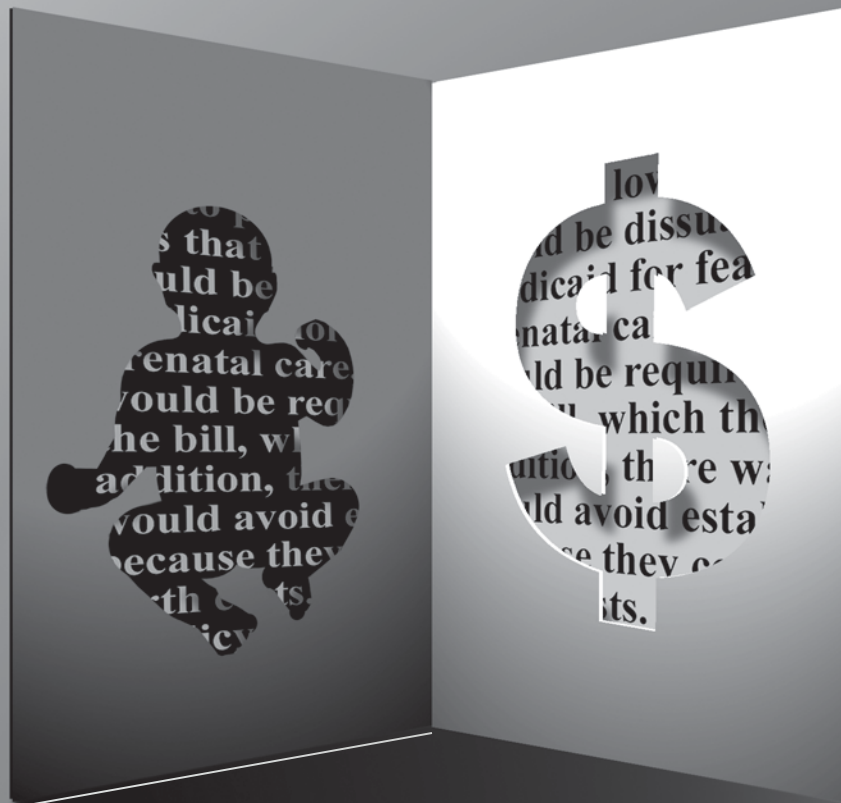




CENTER ON FATHERS, FAMILIES, AND PUBLIC POLICY

REPORT On Wisconsin's Medicaid-Supported Birth Cost Recovery Policy

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Acknowledgements

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CFFPP is a national nonprofit policy organization that addresses the concerns of low-income families who receive federal and state assistance. Founded in 1995 as a policy arm of the Ford Foundation-supported *Strengthening Fragile Families Initiative*, the Center works with practitioners, researchers, and policy advocates throughout the country to promote the well-being of low-income men, their children, and their families. The Center provides technical assistance to direct service organizations, analysis of legislative and policy initiatives that affect low-income families, and advocacy for the creation of holistic laws that are supportive of all members of low-income families, whether or not they live together or are legally married.

ABC for Health is a Wisconsin-based, statewide nonprofit public interest law firm dedicated to linking children and families, particularly those with special health care needs, to health care benefits and services. Founded in 1994, ABC for Health conducts family-by-family casework to assist clients and their families secure health care financing through eligibility for public programs such as Medicaid and BadgerCare. ABC has translated its expertise in eligibility problems into curricula for medical clinics, hospitals, public health agencies, and community-based organizations. ABC for Health's mission is to provide information, advocacy tools, legal services and expert support needed to obtain, maintain, and finance health care coverage and services.



Primary project staff include Marguerite Roulet (CFFPP), Scott Sussman (CFFPP), and Mike Rust (ABC for Health, now with ABC for Rural Health). We would like to thank representatives from county child support agencies who took the time to respond to our questions, as well as representatives from the State Bureau of Child Support, who provided us with additional information. We would also like to thank representatives from community health programs, public health agencies, and community-based organizations who answered our questions and who over the years have worked with us to try to better understand this policy. Most importantly, we would like to thank the families who have shared their experiences with us.

