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PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

Rob Portman, Chairman
Tom Carper, Ranking Member

OVERSIGHT OF HHS SHELTER GRANTS FOR UNACCOMPANIED ALIEN CHILDREN

STAFF REPORT

**PERMANENT SUBCOMMITTEE ON
INVESTIGATIONS**

UNITED STATES SENATE



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OVERSIGHT OF HHS SHELTER GRANTS FOR UNACCOMPANIED ALIEN CHILDREN

I. EXECUTIVE SUMMARY

Since 2015, the Permanent Subcommittee on Investigations has conducted oversight of federal government programs designed to protect and care for children who enter the United States without a parent or legal guardian. Federal agencies, including the Department of Homeland Security (“DHS”), the Department of Justice (“DOJ”), and the Department of Health and Human Services (“HHS”) play key roles in the care of these unaccompanied alien children (“UACs”). Deficiencies at these agencies have continued across two presidential administrations, as discussed in two previous Subcommittee reports. In addition to the issues identified in those reports, since 2018, the Subcommittee has examined whether HHS has placed UACs in safe settings and made efficient use of taxpayer dollars when establishing residential shelters for some UACs. This report describes failures in HHS’s processes to ensure the safety of children in the care of the federal government and safeguard \$32,125,779 in taxpayer funds.

Pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPRA”) and the 1997 consent decree known as the *Flores* Settlement Agreement, HHS uses shelter facilities in cities and states across the United States to house certain UACs. Although HHS, through the Office of Refugee Resettlement (“ORR”), works to place UACs with an adult sponsor, in some instances ORR cannot place a child with a sponsor. In these instances, ORR places UACs in shelter facilities, which differ markedly from detention facilities for adults and provide resources tailored to children that are not available in temporary influx shelters. In most shelter facilities, for example, children do not live in a restricted setting, and they receive classroom education, health care services, recreation, and case management. As noted in a report the Subcommittee released in 2018, staff secure and secure facilities are also available for children who require placement in a more restricted setting because they pose a danger to themselves or the community, or present a flight risk.

HHS, through the Administration for Children and Families (“ACF”) and ORR, offers grants to care providers to operate these state-licensed shelter facilities. Traditionally, community-based non-profit organizations operated most shelter facilities. A surge of UAC arrivals in recent years, however, has led larger, for-profit companies to apply for ORR funding opportunities. As of September 23, 2020, 120 shelter facilities in the United States house 1,478 UACs, with an average length of stay of 60 days.

The Subcommittee sought to understand the processes HHS uses to fund and open shelter facilities for UACs. The Subcommittee identified key gaps in the shelter grant process that affected HHS's ability to place UACs in safe settings and ensure efficient use of taxpayer funds. A review of several prior funding opportunity announcements and interviews with HHS officials demonstrated that, prior to fall 2019, the Department did not require a company seeking a grant to provide shelter services for UACs to disclose prior adverse regulatory actions from state and local governments related to the care of children. For example, an applicant for a shelter facility that previously operated a facility for children and had its license revoked by a state regulatory agency had no obligation to disclose this information to HHS. Additionally, HHS did not conduct independent research on applicants and instead confined its review to the contents of the grant applications. HHS also relied entirely on grantees to obtain necessary zoning approval and state licensure for a shelter facility. Furthermore, the Department did not have a policy in place to restrict funding for grantees without a license to operate until November 2019.

As a result of these gaps in the shelter grant process, the Subcommittee confirmed that HHS awarded grants to two companies with histories of questionable practices in caring for children—VisionQuest National, Ltd. (“VisionQuest”) and New Horizon Group Home, LLC (“New Horizon”). In 2016, the Philadelphia Department of Human Services (“Philadelphia DHS”) contracted with VisionQuest for the provision of residential services. VisionQuest began operating four programs at three residential facilities for young adults and children in the juvenile justice system in Philadelphia, Pennsylvania. All three facilities faced troubling allegations that local authorities in Philadelphia later substantiated. Confirmed incidents included residents escaping from a facility, numerous fights among residents resulting in serious injuries, and facility staff organizing further fights among residents. By February 2018, Philadelphia authorities transferred all children out of the three facilities, and VisionQuest voluntarily closed the program.

In February 2018, New Horizon began operating a residential facility in North Carolina for male children ages 9 to 17 who required full-time mental health services. Less than a month later, state officials conducted an inspection and identified more than a dozen violations of state law. The violations included New Horizon's failure to hire necessary medical personnel, failure to protect two of its five residents from serious harm, and the use of an unauthorized time-out room for residents. State officials ultimately revoked New Horizon's operating license. On appeal, an administrative law judge upheld the license revocation and noted that the facility presented “an imminent danger to the health, safety, and welfare of the clients.”

In 2019, HHS awarded grants to VisionQuest and New Horizon for UAC shelter facilities. VisionQuest received five grants totaling over \$50 million for

seven facilities, including one of the same facilities in Philadelphia that local authorities deemed unsafe for children in 2018. New Horizon received a grant award for approximately \$8 million for a UAC shelter facility in North Carolina. HHS did not require either company to disclose prior adverse actions their respective state and local governments had taken against them, and the Department did not research the disciplinary history of either company. These oversights could have endangered UACs trusted to the care of these companies.

Furthermore, both because of their previous failures in caring for children and other regulatory issues, VisionQuest and New Horizon have struggled to acquire zoning and licensing approval to open shelters across the country. This means that taxpayers have paid for facilities that will never open. HHS's policy of awarding grants to applicants, including VisionQuest and New Horizon, prior to the applicants securing zoning and licensing approval led to issues that could waste tens of millions of taxpayer dollars. VisionQuest, for example, faced immediate challenges in opening the shelter facility under its HHS grant after Philadelphia officials determined that the zoning variance for a previous facility was invalid for a facility housing migrant children. This dispute resulted in litigation prior to the parties entering into a settlement agreement in October 2020. VisionQuest also failed to obtain the necessary zoning approval for proposed facilities in California and Texas after facing local political opposition. Ultimately, HHS disbursed over \$28 million to VisionQuest for five facilities that will not open.

Similarly, North Carolina's revocation of New Horizon's operating license for one of its existing residential facilities meant that New Horizon could not open its proposed UAC shelter facility. Under North Carolina state law, a license revocation makes a facility operator ineligible for any new licenses for a five-year period. (New Horizon executives told the Subcommittee that they were confident that they would succeed in their appeal of the license revocation and had alternate plans to use a separate existing facility license.) HHS was initially unaware of these licensing issues and only learned of them in August 2019—14 months after the license revocation—from a congressional inquiry that cited a local media report. HHS disbursed nearly \$4 million in funding to New Horizon for a facility in North Carolina that will not open.

HHS has since discontinued all five grants to VisionQuest and the grant to New Horizon. The Department also requested financial documentation from both companies for expenditures made with grant funds. This process is ongoing for both companies, but it is further along with New Horizon. On June 8, 2020, HHS transmitted a final disallowance letter to New Horizon requesting the repayment of \$3,119,453.69 (out of \$3,984,803). On July 7, 2020, New Horizon appealed the decision to the HHS Departmental Appeals Board, which has the authority to either uphold the decision or reduce the amount of the disallowance and reverse the

discontinuation of the grant award. HHS officials stated that they would comply with the decisions of the Departmental Appeals Board.

HHS has also implemented changes to its shelter grant process. For example, the Department now restricts funds for grantees that are eligible for funding but do not yet have an operating license. In a briefing with Subcommittee staff, however, HHS officials defended their previous policy, which was in effect as recently as November 2019 and made funds available to unlicensed grantees.

In late 2019, HHS also began requiring applicants to disclose prior documented licensing allegations or concerns. However, HHS did not specify a time period for the issues applicants needed to disclose. In funding announcements from June and July 2020, HHS further required applicants to be licensed at the time of application and to disclose any allegations or concerns of abuse or neglect, as well as any prior denial, suspension, or revocation of their license. As of the date of this report, however, HHS officials expressed uncertainty regarding whether HHS will include the licensing requirement in future announcements.

The Subcommittee's Investigation

Since 2015, the Subcommittee has issued two reports and held three hearings regarding processes at HHS for caring for UACs. Most recently, on August 15, 2018, the Subcommittee released a report documenting weaknesses in federal care of children who arrive in the United States unaccompanied and are placed with sponsors who are not their parents or legal guardians. The 2018 report also addressed concerns about the treatment of UACs in HHS custody at secure facilities.

In October 2019, the Subcommittee initiated an investigation into two companies—VisionQuest and New Horizon—that received HHS grants to operate shelter facilities, as well as the related application review procedures at HHS. As part of this inquiry, the Subcommittee reviewed more than 4,700 pages of documents from the Philadelphia Department of Human Services, the North Carolina Department of Health and Human Services, and HHS. The Subcommittee also received briefings from key personnel at all three entities and interviewed executives at VisionQuest and New Horizon. All entities cooperated with the Subcommittee's requests for information, briefings, and interviews on a voluntary basis.

Based on this investigation, the Subcommittee concludes that HHS failed to exercise proper oversight when awarding grants to companies seeking to operate shelter facilities for UACs. HHS has started to implement new policies and procedures to address shortcomings in its grant process, but the Department can take additional steps to strengthen its policies and procedures.

Findings of Fact and Recommendations

Findings of Fact

- (1) **HHS disbursed \$32,125,779 in grant funding for six facilities that failed to open.** VisionQuest received more than \$28 million in grant funding for five proposed facilities in Pennsylvania, California, and Texas. New Horizon received nearly \$4 million in grant funding for a proposed facility in North Carolina.
- (2) **VisionQuest failed to obtain necessary zoning permits, which prevented the opening of five VisionQuest facilities. HHS discontinued the grants.** VisionQuest sought to rely on an existing zoning variance in Philadelphia to operate its new shelter facility. City officials determined that this variance was not valid for a facility for migrant children, and the two parties engaged in months of litigation. In California and Texas, local political opposition prevented VisionQuest from obtaining the necessary zoning approval for its proposed facilities. HHS eventually discontinued all five grants.
- (3) **HHS learned of New Horizon’s ongoing licensing problems 14 months after HHS awarded New Horizon a grant for a shelter facility.** When HHS made the award, it was unaware that the company was in an ongoing dispute with state regulators over the revocation of an operating license for a separate residential facility in the state. Under North Carolina state law, this revocation rendered New Horizon ineligible to obtain a new license for its proposed facility for UACs for five years. Although North Carolina state officials revoked New Horizon’s license in June 2018, HHS only learned of the revocation 14 months later from a congressional inquiry citing local news reports.
- (4) **Prior to late 2019, HHS did not require grant applicants to disclose prior documented licensing allegations or concerns.** Although panelists of outside experts and HHS officials conduct separate reviews of each UAC shelter grant application, these reviewers did not conduct independent research on previous adverse government actions against applicants related to the care of children. In some cases, such information was publicly available online at no cost. HHS officials told the Subcommittee that grantees’ prior history never affected their ability to carry out the terms of a grant award until 2019.

- (5) **The City of Philadelphia transferred all youth residents out of programs run by VisionQuest due to confirmed instances of child abuse. HHS subsequently gave shelter grant awards to VisionQuest.** In 2016, VisionQuest began operating facilities for troubled children and young adults in Philadelphia, Pennsylvania. By February 2018, the City of Philadelphia transferred all children out of these facilities after investigating and corroborating numerous instances of abuse against children. For example, VisionQuest employees encouraged fights among residents and watched multiple fights without intervening. HHS subsequently awarded VisionQuest a grant to house UACs in one of these same facilities.
- (6) **The North Carolina Department of Health and Human Services revoked the operating license of a New Horizon facility for children before HHS awarded a grant to the company.** New Horizon previously operated a residential facility in North Carolina for children who require full-time care. An inspection by state officials in March 2018 found more than a dozen violations of state law. State officials ultimately revoked the operating license of this facility in June 2018. HHS subsequently awarded New Horizon a grant in March 2019 to house UACs in a new facility in North Carolina.
- (7) **HHS is attempting to recoup funds disbursed for facilities that failed to open.** After discontinuing the grants, HHS began its process to recoup certain prohibited expenditures from both VisionQuest and New Horizon. As of the date of this report, HHS had not determined the final disallowed amount for VisionQuest. Grantees have the right to appeal both the discontinuation and the disallowance of funds before the HHS Departmental Appeals Board. The Board could disagree with HHS's decision to discontinue the grants and could choose to reduce the amount of the disallowed funds. HHS officials told the Subcommittee that they would comply with any actions the Departmental Appeals Board orders.
- (8) **During the course of the Subcommittee's investigation, HHS began restricting disbursement of grant funds to grantees without an operating license.** HHS previously disbursed grant funds before a facility obtained an operating license. As a result, VisionQuest and New Horizon received over \$32 million in funding from HHS even though their facilities never opened. HHS defended this policy as recently as November 2019 before changing course and placing grantees without an operating license on a funds restriction. HHS is unlikely to recoup all of the funds disbursed for the six

facilities that failed to open due to state or local licensing and zoning issues.

- (9) **HHS has begun requiring disclosure of licensing issues and allegations of abuse.** Starting in fall 2019—after the Subcommittee began its investigation—ORR began requiring the disclosure of documented licensing allegations or concerns. In addition, funding opportunity announcements from June and July 2020 for secure, staff secure, therapeutic, and long-term foster care facilities contained a requirement for applicants to disclose allegations of abuse or neglect, as well as any denial, suspension, or revocation of an operating license. HHS officials acknowledged that this requirement did not specify a time period for the allegations or licensing issues applicants needed to disclose. The funding announcements from June and July 2020 also required applicants to be licensed at the time of application. HHS officials indicated that the Department could remove this requirement in future announcements if they need to expand their shelter capacity.

Recommendations

- (1) **HHS should permanently require ORR grant applicants to disclose any prior or current adverse governmental action taken against them regarding the care of children in their grant applications.** HHS should also specify a time period for the adverse actions that applicants must disclose.
- (2) **HHS should permanently require ORR grant applicants to be licensed at the time of application.** Any applicant without a valid and current license to operate a facility should be disqualified from receiving federal grant funding.
- (3) **HHS reviewers should proactively check state databases for information on previous adverse governmental actions regarding the care of children taken against applicants for ORR funding.** In situations where companies have a prior history of operating facilities that serve children, HHS should continue developing information-sharing practices to communicate with state regulatory agencies. These efforts would provide a more complete picture to HHS regarding whether a grantee's prior history could affect its ability to obtain an operating license. This would also allow HHS to confirm that no prospective grantee has a recent history of placing children in harmful situations.

II. BACKGROUND

Under the Homeland Security Act of 2002, an unaccompanied alien child (“UAC”) is a child under 18 years of age who “has no lawful immigration status in the United States,” and with respect to whom “there is no parent or legal guardian in the United States” or “no parent or legal guardian in the United States is available to provide care and physical custody.”¹ The Subcommittee’s 2018 report, *Oversight of the Care of Unaccompanied Alien Children*, details the processes the Department of Homeland Security (“DHS”), Department of Justice (“DOJ”), and Department of Health and Human Services (“HHS”) undertake to, respectively, apprehend, adjudicate, and care for UACs in the United States.²

Since 2017, HHS has opened more shelters across the United States to house UACs who lack sponsors and do not require placement in a more restrictive setting because they do not pose a risk to themselves or the community and are not a flight risk.³ Private organizations, funded by HHS grants, operate these shelters, subject to licensing requirements from state regulatory agencies.

A. Care and Custody of UACs in ORR Shelters

The Office of Refugee Resettlement (“ORR”), a division of the HHS Administration for Children and Families (“ACF”), is responsible for the care and custody of UACs until resolution of their immigration court proceedings or until they turn 18, unless a parent or legal guardian becomes available in the United States to provide care and physical custody. Three main authorities govern the ORR Director’s placement decisions: the Homeland Security Act of 2002 (“HSA”); the William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPRA”);⁴ and the *Flores* Settlement Agreement (“*Flores* Agreement”).⁵

With respect to the care of UACs, the HSA transferred the responsibilities of the Commissioner of the U.S. Immigration and Naturalization Service (“INS”) to the ORR Director.⁶ These responsibilities include ensuring the consideration of the interests of the child in decisions relating to care and custody, the implementation

¹ 6 U.S.C. § 279(g)(2) (2018).

² STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 115TH CONG., *OVERSIGHT OF THE CARE OF UNACCOMPANIED ALIEN CHILDREN* 12 (Comm. Print. 2018).

³ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019); OFF. OF REFUGEE RESETTLEMENT, *ORR Policy Guide: Children Entering the United States Unaccompanied*, § 1.2.4 (Jan. 30, 2015), <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied> [hereinafter *ORR Policy Guide*].

⁴ Pub. L. No. 110-457, 122 Stat. 5044 (2008).

⁵ Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-cv-4544 (C.D. Cal. 1997) [hereinafter *Flores* Agreement].

⁶ 6 U.S.C. §§ 279(a), (b) (2018).

of placement decisions, and overseeing all aspects of facilities in which UACs reside.⁷

The TVPRA provides that “the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.”⁸ Absent exceptional circumstances, it further provides that federal agencies with a UAC in their custody shall transfer the custody of the UAC to HHS within 72 hours after determining his or her UAC status.⁹ HHS must “promptly place[]” UACs “in the least restrictive setting that is in the best interest of the child.”¹⁰

Along with the HSA and the TVPRA, a 1997 consent decree known as the *Flores* Agreement also governs HHS’s care of UACs.¹¹ The *Flores* Agreement stems from a 1985 class action lawsuit challenging previous INS policies.¹² The resulting consent decree entered between plaintiffs and the INS sets out the “nationwide policy for the detention, release, and treatment of minors in the custody of the INS.”¹³ As with the TVPRA, the *Flores* Agreement generally requires ORR to place each child in the least restrictive setting appropriate to the child’s age and needs.¹⁴ In 2016, the U.S. Court of Appeals for the Ninth Circuit affirmed an extension of this requirement to children arriving in the United States with their parents, and it held that each setting must protect the well-being of children and ensure their timely appearances at immigration court proceedings.¹⁵

The *Flores* Agreement also outlines conditions for the care of children whom ORR cannot place with a sponsor and do not require detention:

In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor’s immigration proceedings are concluded, whichever occurs earlier.¹⁶

⁷ *Id.*

⁸ 8 U.S.C. § 1232(b)(1) (2018).

⁹ 8 U.S.C. § 1232(b)(3) (2018).

¹⁰ 8 U.S.C. § 1232(c)(2)(A) (2018).

¹¹ *Flores* Agreement.

¹² See Complaint, *Flores v. Meese*, 681 F. Supp. 665, No. 85-cv-4544 (C.D. Cal. filed July 11, 1985).

¹³ *Flores* Agreement ¶ 9. As described above, the HSA subsequently transferred these INS responsibilities to ORR.

¹⁴ *Flores* Agreement ¶ 11.

¹⁵ *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016). Accompanied children are in the custody of Immigration and Customs Enforcement rather than HHS custody. See U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Family Residential Centers, <https://www.ice.gov/detention-management>.

¹⁶ *Flores* Agreement ¶ 19. By law, HHS must place UACs in the least restrictive setting appropriate for the child’s needs. 8 U.S.C. § 1232(c)(2)(A).

The licensed programs for UACs who do not require placement in a more restrictive setting are either foster settings or UAC shelters.¹⁷ Shelters are group residential care provider facilities in “which all of the programmatic components are administered on-site,” which means that residents do not need to leave the facility to access the services they receive.¹⁸ HHS places children who may require close supervision in “staff secure” shelters, where children receive more monitoring than in a normal shelter but less monitoring than in a secure facility.¹⁹ ORR may also place a UAC in a long-term care setting such as community-based foster care or extended-care group homes.²⁰ UACs are eligible for long term care if: (1) ORR estimates the UAC will be in ORR custody for at least four months due to the lack of a viable sponsor; (2) a legal service provider determines the UAC is potentially eligible for immigration relief; and (3) the UAC is under the age of 17 years and 6 months at the time of placement.²¹

On March 23, 2020, HHS had 126 UAC shelters housing 2,595 UACs, although the number of UACs fluctuates daily.²² The average length of stay for a UAC in HHS care was 54 days.²³ By September 23, 2020, HHS had 120 UAC shelters housing 1,478 UACs, with an average length of stay of 60 days.²⁴ HHS officials told the Subcommittee that the decrease in the UAC population was attributable, in part, to the ongoing COVID-19 pandemic.²⁵

B. Administration Immigration Policies Have Increased the Influx of UACs into ORR Shelters

The implementation of federal immigration enforcement policies, including at the U.S.-Mexico border, resulted in an increased number of UACs under ORR care—from 40,810 in fiscal year 2017 to 67,100 in fiscal year 2019.²⁶ As border crossings surged in the summer of 2018 under new federal immigration enforcement policy, DHS began referring adults who arrived in family units to DOJ

¹⁷ *ORR Policy Guide* § 1.2.

¹⁸ OFF. OF REFUGEE RESETTLEMENT, *ORR Policy Guide: Children Entering the United States Unaccompanied: Guide to Terms*, (Mar. 21, 2016), <https://www.acf.hhs.gov/orr/resource/children-enteringthe-united-states-unaccompanied-guide-to-terms>.

¹⁹ *ORR Policy Guide* § 1.2.4.

²⁰ *ORR Policy Guide* § 1.2.6.

²¹ *Id.*

²² Email from HHS to Subcommittee staff (Apr. 1, 2020).

²³ *Id.*

²⁴ Email from HHS to Subcommittee staff (Sept. 30, 2020).

²⁵ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Oct. 1, 2020).

²⁶ U.S. DEP’T OF HEALTH AND HUM. SERVS. ADMIN. FOR CHILD. AND FAM., FACT SHEET (Sept. 30, 2019), <https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Program-Fact-Sheet.pdf>.

for prosecution under 8 U.S.C. § 1325(a).²⁷ At the time, HHS already faced strained care provider capacity due to larger numbers of UACs crossing the southern border.²⁸ The new federal immigration enforcement policy resulted in even more referrals of children, as the policy separated adults from their children during the pendency of their prosecution.²⁹ Due to the large numbers of UAC referrals, in many cases ORR was unable to place children in one of its care provider facilities within 72 hours as the TVPRA requires.³⁰ To address the urgent need to expand its bed capacity, HHS housed some UACs in temporary influx shelters.³¹ The Trump administration ended the zero-tolerance policy with regard to family separation through the issuance of an executive order on June 20, 2018.³²

By August 2019, HHS finished transferring all UACs from temporary influx shelters to state-licensed shelter facilities or placing them with sponsors.³³ According to ORR, the volume of children transferred to shelters and accompanying media reports generated local political opposition to UAC shelter facilities.³⁴ The surge of UACs also led to interest in ORR funding opportunities from larger, for-profit companies, in contrast to the smaller community-oriented non-profit organizations that traditionally submit applications to ORR for grant funding.³⁵

III. THE HHS APPROVAL PROCESS FOR SHELTER FACILITY OPERATORS IS BASED ON INCOMPLETE INFORMATION

The process for opening a shelter facility to house UACs can take more than a year and consists of several different phases. HHS begins by publishing a solicitation to raise awareness about the forthcoming need for a shelter facility and the Department's estimated timeline. The Department then publishes an announcement that formally invites interested parties to apply to receive grant funding.³⁶ Once an announcement period closes, HHS subjects each application to

²⁷ U.S. DEPT OF JUSTICE, *Memorandum for Fed. Prosecutors along the Southwest Border: Zero-Tolerance for Offenses under 8 U.S.C. § 1325(a)* (Apr. 6, 2018), <https://www.justice.gov/opa/pressrelease/file/1049751/download>.

²⁸ Statement from HHS to Subcommittee staff (Nov. 17, 2020).

²⁹ *Id.*

³⁰ See U.S. DEPT OF HEALTH & HUM. SERVS. OFF. OF INSPECTOR GEN., OEI-BL-18-00510, COMMUNICATION AND MANAGEMENT CHALLENGES IMPEDED HHS'S RESPONSE TO THE ZERO-TOLERANCE POLICY (2020).

³¹ *Id.* at 21. Influx care facilities provide children with temporary emergency shelter and services when ORR experiences an influx of children. *Id.* at 49.

³² Exec. Order No. 13841, 83 C.F.R. 29435 (June 22, 2018).

³³ Renuka Rayasam, *All Migrant Kids Moved out of Last Large Temporary Shelter, Administration Says*, POLITICO (Aug. 3, 2019), <https://www.politico.com/story/2019/08/03/migrant-children-moved-out-shelter-1445507>.

³⁴ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

³⁵ *Id.*

³⁶ See *infra* Part III.A.

several layers of review.³⁷ After the Department makes final decisions and formally awards a grant, the grantee starts working to open a facility.³⁸ Once HHS awards a grant, HHS makes funding available for drawdown in increments based on the budgeted amount and anticipated needs.³⁹ If a grantee fails to comply with the terms of its grant award or applicable federal regulations and HHS becomes aware of the non-compliance, HHS will attempt to recoup funds associated with the non-compliance.⁴⁰

The sections below identify key gaps in the shelter opening process. For example, HHS does not proactively track local zoning and licensing requirements and related developments involving shelter facilities.⁴¹ Instead, HHS relies on grantees to keep the agency apprised of any issues that arise.⁴² Until recently, HHS also did not require facility operators applying for funding to disclose prior adverse government actions against them related to the care of children.⁴³ Although ORR can discontinue a grant after each annual funding period for a variety of reasons and has the authority to disallow expenditures, these gaps can still result in the loss of taxpayer dollars.⁴⁴

A. Solicitation and Announcement

HHS begins the solicitation process one year before ACF awards funding to a grantee.⁴⁵ Prior to publishing an announcement, HHS publishes a forecast and attention notice that an award is forthcoming, along with an estimated posting date and application deadline.⁴⁶ This forecast includes the expected number of awards and the floor and ceiling for award amounts.⁴⁷ Previously, the forecast was available on the ACF website, but HHS no longer maintains an active website for its grants forecasts and instead directs users to Grants.gov, a federal-government-wide website for federal funding opportunities.⁴⁸

³⁷ See *infra* Part III.B.

³⁸ See *infra* Part III.C.

³⁹ See *infra* Part III.D.

⁴⁰ See *infra* Part III.E.

⁴¹ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁴⁵ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*; U.S. DEP'T OF HEALTH AND HUM. SERVS. ADMIN. FOR CHILD. AND FAM., GRANTS & FUNDING, <https://www.acf.hhs.gov/grants>.

Following the forecast, ORR then drafts a funding opportunity announcement.⁴⁹ After the drafting phase, the ORR Director signs the final announcement document and HHS uploads it into its grant system before publication on Grants.gov.⁵⁰ HHS has stated that the decision of when to publish an announcement depends in part on a target opening date for a facility.⁵¹ For example, opening a facility in October means making a decision on award funding in January or February with an announcement in the late summer or early fall of the previous year.⁵²

The application materials in an announcement include lobbying forms, certifications, and standard HHS/ACF grant policy language.⁵³ The announcements also indicate eligible applicants and application disqualification factors.⁵⁴ Care providers must be eligible to obtain a state license to operate within a set number of days (identified in each announcement).⁵⁵ Applications from individuals, sole proprietorships, and foreign entities are not eligible for funding.⁵⁶ HHS also disqualifies applications that request an award amount that exceeds the maximum award amount identified in the announcement and applications received after the application deadline.⁵⁷

Announcements are typically public for 60 days, and ORR provides a point of contact to field questions about their announcements.⁵⁸ Questions about unclear terms in an announcement can lead to a revision of the application materials, but ORR officials told Subcommittee staff that they avoid answering questions that could provide a competitive advantage to an applicant.⁵⁹

The Deputy Director for Children’s Programs at ORR stated that ORR is usually “lucky to receive 50 applications” after publishing an announcement.⁶⁰ In a response to an announcement closing on November 12, 2019, however, ORR

⁴⁹ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See U.S. DEP’T OF HEALTH AND HUM. SERVS. ADMIN. FOR CHILD. AND FAM., STANDING ANNOUNCEMENT FOR RESIDENTIAL (SHELTER) SERVICES FOR UNACCOMPANIED CHILDREN, HHS-2017-ACF-ORR-ZU-1132, https://ami.grantsolutions.gov/files/HHS-2017-ACF-ORR-ZU-1132_2.pdf.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁵⁹ *Id.*

⁶⁰ *Id.*

received between 80 and 90 applications—the largest number ORR has ever received.⁶¹

ORR does not identify capacity needs for specific locations “because these programs are national.”⁶² Instead, ORR determines locations for facilities based on the applications organizations submit and their proposed locations.⁶³ When ORR has the “luxury” of receiving enough applications with a variety of locations, it uses location as a factor in awarding a grant.⁶⁴ In the event ORR needs to increase capacity in certain locations, the Deputy Director for Children’s Programs stated that the agency could account for this need in subsequent awards.⁶⁵

Historically, ORR’s applications did not require disclosure of adverse licensing issues or other adverse actions, such as lawsuits or state administrative actions, against a facility operator.⁶⁶ The Deputy Director for Children’s Programs explained that application materials focused on program design—including staffing plans, program activities, and plans to address the specialized needs of the UAC population—rather than the applicant’s past.⁶⁷ HHS also focused on how an applicant planned to maintain program integrity through proper management and budgeting.⁶⁸

As explained in more detail in Part VI below, the Subcommittee learned in October 2020 that HHS now requires additional disclosures of licensing issues and allegations of abuse. In October 2019, ORR began requiring disclosure of documented licensing allegations or concerns.⁶⁹ In the summer of 2020, ORR added disclosure requirements for allegations of abuse and specific licensing issues and required applicants to be licensed at the time of application.⁷⁰

B. Application Review

ORR subjects each application for grant funding to several levels of review. Panels of contractors, which HHS chooses from its database of qualified individuals, conduct the first review.⁷¹ Panels typically have three members and a lead

⁶¹ *Id.*

⁶² Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Oct. 15, 2020).

⁷⁰ *Id.*

⁷¹ *Id.*

facilitator. They rarely consider more than ten applications.⁷² The number of panels depends on the number of applications; if there are a large number of applications, HHS will increase the number of panels rather than the number of panelists.⁷³ Panels mainly consist of child welfare specialists.⁷⁴ HHS does not allow individuals employed by a prior grantee to serve as panelists.⁷⁵

Panelists provide individual scores and comments for each application, and then the panels meet to discuss and determine a panel score.⁷⁶ Panels base their scores on how applicants address the requirements in an application, with a primary focus on the project description portion.⁷⁷ The panel review process typically takes approximately two weeks to complete.⁷⁸ During this stage, according to the Deputy Director for Children's Programs, no element of an application will result in an automatic disqualification.⁷⁹

ORR project officers perform the next review. The panels send their scores to ORR staff for an internal discussion on capacity, facilities, and potential locations appropriate for each award.⁸⁰ To determine the viable group of applications, ORR staff sets a minimum threshold score that eliminates applicants falling below this number—usually around 60.⁸¹ ORR determines score thresholds based on the number of applications, the range of scores from applicants, and the agency's needs.⁸² Applications occasionally receive a score of zero if they are late or fail to meet any award criteria.⁸³

Viable applications receive an additional review from ORR staff. ORR assigns project officers to specific applications, and they review their assigned

⁷² Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020); Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁷³ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁷⁴ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁷⁹ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁸³ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

applications, comments, and panel scoring.⁸⁴ A key part of the review also focuses on the proposed budget enclosed in each application and the extent to which it meets specific requirements.⁸⁵ Budgets include specific line items, with the largest line item devoted to staffing (approximately 77 to 80 percent of the entire budget).⁸⁶

Once the project officers complete their work, ORR staff make recommendations to senior leadership for approval.⁸⁷ After the ORR Director provides approval, the process moves to the Office of Grants Management (“OGM”), which administers, manages, and provides financial stewardship and technical guidance to more than 60 ACF programs for discretionary grants.⁸⁸ If ORR recommends the applicants with the highest scores above the identified threshold score, the Family Protection and Resilience Portfolio Director at OGM provides final approval.⁸⁹ If ORR decides to defer or decline to fund one or more applications with higher scores than other applications above the identified funding threshold score, then the Assistant Secretary for Children and Families must provide final approval.⁹⁰ While this approval is pending, grants specialists work with project officers to negotiate and refine budgets with the grantee.⁹¹

ORR then moves into “final negotiations” to establish the final amount for an award, which can take several months.⁹² Once this process is complete, information about competitively awarded funds becomes available at TAGGS.gov.⁹³ Prior to publication, ORR includes a seven-day delay to make congressional notifications.⁹⁴ Previously, ORR notified the House and Senate members representing the congressional district containing the headquarters of each recipient, but ORR now also notifies members representing the congressional districts containing the planned shelter facilities.⁹⁵

⁸⁴ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁸⁵ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019). These requirements stem from HHS priority areas and statutory requirements such as the TVPRA and the *Flores* agreement. *Id.*

⁸⁶ *Id.*

⁸⁷ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁸⁸ *Id.*; U.S. DEPT’ OF HEALTH AND HUM. SERVS. ADMIN. FOR CHILD. AND FAM., OFFICE OF ADMINISTRATION, <https://www.acf.hhs.gov/office-of-administration>.

