

# SUFFOLK COUNTY LEGISLATURE



Gail Vizzini  
Director

## BUDGET REVIEW OFFICE

October 9, 2008

To: Presiding Officer William J. Lindsay  
and All Suffolk County Legislators

From: Gail Vizzini, Director  
Budget Review Office

Subject: Interim Report on the John J. Foley Skilled Nursing Facility – Review of  
the 2009 Recommended Operating Budget

The Budget Review Office has prepared this interim report to assist the Legislature in their deliberations concerning the County Executive's proposal to close the John J. Foley Skilled Nursing Facility as presented in the 2009 recommended operating budget.

The operation of the County Skilled Nursing Facility is a major policy determination before the Legislature. There are legal, fiscal, and programmatic issues surrounding this complicated issue. This is not the first Legislature to grapple with the fiscal commitment necessary to operate the Skilled Nursing Facility. Previous County Executives have proposed privatization, transfer to Social Services and the creation of a separate Department of Infirmity Services. Because of the Legislature's steadfast concern for the most fundamental exercise of municipal power in protecting the public health and safety of its residents, Local Law 20-1997 amended the Administrative Code to establish specific requirements and procedures for changes in the delivery of services currently performed by the Department of Health Services, including the Skilled Nursing Facility.

Legal opinion varies as to whether the 2009 recommended operating budget is in compliance with Article 9 (6) of the Administrative Code. The purpose and intent of Article 9 (6) was to establish requirements and a procedure for consideration of any initiatives to replace services provided by the Suffolk County Department of Health Services with services provided by another entity (quasi-public or private) and to ensure

the highest level of scrutiny to any such proposal. Legislative Counsel has advised that the 2009 recommended budget is not in compliance with the purpose and intent of Article 9 (6) of the Administrative Code.

There have also been numerous studies of the Nursing Facility for the Executive and Legislature, including the Suffolk County Blue Ribbon Commission in 1997, the JJFSNF Task Force Report in 2004 and the most recent operational report by consultants Horan, Martell, and Morrone, P.C. (HMM) in May 2008.

The HMM report made numerous recommendations for efficiencies in controllable cost areas and offered five options as far as the disposition of the facility. By the consultant's estimate the closure option would require approximately one year considering the relocation of patients, placement of employees and optimal disposition of the building. The 2009 recommended operating budget proposes closure on January 1, 2009 and provides a general fund transfer to the Skilled Nursing Facility for one quarter of the year.

The 2009 recommended operating budget proposes to abolish all 379 positions at the Skilled Nursing Facility. According to the October 5, 2008 authorized position control, 283 positions are filled. When filled positions are abolished, Civil Service Law provides for an orderly procedure of bump and retreat for permanent competitive class employees whereby senior employees will displace those with less seniority in the same title in the same department. The Department of Civil Service has already begun their analysis. The collective bargaining agreement provides a procedure for non-competitive class and labor class employees. However, many of the titles are unique to the Skilled Nursing Facility.

This report provides you with a programmatic and fiscal overview of the Skilled Nursing Facility and offers several policy options for your consideration. An Executive Summary has been prepared for your convenience. The Budget Review Office is available should you require additional information in your policy deliberations concerning the John J. Foley Skilled Nursing Facility.

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**Review of the  
2009 Recommended Operating Budget**

**Interim Report on the  
John J. Foley Skilled Nursing Facility**



**October 9, 2008**

**Budget Review Office  
Suffolk County Legislature  
Hauppauge, New York**

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## Executive Summary

1. The John J. Foley Skilled Nursing Facility (JJFSNF) provides access assurance to residential long term care in Suffolk County, even as the definition of a “safety net” patient has changed over the last decade. Payor mix for both new and established patients, length of stay, discharge disposition, and age of patients all indicate a profile unique among the skilled nursing facilities in the County, and typical of county nursing homes throughout New York State and the rest of the nation:
  - The percentage of Medicaid patients, both in new admissions and in established patients, is disproportionately high compared to the rest of the nursing homes in Suffolk County.
  - Patients tend to stay at Foley longer than any other nursing home in Suffolk County.
  - Patients are more likely to be discharged to a hospital than at any other nursing home in the County.
  - JJFSNF has the highest percentage of patients less than 65 years of age for any facility in Suffolk County.

These factors combine to give JJFSNF high percentages of patients needing considerable care, but for whom the facility receives inadequate reimbursement. They also make patients with the profile described above much less attractive to the proprietary and non-profit facilities in Suffolk County. In the event of the closure of JJFSNF, 20-30% of the current patients would be considered difficult to place.

2. The October 2006 Berger Commission report<sup>1</sup> concluded that there was a surplus of nursing home beds in Suffolk County and recommended holding the number of beds at 8,865. Since then total nursing home bed capacity in Suffolk County has fallen to 8,781, as documented by the New York State Department of Health Nursing Home Profile Website (<http://nursinghomes.nyhealth.gov/>). Furthermore, the Berger Commission made no recommendations whatsoever regarding the disposition of the JJFSNF.
3. Based on an aging population with large numbers of baby boomers soon to become senior citizens, it seems likely that within eight years we can expect need to exceed Berger Commission recommendations regarding beds in Suffolk County.
4. JJFSNF, which enjoyed occupancy rates above 95% in 2004, 2005, and 2006, has more recently had difficulty attracting and retaining patients because of the uncertainty over the future of the facility. Publicity surrounding the County Executive’s determination to close the facility has led to reluctance on the part of the public to place their family members in a facility that seems to be at risk of closure. As a result, to the extent possible, the County should immediately make a final determination on whether or not to close the facility. As long as the public believes

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<sup>1</sup> The Berger Commission is more formally known as the New York State Commission on Health Care Facilities in the 21st Century.

that closure is a likely scenario it will continue to negatively impact nursing home finances.

