

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
STATE OF NEW YORK,	)	Civ. Action No. 13-CIV-4165 (NGG)
	)	
	)	
Defendant.	)	
	)	

RAYMOND O'TOOLE, ILONA SPIEGEL, and	)	
STEVEN FARRELL, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
ANDREW M. CUOMO, in his official	)	Civ. Action No. 13-CIV-4166 (NGG)
capacity as Governor of the State of New	)	
York, NIRAV R. SHAH, in his official	)	
capacity as Commissioner of the New York	)	
State Department of Health, KRISTIN M.	)	
WOODLOCK, in her official capacity as	)	
Acting Commissioner of the New York	)	
State Office of Mental Health, THE NEW	)	
YORK STATE DEPARTMENT OF	)	
HEALTH, and THE NEW YORK STATE	)	
OFFICE OF MENTAL HEALTH,	)	
	)	
Defendants.	)	
	)	

**SEVENTH ANNUAL REPORT SUBMITTED BY  
CLARENCE J. SUNDRAM  
INDEPENDENT REVIEWER\***

\* The members of the Independent Review team, Mindy Becker, Thomas Harmon, Stephen Hirschhorn and Kathleen O'Hara, contributed substantially to the research and preparation of this report.

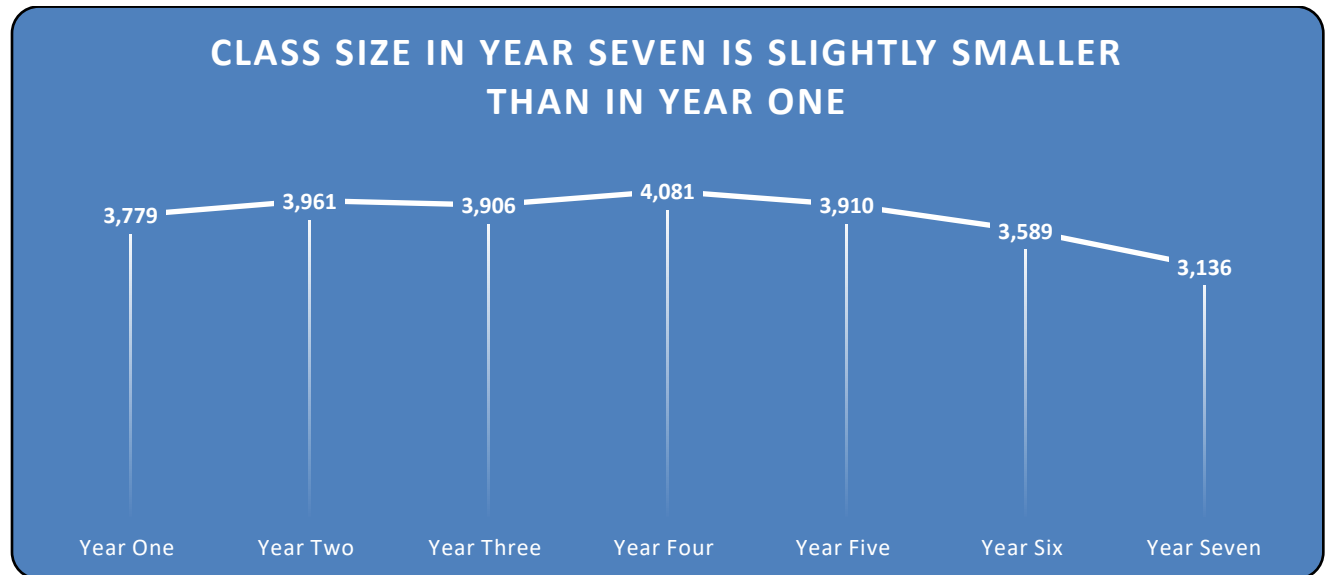
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## Executive Summary

### Summary of progress in implementing the court orders, 2014-2021

This summary provides a snapshot of overall progress in implementing the court orders in this case both for the current report year (March 14, 2020 -March 12, 2021) and in the context of longer term trends.



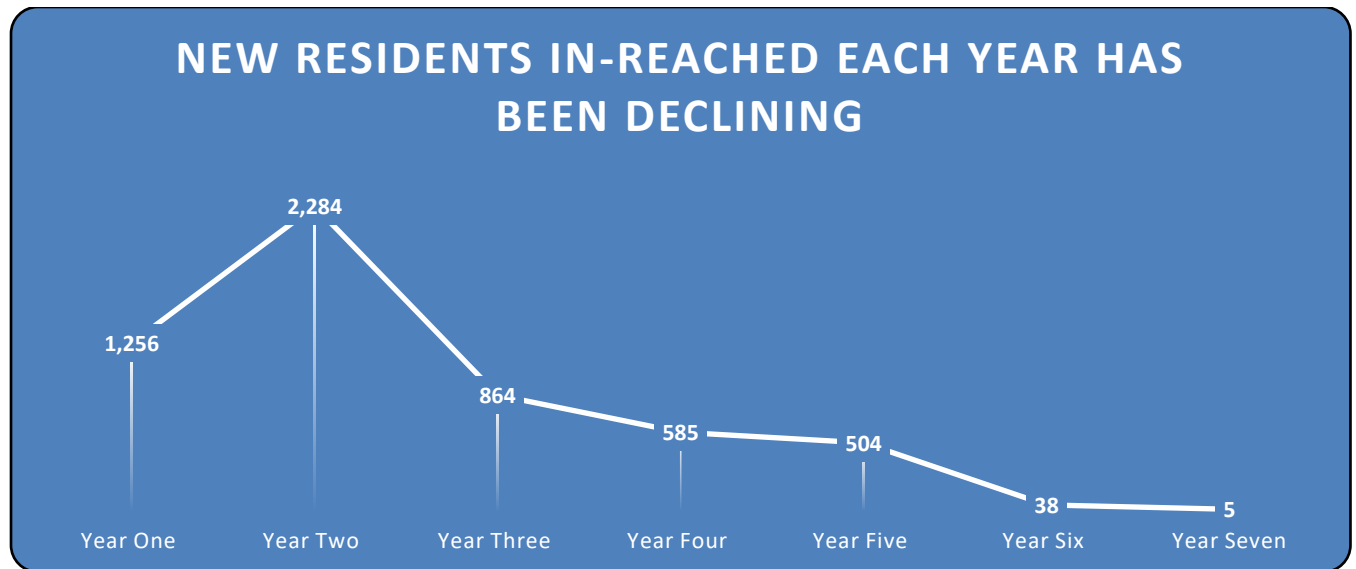
**Figure 1. Class size by report year**

The number of active class members increased over the first four years of the Settlement as additional persons with serious mental illness were admitted to the Impacted Adult Homes due to the lack of success in preventing such admissions, which was described in a previous Annual Report.<sup>1</sup> With the adoption of the Supplemental Agreement, the class was capped as of September 30, 2018.<sup>2</sup> Since that date no additional persons with serious mental illness who are admitted to the Impacted Adult Homes can be added to the class.<sup>3</sup> Consequently, the number of active class members has declined each year as class members have been transitioned to the community pursuant to the Settlement Agreement, have died or have been non-transitionally discharged.

<sup>1</sup> Independent Reviewer's Sixth Annual Report, Doc. # 185, filed April 1, 2020, in 1:13-cv-04165-NG-ST, hereinafter "Sixth Annual Report."

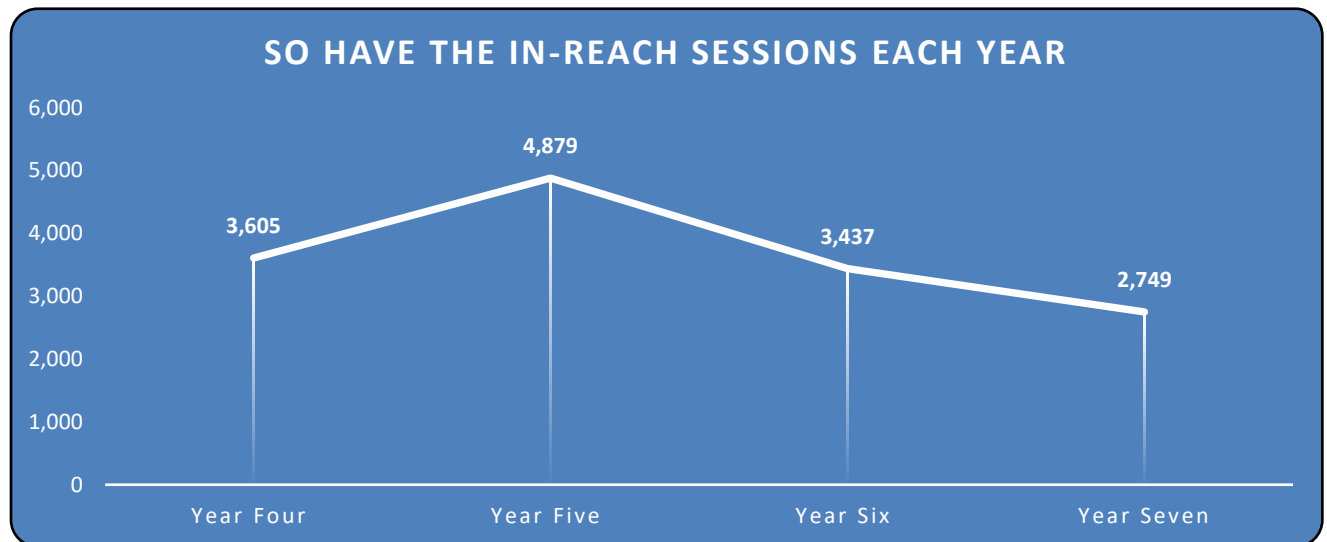
<sup>2</sup> Supplement to the Second Amended Stipulation and Order of Settlement ("Supplemental Agreement"), Doc. 196-1, filed March 12, 2018 in 1:13-cv-04166-NG-ST.

<sup>3</sup> Such admissions are also prohibited by regulations issued by the State Department of Health (DOH) and Office of Mental Health (OMH) which were reinstated in January 2019 after having been the subject of a Temporary Restraining Order. (18 NYCRR Secs. 487.4(d) and 487.13 (c) and (g)). See, *Doe v. Zucker*, Doc. # 81 filed January 4, 2019 in Case 1:17-cv-01005-GTS-CFH (N.D.N.Y.).



