



Margy Waller

06/27/2000 07:02:07 PM

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Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP

cc: Andrea Kane/OPD/EOP, Heather H. Howard/OPD/EOP@EOP, Eric J. Morse/OPD/EOP@EOP

Subject: TANF HPB and child care

Ann: Below is a summary of the current state of play on the question of whether we should/can add a child care measure to the TANF HPB. As you will see at the end of the summary, we have asked OMB to schedule a meeting/conference call for Thursday afternoon with HHS staff to discuss a measure. I asked her to tell them that though we have not made a decision we wanted to know what they could propose IN CASE we wanted to add child care. I think we will need to ask them so hard questions about their concerns and proposals.

Tomorrow (Wednesday) we will meet with Bruce and Barbara to review this and other issues about the bonus and have a follow up call with OMB staff (but not HHS).

See you Thursday - Hope you are having fun!

Child care: A number of commenters suggested adding child care as a work support measure. The final rule does not add it. While the preamble provides some explanation related to problems developing a measure - it also attempts to distinguish between child care as a work support and food stamps and Medicaid/SCHIP. We feel strongly that this is the wrong approach. This administration has put too much emphasis on recognizing the need for child care - especially for low-income workers to be undercut by a weak argument in a final rule's preamble.

Ann O'Leary has expressed serious concern about the reaction to a final rule that includes bonuses only for FS and Medicaid/SCHIP. We plan to have a further conversation with HHS staff about the feasibility of developing a measure. For example, HHS has already developed a data source for the percentage of eligible children who are served in CCDF - and released it in a report last October. There are some tricky issues:

- * It only counts money transferred into the CCDF, and would not count direct TANF spending - or other state spending on preschool, Head Start, after school etc. [We could permit states to supplement the existing measure with other state spending - but then we would be counting coverage that does not have the same standards as CCDF.]

- * It could encourage states to increase co-pays in order to spread the coverage across more children. [This seems like a stretch - and if they make co-pays too high, families won't be able to use the subsidy, thus reducing the percentage of eligible children covered.]

One other way to deal with 'quality' issues would be to create a process measure that would require a co-pay of no more than 10% of household income, and a 75th percentile payment rate. However, since the process measures have been dropped for the other work support bonuses, it doesn't make sense to add one here. Alternatively, HHS could indicate (as it does regarding the possible impact of separate state programs on work measures) that the Department reserves the right to review the 'equal access to comparable care' standards (co-pays at 10% and the 75th percentile payment rate) and to change

bonuses if the failure to meet these standards seems to be impacting the percentage of children covered.

Bottom line: There is a lot of support for adding child care to the bonus. The question is whether there is a measure that will work. We were not entirely satisfied with our brief conversation with HHS on the problems they identified and plan to schedule a conference call on Thursday for a longer discussion just on this issue.

► **Margy Waller**
06/28/2000 08:14:51 PM
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Record Type: Record

To: Lauren Wittenberg/OMB/EOP
cc: See the distribution list at the bottom of this message
Subject: Re: Child care performance goals 

Questions for the child care measure conference call.

- 1) Why would you expect states to change their co-pays or payment standards in response to a performance bonus on child care? If states did change the co-pays or payment standards wouldn't that reduce the number of children covered, since parents would be unable to use the subsidy?
- 2) Could we use the data/measure that was used for the Access to Child Care Report?
- 3) If so, should states be offered the option of adding data for child care funded through other systems, provided they could show that the other systems meet basic "equal access to care standards" in CCDF? Could this include state funded pre-kindergarten and Head Start expansion?
- 4) Could the "equal access to care" standards be used to impact the bonus if a state failed to meet those requirements (market study less than 2 years old, payments at 75th percentile, co-pays of 10% or less)? This would work in the same way that separate state program data can be used to evaluate work measure bonuses (TANF final rule).
- 5) Did you consider the measure proposed by several commenters: amount of expenditures on child care subsidies divided by the estimated number of children younger than thirteen in families with incomes below 85% of the state median income?
- 6) Many commenters suggested that we measure both absolute performance and improvement. If we have a child care bonus, should we do both (splitting the ten awards between the two measures) or only one of the two?

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Saturday
July 22nd
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Margy Waller

06/28/2000 07:27:22 PM

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Record Type: Record

To: Lauren Wittenberg/OMB/EOP

cc: See the distribution list at the bottom of this message

Subject: Re: Child care performance goals

Questions for the child care measure conference call.

- 1) Why would you expect states to change their co-pays or payment standards in response to a performance bonus on child care? If states did change the co-pays or payment standards wouldn't that reduce the number of children covered, since parents would be unable to use the subsidy?
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Message Copied To: _____

February 4, 2000

Olivia Golden, Assistant Secretary
 U.S. Department of Health and Human Services
 Administration for Children and Families
 Office of Planning, Research and Evaluation
 7th Floor West
 370 L'Enfant Promenade, SW
 Washington, DC 20447.



Children's Defense Fund

Attention: Sean Hurley
 Re: Bonus to Reward States for High Performance

Dear Ms. Golden:

We appreciate the opportunity to comment on the High Performance Bonus regulations proposed in the Federal Register on December 6, 1999. The following are the comments of the Children's Defense Fund (CDF), a private, nonprofit organization dedicated to providing a strong, effective voice for all the children of America.

We have four recommendations: retain the food stamp and Medicaid/CHIP bonuses; create a child care bonus; take account of changes in family economic well-being (possibly as a qualifying condition for one or more other bonuses); and change the way funds are allocated among the bonuses.

I. Retain Food Stamp and Medicaid/CHIP Bonuses

We commend the Department for its general approach to measuring and rewarding food stamp and Medicaid/CHIP participation in sections 270.4(c)-(d) of the notice of proposed rulemaking (NPRM). Access to these services is vital if families are to make a successful transition off TANF. Considerable national, state, and local research has shown that many families are leaving TANF for employment, but are unable to earn steady above-poverty wages. This contributes to substantial levels of hardship and economic crisis among families who are seeking to comply with expectations that they work.

We believe that the NPRM's approach to rewarding food stamps and Medicaid/CHIP participation is statutorily appropriate because improving participation in these programs will substantially advance the TANF program's first goal, to "provide assistance to needy families so that children may be cared for in their own homes" (section 401(a) of PL 104-193). Doing so will also advance TANF's overarching goal of enabling families to support themselves through work and is likely to help families to stabilize their employment. And it recognizes the importance of continuing food stamp and medical coverage as expressed by members of Congress of both parties during debate over the welfare law and by the President in signing it.

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We also commend HHS for establishing qualifying conditions for these bonuses (sections (c)(1) and (d)(1)). States should not be deemed to be performing well if they fail to comply with federal legal requirements for ensuring access to these programs. We feel the specific qualifying conditions in the NPRM represent a bare minimum standard of high performance and, at the very least, should not be weakened. Unless HCFA verifies each state's claims thoroughly, however, we suggest that HHS clarify that merely being deemed to meet these qualifying conditions for the purpose of the High Performance Bonus should not be taken as evidence for any other purpose that the state is actually in compliance with the requirements.

As noted below, we also feel that the amount of funding for these bonus items should be expanded beyond the amounts proposed in the NPRM.

II. Bonus Recommended for Child Care

We are troubled by the absence of a child care measure. Child care, as much as food stamps and medical coverage, is central to the successful movement of low-income families into the workforce.

We therefore strongly recommend that HHS provide two sets of bonuses for states that show success in providing child care services, measured, respectively by:

1. The number of children receiving child care subsidies (under the Child Care and Development Block Grant (CCDBG) and, at state option, other TANF and state-funded child care subsidy programs) expressed as a percentage of the estimated number of children federally eligible for CCDBG; and by
2. The percentage point improvement in this measure, relative to the previous year.

However, to help assure that parents who receive these subsidies can afford child care of adequate quality, a state should only be eligible to compete for either child care bonus if it is paying realistic rates to child care providers. Specifically, we propose that *the state must pay for center-based and family child care at no less than the 75th percentile of market rates based on a market rate survey that is not more than 2 years old*. For states that meet this qualifying condition, we propose that a bonus be awarded to the five states that rank highest on the first measure, and the five states that rank highest on the second measure.

Data for these measures should already exist. Numbers of children participating in CCDBG is already collected. Numbers participating in other child care subsidy programs could be collected, mandatorily or at state option. HHS should also explore the feasibility of allowing states to submit reasonable estimates of participation in non-CCDBG-funded child care, e.g., based on funding data. Numbers of federally eligible children could be estimated from the same Census Bureau decennial and demographic

data referenced in the food stamp participation bonus. Information regarding the status of state market rate surveys (the threshold condition) is already collected by HHS.

Success in assuring child care is an appropriate topic for a high performance bonus. As the Preamble of the NPRM observes, one of the bipartisan guiding principles of the 1996 welfare law was that "[p]arents should receive the child care and the health care they need to protect their children as they move from welfare to work." Moreover, child care policy is firmly in states' control.

Furthermore, work clearly cannot "work" for low-income parents unless states improve their child care services. Most families leaving welfare; as well as those trying to stay off welfare, earn too little to pay the full cost of child care and other necessities such as rent, food, and clothing. Moreover, low-wage jobs are often inflexible: parents who miss work because of inadequate or unstable child care risk losing their jobs.

Child care that satisfies parents is much less likely to interfere with parents' ability to work. Evaluations of GAIN, the job-training program for welfare recipients in California, found that mothers receiving AFDC payments who were worried about the safety of their children and did not trust their child care providers were twice as likely to subsequently drop out of the job-training program as mothers who were satisfied with their child care. More recent research suggests that parents who use non-relative care or other types of formal or center-based care for their pre-school children are employed for longer periods of time than those who rely on relative care.

It is not only the current workforce that is affected by inadequate child care. If we are to build a strong future workforce, young children must have a strong start in order to enter school ready to read and succeed. Older children must have access to safe and supportive environments after school. Reading difficulties in young children can be prevented if children arrive in the first grade with strong language and cognitive skills and the motivation to learn to read, which are needed to benefit from classroom instruction. A high quality child care setting can directly help children to gain these important skills. One recent national study found that quality of child care is a stronger predictor of low-income children's learning than is participation in welfare.¹

Further, without child care assistance, families face considerable hardships that not only affect their economic stability but also their children's well-being. A survey of families on waiting lists for child care assistance in Santa Clara County, California found that more than one-third of parents interviewed earned less than \$10,000 annually. Yet employed parents were spending on average about \$300 a month for care. A similar study of families on the waiting list for child care assistance in Ramsey

¹ When all other observable factors are equal, children in center-based child care score higher on vocabulary tests, children with babysitters fare lower, and children in home-based care score in between. Holding constant child care experiences and other factors, welfare receipt did not lower children's test scores. Hirokazu Yoshikawa, "Welfare Dynamics, Support Services, Mothers' Earnings, and Child Cognitive Development: Implications for Contemporary Welfare Reform" *Child Development* Vol. 70, No. 3(May/June 1999):779-801.

County, Minnesota, found that one-third of the families were already in debt, and many said they were struggling to meet their basic needs – rent, food, and clothing. Without child care assistance, one-quarter of the families on the waiting list in Hennepin County, Minnesota turned to welfare in order to survive. In Santa Clara, about 40 percent of the families waiting for child care subsidies reported giving up on searching for work since they could not find affordable child care for their children. These waiting list studies also show that children are often deprived of quality care. In Ramsey County, half of the families would change their child care arrangement if they could receive assistance. In Santa Clara County, 42 percent of parents cited shortcomings in quality, with 47 percent reporting that their child only received individual attention sporadically. In Hennepin County, 34 percent of parents were concerned about quality issues – such as lack of age-appropriate programming, too little attention being paid to their children's needs, and unsafe or unclear environments that threatened their children's safety and development.

III. Consider Change in Overall Economic Well-Being

We also are troubled by the absence of any direct measure of overall child or family economic well-being. We feel that success in advancing low-income families' economic well-being – or at least in avoiding deepening destitution for children – constitutes part of the core of "high performance" in any state welfare-to-work effort. In fact, we feel a state cannot reasonably be considered to be performing well in meeting the overall goals of TANF if it allows large numbers of already-poor children and families to fall much deeper into poverty. Families that fall far below the poverty line become, at some point, considerably less able to care for their children at home. States that allow this to happen are failing to meet the first goal of TANF, to "provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives" (section 401(a) of PL 104-193).

One or more such measure of economic well-being could fit into the bonus structure in either of two ways. Improvement in economic well-being could be rewarded through creation of a separate new bonus, paid out of the existing \$200 million bonus pot. Alternately, and at a minimum, avoiding a substantial decline in economic well-being should be seen as a qualifying condition for states to receive some or all of the other high-performance bonuses. The latter approach may be especially appealing to HHS insofar as it addresses the concern, expressed in the preamble to the NPRM, "that inclusion of too many measures would spread the bonus funds too thinly." Making, if not improvement in economic well-being, then at least absence of deterioration in well-being a qualifying condition of receiving other bonuses (particularly employment-related bonuses) is entirely appropriate and consistent with the goals of PRWORA. A state should not be applauded for excellent performance in meeting these statutory goals if it is permitting families to fall into deeper destitution that threatens their ability to care for their children at home by providing sufficient housing, clothing, and other basic needs.

Operationally, a measure of family economic well-being could take various forms. Our preferred approach is to measure year-to-year change in the state's "child poverty gap" – the aggregate dollar amount needed to lift all poor families with children to the poverty line – based on Census Bureau decennial and annual demographic data.

An alternative approach would be to measure each state's change in extreme child poverty (the number or percentage of children below one-half of poverty or some other multiple of the poverty line), based on Census Bureau data. A second alternative would be to look at patterns of income change for recent welfare recipients, based on administrative data. For example, for a sample of TANF recipients in a given year, the measure could be based on the proportion that suffered losses or gains in measured income from one year to the next. (Administrative income measures, using computer matching to assemble data on key income sources such as TANF, employer-reported earnings, and food stamps, are necessarily incomplete but may have some technical advantages for measuring very low levels of income.)

The preamble to the NPRM notes that HHS considered including a bonus related to child poverty. In fact the NPRM recognizes that child poverty deserves special consideration for a bonus because it "relates to two of the goals/purposes of TANF: promoting work and employment and strengthening child and family well-being by assisting needy children in their own homes or in the homes of relatives." The preamble says HHS did not include child poverty for three reasons:

1. "A child poverty measure was duplicative of the requirements in section 413(i) of the Act for States to report on their child poverty rates and take corrective action where any increase in child poverty of five percent or more is attributable to the TANF program in the State.
2. "Improvements in the proportion of families receiving food stamps and increases in employment and earnings both raise family income and thereby contribute to poverty reduction.
3. "Since the official poverty measure does not reflect income sources such as food stamps or EITC, it may not accurately reward State strategies to support working families."

We feel none of these three reasons provides a compelling rationale for HHS to ignore other, more suitable measures of economic well-being in the bonus structure.

First, while section 413(i) does address child poverty, it does not address concerns that *already-poor* families will fall *deeper* into poverty. Since the vast majority of families on TANF are already poor, the child poverty rate will not capture the changing situation of families who are made poorer by TANF changes. Indeed, this is why HHS itself has noted that the basic child poverty rate is not the best measure of

TANF's effects on economic well-being.² The importance of the distinction between the basic child poverty rate and deepening child poverty is highlighted in two studies which find that, since enactment of the welfare law in 1996, the children poverty rate has declined but the number of *extremely* poor children has risen nationwide and the size of the "child poverty gap" has grown.³ Both studies included the value of noncash benefits and found that loss of food stamps contributed substantially to deepening poverty for children. In regulations implementing section 413(i), HHS could choose to address the depth of poverty (counting the value of food stamps); but so far HHS has not issued these regulations. Therefore, section 413(i) does not currently address our concerns about economic well-being.

Second, while the other proposed bonus criteria do address components of economic well-being, they do not sufficiently address concerns about overall family economic well-being as a whole. Indeed, it is all too easy to imagine how a state which satisfied all or most of the other proposed bonus criteria might still, through a variety of TANF policies, cause families to sink into deeper poverty than before. This perverse outcome could occur, for example, if the state pushed many families off the TANF rolls and into very-low-paid jobs – possibly through cajoling by caseworkers, strict work requirements, increased TANF terminations, or heightened administrative barriers to enrolling in TANF. If a certain proportion of the families pushed off TANF retained food stamp and medical coverage; found and kept low-wage jobs; and progressed at a modest percentage rate of wage growth, then the state could satisfy the above-noted criteria regarding food stamps and employment and earnings. Yet affected families could still lose substantially more in TANF benefits than they gained in earnings, and so sink deeper into poverty.

Third, while it is true that the official federal poverty definition fails to include food stamps, the EITC, and other relevant income sources, this is not a reason to ignore economic well-being in the high performance bonus. Instead, HHS could simply choose to employ an alternative poverty definition that included these income sources – as has been recommended by a variety of expert panels and as HHS already does for various analytical purposes at the national level. The required state-level information could be taken from a variety of sources. For example, the same Census Bureau data sources that HHS proposes to use in calculating the food stamp measure could provide the information needed for a "child poverty gap" or "extreme child poverty" measure with no additional burden to the states.⁴

² "AFDC never served more than a fraction of the poor population. Therefore, a measure of extreme poverty (under 50 percent of the poverty level) would be more likely to capture changes caused by changes in TANF than the basic poverty rate." HHS, Summary of the Minutes of the Consultation on Alternative Outcome Measures, July 21, 1999, page 3.

³ Children's Defense Fund, "Extreme Child Poverty Rises Sharply in 1997," available on the internet at www.childrensdefense.org/publications/extremepoverty.pdf, and Center on Budget and Policy Priorities, "Recent Changes in the Impact of the Safety Net on Child Poverty," <http://www.cbpp.org/12-23-99wel.htm>.

⁴ In particular, Census Bureau officials note that the American Housing Survey and its precursor, the Census 2000 Supplementary Survey, ask respondents about income from food

A final potential concern about an economic well-being measure is that measures that focused on the depth of poverty or economic change might reward or penalize states for something that is partly out of their control. There are several responses to this objection. First, this concern is clearly not an overriding principle, since the same objection could be raised against any of the employment and earnings measures that the NPRM proposes to use. Second, survey data suggest that states do have considerable control over the depth of childhood poverty. Just prior to the enactment of TANF, for example, about two-thirds of children's "pre-transfer poverty gap" (\$46 billion out of \$71.5 billion nationwide) was closed by food stamps and public assistance alone,⁵ two programs whose take-up rate is subject to considerable state influence and variation. Finally, if HHS felt that a measure of extreme poverty would be too sensitive to the effects of an economic recession, then it could design a rule that would set aside this criterion in specified situations of rising unemployment or economic distress.

In sum, regardless of the precise measure and approach that HHS adopts, we feel some consideration of overall family economic well-being – perhaps as a qualifying condition for receiving one or more of the other bonuses – is vital and would capture a core aspect of "high performance" that is missing from the other measures.

IV. Re-Allocate the Bonus Funds

Section 270.8 of the NPRM proposes to allocate \$140 million of the total \$200 million available in bonus funds to four measures of employment and earnings, and to give \$20 million apiece to food stamp and Medicaid/CHIP measures. The NPRM notes that HHS is seeking to recognize the importance of work. However, we see no compelling reason for giving so much to the specified measures of employment and earnings. The other measures we discussed above – child care, food stamps, and Medicaid/CHIP – each serve to advance the goals of TANF equally important ways. Stable employment and the self-sufficiency of families in the low-wage workforce depend critically on child care, food stamps, and medical coverage. Further, rewarding participation in these programs means rewarding states for something over which they have clear control. This is not necessarily the case with the proposed measures of employment and earnings, which may be controlled to a greater degree by the private economy. Moreover, bonuses for child care, food stamps, and Medicaid/CHIP are closely tied to the first goal of TANF, to help families care for their children at home.

stamps and housing benefits. Information on the EITC and other tax items could be simulated using the same approach that the Census Bureau already employs with its annual Current Population Survey.

⁵ Data, using a comprehensive definition of poverty, are from HHS/ACF, *Temporary Assistance to Needy Families (TANF) Program* [–] *Second Annual Report to Congress* [–] August 1999, page 73, table 8.2.

Therefore, we urge that \$35 million be allocated to the new child care measures proposed above, \$35 million be allocated for food stamp participation, and \$35 million for Medicaid/CHIP participation.

While we would also strongly support allocating some of the \$200 million for a new economic well-being bonus, we recognize the concern that too many new bonuses might spread existing dollars too thinly. As noted above, therefore, we believe it would be reasonable for HHS to take an alternate approach by considering lack of decline in economic well-being as a qualifying condition of receiving one or more of the other bonuses – perhaps most appropriately, the bonuses for employment and earnings.

Thank you again for the opportunity to comment.

Sincerely yours,



Deborah Weinstein
Director, Family Income Division



Helen Blank
Director, Child Care and
Development Division

FAX COVER



Income Maintenance Branch

Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503



To: Andrea Kanc/Margy Waller/Ann O'Leary

Organization:

Fax Number: 6-7431/6-2878

From: Matthew McKearn

Date/Time:

Number of Pages: Cover + 12

Attached are the relevant child care pages from ACF's FY 2001 performance plan per my e-mail.

Matthew

Income Maintenance Fax Number: (202) 395-0851

Voice Confirmation: (202) 395-4686

HHS Secretarial Initiative: Increase self-sufficiency for low-income families through employment and child support collections.

DATA VERIFICATION AND VALIDATION

States currently maintain information on the necessary data elements for the first five program measures. Some States maintain this data manually, while others use an automated system. All States were required to have a comprehensive, statewide, automated CSE system in place by October 1, 1997. Implementation of these systems, in conjunction with clean up of case data, will improve the accuracy and consistency of reporting.

As part of OCSE's certification of automated systems, their ability to produce valid data will be reviewed. Self-evaluation by States and OCSE audits will provide an on-going review of the validity of data input and the ability of automated systems to produce accurate data. There is a substantial time lag in data availability. Final and accurate data for FY 1998 was available in the early summer of 1999, while data for FY 1999 should be available in the spring of 2000.

The Office of the Inspector General's State Satisfaction Survey was conducted using the standard controls. The Inspector General is an independent auditor of HHS programs.

4. Increase affordable child care

Approach for the Strategic Objective: Increase access to affordable, quality child care for low income, working families.

CHILD CARE: AFFORDABILITY

Program Description, Context, Legislative Intent and Broad Program Goals

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 established the Child Care and Development Fund to provide assistance to working low-income families to achieve and maintain economic self-sufficiency. Funds are block-granted to the States for use in enhancing the overall quality of child care and to help low-income parents purchase child care services needed to support employment. States, through their appointed Lead Agencies, make many of the decisions on how funds will be used and where emphasis will be placed in achieving the over all goals of improving access to quality child care.

The major change created by PROWRA is the requirement for States to serve families through a single, integrated child care system. Three title IV-A child care programs, Aid to Families with Dependent Children (AFDC) including Job Opportunities and Basic Skills Training (JOBS) program, Transitional Child Care (TCC), and At-Risk Child Care (ARCC) have been repealed and replaced by new funding under section 418 of the Social Security Act. All child care funding is now administered under the Child Care and Development Block Grant (CCDBG) Act rules. Existing CCDBG regulations were revised to reflect these changes and were released in July of 1998.

