IX. What Next? Conclusions and Recommendations

Times are bleak for county nursing homes. Virtually all are losing money, with the amounts of loss steadily increasing over the past decade, and county subsidies increasing as a result. Yet the future is not without hope, depending on how counties choose to face it.

About 80% of all resident days in county homes are paid for by Medicaid, and those payments fall an estimated $100 per resident per day short of covering facility operating costs. Intergovernmental Transfer (IGT) payments have historically been instrumental in closing many county nursing home operating deficits, but increasingly in recent years those payments have been insufficient to fully cover operating losses. And the amounts of the true shortfalls are even greater with the 50% match from county general funds (required to access authorized IGT payments) factored in. Indeed, a number of counties are beginning to raise questions about paying the full 50% match, which potentially restricts the deficit-reducing role of the IGT funds even further.

Meanwhile, costs of operating county homes continue to escalate, particularly benefit costs associated with health insurance and pensions, and this upward trajectory is likely to continue. Add to this the uncertainty of future funding and reimbursement sources, formulas and levels, and uncertainties associated with long-term managed care programs coming at some point with their unknown reimbursement levels.

Finally, add property tax caps to the equation, and these factors combined comprise a "perfect storm" of difficult realities faced by counties and their nursing homes. The net effect of all this appears to be an unsustainable model for the continuation of most county-owned homes, *at least in their current configurations.*

Many of these concerns and uncertainties also impact for-profit and non-profit nursing homes, albeit typically to a lesser degree. But the focus of this study by design was on the small number of county/public nursing facilities, and the public policy implications of future support for such homes.

The seemingly unsustainable current model of public nursing homes is what increasingly informs and influences the conclusion of many counties—counties that have historically considered public nursing homes to be an important part of their mission and which as recently as six years ago appeared solidly in support of continuing county ownership. As financial realities have gotten worse, however, and the need for substantial county subsidies has increased, county commitment to continued nursing home ownership has dwindled. Per our survey data, at least eight counties have recently decided to sell their nursing homes, and are well into the process of exploring the market (including a few that have either just consummated the sale process or are awaiting final approval of the terms of sale from New York State). Several other counties are leaning strongly toward selling.

Yet at the same time, many counties have a different perspective. Just over half of the 33 counties owning homes at the beginning of 2013 appear not to be as far along on the "sell" continuum—including (a) about a quarter that are uncertain and in various stages of ongoing discussions about the future of their homes, with no apparent predisposition as to the outcome of those discussions, and (b) almost a third of the counties that appear to be content with current realities and willing to continue their support for their nursing homes—and that apparently are not engaged in any substantive discussions of divesting, at least at this time.

In this rapidly-evolving environment, what can we conclude from our statewide research, and what are the implications for the state and for those counties—wherever they are in the process—as they face and make their decisions about the future of their nursing homes and who will own them in the coming years?

Wherever counties are in their thinking about the future of their nursing homes, it is our hope that the clarity and urgency brought to the issues facing them by this report will prove a useful tool, encouraging and enabling counties to think strategically in a way that will ultimately preserve these community assets and the care they provide well into the future—regardless of whether they or someone else ultimately owns and operates them.

Conclusions and Implications

This section summarizes some of the major conclusions that emerge from the earlier chapters of our findings—conclusions that we believe have implications for policymakers at both state and county levels as they make decisions concerning future provision of institutional as well as other levels of long-term care.

- County nursing homes have provided valuable services to residents throughout New York for many years. County homes have many significant strengths and attributes, and have provided needed long-term care services to many "hard to place" county residents, regardless of their financial situations, many of whom in all likelihood would not have been served by other for-profit or non-profit homes.

- In recent sales of county nursing homes, the evidence suggests that generally low-income and other “safety net” individuals have not “fallen through the cracks” or been forced to go outside the community for nursing home services. With some important partial exceptions to that statement, in general it appears that transferring ownership from a county facility has not to date borne out the worst fears of some that “hard to place” residents would find it hard to find admission in local nursing homes once the county was no longer involved as a provider. However, this needs to be monitored and receive careful attention in the process of selecting a new owner, to help ensure that persons considered “hard to place” will not be ignored under new ownership and/or that other community providers will be available to pick up any slack. The number and nature of other nursing homes in the county can also influence how well these individuals are covered by the system in the future.