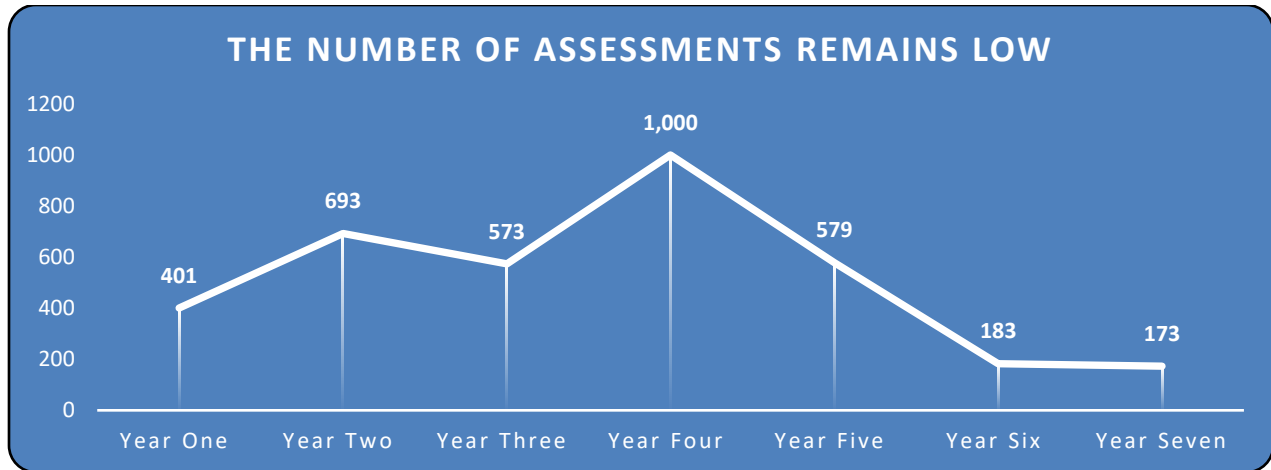
**Figure 2. New residents in-reached each year**

The number of new individuals who receive in-reach each year declined predictably as more people in the class were in-reached in the early years. (Fig. 2) Once the class cap went into effect on September 30, 2018, there are fewer new individuals left to be in-reached to inform them of the Settlement Agreement and their option to move to supported housing or other community alternatives.



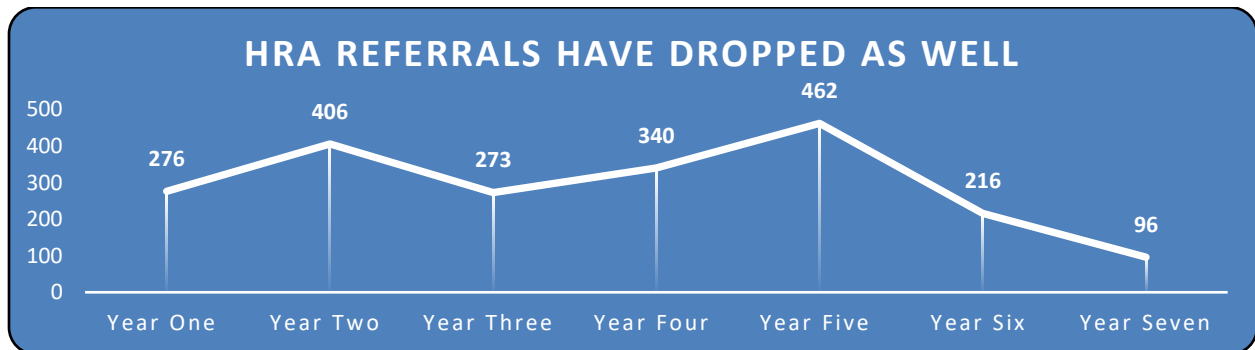
**Figure 3. In-reach sessions each year**

In the current year, the COVID-19 pandemic has limited the ability of Settlement Providers to enter adult homes to conduct in-reach sessions, which has also affected the overall number of sessions for all class members, as displayed in Figure 3. The number of in-reach sessions has also declined sharply in each of the last three years. In part, this reflects the decline in the number of active class members.



**Figure 4. Number of assessments each year**

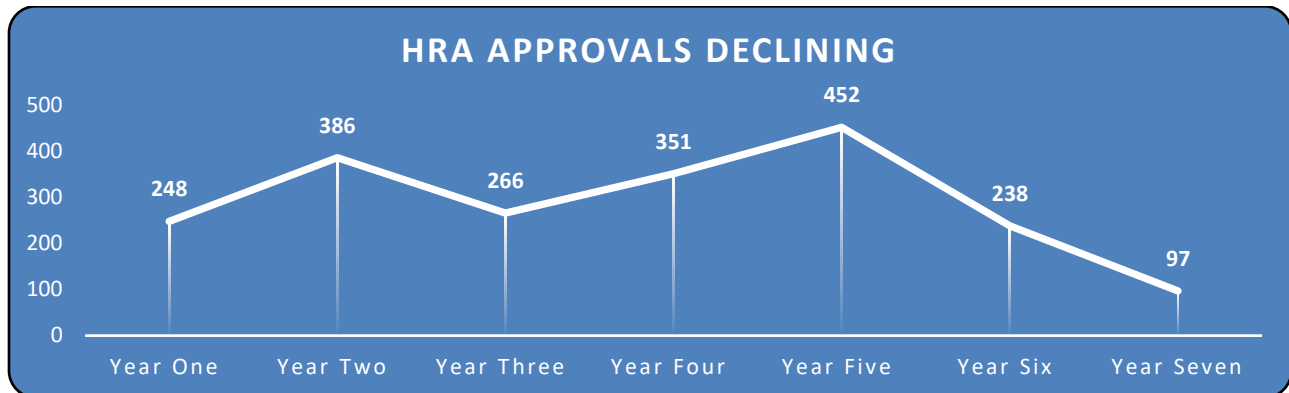
As with in-reach, the pandemic has made it difficult to conduct assessments which usually require face-to-face meetings. (Fig. 4) The decline in assessments also reflects a longer term trend of declining interest being expressed by class members in the option of moving to supported housing or other community alternatives. Like the referrals to the NYC Human Resources Administration (HRA), which reviews and approves moves from adult homes to other settings, the decline in assessments is likely also affected by the extension of the duration of the validity of an HRA approval from six months to five years for approvals issued after March 26, 2018. All persons who received an HRA approval after that date would not be required to have another assessment unless there was a significant change in their conditions, which sharply reduces the number of re-assessments needed.



**Figure 5. Number of referrals to HRA each year**

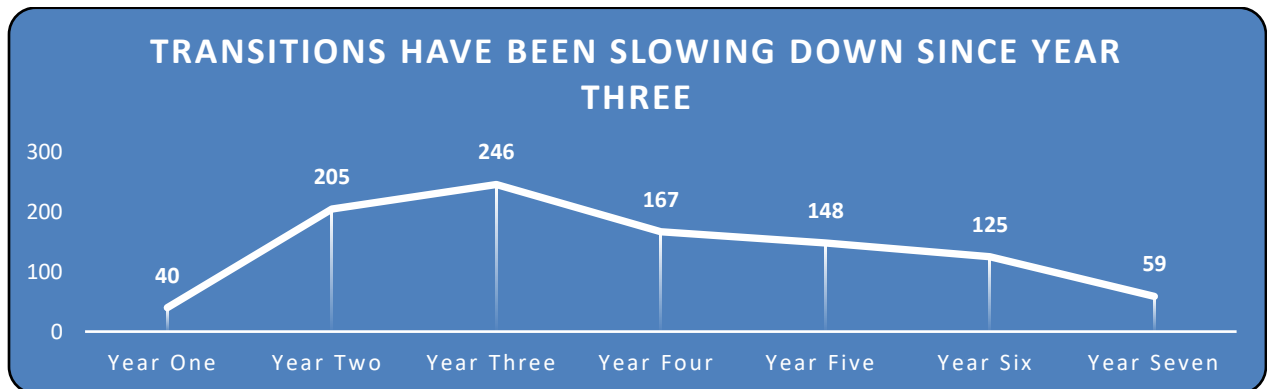
To a considerable extent, the decline in referrals to HRA for approval of recommendations for community housing was expected once the effective duration of an HRA approval was extended from six months to five years. Referrals are now required only for class members who have not previously received one, and since 2014, 2,038 class members have had approvals, nearly half of whom have transitioned. Others have died (304), been non-transitionally discharged (204), are in the in-reach/assessment process (231) or are awaiting housing (386). The decline in referrals

is reflected in the lower number of HRA approvals, which run closely in parallel, as shown in Figure 6 below.



**Figure 6. HRA approvals each year**

The culmination of these longer term trends, which was described in an earlier Report of the Independent Reviewer to the court, as well as the exceptional circumstances that affected the work of all Settlement Providers in this report year,<sup>4</sup> is that transitions of class members have been on a steady downward path since Year Three, as displayed in Figure 7 below.



**Figure 7. Transitions each year**

The Supplemental Agreement provided that the court’s jurisdiction to ensure compliance with its orders is to terminate on December 31, 2020 if, as of that date, “the State has transitioned substantially all eligible NYC adult home residents who are appropriate to be transitioned and has substantially complied with its other obligations. . . .” (§ H(2)) It is evident that, for a variety of reasons including the COVID-19 pandemic in the current report year, there is no disagreement that these conditions for the termination of the court’s jurisdiction have not been met and that several of the deadlines contained in the Supplemental Agreement will have to be revisited and revised.

<sup>4</sup> Independent Reviewer’s Report on the Impact of COVID-19 on Class Members, Doc. # 196, filed September 18, 2020, in 1:13-cv-04165-NGG-ST. (“COVID-19 Report”)

## I. Introduction

This seventh Annual Report is being prepared at an extraordinary and unprecedented time when the nation and the world are gripped by a global pandemic caused by the 2019 Novel Coronavirus (COVID-19) that has already claimed over 2.7 million lives worldwide and over 550,000 in the United States. The entire period covered by this Annual Report (March 14, 2020 - March 12, 2021) was affected by the pandemic. By March 2020, it became clear that people in congregate care facilities, like the adult homes covered by the court orders in this case, were at a heightened risk of infection because of the difficulty of maintaining social distance when confined in close quarters and the continual exposure to multiple shifts of staff entering the homes.

On March 13, 2020, the New York State Department of Health (DOH) issued a Health Advisory to all adult care facilities<sup>5</sup> that immediately suspended all visitation to such facilities except when medically necessary. In compliance with the Health Advisory, staff of the Settlement Providers (Housing Contractors, Care Management Agencies [CMA], Managed Long Term Care Programs [MLTCP] and Peer Bridger agencies) and other agencies providing treatment and support services to class members ceased regular visits to the adult homes. Most closed their offices and required their staff to work from remote locations to avoid congregating in close quarters. Much of the work performed by these Settlement Providers to implement the Settlement Agreement<sup>6</sup> and Supplemental Agreement, especially tasks that required face-to-face contact, slowed down significantly, or came to a halt. Adult home residents were also discouraged from going in and out of the facilities to reduce their risk of exposure to the coronavirus and the related risk to other residents and staff. The impact of the actions taken in response to the Health Advisory upon class members was described in the COVID-19 Report cited earlier and filed with the court.

This Report assumes the reader's familiarity with the Settlement Agreement, which has been described in previous annual reports.<sup>7</sup> In summary, the Settlement Agreement offers a class of approximately 4,000 persons with serious mental illness, residing in 22 specified adult homes

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<sup>5</sup> New York State Department of Health, HEALTH ADVISORY: COVID-19 CASES IN NURSING HOMES AND ADULT CARE FACILITIES, March 13, 2020. (DOH Health Advisory)

<sup>6</sup> Stipulation and Order of Settlement, Doc. # 5, filed July 23, 2013 in 1:13-cv-04166-NGG-MDG.