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Introduction

Over the past year, Advocacy and Benefits Counseling for Health (ABC for Health) and the Center on Fathers, Families, and Public Policy (CFFPP) have conducted a study to examine Wisconsin's policy of seeking reimbursement for Medicaid supported costs associated with the birth of a child born to unwed parents.

Wisconsin participates in a joint federal and state run Medicaid program. This program covers costs associated with the birth of a child for pregnant women whose income is below 185 percent of the federal poverty level. The Medicaid-paid birth costs are an entitlement to the mother, and federal and state laws preclude recovery of these costs from the mother. However, Wisconsin statutes do permit the state to recover these costs from a child's father if the parents are not married. The recovery effort is undertaken by county agencies (offices of child support enforcement). The agencies retain a percentage (15%) of all recoveries, and the remainder is used to reimburse the Medicaid program.

Over a decade ago, both federal and state governments recognized that this recovery policy could be a disincentive to Medicaid coverage and prenatal care and to paternity declarations. The concern was that low-income, pregnant women would be dissuaded from applying for Medicaid for fear that, if they sought prenatal care, the fathers of their children would be required to pay some or all of the bill, which they could not afford. In addition, there was concern that fathers would avoid establishing legal paternity because they could not afford to repay the birth costs. In 1991 Wisconsin implemented a policy that defined reasonable recovery limits and exempted poor fathers from recovery. That policy was relaxed in 1992 at the request of county executives, specifically to protect county revenues. Today, the policy continues to exist with some limits. However, the experience of ABC for Health and CFFPP as well as other agencies working with low-income parents suggest that the policy is implemented differently among the various agencies

throughout the state and is poorly understood by families throughout Wisconsin.

In response, ABC for Health and CFFPP have undertaken this study to examine current policy and practices and to develop a guide that will explain these to consumers. This report is part of the broader effort and presents several of the issues families and advocates throughout the state have indicated as areas of concern or confusion. It is based on surveys completed by county child support agencies, health service providers, and advocates in the state, as well as on the experiences of members of individual families who have dealt with this process. In addition, over the past year CFFPP has legally represented 26 families throughout the state in their efforts to contest aspects of the recovery policy as it applied to their situations, and information from these cases also informs the report.

Policy Overview

In Wisconsin, the birth cost recovery effort is organized at the county level through county child support agencies. When an unmarried, pregnant woman applies for Medicaid/Healthy Start services, she is required to cooperate with the child support agency unless she can show that she has “good cause” not to cooperate. (For example, a pregnant woman may choose not to cooperate if there is a likelihood that cooperating will cause physical or emotional harm to her or the child). Neither pregnant women nor children can be sanctioned for non-cooperation, but this exception to sanctions is not universally understood by community agencies, health care providers, or consumers. Cooperation involves providing information about the alleged father of the child to enable the child support agency to establish legal paternity and establish a child support order. In addition, this information may be used to recover birth costs. While the child support agency has much discretion over how to handle this process, all of the agencies that responded to our survey

indicated that they do seek birth costs from unwed fathers.

The amount that is recovered from fathers can vary according to a number of issues, including the county where the child is born, the number of children who are born, the type of delivery, whether the provider is a health maintenance organization or a fee-for-service provider, and whether any part of the birth cost is covered by a third party. However, while these factors will affect the overall costs associated with a delivery and birth and the amount that would be covered by Medicaid, state policy limits the amount of money that can be collected from parents in a given situation. A maximum amount has been established for different regions of the state by the state bureau of child support, and county agencies are not supposed to seek payments from parents that exceed the regional limit, even if the actual costs are higher. In addition, if a third party (e.g., private insurance) has covered any portion of the costs, that amount should be subtracted from the amount the parent is charged.

