

University of Maine School of Law

## University of Maine School of Law Digital Commons

---

Faculty Publications

Faculty Scholarship

---

Winter 1997

### Child Care Policy and the Welfare Reform Act

Peter R. Pitegoff

Follow this and additional works at: <https://digitalcommons.mainerlaw.maine.edu/faculty-publications>



Part of the [Administrative Law Commons](#), [Family Law Commons](#), [Law and Economics Commons](#), [Law and Gender Commons](#), [Law and Race Commons](#), [Law and Society Commons](#), [Social Welfare Law Commons](#), and the [State and Local Government Law Commons](#)

---



Journal of  
**Affordable Housing**  
& Community Development Law

---

VOLUME 6, NUMBER 2

WINTER 1997

<b>Forum News and Views</b> .....	83
<b>Commentary</b>	
Beyond the Beltway: Familial Status Under the Fair Housing Act <i>Daniel Barkley</i> .....	93
Heard from HUD: The Inspector General <i>Arthur R. Hessel</i> .....	100
Tax Topics: IRS Follows <i>Housing Pioneers</i> Down a Bumpy Road <i>J. William Callison</i> .....	108
<b>Articles</b>	
Child Care Policy and the Welfare Reform Act <i>Peter Pitegoff and Lauren Breen</i> .....	113
What Is Mutual Housing? <i>Martha Taylor</i> .....	131
HUD Goes to Market: The Section 108 Loan Guarantee Program <i>Richard M. Price and Jeffrey S. Lesk</i> .....	139
The Rehabilitation Tax Credit: Historic Preservation, Affordable Housing, and Community Development <i>Thomas R. Curran, Jr.</i> .....	145
<b>Forum Officers, Governing Committee Members, and Committee Chairs</b> .....	157



# Child Care Policy and the Welfare Reform Act

*Peter Pitegoff and Lauren Breen*

Fueled by election-year politics, federal welfare "reform" finally arrived. On August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,<sup>1</sup> making good on his promise four years earlier to "end welfare as we know it." This article sketches the Act's major changes to welfare law with particular attention to federally subsidized child care for low-income families.<sup>2</sup>



Peter Pitegoff



Lauren Breen

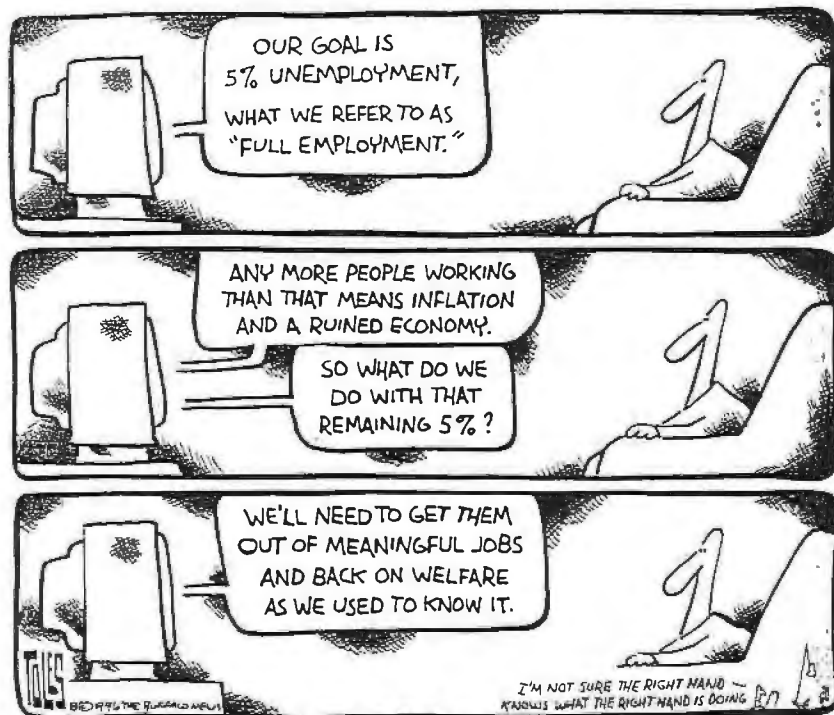
Affordable, quality day care is essential for the working poor and for families in transition from welfare to work. Even before this latest chapter in welfare reform, the child care system—a patchwork of public policies, private initiatives, and informal care—had proven inadequate to meet growing demand.<sup>3</sup> The lack of affordable child care has been a frequent obstacle to employment, especially for poor women. Federal subsidies to poor families for child care, although substantial overall, have been insufficient to subsidize all eligible families and have failed to reach many working families in need, but ineligible due to modest income.<sup>4</sup>

Strict work requirements in the new welfare law are bound to increase the demand for child care among the working poor.<sup>5</sup> The Act maintains a substantial level of federal funding for child care in the near term, although it arguably provides insufficient support to keep pace with growing demand.<sup>6</sup> Over time, the challenge of adequate public support for

---

*Peter Pitegoff, Professor of Law, and Lauren Breen, Clinical Instructor, are supervising attorneys in the Community Economic Development Law Clinic at the State University of New York at Buffalo. The authors thank Thomas Disare, Wendy Irvine, and Frank Munger for their insight and guidance, and Anita Costello for her editorial assistance. We also thank Tom Toles and The Buffalo News for permission to reprint the cartoon on page 114, and the Fund for Labor Relations Studies and the Baldy Center for Law and Social Policy for research support.*

The Buffalo News/Sunday, August 4, 1996



Tom Toles

child care will fall to the states, as the Act triggers a dramatic devolution of social welfare policy.

The full impact of the new law upon poor families is yet unknown and will depend in large part upon how the states design their respective welfare programs. Although parts of the law took effect on October 1, 1996, states must submit their welfare plans to the federal Department of Health and Human Services for approval by July 1, 1997, to be eligible for funding under the Act.<sup>7</sup> Real welfare reform can succeed, we suggest, if coupled with public policies that help generate better quality jobs and targeted support for the working poor. However, in this era of tremendous uncertainty, the Act guarantees two things: the federal safety net for poor families is gone, and responsibility for assistance to the poor—for better or worse—now rests with the states.