<sup>7</sup> Annual reports have been filed previously as follows: Independent Reviewer's Annual Report, Doc. # 36, filed March 30, 2015, hereinafter "First Annual Report;" Independent Reviewer's Second Annual Report, Doc. # 63, filed April 1, 2016, hereinafter "Second Annual Report;" Independent Reviewer's Third Annual Report, Doc. # 102, filed April 3, 2017, hereinafter "Third Annual Report;" Independent Reviewer's Fourth Annual Report, Doc. # 145, filed April 2, 2018, hereinafter "Fourth Annual Report;" Independent Reviewer's Fifth Annual Report, Doc. # 229, filed April 3, 2019, hereinafter "Fifth Annual Report," and Independent Reviewer's Sixth Annual Report, Doc. # 185, filed April 1, 2020, in 1:13-cv-04165-NG-ST, hereinafter "Sixth Annual Report."

in New York City, the opportunity to move to supported housing with necessary support services or to other appropriate community-based alternatives.

The events leading up to the filing of a Supplemental Agreement in March 2018 and its major provisions were described in the Fifth Annual Report<sup>8</sup> and will be referenced as necessary in subsequent sections of this Report.

## **II. Major Activities of the Independent Reviewer During the Year**

This year, as in the past, the Independent Reviewer and his associates engaged in a variety of activities to monitor the implementation of the Settlement Agreement, as well as the March 2018 Supplemental Agreement, and to provide the State and Plaintiffs with information as early as possible to enable them to act as warranted to achieve successful implementation of the legal obligations. This year, however, site visits to adult homes and apartments to which class members transitioned, as well as face-to-face interviews with them and their support staff, were limited due to the COVID-19 crisis. Major activities which informed the content of this Annual Report included:

- Participation in training sessions and other virtual informational meetings for the staff of Housing Contractors, Health Homes, MLTCPs and Peer Bridger agencies.
- Reviews of weekly reports and other updates provided by the State.
- An analysis of the State's Transition Metrics Report for the period September 2019 through February 2020. (The reports for the next two six-month periods were waived by agreement of the Parties and approval by the court, in light of common circumstances that affected the ability to transition class members during the pandemic that had restricted the ability of Settlement Providers to perform their normal functions.)
- Reviews of class members' experiences, Settlement Provider staff's efforts to continue to engage them during the COVID-19 related lockdown and the State's monitoring of infection control at Impacted Adult Homes.<sup>9</sup>
- Telephone interviews with 71 class members and over 100 Settlement Provider's staff in the conduct of our COVID-19 monitoring activities.
- Investigation of complaints of discouragement and interference with the work of Settlement Providers at the Wavecrest Home for Adults, which is described in more detail in Section VII. B. below.

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<sup>8</sup> Fifth Annual Report; pp.6-7.

<sup>9</sup> See, COVID-19 report, fn. 4.



- Reviews of assessments and care plans for 498 class members through participation in post-assessment, pre- and post-transition calls with the State and provider agencies and participation in Case Review Committee conference calls.
- Routine communication with the Parties and court through progress memos, meetings, telephone and video conferences and court-convened virtual status conferences.
- Participation with the Parties in focused conversations about process improvements to better achieve the aims of the Settlement Agreement as well as the closure of Brooklyn Terrace and the orderly transition of its residents to supported housing, or other community facilities.

### III. Class Size

The original Settlement Agreement defined a fixed class, with the intent to bar new admissions of persons with serious mental illness to the transitional adult homes. The Settlement Agreement references regulations of the New York State DOH and the Office of Mental Health (OMH) which are designed to limit discharges of persons with serious mental illness from psychiatric hospitals into adult homes covered by the agreement and to limit admissions of such persons into these homes. (Settlement Agreement, p. 2) The regulations effectuating this intent had been subject to a prolonged Temporary Restraining Order since February 16, 2017, entered with the consent of the State, during which new admissions to these homes had continued.<sup>10</sup> Partly as a result, the class size has fluctuated over the years due to new admissions, transitions of class members to the community under the Settlement Agreement, non-transitional discharges, and deaths. Significantly, the Supplemental Agreement between the Parties in March 2018 addressed the problem of an open front door to the adult homes by capping the class as of September 30, 2018. Persons with SMI admitted after that date are no longer eligible for the benefits provided by the Settlement Agreement.<sup>11</sup>

In each Annual Report, we attempt to fix the number of “active” class members to provide a context for the rate of progress in implementing the Settlement Agreement. Of note, the Temporary Restraining Order that had been in place since February 16, 2017, was lifted in January 2019 and the regulations barring new admissions of persons with SMI to these adult homes were

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<sup>10</sup> *Doe. v. Zucker*, Index. No. 07079/2016, Supreme Court, County of Albany. As discussed below on p. 10, the TRO was lifted on January 4, 2019, and the regulations are once again in effect.

<sup>11</sup> The Supplemental Agreement provides that the State “will continue to make efforts to transition” individuals admitted after that date “into Supported Housing as desired and appropriate.” See Supplement § G(1). The State has been offering members of the post-class cap group the same assessment and transition opportunities as are offered to class members. Although the State does not report information on the group as part of its quarterly reporting, the Independent Reviewer is aware that a number of post-class cap members have in fact moved to community settings using these processes. The State has stated its intention to continue serving the post-class cap group for the duration of the Court’s jurisdiction over the State’s implementation of the Settlement.

once again in place.<sup>12</sup> On January 25, 2019, the State DOH and OMH sent a notice to the affected adult homes and other providers informing them of the reinstatement of the regulations. (18 NYCRR Secs. 487.4(d) and 487.13 (c) and (g)) As discussed in the Sixth Annual Report, the State has also tightened the admissions process to prevent such admissions in the first place. However, persons with serious mental illness have continued to be admitted to the transitional adult homes even after the Temporary Restraining Order had been lifted and the State regulations went back into effect. However, the State's monthly reports to the court indicate that the number of admissions has been reduced significantly due to the closer pre-admission scrutiny of proposed admissions and the requirement of obtaining a State waiver for admission of persons with a SMI (which usually occurs when a class member returns to an adult home from another residential setting).

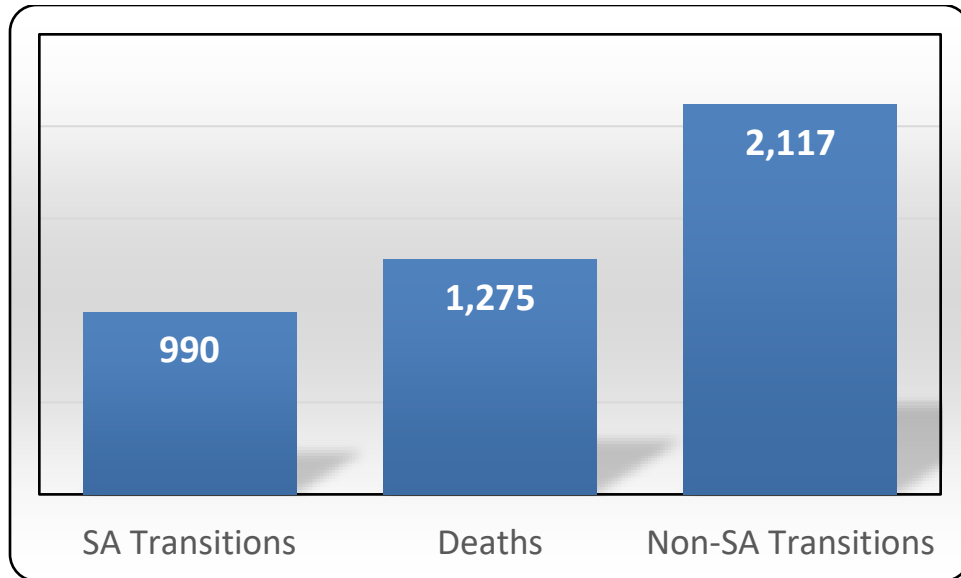
The class list which was reported to the Parties and the court on June 10, 2014 contained 3,874 names (Doc. # 30-1). The DOH has periodically updated the class list based on rosters that it receives from the adult homes reflecting admissions, discharges, and deaths.

Grand Total class members	6,853
Non-SA discharge	-2,117
Deceased	-1,275
Not a class member--no SMI	--325
SA transition	-990
SA transition but returned to adult home	+61
Current active class members	2,207

**Table 1. Active Class Members at Year's End**

The most recent class list as of March 12, 2021, requested by the Independent Reviewer, contained a total of 6,853 names. However, since this list contains all persons who have ever been identified as a class member and does not remove names as people die, are discharged, or are subsequently determined not to qualify for class status as they do not have a serious mental illness, it overstates the number of people who are eligible to be transitioned to supported housing or other alternatives pursuant to the Settlement Agreement. Removing these leaves 2,207 "active" class members eligible for assessment and transition as of March 12, 2021, as displayed in Table 1 above. As the data in Table 1 indicate, overall deaths and non-transitional discharges far outpace the rate of Settlement Agreement transitions, as shown in Fig. 8 below.

<sup>12</sup> *Doe v. Zucker*, Doc. # 81 filed January 4, 2019 in Case 1:17-cv-01005-GTS-CFH (N.D.N.Y.).



**Figure 8. Deaths, non-transitional discharges, and Settlement Agreement transitions**

In addition to a class cap, the Supplemental Agreement also creates a “Decision Date” for class members to state their desire to be assessed for transition under the Settlement Agreement. Failing to communicate this desire by the deadline absolves the State of the obligation to assess or transition these class members under the Settlement Agreement or the Supplemental Agreement. The Parties previously agreed to repeated extensions of the Assessment Decision Date from the original September 30, 2019 date (Supplemental Agreement, G.2) as many of the actions required (*e.g.*, including fully staffing assessment teams within Housing Contractors, and recruiting, training, and deploying all the Peer Bridgers needed) had not been completed within the deadlines set in the Supplemental Agreement. As noted earlier, due to the unanticipated conditions experienced in this report year, the Parties will need to revisit and revise most of the deadlines contained in the Supplemental Agreement.

#### **IV. Process Metrics**

The March 2018 Supplemental Agreement addressed the dearth of measurable performance standards in the original Settlement Agreement. It established benchmarks and set forth specific timelines for the performance of various transition-related activities and thresholds for compliance. Among the activities for which metrics were established were in-reach, assessment, enrollment in care management, the conduct of housing interviews and apartment tours and, ultimately, transitions to the community.

As indicated in the following discussion, the State made progress toward achieving a number of the benchmarks within the transition process.<sup>13</sup> In some areas, however, notably assessments, enrollment in care management and offers to tour apartments, progress has been impacted by the pandemic. And one of the most critical benchmarks — transition to the community -- continues to be elusive, as it has over the years, as discussed in greater detail in Section V below.

