

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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

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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.	)	

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**NINTH ANNUAL REPORT**

**SUBMITTED BY**

**CLARENCE J. SUNDRAM**  
**INDEPENDENT REVIEWER\***

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\* 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.<sup>1</sup> 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 12, 2021-March 10, 2023) and in the context of longer term trends. The effects of the COVID-19 pandemic, which were described in some detail in a previous Report<sup>2</sup> continued into the current Report year and created ongoing uncertainties for the staff of settlement providers in maintaining contact with class members and in performing their functions but as the year progressed there was an increasing return to a semblance of normalcy. (*See*, Sec. VI.D.2)

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.<sup>3</sup> With the adoption of the Supplemental Agreement,<sup>4</sup> 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.<sup>5</sup> Consequently, as shown in Fig. 1 below, the number of active class

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<sup>1</sup> Annual reports have been filed previously as follows: Independent Reviewer's Annual Report, Doc. # 36, filed March 30, 2015, hereinafter "First Annual Report;" Independent Reviewer's Second Annual Report, Doc. # 63, filed April 1, 2016, hereinafter "Second Annual Report;" Independent Reviewer's Third Annual Report, Doc. # 102, filed April 3, 2017, hereinafter "Third Annual Report;" Independent Reviewer's Fourth Annual Report, Doc. # 145, filed April 2, 2018, hereinafter "Fourth Annual Report;" Independent Reviewer's Fifth Annual Report, Doc. # 229, filed April 3, 2019, hereinafter "Fifth Annual Report;" Independent Reviewer's Sixth Annual Report, Doc. # 185, filed April 1, 2020, in 1:13-cv-04165-NG-ST, hereinafter "Sixth Annual Report;" Independent Reviewer's Seventh Annual Report, Doc. # 298, filed April 1, 2021, in 1:13-cv-04166-NG-ST, hereinafter "Seventh Annual Report;" and Independent Reviewer's Eighth Annual Report, Doc. # 243, filed April 1, 2022, in 1:13-cv-04166-NG-ST, hereinafter "Eighth Annual Report."

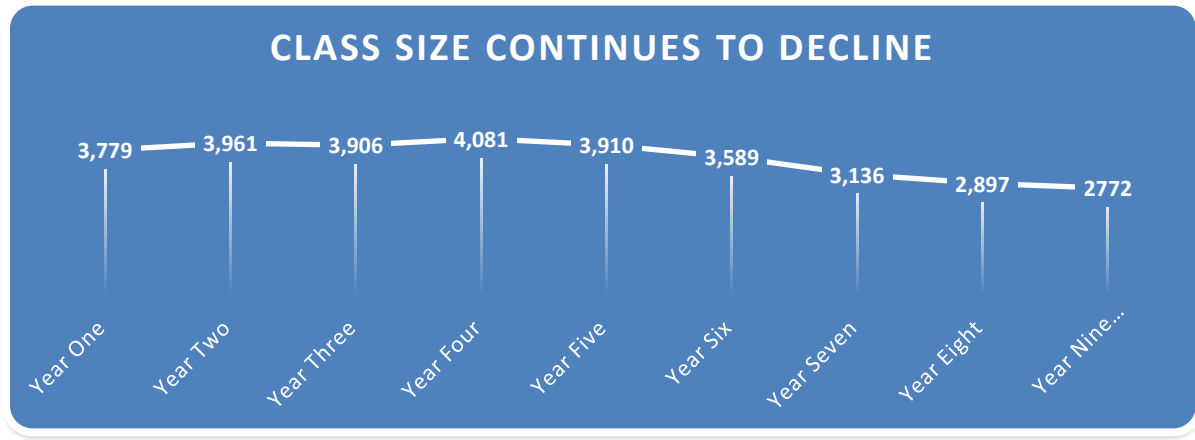
<sup>2</sup> Independent Reviewer's Report on the Impact of COVID-19 on Class Members, Doc. # 196, filed September 18, 2020, in 1:13-cv-04165-NGG-ST. ("COVID-19 Report").

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

<sup>4</sup> Supplement to the Second Amended Stipulation and Order of Settlement ("Supplemental Agreement"), Doc. 196-1, filed March 12, 2018, in 1:13-cv-04166-NG-ST.

<sup>5</sup> Such admissions are also prohibited by regulations issued by the State Department of Health (DOH) and OMH which were reinstated in January 2019 after having been the subject of a Temporary Restraining Order. (18 NYCRR

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. 3, p. 10 )



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

The Supplemental Agreement also added a series of process metrics which were intended to focus attention on speeding up the movement of interested class members through the many steps of the process to transition from an adult home to supported housing or other suitable community options. In this Report, we describe the State’s performance in meeting these metrics. (*See*, Sec. IV below). The State has generally met or come close to meeting most of the specific metrics added by the Supplemental Agreement; however, the ultimate outcome desired of a substantial increase in the number of transitions to community living has not been achieved. (*See*, Fig. 2 below)

Since April 2021, the State has been focused on the Full Court Press (“FCP”) as a strategy to reinvigorate the implementation effort. (This strategy was described in some detail in the Eighth Annual Report and in Section VI. A of this Report.) In doing so, it has used some innovative initiatives such as large group and housing fair style kickoff meetings, and the inducement of refreshments, swag and raffle giveaways to attract the attendance of class members and generate interest. It has issued invitations to all class members to attend the kickoff meetings and hear once again about the Settlement Agreement and the choices they have; to view pictures and videos of available apartments in various neighborhoods; to view video testimonials from class members who have moved; and to speak to peer ambassadors about their experiences in supported housing. Settlement providers have followed up to speak individually to class members who may not have attended the kickoff meeting and have provided them with written information packets as well. These efforts, in addition to the at-least-annual in-reach conversations, have helped ensure that class members are provided the information they require

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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.).

to make an informed decision about whether to transition. The State has continued to refine the kickoff meetings with class members based on experience with each effort.

For many class members—especially those with long stays in adult homes, age-related infirmities or other health issues—who have had many previous opportunities to transition, these efforts did not result in a decision to move. Each of these decisions to decline is subject to review by the Independent Reviewer to ensure that class members have been given another full and informed opportunity to take advantage of the Settlement Agreement as discussed in Section VI. A of this Report. They will also have a final opportunity to change their minds by the Decision Date which is discussed below. (*See*, Sec. VI. D. 3)

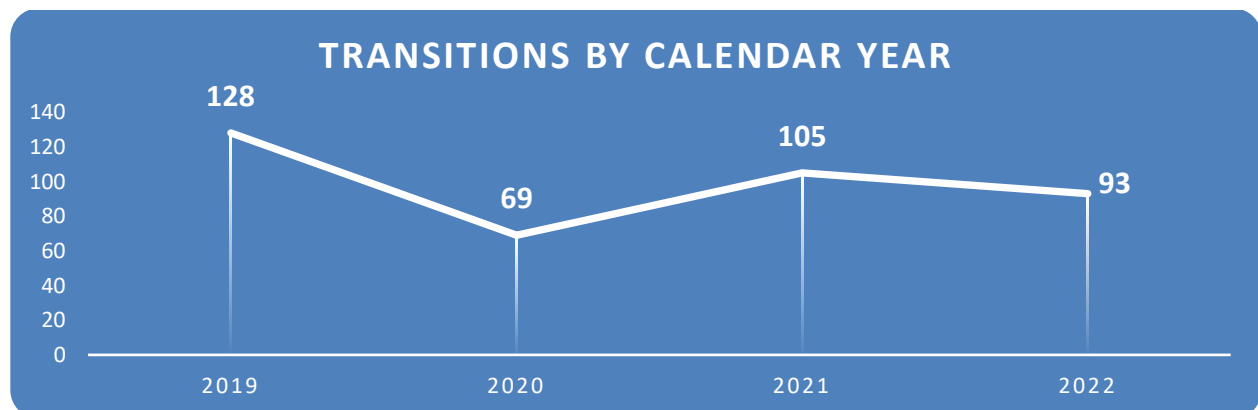
A significant number of class members who had previously said NO changed their minds during the FCP. For these and others who had already expressed their interest in moving out, the expectation was that the settlement providers would respond promptly and speedily to move them through the transition process and to avoid the delays, frustration and discouragement that had so often derailed class members' moves in the past, as described in earlier reports of the Independent Reviewer. If needed, assessments were to be completed promptly, and housing tours scheduled during the kickoff meeting or shortly thereafter, to maintain enthusiasm and momentum. This has been happening during some of the FCPs but, unfortunately, the follow-up and follow-through has been spotty and inconsistent, especially after the initial adult homes where the FCP strategy was first implemented. As has been true throughout the nine years of this case, the performance of various settlement provider agencies has been highly variable, with some focused, attentive and prompt in their follow-up, while others worked at a slower pace. As more adult homes were subject to the FCP, and work remained to be done to transition residents from previous adult homes' FCP, as well as at adult homes not yet subject to the FCP, the accumulation of work demands also made it difficult for State and settlement provider staff to respond with the speed that was anticipated in response to renewed engagement with class members. Staff vacancies, turnover and reassignment of settlement provider staff, and COVID-19-related absences added to the challenge of meeting the expectations. (*See*, Sec. VI.D.2)

During our monitoring work, the Independent Reviewer staff encountered many State and settlement provider staff who were conscientious, diligent and skilled in performing their duties, as discussed in the body of this Report. (*See*, Sec. VI, pp. 26-27) We also acknowledge that since the change in leadership of this effort which occurred in August 2022 the State has made significant efforts to produce timely reports to the court and the parties. In particular, we acknowledge and appreciate the substantial efforts made by State staff to respond to the many information requests made by the Independent Reviewer for data that was used in the preparation of this report. Despite this, the system as a whole, has not been working as intended. Notwithstanding the attention given to transition planning and monitoring the efforts of settlement providers through regular provider calls regarding class members who are interested

in moving out of adult homes, a significant number of moves were delayed by the failure to complete preparatory tasks such as obtaining IDs, arranging for medication training, scheduling tours and other idiosyncratic issues such as obtaining keys, setting up utility accounts, etc. Notably, these are the same types of issues that have surfaced over and over again through the years as described in previous annual reports but have not had an enduring resolution. New State-staffed initiatives that were announced, such as centralizing the responsibility for obtaining IDs, or obtaining necessary paperwork from adult homes and other providers, have petered out without explanation, while the underlying problems persist. Unquestionably, some of the delays are attributable to the ambivalence of the class members themselves who have said they are interested in moving but then have been unavailable or unwilling to engage in follow-up conversations, or appointments to secure IDs, transfer financial entitlements, and apply for benefits like SNAP or Access-A-Ride.

Delays have also been caused by the staff of adult homes and their contractors dragging their feet in producing necessary paperwork, or ordering medication training or filling out forms regarding the ability of class members to manage their own finances. Despite the promise of the Escalation Teams, there has been no consistent and effective remedy for such behavior which adversely impacts the implementation of the Settlement Agreement. Similarly, reports of discouragement and interference by adult home staff, behaviors which are explicitly addressed by the Supplemental Agreement (Para. E), are not resolved on a timely basis. (*See*, Section VI. C.) As has been noted previously, the DOH's enforcement process does not produce quick and effective remediation of such reported problems.

Perhaps as a result, in spite of considerable attention to this new strategy, it has devolved into a "business as usual" mindset among most settlement providers. The State itself has not been able to meet its commitment to produce final reports of the FCP at six of the eight adult homes where the process had ended at the time of this report. The overall result in terms of transitions completed during the Report year bears this out. Although the pandemic related restrictions eased during the year, the number of transitions has remained flat compared to the previous year.



**Fig. 2. Transitions by calendar year**

The workload of settlement providers, coupled with this mindset and the pressure to move people, has sometimes resulted in significant delays and in class members being moved without necessary supports being in place, causing service gaps. Delayed moves and service gaps in the community also lead to additional transition calls (*e.g.*, as many as six pre-transition calls), additional provider meetings (*e.g.*, IDT meetings), and additional support needed from State staff. Workloads grow even greater and settlement provider and State staff are stretched even more thin, creating a self-perpetuating cycle of suboptimal transition preparation leading to more suboptimal preparation as providers must continue to “look back” on early FCPs and follow-up on individual transitions for longer, in more depth while simultaneously being asked to “look forward” and undertake the intensive preparation necessary to launch upcoming FCPs. Perhaps most distressing, in a significant number of cases, these delays lead to class members losing their enthusiasm, changing their minds once again and deciding to remain in the adult home, undoing all the efforts made on their behalf.

In the body of this Report, in lieu of making recommendations, we have highlighted areas where additional attention is required by the State and its settlement providers to fulfill the promise of the Settlement Agreement to the fullest extent.

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.<sup>6</sup>

A draft of this report was provided to the parties and their comments have been considered in this final report.

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<sup>6</sup> 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.<sup>7</sup> 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 Report<sup>8</sup> and will be referenced as necessary in subsequent sections of this Report.

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

This year, as in the past, the Independent Reviewer and his associates engaged in a variety of activities to monitor the implementation of the Settlement Agreement, as well as the March 2018 Supplemental Agreement, and to provide the State and Plaintiffs with information as early as possible to enable them to act as warranted to achieve successful implementation of the legal obligations. 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, were at times limited due to the COVID-19 crisis, particularly in adult homes where instances of infection were reported.

Major activities which informed the content of this Annual Report included:

- Participation in training sessions and other virtual informational meetings for the staff of Housing Contractors, Health Homes, MLTCPs and peer bridger agencies.
- Reviews of weekly, monthly, and quarterly reports and other updates provided by the State.
- Participation in FCP activities at 15 adult homes, including 11 homes that had kickoff events between March 2022 and March 2023. We continue to monitor those homes during the 90-day engagement period; and continue to do so at those homes where care management and other provider's activities continue to focus on class member transitions. This included 33 visits to 13 homes, and meetings with 164 class members and staff of settlement provider agencies. In addition, Independent Reviewer staff

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<sup>7</sup> See, fn. 1 above.

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



attended on-line FCP Summit Meetings prior to FCP kickoffs that were held for eight homes.

- Participated in 203 implementation meetings including those with DOH and HH/CMA staff; Office of Mental Health (OMH), Housing Contractors, peer agencies and Pathway Home staff; and more recently all provider agencies, during which class members statuses at FCP homes, pre and post-transition, were discussed. (*See*, Section VI. A for a full discussion of the FCP).
- Reviewed 150 Decision Making Templates (DMT) that were received in three submissions between December 30, 2022 and January 23, 2023 to support the State's determination that the class members at homes where the FCP had been completed had made an informed decision not to transition, and were designated by the State as a confirmed NO.
- Prepared a memo to the Parties encouraging concerted actions to address multiple incidents of persistent discouragement and interference at a transitional adult home. (*See*, Section VI. C for a full discussion of Discouragement & Interference)
- Participation in biweekly calls with OMH and the peer bridger agencies, and in bi-monthly WebEx's conducted by OMH for the peer bridgers and peers working with the Housing Contractors.
- Reviews of Transition Planning Tools, Dashboard information, assessments and care plans for class members through participation in 161 pre- and post-transition calls with the State and provider agencies and 26 Case Review Committee conference calls. Work includes follow-up with the State and providers on outstanding issues identified during these calls.
- Participated in focused meetings with the Parties on ways to improve the rate of transition of class members to the community; and changes to the Transition Metric Reporting system and implementation of the Decision Date, as specified in the Supplement to the Settlement Agreement. Routine communication with the Parties and court through progress memos, telephone and video conferences and court-convened virtual and in-person status conferences.

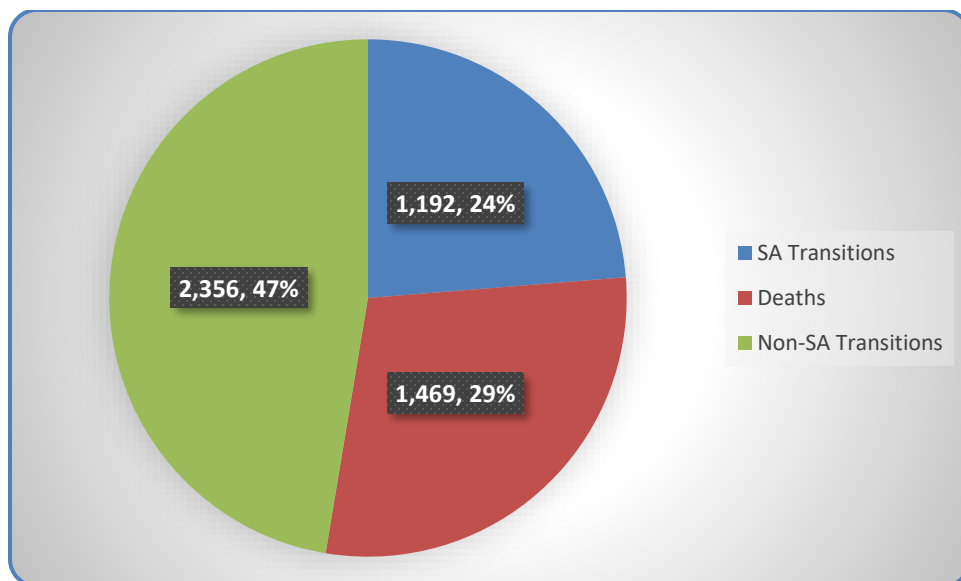
### III. Class Size

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

Grand Total class members	6,854
Non-SA transitions	-2,356
Deceased	-1,469
Not a class member—no SMI	-304
SA transition	-1,192
SA transition but returned to adult home	+105
Current active class members	1,638

**Table 1. Active Class Members December 9, 2022**

The most recent class list as of March 10, 2023, requested by the Independent Reviewer, contained a total of 6,854 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 1,638 "active" class members eligible for assessment and transition as of March 10, 2023, 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. 3 below.



