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# ROBERT BROOKS

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STATE REPRESENTATIVE • 60<sup>TH</sup> ASSEMBLY DISTRICT

**Senate Committee on Universities, Technical Colleges, Children and Families  
Tuesday, August 27, 2019**

Thank you for holding a hearing on Senate Bill 350 and allowing me to testify in favor of this legislation.

Last summer, I served as the Chair of the Study Committee on Child Placement and Support. Senator Lena Taylor was the committee's vice chair.

The committee was tasked with reviewing current standards for determining physical placement and child support obligations.

The committee was composed of 5 legislators and 8 public members, including a judge, court commissioner, private family law attorney, domestic violence advocate, fathers' rights activists, and county child support agency directors.

The diverse membership of the committee allowed us to hear from multiple stakeholders. It was important for us to receive feedback from both practitioners and parents that would be directly impacted by policy change – both of which were represented on the committee.

In July 2018, DCF changed an administrative rule and would no longer collect birth costs from cases where the father is a member of an "intact family." DCF views an "intact family" as one in which the unmarried mother and father live in the same household.

Senate Bill 350 reverses the DCF rule and would allow for collection of birth costs from this group of fathers. The DCF rule change has unintended consequences, as fathers from "intact families" typically have higher incomes and a greater ability to repay birth expenses than those from "non-intact families." The rule change disproportionately benefits fathers who are most able to repay their debt to the state.

Under the Birth Cost Recovery program, the father may be ordered to pay back up to one-half of the birth expenses. The order must not exceed 5% of three years' income. The Birth Cost Recovery program takes the father's ability to pay into account. The court may use a reduced sliding scale that limits the father's contribution to a lower percentage. Additionally, no interest or penalties accrue on these orders.

Some opponents argue that the Birth Cost Recovery program leads to increased poverty for low-income families. This is completely unfounded. For example, during a 10-day period in May 2019, Milwaukee County found 117 paternity cases, 55 of which had \$0 birth cost reimbursement orders, due to the father's own poverty level, incarceration status, or as a result of the DCF "intact family" rule change. Typically, in Milwaukee County, approximately 25% of



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fathers on new paternity cases are not asked to pay anything. The most common expense order is \$500, which is payable at a rate of \$1 per week for fathers earning between \$1,000-2,000 monthly.

In addition, in January 2019, Dane County had 64 paternity judgments, 30 of which had \$0 Birth Cost Recovery orders.

Senate Amendment 1 seeks to codify best practices, which Milwaukee and Dane Counties are already utilizing. Under the amendment, fathers whose income is at or below 150% of the federal poverty level will not receive Birth Cost Recovery orders. The Birth Cost Recovery program's goal is not to put undue financial strains on fathers, and the amendment will ensure that only fathers who truly have the ability to pay will be ordered to repay some of the birth expenses.

In June 2019, the Federal Office of Child Support Enforcement stated that Birth Cost Recovery dollars are no longer eligible to receive federal matching funds. This change will result in a \$4.2 million per year loss in federal funding to county child support agencies. The federal guidance was effective immediately, which did not allow DCF or counties to prepare for this funding loss.

Senate Amendment 1 provides \$1.4 million in state funds for each year of the biennium. This will ensure that counties are not negatively impacted as a result of the federal guideline update.

Eighty-five percent of Birth Cost Recovery funds are used to reimburse the BadgerCare Program for Medicaid-funded births and fifteen percent are distributed to county child support programs. Some of the study committee members that are here today will be able to speak more to the funding breakdown and the impact the loss of federal funds will have on them.

Like the child support itself, the Birth Cost Recovery program stems from the notion that parents should be the ones responsible for their children, not the taxpayers, when they have the ability to pay.

Thank you for your time and attention and I ask that you support this legislation. I would be happy to answer any questions.

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# Wisconsin Legislative Council



Anne Sappenfield, Director  
Jessica Karls-Ruplinger, Deputy Director

TO: REPRESENTATIVE ROBERT BROOKS

FROM: Margit S. Kelley, Senior Staff Attorney, and Amber Otis, Staff Attorney

RE: Senate Amendment 1 to 2019 Senate Bill 350, Relating to Eliminating an Administrative Rule Limitation on Recovery of Birth Costs

DATE: August 27, 2019

This memorandum provides a brief description of 2019 Senate Bill 350 and Senate Amendment 1 to the bill, and the background context for the bill and the amendment. The bill relates to an administrative rule limitation on the recovery of birth costs, and was recommended for introduction by the Joint Legislative Council's Study Committee on Child Placement and Support. The companion bill is 2019 Assembly Bill 103.

## BACKGROUND

Under state and federal child support laws, child support services must be provided when a child is receiving medical assistance. The child support and medical assistance services are structured to work together to enforce parents' legal responsibility for a child and to reduce parents' reliance on public assistance. Under this structure, a state medical assistance program is sometimes referred to as a payer of "last resort," and state and local agencies are required to take "reasonable measures" to determine when anyone other than the state has legal responsibility for the cost of medical care and services. [42 U.S.C. ss. 654 (4) (A) (i) and 1396a (a) (25); s. 49.22 (1), Stats.]

Accordingly, as a condition of eligibility for medical assistance, a person assigns to the state any rights to medical support from any other person. As a result, a local income maintenance agency refers a person who is receiving BadgerCare Plus to the local child support agency, which then determines whether child support services will be provided to establish paternity and financial obligations, including medical support obligations. [s. 49.45 (19) (a), Stats.; Department of Health Services, Medicaid Eligibility Handbook, ch. 8 Medical Support, Release 18-02 (August 10, 2018).]

## CURRENT STANDARD FOR BIRTH COST RECOVERY

Within this general requirement, state law specifically provides that if a mother was enrolled in medical assistance at the time of a child's birth, birth costs paid to a health maintenance organization (HMO) under the program may be recovered by the state. [s. 49.45 (19) (c), Stats.]

The state may recover up to half of the actual costs of the pregnancy and birth from the child's father, subject to an additional income limitation formula. Under the income limitation cap, recovery is limited to no more than 5% of the payer's monthly gross income multiplied by 36 months. Also, if a person's income is below certain thresholds related to the federal poverty line, the amount is determined either

under a specific schedule or as appropriate for the father's total economic circumstances. [s. 767.89 (3) (e), Stats.; s. DCF 150.05 (2) (b) and ch. DCF 150 App. D, Wis. Adm. Code.]

