



UNITED STATES COMMISSION ON CIVIL RIGHTS

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March 11, 2016

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Rachel Schumacher
Director of the Office of Child Care
Administration for Children and Families
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330 C ST SW, Room 4502
Washington, DC 20201

Eric R. Blanchette
Program Manager
Office of Child Care Region IV
Suite 4M60, 61 Forsyth Street
Atlanta, GA 30303-8909

RE: **Low-Income Child Care Subsidies Distribution in the State of Mississippi**

Dear Ms. Secretary, Ms. Schumacher and Mr. Blanchette:

The U.S. Commission on Civil Rights (USCCR) urges the U.S. Department of Health and Human Services, Administration for Children and Families Office of Child Care to review the enclosed USCCR Mississippi State Advisory Committee Advisory Memorandum (Memorandum), "Low-Income Child Care Subsidies Distribution in the State of Mississippi," and to implement the productive recommendations contained in the report. These recommendations promote a successful child care subsidy program that is transparent, inclusive and without bias in its application.

In 2015, the Mississippi State Advisory Committee voted to investigate discriminatory claims against recipients and providers of child care services based on race or color by the federal low-income child care subsidy program in Mississippi. The subsidy, a bipartisan program, is a key tool to enable working families to escape poverty. At 29% in 2014, the state of Mississippi has one of the highest rates of childhood poverty in the country. African-American children in Mississippi are disproportionately affected by childhood poverty, with an estimated 47% living at or below poverty in 2014.

The Mississippi State Advisory Committee Memorandum found that far too many eligible children are not serviced by the subsidy program, and that the money that should support this eligible population of children is redirected elsewhere. While 124,426 children in Mississippi under the age of six were potentially eligible for Child Care and Development Fund (CCDF) funding in 2013, on average, only 18,300, or 14.7 percent, actually received this assistance each month. Eligibility meant to last a year in practical effect is reduced to anywhere between 13 and 260 days as a result of eligibility period re-determination standards which affect family financial stability and positive child development. The child support requirement aimed at single parents has a disparate impact on women. The Quality Rating and Improvement Systems (QRIS) program which is purported to promote higher quality child care appears to instead penalize and costs so much that it excludes the participation of African-American owned and



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operated child care facilities. Furthermore, the investigation also found that QRIS lacks written policies governing its implementation and does not provide a formal avenue for providers to contest their evaluations.

Instead of finding appropriate ways for working families to have full access to this transformative program, it appears that ill-explained barriers prevent child care providers and parents from access. For the program to be successful, it must be transparent and provide full funding to families and providers. Furthermore, the lack of attention to the relationships between the state agency and those it serves, especially those informed by years of mistrust based on race, must end. The Memorandum recommends the following:

1. The Office of Child Care should consider whether sufficiently compelling justification exists for lead agencies to include in their eligibility criteria any requirements which are differentially applied to single (as opposed to married) parents. If sufficiently compelling justification does not exist, such eligibility criteria should be prohibited. As is the case with requiring single parents to initiate legal action for child support in order to be eligible for CCDF assistance, such differential requirements necessarily have a disparate impact on women. The MDHS has not produced data about any purported benefits of such policies that might justify such a disparate impact.
2. In conjunction with requiring increased CCDF spending on quality improvement efforts under the CCDBG Act of 2014, the Office of Child Care should require lead agencies to spend a comparable portion of their CCDF budget on direct support to child care facilities in their lowest-income areas. This support should be directed to help facilities meet quality improvement standards, and may help narrow current disparities in access to high quality child care services on the basis of race or color.
3. The Office of Child Care should conduct or commission a thorough study of the validity of the QRIS evaluation criteria as a predictive measure of improved developmental outcomes for children. This study should include a review of evaluation outcomes in diverse communities to ensure criteria are culturally relevant to diverse populations, and that they do not unduly disadvantage any particular protected class.
4. Especially in light of the increased focus on quality improvement forthcoming, the Office of Child Care should require lead agencies to develop clear, written policies and guidelines regarding factors that define quality in child care. If the QRIS system is continued and/or expanded, the Office should also require that lead agencies share written information with child care providers about the quality measures used and how they are to be rated. Such policies should also include a defined protocol for centers to contest ratings they feel are unjustified. This informational support may address concerns regarding potential biased ratings on the basis of race or color.
5. The Office of Child Care currently requires that lead agencies submit a CCDF Plan, and invite public comment on those plans every three years. In addition to this requirement, lead agencies



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should be required to submit a record of the public comment received, and either (1) an explanation regarding how relevant public comment was incorporated into their plan; or (2) justification regarding why public comment cannot be incorporated.

6. The Office of Child Care should require that all CCDF participation data and program reports be made publicly available online. The Committee recommends that accurate and continuous data be reported to the public regarding the provision and effectiveness of child care services in the state. These data should be measured based on county-to-county assessments methods and should reflect service to all demographic constituencies in the state.

The Commission strongly requests your consideration and action in regards to this letter and accompanying Memorandum.

Sincerely,

Handwritten signature of Martin Castro in blue ink.

Martin Castro, Chairman

Handwritten signature of David Kladney in blue ink.

David Kladney, Commissioner

Handwritten signature of Patricia Timmons-Goodson in blue ink.

Patricia Timmons-Goodson, Vice Chair

Handwritten signature of Karen Narasaki in blue ink.

Karen Narasaki, Commissioner

Handwritten signature of Roberta Achtenberg in blue ink.

Roberta Achtenberg, Commissioner

Handwritten signature of Michael Yaki in blue ink.

Michael Yaki, Commissioner

Attachments: The Mississippi Advisory Committee to the U.S. Commission on Civil Rights Advisory Memorandum on Low Income Child Care Subsidies Distribution in the State of Mississippi.

Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Mississippi Advisory Committee to the U.S. Commission on Civil Rights

Date: December 1, 2015

Subject: Low Income Child Care Subsidies Distribution in the State of Mississippi

On April 29, 2015, the Mississippi Advisory Committee (Committee) to the U.S. Commission on Civil Rights convened a public meeting via web conference to hear testimony regarding alleged discrimination against recipients of federal low-income child care subsidies, and the providers who serve them, on the basis of race or color in the State. A second public web conference involving additional testimony followed on May 13, 2015. These hearings were in fulfillment of a project proposal adopted by the Committee on February 27, 2015. Key to the Committee's inquiry was an examination of the federal Child Care and Development Fund (CCDF) and related programs, and the potential for disparate impact on the basis of race or color as a result of the State's discretionary administration of these funds.

The following advisory memo results from the testimony provided during the April 29th and May 13th, 2015 meetings of the Mississippi Advisory Committee, and related testimony submitted to the Committee in writing during the open period of public comment. It begins with a brief overview of the issue as it was to be considered by the Committee. It then presents primary themes as they emerged from the testimony received, and identifies recommendations for addressing related civil rights concerns. This memo and the recommendations included within it were adopted by a majority of the Committee on November 19, 2015.

