

Welfare Reauthorization: An Early Guide to the Issues

July 2000

Mark Greenberg, Jodie Levin-Epstein, Rutledge Hutson, Theodora Ooms,
Rachel Schumacher, Vicki Turetsky, David Engstrom

Prepared for First Draft Working Session, David and Lucile Packard Foundation, The Impact of Welfare Reform on Children, July 20-21, 2000. A revised and updated version of this article will be forthcoming in the Fall/Winter 2001 Issue of the Packard Foundation's Journal, The Future of Children.

Center for Law and Social Policy
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WELFARE REAUTHORIZATION: AN EARLY GUIDE TO THE ISSUES

The enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) marked an extraordinary turning point in U.S. social policy. The legislation is probably best known for having repealed the Aid to Families with Dependent Children Program and having provided states with block grants to design work-focused, time-limited welfare programs. However, the scope of the 1996 law was much more extensive. The law made major changes affecting child support enforcement, child care, the Food Stamp Program, disability benefits for children, and the eligibility of immigrants for federal, state and local benefits. The law reduced federal requirements and protections for individuals while expanding state discretion and flexibility in numerous aspects of social policy. And, the law has prompted new and intensified discussions about out of wedlock birth, fathers, and marriage and family formation.

These issues and more will be before Congress in 2002. A set of programs – the Temporary Assistance for Needy Families Block Grant, the Child Care and Development Block Grant, the Food Stamp Program, and funding for abstinence education – are all scheduled to be reauthorized by the end of 2002. But the discussions and debates will likely entail far more than the programs scheduled for reauthorization. Rather, 2002 is anticipated to be a year in which Congress, the states, and the public will take stock of what has and has not been accomplished since 1996 and consider the next set of directions for national poverty policy and family policy.

This article seeks to contribute to the 2002 discussions by describing how the 1996 law changed

the social policy landscape in programs affecting children. We describe the principal changes in federal law most relevant to the well-being of children in a set of areas: the repeal of AFDC and enactment of TANF; the law's provisions relating to family formation; the changes in child support enforcement, child care, Medicaid, the Food Stamp Program, immigrant eligibility for public benefits, child welfare, and disability benefits for children. In each area, we highlight the principal impacts of these changes (to the extent known) and suggest key issues likely to be before Congress in 2002.

Two caveats are needed. First, because this is a broad overview, we have necessarily omitted numerous details, both about the legal changes and the impacts of the changes; citations provide sources for more detail about the legal changes, and other articles in this issue discuss the impacts in greater detail. Second, it is inherently speculative to write in 2000 about the likely issues before Congress in 2002. Much could change in the next several years, as a result of elections, changes in the economy and state practices, and new research findings. Nevertheless, much of the picture of the likely 2002 discussions has already begun to emerge, and it is already clear that those discussions and decisions could have a major impact on the well-being of low income children, and all children.

I. 1996: BACKGROUND AND CONTEXT

There are sharply differing views about how to characterize the motivating factors around enactment of the 1996 law. A number of factors can be identified, though there remains much disagreement about which were central, and it is clear that different factors were more or less relevant to different actors. At least five themes were prominent in the debates:

C “Reforming Welfare to Promote Work and Time Limits:” The 1996 discussions were dominated by the perception that the then-existing cash assistance program, Aid to Families with

Dependent Children, did too little to encourage and require employment, and instead either encouraged or at least allowed non-work. Some proponents of change put forward a deeper critique, arguing that the program fostered family break-up and out of wedlock birth, and had created a “culture of dependency” responsible for an array of other social problems. Both the President and Congressional Republicans emphasized the need to transform the cash assistance system into a work-focused, time-limited program.

- C **Reducing Projected Spending:** The 1996 debates were dominated by the perception that projected federal spending for low-income assistance needed to be reduced, either as part of an overall effort to reduce spending, or simply because federal spending for low-income assistance was viewed as excessive.
- C **Promoting “Parental Responsibility:”** The 1996 debates were characterized by broad agreement that both parents should support their children. For custodial parents, this typically meant an emphasis on work and cooperation with child support enforcement. For non-custodial parents, it meant a set of initiatives to strengthen the effectiveness of the child support enforcement system.
- C **Addressing Out of Wedlock Birth:** A strong theme, principally though not exclusively from a set of conservatives, was that out of wedlock birth was presenting an increasingly serious social problem, and that the federal government should exert a strong leadership role in seeking to reduce the incidence of out of wedlock birth.
- C **Promoting Devolution:** A common theme throughout the 1996 discussions was that a set of federal programs had failed, that much of the innovation and creativity in social policy was

emerging from state experimentation, and that federal law should be restructured to give more power and authority to states in the shaping and implementation of policy.

These themes were not the only ones, and some very different characterizations are possible.

Some would suggest that the 1996 debates were characterized by an antagonism to poor families, a lack of concern about federal safeguards and protections, and a set of hostile stereotypes about the needs and circumstances of poor families, and particularly, poor minority women and immigrants. And, some would suggest that the 1996 debates were characterized by the need to “do something” about welfare before the 1996 presidential elections. Other characterizations are also possible. However, it does seem clear that the principal focus of the 1996 debates was not about how to reduce child poverty, at least in the short run. Proponents of the legislation urged that moving toward a structure that promoted work and marriage would promote child well-being in the long-run; opponents asserted that the legislation’s spending reductions and removals of federal protections would hurt children. But the debates largely centered on the themes outlined above, and the articulated goals of the law did not directly address child poverty. At the same time, each component of the law could be expected to have a set of direct and indirect effects, and the 2002 discussions will likely focus much more directly on understanding the law’s impacts on children in efforts to identify the next steps for federal policy.

II. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

In 1996, there was broad agreement that there was a need for significant change in the program of cash assistance for families with children, but sharp disagreement about the direction that change should take.

Until 1996, AFDC was the principal federal-state program providing cash assistance to families

with children. Under AFDC, states provided cash assistance to families with children, and the federal government paid half or more of all program costs. Federal funding was provided to states on an open-ended basis, i.e., it rose when the caseload rose and fell when the caseload fell. Federal law established a complex mix of options and requirements for states. States were mandated to provide some level of cash assistance to eligible poor families but had broad discretion in setting benefit levels. States were required to operate programs of work-related services and requirements for participating families, but these programs were often under-funded, affected a limited share of assistance recipients, and were typically not the central focus of attention in state and local welfare administration.

In 1992, presidential candidate Bill Clinton pledged to “end welfare as we know it” by requiring families receiving welfare to work after two years. In 1994, the Clinton Administration introduced a welfare reform proposal involving expanded services and requirements intended to increase workforce participation for single parents, along with a requirement that parents participate in a work program as a condition of receiving further assistance after a family had received assistance for two years. The proposal did not advance, and after Republicans attained a Congressional majority in November 1994, the focus shifted toward the Republican proposal to end entitlements to assistance, repeal AFDC and instead provide states with block grants.

A. The 1996 Law

The 1996 law repealed AFDC and enacted the structure of TANF block grants. The TANF structure is best understood as a hybrid. States receive a lump sum of money that can be used for an array of purposes. One purpose is to operate a program of assistance for needy families. A set of requirements -- e.g., time limits, work requirements, child support cooperation -- apply to families

receiving TANF “assistance,” but not to those receiving other benefits and services funded under the block grant. Accordingly, it is important to both understand the rules that govern the use of the block grant and the rules that apply to those who receive TANF assistance in state programs funded under the block grant. Key TANF features are:

- C **Essentially fixed federal funding:** Each state qualifies for a block grant each year from 1997 through 2002, with block grant levels set to reflect federal spending from a base period during the early 1990s under the programs that were repealed at the time TANF was enacted.¹
- C **Broad state discretion in use of federal TANF funds:** Unless otherwise prohibited, a state can spend its block grant funds in any way reasonably calculated to accomplish any of the purposes of the law. The purposes are to:

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

A state can also transfer up to 30% of its TANF funds to the Child Care and Development Block Grant and to the Social Services Block Grant (Title XX), subject to certain limits.³ In addition, under a “grandfather clause,” a state can also spend TANF funds in any way that was previously

authorized under a set of programs.⁴

C A state maintenance of effort (MOE) requirement: To avoid a fiscal penalty, a state must spend at least a certain amount of state money for benefits and services for “needy families” with children. The state’s MOE obligation is 80% (or if the state meets TANF participation rates, 75%) of the amount that the state spent in 1994 for a set of federal programs. To count toward MOE, expenditures must be reasonably calculated to accomplish a TANF purpose and must be for needy families. The state has broad discretion in setting the income level to define “needy families.” The state is free to decide whether MOE expenditures will be made in the state’s TANF program or in a “separate state program” not subject to TANF requirements.⁵

C Broad state discretion in designing an assistance program, with no federal entitlement to assistance: The state determines which families are eligible, how long they are eligible, how much assistance they receive, etc. Federal law prohibits the state from using TANF funds to assist certain categories of people, but there is no requirement that a state provide assistance to any family or group of families.

C A distinction between assistance and nonassistance: Key requirements such as time limits and work requirements apply to those receiving “assistance.” Assistance is defined to include payments designed to meet ongoing basic needs and supportive services (such as child care and transportation) for families that are not employed.⁶

C A time limit on federally-funded TANF assistance: The state may not use federal TANF funds to provide assistance to a family that includes an adult who has received federally-funded TANF assistance for sixty months; the state may allow exceptions for up to 20% of families

receiving assistance.⁷ The federal restrictions do not apply to use of MOE or other state funds and do not apply to benefits and services that do not fall within the definition of “assistance.”

C Federal participation rate requirements: The law sets participation rates for families receiving TANF assistance, and a state risks a fiscal penalty if it does not meet these rates. One rate is calculated for all families receiving assistance and a higher rate is applied to two-parent families. To count toward participation rates, an individual must be involved in one of a listed set of work-related activities for a specified number of hours each week throughout the month. Education and training activities only count toward the rates to a very limited extent. A state’s participation rate requirement can be reduced if the state’s caseload has declined since 1995 for reasons other than changes in eligibility rules; this “caseload reduction credit” creates a strong additional incentive for caseload reduction.

B. Developments

Generally, under TANF, most states developed time-limited assistance programs with a strong emphasis on work-related requirements. Most states developed programs in which most or all parents, including parents of very young children, were required to participate in work-related activities; adopted policies under which all cash assistance could be terminated for a violation of program rules; developed policies under which family assistance can be reduced or terminated after a time limit of 60 months or less; imposed restrictions on education and training and placed a strong emphasis on rapid workforce attachment; adopted policies to expand the availability of cash assistance for families entering employment; liberalized program asset requirements, and liberalized eligibility rules for two parent families.⁸

Since TANF was enacted, there has been a historically unprecedented decline in the nation's welfare caseload. The decline began before the law was enacted but accelerated after the law was passed. In early 1994, five million families were receiving AFDC assistance. The number fell to 4.4 million families by August 1996 and then to 2.5 million by September 1999.⁹ Child poverty fell over this period, but the number of children receiving assistance fell much more rapidly than did child poverty, and the share of poor children receiving AFDC/TANF dropped from 61.5% in 1995 to 43% in 1998.¹⁰

Studies have consistently found that most families leaving welfare have found work¹¹ and that labor force participation has increased among female-headed families.¹² However, employed leavers have typically entered into jobs paying wages below the poverty line, and are unlikely to receive employer-provided health care coverage or paid sick or vacation leave.¹³ Despite low earnings and lack of employer benefits, families that have left welfare are also less likely to be receiving Food Stamp benefits or continued Medicaid coverage than those families still receiving TANF assistance.¹⁴

Probably around 40% of welfare leavers are not working. There is only limited information about these families. It appears that some, but not most, are residing with partners or other adults.¹⁵ In some states, a significant share of case closures are due to sanctions or noncompliance with program requirements, such as failure to meet a work requirement, attend a meeting or respond to a notice.¹⁶ Families whose cases are closed due to sanction are more likely to have low education and less work history than families whose cases are closed for other reasons.¹⁷ Parents who are not working after leaving welfare are more likely to have multiple obstacles to employment than parents who are working after having left welfare.¹⁸ Concerns about the circumstances of these families have been heightened by findings that the poorest 20% of female-headed families suffered a loss in disposable income between

1995 and 1998, principally because of sharp drops in receipt of means-tested benefits.¹⁹

Families still receiving TANF assistance are more likely to have serious barriers to employment than those families that have left. As compared to leavers, families still receiving assistance are less likely to have recent work history and less likely to have completed high school. Nearly half (48%) of the families still receiving assistance in 1997 indicated that either their general health or mental health was poor.²⁰ State administrators frequently observe that the families still receiving assistance are more likely to face issues relating to extreme literacy barriers, mental health, substance abuse, domestic violence, ill or disabled family members.

The TANF caseload decline has also had a significant effect on the funding available for other programs affecting children. Nationally, as the caseload declined, cash assistance expenditures fell from nearly \$23 billion in 1994 to \$14 billion in 1998. The drop in cash assistance spending meant that funds which would have been spent for cash assistance became available for other purposes. Federal regulations issued in April 1999 made clear that states could spend TANF and MOE funds to accomplish the purposes of the law even when expenditures were for families that had left or never received TANF cash assistance.²¹

Initially, many states were hesitant to spend available TANF funds, having concluded the funds should be reserved for future economic downturns. By mid-1999, an estimated \$7.3 billion in available TANF funds remained unspent. These unspent funds led some in Congress to propose reducing TANF funding levels. At the same time, states began to become increasingly interested in using TANF funds for initiatives outside the welfare system. The single largest redirection of funds was for expansions of child care, and in some states, there has been a significant commitment of resources to the child welfare

system. Some states began to use TANF funds to supplant existing state low income program spending. While TANF funds are now being used for a broad range of initiatives, there is not yet a clear national picture of how the funds no longer being spent on cash assistance are being used in states.²²

C. Potential Reauthorization Issues

When TANF is reauthorized, there will likely be active debates about many features of the structure. Key questions are likely to include:

Should the purposes of TANF be modified? If current spending trends continue, it seems likely that by 2002, most state spending under TANF will be for services and activities other than providing cash assistance in state welfare programs. Should a principal TANF purpose be to provide supports and assistance to the working poor? Should there be a stronger emphasis on addressing the engagement of fathers and family formation and reunification? Should states be free to use the funds for new purposes?

Should federal funding and state maintenance of effort levels be changed? Some people will likely argue that federal funding is too high in light of caseload declines since 1994. Others will emphasize that there is still no experience concerning adequacy of block grant funds in a recession. States could also respond by emphasizing that their focus is not just on families receiving cash assistance, but on using block grant resources for broader efforts on behalf of low income families, and that funding needs to be maintained or increased. However, some states may be prepared to accept lower block grants in return for lower MOE obligations. There may also be disputes between states about the appropriate levels of individual state allocations – some

states may be asserting that it does not make sense to allocate federal funds in 2002 based on federal welfare spending in states in 1994.

Should federal time limit rules be modified? How should federal law address the families still receiving assistance? Some people will likely argue that there should be no federal time limit or that the 20% cap should be reconsidered in light of the caseload decline, i.e., that 20% of the remaining cases is a far smaller figure than contemplated in 1996. There may be proposals to allow exemptions or extensions for particular groups of families, e.g., working families, families with disabled members, families with infants. And, the discussion of time limits is likely to lead to a broader discussion of the circumstances of families still receiving assistance, and of issues relating to illness, disability, mental health, substance abuse, language barriers and domestic violence.

How should state performance be measured? Many observers have suggested that caseload decline became a principal measure of success under TANF because there were not better measures of performance incorporated into federal law. In 2002, some people will advocate that state success in reducing child poverty be treated as a key measure of performance in TANF. Some will likely advocate increased focus on out of wedlock births and other family formation issues. The basic issue of state accountability for results is likely to be more central to the debate.

Should there be more federal safeguards? One part of the reason for the caseload decline is that most states now use full family sanctions at some point in the penalty process, i.e., terminating all cash assistance to a family when the state concludes that the parent has violated a program rule. States often emphasize that their flexibility in program administration under TANF has been key in promoting employment and reducing caseloads. At the same time, advocates often emphasize that the extent of

state discretion in sanction policy has contributed to the numbers of families leaving welfare without work, and to the deepening of poverty for the poorest female-headed families. Advocates will likely urge that states be required to make better efforts to identify and address literacy barriers, health, substance abuse, mental health or disability-related reasons before exercising full-family sanctions, and that there be clearer federal requirements to assist and work with those families with the greatest barriers to employment. Others may oppose any efforts that could be seen as restricting state flexibility and discretion.

The above list is not complete. One can anticipate that the issues in 2002 will also include questions about approaches to domestic violence; access to education and training; policies affecting families in which members have disabilities; policies affecting the linkages between the welfare system and the workforce development system; and many others.

