WELFARE REFORM AND CHILD CARE: A PROPOSAL FOR STATE LEGISLATION

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INTRODUCTION

Without subsidized child care, Dianne Williams, the mother of an eighteen-month-old son, would never have left welfare and earned the post-secondary degree that led to her current job as a senior secretary;[1] Tammy Stinson, a U.S. Air Force veteran and 29-year-old mother of two children, would spend up to $150 of her weekly $200 salary on child care, increasing the likelihood she would turn to welfare or live in poverty;[2] Jerry Andrews, a graduate of a government-funded early childhood education program, might not earn $31,200 a year and be working towards an engineering degree.[3] These individuals are lucky. The vast majority of children who need subsidized child care do not receive it.[4]

This shortage creates three problems. First, it contributes to underemployment because job options are greatly reduced when child care is unavailable. Second, it erodes the wages of parents who do work because low-income families spend a debilitating percentage of their earnings to pay for the care of their children. Third, it relegates many children to poor quality child care settings, compromising their academic

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1 Marilyn Gardner, *Child Care: Best Ticket Off Welfare?* CHRISTIAN SCI. MONITOR, Sept. 27, 1995, at 1.

2 B.G. Gregg, *Child Care: Caring For Our Future*, CINN. ENQUIRER, Oct. 10, 1995, at A1.

3 LAWRENCE J. SCHWEINHART & DAVID P. WEIKART, SIGNIFICANT BENEFITS: THE HIGH/SCOPE PERRY PRESCHOOL STUDY THROUGH AGE 27, 197-98 (1993).

4 *See* ADMINISTRATION FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUM. SERV., ACF CHILD CARE PROGRAMS SERVING CHILDREN AND FAMILIES, FACT SHEET 2 (1995) [hereinafter ADMINISTRATION FOR CHILDREN & FAMILIES, ACF FACT SHEET]; U.S. DEP'T HEALTH & HUM. SERV., CHILD CARE AND DEVELOPMENT BLOCK GRANT: FIRST ANNUAL REPORT TO CONGRESS ON PROGRAM SERVICES AND EXPENDITURES xiii n. 18 (1994). These sources point to shortfalls in the supply of federal subsidies but do not account for the impact of state subsidies. As this article argues, however, because states vary greatly in the extent to which they provide benefits and because these benefits are generally inadequate, it is appropriate to rely on the availability of federal subsidies as an indicator of overall child care availability.

In this article, subsidized child care refers to government-funded programs that either give funds to child care centers to enroll low-income children or provide parents with vouchers to purchase care from a provider of their choice.

potential and social well-being, and placing them at risk for delinquency and dependency.

Unfortunately, the current shortage of quality subsidized child care will only grow worse when the work requirements of the new welfare reform law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("the Act"),[5] take effect. This law rescinds entitlements to welfare payments for eligible families and, instead, makes block grants to states on the condition that states develop welfare-to-work initiatives that require individuals to work or perform community service.[6] These requirements will increase the demand for child care.[7] The Act addresses this anticipated increase in demand by authorizing Congress to appropriate $14 billion in child care block grants to states, an increase of $4 billion in federal child care funds.[8] These additional funds, however, are insufficient to subsidize child care for all the families that need it. Additionally, the law does not set minimum quality standards for child care and, by increasing states' discretion over the use of federal child care funds, may create incentives for states to prioritize the quantity of subsidized child care over its quality.

Experience with an earlier federal child care block grant coupled with initial reactions to the new law indicate that this increased demand and discretion will adversely affect the working poor, all children enrolled in government-subsidized child care, and, ultimately, the states' coffers. First, given limited resources and the federal mandate to institute welfare-to-work programs, it is likely that states will subsidize child care for welfare recipients at the expense of the working poor. Without sufficient child care subsidies, the working poor will be faced with a range of bad options. A parent could choose to leave a stable job to participate in a workfare program in order to gain priority for child care. Alternatively, if she chooses to keep her job and continues to pay for child care, her inability to keep up with expenses could force her to turn to public assistance. In addition to the disruption this will cause for families, in either scenario the state suffers due to the added strain on the state's assistance program or an increase in the number of families living in poverty.

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[5] Pub. L. No. 104-193, 110 Stat. 2105 (1996).

[6] § 103, 110 Stat. at 2113.

[7] U.S. GEN. ACCT. OFFICE, WELFARE TO WORK: CHILD CARE ASSISTANCE LIMITED; WELFARE REFORM MAY EXPAND NEEDS 5 (1995) [hereinafter GAO, WELFARE TO WORK]. New York City provides a stark example of the anticipated increase in demand. In the five boroughs over 191,000 children between the ages of six and eleven have a parent on welfare, yet there are only 25,000 child care slots. *Home Alone*, CITY LIMITS WEEKLY, Sept. 16, 1996, at 1.

[8] § 603, 110 Stat. at 2279. Due to a restructuring of federal child care funds, however, this is not necessarily an increase in total funds. *See infra* Part II.

Second, given the work requirements imposed by the new law and the penalities states face for failure to comply, states are likely to use their increased discretion over child care funds to spend the limited resources on augmenting the quantity — rather than the quality — of subsidized child care. While such a policy would compromise the development of all children, it would have particularly adverse consequences for low-income children, who suffer acutely from poor quality child care. By sacrificing the quality of child care in order to provide subsidies for more families, a state risks the lives of children living in poverty and may ultimately spend more in corrective measures if these children enter the criminal justice system, special education programs, and foster care.

These predictions of how states will allocate their grant funds are not far-fetched. Past experience with a federal child care block grant, the Child Care and Development Block Grant (CCDBG),[9] suggests that states are likely to favor quantity increases over an assurance of quality. Passed in 1990, this law was the first comprehensive federal attempt to address the need for subsidized child care. The CCDBG sought to combat child poverty by improving the quality and quantity, and reducing the cost, of child care for low-income working families. The law allocated seventy-five percent of the funds for child care subsidies to parents, and twenty-five percent of the funds — a "quality set-aside" — to efforts to improve the quality of child care and increase its supply.

While the CCDBG helped provide child care to many families that needed it and improved the quality of care, three problems compromised its effectiveness. First, and most importantly, the funds were insufficient to meet the demand for child care. This hurt the working poor in particular because states often gave preference for subsidies to parents on welfare entering the workforce. Second, while the quality set-aside helped make needed improvements, states did not address low care giver salaries, nor establish regulations for the majority of family child care providers — providers who, in their homes, care for children who may or may not be related to them. Finally, the CCDBG's voucher program, which allowed parents to purchase child care from any eligible care giver, did not provide parents with adequate counseling about child care options and did not ensure the existence of child care centers in low-income neighborhoods.

States can now apply the lessons learned from this experience when structuring welfare-to-work programs and child care support systems. The Personal Responsibility and Work Opportunity Act authorizes addi-

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[9] 42 U.S.C. § 9858 (1994). The CCDBG is only one initiative in a more complex web of federal laws concerning child poverty in general, and child care specifically. For a discussion of other federal child care programs see *infra* note 83.

tional spending for child care by adding $4 billion to the CCDBG and consolidating all federal child care funds into one program, the CCDBG. The law also makes several fundamental changes to the CCDBG in the Child Care and Development Block Grant Amendments of 1996 (CCDBG Amendments). These amendments, most significantly, give states broad discretion in the allocation of funds: states can either emphasize the quantity of child care subsidies or the quality of that care and the availability of different types of care.[10] The amendments repeal the balance established in the original CCDBG, mandating that seventy percent be used for subsidies and only four percent for quality and availability. States are at liberty to use the remaining thirty-six percent as they see fit. These changes, along with the new work requirements, could exacerbate the longstanding problems associated with the CCDBG. States should draw on lessons learned from six years of experience with the CCDBG and institute an effective child care program. This article proposes state legislation that does so.

First, to expand the availability of child care, especially for the currently underserved working poor, states should ensure that all low-income families receive child care subsidies once their child care expenditures exceed a fixed percentage of their income. Second, states should maintain current expenditures on quality, despite the lowering of federally-mandated quality expenditures, and address entrenched quality problems such as low care giver salaries and the lack of established or enforced regulations for family child care providers. Finally, states should build on the voucher program. To do so, states should improve parental counseling programs that educate parents about their options and sign contracts with child care centers in low-income neighborhoods, where centers tend to disappear without such contracts.

State child care legislation that embraced these goals would enable parents on welfare to obtain jobs, subsidize those parents who already work but spend a debilitating amount of their income on child care, and provide children with an early childhood education that would prepare them for productive lives. While these changes may require additional funds, states could finance the investment in four ways. First, they could use the money saved from providing child care to the working poor who might otherwise turn to public assistance, since merely subsidizing child care is less costly to a state than supporting a family on welfare or trying to move that family off welfare. Second, they could expand their tax bases by training child care providers to report their incomes. Third,

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[10] This article often refers to the quantity of child care versus its quality and availability. Quantity is used synonymously with the number of subsidies a state chooses to provide to low-income families, quality is the type of care children receive, and availability is the supply of certain types of child care.

they could streamline their administrative costs by running only one program, not both federal and state programs. Finally, states could forge partnerships with businesses to share the costs of child care. Moreover, increased funding ultimately will generate long-term savings, as members of a new generation lead productive lives, without burdening the criminal justice, foster care, and welfare systems.

Part I of this article discusses the current paucity of quality, affordable child care, and the effects of this shortage. Part II describes the child care provisions of the Personal Responsibility and Work Opportunity Act and then explores the lessons of the original CCDBG, providing the background for proposed state child care legislation. Part III proposes state child care legislation that maximizes the impact of the increased federal funding and decreased regulatory requirements, relying on the states' six-year experience with the CCDBG. To the extent that this legislation calls for additional state investment, Part III discusses how states can finance these investments.

I. THE CURRENT SHORTAGE OF CHILD CARE AND ITS EFFECTS

Even without welfare-to-work requirements, there is a scarcity of affordable quality child care in the United States for those living below or near the poverty level.[11] Although all states now spend some money on child care, there remains a great disparity among states' investments and most states do not provide care for all the children who need it.[12] Work requirements for welfare recipients will only exacerbate the current shortage.[13] This Part describes the shortage of child care before pas-

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[11] Child poverty is a severe problem in the United States today. The 1995 Census reveals that 20.8% of all children live in poverty. Moreover, children of color are disproportionately represented in poverty: 16.2% of white children, 41.9% of African American children, 40% of Latino children live in poverty. U.S. BUREAU OF THE CENSUS, CURRENT POPULATION SURVEY, MARCH SUPPLEMENT (1996).

[12] Before an infusion of federal child care funds in 1990, states varied widely in annual child care expenditures: Idaho spent twenty-four cents per child and Massachusetts spent $152.04. Half of all the states spent $25 or less. One-third of the states spent less than $17 per child. GINA ADAMS & JODI R. SANDFORT, CHILDREN'S DEFENSE FUND, STATE INVESTMENTS IN CHILD CARE AND EARLY CHILDHOOD EDUCATION 1, Attachment A (1992).

Many states are willing to spend far more money incarcerating their citizens. The cost of building and operating prisons is the fastest-growing item in many states' budgets. Fox Butterfield, *Political Gains By Prison Guards*, N.Y. TIMES, Nov. 7, 1995 at A1 (finding that current expenditures are $30 billion, up from $6.8 billion in 1980). In contrast, federal and state governments spent $2.4 billion on the main federal child care programs during fiscal year 1994. GAO, WELFARE TO WORK, *supra* note 7, at 4. In 1990 eleven states spent at least twenty-four times more money on correctional institutions than on child care. Nevada and Idaho spent 100 times more money, and Virginia spent seventy-five times more money. *See* ADAMS & SANDFORT, *supra* note 12, at 1.

[13] Under the new welfare law, states are required to institute welfare-to-work initiatives. Pub. L. No. 104-193, §103, 110 Stat. 2105, 2113 (1996). Some states have already done so.

sage of new welfare-to-work requirements and discusses three effects of that shortage. First, it argues that a lack of child care has been a barrier to sustained employment and that the current shortage continues to impede meaningful access to employment. Second, it asserts that for parents in low-wage jobs, the scarcity of affordable child care forces them to spend a debilitating percentage of their incomes on child care, placing them at risk for public assistance. Third, it demonstrates that the dearth of quality child care deprives children of an early childhood educational experience that could provide them with the building blocks for future academic and social success. This snapshot of the current need for child care will serve as an historical backdrop for what promises to be a surge in demand for child care under the new law.

A. THE SHORTAGE OF QUALITY CHILD CARE

The current demand for subsidized child care among families on welfare and the working poor far exceeds the supply. While an estimated 7,770,000 children need child care subsidies,[14] in fiscal year 1993, the federal government subsidized care for only 1,398,847 children.[15] Currently, California serves only fourteen percent of all eligible children; no family in Illinois has moved off a waiting list for child care in over one and a half years; and Michigan and South Carolina serve five percent or fewer of all eligible children.[16]

While there is a shortage of all types of care, the supply of infant care and care during nonstandard hours is particularly low.[17] Infant care

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For example, on April 26, 1996 Wisconsin Governor Tommy Thompson signed a new welfare law — Wisconsin Works, or W-2 — that requires all recipients to work. Public Assistance — Wisconsin Works, 1995 Wis. Legis. Serv. 289 (West). *See also* Sam Howe Verhovek, *States Are Already Providing Glimpse at Welfare's Future*, N.Y. TIMES, Sept. 21, 1995, at A1, B10 (reviewing state initiatives: Alabama "threatens to dock recipients a part of their benefits if they do not take an available job"; Texas shortened time limits for those on welfare who have job experience).

These programs will require increased investments in the supports that enable people to work. A recent report issued by the federal government concluded that "[a]s states move to expand work requirements, they may have to reconsider funding priorities and push to develop new sources of child care to meet the needs of welfare recipients and the working poor alike." GAO, WELFARE TO WORK, *supra* note 7, at 12.

14 *See* U.S. Dep't Health & Hum. Serv., *supra* note 4, at xiii n.18 (1994).

15 ADMINISTRATION ON CHILDREN & FAMILIES, ACF FACT SHEET, *supra* note 4, at 3 (noting that in fiscal year 1993, CCDBG funded some portion of care for 755,904 children; the Family Support Act JOBS program funded 201,389; Aid to Families with Dependent Children funded 137,855; Transitional Child Care funded 84,682; and Title IV At-Risk funded 219,017).

16 *See* CHILDREN'S DEFENSE FUND, BASIC FACTS ABOUT CHILD CARE K-1 TO K-3 (1995) [hereinafter CHILDREN'S DEFENSE FUND, BASIC FACTS].

17 GAO, WELFARE TO WORK, *supra* note 7, at 4, 9; ELLEN E. KISKER ET AL., MATHEMATICA POLICY RESEARCH, PROFILE OF CHILD CARE SETTINGS: EARLY EDUCATION AND CARE IN 1990 6 (1991).

is essential if states require — and many do[18] — that mothers of very young children work. Moreover, infants need specialized care and should not be placed with older children.[19] The lack of child care during nonstandard hours is also particularly problematic because in 1991 one in three full-time employees working nonstandard hours was a woman.[20] Moreover, over the next decade most new jobs will be in the service sector during nonstandard hours.[21]

The child care crisis is not limited to quantity problems; the quality of most child care is abysmal.[22] Quality child care is characterized by a low ratio of children to staff, small numbers of children cared for in a facility, stable and consistent relationships between care givers and children, well-trained staff, parental involvement, a safe environment, and developmentally stimulating activities.[23] Most providers in both centers

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18 *See infra* text accompanying note 152.