Background

The Child Care and Development Fund (CCDF) is administered by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care. The intent of this fund is to “[assist] low-income families in obtaining child care so they can work or attend training/education.”¹ The CCDF also seeks to improve the quality of child care, and to promote coordination among early childhood development and afterschool programs.² Program funding is administered to States, Territories, and Tribes through a federal block grant; as such, recipients have significant discretion regarding how to administer these funds. For example, funds may be administered through vouchers provided directly to eligible families, or through grants and contracts made with child care providers.³ Recipients may also coordinate CCDF funded programs with Head Start, pre-k, and other early childhood programs; or use available Temporary Assistance for Needy Families (TANF) funding to directly support child

¹ Office of Child Care, Child Care and Development Fund Fact Sheet, p. 01. Updated March 2012. Available at http://www.acf.hhs.gov/sites/default/files/occ/ccdf_factsheet.pdf. (Last accessed September 01, 2015). Hereafter Cited as *CCDF Fact Sheet*.

² *CCDF Fact Sheet*, p.01

³ *CCDF Fact Sheet*, p.01

care programming.⁴ States, Territories, and Tribes receiving CCDF dollars must submit comprehensive plans regarding their use of this funding to the Office of Child Care every three years; and conduct public hearings to invite public comment on those plans.⁵

At 29% in 2014, the State of Mississippi has one of the highest rates of childhood poverty in the country.⁶ This is an issue which disproportionately impacts the State’s African American children: an estimated 47% of Black children in Mississippi were living at or below poverty in 2014, compared to just 15% of Non-Hispanic White children.⁷ While the Committee recognizes that there will always be competing forces for limited publicly-sponsored resources for low-income families, given the continued disproportionate and long term impact of childhood poverty on the African American community in Mississippi, the Committee sought to examine whether or not the way in which early child care and development resources are currently being allocated in Mississippi may serve to exacerbate, rather than narrow these disparities.

The Committee heard testimony from two panels of experts including researchers, state officials, advocates, and child care providers regarding available early child care and development supports in Mississippi. This testimony primarily focused on State CCDF requirements and distributions.⁸ The Committee notes that despite its leading role in administering CCDF at the national level, and despite a direct reminder of their obligations as a federal agency under 42 U.S. Code 1975 (e) to “cooperate fully with the Commission to the end that it may effectively carry out its functions,” the Office of Child Care declined to participate in either of the Committee’s two public meetings on this topic.⁹

Federal Child Care Subsidies in Mississippi: Overview of Testimony

In Mississippi the CCDF is administered by the Division of Early Childhood Care and Development of the Mississippi Department of Human Services (MDHS, also referred to as the “Lead Agency”).¹⁰ Within federal guidelines,¹¹ lead agencies are free to define income

⁴ *CCDF Fact Sheet*, p.01. For more information on TANF, visit the Office of Family Assistance of the Administration for Children and Families, U.S. Department of Health and Human Services at: <http://www.acf.hhs.gov/programs/ofa/programs/tanf/about> (last accessed September 30, 2015)

⁵ *CCDF Fact Sheet*, p.02. *Note:* According to the Office of Child Care, with the 2014 reauthorization of the Child Care and Development Block Grant, the CCDF State Planning Period was extended from 2 to 3 years.

⁶ Children in Poverty (100 Percent of Poverty). Annie E. Casey Foundation, Kids Count Data Center, Year 2014. Available at <http://datacenter.kidscount.org/data/tables/43-children-in-poverty-100-percent-poverty?loc=26&loct=2#ranking/2/any/true/869/any/322>. (Last accessed September 18, 2015).

⁷ Children in Poverty by Race and Ethnicity. Annie E. Casey Foundation, Kids Count Data Center, Year 2014. Available at <http://datacenter.kidscount.org/data/tables/44-children-in-poverty-by-race-and-ethnicity?loc=26&loct=2#detailed/2/26/false/869,36,868,867,133/10,11,9,12,1,185,13/324,323/> (last accessed September 18, 2015).

⁸ See Appendix A for Hearing Agendas.

⁹ The Office did, however submit a brief written statement from its director, Rachel Schumacher, and respond to a later request of the Committee seeking additional information on their forthcoming quality improvement requirements. See Appendix B: Written testimony of Rachel Schumacher, Director, Office of Child Care. Submitted by the U.S. Department of Health and Human Services, Administration for Children and Families, May 13, 2015. Hereafter cited as *Schumacher Testimony, May 2015*. See also Appendix C: Schumacher email, October 09, 2015.

¹⁰ *Schumacher Testimony, May 2015* p. 01. See also Matthews testimony, Public Meeting of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights, April 29, 2015. Transcript p. 04 lines 10-28.

eligibility, set provider payment rates and copayments for families, and establish priorities and eligibility criteria.¹²

The Committee heard testimony that across the country, and specifically in Mississippi, the CCDF program is severely underfunded and serves a minority of eligible children.¹³ Consistent with federal guidelines, in Mississippi a family of three must earn less than 85% of the State median income, or \$2,916 per month (\$34,992 per year) in order to qualify for CCDF participation¹⁴—a figure which represents approximately 175% of the 2013 federal poverty guidelines.¹⁵ However, within these criteria, lead agencies are required to prioritize funds for “children with special needs” and families with “very low incomes.”¹⁶ As a result, panelist Hannah Matthews of the Center for Law and Social Policy (CLASP) testified that families served are often “well under these income eligibility levels,” and that “more than half of the families receiving CCDBG-funded child care are below federal poverty.”¹⁷ Additionally, due to stagnant federal child care funding (including expiration of support from the 2009 American Recovery and Reinvestment Act), and a significant decline in federal TANF funds, the total number of children receiving CCDF support is currently at its lowest levels since 1998.¹⁸ CLASP data indicates that between 2006 and 2013, Mississippi saw a decline of 53% in the number of children served by the CCDF.¹⁹ Using data from the National Center for Children in Poverty, panelist Carol Burnett of the Mississippi Low Income Child Care Initiative (MLICCI) estimated that 124,426 children in Mississippi under the age of six were potentially eligible for

Available at: <https://database.faca.gov/committee/meetingdocuments.aspx?flr=126314&cid=257>. (Last accessed October 06, 2015). Hereafter Cited as *April Transcript*.

¹¹ Child Care and Development Fund (CCDF) Plan for Mississippi, FFY 2014-2015; p. 35, Section 2.3. *Eligibility Criteria for Child Care*. Available at: http://www.mdhs.state.ms.us/media/16908/eccd_CCDFStatePlan.pdf. (Last accessed September 30, 2015). Hereafter cited as *Mississippi CCDF Plan FFY 2014-2015*.

¹² *Schumacher Testimony, May 2015*. See also Matthews testimony, *April Transcript*, p. 04 lines 10-28.