The first part of this article presents a brief overview of the Act. The second part examines the new block grant program known as Temporary Assistance for Needy Families (TANF), which has replaced the long-standing federal entitlement program of Aid to Families with Dependent

Children (AFDC). The article then provides a more detailed account of child care funding in the wake of federal welfare reform and describes changes in the federal role, including efforts of the new federal Child Care Bureau.

The Act has mixed implications for child care policy. Federal funding to the states to support child care efforts will increase in the short term. Moreover, changes in the structure of that funding will give states more flexibility in administration of federal subsidies. Opportunity exists at such a fluid moment to craft new child care initiatives.

However, a critical change is that federal funding for child care in the coming years is capped and may well fall short of increasing demand. Elimination of the AFDC entitlement for poor families also means the loss of a federal entitlement to child care support for families on welfare. With a gap in child care funding, some states will foot the cost, while others will restrict eligibility and leave many low-income families without adequate child care support.<sup>8</sup> Gaps in child care support fall hard on the working poor and may undermine policy efforts to promote transition from welfare to work. Overall, the substantive provisions of the Act appear disconnected from its stated goals of encouraging "personal responsibility" and "work opportunity." The Act's impact on the poor will be negative and severe.

### Overview of the Welfare Reform Act

The 1996 Act marks a watershed in welfare reform. For the first time since the New Deal, Congress has eliminated the federal guarantee of minimal cash benefits to poor families with children. In addition to replacing the AFDC program with capped block grants to states (state family assistance grants), the Act imposes a time limit on federal welfare benefits, reduces Food Stamp allotments, restricts aid to children with disabilities, and eliminates substantial benefits for legal immigrants.

The Act will save an estimated \$54 billion to \$55 billion over six years, with most savings based upon reductions in the Food Stamp program and eligibility restrictions for all benefits to legal aliens.<sup>9</sup> The new law gives states wide discretion in designing their own welfare programs. As a condition to federal funding, however, states must comply with certain new restrictions, including federally specified time limits and work requirements for welfare recipients. The Act's time limits, work requirements, and status criteria for TANF recipients create new administrative hurdles for the states with few adequate tracking systems yet in place.<sup>10</sup>

The Act changes welfare law in at least seven major areas. The new law:

- (1) ends the federal guarantee of cash benefits to poor families on the basis of need and replaces the AFDC entitlement with the new TANF block grant program;<sup>11</sup>
- (2) establishes stringent work requirements as a condition for receipt of cash benefits and Food Stamps, including a requirement that adults

with children work after two years of assistance and that Food Stamp recipients (between the ages of eighteen and fifty) without children engage in work activity after several months;

(3) imposes a five-year per family time limit for receipt of cash assistance or noncash assistance using federal block grant funds, with allowance for exemption of up to 20 percent of a state's caseload on the basis of hardship;

(4) narrows eligibility criteria for disability benefits for children under the Supplemental Security Income (SSI) program, allowing benefits only to those children with impairments resulting in severe functional limitations expected to result in death or to last for at least a year;

(5) renders current and future legal aliens ineligible for SSI and Food Stamp benefits until they become U.S. citizens (with some exceptions) and places new eligibility limits on cash benefits for legal immigrants;

(6) creates federal and state tracking systems for enforcement of child support payments, as well as penalties such as revocation of drivers' licenses for failure to pay child support; and,

(7) reduces overall Food Stamp funding, resulting in the reduction of individual subsidies from 80 cents per meal to 66 cents per meal.

Unlike earlier drafts of welfare reform legislation, the Act does not require states to impose a "family cap" on recipients, that is, to deny an increase in benefits to a family upon the birth of a new baby. However, the Act does not prevent states from imposing such a cap.

The new law does not convert Medicaid to a block grant program. Thus, Medicaid remains a needs-based federal entitlement. Although a welfare recipient can lose Medicaid for failure to comply with work requirements, U.S. citizens and certain aliens<sup>12</sup> eligible for Medicaid on the basis of income prior to the Act generally will continue to be eligible. Welfare recipients in transition from assistance to self-support will also continue to be eligible for Medicaid coverage for up to one year after their cash benefits end.

The nine parts or titles of the Act are: (I) Block Grants for Temporary Assistance for Needy Families; (II) Supplemental Security Income; (III) Child Support; (IV) Restricting Welfare and Public Benefits for Aliens; (V) Child Protection; (VI) Child Care; (VII) Child Nutrition Programs; (VIII) Food Stamps and Commodity Distribution; and (IX) Miscellaneous. Following is a brief description of changes to the cash welfare system, as reflected in various parts of the Act, as well as a more detailed explanation of the child care provisions of Title VI.

#### Temporary Assistance for Needy Families

The Act ends a core element of federal welfare policy by eliminating AFDC, the sixty-one-year-old federal guarantee of cash assistance to poor families with children.<sup>13</sup> A new system of block grants to the states, TANF, replaces the former AFDC entitlement. The stated purposes of TANF are to give states flexibility in providing assistance to poor families with chil-

dren, end the reliance of poor parents upon government benefits through employment, prevent out-of-wedlock pregnancies, and encourage the formation and maintenance of two-parent families.<sup>14</sup>

TANF block grants are limited or "capped" funds to the states to be used as cash assistance for poor families. Because the funds are limited to \$16.4 billion annually from 1997 through 2002, there is no longer an open-ended federal guarantee of cash benefits to families based upon need. The Act does provide for additional federal TANF funds to states that qualify due to high unemployment or large populations of needy families.<sup>15</sup> Once these additional federal funds are exhausted, all other cash assistance to the poor must be paid by state and local governments, if at all.

Under prior law, states established welfare eligibility criteria and benefit levels, but were federally mandated to provide benefits at these set levels to those who met the established state eligibility rules.<sup>16</sup> The federal government provided open-ended welfare funds to states at a percentage that varied among states from 50 to 78 percent of state welfare expenditures.<sup>17</sup> Thus, so long as a state was spending its own money on AFDC recipients, the federal government continued to contribute "matching" funds for this purpose.