5. Given both the mission of the County nursing home, and its current patient profile, Suffolk County Enterprise Fund 632 will require a General Fund subsidy for the foreseeable future, even with increased efficiency, increased revenue, and decreased labor costs. In the 21 years of the Fund's existence, a General Fund subsidy has been required in 19 years. However, opportunities exist to minimize the subsidy. Section V of this report, entitled "Options," provides a list of alternatives.
6. The 2009 budget cycle represents an opportunity to maximize practical efficiencies recommended by the County Executive's consultant and already initiated by the Department of Health Services. The County has the option to leverage the recent IGT revenue increases rather than close the skilled nursing facility, maximize the cost savings accrued through more efficient operation of the facility, and benefit from the revenue enhancements earned through rate rebasing and Medicare, and implementation of the County Executive's consultant recommendations:
  - The Budget Review Office estimates that the JJFSNF could be operated for all of 2009 with a General Fund subsidy of about \$1.5 million more than the \$3.5 million General Fund transfer to the nursing home that is recommended by the County Executive for closing the facility. To be prudent, we would instead recommend increasing the transfer by \$4.5 million to a total of \$8 million as requested by the Health Department. This higher requested amount should positively impact the 2010 starting fund balance for JJFSNF and allow the County to subsidize the facility at a reduced rate in 2010.
  - The Budget Review Office estimates that a \$9 million General Fund subsidy to JJFSNF will be needed in 2010. If the Legislature adds \$4.5 million in General Fund transfers to the nursing home in 2009, there could be a surplus that would allow the County to reduce its subsidy in 2010 to \$6 million.
7. The 2009 recommended budget abolishes all 379 positions at the Skilled Nursing Facility, of which 283 are filled. Civil Service has already begun their analysis for bump and retreat for permanent competitive positions. The collective bargaining agreement provides a layoff procedure for several non-competitive and labor class titles. Many titles are unique to the Skilled Nursing Facility.

## **I. Introduction**

Many counties across the nation, including 36 in New York State, operate skilled nursing facilities open to residents of their respective municipalities. In New York and around the nation, county owned nursing homes face a variety of challenges in continuing operation, as reimbursement for their patients has generally lagged behind growth in costs, requiring ever larger general fund subsidies to the operating budgets of these facilities.

John J. Foley Skilled Nursing Facility (JJFSNF) is a typical county owned nursing home in New York State, with many of the problems identified below as discussed in the Center for Governmental Research September 2007 report, "County Nursing Facilities In New York State: Current Status, Challenges And Opportunities".

### **Key Challenges Facing County Nursing Homes**

County facilities face a number of challenges not faced, or faced to lesser degrees, by their for profit and proprietary competitors, including:

- Fewer high reimbursement admissions from hospitals, including sub-acute care and rehabilitation patients;
- Disproportionate Medicaid admissions, for which county homes lose money from day one;
- Disproportionate total resident days paid for by Medicaid, compared to Medicare and private pay, both of which are more lucrative and pay more of the bills at voluntary and proprietary facilities;
- Demographic profile of residents with disproportionately high behavioral demands and need for staff attention, but with insufficient reimbursement to cover staff costs;
- Low case mix index compared to other types of homes;
- Rising staff costs, especially in benefits, mostly attributable to mandated increased pension/retirement costs passed on from the state to counties, and to increased health insurance costs;
- Limited county nursing home role in labor negotiations which directly affect their budgets and operations;
- Aging facilities;
- Increasing operating losses per bed;
- Rapid decline in Intergovernmental Transfer (IGT) payments designed to compensate for unique costs and mission of county homes;
- Resulting increases in need for county taxpayer support of county homes.

--Center for Governmental Research. "County Nursing Facilities in New York State" September 2007.

There is policy justification for the operation of a publicly owned nursing facility; generally, county owned facilities care for patients that are generally younger, have more behavioral and mental problems, and are more likely to suffer from dementia than

those in voluntary or proprietary facilities<sup>2</sup>, who depend on high patient turnover and higher reimbursements to remain in operation. Many of these characteristics apply to JJFSNF. Operation of JJFSNF supports the essential public health service of linking people to personal health services and assuring the provision of health care when otherwise unavailable.<sup>3</sup> There is, however, no legal obligation under either the New York State Public Health Law or under Title 10 (Health), New York State Code of Rules, and Regulations for counties to operate long term care facilities.

John J. Foley Skilled Nursing Facility is organized as an Enterprise Fund (Fund 632) in the Suffolk County Budget, and administered through the Department of Health Services. Under New York State Law, this provides a transparent presentation of all costs and all revenue.

**Enterprise Funds** ... may be used to account for activities for which a fee is charged to external users for goods or services. Activities are required to be reported as an enterprise fund if any one of the following criteria is met:

- They are financed with debt that is secured solely by a pledge of the net revenues from fees and charges of the activity. (This is not permissible for New York State local governments).
- Where laws and regulations require that the activity's costs of providing services, including capital costs (such as depreciation or debt service), be recovered with fees and charges rather than with taxes or similar revenues.
- The pricing policies of the activity establish fees and charges designed to recover its costs, including capital costs (such as depreciation or debt service).