In general, the amount that is charged to parents and the regional limits set by state policy do not exceed several thousand dollars. While this may not seem excessively high, for many parents and families in Wisconsin this represents a serious financial burden. Frequently the fathers associated with the mothers—whether or not they live together—are struggling financially, and the addition of this debt to the costs of raising a child can be unmanageable. Health advocates from around the state who responded to our survey indicated that they found that repayment of birth costs competed with families' abilities to meet other needs, created stress in the parents' relationships, created fears for families that they would be pursued or even incarcerated for nonpayment, and led some mothers to forgo Medicaid/Healthy Start services in order to avoid the recovery process.

Health advocates indicated that families found this to be particularly problematic when unmarried parents are living as a family in the same household and raising their child(ren) on a limited budget. This situation would not arise for married parents since the law precludes recovering birth costs from a father who is married to the mother when she applies for services.

However, while the law distinguishes between families, for the families themselves the distinction may not seem appropriate. As one advocate put it: “customers express concern about us doing a [child support agency] referral when the alleged father is in the household ‘already supporting me’.” For these families, the repayment is in effect borne by the mother (and child) as well as the father, a situation that appears to violate the spirit of the law that precludes mothers from having to repay Medicaid costs. Moreover, even if the parents subsequently marry, the debt remains.

While the information we have received indicates that the existence and application of the policy causes financial hardship for low-income parents in Wisconsin, there are in addition several aspects of the policy that are confusing to families and advocates, which make it difficult to ensure that it is consistently applied. Some inconsistencies appear to be the result of the discretion that is accorded to county agencies or individual officials in handling individual cases. However, others appear to reflect conflicting interpretations and applications of the policy. Families and advocates must challenge decisions at the county level by going to court, a process that can be very difficult if not impossible for many of the families affected. The following section briefly outlines some of the issues that are confusing to families and advocates and that appear to be subject to divergent interpretations.

Problematic Issues

a. Low-income fathers

In recognition of the fact that the birth cost recovery policy can cause particular hardship for low-income individuals and families, the law specifies that a court order to repay birth costs is to be “an order requiring the father to pay or contribute to the reasonable expenses of the mother’s pregnancy and the child’s birth, based on the father’s ability to pay or contribute to those expenses” (Wi. Stat. Sec. 767.51(3)(e)). Accordingly, child support agencies are given discretion to request orders for

repayment for less than the Medicaid-paid amount by waiving some or all of the cost in IV-D cases, if they believe that this is appropriate in a given situation. As the Wisconsin Child Support Procedures manual states:

Consider the father's income and the likelihood that it will improve in the future. For example, is the father incarcerated with little or no chance for parole? Are there other circumstances which will likely prevent him from ever meeting or exceeding 185% of poverty level? Will repayment interfere with his ability to support the child? If the answer is yes to any of these questions, you may decide to waive all or part of the costs. (Chapter 6; section 3.3; pg. 54; 03/15/02)

In addition to such discretionary options, state policy also defines specific contexts in which child support agencies are required to follow different procedures. When the state first published this policy in 1991, unmarried fathers whose income was below the Healthy Start limit at the time of the baby's birth were not ordered to repay birth costs. In 1992 the state altered this aspect of the policy: it triggered federal and state income tax refund interception immediately, regardless of income and regardless of whether the father lived with the mother and child; and it tracked the income of fathers over their lives in order to seek recovery should their income rise above the Healthy Start limit.

