

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**BAYVIEW NURSING AND
REHABILITATION CENTER CLAIMED
ALLOWABLE HURRICANE SANDY
DISASTER RELIEF ACT FUNDS**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



**Gloria L. Jarmon
Deputy Inspector General
for Audit Services**

**April 2016
A-02-15-02010**

Office of Inspector General

<http://oig.hhs.gov>

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

Office of Audit Services

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

Office of Evaluation and Inspections

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

Office of Investigations

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

Office of Counsel to the Inspector General

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
at <http://oig.hhs.gov>

Section 8M of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

Bayview Nursing and Rehabilitation Center, an Administration for Children and Families grantee, claimed allowable Hurricane Sandy Disaster Relief Act costs for the period September 1, 2013, through September 30, 2015.

INTRODUCTION

WHY WE DID THIS REVIEW

Hurricane Sandy made landfall on October 29, 2012, devastating portions of the mid-Atlantic and northeastern United States and leaving victims of the storm and their communities in need of disaster relief aid. On January 29, 2013, the President signed into law the Disaster Relief Appropriations Act of 2013, P.L. No. 113-2 (Disaster Relief Act), which, in part, provided the Department of Health and Human Services (the Department) approximately \$800 million in funding for disaster response and recovery and other expenses directly related to Hurricane Sandy.¹ After sequestration, the Department received \$759.5 million in Disaster Relief Act funding, \$577 million of which was allocated to the Administration for Children and Families (ACF). ACF awarded \$235.4 million of the Disaster Relief Act funds it received to the New York State Office of Children and Family Services (State agency) for Social Services Block Grant (SSBG) program expenditures. The State agency awarded approximately \$2.8 million of these funds to Bayview Nursing and Rehabilitation Center (Bayview) for construction and equipment expenses resulting from Hurricane Sandy.

The Disaster Relief Act mandated the Department's Office of Inspector General (OIG) to perform oversight, accountability, and evaluation of programs, projects, or activities supported with Disaster Relief Act funds. This review is part of OIG's Disaster Relief Act oversight activities.

OBJECTIVE

Our objective was to determine whether Bayview claimed Disaster Relief Act costs that were allowable in accordance with Federal requirements.

BACKGROUND

Administration for Children and Families

Within the Department, ACF is the agency responsible for promoting the economic and social well-being of families, children, individuals, and communities. ACF's mission is to foster health and well-being by providing Federal leadership, partnership, and resources for the compassionate

¹ The Budget Control Act of 2011 (P.L. No. 112-25) reduced the Hurricane Sandy disaster relief funds the Department received from approximately \$800 million to \$759.5 million. The law imposed automatic spending cuts, known as "sequestration," designed to reduce the Federal deficit. The Office of Management and Budget determined that disaster relief funds were subject to sequestration, and as a result, the funds were reduced by approximately \$40.5 million.

and effective delivery of human services.² ACF received \$577 million in Disaster Relief Act funds, including \$474.5 million for SSBG program activities, which include social, health, and mental health services for individuals and expenses related to repairing and renovating health care, mental health, childcare, and other social services facilities. ACF allocated these funds to States impacted by Hurricane Sandy. These States were allowed to use the funds for SSBG program costs incurred before the enactment of the Disaster Relief Act if the costs aligned with purposes specified in the law and were not reimbursable by the Federal Emergency Management Agency or covered by insurance.

New York State Office of Children and Family Services

In New York State, the State agency is responsible for administering the SSBG program. For the period October 1, 2012, through September 30, 2015, ACF awarded the State agency Disaster Relief Act funding for SSBG program activities totaling \$235,434,600. The State agency planned to collaborate with seven other New York agencies to award these SSBG funds to subrecipients throughout the State. The State agency also planned to use the SSBG funds for specific disaster recovery projects.³

Bayview Nursing and Rehabilitation Center

Bayview, owned and operated by Bayview Manor, LLC, a for-profit company, is located in Island Park, New York.⁴ Bayview operates a 3-story, 185-bed facility. It provides skilled nursing services and long-term nursing home services.

Hurricane Sandy Damage

Hurricane Sandy severely damaged Bayview's facility. According to Bayview, the facility was flooded with approximately 3½ feet of water, completely destroying the first floor of the building and cement around the property. Also, storm winds destroyed the roof and several windows. Residents of the facility were evacuated for 40 days to other facilities while Bayview oversaw repairs and restored services throughout the facility. However, the first floor of the facility did not reopen for residential treatment until July 2013.⁵

² ACF provides SSBG funds to States to support a variety of initiatives for children and adults, including daycare, protective services, adoption, health related services, transportation, foster care, substance abuse, housing, home-delivered meals, and employment services. Each State is responsible for determining what services will be provided, eligibility, and distributing funds among services.