- Many of those served by county homes receive reimbursement levels far below the actual costs of the services provided and the staff attention needed. With Medicaid reimbursement rates falling an estimated $100 per day short of covering operating costs, and county homes accepting disproportionate numbers of residents on Medicaid from the day they are admitted, the ability of most county homes to be financially sustainable without subsidies is severely compromised compared to non-county homes, under current admission policies and practices. County homes admit fewer new residents per year—including fewer Medicare, short-term and rehabilitation admissions—thereby having fewer opportunities for admitting residents with higher reimbursement levels from day one of residency.

- As financial challenges increase, few if any county homes can afford to continue to conduct business in the future as they have in the past. It is important for county homes—and ultimately their county governments and the state—to think strategically about their future and the numerous options available to them, including (a) ways of increasing revenues and reducing costs internally, as well as (b) consideration of divestiture options.. Historically, relatively few county homes have systematically explored and compared the service and cost-benefit implications of a range of options before making decisions about the future of their nursing facilities. Experiences in several counties indicate that in many county homes, there is the realistic potential to reduce nursing home deficits by several million dollars through revenue enhancements and management efficiencies/ cost reductions if there is the serious will to explore them, but many counties have thus far not aggressively pursued those options through careful study and/or discussions with employees and union officials.

- County nursing facilities have been an important contributor to the local economy in many counties. Statewide, county homes employ about 10,000 people (an average of about 290 per facility, down 9% from 2007), and account for about $800 million in expenditures annually ($1.8 billion if six county hospital-nursing home affiliations are included). The value of the county homes is typically recognized and appreciated, but increasingly must be assessed in the context of increasing contributions needed by county taxpayers to subsidize increasing operating deficits of the homes.

- In the past decade county homes have accounted for a dwindling share of the nursing home market, with reductions in number of homes, beds and residents served. For-profit homes represent a growing share of the market.

- Much of the annual operating deficit faced by county homes is attributable to high costs of benefits, and decisions about work conditions and worker protections, negotiated by state and county elected officials, in conjunction with union leaders, years ago. The cumulative effect of decisions made over the years limits the options available to current nursing home administrators and county leaders in their efforts to reduce deficits. These realities should at least be recognized and acknowledged in debates about the spiraling deficits faced by many county homes, rather than pointing fingers at current administrators and employees as the immediate cause of the deficits, as too often happens in many counties.

- At the same time, current leaders find it easy to become paralyzed by the combined effects of these previous decisions, seemingly precluding negotiations that could begin to modify previous agreements in ways that could enable nursing homes to operate in more streamlined, cost-effective ways. Without intentional efforts to address and overcome the effects of these past decisions, most county homes have relatively little chance to survive. Most counties talk about the need to work with nursing home management and employees and their union representatives in a collaborative process to address many issues related to wages, benefits, work rules, paid time off, scheduling issues and various other concerns unique to a 24/7 institutional setting that are distinct from circumstances that apply to other county employees—but there is little evidence in most counties of substantive efforts to engage productively in such discussions, leaving most of these issues unresolved, and costs continuing to escalate.

- The future of Intergovernmental Transfer (IGT) payments is uncertain, and even if one assumes they continue, unless the payment levels increase dramatically, they are unlikely to be large enough to be able to cover the increasingly large typical county home operating deficits in the future, to the extent they once were able to do. The continuation of IGT payments is considered essential to the future financial sustainability of county homes, but it is increasingly unlikely, as currently constituted, to be *sufficient* as a financial "savior" of county homes.

- ❖ Nearly all counties with nursing homes are facing substantial increases in their 75+ and 85+ populations over the next 15 to 30 years, with potential major implications for the future demand for nursing home care and various lower levels of long-term-care services. Most of the counties with their own nursing homes are also in areas with projected shortages of nursing home beds needed for the future. In the short run, however, the baby boom generation will not be entering nursing homes in large numbers for another decade or so (beginning in the 2020s), and low birth rates during the Great Depression years will keep the rapid expansion of the nursing home market somewhat on hold over the next few years. Thus planners have both short-term and longer-term horizons to consider as they make decisions about the future of nursing facilities.