In contrast to prior law, the Act gives states the freedom to cap the amount of money to be spent on welfare benefits, if they so choose and if permitted by state law.<sup>18</sup> Thus, poor children whose families otherwise meet a state's eligibility requirements no longer are assured of receiving basic cash assistance. Potentially, a state could run out of block grant funds for the year and place new applicants on waiting lists<sup>19</sup> or even terminate benefits to current recipients.

Nothing in the Act prohibits states from guaranteeing welfare benefits to those who qualify on an open-ended basis, as required under the prior federal welfare law. The enormous potential cost to state governments, however, creates a strong fiscal disincentive for open-ended eligibility, given the cap on federal funds under the new law.

The Act allows the TANF block grant money to be used for public assistance activities permitted under prior law<sup>20</sup> as well as for new activities designed to carry out the stated purposes of the program. While the TANF block grants give states considerable control over how federal welfare dollars will be spent, states must comply with a number of restrictions on these funds as well. Only 15 percent of TANF funds may be used for state administrative costs. In addition, states cannot use TANF block grant money for families in which an adult has received federal "assistance" for a total of sixty months.<sup>21</sup> Within this five-year time limit, states may exempt up to 20 percent of their caseload based upon hardship. States may set shorter TANF eligibility time limits if they choose.

States receiving TANF block grants must include mandatory work participation requirements for recipients. Under the Act, adults in TANF families must participate in work activity after receiving TANF cash bene-

fits for two years, or earlier if state authorities deem them ready for work.<sup>22</sup> Hours of required work activity differ for single parents with children under the age of six and two-parent families. Required work participation levels begin at twenty hours per week in 1997 and increase to thirty hours per week by 2002.

To avoid a reduction in TANF block grant funds, states must meet work participation rates set forth in the Act, beginning with 25 percent of total TANF caseload in 1996 and increasing to 50 percent by 2002. The Act does not include federal exemptions from work requirements, but allows states to exempt single parents of infants under age one from work requirements and to exclude these individuals in calculating their total caseload work participation rate. The Act provides that single parents with children under the age of six who cannot find child care cannot be penalized for failing to comply with work requirements, but includes little guidance for implementing this provision on a case-by-case basis. States also may opt out of a provision in the Act that requires unemployed adults to participate in community service after receiving benefits for two months.

The Act allows states to give TANF benefits to unmarried parents under the age of eighteen and their children, provided that they live with an adult relative or in an "adult-supervised setting."<sup>23</sup> States are required to assist minor parents in securing a suitable home or an adult-supervised setting. Minor parents who may suffer harm in the home will be exempt from this requirement. Minor parent recipients are required to attend high school or a training program after their children are twelve weeks old.

Before drawing down TANF block grant funds, a state must submit for approval to the Department of Health and Human Services a plan that outlines, among other things, welfare eligibility criteria, benefit levels, and the appeal process for those who are denied benefits. Although the law contains some requirements for fairness to recipients, the role of HHS and scope of its authority to reject plans are unclear at this time. The deadline to submit state plans is July 1, 1997, but the federal guarantee of cash assistance ended on October 1, 1996.<sup>24</sup>

To receive their full share of federal TANF block grant funds from 1998 through 2003, states will have to meet a "maintenance-of-effort" requirement. This means that a state must spend at least 75 percent of the money it spent on federal welfare programs during 1994, or 80 percent if the state fails to meet TANF work participation requirements. A state will lose one federal block grant dollar for every dollar that its spending falls short of the required percentage of its 1994 rate. States may carry over certain TANF block grant funds to future fiscal years. They may also transfer up to 30 percent of TANF cash assistance funds for child care and social services purposes. However, no more than 10 percent of TANF funds may be transferred for social services.<sup>25</sup>

The Congressional Budget Office estimates no significant difference in federal spending under the Act for cash welfare benefits as compared to

the former AFDC assistance program, citing cuts in the Food Stamp program and cuts in benefits to legal aliens as the chief sources for the projected \$55 billion in overall savings.<sup>26</sup> Because many state welfare caseloads have declined recently, it is entirely possible and ironic that a state may actually receive more money under the new law's family assistance grants during the transition period (October 1, 1996, to June 30, 1997), as compared to the federal AFDC matching funds it would have received based on its 1996-97 welfare caseload.<sup>27</sup>

### Child Care Funding

The Act contains strict work participation requirements for recipients of TANF cash assistance, as well as a five-year limit on cash benefits to families. These changes are likely to result in increased demand for child care among welfare recipients and the working poor.<sup>28</sup>

Federal support of child care for these groups was the subject of much controversy throughout the reform debate. Notably, in response to President Clinton's veto of the version of welfare reform passed by Congress in December 1995,<sup>29</sup> the National Governors Association (NGA) recommended modifications that included an additional \$4 billion in entitlement funding for child care to the states and an increase to 5 percent (from 3 percent) for the states' administrative cost allowance out of such funding. The Act in final form incorporates, among other NGA suggestions, both the additional child care funding and an increase in the related administrative allotment.<sup>30</sup>

Effective October 1, 1996, the Act eliminated three major programs that previously provided child care for the poor under the prior federal welfare law. These programs, often referred to as Title IV-A child care programs, were: (1) child care for AFDC recipients who work or participate in the JOBS program, the federal employment, training, and education program for AFDC recipients; (2) Transitional Child Care for families who are no longer eligible for cash welfare due to income; and (3) At-Risk Child Care for low-income working families likely to become eligible for cash welfare assistance without child care benefits.<sup>31</sup>

In place of these programs, the Act creates the Temporary Assistance for Needy Families (TANF) Child Care Block Grant, which provides "capped" child care subsidies to states for past, current, and potential recipients of TANF cash welfare assistance. The Act also reauthorizes, with amendments, federal funding for the existing Child Care and Development Block Grant (CCDBG) program.<sup>32</sup> The Act requires that both the new TANF Child Care Block Grant and the existing CCDBG be administered through the revised CCDBG program, thus greatly expanding the CCDBG program.