Effective July 1, 2018, the administrative rules governing the process were revised upon the recommendation of a child support advisory committee that is convened every four years. The revised rules specify that recovery from a father is inappropriate in cases where the family is intact at the time that paternity or support is established and the father's income, if any, contributes to the support of the child. [s. DCF 150.05 (2) (a), Wis. Adm. Code, and Clearinghouse Rule 16-075.]

## FISCAL EFFECT OF BIRTH COST RECOVERY

When birth costs paid under the BadgerCare Plus program are recovered, 85% of the amount is returned to the medical assistance program. Fifteen percent of the recovered amount is returned to the local child support agency as an incentive payment, from the federal share. [s. 49.89 (7) (b), Stats.]

The fiscal estimate from the Department of Children and Families (DCF) to the Assembly companion bill reports that revenue collections for the medical assistance program and county child support agencies have likely decreased due to the intact family limitation that was added by administrative rule in July 2018.

In addition, under the state reporting standards that were in place until June 11, 2019, the federal government provided a match of 66% on the incentive payments for county child support enforcement services. Under this matching ratio, for every \$.34 received by a county child support agency from the county-retained incentive, an additional \$1.94 was provided to the county in federal matching funds. [Legislative Fiscal Bureau, *Child Support Enforcement Program*, Informational Paper No. 42 (January 2019).]

However, as of June 11, 2019, the federal Office of Child Support Enforcement has notified state child support agencies that incentive payments must be reported as program income, rather than as general purpose revenue (GPR). Under that category, the matching federal funds are not available. [U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, *State Medicaid Agency Incentive Payments for Assigned Medical Support Collection*, Policy Interpretation Questions No. PIQ-19-01 (June 11, 2019).]

According to data provided by DCF, the following total dollar amounts were collected from birth cost recovery orders, with 85% returned to the medical assistance program and 15% returned to counties:

Year	Total Birth Cost Recovery Collections	15% County-Retained Incentive	Extrapolated Calculation of Approximate Former Federal Match to Counties
2016	\$16,511,200	\$2,476,680	\$4,804,759
2015	\$17,002,661	\$2,550,399	\$4,947,774
2014	\$17,499,093	\$2,624,864	\$5,092,236

<b>Year</b>	<b>Total Birth Cost Recovery Collections</b>	<b>15% County-Retained Incentive</b>	<b>Extrapolated Calculation of Approximate Former Federal Match to Counties</b>
2013	\$17,742,903	\$2,661,435	\$5,163,184

## **THE BILL**

2019 Senate Bill 350 directly modifies the administrative rule to remove the intact family limitation that was added in 2018. Accordingly, under the bill, birth cost recovery from an intact family could be appropriate if the income thresholds related to the federal poverty line are met. Under those thresholds, if a father's income is between 75% to 150% of the federal poverty line, a recovery order may range from 3.3% to 5% of monthly income.

## **SENATE AMENDMENT 1**

Senate Amendment 1 to the bill makes two revisions that modify the impact of the bill and the recent change in the implementation of the federal matching rule.

First, although the amendment does not change the removal of the intact family limitation, the amendment additionally specifies that birth cost recovery cannot be ordered if the father's income is equal to or below 150% of the federal poverty line. In other words, recovery from an intact family could be appropriate if a father's income is over 150% of the federal poverty line, but in no case could recovery be ordered if a father's income is at or below that threshold.

Second, the amendment increases the GPR appropriation to DCF by \$1.4 million for each of the next two fiscal years (2019-20 and 2020-21). The increase is identified as providing temporary funding only and is to be directed to counties for administrative costs.

While the federal match is no longer available for incentive payments, the federal match is available for state GPR appropriations. By increasing the appropriation from GPR by \$1.4 million, the counties could then receive a federal match of approximately \$2.716 million, for a total replacement of the lost match on the incentive payments of approximately \$4.116 million, for each of the next two fiscal years.

If you have any questions, please feel free to contact either of us directly at the Legislative Council staff offices.

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## MEMORANDUM

**TO:** Honorable Members of the Senate Committee on Universities, Technical Colleges, Children and Families

**FROM:** Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs

**DATE:** August 27, 2019

**SUBJECT:** Support for Senate Bill 350 – Birth Cost Recovery

The Wisconsin Counties Association (WCA) supports Senate Bill 350, which repeals a rule change implemented by the Department of Children and Families (DCF) in July 2018 that prohibits birth cost reimbursement from all fathers living in an “intact” family, regardless of their income.

Under current law, if a mother was enrolled in medical assistance at the time of a child’s birth, the father may be ordered to contribute to birth costs paid by the medical assistance program. The amount that may be ordered for a father’s obligation is up to half of the regional average cost of the pregnancy and birth, subject to an income limitation formula. The rule change implemented last year by DCF prohibits the recovery of birth costs if the mother and father are living together (“intact” family) regardless of the father’s income. Senate Bill 350 removes the “intact” family limitation.

To alleviate concerns raised in the Assembly hearing on this legislation with regard to the collection of birth costs from fathers who simply cannot afford to pay, an amendment has been drafted prohibiting birth cost recovery orders from fathers whose income is less than 150% of the FPL.

Under the birth cost recovery program, counties are able to retain 15% of recoveries as reimbursement for their efforts in establishing and collecting birth costs. Counties then reinvest those dollars in their child support programs, collecting federal matching funds on the reinvested dollars at a matching rate of 66% (each dollar invested draws down approximately \$2 in federal match).

At the beginning of July, counties were informed by the Wisconsin Department of Children and Families that the federal Office of Child Support Enforcement issued

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guidance in June 2019 stating that birth cost expenses collected and retained by counties are no longer eligible to receive federal matching funds. This will result in a loss of \$4.2 million per year in federal funding for county child support agencies effective immediately. The Wisconsin Counties Association has been working with the Wisconsin Child Support Enforcement Association (WCSEA) and the Department of Children and Families to find a way to mitigate this loss in federal funds to county child support agencies.

In addition to prohibiting the collection of birth costs from fathers below 150% of the FPL, the amendment also provides \$1.4 million GPR in each fiscal year, on a temporary basis, to make counties whole. The \$1.4 million draws down \$2.8 million in federal funding, providing counties with the \$4.2 million needed to cover the loss in federal matching funds on birth cost recoveries. Counties will work with the administration and legislature to find a permanent solution to this issue for future biennia.

