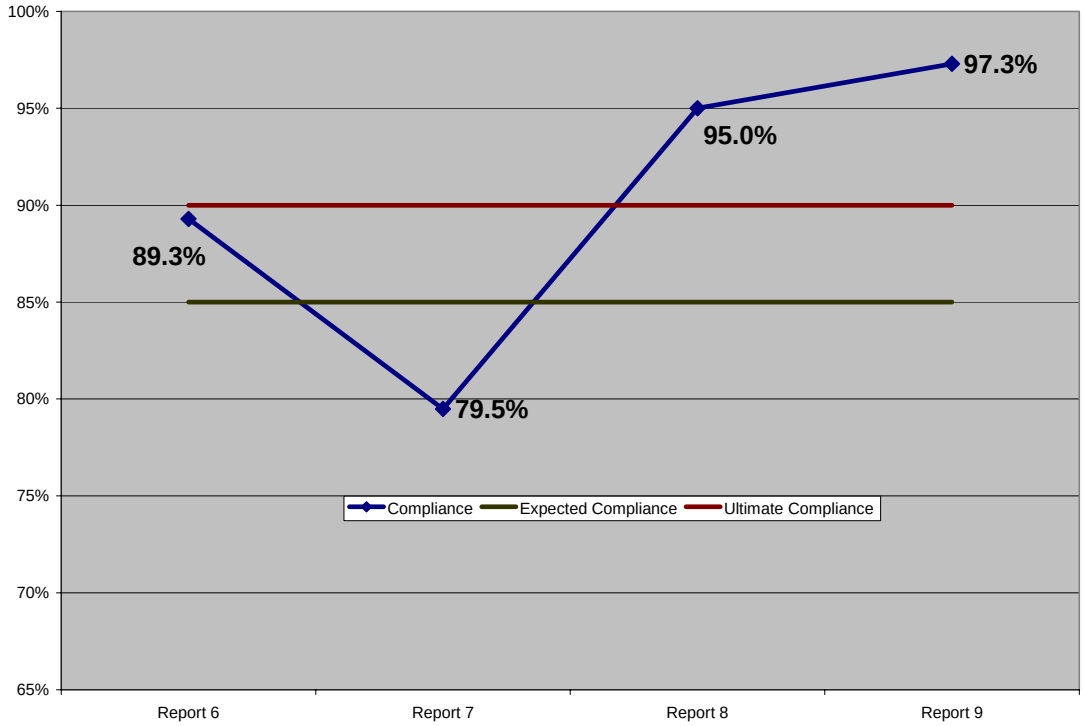
[35] We anticipate that DoHMH will advise us that the 39 represented in exclusion data includes those whose prescreening was completed on time as well as those who were completed late, while the 28 taken from the prescreening data itself only includes those whose prescreening was completed on time. This is another example of how the way in which numbers are currently compiled and reported to us makes it difficult and at times impossible to gain a full understanding of the system as a whole.

The purpose of this requirement is to ensure that Class Members believed to be eligible for Medicaid, who almost by definition are eligible for and in need of mental health services after they are released from the DOC, are able to access these services. Our current measure reads: [#of class members enrolled in MGP on release date] ÷ [(# of class members released whose Medicaid application is pending) – (those who refuse medication and/or prescriptions upon release) – (those whose release date is > 7 days after the Medicaid prescreen determination date) – (those who are ineligible for MGP) - (those who refuse this service)]. Against our expectation of 85%, Defendants reported:

Table 22: PI 5.3: Timely Enrollment in MGP

	Report 6	Report 7	Report 8	Report 9
Compliance	89.3%	79.5%	95.0%	97.3%
Numerator	25	31	19	36
Denominator	28	39	20	37
Expected Compliance	85%	85%	85%	85%
Ultimate Compliance	90%	90%	90%	90%

Figure 7: PI 5.3: Timely Enrollment in MGP



Defendants provided the following information regarding exceptions from this measure:

Table 23: PI 5.3: Exclusions from Denominator

	Aug05	Sep05	Oct05	Nov05
CTDPs done	412	402	427	492
Global refusers	135	98	125	133
CMs without Rxs on release	145	144	162	201
CMs refusing MA applications	37	46	37	52
CMs refusing MA prescreen	12	15	16	13
CMs refusing MGP card	9	15	9	16
CMs not on meds for mental illness	18	17	23	7
CMs prescreen: active Medicaid	27	37	24	33
CMs with active Medicaid	4	7	7	7
CMs prescreened as "active/reactivated" or "reactivated or whose release date is > prescreen determination + 7 days	13	11	17	19
"Medicaid ineligible"	2	1	0	1
"Medicaid ineligible-not in time frame"	0	1	0	0
"Medicaid ineligible - court release"	0	0	0	0
TOTAL EXCLUSIONS	402	392	420	482
Those eligible for MGP (the denominator)	10	10	7	10

Defendants have exceeded our ultimate expectation for the past two reporting periods. While we indicated an intent in the draft of our Eighth Report to raise our expectation, we held off pursuant to discussion with DoHMH. Part of our rationale was the very small numbers involved, rendering it difficult to draw any firm statistical conclusions. At Defendants' request, we agreed to report the data aggregated over a full reporting period, which we have done here; the findings as reported in this way suggest a high level of performance by Defendants on this particular measure. We intend to continue these discussions with Defendants, but at this time, we are prepared to raise our expectation on this measure to our ultimate goal of 90%.

12. Performance Measure 6.1.1: Timely Reactivation of Medicaid

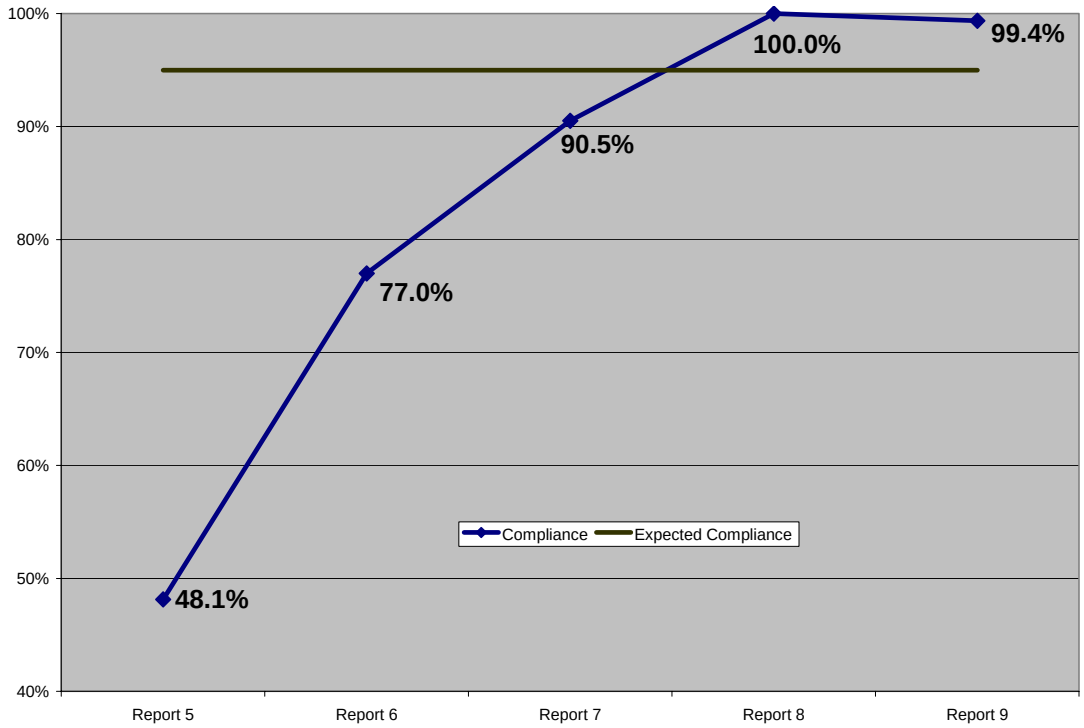
Defendants are obligated to reactivate Medicaid for a Class Member "as of the later of (a) his or her Release Date, (b) the date of the prescreening completion provided necessary documentation is produced, or (c) within 7 business days of the date on which the Pre-Screening Process is completed where an investigation is deemed necessary."[36] Defendants reported as follows:

Table 24: PI 6.1.1: Timely Reactivation of Medicaid

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	48.1%	77.0%	90.5%	100.0%	99.4%
Numerator	259	154	124	80	153
Denominator	538	200	137	80	154
Expected Compliance	95%	95%	95%	95%	95%

[36] Reference: Performance Measure 6.1.1.

Figure 8: PI 6.1.1: Timely Reactivation of Medicaid



Defendants continue to report very high levels of performance for this task. We noted in our last two reports that while performance rates remained high, the absolute number of reactivations each month decreased dramatically. We included a lengthy discussion of our communications with DoHMH regarding reasons for this at page 72 of our Eighth Report, but we were unable to reach an understanding of the reason for the decreasing numbers.

In this reporting period, the numbers have begun to increase, doubling those in the Eighth Reporting period. However, they remain much lower than in the Fifth Reporting period. Defendants note that

> "[t]he data for the Fifth Report was derived… before the development of the data dictionary. Over time, Defendants have refined their definitions so as to more accurately report on those individuals who actually are entitled to receive the particular service and are to be included in the various cohorts. Thus, it now appears that the number of individuals reported for the denominator for PI 6.1 was over-reported in the Fifth Report."

Another issue we raised with DoHMH is the finding that the denominators reported here do not match the prescreening outcome data for "needs reactivation" summarized above in Table 21. We compare the data below:

Table 25: Variance between Prescreen Outcomes and Reactivations of Medicaid

	Aug05	Sep05	Oct05	Nov05
Prescreen result "needs reactivation"	23	23	28	63
Number reactivated	30	43	34	46
Variance	30.4%	87.0%	21.4%	-27.0%

In our last report, DoHMH advised us that the "number reactivated" information (line 2 in table 25) includes those cases where the prescreening was done on time as well as those done late, but the line 1 only includes those done on time. The second line of Table 25 above should therefore be greater than or equal to the top line, and the variance should always be ≥0. This explanation therefore does not explain the findings in November. Defendants indicated in their comments that

> "[t]here are two related explanations for this discrepancy. The first is the result of the passage of time which may occur from the date while the process is initiated until it is completed. Thus, a class member may be identified as needing reactivation during a reporting period earlier than that during which he actually had such benefits reactivated. This is particular[ly] true given the duration of incarceration, and the fact that HRA cannot reactivate an individual's Medicaid benefits until the month in which the individual is released from jail. Second, DOC is not always able to determine a class member's next court date or projected release date. Without this information, HRA cannot process a class member's reactivation, as it cannot reactivate an individual's Medicaid benefits until the month in which the individual is released from jail. One possible solution may be to consider redefining PI 6.1 so as not to exclude clients without 'Next court Date' or 'Projected Release Date.'"

Given that the cohort of Class Members to be included in each month's data is that group of Class Members released during the month, we do not find merit in the first reason provided by Defendants. Thus, if November's cohort includes all those

Class Members released during November, the same cohort would be included for consideration in both lines of the Table 25. Many of them may, in fact, have had their prescreens completed months before, but they all should have had (if eligible) their reactivations completed in November, the month of release.

In contrast, the second reason Defendants put forth is credible. If it happens that some Class Members were released in November without having this release become known *a priori* to Defendants, then they would be unable to reactivate such Class Members' Medicaid prior to release. We would suggest that, rather than eliminating the exclusions, the correct response to this problem is to develop a mechanism to notify HRA after these releases so that HRA can reactivate Medicaid as soon as they learn of the release.