**Figure 3. Deaths, Non-SA transitions, and Settlement Agreement transitions**

As discussed in prior annual reports, although the class size was capped by the Supplemental Agreement as of September 30, 2018, persons with SMI have continued to be admitted to the Transitional Adult Homes. 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.

As discussed in the Eighth Annual Report, 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.<sup>9</sup> 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. A Dear Administrator Letter ("DAL") was distributed to all of the homes on March 14, 2022, and they were directed to start using the new screening process effective April 1, 2022. Since that time, both the preadmission screening and any mental health evaluations required as a result of a completed screen have been carried out by the independent evaluator.

The Independent Reviewer recommended in the report that the independent evaluator or the State undertake a review of a sample of the 181 individuals of 640 individuals who were admitted between March 2021 and January 2022 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. In response, the State engaged with KEPRO in the summer of 2022 to conduct an expanded review of all adult home residents admitted to impacted Adult Homes between October 2019 and March 2022 who were flagged as "yes for potential SMI" or "Not enough Medicaid history" based on internal pre-screen checks performed during that period (prior to KEPRO taking over in April 2022). The review identified 333 individuals who fit these criteria. The State has indicated that the review is ongoing, and the results of that analysis will be shared when the project is completed, although it was not able to provide a date by which completion is expected.

Based on information provided by the State, between March 2022 and February 2023, under the new system there were 1,576 preadmission screens conducted by Kepro for admission to Transitional Adult Homes. The results are displayed in Table 2 below.

Of the 1576 screens that were conducted by KEPRO, 861 could be admitted as not having SMI. Of the 378 MHEs that were conducted, 86 persons were found not to have an SMI and could be admitted and 190 showed evidence of an SMI and could not be admitted to a transitional adult home. Of the 861 that qualified for admission, 797 were admitted during the reporting period.

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<sup>9</sup> Eighth Annual Report; pp. 11-12.

<b>Determinations by Independent Evaluator</b>	<b>Preadmission Screens</b>	<b>Mental Health Evaluations</b>
<b>Can Admit (non-SMI)</b>	861	86
<b>Cannot Admit Without An MHE</b>	556	
<b>Cannot Admit—Evidence of SMI</b>		190
<b>Administrative Closure<sup>10</sup></b>	159	102
<b>Totals</b>	<b>1576</b>	<b>378</b>

**Table 2. Results of Preadmission Screens and Mental Health Evaluations conducted by Independent Evaluator March 2022–February 2023**

Of the 797 admissions, there were 49 returning class members, seven post-class cap members, and 741 individuals designated as Other. Of the individuals categorized as Other, 120 were admitted during the time when DOH OCT was still running checks. Eighty-three of these individuals were not flagged as SMI by the adult home and 37 did not have SMI based on the MHE conducted by the home. Of the returning class members that were screened by Kepro, 10 either did not screen positive for SMI or were found to not have SMI after an MHE. It should be noted that all returning class and post-class cap members are counted as SMI regardless of the result of the screening or MHE. During 2022, and through February 2023, 112 applications for waivers were submitted for 72 individuals; 42 waivers were approved, and 70 were denied. Seven of the waivers were granted prior to March 12, 2022, the start of the reporting period for this annual report, and 11 waivers were granted but did not result in admissions to the adult homes, leaving 31 waivers that resulted in admissions.

As noted on the State’s Monthly Report to the Court on New Admissions to Impacted Adult Homes for November and December 2022, there were 70 and 80 new admissions to the homes during October and November, respectively. Of these 18 were returning class members. This represented a significant increase in admissions when compared to previous months, and appeared to be in response to the *Oceanview* Decision.<sup>11</sup> Concern for this possible outcome prompted the State to pursue a stay of the decision, which was granted on November 1, 2022.<sup>12</sup> Subsequently, the State issued two DALs—the second DAL was sent on December 15, 2022—

<sup>10</sup> Reasons provided for Administrative Closure included Incomplete referral; not enough Medicaid Information/Unable to determine; Discharged elsewhere; deceased and withdrawn.

<sup>11</sup> On October 6, 2022, the Albany County Supreme Court issued a ruling in the matter *Oceanview Home for Adults et al. v. the New York State Department of Health et al.* Index No. 906012-16 which found the regulations at Title 18 of New York Codes, Rules, and Regulations (“18 NYCRR”) §§ 487.2(c), 487.4 (c),(h), 487.10(e)(3) and 487.13 violate and are preempted by, the 42 U.S.C. § 3601, the Fair Housing Act. As a result of the ruling, the Department of Health was immediately enjoined from enforcing these regulations.

<sup>12</sup> On November 1, 2022, the Appellate Division Third Department granted the Department’s application for a stay of the *Oceanview* ruling until the court decides on the pending order to show cause. The stay does not apply to “admissions scheduled” on or before November 2, 2022, which may have resulted in a greater number of permissible admissions after the stay.

reminding adult homes of their ongoing obligations to request preadmission screening of prospective residents. For 42 of the 80 admissions occurring in November 2022, the adult homes did not follow the required process to submit requests for screening and evaluations. In response to this, the State will arrange for the independent evaluator to screen these newly admitted residents to ensure they were not admitted in violation of the regulations. If any of these residents are found to have SMI, the State indicated that it would offer transition planning services to this group consistent with the treatment of post-class cap members. The State's Monthly Report on New Admissions for January and February 2023 also noted that: "In all cases where the regulations have not been followed, the names have been forwarded to the Department of Health's enforcement arm as complaints to be investigated and to issue citations for those homes that are confirmed to have violated the regulations."

The number of returning class members who do not screen positive for SMI under the existing Health and Recovery Plan ("HARP") criteria or are found to not have SMI after an MHE, raises the question of whether the HARP criteria are too narrow in their definition of SMI. At the time of the writing of this Report, the Parties have been discussing potential changes to the HARP criteria and the standards for admission to the adult homes.

## 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– remains unmet, as it has over the years for reasons that are discussed more fully below.

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

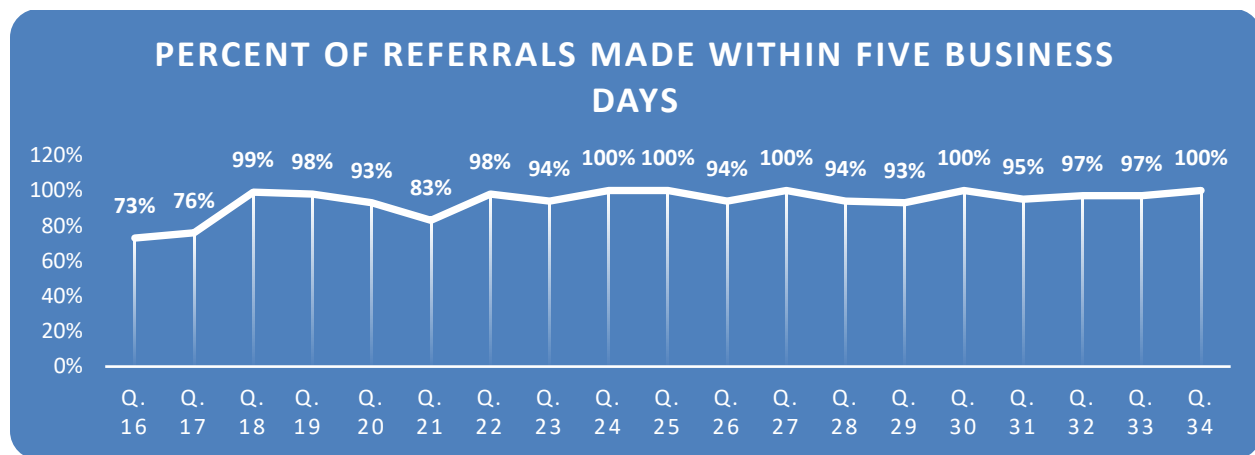
The Supplemental Agreement required that newly admitted residents to adult homes be in-reached within one month of being added to the Community Transition List ("CTL").<sup>13</sup> During in-reach, residents are informed of their options under the Settlement Agreement to choose to move to supported housing or other community housing with necessary support

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<sup>13</sup> The CTL is prepared by the 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.

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; *see*, Fig. 4 below) 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.2)

Beginning with Quarter 16, the first Quarter during 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 has been only one addition to the CTL in the last 11 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.



**Fig. 4. Referral for Assessment Following In-Reach**

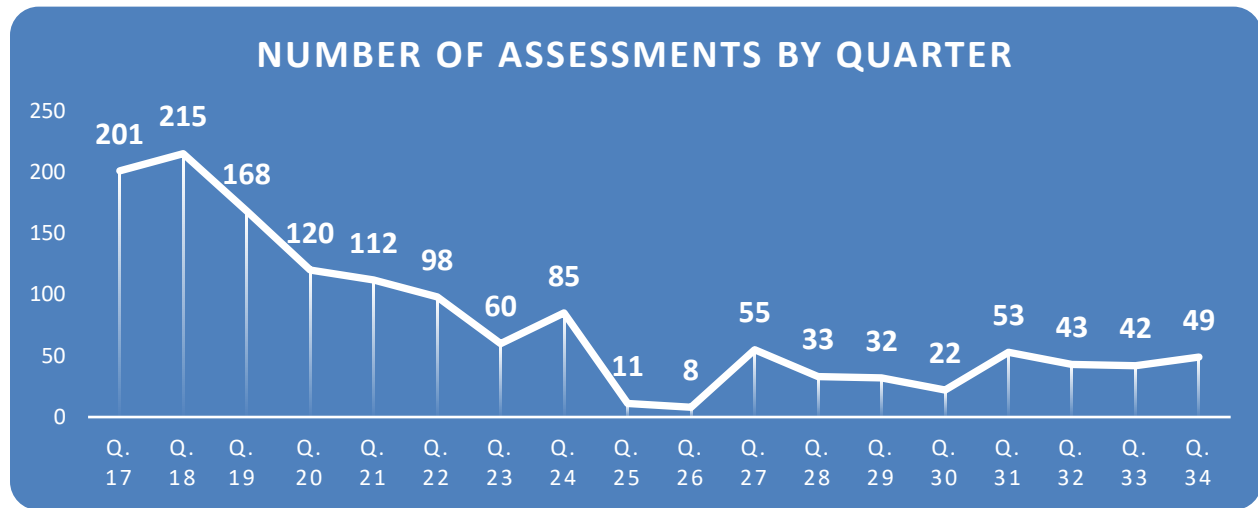
## B. Assessments

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.<sup>14</sup> (Supplemental Agreement, Paragraph B.2.d)

Since the Supplemental Agreement, the number of assessments has fluctuated significantly from a high of 215 in Quarter 18 to a low of eight in Quarter 26 during the pandemic. In part, the decline of the number of assessments is affected by the extension of the duration of the validity of an approval for community housing by the NYC Human Resources Administration (“HRA”) 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

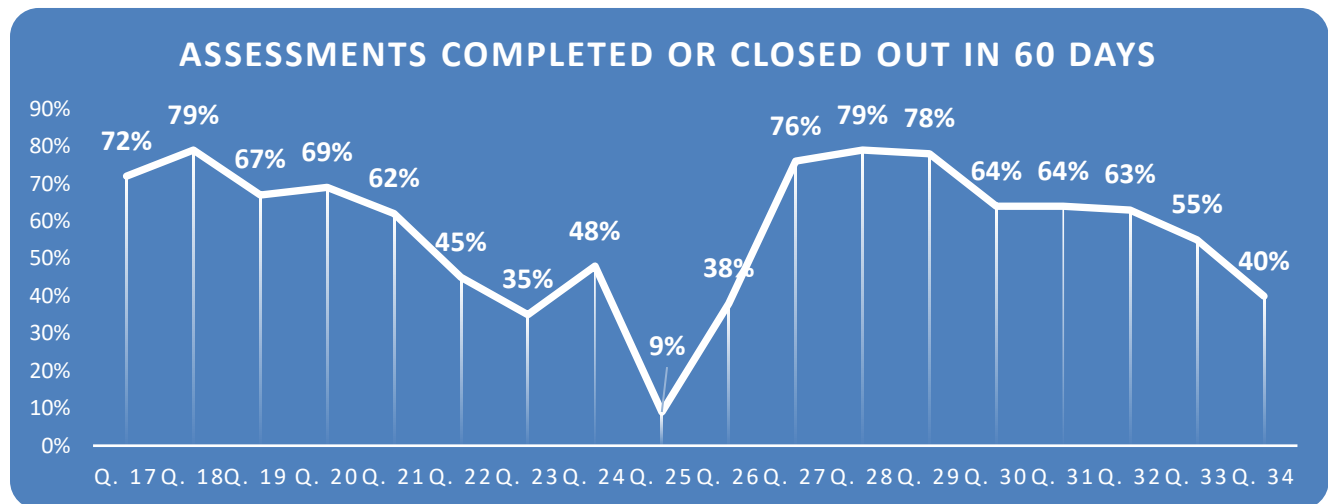
<sup>14</sup> Assessments can be “closed out” if the individual chooses not to transition, is determined not to be appropriate for transition or refuses to engage in the assessment process. (Supplemental Agreement, Paragraph B.4)

significant change in their conditions, which sharply reduces the number of re-assessments needed. (See, Fig. 5 below)



**Fig. 5. Assessments by Quarter**

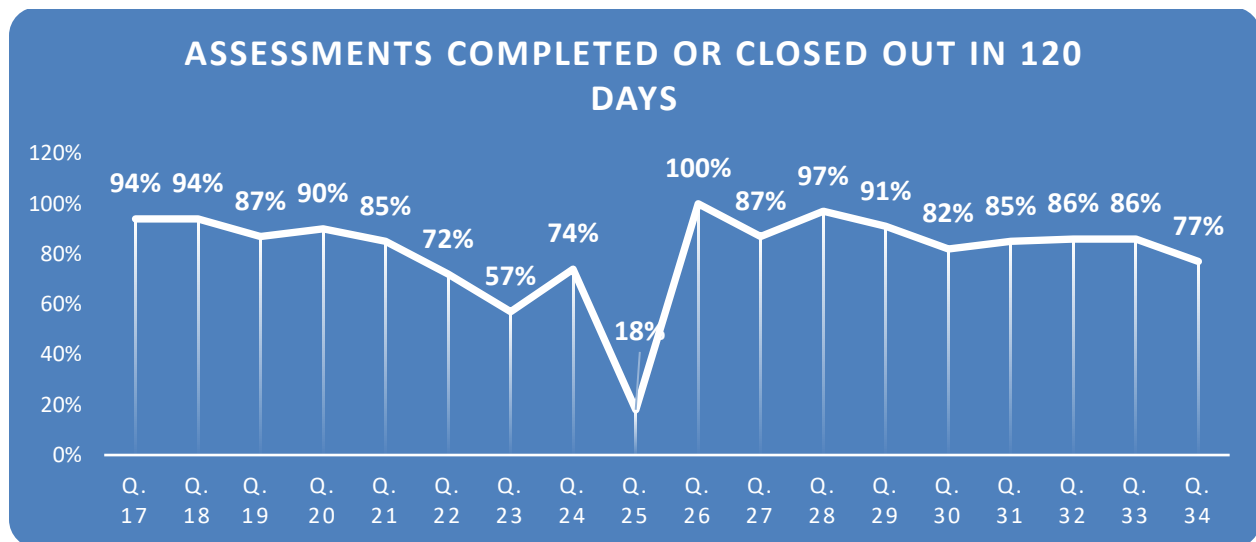
As indicated in Figures 6 & 7, since the Supplemental Agreement, the percentage of assessments conducted or closed out within 60 days has ranged from 9% to 79% on a quarterly basis and has been on a downward trend over the last five quarters even as the total number of assessments has been significantly lower than at its high point.



**Fig. 6. Assessments Completed or Closed Out in 60 Days**

On the other hand, the assessments completed or closed out within 120 days has recovered from its low point of 18% in Quarter 25 and has remained consistently near or above 80%.





**Fig. 7. Assessments Completed or Closed Out in 120 Days**

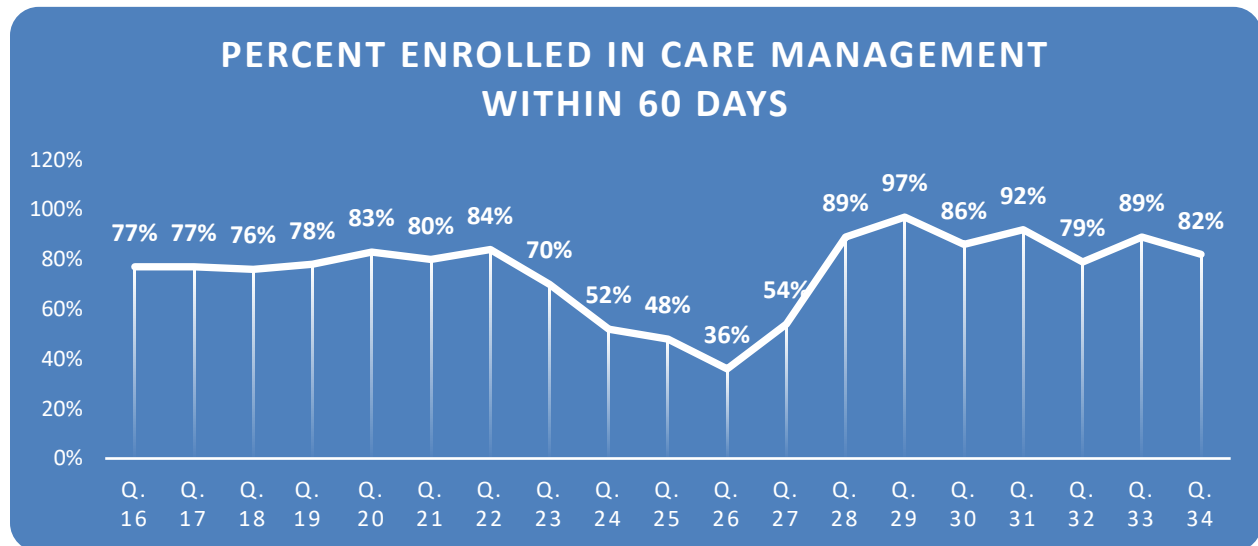
These data indicate that the State has fallen significantly short of the compliance threshold for the 60 day benchmark. It has made significant improvement for the 120-day benchmark, since the low point in Quarter 25, although short of the compliance threshold of 98%. In explaining these data, the State posits that class members who were the least clinically complex and most enthusiastic to move likely transitioned earlier in the settlement. As a result, in recent quarters, more consultation is occurring between the State and assessors to determine the appropriate housing, service and program recommendations for class members agreeing to be assessed. This had led to fewer assessments being completed within the benchmark time frames and the assessments themselves taking longer to complete. However, when the assessments are completed and are subject to review by the Case Review Committee (“CRC”) when they result in a recommendation for a more restrictive placement than supported housing, the CRC has generally agreed with the assessor’s recommendation. In this respect, this is a notable change from previous years where members of the CRC would challenge the assessor’s recommendation much more frequently.