³ We plan on separately reviewing the State agency's internal controls over these SSBG funds as well as its claimed and budgeted costs related to disaster recovery projects.

⁴ Bayview does business as South Point Plaza Nursing and Rehabilitation Center.

⁵ The facility had 33 resident beds on the first floor, as well as office space; a kitchen; a nursing station; a laundry; server, supply, electrical, and generator rooms; 2 elevator machine rooms; and a rehabilitation gym.

Disaster Relief Act Funding

Bayview applied for Disaster Relief Act funding on August 21, 2013. On August 26, 2014, nearly 2 years after Hurricane Sandy made landfall, the State agency awarded Bayview \$2,812,450 in Disaster Relief Act funds.⁶ According to Bayview's subaward from New York State Department of Health (DOH), which collaborated with the State agency, the purpose of the grant funds was to reimburse Bayview for costs incurred as a result of Hurricane Sandy damages. Before the awarding of the grant, Bayview had used bank loans and other private funds to pay for these costs.

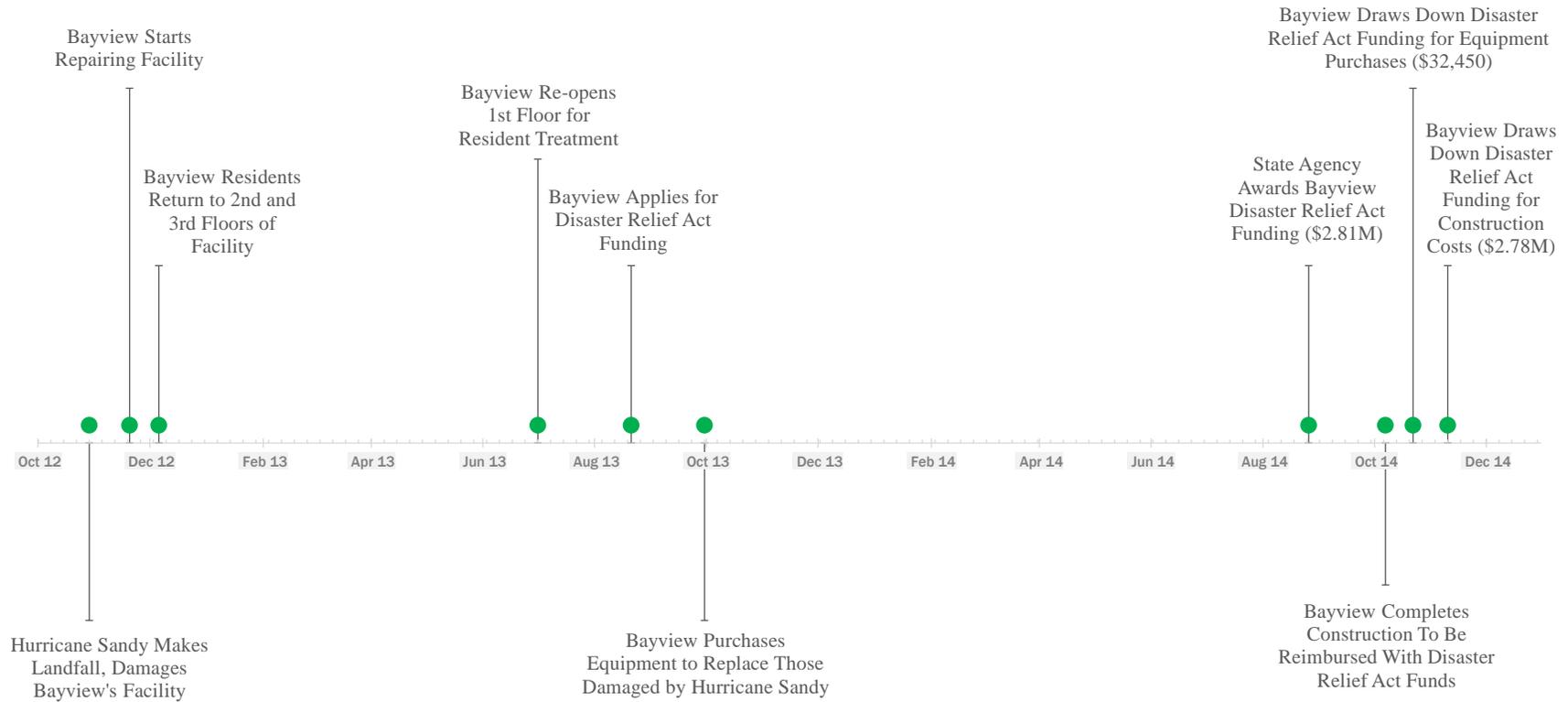
Bayview received Disaster Relief Act funds in two lump-sum payments: \$32,450 for equipment on October 22, 2014; and \$2,780,000 for scoping/predevelopment and construction on November 10, 2014. Bayview deposited these grant funds into its general operating account.