Currently, if a father's income (excluding any W-2 or SSI benefits as income) is below 185% of the federal poverty level, state policy states that no periodic payments are supposed to be due from the father for as long as he can demonstrate that his income is below that level (see *Wisconsin Child Support Procedures*, Chapter 6: Medical support; section 3.2.4; pg. 6-53; 03/15/02). These fathers do remain subject to state and federal income tax intercepts, but no periodic (e.g., monthly) payments should be ordered. Several child support agencies indicated in their response to our survey that they did not require periodic payments from fathers until their income reached or surpassed 185% of the federal poverty level, although they pursued state and federal tax intercepts. However, other agencies noted that

they would set minimal orders when a father's income was very low, including in situations in which the father was unemployed. Thus, while the state, in addition to providing some discretion to child support agencies, has established specific procedures to be implemented in particular contexts, it appears that these procedures are not uniformly followed throughout the state.

b. Second or subsequent child

A second issue that was confusing for families and advocates was the provision that exempts a father from repayment if he already has one or more children with the mother and his income was taken into consideration when the mother applied for services related to the birth of the youngest child. On first sight, this policy seems to suggest that if a mother in this situation includes the father's income on her Medicaid application and is approved to receive services, the father should be exempt from repayment. However, this policy is interpreted somewhat differently in different counties, and the specific description of this policy varies in different state publications. Thus, for example, a brochure of the Department of Workforce Development's Bureau of Child Support, entitled *Medicaid and Repayment of Birth Costs (1/2002)*, states:

An unmarried father may not have to repay birth costs if:

- The couple already had an older child together and
- The father's income was considered when the mother applied for Medicaid before the younger child was born.

The Wisconsin Child Support Procedures manual (03/15/02) addresses the issue in the following manner in its direction to county workers:

Was the father included in the mother's MA eligibility group when MA eligibility was determined? If yes, do not require the father to repay birth expenses... If you are not sure if his income was included in the determination, contact the Medicaid worker. (Chapter 6; section 3.4; pg. 56)

In responding to our survey, some county agencies relied on

the first definition (“fathers’ income being considered”), while others used the second description (“fathers being included in the eligibility determination”) in discussing contexts in which they considered fathers to be exempt from birth cost recovery. Some agencies used still other descriptions, including

- whether the father was in the household at the time of application for medical services, and
- whether the father’s income was included in the MA group.

Other agencies have said that a father can only qualify if he was actually eligible for Medicaid as a result of the determination. In addition, several agencies stated categorically on the surveys that they do not seek repayment if the parents already have a child and made no reference to MA eligibility or consideration of fathers’ incomes. In direct contrast, other agencies responded categorically that they do seek repayment regardless of whether the parents already have a child (and likewise made no reference to MA eligibility or consideration of fathers’ incomes).

While the specific definition may not seem important, it does make the policy confusing and subject to different interpretations. Families have found that, even when they have included the father’s income on the MA application form, this does not guarantee that the father will be considered exempt from recovery efforts. Advocates cannot determine whether this is a function of specific county officials’ or Medicaid officials’ interpretations of the policy and/or of the Medicaid application, a function of the way in which the different administrative systems interface, or a matter of misinformation among families, advocates, and state and county officials.

Moreover, while child support agencies responding to our survey were aware that this policy exists (even if they gave differing interpretations and explanations of their application of it), many of the health agency respondents appeared to be unaware of this policy, even though some of them are directly involved with clients as they apply for Medicaid services. Indeed, one respondent suggested that they face difficulties in effectively

including the father's income on applications when they attempt to do so, stating:

Why can't the state use the father's income on the application when they are living together? She will usually qualify anyway and he is often the sole support for the two of them. He sometimes supports her children from a previous relationship as well.

Requiring reimbursement from fathers in these families reduces funds that would directly support the households and functions in practice as recovering costs from mothers as well as fathers. The policy would seem to exempt some of the fathers from recovery efforts. However, the confusing interpretation of the policy, and the fact that even including a father's income on a Medicaid application form does not guarantee that he will be considered a part of the eligibility group for purposes of exempting him from birth cost recovery efforts, makes the application of this policy uneven throughout the state and leads to confusion among families and health advocates alike.

