

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.)	
)	
KATHY HOCHUL, in her official)	Civ. Action No. 13-CIV-4166 (NGG)
capacity as Governor of the State of New)	
York, MARY T. BASSETT, in her official)	
capacity as Commissioner of the New York)	
State Department of Health, ANN MARIE)	
SULLIVAN, in her official capacity as)	
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.)	
)	

**EIGHTH 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, 2014-2022

This report assumes the reader's familiarity with the Settlement Agreement, which has been described in previous annual reports.¹ In summary, the Settlement Agreement offers a class of approximately 4,000 persons with serious mental illness ("SMI"), residing in 22 specified adult homes in New York City, the opportunity to move to supported housing with necessary support services or to other appropriate community-based alternatives.

This summary provides a snapshot of overall progress in implementing the court orders in this case both for the current report year (March 13, 2021-March 11, 2022) and in the context of longer term trends. The effects of the COVID-19 pandemic, which were described in some detail in a report filed last year,² continued into all of the current report year and created significant challenges for the staff of settlement providers in maintaining contact with class members and in performing their functions.

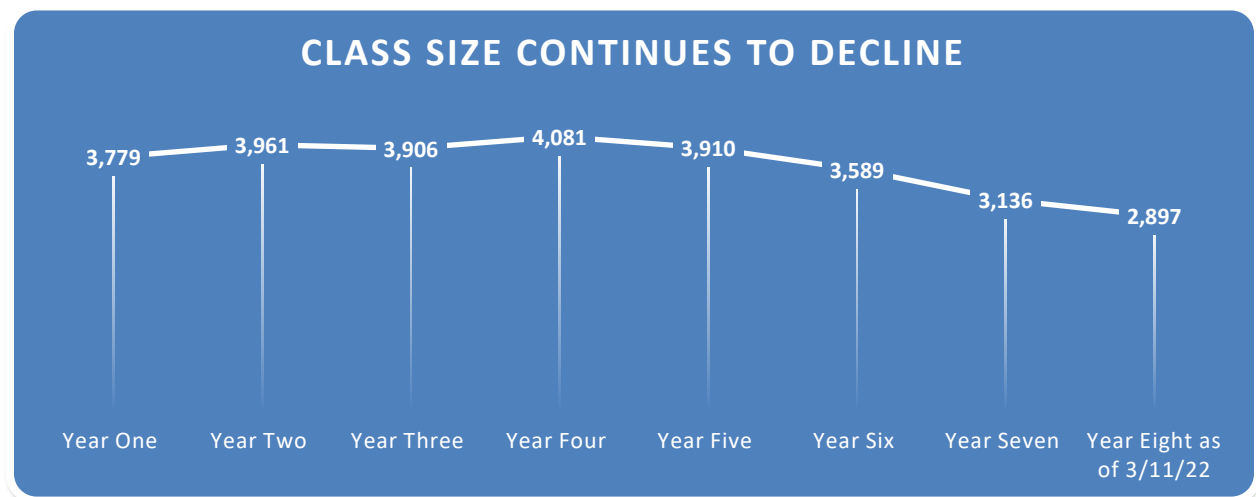


Figure 1. Class size by report year

¹ 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;" Independent Reviewer's Sixth Annual Report, Doc. # 185, filed April 1, 2020, in 1:13-cv-04165-NG-ST, hereinafter "Sixth Annual Report;" and Independent Reviewer's Seventh Annual Report, Doc. # 298, filed April 1, 2021, in 1:13-cv-04166-NG-ST, hereinafter "Seventh Annual Report."

² 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").

The number of class members increased over the first four years of the Settlement as additional persons with SMI 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.³ With the adoption of the Supplemental Agreement,⁴ the class was capped as of September 30, 2018. Since that date no additional persons with SMI who are admitted to the Impacted Adult Homes can be added to the class.⁵ Consequently, as shown in Fig. 1 above, 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 (i.e., discharged outside the Settlement Agreement process). (See, Fig. 8)

To ensure that persons with SMI are not admitted to the Impacted Adult Homes covered by the Settlement Agreement, the State implemented a preadmission screening process. The Independent Reviewer reviewed the effectiveness of this process and found significant deficiencies and gaps that would permit persons with SMI to be admitted to these homes despite the screening process and to remain unidentified by the State. We offered recommendations to strengthen the process.⁶ (Report, Section VIII. A)

A small number of class members who have been discharged to community housing over the years have returned to an adult home (approx. 5%). These class members experienced various challenges during their tenure in the community. The Independent Reviewer conducted a study of these returning class members to understand their reasons for returning and made recommendations to the State to address these issues. (Report, Section VI. B) Despite experiencing problems, based on the sample cases we reviewed, most class members who returned (53%) want to re-transition to the community, and 25% already had.

³ Independent Reviewer's Sixth Annual Report, Doc. # 185, filed April 1, 2020, in 1:13-cv-04165-NG-ST.

⁴ 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.

⁵ 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.).

⁶ A Review of Preadmission Screening for Serious Mental Illness at Transitional Adult Homes, Doc. #310, filed July 9, 2021, in 1:13-cv-04166-NG-ST. ("Preadmission Screening Report")

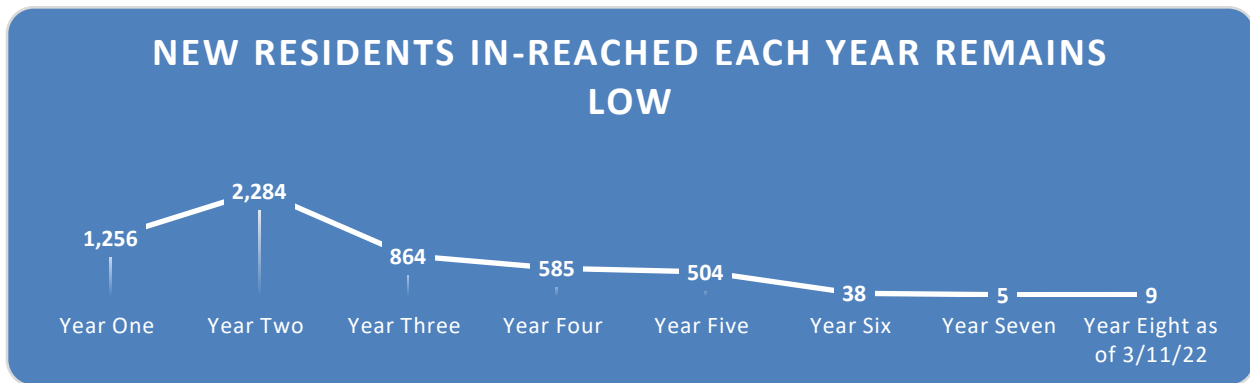


Figure 2. New residents in-reached each year

The number of new individuals who receive in-reach each year declined predictably as most 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.

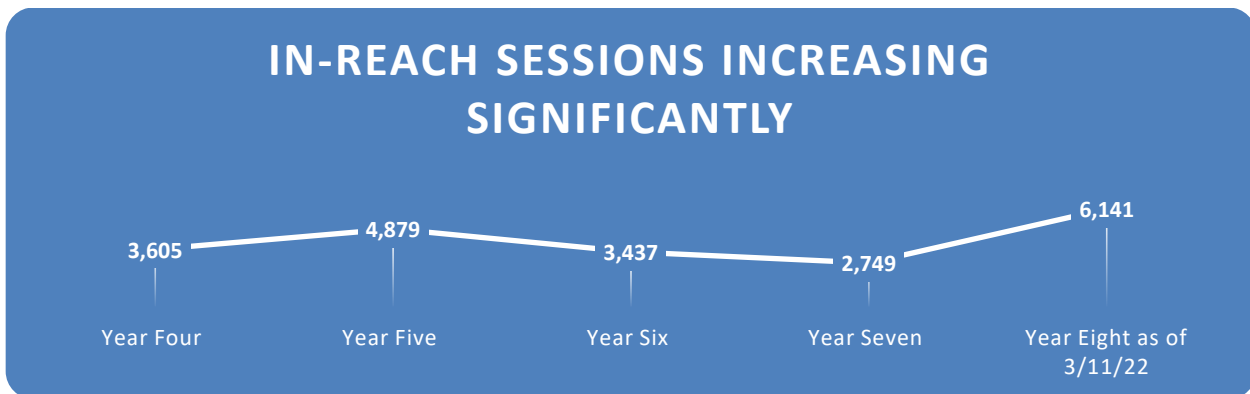


Figure 3. In-reach sessions each year

The continuing effects of the COVID-19 through much of 2021 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 in the last two years. In part, this reflects the decline in the number of active class members. However, as the restrictions on access to adult homes eased during 2021 and settlement provider staff increased their presence on site particularly with the implementation of the “Full Court Press,” which is described later in this report, there were more intensive efforts to reach out to class members in the affected adult homes to attempt to engage them in decision-making about their opportunity to transition to the community. (Report, Section VI. A) The net effect was to more than double the level of engagement with class members despite the formidable obstacles.

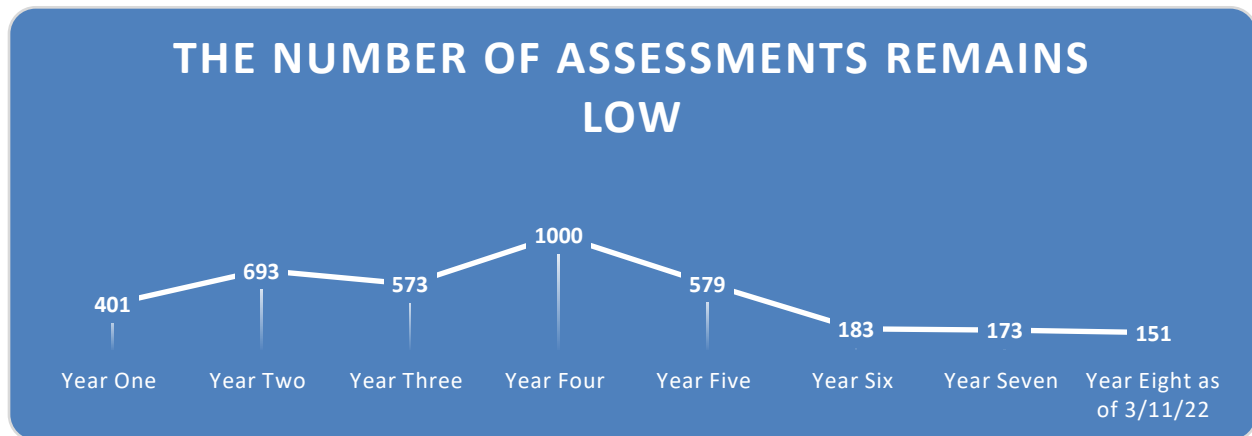


Figure 4. Number of assessments each year

As with in-reach, the pandemic has made it difficult to conduct assessments to determine class members' eligibility for supported housing and their preferences, 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 which was six months initially (State FAQ 12/2/15) to one year, and then 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.

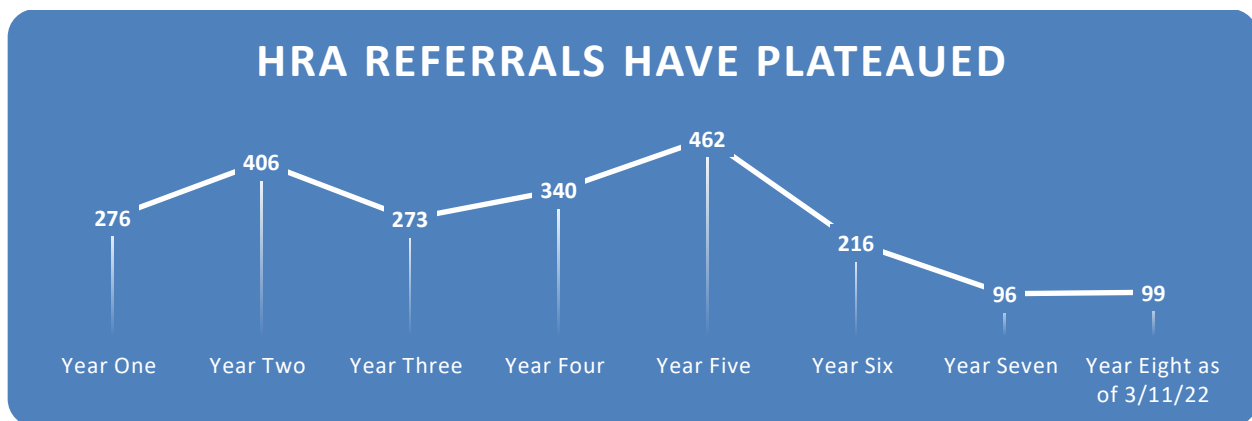


Figure 5. Number of referrals to HRA each year

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, over half of whom have transitioned. 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,⁷ is that transitions of class members have been on a downward path since Year Three, as displayed in Figure 7 below. However, in the current report year, there has been a substantial uptick in the number of transitions, approaching pre-pandemic levels, perhaps reflecting the more intensive efforts being made by the State and settlement providers as part of the Full Court Press process. The close monitoring of the transition process and the efforts of State staff to expedite/troubleshoot pre-transition preparations have likely also been instrumental in the nascent reversal of the transition trajectory.