⁸⁹ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020); Statement from HHS to Subcommittee staff (Nov. 17, 2020).

⁹⁰ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁹¹ *Id.*

⁹² Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁹³ *Id.*; Statement from HHS to Subcommittee staff (Nov. 17, 2020).

⁹⁴ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁹⁵ *Id.*

C. Opening a Facility

Grant awards for UAC shelter facilities are subject to the requirements of the HHS Grants Policy Statement (“HHS GPS”).⁹⁶ The HHS GPS, which the agency last updated in 2007 and spans over 200 pages, includes requirements for construction, health and safety, cost considerations and financial management, procurement, record retention, and HHS enforcement actions.⁹⁷ Federal regulations for HHS awards, appropriations acts, and the TVPRA also apply to UAC shelter grant awards.⁹⁸ Award recipients must also make timely disclosures in writing of all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations with the potential to affect the federal award.⁹⁹ As noted above, all shelter facilities must also comply with corresponding state laws and regulations to obtain an operating license from a state licensing agency.

Once an award becomes official, ORR develops a timeline for the new facility to obtain a license to operate from the appropriate state regulatory body and begin accepting children.¹⁰⁰ HHS officials told Subcommittee staff that they do not base this timeline on federal law or regulations but instead on the average number of days it takes grantees to obtain a license.¹⁰¹ HHS officials added that licensing previously took 75 to 90 days but now takes “a year or longer,” in part, they told the Subcommittee, because of local opposition to immigration facilities.¹⁰²

ORR also provides training to facility operators before a facility starts accepting children.¹⁰³ ORR uses a contractor to provide this training, which lasts approximately one week.¹⁰⁴ The training covers how to work with Federal Field Specialists and project officers, among other HHS employees, and how to perform tasks on the online ORR portal such as submitting a significant incident report.¹⁰⁵

⁹⁶ U.S. DEP’T OF HEALTH AND HUM. SERVS., OFFICE OF THE ASS’T SEC. FOR RESOURCES AND TECHNOLOGY OFFICE OF GRANTS, HHS GRANTS POLICY STATEMENT (Jan. 1, 2007), <https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>.

⁹⁷ *Id.* See also U.S. DEP’T OF HEALTH AND HUM. SERVS. ADMIN. FOR CHILDREN AND FAMILIES, DISCRETIONARY POST-AWARD REQUIREMENTS, <https://www.acf.hhs.gov/discretionary-post-award-requirements>.

⁹⁸ See PSIORR_0002949.

⁹⁹ *Id.*

¹⁰⁰ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

¹⁰¹ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Oct. 1, 2020).

¹⁰² *Id.*

¹⁰³ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

Operators incur certain costs even before opening a facility, such as maintenance and leasing.¹⁰⁶ ORR must provide approval before a facility hires key personnel, including project officers, clinicians, program and assistant program directors, and sexual abuse prevention coordinators.¹⁰⁷ New personnel must undergo a background check that meets ORR’s minimum standards, which includes a fingerprint check if state licensing requirements do not require a national criminal history fingerprint check.¹⁰⁸ ORR’s minimum standards also require a child abuse and neglect check of all jurisdictions in which the prospective employee has lived for the past five years.¹⁰⁹

The *Flores* Agreement requires that ORR place UACs in state-licensed programs until ORR can discharge them to a suitable sponsor.¹¹⁰ However, ORR has few contingency measures to meet its needs should a grantee fail to obtain a license to operate.¹¹¹ The Deputy Director for Children’s Programs explained that in this scenario, ORR would notify OGM of the failure by the grantee to comply with the terms and conditions of the cooperative agreement.¹¹² OGM would then begin the process of formally terminating or discontinuing the project.¹¹³

D. Disbursement of Award Funding

Even though award project periods last three years, ORR divides the funding for each grantee into twelve-month budget periods.¹¹⁴ At the end of each twelve-month period, ORR issues an invitation to each grantee to submit a budget for the upcoming twelve-month period.¹¹⁵ ORR also may choose to issue a “withholding of a non-competing continuation award” if the agency decides not to invite a grantee to continue into the next budget period; HHS also refers to this as a “notice of discontinuation.”¹¹⁶ HHS officials stated there are many reasons why ORR would issue a notice of discontinuation, including if an organization has been unable to obtain a license and open at capacity, but the list of reasons are numerous and may

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *ORR Policy Guide* § 4.3.3.

¹⁰⁹ *Id.*

¹¹⁰ *Flores* Agreement ¶ 19.

¹¹¹ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2019).

¹¹² *Id.*; Statement from HHS to Subcommittee staff (Nov. 17, 2020).

¹¹³ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2019).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*; see Email from HHS to Subcommittee staff (July 27, 2020).

vary with each grant award.¹¹⁷ Grantees have the right to appeal a notice of discontinuation to the HHS Departmental Appeals Board.¹¹⁸

OGM notifies grantees of approved spending amounts allowed in each period.¹¹⁹ Recently, OGM has made funding available for drawdown in six-month increments for all grantees, which means these grantees immediately have access to draw down half of the total funding amount per year, subject to the terms and conditions of the award.¹²⁰ In six months, if a grantee is in good standing, OGM makes the rest of the funding available.¹²¹

Once awards become official, ACF transfers funds to the HHS payment management system for the use of grantees.¹²² Grantees may charge only allowable costs incurred during the grant period and any costs incurred prior to the grant period that receive approval from HHS.¹²³ Facility operators will often draw down expenses every two or four weeks instead of all at once.¹²⁴ In fact, operators that draw down all funds at once may violate federal regulations, pending review of additional factors such as the timing of the drawdown within the funding period.¹²⁵

Until late 2019, ORR released funds to new grantees that had yet to obtain a license to operate a facility. ORR took the position that it is “not feasible” to award funding only after an entity obtains a license.¹²⁶ As a result, until 2019, ORR restricted the receipt of grant funds only through the total approved budget and the amount available to a grantee during the budget period.¹²⁷ OGM could still disallow certain funds through these processes for a facility without a license because the facility would not be housing UACs and typically would only need access to portions of the award budget to cover certain expenditures necessary to

¹¹⁷ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

¹¹⁸ 45 C.F.R. § 16 app. A C(a)(3) (2019); Email from HHS to Subcommittee staff (Aug. 3, 2020). HHS officials told the Subcommittee that should a grantee successfully appeal a notice of discontinuation, ACF would comply with any actions the Departmental Appeals Board orders. Email from HHS to Subcommittee staff (Aug. 3, 2020).

¹¹⁹ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020); Statement from HHS to Subcommittee staff (Nov. 17, 2020).

¹²⁰ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

¹²¹ *Id.*

¹²² *Id.*

¹²³ 45 C.F.R. § 75.309(a) (2019).

¹²⁴ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

¹²⁵ *Id.*; Statement from HHS to Subcommittee staff (Nov. 17, 2020).

¹²⁶ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

¹²⁷ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

maintain a “license-ready” status.¹²⁸ As explained in more detail in Part VI below, HHS now restricts the availability of grant funds for grantees without an operating license.

The grants management officer responsible for the UAC portfolio explained that when a grant project period ends—typically after three years—grantees have an additional 90 days to submit a final project report and federal financial report.¹²⁹ They must also complete drawing down funds from the payment management system.¹³⁰ The process works the same way for a facility that could not obtain a license and never opened.¹³¹ OGM reserves the right to request supporting documentation for a particular time or set of expenses during the grant project period.¹³² However, OGM normally only initiates this standard oversight practice if OGM’s review of required reporting or other information HHS has obtained indicates a grantee has not complied with federal financial regulations.¹³³

E. Recovery of Grant Funds

Under certain conditions, HHS can recoup disbursed award funds. If OGM becomes aware that a grantee has entered the payment management system and drawn down all funds at once, OGM will review the circumstances of the drawdown and take appropriate actions if the drawdown violated federal regulations.¹³⁴ If an audit finding reveals financial impropriety, OGM will review the audit and will most likely request additional supporting information from the grantee.¹³⁵ After the grantee has an opportunity to justify its spending, OGM may write a formal disallowance, which requests the return of specific funds and includes the agency’s formal determination of whether costs the grantee claimed were “allowable.”¹³⁶ The grantee has thirty days to appeal or re-pay the funds; if the grantee has not repaid after this period, the outstanding amount will begin to accrue interest.¹³⁷

Once OGM finalizes a disallowance, HHS officials told the Subcommittee that the debt collection group within the HHS Program Support Center performs debt

¹²⁸ *Id.* ORR explained to the Subcommittee that these restrictions allowed ORR to monitor and control funding drawdowns should a grantee fail to attain a license and prevented grantees from drawing down funds prematurely that they would need to return to the government. Statement from HHS to Subcommittee staff (Nov. 17, 2020).

¹²⁹ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*; Statement from HHS to Subcommittee staff (Nov. 17, 2020).

¹³⁴ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

collection procedures based on the established debt.¹³⁸ To date, ORR’s internal service provider has resorted to debt collection to recover disallowed grant funds on just eight occasions.¹³⁹ According to ORR, HHS and the HHS Office of Inspector General have enhanced their reviews of grantees’ activities, which has led to scrutiny of targeted expenditures, restricted drawdowns, and disallowances, where appropriate.¹⁴⁰ OGM staff also believe this heightened financial oversight has created opportunities to help grantees correct deficiencies—instead of OGM instituting financial control mechanisms.¹⁴¹

Importantly, ORR does not require repayment for expenses—like maintenance and leasing costs—operators incur *prior* to opening if such costs comply with federal regulations.¹⁴² The Deputy Director for Children’s Programs explained that clawing back these types of expenses would deter non-profit organizations from applying for funding awards and favor corporate applicants, which is not ORR’s preference.¹⁴³

Although this report does not address the Department’s general oversight of grantee expenditures, a recent report from the HHS Office of Inspector General identified over \$13 million in potentially unallowable costs by Southwest Key, one of the largest providers in the UAC program.¹⁴⁴

IV. HHS AWARDED GRANTS TO COMPANIES THAT MANAGED FACILITIES DEEMED UNSAFE FOR CHILDREN BY STATE AND LOCAL GOVERNMENTS

VisionQuest National, Ltd. (“VisionQuest”) is a child, youth, and family services organization established in 1973 in Tucson, Arizona.¹⁴⁵ VisionQuest currently operates facilities and programs to help troubled youth in Texas, Pennsylvania, Arizona, Maryland, and Delaware.¹⁴⁶ Since 2016, VisionQuest also has held a contract with ORR to provide long-term foster care for UACs in Tucson, Arizona.¹⁴⁷

¹³⁸ *Id.*; Statement from HHS to Subcommittee staff (Nov. 17, 2020).

¹³⁹ PSIORR_0002969

¹⁴⁰ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020); Statement from HHS to Subcommittee staff (Nov. 17, 2020).

¹⁴¹ Statement from HHS to Subcommittee staff (Nov. 17, 2020).

¹⁴² Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

¹⁴³ *Id.*

¹⁴⁴ U.S. DEP’T OF HEALTH & HUM. SERVS. OFF. OF INSPECTOR GEN., A-06-17-07004, SOUTHWEST KEY PROGRAMS FAILED TO PROTECT FEDERAL FUNDS INTENDED FOR THE CARE AND PLACEMENT OF UNACCOMPANIED ALIEN CHILDREN, <https://oig.hhs.gov/oas/reports/region6/61707004.pdf>.

¹⁴⁵ VisionQuest, *About Us*, <https://www.vq.com/about-us.html>.

¹⁴⁶ Briefing with VisionQuest (Aug. 5, 2020).

¹⁴⁷ PSIORR_0001102.

In 2019, media outlets reported that ORR awarded a grant to VisionQuest for a UAC facility in Philadelphia even though the City of Philadelphia had discontinued VisionQuest’s operation of facilities for youth residents.¹⁴⁸ The news reports alleged several instances of mismanagement and physical abuse of children in these facilities.¹⁴⁹ The Subcommittee confirmed that officials from the Philadelphia Department of Health Services (“Philadelphia DHS”) ultimately transferred all children out of four programs at three VisionQuest facilities in the Philadelphia region.¹⁵⁰ In 2019, despite this history, ORR awarded a grant to VisionQuest for a UAC shelter in Philadelphia, Pennsylvania.¹⁵¹

Similarly, New Horizon Group Home, LLC (“New Horizon”) has operated facilities in North Carolina that provide residential, outpatient, and mental health services since 2006.¹⁵² In 2017, the company’s owner and chief executive officer sought to open a Level IV residential facility for male children ages 9 to 17 because there was only one other Level IV facility in the state (and it was a female-only facility).¹⁵³ Level IV facilities provide the highest level of care to residents in North Carolina.¹⁵⁴ Shortly after New Horizon opened this facility, North Carolina regulators suspended and eventually revoked the company’s license to operate the facility after conducting an audit.¹⁵⁵ In 2019, after the revocation of the license, ORR awarded a grant to New Horizon for a UAC shelter in North Carolina.¹⁵⁶

The following sections describe findings from state and local authorities concerning serious deficiencies—including instances of physical abuse of children—at VisionQuest and New Horizon facilities. Part V below explains the HHS funding process for these entities in more detail, as well as the licensing difficulties the grant recipients faced after receiving their funding awards.

¹⁴⁸ Michael Daly, *VisionQuest, For-Profit Firm Tapped to House Migrant Kids in Philadelphia, Has Sordid History*, DAILY BEAST (July 1, 2019), <https://www.thedailybeast.com/visionquest-for-profit-firm-tapped-to-house-migrant-kids-in-philadelphia-has-sordid-history>.

¹⁴⁹ *Id.*

¹⁵⁰ *See infra* Part IV.A.

¹⁵¹ *See infra* Part V.A.1.

¹⁵² Subcommittee briefing with Owner and Chief Executive Officer, New Horizon Group Home, LLC (June 25, 2020) [hereinafter Subcommittee briefing with New Horizon employees (June 25, 2020)].

¹⁵³ Subcommittee briefing with New Horizon employees (June 25, 2020); Letter from New Horizon to Subcommittee staff (Nov. 16, 2020).

¹⁵⁴ Residential treatment facilities provide different levels of service depending on whether residential facilities fall within one of four levels. *See generally* 10A NCAC 27G .1800 (2019).

¹⁵⁵ *See infra* Part IV.B.

¹⁵⁶ *See infra* Part V.B.1.

A. The Philadelphia Department of Human Services Removed All Residents from Four VisionQuest Programs in 2017 and 2018

In 2016, VisionQuest entered into a contract to provide residential services to the Philadelphia DHS.¹⁵⁷ VisionQuest agreed to provide these services through four programs at three locations in the Philadelphia region: Lee Preparatory Academy at South Penn and Hudmont; Lee Preparatory Academy at Philadelphia; and New Directions.¹⁵⁸ In September 2017, the Philadelphia DHS combined the South Penn program with the Hudmont program.¹⁵⁹ By February 2018, the Philadelphia DHS removed all residents from the Hudmont facility.¹⁶⁰ The Philadelphia DHS also closed intake and removed all residents at the Lee Preparatory Academy in Philadelphia and New Directions.¹⁶¹

1. Lee Preparatory Academy at South Penn

Lee Preparatory Academy was a residential program designed to help adolescent males with a history in the juvenile justice system overcome obstacles and prepare for successful adult living.¹⁶² The South Penn facility located in Franklin, Pennsylvania served males, ages 15 to 20, with a “more significant juvenile and placement history.”¹⁶³ The ultimate goal of the program was the reintegration of each resident into his family or home community as a successfully functioning young adult.¹⁶⁴

The Philadelphia DHS identified multiple incidents at the South Penn facility and ultimately combined the South Penn programs with programs offered at another VisionQuest-run facility. On May 9, 2017, for example, a program analyst from the Philadelphia DHS visited the South Penn facility to conduct an investigation after seven residents at the facility went absent without leave (“AWOL”) from the facility on April 17 and April 20, 2017.¹⁶⁵ Facility staff told the analyst that in both instances, the residents took advantage of blind spots that allowed them to exit the front doors of the facility unseen by staff.¹⁶⁶ Facility staff did not discover three of the absences until the next morning.¹⁶⁷ The facility’s Director of Compliance explained that the three residents had placed blankets over their pillows to make it appear as if they were asleep, and facility staff did not

¹⁵⁷ City of Philadelphia 2017 VQ History 000001.