-- New York State Accounting and Reporting Manual,  
Chapter 4, p.17

There is no requirement for an Enterprise Fund to make a profit, nor is there any requirement to run the fund as a business. Establishment of an Enterprise Fund does not, at least in New York State, necessarily imply responsibility to any bottom line except the provision of service to the residents of the relevant municipality. Most of the county owned nursing homes in New York State are organized as enterprise funds; none of them make a profit.

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<sup>2</sup> Center for Governmental Research. "County Nursing Facilities in New York State" September 2007

<sup>3</sup> Institute of Medicine. The Future of the Public's Health in the 21<sup>st</sup> Century.2003. p.99.

## II. Patient Profile

JJFSNF average occupancy from 2004-2006 was 96.8%, slightly above the 96.5% median occupancy rate for all skilled nursing facilities in Suffolk County in the same time period. Occupancy in 2008 has lagged as the effects of the uncertainty surrounding the facility have compromised its ability to attract and retain patients.

There are significant differences at JJFSNF in patient age, payor mix, and length of stay when compared to the other nursing facilities in Suffolk County. JJFSNF, like most county owned facilities in New York State, disproportionately serves younger patients and patients more likely to be Medicaid payors (and Medicaid payors at time of admission). Patients also tend to stay longer at JJFSNF than at other nursing homes in the County. These differences, which negatively impact the reimbursement for each patient, may make placement of the current residents of the facility difficult. County nursing home administrators responding to the Center for Governmental Research (CGR) survey for the 2007 report indicated that they would expect 20-25% of their patients would not be served by other nursing homes if they closed. Estimates for JJFSNF gathered from individual staff indicate that 35-40 patients would not be placeable elsewhere, close to the CGR estimate. The Suffolk County Department of Health Services believes approximately 64 of the current patients will be more difficult to place than the majority of patients at the facility, but that all patients can be placed, if the closure option is executed. However, *no law or regulation requires closing facilities to place patients within any geographic limit relative to their home or the closing facility if the patient is moving from a closing facility; home assignment does not apply.*

The demographics of the JJFSNF population are typical of county owned nursing homes, but unique in Suffolk County, and comprise a mix that will be difficult financially for the local nursing home market to absorb:

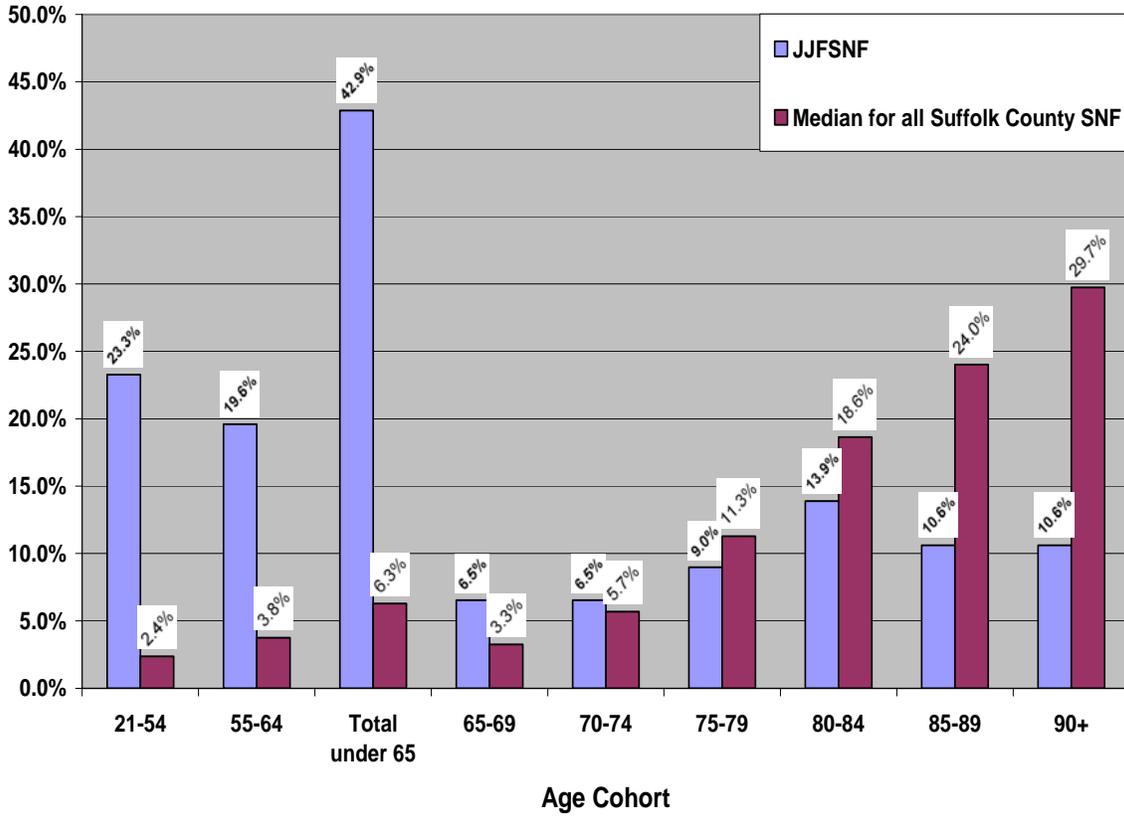
- In 2006, 42% of JJFSNF patients were under 65 years of age, the highest percentage of younger patients in the County. The median occupancy for patients below 65 years of age for other County facilities was 6.3%.
- Payor mix in JJFSNF was also significantly different than in other skilled nursing facilities in Suffolk County. As of 2006, 88% (highest in Suffolk County) of JJFSNF residents are Medicaid patients; the median for the other facilities in the County is 67.8%.<sup>\*\*</sup>
- Medicare patients make up only 3.2% of the patients at JJFSNF, lowest in the County; median percentage for the rest of the skilled nursing facilities in the County is 13.8%.
- New patients in other facilities are unlikely to start as Medicaid patients; median percentage of Medicaid patients as new admissions to other facilities is only 7.7%, while at JJFSNF it is 36.9%, second highest in the County.

