

CLASP Comments on the May 10, 2001 Child Care High Performance Bonus Interim Final Rule

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On May 10, 2001, the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS) released an interim final rule (effective immediately) which implements the child care measure published in the final Temporary Assistance for Needy Families (TANF) High Performance Bonus regulations on August 30, 2000. Although the rule is final, HHS will accept comments until July 9, 2001.¹

The Center for Law and Social Policy (CLASP) strongly supported the addition of a child care measure to the TANF High Performance Bonus and is pleased that HHS included this measure in the final TANF High Performance Bonus regulations. The following discussion provides background on this child care measure, summarizes the interim final rule and raises some questions about the interim final rule's provisions. While we make some specific suggestions, CLASP believes that the child care performance measure is an extremely important component of assessing whether states are achieving the goals of TANF and urges that a child care bonus be implemented. CLASP also agrees with HHS that it is important to look at the combination of accessibility, affordability and quality when seeking to measure state performance in providing child care services. A state should not be considered a high performer solely because it maximizes the number of children receiving subsidies, at the expense of the affordability and quality of care that can be purchased. Therefore, examining all three dimensions is important in an effort to measure state performance.

Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) set forth four goals for the TANF program. These goals are:

- (1) Provide assistance to needy families so that children may be cared for in their homes or in the homes of relatives;
- (2) End the dependence of needy parents on government benefits by promoting job preparation, work and marriage;

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Comments can also be submitted electronically on the ACF Welfare Reform Home Page at <http://www.acf.dhhs.gov/news/welfare>.

- (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.

42 U.S.C. § 601(a) (2000).

PRWORA also directed HHS to provide bonuses to “high performing states,” *i.e.*, ones that were achieving the goals of TANF. HHS provides \$200 million to high performing states under this provision each year. 42 U.S.C. § 603(a)(4). On December 6, 1999, HHS proposed regulations specifying the performance measures upon which states would be evaluated. These regulations included performance measures related to job entry and employment retention, earnings gains, Food Stamp participation by working poor families, participation in Medicaid or CHIP by adults and children in families leaving TANF, and the share of children below 200% of poverty in married couple families. 64 Fed. Reg. 68202 (Dec. 6, 1999). These proposed regulations did not contain a performance measure to reward states for providing child care assistance to families.

CLASP (in comments filed in conjunction with the Center on Budget and Policy Priorities (CBPP)) recommended inclusion of a performance bonus to reward states’ effectiveness in providing child care subsidy assistance to low-income working families. These comments argued that child care assistance was a crucial service for low-income working families and therefore effectuated the TANF purpose of supporting work. Furthermore, child care assistance increased the income available to low-income families by allowing families to spend less of their income on out-of-pocket child care expenditures. CLASP/CBPP proposed that the child care high performance measure be based upon the share of children potentially eligible for Child Care and Development Fund (CCDF) subsidies under federal income eligibility rules (85% of State Median Income (SMI)) who are receiving child care subsidies in a state. Additionally, CLASP/CBPP proposed that no state could qualify for the child care performance bonus without meeting the threshold requirement that child care center and family day care home providers be paid at rates no lower than the 75th percentile of the child care market based on a market rate survey conducted within the past two years.²

In response to the comments of CLASP, CBPP and many other organizations and individuals, HHS allocated \$10 million in the final High Performance Bonus regulations to fund a measure that would reward ten states for high performance in providing child care assistance to low-income families. This final regulation stated that states would be

² In the preamble to the final CCDF regulations, HHS states that payment rates of at least the level of the 75th percentile of the market (75% of care in the relevant child care market can be purchased at this rate) “would be regarded as providing equal access” to the child care for families who are eligible for CCDF subsidies. 63 Fed. Reg. 39936, 39959 (July 24, 1998). In the final CCDF regulations, HHS requires states to include in their State Plans’ discussion of payment rates a summary of the factors upon which they based their payment rates, including the results of a market rate survey conducted every two years. 45 C.F.R. § 98.16(1) (1999). HHS states that this biennial market rate survey is another factor in the analysis of whether payment rates are set at a level to provide equal access. 45 C.F.R. § 98.43(b)(2).

rewarded based on their effectiveness in making quality child care accessible and affordable to low-income working families. 45 C.F.R. § 270.4(e) (2000); 65 Fed. Reg. 52813, 52832-35 (Aug. 30, 2000) (preamble). However, the final regulation did not contain specifics about how HHS would evaluate a state's performance in the areas of affordability and quality of care. At the time, HHS indicated that the agency would consult with states and other individuals and organizations and issue further guidance for implementation of this regulation. 65 Fed. Reg. at 52833.