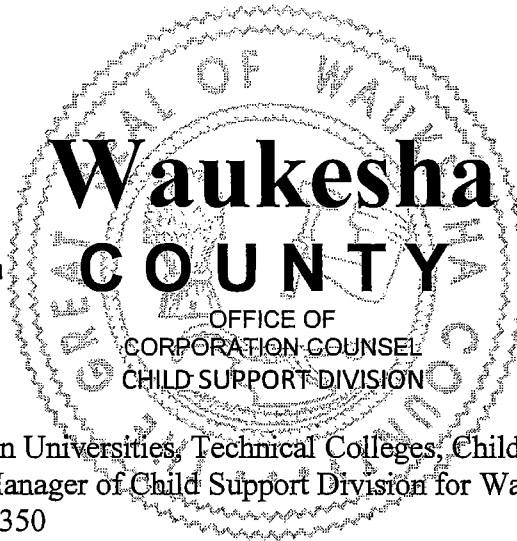
It is vitally important to counties that the legislation, along with the amendment, be acted on quickly. Counties are currently in the process of adopting their 2020 budgets and need to know how to proceed budgetarily as in many instances the federal loss equates to a significant increase in levy or a loss of staff positions (which would be detrimental to the state's child support enforcement program). A county by county breakdown of the federal loss is attached.

Thank you for considering our comments.

**Paul Farrow**  
County Executive

**Erik G. Weidig**  
Corporation Counsel

**Kimberly K. Haines**  
Manager, Child Support Division



To: Senate Committee on Universities, Technical Colleges, Children and Families  
From: Kimberly Haines, Manager of Child Support Division for Waukesha County **VKH**  
Re: Support Senate Bill 350  
Date: Tuesday, August 27, 2019

Thank you, Chair Kooyenga and members of the Senate Committee on Universities, Technical Colleges, Children and Families, for holding a public hearing today on Senate Bill 350. Waukesha County strongly urges you to support this bill which reverses a 2018 administrative rule change limiting counties' ability to collect birth costs from fathers who live with their child's mother, regardless of their income. This bill was drafted with bi-partisan support by the Study Committee on Child Placement and Support. In addition, we support the proposed amendment to the bill which exempts fathers with incomes at or below 150% of the Federal Poverty Level from paying birth costs and provides temporary state funding to make up for the Federal shortfall that was created by the decision to end the federal match for birth cost recovery.

Birth cost recovery reflects decades worth of public policy establishing Medicaid as the payer of last resort. Wisconsin Statute Section 767.89(3)(e) requires a court to order a father to pay back a portion of the "reasonable expenses of the mother's pregnancy and the child's birth". There are clear statutory and administrative code guidelines that ensure birth cost recovery is based on the father's ability to pay. For mothers enrolled in the BadgerCare program, counties collect an average of \$13.4 million dollars per year with 85% of the revenue being returned to the Medicaid program. County child support agencies are allowed to retain 15% of funds recovered, which is roughly \$2.3 million per year, to support the services we provide to mothers, fathers and children.

In 2018, Waukesha County collected approximately \$787,000 in birth costs. Of that, \$118,000 went to Waukesha County's child support agency, and \$669,000 went back to the Medicaid program. Because the child support program received a 66% federal match, these funds generated an additional \$229,000 in federal funding for Waukesha County's child support agency, for a total value of \$347,000.

In July 2018, Wisconsin Administrative Code DCF 150.05(2)(a) was amended to include language that states: "Recovery of birth costs is inappropriate in cases where the alleged father is a member of an intact family that includes the mother and the subject child at the time paternity or support is established, and the father's income, if any, contributes to the support of the child." The "intact family rule" does not factor in a father's income or his ability to pay. Waukesha County requests that this rule be repealed and replaced with no contribution from fathers whose incomes are equal to or below 150% of the Federal Poverty Level.



Lastly, it is critical that the amendment proposed by Chair Kooyenga and Representative Brooks be adopted to prevent a drastic loss in federal funding for county child support agencies. The Federal Office of Child Support Enforcement issued guidance this summer stating that birth cost expenses are no longer eligible to receive federal matching funds. This will result in a loss of \$4.2 million per year in federal funding for county child support agencies. For Waukesha County, this means a loss of roughly \$230,000 per year. A loss of this magnitude would reduce our division by 2.75 positions which is already burdened by twice the caseload of four years ago.

The additional \$1.4 million in state funds provided by the proposed amendment will draw down \$2.8 million in federal funds which are needed to hold county child support agencies harmless after the abrupt federal law interpretation change. This is a temporary funding fix and county child support agencies are committed to finding a long-term solution.

Thank you for your time and consideration. Please do not hesitate to contact me if you have any questions.



## Wisconsin Child Support Enforcement Association

To: Senate Committee on Universities, Technical Colleges, Children and Families  
From: Debra Barnes, President of the Wisconsin Child Support Enforcement Association  
Re: Support for Senate Bill 350 and Senate Amendment 1  
Date: Tuesday, August 27, 2019

Thank you, Chair Kooyenga and members of the Senate Committee on Universities, Technical Colleges, Children and Families, for holding a public hearing today on Senate Bill 350. The Wisconsin Child Support Enforcement Association, the statewide association of county child support agencies, strongly urges you to support this bill which reverses a 2018 administrative rule change limiting counties' ability to collect birth costs from fathers who live with their child's mother, regardless of their income. This bill was drafted with bipartisan support by the Study Committee on Child Placement and Support. In addition, we support Senate Amendment 1 authored by Senators Kooyenga and Bewley and Representative Brooks, which exempts fathers with incomes below 150% of the Federal Poverty Level from paying birth costs and provides temporary state funding to make up for a shortfall created by the abrupt loss of \$4.2 million in federal matching funds on birth cost recovery activities.

While a joyful event, the birth of a baby is not without cost. Under Wisconsin law, an unmarried father may be required to contribute to the cost of his child's birth based on his ability to pay. This is called birth cost recovery (also known as birth cost reimbursement or BCR) and it applies whether the mother paid out-of-pocket costs or if the birth was paid for by Medicaid. If the mother paid, the court can order the father to partially reimburse her, and if the state paid, the court can order the father to partially reimburse Medicaid for the benefits it provided.