19 *See infra* text accompanying notes 65-70.

20 WOMEN'S BUREAU, U.S. DEP'T OF LABOR, CARE AROUND THE CLOCK: DEVELOPING CHILD CARE RESOURCES BEFORE 9 AND AFTER 5, p. 5 (1995) [hereinafter U.S. DEP'T OF LABOR, CARE AROUND THE CLOCK]. This is especially true for parents in rural areas where many jobs are in manufacturing plants or service industries and there is a great demand for evening, night and weekend workers. CHILD CARE DIVISION, U.S. DEP'T HEALTH & HUMAN SERVICES., IMPROVING CHILD CARE IN RURAL AREAS: PROMISING PRACTICES AND STRATEGIES 1 (1994). Moreover, in rural areas parents tend to commute longer distances to work, thus extending the number of hours needed for child care. *Id.* For a consideration of issues facing states providing child care in rural areas, see *id.*

21 U.S. DEP'T OF LABOR, CARE AROUND THE CLOCK, supra note 20, at 5.

22 The supply of quality child care may meet the demand for upper-income parents with the time and resources to obtain it, but parents without time or resources do not have the same options. One study indicates that most parents, regardless of income level, are incapable of evaluating quality, and therefore may not be demanding, or receiving, quality child care. COST, QUALITY & CHILD OUTCOMES STUDY TEAM, UNIVERSITY OF COLORADO AT DENVER, COST, QUALITY, AND CHILD OUTCOMES IN CHILD CARE CENTERS 1 (1995) [hereinafter COST, QUALITY, AND CHILD OUTCOMES]. Additionally, parents do not necessarily correlate quality care with proven quality indicators, such as licensing and regulations. SANDRA L. HOFFERTH & DUNCAN CHAPLIN, CHILD CARE QUALITY VERSUS AVAILABILITY: DO WE HAVE TO TRADE ONE FOR THE OTHER? 8-10 (1994).

23 For an explanation of this definition, see NICOLE POERSCH ET AL., CHILDREN'S DEFENSE FUND, CHILD CARE AND DEVELOPMENT: KEY FACTS 8 (1994). There are three widely-used scales to assess quality. These scales include state regulations and two standards developed in the nonprofit sector, the National Association for the Education of Young Children (NAEYC) and the Health, Education, and Welfare Day Care Requirements (HEWDCR) standards. State regulations generally set a floor for acceptable quality, and primarily focus on health and safety with minimal emphasis on the developmental needs of the child. ELLEN E. KISKER & CHRISTINE M. ROSS, MATHEMATICA POLICY RESEARCH, INC., AN OVERVIEW OF CHILD CARE SUPPLY AND DEMAND: ISSUES AND PROSPECTS 3 (Draft 1992). The NAEYC and HEWDCR standards, used to assess child care centers and family child care providers, respectively, establish more stringent requirements and emphasize the developmental needs of children. For example, the NAEYC recommends a ratio of five infants or toddlers per staff member, but nineteen states allow a higher ratio. Idaho allows twelve children per staff member, Mississippi allows nine, and Louisiana and Georgia allow eight. POERSCH ET AL. at 9. For a study that challenges some of these indicators of quality, see HOFFERTH & CHAPLIN, *supra* note 22, at 4-10.

and family child care[24] settings do not offer quality child care. Only one in seven centers provides care that promotes child development, while seven in ten provide care that could compromise a child's future learning abilities and one in eight provides care that threatens a child's health and safety.[25] The statistics are worse for infants and toddlers. Forty percent of these younger children are in centers that threaten their health and safety and only one in twelve centers available to them provide care that promotes child development.[26]

Additionally, the turnover rate for care givers is high. The average center loses twenty-five percent of its care givers within one year, primarily due to low wages,[27] as compared to six percent for public school teachers and ten percent for all U.S. employees.[28] The average child care teaching assistant earned $8,890 in 1992, a salary far below the poverty level for a family of three.[29] This turnover rate drastically affects children, who need consistency and stability from their care givers.[30]

The quality of family child care, although improvable with regulation, is even worse than that of center-based care. Using different evaluative terms than the study of center quality cited above, but implying roughly the same standards, a recent study of family child care found that "only nine percent of the [family child care] homes . . . rated as good

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24 Family child care includes (1) regulated providers caring for unrelated children in the provider's home; (2) unregulated providers caring for unrelated children in the provider's home (these providers are legally exempt from regulation because they care for small numbers of children); (3) illegally unregulated providers who care for children in the provider's home; and (4) relative providers who care only for children related to the provider. Family child care differs from center-based care where the children are cared for in a more institutionalized setting, not a care giver's home.

25 COST, QUALITY AND CHILD OUTCOMES, *supra* note 22, at 26; CARNEGIE CORP. OF NEW YORK, STARTING POINTS: MEETING THE NEEDS OF OUR YOUNGEST CHILDREN 16 (1994) (documenting the high teacher turnover and high child to staff ratios); POERSCH ET AL., *supra* note 23, at 8; NATIONAL RESEARCH COUNCIL, WHO CARES FOR AMERICA'S CHILDREN xii (Cheryl D. Hayes et al. eds., 1990) (concluding poor quality care, which occurs in all types of child care settings, is one of biggest problems within system, threatening child development).

26 COST, QUALITY AND CHILD OUTCOMES, *supra* note 22, at 26 (finding care givers did not wash their hands after diapering, thereby increasing the risk of spreading illness; care givers rarely held, cuddled, or talked to children; settings lacked toys and other developmental materials).

27 *See* KISKER & ROSS, supra note 23, at 5 (1992).

28 *See* POERSCH ET AL., *supra* note 23, at 10. It is also three times the national average for all U.S. employees. MARCY WHITEBOOK ET AL., THE CHILD CARE EMPLOYEE PROJECT, NATIONAL CHILD CARE STAFFING STUDY REVISITED: FOUR YEARS IN THE LIFE OF CENTER-BASED CHILD CARE 12 (1992).

29 WHITEBOOK ET AL., *supra* note 28, at 10 (citing poverty level for family of three as $11,186); COST, QUALITY AND CHILD OUTCOMES, *supra* note 22, at 45 (finding that child care workers, predominantly women, have larger foregone wages—what the employee could have earned in another job—even than in other female-dominated jobs; child care teachers forego $5,238 in wages per year, and teaching assistants forego $3,528 a year).

30 *See* ELLEN GALINSKY, THE COST OF NOT PROVIDING QUALITY EARLY CHILDHOOD PROGRAMS 5-6 (1990) (unpublished) [hereinafter GALINSKY, THE COST OF NOT PROVIDING].

quality (meaning growth-enhancing), while fifty-six percent are rated as adequate/custodial (neither growth-enhancing nor growth-harming), and thirty-five percent are rated as inadequate (growth-harming)."[31] There are remarkable variations in the quality of family child care.[32] While regulated care givers provide relatively high quality care,[33] care givers related to the children they care for, almost always unregulated under state law, provide the poorest quality care.[34] Relatives may give the poorest care because sixty percent of those surveyed did not choose to be child care providers, but did so to help the mother.[35] Moreover, sixty-five percent of relative care givers live below the poverty level, and therefore are suffering from the stresses of poverty and isolation.[36]

Despite the correlation between quality and regulation, many states exempt an estimated eighty-two to ninety percent of all family care providers from regulation.[37] In 1993, twenty-nine states exempted from regulation family child care providers caring for at least three children.[38] Some states are even more lenient. For example, South Dakota and Idaho exempt family child care providers caring for twelve children or less from even the most basic health and safety requirements.[39] Virginia exempts providers caring for eight or fewer children, and Iowa, Louisiana, and Ohio exempt providers caring for six or fewer children. Texas

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31 GALINSKY ET AL., THE STUDY OF CHILDREN IN FAMILY CHILD CARE AND RELATIVE CARE 4 (1994) [hereinafter GALINSKY ET AL., FCC STUDY]. Only 50% of children in family child care are attached to their care giver, 65% of parents believe they have no other option for child care, and 28% said they would choose alternate arrangements if it were possible. *Id.* These statistics were similar to quality in child care centers. *See id.* (only 50% of children are emotionally attached to care givers; 66% of parents say they have no choices, and 25% would change their arrangements if possible).

32 *See supra* note 24.

33 GALINSKY ET AL., FCC STUDY, *supra* note 31, at 47-51, Table B11 at 130. Quality care was correlated with a slightly higher number of children cared for in the home. *Id.* at 52-57 (providers with better quality ratings served three to six children; those with lower ratings served one to two children). The study posited that this may be because providers caring for larger numbers of children were "intentional providers" who chose this line of work and sought training and support. *Id.*

34 *See id.* at 47 (only 13% of regulated providers were rated as inadequate, as compared with 50% of unregulated providers and 69% of relative providers).

35 *Id.* at 51.

36 *Id.*

37 U.S. GEN. ACCT. OFFICE, CHILD CARE: PROMOTING QUALITY IN FAMILY DAY CARE 4 (1994) [hereinafter GAO, PROMOTING QUALITY]. The effects of these exemptions are manifold. For example, unlicensed family child care providers are ineligible for the federal Child Care Food Program (CCFP). This program reimburses family child care providers for meals, snacks, and a broader range of related activities, such as workshops on nutrition and child development training. *Taking Food from the Mouths of Babes*, CHILD CARE ACTIONEWS (Child Care Action Campaign, New York, NY), July-Aug. 1995 at 1.

38 HELEN BLANK, CHILDREN'S DEFENSE FUND, PROTECTING OUR CHILDREN: STATE & FEDERAL POLICIES FOR EXEMPT CHILD CARE 13 (1994) [hereinafter BLANK, PROTECTING OUR CHILDREN].

39 *Id.* at 12; Children's Defense Fund, Basic Facts, *supra* note 16, at I-3.

exempts providers caring for three or less children (other than the provider's children). Some states impose stricter standards. California exempts only providers who care for children from one unrelated family, and North Carolina exempts only those caring for two or fewer children less than four hours a day.[40]

Even those states that do regulate family child care providers do not impose tough requirements. For example, North Carolina requires no training and California requires that providers attend only an "orientation." Texas has the most stringent requirement of six hours of orientation training and twenty hours of training annually thereafter.[41] Further, aside from regulations, twenty-one states do not conduct criminal background checks of potential family care providers.[42] Even if states do impose regulations, monitoring is often haphazard. In twenty-nine states, inspectors visit family child care homes one time or less per year; in ten, inspectors visit only a sample of homes; in six, inspectors do not visit at all.[43] States with minimal, nonexistent, or unenforced regulations poorly serve the approximately one million children who are cared for in family care settings.

Significantly, these children are more likely to come from low-income families. First, because of the high cost of child care, low-income parents have fewer choices among types of care and, as a result, often enroll their children in cheaper, poorer-quality family child care. Second, because care in urban centers is in short supply,[44] many low income parents have no choice but to leave their children in family care. Indeed, more than fifty percent of low-income children are enrolled in family child care.[45] This is important because the consequences of inadequate care are particularly severe for low-income children.[46]

In sum, there is an inadequate supply of quality child care for low-income families. In particular, there is a shortage of care for infants, children whose parents work nontraditional hours, and the working poor. While many centers and family child care providers do not offer quality

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40 CHILDREN'S DEFENSE FUND, BASIC FACTS, *supra* note 16, at I-3.

41 GALINSKY ET AL., FCC STUDY, *supra* note 31, at 18.

42 *See* U.S. GEN. ACCT. OFFICE, CHILD CARE QUALITY: STATES' DIFFICULTIES ENFORCING STANDARDS CONFRONT WELFARE REFORM PLANS 3 (Feb. 11, 1994) (*Hearings before the Subcomm. on Reg., Bus. Opportunities & Tech. of the House Comm. on Small Bus.*, 102nd Cong. (1994) [statement of Joseph F. Delfico, Dir. of Income Security Issues, Dep't Health & Hum. Servs.]) [hereinafter GAO, STATES' DIFFICULTIES].

43 *Id.* at 4.

44 CHILD CARE FOR LOW INCOME FAMILIES: SUMMARY OF TWO WORKSHOPS, Ch. 2 (Deborah A. Phillips, ed., Electronic Version, 1996)

45 GAO, STATES' DIFFICULTIES, *supra* note 42, at 5-6; U.S. GEN. ACCT. OFFICE, CHILD CARE: CHILD CARE SUBSIDIES INCREASE LIKELIHOOD THAT LOW-INCOME MOTHERS WILL WORK 7 (1994) [hereinafter GAO, CHILD CARE SUBSIDIES INCREASE LIKELIHOOD].

46 *See infra* text accompanying notes 74-77.

care, unregulated family child care providers — who account for the care of one million children — offer the poorest quality care.

B. EFFECTS OF THE SHORTAGE OF SUBSIDIZED CHILD CARE

The shortage of subsidized child care hurts parents and children in three important ways. First, it impedes parents' ability to obtain jobs. Second, it keeps parents that do work from bringing home enough of their paychecks to support their families, often sending them back to welfare. Finally, it primes members of the next generation, deprived of the building blocks necessary for productive lives, for lives of dependency and delinquency.

Historically the absence of child care has been, and continues to be, a barrier to parental employment. In 1986 one in four young mothers was out of the work force because of a lack of child care.[47] In Illinois in 1991, child care problems kept forty-two percent of single parents receiving Aid to Families with Dependent Children (AFDC)[48] from working full-time, thirty-nine percent from looking for work as much as desired, twenty-six percent from working as much as desired, and thirty-nine percent from attending school.[49] A recent government report concluded that increasing the availability of child care subsidies would increase low-income mothers' work participation rates from twenty-nine percent to forty-four percent,[50] and "near-poor" mothers' participation rates from forty-three percent to fifty-seven percent.[51]

Welfare-to-work programs are intended to do just this: provide the support necessary, such as child care, to help parents on welfare obtain jobs and thereby earn their way out of poverty. While a discussion of the welfare-to-work model is beyond the scope of this article, it is important to note that this model may be overly-optimistic and not founded in economic or social reality. Initial experience running welfare-to-work programs demonstrates that parents often confront difficulties obtaining

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47 *See* Peter Cattan, *Child Care Problems: An Obstacle to Work*, MONTHLY LAB. REV., Oct. 1991. The problem was even worse for low-income mothers, 34% of whom were out of work due to a lack of child care. *Id.*

48 42 U.S.C. § 601-687 (1994) (repealed by the Personal Responsibility and Work Opportunity Act of 1996).