Child Care Performance Measures Contained in Interim Final Rule

The May 10, 2001 interim final rule describes how states will be evaluated on their effectiveness in providing child care assistance to families in the areas of accessibility and affordability in FY2002. In FY2003, a quality measure will be implemented as well. States will be ranked on each of the three measures and then HHS will compute a weighted composite ranking by multiplying the accessibility ratio by 6 in FY2002 and 5 in FY2003 and beyond, the affordability ratio by 4 in FY2002 and 3 in FY2003 and beyond, and the quality ratio by 2 in FY2003 and beyond. 66 Fed. Reg. 23854, 23860 (May 10, 2001) (interim final 45 C.F.R. §§ 270.4(e)(7) & (9) replacing 45 C.F.R. §§ 270.4(e)(3) & (5) (unchanged)). HHS does not specify how the composite ranking will be computed after this weighting occurs. One way to get a weighted composite ranking would be to multiply each of the three measures by their weightings add the totals together and then divide by 10. HHS should clarify what methodology will be used.

As a threshold condition, states cannot receive a child care performance bonus if they have not obligated all of their CCDF Matching Funds for the performance year and expended all of their CCDF Matching Funds for the year prior to the performance year. 66 Fed. Reg. at 23860 (interim final 45 C.F.R. § 270.4(e)(10) replacing 45 C.F.R. § 270.4(e)(6) (unchanged)).

Accessibility (weight of 6 in FY2002 and 5 in FY2003 and beyond)

Accessibility will be measured by determining the percentage of children in a state who meet the maximum federal income eligibility requirements for subsidies under CCDF who are served by the state during the performance year. 66 Fed. Reg. at 23856 & 23859 (interim final 45 C.F.R. § 280.4(e)(1)(i) replacing 45 C.F.R. § 270.4(e)(1)(i) (changing the data reporting form from ACF-696 to ACF-800 and -801)).

HHS will use data from the ACF-800 and ACF-801 forms³ filed by states to report case-level and aggregate information about the children and families to whom child care services are provided in the state. These forms include information about children served with CCDF Discretionary, Mandatory and Matching Funds, State

³ ACF-800 data provides aggregate information about all of the children served annually by a state. ACF-801 data is collected monthly and details the characteristics of each family served by the state and the child care providers they use as well as the amount that these families and the state pay for their child care arrangements.

Maintenance of Effort (MOE) and Matching Funds, transfers from TANF to CCDF or the Social Services Block Grant (SSBG),⁴ and any other funds which are “pooled” with CCDF funds should the state choose to report these expenditures. The other sources of funds could include state expenditures that are not counted towards meeting the MOE requirement, funds from SSBG or direct expenditures of TANF funds for child care.

Example: State A is serving 500 children with a mixture of CCDF, SSBG and direct TANF expenditures and reports information to HHS about both CCDF and non-CCDF funded children. State A has set its income eligibility level for CCDF subsidies at 75% of SMI⁵ and there are 1,000 children below that income level. There are 1,500 children below 85% of SMI in State A. Therefore, State A would be ranked on an accessibility measure of 33% based on the number of children who are receiving subsidized child care compared to the number of children under 85% of SMI (*i.e.*, 500/1500).

Analysis and recommendations

CLASP agrees that this measure is an appropriate way to evaluate a state’s effectiveness in addressing accessibility of child care subsidies for low-income families. We agree with HHS’ decision to calculate accessibility using the number of children eligible under federal CCDF rules (rather than those eligible under state rules) as the denominator. This ensures that a state will not appear to be a higher performer on this measure simply because its state eligibility rules are more restrictive than those of other states. Our only recommendation for this measure is that HHS should make clear whether it will use an average monthly number of children served count or the total number of children served over the course of the year.

Affordability (weight of 4 in FY2002 and 3 in FY2003 and beyond)

To measure affordability, HHS will calculate four ratios of child care co-payments to family income for families of three within specified income ranges (below 100% of the federal poverty level; 100 to 124%, 125 to 149%, and 150 to 175% of the federal poverty level). These ratios will then be averaged to come up with one ratio of family co-payment to family income within each range. 66 Fed. Reg. at 23856-57 & 23859 (interim final 45 C.F.R. §§ 270.4(e)(1)(ii), (3)-(4) replacing 45 C.F.R. § 270.4(e)(1)(ii) (adding specifics of the affordability measure)). Then, HHS will calculate a fifth ratio of the number of children eligible for child care subsidies under the state’s maximum income eligibility criteria (as specified in the state’s approved CCDF State Plan) and the number of children eligible for subsidies under the federal maximum eligibility criteria for CCDF (85% of SMI) and rank the states based on that ratio. Id.