By accepting Disaster Relief Act funds, Bayview agreed to claim for reimbursement allowable costs that complied with grant terms. Bayview also agreed to submit required reports to the State agency and DOH. See Appendix A for details on the Federal requirements related to grants awarded to commercial organizations.

The chart (following page) details the timeline of Bayview's Disaster Relief Act grant.

⁶ On October 9, 2013, the New York State Department of Health (one of the seven agencies that collaborated with the State agency) initially denied Bayview's funding request. On October 16, 2013, Bayview appealed the denial. On December 18, 2013, DOH notified Bayview that it was approved for Disaster Relief Act funds totaling \$2,812,450. The award was approved by the New York State Comptroller on August 26, 2014.

**Chart: Timeline of ACF Disaster Relief Act Grant Funding to Bayview Nursing and Rehabilitation Center
October 2012 through November 2014**



HOW WE CONDUCTED THIS REVIEW

We reviewed Disaster Relief Act funds totaling \$2,812,450 awarded to and expended by Bayview for the period September 1, 2013, through September 30, 2015.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B contains the details of our audit scope and methodology.

RESULTS OF REVIEW

Bayview claimed allowable Hurricane Sandy Disaster Relief Act costs. Specifically, Bayview used Disaster Relief Act funds to offset costs it had incurred repairing its facility and replacing damaged equipment before receiving its Disaster Relief Act grant award. Although Bayview did not follow usual Federal procurement requirements⁷ and did not follow requirements for separately tracking and accounting for all grant expenditures,⁸ the costs were allowable as they were incurred before the awarding of the grant and met the purpose of the grant, which was to reimburse Bayview for costs incurred as a result of Hurricane Sandy damages.

Accordingly, this report contains no recommendations.

⁷ Bayview did not obtain competitive bids for its contracts. Bayview officials stated that a competitive bidding process for contracts was impractical because of the high demand for contractors after Hurricane Sandy and its immediate need for rebuilding the facility so that its residents could return.

⁸ Bayview officials stated that Bayview did not separately track and account for its Disaster Relief Act funds because when they paid for Hurricane Sandy-related repairs, they were unaware that Bayview would later be awarded a Federal grant. The officials stated that, before its Disaster Relief Act grant, Bayview had never applied for a Federal grant award.

APPENDIX A: FEDERAL REQUIREMENTS RELATED TO COMMERCIAL ORGANIZATION GRANTEES

FEDERAL REQUIREMENTS

Title 45, part 74, of the Code of Federal Regulations establishes uniform administrative requirements governing Department grants and agreements awarded to commercial organizations. As a commercial organization in receipt of Department funds, Bayview must comply with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31 (45 CFR § 74.27(a)). To be allowable, costs must be reasonable, allocable, and comply with terms of the contract and any other limitations in Subpart 31.2 of the FAR (48 CFR § 31.201-2(a)).

A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with the applicable Federal cost principles (48 CFR § 31.201-2(d)).

Regulations (45 CFR § 74.21(b)(1)) require grantees to maintain financial management systems that provide for accurate, current, and complete disclosure of the financial results of each Department-sponsored project or program.

Regulations (45 CFR § 74.43) require that all procurement transactions be conducted in a manner to provide, to the maximum extent practical, open and free competition. Grantees are required to document in their procurement files a cost or price analysis in connection with every procurement action (45 CFR § 74.45).

APPENDIX B: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed the Disaster Relief Act funds totaling \$2,812,450 awarded to and expended by Bayview for the period September 1, 2013, through September 30, 2015.

We did not review the overall internal control structure of Bayview, the State agency, or ACF's grants management programs. Rather, we reviewed only those controls related to our objective.

We performed fieldwork at Bayview's offices in Island Park, New York, from August through December 2015.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- held discussions with State agency officials to gain an understanding of the Disaster Relief Act funding requirements for the SSBG program;
- reviewed Bayview's Disaster Relief Act funding application and its approved grant award to gain an understanding of the terms and conditions of the award;
- met with Bayview officials to discuss Bayview's accounting system, policies, and procedures for managing Federal grant funds;
- reviewed Bayview's financial management controls, procurement policies and procedures, and construction contracts for Hurricane Sandy repairs;
- reviewed costs claimed by Bayview on expenditure reports submitted to the State agency and DOH to determine whether costs were allowable for reimbursement;
- reviewed documentation supporting grant expenditures claimed, including invoices for construction and equipment, payment checks, bank statements, and credit card statements; and
- discussed the results of our review with Bayview and State agency officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.