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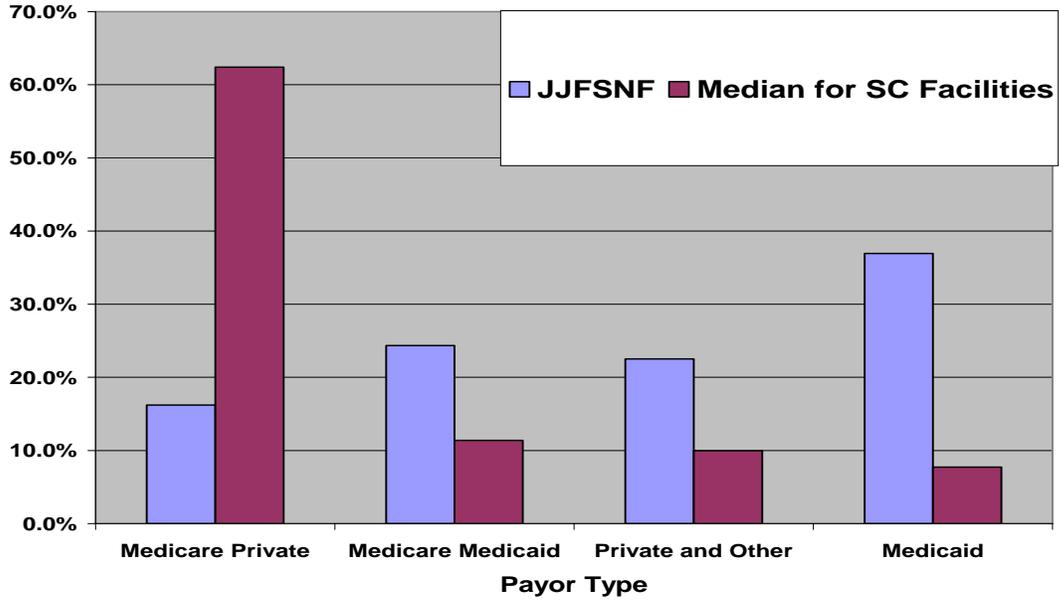
<sup>\*\*</sup> average percentage of Medicaid patients is 65.0%

The following charts illustrate the disparities between JJFSNF and the other nursing homes operating in Suffolk County.

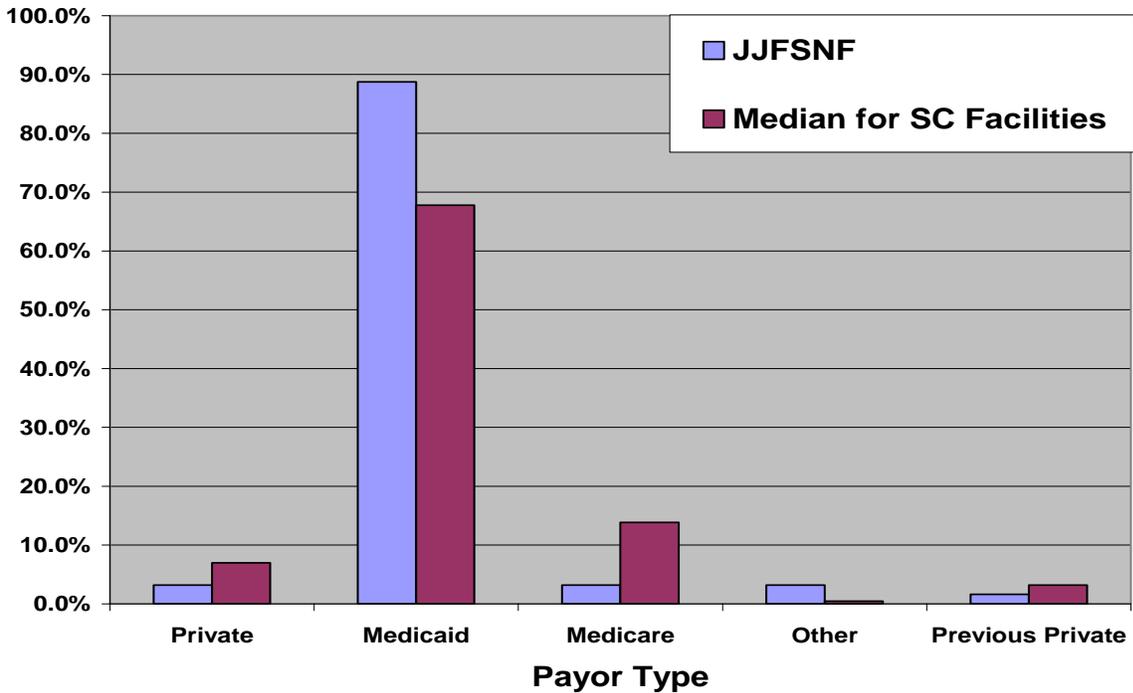
**Age of Patients by Percentage, JJFSNF v. Median of all County SNF**