### 1. In-reach and Referral for Assessment

The Supplemental Agreement required that newly admitted residents to adult homes be in-reached within one month of being added to the Community Transition List (CTL).<sup>14</sup> During in-reach, residents are informed of their options under the Settlement Agreement to choose to move to supported housing or other community housing with necessary support services. It also requires that *all* residents who receive in-reach and agree, or do not refuse, to be assessed will be referred for assessment within five business days. (Supplemental Agreement, ¶ B.2.a, and b) The purpose of the assessment is to confirm that the person has a serious mental illness and is not otherwise disqualified and to identify the housing and service needs and preferences. (Settlement Agreement, ¶ F)

Beginning with Quarter 16, the first Quarter within which the Supplemental Agreement was in effect, quarterly reports provided by the State indicate that it has achieved these benchmarks in the vast majority of cases. As the data shows, there have been virtually no additions to the CTL in the last four Quarters, making the in-reach metric largely inapplicable to the class. See Tables 2 and 3.

Category	Q. 16	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24
Newly admitted residents added to CTL	62	138	94	6	10	2	1	0	0
Deceased or Discharged within one month	5	12	9	2	2	2	0	0	0
Newly admitted residents not deceased or discharged	57	126	85	4	8	0	1	0	0
Percent of newly admitted residents who received in-reach or in-reach attempts with one month	68%	99%	100%	100%	75%	N/A	100%	N/A	N/A

**Table 2. In-reach within one month**

<sup>13</sup> The discussion is based on reviews of quarterly reports filed by the State following the Supplemental Agreement, covering the period of March 2018, Quarter 16, through June 2020, Quarter 24, the last quarter for which the State has filed a report.

<sup>14</sup> The CTL is prepared by the Department of Health (DOH) and identifies adult home residents who appear to have serious mental illness based on information provided by the adult home and Medicaid data claims researched by DOH.

Category	Q. 16	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24
Total referrals for assessment	291	207	154	126	112	78	81	67	4
Percent of referrals made within five business days	73%	76%	99%	98%	93%	83%	98%	94%	100%

**Table 3. Referral for Assessment Following In-Reach**

## 2. Assessments

The Supplemental Agreement required that of the class members referred for assessment, 85% shall be assessed (or the assessment closed out) within 60 days of the referral, and 98% should be assessed (or the assessment closed out) within 120 days.<sup>15</sup> (Supplemental Agreement, ¶ B.2.d)

As indicated in Table 4, since the Supplemental Agreement, the percentage of assessments conducted or closed out within 60 days has ranged from 35% to 79% on a quarterly basis; the range for assessments completed or closed out within 120 days has ranged from 57% to 94%. These data indicate that the State has fallen significantly short of the compliance threshold during the most recent two Quarters (January-June 2020).

Category	Goal	Q. 16	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24
Assessments		N/A <sup>16</sup>	201	215	168	120	112	98	60	85
Percent completed or closed out within 60 days	85%	N/A	72%	79%	67%	69%	62%	45%	35%	48%
Percent completed or closed out within 120 days	98%	N/A	94%	94%	87%	90%	85%	72%	57%	74%

**Table 4. Assessments Completed or Closed Out**

## 3. Enrollment in Care Management

Enrollment in care management and the development of a person-centered plan to assist an individual transition to the community with the needed supports and services (*e.g.*, benefits, linkages to medical and behavioral health care providers, etc.) is a critically important step in the transition process. The Supplemental Agreement required that 85% of members be enrolled in care management, at the ratio of no more than 12 class members to one care manager, within 60 days of being referred for assessment, and 98% enrolled within 90 days of assessment referral. (Supplemental Agreement, ¶ B.2.e)

<sup>15</sup> Assessments can be “closed out” if the individual chooses not to transition, is determined not to be appropriate for transition or refuses to engage in the assessment process. (Supplemental Agreement, paragraph B.4)

<sup>16</sup> The metric did not align with the period covered by Quarter 16.

Category	Q. 16	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24
Residents referred for assessment	44	250	212	175	154	144	101	114	92
Class members not enrolled due to exclusionary criteria	22	147	89	44	37	38	17	21	17
Class members declining enrollment	0	10	2	7	6	12	13	8	6
Class members enrolled in care management	22	93	121	124	111	94	71	85	69
Percent enrolled within 60 days	77%	76%	78%	83%	80%	84%	70%	52%	48%
Percent enrolled within 90 days	82%	92%	90%	91%	94%	91%	93%	69%	54%

**Table 5. Enrollment in Care Management**

In both cases, the creation of a person-centered care plan is to begin within these timeframes. The Supplemental Agreement also allowed for exemptions from this expectation: class members found not to be seriously mentally ill, those declining assessment, or declining enrollment in care management, etc. As reflected in Table 5, during the first seven Quarters following the Supplemental Agreement, 70% to 84% of class members were enrolled in care management within 60 days of assessment referral. Since January 2020, the rate has fallen and during Quarter 24 it was 48%. And while the rate of enrollment within 90 days was usually above 90% during the first seven Quarters, it has declined to 54%. The State attributes the decline, particularly within the last Quarter, to AH+CM capacity challenges and the COVID-19 visitation restrictions.

#### 4. Housing Interviews and Tours

The Supplemental Agreement requires that once a class member is approved to transition to the community by HRA, within two weeks of receipt of the HRA approval, the Housing Contractor must offer the member a meeting, or housing intake interview. It also requires that within 45 days of receipt of the HRA approval, the Housing Contractor must offer the class member the opportunity to be shown at least one apartment that is available and meets the individual's needs, hopes and desires as set forth in the person-centered plan. (Supplemental Agreement, ¶ B.10)

Category	Q. 16	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24
Percent of class members who were offered a housing intake interview within two weeks of HRA approval	60%	70%	75%	91%	87%	85%	84%	84%	94%

**Table 6. Housing Interview Offers**

As indicated in Tables 6, in each Quarter since the Supplement's implementation, 60% to 94% of class members had housing intake interviews within two weeks of HRA approval. However, as shown in Table 7, the percentage of class members offered housing tours within 45 days of HRA approval has been relatively low over the years.

Category	QTR 16	QTR 17	QTR 18	QTR 19	QTR 20	QTR 21	QTR 22
Percent of class members who toured or received an offer to tour housing within 45 days of HRA approval	51%	39%	39%	57%	64%	65%	52%

**Table 7. Housing Tour Offers**

One contributing factor may be that some class members have been approved for Level II<sup>17</sup> housing which their Housing Contractor does not offer. In these instances, the care manager must apply through the Single Point of Access system in New York City to find available Level II beds offered by different agencies, and the Housing Contractor is not in control of when housing interviews/tours can be conducted. Such was the case with 16 individuals (16%) in Quarter 24. But a major factor in the low rates of housing tour offers in the last two Quarters was the COVID-19-related visitation restrictions imposed toward the end of Quarter 23. In fact, according to the State's Quarter 24 Report, the 13 class members (13%) who were offered housing tours between April and June 2020 received them due to a misunderstanding of the restrictions.

## 5. Transitions to the Community

The State has consistently fallen short with the one benchmark that is the key to the success of the initiative: transitioning class members to the community. The Supplemental Agreement requires that Housing Contractors make all reasonable efforts to transition a class member to the community within 60 days of HRA approval. (Supplemental Agreement, ¶ B.11) Yet, as illustrated in Table 8, this goal has been elusive ever since it was set. During the nine Quarters since the Supplemental Agreement's implementation, the rate of compliance with this benchmark has ranged from a high of 3.20% in Quarter 18 to zero in Quarters 17, 23 and 24.

<sup>17</sup> Level II Housing refers to other types of OMH housing, including Community Residence-Single Room Occupancy (CR/SRO); Congregate Treatment; and Apartment Treatment.

Category	Q. 16	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24
Class members who received HRA approval 60 days prior to end of Quarter	79	209	126	127	113	78	50	44	77
Class members who transitioned within 60 days	1	0	4	1	1	1	1	0	0
Percent of class members who transitioned within 60 days	1.3%	0%	3.2%	0.8%	0.9%	1.3%	2.0%	0%	0%

**Table 8. Transitions to the Community**

The State has acknowledged an inherent difficulty in meeting this 60-day timeframe, even in the best of times: if a resident is shown and accepts an apartment within the prescribed 45-day period, he or she still must give a 30-day notice to the adult home, which can push the transition date beyond the 60 days. Nevertheless, the State expects Housing Contractors to endeavor to transition residents within the 60-day period. Transitions are frequently delayed well beyond 60 days for a variety of reasons. Some delays are due to the difficulty of finding an apartment or neighborhood acceptable to the individual, especially if the person has mobility limitations, or to the person's indecision or ambivalence about moving. Other delays are caused by insufficient preparation for the move by Housing Contractor staff or care coordinators who fail to complete pre-transition tasks such as securing IDs, arranging for training in medication administration or evaluations of capacity to self-administer, securing financial entitlements, making accessibility adaptations to apartments, and so on.

Table 9 shows the median number of days from the housing intake interview to transition for the last eight Quarters. This calculation does not include the time from HRA approval to the housing intake interview which is expected to occur within two weeks. Nevertheless, the available data indicates that the actual time to transition is substantially longer than 60 days.

Category	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24
Housing intake interview to transition	115.5	154	143	159	105	286	351	550 (Only one transition)

**Table 9. Median Days from Housing Interview to Transition**

## V. Transition Metric Reviews

To measure the ultimate success of all of the changes incorporated into the Supplemental Agreement, it contains a transition metric that requires reporting by the State of class members transitions every six months, and a review and report by the Independent Reviewer of "each instance" of a claimed exemption of a class member from the transition pool based on enumerated criteria. (Supplemental Agreement, ¶ C)



The transition metric starts with a pool of class members who have an active HRA approval to transition at the beginning of the six-month period. Class members who make an informed choice to remain in the adult home are subtracted from this pool. (§ C.1.a) Further subtracted from the pool are:

1. class members “who are affected by circumstances that so materially impacted the ability to transition during the six-month period that it was impossible as a practical matter” to transition them during this timeframe despite the State’s “diligent efforts” (§ C.1.b), and
2. class members who “demonstrated a regular and persistent course of conduct that could not be ameliorated through engagement . . . and the provision of services,” making it impossible as a practical matter to transition them during this timeframe, despite the State’s diligent efforts (§ C.1.c), and
3. class members who either die or are non-transitionally discharged during the six-month period (§ C.3).

Since the Supplemental Agreement was adopted, there have been four 6-month reports submitted by the State. In each of the first two, the State was required to transition 65% of the class members in the transition pool calculated as described above. For the third six-month period which ended on August 31, 2019, the threshold of compliance increased to 85%. In each of the first 6-month periods completed, the State fell far short of compliance according to the data it reported. In the first two periods, the actual level of performance found by the Independent Reviewer based upon a review of samples of the claimed exceptions was lower than that claimed.<sup>18</sup> For the third, in light of the low level of compliance claimed by the State, the Independent Reviewer determined, and the Parties concurred, that there would be no useful purpose served by a review of “each instance” of a claimed exception as it would be unlikely to effect any change of legal consequence. The Independent Reviewer’s Transition Metric Report for this period was incorporated into the Sixth Annual Report.<sup>19</sup>

For the Fourth Transition Metric period and thereafter, the threshold for compliance increased to 90%. (§ C.2) The State’s calculated rate of compliance for this period once again fell so far below the required level, as shown in the Table below, that the Independent Reviewer

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<sup>18</sup> Review of Defendants’ First Transition Metric Report, Doc. #225, Filed January 28, 2019 in 1:13-cv-04166-NGG-ST; Review of Defendants’ Second Transition Metric Report, Doc.#172, filed September 10, 2019 in 1:13-cv-04165-NGG-ST.