III. FAMILY FORMATION

The issue of marital status and teen pregnancy has gained increased public attention as the incidence of children living in divorced, never-married, and teen parent households has grown. Since at least the 1940's there has been a roughly steady growth in the rate of out-of-wedlock births. While less than 4% of all births were to unmarried women and adolescents in 1940,²³ 32.2% of all births were out-of-wedlock by 1995. In that year, 75% of all teen births were out-of-wedlock.²⁴ It is "the diminishing fertility of married women coincident with the growing fertility of unmarried women [that] has increased the likelihood that children born today will be born outside marriage."²⁵ The increase in divorce is as dramatic: in 1940 the rate among married women was 8.8% and by 1995 it was nearly 19.8%.²⁶

Before enactment of the 1996 law, no federal program expressly sought to influence marital status. In part, this may reflect a tradition which held that family formation is a personal matter. Debates in the 1990s began to challenge this tradition and the 1996 law provided a vehicle for federal funds directed at family formation both within and outside of welfare.

A. The 1996 Law

Several out-of-wedlock initiatives in the debates that led to the 1996 law were at least partially inspired by writers such as Charles Murray who asserted that “illegitimacy is the single worst social problem of our time - more important than crime, drugs, poverty, illiteracy, welfare or homelessness because it drives everything else.”²⁷ Adherents of this perspective viewed cash assistance as “enabling” poor women to have children out-of-wedlock and sought to limit or eliminate assistance as a means of reducing out-of-wedlock births. Proposals to prohibit states from providing assistance to children born out of wedlock to teen parents and to prohibit states from providing additional assistance for children born in welfare families were eventually dropped,²⁸ though the block grant structure permits states to implement these or related policies.²⁹ Other family formation provisions were incorporated in the 1996 law.³⁰ The 1996 law:

- **Included family formation among the TANF purposes:** Three of the four purposes of TANF refer to family formation, i.e., promoting marriage, reducing out-of-wedlock pregnancies, and encouraging the formation and maintenance of two-parent families. The TANF purposes are not just hortatory, but actually affect which activities can be funded with TANF dollars.
- **Changed rules concerning two-parent families:** Under AFDC, two-parent families had to meet stricter eligibility tests than single parent families. Under TANF, states set their own eligibility

rules for two-parent families. However, states must meet a high work participation rate for two-parent families receiving assistance.

- **Established a state bonus for reductions in out of wedlock birth:** An award of \$100 million annually is available to be shared by up to five states with the highest reduction in their out of wedlock birth ratio and who have also reduced their abortion rate. The formula is based on the share of out of wedlock births among women of all incomes and of all ages within the state.
- **Denied federal assistance to some minor parents:** With limited exceptions, states are precluded from spending TANF to provide assistance to unmarried, minor, custodial parents who do not participate in school or training rules and who do not live with relatives or in an adult supervised living arrangement.
- **Allowed TANF spending on family planning:** Expenditure of federal TANF funds on family planning is allowable but spending on abortion and other medical services is precluded.
- **Established federal funding for a new abstinence education program:** Nearly \$500 million (in combined federal and state funds) is provided over 5 years for a program administered through the Maternal Child Health block grant, which, in part, “teaches that sexual activity outside the context of marriage is likely to have harmful psychological effects.”

B. Developments

At least 34 states tapped some TANF funds for teen pregnancy prevention projects and/or for

family planning initiatives by 2000.³¹ As of mid-2000, only Oklahoma had launched a comprehensive initiative to strengthen marriages.³²

In implementing TANF, most states dropped the stricter AFDC eligibility requirements for two-parent (married and unmarried) families and now effectively treat such families the same as single parent families when determining eligibility.³³ At the same time, states often viewed the high two-parent work requirements as a disincentive against assisting two-parent families in their TANF programs, and at least 14 states established state funded programs for two parent families in order to provide assistance to these families without risking the penalties associated with TANF participation rate requirements.³⁴

At this point, it is unclear whether the TANF bonus structure motivated states to address family formation issues. In three of the five states awarded the “illegitimacy bonus,”³⁵ the Maternal and Child Health directors indicate that their state undertook no special activity to win the bonus.³⁶ The initial high performance bonuses did not include family formation measures, although HHS has proposed to include a measure of the share of two-parent families among low income families with children as a performance measure in final regulations.³⁷

Minor parents are a special target in TANF.³⁸ The TANF caseload includes about 142,000 teen parents.³⁹ Relatively little research has examined the impacts of the minor parent provisions. Available research on the school requirement (often called “Learnfare”) suggests that its benefits are concentrated mostly on improving enrollment and grade completion and less on improving graduation rates and earnings.⁴⁰ The research also suggests the positive outcomes occur largely for those still in school, since Learnfare has had little success with “retrieving” those who have dropped out.⁴¹ The underlying assumption of the Learnfare requirement is that the mandate will improve attendance, yet one analysis

suggests that illness plays an important role in school absence among the welfare population.⁴²

Compared to “Learnfare” even less is known about the impact of the minor parent living arrangement rule.⁴³ In large part, because of the confusion surrounding these rules at local welfare offices, teen parents - those who are minors as well as those who are older - may be inappropriately diverted from TANF.⁴⁴

The abstinence education funds under the 1996 law are available for curricula which generally teach abstinence as the only option for their participants and do not offer information on how to use contraceptives. (In contrast, “abstinence-plus” programs encourage abstinence but also provide information about using contraception.) The 1996 law’s version of “abstinence-only” teaches that abstinence is the only appropriate option outside of marriage regardless of age. The federal provision appears to have encouraged changes in state law. As of mid-2000 at least five states passed laws applying the abstinence-unless-married criteria to all sexuality education programs in the state.⁴⁵ To date, research has not found reduced fertility as a result of participation in such abstinence programs.⁴⁶ A federal evaluation of the 1996 abstinence programs is underway.

C. Potential Reauthorization Issues

Marriage. There appears to be growing Congressional interest in enacting legislation that promotes marriage. For example, the Fathers Count legislation debated in 1999 and re-emerging in 2000 emphasizes promoting marriage as a means to ensure responsible, involved fatherhood.⁴⁷ Polls show that most Americans continue to prize and value marriage as an important life goal,⁴⁸ but there is a great deal of uncertainty about the appropriate role of government with respect to marriage.⁴⁹ Since there is little track record of state policy or program experience to draw upon, the risk is great that the

discussion will become politically charged. Among the questions likely to be addressed in the reauthorization debate include: Are there existing policy and program barriers to marriage that should be removed? Can states promote or privilege marriage without, in effect, “bribing” couples to marry and discriminating against single individuals? Should states fund relationships education courses for high school students and for low income parents in communities? How can government best work with faith-based organizations in promoting marriage and strengthening two-parent families? Is TANF the appropriate vehicle for implementing a pro-marriage agenda? What legal reforms or other steps can be taken to discourage divorce without perpetuating those marriages that are abusive or otherwise harmful?

Minor Parents. Reauthorization provides an opportunity to consider a range of approaches to the minor parent provisions. Questions include: Should the current mandates be turned into state options so that states have as much flexibility in addressing the needs of minor parents as they do with other populations? Should new provisions be added that promote adequate assessments of individual and community capacity to meet teen parent needs? What’s the appropriate response when needs don’t match available services? If education remains a goal, should the provision that puts teen parents in competition with adults for “countable” education slots be revamped?⁵⁰ Should distinct performance standards (or a competitive grants program) be developed that reward expanded investments, improved outcomes (including completion of education), and effective coordination of youth services? Should such performance measures be limited to minors, include all TANF teen parents, or reach all teen parents up to age 20?

“Illegitimacy Bonus.” Congress will likely consider whether the “illegitimacy bonus” affects state and family behavior and whether the funds are effectively targeted: there may be proposals to

expand, contract, or eliminate the bonus. There may also be proposals to condition the bonus on new investments designed to reduce out-of-wedlock birth (e.g. family planning initiatives or couples counseling).

IV. CHILD SUPPORT

Child support is a significant income source for low-income families that receive it. For poor single female-headed families receiving child support, the child support is the second largest component of family income after earnings, amounting to 26% of the family's budget, or \$2000 per year.⁵¹ When families headed by single mothers get at least some child support during the year, their poverty rate drops from 33% to 22%.⁵² Child support can help increase single mothers' labor force participation, stabilize and supplement low-wage earnings, link families to private and public health care coverage, and reinforce paternal involvement.⁵³

However, many TANF families may not be able to count on child support as a steady source of income when their welfare benefits end.⁵⁴ In part, this is because most states do not provide adequate child support services to families. In part, it is because many fathers of poor children are themselves poor and have a limited ability to pay support.⁵⁵ Poor children whose parents never married are least likely to receive child support.⁵⁶ This is largely because half of poor custodial mothers lack a support order, the legal prerequisite to collecting support. However, over the last twenty years, never-married mothers experienced a four-fold increase in the amount of support they receive.⁵⁷ In addition, recent evidence suggests that support is more likely to be paid for poor children who do not receive welfare than those who do receive welfare.⁵⁸

Nearly two-thirds of all child support cases in the country are processed through the public child

support (IV-D) program.⁵⁹ The child support program is one of the largest human services programs reaching low-income mothers, fathers, and children.⁶⁰ Only about 20 percent of the child support caseload involve families currently receiving TANF.⁶¹ Most families in the program are working families with incomes below 250 percent of poverty who left or never received welfare.⁶²

The child support program originally was set up to reimburse federal and state welfare costs. When families apply for TANF cash assistance, they are required to cooperate with the child support program and assign (relinquish) their rights to child support to the state.⁶³ The state retains assigned welfare collections as repayment for welfare benefits and shares them with the federal government.⁶⁴ About two-thirds of states spend their share of welfare collections on meeting their TANF Maintenance of Effort (MOE) obligation, while the remaining third use welfare collections to pay for their share of child support program costs.⁶⁵

The federal government reimburses states 66 percent of their program costs through an open-ended entitlement funding stream. In addition, the federal government pays states incentive payments that historically have equaled about 15 percent of program costs.⁶⁶ States fund their matching share of costs with some combination of state general or special funds, assigned welfare collections, and federal incentive payments.⁶⁷

A. The 1996 Law

Generally, the child support changes under the 1996 law were intended to improve child support system performance, and to strengthen requirements that both mothers and fathers cooperate in the establishment of paternity and support and in increasing child support collections. PRWORA, along with the Child Support Performance Incentive Act of 1998, made major changes to the child support

program.⁶⁸ Major provisions under these laws include:

- C **Linked federal and state data bases.** States and HHS were required to expand automated data bases to match child support orders with information on newly-hired employees, quarterly wage information, and other data sources.⁶⁹
- C **Expanded administrative authority.** State agencies must have authority, without a court order, to order genetic tests, subpoena information, adjust orders, order income withholding, suspend licenses, secure and seize assets, report to credit bureaus, conduct quarterly bank matches, and enforce interstate cases.⁷⁰
- C **Voluntary paternity acknowledgment.** The father's name may only appear on a birth certificate if paternity is formally acknowledged under hospital-based procedures. Paternity acknowledgments become final in 60 days.⁷¹
- C **Tightened TANF cooperation rules.** State TANF programs must impose at least a 25% sanction for failure to comply with state cooperation rules, and may make the entire family ineligible. Cooperation rules also apply to Medicaid and foster care programs, and (at state option) the food stamp program.⁷²
- C **Expanded distribution rules.** Complex assignment and distribution rules (which determine whether the state or family keeps collected support) allow former welfare families to keep more of pre-assistance child support, but eliminated the requirement that had mandated that states pass through the first \$50 of support to current TANF families.⁷³

C Established new performance incentives. States must meet 5 performance measures and have reliable data to qualify for federal incentive payments. Incentive payments must be reinvested in child support-related activities. New penalty, audit and reporting requirements were enacted.⁷⁴

B. Developments

Changes in welfare have impacted the child support program in both direct and indirect ways.

While recent HHS data is unavailable, unofficial state data indicate that in some states, program performance has steadily improved since the enactment of PRWORA, due in large part to increased automation, expanded paternity procedures, new hire data base matching, and expanded federal tax offsets. At the same time, welfare changes have had a number of important impacts on the child support program. To understand potential reauthorization issues, it is important to look at both the impacts of the 1996 law on families and on the child support system itself.

Under AFDC, it often made little financial difference to a family whether child support was paid, because most support paid by fathers was retained by the government to offset the cost of welfare benefits.⁷⁵ However, declines in welfare receipt have broadened the need for child support as a longer-term income supplement for working families. The increasing concentration of families in the child support caseload who have left or never received TANF--as well as the steadily improving performance of the child support system itself-- has prompted a reexamination of the child support program's dual and often conflicting goals of promoting family self-sufficiency and of recovering welfare costs. There is also increasing interest in developing the

child support system as a link to private and public health care coverage for children who would

otherwise be uninsured.

The changes in welfare have helped prompt a new awareness of low-income fathers with a limited ability to pay support. This has led to a broader discussion about how to improve the functioning of the child support system so that a father's payment of child support enhances the well-being of his children, and that the system's policies do not impede paternal involvement.⁷⁶ And, it has prompted more attention to how federal and state child support policies might affect marriage, cohabitation, and "fragile families."

The decline in TANF caseloads has resulted in fewer welfare collections and declining government revenues. Of particular concern, this reduction in state revenues has destabilized funding available for child support programs that rely on welfare collections to operate their program.⁷⁷ The funding instability raises concern because of the established link between child support program funding and performance levels.⁷⁸ To address shrinking revenues, a number of these states have begun to consider how to refinance their program. Overall, state program investment has increased markedly since 1994.

In addition, the interaction of the TANF block grant and child support entitlement funding has prompted federal interest in reviewing the structure and level of federal funding. Since enactment of the 1996 law, HHS has engaged stakeholders in a national consultation process to consider questions about how welfare collections and program costs should be distributed among families, the federal government, and the states. Stakeholders have focused mostly on policies related to assignment and distribution of welfare collections, but questions also have been raised about the optimal mix between federal incentive and matching funds. In addition, there has been discussion about whether states should be allowed to use TANF funds to help pay for child support-related activities.

There has been greatly increased attention to issues concerning assignment and distribution of

support. The rules, which allow former TANF families to keep more of the child support owed before the family went on assistance, are complicated and costly to administer,⁷⁹ and have resulted in delays in redirecting support payments to families when they leave welfare. The complexity has been cited by administrators as a contributing cause of computer systems delays, increased staff and training costs, confusion among parents, and audit problems.

The changes in welfare have affected the intake mechanisms of the child support program, since fewer families enter the child support program through TANF, but instead enter through a variety of other “doors,” including Medicaid, Food Stamps, foster care, and self-initiated application. The TANF and child support interface itself has become more complex, since TANF-funded components are operated by multiple state and local agencies and private organizations. The increasingly complicated ways families enter the child support system, and the difficulty in linking non-welfare families to child support services (as well as other public supports), are focusing more attention on child support outreach and intake procedures and interagency coordination.

In addition, new attention is being paid to cooperation, domestic violence, and safety and confidentiality policies in the child support program. Advocates are concerned about the numbers of TANF families sanctioned for child support non-cooperation in some states,⁸⁰ while some states are considering whether to extend child support cooperation requirements to other programs and benefits. Concerns also have been raised about whether tightened cooperation requirements, coupled with more aggressive paternity establishment and enforcement procedures and expanded data bases, will increase the risk of domestic violence for women in the child support caseload. At the same time, new research indicates that most domestic violence victims decide to actively pursue

child support if their safety and confidentiality concerns are met.⁸¹

C. Potential reauthorization issues

Policy issues related to the fiscal interaction of the child support and TANF programs are likely to be a part of the reauthorization discussions. One set of issues involves whether and how to make the shift from a fiscal structure that supports cost recovery to one that supports family self-sufficiency. A second set of issues concern whether and how to decouple the existing funding links between the child support and TANF programs.⁸² There is increasing political support to eliminate the TANF assignment requirement and to distribute all collected support to families. In addition, there may be interest in re-examining the federal funding structure.

There also are policy issues centering around the child support program's role as part of a broader working families agenda. There is a set of issues around whether the child support program should develop as a "hub" program that interacts more closely with family members, develops case management capacity, and develops linkages with other public means-tested and community-based programs, such as Medicaid, SCHIP, food stamps, employment programs, responsible fatherhood programs, and domestic violence programs. There also is a set of issues that more specifically relates to low-income fathers and "fragile families," and whether the child support program should assume an explicit role in supporting paternal involvement and family formation.

V. CHILD CARE

Before the 1996 welfare law, multiple federal funding streams for child care existed, each with its

own set of policies and procedures. Three distinct child care funding streams (known as “IV-A funding”) were linked to AFDC, with open-ended federal matching funds provided to states for AFDC child care for families in work or approved education/training programs; Transitional Child Care (TCC) for families in their first year leaving cash assistance; and At-Risk Child Care for families considered at-risk of relying on AFDC without assistance in paying child care costs. States were required to “guarantee” child care assistance for AFDC families in approved activities and for families qualifying for Transitional Child Care. A separate funding stream, the Child Care and Development Block Grant (CCDBG), provided federal funds to states without state match requirements for provision of child care for low-income families in work or education/training programs and for expenditures for child care quality initiatives.