49 GARY L. SIEGEL & L. ANTHONY LOMAN, ILLINOIS DEP'T OF PUBLIC AID, CHILD CARE AND AFDC RECIPIENTS IN ILLINOIS 4 (1991). The same problems apply to school and vocational training. In the Illinois study, 58% of single parents on welfare had child care problems that caused them to be late or miss school. Moreover, 20% of single parents who lost work in 1991 and returned to welfare, and 42% of single parents who had quit school, did so because of child care problems. *Id.*

50 GAO, CHILD CARE SUBSIDIES INCREASE LIKELIHOOD, *supra* note 45, at 5.

51 *Id.*

jobs,[52] keeping jobs,[53] and earning enough money from the jobs to lift their family out of poverty.[54] Moreover, some commentators reject the theory that child care will increase employment and therefore decrease child poverty as too simplistic, arguing that while child care may be an important component in a parent's ability to obtain and maintain employment, it may not be enough to move a family off welfare or into a higher income bracket.[55]

If a state subsidizes child care for the working poor, however, it may help these families attain economic stability.[56] Nearly three in five children living in poverty under the age of six have parents who work full or part-time.[57] One factor contributing to the persistence of poverty for these working families is the debilitating amount these families spend on child care. While low-income families actually spend fewer dollars on child care than middle and upper-income families, the relative cost is much higher for low-income families. Families living below the poverty level in 1993 spent eighteen percent of their income on child care, as compared to seven percent for upper-income families.[58] A government

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52 In New York City less than 10% of participants in a workfare program were able to obtain full-time jobs. David Firestone, *Workfare Cuts Costs but Tracking New Jobs Poses Problems*, N.Y. TIMES, Sept. 9, 1996, at B1.

53 In Kansas City, a government welfare-to-work program selected participants who seemed likely to succeed in work placements. After 17 months on the job, only 217 of the initial 545 participants placed were still on the job. Jon Nordheimer, *Welfare-to-Work Plans Show Success is Difficult to Achieve*, N.Y. TIMES, Sept. 1, 1996, at § 1 (National Desk), at 1. Program administrators attributed the low success rate to a number of factors including employers' dissatisfaction with the participants' skill levels, attendance, promptness, and initiative. *Id.*

54 In Michigan, although investments in welfare-to-work programs resulted in 30% of welfare clients working — three times the national average — the wages the recipients earned were often below the poverty level. Peter T. Kilborn, *Michigan Puts Poor to Work But Gains Appear Precarious*, N.Y. TIMES, Oct. 24, 1995, at A1. *See also* Jason DeParle, *Less is More: Faith and Facts in Welfare Reform*, N.Y. TIMES, Dec. 3, 1995, at § 4, at 1 (Week in Review) at 1, 4 (citing a study that found that many former welfare recipients now working were actually worse off than their counterparts on welfare).

55 Gary L. Bowen & Peter A. Neenan, *Child Care as an Economic Incentive for the Working Poor*, 73 FAMILIES IN SOC'Y: J. OF CONTEMP. HUM. SERV. 295 (1992). The authors argue that child care resources should be directed to those parents who already have a job or an offer of a job and have pre-school children not receiving subsidized child care. Thus, limited resources are used in those situations where child care is the last barrier to obtaining or maintaining a job. *Id.* at 296.

56 Kilborn, *supra* note 54, at A1.

57 NATIONAL CENTER FOR CHILDREN IN POVERTY, YOUNG CHILDREN IN POVERTY: A STATISTICAL UPDATE 6 (1995) (58% of children in poverty under the age of six have parents who work).

58 LYNNE M. CASPER, U.S. DEP'T OF COMMERCE, WHAT DOES IT COST TO MIND OUR PRESCHOOLERS? 4 (1995). Another study concluded that low-income families spend 27% of their salaries on child care. *See* GAO, Child Care Subsidies Increase Likelihood, *supra* note 14, at 6. A study in Illinois found that the average cost of child care — $350 per month — will consume 47% of the wages from a full-time minimum wage job. *See* SIEGEL & LOMAN, *supra* note 49, at 75.

report found that if all single mothers worked full-time at their potential wage rates, one-third would still be in poverty. If the women worked thirty hours per week, seventy percent would live in poverty. Most importantly, after paying for child care, two-thirds of full-time workers, and three-quarters of part-time workers, would live in poverty.[59]

Child care subsidies for the working poor are essential to alleviate the need to turn to welfare. The burden on the working poor of paying for child care has serious effects. Parents who pay for child care themselves often incur substantial debt, file for bankruptcy,[60] or, most significantly for welfare reform efforts, turn (or return) to welfare.[61] Parents may turn to welfare in order to gain priority for child care subsidies, since almost all states give such a priority to those on welfare.[62] This priority status creates a perverse incentive for working parents to quit their jobs and turn to welfare.[63] Alternatively, parents may turn to welfare because they simply cannot support a family and pay the full cost of child care. Testifying to several committees in the House of Representatives, Jane Ross, Associate Director of the Income Security Issues at the General Accounting Office, discussed the impact of child care on low-

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59 U.S. GEN. ACCT. OFFICE, MOTHER-ONLY FAMILIES: LOW EARNINGS WILL KEEP MANY CHILDREN IN POVERTY 7 (1991).

60 A study conducted by the Greater Minneapolis Day Care Association considered the problem of long waiting lists for child care subsidies and concluded that as a result of the average eighteen-month wait for child care, 80% of the families waiting for subsidies paid for child care themselves, but 71% of these families incurred substantial debt or were forced to file for bankruptcy as a result. The study found that a parent with a monthly budget of $1,521 — the average income for a family on the waiting list — had only thirty-one dollars left for child care after paying for housing, transportation, food, medical expenses, and clothing. GREATER MINNEAPOLIS DAY CARE ASS'N, VALUING FAMILIES: THE HIGH COST OF WAITING FOR CHILD CARE SLIDING FEE ASSISTANCE 1,4-5, 17 (1995). The study interviewed 270 families, randomly selected from the 2,100 families on a county's waiting list for child care subsidies.

61 *Id.* at 16 (about 24% returned to AFDC while they waited for child care); CHILDREN'S DEFENSE FUND, CHILD CARE AND SELF-SUFFICIENCY FACT SHEET 3 (1993) (in Maryland, 20% of families whose subsidized care ended after the allotted one year, returned to AFDC while waiting for child care assistance); SIEGEL & LOMAN, *supra* note 49, at 4 (1991) (20% parents who left AFDC returned because of child care problems).

62 CHILDREN'S DEFENSE FUND, BASIC FACTS, *supra* note 16, at I-1; *see also* U.S. GEN. ACCT. OFFICE, CHILD CARE: WORKING POOR AND WELFARE RECIPIENTS FACE SERVICE GAPS 14-15 (1994); NANCY EBB, CHILDREN'S DEFENSE FUND, CHILD CARE TRADEOFFS: STATES MAKE PAINFUL CHOICES 17 (1994) (updated version). For example, sixteen states used CCDBG funds, originally intended for working poor families struggling to stay off welfare, to provide child care to families on welfare. *Id.* States also have been using CCDBG funds to provide child care to welfare recipients enrolled in the job training program of the federal Family Support Act, instead of using it for working poor families. *Id.*

This article is not making a judgment about whether parents on welfare or the working poor are more deserving of child care. Instead, it focuses on the perverse incentive created by giving priority to welfare recipients for child care. Both groups should be served—the working poor need child care just as much as those on welfare.

63 *See* GREATER MINNEAPOLIS DAY CARE ASS'N, supra note 60, at 16.

income mothers who work and the implications for welfare reform. Ms. Ross testified:

> [A]s states deplete funds for welfare clients, we found that they turn to funds originally intended for the child care needs of the working poor, putting the working poor at greater risk of welfare dependency. For . . . these reasons, we believe that welfare reform's goal of economic independence for the poor could be undermined if the problems in the child care subsidy system are not adequately addressed.[64]

Despite the need for child care subsidies for both those on welfare and the working poor, states often prioritize the former group at great cost to the latter. This is a losing strategy because states face revolving doors of welfare recipients and families never achieve economic independence and stability.

In addition to affecting parents' ability to obtain, maintain and earn a living wage from jobs, the shortage of quality subsidized child care negatively affects children's development. As greater numbers of mothers enter the work force,[65] child care plays an increasingly important role in the development of children. This is especially true for very young children in child care, since scientific research demonstrates that the first three years of a child's life are crucial to a child's mental development.[66] Child care generally benefits

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64 U.S. GEN. ACCT. OFFICE, CHILD CARE: CURRENT SYSTEM COULD UNDERMINE GOALS OF WELFARE REFORM 1 (1994) (*Hearings before the Subcomm. on Hum. Resources of the House Comm. on Educ. and Lab., and Congressional Caucus for Women's Issues*, 102nd Cong. (1994) [statement of Jane L. Ross, Assoc. Dir. Income Sec. Issues, Health, Educ., and Human Serv. Div.].

65 POERSCH ET AL., *supra* note 23, at 1. The Carnegie Corporation of New York reported 67% (twenty-three million) of women whose children were under age eighteen were employed. Only 47% of mothers were employed in 1975. Even mothers with very young children are now in the work force. In 1993, 51% of all mothers with children under age one were in the work force; 54% of mothers with children under age three; 64% of mothers with children ages three to five; and 75% of mothers with children ages six to thirteen. Moreover, the majority of these women work full-time: 69% of employed mothers with children under age three; 70% of employed mothers with children under age six; and 75% of employed mothers with children aged six through thirteen. Many of these women generate the sole income in the family. In 1993, 22% of mothers in the work force were the only wage earners in the family. CARNEGIE CORP. OF NEW YORK, *supra* note 25, at 4.

66 A recent report of a task force of the Carnegie Corporation cited new scientific research on brain development during the first three years of life and found:

> [A]n adverse environment can compromise a young child's brain function and overall development, placing him or her at greater risk of developing a variety of cognitive, behavioral and physical difficulties. In some cases these effects may be irreversible. But the opportunities are equally dramatic: a good start in life can do more to promote learning and prevent damage than we ever imagined.

CARNEGIE CORP. OF NEW YORK, *supra* note 25, at 4.

children,[67] and is particularly beneficial for a child whose home environment may not nurture her physical or social development.[68] For example, it can ensure that children receive nutritious snacks and meals.[69] Child care also helps parents become better care givers themselves.[70] Finally, considerations of physical injury, illness, or sexual abuse in a child care placement are statistically unlikely.[71]

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67 *See, e.g.*, 1 CHILD CARE ACTION CAMPAIGN, IS DAY CARE GOOD FOR CHILDREN? RESEARCH FINDINGS 1 (1993) (for any child, quality child care can aid development of social skills; if a child has a secure relationship with the parent and care giver, she can develop healthy relationships with both adults and peers); WHITEBOOK ET AL., *supra* note 28, at 9 (children in quality child care centers have more advanced social skills, better relationships with their care givers, and more positive attitudes towards child care than children cared for in lower-quality settings); COST, QUALITY & CHILD OUTCOMES, *supra* note 22, at 29 (children in quality child care centers "displayed more advanced language and pre-math skills and had more positive views of their child care situation and of themselves, had better relationships with their teachers, and had more advanced prosocial skills"). *But see* ISABELLE FOX, BEING THERE: THE BENEFITS OF A STAY-AT-HOME PARENT 21-24 (1996) (positing parents are the best primary caretakers for the first 2-3 years of a child's life); William R. Mattox, *What Mary Poppins Knew*, WALL ST. J., Feb. 4, 1993, A19 (editorial) (arguing that center-based child care stunting a child's development and investments in child care is "apt to exacerbate the parenting deficit in many children's lives"); FAMILY RESEARCH COUNCIL, 9 OUT OF 10 DUAL-EARNER COUPLES BELIEVE MOTHER AT HOME BETTER THAN DAY CARE (1993).

68 *See, e.g.*, NATIONAL RESEARCH COUNCIL, *supra* note 25, at 127; KISKER & ROSS, *supra* note 23, at 1; COST, QUALITY AND CHILD OUTCOMES, *supra* note 22, at 32 (quality care has an "even stronger positive influence on the development of children typically considered at greater risk for school failure"); U.S. GEN. ACCT. OFFICE, EARLY CHILDHOOD CENTERS: SERVICES TO PREPARE CHILDREN FOR SCHOOL OFTEN LIMITED 24-26 (1995).

While this article does not assume low-income parents are inadequate parents, child poverty adversely affects children in many ways; thus, children in low-income families are correlated with poorer outcomes. The Carnegie Corporation of New York noted:

> [p]overty undermines families and the well-being of children in many ways. These children are often hungry or inadequately nourished. Many live in overcrowded housing, in unsafe buildings or neighborhoods. Too many are homeless: studies estimate that, of the approximately 100,000 American children who are homeless each night, nearly half are under six years of age.
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> Such deprivation stacks the deck heavily against poor infants and toddlers. These children more often suffer poor health, maltreatment, and later academic failure. Poverty also seems intertwined with inadequate parenting skills and inconsistent parental behavior. Poor parents — often young, working, raising children alone, and having few supports — simply become overwhelmed, further lessening their infants' or toddlers' odds of developing normally.

CARNEGIE CORP. OF NEW YORK, *supra* note 25, at 8.

69 Child care plays an important nutritional role in a child's life since preschool children consume 75% to 80% of their nutritional intake during their hours in child care and programs often offer nutritious meals and snacks. CHILDREN'S DEFENSE FUND, BASIC FACTS, *supra* note 16, at A-2.

70 *Id.* at 9 ("when early childhood programs are effective, they do much more than teach the child. The parents are affected, and through this experience become better teachers, motivators, and advocates for their children.").

71 The preliminary research available shows that (1) children in child care may be at a slightly higher risk for respiratory disease; (2) while group child care will increase a child's exposure to hepatitis A, children are usually only mildly symptomatic; (3) children with meningitis will not attend child care due to hospitalization, thus there is no risk to other children;

Quality child care also will provide broader societal benefits. Child care helps prepare children for school, and a child that starts school prepared to learn is more likely to become a productive member of society.[72] Indeed, some advocates posit that child care can strengthen the national economy if children attend school and become productive members of the work force.[73]

While poor quality care is detrimental to all children, it is especially harmful to low-income children who already start life with fewer resources to encourage positive development.[74] Without quality child care that helps lay the foundation for productive lives, dependency and delinquency may replace academic success and social well-being. A child denied continuous, stable care has an increased risk of future academic and social problems.[75] Indeed, poor quality care can lead to aggressive behavior, poor social skills, decreased learning capacity, and poor language and social development.[76] Moreover, the effects of poor quality child care go beyond poor outcomes for the child. Poor quality child

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(4) the risk of HIV transmission is extremely low; (5) children in child care suffer no greater qualitative or quantitative physical injuries; (6) children are at a greater risk for sexual abuse in their own homes at the hands of a family member than in a child care setting; and (7) children are not at a greater risk for physical abuse or neglect. NATIONAL RESEARCH COUNCIL, *supra* note 25, at 109-16.

72 *See* CARNEGIE CORP. OF NEW YORK, *supra* note 25, at 9 (increased productivity is linked to improvements in human capital and providing child care ensures children will start school prepared to learn and will be future productive members of society). Quality child care improves school readiness, increasing a child's chances of educational success. In 1990, the National Governor's Association and President Bush formulated the National Education Goals. The first goal states, "By the year 2000, all children in America will start school ready to learn." NATIONAL GOVERNORS' ASS'N, NATIONAL EDUCATION GOALS (Feb. 25, 1990). Child care can play a crucial role in meeting this goal. *See* ELLEN GALINSKY & DANA F. FRIEDMAN, EDUCATION BEFORE SCHOOL: INVESTING IN QUALITY CHILD CARE 2-4 (1993).

73 *See* COMMITTEE FOR ECONOMIC DEVELOPMENT, WHY CHILD CARE MATTERS: PREPARING YOUNG CHILDREN FOR A MORE PRODUCTIVE AMERICA 1 (1993). The paper delineates broader societal advantages to quality child care:

> Policies that help children develop and parents work may produce additional benefits that accrue to society at large. A more productive work force can mean not only higher wages and business earnings but also a more competitive national economy. Reducing welfare dependency would be a major social achievement. Supporting the institution of the American family and rebuilding some of the "social capital" lost within some families are worthy objectives that can help strengthen the very fabric of society.