The FY 2001 increase of \$817 million for a total of \$2 billion will be used to expand the Child Care and Development Block Grant (CCDBG) program. This increase will provide quality, affordable child care as a support for low-income working families, essential both to parents' continued employment and children's healthy development and learning.

Access to quality, affordable child care is critical to the achievement of self-sufficiency by welfare clients. Child care subsidies also help the working poor remain self-sufficient. ACF will continue to promote expansion of child care services as a key element in its strategy for helping families achieve economic independence. Doing so will involve working with our partners to increase the supply of child care, to develop measures of, and supports for, child care quality, and to provide information to help parents make sound choices about child care.

In addition, partnerships among providers of child care, Head Start, public and private early childhood education, health, nutrition, mental health and parental employment preparation are essential to meeting the needs of young children and their families. ACF will continue to encourage collaboration at the federal, State and individual program levels to this end.

SUMMARY OF FY 1999 PERFORMANCE

Child Care and Development Fund grantees have many efforts underway to address access to child care for low-income families. As work continues in partnership with States to improve the data collection efforts, a number of indicators, including informal feedback from grantees, show that the number of children served by CCDF is increasing. For example, because some States have reduced the level of parent co-payments required, or have set lower co-payment amounts for the very lowest income families, they are able to increase the number of children served. A number of States indicate having raised their income eligibility standards in an effort to extend child care services to additional families. Other States have initiated new partnerships with the business community and with other early childhood service providers to expand the number of programs that offer child care services that match the hours parents are working or in training. The Child Care Bureau continues to encourage grantees to work toward making child care more affordable and accessible for low income families by offering technical assistance to grantees and information to grantees and the general public about successful initiatives across the country.

Despite this progress, existing resources are inadequate to meet the need for child care assistance. On October 19, 1999, the Secretary of Health and Human Services released a report indicating that nationally, in an average month in 1998, only 1.5 million of the 9.9 million low and moderate-income children eligible for CCDF assistance actually received help through the program—just 15 percent of children eligible under State criteria. The gap between eligibility and receipt of services would be greater if States had chosen to define the eligible population to include all of the low and moderate-income working families that are potentially eligible under Federal law—85 percent of State median income—an estimated 14.7 million children would have been eligible for subsidies in 1998, of whom only 10 percent were served.

Where possible, ACF has used FY 1998 data to establish baselines and projected targets for the Child Care performance measures. An intensive technical assistance effort has been instituted by the Bureau to aid States and Territories in developing high quality data. Due to this effort, the Bureau believes that FY1999 data is the most appropriate baseline on the national level for many of the performance measures, although significant reporting problems remain at the State/Territory level. Child Care and Development Fund grantees were required to submit final program data reports for FY 1999 by December 31, 1999. Performance data for FY 1999 should be available by April 30, 2000. A few of the performance measures will require the establishment of new reporting and/or data gathering methods. The Child Care Bureau intends to address these issues in several ways during FY 2000. Some of the information needed to track state performance is contained in the new FY 2000 and FY 2001 CCDF State Plans. These Plans will be used during FY 2000 to establish baselines. The Bureau also is exploring the addition of items related to performance measures reporting to the State Plan Preprint which is under revision for use in FY 2002 and FY 2003. Data needed for reporting performance on two measures related to child care quality (accreditation of facilities and the awarding of credentials to teaching staff) are available through national awarding/accrediting bodies. Baselines for these measures will be established in FY 2000.

Summary Table

In the performance plan submitted in prior years, ACF identified proxy performance measures that addressed the three goals of the CCDF—affordability, availability, and quality of child care. At that time, ACF indicated that the Child Care Bureau would engage its grantees (the States) as stakeholders in a consensus-building process in FY 1999 to identify the actual measures for future reporting. That process was completed in September 1999 and the current measures listed below replace the proxy measures used as placeholders in previous reports. Working in partnership with the States, in FY 2000 the Child Care Bureau will complete the establishment of baseline data for these new and final performance measures.

Performance Goals	Targets	Actual Performance	Reference
Program Goal: Increase the number of children of low income working families and families in training and education who have access to affordable child care.			Px 60
4a. In FY 2001, increase the number of children served by CCDF subsidies from the 1998 baseline average of 1.5 million served per month to 2.22. (Revised)	FY 01: 2.22 FY 00: 1.92 FY 99: N/A	FY 01: FY 00: FY 99: * FY 98: 1.53	
4b. In FY 2001, increase the percentage of potentially eligible children who receive CCDF subsidies from the FY 1998 baseline of 10% to 11.5%. (New)	FY 01:11.5% FY 00:11% New in 2001 FY 99: N/A	FY 01: FY 00: FY 99: * FY 98: 10%	Px 60

4c. In FY 2001, decrease the average percentage of family income spent in assessed child care co-pay among families receiving CCDF subsidies from the FY 1998 baseline of 6.2% to 5.8%. (Revised)	FY 01: 5.8% FY 00: 5.8% FY 99: N/A	FY 01: FY 00: FY 99: * FY 98: 6.2%	Px 60
4d. In FY 2001, increase the number of slots in state regulated child care settings from the FY 2000 baseline. (Developmental--NOTE: This measure is not limited to subsidized child care slots.)	FY 01: FY 00: New in 2001 FY 99: N/A	FY 01: FY 00: Baseline	Px 61
4e. In FY 2001, increase the number of families working and/or pursuing training/education with support of CCDF subsidies from the FY 1998 baseline of 802,000 to 1.1 million. (New)	FY 01: 1.1 FY 00: 1.0 New in 2001 FY 99: N/A	FY 01: FY 00: FY 99: * FY 98: .802	Px 61
*Availability of Data for FY 1999 Performance Report: FY 1999 Data is due from States December 31, 1999. If all States meet this deadline, FY 1999 Actual Performance will be available by April 30, 2000.			
Total Funding for Child Care Programs (including ELF in FY 01)	FY 01: \$5169.9 FY 00: \$3552.6 FY 99: \$3175.9	Bx: budget just. section Px: page # performance plan	

PERFORMANCE GOALS

The child care program is a recent consolidation under PRWORA of several earlier grant programs. Final regulations were released in July of 1998. ACF began the process of developing child care performance goals and performance outcome, output, and process measures shortly after the final regulations were released and continued to refine the measures throughout FY 1999. The Child Care Bureau discussed the goals and measures in a national conference, via telephone conferences and written communication, and in other meetings with partners in the States, Territories, and Tribes over the past year. The current set of appropriate and achievable program goals and measures was developed through this consensus-building process that incorporated significant opportunities for input from stakeholders. Data for many of the measures is available through existing reports that state grantees submit on an on-going basis. Baselines for these measures have been set with FY 1998 data. A few of the measures remain developmental and the methodology for data collection and reporting must be established during FY 2000.

(Additional child care program goals relating to quality of care may be found under ACF Strategic Objective 5, below.)

While the number and percentage of potentially eligible children receiving subsidized child care (4a) are outputs of the number of budget dollars invested (inputs), these quantities are results-oriented because the availability of child care subsidies directly supports self-sufficiency programs. An adequate supply of child care is an important intermediate stage on the way to improving family economic independence as well as a continuing necessity for sustaining such independence. ACF has also worked to develop outcome measures of both the affordability and the supply of care. One such measure is the co-payment measure (4c), which reflects State efforts in support of families gradually becoming more self-reliant by assuring that child care costs do not consume an excessive share of family

income. Measure 4d is an indicator of the general supply of regulated child care available in the market.

PROGRAM GOAL: Increase the number of children of low income working families and families in training and education who have access to affordable child care.

4a. *FY 2000: Increase the number of children to 1.92 million served by CCDF subsidies from the FY 1998 baseline of average 1.5 million children served per month.*

FY 2001: Increase the number of children to 2.22 million served by CCDF subsidies from the FY 1998 baseline of average 1.5 million children served per month.

4b. *FY 2000: Increase the percentage of potentially eligible children who receive CCDF subsidies to 11 percent from the 1998 baseline of 10%.*

FY 2001: Increase the percentage of potentially eligible children who receive CCDF subsidies to 11.5 percent from the 1998 baseline of 10%.

Data sources: Annual Aggregate Report, ACF-800; Child Care Quarterly Case -Level Report, ACF-801; Child Care Annual Report, ACF-700 (for Tribes only)

The above performance goals directly indicate achievement by counting the average actual number of children receiving services each month. The number served is directly related to the funding provided to the State grantees. This measure also interacts with the measures below on amount of co-pay charged to parents, as well as other State-determined policies such as eligibility criteria and provider payments. If the funding level does not change, additional children can be served only if the States make policy changes—such as increasing the parent co-pay. This measure also interacts with the quality measures under Strategic Objective 5 below since costs associated with increased quality will reduce the number of children receiving services, if funding remains unchanged.

4c. *FY 2000: Decrease to 5.8 percent the average percentage of family income spent in assessed child care co-pay among families receiving CCDF subsidies from the baseline of 6.2% in FY1998.*

FY 2001: Maintain at 5.8 percent the average percentage of family income spent in assessed child care co-pay among families receiving CCDF subsidies.

Data sources: Child Care Quarterly Case-Level Report, ACF-801

The above performance goal indicates the affordability of child care for families served by expressing the out-of-pocket cost as a percentage of family income.

In addition to the issues of whether low-income families can afford child care services, the presence of child care services in the open market is a basic but important indicator of accessibility of services. The following performance goal addresses the availability of regulated child care slots in the market.

- 4d. *FY 2001: Increase the number of slots in state regulated child care setting. (Developmental—Note: This measure is not limited to subsidized child care slots.)***

Data source: Under development. The number of regulated child care slots is being proposed as an optional data element for the annual aggregate ACF-800 data collection. The public comment period for the proposed revisions ends February 21, 2000 at which time it will be sent for OMB approval. The first data collection of this element will occur December 31, 2000.

The following performance goals assess the relationship between access to child care subsidies and parental ability to work or attend training/education leading to greater economic productivity.

- 4e. *FY 2000: Increase the number of families working and/or pursuing training/education with support of CCDF subsidies to 1 million from the FY 1998 baseline of 802,000.***

FY 2001: Increase the number of families working and/or pursuing training/education with support of CCDF subsidies to 1.1 million from the FY 1998 baseline of 802,000.

Data source: Child Care Quarterly Case Level Report, ACF 801, Item #6, Response 1, 2, or 3

OPERATIONAL PROCESSES, SKILLS, TECHNOLOGIES AND RESOURCES

Since the passage of PRWORA, ACF has spent over \$7 million per year in technical assistance to further grantees' ability to increase the accessibility, affordability, and quality of child care. Efforts continue to include systems development, with particular emphasis on helping States meet requirements for reporting and consumer education, assisting them in developing inclusion initiatives (e.g., for children with disabilities), and guidance on building successful linkages between child care programs and programs such as health services, early childhood education and Head Start.

INTERNAL AND EXTERNAL COORDINATION

Quality early childhood programs provide a crucial linkage for comprehensive, healthy child development to prepare children to be successful in school and later in life. Quality programs also provide needed supports to parents who are moving toward self-sufficiency through training and work. In recognition of the importance of comprehensive services, ACF encourages State partners to create linkages between child care and health, family support, early childhood education and other services at the State and community levels. In

addition, ACF continues to collaborate at the federal level in order to facilitate coordination at the community level. To this end, ACF's child care program office continues to work within ACF in coordination with the TANF program, Head Start, and the Administration on Developmental Disabilities. For example, the Child Care and Head Start Bureaus jointly sponsor the QUILT (Quality in Linking Together) project which provides assistance to Head Start and child care grantees on successful ways to form program partnerships. Within HHS, the child care program participates with the Maternal and Child Health Bureau to sponsor the Healthy Child Care America Campaign, aimed at improving the health and safety of child care by creating strong linkages between the child care and health communities. Externally, ACF continues to partner with the Department of Labor's Welfare-to-Work grants program, the States (both individually and through national associations such as the American Public Human Services Association and the National Governors' Association), various national child care associations, and with the research community (e.g., the Child Care Research Consortium, funded by HHS). Special efforts are being made to foster partnerships between the private and the public sector. The Bureau sponsored Partnerships Project provides technical assistance to States and local communities in building coalitions and designing funding strategies involving both public and private entities.

In developing early childhood programs, States and communities craft together resources from a variety of sources, including the Child Care and Development Fund, Head Start, Early Head Start, Social Services Block Grant, Title I, Even Start, USDA Child and Adult Care Food Program, State funded pre-kindergarten programs, other State funding sources, foundations, charities and businesses. Collaboration builds on the strengths of each program and blends them together in a coordinated fashion for the benefit of both children and their families. Collaboration benefits the child by promoting continuity in services from infancy through school-age and benefits the parents by ensuring that early childhood programs support work.

The CCDF State Plans for FY 2000 and FY 2001 contain information concerning state initiatives around collaboration and, to some extent, the results of their initiatives. ACF will be able to report on these efforts in FY 2000 and FY 2001.

DATA VERIFICATION AND VALIDATION

The Federal Child Care Information System collects all aggregate and case-level data required in the statute for the Child Care and Development Fund program. Aggregate State-level data is submitted via the Internet and stored in a database in the Child Care Bureau. All data that is received by the Federal Child Care Information System will be stored in a national data set. Data standards have been set and training and technical assistance has been provided to all States and territories regarding reporting requirements and submission procedures. Those few States that continue to have difficulties in collecting and transmitting required data are receiving additional on-site technical assistance.

The Federal Child Care Information System will collect two sets of child care data: State-level data and case-level data, from the 50 States, the District of Columbia, Puerto Rico and the Territories of American Samoa, the Commonwealth of the Northern Mariana Islands

The objectives and major program areas under this goal are:

5. *Increase the quality of child care to promote childhood development*
 - Child Care: Quality
 - Head Start
6. *Improve the health status of children*
 - Head Start: Health Status
7. *Increase safety, permanency, and well being of children and youth*
 - Child Welfare
 - Developmental Disabilities: Education
 - Developmental Disabilities: Health
 - Youth Programs

5. *Increase the quality of child care to promote childhood development*

Approach for the Strategic Objective: Provide high quality early childhood programs, such as Head Start or accredited child care programs, so that early childhood experiences enhance children's development and school readiness.

CHILD CARE: QUALITY

Program Description, Context, Legislative Intent and Broad Program Goals

In our efforts to break the cycle of poverty and dependency, it is essential to focus both on parents and the upcoming generation. Parents are more likely to succeed in employment and self-sufficiency if they have confidence in their child care arrangements. Beyond issues of health and safety, child care impacts the cognitive, emotional, and social development of children. Research has begun to document the most important early influences on children's development and factors, which contribute to the quality of early child care.

ACF works with State administrators, professional groups, service providers, and others to identify elements of quality and appropriate measures; to inform States, professional organizations, and parents about what constitutes quality in child care; to influence the training of child care workers and accreditation; to improve linkages with health care services and with Head Start, and to otherwise take steps to improve the quality of child care nationally.

Infants and toddlers have been specifically designated by the Assistant Secretary for Children and Families as a priority for attention by all ACF programs. Close cooperation with Early Head Start is underway to address these populations. The second year of funding for the President's Child Care Initiative for working families includes an increase of \$600 million to create the Early Learning Fund, a critical investment in ensuring that our youngest and most vulnerable children—infants, toddlers, and preschoolers—have the chance to learn, to develop fully, and to stay safe. The Early Learning Fund will provide challenge grants to communities (distributed by States) to improve care in a variety of child care settings.

(See also background information under Child Care "Affordability" goal, above)

SUMMARY OF FY 1999 PERFORMANCE

States continue to expand the innovative ways in which they are using quality improvement funds within the CCDF to assure more children are cared for in environments that support their developmental needs. For example, related to an earmark established by Congress to improve care for infants and toddlers, most States are reporting specific initiatives designed to increase training for providers working with infants and toddlers. Many States have established infant-toddler initiatives that include grants and loans to improve quality, recruitment efforts, health consultation for providers, and incentives for providers to become accredited. As compared to 1997 CCDF Plans, States are more likely to report the availability of higher reimbursement rates related to quality, provider grants and loans, and efforts to increase the compensation received by workers in child care.

The Child Care Bureau supports grantees' efforts in this area by developing guidance materials listing successful programs and models for quality improvement activities, and by making information on quality improvement available to grantees and the public through the National Child Care Information Center. The Bureau, in partnership with HHS' Maternal and Child Health Bureau, sponsors the Healthy Child Care America campaign in order to develop and strengthen linkages between child care providers, health professionals, and families, and ultimately to improve the health and safety of children in child care settings. In addition, the Bureau has sponsored national conferences and leadership forums on use of technology to support improved quality in child care, collaboration among early childhood programs, building public/private partnerships and other related topics.

One key strategy for improving the quality of care, as well as its affordability and availability, is to create linkages between CCDF, early childhood programs, and other agencies that provide crucial services to children and families. The Child Care Bureau, through policy and technical assistance, has worked to promote collaboration. In their FY 1997 and FY 1999 CCDF Plans, State Lead Agencies were required to report on their activities to coordinate child care services with other child-serving entities. Below is a summary of these reported activities. The Child Care Bureau will be analyzing collaborative activities reported in FY 2000 and FY 2001 Plans to track progress over time.

In FY 1997 and FY 1999 Plans, 39 States reported that they coordinate with Head Start agencies to provide coordinated child care services, 27 administered or coordinated with the State Head Start Collaboration Project, and 31 coordinated programs, activities, services, and training opportunities with the State Department of Education or Public Instruction. Thirty-two reported coordination with the Department of Health to improve immunization rates, provide training to providers, monitor compliance with health and safety regulations, and improve the child care programs. In addition, 19 States administered or closely coordinated to create statewide Healthy Child Care campaigns or to develop statewide networks for the delivery of health systems through child care programs. Twenty State Lead Agencies said they coordinate directly with tribal communities to improve service delivery to dually eligible children. Thirty-one coordinated with the

TANF agency, 20 with organizations working on school-age care issues, and 23 with the agency administering early intervention programs for children with disabilities.

Summary Table

In the performance plan submitted in prior years, ACF identified proxy performance measures that addressed the three goals of the CCDF—affordability, availability, and quality of child care. At that time, ACF indicated that the Child Care Bureau would engage its grantees (the States) as stakeholders in a consensus-building process in FY 1999 to identify the actual measures for future reporting. That process was completed in September 1999 and the current measures listed below replace the proxy measures used as placeholders in previous reports. Working in partnership with the States, in FY 2000 the Child Care Bureau will complete the establishment of baseline data for these new and final performance measures

Performance Goals	Targets	Actual Performance	Reference
Program Goal: The quality of child care services will improve over time.			Px 67
5a. In FY 2001, increase by 1% the number of child care facilities nationwide that are accredited by a nationally recognized early childhood development professional organization from the FY 1999 baseline.	FY 01: FY 00: FY 99: N/A	FY 01: FY 00: FY 99: Baseline *	
5b. In FY 2001, increase the number of Child Development Associate credentials awarded nationwide from the FY 1999 baseline. (New)	FY 01: FY 00: New in 2001 FY 99: N/A	FY 01: FY 00: FY 99: Baseline *	Px 68
5c. In FY 2001, increase the number of States conducting routine unannounced inspections of regulated providers from the FY 2000 baseline. (New)	FY 01: FY 00: New in 2001 FY 99: N/A	FY 01: FY 00: Baseline *	Px 68
* Availability of FY 1999 Data: Data for these measures are not currently available in that they are not included in required state reports. However, outside sources of the data are being identified and it is expected that FY 1999 performance will set the baseline for 5a and 5b. Data sources are in process of being identified. Data on credentials awarded for FY 1999 is expected to be available by June 1, 2000. Baseline for 5c will be set in FY 2000 through a process of working with the State Lead Agencies for the CCDF to identify State level data sources.			
Total Funding for Child Care including Quality	FY01: \$5169.9 FY00: \$3552.6 FY99: \$3175.9	Bx: budget just. section Px: page # performance plan	

PERFORMANCE GOALS

Under the Child Care and Development Block Grant, a minimum of 4 percent of funds must be used to improve the quality of child care and offer additional services to parents, such as resource and referral counseling regarding the selection of appropriate child care

providers to meet their child's needs. Additional funds are also earmarked for quality improvements.

To improve the health and safety of available child care, many States have provided training, grants and loans to providers, improved monitoring, developed child care worker compensation enhancement projects, and other innovative programs. Tribes may use a portion of their funds to construct child care facilities provided there is no reduction in the current level of child care services.

The above investments are inputs and, in some cases, intermediate outputs. These child care measures have been identified given the current state of available data. Recognized accreditation organizations provide credible ratings of individual provider quality.

Because baseline data are not yet available for the child care measures, target percentage increases cannot be specified at this time. However, data for FY 1999 performance is anticipated to be available by June 2000 for the first two measures. Data for FY 2000 may be available by April 2001 for the third measure. As the baseline data become available, target percentage increases will be specified.

Sa. FY 2000: Increase by 1% the number of child care facilities that are accredited by nationally recognized early childhood development professional organizations and accrediting entities from the FY 1999 baseline.

FY 2001: Increase by an additional 1% the number of child care facilities that are accredited by nationally recognized early childhood development professional organizations and accrediting entities from the FY 1999 baseline.

Data source: National Early Childhood Professional Organizations and Accrediting Entities. The Child Care Bureau will continue to work with stakeholders, including States and National Organizations, to capture information concerning accreditation programs and to collaboratively develop a strategy to more formally address this information need. We anticipate that the data source will be identified by the end of the year.

The above performance goal is an indicator of quality improvement on a nationwide basis. Child care facility accreditation has been linked to better outcomes for children and is growing in acceptance as a marker of good quality care. Several States use Child Care and Development Fund quality improvement funds in various ways to support facility accreditation.

Through intense efforts with program stakeholders to explore alternative ways to measure progress in improving the quality of child care services, the following performance goals have been developed. These goals address the levels of safety necessary to support children's development in child care settings and the higher levels of quality reflected by facilities in which staff have achieved nationally recognized educational credentials.

5b. *FY 2000: Increase the number of Child Development Associate credentials awarded nationwide from the FY 1999 baseline.*

FY 2001: Increase the number of Child Development Associate credentials awarded nationwide from the FY 1999 baseline.

Data source: Child Care State Plans. In addition, the Child Care Bureau will continue to work with stakeholders, including States and National Organizations, to capture information and to collaboratively develop a strategy to more formally address this information need. We anticipate that any additional data source will be identified by the end of the year.

5c. *FY 2001: Increase the number of States conducting routine unannounced inspections of regulated providers from the FY 2000 baseline.*

Data source. The number of States conducting routine unannounced inspections is being proposed as an optional data element for the annual aggregate ACF-800 data collection. The comment period for the proposed revisions ends February 21, 2000 at which time it will be sent for OMB approval. The first data collection of this element will occur December 31, 2000.

INTERNAL AND EXTERNAL COORDINATION

In addition to the partnerships mentioned previously, ACF is working with HHS health agencies, including Maternal and Child Health, Community Health Centers, mental health programs, and the Health Care Financing Administration (and their constituencies) to achieve health targets.

NOTE: See Child Care "Affordability" goal above for "data verification/validation" and "operational processes, skills, technologies and resources."