During the 1996 debates, there were two principal motivating factors in the child care discussions. First, there was a general interest in reducing the fragmentation and complexity resulting from four separate funding streams. Second, there were concerns about the potential impact of TANF work requirements and expectations on the need for child care and on the child care system more generally. Would new work or participation requirements for families receiving cash assistance increase the need for child care assistance? What funding level was necessary to assure access to child care assistance for those families meeting requirements? As demand for subsidies grew among this population, would limited resources cause states to choose between quantity of children served and quality of child care assistance? Would low-income working families that had not received AFDC lose access to child care subsidies?

A. The 1996 Law

The 1996 law consolidated child care funding streams, increased available funding, increased state flexibility in subsidy design, and eliminated guarantees of child care assistance for families receiving or

leaving welfare. The key changes included:

- C **Consolidated funding:** Congress repealed the IV-A child care funding streams and created a single Child Care and Development Block Grant (also known as the Child Care and Development Fund, or CCDF), providing basic funding levels available to all states and a capped amount of additional matching funds available to states that maintained their prior state spending levels.
- C **Increased resources:** Funding levels were set above anticipated spending under prior law, and have continued to increase. The law also allowed states to directly spend TANF funds for child care and to transfer of up to 30% of TANF funds to CCDF.
- C **Repealed guarantees to child care:** States are no longer required (but have the option) to guarantee child care to cash assistance recipients who need child care in order to work or enter education/training, or to families in their first year of leaving cash assistance due to employment or earnings.
- C **Prohibited states from sanctioning single custodial parents with children under six when child care was unavailable:** States are prohibited from reducing or terminating TANF assistance to single parents with children under age six if the parent is unable to comply with work requirements due to lack of necessary child care. This protection provision does not stop the 60-month federal time limit.
- C **Raised maximum income eligibility levels:** Maximum eligibility level for CCDF was raised from 75% to 85% of State Median Income (SMI), though states are permitted to set lower state income eligibility levels. States may make age and income exceptions for children in protective services.
- C **Set requirements for quality expenditures:** States must spend at least 4 percent of their CCDF

funds on measures to improve child care quality. Congress also may earmark certain amounts for particular purposes each appropriation year. For example, in FY2000 Congress included a \$50 million set-aside for the purpose of child care for infants and toddlers.

Federal law provides States with broad discretion to make most key decisions under CCDF. States may determine most matters that affect families' access to child care subsidies, such as how much to pay child care providers who care for eligible children, and how much to ask parents to pay toward the cost of child care. States may also determine the strength of the health and safety standards required of providers who may care for subsidized children, and how to educate consumers of child care about finding a provider who meets child and family needs.⁸³

B. Developments

Since 1996, there has been a significant increase in use of federal and state funds for child care, but with large variations in child care policies among the states on key issues affecting access to child care assistance. States have seen steep declines in cash assistance caseloads, growing workforce participation among poor families, and, in many cases, increased demand for child care assistance. At the same time, recent research findings indicate that many families who are eligible for child care assistance are not receiving subsidies.

Child care spending has grown since 1996. The 1997 total of federal and state spending under CCDF was \$4.2 billion, a 35 percent increase over 1996.⁸⁴ TANF funds have become an increasingly important source of child care funding. States transferred \$652 million of TANF funds to CCDF in FY98 and transferred \$2.4 billion in FY99. In addition, states reported direct expenditure of \$604

million from TANF funds in FY99.⁸⁵

The increased expenditures for child care have resulted in more families and children receiving subsidy assistance, though many eligible families are not receiving assistance. It is estimated that the numbers of children receiving CCDF subsidies increased from 1 million in 1996 to 1.5 million in 1998. At the same time, the federal government estimates that in 1998, only 15 percent of children eligible for child care assistance under state CCDF rules were receiving assistance, while only 10 percent of children potentially eligible under the maximum allowable federal income guidelines were receiving assistance.⁸⁶ And, a review of state studies found that in most of the states, less than a third of the families who have left welfare and were working were receiving child care subsidy assistance.⁸⁷

Without federal entitlements to child care assistance for certain TANF and post-TANF families, variation in how states implemented child care for these families increased. According to state CCDF plans for 1997-1999, 35 states indicated they guarantee child care to families receiving cash assistance; 31 states continue to operate a transitional child care (TCC) program; and 17 more states indicate they give priority to families leaving TANF due to employment over other low income families.⁸⁸ Time limits on how long TCC is available to families vary from state to state. Some states have streamlined their child care systems so that all families meeting certain income eligibility standards are provided child care, no matter their TANF status.

Income eligibility for child care assistance under CCDF varies among states. Overall, at least 17 states have raised eligibility limits since 1997.⁸⁹ According to research by the Children's Defense Fund, as of June 1999 six states had set their initial income eligibility limits for family of three at 85% of State Median Income. At the other extreme, twenty-six states set income eligibility between 40 and 59%

of State Median Income.⁹⁰

States also vary in their approaches to the sliding fee scales used to determine family copayments. CCDF regulations recommended that state set these scales so that families pay no more than 10 percent of gross income for child care. At least 17 states have changed some aspect of the copayment structure since 1997.⁹¹ According to Children's Defense Fund research on copayments for families of three earning \$13,880, 2 states required no copayment, 31 states required 10 percent or less, and 9 states required between 11 and 29 percent of income (in the other 9 states, families earning this level income were not eligible for assistance).⁹²

Reimbursement rates for providers of CCDF-funded child care vary by state and sometimes by locality. While CCDF regulations required states to conduct an updated market rate survey, resulting rate structures vary considerably. A Congressional Research Service study found that provider reimbursement rates for a three-year-old in center-based care full-time ranged from less than \$300 a month (five states) to more than \$600 a month (five states).⁹³ A growing number of states have begun to experiment with differential reimbursement rates in order to encourage certain types of providers to participate in the system, e.g. higher rates for nationally accredited programs or programs that serve children during non-traditional hours or serve special needs children.

C. Potential Reauthorization Issues

Child care policy and funding issues seem likely to be a key aspect of the reauthorization debate, with focus on the trends in caseload and workforce participation, the influx of dollars into child care

spending, and the debate as to whether enough children are reached by subsidies currently. While it is unlikely that the discussions will focus extensively on the PRWORA provisions for TANF and post-TANF families and lack of entitlement to child care assistance, there may be some attention to whether TANF families are being made aware of the protection against sanction when they are unable to obtain necessary child care, and to the issue of how to assure that families who are working and qualify for assistance are made aware of their eligibility, particularly as they transition from cash assistance.

However, the main discussions are likely to revolve around whether CCDF funding levels are adequate, and whether more targeting of specific populations and purposes are necessary. For example, possible areas of concern may include the need for states to develop more child care supply for infants and toddlers, nontraditional hours, sick and disabled children, and low income areas. Also, discussion may focus on whether current guidelines on reimbursement rates are adequate given the growing inability of child care providers to hire and retain staff at the compensation rates they are able to pay. Another aspect of the debate may relate to concerns about school readiness of young children who are participating in child care funded under the CCDF. Finally, the discussion may include consideration of how CCDF should relate to other federal, state and local initiatives, including the 21st Century Learning Centers funding stream for after-school programs, state pre-kindergarten programs, and community planning efforts.

VI. MEDICAID

Medicaid is the principal federal-state program providing health care coverage for low income children and their parents. States are not required to participate in Medicaid, but all states elect to do so.

The federal government pays half or more of the costs of Medicaid benefits for eligible persons. While most Medicaid expenditures are for elderly and disabled individuals, most Medicaid recipients are children or parents of children.⁹⁴

During the debates on the 1996 welfare law, Republican leadership initially proposed that Medicaid be converted into a block grant to states. The proposal faced strong opposition and was ultimately dropped. As a result, the principal Medicaid provision in the 1996 law (apart from restrictions on Medicaid for immigrants, discussed at ___) was the provision intended to address the Medicaid consequences of the repeal of AFDC and enactment of TANF, i.e, the “delinking” of Medicaid eligibility from receipt of cash assistance. However, the largest Medicaid impact of the 1996 law may have resulted not from changes in Medicaid law, but rather from the decline in Medicaid participation among families with children as TANF was implemented. There have been partially offsetting gains in children’s coverage in connection with Medicaid eligibility expansions and with the enactment and implementation of the State Child Health Insurance Program (SCHIP) in 1997. However, there remain significant issues and concerns about the implications of TANF caseload declines for Medicaid coverage, and about potential public policy responses.

A. The 1996 Law

Apart from restricting access to Medicaid for legal immigrants (discussed, *infra*, at ___), the most significant Medicaid provision of the 1996 law was the “delinking” of Medicaid from cash assistance.⁹⁵ AFDC recipients had been automatically eligible for Medicaid, and families leaving AFDC due to employment could qualify for up to a year of Transitional Medicaid Assistance (TMA). It was generally recognized that Congress could not simply require that all TANF recipients be automatically eligible for

Medicaid, because it was up to states to determine who would be eligible for TANF and for how long, so tying Medicaid eligibility to TANF receipt could result in inappropriate contractions or unintended expansions of Medicaid coverage. To resolve the issue, Congress created a new Medicaid eligibility category, known as Section 1931. Key provisions are:

- C **Medicaid eligibility for family members meeting prior AFDC income and resource requirements.** Generally, Section 1931 provides that a family member will qualify for Medicaid if he or she meets the income, resource, and family composition rules that applied to the state's AFDC Program on July 16, 1996, regardless of whether the individual is receiving TANF assistance.
- C **State Options to Modify Requirements:** States have limited ability to modify these rules; in particular, states can make their income and resource eligibility rules more liberal and can extend Section 1931 coverage to low-income two parent families.⁹⁶
- C **Transitional Medicaid Assistance:** A family ceasing to be eligible for Medicaid under Section 1931 due to employment may qualify for up to a year of TMA.

B. Developments

Delinking of cash assistance and Medicaid did not reduce the numbers of persons eligible for Medicaid, and the numbers of persons eligible under Section 1931 may have even increased in states electing to use options under Section 1931 to broaden eligibility. However, Medicaid enrollment among nonelderly, nondisabled adults and children declined nationally between 1995 and 1997.⁹⁷ Enrollment trends varied substantially between states,⁹⁸ but enrollment at the national level fell because increased enrollment by non-TANF families did not offset the lower numbers of TANF families receiving

Medicaid.⁹⁹ Enrollment declined among both adults and children, but the declines for adults were considerably greater.¹⁰⁰

Part of the reason for the decline was that there was a significant drop in receipt of Medicaid when families stopped receiving TANF assistance.¹⁰¹ In light of Section 1931 requirements, state eligibility expansions and the evidence concerning the earnings levels of leavers, many TANF leavers should have continued to be eligible for Medicaid.¹⁰² Under the law, when a family ceases to receive TANF, the state is required to determine whether family members are still eligible for Medicaid under Section 1931 or other categories before terminating Medicaid assistance. Many children would continue to qualify under Section 1931 or on other bases. Adults would be less likely to continue to qualify unless they have very low income, the state has implemented an expansion of coverage for adults, or they qualify based on TMA criteria.

A number of factors have been identified as contributing to the drop in Medicaid receipt after families leave TANF. One factor has been state administrative errors, including state failure to determine whether families are still eligible for Medicaid after TANF termination and failure to make accurate determinations of whether families are working when TANF is terminated.¹⁰³ In April 2000, based on evidence that a number of states had failed to correctly determine continued Medicaid eligibility for families leaving TANF, the Health Care Financing Administration directed all states to review their case closures and provide reinstatements of those families whose Medicaid assistance had been erroneously terminated.¹⁰⁴ Another factor is probably the complexity and restrictiveness of transitional Medicaid rules.¹⁰⁵

State sanction policies under TANF may also be contributing to the decline. Under the 1996 law,

a state may terminate Medicaid for a non-pregnant parent, but not for children, if the parent receives a TANF sanction for failure to comply with TANF work requirements; thirteen states have elected to do so.¹⁰⁶ Even when there is no Medicaid sanction, there are indications of drops in Medicaid participation after families receive TANF sanctions.¹⁰⁷

Another source of the decline appears to be state and local practices concerning applicants for assistance at TANF offices. The extensive use of diversion efforts and up-front job search requirements in some states has reduced the number of families who complete the TANF application process. As a result, some families attempting to enter the system fail to complete the Medicaid application process, have Medicaid applications erroneously denied, obtain employment at earnings levels at which they are not Medicaid-eligible, or erroneously conclude that they are ineligible for Medicaid.¹⁰⁸

Concerns have also been raised that the overall public emphasis on discouraging welfare receipt had a spill-over effect impacting Medicaid participation. Families asked why they are not participating in Medicaid identify the complexity and hassle of the eligibility process¹⁰⁹ and stigma¹¹⁰. It is also clear that misunderstandings about Medicaid eligibility rules play a role, both among families¹¹¹ and welfare workers.¹¹²

C. Potential Reauthorization Issues

It is not yet clear whether the scope of the Medicaid discussions in 2002 will be broad or limited. There are a set of issues very likely to arise in connection with TANF reauthorization, though the Administration or Congress could also propose much broader changes. At minimum, though, one can anticipate that the 2002 discussions will involve at least three types of issues.

First, there will be attention to the interaction between TANF and Medicaid. There will likely be a

set of proposals intended to ensure that families seeking TANF assistance are made aware of and are able to pursue Medicaid applications regardless of the disposition of their request for TANF assistance. There will likely be additional attention to continuation of Medicaid coverage for families at the point of TANF termination, and further examination of the effects of TANF sanctions on Medicaid status.

Second, Transitional Medicaid is scheduled for reauthorization in 2001, so if Congress has not already acted, there will need to be decisions made about the future of Transitional Medicaid.

Discussions are likely to focus on addressing its complexity, the reporting requirements for participating families, and the restrictiveness of eligibility conditions.

Third, there may be a broader discussion of efforts to provide family coverage in Medicaid. Recent expansions have often meant that children in a family will qualify for Medicaid while their parent does not. States currently have options to expand parental coverage through Section 1931 expansions, but there will likely be discussions of whether there should be additional federal options, incentives, or mandates to promote expanded family coverage.

VII. THE FOOD STAMP PROGRAM

The Food Stamp Program is the principal federal food assistance program for low income individuals.¹¹³ The federal government pays the full cost of food stamp benefits, while the federal and state governments share program administrative costs. Most Food Stamp recipients are children, and the majority of Food Stamp benefits are provided to households with children.¹¹⁴ Food Stamps provide a critical supplement to family income for low income households. In 1998,

the average household with children receiving Food Stamps had gross monthly income averaging \$672,

and received a monthly Food Stamp benefit averaging \$232.¹¹⁵

During the debates on the 1996 welfare law, Republican leadership initially proposed that the Food Stamp Program and a set of other federal nutrition programs be repealed and that their funding be consolidated into food assistance block grants to states. The proposal faced strong opposition, and was ultimately dropped, as was a subsequent proposal for a state-option Food Stamp program block grant. Instead, curtailments in Food Stamp Program eligibility and benefits became one of the principal means for reducing projected federal spending in the 1996 law. The original Congressional Budget Office projections estimated that \$27.7 billion, about half of the original projected spending reductions from the 1996 law would be attributable to reductions in Food Stamp Program eligibility and benefits (including restrictions on immigrant eligibility for Food Stamps).¹¹⁶

A. The 1996 Law

Key changes in the Food Stamp Program under the 1996 law included:

- C Restricted eligibility for able-bodied adults without children:** Subject to limited exceptions, able-bodied adults age 18-50 without dependents are only eligible for Food Stamps for 3 months in a 36 month period unless working or in a work activity for at least 20 hours a week.
- C Restricted eligibility for legal immigrants:** The 1996 law made most legal immigrants ineligible for Food Stamps. Congressional action in 1998 reinstated eligibility for certain elderly and disabled immigrants and children who had been in the United States prior to

enactment of the 1996 law and for certain other categories, but most legal immigrants remain ineligible for assistance.¹¹⁷

- C Enacted other reductions affecting eligibility or benefits:** A number of other spending reductions were generated by changing rules relating to household deductions, income-counting rules and benefit levels, and removing a number of provisions that had adjusted food stamp benefits to reflect inflation.
- C Addressed interactions with TANF:** The 1996 law provided that a household's Food Stamp benefits could not increase if a family's TANF assistance was reduced due to a sanction, and also allowed states to impose Food Stamp sanctions against individuals who violated TANF rules. The law also gave states an option to operate a "Simplified Food Stamp Program" for households in which all members also received TANF assistance.¹¹⁸

B. Developments

Since enactment of the 1996 law, participation in the Food Stamp Program has declined more than would have been anticipated based on the changes in the federal law and the strong national economy. As with cash assistance, the decline in Food Stamp Program participation began in 1994 but accelerated after enactment of the 1996 law. At its peak in March 1994, there were 28 million persons receiving Food Stamps. Six years later, in March 2000, total participation was 17.3 million persons, a decline of 38%.