### **C. Enrollment in Care Management**

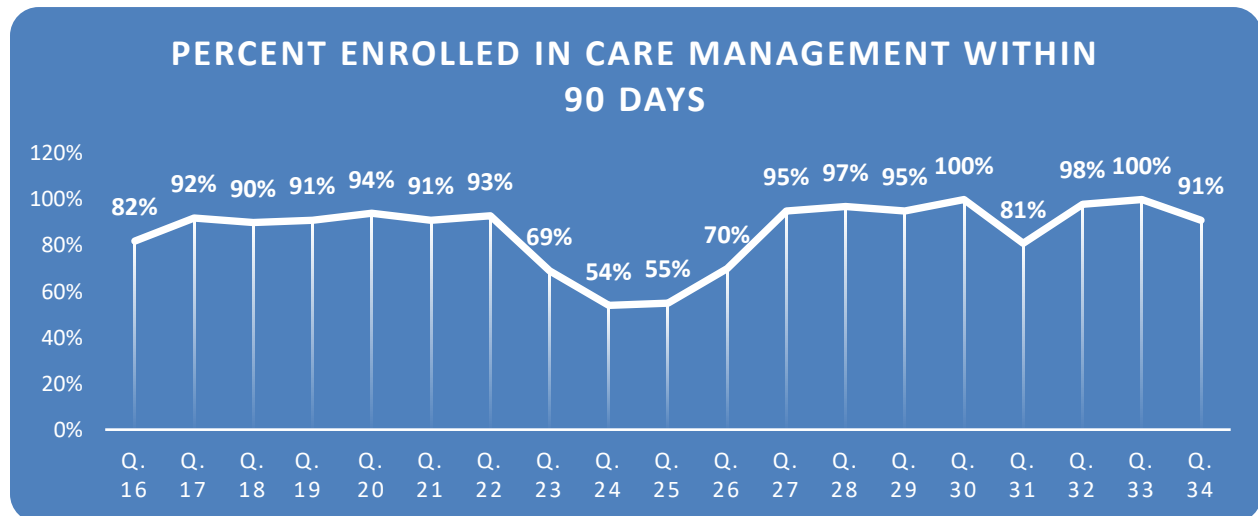
Enrollment in care management and the development of a person-centered plan to assist an individual transition to the community with the needed supports and services (*e.g.*, benefits, linkages to medical and behavioral health care providers, etc.) is a critically important step in the transition process. 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.



Since Quarter 27 (ending March 2021), the State has come close to or exceeded the performance benchmarks for both enrollment in care management within 60 and 90 days as shown in Figures 8 & 9 below.



**Fig. 8. Percent enrolled in care management within 60 days**

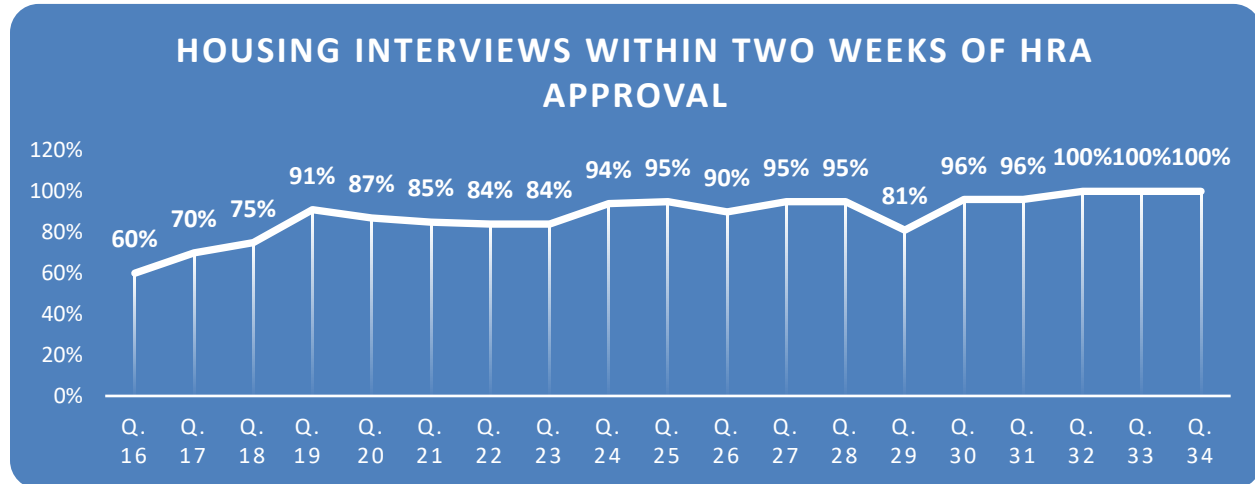


**Fig. 9. Percent enrolled in care management within 90 days**

#### **D. Housing Interviews and Tours**

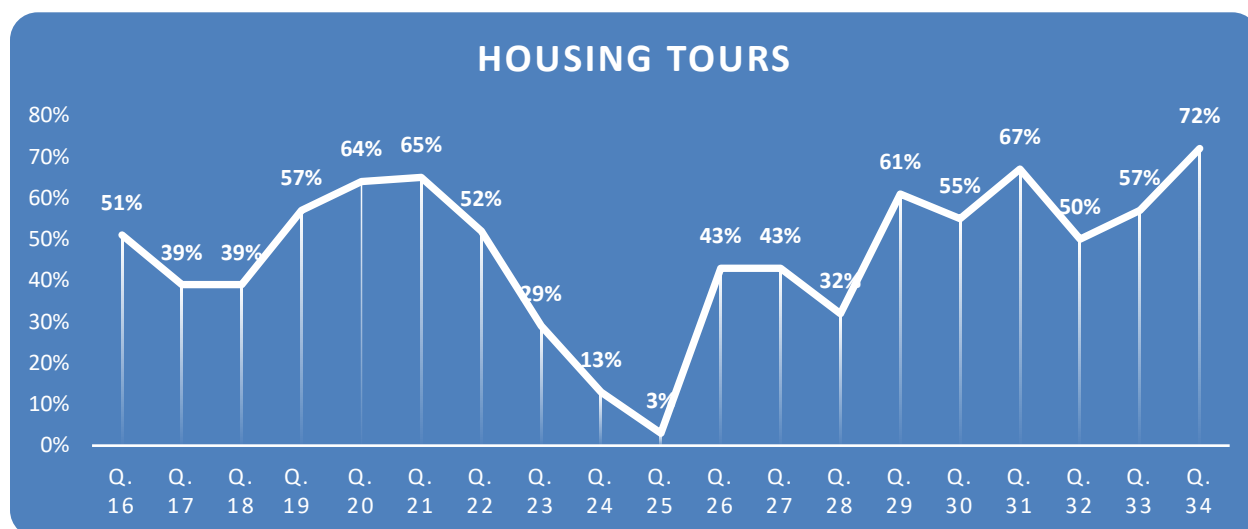
The Supplemental Agreement requires that once a class member is approved to transition to the community by HRA, within two weeks of receipt of the HRA approval, the Housing Contractor must offer the member a meeting, or housing intake interview. It also requires that within 45 days of receipt of the 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 stated in the person-centered plan. (Supplemental Agreement, Paragraph B.10)



**Figure 10. Housing Interview within two weeks of HRA approval**

As indicated in Fig. 10, the State has generally met a high level of compliance with the requirement of holding housing intake interviews with class members within two weeks of HRA approval and met this requirement in 100% of the cases in the last three quarters. However, as shown in Fig. 11 below, the percentage of members offered housing tours within 45 days of HRA approval has fluctuated dramatically over the years; however, it appears to be trending upwards in the last two quarters. The State continues to encourage settlement providers to offer to show many apartment options toward the goal of helping class members to become informed consumers. As such, they are in a better position to make determinations and prioritize their own preferences and needs. The increased emphasis on trying to satisfy class members' preferences for the type of housing they desire and the neighborhoods they want sometimes slows down the speed with which housing tours can be scheduled. However, there are also indications that settlement provider staff may be stretched thin as a result of work on the FCP efforts that have been implemented at 11 adult homes. These efforts may contribute to delays in scheduling housing tours for all class members who have expressed an interest. (*See*, Sec. VI.A for a discussion of the FCP)

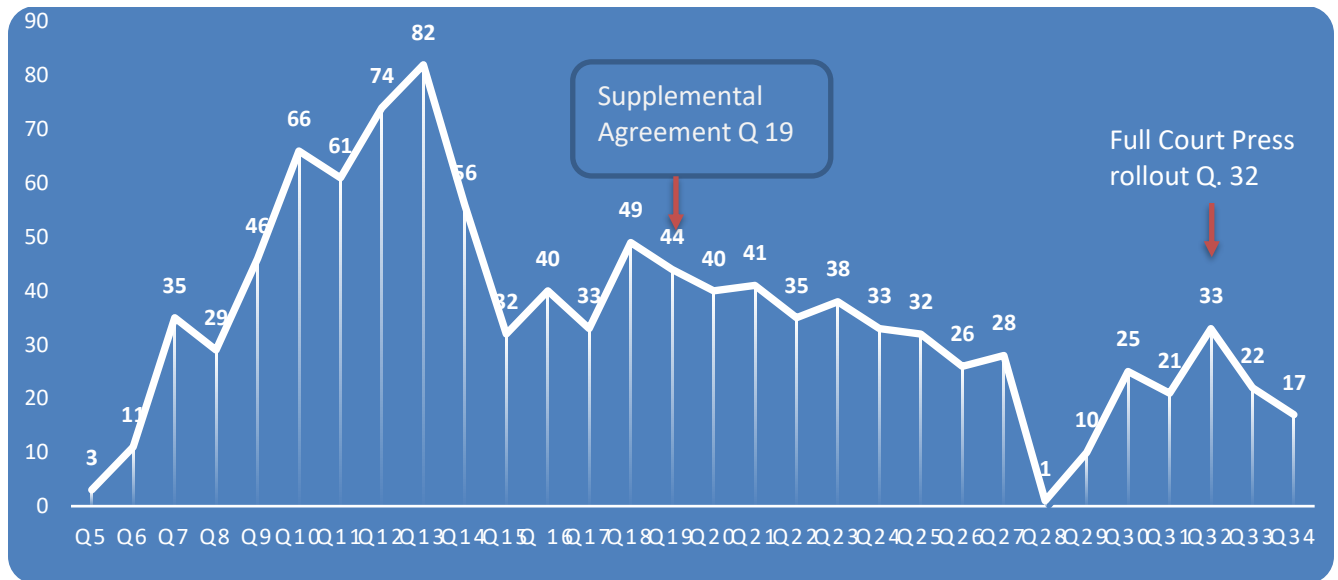


**Figure 11. Housing tour offers within 45 days of HRA approval**

One contributing factor for the low rate of housing tour offers 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.

#### **E. Transitions to the Community**

The ultimate goal of the Settlement Agreement is to facilitate the transition to community living for all class members who choose to do so. Over the life of the Settlement Agreement, the State has had variable levels success in achieving this goal for a variety of reasons that have been described in previous annual reports. In March 2018, the Parties agreed to a Supplemental Agreement intended to ramp up the pace of transitions through a variety of new initiatives which included the creation of a peer bridger program at each of the Transitional Adult Homes (*See*, Fifth Annual Report, p. 19); consolidating the responsibility for assessments of class members with the Housing Contractor agencies; establishing timelines for the performance of critical tasks in the transition process, which have been discussed above; creating a transition metric to measure performance in achieving transitions every six months; adding a Quality Assurance and Performance Improvement process related to the process metrics described above. As discussed above, the State has generally met or come close to meeting most of the specific benchmarks in the Supplemental Agreement. Most recently, starting on April 26, 2021, the State embarked on a new FCP strategy to make a concerted push at each of the adult homes to assist interested class members to make the transition to community living (described in more detail the Eighth Annual Report, p.24 *et seq.* and in Section VI. A of this Report.) Despite these efforts, the overall performance has not achieved the level of success that was anticipated, as shown below (*See*, Fig. 12).



**Fig. 12. Community Transitions, by Quarter**

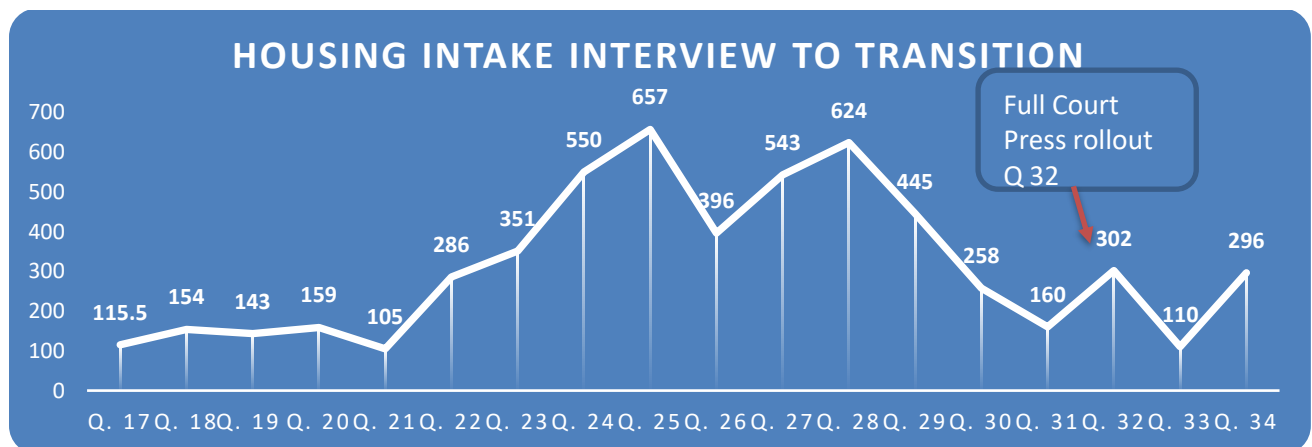
The Supplemental Agreement requires that Housing Contractors make all reasonable efforts to transition a class member to the community within 60 days of HRA approval. (Supplemental Agreement, Paragraph B.11) Yet, as illustrated in Table 3, this goal has not been achieved ever since it was set. Since the Supplemental Agreement’s implementation, the rate of compliance with this benchmark has ranged from a low of 0% in several quarters to hovering around 10% in the most recent five quarters.

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.

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	Q. 31	Q. 32	Q. 33	Q. 34
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	34	31	21	18
Members who transitioned within 60 days	1	0	4	1	1	1	1	0	0	0	2	1	1	2	2	3	3	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%	75%	11%	9%	10%	10%	11%

**Table 3. Transitions to the Community**

Fig. 13 shows the median number of days from the housing intake interview to transition for the last 18 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 FCP 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. However, the data thus far show an initial significant downward trend in reducing the median time from housing interview to transition, which has risen as more adult homes experience the FCP. A limitation of this data is that it measures only the time for class members who have successfully transitioned and does not reflect the experience of the class members who said YES but are still waiting somewhere in the transition process.

**Figure 13. Median days from housing interview to transition**

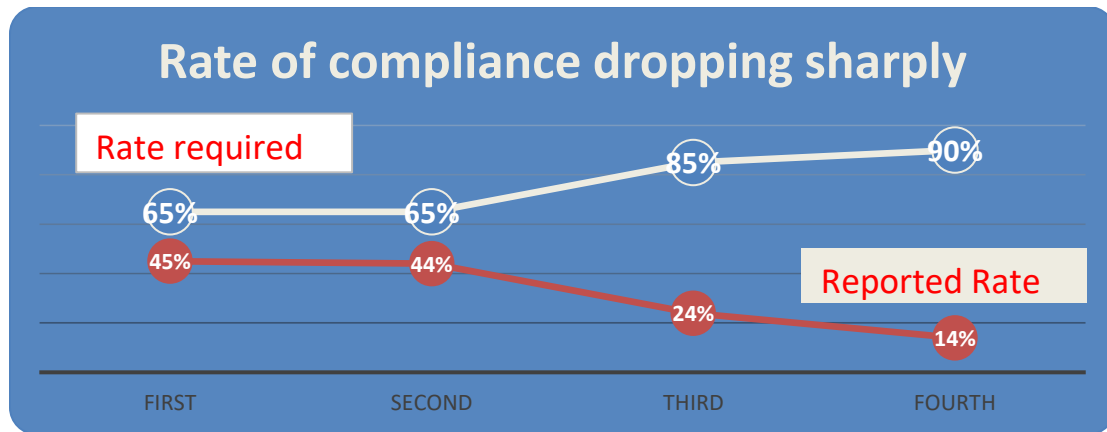
## V. Transition Metric Reviews

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 exclusion of a class member from the transition pool based on enumerated criteria. (Supplemental Agreement, ¶ C)

The State's performance over the first four Transition Metric review periods and the results of the Independent Reviewer's review of this performance are summarized in Table 4 and Figure 14 below.