¹³ Matthews testimony, *April Transcript*, p. 06 line 38 through p. 07 line 06. See also Burnett testimony, *April Transcript*, p. 08 lines 20-24, and Burnett Supplemental Testimony, p. 04. Full text in Appendix D.

¹⁴ *Mississippi CCDF Plan FFY 2014-2015*, Sec. 2.3.5(d) “Income Eligibility Criteria” p. 39.

¹⁵ The federal poverty guideline for 2013 was \$19,530 for a family of three according to the U.S. Department of Health and Human Services. Available at: <http://aspe.hhs.gov/2013-poverty-guidelines>. (Last accessed September 30, 2015). See also Burnett Supplemental Testimony, p. 03. Note: according to the National Center for Children in Poverty, “in order to meet their most basic needs,” families require an income of approximately 200% of federal poverty guidelines. National Center for Children in Poverty. Mississippi Demographics of Low Income Children. Available at: http://www.nccp.org/profiles/MS_profile_6.html (last accessed September 30, 2015).

¹⁶ *Mississippi CCDF Plan FFY 2014-2015*, Sec. 2.5 “Prioritizing Services for Eligible Children and Families” p. 43. Note: Mississippi has defined “very low income” as “income at or below the 50 percent of the State Median Income (SMI).” Sec. 2.5.1, p.45

¹⁷ Matthews testimony, *April Transcript*, p. 04 lines 34-40. Note: “CCDBG” or the “Child Care Development Block Grant” is a synonymous reference to the “CCDF” or “Child Care Development Fund.”

¹⁸ Matthews Testimony, *April Transcript* p. 05 lines 01-11. See also, Panelist Presentations, April 29, 2015 hearing before the Mississippi Advisory Committee to the U.S. Commission on Civil Rights, slide 08. Available at: <https://database.faca.gov/committee/meetingdocuments.aspx?flr=126314&cid=257>. (Last accessed October 06, 2015). Hereafter cited as *April Presentations*.

¹⁹ Matthews Testimony, *April Transcript*, p. 05 lines 01-11.

CCDF funding in 2013, yet on average 18,300, or 14.7 percent, actually received this assistance each month.²⁰

It is within the context of these severe funding limitations that the Committee heard concerns regarding both the budgeting priorities of the MDHS in its administration of the CCDF, and the additional, discretionary eligibility criteria imposed. Ms. Matthews testified, “While many other states have also lost children during this time period, only four states had a larger decline in children served, raising the likelihood that declining participation is not solely the result of funding shortfalls, but also reflects state policy choices.”²¹ Ms. Burnett also noted this disparity. According to data reported by the U.S. Department of Health and Human Services, she wrote: “While the federal funds used by Mississippi to serve children have shrunk by 28% since 2010...services to children have been reduced by 46%.”²²

According to the U.S. Department of Justice, “Under the disparate impact theory, a recipient, in violation of agency regulations, uses a neutral procedure or practice that has a disparate impact on protected individuals, and such practice lacks a substantial legitimate justification. The elements of a Title VI disparate impact claim derive from the analysis of cases decided under Title VII disparate impact law.”²³ In Mississippi, fully 92 percent of CCDF beneficiaries are Black, compared with just 42 percent nationally.²⁴ As such, advocates have argued that any policy choices which unduly restrict or limit CCDF participation will necessarily have a significant, disparate impact primarily on African American families.²⁵ To this end, the Committee heard testimony regarding both state eligibility criteria for CCDF participation, and discretionary budgetary decisions which may unnecessarily limit the number of children who are served by this program. The Committee also heard testimony regarding the State’s use of the Quality Ratings and Improvement System to determine tiered provider reimbursement rates and incentives, program challenges stemming from mistrust and a lack of cooperation between providers and MDHS, and concerns regarding public records and program data.

CCDF Eligibility Criteria

As noted, CCDF dollars are allocated to the States as a federal block grant. The purpose is to allow states autonomy to utilize these funds in a way that is congruent with their current administrative systems. Within some basic federal guidelines, the lead agency in each state has the authority to determine, among other factors, eligibility requirements and priorities for funds distributions. Testimony received raised the following concerns regarding discretionary eligibility criteria in the State of Mississippi:

²⁰ Burnett Supplemental Testimony, p. 04. *Note:* While the monthly average participation was 18,300 children in FFY 2013, MDHS reported that in total 30,178 unduplicated children (approximately 24%) received subsidies at some point during the year.

²¹ Matthews Testimony, *April Transcript*, p. 05 lines 08-11.

²² Burnett Supplemental Testimony, p. 04

²³ See United States Department of Justice Title VI Legal Manual, available at <http://www.justice.gov/crt/title-vi-legal-manual#Disparate>. (last accessed October 09, 2015)

²⁴ Matthews Testimony, *April Transcript*, p. 05 lines 12-15. *See also*, *April Presentations*, slide 10.

²⁵ Burnett Supplemental Testimony, pp. 01-10.

- *Child Support Requirement.* MDHS requires that single parents initiate legal action against the absent parent prior to receiving CCDF funds.²⁶ There is an exception in cases of spousal abuse, but advocates contest this provision is not adequately publicized.²⁷ An estimated 44% of children living in poverty are in families with single parents in Mississippi, compared with just 10% of children living with married parents.²⁸ As such, panelists indicated that child support requirements may deter the families in most need of support.²⁹ Additionally, because the majority of single parents are women, this policy necessarily results in a disparate impact on the basis of sex.
- *Eligibility Re-determination.* In order to provide continuity of care, which is vital to both family financial stability and positive child development, federal guidelines suggest lead agencies implement a 12-month eligibility period for families receiving child care support.³⁰ While the MDHS has adopted this 12-month eligibility recommendation, they also require that parents who qualify for CCDF support because they are enrolled full time in an educational program be re-determined as eligible each semester/quarter.³¹ In addition, priority clients who were referred for child care support from TANF, DCFS, and the home visiting program (HHM) are subject to eligibility based on the policies of their referring program.³² If a family's eligibility or priority status based on one of these circumstances changes during the initial, 12-month eligibility period, that family is terminated from the program.³³ In part due to these policies, despite the intended 365 day eligibility period, MDHS reported that in FFY 2014, families determined to be eligible received between 13 and 260 days of child care support services.³⁴

²⁶ *Mississippi CCDF Plan FFY 2014-2015*, Sec. 2.2.9 "Describe how the Lead Agency documents and verifies applicant information" pp. 33-34.

²⁷ MLICCI State Plan Input Letter to Jill Dent, pp. 04-05. Full text in Appendix E

²⁸ Annie E. Casey Foundation Kids Count Data Center, "Families with Related Children that are Below Poverty by Family Type," Mississippi 2014. Available at: <http://datacenter.kidscount.org/data/tables/55-families-with-related-children-that-are-below-poverty-by-family-type?loc=26&loc=2#detailed/2/26/false/869,36,868,867,133/994,1297,4240/345,346> (last accessed October 01, 2015).