<sup>19</sup> Independent Reviewer’s Sixth Annual Report, Doc. # 185, filed April 1, 2020 in 1:13-cv-04165-NGG-ST, p. 22 et seq.

determined that no useful purpose would be served by reviewing “each instance” of a claimed exception.<sup>20</sup>

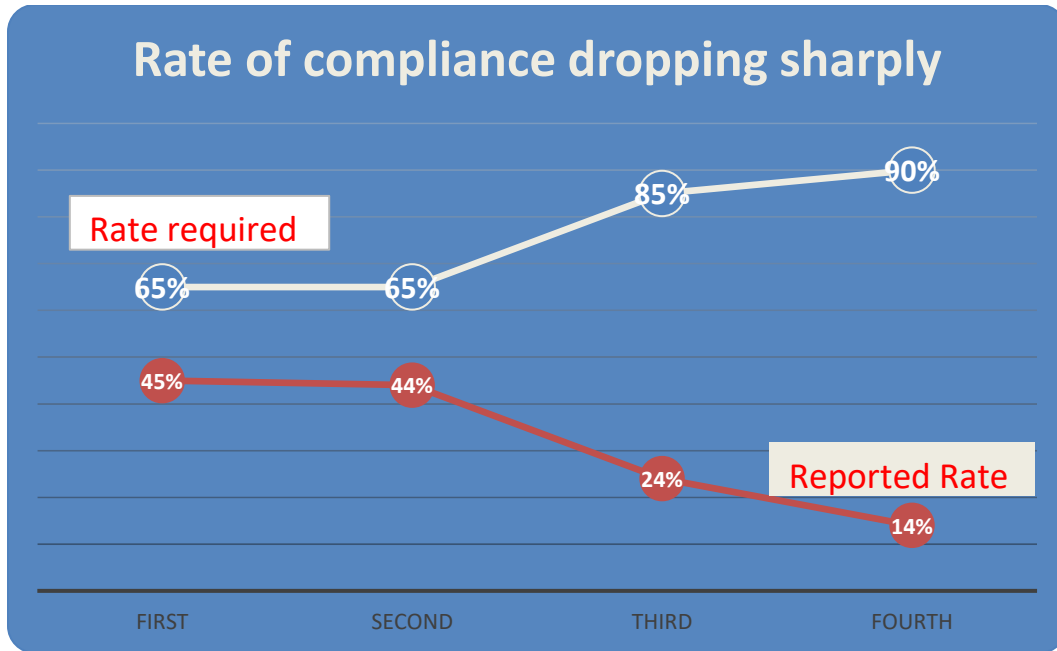
	First TMR 3/1-8/31/18	Second TMR 9/1/18-2/28/19	Third TMR 3/1/19-8/31/19	Fourth TMR 9/1/19-2/29/20
HRA approvals	379	559	691	725
Minus A, B, C exceptions	-155	-258	-257	-280
Balance	224	301	434	445
Compliance Threshold	65%=146	65%=196	85%=369	90%=401
Deaths & discharges	-17	-30	-60	-45
To be transitioned	129	166	309	356
Actually transitioned	58	73	73	51
Percent compliance claimed by State	45%	44%	23.6%	14.32%
Independent Reviewer Finding based on sampling	Disallowed 11/31 exceptions	37.4%	No review performed	No review performed

**Table 10. Summary of Transition Metric Reports**

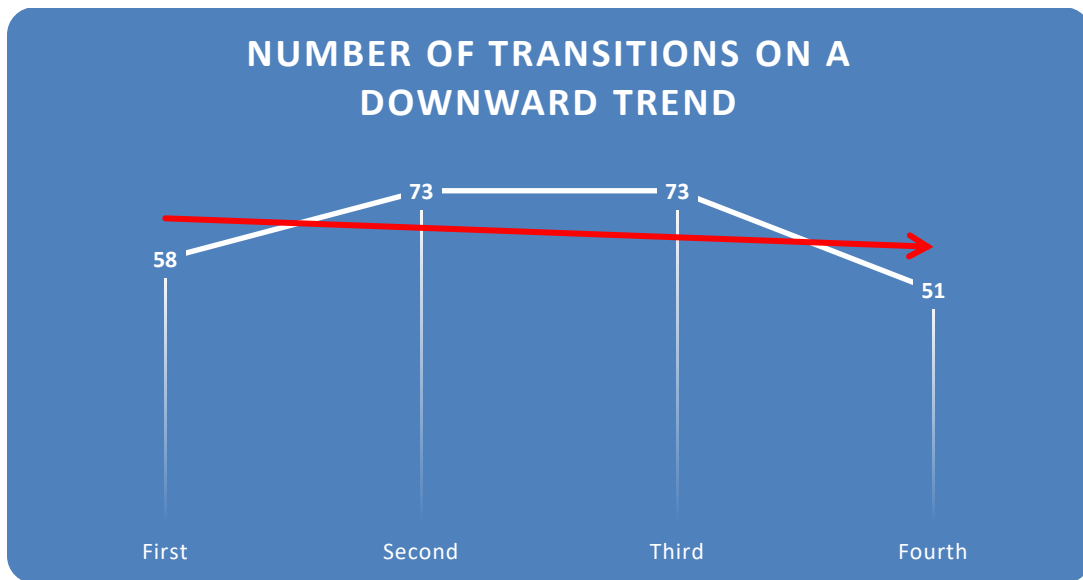
Not only is the rate of compliance declining sharply as the threshold for performance increases (Fig. 9),<sup>21</sup> but the actual number of class members who transitioned to the community is on a downward trend as well (Fig. 10).

<sup>20</sup> Review of Defendants’ Fourth Transition Metric Report, filed August 13, 2020 in 1:13-cv-04165-NGG-ST.

<sup>21</sup> The rate of compliance is as reported by the State. For the First Transition Metric Report, the Independent Reviewer disallowed the claimed exceptions in 11/31 sample cases reviewed. For the Second period, the Independent Reviewer reduced the actual rate of compliance from the 44% claimed by the State to 37.4% after reviewing a 15% sample of claimed exceptions. As noted above, no review of the claimed exceptions was performed for the Third and Fourth periods.



**Figure 9. Rate of compliance in each period**



**Figure 10. Number of class members transitioning in each period**

Significantly, this performance is reflective of a period before the COVID-19 pandemic came into play and much of the transition-related work was adversely affected by the ban on most visitation at adult care facilities imposed by the State DOH via a Health Advisory issued on March 13, 2020 as described in the Introduction to this Report. Through on-going monitoring work in subsequent months, the Independent Reviewer team learned that planned transitions of class members have been delayed, that very few visits to view apartments have occurred and that much of the preparatory work for persons interested in transitioning – such as securing IDs, completing

assessments, applying for benefits – has been made more difficult as government and provider offices have been closed or have sharply reduced operations during the pandemic.

During the September 23, 2020 status conference, the court approved the Parties' agreement to waive the transition metric reporting requirements for the next two periods March 1-August 31, 2020, and September 1, 2020 to February 28, 2021, given the extraordinary circumstances caused by the pandemic.

## **VII. Monitoring**

### **A. Closure of Brooklyn Terrace**

On August 12, 2019, the New York State DOH issued a Commissioner's Emergency Order to Brooklyn Terrace, LLC, limiting its operating certificate due to failure to comply with applicable laws and regulations and citing numerous systemic conditions that constituted imminent danger to the health, safety, and welfare of the facility residents. Some of the citations included were: rooms being below 46 degrees; failure to ensure a clean, comfortable, and well-maintained environment in all areas of the facility; commingling resident funds with operating funds; and failure of the operator to ensure that the approved administrator met the responsibilities and title of the position in the areas of case management, recreation, recordkeeping, personnel, housekeeping, and maintenance. The Order stated that, based on past inspection report citations, the administrator failed in the responsibility to supervise the facility in compliance with laws and regulations. This Order prevented the home from admitting any residents to the facility. On February 14, 2020, a fully executed Stipulation was signed, effective February 19, 2020, seeking revocation of the operating certificate. This was done after the facility sought a settlement and agreed to surrender its operating certificate and close without further enforcement action. The operator had 180 days to surrender the operating certificate.

Brooklyn Terrace submitted a closure plan on March 27, 2020, which was reviewed by the DOH. However, due to COVID-19 restrictions which prevented visitors, including Settlement Providers, from entering the adult home, it was September 2, 2020 before the DOH approved the plan for Brooklyn Terrace to close by December 31, 2020. Implementation of the closure plan was not begun until September 14, 2020 when some visitation was allowed.

The DOH Office of Community Transition, OMH, Settlement Providers, Baltic Street Peer Bridgers, and Plaintiffs collaborated on a plan to ensure that class members would be able to move to supported housing under the Settlement Agreement if they so desired. On September 14 and 15, 2020, representatives of the State DOH met in person with class members to provide them with a notice about the planned closure and their rights under the Settlement Agreement. At that time, the State was able to meet with 100 of the 133 class members at the home. DOH staff went back weekly to try to meet with class members who were not previously available. At these meetings,

a video was presented introducing the various providers that would be involved and the services they could offer, as well as advocates from Mobilization for Justice and CIAD who explained the legal and general rights of class members under the Settlement Agreement. The video also included testimonies of other class members who had moved to supported housing about their experiences. The State arranged for the Housing Contractor staff to meet with class members on site to provide in-reach and arrange and conduct assessments. Pathway Home program was also involved and on site to meet with class members and assign care coordinators to those class members who expressed an interest in moving under the Settlement and did not already have a care coordinator.

During this time, Peer Bridgers who knew the class members the best contacted the class members who had said “no” to transitioning at some point to see if they had changed their mind. If they converted to a “yes, they were assigned a care coordinator through Pathways and referred to the Housing Contractors on site and an assessment was scheduled. Class members who expressed uncertainty about where they wanted to go were also offered an assessment to expedite the process if they decided they wanted to move under the Settlement. For those who said they wanted to move under the Settlement and their assessment recommended supported housing or Level II housing, virtual tours or pictures were shown of available apartments and, if there was an interest in a particular apartment, an in-person tour was given.

The process as described by the State and providers was collaborative and there was frequent, even daily communication between them. St. Josephs and Pathway Home staff were provided office space at Brooklyn Terrace where they could meet with class members and do in-reach and conduct assessments. Staff were usually on site four days a week. The State was receiving weekly updates from the adult home administrator.