HEAD START

Program Description, Context, Legislative Intent and Broad Program Goals

Head Start is a national program that provides comprehensive developmental education, health, mental health, nutrition and social services for America's low-income, preschool children ages three to five and their families. The basic philosophy that undergirds the Head Start program is that children benefit from quality early childhood experiences and that effective intervention can be accomplished through high quality comprehensive services for children, along with family and community involvement. Head Start provides diverse services to meet the goals of three major content areas: early childhood development and health services; family and community partnerships; and program design and management. Approximately 1,520 community-based organizations develop unique and innovative programs to meet specific needs, following the guidelines of Program Performance Standards,

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From: "wendy" <wendypollack@povertylaw.org>
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February 4, 2000

Administration for Children and Families
Office of Planning, Research and Evaluation
7th Floor West
370 L'Enfant Promenade, SW
Washington, DC 20447

Sent electronically via the Internet

Dear Secretary Shalala:

On behalf of our clients, the National Center on Poverty Law submits the following written comments in response to the proposed rule, Bonus to Reward States for High Performance, published at 64 Fed. Reg. 68,201 (December 6, 1999). Our comments (1) respond to some of the questions posed about performance measures, (2) urge consideration of separate bonuses based on child care and (3) domestic violence, (4) suggest improving measures for job quality, and (5) Food Stamps, and (6) urge elimination of the bonus for increasing marriages for low-income men and women.

1. Developing Performance Measures

In response to some of the questions posed:

Reward both accomplishment and improvement, with different thresholds and formulae for several categories.

The bonus should not only reward for a state's performance, but also serve as an incentive for improvement for the awarded state and the other states.

Reward innovation and creativity.

The bonus money needs to be large enough to serve as both an award and an incentive, yet attainable for more than a few states.

Reward long-term strategies, with the bulk of the money reserved for long-term results. For the work measures, in particular, award states that set long-term poverty-ending strategies for recipients that may include longer-term education and occupational skills training, or periods of employment alternating with periods of education or training, instead of rapid attachment to the low-wage workforce.

States should be allowed to choose in which categories to compete, but the categories must be bundled, in twos or threes, so as not allow a state to be rewarded for doing only one thing well, as Illinois does in child care.

Or allow a single, composite formula, but maintain a high threshold in all the work categories for eligibility.

Restrict the use of all bonus award funds to improvement in both the quality and quantity of programs and services that increase the quality of jobs and support services that address barriers to work such as child care, domestic violence, mental health, and substance abuse. The bonus should be

used to help correct any imbalance or running in a state. For example, in Illinois much of the TANF and MOE funds goes to child care, which is good, but that means little or none goes toward job quality. A state like Illinois should be required to spend its bonus money on improving job quality. Alternatively, states should be required to spend the bonus on one-time improvements, rather than reducing a deficit, as Illinois is doing with the bonus it just was awarded; the bonus money is going toward the deficit in child care funding.

If the bulk of the money is used to increase awards in the out-years, and a bonus exceeds 5% of a state's grant, treat the bonus as a multi-year reward for improvement over the prior (up to three) years, and a reward for accomplishment in the current award year.

Work measures should be tied to the TANF population only. The Food Stamp, Medicaid/CHIP and family formation and stability measures should be tied to the entire state population. The child care measure should be tied to the provision of service to very low-income children. The domestic violence measure should have two separate measures—one tied to the TANF population only, and another for the entire state population. See below for fuller discussion of some of the measures.

The need to measure quality policy implementation is clear. In many states there is little or no conflict between TANF policy and practice—"work only" is the policy and rapid attachment to the workforce is the practice. In other states, like Illinois, there is often a huge disparity between public policy and actual implementation of policy. In either case the result is the same—too many families wrongfully terminated without earned income, or forced into low-wage jobs with little or no opportunity for advancement.

We applaud HHS for trying to address this situation by no longer rewarding caseload reduction and other practices that too often have serious negative repercussions on already very poor families, and rewarding outcomes that better meet their needs.

Illinois is one state that has, at least on paper, some positive policies that include access to education and training, the exemption of parents caring for children under age one from the work requirement, and exemptions for short- and long-term disabilities. The reality is that very few individuals are allowed to take advantage of these policies. TANF applicants and recipients are usually told that these policies do not exist or, that they exist, but will not be approved. When questioned about policy vs. practice, the TANF administrators hold up their hands in frustration, and shake their heads in disgust, putting the blame on renegade caseworkers. But we know that this is not a matter of caseworkers stubbornly not following orders. In fact, they are very faithfully following orders from the highest reaches of the welfare agency.

Caseworkers, supervisors, and local office administrators are pressured to reduce caseloads, and, for anyone left on TANF, to make sure that they have earned income. And this is exactly the basis on which these TANF workers are evaluated. TANF personnel are not evaluated on how well they interact with clients, how well they develop an individualized employability plan that takes into account clients' interests, strengths and barriers, or how well they make appropriate work activity assignments and referrals to needed services, etc., all with long-term economic independence in mind.

In addition, the pressure to reduce caseload is fueling an increase in incidents of pre-application denials. Everyday we hear from applicants and recipients who have been diverted from applying for or denied cash assistance for a myriad of reasons: the TANF agency does not "do" cash assistance; a job is required to be eligible; a job search is required prior to any assessment of the appropriate course of action for an individual and her family. We now have a whole population who are entitled to benefits but are turned away and are disconnected to from the state agencies that should be helping them to become economically self-sufficient. In this sink or swim system, too many people are

HHS must evaluate if and how well states are making accommodations for people who need them, whether due to mental or physical disability, substance abuse, domestic violence, low literacy, lack of English fluency, prior criminal convictions, or lack of marketable skills—both soft skills and occupational skills. HHS must evaluate the assessment process, completion of individual responsibility plans, and how well individuals and families are connected to programs and services. HHS must evaluate the training provided TANF workers, reinforcement of the training, supervision and available resources. And, perhaps most importantly, HHS must evaluate the states' personnel policies to see how these policies encourage or discourage positive outcomes for clients, such as long-term family sustaining employment and addressing barriers to such employment.

We support setting criteria for leadership, collaboration, worker-client relationships, and customer satisfaction. HHS should work with experts to establish basic principles and set out best practices for each area to be measured. For example, for addressing domestic violence, basic principles should include a "safety first" approach and confidentiality. Best practices should include model questions for screening and identification of victims, proven training curriculum for TANF workers, models for collaboration with domestic violence experts, and examples of successful worker configurations—specialized units, one resource person in each local office, contracting with domestic violence experts in the state, etc.

Measuring customer satisfaction is very important. However, if a client doesn't know her rights and options, she may not know that she should not be satisfied. Recipients may feel that they are treated with respect by their caseworkers, however, these same recipients are incorrectly terminated from assistance, rarely referred to support services, rarely receive approval for the education and skills training programs needed to obtain quality jobs, etc. Therefore, HHS should evaluate how well states inform applicants and recipients of their rights, responsibilities and options so that clients may make fully informed decisions about what is best for them and their children. Also, how much states play "gotcha" with applicants and recipients. Too often applicants and recipients are forced to jump through meaningless and, often conflicting, bureaucratic hurdles whose only purpose is to deny or terminate assistance. We have had clients threatened with termination and terminated because they were mandated to be at a meeting at the local welfare office during their work hours.

We realize that these things are difficult to assess. We are concerned that HHS just awarded millions of dollars to Illinois, a state that routinely engages in very negative, potentially very harmful, and often illegal, practices. While we want Illinois to be rewarded, we want any such award to be based on positive practices.

2. Child Care

You propose to reward high performance by states in providing food stamps and medical assistance to eligible low-income working families, including those making the transition from welfare-to-work. We commend you for recognizing the importance of these work supports and including them as criteria for receiving High Performance Bonus awards. We strongly recommend that you also include state performance in providing child care assistance to low-income working families as a criterion for receiving High Performance Bonus awards. Child care is of at least equal importance to food stamps and medical assistance in enabling low-income families to work.

The weight given to state performance on providing child care assistance should be at least equal to the weight given to food stamps and medical assistance performance.

The Illinois Department of Human Services' recently released study - When Families Leave Welfare Behind - confirms the findings of other state's welfare leavers studies regarding the prime importance of child care as a work support. All three principal reasons cited by welfare leavers as their biggest obstacles to remaining in the workforce related to child care - 34% had trouble finding someone to care for their children, 24% had trouble paying for child care, and 23% had trouble finding child care because of their work hours. ✓

While Illinois's performance on providing subsidy has been good compared to other states, there remains a great deal of room for improvement. Although under current state rules any family with countable income below 50 per cent of state median income is eligible to receive child care assistance with no waiting list or time limit, the program is still well underutilized for three reasons. One, the State has not effectively publicized and promoted the child care assistance program to low-wage employers, unions, social service agencies, schools, religion organizations and others who regularly interact with low-income populations, nor has the State developed good quality public awareness materials such as brochures, posters and mailers. Second, access for many eligible families has been disrupted by restrictive application processing practices, condoned by the state, employed by the Child Care Resource and Referral Agencies (CCR&Rs) under contract with the state to make subsidy eligibility determinations. And third, the State has not done a good job of training its TANF caseworkers on child care policies, resulting in the spread of misinformation and insufficient referrals to the CCR&Rs.

A high performance bonus based on the percentage of low-income children actually served would encourage the states to improve their efforts at actually providing assistance to eligible families. The bonus should be structured to provide greater rewards for serving very low-income children; i.e. serving the lowest income children should be weighted more heavily than serving children who are at higher income levels but below the upper limit of 85 per cent of state median income. The lowest income children are most in need of obtaining the developmentally appropriate and higher quality care available through the subsidy system and their families are least able to pay for any unsubsidized child care. In addition, some consideration should also be given to the state's provide reimbursement rate in determining the high performance award since the higher the provider reimbursement rate the more likely the child can actually access higher quality care. The amount of the bonus should increase for states that reach the 75th percentile of market rates based on a market rate survey conducted within the past two years.

3. Domestic violence

HHS should reward states for addressing issues related to domestic violence. Including a measure of state performance on domestic violence in the TANF high performance bonus would encourage states to deal with this serious barrier to work among TANF recipients.

As a threshold issue, states should be eligible for a high performance bonus only if they adopt the Family Violence Option (Section 402(a)(7) of the Social Security Act as amended) and meet the requirements of the federally recognized good cause waiver outlined at 45 C.F.R. sections 260.50 et seq. as amended at 64 Fed. Reg. 17,719 (April 12, 1999). Once that threshold issue has been met, then a look at the treatment of domestic violence victims and the services they receive is necessary to access the quality of that treatment. One way to get at this is to look at the proportion of women who disclose that they are victims of domestic violence who receive services or waivers under the Family Violence Option. Further, for those who are identified and who do get services, are the services an integral part of their employability plan and the required hours of

participation, or are these referrals and services over and above the hours required to be considered in compliance with the work participation requirement? We must avoid poor training and restrictive policies that have made the Family Violence Option significantly less effective than it should be.

The "work first" policy is really a "work only" policy in most states, serving as a significant deterrent to appropriately addressing domestic violence issues. A look beyond numbers is necessary. We need measures that are qualitative. There is a disparity between policy, what's on paper, and practice, what really happens to applicants and recipients. (Of course, this is true for the entire TANF program, not just related to domestic violence issues). Regarding domestic violence, for example, HHS needs to consider interviewing advocates in states that are in contention for the bonus based on their numbers, to better assess the quality of the treatment of victims and the services they receive by the TANF agency. For example, in Illinois (a state that has not adopted the Family Violence Option, although women are allegedly screened as part of the assessment process), very few women self-identify, and when they do, they are often ignored. Just this week a recipient called our office to say that both her caseworker and the caseworker's supervisor refused to allow the recipient to change her work activity assignment. The recipient needs a change because her abuser (who is apparently pretty volatile) is hanging around the building, putting the recipient and everyone at that location at risk. The service provider has temporarily hired security, but cannot afford to do this for more than a few days. The welfare agency's response is appalling. There needs to be a way to capture this type of bad practice. Allowing for some form of anecdotal evidence is necessary.

Offering a bonus of \$20 million for high performance in screening for and the delivery of domestic violence services would be an appropriate high performance bonus measure.

4. Improve the measures of "success in the work force" rate

HHS should establish a threshold for competing for the "success in the workforce" bonus based on how much of the funds available (TANF, Workforce Investment Act of 1998, Welfare-to-Work and, of course, state funds) the state uses to provide education and occupational training for quality jobs, particularly for nontraditional jobs for women and minorities. Pay equity and the elimination of occupational segregation should be priorities for states, not only because it is what is fair, but because many nontraditional jobs pay a sustainable wage and provide women and minorities a real opportunity to achieve true economic self-sufficiency.

HHS should reward states for job retention based on a length of time, preferably one full year, that realistically reflects whether an individual has found stability in the work force.

5. Food stamps

According to USDA's recent state-by-state hunger research data, 4.6 percent to 15.1 percent of American households are either hungry or threatened by hunger. Illinois's food insecurity rate is 8.2 percent. The federal Food Stamp Program can help supply much of the food needed, but too often individuals' attempts to obtain food stamp benefits are thwarted at the state level. Thus, we applaud HHS' efforts to encourage and reward states based on improvements and achievements in the Food Stamp Program.

The sharp decline in receipt of food stamps in recent years is larger than an amount that can be attributable to the strength of the economy and appears to be related to TANF caseload declines. We are very concerned that many families that are not receiving cash assistance also are not

receiving food stamps for which they qualify. Those families leaving welfare for work typically have a high income to qualify for food stamps. Those families that are not working after leaving welfare are even more likely to continue to be eligible for such benefits.

The rule proposes to reward states based on improvement in the number of low income working families (those earning less than 135% of poverty but more than the minimum wage for a full-year half-time job) receiving food stamps. States must meet qualifying conditions to compete under the Food Stamp and Medicaid bonus provisions. States will be ranked for each measure and the top 10 states will receive a bonus. \$20 million is allocated for food stamps bonuses.

The proposed regulations would be a useful tool in evaluating and responding to these problems, but should be modified as follows:

1. Who is counted:

a. The Food Stamp measure should include increasing food stamp receipt for all eligible families, not just those who are employed. Studies of welfare reform to date indicate that it is the bottom fifth of earners who are the worst off. This bottom fifth includes families that still receive assistance and those off assistance that are not employed or are only marginally employed. For those families, Food Stamps may be the key to survival and the only protection they have against hunger. In light of this and in light of the TANF goal of maintaining children in their own homes, the measure with respect to state performance that includes Food Stamps should be based on the increase in Food Stamp participation for all eligible families, not just those with earnings.

b. Use statewide measures rather than TANF leavers and include all families. In the alternative, measure all families with earnings (without limitation to half-time earnings).

2. Allocation of bonuses.

- a. More bonus money should go to improvements in food stamps, e.g., \$40 million instead of \$20 million.
- b. Consider splitting the bonus between 5 states for most improvement and 5 states for highest level of coverage.

6. Measure of Family Formation and Stability

Delete the bonus for increasing marriages for low-income men and women. We are very concerned that this bonus will lead to coercive tactics and interfere with the right of individuals to make such a personal decision.

It would be inappropriate for welfare caseworkers to discuss marriage options with applicants or recipients, or for marriage in any way become a threshold issue in order to obtain or retain benefits. If the marriage bonus is retained, will a marriage search become a part of the individual responsibility plan along with a job search? Or will the plan include steps the recipient must take to improve her relationship with her boyfriend? Will states develop "marriage only" curricula to go along with existing abstinence only programs? This may seem farfetched, but unfortunately for those of us who deal with welfare recipients and caseworkers everyday, it is not hard to imagine.

If this bonus remains, the entire population of the state should be the basis of any performance measure and rewarded activities must be limited to general, non-coercive public education campaigns. Any marriage bonus should be limited to a total of \$5 million.

Sincerely,

John Bouman

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Wesley Rousck

Dory Rand

Margaret Stapleton

#43

TANF High Performance Bonus, 64 Fed. Reg. 68202 et seq. (Dec.6,1999)

Forum: High Performance Bonus - Proposed Regulation

Date: Thu, 03 Feb 2000 18:33:09 GMT

From: Mary Mannix <mannix@welfarelaw.org>

Organization: Welfare Law Center

These comments on proposed regulations setting forth the criteria for the TANF high performance bonus are submitted by the Welfare Law Center, a national law and policy organization that represents low-income individuals and organizations and that works to assure that adequate income support is available to those who need it. We are currently working to enforce the legal protections guaranteeing low-income individuals and families access to Medicaid and Food Stamp benefits and to assure that families are able to access the benefits and services, including cash assistance and child care, that they need to transition into employment. In general the proposed regulations are a positive step insofar as they look to state improvements in increasing Food Stamp and Medicaid and CHIP participation, but they should be strengthened in several ways. 1. Food Stamp and Medicaid measures should be strengthened. 1. The amount of bonus funds allocated for improvements in Medicaid/CHIP and Food Stamp performance should be increased. Proposed Sec. 270.8. The allocation of the bonus for the Food Stamp and Medicaid/CHIP measures (proposed \$40 million total) should at least equal the amount provided for the work measures (proposed \$140 million total). Provision of Food Stamps and Medicaid to eligible families is not only mandated by federal law; it is also critical to families' well-being and to their ability to prepare for and sustain employment. HHS should therefore allocate at least as much of the overall bonus funds to Food Stamps and Medicaid performance as it does to the work measures. 2. The Food Stamp measure should look to an increase in participation for all eligible families, not just those who are employed. Proposed Sec. 270.4 (a). Many families who leave cash assistance are not employed and Food Stamps are critical for both their survival and their ultimate ability to gain employment, and the criteria should therefore not focus exclusively on the Food Stamp participation of those who are employed. 3. The Food Stamp and Medicaid qualifying conditions are an important element of the criteria but should be strengthened to focus on actual state compliance with the stated policy requirements. The qualifying conditions essentially require states to demonstrate that they have in place policies that reflect compliance with various federal Food Stamp and Medicaid requirements relating to the application process, outreach, and protection of ongoing eligibility for Food Stamp and Medicaid after cash assistance is lost. Sec. 270.4 (c), (d). These qualifying conditions are an important recognition of the need to comply with federal mandates and take advantage of federal options to assure that families receive the benefits Congress intended. The Food Stamp qualifying conditions do refer to compliance with application processing times and expedited service requirements and avoidance of incorrect denials and terminations as evidenced by administrative reviews. The preamble also acknowledges that USDA is committed to vigorous enforcement of Food Stamp laws and will investigate and take appropriate action on complaints about practices and that HCFA states' compliance with Medicaid qualifying conditions through state documentation and ongoing oversight. From our day-to-day experience representing classes of welfare applicants and recipients in New York City and in assisting low-income organizations and legal advocates across the country we are well aware of the abusive practices that result in illegal denials of Medicaid and Food Stamps. These illegal practices are a reason for the recent sharp decline in program participation. For example, a federal court in New York has found that the New York City welfare agency illegally deters eligible individuals from applying for Food Stamps, Medicaid, and cash assistance. These practices include actively discouraging individuals by among other things, encouraging them to look elsewhere to food pantries and other sources of support, such as family members, and providing misleading information; oral denials without providing an opportunity for a hearing; denying foods stamps and Medicaid when an individual fails to meet cash assistance employment requirements; and turning away individuals who arrive at the welfare office after a certain hour regardless of emergency needs. *Reynolds v. Giuliani*, 35 F. Supp. 2d 331 (S.D.N.Y. 1999). In addition, New York City's illegal

termination of Medicaid to public assistance recipients who have been terminated from cash assistance because of a work program violation is currently being challenged. *Mangracina v. Turner* (S.D.N.Y.) Similar litigation challenging practices that result in illegal Medicaid termination when cash assistance ends is pending in Florida. *Grant v. Kearny*. In other states vigorous advocacy has resulted in state agreements to change practices that illegally terminated families from Medicaid and avoided litigation so far. While the qualifying conditions cannot on their own solve the problem of actual compliance as opposed to compliance expressed simply by written policy, they could be strengthened by requiring states to address this issue more directly with the public. For example, as a condition of qualifying for a high performance bonus states could also be required to 1) certify that they have notified the public that they are competing for the bonus and solicited comments on the extent to which agency practices are inconsistent with their policies; and 2) identify the problems identified and the remedial steps to be taken. As part of the process, states should identify to the public and to HHS any relevant litigation filed or averted. In addition, in light of the acknowledged concerns about state compliance, HHS should publish the preliminary determinations as to whether particular states have met the qualifying conditions and the basis for such conclusions, including information revealed by oversight by the relevant agency and seeks comments as to whether the determinations are accurate. II. The high performance bonus should include measures related to state performance in providing other important benefits and services that promote the purposes of the Act. 1. Provision of child care Decent child care is essential if parents are to move into the labor force. The lack of reliable, accessible, quality child care is repeatedly identified by low-income women as a major barrier to employment, and HHS's own studies reveal that only a small fraction of eligible children receive child care subsidies. Access to Child Care for Low-Income Working Families (HHS), www.acf.dhhs.gov/news/ccreport.htm. To encourage more aggressive state efforts to address this problem, HHS should include the provision of child care as one of the performance measures for the high performance bonus. We note that H.R. 3150 (106th Cong., 1st sess.) includes child care measures in the criteria for bonuses and endorse the comments of NOWLDEF with respect to this issue. 2. Provision of domestic violence screening and services. There has been growing recognition that many low-income women are of have been victims of domestic violence and that such violence can seriously interfere with their ability to work. States should be rewarded for screening and providing services to domestic violence victims under the Family Violence Option. H.R. 3150 (106th Cong. 1st sess.) would include performance with respect to providing domestic violence services as one of the criteria for the bonus. Submitted by: Mary R. Mannix Welfare Law Center 275 Seventh Ave., Suite 1205 New York, NY 10016 tel. 212 633-6967 fax 212 633-6371

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Make
Comments

to: "TANF High Performance Bonus, 64 Fed. Reg. 68202 et seq. (Dec.6,1999)"

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Child care as a measure of states' high performance

Forum: High Performance Bonus - Proposed Regulation

Date: Fri, 04 Feb 2000 17:40:02 GMT

From: Cynthia Godsoe <egodsoe@childcarelaw.org>

Organization: Child Care Law Center

Child Care Law Center 973 Market St., Suite 550 San Francisco, CA 94103 Dear Secretary Shalala, Thank you for permitting us to comment on your proposed regulations published on December 6, 1999 on criteria for rewarding states for high performance in their TANF programs. As a national non-profit organization dedicated to making high quality and affordable child care available to every child in every community, the Child Care Law Center is concerned by HHS's failure to include child care as a criteria for measuring the performance of states in meeting TANF goals. Affordable and quality child care is an integral part of the success of any welfare-to-work program. Without it parents can neither work nor ensure their children's safety. We encourage HHS to recognize this, and to reward states who improve the availability of child care for low income families. We endorse the comment on the regulations by NOW Legal Defense and Education Fund (LDEF) concerning this issue. Their comment documents the connection between child care and the ability of parents -- especially single mothers who make up the vast majority of the TANF participants -- to work outside the home and gain economic self-sufficiency. HHS' own studies reveal the alarmingly low utilization rates of child care subsidies by those eligible for them, ranging from 10 to 24 per cent. Other studies show that many of these parents who are eligible for TANF cash aid and child care subsidies are paying out of their own pockets for child care -- spending that likely makes it impossible for them to meet their other necessary expenses, including housing and food. Growing Up in Poverty Project, Remembering the Children: Mothers Balance Work and Child Care under Welfare Reform 75-76 (2000). Moreover, quality child care is essential to the healthy development of all children, and can be particularly beneficial to children already disadvantaged economically. See The Carolina Abcedarian Project Homepage (visited February 2, 2000)

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This rule is closed for comment.