²⁹ Burnett Testimony, *April Transcript*, p. 07 line 34 through p. 08 line 05; p.08 line 37 through p. 09 line 09. *See also: April Presentations*, slides 21-23.

³⁰ U.S. Department of Health and Human Services, Office of Child Care. *Information Memorandum: CCDF-ACF-IM-2011-06*, "Policies and Practices that Promote Continuity of Child Care Services and Enhance Subsidy Systems," pp. 02-04. Issued September 21, 2011. Available at: <http://www.acf.hhs.gov/programs/occ/resource/im2011-06> (last accessed October 01, 2015). *See also* Matthews testimony, *April Transcript* p. 06 lines 01-15.

³¹ *Mississippi CCDF Plan FFY 2014-2015*, Sec. 2.3.6(c) "Eligibility Re-determination" p. 40.

³² *Mississippi CCDF Plan FFY 2014-2015*, Sec. 2.3.6(c) "Eligibility Re-determination" p. 40. *Note:* eligibility periods of these referring programs are not coordinated with the CCDF eligibility period. *See Mississippi CCDF Plan FFY 2014-2015*, Sec. 2.3.6(b) "Eligibility Re-determination" p. 40.

³³ *Mississippi CCDF Plan FFY 2014-2015*, Sec. 2.3.6(d) "Eligibility Re-determination" p. 40.

³⁴ Dickson Testimony, Public Meeting of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights, May 13, 2015. Transcript, p. 09 lines 22-33. Available at: <https://database.faca.gov/committee/meetingdocuments.aspx?flr=126315&cid=257> (last accessed October 06, 2015). Hereafter cited as *May Transcript*. *Note:* According to the testimony of Ms. Dickson, a number of clients came into the program with just six months left in the fiscal year; therefore, MDHS anticipates an increase in service length in FFY15. *See also:* Panelist Presentations, May 13, 2015 hearing before the Mississippi Advisory Committee to the U.S. Commission on Civil Rights, slide 24. Available at:

Budgetary Decisions

In addition to determining eligibility criteria and defining priority populations to serve, States have authority to utilize a portion of their CCDF funding for a number of discretionary purposes. They may also combine funding with other state programs in order to more effectively serve the intended population. Panelists raised the following regarding these discretionary budgetary decisions in Mississippi:

- *Fraud Detection.* The Mississippi Department of Human Services' implementation of the biometric finger scanning system (eChildcare) in 2012 to verify CCDF families' identities reportedly diverted already severely limited funds away from providing direct voucher assistance to families in need and was not preceded by a public financial plan or supported by evidence of a need to reduce fraud.³⁵ Due to administrative challenges to the programs' implementation, the biometric finger scanning is no longer required for CCDF participation as of August 15, 2013.³⁶ However, MDHS reportedly did not rescind their contract with Xerox for the hardware and technological support associated with this program, a move which, according to testimony from the MLICCI could have recovered enough funding to serve 7,928 children.³⁷ Additionally, panelist Deloris Suel, a child care provider, claimed that 2,000 in-home child care providers left the CCDF program because they had been told they would be required to participate in the finger scanning system, further reducing childcare availability for families in need.³⁸
- *TANF Collaboration.* States are permitted to directly allocate federal TANF dollars to the CCDF program. However, Mississippi allocates no such funding for this purpose.³⁹ Yet, in 2013, the U.S. Department of Health and Human Services reported that Mississippi had \$7,865,405 in unobligated TANF funds, and had spent \$0 on child care.⁴⁰ The MLICCI estimates that these funds could have served an additional 2,973 children.⁴¹

<https://database.faca.gov/committee/meetingdocuments.aspx?flr=126315&cid=257> (last accessed October 06, 2015). Hereafter cited as *May Presentations*. See also: Matthews Testimony, *April Transcript*, p. 06 lines 01-15.

³⁵ Burnett Supplemental Testimony, pp. 07-08. See also Suel Supplemental Testimony, pp. 02-05. Full text in Appendix F. *Note:* While the original Xerox contract was to be limited to \$31,509,200 over a five year term, MDHS reports that actual total paid to Xerox before contract cancelation was \$1,439,739.33. Of this, \$138,997.53 was allotted from CCDF dollars. The remaining \$1.3 million was paid through State discretionary funds out of the Governor's office, and was not within MDHS discretion.

³⁶ Suel Supplemental Testimony, pp. 02-05. See also Burnett Supplemental Testimony, pp. 07-08. See also, MDHS Thompson Response, pp. 06-07, Allegation 11. Full text in Appendix G

³⁷ Burnett Supplemental Testimony, pp. 07-08.

³⁸ Suel Testimony, *April Transcript*, p. 19 lines 14-29

³⁹ *Mississippi CCDF Plan FFY 2014-2015*, Sec. 1.2.1 "What is your expected level of funding for the first year of the FY 2014 – FY 2015 plan period?" p. 04. *Note:* This plan specifies that some federal TANF support may be transferred to CCDF pending budget allocations, though no direct spending was projected.

⁴⁰ U.S. Department of Health and Human Services, Administration for Children and Families Office of Family Assistance. TANF Financial Data FY 2013. Available at: <http://www.acf.hhs.gov/programs/ofa/resource/tanf-financial-data-fy-2013> (last accessed October 01, 2015).

For definitions, see also: Categories and Definitions for TANF and MOE Funds, available at: http://www.acf.hhs.gov/sites/default/files/ofa/categories_and_definitions_for_tanf_and_moe_funds.pdf (last accessed October 01, 2015).

⁴¹ Burnett Testimony, *April Transcript*, p.08 lines 25-33. See also Burnett Supplemental Testimony p. 05.

Quality Rating and Improvement Systems

Current federal guidelines require that a minimum of four percent of CCDF funds be spent on “quality enhancement activities to improve child care and other services to parents.”⁴² This spending requirement is projected to increase to seven percent in FFY 2016 due to new requirements under the reauthorization of the CCDBG Act of 2014.⁴³ By FFY 2020 the total required quality enhancement spending is projected to rise to twelve percent.⁴⁴

In Mississippi, one of the primary strategies for quality improvement is known as the Quality Rating and Improvement Systems (QRIS). The program is “a systemic approach to assess, improve, and communicate the level of quality in early and school-age care and education programs.”⁴⁵ Currently, participation in QRIS is voluntary; and according to the MDHS, approximately thirty-six percent of licensed programs are enrolled across the state.⁴⁶ As an incentive for participation, child care centers may receive between seven and twenty-five percent additional CCDF reimbursements for achieving higher quality ratings.⁴⁷ In FFY 2014, MDHS reportedly dispersed over \$1.3 million to providers for quality bonus.⁴⁸