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

**Table 4. Summary of Transition Metric Reports**



**Figure 14. Rate of compliance in each period**

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.<sup>15</sup> 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 were scheduled to resume with the eighth period which covers the period from September 1, 2021 to February 28, 2022.

In the interim, the structure of the Transition Metric Report was changed with the agreement of the Parties from reporting on a six-month cohort of class members to monthly reporting.<sup>16</sup> Reporting resumed beginning as of February 2022 with the submission of six monthly reports spanning an 11-month period from April 2021-February 2022.

The Independent Reviewer noted that these reports were both stale and untimely. For example, the monthly report for September 2021, which was received by the Independent Reviewer in June 2022, reported on activities that took place in the preceding six months, going back to April 2021 but provided no information on efforts made on behalf of the class members included in that report during October, November and December 2021, or January and February 2022. Moreover, the reports provided insufficient information about the activities of the settlement providers during the period covered. Instead, the reports sometimes relied on prior expressions of disinterest by a class member that may have occurred substantially in the past.

<sup>15</sup> New York State Department of Health, HEALTH ADVISORY: COVID-19 CASES IN NURSING HOMES AND ADULT CARE FACILITIES, March 13, 2020. (DOH Health Advisory).

<sup>16</sup> State's letter to the court proposing a change from the six-month Transition Metric Reports to rolling monthly reports (*See*, Doc. 171 in 1:13-cv-04165, filed 8/30/19), approved by a minute order on September 9, 2019.

The reports did not indicate what information was provided to the class member to facilitate informed decision-making, (*e.g.*, offers of visits to apartments matching their preferences, tours in the community, use of videos or photographs, opportunities to meet with former adult home residents who are now in community housing, etc.). The State's reporting later provided a calculation of compliance with the transition metric for the six months which was at 47% or far below the required 90%. In light of the low level of compliance claimed by the State, the Independent Reviewer determined that no useful purpose would be served by reviewing "each instance" of a claimed exclusion in these monthly reports.

In a subsequent submission by the State of a Transition Metric Report for the month of June 2022 relating to 99 class members who had an active HRA approval to move to community housing, the Independent Reviewer again found substantial gaps in the information provided including no information for 10 of the class members. In 21 cases, there was little or no information about what settlement provider staff were doing during the six-month period covered by the report beyond a single in-reach contact. In 12 cases, there was reference to the fact that a Full Court Press had occurred at the adult home during the six-month period, with a reference "see FCP report" but no FCP report was submitted for the adult home, nor was any information specific to the class member submitted. In the end, the Independent Reviewer rejected the claim for an exclusion from the transition metric for 35/89 cases or 39%.

The Independent Reviewer expressed the opinion to the Parties that in its current form the Transition Metric Reporting was consuming substantial time of the State staff, settlement providers and the Independent Reviewer but was not serving a useful purpose because the quality of the information being provided was inadequate to make a conclusion about whether a claimed exclusion was warranted. At a status conference on November 17, 2022, there was a discussion of the Parties' respective perspectives on the continued value of the Transition Metric Reporting and the court issued a Minute Order as follows:

**The court DIRECTED the Parties to convene with the Independent Reviewer and submit a joint proposal for a reporting structure that meets the needs of the Plaintiffs, the State, and the Independent Reviewer in advance of the next Status Conference.**

As this Report is being drafted, the Parties have not yet reached an agreement on a replacement for the current Transition Metric Reporting contained in the Supplemental Agreement.



## VI. Monitoring

### A. Full Court Press

As described more fully in the Independent Reviewer's Eighth Annual Report, the FCP began in April 2021 to improve the rate of transitions for class members, by having a regular on-site presence of settlement providers at the adult home, including State staff, Housing Contractors (HCs) including HC assessor teams, AH+ care managers 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 kickoff meetings to introduce the settlement providers that will have a regular presence in the home, and provide information about the Settlement Agreement and what it offers. Class members are notified of the meetings in person and/or a written invitation. Refreshments are provided during these meetings.

While the first official FCP started in April 2021, the process has evolved due to lessons learned. Beginning in May 2022, at the Harbor Terrace FCP, there was a change in how information is provided to class members at the kickoff meetings; at this point large group meetings were converted to a housing fair model. Each provider has a table with information that the class members can go to and discuss what that provider has to offer, and providers are also encouraged to walk around and approach class members with information specific to their program. A peer ambassador is also present to talk with class members about their experiences since transitioning to their supported apartment, and often share pictures of their apartment with interested class members.

Generally present at the kickoff meetings are: State staff who introduce the purpose of the kickoff and provide information about the settlement opportunity; the HC aligned with that home, and often representation from other HCs in different boroughs; care management, including a Pathway Home team for Brooklyn and Queens FCPs; the peer-run agency aligned with that home; an ambassador who themselves has moved through the settlement; and often representatives from a day program, Clubhouse and/ or Personalized Recovery Oriented Services ("PROS") program. A table with information on Managed Long-Term Care ("MLTC") options is usually also available and a representative of the Plaintiffs' counsel is often present. Class members are offered the opportunity to view video testimonials from class members who have previously moved to supported housing, and in many cases are offered to be assessed or to schedule an assessment, and/or to tour of apartments that are available under the settlement, all with the goal of providing information on the transition process and motivating interested class members to take the first steps toward transitioning.

Following the kickoff meetings, State staff are still expected to be present in the adult home on a regular basis. However, the number of days present in the homes has varied from once a week to three times a week. Settlement providers are also supposed to have an enhanced presence at the adult home and interact with class members to complete the tasks required to

assist people with the transition process and/or motivate class members who may be ambivalent. Provider presence varies by agency and adult home; some providers have chosen to conduct meetings over the phone instead of in person, while in other cases providers have informed the State that they are trying to establish a more regular presence in a given home but need support to find readily available private space. The peer bridgers continue to have a regular presence in the adult homes. Whenever a class member expresses interest in pursuing the transition process, State staff and settlement providers are supposed to work to expedite an assessment and apartment tours, and assist with getting needed things in place for the move (i.e., financial entitlements, MLTC enrollment, IDs, SNAP, medication training, linkages to health and mental health providers, pharmacies, etc.)

Additionally, the State schedules weekly calls with the Health Homes and CMAs that cover the class members in that adult home, and more recently has combined meetings to include peer bridgers and housing staff. 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 (obtaining IDs; medication training; etc.) and documenting 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 also discussed.

In addition, starting early in the process, the weekly calls include discussions and strategies on ways to engage some class members who are difficult to engage, ambivalent or have changed their minds.

For class members who are not interested in engaging in the process or expressed that they did not desire to move during the FCP, an Informed Decision-Making Template (“IDMT”) was created by the Independent Reviewer with input from State staff and the Plaintiffs. The template has 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.

Before this Report delves into several concerns about FCP implementation, the many instances of State and settlement provider staff working to fulfill the promise of the initiative must be recognized and acknowledged. The Office of the Independent Reviewer team applauds some providers making exceptional attempts to meet the often-touted expedited pacing and intensive support of FCP. For example:

- Some AH+ care managers have helped a few newly enrolled members connect to many services and supports in about a month, and at least one care manager has taken the initiative to communicate directly with HCs beyond their assigned FCP Contractor, exploring a wider range of apartment stock to support his members.
- Though still low, increased provider communication and collaboration have been noted in multiple Independent Reviewer FCP kickoff memos; the peer-run agencies have been a critical, consistent force in connecting other providers to members, and to each other.
- Peers have also accompanied members on apartment and neighborhood tours, assessment and provider appointments, to skill-building groups, on their move day, and well into their post-transition lives. On occasion other providers have participated in tours and group activities as well.
- Independent Reviewer staff have also observed State and provider staff go above and beyond in ways metrics do not typically capture, including: patiently interacting with adult home residents upset at being excluded from the class and FCP events; carefully navigating relationships with ambivalent and NO members who lash out at what they find to be too many engagement attempts; and maintaining supportive communication with members months and even more than a year after transition.
- Individual service providers have also made personal sacrifices to meet FCP demands, such as: working after usual business hours and on weekends; working while homebound due to injury; and plunging right back into complex transitions following bereavement and other leaves.
- Finally, behind all of the considerable frontline work, State staff have envisioned and re-envisioned kickoff and other FCP activities; competently tackled a variety of FCP and related logistics (*e.g.*, IDMT and Decision Date (“DD”) notice); and managed a staggering volume of calls and case reviews with great efficiency. They have recently implemented a master calendar of deliverables to keep track of and meet a variety of task and reporting deadlines that has greatly improved communication with the Plaintiffs and the Independent Reviewer.

The FCP has been implemented rapidly. Since its inception, there have been 15 homes that have gone through the FCP or are in the process (*see*, Table 5). There are 11 homes that have gone through or are in process during this Report period (3/12/22 to 3/10/23).

<b>Adult Home</b>	<b>FCP Start</b>	<b>FCP End</b>	<b>Decision Date Deadline</b>
<b>Wavecrest</b>	4/26/21	7/25/21	1/31/23
<b>Mariners</b>	8/10/21	11/8/21	1/31/23
<b>Queens ACC</b>	10/5/21	1/3/21	1/31/23
<b>Garden of Eden (GOE)</b>	11/16/21	2/28/22	1/31/23
<b>New Haven Manor</b>	3/2/22	5/31/22	1/31/23
<b>The W Assisted Living</b>	4/5/22	7/4/22	1/31/23
<b>Harbor Terrace</b>	5/17/22	8/15/22	1/31/23
<b>Sanford Home</b>	6/13/22	9/11/22	1/31/23
<b>Surfside Manor</b>	7/25/22	10/23/22	1/31/23
<b>Brooklyn ACC</b>	8/16/22	11/14/22	1/31/23
<b>Mermaid Manor</b>	10/24/22	1/22/23	2/21/23
<b>Elm York</b>	11/14/22	2/12/23	3/14/23
<b>Kings ACC</b>	12/14/22	3/14/23	4/13/23
<b>Belle Harbor</b>	2/13/23	5/14/23	6/13/23
<b>Seaview</b>	3/7/23	6/5/23	7/5/23
<b>Lakeside Manor</b>	3/28/23	6/26/23	7/26/23
<b>Parkview</b>	4/18/23	7/17/23	8/16/23
<b>Park Inn</b>	5/9/23	8/7/23	9/6/23
<b>Oceanview</b>	5/31/23	8/29/23	9/28/23
<b>Central Assisted Living</b>	6/20/23	9/18/23	10/18/23
<b>Elliot Pearl House</b>	7/11/23	10/9/23	11/8/23

**Table 5. FCP Schedule**

### 1. FCP Reporting

As mentioned above, at the end of the FCP an IDMT is filled out for each class member who is designated as a confirmed NO to describe how the class member was 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 kickoff presentations, offered or given the information packets in their primary language, invited to view pictures and tour apartments virtually or in person (or both), and to be informed of the services available to them in supported housing.

As envisioned by the State, the FCP process was to include the issuance of an interim report within the first 45 days and a final report to the Independent Reviewer within 90 days after a FCP was completed at a home. However, only two final reports were completed and reviewed by the Independent Reviewer team totaling 63 NOs from those homes (Wavecrest and Mariners). There were no reports produced by the State for the FCPs conducted after that, which created a significant backlog (669 NO cases) at the remaining eight homes that have completed the FCP 90 days or more ago.

Faced with a substantial backlog, the State is currently in the process of discussing options to fulfill its obligation to ensure diligent efforts were made during each FCP period and

to report these efforts to the Independent Reviewer. In light of the then-imminent DD deadline of January 31, 2023 for class members in adult homes that had completed the FCP, the State, with the agreement of the Parties, dispensed with the production of Interim and Final reports, the deadlines for which had long since passed. Instead, beginning in December 2022, the State provided the Independent Reviewer and the Plaintiffs either IDMTs or summary information to support a conclusion that a cohort of class members did not want to transition, despite the State's diligent efforts to educate class members on the opportunity Settlement Agreement offers and the supports available should they decide to transition. (e.g., a summary of CAIRS and AWARDS notes, Opt out forms, etc.).

The Independent Reviewer has received and reviewed documentation for 150 of the 669 (22 percent) of the backlog's NOs for class members who live in homes where the FCP has been completed. In the majority of cases, the IDMT provided enough information to ensure that the class members were making an informed decision and diligent efforts were made during the FCP. However, in several instances (15 of the 150 cases), there was not enough information provided to support the State's determination. In those cases, the State was asked to provide more information or go back to the class members to ensure that they had made an informed decision. Complicating the review was that the information was received many months to over a year after the FCP was completed at the home(s). (See, Table 6)

	<b>FCP End Date</b>	<b>FCP Report Received</b>	<b>Classified as NOs</b>	<b>Documentation Reviewed By IR</b>	<b>Approved By IR</b>
<b>QACC</b>	1/3/22	No*	134	57	49
<b>Garden of Eden (GOE)</b>	2/28/22	No*	117	23	20
<b>New Haven</b>	5/31/22	No*	41	32	32
<b>The W Assisted Living</b>	7/4/22	No*	61	0	NA
<b>Harbor Terrace</b>	8/15/22	No*	118	23	19
<b>Sanford</b>	9/11/22	No*	89	13	13
<b>Surfside</b>	10/23/22	No*	<b>65</b>	<b>2</b>	<b>2</b>
<b>BACC</b>	11/14/22	No*	<b>44</b>	<b>0</b>	<b>NA</b>
<b>Totals</b>			<b>669</b>	<b>150 (22%)</b>	<b>135</b>

**Table 6. Backlog of Cases Classified as NOs Received and Approved By Independent Reviewer**

## 2. FCP Activity (Assessments, Tours, Transitions)

During the FCP kickoff sessions, class members were offered the opportunity to be assessed, schedule an assessment, participate in a virtual tour, and/or schedule an in-person tour of available apartments. Provider timeliness in meeting member interest in these activities varied by home (e.g., some HCs were prepared to provide in-person apartment tours during the three

days of kickoff, while others were not) and very few members took advantage of the opportunity to tour in person or be assessed during kickoffs.

During this Report period, there were 87 transitions: 71 (82 percent) from homes that had gone through or are going through the FCP process and 16 (18 percent) from homes that have not gone through a FCP to date. Of the 71 transitions from the FCP homes, 13 (18 percent) had moved prior to the start of the FCP at their home, 34 (48 percent) class members moved during or within three months of the FCP, and 24 (34 percent) moved from four months to over a year after the FCP was completed at their home. There is also a yet to be quantified but growing number of members who remain in the transition process over one year after their corresponding FCP has been completed. For example, although the QACC FCP ended in January 2022, there are still members from this home slowly wending their way through the transition process. How long transitions (re)initiated during FCPs may take thus remains to be determined, and likely will not be determined until overall settlement work concludes. (*See*, Table 7.)

<b>Adult Home</b>	<b>Within 3 months or during FCP period</b>	<b>More than 90 days after FCP</b>	<b>More than 120 days</b>	<b>Prior to FCP</b>	<b>Total Transitions<sup>17</sup></b>
<b>Wavecrest</b>	0*	0	5	0	<b>5</b>
<b>Mariners</b>	0*	0	2	0	<b>2</b>
<b>Queens ACC</b>	1	0	5	0	<b>6</b>
<b>Garden of Eden</b>	6	0	3	1	<b>10</b>
<b>New Haven Manor</b>	4	2	2	0	<b>8</b>
<b>The W Assisted Living</b>	6	0	2	1	<b>9</b>
<b>Harbor Terrace</b>	5	0	1	0	<b>6</b>
<b>Sanford Home</b>	3	0	2	0	<b>5</b>
<b>Surfside Manor</b>	3	0	0	0	<b>3</b>
<b>Brooklyn ACC</b>	1	0	0	2	<b>3</b>
<b>Mermaid Manor</b>	2	0	0	2	<b>4</b>
<b>Elm York</b>	0	0	0	0	<b>0</b>
<b>Kings ACC</b>	3	0	0	6	<b>9</b>
<b>Seaview</b>	0	0	0	1	<b>1</b>
<b>Total</b>	<b>34</b>	<b>2</b>	<b>22</b>	<b>13</b>	<b>71</b>

**Table 7. Transitions from FCP Adult Homes 3/12/22–3/10/23**

<sup>17</sup> These numbers are for transitions that occurred during the Annual Report period. They do not reflect transitions that may have happened closer to each adult home's FCP period.

### 3. Major Issues/Factors Impairing Performance

After over a year of observing FCPs, the Independent Reviewer has noticed certain, repetitive factors impairing FCP performance. Some of the factors that prevented the 24 class members in the Table 7 above –as well as the yet to be determined final number of members still in the FCP transition process –from moving more quickly once they said YES prior to or during FCP, and/or delayed the scheduled moves included: lack of housing meeting member needs and preferences; inadequate transition preparation (including getting IDs, medication training [*see*, sec. VI. B], MLTC assessment and enrollment, and individualized or member-specific factors); and staffing issues.

In addition, the Independent Reviewer recognizes that in some cases, FCP activities were delayed due to ongoing COVID infections in the adult home as well as an ongoing lack of reliable information about infection rates (*see*, Sec. VI. D) In other cases, discouragement or interference by adult home staff delayed FCP activities. (*see*, Sec. VI. C)

#### A. Housing Stock

During most FCPs, it became obvious that several members who were interested in moving and had HRA approval faced delayed tours and moves due to housing stock limitations. Two key limitations were lack of apartments in preferred neighborhoods and lack of accessible apartments, including first floor units, units in elevator buildings, and more fully accessible buildings and units that could accommodate members' specific needs such as wheelchair accessibility. While we recognize the difficulty of finding apartments in certain high rent and highly sought-after neighborhoods, when discussing this issue, the answer from some HCs is often simply "we don't have any apartments available in that area." Some housing stock issues are almost immediately apparent during FCP kickoffs, as tour delays can signal a lack of "matches" for some members. While other housing issues may not arise until later, it is especially disappointing to observe those that are easily identifiable during kickoffs often linger well into FCPs.