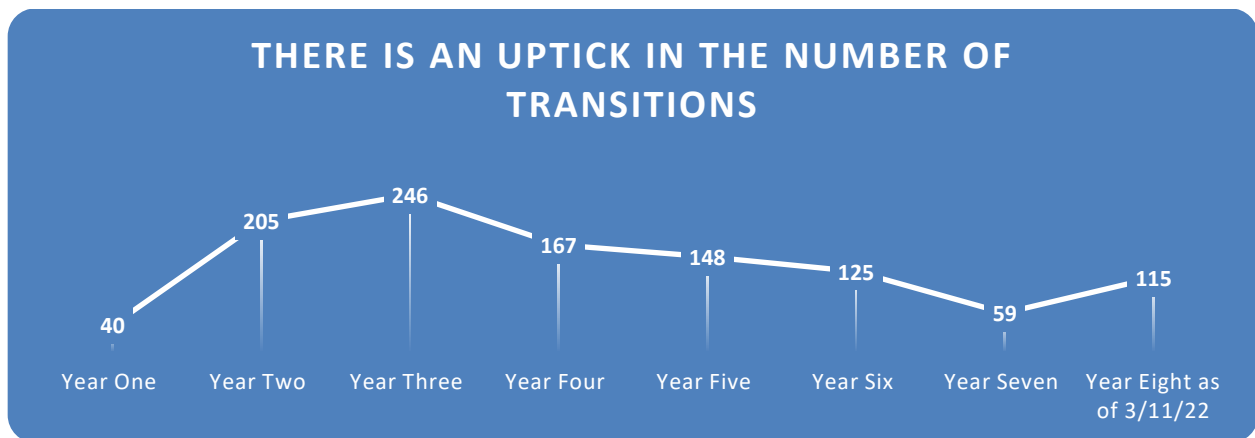


Figure 7. Transitions each year

⁷ 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")

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)) This deadline has been subsequently extended to December 31, 2023.⁸

A draft of this report was provided to the Parties with an opportunity to comment. The comments received have been considered in the preparation of this final report and the Independent Reviewer has made such revisions as appear to have been warranted.

⁸ Stipulation and Order to Extend Second Amended Stipulation of Settlement and Supplement to Second Amended Stipulation, Doc. #213, filed May 12, 2021, in 1:13-cv-04165-NGG-ST.

I. Introduction

This report assumes the reader's familiarity with the Settlement Agreement, which has been described in previous annual reports.⁹ In summary, the Settlement Agreement offers a class of approximately 4,000 persons with SMI, residing in 22 specified adult homes 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 Report¹⁰ and will be referenced as necessary in subsequent sections of this Report.

The entire period covered by this Annual Report (March 13, 2021--March 11, 2022) was affected by the COVID-19 pandemic. For a good part of the report year, there were restrictions on visitation to congregate care facilities like the adult homes covered by the court orders in this case. Staff of settlement providers (Housing Contractors, Care Management Agencies [CMA], Managed Long Term Care Programs [MLTCP] and Peer Bridger agencies) spent long stretches of time working remotely and also had to cope with the difficulty of accessing government offices which were closed or to which access was limited.

Much of the work performed by these settlement providers to implement the Settlement Agreement¹¹ and Supplemental Agreement, especially tasks that required face-to-face contact, slowed down significantly, or came to a halt for long stretches of time. The Independent Reviewer has previously described the impact upon class members in the COVID-19 Report cited earlier and filed with the court.

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. However, this year, as was true last year, 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, continued to be somewhat limited due to the COVID-19 crisis. Major activities which informed the content of this Annual Report included:

⁹ See, fn. 1 above.

¹⁰ Fifth Annual Report; pp.6-7.

¹¹ Stipulation and Order of Settlement, Doc. # 5, filed July 23, 2013, in 1:13-cv-04166-NGG-MDG.

- 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 and quarterly reports and other updates provided by the State.
- Participation in Full Court Press Activities (FCP) at four adult homes. This included 20 visits to the homes, and meetings with 128 class members and staff of settlement provider agencies. In addition, Independent Reviewer (IR) staff regularly attended on-line FCP implementation meetings with DOH and HH/CMA staff, and also with the Office of Mental Health (OMH), Housing Contractors, peer agencies and Pathway Home during which class members transition statuses were discussed. (See Section VI. A for a full discussion of the FCP.)
- Review of the Preadmission Screening process for 21 Individuals with SMI at Transitional Adult Homes. (See Section III for a summary of the report).
- Review of the experiences of 16 class members who returned to the adult homes following their transition to supported housing, which included meetings with 13 class members and follow-up conversations with settlement providers. (See Section VI. B. for a summary of the report on Returning Class Members).
- Review of transitions to supported housing including the availability of one-bedroom apartments, and the issue of housing choice. (Independent Reviewer Memo of 4/20/21 *Transitions to Supported Housing -Availability of One Bedroom Apartments*).
- Participation in bi-weekly calls with OMH and the Peer Bridger Agencies.
- Reviews of assessments and care plans for 197 class members through participation in pre- and post-transition calls with the State and provider agencies and participation in Case Review Committee conference calls. Follow-up with the State and providers on outstanding issues identified during these calls.
- Participation in focused meetings with the Parties on ways to improve the rate of transition of class members to the community. Routine communication with the Parties and court through progress memos, meetings, telephone and video conferences and court-convened virtual status conferences.

III. Class Size

The original Settlement Agreement defined a fixed class, with the intent to bar new admissions of persons with SMI to the Transitional Adult Homes. The Settlement Agreement references regulations of the New York State DOH and the OMH which are designed to limit discharges of persons with SMI 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.¹² 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 partly 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.¹³

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 once again in place.¹⁴

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 SMI 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. The State’s monthly reports to the court indicate that the number of admissions has been reduced due to the closer preadmission scrutiny of proposed admissions and the requirement of obtaining a State waiver for admission of persons with a SMI.

On July 9, 2021, the Independent Reviewer filed the Preadmission Screening Report with the court, reporting on a study of the State’s preadmission screening process for SMI at Transitional Adult Homes. The report raised serious concerns about the ability of the process to screen for SMI. (See recommendations in Section VIII A, below.) These concerns included the accuracy and completeness of the State’s Medicaid claims data which was used as a flag for possible SMI against relevant Health and Recovery Plan (HARP) eligibility criteria. Second, the adult homes used a variety of forms for the mental health evaluations, some of which did not comply with State standards for recording key regulatory elements for such assessments, such as

¹² *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.

¹³ 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. 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.

¹⁴ *Doe v. Zucker*, Doc. # 81 filed January 4, 2019, in Case 1:17-cv-01005-GTS-CFH (N.D.N.Y.).

the credentials and experience of the evaluator. Third, some of the evaluations failed to provide specific diagnoses, list of prescribed medications, frequency of mental health treatment and compliance with medications and treatment.

In response, and as recommended in the report, the State mandated that all Transitional Adult Homes use a standardized mental health evaluation (MHE) form developed in conjunction with the OMH for all new admissions. The State also committed to contracting with an independent agency to conduct the mental health screenings and retained Kepro during January 2022. Training sessions for Transitional Adult Homes on the new screening process were held on January 31, 2022, and February 1, 2022, and a DAL was distributed to all of the homes on March 14, 2022. All homes were directed to start using the new screening process effective April 1, 2022.

Nevertheless, since the issuance of the Independent Reviewer's report, the State's data submitted in response to our request for the Annual Report reflect that since the new evaluation form was instituted in July 2021 through January 2022, 22 of 28 class members seeking re-admission to adult homes were found to not have SMI either on the initial screen or after a MHE. The fact that so many class members are now found not to have SMI, even utilizing the new form, suggests that the screening process the State used initially may have been overbroad by relying on Medicaid data for a range of diagnoses that were not necessarily indicative of SMI.

Further review of the data provided by the State, revealed that between March 2021 and January 2022 there were 1,929 screens conducted for admission to Transitional Adult Homes. Of these, through January 2022, there were 705 admissions, including 57 class members, eight post-class cap members, and 640 other individuals. Of the other individuals, 181 of the 640, or 28%, screened positive for SMI. While recognizing that the State's revised SMI screening process has significantly reduced the number of SMI admissions to the adult homes, this finding raises concerns that many individuals with histories of SMI may have slipped through the screens and have been admitted to the adult homes, without being so designated. Of note, this number is far greater than the 57 former class members who were readmitted to the adult homes during this period that are documented in the State's monthly reports to the court during the report period.

While it is anticipated that the newly designated independent evaluator will address the flaws in the prior system, the Independent Reviewer recommends that they or the State also undertake a review of a sample of the 181 individuals who had screened positive for SMI to determine if they in fact do have SMI, and if further review of all such admissions is warranted. This is a matter of significant importance as one of the key goals of the Settlement Agreement was to close the front door of the Transitional Adult Homes to further admissions of persons with SMI.

The data provided by the State at the Independent Reviewer's request shows the following:

Grand Total class members	6,853
Non-SA transitions	-2,265
Deceased	-1,374
Not a class member—no SMI	-317
SA transition	-1,105
SA transition but returned to adult home	+87
Current active class members	1,879

Table 1. Active Class Members March 11, 2022

The most recent class list as of March 11, 2022, 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 SMI, 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 1,879 "active" class members eligible for assessment and transition as of March 11, 2022, as displayed in Table 1 above. As the data in Table 1 indicates, overall deaths and discharges outside the Settlement Agreement far outpace the rate of Settlement Agreement transitions, as shown in Fig. 8 below.

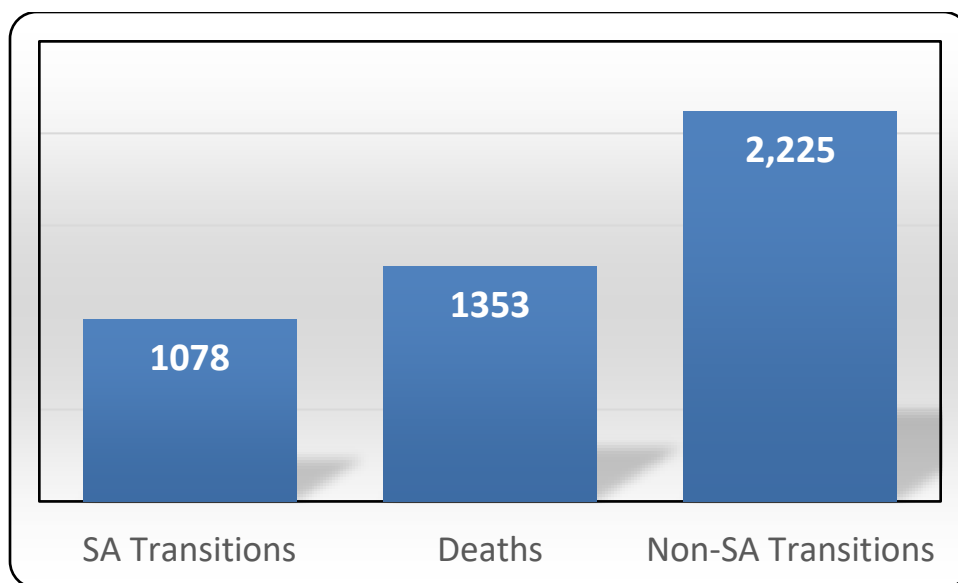


Figure 8. Deaths, non-SA transitions, and Settlement Agreement transitions

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. Due to the unanticipated conditions experienced during the last two years, the Parties still need to revisit and revise the deadlines contained in the Supplemental Agreement, most of which has not happened to date. As noted earlier, the termination date for the Settlement Agreement was extended from December 31, 2020 to December 31, 2023.

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, according to the data provided by the State, the State made progress toward achieving a number of the benchmarks within the transition process. However, offers to tour apartments promptly remain low, and one of the most critical benchmarks—transition to the community—continues to be elusive, as it has over the years for reasons that are discussed more fully below.

A. 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).¹⁵ 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, paragraph B.2.a, and b) The purpose of the assessment is to confirm that the person has a SMI and is not otherwise disqualified and to identify the housing and service needs and preferences. (Settlement Agreement, Paragraph F)

¹⁵ 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 claims data researched by DOH.