Id. at 3.

74 *See* Nazli Baydar & Jeanne Brooks-Gunn, Effects of Maternal Employment and Child Care Arrangements on Preschoolers' Cognitive and Behavioral Outcomes, 27 DEVELOPMENTAL PSYCHOL. 932, 935 (1991).

75 *See* GREATER MINNEAPOLIS DAY CARE ASS'N, *supra* note 60, at 1.

76 *See* GALINSKY, THE COST OF NOT PROVIDING, *supra* note 30, at 4-5 (poor quality child care predictor for "diminished achievement and poorer social skills"; aggressive behavior); CHILD CARE ACTION CAMPAIGN, *supra* note 67, at 1 (finding that "poor quality care can have detrimental effects on children").

care can adversely affect the job performance of a parent concerned about her child's well-being and safety.[77]

The benefits of subsidizing quality child care to the working poor clearly outweigh the burdens. Society is hurt when parents cannot work or must pay a debilitating percentage of their paychecks on child care. Society will ultimately pay more when a new generation fails out of school and burdens the criminal justice, welfare, and foster care systems.

II. LESSONS FROM THE 1990 CCDBG

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("the Act") dramatically changes the landscape of public assistance. Rescinding entitlements for eligible families, the Act provides for federal block grants[78] to the states, directing them to institute work requirements and limit the period of time during which a family may receive assistance. The Act also makes important changes to federal child care funds. It repeals several major funding streams for child care — Aid to Families with Dependent Children Child Care,[79] Transitional Child Care,[80] and At-Risk Child Care[81]— placing these funds, as well as an additional $4 billion, into the CCDBG.[82] Finally, the Act amends the CCDBG itself, most significantly by increasing state discretion over spending: each state can determine what percentage of funds to allocate to subsidies and what percentage to quality investments, subject only to broad federal guidelines. The amendments require states to spend seventy percent of the funds on subsidies and only four percent on quality and availability improvements, a marked decrease from the twenty-five percent mandated for quality and availability in the original CCDBG. States have broad latitude over the remaining thirty-six percent.

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77 *See* GALINSKY, THE COST OF NOT PROVIDING, *supra* note 30, at 13-15.

78 A block grant is a set amount of money given to the states by the federal government with relatively few restrictions on spending. Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the amount of each state's block grant is determined by previous federal welfare funding for levels from 1992-95. Pub. L. No. 104-193, § 103, 110 Stat. 2105, 2116 (1996).

79 42 U.S.C. §§ 601-687 (1994) (repealed 1996). This program provided an entitlement to child care for AFDC recipients engaged in work or work-related activities.

80 42 U.S.C. § 602(b),(g)(1) (1988) (repealed 1996). This program created an entitlement to child care for welfare recipients for one year after obtaining a job.

81 42 U.S.C. § 602(i) (1988) (repealed 1996). This program funded child care for families at risk of welfare involvement.

82 The new CCDBG will include a general entitlement fund, consisting of all the funds a state received under the AFDC, Transitional, and At-Risk child care programs. This is an entitlement to the states, not to an individual. A state is not required to expend any of its own funds in order to access these funds — in other words, there is no "state match" requirement to obtain these funds. The remainder of the funds is available to states through a state match program whereby a state can obtain a match for every dollar of non-federal money it spends on child care, so long as it maintains current levels of child care spending. § 603, 110 Stat. at 2279.

Given this increased flexibility, states should examine the lessons learned during six years of experience with a federal child care block grant and draw on these lessons when creating a child care program to accompany the new work requirements. The original CCDBG was the most far-reaching attempt by the federal government to meet the need for child care. While similar attempts had been made earlier,[83] the CCDBG served more low-income children than any other federal program.[84] The program, however, was not without problems.

This Part describes the original CCDBG and then delineates three important lessons learned from the law. First, it argues that while the

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83 Many of the various federal programs to subsidize child care have succeeded in part, but, taken together, they have failed to solve the growing problem of inadequate child care in the United States. The first substantial federal funding for child care began in the 1970s, although there were piecemeal efforts before then. *See generally* EMILY D. CAHAN, PAST CARING: A HISTORY OF U.S. PRESCHOOL CARE AND EDUCATION FOR THE POOR, 1820-1965 (1989) (describing past government efforts to provde care for low-income children). For example, the first federal program was implemented during the Depression, with the establishment of nurseries as part of the Works Progress Administration. Sandra L. Hofferth, *The 101st Congress: An Emerging Agenda for Children in Poverty in* CHILD POVERTY AND PUBLIC POLICY 203, 207 (Judith A. Chafel ed., 1993); Maryan W. Johnson, *The Regulation of Child Care*, 18 J. LEGIS. 45, 61-66 (1991). The second major program was also in response to a national emergency. When women started working in factories in vast numbers during World War II, the federal government passed the Lanham Act, authorizing $52 million to care for children who would otherwise be left unsupervised. Hofferth, *supra*, at 207. This funding ended, however, with the war. President Ford combined social service spending and earmarked some money for child care under Title XX of the Social Services Act. *Id.* at 208.

The late 1980s brought a flurry of congressional activity on child care, partly in response to a promise by Vice President Bush during his presidential campaign to enact federal child care legislation and fund Head Start for all four-year-old children. *See* GALINSKY & FRIEDMAN, *supra* note 72, at 118 (Congress introduced more than 200 bills between 1987 and 1990). The first major piece of legislation passed was the Family Support Act of 1988 (FSA), Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified as amended in scattered sections of 42 U.S.C. (Supp. 1992)), designed to help families transition from welfare to work. The FSA strengthened work requirements and guaranteed child care subsidies to AFDC recipients who were required to work or attend school through the Job Opportunities and Basic Skills (JOBS) training program. To counteract a potential disincentive to move off welfare because the recipient would lose child care subsidies, the FSA included the Transitional Child Care (TCC) program which guaranteed child care assistance and Medicaid coverage for up to one year after leaving AFDC.

In 1990 Congress passed, with bipartisan support, four major pieces of legislation designed to provide child care to low-income families. For a detailed description of the introduction and passage of these bills, see Hofferth, *supra*, at 217-25. The acts included: (1) a new grant program, the Child Care and Development Block Grant of 1990 (CCDBG); (2) a new entitlement program within Title IV of the Social Security Act (IV-A), giving child care assistance for families "at-risk" of welfare dependency; (3) an expansion of the Earned Income Tax Credit; and (4) an expansion of Head Start funding under the Human Services Reauthorization Act of 1990, designed to enroll every eligible four-year-old in a Head Start program by 1994. Even though $4.3 billion was authorized, enough money to fund every eligible child, only $2.2 billion was appropriated in 1992, thereby undercutting the legislative goal. *See* KISKER & Ross, *supra* note 23, at 22. In fiscal year 1994, the federal and state governments spent a total of $2.5 billion on child care programs. GAO, WELFARE TO WORK, *supra* note 7, at 3.

84 *See supra* note 15.

CCDBG increased the availability and affordability of quality child care, demand outstripped supply. It then finds that the quality of care remained poor. Finally, it concludes that the success of the voucher program was jeopardized due to inadequate counseling and the shortage of child care centers in low-income neighborhoods. This discussion will form the basis for the state legislation proposed in Part III.

A. THE STATUTORY SCHEME OF THE ORIGINAL CCDBG

The 1990 CCDBG permitted each state to apply for federal funds to subsidize child care.[85] An individual state's allocation depended on the number of children under the age of five, the number of children receiving free and reduced-price school lunches, and the state's per capita income.[86] To qualify for a subsidy, a child had to live in a family with an income below seventy-five percent of the state median income,[87] be under the age of thirteen, live with a parent who worked or attended a vocational or educational program, or receive protective services.[88] Congress appropriated a total of $732 million for fiscal year 1991, $825 million for 1992, $893 million for 1993 and 1994, and $942 million for 1995.[89]

One innovative element of the CCDBG was that, rather than allocating all funds for subsidies, it required a state to set aside twenty-five percent of the total funds to improve the quality of existing programs and to expand the supply of certain types of child care, with an emphasis on the latter.[90] States had to spend a majority of this set-aside — seventy-five percent (18.75% of the total funding) — to establish, expand or run child care programs for school-aged children and early childhood education programs.[91] Twenty percent of the set aside (five percent of the total funding) was earmarked for improvements to the quality of child care.[92]

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85 Three percent of the funds are set aside for Native Americans and 0.5% is allocated for the territories. 42 U.S.C. § 9858m(a), (b) (1994). The District of Columbia and Puerto Rico are considered states for the purposes of the act.

86 42 U.S.C. § 9858m(b)(1)-(4) (1994).

87 This level allows a state to provide child care for the working poor as well as those families living below the poverty level. States do have the option of establishing more stringent eligibility criteria, and priority must be given to children of families with very low incomes, 42 U.S.C. § 9858c(3)(B)(i) (1994). Importantly, this approach acknowledges regional differences in poverty levels, and does not repeat the mistake of the Census Bureau's poverty measurement, *see infra* note 162.

88 42 U.S.C. § 9858n(4)(A)-(C)(i)-(ii) (1994).

89 STAFF OF HOUSE COMM. ON WAYS AND MEANS, 103RD CONG., 2D SESS., OVERVIEW OF ENTITLEMENT PROGRAMS 578 (COMM. PRINT 1994); CHILD CARE ACTION CAMPAIGN, FEDERAL, STATE AND LOCAL GOVERNMENTS PLAY A CRITICAL ROLE IN CHILD CARE 2 (1995).

90 42 U.S.C. § 9858c(c)(3)(C) (1994).

91 42 U.S.C. § 9858f(a) (1994).

92 42 U.S.C. § 9858e (1994). Permissible activities include: (1) establishing, developing, expanding, operating or coordinating resource and referral services; (2) providing grants or

States could use the remaining five percent of the set aside (1.25% of the total funding) either to improve the quality or increase the supply of child care. Importantly, states had considerable discretion over the type of quality improvements they could make. This flexibility allowed a state to assess individually what types of quality improvements were necessary, promoting programs responsive to a state's needs. For example, Texas might want to improve the quality of its early childhood programs, which have historically been of poor quality, while Minnesota, which already makes substantial investments in quality improvements, could focus on more intractable problems, such as low care giver salaries.[93]

The "choice" debate of the late 1980s influenced this law. Debating the form of federal child care grants, a number of advocates called for a parental choice scheme, as opposed to a government-controlled "contracted care" system. Under a parental choice scheme, the government issues vouchers directly to parents who use them to purchase child care from a family child care provider or center.[94] The government then reimburses the provider, an individual or center. This voucher scheme differs from a contracted care system in which the government signs a contract with a center to provide care for a specified number of low-income children. The CCDBG struck a compromise between contracted care and vouchers. A parent could either enroll her child in a center that had a contract with the state, or opt for a voucher, equivalent in value to the cost of center-based care, to purchase child care from any eligible child care provider.[95]

The CCDBG broadly defined eligible child care providers, creating a range of options for parents. Acceptable providers included centers, group home child care, and family child care providers licensed and regulated under state law.[96] It also included child care provided by a family member, if that family member was registered and met state standards for care by a relative.[97]

The lack of state regulations for family child care providers was a major weakness in the CCDBG program. State laws differ on the standards for family child care. Some states exempt family child care prov-

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loans to help providers meet state and local standards; (3) monitoring compliance with these standards; (4) providing training and technical assistance in health and safety, nutrition, first aid, child abuse detection and prevention, and care of children with special needs; and (5) improving salaries of full- and part-time staff in the facilities. 42 U.S.C. § 9858e(1)-(5) (1994).

93 *See* LOUISE STONEY & ANDREA GENSER, THE NAT'L ASS'N OF CHILD CARE RESOURCE & REFERRAL AGENCIES, ESTABLISHING EFFECTIVE CERTIFICATE PROGRAMS: ISSUES FOR STATES TO CONSIDER 33-40 (1992).

94 *See* Hofferth, *supra* note 83, at 213.

95 42 U.S.C. § 9858c(C)(2)(A)(i)-(iii) (1994).

96 42 U.S.C. § 9858n(5)(A) (1994).

97 42 U.S.C. § 9858n(5)(B) (1994).

iders who care for small numbers of children or who are relatives of the children for which they care.[98] Unregulated providers potentially expose children to poor quality care, jeopardizing their immediate health and safety and compromising their long-term chances for academic and social development.[99]

B. LESSONS LEARNED FROM THE ORIGINAL CCDBG

Given the relative flexibility states possessed under the CCDBG, programs varied significantly from state to state. These variations created useful data on effective child care investments. A discussion of three central problems encountered by states provides background for the proposed legislation discussed in Part III.

1. *Lesson One: CCDBG Funds Were Insufficient to Subsidize Child Care for All Needy Families*

The CCDBG succeeded in reducing the cost of child care for those low-income families that received subsidies and it served a larger number of families than any legislation had served before. Helen Blank, an expert on child care legislation and the CCDBG, conducted an assessment of the program for the Children's Defense Fund in 1993 and concluded that the CCDBG had helped low-income families obtain more child care.[100] Importantly, because child care subsidies funds were drawn directly from the public fisc, the CCDBG succeeded in shifting the cost of child care away from the working poor and onto society at-large. This redistribution helped mitigate the disproportionate burdens of child care expenditure on low-income families.

Enabled by the new funding, some states made their subsidy eligibility requirements less restrictive. For example, nineteen states broadened their eligibility criteria by increasing the income level cutoff. Nine states raised the maximum income level for families already receiving child care assistance, enabling families to earn more money without losing child care subsidies. For example, Florida raised the income level cutoff for families already receiving assistance from 150% of the poverty level to 185%.[101] Others states expanded child care assistance to serve new groups. Colorado, for example, allowed two-parent families to re-

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98 *See supra* text accompanying notes 38-40.

99 *See supra* text accompanying notes 22-36.

100 HELEN BLANK, CHILDREN'S DEFENSE FUND, INVESTING IN OUR CHILDREN'S CARE: AN ANALYSIS AND REVIEW OF STATE INITIATIVES TO STRENGTHEN THE QUALITY AND BUILD THE SUPPLY OF CHILD CARE FUNDED THROUGH THE CHILD CARE AND DEVELOPMENT BLOCK GRANT vii (1993) [hereinafter BLANK, INVESTING IN OUR CHILDREN'S CARE].

101 *Id.*

ceive subsidies, whereas only a single parent could do so before the infusion of federal funds.[102]

Many states used the funds to help families that they already served. For example, forty states used CCDBG funds to increase child care options for low-income parents by encouraging providers to serve low-income families and by making child care more accessible.[103] To that end, states increased reimbursement rates for low-income children, thus eliminating one factor deterring providers from taking care of children from low-income families.[104] This was one of the program's tremendous strengths, because it provided low-income parents with more child care choices. Thirty states improved the sliding fee scale, requiring low-income parents to pay a smaller percentage of the cost of care, and thereby increasing its affordability.[105]

State investment, however, did not subsidize enough child care to meet the growing demand. While states did increase child care affordability and availability, they could do only so much with limited funds. As Blank noted:

> [T]hese examples of dramatic progress in extending child care assistance to low-income children and families are testament both to the ability of states to handle rapid expansions of their child care systems and to the immense scope of unmet need for child care help as low-income parents struggle to work and care for their children.[106]

Indeed, in fiscal year 1993, the CCDBG served 755,904 children, yet this was only a fraction of the projected 7,770,000 children in need of subsidies.[107] Many states maintained long waiting lists, or rejected all new applications due to the volume of requests. For example, Florida maintained a waiting list of 19,000 families.[108] Minnesota maintained a waiting list of 6,200 families, with many families waiting one year to obtain a subsidy. Most counties in Wisconsin and New Jersey had waiting lists. Oregon served only sixteen percent of the eligible families, while Texas

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102 *Id.* at viii.