Birth cost orders are one-time costs that do not accrue interest. There are clear statutory and administrative code protections in place to ensure that birth cost reimbursement does not pose an undue financial burden to fathers. Under Wisconsin law, birth cost orders are capped at one-half of the regional average for birth costs, regardless of the father's income. Wisconsin's administrative code further limits a father's financial responsibility to 5% of his monthly income over 36 months.

A rule change implemented by the Department of Children and Families in July 2018 prohibited birth cost reimbursement from all fathers living in an intact family, regardless of their income. Under this change, a wealthy father living with the mother and child cannot be ordered to contribute to the birth costs of his child, despite having the ability to do so, while a lower-income father not living with the mother and child could be.

Repealing the DCF 150 rule change will give child support agencies the discretion to collect birth cost reimbursement in cases where the father has the ability to pay, following clear administrative code requirements which limit the amount of birth cost reimbursement ordered. The WCSEA support the proposed amendment which exempts fathers whose incomes are 150% of the Federal Poverty Level from birth cost recovery.

Lastly, it is critical that the amendment proposed by Senators Kooyenga and Bewley and Representative Brooks be adopted to prevent a drastic loss in federal funding for child support agencies. After the passage of the 2019-21 state budget, Wisconsin was made aware that the Federal Office of Child Support Enforcement

issued guidance stating that birth cost expenses are no longer eligible to receive federal matching funds. This will result in a loss of \$4.2 million per year in federal funding for child support agencies. The additional \$1.4 million in state funds provided by Senate Amendment 1 will draw down \$2.8 million in federal funds, holding county child support agencies harmless for the next two years. This is a temporary funding fix and the WCSEA is committed to finding a long-term solution.

It is important that this funding be provided now as counties are currently working to craft their budgets and have just been made aware of this unexpected federal shortfall. For some counties, the loss of funding could mean cutting staff positions. This is concerning as county child support staffing has already fallen by roughly 9% over the past decade while caseloads have increased by about 6%. Wisconsin's strong performance in child support is at risk without additional state funding, which could lead to an additional loss in federal performance-based funding. In fact, Wisconsin is already slipping in the national performance rankings because other states have been investing in their programs. As an example, Wisconsin fell from 2nd in the nation for collection of current support in 2017 to 4th in the nation in 2018.

While we are very grateful for the increase we received in the state budget, which was the first state increase to the program in a decade, our program is at risk without the additional state funds provided by Senate Amendment 1.

Thank you for your time and consideration. Please do not hesitate to contact me if you have any questions.

Debra Barnes, President  
Wisconsin Child Support Enforcement Association



WISCONSIN  
COUNTIES  
ASSOCIATION

## BIRTH COST RECOVERY—Assembly Bill 103/Senate Bill 350

**BACKGROUND:** While a joyful event, the birth of a baby is not without cost. Under Wisconsin law, an unmarried father may be required to contribute to the cost of his child's birth based on his ability to pay. This is called birth cost recovery (also known as birth cost reimbursement or BCR) and it applies whether the mother paid out-of-pocket costs or if the birth was paid for by Medicaid. If the mother paid, the court can order the father to partially reimburse her, and if the state paid, the court can order the father to partially reimburse Medicaid for the benefits it provided.

Birth cost orders are one-time costs that do not accrue interest. There are clear statutory and administrative code protections in place to ensure that birth cost reimbursement does not pose an undue financial burden to fathers. Under Wisconsin law, birth cost orders are capped at one-half of the regional average for birth costs, regardless of the father's income.<sup>1</sup> Wisconsin's administrative code further limits a father's financial responsibility to 5% of his monthly income over 36 months.<sup>2</sup> Additional limits are in place for fathers with incomes below 150% of the Federal Poverty Level.<sup>3</sup>

Once the BCR amount is established, a court determines how it will be paid. A typical birth cost order is repaid at \$25 per month or less. If a father has little to no regular income, no reimbursement is ordered.

On average, Medicaid receives \$13.4 million in birth cost reimbursements per year from fathers who have the ability to pay for their share of the birth. County child support agencies are allowed to retain 15% of funds recovered, which is roughly \$2.3 million per year, to support the services they provide to mothers, fathers and children.

**ISSUE:** A rule change implemented by the Department of Children and Families in July 2018 prohibited birth cost reimbursement from all fathers living in an intact family, regardless of their income. Under this change, a wealthy father living with the mother and child cannot be ordered to contribute to the birth costs of his child, despite having the ability to do so, while a lower-income father not living with the mother and child could be. Repealing the DCF 150 rule change will give child support agencies the discretion to collect birth cost reimbursement in cases where the father has the ability to pay, following clear administrative code requirements which limit the amount of birth cost reimbursement ordered.

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<sup>1</sup> Wis.Stat. §767.89(3)(e)

<sup>2</sup> DCF 150.05(2)

<sup>3</sup> DCF 150 Appendix D

Additionally, the Federal Office of Child Support Enforcement issued guidance in June 2019 stating that birth cost expenses are no longer eligible to receive federal matching funds. This will result in a loss of \$4.2 million per year in federal funding for county child support agencies.

**REQUESTED ACTION:** Support Assembly Bill 103, which would repeal the DCF 150 rule change related to BCR for fathers who live with their child's mother, as well as the amendment authored by Representative Brooks exempting fathers with incomes below 150% of the Federal Poverty Level from BCR and providing state funding to make up for the federal shortfall that will result from the decision to end the match on BCR.

**TALKING POINTS:**

- AB 103 received bi-partisan support from members of the Study Committee on Child Placement and Support.
- The DCF 150 rule change related to BCR for fathers living in an intact family, which AB 103 repeals, is not an equitable policy. As a result of the rule change, fathers who have the ability to reimburse Medicaid for the birth of their child are not required to do so simply because they reside with the child's mother.
- An additional \$1.4 million in state funds will draw down \$2.8 million in federal funds which are needed to hold county child support agencies harmless after an abrupt federal interpretation change eliminated \$4.2 million in federal matching funds for state BCR.
- BCR orders are a one-time cost. These orders are based on the father's ability to pay, do not accrue interest, and are capped at one-half of the regional average for birth costs. A typical BCR order is repaid at \$25 per month or less.
- Wisconsin statute and code ensure that BCR does not pose an undue financial burden to fathers. An amendment proposed by Representative Brooks would explicitly exempt fathers with incomes below 150% of the Federal Poverty Level from BCR.
- BCR ensures parental responsibility and reflects well-established public policy that Medicaid is the payer of last resort. The vast majority of birth cost reimbursement funds collected (85%) reimburse the Medicaid program.