As the 1996 law was implemented, there were sharp reductions in the numbers of immigrants and unemployed non-disabled adults without dependents receiving Food Stamps. However, this was not the principal factor in the caseload decline. A Department of Agriculture analysis of caseload declines between 1994 and 1998 found that the number of households receiving Food Stamp assistance fell by 29% over this period. The number of legal immigrants fell by 72% and the number of childless

unemployed adults fell by 59%. However, both groups had originally reflected relatively small shares of the Food Stamp caseload. As a result, the study concluded that about 13% of the total decline over the period was attributable to legal immigrants and another 10% was attributable to unemployed adults without dependents. Rather, most of the caseload decline (67%) was attributable to a 39% drop in the number of food stamp households receiving TANF assistance, most of which has not been offset by a corresponding increase in participation by non-TANF working families.¹¹⁹

Food stamp participation by children declined more rapidly than child poverty has fallen over this period. A General Accounting Office analysis concluded that the share of poor children receiving Food Stamps fell from 94% in 1994 to 84% in 1997. The GAO observed that "there is a growing gap between the number of children living in poverty--an important indicator of children's need for food assistance--and the number of children receiving food stamp assistance."¹²⁰

Apart from the strong economy and eligibility changes affecting immigrants, what accounts for the decline in Food Stamp participation among families over this period? One important aspect relates to the TANF caseload decline. Studies of families leaving TANF have consistently found significant declines in the likelihood of a family continuing to receive food stamps after leaving TANF.¹²¹ Some of these families would have lost Food Stamp eligibility due to their earnings, but it has been estimated that most (65%) former welfare families who left the Food Stamp Program still had incomes below Food Stamp eligibility standards.¹²² When asked why they were not receiving Food Stamps, the most common reason among income-eligible TANF leavers was that the family had gotten a job or increased earnings, but it remains unclear whether their non-participation was due to believing they were ineligible, administrative complexity, stigma, choice, or other reasons. At the same time, Food Stamp participation rates among

low-earning working households have historically been low, and the efforts to understand low participation by TANF leavers may be prompting a broader discussion of barriers to participation by low-income working families.

Part of the decline in participation among families may relate to state administrative practices. The GAO's analysis of declining participation described a set of practices by some state and local governments that restricted access to benefits for eligible families with children, some of which were in violation of current federal law.¹²³ In early 1999, the Department of Agriculture wrote to all states urging attention to the importance of complying with Food Stamp protections in determining Food Stamp eligibility and benefits when acting on TANF applications and when closing TANF cases.¹²⁴

C. Potential Reauthorization Issues

The Food Stamp Program is scheduled for reauthorization in 2002, and it is anticipated that the discussions that year will involve a broad review of the performance, effectiveness, structure, and cost of the program. Part of the discussion will likely concern the groups that lost eligibility in 1996, and particularly, the impacts of the continued restrictions on Food Stamp assistance for legal immigrants. In addition, the evidence of loss of Food Stamps by families leaving TANF will likely lead to a more extended examination of what can be done to foster food stamp participation by families applying for and leaving TANF assistance.

More broadly, there has been increasing discussion about the importance of Food Stamps as a work support for low-earning families. The Clinton Administration has proposed that one measure of high performance for state TANF agencies should be based on increasing participation in the Food Stamp Program by eligible working families, and the Administration initiated a set of initiatives in 1999

which were intended to improve access for working families.¹²⁵ States and others have suggested that existing Food Stamp rules may create unintended disincentives against serving working families, because families with more frequent changes in circumstances are more likely to result in “errors” in the Food Stamp eligibility and benefit calculation process. The fiscal penalties imposed on states whose error rates exceed the national average give states a strong incentive to avoid error-prone cases.

While there were significant discussions about block granting the Food Stamp program in 1996, it is unclear whether those discussions will resume in 2002. There remains substantial opposition to any such proposal, and the magnitude of the caseload decline probably means that a block grant based on current spending levels will be far less attractive to states, since the program’s participation has historically been very sensitive to changes in economic conditions. At the same time, states continue to express concerns about program complexity, and the need for simplification is likely to be a major theme, whether or not accompanied with discussions of further devolution.

VIII. IMMIGRANTS

The 1996 welfare law significantly reduced the availability of public benefits for legal immigrants in the United States. Before enactment of the 1996 law, most legal immigrants and their children were generally eligible for public benefits under the same terms as citizens; states did not have discretion to develop their own rules for determining immigrants’ eligibility for public assistance. The 1996 law changed both aspects, rendering many immigrants ineligible for receipt of public benefits and granting states significant leeway in determining immigrants’ eligibility. The law has had significant impact on eligibility for and receipt of public benefits by children.

During the 1996 debates, the discussions of immigrant provisions were partly driven by policy

disputes and partly driven by the Congressional interest in generating reductions in projected federal spending. The policy dispute principally centered on the questions of whether individuals were immigrating to the United States in order to receive public benefits or whether there was a need to curtail access to public benefits in order to discourage immigrants from relying on such assistance.¹²⁶ The fiscal issue was largely driven by the Congressional interest in generating spending reductions through the welfare law while freezing cash assistance spending and increasing child care spending. As a result, there was a need to look to other sources for potential spending reductions, and one of the principal areas identified was the reduction in immigrant eligibility for public benefits.

A. The 1996 Law

Nearly half of the projected savings under the 1996 welfare law came from reductions in public benefits eligibility for immigrants.¹²⁷ The 1996 law made most legal immigrants ineligible for most federal public benefits programs and authorized states to deny state-funded benefits to legal immigrants. In its eligibility provisions, the law drew distinctions between qualified and “not qualified” (though often, still legal) immigrants,¹²⁸ and between persons who entered the United States before and after enactment of the 1996 law. Key provisions of the law:

C Made most legal immigrants ineligible for Food Stamps and SSI: As enacted, the 1996 law made most legal immigrants -- both qualified and not qualified -- ineligible for Food Stamps and Supplemental Security Income (the program of cash assistance for needy elderly, blind, or disabled individuals) until they attained citizenship. Exceptions were made only for refugees, asylees, and persons granted withholding of removal (deportation) during their first five years in the United States; lawful permanent residents who can be credited with 40 quarters of work, either through

their own labor or that of their spouses or parents; and honorably discharged veterans and individuals on active duty in the U.S. Armed Forces and their spouses and unmarried dependent children.

- C Restricted immigrant eligibility for TANF and Medicaid, allowing some state options and exceptions.** The law banned not qualified immigrants from these programs, except for emergency Medicaid services. States were given the option to continue to provide TANF and Medicaid to qualified immigrants residing in the United States at the time of enactment. Qualified immigrants entering the U.S. after enactment of the law were made ineligible for federally-funded TANF and Medicaid (other than emergency Medicaid services) during the first five years of residence in the United States, after which eligibility is a state option, subject to requirements to “deem” the income of sponsors.¹²⁹ Exceptions were made only for refugees, asylees, and persons granted withholding of removal during their first five years in the United States; immigrants who meet the 40-quarter work history test; and current and former military personnel and their spouses and dependents.
- C Restricted access to other federal public benefits:** Not qualified immigrants were made ineligible for many federal public benefits subject to limited exceptions.¹³⁰ In addition to the restrictions on Food Stamp and SSI eligibility, qualified immigrants who entered the country after enactment of the 1996 law were made ineligible for certain federal means-tested benefits for five years, subject to limited exceptions.¹³¹ One key exception was provided for emergency Medicaid services, including labor and delivery.

C Gave states broad discretion to restrict immigrant eligibility for public benefits. The 1996 act made undocumented immigrants and other not qualified immigrants ineligible for most State and local public benefits and allowed states to develop their own policies concerning the eligibility of qualified immigrants. Exceptions were made for refugees, asylees, and persons granted withholding of removal during their first five years in the United States; immigrants who meet the 40-quarter work history test; and current and former military personnel and their spouses and dependents.

B. Developments

As laid out in the 1996 law, immigrant eligibility for public assistance programs is a complicated patchwork of federal eligibility rules, state discretionary choices, and statutory exceptions.¹³² Since 1996, Congress has restored eligibility for limited categories of immigrants. Because there are different rules for different programs, a discussion of the effects of law must begin by considering developments on a program-by-program basis.¹³³

Of 1.4 million legal immigrants receiving Food Stamps, an estimated 940,000 recipients lost eligibility when the law was implemented. In 1998, Congress enacted a limited restoration primarily affecting individuals who had been children or elderly at the time the 1996 law was enacted or who were legally in the United States at the time of enactment and who were or subsequently became disabled; the 1998 modifications also extended the eligibility period of refugees, asylees and individuals granted withholding of removal from five to seven years.¹³⁴ This restoration affected about 250,000 recipients,¹³⁵ but it is estimated that more than two-thirds of those who lost eligibility under the 1996 law remain ineligible even with the restoration. With limited exceptions, immigrants who entered the U.S. after enactment of the 1996 law are ineligible for Food Stamps until they attain citizenship.¹³⁶

With limited exceptions, immigrants who entered the United States after enactment of the 1996 law are ineligible for SSI. For pre-enactment immigrants, the story is more complex. Had the law been implemented as enacted, an estimated 580,000 elderly and disabled immigrants would have lost eligibility for SSI in 1997. However, before the terminations were due to take effect, Congress acted to retain benefits for qualified immigrants who were receiving SSI at the time the law was enacted and to allow benefits for new applicants who were residing in the United States when the law was enacted and who were or subsequently become disabled. In addition, the eligibility period for refugees, asylees and individuals granted withholding of removal was extended from five to seven years. A further modification continued SSI for “not qualified” immigrants who were residing in the United States and receiving SSI at the time of enactment. However, not qualified immigrants who subsequently became elderly or disabled will not qualify for SSI, even if they were residing in the U.S. when the law was enacted.¹³⁷

States are required to continue to provide Medicaid benefits to those receiving SSI at the time of the law’s enactment. In addition, nearly every state has opted to provide both Medicaid and TANF assistance to all pre-enactment qualified legal immigrants.¹³⁸ However, with limited exceptions, legal immigrants entering the United States on or after the date the law took effect are ineligible for Medicaid and federally-funded TANF assistance for a period of five years. States can choose to make these newly entering immigrants ineligible for Medicaid and TANF beyond the first five years, though most states have not elected to do so.¹³⁹

Some states have responded to the new restrictions on federal assistance by establishing a variety of state-funded programs, including state-level substitutes for food stamps, SSI, TANF, and Medicaid.

However, the state responses have not been sufficient to compensate for lost federal assistance. An Urban Institute study found that as of May 1999, over half (28) of all states had created at least one of the four substitute programs for immigrants who lost their federal eligibility for public assistance. Fifteen states had created at least two such programs; ten states at least three; and two states—California and Maine—had created all four.¹⁴⁰ Many states with substitute programs, however, did not extend benefits to all legal immigrants who lost federal eligibility, or to post-enactment immigrants during their 5-year federal ineligibility period.¹⁴¹ Participation rates in state substitute programs among those immigrants who lost federal eligibility is low. Due to the combination of restricted eligibility rules and low participation rates, the GAO found that only one-quarter of immigrants who no longer qualify for federal food stamps participate in state-funded food assistance programs.¹⁴²

There are indications that participation among immigrant eligibles in all public benefit programs fell after enactment of the law. Using the Census Bureau’s Current Population Survey (CPS), the Urban Institute found that between 1994 and 1997, use of public benefits among noncitizen households declined by 35 percent, compared to a 14 percent drop among citizen households.¹⁴³ These patterns held for TANF, SSI, food stamps, Medicaid, and state General Assistance. The numbers suggest that noncitizens accounted for a disproportionate share of welfare caseload declines over the period 1994 to 1997.¹⁴⁴

Why the relatively lower enrollment among noncitizen households? Evidence suggests that the differential declines among citizen and noncitizen recipients are attributable in part to changed eligibility criteria, but also to a variety of fears among immigrants: fear that receiving benefits will adversely affect their status because it will increase the likelihood that they will be considered a “public

charge,” fear of being reported to the INS, fear that they will be disqualified from sponsoring the admission of relatives if they take benefits, and fear that receipt of benefits and the reporting of personal information will allow the INS to investigate other family members or a sponsor. An Urban Institute study of Los Angeles County found that, even though eligibility was no different for citizens and legal immigrants under state law, monthly approvals of applications by legal noncitizen families for Medi-Cal (i.e., Medicaid in California) and TANF fell 52 percent between January 1996 and January 1998, with no decline among citizens.¹⁴⁵ Similarly, the number of citizen children of noncitizen parents newly approved for AFDC/TANF and Medi-Cal dropped by 48 percent between January 1996 and January 1998, compared to a small increase among citizen children of citizen parents.¹⁴⁶ Finally, the drop in approved applications was greater for cases headed by a legal immigrant than for cases headed by an undocumented immigrant (i.e., a 71% decline versus a 34% decline), even where an ineligible undocumented parent was eligible to apply only for her citizen child.¹⁴⁷ In mid-1999, the Immigration and Naturalization Service clarified that getting Medicaid (other than long-term care services) would not affect public charge status, but it is not yet clear whether this clarification will affect program participation.

The research literature also suggests that the immigrant provisions of the 1996 law have impacted immigrant children. Utilization of public assistance programs among eligible immigrant children was low prior to welfare reform and remains a substantial problem. A 1998 GAO report found that 73 percent of uninsured Medicaid-eligible children in California were either foreign-born or had a foreign-born parent.¹⁴⁸ A study of Dade County, Florida, revealed that 85 of 87 immigrant households surveyed contained a child eligible for Medicaid but not participating.¹⁴⁹ In trying to understand the impact of the 1996 law on immigrant children, it is also important to note that the immigrant provisions can have multi-

generational impacts within households. In general, three-quarters of all children in families with at least one noncitizen parent are citizens, and more immigrant families have a citizen child (82%) than have a noncitizen child (29%).¹⁵⁰ The result is that there exist a substantial number of families with citizen children who are fully eligible for federal and state-level public assistance, but that get less overall benefits because one or both parents or grandparents is a noncitizen and thus ineligible for various assistance programs under the terms of the 1996 law.

C. Potential Reauthorization Issues

Efforts to restore immigrant eligibility for public benefits have continued in each Congress since enactment of the 1996 law. One can anticipate that in 2002, there will be an overall examination of the current state of policy, and further efforts will be made to restore legal immigrants to the same status as citizens for purposes of public benefits eligibility. In addition, there may be greater attention to issues concerning eligibility and benefits for citizen children in mixed-status households, and increased attention to those areas of federal policy where ambiguity may be having unintended chilling effects in discouraging receipt of public benefits by eligible individuals.

The 2002 discussions are also likely to include a specific focus on the impact of a number of TANF provisions on immigrant families. Advocates have raised concerns about state restrictions on participation in English as a Second Language programs and about the need for

greater efforts to provide initial assessments to identify English literacy needs. Concerns have also been raised about the adequacy of bilingual program and service workers.

IX. CHILD WELFARE

The nation's child welfare system seeks to protect children by: preventing abuse and neglect; investigating reports of such maltreatment¹⁵¹ and removing children from abusive or neglectful homes when necessary; providing supports to families so that children may remain in or return to their homes safely; and providing alternative homes to children who cannot safely return to their families. Two key federal programs, the Child Welfare Services Program and the Safe and Stable Families Program, provide prevention, reunification and adoption support services. These programs are generally known as the IV-B programs. In addition, three federal programs focus on children in out-of-home care. The Foster Care Maintenance Program reimburses states for a portion of the foster care costs of certain children,¹⁵² while the Adoption Assistance Program provides financial assistance to the adoptive parents of certain children with special needs.¹⁵³ The Independent Living Program provides services to help adolescents transition from foster care to living on their own. These programs are referred to as the IV-E programs.¹⁵⁴

A. The 1996 Law

The debate about “ending welfare as we know it” included a proposal to restructure the child welfare system into a block grant. Many in the child welfare field were (and still are) concerned that the existing fiscal structure for child welfare services encouraged states to place children in foster care rather than provide in-home services and supports, because federal funding for foster care costs of eligible children is open-ended, but federal funding for prevention and reunification services is limited.¹⁵⁵ Proponents of the block grant argued that it would enhance state flexibility and discourage unnecessary out-of-home placements. Opponents contended that the block grant structure would remove essential protections for children and jeopardize their safety. In the end, the 1996 law did not include a child

welfare block grant. Indeed, the legislation made few *direct* changes to child welfare programs.

Specifically, the 1996 law included provisions¹⁵⁶ that:

- **Required continuation of state foster care maintenance and adoption assistance programs:**
To be eligible to receive any TANF funds, a state must certify in its TANF plan that it will maintain its IV-E foster care maintenance and adoption assistance programs.
- **Tied eligibility criteria to AFDC standards:** To be potentially eligible for IV-E, a child must be one who would have received or been eligible for aid under the state’s AFDC plan in effect on July 16, 1996.¹⁵⁷ The child must meet the dependency and deprivation provisions of the AFDC law in effect at that time, as well as the state income criteria set forth in its plan. A child may also be eligible for adoption assistance payments if he or she is eligible for SSI, the criteria for which were restricted by the 1996 law.
- **Required consideration of kinship care:** The 1996 law requires states to *consider* giving preference to kin when placing a child outside the home, provided the relative meets all the state child protection standards.
- **Permitted TANF spending on an array of child welfare services:** The TANF purposes (particularly the first purpose, which permits states to “provide assistance to needy families so that children may be cared for in their own homes or the homes of relatives”) are broad enough to allow states to spend TANF funds for a range of child welfare services.

