

Lifting the Lid Off the Family Cap: States Revisit Problematic Policy for Welfare Mothers

By Jodie Levin-Epstein

In the early 1990s, a number of states began implementing “family cap” or “child exclusion” policies in their welfare programs to discourage welfare recipients from giving birth to children while receiving cash assistance. Essentially, these policies reversed the long-standing welfare practice of determining the size of a cash grant based on a family’s size—that is, if a child was born into a family receiving welfare, the family’s grant would be increased modestly. The family cap meant that each family’s grant would be capped at a certain level, and no additional funds would be given if another child were born. Since 1992, 24 states have implemented some type of a family cap policy—15 before welfare reform in 1996 and nine since.

Not surprisingly, the family cap has been controversial, and a handful of states have made efforts to repeal their policies. While family cap policies have certainly reduced grant levels for

needy families with newborns (likely to their detriment), the available research offers no compelling evidence that they have achieved the objective of reducing fertility. In fact, family cap policies may really be a vestige of the old welfare system, when cash assistance was available without time limits. The current welfare system, Temporary Assistance for Needy Families (TANF), limits federal cash assistance to 60 months in a lifetime. While family cap policies seek to limit cash assistance, TANF actually eliminates it after a set time.

This policy brief explains what family cap policies are, reviews some of the research on their effectiveness, explains how many families are affected by them, describes challenges that have been mounted against these policies, and recommends that states with family caps consider repealing these mistaken and potentially harmful policies.

What Is the Family Cap?

In states with “family cap” or “child exclusion” policies, newborn children conceived while their mothers receive welfare are

ABOUT THIS SERIES

This brief is the first in a series that will examine policies that seek to affect childbearing and reproductive health behavior, particularly among low-income families, including comprehensive sex education and abstinence education, provisions in welfare reform related to teen parents, and contraceptive and family planning services.

excluded from the calculation of the family’s cash grant.¹ This deviates from basic welfare policy in which a family’s cash grant is typically based on the family’s size, independent of when a child was conceived. States determine this incremental difference in benefits for families of different sizes. In 2003, for example, the benefit difference for families with one child versus two children ranged from 66 cents per day in Wyoming to \$4.36 per day in part of California.² In a state with a family cap, the family’s grant is capped, and the increment is not added when a child is born to a welfare recipient.

Family cap policies are controversial. For most proponents of

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family caps, the goal is to diminish the fertility of welfare recipients. They argue that the policy creates an economic incentive for parents to abstain from intercourse or improve contraceptive practices, at least while they are receiving welfare. In addition, they note that the salaries of non-welfare families do not increase when a new child is born—so why should a welfare grant? Opponents generally cite three arguments against the family cap: that the policy may propel some women to seek abortions; that, while salaries do not respond to family size, tax policy often does; and, most importantly, that reducing grants compromises the well-being of children.

Most family cap policies were instituted prior to the restructuring of the nation's welfare program into the federal TANF block grant. Since then, new research and other developments have led some states to revisit the efficacy of their family cap policies.

Does the Family Cap Work?

Research regarding the effects of family cap policies has generally been negative or inconclusive. For example, a September 2001 General Accounting Office (GAO) review of the research concluded, “Due to limitations of the existing research, we cannot conclude that family cap policies reduce the incidence of out-of-wedlock births, affect the number of abortions, or change the size of the TANF caseload.” However, some studies have shown that

there is a possibility that the family cap affects births and abortions. A highly publicized 1998 study by Rutgers University showed that, between October 1992 and December 1996, roughly 14,000 births were averted in New Jersey due to the family cap policy; however, the report also estimated that 1,400 abortions were obtained by low-income women that would otherwise not have occurred. This study has since been criticized for potential flaws, however, including being described as having “weak evidence” by the GAO report.