Contact: Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs  
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Michael Blumenfeld, Wisconsin Child Support Enforcement Association  
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State of Wisconsin - Bureau of Child Support  
 Birth Cost Recovery Match Loss - Hold Harmless  
 For the State-County Contract Year 2020

A	1	2	3	4	5	6	7
County	County-Retained Birth Cost Recovery Collections (CY2018)	County-Retained Birth Cost Recovery Collections (CY2018) Federal Match	Total Funding from Birth Cost Recovery Collections	Matchable Funding Loss on Retained Collections (Col. 2 x 34%)	Potential Hold Harmless Funding (matchable)	Fed Match on Potential Hold Harmless Funding	Total Potential Hold Harmless Funding
Adams	\$ 4,713	\$ 9,149	\$ 13,863	(\$3,111)	\$ 3,111	\$ 6,039	\$ 9,149
Ashland	9,853	19,126	28,978	(6,503)	6,503	12,623	19,126
Barron	448	870	1,318	(296)	296	574	870
Bayfield	276	536	811	(182)	182	353	536
Brown	142,703	277,012	419,715	(94,184)	94,184	182,828	277,012
Buffalo	873	1,695	2,569	(576)	576	1,119	1,695
Burnett	7,785	15,112	22,898	(5,138)	5,138	9,974	15,112
Calumet	11,063	21,476	32,540	(7,302)	7,302	14,174	21,476
Chippewa	27,821	54,005	81,826	(18,362)	18,362	35,643	54,005
Clark	9,409	18,264	27,673	(6,210)	6,210	12,054	18,264
Columbia	22,171	43,039	65,210	(14,633)	14,633	28,405	43,039
Crawford	2,870	5,572	8,442	(1,894)	1,894	3,678	5,572
Dane	201,655	391,449	593,104	(133,093)	133,093	258,356	391,449
Dodge	40,930	79,452	120,381	(27,014)	27,014	52,438	79,452
Door	6,091	11,824	17,914	(4,020)	4,020	7,804	11,824
Douglas	21,090	40,939	62,028	(13,919)	13,919	27,020	40,939
Dunn	15,593	30,268	45,861	(10,291)	10,291	19,977	30,268
Eau Claire	45,485	88,295	133,780	(30,020)	30,020	58,275	88,295
Florence	794	1,541	2,334	(524)	524	1,017	1,541
Fond du Lac	18,365	35,650	54,016	(12,121)	12,121	23,529	35,650
Forest	6,376	12,376	18,752	(4,208)	4,208	8,168	12,376
Grant	10,078	19,563	29,641	(6,652)	6,652	12,912	19,563
Green	9,100	17,665	26,765	(6,006)	6,006	11,659	17,665
Green Lake	2,639	5,123	7,763	(1,742)	1,742	3,381	5,123
Iowa	7,635	14,820	22,455	(5,039)	5,039	9,781	14,820
Iron	0	-	-	0	0	0	0
Jackson	7,782	15,106	22,888	(5,136)	5,136	9,970	15,106
Jefferson	23,398	45,420	68,819	(15,443)	15,443	29,977	45,420
Juneau	5,996	11,640	17,636	(3,958)	3,958	7,682	11,640
Kenosha	97,306	188,888	286,194	(64,222)	64,222	124,666	188,888
Kewaunee	3,925	7,619	11,544	(2,590)	2,590	5,029	7,619
La Crosse	33,364	64,765	98,129	(22,020)	22,020	42,745	64,765
Lafayette	5,223	10,138	15,361	(3,447)	3,447	6,691	10,138
Langlade	15,083	29,278	44,361	(9,955)	9,955	19,324	29,278
Lincoln	21,044	40,849	61,893	(13,889)	13,889	26,961	40,849
Manitowoc	36,879	71,588	108,467	(24,340)	24,340	47,248	71,588
Marathon	57,914	112,421	170,336	(38,223)	38,223	74,198	112,421
Marinette	22,985	44,617	67,602	(15,170)	15,170	29,447	44,617
Marquette	1,057	2,052	3,109	(698)	698	1,354	2,052
Milwaukee	367,775	713,915	1,081,690	(242,731)	242,731	471,184	713,915
Monroe	22,865	44,385	67,250	(15,091)	15,091	29,294	44,385
Oconto	13,258	25,736	38,994	(8,750)	8,750	16,986	25,736
Oneida	24,989	48,508	73,497	(16,493)	16,493	32,015	48,508
Outagamie	89,945	174,599	264,545	(59,364)	59,364	115,236	174,599
Ozaukee	11,774	22,856	34,630	(7,771)	7,771	15,085	22,856
Pepin	875	1,698	2,573	(577)	577	1,121	1,698
Pierce	3,207	6,225	9,431	(2,116)	2,116	4,108	6,225
Polk	35	68	103	(23)	23	45	68
Portage	27,602	53,581	81,183	(18,218)	18,218	35,363	53,581

State of Wisconsin - Bureau of Child Support  
 Birth Cost Recovery Match Loss - Hold Harmless  
 For the State-County Contract Year 2020