¹⁵⁸ City of Philadelphia 2017 VQ History 000002.

¹⁵⁹ *See infra* Part IV.A.1.

¹⁶⁰ *See infra* Part IV.A.2.

¹⁶¹ *See infra* Part IV.A.3.

¹⁶² City of Philadelphia 2017 VQ History 000002.

¹⁶³ City of Philadelphia 2017 VQ History 000002, 000006.

¹⁶⁴ City of Philadelphia 2017 VQ History 000002.

¹⁶⁵ City of Philadelphia 2017 VQ History 000036.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

follow the proper protocol for nightly head counts to ensure residents were in their beds.¹⁶⁸ At the time of the May 2017 visit from the Philadelphia DHS, the South Penn facility had surveillance cameras but lacked alarms.¹⁶⁹

The Philadelphia DHS program analyst also interviewed five residents at the facility.¹⁷⁰ Those residents refused to discuss the AWOL situation but stated that they felt safe and had not experienced or witnessed any abusive behavior by the facility staff.¹⁷¹ Two residents also stated that they felt certain staff were afraid of the residents, and they believed they could leave the facility without staff stopping them.¹⁷²

The analyst documented his findings in a memorandum addressed to other Philadelphia DHS officials.¹⁷³ He recommended that the facility install alarms on its front doors and ensure that surveillance cameras captured all of the space in each living unit.¹⁷⁴ The analyst also recommended additional staff training, increased supervision, and the immediate hiring of a program director, the lack of which he believed “negatively impacted operations and programming at this facility.”¹⁷⁵ VisionQuest staff at the facility agreed with these recommendations and began working to improve its practices.¹⁷⁶

On August 29, 2017, the case manager at South Penn filed an incident report concerning a “violation of a child’s rights.”¹⁷⁷ A resident told a case manager that a supervisor in the facility asked about the resident’s sexual experiences, including questions about how many partners the resident previously had and if “[the resident] was ever involved in [group sex].”¹⁷⁸ The supervisor also allegedly rubbed the shoulders of the resident and made the resident feel uncomfortable.¹⁷⁹ The facility reported the allegations to ChildLine, a statewide child protective services program, and VisionQuest suspended the supervisor pending the investigation.¹⁸⁰

In September 2017, the Philadelphia DHS combined the South Penn program with the Hudmont program, which is discussed in more detail below.¹⁸¹

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ City of Philadelphia 2017 VQ History 000037.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ City of Philadelphia 2017 VQ History 000179.

¹⁷⁸ City of Philadelphia 2017 VQ History 000180.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ City of Philadelphia 2017 VQ History 000019.

2. Lee Preparatory Academy at Hudmont

The Hudmont facility located in Polk, Pennsylvania was also part of the Lee Preparatory Academy program and served males, ages 14 to 18, who had limited criminal and placement history.¹⁸² Similar to the South Penn facility, Hudmont sought to provide residents with the opportunity to complete their education goals and acquire vocational, life, and job-related skills to prepare for successful adult living.¹⁸³

The Philadelphia DHS identified a series of incidents at the Hudmont facility that led the agency to remove all residents from the facility. On October 26, 2016, a VisionQuest employee filed three incident reports documenting serious injuries to residents and a fourth report documenting a runaway.¹⁸⁴ One resident was transported via ambulance to a local hospital to treat pain in his right arm “after being assaulted by multiple [male residents between the ages of 14 and 18 in] his living unit.”¹⁸⁵ Another resident went to the same hospital with “abrasions of multiple sites and multiple contusions.”¹⁸⁶ A third resident went to a different hospital with “multiple deep lacerations to the right chest area, multiple contusions to the upper and lower lip, acute cervical strain, and abnormal CT of the chest.”¹⁸⁷ The third resident required a full body CT scan, multiple x-rays, and an EKG, and he received nine stitches to his right side directly below his armpit.¹⁸⁸ During the incident that resulted in injuries to three residents, a fourth resident went AWOL from the program at approximately 8:45 pm and was apprehended the following morning by Pennsylvania State Police.¹⁸⁹

As mentioned above, the Philadelphia DHS combined the Hudmont program with the South Penn program in September 2017. After this combination, the Philadelphia DHS received numerous complaints starting in November 2017 concerning child rights violations, staffing ratios, the educational program, staff clearances, and other general safety concerns.¹⁹⁰ For example:

[O]n November 25, 2017, approximately 15 residents were in one bedroom of the living unit when five residents began assaulting one resident. Incident reports indicate the resident was punched numerous times and then subsequently kicked by multiple residents when on the ground. The video shows one staff standing at the doorway of the

¹⁸² City of Philadelphia 2017 VQ History 000002, 000006.

¹⁸³ City of Philadelphia 2017 VQ History 000002.

¹⁸⁴ City of Philadelphia 2017 VQ History 000206–213.

¹⁸⁵ City of Philadelphia 2017 VQ History 000207.

¹⁸⁶ City of Philadelphia 2017 VQ History 000209.

¹⁸⁷ City of Philadelphia 2017 VQ History 000211.

¹⁸⁸ *Id.*

¹⁸⁹ City of Philadelphia 2017 VQ History 000213.

¹⁹⁰ City of Philadelphia 2017 VQ History 000144.

bedroom. This staff did not change his posture or react to the assault. This staff only moved when the residents started running out of the room.¹⁹¹

Video footage from December 7, 2017 also identified two instances in which the facility failed to meet the required ratio of one childcare worker for every eight children during awake hours.¹⁹² The Philadelphia DHS issued citations to VisionQuest for both of these incidents.¹⁹³

From December 12 to 14, 2017, the Philadelphia DHS Division of Performance Management and Technology conducted an on-site program evaluation of the Hudmont facility that revealed a number of concerns with the facility.¹⁹⁴ For example, the on-site analyst discovered one resident's reportable incident documentation in a different resident's file.¹⁹⁵ The misfiled incident report detailed an account of the resident undergoing an x-ray on his lower extremities after being restrained by staff.¹⁹⁶ However, medical documents indicated that the resident had actually fractured his hand after punching a wall and received an x-ray on the hand.¹⁹⁷ There was no documentation supporting the need for an x-ray of the resident's lower extremities, and it was unclear what caused this confusion.¹⁹⁸

Officials from the Philadelphia DHS also conducted a site visit on January 12, 2018.¹⁹⁹ The Philadelphia DHS verified multiple occurrences of frozen pipes in the kitchen, a five-hour loss of electricity that led to freezing temperatures in the living units, overflowing garbage, improper resident-to-staff ratios, and the transfer of tobacco and other contraband items from staff to residents.²⁰⁰ In February 2018, the Philadelphia DHS decided to remove all of the residents from the facility immediately and then transport them to other locations within a two-day period.²⁰¹ VisionQuest closed the program voluntarily.²⁰²

3. 5201 Old York Road Program

VisionQuest operated two separate programs at 5201 Old York Road in Philadelphia.²⁰³ The first was the Lee Preparatory Academy at Philadelphia, a

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ City of Philadelphia 2017 VQ History 000014–21.

¹⁹⁵ City of Philadelphia 2017 VQ History 000019.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ City of Philadelphia 2017 VQ History 000146.

²⁰⁰ *Id.*

²⁰¹ City of Philadelphia 2017 VQ History 000065.

²⁰² *Id.*

²⁰³ City of Philadelphia 2017 VQ History 000002, 000006.

residential program designed to help older adolescent males and females with experiences in the juvenile justice system to overcome obstacles and prepare for successful adult life.²⁰⁴ The facility had capacity for 20 males and 12 females between the ages of 17 and 20 who manifested social, emotional, or behavioral needs that required an intensive level of intervention and supervision.²⁰⁵

The second program was the VisionQuest New Directions Shelter in Philadelphia, a community-based detention service.²⁰⁶ New Directions served young men, women, and their families, which included children between the ages of 12 and 18.²⁰⁷ The program offered multiple services including emergency placement services, respite care, and diagnostic services.²⁰⁸

The Philadelphia DHS identified a series of events that led it to close intake and transition residents out of the Old York Road program. In October 2017, the Director of Compliance at the New Directions Shelter filed an incident report regarding safety concerns and sexual boundaries.²⁰⁹ On October 26, 2017, a VisionQuest employee was conducting a room check at 11:00 pm and observed that one resident was not in her bed.²¹⁰ After turning the lights on in the living unit, the employee realized that the resident was lying with another resident in a different bed, and neither resident had a shirt on.²¹¹ The employee asked the resident to leave and sleep in the dayroom for the night.²¹² One of the residents was 19 years old and the other resident was 17 years old.²¹³

The VisionQuest employee also learned from another staff member that the 19-year-old resident involved in the October 26, 2017 incident was previously involved in another sexual encounter with a 13-year-old resident.²¹⁴ New Directions staff did not inform the Chief of the Juvenile Branch of the Philadelphia Probation Department of either incident.²¹⁵ On October 30, 2017, a judge discharged the 19-year-old resident from the New Directions program.²¹⁶

The same month, VisionQuest staff reported multiple incidents involving physical altercations. On October 28, 2017, a resident alleged that she and another

²⁰⁴ City of Philadelphia 2017 VQ History 000002.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ City of Philadelphia 2017 VQ History 000056.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ City of Philadelphia 2017 VQ History 000055–56.

²¹⁴ City of Philadelphia 2017 VQ History 000056.

²¹⁵ City of Philadelphia 2017 VQ History 000055.

²¹⁶ *Id.*

resident were “encouraged by staff to fight each other to resolve conflict.”²¹⁷ The residents did not sustain any visible injuries, and VisionQuest removed the staff in question from the unit pending the outcome of an investigation.²¹⁸

On November 2, 2017, a probation officer visited the Old York Road facility to interview a male resident about events at New Directions.²¹⁹ Documents provided to the Subcommittee contain the following account about the resident’s time at the facility between October 30, 2017 and November 3, 2017:

His first experience was with a male staff member who goes by “Kool-Aid.” [The resident] explained that he asked to use the restroom shortly after arriving at [Community Based Services] VQ and Kool-Aid replied “stop f*cking playing with me before I break your jaw.” He believes this interaction occurred on Oct 31st. Another youth whom [the resident] doesn’t know also had issues. This other male youth was wearing a knee brace and was told to remove it even though the youth stated he needed it. The staff member “Kool-Aid” stated “f*ck no young bull, you gotta put it [the brace] in the bag.”²²⁰

The probation officer also asked this resident about the so-called “back alley.” Documents contained the following explanation:

It is the 4th “hut,” the farthest section to the rear of the facility. There is only one camera in the section and the staff will bring kids to the location to fight. [The resident] denied knowledge of staff placing bets or forcing two kids to fight for staff amusement. What occurs is staff will break up a mutual fight or bring two kids who want to fight to the 4th hut OR; if a youth wants to fight another youth they will bring both of the youth back to the 4th huts to fight (even if one of the youth's does not want to fight). He explained this happened on multiple occasions and almost happened to him because a kid who was favored by staff wanted to fight him.²²¹

This resident also indicated that “certain [other residents] are favored by staff,” which results in special privileges such as outside food and the option to select other residents to fight.²²² Additionally, the resident mentioned that the facility had a lack of chairs, mice and bed bug infestations, a musty mildew smell in certain areas, and a lack of clean clothes.²²³

²¹⁷ City of Philadelphia 2017 VQ History 000124.

²¹⁸ *Id.*

²¹⁹ City of Philadelphia 2017 VQ History 000191.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ City of Philadelphia 2017 VQ History 000192.

On November 3, 2017, another Philadelphia probation officer visited the Old York Road facility to interview a female resident regarding the allegations that staff had encouraged fights between residents.²²⁴ The resident described staff encouraging fights in the female living unit.²²⁵ For example, she stated that she and another female resident were “encouraged to fight to get off restriction,” even though the resident was on restriction because of a previous fight.²²⁶ The resident also alleged that at least four staff members were drinking alcohol at the facility on a day in mid-October and appeared “visibly tipsy.”²²⁷

In response to these allegations, the Philadelphia DHS conducted a full tour of the Old York Road facility on November 8 and 9, 2017.²²⁸ The analysts interviewed 23 residents (13 female and 10 male, including 4 minors) and 4 employees.²²⁹ Seven female residents described verbal aggression from the facility staff: “[S]taff get directly in their faces and makes statements like, ‘What ya’ll gonna do?’ ‘Ya’ll a bunch of bitches.’ ‘Ya’ll don’t really wanna do nothing.’”²³⁰ One resident reported that a staff member instigated a physical confrontation with her by making comments about her mother’s parenting and the resident’s sexual activities.²³¹ All ten males denied hearing about a “Back Alley.”²³²

The analysts concluded that the allegations of staff instigating fights and watching residents fight without intervening were valid.²³³ In response, VisionQuest suspended the lead childcare worker, two additional childcare workers, and a shift supervisor.²³⁴ VisionQuest also announced plans to place cameras in all day rooms and increase the number of monthly exterminator visits after several residents described the presence of pests in the facility.²³⁵ The analysts recommended the immediate closure of intake until programming and staffing stabilized.²³⁶ On November 13, 2017, the Philadelphia DHS program supervisor submitted a memorandum to the Director of Court and Community Services further confirming the allegations of staff encouraging fights between residents.²³⁷

²²⁴ City of Philadelphia 2017 VQ History 000054.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ City of Philadelphia 2017 VQ History 000028.

²²⁹ City of Philadelphia 2017 VQ History 000028–31.

²³⁰ City of Philadelphia 2017 VQ History 000028.

²³¹ City of Philadelphia 2017 VQ History 000029.

²³² *Id.*

²³³ City of Philadelphia 2017 VQ History 000032.

²³⁴ City of Philadelphia 2017 VQ History 000031–32.

²³⁵ *Id.*

²³⁶ City of Philadelphia 2017 VQ History 000032.

²³⁷ City of Philadelphia 2017 VQ History 000042–43.

In late November 2017, the Commissioner of the Philadelphia DHS and the Philadelphia Family Court closed intake at the Old York Road facility and made plans to transition all residents out of the program.²³⁸ The state did not revoke the license for this facility, however, and VisionQuest closed the program voluntarily.²³⁹

B. The North Carolina Department of Health and Human Services Revoked the Operating License of a New Horizon Facility in 2018

In 2018, New Horizon operated two residential facilities for children and a day treatment facility in North Carolina.²⁴⁰ The two residential facilities were classified as Level III and Level IV facilities—providing the two highest levels of care to residents in North Carolina.²⁴¹ New Horizon obtained a license to operate these facilities, but the Division of Health Service Regulation (“DHSR”) in the North Carolina Department of Health and Human Services (“NC DHHS”) revoked New Horizon’s license for the Level IV facility after an inspection.²⁴² DHSR also revoked New Horizon’s four other licenses for failure to renew them on time.²⁴³ New Horizon appealed the revocation, and an administrative law judge (“ALJ”) upheld the revocation of the Level IV license but reversed the revocation of the other licenses.²⁴⁴ Under North Carolina law, if NC DHHS revokes the operating license of a residential facility, the facility operator cannot obtain any new licenses for five years.²⁴⁵

1. North Carolina State Law Permits Revocation of a License and Prohibits the Issuance of a New License for Five Years

The Department of Social Services (“DSS”) and DHSR are responsible for licensing and conducting oversight of residential facilities in North Carolina.²⁴⁶ DSS issues licenses for Level I facilities, and DHSR issues licenses for Level II, III, and IV facilities.²⁴⁷ No facility for the mentally ill, developmentally disabled individuals, or individuals suffering from substance abuse may operate in the state of North Carolina without a current license issued by the DHHS Secretary.²⁴⁸

²³⁸ City of Philadelphia 2017 VQ History 000065.

²³⁹ *Id.*

²⁴⁰ NCDHHS_000119.

²⁴¹ *Id.* Residential treatment facilities provide different levels of service depending on the level of the residential facility, which spans four levels with Level IV requiring the highest level of care. *See generally* 10A N.C. ADMIN CODE 27G.1801 (2019).

²⁴² *See infra* Part IV.C.2.

²⁴³ *See infra* Part IV.C.3.

²⁴⁴ *See infra* Part IV.C.4.

²⁴⁵ *See infra* Part IV.C.1.

²⁴⁶ N.C. GEN. STAT. § 122C-1 *et seq.* (2019).

²⁴⁷ *See* NC DHHS, *Residential Child Care Facility, Applying for a License to Operate a Residential Child Care Facility*, <https://www.ncdhhs.gov/divisions/social-services/child-welfare-services/licensing/residential-child-care-facility>.