⁴ States may transfer up to 30% of the funds in their TANF block grants to the CCDF and SSBG block grants. 42 U.S.C. § 604(d)(1).

⁵ Under CCDF, states can set their own maximum income eligibility limits for CCDF subsidies as long as the limit does not exceed 85% of SMI.

The reason for including this fifth ratio is to ensure that a state is not disadvantaged for “providing access to affordable co-payments to a broader range of families.” 66 Fed. Reg. at 23857. For example, suppose State B provides for eligibility up to 85% of SMI with average co-payments of 10% of family income, while State C provides for eligibility up to 50% of SMI with average co-payments of 9% of family income. Without this fifth ratio, State C would receive a higher ranking because the co-payments for its subsidy population are lower. However, families in State C with incomes between 50% and 85% of SMI have to pay the full cost of care while families in State B get some subsidy. Presumably, one wouldn’t want to say that State C is doing more to promote affordability simply because its co-payments are somewhat lower for families in the subsidy system, despite the fact that State B extends eligibility to a much larger group of families. Including a ratio that considers the state’s eligibility level is intended to address this concern.

Finally, HHS will combine the rankings from each of the five ratios to come up with one composite affordability ranking. 66 Fed. Reg. at 23856-57 & 23859 (interim final 45 C.F.R. § 270.4(e)(4)(iii)).

Example: State D has ten children in its subsidy system, four children below poverty and two children in each of the other three income ranges. Of the four children below poverty, two pay a co-payment representing 2% of their family’s income, one pays a co-payment representing 3% of her family’s income and one pays a co-payment representing 4% of his family’s income. The average co-payment to income ratio for the four families below poverty in State D is 2.75%. These calculations will also be performed for State D’s other six children receiving subsidies within their income ranges. These calculations will yield four ratios.

State D’s ratios in each of the four income ranges will then be compared to those of other states, and the State with the lowest co-payment to income ratio within each range will receive the higher ranking in that range. This process will yield four rankings. So State D might be ranked 1 for families below poverty (based on its 2.75% co-payment), 3 for families between 100% and 124% of poverty, 10 for families between 125% and 149% of poverty and 15 for families between 150% and 175% of poverty.

State D will then be ranked according to its number of children eligible under state income thresholds to children eligible under federal income thresholds. Assume that State D covers children below 85% of SMI and State E covers children below 50% of SMI. Because State D covers more children than State E, State D might get a rank of 5 and State E might have a rank of 10 for this fifth ratio.

Finally, all of State D’s affordability ranks – 1, 3, 10, 15 and 5 – will be averaged together which will yield a statewide affordability ranking of 8.5.

Analysis and recommendations

CLASP believes that it is important to encourage and reward states for designing policies to ensure that families' choice of child care providers is not inappropriately constrained by unreasonably large co-payments. We also believe that it is important to consider affordability of care as well as accessibility in order to ensure that states do not have incentives to pay for the cost of serving more children by imposing large, unreasonable co-payments on families. Such co-payments could cause economic hardship to families and ultimately result in their leaving the subsidy system. Furthermore, we believe that this measure takes a useful step in focusing attention on the impact of co-payments on families at different income levels. However, for a set of technical reasons (discussed below) we recommend that HHS change the affordability measure to one of two alternatives. One possible approach could be to calculate the average co-payment to income ratio across all families in the subsidy system and only give child care bonuses to states whose average ratio was 10% or less. Or, if HHS wants to rank states by affordability, we recommend that the ranking be based on the average ratio throughout the subsidy system.

It is important to send the message that child care should be affordable for low-income families and to reward states for their efforts to charge reasonable co-payments for families in the subsidy system. According to 1995 census data, families below poverty who paid for child care for children under 14 spent 35% of their income on child care while the expenditures for families above poverty represented only 7% of their income.⁶ Recognizing the importance of affordability of child care for low- and moderate-income parents, the final CCDF regulations required co-payments based on sliding fee scales to be affordable in order to meet the standard of providing "equal access" to care for families who receive subsidies. 45 C.F.R. § 98.43(b)(3). In the preamble to the CCDF regulations, HHS further states that "co[-]payment scales that require a low-income family to pay no more than 10% of its income for child care, no matter how many children are in care, will help ensure equal access [to care as families who do not qualify for federal or state child care subsidies because their income is too high]." 63 Fed Reg. at 39960.