- *For example, EB was identified as a YES member at the start (7/25/22) of the Surfside FCP. Because of a delayed start to provider calls scheduled by the State, it is unclear what work providers may have undertaken with her during the first month of FCP. On an 8/24/22 call, providers noted they were trying to connect EB to HC TSINY as the designated FCP HC Comunilife did not have housing stock in her preferred neighborhoods (e.g., Jackson Heights, Maspeth). EB's Community Access peer reported reaching out directly to TSINY staff for help but received no response. In addition, sharing EB's case materials with TSINY was delayed because Comunilife had not created an electronic copy of her HRA packet; a paper copy had been found in their office and would have to be scanned to start the referral process. Over two months into FCP, on 9/28/22, Comunilife stated they had acquired a Jackson Heights one bedroom apartment EB could tour. State staff prompted the scheduling of a tour date, which was set for 10/3/22. On the following week's call (10/6/22), Comunilife stated that the apartment*



*was being renovated and was not available for touring. Tentative tour dates were discussed during October 2022 with a tour slated for 10/26 or 10/27/22. On 11/2/22, Comunilife admitted they had not followed through on the tour because staff had not been available. EB was able to tour the apartment on 11/7/22, almost four months after she had been identified as a YES. During the tour she stated she liked it but wanted to think a few days before accepting it. Soon after, she believed she made it clear to Comunilife that she wanted the apartment, but in turn it was not clear to her if Comunilife would match her with it. Although EB felt ready to proceed with the move, it was also unclear to her when and if a move date would be submitted. As she was waiting EB suffered a fall on 12/15/22 and was transferred to a rehabilitation facility. As of 2/23/23, EB remained at this facility and has affirmed to providers she continues to be interested in transitioning.*

The following case illustrates how a unique, member-specific factor – a member’s refusal to engage in-person tours– can be identified early in the FCP process and yet remain unaddressed until culminating in feelings of crisis upon transition.

- *SW, age 67, was identified as a YES member at the start (10/5/21) of QACC FCP, and had lived at QACC for about 26 years. His only housing preference was to live alone in Queens and HC ICL provided him a virtual tour of a one bedroom apartment in Flushing soon after the start of FCP. SW accepted the apartment, but refused in-person tours. A move date of 12/8/21 was initially set but transition preparation tasks, specifically a lack of IDs,<sup>18</sup> first delayed the 12/8/21 move, then led to the cancellation of a 1/5/22 move. SW became more difficult to engage after this; ICL staff and his FOO AH+ care manager consistently reported that they invited him to tour apartments in person, but he declined. In addition to being reported on FCP calls in December 2021, this was reported on calls between January and at least July 2022. SW was also reluctant to leave QACC for other appointments, such as February and March 2022 appointments to obtain a new Medicaid card. Settlement provider and State staff repeatedly discussed SW’s reluctance to leave QACC, displaying care in talking through factors that might influence his engagement (e.g., he might be a closeted alcohol user, he was a “loner” with ongoing personal hygiene challenges, etc.). However, there was never any decisive action taken to ensure SW toured any apartments or neighborhoods in person.*

*By September 2022 a new, 11/4/22 move date was set for SW; at this time he would move to a one bedroom apartment in Corona that he had also accepted after a virtual tour only. Further delays led to 1/10/23 and then 1/13/23 move dates. On the 1/13/23 move date, SW saw his apartment and the neighborhood for the first time. He toured the area with an ICL Peer Specialist who also lives in supported housing. By all accounts on the*

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<sup>18</sup> SW’s situation was first brought to the attention of the State in the Independent Reviewer’s February 4, 2022 memo IDs & Transition Delays.



*February 2023 post-transition call, the move day went well, and the care manager followed up with him by phone on 1/14/23. However, when she saw SW on 1/17/23 he appeared to be overwhelmed and in a “frazzled state.” He was crying and did not show proper hygiene management, and was still wearing the same clothing as he had on the day of the move. He said he thought he could live on his own, but he was wrong and he wanted to go back to the adult home. An IDT was held on 1/18/23 including his care manager, ICL, the Home Care agency, and his therapist from NYPCC. During the meeting SW, was offered other alternatives, such as living with a roommate in a different apartment and increased peer visits, but he refused and only wanted to return to the adult home. On 1/19/23, he visited the adult home on his own and started the process for returning, and refused all services being offered to him.*

*SW was readmitted to QACC on 2/7/23. When asked if there were any signs that SW would react the way he did to his transition to the community after 26 years at QACC, team members on the call said they did not anticipate his reaction to the move. Although it would never be a recommended practice to transition a member who had never toured their apartment or neighborhood, given the fact that he had lived at QACC for 26 years, it is highly questionable that SW would move to an apartment or neighborhood with no in-person tours.*

Despite recent improvements made to the mapping project, which provides up to date information on all the available apartments under the settlement, it does not appear to be routinely utilized by HC staff, nor do State staff seem to routinely prompt providers to review it. It also does not seem to be a regular practice for HCs to check with one another to see what apartments are available that might meet a class member’s needs and/or preferences. In many instances on FCP provider calls Independent Reviewer staff have observed that when a class member is ready and willing to tour apartments, if a HC for that home does not have housing that meets the class members’ needs and/or preferences, they do not offer to contact other HCs unless directed by State staff to do so. However, more recently there has been an increase in HCs checking with each other about housing stock, perhaps related to State staff more routinely prompting them to do so. It has also been encouraging to observe HCs arriving at FCP kickoffs with more housing stock information and photos/videos available to share, and that HCs not assigned to a given adult home are also present to discuss their offerings. During the Elm York kickoff, for example, TSINY staff approached Comunilife to ask about potentially pet-friendly apartments in certain Queens neighborhoods. Comunilife called their realty staff on the spot and, although such a unit was not immediately located, both HCs agreed to stay in contact. Although still rare, we have also observed at least one instance of an AH+ care manager (from TSINY) taking the initiative to communicate with multiple HCs to attempt to locate accessible Queens stock. Here, however, ***we again underscore that despite promising practice advances by State and provider staff, one of the greatest limitations eroding the promise of the FCP initiative is the lack of apartments matched to member needs and preferences, coupled with the often***

*dismayingly slow acquisition of well-matched apartments once individual needs and preferences are clear.*

As stated in the Independent Reviewer's Eighth Annual Report, we also understand that HCs wait to rent apartments until they have a sense of members' needs and preferences, but we again note that there should be increased planning to expedite apartment searching in preparation for and at the start of FCPs. In that Report, we provided the example of the QACC FCP, where class member demographics included many older adults and people with physical disabilities. We observed that the need for accessible apartments was apparent prior to FCP and could have been prioritized further, particularly because fully accessible apartments have been difficult to find across all Queens HCs, and have slowed transitions for multiple members. *It is unfortunate that a year later this observation and recommendation remain relevant and, in fact, there are QACC FCP members whose moves were substantially delayed or have not yet occurred due to lack of accessible apartments.* For example, multiple members did not tour at all during the 90 day FCP due to a lack of accessible apartments.

- *For member ES, the transition to an accessible unit occurred approximately 10 months after the start of FCP. Another member, MO, remains waiting to transition as 2/23/23. MO has suffered both move delays and a cancellation when, just weeks before his August 2022 move and only when he toured in his wheelchair what was to be his apartment, it was determined not to be fully accessible for him. Multiple HCs have been asked for help locating a unit for this member, yet he remains in QACC 16 months after beginning the FCP process. He has not toured any other apartments for several months.*

Finally, an increasingly present delay factor within housing stock is matching FCP class members with Level II housing that meets both their assessed needs and preferences. The Kings Adult Care Center ("KACC") FCP, which began on 12/14/22, includes the highest number of class members recommended for Level II housing to date (16 members as of 2/17/23). No settlement HCs offer Level II housing in Brooklyn, thus members may be presented only with options outside their current borough. In December 2022, State staff confirmed they had researched Level II housing stock within Brooklyn, but it was unclear to what degree this information has been communicated to providers. Additionally, while HC and peer-run agency staff were able to attend a Center for Urban Community Services ("CUCS")-facilitated Level II training in August 2022, CMA and HH staff have not been given the opportunity to attend this training. It has been observed that across many of the FCP homes, CMA and FCP staff have reported they do not know how to locate Level II housing options nor submit CUCS Level II applications on behalf of their members. As of March 2023, the State reported that a member of their staff is acting as a point person for tracking Level II availability across housing providers and boroughs, and will recommend options to service providers. This is a promising step in tracking and communicating Level II options.

### *B. Inadequate Preparation for Transition*

The State facilitates multiple means of preparing its own staff and settlement providers for FCPs. Pre-kickoff preparation includes a Provider Summit conference call, the sharing of an adult home-specific information slide deck, and a State and provider staff visit to the adult home. Following each FCP kickoff (within the first couple of weeks to first month), the State also convenes approximately weekly FCP calls. These calls continue for varying lengths of time past the 90 days of active FCP work. During early FCPs, there were parallel OMH HC and DOH Health Home/Care Management Agency calls; more recently, (Summer 2022 forward) calls are usually for all providers, involving HCs, HH/CMAs, Pathway Home, and peer-run agencies. Calls are intended to ensure class members' transitions are on track and that needed services and supports are in place prior to moving (*e.g.*, benefits and entitlements; medication training and securing medications in the community; IDs to cash checks and/or turn on utilities; and more person-centered or member-specific factors).

Despite these efforts to prepare and keep transition processes progressing, several FCP transitions have been delayed or canceled, and/or progressed at a pace far slower than the State FCP messaging suggests. In many cases, multiple factors worked in concert to impede transition progress. The most observed factors have included: obtaining IDs, medication training, MLTC assessment and enrollment, and other, more member-specific factors. These factors were often mentioned over and over on weekly FCP provider calls; some factors that might impede certain transitions were even identified during (or before) kickoff and yet sometimes persisted as far as pre- and even post-transition calls. ***It is unclear why State staff – several of whom are on each FCP call – do not intervene more decisively when FCP delay factors arise.*** As depicted below, factors such as no apartment tours or no IDs may be raised one month and remain without reportable progress one, two, or three or more months later.

First, work on IDs was often not begun until well into the FCP, despite longstanding awareness of the protracted timelines and complex logistics typically involved in obtaining them. The Independent Reviewer has raised the issues of lack of IDs and their impact upon class members a number of times in past annual reports and memos.<sup>19</sup> Most recently, in his 2/4/22 memo to the State,<sup>20</sup> the Independent Reviewer again raised this issue, illustrated by move delays suffered by three QACC FCP class members who had not been supported in obtaining necessary IDs. As noted there, appointments to get proper IDs can take months, leaving class members who had accepted an apartment without the ability to cash a check, open a bank account, or have their utilities turned on. While there are some work arounds (getting a residency letter along with one picture ID to get certain IDs like an IDNYC, or certain HCs willing to provide loans or cash checks), this work needs to be started as soon as possible to avoid scrambling for

<sup>19</sup> See, Transition Preparation of Class Members, February 8, 2021.

<sup>20</sup> See, IDs & Transition Delays, February 4, 2022

appointments at the last minute or having to delay a move. In the February 2022 memo, the Independent Reviewer also *made a recommendation that remains both relevant and unmet that the State undertake a comprehensive review of the status of FCP class member IDs, including how settlement providers and State staff can work together in a more systematic, time-sensitive manner, to ensure that this transition support is both understood to be critical and is consistently approached as such.*

- *Returning to EB's case, as her Surfside FCP transition was delayed by lack of apartment tours and stock, she also grew increasingly frustrated by delays in obtaining her IDs. In the months leading up to FCP, EB told both her JBFCS AH+ care manager and her Community Access peer bridger that she wanted to obtain all her IDs; she was worried about how she could make it in the community without them. EB was even saving her own money to purchase a new birth certificate, yet leading up to and throughout the Surfside FCP there was little to no progress on this transition task. EB reported that she was told multiple times that her care manager would help her obtain IDs, then did not. On a January 2023 FCP call, State staff noted that EB had completed six years of AH+ enrollment and questioned why, beyond a Medicaid card, she had no IDs. Her care manager said she had been on leave during 2022, with no explanation offered as to why other JBFCS staff did not support EB with this critical task. She also mentioned having asked Surfside for a copy of EB's non-drivers ID, which had been in her possession but had expired. Surfside reported they did not have a copy to help with a renewal. Finally, the care manager reported that she had applied through the Office of Community Transitions for a birth certificate for EB but had not received updates for some time.*
- *Lack of IDs were noted in the case of MD, 63 years old, who transitioned on 10/11/22 from Mermaid Manor, where he had lived for more than 13 years, to a single unit apartment with SJMC Brooklyn Housing. On the two pre-transition calls on 9/29 and 10/6/22, the primary concerns were the lack of a picture ID, and his inability to cash his refund and Social Security checks. Although his birth certificate had been requested through OCT, the process had been taking too long. Because MD did not have a picture ID, he was unable to cash his refund check from the adult home and arranged for his HHA to do it for him. The practice of using his aide in this way was discouraged and at the time of the call, when he received his first check for \$850, he was unable to cash it pending receipt of his IDNYC, which he received on 11/21/22 six weeks after his move.*

The obstacles created by incomplete medication assessments and training that affect timely transitions are described in detail below (see, sec. VI. B)

We have also observed the role more member- (and, situation-) specific factors can play in complicating, delaying, and/or canceling moves. In some cases, member-specific factors have led to what are likely permanent cancellations and/or member conversions to NOs during FCP.

For example, while multiple members with significant medical concerns (e.g., actively undergoing cancer treatment) have been able to transition during FCPs, others have suffered medical crises they and/or their providers consider too grave to be compatible with community living.

The full scope of how poorly handled member-specific factors can impact transition preparations is illustrated by AT's situation.

- Identified as a YES member at the start (8/16/22) of the BACC FCP, AT toured and accepted an apartment in November 2022. Her 12/5/22 move was then delayed until 1/10/23, and again until 1/13/23 as a variety of barriers to transition arose and a total of six pre-transition calls were needed to keep her move close to on track. Underpinning several of these delays was a lack of language accommodation. AT, a Spanish speaker, found the Language Line used by both the State and some provider agencies to be unclear and frustrating. Her providers – none of whom speak Spanish -- consistently signaled to the State that communicating fully with AT was a concern as she would not use the Line. Providers worried about her understanding of fundamental aspects of her transition, such as whether she understood she was moving to Bedford-Stuyvesant and would live adjacent to but not actually in her preferred neighborhood of Williamsburg. A second tour on 1/6/23 confirmed she did understand and agreed to live there. Additionally, after initial medication training delays caused by both care management and the BACC ALP program, AT's training was initiated then paused after just one session as the ALP nurse considered her uncooperative and wondered if she could even read in English (according to her, if AT could not, she would not be a suitable candidate for training). At the request of the Office of the Independent Reviewer, the ICL Nurse Assessor worked with AT in early January 2023 and determined she had a good handle on her medications, surmounting another barrier to transition. Finally, it is unclear why, despite progress reported on both FCP and pre-transition calls, AT did not have a Spanish-speaking Certified Home Health Aide ("CHHA") in place at the time of her move. CHHA services had been discussed as both a necessary support for daily living and as a potentially meaningful language support. Even after the State was made aware on AT's 2/16/23 post-transition call that she had not been connected to any CHHA services, the lack of this key support has persisted through 2/23/23.*

The State's response to providers' language accommodation concerns was slow and inadequate, as has been their oversight of CHHA assessment and enrollment. During AT's FCP experience, a Spanish-speaking Project Coordinator contacted her a few times, but her availability, particularly in relation to AT's own availability, presented challenges to robust communication. It is unknown why more concerted efforts were not taken, but ***the State should ensure that class members such as AT receive settlement and transition-related information in their preferred language, using means that were comfortable and clear to them.***



Despite the State's lack of support for AT, her case also showcases settlement providers developing innovative, person-centered care on their own. For example, providers who spoke basic Spanish did so with AT; others used nonverbal communication and routines like fist bumps to build rapport and gain a sense of how she was feeling. During pre-transition calls, Baltic Street also agreed to have a Spanish-speaking peer who worked in another adult home attempt to visit AT. AT's care manager researched interpretation apps and obtained one that allowed them to speak face-to-face while at least some of what they said was interpreted through her phone. The CMA also raised with the State a transfer to a different agency with Spanish-speaking care managers; it was determined this might be pursued post-transition, though there has not been progress toward this accommodation to date. Finally, ICL introduced AT to a bilingual class member in her new building; the members have become friendly, and he has stepped in to interpret when it has been especially important to ensure AT and ICL understand each other.