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 no additions to the CTL in the last eight Quarters, making the in-reach metric largely inapplicable to the class. The class cap that went into effect on September 30, 2018 also ensures that no persons admitted to an impacted adult home after that date will be added 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	Q. 25	Q. 26	Q. 27	Q. 28	Q. 29	Q. 30
Newly admitted residents added to CTL	62	138	94	6	10	2	1	0	0	0	0	0	0	0	0
Deceased or Discharged within one month	5	12	9	2	2	2	0	0	0	0	0	0	0	0	0
Newly admitted residents not deceased or discharged	57	126	85	4	8	0	1	0	0	0	0	0	0	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	N/A	N/A	N/A	N/A	N/A	N/A

Table 2. In-reach within one month

Category	Q. 16	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24	Q. 25	Q. 26	Q. 27	Q. 28	Q. 29	Q. 30
Total referrals for assessment	291	207	154	126	112	78	81	67	4	33	50	31	32	30	51
Percent of referrals made within five business days	73%	76%	99%	98%	93%	83%	98%	94%	100%	100%	94%	100%	94%	93%	100%

Table 3. Referral for Assessment Following In-Reach

B. Assessments

The Supplemental Agreement required that of the 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.¹⁶ (Supplemental Agreement, paragraph B.2.d)

¹⁶ 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)

As indicated in Table 4, since the Supplemental Agreement, the percentage of assessments conducted or closed out within 60 days has ranged from 9% to 79% on a quarterly basis; the range for assessments completed or closed out within 120 days has ranged from 18% to 100%. These data indicate that the State has fallen significantly short of the compliance threshold for the 60 day benchmark although making progress over the past four Quarters. It has made significant improvement over the most recent five Quarters (October 2020-December 31, 2021) for the 120-day benchmark, although dipping down in the most recent Quarter. It should be noted that the number of assessments during that timeframe were significantly lower than in prior years. Delays were cited as being caused by restrictions in visitation at the adult homes, especially during Quarter 25, as assessments usually require a face-to-face interaction between the assessor and the class member. There has been improvement since that time with respect to the 120-day benchmark.

Category	Goal	Q. 16	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24	Q. 25	Q. 26	Q. 27	Q. 28	Q. 29	Q. 30
Assessments		N/A	201	215	168	120	112	98	60	85	11	8	55	33	32	22
Percent completed or closed out within 60 days	85%	N/A	72%	79%	67%	69%	62%	45%	35%	48%	9%	38%	76%	79%	78%	64%
Percent completed or closed out within 120 days	98%	N/A	94%	94%	87%	90%	85%	72%	57%	74%	18%	100%	87%	97%	91%	82%

Table 4. Assessments Completed or Closed Out

C. 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, paragraph B.2.e) 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: members found not to be seriously mentally ill, members declining assessment, members 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, that rate has fallen and during Quarters 24, 25 and 26 it

was only 48%, 36% and 54% respectively. And while the rate of enrollment within 90 days was usually above 90% during the first seven Quarters, it declined to 54%, 55% and 70% in the following three Quarters. The State attributes the decline to AH+CM capacity challenges and the COVID-19 visitation restrictions. However, the rate of enrollment has increased during the last four Quarters (27-30) and was in compliance with the 60-day and close to compliance with the 90-day enrollment benchmark for the same period.

Category	Q. 16	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24	Q. 25	Q. 26	Q. 27	Q. 28	Q. 29	Q. 30
Members Referred for Assessment	44	250	212	175	154	144	101	114	92	12	78	68	47	49	51
Members not enrolled due to exclusionary criteria	22	147	89	44	37	38	17	21	17	1	16	24	13	11	7
Members declining enrollment	0	10	2	7	6	12	13	8	6	1	5	7	3	4	5
Members enrolled in care management	22	93	121	124	111	94	71	85	69	11	57	37	31	42	37
Percent enrolled within 60 days	77%	76%	78%	83%	80%	84%	70%	52%	48%	36%	54%	89%	97%	86%	92%
Percent enrolled within 90 days	82%	92%	90%	91%	94%	91%	93%	69%	54%	55%	70%	95%	97%	95%	100%

Table 5. Enrollment in Care Management

D. 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, paragraph B.10)

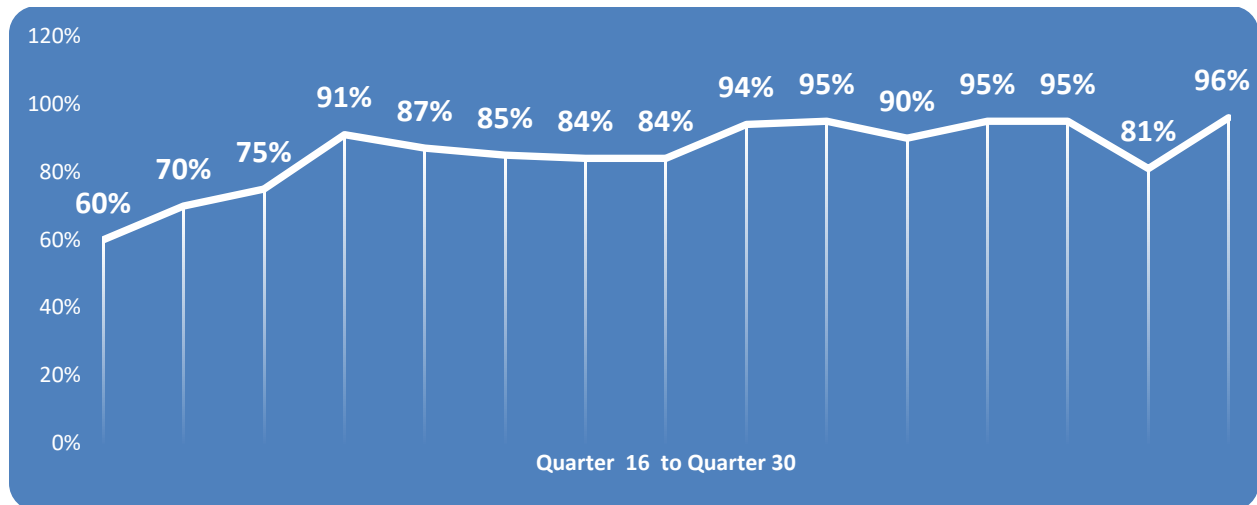


Figure 9. Housing Interview within two weeks of HRA approval

As indicated in Fig. 9, in each Quarter since the Supplement's implementation, 60% to 96% of class members had housing intake interviews within two weeks of HRA approval. However, as shown in Fig. 10, the percentage of members offered housing tours within 45 days of HRA approval has been relatively low over the years and has been declining since a peak of 65% in Q. 21. More recently, performance is on a rising trajectory.

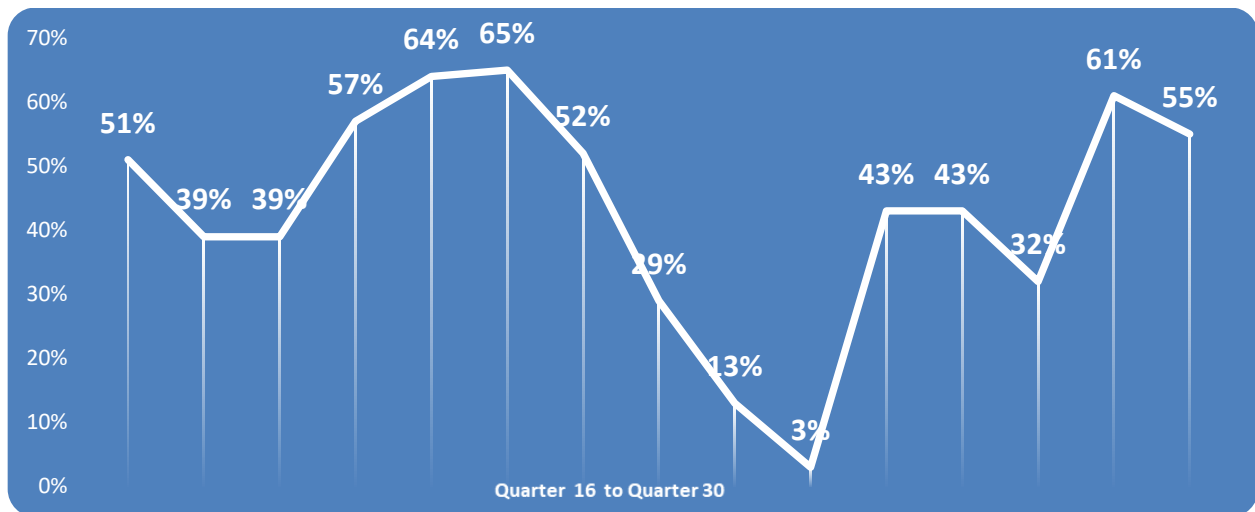


Figure 10. Housing tour offers within 45 days of HRA approval

One contributing factor may be that some class members have been approved for Level II housing which their Housing Contractor may 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. With the more recent initiative to offer apartment treatment rather than congregate care Level II beds, as well as the ability to covert supported housing beds to apartment treatment, Housing Contractors should have more control over Level II housing

options. Another factor may be the lack of fully accessible apartments, limiting Housing Contractors in offering tours and/or actually available apartments that meet class members' needs. For example, while the Queens borough-wide initiative has resulted in several "matches" between class member apartment preferences and Housing Contractors who can meet them, across all Queens contractors there is an evident dearth of fully accessible apartments for members who need them. But a major factor in the low rates of housing tour offers in the Quarters 24 and 25 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, and in the case of the one tour between July and September 2020 a family member took the class member to see an apartment. The rate of tours improved over the next five Quarters but did not reach pre-pandemic levels.

A bright spot in the search for housing has been the progress made in locating one-bedroom and studio apartments. In the Independent Reviewer's Memo of April 20, 2021, *Transitions to Supported Housing—Availability of One Bedroom Apartments*, we noted that the issue of housing choice, particularly the desire of class members to live alone, has been an ongoing impediment to many class members' transitioning to supported housing. Annual Reports of the Independent Reviewer have documented an increased ability on the part of Housing Contractors over the years of this initiative to provide studio and one-bedroom apartments to class members, but this improvement had not been sustained by all Housing Contractors. It was not uncommon for class members who wanted to live alone to be told by Housing Contractors that it would take much longer to find a single unit, and while they could wait for an unstated length of time, if they wanted to move now, a shared unit would be easier to find. However, OMH has placed increased emphasis on addressing this need, given the demand by those still interested in transitioning, which has resulted in dramatic improvements in this area.

As noted in Table 6 below, of the 107 transitions to supported housing in the year covered by this report, 69 or 65% were to one-bedroom or studio apartments. This is in contrast to the 69 transitions to single units of the 148 class members transitioned between March 15, 2019 and December 11, 2020, or 47%, as described in the memo referenced above.

While some contractors, like Pibly Bronx and Brooklyn have consistently met the desire of class members for single units, others like TSI, SIBN, and most notably Institute for Community Living (ICL) have clearly responded to the challenge and improved their performance in this area. In the 21 months covered in the memo, they had transitioned only one of 15 class members to single units, compared to transitioning 11 of 12 class members to single units during the current period. Only Federation of Organizations (FOO) stands out as clearly not improving on their ability to offer single unit housing to class members wanting to transition. They have moved only three of 14 class members, or 21% to single units during the current period, compared to four of 16, or 25% during the 21 months covered in the memo. It is clear that OMH needs to work with FOO administration to take steps to locate affordable single unit housing in the areas they serve,

possibly learning from other Housing Contractors, like ICL, that overcame the obstacles to identifying and securing affordable single unit housing for class members.

Housing Contractor	Class Members Transitioned to Single Units (One-Bedroom or Studio Apartments)	Class Members Transitioned to Shared Units (Two-Bedroom Apartments)	Percentage of Transitions to Single Units
Comunilife	11	5	57%
FOO	3	11	21%
ICL	11	1	92%
Pibly Bronx	4	1	80%
Pibly Brooklyn	16	7	70%
SIBN	4	1	80%
SJMC Brooklyn	10	7	59%
SJMC SI	3	3	50%
TSI	7	2	78%
Total	69	38	65%

Table 6. Transitions to Supported Housing, March 13, 2021–March 11, 2022

E. 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.

Category	Q. 16	Q. 17	Q. 18	Q. 19	Q. 20	Q. 21	Q. 22	Q. 23	Q. 24	Q. 25	Q. 26	Q. 27	Q. 28	Q. 29	Q. 30
Members who received HRA approval 60 days prior to end of Quarter	79	209	126	127	113	78	50	44	77	7	18	41	23	27	19
Members who transitioned within 60 days	1	0	4	1	1	1	1	0	0	0	2	1	1	2	2
Percent of members who transitioned within 60 days	1.3%	0%	3.2%	0.8%	0.9%	1.3%	2.0%	0%	0%	0%	11%	2%	4%	7%	11%

Table 7. Transitions 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, paragraph B.11) Yet, as illustrated in Table 7, this goal has been difficult to achieve ever since it was set. During the 13 Quarters since the Supplemental Agreement's implementation, the rate of compliance with this benchmark has ranged from a high of 11% in Quarters 26 and 30, to zero in Quarters 17, 23, 24, and 25.

