



*Advocacy & Benefits Counseling for Health, Inc.  
Serving Wisconsin Families Since 1994*

**Birth Cost Recovery Update  
“The Birth Tax”  
February 12, 2020**

Hello Partners,

As you know, ABC for Health is dedicated to tracking the birth cost recovery policy in Wisconsin. This policy, we call it the “birth tax,” is one that is especially important to keep our partners engaged and up to date as we work to eliminate the policy statewide. This Update announces a free on-demand workshop on Birth Cost Recovery, new look to our Birth Tax website, information on a county board committee hearing in Milwaukee County, a closer look at the federal matching funds change from earlier this year, and a recent Wisconsin Examiner article on BCR.

**Free Virtual Workshop: Eliminating a Medicaid Health Disparity: Stopping the Birth Tax**

ABC for Health is partnering with HealthWatch Wisconsin, Inc. to offer a free informational workshop on Birth Cost Recovery titled, “Eliminating a Medicaid Health Disparity: Stopping the Birth Tax,” in conjunction with 13th Annual HealthWatch Wisconsin Conference: *2020 Visions & Decisions – Health Insurance. Social Justice. Health Equity*. The workshop will be offered on-demand in a new, virtual portion of the conference, available to registrants from March 5 – March 13, 2020. This particular workshop will be free and open to the public thanks in part to the support of the “Family Stories: Birth Cost Equity for Unmarried Women & Families” project through the Wisconsin Minority Health Program.

**Workshop Description:** After Gov. Tony Evers’ effort to eliminate Birth Cost Recovery Policy in the 2019-2020 state budget was thwarted, some counties took matters into their own hands. In this workshop, we give a summary of where the policy stands, changes in federal funding, and family stories that show the diverse and damaging impact of this inequitable policy. Speakers: Atty. Bobby Peterson, Executive Director and Rich Lavigne, Managing Attorney, ABC for Health

**To register** for just this free workshop, please email [Ryan Co](mailto:ryan.co@healthwatchwi.org) at HealthWatch Wisconsin.

**To register** for the full HealthWatch Wisconsin Conference on March 5, 2020, please visit: <https://www.safetyweb.org/healthwatchwi/conference.html>

**Same Content – A New Look**

On December 19, ABC for Health refreshed its [webpage](#) that houses our research, writing, and updates on the Birth Tax. In the near future, we will be updating our video library on the birth tax and uploading them to this site.

**Milwaukee County Update**

In late December that **Theodore A. Lipscomb, Sr.**, the chairman of Milwaukee’s county board introduced a resolution to review birth cost recovery practices to determine “the fiscal and racial equity impacts” of the practice in Milwaukee County.

The Milwaukee County Board’s Committee on Finance and Audit considered [File 19-969](#) that County Board Chairman Theodore Lipscomb introduced on Birth Cost Recovery after learning about Dane County’s recent budget action. The Milwaukee County Department of Child Support Services



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responded that they will provide the requested report for the January 2020 meeting cycle. Upon receipt of that report from Child Support Services, the Chairman referred that update to both the Committees on Health and Human Needs and Finance.

The Health and Human Needs Committee met at 9 AM on January 29. ABC for Health's Bobby Peterson testified on the harmful impact of the collection actions on disparity families in Milwaukee and Wisconsin. That testimony is available here: (Agenda item 11, video feed for this item begins just after minute 41)

[http://milwaukeecounty.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=1958](http://milwaukeecounty.granicus.com/MediaPlayer.php?view_id=2&clip_id=1958)

### **Financial Impact of Birth Cost Recovery—Less Money for Counties**

#### **A Change in Matching Federal Funds**

As we understand it, the state reported incentive payments to local child support agencies for Medicaid (i.e. birth cost) recoveries as expenditures for child support enforcement activities. Under that formula, the federal government paid 66 cents of every dollar spent on enforcement activities and the state paid 34 cents. In practice, that meant that for every dollar the state paid to counties as incentive funds, the state received nearly \$2.00 in federal matching funds. Those matching funds were pooled and later distributed to county agencies based on a pro rata share of the county's total number of enforcement cases compared against the total number of cases statewide. That pro rata share increased or decreased depending upon certain performance measures. We believe that meant that any given county would not necessarily get the full matching rate for its birth cost recoveries, but certainly it would provide additional funding beyond the flat 15% incentive payment.

As of June 2019, the federal Office of Child Support Enforcement [clarified](#) that states are **not allowed** to treat Medicaid recovery incentive payments as program expenses. Instead, such recovery incentives must be reported as program income that is not eligible for federal matching funds.

That federal interpretation of policy makes sense when you think about how the Medicaid recovery incentive payments work. For every dollar recovered by county enforcement actions, the state is allowed to keep the share that represents the state's required contribution to Medicaid program expenses – currently about 40%. The remainder is returned to the federal Medicaid program except for the 15% county incentive payments called the “county bounty.” So instead of getting 60% refunded to the federal Medicaid program, the feds only get 45%. In that regard, it's really more like the state getting a discount on repayments to the federal government rather than an expenditure made by the state to fund local child support operations.

The loss of the ability to claim federal matching funds means that the income generated through birth cost recovery for child support offices will decrease substantially, making the practice much less impactful on county agency budgets.

As we shared in our November Partner's Update, Dane County recently suspended the pursuit of Medicaid birth cost judgments. We presume that the loss of federal matching income contributed to that decision, although the County Executive explained the decision as follows:



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“With this budget I am ending the controversial practice known as “birth cost recovery collections.” Currently, the federal government permits child support agencies to re-coup costs for Medicaid funded births. These dollars are collected after child support payments are made and counties retain a portion of the proceeds for the administration of this collection. We can forgo this revenue and give these parents one less expense while many of them struggle to make ends meet. The racial disparities in Birth Cost Recovery are stark, with these parents being asked to reimburse the federal government hundreds of dollars each year for many years in some cases.”

We were pleased that Dane County decided to voluntarily end this discretionary policy. Moreover, the increased media, public, and legal attention to the inequities apparent in the Birth Tax and increased representation of families made the process of collecting these funds more expensive and politically uncomfortable for some counties. Indeed, the disclosure of the research and data about the harmful impacts to pregnant women, worsened health and poor birth outcomes that resulted in even more expensive care made the whole process, previously buried in a deep and murky bureaucracy, untenable.

### **Media Coverage of the Birth Tax**

On December 18, Erik Gunn wrote “[Is ‘birth-cost recovery’ on its way out?](#)” for the Wisconsin Examiner speculating that with the two largest counties (and the state’s most aggressive birth tax collectors) rethinking birth cost recovery policies, perhaps the policy may be on its “way out.”

### **Reminder: Pro Bono Legal Assistance Continues**

The Quarles & Brady Law Firm, under the stewardship of Attorney Richie Davis (and former ABC legal intern), will continue to evaluate and accept cases for pro bono representation of clients facing birth cost recovery judgments. Through our partnership, ABC staff will identify screen and refer potential clients to Quarles for possible representation related to the birth cost recovery issue. ABC attorneys will be available to consult Quarles attorneys in order to provide advice and information, as needed, based on our organizational knowledge and experience.

This update is for informational purposes only.

Regards,  
[Brynne McBride](#) & Robin Mwai  
ABC for Health, Inc.