- ❖ Despite the projected shortages of nursing facility beds and the increases in the older population that will be needing and demanding more beds and more long-term-care options, few counties have long-term-care plans in place, and many lower levels of long-term care have received little active consideration in most counties.

- ❖ Counties need to be careful in doing due diligence in making decisions about whether or not to sell their nursing home, and if so, to whom and with what conditions. The recent history of sales and closures indicates that under the right circumstances, and perhaps some good fortune, sales can work out well in meeting community needs and sustaining a well-run, quality nursing home in the for-profit or non-profit sector in place of the former county home. But that history also raises cautionary tales, as one recent sale can fairly be characterized as a failure, and there have been specific concerns about others that potentially could have been avoided or at least minimized with a more careful review and assessment process in place. Selling a facility does not automatically create a good outcome for the future of the community and its residents, nor does it automatically mean a decline in the quality of the nursing home. The outcome largely depends on how the process of making decisions is conceptualized and carried out, and the care with which options are vetted, compared and analyzed.

- ❖ Recent sales of county homes seem to have had some impact in reducing taxpayer costs, at least in the short run, and have certainly helped avoid some costs that would otherwise have occurred.

Residents at the time of sale have been well taken care of and generally, with some exceptions, county nursing home employees seem to have been fairly treated and absorbed into the new owner workforce as appropriate, typically with reasonable wage levels but anticipated sharp reductions in benefits.

- Sale of homes has typically resulted in staff reductions, with mixed results in terms of quality of care. Quality seems to have improved or at least remained at comparable levels in some homes with new owners, while declining in others.

- Despite a frequent assertion that county homes typically offer the highest possible quality of care, the data are mixed on this, depending on different quality measures used. One measure suggests that county homes on balance surpass their for-profit and non-profit counterparts, while another suggests that quality of care has been declining and in the aggregate falling behind that of non-county homes in recent years. This possible decline seems to coincide with reductions in staffing in many county facilities. Whether those staffing reductions contribute to reductions in quality of care cannot be determined by this study, but the relationship should be monitored by state officials in the future.

- Outright closure of current county nursing homes seems to have few if any advocates. Evidence suggests that it makes sense only in the few situations where there is a combination of low occupancy rates in the county home, combined with an excess of nursing home beds in the county.

Recommendations

The findings and conclusions throughout the report and summarized above have implications for both state (and to some extent federal) and county policymakers. To effectively address a number of the issues raised by this study, parallel and complementary actions will need to be taken at both state and county levels. In order to clarify responsibilities, we have chosen to break out the recommendations that explicitly apply to each, even as we understand the need for collaborative approaches that will involve both levels.

General Findings and Recommendations

First, some overriding findings and general recommendations:

- **Before making a determination about the future of its nursing home, each county should engage in a careful due diligence process of examining a range of options concerning the future of its home**. Following such a process, some are likely to opt to remain a county facility, while others will choose to divest from ownership.

Because of the uniqueness of each county and county home situation, there is no clear predisposition to conclude that one approach is better than the other in general. The preponderance of circumstances in some counties may argue for continuing to own their facilities, while in other counties the evidence will suggest selling. The findings in this study do not lead to a conclusion that any one approach is always better than another, because too many variables are at play from county to county.

- ❖ **On balance we conclude that it is generally better for a county to sell its nursing home than to either close it or continue to lose significant amounts of taxpayer money, *as long as it is able to sell to a responsible buyer meeting various criteria and expectations important to the county*.** At some point, whatever the legitimate arguments over the special mission of county homes and other related issues, it may become more important to ensure that the services and jobs are continued than to insist that they must be provided by county employees. That decision will and should be made county by county, with many deciding for rational reasons to continue with their homes, but our research has concluded that it is possible to provide quality services via different types of owners and not only through the public sector, *IF key expectations are met*. That is discussed further below, and our findings make clear that this assurance will not always be met, so the due diligence process again becomes critical in making such decisions.