The Act funds a total of \$22 billion for child care to states through the TANF Child Care Block Grant and the CCDBG Block Grant over fiscal years 1996 through 2002. The larger of the two funding sources is the newly created TANF Child Care Block Grant, which will increase each

year from almost \$2 billion in fiscal year 1997 to more than \$2.7 billion in 2002.

The reauthorized and amended CCDBG Block Grant is to be funded at \$1 billion per year from 1996 through 2002. This grant is a mandatory entitlement to the states. In contrast, the CCDBG Block Grant funding is deemed discretionary funding to the states because actual funding will depend upon whether Congress makes the annual appropriations at the levels authorized in the Act.<sup>33</sup> The new joint stream of federal child care subsidies, consisting of the CCDBG and TANF Child Care Block Grant, is now known as the Child Care and Development Fund.<sup>34</sup>

#### *TANF Child Care Block Grant*

By replacing the Title IV-A child care programs with the TANF Child Care Block Grant, the federal government has ended the states' obligation to guarantee child care for current and former AFDC recipients. TANF Child Care Block Grant funds allocated to a state but not used during the year in which awarded will be reallocated in subsequent years to other states.

The Act separates TANF Child Care Block Grant mandatory funding into three categories: (1) state block grant entitlements based on recent federal AFDC allocations; (2) Indian tribes set-aside; and (3) "remainder" funds for matching grants to states. The TANF Child Care Block Grant funding will be transferred to the CCDBG program in each state and administered by a lead agency within each state. Under the amended CCDBG program, state lead agencies may administer the program using private as well as government agencies.

The first category of TANF Child Care Funding is a \$1.2 billion annual mandatory block grant from 1997 through 2002 to be divided among the states. State shares of this amount will be determined on the basis of recent federal expenditures to the state under AFDC child care programs. States will be able to maximize this amount by choosing from 1994 or 1995 spending levels or the average of spending from 1992 through 1994. In a break with past law, states will not be required to match federal funds in order to be eligible for this mandatory funding share of the TANF Child Care Block Grant.

The second category of child care funding through the TANF Child Care Block Grant is the Indian tribes set-aside. Up to 2 percent, but no less than 1 percent, of the TANF child care funds (\$2 billion in 1997 increasing to \$2.7 billion in 2002) will be earmarked for child care for Indian tribes. There was no provision for Indian tribes set-asides under the three former Title IV-A or AFDC-related child care subsidy programs.

The third category of child care funding within the TANF Child Care Block Grant consists of the annual "remainder" of the TANF Child Care Block Grant funds after payment of the mandatory block grant funds to states and the Indian tribes set-aside. These remainder funds will be

available for matching grants to the states. States will be eligible for remainder funds once they have spent all of their allocation from the first TANF mandatory block grant category plus an amount equal to the amount expended by the state for the three former AFDC-related child care programs in 1994 or 1995, whichever is greater. Once eligible for remainder funds, a state will receive a distribution based upon its percentage of population aged thirteen and younger.

#### *Child Care and Development Block Grant (CCDBG)*

The Act authorizes the revised CCDBG to be funded at \$1 billion per year from 1996 until 2002. Since 1990, the CCDBG program has funded child care on a sliding-scale fee basis for low-income families with parents who work, attend job training, or go to school. CCDBG funding under the Act is discretionary because actual funding will depend upon annual congressional appropriations during this period. States will receive a portion of the annual \$1 billion allocation based upon the existing formula in the CCDBG statute. This formula allocates funds to states based upon the number of low-income children within the state and state per capita income. Indian tribes will also receive up to 2 percent, but not less than 1 percent of the annual \$1 billion allocation for CCDBG funds. Under current law, Indian tribes are entitled to 3 percent of CCDBG funds.

States must spend CCDBG funds within the year awarded or in the subsequent year. Under prior law, states were permitted to spend CCDBG allotments within three years following the award. States must spend TANF Child Care Block Grant funds in the year awarded or forfeit them to a redistribution fund for other states in the subsequent year.

Other significant changes to the CCDBG program include:

- (1) an increase in family income eligibility from 75 percent to 85 percent of state median income;
- (2) the elimination of a 25 percent reserve for activities to improve the quality of child care and other supplementary child care services;
- (3) a new reserve of 4 percent of funds for child care quality improvement activities to educate child care consumers and the public;
- (4) the elimination of CCDBG registration requirement for child care providers otherwise exempt from state or local registration laws;
- (5) a requirement that each state's "CCDBG Plan" must show how the state will meet the child care needs of families that receive TANF cash assistance, are in transition off TANF, or are at risk of becoming eligible for TANF. States must show that 70 percent of the TANF Child Care Block Grant funds are used to provide child care for such families and that a substantial portion of the remaining 30 percent will be used to provide assistance to low-income working families other than families receiving TANF cash assistance, trying to transition off TANF cash benefits through work, or at risk of becoming dependent upon TANF cash assistance; and,

(6) substantial increases in states' reporting requirements with respect to families receiving child care benefits, child care providers receiving benefits, and other data relating to services generated from federal child care funding.<sup>35</sup>

In addition to the two federal child care funding streams (TANF Child Care Block Grant and CCDBG), the Act gives states flexibility to transfer up to 30 percent of their TANF cash welfare block grant for use in child care programs. This transfer provision allows states to transfer cash welfare block grant money to Title XX Social Services Block Grants as well. However, no more than 10 percent of TANF cash welfare block grant funds may be transferred for social services purposes and the recipients of such funds must have incomes below 200 percent of the poverty level. The Act prohibits states from transferring TANF Child Care Block Grant and/or CCDBG funds for use outside of child care assistance.