However, the interim final rule does not expressly state how HHS intends to address the two situations discussed below. We recommend that HHS provide some guidance to states concerning how these situations will be treated:

- First, the interim final rule as proposed does not indicate how the affordability ratio will be calculated for a state that cuts off income eligibility in the middle of a range. For instance, assume that State F's co-payments are 5% of family income until eligibility for child care services is cut off at 160% of poverty, at which point families must pay the full cost of child care. How would the average ratio for families between 150 and 175% of poverty be computed?

⁶ Kristen Smith, Who's Minding the Kids? Child Care Arrangements, Fall 1995 Current Population Reports, P70-70 at 26, Table 14 (Oct. 2000).

- Second, the interim final rule does not indicate how a state will be ranked if no families within the specified ranges are eligible for child care subsidies. For instance, if a state cuts off its income eligibility at 149% of poverty, how will the state be ranked on the measures of co-payments as a percent of family income for families between 150 to 175% of poverty? It is possible that these states would be ranked at the bottom for these income ranges, but if that is the case, the rule should make that clear.

However these issues are resolved, we believe it would be better to treat affordability as a qualifying condition for the child care bonus rather than attempt to rank all states on affordability. While state performance is clearly distinguishable at the extremes, it may be genuinely unclear whether a state with lower co-payments and a lower eligibility cut-off is doing more to promote affordability than a state with somewhat higher co-payments and more generous eligibility guidelines. Furthermore, it is not clear that a state's goal should be for co-payments to be as low as possible. A state might reasonably decide that it is preferable to balance an affordable – but not the lowest possible – co-payment with greater expenditures on quality, accessibility, or other dimensions of the system. In light of the above trade-offs, a qualifying condition – that average co-payment to income ratio of all families in the subsidy system cannot exceed 10% – would seem preferable to a ranking system.

In this affordability qualifying condition, we would eliminate the fifth ratio (number of state eligible children to federally eligible children) because it is unnecessary. A state that has higher co-payments that are still under 10% of family income is not disadvantaged in a qualifying condition regime as it would be under a ranking system in which states are rewarded for having co-payments that are as low as possible. Using CLASP's affordability qualifying condition, both State G with average co-payments of 7% and an income eligibility threshold at 85% of SMI and State H with average co-payments of 2% and an income eligibility threshold at 45% of SMI would be able to compete for the child care bonus, thus recognizing legitimate state policy trade-offs in promoting accessibility and affordability.

If HHS chooses not to make affordability a qualifying condition and instead uses an affordability ranking, we recommend that it should be the composite of two rankings – one based on the average co-payments to family income ratio for all of the children in the state's subsidy system and another ranking based on HHS's proposed ratio of the number of state eligible to federally eligible children. We believe that one ranking based on the average across families is superior to the individual rankings based on the various income levels because averaging across all families better reflects the number of families who are in each income range. Because many families who receive child care subsidies are in the lower income ranges,⁷ the average ranking will provide states with an incentive to lower

⁷ Federal law requires states to prioritize providing services to very low-income families. In analyzing FY1999-FY2001 state plans, the Congressional Research Service found that 30 states chose a very low-income limit between 10% and 39% of SMI and that 16 states and territories set their very low-income limits at 40% to 59% of SMI. Melinda Gish, Child Care: State Programs Under the Child Care and Development Fund, CRS Report to Congress at CRS-3 (Mar. 27, 2001).

co-payments for the lower income families. The co-payment to income ratio ranking would then be averaged with the state eligible children to federally eligible children ratio ranking to form a composite affordability ranking.

Example of CLASP alternative affordability ranking: If ten children were receiving subsidies in State I, HHS would take the co-payment to income ratio for each of the ten children and get an average ratio by adding the ratios together and dividing by 10. So hypothetically, State I could get a rank of 2 and State J, with a slightly higher co-payment to income ratio, would have a rank of 5. The second ranking, based on how close state eligibility rules were to 85% of SMI, would be the same as is contained in the interim final rule. Suppose that on this eligibility ratio, State I would have a rank of 4 and State J would have a rank of 10. Under CLASP's proposed affordability measure, the rank for State I would be 3 (*i.e.*, 2 plus 4, divided by 2) and the rank for State J would be 7.5 (*i.e.*, 5 plus 10, divided by 2.)