  We are not necessarily concluding that most county homes will eventually need to be sold. What we *are* saying is that, absent pro-active attention to the challenges described, this may increasingly become the default result. But it is not a foreordained conclusion. Counties will make those decisions, and the comprehensiveness and thoughtfulness of the process they use in making their decisions will be determinative.

- ❖ **Given all this, we expect that over the next five years there will continue to be counties owning and operating their own nursing homes, but that number will be considerably smaller than the number existing in 2013**. We believe some of our recommendations, if adopted, will help counties follow a rational process leading to decisions that will determine what that number will eventually be. In turn, that smaller number may make it easier to implement some of the other recommendations, especially those affecting the state.

Recommendations with State Implications

Recommendations that follow pertain primarily to county-owned nursing homes, but they also have broader implications. Some pertain to nursing homes in general, and others to more comprehensive long-term care issues involving levels of care below the nursing home level. They are numbered for convenience, but not necessarily in any particular order of priority.

1. **New York State should work closely with the federal government to obtain assurances concerning the future availability of Intergovernmental Transfer (IGT) funds for county nursing homes**. At this point, the future status of IGT funding is uncertain, making it difficult for counties and their nursing homes to make any realistic future financial assumptions about their homes, and what resulting implications are likely for county finances. The sooner the state can provide realistic information to the counties concerning future years' existence of the IGT funds, and the likely amounts of those funds, the better counties will be able to make more realistic plans about the future of their facilities.

2. **The state should consider supplemental financial support for selected county homes that meet specified criteria. Those criteria might include such factors as being a public facility in a county with few other nursing homes, in a county with a shortage of nursing home beds, with rapidly growing projected 75+ and 85+ populations and a high indigent elderly population, as well as being a county home with a demonstrated history of serving a disproportionately high population of Medicaid residents and residents with low clinical scores but behavioral issues with staffing implications.** The rationale here is that the county homes meeting such criteria are playing an especially critical role in their communities by serving residents who may not otherwise be served in their counties, some of whom may be confined to hospitals if they were not served by the county home, or need to find nursing care away from families outside the county. Such supplemental financial support might include development of a formula to cover added costs of residents with behavioral issues not addressed through the RUGS/Case Mix Index formula. Another approach could be to provide a supplement to the basic Medicaid rate that would enhance revenues for residents who enter the facility on day one at the lower Medicaid rate, and who therefore lose an estimated $100 per day for the facility every day they are in the home, from day one forward. *Such an approach, spread across a relatively small number of remaining county nursing homes, would have little impact on the state budget, but could help reduce the operating deficit for these counties and ensure that critical services remain.*

   Parenthetically, it should be noted that this recommendation is consistent with a recommendation in the 2006 Berger Commission report that "a clear policy should be developed [by the state] to guide decision-making about county nursing homes and to protect indigent residents."[38]

3. **As a further incentive for any nursing home to admit more low-income, Medicaid residents, the state might wish to consider providing supplemental financial support for *any* home that admits residents on Medicaid at the time of admission.** The previous recommendation focuses attention on county homes only, to help provide relief for those homes that admit disproportionate numbers of residents paid for by Medicaid from day one, but if the state decides that it wishes to incentivize other homes as well to accept higher proportions of Medicaid residents, and thereby make them less dependent on county facilities, some broader version of such a supplemental Medicaid rate for such admissions might be worth considering. One possible approach that might be used in this context is the state's Vital Access Providers (VAP) initiative, designed to provide support for continued access to vital health care services such as nursing homes for the uninsured, Medicaid and other vulnerable populations. This initiative might have applicability for either this or the previous recommendation, or both.

4. **The state should consider making an exception to the property tax cap for counties with nursing homes meeting criteria outlined above, in order to provide them with additional flexibility if needed to cover county subsidy or matching IGT funds.** Not only are counties concerned about the increased subsidies many of them are having to pay to support their nursing homes, but they are also concerned about the potential for that support, combined with the need for IGT match money to come from the county general fund, to push their counties over the tax cap and/or force other priority items to be cut to avoid that happening. Having some such level of tax relief—for such counties that meet specified criteria demonstrating the value of the county homes in those communities—could help create more flexibility for any counties wishing to explore such a level of nursing home support.