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 acceptable to the individual 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, finding fully accessible apartments for class members with mobility impairments, and so on.

Fig. 11 shows the median number of days from the housing intake interview to transition for the last 14 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. One of the purposes of the Full Court Press described in more detail below was to speed up the transition process for the class members who were interested in moving, by making a concerted effort across settlement providers, assisted by State staff, to expedite the completion of pre-transition tasks, improving communication and aggressively attacking barriers that arise. As more adult homes go through this process, it will be possible to measure how well this purpose has been achieved.

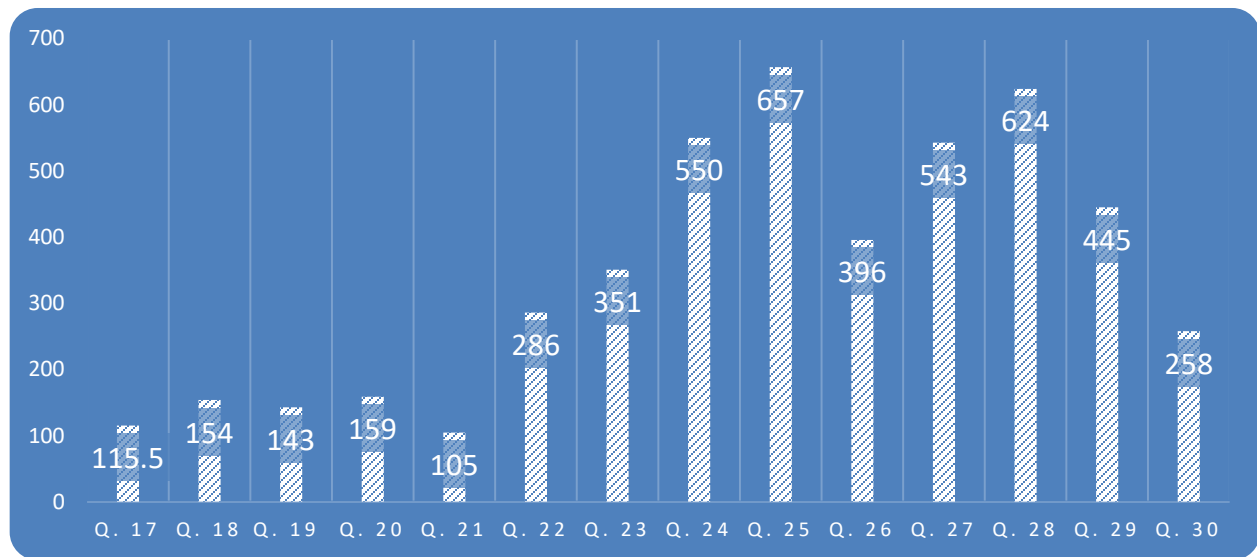


Figure 11. Median days from housing interview to transition

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).

The State's performance over the first four Transition Metric review periods and the results of the Independent Reviewer's review of this performance were reported in the Seventh Annual Report (Section V) and are summarized in Table 8 and Figure 12 below.

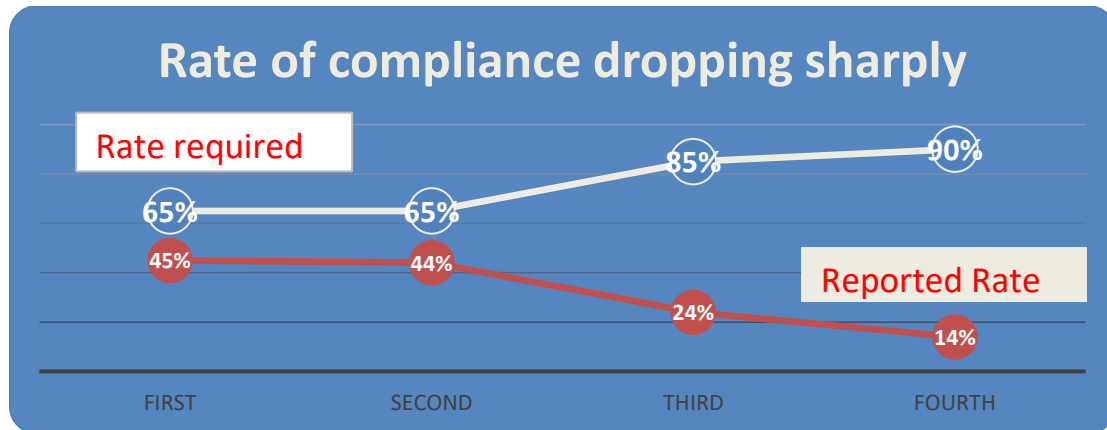
As the COVID-19 pandemic came into play at the start of the fifth Transition Metric period (March 1, 2020), much of the transition-related work of settlement providers was adversely affected by the ban on most visitation at adult care facilities imposed by the State DOH via a Health Advisory issued on March 13, 2020.¹⁷ As the COVID-19 pandemic came into play at the start of the fifth Transition Metric period (March 1, 2020), much of the transition-related work of settlement providers 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, 2020.¹⁸ 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 covering March 1-August 31, 2020, and September 1, 2020 to February 28, 2021, given the extraordinary circumstances caused by the pandemic. This waiver was later extended to encompass the seventh Transition Metric period from March 1 to August 31, 2021. These reports are scheduled to resume with the eighth period which covers the period from September 1, 2021 to February 28, 2022.

	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%			

¹⁷ New York State Department of Health, HEALTH ADVISORY: COVID-19 CASES IN NURSING HOMES AND ADULT CARE FACILITIES, March 13, 2020. (DOH Health Advisory).

¹⁸ New York State Department of Health, HEALTH ADVISORY: COVID-19 CASES IN NURSING HOMES AND ADULT CARE FACILITIES, March 13, 2020. (DOH Health Advisory).

		44%	23.6%	14.32%
Independent Reviewer Finding based on sampling	Disallowed 11/31 exceptions	37.4%	No review performed	No review performed

Table 8. Summary of Transition Metric Reports**Figure 12. Rate of compliance in each period**

VI. Monitoring

A. Full Court Press

As part of discussions about how to improve the rate of transitions for class members, the State proposed a “Full Court Press” strategy.

The goal of the FCP is to have regular on-site presence of settlement providers at the adult home, including State staff, Housing Contractors, assessors, AH + CMs and peer bridgers who work together with class members to determine their interest in transitioning and then to expedite the transition process. The FCP takes place over a 90-day period beginning with kick off meetings to introduce the settlement providers who will have a regular presence in the home, present video and in-person testimonials from class members who have previously moved to supported housing, and PowerPoint presentations by settlement providers to the class members, all with the goal of providing information on the transition process and motivating interested class members to take the first steps toward transitioning. State staff speak about the FCP process, Housing Contractors present on available vacancies including pictures of apartments they have available and what is included in them, peer bridgers discuss peer services available to class members, and the CMAs present on care management services and their role in the process. Class members are notified of the meetings in person, through a written invitation, and/or announcements and signage around the adult home. Refreshments are provided during these meetings.

The FCP began with the Brooklyn Terrace closure process in September 2020 and since that time, the process has evolved due to lessons learned from that experience. After the Wavcrest FCP which was the first official FCP, the Independent Reviewer recommended some changes to

improve the process which have since been implemented in the FCP homes. These included using ambassadors (former class members) to speak in person to class members to give them a firsthand account of their experiences living in supported apartments. Resulting from a recommendation by the Independent Reviewer, the FCP also offers tours of apartments to everyone, even if they have not expressly said they want to move. In some cases, tours were scheduled on the day of the kick off meeting and in the case of the QACC FCP, transportation was available beginning the second day after the kick off so anyone who was interested in a tour could go immediately after the meeting. To encourage people to attend the presentations, refreshments were offered during the kickoff meetings. To expand the range of choices, other Housing Contractors who had apartments in the same or another borough were invited to attend.

Prior to each FCP, each class member is placed into categories—soft, medium, or hard No's or Yeses. These designations involve reviewing in-reach histories of class members by an OMH staff in collaboration with in-reach staff, peers, and housing staff. A soft no is defined as someone who said No currently but has said Yes to moving in the past and/or has discussed that they do not want to move currently but would consider moving in the future. A medium No is someone who has said No the last couple of times at in-reach, but there is something in their history or in their interactions with peers or in-reach staff that indicate they may be able to work with the person to resolve their issues/concerns about moving. A hard No is defined as someone who has consistently said No and has given a clear reason why they do not want to move. These designations are updated on a weekly basis.

Following the kickoff meetings, State staff are expected to be present on a regular basis, generally three times each week, and settlement providers have an enhanced presence at the adult home and interact with class members, either in the common areas, the resident rooms, the dedicated room or, at times, outside the facility. Whenever a class member expresses interest in pursuing the transition process, State staff and providers are expected to expedite assessment and apartment tours.

Additionally, at the FCP homes to date, DOH holds weekly calls with the Health Homes and CMAs that cover the class members interested in transition at the home. During these calls, the status of each of the class members they are working with is reviewed, including the steps being taken in preparing for transition (IDs; medication training; etc.) and completing the necessary steps on the electronic Dashboard in the required timeframe. During the call, any change of heart by class members or other obstacles to transition are discussed. Housing options and the results of recent tours are discussed.

Similarly, OMH holds meetings with the Housing Contractor responsible for each home, as well as the Peer Bridger Agency and Pathway Home, which provides care management services to class members newly identified as interested and enrolled or possibly interested in transition, for whom outreach efforts are initiated. During these calls, the status of class members is discussed, with the focus on locating housing meeting the needs and preferences of class members regarding

apartment type (single or shared unit); location (borough and neighborhood desired); and accessibility (addressing any limitation in mobility that would impact housing choice). During some of these meetings, another Housing Contractor may be included or contacted to see if they may have housing matching what is being requested by class members, after which efforts are made to show pictures to the class member prior to a tour, if interested. As in the calls with DOH, any barriers to transition are discussed, including changes that are made in preference or in a desire to transition at all. In addition, early in the process, the weekly calls included discussions and strategies on ways to engage some class members who were ambivalent or had changed their mind. In addition, State staff generally maintained regular contact with the administrator of the adult home involved in the FCP.

For class members who were not interested in engaging in the process or had expressed that they did not desire to move during the FCP, an Informed Decision-Making Template was created by the Independent Reviewer with input from State staff and the Plaintiffs. The template had several purposes, including: creating a checklist of essential tasks that must be performed by settlement providers to ensure that each class member has adequate information to make an informed decision about transition; providing each class member with a simplified statement of the tasks expected of settlement providers; developing for each class member a record of actions taken to provide adequate information for informed decision-making, when, by whom and with what result; providing an individualized explanation of barriers the class member perceives to transitioning to supported housing or other alternatives; and identifying actions taken by settlement providers to address the perceived barriers.

At the end of the FCP, the informed decision-making form is filled out for each class member who is designated as a No to describe how the class member was well informed of the options to be assessed and/or move to supported housing. The form covers such issues as whether they were given the opportunity to attend the presentations offered or given the information packets in their primary language, to tour apartments virtually or in person (or both), and to be informed of the services available to them in supported housing. These forms are filled out and incorporated into a report by the State describing the outcomes of the FCP at each of the homes that completed the 90-day FCP process. The Independent Reviewer is then tasked with reviewing the forms and determining whether diligent efforts were made by the State and settlement providers.

To date, there have been five homes that have either completed the FCP (Wavecrest and Mariners) or are in process of the FCP (Queens Adult Care Center, Garden of Eden and New Haven Manor). Below are descriptions of the FCP activities in these homes.

1. Wavecrest FCP

The first FCP began at Wavecrest Home for Adults on April 26, 2021, with a two-day rollout and formally concluded on August 20, 2021. On this date, the State ceased its enhanced

involvement except to the extent that it was assisting with the transition of the individuals who were still actively engaged in the transition process. An initial report was issued by the State on September 3, 2021, and a final report was released on October 26, 2021, six months after the FCP began. The following describes the outcome for the 64 class members at Wavecrest, including one post-cap resident, as reflected in the final report.

Confirmed No's	41 (64%)
Transitioned class members ¹⁹	7 (11%)
In transition process	13 (20%)
Discharged	2 (3%)
Pending CRC ²⁰	1 (2%)
Total	64

On November 23, 2021, the Independent Reviewer issued a *Review of Defendant's Final Report on the Outcomes of the "Full Court Press" Engagement at Wavecrest Home for Adults*. The review included an analysis of the 41 confirmed No's to determine if they had made an informed decision about declining the opportunity to transition. In summary, the Independent Reviewer team agreed with the State's conclusion that class members had made an informed decision to decline the opportunity to transition to community housing in 39 of the 41 reported cases (95%). It was clear from a review of all of the information available in these cases that the class members' decisions to decline the opportunity to transition to the community were informed, and in most cases consistent over numerous interactions with settlement providers and State staff. In the two remaining cases, the Independent Reviewer found insufficient evidence that the State had made diligent efforts to assist the class members in making an informed decision regarding transition.