Under QRIS, a one-star rating begins with the single requirement that a child care center hold a state Child Care License. Requirements progress and include the categories of administrative policy, professional development, learning environments, parent involvement, and evaluation.⁴⁹ Some requirements such as designating a bulletin board for parent communication, or holding regular parent/teacher conferences require minimal if any economic burden. Other requirements however, pose a much larger challenge, especially for small, under-resourced child care centers. The Quality Star rating system is progressive, meaning in order for a center to meet the requirements of a higher quality rating level, it must meet all requirements of the preceding levels as well.⁵⁰ As such, a center may meet a number of high quality indicators; however, if staff does not hold the prescribed professional credentials, or costly structural center upgrades are required, the center will not be able to achieve the higher rating or receive the indicated reimbursement incentives.⁵¹

⁴² Schumacher Testimony, *May 2015*, p. 02. See also Dickson testimony, *May Transcript*, p. 07 lines 15-22

⁴³ Schumacher Testimony, *May 2015*, p. 02. See also: Office of Child Care, CCDF Reauthorization: <http://www.acf.hhs.gov/programs/occ/ccdf-reauthorization> (last accessed October 02, 2015). See also Schumacher email October 09, 2015.

⁴⁴ Schumacher email October 09, 2015.

⁴⁵ For more information, visit the QRIS Resource Guide, available at: <https://qrisguide.acf.hhs.gov/> (last accessed October 02, 2015)

⁴⁶ Dickson Testimony, *May Transcript*, p. 10 lines 18-25

⁴⁷ Clay Testimony, *May Transcript*, p. 14 lines 18-26; See also: *May Presentations* slide 49.

⁴⁸ Dickson testimony, *May Transcript*, p. 10 lines 24-25

⁴⁹ For more information, visit the Mississippi State University Early Childhood Institute “Earn Your Stars! The Step-By-Step Workbook for Child Care Directors in the Mississippi Quality Stars Program.” Available at: <http://earlychildhood.msstate.edu/programs/qualitystars/earnyourstars/index.php> (last accessed October 01, 2015).

⁵⁰ Clay Testimony, *May Transcript*, p. 12 lines 20-31

⁵¹ Clay Testimony, *May Transcript*, p. 12 lines 20-31; See also: *May Presentations*, slide 38; See also: Schulman Testimony, *April Transcript*, p. 11 line 35 through p. 12 line 02

Testimony received as part of this inquiry indicated that as it is currently implemented in Mississippi, the QRIS system may have a disparate, negative impact on African American owned and operated child care facilities. Related concerns presented to the Committee follow:

- Participation in the CCDF program is voluntary on the part of providers.⁵² Providers who do accept and rely on CCDF vouchers to support facility operations are predominantly “operated by black women, staffed by black teachers, and located in low-income black communities, and serve black children.”⁵³ According to the MLICCI, base reimbursement rates for providers through the CCDF program are already low—approximately 60 percent below Mississippi’s market rate.⁵⁴ As such, many providers who depend on these funds cannot afford to make the necessary improvements to achieve higher ratings.⁵⁵ In fact, according to MLICCI surveys, “these providers suppress their rates and often engage in payment arrangements that include bartering for services to make their services more affordable to the families they serve.”⁵⁶ Without financial support to make needed improvements, QRIS incentive dollars may not be accessible to many child care facilities, particularly those in low-income, African American communities. Furthermore, due to low base rates, tiered reimbursement incentives are often insufficient for providers to recuperate investments made in quality improvement, even at the highest quality rating reimbursement levels.⁵⁷
- Testimony raised questions regarding the purpose and effectiveness of the QRIS rating system. For example, panelist Debbie Ellis, a child care provider, pointed out a recent study by the RAND Corporation, which indicates that QRIS, as currently configured, does “not necessarily capture differences in program quality that are predictive of gains in key developmental domains.”⁵⁸ Panelist Karen Schulman of the National Women’s Law Center noted “some directors believe that the classroom environment standards do not place enough emphasis on teacher-child interaction...while paying attention to maybe other things on a checklist that may not reflect the actual...very important aspects of the

⁵² Dickson Testimony, *May Transcript*, p. 07 lines 06-13

⁵³ Burnett Supplemental Testimony, p. 06

⁵⁴ CLASP reported that Mississippi’s payment rates for center-based care for a 4 year old in 2014 were 29 percent below the federally recommended 75th percentile; and for a one year old was 29 percent below the recommended level. See Matthews Testimony, *April Transcript*, p. 05 lines 29-38.

⁵⁵ While testimony from the Mississippi State University Early Childhood Institute, which implements the program in the state, estimates a cost of \$1,000-\$3,000 to achieve the necessary improvements for a five star rating, a study of the MLICCI estimated \$11,500 per classroom to meet quality improvement standards. See Burnett Testimony, *April Transcript*, p. 09 line 10 through line 20; Burnett Supplemental Testimony, p. 06. See also: Clay Testimony, *May Transcript*, p. 13 line 38 through p. 14 line 16; *May Presentations*, slide 47. See also, *Mississippi CCDF Plan FFY 2014-2015*, Sec. 3.3 (a) “Creating Pathways to Excellence for Child Care Programs through Program Quality Improvement Activities (Component #3)” p. 97.

⁵⁶ Burnett Supplemental Testimony, p. 06

⁵⁷ Schulman Testimony, *April Transcript*, p. 13 lines 04-13.

⁵⁸ Ellis Testimony, *April Transcript*, p. 15 lines 31-36. See also Karoly, Lynn: *Validation Studies for Early Learning and Care Quality Rating and Improvement Systems: A review of the Literature*. (Working Paper). p. ii May 2014, RAND Education and RAND Labor and Population. Available at:

http://www.rand.org/content/dam/rand/pubs/working_papers/WR1000/WR1051/RAND_WR1051.pdf (last accessed October 01, 2015).

quality of care.”⁵⁹ If high QRIS scores are not necessarily predictive of better development outcomes, some panelists indicated that the state’s promotion of child care centers with higher QRIS ratings to parents may unfairly harm (primarily African American owned and operated) centers that cannot afford the required upgrades.⁶⁰

- FFY 2015 data submitted by the MDHS regarding child care center quality—at a least among those centers that had been rated in QRIS—indicated that 17% of QRIS participating child care facilities owned or operated by providers of color held a quality rating score of three or better, compared with 28% of facilities with a white owner/operator.⁶¹ Similarly, 83% of facilities owned and operated by providers of color held a quality rating of one or two, compared with 72% of white owned and operated facilities.⁶² 28% of participating centers had not yet been rated.
- Some testimony suggested that lower QRIS ratings among primarily African American providers may stem from racial bias,⁶³ and that the assessment process itself may be inconsistent and unclear to providers.⁶⁴ Although QRIS staff does provide the name and contact information of the evaluator to the facility director, a study of the MLICCI found that there were no written policies governing implementation; and no formal avenue for providers to contest their evaluations if they felt they were inaccurate.⁶⁵ A report of the National Equity Project commissioned by the MLICCI quoted from a provider, “There is racial bias on the part of the center visitors—we don’t know how the standards are weighted.”⁶⁶

Especially in light of the significant increase projected in quality improvement spending with the reauthorization of the CCDBG Act of 2014, concerns regarding disparate impact on the basis of race may be particularly troubling.