National Employment Law Project

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February 4, 2000

U.S. Department of Health and Human Services
 Administration for Children and Families
 Office of Planning, Research and Evaluation
 370 L'Enfant Promenade, S.W.
 7th Floor West
 Washington, D.C. 20447

Executive Director
 Jim Williams, Esq.

**Re: Comments on Proposed Rule for the High Performance Bonus (64
 Fed. Reg. 68201, dated December 6, 1999)**

Staff Attorneys
 Sharon Dietrich
 Maurice Emsellem
 Catherine K. Ruckelshaus
 Andrew Kashyap
 NAPIL Equal Justice Fellow

Dear Secretary Shalala:

Thank you for the opportunity to comment on the proposed regulations to reward high performing states in the implementation of their TANF programs.

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Board of Directors
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Sara E. Rios
 Puerto Rican Legal Defense
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Michael Shen
 Shneyer & Shen, P.C.

Thomas Weeks, Director
 Ohio State Legal Services Assoc.

Cathy Wilkinson
 Low-Wage Worker Activist

We commend the U.S. Department of Health and Human Services (HHS) for recognizing that working alone does not bring people out of poverty. Indeed, welfare reform will only produce more poverty without a commitment to the working poor. We are, however, concerned about the absence of any measures rewarding states that protect against displacement of regular employees and abusive working conditions imposed on welfare recipients. In addition, we have several suggestions for improving the work measures. We believe that the Job Entry Rate measure should be adjusted to make displacement a qualifying condition and to include individuals in wage-paying subsidized jobs in the definition of the employed. The Earning Gains Rate should also be adjusted to measure earnings gains more accurately. Finally, suggest broadening the scope of the Food Stamp measure and creating a new Child Care measure.

The National Employment Law Project (NELP) is a non-profit organization that advocates for the working poor by enforcing workplace rights and promoting employment policies that increase access to education, training and employment opportunities for public assistance recipients. NELP's advocacy includes a special focus on the work requirements of the new welfare law and the overlap of welfare and employment policy. Over the past several years, NELP has actively monitored state implementation of the welfare law, engaged in federal policy advocacy focusing on enforcement of federal employment law protections of welfare recipients in work programs, litigated several precedent-setting cases enforcing the workplace rights of workfare participants, and published extensively on the subject of welfare and employment policy. (See, e.g., "Work Reform? The Other Side of Welfare Reform," 9 Stanford Journal of Law & Policy 1 (1998).)

Advocating for the Working Poor and the Unemployed



I. The Proposed Regulations Should Contain Specific Mechanisms for Rewarding States that Develop Anti-Displacement Protections and Procedures to Guard Against Abusive Working Conditions.

A. Condition Eligibility to Compete on the Job Entry Rate Measures on Submission of Grievance Procedures by the States

As set forth in the preamble to the final TANF regulations,

States without adequate non-displacement procedures may have an unfair advantage in obtaining job placements. Therefore, . . . we will consider State grievance procedures or the record of a State with respect to displacement complaints as potential factors in determining eligibility for, or the size of, a High Performance Bonus. (64 Fed. Reg. 17748)

Despite this statement HHS did not propose a specific reward for anti-displacement protections as part of the High Performance Bonus program. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) mandates that each state establish a displacement grievance procedure, but, to date, most states simply have not complied.¹ Indeed, some states have argued that no such procedure is required—that recourse to the courts is sufficient to enforce displacement protections despite the obvious problems with this approach.

Meanwhile, there is abundant evidence that work experience and community service programs are displacing regular employees. To take just one example, the American Federation of State, County and Municipal Employees (AFSCME) District Council 37, the union representing public employees in New York City, has recently filed several lawsuits on behalf of hundreds of city workers who have been displaced by workfare participants.² If an effective grievance procedure were in place, this lawsuit would not have been necessary. Since states that do not have a displacement grievance procedure will be able to place TANF recipients more easily than states that are in compliance with the law, these states will have an unfair advantage in competing on the Job Entry Rate measure and the Increase in the Job Entry Rate measure.

Recommendation: In order to be eligible to compete on both Job Entry Rate measures, states should be required to submit their displacement grievance procedure to HHS and provide evidence that welfare recipients and workers who are employed at their worksites are properly notified of the procedure.

B. Create a Separate Non-Displacement & Working Conditions Measure, Requiring States to Establish a Grievance Procedure that "Integrates" the Procedures and Substantive Protections Now Available under TANF, the Welfare to Work and the Workforce Investment Act of 1998

¹ "A State with a program funded under this part shall establish and maintain a grievance procedure for resolving complaints of alleged violations . . ." PRWORA, Sec. 407(f)(3).

² "Union Again Files Lawsuit Seeking End to Workfare," *New York Times* (April 15, 1999); "DC37 Sues On WEPs' Growth in Parks Dept." *The Chief-Leader* (February 12, 1999); "Court Allows Hospital Layoffs, But Doesn't Settle Workfare Issues," *New York Times* (April 28, 1998); "Giuliani Drops Workfare Jobs at the Hospitals," *New York Times* (April 24, 1998).

Neither the TANF law nor the final regulations offers specific guidance to states on what to include in the grievance procedure to protect against displacement and violations of workplace rights. As a result, enforcement of these rights has not been a high priority of most state and local welfare officials. Thus, welfare officials are unlikely to have answers to questions regarding their legal authority to provide remedies to aggrieved workers, how to provide notice to the workforce of their substantive rights, and the sort of procedure to create for adjudicating such grievances.

In contrast, the Welfare-to-Work (WtW) program and the Workforce Investment Act of 1998 (WIA) contain detailed procedures addressing displacement, complaints related to working conditions of various sorts including discrimination, and complaints concerning comparability of wages and benefits for selected work activities.³ The basic issue regarding displacement is the same in these programs as it is in TANF—ensuring that workforce development programs generate new employment opportunities for participants, rather than allowing employers to reduce employment opportunities for regular employees by shifting work to subsidized positions. In addition, protection against abusive working conditions is central to the goal of creating successful job opportunities for participants in each of these programs. Certainly, as HHS has made clear in the final regulations and its recent civil rights guidances,⁴ violations of workplace protections will significantly undermine the success of the TANF program.

Meanwhile, Congress has placed a significant priority on the need to coordinate TANF, WtW, and WIA, both to improve the efficiency of these programs and to improve the quality of the workforce development services provided to program participants.⁵ Thus, integration and coordination of services is critical to the process of moving welfare recipients into work and providing the many support services and training opportunities that will allow them to succeed in their jobs. As a result, many states have already developed programs that combine funding streams and link agencies that operate these various programs. Since all three programs, in addition, require a displacement grievance procedure, a single, integrated procedure would be most administratively efficient and most effective at combating displacement. Similarly, a single, integrated procedure to protect against abusive working conditions would be logical for each program.

Recommendation: A separate “non-displacement and working conditions measure” should be created to give states guidance in developing a grievance procedure, to reward states for not displacing current workers, and to protect workers against violative working conditions. In addition, an integrated grievance procedure that applies to displacement and other worker

³ The provisions related to comparability in wages and benefits in selected work activities, the labor standard provisions (including the displacement protections), the grievance procedure and the remedy provisions are found in WIA Sections 181(a), (b), (c). The anti-discrimination provisions are found in Section 188 of the law. The WtW protections and grievance procedures are described in Sections 403(a)(5)(J)(i)-(iv) of the law, as amended.

⁴ 64 Fed. Reg. at 17881; “Civil Rights Law and Welfare Reform – An Overview” and “Technical Assistance for Caseworkers on Civil Rights Law and Welfare Reform” (Aug. 30, 1999).

⁵ For example, WIA specifically requires development of significant linkages with the TANF program with regard to membership on the State Workforce Investment Board (Section 111(b)(1)(c)(vi)(I)), in the development of the state plan (Section 112(b)(8)(A)), and in the provision of services provided by the One-Stop Career Centers (Section 111(d)(2)(A)).

protections under TANF should be a qualifying condition for competing on the non-displacement and working conditions measure. Vigorous enforcement of all participants' workplace protections will give employers less of an incentive to displace current workers or otherwise undercut the ability of good employers to compete for qualified workers.

1. The Integrated Displacement & Working Conditions Procedure & Protections:

- a. The Grievance Procedure: As required under the WtW and WIA programs, the integrated grievance procedure should contain: (1) a requirement that notice of substantive non-displacement rights and the grievance procedure be provided to "participants and other interested or affected parties," such as laid-off employees, current employees, unions, and program participants (WIA Section 181(c)(1)); (2) an opportunity for a hearing before an independent authority within 60 days (WIA, 64 Fed. Reg. 18732); (3) the right to appeal to an independent state agency with experience and expertise adjudicating workplace issues (WtW, 62 Fed. Reg. 61609); (4) the right to a written final determination of the appeal within 120 days of the filing of the original grievance (WtW, 62 Fed. Reg. 61609).⁶
- b. The Displacement Protections: Displacement should be defined to include "partial displacement", in addition to the other protections required under WtW (Section 403(a)(5)(J), as amended) and WIA (Section 181(b)(2)).
- c. Wages, Benefits & Working Conditions: The provisions requiring comparability in wages and benefits for selected programs and health and safety protections should be identical to the provisions contained in WIA (Section 181(a), (b)) and WtW (Section 403(a)(5)(J)(ii) as amended). The civil rights and anti-discrimination provisions of TANF (Section 408(d)), WtW (Section 403(a)(5)(J)(iii) as amended, and WIA (Section 188) should also apply.
- d. Remedies: Both the WtW law and WIA provide for the following remedies: (1) suspension or termination of payments; (2) prohibition of placement of participants with an employer who has committed a violation; (3) reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions and privileges of employment; and (4) other equitable relief (WtW Section 403(a)(5)(J), WIA Section 181(c)(3)). In determining what may constitute "other equitable relief," hearing officers should bear in mind that remedies should protect program participants from being used to displace other workers and ensure that participants who complain about a displacing assignment do not end up worse off as a result. At a

⁶ To the extent that the WIA procedure allows for final review up the U.S. Department of Labor (Section (c)(2)(B)), the proposed integrated procedure could allow for final review at the state level for all but the WIA program.

minimum, a participant assigned to a mandatory work activity as a condition of receiving public assistance should not be sanctioned for refusing to accept an assignment that displaces another worker.

These displacement remedies should be available regardless of which party happens to bring the grievance, as the goal is to remedy improper displacement itself and to avoid creating conflicts of interest between regular employees and those being provided new work and training opportunities. Thus, if a program participant brings the grievance, the remedy should include both a non-displacing assignment for the participant and reinstatement or other appropriate relief for the person being displaced, even if not a grievant. Similarly, if a regular employee brings a grievance, the remedy should both make the displaced worker whole and ensure that the participant is not denied a work and/or training opportunity

Finally, the state submission should include a statement clarifying that these remedies should not be considered exclusive. Those who file grievances should be assured that they are not relinquishing their right to bring a separate legal action under other applicable law or contract provision.⁷

2. Measuring Displacement & Working Conditions

After the states submit the integrated procedure and protections that meet the aforementioned conditions, the proposed non-displacement measure would require states to demonstrate that their work programs have not, in fact, resulted in displacement and violations of working conditions. To measure displacement, counting successfully resolved complaints alone would not work because some high performing states may have no grievances filed. Displacement should be measured by requiring all participating worksites with a ratio of at least one TANF program participant to five regular employees to submit payroll records so that the state can verify that there has been no reduction in regular employee work hours. While not a full proof method of detecting displacement, this approach at least monitors those worksites where there is a fairly high ratio of TANF participants to employees. States that wish to compete for the non-displacement bonus would be responsible for collecting this data from employers. While this is an additional data collection burden, unfortunately there is no existing data that would provide as accurate a measure. If HHS objects to imposing additional data collection requirements, unemployment insurance records could be considered as an alternative. To establish compliance with regard to working conditions, states should be required, as they are under WIA (Section 195(4)), to provide evidence that employers who employ TANF

⁷ The current language in all three laws is not adequate. WIA, for instance, states that "nothing in paragraph (3) shall be construed to prohibit a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law for a violation of this title (Section 181(c)(4)). Since some states have claimed that use of the grievance procedure bars other remedies, it is necessary to clarify that invoking the grievance procedure will not prevent an individual from seeking other remedies for the same infraction.

participants have not "exhibited a pattern" of failing to provide participants with equal wages, benefits and working conditions as other workers on the job.

II. Wage-Paying Subsidized Jobs Should Be Counted as Employment in the Job Entry Rate Measures, and Earnings Gains Should Be Measured Over a Longer Period.

A. Counting wage-paying subsidized jobs as employment rewards states for creating jobs that facilitate the transition from welfare to work.

In calculating the Job Entry Rate measures, the exclusion of adult recipients in fully subsidized jobs from the ranks of the employed results in penalizing states for implementing innovative job creation programs (64 Fed. Reg. 68213). To be more specific, individuals in fully subsidized employment are excluded from the numerator (those who became employed) but are included in the denominator (unemployed recipients). While it is true that workfare programs, which require recipients to work in order to receive their benefits, should not be considered employment, transitional wage-paying subsidized job programs are a different beast entirely and should be counted as employment, even if they are fully subsidized.

Workers in these jobs are eligible for the Earned Income Tax Credit, pay into the social security system, and develop a work history that will help them transition into unsubsidized employment. As recognized in the final TANF regulations, these jobs differ from community experience and work experience in that participants are compensated for services performed rather than working in exchange for a needs-based benefit check (64 Fed. Reg. 17758). Wage-paying subsidized jobs resemble unsubsidized employment in every respect; the only difference is the subsidy paid to the employer. The states and cities that have developed these programs should not be penalized for giving the hard-to-employ experience with wage-paying jobs.

Recommendation: In calculating the Job Entry Rate, allow individuals in wage-paying subsidized job programs to be counted as employed even if their jobs are fully subsidized. At the very least, these individuals should be excluded from both the numerator and the denominator because they cannot properly be considered unemployed.

B. The Earnings Gain Rate Should Be Based on the First Full First Quarter, and There Should Be a Quarter in Between the Quarters That are Being Compared.

No allowance is made in the proposed regulations for the fact that first quarter earnings may be artificially low because individuals may start work in the middle or later part of the quarter. In addition, the period of time for calculating the Earnings Gain Rate is too short (64 Fed. Reg. 68213). Few individuals will experience earnings gains from one quarter to the next. Even in the best jobs, wage increases are usually annual.

Recommendation: Individuals who have not worked a full quarter should be excluded from the measure; in other words, the initial quarter should be the first full quarter a recipient has worked. Use the same formula to calculate the Earnings Gain Rate as is used for the Welfare-to-

Work High Performance Bonus. After all, "it is important that these two bonus systems are compatible" (63 Fed. Reg. 64832). That is, first quarter earnings are compared to third quarter earnings, second quarter earnings to fourth quarter earnings, third quarter earnings to fifth quarter earnings, and fourth quarter earnings to sixth quarter earnings (63 Fed. Reg. 64833). This formula will increase the probability that there will be some appreciable increase in earnings.

III. Reward States for Increasing Their Enrollment of All Eligible Food Stamp Recipients.

The proposed food stamp measure does not reward states for providing food stamps to the most needy families. Child poverty remains a critical problem in this country. While the number of children living below the poverty line fell by 2.4 million between 1993 and 1995, it fell by only 1.2 million between 1995 and 1998. To measure the depth of child poverty, the Census Bureau uses "the child poverty gap." The child poverty gap is the total amount by which the incomes of all children who are poor fall below the poverty line. In 1998, the child poverty gap was \$38.2 billion.⁸ While we agree that states should be encouraged to get much-needed food assistance to more low-income families, limiting the measure to the enrollment of families that earn more than the minimum wage for a full-year half-time job leaves out too many families in need.

Recommendation: Reward States for increasing the total proportion of eligible families receiving Food Stamps.

IV. States Should Be Rewarded for Ensuring Access to Quality Child Care.

The lack of affordable child care is a significant barrier to employment for welfare parents. Seven out of 10 public schools have no after-school program. Only 8% of working women have jobs that offer any kind of help with child care.⁹ HHS's own research reveals that only 10% of children who were eligible for child care assistance under federal guidelines received it in 1998. State rates vary from a low of 4% in Mississippi to a high of 24% in West Virginia.¹⁰

Under federal law, families are eligible for child care assistance if they earn no more than 85% of the state median income level. Nevertheless, all but four states have set their income caps below this ceiling; almost half of the states set the upper limit for eligibility at 59% of the state median income or less. Yet even under the lower income limits set by most states, only 15% of eligible children were served in 1998. This is a national travesty. A commitment to ending welfare dependency is hollow without a concomitant commitment to ensuring access to quality, affordable child care.

⁸ Center on Budget and Policy Priorities, "Recent Changes in the Impact of the Safety Net on Child Poverty: Executive Summary," Dec. 23, 1999.

⁹ www.aflcio.org/women/kids.htm

¹⁰ "Only 10 Percent of Eligible Families Get Child Care Help, New Report Shows," Press Release, HHS, Oct. 19, 1999.

Recommendation: An additional non-work measure should be created that will reward States for helping poor families gain access to quality child care. The High Performance Bonus is one of the only tools available to encourage states to improve their child care programs. The bonus could be awarded to the ten states with the highest amount of expenditures on child care subsidies divided by the estimated number of children younger than thirteen in families with incomes below 85% of the State's median income.

V. Reallocate Funds To Account for the New "Non-Displacement and Working Conditions" Measure and the New Child Care Measure

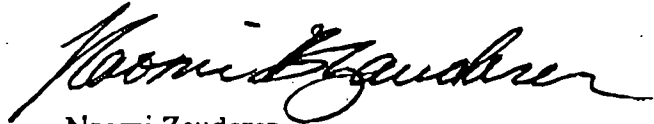
Since we have proposed two new measures, the allocation of funds for each measure must be adjusted. While both the non-displacement and working conditions measure and the child care measure are integrally related to working, there is no one-to-one correspondence between these measures and job entry or success in the workforce. Yet they cannot properly be classified as non-work measures either. Thus, we propose creating a separate "work support" category for these measures. Without access to quality child care, welfare parents cannot acquire a permanent attachment to the workforce. Without displacement protections, states will simply be shifting people back and forth between the ranks of the employed and the unemployed. Work-first policies will only work if the proper work supports are provided. Therefore, we suggest taking \$40 million out of the \$140 million that is proposed for the work measures and allocating \$20 million to each work support measure. This would result in \$100 million for the four work measures, \$60 million for the three non-work measures, and \$40 million for the two work support measures.

In conclusion, we appreciate the opportunity to comment on this important initiative. We also support the comments submitted by the National Organization of Women Legal Defense & Education Fund proposing reforms related to the needs of domestic violence victims. Please do not hesitate to contact us for further information, if necessary.

Sincerely,



Maurice Emsellem
Staff Attorney



Naomi Zauderer
Organizing & Campaign Liaison



Honorable Donna Shalala, Secretary
U.S. Department of Health and Human Services
Attention: Sean Hurley
Administration for Children and Families
Office of Planning, Research and Evaluation
7th Floor West
370 L'Enfant Promenade, S.W.
Washington, DC 20447

Dear Secretary Shalala,

On behalf of the staffs of the Center on Budget and Policy Priorities and the Center for Law and Social Policy, we are pleased to submit comments on the High Performance Bonus regulations proposed in the Federal Register on December 6, 1999.

We have attached a summary of our comments as well as our detailed comments for your consideration. If you have any questions, please contact Wendell Primus of the Center on Budget or Mark Greenberg of CLASP.

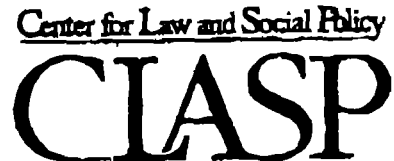
Sincerely,

Wendell Primus
Center on Budget and Policy Priorities

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Comments on the Proposed Rule for the Bonus to Reward States for High Performance

Summary of Recommendations

The Center on Budget and Policy Priorities and the Center for Law and Social Policy are submitting these joint comments in response to the Proposed Rule for the Bonus to Reward States for High Performance. We support the broad directions reflected in the proposed rule. We agree that state performance should be evaluated on both work-related measures and measures of state effectiveness in providing supports for low-income working families. We also agree that part of the bonus funds should be allocated to addressing the TANF goal of encouraging the formation and maintenance of two parent families. While we agree with these broad directions, we are proposing a number of specific modifications, for both substantive and technical reasons. We have six primary recommendations:

1. Retain and increase the bonus for state effectiveness in providing food stamps to low-income working families, awarding bonuses both for states that demonstrate the highest level of performance and states that demonstrate the greatest improvement in performance;
2. Retain and increase the bonus for state effectiveness in ensuring that adults and children leaving TANF assistance maintain health insurance coverage through Medicaid and/or CHIP, awarding bonuses both for the highest level and the greatest improvement in performance;
3. Add a measure of state effectiveness in providing child care subsidy assistance to low-income working families, awarding bonuses both for the highest level and the greatest improvement in performance;
4. In measuring the work-related performance of state TANF efforts, maintain a focus on job placement, employment retention, and earnings gains, but modify the measures to more effectively measure sustained employment and wage growth.
5. Add a measure of work-related performance that is not limited to families participating in or leaving TANF cash assistance, but that measures participation in employment among the entire population of low-income families with children;

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6. Maintain a bonus for family formation and maintenance, but award funds based on a panel-based competition that rewards demonstration programs or innovative policies designed to encourage the formation and maintenance of two-parent families.

In the following comments, we begin with a discussion of a set of cross-cutting themes and then provide more detailed comments on each area of recommendations.

Overview

The 1996 welfare law established a set of goals for the TANF Program, and directed HHS to develop criteria for awarding to states a High Performance Bonus based on the measurement of state performance in achieving the goals of the law.¹ The proposed HHS approach to the bonus has three principal components: measurement of job placement, employment retention and earnings gains by TANF recipients entering employment; measurement of participation in food stamp program by working poor families and of participation in Medicaid/CHIP by adults and children leaving TANF assistance; and measurement of the share of children below 200% of poverty in married families.

In our specific recommendations for the high performance bonus, we emphasize a set of cross-cutting themes:

- that the high performance bonus should measure both work outcomes and the provision of supports for low-income working families;
- that the bonus measures should both look at state performance in relation to families receiving TANF assistance and to state performance affecting the broader population of low-income families with children;
- that bonuses should generally be awarded both for absolute levels of performance and for the improvements in performance over time.

Our starting point is that the process of designing a high performance bonus in 2000 should be informed by the experience of TANF implementation since 1996. Broadly, that experience tells us that there has been a dramatic caseload decline, a significant increase in employment among low-income families, and a new set of issues now emerging for states and families as a result. Specifically:

- There has been an extraordinary decline in the number of families receiving TANF cash assistance across the country, with the number of families receiving cash assistance

The goals of TANF are to:

- (1) provide assistance to needy families so that the children may be cared for in their homes or in the homes of relatives;
- (2) end the dependency of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.

having fallen 43% since enactment of the 1996 law. Nationwide, most poor children are no longer in families receiving TANF cash assistance.