A	1	2	3	4	5	6	7
County	County-Retained Birth Cost Recovery Collections (CY2018)	County-Retained Birth Cost Recovery Collections (CY2018) Federal Match	Total Funding from Birth Cost Recovery Collections	Matchable Funding Loss on Retained Collections (Col. 2 x 34%)	Potential Hold Harmless Funding (matchable)	Fed Match on Potential Hold Harmless Funding	Total Potential Hold Harmless Funding
Price	10,561	20,500	31,060	(6,970)	6,970	13,530	20,500
Racine	106,668	207,062	313,731	(70,401)	70,401	136,661	207,062
Richland	4,606	8,942	13,549	(3,040)	3,040	5,902	8,942
Rock	77,385	150,217	227,602	(51,074)	51,074	99,143	150,217
Rusk	10,382	20,153	30,535	(6,852)	6,852	13,301	20,153
Sauk	34,311	66,604	100,916	(22,645)	22,645	43,959	66,604
Sawyer	1,505	2,921	4,426	(993)	993	1,928	2,921
Shawano	2,698	5,237	7,935	(1,781)	1,781	3,457	5,237
Sheboygan	42,438	82,379	124,816	(28,009)	28,009	54,370	82,379
St. Croix	4,106	7,971	12,078	(2,710)	2,710	5,261	7,971
Taylor	10,829	21,021	31,850	(7,147)	7,147	13,874	21,021
Trempealeau	4,326	8,398	12,724	(2,855)	2,855	5,543	8,398
Vernon	1,778	3,451	5,228	(1,173)	1,173	2,277	3,451
Vilas	9,040	17,549	26,589	(5,967)	5,967	11,582	17,549
Walworth	61,855	120,071	181,926	(40,824)	40,824	79,247	120,071
Washburn	1,791	3,477	5,268	(1,182)	1,182	2,295	3,477
Washington	32,350	62,797	95,147	(21,351)	21,351	41,446	62,797
Waukesha	118,110	229,273	347,384	(77,953)	77,953	151,320	229,273
Waupaca	11,386	22,102	33,488	(7,515)	7,515	14,587	22,102
Waushara	11,139	21,623	32,762	(7,352)	7,352	14,271	21,623
Winnebago	58,779	114,101	172,880	(38,794)	38,794	75,306	114,101
Wood	35,992	69,867	105,859	(23,755)	23,755	46,112	69,867
<b>Statewide Total</b>	<b>\$ 2,172,132</b>	<b>\$ 4,216,491</b>	<b>\$ 6,388,622</b>	<b>\$ (1,433,607)</b>	<b>\$ 1,433,607</b>	<b>\$ 2,782,884</b>	<b>\$ 4,216,491</b>

Note: The matchable funding loss in column 4 is equal to the county-retained birth cost recovery collections federal match, as shown in column 2 x 34%.

*Pulse Report:*

# **Birth Cost Recovery in Wisconsin:** **“It’s Not Child Support.”**

*A policy investigation.*



**HealthWatch Wisconsin**

32 N. Bassett St. Madison, WI | [healthwatchwisconsin.org](http://healthwatchwisconsin.org)





## Introduction

Our ongoing research and investigation illustrates that Birth Cost Recovery (BCR) policy in Wisconsin systemically hinders statewide efforts to promote improved birth outcomes, reduce infant mortality, drives families further into poverty, and discourages unmarried fathers to play an important and supportive role in their children's lives.

## BCR is Not Child Support

The policy does not support children; rather it supports child support offices. BCR is a collections process directed by the State of Wisconsin and implemented by County Child Support Agencies (CSAs) that aggressively pursues the recovery of Medicaid supported birthing costs from unmarried, often non-custodial fathers. ABC for Health has advocated—and continues to advocate—for Wisconsin to abandon the practice altogether as most other states already have. At a minimum, Wisconsin should refocus the approach to lessen the unintended negative consequences on children and families.



## A Review – What is BCR? How is it Implemented in Wisconsin?

The Social Security Act created a federal system to collect child support payments from non-custodial parents.<sup>(1)</sup> As such, the system requires states to locate unmarried parents, establish paternity for non-marital children, and establish orders to collect financial support. The system also *allows* states to recover Medicaid related pregnancy and birth costs from unmarried fathers after the birth of a child. However, the vast majority of states do not pursue birth costs from unmarried parents.

Wisconsin follows a dangerous path that interferes with prompt access to prenatal care for pregnant women. Typically, when an unmarried pregnant woman applies for BadgerCare Plus, she is asked to name the father. The father's name is ultimately forwarded to the CSA, which will attempt to recover birth related expenses from the father. The BCR process is linked to child support obligation payments and the required repayment obligation is set by a judge or court commissioner in family court.



According to the Wisconsin Department of Children and Families, under federal rules, CSAs will ask the court to set the repayment amount to the lower of the following options:

- 5% of the father's monthly income over a 36 month period, or
- Half of the regional average amount for birth costs, or
- Half the actual birth costs up to the full regional amount for birth costs <sup>(2)</sup>

For reference, the projected Medicaid HMO birth costs for live births (no additional costs for multiple or cesarean births) vary between \$3,996 to \$6,177 among Wisconsin's 6 regions.<sup>(3)</sup>

If a pregnant mother does not provide the name of the father of her child, she may be deemed "non-cooperative" and can be sanctioned by losing BadgerCare Plus benefits 60 days after the birth of her child. However, a mother who chooses not to identify the father of her child can request a "Good Cause Exemption."

State records show that between 2011 and 2015, an annual average of 512 Good Cause Exemption requests were filed by unmarried mothers. Of these, an average of only 144 or 28% were granted each year.<sup>(4)</sup> The County Income Maintenance Agency determines if good cause exists to grant the exemption.

The required documentation to prove good cause can be steep for an unmarried mom—which may explain why so few exemptions are approved. The CSA may request the mother to submit a written statement from a health care provider about her emotional or physical health, law enforcement records to establish facts, or written statements from friends, neighbors, or social workers familiar with the circumstances.<sup>(5)</sup>

Few low-income mothers can meet the complex standards necessary to prove good cause. Because almost all mothers are without legal representation in their attempts to prove good cause, they are considerably less likely to successfully influence the ultimate decision. If the father does not pay, he may have his wages garnished, taxes intercepted, or have some public benefits denied or revoked.

## One Family's Story

Ariel is a 25-year-old woman who recently returned to school to pursue a degree. Over the summer, she moved in with her 28-year old partner of 3 years, Nick. Recently, the couple found out they are expecting and are ecstatic to add a new member to their family. Ariel and Nick plan to marry down the road after they save up some money, but the financial priority will be on the new baby, Ariel's schooling, and the family. Ariel is unable to work while she attends school, while Nick struggles to make their ends meet on a single income. Nick strives to support the family, but they both realize that Ariel will need BadgerCare Plus to cover mom and baby's current and future health insurance needs.

Ariel works through a BadgerCare Plus application, but stops when she sees a question asking her to name an "absent parent." She is confused, as Nick is not absent, they are simply unmarried. Ariel has heard that some of her unmarried friends and neighbors encountered issues when listing the dad as an "absent parent," ending up with a court date for the dad. Nick would be upset, even angry to have to go to court and the family cannot afford a lawyer. Ariel worries; she knows that if she does not list Nick, she could be sanctioned and ultimately lose her BadgerCare benefits after the baby is born. But she also knows that if she lists Nick, the county will take him to court to cover the costs of the birth—an expense she is positive he cannot pay while he pays their normal bills. Ariel realizes that if Nick pays monthly BCR payments, he would be less able to help care for her and her child. Ariel is afraid to call Nick and tell him, afraid of causing him more tension or worry. She puts down her phone and starts to consider other options. Her child has not even been born yet; BCR is already driving a wedge between a happy and intact couple.