Climate and Cooperation

As a cooperative program between the federal Office of Child Care, the state lead agencies, the child care providers, and the families served by the initiative, the success of CCDF depends on mutual trust and cooperation between all involved parties. If the program is to foster innovation, and to provide improved monitoring, training, and grants to providers as intended;⁶⁷ the lead agency and the providers must work together to achieve the program purpose. Unfortunately in Mississippi, testimony presented to the Committee revealed deep mistrust and divergent

⁵⁹ Schulman Testimony, *April Transcript*, p. 12 line 03 through line 07

⁶⁰ Burnett Testimony, *April Transcript*, p. 09 line 10 through line 20; Burnett Supplemental Testimony p. 06. *See also*: Clay testimony, *May Transcript* p. 15 lines 03 -07; Dickson testimony, *May Transcript*, p. 15 lines 09-23

⁶¹ *May Presentations*, slide 29. *Note*: MDHS has corrected the totals on these slides. The corrected numbers indicate 154/544, or 28.3% of the centers had not yet been rated.

⁶² *May Presentations*, slide 29. *Note*: MDHS has corrected the totals on these slides. The corrected numbers indicate 154/544, or 28.3% of the centers had not yet been rated.

⁶³ Ellis Testimony, *April Transcript*, p. 23 line 09 through 15.

⁶⁴ Forrester Supplemental Testimony, p. 01; full text in Appendix H

⁶⁵ Burnett Testimony, *April Transcript*, p. 23 line 19 through 35.

⁶⁶ National Equity Project: Mississippi Low-Income Child Care Initiative Institutional Partners, Child Care Providers Listening Campaign. November 2012 p. 06.

⁶⁷ *CCDF Fact Sheet*, p. 01

perspectives between the MDHS and some child care providers—particularly those operating in low-income, African American communities in and around the Mississippi Delta region.

To illustrate, the MDHS regards many of its policy decisions described above as efforts to improve quality and efficiency in the state child care program. Panelist Laura Dickson of the MDHS cited two separate publications released by the National Women’s Law Center in 2013 and 2014 which identified Mississippi’s policies as “family friendly and supportive of low-income parents.”⁶⁸ Nevertheless, a number of African American child care facility owners continue to view at least some of the state’s administration of CCDF as intentionally discriminatory on the basis of race. In the example of the electronic finger scanning initiative, the MDHS maintains the program’s purpose was to address fraud. Some providers however, saw it as an unnecessary barrier to participation and a diversion of funding rooted in racial animus, intended to withdraw support from communities deemed unworthy.⁶⁹ Furthermore, shortly after the program’s cancellation, the MDHS announced that all TANF workplace participants, who had previously been working in child care facilities across the state, would be removed and placed at alternative work sites.⁷⁰ The stated cause for this action was that TANF work placements are intended to be temporary, and to lead to gainful employment—child care facilities were not hiring TANF workplace participants as paid staff within six months of entering the program, so they were to be removed to other sites.⁷¹ Additionally, there were to be no more than three TANF workplace participants at any given site, and parents were not permitted to work in the same classroom as their children—regulations which MDHS found were being violated.⁷² Many child care providers however, saw the move as direct retaliation for their resistance to the finger scanning initiative.⁷³ TANF workplace participants had provided critical support to financially stretched and understaffed centers. The abrupt removal of these participants left many centers unexpectedly understaffed and without sufficient adult supervision for the children in their care.⁷⁴ The lead plaintiff in the Xerox finger scanning case, panelist Deloris Suel, also reported that her CCDF reimbursement checks were delayed by the state in personal retaliation for her filing of the Xerox complaint.⁷⁵

In another illustration, the Committee heard detailed testimony regarding rating reliability procedures involved with QRIS implementation. QRIS evaluators receive extensive training prior to even completing any practice evaluations. Evaluators must then attend an in-depth

⁶⁸ Dickson testimony, *May Transcript*, p. 07 lines 24-28

⁶⁹ Suel Testimony, *April Transcript*, p. 16 line 20 through p. 18 line 08; *See also*: Burnett testimony, *April Transcript*, p. 09 line 31 through p. 10 line 25; Burnett Supplemental Testimony, pp. 07-08; *See also*: Ellis testimony, *April Transcript*, p. 14 lines 04-15

⁷⁰ Letter from Cathy Sikes, Director of Field Operations, Mississippi Department of Human Services to Timothy Noonan of the U.S. Department of Health and Human Services, Office of Civil Rights. June 10, 2014. Transaction Number 04-14-173525. Full text in Appendix I. Hereafter cited as *MDHS Response to DHHS*

⁷¹ *MDHS Response to DHHS*, pp. 01-02

⁷² *MDHS Response to DHHS*, pp. 01-02

⁷³ Letter from Congressman Benny G. Thompson to Attorney General Eric H. Holder, October 11, 2013. Full text in Appendix J. Hereafter cited as *Thompson Letter*. *See also*: Suel testimony, *April Transcript*, p. 17 lines 06-09; p. 19 lines 14-29

⁷⁴ *Thompson Letter*, p. 02

⁷⁵ Suel Supplemental Testimony, p. 04, paragraph 05.

training directly with a state “anchor,” who has been trained to national standards in QRIS. Evaluators must then produce ratings with 85% reliability for three consecutive visits before they are allowed to conduct an assessment on their own. This means that they evaluate the same classroom at the same time as their anchor. Both evaluators independently produce ratings, and discuss their scores for each item. The trainee must be within one point of the anchor on each assessment item in order to be “reliable.”⁷⁶ Once a rater has achieved reliability, every six visits they must conduct another test session with their regional anchor to ensure that reliability is maintained. If their reliability is not within 85%, they must return to conduct evaluations with their regional anchor until reliability is re-established.⁷⁷ Regional anchors are also required to establish reliability with their state anchor every twelve visits. Through such careful implementation, the state has demonstrated 93-94% reliability in QRIS evaluations over the past three years.⁷⁸ In addition, MDHS reported that QRIS staff try to schedule evaluations near the end of a provider’s licensure year, so that centers have “the most time possible to comply with the components of the star level that they are trying to achieve to increase the odds of success.”⁷⁹ Despite this careful implementation however, child care providers continue to express concern that ratings are unclear, and may include racial bias.⁸⁰ Whether this disconnect indicates a climate of mistrust, a lack of clear communication, a need for more transparent information sharing, a lack of cultural relevancy in the assessment tool, or other problems; there is clear room for improvement in the climate and the level of cooperation between MDHS and a number of providers. Without such improvements, conflict and resistance to collaboration will continue to impede the intended outcomes and innovation desired from the CCDF.