In addition to these specific provisions, the implementation of particular TANF requirements may substantially impact children and the child welfare system’s ability to serve them. TANF has the potential to impact the child welfare system in two broad ways, by increasing or decreasing the demand for child

welfare services and by altering available funding sources.

B. Developments

Research indicates that child maltreatment is highly correlated with poverty. The risk of abuse or neglect is 22 times greater for children living in families with annual incomes below \$15,000 than for children living in families with incomes greater than \$30,000.¹⁵⁸ Since TANF requirements are likely to impact family income and material resources, it seems logical to anticipate an impact, either positive or negative, on the incidence of maltreatment.

On the one hand, a family whose TANF case is closed due to a sanction or time limit may face increased material hardship. Since the law was enacted, the poorest single-mother families have experienced a decrease in disposable income.¹⁵⁹ As these families struggle to make ends meet, children may be confronted with abuse or neglect. By the same token, parents who cannot find adequate child care but who are working might leave their children home alone.¹⁶⁰ This lack of supervision could endanger children and lead to the involvement of child protective services. Alternatively, the TANF requirements and services may move a family into a work situation that increases family income and resources and decreases the risk of maltreatment. If this happens, the well-being of children and families might improve.

At this point, it is impossible to quantify the impact of the TANF provisions on the need for child welfare services. On the one hand, there are anecdotal reports of children entering foster care when their families lose TANF assistance¹⁶¹ and the number of children in foster care continues to grow. In 1995, 483,000 children were estimated to be in foster care.¹⁶² By 1999, the estimate had climbed to 547,00.¹⁶³ On the other hand, in 1998, the total number of substantiated cases of abuse and neglect, as well as the

incidence rates of such maltreatment, decreased for the fifth year in a row.¹⁶⁴ To date, no analysis has attempted to disentangle the various contributions to the declining number of substantiated reports of maltreatment or to the increasing number of children in foster care. So, it is impossible to say with any certainty whether the 1996 law has had any impact (positive or negative) on the incidence of child abuse and neglect.¹⁶⁵

TANF may also impact children by increasing or decreasing the funding available for child welfare services. The 1996 law repealed the Emergency Assistance (EA) program (consolidating it into the TANF block grant) and reduced the funding authorization for Title XX.¹⁶⁶ In 1996, funds from these two programs constituted 13% and 16%,¹⁶⁷ respectively, of the federal dollars spent on child welfare. However, states may transfer part of their TANF funds to Title XX¹⁶⁸ and, under a grandfather clause, many states may continue to use their TANF funds for child welfare services.¹⁶⁹ In addition, the purposes of TANF give states the flexibility to support a range of child welfare services with both TANF and MOE monies.¹⁷⁰

One illustration of a potentially significant restructuring of funding and services can be found in El Paso County, Colorado. El Paso decided to unite its TANF and child welfare programs, treating TANF as the primary prevention program for child welfare and treating child welfare as an anti-poverty program. TANF funds are used to provide preventive and rehabilitative services (including substance abuse treatment, domestic violence services and other wraparound services) to families within and outside the child welfare system.¹⁷¹ TANF funds are also used to

provide kinship services (financial and other supports to families caring for their relative's children).¹⁷²

It is not clear how many states and counties are using TANF or MOE funds in these ways because state-reported financial data concerning TANF and MOE spending only indicates broad categories of spending.¹⁷³ Some states may be spending significant amounts of TANF on child welfare services. For example, at least one state appears to be on a course to spend nearly half of its TANF block grant on child welfare in FY 2000. Some advocates are concerned that this level of spending raises questions about whether other supports for low-income families (e.g. job training and child care) are sufficiently available.

Advocates are also concerned that TANF child welfare spending may sometimes merely reflect a replacement of state funds with federal funds. It is impossible to tell from TANF financial data to what extent supplantation is occurring and whether overall spending for child welfare is increasing or decreasing as a result of TANF. However, a 1999 study of four states (California, Georgia, Missouri and Wisconsin) concludes that between 1995 and 1999, total spending (state and federal) for child welfare services increased in each of these states.¹⁷⁴

Another key question is whether states are using TANF and MOE funds consistently with the procedural safeguards of IV-B and IV-E. In El Paso County, Colorado, the agency sought to maintain protections.¹⁷⁵ However, states could decide to tap TANF funds for expenditures not permitted in the IV-B or IV-E programs (e.g. making maintenance payments on behalf of children who are ineligible for IV-E payments because their caregivers do not meet the licensing standards or because the state did not comply with federally required time frames). This presents the possibility that states could use TANF or MOE funds to avoid the protections Congress mandated.

C. Potential Reauthorization Issues

There are several reasons why child welfare discussions are likely to be part of the reauthorization debate. First, answers to questions about whether and how TANF has affected the incidence of child abuse and neglect are likely to remain inconclusive, at least for the foreseeable future. Without definitive evidence on this point, supporters and opponents of the program are likely to continue their arguments about how TANF implementation is affecting child well-being.

Second, the debate about how to finance the child welfare system remains unresolved. Some commentators continue to advocate the creation of a child welfare block grant. Other proposals would sever the link to AFDC eligibility criteria so that all foster children are eligible for IV-E payments or to give states the authority to transfer funds between IV-B and IV-E. Child welfare financing discussions are not likely to curtail as states continue to use TANF and MOE to fund child welfare services. In addition, authorization for the Safe and Stable Families program expires in 2001, so the debate about child welfare financing will probably be underway as TANF reauthorization discussions heat up.

Unless the child welfare financing structure is redesigned before 2002, questions about the best way to finance the child welfare system are likely to arise. Should TANF or IV-E (or some combination) support children living with kin? Should it matter whether the children are part of the child welfare system? Which funding source is most appropriate for preventive services? Family preservation or reunification services? What incentives should the financing structure create and how should it create them? If TANF and MOE funds are used, should Congress require states to follow the protections set forth in IV-B and IV-E? The overlap between the child welfare

and the TANF systems, both in terms of families served and funding streams, suggests that these questions will be addressed as Congress debates the reauthorization of TANF.

X. SUPPLEMENTAL SECURITY INCOME FOR CHILDREN

Supplemental Security Income (SSI) provides income assistance to low-income people who are elderly, blind or disabled.¹⁷⁶ Following the 1990 Supreme Court decision in Sullivan v. Zebley, holding that the Social Security Administration (SSA) had been unlawfully restricting the test for determining whether children were “disabled,” the number of SSI recipients under age 18 grew dramatically. In 1989, approximately 300,000 children received benefits and by 1996, about 1,000,000 children received benefits.¹⁷⁷

In 1994, the program came under attack in a series of press articles and television stories which alleged that children were being “coached” to misbehave in order to get “crazy checks.” Although subsequent investigations revealed no evidence that such abuse was widespread,¹⁷⁸ the attention led Congress to deliberate about the criteria for determining children’s eligibility for SSI. The welfare reform debates included disagreements about what “disabled” means and how impaired children ought to be before the federal government will provide financial assistance.

A. The 1996 Law

The 1996 law made a number of changes to SSI and its application to children.¹⁷⁹ Key changes included provisions that:

- **Narrowed the definition of childhood disability:** Under the new definition of childhood disability, children are eligible for SSI only if they have an impairment that results in “marked and severe functional limitations” and the impairment is expected to last at least

one year or to result in death.¹⁸⁰ The 1996 law required SSA to redetermine eligibility using the new definition for children already receiving benefits.

- **Eliminated the “medical improvement” test for 18 year-olds:** SSA must now review the cases of adolescents turning 18 under the adult eligibility criteria.¹⁸¹ Generally, once a person has been found eligible for SSI, the government cannot terminate benefits unless it demonstrates that the person’s condition has medically improved to the extent that he or she is no longer disabled.¹⁸² In 18 year-old reviews, however, the inquiry is not whether the teen’s condition has improved sufficiently to allow him or her to work, but instead the teen must demonstrate disability anew, using the adult criteria.¹⁸³

B. Developments

SSA interpreted the new definition of childhood disability to mean that children are eligible for SSI only if they have one of the conditions on the agency’s “List of Impairments” or if their condition medically or functionally equals a condition on the list.¹⁸⁴ Many contend that this definition of “marked and severe functional limitations” is too restrictive. Indeed, when SSA came out with the regulatory definition, several Senators who were instrumental in the SSI provisions of the 1996 law sent a letter to the Administration contending that the regulations were inconsistent with their intent.¹⁸⁵ Thus far, SSA has not altered its interpretation and the redetermination process has resulted in approximately 100,000 children losing their eligibility for SSI.¹⁸⁶

Advocates contend that the new review requirements for 18 year-olds create a difficult burden because the adult criteria are based largely on work histories, which teen SSI recipients, by definition, do

not have. They also argue that without the benefit of the “medical improvement” test, adolescents who should continue to receive benefits are losing them. The new reviews have resulted in nearly 50,000 teens (slightly more than half of the SSI recipients who went through the 18 year-old reviews) losing their benefits.¹⁸⁷

C. Potential Reauthorization Issues

Although the 1996 law amended the SSI program, it is not clear that SSI will be part of the discussions around TANF reauthorization. Some advocates fear that SSI children are “off the radar screen.” Others believe children will be better served if revisions to the SSI program are considered independently from TANF reauthorization. Nonetheless, there are a couple of issues that TANF reauthorization legislation might address.

One concern focuses on SSA’s interpretation of the statutory definition of childhood disability. If SSA has not amended this interpretation in the regulations and no changes appear to be forthcoming,¹⁸⁸ the 2002 discussion could include a reexamination of the disability definition.¹⁸⁹

Another concern focuses on the elimination of the medical improvement test for 18 year-olds. Advocates contend that treating 18 year-olds reviews like new applications does not allow for a period of transition. They claim such an approach is inconsistent with the treatment of children receiving special education services through the Individuals with Disabilities Act (IDEA), where adolescents are permitted to receive services until age 22, and with Congress’ recent efforts to help children in foster care transition to independent living, rather than simply cutting them off at age 18.¹⁹⁰ If the 2002 debates include discussions about how to help people with various challenges move toward greater independence, the treatment of 18 year-old SSI recipients could well be a part of those deliberations.

XI. CONCLUSION

The 2002 debates are likely to be an extraordinarily important time for discussions of national poverty policy and family policy. In each specific program, there will be discussions of cost, performance, effectiveness, and incentives for governments and individuals. And, it seems clear that there will also be a set of issues cutting across programs, focusing on concerns such as how government can better assist working poor families; how to address barriers to participation in those programs where participation is seen as desirable; what should be next steps in the national dialog about marriage, out of wedlock birth, fathers, and family formation; and how and where to strike the balance between state discretion and federal responsibility. The context could still change in significant ways before 2002, but the context has already changed in important ways since 1996.

ENDNOTES

1. The programs that were repealed and whose funding was folded into the TANF block grant were the AFDC Program, the JOBS Program (which provided employment and training services for AFDC families), and the Emergency Assistance Program. Generally, the funding formula reflects federal expenditures under these programs in (at state option) 1994, 1995, or the 1992-94 average. State TANF grant amounts for FY 98 are located at <http://www.acf.dhhs.gov/news/welfare/stalloc/sfag-amt.htm>. A minority of states qualify for annual 2.5% adjusters through 2001, because they were determined to be states with historically low historic federal welfare spending or above-average population growth. Otherwise, state grants stay constant through FY 2002 unless a state qualifies for a bonus or a penalty in a year.
2. For an overview of allowable spending under TANF, see U.S. Department of Health and Human Services, *Helping Families Achieve Self-Sufficiency: A Guide to Funding Services for Children and Families Through the TANF Program (1999)*, <http://www.acf.dhhs.gov/programs/ofa/funds2.htm>.
3. While a total of 30% can be transferred, no more than 10% can be transferred to Title XX, and Title XX transfers must be for services to children and their families below 200% of poverty. Beginning in FY 2001, no more than 4.25% of TANF funds may be transferred to Title XX. Funds transferred to another block grant become subject to the rules of that other block grant rather than to TANF rules.
4. Unless otherwise prohibited, the state may spend its block grant funds in any way previously authorized under a set of programs (AFDC, JOBS, Emergency Assistance, AFDC Child Care, Transitional Child Care, At-Risk Child Care) on September 30, 1995, or at state option, August 21, 1996.
5. MOE levels can be found at <http://www.acf.dhhs.gov/news/welfare/stalloc/moetable.htm>. For a more detailed discussion of MOE requirements, see Greenberg, M., *The TANF Maintenance of Effort Requirement*, Center for Law and Social Policy, 1999, <http://www.clasp.org/TANF/moerev.htm#top>.
6. For a discussion of the significance of the assistance/nonassistance distinction in designing state policies and programs, see Greenberg, M. and Savner, S., *The Final TANF Regulations: A Preliminary Analysis*, Center for Law and Social Policy, 1999, <http://www.clasp.org/pubs/TANF/finalregs.PDF>; Greenberg, M., *Beyond Welfare: New Opportunities to Use TANF to Help Low Income Working Families*, Center for Law and Social Policy, 1999, <http://www.clasp.org/pubs/TANF/markKELLOGG.htm>.
7. Stated more precisely, the time limit runs in each month in which an adult or minor parent head of household (or spouse of the head of household) receives federal TANF assistance. The allowable 20% exceptions may be provided by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty. 42 U.S.C. §608(a)(7); 45 C.F.R. §264.1.
8. Detailed information about state policy choices can be found at the website of the State Policy Documentation Project, a joint project of the Center for Law and Social Policy and Center on Budget and Policy Priorities, at <http://www.spdp.org>. Information about state policy choices may also be found in U.S. Department of Health and Human Services, *Temporary Assistance for Needy Families (TANF) Program, Second Annual Report to Congress, August 1999*, <http://www.acf.dhhs.gov/programs/opre/tanifreports/tan19995.pdf>.
9. Caseload data is posted at <http://www.acf.dhhs.gov/news/tables.htm>.
10. U.S. Department of Health and Human Services, *Indicators of Welfare Dependence, Annual Report, March 2000*, Table A-5, http://aspe.hhs.gov/hsp/indicators00/wordver/T_A_5.doc.
11. In the Urban Institute's National Survey of America's Families (NSAF), 61% of welfare leavers were working. Loprest, P., *Families Who Left Welfare: Who Are They and How Are They Doing?*, Urban Institute, 1999, <http://newfederalism.urban.org/pdf/discussion99-02.pdf>. State studies typically report between 50% and 70% of leavers are employed. A number of state leavers studies are posted at <http://aspe.hhs.gov/hsp/leavers99/index.htm>. An overview summary may be found at <http://aspe.hhs.gov/hsp/leavers99/ombsum.htm#findings>.
12. Employment among single mothers with children and with incomes below 200% of poverty increased from 35% in 1992 to 51% in 1998. U.S. DHHS, *Second Annual Report*, supra, Table 4.1.
13. In the NSAF, the median wage for employed leavers was \$6.61 an hour, and 23% of employed leavers were receiving employer-provided health care coverage. Loprest, supra, at p.12 and Table 2.