²⁴⁸ N.C. GEN. STAT. § 122C-23(a) (2019).

DHSR issues initial licenses to facilities for 15 months, and licenses are then subject to annual renewal, with expiration at the end of each calendar year.²⁴⁹

The Department's oversight responsibilities include audits, inspections, and ensuring compliance with regulatory requirements.²⁵⁰ North Carolina state law authorizes the DHSR to impose administrative penalties on licensed facilities that violate applicable state or federal laws.²⁵¹ For example, a violation that results in death, serious physical harm, abuse, neglect, or exploitation is a "Type A1 Violation."²⁵² Each Type A1 Violation in a facility serving seven or more persons requires a civil money penalty of at least \$1,000 and not exceeding \$20,000.²⁵³

The Secretary also has the authority to deny, suspend, amend, or revoke a license when there is a substantial failure to comply with any licensing requirement or other applicable rules.²⁵⁴ Facility owners face long-term consequences when the Department assesses Type A1 violations or summarily suspends or revokes an existing license.²⁵⁵ As a general matter, North Carolina state law prohibits the Secretary from issuing a new license to any such facility owner for a period of 60 months.²⁵⁶ Officials from the NC DHHS told the Subcommittee that those four administrative actions "are not uncommon because these are the main tools in their tool bag."²⁵⁷

2. The DHSR Conducted a Survey of the New Horizon Level IV Facility and Subsequently Revoked New Horizon's License to Operate

A Level IV facility is an intensive residential treatment center for children or adolescents who have a "primary diagnosis of mental illness, severe emotional and behavioral disorders, or substance-related disorders."²⁵⁸ Children or adolescents in these facilities require removal from their homes and treatment in a locked setting.²⁵⁹

New Horizon obtained a license from DHSR on November 11, 2017 for a Level IV facility with nine beds and admitted its first resident on February 23,

²⁴⁹ N.C. GEN. STAT. § 122C-23(e) (2019).

²⁵⁰ N.C. GEN. STAT. § 122C-1 *et seq.* (2019).

²⁵¹ N.C. GEN. STAT. § 122C-24.1(a) (2019).

²⁵² N.C. GEN. STAT. § 122C-24.1(a)(1) (2019).

²⁵³ *Id.*

²⁵⁴ N.C. GEN. STAT. § 122C-24(a) (2019).

²⁵⁵ N.C. GEN. STAT. § 122C-23(e1) (2019).

²⁵⁶ N.C. GEN. STAT. § 122C-23(e1)(3) (2019).

²⁵⁷ Briefing with N.C. Dep't of Health and Hum. Servs. (May 18, 2020).

²⁵⁸ 10A N.C. ADMIN CODE 27G .1801(c) (2019).

²⁵⁹ 10A N.C. ADMIN CODE 27G .1801(d) (2019).

2018.²⁶⁰ On March 5, 2018, a Facility Compliance Consultant from DHSR initiated a survey of the group home.²⁶¹ The survey included: interviews with staff and residents; observations of the facility; and a review of medical, mental health, and medication administration records.²⁶² The DHSR identified numerous violations of state law at the Level IV facility and subsequently imposed penalties and revoked the facility’s operating license.²⁶³

a. The DHSR Survey Identified More Than a Dozen Violations of State Law at the Level IV Facility

The DHSR survey began with a walkthrough of the facility and interviews with staff and the facility owner.²⁶⁴ During the initial walkthrough, the consultant observed a time-out room with a lock on the door, but the DHHS Construction Section had not provided prior approval for the time-out room as required under state law.²⁶⁵ North Carolina state regulations limit the use of restrictive interventions like time-out rooms to emergencies and as a planned measure of therapeutic treatment.²⁶⁶ These regulations stress that restrictive interventions are not a means of punishment or a substitute for inadequate staffing and must not cause harm.²⁶⁷ The DHSR consultant completed the “annual and complaint” survey at the Level IV group home on April 13, 2018, which included a Statement of Deficiencies (“Statement”) spanning 116 pages.²⁶⁸ The Statement cited New Horizon for two standard deficiencies: failure to hold required fire and disaster drills and failure to provide minimum furnishings for resident bedrooms.²⁶⁹

The Statement also cited New Horizon for three Type A1 violations. First, DHSR cited the company for a Type A1 violation for failure to “meet the scope of the license for an intensive residential treatment facility identified to provide intensive treatment and supervision in the residential setting.”²⁷⁰ This violation consisted of 13 discrete deficiencies of statutory and regulatory requirements, including: (1) failure to maintain at least one licensed professional and one qualified professional on staff for required clinical and administrative duties; (2) failure to ensure staff training for mental health needs of residents; (3) failure to ensure that unlicensed persons administering medications had prior training from a registered nurse or pharmacist; (4) failure to request timely criminal background checks of staff after

²⁶⁰ NCDHHS_000119.

²⁶¹ NCDHHS_000120.

²⁶² NCDHHS_000120.

²⁶³ See *infra* Part IV.B.2.a; Part IV.B.2.b.

²⁶⁴ NCDHHS_000120.

²⁶⁵ *Id.* See 10A N.C. ADMIN CODE 27G .0104(8) (2019).

²⁶⁶ See 10A N.C. ADMIN CODE 27E .0104(b) (2019).

²⁶⁷ See 10A N.C. ADMIN CODE 27E .0104(c) (2019).

²⁶⁸ NCDHHS_000120.

²⁶⁹ *Id.* See 10A N.C. ADMIN CODE 27G .0207, .0304(d)(7) (2019).

²⁷⁰ NCDHHS_000121. See 10A N.C. ADMIN CODE 27G .1801 (2019).

extending conditional employment offers; and (5) failure to report allegations of abuse or neglect to the Health Care Personnel Registry and to investigate such allegations.²⁷¹

New Horizon also failed to ensure that the facility always had a minimum of two staff members present at all times and had created required education plans for residents.²⁷² The Statement noted that on most days, the residents “played games or watched TV,” and there were no outside or recreational activities.²⁷³ The facility owner explained that “she was not aware of much of what was going on in the center, including the lack of required background checks, use of the time-out room, [and the] lack of education or recreation.”²⁷⁴

DHSR cited New Horizon for a second Type A1 violation for failure to protect two of the five residents from serious harm and abuse by facility staff.²⁷⁵ For example, one staff member allegedly grabbed a resident “by the shirt holding [the resident] up against a wall and hitting/slapping/choking [the resident].”²⁷⁶ New Horizon’s CEO told Subcommittee staff that she believes this allegation led to the revocation of New Horizon’s Level IV license.²⁷⁷ She further stated that the company immediately initiated an investigation and “removed the staff member allegedly responsible for the abuse from the premises” until completion of the investigation.²⁷⁸ After interviewing the residents and the staff, New Horizon concluded that the allegations were false.²⁷⁹

In another incident, the same staff member accused of holding a resident against a wall also held another resident’s “arm behind his back and pushed up into [the resident’s] back while staff escorted the resident to the unapproved Isolation Time-Out room.”²⁸⁰ In a third incident, a staff member threw water on a resident, put her fingers in [the resident’s face], and attempted to hit the resident with a metal pole.²⁸¹ Other staff members intervened to “hold [the staff member] back.”²⁸²

The Statement detailed another such incident:

²⁷¹ NCDHHS_000121. See 10A N.C. ADMIN CODE 27G .1802, .1803, .0202, .0209, (2019); N.C. GEN. STAT. §§ 131E-256(g), 122C-80 (2019).

²⁷² NCDHHS_000121–23.

²⁷³ NCDHHS_000122.

²⁷⁴ NCDHHS_000123.

²⁷⁵ *Id.* See 10A N.C. ADMIN CODE 27G .0304 (2019); N.C. GEN. STAT. § 122C-24.1(a)(1) (2019).

²⁷⁶ NCDHHS_000123.

²⁷⁷ Subcommittee briefing with New Horizon employees (June 25, 2020).

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ NCDHHS_000123.

²⁸¹ *Id.*

²⁸² *Id.*

A nine-year old [resident], who has diagnoses of Bipolar Disorder, Posttraumatic Stress Disorder (PTSD), ADHD, Disruptive Mood Disorder, and Encopresis, was placed in an unapproved time-out room and left unattended by staff for at least 15 minutes. Encopresis is a condition wherein the person has difficulty in or is unable to control bowel movements. During time in the time-out room, [the resident] smeared feces on the walls. It was the first time [the resident] had done any such thing since his arrival.²⁸³

The Statement concluded that New Horizon’s failure to comply with licensing statutes and rules led to serious harm and abuse of residents.²⁸⁴

DHSR cited New Horizon for a third Type A1 violation for failure to provide services that promoted a safe and respectful environment, including using the least restrictive and most appropriate setting and methods.²⁸⁵ This violation was rooted in the facility’s use of the time-out room without: (1) proper procedures; (2) prior written approval from the DHHS Construction Section; and (3) proper periodic observation.²⁸⁶ New Horizon left residents unattended in the unapproved time-out room for at least 15 minutes on seven different occasions.²⁸⁷ In addition, facility staff had not completed training for restrictive interventions.²⁸⁸

b. The DHSR Imposed Penalties and Revoked New Horizon’s License to Operate the Level IV Facility

After completing the survey, the DHSR consultant also spoke with the Chief of the DHSR Mental Health Licensure and Certification Section to discuss her findings.²⁸⁹ The Section Chief concluded that conditions at the New Horizon facility “present an imminent danger to the health, safety, and welfare of the clients and that emergency action is required to protect the clients.”²⁹⁰ On April 11, 2018, the Section Chief summarily suspended New Horizon’s license to operate the Level IV facility.²⁹¹ New Horizon’s CEO told Subcommittee staff that she “was shocked.”²⁹² The suspension order allowed New Horizon to appeal by filing a petition for a contested case hearing with the North Carolina Office of Administrative Hearings (“NC OAH”) within 60 days of the date of the letter.²⁹³

²⁸³ NCDHHS_000124.

²⁸⁴ *Id.*

²⁸⁵ *Id.* See 10A N.C. ADMIN CODE 27E .0101 (2019).

²⁸⁶ NCDHHS_000124–25. See 10A N.C. ADMIN CODE 27E .0104 (2019).

²⁸⁷ NCDHHS_000126.

²⁸⁸ *Id.*

²⁸⁹ NCDHHS_000119, 127.

²⁹⁰ NCDHHS_000606.

²⁹¹ *Id.*

²⁹² Subcommittee briefing with New Horizon employees (June 25, 2020).

²⁹³ NCDHHS_000607.

On April 26, 2018, the Section Chief took three additional steps. First, the Section Chief issued an immediate Suspension of Admissions that would bar new residents at the New Horizon facility and would remain in place until “conditions [at the facility] are documented to meet approved inspection status.”²⁹⁴ The Section Chief also issued an Intent to Revoke New Horizon’s operating license.²⁹⁵ Lastly, the Section Chief imposed a penalty of \$3,000 for each of the three Type A1 violations.²⁹⁶ The order required payment within 60 days of the notification before the penalties would begin accruing interest.²⁹⁷

New Horizon met with staff from the DHR Mental Health Licensure Branch on May 16, 2018 to discuss the survey results and the corrective actions New Horizon had taken.²⁹⁸ New Horizon’s CEO told Subcommittee staff she believed that no one in attendance from DHR had reviewed the plan of correction she had provided on April 13, 2018.²⁹⁹ On June 1, 2018, the Section Chief transmitted a letter to New Horizon indicating that DHR upheld the three Type A1 penalties, the Summary Suspension, the Suspension of Admissions, and the Intent to Revoke.³⁰⁰ The Section Chief also issued a Notice of Revocation of New Horizon’s license for the Level IV facility.³⁰¹

New Horizon met with the DHR Mental Health Licensure Branch again on June 27, 2018.³⁰² New Horizon’s CEO told Subcommittee staff that none of the DHR officials had a copy of her plan of correction, and she still believed the officials had failed to review it beforehand.³⁰³ On July 6, 2018, the Section Chief transmitted a letter to New Horizon upholding the revocation of New Horizon’s license to operate the Level IV facility.³⁰⁴ New Horizon filed a contested case petition on July 31, 2018.³⁰⁵

²⁹⁴ NCDHHS_000603. New Horizon had 20 days from the date of the letter to file an appeal. NCDHHS_000604.

²⁹⁵ NCDHHS_000146. New Horizon had ten days from the date of the letter to issue a written statement to assert compliance with the lawful requirements for retention of its license. NCDHHS_000147. *See* N.C. GEN. STAT. § 150B-3(b) (2019).

²⁹⁶ NCDHHS_000609.

²⁹⁷ NCDHHS_000609–10. *See* N.C. GEN. STAT. § 147-86.23 (2019). New Horizon had 30 days from the date of the letter to file an appeal. NCDHHS_000610.

²⁹⁸ NCDHHS_000142.

²⁹⁹ Subcommittee briefing with New Horizon employees (June 25, 2020).

³⁰⁰ NCDHHS_000142.

³⁰¹ NCDHHS_000149. New Horizon had 60 days from the date of the letter to file an appeal of the revocation. NCDHHS_000150.

³⁰² NCDHHS_000144.

³⁰³ Subcommittee briefing with New Horizon employees (June 25, 2020).

³⁰⁴ NCDHHS_000144.

³⁰⁵ New Horizon Group Home LLC, 18 DHR 04694, 2 (Office of Admin. Hearings Aug. 22, 2019) (final decision).

3. DHSR Revoked New Horizon’s Four Other Licenses for Failure to Renew on Time

New Horizon’s CEO stated that during these events related to the Level IV facility, she continued to operate the company’s existing facilities in North Carolina.³⁰⁶ In January 2019, however, the state revoked these licenses because New Horizon did not submit its license renewal applications on time.³⁰⁷ The CEO explained that she has previously submitted the applications for renewal of her four non-Level IV licenses in November of each year and received licenses for the next year in January.³⁰⁸ In November 2018, however, the CEO mailed all of the applications and checks for the required fees but did not receive her new licenses in December 2018.³⁰⁹ The CEO spoke with DHSR officials, but the agency could not locate her renewal materials, and the agency later revoked all four licenses on January 18, 2019 for failure to submit timely applications for renewal.³¹⁰ New Horizon added claims regarding these revocations to its contested case petition for the Level IV license and filed amended petitions in February 2019.³¹¹

4. A North Carolina ALJ Upheld the Penalties and Level IV License Revocation but Reversed the Revocation of the Other Licenses

In North Carolina, ALJs hear appeals for issues relating to licensing of mental health facilities, and ALJ decisions are appealable in North Carolina Superior Court.³¹² The party filing an appeal has the burden of proving, “by a preponderance of the evidence,” that the party taking adverse action exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule.³¹³ State law also requires an assessment of the reasonableness of the amount of an administrative penalty and the degree to which the administrative agency evaluated all relevant factors in the statute.³¹⁴ After considering New Horizon’s contested case petition, an ALJ upheld the penalties and the revocation of the Level

³⁰⁶ Subcommittee briefing with New Horizon employees (June 25, 2020).

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *New Horizon Group Home LLC v. N.C. Dep’t of Health and Hum. Servs., Div. of Health Serv. Reg.*, 18 DHR 04694, 2 (Off. of Admin. Hr’gs Aug. 22, 2019) (final decision).

³¹¹ *New Horizon Group Home LLC v. N.C. Dep’t of Health and Hum. Servs., Div. of Health Serv. Reg.*, 18 DHR 04694, 2 (Off. of Admin. Hr’gs Aug. 22, 2019) (final decision).

³¹² Briefing with N.C. Dep’t of Health and Hum. Servs. (May 18, 2020).

³¹³ N.C. GEN. STAT. § 150B-23(a), .29(a) (2019).

³¹⁴ N.C. GEN. STAT. § 122C-24.1(f) (2019). *See also* N.C. GEN. STAT. § 122C-24.1(c) (2019).