5. **Any supplemental support from the state should be tied in some way to accountability of the homes for provision of quality care.** The types of supplemental support suggested above, including the exception to the property tax cap, should be linked to some agreed-upon quality measure(s), so that such support is only provided as long as consistent evidence of quality levels of care exists. The key to the

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[38] Commission on Health Care Facilities, *A Plan to Stabilize and Strengthen New York's Health Care System: Final Report,* December 2006, p. 10.

success of this recommendation would be to agree upon a consistent quality measure to apply to all nursing homes, based on some type of rolling three-year average for something like Medicare.gov ratings, or number of deficiencies compared to state average, etc. This could also be linked to something like the DOH Quality Pool. A three-year average is suggested to avoid the potential for single one-year fluctuations in ratings that can happen to any institution without being indicative of fundamental declines in quality.

6. **The state should take responsibility for reviewing existing measures of quality that compare nursing homes, and for making recommendations as to which should be used consistently in the future, or to initiate the development of a new measure if necessary to enable consistent, reliable comparisons to be made.** Each of the variety of measures currently in existence appears to have significant drawbacks, including lack of comprehensiveness and consistency of measurement, often subject to considerable fluctuation from year to year. The state should consider ways of merging the best attributes of different measures into a more universal measurement of quality that can have more value for comparison purposes in the future, and which can provide a more accurate basis on which to hold facilities accountable for some of the support recommendations offered above. If that is not possible from existing measures, the state should consider developing a more comprehensive comparative measurement approach to be used with all nursing homes in the state.

7. **The state should be more pro-active in working with counties interested in undertaking comprehensive due diligence assessments of options for the future of their nursing homes.** As counties seek to discern the most appropriate future directions for their nursing facilities, the state should be willing to provide guidance and support upon request from the counties, including offering technical assistance, consultation, relevant data, and perhaps financial support for counties seeking outside consultation. Such support should be offered on a prioritized basis for counties meeting particular criteria, such as suggested above.

8. **As part of the state's process of reviewing applications for transfer of ownership of nursing homes, it is recommended that the Department of Health reviewers become more active partners with the counties to help ensure that thorough proper vetting and review of potential buyers takes place. Counties have not always been as careful as they might in making decisions about potential new owners, and the state has considerable experience which should be tapped that could help counties feel more comfortable and informed about their decisions concerning potential buyers.** Ideally this would mean having the state engaged with counties earlier

in the process to provide support in the early vetting stages. State reviewers would provide advice based on previous experience about pitfalls to avoid, types of issues to be concerned about, types of questions to raise, types of information to request from potential buyers, etc.

9. **The state should offer financial incentives for counties to establish new lower-level long-term-care services not now provided in county nursing homes.** The intent would be to consider a form of financial incentive that may make it easier for counties to consider converting nursing home beds, or adding new beds, to meet increasing demands for lower levels of care. For example, if a county wishes to decertify some of its nursing home beds and convert them to a lower level and less expensive form of care—and in the process reduce the state's level of Medicaid expenditures, for example—it can make financial sense for the state to share some of its savings as a financial incentive for the county to undertake the necessary conversion expenses and/or to help subsidize any loss of revenues the county might experience as a result of the transition. Such incentives should also be more generally available for the creation of a wide range of community-based long-term-care services, whether related to conversion of nursing home beds or not, as part of a state focus on creating incentives for communities to establish long-term-care plans to meet the needs of the expanding older population.

   As suggested earlier in the report, one possible source of at least some of these needed funds may eventually result from a NYS request to the federal government for a waiver to reinvest billions of dollars in federal savings resulting over five years from the state's Medicaid Redesign Team reforms. If the waiver is approved and generates funds that can, in part, be directed to local communities to expand community-based long-term-care services, more comprehensive long-term-care plans and strategies may become possible at the local level. The state may also consider offering such supports as technical assistance to local communities and grants for pilot projects to help establish new initiatives.