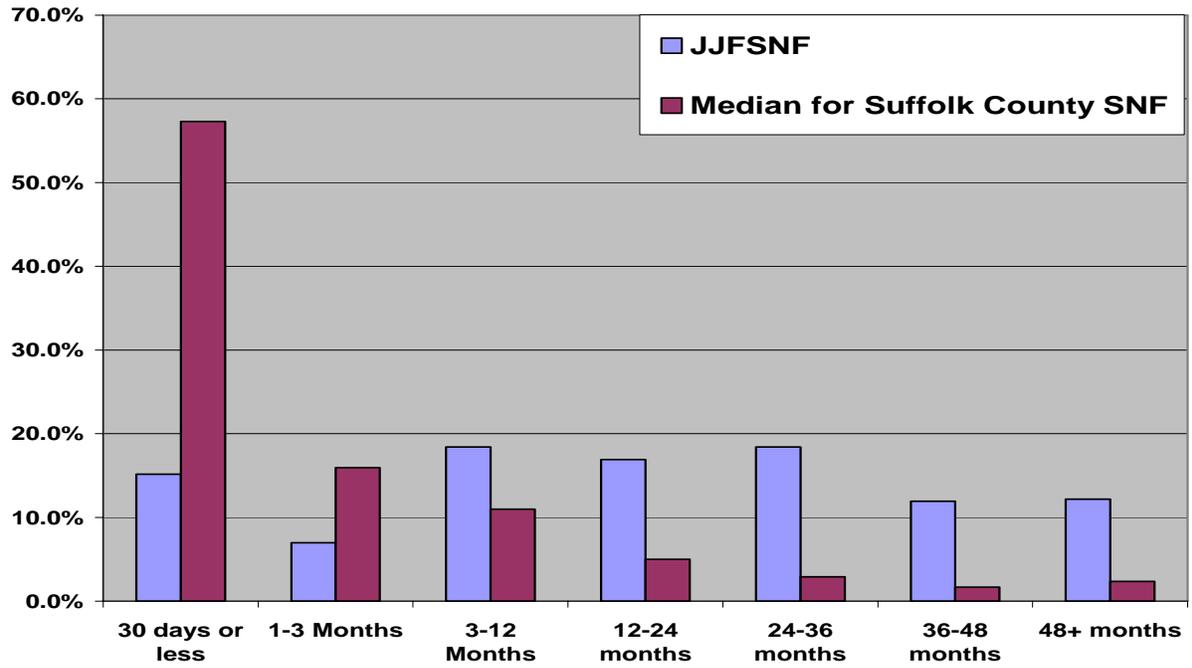
### New Admissions by Percentage of Payors



### Payor by Percentage



## Length of Nursing Home Stay prior to Discharge to Hospital



### **III. The Berger Commission and the Long Term Care Market in Suffolk County**

Neither the final report of the New York State Commission on Health Care Facilities in the 21st Century (the Berger Commission) nor the Long Island Regional Advisory Committee Report mentions JJFSNF. Only one nursing home in Suffolk County, the Brunswick Hospital Skilled Nursing Home, was targeted for closure; and has since closed. The other county nursing home in the region, A. Holly Patterson (AHP) Extended Care Facility (ECF), was targeted by Berger for downsizing, and has received Healthcare Efficiency and Affordability Law (HEAL) monies to downsize and to create an assisted living program on the A. Holly Patterson campus. Nassau Healthcare Corporation, the owner of the ECF, is in the process of complying with the Berger mandates, without completely removing safety net capability from Nassau County. (According to Medicare statistics, as of the end of 1st Quarter 2008, A. Holly Patterson ECF occupancy was 98.3%).

Berger's recommendations, made in October 2006, regarding the long term care market in Suffolk County were:

- to hold the number of beds at 8,865 for the next five to ten years, and
- to "shift any further documented long-term care resource need to the home- and community-based services and supportive housing need categories, for the next five to ten years".<sup>4</sup>

According to the New York State Department of Health Nursing Home Profile Website (<http://nursinghomes.nyhealth.gov/>) there are 8,781<sup>\*\*</sup> current nursing home beds in Suffolk County, already below the Berger recommendations.

The reason for the Berger Commission's bed "freeze" recommendation made in 2006 was overcapacity relative to expected utilization. Suffolk County had 8,251 occupied beds according to Medicare in March 2008. Utilization is higher than expected in the County because of the current lack of lower acuity and home health options in the market. Based on the state nursing home utilization by age cohort, by 2016, the Budget Review Office projects that the expected demand for nursing home beds will be almost 13,500, an 80% increase in expected occupancy (63% increase against actual current occupancy), as the demographic tsunami that is the "baby boom" generation ages.

Closure and downsizing recommendations by the Berger Commission regarding other county nursing homes in upstate New York were based on significantly more overcapacity and lower occupancy than currently experienced at JJFSNF. Many of the

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<sup>4</sup> New York State Commission on Health Care Facilities in the 21st Century; Findings of the Long Island Regional Advisory Committee October 2006, p.49. The final Berger Commission Report in August 2008 considered the Long Island Region to have complied with the recommendations made regarding long term care, and again failed to mention JJFSNF.