Quality (weight of 2 out of 10 beginning in FY2003)

This measure is designed to compare the rates that a state is actually paying for each child in subsidized care (including parental co-payments) with the market rate for that child's care provider. The comparison will take the form of a ratio in which the numerator is the "actual" rates paid by states to child care providers, reported on the state's ACF-801 form, to the array of reported market rates for children of the same age in the relevant county or administrative region. One ratio will be computed for center care (based on the actual rates and market rates paid for center care) and one ratio for non-center care (based on the actual rates paid for any non-center care -- family day care homes, relative care, etc. -- and the market rates for family day care homes). 66 Fed. Reg. at 23857 & 23859-60 (interim final 45 C.F.R. §§ 270.4(e)(2)(ii), (5) & (6) replacing 45 C.F.R. § 270.4(e)(2)(ii)).

The market rates in the ratio's denominator must come from the state's market rate survey, which had to have been conducted in accordance with 45 C.F.R. § 98.43(b)(2) (stating that HHS will determine that a state is basing its provider rates on a market survey designed to promote equal access if the survey was completed no more than two years before the effective date of the state's approved State Plan). In order to compete for a bonus on this measure, the state must submit to HHS the age-specific rates for children 0 to 13 years old and the county or administrative region in which the child's provider of care is located. These calculations will result in two statewide average ratios, one for center-based care and one for non-center-based care. States will be ranked according to each ratio and then the two rankings will be combined to obtain the State's quality "score." 66 Fed. Reg. at 23857 & 23859-60 (interim final 45 C.F.R. §§ 270.4(e)(2)(ii), (5) & (6) replacing 45 C.F.R. § 270.4(e)(2)(ii) (adding specifics about the quality measure)).

Example: Assume State K reports on its ACF-801 form that its CCDF funds have subsidized Susie, a six year old, being cared for in a child care center and Tom, a

three year old, being served in a family day care home. HHS will then take the actual rate paid for child care for Susie and Tom, composed of the amounts paid by the state and their parents (in the form of parental co-payments) to the provider, which is reported by State K to HHS. This rate will be the numerator for the quality ratios for Susie and Tom.

Then, HHS will examine the data submitted by State K based on its market rate survey and determine the market rate for child care for day care centers for six year old children in Susie's day care center's county or administrative region and the market rate for family day care homes for three year old children in Tom's family day care home's county or administrative region. (If Tom were being cared for by a relative or other non-center provider, the denominator would still be the age-specific market rate for family day care homes in Tom's provider's county or administrative region because one cannot determine the market rate for informal care.) It is not clear from the language of the interim final rule what market rate data the state will submit for this denominator.

These ratios will then be computed for all of the children served by State K and averaged together to determine a statewide average ratio for center and non-center-based care. States will be ranked on each of these ratios and the two rankings will be combined to make a composite ranking.

Analysis and recommendations

CLASP strongly supports the goal of improving the quality of the child care provided to low-income children and all families throughout the child care system. However, we are concerned that the interim final rule proposed by HHS is overly complex and does not sufficiently measure efforts to improve quality. Therefore, we would recommend that HHS keep the quality measure but replace the ranking with a qualifying condition that states not receive a child care bonus unless they are paying child care providers at or above the 75th percentile for care based on a market rate survey that is at most two years old.

A recent HHS report discusses numerous studies demonstrating that quality child care can improve outcomes for children.⁸ Despite this fact, however, too many children, particularly low-income ones, do not receive quality child care services.⁹ Therefore, CLASP strongly supports the message that states should combine their efforts to promote accessibility and affordability with initiatives to improve the quality of the child care options available to families, particularly low-income ones. And, CLASP agrees that one useful reflection of quality is the adequacy of the rates actually paid to providers.

⁸ U.S. Department of Health and Human Services, Administration for Children and Families, Child Care Bureau, Access to Child Care for Low-Income Working Families, <http://www.acf.dhhs.gov/programs/ccb/research/ccreport/ccreport.htm>. See also Deborah Lowe Vandell and Barbara Wolfe, Child Care Quality: Does it Matter and Does it Need to be Improved, <http://aspe.hhs.gov/hsp/ccquality00/ccqual.htm>.

⁹ Id.