Since 2001, a number of other studies and research reviews have sought to identify the role of family cap policies in fertility behavior.⁴ A review of state level welfare policies to reduce subsequent non-marital births considered the role of family cap, earnings disregard, work exemptions, work requirements, and sanctions established prior to TANF. The researchers concluded that none of the policies influenced women's childbearing behavior—in fact, they noted that “even the family cap policy, which was designed for the sole purpose of reducing additional births, had no significant association with subsequent non-marital childbearing.”⁵ Another study looked at the effect of eight types of state welfare policies on marital and pregnancy transitions among those entering adulthood, including the family cap, and found “weak or nonexistent effects.”⁶ A study using a different data set found “no systematic effect of the family cap on fertility

rates among women age 15 to 34.” That researcher noted:

If this empirical study result is correct, then the widespread adoption of the family cap as a state welfare policy appears ineffective at best and misguided at worst. Women are not responding by having fewer additional births, and consequently, fewer resources are being provided per child on welfare.⁷

A particularly startling research finding is that there's a possible link between a state's decision to institute a family cap policy and the racial make-up of the state's population. One analysis found that family cap policies are more likely in two types of states: “those with a higher percentage of African Americans in their [welfare] caseloads and those with higher percentages of Latinos in their [welfare] caseloads.”⁸

Significantly, there has been surprisingly little research conducted on the impact of the family cap on children themselves.

Which States Have a Family Cap?

Under Aid to Families with Dependent Children (AFDC), the predecessor program to TANF, a state was required to apply for a waiver to implement a family cap policy. New Jersey was the first state to implement a family cap policy in 1992.⁹ Since then, 23 have states implemented some form of family cap policy (see sidebar on page 3). Of the 24

states, 15 implemented their policy through a waiver and nine implemented their policy after TANF was passed in 1996.¹⁰ TANF is silent on the issue of family cap, but the law's broad flexibility allows each state to decide for itself whether to establish such policies. In recent years, a number of states have eliminated their family cap policy or begun to phase it out.

How Many Families Are Affected by Family Cap Policies?

Because states were not required to collect data on the family cap until recently, the effect of family cap policies have been hard to gauge. However, they clearly affect a substantial number of families. For instance, according to the 2001 GAO report,¹¹ in an average *month* in FY 2000:

- Almost 10 percent of TANF families in states with family cap policies had their benefits affected. These TANF families received about 20 percent less in cash assistance per month due to the family cap.
- At least 108,000 families received less in cash benefits due to family cap policies in 20 states.

To put 108,000 families in perspective, that is more than the total number of families receiving TANF in the states of Alabama, Arkansas, Colorado, Idaho, Maine, Montana, Nebraska, Oregon, Utah, and Wyoming in December 2000.¹² And that figure is likely to underestimate the total

affected. The GAO noted that 108,000 is “a minimum number of families who may have been affected during 2001,” as more families may have been “capped” during the subsequent months.¹³

Beginning with FY 2000, the U.S. Department of Health and Human Services (DHHS) has reported to Congress on the percent of TANF families subject to grant reductions due to the family cap. Between FY 2000 and FY 2001, the percentage of families subject to family cap grant reductions rose from 4.1 to 4.5 percent—equaling more than 93,000 families in FY 2000 and nearly 95,500 families in FY 2001. These figures, too, likely underestimate the effect since five states with family cap policies (Maryland, Nebraska, North Carolina, Oklahoma, and Wyoming) reported *no* families as subject to the cap.¹⁴ The annual DHHS report to Congress lists the family cap as the top known reason (after recoupment of previous grant overpayments) that family grants are reduced. For instance, in 2001, of the 2.1 million families receiving TANF, 4.5 percent had grants reduced because of the cap, while 3.9 percent were subject to work requirement reductions.

The percentage of families who have their grants reduced due to cap policies varies significantly from state to state—ranging from nearly 20 percent in Illinois to about 14 percent in Indiana, Massachusetts, and New Jersey, to under 5 percent in Arkansas, Florida, Nebraska, and South Carolina. It is not immediately

apparent what accounts for this variation.