<sup>\*\*</sup> The HMM report states that there are currently 8,625 beds available in Suffolk County; HMM may not count Continuing Care Retirement Communities (CCRC), or the SNF currently in receivership in its bed count.

recommendations regarding these facilities suggested downsizing or refit, versus closing, even when a facility had an older physical plant, implying a role for publicly owned facilities even in the face of the overcapacity found by the Berger Commission in the upstate regions. Current (end of 1st Quarter 2008 Medicare reporting) median occupancy for county owned homes in New York is 96.5%\*, with 66% of all county owned homes in the state having more than 95% occupancy. The continued relative success in utilization, if not in profitability, of publicly owned facilities, even as the Berger Commission mandates and recommendations are implemented, again implies a role for publicly owned long term care facilities in New York State.

As stated above, current total capacity in residential long term care facilities in Suffolk County is 8,781 beds, already below the 8,865 beds recommended by the Berger Commission to be maintained for the next decade in Suffolk County. While it is true, as the HMM report asserts, that Suffolk County's overall occupancy rate is below 95%, several factors may impact both the desire and the ability of voluntary and proprietary homes in the County to absorb patients from JJFSNF, in the event that the Legislature concurs with the County Executive's proposition that closure is the best course of action available.

Of the 530 currently available (end of March 2008, from Center for Medicaid and Medicare Services statistics) beds in the County:

- 90 beds are in continuing care retirement facilities, which are typically out of the price range of current JJFSNF residents.
- Another 37 beds are in facilities that already have occupancy greater than 97%
- 127 of the available beds are in homes that lost money in 2006. These homes, with these indications of financial problems, hold 20.4% of the total beds in Suffolk County. Their ability to absorb patients who will likely decrease their potential reimbursement is problematic.

It seems unlikely that the voluntary and proprietary homes would choose to treat significant percentages of less profitable patients. To quote from the Center for Governmental Research:

“Voluntary and proprietary providers, without offsetting public subsidies available to county homes, simply cannot afford to provide services to many residents who do not bring at least a few days of other revenue sources with them at admission. County homes' ability and willingness to accept high proportions of such persons is a prime example of the “safety net” portion of their mission.<sup>5</sup>

In the event that the nursing home is closed, it is likely that some patients could be placed in other facilities outside of Suffolk County and that some may have to be placed off of Long Island.

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\* These percentages do not include publicly owned facilities in New York City.

<sup>5</sup> Center for Governmental Research. “County Nursing Facilities in New York State” September 2007.p.

## **IV. The Cost of Operating JJFSNF**

It is unlikely, given both the mission of the County nursing home, and its patient profile, that Suffolk County Enterprise Fund 632 will pay for operation of JJFSNF without subsidy from the General Fund in the foreseeable future, even with increased efficiency, increased revenue, and decreased labor costs. For the 21 years of the Enterprise Fund's existence, a General Fund subsidy has been required in 19 years. Given the current level of reimbursement available for the patients now comprising the safety net population, it is unlikely that any long term care facility fulfilling an access assurance role would be self sustaining.

However, opportunities exist to minimize the General Fund subsidy, and the 2009 budget year is one of those opportunities to maximize those efficiencies recommended by the County Executive's consultant and already implemented by the Department of Health Services.

Factors that are favorably impacting Foley nursing home finances in 2008 are:

- An approximate \$5.6 million Intergovernmental Transfer from New York State for 2006-2008. This represents a one time revenue that is implicit in the 2008 estimated nursing home budget.
- About \$1.6 million in revenue from 2007 generated by the Medicaid rebasing from 1983 to 2002. These funds are also included in the 2008 estimated nursing home budget and represent a one time revenue from retroactive payments.
- Cost savings accrued through more efficient operation of the facility, including:
  1. Staff at no more than the current filled 2008 level.
  2. Most other costs held to 2008 spending levels.
  3. Improvements engendered by a grant from the New York State Dormitory Authority recently awarded to JJFSNF.
- Resumption of Medicare Part B billing for physical and occupational therapy;
- Billing for physician services to Medicare Part B.
- Improved relations with feeder hospitals.
- Recognition as a provider by more insurers such as the Suffolk County Employee Medical Health Plan and TriCare.

As a result of these initiatives, which are all either under way or expected, the County is favorably positioned to have the option to use additional time over the course of 2009 to improve the revenue flow to the JJFSNF. In particular, the Budget Review Office estimates that the JJFSNF can be operated for all of 2009 with a General Fund subsidy of about \$1.5 million more than the \$3.5 million General Fund transfer to the nursing home that is recommended by the County Executive. To be prudent, the Budget Review Office would instead recommend increasing the transfer by \$4.5 million to the 2009 amount requested by the Health Department. This higher requested amount

should positively impact the 2009 starting fund balance for JJFSNF and allow the County to subsidize the facility at a reduced rate in 2010.

In this case the Legislature would choose to use 2009 as a year to invest resources into JJFSNF, with a goal of reducing, minimizing and controlling the expected General Fund subsidies in 2010 and beyond. Further outsourcing of certain functions should be considered; some of these opportunities are discussed in detail in the County Executive's consultant report by HMM.

Looking ahead to 2010, an operating fund subsidy to JJFSNF of \$9 million will probably be required. If the Legislature adds \$4.5 million in General Fund transfers to the nursing home in 2009, there should be a surplus that would offset some of the \$9 million projected subsidy in 2010. We estimate this surplus at \$3 million, resulting in a 2010 subsidy that is more likely to be \$6 million.