103 *Id.* at xii.

104 *Id.*

105 *Id.* at viii.

106 *Id.* at vii.

107 *See* ADMINISTRATION FOR CHILDREN & FAMILIES, ACF FACT SHEET, *supra* note 4, at 3. In the same fiscal year, the various government programs subsidized, in part or in whole, child care for a total of 1,398,847 children, still far below the 7,770,000 children that need subsidies. *See id.*

108 All of the statistics in this paragraph can be found in NANCY EBB, CHILDREN'S DEFENSE FUND, CHILD CARE TRADEOFFS: STATES MAKE PAINFUL CHOICES, app. B, tbl. 2 (1994) (listing states with waiting lists for subsidized child care).

served only nine percent. Maryland's demand exceeded its supply by three times. Ohio's governor proposed to reduce the eligibility level for child care to the poverty level, thereby terminating 20,000 children from child care subsidies. In some counties, the only way for a family to receive child care was to return to public assistance, thus defeating the purpose of the CCDBG. Most states did not provide enough infant care, care during non-standard hours, and care for children of the working poor.[109] Under the CCDBG, some states chose to expand the supply of child care for underserved populations, but many states did not make these investments, leaving these groups without child care.[110]

In sum, while the CCDBG met some of the demand for subsidized care, it also underscored the vast need that remained. States faced difficult choices in deciding who would receive child care and at what levels of subsidy and quality. These questions are intrinsic to any program that relies on limited resources. A proposed balance will be discussed in Part III.

2. *Lesson Two: CCDBG Set-Aside Funds Improved Quality, but Some Problems Remained Unaddressed*

The CCDBG improved the quality of child care provided in the United States, but numerous problems remained unaddressed. States used quality funds to increase the training of child care providers and create resource and referral centers for parents and care givers; however, possibly due to limited funds, states failed to address low care giver compensation and the lack of family child care regulation. Both issues are integral elements of quality child care. The structure of the CCDBG was in part responsible for the restricted state funds: the twenty-five percent quality set-aside was designated not only to improve the quality of care, but to increase the supply of specified types of child care. Many states emphasized quantity over quality. In addition, funding for the administration of the voucher program also came from the set-aside, further reducing the amount available for quality improvements.

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109 *See supra* text accompanying notes 14-21.

110 Twenty-two states implemented infant care programs or helped existent providers expand to serve infants. Forty-six states started school-age programs or provided training for providers working with school-age children. BLANK, INVESTING IN OUR CHILDREN'S CARE, *supra* note 100, at x-xi. For a detailed account of school-age programs funded by the CCDBG, see *id.* at 13-14. Nineteen states expanded child care for teenage parents, many of whom are in school and have infants in need of child care. *Id.* at x-xi. For a list of the nineteen states expending funds in this area, see *id.* at 15. For special needs children, thirty-three states expanded child care facilities or improved the quality of existent services. *Id.* at x-xi. For example, Minnesota has tried to encourage family day care and other providers to work with special needs children. Washington state pays each county to provide child care for homeless children to prevent their involvement with the child protective services or welfare systems. *Id.* For a description of other initiatives, see *id.* at 17-18.

Still, with limited funds — the average state spent nine percent of total funding on quality improvements[111] — states made dramatic improvements to the quality of child care. For example, of the nine percent used for quality improvements, states used thirty percent to start or increase support for resource and referral programs.[112] Resource and referral agencies maintain a quality child care system[113] through programs that educate parents about child care options, collect data about child care supply and demand in the community, and, in some states, administer the voucher program.[114]

Nearly all states used some quality set-aside money to train child care providers.[115] This money was desperately needed; before the CCDBG, nearly half of all the states provided minimal or no training for care givers.[116] With the quality set-aside money, some states used training to develop career ladders — opportunities for advancement, both educationally and economically, in the field — for care givers.[117] These investments improved the quality of child care by encouraging care givers to be trained and continue training in child development. Career ladders make a career in child care more attractive,[118] thereby lowering the

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111 *See* ADMINISTRATION FOR CHILDREN & FAMILIES, ACF FACT SHEET, *supra* note 4, at back panel.

112 *Id;* BLANK, INVESTING IN OUR CHILDREN'S CARE, *supra* note 100, at x; DEP'T HEALTH & HUM. SERVICES, CHILD CARE AND DEVELOPMENT BLOCK GRANT: A SUMMARY OF STATE USE OF QUALITY AND AVAILABILITY FUNDS 5-6 (1994) [hereinafter HHS, QUALITY REPORT].

113 BLANK, INVESTING IN OUR CHILDREN'S CARE, *supra* note 100, at x.

114 *Id.* at x.

115 For a discussion of the importance of training, see *supra* text accompanying note 23.

116 BLANK, INVESTING IN OUR CHILDREN'S CARE, *supra* note 100, at ix, Table 1; HHS, Quality Report, *supra* note 112, at 8-9; ADMINISTRATION ON CHILDREN & FAMILIES, ACF FACT SHEET, *supra* note 4, at 3. *See* CHILDREN'S DEFENSE FUND, BASIC FACTS, *supra* note 16, at C-5.

For a detailed account of state efforts to improve child care training, see BLANK, INVESTING IN OUR CHILDREN'S CARE, *supra* note 100, at 1-7. The Children's Defense Fund notes:

> New state training initiatives include mentoring programs, statewide resource centers, training clearinghouses, more intensive training for child care centers serving low-income children, the use of public health nurses to train caregivers, the use of mobile vans to reach rural areas, and targeted efforts for caregivers working with special needs children in a range of child care settings.

Id. at ix-x.

117 For example, a state may help pay for a care giver child development course that will earn him a National Association for Family Day Care credential, or provide incentives for providers to meet NAEYC's accreditation stands. HHS, QUALITY REPORT, *supra* note 112, at 8.

118 *Invest in Day Care*, N.Y. TIMES, Feb. 13, 1995, A18 (editorial) (arguing for increased investments in child care to improve its quality, including higher salaries for caregivers). The low wages and lack of career ladders is documented in COST, QUALITY, AND CHILD OUTCOMES ET AL., *supra* note 25, at 5.

high rate of care giver turnover[119] and providing children with a more stable environment.

Decreasing staff-to-child ratios also improved child care quality. When Florida implemented a regulation decreasing the staff-to-child ratio, it achieved a dramatic improvement in quality.[120] The more stringent regulation improved the intellectual and emotional development of children, improved teaching styles, and increased overall quality ratings for providers.[121]

Quality improvement was seen in Connecticut, Minnesota, New York, Texas, and Virginia; these states used some of the quality set-aside money to enrich existing programs for low-income children.[122] These exemplary projects acknowledged the importance of early childhood education for low-income children who might not receive developmental support or health maintenance at home. These programs also taught parenting skills by involving a parent in his child's progress.

Despite these achievements under the CCDBG, quality child care remained scarce and several elements of quality care remained unaddressed — most significantly, low care giver compensation, and nonexistent or unenforced state regulations for family child care providers. In 1993 states spent only one percent of all quality funds to increase care givers' salaries, despite the correlation between increased salaries and child care quality.[123] North Carolina was one of the few states to invest in care givers' salaries. It funded a program that gave scholarships to care givers to earn associates degrees in early childhood education. The program rewarded participants with a five percent salary increase for the successful completion of eighteen credit hours of work.[124] Other states had no such program.

Although at least forty states used quality set-aside funds to improve licensing and monitoring systems,[125] enforcement remained sporadic, es-

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119 CARNEGIE CORP. OF NEW YORK, *supra* note 25, at 16.

120 CAROLLEE HOWES ET AL., FAMILIES AND WORK INSTITUTE, THE FLORIDA CHILD CARE QUALITY IMPROVEMENT STUDY 15 (1995) (interim report).

121 *Id.* at 15-24.

122 BLANK, INVESTING IN OUR CHILDREN'S CARE, *supra* note 100, at xi. For a detailed account of each program, see *id.* at 27-31.

123 ADMINISTRATION ON CHILDREN & FAMILIES, ACF FACT SHEET, *supra* note 4, at 3. Only nine states attempted to address the issue. *See* BLANK, INVESTING IN OUR CHILDREN'S CARE, *supra* note 100, at 8.

124 *See* CHILDREN'S DEFENSE FUND, BASIC FACTS, *supra* note 16, at C-5.

125 BLANK, INVESTING IN OUR CHILDREN'S CARE, *supra* note 100, at x. For example, Nebraska increased its monitoring and licensing staff from twelve people to twenty-five. *Id;* HHS, QUALITY REPORT, *supra* note 112, at 7-8 (3/4 of the states put funds toward licensing); ADMINISTRATION ON CHILDREN & FAMILIES, ACF FACT SHEET, *supra* note 4, at 2 (states spent 29% of all quality funds on monitoring programs).

pecially for family child care providers.[126] Some states used the funds to make grants and loans to providers to help them meet health and safety requirements and subsidize start-up costs.[127] Despite these investments, few programs were visited each year and eighty-two to ninety percent of all children were cared for in unregulated settings.[128]

In conclusion, the CCDBG quality set-aside helped increase the standard of child care. It was particularly effective in training, expanding and creating resource and referral centers, and enriching existing programs. However, it did not address low care giver salaries or the impact of family child care regulations, both integral elements of quality child care.

3. *Lesson Three: The Voucher Program Failed Parents in Two Ways*

The voucher component of the CCDBG was an innovative approach to government subsidies. It enabled parents to make choices about child care arrangements and introduced market incentives to the child care industry. In fiscal year 1993, 65% of all low-income parents receiving child care subsidies used vouchers to purchase their care.[129] Vouchers only work, however, if parents have a range of options and have adequate knowledge about those options.[130]

The success of the CCDBG's voucher program was compromised in two ways. First, limited funds restrained states from making adequate investments in parental counseling. Inadequate counseling reduces parents' ability to make informed choices.[131] Second, some states maintained inadequate contracts with child care centers in low-income neighborhoods, causing them to close due to insufficient funding.[132] This section focuses on the voucher programs in three states: California,

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126 For example, in North Carolina, 43 inspectors monitor 6,565 child care centers. U.S. GEN. ACCT. OFFICE, OFFICE OF THE INSPECTOR GENERAL, REPORT OF THE INSPECTOR GENERAL ON CHILD FACILITIES 3 (1994). For a discussion of family child care inspections, see GALINSKY ET AL., FCC STUDY, *supra* note 31, at 101.

127 HHS, QUALITY REPORT, *supra* note 112, at 6-7.

128 *See* GAO, PROMOTING QUALITY, *supra* note 37.

129 ADMINISTRATION FOR CHILDREN & FAMILIES, ACF FACT SHEET, *supra* note 4, at 4.

130 *See* CHILDREN'S DEFENSE FUND, CHILD CARE UNDER THE FAMILY SUPPORT ACT: EARLY LESSONS FROM THE STATES 30-31 (1992). Even with options and knowledge, however, parents may not be making informed choices that ultimately influence the market. *See* COST, QUALITY, AND CHILD OUTCOMES, *supra* note 22, at 16 (finding market is compromised by inadequate consumer knowledge: parents are unable to evaluate and differentiate quality child care; therefore, parental choice may not affect the demand for quality child care and thus will not have the desired effects).

131 *See id.*

132 *See Proposed Regulations Implementing State Grants for Child Care: Hearings Before the Subcomm. on Hum. Resources of the House Comm. on Educ. & Lab.*, 102nd Cong. 4 (1991) [hereinafter Blank Testimony] (Statement of Helen Blank).

Minnesota, and Texas.[133] It explores the success of these states' efforts to provide effective counseling and ensure the continued existence of centers. These findings provide the basis for preliminary conclusions on the effectiveness of the voucher program.[134]

The CCDBG made some efforts to inform parents about their options,[135] but the counseling onus lay with the states, whose programs varied widely. Counseling is necessary because low-income families are not always aware of the different types of child care available to them.[136] Meaningful parental choice begins with consumer education that is timely, unbiased, interactive, accessible, relevant, and useful.[137]

The California child care program's greatest strength was its high quality child care delivery system.[138] Local agencies administering the program offered excellent support services to parents, providing them

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133 This information comes from a study conducted for the National Association of Child Care Resource and Referral Agencies (NACCRRA), the leading agency in the country on referral issues. The study was conducted as a guide for states currently implementing programs. For a list of questions designed to aid implementation, see STONEY & GENSER, *supra* note 93, at 33-40.

134 Comprehensive data on the CCDBG's voucher program are limited because states were not required to complete implementation of the program until October 1992, and studies — particularly those conducted by or for the government — are generally published a few years after implementation.

135 For example, a consumer education program informs parents and the public about licensing and regulation requirements. 42 U.S.C. § 9858c(c)(2)(D) (1994). The CCDBG also requires a state to keep records of substantiated parental complaints and make them available to the public upon request. 42 U.S.C. § 9858c(c)(2)(C) (1994).

136 For example, under the Family Support Act (FSA), a welfare recipient who is required to work in the JOBS program has the right to child care during that period and for a year after leaving welfare under the Transitional Child Care (TCC) program. Yet, a study of the program showed that only one out of three JOBS participants received child care, and fewer received TCC benefits. CHILDREN'S DEFENSE FUND, CHILD CARE UNDER THE FAMILY SUPPORT ACT: EARLY LESSONS FROM THE STATES, 30-31 (1992). Some of the reasons for the low utilization rates include limited access to JOBS, limited information given to parents about child care benefits, low reimbursement rates for child care, limited time to seek care, and confusion about the implementation of transitional benefits. The problem is also due to inadequate counseling. A federal report on the FSA, released in September 1995, found that caseworkers were so overwhelmed by their caseloads, they stopped helping clients obtain child care. GAO, WELFARE TO WORK, *supra* note 7, at 10.

137 *See Using Federal Funds to Expand and Improve Child Care: Focus on Family Day Care*, Family Day Care Initiative Issue Brief (National Center for Children in Poverty, New York, NY), May 1991, at 4.

138 STONEY & GENSER, *supra* note 93, at 13. In response to a call for increased parental choice, California instituted the Alternative Payment system (AP) in 1976, administered by the California State Department of Education (CDE). *See id.* However, the program did not serve the majority of parents. Although the program earmarked considerable funds, it represented only 8.5% of the overall child care budget. The AP is very similar to the voucher program envisaged by the CCDBG, allowing parents to choose from a variety of child care arrangements.