#### *Comparison to Prior Spending Levels*

The Congressional Budget Office has estimated that from 1997 through 2002 the Act will increase child care outlays by \$3.5 billion over projected spending under the former law.<sup>36</sup> The total of TANF and CCDBG funding under the Act (if fully funded) for fiscal year 1997 is \$2.967 billion (\$1.967 billion in TANF Child Care Block Grant funds and \$1 billion in CCDBG funds). Before the new law's enactment, President Clinton had requested a total of \$2.495 billion for these programs for fiscal year 1997.<sup>37</sup> In raw numerical comparisons, federal child care spending under the Act appears to increase in relation to former law.

Under the prior law, however, AFDC Child Care and Transitional Child Care were open-ended federal funding streams. This meant that so long as a state spent money on these programs, it could expect federal matching dollars for every dollar spent. Under the Act, all welfare and child care block grants to the states are capped, regardless of state spending. Thus, the states will not necessarily have access to more federal child care funding than under prior law.<sup>38</sup>

Federal funding projections for child care remain unclear under the Act due to its complexity. For example, effective October 1, 1996, the Act reduced Title XX Social Services Block Grants to the states by 15 percent (from \$2.8 billion to \$2.38 billion). States are permitted to use the Social Service Block Grant in a variety of ways, including for child care services.<sup>39</sup> The impact of this cut upon child care, however, is uncertain because states may use TANF cash welfare block grant funds to provide child care assistance. In addition, the Act allows states to transfer up to 30 percent of TANF block grant cash welfare funds for child care assistance.

Much stricter work requirements under the new law are likely to result in greater demand for child care among the working poor.<sup>40</sup> Thus, even assuming that federal child care assistance expenditures under the Act exceed projected spending under prior law, increased demand for child care subsidies may very well outpace any increase in funding. If federal

funding for child care falls short of the level necessary to carry out the work participation requirements of the Act, states will be responsible for funding the gap.<sup>41</sup>

The size of a child care funding gap under the Act, or whether such a gap will exist at all, is difficult to project. Some policy analysts predict that if states restrict welfare eligibility, welfare caseloads will decrease, as will the number of families eligible for child care assistance. Accordingly, there would be fewer families eligible for an increased pool of child care funding, possibly creating a surplus in such funds.<sup>42</sup> More likely, however, states will find that the new work requirements for welfare recipients will increase the total demand for child care subsidies for welfare recipients and for the broader population of the working poor. Because almost two-thirds of the 1.5 million children receiving federal child care subsidies are from working poor families, this situation has already forced states to face the growing problem of welfare recipients and the working poor competing for child care subsidy dollars. For instance, the State of Wisconsin has revised its child care subsidy eligibility criteria, making it much more difficult for working poor families to qualify.<sup>43</sup>

The Act is fueling the debate about child care as work for welfare recipients. Under the Act, a recipient can meet TANF work participation requirements through providing child care for another recipient who is engaged in community service in fulfillment of TANF work program requirements.<sup>44</sup> Although this may appear to be an efficient system, the Act provides no details for regulation of this care or how such a program will be implemented. Child care professionals warn that the expectation that welfare mothers will assimilate easily into this field without adequate training and support is naive and potentially disastrous.<sup>45</sup>

Achieving and maintaining the quality of child care services for families remains a stated goal of federal policy and one purpose of the new federal Child Care Bureau. The Secretary of Health and Human Services established the Child Care Bureau in January 1995 as part of the HSS Administration on Children, Youth and Families. The bureau will play a key role in drafting the regulations for Title VI of the Welfare Reform Act.

The Child Care Bureau is responsible for administering federal child care funds to the fifty states, U.S. territories, and Indian tribes. In anticipation of the Act's impact on child care policy at the state level, the federal Child Care Bureau has been working closely with state officials in an effort to achieve quality child care services. As part of this effort, the bureau has established the National Child Care Information Center, a valuable resource that provides up-to-date child care information to government administrators, policy makers, parents, child care providers, and the general public.

To reduce the administrative burden on states, the Child Care Bureau combined the staff of the former federal AFDC, At-Risk, and Transitional Child Care programs with the staff for the Child Care and Development Block Grant program. This parallels the Act's consolidation of federal child



care subsidies into a joint federal funding stream for child care subsidies, now known as the Child Care and Development Fund. The bureau predicts that the new system, characterized as "seamless," eventually will be easier for the states in terms of administration because states no longer will need to determine a poor family's eligibility under multiple child care subsidy programs.<sup>46</sup>

The Child Care Bureau provides a source of federal guidance to states in adapting to the new regulatory environment for federal child care support. It may also help states develop a more efficient delivery system for child care benefits under the Act. The bureau, however, cannot change the structural limitations of welfare reform as we know it. Over time, the Act is still likely to result in a funding gap for child care. And for many poor parents, the federal entitlement to child care support, which previously was tied to AFDC, has disappeared.

### Conclusion

The 1996 Welfare Reform Act has mixed implications for child care policy. Federal funding to the states to support child care efforts will increase in the short term. Moreover, changes in the structure of that funding will give states more flexibility in administration of federal subsidies. Opportunity exists at such a fluid moment in public policy to craft new child care initiatives and to build upon an already decentralized system.<sup>47</sup>

The question of child care for low-income families trying to get off welfare, as well as for working poor trying to sustain employment, is central to the welfare reform challenge. A major obstacle for obtaining and sustaining employment among the working poor is the lack of adequate and affordable child care. With the new law pushing more people from welfare to work, demand for child care services will intensify. Although federal expenditures for child care may increase in the near term, it is unclear whether funding levels now and in the future will be sufficient to meet the growing need for subsidized day care for children of the working poor.

A critical change is that federal funding for child care in the coming years is capped and may very well fall short of increasing demand. Furthermore, poor families have lost their entitlement to child care subsidies formerly associated with AFDC. As funding responsibility shifts to the states, some states will foot the cost, while others will restrict eligibility and leave many poor and moderate-income families without adequate child care support.