There are several steps that HHS must take to ensure that this measure will be useful. First, the actual amounts paid by a state will include a mixture of part-time, part-month payments as well as full-time, full-month payments. In order to compute this quality ratio, HHS will have to ensure that the numerator and denominator are measuring comparable rates, such as a full-time equivalent measure. Given that the ACF-801 form reports both the amount paid for care and the hours the child is in care, this conversion should not be difficult.

Second, HHS will have to clarify the meaning of “the array of reported market rates for children of the same age in the relevant county or administrative region,” the denominator of the quality ratio. We would propose that HHS use at least the 75th percentile of the reported market rates as the measure by which to judge whether the actual rates paid can purchase quality child care.

Third, the data in the surveys upon which these market rates will be determined could be outdated by the time the state’s performance is evaluated. The interim final rule requires the market rates for the ratio’s denominator to be determined according to 45 C.F.R. § 98.43(b)(2). This regulation states that HHS will consider reimbursement rates set at a level to provide equal access if a state sets its rates according to a market survey conducted no more than two years prior to the filing of the State Plan. However, State Plans are in effect for two years. Therefore, the data from the market rate surveys used to calculate this bonus could be more than two years old. For instance, an FY2003 bonus could be based on the data from a market rate survey conducted in FY1999 for a FY2001 State Plan. Therefore, we would recommend that HHS require states to submit their market rate data based on a market rate survey that is at most two years old in order to compete for the bonus.

However, there are three additional concerns which would make this measure difficult to implement as proposed and do not have simple solutions. First, by comparing all non-center care payments to the rates for family day care homes, HHS could be penalizing states that have a larger share of their children in informal care because the state’s actual rate for relative care, for instance, might be lower than that for a family day care home provider yet still sufficient to purchase quality relative care.

Second, the overall ranking on this measure will be computed by taking a statewide average of “actual rate to market rate” ratios paid for all children receiving child care subsidies. However, provider reimbursement rates can vary widely across a state and large concentrations of providers in areas of low or high reimbursement rates could skew the statewide market average and over or understate a state’s reimbursement rate ratio.

Third, State L could have a policy and practice of paying for child care at the 75th percentile but some parents might choose care that is cheaper. If this were the case for large numbers of families, it could possibly indicate that parents were not being informed about the availability of or discouraged from using higher cost or higher quality care. But

it could also be a reflection of parental choice, *ie*, the lower cost care is more convenient or the parent knows and trusts the child care provider. HHS will not be able to distinguish between these two situations using the interim final rule's proposed quality ranking system. As a result, State L could be ranked at the same level or lower than State M who has a policy and practice of paying at the 70th percentile even though it is unlikely that families in State M have greater access to quality care than families in State L. Because of these technical difficulties, CLASP's recommendation is that instead of the quality measure described in the May 10, 2001 interim final rule, it would be preferable to create a qualifying condition that requires states to be paying at or above the 75th percentile of the market based on a market rate survey that was at most two years old, in order to receive a child care bonus. We would also urge HHS to continue working with states and advocates to develop a child care quality measure that can be used to evaluate innovative strategies that are designed to improve the quality of child care services, such as compensation initiatives, efforts to reduce turnover among providers and implementation of tiered reimbursement rates which increase child care payments to providers as the quality of care offered by these providers increases.

HHS states in the preamble to the final TANF High Performance Bonus regulations that it rejected the use of a qualifying condition because the agency wanted to not hold states accountable to one particular standard, promote flexibility and give states an incentive to increase their rates beyond the 75th percentile. 65 Fed. Reg. at 52834. While these are legitimate reasons, we are concerned that the quality measure proposed in the interim final rule is too complex and, given the measurement problems discussed above, might not prove to be an accurate measure of state efforts on reimbursement rates. We believe that our proposed measure is simpler and underscores the importance of the benchmark of the 75th percentile set in the preamble of the final CCDF regulations.

Conclusion

CLASP is very pleased that a child care measure was adopted in the final TANF High Performance Bonus regulations and we strongly support the goals of the child care interim final rule. We believe that the accessibility measure is good and needs slight clarification. We have proposed several changes to the affordability and quality measures in the interim final rule in order to promote simplicity and help HHS more accurately evaluate and reward state performance. However, we urge HHS to implement this child care rule. The TANF High Performance Bonus is a very important tool in rewarding the creation of systems that truly support low-income families. This child care rule should be implemented as part of the High Performance Bonus in order to reward states whose child care subsidy systems are effectively providing this crucial work support to low-income families with children.