As a result of the cumulative efforts of the State and Settlement Providers, in the end according to information provided by the State on January 7, 2021:<sup>22</sup>

- 72 of the 133 (54%) class members said they were interested in moving under the Settlement during their last in-reach;
- Of the 72, 50 (69.4%) were approved for supported housing or Level II, while the remaining 22 were not approved, declined or were not assessed for a variety of reasons as shown in Table 11;
- Of the 50 who were approved for transition, 17 (34%) moved to supported housing (14) or Level II (3) ;
- Of the remaining 33 class members who were approved for supported housing, 26 moved to another adult home, five to a nursing home, one to a hospital and one class member moved out with his belongings without letting anyone know where

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<sup>22</sup> The numbers in this section of the report vary somewhat from numbers contained in State reports and analyses done by the Plaintiffs, largely due to different periods covered in those documents. The differences are small and not material to the overall picture described in this report.

he went, as shown in Table 12. This number includes 15 who changed their minds and decided to move to an adult home (14) or a nursing home (1).

SH/Level II	Not eligible	Declined Assessment	Not Assessed	Total
50 (69%)	13 (18%)	3 (4%)	6 (8%)	72 (100%)

**Table 11 Housing Recommendations for “Yeses”**

SH/Level II	ACF	Nursing Home	Hospital	Other/Unknown	Total
17 (34%)	26 (52%)	5 (10%)	1 (2%)	1 (2%)	50 (100%)

**Table 12 Where “Yeses” Moved**

Despite the efforts of the State DOH, OMH and Settlement Providers, when plans for the closure of Brooklyn Terrace became known, recruiters from other adult homes and nursing homes began approaching residents, including class members, about moving to their facility. The State had informed the administrator of Brooklyn Terrace that he was not supposed to move any class members without the State’s approval but a number of class members ended up moving to another adult home without the State’s knowledge. In fact, there were 12 class members who moved to an adult home out of NYC which could prevent them from being eligible to move under the Settlement in the future, but there had been no State approval. In total, 20 class members moved to other adult care facilities and nursing homes without the knowledge or approval of the State. The State informed the administrator again that he needed to get approval from the State to ensure that these class members were making informed decisions about moving to other than Settlement housing.

The State DOH contacted these class members in their current location and explained that they were entitled to move under the Settlement and asked if they were still interested. Sixteen (16) class members stated they were still interested in moving under the Settlement and the State has agreed to work with them to assist them with this, though a specific plan for doing so has not been developed to date. Any class member who moved to an adult care facility covered under the Settlement will continue to receive regular in-reach.

In total, as shown in Table 13 below, at the time of the January 7, 2021 update from the State, the majority of the 133 total class members ended up moving to other adult homes (55percent) or nursing homes (16%).

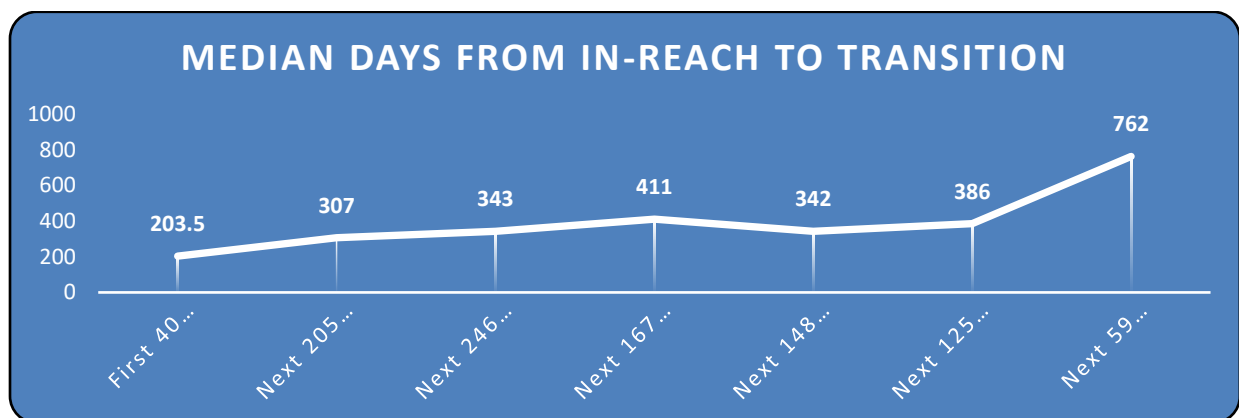
Supported Housing	Level II	Nursing Home	Hospital	ACF in NYC	ACF outside of NYC	With family/own apt.	Unknown	Non-SMI	Total
14 (11%)	3 (2%)	21 (16%)	4 (3%)	61 (46%)	12 (9%)	3 (2%)	3 (2%)	12 (9%)	133 (100%)

**Table 13. Where class members went (as of 1/25/21)**

While 17 class members were successful in moving to supported housing or Level II placements from Brooklyn Terrace, not all of the moves were problem-free. Several experienced difficulties with getting ID's, SNAP, MLTC's and other entitlements. Some of this was attributed to the short time available to move people during the closure process and some due to difficulties reaching the appropriate entities during COVID-19. However, it had an effect on people having access to money or having a needed home attendant start on the date of their move. One person could not see her physician because she did not have a replacement Medicaid card or any other picture ID which affected her being able to get her medications renewed.

As the State looks to absorb the lessons learned from the experience of closing Brooklyn Terrace and transition its residents to the community or other alternatives, and to consider their application to the work ahead with the remaining impacted adult home, a few observations are in order.

The existing system for transitioning adult home residents to supported housing or other community alternatives was not built for speed. The Independent Reviewer has commented on numerous occasions on how time-consuming, complicated, and cumbersome the process is with multiple steps that are followed in a series from in-reach to eventual transition. The record of implementation over the past seven years shows that the median time for an individual to transition from in-reach has been near or over a year for some time and has been increasing.



**Figure 11. Median days from in-reach to transition**

Against this backdrop, the record of performance at Brooklyn Terrace is a sharp contrast. Within the period from mid-September to December 31, 2020, in the midst of a pandemic, the State and the Settlement Providers managed to transition 17 persons to supported housing or Level II placements. These 17 class members comprise half of all class members from 21 adult homes who moved during that period. By way of comparison, during the same period in 2019 before the pandemic, of the 32 class members who moved to the community, none were from Brooklyn Terrace.

Many things were different about the Brooklyn Terrace transitions. Perhaps most importantly, the imminent closure of the facility provided a strong motivation for class members to decide about transitioning under the Settlement or moving to another adult home. Remaining in place was no longer an option. At the same time, the State committed substantial resources to engage class members and explain to them their options under the Settlement Agreement. The frequent presence of Settlement Provider staff on site and their regular communication with class members was also a different experience than many reported earlier in the life of the Settlement Agreement when complaints about infrequent contact and the lack of information about the status of their cases were heard often. The State also compressed the multiple steps that are normally taken in series into quicker performance of multiple tasks at the same time. This enabled interested class members to move quickly to complete assessments, HRA approvals, housing interviews, apartment selection and transition. These efforts produced results more quickly than has been seen in the history of implementation of these court orders, an achievement that should not be overlooked or minimized.

At the same time however, the limitations of the existing system for transitioning class members resulted in class members who wanted to move to supported housing nevertheless not being able to achieve this result in the short period of time between the commencement of implementation of the closure plan and the actual closure of Brooklyn Terrace. Unfortunately, these class members were moved to other congregate care settings including adult homes and nursing homes. In fact, the vast majority of class members residing at Brooklyn Terrace ultimately ended up moving to another institution, either an adult home or a nursing home, including a substantial majority of those who had expressed an interest in supported housing, as shown in Tables 12 & 13 above.

Despite the unusual efforts of the State and the Settlement Providers as described above, and the sense of urgency created by the imminent closure of the facility, four months proved not to be enough time to do all that needed to be done to effect successful community transitions for all of those who qualified and wanted it. And, as reported above, for some of those who moved, essential supports were not in place at the time of the move. A compressed timeframe also limits the opportunity to provide medication administration training for those who need it. It is also possible that the imminent closure of the facility motivated some residents to elect to move to other adult homes even though they may have been interested in supported housing.



When the timeframe for deciding is compressed, as it was at Brooklyn Terrace, the State should consider expanding the range of choices available to class members. The Mapping Project may prove to be a helpful resource in identifying neighborhoods where Housing Contractors have had success in finding apartments and perhaps even identifying vacancies that class members may visit as part of their consideration of options. We are aware that there have been instances in which class members have been transferred to a Housing Contractor which works in a borough that the person is interested in moving to. However, it may be easier and quicker to arrange a tour of an apartment before the class member's choice makes a transfer appropriate.

The experience with the closure of Brooklyn Terrace also highlights the need to make special efforts to protect the rights and choices of class members who may be temporarily in hospitals or nursing homes which are not served by Settlement Providers, and therefore face particular challenges in receiving information and making informed choices.

### B. Discouragement and Interference

The Settlement Agreement (§ E. 4) provides: "The State shall advise NYC Impacted Adult Homes that they may not interfere with the reasonable access of Housing Contractors to the NYC Impacted Adult Homes and may not discourage NYC adult home residents from meeting with Housing Contractors."

The Supplemental Agreement further requires the State to ensure that all Settlement Providers have access to the Impacted Adult Homes and are able to do their work unimpeded. (§ E (1)) It further creates a process for the reporting of such allegations of interference and discouragement, investigation, and remedial action both for individual complaints and systemic problems. (§ E (3) (4)) The DOH has also issued instructions to adult homes to cooperate with Settlement Providers and to provide them with private space to perform their functions on site.<sup>23</sup>

The Independent Reviewer received complaints of discouragement and interference with the work of Peer Bridgers at the Wavecrest Home for Adults during the period from March 2019 through March 2020, when visitation to adult homes was suspended by an Order of the DOH in response to the COVID-19 pandemic. The investigation of these complaints was hampered by the closure of the adult home to outside visitation in March 2020 and the removal of all Settlement Provider staff from the premises.

Nevertheless, the Independent Reviewer's staff investigated the allegations. The Independent Reviewer staff interviewed a total of 16 people in-person and on the phone, including several frontline peers, their supervisors, other service providers who have witnessed some of the interactions which were the subject of complaints, and a family member who was present during one of the conflicts. The staff also interviewed the Wavecrest administrator, the case manager,

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<sup>23</sup> Dear Administrator Letters (DAL) were issued by the DOH on March 12, 2014, June 6, 2014, and July 18, 2016. These requirements are also contained in regulations issued by the DOH at 18 NYCRR 487.13 (<https://regs.health.ny.gov/volume-b-1-title-18/content/section-48713-transitional-adult-homes>)

and the recreational director and reviewed numerous documents and reports regarding the incidents described in this report, as well as reviewed video surveillance footage and photographs provided by Wavecrest.

The investigation was able to establish that shortly before the Peer Bridgers were to begin work at this adult home, the administrator convened a meeting to instruct adult home staff not to cooperate with the Peer Bridgers or provide them with any information about the residents. Shortly thereafter, the Peer Bridgers reported a pattern of noncooperation, interference, and harassment by staff of the adult home. This included restricting their use of restrooms; filing complaints about them with their supervisors and the DOH which resulted in their suspension pending investigation; failing to provide them with privacy in their workspace; and yelling and shouting at the Peer Bridgers in the presence of others. Some of the conflicts arose as the Peer Bridgers lacked adequate private space to perform their functions and store their belongings. After the facility was closed to visitation, the lack of in-room phones made it even more difficult for Settlement Providers to contact class members.