Welfare "reform" is arguably a misnomer for this Act because it transfers the work of substantive reform to the states.<sup>48</sup> With Orwellian flare, the very name of the Act is misleading, implying that "work opportunity" and "personal responsibility" will result from dismantling the federal welfare system.<sup>49</sup> Although the Act mandates work and favors certain parenting choices, scant evidence exists that the legislation is likely to yield the desired changes in personal behavior or lead to employment opportunity and economic self-sufficiency for the working poor.<sup>50</sup>

The stated goals of the Act appear disconnected from its substantive provisions. With respect to "work opportunity," the Act directs that states require adult recipients to work after two years on public assistance, and it sets overall work participation rates that each state must meet. Nothing in the Act, however, addresses the paucity of quality jobs available to those on public assistance and the obstacles faced by the working poor in sustaining employment.<sup>51</sup>

Despite the Act's emphasis on work requirements, over two-thirds of AFDC recipients are children, the adult beneficiaries are parents or relatives caring for children, and many of these adults are already working.<sup>52</sup> Projected gaps in child care funding, moreover, will fall hardest on the working poor and may undermine policy efforts to promote transition from welfare to work.

The findings reported in the Act reflect an explicit aim to modify the personal behavior of welfare recipients, with particular focus on the negative consequences of out-of-wedlock births.<sup>53</sup> Yet, social science research suggests that welfare programs are not among the primary reasons for out-of-wedlock births.<sup>54</sup> Even if the Act were to encourage AFDC recipients to work more and bear fewer children out of wedlock, these rationales have little to do with many of the legislation's sweeping changes.

Supporters of the Act claim that it will rescue the poor from a dependency trap and unleash new creativity in state and local policy. Critics see the Act as abandonment of the poor, predicting brutal cuts in state support and no sign of employment opportunities necessary for welfare recipients to make the transition to ongoing work.<sup>55</sup> From either point of view, the new federal welfare rules present each state with the challenge of reforming its own regime for reducing and coping with poverty—all with new limits on federal funding. The result is likely to be a patchwork of policies with wide disparities among the states.<sup>56</sup>

The question of child care is central to welfare policy. Welfare reform, if it is to succeed, must help generate better jobs and craft targeted policies for the working poor. For parents to make the transition from welfare to work and to sustain employment, adequate public support for affordable, quality child care is essential.

1. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

2. In this article, we highlight major changes in federal welfare law with an emphasis on federal child care subsidies. For a more thorough explanation and summary of the Act, see AMERICAN PUBLIC WELFARE ASSOCIATION (APWA), THE NATIONAL GOVERNORS ASSOCIATION (NGA), & THE NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL), THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (CONFERENCE AGREEMENT FOR H.R. 3734), ANALYSIS (Aug. 1996) <<http://www.apwa.org/reform/analysis.htm>>; DAVID A. SUPER ET AL., CENTER ON BUDGET & POLICY PRIORITIES, THE WELFARE CONFERENCE BILL (Aug. 13, 1996); MARK GREENBERG & STEVEN

SAVNER, CENTER FOR LAW & SOCIAL POLICY, A DETAILED SUMMARY OF KEY PROVISIONS OF THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT OF H.R. 3734 (Aug. 1996) <<http://epn.org/clasp/clkccp.html>>; MARK GREENBERG, CENTER FOR LAW & SOCIAL POLICY, A SUMMARY OF KEY CHILD CARE PROVISIONS OF H.R. 3734 (Aug. 1996) <<http://epn.org/clasp/clkccp.html>>; CHILDREN'S DEFENSE FUND, SUMMARY OF WELFARE BILL (Aug. 1996) <<http://www.tmn.com/cdf/welfarebill.html>>; Vee Burke, *Welfare Reform*, CRS Issue Brief 93034, Cong. Res. Serv. (Libr. of Cong.) (Aug. 2, 1996); OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, DEP'T OF HEALTH & HUMAN SERVICES, PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (H.R. 3734), SUMMARY OF PROVISIONS (Aug. 1996) <<http://aspe.os.dhhs.gov/hsp/isp/reform.htm>>.

3. Peter Pitegoff, *Child Care Enterprise, Community Development, and Work*, 81 GEO. L.J. 1897, 1902-09 (1993).

4. HOUSE SELECT COMM. ON CHILDREN, YOUTH, AND FAMILIES: KEY TRENDS IN THE 1980S, 100th Cong., 2d Sess. 17-19 (1988); Barbara Reisman, *The Economics of Child Care: Its Importance in Federal Legislation*, 26 HARV. J. ON LEGIS. 473, 485-86 (1989); Karen Hill-Scott, *No Room at the Inn: The Crisis in Child Care Supply*, in *CARING FOR CHILDREN: CHALLENGE TO AMERICA 197, 206-09* (Jeffrey S. Lande et al., eds., 1989).

5. LADONNA A. PAVETTI & AMY-ELLEN DUKE, URBAN INSTITUTE, INCREASING PARTICIPATION IN WORK AND WORK-RELATED ACTIVITIES (REPORT TO U.S. DEP'T OF HEALTH AND HUMAN SERVICES) lvii-lxii (1995); Sandra Clark & Sharon Long, *Child Care Block Grants and Welfare Reform*, in *WELFARE REFORM: AN ANALYSIS OF THE ISSUES 25 n.7* (Isabel V. Sawhill ed., 1995); Jennifer Preston, *Welfare Rules Intensify Need for Day Care*, N.Y. TIMES, Nov. 11, 1996, at B1. See also Joe Sexton, *Welfare Mothers and Informal Day Care: Is It Up to Par?*, N.Y. TIMES, Oct. 14, 1996, at B1 (New York City officials project that by the year 2000, under the new law, an additional 300,000 children under age twelve could require subsidized care at an estimated cost to the city of \$380 million per year.).

6. See *infra* text accompanying notes 36-46, comparing federal child care funding under the Act to prior spending levels.

7. For more information regarding the Act's effective dates, see GREENBERG & SAVNER, *supra* note 2, at 58-61.

8. CHRISTOPHER P. LAMB, CENTER ON SOCIAL WELFARE POLICY & THE LAW, LEFT TO THE TENDER MERCIES OF THE STATES: THE FATE OF POOR FAMILIES UNDER A CASH ASSISTANCE BLOCK GRANT 5-6 (1995).

