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CHILD SUPPORT POLICY CONCEPTS AND PROPOSALS THAT WILL IMPACT POOR FAMILIES

Several bills that would make significant changes to child support policy were considered, but not passed, by Congress during the Fall 2000 session.¹ Many of the same provisions are contained in legislation that has been introduced this session.² While it is not clear whether or in what form these bills will pass at this point, it appears imminent that some significant changes will be made to child support policy in the near future, either as child support legislation this session or as part of the 2002 welfare reauthorization.

This briefing has been prepared in order to provide as concise as possible a description of the child support changes under consideration and what they could mean for low-income families. The child support policies most likely to affect low-income families include:

- The pass-through and disregard of child support. States would have the option to pass through child support to families currently receiving TANF benefits up to \$400 for a family with one child and \$600 for a family with two or more children *if* the family has been on TANF for no more than 5 years.
- A requirement that states pay any child support and arrearages to a family once they leave welfare before claiming the state's assigned child support arrears.
- A prohibition on collecting repayment for birthing costs from the noncustodial parent.
- The option for states to convert state-owed arrearages to the custodial parent.

What is the assignment of child support rights?

Under current law, families receiving TANF benefits must provide information to the state that will assist in locating the noncustodial parent in order to establish paternity and collect child support. The TANF recipient must also assign any rights to collected child support to the state, meaning that *the custodial parent is no longer in a position to make decisions regarding the collection of child support from the noncustodial parent*. The state is now empowered to use whatever means are legally available to enforce the payment of child support, and to retain the child support as repayment for TANF benefits paid to the family.

What is the pass-through?

In assigning child support rights, the custodial parent gives up entitlement to any of the collected child support unless the state has a policy to forward it to her, rather than to retain, some of the child support it collects on her behalf.³ The "pass-through" refers to the amount of money the state collects on behalf of TANF recipients and then gives (passes through) to them.

Prior to the passage of the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA), states were required to pass through at least \$50 of collected child support, and were relieved of giving the federal government their share of the \$50 (all child support retained by a state must be shared with the federal government). With enactment of PRWORA, however, states are no longer required to pass through any child support and are not relieved of paying the federal government its share of collected child support, even when the state opts to pass-through some of the child support to the family. The result is that there is now very little financial incentive for states to pass through child support.

What is a disregard?

A child support disregard refers to a state's disregard of the child support income passed through to a family when calculating that family's income and determining eligibility for welfare and the welfare grant level for the family. The disregard allows a family to increase its monthly income by the amount of child support that is collected on its behalf in any given month, maintaining the same level of cash assistance regardless of the child support collected. If a state does not disregard the child support income when determining eligibility, a family who would otherwise have been eligible for TANF assistance might become ineligible once the child support is added into the family's income. If a state passes through child support but does not disregard it when calculating the monthly grant, the TANF grant is reduced by the dollar amount of child supported collected and distributed to the family each month.

States that pass-through collected child support have the option of disregarding the child support income received by the TANF family when determining eligibility for programs and benefit levels. However, under current law, the state must repay the federal government its share of the collected child support whether or not the support is passed through to the custodial parent and disregarded in her benefit calculation. So, states have little incentive to do so since it would be a significant cost.

The disregard is important to bear in mind in any consideration of pass-through policy, since *without a disregard, the family receives no additional income in spite of a pass-through.*

While the proposals to change child support distribution currently being considered by Congress would provide only the option, and not a mandate, for states to pass-through and disregard a significant amount of child support, there is an incentive built into the bills that would encourage the disregard if states elect to adopt a pass-through. States would no longer have to repay the federal share of child support if they disregarded the amount when determining the TANF grant amount.

What are child support arrearages?

Child support arrearages are the amount of child support that is owed but has not been paid. Arrearages can result from the nonpayment of a monthly child support order, debt for the welfare costs paid to a family, retroactive support charged from as early as the birth of a child, and medical costs associated with the birth of a child.

Arrearages can be owed to the custodial parent or the state. If the family has never received welfare, arrearages are owed to the custodial parent, and any decisions regarding their enforcement or

forgiveness are made exclusively by her. A judge is prohibited from negotiating this debt without the consent of the custodial parent. If the family has received welfare, the debt could be owed to the state or in part to the custodial parent and to the state.

What child support pass-through and disregard policies do states currently have in place?

There are currently 32 states that retain all collected child support. Sixteen states pass-through and disregard \$40-\$50 per month, although at least one of these states (Kansas) is considering legislation to abolish its \$40 pass-through. Two states (Nevada and Connecticut) pass-through \$75 and \$100 respectively. Wisconsin passes through and disregards all collected child support to TANF (W-2) families.

What current proposals would require a change in policy or state practice with regard to child support?