These on-going behaviors created a difficult work environment for the Peer Bridgers and resulted in them making at least four requests to transfer out of this home. The complaints against the Peer Bridgers and their suspensions also left the class members in this adult home without their services which were intended to assist them in taking advantage of the options available under the Settlement Agreement.

The Independent Reviewer provided the Parties with a report of the investigation, and subsequently filed a report under seal with the United States District Court. At a status conference with the court on January 22, 2021, the court set April 19, 2021 as the date for an evidentiary hearing on the allegations of discouragement and interference and to consider a resolution. The court also suggested that the issues might be capable of resolution without formal judicial proceedings.

Subsequently, the Plaintiffs and the State Defendants conducted extensive negotiations with counsel for the Wavecrest Home for Adults which resulted in a Settlement Agreement that was filed with the court on March 17, 2021<sup>24</sup> and is appended to this report. (Appendix B) In summary, in the Settlement Agreement, while denying the allegations of discouragement and interference, Wavecrest agreed to:

1. Ensure that Settlement Implementation Providers can perform their duties ‘in a welcoming environment marked by reciprocal professionalism, respectful communication, collaboration and open communication;’

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<sup>24</sup> Settlement Agreement Between the Parties and Wavecrest Home for Adults, Doc. # 201-1, filed March 17, 2021 in 1:13-cv-04165-NGG-ST.

2. Develop written policies regarding residents' rights under the Settlement, including appropriate conduct in treatment of Peer Bridgers and other Settlement Implementation Providers, in consultation with and subject to the approval of all signatories, and ensure that all Wavecrest staff will undergo training to be provided by the Plaintiffs and the State;
3. Provide dedicated private space, including a private bathroom, for the exclusive use of Settlement Implementation Providers, and make available the recreation room and dining room for no less than 28 hours a week for these providers to meet with class members;
4. Permit access by all Settlement Implementation Provider staff to staff bathrooms when the private bathroom is not available, and maintain the cleanliness of the private bathroom and keep it stocked with supplies;
5. Equip the private room with a small refrigerator and microwave for use by the Settlement Implementation Providers;
6. Permit Community Access, the employer of the Peer Bridgers, to place reasonably sized lockers in the private room, without damaging the room;
7. Install in each room occupied by class members a "Verizon wireless home phone" unit base and a basic landline phone unit and provide talk-only cellular service plan for each unit;
8. Assist class members in using iPads or similar tablets provided by DOH or the Settlement Implementation Providers, including helping them to log into video conference calls and access the Internet, and provide other minor help when Peer Bridgers are unavailable or unable to assist residents; and
9. Agreed to reopen to visitation, within 20 days of execution of the Settlement Agreement, consistent with applicable guidance from the DOH.

On March 22, 2021, Judge Garaufis SO ORDERED the Settlement Agreement and, in light of the Settlement, canceled the hearing that had been set for April 19, 2021. The remedial actions contained in this Settlement Agreement would likely assist Settlement Providers at other Impacted Adult Homes and prevent instances of discouragement and interference that affect their ability to perform their functions unimpeded. In particular, for the two other adult homes that lack in-room telephones, the remedial action identified in this Settlement Agreement could ease the impediment to communication experienced by class members and the Settlement Providers.

## IX. Conclusion

As is evident from this report, even before the extraordinary circumstances that affected all implementation activities during the current report year, the pace of progress in transitioning class members from adult homes to community alternatives had been slowing down significantly. Despite the efforts of Settlement Providers, it seems clear that doing more of the same is unlikely to change the trajectory of this case.

But in the midst of this pandemic and the numerous challenges it presented for the State and the Settlement Providers, there is a ray of hope. The experience of closing Brooklyn Terrace over the space of about three months revealed the effect of substantially changing the implementation process. As described in this report, the State and Settlement Providers abandoned the step-by-step process that had been in place for all other transitions and instead adopted a much more flexible and comprehensive approach that integrated the efforts of multiple providers, collapsed multiple steps to permit them to be accomplished almost simultaneously and prioritized speed and responsiveness to class members' needs. While they were not able to accomplish the goal of transitioning all class members who desired supported housing or other community alternatives within the short time available, they nevertheless were able to move more people within that time than has been done ever before in the history of this case.

There are lessons to be learned from this experience. First, having a sense of urgency about responding to class members' needs is effective. Second, committing substantial resources to a single site can improve communication and coordination among Settlement Providers and improve responsiveness to class members' expressed desires. Third, having a deadline for accomplishing a task focuses the mind and reduces indecision. Fourth, expanding access to housing and resources available from other Housing Contractors may expand the range of choices available to meet class members' needs.

In the COVID-19 Report, the Independent Reviewer wrote:

[P]erhaps more fundamentally, the experience over the past several months should prompt a re-thinking of the entire implementation process of the Settlement Agreement. For years we have been decrying the cumbersome, time-consuming process to move people out of adult homes and into supported housing or other alternatives. While there have been some process changes made, and others being considered, to date none of these has made much of a difference in speeding the transitions of class members out of adult homes. In fact, transitions have slowed down to a trickle.

Meanwhile, maintaining the infrastructure required by the processes created requires the commitment of substantial resources which seem to be benefiting a dwindling number of class members. This includes money provided to the Housing Contractors to rent apartments, hire staff (although they carry many vacancies), to pay assessors who perform a few assessments; and to pay two peer bridger agencies

who also carry many vacancies, etc. In seven years, the current processes and infrastructure have moved less than 1,000 people. Most class members continue to live in adult homes and now with the heightened risk to their health and their lives.

We think it is time to consider experimenting with an alternative process that directly empowers class members to move out of the adult home if they so desire. In lieu of the current multi-step process, class members would be offered the option of a voucher equivalent to the prevailing cost of supported housing in the four boroughs of New York and funds for the help of a care coordinator/peer bridge/navigator (who could be the existing care coordinator, a family member, or a friend) to help them find and secure an apartment of their choosing from any current Housing Contractors, other housing agencies or the housing market. They would continue to have the choice to retain the services of a Health Home and/or MLTCP to provide the Medicaid-funded support services they would need in the community. Perhaps class members would think differently about their choices with this type of control over their own decision-making, rather than the process that has been created. Would people who have said they are disinterested in moving give it a second thought with this type of control? (COVID-19 Report, pp. 22-23)

With the Brooklyn Terrace closure experience, the State has begun movement in this direction, with good results as noted earlier. We think there is room to do more, including resurrecting in some form the incentive program for enhanced services and supports that the State offered earlier in the life of this Settlement.<sup>25</sup>

There also needs to be a much more effective means of holding the staff of Settlement Providers accountable for performing functions that are essential to timely and effective transitions for class members. The State has been reasonably diligent in stating expectations for performing such functions as obtaining IDs, enrolling in SNAP, arranging for home health aides, and obtaining cash entitlements. However, as has been documented in each of our annual reports, performance of these functions does not occur consistently, and planned moves are either delayed or class members are transitioned without essential supports being in place.

Across multiple activities covered in this reporting period (*e.g.*, observing Settlement Provider training sessions, participation in transition calls, COVID-19 reviews, and interviews) a recurring theme was the on-going problem of class members preparing and moving to the community without all pre-transition preparations completed. Most notably, the Independent Reviewer team observed several instances in which class members moved without needed IDs and/or without cash benefits like Supplemental Security Income/Social Security Disability Income (SSI/SSDI) and SNAP in place. In such cases it was equally notable that Settlement Providers as well as State staff seemed to accept these delayed preparations with little acknowledgment of the hardship class members experienced without benefits in place. It was especially concerning to observe some AH+ care managers evidencing little to no follow up on delayed preparations; for

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<sup>25</sup> Described in the Fourth Annual Report, pp.32-35.

example, on some post-transition calls AH+ care managers had not checked on the status of submitted ID or benefit applications, nor had submitted additional documents necessary to the processing of these applications.

While we have not found instances where individuals have come to significant harm because of these performance failures by the staff of Settlement Providers, it is reasonable to conclude that they contribute to a sense of instability in community living which may be shared with friends and acquaintances who are still in the decision-making process. We have not observed or heard of these staff being held accountable for their failure to perform essential tasks.

We recognize that the environment within the past year has been much more challenging than usual, as many government offices have transferred their functions online creating a need for more training to navigate their systems. Some care coordinators have been able to master these new systems and continue to perform their functions effectively, while others use the closure of government offices as an all-purpose explanation for their inability to complete essential tasks. As the State is in the process of implementing a new Transition Planning Tool and an electronic dashboard to track class member transition progress, we recommend concurrent steps to reinforce the importance of pre-transition preparations, particularly obtaining IDs and cash benefits.<sup>26</sup>

In the recommendations which follow, we offer suggestions on how the State and Settlement Providers can chart a more effective course going forward.

## **X. Recommendations**

1. The State's development of an electronic dashboard to help manage the transition process is a positive step in conjunction with the revised Transition Planning Tool. This dashboard could be used to add accountability for the performance of tasks related to securing IDs, applying for benefits and other essential transition-related tasks by adding due dates for the commencement and completion of these tasks, that would be visible to supervisors as well as State staff. (*e.g.*, SSA Change of Address submission, transfer of funds held by the adult home, etc.)

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<sup>26</sup> We addressed this concern in the COVID-19-19 Report filed on September 18, 2020 ( fn. 4, p. 24) as follows:

As is evident from this report, some care coordinators have managed to navigate online systems to enroll their clients in SNAP, secure IDs, and perform other essential transition related tasks. Yet, most others report it is impossible to complete these tasks under the current conditions and that they must await the reopening of offices. We recommend using the skilled care coordinators to train their colleagues to use online resources effectively during a time when their preferred method of completing tasks is not available.

*In response to a draft of this report, the State indicated that it would include deadlines for completion of the enumerated tasks and other similar transition-related tasks.*

2. In the COVID-19 Report we documented accounts from both Settlement Providers and class members about difficulties with phone contact during the pandemic. In three adult homes with no phones in resident rooms, maintaining phone communication with class members is particularly challenging, and reliance upon communal phones in hallways a possible health hazard. We reiterate another recommendation made in the COVID-19 Report (p. 23-24)

Perhaps the most important take away from the interviews with class members and Settlement Providers is the critical need for an effective and reliable system of communication available to class members, especially when in-person meetings are sharply restricted. Since the conditions that affect class members vary tremendously among them based not only on their own ability to navigate technology but also the conditions in the adult homes in which they live and the support available within them, the solution for each class member must be individualized and personalized. The best vehicle to address this need is the Person Centered Plan. Settlement Providers must be directed to work with class members to incorporate into these plans changes necessitated due to the circumstances that exist in the wake of the pandemic. A key element of the changes to these plans is a communication strategy based upon the environment affecting each class member. For some class members who live in adult homes with effective and reliable telephone access to make and receive calls through the adult home phone system, there may be little or no need for changes. Sometimes, what may be required is an effective system for delivering messages to class members. There may be a need for a wider distribution of cell phones and training in appropriate usage of the devices. The State should set priorities for such a distribution, perhaps starting with the three adult homes which do not provide for in-room telephones. We recommend the development of a plan that addresses the needs of class members in each of the adult homes, that identifies each class member's needs, specifies who is responsible for providing a cellphone if one is needed and assisting the class member in using it effectively, and that monitors the timely implementation of the plan.