c. Appropriate Charges

A third issue that led to confusion among families and that appeared to be inconsistently interpreted throughout the state was that of what constitutes appropriate charges for recovery. For example, the state has set specific maximum limits on the amount that can be recovered from families for the birth of one child. These limits vary regionally, but nowhere exceed \$5367 (*Child Support Bulletin No. 03-09, 04/24/2003, pg. 2*). Both the Wisconsin Child Support Procedures manual (03/15/02) and specific Bureau of Child Support bulletins directed to county child support directors, supervisors or lead workers, and to attorneys state that the regional limits cannot be exceeded. For example, the *Child Support Bulletin No. 03-09 (04/24/03)* states:

The regional averages shown above are the maximum birth cost amount which agencies may ask courts to order fathers to repay, whether the birth is fee-for-service or paid through an HMO. Obtaining information about the actual cost does not permit the agency to request a repayment order higher than the regional aver-

ages. (CSB 03-09, 04/24/03, pg. 3)

However, advocates have worked with clients who have faced payments in excess of these regional averages. It is difficult for parents to contest these charges, as there is currently no effective appeals process outside of using the court system. While families can go to court, this is a daunting and difficult process for families who cannot afford, and/or do not have access to, legal representation.

More complicated than identifying situations in which parents have been charged more than the regional limit is the attempt to identify incorrect charges when the total amount does not exceed the limit. One of the more common issues raised by advocates was that of identifying whether and what portion of the actual birth costs in a given situation were paid by a third party (e.g., private insurance). Again, state policy does address this issue, noting that any payment made by a third-party payer, such as an insurance carrier, is to be deducted from the costs charged to the father (see *Child Support Bulletin 03-09, 04/24/03, pp. 1-2*). Several child support agencies responding to our survey indicated that they do in fact follow this policy and reduce costs dollar-for-dollar by the amount paid by a third party.

However, health workers and advocates noted that it can be difficult for parents to present sufficient evidence that a third party has covered some of the costs. Without access to this information it is unlikely that they will receive a reduction in the repayment cost, and consequently they will be held responsible for paying costs that were paid by private insurance. Health agency representatives noted that parents need to know many different kinds of information in order to accurately determine what their repayment costs should be, including “each county’s policy, so they are aware of what is expected of them,” “their health coverage policies that they may have through their parents, or through their employers,” “out of pocket costs,” and information from their “EOB’s (explanation of benefits) etc., to verify what insurance has paid.” Without access to all of these pieces of information and without means to present this information to county officials, parents may be held responsible

for payments that have already been made. This can be particularly daunting for a father who does not have easy contact with the mother of his child and who may therefore have less access to information (e.g., access to an Explanation of Benefits that provides information on payments made by the mother's parents' insurance).

The confusion over what charges can be appropriately included and the amount that families can be held responsible for can lead to excessively high payments by families. For example, in one county, parents who have subsequently married and are raising their disabled child continue to pay over \$61,000 in birth cost recovery despite the fact that all of the charges were incurred after the birth of the child and the mother did not receive Medicaid services for the birth.

d. Different implications for parents from different communities and/or with different legal statuses

Finally, one additional issue that complicates the application of the birth cost recovery policy is the different implications it can have for parents from different communities or for parents who have specific legal statuses within the state or country.

For example, members of Wisconsin's federally recognized Native American tribes might or might not be required to reimburse birth costs depending upon whether these costs were paid for by Medicaid or by the Indian Health Services through the Contract Health Services program. This decision is based on whether they are required to apply for Wisconsin Medicaid and whether they meet the income eligibility requirements. If so, the father will likely be required to repay the birth costs. By contrast, the father is not required to repay birth costs that were paid for through the Contract Health Services program. Thus, in a somewhat counterintuitive manner, in a situation in which the mother's income is sufficiently low to make her eligible for Medicaid services, the father is more likely to be required to pay back birth costs than in a situation in which the mother's income is high enough to make her ineligible for Medicaid services.