10. **As part of a review of long-term-care policies, the state should lobby the federal government to remove its restrictions against public nursing homes offering assisted living programs.** This issue was raised in the 2007 statewide study, and it has received no traction in the meantime. A number of county nursing homes have consistently raised the issue of providing an assisted living option, indicating that it would be a more appropriate level of care for some of their residents. But federal regulations continue to restrict counties from investing in this alternative level of care for Medicaid residents. The rationale behind these restrictions should be reviewed, and changes in the

regulations should be considered. One approach might be to consider providing such care through Medicaid waivers. Short of obtaining relief from this archaic restriction, it may be possible for a county to pursue such an option on a collaborative partnership basis with a non-public service provider.

11. **The state should be as clear and informative as possible about its plans concerning the statewide rollout of managed long-term-care programs, including the timing for various parts of the state, and their direct applicability to nursing homes and long-term care in general**. There is considerable confusion about the plans for implementing managed care initiatives and what impact they are likely to have, and when and where, on nursing home residents, including the impact they are likely to have on the establishment of broader long-term-care service networks in counties throughout the state. Nursing home administrators and counties owning nursing homes are particularly concerned about how these plans may affect eligibility for nursing home services compared with other long-term-care programs, and the impact managed care will have on the revenue profile of the homes. The state should engage in a carefully-designed education effort to help all who are involved in the provision of long-term care understand what is coming when, and what implications this new direction will have for residents and for revenue expectations.

12. **The state should solidify and expand its support for New York Connects, or a variation thereof, to strengthen programs at the county level which help the elderly population and their caregivers make well-informed decisions about the level of long-term care they need**. While these programs are not mandatory, and residents are not obligated to follow the advice of the program, they can provide an informed and educational focus on available options and how those might apply to an individual or family's circumstances and needs.

Recommendations with County Implications

Counties often face a very difficult choice between stanching the financial bleeding in a very difficult environment, or disposing of a community asset affecting hundreds of people in order to save what in most counties amounts to a relatively small share of the county's overall budget or tax levy. As one of the few services counties provide that isn't mandated, a financially hemorrhaging nursing home is an understandable target for cost-cutters. **But the key for any county, as suggested earlier, is to implement not just a careful review of potential buyers of the nursing facility, but well before that to engage in a thoughtful, comprehensive process of reviewing a range of options involving possible continuation of the facility as a county operation on through a continuum of change with divestiture of the facility at the other end**.

If the decision is ultimately to sell, it has been and will continue to be tempting for financially-strapped counties to focus on getting the highest purchase price possible, without providing a careful vetting process to ensure as much as possible that key county needs and expectations are met. Our case studies show that the consequences of a poor selection of a new owner can be devastating for current residents, families and staff members, and for those who may need nursing home care in the future.

The recommendations that follow incorporate improved processes at the county level.

Comprehensive Review of Options

1. **Counties and their nursing homes should actively explore the various options outlined in Table 7 and the discussion in Chapter VIII.** The fact that many of the options outlined in Table 7 have not been seriously considered by most counties or their nursing homes suggests that there may be significant untapped beneficial opportunities waiting to be explored. Ideally, as part of any decision about the future of a county's nursing home, a comprehensive process should be undertaken by counties, involving a variety of inputs from county officials, employees, union and community leaders, and others as appropriate, to analyze and compare relevant options from that list. Each county should select those options it considers most relevant and pertinent to its needs and resources and assess the potential for developing new cost-effective solutions internally (through revenue enhancements and cost reductions) before considering divestiture options. *Such a due diligence process can help county leaders bring the public along on whatever decision is ultimately made about the future of the facility, based on careful documentation of selected options and their respective pros, cons and net cost and revenue implications.*

2. **Counties should create more comprehensive long-term-care plans, and explore opportunities to expand the provision of lower levels of long-term care by expanding the numbers of non-institutional beds and program slots.** In some cases this could involve choosing to decertify a number of underused nursing home beds and convert them to other types of service provision. Or it may not involve conversion of existing beds, but rather expansion of other more community-based lower levels of care, which may help address unmet needs in a county. It may also help create links to individuals and families for subsequent admission to the nursing home when that level of care is needed. Either way, the key is for counties to begin to create the more comprehensive long-term-care plan that most do not currently have in place, despite the likely increased demand in future years for a wider array of long-term-care programs in the community, below institutional levels of care.