Similarly, other member-specific factors offer some of the richest examples of how a truly person-centered, intensively supportive approach can lead to fairly rapid and successful transitions. ***We consider the following examples from The W and Garden of Eden ("GOE") FCPs uncommon but instructive. They could be used to identify and more systematically employ promising practices to achieve swifter, more person-centered FCP transitions.***

- *First, ED, designated a YES member at the start (4/5/22) of The W FCP, had come close to transitioning in the past but had reservations about apartments and potential housemates after a prior negative experience. During FCP, she was focused on living near her mother in Castle Hill and continued to vacillate about housemate preferences. In mid-May 2022, ED relapsed on Fentanyl. Her PRFI AH+ care manager quickly connected her to a Methadone clinic and helped her establish a daily schedule there, including participating in a support group. HC Pibly Bronx explored multiple housemates with her and identified apartments on a bus line that would ensure a fairly easy trip to Castle Hill (there was scarce housing stock available in the neighborhood itself). Community Access and Pibly also invited her to participate in group activities, including a jointly held cooking class in a model apartment in late May 2022. In Summer 2022, ED toured a one bedroom Bronx apartment near bus lines and accepted it. She transitioned on 8/3/22 and other than an initial Fall heating issue (resolved once her care manager helped her call 311), she is reported to love her independence. Providers also note her apartment is bright and airy, and she keeps it and her own appearance immaculate. Her care manager considers her life in the community to be a complete change in a positive direction.*
- *WF was also a YES member, but she had rejected seven previous apartments and for about the first month of The W FCP stated she was not yet ready to tour or talk about transitioning. She had expressed, however, two specific preferences: first, she wanted a one bedroom apartment with two bathrooms. Second, she was quite connected to her ArchCare Program of All-inclusive Care for the Elderly ("PACE") and wanted to live close enough to its Center*

*to continue to participate in services there. One month into FCP (5/9/22), Pibly reported they had found housing that might meet WF's specifications; another resident was vacating an apartment that indeed had two distinct bathroom areas, and they believed it was a comfortable distance to the ArchCare PACE Center. On 5/16/22 WF toured and accepted the apartment, and by 5/23/22 a 7/7/22 move date was set for her. At this time, it was noted that WF had no IDs and in fact told Pibly on the tour that she was afraid to accept the apartment because she didn't want to move without them. The Pibly Program Director and State staff contacted her PACE case manager to bring her into transition planning. The State also worked to obtain a birth certificate for WF, and a transition that could have easily been delayed for various idiosyncratic reasons was thus achieved within the FCP 90 days. To add to the success, WF's providers recently reported her transition has been exceptionally positive and she is now more independent and assertive; for example, she is able to respectfully "talk back" to them and ask for female case managers, with whom she feels more comfortable.*

- *A case exemplifying HC flexibility in accommodating changing preferences of a class member is that of AJ, 64, who had lived at GOE for 18 years and had transitioned twice before to supported housing in 2015 and 2020. Some of the reasons given for his return to an adult home were the neighborhoods; fear for his safety; food and money. During a pre-transition call on 7/13/22 for a planned 8/3/22 move, most things were in place for the transition to a third-floor studio apartment in an elevator building in Midwood, Brooklyn, which is generally regarded as a safe neighborhood. Towards the end of the call, the AH+ CM mentioned that AJ only wanted to live on the first floor, although he had accepted the third-floor apartment after touring it. He also had well-documented fears of gas stoves, due to an experience with a fire years ago, which was noted on the Transition Planning Tool. Following the call, the team met with him, and AJ confirmed that he was not truthful when he agreed to move to a third-floor apartment and he was very fearful of living on any floor but the ground floor, due to his fear of using the stairs, especially in case of a fire. He also said he wanted an electric stove and not a gas stove, due to his fear of fires. After many emails among the providers and discussions with AJ, it was agreed that he would not move at this time until a ground floor apartment with an electric stove could be located. To their credit, Pibly Brooklyn was able to address AJ's specific needs and he moved to a ground floor studio apartment with an electric stove on 11/8/22, three months after his intended move date. Although initial problems adjusting to the transition were cited on his post-transition calls, strides have since been made, including in budgeting his money.*

Broadening the scope of inadequate transition preparation, two especially frustrating compounding factors are: delays beget delays, and delays overshadow delays. Delays beget delays in the sense that when a member enters the FCP period with most transition preparation yet to be accomplished, providers are confronted with a newly intensified workload and start

down a spiral of more and more outstanding tasks as the lack of initial preparation begets an even longer list of tasks to accomplish.

- *For example, class member SW was a YES member at the start of the QACC FCP and had been enrolled in FOO AH+ care management since September 2019. As highlighted in the February 2022 memo by the Independent Reviewer,<sup>21</sup> SW's transition was initially delayed (12/8/21), then canceled (1/5/22) when, after over two years of enrollment, SW still had not been supported by his care manager in obtaining IDs sufficient to cash a check or open his own utilities account. As a result of this delay, SW's Conflict-free Evaluation and Enrollment Center ("CFEEC", now New York Independent Assessor or "NYIA") interviews for MLTC services -- which State and care management staff had made efforts to expedite -- expired. SW, already frustrated with the move delay and cancellation, became very upset when his care manager approached him to sit for new CFEEC interviews. During most of 2022, SW continued to express frustration and refuse to complete this onerous task a second time, while his care manager had to devote even more time to convince him to work with her on tasks like this.*

We also caution that delays overshadow delays in the sense that move delays or cancellations may draw attention to a specific, proximal delay factor, then that factor may be used to continue a "business as usual" approach (or, lack of approach) to other delay factors. Even if the proximal factor is addressed to restart transition progress, other undone transition tasks may linger. For example, there are housing-specific factors cited in delaying tours and/or delaying or canceling FCP moves, such as apartment repairs or renovations. Behind the immediate apartment factor, however, there may be several care management tasks that were not completed anyway, such as ongoing medication management concerns, pending MLTC enrollment, etc. In other cases, a specific care management task may be cited as needing to be addressed when a move is delayed or canceled, but behind this factor there are other tasks left undone during the length of the delay.

- *The SW case above also illustrates how much overshadowed delay factors can plague a transition. SW's initial delay and cancellation (12/8/21, 1/5/22) were attributed to his lack of IDs but behind this his care manager had yet to obtain a properly completed 787 form (thus ensuring his benefits would be delayed) and his medication training, SNAP, Access-a-Ride, and half-fare Metrocard applications were either not yet started or not yet completed. Unfortunately, both ID and other care management preparation persisted over the course of 2022, with SW's subsequently scheduled move (11/4/22) also delayed to 1/10/23, and again to 1/13/23. Even SW's readmission to QACC is in some ways related; despite provider and State staff discussing his refusal to tour in person numerous times from the October 2021 FCP start through his January 2023 move, no one at either the provider or State level ever addressed the absence in-person tours.*

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<sup>21</sup> See, IDs & Transition Delays, February 4, 2022



- *As another example, EB's abovementioned transition is currently paused as she has been in a rehabilitation facility following a 12/15/22 fall. It is unclear if her care manager has continued to work on any of her many needed transition preparation tasks during her time in rehab. Should her transition be more extensively delayed and/or canceled, her rehab stay and physical health should not overshadow the salient, ongoing problem of lack of timely and person-centered support from her providers.*
- *YS was identified as a soft NO at the start (6/13/22) of the Sandford Home FCP. He has a history of being indecisive about moving. He has had six in reaches since 2015 and said YES five times, but then opted out of AH+ care management. He has had an approved HRA for supported housing since 4/6/2018. The fact that he did not have proper ID was identified as holding him back from moving in the past. It is unclear why the issue with his IDs was still ongoing when he has had an HRA approval since 2018. During the delays caused by the ID issue, and the fact that the apartment he had chosen a month before had not yet been cleaned and painted, he changed his mind about moving.*

Finally, we recognize there are members who only enroll in AH+ care management during the FCP and, thus, transition preparation is off to an understandably delayed start. However, some providers have demonstrated that enrollment at the start of FCP does not condemn a transition to delays or cancellations; when the touted intensive effort of FCP is in fact realized, members can both enroll in care management and transition within or not far past 90 days.

- *For example, CS, a SOFT NO member at the start of the New Haven FCP, converted to YES during kickoff (3/3/22). His FCP progress was rapid: he toured, initially accepted (3/25/22), then declined one apartment, then toured and accepted (5/5/22) a second apartment and a move date was set for 6/6/22. He enrolled in Pathway Home WellLife on 4/27/22, giving his AH+ care manager approximately five weeks to prepare for transition. At the time of enrollment, he had a Medicaid card with no photo and no other IDs. CS was born out of state, complicating the process for obtaining a birth certificate. His care manager worked quickly to set an IDNYC appointment, despite limited availability due to COVID. She obtained an in-person appointment at a Brooklyn HRA office for the week following CS's transition and accompanied him there twice to ensure he was approved. She also discussed budgeting with CS prior to his transition, helping him think through how to save money and stretch his New Haven refund if he could not immediately cash his benefits checks. CS's care manager also had SNAP benefits in place at the time of his move, and both WellLife and HC FOO provided him with food. The care manager also quickly set up medication training for CS, and by the time of his 5/23/22 pre-transition call he had attended two training sessions and was reported to be doing well. His care manager continued to follow his progress and he was determined to*

*be able to manage his medications on his own prior to his transition. Finally, because CS had been enrolled with MLTC Riverspring prior to FCP, supports such as a home health aide were able to be put in place quickly.*

*CS's transition was not without challenges; for example, although he obtained an IDNYC fairly quickly, because HC FOO did not give him a key to his own mailbox, he had to wait a number of additional weeks to retrieve it and cash his benefits checks. However, his care manager and the Pathway Home team had worked quickly to have him both well prepared to move and, importantly, supported him following his swift transition. CS had lived in New Haven for 26 years prior to his move, and in another adult home prior to that. With just five weeks of intensive preparation, however, he transitioned successfully and is currently doing well enough to be readying to graduate from Pathway Home. After encountering some additional challenges with the birth certificate, his care manager hopes to have obtained it prior to his graduation. CS is reported to be pleased with his apartment and independence, and is able to be his own payee.*

### *C. Staffing Issues*

Timely completion of essential transition tasks in a number of cases was also adversely affected by staffing issues including overwork and burnout; staff turnover or leaves of absence among the settlement providers (housing contractor assessors, care managers, peer bridgers and State staff); missed opportunities for State and provider staff to collaborate; and understaffing and pacing as two factors underpinning much of the above.

Several provider staff at both the frontline and management level have reported feelings of overwork and burnout to the Office of the Independent Reviewer and, to our knowledge, at least occasionally to the State. As described above (*see*, sec. VI. A) staff have described professional and personal sacrifices to attempt to fulfill the FCP promise of more intensive support and expedited transition pacing, including working beyond typical hours and on weekends and taking on transition tasks corresponding to other providers to reduce transition delays (*e.g.*, peers completing cell phone applications instead of care managers, HC staff shepherding along the submission of 787 (payee) forms and/or obtaining other care management documents from adult home staff, etc.). While we applaud these exceptional efforts, we also recognize they are unsustainable and understandably lead some staff to burn out and/or reduce attention to other settlement-related tasks (*e.g.*, tasks for members in non-FCP homes). Burnout and/or other factors have led to settlement provider leaves of absence and turnover, increasing already challenging FCP demands on remaining staff.

Additionally, while the Office of the Independent Reviewer has highlighted some positive examples of provider collaboration in FCP kickoff memos (*e.g.*, Surfside and KACC memos), we caution that these are isolated examples shared to highlight the need for more systematic collaboration. To date we have observed little evidence of systematic collaboration and, in fact, have observed multiple examples of stymied collaboration attempts. For example,

leading up to the Elm York FCP kickoff (11/14-16/22), Community Access reported that they had requested photos and/or videos from HC TSINY so that they could give class members a tangible sense of housing opportunities as early as possible. TSINY did not respond to their request during kickoff and as late as a 2/6/23 FCP call, a Community Access peer again asked TSINY staff if they could show members apartment photos or videos to generate increased interest in touring and transitioning. At this time – approximately 10 days prior to the completion of the 90 day FCP --TSINY staff affirmed they could provide photos. As another example, during multiple FCPs Community Access has reached out to HCs to collaborate on peer-run groups in model apartments. During The W FCP (May 2022), HC Pibly Bronx did provide an accessible apartment for a cooking skills group. Class members who attended seemed to greatly enjoy themselves while building skills, and at least two refined their housing preferences after spending a more extended period of time in an apartment (*e.g.*, one member decided she did not like having a kitchen that was open to the main living space; Pibly was later able to show her an apartment with a walled-in kitchen that she accepted). More recently, HC Comunilife also offered a model apartment for Community Access groups. ***These are examples of positive progress with collaboration, but with comparatively little time and ever fewer adult homes left on the FCP roster, such collaboration should be expanded, quickly.***

Finally, the State and settlement provider staff have been stretched to the limit and sometimes beyond by the work demands for reasons that have been described in this Report. The State frequently reports on its ongoing hiring efforts, but these efforts progress extremely slowly, and what hiring has occurred has not noticeably impacted FCP activities on the ground, perhaps because the intensive, specialized nature of this initiative involves not just hiring but extensively training new staff. The State also cannot easily influence staffing and retention among provider agencies; indeed, as discussed above, the intensive demands of FCP itself influence some staff's decision to leave their settlement positions, as does increasing job insecurity as providers are well aware of the scheduled settlement end date.

The staffing pressures are approaching a crescendo with the cumulative effects of work on tasks left over from prior FCPs, planning and implementing FCPs at the remaining adult homes, IDMT conversations and documentation, distribution of DD notices, and sprinting for the planned finish line of December 31, 2023. There is a continuing concern that these pressures may result in overworked staff taking shortcuts and going through the motions rather than delivering on the repeated promise of rich engagement with class members before their options under the Settlement Agreement are extinguished. As the case examples above show, these concerns are not merely theoretical but have been visible for some time (*e.g.*, tours delayed for weeks and months, months waiting for help to obtain IDs, moves scheduled only to be delayed and even canceled, service gaps in implementing person-centered plans, etc.).

***Through the life of this Settlement Agreement, long delays in delivering on promises of supported living in the community has had a discouraging effect upon many class members who grow tired of waiting and abandon their intention to move. If the final opportunities of***

*class members are to be different and consistent with the promises being made, State and settlement provider staff must have the ability to manage the related workload.* As noted earlier in this Report, there are many dedicated people who are working hard to implement the Settlement Agreement but the system as a whole – which requires a high degree of collaboration and cooperation among workers in disparate agencies -- often impedes their success in achieving the goal of assisting class members who want to move achieve that objective within a reasonable time. *At this late date, there is not time to add significant new resources to the effort. But the workload can be managed by a pacing schedule that recognizes the needs of class members and the demands upon the staff. The State, as the manager of this complex enterprise, also needs to assert a sense of accountability among those workers who neglect the completion of tasks that are necessary for a successful transition to the community for those class members who choose to move.*

### B. Housing Contractor Nurse Assessor Medication Management

As described in the Independent Reviewer's Eighth Annual Report, at the end of June 2021 a standardized medication assessment became part of the HC Nurse Assessors' overall assessment duties. Although included in the medication initiative, medication training was not standardized to the same degree; Nurse Assessors were encouraged to be available to support class members in need of training, and to tailor training to individualized needs. As depicted in the Eighth Annual Report, the first seven months of this initiative were promising: 138 class members served by nine HCs and two Pathway Home teams were assessed and some of the 60 members recommended for training received this additional service from HC and Pathway Home Nurse Assessors.

From March 12, 2022 to March 10, 2023, 125 additional class members served by nine HCs were assessed. 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, injectable, and other such as topical). Members' overall capabilities and independence are then considered to determine if they should receive medication training.

Rated Independence Level, 3/12, 2022 to March 10, 2023 (n=125)				
Medication Type	Independent	Low Level Assistance	Higher level assistance	Totals
Oral	47	43	35	125
Injection	10	4	25	39
Other	30	13	3	46
Totals	87	60	63	210

Table 8. Medication Assessments

The above counts reflect that several of the members assessed use more than one medication type, yielding a grand total of 125 members assessed for use of 210 distinct medications. To date, Nurse Assessors have categorized the 125 assessed class members as: recommended for medication training (80) or training not needed (45). It is unclear how many of the 80 members in need of training have received support from Nurse Assessors.

Areas of ambiguity highlighted in the Eighth Annual Report remain present in this initiative. Specifically, there is ambiguity around systemic and timely medication training particularly during FCPs. This initiative does not require that Nurse Assessors play a role in training, and they appear to be a key but underutilized training support due to two barriers. First, once class members are assessed as in need of training, their AH+ care managers are expected to arrange it through the adult home ALP program or members' MLTC plan. If neither of these supports are available to a member, and/or if delays or other challenges with these supports occur, Nurse Assessors could be available to provide medication training. However, Nurse Assessors are not systematically kept aware of class members' training needs, thus there are regularly missed opportunities for their support. The Independent Reviewer continues to observe frequent instances of class members' medication training not being initiated in a timely manner and/or not progressing, sometimes extending to and past initial pretransition calls. On many such calls, it is evident that the Nurse Assessor has not been made aware of training progress nor asked to offer training support. This lack of communication with Nurse Assessors compromises the positive role they could play in training, as well as compromising class members' timely transitions and safety in the community.

Second, the Independent Reviewer acknowledges that many adult homes present challenging environments to provide medication trainings. As of March 2023, HC Nurse Assessors described the following conditions when trying to involve themselves in medication trainings:

- Thirteen adult homes do not allow Nurse Assessors to access any actual medications (Belle Harbor, Central Assisted Living, Elm York, Garden of Eden, Harbor Terrace [now The Veranda], Lakeside, Mariners, Mermaid Manor, New Gloria's Manor [now the Elliot Pearl House], Oceanview, Park Inn, Sanford, Surfside);
- Five adult homes allow Nurse Assessors to access some or all medications (New Haven, Seaview, Wavecrest, Parkview, and The W; at the latter two homes insulin handling and training is led by the in-home nurse);
- Two adult homes allow Nurse Assessors to be present during their in-home nurse-led trainings if they express a concern (BACC, QACC);
- One adult home (KACC) is generally described as "may be open" to Nurse Assessor involvement.



These reported challenges understandably complicate Nurse Assessor-led medication training efforts in the homes and make it all the more important to ensure all providers and State staff communicate systematically about training scheduling and progress. With more robust communication, providers could address adult home and other challenges more quickly, leading to more timely training progress. In most of the delayed training cases our Office has observed, Nurse Assessors play a pivotal role in jumpstarting training progress but only quite late in the transition process, including after a transition has already been delayed due to lack of training.