When the FCP period ended on October 26, 2021, there were 13 class members in the transition process. In a subsequent State report on January 11, 2022, that number had dwindled to seven, including one person in the process of moving who eventually moved on March 3, 2022. Five others had changed their minds or abandoned the effort and one class member remained difficult to engage.

As important as it is to ensure that class members who decline the opportunity to transition are making an informed decision—after an opportunity to visit apartments, hear from former adult home residents who have moved and learn about the support services that are available to meet

¹⁹ This number includes one class member who moved on April 1, 2021, just prior to the kick-off of the Full Court Press.

²⁰ The Case Review Committee (CRC) was created by the Supplemental Agreement (D.5) to address and resolve individual cases that require further attention, usually because as assessment has determined that the class member does not qualify for supported housing, does not have SMI, or where there is a disagreement about the results of an assessment between the Parties.

their needs—it is equally important to make diligent efforts to assist those who want to move to accomplish this in a timely manner. During the Full Court Press, we consistently observed a lack of timely follow-through once class members expressed an interest in transition, particularly for in-person apartment viewings. Multiple class members who said yes to transition (or expressed ambivalence) waited months to view apartments in person. Related, some class members attended apartment viewings nonresponsive to their stated needs/preferences, such as viewing two-bedroom apartments in lieu of one-bedroom apartments, which they preferred.

Some of the lessons learned during the Full Court Press, such as offering housing visits to class members at the time of in-reach and being prepared to schedule tours promptly, reportedly are being implemented at non-Full Court Press facilities as well.

2. Mariners FCP

The Mariners FCP began on August 10, 2021, with a three-day rollout and ended on November 10, 2021. There was a total of 53 class members. The team for the FCP Kick off included State staff from DOH and OMH, Baltic Street peers, staff from the two Staten Island Housing Contractors, and some AH + CM's. In total there were 18 class members who attended the presentations on one or more of the three days. The presentation was done in the large dining room which had plenty of space to socially distance people.

Designation of Interest	All Class Members
Yes	15
Soft No	13
Medium No	9
Hard No	14
D/C'd prior to FCP	2
TOTALS	53

Table 9. Mariners' Initial FCP Designations

State staff was on-site at least three days a week and a minimum of one peer bridger was present five days a week. Housing Contractor staff, including in-reach staff and assessors, were present at least once a week and more often as needed. The AH + CMs were there as needed to meet with class members on their and to work with them to provide what they needed to assist with preparing them to transition. As mentioned above, two weekly meetings were held with State staff and settlement providers to discuss the progress of each class member's move and to trouble shoot any issues that may have arisen.

While the FCP officially ended on November 10, 2021, and there is not the regular on-site presence as during the FCP, the settlement providers continue to work with class members who have expressed an interest in moving but were not able to move during the FCP time frame for various reasons including: accepted an apartment and had a move date beyond the last day of FCP; had a tour scheduled; in the HRA process; identifying apartments that meet the preferences; has a

clinically complex case that requires further services to be put in place (Assertive Community Treatment (ACT)), neurological testing); or still deciding if they are interested in Level II housing. The weekly meetings with the State and AH + CMs continued after the official end of the FCP to discuss progress toward transition-related tasks for each AH+ CM's caseload at Mariners.

The State issued an initial report for Mariners on December 10, 2021 and a final report on February 22, 2022 describing the outcomes of the FCP as follows:

Confirmed No's	32 (60%)
Transitioned class members	3 (6%)
In transition process/remain interested	10 (19%)
Changed mind	1 (2%)
Discharged	4 (7%)
Deceased	2 (4%)
Other	1 (2%)
Total	53

3. Queens Adult Care Center

FCP at QACC began with Kick off activities from October 5 to 7, 2021 and concluded on January 7, 2022. At the time of Kick off, OMH had designated each of the approximately 169 class members²¹ as: Yes; Soft No; Medium No; or Hard No.

Designation of Interest	All Class Members
Yes	27
Soft No	48
Medium No	47
Hard No	58
TOTALS	180

Table 10. QACC Initial FCP Designations

As of March 11, 2022, six QACC class members had transitioned, though one of the six subsequently asked to (and did) move back to the adult home. One additional class member is scheduled to move, and two class members are waiting for their moves to be rescheduled due to delays in obtaining IDs; one of these class members was initially scheduled to move in early December 2021 while another was scheduled to move in early February 2022.

Following the conclusion of FCP intensive on-site presence on January 7, 2022, the State has entered into a subsequent 90 day period during which provider work focuses on addressing

²¹ A small number of class members were changing statuses (*e.g.*, were being discharged from QACC) concurrent to the FCP Kick off, thus the initial counts fell from 180 to slightly below, as reflected in some numbers here.

obstacles for those class members that are still in the assessment or transition process, including identifying suitable housing that meets their stated needs and preferences. Because the Omicron variant complicated on-site presence during December 2021 and January 2022, both State and settlement provider staff continued to work on site during this second period of FCP.

To date, the FCP at QACC has demonstrated both promising practices and challenges. Kick off activities were well-organized and fairly well-attended, and it was especially promising to see providers conduct immediate in-reach and assessments, and begin offering apartment tours on the second day of FCP. Service providers continued to work on timely in-reach, assessment, transition preparations, and follow-up communication (*e.g.*, IDT meetings) with ambivalent class members despite the additional challenges posed by the Omicron variant. The involvement of State staff, including their consistent presence on weekly provider calls, has bridged some communication gaps between OMH providers and DOH providers, and has expedited certain transition tasks.

A FCP challenge has been a longstanding dearth of fully accessible apartments; few QACC class members with accessibility needs have been able to tour or select apartments. While it is understandable that Housing Contractors wait to acquire stock until they have a sense of members' needs and preferences, there should be increased planning to expedite apartment searching once FCP has commenced, and this planning should include consideration for housing stock across all Housing Contractors. For example, QACC class member demographics include many older adults and people with physical disabilities; the need for accessible apartments was apparent prior to FCP and could have been prioritized further. Fully accessible apartments have been difficult to find across all Queens Housing Contractor stock during this FCP, slowing transition progress for multiple class members.

In addition, early in the QACC FCP multiple class members had delayed or insufficient (*e.g.*, one session, once per month) medication trainings conducted by QACC staff. There was also confusion around the role of contracted Americare staff in running these trainings. While challenges with QACC-led trainings were addressed as they arose, for future FCPs it may be helpful to ensure there is a clearer initial understanding between the State and adult home administration regarding adult home staffs' role in medication trainings. This should be complemented with an understanding of how and when the Housing Contractor Nurse Assessor may be involved in such trainings. In the case of this FCP, the Nurse Assessor began monitoring medication training progress even when she did not train members directly; such monitoring can help ensure members progress with training and plans can be made for post-transition medication support (as needed).

A particularly concerning delay observed during the QACC FCP has been the slow pace of obtaining sufficient IDs and supporting documents (*e.g.*, birth certificates) for some class

members. Lack of IDs has delayed some transitions significantly (*e.g.*, the above class member whose move has been pending since early December 2021 due to lack of IDs) while in other cases class members moved with limited IDs only to encounter hardships in the community (*e.g.*, the class member who transitioned during FCP then asked to return to QACC faced multiple challenges in the community, including an ongoing lack of IDs). The stated goal of FCP is to expedite the transition process; when class members “buy into” FCP only to experience months-long delays with supports and/or move delays due to lack of IDs both the FCP process and the credibility of State and provider staff may be undermined. AH+ care managers should be reminded that obtaining IDs can take several months, thus it is work that can and should begin at the time of member enrollment and, in the least, must begin prior to time-limited FCP initiatives.

Finally, despite many examples of promising on-the-ground communication and collaboration among providers and State staff, there are also many examples of communication lags between OMH providers and DOH providers, and providers and State staff. For example, different providers have expressed differing understandings of ambivalent class members’ interest in moving at a given point, which in turn stalls transition progress. Further efforts to promote consistent and effective communication seem necessary. In particular, more efforts are needed to bridge the separate channels of communication between OMH and its Housing Contractors, peer bridger agencies and Pathway Homes on the one hand, and DOH’s communications with Health Homes, CMAs and Managed Long Term Care Programs (MLTCs) on the other. The Independent Reviewer has recommended that the State schedule joint calls among all settlement providers periodically, especially during the Full Court Press.

4. Garden of Eden

The FCP at Garden of Eden began on November 16, 2021, and was scheduled to continue until February 16, 2022. Following the conclusion of the on-site presence, over the subsequent 90 days the provider’s work focuses on addressing the obstacles that have been identified for those class members that are in the assessment or transition process, including identifying suitable housing that meets their stated preferences.

As described earlier, prior to the start of the FCP each of the individuals eligible for transition was designated as belonging to one of the following groups: Yes, Soft No; Medium No; and Hard No. At the start of the FCP, the 146 class members eligible for transition fell into the following categories, based on the information provided:

Designation of Interest	All Class Members
Yes	17
Soft No	28
Medium No	13
Hard No	88
TOTALS	146

Table 11. Garden of Eden Initial FCP Designations

As of March 11, 2022, two class members had transitioned and five moves were scheduled.

Although notifications about COVID cases at several adult home were made starting in early November 2021, it had not significantly impacted the implementation of the FCP at Garden of Eden (GOE) thru December 10, 2021. However, at the beginning of February 2022, several GOE class members tested positive for COVID and were sent to a rehabilitation facility before they could return to GOE. This rendered these class members not accessible to settlement providers, and threatened to derail the planned move of one class member with an imminent transition date. In response, an allegation of interference or discouragement was reported to ACF, as noted below.

According to the State's recent report of incidents of interference and discouragement for March 2022, since early November 2021 through March 11, 2022, there have been eleven complaints at the Garden of Eden about possible interference or discouragement during the FCP that have been shared with the State, and/or the ACF Hotline. As of that date, seven reports had been filed and are pending with ACF, two were in process of being filed and two were addressed by OCT.

Specifically, the adult home was reportedly preventing all providers and State staff from visiting with class members in their rooms (although addressed immediately by the State, it continued to occur after that); the wrist temperature scanner at the adult home appeared to be malfunctioning, as the readings it provides are so low as to indicate hypothermia of many of the persons attempting to enter. Visitors, including settlement providers and IR staff, had to take time to attempt to raise their wrist temperature and undergo re-scans until their temperatures were up to at least 96° F before entering.

Allegations have also been made that the Administrator has raised the number of days for required attendance at the day treatment program used by the home at first from four to five days a week, and then as of January 2022, increased the requirement to seven days a week. The effect of these requirements was to make class members unavailable to settlement providers for much of the day during the Full Court Press. In addition, one class member said she was not moving because the Administrator said she would not discharge her, after sharing with her a story of a class member who had transitioned and recently passed away. Another complaint alleged that several class members were sent to a rehabilitation facility following positive tests for COVID, and the Garden

of Eden did not send required documentation to the facility, which jeopardized a class member's transition. Further allegations were made that the physician renting space at the facility declined to sign forms needed to start medication training for class members planning to move, and also declined, allegedly at the direction of the Administrator, to sign "787" forms needed to establish how class members will manage their funds once they move. While all of these complaints have not been resolved, in light of the delays, the State has continued the FCP at the Garden of Eden beyond the original 90 day period, and the end date is undetermined at this point.

The reporting of these and other complaints of interference or discouragement at the Garden of Eden was detailed in the Independent Reviewer's memo to the Parties of February 7, 2022.

5. New Haven Manor

The FCP at New Haven Manor started on March 2, 2022, and will continue for the 90-day period. There were three-days of kickoff meetings to explain the FCP and provide class members with all the information on supported housing and supports available, case management, peer bridger involvement, etc. Pictures of apartments were shown as examples of what is available. Ambassadors presented on their experience in supported housing. Thirty-seven (37) of the 62 class members at the home attended one or more of the three days.

At the start of the FCP, class members were classified into groups of people who had already said yes to transitioning, or were a soft, medium, or hard no. These designations were as follows:

Designation of Interest	Class Members
Yes	12
Soft No	8
Medium No	18
Hard No	14
TOTALS	62

Table 12. New Haven Initial FCP Designations

Since the FCP began, seven class members have toured apartments, were offered a tour or a tour was scheduled, and two class members have a move date. While there 12 class members who said Yes to moving at the start of the FCP, there are currently 18 people who are in the process of transitioning (being assessed, identifying housing or already have a scheduled move).