3. **Counties with sufficient nursing home beds should begin to explore downsizing or decertifying beds in a portion of their home, and potentially converting them to assisted living beds to be leased by community partners.** Although the counties are not legally able to provide such services directly for Medicaid recipients, they could potentially develop partnerships with non-public-sector entities to help make this level of service available in counties where the need exists**.**

4. **Counties should improve their efforts to inform people interested in long-term-care options about what is available and provide advice as to the best options for their circumstances. This may mean strengthening NY Connects programs or equivalent central intake programs.** This recommendation is consistent with the earlier recommendation to the state to strengthen support for such programs. Properly used, they can provide helpful advice to seniors and family members concerning a variety of long-term-care options before they make a decision to choose one, where they have the flexibility to choose.

Internal Improvement Options

1. **Counties interested in potentially continuing to own their nursing homes should more aggressively market their services and the quality of their care.** County homes throughout the state have very different approaches to marketing, and different perceptions of its value. Some counties are at least implicitly encouraged to downplay marketing because of the potential negative impact on taxpaying private nursing homes. Nonetheless, especially if county homes begin to more aggressively expand services and levels of care, marketing and expanded communications with the public, hospital discharge planners, physicians, social workers, senior centers and other service providers working with older citizens may become especially important, especially to the extent that homes consciously attempt to attract more Medicare and private pay residents to supplement the Medicaid/safety net core of the clientele of most county homes.

2. **Counties should strengthen working relationships between nursing home management, labor representatives and county officials to help resolve issues to make retaining county homes more viable in the future.** County leaders and nursing home administrators in their surveys expressed support for finding ways to bring key groups together to find mutually beneficial solutions in the interest of more sustainable future operations. But despite much talk of working more effectively with labor unions around issues unique to nursing homes, most counties appear to have talked about doing this more than they have actually made it happen.

3. **Counties should consider establishing separate bargaining units involving nursing home employees and/or include nursing home administrators more directly and substantively in labor negotiations.** This happens now in some counties, but in most, the special 24/7 and related circumstances associated with managing a nursing home do not get adequately factored into the broader county contract negotiation process. Often decisions are made (or not made) as a result that have direct—and often negative—implications for the cost effectiveness and performance of, and overall ability to manage, the county home. If county home administrators are to be held accountable for the performance of their homes, counties should consider ways to give them more management flexibility, with fewer limitations on what they are and are not allowed to do under terms of a contract which they may have had little say in shaping.

4. **For counties that decide to continue to own and operate their nursing home, a number of options should be considered to increase revenues and reduce costs. Among specific revenue enhancement opportunities would be to provide more education on Minimum Data Set (MDS) coding to ensure accuracy in capturing resident conditions that impact reimbursement; improved billing practices; and expansion of the number of short-term residents at higher reimbursement levels**. The practical implications of such opportunities should be carefully explored, and the potential revenue implications of each analyzed and monitored to determine the potential implications for reducing the county home operating deficit.

Consideration of Divestiture Options

Our research on the impact of selling or closing nursing homes (see Chapter VII) suggests that the outcomes that result from a sale hinge primarily on the process used by the county in making its decision, the thoroughness with which the process is undertaken, the breadth of factors considered in the decision (going far beyond just the sale price), the expectations of the county and the extent to which they are met by the potential buyer, and the extensiveness of the owner vetting process. In short, *who* buys the home, and *how* the buyer is selected, are keys to how well the decision holds up over time. Such a thorough process is at the heart of the following recommendations.