IV license.³¹⁵ The ALJ, however, also concluded that DHR erroneously revoked New Horizon’s other four licenses.³¹⁶

a. The Level IV License Penalties and Revocation

After New Horizon filed a contested case petition challenging the Type A1 violations, suspensions, and license revocation, an ALJ held five hearings between February and May 2019 on the appeal.³¹⁷ On August 22, 2019, the ALJ issued an opinion and concluded that DHR appropriately cited New Horizon for all three Type A1 violations and the accompanying administrative penalties.³¹⁸ According to the ALJ opinion, New Horizon had failed to protect two of its five residents from “serious harm and abuse by staff of the Facility.”³¹⁹ All three violations were supported by both a preponderance of the evidence and clear and convincing evidence.³²⁰ The ALJ also concluded that the penalty amounts for all three Type A1 violations were reasonable considering the underlying facts and circumstances.³²¹

The ALJ also concluded that DHR’s summary suspension of New Horizon’s license for the Level IV facility was required to protect clients.³²² Based on the violations and deficiencies identified in the survey, New Horizon’s failure to comply with the licensure statutes and rules presented “an imminent danger to the health, safety, and welfare of the clients.”³²³ In addition, the ALJ upheld DHR’s decision to suspend admissions at the Level IV facility.³²⁴ The ALJ again concluded that New Horizon’s failure to comply with the licensure statutes and rules were detrimental to the health and safety of the residents.³²⁵

Lastly, the ALJ concluded that DHR properly revoked New Horizon’s license for the Level IV facility.³²⁶ As previously noted, the DHHS Secretary has the authority to deny, suspend, amend, or revoke a license when there is a substantial failure to comply with any licensing requirement or other applicable rules.³²⁷ The ALJ concluded that New Horizon substantially failed to comply with

³¹⁵ *New Horizon Group Home LLC v. N.C. Dep’t of Health and Hum. Servs., Div. of Health Serv. Reg.*, 18 DHR 04694 (Off. of Admin. Hr’gs Aug. 22, 2019) (final decision).

³¹⁶ *Id.*

³¹⁷ NCDHHS_000117.

³¹⁸ *New Horizon Group Home LLC v. N.C. Dep’t of Health and Hum. Servs., Div. of Health Serv. Reg.*, 18 DHR 04694, 19–22 (Off. of Admin. Hr’gs Aug. 22, 2019) (final decision).

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.* at 22.

³²² *Id.* at 20.

³²³ *Id.*

³²⁴ *Id.* at 21.

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ N.C. GEN. STAT. § 122C-24 (a) (2019).

provisions of North Carolina law, and these failures endangered the health, safety, and welfare of the residents of the facility.³²⁸

The ALJ summarized his conclusions, stating:

The violations were systemic. The Facility had only been open less than two months and practically everything went wrong. All issues raised by the Statement of Deficiencies should have been anticipated and addressed prior to opening. To have so much go so wrong in such a short period of time is indicative of an inability to effectively operate this Level of a facility. Admittedly, it is difficult to show corrections have been made when admissions have been stopped and the current clients have been removed. However, the Plan of Corrections is speculative and hypothetical, a forecast of what would be done. All the planning and process for initially opening are, to a large degree, the very same thing—a forecast of how the Facility will be run, and in this instance, it did not come to fruition.³²⁹

New Horizon told the Subcommittee that the company filed a petition for judicial review of the ALJ decision in North Carolina Superior Court.³³⁰ Initially, the company engaged with the Office of the Attorney General of North Carolina (“AG”) to “globally resolve the issues.”³³¹ Specifically, New Horizon submitted a “comprehensive” settlement proposal to the AG’s office under which DHSR would reinstate the Level IV license and New Horizon would then voluntarily relinquish it.³³² New Horizon understood that such an arrangement would allow the company to protect its federal grant and continue to operate.³³³ New Horizon told the Subcommittee that the AG’s office was initially silent on the proposal before communicating a “flat out denial” without providing an explanation or counteroffer.³³⁴ On August 18, 2020, New Horizon filed a complaint against DHSR in federal court.³³⁵ New Horizon informed the Subcommittee that the suit was “voluntarily dismissed without prejudice” and that the company “continues to assess possible avenues to vindicate constitutional rights” it believes DHSR has violated.³³⁶

³²⁸ *New Horizon Group Home LLC v. N.C. Dep’t of Health and Hum. Servs., Div. of Health Serv. Reg.*, 18 DHR 04694, 21 (Off. of Admin. Hr’gs Aug. 22, 2019) (final decision).

³²⁹ *Id.* at 15.

³³⁰ Subcommittee briefing with New Horizon employees (June 25, 2020).

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *New Horizon v. N.C. Dep’t of Health & Human Serv.*, No. 5:20-CV-00441 (E.D.N.C. filed Aug. 18, 2020). New Horizon asserts that DHSR violated the company’s due process and equal protection rights under the U.S. Constitution and North Carolina Constitution, and the company seeks damages, among other remedies, for the loss of the HHS grant. *Id.* at 35.

³³⁶ Letter from New Horizon to Subcommittee staff (Nov. 16, 2020).

b. Other License Revocations

New Horizon filed amended contested case petitions in February 2019 to challenge the revocation of its other four licenses.³³⁷ In August 2019, the ALJ concluded that DHSR improperly revoked these licenses.³³⁸ He noted that while there is “overwhelming evidence that the Level IV facility was a failure, there is no pour-over effect from those facts” that should have affected the other licenses.³³⁹ Although DHSR pointed to a lack of timeliness as justifying the revocations, the ALJ acknowledged that “[a] reasonable inference can be drawn from the evidence that indeed the failures of the Level IV facility did influence the decision-making for the other four facilities.”³⁴⁰

The ALJ also criticized DHSR’s “rigid enforcement” of the state law provision regarding the expiration of licenses and noted that the agency had the authority to issue a provisional license while providing New Horizon with the opportunity to resubmit its applications and checks.³⁴¹ The ALJ concluded that DHSR acted erroneously, failed to use proper procedure, and failed to act as required by law or rule in revoking New Horizon’s other four licenses.³⁴²

V. HHS AWARDED GRANTS TO COMPANIES THAT FAILED TO SECURE AN OPERATING LICENSE

HHS published a funding opportunity announcement for Residential (Shelter) Services for Unaccompanied Children on May 31, 2016.³⁴³ HHS had modified this standing announcement multiple times with additional due dates for fiscal years 2017 and 2018.³⁴⁴ The announcement invited applications for facilities with a minimum capacity of 50 beds and allowed for a combination of basic shelter care, group home, and temporary foster care.³⁴⁵ The announcement required care providers to obtain or become eligible to obtain a license (temporary, provisional, or an equivalent) from the appropriate licensing agency within 60 days of officially

³³⁷ NCDHHS_000118.

³³⁸ *New Horizon Group Home LLC v. N.C. Dep’t of Health and Hum. Servs., Div. of Health Serv. Reg.*, 18 DHR 04694, 2 (Off. of Admin. Hr’gs Aug. 22, 2019) (final decision).

³³⁹ *Id.* at 17.

³⁴⁰ *Id.*

³⁴¹ *Id.* at 22.

³⁴² *Id.* at 23.

³⁴³ U.S. DEP’T OF HEALTH AND HUM. SERVS. ADMIN. FOR CHILD. AND FAM., STANDING ANNOUNCEMENT FOR RESIDENTIAL (SHELTER) SERVICES FOR UNACCOMPANIED CHILDREN, HHS-2017-ACF-ORR-ZU-1132, https://ami.grantsolutions.gov/files/HHS-2017-ACF-ORR-ZU-1132_2.pdf.

³⁴⁴ *Id.*

³⁴⁵ U.S. DEP’T OF HEALTH AND HUM. SERVS. ADMIN. FOR CHILD. AND FAM., STANDING ANNOUNCEMENT FOR RESIDENTIAL (SHELTER) SERVICES FOR UNACCOMPANIED CHILDREN 3, HHS-2017-ACF-ORR-ZU-1132, https://ami.grantsolutions.gov/files/HHS-2017-ACF-ORR-ZU-1132_2.pdf.

receiving the award.³⁴⁶ As with other funding opportunity announcements, HHS did not require applicants to disclose previous disciplinary actions taken by state or local governments.³⁴⁷

VisionQuest applied to four funding opportunity announcements and received five grant awards from HHS for seven facilities. VisionQuest, however, failed to obtain a license to operate five of these new facilities.³⁴⁸ Similarly, New Horizon also applied to a funding opportunity announcement and received a grant award for a facility in North Carolina; however, the company failed to obtain a license to operate this facility, which ultimately resulted in ORR terminating the grant.³⁴⁹

The Subcommittee reviewed several grant applications from VisionQuest and New Horizon, as well as the materials ORR and ACF used to make decisions on the applications. The sections below describe these decisions and the difficulties both organizations faced in obtaining operating licenses for their facilities. Ultimately, four proposed VisionQuest facilities and the proposed New Horizon facility failed to open.

A. VisionQuest Failed to Obtain Operating Licenses for Five Facilities after Receiving Grants from HHS

1. HHS Awarded Five Grants Totaling More Than \$50 Million to VisionQuest for Seven Facilities

VisionQuest submitted an application in response to the funding opportunity announcement that closed on June 29, 2018.³⁵⁰ The application proposed a staff secure facility in Philadelphia, Pennsylvania at VisionQuest's 5201 Old York Road facility.³⁵¹ VisionQuest referenced the New Directions program previously located at this facility, but the company did not disclose that Philadelphia DHS had transferred all children out of the facility after substantiating allegations that staff had encouraged fights among residents.³⁵² In fact, VisionQuest did not provide any explanation for why the New Directions program closed down, nor did the

³⁴⁶ U.S. DEP'T OF HEALTH AND HUM. SERVS. ADMIN. FOR CHILD. AND FAM., STANDING ANNOUNCEMENT FOR RESIDENTIAL (SHELTER) SERVICES FOR UNACCOMPANIED CHILDREN 18, HHS-2017-ACF-ORR-ZU-1132, https://ami.grantsolutions.gov/files/HHS-2017-ACF-ORR-ZU-1132_2.pdf.

³⁴⁷ U.S. DEP'T OF HEALTH AND HUM. SERVS. ADMIN. FOR CHILD. AND FAM., STANDING ANNOUNCEMENT FOR RESIDENTIAL (SHELTER) SERVICES FOR UNACCOMPANIED CHILDREN, HHS-2017-ACF-ORR-ZU-1132, https://ami.grantsolutions.gov/files/HHS-2017-ACF-ORR-ZU-1132_2.pdf.

³⁴⁸ See *infra* Part V.A.

³⁴⁹ See *infra* Part V.B.

³⁵⁰ PSIORR_0001097-1155; PSIORR_0002635. VisionQuest applied to funding opportunity announcement HHS-2017-ACF-ORR-ZU-1133. *Id.*

³⁵¹ PSIORR_0001104.

³⁵² PSIORR_0001102.

application require the company to do so.³⁵³ VisionQuest concluded its application with the following:

The proposed program will ensure positive outcomes for [unaccompanied children] by providing them with support systems and safe environments. Overall, VisionQuest is an ideal organization to provide services to UC, because of its long-standing history providing these and similar services across the country; its experience working with evidence-based models; and its long-term, high quality work in the State of Pennsylvania.³⁵⁴

The reviewing panel awarded a score of 83 (out of 100) to the VisionQuest application.³⁵⁵ ORR did not indicate a cutoff score for this batch of applications but ultimately recommended awarding \$5,330,869 in grant funding to VisionQuest for the Old York Road facility.³⁵⁶ Then-ORR Director Scott Lloyd issued a memorandum to the Director of OGM on September 14, 2018 recommending approval of several grants, including a grant to VisionQuest.³⁵⁷ The Acting Director of OGM provided her approval on September 19, 2018.³⁵⁸

VisionQuest also submitted four applications in response to the funding opportunity announcement that closed on May 9, 2019.³⁵⁹ The applications proposed six facilities: one in New Mexico, two in California, one in Arizona, and two in Texas.³⁶⁰ The respective panels awarded scores of 93.33, 91.33, 90.33, and 82.33 to these applications.³⁶¹ After conducting its internal review of the panel scores, ORR determined that the cutoff score for this batch of applications was 60 out of 100.³⁶² ORR recommended awarding \$2,880,254 in grant funding for the facility in New Mexico, \$24,727,703 for the facilities in California, \$2,851,919 for the facility in Arizona, and \$14,587,384 for the facilities in Texas.³⁶³ Jonathan Hayes, the Acting ORR Director, issued an undated memorandum to the Director of Family Protection and Resilience recommending approval of several grant applications, including all four VisionQuest applications listed in an Excel

³⁵³ *Id.*

³⁵⁴ PSIORR_0001155.

³⁵⁵ PSIORR_0002635.

³⁵⁶ PSIORR_0002632–33, 0002635.

³⁵⁷ PSIORR_0002632–33.

³⁵⁸ *Id.*

³⁵⁹ PSIORR_0002627–28.

³⁶⁰ *Id.*; Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

³⁶¹ PSIORR_0002627–28.

³⁶² PSIORR_0002626.

³⁶³ PSIORR_0002627–28.

spreadsheet included with the memorandum.³⁶⁴ The Director of Family Protection and Resilience provided her approval on July 15, 2019.³⁶⁵

2. Five VisionQuest Facilities Failed to Obtain an Operating License and Will Not Open

Five planned facilities by VisionQuest that received ORR grant funding will not open because local governments denied VisionQuest operating licenses. The Deputy Director for Children’s Programs told the Subcommittee that the volume of UACs and media reports of influx shelters have played a role in recent local political opposition to UAC facilities.³⁶⁶ For example, ORR ideally could build facilities in North Carolina and Georgia, but there are “patches all over the country of local governments putting up barriers for ORR to be there.”³⁶⁷ Accordingly, the proposed VisionQuest facilities in Philadelphia, California, and Texas failed to obtain an operating license. VisionQuest will not obtain the necessary zoning permit for the Philadelphia facility and is ineligible to receive a license without the permit.³⁶⁸ City ordinances prohibit the two California facilities from opening, which makes them ineligible to obtain a license to operate.³⁶⁹ Similarly, the Texas facilities failed to obtain zoning approval from local officials.³⁷⁰

a. The Philadelphia Facility

The Philadelphia VisionQuest facility was subject to litigation after HHS awarded the grant to the company in 2018. In 2010, the Philadelphia Zoning Board of Adjustments (“ZBA”) granted a zoning variance to OYR Realty Partners (“OYR”), the company that owned the building that previously housed VisionQuest’s 5201 Old York Road programs.³⁷¹ The zoning variance allowed the property to operate as a “[d]iagnostic, treatment, educational, and...residential facility for 145 residents between the ages of 13 and 18” who are “not under the jurisdiction of any court.”³⁷² VisionQuest leased the property that is now known as the Grace Dix Center from OYR, and it announced its plan to reopen the property as a new staff secure facility for UACs shortly after entering into the contract with HHS.³⁷³

³⁶⁴ PSIORR_0002625–26.

³⁶⁵ *Id.*

³⁶⁶ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

³⁶⁷ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

³⁶⁸ *See infra* Part V.A.2.a.

³⁶⁹ *See infra* Part V.A.2.b.

³⁷⁰ *See infra* Part V.A.2.c.

³⁷¹ *VisionQuest v. Philadelphia Zoning Board of Adjustment*, No. 19042158, 1 (Pa. Ct. Com. Pl Philadelphia County 2019).

³⁷² *Id.*

³⁷³ *Id.*

On January 23, 2019, the Philadelphia Department of Licenses and Inspections determined that the zoning variance did not permit the company to house UACs at the Grace Dix Center.³⁷⁴ VisionQuest immediately appealed the decision to the Philadelphia ZBA.³⁷⁵ On April 3, 2019, the Philadelphia ZBA, in denying VisionQuest’s appeal, explained that the zoning variance did not permit the housing of children under the jurisdiction of federal immigration courts.³⁷⁶

On April 9, 2019, VisionQuest appealed to the Court of Common Pleas of Philadelphia County.³⁷⁷ On October 31, 2019, the Court of Common Pleas issued a final order ruling in VisionQuest’s favor.³⁷⁸ On November 4, 2019, the City appealed the court’s final order to the Commonwealth Court of Pennsylvania, which triggered an automatic stay of the lower court’s decision.³⁷⁹ VisionQuest executives told the Subcommittee that the company has ceased all litigation efforts because they believe the appeals process could take up to several years to complete.³⁸⁰ On October 19, 2020, VisionQuest, OYR, and the City of Philadelphia entered into a settlement agreement.³⁸¹ The agreement allows VisionQuest, without obtaining a new zoning permit, to utilize the property as a residential facility for dependent adolescents, but prohibits use of the property as a facility for UACs and children adjudicated delinquent.³⁸²

Officials from the Philadelphia Law Department told the Subcommittee that nothing prevented VisionQuest from seeking a new zoning variance for the staff secure facility.³⁸³ VisionQuest executives told the Subcommittee that they declined to seek a new variance because this action would have required a lengthier process and, more importantly, would have damaged the company’s legal position and ability to care for UACs at the Philadelphia facility.³⁸⁴

³⁷⁴ *VisionQuest v. Philadelphia Zoning Board of Adjustment*, No. 19042158, 2 (Pa. Ct. Com. Pl Philadelphia County 2019).