14. Evidence concerning declines in Food Stamp participation and Medicaid participation after leaving TANF is discussed, *infra*, at Sections VI and VII.
15. Loprest, *supra*, at 14.
16. U.S. General Accounting Office, *Welfare Reform: State Sanction Policies and Number of Families Affected*, GAO/HEHS-00-44, March 31, 2000, www.gao.gov.
17. Schott, E., Center on Budget and Policy Priorities, forthcoming, 2000.
18. Loprest and Zedlewski, *Current and Former Welfare Recipients: How Do They Differ?*, Urban Institute, 1999, <http://newfederalism.urban.org/pdf/discussion99-17.pdf>.
19. Primus, et. al, *The Initial Impacts of Welfare Reform on the Incomes of Single Mother Families*, Center on Budget and Policy Priorities, 1999, <http://www.cbpp.org/8-22-99wel.pdf>.
20. Loprest and Zedlweski, *supra*.
21. 64 Fed. Reg. 17720, April 12, 1999.
22. For FY 99 expenditure and obligation data, see <http://www.acf.dhhs.gov/programs/ofis/data/q499/index.html>. For a discussion, see Lazere, E., *Welfare Balances in the States After Three Years*, Center on Budget and Policy Priorities, 2000, <http://www.cbpp.org/1-11-00wel.pdf>.
23. *Report to Congress on Out-of-Wedlock Childbearing*, U.S. Department of Health and Human Services, September 1995.
24. *Monthly Vital Statistics Report, Report of Final Natality Statistics, 1995*. National Center for Health Statistics, Centers for Disease Control and Prevention, June 10, 1997
25. *1998 Green Book*, Committee on Ways and Means, U.S. House of Representatives, May 19, 1998.
26. These rates are per 1,000 married women age 15 years or older. *Monthly Vital Statistics Report*, Vol. 43, No 9 (s), 1995; Vol. 44, No. 12, 1996.
27. *The Coming White Underclass*, Wall Street Journal, October 29, 1993.
28. The initial version of the 1996 legislation would have made children who were born out of wedlock to teen parents permanently ineligible for cash assistance. Savings from this provision would have been made available to states for a range of purposes, including the funding of orphanages.
29. Around 20 states established a family cap under an AFDC waiver prior to 1996; three more did so by 2000. *Excluded Children: Family Cap in a New Era*, Center for Law and Social Policy, February 1999.
30. *Teen Parent Provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Center for Law and Social Policy, 1996.
31. *Linking Family Planning With Other Social Services: The Perspectives of State Family Planning Administrators*, Center for Law and Social Policy, 2000.
32. Oklahoma's \$10 million is available for a range of activities including public education, training of state employees to offer relationship skills workshops, improving data and research, and working with faith based groups and community leaders. Also in 2000, Arizona enacted a law which includes \$1.6 million targeted on marriage education and abstinence promotion.
33. See <http://www.spdp.org>.
34. See <http://www.spdp.org>.
35. The 1999 "illegitimacy" awards went to Alabama, California, District of Columbia, Michigan, and Massachusetts.
36. Romero, D., Chavkin, W. and Wise P.H., *State Welfare Reform Policies and Maternal and Child Health Services: A National Study*, Finding Common Ground in the Era of Welfare Reform and Medicaid Managed Care, Columbia University School of Public Health, to be submitted for publication.
37. The initial bonuses were based on rates of employment entries, job retention, and earning growth. Proposed regulations would include, among other factors, rewarding states in which there is the greatest increase in the share of two parent families among low income families. TANF High Performance Bonus, 64 Fed. Reg. 68202 et seq. (Dec.6, 1999). For a discussion, see Center for Law and Social Policy and Center on Budget and Policy Priorities, *Comments on the Proposed Rule for the Bonus to Reward States for High Performance*, http://www.clasp.org/pubs/TANF/High_Performance_Bonus_Comments.htm
38. Targeting was driven by a belief that tough rules will diminish teen births and by the fact that about half of the mothers who receive welfare first became a parent as a teenager. The teen birth rate is declining. The decline began in 1991, before state experiments with minor parent or family cap rules and significantly before enactment of the 1996

law.

39. *Temporary Assistance for Needy Families (TANF) Program: Second Annual Report to Congress*. About 110,000 teen parents are considered “heads of household” and 31,000 are considered “children”. However, many states have not yet developed data systems to adequately identify “nested” teen parents, those who live within a TANF household. The report notes that teen parent status for about 5% of recipients is “unknown” -- potentially, 307,000 individuals.
40. *LEAP: Final Report on Ohio’s Welfare Initiative to Improve School Attendance Among Teenage Parents*, MDRC, 1997; *Wisconsin’s Learnfare Program*, Wisconsin Legislative Audit Bureau, 1996; *Implementation of California’s Cal-Learn Program Demonstration Project: A Process Evaluation*, UC Data, University of California, 1998; *Delaware: The ABC Evaluation: Do Welfare Recipients’ Children Have a School Attendance Problem?* Abt Associates, 1999.
41. The federal TANF school requirement is limited to minor teen parents; states can extend the requirement to others. While the research results to date raise a number of issues, 40 states apply such rules to TANF students in elementary, junior or senior high school, see <http://www.spdp.org>.
42. Because of the role of illness, the authors suggest the value of investing in child health. *Delaware: The ABC Evaluation: Do Welfare Recipients’ Children Have a School Attendance Problem?* Abt Associates, August 1999.
43. *Seeking Supervision: State Policy Choices in Implementing the TANF Minor Parent Living Arrangement Rule*, Center for Law and Social Policy, 1999. A concern is abuse: About 30% of a sample of 535 women in Washington who had been pregnant as teens report molestation by a family member.
44. *Turned Away, Misinformed, Denied -- Teen Parents’ Experiences in Welfare Offices*, Youth Law News, July-August 1999.
45. *Between the Lines: States’ Implementation of the Federal Government’s Section 510(b) Abstinence Education Program in Fiscal Year 1998*, SIECUS, 1999.
46. *No Easy Answers, Research Findings on Programs to Reduce Teen Pregnancy*. The National Campaign to Prevent Teen Pregnancy, 1997. Only one study approximates a controlled evaluation of the two types of abstinence programs. The study found that among adolescents who are already sexually active when the programs began, those in the abstinence-plus program engaged in less frequent intercourse and less unprotected sex than those in either the health education or the abstinence only program. *Abstinence and Safer Sex HIV Risk-Reduction Interventions for African American Adolescents, A Randomized Controlled Trial*, Jemott et.al, Journal of the American Medical Association, May 20, 1998.
47. The Fathers Count Act (H.R. 3073) passed the House in 1999; a similar bill, (S. 1364) with a stronger emphasis on promoting marriage, is being considered in the Senate in 2000.
48. The National Marriage Project, *The State of Our Unions, 1999: The Social Health of Marriage in America*, Rutgers, the State University of New York.
49. Ooms, Theodora, *Toward More Perfect Unions: Putting Marriage on the Public Agenda*, Washington, DC: Family Impact Seminar, 1998, available from tooms@clasp.org.
50. Under current TANF rules, not more than 30% of those counting toward satisfying a state’s participation rate may do so either through participating in vocational educational training or by being a parent under age 20 engaged in education or school completion. Thus, teen parents and adults engaged in vocational education can be, in effect, “competing” for the available education slots countable toward participation rates.
51. Earnings are 38%, cash assistance is 20%, and other income is 16% of the budgets of poor families receiving child support. See Sorenson, E. and Zibman, C., *To What Extent Do Children Benefit From Child Support?*, Urban Institute, 2000.
52. U.S. Census Bureau, *Child Support for Custodial Mothers and Fathers: 1995*, P. 60-196, 1999.
53. Meyer, D., *Child Support and Welfare Dynamics: Evidence from Wisconsin*, Demography, Vol. 30, 45-62; Seltzer, J., *Child Support and Child Access: Experiences of Divorced and Nonmarital Families*, Focus, Vol. 21, Spring 2000; Doolittle, F., Knox, V., Miller, C., and Rowser, S., *Building Opportunities, Enforcing Obligations*, MDRC, 1998.
54. U.S. General Accounting Office, *Child Support an Uncertain Income Supplement for Families Leaving Welfare*, GAO/HEHS-98-168, 1998.

55. Sorensen, E. and Zibman, C., *To What Extent Do Children Benefit from Child Support? New Information from the National Survey of America's Families*, Focus, Vol. 21, Spring 2000; Sorensen, E. and Halpern, A., *Child Support Enforcement Is Working Better Than We Think*, Urban Institute, 1999.
56. U.S. Census Bureau, *supra*. However, families participating in the IV-D program are more likely to have a support order than families who do not participate. See Lyon, M., *Characteristics of Families Using Title IV-D Services in 1995*, U.S. Department of Health and Human Services, <http://www.acf.dhhs.gov/programs/cse/prgrpt.htm>
57. Sorensen and Helpen, *supra*.
58. Sorensen and Zibman, *supra*.
59. Lyon, *supra*.
60. OCSE, *Child Support Enforcement: FY 1998 Preliminary Data Report*, and preceding annual reports.
61. Center for Law and Social Policy estimate based on most recent HHS data
62. Lyon, *supra*.
63. The child support cooperation requirements are in 42 U.S.C. §§608(a)(2) (TANF); 1396k(a)(1)(B) and (C)(Medicaid); and 654(29)(child support). In addition, PRWORA gave states the option to require custodial and/or noncustodial parents to cooperate with the child support program (but not assign support) as a condition of Food Stamp eligibility under 7 U.S.C. §2015. Child support assignment provisions are at 42 U.S.C. §§608(a)(3)(TANF); 1396k.(a)(1)(A)(Medicaid); and 671(a)(17) (foster care). Under TANF and child support rules, only those families receiving TANF-funded cash assistance are required to assign child support. Families who only receive TANF-funded “nonassistance” (such as nonrecurrent short-term benefits, work subsidies, or child care when the custodial parent is employed) or who receive “assistance” only in the form of a voucher or third-party payment (such as child care vouchers or a rent subsidy paid directly to the landlord) are not required to assign child support. 45 C.F.R. §260.31; HHS Action Transmittal OCSE-AT-99-10, Sept. 15, 1999.
64. Under AFDC, retained welfare collections were split between the state and federal governments according to the state’s AFDC Federal Financial Participation (FFP) rate. When AFDC was repealed, the Medicaid matching percentage was substituted. This means that poorer states with higher Medicaid matching rates return a larger proportion of retained collections to the federal government (and derive fewer program revenues) than states with lower Medicaid matching rates. 42 U.S.C. §657(a)(1); (a)(2); and (c)(3).
65. An amount equivalent to about a third of the federal share of welfare collections is paid to the states as incentive payments or earmarked for special projects, while the remainder is returned to the federal treasury as general revenues. Historically, federal incentive payments to the state amounted to about 30% of the federal share of collections, and about 15% of program costs. In addition, PRWORA included set-asides equaling 3% of the federal share of collections to fund the Federal Parent Locator Service, training, and technical assistance.
66. Historically, the incentive payment formula was based on welfare and non-welfare collections made by the state. A new formula based on five performance factors was adopted in the Child Support Performance Incentive Act of 1998, and will be fully phased in by 2002.
67. Fishman, M., Dybdal, K., and Tapogna, J., *State Financing of Child Support Enforcement Programs*, Final Report to HHS/ASPE, Contract No. 100-96-0011, 1999.
68. Roberts, P., *Family Law Issues and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Center for Law and Social Policy, 1996; Roberts, P., *Guidance from the Federal Government on Implementation of the Child Support Related Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 as Amended by the Balanced Budget Act of 1997 and Child Support Performance and Incentive Act of 1998*, Center for Law and Social Policy, 1999.
69. Turetsky, V., *Child Support Administrative Process: A Summary of Requirements in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Center for Law and Social Policy, 1997.
70. *Id.*
71. Roberts, P., *Guide to Establishing Paternity for Non-Marital Children: Implementing the Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Center for Law and Social Policy, 1996.
72. Roberts, P., *Child Support Cooperation Issues: Implementing the Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Center for Law and Social Policy, 1996.

73. For a detailed explanation of assignment and distribution rules, see Roberts, P., *Guidance from the Federal Government, supra*, pp. 7-10 and 24-31.
74. Roberts, P. and Turetsky, V., *New Federal Legislation on Computer Penalties, Incentive Payments, Medical Support, and Other Topics*, Center for Law and Social Policy, 1998.
75. Under AFDC, states were required to “pass through” the first \$50 of support to families receiving assistance. The cost of the pass-through was shared by federal and state governments. When TANF was enacted, the pass through requirement was repealed. While states can continue to pass through some or all support to families, the cost of doing so must be born entirely by the state. Under the new rules, less than half of states have continued to pass through support to TANF families. For a list of state pass-through policies, see Roberts, P., *State Policy Re Pass-through And Disregard Of Current Month’s Child Support Collected For Families Receiving TANF-funded Cash Assistance*, Center for Law and Social Policy, 1999.
76. In particular, attention has been focused on informal support, imputing income when setting orders, arrearages and welfare cost recovery policies. For a discussion of these issues, see Turetsky, V., *Realistic Child Support Policies for Low Income Fathers*, Center for Law and Social Policy, 2000.
77. In a number of states, program funding has been destabilized by a combination of factors, including a decline in welfare collections, expanded distribution rules, and reduced federal incentive payments under the new incentive formula.
78. For two studies examining the effect of child support expenditures on performance, see Freeman, R., and Waldfogel, J., *Dunning Delinquent Dads: Child Support Enforcement Policy and Never-Married Women*, *Focus*, Vol. 21, Spring 2000, University of Wisconsin-Madison, Institute for Research on Poverty; Turetsky, V., *You Get What You Pay For: How Federal and State Investment Decisions Affect Child Support Performance*, Center for Law and Social Policy, 1998.
79. 42 U.S.C. §657.
80. U.S. General Accounting Office, *State Sanction Policies and Numbers of Families Affected*, GAO/HEHS-00-44, 2000.
81. Pearson, J., Thoennes, N. and Griswold, E., *Child Support and Domestic Violence: The Victims Speak Out*, *Violence Against Women*, Vol. 5, 427-48, April 1999; Brandwein, R., ed. *Battered Women, Children, And Welfare Reform: The Ties That Bind*, Sage, 1999. For an overview of domestic violence research, child support cooperation requirements, the Family Violence Option, and safety and confidentiality requirements, see Turetsky, V. and Notar, N., *Models for Safe Child Support Enforcement*, CLASP, 1999.
82. The funding links between child support and TANF include the revenue-sharing formula for retained welfare collections (the federal government’s share of welfare collections is based on the old AFDC/Medicaid federal financial participation rate) and the use of retained welfare collections to fund TANF MOE expenditures in two-thirds of the states.
83. State discretion in these areas is broad but not unlimited. Under the federal law, states are required to ensure that families receiving CCDF subsidies have “equal access” to care comparable to families not receiving subsidies. States set their own payment rates for providers, but the federal government has indicated that states must conduct market rate surveys in setting child care rates, and that payment rates at the 75th percentile (i.e., sufficient to purchase care from 75% of local providers) would be considered to meet the equal access requirements. Similarly, states set their own fee scales for parental copayments, but HHS has suggested that fee scales in excess of 10% of family income could violate equal access requirements. And, states have broad discretion in determining health and safety standards, but federal law does require that states have standards for the prevention and control of infectious diseases, building and physical premises safety; and minimum health and safety training appropriate to the provider setting. See Blank, H., *Helping Parents Work and Children Succeed: A Guide to Child Care and the 1996 Welfare Act*, Children’s Defense Fund, 1997; Greenberg, M., *A Summary of Key Child Care Provisions of H.R. 3734*, Center for Law and Social Policy, 1996, <http://www.clasp.org/pubs/childcare/clkccp.html>.
84. HHS fact sheet, *State Spending under the Child Care Block Grant*, November 12, 1998, <http://www.acf.dhhs.gov/new/press/1998/c97fund.htm>.
85. Calculations by Center for Law and Social Policy from U.S. Department of Health and Human Services, Administration for Children and Families, *TANF Program Federal Awards, Transfers, and Expenditures through 4th Qtr. FY98; TANF Program Federal Awards, Transfers, and Expenditures 4th Qtr. FY99*,

www.acf.dhhs.gov/programs/ofs/data.

86. U.S. Department of Health and Human Services, Administration for Children and Families, *Access to Child Care for Low-Income Working Families*, October 1999, <http://www.acf.dhhs.gov/programs/ccb/reports/ccreport.htm>.

87. Schumacher, R. and Greenberg, M., *Child Care after Leaving Welfare: Early Evidence from State Studies*, October 1999, <http://www.clasp.org/pubs/childcare/Child%20Care%20after%20Leaving%20Welfare.htm>.

88. Parizek, E., Falk, G. and Spar, K., *Child Care: State Programs Under the Child Care and Development Fund*, CRS-98-875EPW, 1998, 8.

89. American Public Human Services Association, *Child Care at Three: Survey of State Program Changes*, 1999, 2.

90. Blank, H., and Oxendine Poersch, N., *State Developments in Early Child Care and Education in 1999*, 20-21.

91. American Public Human Services Association, *Child Care at Three: Survey of State Program Changes*, September 1999, 3.

92. Blank, H. and Oxendine Poersch, N., *State Developments in Early Child Care and Education in 1999*, 26-27.

93. Gabe, T., Lyke, B., and Spar, K., *Child Care Subsidies: Federal Grants and Tax Benefits for Working Families*, CRS-RL30081, March 1999.

94. For a brief overview of the Medicaid Program, see

<http://hcfa.hhs.gov/pubforms/actuary/ormedmed/DEFAULT4.htm>. About 2/3 of Medicaid recipients are children or adults in families with children, <http://hcfa.hhs.gov/stats/hstats98/blusta98.htm#Table11>. However, in 1997, approximately 74% of Medicaid expenditures were for elderly and disabled recipients and 23% were for children and adults in families with children. See <http://hcfa.hhs.gov/stats/hstats98/blustat2.htm#tab26>, Table 34.

95. For a summary of other Medicaid-related changes under the 1996 law, see, Mann, C., *An Analysis of the Medicaid-Related Provisions in the New Welfare Law*, Center for Budget and Policy Priorities, 1996, www.cbpp.org/afdcmed.htm.

96. For an overview of how states could use Section 1931 to broaden eligibility, particularly for working parents, Guyer, J. and Mann, C., *Taking the Next Step: States Can Now Expand Health Coverage to Low-Income Working Parents Through Medicaid*, Center on Budget and Policy Priorities, 1998, <http://www.cbpp.org/702mcaid.htm>.

97. The Urban Institute calculated that enrollment among nonelderly, nondisabled adults and children fell by 5.3% between 1995 and 1997. Ku, L. and Bruen, B., *The Continuing Decline in Medicaid Coverage*, Assessing the New Federalism, Brief A-37, The Urban Institute, 1999. http://newfederalism.urban.org/html/anf_a37.html. The U.S. General Accounting Office has estimated a 7% decline over the 1995-97 period. U.S. General Accounting Office, *MEDICAID ENROLLMENT: Amid Declines, State Efforts to Ensure Coverage After Welfare Reform Vary*, GAO/HEHS-99-163, at 6.