Ariel feels the stress and anxiety growing as she considers her third option; to forget about the application completely. She could simply wait to get prenatal care, or pay out of pocket and avoid the expenses that BadgerCare would cover. Her partner would not have to pay for BCR at all! She wonders if this is an option for her baby.

Ariel feels the pressure of this situation and even more confusion. How is she supposed to choose between potentially harming her child or hurting her relationship with Nick? Stuck in a lose-lose situation, she thinks of their child. She hopes Nick understands and can somehow afford the stress and expenses related to a BCR judgment and still provide a comfortable life for their child and new family.

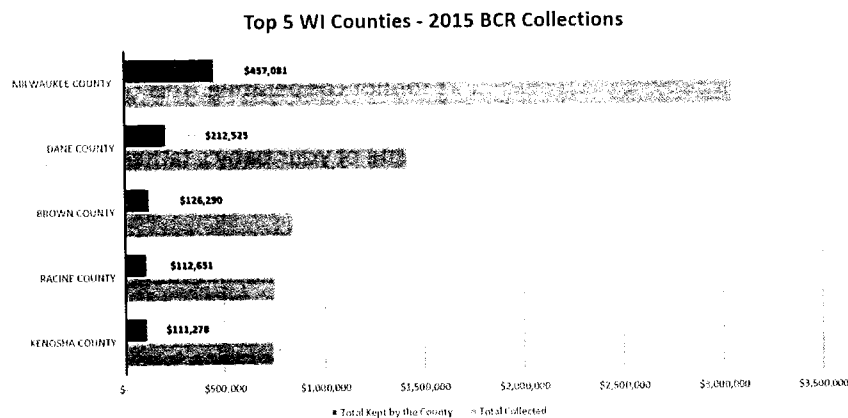
## What is Good Cause?

Pregnant women are asked to cooperate with child support agencies by identifying the father of a child. You may have a good reason for not cooperating. This "good cause" reason for not identifying the name of your baby's father may be one of the following:

- Cooperation could result in physical and/or emotional harm to you or your child;
- Your cooperation would make it more difficult to escape domestic abuse or risk of abuse;
- Your child was born as a result of sexual assault or incest;
- A petition for adoption of your child is filed or you are working with an agency that is helping you decide if you will place your child for adoption.<sup>(6)</sup>

## Why is BCR So Critical to Address?

BCR policy affects a significant proportion of Wisconsin's most vulnerable families—unmarried women, fathers, infants—but most often, minority families in poverty.



In 2015, BadgerCare Plus supported 37% of the 67,004 births in Wisconsin. Of the BadgerCare supported births, 69% were to unmarried moms, which means 17,106 fathers were potential candidates for BCR judgments. Furthermore, birth cost judgments disproportionately affects black mothers and families; in 2015, MA/BadgerCare supported 5,114 births to Black/African American women and 90% of the mothers were unmarried.<sup>(7)</sup>

Between 2011 and 2016, Wisconsin collected nearly \$106 million in BCR judgments.<sup>(8)</sup> Unlike child support, not a nickel of those collections went to support Medicaid eligible moms and infants in need; \$15,883,236 went to CSAs, and the remainder went to the state and federal governments.

### BCR may increase infant mortality.

In the “2016 America’s Health Rankings”, the United Health Foundation indicated that Wisconsin’s black/white infant mortality ratio of 2.9 is among the highest in the nation.<sup>(9)</sup> Research by Dr. Meghan Pesko in a MPH Capstone project at the UW School of Medicine and Public Health makes the cogent case that BCR policy may be a significant contributor to infant mortality. The unintended consequences of Wisconsin’s BCR policy—such as perpetuating family poverty, contributing to parental discord, lack of paternal support, increase in chronic stress, and delayed entry into prenatal care—may contribute to infant mortality (death of an infant before age 1). Dr. Pesko concludes that “elimination of BCR policy should be considered as part of a multi-faceted effort to reduce health disparities in infant mortality in our state.”<sup>(10)</sup>

### Excessive birth cost judgments negatively impact child support payments.<sup>(11)</sup>

The number of single parent households in the U.S. has risen from approximately 9% in 1960 to greater than 26% today.<sup>(12)</sup> Therefore, the role of child support payments has become even more critical to lift single moms and children out of poverty. Large BCR judgments compromise resources from financially strapped dads that could otherwise be used to support the family. Strong enforcement measures by CSAs often do not result in increased payments but instead keep fathers from participating in the system.<sup>(13)</sup>

### BCR makes unmarried dads less likely to take an active role in their infant’s life.

BCR judgments can become 30% of an under or unemployed non-custodial father’s income.<sup>(14)</sup> The fear of inability to pay, the potential for court action, contempt of court charges, loss of a job, etc. can act as an incentive for a father to disengage and run. At the very least, the weight of obligations associated with BCR can cause family conflict and can keep fathers—and precious financial resources—away from the families and children. Anecdotally, some unmarried fathers will not attend the birth of their own child because they do not want to be identified and forced to pay for the birth costs; this is troubling because research has shown that paternal absence may widen the black/white gap in infant mortality almost four-fold.<sup>(15)</sup> Remember, no dollars recovered under BCR go to the family.

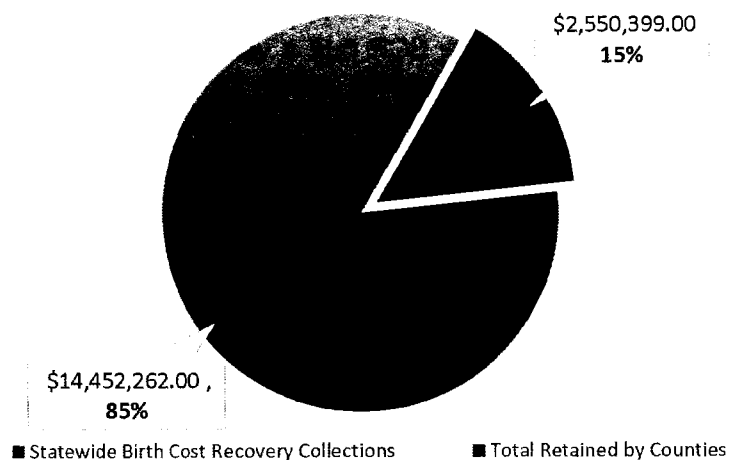
Again, none of these collections go to children and families. Federal child support laws incentivize CSAs to maximize collections by their ability to keep 15% of collections for the support of their county agency budget. The remaining 85% is returned to the Wisconsin Department of Health Services and the federal government for repayment of Medicaid costs.