The California voucher system selected administrators through a competitive bidding process, then handed over the program to this administrator, generally a local agency. The administrative agency could spend fifteen percent of the funds on administrative costs and an

with the tools to make informed choices. Part of the quality of the program, however, was attributable to the availability of additional public and private funds. If confined to the ten percent support services allotment of the CCDBG, the local agencies might not have provided the same level of support.[139]

In Texas, a state operating a counseling program with CCDBG funds alone, the quality of the counseling was much worse. Subsidized child care was not an integral part of the human services support system until after 1990. In 1989, Texas provided subsidized care for nearly 17,000 children.[140] With the infusion of federal funds, Texas served approximately 60,000 children.[141] Although Texas served greater numbers of children, it did not provide parents with adequate counseling. A parent had four days to locate a provider, and was not given much help in the process since caseworkers could serve 3,000-4,000 families.[142]

Minnesota provides an example of yet another potential pitfall in counseling: multiple agencies. In that state, local agencies administered the voucher program with a high degree of autonomy.[143] Each county conducted the program differently to reflect local needs and circumstances. In counties where the program was administered by an established local child care resource and referral agency designed specifically to help parents choose appropriate child care, that agency provided comprehensive counseling to parents.[144] However, in counties where the program was administered by a local social service department responsible for a multitude of programs in addition to child care, counseling was contracted out to a nonprofit agency, and was generally less success-

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additional ten percent on supportive services, i.e., counseling parents. *See id.* at 12. The agencies were paid in advance to avoid cash flow problems.

Although the CDE established general operating guidelines for the voucher program, each local administrative agency could adapt the guideline to meet local needs. The NACCRRA study found this flexibility was used to advantage. For example, in rural areas, the agency conducted in-take interviews with clients over the phone. *See id.* A statewide requirement of face-to-face interviews would have been prohibitively expensive. Rates were also tied to local market rates, thus accounting for regional differences in cost. There was not, however, complete parity between contract care and voucher-purchased care. Contract care had to meet stringent CDE requirements, thus boosting the cost of care and, consequently, the reimbursement rate. Voucher-purchased care was only tied to the average local rate, and thus could fall somewhat below the cost of average care. However, if a voucher provider served more than fifty percent low-income children, it too had to meet the stringent CDE standards. *See id.* at 13.

139 *See id.* at 12.

140 *See id.* at 16.

141 *Id.* Even with this marked increase, however, Texas still serves only sixteen percent of all eligible families. *Id.*

142 *See id.* at 20-21.

143 *Id.* at 25.

144 *See id.* at 26-28.

ful.[145] Parents often did not seek the help of that agency because they were overwhelmed by the number of agencies involved in the network of government supports.[146]

Effective counseling is only relevant if parents have options from which to choose. Unfortunately, the CCDBG did not ensure parents would have these choices because it did not mandate contracts with centers in low-income neighborhoods and, left to the vagaries of the free-market, independent providers tend not to open centers in low-income neighborhoods.[147] By contrast, a contracted care system supports centers in these neighborhoods.

California maintained a dual contract and voucher system that ensured the existence of centers in low-income neighborhoods, but this created administrative problems because the state administered the dual system through two agencies which often worked at odds with each other.[148] Minnesota avoided this problem by running a voucher-only system. All funds were distributed through a voucher system, and the state maintained no contracts with individual providers. As a result of this system, however, there were fewer child care options available to low-income families. Centers serving these families found it difficult to operate without guaranteed subsidy funds and many stopped serving low-income children or closed down completely.[149]

The experiences of California, Minnesota and Texas provide valuable lessons on which states should draw when creating a child care program to accompany a work program. Indeed, all three lessons discussed in this Part form the basis for the state legislation proposed in Part III.

III. PROPOSAL FOR STATE CHILD CARE LEGISLATION

The Child Care and Development Block Grant Amendments of 1996[150] increase state funds and flexibility. Unfortunately, the CCDBG Amendments do not address or correct the three problems with the original CCDBG identified in Part II; rather, the amendments only exacerbate these problems. First, Congress added to the demand for child care subsidies by requiring welfare recipients to work. While the law does au-

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145 *See id.*

146 *See id.*

147 *See* Blank Testimony, *supra* note 132, at 4.

148 For example, there was a problem in some areas where parents could not use their vouchers to purchase care at a contracted center because centers were often full and local voucher program administrators did not reach out to contracted centers. *See* STONEY & GENSER, *supra* note 93, at 14. Moreover, there is no single place for a parent to go to obtain child care. Often, she must put her name on a waiting list for both programs. *See id.*

149 *See id.* at 29.

150 Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 601-615, 110 Stat. 2105, 2278-2287 (1996).

thorize additional funds, these funds will not be adequate to subsidize child care for both families moving off welfare as well as those at risk of turning to public assistance or living in poverty. As a result of the increase in demand, states will be inclined to reduce subsidies for the working poor in order to provide child care for welfare recipients required to work. Second, Congress reduced the quality set-aside from the twenty-five percent earmarked for quality and availability improvements to a mere four percent for both activities. Pressed to provide child care for increased numbers of families, states will be tempted to skimp on quality investments, compromising the futures of all children enrolled in government-subsidized child care. Finally, Congress did not require states to maintain contracts with inner-city centers, or provide additional funding for counseling.

States can rectify these problems. To use the additional funds and increased flexibility to the greatest effect — that is, to help families currently receiving welfare obtain employment, keep those families already working from turning to welfare or living in poverty, and prepare the next generation to lead productive lives — states should learn from their six-year experience with the CCDBG. This Part proposes state legislation that draws on the lessons learned from the original CCDBG, incorporating three central changes. First, states should invest more funds to increase the number and size of subsidies, with particular attention to the working poor. Second, states should maintain current quality expenditures and also make efforts to increase care giver salaries, and establish and routinely monitor regulations for all family child care providers. Finally, states should continue the voucher program, but invest additional funds in parental counseling and maintain contracts with centers in low-income neighborhoods.

This Part discusses how a state can fund such a program, and concludes that, although such legislation may entail initial outlays, states ultimately will save money as welfare rolls decrease and the next generation leads productive lives. This Part discusses legislation passed in Wisconsin as an example of an effective approach to child care, and recommends how the Wisconsin model could be improved. That state's legislation is instructive because Wisconsin was the first state to abolish entitlements and replace them with work requirements. Of course, the exact implementation of a child care program will vary from state to state. The following discussion is intended as a broad guide to the issues states can consider when passing child care legislation.

A. STATES SHOULD INCREASE THE NUMBER AND SIZE OF SUBSIDIES, AND EXPAND HELP FOR THE WORKING POOR

A comprehensive and effective child care program that accompanies a welfare-to-work initiative would provide subsidies for those required to work. In particular, states should ensure child care is available for currently underserved groups, including infants and parents with nontraditional work schedules. In addition, to enable families to move permanently from dependency to self-sufficiency, states should provide subsidized child care for the working poor.

An increased supply of infant care is imperative if a state's welfare-to-work initiative requires a mother to work soon after bearing a child. While the Personal Responsibility and Work Opportunity Reconciliation Act allows a partial exemption for parents with children under the age of six and a total exemption for parents with children under age one,[151] some states may impose far more stringent work requirements. For example, Michigan's recent welfare reform requires mothers to work three months after bearing a child.[152] To address the unique needs of infants in child care, effective state legislation should create different centers for the infants and ensure low staff-to-infant ratios.

States also should expand the availability of child care during nontraditional hours because the biggest growth in jobs over the next decade will come in the service sector during nontraditional hours.[153] Given the traditionally low skill level required for these jobs, this is a likely source of employment for those welfare recipients without marketable skills. Since centers often operate only during the day time, these parents will rely on family child care. To address the low quality of family child care, states should either open centers during nontraditional hours or regulate all family child care providers.

Providing child care for the working poor will help families achieve and maintain economic stability and ensure that they do not turn to the state for assistance or live in poverty.[154] A parent that spends a smaller percentage of her income on child care may achieve greater economic stability, which decreases the likelihood that she will turn to welfare or live in poverty. If a state does not provide subsidized child care for these

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151 § 103, 110 Stat. at 2131-32.

152 MICH. COMP. LAWS ANN. § 400.57f(3)(d) (West 1996).

153 U.S. DEP'T OF LABOR, CARE AROUND THE CLOCK, *supra* note 20, at 6.

154 *Child Care: A Key Component of a Successful Welfare Reform Strategy, Hearings before the Subcomm. on Human Resources of the House Comm. on Ways & Means and Subcomm. on early Childhood, Youth & Families of the House Comm. on Econ. and Educ. Opportunities*, 103rd Cong. 1st Sess. 4 (1995) (statement of the Children's Defense Fund) (positing that welfare reform will not work unless both those on welfare and the working poor receive child care subsidies; this will prevent a revolving door problem).

parents, it risks higher rates of welfare dependency, thus compromising the savings a state will realize by moving people off welfare.[155]

Wisconsin's child care legislation illustrates these tradeoffs. In promoting its program, the state pledged it would not have waiting lists for child care. Instead it would serve all families immediately.[156] It also promised to provide child care to the working poor whether or not they had ever received welfare payments.[157] It made these guarantees, however, by restricting eligibility, effectively redefining "working poor." Under the new law, a family with an income below 165% of the poverty level—or $20,375 for a family of three—is eligible for child care subsidies.[158] Under Wisconsin's old system, eligibility was set at 227% of the poverty level, or $27,996 for a family of three.[159]

The new policy hurts the working poor. A family that earns $21,000 is ineligible for child care subsidies, yet if the family pays the national average of $5,200 a year for a toddler in child care, it will spend twenty percent of its income on child care for a single child. For those families that make just below the cut-off level, subsidies will decrease dramatically. For example, a single parent in Wisconsin who earns $1,600 a month with two children in child care centers would pay $910 a month, instead of $62 as she would under the old system.[160] As a result, families will likely turn to unlicensed family child care, which is less expensive.[161] As illustrated in Part I, statistics show that unlicensed family child care is of very poor quality. Thus, the children of the working poor will be relegated to potentially harmful and dangerous child care arrangements.

Providing subsidies for all families that spend a debilitating amount of their incomes on child care, however, would be far too burdensome for a state. For example, to subsidize child care up to the point where a parent is paying only twelve percent of her income on child care —less than the debilitating seventeen to twenty-seven percent that poor families currently pay — a state would have to provide child care for families earning up to $43,300.

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155 *See infra* text accompanying notes 209-11.

156 *See* DAVE EDIE, WISCONSIN OFFICE OF CHILD CARE, SUMMARY: CHILD CARE AND WELFARE REFORM 2 (1995).

157 *See id.*

158 Public Assistance — Wisconsin Works, 1995 Wis. Legis. Serv. 289 §49.155(1m)(c) (West); EDIE, *supra* note 156, at 2. The state will require all parents to pay some portion of their child care expenses on a sliding fee arrangement. The sliding scale will be determined by a percentage of the cost of the care. The payments are higher than parents currently are asked to pay; EDIE, *supra* note 156, at 2.

159 WIS. STAT. § 46.98(4)2 (1995).

160 Harriet Brown, *Wisconsin's Welfare Boomerang*, N.Y.TIMES, May 7, 1996, at A23.

161 *See id.*

While a state most likely cannot afford to provide subsidized child care to so many families, calculating eligibility based on percentage of income spent on child care, as opposed to percentage of the poverty index, provides a new way of thinking about who needs aid.[162] It accounts for regional differences in the cost of living. It also incorporates the cost of child care into a family's budget, which the poverty index does not.[163] States can institute a sliding scale fee arrangement for parents approaching the percentage cut-off for eligibility, ensuring that more funds will be spent on those families that spend a greater percentage of their incomes on child care. While subsidized child care will not alter the macroeconomic forces that depress wages,[164] it will shift the costs of child care from the working poor onto society at-large. Effective child

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162 This is true because the poverty index may not be the best measure of true poverty. *See* Patricia Ruggles, The Urban Institute, Drawing the Line 47-52, 167-68 (1990). Ruggles argues that the poverty index underestimates the number of people living in poverty because it uses an outdated standard of living. The index uses the standard of living established in the 1950s, when the index was developed. She points out that consumption patterns and community expectations of what is necessary for decent living have changed, yet the poverty index relies on what a family needed in 1955, not 1995. Moreover, child care was not a basic family need in the 1950s because most mothers stayed at home. Today, however, child care is a large percentage of a family's budget, but the poverty index does not account for this expenditure. *See* Child Care Law Center, Working for Change: Child Care as Welfare Prevention 5 (March 1995).

Other commentators have criticized the Census Bureau's poverty measure as an indicator of poverty. *See* William H. Scarbrough, *Who Are the Poor? A Demographic Perspective, in* CHILD POVERTY AND PUBLIC POLICY, *supra* note 83, at 55, 58-63. Scarbrough notes that the poverty measure does not differentiate between a child living in poverty for ten years versus one year. He believes that one year of living in poverty may not have the same long-term impact on a child as growing up in a household that is perpetually below the poverty line. Scarbrough also notes that the poverty measure does not indicate the degree of poverty, because it does not distinguish those who live at fifty percent below the poverty line, and thus are even more deeply troubled. *See also* Judith A. Chafel, *Child Poverty: Overview and Outlook, in* CHILD POVERTY AND PUBLIC POLICY, *supra* note 83, at 1-2.

One commentator, an analyst from the conservative Heritage Foundation, argues the poverty index overestimates the number of people in poverty because it does not incorporate the value of noncash benefits, such as Medicaid. *See* Robert Rector, *Poverty in America: Census Overstates the Problem*, CHI. TRIB., Sept. 30, 1991, at C17.

For all these reasons, states should ensure they provide child care for families living above the poverty level because the poverty index probably does not provide the best indicator for which families need subsidized child care. The CCDBG and most states establish eligibility based on a percentage of the poverty index.

163 *See Poverty Level Fails to Consider the Impact of Child Care Costs on Families*, WORKING FOR CHANGE (Child Care Law Center, San Francisco, CA) March 1995, at 5.

164 Suzanne M. Bianchi, *Children of Poverty: Why Are They Poor?, in* CHILD POVERTY AND PUBLIC POLICY, *supra* note 83, at 91, 95-96. The average wages of younger workers and older workers within the high school-educated employment market has decreased. Thus, lower wage earners can not earn enough to maintain a family above the poverty level. This problem is accentuated for men of color. During the 1980s, the percentage of white men with low earnings rose from 10% to 25%. For African American men, it rose from 26% to 37%. This increase may be due to a shift in the economy away from manufacturing and low-technology businesses toward high-technology and professional services, jobs that require a higher level of education. *Id.* at 96-97.

care legislation would redistribute the costs of child care, enabling low-income parents to use the fruits of their labor to raise their families out of poverty.

As the Wisconsin legislation demonstrates, once a state pledges to serve all eligible families, it may be able to do so only by narrowing the terms of eligibility. The Wisconsin model may create future problems if ineligible working poor families turn to welfare, either because they have incurred debts paying for child care or in order to expedite receipt of a child care subsidy. Equally undesirable is the possibility that a family who time limit for public assistance has expired may end up living in poverty. Additionally, the policy risks the futures of children who will be cared for in poor quality settings, compromising their chances to lead productive lives, because their parents cannot afford quality care if forced to pay the full, or nearly full, costs themselves. Clearly, a state needs to draw an eligibility line somewhere, and providing child care for the poorest families is arguably of greatest importance, but if a state can possibly expand the program to serve more families, these families will have a greater chance for economic self-sufficiency.

B. STATES SHOULD MAKE FURTHER INVESTMENTS IN QUALITY

Since the CCDBG amendments decrease the quality set-aside, states should make up for this by at least maintaining their current levels of quality investments and, ideally, making further investments. Increased investments in the number of child care subsidies should go hand-in-hand with quality improvements because more care of poorer overall quality is not a responsible government solution given the particularly adverse effects of poor quality child care for low-income children. A state should invest in both subsidies and quality, but if funds are limited, a state should invest in subsidies only to the point that it can simultaneously improve the quality of that care. Ideally, a state would allocate ten to fifteen percent for quality improvements, a vast improvement over the five percent mandated in the original CCDBG. This would also be a dramatic improvement over the four percent allocated for both quality and availability improvements in the new CCDBG.