The only provisions in any of the child support proposals that states would be required to adopt are the payment of current child support collections to the custodial parent and children after they leave welfare, and the prohibition on collecting birthing costs. In fact, there have recently been suggestions to make even the payment of current child support collections to post-welfare families optional, since the cost to states under a mandatory provision could prevent passage of the legislation.

Child support payment to former welfare families. Current legislative proposals would simplify the state's distribution of child support, which has been extremely complicated and dependent on the dates that a family went on and off of welfare. It is not clear where the legislation will end up on simplification; if it will mandate states to pay a greater share of current support to families once they leave welfare or if states will have the option to retain child support arrearage payments even after families leave welfare.

Prohibition on recovery of birth costs. The prohibition on collecting child support to repay Medicaid costs associated with the birth of a child has the potential to prevent many low-income noncustodial fathers from accumulating significant debt. Currently, if a custodial parent has no private medical coverage at the time of birth, the father can be held responsible for payment of the birth costs no matter how costly the birth. If a state also charges interest on this debt, it can become one of the primary components of an insurmountable child support debt that is owed not to the family but to the state.

What impact would the optional proposals have if they were adopted by states?

The pass-through and disregard of \$400 to \$600 in monthly child support payments would clearly provide a benefit to both the custodial parent and children and the noncustodial parent. The legislation provides incentives to states to adopt the policy, but it is not clear whether incentives would persuade states to give up a long-held policy of recovering welfare costs from noncustodial parents by retaining child support payments. It is also not clear if the current language, which stipulates that the pass-through and disregard could only be applied to families who have been on TANF for no more than 5 years, would prevent TANF participants with the most significant hardships from benefiting from the policy.

The option for states to convert state-owed arrearages to the custodial parent could also have a profound impact on families if a state were to adopt the policy. This would mean that child support arrearages owed to the state would be owed instead to the custodial parent, and the state would only pursue child support debt at the request of the custodial parent.

What will determine a state's likelihood of adopting some of the more generous child support policies?

Among the factors a state will consider in choosing options with regard to child support are: the availability of TANF funds to cover the costs and count towards the state's "maintenance of effort" requirement; the financial incentives and whether in a particular state they will provide additional funds or cover the costs, and the political pressure to change a current policy.

Since many of the provisions in current legislation are optional, it will be difficult to predict a state's likelihood of adopting them. States will be likely to become more varied in their child support policies with more options available to them.

In addition to the federal legislation currently being debated, many child support laws are enacted at the state level. It is important to keep up with what legislation or policy changes a state may be considering, since without input from those who work on behalf of low-income noncustodial parents, their concerns will not likely be prioritized.

What are some useful websites for monitoring child support policy?

To monitor federal legislation:

www.thomas.gov. This site provides the most up-to-date record of all legislation, House and Senate activity, and Committee schedules. You can search for a bill by bill number or subject.

www.chn.org. A useful site for monitoring legislation important to low-income families. They are currently developing a Welfare Reauthorization project page. Click on CHN Issues and Resources, and then on Legislative Status Report for updates.

To monitor national welfare policy:

www.welfareinfo.org. A clearinghouse with countless types and sources of information on welfare and other issues pertinent to low-income families. The site is organized by an extensive list of topics, summaries and information are available by state, new items are designated.

www.handsnet.org. Headlines on current issues and reports concerning human services. Alerts on legislative action. Webclipper is a paid subscription service that posts updated information by e-mail weekly.

www.clasp.org. Home page offers updates on current research and activity relating to law and policy affecting the poor; new publications often specific to child support policy.

To monitor child support policy:

www.supportguidelines.com. Click on News to get a bi-weekly update of any court cases related to child support.

www.acf.dhhs.gov/programs/cse. The Federal Office of Child Support Enforcement. Provides child support facts and descriptions, news and announcements, policy updates and links to states.

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¹ In May 2000, Representative Nancy Johnson (R-CT) introduced the "Child Support Distribution Act of 2000" that included some provisions regarding the distribution of child support as well as some access to child support enforcement tools to private collection

agencies and the text of the Fathers Count Act that was passed by the House in the fall of 1999. Senator Bayh also sponsored the "Responsible Fatherhood Act of 1999", with a counterpart House bill introduced by Representative Jesse Jackson, Jr. on June 15, 2000. These bills would also have affected the distribution of child support. All of the bills were not acted on in the Senate, so have been reintroduced this session in various forms.

² To date, legislation introduced this session includes Senate Bill 685, *The Strengthening Working Families Act of 2001*, sponsored by Sen. Bayh (D-IN) and co-sponsored by 11 senators from both parties, with a companion bill, H.R. 1300, in the House. The *Child Support Distribution Act of 2001* (H.R. 1471), sponsored by Representatives Johnson (R-CT) and Cardin (D-MD), has also been introduced. Both bills have a significant focus on marriage promotion contained in the fatherhood provisions, and similar child support distribution changes.

³ Since most custodial parents are mothers and most noncustodial parents are fathers, they will be referred to by gender in this policy brief.