Wide variation exists with respect to BCR policy among the states. However, because there is little federal oversight of BCR within the U.S. Department of Health and Human Services, comprehensive state-to-state comparison data is nonexistent.

In 2010, the National Council of Child Support Directors Member Survey indicated that only a small minority of states even continue to practice BCR. <sup>(16)</sup> Wisconsin was then found to be one of only eight states that still practice and implement BCR policy—and among those states, Wisconsin appeared to have the most aggressive enforcement posture.

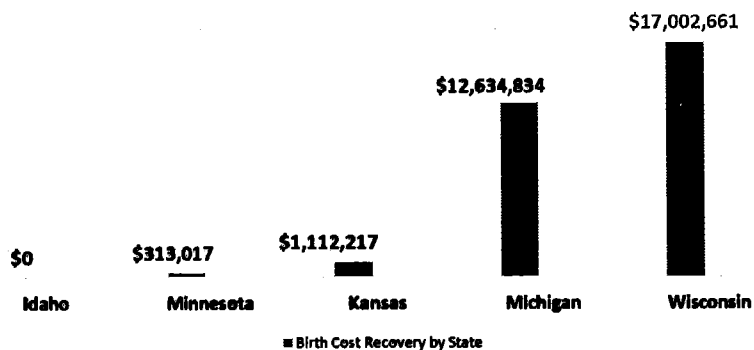
Although the federal law has not changed at all, most states have abandoned the practice of BCR after realizing that it is not in the best interest of the family.

Birth Cost Recovery Collections & Payments to Counties 2015



**BCR collects significant resources from families— in excess of \$100 million between 2011-2016 in WI alone.**

Birth Cost Recovery Amount Collected in 2015



**Wisconsin has 58.2% of the population of Michigan yet has collected almost \$4.4 million more in BCR.**

This chart is based on information ABC collected in Fall 2017 via Freedom of Information Requests to the **eight states known to still recover birth costs as of 2010**. In 2014, Idaho discontinued BCR practices from Medicaid-covered births entirely, with a district court decision that found the State's application of Idaho's Medicaid reimbursement statute violated constitutional equal protection rights.

Wisconsin's neighbor, Minnesota, still continues to pursue recovery of Medicaid birth costs from non-custodial parents, but experienced a significant decrease in the cases pursued in the past 15 years. In 2015, Minnesota only collected about \$300,000, compared to Wisconsin's 2015 collection of \$17 million. The Minnesota Department of Human Services informed us that Minnesota practices extreme discretion when deciding whether to pursue the recovery of birth costs.

Minnesota concluded that the best interest of the family is compromised by imposing a birth cost judgment when the father is unable to pay. Also, the administrative costs to obtain the judgment may exceed what the county or state can recover from the father.

## Why is BCR so Difficult to Address?

The individuals affected by BCR lack a voice within our state policy making structure. This is not unique to Wisconsin. Sadly more research points to “the widening gulf in political voice and power along socio-economic lines” in our country.<sup>(17)</sup> Even among advocates, the issue is often lost because it is complex and poorly understood. BCR lies among several systems—the county child support enforcement agency, family courts, county income maintenance programs, the Wisconsin Department of Children and Families, and the State Medicaid system. The fact that BCR is a secondary consideration in the Child Support System means that bureaucratic processes often run on autopilot without full consideration of potential negative consequences to families and newborns.

Moreover, the public and politicians often conflate BCR with child support instead of recognizing unique approaches with different outcomes and consequences. Instead, policy misinterpretations further drive families into poverty and create family instability. Finally, the opportunity for counties to retain 15% of BCR payments creates an incentive to maximize BCR judgments to fund Child Support Enforcement operations. County governments might be resistant to change as they collectively received almost \$16 million toward their budgets between the years 2011 through 2016.



## What Happens Next?

ABC for Health has long advocated for a review of Wisconsin’s BCR policy. Recently, ABC teamed up with 13 other state-wide advocacy organizations<sup>(18)</sup> and sent letters to the Executives of Milwaukee and Dane counties to request meetings for a comprehensive discussion of the county level approach to BCR policy. Among Wisconsin counties, these two ranked highest in BCR collections for the period 2010 to 2016. Both counties are also actively working to address birth outcome disparities, and we hope that research suggesting a connection between BCR and negative birth outcomes might prompt a good faith effort to address policy change.

**Ultimately, Wisconsin should end the practice of BCR. At a minimum, CSAs and Economic Support (ES) offices must apply more discretion when deciding to pursue actions against absent parents.**

The overwhelming majority of states either abandoned or never used the practice of BCR. The practice is not required by federal law, does not support the child, and is not in the best interest of families.

- Common sense dictates that CSAs should not pursue a birth cost judgment when the father is a member of an intact family unit at the time of paternity establishment and contributes to the support of the mother and child through income or in-kind services.
- CSAs should not seek a birth cost judgment against a Medicaid or BadgerCare Plus eligible father.
- The decision to pursue a birth cost judgment should review a father’s current and future ability to pay, including factors such as employment and earnings history, job skills, educational attainment, availability of suitable jobs in the local economy, and other barriers to employment.
- CSAs and ES offices must promote significantly improved education and outreach related to Good Cause exceptions for pregnant women, health care providers and other advocates
- Community stakeholders must help inform and assist pregnant women to secure evidence that supports Good Cause requirements and terminate the need to identify the father as not in the best interests of the mother or child

Wisconsin leads the country in the pursuit of absent parents for Medicaid birth expenses; this practice fails to support families. Through elimination of BCR actions against absent parents, Wisconsin will demonstrate its actual commitment to the support and well-being of children and families.

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Visit our full directory of BCR research at:  
**[HealthWatchWisconsin.Org](https://www.healthwatchwisconsin.org)**

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# Birth Cost Recovery:

**“It’s Not Child Support.”**



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