- *For example, on RM's 12/2/22 second pre-transition call (six days prior to move), it was revealed that the ALP Certified Home Health Agency ("CHHA") nurse was reporting he could not administer his own eye drops. When asked, RM's then-AH+ care manager could not describe what the ALP nurse had done to date to help him learn, nor if she had recommended or provided an eye drop dispensing device to RM. On RM's third pre-transition call (one day prior to move), uncertainty remained about how the ALP nurse was training RM. On both the second and third pre-transition calls, the HC director offered to have the Nurse Assessor visit RM on his move day and support him during his first weeks in the community. However, because RM's ability to manage his eye drops was still in question, a potential move delay was also raised. On both calls the need to purchase an inexpensive, widely available eye drop dispenser was discussed, yet no one did so until after RM had moved. While RM's move went forward on 12/8/22 and the HC Nurse Assessor did support him in the community, as recently as late January 2023 he told providers he struggled to self-administer his eye drops. He also ran out of eye drops sometime during January 2023 and his new AH+ care manager had to be prompted multiple times, across a period of more than 10 days, to obtain additional drops for him. Had RM's eye drop training needs been identified and the Nurse Assessor brought in earlier, some of his post-transition challenges could have been minimized.*

***Cases like this highlight the need to ensure that providers such as AH+ care managers and State staff such as Escalation Teams approach medication training more proactively, such that class members who are active in the transition process and may need initial and/or additional training are identified prior to pre-transition issues arising. This is an issue that should be identified in the person-centered plan, and certainly early in the transition planning process. As the HC Nurse Assessor medication initiative rolled out alongside the Dashboard, leveraging the latter to inform the former should be considered. In addition, recent Nurse Assessor feedback on the challenges individual adult homes present indicates the need for State staff such as Escalation Teams to proactively plan for how trainings are to be initiated and progressed, given known challenges. As indicated in the Eighth Annual Report, when the medication initiative was initially launched, the State facilitated conversations that allowed Nurse Assessors to exchange promising practices when faced with assessment and training challenges (e.g., providing members with pill bottles/boxes and candies or other small objects members could practice with if they were denied access to their actual medications). The State***

*should consider reviving cross-provider conversations and other forms of more proactive communication and support.*

*Related, the Independent Reviewer underscores for the second year that the relationship between this initiative –particularly medication training– and FCP warrants increased attention.* In some cases, adult home-led trainings may function well and allow the HC Nurse Assessor to better manage their time during the labor-intensive FCP period. However, we have also observed many instances of slow and/or insufficient adult home-led medication trainings.

During FCP provider calls at almost all adult homes (e.g., The W, Surfside, GOE, Elm York, BACC, and KACC), a variety of medication training issues have been reported: delays or refusals to write training scripts by in-home physicians; delayed or insufficient training by ALP and/or MLTC nurses; preexisting relationships between adult home staff and class members impacting training efforts; member concerns and questions with their medications (e.g., side effects) going unaddressed. For example:

- *During The W FCP, AH+ care managers reported waiting weeks for member medication training to begin after submitting requests; they were told physician staffing changes and absences delayed training scripts. Similar medication script and training delays were reported at BACC, KACC, and GOE. Until recently, the ALP office at KACC was under the impression, source unknown, that they needed a 30-day move notice to start medication training, preventing the timely initiation of the training for class members. This has been clarified by DOH, potentially permitting medication training to start when requested, although as recently as 2/22/23 settlement providers have reported that they sometimes contact the ALP office multiple times to initiate training and receive no response. At GOE, physicians will not authorize medication training for transitioning class members, as in the example below. Recently, settlement providers such as HC staff have also informed the State that they are not able to conduct any training of their own in the home, even when State staff have in fact asked them to attempt to do so (See, Sec. VI. C.2).*
- *ZM, 66 year-old, had lived at GOE for 10 years prior to her planned move of 11/10/22 to an apartment treatment program with Pibly Brooklyn. The major roadblock to her transition was the need to learn to self-administer her insulin. ZM has been doing medication training with the Pathway RN. Her Primary Care Physician ("PCP") at the adult home refused to write orders for medication training for her and other transitioning class members across the board. They also would not provide ZM's medications to the Pathway RN, so all the training was with fake medications and she never actually administered insulin to herself. At the end of the pre-transition call on 10/24/22, at the suggestion of OCT, the plan was for ZM to get an order to self-administer her insulin*



*with RN Supervision from her outside PCP. On the follow-up call of 11/4/22, it was reported that ZM had been self-administering her own medications under the Supervision of the AH RN pursuant to her PCP's order. At that time, she was progressing in the training and was well aware of the signs and symptoms of high and low blood sugar. Her transition to the community went on as planned and she was self-administering her insulin and other medications.*

- *Class member KR's complicated relationship to medication training was an ongoing impediment to transition progress during and after the Surfside FCP. KR had received medication training prior to FCP, but he was reported as having had a negative experience with the ALP nurse and was found unable to manage his own medication. The then-HC Nurse Assessor met with KR multiple times and determined that with individualized support KR could train to some success. However, during FCP, ambiguity around KR's ability to manage his medications continued and KR himself was reported to feel embarrassed to train further with the ALP nurse, given past experience. After months of waiting, KR was transferred to Pathway Home to receive additional medication training and support and transitioned to the community in December 2022, where he is reported to be doing well with the use of prepackaged medications.*
- *Also at Surfside, EB has encountered both care management and ALP barriers to training. Leading up to FCP she told peers she wanted to learn how to self-manage her diabetes, including learning how to self-inject her daily insulin. EB even has a sliding scale chart she studies on her own. She has told her care manager of her wish to self-manage her diabetes, but it is unclear what – if any – steps the care manager has taken to start medication training. On a January 2023 FCP call State staff asked directly if EB had received any training and no one from her care management agency nor Health Home replied to their inquiry. As EB waits, she has also approached the Surfside ALP staff on her own, but she reported as recently as December 2022 that they would not allow her to try to self-manage her medications.*
- *Finally, we acknowledge member-specific factors can further complicate medication training efforts. However, we are concerned to observe multiple instances in which such factors are known, yet are not addressed through either timely or person-centered means. For example, Elm York member AS has a history of complaints about her medications and some of her prescribing providers. She moved fairly quickly through the FCP transition preparation process and has a move date currently set for 3/7/23. Beginning on late January 2023 FCP calls, multiple providers raised the issue of her medication complaints and noncompliance, including noncompliance with medication training itself. From this point forward, State and provider staff consistently discussed AS's relationship to her medications. However, it is unclear why her significant and well-established*

*complaints were not addressed from the start of FCP, particularly given she had been enrolled in AH+ care management since March 2022 and was a designated YES member going into FCP. It is also unclear why person-centered supports recommended on her AHRAR that might help address her poor relationship to medications (e.g., ACT Team enrollment) were never pursued. On AS's first pre-transition call (2/17/23), serious concerns about her lack of medication training and her overall medication outlook were raised; as of 2/23/23 it appears highly likely that her move will be delayed.*

***Given FCP is meant to offer members intensive service provision and an accelerated path to transition, delays with medication training suggest the need for a more systematic, person-centered, and time-sensitive approach.*** This approach may involve other providers (AH+ care managers, State Project Coordinators, Escalation Teams, and even outside providers like PCPs) but, as KR's case illustrates, the role of the HC Nurse Assessor can be critical in ensuring medication assessment and training follows the expedited pacing FCP promises, while also ensuring member health and safety as they transition.

### C. Discouragement and Interference/Incident Reporting and Review

The Supplemental Agreement of 2018 required the State 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. It also required the State to report information on potential cases of discouragement and interference by adult home operators, administrators, staff, and/or others. In addition, the State is required to "notify the Independent Reviewer, counsel for the United States, and Class Counsel on a monthly basis of any reports or concerns about interference and discouragement."<sup>22</sup> To facilitate this reporting, the State created Excel trackers providing structured documentation of individual cases and steps to investigate and address such incidents. Soon after the peer bridger program was implemented 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.

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—which 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. According to the peer-run agencies, the only discouragement and interference tracker that was shared with them was in August 2022,

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<sup>22</sup> Supplement to the Second Amended Stipulation and Order of Settlement ("Supplemental Agreement"), Doc. 196-1, filed March 12, 2018, in 1:13-cv-04166-NG-ST. (Sec. D & E Pg.10-12)

and several of the complaints that they had made did not appear on the tracker. As of December 2022, while intermittent discussions have occurred with the peers, no agreement has been reached on sharing an integrated tracker with them.

Initially these trackers were shared regularly with the Parties and offered a better understanding of challenges in the adult homes. 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 substantiated.<sup>23</sup>

Further, the State has not been complying with the Supplemental Agreement's requirement to report post-transition incidents, and the last quarterly tracker of incidents that was shared was in December 2021. In addition, while the State regularly includes reports of discouragement and interference in Appendix B of its quarterly report, the last monthly report of potential cases of discouragement and interference was distributed in July 2022. On February 24, 2023, following the release of the draft annual report, the State circulated a proposed listing of dates that they would provide an updated monthly report of all incidents of discouragement and interference through January 2024, and have since provided reports in February and March 2023.

The Supplemental Agreement also requires that the quarterly reports for discouragement and interference include "the results of all such investigations, any corrective actions taken, and if no corrective action was taken, the reasons why corrective action was not required." (Supplemental Agreement E.5) Except for the results of cases that are no longer pending, none of the other requirements have been included in the quarterly report. ***These gaps in updated trackers undermine their critical function as a feedback 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. Moreover, there are inordinate delays in investigating and bringing reports of discouragement and interference to a conclusion.***

***Recognizing that the majority of incidents that are reported by providers and investigated by the State are repeat crisis episodes, including hospitalizations/ER visits, the IR has suggested to the State that these incidents might not warrant full blown investigations if they arise out of a known/ongoing medical condition, even though the settlement requires their reporting.*** Towards the end of the reporting period, the State expressed an interest in exploring this further. In an email to the Parties in October 2022, the State recognized that it is not the best use of settlement time/resources to investigate root causes of these known conditions. In reducing the overall volume of what is required to be investigated, the State

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<sup>23</sup> 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.

believes it can focus on isolating patterns, providers etc. that may require attention. However, as this Report is being drafted, there has been no agreement to change the current practice.

#### 1. Summary of the Data & Types of Complaints

Based on information received from the State as of March 16, 2023, there were 55 reports of discouragement and interference filed with the DOH against 14 of the 21 adult homes between March 12 and February 14, 2023, ranging from one to 28 reports in these homes (Table 9 below).

<b>Adult Home</b>	<b>Number</b>	<b>Percent</b>
<b>Garden of Eden (GOE)</b>	28	51%
<b>Belle Harbor Manor</b>	3	5%
<b>Central Assisted Living</b>	3	5%
<b>Queens Adult Care Center</b>	3	5%
<b>The W Assisted Living</b>	3	5%
<b>The Elliott Pearl House</b>	2	4%
<b>Oceanview Manor</b>	2	4%
<b>Sanford Home</b>	2	4%
<b>Seaview Manor</b>	2	4%
<b>Mermaid Manor</b>	2	4%
<b>Kings Adult Care Center</b>	2	4%
<b>New Haven Manor</b>	1	2%
<b>Park Inn Home</b>	1	2%
<b>Lakeside Manor</b>	1	2%
<b>Total</b>	<b>55</b>	<b>100%</b>

**Table 9. Number of Reports of Discouragement and Interference by Adult Home**

While there were 55 reports of discouragement and interference, seven reports included more than one complaint that fell into different categories for a total of 62 types of incidents. However, one of the reports were not placed into a complaint category, but given a case number, leaving 61\_types of incidents that were categorized below. (These categories are drawn from DOH regulations at 18 NYCRR 485.14, 18 NYCRR 487.5(a) or NYCRR 487.11(1)(12)).

- Attempt to influence NYC AH Resident's decisions about where to live or what services to receive. (9 or 15%).
- Employ dilatory tactics that frustrate efficient implementation of the settlement (20 or 33%).
- To impede or obstruct their access to adult home residents. (11 or 18%).

- In any other way, that settlement providers are aware of, limit or violate NYC Adult Home Residents' rights. (19 or 31%).
- To interfere with NYC Adult Home Resident's private communication with settlement implementation providers. (1 or 2%).
- Prohibit meeting with NYC Adult Home Residents in their room. (1 or 2%).

Of the 55 reports, three were complaints by settlement providers that were resolved by State staff working with facility administration and were not filed with DOH's division of Adult Care Facilities ("ACF"), and one report has still not been filed with ACF since April 14, 2022, leaving 43 reports that were formally filed with ACF for investigation. Of the 51 formal complaints, two (4%) were substantiated, three were partially substantiated (6%), 17 (33%) were unsubstantiated, and 29 (57%) were still pending completion of the investigation, and final determination. Based on the information provided by the State, as of March 16, 2023, the 30 pending investigations have been open a median of 177 days. Moreover, there are 28 additional reports of discouragement and interference that were filed in previous report years between July 31, 2019 and March 10, 2022, that are still pending that have been open a median of 590 days.

## 2. Garden of Eden ("GOE")

As noted in Table 17 above, the GOE stands out for the high percentage of complaints that have been made for discouragement and interference, primarily by settlement providers, during this reporting period and previously, accounting for 24 of the 47 complaints described above (51%). Since the start of the FCP at the home during November 2021, there has been a marked increase in the number of complaints filed against them, as discussed in last year's Annual Report, when there were 11 reports filed.<sup>24</sup> Specifically, 39 reports (including one that contained four parts) have been filed between November 1, 2021 and March 10, 2023, based on information provided by the State. It should be noted that providers have informed the Independent Reviewer of additional complaints that have been filed with DOH and the Justice Center for the Protection of People with Special Needs with assigned case numbers, that do not appear on the tracker. Specifically, two allegations that the Administrator called a class member a rat for complaining about her withholding his Personal Needs Allowance ("PNA"), and that she contacted another class member who had transitioned and asked her to return to the facility, are not included on the Discouragement & Interference tracker, but were categorized by ACF as Psychological Abuse.

In looking at the patterns of complaints during this period we have noted the following:

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<sup>24</sup> Eighth Annual Report; pp. 31-33

- There were 17 complaints that actions were taken by the facility to impede the ability of settlement providers to access the facility to meet with class members, or impact the ability of class members to meet with providers; including not allowing them to meet with them in their rooms; COVID 19 temperature screening policies which made it unnecessarily difficult and time-consuming to enter the facility; policies not assisting or allowing settlement providers to assist residents move out on moving day; and not providing a designated area in the facility that allows for privacy and is appropriate to meet in order to conduct the business of the Settlement Agreement.
- There were 14 complaints by settlement providers that the facility staff and administration directly impacted or attempted to impact the ability of class members to transition and remain in the community. These complaints included retaliation against class members who want to move; telling class members they would not be discharged, or were not ready to leave; contacting class member's family members and advising against the move; increasing the number of days a week that class members were required to attend day program, and not holding back class members from day program in order to attend appointments needed for transition; informing class members considering or in the process of transition about a class member who recently moved out and passed away, and telling/implying that this would/could happen to them; and calling class members who had moved telling them they could return to the adult home.
- There were four complaints that actions taken by facility staff or administration impacted class members receipt of money that was due to them. This includes class members who transitioned to the community whose SSA checks were not returned to SSA in a timely manner and those that were threatened they would lose their money/PNA if they failed to attend the day program, as specified and directed by the facility. Another class member alleged that his allowance check was being held from his family because he had planned to move out of the facility in March 2023.
- There were two complaints that several class members who were in the transition process were being sent to Rehab after being diagnosed with COVID, and the adult home was not sending the needed paperwork to the Rehab facility to facilitate their return to the adult home, possibly jeopardizing their transition to the community.
- There were three complaints that facility staff and/or administration had demeaned or belittled class members by using slurs against them on multiple occasions, calling them derogatory names and discussing confidential resident matters in facility common areas, and yelling at a class member after he reported that he signed forms to be assessed for transition.



- There were two complaints that physicians renting space at the facility, reportedly at the direction of the Administrator, routinely refused to sign paperwork needed by class members in the process of transition (e.g., medication training, 787 form for Representative Payee status, which is frequently raised on pre-transition calls), and in one case impacted the class member's desire and ability to be evaluated for transfer to a Skilled Nursing facility.

Of the complaints referenced above, two have been substantiated and three have been partially substantiated; 16 have been unsubstantiated; and the remainder are pending completion.

In two separate memos to the Parties of February 7, 2022 and November 9, 2022, the Independent Reviewer described in detail the problems settlement providers have had in entering the facility and the lack of appropriate space for them to do their work, and the ongoing challenges that face class members considering transitioning, many of which were discussed on pre-transition calls for class members. Because of these challenges, providers reported they usually try to meet with class members outside of GOE when possible, which was getting more difficult as the weather changed. However, when they ask to have members paged to go outside, they are often told the members are not there, the members do not want to meet with them, and/or staff simply refuse to page members. One class member was unable to start medication training at the adult home as the private physicians employed by the home refused to write orders across the board for medication training or to clarify resident's representative payee status. Fortunately, with the help and support of providers, including the provision of medication training, the class member transitioned.

In summary, the system for responding to reports of discouragement and interference is simply not working. The following are the overriding issues that have not been addressed:

1. The State is not producing the reports required by the court order on a timely basis.
2. Complaints are not being resolved on a timely basis or at all, discouraging others from complaining.
3. Responses to the reports are not effective in correcting the problems reported.
4. The status of ongoing investigations is not communicated to the complaining party, no matter how long the complaint remains opened. In cases that are unsubstantiated, when complainants are informed, they are only told that "*No evidence of noncompliance with Department Regulations related to the complaint could be substantiated,*" and do not include what steps were taken to address the complaint, and frequently complainants are not contacted by the investigator in their investigation.
5. In cases that are substantiated, the complaining party is generally informed of the regulation that was violated and that appropriate findings "are being issued to the facility to correct," with no information provided as to what those corrective actions are or if they are ever actually put in place.