On November 17, 2005, we held a meeting with HRA and DoHMH staff to attempt to understand why data provided by the two agencies could not be reconciled. During this meeting we learned that HRA has in the past asked the State agency that handles the data in WMS to alter their reporting; this request was denied. Subsequent to this meeting, on December 2, 2005, we asked Defendants to provide us with case-specific data containing information from forms 2175D and 2175E. Defendants responded that the data is not recorded by MAP at the case-specific level we requested and that "there is no way to break out the information by individual" other than to review the information manually. They further indicated that

> "HRA has no obligation under the Settlement to report on individuals. The performance measures that were agreed to by the parties and the monitors require HRA to report on aggregate numbers of the number of applications that were processed, not performance based on specific individuals who

were serviced. As HRA has explained in the past, the size of the caseload, the number of centers, time-frames for outcomes, the types of available services and the limitations of the computer systems make the complexities of tracking individuals virtually impossible. Because the time, effort, man-power and resources are not available to produce such reports, as well as the fact that producing such reports is not a requirement under the stipulation, HRA is not able to change its current reporting process."

In our draft report we renewed our request for a site visit to HRA to better understand the obstacles they face in responding to our request, and to determine if there might be alternate, reasonable means for HRA to provide us with the information we require. Defendants, in their comments, indicated that they "will not agree to a site visit or to alter their reporting methods to suit the Monitors' desire to report in a manner not contemplated by the Stipulation." Class Counsel, in their comments, point out that ¶124 "does not shield [Defendants] from changing formats in which they instruct their existing software to report." The site visit we have requested, and continue to require, would help us to answer the question as to whether changes to hardware or software would or would not be needed in order for HRA to provide us with the information we require. Until such as time as we understand how the data from HRA relates to the data from Citrix vis-à-vis the monthly cohort, we will not be able to provide a more precise report to the Court or the Parties as to Defendants' rate of compliance with this measure.

13. Performance Measure 6.1.2: Provision of Temporary Medicaid

Defendants have not yet begun to report data regarding the provision of Temporary Medicaid. Above, in Section II. G., we discussed the status of Defendants' efforts to meet the requirements of Justice Braun's order of November 11, 2003, vis-à-vis this task. There, we summarized Defendants efforts to date. We

reported there that Defendants have initiated legal action against the state regarding the implementation of the Court's order of November 12, 2003. Therefore, while Defendants are out of compliance on this measure at this time, we note their efforts to develop a system whereby they can implement the Court's order.

14. Performance Measure 6.2: Mailing of Medicaid Cards

a. Temporary Medicaid Cards

Defendants are obligated to provide temporary Medicaid cards to all Class Members whose Medicaid is activated or reactivated, per ¶¶66-68 of the Stipulation. The purpose of this is to ensure that, should a Class Member be released after Defendants have completed the process to activate or reactivate Medicaid, but prior to the time when the State Department of Health ("DOH") will have been able to provide a permanent Medicaid card, said Class Member will be able to access services in the community. DoHMH provides information they receive from HRA for this measure. Over the past two reporting periods, DoHMH has reported 100% compliance. For this report, they reported:

Table 26: PI 6.2: Temporary Medicaid Cards

Report 9			
Aug05	Sep05	Oct05	Nov05
100.0%	100.0%	100.0%	100.0%
157	115	182	128

Defendants have been providing this service to an increasing number of Class Members leaving each reporting period. For the 7th reporting period, the per-month average was 63.25; for the 8th it was 116.75. During this 9th reporting period, Defendants increased the number of Class Members leaving the system to whom they provided this service to an average of 145.5 per month.

In our Seventh Report, at p. 79, we outlined our explanation of who we would expect to receive a temporary Medicaid card. It is our belief that the number of temporary cards provided should be ***less than or equal to*** the (a) number of reactivated Medicaid cases plus (b) the number of Medicaid applications submitted. In their comments, Defendants explained their understanding of who should be receiving a Temporary Medicaid Card as follows: "inmates (a) whose Medicaid cases are successfully reactivated… and (b) [w]hose Medicaid applications [are] submitted and found to be eligible." We agree that this is a more precise definition but one which requires reporting on the outcomes of the Medicaid applications submitted on behalf of incarcerated Class Members.

Continuing the analysis presented in our last two Reports:

Table 27: Medicaid Cards: Comparison to Reactivations and Applications for Medicaid

		Report 6	Report 7			
		Nov04	Dec04	Jan05	Feb05	Mar05
5.1	MA apps submitted	25	46	29	28	38
6.1.1	reactivated MA cases	42	48	35	19	22
	Sum (5.1) + (6.1.1)	67	94	64	47	60
6.2	temp cards provided	68	68	51	57	77

		Report 8				Report 9			
		Apr05	May05	Jun05	Jul05	Aug05	Sep05	Oct05	Nov05
5.1	MA apps submitted	30	30	28	24	22	25	20	30
6.1.1	reactivated MA cases	23	17	25	15	30	33	34	46
	Sum (5.1) + (6.1.1)	53	47	53	39	52	58	54	76
6.2	temp cards provided	91	100	106	170	157	115	182	128

As in our past two Reports, for most months for which we have data, Defendants are providing many more temporary Medicaid cards than we would expect given the cohort of Class Members released during the month. We outlined our confusion regarding this measure in our Eighth Report at page 75,

and we have received no further information regarding this question at this time. On December 2, 2005, we asked Defendants to provide us with case-specific data containing the mailing dates of temporary Medicaid cards. Defendants responded that the data is not recorded by MAP at the case-specific level we requested and that "there is no way to break out the information by individual" other than to review the information manually. They further indicated that

> "HRA has no obligation under the Settlement to report on individuals. The performance measures that were agreed to by the parties and the monitors require HRA to report on aggregate numbers of the number of applications that were processed, not performance based on specific individuals who were serviced. As HRA has explained in the past, the size of the caseload, the number of centers, time-frames for outcomes, the types of available services and the limitations of the computer systems make the complexities of tracking individuals virtually impossible. Because the time, effort, man-power and resources are not available to produce such reports, as well as the fact that producing such reports is not a requirement under the stipulation, HRA is not able to change its current reporting process."

In our draft report, we renewed our request for a site visit to HRA to better understand the obstacles they face in responding to our request and to determine if there might be alternate reasonable means for HRA to provide us with the information we would require. Defendants, in their comments, indicated that they "will not agree to a site visit or to alter their reporting methods to suit the Monitors' desire to report in a manner not contemplated by the Stipulation." Class Counsel, in their comments, point out that ¶124 "does not shield [Defendants] from changing formats in which they instruct their existing software to report." he site visit we have requested, and continue to require, would help us to answer the question as to whether changes to hardware or software would or would not be needed in order for HRA to provide us with the

information we require. Until such as time as we understand how the data from HRA relates to the data from Citrix vis-à-vis the monthly cohort, we will not be able to provide a more precise report to the Court or the Parties as to Defendants' rate of compliance with this measure.

b. Permanent Medicaid Cards

For this reporting period we requested that the New York State Department of Health provide us with an update regarding the State-vendor's timeliness in issuing permanent Medicaid Cards. The State continued to assist us by promptly responding to our request. The information provided covered the four-month period of August-November, 2005 and indicated that the vendor mailed issued a total of 485,191 cards. Of these, 484,686 were processed on the same day, while 505 or 0.1% were delayed by one day. DOH reported that no cards were delayed for more than one day. It is worth noting that of the 505 with the one-day delay, 500 were delayed on October 28, indicting the likelihood that the overwhelming majority of these delays were attributable to one specific problem on a particular day. Of the remainder, three were delayed on October 27 and two on November 19. The State DOH vendor is operating in a manner consistent with the demands of the Stipulation. In keeping with our stated practice we will periodically conduct spot-checks of this issue.

15. Performance Measure 7.1: Provision of Medications/Prescriptions

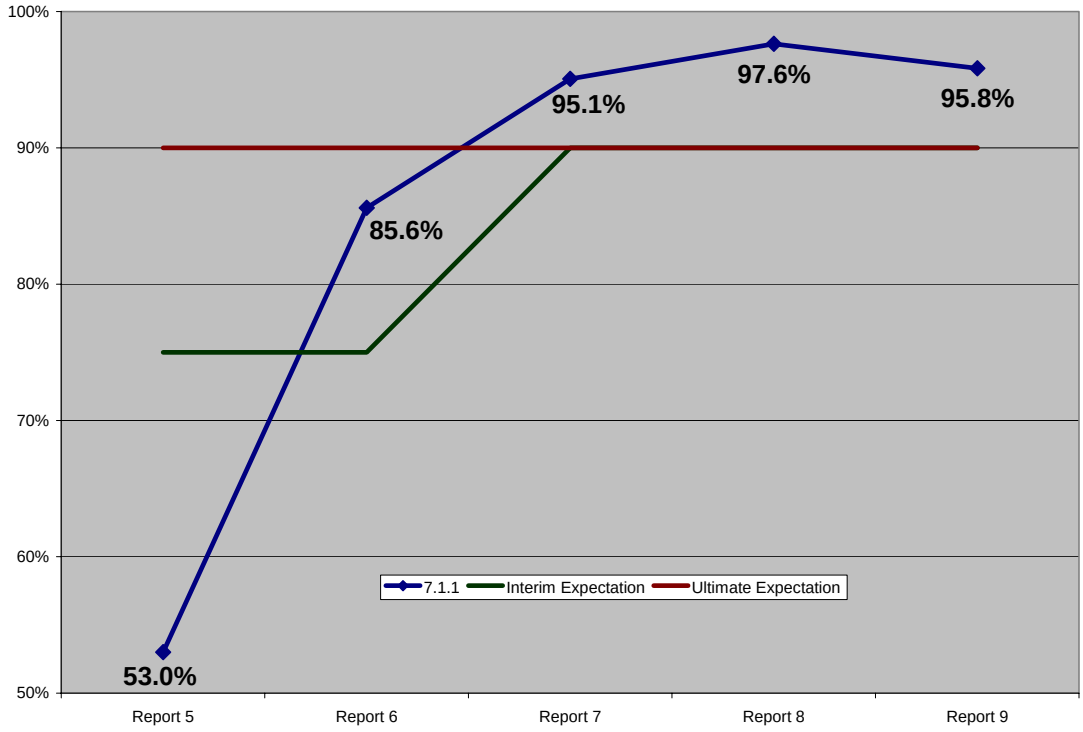
This measure includes three submeasures relating to the various obligations of Defendants to provide Class Members with medications and/or prescriptions for medications. For those Class Members who are released from jail, Defendants are

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

Table 28: PI 7.1: Provision of Medications and Prescriptions

	Report 5	Report 6	Report 7	Report 8	Report 9
7.1.1	53.0%	85.6%	95.1%	97.6%	95.8%
numerator	565	309	500	494	506
denominator	1066	361	526	506	528
7.1.2	100%	100%	100%	100%	100%
N	27	23	20	27	23
7.1.3	100%	100%	100%	100%	100%
N	55	43	20	55	42
Interim Expectation	75%	75%	90%	90%	90%
Ultimate Expectation	90%	90%	90%	90%	90%

Figure 9: PI 7.1.1: Provision of Walking Medications and Prescriptions



Defendants provided the following information regarding exclusions from the denominator for measure 7.1.1:

Table 29: PI 7.1: Exclusions from Denominator

	Aug05	Sep05	Oct05	Nov05	**Total**
CMs on meds, not refusing DCP services	224	231	238	286	**979**
CMs refusing walking meds	13	19	24	19	**75**
CMs refusing prescriptions[37]	0	1	1	0	**2**
CMs "whose walking meds determination is N/A"[38]	94	76	80	105	**355**
CMs "whose prescription determination is N/A"	6	1	4	8	**19**
Total Exclusions	113	97	109	132	**451**
Eligible for Walking Medications	111	134	129	154	**528**

[37] This exclusion covers only those Class Members who *accepted* the walking medications but who *refused* the prescriptions. Those who refused walking medications and prescriptions are counted in the line above.
[38] This exclusion covers those Class Members who were released at court or bailed out, and therefore could not be provided with medications or prescriptions prior to release. Defendants reported that the next exclusion covers those who were not given prescriptions only. We, like Class Counsel, are confused as to how a Class Member released from court or on bail could receive medications but not prescriptions. We request clarification from Defendants prior to the next report.