*In response to a draft of this report, the State indicated that it agrees and is working on such a plan.*



## Appendix A. Table of Acronyms and Abbreviations

Acronym/Abbreviation	Meaning
<b>ACF</b>	Adult Care Facilities
<b>AH</b>	Adult Home
<b>AH+ CM</b>	Adult Home Plus Care Manager
<b>ALP</b>	Assisted Living Program
<b>CAIRS</b>	Child and Adult Integrated Reporting System
<b>CC</b>	Care Coordinator
<b>CIAD</b>	Coalition of Institutionalized Aged and Disabled
<b>CM</b>	Care Manager
<b>CMA</b>	Care Management Agency
<b>CTL</b>	Community Transition List
<b>DAL</b>	Dear Administrator Letter
<b>DOH</b>	New York State Department of Health
<b>HC</b>	Housing Contractor
<b>HH</b>	Health Home
<b>HHA</b>	Home Health Aide
<b>HRA</b>	Human Resources Administration
<b>IAH</b>	Impacted Adult Home
<b>MFJ</b>	Mobilization for Justice
<b>MH</b>	Mental Health
<b>MLTCP</b>	Managed Long Term Care Plan
<b>OCT</b>	Office of Community Transition
<b>OMH</b>	New York State Office of Mental Health
<b>SA</b>	Settlement Agreement
<b>SMI</b>	Serious Mental Illness
<b>SNAP</b>	Supplement Nutrition Assistance Program
<b>SSA</b>	Social Security Administration
<b>SSI</b>	Supplemental Security Income



## Appendix B –Settlement Agreement with Wavecrest HFA

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
STATE OF NEW YORK,	)	Civil Action No. 13-CV-4165
	)	(NGG)
Defendant.	)	
	)	

RAYMOND O'TOOLE, ILONA SPIEGEL, and	)	
STEVEN FARRELL, individually and on behalf	)	
of all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
ANDREW M. CUOMO, in his official	)	Civil Action No. 13-CV-4166
capacity as Governor of the State of New	)	(NGG)
York, NIRAV R. SHAH, in his official	)	
capacity as Commissioner of the New York	)	
State Department of Health, KRISTIN M.	)	
WOODLOCK, in her official capacity as	)	
Acting Commissioner of the New York	)	
State Office of Mental Health, THE NEW	)	
YORK STATE DEPARTMENT OF	)	
HEALTH, and THE NEW YORK STATE	)	
OFFICE OF MENTAL HEALTH,	)	
	)	
Defendants.	)	
	)	

### SETTLEMENT AGREEMENT BETWEEN THE PARTIES AND WAVECREST HOME FOR ADULTS

WHEREAS, Wavecrest Home for Adults (“Wavecrest”) is an Impacted Adult Home under the Second Amended Stipulation and Order of Settlement and Supplement to the Second Amended Stipulation and Order of Settlement (collectively the “Settlement Agreement”) in *United States of America v. State of New York*, Civil Action No. CV-13-4165 and *O’Toole, et al. v. Cuomo, et al.*, Civil Action CV-13-4166 (United States District Court, Eastern District of New York, to which the signatories below, other than Wavecrest, are parties;

WHEREAS, the Settlement Agreement provides that the parties thereto “intend that the measures required pursuant to [the] Agreement will provide residents of Impacted Adult Homes in New York City who have serious mental illness with the opportunity to live in the most integrated setting and will ensure that they are provided with the information necessary to allow them to make informed choices about those opportunities,” (Second Amended Stip. and Order of Settlement at 3; Supplement at Section F(1));

WHEREAS, Peer Bridgers and other Settlement Implementation Providers working under the Settlement Agreement need to be able to access and meet privately with class members for purposes of assisting them in considering or achieving transition to alternative community housing;

WHEREAS, the Supplemental Agreement requires the State to ensure that all Settlement Implementation Providers have access to the Impacted Adult Homes and are able to do their work related to the class members unimpeded (Supplement ¶ E (1));

WHEREAS, concerns have been raised in the context of the Settlement Agreement about issues of discouragement and interference experienced by Peer Bridgers and other Settlement Implementation Providers at Wavecrest;

WHEREAS, Wavecrest denies these allegations of discouragement and interference; and

WHEREAS, the signatories are desirous of resolving these issues without court intervention; and

IT IS HEREBY AGREED by the signatories:

1. Commitment to environment of respect. Wavecrest hereby expresses its commitment to ensuring that Settlement Implementation Providers can perform their duties under the Settlement Agreement in a welcoming environment marked by reciprocal professionalism, respectful communication, collaboration, and open communication.
2. Written policies. Wavecrest agrees to develop written policies within fifteen days of execution of this Agreement regarding resident rights under the Settlement, including appropriate conduct and treatment of Peer Bridgers and other Settlement Implementation Providers. These policies, which shall be consistent with Wavecrest's ability to function efficiently and in conformity with all applicable NYS Department of Health ("DOH") regulations, shall be developed in consultation with and subject to the approval of all signatories.
3. Training of staff. Wavecrest agrees to ensure that within three months of execution of this Agreement, all Wavecrest staff will undergo training regarding resident rights under the Settlement, which shall include appropriate conduct with and treatment of Peer Bridgers and other Settlement Implementation Providers and cultural competence and equity and inclusion training, including race, gender, and disability. Mobilization for Justice, New York Lawyers for the Public Interest, Disability Rights New York, and the State will develop the content of and conduct this training. A recording of the training will be made and kept available at Wavecrest for future use in the event employees are not able to attend or for those hired at a future date.
4. Dedicated private space from which the Peer Bridgers can work. Wavecrest agrees that it will dedicate a room with a private bathroom, beginning no later than April 1, 2021 for exclusive use by the Settlement Implementation Providers, including the Peer Bridgers. Additionally, the recreation room and dining room shall be made available on a regular basis, at scheduled times including during weekend and evening hours, not less than 28 hours per week (specifically at least the following: the dining room between 2 and 4 PM daily and the recreation room between 11 AM and 1 PM daily), for Settlement Implementation Providers to meet with class members. When providers are meeting with class members in any of these spaces, Wavecrest staff shall remain at a distance and not eavesdrop or surveil the meeting. Wavecrest will provide regular cleaning and maintenance for the dedicated room at reasonable intervals. The dedicated room shall not be construed as "certified space" by the DOH for purpose of regulatory compliance matters for the duration of time during which Settlement Implementation Providers are present at Wavecrest.
5. Access for the Peer Bridgers to clean, private bathrooms. Wavecrest agrees that Settlement Providers, including the Peer Bridgers, will have access to staff bathrooms when the private bathroom in the dedicated room described in paragraph 4 above is not available. Wavecrest will maintain the cleanliness of the private bathroom in the dedicated private room and keep it stocked with supplies.

6. Access to facilities to refrigerate and reheat food. Wavecrest agrees to outfit the dedicated room with a new small refrigerator and new microwave for use by the Peer Bridgers and other Settlement Implementation Providers.
7. Storage lockers for Peer Bridgers to store their personal belongings. Community Access, as the employer of the Peer Bridgers, will be permitted to place reasonably sized lockers in the dedicated room described in paragraph 4 above. Such lockers must be reasonably sized, assembled pursuant to manufacturer instructions, and not be permanently installed or otherwise damaging to the room.
8. Telephones in resident rooms. No later than 30 days of execution by all parties to this Agreement, Wavecrest will install in each room in which class members reside a “Verizon wireless home phone” unit base and a basic landline phone unit that can plug into that base via a phone jack or a USB, and provide a talk-only cellular service plan for each such unit.
9. Making available and assisting residents in using electronic tablets to facilitate communications with Peers and other Settlement Providers. Wavecrest will facilitate the use by residents of iPads or similar tablet devices provided by DOH or the Settlement Providers. “Facilitate” shall include but not be limited to helping residents log in to video conference calls and access the Internet and providing minor help that may be required when using the device when Peer Bridgers are unavailable or unable to assist residents. Wavecrest will not be responsible for the purchase of such devices and will not be responsible if they are lost or damaged.
10. Re-opening to visitation consistent with regulatory guidance for the COVID-19 pandemic. Wavecrest will, within 20 days of the execution of this Agreement, reopen to visitors, consistent with applicable guidance from the DOH regarding visitation, including without limitation, restrictions on visitation following a COVID-19 infection of a resident or staff member and any requirements in the guidance for mandatory visitor or staff testing. Such visitation, including with respect to Peer Bridgers and other Settlement Implementation Providers, shall be subject to Wavecrest’s infection control policies and the regulation and directives of the DOH. Wavecrest will not be responsible to pay for testing or to administer tests at the facility for Settlement Providers.
11. Issues. Any issues or conflicts in connection with the foregoing provisions shall first be brought to the attention of Wavecrest, or, if Wavecrest has a concern about Settlement Implementation Provider conduct, to the appropriate Settlement Implementation Provider agency supervisors for resolution. If the matters are not resolved promptly, they shall be referred to and resolution facilitated by the DOH Office of Community Transitions (“OCT”) at 518-485-8781 or sent via email to [commtran@health.ny.gov](mailto:commtran@health.ny.gov) for prompt attention, prior to any party contending that a breach of this Agreement has occurred.
12. Regulatory compliance issues. The DOH agrees that it shall not inspect Wavecrest’s actions, issue regulatory citations or undertake enforcement activity with regard to

Wavecrest absent consideration of whether Wavecrest acted reasonably in light of its obligations under this Agreement. Wavecrest's compliance with the terms of this Agreement shall not result in regulatory citations or enforcement action by the DOH and its provision of a dedicated room as part of this Agreement shall not be construed as an improper use of a resident room by the DOH or result in demands or actions by the DOH to decertify beds.

13. Agreement of resolution. The signatories agree that the foregoing addresses the concerns raised by the Independent Reviewer in his report filed under seal on January 14, 2021 in the context of the Settlement Agreement, specifically issues of discouragement and interference experienced by Peer Bridgers and other Settlement Implementation Providers at Wavecrest. This Agreement shall not be construed as an admission of wrongdoing by Wavecrest, and it shall terminate on the Termination Date under the Settlement Agreement, as established or amended by the Court and/or the Parties.
14. Filing and Jurisdiction. The signatories hereby acknowledge and concur that this document shall be filed with and may be so ordered by the court in *United States of America v. State of New York*, Civil Action No. CV-13-4165 (Garaufis, J) and *O'Toole, et al. v. Cuomo, et al.*, Civil Action CV-13-4166 (Garaufis, J) and, for purposes of this Agreement, that the Court has jurisdiction to enforce this Agreement pursuant to the All Writs Acts, 28 U.S.C. § 1651.

15. This agreement may be signed in counterpart.

Dated: March 15, 2021

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OF AMERICA:

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Lisa Ullman  
Executive Director, Adult Home Settlement Initiative  
New York State Department of Health

SO ORDERED THIS  
DAY OF MARCH, 2021

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Hon. Nicholas G. Garaufis  
United States District Judge