Challenges to Family Cap Policies

In many ways, family cap policies are a relic of a pre-welfare reform era. In fact, Kansas had planned to implement a family cap policy prior to enactment of TANF in

STATES WITH A FAMILY CAP



Arizona	Illinois**	N. Carolina
Arkansas	Indiana	N. Dakota
California	Maryland**	Oklahoma
Connecticut	Massachusetts	S. Carolina
Delaware	Minnesota	Tennessee
Florida	Mississippi	Virginia
Georgia	Nebraska	Wisconsin*
Idaho*	New Jersey	Wyoming

Shaded areas indicate states with some type of family cap.

Sources: Minnesota Statutes, 2003, Chapter 256J.24, sub 6; U.S. Department of Health and Human Services. (2003, February). *Temporary Assistance for Needy Families Program Fifth Annual Report to Congress*. Washington, DC: Author, Table 12:13. Available at: <http://www.acf.dhhs.gov/programs/ofa/annualreport5>.

NOTE:

* Idaho and Wisconsin do not have family cap policies that try to influence the timing of conception; rather, TANF grants in Idaho are the same for families of all sizes, and Wisconsin grants for families are dependent on work status.

** Illinois is phasing out its family cap; Maryland is not continuing its family cap since every county has opted out of implementing the family cap since October 2002.

1996, but determined that the new 60-month lifetime limit for welfare sent a sufficient signal to families about the temporary nature of cash grants and the inadvisability of having additional children.¹⁵

Family cap policies have been challenged since the passage of TANF on both the state and national levels, and several states have revised or rescinded their family caps:

- In 2003, Illinois enacted a measure to phase out its child exclusion provision. Starting in 2004, the family cap does not apply to newborns, and the policy will terminate entirely by July 1, 2007. In the interim, the state agency, subject to appropriations, may stop applying the family cap to children born before 2004.
- In October 2002, Maryland began allowing counties to opt out of the family cap, and all counties have done so. The current state family cap policy expires in September 2004.
- In 2003, Arizona established that when child support is paid on behalf of a custodial parent receiving welfare, these monies should go to the capped child rather than to the state agency to recoup welfare costs.

In addition, a number of legal challenges have been mounted against family cap policies. In California and Indiana, for instance, plaintiffs successfully

argued that capped children have rights to child support assignments. And, in Nebraska in December 2003, the state's highest court stopped implementation of a family cap policy on certain classes of parents with disabilities.¹⁶

On the national level, Rep. Dennis Kucinich (D-OH) introduced a welfare bill in 2003 that included a provision that would have imposed a 5 percent penalty on a state's TANF allocation if it decided to "penalize the birth of a child." (A similar bill was introduced in 2001 by the late Rep. Patsy Mink [D-HI]). In 1998, Rep. Chris Smith (R-NJ) introduced H.R. 4066, a bill that would have denied TANF funds to any state that had or planned to have a family cap policy. None of these federal provisions passed.

What Next?

States have the power to determine whether or not to implement a family cap, and a handful of them have recently decided to abandon this policy. These states are supported by most of the available research, which offers no compelling evidence that the family cap achieves its stated objective of reducing fertility. The evidence is clear, however, that family cap policies have reduced grants to needy families with newborns. If family caps are not achieving their stated aim *and* are potentially harming families, more states should consider repealing these mistaken policies.

Endnotes

- 1 For a detailed description of family cap policies, including exemptions, see Stark, S., & Levin-Epstein, J. (1999, February). *Excluded Children: Family Cap in a New Era*. Washington, DC: CLASP. Available at: <http://www.clasp.org>.
- 2 This compares the maximum monthly benefit available for a family of two and three as of January 1, 2003. The amount is \$20 in Wyoming and \$131 in region 1 of California. U.S. House Committee on Ways and Means. (Forthcoming). *2003 Green Book*. Washington, DC: Author, Table 11, TANF chapter. Available at: <http://waysandmeans.house.gov>.
- 3 United States General Accounting Office. (2001, September). *Welfare Reform: More Research Needed on TANF Family Caps and Other Policies for Reducing Out-of-Wedlock Births* (GAO-01-924). Washington, DC: Author, p. 20.
- 4 Most of the research on the family cap has examined its potential fertility effects—although the Urban Institute examined its relationship (and the relationship of a number of other welfare policies) to the living arrangement decisions of single mothers. See Acs, G., & Nelson, S. (2002, March). *Assessing the Relation-*