Based on this data, it is evident that Defendants continue to provide walking medications and prescriptions at a high level of performance. We will continue to follow this measure closely as it is one of the cardinal aspects of this case.

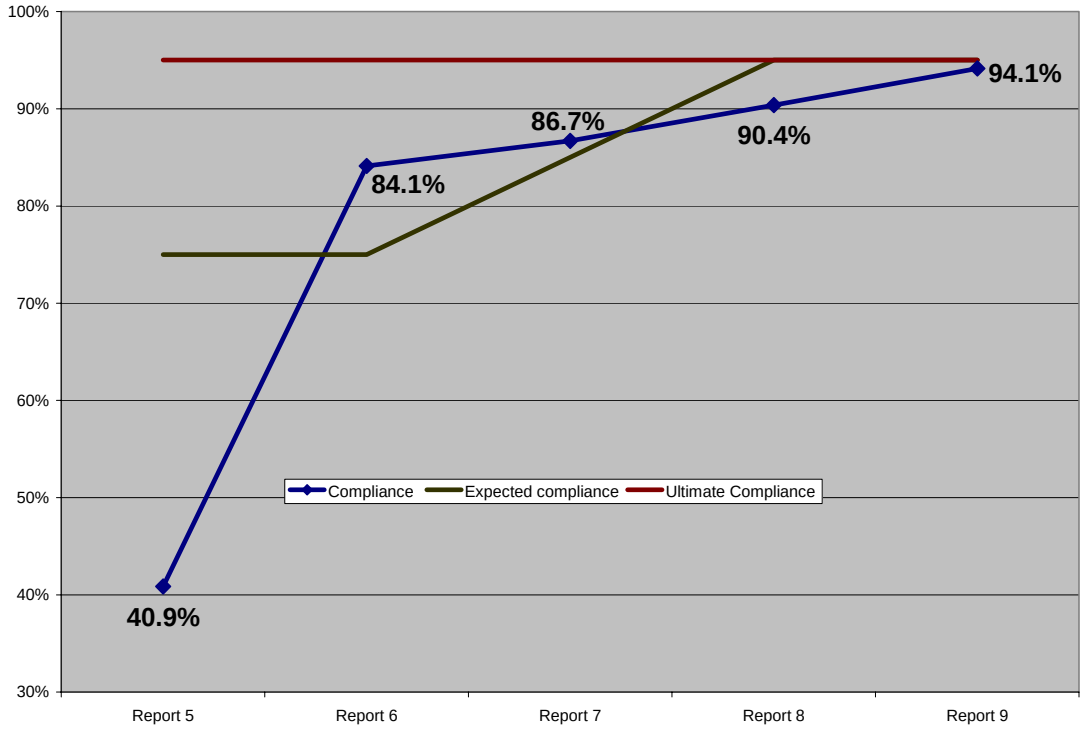
16. Performance Measure 8.1. Provision of Appointments to Class Members with Known/Projected Release Dates

Paragraph 45 obligates Defendants to provide Class Members whose release dates are known or projected in advance with appointments for community mental health follow up upon their release. Like measure 7.1, this issue is one of the foundational issues in this litigation. Successful discharge planning includes the provision of medications for those who need them, but this is only helpful over time if the medication provided bridges a gap between two treatment providers. Given improvements in performance during the sixth and seventh reporting periods, we increased our expectation to 95%. Against this compliance expectation, Defendants reported:

Table 30: PI 8.1: Provision of Appointments

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	40.9%	84.1%	86.7%	90.4%	94.1%
Numerator	132	159	254	263	257
Denominator	323	189	293	291	273
Expected compliance	75%	75%	85%	95%	95%
Ultimate Compliance	95%	95%	95%	95%	95%

Figure 10: PI 8.1: Provision of Appointments



Defendants reported the following regarding exceptions from the denominator for this measure:

Table 31: PI 8.1: Exclusions from Denominator

	Aug05	Sep05	Oct05	Nov05
CMs with CTPDs completed	412	402	427	492
Global Refusers	135	98	125	133
Appt/Referral Refusers	111	137	120	170
Unknown release date	103	84	118	127
TOTAL Exclusions	349	319	363	430
Total eligible for appointment	63	83	64	62

The data demonstrate that Defendants maintained a steady rate of improvement over the current reporting period when compared with the last two reporting periods. This finding is significant at the $p<0.0001$ level over the five reporting periods, at the $p=0.002$ level from Report 6 to Report 9, but only at the $p=0.10$ level when comparing Report 9 to Report 8. While Defendants have not quite achieved

the ultimate expectation of 95%, we note the continued upward trend and encourage further efforts to attain compliance on this important task.

17. 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, using the criteria outlined in ¶44. Against a performance expectation of 95%, Defendants reported 100% compliance with this expectation for all months during the reporting period, with an average of about 26 appointments provided per month. SPAN appears to continue to demonstrate high percentages of performance with respect to this measure.

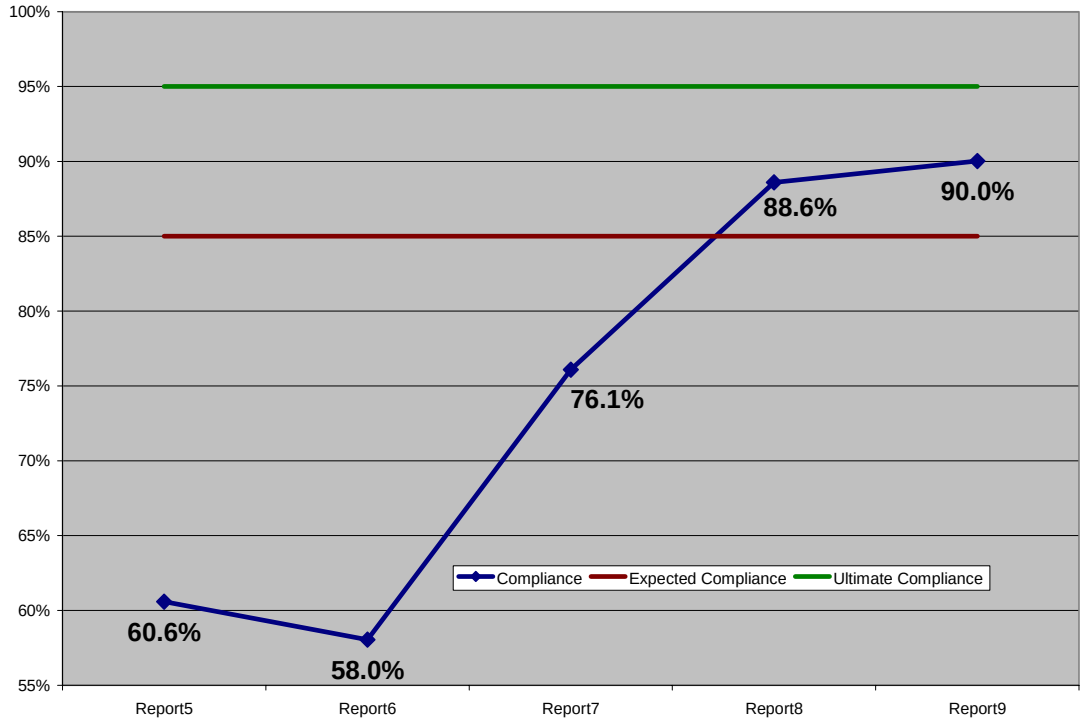
18. Performance Measure 8.3: Provision of Referrals to Class Members without Known/ Projected Release Dates

Paragraph 46 of the Stipulation requires the provision of referrals to Class Members released from jail without known or projected release dates. This has been one of the more difficult tasks for Defendants to perform, based on their inability to meet our ultimate performance expectation of 95%. For this reporting period, Defendants reported:

Table 32: PI 8.3: Provision of Referrals

	Report5	Report6	Report7	Report8	Report9
Compliance	60.6%	58.0%	76.1%	88.6%	90.0%
numerator	206	256	420	474	388
denominator	340	441	552	535	431

Figure 11: PI 8.3: Provision of Referrals



Defendants improvement over the five reporting periods is statistically significant at the $p<0.0001$ level. However, when comparing Report 9 to Report 8, the change is significant only at the $p=0.48$ level, indicating that the trend demonstrated could occur by chance with a probability of about 0.48.

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

Table 33: PI 8.3: Exclusions from Denominator

	Aug05	Sep05	Oct05	Nov05
CMs with CTPDs completed	412	402	427	492
Global Refusers	135	98	125	133
Appt/Referral Refusers	111	137	120	170
CMs with Known release date	63	84	64	62
Total Exclusions	309	319	309	365
Total eligible for referral	103	83	118	127

Defendants' improvement documented in Reports 7 and 8 has plateaued in the current reporting period. We anticipate that Defendants will continue to focus on

this task and will demonstrate further improvements during the coming reporting period. This is one of the areas in which we agreed to hold in abeyance our planned increase in performance expectation to allow for focused joint study of the issue. As provision of links to aftercare is a fundamental aspect of this litigation, we anticipate working with them closely in order to understand any barriers to improved performance and will make a determination as to the level of compliance we will require at the conclusion of this period of focused study.

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

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

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

These criteria, especially the last, considerably shrink the pool of eligible individuals against which Defendants' performance is to be measured. We have been assured by HRA that they provide eligible individuals who appear at a job center with needed emergency benefits during the initial visit. Thus, our expectation regarding compliance for this measure is 100%. Defendants reported that 100% of all Class Members meeting the above criteria were provided with emergency benefits, consistent with our expectation. 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.