This section discusses two quality investments states should make in addition to those they have already undertaken. Specifically, it recommends that states increase care giver salaries or make other benefits available to increase retention of care givers and attract others to the field. It also recommends that states establish and monitor family child care regulations, to ensure that the large numbers of low-income children cared for in these settings are receiving quality care.

1. *States Should Work to Increase Care Giver Compensation*

Low care giver salaries affect the quality of care. Some advocates correlate low compensation — $5.50 an hour for high school graduates and eight dollars an hour for college graduates[165] — with the forty percent care giver turnover rate.[166] It is likely that higher salaries would increase the productivity of current staff[167] and make the profession more attractive to qualified individuals,[168] decreasing care giver turnover.

To be sure, higher salaries will increase operating costs, potentially reducing the number of children served. Moreover, it may take substantial investments to increase care giver salaries enough to affect quality.[169] Arguably, the government should subsidize the true cost of child care, including making care giver salaries commensurate with other professions,[170] but states are unlikely to do so given limited resources.[171] Alternatively, states could offer educational loans to care givers enrolled in higher education, as does North Carolina.[172] At a minimum, states should provide health care for child care workers, since the vast majority

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165 NATIONAL CENTER FOR EARLY CHILDHOOD WORK FORCE, BREAKING THE LINK: A NATIONAL FORUM ON CHILD CARE COMPENSATION 5 (1994) [hereinafter BREAKING THE LINK]. These low wages decreased 20% between the mid 1970s and mid 1980s when adjusted for inflation. *See* WHITEBOOK ET AL., *supra* note 28, at 10.

166 WHITEBOOK ET AL., *supra* note 28, at 12.

167 *See* COST, QUALITY, AND CHILD OUTCOMES, *supra* note 22, at 18.

168 *See id.* There is some difference of opinion about this prediction. According to one study:

> [N]ormally, economists assume that it is higher quality staff, not higher wages, that improves quality. Raising wages, while beneficial to existing child care workers, should not affect child care quality of services unless centers hire more qualified staff. . . . Therefore, economists argue that, assuming that more qualified staff do produce higher quality, centers should hire better qualified staff and pay the wages which attract such staff based on existing market conditions. On the other hand, early childhood educators do tend to argue that raising wages does increase productivity of existing staff. More importantly, looking at the long-run, they argue that establishing a professional wage is a precondition to attracting more qualified individuals into the profession.

Id.

169 *Id.* at 48.

170 *See* Heidi Hartmann, *Women's Work and the Affordability of Child Care: The Challenge of Restructuring the System, in* Breaking the Link, *supra* note 165, at 14, 16 (arguing that government should subsidize care givers' compensation because "the social *benefits* of raising children go to the society as a whole, but the *costs* that people experience for raising children are personal and individual.").

171 It may take a broader social campaign to persuade the general population that child care is a public good, worthy of investment. Absent such a change in popular opinion, a state can make some attempts to address care giver compensation.

172 *See supra*, text accompanying note 124. North Carolina has also instituted a program to pay higher wages to reward those who pursue further early childhood education and training, as well as workers who stay with one center or family child care provider. The WAGE$ program supplements the salaries of teachers, assistants and directors according to education pursued. The worker receives the supplement every six months, but if he switches jobs, he must start the six month period over, thus discouraging turnover. *See* CHILD CARE W.A.G.E.$

of child care centers do not provide health insurance for their employees,[173] despite routine exposure to illness on the job.

Another method for augmenting compensation is to increase the reimbursement rate for subsidized child care. Currently, states tie reimbursement rates to a percentage of the market rate, typically lower than 100%.[174] This lower rate perpetuates low wages because care giver salaries are the single largest budget item for a child care program.[175] Moreover, some child care advocates believe the government should not pay the same rates to providers who do not offer the same quality care.[176] Paying different rates for programs of different quality creates an incentive for a provider to invest in quality improvements.

Wisconsin provides an interesting model that ties reimbursement rates to the quality of care provided. While this does not guarantee all children will be cared for in quality settings, it does provide an incentive for care givers to upgrade the care they offer. Wisconsin does this by establishing two tiers of family child care. The state will reimburse a care giver without training at fifty percent, and a care giver who does participate in training and complies with other state regulations at seventy-five percent.[177] Importantly, the law allows reimbursement to reflect additional quality improvements.[178] Further, the law recognizes the importance of retaining skilled care givers. It authorizes grants to caregivers "to improve the retention of skilled and experienced child care staff."[179] State child care legislation should follow this model by tying reimbursement rates to quality standards. This would give programs an incentive to improve the quality of care, and would allow them to do so by raising care giver salaries.[180]

PROJECT (a promotional flier published by Day Care Servs. Ass'n, P.O. Box 901, Chapel Hill, NC 27514).

173 BREAKING THE LINK, *supra* note 165, at 5.

174 *See* LOUISE STONEY, CHILDREN'S DEFENSE FUND, PROMOTING ACCESS TO QUALITY CHILD CARE: CRITICAL STEPS IN CONDUCTING MARKET RATE SURVEYS AND ESTABLISHING RATE POLICIES (1994).

175 *See* BREAKING THE LINK, *supra* note 165, at 9.

176 Blank Testimony, *supra* note 132, at 4.

177 1995 Wis. Legis. Serv. 289 §§ 46.98(4)(dg), (dm) and 49.155(6)(b),(c) (West).

178 1995 Wis. Legis. Serv. 289 § 49.155(6)(d) (West).

179 1995 Wis. Legis. Serv. 289 § 46.987(2)(a) (West).

180 A comparison of the different CCDBG regulations supported by the Bush and Clinton Administrations provides an illustration of the issues involved in such a policy. The regulations promulgated by the Bush administration allowed a state to submit a plan for differential rates but restricted the differential to ten percent. 45 C.F.R. § 98.43(e). The proposed Clinton rule abolishes the ten percent limitation, providing an incentive for centers to improve their quality. *See* FEDERAL REGISTER, vol. 59, No. 90, Wednesday, May 11, 1994, at 24513.

2. *States Should Establish and Routinely Monitor Family Child Care Regulations*

Family child care regulations act as a crucial predictor of quality. States should establish and enforce regulations for family child care providers because family child care — under-regulated or unregulated in many states — is the most prevalent form of child care for children under the age of two years. If a child receives poor quality care during these first years — and unregulated care is typically of much poorer quality[181] — she may never regain the lost ground.[182] Therefore, state child care legislation should eliminate regulation exemptions and establish more stringent licensing requirements.[183] With these regulations in place, a state should provide subsidies only for children in the care of licensed providers.

An effective state regulatory program would seek to promote the qualities found in a quality family child care provider. There are several predictors of quality family child care. Care givers who choose their line of work, educate themselves about child development and child care through training, plan activities for the children in advance, seek support from other family child care providers, care for larger numbers of children (three to six children, instead of one to two), charge higher rates, and follow standard safety practices typically provide higher quality care.[184] These care givers can be termed "intentional providers,"[185] and regulations could incorporate requirements or incentives that foster the qualities they possess. For example, and most importantly, state child care legislation should require training as a licensing prerequisite since training for family child care providers helps improve the quality of the relationship between child and care giver,[186] and decreases turnover

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181 *See supra* text accompanying note 34 (of family child care providers, only 13% of regulated caregivers provide inadequate care, as compared with 50% of unregulated caregivers and 69% of relative caregivers).

182 *See* CARNEGIE CORP. OF NEW YORK, *supra* note 25, at 8-9.

183 This is one of the recommendations made by THE STUDY OF CHILDREN IN FAMILY CHILD CARE AND RELATIVE CARE, *supra* note 31, at 101. *See also* NATIONAL CENTER FOR CHILDREN IN POVERTY, USING FEDERAL FUNDS TO EXPEND AND IMPROVE CHILD CARE: FOCUS ON FAMILY DAY CARE (1991) (advocating for regulations that impose "important but not trivial requirements").

184 GALINSKY ET AL., FCC STUDY, *supra* note 31, at 3. For example, 96% of regulated providers keep the telephone number of a child's doctor, as compared with 51% of relatives. *Id.* at 65.

185 *See id.* at 45.

186 *See* ELLEN GALINSKY ET AL., FAMILY CHILD CARE TRAINING STUDY 1, 13 (1995) [hereinafter GALINSKY ET AL., TRAINING STUDY]. THE STUDY OF CHILDREN IN FAMILY CHILD CARE AND RELATIVE CARE concluded that training should be "accessible, affordable, high quality, provider-friendly, offered at various levels, and linked to credentials and compensation." GALINSKY ET AL., FCC STUDY, *supra* note 31, at 99.

rates.[187] This training should be tailored to the specific needs of family child care providers. It need not be exhaustive since eighteen to thirty-six hours of training can have dramatic effects.[188]

State child care legislation also could implement other family child care licensing and regulation initiatives. For example, states could require background checks for all providers.[189] A mandated background check for all providers would prevent individuals with criminal records, particularly those with child abuse convictions, from caring for children.

Instead of loosening the substance of licensing requirements, states can take steps to simplify the procedures, such as providing forms in different languages and counselors to offer advice.[190] States also could provide funds for training programs and make loans to upgrade a home where services are provided to meet state health and safety requirements.

To provide support for family child care providers, and not just regulation, a state could build a network of family child care providers by establishing a state-wide resource center.[191] This resource center could have a toll-free number and a home page on the Internet with information on child development and training opportunities. An Internet bulletin board would allow providers to communicate with each other about programmatic ideas, and ask for and receive advice on a variety of issues. The only cost entailed is to input the information and update it, so a state could implement these supports at minimal expense. There would be an expense to providers who would need a computer to take advantage of the network, but states could provide loans for this purpose, or create a partnership with a local business asking for in-kind donations. Public Internet access, such as at local libraries, would give providers another avenue to access the resource center with no new costs involved.

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187 GALINSKY ET AL., TRAINING STUDY, *supra* note 186, at 25.

188 GALINSKY ET AL., TRAINING STUDY, *supra* note 186, at 1. In the context of center-based care, one study found that Florida's increased training requirements — from 20 hours to 30 — dramatically improved the quality of care provided. Moreover, it did not decrease the supply. *See* HOWES ET AL., *supra* note 120, at 8, 20, 25. In Georgia, when that state instituted a ten-hour annual training requirement, it improved quality and did not decrease the supply. *See* ANNETTE SIBLEY ET AL., CHILD CARE LICENSING: GEORGIA IMPACT STUDY 17, 27-28 (1994).

189 While this may seem an obvious requirement, as of 1994, 21 states did not complete criminal checks on family child care providers, and seventeen did not check for a history of child abuse. GAO, STATES' DIFFICULTIES, *supra* note 42, at 3.

190 *See* GALINSKY ET AL., FCC STUDY, *supra* note 31, at 101.

191 A recent government report documented the need for such networks. PROMOTING QUALITY, *supra* note 37, at 4. Testimony by a government official before the House of Representatives relates several such successful initiatives. *Family Child Care — Innovative Programs Provide Quality: Hearings Before the Subcomm. on Regulation, Bus. Opportunity & Tech. of the House Comm. on Small Bus.*, 103rd Cong. 5 (1994) (statement of Leslie G. Aronovitz, Assoc. Dir., Inc. Sec. Issues) (especially noting the role of private donors and donated computers in classrooms). *See also* FAMILIES & WORK INSTITUTE, SELECTED INITIATIVES TO IMPROVE THE QUALITY OF FAMILY CHILD CARE (1994) (cataloging state programs).

Regulations should be enforced by routine state inspections.[192] There is some evidence that the cost of increased inspections is minimal.[193] State monitoring is particularly needed because almost all parents, regardless of income or education, are unable to discern quality care for themselves.[194] Moreover, periodic visits by licensed staff effectively ensure compliance.[195] Unfortunately, this method of monitoring is underutilized: a federal study concluded that twenty states did not conduct a single unannounced visit per year.[196] Ideally, state inspectors would have experience with family child care providers, or be former providers themselves so they could know what to look for and offer advice and support on the spot.[197]

Surprisingly, increased regulation of family child care, unlike regulation of center-based care,[198] will not increase its cost or decrease its availability.[199] Modest training requirements in particular may not increase the cost or decrease the availability of child care.[200] Unfortunately, Wisconsin's legislation does not require training for family child care providers, despite its positive correlation with quality and negative correlation with decreased availability. As discussed above, the Wisconsin model does provide incentives for child care providers to invest in training, but it is yet unknown whether these incentives will produce the desired result.

A more prudent approach would require provider training as a prerequisite for reimbursement, ensuring all children cared for with public funds are in quality settings. Moreover, a training requirement reinforces the dual goals of child care: enabling parents to work and bring home living wages, while also providing children with the quality care that lays the foundation for productive lives. To the extent that a state focuses too

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192 REBECCA MAYNARD & EILEEN MCGINNIS, POLICIES TO ENHANCE ACCESS TO HIGH-QUALITY CHILD CARE 18 (1990). The authors of The Study of Children in Family Child Care and Relative Care recommend that states should "develop systems for inspection visits. If there is a choice between covering fewer homes or random, rotating visits, we recommend random, rotating visits." GALINSKY ET AL., FCC STUDY, *supra* note 31, at 101.

193 *See* HOFFERTH ET AL., THE URBAN INSTITUTE, STATE REGULATIONS AND CHILD CARE CHOICES 23, n.27 (1994).

194 *See* COST, QUALITY, AND CHILD OUTCOMES, *supra* note 22, at 15-16.

195 *See* GAO, STATES' DIFFICULTIES, *supra* note 42, at 4.

196 *Id.* at 4.

197 GALINSKY ET AL., FCC STUDY, *supra* note 31, at 101.

198 HOFFERTH ET AL., *supra* note 193, at 20-24; COST, QUALITY, AND CHILD OUTCOMES, *supra* note 22, at 38-40 (increased regulations of centers will increase its cost and decrease its availability); *but see* SIBLEY ET AL., *supra* note 188, at 17, 27-28 (more stringent staff-to-child ratio regulations did not decrease availability or increase cost).

199 *See* HOFFERTH ET AL., *supra* note 193, at 22, 24.

200 *See* GALINSKY ET AL., TRAINING STUDY, *supra* note 186, at 17 (training requirement did not decrease availability); SIBLEY ET AL., *supra* note 188, at 17, 27-28 (Georgia's ten hour training requirement did not decrease availability). In the context of centers, an increased training requirement did not decrease availability. *See* HOWES ET AL., *supra* note 120, at 25.

much attention on one goal, the other will suffer. States will need to strike a balance between the quality of care and its availability — not sacrificing one for the other, since both are essential components of a child care program.

Given the research on negative outcomes of poor quality care, it seems best to ensure a minimum level of quality, rather than overextend the child care resources and provide substandard care for larger numbers of children. Ensuring quality first, then trying to expand the funding for the program would maintain a higher level of care for the children receiving funds. Although the children without subsidies may be in potentially dangerous child care arrangements, the government should not subsidize substandard care. Moreover, if a state does not invest the money needed to help current programs provide quality care, the state will not realize the long-term savings proven to exist for children enrolled in quality programs.