98. Over this period, states varied from a 21 percent decline in West Virginia to a near 30 percent increase in Oregon. Dion R. M. and Pavetti, L., *Access to and Participation in Medicaid and the Food Stamp Program: A Review of the Recent Literature*, at Appendix B.

99. Ku and Bruen found that the decline in average monthly participation among welfare families was 21.9 percent, with the increase among families not on welfare at 18.2 percent. Ku and Bruen, *supra*, at Table 2.

100. The decline was 10.6% for adults and 2.7% for children, largely because increases in Medicaid enrollment among non-TANF adults have been much smaller than among non-TANF children. The decline among children receiving welfare (20.4%) was largely offset by an increase among children not on welfare (16.5%). By contrast, the decline among adults receiving welfare (24.2%) was offset to a much lesser extent by the increase (6.6%) in enrollment among adults not receiving welfare. See Ku and Bruen, *supra*, at Table 1. A study by the Families USA Foundation put the total number of people who lost Medicaid as a result of welfare reform at 1,250,000, with 675,000 of them uninsured. *Losing Health Insurance: The Unintended Consequences of Welfare Reform*, Families USA Foundation, 1999, 16.

101. In the National Survey of America's Families, among those who left welfare in the last six months, 52% of adults and 55% of children were receiving Medicaid. Among all leavers, 34% of adults and 47% of children were receiving Medicaid. Loprest, Chart 11. A review of state leavers studies found considerable range among states, but that typically, at least 20% of children and most adults were no longer receiving Medicaid after leaving TANF. See Greenberg, M., *Participation in Welfare and Medicaid Enrollment*, Kaiser Commission on Medicaid and the Uninsured, 1998, at <http://www.kff.org/content/archive/1437/enrollment.html>; See also Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, *"Leavers" and Diversion Studies*:

Summary of Research on Welfare Outcomes Funded by ASPE; Dion and Pavetti, supra, 11-13.

102. U.S. General Accounting Office, *Medicaid Enrollment: Amid Declines, State Efforts to Ensure Coverage After Welfare Reform Vary*, GAO/HEHS-99-163, 1999, 11-12.

103. Families who leave TANF due to employment are often not identified as working at the point when the case is closed. For example, while studies of leavers suggest that about 60% of leavers are working, only 22% of TAN case closures in FY 98 were coded as closed due to employment. See http://www.acf.dhhs.gov/programs/opre/characteristics/fy98/tab31_98.htm.

104. State Medicaid Directors Letter, April 7, 2000, <http://www.qa.hcfa.gov/medicaid/smd40700.htm>.

105. One source of complexity is that in order to qualify for TMA, an individual must have received Medicaid based on qualifying under Section 1931 for at least three of the prior six months before ceasing to qualify for Section 1931 Medicaid due to hours or earnings from employment. In addition, a family's TMA can be terminated if the family fails to meet a set of very specific quarterly reporting requirements.

106. See http://www.spdp.org/medicaid/table_8.htm.

107. A GAO review of state data found that two to five months after benefit termination the proportion of families receiving Medicaid fell from 100 percent to 58.5 percent in Massachusetts, from 100 percent to 53.5 percent in Wisconsin, and from 86.3 percent to 54.4 percent in Iowa. See U.S. General Accounting Office, *Welfare Reform: States' Early Experiences with Benefit Termination*, GAO-HEHS-97-74, 1997, 42-43. Further review of additional sanction data found consistent evidence of declines in Medicaid participation after TANF sanctioning. See Dion and Pavetti at 18 & Table 4.

108. U.S. GAO, supra, at 18-23; Dion and Pavetti, at 13-15; Smith, Lovell, et al, *The Dynamics of Current Medicaid Enrollment Changes: Insights from Focus Groups of State Human Service Administrators, Medicaid Eligibility Specialists and Welfare Agency Analysts*, Health Management Associates and The Lewin Group, 1998; Maloy, K., Pavetti, L., Shin, P., et al., *A Description and Assessment of State Approaches to Diversion Programs and Activities under Welfare Reform*, George Washington University, Center for Health Policy Research, 1998.

109. In a telephone survey of 1335 unsuccessful applicants for Medicaid benefits, 72% cited the difficulty of obtaining required documents, 66% cited the overall hassle of the enrollment process, and 62% cited the belief that the process was complicated and confusing as important reasons for their failure to complete the enrollment process. See Perry, M., Kannel, S., Burciaga Baldez, R., et al., *Medicaid and Children: Overcoming Barriers to Enrollment, Findings from a National Survey*, Henry J. Kaiser Family Foundation, January 2000, 9.

110. Stuber, J., Maloy, K., Rosenbaum, S. and Jones, K., *Beyond Stigma: What Barriers Actually Affect the Decisions of Low-Income Families to Enroll in Medicaid?*, Center for Health Services Research and Policy, The George Washington University Medical Center, Issue Brief, June 2000.

111. A study of 1100 heads of households at 20 community health centers in 10 states found that 30% of the sample believed that TANF work requirements also apply to Medicaid (with an additional 19% unsure). Twenty-seven percent thought that TANF time limits apply to children's medical benefits (with an additional 30% unsure). And, 17% believed that an individual has to be on welfare to receive Medicaid (with an additional 11% unsure). See Stuber, Maloy, Rosenbaum, and Jones, supra.

112. The evidence of complexity and confusion is found in a number of studies. First, the GAO conducted interviews with welfare officials in 21 states and officials indicated that the number of welfare-related eligibility categories for Medicaid ranged from almost 30 to more than 100. See U.S. General Accounting Office, *Medicaid Enrollment: Amid Declines, State Efforts to Ensure Coverage After Welfare Reform Vary*, GAO/HEHS-99-163, 1999, 24. Second, Ellwood conducted site visits and interviews in five states and reported confusion on the part of welfare workers, particularly regarding §1931 rules in the area of (1) Transitional Medicaid Assistance (2) impact on eligibility when families fail to meet reporting requirements (3) income disregards that vary across eligibility categories. See Ellwood, M., *The Medicaid Eligibility Maze: Coverage Expands, but Enrollment Problems Persist*, Mathematic Policy Research, 1999, <http://www.kff.org/content/1999/2164/pub2164.pdf>. Third, Smith reports a general level of confusion among eligibility staff and potential recipients themselves. See Smith, V., Lovell, R. and Peterson, K., et al., *The Dynamics of Current Medicaid Enrollment Changes: Insights from Focus Groups of State Human Service Administrators, Medicaid Eligibility Specialists, and Welfare Analysts*, The Kaiser Commission on Medicaid and the Uninsured, 1998.

- 113.** For a general overview of Food Stamp Program structure and rules, see <http://www.fns.usda.gov/fsp/MENU/about/about.htm>; for a more detailed discussion, see Food Research and Action Center, *FRAC'S Guide to the Food Stamp Program* (1999, Tenth Edition)
- 114.** In 1998, 58% of food stamp household had children, and 53% of food stamps recipients were children. Children received 54% of Food Stamp benefits (when household benefits are prorated on a per capita basis). Castner, L., and Rosso, R., *Characteristics of Food Stamp Households Fiscal Year 1998*, Mathematica Policy Research, February 2000, <http://www.fns.usda.gov/oane/MENU/Published/FSP/FILES/char98.pdf>, 16, 21. Almost half of households with children (46%) had gross income of 50% of the federal poverty guidelines or less. *Characteristics*, 35.
- 115.** *Characteristics of Food Stamp Households Fiscal Year 1998*, 18.
- 116.** Center on Budget and Policy Priorities, *The Depth of the Food Stamp Cuts in the Final Welfare Bill*, August 14, 1996, <http://www.cbpp.org/DEPTH9.HTM>.
- 117.** For more detail, see <http://www.fns.usda.gov/fsp/MENU/ADMIN/WELFARE/SUPPORT/immigrants.htm> and discussion of immigrant eligibility, *infra*.
- 118.** For a detailed summary of the Food Stamp Provisions of the 1996 law, see <http://www.fns.usda.gov/fsp/MENU/ADMIN/WELFARE/SUPPORT/960813.htm>
- 119.** United States Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation, *Who is Leaving the Food Stamp Program? An Analysis of Caseload Changes from 1994 to 1998*, August 1999. The study found that overall, the number of single parent households receiving food stamps declined by 28%, reflecting a decline of 43% in single parent households with TANF income and a 8% increase in single parent households without TANF income. The number of single-parent households receiving Food Stamps with TANF income fell by 1,427,000 while the number of single parent households receiving Food Stamps with no TANF income rose, but only by 96,000 households.
- 120.** U.S. General Accounting Office, *Food Stamp Program: Various Factors Have Led to Declining Participation*, GAO/RCED-99-185, 1999, 10.
- 121.** In the Urban Institute's National Survey of America's Families, only 47% of families that had left welfare within the last six months were still receiving Food Stamps; among families that had left more than six months ago, participation was 31%. Loprest, *supra*, Chart 11.
- 122.** About half of those who had left TANF and Food Stamps had incomes below poverty, and 23% had incomes below 50% of poverty. Zedlewski and Brauner, *Declines in Food Stamp and Welfare Participation: Is There a Connection?*, Assessing the New Federalism Discussion Paper 99-13, Urban Institute, 1999, <http://newfederalism.urban.org/pdf/discussion99-13.pdf>, 20-21.
- 123.** For example, in one city, a federal review found that caseworkers were not permitting household to apply for food stamps during their first visit, did not inform applicants about food stamps if the applicants were denied TANF benefits or received diversion benefits, and frequently denied food stamps for households that did not meet TANF requirements. In another city, applicants who arrived after 8:30 A.M. were told to return the next day, and applicants who arrived before 8:30 A.M. sometimes waited the entire day without being seen. U.S. GAO, *supra*, 13-14.
- 124.** <http://www.fns.usda.gov/fsp/MENU/ADMIN/WELFARE/SUPPORT/commi.html>.
- 125.** The Administration's initiative made it easier for states to develop rules under which families with automobiles could qualify for Food Stamp assistance, allowed states to simplify the rules concerning reporting of changed circumstances for working families, and began a nationwide public education campaign and a toll-free hotline targeted at working families. <http://www.fns.usda.gov/fsp/Clintoninitiative/default.htm>.
- 126.** Much of the Congressional concern stemmed from the fact that noncitizens use public benefits at higher levels than citizens. See discussion in U.S. House of Representatives, *1998 Green Book*, Appendix J. Recent analysis notes that noncitizens households tend to have lower household income and more children than citizen households. When controlling for poverty and number of children, noncitizens actually use public benefits at levels equal to or lower than do citizens. See Michael Fix and Jeffrey S. Passel, "Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform: 1994-97," The Urban Institute, March 1999.
- 127.** The Congressional Budget Office estimated that the immigrant eligibility changes in the welfare law would save almost \$23.7 billion over 6 years, accounting for about 44% of the \$54.1 billion savings initially projected for the law. See Federal Budgetary Implications of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, CBO Memorandum, Congressional Budget Office, December 1996. p. 27. The savings were significantly

reduced when subsequent legislation in 1997 and 1998 modified the immigrant provisions of the 1996 law.

128. Generally, qualified immigrants include persons admitted for legal permanent residence, refugees, immigrants paroled into the United States for at least 1 year, and immigrants granted asylum or related relief. See PRWORA Sec. 431. The 1996 immigration law added certain abused spouses and children as another class of qualified immigrants, and the 1997 Balanced Budget Act added Cuban/Haitian entrants. Before 1996, some not qualified immigrants received public benefits under an eligibility category referred to as “Permanently Residing Under Color of Law” (PRUCOL), denoting those immigrants who had lived legally in the United States for a period of time but who were not lawfully admitted as permanent residents. PRUCOL immigrants included, for example, applicants for political asylum.

129. In addition to imposing bars and five-year waiting periods for qualified immigrants, the law also made post-enactment immigrants subject to heightened sponsoring and deeming requirements whereby the income and resources of an immigrant’s sponsor are counted as the immigrant’s when making eligibility determinations. See Wendy Zimmermann and Karen C. Tumlin, “Patchwork Policies: State Assistance for Immigrants under Welfare Reform,” The Urban Institute, 1999, <http://newfederalism.urban.org/pdf/occ24.pdf>, at 27 (“Federal welfare and immigration reform makes deeming an even greater barrier to immigrant benefit receipt by expanding the categories of immigrants who are required to have sponsors, the number of programs to which deeming applies, and the length of time deeming lasts”). The deeming requirements are meant to ensure that new immigrants rely on their sponsors rather than public benefits for aid. Under the 1996 law, new immigrants coming to join family members in the United States (with narrow exceptions) must secure an affidavit of support from a sponsor whose income is above 125 percent of the federal poverty level. The affidavit is legally enforceable and remains in effect until the sponsored immigrant attains citizenship or accumulates 40 qualifying quarters of work. See United States General Accounting Office, *Welfare Reform: Many States Continue Some Federal or State Benefits for Immigrants*, GAO/HEHS-98-132, July 1998, 6-7.

130. The definitions of public benefits and the limited exceptions were specified in Sec. 401 and 403 of PRWORA.

131. Administrative interpretations by HHS (63 FR 41658-61, August 4, 1998), the Social Security Administration, and the Department of Agriculture have designated federally-funded TANF, Medicaid, CHIP, SSI, and Food Stamps to be such benefits. See “Summary of Immigrant Eligibility Restrictions Under Current Law,” ASPE, June 19, 2000, at 3-4, available at <http://aspe.hhs.gov/hsp/immigration/restrictions-sum.htm>.

132. For a helpful table detailing federal provisions and areas of state discretion for SSI, Food Stamps, Medicaid, and TANF, see Zimmermann and Tumlin, Figure 1 at 15.

133. The principal amendments to the original 1996 law include the Illegal Immigration Reform and Immigrant Responsibility Act (“Immigration Law” PL 104-208), the Balanced Budget Act of 1997 (PL 105-33), the Agricultural Research, Extension and Education Reform Act of 1998 (PL 105-185), and the Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 (PL 105-306).

134. See Agricultural Research, Extension and Education Reform Act of 1998, Public Law 105-185, sec. 503-510. The 1998 changes also restored eligibility for certain Native Americans born outside of the U.S., and Hmong or Lao tribe members. The 1998 changes supplemented a set of modifications in 1997, which had provided that Cuban and Haitian entrants and Amerasian immigrants would be treated in the same manner as refugees in those programs denying or restricting access for qualified immigrants. For a detailed discussion of the 1998 modifications, see Carmody and Dean, *New Federal Food Stamp Restoration for Legal Immigrants: Implications and Implementation Issues*, Center on Budget and Policy Priorities, 1998, available at <http://www.cbpp.org/71098fs.pdf>.

135. USDA Table, Number of Legal Immigrants with Restored Benefits from the Agricultural Research Conference Report, March 26, 1996. (As cited in Carmody and Dean, at 7.)

136. Carmody and Dean, *supra*, at 9.

137. Overall, the modifications under the Balanced Budget Act of 1997 (P.L. 105-33) were estimated to reverse \$11.4 billion of the \$23.8 billion in immigrant benefits curtailed under the 1996 law. Those remaining ineligible for SSI are (1) immigrants residing in the United States as of August 22, 1996, who become elderly (65 years of age) but are not disabled; and (2) those who arrived after August 22, 1996, unless they meet one of the law’s exemptions. See Immigrant Policy Issue Brief, Supplemental Security Income, The National Conference of State Legislatures, www.stateserv.hpts.org/public/issueb.nsf/b4bc90dca37b8185852564f0007cc729/c7c05637d5ada1c68525659a00832721?OpenDocument. The CBO estimated that in addition to those immigrants whose SSI was not terminated, this limited

restoration of eligibility for blind and disabled pre-enactment immigrants would affect 65,000 individuals in 1998 and 85,000 individuals in 2000. See General Accounting Office, *supra*, at 10.

138. Only Alabama opted not to provide TANF and only Wyoming elected to deny non-emergency Medicaid to pre-enactment immigrants. Zimmermann and Tumlin, *supra*, Table 25 at 60.

139. In 1997, eight states reported that they did not plan to provide TANF to post-enactment immigrants following the five-year bar. Similarly, while only Wyoming opted not to provide Medicaid to pre-enactment immigrants, six states reported that they would not provide Medicaid to post-enactment immigrants after the five-year bar. At least seven states were undecided on Medicaid, with another five undecided on TANF. The numbers on state denial of services to post-enactment immigrants beyond the five-year bar should not be considered reliable since these policies do not become operational until 2001. See Zimmermann and Tumlin, *supra*, at 25 & Table 5 at 60.

140. *id.* at 22-23.

141. A GAO review found that 14 states (in which 90% of the legal immigrants receiving food stamps resided in 1996) had developed some form of program to address food needs of immigrants who had lost federal assistance, but only three of those states were extending food assistance to all legal immigrants who had lost federal eligibility. The GAO further estimated that about one-third of states are providing either state-funded cash assistance, medical assistance, or both to post-enactment immigrants during their 5-year federal ineligibility period. See GAO, *supra*, at 16.