6. To date, the State has not taken timely actions to address the level of discouragement and interference at the GOE.

The State DOH attributes many of the difficulties with enforcement to its statutorily prescribed regulatory structure. Paragraph E. 4 was added to the Supplemental Agreement in 2018 specifically to address this concern. It provides:

The process of investigating allegations of interference or discouragement pursuant to this paragraph is distinct from, and may or may not be accompanied by, an investigation pursuant to the process set forth in SSL 461-a and 18 NYCRR 487.

***However, despite the availability of this additional pathway to address interference with, and discouragement of, class members' exercise of their rights under the Settlement Agreement, the State has thus far not utilized it to address the repeated complaints that have been made.***

#### D. Space Plans, COVID-19 Protocols, Decision Date

##### 1. Space plans

As reported in the Independent Reviewer's Eighth Annual Report,<sup>25</sup> adequate space for providers to perform their Settlement functions has been an ongoing challenge. This challenge remains especially pronounced for the peer-run agencies as the Supplemental Agreement requires three full-time peer bridgers to work in each adult home. As of March 2022, approvable space was still pending in five settlement-involved homes, with State enforcement actions taken against one home in 2022. In the absence of approvable space, providers have had to negotiate part-time spaces (*e.g.*, dining rooms when not otherwise in use), small spaces that preclude privacy and adequate COVID distancing precautions, and alternatives to inside spaces (*e.g.*, meeting on the home's patio or across the street). As noted previously, during 2022 the challenges presented by the lack of approvable space continued to compound due to the lack of clear, timely response and progress by DOH.

Space challenges have also been compounded by the increasing number of settlement-involved adult homes that have reported themselves as non-transitional and therefore no longer subject to the space regulations of the State DOH. In December 2021, the State notified providers that Central Assisted Living and Mariners Residence were no longer transitional homes; in July 2022 they added GOE and New Gloria's Manor (now the Elliot Pearl House) as having converted to non-transitional status. All four of these adult homes had previously been reported by providers as limiting access to in-home space to conduct settlement work, while one of the four (Central Assisted) had never achieved an approved space plan to begin with. At another, The Elliot Pearl House, the State approved a space plan that did not meet its own

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<sup>25</sup> Independent Reviewer's Eighth Annual Report, Doc. #243, filed April 1, 2022, in 1:13-cv-04165-NG-ST.

regulatory requirements. When providers complained to the State about space within these homes, they were told the State could not pursue the same enforcement actions it might take for Transitional Adult Homes. This left providers to their own devices to find in-home space to carry out settlement work.

In September 2022, the Plaintiffs filed a motion with the Court to require the State to comply with the Settlement Agreement and secure approvable space in the four homes still lacking it (Central Assisted, GOE, the Elliot Pearl House, and Oceanview Manor).<sup>26</sup> The State filed a response in October 2022 asking the Court to deny the Plaintiffs motion<sup>27</sup> and by November 2022, the State reported that approvable space was available at Central Assisted, the Elliot Pearl House, and Oceanview Manor. The State also reported that space was available to providers at GOE, but this conflicted with ongoing provider accounts that the basement space that was ostensibly available to them was not in fact always available.

In summary, significant progress was made with space plans in 2022 but additional State action is needed to ensure consistently available space, free from potential interference, is available at GOE, where settlement providers were prohibited from entering the home for a two week period in June 2022. ***The acceptance by DOH of the unilateral assertion by adult homes that they are no longer subject to the State regulations applicable to Transitional Adult Homes, without any substantive review of the claim, is very troubling as it leaves settlement providers on their own to negotiate their ability to work with class members in these homes in privacy and safety, and needs to be addressed.***

## 2. COVID-19 Protocols

The COVID-19 pandemic has created persistently difficult environments for workers in long-term care facilities like adult homes. During the latter half of 2021 settlement providers returned to significant in-home work and in 2022 collaboration among providers, and the Parties, led to clearer State guidance and support for in-home work. However, factors limiting a full and consistent return to in-home work remain.

First, the State continued to refer settlement providers to its website to obtain COVID information and guidance (<https://coronavirus.health.ny.gov/long-term-care-facilities>), and in early 2022 committed to communicating when settlement-specific guidance was posted so that providers would not need to dedicate as much effort to locating it themselves. As the year progressed, New York State, like much of the U.S., eased COVID oversight, resulting in less frequent and less changeable guidance (e.g., following an April 18, 2022 update to ACF

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<sup>26</sup> Memorandum of Law in Support of Plaintiffs' Motion to Enforce the Second Amended Stipulation of Settlement, Doc #256, filed September 23, 2022, in 1:13-cv-04165-NG-ST.

<sup>27</sup> Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion to Enforce the Second Amended Stipulation of Settlement, Doc #359, filed October 14, 2022, in 1:13-cv-04165-NG-ST.

guidance there was not a comprehensive update until December 23, 2022). However, when providers have raised concerns about how such guidance was implemented on the ground (*e.g.*, inconsistent use of masks by staff) their complaints were responded to slowly, consistent with other reports of discouragement and interference and ACF Hotline complaints that have not been addressed in a timely basis (as described in Section VI. C). The slow and/or absent response to COVID-specific complaints has sometimes compromised settlement providers' sense of safety in the homes.

The second and key challenge to in-home work was the lack of consistent information on the number of positive and isolation cases in the adult homes. During the first half of 2022, the State offered a few types of updates to providers, beginning with daily updates during the Omicron surge. However, by June 2022, providers expressed confusion over the COVID statistics adult homes reported to DOH being lower than the counts adult home staff sometimes shared when they visited the homes. As this confusion persisted across multiple adult homes, providers temporarily suspended in-home work in several of them, sometimes multiple times, to limit staff exposure to potential COVID cases. Some of the in-home work suspensions corresponded to adult homes in the FCP process; here staff absences may have slowed the expedited pacing class members had been promised.

A key step forward in COVID reporting was facilitated by the October 20, 2022 court order<sup>28</sup> which required settlement-involved adult homes to share resident COVID-19 information, including infection, isolation, and quarantine statuses, directly with settlement providers. This has empowered provider agencies—particularly the peer-run agencies that seek to have daily, full-time presences in the homes to manage information-gathering and updates directly. In turn, providers may have more confidence in the information received and can make more timely determinations when it may be necessary to pause in-home work. Unfortunately, through the end of 2022 providers continued to report instances in which staff at certain adult homes were not always forthcoming with COVID information, as well as instances in which COVID information from one source (*e.g.*, a specific staff member on a specific day) varied from information from another source (*e.g.*, a different staff member and/or a different day, what a staff member reported versus what was posted in a public area of the home, etc.).

- *For example, on November 29, 2022, after days of ambiguous statements that seemed to indicate there were no COVID cases at The W Assisted Living, settlement providers were again told there were no COVID positive cases on that date. The W staff also told them that they would not provide documentation (e.g., a tracker) to substantiate this information, and a staff person claimed they did not know about the court order. Providers sought help from the State and The W staff then released an Excel tracker to providers documenting that as far back as November 21, 2022 class members had tested*

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<sup>28</sup> Doc #267, filed October 10, 2022, in 1:13-cv-04165-NG-ST.

*positive in the facility, with additional positive cases documented through November 29, 2022. As the number of positive cases was as high as eight, providers such as the peer-run agency would have paused in-home work had they been given accurate information. When this information was revealed after days of The W reporting zero positive cases, provider staff expressed great frustration and concern for their health and safety.*

### 3. Decision Date

In the Supplemental Agreement,<sup>29</sup> the Parties agreed to a final date by which class members could express the desire to be assessed as a step towards transitioning to the community. 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 initial “Assessment Decision Date” (Decision Date or DD) of September 30, 2019 was repeatedly postponed as many required actions (*e.g.*, including fully staffing assessment teams within Housing Contractors; recruiting, training, and deploying all peer bridgers) had not been completed within the Supplemental Agreement deadlines. COVID-19 restrictions further limited progress in 2020 and 2021.

Following discussions among the Parties and the Independent Reviewer, a report was filed with the Court in July 2022 establishing a new rolling DD process.<sup>30</sup> This rolling DD takes into account the influence activities developed after the Supplemental Agreement (*i.e.*, the FCP) may have on class member assessment decisions. More specifically, the DD and member education around it are related to when each adult home and, therefore, each member residing there experiences the planned intensive engagement of a FCP. Eight FCPs had already occurred or were in process by the July 2022 DD report filing. For the corresponding eight homes and member residents, a January 31, 2023 DD was set. For homes where FCP had not commenced as of July 15, 2022, the DD was set to be either January 31, 2023 or 120 days after the start of its FCP (whichever would be the later date).

A parallel, rolling DD education process was also launched. For the eight initial FCP homes, a written DD notice was scheduled to be hand-delivered to class members by October 1, 2022, with two additional notices to be sent approximately 45 and 90 days following. For each additional home, members could be informed verbally about the DD during the FCP kickoff and would receive a hand-delivered written notice at that time; they would then be sent additional notices approximately 45 and 90 days following.

As of March 10, 2023, the State, specifically a combination of State staff, the peer-run agencies, and HCs, completed the DD notice distribution for the 10 homes with a January 31,

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<sup>29</sup> Supplement to the Second Amended Stipulation and Order of Settlement (“Supplemental Agreement”), Doc. 196-1, filed March 12, 2018, in 1:13-cv-04166-NG-ST.

<sup>30</sup> Report on the Recommendation of the Parties for the Assessment Decision Date, Doc #345, filed 7/18/22, in 1:13-cv-04165-NG-ST.

2023 deadline, and one adult home each which had February 21 and March 14, 2023 deadlines. The Independent Reviewer recognizes that the State dedicated a great amount of time and effort to the massive and complex task of delivering notices three times to each class member and accomplishing on-time DD notice delivery for a significant portion of the class.

## **VII. Conclusion**

Since April 2021, the State has been focused on the Full Court Press (“FCP”) as a strategy to reinvigorate the implementation effort. (This strategy was described in some detail in the Eighth Annual Report and in Section VI. A of this Report.) In doing so, it has used some innovative initiatives such as large group and housing fair style kickoff meetings, and the inducement of refreshments, swag and raffle giveaways to attract the attendance of class members and generate interest. It has issued invitations to all class members to attend the kickoff meetings and hear once again about the Settlement Agreement and the choices they have; to view pictures and videos of available apartments in various neighborhoods; to view video testimonials from class members who have moved; and to speak to peer ambassadors about their experiences in supported housing. Settlement providers have followed up to speak individually to class members who may not have attended the kickoff meeting and have provided them with written information packets as well. These efforts, in addition to the at-least-annual in-reach conversations, have helped ensure that class members are provided the information they require to make an informed decision about whether to transition. The State has continued to refine the kickoff meetings with class members based on experience with each effort.

For many class members—especially those with long stays in adult homes, age-related infirmities or other health issues—who have had many previous opportunities to transition, these efforts did not result in a decision to move. Each of these decisions to decline is subject to review by the Independent Reviewer to ensure that class members have been given another full and informed opportunity to take advantage of the Settlement Agreement as discussed in Section VI. A of this Report. They will also have a final opportunity to change their minds by the Decision Date. (*See*, Sec. VI. D. 3)

A significant number of class members who had previously said NO changed their minds during the FCP. For these and others who had already expressed their interest in moving out, the expectation was that the settlement providers would respond promptly and speedily to move them through the transition process and to avoid the delays, frustration and discouragement that had so often derailed class members’ moves in the past, as described in earlier reports of the Independent Reviewer. If needed, assessments were to be completed promptly, and housing tours scheduled during the kickoff meeting or shortly thereafter, to maintain enthusiasm and momentum. This has been happening during some of the FCPs but, unfortunately, the follow-up and follow-through has been spotty and inconsistent, especially after the initial adult homes where the FCP strategy was first implemented. As has been true throughout the nine years of this case, the performance of various settlement provider agencies has been highly variable, with

some focused, attentive and prompt in their follow-up, while others worked at a slower pace. As more adult homes were subject to the FCP, and work remained to be done to transition residents from previous adult homes' FCP, as well as at adult homes not yet subject to the FCP, the accumulation of work demands also made it difficult for State and settlement provider staff to respond with the speed that was anticipated in response to renewed engagement with class members. Staff vacancies, turnover and reassignment of settlement provider staff, and COVID-19-related absences added to the challenge of meeting the expectations. (*See*, Sec. VI.D.2)

During our monitoring work, the Independent Reviewer staff encountered many State and settlement provider staff who were conscientious, diligent and skilled in performing their duties, as discussed in the body of this Report. (*See*, Sec. VI, pp. 26-27) We also acknowledge that since the change in leadership of this effort which occurred in August 2022 the State has made significant efforts to produce timely reports to the court and the parties. In particular, we acknowledge and appreciate the substantial efforts made by State staff to respond to the many information requests made by the Independent Reviewer for data that was used in the preparation of this report. Despite this, the system as a whole, has not been working as intended. Notwithstanding the attention given to transition planning and monitoring the efforts of settlement providers through regular provider calls regarding class members who are interested in moving out of adult homes, a significant number of moves were delayed by the failure to complete preparatory tasks such as obtaining IDs, arranging for medication training, scheduling tours and other idiosyncratic issues such as obtaining keys, setting up utility accounts, etc. Notably, these are the same types of issues that have surfaced over and over again through the years as described in previous annual reports but have not had an enduring resolution. New State-staffed initiatives that were announced, such as centralizing the responsibility for obtaining IDs, or obtaining necessary paperwork from adult homes and other providers, have petered out without explanation, while the underlying problems persist.

Unquestionably, some of the delays are attributable to the ambivalence of the class members themselves who have said they are interested in moving but then have been unavailable or unwilling to engage in follow-up conversations, or appointments to secure IDs, transfer financial entitlements, and apply for benefits like SNAP or Access-A-Ride.

Delays have also been caused by the staff of adult homes and their contractors dragging their feet in producing necessary paperwork or ordering medication training or filling out forms regarding the ability of class members to manage their own finances. Despite the promise of the Escalation Teams, there has been no consistent and effective remedy for such behavior which adversely impacts the implementation of the Settlement Agreement. Similarly, reports of discouragement and interference by adult home staff, behaviors which are explicitly addressed by the Supplemental Agreement (Para. E), are not resolved on a timely basis. (*See*, Section VI.



C.) As has been noted previously, the DOH's enforcement process does not produce quick and effective remediation of such reported problems.

Perhaps as a result, in spite of considerable attention to this new strategy, it has devolved into a "business as usual" mindset among most settlement providers. The State itself has not been able to meet its commitment to produce final reports of the FCP at six of the eight adult homes where the process had ended at the time of this report. The overall result in terms of transitions completed during the Report year bears this out. Although the pandemic related restrictions eased during the year, the number of transitions has remained flat compared to the previous year. (*See*, Fig. 2, p. 6)

The workload of settlement providers, coupled with this mindset and the pressure to move people, has sometimes resulted in significant delays and in class members being moved without necessary supports being in place, causing service gaps. Delayed moves and service gaps in the community also lead to additional transition calls (*e.g.*, as many as six pre-transition calls), additional provider meetings, and additional support needed from State staff. Workloads grow even greater and settlement provider and State staff are stretched even more thin, creating a self-perpetuating cycle of suboptimal transition preparation leading to more suboptimal preparation as providers must continue to "look back" on early FCPs and follow-up on individual transitions for longer, in more depth while simultaneously being asked to "look forward" and undertake the intensive preparation necessary to launch upcoming FCPs. Perhaps most distressing, in a significant number of cases, these delays lead to class members losing their enthusiasm, changing their minds once again and deciding to remain in the adult home, undoing all the efforts made on their behalf.

In the body of this Report, in lieu of making recommendations, we have highlighted areas where additional attention is required by the State and its settlement providers to fulfill the promise of the Settlement Agreement to the fullest extent.



## Appendix A. Table of Acronyms and Abbreviations

Acronym/Abbreviation	Meaning
ACF	Adult Care Facilities
ACT	Assertive Community Treatment
AH	Adult Home
AHRAR	Adult Home Resident Assessment Report
AH+ CM	Adult Home Plus Care Manager
ALP	Assisted Living Program
CAIRS	Child and Adult Integrated Reporting System
CC	Care Coordinator
CHHA	Certified Home Health Agency
CIAD	Coalition of Institutionalized Aged and Disabled
CM	Care Manager
CMA	Care Management Agency
CTL	Community Transition List
CUCS	Center for Urban Community Services
DAL	Dear Administrator Letter
DD	Decision Date
DMT	Decision-Making Template
DOH	New York State Department of Health
FCP	Full Court Press
GOE	Garden of Eden
HARP	Health and Recovery Plan
HC	Housing Contractor
HH	Health Home
HHA	Home Health Aide
HRA	Human Resources Administration
IAH	Impacted Adult Home
IDMT	Informed Decision-Making Template
KACC	Kings Adult Care Center
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
PACE	Program of All-inclusive Care for the Elderly
PCP	Primary Care Physician

<b>PNA</b>	Personal Needs Allowance
<b>PROS</b>	Personalized Recovery Oriented Services
<b>QACC</b>	Queens Adult Care Center
<b>SA</b>	Settlement Agreement
<b>SMI</b>	Serious Mental Illness
<b>SNAP</b>	Supplemental Nutrition Assistance Program
<b>SSA</b>	Social Security Administration
<b>SSI</b>	Supplemental Security Income