9. Projected federal Food Stamp savings through 2002 are more than \$23 billion. These savings are achieved through an across-the-board cut in Food Stamp benefits. In concrete terms, overall benefits will be reduced from an 80-cent per meal subsidy to 66 cents. Moreover, the Act restricts eligibility for Food Stamps of unemployed adults without children to three months (or six months in certain cases) within a three-year period. For a more complete description of the Act's changes to the Food Stamp program, see Burke, *supra* note 2, at i; SUPER ET AL., *supra* note 2, at 15. Roughly half of these savings (\$23.7 billion) is tied to restrictions in alien eligibility for cash welfare, Food Stamps and SSI. Changes to the Food Stamp program account for a projected savings of \$23 million.

10. Kathleen A. Kost & Frank Munger, *Fooling All of the People Some of the Time: 1990s Welfare Reform and the Exploitation of American Values*, 4 VA. J. SOC. POL'Y & L. 3, 77 (1996).

11. With regard to cash benefits to poor families, the Act repeals: (1) Aid to Families with Dependent Children (AFDC), the primary cash assistance program for families; (2) Emergency Assistance to Families with Children, which provided emergency aid to families for up to one month per year; and, (3) the Job Opportunities and Basic Skills program (JOBS), the employment, training and education program for AFDC recipients.

12. Welfare Reform Act § 401.

13. 42 U.S.C. § 601; Welfare Reform Act § 103.

14. Welfare Reform Act § 401(a). *But see infra* notes 48-54 and related text (suggesting a disconnection between the stated goals of the Act and its likely result).

15. See Burke, *supra* note 2, at 5. In addition to this \$16.4 billion to states, the Act provides \$4.5 billion for supplemental grants, contingency funds, out-of-wedlock bonuses, and performance bonuses. *Id.*

16. CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS, WELFARE REFORM IN 1996 BUDGET RECONCILIATION LEGISLATION, at 2 (July 7, 1996).

17. 42 U.S.C. § 603. This percentage rate is referred to as the "Medicaid matching rate."

18. To be eligible for TANF Block Grant funds, however, states must meet the Act's requisite threshold spending levels or "maintenance-of-effort" requirement described *infra*, text accompanying note 25.

19. SUPER ET AL., *supra* note 2, at 4.

20. See APWA ANALYSIS, *supra* note 2, at 3 ("Activities that were authorized under Title IV-A and IV-F as of Sept. 30, 1995, are eligible uses.').

21. See GREENBERG & SAVNER, *supra* note 2, at 27-28 (ambiguity remains with regard to the Act's definition of assistance).

22. Allowable work activities include unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job-readiness for up to six weeks and up to twelve weeks in states with high unemployment; community service programs; vocational education training for up to twelve months; job-skills training directly related to employment; education directly related to employment (for recipients without high school diploma or equivalency); studies toward GED; and provision of child care services to an individual participating in a community service program. Welfare Reform Act § 407 (Mandatory Work Requirements).

23. The Act describes an adult-supervised setting as a "second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement." *Id.* § 408(a)(5)(B)(i).

24. From Oct. 1, 1996, through June 30, 1997, states that have not submitted a welfare plan to HHS can still draw down federal "matching" dollars as they did under the prior law. After Oct. 1, 1996, federal matching funds are limited to a state's pro rata share of the TANF block grant. Because state shares of the TANF block grant during 1996 and 1997 are likely to be higher than projected state eligibility for federal matching dollars under the prior law, however, there is opportunity initially under the Act for states to receive more

money than they may have been entitled to under the prior matching system. GREENBERG & SAVNER, *supra* note 2, at 58; see David Firestone, *New York Losing Millions for Lack of Welfare Plan*, N.Y. TIMES, Oct. 9, 1996, at 1.

25. The Act permits states to transfer up to 10 percent of their TANF block grants to their Title XX Social Services Block Grant (SSBG). The SSBG is a capped entitlement to states under Title XX of the Social Security Act based upon total state population. The Title XX grant requires no state match and gives states great latitude in how the funds can be used. Notably, the Act also reduces Title XX funds by 15 percent until fiscal year 2002. See Peter T. Kilborn, *Little-Noticed Cut Imperils Safety Net for the Poor*, N.Y. TIMES, Sept. 22, 1996, at 1 (15 percent SSBG cut will adversely affect assistance for elderly poor, shelters, day care, and abused children). Under the Act, SSBG funds can be used by states for in-kind vouchers for families not eligible for federal cash assistance.

26. SUPER ET AL., *supra* note 2, at 1.

27. GREENBERG & SAVNER, *supra* note 2, at 58.

28. See *supra* note 5 (listing sources projecting increase in demand for child care).

29. See Burke, *supra* note 2, at 9; Karen Spar, *Child Care in the 104th Congress: Issues and Legislation*, CRS Issue Brief 95009, Cong. Res. Serv. (Libr. of Cong.), at 10 (Aug. 2, 1996).

30. Welfare Reform Act §§ 603, 605.

31. A description of all federal programs that touch child care would include both programs created specifically to provide child care and preschool education services (e.g., Head Start) as well as those that serve a different primary function but provide for child care support as a related activity (e.g., Job Training and Partnership Act). An accurate tabulation of federal subsidies to child care would include the "indirect" federal assistance provided through the child and dependent care tax credit, which is estimated to be the largest source of federal child care support. Such a complete description of federal child care programs and tabulation of related costs is not attempted here. For a more complete description of federal child care programs, see Spar, *supra* note 29.

32. 42 U.S.C. § 9858.

33. Spar, *supra* note 29, at 11-12.

34. Telephone Interview with Jennifer Chang, Special Assistant to the Associate Commissioner, Child Care Bureau, Department of Health and Human Services (Nov. 4, 1996).