- While all states have experienced caseload declines, there have been significant variations in the rate of decline; at the extremes, three states have reported declines of 80% or more and three states have reported declines of 20% or less since August, 1996.
- Studies of families that have left welfare are consistently (though not uniformly) finding that half or more of those families are working, though typically with earnings below the poverty line.
- Prior research found evidence of significant rates of job loss and limited earnings growth for families leaving welfare. While there is only limited information about the experience under TANF, state studies are consistently reporting that the share of leavers employed at some point in a year is substantially higher than the share employed at the end of the year. And, studies are finding evidence of earnings growth, though the growth is typically still not sufficient for wages to reach the poverty line.
- Studies of welfare leavers are consistently reporting sharp drop-offs in receipt of food stamps and Medicaid by families that have left TANF and are also finding that most working leavers are not receiving child care subsidy assistance. At the same time, other research suggests that participation in these programs by low-income working families that have not been participating in TANF is even lower.
- Leavers studies are finding that a group of families have left welfare without finding work, and census data suggest that a group of families (concentrated in the bottom quintile of female-headed families) are now poorer, largely because of sharp declines in receipt of means-tested assistance, particularly food stamps and TANF. Census data has shown that the very poorest single mother families have had declines in income between 1995 and 1998. In addition, a recent study by CBPP on child poverty using Census data showed that while child poverty has declined, for those children remaining in poverty the average amount by which they are below poverty is the largest recorded since 1979 when these data were first collected.
- As the TANF caseload has declined, the share of TANF and state maintenance-of-effort funds being expended for cash assistance has also declined. Federal guidance has made clear that states may spend TANF funds for benefits and services for needy (low-income) families who are not receiving or have never received cash assistance. Under some circumstances, TANF funds can be spent for families that are not low-income families. If current trends continue, it is foreseeable that within a few years, the majority of state expenditures under TANF will not be expenditures for cash assistance.

As we look at these trends together, they lead to a set of conclusions that have shaped our comments on the high performance bonus regulations. First, it now seems clear that state TANF efforts, in connection with a strong economy and other federal and state make-work-pay efforts, have been successful in raising employment rates for families receiving TANF cash assistance. While efforts to promote workforce participation need to continue, it also seems clear that much of the initial employment is in low-wage jobs. Thus, the emerging challenge for states involves how to support employment retention and wage advancement and how to ensure that families in low wage jobs receive the work supports needed to sustain workforce participation and enhance the well-being of low-wage working families. The need to address supports such as food stamps, Medicaid/CHIP and child care for working families is not a diversion from the focus on employment; it is an essential part of the national strategy to encourage work and reduce the poverty of working families.

We understand that questions have been raised about whether the linkage to work supports should be a measure of state success in TANF implementation. We believe it is entirely appropriate, because it advances the first goal of TANF, i.e., providing assistance to needy families. Moreover, it also advances the second goal of TANF, because it is hoped that the provision of work supports will help families sustain and stabilize their workforce participation, so that they can progress over time to a point where they may no longer need government benefits.

In every state, there is a state agency that is primarily responsible for administration of the cash assistance component of the state's TANF efforts. As discussed in our detailed comments, there are an array of activities that this agency can do to improve linkages to food stamps, Medicaid, and child care. We recognize that other state agencies may have primary responsibility for one or more of the above work supports. However, that should not diminish the appropriateness of these measures for the high performance bonus. One can also observe that the performance of a number of other state agencies – the workforce agency, the employment service, the education agency, the vocational rehabilitation agency, the child support agency, etc. - may all have significant impacts in affecting the quality of a state's TANF implementation, but one does not conclude that it is inappropriate to measure employment outcomes simply because those outcomes are partially dependent on the actions of other state agencies.

Effective TANF implementation necessarily involves the coordination and participation of a large number of state and local agencies, businesses, nonprofit groups, and numerous other actors. Ultimately, the measure of TANF performance is not intended to be the measure of the performance of one agency, but rather the performance of the state. Hopefully, the incorporation of work supports in the high performance bonus - like the incorporation of measures of employment retention and earnings gains - will spur improved coordination and cooperation in state development and implementation of comprehensive strategies to enhance the well-being and support the progress of low-income working families.

Our second cross-cutting theme is the need to look at performance both for the families receiving TANF cash assistance and to also use broader measures for the entire population of low-income families with children. For example, we are recommending looking at workforce outcomes both for recipients of TANF cash assistance and for all low-income families with children. And, the food stamp measure and our proposed child care measures would be based on participation by the entire eligible population. We are not proposing a similar Medicaid measure, primarily because of data limitations, but over time, our view is that the best measures of performance would look both at families in and leaving TANF cash assistance and at the broader low-income population.

There are three principal reasons why we emphasize the need to measure performance based on broader population measures. First, because there are no uniform federal eligibility requirements for TANF, there are large variations between states in what it means to be a TANF cash assistance recipient. States vary in income and resource eligibility, family composition rules, work requirements, sanction policies, time limit policies, diversion policies, etc. Thus, looking at the families receiving cash assistance means very different things in different states, making it very difficult to compare state performance. And, those states with the largest caseload declines are sometimes suggesting that their remaining families have more severe barriers to employment, further exacerbating the problems of comparing employment performance among states.

Second, as the caseload has declined, a smaller and smaller share of low-income families are participating in state TANF cash assistance programs. The picture is clearest for those states with the largest caseload declines, but we have already reached the point where most poor families with children are not participating in TANF cash assistance programs. Families may not be participating because of eligibility rules, because they are working (and either are ineligible or choose not to participate), because restrictive policies have made it difficult to participate, or for other reasons. In any case, as the numbers receiving cash assistance become steadily smaller, the measure of state performance based on the outcomes for those in the cash assistance programs becomes a steadily less informative measure of state performance.

Finally, the structure of TANF itself and how states are actually spending monies suggests that the measure of state performance should not be limited to those families in the TANF cash assistance program. TANF funds can be spent for an array of purposes outside the TANF cash assistance program. Federal guidance has made clear that states can set a definition of needy families that is substantially above the TANF cash assistance benefit level and can use TANF funds for benefits and services to needy families outside TANF. TANF expenditures under the third and fourth purposes of TANF (preventing out of wedlock pregnancies, encouraging the formation and maintenance of two parent families) are not limited to needy families (if the expenditures are for purposes other than providing assistance). Under final regulations, states are free to use TANF funds for providing "nonassistance" in a number of circumstances, and families that are not receiving assistance are not counted as part of the TANF cash assistance caseload. And, states are free to use maintenance-of-effort funds outside of the

TANF cash assistance framework, and the outcomes for families in separate state programs are not measured in a calculation of outcomes for recipients of TANF cash assistance.

Over time, a steadily smaller share of TANF funds are being directed to TANF cash assistance. The identification of high performers, then, should not be limited to measuring outcomes for families in the cash assistance program, but should look to outcomes affecting low-income families generally. For example, if a state transfers 30% of its TANF funds to child care, the state is presumably hoping that through expanding child care subsidies, fewer families will be in need of TANF cash assistance. Or, if a state commits TANF funds to a state earned income tax credit, the state is presumably hoping that it will be encouraging employment and reducing the need for TANF cash assistance among working families.

Because TANF is a block grant, it presents to states a set of choices about how to use its resources. The state may choose to use those resources in or outside of the state's TANF cash assistance program, or may choose not to spend those resources at all. The best way to measure the results of the choices made by states is by looking at the resulting outcomes for all low-income families.

This leads to our third cross-cutting theme: the need to structure bonuses that reward both absolute levels of performance and improvement. We understand that states began TANF at very different starting points, and that there is substantial variation between states on virtually every measure of performance. States have different economies, different demographic compositions, differing histories and capacities and differing TANF populations. There is no easy way to adjust for these differences when identifying high performers. We conclude that it is nearly impossible to adjust for all these differences fairly. So, throughout our recommendations, we have sought to propose awarding bonuses both to the highest performers and to the states demonstrating the greatest improvement from year to year. We think the high performance bonuses can send an important set of signals to states about goals to strive for. Hopefully, our knowledge about the practices associated with high performance can be enhanced by identifying those states with the highest levels of performance in accomplishing the goals of TANF. At the same time, all states should always have an incentive to improve their performance over time. We believe that rewarding both absolute levels of performance and improvement reflects the best way to strike this balance.

Attached is a table summarizing our suggested measures followed by detailed comments.

Center on Budget and CLASP Recommendations			
Measurement	Population ²	Allocation ³	# of Awards ⁴
Work Related Measures		\$90	
Improvement in the Earnings Gap - improvement from the previous fiscal year in the reduction of the earnings gap as measured by the aggregate amount of earnings all low-income working families need to earn to get to the poverty line using Census data	Population	\$25	8
Job Entry Rate - the rate at which unemployed or underemployed (less than half-time) recipients enter the workforce and remain employed for two consecutive quarters earning at least half-time minimum wages	TANF	\$25	8
Improvement in the Job Entry Rate - improvement from the previous fiscal year in the Job Entry Rate (see above)	TANF	\$25	8
Improvement in the Earnings Gain - improvement from the previous fiscal year in the earnings among unemployed or underemployed recipients who enter employment (as defined by the job entry measure) and who remain employed for one year earning at least half-time minimum wage earnings in the last quarter.	TANF	\$15	5
Work-Support Measures		\$90	
Child Care Rate - percent of CCDF-eligible children receiving child care assistance-allocated equally by level and improvement from the previous fiscal year	Population	\$30	5/5
Food Stamp Participation Rate - percent of eligible low-income working families (working at least half time at minimum wages) receiving food stamps-allocated equally by level and improvement from previous year	Population	\$30	5/5
Medicaid/CHIP Participation Rate - percent of eligible TANF recipients and leavers receiving Medicaid/CHIP 6 months after leaving TANF-allocated equally by level and improvement from previous year	TANF	\$30	5/5
Non-Work Measure		\$20	
Family Formation - innovative policy or program demonstrations that may lead to the desired outcomes as determined by a panel of experts	Population	\$20	a small number

² "TANF" means a measurement that includes the TANF recipients or families that recently left TANF. "Population" means a population-based measurement that includes low-income families regardless of whether they are receiving TANF.

³ Allocations in millions of dollars

⁴ Numbers of awards are suggestions. In general, we believe the number of states receiving awards should be reduced, and that measurements broken out by level and percent improvement should have equal numbers of awards for each component.

Detailed Comments

1. RETAIN AND INCREASE THE MEASURE OF FOOD STAMP PARTICIPATION BY LOW-INCOME WORKING FAMILIES

Introduction

We support inclusion of a measure of states' success in providing food stamps to eligible low-income working families. We believe that food stamps, along with health care coverage and child care assistance, are critical supports that states can provide for low-income working families. We recommend increasing the amount of the high performance bonus funds dedicated to the food stamp measure to \$30 million.

Studies of people who leave TANF for employment show that most are making relatively modest wages, often below the poverty line. A recent Urban Institute report found that two-thirds of families that left TANF remained eligible for food stamps, but only about 40 percent of those who were eligible actually received food stamps.⁵ Studies by the Food and Nutrition Service (FNS) have shown that historically fewer than half of working families who are eligible for food stamps and do not receive cash assistance receive food stamps.

Food stamps are, however, an important support for low-income working families — both those with recent experience receiving TANF assistance and those who never receive TANF either because they are diverted or because they never apply. A family of three with a parent who works 30 hours a week at the minimum wage (with \$250 in rent and utility expenses each month) is eligible for almost \$230 a month in food stamps. Receipt of food stamps would increase the family's pre-tax monthly income by 34 percent. The expansions of the Earned Income Tax Credit (EITC) in the early 1990s were designed so that full-time year-round minimum wage earnings plus the EITC and food stamps would bring a family of four to the poverty line.

Between 1996 and 1999 the number of food stamp participants fell almost 30 percent. Some decline was expected because of eligibility changes in 1996 and the continued strength of the economy. But a consensus has developed among researchers that these two factors do not explain the bulk of the decline. An analysis by FNS of participation decline between 1994 and 1998 concluded that only about a quarter of the decline can be attributed to lower participation among able-bodied childless adults and immigrants, the two groups whose eligibility was restricted in 1996. Participation of elderly and disabled citizens was almost unchanged. Thus, the remainder occurred primarily in families with children.⁶ If these families have income that

⁵ Sheila R. Zedlewski and Sarah Brauner, *Are the Steep Declines in Food Stamp Participation Linked to Falling Welfare Caseloads?*, November 1999.

⁶ U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation, (continued...)

makes them ineligible for food stamps, then their non-participation should not be viewed as a problem, and the proposed food stamp measure would not include them. It appears, however, from state studies that have attempted to track people who leave TANF, that many of the families who no longer receive food stamps are still eligible.

We are increasingly convinced that the dramatic decline in the proportion of low-income families who receive food stamps is a serious problem that is contributing to the declining incomes of the poorest single-mother families. According to Census data, between 1995 and 1998 the disposable incomes of the poorest one-fifth of single-mother families with children declined by \$349. On average, each family lost \$488 of TANF income and \$314 in food stamps. Their increased earnings and EITC did not make up for the lower benefits.

Given this evidence, we strongly applaud that states will be measured on their success providing food stamps to all low-income working families rather than only those who recently left TANF. Under the TANF law regarding the high performance bonus, states are to be judged based on their performance in meeting the multi-faceted goals of TANF. These goals address the well-being of *all* needy families with children, not only those that receive TANF assistance. Many states have been quite successful in moving people from cash assistance to employment and in lowering their TANF caseloads. TANF's five-year time-limit goes into effect in 2002. It is therefore especially critical in the period covered by the proposed rule that the high performance bonus examine state's performance on the well-being of all needy families.

Awarding a part of the high performance bonus based on a state's success in enrolling working poor families in food stamps makes good sense because it can encourage states to find innovative alternatives to practices that make receiving food stamps difficult for these families. For example, some states require working families to get their employers to complete a "wage verification form" every few months. This both forces the new worker, who is anxious to make a good early impression, to identify her or himself to the employer as a food stamp recipient and imposes extra work on the employer. These forms, however, are not required by federal law. Indeed, the regulations give states flexibility to accept any reasonable documentary evidence provided by the household. States that rely primarily on households' wage stubs, for example, or on electronic verification of households' earnings through links with other state databases likely would make receipt of food stamps a viable option for more working poor families. This also would reduce the burdens on employers who have been willing to support welfare-to-work efforts by hiring people seeking to leave cash assistance programs.

Similarly, requirements that working parents make frequent visits to food stamp offices is a major barrier to access to the food stamp program. Guidance USDA issued last summer allows states to limit face-to-face interviews to one per year, regardless of the length of the household's certification period or other options the state may have taken. That same guidance allows states

⁶ (...continued)

Who Is Leaving the Food Stamp Program? An analysis of Caseload changes from 1994 to 1998, August 1999.

to limit working households' reporting obligations to changes in status: going from part-time to full-time work, changes of employer, and changes in hour wage rates. It also allows states to adopt quarterly reporting: requiring working families to submit a complete report every three months, but not requiring the family to report routine changes between quarterly reports. Even where states choose not to adopt these reporting changes, they can allow households not to report changes of less than \$100 per month in their earnings. The \$100 threshold, and certainly status reporting and quarterly reporting, should free both households and state agencies from most of the more onerous burdens associated with continued receipt of food stamps. This is likely to cause more working families to conclude that receipt of food stamps is worthwhile. States electing these options to reduce burdens on food stamp participation are serving important purposes of welfare reform and can properly be rewarded with the high performance bonus.

President Clinton has recently recognized the need to improve access to low-income working families through the food stamp initiatives he launched last summer. (See FNS guidance, July 14, 1999.) In addition to the reporting changes mentioned above, the new policy allows states to extend eligibility to low-income working families without regard to the value of a motor vehicle by expanding categorical eligibility. States have been troubled that working families who need reliable cars to commute to work often lose food stamp eligibility when their earnings reach a level that disqualifies them for cash assistance under TANF. Similarly, under the prior policy, a family that did not want to receive TANF assistance but did want food stamps would not be eligible for food stamps if it had a car valued above the food stamp vehicle threshold, but would be eligible for food stamps if it applied for and received TANF cash assistance. Now, under the administration's new guidance on categorical eligibility, states have a concrete way to remedy this inequity. In fact, this particular policy change is closely related to TANF in that states can now extend food stamp eligibility by using TANF funds to assist families that have started work and ceased to receive cash assistance.

In addition to taking advantage of these new options for expanding eligibility and reducing procedural barriers, there are many other tools available to states to increase the participation of low-income working families in food stamps. They can make sure that potential recipients are informed about their eligibility and simplify application processes. In particular, they can improve links with other programs that provide benefits to working families not receiving TANF, such as Medicaid and child care. In their TANF work retention efforts they can highlight the availability of food stamps and ensure that eligible families maintain their benefits.

Specific Recommendations

Under the proposed rule, states would compete for high performance bonus funds based on the number of low-income working families (defined as families with children under age 18 who have an income less than 130 percent of poverty and earnings equal to at least half-time full-year minimum wage) who received food stamps as a percentage of the number of such low-income working families in the state. HHS would award a bonus to the ten states with the

greatest percentage improvement in this measure between the two prior calendar years, based on Census Bureau decennial and annual demographic program data. Ten percent of the annual total amount available for the high performance bonus (or \$20 million) would be allocated to the food stamp measure.

Increase the allocation for the food stamp measure. We strongly recommend that at least \$30 million of the high performance bonus funds be allocated to the food stamp measure. As discussed above, given the importance of food stamps to the well-being of families with children, the tools that states have to influence participation, and the ability to measure states fairly and accurately, an amount at least this large should be in the final regulations.

Reward states based on their level of performance on the food stamp measure, as well as on improvement. The final rule should be changed to award five bonuses based on the percentage point improvement over the prior year and five based on the level of the measure. With the current structure for the award, a state that goes from having 30 percent of its low-income working families receiving food stamps to 33 percent (a 10 percent increase) would receive a bonus, but one that goes from 60 to 65 percent (an 8 percent increase) would not. The bonus should be used to promote continued improvement of all states, which can be accomplished by splitting the bonus into two and providing awards to both the highest performers and those with the greatest improvement.

Eliminate the qualifying conditions. The proposed rule would instruct the FNS to determine whether a state is meeting four conditions in order for the state to be eligible for the food stamp portion of the bonus. We recommend that these conditions be dropped. The conditions, which are all required under current law or regulation, include (1) informing individuals of the opportunity to apply for food stamps on their first contact with the state agency, (2) making application forms readily accessible and available upon request, (3) complying with application processing time frames and expedited service rules, and (4) taking steps to prevent inappropriate denials and terminations of eligible food stamp participants who have lost TANF eligibility. On the first two conditions FNS would base its determinations on the state's policy instructions or regulations. On the second two conditions FNS would conduct administrative reviews in addition to relying on state policy materials.

While we ardently support the premise that states should be in compliance with these four features of current food stamp policy, we oppose requiring FNS to go through the additional effort to certify such compliance for purposes of the High Performance Bonus. Our concern is that the agency would not have additional resources to undertake the new determinations and, as a result, would certify that states are in compliance based on incomplete information. If, at a later date, the agency did discover noncompliance with these policies the earlier certification could interfere with administrative or legal actions it might want to undertake.

As an alternative, we suggest that the regulations require states to submit certifications to HHS that they are in compliance, but not require agency verification. Under the latter

recommendation, if the agency had evidence that the state was out of compliance with a particular requirement it could deny the state a bonus.

Consider whether to adjust the data to account for different sized immigrant populations in different states. The measure proposes to use the number of working families with children with income below 130 percent of poverty to represent those families who are likely to be eligible for food stamps. Federal law makes most legal immigrants ineligible for food stamps. Without an adjustment, states with a disproportionate number of immigrants would be at a disadvantage unless they had chosen to provide state-funded food stamps to all otherwise eligible legal immigrants. States that have provided these state-funded benefits could be rewarded for providing the benefits, but states with high immigrant populations should not be penalized if they do not fully offset the effects of the federal treatment of legal immigrants using their own resources. The data under consideration should provide enough information on citizenship status to allow for an appropriate adjustment.

Be more specific in the final rule about what data will be used. Under the proposed rule HHS would measure performance using "Census Bureau decennial and annual demographic program data." We understand that the Department will be using data from the American Community Survey when those data becomes available, as well as data from Census 2000 supplementary survey and other data to gauge state performance on the food stamp outcome measure and the family formation measure. We agree that these data, particularly the ACS data, are appropriate for this purpose. They will be the best data sources for measuring food stamp outcomes for the low-income population with children at the state level. At full implementation in 2003, the ACS will have a sample size of three million households, far larger than any other Census survey. It will be able to provide statistically valid demographic data at the state level on an annual basis, something that has only been available in the past only once every ten years from the Decennial Census. The data necessary for the food stamp outcome measure — families with children less than 18 who have an income below 130 percent of the poverty level and earnings at a given level — are only available from the 2000 Census or the ACS.

Because these are new surveys and it is not clear that the funding will be available for them, the final rule should specify what alternative data would be used if these surveys are either not available or deemed not statistically reliable at the state level. One alternative would be to use data from the annual Food Stamp Integrated Quality Control System for the numerator of the measure and data from the Census Bureau's projections of the number of children in each state for the denominator. If the measure used these data it would have to measure only improvement in performance because states have very different economic and demographic circumstances. We would recommend, however, that if there is a need to use improvement only, that HHS measure improvement from a base period, such as 1996, so that states that performed well in periods before the measure became effective would not be disadvantaged. In addition, if other data must be used, it may be necessary to include all food stamp households with earnings as opposed to just those with earnings above half-time full-time minimum wage in order to increase sample sizes.

after leaving welfare. Although the employer's health plan will pay much of the family's medical bills, Medicaid plays a crucial role by helping such a family meet premium and cost-sharing obligations, as well as in providing coverage for services not included in the employer's health plan.

- **States have considerable flexibility to take steps to improve their performance on this measure;**

States have extensive opportunities to influence the extent to which families leaving welfare remain enrolled in health care coverage. For example, states can help to assure that families leaving welfare for work receive the Transitional Medicaid Assistance for which they are eligible by training caseworkers about the availability of TMA, educating families about TMA, and minimizing the verification requirements necessary to establish that someone has left welfare due to earnings. States also have a number of options for assuring that families who leave welfare for a reason other than earnings receive the health care coverage for which they are eligible. For example, they can help assure that families do not inappropriately lose their Medicaid coverage when sanctioned under TANF. These steps include training caseworkers about the Medicaid implications of a TANF sanction, providing sanctioned families with understandable information about the circumstances under which they continue to be eligible for regular Medicaid, and updating their computer systems to assure that they do not automatically terminate the Medicaid coverage of someone who loses TANF due to a sanction. (Note that children, unless they are minor heads of households, cannot automatically lose their eligibility for Medicaid when their families lose TANF due to a sanction and, in all but 13 states, other family members also remain eligible for Medicaid.)

- **A growing body of evidence suggests that there is considerable room for states to improve their performance in this area.**

Both national and state studies indicate that parents and children leaving welfare (as well as those who are diverted from welfare) are at high risk of joining the ranks of the uninsured even though they generally remain eligible for coverage under Medicaid or CHIP.