Assumptions used to project the nursing home budget for 2009 and 2010 are:

- A 3% increase in expenses other than health insurance, which is assumed to grow at 7%.
- Staffing that is assumed to continue at about current fall 2008 levels.
- Revenue based on current Medicaid and Medicare rates –no additional rate increase is assumed for 2009 or 2010.
- Patient occupancy rates that are consistent with the requested budget.
- Other revenues that are based on an average of 2007 actual and 2008 estimated dollar amounts, with no growth assumed for 2010.
- Debt service based on information provided by the Comptroller's office.

It should be noted that on page 14 of the narrative accompanying the 2009 recommended budget the General Fund subsidy to the nursing home for 2010 is projected to be \$15 million. Clearly this is higher than the \$9 million estimated in this report. Our analysis indicates that the \$15 million figure is consistent with Medicaid and Medicare rates that do not reflect their recent increase and with significantly higher staffing levels than currently exist at the facility. The Budget Review Office believes that the above assumptions implicit in our \$9 million projected subsidy are reasonable. That being said, the Legislature still needs to determine whether or not it is willing to spend \$9 million annually in 2010 dollars. Alternative options are noted below in Section V of this report.

It should also be noted that in the event that the decision is made is to close JJFSNF, there are costs associated with closure that would continue to be borne by the County:

- \$25 million in debt service over the next 18 years (2009-2026) would no longer be eligible for 100% reimbursement through Medicaid.
- The County's \$1.6 million annual obligation for the employee health insurance for the 165 retirees from the nursing facility.
- \$7.9 million to refit the facility to office space as estimated in the unsuccessful HEAL-NY 7 and 8 grant applications prepared by the County Executive's consultant, Horan, Martello, and Morrone.

The Legislature has a number of options to consider in its deliberations over the JJFSNF. The uncertainty surrounding the possible closure of the facility is adversely impacting patient occupancy and revenue. As long as the public believes that closure is a likely scenario it will continue to negatively impact nursing home finances. To the extent possible, the County should make a final policy determination on the closure issue.

## V. Options

Should the Legislature choose not to close the nursing home there are several options that may be considered over the course of 2009, with an eye towards minimizing the General Fund subsidy. Options include:

- Consideration of a surcharge on non-publicly owned nursing homes, similar to the one instituted in New Jersey. This would require both NYS and federal approval. The concept is based upon the premise that the for profits have a modest financial responsibility for the population served by the public sector. Depending upon the size of the surcharge, revenue to the County could be \$1 million or more annually.
- Consideration of a health district property tax levy or sales tax. Many states and municipalities across the country use similar revenues to fund their local health activities. The revenue from such a levy could also be applied to offset other public health operations including health clinics and health inspections.
- Exploration of establishment of a public benefit corporation with JJFSNF partnering with a hospital and or the health clinics participating in the corporation. At this stage the Budget Review Office does not believe a public benefit corporation would be cost effective; however, considerably more analysis is needed before a final determination is made.
- Contract out for the management and operation of the facility. Outsourcing could take on a number of forms, including contracting for management services; specific functions performed at the nursing home; or all services. Resolution No. 334-2008 authorizes a request for proposals to identify a management consultant for the JJFSNF. An analysis would have to be undertaken to make a determination as to the efficiencies gained. The legal implications of the Taylor Law, as it pertains to functions performed by public employees, also needs to be explored.
- Selling the assets to a non-profit or profit provider and transferring the bed license. This has been one of several options that have been proposed in the past. The JJFSNF is a considerable asset. There is value to the facility, the patient mix and associated revenue, the operating license, the County land on which the building stands, the location, and the trained and experienced staff. Although the details would have to be worked out, at this time the Budget Review Office has some reservations. In particular, given nursing home finances, in order for it to be worthwhile for another provider to take over the facility and make it operate without a loss, it would appear that two conditions would need to be met:
  - ✓ Over time most providers would need to reduce the above average number of low reimbursement and hard to place patients that are at the Foley nursing facility. This could create a void in the County's nursing home market that is currently filled by Foley. As a result, if it is the Legislature's desire to sell the nursing home, the Budget Review Office recommends that an RFP require perspective buyers to demonstrate an

ability to maintain, over the long run, the existing level of hard to place patients.

- ✓ Another provider would likely replace or transition the current County workforce to lower cost private sector employees. From the prospective of service provision it is unclear what if any impact this would have. It would be a hardship on the displaced County employees.

## **VI. Employees**

The 2009 recommended operating budget proposes to abolish all 379 positions at the Skilled Nursing Facility. According to the October 5, 2008 authorized position control 283 positions are filled. The Department of Civil Service has already begun the analysis to identify seniority and bump and retreat rights for permanent competitive class employees. The Civil Service Law provides an orderly procedure based on seniority and permanent competitive status to determine the impact of bump and retreat. Competitive class employees have rights to be placed on a preferred list which gives absolute preference should there be authorization to hire in the same title. The collective bargaining agreement provides for a procedure for abolished positions in the non-competitive and labor class. However, many labor class titles such as Food Service Worker and Nurse's Aide and the non-competitive title of Licensed Practical Nurse are unique to the Skilled Nursing Facility. Following is a listing of the titles associated with the 283 abolished positions.