1. **Establish a clear set of the county's criteria and expectations that a potential buyer should meet to be selected, including future expectations of admission policies and approaches to "safety net" candidates for admission in the future**. Such a delineation of expectations and review of proposals for how well they are met can be supplemented by reviews of data about other facilities owned by each potential buyer, by field visits to facilities and by reference checks, as

well as through interviews. It should be noted that there is no clear right or wrong way to handle the criteria/expectations issue. Some counties prefer to be very explicit and attempt to pin down applicants in their initial proposals concerning how they would handle certain situations, while others prefer to be more general, at least initially, raising broad issues but without attempting to force specific types of responses, preferring instead to see what potential bidders offer in a more unstructured way, and becoming more precise as the process moves forward with selected "finalists." This latter perspective also is based in part on not wanting to turn some potential buyers off by overly detailed initial requirements. Each county will need to find its comfort level with these types of issues and how and when they get addressed.

2. **Consider more than just the sale price in choosing a buyer.** A big dollar figure is obviously appealing to a county looking to divest itself of a nursing home. But that should be balanced with the needs of residents, their families, employees and the larger public to ensure that the best possible new operators take over the home. As suggested in the previous recommendation, county officials should decide what pre-conditions they want to attach to the sale, such as providing preference in admissions to particular subgroups of residents; continuing to admit low-income, uninsured or behaviorally difficult residents; giving preference to existing staff members in filling positions; potential protections concerning wage structures for employees; etc. This can be done in part by spelling out requirements in a Request for Proposals as well as through thorough follow-up interviews and conversations with bidders.

3. **Thoroughly research and vet potential buyers.** This includes finding out not only about the experience of any current nursing home operators in other facilities but also about their financial backgrounds and available resources. Selling to an organization with thin financial resources, or a poor track record of providing quality care, is likely to lead to serious problems in the long run. Indeed, there is evidence from our case study for this project, as well as examples in other counties, where the failure to carefully vet potential buyers against criteria or expectations set by the county led either to unfortunate outcomes post-sale, or to the sale not being consummated because decision-makers were ultimately not convinced the preferred buyer would be able to meet county needs and expectations over the long haul.

4. **Counties should test building protective language into the terms of agreement to sell or lease that provides options should the terms of sale not be met (e.g., party breaks lease arrangement, becomes financially unable to sustain operation of the home)**. It is difficult to

build in iron-clad, legally enforceable protections, but a county may wish to attempt to include language along the lines of providing right of reversion back to the county if conditions are not met by the successful buyer or leaser of the nursing home, while recognizing enforceability of these provisions may be challenging. At the same time, establishing test cases for building in such protections would appear to have little risk, other than potentially being fought by potential buyers, in which case this would need to be negotiated as part of the terms of sale, and the county would need to determine how strongly it felt about sticking to its intentions, and where the compromise point might occur.

5. **If a county is not satisfied that any specified conditions can be successfully met by the successful bidder, it should not enter into an agreement to transfer ownership.** As difficult as this may be after a thorough process and the time invested in it by many people, experience suggests that it is better to walk away up front from a potential deal that has remaining unresolved issues than to enter into it with misgivings and risk problems in the future.

6. **Ensure an open, transparent process involving key stakeholders throughout the process**. Involve stakeholders as much as possible and be honest with them about what is happening. In counties where employees felt officials weren't forthright about their intentions to sell, new owners had more trouble establishing good working relationships. Dealing as much as possible with objections in an upfront way can set the tone for open, productive relationships among staff, residents and new owners—as well as providing early indications before a sale is finalized of how well the potential new owner relates to various constituent groups.

7. **Provide as much continuity as possible through the transition.** This might include entering into a management contract with the buyer before a sale is finalized, as was done in Oswego County, or requiring the buyer to retain a certain percentage of existing staff members to help residents adjust to the change.

8. **Assess the extent to which county officials can or want to be involved in an oversight role following the sale**. In one of the case study counties, a committee consisting of county officials and the home's buyer and administrator met periodically and discussed the home's operations. While this structure wasn't well implemented in that county, some similar process could potentially help maintain a county's interest in seeing the home succeed under new ownership and hold it accountable.

9. **Counties should consider using a portion of sale proceeds to invest in the development and expansion of community-based levels of long-term care to meet demands in their communities.** Where this is possible, it would represent a commitment to the importance of developing a strong network of long-term-care programs below the institutional level, hopefully to be supported as well with funds from the state.