- A January 2000 Urban Institute study found that more than one-third of women and nearly one out of five children are uninsured within the first six months of leaving welfare. Within a year, almost half of women and close to one-third of children are without coverage. Despite the existence of TMA, after six to twelve months of being off of welfare, only 35 percent of women and 44 percent of children are enrolled in Medicaid.⁷

⁷ Prepared by researchers at the Urban Institute and released in the January/February issue of Health Affairs.

- State studies of families that have left TANF are often finding that at least 20% of children and the majority of parents are no longer receiving Medicaid after having left TANF assistance.⁸
- A May 1999 Families USA study found that over two-thirds of a million low-income people lost Medicaid coverage and became uninsured as of 1997 due to welfare reform. The vast majority of those losing coverage were children who, in all likelihood, were still eligible for Medicaid.
- The Center on Budget and Policy Priorities recently conducted an analysis of trends in Medicaid enrollment among poor children that suggests the nation would have made progress in reducing the uninsured rate among low-income children but for the impact of the welfare law. Among poor children, the rate of Medicaid participation rate fell from 62.6 percent to 57.8 percent, even though virtually all poor children are eligible for Medicaid. If Medicaid had covered the same proportion of poor children in 1998 that it covered in 1996, some 643,000 additional poor children could have had health insurance coverage last year. Instead, the number of uninsured children increased, although not by a statistically significant amount. Indeed, a recent Urban Institute analysis found that one out of five children become uninsured within six months of leaving welfare, as do one out of three parents. According to the same study, within a year of leaving welfare, 30 percent of children and nearly half of parents are without coverage.

These studies strongly suggest that states have room to improve their performance in helping families maintain their health care coverage after leaving welfare.

Specific Recommendations

Under the proposed rule, states would compete for high performance bonus funds based on the number of individuals receiving TANF benefits who are also enrolled in Medicaid or CHIP, who leave TANF and are enrolled in Medicaid or CHIP in the sixth month after leaving TANF. HHS would award a bonus to the ten states with the greatest percentage improvement in this measure between the two prior calendar years. Ten percent of the annual total amount available for the high performance bonus (or \$20 million) would be allocated to the Medicaid/CHIP measure. In general, we agree with the decision to allow states to compete on the basis of their success in providing Medicaid and/or CHIP coverage to the members of low-income families who have left welfare. This measure captures an important aspect of states' performance, and we believe that states have the capacity to provide reliable data to support a fair

⁸ For a review of initial findings from state leavers studies concerning declines in Medicaid receipt after leaving welfare, see Greenberg, *Participation in Welfare and Medicaid Enrollment* (Kaiser Family Foundation, 1998).

evaluation of their performance on this measure. Here are our specific technical comments on the portion of the proposed rules relating to Medicaid participation.

Increase the allocation for the Medicaid/CHIP measure. We recommend that at least \$30 million of the high performance bonus funds be allocated to the Medicaid/CHIP measure. As discussed above, given the importance of health care coverage to the well-being of families with children, and the tools that states have to influence participation, an amount at least this large should be in the final regulations.

Reward states based on level of participation in Medicaid/CHIP, as well as on improvement in participation rates. Although it is somewhat ambiguous, the proposed health care measure apparently would distribute bonus funds to states with the largest percent increase from one year to the next in the Medicaid/CHIP participation rate among people who left TANF assistance six months earlier.⁹ This measure would make it difficult for states with a history of success on the health care measure to win bonus funds, even if they improve upon their successful records. For example, consider a state in which only 30 percent of people who have left TANF are enrolled in Medicaid or CHIP six months later. If this low performing state increases its CHIP/Medicaid participation rate to 40 percent, it would be more likely to win a bonus than a high performing state that increases its health care participation rate from 90 percent to 95 percent. Accordingly, we recommend that the health care-related bonus funds be divided among the set of states with the highest Medicaid/CHIP participation rates and the states with the highest percentage point increase in this participation rate.¹⁰ By rewarding states for their performance, as well as for improvement in their performance on this measure, HHS would make the health-care related measure(s) more equitable and also increase the incentive for states that already perform moderately well on the health care measure to compete for bonus funds.

Measure individuals rather than families. We particularly commend the decision to evaluate states on the percentage of *individuals* that are enrolled in Medicaid or CHIP, rather than the percentage of *families* with one or more members on Medicaid or CHIP. The studies conducted to date on the percentage of individuals with health insurance coverage after leaving welfare highlight that often only selected family members retain their health care coverage. In particular, parents appear to be at much greater risk than children of losing out on the health care

The proposed regulations indicate that states will be rewarded based on the "percentage" increase in their health care participation rates. We have assumed that this means "percent" increase, rather than the percentage point increase in participation rates.

¹⁰ We specifically recommend evaluating states for the improvement measure based on which have the largest percentage point increase in participation rates, rather than percent increase. If HHS were to use the percent increase in the CHIP/Medicaid participation rate as the measure, it would make it relatively easy for states with a history of poor performance to secure bonus funds. For example, under an improvement measure based on the percent increase, a state that increases its participation rate from 20 percent to 24 percent (a 20 percent increase) would be more likely to win bonus funds than a state that increases its participation rate from 60 percent to 65 percent (an 8.3 percent increase).

coverage for which they are eligible. We also recommend that states be required to provide data separately on the percentage of parents and children with Medicaid and/or CHIP leaving welfare.

Evaluate annually the feasibility of a broader health care measure. As indicated previously, we support a measure of health care coverage for families leaving welfare. At the same time, the proposed measure does not provide any indication of state performance in providing health care coverage to the members of low-income families diverted from TANF assistance or who elect not to apply for TANF. Like families leaving TANF, low-income families who have never been enrolled in TANF often need Medicaid and CHIP coverage in order to maintain self-sufficiency and to improve child and family well being. It is as important that these families receive the health care coverage for which they are eligible as it is to assure that families leaving TANF do not inappropriately lose health care coverage. At this time, we are not recommending an alternative health care outcome measure that addresses this issue because of the lack of reliable state-specific survey data that can be used to evaluate a state's success in assuring that low-income children and parents have health care coverage. However, we recommend that HHS review annually whether such data has become available, and, if it does, to consider a measure that allows states to compete on their success in assuring that low-income children and parents have health insurance coverage, regardless of their recent receipt of TANF.

Eliminate or amend the qualifying conditions. As currently drafted, Section 270.4(d)(1) requires a state to meet various "qualifying conditions" before it can compete on the health care measure. The "qualifying conditions" require states to comply with various requirements of federal Medicaid law primarily related to the delinking of TANF and Medicaid eligibility. They include the requirements that states (1) provide families with the opportunity to apply for Medicaid at first contact with a TANF agency; (2) inform families via a written notice of their eligibility for Transitional Medicaid Assistance when they become ineligible for regular Medicaid due to earnings; (3) retain individuals' Medicaid coverage until they have been determined not to be eligible for Medicaid under any other category; and (4) meet CHIP and Medicaid data reporting requirements.

Although we believe it is essential that HCFA assure states are in compliance with Medicaid law, we do not believe that the high performance bonus provides an appropriate vehicle for HCFA to evaluate or verify whether a state is in compliance with the qualifying conditions. We recommend that the final regulation either drop the qualifying conditions or, at a minimum, clearly establish that an HHS decision to consider a state for the health care measure does not mean the federal government has "evaluated" or "verified" that the state is in compliance with federal law in these areas. The preamble language also should be corrected to remove any references to HCFA "verifying" or "evaluating" that states competing on the health measure are in compliance with federal Medicaid law.¹¹

¹¹In particular, the following language in the preamble should be corrected if necessary to clarify that a state's participation in the health care measure does not constitute an evaluation by HCFA that it has complied with
(continued...)

Eliminate the qualifying options. As currently drafted, Section 270.4(d)(2) requires a state to implement at least two of seven "qualifying options" as a condition of competing on the health care measure. The options include simplifying enrollment and re-enrollment procedures; accepting mail-in or phone-in application for Medicaid; adopting "less restrictive methodologies" when evaluating families with children for eligibility for Medicaid; and using a definition of "unemployed parent" when evaluating the eligibility of two-parent families with children for Medicaid that includes parents who are employed more than 100 hours per month.

We agree states should be encouraged to take advantage of the options available under federal law to promote participation in Medicaid and/or CHIP; but many of the qualifying options listed in Section 270.4(d)(2) are not particularly meaningful. For example, it appears that a state could meet the "qualifying options" requirement by limiting coverage of two-parent families to those in which the principal wage earner works fewer than 101 hours (rather than 100 hours) a month and by adopting a "less restrictive methodology" of disregarding \$95 of a worker's monthly earnings (rather than \$90). HHS should eliminate the qualifying options.

Consultation. As part of its consultation with interested parties, we believe that HHS should indicate in the final regulation that it will post the data submitted by states competing on the high performance bonus measures on the Internet.

(...continued)

the requirements referenced in the qualifying conditions: On page 68210, the regulation indicates "HCFA will verify States' compliance through State documentation and the agency's ongoing oversight of the Medicaid/CHIP programs;" on page 68211, the regulation states "HCFA will verify compliance through the agency's ongoing review of the Medicaid/CHIP program;" and on page 68221, it states that "The qualifying conditions will be evaluated by HCFA based on State documentation and HCFA oversight of the Medicaid/CHIP programs."

3. ADD A CHILD CARE MEASUREMENT TO THE WORK-SUPPORT MEASUREMENTS

Introduction

We recommend that in addition to measuring state performance relating to participation in food stamps and Medicaid, HHS should also include a measure of state performance in providing child care subsidy assistance to families eligible for assistance under federal Child Care and Development Fund (CCDF) eligibility rules. Specifically, we recommend that states be ranked on the share of CCDF-eligible children receiving child care subsidy assistance, and that bonuses be awarded for the five states in which the highest percentages of eligible children receive assistance and the five states demonstrating the greatest improvement (measured in percentage point increases) from the prior year. We further recommend that a qualifying condition for the bonus be that the state's payment rates for center-based care and family day care be set at levels not lower than the 75th percentile of the local market rates in the state.

The rationale for including a measure of performance in relation to child care is similar to the rationale for including such a measure for food stamps and Medicaid. Child care assistance can be a crucial work support in making it possible for low-income families to accept and maintain employment. Moreover, child care assistance can help to reduce the out of pocket costs faced by low-income working families, and in doing so, can increase the resources available to meet other family needs. Thus, the provision of child care subsidy assistance advances both the TANF goal of promoting work and the goal of providing assistance to needy families. Indeed, the preamble to the proposed regulations expressly states that "The new law reflects widespread, bipartisan agreement on a number of key principles" including the principle that "Parents should receive the child care and the health care they need to protect their children as they move from welfare to work." 64 Fed. Reg. at 68203.

The preamble to the proposed rules does not expressly state why HHS opted to include bonuses in relation to food stamps and Medicaid but not child care. It is possible that this decision was based, in part, on the fact that there has been considerable attention and concern based on evidence of declining participation in food stamps and Medicaid after families leave TANF assistance. While that declining participation certainly presents reasons for immediate concern, we also believe that in the long run, the challenge for all states is to focus attention on efforts to link low-income working families with important work supports, and surely child care is a critical part of that effort. Recent research suggests that there is room for improvement both in providing child care assistance for families leaving TANF and for other low-income working families. A review of state leavers' studies concluded that in those studies, the majority of families working after leaving TANF assistance were not receiving child care subsidy assistance, and that in most of the states with data, only about 25-30% of working leavers were receiving

subsidies.¹² And, HHS analysis indicates that only about 10% of children eligible under federal CCDF income guidelines were receiving CCDF-funded child care assistance in 1998.¹³

In developing the proposed rules, HHS may also have distinguished child care from Medicaid and food stamps because the latter programs are federal entitlements for eligible families while child care is not a federal entitlement. However, the fact that a particular benefit is not a federal entitlement should not preclude HHS from measuring state performance and awarding bonuses for superior performance. For example, there is no "entitlement" to retention or advancement services, yet HHS proposes to award bonuses for state performance in addressing retention and advancement. And, although there is not an open-ended federal matching funding stream for child care, states can directly affect the share of eligible families receiving subsidy assistance through their decisions about how to spend (and whether to transfer) TANF funds and how to use maintenance-of-effort funds.

Specific Recommendations

We are recommending that child care performance be measured based on the share of CCDF-eligible children receiving child care subsidies. We understand that an estimate of the numbers of CCDF-eligible children in each state can be derived from Census data. The number of children in a state receiving CCDF-funded subsidies can be calculated from CCDF administrative data reported by states to the federal government. We recognize that a state may also be providing child care subsidies through direct expenditure of TANF funds or through expenditure of state funds not included in CCDF reporting. We suggest a state be permitted to supplement CCDF reporting with reporting of participation in other non-CCDF-funded child care programs. If a state did not elect to supplement CCDF reporting, the calculation of state rankings could be conducted by HHS without the need for reporting of any additional data by states.

As in our food stamp and Medicaid measures, we are recommending that the bonuses be allocated both for the states with the highest level of performance and for states with the greatest improvement from the prior year. Our reasoning is similar to that relating to food stamps and Medicaid: it is important to recognize those states with the highest level of performance, but also important to structure a bonus for which all states can compete by improving their performance from year to year.

In structuring our recommendations, we considered whether it would be preferable to base the bonus on the share of CCDF-eligible children receiving assistance or the share of TANF

¹² Schumacher and Greenberg, *Child Care After Leaving Welfare* (Center for Law and Social Policy, October 1999).

¹³ U.S. Department of Health and Human Services, *Access to Child Care for Low-Income Working Families* (October 19, 1999).

recipients and employed TANF leavers receiving subsidies. We ultimately opted for the CCDF measure for three reasons. First, we recognized that it might be more difficult to obtain consistent and reliable information on work status and child care program participation by TANF leavers. Second, we appreciate that some states have made a policy decision to structure a "unified" child care system in which there is no eligibility distinction made between TANF recipients and leavers and other low-income working families. It would seem inappropriate to award a bonus to a state that was doing a "better" job of assisting TANF leavers simply because fewer child care resources were being made available to low-income families outside TANF. Finally, we recognize that a number of states have used TANF funds to significantly increase the availability of child care assistance outside the TANF cash assistance system in an effort to reduce the need for TANF cash assistance. The efforts of those states would not be reflected if performance were solely measured based on receipt of subsidies by TANF families and TANF leavers.

Finally, we recommend that a qualifying condition for the bonus be that the state's child care payment rates for center-based care and family day care are set at rates no lower than the 75th percentile, based on a market rate survey conducted within the past two years. In promulgating CCDF regulations, HHS had indicated that payments established at least the 75th percentile of the market rate would be regarded as providing equal access for CCDF-funded children to the care available to families that are not eligible to receive subsidy assistance. 63 Fed. Reg. 39959 (July 24, 1998). We believe that a qualifying condition of this nature is important because otherwise, a state that was providing minimal subsidy assistance to a large number of families would be measured to be a "high-performing" state.

4. MODIFY THE WORK MEASURES TO MORE EFFECTIVELY MEASURE SUSTAINED EMPLOYMENT AND WAGE GROWTH.

Introduction

The proposed regulations would measure state work performance by calculating a job entry rate and a success in the workforce rate. The success in the workforce rate would be based on a combination of scores from a job retention rate and an earnings gain rate. All of these measures would be calculated from a base of families receiving TANF cash assistance.

We agree that job entry, employment retention, and earnings gains are appropriate outcomes to measure in a performance bonus. However, we believe that the measurements as described in the proposed regulations can be improved to more effectively measure these outcomes. As described in Section 5, we are recommending that one measure be an earnings gap rate measured for all low-income families in a state. For those families receiving TANF assistance, we are proposing two measures: a sustained employment measure and an earnings gain measure.

This section outlines our concerns about the proposed measures, suggests ways of strengthening those measures, and describes the rationale and a proposed design for a sustained employment measure and an earnings gain measures as potential alternatives.

Specific Recommendations

Measure Sustained Employment. Under the proposed regulations, bonus funds would be awarded for performance on a job entry rate calculated based on the unduplicated number of adult recipients who were unemployed at some point in the performance year and who then enter not fully subsidized employment at some point in the performance year. The proposed regulations do not define what it means to be "unemployed at some point" and do not set any minimum threshold for what is required to count as having entered not fully subsidized employment.

We have concerns about the job entry rate, based both on the methodology as outlined in the proposed rule and on the initial experience with a job entry rate in the High Performance Bonus data released to date. The fact that there is no definition of "unemployed at some point" means that states could interpret the language differently. For example, one state might define "unemployed at some point" as requiring a month of unemployment, while another might require a day or week of unemployment. At minimum, there should be a clear and consistent definition.

Even with a consistent definition of "unemployed," the rate is still of limited utility if there is no minimum threshold requirement for employment. Again, a state could count an individual who was employed for a day (or an hour) as having been employed. If the rate is to be

maintained, we suggest that a uniform minimum threshold for being "employed" should be established.

We are concerned about the utility of the proposed job entry rate, in part, because some seemingly anomalous results were apparent in the initial state reporting using a similar definition in High Performance Bonus reporting for 1998. In the 1998 results, there were extreme variations between states in reported job entry rates, with three states reporting rates of 20% or less and one state reporting a rate of 88%. While it is not impossible that performance could have varied so much, the magnitude of the range suggests the need to examine the data more carefully. And, other anomalies were also apparent. For example, the calculation of the job entry rate is supposed to be based on the unduplicated number of adult recipients who were unemployed at some point in the year. Since this is an unduplicated count, one would expect the figure to grow at some reasonable pace throughout the year. However, one again sees large variations: at one extreme, in one state, the fourth quarter figure is only 11% larger than the first quarter figure, while at the other extreme the figure is 115% larger. And, there seems to be no consistent relationship between the fiscal year denominator and the state's unemployed adult caseload for the fiscal year.

We are unable to determine whether these anomalies occurred because of problems in the accuracy or consistency of data submitted by states, or because states were interpreting the instructions differently or if there were other undetermined problems in the nature of the job entry measure. At minimum, these results suggest the need to clarify instructions so that states are consistently interpreting the directions as to which cases should appear in their numerators and denominators.

We also have concerns about the calculation of the job retention rate under the proposed rule. The job retention rate would be calculated based on the unduplicated number of employed adult recipients who were also employed in the first and second subsequent quarters. We do consider this proposed rate an improvement over the one used until now, which has measured job retention based on being paid for work performed in two consecutive calendar quarters. Our concern under this prior definition was that since there was no minimum hours or earnings requirement so long as the individual worked in the quarter, an individual could be measured as having worked in two consecutive quarters if, for instance, he or she was employed for two days, i.e., on March 31 and April 1. While this problem has been alleviated somewhat by requiring work in an initial quarter and a first and second subsequent quarter, we believe there are still two limitations to the proposed measure. First, it imposes no minimum earnings requirement to constitute having worked in a quarter. Thus, one will know the number of individuals that have worked in three consecutive quarters, but will not be able to tell if such individuals worked for nine months or three days. Second, the proposed measure does not appear to calculate employment retention in a consistent manner from the point of job entry. Rather, the individuals employed in Quarter 1 and tracked for the next two quarters could be individuals that had already been continuously working for an extended period of time before Quarter 1. Prior research has found that the highest risk of job loss occurs in the initial months of employment. Thus, mixing

individuals newly entering employment with individuals who have already been working for some time will mean that the data will not provide a clear picture of the share of new job entrants retaining employment.

Thus it would be an improvement to modify the job retention measure to calculate retention in the first two quarters after the initial quarter of employment entry. However, the problem of having no minimum threshold for counting as "employment" would remain.

Our alternative suggestion would be to develop a single sustained employment rate in lieu of the proposed job entry and job retention rates. Under our proposal, the base would be the entire caseload of adult TANF recipients, excluding only those adults who were already engaged in employment with earnings equal to or greater than the equivalent of 20 hours times the minimum wage for the thirteen weeks of the quarter. Then, an individual would count as having obtained sustained employment if, during the next year, he or she had at least two consecutive quarters with earnings equaling or exceeding the threshold (i.e., 20 hours times minimum wage times 13 weeks).

This sustained employment measure would offer several advantages over the approaches in the proposed rule. Rather than rewarding brief, sporadic, unstable employment, it would reward those states that were most successful in helping individuals enter or retain employment at a substantial level over a two-quarter period. And, because the base would exclude adults already working at or above the 20-hour-a-week equivalent, it would measure movement from below to at or above a clear, consistent work threshold. Moreover, no state would win a bonus for job entries if the state was not also able to demonstrate that individuals who entered employment were retaining that employment for at least two quarters.

As with our other measures, we are recommending that bonuses be awarded both for absolute level of performance and for improvement from prior performance, with \$25 million allocated to each measure.

Measure Earnings Gain Rate. The proposed regulations would require the calculation of a measure of earnings gain over a two-quarter period. Though earnings gain would be separately calculated, states scoring highest in earnings gain might not qualify for a high performance bonus, because the measure of earnings gain and the measure of employment retention would be consolidated into a single "success in the workforce" measure, with greater weight given to employment retention.

We agree that it is important to look at earnings gains, but are recommending some modifications to the measure and how it is used. Specifically, we recommend:

- Earnings gain should be measured over a one-year period rather than a six-month period.

- Earnings gain should be measured beginning from the quarter in which an individual first begins working an average of at least 20 hours a week throughout the quarter.
- Earnings gain should qualify for its own bonus, and not be consolidated into a single measure with employment retention.

First, we agree that earnings gain should be measured and reflected in the determination of the high performance bonuses. A consistent finding across state studies of families leaving welfare has been that the initial wages of employed welfare leavers are higher than the minimum wage, but not sufficient to reach the poverty line. The Urban Institute's National Survey of America's Families (NSAF) reported median wages for welfare leavers of \$6.61 an hour, and reports of average wages are often at a similar level.

In structuring their TANF programs, many states articulated a "work first" strategy, encouraging families to take the first available job. The underlying premise of this strategy was that it was important for parents to rapidly connect with employment, and that once employed parents could move up into better jobs, either through normal labor force progression or through participation in education, training or other advancement activities. In light of this commonly-shared approach, and in light of the fact that parents are typically beginning employment with below-poverty wages, it would be extremely valuable for HHS to encourage consistent data collection to better understand the extent of upward movement over time and to reward those states that are most successful in increasing the earnings of families entering employment.

We appreciate that HHS has already recognized the need to measure earnings gains in the initial High Performance Bonus competitions and in the proposed regulations. We are concerned, however, that the initial measure may need to be adjusted to more effectively measure wage gains, and are therefore suggesting several revisions.

The proposed regulations are not entirely clear as to how the calculation of earnings gain would be made. The proposed regulations indicate that a comparison would be made between the initial and second subsequent quarters for adult recipients employed in both of those quarters. However, the regulations do not define initial quarter. We assume that it is intended to mean the first quarter in the fiscal year in which employment earnings appear, but were unsure whether the intent was to measure the first quarter after a quarter of unemployment, or the first quarter after any period of unemployment. At a minimum, this needs to be clarified.