**LISTING OF FILLED ABOLISHED POSITIONS**

<b>JOB TITLE</b>	<b>TOTAL</b>
ACCOUNT CLERK	2
ACCOUNT CLERK/TYPIST	3
ACCOUNTANT	1
ADULT DAY HEALTH CARE PROG DI	1
ASSISTANT COOK	3
ASSISTANT HOUSEKEEPER	1
ASST FOOD SERVICE SUPVR	2
ASST NURSING CARE DIR	1
CLERK TYPIST	5
CLINICAL NURSE PRACTITIONER	1
CLINICAL SERVICES ADMINISTRAT	1
COOK	2
CUSTODIAL WORKER II	16
CUSTODIAL WORKER III	1
DENTAL HYGIENIST	1
DIETETIC SERVICE SPVR	1
DIETETIC TECHNICIAN	1
DIETICIAN	1
FINANCIAL DIRECTOR (NURSG HOM)	1
FOOD SERVICE WORKER	22
FOOD SERVICE WORKER II	2
HEALTH PROGRAM ANALYST I	1
HEALTH PROGRAM ANALYST II	1
HOUSEKEEPER	1
LAUNDRY WORKER	2
LICENSED PRACTICAL NURSE	36
MAINTENANCE MECHANIC I	1
MAINTENANCE MECHANIC II	4
MAINTENANCE MECHANIC III	2
MAINTENANCE MECHANIC IV	1
MATERIEL CONTROL CLERK II	1
MED SOCIAL WORKER ASST	2
MEDICAL PROGRAM ADMIN	1
MEDICAL RECORDS CLERK	2
MEDICAL RECORDS CLERK (SP SPK)	1
MEDICAL SOCIAL WORKER	2
MEDICAL SOCIAL WORKER II	1
NEEDLE TRADES SPECIALIST	1
NEIGHBORHOOD AIDE	1
NURSES' AIDE	103
OCCUPATIONAL THERAPIST	1
OCCUPATIONAL THERAPY AIDE	1
OFFICE SYSTEMS ANALYST I	1
PHYSICAL THERAPIST	1
PHYSICAL THERAPIST ASST	2
PHYSICIAN II	1

**LISTING OF FILLED ABOLISHED POSITIONS cont.**

<b>PHYSICIAN III</b>	<b>1</b>
<b>RECREATION INSTRUCTOR</b>	<b>1</b>
<b>REG NURSE SUPVR-NRSNG HME</b>	<b>11</b>
<b>REGISTERED NURSE</b>	<b>14</b>
<b>SENIOR ACCOUNT CLERK</b>	<b>2</b>
<b>SENIOR CLERK TYPIST</b>	<b>4</b>
<b>SENIOR COOK</b>	<b>1</b>
<b>SR MEDICAL RECORDS CLERK</b>	<b>1</b>
<b>THERAPEUTIC ACTIVITIES SP</b>	<b>1</b>
<b>THERAPEUTIC ACTIVITIES WORKER</b>	<b>6</b>
<b>WAREHOUSE WORKER II</b>	<b>1</b>
<b>Grand Total</b>	<b>283</b>

The 2009 recommended budget narrative states that the Labor Department will be available to assist the displaced employees in obtaining other employment.

## **Appendix 1: History and Background**<sup>6</sup>

The John J. Foley Skilled Nursing Facility (JJFSNF) is located in Yaphank on a site where County facilities dedicated to the care of the poor and the infirm have been located for over 100 years. In 1871, Suffolk County purchased a Yaphank Farm to construct the first “Almshouse for the Poor, the Aged, and the Destitute”. In 1879, Suffolk County acquired an adjacent farm and building to be used as an orphanage; by 1919, this building was closed and then subsequently remodeled to serve as the Infirmary for the Almshouse.

In 1937, Suffolk County secured federal assistance to construct a new building at the Yaphank site; this building, called the infirmary, was designed to be used as a home as well as a hospital for the aged and chronically ill population of the County. Over the next 30 years the building was renovated to comply with changes in state and federal regulations, and to better serve its increasingly elderly patient population. During this period, the Infirmary developed formal transfer and linkage arrangements with local hospitals.

By 1968, it became clear that the Infirmary building was not up to the tasks then required of it; the building was small, antiquated, and lacked the design necessary to meet the physical plant requirements of its regulatory bodies. A study performed that year by the Long Island Health and Hospital Planning Council concluded that the design of the unit “did not lend itself to operation of a modern day nursing home from either a patient or operational standpoint”, and that the Infirmary be replaced with a 200 bed nursing home on the same site in Yaphank. This recommendation was not implemented, and the facility continued to deteriorate, while at the same time increasingly accepting severely disabled and hard to place patients rejected by voluntary or proprietary nursing homes. During this timeframe, federal and state regulators issued reports critical of the Infirmary and threatened closure in 1990, when NYSDOH charged that the Infirmary had failed to meet standards of care for its residents. Suffolk County was informed that if construction of a new facility did not begin soon, New York State would suspend funding.

After considerable debate on whether to continue to operate a County owned facility, or to transfer ownership to a not for profit entity, construction on a new facility began in 1991, and was completed in April 1995. At that time, 205 residents\* from the old Infirmary were transferred to the new facility. The facility was expanded to a total of 264 beds by March 1996, at that time with 24 beds for residential AIDS patients (there are currently 12 beds reserved for AIDS patients).

Since the adoption of the 1987 operating budget, the nursing home has been operated as an enterprise fund of Suffolk County (originally Fund 32, now Fund 632). Prior to this

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<sup>6</sup> Multiple Sources, including the 1997 Blue Ribbon Panel Report on Healthcare in Suffolk County and Proceedings of the Suffolk County Legislature.

<sup>\*</sup>14 of those 205 patients are still residents of JJFSNF.

budget, the nursing home was operated as a subunit of the Department of Health Services. During the 21 years of its existence as a separate fund, the nursing home has required subsidy from the general fund in 19 of those years.

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