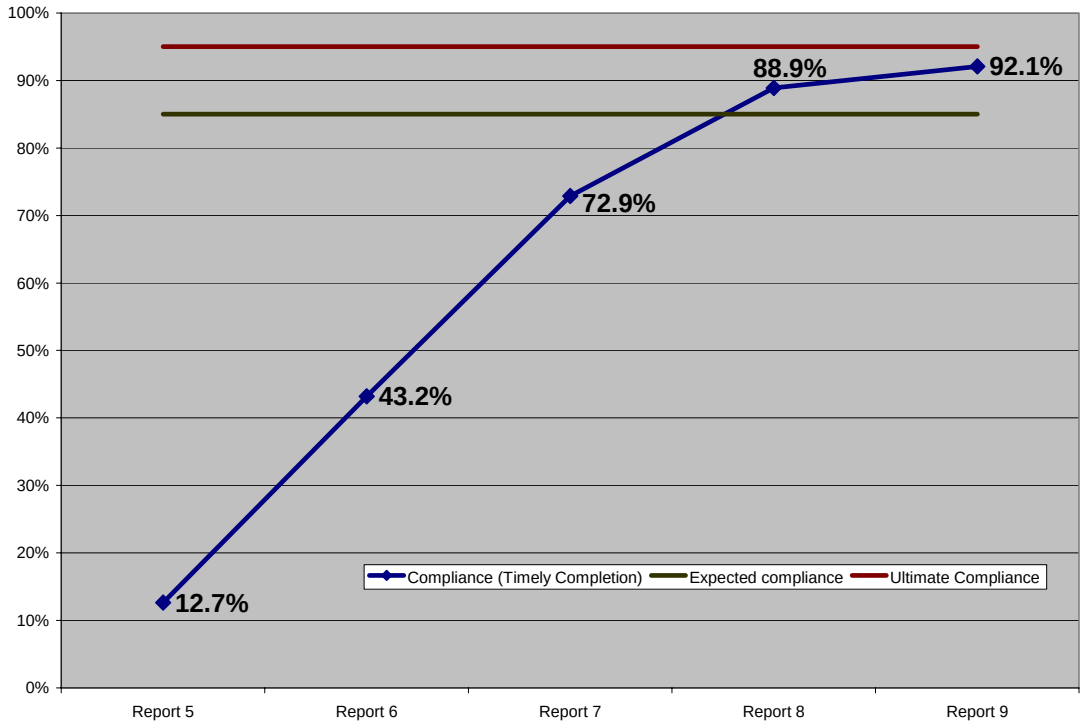
20. Performance Measure 9.2: Timely Completion and Submission of Public Assistance ("PA") Applications

Paragraph 78 requires Defendants to assist Class Members who are SPMI in applying for public assistance benefits and outlines timelines for this process. This is a task that Defendants hitherto had some difficulty performing, according to the data which they have provided. Against our interim expectation of 85% compliance,[39] Defendants reported:

Table 34: PI 9.2: Timely Completion and Submission of PA Applications

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	12.7%	43.2%	72.9%	88.9%	92.1%
numerator	31	70	121	136	128
denominator	245	162	166	153	139

Figure 12: PI 9.2: Timely Completion and Submission of PA Applications



[39] In our Eighth Report, we erroneously concluded that we were raising our expectation for this measure. In fact, we had agreed to defer raising our expectation for this measure pending Defendants' exploratory process discussed in our Eighth Report and above in this report.

Defendants improvement over the five reporting periods is significant at the $p<0.0001$ level. However, when comparing Report 9 to Report 8, the change is significant only at the $p=0.35$ level, indicating that the trend demonstrated could occur by chance with a probability of about 0.35. Defendants point out that the rate of increase must necessarily slow as they achieve higher levels of performance. While this is true, we will continue to point out where their improvement has slowed down particularly with respect to measures for which they have not achieved the expectations we have set and for which they have objected to our increasing our expectation as we laid out in our performance measures of June, 2004.

Defendants reported as follows regarding the noncompliant cases:

Table 35: Timely, Late and Uncompleted PA Applications

	Report 8	Report 9
# Completed Timely	136	128
	88.9%	92.1%
# Completed Late	6	8
	3.9%	5.8%
# Not Done	11	3
	7.2%	2.2%
Denominator	153	139

This data demonstrates that, while Defendants have not improved dramatically on overall compliance with the performance measure (which measures the *timely* completion of the PA application), their overall completion of the PA application (timely as well as late) has improved and they have reduced the number of eligible Class Members for whom they fail to complete the PA application. This would appear to us to represent an interim step in improving compliance with the performance measure: the first step is to increase the number of applications

completed late as opposed to not completed, and the next step should be to improve performance with the stated timelines.

Defendants provided the following data regarding exclusions from this measure:

Table 36: PI 9.2: Exclusions from Denominator

	Aug05	Sep05	Oct05	Nov05
# released to community with CTDP completed	412	402	427	492
Not SPMI	131	155	221	251
Refused all DCP	135	98	61	69
Refused PA application	84	88	107	106
"Previously Active" PA	0	0	1	1
"PA ineligible"	2	2	1	2
Delay Code: Medical	2	6	2	3
Delay Code: Court	7	4	4	1
Delay Code: SPMI status change	1	0	0	1
Delay Code: Refused	6	8	4	8
Released before CTDP + 5 business days	10	5	2	5
Total Exclusions	378	366	403	447
Eligible for PA Application	34	36	24	45

Again, we note that Defendants' use of "delay codes" for medical and court visits and about the timing in the last listed exclusion remains unacceptable to us. During this reporting period, Defendants first began to include the Delay Code for SPMI Status Change. We assume that this refers to those Class Members who were determined to be not SPMI at the time of the initial CTDP and whose status changed to SPMI at some later point in the incarceration. We are struck by the report that this only occurred in 2 cases out of a total of 196 Class Members (1%) potentially eligible for this service during the reporting period.[40] In our Citrix-medical record comparison probe, described above, we reviewed a total of just under 200 charts. Of these charts, we identified 45 cases in which the Class

[40] We included for consideration in this denominator all Class Members who were potentially eligible for this service. Excluded were those who were not SPMI, who refused all or this specific service, who had PA or were ineligible, or who were released before the CTDP + 5 business days.

Member was initially designated not LSPMI, remained incarcerated long enough to have a CTDP completed, and who were rated as not SPMI at the CTDP. At some later point in the incarceration, 9 of these Class Members (20%) were reevaluated as SPMI at a Treatment Plan Review. This change in status was not documented in Citrix, where the case was still considered not SPMI. Our preliminary findings thus are dramatically at odds with Defendants' exceptions report noted above, and raises questions concerning Defendants' compliance with the requirements of ¶125 that they "update, as necessary, those fields for each Class Member in a timely manner, so that the Discharge Planning MIS accurately reflects current information for each Class Member."

The improvement seen in the last three reporting periods appears to have plateaued. We anticipate working with Defendants to develop a better understanding of barriers to the completion of this important task for Class Members who are SPMI.

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

This measure tracks the timely registration of PA applications at HRA upon receipt. We recognize that HRA has defined a cohort for this measure that is different from that we defined in our Performance Indicator. Rather than using our denominator of [# of PA applications submitted by discharge planners in the jails], HRA has based this on a denominator of [PA applications received by HRA]. Based on this cohort, and against an expectation of 95%, Defendants report as follows:

Table 37: PI 9.3: Registration of PA Applications

	Report 6	Report 7	Report 8	Report 9
Compliance	95.0%	99.6%	98.6%	99.5%
Numerator	493	445	351	389
Denominator	519	447	356	391

Repeating the analysis summarized at pages 87-88 of our Eighth Report, we find once again that many more applications reportedly are registered at HRA than were submitted for the cohort of Class Members included in each month's data:

Table 38: Comparison of PA Applications Submitted to PA Applications Registered

	Report 6	Report 7	Report 8	Report 9
PA applications required	162	166	153	139
PA applications registered	493	445	351	389
Variance (# of cases)	331	279	198	250
variance (percentage)	304.3%	268.1%	229.4%	279.9%

As outlined above, we held a meeting on November 17, 2005 with DoHMH and HRA in an attempt to understand how this data may be understood, and on December 2, 2005 we submitted a formal request in follow up to that discussion. We requested data containing the date of registration for all Public Assistance applications received for Brad H class members in a given month. Defendants responded that the data is recorded by FIA at the case-specific level we requested in a database known as NYCWAY. Defendants indicated that

> "[a]lthough NYCWAY can be programmed to report on Brad H applications, WMS cannot be. It is possible to program NYCWAY to generate a report consisting of each class member's application date - the date the application was entered into WMS – and the disposition."

Defendants concluded that in order to provide us with the information we requested,

> "either WMS will have to be programmed to generate such a report, or a new automated process would have to be created, or data-matching would have to be done manually. Currently, there are not enough resources available to create a new automated system or to do manual data-matching.

> Programming WMS to generate such a report would need to be done by the State."

The first part of this response indicates that Defendants are able to provide us with some useful information, pursuant to our request referenced above, derived from the NYCWAY database. We request that they begin providing us monthly information from NYCWAY concerning the date of receipt of applications for Brad H. Class Members. Alternatively, in the event that HRA determines that this would require programming beyond their willingness or capability, we request a site visit, to include relevant technical personnel, to the review the NYCWAY database as it pertains to Brad H. Class Members.

At least as they have defined it and given the limitations of the data HRA provides to us currently, Defendants appear to be continuing to meet our expectation on this task.

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

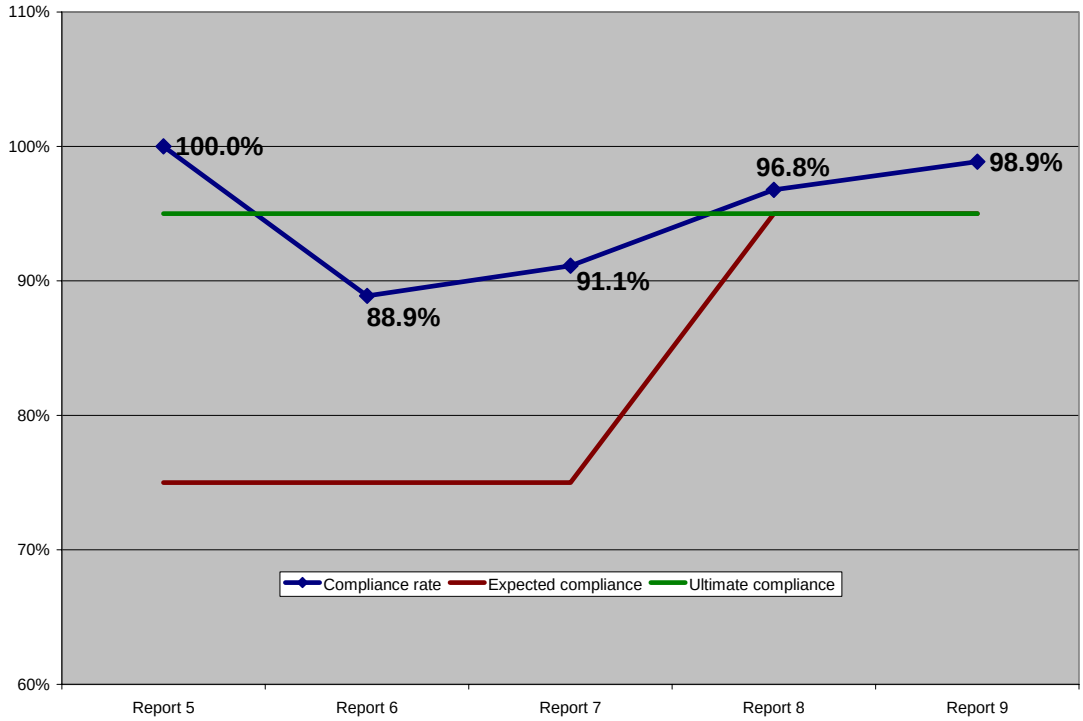
Paragraph 89 of the Stipulation requires Defendants to assist in obtaining supportive housing for those Class Members they determine to need it. Our uncertainty as to how DoHMH assesses the need for determination was most clearly outlined on p. 94 of our Seventh Report and referenced again at p. 88 of our Eighth Report. We have previously accepted SPMI status as a necessary criterion for accessing supportive housing using the HRA 2000 application; this is so despite our interpretation of the language and structure of the Stipulation to extend this service to all potentially eligible Class Members regardless of SPMI status.