B. Housing Contractor Nurse Assessor Medication Management

Over the course of settlement implementation, the Independent Reviewer has observed multiple cases of class members lacking adequate medication assessment/training from adult home staff, resulting in delayed transitions. Further, inadequate medication management training has led to crises in the community due to medication challenges following inadequate preparation. In

response, the Independent Reviewer made the process recommendation to shift medication assessment/training responsibilities from adult home staff to Housing Contractor (HC) Nurse Assessors. Over a series of meetings in May and June 2021 Nurse Assessors and other HC staff edited a pre-existing Office for Persons with Developmental Disabilities (OPWDD) medication tool, recommended by the Independent Reviewer, to better reflect the needs of class members. This standardized medication assessment was embedded in the HC Assessors' overall assessment and rolled out June 30, 2021, coinciding with live date for the PSYCKES Dashboard and allowing assessment information to be uploaded there. Medication training for class members was not standardized to the same degree; instead, Nurse Assessors were encouraged to tailor training to individualized needs. During OMH calls and meetings with Housing Contractors, promising strategies for medication training are discussed (*e.g.*, using mock blister packs and insulin pens for trainings, how to request medication labels in class members' primary languages, etc.).

As of January 31, 2022, 138 class members served by nine HCs and two Pathway Home teams have been assessed and, as needed, trained. The standardized assessment tool, designed to encourage medication skill building, prompts for class member categorization by medication independence level (independent, low level assistance, higher level assistance) across medication types (oral, injection, and other such as topical). Each member's overall capabilities and independence are then considered to determine if they should receive medication training.

Medication Type	Rated Independence Level *			Totals
	Independent	Low Assistance Level	Higher level assistance	
Oral	88	34	11	133
Injection	8	6	7	21
Other	42	11	4	57

Table 13. Medication Assessments

The above counts reflect several members assessed across more than one medication type. To date, Nurse Assessors have categorized 138 assessed class members as: recommended for medication training (60) or training not needed (78). The high proportion of members assessed as already possessing self-medication capabilities is noteworthy. It may suggest that a nurse who can take a "fresh look" at a member, without a history of relating to them in an institutionalized context, is more open to identifying skills they may have, even if not otherwise exercised in the adult home. It may also suggest that when members interact with nurses not affiliated with adult homes, they too are less burdened by institutionalization and are more willing to engage and demonstrate their full skill set.

For example:

- *MP is a class member who returned to an adult home after some time in supported housing. When he again engaged in the transition process, his move was delayed because he was found to be unable to inject his own insulin. The Transitional Services for New York (TSINY) Nurse Assessor initially assessed him in July 2021 and believed he could learn to manage his insulin himself, despite doubts expressed by his MLTC. In October 2021, the Nurse Assessor began training with MP and soon learned that no one—including his MLTC—had ever provided him with a sliding scale to measure his insulin needs and administer corresponding doses. The Nurse Assessor provided him with this tool, as well as a log to track his measurements and doses. MP practiced using the sliding scale and log and was observed to be able to use the scale, draw up the correct amount of insulin, and inject himself. He also trained on using a blood glucometer; he has struggled more with this device and the readings he records sometimes differ from those of the MLTC staff. However, he has made great progress since October and continues to practice the full routine. The Nurse Assessor's careful assessment and attention to the training and tools MP had (not) been afforded previously have resulted in near-independent management of his diabetes needs and medication, which in turn will be integral to his successful re-transition into the community.*

There remain a few areas of ambiguity within this initiative. First, by design the medication assessment is embedded in the overall HC assessment, with Nurse Assessors now supporting medication needs of class members at the time of their HC assessments. However, many class members already had an HC assessment and as indicated in Table 4 above, the number of new assessments has been declining over the past few years. These previously assessed members are not integrated into the medication initiative in a systematic way, rather individuals come to the attention of providers and OMH when medication issues are raised during the pre-transition process and may threaten to slow or delay a transition. In such cases, a Nurse Assessor may take on the additional responsibility of supporting the member with medication assessment and/or training. Consideration should be given to how to approach the pool of previously assessed class members more proactively, such that members who are active in the transition process and could benefit from additional medication support are identified prior to a pre-transition issue arising. As this medication initiative rolled out alongside the Dashboard, leveraging the latter to inform the former might be considered.

Second, the relationship between this initiative and Full Court Presses (FCP) warrants further consideration. The Independent Reviewer has observed that during FCPs some class members who prepare to transition continue to receive medication assessments and training through the adult home, even if they have had an HC assessment during FCP. In some cases, these adult home-led assessments and trainings may function well and allow the HC Nurse Assessor to work most efficiently during the labor-intensive FCP period. However, we have also observed instances of slow and/or insufficient adult home-led medication training during FCP, indicating there is a need for Nurse Assessors to be involved further. Planning for when and to what degree

Nurse Assessors should be involved in this process seems relevant to maintaining the intended expedited pace of FCP transitions while also ensuring class member health and safety.

C. Returning class members

Each year, a small number of class members who have moved out of adult homes and into supported housing are readmitted to an adult home. In this report year, the Independent Reviewer undertook an examination of how frequently and for what reasons class members who have transitioned returned to adult homes. Since the implementation of the Settlement Agreement began in 2014, 990 class members had transitioned by the end of Year 7 (March 12, 2021). Of these, 52 class members (5%) returned to an adult home. One class member had transitioned and returned to an adult home twice, bringing the total number of returns to 53. The median length of stay in the community before returning to an adult home was 390 days, or slightly over one year.

As of early June 2021, 19 of the 52 class members who returned to adult homes had died (10), been non-transitionally discharged upon return (6) or been admitted to a non-*O'Toole* adult home upon discharge from supported housing (3), leaving 33 from which the Independent Review drew a sample of 16 (49%) for closer review. In this review, the returning class members were interviewed to solicit their perspectives about why they returned to an adult home. In the nine cases where incident reports were filed and investigations conducted, the Incident Review Summaries were reviewed.²² And for the 16 sample cases, 33 former or current HC, Care Management Agency, and Peer Bridger Agency staff were interviewed for additional information where necessary.

During interviews, the 16 returning class members were asked what challenges they faced while in supported housing and what ultimately led to their decision to return to an adult home. Over half of the sample class members reported issues with their apartments (repairs, keeping it clean, location, etc.), with their health/mental health, and feelings of loneliness and boredom. Half reported issues with their housemate. Less frequently, class members had concerns with managing medications, help from settlement providers, money (sufficiency, management, etc.) and food (sufficiency, buying, preparation etc.).

²² The event of a class member returning to an adult home or expressing an interest in doing so is considered to be a reportable incident. However, because the incident reporting system for transitioned class members has evolved during the life of the Settlement Agreement, not all cases of returning class members were reported and investigated as incidents. Incident reporting requirements were established by the March 2018 Supplement to the July 2013 Settlement Agreement. They defined events that must be reported and investigated, including members returning to an adult home or desiring to. Transition providers were expected to report these events for any transitioned class member if the individuals were receiving AH+ Care Management Services, a service that could be ended six months following transition if the individual was doing well in the community. In October 2019, the requirements were amended. The receipt of AH+Care Management Service was no longer a contingency for incident reporting. Housing Contractors were expected to report incidents regardless of the individual's AH+ Care Management status.

Although all class members recounted challenges and ultimately “last straws” that led to their return to adult homes, many recounted experiences they enjoyed when they were living in supported housing. It is noteworthy that of the 16 sample class members who returned to adult homes following stays in supported housing, 25% subsequently re-transitioned to the community—three prior to the initiation of this review and one during the course of the review. An additional five of the 16 class members (31%) reported to IR staff that they want to transition back to the community.

Several conclusions can be drawn from this review.

First and foremost, very few class members who transition under the Settlement Agreement return to adult homes (5%) even though many encounter difficulties in supported housing. In each of the annual reports, the Independent Reviewer has reported on cases of class members struggling with the same types of issues as are described in this report—conditions in their apartments and with their neighborhoods; conflicts with housemates; difficulties in managing their money; challenges in managing activities of daily living; and managing medications they need for their physical and mental health. Although, in theory, all of the services and supports funded by the Medicaid program should be available to them in the frequency and intensity they require to thrive in supported housing, in reality for many the level of supports is inadequate, delayed, and unreliable. Most distressing is that class members are sometimes discharged from an adult home without the needed services and supports in place from the start—especially the services of Home Health Aides to assist them in activities of daily living. These issues have been addressed in repeated recommendations of the Independent Reviewer, but as this report once again demonstrates, they persist and continue to require attention and correction.

Despite experiencing these types of problems, based on the sample cases, most class members who returned (53%) want to re-transition to the community, and 25% already have. This speaks to the overall success of the initiative for those who have taken advantage of the choice created by the Settlement Agreement. Even when things have not worked out, many class members want to try it again.

Second, it was noteworthy the number of cases in which individuals’ decisions to return to an adult home arose from their desire for round-the-clock coverage or a greater level of supervision following a health or psychiatric crisis. To quote one who required abdominal surgery and wanted to convalesce in a nursing facility, “after two years in the adult home I’m feeling better and want a second chance.” This points to the need to ensure that the promise of wrap-around services in supported housing, even on an intensive level, becomes a reality. Several of these cases also suggest the need for expanded use of Level II housing and or respite housing if the class members so choose. In some cases, this choice may be driven by traditional Level II needs, while in other cases, particularly for older class members and those with significant health issues, the reassurance of regular staff supervision in community settings may encourage some who have been reluctant to take advantage of the choice offered by the Settlement Agreement.

In a couple of cases, the return to an adult home was suggested or initiated by clinicians from OMH programs. It is not clear the extent to which issues prompting this consideration were discussed with housing and other support providers so that problems could be addressed and ameliorated before the wheels of a return were set in motion. It would behoove OMH to remind clinicians in its programs to confer with individuals' support providers before suggesting re-admission to adult homes.

Finally, nine of the 16 sample cases were reported as incidents and reviewed by the State. (As indicated earlier, the incident reporting process has evolved over the past several years and not all events which are now considered reportable were captured.) In six of the nine reviews, however, there was no evidence that the class member was interviewed as part of the review process. Interviewing class members should be standard procedure in most incident reviews and particularly in those cases where one is probing why an individual returned or desires to return to an adult home.

D. Discouragement and Interference/Incident Reporting and Review

As part of the Supplemental Agreement, in 2018 the State agreed to include in its quarterly reports to the court information on post-transition incidents that jeopardized AH+ enrolled class members' ability to remain stably housed, safe, and healthy. Similarly, the State agreed to include in its quarterly reports information on potential cases of discouragement and interference by adult home operators, administrators, staff, and/or others. To facilitate this reporting the State created Excel trackers providing structured documentation of individual cases and steps such as investigative actions and determinations taken to address these cases. When the peer bridger program began in Spring 2019, the State also created a peer tracker, similar to and overlapping with the discouragement and interference tracker, to report on cases the peer-run agencies observed, and State actions taken in response to them.

Initially these trackers were shared regularly with the Parties and offered a better understanding of challenges in the adult homes and supported housing. However, both the incident and discouragement and interference trackers revealed that many reported cases remained unresolved for prolonged periods of time and lacked specific outcomes even when determined to be resolved.²³

Further, no monthly trackers of incidents or reports of discouragement and interference were shared between November 2020 and December 2021, at which time a new incident tracker was distributed. These gaps in updated trackers undermine their critical function as a feedback

²³ See, the Independent Reviewer's Review of the Incident Reporting and Review System, Doc. #167, filed July 9, 2019, in 1:13-cv-04165-NGG-ST; Independent Reviewer's Sixth Annual Report, Doc. # 185, filed April 1, 2020, in 1:13-cv-04165-NG-ST; and the Independent Reviewer's Memo on Interference and Discouragement (circulated 4/23/21).

loop to reporting providers and as a mechanism for keeping the Independent Reviewer and Plaintiffs informed. In their absence, State progress, determinations, and potential outcome actions on cases are unknown to involved parties.

The State facilitated discussions with the peer-run agencies in April 2021 to merge the peer tracker into a comprehensive discouragement and interference tracker. The State also committed to sharing this tracker regularly with the peer-run agencies—who had never had access to the trackers, despite the high volume of cases they reported—so the feedback loop between reporting providers and the State could improve. The Independent Reviewer strongly encourages the State to reengage with their stated plan for this tracker, and to establish a practice of consistently updating and sharing both the incident and discouragement and interference trackers. The Independent Reviewer also underscores the recommendation shared in the prior reporting on the trackers that except in exceptional circumstances, incident investigations be completed within 60 days.

E. Space Plans, COVID-19 protocols, In-person work

1. Space plans

The Supplemental Agreement requires three full-time peer bridgers to work in each adult home, and as they began work in Spring 2019 there was increased attention to DOH regulations around adequate space for providers to perform their Settlement functions. DOH worked with the adult homes to identify space that met regulations, though enforcement was slow.²⁴ Work on approvable space plans was ongoing, with success varying by adult home, when the COVID-19 pandemic interrupted on-site work in March 2020.