³⁷⁵ *Id.*

³⁷⁶ Findings of Fact and Conclusions of Law of the Philadelphia Zoning Board of Adjustment 12, No. 01351.

³⁷⁷ *VisionQuest v. Philadelphia Zoning Board of Adjustment*, No. 19042158, 3 (Pa. Ct. Com. Pl Philadelphia County 2019).

³⁷⁸ *VisionQuest v. Philadelphia Zoning Board of Adjustment*, No. 190401351 (Pa. Ct. Com. Pl Philadelphia County 2019).

³⁷⁹ *In re: Appeal of VisionQuest*, Brief for Appellant City of Philadelphia 15, No. 1692 CD 2019.

³⁸⁰ Briefing with VisionQuest (Aug. 5, 2020).

³⁸¹ *In re: Appeal of VisionQuest*, Settlement Agreement and Release, No. 1692 CD 2019 (Oct. 19, 2020).

³⁸² *Id.* at 3.

³⁸³ Briefing with Philadelphia Law Dep’t (July 16, 2020).

³⁸⁴ Briefing with VisionQuest (Aug. 5, 2020). According to VisionQuest, the City could have denied a new variance at its discretion, leaving the company with a limited legal basis, if any, for appealing the decision. In contrast, an appeal of the scope of the variance VisionQuest had already used for the care of non-UAC children created a significantly stronger legal position for the company. Statement from VisionQuest to Subcommittee staff (Nov. 18, 2020).

During the litigation, HHS placed VisionQuest on a funds restriction.³⁸⁵ HHS officials also told the Subcommittee that the Philadelphia program would not continue into its third year.³⁸⁶ VisionQuest received \$5,330,869 in funding from HHS for the first year of the grant and \$3,152,563 for the second year.³⁸⁷ VisionQuest has appealed the notice of discontinuation for this grant.³⁸⁸ As of the date of this report, HHS is finalizing a disallowance letter to VisionQuest.³⁸⁹

b. The California Facilities

VisionQuest planned to operate two California facilities in Arleta and Hemet.³⁹⁰ The two proposed VisionQuest facilities in California have also faced zoning and licensing issues that will prevent them from opening.

VisionQuest proposed one facility in Arleta, California, which is in the City of Los Angeles.³⁹¹ The company selected a vacant location that previously served as an assisted living facility and a drug rehabilitation facility.³⁹² VisionQuest executives told the Subcommittee that the company first met with a local city councilmember on August 20, 2019 to discuss using the building as a shelter facility for migrant children.³⁹³ After hearing no objections from the councilmember, VisionQuest met with her chief of staff, who encouraged the company to meet with two neighborhood associations.³⁹⁴ VisionQuest subsequently met with these associations and received no feedback on its proposal.³⁹⁵ The company proceeded to meet with the local zoning planning office, which scheduled a decision meeting for the end of December 2019.³⁹⁶

VisionQuest believes that subsequent news coverage regarding a potential “detention center” in the city led to a two-year ordinance that prohibited detention centers in Los Angeles.³⁹⁷ VisionQuest executives stated that the interim ordinance would prohibit the implementation of a facility housing migrant children until the city council passed an official prohibition.³⁹⁸ VisionQuest decided to halt operations

³⁸⁵ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

³⁸⁶ Email from HHS to Subcommittee staff (May 28, 2020).

³⁸⁷ Email from HHS to Subcommittee staff (July 27, 2020).

³⁸⁸ *Id.*

³⁸⁹ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Oct. 1, 2020).

³⁹⁰ Email from HHS to Subcommittee staff (May 28, 2020).

³⁹¹ Briefing with VisionQuest (Aug. 5, 2020).

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*

at this site and proposed alternative locations to ORR that did not require approval for a zoning permit.³⁹⁹

VisionQuest also proposed a facility in Hemet, California.⁴⁰⁰ This location previously served as an assisted living facility, and VisionQuest believed it met all ORR facility requirements and was properly zoned.⁴⁰¹ In August 2019, VisionQuest met with the Hemet city planner for approval, but he did not agree that the building was properly zoned.⁴⁰² VisionQuest stated that it began making necessary adjustments to the property and fielded numerous requests for information from the planning board.⁴⁰³ VisionQuest believes the planning board “slow-rolled” the process until the city adopted an ordinance prohibiting the facility.⁴⁰⁴ Once again, the company halted operations and proposed alternative locations to ORR for the facility.⁴⁰⁵

On October 20, 2019, HHS placed this grant on funds restriction, which restricted the expenditure of remaining year 1 funds without prior approval.⁴⁰⁶ HHS declined to move the Arleta and Hemet facilities to an alternative location and decided against approving funding for the second year of the grant.⁴⁰⁷ VisionQuest received \$12,363,852 in funding from HHS for the first year of the grant and has appealed the notice of discontinuation it later received from HHS.⁴⁰⁸ HHS requested documentation of expenditures for both of the proposed California facilities to confirm that VisionQuest expended grant funds in a manner consistent with federal regulations and the terms of the grant award.⁴⁰⁹

c. The Texas Facilities

Two Texas facilities VisionQuest planned to operate in San Antonio and Universal City have also faced zoning and licensing issues that will prevent them from opening.

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ Statement from HHS to Subcommittee staff (Nov. 17, 2020).

⁴⁰⁷ Email from HHS to Subcommittee staff (May 28, 2020). VisionQuest explained that when it became clear that local officials were denying minor zoning requests, it also requested to move proposed shelters in California to other available qualified real estate that did not require zoning hearings. According to the company, ORR denied these requests without an explanation. Briefing with VisionQuest (Aug. 5, 2020).

⁴⁰⁸ Email from HHS to Subcommittee staff (July 27, 2020).

⁴⁰⁹ *Id.*

For its proposed San Antonio ORR shelter, the company selected a recreation center owned by the Second Baptist Church.⁴¹⁰ VisionQuest stated that the church had a strong desire to help children, and the company and the church met jointly with a local city councilmember on August 28, 2019.⁴¹¹ VisionQuest stated that it received approval from the councilmember and scheduled a meeting on September 10, 2019 with neighborhood associations.⁴¹² VisionQuest executives told the Subcommittee that they received no pushback from the neighborhood associations and even received letters of support for the facility.⁴¹³

According to VisionQuest, a Bexar county commissioner intervened in late September 2019 and argued against the implementation of the facility.⁴¹⁴ VisionQuest met with city councilmembers throughout October 2019 and appeared before the city zoning commission.⁴¹⁵ VisionQuest executives told the Subcommittee that the commission denied their zoning permit.⁴¹⁶ VisionQuest stated that the San Antonio city council followed the decision of the zoning commission and similarly denied its permit request.⁴¹⁷ VisionQuest informed ORR of these developments and again proposed an alternative location.⁴¹⁸

For its proposed Universal City facility, VisionQuest selected a vacant school building and met with the city manager for Universal City at the end of August 2019 to discuss the permit process.⁴¹⁹ VisionQuest executives told the Subcommittee that the city manager did not want the building to remain vacant and worked to help the company meet zoning requirements.⁴²⁰ According to VisionQuest, the city manager spoke with ORR Director Hayes to understand the difference between a detention center and a shelter facility.⁴²¹

The company also appeared before the Universal City zoning board and presented its plan.⁴²² VisionQuest executives stated that the zoning commissioners rejected the VisionQuest plan.⁴²³ The company informed ORR and proposed alternative locations for the facility.⁴²⁴

⁴¹⁰ Briefing with VisionQuest (Aug. 5, 2020).

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ *Id.*

On October 20, 2019, HHS placed this grant on funds restriction, which restricted the expenditure of remaining year 1 funds without prior approval.⁴²⁵ HHS officials told the Subcommittee that VisionQuest notified ORR in mid-December 2019 that the company would not obtain the necessary zoning approval.⁴²⁶ HHS declined to move either facility to an alternative location and issued a notice of discontinuation for the grant.⁴²⁷ VisionQuest received \$7,293,692 in funding from HHS for the first year of the grant and later appealed the notice of discontinuation.⁴²⁸ HHS requested documentation of expenditures to confirm that VisionQuest expended grant funds in a manner consistent with federal regulations and the terms of the grant award.⁴²⁹

3. Two VisionQuest Facilities in Arizona Plan to Open at Full Capacity

Proposed VisionQuest facilities in New Mexico and Arizona have also faced licensing issues, but these facilities have a better prospect of opening in some form. HHS officials told the Subcommittee that the proposed New Mexico facility has since relocated to Benson, Arizona.⁴³⁰ The facility planned to open with a 60-bed capacity on July 15, 2020, but the COVID-19 pandemic delayed this opening.⁴³¹ On August 28, 2020, VisionQuest received a license to operate with a 48-bed capacity.⁴³²

The other new Arizona facility, located in Tucson, sought to obtain a license to operate a facility with 50 beds and initially faced licensing challenges.⁴³³ In January 2020, the facility obtained a license to operate with a 20-bed capacity.⁴³⁴ HHS partially withheld funding for this facility and stated that delays for the

⁴²⁵ Statement from HHS to Subcommittee staff (Nov. 17, 2020).

⁴²⁶ Email from HHS to Subcommittee staff (May 28, 2020).

⁴²⁷ *Id.*; Email from HHS to Subcommittee staff (July 27, 2020). As with its proposed shelters in California, VisionQuest explained that it requested to move proposed shelters in Texas when local officials began denying zoning requests. According to the company, ORR also denied these requests without an explanation. Briefing with VisionQuest (Aug. 5, 2020).

⁴²⁸ Email from HHS to Subcommittee staff (July 27, 2020).

⁴²⁹ *Id.*

⁴³⁰ Email from HHS to Subcommittee staff (May 19, 2020). VisionQuest executives told the Subcommittee the move was necessary because New Mexico Governor Michelle Lujan Grisham “prohibited detention facilities in the state.” Briefing with VisionQuest (Aug. 5, 2020). The Subcommittee did not confirm this assertion but notes that state legislators in New Mexico proposed a bill in December 2019 to ban private immigration detention centers. *See Bill Would Ban Private Immigration Detention in New Mexico*, ASSOC. PRESS (Dec. 23, 2019), <https://www.usnews.com/news/best-states/new-mexico/articles/2019-12-23/bill-would-ban-private-immigration-detention-in-new-mexico>.

⁴³¹ Email from HHS to Subcommittee staff (July 27, 2020).

⁴³² Statement from HHS to Subcommittee staff (Nov. 17, 2020).

⁴³³ Email from HHS to Subcommittee staff (May 19, 2020).

⁴³⁴ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

remaining licensed beds were also due to the COVID-19 pandemic.⁴³⁵ In June 2020, VisionQuest received a license to operate with a 50-bed capacity.⁴³⁶

B. New Horizon Failed to Obtain an Operating License After Receiving a Grant Award from HHS

1. HHS Decided to Award a Grant to New Horizon for Almost \$8 Million in March 2019

On October 19, 2018, New Horizon began preparing an application in response to the funding opportunity announcement and submitted the application on November 25, 2018.⁴³⁷ New Horizon’s application did not disclose that North Carolina authorities had revoked the operating license for its Level IV residential facility just five months prior in July 2018.⁴³⁸ According to New Horizon executives, the company was not concerned that the revocation of the Level IV license would affect its ability to obtain a license for the new shelter facility because it planned to use its existing Level III license.⁴³⁹ The company was also confident it would prevail in its appeal of the Level IV license revocation.⁴⁴⁰

The application review panel awarded a score of 77 to New Horizon’s application.⁴⁴¹ After conducting its internal review of the panel scores, ORR determined that the cutoff score for this batch of applications was 50 out of 100.⁴⁴² ORR recommended awarding \$7,969,607 in grant funding to New Horizon.⁴⁴³

Acting Director Hayes issued a memorandum to Lynn Johnson, the Assistant Secretary for ACF, in March 2019 recommending approval of several grants, including for New Horizon.⁴⁴⁴ The memorandum stated, “ORR requires this modality of care due to the need for shelter services in NC.”⁴⁴⁵ The Deputy Director for Children’s Programs told the Subcommittee that ORR wanted to build a footprint in North Carolina because it is a “high release point”—an area in close proximity to placements with sponsors for migrant children—and, at the time, only had long-term foster care facilities.⁴⁴⁶ ORR also sought to enable children to

⁴³⁵ Email from HHS to Subcommittee staff (May 19, 2020).

⁴³⁶ Statement from HHS to Subcommittee staff (Nov. 17, 2020).

⁴³⁷ Subcommittee briefing with New Horizon employees (June 25, 2020); PSIORR_0001922–23; PSIORR_0002621. *See also* PSIORR_0001922–2046.

⁴³⁸ PSIORR_0001922–2046.

⁴³⁹ Subcommittee briefing with New Horizon employees (June 25, 2020).

⁴⁴⁰ *Id.*

⁴⁴¹ PSIORR_2653–64.

⁴⁴² PSIORR_0002619.

⁴⁴³ PSIORR_0002621.

⁴⁴⁴ PSIORR_0002617–20.

⁴⁴⁵ PSIORR_0002619.

⁴⁴⁶ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

maintain close contact with family and potential sponsors in the area.⁴⁴⁷ No other applicants in this batch of applications proposed a shelter facility in North Carolina.⁴⁴⁸ The Assistant Secretary provided her approval on March 14, 2019.⁴⁴⁹

2. The North Carolina Division of Social Services Denied New Horizon’s License Application in July 2019

New Horizon told the Subcommittee that it understood that the new shelter facility that received funding from ORR only required a Level I license.⁴⁵⁰ Since the requirements for a Level III license in North Carolina exceed the requirements for a Level I license, the company planned to use its existing Level III license for the new shelter facility.⁴⁵¹ As noted above, however, DHSR revoked all of New Horizon’s other licenses in January 2019, and the ALJ did not issue a ruling reversing the denial until August 2019.⁴⁵² New Horizon executives explained that the absence of a license for the new facility both delayed the county-level inspection process and led the company to apply for a new Level I license from DSS.⁴⁵³

New Horizon’s CEO hand-delivered a completed application to the DSS office on July 17, 2019.⁴⁵⁴ The application is dated May 6, 2019.⁴⁵⁵ The DSS began an initial application review, which included a web-based search of the NC DHHS Provider Penalty Tracking Database.⁴⁵⁶ The database indicated that DHSR previously took “negative licensure action” against New Horizon.⁴⁵⁷ The DSS contacted DHSR, and the agency confirmed that it had issued the Type A1 Penalties, summary suspension, and license revocation discussed above.⁴⁵⁸

On July 31, 2019, the DSS Deputy Director for Child Welfare Services issued a letter of denial to New Horizon.⁴⁵⁹ The letter acknowledged that New Horizon had appealed the administrative actions from DHSR.⁴⁶⁰ Additionally, the letter stated that if the NC OAH upheld the license or any of the penalty assessments,

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.*

⁴⁴⁹ PSIORR_0002620. New Horizon told the Subcommittee that the company received the notice of award on May 3, 2019. Letter from New Horizon to Subcommittee staff (Nov. 16, 2020).

⁴⁵⁰ Subcommittee briefing with New Horizon employees (June 25, 2020).

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ *Id.*

⁴⁵⁴ *Id.*; Briefing with N.C. Dep’t of Health and Hum. Servs. (May 18, 2020); NCDHHS_014–033.

⁴⁵⁵ NCDHHS_014.

⁴⁵⁶ Briefing with N.C. Dep’t of Health and Hum. Servs. (May 18, 2020); NCDHHS_011.

⁴⁵⁷ Briefing with N.C. Dep’t of Health and Hum. Servs. (May 18, 2020).

⁴⁵⁸ Briefing with N.C. Dep’t of Health and Hum. Servs. (May 18, 2020); NCDHHS_012.

⁴⁵⁹ NCDHHS_010–013.

⁴⁶⁰ NCDHHS_012.