In response to our inquiries, DoHMH provided us with additional, useful information regarding the process for supportive housing application. DoHMH indicates that it will offer a supportive housing application to *all Class Members who are designated as SPMI*. Those who are receptive to proceeding with this application will receive assistance. DoHMH will make a recommendation as to what level their initial assessment indicates might be appropriate, as required by the application process, but it is HRA which determines whether the Class Member is eligible for supportive housing and if so at what level. For this reporting period, against a performance expectation of 95%, Defendants provided the following information:

Table 39: PI 10.1: HRA 2000 Applications

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance rate	100.0%	88.9%	91.1%	96.8%	98.9%
Numerator	42	112	113	120	87
Denominator	42	126	124	124	88
Expected compliance	75%	75%	75%	95%	95%
Ultimate compliance	95%	95%	95%	95%	95%

Figure 13: PI 10.1. HRA 2000 Applications



Although the number of Class Members receiving HRA 2000 applications dropped over this reporting period, Defendants continue to report rates of compliance above our expectation for this measure.

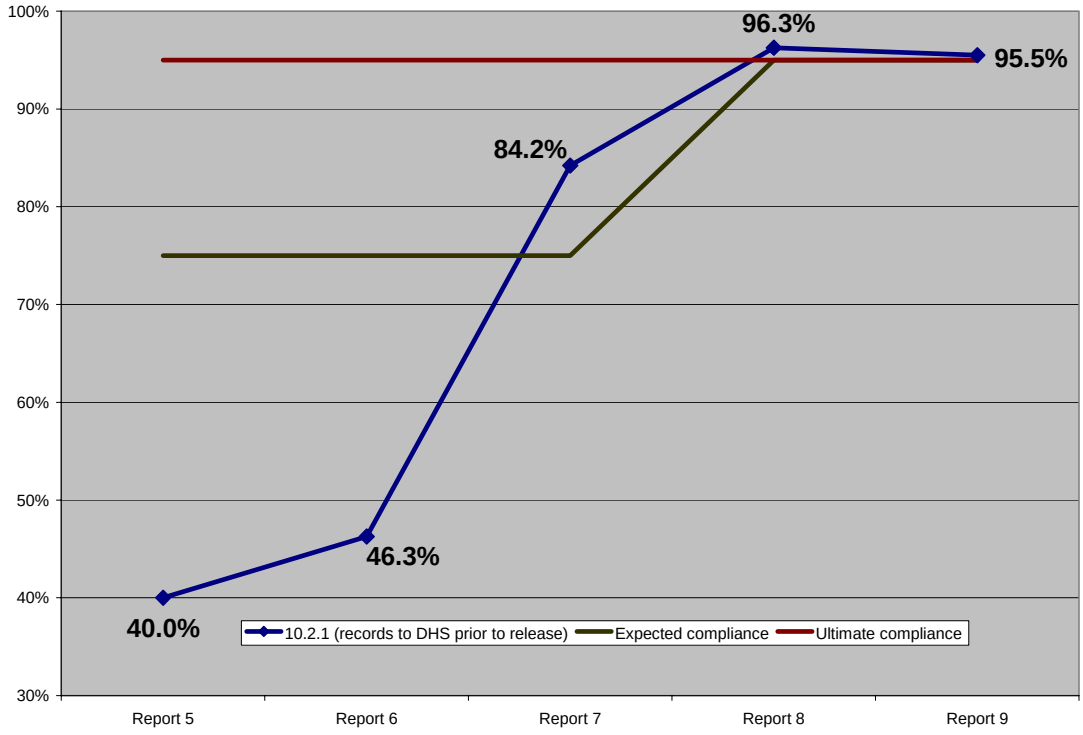
23. Performance Measure 10.2.1: Sharing of Information with DHS: Class Members with Projected Release Dates

Defendants are obligated in ¶¶94-96 of the Stipulation to use best efforts to facilitate direct placement in Program Shelters by providing DHS with clinical information prior to release for those Class Members released with a projected release date. For the current reporting period, Defendants reported as follows:

Table 40: PI 10.2.1: Timely Provision of Records to DHS Prior to Release

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	40.0%	46.3%	84.2%	96.3%	95.5%
Numerator	20	31	64	77	85
Denominator	50	67	76	80	89
Expected compliance	75%	75%	75%	95%	95%
Ultimate compliance	95%	95%	95%	95%	95%

Figure 14: PI 10.2.1: Timely Provision of Records to DHS Prior to Release



Defendants' improvement over the five reporting periods is statistically significant at the $p<0.0001$ level; the change noted between Report 8 and Report 9 is non-significant ($p\approx0.8$). At this time, Defendants continue to forward records on about 50% of the Class Members whom they know or predict to be homeless upon release:

Table 41: PI 10.2.1: Rate of Forwarding of Records to DHS for Known Homeless Class Members Prior to Release

	Report 8	Report 9
# homeless on release	153	162
records provided to DHS prior to release	77	85
rate	50%	52%

Defendants have indicated that this measure relates only to those Class Members who are both homeless upon release and who have a projected release date.

Defendants continue to report lower than expected rates of homelessness. See below at section III.B.6 for more discussion of this issue. We note here that Defendants have developed a mechanism to attempt to engage Class Members in more sophisticated discussions of housing status.

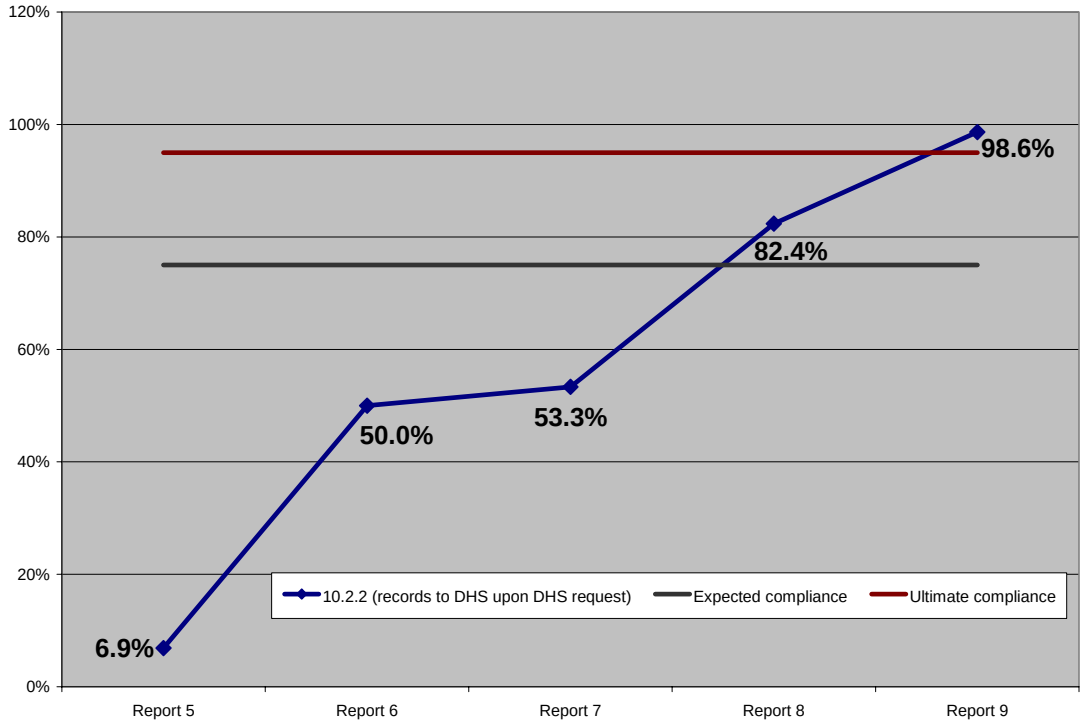
24. Performance Measure 10.2.2.: Timely Provision of Information to DHS: Class Members who Present to DHS after Release

Defendants are required by ¶¶94-95 of the Stipulation to provide records to DHS "promptly upon learning of the Class Member's release" for those Class Members who leave jail without having had said information forwarded prior to release. For practical reasons, we have articulated this performance measure to require a specific request from DHS and have given Defendants a 3 business day window to respond to this request. During the current reporting period, Defendants reported as follows:

Table 42: PI 10.2.2: Timely Provision of Information to DHS After Release

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	6.9%	50.0%	53.3%	82.4%	98.6%
Numerator	2	19	40	56	72
Denominator	29	38	75	68	73
Expected compliance	75%	75%	75%	75%	75%
Ultimate compliance	95%	95%	95%	95%	95%

Figure 15: PI 10.2.2: Timely Provision of Information to DHS After Release



Defendants improvement over the five reporting periods is statistically significant at the $p<0.0001$ level, and the improvement noted between Report 8 and Report 9 is significant at the $p<0.001$ level.

We do not compare this measure to the rate of homelessness reported by Defendants. This measure is entirely based on that group of Class Members who appear at a DHS shelter and about whom DHS requests information of the discharge planning program. As such, it is a self-selected group of Class Members.

It is evident that Defendants have exceeded our interim expectation of 75% as well as our ultimate expectation of 95%. We agreed in our Eighth Report to hold off on increasing our expectation pending study of potential problems. Should Defendants maintain this high level of compliance during the coming reporting period, such study will not be needed, and we will raise our expectation at that time.

25. 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 302 Class Members for whom transportation was offered during the reporting period. A total of 161 Class Members (53%) accepted this offer. In comparison, Defendants reported that 44% of the 512 eligible Class Members accepted transportation during the Eighth reporting period and that 36% accepted the offer during the Seventh reporting period.

Operationally, because this service is restricted to SPMI Class Members with projected release dates, it is limited to two jails, Rose M. Singer Center ("RMSC") for women and Eric M. Taylor Center ("EMTC") for sentenced men. Prior to this report, no woman was ever reported to accept this service. In our last report, at pp. 96-100, we summarized our thoughts regarding this consistent finding and made suggestions regarding intervention.

For this report, Defendants reported as follows:

Table 43: PI 11.3: Transportation

	Accepted	Declined	Total
EMTC	157	50	207
RMSC	4	91	95
Total	161	141	302

It is evident that women continue to decline this service far more often than men, though for the first time, Defendants have reported that some women accepted this service. This disparity is clearly not attributable to random chance. In our Eighth Report, at page 97, we discussed several reasons that staff believed caused women to be less likely to accept transportation than men. DoHMH reported that they planned implemented a procedure on or about October 1, 2005, whereby women are picked up at an earlier time and in a different van than men from EMTC. This change was calculated to address both of the major issues suggested as reasons for refusals among female Class Members. All of the women who accepted transportation did so in October, 2005, suggesting that the procedural change may have had some impact on these decisions.

Defendants reported to us that women continue to refuse for a variety of reasons. Reasons listed included:

1. Stating that they were leaving with WPA[41]
2. Stating that they were leaving with CEO
3. Stating that a family member is meeting them over the bridge
4. Stating that the bus makes multiple stops
5. Stating that they want the metro card from DOC

It is very positive that Defendants are tracking the reasons for Class Members' refusals of this service, as this should guide them in crafting remedial efforts. We commend Defendants for instituting procedural and operational changes geared toward rectifying the situation whereby no women accepted transportation. Additionally, they have begun to collect information about why the vast majority of women continue to refuse this service. This is the proper method for planning

[41] We assume that WPA stands for "Women's Prison Association".

effective future refinements. We expect that they will continue to track these refusals and share the results with us. We anticipate seeing gradual increases in the acceptance rate over time as we and Defendants continue to examine this problem.

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

This measure is 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 the Program Shelter to an I/A Shelter. For the current reporting period, they reported as follows:

Table 44: PI 11.2 and 11.3: Transportation

	Compliance Rate
11.2	100% (5/5)
11.3	100% (3/3)[42]

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

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

Defendants report on these two measures separately for LINK follow up calls, but they continue to aggregate the data for these two measures for follow up calls made by jail-based discharge planners.[43] Thus, we must report on them together.