As the adult homes reopened to visitors in Spring 2021, they were understandably using space differently to promote distancing and other COVID-19 safety measures. In turn, DOH understandably entered into a period of revisiting and, as needed, revising space plans, during which enforcement actions were not used. The result of this approach was that from Spring through December 2021 access to approvable space varied from home to home, with approvable space still pending in five homes as of March 2022. In the absence of approvable space, peer bridgers have had to negotiate part-time, temporary spaces (*e.g.*, dining rooms offered as long as residents were served meals in their rooms), very small spaces that preclude adequate distancing precautions, and alternatives to inside spaces (*e.g.*, meeting on the home's patio or off-site). The challenges presented by the lack of approvable space were sometimes furthered by lack of clear, timely response and progress by DOH.

²⁴ See, A Report on the Status of the Peer Bridger Program, filed within the Independent Reviewer's Sixth Annual Report, Doc. # 185, filed April 1, 2020, in 1:13-cv-04165-NG-ST.

In addition, certain adult homes (*e.g.*, Garden of Eden, Mermaid Manor) presented approvable and subsequently approved space plans, yet the space was often unavailable to peer bridgers; DOH response to reports of such problems was slow. For example, in July 2021 Baltic Street filed a complaint when they were denied access to the space Garden of Eden had identified to DOH in its space plan. DOH took several weeks to resolve the issue, during which time peer bridgers were told by the adult home that they had to meet with class members outside. Both peer-run agencies also filed complaints regarding property such as lockers that had been moved, broken into, and/or were being used by certain adult homes (*e.g.*, Mariners Residence, New Gloria's Manor) for their own purposes. Over the course of 2021, the State was able to return and/or reestablish access to some but not all peer-run agency property.

Finally, in December 2021 the State notified the peer-run agencies that Central Assisted Living and Mariners Residence were no longer transitional homes and although they were expected to continue to comply with Settlement terms including space plans, they were not subject to the State's regulations regarding space plans. Although the State committed to addressing the lack of approved plans in these two homes, there is not yet available space in either. In all cases, the State committed to having achieved approved space plans for all adult homes by the end of 2021, or to initiating enforcement action against homes without approved plans. An enforcement referral against one home has been filed, while the State continues to try to work with four other homes that do not yet have approved space plans.

2. COVID-19 protocols

The COVID-19 pandemic created difficult work environments for workers everywhere and was especially challenging in long-term care facilities like adult homes. The difficulty settlement service providers, including peer bridgers, experienced in attempting to reestablish on-site work in Spring 2021 was exacerbated by the challenge of obtaining clear and actionable guidance from the State.

First, DOH referred settlement provider staff to its website to obtain the guidance. (<https://coronavirus.health.ny.gov/long-term-care-facilities>). However, the information on this site broadly covered a wide variety of facilities and much of it was not specifically relevant to the work of settlement providers. Finding specific, relevant and actionable information was both time-consuming and difficult, and several months went by with provider requests for more specific guidance unanswered.

Second, guidance addressing issues such as masking mandates applied differently to adult homes with Assisted Living Programs (required) and those without such programs (not required until the state-wide mandate of December 10, 2021, which was lifted on February 10, 2022).

Third, because guidance itself was unclear, providers expressed a resultant lack of clarity around when to report concerning behaviors they might observe in the adult homes. Ambiguous

guidance rendered it difficult to understand if/when compliance with that guidance might be questioned and, further, what response—if any—providers could expect from DOH.

Fourth, from Spring 2021 onward the peer-run agencies in particular consistently asked for updates on the number of positive and isolation cases in the adult homes. While DOH OCT obliged with notifications of class members in isolation, lack of transparency around overall COVID-19 case rates concerned settlement providers and agencies, to the point that the peer-run agencies postponed their return to full-time, on-site work. It was not until November 2021 that DOH began to provide regular updates to settlement providers on all cases (positive and isolation, among both class members and other residents) at all adult homes. The emergence of the Omicron variant and the surge and ebb of infection rates further added to the difficulty settlement providers faced in ensuring a safe work environment for their staff.

All of these conditions created an environment of uncertainty for peer bridger agencies which were attempting to transition back to full-time on-site work by the fall of 2021. As this draft is being prepared, this remains a work in progress.

3. In-person work

During this reporting period, the changing course of the COVID-19 pandemic, resultant conditions within the adult homes, and State response to these conditions substantially influenced where and how settlement providers worked. Providers—including CMAs, HCs, and peer-run agencies—demonstrated innovation and flexibility in working with class members remotely/semi-remotely. Through the first half of 2021, many providers engaged in a good amount of work away from the adult homes, relying on telephone contact, in-person contact with class members out of doors and/or in alternate locations (*e.g.*, in Housing Contractor model apartments), and brief, targeted visits within the homes (*e.g.*, to retrieve documents needed for transition, conduct an assessment, etc.).

By May 2021, however, adult home visitation was open and COVID-19 case counts were waning, yet some providers continued to engage in no or minimal in-person work. The June 16, 2021 Independent Reviewer Memo²⁵ outlines two case examples of the negative impact lack of in-person contact had on class members preparing for transition. In addition, the Memo differentiates between on-site and in-person work, acknowledging that while substantial work on-site in the adult homes may be an ongoing challenge, providers themselves developed a variety of in-person work strategies (such as those listed above) that balanced COVID-19 safety concerns with Settlement progress goals.

²⁵ Independent Reviewer's Memo, In Person Visits by Case Managers, June 16, 2021, Doc. # 322, filed October 28, 2021, in Case 1:13-cv-04166-NGG-ST.

At the time the memo was distributed, some CMAs and AH+ CMs were observed as less likely to visit class members and/or adult homes, as compared to other providers. Following the memo DOH OCT provided assurance that they had communicated with all service providers regarding the expectation of in-person work, and all providers confirmed they were engaging in such work. As the pandemic continues, the Independent Reviewer underscores that even as on-site adult home work may be limited again, in-person work with class members is critical to initial and ongoing engagement, as well as developing a robust understanding of “who” class members are and how best to support their strengths, needs, and preferences.

F. Service Gaps

Since early in the life of this case, the Independent Reviewer has maintained an interest in following up on class members to see how they are doing after the transition to community housing. In each of the annual reports, we have reported on the follow-up with samples of class members living in supported housing and Level II supervised facilities. We have followed up with class members who returned to an adult home after having transitioned to community housing to understand the reasons for their decisions. (*See*, Section VI. C above on Returning Class Members)

As part of this ongoing effort, on June 16, 2021, the Independent Reviewer reported to the Parties on the performance of some care managers who were working remotely during the COVID-19 crisis and the adverse impact of their lack of personal contact with class members.²⁶ Subsequently, on October 28, 2021, the Plaintiffs submitted a letter to the court requesting that the court order the State to report “on all class members who have transitioned to supported housing since Jan. 1, 2020 and any service gaps they have encountered in the first year.”²⁷ At a status conference on November 3, 2021, the court directed the State to submit such a report.

On November 22, 2021, the State filed a Report on Service Gaps Following Transition.²⁸ In that report, the State provided information about 150 class members who transitioned to supported housing since January 1, 2020. (Another eight moved to Level II residences.) In preparing the State’s report, the State “reviewed notes taken during post-transition calls, incident reports, and other information shared by providers or other sources including the Independent Reviewer.” (*Id.*) The State reported a service gap “if it appeared that there was a basic need that went unmet for an unreasonable period of time. If the need was met, even in an imperfect way, to bridge a short-term lack of a certain types of services, that was not counted as a service gap.” The report noted that in 16% of the cases, post-transition calls were not held “because of intervening

²⁶ *Id.*

²⁷ Letter to the court, Doc. # 322, filed October 28, 2021, in Case 1:13-cv-04166-NGG-ST.

²⁸ Doc. # 325-1, in Case 1:13-cv-04166-NGG-ST.

events such as a class member's decision to return to the adult home or due to a scheduling oversight." (*Id.*)

The State report identified service gaps in 30 cases (20%). The report describes follow-up actions taken with providers and their staff for some of the cases, as well as more systemic corrections for persistent problems such as timely receipt of benefits from the Supplemental Nutrition Assistance Program ("SNAP"). The State report is accompanied by a spreadsheet providing information on each of the 150 cases as well as a conclusion in each case of whether or not there is a service gap.

The Independent Reviewer team reviewed the information provided by the State on each of the 150 cases. Like the State, the Independent Reviewer did not consider a short-term lack of a service to be a "service gap" if it did not have a substantial adverse effect upon the class member. Perhaps the most common example is the delay in receiving SNAP benefits, which was experienced by many class members. While a very small number had to rely upon food pantries, in most cases providers either did grocery shopping for the class member or provided them with sufficient funds to manage until the SNAP benefits were available, and they experienced no food insecurity.

In a report, to the Parties, the Independent Reviewer recognized that by its very definition, the State report and his review focuses upon what is not there. In doing so, there is a risk of overlooking and under appreciating the substantial efforts of settlement providers and their staff in supporting class members in the community, especially during an extraordinarily difficult time when the COVID-19 pandemic ravaged congregate care facilities, resulted in closed government offices, and forced most workers to work remotely to avoid infection. The Independent Reviewer cited examples of their successes while also reviewing service gaps.

The principal findings of this review were that:

- The sources of information relied upon by the State were often inadequate and insufficient, noting that in 16% of the cases there were no post-transition calls held, which usually occur within a month after discharge from an adult home to verify that all necessary services and supports are in place. Thus, an important source of information about the implementation of the discharge plan was unavailable or unreported in a significant number of cases.
- Overall, in 65 cases (43%), there was insufficient information to support the State's conclusion that there were no service gaps. In many, a discharge had occurred early in 2020 and there was no information provided about the class member for many months thereafter and sometimes for all of 2021.
- The State's reliance on incident reports as an indicator of service gaps set too high a threshold for this purpose. And, as discussed in section VI. C, the State has not been diligent in fulfilling its responsibilities under the Supplemental Agreement for reporting

upon its incident review process, including failing to provide the required reports to the Plaintiffs, the Independent Reviewer and the court for over a year.

Based upon its review, the Independent Reviewer team identified service gaps in 26 cases (17%) where the State did not identify any. In another 14 cases (9%), the review identified additional service gaps to the ones identified by the State. In one case, we disagreed with the State's conclusion that there was a service gap.

In response to this review, the State has indicated its intention to supplement the information provided in its initial report to the court.

VII. Conclusion

Despite the significant challenges posed by the COVID 19 pandemic, settlement providers began to adjust to the "new normal" of working around and through the many restrictive changes necessitated by health and safety considerations. There is a small glimmer of hope that the recent trend of declining transitions may be reversing as there has been an uptick in the number of class members transitioning thus far in 2021-22 compared to the previous year.

The work of implementation of the Settlement Agreement has been made more challenging by the continuing admissions of persons with SMI into the Transitional Adult Homes despite a clear requirement to prevent such admissions. The efforts made by the State to tighten controls on improper admissions have proved less effective than needed and the State has made, renewed efforts to prevent inappropriate admissions by providing for independent evaluations to screen out persons with SMI.

The State continues to maintain a high degree of compliance with the process metrics established by the Supplemental Agreement, with the important exception of those related to the most critical outcome desired—timely transitions of class members who choose to leave the adult homes.

The State adopted a Template for Informed Decision-Making, recommended by the Independent Reviewer, as a tool to inject a measure of discipline and consistency in the efforts of settlement providers to ensure that class members are fully informed of their options. The use of this tool has provided greater confidence for all parties in accepting class members' decisions not to transition. At Wavecrest, at the conclusion of the FCP, 41 class members were confirmed No's. The Independent Reviewer team reviewed each of these cases against information collected using the Informed Decision-Making Template and agreed, based on the evidence provided, that 39/41 (95%) had made an informed decision to decline the opportunity to move to the community.

The Wavecrest experience also illustrates the continuing challenge of timely transitioning of those who said Yes. When the FCP ended at Wavecrest on October 26, 2021, six months after it began, there were 13 class members still in the transition process. The reasons for the delays

varied. For some, it was the need for a neurology or other evaluations; awaiting a Level II vacancy; highly specific preferences (*e.g.*, an apartment in Manhattan, a Level II facility that had closed); or OPWDD placements. By January 11, 2022, according to an update provided by the State, that number had dwindled to seven, including one person who was in the process of moving and who eventually moved on March 3, 2022. Five others had changed their minds or abandoned the effort, and one remained difficult to engage.

At the urging of the Court, the Parties are continuing to explore additional improvements in processes and choices to improve outcomes for class members, most especially in achieving timely transitions of those who opt to move to community housing. To support and guide these efforts, the Independent Reviewer offers several recommendations that follow.