North Carolina law would prohibit the licensure of a new facility.⁴⁶¹ The letter also indicated that New Horizon could appeal the denial within 60 days.⁴⁶²

3. A North Carolina ALJ Upheld the License Denial, Eliminating the Possibility of the New Horizon Facility Opening

On September 30, 2019, New Horizon filed a contested case petition with the NC OAH challenging the denial of the Level I license application.⁴⁶³ On November 5, 2019, NC DHHS filed a motion for summary judgment.⁴⁶⁴ The ALJ concluded that DSS was required to deny New Horizon’s license application at the time and did not exceed its authority.⁴⁶⁵ Additionally, the opinion noted that the ALJ hearing the appeal of the penalty assessments and the license revocation had since upheld those actions.⁴⁶⁶ As a result, on January 28, 2020, the ALJ granted the motion for summary judgment from NC DHHS.⁴⁶⁷ NC DHHS officials told the Subcommittee that New Horizon did not appeal to North Carolina Superior Court, and the company has no further appeals available.⁴⁶⁸

4. ORR Learned of New Horizon’s Licensing Issues from a Congressional Inquiry, 14 Months after the Company’s Level IV License Revocation

HHS officials told the Subcommittee that ORR learned of New Horizon’s licensing issues from a congressional inquiry that cited a news article.⁴⁶⁹ The Subcommittee identified local news articles regarding the license denial published between July 31 and August 8, 2019—14 months after DHSR revoked New Horizon’s license for the Level IV facility.⁴⁷⁰ During this time, the NC DHHS Provider Penalty Tracking Database, including DHSR facility reports, was publicly available, and NC DHHS told Subcommittee staff that the agency makes additional

⁴⁶¹ *Id.*

⁴⁶² NCDHHS_013.

⁴⁶³ NCDHHS_003; *New Horizon Group Home LLC v. N.C. Dep’t of Health and Hum. Servs.*, 19 DHR 05406, 3 (Off. of Admin. Hr’gs Jan. 28, 2020) (final decision summary judgment for respondent).

⁴⁶⁴ *New Horizon Group Home LLC v. N.C. Dep’t of Health and Hum. Servs.*, 19 DHR 05406, 1 (Off. of Admin. Hr’gs Jan. 28, 2020) (final decision summary judgment for respondent).

⁴⁶⁵ *Id.* at 4–7.

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.* at 7.

⁴⁶⁸ Briefing with N.C. Dep’t of Health and Hum. Servs. (May 18, 2020).

⁴⁶⁹ Email from HHS to Subcommittee staff (May 15, 2020).

⁴⁷⁰ Tyler Dukes *et al.*, *Unlicensed NC Company with Troubled History Gets \$4M to House Migrant Children*, WRAL (July 31, 2019), <https://www.wral.com/unlicensed-nc-company-with-troubled-history-gets-4m-to-house-migrant-children/18513234>; Patrick Michels *et al.*, *N.C. Shut down a Group Home Last Year. The U.S. Just Gave it a Contract to House Migrant Children*, REVEAL (July 31, 2019), <https://www.revealnews.org/article/nc-shut-down-a-group-home-last-year-the-us-just-gave-it-a-contract-to-house-migrant-children>; Travis Fain, *State Denies License for Company that Wants to House Migrant Children in NC*, WRAL (Aug. 9, 2019), <https://www.wral.com/state-denies-license-for-company-that-wants-to-house-migrant-children-in-nc/18559928>.

information about a penalty available upon request.⁴⁷¹ HHS also was not aware of New Horizon’s plan to use an existing license for the new shelter facility.⁴⁷² On August 9, 2019, OGM placed New Horizon on a funds restriction, which prohibited the company from drawing down any additional funds.⁴⁷³ By this point, however, New Horizon had already drawn down \$3,984,803 in grant funds from the payment management system.⁴⁷⁴

The Deputy Director for Children’s Programs told the Subcommittee that New Horizon is the first ORR award recipient that could not obtain a license to operate in its state.⁴⁷⁵ She explained that because this was the first shelter facility that ORR attempted to place in North Carolina, ORR “did not have expertise in North Carolina law.”⁴⁷⁶ She also distinguished the problems associated with New Horizon’s past conduct from other instances in which local political opposition created an impediment to licensing for a UAC facility.⁴⁷⁷ Providing an example in the latter category, she explained that a facility in Houston took over eight months to open when ORR believed it could have opened in less than one month absent local concerns.⁴⁷⁸ She also explained that similar examples exist in the District of Columbia, Philadelphia, and San Diego, where applicants have received blanket denials from local authorities irrespective of their history and future prospects.⁴⁷⁹

The Deputy Director for Children’s Programs added that ORR is typically excited to see new applicants, but they were “caught off guard” by New Horizon.⁴⁸⁰ She explained that ORR now pursues greater engagement with the home state government of applicants—including the state licensing body or child welfare agency—before awarding a grant.⁴⁸¹ This engagement will not be part of panel scoring but will instead take place during ORR’s review of panel scores.⁴⁸² ORR will also look internally at adverse actions it has previously taken against an applicant.⁴⁸³

⁴⁷¹ Briefing with N.C. Dep’t of Health and Hum. Servs. (May 18, 2020).

⁴⁷² Email from HHS to Subcommittee staff (July 27, 2020).

⁴⁷³ PSIORR_0002436–37, 0001254.

⁴⁷⁴ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁴⁷⁵ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁴⁷⁶ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁴⁷⁷ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Nov. 25, 2019).

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

⁴⁸² *Id.*

⁴⁸³ *Id.*

5. HHS Has Yet to Recoup Funds from New Horizon

As noted above, New Horizon ultimately received \$3,984,803 from HHS, which is approximately half of the award amount.⁴⁸⁴ OGM orally requested an accounting of expenditures from New Horizon on August 8, 2019 and made a follow-up request on August 15, 2019.⁴⁸⁵ On January 30, 2020, HHS transmitted a pre-disallowance letter to New Horizon due to non-compliance with the terms and conditions of the grant award.⁴⁸⁶ After reviewing financial reports, budgets, spending and obligation schedules, invoices, and receipts, HHS calculated a potential disallowance of \$3,007,991.48.⁴⁸⁷ HHS identified five categories of questioned costs and drawdowns: (1) improvements charged directly to the grant; (2) prepaid expenditures charged directly at the time of prepayment; (3) questioned expenditures; (4) undeterminable and unsupported expenditures; and (5) drawdowns exceeding actual expenditures.⁴⁸⁸

New Horizon provided a detailed listing of all expenditures totaling \$3,073,967.28 and additional support for expenditures not listed in detail totaling \$69,141.43.⁴⁸⁹ After reviewing those documents, HHS transmitted a final disallowance letter to New Horizon on June 8, 2020.⁴⁹⁰ HHS formally disallowed \$3,119,453.69, which included unallowable costs and overdrawn funds.⁴⁹¹ The disallowance letter also indicated that New Horizon drew down the entire \$3,984,803 from the payment management system one week after the funds became available.⁴⁹²

HHS calculated \$2,277,759.40 in unallowable claimed costs, which consisted of expenses without preapproval, unallowable charges, and unsupported expenditures.⁴⁹³ For example, New Horizon spent \$138,214 on fencing and gates around the new facility.⁴⁹⁴ Federal regulations prohibit most capital expenditures without prior written approval of the HHS awarding agency.⁴⁹⁵ In the agency's view, the replacement fence and four other expenditures increased the value of the facility, which qualified them as improvements.⁴⁹⁶ In New Horizon's view, the fencing expenditure and four other expenditures constituted repairs necessary to

⁴⁸⁴ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁴⁸⁵ Email from HHS to Subcommittee staff (May 15, 2020); PSIORR_0001256.

⁴⁸⁶ PSIORR_0002940-46.

⁴⁸⁷ PSIORR_0002940.

⁴⁸⁸ *Id.*

⁴⁸⁹ PSIORR_0002941.

⁴⁹⁰ PSIORR_0002854-2866.

⁴⁹¹ PSIORR_0002854.

⁴⁹² PSIORR_0002855.

⁴⁹³ *Id.*

⁴⁹⁴ PSIORR_0002856.

⁴⁹⁵ 45 C.F.R. § 75.439(b) (2019).

⁴⁹⁶ PSIORR_0002857-58.

meet code regulations for a childcare facility.⁴⁹⁷ On July 19, 2019, New Horizon informed its project officer of the plan to replace the fence, stating, “We are currently in the process of upgrading the current picket and chain link fencing to privacy fencing.”⁴⁹⁸ The disallowance letter, however, stated that New Horizon “did not request and did not receive approval to make this purchase.”⁴⁹⁹

HHS similarly disallowed several other expenditures. New Horizon signed a lease for the facility on June 25, 2019 that required a down payment of \$500,000 at signing, a \$250,000 down payment on January 1, 2020, and \$15,500 in monthly payments.⁵⁰⁰ Federal regulations specify that rental costs are allowable if they are comparable to market conditions and alternatives available in the area.⁵⁰¹ HHS concluded that the down payments were not comparable to terms in other leases.⁵⁰² Additionally, HHS noted that the monthly rent payments included a \$2,000 escrow for capital improvements and were unallowable.⁵⁰³ HHS ultimately disallowed \$1,133,500 of the \$1,199,500 in rent expenditures charged to the grant award.⁵⁰⁴

HHS also stated that New Horizon’s drawdown exceeded actual expenditures by \$841,694.29.⁵⁰⁵ New Horizon believes that certain factors HHS used for determining disallowances seem “subjective,” including the difference between major and minor repairs.⁵⁰⁶ New Horizon filed an appeal of the disallowance decision with the HHS Departmental Appeals Board on July 7, 2020.⁵⁰⁷ Although the process is ongoing, the amount of unallowable costs is now \$2,481,144.37.⁵⁰⁸ The amount of drawdowns exceeding actual expenditures is now \$673,096.68.⁵⁰⁹ As of the date of this report, New Horizon’s appeal of the HHS disallowance letter is before the HHS Departmental Appeals Board for administrative adjudication.⁵¹⁰

VI. HHS HAS IMPLEMENTED CHANGES TO ITS UAC SHELTER GRANT PROCESS

HHS officials told the Subcommittee that OGM has restricted funds for grantees who are eligible for funding but do not yet have licenses since November

⁴⁹⁷ Subcommittee briefing with New Horizon employees (June 25, 2020).

⁴⁹⁸ Letter from New Horizon to Subcommittee staff (Nov. 16, 2020).

⁴⁹⁹ PSIORR_0002857.

⁵⁰⁰ PSIORR_0002859.

⁵⁰¹ 45 C.F.R. § 75.465(a) (2019).

⁵⁰² PSIORR_0002860.

⁵⁰³ PSIORR_0002859–60.

⁵⁰⁴ PSIORR_0002860.

⁵⁰⁵ PSIORR_0002854.

⁵⁰⁶ Subcommittee briefing with New Horizon employees (June 25, 2020).

⁵⁰⁷ Email from New Horizon to Subcommittee staff (July 15, 2020).

⁵⁰⁸ Letter from U.S. Dep’t of Health and Hum. Servs. Admin. For Child. and Fam. to New Horizon re Department Appeals Board Matter A-20-90 (Oct. 16, 2020) (on file with Subcommittee).

⁵⁰⁹ *Id.*

⁵¹⁰ Statement from HHS to Subcommittee staff (Nov. 17, 2020).

2019.⁵¹¹ HHS alerted new grantees of these funding restrictions in their notices of award and instructed them to submit a budget request for the pre-licensing period.⁵¹² This budget request must address pre-staffing needs and funds necessary for obtaining a license.⁵¹³ Once a grantee obtains a license, it must submit a budget within seven business days that would enable the facility to receive children and provide services.⁵¹⁴ Project managers review these budget requests, and negotiations between the grantee and ORR may follow.⁵¹⁵ Once OGM and ORR approve the budget requests, the remaining funds become available.⁵¹⁶

Based on the Subcommittee's investigation, had HHS implemented this restriction sooner, the Department could have avoided disbursing \$32,125,779 in taxpayer funds for facilities that will not open.⁵¹⁷

Beginning in October 2019, ORR began to require applicants to disclose documented state licensing concerns in funding opportunity announcements for UAC shelter facilities.⁵¹⁸ In June and July 2020, ORR published funding opportunity announcements to renew expiring grants for secure, staff secure, therapeutic, and long-term foster care bed capacity.⁵¹⁹ ORR used this opportunity to clarify and expand upon the October 2019 disclosure requirements.⁵²⁰ For example, these funding opportunity announcements required applicants to disclose allegations of abuse or neglect that have been made against them, as well as any denial, suspension, or revocation of an operating license.⁵²¹ This requirement did not include a time period for the licensing issues or allegations of abuse an applicant must report; ORR officials stated that they are working to determine a time period for future applications.⁵²² The 2020 funding opportunity

⁵¹¹ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁵¹² *Id.*; PSIORR_0002950.

⁵¹³ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Apr. 23, 2020).

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ *Id.*; Email from HHS to Subcommittee staff (July 27, 2020). HHS officials explained to the Subcommittee that the grantees drew down a portion of this amount for allowable costs under the grants and that it was reasonable to expect grantees to expend costs associated with obtaining a license during the first year of an award. Statement from HHS to Subcommittee staff (Nov. 17, 2020).

⁵¹⁸ Briefing with policy staff, U.S. Dep't of Health and Hum. Servs. Admin. for Child. and Fam. (Oct. 15, 2020). *See also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-20-609, UNACCOMPANIED CHILDREN: ACTIONS NEEDED TO IMPROVE GRANT APPLICATION REVIEWS AND OVERSIGHT OF CARE FACILITIES 58 (2020).

⁵¹⁹ *Id.*

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² *Id.*

announcements also required applicants to be licensed at the time of application.⁵²³ HHS officials, however, told the Subcommittee that ORR could remove this provision in future announcements if it seeks to expand shelter capacity.⁵²⁴

Since the June and July 2020 announcements, project officers have also engaged with applicants to discuss licensing issues and issues related to allegations of abuse and neglect.⁵²⁵ As part of this new effort to verify the accuracy and completeness of an application, ORR has primarily focused on substantiated allegations of abuse related to the care of children.⁵²⁶ Project officers begin with a “macro look” at an applicant and do not limit their review of allegations to those that allegedly occurred at the specific facilities mentioned in applications.⁵²⁷ They will also engage with state and local government partners to address licensing issues.⁵²⁸ Per HHS policy, project officers, and not panelists conducting the first review of an application, conduct this review.⁵²⁹ In fact, HHS prohibits panelists from seeking “additional outside information on the application or organization” and limits them to the published evaluation criteria in the HHS Grant Review Handbook.⁵³⁰ According to HHS officials, this approach follows standard policy for federal grantmaking.⁵³¹

VII. CONCLUSION

During its investigation, the Subcommittee identified key gaps in the HHS grant process for UAC shelters. These gaps include the Department’s previous failures to vet grant applicants properly or play an active role in ensuring grantees successfully navigate the zoning and licensing process. At a minimum, these failures have resulted in the expenditure of millions of taxpayer dollars that HHS may be unable to recover. By failing to uncover previous adverse government actions against grantees, HHS may have also increased the likelihood of placing UACs in harmful settings.

HHS has begun to implement certain changes since learning of the issues with New Horizon described above. Since October 2019, for example, the

⁵²³ *Id.*

⁵²⁴ *Id.*

⁵²⁵ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Oct. 15, 2020).

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ *Id.*

⁵²⁹ *Id.*

⁵³⁰ U.S. DEP’T OF HEALTH AND HUM. SERVS. ADMIN FOR CHILD. AND FAM., ACF GRANT REVIEW HANDBOOK 8 (on file with Subcommittee); U.S. DEP’T OF HEALTH AND HUM. SERVS. ADMIN FOR CHILD. AND FAM., REVIEWER AND PANEL CHAIRPERSON GUIDANCE FOR ACF GRANT REVIEWS 1 (on file with Subcommittee).

⁵³¹ Briefing with policy staff, U.S. Dep’t of Health and Hum. Servs. Admin. for Child. and Fam. (Oct. 15, 2020).

Department has required disclosure of documented licensing concerns from applicants. Starting with funding opportunity announcements in June and July 2020, the Department has expanded disclosure requirements and has also required—possibly on a temporary basis—that applicants be licensed at the time of application. HHS officials have also increased their involvement in the grantee licensing process. The Department has also worked to recoup expenditures from VisionQuest and New Horizon, although these actions are subject to appeal and a potential reversal from the HHS Departmental Appeals Board. In addition, HHS has taken steps to restrict grant funding for new grantees without an operating license.

HHS should take additional steps to improve the HHS shelter grant process and protect taxpayer dollars. First, the Department should make permanent its current requirement of written disclosure of prior adverse government actions in all future grant applications and should include a time period for actions applicants must disclose. Additionally, the Department should permanently require applicants for UAC shelter grants to be licensed at the time of application. HHS should also proactively research an applicant and continue developing information-sharing practices with state regulatory agencies to ensure a full understanding of an applicant's history prior to award decisions. The Subcommittee will continue its oversight efforts to ensure the implementation of these recommendations and identify additional gaps in the care of the UAC population.