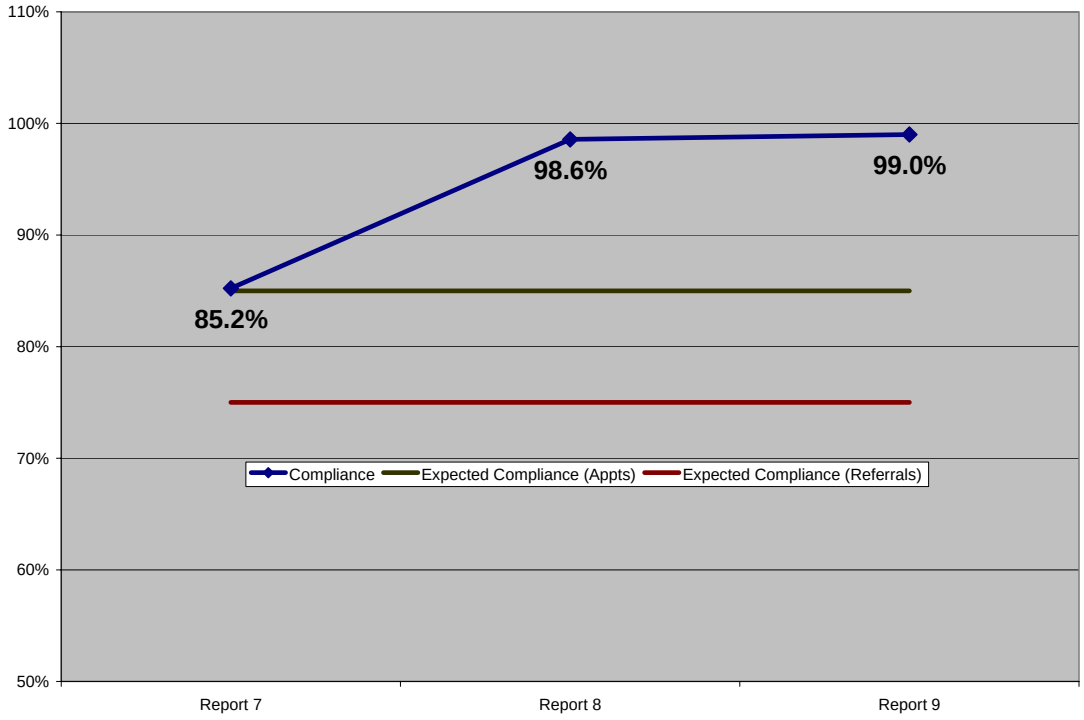
[42] In the Draft Report, we reported that 3 of 5 Class Members received this service. DHS clarified that the two Class Members who did not receive this service refused the offer. We have therefore removed them from the denominator. DHS agreed to provide this information routinely in the future.

For the calls made by jail-based discharge planners, Defendants reported as follows:

Table 45: PI 12.0: Follow-up Calls Made by Jail-Based Discharge Planners Regarding Appointments and Referrals

	Report 7	Report 8	Report 9
Compliance	85.2%	98.6%	99.0%
Numerator	225	275	299
Denominator	264	279	302
Expected Compliance (Appts)	85%	85%	85%
Expected Compliance (Referrals)	75%	75%	75%

Figure 16: PI 12.0: Follow-up Calls Made by Jail-Based Discharge Planners Regarding Appointments and Referrals



[43] Defendants advised us prior to our Eighth Report, and we so noted on page 100, that they would separate the follow up calls regarding appointments from those regarding referrals effective the September, 2005 data report. They have not done so. In their comments, they advised us that "they continue to look into the issue of separate data reports."

For calls made by LINK, Defendants reported as follows:

Table 46: PI 12.1: Follow-up Calls Made by LINK Regarding Appointments

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	70.2%	81.3%	97.9%	100.0%	100.0%
Numerator	73	78	94	81	71
Denominator	104	96	96	81	71
Expected Compliance	85%	85%	85%	85%	85%
Ultimate Compliance	95%	95%	95%	95%	95%

Figure 17: PI 12.1: Follow-up Calls Made by LINK Regarding Appointments

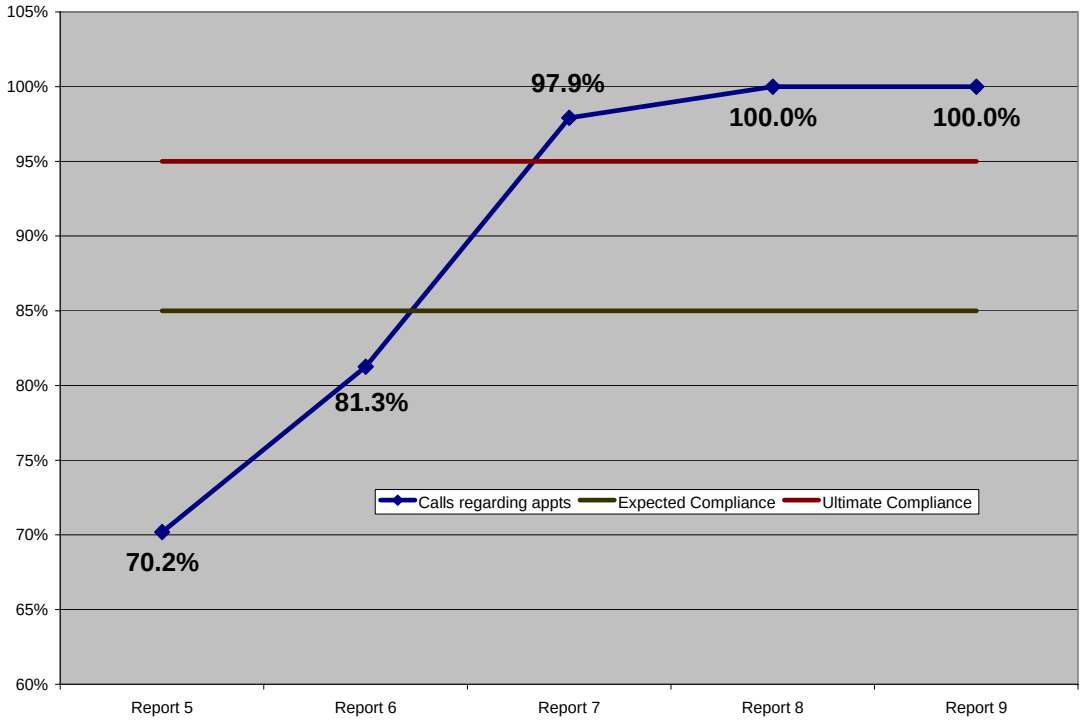
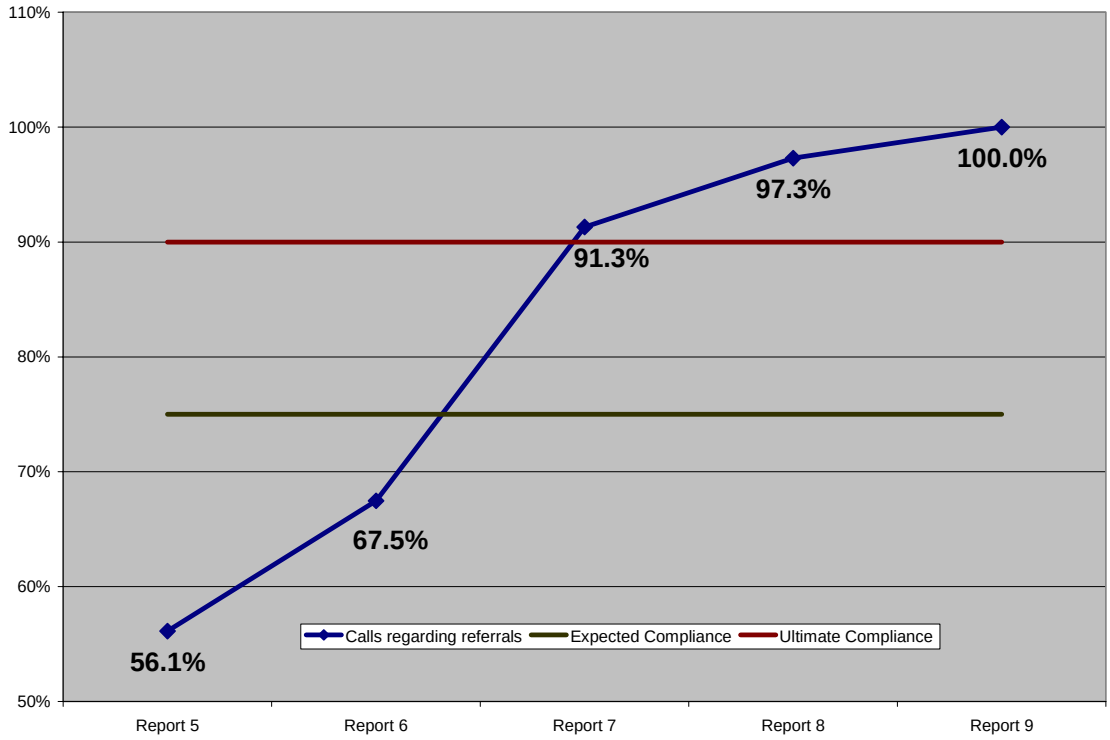


Table 47: PI 12.2: Follow-up Calls Made by LINK Regarding Referrals

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance	56.1%	67.5%	91.3%	97.3%	100.0%
Numerator	78	56	105	72	66
Denominator	139	83	115	74	66
Expected Compliance	75%	75%	75%	75%	75%
Ultimate Compliance	90%	90%	90%	90%	90%

Figure 18: PI 12.2: Follow-up Calls Made by LINK Regarding Referrals



In our Eighth Report, we indicated that we believe the eligible population for this set of measures to be all SPMI Class Members who were given appointments or referrals prior to release. We performed an analysis on page 102 of that report in which we compared the number of individuals provided with these services to the number of follow up calls made. In that analysis, these numbers did not match. We have repeated this analysis for all of the months in the current report:

Table 48: Follow-up Calls by Jail-Based Discharge Planners and LINK

	Aug05	Sep05	Oct05	Nov05
# of appointments made for SPMI CMs	33	47	32	35
# of referrals made for SPMI CMs	41	34	36	44
(appointments) + (referrals)	74	81	68	79
# of f/u calls made by JBDP	74	81	68	79
# of f/u calls made by LINK	29	42	37	29

In the current reporting period, it appears that the jail-based discharge planners are performing follow up calls for all SPMI Class Members who had appointments or referrals provided to them, and that LINK may be making such calls for a subset of this group as well.

Given that the improved compliance has now been demonstrated over the past three reporting periods, we now raise our expectation to the ultimate expectations set out in our Performance Measures: 95% expectation for appointment follow ups and 90% expectation for referral follow ups.