VIII. Recommendations

The Stipulation and Order of Settlement, Section L. 9, provides that the duties of the Independent Reviewer “shall be to observe, review, and report findings and make recommendations to the Parties solely with respect to the implementation of and compliance with the agreement.” During the current reporting period the Independent Reviewer team completed systemic reviews with recommendations to the Parties, addressing the State’s preadmission screening process for admission of individuals with SMI to the Impacted Adult Homes, and a issued a report on class members who have returned to the adult homes. In addition, the Independent Reviewer issued memos to the Parties with recommendations related to housing choice; a voucher program; incentives and a Housing Fair to enhance housing choice for class members; a strategy for accelerating the engagement with class members at the non-FCP adult homes who are currently in the No/Uncertain group; and ongoing concerns about transition preparation, including getting IDs, SNAP benefits and other entitlements for class members before they transition. While monitoring the implementation of the State’s FCP strategy at adult homes, the Independent Reviewer offered several recommendations to promote class member turnout and engagement including inviting former residents to speak of their experiences, arranging in-person and virtual tours of apartments more expeditiously, etc.

Below is a summary of the key recommendations made by the Independent Reviewer since the last Annual Report to improve the implementation of the Settlement Agreement and the Supplement and the response/actions taken by the State in response. Where available, the State’s response is provided following the recommendation, in italics.

A. Preadmission Screening Process²⁹

1. The State should promptly issue a standardized and comprehensive MHE tool similar to the one it developed but never put into practice and require its use in all adult home preadmission screenings at TAHs.

²⁹ See, Preadmission Screening Report, *supra* note 6.

The State promptly implemented the use of the standardized and comprehensive mental health evaluation form.

2. The State should require the submission of the preadmission screening evaluation and review it for completeness and compliance with regulatory requirements.

*Instead, the State elected to secure an independent evaluator to conduct the MHEs and entered into a contract with Kepro in January 2022. Training sessions for Transitional Adult Homes, describing how they will submit requests for screening and evaluations to the independent evaluator, were held on January 31, 2022, and February 1, 2022. A formal “Dear Administrator Letter” requiring that screening and evaluation requests be submitted to the independent evaluator was issued on March 14, 2022, and the evaluations were expected to begin April 1, 2022. However, in the interim, the new MHE has continued to be completed by clinicians without any review of the evaluations. **The admissions data provided by the State still indicates that substantial numbers of people who screened positive for SMI were nevertheless admitted into adult homes before the new process was fully implemented. As noted earlier in this report, the Independent Reviewer recommends that the State or the new independent evaluator review a sample of these admissions to ensure that inappropriate admissions do not undermine one of the goals of the Settlement Agreement.***

3. The State should develop a process for sharing information from PSYCKES and HARP with the clinicians who are conducting preadmission screenings at the TAHs.

The clinicians that have continued to conduct the Mental Health Evaluations at the adult homes have not been afforded access to the information from PSYCKES and HARP. However, the State has indicated that the independent evaluator will have access to relevant clinical information. This will ensure that the evaluations are as comprehensive as possible.³⁰

B. Accelerating the Pace of Transitions

1. Provide class members with housing vouchers to seek housing that aligns with their choice from any available provider, to expand possibilities. (Independent Reviewer Memo, *Thoughts about the Full Court Press*; February 10, 2021.)
2. Reinstate an earlier program that provided transition incentive funding for things that would make the prospect of moving more attractive to people who are seriously thinking about it. Place a cap of \$2,500 per person; use the person-centered plan as the

³⁰ State letter to the court, Doc. # 314-1 in Case 1:13-cv-04166-NGG-ST filed 08/03/21.

vehicle to identify for each person the things they desire to ease the transition and create a budget with the class member for those items; and establish broad categories of expenditures that would qualify (similar to what was offered in the State's 5K enhancement project, which ended in February 2017 after two years). (Independent Reviewer Memo, *Further thoughts about the Full Court Press-Informed Consent, Housing Options, Incentives*; February 26, 2021.)

As noted in the State's letter to the court of January 14, 2021,³¹ "the State has supported the idea of empowering class members in finding their own apartments but believes it would be difficult to establish a mechanism for paying landlords. After further discussion facilitated by the Independent Reviewer, the Parties have agreed that class members will be able to find their own apartments and, assuming a reasonable cost and that the apartment appears safe, the State will designate a HC to secure the apartment and assist the class member in entering into a lease. The Parties are refining a jointly developed draft handout for distribution to class members to explain this option, and settlement providers will be educated so they can provide support to class members exercising this option."

3. Housing Fairs/Expanding housing choices—Widening the search for housing to include all Housing Contractors as well as other housing providers in New York City, and open market searches for housing. One means to accomplish this would be the holding of housing fairs where multiple providers of housing could meet with interested class members, not in their assigned homes. (Independent Reviewer memos: *Transitions to Supported Housing—Availability of One Bedroom Apartments*: April 20, 2021; and *Proposal for a Housing Fair*: July 19, 2021.)

The State expressed agreement with the general idea of holding a Housing Fair. In discussions in Parties' meetings, it was agreed that there would be several fairs and the first Housing Fair would be held in Queens, and they would seek a suitable venue for the event, which at present is impacted by the rise in COVID cases.³²

4. Expand Level II housing/Apartment Treatment. Recognizing the preference of some class members to have a greater level of staff support, there is a need to expand choice to include Level II housing. This would allow class members who desire an increased level of supervision and skill building to choose supervised housing (e.g., apartment treatment) rather than independent supported housing apartments. Apartment treatment would provide them an apartment, shared or alone, similar to supported housing, but with off-site staff available to help to monitor medication management, and other identified clinical and housing needs. (*Report on Returning Class Members*).

³¹ State letter to the court, Doc. # 330-1 filed in Case 1:13-cv-04166-NGG-ST 01/14/22.

³² *Id.*

*The State reports that OMH has worked out the mechanics of converting supported housing apartments to Apartment Treatment beds with leadership in central office and housing to make it possible to do so on an expedited and as needed basis, using the funding under their Adult Home contract.*³³

5. Other options to be considered include Supportive-Single-Room-Occupancy (SP-SRO) and Mixed-Use /Income Housing. Supportive-Single Room Occupancy (SP-SRO) housing is a form of Single-Site Supportive Housing that combines permanent housing with some on-site services. The support offered in SP-SROs is consistent with the principles guiding all supportive housing. Mixed-use housing is affordable housing where supportive housing units are integrated with other affordable housing units in the same building. (Independent Reviewer Memo, *Further thoughts on the Full Court Press*, February 26, 2021.)

6. Expand the activities of the settlement providers to reach the No/Uncertain group at all adult homes now to accelerate the transition process. Specifically, utilize the Informed Decision Making Template, currently being used in FCP homes, to focus on the following activities: opportunities to tour regardless of desire to move; opportunities to speak with someone who has moved; involving the class member's significant others; and giving the class member the opportunity to talk out fears/reservations. (Independent Reviewer Memo, *Priming the Pump with the No/Uncertain group at all adult homes*, February 7, 2022.)

C. Consolidation of Care Management and Housing Functions Under One Organization

Merge the responsibility for case management with the HCs and create a single accountable organization to serve the class members. This would permit having a single case manager with a small caseload responsible for all aspects of the transition process, rather than the current system where a case manager from the HC agency is responsible for landlord-tenant issues, while a care coordinator from a Health Home deals with behavioral health issues, and another case manager or nurse manager from an MLTC deals with medical issues, Home Health Aides and the like. (Statement of the Independent Reviewer at the Status Conference of 11/3/2021; and Independent Reviewer's *Building a Better Mousetrap* memorandum of 10/17/19.)

State's Response

The premise of this suggestion is that integration of care management under the auspices of the HC will improve communication and accountability. There is a logic to this approach

³³ *Id.*

and if we were starting from scratch, the State might agree that this is the right structure. However, with close to 350 care managers in place and employed through the Medicaid Health Home structure, it simply is not practical to transfer these responsibilities to a different provider, i.e., the Housing Contractor.

Although the realignment of provider agencies described in the Process Changes document filed with the court on September 21, 2020 was never implemented, the State took steps that they believe reached the same goals through a “phased realignment.” In January 2021, the State asked the Health Homes to limit the number of CMAs and AH+ care managers that were being assigned to each adult home so that realignment could naturally be achieved over time as new in-reaches were completed. All new “yes” in-reaches have been assigned this way since January 2021 except in five specific instances, detailed in the State’s letter to the court of January 14, 2022. Initially, the State did not undertake realignment for class members who had previously said “yes” at in-reach, out of concern for disrupting existing care manager relationships. After further discussion with Plaintiffs’ Counsel and the Independent Reviewer, the State determined to take a closer look whether realignment currently would be appropriate for each of these class members, including post-class cap group members. The details and results of that review of those 95 class members are also detailed in the State’s letter to the court.

D. Accountability for Care Management

1. The State take steps to reinforce for the AH+ care managers the importance of securing IDs and available benefits as expeditiously as possible. Care managers should be informed that the process of obtaining IDs can and should start at the time of care management enrollment; they should understand that the complexity of obtaining IDs and supporting documents such as birth certificates and/or immigration documents may necessitate several months of work, and they should begin this work as soon as possible. Care managers should also be reminded of the importance of having all IDs and benefits in place at or as soon as possible to the time of transition. Overall, there is a need for more training of care management staff in better preparing members for transition, and for holding staff accountable in fulfilling these tasks in an expeditious manner. (Independent Reviewer Memo, *Transition preparation of class members*; February 8, 2021)

The State began centralizing requests for documents needed by providers at FCP homes, with the Wavecrest rollout in April 2021. These include assistance in obtaining IDs; birth certificates; and other documents need for transition that often take the AH +CM and other providers extensive time to complete. The State indicated that it is their goal to implement this practice at all of the Impacted Adult Homes, and presently it is in place at approximately half of the homes.

Development and Implementation of the Dashboard—the Dashboard was developed as a tool to track and monitor the tasks to be completed by AH+ CM and Housing case managers on the Transition Planning Tool prior to and after transition to the community, with designated time frames for the completion of each task. The Dashboard went live at the end of June 2021.

The State indicated that if they were starting from scratch, they might structure the care management relationship differently. Nevertheless, they stated that the State does have the ability to address the performance of CMA as necessary. To begin with, the State designates the Health Homes which do have a contractual relationship with the CMAs. The State provides regular oversight to Health Homes, including through regularly held calls with each Health Home and the supervisor of each CMA, and requires the Health Homes to oversee the work of the care managers. For example, each Health Home is required to review the Transition Planning Tool updated by the care manager and submit it to the State before a pre-transition call.³⁴ (State's letter to the court of January 14, 2022, p.6 #7.)

2. The State should use the performance data in the Dashboard to develop a report card for each of the Health Home/CMA's and other settlement providers on the timely performance of required tasks and periodically publish the report to the providers, the Independent Reviewer and the Parties. Because obtaining IDs is a pervasive bottleneck, the State should consider if the Dashboard item addressing them should be expanded into a more itemized list in order to further prompt and document care manager progress and performance.
3. More efforts are needed to bridge the separate channels of communication between OMH and its Housing Contractors, Peer Bridger Agencies and Pathway Homes on the one hand, and DOH's communications with Health Homes, CMAs and Managed Long Term Care Programs (MLTCs) on the other. The Independent Reviewer recommends that the State schedule joint calls among all settlement providers periodically, especially during the Full Court Press.
4. The State should provide settlement providers with information about class members' past experience with community housing (Email to the State of August 23, 2021, with reference to experiences learned during our review of Returning Class Members).

E. Reinstatement of Regular Discouragement and Interference/Incident Reporting and Review

As required by the Supplemental Agreement, the State must reinstate regular updating and sharing of discouragement and interference and incident reporting trackers with reporting

³⁴ *Id.* P. 6, #7.

providers, Plaintiffs, and the Independent Reviewer. As of April 2021, the State facilitated discussions with the peer-run agencies to merge the peer tracker into a comprehensive discouragement and interference tracker. The State also committed to sharing this tracker regularly with the peer-run agencies and other providers, but there has been no progress since this time.

The Independent Reviewer strongly encourages the State to reengage with their stated plan for this tracker, and to establish a practice of consistently updating and sharing both the incident and discouragement and interference trackers. The Independent Reviewer also underscores the recommendation shared in the prior reporting on the trackers, that except in exceptional circumstances, incident investigations be completed within 60 days.

Finally, it is essential that the results of actions taken in response to reports of discouragement and interference are communicated promptly to the reporting parties. The lack of such a feedback loop encourages the perception that there is not an effective response to such reports and may discourage settlement providers from reporting these events.

Appendix A. Table of Acronyms and Abbreviations

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