To help address this issue, the Committee notes that panelist Karen Schulman of the National Women’s Law Center recommended QRIS evaluators establish relationships with child care center directors, and provide feedback to facilitate improvement, including “information about how they were assessed and why they received a particular rating.”⁸¹ Also, the Committee notes that in compliance with federal requirements to solicit public input, the MDHS held three public meetings to receive public comment on the FFY 2014-2015 state CCDF plan. The agency received additional comments submitted in writing. Despite fifty-four pages of transcript from the resulting public meetings, and an additional nine pages of written comments received, MDHS reportedly did not adopt a single change to the plan based on these public comments. The agency also reportedly did not provide any response to the public regarding consideration of their comments.⁸² Increased communication regarding the deliberations behind such decisions, and a public response regarding why specific recommendations could not be implemented, may help to

⁷⁶ Clay testimony, *May Transcript*, p. 11 line 13 through p. 12 line 13

⁷⁷ Clay testimony, *May Transcript*, p. 11 line 13 through p. 12 line 13

⁷⁸ Clay testimony, *May Transcript*, p. 11 line 13 through p. 12 line 13

⁷⁹ Dickson testimony, *May Transcript*, p. 10 lines 31-36

⁸⁰ Ellis testimony, *April Transcript*, p. 23 lines 09-15

⁸¹ Schulman Testimony, *April Transcript*, p. 12 lines 23 -34; p. 22 line 26 through p. 23 line 02 *Note*: MDHS reports that the Mississippi Quality Stars staff mails providers information about their rating, along with a staff member name and direct contact information in case of any questions/concerns/objections/requests related to the information that is provided.

⁸² Suel Testimony, *April Transcript*, p. 18 lines 20-32

improve relations and establish cooperation between MDHS and child care providers moving forward.

Public Records and Program Data

Maintaining accurate, consistent public records and program data that is transparent and accessible is key to the successful implementation of any public, collaborative initiative. Public data and record sharing allows for accountability, increased accuracy, multi-stakeholder cooperation, and innovation. In the case of establishing rules and regulations related to federal programs, it is also a requirement of the federal Administrative Procedures Act.⁸³ To this end, testimony received during this inquiry raised the following:

- Testimony from a child care center provider indicated that information on the QRIS website may be inaccurate: specifically, centers that had discontinued participation in QRIS were still listed as participating centers and may have inflated the percentage of all centers participating in the program to 36%.⁸⁴
- MDHS does retain data regarding the race/ethnicity of children attending quality rated child care facilities in the state. However, data submitted for both FFY 2014 and FFY 2015 showed that more than 50% of the children attending the relatively few facilities that participate in QRIS were at centers that had not yet been rated.⁸⁵ An analysis of this data did suggest that access to high quality affordable child care services may be more limited for children of color.⁸⁶ However, given the significant number of children at centers that had not yet received ratings, the validity of this data is unclear. The Committee recognizes that QRIS ratings are often delayed until the end of the year to provide centers with the opportunity to meet quality improvement standards; however given similar gaps in 2014 and 2015 data, it does not appear as though this data was updated at the conclusion of the previous fiscal year.⁸⁷
- MDHS reported that child care copayments for CCDF recipients total no more than 8.6% of a family's annual income, and that those clients who received TANF benefits have no copayment amount at all.⁸⁸ Federal guidelines recommend that copay fees total no more than 10% of parents' income, and the national average is 7%.⁸⁹ However, according to testimony from the Center for Law and Social Policy, citing federal data, in Mississippi these subsidies average 26% of parent's monthly income—a rate that is the highest in the country. This data further indicates that 64% of parents receiving CCDF subsidies in

⁸³ 5 U.S.C. Subchapter II. Available at: <https://www.archives.gov/federal-register/laws/administrative-procedure/> (last accessed October 02, 2015).

⁸⁴ Forrester Supplemental Testimony, p. 01. *Note:* MDHS reports that program participation data on the website is updated quarterly, and is not used to determine percentage rates that are reported monthly.

⁸⁵ *May Presentations*, slide 28.

⁸⁶ In FFY 2015, 11.2 % of non-White children attended a child care facility with a quality rating of three or better, compared with 15.4% of White children. Similarly, 37.7% of non-White children attended a center with a lower quality rating of one or two, compared to 25.4% of White children.

⁸⁷ MDHS Child QRIS Rating Participation Data, FFY 2014 and FFY 2015, Appendix K

⁸⁸ Dickson Testimony, *May Transcript*, p. 08 lines 36-43; p. 09 line 03 through 09.

⁸⁹ Matthews Testimony, *April Transcript*, p. 05 line 23 through line 27.

Mississippi are required to pay these copayments.⁹⁰ At the time of this report, the source of this discrepancy remains unclear.⁹¹

- MDHS reported that all state data is available to any person who makes a request under the Freedom of Information Act (FOIA), and that the agency regularly provides data to meet those requests.⁹² However, public comment during the Committee’s inquiry indicated potential delays in this data sharing process.⁹³ Dr. Cory Wiggins of the Mississippi Economic Policy Center noted the importance of easy access to real time data, in order for researchers and policy makers to truly understand issues impacting children, and how to address them.⁹⁴ Dr. Wiggins also spoke to the importance of further disaggregating data, at least to the county level, in order to better understand issues impacting Mississippi’s low-income children: “We know a lot of these issues that people look through and try to figure out how to impact the lives of children tends to be very localized. I think we think county level data is one sort of way of looking at it.”⁹⁵
- The implementation of Mississippi’s contract with Xerox for finger scanning identification of CCDF participants was canceled, at least in part, due to administrative challenges stemming from a lack of public records transparency.⁹⁶ While this effort was canceled in 2013, it is clear that the lack of transparency caused significant damage to the relationship between the MDHS and many child care providers, as referenced in the previous section. This relational damage and residual mistrust continues to the present.

Findings and Recommendations

On February 27, 2015 the Mississippi Advisory Committee to the U.S. Commission on Civil Rights voted to conduct a study of federal low-income childcare subsidy distributions in Mississippi, and related programs. Testimony focused on the alleged discriminatory treatment of both providers and families receiving federal child care support on the basis of race or color as a result of the state’s discretionary administration of federal CCDF and related funds. This study

⁹⁰ Matthews Testimony, *April Transcript*, p. 05 lines 22-28; based on FFY 2013 data submitted by MDHS to the Federal Office of Child Care. Available at: <http://www.acf.hhs.gov/programs/occ/resource/ccdf-statistics> (last accessed November 10, 2015)

⁹¹ After the Committee’s final review and approval of the report, MDHS offered the following clarification: “In Mississippi, clients on TCC, with special needs, or served by our federal home visiting program or are in Foster/Preventive/Protective care are assigned a minimum \$10 copayment and are served on a referral from the programs mentioned above. Because Mississippi considers these individuals to be our most vulnerable, we do not collect income information for these families and serve them without regard to income due to the high number of risk factors associated with the families. This means that our system reflects a \$10 copayment assigned to a family with no reported income making the copayment as a percent of income seem incorrectly high. When the data for this table is pulled, our copayment as a percent of income is not accurately reflected because it uses our entire population, which includes these families (roughly 1/3 of our total population). While I understand this can be confusing, the copayment amounts as a percent of income that were reported by [MDHS supplemental testimony, Appendix L] are correct for those families that are assigned a copayment based on their income.” The Office of Child Care did not respond to the Committee’s request for copayment data verification.