- ship Between Welfare Policies and Changes in Living Arrangements of Low-Income Families and Children in the Late 1990s*. Assessing the New Federalism Discussion Paper No. 02-25. Washington, DC: Urban Institute. Available at: <http://www.urban.org>.
- 5 Ryan, S., Manlove, J., & Hofferth, S. (2003, November). *State-Level Welfare Policies and Subsequent Non-Marital Childbearing*. Paper presented at the Annual Association for Public Policy Analysis and Management Research Conference, Washington, DC. Data are drawn from the Panel Study of Income Dynamics.
- 6 Harris, K.M., Guilkey, D., & Veliz, E. (2003, November). *Welfare Reform and Non-marital Childbearing in the Transition to Adulthood*. Paper presented at the Annual Association for Public Policy Analysis and Management Research Conference, Washington, DC. Data are drawn from the National Longitudinal Study of Adolescent Health (known as Add Health).
- 7 Kearney, M.S. (2002, August). *Is There an Effect of Incremental Welfare Benefits on Fertility Behavior? A Look at the Family Cap*. Working Paper 9093. Cambridge, MA: National Bureau of Economic Research. Available at: <http://www.nber.org>.
- 8 Soss, J., Schram, S.F., Vartanian, T.P., & O'Brien, E. (2001). Setting the Terms of Relief: Explaining State Policy Choices in the Devolution Revolution. *American Journal of Political Science*, 45(2), 378-403.
- 9 August 1993 was the first month a family's grant might be capped in New Jersey.
- 10 Kaiser Family Foundation. (1999, November). *Welfare Policy and Reproductive Health: 'Capping' a Family's Benefits*. Issue Brief. Menlo Park, CA: Author. Available at: <http://www.kff.org>.
- 11 United States General Accounting Office, 2001.
- 12 CLASP calculations using U.S. Department of Health and Human Services (DHHS) data, "Total Number of Families September 2000-March 2001" at <http://www.acf.dhhs.gov/news/families.htm>. The total number of TANF families for those 10 states was 91,992. The AFDC/TANF Families Monthly Average for FY 1999 for the same 10 states found the same results; the total of 105,000 families in those 10 states receiving TANF is still lower than the number of families impacted by the family cap. U.S. House Committee on Ways and Means. (2000). *The 2000 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means*. Washington, DC: U.S. Government Printing Office.
- 13 United States General Accounting Office, 2001.
- 14 U.S. Department of Health and Human Services. (2003, February). *Temporary Assistance for Needy Families Program Fifth Annual Report to Congress*. Washington, DC: Author. Available at: <http://www.acf.dhhs.gov/programs/ofa/annualreport5>.
- 15 Department of Social and Rehabilitation Services. (1997, January 27). *Family Cap Discussions*. Topeka, KS: Department of Social and Rehabilitation Services. Quoted in Stark, S., & Levin-Epstein, J. (1999, February). *Excluded Children: Family Cap in a New Era*. Washington, DC: CLASP. Available at: <http://www.clasp.org>.
- 16 Unpublished research by Paula Roberts, CLASP Senior Staff Attorney, 2003. For a summary list of family cap litigation, contact proberts@clasp.org.

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The Center for Law and Social Policy (CLASP), a national nonprofit organization founded in 1968, conducts research, legal and policy analysis, technical assistance, and advocacy on issues related to economic security for

low-income families with children.

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low-income families, including comprehensive sex education and abstinence education, provisions in welfare reform related to teen parents, and contraceptive and family planning services.

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