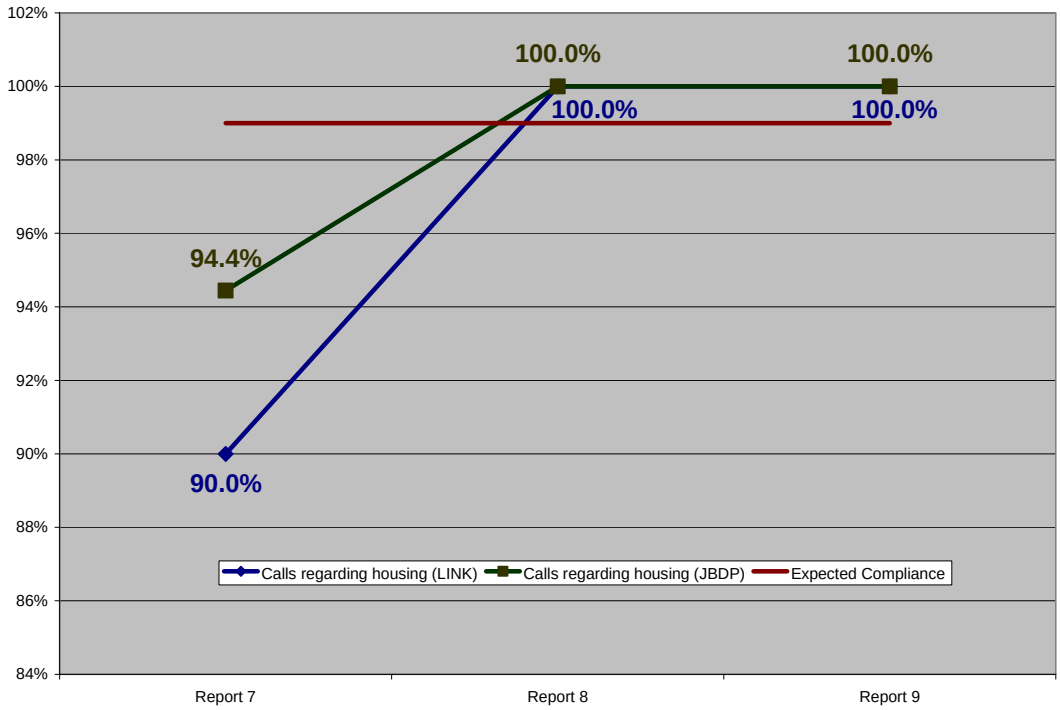
30. Performance Measure 12.3: Follow-up Contacts for SPMI Class Members regarding Appropriateness of Housing

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

Table 49: PI 12.3: Follow-up Calls Regarding Housing

	Report 7	Report 8	Report 9
Calls regarding housing (LINK)	90.0%	100.0%	100.0%
Numerator	144	92	86
Denominator	160	92	86
Calls regarding housing (JBDP)	94.4%	100.0%	100.0%
Numerator	221	206	172
Denominator	234	206	172
Expected Compliance	99.0%	99.0%	99.0%

Figure 19: PI 12.3: Follow-up Calls Regarding Housing



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

Defendants advised us that, in November, 2005, of the 492 Class Members released to the community having had a CTDP prior to release, 241 were SPMI. The data above reveals that a total of 77 SPMI Class Members were included for

consideration for this service, and that fact, calls were attempted for all 77 of them. Defendants elsewhere report a very low rate of expected homelessness upon release (homeless individuals by definition have no contact information). In our Eighth Report, we noted that we had initiated discussions with DoHMH regarding the derivation of the denominator used in this measure, as we have concerns that all relevant Class Members are not being considered for these follow up calls. They then speculated that a partial explanation of this variance may be due to their not contacting Class Members who had refused all discharge planning services, but they were not certain of this. We noted that our initial measure did not contemplate such an exclusion, though we accepted this position as it relates to calls made by jail-based discharge planners.

Neither in their comments nor at a clarification meeting we held with DoHMH prior to writing the Eighth report did they assert that these refusals accounted for the entire differential. With respect to the follow up calls made by LINK, it is difficult for us to imagine how this could be refused in the context of overall work with a LINK case manager after release.

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

arrangements Defendants have made for the Class Member. Paragraph 100 applies to all Class Members who are SPMI.

We anticipate further discussion with Defendants regarding the derivation of these numbers and explanations of all exclusions they would make.

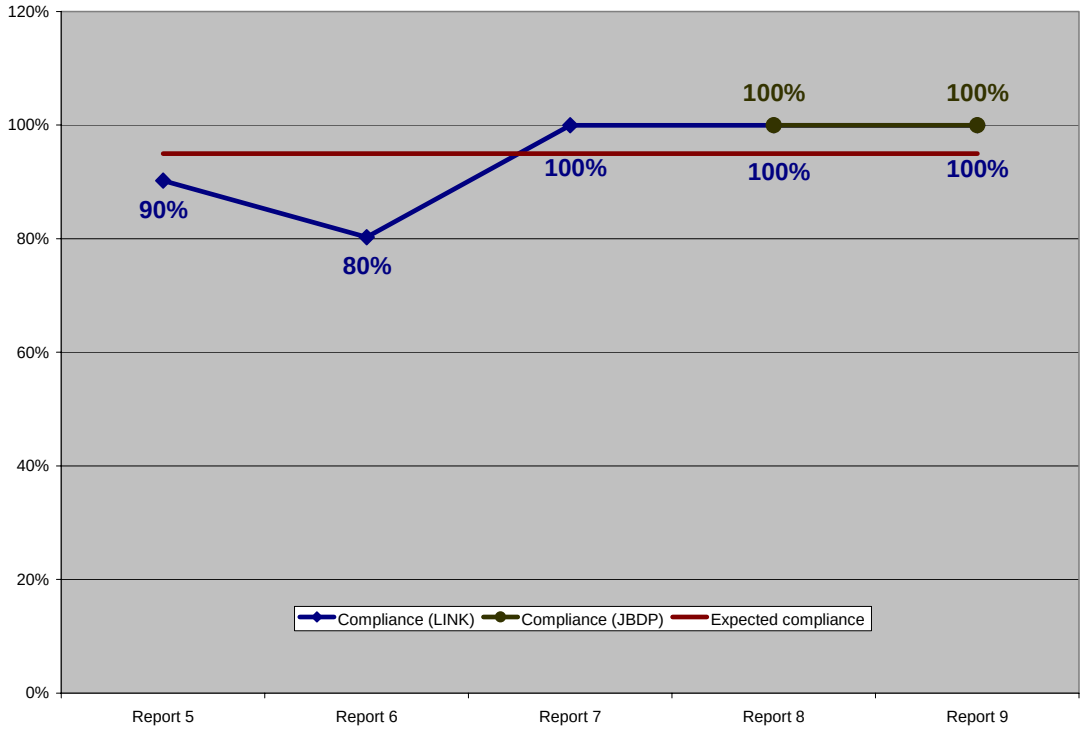
31. Performance Measure 12.4: Offer of Assistance to Procure More Appropriate Housing

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

Table 50: PI 12.4: Offer of Assistance Regarding Housing

	Report 5	Report 6	Report 7	Report 8	Report 9
Compliance (LINK)	90%	80%	100%	100%	100%
Numerator	74	61	57	35	35
Denominator	82	76	57	35	35
Compliance (JBDP)				100%	100%
Numerator				2	2
Denominator				2	2
Expected compliance	95%	95%	95%	95%	95%

Figure 20: PI 12.4: Offer of Assistance Regarding Housing



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

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

During this period we did not gather data regarding this measure.

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

During this period we did not gather data regarding this measure.

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

The appropriate response to Class Member refusals of discharge planning services has been an ongoing issue during the course of our monitoring activities. As we have described elsewhere (e.g. see our Eighth Report at page 106) our position has been that, as a general rule, refusals should not be taken at face value.

This is so despite the voluntary nature of all services provided for in the agreement. As a result, we required of Defendants that they re-offer refused services to Class Members in keeping with our understanding of Defendants' policies (see CHS Policy XI-C, ¶A.7., Revision 6/3/2003) and as way of ensuring that staff attempt to engage Class Members in need of services. Defendants have repeatedly asserted (1) that they viewed this requirement as beyond the scope of our authority; (2) that the entire Stipulation is predicated upon the voluntary acceptance of services; and (3) that some Class Members refuse services for logical and appropriate reasons. We have accepted conceptually numbers 2 and 3, but assert that the creation of a measure to deal with this issue is well within our brief pursuant to paragraph 144 of the Stipulation.

During this reporting period we did not collect data on this measure. During the next reporting period we will engage in further discussions with DoHMH about this issue. We do recognize that some Class Members refuse services for rational reasons such as already having a service or its equivalent in place; we would consider these to be competent refusals and they should be respected subject to the right of the Class Member to change his or her mind. However, given the nature of the Class it is foreseeable that some Class Members will refuse services at a time when their psychiatric conditions are not sufficiently stabilized for them to form a reasoned opinion about whether they desire a specific service. In such cases, the appropriate course of action is to monitor the Class Member's course of treatment and response to clinical interventions and to re-offer services at a clinically appropriate time in a clinically appropriate manner. Such an approach is congruent

with DoHMH's recent emphasis on more comprehensive clinical assessment, and certainly offers the individualized approach to Class Members which is inextricably bound with the general requirements and specific intent of the Stipulation.

We look forward to reaching an agreement with DoHMH regarding how they should implement and document an approach to refusals consistent with these understandings. In the event that we are unable to reach an accommodation with DoHMH on this matter, we will return to the monitoring of our measure as originally formulated.

B. Data Unrelated to Performance Indicators

1. DHS Placement Directly in Program Shelter

Defendants have reported as follows:

Table 51: Placement of SPMI Class Members Directly into Program Shelter

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

Data in this table is derived by combining the monthly reports provided to us by Defendants for element which they have numbered 12.4.4. The data dictionary remains unclear as to the exact group of Class Members which DOHMH considers for this element. They define the denominator as "from the number of 12.4.3. [i.e. the number of Class Members who present to a shelter], those who needed direct placement in a program shelter." Defendants in their comments indicate that, as currently defined in the Data Dictionary, the denominator for 12.4.4 is equivalent to the value for 12.4.3. In other words, the data dictionary equates "those who present to shelter" with "those who need direct placement in program shelter." Defendants

point out that this has never been noted before and that they "will revise the data dictionary accordingly."

We understand that placement in program shelters is contingent on available space. Our concern revolves around how Defendants define "needed direct placement in program shelter." We are unaware of how they make this judgment and anticipate discussion with DHS regarding their criteria. We note that the actual number of individuals seen as appropriate for direct placement in program shelters and the actual number of individuals actually placed there has increased consistently over the past four reporting periods.

We noted in our last report that Defendants correctly articulate that their "obligation… is to use its 'best efforts' to place sentenced Class Members directly" into program shelters and that they therefore cannot be held accountable to achieve a specific level of performance. Further, they note that "there is no measure of performance associated with this obligation." They believe that our reporting of data in this way is "misleading, as it incorrectly suggests that Defendants are not complying with their obligations." We do not intend to use these data to hold Defendants accountable to any particular rate of direct placement in program shelters. However, we believe that expressing these data as "the rate of SPMI Class Members who appeared at a DHS shelter who were placed directly in program shelters" is informative as to Defendants efforts in this regard. Clearly, this obligation falls both on the discharge planning staff (who must provide information in a timely and useful way to DHS) as well as on DHS (which must make use of that information and make best efforts to find program beds when needed).

In our last report, we concluded that in order to best understand these data and evaluate Defendants' compliance with their obligation to put forth best efforts at direct placement, we would need to better understand the process by which Defendants determine eligibility for placement in a program shelter as well as to understand how DHS uses the information it receives from DoHMH in making these determinations. While the reporting of percentages is not dispositive on the question of best efforts, currently it is the only meaningful information we have on this issue. We have requested that DHS provide us with their procedure for evaluating sentenced Class Members for direct placement, including how they use material provided by DoHMH. If this material does not sufficiently inform us as to how DHS makes these decisions, we will request site visits and interviews with staff during which we will address this issue.