Members of other communities face different issues. For example, non-citizen pregnant women can be covered for labor and delivery costs by Medicaid through the Emergency Medical Assistance Program. However, they can only apply for emergency medical services in the final month before their expected delivery date. Many of the women in Wisconsin who are in this position are Latinas who are unfamiliar with the state's administrative systems and the specifics of the health system and have limited knowledge of English. Consequently they must make many decisions in a very limited time period, and some options that could affect birth cost recovery might no longer be available by the last month of their pregnancy.

Conclusion

As our experience over the past years and the responses to our study indicate, Wisconsin's policy of recovering birth costs from unwed fathers is problematic. Many aspects of the policy are confusing to families and advocates, which makes it difficult to determine if the policy is properly applied in a given situation. Some of the requirements for applying the policy appropriately can be difficult for families to meet, which again makes it difficult to ensure that the policy is properly applied (e.g., expecting fathers to present copies of EOB statements in order to calculate whether any repayment amounts remain outstanding). In addition, several aspects of the current policy appear to be subject to different interpretations (e.g., the process for determining whether the father is exempt from paying based on his status within the MA eligibility group). Finally, there are few options available to families to appeal decisions they believe are inappropriate. All of these factors make the policy as it is currently applied problematic, both for families and for the advocates who are assisting them in negotiating the process.

However, beyond the issue of inconsistent application, the policy itself is problematic for many poor families in Wisconsin. One rationale for the current policy is that it provides revenue to the counties. However, this benefit comes at a significant cost.

The revenue is being sought from among the poorest residents in the state—i.e., families in which the mother was sufficiently poor to qualify for Medicaid. In situations in which the father lives with the mother and children, the funds are taken directly away from the children in the home—the very children whose financial support the county child support offices (which set the repayment amounts) are charged with ensuring. And, as our study indicates, the application of this policy causes stress between parents, leads to anxiety over being pursued or even incarcerated for failure to pay, deters some fathers from willingly establishing paternity, and, perhaps most alarmingly, deters pregnant women from seeking prenatal health care.

These concerns have already been recognized on a national level. In 1998, the Secretary of Health and Human Services and the Secretary of Labor created the Medical Child Support Working Group to examine, and make recommendations to improve, the enforcement of medical support for children. In June 2000, the Working Group produced a report, *21 Million Children's Health: Our Shared Responsibility*, which addresses numerous areas that affect the health care coverage of children in divorced, never-married, or separated families. Among the issues they address is that of states seeking reimbursement of birth costs from unwed fathers when Medicaid has paid these costs, a policy they find to be highly problematic and counter to other policy priorities.

As they note, the policy deters fathers from voluntarily establishing paternity and deters mothers from seeking prenatal care—both of them problems that earlier Congressional action had attempted to alleviate by expanding Medicaid coverage for low-income, pregnant women and eliminating the requirement that they cooperate with child support enforcement (Working Group Report, Chapter 3; pg. 25). In addition, the Working Group notes that reimbursing the state competes with fathers' and families' abilities to directly support their children. While our own study confirms that this is a particular problem for families in which the father lives in the home with his child(ren) and his child(ren)'s mother, the Working Group makes a broader argument:

Moreover, to the extent that the State does collect the medical expenses as arrears owed to the State, this money reimburses the State at the expense of additional support that might go to the child. When both parents have limited income, as is almost always the case when Medicaid is involved, the IV-D program should maximize the amount of support going to the child rather than collect State debt. (Report, Chapter 3; pg. 25-6)

Consequently the Working Group has recommended at the federal level that:

Congress should amend Title IV-D of the Social Security Act to preclude State IV-D agencies from attempting to recover Medicaid-covered prenatal, birthing, and perinatal expenses from noncustodial parents. (Recommendation 20, Report, Chapter 3; pg. 26)

Given our experience that the Wisconsin policy exhibits many of the problems identified at the national level, ABC for Health and CFFPP recommend that Wisconsin change its policy at the state level and thereby further the goals of encouraging unwed fathers to voluntarily establish paternity, encouraging pregnant mothers to seek prenatal health care, and eliminating barriers for low-income parents as they support their families.



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