In any case, we think there are two principal problems with comparing the initial quarter of employment to the second subsequent quarter. First, the initial quarter of employment will typically be a partial quarter because the individual may not enter employment on the first day of the quarter. Thus, a part of the difference between the initial and second subsequent quarter is simply a reflection of the difference between a partial and full quarter. Second, the gap between the initial and second subsequent quarters is too short to meaningfully measure earnings gains. For example, some states are seeking to encourage participation in education or training after a

parent has stabilized in employment, and some projects seek to help individuals move into higher paying jobs after demonstrating a sustained work history. The effectiveness of initiatives such as these would not likely be reflected in earnings gains within six months. While there is no clearly correct standard, looking at progress over a one-year period would be a more meaningful measure. Since this measure would be based on unemployment insurance wage record matching, it would not call for sustained tracking and follow-up by states not otherwise wishing to do so.

One approach to dealing with the partial quarter problem could just be to say that the base for calculating earnings gain would be the first quarter after the initial quarter of employment. While we believe that would be an improvement over the proposed measure, we are also suggesting a further refinement: we propose that earnings gains be calculated based on the increase from Quarter 2 to Quarter 6 (i.e., one year) for those parents who a) are either unemployed or have earnings below 20 times the minimum wage times 13 weeks in Quarter 1; and b) have earnings of at least 20 times the minimum wages times 13 weeks in Quarters 2 and 6.

The reason for our proposed measure is to attempt to better measure real gains in wages as opposed to the increased earnings that result from increased hours or weeks of employment. Earlier research on the employment experience of AFDC recipients has concluded that most of the gains in earnings were attributable to increased hours or weeks rather than increased wage levels.¹⁴ Advancement strategies are typically seeking to increase job quality, and will not be well reflected by a measure of aggregate wages that cannot distinguish between earnings increases due to higher wages and increases due to more hours of work. There is no perfect resolution of this difficulty when using UI wage records, but we think that by imposing a work threshold (20 hours times minimum wage), the result is more likely to better reflect the extent of increases in wages.

Finally, we are recommending that earnings gain be provided its own bonus rather than combined with the employment retention measure. The proposed regulations would combine the two, giving earnings gain less weight. The preamble explains "We believe that earnings gain is dependent on job retention, and therefore, should be given a lesser weight." 64 Fed. Reg. 68213. This statement is true in the narrow sense that an individual cannot have earnings gain unless he or she remains employed. However, research findings are suggesting that the factors affecting employment retention and the factors affecting advancement are not the same, and that the policies that support employment retention may, in themselves, do little to promote advancement.¹⁵ And, at least in the initial results for the high performance bonus, there is little if

¹⁴ See Fridlander and Burtless, Five Years After (Russell Sage Foundation, New York, 1995); Cancian and Meyer, Work After Welfare: Women's Work Effort, Occupation, and Economic Well-Being, Social Work Research, Forthcoming, 2000.

¹⁵ See Rangarajan, Schoet, and Chu, Employment Experiences of Welfare Recipients Who Find Jobs: Is Targeting Possible? (Mathematica Policy Research, Inc., Princeton, N.J., 1998); Cancian and Meyer, Work After Welfare: Work Effort, Occupation, and Economic Well-Being, Draft paper prepared for the Annual Meeting of the Association For Public Policy Analysis and Management (1997).

any relation between the states that had the highest rankings on retention and those with the highest rankings in earnings gains. For example, Hawaii ranked 1st on retention and 43rd on earnings gain; Connecticut ranked 2nd on retention and 31st on earnings gain. Conversely, South Dakota ranked first on earnings gain but 34th on retention, and Kansas ranked 2nd on earnings gain and 29th on retention. While there are many questions about how to understand these results, they certainly do not support a measure which treats earnings gains and retention as measuring similar or closely related outcomes.

We should observe that while we support an earnings gain measure, we have one concern that merits further examination over time. A broadly shared goal is that families are able to stabilize in family-supporting employment. Some states may attempt to reach this goal by focusing on rapid employment placement and post-employment services; other states may attempt to reach the goal by stronger emphasis on employment preparation activities and more focus on the quality of initial job placement. Ideally, a federal measure of performance would not "prefer" one strategy to the other, but would focus on the ultimate outcomes, e.g., at some subsequent point, what are the earnings of employed families in the state. We do have some concern that a measure of earnings gain could unintentionally have the effect of treating those states that begin with the lowest base earnings as the states that demonstrate the most "earnings gains," at the expense of those states paying more attention to initial job quality. At this point, the available data is probably not sufficient to know whether this concern is justified, but we would urge HHS to closely examine the results of this measure, and try to develop a better understanding over time of the factors associated with measured high and low performance.

Reconsider Treatment of Separate State Programs. The preamble to the proposed regulations expressly recognizes that the measure of a state's TANF performance could be affected by the state's choices about who is and is not assisted in the TANF assistance program. The preamble observes that a state could, for example, shift families with the most significant barriers to employment into a separate state program, thus artificially elevating the measured performance of the TANF program. It is true that such a result could happen, but that is just one of a number of ways in which the states' TANF and maintenance-of-effort policies could limit the comparability of performance across states. For example, a state with more restrictive sanction policies or more rigorous up-front requirements could make it difficult or impossible for those families with severe barriers to employment to ever receive or continue to receive assistance. A state that allows exceptions to time limits for families in which a parent or ill, disabled or elderly may have a lower rate of employment entries among the TANF population than a state with a more restrictive time limits. A state that categorizes cases in which a grandparent is caring for grandchildren as child-only cases may demonstrate a higher job entry rate among adults receiving assistance than a state that provides assistance for the grandparents.

There is no easy way to adjust for the fact that measured state performance will be affected by state eligibility rules, caseload demographics, policy choices about whether and how to assist families and a multitude of other factors. That is one reason why we emphasize the need

for population-based performance measures. However, for any bonus that is based on performance relating to the TANF population, we do think that it is inappropriate to single out the use of separate state programs among the array of potential factors that could affect measured performance. Either HHS should make a commitment to scrutinizing the entire set of policy choices that affect the composition of a state's TANF assistance program, including those policies that have the effect of restricting assistance for families with barriers to employment or HHS should simply base its measures of performance relating to TANF assistance on the families that receive TANF assistance. We think that the best balance is to have a set of measures relating to families receiving TANF assistance and a set of measures relating to the entire low income population, while at the same time committing federal attention to efforts to better understand and focus public attention on how states are addressing the circumstances of those families with the greatest barriers to employment.

5. BASE PART OF THE WORK MEASUREMENT ON THE ENTIRE POPULATION OF LOW-INCOME FAMILIES

Introduction

Under the proposed regulations, all work-related measures are based solely on measuring outcomes among the population receiving TANF assistance. We recommend a more inclusive set of work measures that will measure how well states are serving the entire universe of working families, not just families on TANF. We suggest that the final regulation, in addition to measuring performance relating to the TANF population, also include at least one measure of performance based on work participation by the state's entire low-income working family population.

As discussed in the overview on pages 5-6, there are several reasons why the work measures should become at least partially population-based. Caseloads have declined significantly and more former and current welfare recipients are working than ever before. More former recipients are among the working poor. Some states have experienced very steep caseload declines and have relatively few families left on TANF. These remaining families have a disproportionate number of barriers to employment. A diminished caseload base may handicap a state against winning a performance bonus based solely on TANF population.

At the same time, states that are serving relatively few of their poor families with TANF may be providing other work-based supports to low-income families not receiving assistance. For example, a state may have used its TANF funds to substantially expand the availability of child care or to develop an earned income tax credit or to develop other supports for the low-income working population.

States are serving a varying percentage of their total number of poor families and children with TANF. Because of this variation, a performance bonus measure that looks only at current TANF population will inherently miss some of the work a state has done to support working families. A performance measure that focuses solely on the TANF population cannot evaluate how well states have done in helping low-income families avoid returning to the rolls. For these reasons, we recommend that HHS consider making more of the work-related measures based on the total population of low-income families.

Specific Recommendations

Specifically, we propose that \$25 million of the work-related bonus be allocated to a population-based measure that calculates an earnings gap. Bonuses would be awarded to the eight states with the most significant improvement in earnings gap from the previous fiscal year. Specifically, we propose:

6. CHANGE THE FAMILY FORMATION MEASURE TO A PANEL-BASED COMPETITION

Introduction

We appreciate HHS' intent to "stimulate successful state initiatives" in pursuit of the TANF goals to "promote marriage" and "encourage the formation and maintenance of two-parent families." The proposed rule would rank and then reward the top ten states that demonstrate an increase in the percentage of children below 200 percent of poverty who reside in married couple families. However we believe there are serious methodological and substantive problems with using the proposed performance measure as a basis for rewarding states on this issue. We also believe that quantitative measures are inappropriate and premature in an area of policy that is so untried and untested.

As an alternative, we propose that HHS establish a monetary awards program that would reward states for innovative policy initiatives or program demonstrations that have demonstrated, or can be reasonably expected to lead to the desired outcomes, namely more children being raised in stable, healthy marriages and two-parent family households.

Data and Measurement Problems in the Proposed Regulations.

Since state-produced vital statistics on marriages and divorces are not universally available, uniform, or reliable, the rule proposes using Census household survey data for the proposed performance measure.

We understand that Census data will be available to construct this proposed measure for each state through population estimates based on data collected in the 2000 Census long-form (the survey administered to 1 in 6 households) and, in the subsequent years, data collected by the new annual American Community Survey (ACS) and its precursors, assuming the necessary fiscal appropriations are enacted to fund it.

These Census survey data have a number of shortcomings in relation to their proposed use for this measure and awarding the bonus. We first list those problems that apply mainly to restricting the measure to families below the 200 percent of poverty. This restriction could produce misleading results and create perverse incentives:

- There are often significant differences among states in changes in economic conditions. States experiencing an economic slowdown or recession, with an increase in poverty, could thus have a higher ranking on this measure, whereas states with improving economies might do worse. What appeared to be an increase in the formation of married couple families could just be a result of a decline in the economic well-being of married families. Using this measure could, in effect, reward states in which more married couples were in poverty.

- Since single mothers usually improve their economic situation when they marry, increases in marriage would move many two-parent families out of poverty. Thus, paradoxically, states that were successful in encouraging single parents to marry could be less likely to receive the bonus.

If the measure were made universal, and state rankings were based on the percentage increase in all children living in married-couple households some of these problems would be avoided. However the following problems would remain:

- The measure would be affected by demographic factors particular to that state or region such as increases or decreases in the birth rate among married couples or changes in the numbers of married couples who immigrate.
- States would have incentives to institute financial rewards or penalties which had immediate results rather than investing in longer lasting solutions. For example, some have proposed to offer monetary bonuses to pregnant teens who marry, or withdraw assistance if a pregnant teen does not. Such strategies would be viewed by many as unwise and/or punitive. Using financial incentives to encourage "shotgun" marriages would not take into account the quality of the relationship between the couple or provide them with the support they need for their relationship to be successful. (Teen marriages are at high risk of divorce, and high conflict and abusive marriages are harmful to children and the adults involved.)
- Awarding the bonus based on the proposed measure will focus state efforts entirely on the quantitative second goal of TANF "promoting marriage," and give no incentive to states to devote resources to pursuing the more qualitative fourth goal "to encourage the formation and maintenance of two-parent families."
- Finally, there is no record of how this measure has fluctuated from year to year in the past, and it would be very difficult to know whether and how to attribute changes in this measure in the future to state policy or program initiatives.

In short, the adoption of quantitative performance measures of these goals is premature and will not stimulate state initiatives that are likely to be successful in the long run.

In pursuing the work goals, states have had more than a decade of lessons from demonstration work/welfare programs to draw upon, and reasonable quantitative measures of performance can be constructed. However, the public sector has no record of program or policy experiments related to encouraging marriage and strengthening two-parent families. Hence states have no guidance as to the best approaches to use to pursue these goals. This absence of program experience and evaluation is likely to result in two responses:

- Many states may decide it is not worth even trying to compete for these marriage awards.
- A few states may be tempted to implement changes in financial incentives to boost marriage rates that may gain some short-term political support but are not based on any research or experience and will be unlikely to succeed.

Specific Recommendations

We believe the best way to encourage states to develop successful innovations in this area would be for HHS to establish an Innovations in Strengthening Marriage and Two-Parent Families Award program. This program could be modeled on existing awards programs such as the Innovations in Government Award program administered by the John F. Kennedy School of Government at Harvard University, in collaboration with the Council for Excellence in Government and the Ford Foundation. (In this program \$100,000 is awarded each year to the 10 applicants from local, state or the federal government for outstanding innovative examples of solving a problem of significant concern to a portion of the American people. \$20,000 awards are given to an additional 15 programs).

In the proposed Innovation Awards program states (and perhaps local governments) would be invited to compete on a voluntary basis for substantial monetary awards given for demonstration programs, innovative policies or a package of initiatives designed to promote marriage and/or encourage the formation and maintenance of two-parent families. These efforts could be quite new, or instituted within the last five years. We recommend awarding a total of \$20 million to a small number of states. The applications would be reviewed and rated by a panel of judges according to criteria such as:

- **Well-targeted.** The extent to which the program or policy is targeted on population groups at high risk of single-parenthood.
- **Strengthening relationships.** The extent to which the initiatives focus both on strengthening the quality of the parental relationship, as well as marital status and stability.
- **Promise of success.** How well the applicant can demonstrate that the program or policy design is based on sound research, plausibly related to the desired outcomes, and targeted on the stages of family formation that appear most likely to respond successfully to the initiative.
- **Achievement of success.** Whether the applicant can demonstrate that the program or policy has had a positive effect on the formation, stability and quality of two-parent family unions.

- **Replicability.** The extent to which the program or policy could be replicated and adapted by other communities or states.
- **Partnership with the community and private and non-profit sectors.** The extent to which the program has created the public education and cultural and community support necessary for success.

In announcing the proposed competitive awards program, states would be encouraged to use unspent TANF funds to design and implement these new initiatives as well as seek matching funds from the private sector.

It would be important to select a panel of judges who were widely respected and independent of political partisanship. At a minimum the panel should include nationally known experts in couples and marital research, experts in evaluation of innovative programs and individuals with experience in public sector human service programs.

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million to the family-related, non-work measures, for an amount of \$20 million each. Our experience and that of our member organizations leads us to the emphatic conclusion that parents can succeed at work only if the supports which every working family needs are in place for them as well. Therefore, we believe that it is important to give the same kind and amount of recognition to the non-work measures as to the work measures. This includes for each measure an award both for high performance and for greatest improvement. Thus we strongly urge ACF to reconsider this proposed, unequal division. Rather, we advocate that there be 10 awards; five for best performance on job placement, job retention, access to food stamps, access to health insurance, and access to child care, and five for greatest improvement in each category. We further think that each category should receive equal funding.

The Success in the Workforce Measure. We believe that one year is a better measure of job retention than six months, particularly since this proposed measure concerns continued participation in the work force rather than continued employment in any one job. In addition, we believe that this measure should require continuity of participation and not merely use point in time data. As it is currently written, someone could hold a job in the first and third quarter, and not in the intervening second quarter, and still be counted as a "success." This cannot adequately measure progress toward the goal of sustained employment. Therefore, we believe that for an individual to count toward the numerator in this measure, they should have significant sustained earnings in every quarter that is counted.

The Food Stamp High Performance Measure. Receipt of food stamps is an important support for low income working families. However, participation in the food stamp program has dropped dramatically in recent years, and participation by the working poor is especially low. The federal government has recently announced several actions designed to ensure working families access to food stamps. Within current law and regulations, states have broad leeway to take action in numerous areas to simplify and streamline food stamps procedures and to facilitate enrollment. It is thus important and appropriate to utilize a measure of the improvement in the number of low-income families receiving food stamps as a High Performance Bonus measure. We also support the proposal that states must meet designated "qualifying conditions" in order to compete for this bonus.

However, we support the following changes to this measure. First, we believe that it should measure participation as a percentage of all low income families, not just working families. For many families between jobs, food stamps may be the sole source of support. The state should be rewarded for maximizing the access of unemployed families, as well as access for currently employed families. Second, we support proposed Section 273.4(c)(1), requiring states to have met certain minimum qualifying conditions. However, we believe that in order to be eligible for the award, the state should be required to affirmatively demonstrate their compliance with the qualifying conditions described in items (i) through (iv). In particular, states should be required to affirmatively demonstrate that their computer system has been programmed so that when any TANF case closes, the food stamp case remains open and the worker must independently determine whether the household remains eligible for food stamps before closing the case. This

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requirement of affirmative demonstrations by the state should be in addition to the other evidence proposed in the regulation.

The Medicaid and CHIP High Performance Measure. The ability to provide one's children with needed health care is a core parental concern. Provision of such health insurance coverage is an essential support for low income working families. The abrupt decreases in the Medicaid roles which have accompanied the decline in TANF workloads in all too many states is a concern of NACA members around the country. Several have taken the lead in successful state-level efforts to draw public attention to the problem and to persuade state governments to take steps to correct the problem. Many NACA members are involved in CHIP and Medicaid outreach and enrollment efforts around the country, and are fully cognizant of the innumerable burdens to enrollment and retention. States have very broad latitude within current law and regulation to take the steps needed to dramatically simplify enrollment procedures and to increase both enrollment and retention in both Medicaid and CHIP. Thus, NACA strongly endorses the proposal that a new High Performance Bonus measure be put in place measuring enrollment in Medicaid and CHIP. As is the case with the proposed Food Stamp measure, we also support the proposed requirement that states meet designated "qualifying conditions" in order to complete for this bonus.

However, as with the food stamp measures, we believe that the state should be required to affirmatively demonstrate compliance with the qualifying conditions in order to be eligible for the bonus.

We also believe that the measure should be the percentage of all low income families enrolled in these programs, and not merely TANF leavers. We note that the measure included in the proposed rule in effect measures compliance with current law. Essentially, all TANF leavers should be Medicaid eligible for the first six months, either because of income eligibility or because they are eligible for transitional Medicaid. Therefore, if a state is in compliance with the law, it should have essentially every TANF leaver enrolled in Medicaid at the six month point. We believe it is inappropriate to use a performance bonus to reward states for complying with the law—particularly a law which has been in place for years.

However, we believe that enrollment in health insurance is a critical work support for low income families. We know that states have many discretionary tools available to increase enrollment in public health insurance programs. Therefore, we believe that the appropriate measure is the percentage of all low income families enrolled in Medicaid or CHIP. We note that this is an important goal for TANF. First, access to health insurance is often a prerequisite for remaining employed. If the goal is to help families avoid losing work and becoming dependent on welfare, then providing broad access to health insurance is a critical component. Secondly, by the time these awards are issued, families will have begun to reach their 5 year time limits on TANF in all 50 states. Fewer and fewer families will be TANF eligible, and it seems sensible to measure success on assisting families into the work force by looking at all families, not just recent TANF leavers.

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The final family-related measure. ACF has proposed as the final non-work measure a measure of family formation and stability, which it defines as the percentage increase in all children below 200 percent of poverty who reside in married couple families. NACA is troubled by this proposed measure and proposes a substitute – a measure of the availability of child care supports – for two reasons.

The High Performance Bonus program is designed to encourage the adoption of "best practices" by states, to identify those states with particularly effective programs as demonstrated by measurable results, and, through the provision of a concrete reward, to provide equally concrete incentives for states to adopt practices which work. We do not believe that the proposed measure of family formation and stability can achieve the desired result. While some programs may have indirect effects on family stability, we know of no state programs that have been demonstrated to be effective in achieving the goal of raising the percentage of children residing in married couple families. To the contrary, research we have reviewed indicates that family formation and stability is more directly related to the state of the economy than to any policy or program under state or federal control. To institute a High Performance Bonus measure for an area in which state programs have only tangential effects appears to us to reward states with strong economies, rather than states with effective program models. While some welfare provisions have historically affected family structure, those measures (e.g. the denial of benefits to two parent families) have largely been eliminated already, and thus the performance bonus would not be rewarding the state for that choice.

Conversely, it is broadly acknowledged that affordable, acceptable child care is an essential precondition for any working family at any income level. Access to high quality child care may be the single most important determinant in how children will be affected by welfare reform. For many children, welfare reform means spending up to 12 hours a day in child care. If it is good, that child care can significantly contribute to the child's safety, nutrition, and development. Conversely, poor child care—or worse, no child care—may endanger the child's safety, health, and learning.

The omission of a child care measure from an initiative designed to create visibility and support for the provision of essential supports for low-income working families, as is the addition of family-related High Performance Bonus measures, would have long-term, thoroughly negative consequences. Thus, it seems essential that the third family-related High Performance Bonus measure be a measure related to child care.

We are aware that there are concerns about the availability of appropriate, reliable, comparable data in this area. In fact, because of the formative impact which ACF can have through the incentives which this program provides, this in itself could be viewed as a reason for ACF to establish a High Performance Bonus measure in this area. It would be an appropriate and valuable outcome, since provision of adequate child care is critical for the success of welfare reform for children, if the bonus encourages states to develop the kind of information they need

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to administer their state programs appropriately.

Bonus measures should take into account overall improvements in enrollment among low-income working families (setting income standards to at least 200 percent of the federal poverty line) without regard to TANF status and uptake rates for child care subsidy enrollment among TANF leavers. Further, areas that have proven problematic at the state policy level and detrimental to the smooth provision of subsidized child care to working families--should also be addressed, including (1) the appropriateness of the state's co-payment scale and policy with regard to parental affordability, based on objective and measurable data and 2) payment policies for ALL providers participating in the subsidy program, based on objective and measurable criteria.

Continuing Review

We support the suggestion that the Department should continue to review the available measures of success annually, and consider refining the bonuses as new data becomes available that might measure success more precisely. We urge the Department to include members of the advocacy community in the review process, and also to release the findings of that review.

Release of Data

We urge the Department to release all the data submitted by states interested in receiving these bonuses, and the final rankings, and to make that information available on the ACF web site.

We appreciate the opportunity to submit comments on this regulation and support the Department in its desire to broaden the measures of welfare success.

Sincerely yours,



Tamara Lucas Copeland
President

To: Advocates concerned with use of incentives to improve state welfare performance
From: NOW LDEF
Re: Comment on HHS Regulations on High Performance Bonus
Date: January 24, 2000

In December, we sent you an analysis of the proposed high performance bonus regulations issued by HHS. Comments on those proposed regulations are due on February 4, 2000 and should be sent to: Administration for Children and Families, Office of Planning, Research and Evaluation, 7th Floor West, 370 L'Enfant Promenade, SW, Washington D.C. 20447. The full text of the proposed regulations are published at 64 Fed. Reg. 68202 (Dec. 6, 1999) and can be accessed on the following website:
<http://www.acf.dhhs.gov/news/welfare>

Attached are NOW LDEF's draft comments on the proposed regulations. We urge you to use our draft comments as a model for submitting your own comments. It is critically important that HHS hear from as many groups as possible on the importance of including child care and domestic violence as measures of state performance, expanding the food stamp and employment measures, and deleting the marriage measure.

If you have any questions or want more information, please contact Sherry Leiwant or Yolanda Wu in NOW LDEF's New York office, sleiwant@nowldef.org or ywu@nowldef.org, 212-925-6635, or Jackie Payne in NOW LDEF's D.C. office, jpayne@nowldefdc.org, 202-544-4470. If you do comment on these regulations, please send us a copy of your comments. Thank you.