⁹² Dickson Testimony, *May Transcript* p. 17 lines 39-41

⁹³ Dickson and Burnett testimony, *May Transcript* p. 18 lines 07-40

⁹⁴ Wiggins testimony, *May Transcript*, p. 06 lines 09-42; p. 16 line 33 through p. 17 line 04.

⁹⁵ Wiggins testimony, *May Transcript*, p. 16 lines 23-31; p. 06 lines 01-07

⁹⁶ Suel Supplemental Testimony, pp. 02-05. *See also* Burnett Supplemental Testimony, pp. 07-08. *See also*, MDHS Thompson Response, pp. 06-07, Allegation 11 in Appendix G

included hearing balanced and diverse testimony during two public meetings from state officials, national researchers, child care experts, advocates, and child care providers. In addition, the Committee heard a number of public comments and received supplemental written testimony on the topic. The Committee submits the following findings based on this testimony:

1. The MDHS has imposed a number of discretionary requirements which may unnecessarily restrict the families in greatest need from accessing quality, affordable child care—primarily in low-income communities of color. These requirements include that single parents initiate legal action for child support prior to receiving services; that eligibility re-determination is documented every semester or quarter for parents who qualify because they are students; and that priority re-determination for children referred from other supportive programs is not coordinated with the CCDF eligibility period, resulting in many children losing their subsidies in less than the intended 12-month eligibility period.
2. MDHS discretionary spending on fraud prevention has perhaps unjustifiably diverted already severely limited funding away from providing direct services to children, primarily in low-income communities of color. Failure to utilize otherwise unobligated federal TANF dollars to support child care needs in the state may further restrict otherwise available resources.
3. A number of concerns exist regarding federally required spending on the quality improvement of state low-income child care services. These include: (a) quality incentives may be out of reach for the providers most in need of support, particularly those in low-income African American communities; (b) the quality rating system QRIS may not accurately predict improved developmental outcomes for children; (c) the QRIS may be subject to rater bias and result in systemically lower scores on the basis of race or color. That required quality improvement spending is projected to increase with the 2014 authorization of CCDF makes these concerns even more troubling.
4. A significant disconnect exists between the CCDF lead agency, MDHS, and many child care providers in Mississippi—especially those who serve primarily low-income African American communities. The resulting mistrust and guarded lack of cooperation is an impediment to the goals of the program, and may be preventing a significant portion of families and children in need from accessing quality child care.
5. Data discrepancies and non-transparent program reporting may result in increased mistrust and make it difficult for advocates, researchers, and child care providers to collaborate with MDHS for program improvement, particularly in the African American community.

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁹⁷ In

⁹⁷ 45 C.F.R. § 703.2

keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Mississippi Advisory Committee recommends that the Commission advise the following to the U.S. Department of Health and Human Services, Administration for Children and Families Office of Child Care:⁹⁸

1. The Office of Child Care should consider whether sufficiently compelling justification exists for lead agencies to include in their eligibility criteria any requirements which are differentially applied to single (as opposed to married) parents. If sufficiently compelling justification does not exist, such eligibility criteria should be prohibited. As is the case with requiring single parents to initiate legal action for child support in order to be eligible for CCDF assistance, such differential requirements necessarily have a disparate impact on women. The MDHS has not produced data about any purported benefits of such policies that might justify such a disparate impact.
2. In conjunction with requiring increased CCDF spending on quality improvement efforts under the CCDBG Act of 2014, the Office of Child Care should require lead agencies to spend a comparable portion of their CCDF budget on direct support to child care facilities in their lowest-income areas. This support should be directed to help facilities meet quality improvement standards, and may help narrow current disparities in access to high quality child care services on the basis of race or color.
3. The Office of Child Care should conduct or commission a thorough study of the validity of the QRIS evaluation criteria as a predictive measure of improved developmental outcomes for children. This study should include a review of evaluation outcomes in diverse communities to ensure criteria are culturally relevant to diverse populations, and that they do not unduly disadvantage any particular protected class.
4. Especially in light of the increased focus on quality improvement forthcoming, the Office of Child Care should require lead agencies to develop clear, written policies and guidelines regarding factors that define quality in child care. If the QRIS system is continued and/or expanded, the Office should also require that lead agencies share written information with child care providers about the quality measures used and how they are to be rated. Such policies should also include a defined protocol for centers to contest ratings they feel are unjustified. This informational support may address concerns regarding potential biased ratings on the basis of race or color.
5. The Office of Child Care currently requires that lead agencies submit a CCDF Plan, and invite public comment on those plans every three years. In addition to this requirement, lead agencies should be required to submit a record of the public comment received, and either (1) an explanation regarding how relevant public comment was incorporated into their plan; or (2) justification regarding why public comment cannot be incorporated.
6. The Office of Child Care should require that all CCDF participation data and program reports be made publicly available online. The Committee recommends that accurate and continuous data be reported to the public regarding the provision and effectiveness of

⁹⁸ In a letter submitted to the Committee on November 06, 2015, the Office of Child Care stated that the Agency lacks legal authority to implement recommendations 1&2; the Agency's view is that such implementation would require Congressional action. The Agency also noted that MDHS does have the authority to implement these recommended policy changes without action from the Office of Child Care or Congress.

child care services in the state. These data should be measured based on county-to-county assessments methods and should reflect service to all demographic constituencies in the state.

In addition, given their lack of full cooperation, the Committee recommends that the Commission issue a statement to the Office of Child Care, reminding them of their obligation as a federal agency under 42 U.S. Code 1975 (e) to “cooperate fully with the Commission to the end that it may effectively carry out its functions,” to the extent that such cooperation may be required in future Committee investigations.

Appendix:

- A. Hearing Agendas
- B. Written testimony of Rachel Schumacher, Director, Office of Child Care
- C. Schumacher email, October 09, 2015
- D. Burnett Supplemental Testimony
- E. MLICCI State Plan Input Letter to Jill Dent
- F. Suel Supplemental Testimony
- G. MDHS Thompson Response
- H. Forrester Supplemental Testimony
- I. MDHS Response to DHHS
- J. Letter from Congressman Benny G. Thompson to Attorney General Eric H. Holder
- K. MDHS QRIS Rating Child Participation Data FFY 2014 and FFY 2015
- L. MDHS Reported Copayment Rates