35. See GREENBERG, *supra* note 2, at 3-7 (detailed description of changes to the CCDBG under the Act).

36. Spar, *supra* note 29, at 11.

37. *Id.* at 6-7.

38. GREENBERG, *supra* note 2, at 2.

39. Spar, *supra* note 29, at 8.

40. See *supra* note 5.

41. SUPER ET AL., *supra* note 2, at 10.

42. *Id.*

43. Clifford J. Levy, *Welfare and the Working Poor*, N.Y. TIMES, Nov. 17, 1996, at E5.

44. Welfare Reform Act, § 407.

45. NAT'L CENTER FOR THE EARLY CHILDHOOD WORKFORCE, INVESTING IN CHILD CARE JOBS IN LOW-INCOME COMMUNITIES (1996); Nat'l Center for the Early Childhood Workforce, *From Welfare to Working in Child Care: Possibilities and Pitfalls*, in RIGHTS RAISES RESPECT, Spring/Summer 1996, at 1.

46. Interview with Jennifer Chang, *supra* note 34.

47. See, e.g., Pavetti and Duke, *supra* note 5 (analyzing child care aspects of welfare to work programs in five states).

48. The Act, according to Senator Daniel P. Moynihan, "does not 'reform' Aid to Families with Dependent Children. It abolishes it." Daniel P. Moynihan, *They Call It Reform, But Really It Abolishes Aid to the Needy*, BUFFALO NEWS, Aug. 14, 1996, at B3.

49. See Lucy A. Williams, *Race, Rat Bites and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, XXII FORDHAM URB. L.J. 1159, 1191-95 (1995) (analyzing the destructive personal and policy effect of media perpetuation of welfare stereotypes). Cf. GEORGE ORWELL, NINETEEN EIGHTY-FOUR (1949) ("War is Peace, Freedom is Slavery, Ignorance is Strength" are the three slogans of "the Party" in Orwell's novel and an example of "Newspeak," the official language of Orwell's Oceania.).

50. Kost & Munger, *supra* note 10. Cf. Lucie White, *No Exit: Rethinking "Welfare Dependency" from a Different Ground*, 81 GEO. L.J. 1961 (1993) (countering the myth that welfare policy causes female-headed households to remain poor).

51. JOEL HANDLER, THE POVERTY OF WELFARE REFORM 39-44 (1995); Sheldon Danziger & Jeffrey Lehman, *How Will Welfare Recipients Fare in the Labor Market?* CHALLENGE, Mar.-Apr. 1996, at 31; WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR (1996); William Julius Wilson, *When Work Disappears*, N.Y. TIMES MAG., Aug. 18, 1996, at 26. The low-wage labor market is inhospitable for many would-be workers, as wage rates for unskilled workers have fallen in real terms and available jobs often provide insufficient pay, benefits, and stability to support a family. Sandra K. Danziger & Sheldon Danziger, *Will Welfare Recipients Find Work When Welfare Ends? in WELFARE REFORM: AN ANALYSIS OF THE ISSUES* 41 (Isabel V. Sawhill ed., 1995.).

52. CENTER ON SOCIAL WELFARE POLICY & LAW, WELFARE MYTHS: FACT OR FICTION? EXPLORING THE TRUTH ABOUT WELFARE 21 (1996). Evidence suggests that welfare recipients do not lack a work ethic. In fact, over two-thirds of the adults receiving AFDC in any given month have recent employment experience, either while receiving or prior to their receiving public assistance. MARY JO BANE & DAVID ELLWOOD, WELFARE REALITIES—FROM RHETORIC TO REFORM 49 (1994), cited in WELFARE MYTHS, *id.* at 21 n.4. A 1993 study found that at any given time about a third of mothers in families receiving AFDC were working, and about half of all single mothers were working at some time while receiving AFDC. Kathleen Mullan Harris, *Work and Welfare Among Single Mothers in Poverty*, 99 AM. J. SOC. 344 (1993).

53. Welfare Reform Act § 101.

54. SHARON PARROTT & ROBERT GREENSTEIN, CENTER ON BUDGET AND POLICY PRIORITIES, WELFARE, OUT-OF-WEDLOCK CHILDBEARING, AND POVERTY: WHAT IS THE CONNECTION (1995). The Center on Social Welfare Policy and Law has found that the typical birthrate among women receiving AFDC is lower than that in the rest of the population. WELFARE MYTHS, *supra* note 52, at 20. Federal government studies have shown that the pattern of family sizes among welfare

recipients is not unlike the pattern for the general population. ADMINISTRATION FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVICES, CHARACTERISTICS AND FINANCIAL CIRCUMSTANCES OF AFDC RECIPIENTS: FY 1993 1, cited in WELFARE MYTHS, *supra* note 52, at 19 n.1.

55. See, e.g., Mary Jo Bane, *Stand By for Casualties*, N.Y. TIMES, Nov. 10, 1996, § 4, at 13 (analyzing "flaws" in the Welfare Reform Act and anticipating severe risk of harm to poor children); Christopher Georges & Dana Milbank, *Sweeping Overhaul of Welfare Would Put Onus on States*, WALL ST. J., July 31, 1996, at 1 (reporting on the imminent passage of the Act and recounting perspectives of supporters and detractors); Robert Pear, *Senate Passes Welfare Measure, Sending It for Clinton's Signature*, N.Y. TIMES, Aug. 2, 1996, at A1 (including sidebar at A16 with excerpts from Senate debate); *Some Look at the Welfare Plan with Hope, But Others Are Fearful*, N.Y. TIMES, Aug. 4, 1996, at 26 (quoting a range of reactions to the welfare reform legislation).

56. Harvard Professor Paul E. Peterson predicts that states will find themselves in a "race to the bottom—a race to cut welfare benefits faster than their neighbors, thereby endangering the well-being of the most marginal members of society. . . ." Paul E. Peterson, *State Response to Welfare Reform: A Race to the Bottom?* in WELFARE REFORM: AN ANALYSIS OF THE ISSUES, *supra* note 5, at 7.