2. SPAN

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

Table 52: SPAN Inreach Data

Month	Jail	# of sessions	# of CMs	# CMs/session
August	AMKC	4	54	13.5
September	AMKC	3	99	33
October	VCBC	3	40	13.3
November	BBKC	5	43	8.6
TOTAL		15	236	15.7

During the eighth reporting period, the data indicated that SPAN conducted three inreach sessions in April (30 attended), four in May (51 attended), four in June (47 attended) and none in July. Defendants described those numbers as truncated because of problems with gaining clearance to Rikers for SPAN personnel. If we exclude July when no inreach occurred we see that the number of sessions has

remained relatively constant over the two periods. Further, we note that since the closing of the Staten Island office in October, not a single inreach session was conducted on Rikers Island.

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

Table 53: SPAN Utilization

	Report 6	Report 7	Report 8	Report 9
# of SPAN visitors	191	132	128	227
Homeless	32.6%	37.5%	43.5%	42.8%
SPMI/Likely SPMI	45.9%	53.4%	57.0%	51.6%
% of SPAN CMs who attended inreach session	18.8%	7.2%	4.4%	4.2%
% of released CMs who attended inreach session	6.2%	3.1%	2.9%	5.5%
After 5pm	3.3%	2.4%	3.0%	6.0%
Bronx		21.4%	23.0%	24.9%
Brooklyn		32.9%	28.3%	34.1%
Manhattan		33.6%	30.9%	24.9%
Queens		8.6%	10.9%	13.7%
Staten Island[44]		3.6%	7.0%	2.4%

The most important finding here is that the absolute number of SPAN visitors increased fairly dramatically during this reporting period, nearly doubling the utilization seen in the eighth reporting period. This is the case despite the inadequate numbers of inreach sessions conducted during the period, and the incomplete reallocation as per the plan. We strongly encourage Defendants to complete this redeployment and would expect that utilization would continue to increase.

[44] The Staten Island SPAN Office was closed midway through the Ninth Reporting Period.

3. Refusal Rates

During this period we did not collect data regarding specific refusers. Defendants reported the following rates of refusal of all discharge planning services:

Table 54: Refusal Rates

Aug05	Sep05	Oct05	Nov05
32.8%	24.4%	29.4%	27.0%
135/412	98/402	125/427	133/492

In aggregate there was a global refusal rate of 28.3% (491/1739) for this period, a slightly decreased rate from the 30.2% (565/1868) for the previous reporting period.

4. 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 from court. During the last reporting period, DOC consistently reported compliance rates at or exceeding 95%. For this reporting period, Defendants reported as follows:

Table 55: Time of Release

	Aug05	Sep05	Oct05	Nov05	Overall
EMTC	93.7%	97.1%	98.2%	96.4%	96.2%
	133/142	133/137	110/112	132/137	508/528
RMSC	100.0%	100.0%	98.2%	97.8%	98.9%
	62/62	73/73	55/56	90/92	280/283
Total	95.6%	98.1%	98.2%	96.9%	**97.2%**
	195/204	206/210	165/168	222/229	**788/811**

Although these compliance rates are quite high, this is a foundational issue which animated this case and we have expected 100% compliance with this measure. Overall, RMSC was non-compliant in only three instances throughout the reporting period. Defendants did note that in November

"three (3) of the five (5) EMTC deficiencies involved cases where inmates were released directly to a community program (other than CEO) which provided escort and transportation. In two (2) cases, inmates were escorted and transported by the Fortune Society. In one (1) case, the inmate was escorted and transported by Samaritan Village. If these three (3) cases are counted as non - applicable (as are the CEO cases), EMTC's compliance for November 2005 would be 98.5% rather than 96.4%."[45]

We conducted a review of the time of release for non-compliant cases with information provided by DOC and found as follows:

Table 56: Time of Release: Noncompliant Cases

Hour starting	1600	1700	1800	1900	2000	2100	2200	2300
# of cases released during hour	0	1	1	0	5	2	4	0
% of noncompliant cases released during hour	0%	5%	5%	0%	22%	9%	17%	0%
Hour starting	2400	0100	0200	0300	0400	0500	0600	0700
# of cases released during hour	0	0	0	2	3	0	1[46]	4[47]
% of noncompliant cases released during hour	0%	0%	0%	9%	13%	0	5%	17%

This indicates that close to half (48%) of the non-compliant cases occurred between 8 and 10 pm. Five cases, or 22% occurred between 3 am and 5 am. These cases presumably did not have alternate means of transportation and thus are cause for concern.

In conclusion, the overall levels of compliance are high. We encourage DOC to engage in further study and remedial action to eliminate release of Class Members outside of the prescribed timeframes, a phenomenon that appears largely to be limited to EMTC and to two specific timeframes.

[45] Because the underlying purpose of the prohibition on release during darkness is not offended by direct release to a program which provides transportation, we urge the Parties to discuss ways to accommodate such instances, perhaps along the lines of the written waiver from the obligations of paragraph 32, such as that accomplished to permit Class Members to participate in the CEO program.

[46] Note that this non compliant case was actually released to a program other than CEO providing transportation according to DOC.

[47] Note that according to DOC two of these non-compliant cases were released to a program other than CEO which provided transportation.

5. Pilot Project

We have previously been unable to fully understand or utilize for analysis the data provided to us by Defendants. As a result, we have been unwilling to draw definitive conclusions about whether this pilot should be made permanent per ¶34. To remedy this situation we provided to Defendants spreadsheets outlining a form of report we required of DoHMH. They produced these reports for the months of October and November, 2005.

Defendants reported the following:

Table 57: Pilot Project Calls

		Oct05				Nov05				
	October	AMKC		RMSC		AMKC		RMSC		
		C71	C95	MO	GP	C71	C95	MO	GP	Total
	total Ms	56	139	17	193	65	126	17	201	814
Exclusions	No contact info	12	72	0	100	31	65	4	24	308
	Refused consent	30	27	14	85	23	23	13	167	382
	Known release date in IIS	0	11	0	0	0	15	0	0	26
	Total pool	14	29	3	8	11	23	0	10	98

There were in total 814 Class Members potentially within the group relevant to the pilot project. The Stipulation at ¶34 indicates that defendants shall use all reasonable efforts to ascertain the release date of class members housed at AMKC or RMSC. Of these 814 class members, 308 (38%) were excluded because there was no known contact information. An additional 382 (47%) were reported by DoHMH to have refused consent to contact their attorneys. Twenty six (3%) had known release dates in the IIS, thus making it unnecessary to contact their attorneys. Thus, of the original 814, 716 (88%) were excluded for one of these reasons.

We note that the female Class Members were far more likely to refuse consent than were the male Class Members. Overall, about 27% of the eligible men in AMKC refused consent for staff to contact their attorneys, while 65% of the women refused consent. As with many other issues, we recognize that Defendants are not obligated to obtain consent, but at the same time suggest that a finding of such disparate refusal rates ought to prompt examination regarding the root cause for such a difference.

This process left a pool of 98 consenting Class Members for whom DoHMH had contact information but no known release date. Of these, 13 (13%) resulted in successful contact with an attorney or his/her staff. DoHMH reported that the attorneys were able to provide release date information for one Class Member (1% of all calls) and information that one other class member (1% of all calls) "might be getting state time." All attempted contacts of attorneys were made by placing a telephone call, generally one time but in six instances twice and in three instances three times.

It is evident based on this data that these attempts to obtain information regarding release dates from defense attorneys are generally fruitless. We will evaluate the data provided by Defendants for December and January. If our analysis reveals that these results are similar to results from October and November, we will no longer require Defendants to conduct these calls and will allow the Pilot Project as outlined in ¶¶34-35 to be terminated in order to free up the resources for other purposes.

6. Homelessness

We have consistently commented on the lower than expected rates of homelessness among the Class reported by Defendants. See for example pages 93-94 of our Eighth Report. DoHMH indicated to us that they were reviewing their techniques of assessing homeless to attempt to ensure that they accurately assess this crucial factor. In response to our request, DoHMH provided the following update concerning their efforts in this area:

> "In order to better address the issue of determining homeless status, we have incorporated the following questions into the DCP form. It is designed to provide a more comprehensive assessment of the Class Member's homeless status. We intend to introduce this to staff on Thursday, January 26, 2006 and begin implementation Monday, January 30, 2006. A formal policy and procedure will be available by that time."

The homelessness checklist they have developed is as follows:

- ☐ Living on the street or some other space not meant for human habitation (car, etc)
- ☐ Living with others without a lease (family or friends)
- ☐ Living in SRO
- ☐ Living in a shelter(emergency, transitional or drop-in center) continuously for 4 months or used shelter 14 days non continuously within the last 60 days
- ☐ Living in an institutional/correctional facility without a permanent address
- ☐ Was homeless in the past but is now housed and in danger or being evicted
- ☐ Now housed but in danger of being evicted
- ☐ Homeless for a year or more
- ☐ Homeless more than once within the past several years"

During this reporting period, Defendants provided the following information on this topic:

Table 58: Homelessness Status of Class Members

	Aug05	Sep05	Oct05	Nov05
homeless on incarceration	4.8%	5.5%	5.5%	6.9%
homeless on release	4.4%	5.5%	6.5%	5.2%

These reported rates are reasonably consistent with Defendants' previous reports but as we have noted previously are considerably below what one would expect. We will monitor the effect that these new protocols have on this area.

IV. ***Conclusion***

In closing, we would like to review the main findings for the convenience of the reader.

First, Defendants have undoubtedly demonstrated continued improvement in a number of specific discharge planning areas. These were summarized in the introduction and described in detail in the body of this report. These improvements resulted from substantial efforts on the part of the Defendants, and in particular DoHMH, in working to achieve the goals of the Stipulation.

Second, all improvements noted have come despite substantial systemic limitations which include:

- a high rate of vacancies among the Master's-level discharge planning staff
- poor recordkeeping system
- lack of access to prior records
- policies and procedures that have not been updated to drive the current model

Third, we have ongoing concerns regarding the nature of the data Defendants provide to us and the relationship of various data elements to one another. We have described a study which we will soon undertake to explore the data contained in Citrix as it reflects the data that is in clinical records. Further, we have repeatedly sought to determine how data from different agencies interrelates: we have asked for a site visit to one of these agencies

to try to determine what the nature of this relationship is and how the data can be reconciled.

Fourth, it is commendable that Defendants have achieved high rates of compliance on many individual measures. They must now turn more vigorous attention to creating a system which satisfies the requirements embodied in paragraphs 5 and 44 of the Stipulation, which, taken together make clear that Defendants are to create individualized and clinically appropriate discharge plans. We have indicated over time that we believe that the focus must be on the big picture, not exclusively on the individual tasks taken in isolation.

Fifth, we are refining our approach to the determination of "appropriateness" as it pertains to certain judgments made by clinical and discharge planning staff. This is an area in which, so far, we have elected not to reduce our results to a numerical description of compliance, as required by ¶141. We have made the decision, based on our reviews to date, that the information contained in the records does not support staff in completing these tasks in an appropriate manner, and they similarly do not support our ability to make "yes/no" decisions regarding their work. We have invited the feedback of the Parties regarding this approach and anticipate further development over the coming months.

This concludes our Ninth Report. Our next report comes due on June 6, 2006. Per our set timelines, data and other information from Defendants will be due to us six weeks prior to that date, on April 25, 2005. Our draft will be released on May 16, 2005, and we will require any comments back by the end of the business day on May 26, 2006.

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

Respectfully Submitted,

Digitally signed by Erik Roskes
DN: CN = Erik Roskes, C = US
Date: 2006.02.03 11:57:49 -05'00'

Henry Dlugacz
Compliance Monitor

Erik Roskes
Compliance Monitor