142. *id.* at 15.

143. Fix and Passel, *supra*, at 2.

144. Though only 9 percent of households receiving welfare in 1994, noncitizen households accounted for 23 percent of welfare caseload declines from 1994 to 1997. See *id.* at 2.

145. Zimmermann, W. and Fix, M., *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in Los Angeles County*, Urban Institute, 1998, 2 & Table 1 at 4.

146. *id.* at 2.

147. *id.* at 2.

148. U.S. General Accounting Office, *Medicaid: Demographics of Nonenrolled Children Suggest State Outreach Strategies*, GAO/HEHS-98-93, 1998.

149. Schlosberg, C., *Beyond Outreach and Informing: Getting Serious About Covering Uninsured Children in Immigrant Families*, Policy and Practice, December, 1998, 54-63 (as cited in Ellwood, *supra* note 112 at 20).

150. Zimmermann and Tumlin, *supra*, at 26.

151. The term maltreatment is used in this article to refer to child abuse and/or neglect.

152. Children are entitled to foster care maintenance payments if they are: removed from the home of their parents or specified relatives pursuant to a voluntary placement agreement or judicial order; placed in the custody of the child welfare agency; and meet the old AFDC eligibility criteria at the time of removal. 42 U.S.C. §672; 45 C.F.R. Parts 1355, 1356, 1357.

153. A child with “special needs” is essentially a child whose condition makes it unlikely that he or she will be placed for adoption absent financial assistance. 42 U.S.C. §673; 45 C.F.R. Parts 1355, 1356, 1357. The adoptive parents of such a child are entitled to payments for certain non-recurrent adoption expenses. In addition, if the child meets the eligibility criteria for AFDC or Supplemental Security Income (SSI), the state may provide the parents with on-going assistance payments.

154. In addition to these programs, authorized under Titles IV-B and IV-E of the Social Security Act, there are a wide range of federal programs whose funds can be used to provide various child welfare services (e.g. Title XX, Medicaid and the old Emergency Assistance Program). The Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et. seq.) also provides federal funding and guidance in the child welfare arena. However, the focus of this article is primarily on the interaction of TANF with the IV-B and IV-E programs where the federal government plays the most direct child welfare role.

155. Under the Foster Care Maintenance and Adoption Assistance programs, the federal government reimburses states (at their Medicaid matching rate) for each eligible child. The federal government also reimburses for training expenditures (75% federal matching rate) and administrative costs (50% matching rate). The Child Welfare Services Program provides a capped, discretionary funding stream. The Safe and Stable Families provides a capped, entitlement funding stream. The federal share for both programs is generally 75%. The Independent Living Program

is also a capped entitlement. Under Title I of the Foster Care Independence Act of 1999, Public Law 106-169, the new federal matching rate is 80%.

156. In addition to the provisions described in the text, the 1996 law authorized and appropriated funds for a national longitudinal study of abused and neglected children and children at risk of abuse and neglect. The statute also extended the enhanced matching rate available for implementation of the required child welfare data system, the Statewide Automated Data Collection Information Systems (SACWIS), through 1997. Finally, the statute allows for-profit institutions to receive foster care maintenance payments.

157. The 1996 welfare law referenced the AFDC plan in effect on June 1, 1995, but technical corrections in the Balanced Budget Act of 1997, Public Law 105-33, altered this date to July 16, 1996 in order to harmonize this provision with the comparable “look-back” provision for Medicaid.

158. Sedlak, A.J. and Broadhurst, D.D., *Third National Incidence Study of Child Abuse and Neglect, Final Report*, U.S. Department of Health and Human Services, 1996.

159. Primus, W., Rawlings, L., Larin K. and Porter, K., *The Initial Impacts of Welfare Reform on the Incomes of Single-Mother Families*, Center on Budget and Policy Priorities, 1999.

160. The 1996 law prohibits states from sanctioning single custodial parents for failure to comply with work requirements if the parent demonstrates that she or he is unable to obtain needed child care for a child under the age of six. 42 U.S.C.607(e)(2). However, it is not clear that TANF recipients are aware of this exception and they may believe they risk losing cash assistance if they do not comply with the work requirements. In addition, the exception does not apply to lack of child care for children 6 or older. Yet, a number of states include failure to supervise children up to the age of 10-12 within the definition of neglect. Thus, some parents may be faced with charges of neglect either because they leave their child unattended to go to work or because they lose their cash assistance and cannot adequately care for the child.

161. For example, in September 1999, the Institute for Children and Poverty, Homes for the Homeless conducted a study of 100 shelter residents and found that 36% of the homeless families had lost some or all of their TANF benefits in the prior six months and that 18% of those families reported they lost a child to foster care.

<http://www.HomesfortheHomeless.com>

162. Committee on Ways and Means, U.S. House of Representatives, *1998 Green Book*

163. See <http://www.acf.dhhs.gov/programs/cb/stats/tarreport/rpt0100/ar0100c.htm>

164. *HHS News*, April 10, 2000, <http://www.hhs.gov/news/press/2000pres/20000410.html>.

165. A potential explanation for why incidence rates are decreasing while foster care caseloads are increasing relates to the duration of foster care stays. The number of children in foster care is a function of the number of children coming into care and the number exiting care. If more children come in than leave, the total number in care will increase. Thus, if children remain in care for longer periods of time, the foster care caseload could increase even while the number of children entering care decreases from previous years. Some researchers postulate this dynamic is currently occurring in the nation’s foster care caseload. Wulczn, F.H., Brunner, K. & Goerge, R.M., *An Update from the Multistate Foster Care Data Archive: Foster Care Dynamics 198-1997*, The Chapin Hall Center for Children at the University of Chicago, 1999. Even if this explanation is correct, the impact of the 1996 law remains unknown. The law could be contributing (positively or negatively) to the increased duration of foster care stays. For example, the time limit and sanction provisions may make it harder for parents to establish stable homes to which their children can return. Alternatively, the work requirements may help improve a parent’s financial well-being and help her regain custody of her children more quickly.

166. The authorization level was reduced from \$2.8 billion to \$2.38 billion. In addition, Congress has never appropriated the full \$2.38 billion; e.g. the FY 2000 appropriation was \$1.775 billion.

167. Geen, R., Waters Boots, S. & Tumlin, K., *The Cost of Protecting Vulnerable Children: Understanding Federal, State, and Local Child Welfare Spending*, Urban Institute, 1999.

168. See discussion of transfer restriction *supra*, note 3.

169. In 1996, at least 45 states were using EA funds to provide child welfare services. Geen, et al, *supra*.

170. The eligibility provisions of the 1996 law could also make IV-E funds less accessible to states. For example, the “look back” to AFDC criteria to determine eligibility for IV-E payments may decrease the number of eligible children. If a state had a relatively low income cut-off under its 1996 AFDC plan, the combination of greater work and even modest inflation may reduce the number of children removed from families who meet those income criteria. Similarly,

the more restricted eligibility criteria for SSI may reduce the number of children eligible for adoption assistance payments. In this case, additional state or local dollars may be required to support children in out-of-home placements. Anecdotal evidence suggests this may be an issue in some places. A 1999 report on child welfare waivers notes that as a result of a low unemployment rate, the welfare law's focus on work and the low poverty threshold used by Indiana in its AFDC program, "few families are IV-E eligible . . . and the [state is] having a hard time filling the IV-E [waiver] slots." [Note Indiana's waiver required at least 75% of the "waiver slots" to be used for IV-E eligible children. It is those slots the state could not fill.] *Child Welfare Waivers: Promising Directions - Missed Opportunities*, Cornerstone Consulting Group, Inc., 1999.

171. A number of states (including Texas, Maryland and Arizona) are using TANF or MOE funds to provide home visiting services, which often have a goal of preventing child abuse and neglect. Cohen, M., *Tapping TANF: When and How Welfare Funds Can Support Reproductive Health or Teen Parent Initiatives*, Center for Law and Social Policy, 1999, <http://www.clasp.org>.

172. Berns, D. and Drake B., *Uniting Child Welfare and Welfare Reform*, Children's Voice. Child Welfare League of America, 1999; *Combining Child Welfare and Welfare Reform at a Local Level*, Berns, D. and Drake, B., *Policy & Practice*, American Public Human Services Association, 1999. Several other states (including California, Florida, Louisiana, Missouri and Wisconsin) are also using TANF or MOE funds to support kinship care. Christian, S. & Ekman, L., *A Place to Call Home: Adoption and Guardianship for Children in Foster Care*, National Conference of State Legislatures, 2000.

173. For example, during FY 1999, states reported that they transferred nearly \$1.3 billion from their TANF block grant to Title XX. See <http://www.acf.dhhs.gov/programs/ofs/data/q499/table-d.htm>. However, TANF financial reports do not indicate how funds transferred to Title XX were spent.

174. Ellwood D.A. and Boyd, D.J., *Following the Money: Changes in State Spending on Social Services Since the Implementation of Welfare Reform*, The Nelson A. Rockefeller Institute of Government, 2000.

175. For example, the child welfare case is closed when a relative obtains guardianship and receives a TANF-funded kinship care payment instead of a foster care payment. Thereafter, the guardian reports annually to the probate court on the child's well-being, but caseworkers are not required to visit on a regular basis and on-going supervision by the child welfare agency and juvenile court ceases. The biological parent may revoke the guardianship and the agency will consider opening another child welfare case in such circumstances. Thus, both the court and the agency retain a peripheral involvement; seeking to avoid unnecessary intrusion on the family while maintaining close enough contact to protect the child.

176. Committee on Ways and Means, U.S. House of Representatives, *1998 Green Book*.

177. Committee on Ways and Means, U.S. House of Representatives, *1998 Green Book*. This increased caseload largely resulted from three policy changes. First, in 1989, the Omnibus Budget Reconciliation Act established an outreach program for children eligible for, but not enrolled in, SSI. Second, in 1990, SSA expanded its "List of Impairments," a list of conditions SSA considers disabling, to broaden the category of mental impairments so that the list would be more consistent with the existing knowledge about mental disorders. Finally, following the U.S. Supreme Court's decision in *Sullivan v. Zebley*, 493 U.S. 521 (1990), SSA began to use an Individualized Functional Assessment (IFA) to assess children's ability to function in their daily activities. If the IFA demonstrated that a child had an impairment that "substantially reduced" his or her "ability to function independently, appropriately and effectively in an age-appropriate manner," the child was eligible for SSI. As part of the IFA, SSA was to consider evidence of the child's "maladaptive behavior." In addition to these policy changes, the recession of the early 1990's is thought to have caused more children to meet the income criteria of the SSI program. *Restructuring the SSI Disability Program for Children and Adolescents: Report of the Committee on Childhood Disability Policy Panel*. National Academy of Social Insurance, 1996.

178. An expert panel concluded that "[a]ny evidence of such coaching or 'gaming the system' is extraordinarily thin -- and appears to be based on anecdotes or perceptions of dubious benefit claims, which upon investigation are found to have been denied." *Restructuring the SSI Disability Program for Children and Adolescents: Report of the Committee on Childhood Disability Policy Panel*, National Academy of Social Insurance, 1996. A General Accounting Office report found that "substantiating and measuring the extent of such coaching are extremely difficult" and concluded that "studie[s] we reviewed found little evidence of widespread coaching but could not rule it out." *Supplemental Security Income: Growth and Changes in Recipient Population Call for Reexamining the*

Program, United States General Accounting Office, 1995, GAO-HEHS-95-137.

179. In addition to the changes noted in the text, the 1996 law made several other modifications relevant to SSI children. The law modified the amount and use of certain SSI payments. If a child is owed back payments worth more than six months of benefits, the child's caretaker must deposit that back payment into a dedicated savings account, funds from which can only be used for specific expenses. The 1996 law also created an installment payment system for past due benefits if the past due amount totals at least 12 months of benefits. The 1996 law also altered the benefits available to hospitalized children. Historically, children covered by Medicaid who were hospitalized for the full month (e.g. if more than half the costs were covered by Medicaid) were generally only entitled to a personal needs allowance payment of \$30 for that month. The 1996 law applied this benefit reduction to children hospitalized and covered by private medical insurance, regardless of the caretaker's actual out-of-pocket expenses. Finally, for all SSI applicants, not just children, the 1996 law eliminates prorated payments for the month of application. Instead, benefits become payable beginning on the first day of the month following application or the first day the applicant becomes eligible, whichever is later.

The 1996 law also made changes to the SSI program which primarily affect adults (e.g. prohibition on benefits to fugitive felons and parolees, certain immigrants, and those convicted of fraudulently obtaining benefits).

180. 42 U.S.C. §1382c(a)(3)(C). Prior to 1996, a child could be eligible for SSI if he or she had an impairment included in or equal to an impairment on SSA's "List of Impairments." or if an IFA demonstrated a substantial inability to function in an age-appropriate manner. The 1996 law eliminated the more flexible IFA and directed SSA to amend the SSI regulations to remove all references to "maladaptive behavior". Although the references to "maladaptive behavior" have been removed from the regulations, evidence of such behavior may still be considered to determine whether a child has a mental impairment that is functionally equivalent to one of the conditions on the List of Impairments. *See*, 20 C.F.R. §§416.924 - 416.926.

181. In addition to modifying the 18 year-old review process, the 1996 law altered the time frames for other continuing eligibility reviews. Children must now undergo a review every three years, unless their condition is not expected to improve. Children who qualify because of their low-birth weight must undergo a review 12 months after birth. In all childhood reviews, the child's caretaker (the representative payee) must present evidence that the child has been receiving medically necessary and available treatment, unless SSA determines that treatment is not appropriate in light of the child's condition.

182. 42 U.S.C. §1382c(a)(4).

183. The only difference is that the 18 year-old review uses the "gainful employment" threshold applicable to current recipients rather than the threshold applied to new applicants. 20 C.F.R. §§416.987, 416.929 and 416.260.

184. 20 C.F.R. §§416.924 - 416.926.

185. The letter says: ". . . a large percentage of [the children expected to] lose assistance based on the SSA's definition of disability will be disabled children who are truly in need of assistance. . . The SSA is proposing to define "marked and severe" as meaning listings level severity or any equivalent level of severity. Congress never intended and did not require this level of severity." Letter to President William J. Clinton from Senators Kent Conrad, Edward Kennedy, John D. Rockefeller IV, Max Baucus, Christopher Dodd, John Chafee, Tom Harkin, James Jeffords, Patrick Leahy and Tom Daschle dated April 14, 1997.

186. SSA was required to complete these one-time redeterminations for 288,000 children. In the face of criticism about how the redeterminations were being conducted, SSA agreed to re-review the claims of about 36,000 children. By November of 1998, SSA had completed 98% of its redeterminations and terminated benefits for 115,300. Of those, 55,200 appealed the terminations and some of the appeals are still pending. As of April 1999, SSA estimates that when all appeals are completed 100,000 children will have lost benefits. *Supplemental Security Income: Progress Made in Implementing Welfare Reform Changes; More Action Needed*, United States General Accounting Office, GAO-HEHS-99-103, 1999.

Children who receive SSI are generally eligible for Medicaid. Children who lose their SSI benefits as a result of the new definition of childhood disability are entitled, pursuant to the Balanced Budget Act of 1997, Public Law 105-33, to retain their eligibility for Medicaid under the old disability criteria. However, children who never qualify for SSI under the revised definition of disability will not be eligible for Medicaid unless they meet other eligibility criteria. In addition, not all children who lost SSI eligibility retained their Medicaid coverage. In April 2000, the Health Care Financing Administration sent a letter to all states, directing them, among other things, to obtain from

SSA a list of children who lost SSI and to ensure those children were enrolled in Medicaid. Letter from Timothy Westmoreland, Director of Medicaid and State Operations, Health Care Financing Administration to State Medicaid Directors, dated April 7, 2000.

187. *Supplemental Security Income: Progress Made in Implementing Welfare Reform Changes; More Action Needed*, United States General Accounting Office, GAO-HEHS-99-103, 1999. Eighteen year olds who lose SSI benefits will also lose Medicaid coverage unless they qualify independently of their SSI eligibility. They are not covered by the grandfather clause in the Balanced Budget Act of 1997.

188. SSA issued the rules on February 11, 1997 as “Interim Final Rules” issued under an exception to the Administrative Procedure Act’s requirement of prior comment. The agency accepted comments until April 14, 1997, but has made no revisions to the rules in response to those comments.

189. Advocates have argued that the severity of impairment should fall somewhere between the IFA level criteria, rejected by the 1996 law, and the listing level severity adopted by SSA. Indeed, the letter from the Senators to President Clinton called for such an interpretation of “marked and severe.” Letter to President William J. Clinton from Senators Kent Conrad, et al., supra.

190. Advocates believe more needs to be done to create a seamless system of supports for children with disabilities and their families, so that these children can maximize their potential and live as independently as possible as they become adults. Congress could extend eligibility for SSI under the children’s definition of disability up to age 22. Legislation could also provide Medicaid coverage to all children with impairments, regardless of their eligibility for SSI, so that these children can access the services and treatment needed to maximize medical and functional improvement.