C. STATES SHOULD IMPROVE THE VOUCHER SYSTEM BY IMPROVING PARENTAL COUNSELING AND MAINTAINING CONTRACTS WITH CENTERS IN LOW-INCOME NEIGHBORHOODS

To ensure the effective functioning of a child care program, a state will need to make some changes to the voucher program. William Gormley, Jr., academic and advocate, argues that "many welfare mothers are being thrown into the child care market unprepared. If they stumble in their child care choices, our welfare experiments collapse."[201] Indeed, states' experiences instituting the voucher system demonstrate that parental choice necessitates investments in effective counseling and government intervention to compensate for market failure. State child care legislation should mandate sufficient funds for counseling to ensure parents receive the information they need to make informed choices. It also should maintain contracts with centers in low-income neighborhoods to ensure their continued existence, providing a range of options for low-income parents.

The experiences of California, Texas, and Minnesota discussed in Part II suggest that a voucher-only system will not provide parents with a full range of options, and should be supplemented with a government guarantee of contracts with child care centers. A better model would guarantee a certain level of funding in the form of contracts to centers in low-income neighborhoods, to ensure the availability of that option, and then provide a voucher system beyond this. Both programs could be administered by a single agency.

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201 Gardner, *supra* note 1, at 1.

To ensure the success of the voucher program, states should invest more resources in consumer education.[202] Low rates of parental awareness about their options underscore the need for this investment.[203] States should develop referral systems that provide timely, unbiased, interactive, accessible, relevant, and useful parental counseling. Each state's delivery system will be tailored to its particular need and resources, but California's experience demonstrates that a state should run only one system. An effective program would fund a resource and referral center in a centrally located area, easily accessible to those in the neighborhood. Parents in more remote locations could use a toll-free telephone line.

Texas' heavy caseloads demonstrate the pitfalls of insufficient staffing, but the number of staff required to counsel all eligible parents will be the most expensive item for a state. There are cost-effective approaches to counseling. For example, a state could place user-friendly computer terminals in the resource and referral agencies to provide initial counseling to parents. A parent could learn about different child care options from easy-to-read information screens, written in several languages. After entering pertinent information about her home, number of children, work hours, and preferred form of child care, the computer would generate a list of providers. For a parent unfamiliar with computers, a resource center staff person could be available to answer questions. Moreover, caseworkers could be available for the more difficult second phase of counseling, choosing between providers. This is just one possibility and solutions will vary from state to state. It is clear from past experience, however, that investments are necessary to ensure parents make informed choices.

State child care legislation also should mandate continued contracts with centers to correct for market failure and guarantee center-based care as an option for low-income families. The federal government advises that states may need to maintain contracts with centers in low-income neighborhoods. The Administration for Children and Families, the division of the Department of Health and Human Services that administers the CCDBG, acknowledged:

> [O]ur restatement of the regulatory position that certificates must be available whenever [child care services] are offered does not preclude grantees from entering into grants or contracts for child care services. Depending upon the child care needs of the eligible population in discrete geographic areas of service, grants and contracts

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202 Others recommend this as well. GALINSKY ET AL., FCC STUDY, *supra* note 31, at 97 (recommending "public and private investments in child care consumer education").

203 *See id.*

> may be necessary to provide stable child care for participating populations or specific communities. In essence, the provision requires a good faith effort by the grantee to balance the allocation of funds between grants/contracts and certificates to ensure that parents have optimum choice among quality child care options. . . .[204]

Even if states increase family child care regulation, parents should have a range of child care options. State child care legislation could require localities to provide contracts with centers in danger of closing. Maintaining contracts should not require substantially more money, especially if the vouchers and contracts are run by the same agency, streamlining administrative costs.

D. FINANCING AN INCREASED INVESTMENT

It will cost states money to increase subsidies, improve quality, and change the voucher program. States can offset these costs in a number of ways and ultimately recoup their outlay many times over. This section describes both the offsetting opportunities and the long-term savings available to states that invest in child care.

States will need to spend money in order to save money over the long-run. During the welfare reform debates surrounding the new law, numerous politicians, academics, and activists advocated child care as a central component — indeed, as the very backbone — of welfare reform in the United States.[205] At the signing ceremony for the Personal Responsibility and Work Opportunity Reconciliation Act, President Clinton stated that the increased child care funds were a positive component of

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204 FEDERAL REGISTER, *supra* note 180, at 24519.

205 *See, e.g., President Clinton's Radio Address to the Nation*, U.S. NEWSWIRE, April 8, 1995 ("If we cut child care, how can we expect mothers to go to work?" and "[i]f we're going to make people on welfare work, we have to make it possible for them to work"); *Charlie Rose* (PBS television broadcast, Oct. 18, 1995 (interviewing Marian Wright Edelman who wants "welfare reform that gives people adequate child care"); Robin Toner, *Senators Gain on Welfare Bill But Delay Vote*, N.Y. TIMES, Sept. 15, 1995 at A1, A30 (quoting Sen. Chris Dodd of Connecticut: "If you had to pick one issue that's critical to moving people from welfare to work, it's child care"); Gardner, *supra* note 1, at 1 (quoting William Gormley Jr. professor of government and public policy at Georgetown as saying child care "is the linchpin for successful welfare reform"); *Lee Gathers Former Welfare Moms; To Tell Why, How They Were Helped; Lawmaker: Reforms Should Not Punish*, HOUS. POST, Feb. 26, 1995, at A37 (quoting Rep. Sheila Jackson Lee, Texas Democrat and member of the Democratic Task Force on Welfare Reform, as saying "welfare reform will not succeed if we don't have job training and child care"); Mark Sauer, *As Legislation Takes Shape in Washington to Get Poor People Off Welfare and Back to Supporting Themselves, Some San Diegans Worry About the Children Caught Up in the Change*, SAN DIEGO UNION-TRIB., Sept. 24, 1995, at A-1 (quoting child care advocate Barbara Chernofsky: "Access for poor families to quality child care is essential so that teenagers do not end up on welfare, or in the juvenile justice system, or as pregnant teenagers. . . . [Congress] always seem[s] to find money for police and prisons — they're willing to pay at the back door, but not up front when it counts.").

the law "because without the assurance of child care it's all but impossible for a mother with young children to go to work."[206] During the debates, child care advocates argued that although investments in child care may entail initial outlays, these investments will pay off many times over in the long run.[207] Indeed, states can double their investment over a seven year period, and realize a seven-fold return over the lifetime of the care recipient.[208]

There are four ways in which states can offset this initial expenditure for increased child care funds. First, since child care subsidies are cheaper than welfare supports, a state will save money immediately if it can provide child care subsidies instead of welfare to those families at risk of welfare dependence.[209] In one Minnesota county, due to an eighteen-month wait for child care subsidies, twenty-five percent of the waitlisted families relied on AFDC in order to survive; fifty percent had to rely on food stamps and Medicaid supports.[210] The monthly cost of welfare assistance was $629,500, but subsidized child care would have cost $518,000, saving the local government $111,500, or $1.3 million a year.[211] Second, a family child care training requirement will save the state money because, after training, ninety-five percent of providers report income from child care in their tax returns, as compared to seventy percent before training.[212] This increased rate of reporting will expand the state tax base for states with income taxes. Third, states can save money by streamlining the administration of child care programs. In

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206 *Welfare Reform Bill Signing Ceremony*, (CNN television broadcast, Aug. 22, 1996).

207 *See* Gardner, *supra* note 1, at 1 (quoting Barbara Reisman, executive director of the Child Care Action Campaign, "the sad truth about welfare reform is that in order to end welfare as we know it . . . it is going to cost more money in the short run. It will cost more to give [welfare recipients] the supports they need than to give them a welfare check"); *Charlie Rose* (PBS television broadcast, Oct. 18, 1995) (interviewing Marian Wright Edelman saying "investing in children early saves money. I wish I knew why we we're more willing to invest in prisons than in Head Start."). Others disagree. *See, e.g.*, Carl L. Williams, *Editorial*, ATLANTA J., Sept. 28, 1995, at 12A (quoting Senator Paul Coverdell of Georgia, "[o]ver the past three decades, the government has spent $5.4 trillion to lose the war on poverty. . . . There are more poor today than when we started. The Democratic proposal [for welfare reform] to simply throw more tax dollars at the problem is simply more of what has utterly failed"); Barbara Kessler, *Day-care Burden Compared; Poor Pay Larger Percentage of Income, Federal Study Finds*, DALLAS MORNING NEWS, Oct. 6, 1995, at 38A (quoting spokesman for House Majority Leader Dick Armey, "[l]iberal democrats always say there's not enough money. They always say 'More money and spend it faster.' We've tried that with welfare, and it didn't work.").

208 John McCormick, *Missing the Point on Welfare*, NEWSWEEK, Aug. 14, 1995 at 32; SCHWEINHART & WEIKART, *supra* note 3, at xviii.

209 *See* GREATER MINNEAPOLIS DAY CARE ASS'N, *supra* note 22, at 17.

210 *Id.* at 1.

211 *See id.* at 17. The monthly cost for AFDC (which includes food stamps and Medicaid) per family was $854, and the cost of food stamps and Medicaid alone was $405, compared with the $259 it costs to provide child care assistance.

212 *See* GALINSKY ET AL., TRAINING STUDY, *supra* note 186, at 18-19.

fact, with the elimination of federal child care programs, the streamlining process has already begun.[213] Finally, states should develop partnerships with businesses and foundations to fund family child care initiatives. Some states have successfully done so.[214]

If these methods do not offset the total cost of an increased investment — and they may not given the tremendous demand for subsidized child care and need to improve its quality — states will need to invest some portion of their federal welfare block grants[215] or use another source of funds. Although this may be difficult, a state will recoup this investment in the short-run as welfare rolls drop, and in the long-run, as members of a new generation lead productive lives. Recent history in Wisconsin provides an example of a pay off within a few years. Between 1987 and 1995, the state increased investments in child care from twelve million to sixty-five million.[216] As a result, welfare rolls dropped twenty-seven percent, returning the state two dollars for every one dollar invested.[217]

An investment in quality child care will yield tremendous long-term savings. The government realizes a seven dollar return for every dollar it invests in a preventive program, for these programs work to reduce special education and welfare costs, decrease criminal justice involvement,

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213 For example, Michigan is counting on savings from consolidating various social service programs. *See* GOV. JOHN ENGLER, MICHIGAN DEP'T OF SOC. SERV., TO STRENGTHEN MICHIGAN FAMILIES 1992—1994 —1996, 2 (1995).

214 For example, California raised $6.8 million over nine years. *See* GAO, PROMOTING QUALITY, *supra* note 37, at 10-11. However, some private sector initiatives raise funds for the already-employed, not those on welfare. *See* Wendy Zellner, *The Babysitters Club*, BUSINESS WEEK, Sept. 25, 1995, at 64. The American Business Collaboration for Quality Dependent Care intends to spend $100 million on child and elder care projects over the next six years. *Child Care: Corporate Responsibility?* AMERICAN POLITICAL NETWORK, INC. DAILY REPORT CARD, Sept. 25, 1995. Yet these investments may not reach the communities in need of subsidized care. *See id.* (quoting Faith Wohl, director of workplace initiatives at the General Services Administration, as saying "what about the kids who are not in the communities where these companies are focusing?").

215 States can either use money directly from the TANF funds or transfer some of those funds to the CCDBG funding stream. If they spend TANF funds directly, however, this assistance will trigger the five-year time limit for the receipt of government assistance. Money transferred to the CCDBG funding stream is not subject to this restriction.

216 *See* Gardner, *supra* note 1, at 1.

217 *See* TOMMY G. THOMPSON, W-2 — WISCONSIN WORKS (1995) at 1; McCormick, *supra* note 208, at 32 (citing Wisconsin's investments in child care as an essential component and first step toward reducing welfare roles by putting people to work). Initially, Wisconsin had to pay $1,400 a year per parent in addition to welfare benefits to help the parent move from dependency to economic self-sufficiency. The state provided child care, job training, and job placement. *Id.* at 32. *See also* IT'S ABOUT WORK: UTAH SINGLE PARENT EMPLOYMENT DEMONSTRATION PROJECT 7 (1995) (describing an AFDC diversion program that provided child care and health insurance to AFDC applicants instead of support checks; the project saw a 41% decrease in AFDC caseload and a corresponding 42% decrease in AFDC program costs).

and increase worker productivity.[218] Quality child care qualifies as a preventive program.[219] Policy makers can use this evidence of immediate, near-term, and long-term savings when lobbying for increased child care availability. They should also stress the need for quality improvements and show that long-term savings will be realized only from quality child care programs, not mere custodial care.[220]

It may be difficult for an elected official to ask the electorate to spend more money, especially when the long-term savings most likely will not be realized until many years after the official has left office. However, an electorate educated about the long-term savings could come to appreciate the value of such investments.[221] Officials could make a strong economic argument that these expenditures today will save everyone's children tomorrow — both those children who will benefit directly from the programs in 1996, and those children who will not pay higher taxes in 2016 to fund expensive, reactive programs, and increased welfare rolls, swollen with the working poor who are forced to turn to welfare or live in poverty because of the debilitating costs of child care.

CONCLUSION

With the advent of federal welfare block grants, states have tremendous discretion over public assistance programs. To ensure the success of welfare reform, states must pass child care legislation that creates a comprehensive child care system for low-income families. Such a system would help parents on welfare obtain jobs, enable working parents to bring home more of their paychecks, and provide children with an early childhood education from which they will benefit for the rest of their

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218 SCHWEINHART & WEIKART, *supra* note 3, at 3. *See also* F.A. CAMPBELL & C.T. RAMEY, LONG-TERM OUTCOMES FOR HIGH RISK STUDENTS: THE CONTINUING EFFECTS OF EARLY INTERVENTION 19-21 (1993) (low-income children in early child care program had higher IQ's and reading and math scores at age 15); J.R. LALLY & P. MANGIONE, THE SYRACUSE FAMILY DEVELOPMENT RESEARCH PROGRAM (1993) (due to decreased delinquency rates, the total cost to the juvenile justice system of children who received quality child care was $186; society paid $1,985 in juvenile justice costs for children not enrolled in child care).

The United States invests far less money to raise children out of poverty than other industrialized countries. Those countries also have much lower rates of crime, violence, teenage pregnancy, and child poverty. CHILDREN'S DEFENSE FUND, THE STATE OF AMERICA'S CHILDREN YEARBOOK 7 (1994).

219 *See* SCHWEINHART & WEIKART, *supra* note 3, at 17.

220 *See id.*

221 Governor Tommy Thompson of Wisconsin has made such an argument, and he remains a strong leader in that state. *See ABC World News Tonight* (ABC television broadcast, Jan. 13, 1995); Nina Bernstein, *Foster Care System Wary of Welfare Cuts*, N.Y. TIMES, Nov. 19, 1995, at A1. Other commentators have advocated state leaders take such a stand and start educating the public about the need for initial investments. *See New York's Welfare Challenge*, N.Y. TIMES, Sept. 17, 1996, at A22 (arguing that "Mr. Pataki should begin preparing New Yorkers for the likelihood that welfare 'reforms' will probably cost money, at least in the short run" and advocating Pataki ensure child care will be available to those that need it).

lives. Moreover, investments in preventive programs made today will save future government expenditures on expensive, reactive programs such as the criminal justice, special education, and foster care systems. We cannot afford — in either economic or social terms — not to make these investments.