

*Pulse Report:*

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

*A policy investigation.*



**HealthWatch Wisconsin**

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## 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.

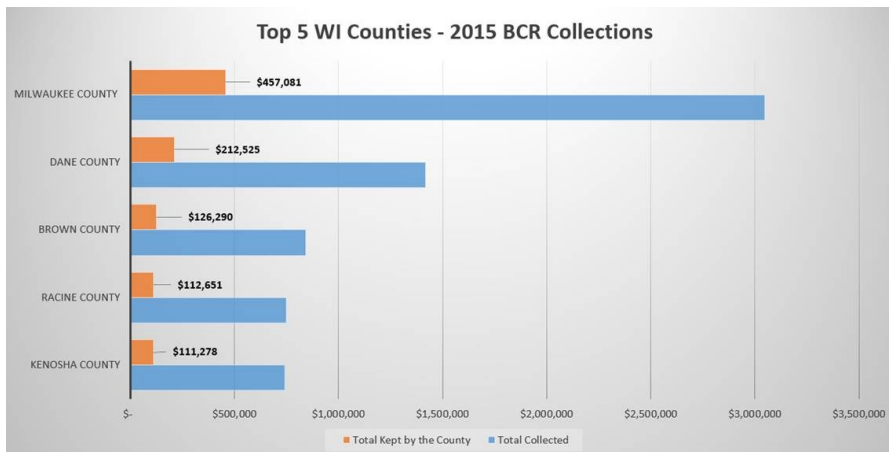
## What is Good Cause?

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.

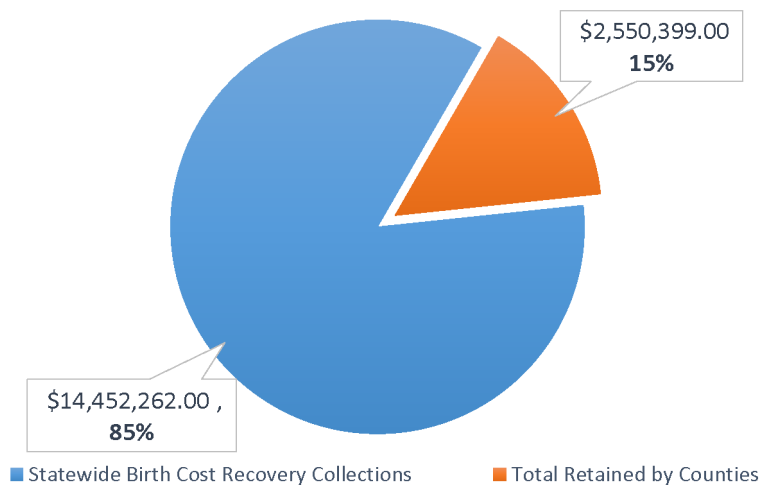
Again, none of these collections go to children and families. Federal child support laws incentivize CSAs to maximize collections by their ability to keep 15% of collections for the support of their county agency budget. The remaining 85% is returned to the Wisconsin Department of Health Services and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

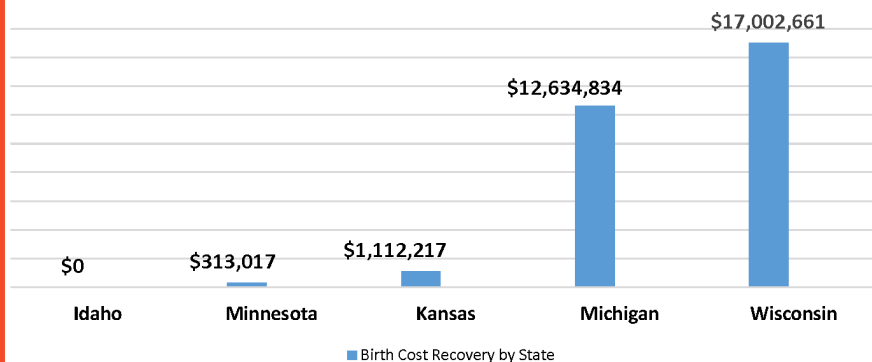
Although the federal law has not changed at all, most states have abandoned the practice of BCR after realizing that it is not in the best interest of the family.

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.

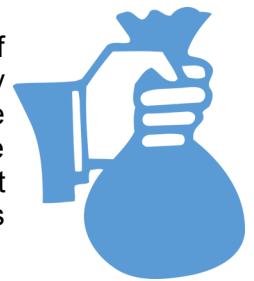
Wisconsin's neighbor, Minnesota, still continues to pursue recovery of Medicaid birth costs from non-custodial parents, but experienced a significant decrease in the cases pursued in the past 15 years. In 2015, Minnesota only collected about \$300,000, compared to Wisconsin's 2015 collection of \$17 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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