**NOW LDEF's Draft Comments on Proposed High Performance
Bonus Regulations**

U.S Department of Health and Human Services
Administration for Children and Families
Office of Planning, Research and Evaluation
370 L'Enfant Promenade, SW
7th Floor West
Washington, DC 20447

Dear Secretary Shalala:

Thank you for permitting us to comment on your proposed regulations published on December 6, 1999 on criteria for rewarding states for high performance in their TANF program.¹

Although there are several areas on which we focus our comments, we are most concerned by HHS's failure to include child care as a measure of a state's performance in meeting TANF goals. Child care is intimately connected to single parents' ability to work outside the home without endangering their children, and HHS itself has recognized repeatedly that child care is critical to meeting the goals of TANF. At the same time, HHS's own studies show that the states could do a far better job of insuring that child care is available to low income families. We feel strongly that states should not be rewarded for high performance in their TANF program unless they are effectively providing child care to low income single parents. We strongly urge you to include child care as a measure of high performance. As discussed below, we also urge you to include states' efforts to assist domestic violence victims as a measure of state performance, to expand the food stamp and employment measures, and to delete the marriage measure.

Failure to include child care as a measure of state high performance in meeting TANF goals cannot be justified.

Child care is essential to the success of welfare reform. TANF is a program aimed at helping single parents become self sufficient through employment outside their homes. Single parents cannot work outside their homes unless their children are cared for during the hours they work. Thus, without child care, this major goal of TANF simply cannot be met. Indeed, the preamble to the proposed regulations states that there is "widespread bi-partisan agreement" that "parents should receive the child care . . . they need to protect their children as they move from welfare to work." 64 Fed. Reg. 68203.

¹ NOW Legal Defense and Education Fund is a leading national not-for-profit civil rights organization with a 30 year history of advocating for women's rights. Among NOW LDEF's major goals are securing economic justice for all women. Throughout our history, we have advocated for the rights of poor women. NOW LDEF's State Advocacy Project is currently focused on a range of women's issues as they impact women's poverty: child care, violence, employment and reproductive rights.

But that is not happening. HHS's own studies show that only 10 percent of children entitled to child care subsidies receive them, with state rates varying from a low of four percent in Mississippi to a high of 24 percent in West Virginia. U.S. Dep't of Health and Human Services, "Access to Child Care for Low-Income Working Families" <http://www.acf.dhhs.gov/news/ccreport.htm>>" The disturbing low rates of child care subsidy delivery should be sufficient to persuade HHS to include child care as a performance measure. Provision of Food Stamps to the working poor is included as an element in measuring state performance under TANF citing the statistic that only 39 percent of working poor families eligible for Food Stamps receive them. Child care is even more directly connected to TANF's primary goal of enabling recipients to find and keep employment. As these statistics show, child care subsidies are not currently being delivered to those who need them.

Child care is essential to enable the TANF population -- primarily single women with children -- to work outside the home. The lack of adequate child care for young children is probably the major barrier to the ability of a single mother to work outside the home. According to one national study by the Institute for Women's Policy Research, 60 percent of welfare recipients reported that unavailability of child care kept them from participating in work programs.² A study by the Urban Institute found that 60 percent of single mothers cited "unavailability of affordable child care" as a barrier to work.³ In addition to constituting a complete barrier to work for some families with small children, lack of child care can also affect parents' ability to retain a job. A Florida study looked at this issue in depth in a survey of welfare leavers and concluded that about one-fourth (26 percent) of respondents knew of a better job they could not take because of inadequate child care, 22 percent had missed work at least once in the past month because of a child care problem, and 33 percent had to reduce their hours of work because of child care issues. In all, over half of welfare leavers surveyed stated that their ability to work was affected by child care problems. It is clear from HHS's own report that child care can make the difference between success in employment and dependence on welfare. In the Department's news release on their study of child care access, HHS cited studies from North Carolina and Florida showing that increased child care subsidies result in increased employment rates and conversely that parents who do not receive child care support are seven times more likely to rely on public assistance than parents who receive a subsidy.⁴ As Assistant Secretary Olivia Golden specifically stated in that release, "child care subsidies make a difference for parents trying to get and keep a job."⁵

TANF's goals include "provid[ing] assistance to needy families so that children may be cared for in their own homes" and "end[ing] the dependence of needy parents on

² Institute for Women's Policy Research, *Child Care and Welfare Reform*, IWPR Welfare Reform Network News at 8 (May 30, 1997).

³ Sharon K. Long, et. al., *Child Care Assistance Under Welfare Reform: Early Responses by the States* at 7-8 (Sept. 1998).

⁴ U.S. Department of Health and Human Services, Administration for Children and Families, "Only 10 percent of Eligible Families Get Child Care Help, New Report Shows" October 19, 1999, <http://www.acf.dhhs.gov/news/cc98>

⁵ Id.

government benefits by promoting job preparation [and] work . . .” Currently, almost half of all TANF children are under age six, and thus would require child care in order for their single parent to work outside the home. Only seven percent of recipient children are 16 or older.⁶ That TANF's goals cannot be accomplished without provision of child care to TANF families should be recognized in the high performance measures.

State Policies in this Area Can Make a Difference. One of the major problems facing low income families with respect to child care has been states' failure to insure that child care subsidies get to the families that need such support. Again, HHS's own studies show that only 10 percent of eligible families receive child care subsidies to which they are entitled. More effective state policies in this area could insure that more families receive these subsidies. In fact, the states have more direct control over provision of child care subsidies than they do over many of the other factors that HHS has chosen to include in the proposed performance measures.

States control information to low income families about child care, and the lack of information about child care subsidies is a major reason that the families who are eligible for such subsidies use them. Lack of information about child care subsidies has been a consistent problem. Prior to TANF, when transitional child care funds were given to states with the condition that they be expended on women moving from welfare to work, studies show that most of the population eligible for subsidies did not know about the subsidies and consequently did not use them.⁷ It is estimated that fewer than 20 percent of welfare or former welfare recipients in employment in California in 1995 knew about child care subsidies potentially available to them; similarly, in a Georgia study, less than half of those leaving welfare for work were aware of the potential availability of Transitional Child Care (TCC) assistance and only about 35 percent of those eligible for the program received assistance. The Public Advocate for New York City found that welfare families were consistently misinformed by welfare program staff about available child care subsidies, with almost half never informed that subsidies were available and the same proportion believing they would lose their grant if they did not find child care. Further, half of those who did receive child care referrals from the Office of Employment Services (OES), the agency responsible for workfare placements, were unable to find child care because the program referred to was either full or inaccessible to the family.⁸ More recently, studies in Florida, South Carolina, Massachusetts and New Jersey indicate that around half of welfare leavers do not know that their states provide child care subsidies to families leaving assistance.⁹ If states were eligible for a bonus for

⁶ Characteristics and Financial Circumstances of TANF Recipients, FY 1998
www.acf.dhhs.gov/programs/opre/characteristics/fy98

⁷ Marcia Meyers and Theresa Heintze, □ Subsidy Shortfall: Are Child Care Subsidies Working for Those Working Their Way Off Welfare, □ University of California at Berkeley (1997); Laurie Miller and Kitty Barnes, □ Parents Need Transitional Child Care □ *Child Care Action News*, p. 1 (November/December, 1997).

⁸ Mark Green, □ Welfare and Child Care: What About the Children, □ New York City, 1997.

⁹ Rachel Schumacher and Mark Greenberg, “Child Care After Leaving Welfare” (Center for Law and Social Policy, October, 1999)

providing child care to women on welfare and those leaving welfare, more emphasis might be placed on letting such individuals know about their rights to child care assistance, and more would take advantage of child care subsidies.

In addition, the performance measures should address the severe shortage of child care services for families moving from welfare to work or struggling to remain off welfare. State policies could help alleviate this problem through increased subsidy payments or better payment procedures. Annual costs of child care range from \$3,000 to \$8,000 for a four-year old in an urban area, clearly more than most low income families struggling to leave welfare or remain off welfare can afford to pay.¹⁰ But state subsidies do not necessarily provide enough to close the gap between what a poor family can afford and what the child care provider will accept. Although Federal law requires states to conduct market surveys of what child care costs and peg their subsidies to the results, most states have not conducted market surveys within the last four years and 19 states have not completed a survey since 1995 or earlier. At the same time, newspaper accounts and specific reports from child care providers indicate that poor payment procedures force many providers who would willingly accept subsidies to refuse them because they cannot get paid by the state in a timely manner for services to poor children. In Wisconsin, California, and New York, providers report that they must turn away children with subsidies because of problems with state payment systems.¹¹ This problem is borne out by meetings we have held with providers in New York and California who complain that they cannot function when payments for services are late and that this causes them to turn away children whose payments come from the state. States could clearly alleviate these problems by (1) conducting market rate surveys and paying subsidy rates based on the current survey, and (2) improving payment procedures for providers. A bonus that included child care would encourage states to make subsidy rates more realistic and procedures for payment more efficient.

Good child care can help poor children get a fair start in life. Finally, encouraging states to provide child care assistance to families will help the children in those families. Quality child care programs make a difference in children's cognitive performance, language development, social development and overall behavior. HHS's own website cites studies finding that "higher quality child care for very young children (0 to 3) was consistently related to high levels of cognitive and language development."¹² At the same time, HHS reports that studies of care for low income children raise concerns about the quality of care they are receiving.¹³ Encouraging states to support high quality

¹⁰ Children's Defense Fund, The State of America's Children Yearbook, 1999 (Children's Defense Fund, 1999), p. 51.

¹¹ Jason DeParle, "Wisconsin Welfare Experiment: Easy to Say, Not So Easy to Do" N.Y. Times, October 18, 1998 at A1; Carla Rivera, "Falling Through the Cracks in New Child Care System," L.A. Times, Sept. 7, 1998 at B1.

¹² "Mother-Child Interaction and Cognitive Outcomes Associated With Early Child Care," NICHD Early Child Care Research Network (1997) as cited <http://www.acf.dhhs.gov/programs/ccb/faq/quality.htm>

¹³ Quality and Child Outcomes in Child Care Centers, Executive Summary, University of Colorado at Denver (1995); New Findings on Children, Families and Economic Self-Sufficiency, National Research Council, Institute of Medicine (1995).

child care for poor single parents will help get that kind of care to the children who need it.

A high performance bonus under TANF is the only mechanism available to encourage states to improve performance in the critical area of providing child care to low income families. At present, there are no alternative means of rewarding states for doing well in the area of child care. There are also very limited enforcement mechanisms for insuring that states provide child care money under the child care block grant to those who are eligible for it. For instance, outside the TANF high performance bonus, none of the incentive awards and performance measures listed in the preamble to the proposed regulations address the provision of child care. (As discussed below, the bonus for reducing out-of-wedlock births arguably rewards the same successes already rewarded under the proposed increased marriage bonus.) At the same time, while the law is clear under both Food Stamps and Medicaid that there are Federal eligibility standards and individuals have the legal possibility of enforcing their right to benefits, those rights do not exist under the child care block grant program.¹⁴ Including child care under the TANF high performance bonus would be a very useful tool – perhaps the only one – to persuade states to improve their child care programs for poor single parents and their children.

High performance with respect to child care would be readily measurable. HHS could include many possible measures related to child care in a high performance bonus, helping focus states on some of the important issues of delivery of child care subsidies to low income families. For example, a possible threshold for competing for bonus money based on child care could be that the state must pay child care rates equal to at least the 75th percentile of market rates based on a market rate survey that is not more than two years old. For states that meet such criteria, state success could be measured by (a) the percentage of eligible current and former TANF recipients who receive child care subsidies, and/or (b) the amount of the State's expenditures on child care subsidies divided by the estimated number of children younger than thirteen in families with incomes below 85 percent of the State's median income. Either of these measures along with the threshold criteria would encourage states to (1) set subsidy rates at a reasonably high level to secure child care; (2) let poor families know about the availability of child care subsidies; and (3) establish income eligibility guidelines which would cover as many low income families as possible.

These measures meet all of the criteria that HHS along with the National Governors Association (NGA) and the American Public Human Services Administration (APHSA) have deemed important as articulated at 64 Fed. Reg. 68206. These criteria meet each of the bulleted principles:

- They are "simple, credible and quantifiable."
- They focus on outcomes – the receipt of child care subsidies – rather than process.

¹⁴ The Child Care and Development Block Grant statutory authorization specifically precludes a private action to enforce the right to child care subsidies in court.

- They do not impede state flexibility; states still formulate their child care program and determine eligibility for subsidies. They are rewarded for delivering those subsidies and focusing their efforts on low income families with children.
- There are no other incentives and no direct penalties with respect to providing child care subsidies to poor single parents struggling to work and care for their children.
- These measures do not require additional data collection since, under current law, states are required to disclose how they determine market rate and who they provide subsidies to; clearly, this builds on existing data collection.
- There is little risk that these measures will have unintended consequences. ✓
- These measures are completely positive – that is, the delivery of child care subsidies that will encourage poor single parents to work without jeopardizing the health and welfare of their children.
- The measures reflect the strong emphasis on employment and self sufficiency. Single parents need child care in order to fulfill the TANF directive to have wage labor replace cash benefits. Other than the direct employment measures, no other measure is more directly related to employment outside the home for single parents than the provision of child care.

A significant portion of the \$200 million bonus should be allocated to states that are successful in providing child care to low-income single parent families struggling to be able to work for wages. Outside of direct employment measures, we believe that child care should be the largest portion of the bonus because it is the most important support for single parent families where the adult works outside the home, and is the support most directly related to TANF goals. Moreover, it is within the state's control and is not only critical as a work support but also makes a difference in the lives and futures of poor children whose mothers must work outside the home. Child care is the central component of a good TANF program and HHS should recognize it as such in its construction of this high performance bonus. We believe that a \$40 million bonus for states that perform best in delivering child care subsidies would be appropriate. Alternatively, we suggest that state child care policies be a threshold for competition for the high performance bonus – that no state be eligible to receive any bonus money unless it meets certain criteria for delivering child care subsidies such as recent market surveys and payment of subsidies accordingly and provision of subsidies to at least 70 percent of those eligible under Federal income guidelines. *Wout*

As HHS and this Administration have repeatedly recognized, child care is central to the ability of TANF recipients to move off welfare and into paid employment without harming their children. At the same time, as HHS recognizes in its own studies, states are not doing a good enough job of providing child care subsidies to the families who need them. We urge HHS not just to speak but to act by giving real encouragement to states to do a good job of providing child care to poor families. The high performance

bonus in TANF is an appropriate and effective vehicle to get states to perform better with respect to delivery of child care services.

States should be rewarded for addressing issues related to domestic violence.

Because of the prevalence of domestic violence among women on TANF and because of the relationship between violence and the ability of these women to work, states' efforts to help domestic violence victims should be an element in assessing whether a state TANF program is a good one. Domestic violence affects a significant portion of welfare recipients and creates a daunting impediment to work and economic self-sufficiency. Studies show that between 20 percent and 30 percent of welfare recipients currently suffer from domestic violence.¹⁵ Some welfare-to-work programs report that up to 75 percent of their clients have been, or are, victims of domestic violence.¹⁶ For many battered women, welfare is the only income source that allows them to break free from financial dependence on their abusers. Battered women also face additional barriers when they join the workforce. Studies show that up to 60 percent of the women surveyed reported their partner had discouraged them from working; 33 percent to 46 percent reported their partner had prevented them from working; 70 percent reported that their abusers harassed them at their job, and 37 percent reported that their abusive partner caused such problems as tardiness or missed work.¹⁷ Domestic violence victims often need medical treatment to treat health problems caused by domestic violence before they are capable of working outside the home.

Although 41 states have adopted some form of the Family Violence Option (FVO) which allows them to tailor their programs to screen for domestic violence, offer services and grant program waivers where necessary, initial reports indicate that poor training of case workers and restrictive policies have made the FVO significantly less effective than it should be.¹⁸ For instance, a study commissioned by HHS found that "fully 20 states have notice and assessment processes that on their face appear inadequate."¹⁹ Including a measure related to domestic violence in the TANF high performance bonus would encourage states to deal with this serious barrier to work among TANF recipients. Measures of state performance on domestic violence could include looking at the proportion of women who disclose they are victims of domestic violence who receive services or waivers under the Family Violence Option. This

¹⁵ Jody Raphael & Sheila Haennicke, Keeping Battered Women Safe Through the Welfare-to-Work Journey: How are we Doing?, 4 (Sept. 1999).

¹⁶ NOW Legal Defense and Education Fund, Report From the Front Lines: The Impact of Violence on Poor Women, 7 (1996).

¹⁷ U S General Accounting Office, Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients, PIN (GAO/HHS-99-12 November, 1998).

¹⁸ Jody Raphael & Sheila Haennicke, Keeping Battered Women Safe Through the Welfare-to-Work Journey: How are we Doing?, 9 (Sept. 1999) (identifying effective assessment of domestic violence as the major implementation issue in the states).

¹⁹ Id.

would be a relatively simple and straightforward way to focus states on serving poor victims of violence. We believe that offering a bonus of \$20 million for high performance in screening and delivering domestic violence services would be an appropriate high performance bonus measure.

The Food Stamp measure should include increasing food stamp receipt for all eligible families, not just those who are employed.

Studies of welfare reform to date indicate that the bottom fifth of earners are doing the worst.²⁰ This bottom fifth includes those still on assistance and those off assistance who are not employed or are only marginally employed. For those families, Food Stamps may be the key to survival and the only protection they have against hunger. In light of this and the TANF goal of maintaining children in their own homes, the measure with respect to state performance that includes Food Stamps should be based on the increase in Food Stamp participation for *all* eligible families, not just those with earnings.

Improve the measures of "success in the work force" rate.

Although we applaud HHS for looking at the level of earnings and job retention rates as elements in determining high performance of a state, these work measures could be improved. In particular, HHS should urge consideration of the quality of jobs in which recipients and former recipients are being placed, especially the potential for long-term earnings gain and job retention. Recent studies show that a significant percentage of welfare leavers remain in poverty.²¹ Many former welfare recipients are struggling to make ends meet in low-paying jobs that offer no benefits and little opportunity for advancement. Given the reality that welfare recipients are facing lifetime limits for receiving assistance, the success of welfare reform depends on states' abilities to ensure that hard-to-serve recipients get into and retain stable jobs that pay good wages. Unlike service-sector jobs that do not pay a sustainable wage, nontraditional jobs for women such as those in law enforcement, firefighting, information technologies, construction, building, and other skilled trades, provide a real opportunity for women to achieve economic self-sufficiency after leaving welfare. For instance, according to U.S. Department of Labor, in 1998, median weekly earnings for cashiers, waitresses, and

²⁰ Census Bureau, Current Population Survey (1997); Primus, Rawlings, Larin, Porter [The Initial Impacts of Welfare Reform on the Incomes of Single-Mother Families] Center on Budget and Policy Priorities (August 22, 1999); Robert Greenstein, Jim Jaffe, Toni Kayatin [Low Unemployment, Rising Wages Fuel Poverty Decline] Center on Budget and Policy Priorities (October 1, 1999); Children's Defense Fund and National Coalition for the Homeless, [Welfare to What: Early Findings on Family Hardship and Well-Being] (November, 1998); Zedlowski, Sheila R., "Work Activity and Obstacles To Work Among TANF Recipients," (Urban Institute, September, 1999).

²¹ Id.

hairdressers ranged between \$250 and \$325, while those for women construction workers and mechanics were \$400 and \$520 respectively.²²

Programs like those funded by the Welfare-to-Work program and the Workforce Investment Act of 1998 provide critical job training and skills building for nontraditional jobs. We urge the Department to encourage states to utilize these funds by including this in the high performance bonus. A threshold for competing for the bonus under these criteria could be a states' full utilization of Federal programs designed to improve the quality of job placement and productivity of low-income workers and welfare recipients. Thus, a high performance bonus could make a state's utilization of grants under the Welfare to Work program and the Workforce Investment Act of 1998 a threshold to their eligibility to compete for a bonus under the "success in the work force" criteria.

We also urge the Department to expand the job retention criteria. Under the proposed rules, states are rewarded based on the number of earners who remain in employment for at least six months. Success should be gauged by a length of time that more accurately reflects whether an individual has found stability in the work force. Six months is a relatively short period of time to measure job retention; a full year period would be preferable.

Delete the bonus for increasing marriages for low-income men and women.

HHS uses suspect statistics to suggest that all the ills of society are caused by single motherhood. (The preamble to the proposed regulations states: "We also know that children who live with only one parent suffer more emotional, behavioral and intellectual problems. They are at greater risk of dropping out of school, alcohol and drug use, adolescent pregnancy and childbearing, juvenile delinquency, mental illness and suicide." 64 Fed. Reg. 68211.) But studies that control for income do not find children at any greater risk because they were raised by one parent than they are when raised by two. Indeed, two parent families, with risks of domestic violence and abuse, may provide particularly poor environments for children. Instead, poverty, poor neighborhoods and bad schools are undoubtedly the most important risk factors for poor outcomes for children.

Nevertheless, instead of rewarding states for providing child care support to enable single mothers to work without putting their children at risk, HHS proposes to reward states for increasing the number of children in families with incomes of less than 200% of poverty with two married parents. Although marriage rates are down across race, ethnic and class lines, the marriage rate is especially low among poor women. Almost 50 percent of all unmarried mothers have family incomes below the poverty

²² U.S. Dept of Labor, Women's Bureau, Facts on Working Women (Apr. 1999), available at http://www.dol.gov/dol/wb/public/wp_pubs/fact98.htm; U.S. Dept of Labor, Bureau of Labor Statistics, Highlights of Women's Earnings in 1998" (Apr. 1999), available at <http://www.bls.gov/cpswom98.htm>; U.S. Dept of Labor, Women's Bureau, 20 Leading Occupations of Employed Women 1998 Annual Averages (Feb. 1999), available at http://www.dol.gov/dol/wb/public/wb_pubs/20lead98.htm

line.²³ One researcher recently discussed the myriad of reasons why low-income single mothers may choose not to marry. Based on interviews of over 130 poor mothers in nine neighborhoods, the researcher identified legitimate motives for nonmarriage among the poor, including concerns that marriage may increase economic instability and even foster child neglect.²⁴ Not only may it be common sense for low income women to remain single, but it is difficult to imagine what a state could, would or should do to encourage poor men and women to marry.

As a legal matter, marriage has long been considered one of the most personal of decisions, which should be made free of government interference. Zablocki v. Redhail, 434 U.S. 374 (1978). Like the decision when and whether to have a child, the decision when and whether to marry falls within the basic individual right of privacy. Encouraging states to push individuals into marriage violates this basic right. Low-income men and women should have no less right to make the most personal decisions for themselves just because of their income level.

In addition, the marriage reward does not meet HHS's own standards for a reward system articulated at 64 Fed. Reg. 68206 – that it be simple, credible, quantifiable and understandable. State participation in increasing marriage is none of these. Nor does it meet the criteria of being non-duplicative of other bonuses. There is a very narrow line of difference between rewarding states for decreasing out of wedlock births and rewarding states for increasing the number of children in married parent families. It is difficult to see what the difference in state programs would be in competing for these two bonuses unless, under the latter, states rewarded poor two parent families for having more children. Otherwise decreasing the number of out of wedlock births or increasing the number of children in married parent families is exactly the same thing. This measure should be eliminated in favor of measures that reward states for helping poor single parents achieve self-sufficiency, in particular, providing child care subsidies to poor families.

²³ Kathryn Edin, "Few Good Men: Why Poor Mothers Don't Marry or Remarry," *The American Prospect*, Jan. 3, 2000, at 26.

²⁴ *Id.* at 28-30.